

**The Second Report
of the Joint National Bureau of
Investigation -
National Prosecution Service
Special Investigation Team
(NBI-NPS SIT)
on the January 25, 2015
Mamasapano Incident**

In memory of

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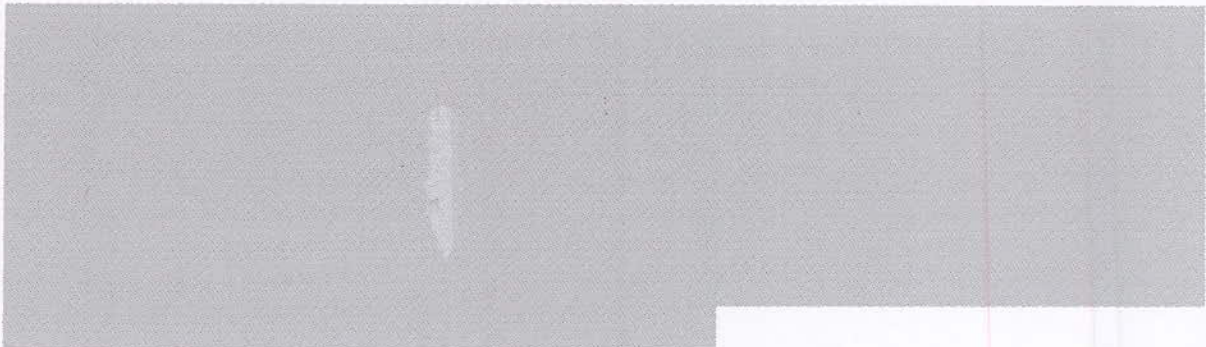
Because of the seemingly endless evidentiary and logistical challenges they faced from May to September 2015, the members of the NBI-NPS SIT fully realize that without the indispensable cooperation and valuable assistance extended by the following persons and organizations, the second phase of the investigation would not have been completed:

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[REDACTED]



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We salute our respective heads of offices NBI Director Virgilio T. Mendez and the Prosecutor General Claro A. Arellano.

We wish to extend our sincerest thanks to our stern taskmaster, the Secretary of Justice, Hon. Leila M. De Lima, for the opportunity to serve and the invaluable investigative experience this case has given each of us. As she begins a different journey in public service, we are confident that she will bring the rule of law, and her objectivity, fairness and thoroughness to the "next higher level".

LIST OF ACRONYMS AND TERMS USED

A	
Aerodrome	Refers to an airport, a defined area on land or water (including any building, installation and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft. (As defined in Section 3, Republic Act No. 9497)
AFP	Armed Forces of the Philippines
Aircraft Operations Log	A CAAP issued form in which the controller-on-duty records the take off and landing of aircrafts
ARP	Airport Reference Point; also Aerodrome Reference Point, the latitude and the longitude of the approximate center of the airport.
Alternate Aerodrome/Altn Aerodrome	An aerodrome at which an aircraft can land should this become necessary shortly after take-off and it is not possible to use the aerodrome of intended landing. (ICAO)
AOR	Area of Responsibility
ASG	Abu Sayyaf Group; also Al-Harakat al-Islamiyya or "Bearer of the Sword" (<i>Richard Swain, Ph. D, Booz Allen Hamilton, Operation Enduring Freedom Philippines: A Case Study, October 2010</i>)
ATC	Air Traffic Control
ATS	Air Traffic Service
B	
BIAF	Bangsamoro Islamic Armed Forces
BIFF	Bangsamoro Islamic Freedom Fighters
BOI	Board of Inquiry
C	
CAAP	Civil Aviation Authority of the Philippines
CASEVAC	Casualty Evacuation; the unregulated movement of casualties that can include movement both to and between medical treatment facilities (Source: Joint Publication 1-02, Department of Defense Dictionary of Military and Associated Terms, 8 November 2010, as Amended through 15 June 2015)
CCCH	Coordinating Committee on the Cessation of Hostilities
CFT	Contract Field Teams; also called Contractor Field Teams;
CHR	Commission on Human Rights
CIA	Central Intelligence Agency
CIDG	Criminal Investigation and Detection Group
Col	Colonel
<i>Corpus delicti</i>	Defined as the body, foundation or substance upon which a crime has been committed. It refers to the fact that a crime has been actually committed. (<i>People vs. Quimzon, G.R. No. 133541, April 14, 2004</i>)

D					
DDROS	Deputy Director, Regional Operations Service				
DFA	Department of Foreign Affairs				
DNA	Deoxyribonucleic Acid				
DND	Department of National Defense				
DOJ	Department of Justice				
DOS	Datu Odin Sinsuat, a municipality in the province of Maguindanao				
DOTC	Department of Transportation and Communication				
DPCR	Directorate for Police Community Relations of the PNP				
E					
Exfiltration	The removal of personnel or units from areas under enemy control by stealth, deception, surprise or clandestine means. (Source: Joint Publication 1-02, Department of Defense Dictionary of Military and Associated Terms, 8 November 2010, as Amended through 15 June 2015)				
F					
FAA	Federal Aviation Administration				
FBI	Federal Bureau of Investigation				
FIID	Force Intelligence and Investigation Division of the Special Action Force				
Flight Plan	Specified information provided to air traffic services units, relative to an intended flight or portion of a flight of an aircraft. (Source: <i>Annex 2 to the Convention on International Civil Aviation on Rules of the Air, July 2005, retrieved on www.icao.int</i>)				
FSSU	Forward Service Support Unit of the 6 th Infantry Division of the Philippine Army				
G					
GPS	Global Positioning System				
GRP	Government of the Republic of the Philippines				
GWOT	Global War on Terror				
H					
HUMINT	Human Intelligence				
HVT	High Value Target				
I					
ICAO	International Civil Aviation Organization				
ICAO Four (4) Letter Airport Identifier Codes	These codes uniquely identify individual airports worldwide. They are used in flight plans to indicate departure, destination and alternate airfields as well as in other professional aviation publications. The first two (2) letters of ICAO codes identify the country. The ICAO codes are used by air traffic control and airline operations. The ICAO airport codes for certain airports in the Philippines are as follows:				
	<table border="1"> <tr> <td>RPLL</td> <td>Ninoy Aquino International Airport, Manila</td> </tr> <tr> <td></td> <td></td> </tr> </table>	RPLL	Ninoy Aquino International Airport, Manila		
RPLL	Ninoy Aquino International Airport, Manila				

ID	Infantry Division of the Philippine Army		
IED	Improvised Explosive Device		
IG	Intelligence Group of the Philippine National Police		
IP	Intelligence Packet/Intelligence Package		
IPB	Intelligence Preparation of the Battlefield		
IR	Infra-Red		
ISR	Intelligence Surveillance and Reconnaissance		
ISTAR	Intelligence, Surveillance, Target Acquisition and Reconnaissance of Special Action Force		
IW	Irregular Warfare; A violent struggle among state and non-state actors for legitimacy and influence over the relevant population(s). (Source: Joint Publication 1-02, Department of Defense Dictionary of Military and Associated Terms, 8 November 2010 as amended through 15 June 2015, p.121, accessed from www.dtic.mil/doctrine/dod-dictionary)		
ISR	Intelligence Surveillance and Reconnaissance		
J			
JI	Jemaah Islamiyah		
JSOAD	Joint Special Operations Aviation Division		
JSOTF-P	Joint Special Operations Task Force-Philippines		
JTF 510	Joint Task Force 510; USPACOM's rapid deployment joint task force in which SOCPAC serves as the nucleus. JTF 510 is specially tailored for deployment in support of contingencies and crises that require a rapid SOF response within the USPACOM AOR. (Source: Special Operations Command in the Pacific (SOCPAC) Joint Task Force 510, www.globalsecurity.org)		
L			
LCC	Last Cover and Concealment		
LEO	Law Enforcement Operation		
M			
MEDEVAC	Medical Evacuation		
ME	Main Effort		
MILF	Moro Islamic Liberation Front		
MNLF	Moro National Liberation Front		
MPPO	Maguindanao Police Provincial Office; located in Camp Datu Akilan, Shariff Aguak		
N			

NBI	National Bureau of Investigation
NPS	National Prosecution Service
NVG	Night Vision Goggles
O	
OEF-P	Operation Enduring Freedom-Philippines
OIC	Officer-in-Charge
OPCON	Operational Control
OPLAN or Oplan	Operation Plan
ORCC	Operations and Rescue Coordination Center of CAAP
P	
PA	Philippine Army
PAF	Philippine Air Force
PAG	Private Armed Group
PO	Police Officer
P/Dir or PDIR	
P/Dir or PDIR	Police Director
PNP	Philippine National Police
P/SInsp	Police Senior Inspector
P/Supt.	Police Superintendent
R	
Round Robin Flights/Overhead Flights	An aircraft will just cruise around the area and will take off and land on the same aerodrome
RTC	Regional Trial Court
S	
SAC	Special Action Company
SAF	Special Action Force
Seaborne Company	84th Special Action Company
SEALs	Sea, Air, Land; Seal Team United States Navy forces organized, trained and equipped to conduct special operations with an emphasis on maritime, coastal, and riverine environments. (Source: Joint Publication 1-02, Department of Defense Dictionary of Military and Associated Terms, 8 November 2010, as Amended through 15 June 2015)
SIC	Special Investigation Commission
SILG	Secretary of Interior and Local Government
SIT	Special Investigation Team
SOCO	Scene of the Crime Operatives
SOCPAC	Special Operations Command in the Pacific
SSE	Sensitive Site Exploitation; Refers to a related series of activities inside a captured sensitive site to exploit personnel documents, electronic data and material captured at the site, while neutralizing any threat posed by the site or its contents. Also called the SSE (JP3-31) citing "Definition of United States Department of Defense military terms" which was updated on July 17, 2015, (http://www.Militaryfactory.com/dictionary/military-terms-defined)

T	
TCP	Tactical Command Post; In Oplan EXODUS, the TCP was the headquarters of the 43 rd SAC in the MPPO at Camp Datu Akilan, Shariff Aguak, Maguindanao
TELCOS	Telephone Companies or Providers
TOG	Tactical Operating Group
U	
UAV	Unmanned Aerial Vehicle; also UAS or Unmanned Aerial System; also called "Drones"
US	United States
US DOD or DOD	United States Department of Defense; also referred to as Department of Defense
US MIL	United States Military
USPACOM	United States Pacific Command; One of six geographic combatants commands defined by DOD's Unified Command Plan (Source: www.pacom.mil)
UTC/Zulu Time	Coordinated Universal Time (abbreviated as UTC, and therefore often spelled out as Universal Time Coordinated and sometimes as Universal Coordinated Time); The standard time common to every place in the world. Formerly and still widely called Greenwich Mean Time (GMT) and also World Time, UTC nominally reflects the mean solar time along the Earth's prime meridian. (The prime meridian is 0° longitude in the 360 lines of longitude on Earth. There are 179 meridians toward the East and 179 toward the West. The 180th meridian is also called the International Date Line.) The prime meridian is arbitrarily based on the meridian that runs through the Greenwich Observatory outside of London, where the present system originated. The UTC is based on an atomic clock to which adjustments of a second (called a <i>leap second</i>) are sometimes made to allow for variations in the solar cycle. Coordinated Universal Time is expressed using a 24-hour clock but can be converted into a 12-hour clock (AM and PM). UTC is used in plane and ship navigation, where it is also sometimes known as Zulu. UTC was defined by the International Radio Consultative Committee (CCIR), a predecessor organization of the ITU-TS, and is maintained by the Bureau International des Poids et Mesures (BIPM). (http://whatis.techtarget.com/definition/Coordinated-Universal-Time-UTC-GMT-CUT)
V	
VDOP	Vehicle Drop-Off Point
VFA	Visiting Forces Agreement
W	

WESTMINCOM	Western Mindanao Command of the AFP
Z	

**THE SECOND REPORT OF THE JOINT NATIONAL BUREAU OF
INVESTIGATION – NATIONAL PROSECUTION SERVICE
SPECIAL INVESTIGATION TEAM (NBI-NPS SIT) ON THE
JANUARY 25, 2015 MAMASAPANO INCIDENT**

I. Introduction

Two (2) months after its constitution¹, the Joint National Bureau of Investigation – National Prosecution Service Special Investigation Team (NBI-NPS SIT) submitted its Report (the first Report)² to Secretary of Justice Leila M. De Lima and President Benigno Simeon C. Aquino III on April 16, 2015. The redacted version of the first Report was released to the public on April 22, 2015.³

The NBI-NPS SIT recommended, among others, the filing of complaints for the complex crime of direct assault with murder against ninety (90) individuals responsible for the Mamasapano incident, in the aftermath of Oplan EXODUS, the law enforcement operation to arrest Zulkifli bin Hir, alias Marwan. These persons were positively identified by witnesses at Barangay Tukanalipao, Mamasapano as among those who were present and wholly participated in the killing of thirty five (35) Philippine National Police-Special Action Force (PNP-SAF) commandos on January 25, 2015.

The first Report only covered the thirty five (35) SAF commandos, members of the 55th Special Action Company (SAC), who were killed at Barangay Tukanalipao. Evidence gathered up to the time the first Report was submitted was not sufficient for the NBI-NPS SIT to reach a conclusion and make findings and recommendations concerning the deaths of nine (9) other SAF commandos from the 84th Seaborne Company and other individuals killed at Barangay Pidsandawan, Mamasapano, the very *locus* of Oplan EXODUS.

The NBI-NPS SIT was fully conscious of its mandate to conduct a thorough, in-depth and comprehensive investigation. Nevertheless, it emphasized in its first Report that there were a number of factors that challenged its capacity to fully ferret out the entire truth surrounding the carnage at Mamasapano. Among these factors was the then two (2) month

¹ Department Order No. 034 dated February 2, 2015

² “The Report of the Joint National Bureau of Investigation-National Prosecution Service Special Investigation Team (NBI-NPS SIT) on the January 25, 2015 Mamasapano Incident” dated April 16, 2015.

³ Accessible online at the DOJ website and the Official Gazette.

deadline imposed on it to finish the report and come up with its findings and recommendations. The deadline, while understandable, nevertheless prevented the NBI-NPS SIT to fully gather all the evidence necessary to establish the relevant facts that would identify all the persons who participated in the killings and thievery, and assign their respective criminal liability, if any. Moreover, a host of other issues were uncovered by the NBI-NPS SIT, including the apparent participation of American nationals during Oplan EXODUS that needed to be threshed out. Thus, the team was constrained to seek a continuation of its investigation.

This Second Report, completed after five (5) more months of extensive investigation and judicious analysis and assessment of evidence, is the written result of the NBI-NPS SIT's determined efforts to discharge its remit from the Secretary of Justice.

A. Authority to extend the investigation

Recall that in its first Report, the NBI-NPS SIT recommended that it be granted an additional two (2) months within which to continue its investigation and submit its report with recommendations. In a Memorandum dated April 23, 2015, the Secretary of Justice gave the team until June 20, 2015 to complete its investigation.

This original June 20, 2015 deadline was extended by the Secretary of Justice⁴ to July 20, 2015. Along with the authorized extension, she further directed the NBI-NPS SIT to utilize the new period to conduct interviews of remaining witnesses, subpoena and incorporate documents and reports of other government agencies, if need be, and to edit and finalize the report.

On July 20, 2015, the Secretary of Justice even further extended the deadline for the NBI-NPS SIT to finish its investigation and case build-up up to September 30, 2015.⁵

B. Scope of the report

As discussed above, this Second Report is the result of further evidence gathering and case build-up that continued following the

⁴ Department Order No. 406, series of 2015, attached as Annex "A"

⁵ Department Order No. 601, series of 2015, attached as Annex "B"

submission and release of the Report dated April 16, 2015. The continued investigation of the NBI-NPS SIT was aimed at obtaining additional evidence in order to establish the identity and assess the possible criminal liability of the persons responsible for the killing of the nine (9) SAF commandos at Barangay Pidsandawan, the alleged killing by SAF commandos of Moro Islamic Liberation Front (MILF) members and civilians and for injuries sustained by the latter.

In Department Order No. 601 dated July 20, 2015, the Secretary of Justice outlined the scope of the NBI-NPS SIT's final report, which must include the following:

1. A thorough discussion on the extent of the American involvement in the planning, execution and post-action of Oplan EXODUS;
2. A discussion on the possible criminal liabilities of the Special Action Force (SAF) with regards to the individual civilian casualties and/or injuries sustained by them;
3. A narrative on the analysis/establishment of approximate sequence of death of the SAF commandos; and,
4. The possibility of obtaining eyewitnesses who are residents of Barangay Pidsandawan, Mamasapano, Maguindanao, who have personal knowledge of the assault of the 84th Seaborne commandos on the hut of Zulkifli bin Hir alias Marwan, as well as the subsequent fire fights and other events that transpired involving the 84th Seaborne commandos.

C. Methodology

This Second Report observes the same methodology as the first. During the continuation of the investigation, additional sources of information were uncovered and newly discovered evidence, in the form of testimonial (reduced to sworn statements), documentary and electronic evidence (in digital form or electronic recordings) were assessed and evaluated to determine what are relevant and competent evidentiary bases for possible criminal complaint(s) that may be filed against individuals found to have committed crimes following the Mamasapano incident. These

additional evidence included the following:

1. Testimonial evidence (Sworn Statements)

As with the first Report, the NBI-NPS SIT considered only the accounts of witnesses on the basis of their personal knowledge of the relevant facts. While some of the witnesses were not personally interviewed by the NBI-NPS SIT, only their sworn statements duly executed before other investigative bodies were considered.

Several witnesses whose statements were already included in the first Report were summoned anew by the NBI-NPS SIT to answer additional questions and to provide additional information on matters not covered by their previous sworn statements. These witnesses include:







- a. P/Dir. Getulio P. Napeñas
- b. P/Supt. Raymund A. Train
- c. P/Supt. Michael John C. Mangahis
- d. PSI Lyndon A. Espe

The following personnel from the Civil Aviation Authority of the Philippines (CAAP) were also interviewed and their sworn statements taken down:

- a. 
- b. 
- c. 
- d. 

In addition thereto, the witnesses processed by the Commission on Human Rights (CHR) were not personally interviewed by the NBI-NPS SIT. But because the CHR provided the NBI-NPS SIT with copies of the sworn statements of these witnesses, their statements became among the bases for certain lines of inquiries. It must be stated though that these sworn statements were received by the NBI-NPS SIT mere days before the submission and release of the first Report. Even so, the NBI-NPS SIT already thoroughly assessed and evaluated these statements. After concluding that the statements would not affect its findings and conclusions, the team deemed in the interim not to include them in the first Report. Instead, the team resolved that the sworn statements of the following

individuals will be considered and included in this Second Report:

- a. 
- b. 
- c. 
- d. 
- e. 
- f. 
- g. PSI Sahibon Mohamad Mamantal
- h. PO3 Edo Kilam
- i. PO3 Mama Kadalim Ebrahim
- j. Sgt. Joyler M. Singco

It must also be stressed that there were several individuals⁶ who presented themselves to the NBI-NPS SIT and volunteered to give “alternative” versions of what “actually” transpired at Barangays Pidsandawan and Tukanalipao on January 25, 2015. These individuals, who were interrogated at length, claimed that their narratives are based on their personal knowledge. They gave curious versions that were highly inconsistent with the narrative of other government and civilian witnesses whose sworn statements were earlier submitted to the NBI-NPS SIT. On the other hand, when pressed to do so, these individuals were unwilling to execute sworn statements to support their unorthodox claims. As a result, these persons miserably failed the team’s vetting procedures. Hence, the NBI-NPS SIT disregarded their narratives as they amount to mere hearsay, which is inadmissible as evidence in any proceeding. More importantly, not only are the accounts of these individuals incredible, they likewise cannot be verified or corroborated by other testimonial, documentary or photographic evidence.⁷

2. Video evidence

The hut at Barangay Pidsandawan where Marwan was killed and its

⁶ These persons were internally categorized by the NBI-NPS SIT as “walk-ins” to distinguish them from subpoenaed and sworn witnesses.

⁷ The claims of these individuals were not seriously considered. However, pursuant to the directive of the Secretary of Justice under Department Order No. 034 to directly report any significant developments in the conduct of its investigation, the NBI-NPS SIT submitted a secret Memorandum addressed to the Secretary of Justice detailing the accounts made by these individuals and the unorthodox conclusions that could be derived therefrom. The contents of the said Memorandum will not be discussed in this Report.

surrounding area was part of the crime scene that the NBI-NPS SIT had originally planned to inspect and forensically examine during its ocular inspection.⁸ However, following the burning of Marwan's hut by still unidentified individuals a few weeks after January 25, 2015, any inspection became impossible. Nonetheless, it came to the attention of the NBI-NPS SIT that Raffy Tima, a reporter for GMA News was able to visit the hut before it was razed to the ground. Raw video footage taken by Tima and his news crew as well as the edited video that was aired by GMA News were submitted by the latter after these were subpoenaed by the NBI-NPS SIT.

3. Other documentary evidence

Following reports that unidentified aircraft were seen flying around Mamasapano airspace immediately before, during and after January 25, 2015, the NBI-NPS SIT visited the CAAP main office in Pasay City, [REDACTED] to interview its relevant and responsible managerial and technical officials. After interviewing these CAAP officials, the NBI-NPS SIT obtained certified true copies of flight plans and other pertinent documents of aircraft, whether military, commercial and general aviation, taking off from, and landing in [REDACTED] during the relevant periods.

4. Open source materials

The NBI-NPS SIT also resorted to open source information, or information that is publicly available. Open source information include: media such as newspapers, magazines, radio, television and computer-based information; public data; commercial and other data publicly available. In most cases, open source information were used merely to corroborate, assess or verify evidence already gathered through lawful means. In any case, open source information was subjected to great scrutiny especially with respect to the author and provenance.

⁸ The ocular inspection scheduled on February 27, 2015 at Barangay Tukanalipao was aborted due to clashes between the AFP and BIFF elements in the Salibo-Pagatin-Mamasapano-Shariff Aguak (SPMS) Box. On March 11, 2015, the NBI-NPS SIT along with the Secretary of Justice inspected the area of Barangay Tukanalipao but did not proceed to Barangay Pidsandawan due to security concerns.

D. Limitations

The NBI-NPS SIT persistently interviewed several witnesses and thoroughly examined voluminous documents and other sources of evidence. Despite its thoroughness, several factors outside the control of the NBI-NPS SIT affected its investigation anew:

1. Lack of inputs from relevant United States government agencies

Probing the extent of the American involvement in the planning and execution of Oplan EXODUS (as well as post-operation activities) objectively required that the NBI-NPS SIT seek the side of relevant and authorized military and diplomatic representatives of the United States. However, as will be discussed in Chapter II, US Embassy officials declined to be interviewed, citing their diplomatic immunity and/or lack of authority to speak on the matter. In effect, they refused to participate in the investigation. This constrained the NBI-NPS SIT to proceed with and terminate the investigation without any official American input or vantage point. Thus, insofar as the American contribution to Oplan EXODUS, the NBI-NPS SIT relied on testimonial and documentary evidence from other than official United States government sources.

2. No *Corpus Delicti* of Alleged MILF and Mamasapano residents' deaths

Anent the possible criminal liabilities of the SAF commandos for individual civilian casualties, it should be emphasized that in any criminal prosecution, evidence of the *corpus delicti* is indispensable. *Corpus delicti* is defined as the body, foundation or substance upon which a crime has been committed. It refers to the fact that a crime has been actually committed. It is made up of two elements: (a) that a certain result has been proved and (b) that some person is criminally responsible for the act.⁹

Where a person or persons were allegedly killed or injured, the first element of *corpus delicti* would refer to the fact of death or injury. A death certificate, autopsy report or medical examination certificate are ideal and in fact, the best evidence of the death or injury of a person. However, because the alleged civilian or MILF victims at Tukanalipao are Muslims, their

⁹ People of the Philippines vs. Quimzon, G.R. No. 133541, April 14, 2004

religious and cultural beliefs forbid the conduct of an autopsy or medical examination before burial. This circumstance prompted the NBI-NPS SIT to instead request the MILF in writing, through the Joint Commission for the Complete Cessation of Hostilities (CCCH), to provide other documentary evidence of death or injuries such as affidavits or certificates of ablution. Despite repeated requests for over eight (8) months to the MILF, no documents relevant to prove the death of these persons were provided to the NBI-NPS SIT.

In the meantime, the CHR submitted affidavits of witnesses narrating the supposed deaths of, and injuries sustained by civilians at the hands of SAF commandos on January 25, 2015. Unfortunately, while the testimony of witnesses would have sufficed to prove the facts of death or injury,¹⁰ these witnesses nevertheless failed to identify the particular person or persons responsible for the said deaths or injuries. All these leave the second element of the *corpus delicti* still without any credible proof. Therefore, as the *corpus delicti* was not proven, no crime was deemed committed. Accordingly, the NBI-NPS SIT had no reason to proceed with the investigation in this regard.

3. Phone logs of SAF commandos' cellular phones for January 25, 2015 were already purged by telecommunications companies

The investigation also sought to establish the sequence of death of the SAF commandos who were killed during the Mamasapano incident. For this purpose, formal inquiries¹¹ were made with the various telecommunication companies on the possibility of obtaining the cellular phone records of the SAF commandos who were killed during the Mamasapano incident. An analysis of the cellular phone records of the SAF commandos and their respective families would help establish the probable timeline when the SAF commandos last communicated with their relatives using their respective cellular phones. With this information, the sequence of death of the SAF commandos could have been approximated. However, the NBI-NPS SIT was informed by these telecommunications companies¹² that they do not keep

¹⁰ Id.

¹¹ Letters of the Secretary of Justice to Globe Telecoms, Smart Communications and Digitel Mobile Philippines dated August 5, 2015, attached as Annexes "C", "C-1" and "C-2", respectively.

¹² This information was received by Assistant State Prosecutor Ethel Rea Suril from a representative of Smart Communication and Sun Cellular only through a telephone call.

these cellular phone logs indefinitely due to their system limitations. Thus, by the time these inquiries were made, immediately after the completion of the first Report, all data relating to the last calls made by the SAF commandos using their respective cellular phones on January 25, 2015 were already purged from the data systems of these telecommunications providers.

Undeterred, the NBI-NPS SIT sought the information by resorting to the deceased SAF commandos' respective immediate relatives. Some of the next of kin of the SAF commandos went to the NBI to be interviewed and executed their sworn statements. They were asked about the last time that they received text messages or call from the SAF commandos in the hope that this could help in establishing the timeline of death of the SAF commandos. However, based on the sworn statements of these next of kin¹³, they received the last text messages/calls from the SAF commandos either days prior to or sometime on January 24, 2015. The timeline was therefore unfocused and imprecise. It was established that the latest text message received from any of the SAF commandos was that from PO2 Nicky De Castro Nacino Jr., at about 10:00-11:00 a.m. of January 25, 2015 asking for cellular pre-paid load from his sisters and mother¹⁴.

4. Lack of Eyewitnesses from Barangay Pidsandawan

This limitation hobbled the NBI-NPS SIT since the first phase of its investigation. Obtaining witnesses who could testify on the identity and possible criminal liability of the persons who were involved in the killing of the nine (9) other 84th Seaborne commandos at Barangay Pidsandawan was an ideal evidentiary goal for the NBI-NPS SIT that all diligent efforts were made to find such witnesses. All the same, despite considerable time and resources spent, no Barangay Pidsandawan eyewitness was found. Because of this, there remains a deficit in the number of SAF victims covered by the complaints filed by the NBI-NPS SIT against identified MILF, BIFF and

These representative promised that a written certification will be sent to the NBI-NPS SIT. As of this writing, those certifications have yet to be submitted. Globe Telecommunication, on the other hand, did *not* reply at all to our request.

¹³ Sworn statements of Perlito Agabon, Geraldine Anniban, Noilyn Balaca, Anastacia Capinding, Kristine Clemencio, Melanie Duque, Merlyn Gamutan, Liezel Inocencio, Nicky Nacino, Erica Pabalinas, Haslyn Ramirez-Acob, Julius Sagonoy, Marilyn Sarcena, Ruby Senin, Telly Sumbilla and Virgie Viernes, attached as Annexes "D" to "D-15", respectively.

¹⁴ Sworn Statement of Nicky M. Nacino (the father of the deceased PO2 Nicky De Castro Nacino) dated April 8, 2015, question no. 4, Annex "D-8"

PAGS or unaffiliated respondents.¹⁵

In the absence of third party witnesses, the NBI-NPS SIT has no other independent evidence to prove what actually happened in Barangay Pidsandawan except for the sworn statements of the 84th Seaborne commandos themselves. While there appears to be no reason to doubt the credibility of the 84th Seaborne and their statements, as the surviving commandos were present during the incident and their accounts are corroborated by other evidence¹⁶, these sworn statements are nonetheless irrelevant in so far as determining the identity of the persons responsible for the killing of the nine (9) commandos. Indeed, not one of the surviving members of the 84th Seaborne were even able to describe, much less name, the MILF, BIFF, PAGs or unaffiliated persons who engaged them in a firefight at Barangay Pidsandawan. Therefore, the NBI-NPS SIT is left without any basis to support a conclusion as to the identity and criminal liability of the persons involved in the killing of the nine (9) commandos from the 84th Seaborne.

¹⁵ See NBI-NPS SIT Memorandum-Referral dated September 18, 2015 filed with the Office of the Prosecutor General

¹⁶ Such as photographs taken inside Marwan's hut.

II. Factual Findings of the NBI-NPS SIT

A. Oplan EXODUS Redux

In 2007, after the filing of separate Informations for multiple frustrated murder and multiple attempted murder, different branches of the Regional Trial Courts in Mindanao issued warrants of arrest against Zulkifli Bin Hir, alias “Marwan”, Basit Usman and Amin Baco, alias “Johan”.¹⁷

All previous attempts made by the Philippine National Police (PNP) to execute the said warrants proved futile.¹⁸ However, the resolve to arrest Marwan, Usman and Johan, considered as high value targets (HVTs) by the PNP, never wavered. After a series of renewed planning and preparation, the SAF conceived Oplan EXODUS to finally execute the warrants of arrest against Marwan, Usman and Baco.

The execution of Oplan EXODUS faced many obstacles. Apart from the terrain, consisting mostly of marshlands, intelligence reports showed that the HVTs were located at an area in Mamasapano, Maguindanao controlled by several armed Muslim insurgent groups including the MILF and the Bangsamoro Islamic Freedom Fighters (BIFF). Oplan EXODUS was hatched to take advantage of the training and special capabilities of the SAF, the elite special operations unit of the PNP.

Oplan EXODUS, as originally drafted, called for the deployment of three hundred ninety two (392) officers and men assigned to different operating companies. The 84th Seaborne Company was the main effort (ME), the designated assault force tasked to enter Marwan’s hut and arrest him. The 55th Special Action Company (SAC) was designated as the blocking force. Other companies served as containment forces along the entry and exit routes of the 84th Seaborne and acted as route security.

¹⁷ On December 18, 2007, in Criminal Case No. 552-2007, entitled “People of the Philippines versus Abi Salman, et al.”, a warrant of arrest was issued against several individuals, including Zulkifli Bin Hir, alias Marwan and Basit Usman, for the crime of multiple frustrated murder and multiple attempted murder.

On January 21, 2013, in Criminal Case No. 2865, entitled “People of the Philippines versus Comdr. Kule Mamagong, et al.”, a warrant of arrest was issued against several individuals, including Basit Usman, for the crime of multiple frustrated murder.

¹⁸ Oplans PITAS, SMARTBOMB, WOLVERINE, CYCLOPS, CYCLOPS 2, WOLVERINE 2, WOLVERINE 3, TERMINATOR, TERMINATOR 2 (Source: BOI Report, pp. 13-15)

On the night of January 24, 2015, Oplan EXODUS was put into action. The 84th Seaborne was first to deploy from the designated vehicle drop-off point (VDOP). The various other companies were deployed to their designated positions following a tight and complex synchronized timeline. However, as soon as it was launched, Oplan EXODUS began to unravel.

The 84th Seaborne encountered delays on its way to Marwan's hut. Their delay cascaded to the other SAF companies' timelines as the latter's individual movements were precisely dependent on the advance of the 84th Seaborne.

Eventually, despite being understrength due to the failure of most of its commandos to timely ford the raging Kabulnan River¹⁹ before the break of dawn and the Muslim morning call to prayer, thirteen (13) members of the 84th Seaborne reached Marwan's hut in the early morning of January 25, 2015. Predictably, Marwan resisted arrest and after a brief exchange of gunfire, the latter was eventually killed. Two (2) commandos would be slightly injured by an improvised explosive device (IED) that was tripped and detonated beside Marwan's hut. More technical delays in conducting sensitive site exploitation (SSE)²⁰ at the hut forced the 84th Seaborne commandos to instead detach Marwan's right index finger for DNA testing and identification. They then needed to extricate themselves from Barangay Pidsandawan before opposing forces arrive.

Immediately thereafter, a firefight ensued between the 84th Seaborne and armed groups who apparently responded to the loud disturbance that arose from the attack on the hut and the killing of Marwan. This prevented the 84th Seaborne from timely linking up with the 55th SAC, which was proceeding to a waypoint about three (3) kilometers away.

The 84th Seaborne by then was being harassed by armed groups in its front and rear. Meanwhile upon hearing sustained gunfire, the 55th SAC, on its way to its designated position, decided to halt at a cornfield in Barangay Tukanalipao. Eventually, waves of armed groups²¹ began to arrive across the Kabulnan River that fronted the cornfield. Realizing that they were about to

¹⁹ Only thirteen (13) of the thirty eight (38) were able to timely cross the river and advance to Barangay Pidsandawan.

²⁰ The American-provided iris scanning device to be used on Marwan took time to function.

²¹ MARATHON estimates that almost a thousand MILF, BIFF, PAGs and unaffiliated armed individuals attacked the 55th SAC at Barangay Tukanalipao.

be outflanked and surrounded, the 55th SAC decided to make a last stand by forming a “box” in the cornfield. Punctuated by sniping, a long firefight began. Initially, the darkness of the night and the stalks of corn provided the 55th SAC with effective cover and concealment. But the advantage of night would inevitably give way to the light of day. The corn stalks would soon wither and fall from the immense volume of fire from the enemy.

By day’s end, nine (9) commandos from the 84th Seaborne and thirty five (35) from the 55th SAC would heroically fall to their gruesome deaths.

B. The Genesis of the American involvement in Oplan EXODUS

In its first Report dated April 16, 2015, the NBI-NPS SIT recommended to the Secretary of Justice that it further investigate and probe the extent of American involvement in the January 25, 2015 Mamasapano incident. The team based this on the allegations of PO2 Wharlther Jay T. Rebucas, one of the surviving SAF commandos. PO2 Rebucas is a member of the 84th Seaborne, the company tasked to arrest the HVTs Marwan, Basit Usman and Amin Baco at Barangay Pidsandawan, Mamasapano. The team noted in its Report:

“In addition, PO2 Rebucas stated that when they were in a continuous gun battle with the enemy, he heard the sound of motorcycles coming in and out of the encounter site and the sound of a drone with which he is too familiar since their operation in Al-Barka, Basilan against the ASG.”²²

Meanwhile, P/Supt. Michael John C. Mangahis²³, alleged in his affidavit that there were six (6) Americans who were present at the Tactical Command Post (TCP) on January 25, 2015. The NBI-NPS SIT previously found that:

“Mangahis was at the TCP, which was the headquarters of the 43rd SAC, together with Napeñas, Taliño, Dela Rosa, P/Supt Abayari, P/Insp Lyndon Espe, PO2 Belmes, and *six (6)*

²² The Report of the NBI-NPS Special Investigation Team (SIT) on the January 25, 2015 Mamasapano Incident dated April 16, 2015, p. 77, citing the Sworn Statement of PO2 Rebucas dated February 9, 2015, p. 7, Q&A No. 35

²³ Battalion Commander of 3rd Special Action Battalion based in Camp Bagong Diwa, Taguig City

Americans whom he only met there during the operation.”²⁴

For its part, the Board of Inquiry (BOI) categorically maintained that the involvement of the United States in Mamasapano was limited to intelligence sharing and medical evacuation of SAF commandos, and that only the latter actually executed Oplan EXODUS.²⁵

Even during the first phase of the NBI-NPS SIT’s investigation, there have been persistent reports that Americans used unmanned aerial vehicles (UAV) or what is commonly known as “drones” to obtain real-time intelligence during the January 25, 2015 Mamasapano operation. In fact, immediately after said operation, Philippine newspapers were replete with news articles speculating on the presence of drones in the airspace of Mamasapano before, during and after the operation.

Mamasapano Mayor Benzar Ampatuan vaguely testified before the Senate on the aircraft he saw flying over the area:

“Sen. A. Cayetano. Madam Chair, just before we let the mayor go.

Mayor, factual lang. during the whole day, may nakita ka bang drones sa area?

Mr. Ampatuan. May lumilipad po na eroplanong puti.

Sen. A. Cayetano. Puti?

Mr. Ampatuan. Yes.

Sen. A. Cayetano. So may drones.

Mr. Ampatuan. Paikot-ikot po.”²⁶

In order to clarify the issues regarding the type and extent of the intelligence support provided by the Americans to the SAF, the NBI-NPS

²⁴ Id. p. 53, citing the Sworn Statement of P/Supt. Mangahis dated February 4, 2015.

²⁵ Id. p. 178- 179

²⁶ TSN, Hearing of the Senate Committee on Public Order and Dangerous Drugs, joint with the Committees on Peace , Unification and Reconciliation; and Finance, February 10, 2015, p. 264.

SIT wrote the Federal Bureau of Investigation (FBI) Legal Attache in Manila²⁷, the Philippine Air Force (PAF)²⁸ and the Civil Aviation Authority of the Philippines (CAAP)²⁹. The team also subpoenaed the SAF officers who were at the Tactical Command Post (TCP) and on the ground to give additional information regarding the matter.³⁰ At that point, the team aimed to obtain details even on the medical evacuation/casualty evacuation by American personnel of the SAF commandos from Mamasapano to Shariff Aguak from the subpoenaed SAF officers.

The NBI-NPS SIT subpoenaed P/Dir. Getulio P. Napeñas, the director of SAF, for clarificatory questioning. He complied with that subpoena and presented himself before the panel.³¹ He testified under oath and the panel informed him that while much of the information elicited from him will be confidential, the interview will be recorded.³² He and his counsels did not object to the recording. The panel also informed Napeñas of his constitutional rights prior to the questioning. He stated that he understood his Miranda rights and that everything he stated can and will be used against him in any court of law. The panel advised Napeñas that he was summoned to shed light on the American participation during and prior to Oplan EXODUS.

The NBI-NPS SIT also subpoenaed P/Supt. Raymund A. Train, P/Supt. Michael John C. Mangahis and PSI Lyndon A. Espe.³³

P/Supt. Train³⁴, P/Supt. Mangahis³⁵ and PSI Espe³⁶ likewise testified

²⁷ Letter of the Secretary of Justice to the U.S. FBI Legal Attaché dated May 6, 2015, attached as Annex "E"

²⁸ Letter of the Secretary of Justice to PAF dated May 5, 2015, attached as Annex "F" and a Confidential Letter of the Secretary to PAF dated July 10, 2015

²⁹ Letter of the Secretary of Justice to CAAP dated May 5, 2015, attached as Annex "G" and a Confidential Letter of the Secretary to CAAP dated June 3, 2015

³⁰ The subpoena for P/Dir. Napeñas dated May 5, 2013 directed him to appear on May 13, 2015.

³¹ The interview was conducted at the DOJ Executive Meeting Room 01. He was assisted by counsels *de parte*, Attys. Vitaliano N. Aguirre II and Paolo A. Mabazza. The interview started at 10:00 a.m. and lasted four (4) hours.

³² The transcripts of stenographic notes (TSN) of the all interviews were later submitted to the Secretary of Justice pursuant to the NBI-NPS SIT's regular reportorial duties.

³³ The subpoenas for P/Supt. Train, P/Supt. Mangahis and PSI Espe dated May 13, 2015 were addressed to the Office of the Director SAF in Camp Bagong Diwa, Taguig and were received by that office for them.

³⁴ P/Supt. Train was directed to appear on May 21, 2015 but because of his request for the resetting of the hearing, he was interviewed on May 20, 2015.

³⁵ P/Supt. Mangahis was interviewed on May 20, 2015.

under oath and the panel similarly advised them that while much of the information elicited from them will be confidential, the interview will be recorded.³⁷ P/Supt. Train, P/Supt. Mangahis, PSI Espe and their counsel, Atty. Mark Julio U. Abong did not object to the recording. The panel also informed them of their constitutional rights prior to the questioning. They stated that they understood their Miranda rights and that everything they will state can and will be used against them in any court of law. The panel advised them that the purpose of the interview was for them to clarify the exact American participation prior to and during Oplan EXODUS.

1. Americans and the Planning Stage of Oplan EXODUS as narrated by SAF officers and personnel

a. P/Director Getulio P. Napeñas

He narrated that the SAF's drafting of the plan to arrest Marwan started even before February 8, 2014.³⁸ According to Napeñas, the coordination with their American counterparts was necessary for the latter to provide the SAF with the intelligence, surveillance and reconnaissance (ISR) for the Oplans. The SAF's liaison to the Americans, Napeñas alleged, was P/Superintendent Raymund Train.³⁹ On the other hand, the American liaison to the SAF during the 2014 period was [REDACTED]⁴⁰, who worked (or works) at the United States Embassy in Manila, particularly with the Joint Special Operations Task Force-Philippines (JSOTF-P), an inter-service United States military task force.⁴¹ Napeñas' contact person at the JSOTF-P

³⁶ PSI Espe was directed to appear on May 20, 2015 but was interviewed on May 21, 2015 to accommodate the request of P/Supt. Train for the resetting of his interview.

³⁷ The transcripts of stenographic notes (TSN) of all the interviews were later submitted to the Secretary of Justice pursuant to the NBI-NPS SIT's regular reportorial duties.

³⁸ This plan denominated as Oplan WOLVERINE was to be executed on April 25, 2014 but was aborted.

³⁹ Napeñas disclosed that P/Supt. Train is a graduate of the regular course of the Federal Bureau of Investigation (FBI) Academy, hence, his contacts with the Americans.

⁴⁰ The panel asked Napeñas whether [REDACTED] was a real name or a mere alias. He stated that he does not know. He also *allegedly* did not know whether [REDACTED] is a US military person or civilian and from what branch of service or agency.

⁴¹ According to GlobalSecurity.org, "The mission of the JSOTF-P is to, at the request of the Philippine Government, work alongside the AFP, to defeat terrorists and create conditions necessary for peace, stability and prosperity in the Southern Philippines. The JSOTF-P consisted of between 500 to 600 personnel, including Army Special Operations Forces, Navy Seals, Air Force Special Operators, and a host of support personnel from all four U.S. military services. The Task Force was organized around a headquarters element, temporarily located at Camp Navarro, Zamboanga City, and 3 subordinate regional task forces. Camp Navarro is an

during the infancy of the planning for Oplan EXODUS was its commander, Colonel Erik M. Brown.⁴² He added that if he had to talk to someone regarding the coordination for Oplan EXODUS and earlier operations it was the commander of JSOTF-P.

He disclosed that he was in charge of liaising with the JSOTF-P on a “commander to commander” level. He claimed that he had no connection with the FBI and pointed anew to Train, who he said has “personal links” with the said bureau. When pressed further by the panel as to what other American intelligence services SAF has worked with, Napeñas admitted that he has previously liaised with the [REDACTED]. He explained that the purpose of his liaising with these American agencies is for the latter to provide tactical Intelligence Surveillance and Reconnaissance (ISR) assistance.

Napeñas remembered that as early as 2012 the Americans were already very supportive of SAF’s efforts to neutralize Marwan. He stated that JSOTF-P was established precisely for these kinds of operations. For Oplan EXODUS, he personally requested [REDACTED] or Col. Brown to provide the ISR support. Napeñas, however, qualified that the Americans were not involved in the drafting of or planning for Oplan EXODUS. They were only briefed about the operation after the planning was completed. It was at that point that the Americans were asked by the SAF where their assistance, i.e. the ISR component, can possibly “fit in”. For ISR purposes, it was Train who briefed the Americans. On the other hand, Napeñas also personally briefed [REDACTED]

Armed Forces of the Philippines facility. These Task Forces are: Task Force Archipelago, based at Camp Navarro, Zamboanga del sur Province; Task Force Siongco, Maguindanao Province; and Task Force Sulu, based at Camp Bautista, Jolo Island, Sulu Province. A handful of JSOTF-P personnel also worked in Manila to coordinate with the US Embassy Country Team and AFP General Headquarters. JSOTF-P also includes a Joint Special Operations Aviation Detachment (JSOAV) to ensure special operations forces are able to move freely in the country. The JSOAV maintains a small fleet of [REDACTED], complemented by [REDACTED] for use in jungle areas where U.S. and Philippine forces are collocated.”

The JSOTF-P officially closed its operations in the Philippines in February 2015. It was replaced by the WESTMINCOM Forward Liaison Element (WMC-FLE) on March 1, 2015. *See* Philippine Daily Inquirer, “US-led anti-terror unit deactivated”, February 26, 2015; The Diplomat, “US Concludes Special Operations Task Force in the Philippines”, March 3, 2015.

⁴² Brown assumed as JSOTF-P commander in June 2014. He is from the US Special Forces. *See* www.zambotimes.com, “Joint Special Operations Task Force – Philippines (JSOTF-P) for Western Mindanao, installed Col. Erik M. Brown as the new commander”, June 3, 2014.

on Oplan EXODUS.

He explained that the intelligence packet regarding Marwan was developed not by SAF but by the PNP-Intelligence Group (IG) led by Chief Supt. Fernando Mendez, Jr. Napeñas claimed that he does not know whether the Americans helped in developing the intelligence packet. This intelligence packet was then given by IG to SAF, specifically to Train. The intelligence packet became one of the bases for Oplan EXODUS.

b. Testimony of P/Supt. Raymund A. Train

P/Supt. Train's contribution in the efforts to neutralize Marwan started way back in 2010 when he was the commanding officer of the 84th SAC when the plan then was called Oplan PITAS. For Oplan EXODUS, he was tasked to know the area and the intelligence preparation for the battlefield (IPB) since most of their targets, particularly the Jemaah Islamiyah (JI) were based in Central Mindanao.

Since March 2014, several Oplans, such as WOLVERINE, WOLVERINE 3, TERMINATOR 1, TERMINATOR 2 and EXODUS, were drafted⁴³ with the sole objective of capturing Marwan. He was familiar with all of these Oplans because as an intelligence officer assigned in Central Mindanao, he was tasked to fill the gaps when the intelligence packets⁴⁴ were presented to the planners for discussion. The intelligence packets for TERMINATOR 1, TERMINATOR 2 and EXODUS came from S/Supt. Fernando Mendez Jr. of the Directorate for Intelligence of PNP- Intelligence Group.

Train denied that the source of the intelligence packet for Oplan

⁴³ Other SAF officers involved in the drafting of these Oplans were P/Dir. Getulio P. Napeñas, PCSupt. Noli G. Taliño, Chief S/Supt. Richard Dela Rosa, S/Supt. Hiso, P/Supt. Michael John C. Mangahis, P/Supt. Hendrix B. Mangaldan, 5th Battalion Commander Ariño, PCI Larry L. Corales, Jr. and Police Inspector Recaredo Marasigan

⁴⁴ According to Train, the drafting of an Oplan starts with an intelligence packet, which is the basis of the mission planning. It contains the identity of the target, his location and his pattern of life and any information that would enable the planners to know how to apprehend the subject/target. This intelligence packet will then be analyzed and reviewed by the planners to determine whether it is doable or actionable. Thereafter, the supplemental intelligence or tactical intelligence is sought so that the tactical requirements, or any intelligence gaps, needed by the men on the ground can be provided. For special operations, how the troops can penetrate without being detected and the considerations for extraction is also discussed.

EXODUS was the FBI. He was adamant that the information in intelligence packet came from a human intelligence (HUMINT) source and that the contacts⁴⁵ and the handler of these contacts were all Filipinos.

According to Train, there was no item of information in the intelligence packet of the Oplans that came from the JSOTF-P. He stressed that the extent of American involvement in the drafting of any Oplan was limited to providing technical intelligence like maps and satellite images, which are provided only upon the request of the SAF.

He had occasion to work with the Americans under JSOTF-P starting in 2007 when he worked in Zamboanga. However, the cooperation mostly dealt with training of the troops and providing technical intelligence because the SAF did not have the capability for the latter. Most of the American instructors are former SEALs⁴⁶ because the training of the Seaborne is patterned after that of the SEALs. But the other SAF units also joined in the trainings provided by JSOTF-P.

Likewise, the assistance of the JSOTF-P was sought to provide medical assistance for mission casualties during the “big” operations of SAF. But the Americans were never allowed to engage in the actual operation. Train admitted that he knows of no document which categorically states the limitations of the American involvement in any police operation.

██████ was the only one from the American side that Train coordinated with for Oplan EXODUS. Train, however, clarified that ██████ was not present during the mission planning for Oplan EXODUS in Bicutan. When confronted by P/Dir. Napeñas’ admission that at some point Americans were present, Train said that he was not there when Americans attended the planning. He conceded though that it was not uncommon for SAF mission planning sessions to have American participants. He also claimed that he did not know the names of the Americans who participated in the mission planning.

⁴⁵ Further discussion of these contacts/informants is discussed in the narrative of Train of the events which transpired in Pidsandawan in Chapter II (D) (1) (c)

⁴⁶ The acronym stands for “Sea Air and Land”. SEAL Teams are U.S. Navy Forces organized, trained and equipped to conduct special operations with emphasis on maritime, coastal and riverine environments. (JP 3-05 Joint Publication 1-02 Department of Defense-Dictionary of Military and Associated Terms 8 November 2010, as amended 15 June 2015 as cited in www.dtic.mil/doctrine/dod.dictionary)

██████████ and the other Americans from JSOTF-P went to Bicutan on a social visit when they were invited by P/Dir. Napeñas and his predecessor. In 2014, the Americans went to Bicutan only to attend the SAF Christmas party. He admitted though that the mission planning was conducted on the same day.

According to Train, between him and Napeñas, it was the latter who had more American contacts. When the panel told Train that Napeñas claimed differently, as he was the one who attended the FBI Academy, Train maintained that in terms of networking with FBI, he has plenty as he had more than two hundred thirty (230) classmates, but in terms of American contacts in the Philippines he stressed that it was Napeñas who had more.

Train recalled that he could not go directly to Colonel Brown of JSOTF-P for any of his requests because he followed rank and protocol. It was Napeñas who talked to Colonel Brown and there were times that the former went directly to any of their American counterparts, without Train liaising for such meetings. The staff of Colonel Brown could also contact Napeñas without going through Train because it was Napeñas' policy that whenever these Americans need something, they can go straight to him.

Train contended that his only role was to liaise, get special instructions, arrange the details of a particular operation and present it to P/Dir. Napeñas for his approval. He and ██████████ dealt with the minor details and coordination with other people while Napeñas dealt with Colonel Brown.

He said that communications with JSOTF-P is highly compartmentalized such that if a matter has to do with Oplan EXODUS, he coordinated with ██████████. As to any Mutual Legal Assistance Treaty (MLAT) issue, then he had to coordinate with the FBI. He also stated that ██████████⁴⁷ of the FBI Legal Attache in Manila was never involved in any of the Oplans. Train knew ██████████ only because he had to submit certain requirements to him prior to his training at the FBI.

⁴⁷ Assistant Legal Attaché of the FBI. The NBI-NPS SIT met ██████████ on May 13, 2015 as part of the request for an interview, which he declined. He was also officially furnished a copy of the team's first Report.

c. Testimony of P/ Supt. Michael John C. Mangahis

P/Supt. Mangahis disclosed that he was involved in the various special police operations that targeted Zulkifli bin Hir alias Marwan. These operations included WOLVERINE 1, 2 and 3; CYCLOPS 1 and 2; SMART BOMB 2012; CATFISH and MUDSLIDE.

During the WOLVERINE operations, Mangahis was in charge of monitoring and logistics for the commandos. According to him, there were Americans from JSOTF-P involved in the WOLVERINE operations who provided support that included the donation of Harris radios and the setting-up of base radios. However, these base radios were primarily for back-up and were never used. He also saw the JSOTF-P personnel provide maps, phones and other equipment that he is not familiar with.

He added that if the SAF commandos required other equipment or supplies from the Americans, the request is made through P/Dir Napeñas. P/Supt Mangahis was quick to note, however, that this support did not include actual support in combat operations. P/Supt Mangahis confirmed that all operations start from “intelligence packets”. According to Mangahis, *some* of these intelligence packets may have come from the Americans but *not all*. As for WOLVERINE 1, Mangahis was certain that the intelligence packet did not come from the Americans as these were developed from intelligence sources that SAF recruited. In the case of Oplan EXODUS, the intelligence packet came from Monsalve and Melvin. However, he was not sure of the exact influence or support of JSOTF-P.

In the five (5) years of SAF operations where Mangahis was involved, he claims that different members of JSOTF-P were involved as their tours of duty lasted for only about six (6) months. The highest ranking JSOTF-P officer he met was a certain “Colonel Miller”, who was involved in WOLVERINE back in 2012. When asked by the team about the intricacies of coordination between JSOTF-P and PNP, Mangahis supposed that if someone from JSOTF-P had an intelligence packet and would like to talk to the PNP, it was likely that the contact point would be the PNP-Intelligence Group (IG) or the Directorate for Intelligence (DI). He opined that it is possible that the Americans also have Filipino assets on the ground. In any case, according to Mangahis, it was still the PNP who developed the Oplans.

2. JSOTF-P and Operation Enduring Freedom-Philippines

The Joint Special Operations Task Force-Philippines (JSOTF-P) was established in July 2002 following the Joint Task Force 510's (JTF 510) successful efforts in the fight against the Abu Sayyaf Group (ASG) on the island of Basilan in 2001.⁴⁸

The US military's presence in the Philippines dates back prior to the events of 9/11 when the US Army's First Special Forces Group (Airborne) conducted advisory assistance mission with the AFP, helping them in developing plans to target terrorist organizations, specifically the ASG. On May 21, 2001, the ASG staged a kidnap for ransom of more than a dozen Filipinos and foreigners from a resort in Palawan and transported them to Basilan. The ASG kidnapping, coupled by the 9/11 attack on the US, gave the Bush administration the opportunity to expand the Global War on Terror (GWOT). It then established Operation Enduring Freedom-Philippines (OEF-P) in the early part of 2002, where the initial command and control headquarters was the JTF 510, the forerunner of JSOTF-P.⁴⁹

The JTF-510's mission was to assist the Government of the Republic of the Philippines (GRP) by increasing the capacity of its armed forces in the south to deal with the outlaw Islamic terrorist group, Al-Harakat al-Islamiyya or the ASG.⁵⁰ At its inception, the JTF 510's core strategy in combating terrorism in the Philippines was one of an indirect approach, wherein Special Operations Forces (SOF) maintains a small physical signature while simultaneously building and developing the Philippine military's capacity to locate, isolate and defeat terrorist networks, providing civil affairs forces and assets to assist in humanitarian aid and civic action programs, and offering information operations (IO) assets and enablers in order to positively influence the local population and delegitimize terrorist and insurgent groups. The said strategy was developed taking into consideration Philippine sovereignty, provisions in the Philippine Constitution and the recognition of the potential internal political

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⁴⁹ Id.

⁵⁰ Richard Swain, Ph. D, Booz Allen Hamilton, Operation Enduring Freedom Philippines: A Case Study, October 2010, citing Zachary Abuza, *Balik Terrorism: The Return of the Abu Sayyaf* (Carlisle Barracks, PA: Strategic Studies Institute, September 2005), p.5; Abu Sayyaf means "Bearer of the Sword"

repercussions of American military forces conducting over and/or unilateral military operations within the Philippines.⁵¹

Like its forerunner, JSOTF-P also employed the indirect approach in combating terrorism in the Philippines. The JSOTF-P's mission, on the other hand, is to work alongside the armed forces of the Philippines in order to defeat terrorists and create the conditions necessary for peace, stability and prosperity in the southern Philippines.⁵² Then JSOTF-P Commander, Col. William Coultrup, affirmed JSOTF-P's mission statement and in addition declared that:

“The desired end state is that JI leadership and safe havens have been neutralized and the conditions for their presence no longer exist.”⁵³

Thus, in order to achieve that end state, JSOTF-P, along with the AFP devised the following military operational plan: (1) Capacity building or building of the military capacity of the Philippines to conduct counter terrorism operations through trainings and assistance by the US SOF given to select military units and organizations within the AFP; (2) Targeted CMO which refers to conducting infrastructure development and reconstruction projects in specific areas identified by the JSOTF-P and the AFP. Those specific areas identified are areas that are at risk for cooperating and sympathizing with terrorist or insurgent groups. JSOTF-P personnel trains the AFP to build and improve roads, bridges, shelter and other forms of hardened infrastructure. Moreover, the JSOTF-P also conducts medical, dental and veterinary seminars to teach AFP personnel how to better treat different medical conditions; (3) Information Gathering and Sharing constitutes the efforts of the JSOTF-P in assisting AFP in the timely collection, fusion and dissemination of accurate information and intelligence among military units and supporting agencies. To support this operation, JSOTF-P employs Liaison Coordination Elements (LCEs) which are small, specially organized and tailored teams of US SOF personnel that co-locate

⁵¹ [REDACTED], accessed on September 8, 2015

⁵² Joint Special Operations Task Force-Philippines (JSOTF-P), retrieved on September 8, 2015, retrieved from www.globalsecurity.org

⁵³ [REDACTED], accessed on September 8, 2015

with and assist a designated AFP headquarters with information and intelligence collection, processing, analysis and fusion. When necessary, LCEs can “reach back” to the JSOTF-P for additional intelligence assets and capabilities such as UAV or additional casualty evacuation support to assist AFP operations.⁵⁴

All JSOTF-P operations are conducted exclusively by, through and with designated AFP units. In his monograph on the JSOTF-P, [REDACTED] posits that there have been no *unilateral* U.S. military operations conducted by units or service members assigned to the JSOTF-P. [REDACTED] also cited the [REDACTED] of former JSOTF-P commander [REDACTED] :

“The most important aspect of this mission is that U.S. forces are not doing the fighting. They are providing assistance to Philippine security forces to allow them to fight and win against terrorist organizations. Thus, U.S. forces are able to contribute to the accomplishment of mutually beneficial U.S. and Philippine strategic objectives in the battle against terrorism through, by and with Philippine forces.”⁵⁵

JSOTF-P’s composition comes from all U.S. armed services and various government agencies. As of 2009, the combined number of U.S. service members assigned to the JSOTF-P is around 500 personnel.⁵⁶ With respect to JSOTF-P’s supporting resources, particularly on aviation and ISR, there are only a few available aircraft for military fixed-wing air support, some of which are even provided by contract. These aircraft, according to JSOTF-P personnel, are not designed for offensive military purposes but only for transporting personnel, logistics and medical/casualty evacuation. Their rotary-wing air support are limited to two (2) Blackhawk helicopters with a few more provided by contract. On the other hand, UAV assets are limited to a handful of tactical level drones equipped only with cameras and possess a limited operational range. The capability of these UAVs to collect and transmit imagery is severely constrained by the thick and densely vegetated Filipino terrain, hence, their limited ability to observe open roads and waterways.⁵⁷

⁵⁴ Id. p. 36-37

⁵⁵ Id. p. 45

⁵⁶ Id., p. 39

⁵⁷ Id., p. 38-42

The JSOTF-P continuously operated in the Philippines since 2002, at the request of and with the explicit consent of the Government of the Republic of the Philippines (GRP). It is claimed that the JSOTF-P are not the ones in-charge, rather, they are the guests of and are supporting the AFP and the GRP.

However, in the early part of 2015, the JSOTF-P mission in the Philippines was shut down.⁵⁸ Meanwhile, the *Los Angeles Times* assumed that the Mamasapano operation was the reason why the JSOTF-P closed its operations in the Philippines.

“But the debacle marked an inglorious end to a little-known 13-year U.S. military advisory operation in the Philippines, an effort credited with improving its army and police and with reducing the number of insurgent groups.”⁵⁹

3. The American Intelligence Surveillance and Reconnaissance (ISR)

a. Coordination of the NBI-NPS SIT to the FBI Legal Attaché

As part of the team’s investigation on whether the so-called “spy” planes that hovered the Mamasapano airspace on January 25, 2015 was either a drone or a manned ISR aircraft, the team exerted diligent efforts to request for a meeting with representatives of the FBI Legal Attaché office in Manila.

On May 6, 2015, the NBI-NPS SIT wrote FBI Legal Attaché [REDACTED] and requested for official documents on the ISR support and medical evacuation (MEDEVAC)/casualty evacuation (CASEVAC) provided to the SAF operation on January 25, 2015 by either the JSOTF-P or the FBI.

On May 13, 2015, Assistant Legal Attaché [REDACTED] met with the NBI-NPS SIT at the latter’s office in the DOJ. During the very brief but

⁵⁸ In an article on *The Diplomat*, it was noted that after thirteen (13) years of providing operational advice and support, the JSOTF-P has concluded its mission in the Philippines. (Source: Ankit Panda, “US Concludes Special Operations Task Force in the Philippines”, *The Diplomat*, March 3, 2015, retrieved on September 15, 2015 from www.thediplomat.com)

⁵⁹ David S. Cloud and Sunshine de Leon, “A heavy price paid for botched terrorist raid by Philippines and U.S.”, *Los Angeles Times*, September 10, 2015, retrieved on September 30, 2015, retrieved from www.latimes.com/world/asia

cordial meeting, [REDACTED] politely declined the team's request for an interview and documents. He explained that he was only deputized by Legal Attache [REDACTED] to meet with the team but that his office was not authorized by the US Ambassador to give testimony or evidence, citing their diplomatic immunity.

b. Narrative of SAF Officers on ISR

In order to address the failure to obtain testimony from official United States representatives as well as the gap in personal testimonies on the appearance of "spy" aircraft, the team questioned the SAF officers on the identities of Americans present at the TCP in Shariff Aguak as well as their observations regarding the ISR support on January 25, 2015.

i. P/Director Getulio P. Napeñas

The NBI-NPS SIT confronted Napeñas with the sworn statement of P/Supt. Michael John Mangahis who indicated in his sworn statement⁶⁰ that he saw six (6) American nationals at the Tactical Command Post (TCP) at the 43rd SAC headquarters at Camp Datu Akilan, Shariff Aguak, Maguindanao on January 25, 2015. Napeñas stated that he was not aware that there were six (6) Americans there but disclosed that he travelled with [REDACTED] of JSOTF-P and another American from General Santos to Maguindanao. The other American helped in setting up the ISR equipment at the TCP. He did see more Americans on January 26, 2015, when the latter helped in the medical evacuation of the SAF casualties from Mamasapano to Shariff Aguak. While there were no logging procedures at the TCP for the latter to identify all persons who can access the highly secure facility, Napeñas recalled the name of the second American as [REDACTED]. He can only phonetically remember the name but was unsure of the spelling. He stated he was "satisfied" that they identified themselves as from the JSOTF-P. All the Americans wore civilian clothing at the TCP.

Napeñas explained that the intelligence assistance provided by the Americans to the SAF for Oplan EXODUS was two-fold. First were the aerial photographs and detailed maps developed by the Americans and given to the SAF operating units. The second took the form of the tactical intelligence during the actual operation, in order for SAF to see the real-time

⁶⁰ Sworn Statement of P/Supt. Michael John C. Mangahis dated February 4, 2015.

movements of “friend or foe”. The SAF side could check the movement or location of the SAF or opposing forces by low-tech radio check or by SMS message, based on their GPS coordinates. But the Americans could see the actual movements of both SAF and opposing forces in real-time through a surveillance aircraft with cameras overflying the Mamasapano area. Napeñas stressed that rather than an unmanned aerial vehicle (UAV) or drone, the aircraft patrolling the Mamasapano area was more likely *manned or piloted*.⁶¹

On January 25, 2015, the real-time video feed from the American surveillance aircraft was transmitted to a video monitor back at the TCP operated by [REDACTED]. Napeñas stated that while he could not hear the communication between the U.S. aircraft and the American ISR equipment handlers at the TCP, he confirmed that the latter were using cellular phones to communicate with the aircraft. He and the other SAF personnel also saw the real-time video from the monitor being operated by [REDACTED].

Napeñas interestingly compared the [REDACTED]

[REDACTED] He stated that the Mamasapano real-time video feed [REDACTED]. According to him, rather than clearly identifiable [REDACTED]

[REDACTED] But the geographical landmarks like the river and surrounding hills can be clearly seen. When asked about the size of the video monitor, Napeñas said that it was rather small since the Americans only used a portable computer.

He recalled that the TCP was divided into rooms, one of which was occupied by [REDACTED] and their ISR equipment. But it was not actually segregated because the SAF personnel, including Napeñas could freely come and go to the American side and see their equipment and the video feed. An array of communication equipment were also brought by the Americans at the TCP, aside from their personal cellular phones and Harris radios.

He remembered that the field of [REDACTED] was

⁶¹ The type, make and model of the probable ISR aircraft used over Mamasapano between January 23 to 26, 2015 is further discussed in Chapter II (3) (h).

not [REDACTED] both Pidsandawan and Tukanalipao. Initially, the ISR aircraft was covering the 84th Seaborne's early morning movement at Pidsandawan. The camera's resolution was such that Napeñas even saw the [REDACTED].

The camera's field of view later reoriented from Pidsandawan to Tukanalipao during the firefight there. A gap on the video coverage then occurred but Napeñas was by then already very busy monitoring by radio the debacle of the 55th SAC at Tukanalipao. He was not able to see the real-time video coverage at Tukanalipao. He also stated that aside from the reorientation, another video coverage gap happened when the ISR aircraft had to refuel in the afternoon. The ISR aircraft only resumed its patrol over Mamasapano early in the evening, this time searching for the 84th Seaborne. At the time, there was already a flurry of requests from the SAF for artillery support from the AFP, hence the need for the units' exact locations.

When the SAF transferred their TCP to the 6th Infantry Division headquarters at the old Maguindanao Provincial Capitol also in Shariff Aguak, the Americans likewise evacuated with Napeñas and they brought along their ISR equipment. Napeñas could not recall when the ISR coverage over Mamasapano was finally terminated. Napeñas was adamant that there were *no* American forward observers or controllers on the ground that guided the ISR aircraft over Mamasapano.

He admitted that there were times at the TCP, when [REDACTED] would "discuss" some [REDACTED] with him, sometimes through Senior Insp. Lyndon A. Espe. Whenever viable, he would give the "discussion" some thought. But Napeñas underlined the fact that [REDACTED] did **not** advise or order him at the TCP.

ii. P/Supt. Michael John C. Mangahis

In his testimony, P/Supt. Mangahis declared that during Oplan EXODUS, the TCP was located at the Maguindanao Police Provincial Office (PPO). It was set-up in the evening of January 24, 2015 at around 7:00 or 8:00 p.m. P/Dir. Getulio Napeñas arrived at around 9:00 in the evening together with [REDACTED], an American. In all, he saw about four (4) Americans at the TCP. However, the presence of the Americans was never recorded or

logged at the TCP.

One room at the TCP was occupied by Americans where the latter set up monitors and computers. While Mangahis, P/C Supt. Taliño, Francis Abayari, PSI Espe and P/S Supt. Dela Rosa had access to the room occupied by the Americans who never left. The Americans used the monitors at the TCP from January 24, 2015 at around 10:00 p.m. until 4:00 a.m. of the next day.

Mangahis and the others could only see blurred images on the monitor. The Americans were the ones interpreting what could be seen on the monitor. The images on the monitor moved in an upward and downward direction and was apparently shot from an overhead *manned* aircraft. However, it did not appear to Mangahis that the Americans at the TCP were directly controlling what can be seen on the monitor. The images also appeared to be [REDACTED]. Mangahis could see [REDACTED] representing the 84th SAC.

On January 25, 2015 at around 2:30 to 3:00 a.m., the 84th SAC can be

[REDACTED]. Thereafter, firing started and lasted for about five (5) to ten (10) minutes.

[REDACTED]. After five (5) minutes, the image on the monitor began to move and twenty (20) minutes later, the images on the monitor were no longer those of the target area.

At around 5:30 a.m., the focus of the ISR monitors was still the 84th SAC. It was then that Mangahis left the TCP. He believed, however, that the monitors were used even during the extrication as he heard that the ISR aircraft had to refuel.

Mangahis recalled that Oplan EXODUS was not the first time that an ISR aircraft was used. During Oplan SMART BOMB, he overheard Napeñas speaking to someone overhead. Mangahis claims that using the ISR aircraft

was a huge advantage during their operations. It was mentioned during planning that there will be an ISR aircraft but the details were never discussed. Nevertheless, Mangahis claimed that even without the ISR plane, they can still make do with old school techniques.

iii. P/Supt. Raymund A. Train

For Supt. Train, ISR support is very important because one could see from the monitor the dots showing the movement of the commandos. He requested for ISR for Oplans WOLVERINE, WOLVERINE 3, TERMINATOR 1, TERMINATOR 2 and EXODUS. For all of these operations, he knew that there were instances when drones were used for the ISR but he could not categorically state which of these operations used drones since he was not present at the TCP. According to Train, there were times when the ISR aircraft were *manned*.

He narrated that he was able to observe an ISR aircraft when they did a [REDACTED] but there was not an instance when he was at a TCP during an actual operation where an ISR monitor was visible. He said that what can be seen from the monitor are [REDACTED] the area. He likened the [REDACTED].

Train assumed that the ISR aircraft were launched [REDACTED]. He stressed that none of the SAF commandos would know for sure because there is a need to [REDACTED]. He surmised that it is the Philippine Air Force (PAF) who would know [REDACTED]. They also never received any training pertaining to ISRs. He also clarified that there were times when his request for ISR was not granted because the AFP would simultaneously make a similar request. There were also instances when [REDACTED]. He added that his requests for ISR and the approval or denial thereof were *never* in writing.

Train maintained that the use of ISR aircraft does not constitute American intervention in SAF operations. To his mind, for as long as they do not interfere with the actual combat operation and they just provide tactical information and technical assistance, the same cannot be considered

American intervention. He pointed out that it was clear to the Americans what they can and cannot do during police and military operations.

Based on his conversations with his American contacts, Train recalled that the UAV most often used is [REDACTED]. There are times that a [REDACTED] is also used. He also said that the SAF does not have a direct line to the UAVs or ISR aircraft. Rather, SAF communicates with the TCP and it is the TCP which will relay the message to the UAV or ISR aircraft.

During Oplan EXODUS at Barangay Pidsandawan, Train was not certain what type of ISR aircraft was used overhead. He stated that he could not hear the ISR aircraft at that time because it [REDACTED] to [REDACTED]. According to him, [REDACTED]. It was only in the afternoon when they were going down the Tukanalipao area that they were able to hear the sound of the ISR aircraft.

iv. PSI Lyndon A. Espe

PSI Espe⁶³ testified that that he was at the TCP in Shariff Aguak on January 24, 2015, together with the staff of P/Dir. Getulio Napeñas. He was designated by Supt. Train and P/Dir. Napeñas to assist in map plotting and to be the contact of the 84th Seaborne Company, the company tasked to assault

⁶² The [REDACTED]

The primary concept of operations, remote split operations, employs a launch-and recovery ground control element for take-off and landing operations at the forward operating location, while the crew based on the United States executes command and control of the remainder of the mission via beyond-line-of-sight links. Remote split operations result in a smaller number of personnel deployed to a forward location, consolidate control of the different flights in one location, and as such, simplify command and control functions as well as the logistical supply challenges for the weapons system.

The [REDACTED]

Its primary function is armed reconnaissance, airborne surveillance and target acquisition.

⁶³ Member of the 84th SAC. He was at the TCP and was the designated map plotter for Oplan EXODUS.

Marwan's hut in Pidsandawan. As a map plotter⁶⁴, he said that it was his duty and responsibility to know the exact location of the 84th Seaborne as relayed by S/Insp. Tabdi or P/Supt. Train, which in turn he will immediately plot in their map to support P/Dir. Napeñas' decision-making.

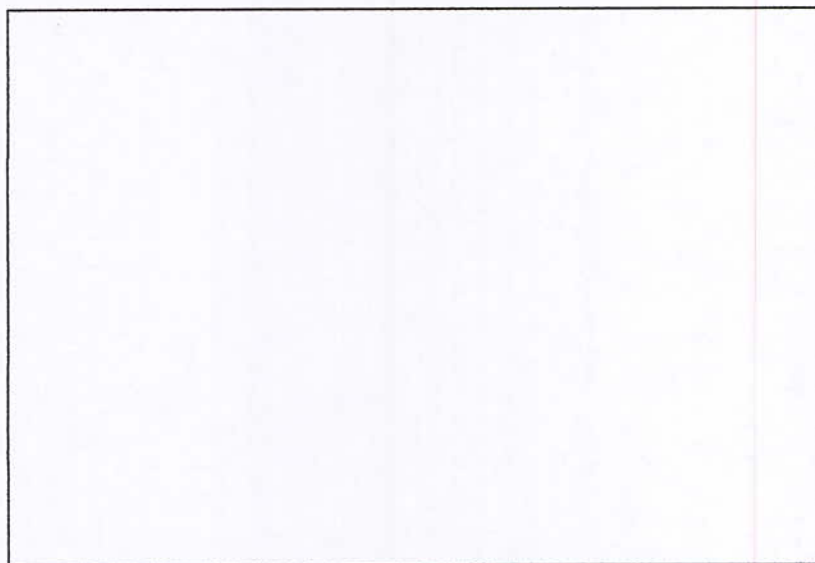
According to him, at around 7:00 to 8:00 p.m., Napeñas and the Americans arrived at the TCP. Napeñas arrived together with [REDACTED]. The Americans then set-up their ISR monitor on a table which was near the map that Espe used during the operation. Upon request, Espe made the following sketch⁶⁵ to indicate the lay-out of the TCP on January 25, 2015:



⁶⁴ Espe disclosed in the May 21, 2015 interview that he used a military map which is composed of grid coordinates with a scale of 1:50,000. The map is a panoramic photographic map, the same one that P/Dir. Napeñas brought when he was interviewed by the team on May 13, 2015.

⁶⁵ The actual sketch of Espe of the TCP lay-out on January 25, 2015, attached as Annex "I"

Espe then mentioned that at 1:00 p.m. of January 25, 2015, the TCP was subsequently transferred to the 6th Infantry Division of the Philippine Army in the old Capitol of Maguindanao. When the TCP was transferred there, the Americans were already present, Espe then drew another sketch⁶⁶ of the second TCP's lay-out:



Espe also disclosed that he saw the ISR monitor. He described it as having a [REDACTED] where one can identify what was on the ground. He also maintained that he was able to see in real time what was happening on the ground during the operation. Espe regularly saw the ISR video coverage. According to him, the [REDACTED]. He also averred that he saw in the ISR monitor when the 84th Seaborne were [REDACTED]

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Espe said that there was also ISR coverage over the 55th SAC during their insertion at Barangay Tukanalipao. It was when the 84th Seaborne was not yet engaged and it was still dark. When he saw anew the ISR video coverage over the 55th SAC, it was already morning. They saw that there were already a [REDACTED] the 55th SAC was positioned. He also saw flashes on the monitor. This was during the time

⁶⁶ The actual drawing of Espe of the lay-out of the second TCP, attached as Annex "I-2"

⁶⁷ Espe also made a sketch of what he saw in the ISR monitor representing the position of the 84th SAC in Pidsandawan, attached as Annex H-2". His sketch and narrative of the 84th SAC's position shall be discussed further on the next chapter on Events at Pidsandawan Chapter II (D) (2) (c).

that the 55th SAC radioed that they were already engaged and were asking for support.

c. NBI-NPS SIT's Communication with the Philippine Air Force (PAF)

In order to document the presence of U.S. military aircraft or drone over Mamasapano on January 25, 2015 from the vantage point of the PAF, the team communicated with its [REDACTED]

On May 5, 2015, the team, through the Secretary of Justice, wrote the PAF commanding general, Lt. Gen. Jeffrey F. Delgado. The team requested for information and documents relative to the presence of fixed wing and rotary aircraft or UAV operated by United States personnel or American individuals in the airspace of Mamasapano and Shariff Aguak, both in Maguindanao, for the period January 24 to 26, 2015. The same request was restated by the team in their letter to PAF dated July 6, 2015. In addition, the team requested to interview PAF personnel who had access to the relevant information. On July 29, 2015, the team received a reply from Col. Maxima O. Ignacio, the Air Force Adjutant. In its letter, the PAF noted that:

“This Command had already taken cognizance of your request and immediately verified the matter with the

[REDACTED]

Let it be noted that we have [REDACTED]

[REDACTED]

[Redacted]

As to the [Redacted], the latter is not [Redacted]

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Attached to the letter of the PAF [Redacted] were some flight itineraries of U.S. aircraft on the relevant dates as requested by the team:

Table 1: U.S. Aircraft Itineraries on January 24, 2015

Date: January 24, 2015		
Aircraft Type and Call Sign	Itineraries/Time	Mission
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

Table 2: U.S. Aircraft Itineraries on January 25, 2015

Date: January 25, 2015		
Aircraft Type and Call Sign	Itineraries/Time	Mission
[Redacted]	[Redacted]	[Redacted]
[Redacted]	[Redacted]	[Redacted]

⁶⁸ Reply-Letter of the [Redacted]

Table 3: U.S. Aircraft Itineraries on January 26, 2015

Date: January 26, 2015		
Aircraft Type and Call Sign	Itineraries/Time	Mission

d. NBI-NPS SIT's Coordination with CAAP

i. CAAP at a Glance

CAAP was created pursuant to Republic Act No. 9497 otherwise known as the "Civil Aviation Authority Act of 2008". Under the said law, CAAP is created as an independent regulatory body with quasi-judicial and quasi-legislative powers and possesses corporate attributes. It is attached to the Department of Transportation and Communication (DOTC) for the purpose of policy coordination. As a result of CAAP's creation, the Air Transportation Office (created under the provisions of RA No. 776, as amended) was abolished.

CAAP is the regulatory body which establishes and prescribes rules and regulations for the inspection and registration of all aircraft owned and operated in the Philippines and all air facilities. It establishes and prescribes the corresponding rules and regulations for the enforcement of laws

governing air transportation. CAAP also determines, fixes and/or prescribes the charges and/or rates pertinent to the operation of public air utility facilities and services. It likewise administers and operates the Civil Aviation Training Center; operates and maintains national airports, air navigation and other similar facilities in compliance to ICAO; and performs such other powers and functions as may be prescribed by law.

ii. CAAP Briefing and Documents

Due to the failure of the SAF officers and commandos to identify the particular relevant American aircraft used during Oplan EXODUS, the team sought CAAP's expert and documentary assistance. In its letter⁶⁹ dated May 5, 2015, the team, through the Secretary of Justice, requested CAAP Director General William Hotchkiss III to furnish the team the following:

(1) the flight plan and crew manifest of the helicopter used by the American individuals in transporting the cadavers of the Special Action Force (SAF) commandos from Mamasapano to Shariff Aguak, both in Maguindanao and other places on January 25-26, 2015; and

(2) documents and records with respect to the model, type, tail or body number, civil aeronautics registration and ownership details of the said helicopter.

On June 3, 2015, a follow-up letter⁷⁰ was sent by the NBI-NPS SIT to CAAP stating that the team has not yet received any reply to its written request dated May 5, 2015. The team also manifested that:



On June 17, 2015, the NBI-NPS SIT visited the CAAP main office in Pasay City. The team was directed to the Operations and Rescue

⁶⁹ Letter request of the Secretary of Justice to CAAP Director General William Hotchkiss III dated May 5, 2015, attached as Annex "G"

⁷⁰ Confidential Letter request by the Secretary of Justice to CAAP Director General William Hotchkiss III dated June 3, 2015

Coordination Center (ORCC). The chief of the ORCC, Ms. Maria Jocelyn Lim, together with her staff provided the team with the documents indicated in the formal request. Lim and her staff explained that the reason for CAAP's delay in responding to the team's inquiry was because all the documents required by the team had to originate from CAAP offices in [REDACTED].

The team told Lim that the relevant flight plans that should be provided by CAAP must relate to the period January 24 to 26, 2015, where the declared routes are from [REDACTED] and vice versa. The aircraft subject of NBI-NPS SIT's and CAAP's focus were either those registered to the [REDACTED] or other [REDACTED]. Lim briefed the team on how to analyze the data indicated in the CAAP flight plans and airport operations logs provided to them.

Lim stated that a "Flight Plan" is a standard issue CAAP form which is required to be filed with the airport control tower by a pilot of an aircraft to signify the intention to fly an aircraft. After the flight plan is filed with the control tower, the latter will note the date and time of the flight as reflected in the filled-up flight plan. The required entries in the flight plan are the aircraft identification, usually the aircraft call sign, type of aircraft, the departure aerodrome, the destination aerodrome, the alternate aerodrome, the route, the date of departure, the time of departure which is expressed in universal coordinated time system (UTC) or Zulu time⁷¹, the category or type of flight, the endurance, the number of persons on board and

⁷¹ Z or Zulu time or Coordinated Universal Time (abbreviated as UTC, and therefore often spelled out as Universal Time Coordinated and sometimes as Universal Coordinated Time) is the standard time common to every place in the world. Formerly and still widely called Greenwich Mean Time (GMT) and also World Time, UTC nominally reflects the mean solar time along the Earth's prime meridian. (The prime meridian is 0° longitude in the 360 lines of longitude on Earth. There are 179 meridians toward the East and 179 toward the West. The 180th meridian is also called the International Date Line.) The prime meridian is arbitrarily based on the meridian that runs through the Greenwich Observatory outside of London, where the present system originated. The UTC is based on an atomic clock to which adjustments of a second (called a *leap second*) are sometimes made to allow for variations in the solar cycle. Coordinated Universal Time is expressed using a 24-hour clock but can be converted into a 12-hour clock (AM and PM). UTC is used in plane and ship navigation, where it is also sometimes known as Zulu. UTC was defined by the International Radio Consultative Committee (CCIR), a predecessor organization of the ITU-TS, and is maintained by the Bureau International des Poids et Mesures (BIPM), accessed on September 11, 2015, <http://whatis.techtarget.com/definition/Coordinated-Universal-Time-UTC-GMT-CUT>

emergency/survival.

Supplementary information such as the owner of the aircraft and hangar and sometimes the names of the passengers are included in the list. There is also a certification by the pilot-in-command not to fly the aircraft over prohibited areas, not to willfully deviate from the flight plan except when necessary for safety, to operate in accordance with existing Civil and Military regulations and not inimical to the security of the Republic of the Philippines. Moreover, the pilot-in-command certifies that he is qualified to fly the route mentioned in the flight plan.

Lim also explained that in the absence of a filed flight plan, the pilot can alternatively call or radio the control tower of the intention to fly an aircraft before take-off. According to Lim, CAAP allows the pilot this leeway for as long as there has been communication with the control tower before take-off.

After the aircraft takes off, the controller-on-duty at the control tower will record the time of actual takeoff of the aircraft in a CAAP document denominated as 'Aircraft Operations Log'. When an aircraft lands in a particular aerodrome, the time of landing is also recorded in the said operations log. In the said document, the following entries are recorded: (1) the aircraft identification which is usually the aircraft call sign; (2) the type of flight, such as 'D' for airlines, 'C' for general aviation and 'M' for military flights; (3) the time of landing or time of take-off which is recorded in UTC or Zulu time.

During the meeting, the ORCC pointed out several aircraft that originated from or destined for [REDACTED], where the indicated owners are either [REDACTED]. These are two (2) [REDACTED] Helicopters with call signs [REDACTED] and two (2) [REDACTED] with [REDACTED] and a [REDACTED], which are registered with the [REDACTED].

The ORCC also provided the team some materials on [REDACTED]. They informed the team that [REDACTED]. When the team asked the relation of [REDACTED],

CAAP cannot exactly state the relationship of the two (2) companies. Thus, they suggested to the team to visit CAAP [REDACTED] and CAAP [REDACTED] since the documents that they provided to the team all came from CAAP [REDACTED].

Upon closer scrutiny of the documents provided by ORCC, the NBI-NPS SIT found the call sign [REDACTED] entered in one of the airport operations logs. According to ORCC, [REDACTED] was previously the call sign of one of the [REDACTED] helicopters, [REDACTED]. They also mentioned that [REDACTED] stood for [REDACTED].

iii. CAAP [REDACTED]

On July 2, 2015, the team went to the CAAP office in [REDACTED] City. The team interviewed CAAP [REDACTED], the Facility-in-Charge.

In his sworn statement⁷², [REDACTED] states that as Facility-in-Charge, he is responsible for the efficient administration and operation of an airways traffic service facility. His duties also include planning, organizing and directing the activities of the Air Traffic service facility and ensuring that the facility is performing its service mission in accordance with established standards and procedures; ensures the adequacy of facility personnel, equipment, supplies, procedural documents, guidance materials, work aids, information displays and other facility requirements. In addition, he also performs technical functions in the air traffic section as an Air Traffic Controller. During the interview, he informed the NBI-NPS SIT that he was on-duty from 9:00 p.m. of January 25, 2015 up to 5:00 a.m. of January 26, 2015.

[REDACTED] discussed the procedures before an aircraft is allowed to take-off from the airport and the procedures to observe before an aircraft is cleared for landing. He explained that before take-off, it is mandatory that a flight plan shall be filed by the pilot of the aircraft with the control tower. A flight plan can be filed by the aircraft pilot either by physically filling up the flight plan form of CAAP or in the absence of a written flight plan, by telephone or radio communication by the pilot or his representative to the

⁷² Sworn statement of [REDACTED] dated July 9, 2015, attached as Annex "J"

control tower. After the requisite flight plan has been filed and the last checking made, the aircraft is cleared for take-off by the Aerodrome Controller on-duty. The take-off will be recorded by the controller in a standard issue CAAP document denominated as "Aircraft Operations Log" where entries such as the time of take-off (time is recorded using the Universal Coordinated Time System [UTC]), the aircraft's call sign, the type and category of aircraft, whether it is "D" for Airlines, "C" for General Aviation and "M" for Military.

On the other hand, before an aircraft lands or while en route, the control tower [REDACTED] of the estimated time of arrival, transfer message and other pertinent [REDACTED]. The aircraft approaching [REDACTED] since the latter has jurisdiction within [REDACTED] from the airport reference point (ARP).⁷⁴ [REDACTED] also has jurisdiction of the airspace from the ground level up to a flight level of [REDACTED]. Once the aircraft has landed, the controller-on-duty will record its landing in an "Aircraft Operations Log."

[REDACTED] clarifies that with respect to military aircraft, flight plans are filed with the [REDACTED]. He stated that the [REDACTED] will relay the filing of the flight plan as well as the details of the flight of a particular military aircraft to the control tower [REDACTED]. After transmitting the information, the aircraft can be cleared for takeoff by the control tower.

When [REDACTED] was asked regarding other means of documenting aircraft operations and communications made between [REDACTED] tower and aircraft within their area of responsibility, he claimed that they have [REDACTED].

[REDACTED] was likewise told to provide records of all the aircraft

⁷³ [REDACTED] is a radar-equipped airport.

⁷⁴ Also, aerodrome reference point, the latitude and the longitude of the approximate center of the airport.

operations within their aerodrome that flew over the Maguindanao airspace and landed in the area, in particular those aircraft used by the [REDACTED]. He made it clear that the control tower [REDACTED] Maguindanao. He noted that as far as they are concerned, these aircraft [REDACTED]. He also averred that as for the location of an aircraft during flight, [REDACTED].

Regarding the type of aircraft used by the [REDACTED], [REDACTED] stated that the American planes [REDACTED]. He pointed out that these aircraft are only categorized as [REDACTED] because it is being used by the [REDACTED]. He claims that [REDACTED]. Thus, the control tower will just [REDACTED].

Based on the records in his custody, [REDACTED] listed the following aircrafts owned and operated by the [REDACTED] that departed and landed in their aerodrome and area of operation on January 23 to 27, 2015. [REDACTED] owns two (2) [REDACTED] helicopters which were used by [REDACTED].

⁷⁵ [REDACTED] sworn statement dated July 9, 2015, stated that route is the course in which the aircraft will take to reach its destination, p.5, par. 18

⁷⁶ In brief, the Visiting Forces Agreement is essentially about the treatment of U.S. armed forces and defense personnel who would be visiting the Philippines to take part in activities covered by the Mutual Defense Treaty and approved by the Philippine government. It gives substance to the MDT by serving as the legal framework in promoting defense cooperation between the Philippines and the United States. The agreement further provides the mechanisms for regulating the circumstances and conditions under which US forces may visit and stay for a few days or weeks in the country. It is basically an instrument that seeks to make clear rules that will apply whenever members of the US armed forces visit the Philippines for the purpose of joint training, exercises, consultations, exchanges and the likes, Col. Samuel Narcise, PA, Republic of the Philippines-USA Visiting Forces Agreement: Balikatan Exercises United States Army War College 2003, p.6, retrieved on October 1, 2015, retrieved from www.dtic.mil/oai/ADA414512 citing Agreement Between the Government of the Republic of the Philippines and the Government of the United States Regarding the Treatment of US Armed Forces Visiting the Philippines, a Primer on the VFA

the U.S. military during the said period. These two (2) [REDACTED] helicopters have the call signs [REDACTED]. On the other hand, the aircrafts owned by the [REDACTED] which were used during the said period were two (2) [REDACTED] aircrafts with call signs [REDACTED]. Aside from that, the [REDACTED] also operated a [REDACTED] aircraft, a [REDACTED] with call sign [REDACTED].

When [REDACTED] was asked regarding the presence of unmanned aerial vehicles or drones that landed or took-off in his area of responsibility, he confirmed that there were drones that landed and took-off in their aerodrome several years ago. He also disclosed that during the period of January 24 to 27, 2015, the [REDACTED] made several overhead flights through the route [REDACTED]. He pointed out that when the departure aerodrome and the destination aerodrome are the same, the flight is an *overhead flight*. It means that the aircraft will just cruise around the area and will take-off and land on the same aerodrome.

[REDACTED] provided the NBI-NPS SIT with the following documents: (1) flight plans of aircrafts operated by the U.S. military on January 24-27, 2015 that flew from [REDACTED]; and (2) aircraft operations logs for the period January 23 to 27, 2015. The said documents were also attached to his sworn statement dated July 9, 2015.

When CAAP [REDACTED] personnel were asked regarding the relationship of [REDACTED], they disclosed that [REDACTED]. However, by the end of 2014, the acronym [REDACTED] was no longer used. They also stated that the owner of the helicopters is [REDACTED], and that [REDACTED] is renting or leasing the said helicopters of [REDACTED] or vice versa.

iv. CAAP [REDACTED]

On July 13, 2015, the NBI-NPS SIT visited the CAAP [REDACTED] control tower at [REDACTED]. The airport manager of [REDACTED]. The team also interviewed [REDACTED], Air Traffic Management Officer III and the Facility-in-charge of [REDACTED] tower, [REDACTED], the Air Traffic Management Officer II/Shift Supervisor in the [REDACTED], and [REDACTED].

██████████, the Communication Navigation and Surveillance Systems Officer II of ██████████. They executed their individual sworn statements dated July 14, 2015.⁷⁷

In her sworn statement, ██████████ states that as Air Traffic Management Officer III and the Facility in-charge at the ██████████, she is responsible for the efficient administration and operation of airways traffic and she also performs functions in the air traffic section as an air traffic controller. She enumerated the procedures for recording and documenting an aircraft that has landed and took-off for as follows:

“Before a landing of an aircraft in the ██████████ Airport, while en route, the control tower receives an estimated time of arrival and transfer message from ██████████ Control with pertinent data for air traffic control purposes. The aircraft approaching will be released by ██████████ Control Center to ██████████ Tower. Once the aircraft has landed, the duty controller will record the said landing by filling-up the aircraft operations log with information like the time of landing using the Universal Coordinated Time System and also making an entry in the arrival column by writing the aircraft call sign, the type of aircraft and the category whether it is “D” for airlines, “C” for general aviation and “M” for military. Once the aircraft has exited the runway and on the ramp, the responsibility relating to such aircraft ends.

For take-off, before an aircraft is allowed to take-off from the airport, it is a mandatory requirement that a flight plan shall be filed by the pilot with the control tower. The standard practice in filing the flight plan is for the pilot to fill up the flight plan form of the CAAP. It can also be filed by telephone or through radio communication made by the pilot or its representative to the control tower, in the absence of a written flight plan. After the filing of the flight plan and the last checking, the aircraft is cleared for take-off by the aerodrome controller on-duty. Once the aircraft has taken-off, the time of take-off in Universal Coordinated Time System will then be

⁷⁷ Sworn statements of ██████████, attached as Annexes as “J”, “J-1”, “J-2”, respectively

recorded in the aircraft operations log, while the call sign of the aircraft will be entered in the departure column, then other entries will also be recorded in the columns for type of aircraft and category. Their responsibility with such aircraft ends when it reaches beyond the [REDACTED] aerodrome control zone.”

She pointed out that the CAAP-[REDACTED] has a voice log recorder that records all communications of the tower with different aircrafts.

With respect to military aircraft, [REDACTED] explains that flight plans of military aircraft are [REDACTED] and are [REDACTED] to the control tower by [REDACTED]. After everything is checked, the on-duty controller will clear the aircraft for departure.

During the interview, [REDACTED] provided the team with the documents, including the aircraft operations logs, flight plans and facility log forms which show the aircraft operations relating to aircrafts owned and related to the [REDACTED] from January 23 to 27, 2015, particularly the [REDACTED] and the [REDACTED] Helicopter known as [REDACTED]. She confirmed that there was [REDACTED] in transporting the SAF commandos from Mamasapano to Shariff Aguak and other places on January 25 to 26, 2015. She said other related activities [REDACTED].

[REDACTED] also claims that they allow flights which will not land in the point of destination. These are called *round robin* trips. This means that the aircraft will not land in [REDACTED] Airport but will only possibly hold-over [REDACTED] area.

Meanwhile, [REDACTED] states that he is an Air Traffic Management Officer II/Shift Supervisor at CAAP [REDACTED] Airport. Like [REDACTED], he also performs technical functions in the air traffic section as an air traffic controller. He also detailed the procedures observed in the recording and documentation of aircraft operations.

He claims that on January 25, 2015, while he was on-duty at around 11:19 a.m., [REDACTED] Control Tower informed them that [REDACTED] was in their area of jurisdiction. At 11:34 a.m., the pilot of the aforesaid plane contacted

them and informed them of the plane's location, altitude and the intention to "hold-over" in the area. He states that to hold-over means that the plane will just fly around a particular radius. The aircraft's location then was at [REDACTED] from [REDACTED] airport. He also mentioned that the [REDACTED] flew around the said area for more or less two (2) hours. Moreover, the [REDACTED] informed them of a possible night flight operations. However, at 8:00 p.m., they were notified by PAF that there will be no night flights.

[REDACTED] states that there are flights allowed by CAAP when the aircraft will not land in the point of destination. These flights are called *round robin* trips. He further averred that they are not informed of the reasons why these planes would hold-over or do round robin trips. He supposed that those trips have something to do with [REDACTED].

In his affidavit, [REDACTED] states that he is the Communication and Surveillance Systems Officer II at CAAP [REDACTED]. As such, he is responsible for the maintenance and proper operation of all equipment at [REDACTED].

[REDACTED] avers that they use a voice log recorder as a means of documenting their aircraft operations and communication between CAAP tower and the aircrafts within their area of responsibility. [REDACTED]

In this regard, CAAP [REDACTED] provided the team with a Certification dated February 23, 2015 issued by [REDACTED] of the Air Navigation Service to the ATS-on-Duty. The certification states as follows:

"This is to inform you that the requested [REDACTED]

e. Results of the NBI-NPS SIT's Coordination with PAF and CAAP

The PAF pointed out that since [REDACTED], these are subject to CAAP's approval and clearance. According to PAF, its only obligation is [REDACTED]. They allegedly have no control over these American aircraft, even though they are informed ahead of the flight [REDACTED].

CAAP officials, on the other hand, averred that the planes used by the [REDACTED]

CAAP personnel only rely on information from PAF that the documents submitted to the [REDACTED]

Moreover, CAAP [REDACTED] also confirmed that [REDACTED]

[REDACTED], PAF claimed [REDACTED] relevant documents/records as to the presence and operations [REDACTED] over the Mamasapano airspace during the relevant period. On the other hand, [REDACTED] confirmed that there were drones that landed and has taken-off in [REDACTED] several years ago.

Interestingly, while the PAF submitted detailed logs on the flights of [REDACTED] helicopters, its records were wanting with respect to the two (2) [REDACTED] on January 24 to 26, 2015 was documented in the itineraries submitted by PAF.

After receiving the required relevant flight plans and airport logs from CAAP [REDACTED], the NBI-NPS SIT culled the following data arranged in a coherent table format. The entries on the first eight (8) columns used information from the flight plans filed from January 24 to 27, 2015. The entries on the last column represent the actual time of take-off and landing as expressed in the Aircraft Operations Logs of the particular control tower.

Table 4: CAAP [redacted] Flight Plans and Aircraft Operations Log on January 24, 2015

From CAAP – Aircraft Operations Log and Flight Plans Date: January 24, 2015								Aircraft Operations Log
Aircraft Type	Aircraft Call Sign/ Ident	Type of Flight	Itinerary/ Route	Departure Aerodrome ⁷⁸ Time	Destination Aerodrome	Altn. Aero- Drome	Owner	
		V				AOS		
		M						
		M						
		M						

⁷⁸ Refers to an airport, a defined area on land or water (including any building, installation and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft. (As defined in Section 3, Republic Act No. 9497)

⁷⁹ As manifested in the flight plans filed with CAAP, the pilot-in-command of [redacted]

		M						

Table 5: CAAP [redacted] Flight Plans and Aircraft Operations Log on January 25, 2015

From CAAP-Flight Plans Date: January 25, 2015								Aircraft Operations Log
Aircraft Type	Aircraft Call Sign/Ident	Type of Flight	Itinerary/Route	Departure Aerodrome/Time	Destination Aerodrome	Altn. Aerodrome	Owner	
		V				AOS		
		M				AOS		
		M						
		M						

⁸⁰ As manifested in the flight plans filed with CAAP, the pilot-in-command of [redacted]

Table 6: CAAP [REDACTED] Flight Plans and Aircraft Operations Log on January 26, 2015

From CAAP–Flight Plans Date: January 26, 2015								Aircraft Operations Log
Aircraft Type	Aircraft Call Sign/ Ident	Type of Flight	Itinerary/ Route	Departure Aerodrome/ Time	Destination Aerodrome	Altn. Aerodrome	Owner	
		V				AOS		
		M						

Table 7: CAAP [REDACTED] Flight Plans and Aircraft Operations Log on January 27, 2015

From CAAP–Flight Plans Date: January 27, 2015								Aircraft Operations Log
Aircraft Type	Aircraft Call Sign/ Ident	Type of Flight	Itinerary/ Route	Departure Aerodrome/ Time	Destination Aerodrome	Altn. Aerodrome	Owner	
		V				AOS		

		V				AOS		
		V				AOS		
		M						

Table 8: Summary of Flights taken from the Aircraft Operations Logs from CAAP

Date	Aircraft Type	Aircraft Call Sign/Ident	Airport	Take Off	Airport	Landing
23 January 2015				1225Z (8:25 p.m.)		1340Z (9:40 p.m.)
24 January 2015				0302Z (11:02 a.m.)		0402Z (12:02 p.m.)
				0500Z (1:00 p.m.)		0559Z (1:59 p.m.)
				1227Z (8:27 p.m.)		
				1521Z (11:21 p.m.)		
25 January 2015						1658Z (12:58 a.m.)
				1826Z (2:26 a.m.)		2301Z (7:01 a.m.)
						2006Z (4:06 a.m.)
				2131Z (5:31 a.m.)		0124Z (9:24 a.m.)

				2354Z (7:54 a.m.)		0057Z (8:57 a.m.)
				0945Z (5:45 p.m.)		1038Z (6:38 p.m.)
				0753 (7:53 a.m.)		0859 (8:59 a.m.)
				1746 (5:46 p.m.)		1840 (6:40 p.m.)
				2009 (8:09 p.m.)		2123 (9:23 p.m.)
				2129 (9:29 p.m.)		2141 (9:41 p.m.)
				0225Z (10:25 a.m.)		0510Z (1:10 p.m.)
				1056Z (6:56 p.m.)		
				1212Z (8:12 p.m.)		
26 January 2015						

81 [redacted] with call sign [redacted] when it was then
still owned by [redacted]

82 The aircraft logs were taken from the [redacted]

83 Ibid.

84 Ibid.

85 Ibid.

86 [redacted]

the two (2) [redacted] with call signs [redacted] and two (2) [redacted] helicopters with call signs [redacted].

The first two [redacted] planes are both owned and operated by the [redacted] as indicated in the flight plans filed by the pilots, while the two (2) [redacted] are both owned by [redacted].

f. What is ISR?

The term “intelligence surveillance and reconnaissance” (ISR) has been repeatedly used in the previous testimonies of the SAF officers and commandos. At this point, it has yet to be properly defined.

ISR is a tactical enabling operation. The acronym encompasses a broad category of activities designed to support a battalion’s intelligence development, planning and decision-making. *Intelligence*, the product gained by analyzing combat information for its relevance to the unit’s mission, has always been critical to successfully accomplishing the mission. Intelligence is either the product resulting from the collection, processing, integration, analysis, evaluation and interpretation of available information concerning areas; or information or knowledge about an adversary obtained through observation, investigation, analysis or understanding.⁸⁸ Intelligence needs today differentiate between the terms reconnaissance and surveillance. The former is associated with a snapshot view of the battlefield while the latter is analogous to continuous monitoring of the situation as it unfolds on the battlefield.⁸⁹ More to the point, *surveillance* refers to the systematic observation of the aerospace, surface or subsurface areas, places, persons or things by visual, aural, electronic, photographic or other means, while *reconnaissance* is a mission undertaken to obtain by visual observation or other detection methods, information about the activities and resources of an enemy or potential enemy, or to secure data concerning the meteorological, hydrographic, or geographical characteristics of a particular area.⁹⁰

⁸⁸ “Chapter 3: Intelligence, Surveillance and Reconnaissance Operations”, accessed on September 11, 2015, <http://www.globalsecurity.org/military/library/policy/army/fm/3-21-21/chap3.htm>

⁸⁹ Sqn Ldr Rajesh Kumar, “Tactical Reconnaissance: UAVs versus Manned Aircraft”, March 1997, citing Marshall, James P., *Near Real Time Intelligence on the Tactical Battlefield* AU Press, Maxwell AFB, 1994, p. 13, accessed on September 11, 2015.

⁹⁰ “Chapter 3: Intelligence, Surveillance and Reconnaissance Operations”, accessed on September 11, 2015, <http://www.globalsecurity.org/military/library/policy/army/fm/3-21-21/chap3.htm>; also Intelligence, Surveillance and Reconnaissance Operations, Air Force

g. Various Types and Roles of an ISR Aircraft

Surveillance or ISR aircraft are planes primarily used by the military to obtain information or battlefield intelligence. ISR aircraft can either be manned aircraft or unmanned aerial vehicles (UAVs), also unmanned aerial system (UAS) or commonly termed as “drones”.⁹¹

Unmanned aerial vehicle (UAV), also known as drones, are aircraft either controlled by ‘pilots’ from the ground or increasingly, autonomously following a pre-programmed mission. While there are dozens of different types of drones, they basically fall into two categories: those that are used for reconnaissance and surveillance purposes and those that are armed by missiles and bombs.⁹²

A UAV is an aircraft with no pilot on board which can be a remote controlled aircraft or one that can fly autonomously based on pre-programmed flight plans or more complex dynamic automation systems. A UAV is an aircraft that is capable of controlled, sustained level flight and powered by a jet or reciprocating engine. The term “Unmanned Aerial Vehicle” was officially changed to “Unmanned Aircraft System” (UAS) to reflect the fact that these complex systems include ground stations and other elements besides the actual air vehicles. According to open sources, some early UAVs are called drones because they are no more sophisticated than a simple radio controlled aircraft being controlled by a human pilot (sometimes called the operator) at all times. On the other hand, sophisticated versions may have built-in control and/or guidance systems to perform low-level human pilot duties such as speed and flight path stabilization, and simple pre-scripted navigation functions such as *waypoint* following.

As the military role of UAV is growing at unprecedented rates and as the capabilities grow for all types of UAV, countries continue to subsidize their research and development leading to further advances enabling them to perform a multitude of missions. Although UAVs predominantly perform ISR missions, their roles have also expanded and now also includes

Doctrine Document 2-9, July 17, 2007

⁹¹ Marshal Curtis Erwin, Intelligence, Surveillance and Reconnaissance (ISR) Acquisition: Issues for Congress, April 16, 2013, retrieved on September 8, 2015, retrieved from www.crs.gov

⁹² Chris Cole and Jim Wright, “What are Drones,” 2010, accessed September 7, 2015, dronewars.net/aboutdrone/

electronic attack (EA), strike missions, suppression and/or destruction of enemy air defense (SEAD/DEAD), network node or communications relay, combat search and rescue (CSAR), and derivations of these themes. UAVs are of the following types: (1) target and decoy – providing ground and aerial gunnery a target that simulates an enemy aircraft or missile; (2) reconnaissance – providing battlefield intelligence; (3) combat – providing attack capability for high-risk missions; (4) research and development – used to further develop UAV technologies to be integrated into field deployed UAV aircraft; and civil and commercial UAVs which are specifically designed for civil and commercial applications.

UAVs can be designed for maximized on-station times and maximum flight duration of unmanned aerial vehicles varies widely. Internal combustion engine aircraft endurance depends strongly on the percentage of fuel burned as a fraction of total weight (the Breguet endurance equation), and so is largely independent of aircraft size. Solar electric UAVs hold the potential for unlimited flight, a concept championed by the Helios Prototype, which unfortunately was destroyed in a 2003 crash.⁹³

On the other hand, a manned ISR aircraft is an aircraft primarily built or modified for tactical reconnaissance. As the term implies, a manned aircraft is a piloted aircraft that is dedicated for intelligence, surveillance and reconnaissance roles. This manned airborne ISR asset is equipped with near real-time capable systems that records data and transmits digitized images to the ground receiving stations. Moreover, it has all the advantages of fighter aircraft of speed and flexibility of operations and have a quick response time.⁹⁴

Recall that PO2 Wharlther Rebucas of the 84th Seaborne stated that he heard the sound of a “drone” over Tukanalipao.⁹⁵ On the other hand, P/Director Napeñas, who had direct links with JSOTF-P, is positive that the ISR aircraft were manned.

⁹³ Retrieved from www.theuav.com, accessed on September 6, 2015

⁹⁴ Tactical Reconnaissance: UAVs versus Manned Aircraft, A Research Paper by Sqn Ldr Rajesh Kumar, 1997, citing Thornborough, Anthony M., *Sky Spies: Three Decades of Airborne Reconnaissance*, Arms and Armour Press, London, 1993, p.65-101, accessed on September 10, 2015.

⁹⁵ Affidavit of PO2 Wharlther Rebucas dated February 9, 2015.

h. Tracking JSOTF-P's ISR Aircraft used over Mamasapano

Because high-ranking SAF officers were adamant that the ISR aircraft were manned, the team had to eliminate from its backtracking the identification of U.S. UAVs or drones. All types of helicopters were likewise eliminated much earlier from the team's search pool as there was no testimony that rotary wing aircraft conducted the ISR over Mamasapano. The process of elimination left the team with one type of fixed wing aircraft in the JSOTF-P's fleet or aircraft: the [REDACTED].

The [REDACTED] is [REDACTED] aircraft that can be [REDACTED]

The NBI-NPS SIT traced the two (2) [REDACTED] aircraft which were indicated in the CAAP flight plans for the period January 23 to 27, 2015. These two planes' registration details can be found from the online aircraft registration database of the Federal Aviation Administration (FAA). FAA is the national agency under the United States Department of Transportation primarily responsible for advancement, safety and regulation of civil aviation, as well as overseeing the development of air traffic control.⁹⁷

i. [REDACTED]

The said aircraft's original registration is [REDACTED]. The FAA listed its registration number as [REDACTED] with construction number/serial number [REDACTED]. The aircraft is a [REDACTED] manufactured in 2004. Its certificate of registration is dated April 1, 2010. The said certification has been cancelled on March 22, 2011 and the aircraft has been [REDACTED]. The registered owner of the aircraft [REDACTED]

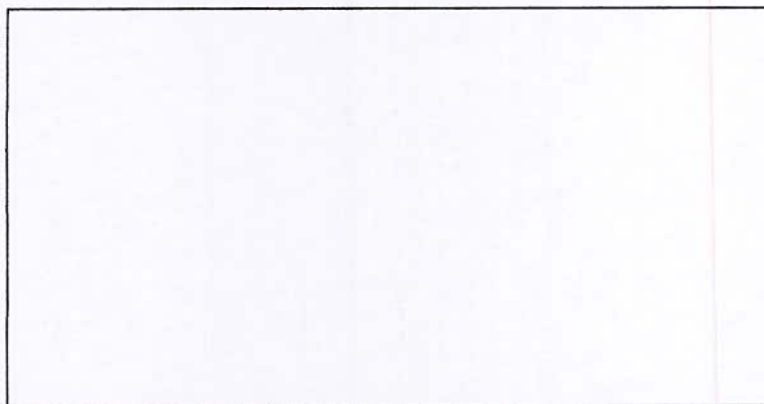
The same entries were also found by the team in the website of airport-data.com including the statement that the said aircraft [REDACTED]. On the other hand, according to the website www.planelogger.com, the said aircraft [REDACTED]

⁹⁶ [REDACTED]

⁹⁷ www.faa.gov

[REDACTED]

The team found online photographs of the [REDACTED]



Starboard side and bottom view of [REDACTED]

ii. [REDACTED]

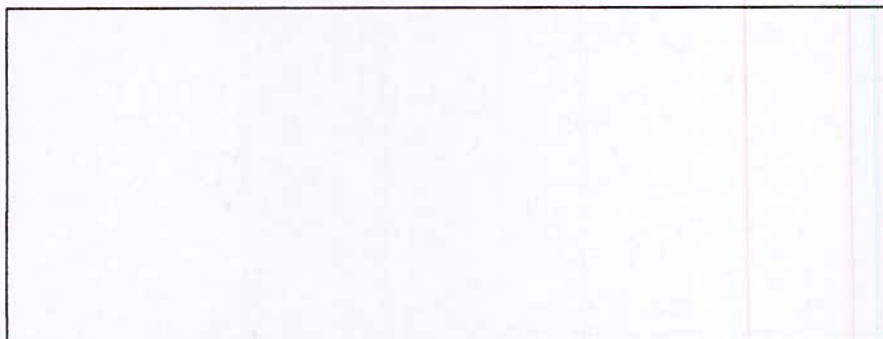
This aircraft's previous registration is [REDACTED] with construction number [REDACTED]. In the FAA website, the said aircraft's registration is [REDACTED] with serial number [REDACTED].

The aircraft is a [REDACTED] manufactured in 2007 and its certificate of registration was issued on October 1, 2008. The said certification has been cancelled on March 13, 2009 [REDACTED] according to the FAA website.

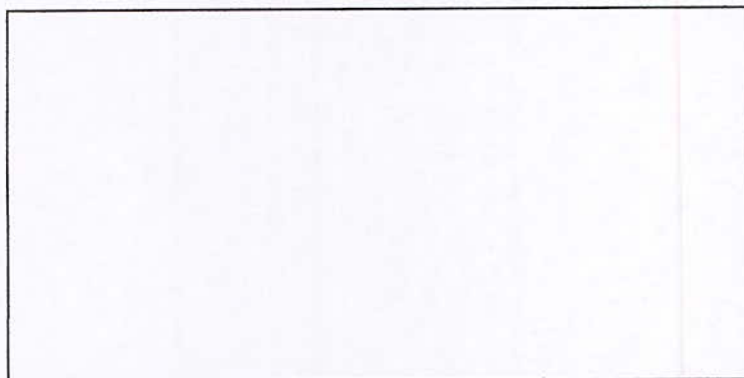
The registered owner of the aircraft prior to [REDACTED]

[REDACTED] The registry number of this aircraft then was [REDACTED]. According to the website www.planelogger.com, the said aircraft has an active registration and has been delivered to the [REDACTED].

The NBI-NPS SIT was able to retrieve a photograph of the aircraft [REDACTED].



Starboard side of [REDACTED]



Upper, front and portside view of a generic [REDACTED]

As described by its manufacturer, the [REDACTED] is a versatile aircraft. It can be modified and configured depending on the use for which it was acquired. Take for example, one of its configurations, the [REDACTED].

The [REDACTED] that operates worldwide. It provides a manned, fixed-wing, on-call/surge capability for tactical airborne intelligence, surveillance and reconnaissance in support of special operations forces. The initial block of [REDACTED]

The [REDACTED] fleet evolved from commercially available aircraft that were purchased and then modified with communications gear, aircraft survivability equipment, electro-optical sensors and advanced navigation systems. The advanced radio-communications suite is capable of establishing DOD/NATO data links, full motion video, data and voice communications. The [REDACTED]

It is therefore clear that a [REDACTED] aircraft is flexible enough to perform intelligence, surveillance and reconnaissance missions.

iii. The [REDACTED] were the ISR Aircraft over Mamasapano

On January 24 to 27, 2015, there were several [REDACTED] aircraft that flew the route of [REDACTED]. It can be gleaned from the summary of flights during the dates mentioned that the [REDACTED] with call signs [REDACTED] and [REDACTED] were the aircraft that incurred the *most* number of flights for that period. Moreover, these two (2) planes were also the planes that made *round robin* or overhead flights from [REDACTED] and back.

CAAP described round robin flights as flights where the plane will just travel the declared route but both the departure and destination aerodrome are the same. Unfortunately, [REDACTED] of CAAP [REDACTED] stressed that they have *no means* of verifying if indeed the two (2) [REDACTED] aircrafts went to Mamasapano since, as per the flight plans filed, the aircrafts' route is [REDACTED]

Thus, they [REDACTED]

After a thorough perusal of the available data on the aircraft logs, the time of flights and the frequency of trips, the team was able to establish that the mission tasked to [REDACTED] was indeed intelligence, surveillance and reconnaissance. It should also be noted that CAAP [REDACTED].

As mentioned above, the [REDACTED] fleet maintained by the [REDACTED], are [REDACTED] that were specifically configured for original use in Operation Enduring Freedom.⁹⁹ To recall JSOTF-P is the

⁹⁸ Accessed from [REDACTED], accessed on September 24, 2015

⁹⁹ Although Operation Enduring Freedom refers primarily to operations in Afghanistan, it also includes military operations in other areas, such as the Horn of Africa and the Philippines, Fact Sheet on the Operation Enduring Freedom, posted on September 17, 2014, retrieved on September 30, 2015, retrieved from www.afhso.af.mil

present evolution of Operations Enduring Freedom-Philippines.¹⁰⁰ Prior to its deactivation in March 2015, JSOTF-P had a Joint Special Operations Aviation Division (JSOAV) which maintained a small fleet of [REDACTED], complemented by [REDACTED].¹⁰¹

Despite diligent efforts to search international aircraft records and open source materials, the team is unable to know the exact surveillance and communications features of [REDACTED], the number of cameras and communications equipment onboard and the extent of their photographic and video capability to “see” the terrain below in real-time. There is no existing document or photograph to show the [REDACTED] internal or external ISR equipment. None of the SAF commandos the team interviewed could testify on the cameras of these aircraft. But P/Director Napeñas insists that the ISR aircraft were *manned*, that these were *not* drones. His testimony is seconded by the other SAF officers’ narrations. On the other hand, they categorically note that from the TCP they could [REDACTED].

[REDACTED] These are testament to the high technology used by these [REDACTED].

In Part II¹⁰² of this Report, we discussed how P/Dir. Getulio Napeñas candidly stated that the Americans provided tactical intelligence during Oplan EXODUS where they [REDACTED]. According to Napeñas, they were able to [REDACTED].

P/Supt. Mangahis confirmed the statement of Napeñas and claimed that the [REDACTED] moved in an upward and downward direction. It was apparently taken from an overhead *manned* aircraft as it did not seem that the Americans at the TCP were directly controlling what can be seen on the monitor. The Americans were in front of the ISR monitor from 10:00 p.m. of January 24, 2015 until around 4:00 a.m. the next day. At around 2:30

¹⁰⁰ [REDACTED]

¹⁰¹ [REDACTED]

accessed on September 24, 2015

¹⁰² Chapter B (3) (b)

to 3:00 a.m., [REDACTED]
[REDACTED].

PSI Espe's statements, on the other hand, corroborated Mangahis' claims. They were both at the TCP during the launch of Oplan EXODUS. He even stated that the [REDACTED] of 84th Seaborne, the main effort/assault team. He saw in the [REDACTED]
[REDACTED].

P/Supt. Raymund Train averred that he was not certain what type of surveillance aircraft was used during Oplan EXODUS but noted that the same [REDACTED]. He only heard the sound of the ISR aircraft in the afternoon when they were going to the Tukanalipao area.

The accounts of Espe, Mangahis, Napeñas and Train regarding the ISR aircrafts and their coverage over Mamasapano were compared by the team with the information that was relayed to them by CAAP [REDACTED]. The significant hours mentioned by SAF officers *matched* the hours of flights of [REDACTED] on January 24 to 25, 2015.

Recall likewise that in Part II¹⁰³ of this Report, Table 8 summarizes the flights of aircrafts from [REDACTED] to different destinations in the south. The myriad of flight information were taken from the flight plans and aircraft operations logs that were provided by CAAP [REDACTED] as well as the summary of [REDACTED]. The relevant data gathered are recapitulated below:

¹⁰³ Chapter B (3) (e)

Table 8: Summary of Flights taken from the Aircraft Operations Logs from CAAP

Date	Aircraft Type	Aircraft Call Sign/Ident	Airport	Take Off	Airport	Landing
24 January 2015				1227Z (8:27 p.m.)		
				1521Z (11:21 p.m.)		
25 January 2015						1658Z (12:58 a.m.)
				1826Z (2:26 a.m.)		2301Z (7:01 a.m.)
						2006Z (4:06 a.m.)
				2131Z (5:31 a.m.)		0124Z (9:24 a.m.)
				0225Z (10:25 a.m.)		0510Z (1:10 p.m.)
				1056Z (6:56 p.m.)		

Based on the information listed above, [REDACTED] made several flights to and from [REDACTED] in the evening of January 24, 2015 at 8:27 p.m. up to 6:56 p.m. of January 25, 2015.

[REDACTED] took off at [REDACTED] airport at 11:21 p.m. and landed back at [REDACTED] at 4:06 a.m. of January 25, 2015. The aircraft again took off at 5:31 a.m. and came back at 9:24 a.m. It departed anew at 10:25 a.m. and arrived at [REDACTED] at 1:10 p.m. On the other hand, [REDACTED] incurred two (2) flights, first take off was at 8:27 p.m. of January 24, 2015 and landed at [REDACTED] at 12:58 a.m. of January 25 and then again left [REDACTED] at 2:26 a.m. and came back at 7:01 a.m.

The declared route in all the flights above-cited was [REDACTED]. But upon examination of the aircraft operations logs from CAAP [REDACTED], those two (2) [REDACTED] did not land at the said airport. Moreover, there are no records to show the said aircraft took off from the [REDACTED] airport. Thus, the two (2) aircraft only made round robin flights or overhead flights from [REDACTED] area and back.

¹⁰⁴ As manifested in the flight plans filed with CAAP, the pilot-in-command of [REDACTED]

¹⁰⁵ As stated in the flight plans filed with CAAP, the pilot-in-command of [REDACTED]

However, from the duration or length of time that the aircraft flew over the [redacted] area, it can be gleaned that the two (2) [redacted] obviously also covered the area of Mamasapano, Maguindanao. The [redacted]

In sum, the [redacted] that flew the ISR missions over Mamasapano and Maguindanao area on January 24 to 25, 2015 came [redacted]. It cannot be denied that the [redacted]

The [redacted]

[redacted] and [redacted] predominantly [redacted] or while in flight on a round robin trip over Mamasapano, [redacted] would have even as they discharged their military ISR mission for the SAF and JSOTF-P.

Considering their covert purpose, perhaps it should not be surprising that the JSOTF used [redacted], which were already [redacted]. But despite the convoluted registration records of [redacted], the *undeniable* fact is that JSOTF-P's [redacted] served as the "eyes" of the SAF TCP at Shariff Aguak before, during and after January 25, 2015.

iv. GMA News Photographed the [redacted]

While CAAP could not categorically state that the [redacted] really patrolled over Mamasapano on January 25, 2015, the plain fact that these planes were *the* ISR aircraft supporting the SAF before, during and after Oplan EXODUS is supported by a hastily taken photograph by a civilian news reporter.

Raffy Tima, a television reporter of GMA News, claimed that when he and his team went to the hut of Marwan weeks after the January 25, 2015 Mamasapano operation, he heard and even captured an image in his still camera, which was equipped with a 1360-mm lens, of a “spy” plane hovering the area. Tima narrates that:

“Walking back to our boats waiting near the river, we started hearing the humming sound of a plane. I immediately recognized the sound. I heard it countless of times during my coverage in the Zamboanga Peninsula and Basilan.

And so I jokingly asked my crew and the MILF fighters to wave in the air. Somebody is watching us, I told them. My news crew readily obliged. The MILF fighters gave me a puzzled look.

Later, they told me that they have been hearing the plane since that morning, but they couldn’t see it.

Upon boarding our boats, the fighters relaxed a bit. I somehow felt they have control over the river. Everyone completely relaxed upon reaching the MILF-controlled village. The humming sound of the plane was still very audible over the quiet open field.

Then the MILF fighters excitedly pointed to the sky. A break in the cloud revealed a tiny white speck in the sky. “That’s the spy plane,” they said in chorus.

My cameraman tried to take a video of the white speck, but it was too far for his lens.

Fortunately, my camera, which was equipped with a 1360-mm equivalent lens, was with me. But after only three shots, the plane disappeared into the clouds. But it was enough.¹⁰⁷”

¹⁰⁷ Raffy Tima, “First Person: Inside Marwan’s Hut,” GMA News Online, February 23, 2015, accessed August 28, 2015, <http://www.gmanetwork.com/news/story/441910/news/>



Photograph [REDACTED] taken by Raffy Tima from GMA News Online

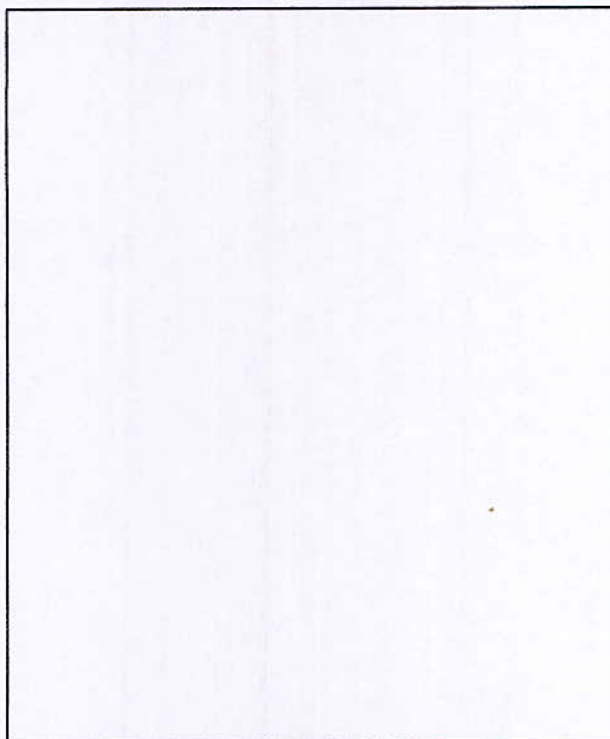
It can readily be observed that the dimension and shape of the [REDACTED] plane's undercarriage as taken by Tima, when compared with other photographs and diagrams of the subject [REDACTED], are very [REDACTED].

4. American Assistance in the Medical Evacuation/Casualty Evacuation (MEDEVAC/CASEVAC) of SAF commandos

The [REDACTED] showing their itinerary. These helicopters flew from [REDACTED] to Shariff Aguak, Maguindanao. The FAA registration records of these helicopters are as follows:

a. [REDACTED]

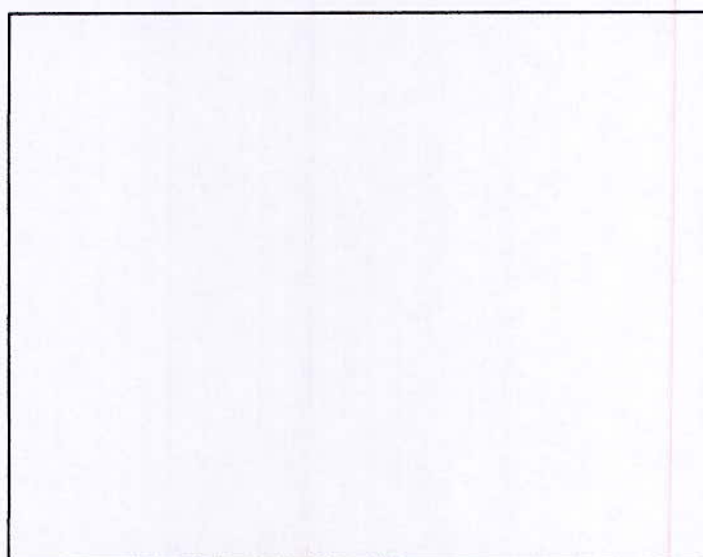
The said aircraft's registration is [REDACTED] with serial number [REDACTED]. The aircraft is a [REDACTED] manufactured in 1990. Its certificate of registration was issued on [REDACTED]. The registered owner of the aircraft is [REDACTED].



(Source: jetphotos.net)

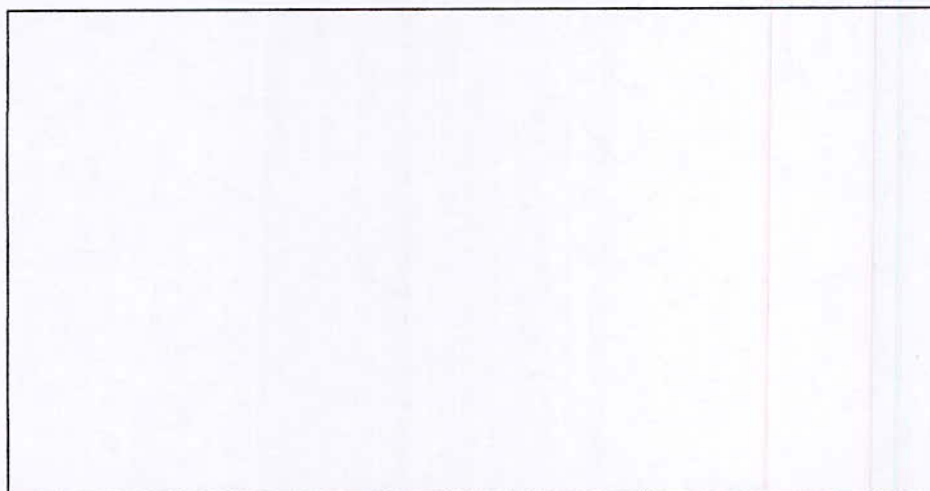
b. [REDACTED]

The said aircraft's registration is [REDACTED] with serial number [REDACTED]. The aircraft is a [REDACTED] [REDACTED] manufactured in 1984. Its latest certificate of registration is dated [REDACTED]. The registered owner of the aircraft is [REDACTED] with address at [REDACTED].



(Source: planeimages.net)

The [REDACTED] was able to photograph [REDACTED] as it landed in [REDACTED].



(Source: [REDACTED])

c. Corporate Ownership of these Helicopters

i. [REDACTED]

[REDACTED]. The company provides helicopter and air carrier services to private and government entities alike.

On [REDACTED] has a fleet of [REDACTED] aircraft of varying rotary wing and fixed-wing types capable of a wide range of passenger transport and light, medium and heavy load-carrying missions. The [REDACTED] business serves both government and commercial customers, including significant and critical programs with the U.S. military in support of overseas operations. [REDACTED]

ii. [REDACTED]

According to its website, [REDACTED] is a leading [REDACTED]

Throughout the decades, the company and its predecessor companies evolved to provide an array of services for customers within the U.S. and abroad. At present, [REDACTED] aviation, logistics, training, intelligence and operational solutions for commercial and international markets, as well as the U.S. government.¹⁰⁹

iii. [REDACTED]

The NBI-NPS SIT attempted to establish the direct business relationship of [REDACTED] in regard to the above helicopters but was unable to. Its open source research on the transfer of these helicopters between these companies yielded negative results.

It is interesting though that in the flight plan filed with respect to the [REDACTED] helicopters with registry number [REDACTED]. On the other hand, a check of the said helicopter's registration with the FAA¹¹⁰, revealed that the registered owner of the [REDACTED] with registry number [REDACTED] is [REDACTED] with address at [REDACTED]

[REDACTED] Certainly, one aircraft cannot be owned by the two (2) companies at the same time.

d. Rescue and Retrieval Operations using American Contract Helicopters

i. P/Dir. Getulio P. Napeñas

P/ Dir. Napeñas testified¹¹¹ that another aircraft-related assistance that

¹⁰⁹ Retrieved from [REDACTED], retrieved on September 14, 2015.

¹¹⁰ www.faa.gov

¹¹¹ Clarificatory hearing dated May 13, 2015

the Americans provided to the SAF was the helicopter MEDEVAC and CASEVAC for the injured and dead SAF commandos at Mamasapano on January 26, 2015. He indicated that perhaps Supt. Mangahis was confused about the exact number of Americans at the TCP because of the American MEDEVAC helicopter flights to and from Shariff Aguak on the second day.¹¹²

Napeñas presumed that the American helicopters took off from the [REDACTED].¹¹³ When asked about the ownership of the helicopter, he admitted he heard it is owned by [REDACTED]. As he was then so busy worrying about the safety and condition of both the 84th Seaborne and the 55th SAC, the body or tail number of the helicopter was “the least” of his concerns and he could not remember. But he recalled that the helicopter had two (2) pilots. He claimed that he has not personally worked with [REDACTED] before but that the latter helped SAF before by providing helicopters that evacuated casualties from an operation in Sulu. Napeñas recalled that the ISR video coverage over Mamasapano resumed at around 7:30 p.m. of January 25, 2015 when the MEDEVAC helicopters began their search and rescue flights.

5. Marwan’s Detached Finger Reaches the FBI

a. Narrative of SAF Officers

i. P/Dir. Getulio P. Napeñas

The need for proof that it is indeed Marwan who will be actually arrested or neutralized compelled the SAF to provide for a contingency for retrieving his body, according to Napeñas.¹¹⁴ He narrated that it was supposed to be the Criminal Investigation and Detection Group (CIDG) who would come during the investigation stage to identify Marwan’s remains

¹¹² Mangahis mentioned in his affidavit that there were six (6) Americans at the TCP.

¹¹³

[REDACTED] flights is discussed in Chapter 3 subchapter E and Chapter 4.

¹¹⁴ Part VII (Actions at the Objective) of Oplan EXODUS include [REDACTED]

with the participation of the Scene of the Crime Operatives (SOCO). But because it was no longer practical to retrieve Marwan's body at Pidsandawan without the 84th Seaborne sustaining more casualties from the rear guard battle with MILF and BIFF forces, Marwan's index finger was simply dismembered by the 84th Seaborne.¹¹⁵

Napeñas admitted that Marwan's index finger was, in fact, "forgotten" after he told Supt. Train to place it in a refrigerator for preservation. The pressing priority of the day was to evacuate or retrieve the injured and dead SAF. On January 26, 2015, when Napeñas was already in Cotabato he remembered Marwan's finger and asked Train about it. Train told him that he left it in the refrigerator at the 43rd SAC headquarters in Shariff Aguak. Napeñas worried about the procedure. Train informed him that he has a contact at the FBI for the processing of the finger. Napeñas cannot remember who Train's FBI contact was. He approved Train's recommendation because the PNP has no DNA database to compare the sample from the finger anyway and second, he was worried that the finger would be decomposed by further delay.

While he was aware of the need to establish the chain of custody over Marwan's finger, including the requirement for a turn-over receipt from Train to the FBI, in his level as a "strategic commander" these evidentiary details were already far from his mind. Napeñas stated that between him and Train, the latter would know the details whether the chain of custody was observed.

ii. P/Supt. Raymund A. Train

According to Train, after S/Insp. Tabdi detached the index finger of Marwan at the hut in Pidsandawan, the same was then placed in a Sensitive Site Exploitation (SSE) pouch. This pouch is used by SAF commandos to contain any evidence for DNA sampling like saliva and blood sample from its neutralized targets. Tabdi then handed it to PO2 Dioscoro Basañez. However, because of the need for them to immediately extricate from the house because of the heavy fire from the enemy and the SAF troopers who were covering them, PO2 Basañez was able to hand Marwan's finger to

¹¹⁵ Train's detailed testimony regarding Marwan's detached index finger will be further discussed in Chapter II (B) (5) (a) (ii)

Train in another area where they were able to consolidate. Train placed it in a self-sealing plastic bag.

He later showed the finger to P/Dir. Napeñas when they reached the TCP in Shariff Aguak, Maguindanao. However, because of the instructions for Train to proceed immediately to Cotabato, he placed the detached finger in a freezer of the refrigerator used by the 43rd company at the TCP.

After the debriefing conducted by the PNP for DILG Secretary Manuel Roxas II, Train stayed behind for another inquiry by the Criminal Investigation and Detection Group (CIDG). It was only after three (3) days that he was able to recommend to Napeñas that the detached finger be handed to the Americans, specifically the FBI, for the latter to conduct a DNA examination and compare it with Marwan's DNA sample in their database. Train testified that he did not intend to violate the chain of custody of the evidence when he recommended the course of action. He only requested for it because of the strong public clamor to confirm the identity of Marwan and the fact that the PNP Scene of the Crime Operatives (SOCO) does not have a DNA sample in their database which can be compared with Marwan's detached finger.

After Napeñas verbally approved his suggestion, Train instructed S/Insp. Lyndon A. Espe to retrieve the detached index finger from the freezer at the TCP. Train initially tried to contact ██████████¹¹⁶ but when he was unable to contact the latter, he called up ██████████¹¹⁷ who then assured him that he will take care of the coordination with the FBI for the DNA testing of Marwan's finger. Later on, Train was told by ██████████ to coordinate with another FBI agent named ██████████ who will get the detached finger for DNA examination. He was allegedly unable to get the last name of ██████████ because of the need to act immediately.

Train then gave the phone number of ██████████ to Espe¹¹⁸ so that he can talk to the former and hand over the detached finger. It was Espe who met ██████████ at the General Santos airport and handed the detached index finger¹¹⁹

¹¹⁶ ██████████.

¹¹⁷ Of the JSOTF-P, according to both Napeñas and Train.

¹¹⁸ Member of the 84th SAC who was at the TCP during Oplan EXODUS and designated as map plotter. He was also interviewed by the NBI-NPS SIT on May 21, 2015 on the turn-over of Marwan's detached finger. His narration is further discussed in this chapter as well.

¹¹⁹ A turn over receipt which P/Supt Train requested from ██████████ was shown to the NBI-

of Marwan to him. Train maintained that he has not met [REDACTED]. Later on, when Train was still at the hospital¹²⁰, he was informed by [REDACTED] of the results of the DNA examination.

iii. PSI Lyndon A. Espe

Espe avers that on January 27, 2015, P/Supt. Train called him on the phone and said "*Tô, kunin mo yung parang plastic na bottle nandoon yung daliri ni Marwan, naka-plastic yun tapos may bottle na plastic tapos naka-seal, kunin mo dun sa refrigerator ng 43rd.*" ("Kid, get Marwan's finger inside the plastic bottle wrapped in plastic at the refrigerator at the 43rd.")

Complying with Train's orders, Espe went to the 43rd SAC camp and retrieved Marwan's finger from the chest freezer. Thereafter, Train instructed him to turn-over the detached finger to a certain [REDACTED] of the FBI. Train also gave him [REDACTED] contact number. Espe immediately sent a text message to [REDACTED] and they agreed to meet at 2:00 p.m. of the same day at the General Santos airport.

After retrieving the detached finger from the freezer, Espe placed it in an ice box and went to the SAF headquarters in Isulan, Sultan Kudarat. While at Isulan, he typed a certification that he has turned-over the body part to the American.

Espe, together with SPO1 Allan Franco, went to the General Santos airport. They arrived at the airport around 2:00 p.m. They met [REDACTED] and two (2) other Americans at a restaurant located on the second floor of the airport building. He introduced himself as well as SPO1 Franco and turned-over the ice box containing the detached finger to [REDACTED]. He also asked [REDACTED] to sign the certification he made and he also requested for a document from the American to document that the latter received the said specimen. [REDACTED] gave him an FBI turn-over receipt. Unfortunately, PSI Espe lost the two (2) documents in his possession. When he realized the following day that he lost the documents, he called up Supt. Train and asked him to request for another FBI receipt from [REDACTED] bearing the same date. Thus, Supt. Train met [REDACTED] in Manila and obtained another turn-over

NPS SIT during the clarificatory hearing on May 20, 2015, attached as Annex "H-3"

¹²⁰ Train sustained blast injuries from an improvised explosive device (IED) near Marwan's hut.

receipt which was dated January 27, 2015 but was signed, not by Espe, but by Train¹²¹.

During questioning by the NBI-NPS SIT, PSI Espe drafted a turn-over receipt to simulate how the PNP turn over receipt to the FBI appeared.¹²²

b. Result of DNA Analysis on Marwan's finger

By the first week of February 2015, several local news agencies¹²³ were already reporting the FBI's findings on Marwan's finger. The news reports quoted David Bowdich, Assistant Director in Charge of the FBI Los Angeles Office¹²⁴ who preliminarily confirmed that the DNA sample it received from the PNP, indeed, came from Marwan:

“As previously announced, following an apprehension operation by the Philippine National Police, the FBI received from our Philippine counterparts a biological sample of an unknown individual for testing. Evidentiary analysis at the FBI Laboratory is one of the many services we provide to our law enforcement partners around the world. As we have reported to our Philippine law enforcement partners, preliminary results indicate that the DNA profiles obtained from the biological sample indicate a possible relationship with a known relative of Zulkifli Abdir aka Marwan. Although the results of the DNA examinations do not provide absolute identification, the results do support that the biological sample provided by Philippine authorities came from Marwan. Further testing and analysis will be conducted by laboratory examiners in an effort to fully identify the subject of DNA provided to the FBI.”

¹²¹ The FBI Receipt is attached as Annex “I-4”

¹²² A copy of the form drafted by PSI Espe during his interview on May 21, 201, attached as Annex I-3

¹²³ *GMA News* (<http://www.gmanetwork.com/news/story/426503/news/nation/fbi-confirms-dna-sample-came-from-marwan>).

Manila Bulletin (<http://www.mb.com.ph/fbi-confirms-marwan-killed-in-mamasapano/>)

Interaksyon (<http://www.interaksyon.com/article/104402/breaking--dna-match-as-confirmed-by-fbi-proves-marwan-was-killed>)

¹²⁴ <http://www.gmanetwork.com/news/story/426503/news/nation/fbi-confirms-dna-sample-came-from-marwan>

It was only on April 2, 2015¹²⁵ that the final confirmation of the DNA result on the detached right index finger of Marwan was announced by the FBI.¹²⁶

“The U.S. Federal Bureau of Investigation said on Wednesday it has confirmed that Zulkifli bin Hir, one of its ‘most wanted terrorists,’ was killed in a raid in the Philippines in January.

A person familiar with the investigation said the FBI was able to confirm bin Hir's death in part through DNA analysis of a severed finger that Philippine authorities collected from the gruesome scene of a raid that left bin Hir dead.”

FBI Assistant Director Bowdich further stated that the bureau has now taken Marwan off its Most Wanted Terrorist list and thanked the PNP.¹²⁷

On April 5, 2015, an official statement was released by the then OIC, PNP, Deputy Director General Leonardo A. Espina that “the result of the confirmatory DNA tests and further investigation conducted by the U.S. FBI established with certainty the identity of international terrorist Zulkifli Bin Hir alias Marwan as the person who was successfully neutralized by the PNP-SAF in Mamasapano, Maguindanao on January 25, 2015”.¹²⁸

6. Were there really “Caucasians¹²⁹” on the ground in Mamasapano?

At the onset, rumors were rife that Americans were involved in the execution of Oplan EXODUS on the ground in Mamasapano. While the presence of the Americans at the TCP on January 25, 2015 and the provision of technical support were admitted by both the U.S. Embassy and the PNP,

¹²⁵ Thursday, Apr 2, 2015 1:35am EDT

¹²⁶ Reuters report by Julia Edwards (<http://www.reuters.com/article/2015/04/02/us-philippines-rebels-marwan-idUSKBN0MS5BI20150402>)

¹²⁷ The same information which was reported by Reuters was also reported by CNN Philippines <http://cnnphilippines.com/news/2015/04/02/FBI-confirms-Marwans-death.html> (updated 13:31 PM PHT Fri, April 3, 2015)

¹²⁸ <http://pnp.gov.ph/portal/index.php/press-news-releases/chief-pnp-speeches/2516-statement-of-oic-pnp-pddg-leonardo-a-espina>

¹²⁹ The term “Caucasian” is defined as: “of, constituting, or characteristic of a race of humankind native to Europe, North Africa, and southwest Asia and classified according to physical features – used especially in referring to persons of European descent having usually light skin pigmentation.” (Merriam-Webster Dictionary)

their ground “presence” in Mamasapano has always been denied.¹³⁰ Claims of local residents fueled more speculations as these were given voice in the media by several groups.¹³¹

a. MARATHON

To recall, MARATHON stated in his sworn statement¹³²:

“100. T: Mayroon ka ba nakita na mga foreigners o ibang lahi na namatay sa insidente sa Mamasapano?”

S: May nalaman ako na may dalawang Amerikano sir na namatay. Hindi mukhang Pilipino. Iyong isa puti-puti ang buhok at gwapo man yun sir.”

(“100. Q: Did you see foreigners or of a different race who died during the incident at Mamasapano?”

A: I learned that there were two (2) Americans who died, sir. He did not look Filipino. One had white hair and good looking, sir.”)

b. Denials of the U.S. Embassy

For its part, the U.S. Embassy, through its spokesperson Burt Hoyer, categorically denied that there were US service member casualties at

¹³⁰ Admissions by P/Dir. Getulio P. Napeñas, P/Supt. Raymund A. Train, P/Supt. Michael John Mangahis and PSI Lyndon A. Espe during the NBI-NPS SIT interviews.

¹³¹ On February 17, 2015, the party-list group Gabriela was quoted by GMA News as claiming that there was a body of a male Caucasian among those recovered from the site of the encounter in Mamasapano, Maguindanao on January 25, 2015. The report further stated that Gabriela got the information from residents in the area who helped carry the bodies of the PNP-Special Action Force commandos killed in the clash. (<http://www.gmanetwork.com/news/story/439371/news/nation/body-of-male-caucasian-recovered-in-mamasapano-after-clash-gabriela>).

On February 2, 2015, Rep. Neri Colmenares of the Bayan party-list was quoted by the Philippine Daily Inquirer as saying, “a witness, a farmer in Tukananipao, had reported seeing the body of a Caucasian soldier among the dead in the 12-hour gun battle between Philippine National Police-Special Action Force (SAF) commandos and guerrillas from the Bangsamoro Islamic Freedom Fighters (BIFF) and the Moro Islamic Liberation Front (MILF) in Mamasapano town, Maguindanao, on Jan. 25, 2015.”

¹³² Karagdagang Sinumpaang Salaysay ni MARATHON dated March 13, 2015, p. 10

Mamasapano. He stated that U.S. service members serving in JSOTF-P only responded to assist in the evacuation of dead and wounded after the fire fight in Maguindanao at the request of the AFP.¹³³

c. Testimony of SAF Officers

The SAF officers who were interviewed by the NBI-NPS SIT uniformly denied that Americans participated in the execution of Oplan EXODUS on the ground.

i. P/Dir. Getulio P. Napeñas

P/Dir. Napeñas also heard rumors that there were two (2) “Caucasians” who were among the dead at Tukanalipao. He describes these allegations as “totally incorrect”.

According to him, there was not a single American who joined the SAF at Mamasapano. He emphasized that there was *no* possibility of American forces fighting on the ground, not even as forward observers for the ISR aircraft because the “rules” prohibit them from joining. Napeñas argued that if there were Americans, particularly “Caucasians” who joined the SAF, they would be easily seen either at the AFP or MILF checkpoints in Maguindanao. He points out that perhaps the dead SAF commandos from the 55th SAC who had slight “Caucasian” features were mistaken for Americans at Tukanalipao.¹³⁴

Napeñas pointed out that the rumor about a Caucasian being killed in Mamasapano had surfaced before. He explained that it might be because two of the slain SAF troopers had “Caucasian”-like features: PO2 Romeo Cempron and PO4 Noel Golocan.¹³⁵

¹³³ <http://newsinfo.inquirer.net/669943/us-embassy-denies-us-soldier-was-killed-in-mamasapano-clash>

¹³⁴ Clarificatory Hearing dated May 5, 2015

¹³⁵ <http://newsinfo.inquirer.net/722340/napenas-laments-anti-saf-stories>



(SAF image downloaded from: dpcr.pnp.gov.ph/fallenheroes)

ii. P/Supt. Raymund A. Train

P/Supt. Train also denied the rumors of “Caucasians” as he surmised that these suspicions came out only because they have a teammate who looked like a “white American”. His photograph came out in the media and he was seen by the local residents. Train points out that one of his teammates who survived the incident was big, “tiso’y” (mestizo) and even dyed his hair blond. What can be seen from the truck during their extraction was his blond hair.

iii. PSI Lyndon A. Espe

When PSI Espe was asked who among those who died from the 84th Seaborne and the 55th SAC looked “Caucasian”, he stated that only S/Inspector Tabdi of the 84th and PO3 Golocan of the 55th were the ones who were “maputi” (white and fair complexioned). Espe added that Golocan was also heavily built.



(SAF image from www.dpcr.pnp.gov.ph/fallenheroes)

d. Photographs and news report

Persistent rumors of “Americans” who died while fighting alongside SAF commandos resurfaced on September 15, 2015, when excerpts from a video that purportedly shows at least one “Caucasian”-looking casualty in the encounter site in Barangay Tukanalipao, Mamasapano was published by the Philippine Daily Inquirer.¹³⁶



(Source: Philippine Daily Inquirer website)

In the article accompanying the video footage, Inquirer reporter Nikko Dizon wrote that “(o)ne of the dead was allegedly a ‘blue-eyed man’. The other one was black and huge that he could not be carried on the gurney as his body was whisked away by his compatriots.”¹³⁷ It was further reported that the said video footage was furnished to the Inquirer by a television journalist who covered the Mamasapano incident. The video, which was touted as the first visual indication of foreign participation in the SAF operation was allegedly obtained by the TV journalist from a source in the MILF. The same report indicated that various sources who requested anonymity said that there were Americans among the 55th SAC commandos, while some of their sources denied that there were Americans casualties

¹³⁶ <http://newsinfo.inquirer.net/721976/unidentified-caucasian-killed-in-mamasapano>,
<http://newsinfo.inquirer.net/722316/mamasapano-video-long-nose-catches-attention-of-men-by-the-river>

¹³⁷ Philippine Daily Inquirer, “Unidentified Caucasian Killed in Mamasapano (video footage shows recovery of fatalities)” by Nikko Dizon, September 15, 2015, pp. A1 and A12

from the 84th Seaborne.

e. Statement of the widows of SAF Commandos who died in Barangay Tukanalipao

Meanwhile, Christine Cempron, Rachel Sumbilla and Marie Golocan,¹³⁸ were also interviewed by the press and said that the commandos who were seen in the above video lying dead in the cornfields were not their husbands. Cempron said that her husband sustained injuries to the chest, while the one seen in the video had a head injury. On the other hand, Sumbilla said that she was certain that it was not her husband who can be seen in the video because the built and the features of the man seen in the video were not those of her husband.¹³⁹

The identity of the SAF commando who was seen in the video was later revealed when Virgie Viernes, a widow of one of the slain members of the Philippine National Police Special Action Force said the “Caucasian”-looking man in “Caucasian” video footage was her late husband, PO1 Olibeth Viernes.¹⁴⁰



(SAF image downloaded from: www.dpcr.pnp.gov.ph/fallenheroes)

C. PO2 Christopher Lalan and proofs of death of his alleged victims

In its first Report, the NBI-NPS SIT refrained from making any recommendation as to any crime that PO2 Lalan may have committed at Barangay Tukanalipao on January 25, 2015. The NBI-NPS SIT saw the need to conduct further investigation on the MILF’s claim that PO2 Lalan was

¹³⁸ Published on September 16, 2015 in GMA’s “QRT”

¹³⁹ GMA’s QRT (<http://www.gmanetwork.com/news/lite/story/537176>)

¹⁴⁰ GMA’s QRT (<http://www.gmanetwork.com/news/lite/story/537333>)

responsible for the deaths of Mohamad Ambilang, Norhamid Angkay, Mamarisa Sandigan, Rasul Kamsa and Musib Kasim at a *langgal* or small mosque at Sitio Amilil in Barangay Tukanalipao.

The team already lengthily discussed the narrative of PO2 Lalan and his possible liability for the deaths of civilians in the first Report. The relevant portions are recapitulated below, together with new information obtained after April 16, 2015.

1. PO2 Lalan's Sworn Statement dated February 3, 2015¹⁴¹

PO2 Lalan is a member of the SAF FIID under the ISTAR team attached to the 5th Special Action Battalion based in Camp Abendan Mercedes, Zamboanga City.

In his statement, PO2 Lalan affirmed that at around 8:30 p.m. of January 22, 2015, they jumped off and later reached Pagadian City at around 5:00 a.m. They went to Cotabato City on January 23, 2015 and spent the night there. At 8:00 a.m. of January 24, 2015, they continued their trip to General Santos City. At around 9:00 p.m. of the same day, they proceeded to their Vehicle Drop-Off Point (VDOP) at Shariff Aguak, Maguindanao and arrived there at around 2:00 a.m. of January 25, 2015. They proceeded to the designated Waypoints using Global Positioning System (GPS) and Infra-Red (IR) Chemical lights placed by the Main Effort 1¹⁴² (ME1) to guide them and visible only through their Night Vision Goggles (NVGs).

According to PO2 Lalan, the 55th SAC was not able to reach their designated position, Waypoint 19, to support ME1. This was because after crossing a small bamboo/wooden bridge somewhere along Waypoint 11 or 12, they heard a burst of gunfire at the target area at around 4:00 a.m. The heavy load of ammunition and the 90 mm recoilless rifles carried by the tail portion of their group and the need to frequently halt slowed them all. They returned to the other side of the bridge to block resistance from the community so that ME1 can easily withdraw.

¹⁴¹ The Report of the Joint NBI-NPS SIT on the January 25, 2015 Mamasapano Incident, pp. 84-86

¹⁴² 84th Seaborne

Later on, someone shouted at the SAF commandos so they returned and positioned themselves in line formation in the cornfield facing the other side of the bridge and observed. They heard sounds surrounding them. Using their NVGs, they saw armed men growing in number. They heard gunfire from the location of ME1, and the 55th SAC just observed. At this point, they realized that the armed persons were starting to converge in front of them at the other side of the bridge. PO2 Lalan heard his team leader report to the TCP that armed men were increasing in their area. They were instructed to observe but if fired upon, they should fire back. They formed a box to prepare for firefight and to provide 360 degree security. The 55th SAC stayed in that position for almost an hour and a half even as the armed persons continued to grow in number.

Suddenly, a burst of fire directed at them erupted and PO2 Lalan's team returned fire. From 5:30 to 6:00 a.m., they heard a steady volume of fire from different directions heading towards their location. PO2 Lalan heard PO2 Kiangan shout, "*Sir; Anniban is dead*". PO2 Lalan also heard commands to return fire and maximize ammunition.

At around 7:00 or 8:00 a.m., while they were engaged with the enemy, he heard requests for support from officers/team leaders through their radios or cellular phones.

At about 2:00 p.m., most of his comrades were already dead and they ran out of ammunition. PO2 Lalan also saw some of his comrades crawling towards an area of lesser gun shots. PO2 Lalan asked permission from his senior to extricate hoping that he will be able to survive. His senior let him go.

While he was escaping from the cornfield, PO2 Lalan met two (2) armed men who shot him on the chest. He was wearing a bullet proof vest at the time and the bullet did not penetrate. He fired back, hitting one of the armed men. When he was about to fire at the other, the ammunition of his M4 assault rifle ran out. PO2 Lalan then drew his Glock pistol and fired at the armed man forcing the latter to drop. PO2 Lalan removed his vest and Kevlar helmet and jumped into the river, all the while being shot at from different directions. Upon reaching the other side of the river, PO2 Lalan saw two (2) armed men standing on the cornfield. He immediately dived for the other side of the river and hid there for almost eleven (11) hours. The

two (2) armed men searched for him and strafed the river, but Lalan was not hit.

At around 3:00 p.m., the exchange of gun fire in the area of the 55th SAC stopped. By 6:00 p.m., gunfire in other areas tapered off as well.

Confident that there were no more threats, PO2 Lalan came out of the river and tried to find his way out of the cornfield. Everywhere he looked, there were *nipa* huts and trails that made him hesitant to proceed, and so he again hid as daylight was about to break. From where he was hiding, he saw a group of armed men searching the area. They were carrying some of the SAF's special equipment.

At about 1:00 to 2:00 p.m. of January 26, 2015, a group of men with bolos were headed to the place where Lalan was hiding. Lalan pretended to be dead. He suddenly stood up and pointed his gun at the bolo-wielding men. That surprised the men who scampered toward different directions. He followed one of them and reached a house where he saw armed men sitting. One of them pointed his gun at Lalan but the latter also pointed his gun to the said person while saying "*sige sabayan tayo*" ("Okay, let's duel.") The armed man ran towards the cornfield. However, the other men were alerted and were about to open fire at Lalan. With his will to survive, Lalan grabbed one firearm hanging near the door of the house and fired at the armed men causing them to also run towards the cornfield.

He then walked around looking for a way out while being fired upon by armed men who positioned themselves in almost all the houses. Along the way, he saw an old woman and asked from her directions going to the highway. He then saw a bicycle in a nearby house and he used it to flee the area. Lalan reached an Army detachment where he was finally turned over to the Special Action Force (SAF).

2. PO2 Lalan's statements before the NBI-NPS SIT¹⁴³

PO2 Lalan said that he was the designated navigator of the first team led by PSI John Garry Eraña. Their team was assigned to secure Waypoint 19 for the extrication of the Seaborne Company. They were informed during their briefing that the terrain that they were supposed to traverse was mostly

¹⁴³ Id., pp. 86-87

marshland and infested with the enemy.

He stated that they were unable to reach their designated area because some of the members who were carrying the heaviest load often called for a halt since the current in the river they were crossing was strong. When they were about to cross the wooden bridge, they heard burst of gunfire from the north side. The team leaders then decided to cross to the other side but when they were about to cross, he heard someone shouting angrily and he retreated. Thereafter, they were commanded to position themselves in line formation and there they saw, through their NVGs, that the enemy were growing in number and appear to surround them, so they formed a box formation. PSI Ryan Pabalinas then gave specific instructions that they should not fire their weapon unless fired upon.

When daylight came at around 5:00 to 6:00 a.m., the enemy fired at them and they retaliated. At around 2:00 p.m., while he was crawling for cover and escaping, he saw that his companions were still in the area. He then asked permission from PO3 Golocan who was mortally wounded, to extricate himself from the area. PO3 Golocan held his hand and told him to escape so that he can live to tell what happened to them.

While he was crawling east towards the river, he asked permission from a commissioned officer but they were already unresponsive as they seemed to be in shock. The most senior official whom he saw crawling was PSI Pabalinas. From the cornfield, he jumped into the river and two armed men ran after him. He attempted to cross but since his war belt had pouches that were heavy, he was being carried by the current, so he hid in the water lilies and stayed at the river bank. He knew that the two men were shooting at him because he could feel the heat of the bullets as it passed near him. He removed his uniform in the morning of January 26, 2015.

He sustained a blast injury and a ruptured ear drum. Lalan reiterated that they did not get lost as they had NVGs, GPS and their way was marked with tactical infrared chemical light. They were just delayed by the movement of the troops because of the heavy equipment they were carrying as they crossed the rivers. That is why they were in the cornfield, which was somewhere between waypoints 11 and 12, instead of being in waypoint 19, which is about one kilometer away from the cornfield.

He also added that it would have been impossible for the enemy not to

recognize them as government troops considering their highly specialized equipment and guns. He believed that the armed men shot them because they knew that they were from the government.

3. Video interview of PO2 Christopher Lalan¹⁴⁴

In the course of our investigation, among the many allegations that surfaced was that the lone survivor from the 55th SAC, PO2 Christopher I. Lalan, killed several persons who were sleeping in a mosque in Barangay Tukanalipao. GMA News apparently was able to capture on video some of PO2 Lalan's admissions that he shot and "sprayed" several persons during his escape.

During our questioning of PO2 Lalan on March 27, 2015, we showed him the said GMA News video. PO2 Lalan was asked whether he could remember being interviewed by the media after his rescue. He stated that he was not aware that he was being videotaped then. Lalan also said that he came to know of his interview only while he was in the hospital and his sibling informed him of that interview.¹⁴⁵

After the video footage was shown to PO2 Lalan, he confirmed that he was the one being questioned before the camera. He also identified PCI Corales as among the SAF officers present at that time.

The GMA News video footage lasts two (2) minutes and forty two (42) seconds.

It showed a shirtless PO2 Lalan sitting on the ground while several persons are asking him questions. At the start, he stated, "*Maraming nakatulog na mga ano.. MI, kinuha ko yung isang ano.. inisprayhan ko silang lahat.*" ("There were many sleeping...MI, I got the.. I sprayed them all.")

He then disclosed that he ran and realized that all the huts in the area were the houses of *MNLF*. He was alone by the time since all his companions were already injured. *MNLF* members aimed and fired at him but he was not hit.

¹⁴⁴ Id. pp. 174-176

¹⁴⁵ NBI-NPS clarificatory hearing on March 27, 2015

Lalan narrated that he was able to escape, and reached a hut where there were persons sleeping. He was asked whether he hit the people inside. He replied in the affirmative and said that he left his gun because he had no bullets. Lalan also stated, "*Eight. Parang niratrat ko talaga. Yan na rin ang...*" ("Eight. I think I really shot them. That's also..")

Lalan said that he was being fired upon and he went to the cornfield so that he cannot be seen. He also disclosed that when he asked for directions, he was told: "*Doon, itinuro. May isang -kukunin ko sana yung isang motor, mang-aagaw ng baril, kaya niratrat ko din.*" ("There, it was pointed. There was a - I wanted to get a motorcycle, and to get a gun, that's why I also sprayed them.")

The video ends with someone in the background audibly telling Lalan to rest first.

4. MILF SIC Report¹⁴⁶

For its part, the MILF alleged that on January 26, 2015, at about 1:00 p.m., Melgar Sailala was in a *langgal* (a small mosque) beside his house in the vicinity of Sitio Amilil and was taking a nap on the floor with four (4) members of 105th BC. He awakened to the sound of a gunshot and saw a man standing at one of the doors of the *langgal* with a pistol leveled at Musib Kasim, who appeared to have been shot dead while asleep. The armed man shot Rasul Kamsa and Norhamid Angkay next and both died instantaneously. Mamarisa Sandigan, the fourth 105th BC member, tried to get up but the man shot him as well. Sailila made a run for it by jumping out of the *langgal* through an opening in the wall. The armed man ran after him, but Sailila was able to escape. Sailila later identified the armed man through photographs shown to him during MILF's investigation as PO2 Christopher Lalan.

In all, BIAF casualties reached seventeen (17), including four (4) whose deaths are being attributed to PO2 Lalan.

At around 2:00 p.m., or an hour after the incident in the *langgal*, the group of Sheik Abdullah Abad, Mohammad Ambilang, Kapital Jainal and

¹⁴⁶ Summarized in the Report of the Joint NBI-NPS SIT on the January 25, 2015 Mamasapano Incident, pp. 191-192

Mataya Sangki saw PO2 Lalan near the wooden bridge shirtless, holding an armalite, and coming towards them. As PO2 Lalan neared, Sheik Abdullah Abad shouted, “*civilian kami, wag ka magpaputok!*” (“We are civilians! Don’t shoot!”) The latter and Ambilang raised their hands to show that they were not armed, but PO2 Lalan leveled his long firearm at Ambilang, who turned and ran away. PO2 Lalan shot Ambilang. The rest of the group fled. PO2 Lalan chased them, but gave up after several meters. The group later came back for Ambilang and they found him dead at the place where he was shot by PO2 Lalan.

PO2 Lalan was identified by Ambilang’s companions through the former’s photographs shown to them during the MILF investigation.

5. Object evidence collected at Barangay Tukanalipao¹⁴⁷

On March, 11, 2015, the NBI-NPS SIT, together with its NBI Forensic team conducted a site inspection at Sitio Amilil, Barangay Tukanalipao, Mamasapano. In the course thereof, the barangay chairperson of Tukanalipao informed the NBI forensic team that four (4) civilians died inside a prayer room or *langgal* in Sitio Amilil on January 26, 2015, hence the NBI forensic team was directed to conduct an examination thereof.

The NBI forensic team discovered that the structure is made of light materials, with an adjoining extension house owned by Faisal Dagadas. The forensic team processed these structure in the presence of NBI agents, the Tukanalipao barangay chairman, and three (3) other officials. They also took photographs of these structures, inside and out.¹⁴⁸ The examination resulted to the recovery of the following:

- a. One (1) piece pillow case with blood taken inside the prayer room;
- b. One (1) piece linoleum cut from the floor taken inside the prayer room; and,
- c. One (1) piece black shoe “5.11” taken from the extension room.

¹⁴⁷ Id., pp. 167-168

¹⁴⁸ Photographs of the *langgal*/prayer house was referred in the Final Report of Ligaya S. Banawan from the NBI Forensic Investigation Service dated March 25, 2015, p. 8

6. Commission on Human Rights (CHR) Witnesses

Several residents of [REDACTED] were interviewed by the investigators of the CHR-Region XII and ARMM. The police officers who helped in the retrieval and transport of the bodies of the SAF commandos also gave their sworn statements to the CHR. The sworn statements of these residents and the police officers were received by the Office of the NBI-DDROS from the CHR on April 15, 2016.

a. [REDACTED]

[REDACTED]. He stated that his cousin [REDACTED] together with three of his neighbors died in the *masjid* (mosque) on January 26, 2015. On that day, he and his companions Melgar, Mama, Rasul, Ali, Omar Dagadas and Moshib attended the service. Later, after learning that a ceasefire was already declared, his companions felt that it was fine for them to sleep in the *masjid*. While his companions went on to sleep, he proceeded to feed the cows.

At about 1:00 o' clock in the afternoon, he heard a shot so he proceeded towards the *masjid*. He was told that a man shot his companions who were sleeping in the *masjid*. Melgar and Mama Dagalas were the first ones who went inside the *masjid*. He also saw that four of his companions who sustained gunshot wounds in the chest and feet were already dead. He helped in bringing the cadavers out and burying them.¹⁴⁹

b. [REDACTED]

[REDACTED]. She stated that on January 25, 2015, some of their relatives from Barangay Tukanalipao evacuated from the area. At about 1:00 p.m. of January 26, 2015, she was told that her husband [REDACTED] will collect some of their relative's things to be brought to their house. However, by 2:00 p.m., she was informed by Sapiya Madali and another cousin that her husband died. He sustained gunshot wound at the back. She did not know where her husband was shot because his cadaver was just brought to their house.¹⁵⁰

¹⁴⁹ Handwritten Sinumpaang Salaysay of [REDACTED] dated March 18, 2015

¹⁵⁰ Sinumpaang Salaysay of [REDACTED] dated February 17, 2015

c. [REDACTED]

[REDACTED]. At about 4:00 a.m. of January 25, 2015, she was awakened by her husband¹⁵¹ because he heard shots about 200 meters near their house. She immediately got their youngest child, went down from their house and laid on the ground.

She noticed that she sustained an injury on her right cheek. She felt as if she was slapped and then she felt numb. She saw that her husband sustained a gunshot wound on the back. When her husband asked her if she could run, she said no. Her husband brought out their youngest child and went to ask for help. Her husband and his companions were able to come back at about 6:00 a.m. She did not know what happened after that because she already lost consciousness. She woke up at the clinic and she learned that her daughter [REDACTED] died because of a gunshot wound.¹⁵²

d. [REDACTED]

[REDACTED]. He said at about 4:15 a.m. of January 25, 2015, he heard many sounds of gun fire which lasted for about five (5) minutes. After their “Sambayanang Sabbah”, at about 5:35 a.m., he again heard loud shots which sounded near to their barangay. He then helped in assisting the civilians telling them to stay near the road as it was a safer area.

Many persons died on January 25, 2016 and he saw that there were two (2) MILF elements who died in the bridge. Thereafter, their barangay captain sought their help in transporting the dead bodies of SAF. He and some of his relatives helped by bringing out the cadavers and in the course thereof, he saw that one of those who died near the bridge was a civilian named Kutin. The men who were sleeping and were killed by SAF inside a *masgit* were members of the MILF 105th BC. He also said that he can provide photographs of his relatives who were killed by SAF.¹⁵³

¹⁵¹ [REDACTED], his sworn statement was discussed in the first report (The Report of the Joint NBI-NPS SIT on the January 25, 2015 Mamasapano Incident), p. 151

¹⁵² Sinumpaang Salaysay of [REDACTED] dated February 27, 2015

¹⁵³ Handwritten Sinumpaang Salaysay of [REDACTED] dated March 18, 2015

e. [REDACTED]

[REDACTED] stated that at around 1:00 p.m. of January 26, 2015, he ordered his son [REDACTED] to fetch their livestock upon hearing the announcement of their Barangay Chairperson that they can return to their home after the incident in their barangay. However, after about an hour, he heard gunshots from the direction of their barangay, so he tried to locate his/her son. He later learned from his brother that his son was injured and was brought to a clinic in Barangay Libutan in Mamasapano, Maguindanao. He then brought his son to the [REDACTED]

.¹⁵⁴

f. [REDACTED]

[REDACTED].
On January 25, 2015, he and the Barangay Captain together with some members of the CCCH of the government and the MILF went to the place where the encounter happened. By the afternoon, he was told by the CCCH to gather the bodies in one place. He saw a cadaver with hands bound on his back, facedown near the bridge and the other cadavers who were in uniform. The cadaver's hand was bound by a black and hard object and was barely recognizable because of the injury he had sustained.

When he went home in the night, he learned that [REDACTED] [REDACTED] was looking for her husband [REDACTED]. He remembered that the man whose hands were tied was wearing old sweater and short pants which matched the description of [REDACTED] husband when they last saw each other. Thus, he was convinced that the man whose face was badly injured was [REDACTED].¹⁵⁵

D. The Events of January 25, 2015

1. Testimony of P/Supt. Raymund A. Train

a. The assault on Marwan's hut

P/Supt. Train claimed that he and the other members of the 84th

¹⁵⁴ Complaint-affidavit of [REDACTED] dated February 9, 2015

¹⁵⁵ Sinumpaang Salaysay of [REDACTED] dated February 10, 2015

Seaborne Company proceeded to the house of Marwan in Mamasapano, Maguindanao in the early morning of January 25, 2015. In the meantime, the other SAF members/companies proceeded and positioned themselves at different waypoints along the area.

Although all the thirty eight (38) members of the 84th Seaborne Company were able to cross the Kabulnan River, the first thirteen (13) members who were able to cross the river immediately proceeded to the target area because of time constraint. They knew that 4:00 a.m. is the prayer time for the people in the area and as per his time check it was already 3:40 a.m. Thus, if they waited for all members to cross the river, they would lose the element of surprise.

Train assessed at the time that the team, despite being understrength, can proceed with the service of the warrant of arrest for the three (3) targets using the soft approach. When they proceeded to the target area, the guide¹⁵⁶ who accompanied them, remained at the river bank. The first house that they reached at the target area was Marwan's hut. The hut was followed by a mosque, three houses and around 70 meters away was the hut of Basit Usman.

They then decided to do an "L-type" formation when they were approaching the hut of Marwan, with the team of S/Insp. Gednat Tabdi¹⁵⁷ on the left side while Train's team was positioned on the right rear end.

While they approached their final assault position, PO2 Jovalyn Lozano¹⁵⁸ said: "*Sir, pinatay na yung ilaw, pasukin na natin*". (Sir, the light was turned off, let's go in.") But Train refused and ordered his men to proceed with their soft approach. Lozano then crawled at the back side of the house. But when Lozano approached the target area, he triggered an Improvised Explosive Device (IED). When the IED exploded, Lozano was injured while Train got hit in the chest by a shrapnel.

Immediately after the explosion, automatic gun fire aimed at them emanated from the house of Marwan. So they ducked, took cover and engaged in the fire fight with the men from the hut of Marwan. The

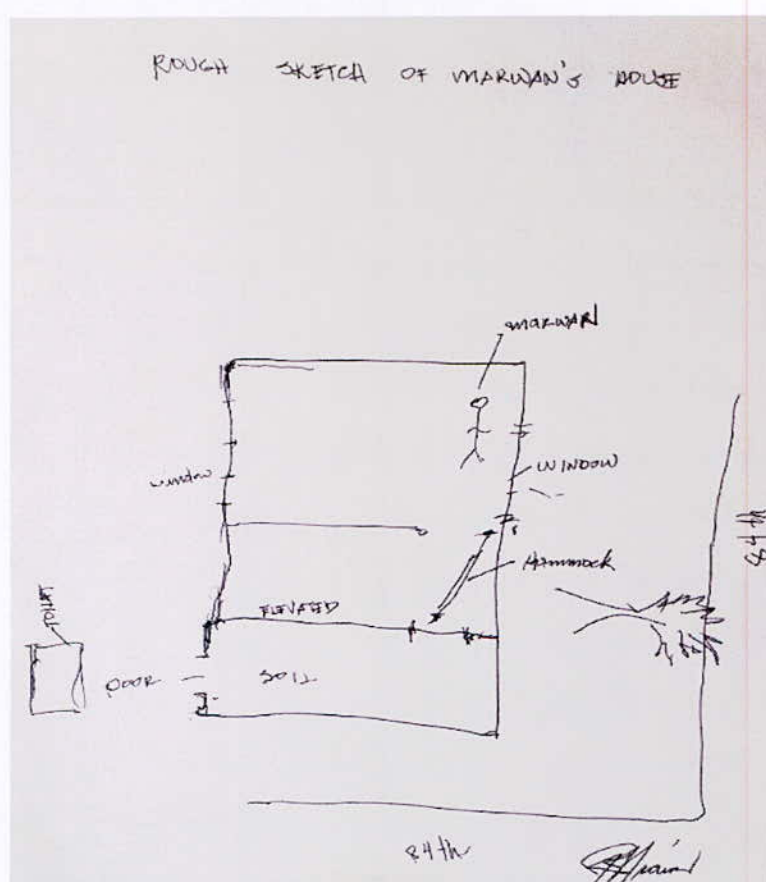
¹⁵⁶ The identity and particulars of these guides are discussed in the latter part of this Chapter

¹⁵⁷ The team leader of Team 841 of the 84th SAC who was killed in police operation (KIPO)

¹⁵⁸ The designated pointman of Team 841 of the 84th SAC who was wounded in police operation (WIPO)

intermittent exchange of fire between the 84th Seaborne and the men from Marwan's hut lasted for about five (5) minutes. They continued to engage until such time that the occupants of the hut were subdued.

During the firefight they could not confirm if it was Marwan who was inside the hut since what they could see through their night vision goggles were only the silhouettes of the persons firing at them and the flashes coming from their rifles. Train made the following sketch¹⁵⁹ of Marwan's hut as he remembered it during their assault:



He illustrated how their "L type" position was formed in relation to Marwan's hut (lower right side of the sketch). He said that the 84th SAC went inside Marwan's hut at the rear end of the house. He pointed to the door where they entered but clarified because it was dark, he was not certain whether there was another point of entry in the hut. He remembered the windows which he indicated in his sketch, he is, however, uncertain whether these windows were big enough to be used as the point of egress of

¹⁵⁹ The actual sketch drawn by Train is attached as Annex "N"

Marwan's two (2) companions, who escaped *en route* to Basit Usman's house. Train was directly positioned in front of the window where Marwan was shooting at the 84th SAC.

The commandos on the left side of the house and the group of S/Insp. Tabdi were able to observe that two men (2) ran away from the hut of Marwan towards the hut of Basit Usman during the fire fight. These commandos were also getting fire from the mosque around forty (40) meters away from Marwan's hut.

After subduing Marwan, the commandos saw his body and took photographs to ascertain his identity. After the team took photographs, Tabdi's team conducted the sensitive site exploitation (SSE). They then said "*siya na nga*". ("It's really him.") Train also went inside the hut to confirm that it was Marwan who was killed.¹⁶⁰ At the time he went inside the hut, the team of Tabdi was already conducting the SSE.¹⁶¹

After ascertaining that it was indeed Marwan who was killed in the fire fight, Train called the TCP and uttered the phrase "Mike One Bingo", to signify that they were able to accomplish their mission. This was the time when he was able to resume radio communication after their last contact coverage. He also remembered that when he said the code, S/Insp. Lyndon Espe asked if the subject was dead or alive. When Train replied that the target was dead, Espe asked if they could carry the body.¹⁶²

Train answered that he himself was having a hard time moving because of the injury he sustained and that they were also under heavy fire from the elements in the house of Basit Usman. In fact, the team was not able to conduct an iris scanning as planned because the said procedure takes a while to complete. S/Insp. Tabdi then decided to just sever the left index finger of Marwan for them to be able to positively confirm the identity of

¹⁶⁰ Train said that although he has not seen Marwan personally before Oplan EXODUS, he was able to confirm his identity from the photographs shown to them for their past operations and also from the videos presented to them by their source.

¹⁶¹ "Sensitive site exploitation" refers to "a related series of activities inside a captured sensitive site to exploit personnel documents, electronic data, and material captured at the site, while neutralizing any threat posed by the site or its contents. Also called the SSE (JP3-31)" citing "Definition of United States Department of Defense military terms" which was updated on July 17, 2015, (<http://www.Militaryfactory.com/dictionary/military-terms-defined>)

¹⁶² This statement was corroborated by PSI Espe when he was interviewed during the clarificatory hearing as discussed in the latter portion of this chapter.

Marwan.

Thereafter, they recovered several pieces of evidence from Marwan's hut. The area in which he was supposed to collect evidence was in the rear portion of the hut while Tabdi and his men had their own area to collect evidence from. The M16A1¹⁶³ rifle which was used by Marwan to fire at them was later turned over to the CIDG. Meanwhile, the other object evidence which were recovered from the hut of Marwan were lost during the extraction because they distributed the SSE evidence that they were able to gather between him and Tabdi.

They were also supposed to take video evidence but were unable to do so because the taking of the SSE inside the hut took time. When they were fired upon, they immediately went out of the hut. The sentinels of Basit Usman in the mosque were firing at them so they rushed to extricate themselves.

Train and company were unable to exit the area using the planned exfiltration route because the communities were already alerted and they had to take the alternate route. He maintained that they did not get lost during their extraction because every route was pre-programmed in their GPS and they also had guides to confirm the routes shown by their GPS.

He added that had everything went according to plan, they would have reached the VDOP at 6:00 to 7:00 a.m. of January 25, 2015, and would have linked up with the 55th SAC at waypoint 19. As it happened, however, prior to 6:00 a.m. and onwards, they heard a loud exchange of fire in the direction of the 55th SAC while they were approaching waypoint 16, crossing the small creek. They also received instructions from the TCP that the 55th SAC was engaged and the 84th Seaborne was to reinforce them.

¹⁶³ The M16A1 Armalite rifle was originally made by Colt Manufacturing in 1960. It is effective at ranges of less than 400-460 meters. The weapon permitted the heavily burdened soldier to maintain the same degree of firepower at a reduced weight. Finally, the M16A1 allowed every soldier to have an automatic fire capability whenever the situation required it, while the weapon's lighter ammunition facilitated battlefield resupply in greater quantities, enabling the resupply of field units for longer periods of time. (<http://www.globalsecurity.org/military/systems/groundm16.htm> and <http://weaponsystems.net/weapon.php?weapon=AA04%20-%20M16A1>)

b. The photographs taken by the 84th SAC at Marwan's hut

When the photograph below, which appeared in the front page of the Philippine Daily Inquirer, was shown to him¹⁶⁴, Train admitted that it was PO2 Basañez and PO2 Andrada who took that photograph of a dead Marwan with a man in a uniform crouching beside him.



(Source: Philippine Daily Inquirer website)

Train, however, vouched that it was not PO2 Basañez or PO2 Andrada who leaked the said photograph to the Inquirer because he personally delivered all the pieces of evidence they have gathered at the TCP immediately upon arrival. He identified S/Insp. Tabdi as the one whose hand was seen in the photograph wearing a military uniform with an M4 assault rifle, holding a pistol and kneeling beside Marwan.

He explained that the real reason Marwan was seen half naked in the said photographs was because he only wears a *malong* while sleeping.

¹⁶⁴ A print-out of the photograph was accessed from the Philippine Daily Inquirer Website <http://newsinfo.inquirer.net/669055/marwan-finger-cut-off-for-dna> which was published in print on January 30, 2015

c. The fate of SAF's local "guides"

Train disclosed that there were two [REDACTED], [REDACTED] and [REDACTED], whom they used as informants since these men knew the area of operation. [REDACTED] guided the team and went with them up to the point where they crossed the last river, which was the free point¹⁶⁵ going towards the hut of Marwan. [REDACTED] stayed in the riverbank and were the ones left to man the toe line. The rest of the 84th Seaborne who were still crossing the river were the ones left to secure [REDACTED], who were both unarmed at that time.

During their last stand, when the commandos were already pinned down, Train gave a rifle¹⁶⁶ used by one of his dead comrades to [REDACTED] and told him to fire back. [REDACTED] were in civilian attire when they were being fired at. This happened after the ceasefire has been declared at about 11:00 a.m. of January 26, 2015.

[REDACTED] was shot during the firefight and died at around 4:00 pm. Train remembered when [REDACTED] was killed because he died at the same time with S/Insp. Tabdi. Meanwhile, [REDACTED], who sustained injuries in his shoulder, is still alive [REDACTED].

[REDACTED], who are both Filipinos and local residents of Maguindanao were [REDACTED]¹⁶⁷. They went through a vetting process just like any SAF informant. It was Train who approved the covert employment of these two (2) assets after they were vetted. [REDACTED] is in his [REDACTED], while [REDACTED] could have been in his [REDACTED].

¹⁶⁵ The area after the last river crossing is a known BIFF area.

¹⁶⁶ This "SOAR" rifle was actually issued to PO3 Rommel Magno, but since it malfunctioned during their assault at Marwan's hut, he exchanged it with the rifle of one of his comrades who eventually died. The same was used by [REDACTED] and was retrieved after he died. When the Army carried [REDACTED] body, PO3 Magno told the Army personnel if he could just carry the gun since it was issued to him. However, the Army soldier told him that he was already injured so he said that the former will just carry the same. When they reached the VDOP, PO3 Magno again worried about his issued firearm. Train thought that firearm same will be later returned to them and that P/Supt. Mangahis can take care of it. Train even told PO3 Magno he can declare it as lost. They were shocked to discover later on that this firearm was inexplicably among those ceremonially surrendered by the MILF to the Government on February 18, 2015.

¹⁶⁷ Member of Forward Recon Team of the 84th SAC/FIID

He also said that although [REDACTED] knew the general area where Marwan lived, the former did not know the specific location of the house. It was the 84th Seaborne who had the grid coordinates for Marwan's hut.

[REDACTED] was the one who helped them for Oplan TERMINATOR 1 and 2, while [REDACTED] was used for the first time in Oplan EXODUS. [REDACTED] was more knowledgeable with the terrain of the area. [REDACTED] has been an asset of the SAF since October 2014 while [REDACTED] became one only in December 2014.

2. Narrative of SAF Officers Present at the TCP

The account of P/Supt. Train of what transpired during the assault of Marwan's hut were corroborated by P/Dir. Getulio P. Napeñas, P/Supt. Michael John C. Mangahis and PSI Lyndon A. Espe during their interview by NBI-NPS SIT.

P/Dir. Napeñas, P/Supt. Mangahis and PSI Espe who were present at the TCP witnessed [REDACTED] SAC during the execution of Oplan EXODUS on January 25, 2015.

a. P/Dir. Getulio P. Napeñas

P/Dir. Napeñas remembered that the field of view of the ISR aircraft's camera [REDACTED]. Initially, the ISR aircraft was covering the 84th Seaborne's early morning movement at Pidsandawan. The [REDACTED] beside the hut of Marwan. The focus of the camera would change from time to time and the frame would move. It could be disorienting at times to view the changing focus.

b. P/Supt. Michael John C. Mangahis

P/Supt Mangahis stated that he saw the actual movement of the 84th SAC as they were on their mission to arrest Marwan. Although he saw [REDACTED]

[REDACTED]. He mentioned that the location of the 84th SAC has been monitored by PSI Espe who had contacts with the 84th SAC

specifically PSupt. Train and PSI Espe. The images that he saw on the monitor were [REDACTED].

Mangahis also corroborated the statement of Supt. Train as he recalled that in the morning of January 25, 2015, [REDACTED]

[REDACTED] . When the firefight started, Mangahis saw in the monitor, [REDACTED], that of Basit Usman. He recalled that the firefight lasted for about five (5) to ten (10) minutes.

A few hours later, the TCP received calls about the encounter of the 55th SAC with some armed groups in the area. Mangahis then coordinated with the medical service because of reports that the 55th SAC had suffered casualties. He stated that back then, he was more concerned of the 55th SAC because of their situation. The 55th SAC were at a fixed position and were surrounded by armed groups, while the 84th Seaborne was already moving and had more options for maneuver.

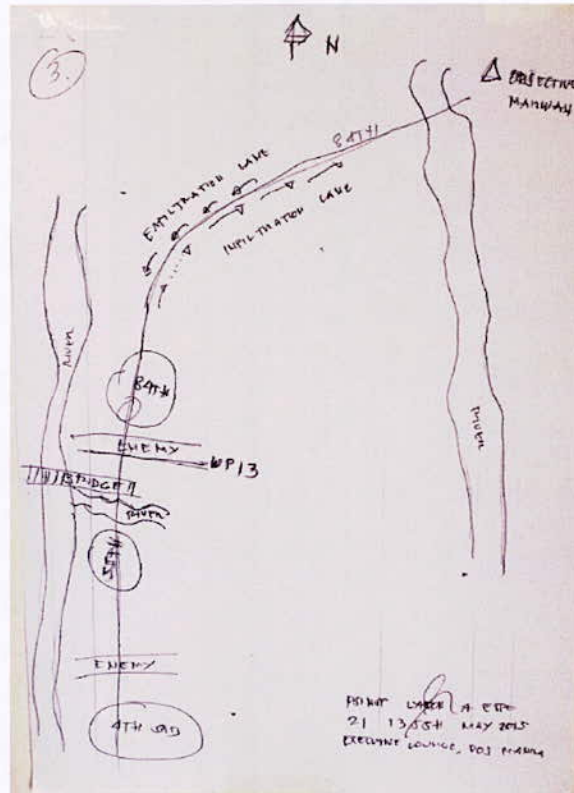
c. PSI Lyndon A. Espe

PSI Espe narrated that he was at the TCP during the Oplan EXODUS, as he earlier stated, since he was the designated map plotter. According to him, he, together with PO2 Joe Noel Belmes, went to the TCP at around 6:00 to 7:00 p.m.¹⁶⁸ of January 24, 2015 and set-up their map, laptop and other equipment on the table.

They brought with them portable monitors, radio and mobile phones and set them up on the table near the map. Because Espe was the designated map plotter and the designated contact of the 84th Seaborne and his proximity to where the Americans set-up their monitor, [REDACTED]

¹⁶⁸ During the interview, PSI Espe corrected his earlier affidavit subscribed on February 8, 2015 that he was at the TCP from 7:00 a.m. of January 24, 2015 and categorically stated that he went to the TCP at around 6:00 to 7:00 p.m. of January 24, 2015.

_____ . He was able to draw the route taken by the 84th Seaborne, as can be seen below:



Espe pointed out in the drawing that the plan called for the same infiltration and exfiltration lane. He remembered that when they were following the 84th Seaborne's insertion by foot through the _____

_____ . At this point, 84th SAC he called the 84th Seaborne to reinforce the 55th SAC and "tusukin" or "bumutas" ("drill" or "punch through") the enemy ranks.

Espe also substantiated the 84th Seaborne narration of events at Pidsandawan based on _____ and from the exchanges of call and SMS messages between him, Supt. Train and PSI Gednat Tabdi. He also confirmed the statement of PSupt. Mangahis that

Espe even disclosed that during the operation, he received a call from Train saying “bingo, bingo.”¹⁶⁹ He then told P/Dir. Napeñas about the call from Train. He remembered Napeñas told him “*O, ipadala mo, sabihin mo kay Train na buhatin yung bangkay.*” (“Tell them, tell Train to carry the body.”) Since at that time he knew that the 84th Seaborne was already withdrawing, he just sent a text message to Train. He received a call from Train asking, “*Bakit dadalhin pa namin yung bangkay? Sabihan mo si Napeñas siya kaya pabuhatin mo dito, pagod na nga kami.*” (“Why do we have to bring back the body? Tell Napeñas maybe he can carry the body, we are already tired.”)

3. The media reached Marwan’s hut before it was burned

In his article entitled, “FIRST PERSON: Inside Marwan's Hut”¹⁷⁰, Raffy Tima of GMA News wrote:

“I could just imagine how the Philippines’ most wanted man went around the house, perhaps cooking his food inside the first room where the single entrance was located. And maybe eating at the adjacent room where signs of an attack could still be found. The water jug and other household items found inside the hut all had bullet holes.”

Tima further wrote:

“There was not much in the room. Most of Marwan's belongings were no longer there. The only significant item was a black plastic tarp seen in the background of Marwan's now infamous picture minutes after he was killed. The plastic had two holes on it.

Other than some bullet and shrapnel holes on the wall,

¹⁶⁹ This conversation was confirmed by P/Supt. Train himself when he was interviewed.

¹⁷⁰ Raffy Tima, “First Person: Inside Marwan’s Hut,” GMA News Online, February 23, 2015, accessed August 28, 2015, <http://www.gmanetwork.com/news/story/441910/news/special-reports/first-person-inside-marwan-s-hut>

the room looked pristine. Not banged-up as one might expect from an encounter with a suspected international terrorist blamed for the deaths of hundreds, probably thousands, of innocent people. A signature, I thought, of a precise SAF commando operation.”

In a video¹⁷¹ that accompanied his report, Tima pointed to a crater just outside the hut of Marwan that appears to have been caused by a grenade explosion.

4. Eyewitnesses to the retrieval of the bodies of the SAF commandos

a. Narrative of local police and military officers

Several sworn statements¹⁷² of the local police officers were submitted by the CHR to the NBI-NPS SIT just a few days before the release of the latter’s first Report and were thus not earlier discussed.

i. PSI Sahibon Mohamad Mamantal

S/Insp. Mamantal is a police officer assigned at the Regional Public Safety Battalion (RPSB) in Making, Parang, Maguindanao. He and his battalion commander, together with other AFP troops, arrived in Barangay Tuka in Mamasapano at about 7:00 p.m. of January 25, 2015. Before arriving in the area, they already heard unconfirmed reports that there were police officers who died in an operation. By 10:00 p.m., there were five (5) bodies which were retrieved from the area but Mamantal and his group did not know who recovered them. They were also uncertain of the conditions of the bodies because it was very dark. From Barangay Tuka, they ferried the bodies to the Provincial Capitol of Maguindanao.

¹⁷¹ In a subpoena dated September 1, 2015, GMA News TV, through its Senior Vice President Marissa Flores and General Counsel Atty. Jose Vener Ibarra, was directed to submit to the NBI-NPS SIT the duly authenticated copies in DVD format of the raw video and the publicly aired video taken by Tima’s crew inside Marwan’s hut at Pidsandawan, Mamasapano, Maguindanao. In compliance thereto, Atty. Ibarra submitted two (2) DVDs to the panel on September 7, 2015. The DVD of the video footage shown on TV and the Transmittal Letter are attached as Annexes “P” and “P-1”, respectively

¹⁷² The sworn statements of these police officers were received by the Office of the NBI-DDROS from the CHR on April 15, 2016.

At around 3:00 a.m. of January 26, 2015, Mamantal's battalion was again asked to help retrieve nine (9) bodies from the 84th Seaborne in the Tukanalipao and Tuka areas. They waited for survivors from the 84th Seaborne and the AFP rescue team to arrive at their post at around 5:00 a.m. Although it was still dark at that time, Mamantal saw that the nine (9) bodies they retrieved were still wearing complete uniforms. At around 8:00 a.m., the police officers from the Mamasapano police station arrived and they all worked together in extracting the remaining bodies from the site. After about thirty (30) minutes, they were allowed to enter the Tukanalipao area, but limited to two (2) PNP personnel per vehicle. Mamantal was among the four (4) police officers who volunteered to enter the area.

They were able to retrieve a total of twenty nine (29) bodies, four (4) of which were found in the cornfields and brought by the civilians to them. Some of the bodies which were retrieved were still wearing their uniforms. It took them two (2) trips to be able to transport the bodies from the Barangay Tukanalipao to the VDOP before they ferried it to Camp Siongco, Datu Odin Sinsuat, Maguindanao.¹⁷³

ii. PO3 Edo S. Kilam

PO3 Kilam is assigned at the Mamasapano Municipal Police Station in Maguindanano. At around 1:00 a.m. of January 24, 2015, Kilam heard sounds and saw several hauler trucks passing along the highway. He did not take much notice of it. By 4:30 a.m., he again saw another convoy of hauler trucks which were about two hundred (200) meters from their station. After several minutes, he heard bursts of gun fire.

At about 5:00 a.m., he received a text message from the Provincial Headquarters asking him to ascertain what group entered the vicinity. At about 5:30 a.m., he called up the barangay chairman of Barangay Libutan and the latter informed him that there was an encounter but could not identify the groups involved. It was only by 7:00 a.m. that Kilam was informed by residents living near the area that the encounter involved "soldiers". He received another text message ordering him that no civilian should be allowed to enter the boundary of Rajah Buayan and that they establish a check point in front of the Mamasapano municipal hall.

¹⁷³ Affidavit of PSI Sahibon Mohamad Mamantal dated March 19, 2015

At around 11:00 a.m., Kilam was asked to set up a meeting of the OIC- Regional Director with the Municipal Mayor of Ampatuan so that they can talk. He was told by their OIC-Regional Director that P/Dir. Napeñas will go with them to Barangay Tuka. But Kilam did not actually see Napeñas. By 4:00 p.m., he returned to the police station and still heard gunshots. At about 5:00 p.m., when there was no longer any sound of gunfire, Mayor Benzar Tahirodin Ampatuan ordered the civilians to help in the retrieval of the bodies, but only five (5) more cadavers were brought out.

At around 6:00 a.m. of January 26, 2015, Kilam was called up by the barangay chairman of Barangay Libutan, who requested help to extricate the remaining cadavers as it added to the residents' "fears". They were also advised to wear civilian clothes. At Barangay Tuka, Kilam's team was the only one allowed to enter Barangay Tukanalipao but other teams from various units later joined in the retrieval.

The first cadaver that they saw near the river wore only an underwear and a sweatshirt. They also found that the other twenty six (26) cadavers piled beside the river were without clothes, except for one who was wearing a printed t-shirt. They believed that all of the dead were shot in the head because that was the part that looked smashed.

Two (2) vehicles were used in transporting a total of forty four (44) cadavers. The first vehicle driven by PO1 Abid Pendatun carried six (6) cadavers, while the other vehicle driven by PSI Mamantar and PO3 Ibrahim carried eight (8) cadavers. The next trip of the two (2) vehicles carried fourteen (14) and sixteen (16) cadavers, respectively. They were directed to bring them directly to Barangay Tuka where the cadavers were eventually transferred to Regional Mobile Group (RMG) vehicles. The last body which was retrieved was transported by a carabao cart to Mamasapano by PO2 Mansur.¹⁷⁴

iii. PO3 Mama Kadalim Ebrahim

Ebrahim was assigned at the Regional Logistics Division of the PNP-ARMM based in Making, Parang, Maguindanao. At around 1:00 p.m. of January 25, 2015, he was told by S/Insp. Carmelo Mungcas to report to the Regional Public Safety Battalion (RPSB) for a meeting. From RPSB, they

¹⁷⁴ Affidavit of PO3 Edo S. Kilam dated February 25, 2015

were ordered to proceed to Shariff Aguak and eventually to Mamasapano at around 3:00 p.m. They arrived at Barangay Tuka at around 4:00 p.m. and waited for further instructions until the following day.

At around 9:00 p.m. of January 26, 2015, they were allowed to enter Barangay Tukanalipao. Ebrahim volunteered to help in the retrieval of the twenty five (25) cadavers piled under the bridge while four (4) more cadavers were retrieved by the civilians from the cornfield. Some of the cadavers they retrieved were still in uniform. It took them two (2) trips to transport the cadavers from Barangay Tukanalipao to the VDOP. They eventually ferried the cadavers to Camp Siongco, Datu Odin Sinsuat (DOS), Maguindanao.¹⁷⁵

iv. Sgt. Joyler M. Singco

Sgt. Singco is from the Forward Service Support Unit (FSSU) of the 6th Infantry Division, Philippine Army. He was the one tasked to conduct the embalming of the cadavers brought to their unit. He embalmed twenty two (22) of the forty four (44) dead SAF commandos brought to their unit.

On January 26, 2015, at around 2:15 a.m., five (5) cadavers were brought to the FSSU mortuary by C/Insp. Caliyo and S/Insp. Chan of the SAF. Of the five (5) cadavers, two (2) were left wearing upper fatigue uniforms while the three (3) wore only their cycling shorts. Only two (2) cadavers had their boots on. Two (2) of the SAF commandos were identified through their insignias while the other three (3) were named by their officers. They were identified as PO1 Asjali, PO2 Cinen, PO2 Kibete, PO2 Allaga and PO3 Sumbilla. He started the embalming at around 4:00 a.m. because the bodies were starting to decompose.

He observed that PO1 Asjali sustained several headshots. PO2 Cinen sustained gunshots at his right chest and on his face. PO2 Kibete sustained wounds on his left arm, chest and head. PO2 Allaga sustained wounds on his legs and stomach. PO2 Sumbilla sustained several headshots.

At about 10:00 a.m., Supt. Ramos of Scene of the Crime Operations (SOCO) asked the AFP to stop the embalming because SOCO still had to

¹⁷⁵ Affidavit of PO3 Mama Kadalim Ebrahim dated March 19, 2015

autopsy the cadavers. Thereafter, SOCO from different units arrived and started the process of testing the cadavers for powder burns and identification. The records were then given to the AFP and they were ordered to continue with the embalming, after which the SOCO followed.

At around 2:30 p.m., eight (8) more cadavers arrived, which were then subjected to paraffin testing, identification, embalming and autopsy. The same procedures were followed for the succeeding cadavers that arrived at their mortuary.

Nineteen (19) cadavers appeared to have wrecked heads. On January 27, 2015, embalmers from St. Peter's and other funeral homes arrived to help Singco in the embalming process.¹⁷⁶

b. Narrative of the local residents

In our first Report, we discussed the accounts of Mamasapano residents of what they witnessed at Barangay Tukanalipao from January 25 to 26, 2015. The following barangay leaders and residents testified on how they assisted the PNP and AFP in the retrieval of the bodies of the dead SAF commandos:

i.

[REDACTED]. He claimed that he was the one who saw and confirmed that the casualties were thirty-four (34) SAF and one (1) civilian. He and several local residents retrieved the cadavers but only five (5) were brought out of the area by 7:00 p.m. The other cadavers were retrieved the following day. The bodies were handed over to members of the SAF present in the highway of Mamasapano. He observed that the cadavers were stripped of their uniforms and there were no firearms or other belongings found in the vicinity of the conflict.¹⁷⁷

ii.

[REDACTED]. He said that Mayor Benzar Ampatuan called him to say that they were to help

¹⁷⁶ Affidavit of Sgt. Joyler M. Singco dated March 17, 2015

¹⁷⁷ The Report of the Joint NBI-NPS SIT, p. 147

evacuees and move them to a secure place. Together with Mayor Ampatuan, LGU officials, International Monitoring Team (IMT), CCCH, government and MILF peace panels, they were able to enter the encounter site at 5:00 p.m. and retrieved five (5) cadavers of the SAF commandos. They were only able to retrieve five (5) bodies because it was getting dark and according to him, they feared for their lives. The casualties had only their underwear on and nothing else. The following day, he again went with the retrieval team that now included policemen from Mamasapano Police Station to get the bodies from Tukanalipao.¹⁷⁸

iii. [REDACTED]

[REDACTED]. He said that at 2:00 p.m., representatives from the CCCH and IMT came and directed them to go and retrieve casualties from the encounter site. At around 5:00 p.m., they were able to retrieve five (5) bodies of the SAF commandos near the wooden bridge in the cornfield. The bodies only had undergarments on them. It was dark so he was not able to see the wounds on their bodies. They placed the bodies on a “*kuliglig*”¹⁷⁹ and brought them to the highway in Tuka where members of the Army and other SAF troopers were stationed. He was frisked and was asked about the cadavers and the cadavers were searched even though he told them that [REDACTED]

[REDACTED] The next day, January 26, 2015, the mayor gave instructions for the CCCH and IMT to continue their retrieval operations.¹⁸⁰

iv. [REDACTED]

[REDACTED]. He claimed that when he got back home a day after the firefight, [REDACTED]

*While there, he witnessed that some of those persons who helped carry the dead bodies were also the same persons who were with the group of armed men that rushed to the said area.*¹⁸¹

¹⁷⁸ Id., p. 150

¹⁷⁹ A farm tractor

¹⁸⁰ Id., p. 151

¹⁸¹ Id. p. 153

v. [REDACTED]

[REDACTED] He said that at around 9:00 or 10:00 a.m. of January 26, 2015, Mayor Ampatuan called up the [REDACTED], and asked them to help in the retrieval of dead bodies.

While they were retrieving the cadavers, [REDACTED]

[REDACTED] He also came to know during the retrieval operations that the dead bodies were SAF members. They loaded the dead bodies onto a pump boat and carried them to a vehicle which was parked along the highway.¹⁸²

vi. [REDACTED]

[REDACTED] Between 9:00 to 10:00 a.m. of January 26, 2015, [REDACTED] He then observed that some of those who helped retrieve the bodies were also the same armed persons who attacked in the area the previous day. However, he does not know their names and only know them by their faces.

5. Possible local eyewitnesses at Marwan's hut in Barangay Pidsandawan and its Vicinity

As we earlier noted in our Introduction, among the limitations which the team was unable to hurdle was the dearth of possible witnesses at Barangay Pidsandawan and other barangays where Oplan EXODUS initially took place.

The NBI-NPS SIT pursued all avenues to identify and find local residents who may have seen the 84th Seaborne's assault of Marwan's hut in

¹⁸² Id. p. 157

Barangay Pidsandawan. In fact, the team even planned for another round of discreet recruitment of Mamasapano witnesses.¹⁸³ But the present security situation in Mamasapano rendered these attempts to obtain evidence direct from source dangerous and futile.¹⁸⁴

Back in Manila, [redacted] individuals¹⁸⁵ who presented themselves were interviewed by the team from June to August 2015, in the hope that they could identify any or some of the MILF, BIFF, PAGS and other individuals who attacked the 84th Seaborne at Barangay Pidsandawan and during the latter's movement toward Barangay Pembalakan. Instead of identifying assailants, however, these persons tried to persuade the team to an all-together "alternative" version of the events at Pidsandawan on January 25, 2015 and on prior dates.

Mindful of its mandate to ferret out the truth surrounding Oplan EXODUS, the team was constrained to patiently listen to the unorthodox version floated by these individuals. The NBI-NPS SIT quietly vetted these persons as well as their narrations and they all utterly failed in terms of credibility, lucidity and chronology. Worse, these supposed "witnesses" refused to be deposed under oath. Because these individuals were clearly unreliable and their allegations wholly unverifiable and not supported by any shred of independent testimonial and documentary evidence, the team saw fit not to include their wild allegations in this second Report. A secret memorandum was submitted by the team to the Secretary of Justice outlining the "alternative" version proffered by these persons and their dubious backgrounds and motives.¹⁸⁶

¹⁸³ These various attempts by the NBI-NPS SIT to enlist witnesses from Mamasapano were regularly reported to the Secretary of Justice.

¹⁸⁴ It has become even more dangerous to interview witnesses from Mamasapano now, especially after the public release of the redacted version of the NBI-NPS SIT's first Report.

¹⁸⁵ Other persons who described themselves as "handlers" or "facilitators" of "witnesses" were similarly (and patiently) met by the NBI-NPS SIT for "exploratory" interviews.

¹⁸⁶ See Footnote No. 6

III. Conclusions

A. The prospects of filing complaints against those who attacked the 84th Seaborne at Barangay Pidsandawan

It must be emphasized at this juncture that the NBI-NPS SIT is not performing the function of a prosecutor, much less of a judge, but of an investigator. Its mandate is in the nature of a *fact-finding* body, not of a trial court. Thus, it is under no legal compulsion to anchor its findings and conclusions only on proof beyond reasonable doubt, as required in criminal proceedings during trial. Nevertheless, the presumption of innocence, a right guaranteed under the Constitution,¹⁸⁷ behooves the NBI-NPS SIT to warrant that its findings and recommendations on who may be held liable for the crimes committed during the Mamasapano incident be supported only by competent evidence that is relevant and admissible.

In their testimonies, the surviving members of the 84th Seaborne recall that on January 25, 2015, they were engaged in a moving firefight with armed groups at Barangay Pidsandawan that resulted in nine (9) commando fatalities. Autopsy shows that the following 84th Seaborne commandos sustained mortal gunshot wounds:

1. P/Insp Gednat G. Tabdi sustained a gunshot wound to the head.¹⁸⁸
2. P/Insp Rennie L. Tayrus suffered gunshot wounds to the head, back and left lower extremity.¹⁸⁹
3. SPO1 Rodrigo F. Acob, Jr. had a gunshot wound to the head.¹⁹⁰
4. SPO1 Lover L. Inocencio sustained gunshot wounds to the head and left thigh.¹⁹¹
5. PO3 Virgel S. Villanueva suffered a gunshot wound to

¹⁸⁷ CONSTITUTION, Article III, Section 14(2)

¹⁸⁸ Autopsy Report and Anatomical Sketch of PSInsp Gednat G. Tabdi, attached as Annex “Q” and “Q-1”

¹⁸⁹ Autopsy Report and Anatomical Sketch of PSInsp Rennie L. Tayrus, attached as Annex “R” and “R-1”

¹⁹⁰ Autopsy Report and Anatomical Sketch of SPO1 Rodrigo F. Acob, Jr., attached as Annex “S” and “S-1”

¹⁹¹ Autopsy Report and Anatomical Sketch of SPO1 Lover L. Inocencio, attached as Annex “T” and “T-1”

the head.¹⁹²

6. PO2 Peterson I. Carap had gunshot wounds to the head and left thigh.¹⁹³

7. PO2 Roger C. Cordero suffered a gunshot wound to the neck.¹⁹⁴

8. PO2 Nicky D.C. Nacino, Jr. suffered a gunshot wound to the neck.¹⁹⁵

9. PO1 Angel C. Kodiamat sustained a gunshot wound to the chest.¹⁹⁶

Evidently, the killing of the nine (9) members of the 84th Seaborne were the result of a series of deliberate acts by these armed individuals. Hence, intent to kill is conclusively presumed from the mere fact of their death.¹⁹⁷

However, evidence of the existence of a crime is one thing. Proof of the identity of the offender is quite another. For even if the commission of the crime was established, without evidence of the identity of the persons responsible, there can be no criminal prosecution.¹⁹⁸

To be sure, the surviving commandos of the 84th Seaborne gave very credible accounts on what happened to them at Barangay Pidsandawan on January 25, 2015. Their respective narrations corroborate each other and there appears to be no reason or motive for them to falsely narrate the event. Moreover, not only are their individual testimonies credible, but the surviving commandos of the 84th Seaborne are themselves credible. They

¹⁹² Autopsy Report and Anatomical Sketch of PO3 Virgel S. Villanueva, attached as Annex “U” and “U-1”

¹⁹³ Autopsy Report and Anatomical Sketch of PO2 Peterson I. Carap, attached as Annex “V” and “V-1”

¹⁹⁴ Autopsy Report and Anatomical Sketch of PO2 Roger Cordero, attached as Annex “W” and “W-1”

¹⁹⁵ Autopsy Report and Anatomical Sketch of PO2 Nicky D. Nacino, Jr., attached as Annex “W” and “W-1”

¹⁹⁶ Autopsy Report and Anatomical Sketch of PO1 Anghel C. Kodiamat, attached as Annex “X” and “X-1”

¹⁹⁷ *Abdulla vs. People of the Philippines*, G.R. No. 150129, April 6, 2005

¹⁹⁸ See *People of the Philippines vs. Tuniaco*, G.R. No. 185710, January 19, 2010 where the Supreme Court held that; “*Corpus delicti* has two elements: (a) that a certain result has been established, for example, that a man has died and (b) that some person is criminally responsible for it. The prosecution is burdened to prove *corpus delicti* beyond reasonable doubt either by direct evidence or by circumstantial or presumptive evidence.”

were present and personally involved in the violent incident. Nonetheless, while their testimonies may be relevant for establishing the fact of the armed engagement at Barangay Pidsandawan, they are unfortunately irrelevant for establishing the identities of the persons who may be held liable for the death of the nine (9) commandos.

In our jurisdiction, relevant evidence refers to that evidence that relates directly to a fact in issue as to induce belief in its existence or non-existence.¹⁹⁹ In the case of the testimonies of the members of the 84th Seaborne, there was no statement or allegation relating to the description, much less the names, of the persons who attacked and killed their fellow commandos.

One may argue that since we found in our first Report that the armed “Pintakasi” that murdered the 55th SAC commandos belonged to the MILF, BIFF and PAGs, and that since the members of these groups acted in conspiracy, then they should likewise be held liable for the death of the nine (9) members of the 84th Seaborne. However, this argument is speculative, to say the least.

First, the surviving members of the 84th Seaborne never alleged that the persons who fired at the 55th SAC commandos were the very same individuals who attacked them. Indeed, there is no showing that the members of the 84th Seaborne came close enough to the location of the 55th SAC to conclude that the persons who engaged the 55th SAC were the same persons who engaged the 84th Seaborne.²⁰⁰ Second, the members of the 84th Seaborne were fired upon at around 4:00 a.m. and they were attacked practically the whole day of January 25, 2015. On the other hand, the members of the 55th SAC were apparently engaged much later, between 5:00 to 6:00 a.m.

The foregoing circumstances all the more highlighted the need for witnesses who could provide positive identification of the assailants, given the irrelevance of the testimony of the members of the 84th Seaborne. Thus, the NBI-NPS SIT exerted all diligent efforts to find at least one credible witness who could testify on the identity and possible criminal liability of the persons who were involved in the killing of the nine (9) members of the 84th

¹⁹⁹ People of the Philippines vs. Yatar, G.R. No. 150224, May 19, 2004

²⁰⁰ In fact, the 84th Seaborne failed to link up with the 55th SAC at the Tukanalipao cornfield despite the former’s attempt to do so.

Seaborne.

On this score, it must be stated that the search for witnesses were not limited to eyewitnesses. Even the possibility of persons who could provide circumstantial testimony were considered. Indeed, as held in one case, positive identification is of two types. One type is when the witness may identify the perpetrator as an eyewitness to the very act. The second type of positive identification forms part of circumstantial evidence, which, when taken together with other pieces of evidence constituting an unbroken chain, leads to only fair and reasonable conclusion, which is that the person identified is the author of the crime to the exclusion of all others.²⁰¹

After persistent and determined inquiries and other earnest efforts, no such witness, direct or circumstantial, was found or presented. Therefore, in the absence of any evidence that could show the identity of the perpetrators who could be held liable for the death of the (9) members of the 84th Seaborne, it is the sad duty of the NBI-NPS SIT to report that it cannot make any recommendation in this regard.

B. No Sufficient Proof of the Criminal Liability of PO2 Christopher I. Lalan

Basic is the principle in criminal law that the evidence presented must be sufficient to prove the *corpus delicti*, the body or substance of the crime and, in its primary sense, refers to the fact that a crime has been actually committed. The *corpus delicti* is a compound fact composed of two things: 1) the existence of a certain act or a result forming the basis of the criminal charge, and 2) the existence of a criminal agency as the cause of this act or result.²⁰²

In any charge for murder or homicide, one must prove that a person was killed and that the accused is the one who killed that person. It is for this reason that the NBI-NPS SIT exerted efforts to validate the MILF's claim that several residents were killed by PO2 Christopher Lalan while they were sleeping in the *langgal*.

Recall that on March 11, 2015, the Secretary of Justice together with

²⁰¹ People of the Philippines vs. Caliso, G.R. No. 183830, October 19, 2011

²⁰² Yadao vs. People, G.R. No. 150917, September 27, 2006

the NBI-NPS SIT met with the MILF leaders in Camp Darapanan²⁰³. One of the requests made by the team was for the MILF to submit documents to prove the death of people who were allegedly killed by PO2 Lalan. We reiterated this same request in our letter dated March 17, 2015²⁰⁴.

The NBI-NPS SIT, through the CCCH, repeatedly asked from the MILF for updates on the proof of death, particularly the “certificates of ablution” in lieu of a medico-legal certificate or an autopsy report which are traditionally waived in Muslim burials. The last attempt of the NBI-NPS SIT to obtain these documents was made in Cotabato City on July 13, 2015 when they spoke with Major Carlos T. Sol, Jr., of the CCCH.

Despite the team’s repeated attempts, the MILF or any of the next of kin of the alleged victims failed to submit any proof of death of the supposed victims of PO2 Lalan. The MILF only came up with an enumeration of the Barangay Tukanalipao victims and their individual photographs, which has yet to be independently authenticated. It must be stressed that even as the MILF SIC Report identified the alleged witnesses against Lalan, the MILF did not grant access to the NBI-NPS SIT to interview these witnesses and assess their testimonies.

We previously noted in our first Report that an investigation may only be restarted once the alleged Tukanalipao victims’ families provide the necessary proof of death and their respective testimonies as to how these persons were killed and by whom. That possibility has closed.

While the NBI forensic team was able to recover a pillow case, a piece of linoleum cut and a black shoe from the *langgal* in Sitio Amilil, the fact remains that these are not conclusive proof of death of the persons who were allegedly killed in the *langgal*.

A CHR witness, Iskak Mamalankas, who said that he can provide photographs of his relatives who were allegedly killed in the *langgal*, was not able to provide the said photographs which can be used by the NBI-NPS

²⁰³ The MILF was represented by its Chairman Al Haj Murad, Mohager Iqbal and five (5) other officials of its Central Committee. The Secretary of Justice was accompanied by NBI Director Virgilio L. Mendez, Deputy Director Edward A. Villarta and Assistant State Prosecutors Juan Pedro C. Navera and Irwin A. Maraya. Regional Prosecutor Al Calica also attended.

²⁰⁴ Letter of the Secretary to the Chairman of the MILF dated March 17, 2015 and served through the Chairman, GPH-CCCH, attached as Annex "L"

SIT to verify the identity of the victims.

In addition to the failure of the MILF to provide proof of death of the alleged victims of PO1 Lalan, they were likewise unable to present convincing evidence that PO2 Lalan was positively identified as the one responsible for the killing of the alleged victims.

We also found that despite the fact that [REDACTED] executed a statement saying that four (4) of his companions were the ones killed in the *masjid* while they were sleeping, he has no personal knowledge as to who shot them. He only heard that his companions were shot while they were sleeping by a naked man. Thus, his description of the alleged perpetrator as he declared in his sworn statement is a mere hearsay.

Even if the MILF SIC report claims that PO2 Lalan was identified by the residents through his photograph as the one who shot these men, we found no affidavit or sworn statement to this effect that was executed or submitted by the persons who allegedly identified PO2 Lalan.

Melgar Sailala, who was mentioned in the MILF SIC report as the witness to the killing and was the one who identified Lalan, did not execute a sworn statement. If, in fact, he was able to witness the incident, escaped from it and was able to positively identify PO2 Lalan from the photograph shown to him, why did he not execute an affidavit? His statement would have been crucial.

Another eyewitness in the person of Sheik Abdullah Abad and the other companions of Ambilang who allegedly identified the photograph of PO2 Lalan could be that proper witness, but his statement was not submitted to the NBI-NPS SIT, even *after* the release of its first Report where it stated that the team needed testimonial and documentary evidence to support the MILF's claims.

Mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.²⁰⁵

We also stressed that the witnesses' statements submitted by the CHR-

²⁰⁵ De Jesus vs. Guerrero, G.R. 171491, September 4, 2009.

ARMM *never* even mentioned PO2 Lalan as the one responsible for the deaths of the civilians identified in the MILF SIC Report.

None of the local residents in the area who executed their sworn statements were able to identify PO2 Lalan as the one who killed the men who were sleeping in the mosque. Most of them were even unable to identify any of the alleged victims.

As the *corpus delicti* was not sufficiently established, the NBI-NPS SIT finds no reason to proceed further with the investigation. We therefore conclude that no charges can be filed against PO2 Lalan for whatever crimes he may have allegedly committed at Barangay Tukanalipao on January 25, 2015, particularly as to the MILF's claim that he was responsible for the deaths of several Tukanalipao residents.

C. American participation in Oplan EXODUS was only limited to the giving of intelligence support and medical evacuation; they did not take part in the actual fighting.

Because of the fact that the United States was its colonizer, any official American activity within Philippine territory touches a raw sensitive nerve among many Filipinos.

Oplan EXODUS and the United States' part in it is especially sensitive for its obvious implications to national sovereignty and the Philippine Constitution. Many would view the Americans' role in Oplan EXODUS as direct foreign intervention in what should be purely internal affairs of the Philippines, particularly in its law enforcement operations against criminals and terrorists. To the Filipino public, whose different convictions on the Mamasapano incident are influenced mainly by their political and religious beliefs, the violent deaths of Filipinos (SAF commandos, Muslim separatist rebels and civilians) in a firefight that may have been instigated by Americans is twice the insult. It is rubbing salt on a still healing colonial wound. To a good number of Filipinos, the well of anti-American sentiment still runs deep. The notion that a promising prospect for peace in Mindanao would fail because of Oplan EXODUS and its Filipino and/or American authors deepens that resentment.

The NBI-NPS SIT's main task was to determine the criminal liability

of those involved in the Mamasapano incident. Discharging that task required a thorough inquiry, not just measuring the extent of American involvement in Oplan EXODUS, but more importantly, determining whether their participation exposes these American nationals to criminal prosecution for violation of Philippine penal laws.

What roused suspicions that Americans were deeply involved in the Mamasapano incident was that, in the aftermath of the firefight in Barangays Tukanalipao and Pidsandawan in Mamasapano, there were “Caucasian”-looking men seen on television helping out in the medical evacuation/casualty evacuation of the dead and injured SAF commandos, who were flown out in what seemed like American helicopters.

Rumors then evolved that “Caucasian” commandos were among those who died in the prosecution of Oplan EXODUS. Accounts also surfaced of how residents saw and heard unidentified white aircraft or drones flying over Mamasapano during the firefight. The fact that Philippine authorities gave Marwan’s detached finger to the U.S. FBI to confirm, through DNA test, whether SAF commandos neutralized the right subject, all the more fueled speculation that it was the Americans who actually ran Oplan EXODUS.

The NBI-NPS SIT unraveled fact from fiction, mainly through the narrative of SAF officers involved in Oplan EXODUS, including SAF Director Napeñas.

The truth is that SAF had liaised with JSOTF-P not just for Oplan EXODUS but in at least ten (10) previous Oplans against Marwan since 2010. Napeñas and Train coordinated with [REDACTED], who was apparently one of the Liaison Coordination Elements (LCEs)²⁰⁶ of JSOTF-P, for requests that included training and ISR coverage during operations. According to the SAF officers we interviewed, the extent of American involvement in Oplan EXODUS was limited to providing SAF with crucial intelligence information for the latter to be able to carry out the operation. In particular, upon the request of SAF, JSOTF-P deployed fixed wing surveillance aircraft

²⁰⁶ To recall, JSOTF-P employs Liaison Coordination Elements (LCEs) which are small, specially organized and tailored teams of US SOF personnel that co-locate with and assist a designated AFP headquarters with information and intelligence collection, processing, analysis and fusion. When necessary, LCEs can “reach back” to the JSOTF-P for additional intelligence assets and capabilities such as UAV or additional casualty evacuation support to assist AFP operations.

over Mamasapano to provide real time ISR imagery to the TCP of the situation on the ground. JSOTF-P provided personnel to man and operate surveillance and communication equipment at the TCP. These American intelligence and technical personnel did *not* participate in actual combat with MILF, BIFF and PAGs at Mamasapano. Neither did these Americans give direction or orders to the SAF commandos.

The reports that there were “American” commandos among those who died in Mamasapano are not true. MARATHON stated that he only *learned* that a corpse that “did not look Filipino” was among the SAF commandos who died in Barangay Tukanalipao. He did not actually see Caucasians among the dead. Surviving SAF officers, particularly PSI Espe, explained that what MARATHON probably heard about were the cadavers of PSI Tabdi and PO3 Golocan, the commandos who had fair complexion among the dead. A blonde-haired and heavily-built SAF commando, SPO1 Allan Franco of the 84th Seaborne, who survived and was seen after the debacle, may have contributed to more “Caucasian” conspiracy theories. The fact that there were no Americans or Caucasians who were killed at Tukanalipao or Pidsandawan is bolstered not by the testimonies of Napeñas, Train or Espe but by the widow of the dead commando mistaken to be a “Caucasian”²⁰⁷.

In any case, with or without the testimonies of the SAF officers or the widows of the dead commandos, a close and objective scrutiny of the dead “Caucasian” in the controversial Tukanalipao video grab will reveal that, despite their uncharacteristic height and built, they look neither Caucasian nor American. What is clearly overlooked in the controversy over alleged “Caucasians” participating in Oplan EXODUS is that as highly trained, specially-skilled commandos that belong to the elite SAF, most of them would, by reason of the very physical nature of their profession and their almost-daily rigorous special forces training²⁰⁸, possess height, weight and

²⁰⁷ PO2 Oliebeth L. Viernes’ widow, Virgie Viernes.

²⁰⁸ The Commando Course was first called the SAF Operation Course when the training was conducted for Classes 1 through 9 until 1995, when it became known as the SAF Commando. Throughout the years, the scope of training of the Commando Course has also evolved to include subjects that were previously not taught but are now deemed important in their pursuit of excellence. The Close Quarter Battle and Intelligence Phases were taught as an orientation module and also taught in full once a trooper undergo a separate specialization course which is the Urban Counter-Revolutionary Warfare Course. The present Commando training program now includes Internal Security Operations, Waterborne Rescue, Police Intervention, Barangay Module, Operational Testing, and Field Training Exercise, to be taken up in the four months of training prior to the test mission that will be held for one month. The SAF Trooper

built that are especially uncharacteristic of the average Filipino physique. From the credible recitals of the surviving SAF commandos and the widows of those who died, there is no doubt that only Filipino commandos and their local guides fought on villages and cornfields of Barangay Pidsandawan and Barangay Tukanalipao on January 25, 2015.

At any rate, assuming remotely that there were Americans among the 55th SAC and 84th Seaborne commandos, nothing can be gained from looking into their case further since, assuming they had criminal liability, the same had been extinguished by death.

Indeed, it would appear that the farthest reaches of American participation in Oplan EXODUS was providing real-time aerial ISR coverage. According to the Department of Foreign Affairs (DFA), this type of intelligence assistance is allowed within the framework of the Visiting Forces Agreement (VFA) and other bilateral or regional cooperation with the U.S. against terrorism and other non-traditional security concerns. The activities enumerated in the VFA were held by the Supreme Court in *Lim v. Executive Secretary*²⁰⁹ to be legal.²¹⁰

The only constitutionally restricted activity is for the U.S. military to engage in actual combat in the Philippines. Precisely because of their covert ISR role, the [REDACTED] were not armed attack planes and did not engage or conduct air strikes in Mamasapano. Thus, [REDACTED], the JSOTF-P personnel identified by Napeñas and Train, who merely set up the ISR monitor at the TCP at Shariff Aguak to communicate with the [REDACTED] ISR aircraft did not violate the Constitution or the Revised Penal Code and other special penal laws.

As for the MEDEVAC and CASEVAC airlifts of the dead and injured SAF commandos, which have been confirmed by the U.S. Embassy as

is expected to be at the forefront of danger at times that are not of their own choosing and in places they are not familiar with. But even so, with the help of the definitive Commando Course, a SAF Trooper is expected to deliver despite great odds. (<http://saf.gov.ph/index.php/trainings/commando>)

²⁰⁹ *Lim v. Executive Secretary*, G.R. No. 151445, April 11, 2002 where the Supreme Court ruled that “(b)oth the history and intent of the Mutual Defense Treaty and the VFA support the conclusion that *combat-related* activities as opposed to *combat* itself such as the one subject of this petition, are indeed authorized.”

²¹⁰ See TSN, Hearing of the Senate Committee on Public Order and Dangerous Drugs, February 23, 2015, p. 97

conducted by JSOTF-P contracted helicopters, there is nothing in our Philippine Constitution or the Revised Penal Code that prohibits Americans from providing that time-crucial humanitarian assistance immediately after a law enforcement operation. Surely, it would be the height of inhumanity if we deny MEDEVAC/CASEVAC to the SAF commandos on the purely academic and wrong notion that these American helicopters *might* violate the Constitution merely by taking off from and landing in Philippine soil.

There were procedural and chain of custody lapses on the part of the SAF in immediately turning over Marwan's finger to FBI representatives at the General Santos airport. A detailed turn-over receipt as well as a photograph of the specimen should have ideally accompanied the transfer to the FBI. The reason is that the PNP's CIDG or SOCO should have some record on Marwan's finger. After all, Marwan's hut is a Philippine crime scene and the warrant of arrest that was the legal basis of Oplan EXODUS was issued by a Philippine court. While well-meaning, in view of the possibility that the finger might decompose ahead of DNA examination and the fact that the PNP has no DNA database²¹¹ in the first place, the SAF leadership seemed to have short-circuited the PNP leadership chain as well as the policy-making hierarchy of the Executive Department in immediately handing over Marwan's finger to a *foreign* law enforcement agency.²¹² Nevertheless, Napeñas, Train and Espe did not violate any article of the Revised Penal Code in handing over the finger to the FBI.

In sum, every law enforcement operation is eventually judged by its results. As we noted in our first Report, Oplan EXODUS can be seen as either a glass "half empty or half full." But without the FBI's DNA examination, the identity of the person, who fired upon and was neutralized by the 84th Seaborne, would not be settled. Having established Marwan's identity and physical presence in Barangay Pidsandawan, Mamasapano on January 25, 2015 through the FBI's DNA examination is testament to the continued effective partnership between the Philippines and the United States in the fight against international terrorism. The scientific confirmation that it was indeed Marwan who was finally neutralized by the heroic SAF commandos on January 25, 2015 at least puts a consolatory silver lining in

²¹¹ Recall that Marwan is a *Malaysian* citizen and thus, unlikely to have any extant PNP or NBI records

²¹² Whether they should face administrative sanctions for turning over evidence from a Philippine crime scene to a foreign law enforcement agency without higher authority is the PNP's prerogative.

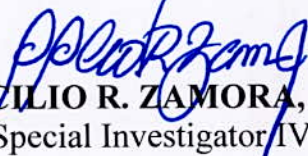
that very dark cloud in Philippine law enforcement history called the Mamasapano incident.

RESPECTFULLY SUBMITTED.

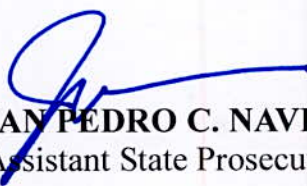
September 30, 2015.



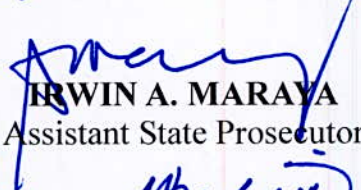
EDWARD A. VILLARTA
Deputy Director, Investigation Services



CECILIO R. ZAMORA, JR.
Special Investigator IV



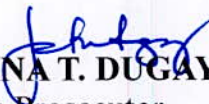
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