PROMOTING HUMAN RIGHTS-BASED ACCESS TO JUSTICE: LESSONS FROM THE MAGUINDANAO MASSACRE

LIBERTAS

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DISCLAIMER

This research project is a result of data provided by various sources, all of whom project proponents have acknowledged. The narration of facts, opinions, and views given by the key informants of this project do not necessarily reflect the views of the United Nations Development Programme (UNDP), the Commission on Human Rights (CHR), and Libertás.

UNDP and CHR assume no responsibility for the contents of this research project, and are responsible only for providing the means and venue necessary for these views to be presented.

FOREWORD

(Awaiting from CHRP)

EXECUTIVE SUMMARY

This is a study undertaken pursuant to Project Award Number: 00050762 under the UNDP Fostering Democratic Governance Portfolio, with the Commission on Human Rights of the Philippines (CHRP) as Implementing Partner and Libertás as Responsible Party.

This paper aims to present the systemic obstacles to justice encountered by victims of human rights violations (HRVs). The study is in two parts:

Part One: With the Maguindanao Massacre as a case study, challenges encountered in the justice system are examined and recommendations are formulated for breaking impunity, increasing accountability of public officers, and broadening access to justice by victims of HRVs;

Part Two: Using the principle of Command Responsibility, an alternative legal framework for exacting criminal liability from public officers, is presented. Prescriptions are also made for future advocacy, including coordinative work for the creation of a Technical Working Group that will draft a bill on Command Responsibility.

Part One

The primary sources of data for Part One are interviews of and focus group discussions (FGDs) and dialogues with (1) family members of the Maguindanao Massacre victims, and (2) key informants who are private or public prosecutors, officials from the security sector, relevant government agencies, and representatives of Civil Society Organizations (CSOs) and media organizations.

Culling from the activities, the following recommendations are offered:

1. Definition of Extrajudicial Killing (EJK), or red-tagging of cases as EJK upon filing of information in court, for appropriate monitoring

2. Special courts for EJK to undertake continuous trial

3. Enactment of a law on Command Responsibility to exact criminal liability

4. Requirement of a human rights clearance in all law enforcement agencies

5. Enhancement and increased coverage of the Witness Protection Program

6. Community and peer support in the prosecution of criminal cases

7. Training of paralegals on investigation and legal support in the prosecution of cases

8. Rationalized and integrated financial and other support for victims of atrocious crimes, including families of the Maguindanao Massacre victims

9. Inter-agency cooperation and evidence-sharing among various agencies involved in the investigation and prosecution of crimes involving HRVs

10. Initiation of administrative cases involving HRVs by Government agencies, despite the absence of private complainants

11. Transparency in the conduct of internal investigations and in the military justice system

12. Improved logistics management system in the Armed Forces of the Philippines (AFP) for effective firearms control

13. Measures to de-politicize the local police force

14. Upgrading of forensics capability and more Scene-of-the-Crime (SOCO) training for all law enforcement agencies and community paralegals

15. Deputization of CSOs by the CHRP for the exercise of visitorial powers

16. Support program for public prosecutors

17. Allowance of perpetuation of testimony in EJKs and other cases of HRVs

18. Prohibition against or circumscribed issuance of John Doe warrants, and other logistical support for effecting warrants of arrest

19. Capacity building for Philippine National Police – Human Rights Affairs Office (PNP-HRAO) and AFP- Human Rights Office (HRO) on human rights principles, and support for propagation of the same in their respective organizations

20. Engagement of the Anti-Money Laundering Council in cases involving HRVs

Part Two

In this portion of the study, the principle of Command Responsibility is examined – its origin, incipient limitations, and development under both international and local legal frameworks – within the context of determining the manner by which it can be utilized to exact liability. Upon conclusion, an alternative legal framework for exacting criminal liability from public officers, is presented.

The doctrine of Command Responsibility traces its genesis to the laws of war and international humanitarian law. It refers to the "*responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflicts*".

The *corpus* of the laws of war and international humanitarian law regulates and prescribes the acts that may be undertaken by belligerents and their combatants in times of war or other armed conflict. The laws of war apply not only to occurrences of "war" in its technical sense, but to all *armed conflicts*.

The *codification* of the concept of Command Responsibility came as a result of the atrocities of World War II, via Protocol I to the Geneva Convention of 1977. This principle is reiterated in the Statute of the International Criminal Tribunal for former Yugoslavia (ICTY), a United Nations court of law dealing with war crimes and serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. In like manner, on November 8, 1994, the United Nations Security Council through Resolution 955 (1994) established the Statute of the International Tribunal for Rwanda, and in the charter enunciated the principle of Command Responsibility. Finally, on July 17, 1998, the Rome Statute of the International Criminal Court was adopted by the United Nations establishing the International Criminal Court, which has the power to exercise jurisdiction over persons for the "*most serious crimes of international concern*". This time, the principle of Command Responsibility was taken beyond the confines of the military organization, with the Rome Statute applying the doctrine even as to civilian organizations.

Cases decided by the US Supreme Court for war crimes committed in the Philippines, and the Philippine Supreme Court, impliedly applied the doctrine of Command Responsibility, by invoking the law of nations (which includes the law of war) through the incorporation clause of the Constitution.

Based on domestic statute, Command Responsibility can be used to exact *criminal liability* in military and civilian organizations under specific circumstances, as prescribed by certain laws. These laws include the International Humanitarian Law, the Anti-Torture Act, the Anti-Money Laundering Act, Presidential Decree No. 957, Republic Act No. 776, and Republic Act No. 602.

As to *civil liability*, the Supreme Court has held that Article 32 of the New Civil Code can be used to impose civil liability on superiors who are *indirectly responsible* for the violation of civil and political rights of individuals. However, the issue of whether the elements of Command Responsibility can constitute the basis for this indirect responsibility, has not been squarely put forth and resolved. One statute that does provide for the solidary civil liability of the superior in an organization, is RA No. 7877, for failure to take action upon complaints relating to violations thereof.

As a general rule, Command Responsibility alone cannot be used to draw *administrative liability* from superiors, unless there is gross neglect by the latter (which

alone is a culpable administrative act, thereby making the use of Command Responsibility superfluous). By way of exception, EO 226 S. 1995 and AFP Memorandum of 04 February 2007 establish the principle of Command Responsibility in the PNP and the AFP. However, the implementing rules therefor still need to be formulated.

As can be seen, there is a patchwork of principles and laws on Command Responsibility under Philippine law.

There are also pending bills aimed at improving the organizational structure and powers of the CHRP, including bills enabling the application of Command Responsibility in certain instances.

However, rather than a continued patchwork approach, it is recommended that an integrated bill on Command Responsibility be pursued to apply generally to all types of crimes committed by subordinates under the aegis of the negligence of Government officials and employees, for acts punishable under the Revised Penal Code (RPC) and statutes. This will be a boon not only to the protection and vindication of human rights, but to the prosecution of all crimes committed by Government officials and employees, including the area of graft and corruption where policy reforms are similarly needed.

The elements of Command Responsibility as an additional mode of commission of a criminal offense under the RPC and special laws must include:

a. ***Government office held by superior***: the superior may be a *de jure* or a *de facto* government official/employee, or agent of Government;

b. ***Relationship between superior and subordinate****:* the existence of lines of command authority and responsibility between the superior and subordinate. The superior has authority (*de jure* or *de facto*) over a subordinate (whether government or private individual)

c. ***Mens Rea of superior****:* the existence of information on the part of the superior that triggers an affirmative duty to act. Knowledge may be actual or constructive.

Constructive or presumed knowledge may in turn be determined using two tests:

Test 1: Superior ought to know, or should have known about the act or omission of the subordinate;

Test 2: Superior has a reason to know about the act or omission of the subordinate based on available information, presumed -

- When the irregularities or illegal acts are widespread within the area of jurisdiction;

- When the irregularities or illegal acts have been repeatedly or regularly committed within the area of responsibility; or
- When members of the immediate staff or office personnel are involved

d. ***Actus reus of superior****:* the failure or omission of the superior in relation to the subordinates' offense, which may be in instituting preventive measures, acting on information, seeking out further information, investigating, reporting, and/or imposing sanctions on errant subordinates, as follows:

Prior to act or omission

- Failure to take reasonable measures to prevent the act or omission

After the act or omission

- Failure to punish the subordinates OR
- Failure to immediately report to proper authorities OR
- Failure to institute measures to prevent repetition of the act or omission OR
- Failure to remedy the result of the act or omission when possible

e. ***Offense committed by subordinate****:* the act of the subordinate, punishable under the RPC or special law. However, the act of the subordinate must generally be *within* the framework of the superior-subordinate relationship, for the supervisory function of the superior to apply –

- If act of the subordinate is official or has some nexus to official function, then the superior is liable

By way of exception, where the act of the subordinate is *outside* the scope of the supervisory relationship, the superior may nonetheless be held for the acts of the subordinate -

- If the act is not official or has no nexus to official functions, then the punishable act by the superior is the lack of punishment, failure to report, or remedy the offense, when possible

f. ***Imputed liability of superior****:* the superior incurs the *same* criminal liability as if he/she personally committed the offenses together with the subordinates.

g. ***Hierarchy of command****:* the superior is punished as a principal, regardless of the level separating the subordinate from the superior, so long as the above elements exist

PROMOTING HUMAN RIGHTS-BASED ACCESS TO JUSTICE: LESSONS FROM THE MAGUINDANAO[1] MASSACRE

INTRODUCTION: PROJECT DESCRIPTION[2]

1. Project Proponents

The **Commission on Human Rights of the Philippines (CHRP)** is an independent office created by virtue of the 1987 Constitution[3]. It has the mandate, among others, of promoting and fulfilling the human rights obligations of the State, in the process ensuring the meaningful participation of civil society, with the end-goal of realizing the citizenry's full enjoyment of their rights. The CHRP monitors and reports compliance of the Philippine government with international human rights standards to the respective UN treaty bodies.

The **United Nations Development Programme (UNDP)** is the United Nations' global development network. It advocates for change and connects countries to knowledge, experience and resources to help people build a better life. UNDP provides expert advice, training, and grant support to developing countries, with increasing emphasis on assistance to the least developed countries. To accomplish the Millennium Development Goals (MDGs) and encourage global development, UNDP focuses on poverty reduction, HIV/AIDS, democratic governance, energy and environment, social development, and crisis prevention and recovery. UNDP also encourages the protection of human rights and the empowerment of women in all of its programs[4].

Libertás is a non-stock, non-profit organization of legal professionals dedicated to the protection of civil liberties and the advancement of sustainable democratic reforms in the Philippines. Libertás' mission is to foster solidarity within the Philippine legal community by promoting adherence to public ethics and the highest standard of integrity in the pursuit of sustainable democratic reforms in governance, the delivery of justice, elimination of corruption, and advocating for the public interest. Through regular education, advocacy, monitoring, and networking activities, Libertás aims to increase public awareness of citizen rights and responsibilities and engender public commitment to good governance and the administration of justice.

2. Project Details

This is a study undertaken pursuant to Project Award Number: 00050762 under the UNDP Fostering Democratic Governance Portfolio, with the CHRP as Implementing Partner and Libertás as Responsible Party. The Project Details are as follows:

Project Title	Strengthening Human Rights Infrastructure in the Philippines
Annual Work Plan Key Activity	Conduct Investigation And Documentation Of Alleged Human Rights Violations
Activity Title	Promoting Human Rights-Based Access To Justice: Lessons from the Maguindanao Massacre

This paper aims to present the systemic obstacles to justice encountered by victims of human rights violations (HRVs). The study is in two parts:

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PART ONE: THE MAGUINDANAO MASSACRE AS A CASE STUDY FOR BREAKING IMPUNITY, INCREASING ACCOUNTABILITY, AND BROADENING ACCESS TO JUSTICE

1. Rationale For The Case Study[5]

"*The Maguindanao Massacre has again brought to fore . . . the weaknesses of Philippine governance in the ungovernable 'Wild, Wild West' of Muslim Mindanao. [These] are 'structural inequities in our political system, including control by an elite minority, traditional politicians and political dynasties, and enforcement of such control through private armies' . . . [This was] identified by the National Unification Commission (NUC) Consultations in 1992-93 as one of the root causes of the internal armed conflicts in the country. The NUC then had specific recommendations to address these root causes, including establishing a regime of good governance, upholding respect for people's rights and improving the administration of justice, and establishment of a pluralistic political society*."[6]

Indeed, there are many factors that set the stage for the commission of the Maguindanao Massacre. One root cause is the lack of accountability of officials, and of Government itself. These are seen in:

- The actions/inactions of the Department of National Defense (DND) and the Department of the Interior and Local Government (DILG);
- Lack of accountability of ground commanders in ignoring intelligence reports indicating the existence of a criminal plot, as well as requests for escort by journalists (Ironically, promotions were even given[7] to some officers perceived to have been negligent in the backdrop of the massacre);
- Actions/inactions by the Armed Forces of the Philippines (AFP) and the Philippine National Police (PNP) leading to the build-up of arms in Maguindanao, and the Ampatuans' command of Citizen Armed Force Geographical Unit (CAFGUs), Civilian Volunteers Organization (CVOs), and private armies;
- Lack of preventive suspension over local government officials;
- Actions/inactions of the Department of Justice (DOJ) in the investigation and prosecution of responsible parties.

As a Security Sector Reform Actor, the CHRP is engaging other security sector reform actors to ensure that the Maguindanao Massacre is not repeated. The crime must be examined to expose and confront the issue of impunity that characterizes heinous human rights violations.

Using the Maguindanao Massacre as a case study, the research aims to examine the systemic obstacles to justice encountered by victims. It will offer legal prescriptions to broaden access to justice.

This activity also seeks to re–examine the principle of "presumption of regularity in the performance of official functions", vis-a-vis the rights–based principle of state accountability.

2. Parameters And Methodology

The primary sources of data for this portion of the study are interviews of and focus group discussions (FGDs) and dialogues with (1) family members of the Maguindanao Massacre victims, and (2) key informants who are private or public prosecutors, officials from the security sector, relevant government agencies, and representatives of Civil Society Organizations (CSOs) and media organizations.

The views of the family members were sought to shed light on the identities of the victims, the government response and assistance to them, and the progress of their arduous quest for justice.

Other key informants are persons whose work impacts on the Maguindanao Massacre, either as part of Government that is relied upon by the families of the victims, or as members of CSOs that help find answers and relief for them.

The following were interviewed:

a. *Gov. Esmael "Toto" Mangudadatu*, family member of many of the Maguindanao Massacre victims, whose decision to run as Governor of Maguindanao is widely believed to have triggered the series of events leading to the massacre

b. *Atty. Nena Santos*, private prosecutor in the criminal cases against the Ampatuans and other accused in the Maguindanao Massacre; lawyer of many of the victims' families

c. *Atty. Maria Gemma Oquendo*, private prosecutor in the criminal cases against the Ampatuans and other accused, and family member of two (2) victims

d. *Atty. Christian Hernandez*, a lawyer who represented one of the intended witnesses for the prosecution of the criminal cases against the Ampatuans and other accused

e. *Assistant Chief State Prosecutor Richard Anthony Fadullon*, who was the Head[8] of the Prosecution Panel of the DOJ in the criminal cases against the Ampatuans and other accused

f. *Assistant State Prosecutor Juan Pedro C. Navera*, who was a member[9] of the Prosecution Panel of the DOJ in the criminal cases against the Ampatuans and other accused

G. Aquiles Zonio, a Mindanao correspondent at the Philippine Daily Inquirer;

member of the media contingent who joined the convoy for the filing of the certificate of candidacy of Toto Mangudadatu during the day of the massacre

h. *Raymund B. Villanueva*, Director for Radio of Kodao Productions, a media advocacy group

i. *Red Batario*, Executive Director of the Center for Community Journalism and Development (CCJD), a media advocacy group

j. *Col. Leo Cresente Ferrer*, Brigade Commander of the Philippine Army's 601st Infantry Brigade (IB), which IB was in charge of securing Maguindanao up until the massacre. Col. Ferrer started heading the 601st IB after the occurrence of the Maguindanao Massacre

k. _____, the Deputy Brigade Commander of the 601st IB

l. *Col. Romeo Mendoza*, the Commander of the 104th IB, Barangay Kalandagan, Tacurong City, Sultan Kudarat. The IB was deployed to provide security in Maguindanao and part of Sultan Kudarat province in December 2009, replacing the 601st brigade troops in Maguindanao

m. *Col. Gerardo F. Barrientos*, the Deputy Commander of the 104th IB, which replaced the 601st brigade troops in Maguindanao after the massacre

n. *Atty. Eduardo S. Villena*, Chief of the Legal Division of the Criminal Investigation and Detection Group (CIDG) of the PNP

o. *Atty. Vicente S. Aquino*, Executive Director of the Anti-Money Laundering Council (AMLC)

p. *Col. Agapito Carmelo S. Nagrampa*, Group Commander of the Civil-Military Operations Group, Philippine Army

q. *Teodoro M. De Mesa*, Chairperson of Philippine Alliance of Human Rights Advocates (PAHRA), a human rights network

Three focused group discussions were also held at South Cotabato, with many families of the Maguindanao Massacre victims. These discussions were held on August 21, 2010 at Marbel (18 family members/ discussants), Tacurong City (13 family members/discussants) and on August 22, 2010 at General Santos City (25 family members/discussants).

On October 6, 2010, an informal dialogue was held with PNP Human Rights Affairs Office (PNP-HRAO) Police Chief Supt Franklin Bucayu, and PNP Community

Relations Group Senior Supt Carmelo E. Valmoria, to inquire into the efforts their offices have undertaken to address human rights issues in the PNP. This dialogue was also attended by CHRP Commissioner Jose Manuel Mamauag and lawyers from CHRP-Investigation and Legal, who shared the existing challenges in the investigation and prosecution of human rights cases.

The secondary sources of data for this portion of the study are newspaper accounts of the massacre.

3. Timeline Of The Maguindanao Massacre[10]

Events leading to the day of the massacre

The gubernatorial race in Maguindanao province in May 2010 was a highly political contest between two clans - the Ampatuans and the Mangudadatus. Gov. Andal Ampatuan Sr. was on his third and last term as Governor, and was no longer allowed to run for the office by law. While this opens the door for possible contenders, he reportedly wanted one of his sons to succeed him.

He was allegedly displeased when the Mangudadatus, allies of the Ampatuans, travelled to the Shariff Aguak municipality along with 200 fully armed men, to inform Ampatuan Sr. that a member of their clan, Buluan Vice Mayor Esmael "Toto" Mangudadatu, will vie for the Maguindanao gubernatorial post in the upcoming elections.

This was the start of the clash between the two clans.

This is Toto Mangudadatu's account of the antecedent events:

> *"I announced I was running last March 2009; the first things that were taken from us were the firearms issued to our PNP personnel. Andal Ampatuan Sr. so ordered Provincial Director Piang Adam, who is now incarcerated. An inventory was made of the firearms issued to Buluan, Maguindanao. Col. Piang Adam took the firearms. I was in Manila at that time when he went to Buluan and got all those firearms. He called me by phone. I was Vice Mayor at that time; I was not in Buluan, and I had made the request for the firearms from then PNP Chief Ebdane. I told him I had no choice since it was an inventory.*
>
> *That was in March, April, May. Then something happened in May. A bomb went off in Sharif Aguak, on May 15 at 7:30 in the morning. People died in the blast. My cousin and uncle were accused of setting the bomb off; also, the Barangay Captain of Upper Siling, Tau Gan Mangudadatu who is chief security of our fishpen; Noradeen Gagil; and Randy Madapit, my cousin who was chief security of the local government of Buluan. Five of them were charged with terrorism on May*

15, 2009. The case was filed before the court in Cotabato City, but they were not arrested because the alleged witnesses refused to appear.

They were not successful that time. They also attacked Pandag municipality where the mayor was my brother Freddy Mangudadatu. There was a shoot-out involving the men of Piang Adam who was provincial director. One of his men and a relative were killed. The police, CVO, and the CAFGUs were able to recover 7 or 9 high powered firearms from the attackers. Unfortunately, in that incident of June 19, cases were filed not against the attackers but against us, including me. They claimed that we attacked and burned down the residence of Piang Adam at Barangay Katikop, according to the CIDG report of Col. Atanacio Macalan. Everything was fabricated. The reports of the Pandag police were disregarded. In that investigation, it also said that we killed someone, and I was pinpointed as the one who led the assault, by Piang Adam Jr., Vice Mayor of Pandag at that time, and son of Piang Adam. That is why I was charged with multiple murder, multiple frustrated murder, and arson. But a thorough investigation was later conducted. We got an independent investigator who said that they were the ones who attacked us.

But only July 8, we were attacked again. At 9am until the evening in Pandag - the PNP Maguindanao, RMG ARMM, 76th IB, 64th IB, and others headed by Major Sukarno Dicay, OIC Provincial Director of Maguindanao, went to the Pandag municipality and Buluan municipality, and confiscated all the firearms. Firearms of CAFGUs issued by the Army, and the firearms of the policemen of Pandag which were issued by Crame, were all confiscated. They even went to the office of the PNP in Pandag municipality. They produced records with complete details that allegedly showed that we were in illegal possession of firearms. I was not even there at that time. Mayor Jong Mangudadatu, Mayor Freddy Mangudadatu, Mayor Sajid Mangudadatu of Pandag municipality, Assemblyman Tong Mangudadatu of 2nd District of Maguindanao and many more, were charged with illegal possession of firearms.

On July 9, I took a flight from Davao to Manila to meet with President Macapagal-Arroyo. We proceeded to Guagua, Pampanga together with Congressman Pax Mangudadatu and Governor Zaid Mangudadatu to personally see the President. We informed her of what happened and she called Victor Librado who was then her AFP Chief of Staff. She told him to return our firearms. Their excuse was that Commander Kato was in the area, and I told her that this was not true. The firearms were returned because it appears that the problem was between the CAFGUs and the Pandag police. But they wanted me to yield and declare I will not be running in the election against the Ampatuans. I refused.

On July 20, we were all summoned to the DND before then Secretary of National Defense Gibo (Gilbert) Teodoro. All the sons of Andal Ampatuan Sr. were there, including Samsamin Ampatuan, his nephew, and Congressman Datu Manog.

From our side, there were Governor Zaid Mangudadatu, Assemblyman Toy Mangudadatu, Mayor Jong Mangudadatu, Mayor Freddie Mangudadatu, Mayor Dong Mangudadatu and I - we went to MSD Aguinaldo in Manila which is considered neutral ground. The purpose of the meeting was to say in front of Gibo Teodoro that I will no longer run for the office of Governor of the province of Maguindanao. But they didn't get that from me. I was asked upfront. Gibo's position was for there to be no conflict.

When they realized I would not withdraw from the gubernatorial race, they requested Malacañang to call us on August 11 and appear before President Macapagal-Arroyo. At 6pm of that day, we had dinner with the President, Gibo Teodoro, Pichay, Datumanong, and the Ampatuans. We brought my mother and my sister Vice Mayor Eden Mangudadatu, who was also killed in the massacre. Same story: The President told us we should no longer fight. Gibo Teodoro turned to me and said, 'Toto, tell them you will back out.' But I said they cannot ask me to back out in politics. We are in a very democratic form of government, I am physically and mentally capable. There is no reason why I should not run for any position, as long as I am fit and we are still in the Philippines. I thought we understood each other already.

On August 12, Zaldy Ampatuan called me by phone and told me that the case that was filed against me will be withdrawn because I said I will back out. I waited for all the cases against me to be dismissed, but they were not. Had they withdrawn all the cases, maybe I would not have run. If they stopped persecuting people, maybe I would not have run. But because they were continuously doing bad things, against the will of the people and against the rule of law, I pushed through with my plan.

In September, when they confirmed I was running, two prowl cars went to my home in Insular Subdivision. I was not there but the caretaker told me that persons in a car with no plate numbers who sounded Moslem with a Maguindanaon dialect came to the house looking for me. I was in SM then and they followed me there, but they were not allowed to enter the mall because they had firearms. Their M79 and M43 were thrown in the Buluan public market. When November came and I was about to file my candidacy, I talked to my mother.

I told my mother I was going to file my candidacy. I have arranged a convoy to Sharif Aguak. I called ARMM Regional Director Umpa, and

asked for security. He did not give me any. My mother told me to file my candidacy on Monday, and instead of me filing, it would be my sisters and my wife who should go. We originally wanted our children to be part of the convoy. In politics, they are lucky. It was a good thing I didn't let the kids go with the convoy. We thought then that they would have high respect for women; as it is with all religions, women should not be harmed. So we sent women. I was in Manila on Saturday, and I told my wife, 'Love, you heard what my mother recommended.' She said yes, and that it was a better plan. I told her and my sister I will go to Manila to affiliate with the LP[11], or with Villar's NP[12]. But when I got to Manila, no one would take me. I was told in LP to seek approval from Toz Postura who was LP Chairman of Maguindanao, but he would not endorse me. When I went to the NP, they would not take me in. So on Sunday[13], my wife told me to come home. Sunday evening, I rested at our Davao home."

The day of the massacre

Pursuant to Section 3 of Commission on Election (COMELEC) Resolution No. 8678, "*Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 10, 2010 National and Local Elections*," promulgated on October 6, 2009, the certificate of candidacy for provincial officials shall be filed in five legible copies with the Provincial Election Supervisor concerned. However, a COMELEC Resolution directed the *transfer* of the COMELEC Satellite Office from Cotabato City, to the Provincial Capitol in Maguindanao (Shariff Aguak). Still another resolution was issued, directing all candidates in the province to file their certificates of candidacy at the provincial capitol.[14]

On November 23, 2009, a Monday, Toto Mangudadatu's wife and other women relatives left Buluan to file his certificate of candidacy for the gubernatorial post in his behalf, with the COMELEC office in the Maguindanao provincial capital of Shariff Aguak, pursuant to the latest COMELEC Resolution. Lawyers and members of media were with them forming a convoy of seven vehicles. There were also two vehicles that were not part of the convoy, but happened to be traveling on the same highway - a red Toyota Vios and a light blue Toyota Tamaraw FX. The Vios had five passengers, bringing a government employee who had suffered a mild stroke, to a hospital in Cotabato City. The FX was driven by Anthony Ridao, an employee of the National Statistics Coordination Board, who was on his way to work.

In an affidavit, a member of the convoy who was driving a vehicle carrying other members of the Mangudadatu family said that he maintained a distance of 20 meters from the main convoy. This enabled the two vehicles that were not part of the convoy (the Vios and the FX) to get ahead, thus appearing to be part of the convoy.

Toto Mangudadatu narrates:

"6:00 am on Monday morning, November 23, my wife (Genalyn Mangudadatu) was leaving to file the candidacy. She told me I could try to catch up at 9:00 am. I said I will send the kids off to school first because I haven't been spending time with them. I caught the last flight from Manila on Sunday so when I got there, they were already asleep, and I was again leaving on Monday. So I told my wife I will try to catch up for the filing. She said there were many in the convoy: mostly women.

That morning I was with Engr. Abet Onga, my present administrator; I told him to hurry. We were in one van, with one police bodyguard.

By 8:45 am, we were at Tulunan, North Cotabato, near Buluan. I called my wife and told her to wait for me. She said if I do not get there by 9:00 am, she will proceed without me. She advised me to just wait for her return at Buluan and just have a presscon since many members of the media accompanied her."

Between 9:00 and 10:00 am, Police Senior Superintendent Abusama Maguid, Officer-in-Charge of the Maguindanao police provincial office, allegedly received a report from Police Chief Inspector Sukarno Dicay that there was a bomb threat along the National Highway, particularly at Sitio Malating, Brgy. Salman in Ampatuan, Maguindanao.

Because of this report, a checkpoint was set up and manned by members of the Maguindanao police and CVO led by Police Inspector Saudi Mukamad of the 1507th RMG, and the convoy and the two vehicles also travelling on the highway were ordered to stop allegedly for a routine inspection. The driver and some passengers in the last vehicle in the convoy got out to urinate.

The convoy was accosted by about 100 armed men. Witnesses identified Datu Unsay mayor Andal "Unsay" Ampatuan Jr. as being among the armed men.

When shots were fired, the men who urinated quickly boarded the last vehicle in the convoy, and were able to flee.

Gigi Mangudadatu, Toto's wife, managed to make a call to her husband, saying an armed group, supposedly of the Ampatuan clan, flagged down their convoy on their way to Shariff Aguak. Her parting words over the phone were about the armed men slapping them around and commanding them to swallow the certificate of candidacy forms they brought.

Toto Mangudadatu continues:

"When I got to Buluan town, I passed by the wake of a relative. That was where I got the call from my wife. She said that they were

accosted by men, many of whom were in uniform, carrying high powered firearms. She said that Unsay was there and that he slapped her. Those were her last words. After that, I got text messages from people saying my wife was kidnapped. Many people were at the wake with me. We rushed to the KMB radio station, and I went on air to say that my wife was abducted. Text messages came in saying my wife and her companions were raped.

I called Col. Medardo Geslani of the 601st Infantry Brigade, and he said he did not know of any abduction. I also called (Maj. Gen. Alfredo) Cayton, he also did not know about the incident. I called (Police Chief Inspector Sukarno) Dicay, and he told me he does not care. Dicay is the OIC Provincial Director who was implicated in the Massacre."

At around 11:00 am, the 64th IB of the Philippine Army received information that a convoy of civilians was abducted by armed men in the national highway. The Philippine Army units in the area were immediately alerted and they launched a search for the hostages.

Between 10:30 am and 3:00 pm, the convoy and the two other tailing vehicles were brought to a hilly and sparsely-populated area about 2.5 kilometers away from the national highway. At the site, a heavy-duty backhoe had been used to dig three holes that were to be used as mass graves.

According to witnesses, the armed men shot the hostages at close range with rapid-fire weapons, dumped the bodies and vehicles into the mass graves, and began covering up the site using the backhoe.

At about 1:00 pm, the 64th IB troops reached Barangay Salman and met with Chief Inspector Dicay, who was in charge of the persons manning the checkpoints in the area, and conveyed to him the information about the abduction. Dicay allegedly maintained he has no knowledge of the reported abduction.

At 1:30 pm, the 64th IB troops advanced eastward, and at 2:00 pm, they reached the crime scene. At about that same time, Buluan Mayor Jong Mangudadatu, on board a private chopper, was looking for his family who was a part of the convoy.

Toto Mangudadatu carries on:

"When I got no response from the military, I asked my brother to deploy our own chopper; we had to exert effort to rescue my wife and our sisters. Col. Estenes of the 601st Brigade took pity on us and accompanied my brother and the pilot. The culprits scattered at the sight of the chopper."

This is the short account of Col. Ferrer[15]:

"The 64th IB was the one Mangudadatu asked help from. I will let you talk to the person who went with them on the chopper. <He calls someone on the phone at the time of the interview> You remember the Maguindanao Massacre; were you the one on the chopper? 'Yes sir'. Were you first at the scene of the crime? 'Yes sir, but everyone was already dead. I had a GPS with me; I gave the recording of the location. Then I contacted Col. Geslani and the 64th IB and directed them to the area. The armed men of Ampatuan were still there. I left Mayor Jong on the chopper. I did not touch the bodies; I merely secured the scene. By this time Mayor Jong was already on the ground searching for his sisters. I told him not to touch anything. The 64th IB secured the place.'"

The interview of Toto Mangudadatu continues:

"Then the army arrived, led by Col. Merona of the 64th IB. In the footages, you could still see the checks that were issued, the passbooks, and car keys. You could see an official picking them up. These have not yet been returned.

Plus my wife had cash with her from our businesses. She deposits at the bank every Monday, but that day she had not deposited yet because they left early. She had a huge amount with her because our businesses consist of a fishpen, plantation, Petron gas station, ice plant, and other businesses. It was all gone, including the Rolex watch I got her for her birthday in February. But in the footage, you could see that the checkbook, passbook, our joint accounts - they were there.

I do not know who got the money. When my brother got there, you can see in the footage that everyone was dead, and most of the women - their zippers, the buttons of their pants, were opened. The contention of some experts was that they were bloated and this caused their pants to get unfastened. But I do not believe it. Do you think that when we are buttoned up so tight, the zipper would open on its own? But the examination by the NBI showed that some of the women were raped. My wife had laceration on her private parts ante mortem. It means she was alive when she was sliced up. She had one laceration, 17 gunshot wounds, and she was hacked on her back. She was hacked on the breasts, on her mouth, and her private parts were lacerated and shot. Her pants were also pulled down."

The 64th IB troops initially found 21 cadavers: 15 female and 6 male, all with multiple gunshot wounds in different parts of their bodies. Later, another cadaver was found by a nearby bridge. According to a witness, the perpetrators hurriedly fled the scene just before Army soldiers arrived. Some of them were still visibly making their

escape when the helicopter got to the area. They left behind more than two dozen unburied victims and their vehicles, as well as the backhoe used to dig the graves.

According to Police Director Caro, the area was immediately secured, and they awaited the arrival of the PNP Scene of the Crime Operatives (PNP-SOCO) team for proper investigation. At 8:00 pm, the SOCO teams from PRO-12 arrived.

Events after the massacre

President Gloria Macapagal-Arroyo ordered the military and the police to immediately pursue the perpetrators. On November 24, 2009, the day after the massacre, she issued *Proclamation 1946*, placing the provinces of Maguindanao and Sultan Kudarat, and the City of Cotabato, under emergency rule.

The PNP relieved and investigated key police officers in the ARMM, the provincial director of Maguindanao, as well as the Maguindanao police maneuver groups. Additional PNP and AFP forces were pulled in from other provinces to replace them. Search, investigation and processing of the crime scene continued.

The SOCO team found 3 more grave sites in Sitio Malating. On November 24, and 25, 2009, they exhumed more cadavers. They recovered a total of 57 cadavers from the crime scene. The remains of a 58th victim, Reynaldo "Bebot" Momay, photographer of *Midland Review* in Tacurong, who, witnesses said was part of the media contingent, has yet to be found.

In view of the heightened political tension in said province, the COMELEC issued Minute Resolution No. 09-0817[16], "*In The Matter of Amending Section 3 of COMELEC Resolution No. 8678 on the Venue of Filing of Certificates of Candidacy of Candidates for the Province of Maguindanao Only*," on November 24, 2009. The resolution states therein that members of the House of Representatives and Provincial candidates can file their respective certificates of candidacy with *either* the Office of the Provincial Election Supervisor of Sultan Kudarat, or the Office of the Provincial Election Supervisor of Maguindanao.

On December 5, 2009, at 7:00 am, Executive Secretary Eduardo Ermita announced *Proclamation No. 1959* declaring a state of martial law and suspending the privilege of the writ of habeas corpus in the province of Maguindanao, except for certain areas identified as bailiwicks of the Moro Islamic Liberation Front (MILF) separatists.

Pursuant to the proclamation, Lt. Gen. Raymundo Ferrer, AFP chief Eastern Mindanao Command, took over the Provincial Capitol. The AFP and PNP secured the municipal halls. Searches were also conducted in residences of members of the Ampatuan clan.

Maguindanao Gov. Ampatuan Sr., ARMM Gov. Zaldy Ampatuan, Maguindanao Vice Governor Akmad Ampatuan Sir, Shariff Aguak Mayor Anwar Ampatuan and

Sangguniang Bayan member of Shariff Aguak Cahoner Ampatuan, were arrested. Local officials arrested include: Paisal Sulaik, a Sangguniang Bayan member of Shariff Aguak; Keise Usman, regional secretary of agriculture of the ARMM; and Kabuntalan Emblawa, regional environment secretary of the ARMM. Ampatuan Sr. and Zaldy Ampatuan were brought to Davao City and General Santos City, respectively.

It was only on December 16, 2009 that the COMELEC promulgated Resolution No. 8714[17], "*Rules and Regulations on the (1) Bearing, Carrying or Transporting of Firearms or Other Deadly Weapons; and (2) Employment, Availment or Engagement of the Services of Security Personnel or Bodyguards, During the Election Period for the May 10, 2010 National and Local Elections*."

Section 1 of the said Rules provides that during the election period: "(a) no person shall bear, carry or transport firearms or other deadly weapons in public places including all public buildings, streets, parks, and private vehicles or public conveyances, even if licensed to possess or carry the same; and (b) no candidate for public office, including incumbent public officers seeking election to any public office, shall employ, avail himself of or engage the services of security personnel or bodyguards, whether or not such bodyguards are regular members or officers of the Philippine National Police (PNP), the Armed Forces of the Philippines (AFP) or other law enforcement agency of the Government."

Section 6 provides that security personnel or bodyguards can be assigned to a candidate for public office "*when circumstances warrant, including but not limited to threats to life and security*." Upon application, they may be assigned "*regular members of the PNP or the AFP, or the National Bureau of Investigation, and as augmentation, duly licensed/authorized Protective Agents of Private Detective Agencies, to provide security, for the duration of the election period*."

Major General Alfredo Cayton and Col. Medardo Geslani were relieved from their posts as commanders of the Army's 6th Infantry Division and 601st Brigade, respectively, for denying the security requests. They both underwent an investigation but were cleared by a military board. The board sided with the two officials' claim that the request was turned down because of the limited number of available foot soldiers. In clearing Cayton and Geslani, military probers said the Armed Forces is not inclined to protect politicians as part of its mandate to remain apolitical.[18]

Following the recommendation of the Armed Forces' Board of Generals, and despite opposition from the families of victims, Cayton was promoted to Army vice commander, the second highest post in this branch of the armed forces.[19] He was due to retire on February 14, 2010 upon reaching the mandatory retirement age of 56.

4. Interviews

Excerpts from other interviews[20], the FGDs, and dialogues undertaken for this research, follow. The responses of the subjects are quoted directly, or paraphrased. While some answers were given in mixed Pilipino, Ilonggo, and English, the translations to English were made by the interviewers for this study.

Interview of Atty. Nena Santos

She is a private prosecutor in the criminal cases against the Ampatuans and other accused, representing most of the family members of victims, including the Mangudadatu family.

Representation of families

"*I am representing 27 families of the 57 victims: the Mangudadatu family, relatives, workers, lawyers, and innocent by-passers.*

We were asked: rido[21], or file a case. The family chose to file a case. I told them - if we go with rido we will be no different from the Ampatuans. I am not related to any of the victims. But they chose me, a non-Moslem, and treat me like an elder sister."

Protection of witnesses

The respondent stressed the need to protect witnesses, as it is their testimonies which will constitute much of the evidence in prosecuting the case. Consequently, the victims' families are wary about providing access to these witnesses, even to Government agencies, as such disclosure may pose a threat to the life of these individuals in case information leaks about their identity and whereabouts.

Support for victims' families

The interviewee indicated that much of the support for the prosecution of the cases by the victims' families, including the protection of witnesses and the victims' families, does not emanate from the Government.

"*They say there are a lot of funds poured out for the families of the victims, but these funds never reached us.*"

Retaliatory cases

"*Do you know how many new cases came out of this? Twenty-five[22]. When the court announced who our witnesses were, their houses were burned; their relatives were killed; cases were filed against them; and warrants of arrests were issued against them. Some witnesses were issued warrants of arrest after they testified, or immediately thereafter, or even during, while they were still testifying. We didn't know, and it caught us by surprise. We hear about it during the hearing, and when we would verify, we would find out that there is a warrant of arrest issued against the witness*."

Transfer of filing by COMELEC

"*If they did not transfer the regional office, we could have filed in Cotabato. This actually gives rise to a new case, but we are handling this one at a time. We did not want to go after the COMELEC officers because elections were still pending. We did not want to antagonize COMELEC. It is all a matter of timing*."

When to file case

"*First of all, preserve your evidence. You don't need to file immediately because the prescription period (*for murder*) is 20 years. Wait for the right timing. If you think that the timing is not right, make the client understand that sometimes, winning does not come from rushing into a case*."

Availability to clients and witnesses

"*This is 24/7. My cell phone is never off. I have to be always available to accept visitors; even at 1:00 or 2:00 in the morning, I have to be ready to see witnesses. Everybody is anxious, so you have to play it well. And because number 1, they trust you*."

Special court

"*It would not be fair for the judge that s/he will keep handling cases such as this. The present judge still has other cases aside from this one, but these are being unloaded already, upon the request of the Secretary of Justice with the Court Administrator. The Court Administrator is always present at the hearings*."

Forensics

"*There were supposedly videos of the actual killing taken with cellphone cameras. Cell phones were found on the bodies, hidden in socks or panties. Atty. Oquendo*[23] *was able to text at 11:11 a.m. She had presence of mind. She texted that they were being killed one by one by the Ampatuans. She knew the Ampatuans*."

Atty. Santos also discussed the difficulty in undertaking the medico-legal examination and autopsy of the cadavers, considering the number of the bodies, and the lack of equipment and other resources, for such exercise.

Who to trust with the handling of the bodies was also an issue, since the families believed that the perpetrators, through their contacts in the law enforcement agencies, were capable of sabotaging the evidence.

"*The bodies had to be transported all the way to Marbel. There was a big hospital in Sultan Kudarat, but the bodies could not be brought there because it was a*

Mangudadatu area, and results of the examination will be questioned. They could say we shot the victims ourselves. We made it clear: do not let the police touch the bodies because they are loyal to the Ampatuans. Call for the NBI in General Santos City, let them do the autopsy. Do not let them contaminate the crime scene. The police and the AFP wanted to take the bodies in the middle of the night. I tell you, the truck would go missing with the bodies. I warned them. They could only take the bodies in daylight, then straight to funeral parlors.

We didn't know how to address the issue. We didn't trust the police and the military who came. New people had to be brought in from Region 12. A backhoe was needed to dig the bodies out. The bodies had to be recovered as soon as possible while the wounds were still fresh. M16 gunshots will go thru all the soft parts of the body before exiting, while M14 bullets will just stay embedded. If you leave the bodies buried, you cannot get any medico-legal to process this evidence anymore."

Preparation of witness

"*I am present while the witnesses are prepped. They are not rehearsed. You never rehearse the truthful witness - you merely guide him in describing where he was, in completing his sentences - but you can never ask him to go thru a script because only he knows what really happened.*"

<u>Interview of Atty. Maria Gemma Oquendo</u>

She is a private prosecutor in the criminal cases against the Ampatuans and other accused, being a family member of two massacre victims – her father, Catalino Oquendo, and her sister, Atty. Cynthia Oquendo. With family members of 13 victims of the Maguindanao Massacre, Atty. Oquendo formally organized the "Heirs of 11-23 Inc."

Last moments of Atty. Cynthia Oquendo

"*It seemed she knew she will not live much longer, and her last cellphone message started with* 'Christian greetings'. *She was asking for help, since many of those she was with were already killed.* 'They are now firing.' *That was around 10:49 a.m., the longest 15 minutes of our lives, her last 15 minutes. I was also thinking of my father – she said he had broken ribs and a head injury. He must have fought back. His shoulder was almost severed from his body."*

State actors' indifference

"*COMELEC deputizes the PNP to provide police visibility at the checkpoints, the point of security. When Toto Mangudadatu requested for police escorts, he was told there were not enough police officers. When he requested from the military, he was told none can be deployed since they were transferred*."

Mistaken assessment

"*Under the principles of Islam, women would not be harmed. But our mother was cautious. She consented to my sister's request only when our father said he will accompany her*."

Administrative cases

When asked whether administrative cases were already filed at this time, Atty. Oquendo replied that she has not started any move to look into the administrative liability of actors. She said she would prefer to put things in order, starting with the institution and prosecution of criminal cases.

Faith in the justice system

"*I still believe in the justice system; I believe that justice will be served. However, it will take a long time.*"

Command responsibility

"*Command responsibility is a good theory; I understand that some people act only to follow orders of someone else. But I also believe that a person has the option to say no. I cannot however speak for those who are loyal to an institution. It can be used as a defense by those who execute the act on behalf of a superior. As the daughter and sister of victims of the massacre, there are morality issues to consider, since you can say no*.

Personally I would like to hold everyone responsible, including the military who did not provide security, but we have to make a reality check if this is doable."

<u>Interview of Atty. Christian Hernandez</u>

Atty. Hernandez is a lawyer who represented one of the intended witnesses for the prosecution, Suwaid Upham, who was given the alias Jesse. Jesse, an alleged gunman in the massacre, was shot and killed on June 14, 2010, in Maguindanao.

Witness protection

"*When the massacre hit the news, I immediately volunteered my services as a lawyer to Harry Roque[24], who later contacted me to serve as lawyer of the witness 'Jesse'. Jesse had a P3 Million bounty on his head so he had to be hidden and moved around. My work was all pro bono, and even included the use of my car and the cost of gasoline.*

In meeting with the prosecution team, along with the partner of Atty. Roque, the DOJ was not receptive to Jesse, and in fact was mad because before the meeting, the

witness gave a TV interview without their knowledge. There were many factors in play; the witness was wary of government, and the prosecution did not want to meet outside the DOJ.

There is faith in the Witness Protection Program, but one of those that we got to talk to lamented that the money is not sufficient."

"*Witness protection program by private sector including NGOS? It is already being done. In the case of Jesse, he was hidden in a seminary but had to leave because he was already pinpointed.*"

Special courts

"*Regarding the judicial system, it might help to have special courts and continuous trials; 100 EJK courts were created but the impact remains to be seen*, *and now the Administrative Order creating it was repealed*."

Evidence

"*There is also too much reliance on testimonial evidence. If we lose the witness, we lose the case. Witnesses will always be harassed if they know something. WPP is good but it is important to perpetuate testimony ASAP before trial. When trial day arrives, first get the witness to testify to provide primary evidence. If not, resort to secondary evidence.*

Forensics is very important. In addition, the SOCO needs help; they request for training for the use of equipment that are brought in from Germany. The camera they use is still film-based, and they have to personally pay for the film and have it developed."

Jesse's Narration

"*In Jesse's affidavit, I think I remember a statement that Andal was using shabu. He was also one of those actually firing at the victims. Before he left the scene, he allegedly took blood from the deceased body of Mangudadatu's wife and smeared it on himself*.

I could say that the massacre was preventable. Remember that they were subjected to a checkpoint."

Interview of Assistant Chief State Prosecutor Richard Anthony Fadullon

Assistant Chief State Prosecutor Fadullon was the Head of the Prosecution Panel of the DOJ in the criminal case against the Ampatuans and other accused, until March 9, 2011.

Extrajudicial killings

"*Can the Maguindanao Massacre be considered baseline? Not all cases are of this magnitude.*

There is no such crime as extralegal killing or enforced disappearance; it is either homicide or murder, or kidnapping.

What is the operative definition? All killings are extralegal. The Supreme Court tried with the writ of amparo, but there is still no definition. Are we limiting this only to victims with political leanings; the media; or those perpetrated by state actors/agents? Does it matter who the victim is? What if the victim is the police or military? This should also be considered extralegal killing.

The Department of Justice in September or October 2007, through then Secretary Agnes Devanadera, agreed to limit the definition to cases where state actors are involved. Because of the 'red flag', *the task force in DOJ monitors the case through its regional office, and also directs prosecutors to look at circumstances attendant to the case*.

Under Administrative Order No. 181, prosecutors and legal enforcers tie-up for extralegal killings on case build-up. But these are the challenges: (1) the issue on impartiality – a new prosecutor different from the one who did the investigation has to be appointed; (2) there also has to be logistical and administrative support. What if in one place, there is only one prosecutor?"

Civil Society Organizations

"*Some CSOs have statistics different from that of the police, but for as long as there is distrust, we cannot get our act together. Also, the police is hard put in clearing its image, so it does not favor having statistics. Some CSOs fail to see that the criminal justice system is not just the government, but includes CSOs.*

The approach should be holistic. Each pillar in the criminal justice system must realize that it needs to help."

Prosecution panel

"*Trust is a big issue. I pick my team very carefully.*

As public prosecutors, we have other cases to handle. The judge also has other caseloads."

Security

"Sometimes we get too busy preparing for the case that we forget to arrange for security. The Witness Protection Program helps out my team. For my security, I made personal arrangements for me and my family."

Defense tactics

"The defense lawyers take away the focus of the prosecution, distracting us with disbarment and contempt charges."

Command responsibility

"*The IHL and the law on Torture are already there. But where do you stop?*"

Perpetuation of testimony

"*Yes it will help, but still when you have defense lawyers raising technicalities, it can be blocked*."

Interview of Assistant State Prosecutor Juan Pedro Navera

Senior State Prosecutor Navera of the National Prosecution Service, DOJ, was a member of the Maguindanao Massacre Prosecution Panel, until March 9, 2011.

Command responsibility

"*Command responsibility applies to administrative cases only. Personally, I favor a law on command responsibility that can apply to all criminal offenses under the Revised Penal Code and special statutes; it will make the job of the prosecution easier. As the law now stands, a prosecutor needs to prove each element of the crime charged. If at all a law would be enacted, the superior must have direct supervision over the subordinate before command responsibility should apply*."

Prosecuting the case

"*The Maguindanao Massacre should have been tried in Cotabato. But because of the breakdown of law and order in Mindanao, the DOJ filed a petition for change of venue with the Supreme Court, and the Supreme Court ordered the case to be tried in Quezon City. And then a raffle was conducted but the first judge to whom it was assigned inhibited himself. There have been eight motions to inhibit the Judge in Branch 221, the current judge hearing the cases.*

There are 10 members of the prosecution panel, five of whom are women.

As of this time, there are 197 accused in the massacre: about 112 individuals are at large, and 85 accused are in custody, including the Ampatuans, CVOs, and policemen. Every week the figures change.

Four staff sergeants from the Philippine Army, members of the 64th infantry battalion and 75th infantry battalion are among those who were indicted. The information filed against the accused is for murder - 197 informations for the murder of 57 victims. Conspiracy was alleged in the information against the accused, thus each accused is made to answer for the death of each of the 57 victims. Some of the aggravating circumstances alleged are treachery, armed men, cruelty, uninhabited place. There's no indictment for rape."

Participation of law enforcement agencies

"*The locust of the investigation immediately after the incident was the NBI, in terms of collating the evidence. In terms of documentation, the NBI relied on the local criminal laboratory office (Region 12) and the CIDG. The experience of the DOJ was that there was a breakdown of command structure in the PNP immediately after the incident. They could not get documents from the PNP-ARMM. It is the NBI which the DOJ tasked to get in touch with the witnesses. Regional crime lab office 12 has custody over the evidence, such as bullets.*

Disregarding the magnitude, this should be a local police matter, if there was no breakdown in the law and order structure in Mindanao. In practice, the NBI became in charge of warm bodies (witnesses), and region 12 is in charge of forensic evidence."

Forensic evidence

"*Forensic evidence is very important in cases such as the massacre, to establish the number of people who killed the victims, the ballistics, including trajectory. Chain of custody must be strictly established. Forensic examination was conducted by staff from Crame. There's one person unaccounted for. The DNA would come in handy here if another body is found*."

Case build-up

"*From time to time, the DOJ makes issuances assigning prosecutors to assist the police in case buildup on an ad hoc basis (not only in EJK), but the prosecutor should not participate in the preliminary investigation. The prosecutor who participated in the case build-up can prosecute the case once the information is filed in court*."

Coordination with AMLC

"*No referral is made by the DOJ to the AMLC for investigation; traffic is one way, from BSP or AMLC, to the DOJ. This is because the DOJ performs quasi-judicial functions and must therefore be neutral. There's only coordination between the DOJ*

and the AMLC once probable cause has been established, and an information has been filed in court. Sometimes AMLC lawyers are deputized by the DOJ to prosecute AMLA cases, but there should be a public prosecutor present in court. Otherwise, a written deputization order by the Prosecutor General is needed."

Coordination with CHRP

"*There is no active coordination between the DOJ and the CHRP. In terms of evidentiary buildup, CHRP does not participate. This is good so that the DOJ and the police will be on their toes*."

Role of private prosecutors

"*Private prosecutors are needed to maintain the confidence of the witnesses for the prosecution in the state agencies, since the confidence of the witnesses is reposed in their lawyers, and not necessarily in the institutions*."

Retaliatory acts against witnesses

"*There are other cases which arose from the massacre, including arson committed against witnesses for the prosecution. After the names of the witnesses for the prosecution were announced at pre-trial, there were incidents - burning of farms or houses of witnesses, murder of their relatives; there were at least four instances of arson and murder involving the witnesses or their relatives, as victims. The prosecution of these cases is not handled by the head office, but by the field offices of the DOJ.*

Sometimes also, after announcement of the names of the witnesses, trumped up charges are filed against the witnesses – e.g. theft complaint against the house helper who allegedly overheard the planning of the massacre. After the name of Rasul Sankey was announced as a witnesses, a family member of his was shot, and a complaint was filed against him for murder, because one of his family members who was allegedly under the control of the Ampatuans, went on a press conference and said that Rasul Sankey himself participated in the Maguindanao Massacre by firing shots, and that he was involved in drugs.

Ethically, the DOJ cannot assist the witnesses in these retaliatory cases filed against them, so the witnesses have engaged their own counsel."

Witness Protection Program

"*Aftercare program must be included, which is a function of funding. There is no provision for employment. The first function of the witness protection program is to secure the witness. The financial support comes after. There is provision for education of children of witnesses.*

Policemen who become witnesses are disqualified under the witness protection program because it's part of their job to testify, so it is their family who is secured.

Relocation of the witness can happen, but the problem becomes transporting the witness from the relocation site to the court."

Administrative cases against accused

"*The administrative cases and the murder cases are proceeding independently of each other. The administrative cases against the 100+ policemen are still ongoing, initiated by a private prosecutor. There are accused policemen in the murder cases who the DOJ would like to discharge to utilize as state witnesses. There are about 15 police officers who are undergoing discharge hearings in the court, which are still ongoing.*

There is a police officer/ prosecutor who prosecutes the administrative cases in the NAPOLCOM. Unfortunately, there is no coordination between the NAPOLCOM police officer/and DOJ prosecution panel as to the testimony of subject policemen. There should at least be information passed on between the NAPOLCOM and the DOJ in this respect. At the same time, it is not necessarily true that the testimony of these accused in the NAPOLCOM administrative case will be accepted or adopted by the prosecution and by the court in the murder cases.

There is also no referral made by the DOJ to the Ombudsman or to the mother agency for administrative cases, even if there is a resolution to file an information in court. It's up to the complainant to file the administrative case in the proper forum."

Alleged arms buildup

"*With respect to the AFP personnel and the alleged arms buildup, the DOJ will need to rely upon the Department of Defense for information*."

Perpetuation of testimony

"*Under current rules, perpetuation of testimony does not always apply to criminal cases. It must be alleged that the witness is about to die, or is about to flee to another jurisdiction.*"

Support for the Prosecution

"*Frequent training in forensics is needed by the prosecution. There is also no counseling or program to stress-proof the prosecutors. While the law protects witnesses, it does not provide coverage of that protection to the prosecutors who handle these witnesses.*

The prosecution panel has a regular workload; they handle other cases. If need be, the workload can be reduced, but to take away their other cases altogether will not be good for them career-wise."

Definition of EJK

"*As far as the DOJ is concerned, substantively, there's no crime of EJK - just murder. But when a case is tagged as an EJK, there is more public attention. The confidence level of the witnesses increases. The DOJ does not operate on the definition of EJK, so they do not tag cases as EJK when they file any such case in court, despite the creation of special courts*."

Interview of Aquiles Zonio

Mr. Zonio is a Mindanao correspondent at the Philippine Daily Inquirer. He was part of the media contingent who joined the convoy, but managed to avoid the massacre when he and his two companions decided to pass by the hotel where they stayed the night before, to attend to personal needs and get their bags.

At the hotel, they were told that just 3 minutes before their arrival, unidentified men riding motorcycles in tandem came by and asked the hotel personnel for the names of the media who were going on the convoy for the filing of the Mangudadatu certificate of candidacy. Alarmed and sensing danger, they decided to skip the trip and went back to Buluan town to wait for the convoy's return.

Preparations for filing of candidacy

"It was Henry Araneta, DZRH reporter, who told us of the filing. My first question was what the significance of the filing was since this was usual during election time. They said that previously, Andal ran unopposed. In addition, Toto has asked Muslim women to file for him. That interested me. When we got to Buluan, four of us were requested to enter the house of Khadaffy Tuy Mangudadatu, Toto's younger brother, where the security arrangements for the convoy were discussed. If Cayton[25] *could not be contacted, the filing will not push through. But Cayton was contacted and he gave clearance saying,* 'There was no presence of any threat group along the route going to Shariff Aguak.'

I was the one talking with Cayton and I took his words at face value. Those who flagged down the convoy appeared to be friendly forces, combined elements of police, CAFGU and CVO. Even the military wouldn't have suspected anything."

Continued danger after the massacre

"*After the incident, the Philippine Daily Inquirer advised me to move out of Buluan for safety. The ISAFP came and took us to a safe house. The next day, a state of emergency was declared in Maguindanao.*

We were told that 'wardogs' *were sent out to hunt down the three journalists who survived."*

CAFGUs

"*The CAFGUs are geographical. It is the military that provides them with training but the funding comes from the local government. The Ampatuans used some of these CAFGUs. It is public knowledge that the Ampatuans were used by the Government in the past to fight the MILF. In some areas this is not happening, but it happens in Maguindanao. The Ampatuans used the CAFGU and CVO as their own private army. The Ampatuans pay for their wages, with money from government*."

Arming journalists

"*With the upsurge of media killings in the country starting 2004 up to the time of the massacre, several journalists were compelled to arm themselves. They purchase licensed firearms, but due to financial constraints, they can hardly afford to pay for the permit to carry (PTC). The PNP is very strict. For us who are not well-paid, and just make enough to make both ends meet, we do not have P12,000 to pay for a permit to carry. I'd rather use that for my daughter's tuition*."

Ill-Gotten wealth

"*From what I hear, there is no ongoing investigation being conducted by the COA. Last information I received from a reliable source was that at the time of the massacre, the cold cash in the possession of the Ampatuans is 10 million dollars. That is about half a billion pesos.*

It is an injustice to the local residents. If you go to Sharif Aguak, provincial capital of Maguindanao, you can see the stark contrast between the Ampatuans and the ordinary citizens. They do not enjoy basic services.

In my opinion, there should be a separate team that will conduct an investigation on the ill-gotten wealth of the Ampatuans.

In my separate interviews with the BBC and Amnesty International, I emphasized that the government should take serious efforts at running after the ill-gotten wealth of the Ampatuans.

COA in Manila should look into this. It should not be dependent on the report of COA in ARMM. I think the IRA in ARMM is about one billion. It is big money, and the national COA office should intervene. It should be frozen by the national government.

Mayor Jong Mangudadatu of Buluan claimed he had discovered anomalies even in the distribution of NFA rice, distribution of relief assistance for evacuees. The relief

goods did not reach the evacuees; they were sold in the markets."

Interview of Raymund B. Villanueva

Mr. Villanueva is the Director for Radio of Kodao Productions (a media advocacy group). Kodao Productions makes video documentaries on burning social issues in the Philippines, such as environmental destruction, human rights, civil liberties, and many more. It also produces broadcasts for national radio networks and community radio stations throughout the country.

How the stage for the massacre was set

"*The Maguindanao Massacre is still part of the culture of impunity. The killing of 33 media people was a violation of communication rights, not simply murder. Key is the national government support to arm the clan, and thus government is to blame. The Ampatuans were used to terrorizing the people for them not to support the liberation struggle in Mindanao. It was terroristic and state-designed. Then Secretary of National Defense Teodoro knew that the firearms of the Ampatuans were government resources. Government also pays the wages of CVOs and CAFGUs who were involved as well. Even the prosecutors are afraid of the military.*"

Command responsibility

"*I support enacting into law the doctrine of command responsibility. The worst year for journalists and activists was in 2006 with Oplan Bantay Laya. In the last nine years, there has been a pattern, a system, a clear design and objective of culture that resulted in a ballpark figure of 1,100 EJKs, 400 EDs, and hundreds of cases of torture. 12 days into the PNoy administration, five activists were killed: 3 from ACT new party-list, 2 from Anakpawis and Bayan Muna. This is a sampling to ring in the new administration.*"

Other recommendations

- Have special courts for EJK that are impartial and can try the claims of political prisoners;

- Resume peace talks. The violations of both sides in the course of the negotiations should be discussed. In 2004, the GRP suspended peace negotiations. While peace talks were ongoing, the killings slowed down and became intermittent;

- Consider witness protection by private institutions so that the families can also be protected;

- Ask for legislation for prosecutorial power of CHRP;

- Increase the number of paralegals for communication rights activism and for civil and political rights. The fact-finding team is usually composed of paralegals. Training gives them the confidence to assert and to be more effective; include some medico-legal training for paralegals;

- It is best if progressive groups are impartial. In the past, they asked assistance of forensic experts. At Limay, Bataan with then CHRP Chair de Lima, the human rights workers let the scientists and academicians handle the digging of bodies so there will be no suspicion.

Interview of Red Batario

Mr. Batario is the Executive Director of the Center for Community Journalism and Development (CCJD). The CCJD was formed by a group of journalists and development workers in July 2001 as a facility for journalists working with communities, citizens, and institutions for social change.

Background on CCJD

"*We are a media development organization. CCJD is also the founding member of the Freedom Fund for Filipino Journalists. Way back in 2003, we realized that there is an alarming trend in the killing of journalists. So, we decided, together with several other organizations, to form this group to look at the situation and provide support.*

We provide financial assistance to the relatives of victims: immediate help, then later on to investigate. We provide a legal support fund, in terms of following up cases, in terms of following up with the police."

Impunity and the Maguindanao Massacre

"*It was so totally unexpected. And so abominable, you cannot imagine it happening because it has never happened anywhere else in the world. The only other time there were that many journalist-casualties was in a plane crash in Iran. What is the message of killing that number of journalists? One message is that the culture of impunity is deeply entrenched. Another message is that some forces are untouchable, and in the areas where they are, they are the government.*"

Private group assistance

"*When courts issue subpoenas for attendance of hearing, they do not provide fare. Private groups come in to help because resources are not enough, even if we work closely with the DOJ.*"

Helping victims and their families

"*The National Union of Journalists is the one directly assisting the families through their chapters. Our work is facilitative. When donors come in, we link them up with NUJP or FFFJ. We also link them up with psychologists for psycho-social support for the families of victims through Dart Center Australia.*

If I would say one good thing that came out of the Maguindanao Massacre, it is the realization that we should help each other and work together. So we developed an alert system, peer support. In the provinces, journalists carry emergency dialing numbers in the cellphones. With the press of one button, a call is placed to me so I can contact the next of kin, or the newsroom. It is very informal but it provides the most immediate response. But through it we also receive a lot of threats, either through text messages, emails, or calls."

Risk faced by journalists

"*This was not indiscriminate killing; this was targeted.*

Journalists in the provinces are paid so low, maybe P3,000 a month; they are vulnerable and they get exploited by those in power."

The massacre could have been prevented

"*It could have been prevented if the military had very good intelligence. It was a failure of intelligence for one. It could have been prevented also if there were no warlords; this was the root of it, which also came out of greed.*"

Faith in the Legal System

"*I still have faith in the legal system. There are still good people who work quietly, and prefer not to call attention to themselves.*"

Command responsibility

"*There should be command responsibility but in practice, most of the time, we do not see it. It involves several layers. It could rest on lieutenants, which is about the fifth level, or the sergeant, since there are detachment commanders. It does not go higher than that. But in command responsibility, shouldn't it go as high as the Commander in Chief?*"

On debunking presumption of regularity

"*If the commander states that no patrol was sent out, who would be responsible for human rights violations committed in a particular instance, if the commander is backed by the presumption of regularity? The remedy is to get depositions and direct testimonies from persons or barangay officials who were present. But definitely the military will not give that information.*"

Interview of Col. Leo Cresente Ferrer

He is the Brigade Commander of the Philippine Army's 601st Infantry Brigade (IB), immediately replacing Col. Geslani four days after the Maguindanao Massacre. The 601st IB was in charge of securing Maguindanao at the time of the episode. The 601st Infantry Brigade was then replaced by the 104th Infantry Brigade in Maguindanao on 22 December 2009 after the imposition of Martial Law. Currently, the HQ of 601st Infantry Brigade is in Maria Cristina, Iligan City.

Military service

"I have been in the service since 1977, if you include my cadet days. If you are going to include only my regular commissions, it started in 1981. Today is 2010, less 1981, that's about 29 years in the regular force, plus 4 years—33 years from the time we are enlisted into the Armed Forces. When you are a cadet, you are automatically enlisted into the Armed Forces. My employer is the Philippine Army. Before I was designated as Brigade Commander, I served as Task Force Gensan commander from August 18, 2008 - November 27, 2009."

Post- massacre assignment

"*Then on November 27, 2009, four days after the massacre, I was assigned as Brigade Commander, here for the 601st IB in Maguindanao. I was based then in Tacurong, Sultan Kudarat - when we implemented the state of emergency, then martial law. I was not the commander at the time the incident occurred, I relieved Col. Geslani. He is in Tarlac now as Deputy Training and Doctrines Command of the Philippine Army.*

Our mission during that time, during the state of emergency, was to preserve pieces of evidences and arrest the perpetrators of the massacre. The rest was to recover the firearms to be used as evidence. It was joint work with the PNP. When the police has less capability to implement police work because the opponent has military capability, then you use the military to complement the PNP.

I came in a day after the state of emergency. The role of securing the area was given to the 73rd IB, which was given to us, plucked out from Sarangani. My role in the AFP then was to secure the general area of the crime scene. We are not to go anywhere inside the crime scene. We are not to put our footprints there. We are only at the periphery —to secure those who are going inside, and to secure the scene of the crime from being looted. I took on this responsibility from November 27 to December 9, then my Deputy took over as OIC of the brigade because my mother died on December 9."

Effecting arrest

"What is important to me is that I accomplish my mission as fast as possible. As long as I could complete my mission, I bring him to Gensan, that's it. They can ride in a car, a train or a bicycle - as long as I could accomplish my mission of bringing Zaldy to Gensan and Andal Sr. to Davao City. And I accomplished it as ordered, without any delay.

This was a joint operation of the military and the police. The 2 PNP guys rode with Zaldy going to Gensan. I was in the lead car. I was directed to arrest. I did not handcuff them out of delicadeza. There was no violent objection against their arrest. They surrendered peacefully."

Implementing Martial Law

"*During the imposition of martial law, we did not have any single case of human rights violation. There is no course in the AFP on Martial Law 101 -- it's just an application, considering human rights and IHL. When I commanded the forces there, I saw to it that the operation was transparent—the media can go around interviewing us, even in church celebrations; that helped a lot. So far, that's the contribution of the AFP. We implemented the imposition of the State of Emergency and Martial Law — both the AFP and PNP. We organized a Joint Security Coordination Center (JSCC) that served as the operations center. We made the implementation of our operations as swift as possible. In areas where the security environment was somehow hostile, then you must act swiftly. The imposition of martial law, though short as it was, helped us a lot. Contrary to public reaction that we went back to martial law in 1972 where there were a lot of human rights abuses, the implementation of martial law was very smooth—I am proud that we do not have a single case of human rights abuse.*

We did not even have a problem with the defense team. In fact, during the arraignment of Andal Jr. at Gensan City Airport., I arranged the arraignment area at the airport. Atty. Fortun needed a flight, and we arranged for him to take a jet of the Philippine Air Force from Cotabato City to Gensan City."

Cases filed

"*There were two cases filed against me: Illegal arrest and illegal detention of Ampatuan. It does not bother me; I am only obeying the orders of my superior, the administrator of the martial law, Gen. Ferrer, Eastern Mindanao Command*."

PNP – AFP collaboration

"*It is the Unified Command that makes a decision when the army will come in. There are times when the army, the AFP, will be the lead agency. There are times when the police will be the lead agency. In terms of operations against a big armed group, whether it's a police matter or not, I think it's the Army that took the lead because it has the capability—it has air, land, sea power. So the police would be supporting us. But when it comes to handling of evidence: that is police matter. The Army is outside of the*

chain of custody of evidence. That's why intelligence work is a joint operation - Army, Air Force, Navy, Police. Because the presence of armed forces penetrates even in the mountainous area, where there is no police visibility.

When the PNP National Headquarters decided to relieve all of these people, the replacement police came from all over. Some came from Davao, some came from Gensan, some came from Cotabato. We established the Joint Security Coordination Center in Maguindanao with Gen. Serapio for the police and Gen. Ferrer for the AFP.

The infantry battalion was the first one to arrive, the 64th IB; they are now based in Lanao Sur. A small group will do recon. Then they coordinate with the police. We don't have any custody, we are not along the chain of custody of evidence, so we secure the general area of work of the police just to make sure no one enters, or makes trouble."

SOCO

"*My opinion is that with the Muslim culture, they want to get the remains immediately. You can see from the footages - many media people were there, you cannot see the army there. The police that arrived were not SOCO but police officers from Maguindanao before they were relieved.*

I don't have any problem with the police; we work very well with the SOCO. There was an instance that SOCO worked without sleep; getting the serial numbers of guns, processing evidence. They were even reluctant to come with us on operation because when bodies kept on surfacing, they had to keep on processing without end. The manpower was limited; and the evidence of warlordism was overwhelming."

Arms search and control

"*When we search, we have an explosives and disposal team with us. The Army has this; the PNP also. We found a cache of guns in a vacant lot, near the house of Anwar. We had a search warrant. There were boxes of ammunition from Armscor. We don't buy ammunitions from them; it's the police.*

We have to be stringent with the procurement regulations of gun owners, gunshops, as well as the processing for requests of ammunition with PNP. What I know is, in the past, there are PNP officials who are jailed for this. But for the massacre, the investigation is still ongoing."

Inter-Agency collaboration

"*We were coordinating with other agencies. From the PNP there was the CIDG from Manila; SOCO from General Santos City; intelligence group from PNP. We had the DOJ (NBI and prosecutor), the CHRP; we had the media. There was no one from the*

Department of Health, no doctors, because there were no survivors. The PDEA was there because there were reports that drugs were involved."

Scene of the crime training for the Military

"*We don't have specific training on how to conduct ourselves at the scene of the crime. So let's say an example, when you are operating in an area, and there is an incident that happened, you go to it, you cannot wait for the police, because the police might not be coming.*

What could bring about better prosecution? Education for the police and the soldiers. In areas where there are no police, you have to give capability to the army to do some evidence gathering. We do not have gloves; we don't even have fingerprint equipment.

We have a unit, the provost marshal for the garrison unit, that processes evidence. But their jurisdiction is within the camp. Their role is to gather evidence, looking inside the houses of soldiers, inside the camp. But outside camp, it is for the police to process evidence.

In case we are at the scene of the crime first, we coordinate with the police and ask them to send their SOCO."

CAFGUs and CVOs

"*From what I know, no CAFGUs were involved. They were issued Garands as weapons, and no Garand was used to shoot any of the victims. They were shot with M16s. CAFGUs are under regular soldiers that act as cadre who are not subservient to the mayor. But a CVO only obeys the mayor or the police. The CVOs are from the local government.*

Remove the CVOs and if need be, increase the police, increase AFP strength. The CVO is subservient to the appointing power which is the mayor. In my area of jurisdiction, there are only a few remaining CVOs, and fortunately they are not abusive."

Interplay between Warlordism and MILF

"*In terms of removing warlordism, it could not be totally removed because of the culture - meaning, the rido among existing clans, family wars, which require firearms.*

We must be very fast in our actions, because there are many forces around, who are also interfering in our actions. Who are these forces — some MILF, depending on the area. Our strategy need not be violence; we can put our hopes on the dialogue. And we are also hoping once the GRP and the MILF have a final agreement, then we can have demobilization, disarmament, reintegration (DDR). In the end, the warlords will not have anything to use.

The AFP has contributed a lot in identification of the means to warlordism – armed capability, arm cache, explosive cache, so on and so forth. The AFP has contributed much to the collection of evidence, and we contributed much also in making the police work easy for the PNP, in terms of manpower, security—securing the PNP when they do their jobs in collection and preservation of evidence. The AFP has also done a lot in getting information as to where the suspects are, the arms, and the residences that will be subjected to search warrant; the AFP has also served a lot in helping the PNP in respecting cultures of the Maguindanaoans because the AFP is aware of the cultures of the Maguindanaoan."

Rido

"*We need to deal with the greed for the perpetuation of power -- that is the reason behind the massacre.*

We also need to improve the justice system. In our area, Lanao, Maguindanao—there are 3 kinds of justice — through customary law, constitutional law, sharia law. They have unwritten law. If it can be resolved through customary law, this is used, especially in rido. If not, we use legal means. Seldom have cases been filed in court because the people resolve it using their culture. Paying of blood money in case life is lost is mostly done to resolve the conflict. Otherwise, the families may go to war in order to regain or preserve family honor– this is what we call RIDO (family feuds)."

Interview of Col. Magaway (Lt. Col. Virgilio D. Magaway?)

_____ is the Deputy Brigade Commander of the 601st IB, the IB which was in charge of providing security to Maguindanao at the time of the massacre.

Scene of the Crime

"*We were at the scene to provide area security starting 28th November until we went to Lanao. It was the police which secured the arms, not the military.*

So far as the AFP is concerned, we have done our job well. There is nothing I can see to show we were remiss in our duty, because we secured the area – this was our mandate and we performed it. As a matter of fact, the 64th IB reacted fast even if it was about 15 km from its battalion headquarters."

Interview of Col. Romeo Mendoza

Col. Mendoza is the Commander of the 104th IB, Barangay Kalandagan, Tacurong City, Sultan Kudarat. The IB has been providing security in Maguindanao and part of Sultan

Kudarat province. They were deployed to this assignment in December 2009, replacing the 601st brigade troops in Maguindanao.

Contributions of the Army

"*We have successfully protected supply routes, and kept highways safe. There have not been any ambushes by lawless armed groups, or kidnap-for-ransom groups. Some families carry arms to protect themselves against rido*.

For arson committed against witnesses, we provide community protection by sending soldiers. There are areas where we stay put, and when the situation improves, we leave.

For persons who are targeted for retaliation, we sometimes provide security when there is a directive. But we do not provide day-to-day security because this is contrary to the orders of the commander–in-chief who recalled the detailed escort of AFP for politicians and businessmen. If they need, they can ask security escort from the PNP."

Media coverage

"*In many instances of our work, the media is there to cover the events, for transparency. Most of our searches are covered by media. But we would like to ask them to observe rules on engagement, and not interfere. It is good to have them so that the truth will be reported. If we stop them, we get accused of doing something illegal*."

CAFGU

"*I can tell you that CAFGUs do not contribute to warlordism. CAFGUs have a budget for training, uniform, firearm and ammunition, provisions. So we cannot just get CAFGUs anytime we want. There is a process that is controlled by the military. But it is not a full-time job; they are given only subsistence allowance. When they go off-duty, they can do other jobs like carpentry, fishing, or any form of moonlighting. If the CAFGU is close to the mayor or governor, he can also work there when he is off-duty. CAFGUs have the mandate to maintain peace and order, and ensure that lawless armed groups will not infiltrate their barangays. They are like the barangay defense system, but armed.*"

PNP

"*The police files the case and takes care of the evidence. We secure the area because that is our job - to make sure that lawless armed groups cannot move around freely terrorizing, extorting or kidnapping. The police know how to do their job, but there are only so many of them, and they cannot address the big armed groups. That is why we work together.*

If possible, it would be good if the PNP can deputize one unit in the Philippine Army to help effect arrests. In the field, we can help, when they are not present. Under the present set-up, we still need to call them and sometimes, this is not very easy especially when they have a lot of things to do. We also understand their situation.

Let us have a seminar-workshop where we invite the military and the police, and then we submit the required result. After that, we can have improved policies, recommendations on the matters that complicate our lives. Even the UN does that to gauge the neutrality of a peacekeeper. The AFP would appreciate that since we also want to address these problems."

SOCO training for the military

"*Inasmuch as we're already involved in anti-criminality, it would also be good to train soldiers. We can have a special unit to assist the police. Like SOCO, we can have a unit that goes with the army that has initial training on SOCO skills and responsibilities. If we are given training and capabilities, we can help more*."

Col. Gerardo F. Barrientos

Col. Barrientos is the Deputy Commander of the 104th IB, which replaced the 601st brigade troops in Maguindanao after the massacre.

Serving warrants of arrest

"*As far as the Maguindanao massacre is concerned, the 104th IB focused on addressing the private armed groups; we cooperated with, and augmented the efforts of the Philippine National Police that makes the arrests. In fact, we obtained a copy of warrants of arrest against the personalities involved in the Maguindanao Massacre. Unfortunately, it was difficult because we did not know the identities of the accused. For example, who will we arrest when we do not know what they look like? While there are photos and names, these people are nowhere to be found.*

We build up intelligence nets, and asked the people to assist us in locating them. But this is really a game of hide and seek.

Another problem is that they are able to swap names; we rely only on their photos. If we have a national ID system, there is a certain individual with a name like this, a picture like this; even if he changes his name, the picture will identify him. But the national ID system might not be the solution because it cannot establish the location of a person. Maybe you could limit his movement as far as transactions are concerned.

I would presume that the copies of warrant of arrest are spread all throughout the different agencies. But these people are not going there. They're in the mountain areas. So from time to time, they are also aware that there's a warrant of arrest issued against

them. Most of the time, they limit their activities to the hinterlands, rather than going to areas where they will be susceptible to arrest."

Politicization

"*In the political set-up, the policy should be that the PNP provincial director is not affiliated with the governor who approved his designation. Same with the mayor. They should not be politicized.*

The AFP is independent but some political leaders have preferences."

Evidence at scene of the crime

"*If you ask me, the troops are well aware of their duties and responsibilities. So it's automatic that any evidence that would be located or found in the crime scene, we do not normally touch it, unless the team from SOCO arrives or the team from the PNP arrives. It's always just a sort of, not a standing order, but common sense - the moment the troops arrive in the area, there's an instruction that we cannot touch the evidence in the area until the appropriate authorities arrive at the scene.*

The focus of our job is practically running after the culprit. So the moment we are in the field—melees, encounters, engagements— we immediately call on the PNP for the preservation of the evidence."

Culture-sensitivity

"*In fact, it is mandatory with the forces assigned in Muslim-dominated areas that we have an understanding of Muslim culture. For example, if the victim is female, you cannot simply touch her. Otherwise, we will be violating some cultural sensitivity.*

Soldiers are made aware of this particular culture. So the moment they're deployed in Muslim-dominated areas, we see to it that we conduct some sort of information campaign relative to the cultural sensitivities of the area. And it has been working. Luckily for us, we have officers who are Muslims. In this brigade, we have 5 Muslim officers. So from time to time, they tell us, 'Sir, there are cultural sensitivities involved here.'"

Armed groups

"*Political groups are very careful now because they know that the Government is dead serious in controlling armed groups. In fact, there is a mandate that these private armed groups should be dismantled. 2-3 people working for a certain political personality or any private individual, is considered an armed group. Right now, they are practically abiding and are being careful because they know that the Government will be after them the moment they organize armed groups.*

The problem in the area itself is focused more on addressing many armed elements roaming around the area whose identity could not be associated directly to anybody—meaning, these are lawless elements, referring to the lawless uncontrolled groups of the MILF; there are those kidnap-for-ransom groups operating in the area; and there are those individuals who just simply organize themselves to protect themselves against possible intrusions of any other armed elements."

CVOs and CAFGUs

"*Talking about CVOs, these are practically controlled by the PNP. The mandate of organizing CVOs, is I think, assigned to the PNP. As far as the armed forces are concerned, yes it's the CAFGU, but there is a thorough process of selection. Meaning, you cannot just simply ask to have a CAFGU here; it must pass through procedures and processes when there is a necessity of organizing a CAFGU. Of course, these are areas where armed forces are really needed, but again it undergoes a thorough process and assessment by the military commanders, and politicians have nothing to do with this.*

The CVO program is a function of the PNP. In my personal point of view, the CVO program is very misinterpreted. Any civilian whom you organize for the purpose of providing necessary development to the community is a CVO. It is just that some of them carry personal firearms, so the CVO concept was seen as bad. It is not bad. It's just that some people took advantage of this particular organization, and the rise of CVO."

Firearms of Civilians

"*I think we need to really control loose firearms. Even if you say you are a private citizen, you should not be easily allowed access to firearms without compliance with law. We have a civilian group that is starting to carry personal firearms. Even with proper documentation and authorization, people are immediately suspicious*."

<u>Interview of Atty. Eduardo S. Villena</u>

Atty. Villena is the Chief of the Legal Division of the PNP-CIDG . He actively participated in the investigations of the Davao Death Squad[26], Parañaque shooting[27], and the RCBC robbery/killing[28]. In behalf of the PNP, he supervises the preparation of the evidence for the prosecution in the Maguindanao Massacre case. He is also a criminal law professor.

HRVs and extrajudicial killings

"*I asked the CHRP - what are the cases of human rights violations - and they gave me the provisions of the Revised Penal Code. Human rights violations are those that shock the conscience. But all cases are shocking to the conscience. I also asked*

the CHRP to create a committee to classify what those crimes are, whether punished by the RPC or by special laws, which are considered human rights violations. Until this is properly classified, we will be at a loss about HR violations.

EJK is a misnomer because it gives the impression that there is still judicial killing. This should be called summary executions committed by both sides: state actors and nonstate actors."

Evidence Handling

"*This is sub judice, so let us go hypothetical. First, take into account the sources of evidence and how it came into their possession. You will accept, but subject to forensic examination. Note that not all police officers are investigators. Personnel involved must be duly qualified.*

Second, handling of evidence. In the scene of the crime, first responder is not the police – it is the barangay or community leaders. First thing they have to do is to call the police. When the police comes, they will not interfere as well unless there is sign of life. Next is to cordon the area. If the local police starts picking up evidence, it is altered and thus inadmissible. S/he must only act within the given authority.

Third, chain of custody of evidence. The one who picked up the evidence should be the one to turn it over, and this evidence should be immediately examined.

We have a number of investigators but many are assigned to desk jobs. The PNP should have an official listing of investigators. They must be ready to be called upon regardless of place of assignment to help in any investigation.

Paralegal training of community workers is good but the problem is after the training, they might feel they are highly qualified already. The training should define limitations. It should teach them how evidence is preserved, and to call the competent authority to do the actual retrieval of the evidence. They should not do it themselves."

Court management of case

"*In the case of the Maguindanao Massacre, we are the ones supervising the evidence for presentation by the prosecution. I noticed that one of the accused is already acting strangely; I hope he will not do anything because the judge ordered removal of the handcuffs during the court proceedings. We have made the report that the guy is acting strangely. If we want to help him, the best thing to do is refer him to a mental institution; right now we might be putting everyone else in danger*."

Management of case by PNP

"*If there are threats that are continuing in relation to this case, it is normal in Mindanao. As for the case, there were firearms that were retrieved, and witnesses are*

credible. Our task is to ensure that the evidence is properly handled, and properly processed, and that evidence is still available when it is marked by the time it is formally offered.

We are under the direction of the DOJ, and we comply as a matter of duty. We also see to it that at all times, we have personnel present to take note and report progress to all concerned. If we see something that needs improvement, we immediately put it in writing. A document like that will outlive all of us. This is the trial of the century. But with the number of accused (196 so far) we might go beyond 2016 which is the end of the term of the President. I hope those involved will remain in public service. I am sure this case will outlive me. I hope that time will vindicate all of us. We will continuously be on guard."

Preventive measures

"*There is so much focus on prosecution. Why don't we focus on preventive, proactive measures? We can do this thru the PNP Human Rights Affairs Office. I have only one comment: Try to classify the lecturers. Get from all sides, including those with hands-on experience among the police officers.*

Lectures must also be on a regular basis, like the ones every flag ceremony. If it is a one-time lecture, they will only be good for two weeks. They need reminders. Also to prevent police officers from doing wrong, there must be sanctions, and these sanctions should include publishing the name of erring police officers. This should be contained in a human rights corner in the newspapers. But also include those who were acquitted. Police officers will then be careful."

<u>Interview of Atty. Vicente S. Aquino</u>

Atty. Aquino is the Executive Director of the Anti-Money Laundering Council (AMLC). The AMLC Executive Director was interviewed in view of the allegations of ill-gotten wealth by the accused Ampatuans, and theories of possible misuse of such funds in derailing the prosecution of the case against them.

AMLC engagement

"*The AMLC is already fully engaged in the case and cannot disclose, much less discuss this engagement*."

Investigation by AMLC

"*AMLC conducts investigation motu proprio, or upon the referral of other government agencies, or upon complaint by private individuals. The AMLC has many investigative triggers:*

- *Suspicious transaction reports received from banks and other financial institutions*

- *Referral of other law enforcement agencies such as the PNP, Ombudsman, PDEA, BOC, CIDG, NBI, Congress*
- *News reports*
- *Complaints from any person (as a general rule, complaints must be under oath to avoid baseless suits. But even if it is an anonymous complaint, if the same can be verified or appears to be with merit, then the AMLC investigates)*
- *Request from another jurisdiction or country*

Amendment of AMLC Charter

"*There is a move to amend the AMLC's charter to broaden the acts constituting money laundering, including possession and transporting; and to increase the number of predicate crimes underlying money laundering – e.g. crimes against women and children, environmental crimes, bribery, corruption of a public official, carnapping. RP employs the list approach, where the predicate crimes are listed in the law. In other jurisdictions, the penalty-based approach is used, where the predicate crime to money laundering is determined by the penalty.*

Another proposed amendment is to increase the number of reporting institutions, like lawyers, accountants, dealers in precious metals, casinos, real estate dealers. The lawyer-client privilege will be respected; it is only when the lawyer acts as a financial advisor that the lawyer should report the suspicious financial transaction, where the representation is for a business transaction, and not litigation.

It is also proposed to do away with the Eugenio ruling of the Supreme Court in the PIATCO case, that is, that the AMLC must give prior notice to the account owner of a bank account before investigating. If freezing of bank accounts can be made ex parte, inquiry must also be allowed ex parte. We are also pursuing that AMLC be allowed to prosecute predicate crimes, not only money laundering cases."

Properties subject of forfeiture by the Government

"*Theoretically, so long as murder is committed, the AMLC investigates if there are related financial transactions. Contrary to popular belief, all types of property can be the subject of forfeiture, not only money. Even if there's no financial component emanating from the predicate crime, AMLC may still investigate as the definition of proceeds under the AMLA is comprehensive. The term 'proceeds' refers to an amount derived or realized from an unlawful activity. It includes: (1) All material results, profits, effects and any amount realized from any unlawful activity; (2) All monetary, financial or economic means, devices, documents, papers or things used in or having any relation to any unlawful activity; and (3) All moneys, expenditures, payments, disbursements, costs, outlays, charges, accounts, refunds and other similar items for the financing, operations, and maintenance of any unlawful activity.*"

Private complainants' personality in forfeiture proceedings

"*The forfeiture proceeding is instituted in the name of the State, and the proceeds go to the State, as a rule. However, if a favorable judgment is obtained, the AMLC notifies the complainants or the victims' families. The AMLC also publishes the civil forfeiture decision to enable victims to assert their claim by filing a claim in the civil forfeiture proceedings and to recover therefrom*."

Freeze order and forfeiture proceedings

"*A petition for a freeze order is filed with the Court of Appeals, while a civil forfeiture action is filed with the Regional Trial Court. Under the AMLA, as amended, there are only 2 requisites for the CA to issue a freeze order: 1) there is an ex parte application by the AMLC with the CA 2) the CA finds probable cause that the funds and other assets sought to be frozen came from or are related to the unlawful activity*."

Interview of Col. Agapito Carmelo S. Nagrampa

Col. Nagrampa is the Group Commander of the Civil-Military Operations Group, Philippine Army.

AFP Investigation

"*There is a (Zeñarosa) Commission which is currently investigating those individuals involved in the massacre. There are efforts taking place to account for the firearms and ammunition issued to our personnel. This is important to allow the process to focus on the sources of possible pilferages and/or reports of tampering of these serialized government properties.*

Internally, we need to close the gaps, if there are identified ones, in our logistics management system and adopt stringent or pro-active measures to make individual accountability more pronounced and emphasized. As a matter of policy, legitimate military personnel are issued firearms for a specific military purpose and not for anything else."

Relationship of Philippine Army with Local Government Units

"*There has to be a good working relationship between the military and the local government units, particularly in providing service to the people. The Local Chief Executives (LCE) and his Council, the military commander and the local police chief and other community stakeholders should be one in ensuring that the common good prevails. Our people are looking at their collective endeavors to affect change in their lives.*

LGUs are central to the lives of the people. The Philippine Army supports the LGUs in a number of ways to make the life of our fellow Filipinos much better. It aims to serve them and achieve the common good. A symbiotic relationship is desired between them, and with this follows that nothing will be sacrificed in favor of personal agenda. Hence, the role of civil society organizations (CSO) is important."

Firearms

"*I suppose our field units conduct random checks and perform monthly inventory of firearms. I also suppose law enforcement agencies are regularly conducting their firearm inventory.*

As a matter of policy, our unit commanders thru respective staff officers undertake actual recording of all government-issued weapons. This is to ensure that individually-issued firearms are accounted for."

SOP in case of assistance sought by civilians

"*There is a clear delineation of roles by the local police unit and the military unit in a given area. A number of executive orders from the previous administration were issued to this effect. For peace and order concerns, it is normally within the jurisdiction of the police units. For insurgency or terrorism-related tasks, the military takes the lead role. On occasions or circumstances when the local police units need assistance as they cannot address the matter, the Army units can be of help as long as the LGUs/LCEs request for that assistance.*"

Command responsibility

"*The military organization has a clear definition of the doctrine of Command Responsibility. This has been issued and reissued time and again to remind our Officers and personnel about serious implications of neglect or wrong-doings in the military service. As an example, a Battalion Commander has clear command responsibility over his Company Commanders, and even over the Platoon leaders. A Brigade Commander has command responsibility over his Battalion Commanders, and all the Company Commanders under his command.*

This concept of responsibility has to apply to compliance with operational and administrative SOPs, military regulations or conduct, etc. I suppose our field commanders are very professional and conversant enough to understand and practice this by heart.

Our troops are also familiar with the consequences of neglect or lapses. We have working mechanisms like Court Martials that try and hear cases of our personnel who fail to live up to the doctrine of command responsibility. We also have the command's Office of the Inspector General (IGs) which ensures that policies and regulations are adhered to by our personnel. Whether it is operational slips, matters

about firearm, ammunition pilferage, or damage to a multi-million military equipment like tanks, our personnel are aware of the principle of Command Responsibility as an important facet of military routines."

CVOs and CAFGUs

"*The Philippine Army units do not maintain CVOs. They are normally established by the local government units (like Barangays, Puroks, etc…), and the CVOs perform local peace and order duties with very very limited authority. Locally-established CVOs typically assist our people in addressing petty crimes, squabbles/disputes among neighbors, or enforcing anti-drug efforts, curfew, etc.*

CVOs are not covered by the Articles of War; they are not part of our military Organization, nor are they within our chain of command. If responsibility shall apply, I suppose control is along the local government set-up. The Army units, on the other hand, coordinate with the local government units on how these CVOs are deployed or utilized.

The Philippine Army administers and exercises command and control over CAFGUs (Civilians Auxiliary Force Geographical Units) in many localities. This is done through the designated Cadre Battalion based in every Infantry Division. They form part of the structure, and responsibility is performed by the Battalion Commander. Since CAFGUs are part of the structure, they are subject to military regulations, and therefore triable by Court Martial. The provisions of the Articles of War apply to them also."

Military Justice System

"*This is the basis of our legal system internally, and is part of our broader legal system. For offenses committed in the performance of military functions or duties, the military justice system applies. For offenses committed outside of military function, the provisions of the Revised Penal Code (RPC) or other issuances by pertinent authorities apply.*

The workings of the military justice system is something not commonly known to many of our people. But it functions effectively in the organization in addressing an assortment of offenses listed in the manual. Not only that, this is implemented from the lowest level (Platoon or Squad) up to the higher level (Hqs, Unified Commands, Major Services) in all branches. A Platoon Leader dispenses the justice system for direct members of his organization; and so with the Company Commander, Battalion Commander, etc.

Of course, the conduct of Court Martial hearings is not done publicly, as the rights of the accused and everyone is protected. The presumption of innocence is always observed."

The Philippine Army does not actively advertise this information to the public, because this can be very expensive. But we educate our stakeholders also about the efforts we invest in supporting HR concerns."

Human Rights training needs

"*Human rights training is an important part of our general education and training process. Every soldier or officer has a series of training opportunities to learn and relearn HR tenets, principles and provisions. While discussion on the matter may fall along theories, we consider also that every operational condition is not the same. A Platoon Leader or a Company Commander will be confronted with diverse conditions in as many areas he has been to. The situation he is in is not a vacuum. A combatant is armed and dangerous and is therefore a military objective. He is also aware that civilians or children are not targets in combat. They are to be protected. HRs are to be observed.*

The perceived 'bad image' of the soldiers must be a 'carry-over' from the vestiges of the past. I suppose our organization is a learning organization and mistakes are to be taken seriously and not to be repeated. The Philippine Army has been taking a lot of organizational and operational reforms since.

Our soldiers are better off now than when we were lieutenants. They are steadfast, hard-working and just as service-oriented, though some may fall astray.

We have recurring training on human rights. Infantry Divisions ensure that HR refresher or orientation sessions are periodically undertaken. Lower commanders also guarantee that their personnel are updated. When resources are scarce, Commanders find ways to allocate or tap the services of appropriate agencies.

Sustainability is a challenge. We need very much the support of other organizations in the production of educational materials, production equipment, and crafting responsive training packages. Our personnel need to have individual copies of these materials as their ready references from time to time."

<u>Interview of Teodoro De Mesa</u>

He is Chairperson of Philippine Alliance of Human Rights Advocates (PAHRA), a human rights network. He discussed several human rights cases, other than the Maguindanao Massacre case.

EJK, ED, Torture: PICOP 6 case

"*This is a case in Agusan del Sur, eight years ago when 6 workers of PICOP went to a fiesta and 1 drunk soldier decided that they looked like the NPA who ambushed the soldiers where one of their officers died. So they herded at least 6*

workers back to the camp. That was the last time the friends and relatives saw them. So the parents started looking for them.

*And the usual answer given when you ask the military camp, '*Ah, they are not here. They went home. We sent them home*.' But where did they go? '*We don't know; maybe they joined the NPA*.' An abduction case was filed.*

Six years afterwards when the case was archived and about to be provisionally dismissed, there was a soldier whose conscience bothered him, and started looking for us. We don't know him; he doesn't know about us. He only heard that we were helping the parents look for their son, husband, brother. He spent his own money looking from Mindanao to Manila. Naturally we were worried but we kept him and let him through to two counselors. The only question is: 'Are you telling the truth*.' He was here for a week and went through two counselors, both priests, and his testimony was evaluated by a lawyer.*

*We smuggled him into the courthouse on the day the court was going to hear the case for the last time. The soldiers saw him. And with his testimony, he was able to turn the whole thing around. Then, the judge ruled that he was credible. But the thing is, that was for abduction. What is the real thing that happened? He testified, '*The six workers were herded; the soldier who was head of that group called up the commander, "We got ourselves some NPA. What will we do with them?" "Kill them*.'"*

*The thing was, the soldier who came to us was there. He was not a part of it but he happened to be there because he was going to get his salary. What did he see? '*These guys put them to death one at a time. Did you know that when a blow is delivered to a person's head, the eyes pop out? They didn't die immediately; and after that the bodies were burned*.' That was what he narrated in his testimony.*

We asked the families if they still wanted to file a case for multiple murder and they said yes, because the victims deserve justice. We told the witness that at the very least, there will be retaliation, many cases will be filed against them and at worst, he and his family may be killed. He said he experienced Martial Law where a relative was abducted and killed by the military and he remembered that.

Four of the accused were convicted for abduction; this is now under appeal."

Torture

"*We have the Anti-Torture Law. PAHRA is helping with IRR. But there was this case in Bataan; his medical record will show that he is ok, because they tortured him only after the examination.*"

Issue of evidence

"*In the case in Bataan, two men were shot and the wife was arrested. We told them to immediately exhume the bodies because the police claimed there was an encounter and the bodies can disprove that. They got a permit to exhume but the two bodies were already missing.*"

"*I'll give you another case in Central Luzon. In an encounter, no one is killed. On the way back, the soldiers see three brothers in a tricycle going to their farm. They fire at the tricycle. All three brothers die. The soldiers call the funeral home. What they did was to change the victims' clothes so they will look like rebels. So it would seem realistic, they made cuts on the shirts so they will look like bullet holes.*

*Someone advised the family: '*Get their clothes*.' The soldiers forgot about the old clothes which were transported with the bodies.*

There are three EJKs and the evidence is with the relatives."

Perpetuation of testimony

"*Once the testimony of a witness is put in a deposition, the risk decreases. There may be retaliatory action against him, but not elimination of evidence. This is where a lawyer could help us. The lawyer can make sure the evidence survives, while we can work on making sure that the witness survives. It is not just about perpetuating the testimony; the witness should be able to survive to testify. There are technicalities where we need the help of lawyers.*"

Witness protection

"*The protection the witness receives, as well as the resources, comes from civil society. It extends to his immediate family because he can no longer work. In the Kuratong Baleleng case, the witness whom we helped refused government protection because the accused police officers even visited him. Because of that, he just left.*

He could also be physically safe, but witness protection is not just about being physically safe; it is also being able to sustain the courage, determination and morale to be able to stand continuously for truth and justice. Otherwise there will be a breakdown. Not just only for the individual witness but also for the family."

Human Rights Defenders: First line of defense

"*That is why the full thrust of PAHRA at the moment is to build formations of human rights defenders so that at any level, they are able to move. We try to develop paralegals at certain points where they are needed, and maybe later they are able to assert to a higher degree. When people are in the field, they would also like legal consultation. With the advent of technology, can we have e-lawyers? It is important that they know a lawyer is looking into the case.*

One time someone was abducted in San Fernando. We were at a conference in Manila with a person from Amnesty International. The representative of AI who was a foreigner called the commander of the camp. 'Hello, this is Amnesty International. We heard that you have this person there.' *The commander answered yes. But it was one month afterward that we were able to see the person. Someone recounted that when the call was received, the face of the commander changed and the person was not touched anymore after that. We could use that as extra protection through e-lawyers. If we could have a pool of lawyers that we can call:* 'Do not touch him, searge; I am his lawyer.'

Enforced disappearances/abductions

"*We have community workers who are abducted. For example, from Zambales there were three. From March 21, 2010 up to now they are missing. They are also exposed. I talked to the family. The mother called the battalion commander. They went to the nearest police outpost. The son called the cellphone and then the military put it on the blotter that the mother was able to talk to the son. But the answers were repetitive:* 'Do not worry; I am in a good place. Please give my harvest to my brother.' 'Where are you?' 'Do not worry.'

If that was an enforced disappearance, what is the impact of having the son talk to the mother? For me, hearing a voice does not necessarily mean anything. Or it could be that when a person is abducted, you complain; he surfaces and thanks the military for providing protection -- but he will not go back to his home; he will instead remain in the camp. In that instance, you have no case of enforced disappearance.

That is why we are asking the CHRP to give deputization to civil society organizations because only CHRP has the privilege of visitation, besides lawyers thru privilege of counsel."

"*Another case is of one who was accosted at Pangasinan and taken to Tarlac to Camp Aquino. I called the CHRP Commissioner and she replied she was in Africa, but that she will ask her executive secretary to make sure that I have investigators who will follow it. Wow! The investigators proceeded to Camp Aquino but the person was not there. I received a tip that he would be taken to Quezon province to the Quezon provincial jail. CHRP got there first to the surprise of the soldiers.*"

"*We had another case in Lourdes Hospital. Someone was brought there with a gunshot wound. The police was notified. The nuns at Lourdes Hospital contacted us because 20 police officers arrived and they were scaring the other patients. We talked to the commander. He told us that the patient was part of an ambush in Antipolo. They had no warrant but they said no warrant is needed because the patient was identified. After an hour, they brought a John Doe warrant*.

Media was present but they could not do anything. We thought things were ok and we left. In an hour, he went into surgical operation. Then they came to get him.

Even the hospital guards could not stop them. They were told, 'If you have a problem with this, file a case.' *They took the newly operated patient, put him on a wheelchair, with the dextrose drip and took him to Crame.*"

Human rights education and awareness program

"*AFP has human rights education. What is the impact of this? Let us test it. We have an arrest on a Friday evening. You call up the AFP human rights office. We would like to ask whether you have this person taken in Labrador. The answer is* 'I'll check on it first thing in the Monday morning*.' That was Friday. By Monday morning the person is already dead. We tell them that we contact them because we simply want to make sure the person is with the military and that due process is given, but not to accuse them.*"

Lack of political will to overcome poverty

"*On the right to food, Prof. Cecilia Florencio of UP[29] wanted to show the distinction between unwillingness and inability of the State to fulfill its obligation. The malnutrition in the Philippines always has been expressed in the top ten malnourished regions. She showed that these malnourished regions had been consistent for the past 3 administrations. And she showed that this was so because the plan of one administration that failed was just copied by the next one and just repackaged. So, the malnutrition actually increases instead of being reduced. Now, is the State unwilling or unable? Because if it is just unable, then they will be able to find what kind of resources it needs. But if it is unwilling, you can always look for loopholes not to implement it. She says, in this aspect, the State is unwilling to really nourish the nation.*

That's why when you look at Maguindanao, 60 % of the people of Maguindanao are below the poverty line. And it has been so since the Ampatuans took over. So it has been consistent. So, are they unwilling or unable? That means they really don't want to uplift people from poverty, because poverty becomes a basis to be able to hold on to political power, because people would depend on you. Instead of people being able to stand on their feet, they will depend on dole outs. And if it seems they are the only ones who are powerful with all their resources, people will depend on them."

Ideological divide

"*We always say that extra judicial killing, enforced disappearance, torture, and other grave human rights violations are rooted in economic, social, and cultural issues. Unless these are resolved or up to a certain extent, diminished, EJK, enforced disappearance, and torture will continue, because we will always see signs of resistance against situations that are unjust.*

You also have the issue of the ideological divide in relation to human rights. But no matter what is said regarding that, violations are violations.

That is the case actually with what happened with Melissa Roxas, an ideologically rooted person, who was taken. When she was taken, we were contacted by a human rights agency of the Philippine Government. We said we know of her but they should ask the other human rights group where she is affiliated for other details. After that there was a post in the bulletin of the US Embassy in New York where according to the government agency, our organization denied the abduction, and that the incident is false. That act was intended to drive a wedge between the two groups, and this was done by an agency which is part of the executive branch supposed to ensure that human rights are upheld."

Addressing HRVs

"*The preventive aspect is at this moment, the best. But we also need to consider intervention. That is why deputization is important. Another thing that would be good is for people to know their rights, but there should also be those who would be ready to intervene. Otherwise, you just go to the next best thing; you have to document it. But documenting does not prevent torture, enforced disappearance or EJK. Then you start looking for evidence.*

In relation to grave impunity, although the legal process is a remedy, it might not be the only one to be able to break it; there must be something else. Or else, we do the prevention aspect, perhaps more. Or, another action is, we really take some cases wherein we could help one another and show the judge, the lawyer, the witness, the victim and the family that we can help each other.

There are attempts to at least move to the protection of human rights. But we use the word attempt because it never completely becomes successful. Some unscrupulous members of the military started to know how to get away with it. After an abduction, you ask for a writ of habeas corpus and a writ of amparo, and the military merely surfaces him and says that he was taken away for his own good, to protect him."

5. Focus Group Discussions

Three focused group discussions were held at South Cotabato with families of the Maguindanao Massacre victims. These discussions were held on August 21, 2010 in Marbel (18 family members/ discussants) and Tacurong City (13 family members/discussants), and August 22, 2010 in General Santos City (25 family members/discussants).

A. FIRST Roundtable Discussion with family members of Maguindanao Massacre victims[30]

Participants in FGD1, Group 1:

1. Estrella Razon, widow of **Fernando Razon** of Periodico Ini, General Santos City

2. Jovelyn D. Villacastin, sister of **Jose Duhay**, of Gold Star Daily, Tacurong City

3. Argie Caniban, widow of **John Caniban** of Periodico Ini; they have one child

4. Leonardo Caniban and Teresita Caniban, parents of **John Caniban**; John was the breadwinner for his parents, his wife and daughter, and also supported his unmarried sister and nephew

5. Emily A. Lopez, first cousin **Art Betia** of Periodico Ini, General Santos City; Art Betia, a bachelor, was supporting his elderly uncle and aunt, as well as orphaned nephews. Art was marketing manager of a local newspaper

6. Corazon J. Cabillo, mother of **Romeo Jimmy Cabillo**, Midland Review, Tacurong City

7. Roberto C. Arriola, father of **Macdelbert Arriola**, UNTV photographer. Macdelbert, 20 years old, has a son with his live-in partner

8. Ricardo D. Cachuela, Jr., brother of **Hannibal Cachuela**, of Punto News, Koronadal City

9. Karen F. Araneta, wife of **Henry Araneta** of DZRH, another victim; they have one child, and he has other children from his first wife

Narration of some of the participants

In Teresita Caniban's account, of the day of the massacre, about 3 in the morning, Jimmy Cabillo came by the Caniban residence, and he and John Caniban left together for Buluan. At around noon, Teresita was informed of the massacre; she texted John but he was not replying. She was hoping John was not included in the convoy since he and Jimmy were only on a motorcycle. They monitored the news; at 10 in the evening, Teresita was informed that John was one of the victims. All the families of the victims were called together from General Santos City and Marbel, and they proceeded to the site of the massacre. Teresita was able to identify her son's remains from his clothes, watch, and wallet.

In her account, Emily Lopez also noted foreboding behavior on the part of Art Betia before the massacre. He bought a week's worth of supplies for the household; he gave away his coins to the children. He told Emily he will be joining the convoy for the filing of Toto Mangudadatu's candidacy. Later that day, Emily was in the area and noticed the military on the road, and she was told a massacre happened. At 5 in the afternoon, she was informed that Art could be among the victims. Later the publisher for whom Art worked, asked her to claim the remains of Art.

Difficulties and Challenges

(a) Economic impact

There was an outpour of support for the families of those who were killed in the Maguindanao Massacre. The support came from Government as well as private institutions and individuals. For those from media, journalists' groups also took care of their own. However, it would appear that the efforts were uncoordinated and sporadic, reaching some but not all the families, and presenting only temporary assistance.

Rick Cachuela, Jr. is now supporting the family that his brother left behind. There was an announcement that there are funds from institutions and individuals intended to support the families of the media victims, but they did not have easy access. Before it is released, agreements and proposals have to be made. The initial funds they were given were not sufficient. The victim's child had to stop schooling and is looking for work.

Upon her husband's death, Karen Araneta and her daughter had to move out from her in-law's house and rent their own place. Before his death, they were planning on getting their own house. The financial aid that was given by different institutions and individuals was used to give them this fresh start. But she needs funds for their day -to d-ay expenses.

Jovelyn Villacastin said she is supporting the children of her deceased brother. While these children were given scholarships, as part of the financial support package for families of victims, there was no support for allowances and school expenses. To support them, Jovelyn said she is trying to start a business but it costs too much.

Estrella Razon said that her five children have tuition scholarships from the learning institution STI, support organization Bantay Bata, and media organizations Freedom Fund for Filipino Journalists (FFFJ) and the National Union of Journalists of the Philippines (NUJP). The two youngest children have allowances of P600/month, and tuition of P500/year. Her in-laws are also helping. Her husband had Social Security Service coverage, so she gets a pension of P2,200 per month that she is now using. She used the money given as donations at his funeral to pay off his motorbike, and attach a sidecar, which is now being used as a public utility vehicle.

Teresita Caniban said that the amount given to them as financial support for families of media victims was used up for electricity, water, food, medication. They have no more property since it was sold off to pay for existing medical bills because she is sickly. They were relying solely on the support of their son.

Emily Lopez said the donations left over after the funeral was kept for the elderly uncle and aunt, and for the transportation allowance of the nephews that Art was supporting when he was still alive. There are people who offer help but it is intermittent

and after a while, they do not come back. They are also careful that people will take advantage of them. They are trying to make the money last as long as possible.

Karen Araneta said they were so happy when they were told that the DOJ would be giving P50 million as financial support, and the Philippine Charity Sweepstakes Office (PCSO), P5 million. But they were only handed P10,000 from the DOJ, and not all of them received it. They were also given P50,000 which they said came from a media institution, and still not everyone received it. PCSO had a media release that it has given financial support, but the families did not receive anything from the PCSO. No one from PCSO is willing to talk to them, and DOJ officials said they are reshuffling personnel and cannot attend to them. CHRP also has not given financial support yet.

On the other hand, the Department of Social Welfare and Development (DSWD), the Department of National Defense (DND), the National Disaster Coordinating Council (NDCC), and the National Union of Journalists of the Philippines (NUJP) made good on their promise to give support, and so did the local government of Marbel, as well as the province and congressional representative. The local government of Sultan Kudarat also gave support for funeral expenses. The congressman of South Cotabato gave P10,000 per family.

There were problems on accessing the financial support given to the families. For example, Emily who was claiming for Art Betia who was single, has to fight for support of the elderly uncle and aunt that Art was supporting for the past 10 years. She asked that these relatives be provided for as well, since they are also victims.

Rick Cachuela said that his brother was abandoned by his wife for 16 years and the brothers and their families have provided for themselves in one household. To access further support, he was told that the DOJ will determine who should be entitled to assistance. He asked that the DOJ, before coming up with guidelines on egal

Corazon Cabillo is asking for help in order to understand the status of the case. Karen Araneta is also asking for help to be able to attend the hearings. Even if others who attend explain to her, they cann

Mangudadatu's convoy were killed, her husband, who is with SOCO, asked his colleagues to find Bebot's remains. But they could not find Bebot's body. Witnesses say he was one of those present at the pre-conference, and was seen getting into the van that was part of the convoy. His jacket was used to cover one of the bodies. His dentures were recovered at the site, and his identification card was seen in the video footages as among those found at the site. The ID can no longer be found among the items with SOCO.

Difficulties and Challenges

(a) Economic impact

There is talk of financial assistance, but family members of non-media victims say there are not able to access them.

Gov. Toto Mangudadatu's lawyers are providing free legal representation for the non-media victims. He also provided partial support for funeral expenses.

The families of those who were Government employees were given benefits especially since it occurred on a working day.

In Eden Ridao's case, because her husband has not served the Government for 15 years, the Government Service Insurance System (GSIS) is not giving survivorship benefits for the children. In addition, Eden is considered gainfully employed and under a policy dated 2009, she is not entitled to survivorship.

It was reported that the Philippine Charity Sweepstakes Office (PCSO) said it will give support, but this has not reached them.

Federation of Philippine Industries (FPI) will allegedly give P50 million that will be administered by the DOJ. P3 million was already given, with P47 million remaining. No disbursement was made without endorsement from DOJ, but coordination with them is difficult. Eden said the guidelines are not clear; she has submitted requirements in July 2010 but has not received a reply yet. A participant said that the DSWD might manage the fund.

Last December 2009, financial assistance was given, but not to all. Reyna has not received any financial support from the institutions, but Gov. Toto Mangudadatu gave some money which she used to rent a van to search for the remains of her missing father.

The Presidential Management Staff (PMS) Malacañang allegedly gave P100 thousand to families of victims. At one time, Reyna panicked when the barangay captain informed her that men were looking for her. She found out later that these were from the PMS of Malacañang, but they just passed her house and smiled, and did not even talk to her. It traumatized her.

Psychologists helped just once. Reyna Momay-Castillo said it is not their fault; they had little funds. For hearings in Manila, FFFJ has support for media. She gets her support from her lawyer, Harry Roque.

For non-media victims, they are the last to be updated about the case. Atty. Gemma Oquendo updates them because their lawyer, Atty. Nena Santos is very busy.

(b) Experience in harassment/threat

Reyna Momay-Castillo and Eden Ridao say they still have fears, because the perpetrators are still around; they do not take unnecessary risks. When they go to hearings, they are safe with DOJ, but eventually, they have to return home where no security measures are in place.

Justice: would incarceration be enough?

Sometimes they think about just accepting money to back out from the case. The money can help with their daily expenses. Eden Ridao said that if the support from Government is enough, they would not need to worry. But since the support is not enough, there is temptation.

Reyna Momay-Castillo said they should all fight for justice until the end, and support each other through it. Compensation should not be a substitute for justice. Justice should be achieved first, with compensation to follow. Gloria Teodoro shared this view; the incident left her a single parent, and it is justice she is seeking.

B. SECOND Roundtable Discussion with family members of Maguindanao Massacre victims[31]

Participants in FGD2, Group 1:

1. Rich Andrew W. Teodoro, son of **Andy Teodoro**, a media man connected with the Central Mindanao Inquirer, Tacurong City. Andy was the breadwinner for three families, with a total of 9 children. The first two families have no quarrel, but the third family gets most of the donations, and allegedly does not share with the two other families

2. Lumangas B. Sabdula (Bapa), husband of **Farida Sabdula**. Farida was the breadwinner of the family and the one who manages their farm in Colombio, Sultan Kudarat. She brought in P250,000 per year. Bapa is now 62 years old and cannot do the work she did, since he worked in the local government of Buluan. He now has to provide for three children, in-laws with two other children, as well as in-laws of one sister who also has a child, all totaling 10 persons. Farida

managed the corn farm which has two carabaos, but now the farm is run-down. She took care of everything.

3. Bainot M. Mangakap, sister of **Mamotabai "Baimamot" Mangudadatu** who left one child. Mamotabai was financially supporting her siblings.

4. Benjie B. Kalim, husband of **Wahida Ali Kalim**. He is employed with the local government of Buluan. He remarried and the new wife takes care of the child. To make ends meet, he also works part-time as electrician

5. Mohamad Palawan, husband of **Rahima Patu Palawan**. They have 5 children. Rahima had an installment payment business while Mohammad is a tricycle driver. Some of the children have to stop schooling because there isn't enough money to support them

6. Takungan Balayman, mother of **Pinky and Leilani Balayman** who were both victims of the massacre. Pinky, who was married and had one child, was a collector at the public market. Leilani was the cashier for Toto Mangudadatu's assistant. Both were providing for the family and helping with the expenses of their two other siblings.

7. Samira Calimbol, mother of **Mariam Usman Calimbol**. She said she has 5 children, with Mariam being the youngest. Mariam was a caretaker at Toto Mangudadatu's fishpond. The mother is a fish vendor at the public market. Mariam's siblings were taken in as assistants in the fishpond where she used to work

Difficulties and Challenges

(a) Economic impact

Rich said to access donations, he also needs to give a portion to emissaries. He asks to attend the hearings as well, because they are not updated; his stepmother claims that the lawyer hired to handle his father's case is her lawyer, and not theirs. He said that they are trying to cope as best as they can. He is applying for the position of driver with Toto Mangudadatu, but there is no vacancy yet. He is a part-time driver of a public utility van plying Tacurong-Marbel.

According to Bapa, they've been told that financial assistance and scholarships would be given to the victims' children from the NGOs, but this has not materialized yet.

It is the Mangudadatu family which gave support of P20,000 during the burial. The mayor of Buluan also gave P20,000 and 7 sacks of rice. The congressman gave P10,000. DSWD gave P10,000. The Presidential Management Staff gave P100,000. This is for every family. They were later told that Chairman Aranza of the Philippine Federation of Industry, promised P50 million. The families were given an initial amount

of P50,000, but none of the families from Buluan apparently received this. They were promised to be given two weeks later, but three months has lapsed and they still have not received any.

Gov. Toto Mangudadatu provided them with lawyers to handle their cases. But for the case of Rich's father, his stepmother got a Manila-based lawyer through the assistance of Benjie Caballero of NUJP.

Bapa also accompanied Toto Mangudadatu to witness the August 4 and 6 hearings in Manila. The Mangudadatus shouldered all expenses. Then he was able to meet with the lawyers, Attys. Nena and Preema who update him on the case.

Psychological Care

Bapa said that the CHRP, DOH and DSWD gathered everyone from General Santos City, Marbel, and Buluan. They were brought to a resort where the children enjoyed the swimming pool, and the adults were given counseling about the massacre. This happened one time in December 2009. There was no follow-up.

Participants in FGD2, Group 2:

1. Rashid D. Edsing, widower of **Pinky Balayman** with whom he has one child; and brother-in-law of **Leilani Balayman** (sister of Pinky)

2. Asmin Edza, wife of **Norton "Sedic" Edza**, one of the drivers for the convoy; they have two children

3. Halima T. Daud, widow of another driver in the convoy, **Rasul Daud**. Rasul was the sole breadwinner in the family; they have two children

4. Fairodz Demello, wife of **Eugene Demello**

5. Paisal G.l. Bernan, brother of **Zoraida Bernan**. Zoraida was a license inspector for the municipality. She was the breadwinner and prime supporter of her parents. She adopted one of Paisal's children and provided education and care. Paisal also lost a cousin and an aunt, both of whom are female relatives of the Mangudadatus

6. Almadin M. Abdul, brother of **Raida Sapalon Abdul**, another female relative of the Mangudadatus

Narration of some participants

The male relatives said they really wanted to join the convoy to show their support in the filing of candidacy. But they were asked to leave the convoy because as instructed by the Mangudadatu family, only women were supposed to join the convoy.

Difficulties and Challenges

(a) Economic impact

Paisal Bernan said that none from Buluan received any of the financial assistance that are reportedly given to the families of victims. It is Gov. Toto Mangudadatu that is supporting them, and who provided them with a lawyer to handle the case. Rashid Edsing confirmed that they did not receive the P50 thousand financial assistance.

They had pooled money for transportation cost when they were told that officials wanted to meet them, hoping they would get financial assistance. They were allegedly promised by DOJ Undersecretary Ian Norman Dato and Federation of Philippine Industries president Jesus Arranza, that they will be given support within two weeks, but no assistance came.

They said the children had to be separated and distributed among the relatives so they can be cared for.

(b) Experience in harassment/threat

Two months before the massacre, there were talks that a massacre will take place in Buluan, where Toto Mangudadatu was vice mayor, and where many of his relatives reside.

Paisal Bernan said that even after the massacre, they are still exposed to threat. In three instances when he went to Cotabato, he noticed men following him but was able to elude them. He is asking for protection, and requested permission to carry arms.

Everyone was told that the families of the victims will also be killed. They cannot go to Cotabato because they are afraid something bad will happen to them. The Ampatuans still have about 2,000 men around. The brother of a massacre victim was already abducted in Tacurong in July. He remains missing.

Justice: would incarceration be enough?

It would not be enough. But the group was unanimous that they cannot be paid off to desist from the case.

C. THIRD Roundtable Discussion with family members of Maguindanao Massacre victims[32]

<u>Participants in FGD3:</u>

1. Merly Perante, widow of Koronadal-based news correspondent **Ronnie Perante** of Gold Star Daily

2. Femalyn Magaway, first cousin of **Noel Decena**, circulation manager of Periodico Ini, based in Marbel

3. Mary Grace Morales, widow of **Rosell Morales** of News Focus, General Santos City, and sister of **Marites Cablitas**, also of News Focus

4. Maria Luisa Buenafe, first cousin of **Benjie Adolfo** of Gold Star Daily, Koronadal City

5. Phoebe Bataluna, girlfriend of **Benjie Adolfo**, and daughter of **Rubello Bataluna**, also of Gold Star Daily

Participants are members of the support group, “Heirs of 11/23 Heroes”, being families of media victims, most from print media but with crossovers to broadcast media. Other members of the group are Atty. Gemma Oquendo who lost her sister Atty. Cynthia Oquendo-Oyano and father Catalino Oquendo, and Cynthia Oquendo’s husband.

Narration of some participants

Merly Perante’s husband, victim Ronnie Perente, went with other media people to the Kalimudan festival in Isulan during the weekend before the massacre. After that, he informed her he was attending a press conference in connection with the filing of the candidacy of Mangudadatu.

Femalyn’s cousin, Noel Decena also went to the festival. Other than that, she did not know of his schedule. But on the day of the massacre, he was able to SMS asking for prayers because they were in a delicate situation.

When asked if their relatives knew of the risk, they said none of them mentioned being aware of any risk because they work with, and cover news, for both sides. If there was even one who mentioned the possibility of risk, they would not have gone through with it. There was a meeting before the convoy started, but the members of media were not included. They were informed there was a threat against the Mangudadatus, but the media believed there was no similar threat to them.

Difficulties and Challenges

(a) Immediate Problems Encountered

It is the media colleagues who went to the site who coordinated with the families and gave them updates. Mary Grace Morales said there was a known person in

Government who was at the site and who had the bodied lined up before they were loaded in the dump truck, and who took video footages. Mary Grace Morales felt that the bodies were not handled with care; some of the limbs were dangling. They were not put in body bags and where thrown into the truck like garbage. It hurt her as a family member to see that.

Mary Grace Morales said they were asked to leave and the bodies will follow. But no one was coordinating with the families; the bodies were transferred and scheduled for burial without the knowledge of the families. She did not feel that Government was coordinating and assisting them.

Phoebe Bataluna went to media contacts to look for the remains of her father and her boyfriend. She was able to identify them through their clothes.

Merly Perante identified her husband through his tattoos.

For legal assistance, even while they were still at the funeral parlors, people approached them and asked them to sign documents. They did not sign because they did not understand it, but there were those who signed.

(b) <u>Economic impact</u>

They did not seek Government assistance. But people from Government came to help. Gov. Mig Dominguez of Saranggani province helped those in media who were his friends, many of whom were from General Santos City; he coordinated with funeral parlors for the families.

Merly Perante said that the DSWD also gave P10,000 which they used for transportation and lodging at the time they were making funeral arrangements immediately after the massacre. No documents were required; only the identification card of the claimant was required as proof.

Mary Grace Morales said that officials of General Santos City, as well as private groups, gave financial support, including President Macapagal-Arroyo, Sec. Agnes Devanadera, Loren Legarda, Manny Pacquiao, and Ka-Rancho Inc. Merly said that she feels some of them were just jumping on the bandwagon. Toto Mangudadatu also gave assistance, but not to all. They said UNDP also gave, but not to all. It seems that to be given, they have to go when asked to do so, and when they fail, the assistance is forfeited. They were in agreement that the families of non-media victims who were just passing through and were not part of the convoy are the most disadvantaged. The CHRP has not yet given any assistance since their promise in January 2010.

Federation of Philippine Industries (FPI) promised assistance, but the mechanics and guidelines are not clear. They are presently seeking livelihood programs and are submitting project proposals to FPI, also for the expenses of the group. Since the funds are already there, they ask that the families not be subjected to additional hardships in

accessing these funds. Some of the families also have not received the initial financial assistance.

They met at the funeral parlors and decided to band together, eventually forming the group: Heirs of 11/23 Heroes, Inc. They also coordinate with other families of victims, even non-media.

Freedom Fund for Filipino Journalists (FFFJ) offered them monetary support and pro bono legal services with NUJP. There is also support from Bantay Bata.

Sec. Norberto Gonzales, of the National Disaster Coordinating Council (NDCC) also gave support. He funded the transport of the remains of one victim to Leyte where his family resides. He also gave funds for the baptismal of Merly's child (she was 6 months pregnant when the massacre happened). The baptismal was also the occasion for the induction of officers of their group.

They ask that if there are promises for support, the support should be given directly to the families, and not through other groups.

The reports are not accurate; the families do not receive the amounts stated in the report. It causes problems with other family members and even neighbors who think they are not sharing the money.

Sometimes it is not clear which group will be assisted. For example, a concert for the benefit of "Maguindanao Massacre victims" was supposed to be for media victims but because it was not clear, the families of other victims claimed as well.

(c) <u>Support</u>

Psychological counseling was given only once. The psychologists promised to return in April (but still no update as of August when the interview was done). But they have not done so, apparently because there are no more funds. There are other private groups, including nuns, that counsel them.

The members of Heirs of 11/23 Heroes Inc. work as a group. If one of them is approached, they make sure everyone in the group is informed. Their lawyer is Atty. Preema of FFFJ, and they are brought batch by batch to attend hearings in Manila. A batch that comes from a hearing echoes to the others. They are well-updated.

In attending hearings, FFFJ provides them with accommodation and transportation, and the Witness Protection Program provides them with security.

Justice

Civil and administrative cases are not a priority. They are focused on the criminal case.

They are worried that if the persons implicated in the case lose their jobs and benefits, they would become desperate and be vulnerable to corruption and bribery, and present inaccurate facts or total lies in the case.

It was also relayed through a member of the group that half a million pesos was initially offered to the victims' families (it will be P1 million upon termination of the case) plus educational assistance based on the following conditions: at least five families of the massacre victims will change lawyers; agree to a transfer of venue of the case; and issue a public statement that they are withdrawing the case against the Ampatuans.

6. Dialogue With The Philippine National Police Human Rights Affairs Office And Community Relations Group

Philippine National Police Human Rights Affairs Office (PNP HRAO)

- Sr. Supt. Franklin Jesus B. Bucayu, then Police Chief, PNP HRAO
- Police Supt. Gerardo Dia, PNP HRAO
- Sr. Supt. Carmelo E. Vallmoria, then Deputy Chief, Police Community Relations Office

The functions of PNP HRAO include:

- HR program formulation
- Policy development
- Capability development
- Multi-sector coordination

"*PNP HRAO was created 4 years ago. We have formulated a battle cry, or what we call an advocacy statement, that the PNP can use to immediately understand human rights, so the police force will pick it up quickly in its right sense, from the point of view of law enforcement. The motto is "to serve and protect -- To serve and protect human rights.*

The PNP HRAO is still in its infancy stage. The transformation program started with General Razon. One of our successes in the component, Institutional Policy Development, is stopping the practice of parading suspects. This is an indication of success in our human rights development program in the PNP. We also updated the police operational procedure manual. Another accomplishment is when we established the PNP Human Rights Resource Center, a library with human rights reading materials, and a big conference room for all NGOs and advocates. All in all, the PNP has a human rights program for up to year 2030.

Still, there still a need to change perception and to mainstream human rights in the PNP. The CSOs are focused on human rights, and law enforcement sectors say they already know human rights. Still, the two are looking at it from different points of view; there will always be a clash.

Human rights should not be seen only as an accountability; it should be embraced in the right sense, or accepted and implemented in the law enforcement way. We at the Human Rights Affairs Office, look at it differently now. But we are having difficulty mainstreaming it, or rolling it out. There is resistance because if you are always punished for something, you would probably not look at it positively; thus, the need for a paradigm shift.

That is why we developed our advocacy statement: "to serve and protect human rights"; not only competency and professionalism, but promotion of human rights . You might be competent, but in dealing with difficult situations, if you do not think in terms of human rights, your competency will be seen by others as, for example, police brutality.

PNP HRAO cannot be everywhere in the Philippines. We are 14 personnel servicing 135,000 in the PNP. We need to come up with a scheme of disseminating progressive doctrines; so we do lectures all over the country and, instead of being actually involved in investigation, we give guidance and assistance. For human rights affairs violations by the PNP, we have an Internal Affairs Service that takes care of that.

The PNP Community Relations Program further enhances peace and order. It is also involved in the PNP internal and external makeover. Col. Valmoria is the Deputy Chief of Police Community Relations, the busiest person when Ondoy happened. The CHRP Chair was coordinating with him in Camp Aguinaldo.

We are not an investigative body. We only advise the PNP and oversee the development programs. Monitoring human rights cases is not a concern solely of the PNP. That is why the public should also participate and help monitor.

There is an effort to set up human rights desks at every station but this will require huge funding. So far, we have instituted ad hoc desks only that are connected to the office of the commander."

Areas for joint activities with CSOs

"*We can use help in capacity building trainings on human rights. For three years now, we have trained 200 trainors - that's a 7-day activity. Both UNDP and Hans Seidel Foundation financed the training. We have published books, compendiums on human rights, and training manuals.*

We also need paralegal trainings on how to investigate, make documentation of cases, get affidavits, and properly brief accused and victims."

Maguindanao Massacre

"*All members of the police force involved in the massacre were transferred from their original stations to clear the way for investigation; they were disarmed, and the accused placed under preventive suspension.*

The President immediately formed a task force: the Ampatuan Task Force. Persons involved were immediately disarmed and preventively suspended. They were subjected to internal and administrative cases. Internal Affairs is currently conducting its investigation. The hearing is open to the public.

We try to institutionalize. We are monitoring the Maguindanao Massacre hearings. Since that time, we've been swamped; there is international pressure, letters, and we are pressed for time."

7. Dialogue With The Commission On Human Rights Legal and Investigation Division

- Commissioner Jose Manuel S. Mamauag

CHRP Legal and Investigation Office

- Atty. Flora C. Atilano, *Director*
- Atty. Diana B. De Leon, *Chief, Investigation and Case Monitoring Division*
- Atty. Jacquie de Guia
- Atty. Banuar Reuben Falcon
- Atty. Dolly Cuevas

Investigations in Maguindanao

"*The CHRP has participated in investigating alleged pre-massacre violations by the Ampatuans.*

In relation to the Maguindanao Massacre, the recommendations of the CHRP on forensic evidence was adopted by the Department of Justice.

There are still 4 missing persons – so there may actually be 61 victims."

Investigation in general

"*If military men go with CHRP investigators, people wouldn't want to talk to the CHRP. We link up with the PNP; we would prefer having the evidence preserved but sometimes, this is already compromised. That is an area of concern.*

Another area for consideration is training in the making of affidavits, maybe to the level of the barangay captain.

What is actually monitored by the CHRP? It is that the witnesses are properly taken care of, and whether there is adequate and proper case handling. First, there is a universal mandate for human rights cases monitoring: you need to know how to look at the cases, what to look for, and the number of cases being prosecuted.

CHRP conducts investigation of extrajudicial killings, enforced disappearances and torture cases. There is a problem with defining extrajudicial killings, because there are several definitions. One definition limits EJKs to political killings.

What is the value of tagging a case as an extrajudicial killing? It should be done at point of filing, yet cases are still raffled. There ought to be heavier penalties, but up to now there is no special handling. There is a pending resolution for consideration by the Commission for tagging cases of extrajudicial killing, enforced disappearances, and torture, not for purposes of prosecuting, but for consideration as part of assessing the human rights situation.

The CHRP records incidents from the regions and collates. The listing includes all cases that they receive. They are recorded as to evidence gathered, perpetrator, and facts. Recommendations are made as to whether to further investigate, or to forward to the appropriate agency.

CHRP also does case-buildup and evidence gathering. When the case is already filed, sometimes CHRP personnel are called in to testify.

CHRP generally does not participate in court hearings; it only observes. No security is provided to CHRP investigators, even in the investigation of the Maguindanao Massacre.

You are right, there is also a problem of logistics, 7,107 islands; we can cover only so much. In Region 7, there is a high incidence of human trafficking and child prostitution. But I think in Bohol, we just have one nipa hut and one person serving as CHRP presence."

8. Synthesis And Recommendations

Definition of Extrajudicial Killing

In many of the responses, it is clear that the lack of definition of extrajudicial killing is a problem especially for government agencies in charge of criminal prosecution.

Since all cases are "shocking to the senses," a good definition would set apart this crime from others. One suggestion was to call it unexplained killing and to let it cover both state and non-state perpetrators. As it is, the classification based on

perpetrators is left to the groups responsible for documentation, and this poses a problem especially since it results in differing data.

Red-tagging, though not a definition, puts value on identifying cases with EJK components since red-tagged cases get monitored by the DOJ at the regional offices. This label also brings it more public attention and increases the confidence level of witnesses. It is suggested that red-tagging be done at the point of filing informations in court, and that red-tagged cases no longer be raffled. Aside from special handling by the prosecution, this will also facilitate human rights documentation and monitoring.

Another suggestion to address extrajudicial killing is to have special courts with continuous trial. Despite the designation of special courts, there is no report on the impact of such designation on criminal prosecution and case resolution.

One key informant said that the resumption of the peace talks between the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDF) is also a factor that affects the commission of extrajudicial killings because while peace talks are ongoing, extrajudicial killings are seen to slow down and become intermittent.

Command Responsibility

Many of the key informants from both government and civil societies favor a law on command responsibility to exact criminal liability. It was also asked that command responsibility be made to apply to all criminal offenses under the Revised Penal Code and other criminal statutes, not only to extrajudicial killings, enforced disappearance and torture cases.

In the Armed Forces of the Philippines, the present rules on command responsibility in administrative cases go as high as two degrees only.

In connection with this, the Philippine Army respondent said that in recognition of civilian supremacy, when the civilian authority such as a regular court assumes jurisdiction, the court martial surrenders the subject and the case even if there is a separate crime or administrative case arising under the Articles of War; they only ask for clear indicators.

HR Clearance to Increase Accountability

Under the present framework, a clearance from the Commission on Human Rights must be presented to the Commission on Appointments by a nominee before promotion to full colonel, in order to emphasize accountability for human rights violations. There is also a Discipline, Law and Order Branch in the AFP which is the repository of complaints involving human rights and other cases, which records are considered in the promotion of officers for the rank of lieutenant colonel and below.

A clearance of “no pending case” is similarly needed to obtain loans from savings and loans association, a stringent requirement only with the AFP, and not other in government agencies.

It is recommended that this clearance mechanism likewise be adopted in the PNP and other law enforcement agencies. This would engender a personal need for law enforcers to adhere to human rights standards.

Witness Protection and Support

Prosecution of cases, especially those involving EJKs, is often grounded on testimonial evidence. Hence, there is critical need to secure witnesses. Unfortunately, one common observation is the lack of funds and insufficiency of support for witnesses under the Witness Protection Program (WPP).

Thus, while the function of the WPP is to secure witnesses during trial, there is meager support for the witnesses’ families. Nor is there an effective aftercare program, which should include provisions for employment. Education of children of witnesses under the program does not seem sufficient. These deficiencies reduce the viability of availment of the WPP by potential witnesses.

Together with this protection system, the support of private prosecutors is needed in order to maintain the level of confidence of the witnesses who are distrusting of Government institutions.

Another reason why these private lawyers are needed is to help witnesses handle retaliatory cases filed against them. Witnesses invariably suffer from retaliatory actions from the parties in the case, including crimes committed against their persons and properties, and those of their families’. Such retaliatory actions may also include trumped-up charges against the witnesses, further draining them of resources.

In the experience of the Maguindanao Massacre, many of the witnesses who stepped up, as soon as their names were announced at pre-trial, found themselves and their families the target of harassment, arson, or marked for death. They are also slapped with cases and warrants of arrest. Ethically, the DOJ cannot assist the witnesses in the retaliatory cases filed against them, so the witnesses have to engage their own counsel.

A mechanism must be crafted to apply to witnesses, whether qualifying under the present criteria of the WPP or not, to provide them with legal assistance in their defense against such trumped-up cases.

Role of the Community and CSOs

CSOs believe that multiple approaches should be employed for human rights protection and vindication. A pro-active approach would be to educate people about

their rights. In case of ongoing violations thereof, organizations must further be prepared to intervene. When violations have unfortunately been consummated, organizations can assist in the documentation and prosecution of the crime.

Indeed, community support is a necessary element in successful criminal prosecution. As one respondent puts it, monitoring human rights cases is not a concern solely of one agency; that is why the public should also participate and help monitor such cases. More than ever, communities are relied upon also to protect and sustain witnesses, as well as families of victims who may be pressured into desisting from pursuing cases.

As potential first responders to crime scenes, people from the community can also preserve evidence and call the police. They are also in a position to debunk presumption of regularity by giving direct testimonies. However, in the process, they too become vulnerable to HRVs.

These groups can include people from media and human rights defenders who, taking lessons from the Maguindanao Massacre, have developed their own alert system and peer support to protect themselves. At least two interviewees said that to stay alive, one has to rely on one's self, and not to entirely depend on the Government to do it for them.

On a related matter, to protect themselves as well as assist in criminal prosecution, among the steps taken by these groups are to train more paralegals on how to investigate, make documentation of cases, get affidavits, and properly brief accused and victims. Technology may also be tapped for quick access to legal aid. However, one respondent asks to be circumspect about the resulting overzealousness of community workers who get paralegal training. He emphasized they should preserve evidence and call competent authority to do actual retrieval of evidence, and not to contaminate by doing it themselves.

There also exists, albeit informally, a system of alternative witness protection managed, funded and supported outside of the Government program. This is especially sought by witnesses to crimes where perpetrators are allegedly from the police or the military, and who refuse Government protection.

Funds gathered by CSOs can also be used to organize victims' families, in order to galvanize and sustain their pursuit for justice.

For instance, subpoenas, when issued, do not come with financial aid for fare or subsistence of the witnesses who are summoned. It is possible that many cases are dismissed for failure to prosecute, due to this. It is CSOs that support these witnesses by providing, them with financial assistance to enable them to attend hearings.

Thus, successful prosecution of criminal cases goes beyond strengthening Government institutions; success also hinges on steady support for alternative witness

protection. Representatives of CSOs that were interviewed spoke of linking victims to sources of aid, as well as working with religious orders to provide sanctuary for witnesses who opt for this type of protection. As it is, these groups have to stay and appear impartial so that they will be above suspicion.

Support for Victims' Families

The families of victims in the Maguindanao Massacre come from diverse backgrounds: media, lawyers, relatives of the Mangudadatus, and hapless passers-by who got caught up in the convoy. They share a common need: to know what is going on with the prosecution of the criminal cases. In the discussions, it was clear that talking with others going through the same pain is helping the victims' families cope. Thus, it is good that they have organized themselves to meet frequently and to share updates, both on their personal lives, as well as on the progress of the cases.

They however feel that despite the outpour of financial support in the few months immediately after the massacre, there was no systematic giving of support as some would receive support, but others would not. It was also not sustainable because after time passed, the support dwindled, leaving the families to fend for themselves. While the assistance of the DOJ was welcome, there was a consensus that the DSWD's presence was more pressing, especially in providing counseling. The counseling that some of them now get comes from religious orders.

In this respect, a cohesive financial support program with support coming from various sources may be rationalized and administered just by one agency, perhaps the CHRP or the DSWD, so that the families need only coordinate with one agency. Requirements can be streamlined by such agency, so that the families need not undergo repetitive processes for screening, which merely add to the families' difficulty and frustration. This agency can also liaise with other government agencies to ensure that benefits resulting from the death of the victims, e.g., GSIS benefits, will be received by the families.

Other non-financial programs can also be administered by this agency, including psychological care for the victims' families.

Inter-Agency Cooperation

Because of the high-profile status of the Maguindanao Massacre, Government agencies with quasi-judicial functions were pulling all stops in investigating and prosecuting alleged perpetrators and Government officials by whose action or inaction, were implicated in the massacre. While this is good in ferreting out the truth, it may have resulted in duplication since the agencies do not share or furnish copies of evidence and results of investigations with other agencies.

Tie-up and closer coordination between the police and the prosecutors is recommended. Right now, the prosecution is dependent on the quality of evidence that the police brings to them.

Another instance where they can work together is in making available the evidence gathered in one proceeding to other government agencies. One case in point was the administrative investigation of police officers involved in the Maguindanao Massacre, and how pieces of evidence from this investigation were not furnished to the prosecution panel of the DOJ.

In addition, a multi-agency protocol should be established so that offices like the DOJ and the CHRP will take the initiative of furnishing copies of the results of investigations conducted by their office on EJKs and other relevant crimes, to the AMLC, the Ombudsman, the Commission on Audit (COA), the mother agencies where Government officials are involved as respondents, and other pertinent offices. This way, the AMLC, the Ombudsman, and the mother agencies can initiate or cause the initiation of investigation over the same officials, within their area of concern, e.g., money laundering for the AMLC, administrative and other criminal offenses for the Ombudsman, administrative cases for the mother agencies, and financial audits by the COA.

Moreover, evidence gathered during case build-up by each agency can be shared with other offices, nonetheless maintaining the discretion of the lead agency in determining the viability of such evidence. In this way, duplication can be minimized, and investigation may be made more efficiently.

Initiation of Administrative Cases

To be sure, the exaction of administrative liability arising from the acts of an errant Government employee is *not* merely a private matter between the complainant and the Government employee. It is, more importantly, a concern of the public and of the State; it is therefore, a matter of public interest.

It is therefore disconcerting to note, perhaps generally believing it is the initiative of private complainants alone, that not many administrative cases have been initiated by Government agencies relating to the Maguindanao Massacre. For the PNP, for instance, the administrative case against the police involved had to be initiated by a private prosecutor in behalf of the victims' families. The victims also believe that, being unable to explore other avenues due to limited resources, they will need to defer the institution of administrative cases when, in fact, Government agencies should be able to initiate the same at the present time.

Similarly, the Provost Marshall in the AFP should be required to act on complaints, even if the same may be anonymous, or absent a private complainant, in the same manner that the Ombudsman acts on anonymous complaints.

Thus, following receipt of information from other agencies as above-described, the Ombudsman and/or the mother agency to which the Government official who is the respondent in an investigation belongs, should initiate administrative investigation proceedings, *despite* the lack of a private complainant.

Transparency in Conduct of Internal Investigations

There are agencies which, by action or inaction, may have participated in setting the stage for the Maguindanao Massacre. For instance, the COMELEC transferred the site of the filing of the certificate of candidacy, from Cotabato to Shariff Aguak, which is believed to have been a part of the plot to waylay the convoy of victims. Weapons allegedly used by the Ampatuans, on the other hand, appear to have come from the arsenal of the Government.

Administrative, if not criminal liability, may be exacted in these instances. The agencies concerned must therefore conduct investigations into the circumstances surrounding the matter, observing transparency in the process.

In the same vein, the military justice system must be made understandable and accessible to the public. Proceedings in the court martial, for instance, should be made open to the public, in the same manner that ordinary criminal proceedings are made public. This will pave the way for engendering faith in the military justice system.

Improved Logistics Management System

As Government-issued firearms appear to have been used in the commission of the massacre, it is imperative that the logistics management system of weapons be improved. It was suggested that regular audits and spot checks of weapons be undertaken by all units of law enforcement agencies, and that other more stringent measures for individual accountability over firearms be adopted.

AFP-PNP-LGU Collaboration

In instances involving peace and order, clearly it is the police that has jurisdiction. However, when armed elements are involved, especially if they have considerable military power, the police calls in the AFP.

One huge challenge is getting the communities to trust the PNP and the AFP. For those subjected to the brunt of militarization, this might not be easy to do. However, the interviewees spoke of the need for CSOs to work with Government and help each other bring justice to victims.

In some instances, there is also the danger of collusion between law enforcers and local government officials that would make one group look away when faced with violations by the other group. To prevent this, the AFP has instituted a maximum of two years tour of duty in one locality, so as not to breed familiarity with local officials.

Similarly, the local police, and CVOs, if the same are to be maintained -- must be insulated from politics, starting with their appointment/designation. A system must be devised such that the police and CVOs will observe no fealty towards local government officials, who may use them as their private armies.

Forensics and SOCO training

Many respondents believe that in order to diffuse the danger on the lives of witnesses who provide testimonial evidence, there must be equal, if not more, focus on forensic evidence. In this respect, the forensics capability of law enforcement agencies, notably the PNP, must be enhanced, and its equipment upgraded.

The military feels a need to be trained on forensic science as well. This is especially true in instances when the police, due to distance, may take time in reaching the scene of the crime, which the AFP is, in the meantime, able to secure. Training in forensics will enable the AFP to better appreciate their function, so that they may more effectively discharge the same.

Similarly, forensic training for prosecutors would enable them to better appreciate the evidence they will be presenting in prosecuting cases.

The CHRP

While it takes teamwork to ensure successful prosecution of criminal cases involving extrajudicial killings, there must also be a recognition of the limitations of each agency. For example, according to the mandate of the CHRP, it must act as a watchdog agency. Upon the other hand, there are initiatives in Congress to vest CHRP with residual prosecutorial power. While this may impinge on its watchdog status, the call is also raised by the key informants from both Government and the private sector.

A representative of the CHRP stressed the need to maintain the civilian composition of investigating teams, because if CHRP investigators are accompanied by the Philippine Army, people will not want to talk to them.

There is also a clear indication of the willingness of CSOs to work with the CHRP, and assist the agency in their visitorial duties. A key informant raised the request of civil society groups to be deputized by the CHRP, so that if CHRP officials are not yet available, they themselves who are already on the ground, can visit camps and prisons in cases of urgent need.

Support for Public Prosecutors

It was also suggested to provide support for public prosecutors. There is a need to stress-proof them, as no in-house counseling is made available.

Moreover, while security is provided, it is only during the time of the hearings. There is also no protection for their families, except what they provide at their own cost. It is therefore recommended that security measures be put in place for the public prosecutors, and their families as well.

Further, while witnesses are subjected to retaliatory cases, public prosecutors are similarly slapped with disbarment cases and contempt charges by the defense team -- unnecessary distractions that they need to personally attend to on top of their already heavy caseload. Thus, legal services can also be provided to assist the public prosecutors in this respect, to enable them to focus on the prosecution of the case.

Perpetuation of Testimony

Indubitably, prosecution of cases rely heavily upon testimonial evidence. Hence, the threat to the life of witnesses continue to exist while his/her testimony has not been completed. Unfortunately, presentation of evidence can take on a snail's pace, sometimes stretching over several years, thereby exposing the witness to prolonged danger. Upon the other hand, easily completing a witness' testimony will help dissipate the danger to his/her life, since the malevolent objective of preventing the witness to testify, would have already been frustrated.

Under current rules, perpetuation of testimony does not always apply to criminal cases. This tool should thus be made available especially in grave HRVs where there is a threat to the lives of witnesses.

Effecting Warrants of Arrest

It was disclosed that John Doe warrants are issued by courts, and that the same can therefore be utilized by State actors in committing HRVs, as such warrants may be served against anyone at their discretion. Rules prohibiting, or circumscribing, the issuance of John Doe warrants must therefore be crafted.

On the other hand, in order to facilitate service of legitimate warrants of arrest, logistical measures may be put in place, such as putting the photographs of the subjects on warrants to enable law enforcers to effect the same.

Preventive Measures

It is also suggested to focus on preventive, proactive measures by tapping the PNP-HRAO and the AFP-HRO.

HR principles can be ingrained in the AFP and the PNP by presenting the same beyond mere accountability and punishment for violation, but as a way of service. Officers with hands-on experience can serve as lecturers in institutionalized programs.

The Philippine Army takes pride in the fact that there was no report of human rights violation at the time of martial law immediately following the massacre. It was added that even while there was no course or training on implementing a state of martial law, there was reliance on general principles of human rights as anchor. They are asking for more support in producing educational materials as references and training modules. They also ask that they be given personal copies that they can refer to even after trainings.

AMLC

The Anti-Money Laundering Council is another agency that can aid in criminal prosecution. Contrary to popular belief, all types of property can be the subject of forfeiture, not only money. AMLC can investigate, and as a government agency, can be instrumental in cutting off funds that are used to, among others, pay off hired guns to threaten or kill witnesses. AMLC can freeze the funds of alleged perpetrators and investigate the wealth of warlords.

Truly, the Maguindanao Massacre was an unspeakable crime. It represents all that is evil in our political system. It shows what is dysfunctional in our legal processes. The only good that can come out of it is that it compels us to train our sights on these infirmities, and galvanizes our resolve as a nation to address it. The above recommendations are made in this light, so that the lost lives of the victims may not be put to naught.

PART TWO: DISQUISITION ON COMMAND RESPONSIBILITY

1. The Concept Of Command Responsibility

The doctrine of Command Responsibility traces its genesis to the laws of war and international humanitarian law. It refers to the "*responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflicts*"[33]. As *originally* conceived, hence, the application of the principle of Command Responsibility is limited: (i) it applies only in the armed forces, (ii) during wars or other armed conflicts, and (iii) is used to exact derivative *criminal* liability.

The principle of Command Responsibility evolved from customary international law[34], as an instinctive recognition of the need to use exaction of liability for the negligence or omission of superiors in preventing abuses by subordinates during wartime or armed conflict, as a means of preventing such abuses. If personal liability attaches to superiors, then they will be more concerned about keeping the actions of their subordinates in check.

2. Related Principles of Derivative Liability

Related principles of liability imputed upon superiors, which apply within the framework of civilian organizations, are that of *respondeat superior* (of American origin)[35] and *pater familias* (of Common Law origin). Under both theories, the master may be held *civilly* (as opposed to criminally) liable for the negligent acts of his or her servants.

The distinction between *respondeat superior* and *pater familias* lies in the source of the obligation – *respondeat superior* being based on *culpa contractual*, while *pater familias* being based on *culpa aquiliana*, or tort/quasi-delict[36].

In *respondeat superior*, the negligence of the employee or agent, is *conclusively* presumed to be the negligence of the employer pr principal, making the latter civilly liable to others on account of the negligence of the employee/agent[37]. This *conclusive* presumption of negligence allows *no* showing of any diligence exercised by the employer/principal as a defense.

Upon the other hand, *pater familias* allows the employer to show in defense that he exercised diligence in the selection and supervision of his employees, which may exculpate the employer from liability. Thus, the basis of the liability of the employer under the theory of *pater familias* is ultimately his own negligence for failing to select suitable employees, or in supervising the same[38].

3. Parameters of the Study

In this portion of the study, the principle of Command Responsibility is examined – its origin, incipient limitations, and development under both international and local legal frameworks – within the context of determining the manner by which it can be utilized to exact liability. Upon conclusion, an alternative legal framework for exacting criminal liability from public officers, is presented.

The sources for this study are laws, international instruments, research papers, and issuances from government offices.

4. The Laws of War and International Humanitarian Law as Precedents of the Principle of Command Responsibility

During ancient times and in the Middle Ages, no distinction was made between combatants and civilians. Subduing an enemy State meant crushing all members of the population of the other, to ensure victory. Gradually, the general realization came to be -- that wars should be undertaken against States as represented by their *armed forces*, excluding civilians. But these meant that civilians must not participate in the aggression against agents of the other State, lest they lose their status as civilians and the protection attaching thereto. This general understanding evolved into customary law.

The first efforts to *codify* the usages of war came in the second half of the 19th century, beginning with the Declaration of Paris of 1856 about warfare at sea[39]. Then came the Hague Conventions and the Geneva Conventions, and amendments, supplements, and protocols thereto.

The *corpus* of the laws of war and international humanitarian law regulates and prescribes the acts that may be undertaken by belligerents and their combatants in times of war or other armed conflict. These measures to humanize war include the protection of civilians; humane treatment of wounded combatants; prohibition of use of certain weapons; and prevention of unnecessary destruction of properties, among others.

The Geneva Conventions deal with the humanitarian treatment of the victims of war. These instruments are:

- The First Geneva Convention *"for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field"* (first adopted in 1864, last revision in 1949)
- The Second Geneva Convention *"for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea"*(first adopted in 1949, successor of the 1907 Hague Convention X)
- The Third Geneva Convention *"relative to the Treatment of Prisoners of War"* (first adopted in 1929, last revision in 1949)
- The Fourth Geneva Convention *"relative to the Protection of Civilian Persons in Time of War"* (first adopted in 1949, based on parts of the 1907 Hague Convention IV)

In addition, there are three amendment protocols to the Geneva Convention:

- Protocol I (1977): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts.
- Protocol II (1977): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts.
- Protocol III (2005): Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem.

Upon the other hand, the Hague Conventions consist of two treaties negotiated at The Hague in the Netherlands: The First Hague Convention is entitled *Convention (I) For The Pacific Settlement Of International Disputes (Hague I)* (29 July 1899), while the Second Convention is entitled *Pacific Settlement of International Disputes (Hague I*); October 18, 1907.

There was also a Geneva Protocol to the Hague Convention, considered an addition to the Hague Conventions. The Geneva Protocol to the Hague Convention was signed on June 17, 1925 and entered into force on February 8, 1928. Entitled *Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare*, it prohibits the use of all forms of chemical and biological warfare.

Along with the Geneva Conventions, the Hague Conventions were among the first formal statements of the laws of war and war crimes.

The laws of war apply not only to occurrences of "war" in its technical sense, but to all *armed conflicts*. Hence, the United Nations exhorted the application of basic humanitarian principles in *all* armed conflicts, calling upon all parties to armed conflicts to observe international humanitarian rules[40], as follows:.

"The General Assembly: xxx

1. 'Affirms' resolution XXVIII of the XXth International Conference of the Red Cross held at Vienna in 1965, which laid down, inter alia, the following principles for observance by all governmental and other authorities responsible for action <u>in armed conflicts</u>:

   (a) That the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;
   (b) That it is prohibited to launch attacks against the civilian populations as such;
   (c) That distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible;" (emphasis provided)

5. Codification of the Principle of Command Responsibility In International Instruments

The *codification* of the concept of Command Responsibility came as a result of the atrocities of World War II, via Protocol I to the Geneva Convention of 1977[41], where the contracting parties reaffirmed and developed "*provisions protecting the victims of armed conflicts and to supplement measures intended to reinforce their application*[42]". The pertinent provision reflecting Command Responsibility states:

> "Art 86. Failure to act xxx
>
> 2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach." (emphasis provided)

This principle is reiterated in Article 7(3) of the Statute of the International Criminal Tribunal for former Yugoslavia[43] (ICTY), a United Nations court of law dealing with war crimes and serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The ICTY was created through UN Resolution 827 dated May 25, 1993. The ICTY Statute states, on Command Responsibility:

> "Article 7
> Individual criminal responsibility
>
> 3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof." (emphasis provided)

In like manner, on November 8, 1994, the United Nations Security Council through Resolution 955 (1994) established "*an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of International Humanitarian Law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994*". On Command Responsibility, the Statute of the International Tribunal for Rwanda provides:

"Article 6: Individual Criminal Responsibility

xxx

3. The fact that any of the acts referred to in Articles 2 to 4 of the present Statute was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof." (emphasis provided)

Finally, on July 17, 1998, the Rome Statute of the International Criminal Court was adopted by the United Nations[44] establishing the International Criminal Court, which has the power to exercise jurisdiction over persons for the "*most serious crimes of international concern*". On Command Responsibility, Article 28 thereof states:

"Article 28
Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution." (emphasis provided)

This time, the principle of Command Responsibility was taken beyond the confines of the military organization, with Article 28(b) of the Rome Statute applying the doctrine *even as to civilian organizations*, thus:

(b) "With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

(i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;

(ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and

(iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution." (emphasis provided)

6. In re Yamashita, 327 U.S. 1 (1946); US Supreme Court A Standard of Strict Accountability/Strict Liability

This was a Petition for a Writ of Habeas Corpus and a Writ of Prohibition filed by General Yamashita with the United States Supreme Court, to review an order of the Supreme Court of the Philippines denying petitioner's application for writs of habeas corpus and prohibition. The Supreme Court of the Philippine Islands denied the petition for habeas corpus presented to it on the ground, among others, that its jurisdiction was limited to an inquiry as to the jurisdiction of the commission to place petitioner on trial for the offense charged, and that the commission, being validly constituted, had jurisdiction over the person of petitioner and over the trial for the offense charged.

Yamashita was the Commanding General of the Fourteenth Army Group of the Imperial Japanese Army in the Philippine Islands. The gist of the charge was that Gen Yamashita had failed in his duty as an army commander to control the operations of his troops, "permitting them to commit" atrocities against the civilian population and prisoners of war. Yamashita was held for trial before a military commission, which found him guilty of the offense as charged, and sentenced to death by hanging.

The charge is that Yamashita, between October 9, 1944, and September 2, 1945, in the Philippine Islands, "*while commander of armed forces of Japan at war with the United States of America and its allies, unlawfully disregarded and failed to discharge his duty as commander to control the operations of the members of his command, permitting them to commit brutal atrocities and other high crimes against people of the United States and of its allies and dependencies, particularly the Philippines, and he . . . thereby violated the laws of war*."

He allegedly executed "*a deliberate plan and purpose to massacre and exterminate a large part of the civilian population of Batangas Province, and to devastate and destroy public, private, and religious property therein, as a result of which more than 25,000 men, women and children, all unarmed noncombatant civilians, were*

brutally mistreated and killed, without cause or trial, and entire settlements were devastated and destroyed wantonly and without military necessity."

The US Supreme Court held that the order convening the commission was a lawful order; that the commission was lawfully constituted; that petitioner was charged with violation of the law of war; and that the commission had authority to proceed with the trial, and, in doing so, did not violate any military, statutory, or constitutional command. *Notably, the US Supreme Court stated that in an application for habeas corpus, the Court is not concerned with the guilt or innocence of the petitioner. Consequently, the Court did not appraise the evidence upon which Yamashita was convicted.*

In any case, *the US Supreme Court noted that the acts* described to have been committed by Yamashita directed against the civilian population of an occupied country and against prisoners of war, *are recognized in international law as violations of the law of war* (Articles 4, 28, 46, and 47, Annex to Fourth Hague Convention, 1907, 36 Stat. 2277, 2296, 2303, 2306, 2307).

The US Supreme Court observed:

> "The question, then, is whether the law of war imposes on an army commander a duty to take such appropriate measures as are within his power to control the troops under his command for the prevention of the specified acts which are violations of the law of war and which are likely to attend the occupation of hostile territory by an uncontrolled soldiery, and whether he may be charged with personal responsibility for his failure to take such measures when violations result.
>
> It is evident that the conduct of military operations by troops whose excesses are unrestrained by the orders or efforts of their commander would almost certainly result in violations which it is the purpose of the law of war to prevent. Its purpose to protect civilian populations and prisoners of war from brutality would largely be defeated if the commander of an invading army could, with impunity, neglect to take reasonable measures for their protection. Hence, the law of war presupposes that its violation is to be avoided through the control of the operations of war by commanders who are to some extent responsible for their subordinates.
>
> This is recognized by the Annex to Fourth Hague Convention of 1907, respecting the laws and customs of war on land. Article I lays down, as a condition which an armed force must fulfill in order to be accorded the rights of lawful belligerents, that it must be "commanded by a person responsible for his subordinates." 36 Stat. 2295. Similarly, Article 19 of the Tenth Hague Convention, relating to bombardment by naval vessels, provides that commanders in chief of the belligerent vessels "must see that the above Articles are properly carried out." 36 Stat. 2389. And Article 26 of the Geneva Red Cross Convention of 1929, 47 Stat. 2074, 2092, for the amelioration of the condition of the wounded and sick in armies in the field, makes it "the duty of the commanders in chief of the belligerent armies to provide for the details of

execution of the foregoing articles [of the convention], as well as for unforeseen cases."

And, finally, Article 43 of the Annex of the Fourth Hague Convention, 36 Stat. 2306, requires that the commander of a force occupying enemy territory, as was petitioner, "shall take all the measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country." (emphasis provided)

It is worthy to note that the US Supreme Court *did not* actually rule on the guilt or innocence of Gen. Yamashita, but merely upheld the jurisdiction of the military tribunal in deciding over the case. In fact, the Court categorically stated that it made no appreciation of the evidence against Yamashita.

It has therefore been said that the case of *Yamashita* has often been misinterpreted and erroneously cited as an example of a conviction based on Command Responsibility that has been upheld by the US Supreme Court.

In any case, the US Supreme Court did launch embryonic precepts of Command Responsibility, as the provisions of the Conventions mentioned did not specifically ascribe criminal liability for violation thereof, although the same made it a positive duty for commanders to comply with the requirements of said Conventions.

What *is* definite from this case is that the *military commission* (rather than the US Supreme Court), found Yamashita guilty of such acts, and the military commission therein used a standard of "***strict accountability***" or "***strict liability***" for commanders.

It has further been observed that because the military commission made no specific finding that Yamashita actually knew of any of the atrocities, the case is cited for the proposition that ***a commander is responsible for doing everything possible to prevent war crimes***. In a case like this, ***where the atrocities were so widespread***, the commission was willing to find that the commander "**must have known**" what was going on, and to hold him criminally responsible for failing to act to prevent further violations and to punish violators.[45]

7. The Incorporation Clause of the Constitution Makes the Generally Accepted Principles of International Law on Command Responsibility Applicable Domestically

Yamashita vs. Styer
G.R. No. L-129, December 19, 1945

This is the original petition for a writ habeas corpus presented by General Yamashita before the Supreme Court of the Philippine Islands, challenging the jurisdiction of the Military Commission created to try him. Yamashita contended, among

others, that there is no charge of an offense against the laws of war, and that the military commission had no jurisdiction over such charges.

The Philippine Supreme Court held, quoting the US Supreme Court, that:

> "From the very beginning of its history this Court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as of enemy individuals. By the Articles of War, and especially Article 15, Congress has explicitly provided, so far as it may constitutionally do so, that military tribunals shall have jurisdiction to try offenders or offenses against the law of war in appropriate cases. Congress, in addition to making rules for the government of our Armed Forces, has thus exercised its authority to define and punish offenses against the law of nations by sanctioning, within constitutional limitations, the jurisdiction of military commissions to try persons and offenses which, according to the rules and precepts of the law of nations, and more particularly the law of war, are cognizable by such tribunals." (emphasis provided)

Yamashita was indicted for "*having permitted members of his command to commit brutal atrocities and other high crimes against the people of the United States and of its allies and dependencies, particularly the Philippines, crimes and atrocities which in the bills of particulars, are described as massacre and extermination of thousands and thousands of unarmed noncombatant civilians by cruel and brutal means, including bayoneting of children and raping of young girls, as well as devastation and destruction of public, private, and religious property for no other motive than pillage and hatred*".

The Philippine Supreme Court then found that the acts alleged to have been committed by Yamashita constitute a violation of the laws of war as described in paragraph 347 of the Rules of Land Warfare.

Without specifically citing the Incorporation Clause[46] of the 1935 Constitution then in effect, the Philippine Supreme Court, in dismissing Yamashita's petition for habeas corpus and upholding the jurisdiction of the Military Commission, applied the "law of nations" sanctioning the acts alleged to have been committed by Yamashita.

This shows that the doctrine of Command Responsibility, as known under the law of nations, was applied by the Military Commission to the acts of Yamashita committed in the Philippines, and the principle behind such application was affirmed by the Philippine Supreme Court.

Kuroda vs. Jalandoni
G.R. No. L-2662, March 26, 1949

Four years later, the Philippine Supreme Court reiterated the principle of the application of "*generally accepted principles and policies of international law*", in the

Kuroda case, now more clearly citing the incorporation clause of the 1935 Constitution[47].

Kuroda, formerly a Lieutenant-General of the Japanese Imperial Army and Commanding General of the Japanese Imperial Forces in the Philippines during the period 1943 and 1944, was charged before a Military Commission convened by the Chief of Staff of the Armed Forces of the Philippines, with having unlawfully disregarded and failed "*to discharge his duties as such commander to control the operations of members of his command, permitting them to commit brutal atrocities and other high crimes against noncombatant civilians and prisoners of the Imperial Japanese Forces, in violation of the laws and customs of war*".

Kuroda contended that he was charged with 'crimes' not based on law, national and international, since the Philippines was not a signatory nor an adherent to the Hague Convention on Rules and Regulations covering Land Warfare; was not a party to the Hague Convention ; and signed the Geneva Convention only in 1947.

He went to the Philippine Supreme Court seeking to establish the illegality of Executive Order No. 68 of the President of the Philippines establishing a National War Crimes Office and prescribing rules and regulations governing the trial of accused war criminals; and permanently prohibit the Military Commission from proceeding with his case.

The Philippine Supreme Court held that the rules and regulations of the Hague and Geneva conventions form part of, and are wholly based on, the generally accepted principles of international law. Such rules and principles, therefore, form part of the law of our nation, even if the Philippines was not a signatory to the conventions embodying them, for our Constitution has been deliberately general and extensive in its scope and is not confined to the recognition of rules and principles of international law as contained in treaties to which our government may have been or shall be a signatory.

The Supreme Court thus decided not to interfere with the due processes of the Military Commission. The SC decision therefore again affirmed the law of nations as being a part of the law of our land. If such rationale is extended, the incorporation would include the doctrine of Command Responsibility into domestic law, as known under the law of nations.

8. Using Command Responsibility to Exact Liability from Public Officers Under the Philippine Legal Framework

Kinds of Liability

The laws on public accountability impose ***criminal, civil, and administrative*** liabilities upon erring public officials and employees. Sometimes, one, two, or *all* of

these three (3) types of liabilities may be imposed for the *same* act of a Government employee.

In *Tecson vs. Sandiganbayan*[48], the Court explained that in the law on public officers, a public official or employee is under a three-fold responsibility for violation of duty or for a wrongful act or omission. This means that a public officer may be held civilly, criminally, and administratively liable for a wrongful doing. Thus, if such violation or wrongful act results in damages to an individual, the public officer may be held *civilly* liable to reimburse the injured party. If the law violated attaches a penal sanction, the erring officer may be punished *criminally*. Finally, such violation may also lead to suspension, removal from office, or other *administrative* sanctions. These types of liabilities are separate and distinct from each other, and application of one does not preclude the application of the rest.

Does the principle of Command Responsibility exist in the Philippines as a tool to exact liability – criminal, civil, and administrative - from superiors, for acts of subordinates? This portion of the study examines that question, with particular focus on using Command Responsibility to exact ***criminal liability***, under the current legal framework.

8.1 Using Command Responsibility in Exacting Criminal Liability

Nullem crimen nulla poena sine lege. This refers to the rule of criminal law that one cannot be punished for doing something that is not prohibited by law. Unless there be a particular provision in the penal code or special penal law that defines and punishes the act, even if it be socially or morally wrong, no criminal liability is incurred by its commission[49].

In order that the omission constituting Command Responsibility can be considered a criminal offense, hence, there must exist a law punishing the same.

There is a patchwork of such principles and laws which utilize Command Responsibility under Philippine criminal law. Examples are presented hereunder.

Command Responsibility Availing under the Law of War

Notably, the courts in the cases of *Yamashita* and *Kuroda* did *not* rule upon the charges laid against Yamashita and Kuroda, merely upholding the jurisdiction of the Military Commissions over the acts alleged to have been committed by the accused. It also appears that there is yet to be a criminal case to be resolved by the Philippine Supreme Court squarely affirming the conviction of a commander on the basis of Command Responsibility.

Be that as it may, the cases of *Yamashita* and *Kuroda* indeed constitute bases to conclude that Command Responsibility can be, and has been used, to exact criminal

liability within the Philippine legal framework. Indeed, the Philippine Supreme Court in both cases, and additionally, the US Supreme Court in *Yamashita,* decided the threshold issue of, and upheld the applicability of the laws of war as part of the law of the land, thus making the principles of Command Responsibility *as the same is known under international law*, a part of domestic law.

However, it should be evident that **such application of Command Responsibility is circumscribed by the law of war**, as shown in *Yamashita* and *Kuroda*.

It *may* also be argued that *if* the Rome Statute of the International Criminal Court prescribing the application of the doctrine of Command Responsibility in *civilian* organizations[50], can be considered a general principle of international law, even as the Philippines has not ratified the same[51], then Command Responsibility can be made to apply even as to non-military organizations, but again, *only for the crimes defined in the Rome Statute*, to wit:

> "Article 5
> Crimes within the jurisdiction of the Court
> 1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
> (a) The crime of genocide;
> (b) Crimes against humanity;
> (c) War crimes;
> (d) The crime of aggression"

Command Responsibility Availing under the IHL

The IHL[52], enacted into law in 2009, defines and punishes three (3) classifications of crimes, namely:

1. Under Section 4, *War Crimes*[53], or those committed in the context of "armed conflict". Armed conflict is defined as:

> "Armed conflict" means any use of force or armed violence between States or a protracted armed violence between governmental authorities and organized armed groups or between such groups within that State: Provided, That such force or armed violence gives rise, or may give rise, to a situation to which the Geneva Conventions of 12 August 1949, including their common Article 3, apply. Armed conflict may be international, that is, between two (2) or more States, including belligerent occupation; or non-international, that is, between governmental authorities and organized armed groups or between such groups within a state. It does not cover internal disturbances or tensions such as riots, isolated and sporadic acts of violence or other acts of a similar nature." (Section 3 (c))

2. Under Section 5, *Genocide*[54], which is any of cited acts *when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*

3. Under Section 6, *Other Crimes Against Humanity*[55], which is any of cited acts *when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*

In the commission of War Crimes, Genocide, and Other Crimes Against Humanity, the superior may be held *criminally* liable for crimes committed by subordinates using the principle of Command Responsibility, thus:

> "Section 10. Responsibility of Superiors. - In addition to other grounds of criminal responsibility for crimes defined and penalized under this Act, a superior shall be criminally responsible as a principal for such crimes committed by subordinates under his/her effective command and control, or effective authority and control as the case may be, as a result of his/her failure to properly exercise control over such subordinates, where:
>
> (a) That superior either knew or, owing to the circumstances at the time, should have known that the subordinates were committing or about to commit such crimes;
>
> (b) That superior failed to take all necessary and reasonable measures within his/her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution." (emphasis provided)

Command Responsibility Availing under the Anti-Torture Act

Under the Anti-Torture Act of 2009[56], the following crimes are defined and punished:

1. Under Section 4 - *Acts of Torture*[57]. Torture is defined as follows:

> "(a) 'Torture' refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." (Section 3; emphasis provided)

2. Under Section 5 - *Other Cruel, Inhuman and Degrading Treatment or Punishment*. It is defined as:

> "(b) 'Other cruel, inhuman and degrading treatment or punishment' refers to a deliberate and aggravated treatment or punishment not enumerated under Section 4 of this Act, inflicted by a person in authority or agent of a person in authority against a person under his/her custody, which attains a level of severity causing suffering, gross humiliation or debasement to the latter."(Section 3; emphasis provided)

A mode of commission of Torture and Other, Inhuman and Degrading Treatment or Punishment is by Command Responsibility. The law provides:

> "Section 13. *Who are Criminally Liable.* - Any person who actually participated Or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment or who cooperated in the execution of the act of torture or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts shall be liable as principal
>
> xxx
>
> The **immediate** commanding officer of the unit concerned of the AFP or the **immediate** senior public official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of torture or other cruel or inhuman and degrading treatment or punishment for any act or omission, or negligence committed by him/her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his/her subordinates. If he/she has knowledge of or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as principals." (emphasis provided)

Command Responsibility Availing in Certain Private Organizations

In certain circumstances, criminal liability is imposed upon specific officials of private organizations for non-compliance of such establishment with requirements of the law.

The formulation of the culpability of the superiors, warranting imposition of criminal sanctions, varies under these different statutes. In one, a showing of *gross negligence* by the superior is required for criminal liability to attach (e.g. Anti-Money Laundering Act, or AMLA). In other laws, such as PD No. 957, RA No. 776, and RA No. 602, the mere facts of being the head of such organization, and the non-compliance of

the organization with the requirements of the law, suffice to establish the criminal culpability of the superior.

Under the Anti-Money Laundering Act (2001)

Section 14 (c) of Republic Act No. 9160, as amended by Republic Act No. 9194, provides:

> "(c) Malicious Reporting. Any person who, with malice, or in bad faith, reports or files a completely unwarranted or false information relative to money laundering transaction against any person shall be subject to a penalty to six (6) months to four (4) years imprisonment and a fine of not less than One hundred thousand Philippine pesos (Php100,000.00) but not more than Five hundred thousand Philippine pesos (Php500,000.00), at the discretion of the court: Provided, That the offender is not entitled to avail the benefits of the Probation Law.
>
> "If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in, or allowed by their **gross negligence**, the commission of the crime. If the offender is a juridical person, the court may suspend or revoke its license. If the offer is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties herein prescribed. If the offender is a public official or employee, he shall, in addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be." (emphasis provided)

Under Presidential Decree No. 957
Regulating The Sale Of Subdivision Lots And Condominiums, Providing Penalties For Violations Thereof (1976)

> "Sec. 39. Penalties. Any person who shall violate any of the provisions of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, upon conviction, be punished by a fine of not more than twenty thousand (P20,000.00) pesos and/or imprisonment of not more than ten years: Provided, That in the case of corporations, partnership, cooperatives, or associations, the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto." (emphasis provided)

Under Republic Act No. 776
An Act To Reorganize The Civil Aeronautics Board And The Civil Aeronautics Administration, To Provide For The Regulation Of Civil Aeronautics In The Philippines And Authorizing The Appropriation Of Funds Therefor (1952)

> "Sec. 42. Specific penalties. (A) Any person engaging in air commerce without a permit issued by the Board as provided in this Act shall be punished by a fine not

exceeding five thousand pesos or by imprisonment for not more than one year, or both, in the discretion of the court: Provided, That a person engaging in air commerce on the date of the approval of this Act may continue so to engage until such time as the Board shall pass upon an application for a permit for such service, which application must be filed, as provided in Chapter IV of this Act, within one hundred and twenty days after the approval of this Act.

xxx

Section 42 (O) For the purpose of carrying out the provisions of this section, the manager, or general manager or business manager, or person in charge of the business of the firm or corporation committing an unlawful act shall be held personally liable." (emphasis provided)

Republic Act No. 602
An Act To Establish A Minimum Wage Law, And For Other Purposes (1951)

"Sec. 15. Penalties and recovery of wage due under this Act. (a) Any person who wilfully violates any of the provisions of this Act shall upon conviction thereof be subject to a fine of not more than two thousand pesos, or, upon second conviction, to imprisonment of not more than one year, or to both such fine and imprisonment, in the discretion of the court.

(b) If any violation of this Act is committed by a corporation, trust, partnership or association, the manager or in his default, the person acting as such when the violation took place, shall be responsible. In the case of a government corporation, the managing head shall be made responsible, except when shown that the violation was due to an act or commission of some other person, over whom he had no control, in which case the latter shall be held responsible." (emphasis provided)

8.2 Civil Liability of Superiors

Aberca vs. Ver
G.R. No. L-69866, April 15, 1988

A petition for certiorari was brought by individuals against the dismissal of their civil complaint damages. Said individuals' rights and liberties were allegedly violated by members of the Armed Forces of the Philippines at the time of the suspension of the writ of habeas corpus during martial law.

The case stemmed from alleged illegal searches and seizures and other violations of the rights and liberties of petitioners by various intelligence suits of the Armed Forces of the Philippines, known as Task Force Makabansa (TFM), which was ordered by General Fabian Ver "*to conduct pre-emptive strikes against known communist-terrorist (CT) underground houses in view of increasing reports about CT plans to sow disturbances in Metro Manila*."

Petitioners alleged, among others, that in complying with said order, elements of the TFM raided several places, employing in most cases defectively issued judicial search warrants; that during these raids, certain members of the raiding party confiscated a number of purely personal items belonging to plaintiffs; that plaintiffs were arrested without proper warrants issued by the courts; that for some period after their arrest, they were denied visits of relatives and lawyers; that plaintiffs were interrogated in violation of their rights to silence and counsel; that military men who interrogated them employed threats, tortures and other forms of violence on them in order to obtain incriminatory information or confessions and in order to punish them; that all violations of plaintiffs' constitutional rights were part of a concerted and deliberate plan to forcibly extract information and incriminatory statements from plaintiffs, and to terrorize, harass and punish them, said plans being previously known to and sanctioned by defendants.

Petitioners instituted a civil case for damages against respondents, who included superiors known to have ordered the pre-emptive strikes. However, the trial court dismissed the complaint, which became the subject of the petition before the Supreme Court.

The Supreme Court held that Article 32 of the Civil Code[58], the basis for the action for damages, holds liable those who "directly", as well as those who are "**indirectly**" responsible for the violation. Said the Supreme Court:

> "May a superior officer under the notion of respondeat superior be answerable for damages, jointly and severally with his subordinates, to the person whose constitutional rights and liberties have been violated?
>
> Respondents contend that the doctrine of respondent superior is inapplicable to the case. We agree. The doctrine of respondent superior has been generally limited in its application to principal and agent or to master and servant (i.e. employer and employee) relationship. No such relationship exists between superior officers of the military and their subordinates.
>
> Be that as it may, however, the decisive factor in this case, in our view, is the language of Article 32. The law speaks of an officer or employee or person "directly" or "indirectly" responsible for the violation of the constitutional rights and liberties of another. Thus, it is not the actor alone (i.e. the one directly responsible) who must answer for damages under Article 32; the person indirectly responsible has also to answer for the damages or injury caused to the aggrieved party." (emphasis provided)

The Supreme Court upheld the petitioners, and *remanded* the case to the trial court for *further proceedings*. To date, the proceedings on the main case continue[59]. The resolution of the main issue, that is, the determination of the participation and actual liability of the respondents, remains outstanding.

Moreover, there is still correlation that needs to be made whether the issue of indirect participation translates to derivative liability of superiors, and whether the components of Command Responsibility can be used to establish such indirect

responsibility under Article 32 of the Civil Code. These issues may be determined only upon a final resolution of the case by the Supreme Court in due course, if the same is elevated from the trial court, upon conclusion of trial.

RA 7877 AN ACT DECLARING SEXUAL HARASSMENT UNLAWFUL IN THE EMPLOYMENT, EDUCATION OR TRAINING ENVIRONMENT, AND FOR OTHER PURPOSES 1995

A statute that provides for *solidary*[60] civil liability of the superior in an organization, is RA No. 7877, for failure to take action upon complaints relating to violations thereof. Said law provides:

> "Sec. 4. Duty of the Employer or Head of Office in a Work-related, Education or Training Environment. It shall be the duty of the employer or the head of the work-related, educational or training environment or institution, to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment . Towards this end, the employer or head of office shall:
>
> xxx
>
> Sec. 5. Liability of the Employer, Head of Office, Educational or Training Institution. The employer or head of office, educational or training institution shall be solidarily liable for damages arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon." (emphasis provided)

However, the scope of liability appears to be limited to failure to take action *post-facto*, that is, after the act of sexual harassment had been committed; the law is silent on the superior's liability for failure to prevent the same.

In any case, this law is useful in establishing the solidary civil liability of the employer together with the perpetrator of sexual harassment, and may be used as a model for future legislation.

8.3 Command Responsibility in Exacting Administrative Liability

In general, the principle of Command Responsibility cannot be invoked to exact administrative liability. Said the Supreme Court in *Principe vs. Fact-Finding & Intelligence Bureau (FFIB) and the Ombudsman (*G.R. No. 145973, January 23, 2002):

> "In any case, the neglect of a respondent superior who is charged for an administrative offense must still be established by substantial evidence. Thus, the Supreme Court held that administrative liability cannot be based on the principle of command responsibility in the absence of substantial evidence of gross neglect of said officer. The negligence of the subordinate officer is not

tantamount to the negligence of the superior officer, especially if it is not within the mandated responsibilities of the respondent superior to perform the acts complained of in the administrative case, such as conducting actual monitoring of projects" (*Principe vs. Fact-Finding & Intelligence Bureau (FFIB) and the Ombudsman*).

In other words, while the administrative act complained of contains the component of Command Responsibility, the complainant must nonetheless prove by substantial evidence the gross neglect of the superior, for administrative liability to attach. The principle of Command Responsibility alone does not suffice.

By way of exception, Executive Order No. 226 s. 1995 established the principle of Command Responsibility in imposing administrative liability, *within the Philippine National Police*. Said EO provides, in pertinent part:

> **"February 17, 1995**
> **EXECUTIVE ORDER NO. 226**
> SECTION 1. Neglect of Duty Under the Doctrine of "Command Responsibility" . — Any government official or supervisor, or officer of the Philippine National Police or that of any other law enforcement agency shall be held accountable for "Neglect of Duty" under the doctrine of "command responsibility" if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during, or immediately after its commission.
>
> SECTION 2. Presumption of Knowledge. — A government official or supervisor, or PNP commander, is presumed to have knowledge of the commission of irregularities or criminal offenses in any of the following circumstances:
> a. When the irregularities or illegal acts are widespread within his area of jurisdiction;
> b. When the irregularities or illegal acts have been repeatedly or regularly committed within his area of responsibility; or
> c. When members of his immediate staff or office personnel are involved.
>
> SECTION 4. Administrative Liability. — Any violation of this Executive Order by any government official, supervisor, officer of the PNP and that of any law enforcement agency shall be held administratively accountable for violation of existing laws, rules and regulations." (emphasis provided)

For the Armed Forces of the Philippines, there is a similar issuance, *AFP Memorandum of 04 February 2007*, issued by General Hermogenes C. Esperon, Jr., which imposes administrative liability similarly using the principle Command Responsibility.

However, sixteen (16) years after issuance, the implementing rules and regulations for said EO and AFP Memorandum still need to be formulated.

8.4 Summary

Criminal Liability

In *general*, therefore, the principle of Command Responsibility does not apply to exact criminal liability. By way of *exception*, there are *specific* instances when the same may be invoked, notably:

1. Under customary international law, specifically the law of war, in conjunction with the incorporation clause of the Constitution
2. Under domestic legislation, examples of which are the IHL, the Anti-Torture Act, the Anti-Money Laundering Act, PD No. 957, RA No. 776, and RA 602

Civil Liability

While the Supreme Court has held in *Aberca* that Article 32 of the Civil Code may be used to impose civil liability for persons *indirectly* responsible for violations of civil and political rights, the matter of whether indirect responsibility translates to Command Responsibility, and vice-versa, remains outstanding.

We also see an example of a statute, RA7877, which imposes solidary civil liability upon the head of an organization for sexual harassment, for the limited instance when such head fails to act upon a complaint.

Administrative Liability

As a general rule, Command Responsibility alone cannot be used to draw administrative liability from superiors, unless there is gross neglect by the latter (which alone is a culpable administrative act, thereby making the use of Command Responsibility superfluous).

By way of exception, EO 226 S. 1995 and AFP Memorandum of 04 February 2007 establish the principle of Command Responsibility in these organizations. However, the implementing rules therefor still need to be formulated.

9. Proposed Alternative Legal Framework on Command Responsibility

The Gaps Under the Law

Apart from the conclusion of the limited applicability of the doctrine of Command Responsibility under criminal law, there is further no unanimity of opinion on the essential elements of the norm that seeped into Philippine domestic sphere through the Constitution. This vagueness leads to concerns as to how to successfully pursue criminal prosecution of violations of the law, outside the laws which specifically provide for the same (e.g. IHL and Anti-Torture Act).

Moreover, there is a presumption under the rules of evidence that official duty has been regularly performed (and that therefore, there is no neglect by a superior with respect to the acts of his/her subordinates). This presumption is found under Rule 131 of the Revised Rules of Court, thus:

> "SECTION 3. Disputable presumptions. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> xxx
>
> (m) That official duty has been regularly performed;"

These apparent gaps in the legal framework lead to the recommendation that the doctrine of Command Responsibility be legislated into law.

The Revised Penal Code (RPC)

Under the RPC, the following are considered principals in committing felonies:

> **"**Article 17. *Principals.* — The following are considered principals:
> 1. Those who take a direct part in the execution of the act;
> 2. Those who directly force or induce others to commit it;
> 3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished."

There is a fourth means of commission of a criminal offense as a principal, through the theory of conspiracy.

> "The general rule is well settled that, where several parties conspire or combine together to commit any unlawful act, <u>each is criminally responsible for the acts of his associates or confederates committed in furtherance of any prosecution of the common design for which they combine. In contemplation of law the act of one is the act of all</u>. . . . It is immaterial, as affecting the question of co-equal responsibility, that one or more were not actually present at the consummation of the preconceived design." (12 C.J., pp. 577-578, cited in People vs. Ging Sam, et al., 94 Phil. 139, 164 (1953); emphasis provided)

It is recommended that an additional means of committing a felony be added under the RPC, using the rule of Command Responsibility.

Command Responsibility is intrinsically an issue of negligence (omission), rather than the commission of a positive act. For if it were a positive act which the superior performed that led to the commission of a felony by the subordinates, then the means by which a felony is committed as *principal* under the RPC may be employed – that is, by direct participation, by inducement, or by indispensable cooperation.

The use of negligence as a basis for criminal prosecution finds footing as "fault (culpa)" under the RPC, thus:

> **"**Article 3. *Definition.* — Acts and omissions punishable by law are felonies *(delitos).*
>
> Felonies are committed not only by means of deceit *(dolo)* but also by means of fault *(culpa).*
>
> There is deceit when the act is performed with deliberate intent; and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill." (emphasis provided)

By adopting Command Responsibility as a means of committing a felony under the RPC, *any* felony thus defined in the RPC will automatically fall within its ambit, such that if the elements of Command Responsibility accordingly defined apply, then criminal liability will attach.

Since the RPC provides supplementary application to special laws, offenses defined under special laws can, consequently, be committed using the rule on Command Responsibility to be crafted. The RPC provides, in this respect:

> **"**Article 10. *Offenses not subject to the provisions of this Code.* — Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary. "

Recommended Elements of Command Responsibility Under Criminal Law

Culling from customary international law, jurisprudence, and domestic legislation, the recommended elements of Command Responsibility are:

h. ***Government office held by superior***: the superior may be a *de jure* or a *de facto* government official/employee, or agent of Government;

i. ***Relationship between superior and subordinate****:* the existence of lines of command authority and responsibility between the superior and subordinate. The superior has authority (*de jure* or *de facto*) over a subordinate (whether government or private individual)

j. ***Mens Rea of superior****:* the existence of information on the part of the superior that triggers an affirmative duty to act. Knowledge may be actual or constructive.

Constructive or presumed knowledge may in turn be determined using two tests:

Test 1: Superior ought to know, or should have known about the act or omission of the subordinate;

Test 2: Superior has a reason to know about the act or omission of the subordinate based on available information, presumed[61] -

- When the irregularities or illegal acts are widespread within the area of jurisdiction;
- When the irregularities or illegal acts have been repeatedly or regularly committed within the area of responsibility; or
- When members of the immediate staff or office personnel are involved

k. ***Actus reus of superior****:* the failure or omission of the superior in relation to the subordinates' offense, which may be in instituting preventive measures, acting on information, seeking out further information, investigating, reporting, and/or imposing sanctions on errant subordinates, as follows:

Prior to act or omission

- Failure to take reasonable measures to prevent the act or omission

After the act or omission

- Failure to punish the subordinates OR
- Failure to immediately report to proper authorities OR
- Failure to institute measures to prevent repetition of the act or omission OR
- Failure to remedy the result of the act or omission when possible

l. ***Offense committed by subordinate****:* the act of the subordinate, punishable under the RPC or special law. However, the act of the subordinate must generally be *within* the framework of the superior-subordinate relationship, for the supervisory function of the superior to apply –

- If act of the subordinate is official or has some nexus to official function, then the superior is liable

By way of exception, where the act of the subordinate is *outside* the scope of the supervisory relationship, the superior may nonetheless be held for the acts of the subordinate -

- If the act is not official or has no nexus to official functions, then the punishable act by the superior is the lack of punishment, failure to report, or remedy the offense, when possible

m. ***Imputed liability of superior****:* the superior incurs the *same* criminal liability as if he/she personally committed the offenses together with the subordinates.

n. ***Hierarchy of command****:* the superior is punished as a principal, regardless of the level separating the subordinate from the superior, so long as the above elements exist

10. Advocacy Work for Enactment of Law on Command Responsibility

Background

The Philippine Commission on Human Rights is considered to have full compliance with the Principles relating to the Status of National Institutions (The Paris Principles), yet there is always room to improve and expand its powers.

In the 15th Congress, as of this writing, there are five pending bills that seek the strengthening of the Commission on Human Rights. At the House of Representatives, Rep. Lorenzo R. Tañada III filed House Bill No. 55 and Rep. Karlo Alexei B. Nograles filed House Bill No. 1141. At the Senate, Sen. Francis G. Escudero filed Senate Bill No. 106, Sen. Antonio "Sonny" F. Trillanes filed Senate Bill 297, and Sen. Manny Villar filed Senate Bill No. 2617.

HB Nos. 55 and 1141, and SB Nos. 106 are similar in that they seek to institutionalize a transparent and credible selection and appointment process. They propose the creation of a nomination committee that would list the persons from whom the President can choose as Chairperson or Commissioner of the CHRP. The bills also seek to strengthen the administrative organization, and grant it full fiscal independence, which it does not enjoy at present. Full fiscal independence is necessary to allow a government office to exercise its powers without fear of budgetary repercussions, and to shield it from influence peddling.

These bills moreover also seek the expansion of the CHRP's investigation, residual prosecution, monitoring, legal education, advocacy, and witness support mandate.

SB No. 297 provides for the nomination committee, and SB No. 2617 provides for structural strengthening of the CHRP, a listing of civil and political rights, human rights clearance requirement for promotion, a bureaucracy-wide and extensive mandate on human rights education and training, and compensation for wrongful conviction.

Upon the other hand, there are five pending bills on "the principle of command responsibility" or "the doctrine of superior responsibility" that can be considered in congruence with the proposed expansion on powers of investigation and prosecution of the CHRP.

Rep. Umali filed House Bill No. 946, and in the Senate, Sens. Estrada and Santiago filed Senate Bill Nos. 657, and 2422, while Sen. Villar filed two bills: SB No. 1228 and 2608. Moreover, Sen. Madrigal filed SB Bo. 1427, the proposed "*Command Responsibility Act of 2007*" in the 14th Congress. All bills cover responsibility of officials in both civilian and military service.

In HB No. 946 and SB Nos. 657 and 2422, one key element is that both superior and subordinate must be public officers or in allied government security service. There is no such pronouncement in SB No. 2608, which simply labels the subordinate as one "*under the effective control of the official or superior*" thus allowing for pinning of responsibility against public officials who availed the services of, for example, hired guns, with the intent of escaping liability for the commission of a crime.

SB No. 1228 provides for the application of the principle of command responsibility for gross violations of human rights committed by law enforcement agencies, including the Philippine National Police. It provides that superiors up to the level of heads of departments shall be jointly liable with the offending officers for purposes of criminal prosecution.

On the other hand, Sen. Madrigal's formulation under SB No. 1427 for the application of Command Responsibility adopts the provisions of the Rome Statute of the International Criminal Court defining the responsibility of military commanders and superiors, and of superiors in civilian organizations. In addition, SB No, 1427 provides for a presumption of knowledge on the part of the superior of the crime committed by the subordinate, in certain instances[62].

It is recommended that an integrated draft bill on Command Responsibility be pursued.

An Integrated Draft Bill on Command Responsibility

For the initial coordinative work for the creation of a Technical Working Group that will draft a bill on Command Responsibility, it is proposed that the bill encompass the following elements, as heretofore discussed:

a. Government office held by superior

b. Relationship between superior and subordinate

c. Mens Rea of superior

d. Actus reus of superior

e. Offense committed by subordinate

f. Imputed liability of superior

g. Hierarchy of command

Proposed Plan of Action

1. Review of existing laws and identification of deficiencies in the law (which would include the research recommendations)

2. Review of pending legislation for 15th Congress
   - Integrating research recommendations as proposed provisions for pending legislation

3. Drafting of bill on recommendations specifically on Command Responsibility

Creation of a TWG

It is proposed that the Technical Working Group that will study these recommendations to be incorporated into a bill be composed of the following:

- Commission on Human Rights
- Security sector
  - PNP (CIDG) and (HRAO)
  - AFP (HRO) and Philippine Army (CMOG)
- Ombudsman
- Civil Service Commission
- Department of Justice
- Inputs from: DSWD, NGOs, and crisis intervention sectors
- Observers: House of Representatives and Senate Committees on Human Rights, senatorial and congressional staff

4. Presentation/Submission of the draft bill to the members of the TWG for comments

5. Option for sub meetings for civilian agencies, and for military and police

6. First integrative meeting of government agencies (with observers)

7. Subsequent meeting of government agencies with participation of CSOs (with observers)

8. Approval/endorsement of the CHRP

9. Finding a champion in Congress

In fine, while there are new laws prescribing the use of Command Responsibility in establishing criminal liability, these laws apply to specific acts only (e.g. Torture, IHL).

Upon the other hand, the current bills on Command Responsibility indicate a desire on the part of the legislature to address the gaps in the legal framework, and effectively utilize the principle in the successful prosecution of crimes, notably human

rights violations. For maximum optimization, and to seal the gaps in the legal framework, the doctrine can be used to apply generally to all types of crimes committed by subordinates through the negligent acts of Government officials and employees, for punishable acts under the RPC and statutes. This will be a boon not only to the protection and vindication of human rights, but to the prosecution of all crimes committed by Government officials and employees, including the area of graft and corruption where policy reforms are similarly needed.

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[1] Maguindanao residents have expressed the preference to call the incident the "Ampatuan Massacre" rather than the "Maguindanao Massacre" to reduce the association of their locality with the gruesome crime, and bring more focus to the alleged perpetrators of the same. However, since the episode is most commonly known as the "Maguindanao Massacre", the use of such term is maintained in this study

[2] Taken from the Terms of Reference of the research project

[3] Section 17. There is hereby created an independent office called the Commission on Human Rights.

Section 18. The Commission on Human Rights shall have the following powers and functions:

- Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
- Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in

[4] Taken from the UNDP website, http://www.undp.org/about/

[5] Taken from the Terms of Reference of the research project

[6] Santos, Soliman Jr., 'The Maguindanao Massacre, the Bangsamoro problem and the Peace Process', available online at http://www.abs-cbnnews.com/views-and-analysis/12/20/09/maguindanao-massacre-bangsamoro-problem-and-peace-process-soliman-m-sant

[7] This has not only happened in this case – a General implicated in a series of the extra judicial killings of HR defenders has been promoted despite his inaction to investigate his own men's reported involvement.

[8] As of March 9, 2011, most of the members of the prosecuting panel were replaced by DOJ Secretary Leila De Lima via DOJ Department Order No. 172. Assistant Chief State Prosecutor Fadullon also tendered his resignation from the prosecution panel on March 10, 2011 (http://www.sunstar.com.ph/manila/local-news/2011/03/15/justice-chief-misinformed-about-prosecutors-performance-144882; http://newsinfo.inquirer.net/breakingnews/nation/view/20110314-325369/Replaced-Ampatuan-prosecutor-says-they-were-never-told-of-revamp). Last accessed, April 11, 2011

[9] Based on the DOJ Department Order No. 172 dated March 9, Assistant Regional State Prosecutor Pete Medalle replaced Assistant Chief State Prosecutor Fadullon, while State Prosecutors Juan Pedro Navera, Irwin Mara, Karla Cabel and Amada Felipe were replaced by Assistant State Prosecutors Amor Robles, Romeo Martin Seranilla and Grace Ruiz (http://newsinfo.inquirer.net/breakingnews/nation/view/20110314-325369/Replaced-Ampatuan-prosecutor-says-they-were-never-told-of-revamp). Last accessed, April 11, 2011

[10] Perez, Analyn & Dimacali, TJ, "The Maguindanao Massacre: a map and timeline," GMANews.TV, November 25, 2009. Retrieved Dec. 28, 2010 from http://www.gmanews.tv/story/177821/the-ampatuan-massacre-a-map-and-timeline.

Teves, Maria Althea, "Timeline - Maguindanao Massacre (until the declaration of martial law)," abs-cbnNEWS.com/Newsbreak, December 14, 2009. Retrieved Dec. 28, 2010 from http://newsbreak.com.ph/index.php?option=com_content&task=view&id=7273&Itemid=88889279

Interview with Gov. Esmael "Toto" Mangudadatu by Atty. Edgar Bernal and Sylvia Angelique Umbac, August 21, 2010, Tacurong City.

[11] Liberal Party

[12] Nacionalista Party

[13] November 22, 2009, the day preceding the massacre

[14] This was allegedly thru a COMELEC Resolution, which is not available in the agency's website. Mercado, Jun OMI, November 25, 2009. Retrieved on January 27, 2011 from http://blogs.gmanews.tv/jun-mercado/archives/61-The-Maguindanao-Massacre,-Part-1.html

[15] Interview of Col. Cresente Ferrer by Atty. Edgar Bernal, September 2010, Iligan City

[16] COMELEC Resolution No. 0817 dated Nov. 24, 2009 can be accessed at http://www.comelec.gov.ph/2010%20National_Local/resolutions/mr_09_0817.html

[17] COMELEC Resolution No. 8714 dated Dec. 16, 2009 can be accessed at http://www.comelec.gov.ph/2010%20National_Local/resolutions/res_8714.html

[18] Legaspi, Amita, "Promotion of Army general in Maguindanao massacre case opposed," GMANews.TV, Jan. 12, 2010, Retrieved Dec. 28, 2010 from http://www.gmanews.tv/story/181363/promotion-of-army-general-in-maguindanao-massacre-case-opposed.

[19] Dalangin-Fernandez, Lira & Salaverria, Leila, "Military officer in Maguindanao massacre promoted," INQUIRER.net, January 6, 2010. Retrieved Dec. 28, 2010 from http://newsinfo.inquirer.net/topstories/topstories/view/20100106-245849/Military-officer-in-Maguindanao-massacre-promoted.

[20] Other than the respondents mentioned in the paper, interviews with individuals from other offices were sought, but the same declined or did not respond to the request for interview. These are the Ombudsman, the National Bureau of Investigation (NBI), and private prosecutor Atty. Harry Roque.

[21] Clan feud, usually involving retaliatory violence

[22] As of the date of the interview, June 30, 2010

[23] One of the victims of the massacre, a lawyer of the Mangudadatus

[24] Another private prosecutor in the cases against the Ampatuans and other accused, in relation to the Maguindanao Massacre

[25] Major General Alfredo Cayton, Commander of the Army's 6th Infantry Division. He was relieved from his post as Commanders of the Army's 6th Infantry Division for denying security escort requests. He underwent an investigation but was cleared by a military board. Following the recommendation of the Armed Forces' Board of Generals, and despite opposition from the families of victims, Cayton was promoted to Army vice commander, the second highest post in this branch of the armed forces. He was due to retire on February 14, 2010 upon reaching the mandatory retirement age of 56.

[26] What a vigilante group in Davao City, Philippines, has been publicly called; the group is allegedly responsible for summary executions of delinquents and drug traffickers in Davao

[27] A shootout between the PNP's Special Action Force and members of the PNP Highway Patrol Group with suspected robbers at the United Parañaque Subdivision 4 in Barangay (Village) Marcelo Green in December 2008, resulting in the deaths of 16 persons, including 6 civilians

[28] Tagged the bloodiest bank robbery in the country's history, with ten dead, all methodically shot in the head. This occurred on May 16, 2008, in Cabuyao, Laguna

[29] University of the Philippines

[30] Venue: Mang Gorio's Restaurant
Koronadal City (Marbel), South Cotabato
August 21, 2010 (Saturday) 10:00 am – 3:00 pm

[31] Venue: Genalin Forest Resort
Tacurong City, South Cotabato
August 21, 2010 (Saturday) 4:00 pm – 7:00 pm

[32] Venue: Café Amoree
General Santos City, South Cotabato

August 22, 2010 (Sunday) 10:00 am – 2:00 pm

[33] Joaquin G. Bernas, S.J., Command Responsibility

[34] The primary sources of international law are:
1. International treaties or conventions;
2. International custom; and
3. General principles of law recognized by civilized nations (Salonga & Yap, Public International Law, 5th ed; citing Article 38 of the Statute of the International Court of Justice

[35] Poblete v. Fabros; G.R. No. L-29803, September 14, 1979

[36] See Cangco vs. Manila Railroad Co., 38 Phil. 768; G.R. No. 12191, October 14, 1918

[37] *Id*

[38] Cuison v. Norton & Harrison Co., G.R. No. 32774, October 14, 1930

[39] See Salonga & Yap, Public International Law, 5th ed; p. 185

[40] Respect for Human Rights in Armed Conflicts. Resolution 2444 (XXIII) of the United Nations General Assembly, 19 December 1968

[41] Though the Philippines signed Protocol I on December 12, 1977, it has not yet ratified the same through the Senate.

[42] Preamble

[43] Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of m [oi(-8()2(mh0 1J ET Q q BT3 q)-9(Q q BT /F1 10.08 Tf 0 0 0 rg 0.9981 0 0 1 82.08 415.2 Tm [(T)95(c)-6)-5(l) Tf 0 [oi(-8()2(

[51] The Philippines is a signatory thereto but the Senate has not yet ratified the same, as required under Article VII, Section 21 of the Constitution: **"**No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

[52] Republic Act No. 9851, Philippine Act On Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity

[53] Section 4. *War Crimes.* - For the purpose of this Act, "war crimes" or "crimes against International Human Humanitarian Law" means:

the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated;
(6) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and causing death or serious injury to body or health .
(7) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;
(8) Killing or wounding a person in the knowledge that he/she is *hors de combat,* including a combatant who, having laid down his/her arms or no longer having means of defense, has surrendered at discretion;
(9) Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;
(10) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether such building or place has been used to make an effective contribution to military action, it shall be presumed not to be so used;
(11) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons;
(12) Killing, wounding or capturing an adversary by resort to perfidy;
(13) Declaring that no quarter will be given;
(14) Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war;
(15) Pillaging a town or place, even when taken by assault;
(16) Ordering the displacements of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
(17) Transferring, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
(18) Committing outrages upon personal dignity, in particular, humiliating and degrading treatments;
(19) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;
(20) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
(21) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols;
(22) In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
(23) In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
(24) Committing any of the following acts:

(i) Conscripting, enlisting or recruiting children under the age of fifteen (15) years into the national armed forces;
(ii) Conscripting, enlisting or recruiting children under the age of eighteen (18) years into an armed force or group other than the national armed forces; and
(iii) Using children under the age of eighteen (18) years to participate actively in hostilities; and

(25) Employing means of warfare which are prohibited under international law, such as:
(i) Poison or poisoned weapons;
(ii) Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
(iii) Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and
(iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.

[54] Section 5. *Genocide* - (a) For the purpose of this Act, "genocide" means any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group as such:

(1) Killing members of the group;
(2) Causing serious bodily or mental harm to members of the group;
(3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(4) Imposing measures intended to prevent births within the group; and
(5) Forcibly transferring children of the group to another group.

[55] Section 6. *Other Crimes Against Humanity.* - For the purpose of this act, "other crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Willful killing;
(b) Extermination;
(c) Enslavement;
(d) Arbitrary deportation or forcible transfer of population;
(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
(f) Torture;
(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act;
(i) Enforced or involuntary disappearance of persons;
(j) Apartheid; and
(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

[56] Republic Act No. 9745, An Act Penalizing Torture And Other Cruel, Inhuman And Degrading Treatment Or Punishment And Prescribing Penalties Therefor

[57] Section 4. *Acts of Torture.* - For purposes of this Act, torture shall include, but not be limited to, the following:

(a) Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

(1) Systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;

(2) Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;

(3) Electric shock;

(4) Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);

(5) The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;

(6) Being tied or forced to assume fixed and stressful bodily position;

(7) Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;

(8) Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;

(9) Dental torture or the forced extraction of the teeth;

(10) Pulling out of fingernails;

(11) Harmful exposure to the elements such as sunlight and extreme cold;

(12) The use of plastic bag and other materials placed over the head to the point of asphyxiation;

(13) The use of psychoactive drugs to change the perception, memory. alertness or will of a person, such as:

(i) The administration or drugs to induce confession and/or reduce mental competency; or

(ii) The use of drugs to induce extreme pain or certain symptoms of a disease; and

(14) Other analogous acts of physical torture; and

(b) "Mental/Psychological Torture" refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale, such as:

(1) Blindfolding;

(2) Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;

(3) Confinement in solitary cells or secret detention places;

(4) Prolonged interrogation;

(5) Preparing a prisoner for a "show trial", public display or public humiliation of a detainee or prisoner;

(6) Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;

(7) Maltreating a member/s of a person's family;

(8) Causing the torture sessions to be witnessed by the person's family, relatives or any third party;

(9) Denial of sleep/rest;

(10) Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will;

(11) Deliberately prohibiting the victim to communicate with any member of his/her family; and

(12) Other analogous acts of mental/psychological torture.

[58] ARTICLE 32. Any public officer or employee, or any private individual who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
(1) Freedom of religion;
(2) Freedom of speech;
(3) Freedom to write for the press or to maintain a periodical publication;
(4) Freedom from arbitrary or illegal detention;
(5) Freedom of suffrage;
(6) The right against deprivation of property without due process of law;
(7) The right to a just compensation when private property is taken for public use;
(8) The right to the equal protection of the laws;
(9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
(10) The liberty of abode and of changing the same;
(11) The privacy of communication and correspondence;
(12) The right to become a member of associations or societies for purposes not contrary to law;
(13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;
(14) The right to be free from involuntary servitude in any form;
(15) The right of the accused against excessive bail;
(16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
(17) Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
(19) Freedom of access to the courts.
In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

[59] Diokno, Civil and Administrative Remedies as Instruments of Accountability for Violations of Human Rights

[60] ARTICLE 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. (New Civil Code)

[61] Taken from Executive Order No. 226 s. 1995

[62] "A. When the same crime was committed by his or her subordinates two or more times in one year, whether or not the said offenses were committed by the same subordinate;
B. When the crime committed by the subordinate was pursuant to a policy being implemented by the official or superior whether or not said policy is in writing; and
C. When the crime was committed in compliance with the order of the superior, albeit only the intended result was manifested to the subordinate." (proposed Sec. 7)