

**Manifestation of Sulong CARHRIHL
At the Supreme Court's Summit on Political Killings
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Greetings of peace.

Sulong CARHRIHL welcomes the initiative of the Supreme Court through Chief Justice Reynato Puno to further understand and explore ways and means to prevent and halt the alarming series of extrajudicial killings of political activists and journalists.

Sulong CARHRIHL is a nationwide citizens' network promoting the observance of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) signed by the Philippine government and the National Democratic Front in 1998. In the context of the ongoing armed conflict, it demands that both the state and the non-state armed group adhere to human rights and international humanitarian law. Its slogan, "our rights, our peace" embodies its philosophy that human rights is the foundation of a just and lasting peace.

We take this opportunity to elaborate on our analysis and proposed solutions on the unabated extrajudicial killings in the last five years.

We wish to focus our intervention on the killings of political activists in the belief that these murders exhibit a more established pattern than the more variegated cases of media persons' deaths – this, without in any way lessening the abomination we feel for each of these premeditated acts of violence on the lives of the latter, regardless of the culprit and circumstances.

Analysis

On the unrelenting phenomenon of activists' deaths, allow us to make the following observations:

1. The scale and brazenness of the killings of a select group of people coming from a certain political ideology cannot be considered "random" killings. The programmatic nature of these killings can be concluded from the following:
 - Shared background of those killed: at the time of their death, they belonged to (or in the case of some, were former members of) national democratic groups like the Bayan, Bayan Muna, Anakpawis, and the League of Filipino Students.
 - Common modus operandi: prior to the assassination, the victims received death threats or got wind of reports of being allegedly in a "hit list"; killers were trained hit men who were able to elude arrest although the killings were made in public places.
 - Typical government response: immediate exculpation of government personnel; slow action of concerned agencies; promotion and show of public support for officers suspected of involvement in the killings; throwing the burden of producing witnesses to the public.
2. The tremendous rise in political killings of leftist activists appears to be in line with the slant of the national security policy the Macapagal-Arroyo administration has adopted since 2002.

In her first years, alarm from within the administration was already expressed over the good electoral showing of the national democratic party list groups, alongside the CPP-NPA-NDF's use of force during the elections (enforced collection and other punitive measures on electoral candidates). Their good showing in the 2004 polls further validated the "fears".

The prominent use of trained and mobile assassination squads is apparently aimed at weakening the legal infrastructure and electoral machinery of the national democratic movement. This extrajudicial approach has taken place alongside open active campaigning of the AFP and the National Security Council against the national democratic and other left-oriented party list organizations, as evidenced again most recently in the 2007 election.

The main reasoning of government, as reflected in remarks by government officials, is that these legal organizations, especially their elected representatives who have access to congressional funds, divert funds

to support the CPP's guerilla warfare. To government's national security managers, the armed and the legal national democratic groups are one and the same. This reasoning has dangerously erased the distinction between combatants and non-combatants.

3. It can hardly be expected that such extrajudicial means to achieve certain politico-military goals be articulated in official national security policy for the obvious reason that these are illegal. But the systematic pattern that has emerged based on the way the murders were done, the nature of the victims, the way the agents of state security have responded, the immediate exoneration of their culpability, the President's praise given to military officers notorious for human rights violations, and current thinking in the national security agencies of the state as reflected in actions, documents and statements indicate a certain coherence that already operates in the level of a policy. Denials cannot erase what is already apparent in terms of actual events.
4. The use of extrajudicial killing or "salvaging" as part of national security and counter-insurgency operations is not new. Past administrations have utilized it against anti-state forces. The records on the martial law period and even after will bear this out. Resort to such practices is apparently condoned by a prevalent military ethos that sees legal checks as obstacles to the achievement of military goals. The same ethos demonizes the perceived enemy, thus justifying violent means of exterminating the threat. Since past human rights violations committed in the conduct of the counter-insurgency have been condoned by the civilian leadership and violators have escaped prosecution, a culture of impunity has been entrenched.

Recommendations

To stop the bloodletting, we propose the following:

1. Review and reorient the administration's national security policy.

The administration must reorient its view of the communist insurgency, its causes, and the ways the problem ought to be addressed. The government knows that the communist rebellion is rooted not just in an ideology the government detests but more fundamentally in long-standing social inequities. It should not prioritize a militaristic response to what is basically a governance and social problem.

- *Protect, do not constrict, the democratic space that enables popular participation of advocates of divergent ideologies.*

Proscribing certain political parties and people's organizations directly (such as through terrorist tagging under the Anti-Terrorism Law) or indirectly (through harassments and killings of their members) not only violates the Bill of Rights enshrined in our constitution. It also reinforces the logic of "armed struggle".

As a teacher at the University of the Philippines, I am aware of the idealism of many of our youth whose frustration with the system and conviction of the impossibility of achieving reforms through peaceful means are validated by each activist's death. Yes, 20 years after martial law, it appears that the government remains the best recruiter for the NPA.

- *Put in place a consistent and comprehensive peace policy.*

There is no way the counter-insurgency will be won by military means. Neither can we expect the CPP-NPA-NDF to win its armed struggle given domestic and global circumstances. Come 2010, we would have a few more thousands soldiers and guerillas dead, a few more thousand civilians caught in the crossfire. But we will be even worse off than we are now in terms of peace and human rights (we are currently ranked 100th out of 120 countries in the Global Peace Index).

An end game founded on a peace process alongside thorough reforms is ultimately worth the investment, if not the only viable alternative. The perceived belligerence of the CPP-NPA-NDF does not take away the burden from the government to pursue such an alternative.

By a consistent peace policy, we don't mean consistently inconsistent: peace talks today, war tomorrow; negotiations under this administration, all-out war in the next. In the last 20 years, we see-sawed from one approach to another and where did that get us? This lack of consensus in government and among us has not helped us get any closer to national unity and reconciliation. It has only brought more fissures and short-term,

opportunistic alliances between and among state and civil society groups from all sides of the political spectrum.

A comprehensive approach to the insurgency has often been confused with the right hand and left hand approaches – the right hand for peace, the left for war. Often, however, the right hand did not seem to know what the left hand was doing; or the left hand took what the right gave – the exact opposite of a sustained, cumulative peace policy. We have to decide – all-out war or all-out peace? We already know the consequence of the former. We have not fully tried the latter.

Our constitution says we espouse peace as a national policy. There are serious reasons for the Supreme Court to examine if in fact the Philippine government has spurned this constitutional provision, not only in the light of the extrajudicial killings but in the bigger context of this administration's adherence to the US-led "war against terrorism".

- *Comply with the CARHRIHL, and hold violators accountable.*

The CARHRIHL highlights the need to protect civilians in the conduct of warfare. It puts limits on the choice of methods of war and strongly admonishes the warring parties to respect the distinction between combatants and non-combatants. Summary executions and incitement to cause harm to another person are all prohibited in the CARHRIHL.

The CARHRIHL tells us that counter-insurgency operations are not a license to kill or to inflict punishment on communities or persons suspected of supporting the "enemies of the state". Similarly, a revolution and "revolutionary justice" do not justify inflicting the death penalty on "enemies of the people" and endangering civilian lives.

Unfortunately, the parties pounce on the violations of the CARHRIHL committed by the other in order to score propaganda points rather than to advance its "rights protection" and "justice" value. In the past year, we witnessed how innocent children killed during armed hostilities were passed off by AFP soldiers as child combatants in order to discredit the other party – rubbing salt to the injury of the suffering parents. Oblivious to the impact on ordinary people and the economy, the CPP-NPA have attacked civilian objects such as cell sites, bridges and buses while condemning government's "anti-people" activities. It has not come out with an honest accounting of the internal purges it conducted in the 1980s that caused the deaths of thousands of members. This past crime for which it has not paid full retribution has become an Achilles heel overexploited by the AFP in its anti-communist propaganda.

The CARHRIHL in itself does not have the force of law. But a signed agreement, it puts moral responsibility on both parties to adhere to its provisions.

In any case, Congress can enhance compliance and accountability, and penalize violations of the two parties to CARHRIHL, by immediately passing legislation that would enforce CARHRIHL's various provisions.

Various bills on human rights and IHL concerns have actually been filed in past Congresses but our legislators do not seem to have the will and, unlike in the case of the Anti-Terrorism Law, the Executive never certified these as urgent.

The 14th Congress should be enjoined to immediately pass legislation that, among others, would:

- ban and prescribe penalties for the crimes of torture and enforced disappearances (committed by both state and non-state armed groups),
- provide protection and care for internally displaced persons during and after armed hostilities
- operationalize international humanitarian law, and provide penalties for specific IHL violations,
- ban and penalize the production, transfer, use and stockpile of landmines and provide support for mine clearance, among others.

Moreover, the Senate should ratify all the UN conventions and protocols such as the Rome Statute of the International Criminal Court and the Optional Protocol to the UN Convention Against Torture in order to complete our accession, and immediately pass the enabling legislation,

2. Strengthen check-and-balance mechanisms among the arms of government.

There is need to strengthen the capacity of different government agencies to exercise checks on potential abuses by the others.

For example, the police is largely responsible for the investigation of the crime and filing of charges against suspects. However, the effectiveness of the police in pursuing leads that implicate the military has been hampered by their apparent fear of antagonizing the military command. That the police was unable to assert its investigative authority on the AFP was evident in some of the cases that have been investigated.

The reasons for this are historical and structural. During martial law, we saw the PC-INP put under a centralized command led by generals and the defense ministry. Historically, too, the AFP has led the counter-insurgency program, with the police playing a subordinate role. The outcome is what we can call an “overdeveloped” military and an “underdeveloped” police.

That the AFP has been preoccupied with internal rather than external defense is an even bigger historical anomaly that must be corrected soon.

Moreover, the AFP has increasingly forayed into civilian tasks, and ingratiated itself in the main halls of power that were erstwhile civilian domains.

Measures must be taken to strengthen the independence, capacity, commitment to human rights and integrity of the police force as a civilian agency that can effectively apply the rule of law on erring members of the AFP. The different recommendations to reform the military advanced by the Davide and Feliciano Commissions should likewise be pursued.

Another government agency that has had great difficulty in exercising its powers is the Commission on Human Rights. Its success is entirely contingent on the cooperation of the police and the AFP. It cannot go far without the backing of the president and other agencies to provide the counterweight.

The CHR has in many instances failed to stand its ground. It endorsed the rank promotion of generals who are at the center of these controversies when it could have used this power to exact greater accountability and prevent further abuses.

For lack of space and time, we cannot enumerate here all the institutional reforms we deem necessary to achieve rule of law and justice in this country. We cite the police and the CHR only as examples.

For more specific recommendations, we would like to draw attention to the list of measures recently forwarded by Human Rights Watch, which we are attaching to this document. These recommendations were, after all, drawn from a wide range of sources including members of our network, and thus also reflect our thinking.

We welcome the initiatives of the judiciary and concerned agencies to improve on the delivery of justice through such measures as setting up special courts and prosecutor's office to handle the numerous cases of extrajudicial killings, and enhancing the witness protection program. We count on the Supreme Court to continue to shield us, the people, from state incursions on our basic rights.

But even as we distinguish among the different arms of government and are able to sort the hawks from doves, the do-gooders from abusers, the helpful and the hopeless in government, government as a whole cannot come out clean in this bloody mess unless it shows in words and actions that it and all its instrumentalities are making sure that tomorrow, not another unarmed person would be shot for his or her political affiliation.

[Attachment: Recommendations of the Human Rights Watch]

Attachment

Recommendations of the Human Rights Watch

Source: "Scared Silent, Impunity for Extrajudicial Killings in the Philippines" (New York: Human Rights Watch, July 2007) available at <http://www.hrw.org/reports/2007/philippines0607/>.

To the President:

- Immediately issue an executive order to the AFP and PNP reiterating the prohibition on the extrajudicial killing of any person. This prohibition does not include lawful attacks on combatants during hostilities with NPA forces. Vigorously investigate and prosecute members of the security forces implicated in killings, particularly those identified by the Melo Commission report.
- Immediately direct the Armed Forces of the Philippines, the Philippines National Police, and all other executive agencies to desist from statements that are incitement to violence, such as by implying that members of non-governmental organizations are valid targets of attack because of alleged association or sympathy with the Communist Party of the Philippines or the New People's Army.
- Immediately implement the full recommendations of the Melo Commission.
- Immediately implement the full recommendations contained in the preliminary note of the United Nations Special Rapporteur on extrajudicial, summary, or arbitrary executions.
- Order the Inspector General of the AFP, the Deputy Ombudsman, and the Provost Marshal of the AFP to investigate and report publicly within 90 days on the involvement of military personnel in extrajudicial killings, and to identify failures within the AFP investigative agencies to so-far prosecute such criminal behavior, and, where appropriate, the failure to so-far prosecute officers under principles of command responsibility.
- Order the director of the National Bureau of Investigation to investigate and report publicly within 90 days on the failures of the PNP and Task Force Usig to investigate adequately, and to recommend for prosecution, military personnel involved in extrajudicial executions. The report should also explain why Task Force Usig and the Melo Commission came to different conclusions with regards to the complicity of superior military officers.
- Order the Department of Justice to conduct a review within 60 days and publicly report on the failures of the current witness protection program and propose reforms. The Department of Justice should also circulate an explicit set of operational guidelines for the police stipulating individual police officer's duties to provide protection to witnesses and individuals who report threats on their lives. The guidelines should stipulate clear sanctions for officers who fail to provide necessary protection in conformity with these guidelines.
- Invite the United Nations Special Rapporteurs on Human Rights Defenders, and the Working Group on Arbitrary Detention to visit the Philippines.
- Provide the Human Rights Commission with the necessary powers to carry out credible investigations, including the power to subpoena individuals, compel testimony, and provide protection to witnesses.
- Provide the Melo Commission with the necessary powers to carry out credible investigations, including the power to subpoena individuals, compel testimony, and provide protection to witnesses.
- Expand the membership of the Melo Commission to include representatives from affected civil society organizations.

To the Armed Forces of the Philippines:

- Cease all targeting of civilians.
- Immediately put an end to unlawful killings by military personnel and hand over those alleged to be responsible to the appropriate prosecutorial authorities.
- Comply with all requests for appearances by civilian investigative bodies.
- Immediately cease the practice of approaching civilians in their homes. Any such operation should be conducted in coordination with the PNP after informing local civilian officials who is to be approached and why.

To the Philippines National Police:

- Seek to establish responsibility at all levels of the chain of command in any investigations involving extrajudicial executions.
- Carry out an immediate review of closed cases of unlawful killings or attempted killings with a view to identifying further genuine lines of inquiry leading to arrests.
- Investigate possible collusion between police officers to suppress evidence of military involvement in unlawful killings or attempted killings.
- Sanction officers who fail to provide necessary witness protection in accordance with the law.

To the Judiciary:

- Order the Department of Justice to conduct immediate further investigations when cases are presented that do not identify suspects by name, or where the suspect has not been located.

To the CPP-NPA-NDF:

- Cease all targeting of civilians.
- Cease all killing of current or former members.

To the United States:

- Make Foreign Military Financing contingent on certification from the Secretary of State to the Chair and the Ranking Members of Committees on Appropriations that the government of Philippines is taking effective steps to bring to justice members of the Armed Forces of the Philippines and the Philippine National Police, against whom there is credible evidence of human rights violations, especially political killings.
- If there has been no progress in any prosecutions of members of the military, the United States should suspend the next annual bilateral Balikatan exercises and/or suspend the Armed Forces of the Philippines from participation in the 2008 multinational Cobra Gold joint military exercises.