

Legal Audit of Cases of Extra-Judicial Killings in the Philippines

(Final Narrative Report)

I. INTRODUCTION

The first and foremost of human rights is the right to life. It has long been accorded universal status, for the existence of all other rights is premised on the preservation of life. The extra-judicial taking of life is the ultimate violation of human rights. It cannot be allowed anywhere, and it has to be resisted everywhere. Extra-judicial killings also constitute brazen assaults on the rule of law. (Chief Justice Reynato S. Puno, "A View From the Mountaintop", delivered on the occasion of the National Consultative Summit on Extra-Judicial Killings and Enforced Disappearances - Searching for Solutions, 16-17 July 2007, Manila Hotel)

Political killings and other forms of human rights violations have once again beleaguered our country, reminiscent of the martial law years during the Marcos regime. The number of people killed, or tortured, or have disappeared has risen to unprecedented height since 2001 up to the present; and although the incidents increase by the day, the conviction of perpetrators remains elusive.

A number of victims' families and human rights organizations have mustered the courage to file criminal complaints to seek justice. However, the pace at which the resolution of these cases has moved is in itself a cause for serious and grave concern. But, even more alarming is the fact that a number of these cases have reached a dead end without being resolved and some have been archived or considered closed or labeled "cold cases" because the perpetrators have not been identified or the accused is/are at large or witnesses have refused to testify out of fear.

In the interest of speedy and efficient administration of justice, on 01 March 2007, the Supreme Court issued Administrative Order No. 25-2007 creating 99 Special Courts nationwide to hear, try and decide cases involving killings of political activists and members of media.

Not to be outdone, on 27 March 2007, in line with the recommendation of the MELO Commission, the Justice Secretary issued Department Order No. 257 designating a number of prosecutors to conduct the inquest/preliminary investigation/reinvestigation of alleged human rights violations and extra-judicial killings and, if evidence warrants, initiate the prosecution before the proper courts.

Alarmed at the seeming impunity with which extra-judicial killings and enforced disappearances were being committed, Chief Justice Reynato S. Puno saw it necessary for the Judiciary to take a more pro-active stance in addressing the issue of political slays. He said: "The fact that killings remain unsolved heightens public distrust in our system of justice".

Citing Article VIII, section 5 (5) of the 1987 Constitution which expanded the judicial rule-making power of the Supreme Court to include, among others, "to enhance the protection and enforcement of constitutional rights", the Chief Justice echoed the Judiciary's intent of fully using this "expanded" power, thereby laying the premise for the holding of the first National Consultative Summit on Extra-Judicial Killings and Enforced Disappearances - Searching for Solutions" on 16-17 July 2007, wherein, as an observer noted, the entire Philippine political spectrum was represented. The Summit was later dubbed "A Conspiracy of Hope".

In order to strengthen the rule of law, Chief Justice Puno broached the idea of re-examining Philippine legal procedures to make these more *helpful* to the victims, more *forceful* against the suspected perpetrators, more *demanding* of government agencies to solve such cases, and at the same time streamlining these procedures and remedies. He also proposed a study on the sociology of violence and the seeming reluctance of victims to resort to legal remedies.

The debate goes on. In the meantime, the phenomenon of "extra-judicial killings" persists and the resolution of the cases has

remained at a snail pace, the following questions are apropos and require immediate answers and solutions: "What are the weaknesses and obstacles to the prompt resolution of these cases? What measures can be undertaken to remedy and/or overcome these challenges? What can be done to make more effective the rule of law and the administration of justice?"

Admittedly, these unexplained killings are anathema to a democratic and civilized State such as ours. The MELO Report succinctly puts it:

In a civilized and democratic society such as ours, one must uphold and observe the rule of law, the principles of justice, and the system and rules of how it is dispensed - from investigation to arrest, to inquest, and to trial. The system may be far from perfect, giving rise to the temptation to take shortcuts. But precisely, shortcuts are in defiance of the system of impartial justice. The rules must be observed at all times.

Quite understandably, the victims' families demand swift justice if only to ease the pain due to the loss of a loved one. But, what about the rights of the accused; should we care for his rights, who did not respect that most basic of rights - the right to life?

In our quest to bring perpetrators to justice, we might lose sight of the basic conditions for a fair trial. For, failure to provide fair trial rights to an accused diminishes not only the credibility of the courts, but also erodes the functioning of the legal system as a whole. As correctly observed by a noted legal practitioner:

Precisely, it is the failure to provide due process, i.e. to seek and obtain remedy through the rule of law, that is, at the very heart of "extra-judicial killings", where a person or group of persons commandeers the legal process, turning himself or themselves into the accuser, prosecutor, judge and executioner. If the rights of an accused are not respected in their entirety and without exception, then we simply feed into the cycle and culture of violence; we become no better than the perpetrators themselves.

The 1987 Philippine Constitution, particularly, the Bill of Rights, protects certain trial rights of an accused, including the right to adequate counsel, the right to remain silent, and the prohibition

of torture, which rights are reinforced and supplemented by the provisions and protections under ordinary laws and case law of criminal procedure and evidence, as well as under international treaties, among others, the Universal Declaration of Human Rights (UDHR), the International Convention of Civil and Political Rights (ICCPR), the Geneva Conventions and the Convention Against Torture (UNCAT). We are enjoined to do no less than to respect and uphold such rights.

According to Supreme Court Associate Justice Adolfo S. Azcuna, our Constitution was enacted so that we can have for ourselves a "just and humane" society. But, as we address an imbalance that threatens our ability to have such society, there is a need to "put the rule of law and the necessary balance" so that we can attain a solution for these extra-judicial killings and enforced disappearances that confront our society." Verily, the need to balance the rule of law, due process, and the right to speedy and fair trial of the accused will have to come into play.

Suffice it to say, therefore, that while we aspire for a speedy resolution of the so-called "extra-judicial killings", the rule of law must be observed and maintained at all times and under any given circumstance and, at the same time, serious decisive efforts should be undertaken to address the bottlenecks and/or flaws in the investigation, prosecution and trial of the said cases. We are mindful of the counsel of the late Supreme Court Justice Jose B.L. Reyes thus:

*No master, but law;
No guide but conscience;
No aim but justice.*

II. PROJECT OBJECTIVES AND METHODOLOGY

On 28 March 2008, the Integrated Bar of the Philippines (IBP), through its National Committee on Legal Aid (IBP-NCLA), in cooperation with The Asia Foundation (TAF) and the support of the Australian Agency in International Development (AusAID), launched the project denominated as **LEGAL AUDIT OF CASES OF EXTRAJUDICIAL KILLINGS IN THE PHILIPPINES** (the "Project").

In general, the Project is aimed to survey, collate, and study cases of "extra-judicial killings" pending before courts and other administrative bodies all over the country, in order to identify weaknesses and obstacles to the effective and prompt resolution of the said cases, and recommend measures to overcome these challenges.

Specifically, the objectives of the Project are:

1. Collate information on the number and nature of cases of "extra-judicial killings" pending with trial courts and administrative bodies nationwide;
2. Determine the status of cases of "extra-judicial killings" and identify causes of delay, if any, in the disposition of these cases;
3. Gather recommendations to correct the failings or flaws, if any, in the prosecutorial and judicial process of resolving cases of "extra-judicial killings";
4. Produce an updated inventory of cases of "extra-judicial killings" that have been prosecuted and resolved, and identify areas (cities, municipalities, provinces or regions) with the most number of cases of "extra-judicial killings as well as courts which are efficient and effective in handling such cases; and
5. Help bring back the people's confidence in the judicial system.

Pursuant thereto, the IBP-NCLA undertook a survey of cases of extra-judicial killings and other human rights violations pending with the Regional Trial Courts, Court of Appeals, Supreme Court, Sandiganbayan, Philippine National Police (PNP) and the Commission on Human Rights (CHR) within the National Capital Region (NCR). The IBP-NCLA also mobilized the Legal Aid Offices constituted in all the 84 IBP Chapters nationwide which visited different trial courts and administrative bodies within their respective areas of jurisdiction and conducted an inventory of EJK cases, and thereafter, submitted reports on the results of the legal audit reflecting information on the following:

1. Parties involved;
2. Summary and nature of the case;
3. Court, body or tribunal where the case was filed;
4. Status of the case/stage of the proceedings;

5. Names of handling lawyers, including prosecutors and government lawyers assigned;
6. Conditions of the parties (e.g. whether accused is at large, on bail, missing or incarcerated, and whether the victim is under witness protection or missing);
7. Relevant comments on the proceedings and handling of the case by the investigators, lawyers, judges and court personnel;
8. Observed and perceived flaws in the proceedings; and
9. Recommendations on how to expedite hearings and hurdle challenges faced in prosecuting EJK cases.

III. LIMITATIONS ON THE LEGAL AUDIT

The legal audit is confined to the cases documented by the IBP-NCLA and its Legal Aid Offices in the various IBP local chapters, and insofar as the cases with the CHR are concerned, it relied on the information provided by the CHR National Office. The incidents/cases included in the legal audit happened between January 2001 and August 2008.

Cases pending with the Office of the Ombudsman are not included in the legal audit due to unavailability of records or information. In some provinces and cities, the legal audit yielded negative results due to non-existence of EJK cases as certified by the courts in their respective areas.

IV. EXTRAJUDICIAL KILLINGS; WHY ARE THEY HAPPENING?

What are the cases considered as "extra-judicial killings" or "EJKs" in the Philippines? In Administrative Order No. 25-2007 which set up special courts to try, hear and decide cases involving killings of political activists and members of the media, the Supreme Court stated that in determining whether a crime is "EJK", the following factors, among others, shall be considered: (1) political affiliation of the victim; (2) method of attack; and (3) reports that state agents are involved in the commission of the crime or have acquiesced in them.

An international non-government organization observed that "extra-judicial killings" in the Philippines show a common pattern: (a) surveillance and threats to victims presumptively by

officers; (b) finding the names of the victims in an "Order of Battle" by military commanders; (c) victims have affiliations with lawful activist or leftist movements and political parties (including labor, journalism, women, peasant, environmental and other sectors); (d) assassination (often in front of families and friends of the victims) by hooded person often driving motorbikes or unlicensed vehicles; (e) scant investigation; and (f) witness intimidation and sometime witness "murder".

The MELO Commission carefully noted that in the killings of political activists and members of the media: (i) the victims were all non-combatants; (ii) they were not killed in armed clashes or engagements with the military; and (iii) they were killed by motorcycle riding hooded killers in assassination manner.

There are other definitions given to "EJK", such as: (a) *a deliberate killing not authorized by a previous judgment pronounced by a duly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples* (Torture Victim Protection Act Definition - US Congress); (b) *death is caused by a law enforcement official without following the legal rules or due judicial process* (Human Rights Solidarity Website - <http://www.hrsolidarity.net/mainfile.php/2005vol15no03/2425>); (c) *killings by government officials without due process of law or killings that result from the deliberate, illegal and excessive use of lethal force by the police, security forces, or other agents of the state whether against criminal suspects, detainees, prisoners or others* (Cingranelli-Richards (CIRI) Human Rights Indicators); and (d) *arbitrary taking of life by the police, military or security force* (56 A.F.L. Rev.109).

For purposes of the legal audit, we have adopted the definition given by the Supreme Court to "extra-judicial killings", as distinguished from other human rights violations, and in identifying the cases that would qualify as EJK cases among the 405 documented cases; the IBP-NCLA took into account the following factors:

- (a) The victims are usually activists and/or media personnel and the alleged perpetrators are agents of the State;
- (b) The victims are most often slain while alone or with small groups, unarmed, and while in their homes or in public places, are gunned down by two or more

masked or hooded assailants riding motorcycles for quick getaways;

- (c) The killings were mostly committed in an ambush, assassination or "professional hit" style, with perpetrators committing their acts quickly, and with impunity.

In fine, the overriding factor that differentiates EJK from the other forms of human rights violations is that *"the perpetrators of the killings are state agents who, without following legal rules or due process but merely relying on their own personal concept of justice, took the law into their own hands and eliminated the so-called 'enemies of the State'".* The MELO Report revealed:

It is said by those who justify these killings that the victims are enemies of the State. Verily, one's attention may be called to the screams in death of the victims of the Communist Party of the Philippines, its armed group the New People's Army ("NPA"), and its front organizations. Surely, ever present is the only too human feeling of wanting to see one's enemies and oppressors bite the dust, so to speak, struck down on the quick based on one's own personal concept of justice or on the military's unilateral assessment that they are the enemies of the State.

Why the "extra-judicial killings"? Sadly, it has been observed that there is an institutional belief among the state agents that "extra-judicial killings" are "OK". Professor Cristina Montiel, Department of Psychology, Ateneo de Manila University, described the social fabric of "extra-judicial killings" and "enforced disappearances" as one where "a dehumanized image of the enemy is produced in the minds of the military through workshops, seminars, and other forms of mental conditioning" and "that there is an authoritarian culture and blind obedience to superior within the military". She elucidated thus:

The non-human enemy is the communist, who is obsessed with killing others and destroying the State, godless, full of greed and cruelty, hard-hearted, and extremely dangerous. S/he pretends to be innocent citizens of civil society, but s/he is really a communist cadre. S/he is almost non-human in his/her moral inferiority, and one can kill him/her without guilt. If

there is a need to torture before killing, then it is okay, in order to save the State. God is on our side.

Representative Teodoro R. Locsin has his own version. He described it in this wise:

Imagine a situation where killings and disappearances are taking place. The victims form a distinct and disliked, though by no means unpopular and in fact highly populist political grouping. The victims are not prominent members of the same groups nor even zealous militants but mere rank and file, fellow travelers so to speak. The crimes show a pattern pointing to security agents as the perpetrators. The authorities are reluctant to investigate. More, the authorities are openly dismissive of the problem. Gratuitously, yet with a knowing air, they deny the crimes are taking place. Yet, contradictorily, they blame the crimes on the victims themselves, adding that in a sense the victims have only themselves to blame for their adherence to a cause detested by the military. "They are begging for it", is heard from their lips. And yet the Constitution that covers both victims and suspects protects the freedom of belief without any distinction; the last distinction having been erased by the repeal of the anti-subversion law.

V. EXTRAJUDICIAL KILLINGS; WHY ACT NOW?

Prosecution and punishment break the cycle of crime and impunity, and failure to do this not only perpetuates human rights violations, but also sends a message of a State's tolerance for the said practices. (Senator Jovito R. Salonga, delivered on the occasion of the National Consultative Summit on Extra-Judicial Killings and Enforced Disappearances, 16-17 July 2007)

Article III, Section 1 of the 1987 Philippine Constitution states: "No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied equal protection of the laws". "Life" has been defined as something more than mere animal existence. The prohibition against its deprivation without due process extends to all the limits and faculties by which life is enjoined. *It is an undisputed fact that the number of EJK and other forms of human rights violations from 2001 to the present has risen to*

unprecedented height, enough to alarm all sectors of society, and the international community.

Article II, Section 5 of the same Philippine Constitution provides that, "The maintenance of peace and order, the protection of life, liberty and property, and the promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy." EJK does not just deprive a person of his right to life but his right to expression as well, as a democratic state of freedom of assembly and expression is inherent in nature; it is the right of every inhabitant of the state, which should not be impeded by any other unlawful means. *With the ballooning number of EJKs for the past recent years, it would seem that the government has effectively failed in its duty of providing welfare and protection of its citizenry.*

The Philippine Constitution guarantees the freedom of speech and of the press, that is, the right to freely utter and publish whatever one pleases without previous restraint, and to be protected against any responsibility for doing so as long as it does not violate the law, or injure someone's character, reputation or business. It likewise guarantees the rights of assembly and to form associations or societies not contrary to law. *With the rising number of EJKs, these rights appear to be trampled upon. The Philippine Government may be considered remiss in its obligations under international human rights law to hold accountable perpetrators of politically motivated killings. Victims' families are effectively denied the justice they deserve as the killers literally get away with murder.*

The Philippines has one of the largest, best organized, and most active communities of non-government organizations (NGOs) within the developing world, representing a broad range of political perspectives. Many left-wing NGOs are especially vocal in their opposition to the Arroyo administration. It is the members of such organizations, particularly the civil society groups viewed by the military as being associated with the Communist Party of the Philippines (CPP) and New People's Army (NPA) who appear to have been targeted in the spate of political killings. These are the people who are identified by the Armed Forces of the Philippines (AFP) as the "enemy of the state" and are most likely to become the victims of EJKs.

The killings of media personnel have likewise been characterized by the lack of a central or homogenous theory for the

killers' motives. Most of the killings have been plausibly attributed to personal vengeance, local politics, or commercial concerns. While the media killings are by no means less abhorrent than the activist killings, the fact is that no central theory accusing agents of the government of the systematic assassination of media personnel has been forwarded, not to mention substantiated. Likewise, the progress or performance of the PNP insofar as media killings are concerned is much better than that pertaining to activist killings. Nonetheless, the increase in the number of slain media men should not go unheeded. The fact is that certain persons or groups have been so bold as to assault and kill media personnel for their own selfish interests. Judges and lawyers have not also been spared.

The PNP as well as the prosecution arm of the government should make sure that the perpetrators of these crimes are brought swiftly to justice and tried in competent civilian courts. Sad to say, the PNP has not made much headway in solving these killings.

The EJKs were carried out, as seen in a great number of cases, by unidentified men riding in motorcycles, wearing helmets or bonnet masks. The attackers rode in tandem in their motorcycles with the back rider getting off to do the shooting. In some cases where the attackers killed their victims on foot, they made their escape using motorcycles or unlicensed vehicles. The efficiency and confident manner with which the attacks were undertaken clearly suggest that the killers are well-trained professionals who knew their business well. Many of the attacks were carried out during daytime and consummated with a limited number of shots hitting their intended target/s.

EJK must be condemned in the strongest possible terms. It cannot be condoned and must be stopped at once by prosecuting and punishing the perpetrators of such dastardly acts with certainty and resoluteness. According to Senator Salonga:

Prosecution and punishment serve the function of deterrence. But to be an effective deterrent, prosecution and punishment must be certain, speedy and severe.

And, in the words of Senator Francis "Kiko" Pangilinan:

Ensuring the swift disposition of cases would strike fear in the hearts of the would-be criminals that in fact cases are resolved and the guilty punished.

VI. JUDICIAL REMEDY/PROCEDURE

As explained by Court of Appeals Associate Justice Lucas P. Bersamin, the appropriate judicial remedy for EJK is the criminal prosecution of the offending state agents for either murder or homicide. The prosecution starts by the filing of the criminal information in the *proper* trial court. Emphasis is on the word "proper", for the forum may be either the Regional Trial Court of the province or city where the killing was perpetrated, or the Family Court of the province or city where the killing was perpetrated, should a child be also involved as a victim. The Sandiganbayan may also be the proper court should the killing be alleged to be committed by a state agent *in relation to the discharge of his office* and such state agent is an Army or Air Force colonel or Navy Captain, or an officer of the Armed Forces of higher rank, or is a police officer occupying the position of provincial director or holding the rank of senior superintendent or higher, or is a regional director or higher, whose position is classified as grade 27 or higher under the *Compensation and Position Classification Act of 1989 (RA 6758)*.

The filing of the criminal information for murder or homicide happens only after an inquest or a preliminary investigation conducted by the public prosecutors concerned. Thereafter, the cases undergo arraignment and trial of the accused in which the State presents evidence and the accused is given the opportunity to adduce his evidence before judgment.

Under Administrative Order No. 25-2007, EJK cases are to be given priority in the trial calendars of the Special Courts and shall undergo continuous trial (to be terminated within 60 days from the commencement of the hearing) and determined within 30 days from the time the cases are submitted for decision. To expedite the proceedings, no postponement or continuance shall be allowed except for clearly meritorious cases. The Special Courts may also treat as direct contempt of court such pleadings and motions found to have been filed for dilatory purposes.

To be emphasized is that the courts have no authority to initiate proceedings against persons without specific cases being first commenced. Thus, the occasion to hear and determine EJK cases does not arise until and unless the jurisdiction of the courts

under the Constitution and some specific law or laws is invoked through written complaint or petition. Once the complaint or petition is filed in the proper courts, the process to hear, try and determine the case begins and the courts are then empowered to do everything within legal bounds - from receiving the competent evidence proving the killings, to rendering the appropriate dispositions, either convicting the persons guilty of committing the killings, or acquitting them if their guilt has not been established by proof beyond reasonable doubt.

Further, the courts trying the EJK cases exclusively rely on admissible evidence to be presented before them. Hence, the need for competent witnesses and other evidence to persuade the trial judges about the commission of the crimes by the persons duly charged therewith. Only the probable truth of the occurrence has to be established beyond reasonable doubt.

VII. THE AUDIT FINDINGS

A. The Documented Cases

A total of 405 cases had been documented in the NCR and in the 14 Regions nationwide. (See Tables 1 and 2)

Table 1: On a Per Region Basis

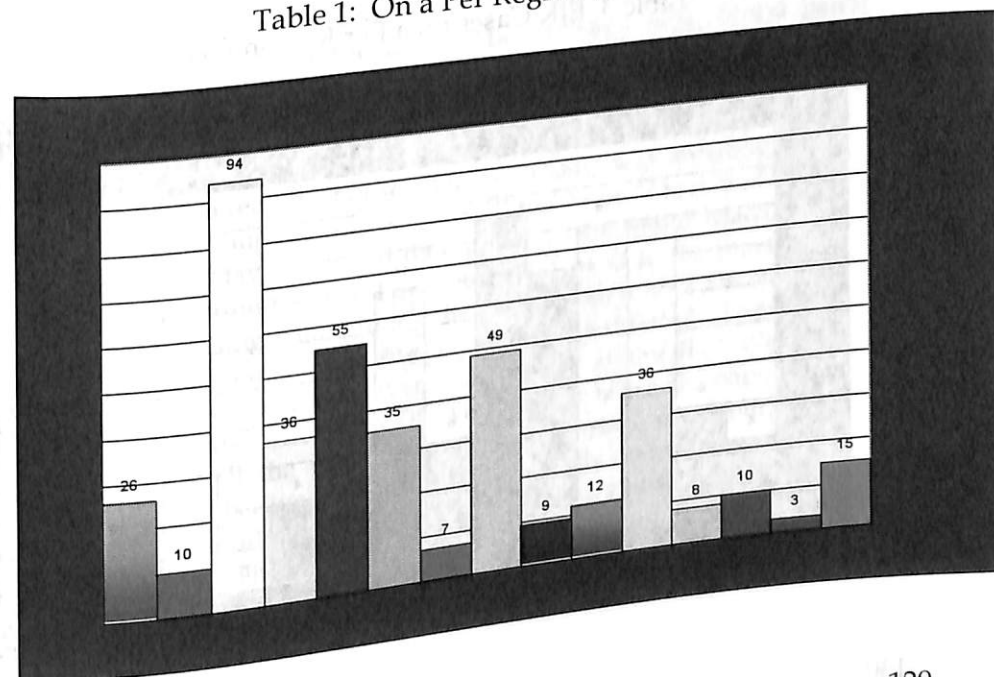
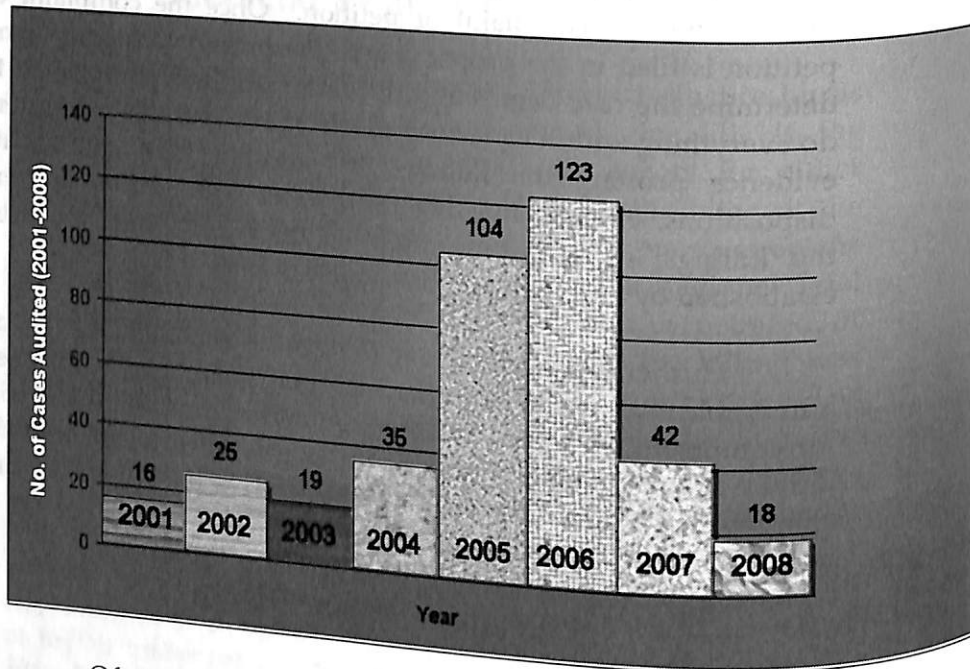


Table 2: On Year of Occurrence



Of the 405 documented cases, only 121 qualified as EJK, (see Tables 3 and 4) and the rest are considered as other human rights violations or "OHRVs" which include summary executions, killings perpetrated by hired killers and those allegedly perpetrated by the leftists through its "purging activities".

Table 3: EJK Cases on a Per Region Basis

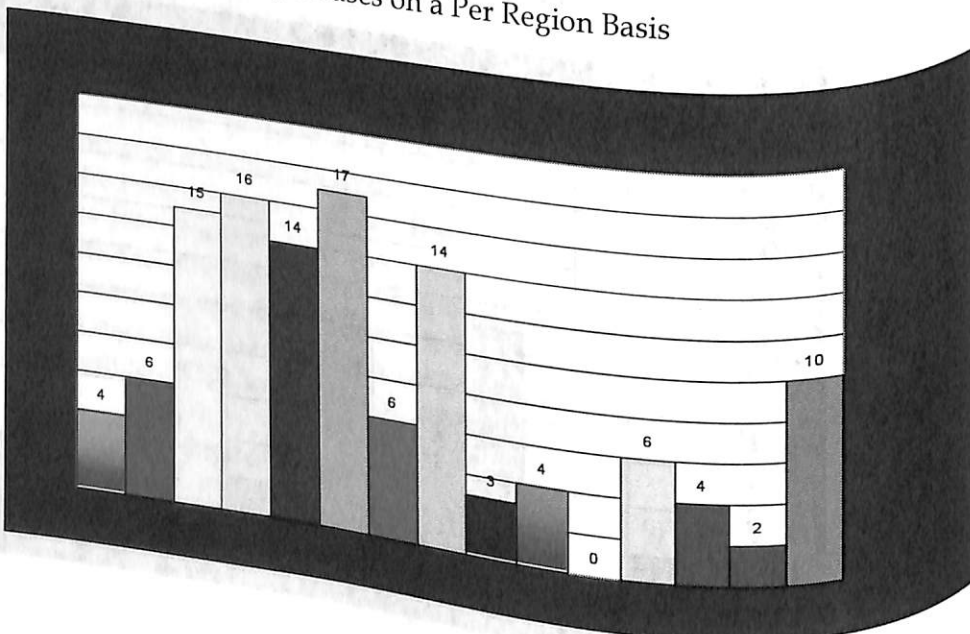
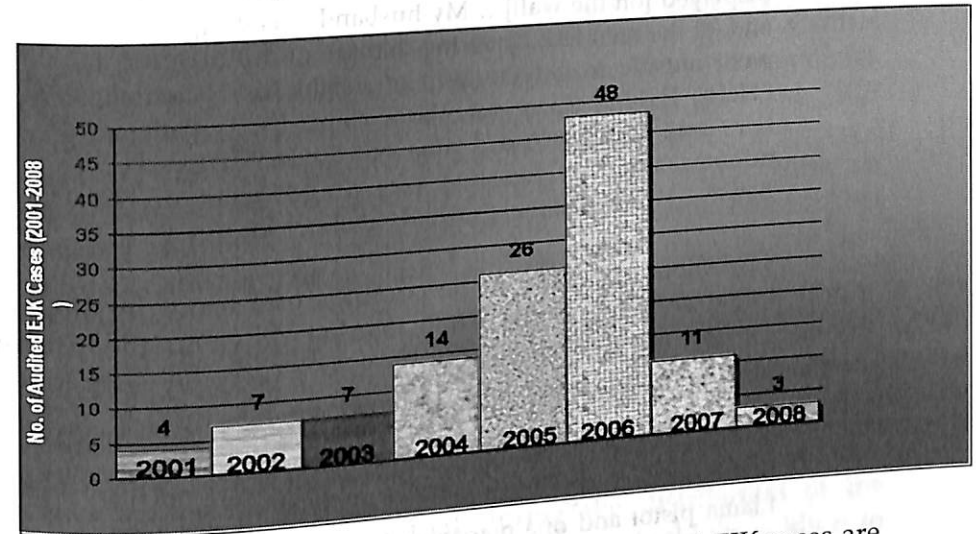


Table 4: EJK Cases Based on Year of Occurrence



A narrative of some of the more sensational EJK cases are as follows:

Case 1: Pastor Isias De Leon Santa Rosa (Bicol)

The killing of Pastor Isias de Leon Santa Rosa in Bicol on 03 August 2006, provides clear physical evidence of involvement by military personnel. Just before 8:00 in the evening that day, there was a knock on the door. The victim's wife, Sonia Santa Rosa, recounted what happened.

Immediately when I opened the door, about ten armed men entered the house. [One of them] was shouting, commanding the others "Enter!" and to us "Lie down!" All of us lay down and they pointed guns at our heads. After 5 minutes they brought my husband to the room of my younger daughter. They asked him if he is Elmer. My husband did not answer. Then he answered, "I am not Elmer. You can even verify, look at my ID." We don't know who Elmer is. We've never heard the name before. All the time I was just comforting our [four] children, because the children were really crying. One of the men said: "Just follow our orders and you will not be harmed." They searched the living room and the other rooms. They took with them the laptop, the printer, and a bag of personal belongings of my husband, including

some cash and cell phones, and a samurai knife that was displayed [on the wall]... My husband was dragged out and all the men left. Knowing that the group had fled, I went outside to get the help of neighbors. I shouted, "Help! Help!" Many neighbors came here, gathered here, and then we heard nine gunshots. [That was] 5 minutes after my husband was dragged out of the house... [We heard the] gunshots at about 8 p.m.

The shots appeared to be coming from a nearby stream. Local police arriving at the ditch leading down to the stream found not one, but two, bodies. Santa Rosa's body lay face down, and about five meters away lay another body, face up.

According to the police report, the second body was that of a male, wearing a balaclava over his face. A .45 caliber Llama pistol and one magazine loaded with six bullets were found beside the body. Local police also discovered a brown wallet on the body containing an AFP identification card in the name of Corporal Lordger Pastrana. Also found on Pastrana's body was a mission order marked "SECRET" from the 9th Military Intelligence Battalion for Pfc. Lordger Pastrana, authorizing him to carry a .45 caliber Llama pistol from July 1, 2006, until September 30, 2006.

Forensic testing by the police of the firearm confirmed that one of the cartridge cases found at the scene of the shooting matched the pistol authorized by the AFP to Pastrana and found in his possession. However, another two slugs submitted for examination, including one found in Santa Rosa's body, did not match the firearm. The official autopsy indicates that Pastrana was shot from the side, with the bullet passing from his left armpit and out through his right shoulder. Together, this evidence suggests—but is not conclusive—that Pastrana may have been shot by accident by another member of his team while either he or another team member attempted to execute Pastor Santa Rosa.

Sonia was uncertain why her husband was killed. According to Sonia, "My husband was a writer. He wasn't outspoken. He wrote anti-mining brochures, against the Lafayette mining at Rapu-Rapu... [and] on [agrarian reform] issues."

Case 2: Ricardo Ramos (Tarlac)

Ricardo "Ric" Ramos was the President of the Central Azucarrera de Tarlac Labor Union and also a local village official. In September 2005 he received a funeral wreath that said: "RIP Ricardo Ramos." According to Ramos' brother, there had been a list of communist sympathizers circulated with Ramos' name on it, along with a local village official and labor leader named Abel Ladera, who was shot and killed in March 2005.

In the morning of 25 October 2005, the Department of Labor and Employment visited the hacienda where Ramos worked. They came to oversee the distribution of wages to the 700 or so union workers covered by an agreement that had just been struck during a strike in which Ramos had been involved. One eyewitness told us: "I noticed during the distribution of the money that the army was around. Ric [Ramos] told the soldiers to go away."

Two soldiers, whom the witnesses saw among these military personnel, went to see Ramos later in the afternoon. He was resting in a traditional thatch hut used as a meeting hall by the union and village leaders. Told that Ramos was sleeping, the two soldiers returned between 7:00 and 8:00 o'clock in the evening when Ramos was talking to other people, and they were again turned away and told to come back later. Around 9:00 o'clock that evening, a group of around 20 men were seated at a table in the hut, drinking and talking. Ramos was seated facing a wall and looking down sending a text message on his cell phone. Witnesses told that they heard two shots and saw Ramos shot in the head. "His brains splattered against the roof... with a wet sound."

The victim's brother was told that the police found two shells from an M14 rifle. The M14 is a Philippine army issued weapon, often used as a sniper rifle.

At the time of the killing, the army had a small detachment about 50 meters from where the shooting occurred. Yet it was security guards from the hacienda who were the first to respond. According to witnesses, the detachment was then removed. "That night after the killing, an [armored personnel carrier] arrived, with a large truck and a helicopter to take the soldiers away."

The eyewitnesses were told that an arrest order had apparently been issued for the two soldiers accused of killing Ramos. However, charges against one of the accused, a private, were later dropped, and according to the victim's brother, the remaining suspect, a sergeant with the 7th Infantry Battalion, remains free and apparently still on active service.

Case 3: Marlyn G. Esperat (Tacurong, Sultan Kudarat)

A former employee of the Department of Agriculture, later turned journalist, denounced two officers of the Department of Agriculture in Central Mindanao regarding their participation in the fertilizer scam. She was killed on 07 April 2005 (Holy Thursday). The killers were arrested. On 08 April 2005, the complaint was filed in the Prosecutor's Office. On 12 April 2005, the information was filed. The three gunmen pleaded guilty on 04 July 2005 and pointed an Army Sergeant as the one who hired them. The Army Sergeant later confessed and pointed to the DA officials as the masterminds. Despite the confession, the Prosecutor has stricken off the names of the two DA officials. The Department of Justice reopened the case on 08 October 2007. On Certiorari to the Court of Appeals, the CA sustained the reopening of the case in October 2008. The Regional Trial Court of Tacurong, Sultan Kudarat issued warrants of arrest. The two officials remain at large.

The alleged delay was caused by the exhaustion of legal remedies pursued by the two DA officials by filing a Petition for Certiorari in the Court of Appeals.

Case 4: George Vigo and Maricel Vigo (Kidapawan, North Cotabato)

The Vigo couple worked in Kidapawan, North Cotabato for a small NGO called the People's Kautayan Foundation. George Vigo has a local radio program, which dealt with agrarian reform issues. The Vigos were also political supporters of a local congresswoman and another woman who was running for mayor against an entrenched local politician. The couple was on board their motorcycle when they were gunned down by four assailants riding in their motorcycles on 19 June 2006.

Based on the account of witnesses, the driver of the motorcycle was wearing a safety helmet and black jacket while his back rider who shot to death the couple was wearing white t-shirt with face towel covering his head and face. The witnesses could not identify them.

During the wake, then PNP Chief Lomibao assured the relatives of the victims that the death of the couple would be given justice. The next day, the PNP created "Task Force Vigo" and pinpointed a man after three days.

The basis by which the suspects in the case were identified is also of concern. The one named accused in the case was identified from a cartographic sketch produced by one individual who did not actually see the shooting take place, but who saw a "suspicious looking person" among the crowd of policemen and onlookers following the shooting.

Case 5: Noel Capulong (Calamba, Laguna)

On 27 May 2006, in Calamba City, the victim was shot four times while he was in his jeep in front of his residence by an assailant clad in white shirt, short pants and rubber sandals. The assailant wore a green bonnet, his face uncovered. After shooting the victim, the assailant hurriedly fled on board a motorcycle that was driven by another person. A cartographic sketch of the assailant was drawn based on the details provided by the eyewitness.

The accused denied the accusation against him. He averred that he was at the chapel at Iglesia ni Cristo in Cabuyao, Laguna on that date from 5:00 o'clock in the afternoon to 7:30 o'clock in the evening and that he never left the chapel during those hours. His statement was corroborated by fellow church members. Orders were issued by the prosecutor for the witness to appear for a clarificatory hearing but the latter failed to attend.

The case was dismissed as the identification of the accused was faulty, unreliable at the very least. The facial features of the accused and the assailant described by the witness were different. The witness described the assailant as chubby, round faced and round eyed. The accused was chinky-eyed and had an elongated face.

Case 6: Bernabe Barbosa Burra, Jr. (Palo, Leyte)

On 21 November 2005 at 5:00 o'clock in the morning, the victims were still asleep and others were busy preparing breakfast, when without warning, they were sprayed first by M-16 armalite rifles followed by six to nine explosions coming from an M203 grenade launcher from the elements of the 19th Infantry Battalion of the Philippine Army (IB PA) under the command of a certain Lt. Benedicto.

According to the survivors and witnesses, the strafing and bombing continued despite the shouts of the peasants that "Mag-uuma la kami (we are just farmers)" and "tama na (enough, please)" and even after Brgy. Captain Renato Dizon approached the soldiers and begged them to stop shooting. Instead the soldiers rebuked him and ordered him to leave the place.

When the smoke cleared on the *kamalig* (makeshift hut) where the peasants were gathered, after the rain of bullets fired from the soldiers, 11 were left wounded and brought to Eastern Visayas Medical Center (EVRMC), eight were beaten before they were taken to the Philippine National Police Station of Palo, Leyte and detained, and five died right there on the rice plains.

Later, two wounded women died while being treated at the hospital. They were identified as Alma Bartoline who was seven months pregnant and the elderly Eufemia Burra, 51 years old.

Some of the victims were members of Bayan Muna and San Agustin Farmer Beneficiaries Cooperative.

On 22 November 2005, a complaint was filed against the hapless peasants for Illegal Possession of Firearms and Ammunition under P.D. 1866 as amended by R.A. No. 8294. The information was filed on 16 December 2005 and is pending before the Municipal Trial Court of Palo Leyte.

As per resolution of the Commission on Human Rights dated 06 March 2006, pertinent documents were already transmitted to the Deputy Ombudsman for the Military and other Law Enforcement offices recommending the filing of appropriate

criminal and administrative cases against the military respondents.

Case 7: Basit A. Abubakar (Zamboanga Sibugay)

On 03 March 2003 at 6:00 o'clock in the morning, according to the victim's father and the witnesses, victim Basit O. Abubakar was forcibly taken by 1Lt. Bhen Sabbaha and some military men. At 10:00 o'clock in the morning of the same day, the victim's father was informed that a dead body was found and recovered by the police along the highway of R.T. Lim, Zamboanga Sibugay. When he went to verify, complainant saw that it was the dead body of his son whose wrists were handcuffed. In the Certificate of Death of the victim, it was declared that he died of drowning.

A complaint was filed against the respondents. In their counter-affidavit, respondents alleged that the victim is a suspect of an ambush incident which killed five military soldiers last 25 February 2003. He was collared on 03 March 2003, was brought to the Provincial PNP at Ipil, Zamboanga Sibugay for disposition using a sea route on board a pump boat for several considerations. They handcuffed the victim for security reason, but the victim fell into the sea, which resulted to his death by drowning.

However, in the Post Mortem Examination performed by NBI Medico Legal Officer after the deceased was exhumed, they found traumatic injuries suffered by the victim, which caused his death. These findings prompted the CHR to file the criminal complaint against the accused.

On 21 November 2003, a resolution was issued and on 10 February 2004, information was filed in court and a Warrant of Arrest was issued on 20 February 2004.

On 17 January 2006, the accused was arraigned. The trial is on going before the Regional Trial Court, Branch 24, Ipil, Zamboanga Sibugay.

**Case 8: Ricardo Valmocina and Roel Joseph Valmocina
(San Ildefonso, Bulacan)**

At about 9:00 o'clock in the evening of 01 February 2006, about 15 to 20 armed men, all wearing bonnets and carrying high caliber weapons, forcibly entered the house of Ricardo Valmocina at Brgy. Pinaod, San Ildefonso, Bulacan and there killed Ricardo, his son Roel Joseph Valmocina, poultry farm workers Melchor Cardinal, Michael Milanay and Manuel Avila, Jr. and abducted Reynante Valmocina, another son of Ricardo Valmocina, and Robin Solano. The military was pointed as the perpetrator of the gruesome carnage.

Ricardo's sister, Consorcia Valmocina-Tamayo, and his common-law wife, Amelita Gonzales, were interviewed and gave the following account:

About two weeks after the burial of Ricardo and his son, Major General Palparan went to Brgy. Pinaod and held a "pulong-pulong" wherein he allegedly told his audience that the Valmocina incident should serve as an example to those who supported the NPA "at kailangan may magsakripisyo.

After that meeting, Consorcia talked to Gen. Palparan and informed the latter about her missing nephew and house-help. Gen. Palparan allegedly promised to send somebody to her place to discuss her problem.

It was M/Sgt. Rizaldie Hilario a.k.a. M/Sgt. Rollie Castillo, who, together with some soldiers, went to visit the Tamayo compound. That was the first time that Consorcia saw M/Sgt. Castillo. M/Sgt. Castillo allegedly told her that Robin Solano was already dead. However, Castillo did not mention anything about Reynante Valmocina. Also, instead of talking about how to find her nephew, Castillo kept on asking about the guns they allegedly hid inside the house. Castillo and his men even went to look for the guns in all the rooms in the house but found nothing.

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Consorcia Tamayo admitted that her nephews Ogie Valmocina Lorenzana and his brother Emon are NPA commanders and had at one point worked in her poultry farm. She also said that there were rumors that it was Ogie's group that attacked the army detachment at the former Brgy. Pinaod barangay hall. She further averred that because of poverty, Ogie and Emon joined the NPA: "Mula ng sila ay namundok, guminhawa ang buhay nila, nakapagbibigay ng pera sa Nanay nila."

Consolacion also told the probers that at the time of the killing of Ricardo and his son, a neighbor reported to an army soldier of the gunfire shots inside the Tamayo compound, but the soldier replied, "Wala iyon, putok lang ng rebintador iyon, wag mo ng pansinin."

Based on the analysis of the CHR, it was established that the killing of Ricardo and his son and some others, and the abduction of Reynante and Robin, were violations of human rights. The brutal and gruesome killing undoubtedly showed that the killing was premeditated and well planned. However, due to the lack of witnesses that can directly identify the perpetrators of the crime, several theories were advanced: (1) robbery; (2) perpetrators were NPA; (3) personal grudge, and (4) perpetrators were the military.

After further evaluation, the CHR excluded the first 3 theories and rendered the following findings: "While at this point, no direct evidence, testimonial or documentary, pointed to the military as the perpetrators, pieces of circumstantial evidence gathered tend to show otherwise. The sequence of events prior to and even immediately after the incident, clearly points to the military as the probable persons behind the said crime. Even Task Force Valmocina of the Bulacan PNP while not directly pointing to the military as the perpetrators, insinuated the possible involvement of the military when they did not categorically ruled out military involvement in the incident."

The CHR further stated: "These probers firmly believed that if the pieces of circumstantial evidence gathered are thoroughly pursued and if close coordination and exchange of information can be made between this Office (CHR) and that of the PNP's Task Force Valmoncina and Task Force Usig, the

unmasking of the real perpetrators of this horrible crime will be done and justice to the victims and their relatives will be served."

B. Parties Involved in EJK Cases

The profiles of the victims and perpetrators involved in the 121 EJK cases are as follows:

Table 5: Profile of Victims

PROFILE OF THE VICTIMS	TOTAL NUMBER
Activists/Sympathizers	59
Media Practitioners	21
Others	41
TOTAL	121

Table 6: Profile of the Perpetrators

PROFILE OF THE PERPETRATORS	TOTAL NUMBER
Unidentified Armed Men	29
Military/CAFGU	41
PNP	30
Others	21
TOTAL	121

C. Status of EJK Cases

Of the 121 EJK documented cases, 38 have been filed with the courts and the remaining 83 have not even reached the courts for various reasons as shown hereunder.

VIII. BOTTLENECKS AND WHY THESE MATTER

There are various stages involved in the disposition of EJK cases: namely: (a) the investigation, identification and apprehension of suspected perpetrators; (b) filing of the complaint; (c) preliminary investigation to determine existence of probable cause against the alleged perpetrators; (d) filing of the appropriate information; and (d) trial on the merits resulting in either the conviction or acquittal of the accused.

We cannot over-emphasize the need for an immediate, thorough and impartial investigation of EJK incidents and the collection and preservation of whatever evidence might be found at the scene of the crime and eye witnesses, if any, as these pieces of evidence would have a direct and critical bearing on the effective and efficient prosecution of the said cases before the trial and/or appellate courts. As the cliché goes, "Haste makes waste"; it is not so much the speed by which the complaints are commenced but that the said complaints are based on truthful and accurate statement of facts that are supported by admissible evidence in court. Adjunct thereto, is the safety and security of witnesses to ensure that they can be presented to testify in court.

Hereunder are the identified flaws or weaknesses in the process of the investigation that resulted in the eventual dismissal of the cases or the sending thereof to archive or considering the same "closed", as well as the causes for the delays in the prosecution of the said cases, to wit:

A. No Case Filed in Court Due to Non-Identification of Perpetrator/s

The identities of the perpetrators or assailants (38 cases) have not been established or determined. The killers were described as "armed" men and believed to be members of the military or CAFGU. On the other hand, the victims were members or known sympathizers of left-leaning groups and media practitioners. *No cases have been filed and the killers go scot-free.*

B. Prosecution of Cases Could Not Proceed Due to Non-Apprehension of Accused

In at least four cases, although the identities of the perpetrators had been identified and cases have been filed in court, they were not apprehended and have remained at large; hence, *trial of the cases could not proceed.*

C. Dismissal of Cases Due to Insufficiency of Evidence; Lack of Merit

Ten cases were *dismissed* due to insufficiency of evidence or lack of merit, which could be attributed to the sloppy investigation conducted by the police authorities. In one case (Hurjae Amaneo-victim), however, the case was dismissed due to the death of the accused (PO1 Wilson Porcalla).

D. Delays in the Investigation of Cases

Twenty-six cases are still undergoing investigation by appropriate authorities. The delays are caused by failure to positively identify the suspected perpetrators or due to the non-cooperation of victims' families and witnesses.

E. Cases Archived or Closed Due to Refusal of Victims' Families to Cooperate in the Investigation

Fifteen cases have either been *archived or closed* due to alleged refusal of victims' families to cooperate in the investigation due to perceived bias of the investigators.

F. Delays in the Trial of Cases

Twenty-eight cases are on-going trial before the Regional Trial Courts in the provinces or cities nationwide, including one on appeal with the Court of Appeals. Delays were due to non-availability of witnesses, the Judges or the Public Prosecutors or handling lawyers. In some instances, the delays were due to the filing of numerous motions and pleadings by lawyers of the accused.

G. Sloppy Police Investigation; Too Much Reliance on Eyewitness Account

The fundamental principles of any viable investigation are competence, thoroughness, promptness and impartiality of the investigation. The broad purpose of an inquiry is to discover the truth about the events leading to the suspicious death of a victim. The investigation shall, at a minimum, seek to:

1. Identify the victim;
2. Recover and preserve evidentiary material related to the killing to aid in any potential prosecution of those responsible;
3. Identify possible witnesses and obtain statements from them concerning the killing;
4. Determine the cause, manner, location and time of the killing of the victim/s, as well as any pattern or practice that may have brought about such killing;
5. Identify and apprehend the person/s involved in the killing; and
6. Bring the suspected perpetrator/s before a competent court established by law.

One of the most important aspects of a thorough and impartial investigation of an EJK or arbitrary and summary execution is the *collection and analysis of evidence*. It is essential to recover and preserve evidence, and to interview potential witnesses so that the circumstances surrounding the killings can be established or clarified. The crime of the scene should be properly processed, among other:

1. The area around the body should be closed off;
2. Color photographs of the victim should be taken as these, in comparison to black and white photographs, may reveal in more detail the nature and circumstances of the killing of the victim/s;
3. A record should be made of the body position and condition of the clothing;
4. Factors to determine the estimated time of the death of the victim/s must be observed such as, temperature of the body, location and degree of fixation of lividity, rigidity and stage of decomposition of the body/ies of the victim/s;

5. Collection of preservation of blood, hair, fibers and threads at the crime scene;
6. A record of vehicles found in the area;
7. Casting and preservation of pry marks, tire or shoe impressions or any other impressions of evidentiary nature;
8. Fingerprints should be located, developed, lifted and preserved;
9. A record of the identity of all persons at the crime scene;
10. Information should be obtained from scene witnesses, including those who last saw the victim/s alive, when, where and under what circumstances; and
11. Any other relevant papers, records or documents should be saved for evidentiary use and for handwriting analysis.

In this jurisdiction, there is a great tendency on the part of the investigators, especially the police, to rely too much on accounts of eyewitnesses and not to pursue other leads for the identification and/or eventual apprehension of the perpetrators. There is credence to the report of Philip Alston.

There are a few strong forensic facilities in the country. And even more disappointing is the extent to which the police do not go further to apply forensic mechanisms which might actually yield those significant information relating to the killers. Instead of doing serious forensic tests and investigations, they rely on witnesses. They need to find someone who saw it and when that person is called to defend that person that was killed, witness disappears. That in fact is very convenient for the conclusion of the police.

H. Lack/Insufficient Witness Protection

More significant is the refusal and unwillingness of witnesses to testify for fear that they will become the next victims. There is reluctance on the part of the families of the victims and witnesses to cooperate in the conduct of investigation for fear of reprisal by the perpetrators. After all, these families note, the perpetrators are armed and have so far proven their ability to act with impunity. The refusal or unwillingness of witnesses to cooperate is due to the perceived bias of the police and is also a

factor that leads to the non-disclosure of the identity of the assailants or the non-reporting of the case at all. Witnesses and victims' families are being scared silent. A number of family members and witnesses have taken their protection into their own hands, and have fled their homes to live or hide either in big cities or in the sanctuary of churches. They try to safeguard their own lives by staying silent on what they knew and what they saw. They are also aware that the military is involved in these illegal liquidations and they do not want to risk their lives. The refusal of a witness can also be attributed to the culture of the Filipinos, that is, when you have nothing to gain in a situation it is better not to say something about it. Again, Mr. Alston stated:

The vital flow which undermines the utility of the judicial system is the problem of witness vulnerability. The present message is that if you want to preserve your life expectancy, don't act as a witness in a criminal prosecution for the killing. Witnesses are systematically intimidated on community and very limited real geographical mobility, witnesses are uniquely vulnerable when the forces accused of killings are all too often those, or are linked to those, who are charged with ensuring their security.

I. Ineffective Prosecution

From a procedural point of view, ineffectiveness in the prosecution of EJKs can be traced to various factors:

1. Lack of forensic capability and technology on the part of the police agencies and heavy reliance on eyewitnesses;
2. Lack of an effective witness protection program, specifically due to lack of financial and emotional support for families of victims who come from poor communities;
3. Refusal or unwillingness of witnesses to cooperate due to what they consider as lack of impartiality of the police or lack of financial resources to sustain the cost and expenses of attending investigations and hearings;
4. Intimidation and threats against the victims' families and witnesses;

5. Offers of financial compensation and other inducements, such as jobs to the victims' families, leading to amicable settlements; and
6. Long delay in the resolution of petitions for change venues and other motions and pleadings filed by lawyers of the suspected perpetrators.

The usual problem encountered in the prosecution of an EJK case is the absence of witnesses. In some instances, the cases were dismissed due to technicality attributable to the improper collection of evidence or defective or insufficient information. There is also the problem of efficient coordination between the prosecutors handling the cases and the victims' families and witnesses.

The refusal or non-cooperation of victims' families and/or witnesses mirrors the very real and grave distrust they have on the system. There is a pervasive feeling of exasperation and despair, to the point of indifference and apathy, and worse, fatalistic surrender and glum, that permeate and envelop their hearts and minds that "nothing will come out of their cases anyway". Remarks like: "*Bahala na ang Diyos sa kanila*"; or "*Mahirap lang kami, wala kaming laban*"; or "*Paano na kami? Sino ba ang aming kakampi?*" or words to that effect, are heard from them. There is so much pain and sorrow in their hearts and souls that have slowly eaten up or consumed whatever glimmer of hope that still remains in them as a human being. The wails of anguish of a wife or a mother over the loss of a husband or a son or daughter are truly heart rending and deafening.

IX. EVALUATION AND RECOMMENDATIONS

There is a pattern in the manner of killings: the victims were generally unarmed, alone, or in small groups, and were gunned down by two or more masked or hooded assailants, oftentimes riding motorcycles. The assailants usually surprised the victims in public places or their homes, and made quick getaways. It is undisputed that the killings subject of the investigation did not occur during military engagements or firefights. These were assassination or ambush type killings, professional hits carried out quickly and with

assailants escaping with impunity. Circumstances show that killings of activists and media personnel is pursuant to an orchestrated plan by a group or sector with an interest in eliminating the victims, invariably activists and media personnel. There is enough circumstantial evidence to show involvement of some military elements in the killings. Xxx (MELO Report [2006])

A. State Policy and Direction

We cannot over-emphasize the grave responsibility of the State to protect the right to life of all its citizens, regardless of political beliefs or background- it is the very essence of the existence of a State and its Government - "*a government of the people, by the people and for the people.*" However, when killings are perpetrated by agents of the State against individuals labeled as "enemies of the State", without the benefit of due process, such acts are an abomination of the very existence of the State itself. Hence, it must be condemned and stopped at all cost.

The MELO Report disclosed: "It is also clear that the rise and the killings of such activists whom the militant brands as "enemies of the state" was to such an extent that they could not possibly be ascribed or attributed to a simple rise in the crime rate." It went further: "It is of note that the military in general called the victims as "enemies of the State" who deserve to be neutralized, according to the testimony given to us. Although there is no concrete evidence linking the military in the course of our investigations, some revealing statements were made or acknowledged or confirmed." And, according to the MELO Report: "These statements were made by a certain gentleman General Palparan to the media, TV interviews, foreign newsmen, etc. and if I may quote, concerning party-list, he said, "A lot of the members are actually involved in the atrocities and crimes. Referring to certain activist groups, he said even though they are in government as party-list representatives, no matter what appearance they take, they still as the enemies of the State."

The results of the IBP-NCLA legal audit disclose that in the 71 documented EJK cases (out of 121 or almost 59%), the alleged perpetrators had been identified as members of the police,

military or CAFGU, and the victims (80) were activists/sympathizers and media practitioners. *Res ipsa loquitur*. The numbers speak for themselves.

In line therewith, the IBP-NCLA proposes that the Government, particularly, the Executive Branch, should issue a categorical statement that it **DOES NOT AND WILL NOT CONDONE OR TOLERATE** "extra-judicial killings" and that state agents and/or their cohorts who may be found to have committed such killings **WILL BE PROSECUTED AND PUNISHED** to the extent allowed by law. The military, police and other security forces must be made to understand that the Government will not condone the commission of crimes under any circumstances, and that the government will hold accountable the official who ordered or tolerated the commission of such crimes.

There must be drastic paradigm shift as far as the Armed Forces of the Philippines, the Philippine National Police and other security forces are concerned, adopting the slogan: "**ZERO EJK**". They must be able to demonstrate that they are truly befitting of their role as the "protectors of the people" as now enshrined in the 1987 Philippine Constitution.

B. Strict Chain-of Command Responsibility

The doctrine of command responsibility is well established in conventional and customary international law, and imposes criminal liability for superiors in relation to crimes committed by their subordinates under certain circumstances. As such, it must be acknowledged as part of the law of the land. In essence, command responsibility imposes criminal responsibility for a superior's failure to act when under a duty to do so. A superior will incur command responsibility if he/she knows or has reason to know that his/her subordinates are about to commit or have committed crimes, unless the superior prevents the subordinates' crimes, or, if the crimes have already been committed, punishes the perpetrators. Simply put, it is a liability for an omission.

To be sure, though, Congress should enact a law that would clearly define the nature, elements and practical application and procedures of the principle of command responsibility within the context of Philippine setting.

C. Clear-Cut Definition of EJK

At present, killings are categorized as either murder or homicide as defined under the pertinent provisions of the Revised Penal Code, regardless of who the victims are or who the perpetrators are. Administrative Order No. 25-2007 states that in determining whether a crime is "extra-judicial killing" the following factors, among others, shall be considered: (1) political affiliation of the victim; (2) method of attack; and (3) reports that state agents are involved in the commission of the crime or have acquiesced in them.

Supreme Court Associate Justice Ruben T. Reyes and Court of Appeals Associate Justice Mariano del Castillo said: "The name "extra-judicial killing" is a misnomer since every killing, outside of the death penalty, is extra-judicial. When does a case fall under "extra-judicial killings" in order that the special court can assume jurisdiction? Thus, the motive must be determined during investigation. This is relevant in the light of the existence of special courts to handle such cases. A categorical definition would pinpoint who are to be held liable and who are the victims." They went further to raise the issue on killings made by groups like the ABU SAYAF, MILF, or even political opponents. Are the said killings be likewise categorized as "extra-judicial killings"? How then do we distinguish these crimes, especially in determining the jurisdiction of the special courts?

Relative thereto, there may be a need for the expansion of the coverage of EJK cases to include the following: (a) the killing of media personalities, judges and lawyers who are being killed by reason of their profession or work-related; (b) the killings of activists who are critical of the government and the military; (c) killings of labor leaders or farmers who might have been vocal in their pronouncements against capitalists; (d) killings of people by reason of their political ideologies; and (e) killings of vigilante groups or the killings of hardened criminals by people who believe that justice will be served best by killing rather than subjecting these criminals to the judicial process, *provided, that, there is probable cause to engender belief that the perpetrators of the killings are members of the military or police or security forces of the State.*

Needless to state, therefore, that, *in order that a killing can be considered as "extra-judicial killing", the perpetrator/s of the killing are state agents who, without following legal rules or due process but merely relying on their own personal concept of justice or in blind obedience to superior/s, took the law into their own hands and eliminated the so-called "enemies of the State".* As such, killings done by the ABU SAYAF, MILF, NPA or other groups, or even political opponents will not qualify as "extra-judicial killings".

D. Creation of Special Courts

Undoubtedly, EJK cases are extraordinary or *sui generis* in character, in terms of the perpetrators of the killings who are State agents, directly or indirectly, and the political motivation behind the killings which are carried out with impunity against the perceived "enemies of the State", hence, extraordinary legal remedies are required to be put in place.

Considering the extraordinary character of EJK cases, and in order to respond to the dismaying performance of the administrative bodies within the judicial system related to the prosecution of EJK cases and the legal audit observation that showed poor performance of "ordinary" courts, the IBP-NCLA proposes the revisiting of Administrative Order No. 25-2007 creating Special Courts to hear, try and decide EJK cases.

Although the establishment of "special courts" for EJK cases is a laudable move, there is a great deal that remains to be done to further address the persisting problems related to the disposition of the said cases. As already stated, the Administrative Order should be enhanced to clearly define the term "extra-judicial killings", i.e the specification of the special ingredients or elements that makes a murder or homicide qualify as "extra-judicial killing" in order that the designated special courts can assume jurisdiction over the case, and in addition, it must include the parameters or guidelines on: (1) *who* determines whether or not a murder or homicide qualifies as "extra-judicial killing"; and (2) *how* and *when* does jurisdiction vest with the designated special courts.

If it is not too much to suggest, the Supreme Court should order an immediate inventory of all EJK cases pending before the

Regional Trial Courts nationwide and, thereafter, direct the immediate re-assignment thereof to the designated "special courts" subject, however, to the rules on jurisdiction and venue. All pending motions for change of venue should be resolved as soon as possible so as not to further delay the proceedings in the case.

Presiding Judges in the designated special courts should be required to undergo special training or seminar in the handling of EJK cases, including their respective Clerks of Court and other involved court personnel.

Service of subpoena, orders and other court processes has always been a cause of delays even in the trial of other cases. Hence, the inventory of the EJK cases should include the complete names and addresses of all the parties concerned. For the military, police and other security forces, an office or officer should be designated to receive the same and that such receipt shall be deemed proper and complete service. The same office or officer shall have the responsibility of ensuring attendance of the accused in all hearings or court proceedings. No accused military, police or security officer shall be re-assigned until the trial of the case is concluded or terminated. Violations of these rules shall render the officer liable for contempt of court.

In addition, the prescribed periods for the disposition of EJK cases under Administrative Order No. 25-2007 must be strictly observed/applied inasmuch as the long delay in the disposition of cases increases the chances of harassment of the victims' families and the material witnesses to the cases.

All told, there must be a substantial increase in the disposition of EJK cases within a reasonable period of time. It has been said that, "an increase in the rates of criminal conviction in EJK cases will tend to promote genuine respect for the rule of law, while low conviction rates could effectively embolden criminals in perpetuating the killings."

E. Creation of Special Investigative Body

Undoubtedly, in cases where government involvement is suspected, there is a strong perception or belief that no objective and impartial investigation is possible. Hence, the IBP-NCLA

recommends the creation of a "special investigative body" to handle the investigation of "extra-judicial killings", the members of which shall be selected exclusively from nominees from the Church, civil society, lawyers organizations and the like nominated by the Church, civil society, lawyers organizations and the like. The creation of such body entails defining the scope of the investigation, determining the type of proceedings to be followed and selecting procedures governing those proceedings, and authorizing the body to report the results of its findings and its recommendations. The Government must allocate funds for the efficient and effective operations of the body. The IBP-NCLA further recommends that the **Commission on Human Rights (CHR)** be designated as the principal or lead agency of the proposed special independent body.

In order to have continuity in the handling of EJK cases, it is proposed that the designated teams of Special Prosecutors pursuant to DOJ Department Order No. 257, dated 27 March 2007, that had been tasked to conduct the inquest/preliminary investigation of alleged human rights violations and extra-judicial killings, and to initiate prosecution before the proper courts, if evidence warrants, be made automatic members of the special investigative body under the administrative control and supervision of the CHR as the principal and lead agency of the proposed special independent body.

Eventually, the CHR should be given the authority to establish specialized prosecutorial arm consisting of special CHR prosecutors in connection with the handling of EJK cases, commencing from initial investigation to the actual prosecution of the cases. It has to be given more power and independence so that it can be a more effective component of the justice system rather than simply being an investigative body as it is today. Concomitantly, the powers of the special CHR prosecutors may be expanded to include:

- (1) To issue orders for the production of documents and witnesses, as well as the conduct of ocular inspection;
- (2) To allow the filing of criminal complaint for preliminary investigation before the special CHR prosecutors in EJK cases even without the perpetrators being exactly identified, but there must be an

- allegation to the effect that the killing was probably committed by State agents for political motives;
- (3) The preliminary investigation should not be limited to an analysis of the complaints and supporting affidavits vis-à-vis the counter-affidavit/s, but must include the search and acquisition of evidence beyond those stated in the complaints and counter-affidavits;
 - (4) The special CHR prosecutor may authorize and deputize private prosecutors or any human rights organizations accredited by the Supreme Court to conduct investigation, with authority to subpoena witnesses, require the production of documents, and exercise the power of contempt.
 - (5) In EJK cases, the special CHR prosecutors should not dismiss the case for insufficiency of evidence but rather archive them to be re-opened upon motion of the private complainant.

F. Protection of Witnesses

Lack of funding poses the biggest challenge to the effective and efficient implementation of the Witness Protection Program and Security Benefit Program under RA No. 6981. Hence, there is an urgent need to increase the budget for the program to include provisions for economic opportunities for the families of the witness, protection equipment, facilities and personnel.

The present law on witness protection must be amended wherein the witness or applicant for said protection is given the option to whom he or she shall be placed under protection which can be any accredited church group or human rights group or person. Also, the money that have been intended for the witness protection may be released by the court granting the protection, through an order, to the chosen group or person.

Protection of witnesses in EJK cases is better handled by private organizations or groups in view of the general sense of distrust associated with the military, police or other agencies of the State who are perceived to be linked to the very perpetrators of the killings.

The IBP-NCLA recommends the Integrated Bar of the Philippines to be accredited under the Witness Protection and Security Benefit Program for EJK cases.

G. Speedy and Impartial Investigation

In the meantime, investigation of EJK cases must be speedy, impartial, thorough and complete, and in full accordance with international standards. The CHR should be given oversight functions over the investigations of all EJK cases that are currently under investigation and, as such, it shall have the power to take over the investigation, including the authority to inquire into allegations of involvement of high-ranking military and/or police officials. In this regard, the President should order the AFP or PNP or other investigative agencies to cooperate with the investigation conducted by the CHR, Congress, Courts and other domestic and international bodies, with full participation of the victims' families, under the monitoring and technical assistance by the international community, and identify and prosecute persons responsible for the killings.

The AFP or PNP should cooperate with any truth-seeking effort made by the Judicial Branch and other government organs regarding the disclosure of their operational documents as well as whereabouts of the people in their custody. Thorough investigations should be made in order to identify the members or officials reported to be involved in extra-judicial killings. The investigation must be conducted by the CHR or a body or agency independent of the AFP or PNP, as the case may be. The civilian investigative body should be independent of, and not under the command, control or influence of the AFP or PNP or other government agencies involved in the commission of the killings or have acquiesced in them.

As proof of killings is not that easy, securing and protecting competent evidence as well as professionalizing the investigative agencies of the Government and enhancing their investigative capabilities will improve the chances of resolving the incidents of extra-judicial killings. Incidentally, there is also a need to appraise the police officers and other investigative personnel in the proper procedure of collecting and preserving competent evidence and interviewing material witnesses.

H. Efficient Prosecution

An inventory of all EJK cases pending with the Offices of the Provincial or City Prosecutors nationwide, as well as with the Office of the Ombudsman and other quasi-judicial bodies in order to determine the status thereof and the causes of delays, if any, and to make public the results of the said inventory. Parallel thereto, a review of the cases should be done to determine, among others, the sufficiency of the evidence collected and submitted by the investigative agencies, and to remand to the said agencies those cases where evidence are found to be lacking or insufficient for further investigation and/or evidence gathering.

The names of the Prosecutors designated to handle EJK cases should be disclosed and made known to the public, for easy monitoring on the progress of the cases being handled by the said Special EJK Prosecutors.

Also, there must be strict observance of the periods provided by law by which inquest, preliminary investigation and reinvestigation should be terminated.

I. Inventory/Accounting of Accused/Respondents

The AFP, PNP or other security agencies to render a report on the whereabouts of all its personnel, including high-ranking officials, who have been charged of committing EJK or whose names have been included as alleged perpetrators of "extra-judicial killings".

J. Multi-Sectoral Quick Reaction Teams

Multi-sectoral quick reaction teams should be organized that shall work parallel or in coordination with the proposed special investigative body, to immediately assist the proposed special investigative body upon the occurrence of an "extra-judicial killing" incident, and to monitor the progress of the investigation and prosecution of the cases before the investigative and prosecutorial bodies and the courts as well.

Certainly, the foregoing recommendations are not to be taken as prescriptions or solutions that would provide a cure to an endemic ailment known as "extra-judicial killings" that plague

our society today. Neither are they meant to obliterate the incidents of political killings or "extra-judicial killings" in the country. In fact, they are not new ones and had been recommended by practically everyone, including the MELO Commission, who have shown great interest and concern in the plight of victims of extra-judicial killings and enforced disappearances. What is sorely lacking is the political will on the part of the Government to hold accountable those who are responsible for these killings.

X. CONCLUSION

Even in darkness, light dawns for the upright, for the gracious and compassionate and righteous man . . . Surely, he will never be shaken; a righteous man will be remembered forever. He will have no fear of bad news; his heart is steadfast, trusting in the Lord. His heart is secure, he will have no fear; in the end he will look in triumph on his foes. (Psalm 112; 4, 6-8)

When Chief Justice Reynato S. Puno blew the trumpet for the Summit on Extra-Judicial Killings and Enforced Disappearances, the Integrated Bar of the Philippines, under the leadership of its National President Feliciano M. Bautista, has chosen to respond to such "Call to Action". He said thus: "We in the IBP chose to act, and we choose to act now."

This Project is IBP's modest share in pursuing the objectives of the Supreme Court of protecting the people's right to life. As the mandated organization of all lawyers in the country, the IBP is duty-bound to preserve and maintain the rule of law at all times and under any circumstance. It firmly believes that "extra-judicial killings" must be stopped; it cannot and must not be allowed at all.

No doubt, there are obstacles that need to be hurdled, but for the gracious, compassionate and righteous, these difficulties would not be enough to shake or make us cower in fear. All it takes is to be steadfast and secure in our hearts. In the end, we will overcome our fears and look triumphant on our enemies. As the adage goes: "After a storm is a silver lining." Truly, hope springs eternal for those who are upright and righteous.

Respectfully submitted.
12 December 2008, Pasig City.

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