

THE MEASURES MEASURED

**REPORT OF
THE INTERNATIONAL VERIFICATION AND FACT FINDING MISSION
(IVFFM)
ON ATTACKS AGAINST LAWYERS AND JUDGES IN THE
PHILIPPINES
4-12 November 2008**

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LIST OF ABBREVIATIONS

AFP	Armed Forces of the Philippines
CARHRIHL	Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law
CBCP	Catholic Bishops Conference of the Philippines
CHR	Commission on Human Rights
CODAL	Counsels for the Defense of Liberties
CPP	Communist Party of the Philippines
CSPS	Court Security and Protective Service
CTUHR	Center for Trade Union and Human Rights
DILG	Department of the Interior and Local Government
DoJ	Department of Justice
FLAG	Free Legal Assistance Group
HRW	Human Rights Watch
IALAG	Inter-Agency Legal Action Group
IBP	Integrated Bar of the Philippines
ICCPR	International Covenant on Civil and Political Rights
IFFM	International Fact Finding Mission on the Attacks against Filipino Lawyers 2006
IVFFM	International Verification and Fact Finding Mission on the Attacks against Filipino Lawyers 2008
JAG	Judge Advocate General
JFA	Judges Foundation Association
JMC	Joint Monitoring Committee
KMP	Philippine peasant organization
MILF	Moro Islamic Liberation Front
NBI	National Bureau of Investigation
NDFP	National Democratic Front of the Philippines
NPA	New People's Army
NUPL	National Union of Peoples' Lawyers
OBL	Oplan Bantan Laya
OCA	Office of the Court Administrator
PAHRA	Philippine Alliance of Human Rights Advocates
PAO	Public Attorneys' Office
PCIJ	Philippine Center for Investigative Journalism
PILC	Public Interest Law Center
PLACE	Pro-Labor Legal Assistance Center
PNP	Philippine National Police
TFDP	Task Force Detainees of the Philippines
TFJP	Task Force Judiciary Protection
TWG	Technical Working Group
UPR	Universal Periodic Review

EXECUTIVE SUMMARY

In November 2008, the Dutch Lawyers for Lawyers Foundation (**L4L**) sent a team of eight judges and lawyers from Belgium and the Netherlands to the Philippines to look into the killing and harassment of their Filipino colleagues. The International Verification & Fact Finding Mission (IVFFM) is a continuation of the first mission sent over by L4L to the Philippines in June 2006.

Purpose of Mission

The main purpose of the IVFFM was to look into the effectiveness of the government's measures, especially those in response of the Melo Commission's recommendations. The investigation of the IVFFM focused on members of the legal profession and the question whether their position in practicing law has improved, in particular since its previous mission in 2006. The IVFFM investigated the impact of the measures by the government on the threats and attacks against and the extrajudicial killings of lawyers and judges as well as the progress made in the investigations and prosecution.

Method of Working

From 4-12 November, 2008, the IVFFM held interviews and conferences in Quezon City, Manila and Cagayan de Oro, Mindanao, with victims amongst lawyers and judges, the families of slain lawyers and judges, representatives of the Integrated Bar of the Philippines (IBP), Philippine civil society organizations and human rights advocates, like Amnesty International, CODAL and the Philippine Alliance of Human Rights Advocates (PAHRA), concerned executive branches, such as representatives of the Department of the Interior and Local Government (DILG), Department of Justice (DoJ), Philippine National Police (PNP), Task Force USIG, National Bureau of Investigation (NBI), Office of the Ombudsman, Commission on Human Rights of the Philippines (CHRP), members of the judiciary (Supreme Court) and legislators (Senate and House of Representatives). The IVFFM regrets that representatives of both the Armed Forces of the Philippines (AFP) and the Melo Commission declined its invitation to meet. The IVFFM also studied documents, including those provided by the aforementioned individuals, agencies and organizations.

Most Serious Concern: Political Will/Lack of Trust

The IVFFM would like to emphasize that if extrajudicial killings are to be stopped once and for all, it must start with the President who should consistently and at all levels condemn the killings and pursue structural reforms to materialize a cultural change. Such change is necessary to address the underlying causes of the killings which seem to be deeply entrenched in institutional beliefs.

Since the first international fact finding mission of lawyers and judges in June 2006, President Arroyo has indeed publicly condemned extrajudicial or politically motivated killings and repeatedly stated that her administration is working hard on putting an end to these killings.

However, the IVFFM is deeply concerned about the gap between what the government has said what has been done to address the extrajudicial killings, and the actual results of its initiatives as well as about the lack of the prerequisites for solving a problem of this magnitude. It takes time and – as pointed out by Chief Justice Puno - requires the political will to sometimes take the unpopular stance in order to protect human rights and uphold the right to life.

Above all, the government's initiatives need the support of its citizens at all levels and to gain this support, its citizens must have faith in the government's good will to solve the problem however great the cost.

However, the IFVVM observed a lack of trust among lawyers, judges, their relatives and civil society organizations as to whether the government is sincere in addressing the problem of these killings. There is a strong belief that the government's measures only exist on paper or serve as '*window dressing*' so as to satisfy the international community that measures were taken to address the killings. It was noted, for instance, that it was entirely up to the discretionary will of the President whether and if so, to what extent the Melo Commission's findings and advice would be followed.

[Main findings of various national and international institutions and policy responses](#)

The President created the Melo Commission and invited both the UN Special Rapporteur on extrajudicial, summary or arbitrary executions (Philip Alston) and the European Union to visit the country. Their reports, as well as the reports of various other national and international governmental and civil society organizations, provide a coherent picture of the pattern of extrajudicial killings and their underlying causes, only confirming the conclusions of the first IFFM-report of July 24, 2006. The link between the military and other state agents and these killings was also further established.

Most reports identified the government's counter-insurgency strategies that increasingly label civil society groups as fronts for communist insurgents, the culture of impunity and the military involvement in politics as the main root causes for the recent spate of killings.

To solve the issue of extrajudicial killings and to prevent the same effectively, the government has been urged to follow several concrete recommendations, including to bring all perpetrators to justice and to create an independent, credible and impartial investigative body to investigate the extrajudicial killings. The government welcomed all recommendations as well as support in resolving extrajudicial killings.

Although the government has ordered indeed a range of initiatives to various departments and offices to follow up national and international recommendations, it has not sufficiently implemented substantive and preventive measures necessary to materialize the recommendations. This is what happened, for example, with most of the Melo Commission's recommendations.

The government further rejected some crucial recommendations, including the one to address the root causes of the issue of extrajudicial killings in the context of the appropriate reform of the judiciary and the security forces.

Nevertheless, the government claimed to be very successful in addressing the issue: the number of extrajudicial killings would have declined significantly, while prosecutions are up.

Findings and conclusions

The IVFFM found that lawyers and judges in the Philippines are still threatened, intimidated and killed as a consequence of which they encounter difficulties in carrying out their legal profession. Although the exact number of lawyers and judges that has been killed since the first mission in June 2006, could not be determined, it is undisputed that in the period 2007/2008 at least nine lawyers and three judges were killed. After its mission, the IVFFM learnt that a fourth judge was killed on December 7, 2008.

Lawyers also fear for being silenced by fabricated charges. It seems that activists are increasingly facing questionable criminal charges which are produced through the subversion of court procedures and rules on evidence. The IVFFM was informed that now for the first time also a fabricated charge against a human rights lawyer was filed.

The IVFFM is concerned about these reported developments. Fabricated charges, using the courts to target activists, as well as the continuous threats, intimidation and other forms of harassment, undermine the rule of law in the Philippines. Even if these kind of cases are later in court dismissed, the accused is always hampered in his work, since the warrants of arrest are reportedly always for non-bailable offences; he or she will be in jail or forced to go in hiding. No (substantive) damage money is paid afterwards. For the constitutional state to function properly, it is essential for lawyers and judges to be able to practice law freely and independently.

Based upon its evaluation of the relevant documents and testimonies, the IVFFM has reached the following conclusions with respect to the impact of the government's measures on the position of lawyers and judges:

Contrary to its 2006 position, the government acknowledged that profession related killings of lawyers and judges (hereinafter 'these killings') are a serious problem. Consequently, the government has taken a range of initiatives to protect lawyers and judges. The IVFFM observed

that most government initiatives were actually initiated and (partly) financed by the Supreme Court or the Committee on the Security of Judges and focus mainly on the security of judges.

Despite these protective and security measures, lawyers and judges still fear for their lives or for being silenced by fabricated charges.

Even today, lawyers and judges are still subjected to (death) threats, intimidation, surveillance and other acts of harassment. Some of them are labelled as 'enemy of the state', especially lawyers who represent clients who are accused of being a supporter or a member of the New People's Army (NPA).

As a result of this, lawyers and judges are still hampered in carrying out their legal profession.

Although the number of killings has declined, they still occur; it must be emphasized that every killing is one to much.

The Philippine government claims to have taken firm measures to address the problem of extrajudicial killings as a result of which the number of killings would have declined significantly. However, the IFVVM found that the number of and the reasons for this decline are not undisputed.

The IVFFM has not been able to establish to what extent the government's measures contributed to this decline. The government has indeed established various Task Forces. Human rights awareness programs were also issued, which must be welcomed. Nevertheless, in terms of preventing other human rights violations related to the killings, investigation and prosecution of the perpetrators and institutionalizing or implementing necessary structural reforms, these measures have not led to visible results.

Apparently only 1 (one) person has been convicted for these killings and this occurred in 2006. So impunity still seems to be the rule rather than the exception. In the cases that were investigated by the first mission in 2006, little or no progress has been made so far. In many other cases – also in cases on trial - the accused are still at large or not yet identified (John Does) or cases are cold cases, which means that there has been no development or progress for more than a year.

So far, the authorities have failed to analyze the killings of lawyers and judges in the context of other killings that have occurred in the Philippines since 2001, including the killings of members of leftist groups. As a result, there is still no systematic cross-reference of cases with similarities in modus operandi or forensic findings. The fact that differing data were shown in their presentations also indicate that there is little or no coordination between the various Task Forces and agencies concerned.

In addition, it has remained unclear how the establishment of the various Task Forces has contributed to address the other identified reasons for the failure to investigate and prosecute extrajudicial killings effectively. These reasons include the lack of witnesses and resources, sloppy police investigations, the unwillingness of the police to investigate the military, the inadequate implementation of the legal framework, the ineffective accountability mechanisms and the passive and politicized criminal justice system. Witnesses and family members of slain lawyers and judges are, for instance, still hesitant to come forward out of fear for their lives and distrust of the authorities.

While the Melo Commission stated that *'the circumstances clearly show that such killings (...) [takes place] pursuant to an orchestrated plan by group or sector with an interest in eliminating the victims'*, the governmental measures merely focus on protection and security of lawyers and judges, where they should also address the underlying causes. However, the governmental authorities' willingness to investigate upon serious allegations of involvement of state agents in these killings is still lacking. It would increase their credibility, if the authorities would successfully investigate accusations of extrajudicial killings perpetrated by members of the military or other state agents.

In this regard reference should be made to the Melo Commission's finding that under the principle of command responsibility, some senior military officers may be held responsible for their failure to prevent, punish or condemn the killings. The IVFFM observed that according to the ruling opinion in the Philippines the principle of command responsibility cannot be used in criminal cases. However, the government has not followed the Melo Commission's recommendation to propose legislation in this regard.

Although the government said that it looked forward to actual concrete programs of partnerships between the Philippines and the EU, it has still not signed the Memorandum of Agreement necessary to implement the EU technical assistance program.

It is the primary duty of the Philippine government to protect the life of its citizens. Nevertheless, it has mainly been the Supreme Court that has played an active role in addressing the issue of extrajudicial killings and enforced disappearances. The most important initiative of the Supreme Court was the introduction of the Writ of Amparo, which took effect on October 24, 2007. The Writ allows courts to order the temporary protection, inspection and production of documents in cases where an individual's life, liberty or security has been violated or is under threat. The IVFFM observed that this initiative of the Supreme Court was highly appreciated and is broadly supported. A further development in terms of implementation and enforcement is needed to make the Writ more effective.

Recommendations

In order to stop the killings, threats and harassment of lawyers and judges, the IVFFM calls on the Philippine government to:

1. consistently condemn all forms of attacks against lawyers and judges publicly, at all levels and in strong terms;
2. immediately further enhance steps taken to protect the safety of lawyers and judges, which steps should include the prosecution of alleged perpetrators with urgency and fervor;
3. fully comply with the Basic Principles on the Role of Lawyers, in particular articles 16 and 17, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990;¹
4. address the underlying root causes of the extrajudicial killings effectively and to leave no stone unturned in investigating the serious allegations that its own military forces are involved in the killings;
5. create and fully support an independent, credible and impartial body, i.e. not under the control or the influence of the government, composed of members selected exclusively from nominees from lawyers organizations, civil society, the Church and the like in a transparent way, who are known for their human rights record, independency and integrity; this civilian investigative body must be entrusted with the necessary investigative and prosecutorial powers to investigate promptly, impartially and effectively - under international supervisory mandate - all reports and complaints against state security agents with respect to extrajudicial killings, threats and other forms of harassment; the recommendations of this investigative body should be immediately followed by the government.
6. fully implement a framework within which the pattern of extrajudicial killings can be stopped in accordance with the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Declaration of Basis Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly in Resolution 40/34 of 29 November 1985;

¹ Article 16 reads as follows: '*Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.*'

Article 17 reads as follows: '*Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.*'

7. immediately use the principle of command responsibility as a basis for criminal liability of perpetrators; if and to the extent that this principle cannot be used within the current applicable legal framework in the Philippines, certify as urgent before Congress legislation on the principle of command responsibility in line with the Melo Commission's recommendations;
8. immediately sign and implement the Memorandum of Agreement with the European Union regarding the EU technical assistance program in the field of police investigation and prosecution, human rights awareness and judiciary;
9. fully comply with requests of International bodies such as the UN Special Rapporteurs to visit the Philippines and carry out fact finding missions and to fully support these missions and follow its recommendations;
10. take all other measures needed to end the culture of impunity and to restore the people's faith in the functioning of the constitutional state and the rule of law.

1. INTERNATIONAL VERIFICATION & FACT FINDING MISSION (IVFFM) ON THE ATTACKS AGAINST FILIPINO LAWYERS AND JUDGES

- 4-12 NOVEMBER 2008 - THE PHILIPPINES -

1.1 Introduction

In November 2008, the Dutch Lawyers for Lawyers Foundation (**L4L**)² sent a team of eight judges and lawyers from Belgium and the Netherlands to the Philippines to look into the killing and harassment of their Filipino colleagues. The International Verification & Fact Finding Mission (IVFFM) is a continuation of the IFFM sent over by L4L to the Philippines in June 2006.³

The findings of the first International Fact Finding Mission (IFFM) were alarming.⁴ Filipino human rights lawyers and judges were increasingly threatened, intimidated and killed as a consequence of which they encountered more and more difficulties in carrying out their legal profession. Up to June 2006, at least 15 lawyers and 10 judges were killed since President Arroyo came to power in 2001. Especially worrisome was the IFFM's conclusion that the Philippine government had hardly done anything to address the extrajudicial killings effectively. In particular it had neither responded seriously to strong allegations that its own security forces were involved in the killings nor had it taken effective measures to improve the poor record of prosecutions of the perpetrators.⁵

In order to stop the atrocities against lawyers and judges, the IFFM made the following recommendations to the Philippine government:

² Lawyers for Lawyers (**L4L**) (*Stichting Advocaten voor Advocaten*) is an independent, non-political Dutch foundation that has committed itself to enable lawyers worldwide to practice their legal profession freely and independently so as to safeguard the constitutional state to function properly. **L4L** actively supports lawyers who are hindered or threatened in practicing law. For more information visit its website www.lawyersforlawyers.nl.

³ From 15-20 June, 2006, a delegation of two Dutch judges and six Dutch and Belgian lawyers held interviews and conferences in Quezon City, Manila and Tacloban City, Leyte, with lawyer-victims, the families of slain lawyers, representatives of the Integrated Bar of the Philippines (IBP), Philippine civil society organizations and human rights advocates, concerned government agencies such as the Departments of the Interior and Local Government (DILG) and Justice (DoJ), Philippine National Police (PNP), National Bureau of Investigation (NBI), Armed Forces of the Philippines (AFP), members of the judiciary (Supreme Court) and legislators (Senate and House of Representatives). It also studied relevant documents, including those provided by the aforementioned individuals, agencies and organizations.

⁴ The report of the International Fact Finding Mission (IFFM), '*From facts to Action. Report on the attacks against Filipino Lawyers and Judges*' was published on July 24, 2006. On this date, representatives of the mission presented the first copy of its report to Chargé d'Affaires, Ms Laura Santos of the Philippine Embassy in The Hague, The Netherlands. The report can be downloaded from <http://www.advocatenvooradvocaten.nl/cms/content/view/175/170/>.

⁵ IFFM Report 2006, p. 36-38.

1. to condemn the killings publicly and in strong terms;
2. to immediately take vigorous steps to protect the safety of human rights lawyers and judges, which steps should include the prosecution of alleged perpetrators;
3. to leave no stone unturned in investigating the serious allegations that its own security forces are involved in the killings;
4. to constitute and fully support an independent body, i.e. not controlled by the government, to investigate the killings, threats and harassment and to follow its recommendations;
5. to take all other measures needed to end the culture of impunity and to restore the people's faith in the functioning of the constitutional state and the rule of law.⁶

After this first mission, important developments and policy responses regarding the extrajudicial executions in the Philippines occurred.

On August 21, 2006, President Arroyo stated that the Philippine Government condemned '*political killings in the harshest possible terms*'⁷ and a special Commission of Inquiry, known as the Melo Commission by its chair, former Supreme Court Justice Jose Melo, was established.⁸ The task of the Melo Commission was to investigate and stop the series of killings of journalists and leftist activists in the country and '*to leave no stone unturned in its pursuit of justice for the victims and their families*'.⁹ The Government members of the Melo Commission, namely the NBI Director and the Chief State Prosecutor, would form a team to prioritize the prosecution of media professionals and activist killings which would be mandated '*to put the murderers behind bar at the soonest possible time*'.¹⁰ The Melo Commission would have '*a sweeping mandate*' in order to jail the culprits and '*break this cycle of violence once and for all*'.¹¹

In February 2007, the Philippine government invited UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Professor Philip Alston, '*as a concrete manifestation of the Philippines' willingness to cooperate with the international human rights system*'.¹²

⁶ IFFM report 2006, p. 39. The IFFM recommendations were endorsed worldwide, amongst others, by Amnesty International, Asian Human Rights Commission, Bar Human Rights Committee of England and Wales, Law Society of Upper Canada Human Rights Monitoring Group, Lawyers Rights Watch Canada and Lawyers for Lawyers Foundation.

⁷ Gov. Ph News: '*Palace issues Administrative Order on media killings*', Wednesday, August 23, 2006 / human rights <http://www.gov.ph/>.

⁸ Administrative Order No. 157 by the President of the Philippines, creating an independent commission to address media and activist killings ('A.O. No. 157').

⁹ Gov. Ph News: '*PGMA gives Melo Commission sweeping mandate to probe letrajudicial killings*', Monday, August 21, 2006, <http://www.gov.ph/>.

¹⁰ A.O. No. 157, section 4 (Prosecution).

¹¹ A.O. No. 157, section 3 (Duties and functions) sub iii. See also Gov. Ph News: '*PGMA gives Melo Commission sweeping mandate to probe extrajudicial killings*', Monday, August 21, 2006, <http://www.gov.ph/>.

¹² Philippine national report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1, A/HRC/WG.6/1/PHL/1, 7 March 2008, par. 109, p. 15.

A day after Prof. Alston's mission, Press Secretary Ignacio R. Bunye announced that the Philippines would resolve the extrajudicial killings under its justice system, '*supported by well-meaning partnerships with the UN, the EU and other allies for justice and democracy*'.¹³

In March 2007, the Philippine government indeed asked the international community, including the European Union, for technical support in conducting investigations into the extrajudicial killings. Subsequently, the European Union organized an EU Needs Assessment Mission that focused on the question of how it could best meet the government's request.¹⁴

In addition, the judiciary and the Supreme Court in particular, has taken an active role in addressing the issue of extrajudicial killings. In July 2007, Supreme Court Chief Justice Reynato Puno took the initiative for the National Summit on Extrajudicial Killings and Enforced Disappearances that brought together all sectors of society to search for solutions to the spate of unsolved murders and abductions in the country.¹⁵ As a result, the judiciary has promulgated new rules to enhance human rights protection, including the Writ of Amparo and the Writ of Habeas Data.

The Philippines was also one of the first countries to go through the Universal Periodic Review (UPR) mechanism of the UN Human Rights Council in April-June 2008.¹⁶ In its national report submitted to the Human Rights Council Working Group on the UPR, the Philippine government stated that it had taken '*firm measures to address the problem of extrajudicial killings and enforced disappearances*' and that '*[A]ddressing this most urgent concern, by bringing their perpetrators to justice and preventing such killings in future*' remained a '*priority of Government*'. According to the Philippine National Police (PNP), the '*incidence of killings of activists and media professionals dramatically declined from 2006 to 2007*'.¹⁷

In her message in celebration of the 110th Philippine Independence day on June 11, 2008, President Arroyo highlighted that the Philippines have met a lot of success since the formation of the Melo Commission: '*Extrajudicial killings are down and prosecutions are up. We will not be satisfied until we are at zero, but we are making progress*'.¹⁸

¹³ Statement of Secretary Ignacio R. Bunye: '*Re Alston recommendations*', Wednesday, February 21, 2007, <http://www.gov.ph/>.

¹⁴ EU Needs Assessment Mission Philippines, 18-28 June 2007, Report, Brussels, October 2007 ('EU NAM report 2007').

¹⁵ National Consultative Summit on Extrajudicial Killings and Enforced Disappearances. '*Searching for Solutions*', Centennial Hall, Manila Hotel, Philippines July 16-17, 2007 ('Summit report 2007').

¹⁶ The Universal Periodic Review (UPR) is a new and unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situation in their countries and to fulfil their human rights obligations. The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself. For UPR documentation on the Philippines see <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/PHSession1.aspx>.

¹⁷ Philippine national report, footnote 11, par. 105, p. 14.

¹⁸ Gov. Ph News: '*President Gloria Macapagal-Arroyo's Message in celebration of the 110th Philippine Independence Day*', Wednesday, June 11, 2008, <http://www.gov.ph/>.

Although the number of killings may have declined indeed from 2006 to 2007, international and Philippine civil society organizations claimed that the reality remains that the killings, threats and harassment of persons involved in social activism, including lawyers and judges, still continue. For the main part, none of those responsible would have been identified or convicted and people still would fear to pursue cases in court or to testify because of the inability and failure of the justice institutions to hold the perpetrators accountable and ensure protection of their citizens. There were also concerns that the continuing harassments and arrests of activists on allegedly trumped-up charges show that the Philippine government would only be changing its tactics.¹⁹

In view of the above, Lawyers for Lawyers (**L4L**) decided to organize a follow-up mission to form its own opinion with regard to the current position of Filipino lawyers and judges and the effectiveness of the measures claimed to be taken by the Philippine Government to address the problem of extrajudicial killings.

The IVFFM was hosted by a national hosting committee consisting of representatives of the National Union of Peoples' Lawyers (NUPL)²⁰ in collaboration with the Counsels for the Defense of Liberties (CODAL).²¹ The IVFFM itself was and is fully independent of its Filipino hosting committee or any other individual, organization or authority, including those it has met during its investigation in the Philippines.

Hereafter, the IVFFM will first explain its purpose and method of working. In order to gain an insight into the phenomenon of extrajudicial executions in the Philippines, it shall briefly touch upon the political context in which these killings take place and then proceed with the current domestic developments related thereto. In doing so, it shall give an overview of the findings of various national and international investigative missions addressing the issue and the responses thereto by the government. It shall also take into account the role of the Supreme Court and the Writ of Amparo issued by the Court. Subsequently, it shall present the results of its interviews and investigations followed by its concluding observations and recommendations.

¹⁹ Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (C) of the Annex to Human Rights Council Resolution 5/1 (i.e. summary of 31 stakeholders' submissions to the Universal Periodic Review), A/HRC/WG.6/1/PHL/3, 11 March 2008, par. 8, p. 3, par. 20-21, p.5-6, par. 16-18, p. 4-5 and par. 10, p. 3, par. 42, p. 10.

²⁰ The National Union of People's Lawyers (NUPL) was formally conceived during the national consultation of human rights lawyers held in Davao City on October 14, 2006. The NUPL aims to render a more effective, immediate, and well-coordinated legal response to the cases of human rights violations nationwide.

²¹ Counsels for the Defense of Liberties (CODAL), formerly the Committee for the Defense on the Attacks of Lawyers, was formed at the Integrated Bar of the Philippines' (IBP) National Office meeting on 30 April 2005, in order to – amongst other things – condemn and campaign against the rising attacks against members of the legal profession.

1.2 Composition of Delegation

The IVFFM was composed of attorneys, judges and lawyers from both Amsterdam, the Netherlands and Antwerp, Belgium: Gerrard Boot (Judge), Jo Dereymaeker (Attorney), Thea Gijssberts (Judge) Hein Karskens (Attorney), Judith Lichtenberg (Head of Mission/Lawyer), Angela Meijer (Attorney), Adrie van de Streek (Attorney) and Nol Vermolen (Judge).

The participants represented respectively Lawyers for Lawyers (**L4L**),²² Lawyers without Borders²³ and the Flemish Bar Association.²⁴ The mission was further supported by Amnesty International, the Netherlands Bar Association,²⁵ the Amsterdam Bar Association,²⁶ the Integrated Bar of the Philippines (IBP),²⁷ the Netherlands Association for the Judiciary,²⁸ the Netherlands Judges for Judges Foundation and Lawyers' Rights Watch Canada.²⁹

1.3 Purpose of Mission

As set out in its Mission Statement (**Annex 1**), the purpose of the IVFFM was to:

- (a) verify the status of cases of harassed or killed lawyers and judges investigated by the IFFM in June 2006;
- (b) verify and collect as many findings as possible regarding several new cases of threats, harassment and killings of human rights lawyers and judges as well as the (lack of) reaction thereto by the competent Philippine authorities;
- (c) verify and collect as many findings as possible regarding the effectiveness of the measures the Philippine government claims to have taken to address the problem of extrajudicial killings;
- (d) inform the appropriate Philippine authorities and the international community, more specifically national and international lawyers organizations about these findings.

²² www.lawyersforlawyers.nl, see also footnote 1.

²³ <http://www.advocatenzonderegrenzen.nl>.

²⁴ <http://www.advocaat.be/>.

²⁵ <http://www.advocatenorde.nl/english/default.asp>.

²⁶ http://www.advocatenorde-amsterdam.nl/NOVA/ipublish_amsterdam.nsf.

²⁷ <http://www.ibp.org.ph/>.

²⁸ The Dutch Association for the Judiciary (NVvR) is the independent trade association and union of judges and public prosecutors in the Netherlands. <http://www.nvvr.org/en-gb/Content.aspx?type=content&id=63>.

²⁹ Lawyers Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law by providing support internationally to human rights defenders in danger. <http://www.lrwc.org/index.php>.

1.4 Method of Working

From 4-12 November, 2008, the IVFFM held interviews and conferences in Quezon City, Manila and Cagayan de Oro, Mindanao, with lawyers and judges who were the victims of harassment, the families of slain lawyers and judges, representatives of the Integrated Bar of the Philippines (IBP), Philippine civil society organizations and human rights advocates, such as Amnesty International, CODAL and the Philippine Alliance of Human Rights Advocates (PAHRA), concerned executive branches, such as representatives of the Department of the Interior and Local Government (DILG), Department of Justice (DoJ), Philippine National Police (PNP), Task Force USIG, National Bureau of Investigation (NBI), Office of the Ombudsman, Commission on Human Rights of the Philippines (CHRP), members of the judiciary (Supreme Court) and legislators (Senate and House of Representatives). The IVFFM regrets that representatives of both the Armed Forces of the Philippines (AFP) and the Melo Commission declined its invitation.

In addition, the IVFFM also studied documents, including those provided by the aforementioned individuals, agencies and organizations, reports and statements of international and Philippine human rights organizations, governmental country reports, various news items and other relevant documents.

During its press conference in Quezon City, Metro Manila on November 12, 2008, the IVFFM presented its initial findings (**Annex 2**).

Based upon its evaluation of the relevant documents and testimonies of individual cases, the IVFFM has now produced its own final findings and recommendations as set out in this report. It will present its report to the Lawyers for Lawyers Foundation and to the other Dutch, Belgian and international lawyers organizations concerned as well as to the Integrated Bar of the Philippines, members of the judiciary and legislators and the Philippine government agencies it has met during its mission, with the urgent request to act upon its recommendations and do the utmost to stop the killings, threats and harassment of lawyers and judges.

The IVFFM obviously will share its findings with the victimized lawyers and judges, the families of slain lawyers and judges, and the human rights advocates it has met during its mission.

In addition, the IVFFM will send its report to (international) governmental organizations such as the United Nations, the European Union and civil society organizations.

1.5 Media Coverage

During its mission in the Philippines, the IVFFM had an interview with the local press in Mindanao on November 6, 2008 and it held a press conference on November 12, 2008 in

Quezon City, Metro Manila. The IVFFM gained media attention from Philippine national and local newspapers and TV channels.

Dutch national and local newspapers, legal magazines and (online) newsletters also paid attention to the IVFFM.

2. EXTRAJUDICIAL KILLINGS IN THE PHILIPPINES

- recent developments and policy responses -

2.1 Political context

When President Gloria Macapagal-Arroyo first acceded the presidency in 2001, it was hoped that she could help stabilise the country's volatile politics. From the beginning, however, Arroyo has faced many serious challenges of her administration, including military mutinies, taking place in a context of multiple armed conflicts. The 2004 elections in which Arroyo was re-elected as President, continued to be a source of contention after allegations that she was linked to election fraud and corruption, putting her legitimacy on the line. Although Arroyo denied any wrongdoing, the political situation remained unstable, culminating in Arroyo's declaration of a national state of emergency in 2006 to face down an alleged left-right coup attempt.³⁰ Under the state of emergency,³¹ Arroyo granted exceptional powers to the executive branch, allowing law-enforcement officials to issue warrantless arrests of alleged enemies of the state, including some members of the political opposition and journalists from critical media outlets.³² The use of emergency powers coincided with a rising number of extrajudicial killings and other human rights abuses, putting the international spotlight on the Philippine's human rights record. Since 2005, President Arroyo has faced four separate impeachment motions in Congress, the last one issued on October 13, 2008, accusing her of corruption, extrajudicial killings, torture and illegal arrests. Arroyo's constitutionally mandated term as president ends in 2010.³³

2.2 Extrajudicial killings during the Arroyo administration

Between 2001 and 2006 the spate of extrajudicial killings in the Philippines reached unprecedented levels, enough to alarm all sectors of society as well as the international community. The IFFM – visiting the country in June 2006 in response to reported killings and harassment of members of the legal profession - noted a pattern in the killings of human rights lawyers and judges, which could be seen in the light of other extrajudicial executions in the

³⁰ Governmental News Statement, '*PGMA declares a State of National Emergency*', February 24, 2006, <http://www.gov.ph/news>.

³¹ Presidential Proclamation 1017.

³² Following the declaration of the State of Emergency, the PNP filed rebellion/insurrection charges on February 27, 2006 against 51 top leaders of the CPP and other personalities, including six party-list representatives, allegedly involved in the attempt to bring down President Arroyo.

³³ President Arroyo has proposed amending the Philippine Constitution. The change would - amongst other things - extend Arroyo's term of office after 2010.

Philippines, including the murders of leftist activists. The Arroyo administration's lack of an effective response had led to a culture of impunity, intensifying the risk of more killings and human rights violations, whilst further diminishing public confidence in the rule of law.³⁴

Since the IFFM mission, various national³⁵ and international³⁶ governmental and civil society organizations have investigated and released reports on the problem of extrajudicial killings, including the government-appointed Melo Commission and UN Special Rapporteur Philip Alston. Despite differences in scope, they provide a coherent picture of the various elements of the extrajudicial killings and their underlying causes, only confirming the findings of the first IFFM-mission as well as the conclusions of its subsequent report.

This chapter shall first summarize the main findings of these reports, followed by an overview of the Arroyo administration's and the judiciary's responses thereto.

2.3 Main findings on extrajudicial killings since 2006

2.3.1 The number of extrajudicial killings

Both governmental bodies and civil society organizations have produced lists of the numbers of extrajudicial killings in the Philippines since President Arroyo assumed office in 2001.³⁷ Although

³⁴ IFFM report 2006, p. 37-38.

³⁵ Including the Independent Commission to Address Media and Activist Killings, January 22, 2007 ('Melo report'), Supreme Court of the Philippines: National Consultative Summit on Extrajudicial Killings and Enforced Disappearances, '*Searching for Solutions*', July 16-17, 2007, Manila Hotel, ('Summit report 2007'), Integrated Bar of the Philippines, National Committee on Legal Aid, '*Legal Audit of cases of Extrajudicial Killings in the Philippines*', December 12, 2008 ('IBP report 2008'). See also Center for Trade Union and Human Rights, '*Trade Unions Under Siege: Trade Union and Human Rights Report January 1 to December 31, 2006*', January 2007 ('CTUHR report 2007') and Karapatan's annual Human Rights Reports.

³⁶ Including Amnesty International, '*Political Killings, Human Rights and the Peace Process*', August 2006, ('AI report 2006') '*Seeking Answers: Probing Political Persecution, Repression & Human Rights Violations in the Philippines*', September 21, 2006, Special Update: March 8, 2007 ('SU report 2007'), International Federation for Human Rights, '*Unabated Extrajudicial Killings – A Schizophrenic Policy*', February 7, 2007 ('FIDH report 2007'), Philip Alston, '*Report of the Special Rapporteur on extrajudicial summary or arbitrary executions, Philip Alston, on his mission to the Philippines (12-21 February 2007)*', June 2, 2008 ('Alston report 2007') and its Preliminary note of 22 March 2007, A/HRC/4/20/Add.3 ('Preliminary note 2007'). Human Rights Watch, '*Scared Silent, Impunity for Extrajudicial Killings in the Philippines*', June 2007 ('HRW report 2007'). Other reports include EU NAM Report 2007, US State Department Country Report, March 11, 2008 ('US report 2008').

³⁷ Report of the Technical Working Group (TWG) on the Alleged Political Killings (Covering the Period 1 February 2001 to 31 October 2006) as of 20 December 2006, referring to lists of incidents/cases of alleged political killings reported by Karapatan, Amnesty International, Task Force Detainees of the Philippines (TFDP), PNP/Task Force USIG and the GRP Monitoring Committee (created under E.O. No. 404 in 2004 to receive complaints and do monitoring of the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL)).

the numbers varied between 111 and 724 killings, listed in 2006 by Task Force USIG³⁸ and Karapatan³⁹ respectively, it is undisputed that politically motivated killings have taken place in the Philippines and that their numbers increased between 2001 and 2006 as compared to a similar period prior thereto.⁴⁰ Although the exact number of victims could not be determined, Alston's opinion that '*the number is high enough to be distressing*' is widely shared.⁴¹ Moreover, it is noted that the conflicting figures of various parties can be simply explained by the different opinions on the concept of extrajudicial killings. Discussions on this topic have been qualified as '*time wasting*' and have allegedly caused a delay of official action at the level required.⁴²

2.3.2 The various elements of extrajudicial killings

The wave of extrajudicial killings follows a pattern consisting of various elements, including (i) the (perceived) political affiliation of the victims, (ii) the methodology of the attacks, (iii) the lack of progress in the investigation or prosecution of the cases and (iv) repeated reports of military or other state agents' involvement in the attacks.⁴³

The victims' profile

The victims are unarmed civilians and often members of leftist political and community organizations, including *Bayan Muna*, *Anakpawis*, *Bagong Alyangsang Makabayan* (BAYAN - New Patriotic Alliance). Among the victims are human rights defenders, trade unionists, lawyers, judges, church people and priests, journalists, elected local officials and political activists.⁴⁴

³⁸ Task Force USIG was created by the Secretary of the Interior and Local Government (DILG) on 13 May 2006 to look into the alleged killings of party list and other militant group members. According to TF USIG accomplishment report as of August 8, 2008, '[T]here are 114 valid cases of slain militant party list members / leftists activists since 2001.'

³⁹ Karapatan is an alliance of human rights organizations. It has listed 977 victims of extrajudicial, summary and arbitrary killings under the Arroyo government between 21 January, 2001 and October 31, 2008, Karapatan Report 2008, p. 15.

⁴⁰ Melo report, p. 5. All reports listed under footnote 35 and 36.

⁴¹ Alston added '[E]ven more importantly, numbers are not what count. The impact of even a limited number of killings of the type alleged is corrosive in many ways. It intimidates vast numbers of civil society actors, it sends a message of vulnerability to all but the most well connected, and it severely undermines the political discourse which is central to a resolution of the problems confronting this country', Philip Alston, UN Press Release, 22 February 2007.

⁴² EU NAM report 2007, p. 14-15.

⁴³ Including AI report 2006, p. 1-2 and 16-23, HRW report 2007, p. 2, IBP report, p. 10-11, Melo report p. 5-6, FIDH report 2007, p. 1. Philippine Commission on Human Rights former chairperson Purificacion Quisumbing also noted that a pattern of impunity in relation to the killings is visible, Philippine Daily Inquirer (PDI), 23 May 2006.

⁴⁴ Melo report p. 40-41. All reports listed under footnote 35 and 36.

(a) Labelling and death threats

Prior to the attacks, victims are often labelled as 'members of the CPP-NPA', 'communists' or 'enemies of the state'. In the majority of the cases, family members of victims reported previous death threats or surveillance by suspected military or police personnel. Victims are followed while undertaking routine journeys or being observed near their houses or offices.⁴⁵ Many victims are informed by sources within the Armed Forces of the Philippines (AFP) that their names appear in military 'orders of battle'.⁴⁶

(b) The manner and location

The victims are generally gunned down by two or more masked or hooded assailants, riding motorcycles,⁴⁷ who seem to be very self confident in getting away with it. The attacks take place in public places, sometimes in broad daylight, or in the victims' homes, when they are alone or in small groups. The killings are mostly committed in an ambush, assassination or 'professional hit' style. They occur throughout the Philippines, especially in areas where the AFP conducts internal security operations, however, not in armed clashes or during military engagements.⁴⁸

The lack of progress in the investigation or prosecution

Nearly all cases of extrajudicial killings have remained unsolved.⁴⁹ The Melo Commission even reported that in many cases the investigation '*has met a blank wall*'.⁵⁰ So far, none of the perpetrators of extrajudicial killings of leftist activists have been convicted in court.⁵¹ Governmental authorities claim that the main reasons for the poor records are the unwillingness of witnesses to cooperate⁵² and the lack of adequate forensic capabilities and other technology services.⁵³ Although the need for more forensic capabilities, technology and the enhancement of the witness protection programme is generally acknowledged, it has also been emphasized repeatedly that there are other, more pressing reasons for the failure to investigate extrajudicial

⁴⁵ Melo report, p. 51, AI report 2006, p. 23-24, Alston report, p. 11-12, CTUHR report 2007, p. 5. The US Country report 2008 noted: '*leftwing and human rights activists were often subject to harassment by local security forces*'.

⁴⁶ An 'order of battle' is a military list of targeted enemies ranked according to their importance.

⁴⁷ Melo report, p. 11. All other reports listed under footnote 35 and 36.

⁴⁸ AI report 2006, p. 21-24, CTUHR report 2007, par 7, p. 9, HRW report 2007, p. 26-27, Melo report p. 5-6, 50-51.

⁴⁹ Melo report, p. 5. IBP report, p. 17. All other reports listed under footnote 35 and 36.

⁵⁰ Melo Report, p. 41.

⁵¹ AI report 2006, p. 25, HRW report 2007, p.45-49, EU NAM report 2007, p. 15.

⁵² While the PNP claims that the CPP/NPA has terrorized the witnesses, the majority of the reports note that if witnesses refuse to come forward, it is out of fear or distrust of the authorities. There are also reports that witnesses who have approached the police to pass over relevant information have been turned away, including EU NAM report 2007, p. 15, AI report 2006, p. 26-27.

⁵³ According to the PNP, cases are often ordered dismissed due to a lack of evidence or they do not even reach the prosecution stage, because of the unwillingness of witnesses to cooperate. See also EU NAM report 2007, p. 19-24. Alston report 2007, p. 20.

killings effectively and to prosecute the perpetrators.⁵⁴ These include *'sloppy police investigations'*⁵⁵ and the unwillingness of the police to investigate the military.⁵⁶ Other pressing reasons are the inadequate implementation of the legal framework⁵⁷, the ineffective accountability mechanisms⁵⁸, the passive and politicised criminal justice system⁵⁹ and the recent changes in the priorities of that system.

⁵⁴ Alston noted: *'[A]t one level there is indeed a need for more staff, more resources, and more specialist expertise, a better witness-protection programme, and the strengthening of key institutions', (...)* [B]ut the strong risk is that these measures will treat only some of the symptoms of the crises, and will fail to address meaningfully two of the most important underlying causes of a great many of the killings', Alston, Preliminary note 2007. The EU Mission noted that *'Duplication of mandates and functions among State investigation agencies has resulted in conflict and inconsistency in police investigations on the ground and 'inefficient use of severely limited government resources'*. It also confirmed that *'[T]here is an urgent need to increase resources for the WP Programme*, EU NAM report 2007, p. 14 and 22.

⁵⁵ The IBP noted that *'[I]n this jurisdiction, there is a great tendency on the part of the investigators, especially the police, to rely too much on accounts of eyewitnesses and not to pursue other leads for the identification and/or eventual apprehension of the perpetrators'*. According to the IBP, *'[T]here is credence to the report of Philip Alston', quoting: 'There are a few strong forensic facilities in the country. And even more disappointing is the extent to which the police do not go further to apply forensic mechanisms which might actually yield those significant information relating to the killers. Instead of doing serious forensic tests and investigations, they rely on witnesses. They need to find someone who saw it and when that person is called to defend that person that was killed, witness disappears. That in fact is very convenient for the conclusion of the police',* IBP report 2008, p. 44-46. The EU Mission noted that *'[T]he crime scene examinations are of poor quality. Only obvious evidence such as empty shells was collected. No extensive measures were undertaken, which could lead to an individual's connection to the crime or the scene. Request for further laboratory examinations were confined to questions of whether the shells were fired from the gun found at the scene. No more sophisticated examinations such as fingerprints analysis were requested. The chain of custody for samples of collected evidence could not be followed through the documentation in the case files, which is of utmost concern if ever the case come to court and the prosecution need to prove the source of the evidence',* EU NAM report 2007, p. 15.

⁵⁶ Before the Melo Commission, Task Force USIG pointed out *'that military operations are beyond the scope of the TFU, since the military conducts its own operations. Task Force USIG investigated only four military personnel'*, Melo report, p. 10. However, General Esperon stated that *'[A]lthough the AFP entertains the complaints filed, it is the PNP which is the rightful or correct agency to proceed with the criminal investigation, with the AFP simply cooperating with the PNP by giving inputs and making its personnel available for investigation'*, Melo report, p. 15. Alston noted that *'no one questioned the PNP's authority and duty to investigate crimes allegedly committed by the AFP. However, in practice, it does so in only a perfunctory manner. Plausible explanations for this reticence include fear, a tacit understanding that crimes by the AFP should not be investigated, the personal bonds felt among senior AFP and PNP officers, and the solidarity fostered by current cooperation in counterinsurgency operations'*, Alston report, p. 19. See also HRW report 2007, p. 68.

⁵⁷ The EU Mission noted that *'[T]he legal framework, including standard operating procedures, for investigating extrajudicial killing is in place, but seems not to be implemented or applied'*. EU NAM report 2007, p. 15.

⁵⁸ According to Alston, *'[M]any of the accountability mechanisms which are invoked as checks on governmental abuses have been rendered ineffectual in dealing with such issues. On paper, they remain strong. In practice, they are of all too little use, and often this is the result of official design'*, illustrating his views with various examples, Alston, Preliminary note 2007, p. 4.

⁵⁹ The EU Mission noted that *'[M]any prosecutors are not sufficiently active in their cases. (...) the Prosecution waits for the PNP to deliver a case to them before they get involved.'* According to the prosecution, the law leaves room for the prosecution to become involved in assisting the police and advising them legally about the case, only *'if the prosecution determines the case should go to the next stage (filing at Court)'*. Prior to that stage the prosecutors take on a quasi-judicial function in weighing up whether there is probable cause or not, so that they should avoid to be considered biased. The EU Mission, however, was not persuaded that *'the current law demands inaction by prosecutors before case filing'*, and *'wondered if this was in fact merely an ineffective operating practice which could be changed'*, EU NAM

*With respect to the latter, Amnesty International noted that '[E]vents during and since the State of Emergency [in February 2006] have also raised concerns over political motivations behind reportedly selective arrests and launch of criminal proceedings, particularly against leftist suspects. The nature of the charges and the manner in which they have been brought forward have intensified continuing concerns that these arrests constituted arbitrary detentions based on a deliberate invocation of unfounded allegations, and signalled an erosion of the right of suspects to due process and a fair trial.'*⁶⁰

Other reports refer in this regard to the creation of the Inter-Agency Legal Action Group (IALAG) on January 17, 2006 that would organize the systematic filing of fabricated charges against leftist political activists suspected of being members or supporters of the CPP.⁶¹

It is generally acknowledged that the above mentioned factors have led to '*a rooted mistrust in the criminal justice system from the general public.*'⁶²

The involvement of the military and other state agents

All reports point to the involvement of state agents in the extrajudicial killings of activists and the military in particular.⁶³ When it comes to the nature and degree of the military involvement, the Melo report differs from most other reports that are also based upon interviews with eyewitnesses and victims' families.⁶⁴ While the Melo Commission concluded that there is '*no direct evidence, but only circumstantial evidence*' that '*a certain group in the military*' is responsible for '*an undetermined number of the killings, by allowing, tolerating, and even*

report 2007, p. 26. For a more in-depth analysis see '*Special report: the criminal justice system of the Philippines is rotten*', Article 2, February 2007 Vol. 6, No.1, confirming these views.

⁶⁰ AI report 2006, p. 11-14. Alston noted that '[T]he priorities of the criminal justice system have also been distorted, and it has increasingly focused on prosecuting civil society leaders rather than their killers'. (...) '*Senior Government officials are attempting to use prosecutions to dismantle the numerous civil society organizations and party list groups that they believe to be fronts for the CPP*', Alston report 2007, p. 2 and 18. Karapatan noted '*the Arroyo government has also manipulated the Philippine judicial system to take legal actions aimed at slandering and immobilizing the operations of legal democratic organizations*', Karapatan report 2008, p. 11. See also SU report 2007, p. 10-14.

⁶¹ '*On paper, IALAG is tasked to investigate, prosecute, monitor and handle litigation processes of cases involving national security.*' However '*its unwritten primary objective is to organize the systematic filing of imagined criminal lawsuits against political activists suspected of being members or partisans of the CPP*', Karapatan report 2008, p. 11. See also SU report 2007, p. 10-14; Alston report 2007, p. 19.

⁶² See for instance EU NAM report 2007, p. 14.

⁶³ All reports listed in footnotes 35 and 36. See also the Commission on Human Rights of the Philippines, '*On the killings of members of Bayan Muna, Anakpawis and other allied organizations*', Quezon City, July 8, 2006, available at <http://www.chr.org.gov.ph>.

⁶⁴ Although the Melo Commission '*planned to invite resource persons or witnesses from the various activist or militant groups, families of victims, .. they declined to appear, seemingly upon the urging of Karapatan*'. According to the Melo Commission '*[K]arapatan and other activist or militant groups refused to cooperate, and rather questioned the Commission's independence*', Melo report, p. 3.

encouraging the killings;⁶⁵ most other reports proved well founded that members of the security forces, including the military, have not only *'tolerated'* or *'acquiesced to'* the killings, but have also been *'directly involved'* in *'many'* or a *'significant number'* of them.⁶⁶

2.3.3 The reason for the extrajudicial killings

The PNP and military officials claim that most of the killings could be attributed to a purge within the ranks of the communist movement.⁶⁷ Most reports, including the Melo Commission report, dismissed this purge theory for lack of merit.⁶⁸ Given the victim's profile, it is generally

⁶⁵ The Melo Commission first stated that *'[N]o witness came forward to testify that he or she witnessed the military or any military personnel actually participate in any extrajudicial killing'*, Melo report, p. 53. Referring to this passage of the Melo Report, Human Rights Watch noted that it was able *'to interview eyewitnesses to killings that identify the perpetrators as members of the military. In addition, Human Rights Watch's investigations uncovered other sources of information that support the allegations of the involvement of military personnel in many of the killings'*, HRW report 2007, p. 3.

⁶⁶ The IBP noted: *'[T]he numbers speak for themselves'*, noting that *'[T]he results of its legal audit disclose that in the 71 documented EJK cases (out of 121 or almost 59%) the alleged perpetrators had been identified as members of the police, military or CAFGU'*, IBP report 2008, p. 52; Amnesty International refers to *'repeated credible reports that members of the security forces have been directly involved in the attacks, or else have tolerated, acquiesced to, or been complicit in them'*, AI report 2006, p. 2. UN Special Rapporteur Alston stated that *'[T]he AFP remains in a state of almost denial (...) of its need to respond effectively and authentically to the significant number of killings which have been convincingly attributed to them'*, UN Special Rapporteur Philip Alston, Press Statement, Manila, 21 February 2007. In his final report, Alston also noted that *'[T]he military is in a state of denial concerning the numerous extrajudicial killings in which its soldiers are implicated'*, Alston report 2007, p. 2 and 13. The research of Human Rights Watch, based on accounts from eyewitness and victim's families, found *'that members of the Armed Forces of the Philippines (AFP) were responsible for many of the recent unlawful killings'*, HRW report 2007, p. 25. The International Federation for Human Rights concluded that *'[T] here are credible reports that members of the security forces are often involved in the extrajudicial killings, or did not intervene to prevent them'*, FIDH report 2007, p. 5. The Center for Trade Union and Human Rights notes that *'[M]ilitary and PNP and their agents remain on top of suspected perpetrator'*, CTUHR report 2007, par. 6, p. 9.

⁶⁷ Some police officers have suggested that the rise in killings can be attributed to the rise and fall of a normal crime rate cycle. Both Amnesty International and the Melo Commission have explicitly declined this suggestion. Before the Melo Commission, the PNP stated that some of the victims may have been targeted by the CPP//NPA for alleged financial opportunism. The Melo Commission noted, however, that *'[I]n fact, none of the victims was positively identified as a financial officer of the CPP/NPA. Since the overwhelming majority of the victims were mere students, peasants or labourers, the Melo Commission also found it 'highly unlikely' that they would have committed any financial opportunism'*, Melo report, p. 54-55. See also p. 15 and 20.

⁶⁸ The Melo Commission noted that *'[N]o plausible explanation has been given for the rise in extrajudicial killings, except that the killings were perpetrated by the CPP-NPA pursuant to a purge of its ranks. It is argued that documents have been 'captured' detailing this plan of the CPP/NPA, and that there are witnesses to testify to this fact. The documents and witnesses, however, despite request by the Commission, were not presented'*, Melo report, p. 54. See also p. 55. Alston considered the evidence offered by the Armed Forces to support its claim that the killings could be part of a purge within the ranks of the communist movement *'especially unconvincing'*, Press Release United Nations, 22 February 2007. HRW noted that in most of the cases examined by HRW in which the police considered the matter *'solved'*, *'the alleged suspects were members of the NPA. In each of these cases, this finding seemed unlikely given the available facts on the ground and consistent rebuttals from the victim's families. Moreover, experts on the NPA have found no evidence that large-scale intra-NPA killings have persisted beyond the early 1990s, and that the current*

understood that the motive for the killings appears to be the elimination of persons because of their (perceived) political affiliation or connection with the CPP-NPA and to suppress political opposition.⁶⁹ Although the Melo Commission concluded that there is no state policy behind the spate of killings, it noted that the circumstances clearly show that the killings take place pursuant to *'an orchestrated plan by a group or sector with an interest of eliminating the victims'*.⁷⁰ When considering the motive, the Melo Commission added that *'the military has continued to classify the victims as "enemies of the state",* while referring to statements of Gen. Esperon and Gen. Palparan, who *'admitted themselves' that 'the armed forces considers the so-called left wing and some party list organizations, and their members, 'enemies of the state', who should be 'neutralized'*.⁷¹

2.3.4 Capacity and opportunity to commit the extrajudicial killings

In its report, the Melo Commission also explained that *'[T]he suspected group in the military has no doubt'* the capacity and the opportunity to carry out the killings:

*'In fact, the killings appear to be well organized and the killers adequately equipped. More telling, however, is the fact that, with the CPP-NPA out of the question, **only** a group with certain military capabilities can succeed in carrying out an orchestrated plan of eliminating its admitted enemies.*

*Too, this group admittedly has all the opportunity to carry out the said killings. Its members roam the countryside free from restrictions, pursuant to their 'all-out war' on communism. Their presence in the areas where the killings occurred is undeniable.*⁷²

killings do not reflect the typical pattern of killings by the NPA, thus calling the PNP's explanation into question', HRW report 2007, p. 71 (p. 70-77).

⁶⁹ While considering the motive for the extrajudicial killings of civilian activists, the Melo Commission noted that *'[I]n a great majority of the cases of activist killings, the only explanation for the victims deaths is the fact that they were allegedly rebels, or connected with the CPP / NPA'*, Melo report, p. 54. Alston noted: *'The aim has been to intimidate a much larger number of civil society actors, many of whom have, as a result, been placed on notice that the same fate awaits them if they continue their activism'*, Alston report 2007, p. 6. HRW quoted Congressman Teodoro Casiño: *'(..) since 2001 the numbers have escalated at an alarming pace. Previously, a significant number of victims were with armed underground groups. But we have noticed that since 2001 nearly all of these victims are not members of armed groups, but are members of legal groups who are very critical of the Government'*, HRW report 2007, p. 25-26, See also AI report 2006, p. 10. and FIDH report 2007, p. 5.

⁷⁰ Melo report, p.6. Alston noted that *'[O]f particular concern is the fact that those killed appear to have been carefully selected and intentionally targeted'*, Alston report 2007, p. 6, FIDH report, p. 5.

⁷¹ Melo report, p. 54-55. The Melo Commission concluded: *'The NPA purge theory being discredited, the only other theory left is that certain elements within or connected to some military officers are responsible for the killings. The victims, according to General Palparan and others, were enemies of the State; hence their neutralization.'* (..), Melo report, p. 55. FIDH noted that *'[T]he fact that the victims are by large found among the leaders and members of so-called left groups gives credit to those who denounce the existence of a concerted plan to neutralise those opposition groups'*, FIDH report 2007, p. 5.

⁷² Ibid. p. 55-56.

2.3.5 The underlying causes of the extrajudicial killings

Most reports have identified the government's counter-insurgency strategy⁷³ as the main root cause for the recent spate of killings, especially since it involves vilifying legal leftist organizations and intimidating its leaders.⁷⁴ The culture of impunity and the military influence in politics are also considered root causes.

2.3.5.1 The government's counter-insurgency strategy

During the IFFM's visit of the Philippines in June 2006, President Arroyo announced an '*all-out war*' against the CPP-NPA to finally put an end to the decades-old communist insurgency. This overall strategy or '*holistic war*' aimed at defeating the communist threat within two years '*through a combination of military operations, law enforcement and pro-poor programs*'.⁷⁵ Last year, the government decided to extend its all-out war until 2010.⁷⁶

The underlying idea of this strategy is said to '*bear down upon the enemy*' and at the same time '*solving the root causes of insurgency such as poverty and injustice*' while bringing '*communist rebels back to the fold of the law and thus 'neutralize' their threat*'.⁷⁷ The government's intensifying efforts against the CPP-NPA are reportedly part of its counter-insurgency program under the name of 'Oplan Bantay Laya' (OBL) or Operation Plan Defend Freedom that was first launched in 2002.⁷⁸

⁷³ The Philippine armed forces have battled a communist insurgency for over four decades and certain Muslim separatists for nearly a half century in different regions of the country. Those campaigns have been hounded by numerous allegations of human rights violations, including the torture of suspected rebels and sympathizers. However, Philippine human rights organizations such as Karapatan, claim that '*the recent spate of state killings*', are '*the worst since the dictatorship of President Marcos*'. Joel D Adriano, '*Arroyo's risky politics of patronage*', in: Asia Times Online, December 9, 2008.

⁷⁴ Including Amnesty International that noted that '*[R]ather they [the killings] constitute a pattern of politically targeted extrajudicial executions taking place within the broader context of a continuing counter-insurgency campaign*', AI report 2006, p. 2. Alston noted that '*[T]he first cause has been variously described as 'vilification', 'labelling', or guild by association. (...) The second cause is the extent to which aspects of the Government's counter-insurgency encourage or facilitate the extrajudicial killings of activists and other 'enemies' in certain circumstances*', Alston, Preliminary note 2007, p. 4. See also HRW report 2007, p. 17.

⁷⁵ Press Secretary and Presidential Spokesman Ignacio R. Bunye noted that '*[T]he time has come to finally defeat this threat through a combination of military operations, law enforcement and pro-poor programs to mop up the revolutionaries' mass base*', in Press Statement: '*Palace allays fear of authoritarian rule*', June 19, 2006.

⁷⁶ '*PGMA reiterates call to end insurgency in 2010*', by Freddie G. Lazaro, Philippine Information Agency (PIA) Press Release April, 22, 2008. See also '*New AFP chief vows to end insurgency, stop threats*', by Dino Maragay, May 1, 2009, www.philstar.com

⁷⁷ Melo report, p. 14 and 54.

⁷⁸ It is said that OBL was originally designed in the context of the war on terror's second front against Muslim separatist groups that operate in the South of the Philippines, including the Abu Sayyaf Group (ASG), which has been linked to Al Qaeda, but has been reconfigured by the Arroyo administration into an all-out war against the armed communist militia, because of its alleged new united front with ASG, see, for instance, '*Merging Executive Policy and Military Strategy*' in

Elements of the government's counter-insurgency strategy are believed to be conducive for the killings to take place since they make no distinction between armed combatants and unarmed civilians.⁷⁹ The EU Mission noted, for instance, that there is a '*fundamental and dangerous misconception within the AFP as to what amounts to a legitimate military target*'.⁸⁰ The IBP also noted that '[S]adly, it has been observed that there is an institutional belief among the state agents that "extrajudicial killings" are "OK"'.⁸¹

This is allegedly a result of the common practice of senior officials and military officers of publicly linking legal leftist political and community organizations and their members with communist armed groups, while labelling them as '*enemies of the state*', who should be '*neutralized*'.⁸² Although the AFP claims that the word 'neutralize' does not necessarily mean killing, it is feared that elements within the armed forces might have interpreted this differently, especially since the authorities failed to condemn the killings consistently at all levels of government.⁸³

Such fears prove well-founded indeed: On more than one occasion, AFP personnel confirmed to the EU mission '*that civilians who supported the counter-insurgency through political affiliation, financial support, or legal representation [emphasis supplied] were legitimate military targets*'.⁸⁴ Various testimonies would confirm that the lawyers taking up cases against members of the

Bulatlat, Vol. VI, No. 27, August 13-19, 2006, '*Deadly dirty work in the Philippines*', in: Online Asia Times, February 13, 2007'. See also SU report 2007, p. 15.

⁷⁹ EU NAM report 2007, p. 35. HRW report 2007, p. 17, AI report 2006, p. 20. SU report 2007, p. 15, noting that the AFP distributed a directive to security and intelligence agencies on September 3, 2004, '*to adopt a distinct system of target research, focusing mainly on all sectoral organizations (...) that are known to be actual front of the [Communist Terrorist Movement] and other groups with similar inclinations*'. (...) Additional documents distributed with the directive clarify that the targeted '*legal organizations*' are not limited to those with established ties to the CPP, but extend to sectoral groups including women, professionals, cultural minorities, transportation workers, the urban poor, peasants, students and youth, and labourers.'

⁸⁰ Ibid. p. 36. See also AI report 2006, p. 20-21, FIDH report 2007, p. 3.

⁸¹ IBP report 2008, p. 13.

⁸² Most reports in this regard refer to a Briefing presentation entitled 'Knowing the Enemy' and the book 'Trinity of War' both produced by the AFP that accuses progressive leftist organizations, including lawyers' groups such as the Free Legal Assistance Group (FLAG), media groups like the Philippine Center for Investigative Journalism (PCIJ) and religious organizations such as the Catholic Bishops Conference of the Philippines (CBCP) of being 'front organizations' of the CPP-NPA. The AFP confirmed the existence of the said Briefing presentation before the Melo Commission, while explaining that the term 'front organizations' means that many members of these legal organizations are identified members of the NPA, conveniently hiding under a legal organization to serve the ends of the CPP-NPA, Melo report, p. 11-15. FIDH also refers to speeches and press releases of '*high level military and government officials*' in which '*legal organisations in the Philippines*' are '*regularly designated as 'fronts of the NPA'*', adding that '*[S]uch statements make them legitimate targets*'; FIDH report 2007, p. 3 and footnotes 11-12.

⁸³ Melo report. p. 54. AI report 2006, p. 3.

⁸⁴ EU NAM report 2007, p. 35. Alston noted that the result of labelling or guilt by association is that '*[A] wide range of groups, including human rights advocates labour union organizers, journalists, (...) and others, are classified as 'fronts' and then as 'enemies of the State' that are accordingly considered to be legitimate targets*', Alston, Preliminary note 2007, p. 4.

army or the police are generally harassed and threatened.⁸⁵ The IBP also confirmed that judges and lawyers have not been spared.⁸⁶

An example how the government's labelling of leftist activists as supporters of the armed rebels contribute to the killings is the listing of such unarmed civilians in military 'orders of battle'. Amnesty International noted that *'[O]nce named, the threat of subsequent assassination attacks by unidentified men is markedly increased'*.⁸⁷

It is even feared that the intensified counter-insurgency campaign is less a legitimate response to the security threat caused by the armed communist insurgency, than an attempt to eliminate legal left-leaning organizations such as party list parties. According to Alston, the *'idea is not to destroy the NPA but to eliminate organizations that support many of its goals and do not actively disown its means. While non-violent in conception, there are cases in which it has, certainly at the local level, spilled over into decisions to extrajudicially execute those who cannot be reached by legal process'*.⁸⁸

It is further established by the EU Mission that 80% of the AFP's funds are directed towards non-combat activities.⁸⁹ While seeking to defeat the communist insurgency through the concept of winning the hearts and minds of the people, the military are conducting so-called governance activities, such as socio-civic projects which brings in small-scale development in rural areas nationwide, including infrastructure and day care. The AFP is also present in schools, at universities and in workplaces by giving political instruction in the form of civil education and by intervening in industrial and farmers' disputes.⁹⁰ While conducting this strategy, well-established AFP counter-insurgency techniques are used.⁹¹ As a consequence, the AFP is not to be seen by

⁸⁵ FIDH report 2007, p. 4, According to FIDH, *'[T]he witnesses and the relatives of the victims are also threatened, if not killed'*.

⁸⁶ IBP report, p. 16-17.

⁸⁷ AI report 2006, p. 24. The EU Mission noted that *'according to human rights organizations the 'order of battle' is a 'killing list'*, EU NAM 2007, p. 35. See also Alston report 2007, p. 9-10.

⁸⁸ Philip Alston, Press Statement, Manila, 21 February 2007, p. 4. Alston also called for an acceptance of *'the need to provide legitimate political space for leftist groups'*, noting that despite the party-list system and the repeal of the Anti-Subversion Act, *'the executive branch, openly and enthusiastically aided by the military'*, had been *'trying to impede the work of the part-list groups and to put in question their right to operate freely'*. FIDH noted that *'[T]he fact that the victims are by large found among the leaders and members of so-called left groups gives credit to those who denounce the existence of a concerted plan to neutralise those opposition groups. The various declarations by high level military and even government officials blurring the line between legal organisations and illegal armed groups are of utmost concern in that regard. Beyond eliminating them, the objective of such policy may also be to bring those groups back in the clandestine armed struggle, which would further justify a strong militarization in the country'*, FIDH report 2007, p. 5.

⁸⁹ EU NAM 2007, p. 34.

⁹⁰ The NPA and other armed insurgents base their concept of military struggle on the theory and practise of protracted people's war. The AFP mirrors this in their counter measures through the concept of winning the hearts and minds of the people, EU NAM report 2007, p. 34. See also p. 14 and 35.

⁹¹ Amnesty International refers to the practice of 'zoning', whereby the military targets a village or district believed to be influenced by the CPP-NPA, order the inhabitants to assemble to listen to lectures, at times using former insurgents now being used as military 'assets', about the communist threat so as to encourage informants and identify alleged

the public as a *'politically neutral entity in terms of its constitutional mandate'* which could be *'counterproductive to the normal democratic development of Philippine society'*.⁹² This development would be further undermined by Executive Order 546, which *'directs the PNP to support AFP in combat operations involving the suppression of insurgency'*.⁹³

2.3.5.2 Culture of impunity

It is generally acknowledged that the prosecution and punishment of those responsible for the extrajudicial killings are crucial for breaking the cycle of crime and impunity.⁹⁴ As Chief Justice Reynato S. Puno said: *"[T]he fact that killings remain unsolved heightens public distrust in our system of justice"*.⁹⁵ The EU Mission expressed itself in similar terms, noting: *'[T]here is an overwhelming need for successful prosecutions of cases of extrajudicial killing to be carried out soon in order to build public confidence and limit the undercurrent of impunity which exists in the Philippines'*.⁹⁶ However, the slow progress of investigations and the lack of prosecution of the perpetrators have led to a culture of impunity that may increase the risk of further human rights violations, *'not least by sending a message of de facto state tolerance for such practices'*. If perpetrators believe they are shielded from prosecution for such crimes they will even be more likely to repeat them.⁹⁷

2.3.5.3 Military involvement in politics

Since the martial law era, the AFP has been deeply involved in politics. Military mutinies and coup threats appear to be part of the Philippine political system. Two of the past five presidents have been ousted by what amounted to civilian-backed military coups. Two others, including President Arroyo, owe their presidencies to the same coups.⁹⁸ Political analysts believe that as a result, *'every Philippine president in effect serves at the pleasure of the military, and for every president, the care and feeding of senior officers is an important part of the job'*.⁹⁹ Human

communist supporters within the community, that reportedly leads to the public labelling of legal left activists, or their inclusion on military orders of battle, AI report 2006, p. 24. For other examples see also Alston report 2007, p. 8-13.

⁹² EU NAM report 2007, p. 34. Alston noted that *'[W]hen political 'warfare' is conducted by soldiers rather than civilians, democracy has been superseded by the military'*; Alston report 2007, p. 9.

⁹³ EU NAM report 2007, p. 36. Melo report, p. 15.

⁹⁴ AI report 2006, p. 24. All reports listed in footnote 35 and 36 share this view.

⁹⁵ IBP report 2008, p. 3.

⁹⁶ The EU Mission further noted that *'[P]art of the nervousness of witnesses to come forward and the scepticism of civil society about the legal process reflect the relatively low level of public trust in the transparency and fairness of the criminal justice system'*; EU NAM report 2007, p. 3.

⁹⁷ AI report 2006, p. 24-25. Senator Jovito R. Salonga: *'[P]rosecution and punishment break the cycle of crime and impunity, and failure to do this not only perpetuates human rights violations, but also sends a message of a State's tolerance for the said practices'*, delivered on the occasion of the National Consultative Summit in July 2007, IBP report 2008, p. 15.

⁹⁸ The only one who entered and departed without military intervention was himself a general.

⁹⁹ Seth Mydans, *'For Philippine Military, Politics Remains a Crucial Mission'*, in The New York Times, March 5, 2006.

rights activists claim that President Arroyo has also become beholden to the military, *'preventing her from disciplining those in the military who may be implicated in rights violations'*.¹⁰⁰ Many political analysts have noted that President Arroyo has appointed a large number of top retired military and police officials to desirable political posts in her administration, apparently to defuse future threats from military coups.¹⁰¹ The appointments have strengthened the idea that President Arroyo needs to consolidate support within elements of the military and is trying to 'whitewash' the human rights record of the various retired military and police officials currently populating her administration.¹⁰²

2.3.6 Legal Context

All international reports point to the fact that the Philippines have signed and ratified almost all relevant international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Geneva Conventions of 1949 and the Second Additional Protocol (1977) thereto. Within this legal framework, it is the primary duty of the Philippine government to protect the life of its citizens. Such protection includes a legal duty to take reasonable steps to prevent political killings or other human rights violations, *'especially when the majority of the perpetrators of such crimes are reputed to be State agents'*.¹⁰³ A State remains responsible for the acts of its agents, such as soldiers or police officers, if they exceed their authority or contrive instructions. It is also legally obliged to investigate and prosecute perpetrators of killings, and to provide the victims with adequate compensation.

The Philippine government asserts that respect for human rights principles is also enshrined in its 1987 Constitution, laws and policies. The view is widely shared, however, that the Philippine government fails to fulfill its obligation to protect the right to life of its citizenry. As stated by the IBP report: *'[W]ith the ballooning number of EJKs [extrajudicial killings] for the past recent years, it would seem that the government has effectively failed in its duty of providing welfare and protection of its citizenry'*. It added: *'[T]he Philippine Government may be considered remiss in its obligations under international human rights law to hold accountable perpetrators*

¹⁰⁰ As one commentator told Human Rights watch, *'this puts the president in a position where her ongoing survival depends on weakening the political opposition – particularly from the vocal left – while feeding 'the loyalty of the key state players crucial to her political survival, notably, the military', whom she is increasingly unable or unwilling to control'*, HRW report 2007, p. 9.

¹⁰¹ Former Armed Forces of the Philippines chief of staff Angelo Reyes now heads the Department of Energy. Prominent former armed forces chief of staff appointees include Arroyo's executive Secretary Eduardo Ermita. All former PNP chiefs under the Arroyo administration were also given positions in government after retirement. Recently, President Arroyo appointed former PNP chief Avelino Razon Jr as deputy director of the National Security Council and Arturo Lomibao, also a former PNP head, as undersecretary at the Office of the President. Ermita justified the appointment of former PNP chiefs to government posts upon their retirement saying their talents should not go to waste, in: *'Razon named to National Security Council'*, November 8, 2008, www.philippineneews.com

¹⁰² FIDH and HRW both noted in this regard that the 'legitimacy' of President Arroyo has been largely questioned and the support of the military is consequently important for her as a consequence of which the 'AFP influence in the Philippines' political life is on the rise', FIDH report 2007, p. 4 and HRW report 2007, p. 9.

¹⁰³ EU NAM report 2007, p. 5-6.

of politically motivated killings. Victims' families are effectively denied the justice they deserve as the killers literally get away with murder'.¹⁰⁴

2.3.7 Command responsibility

Although the Melo Commission's conclusions indicate that involved members of the military acted of their own volition and not on direct government orders, it stated that under the principle of command responsibility their superiors could be held accountable for their subordinates' crimes. The principle can be defined as the responsibility of commanders or other superiors for war crimes committed by their subordinates when they know or should have known that their subordinates are committing or are about to commit crimes and fail to take all necessary and reasonable measures to prevent or investigate them or punish the persons responsible.¹⁰⁵ The Melo Commission noted that while it is obvious that some elements in the military were behind the killings *'it becomes equally plain that some ranking officers in the Army have not performed their function of investigating or preventing the said killings, as well as punishing their perpetrators'*. According to the Melo Commission, the failure to act could possibly be attributed to the misconception of senior military officers that as a matter of command responsibility superior commanders may only be legally responsible for acts of their subordinates they authorized.¹⁰⁶

2.3.7.1 Major General Palparan¹⁰⁷

The Melo Commission openly blamed now-retired Major General Jovencito S. Palparan for the killings of leftist activists. According to the Melo Commission, Palparan admitted that he had *'inspired'* and openly encouraged persons *'to perform extrajudicial killings against those suspected of being communists, albeit unarmed civilians'*.¹⁰⁸ By stating that *'[I]f his men kill civilians suspected of NPA connections, it is their call'*, General Palparan *'admitted his guilt'* under the doctrine of command responsibility. Accordingly, the Melo Commission concluded that *'General Palparan may be held responsible for failing to prevent, punish or condemn the killings*

¹⁰⁴ IBP report 2008, p. 16.

¹⁰⁵ See for instance Article 28 of the Statute of the International Criminal Court. The doctrine of command responsibilities applies to both civilian and military superiors at every level in the chain of command.

¹⁰⁶ AFP Chief of Staff, General Hermogenes Esperon Jr. claimed in his testimony for the Melo Commission that *'the concept of command responsibility means that a commander is responsible for what his men do or fail to do in terms of accomplishing the mission. It does not include criminal liability of the superior if his men or subordinates commit an illegal act that is criminal in nature. Only the subordinate should be liable for the criminal act and not the superior commanders. The commander is responsible only for acts he authorized'*, Melo report, p. 18. On behalf of Task Force USIG (TFU), Gen. Razon stated before the Melo Commission that TFU did not investigate higher-ranking military officials, claiming that *'the PNP cannot go further than the suspect. If the Sergeant remains silent or refuses or fails to point to the involvement of a superior officer, the PNP cannot go higher'*, Melo report, p. 9. See also Melo report p. 61-62 and HRW report 2007, p. 49-52.

¹⁰⁷ Major General Jovito S. Palparan was one of four military officials who testified before the commission. He served in the AFP for thirty-three years before his retirement on September 11, 2006. See Melo report, p. 21-31.

¹⁰⁸ Melo Report, p. 56.

under the principle of command responsibility. General Esperon admitted to the Melo Commission that no formal investigation was conducted by the AFP on General Palparan, *'simply because no complaint was filed'*.¹⁰⁹

2.3.8 Recommendations

All reports came up with various recommendations for the Philippine government to address the extrajudicial killings effectively. One recommendation they had in common is the creation of an independent, credible, and impartial body to investigate cases of extrajudicial killings and enforced disappearances.¹¹⁰ The Melo Commission, for instance, recommended that it should be a *'civilian investigative agency (...) independent of, and not under the command, control or influence of the Armed Forces'*, while the IBP proposed that members of a *'special investigative body'*, should be selected *'exclusively from nominees from the Church, civil society, lawyers organizations and the like nominated by the Church, civil society, lawyers organizations and the like'*.

2.4 Policy responses

2.4.1 Government's position

President Arroyo has repeatedly stated that her administration is working hard on putting an end to extrajudicial killings.¹¹¹ As a result of government efforts, the President reported an 83 percent drop in violence against political activists and journalists in 2007.¹¹² Government officials and military officers insist that there is no state policy which calls or allows for such killings.¹¹³ Reports indicating that the government ordered any of the deaths are disposed of as being anti-state propaganda.

¹⁰⁹ Melo report, p. 14. General Esperon added that the AFP *'deemed it more appropriated'* to let Task Force USIG conduct any investigation against General Palparan, *'lest the AFP be accused of whitewashing the matter.'* Additionally, Gen. Esperon said that *'to investigate Gen. Palparan during the time that he was neutralizing the NPA would have been counterproductive'* and such *investigation may 'muddle or obstruct any on-going operation'*, Melo report, p. 17.

¹¹⁰ Including AI report 2006, p. 35; Summit report 2007, p. 4; Melo report, p. 73; IBP report 2008, p. 58-59.

¹¹¹ Various Press Statements of the Office of the President, including *'Arroyo admin working hard to end extrajudicial killings'*, Thursday, March 8, 2007, www.gov.ph/news.

¹¹² *'PGMA reports 83% drop in political and journalist killings in less than a year'*, Friday, January 18, 2008, www.gov.ph/news. See also Report of the Working Group on the Universal Periodic Review, The Philippines, A/HRC/8/28, May 23 2008, p. 5.

¹¹³ *'Palace maintains position: Killing not policy of gov't, says Ermita'*, Wednesday, November 28, 2007, www.gov.ph/news. The Philippine delegation to the 8th Session of the United Nations Human Rights Council (UNHRC) in June 2008 reaffirmed that there is no governmental policy, support or acquiescence for any violations of human rights, including extrajudicial killings and enforced disappearances.

The government pursues a comprehensive counter-terrorism strategy, integrating security, law enforcement, development and human rights. Government officials have explained that the Arroyo administration is working on ending the 'trail of mass murder' the CPP-NPA has been inflicting on the people 'by increasing legal, counter-propaganda and operational measures against the revolutionary left'.¹¹⁴ Allegations that militant organizations are included in the order of battle of the AFP as part of the crackdown on communist insurgency are rejected. President Arroyo is said to be in full control of the Armed Forces and the renewed campaign against the communist movement would have no connection at all with the killings of leftist leaders.¹¹⁵ The troops would adhere to strict rules of engagement and only aimed at 'verified' leaders and co-conspirators of the armed units of the CPP/NPA.¹¹⁶ An inter-agency legal action group has been created to 'answer the clamor of the military that captured leaders of the communist movement easily get out of jail due to the absence of a warrant of arrest and the help of their lawyers'. The first accomplishment of this legal offensive is said to be 'the filing of rebellion charges, for the first time, against the Communist Party of the Philippines, New People's Army, National Democratic Front (CPP/NPA/NDF) and the other communist front organizations'.¹¹⁷

Although the government concluded that the allegations of extrajudicial killings have been exaggerated for political purposes, it stated to remain committed to resolve verifiable and legitimate cases of extrajudicial killings, whoever may be the perpetrators, whether they are members of rebel groups or members of the military and police.¹¹⁸ The government also said to welcome all recommendations in resolving extrajudicial killings and to look forward to actual concrete programs of partnership between the Philippines and the EU.¹¹⁹

¹¹⁴ 'Arroyo admin working hard to end extrajudicial killings', Press Statement, Office of the President, Thursday, March 8, 2007, www.gov.ph/news.

¹¹⁵ 'Palace allays fear of authoritarian rule', Press statement, Office of the President, June 19, 2006, www.news.ops.gov.ph/archives2006/jun19.htm.

¹¹⁶ Statement of Press Secretary Ignacio Bunye, 'AFP order of battle for armed rebels only – Palace', Thursday, March 29, 2007, www.gov.ph/news; 'Militant groups not in AFP order of battle', Manila Bulletin, Friday, March 30, 2007.

¹¹⁷ Secretary Norberto Gonzales, National Security Adviser, in: 'WSA creates legal offensive vs armed communist groups', by Rutchie Cabahug-Aguhob, PIA Press Release 2006/05/04. Gonzales added that 'all the front organizations of the Communist Movement today are engaged in armed rebellion, therefore, guilty of rebellion'.

¹¹⁸ Statement by Ambassador Erlinda F. Basilio, Permanent Representative to the United Nations, of June 3, 2008 before the 8th Session of the UNHRC. Stressing that the government is not in denial over the spate of extrajudicial killings, President Arroyo said '[W]hile the Armed Forces deal decisively with the issue of unexplained killings, I extol the 99 percent of our good and valiant soldiers who are on 24 by 7 alert to safeguard the people and the nation' in: 'PGMA vows resolution of extrajudicial killings; AFP to continue as vanguard for freedom', Press Statement, Office of the President, February 22, 2007, www.gov.ph/news. She promised, however, that '[I]f rogue members of the military or police are involved' in such killings, 'they shall be punished' in: 'Perpetrators of media killings will be punished, says President Arroyo', Press Statement, Office of the President, Thursday, June 14, 2007, www.gov.ph/news.

¹¹⁹ 'European Group winds up mission, offer technical aid on extrajudicial killings', Press Statement, Office of the President, June 29, 2007, www.gov.ph/news.

2.4.2 Government's measures to address extrajudicial killings

To follow up the Melo Commission's recommendations report, President Arroyo ordered a range of initiatives to various departments and offices to strengthen cooperation between government agencies, the police and prosecution to solve the cases of extrajudicial killings and hasten trials, notably:

- for the Melo Commission to continue its work and submit supplemental reports as the need arises;
- for the Department of National Defense (DND) and the AFP to come up with an updated document on command responsibility;
- for the Department of Justice to broaden and enhance the government's witness protection program to cover all witnesses;
- for the Department of Justice and the Department of National Defense to coordinate with the Commission on Human Rights to constitute a joint fact finding committee that will go further in the investigations and the findings of the Melo Commission, and
- for the Department of Foreign Affairs to formally invite the President of the EU, as well as the governments of Spain, Finland and Sweden to send representatives to the Philippines and participate in the ongoing investigation by the Melo Commission.

The President also proposed to the Supreme Court to create special courts which would solely handle all cases of extrajudicial killings in the country and for the Justice Department to designate a special team of prosecutors. In addition, the President ordered the PNP and the AFP to take active steps to prevent human rights violations by men in uniform, including instructions and training designed to reiterate to all PNP and AFP personnel that human rights abuses will not be tolerated and she created a multi-agency Task Force against political violence, Task Force 211.¹²⁰ The President further certified as urgent before Congress legislation to strengthen the Witness Protection Program, to impose harsher penalties on persons who commit political killings, and to impose the harshest penalties on persons in uniform who commit such killings.¹²¹

Initially, the government announced that it could not release the Melo Commission's report because it was still '*incomplete*' and '*inconclusive*' due to '*the lack of testimonies from the militant groups and the victims' relatives*'.¹²² To have the Melo Commission finish its job, the

¹²⁰ A.O. 211 creating a multi-agency Task Force against Political Violence, Task Force 211 (November 2007) to increase coordination between the Department of Justice, the Department of National Defense, the Presidential Human Rights Committee, investigative and national security agencies, and civil society for speedier solutions to such violence.

¹²¹ '*Palace: Quick action on Melo commission recommendations*', Press Statement, Office of the President, February 26, 2007, www.gov.ph/news.

¹²² '*Gov't to work closely with U.N. to come up with complete and conclusive Melo Report*', Press Statement, Office of the President, February 15, 2007, www.gov.ph/news.

President extended the authority of the Melo Commission to come up with a comprehensive report that could lead to a permanent resolution to all extrajudicial killings in the country.¹²³

2.4.3 Universal Period Review (UPR)

The Philippines has been one of the first countries to go through the Universal Periodic Review (UPR) mechanism of the Human Rights Council. During the interactive dialogue of the first session of the Working Group for the Philippines on 11 April 2008, many delegations were encouraged by the fact that the government has expressed its commitment to end extrajudicial killings and they welcomed national efforts made to address this issue, including the establishment of the Melo Commission and the government's willingness to have accepted the Special Rapporteur on extrajudicial, summary or arbitrary executions' visit to the country.

There remained concerns, however, about the few convictions of the perpetrators of the killings. Several delegations asked for more information on concrete steps taken to improve the situation of extrajudicial killings of activists, including a follow-up to recommendations made by the Special Rapporteur and an evaluation of the effect of the measures taken so far by the government.¹²⁴

Several stakeholders to the Universal Periodic Review also raised concerns that impunity for incidents of extrajudicial executions and enforced disappearances remains pervasive. It was noted that the numerous initiatives undertaken by the government have not sufficiently materialized and have rarely led to thorough and independent investigations and convictions.¹²⁵

The Philippines voluntarily committed to maintain the momentum on addressing killings of activists and media professionals. Several other recommendations given by delegations during the interactive dialogue that enjoyed the support of the government include recommendations to completely eliminate torture and extrajudicial killings, to intensify its efforts to carry out investigations and prosecutions on extrajudicial killings and to punish those responsible and to fully involve civil society in the follow-up to the review.

Recommendations indicating that the Philippines should address the root causes of the issue of extrajudicial killings in the context of the appropriate reform of the judiciary and the security

¹²³ On April 4, 2007, the Government issued Administrative Order 173 extending operations of the Melo Commission. The Melo Commission's preliminary report was released on February 22, 2007. It was handed over to the President on January 30, 2007.

¹²⁴ Report of the Working Group on the Universal Periodic Review p. 15.

¹²⁵ Including Amnesty International, Review of the Philippines under the Universal Periodic Review: Amnesty International's reflections on the outcome, AI Index: ASA 35/002/2008; Oral Statement of FORUM-ASIA in association with PAHRA and TFDP during 8th Session of the UNHRC of June 10, 2008; Submission by Karapatan for the Upcoming UPR's First Session April 2008, p. 1-2; Joint Report by NGOs with UN Consultative Status and endorsed by various (29) Philippine Civil Society Organizations, par. 2; Diakonie and Action Network Human Rights, in particular par. 1, 3-9; Joint UPR submission, November 2007, p 1,3-5.

forces did not enjoy the government's support. The government also rejected recommendations to provide a follow-up report on efforts and measures to address the issue of extrajudicial killings and enforced disappearances, taking into account the recommendations of the Special Rapporteur on extrajudicial, summary or arbitrary executions.¹²⁶

¹²⁶ Response of the Government of the Philippines to the recommendations made by various country delegations during the interactive dialogue of the Universal Periodic Review (UPR) Working Group held on April 11, 2008.

2.5 Measures of the Judiciary

The judiciary and the Supreme Court in particular, have taken an active role in addressing the issue of extrajudicial killings. In July 2007, the Supreme Court held the National Summit on Extrajudicial Killings and Enforced Disappearances that brought together all sectors of society to search for solutions to the spate of unsolved murders and abductions in the country.

As a result, the judiciary has promulgated new rules to enhance human rights protection, including the Writ of Amparo. This new rule that went into effect on October 24, 2007, provides remedies to any person whose right to life, liberty and security is violated and threatened. Under the Writ, victims and their families have the right to access information on their cases and the provision of temporarily protective measures, including witness protection. It also allows for inspection of places to locate victims of illegal arrest or disappearance.

Other specific recommendations presented on the Summit include, amongst others, a local definition of extrajudicial killing through legislation and an independent, credible, and impartial body to investigate cases of extrajudicial killings and enforced disappearances.¹²⁷

The Present Chief Justice Puno also dealt very quickly with President Arroyo's request to create special courts to give priority to political cases. On 1 March 2007, the Supreme Court issued Administrative Order 25-2007 designating 99 regional trial courts across the country as special tribunals to hear, try and decide cases involving killings of political activists and members of the media. The order limits the duration of the trials to 60 days after their commencement with judgment to be rendered within 30 days after closing the trial. It also provides no postponement except for '*clearly meritorious reasons*'.

¹²⁷ '*Summit on Extrajudicial Killings Sows Hope*', by Jen T. Tuazon, Benchmark Online July 2007, www.supremecourt.gov.ph/publications.

3. MEASURES TO STOP EXTRAJUDICIAL KILLINGS: EFFECTIVE?

3.1. Scope of the investigation

The Philippine government claims to have taken firm measures to address the problem of extrajudicial killings and enforced disappearances. As a result, the number of killings would have declined significantly while prosecutions are up.

The main purpose of the IVFFM was to look into the effectiveness of the government's measures, especially those in response to the Melo Commission's recommendations. The investigation of the IVFFM focused on members of the legal profession, in particular on the question whether their position in practicing law has improved since its previous mission in 2006.

The IVFFM looked into the impact of the measures on the threats and attacks against and the extrajudicial killings of lawyers and judges as well as at the progress in the investigation and the prosecution thereof. It looked specifically into the cases of slain lawyers and judges it investigated during its 2006 mission. It further investigated over 20 new cases of threats and attacks against individual lawyers and judges and acts of harassment against lawyers organizations such as the Public Interest Law Center (PILC) and the Pro-Labor Legal Assistance Center (PLACE) as well as the (lack of) response thereto by the competent Philippine authorities.

The IVFFM interviewed family members and colleagues of slain lawyers and judges and over 20 lawyers and judges from various regions of the country, including judge Silvino T. Pampilo Jr. and attys. Trixie Angeles, Concepcion Brizuela, Katrina Castillo, Emiliano Deleverio, Beverly Musni, Jobert Pahilga, Tirsendo Poloyapoy, Rachel Pastores, Harry Roque and Cyril Yap. The remaining persons the IVFFM spoke to all choose not to be mentioned in this report, out of fear for repercussions by the security forces or (local) authorities. The IVFFM also interviewed representatives of the Philippine executive and legislative branch, the judiciary, lawyers groups and civil society organizations.¹²⁸

¹²⁸ See chapter 1 of this report and Annex 3.

3.2. Extrajudicial killings of lawyers and judges

3.2.1 Recognition of problem by the authorities

Contrary to 2006, when the authorities considered the killings of lawyers and judges as *'isolated cases borne of personal motives'*,¹²⁹ representatives of the DILG, PNP, Task Force USIG and the NBI now acknowledged that attacks against lawyers and judges are a serious problem in the Philippines.

The PNP provided the IVFFM with the founding document creating the Task Force Judges, Prosecutors and IBP Lawyers which stated: *'[B]ased on the data presented, there is a clear need for the protection and security of judges, prosecutors and IBP Lawyers. As part of the criminal justice system, they should be given special attention in order to ensure the administration of justice in the country.'*¹³⁰

The NBI informed the IVFFM that attacks against its judicial system have resulted, amongst others, *'in the unwarranted injury, permanent disability and death of ... judges, lawyers and court personnel'*.¹³¹

The IVFFM was not able to verify whether the AFP has changed its opinion in this regard, because it declined its invitation to meet. In June 2006, the AFP considered the situation with respect to the killings of lawyers and judges *"not so alarming as assumed in the newspapers,"* because *"there are many lawyers in the Philippines"*. Judges, according to the Judge Advocate General (JAG) of the AFP, were also killed in relation to corruption and bad decisions.¹³²

3.2.2 The way of addressing these killings

When the IVFFM asked the authorities what measures they have taken so far to address the attacks against lawyers and judges, the DILG, PNP and NBI presented a range of government initiatives aiming to ensure the protection and security of the said members of the judiciary.

¹²⁹ Interior and Local Government Secretary Ronaldo V. Puno told the IFFM that he had never been aware of a pattern of killings of lawyers and judges in his country. Only recently, Mr. Puno had noted allegations of such patterns regarding political activists, journalists and *'this is a third wave of such allegations, now regarding lawyers'*. He acknowledged, however, that lawyers have been killed, such as Attys. Magsino and Bocar, who were *'actively involved in militant groups'*, IFFM report 2006, p. 27-28.

¹³⁰ LOI 01/06, "TF JUDGES, PROSECUTORS AND IBP LAWYERS", attached as Annex 4 to this report.

¹³¹ "Addressing the Security Concerns for Philippine Judges", presented to Stichting Advocaten voor Advocaten, 11 November 2008, attached to this report as Annex 5 hereinafter referred to as 'NBI presentation 2008'.

¹³² IFFM report 2006, p. 30.

(i) PNP initiatives¹³³

The PNP informed the IVFFM that following President Arroyo's directive to the DILG and the PNP to '*ensure the security of judges through the creation of a task force*' and '*make coordination on security arrangements of judges and court facilities*', the PNP Task Force to secure Judges, Prosecutors and IBP lawyers was created as well as a Technical Working Group to design a comprehensive plan for the security of judges.

In addition, the PNP referred to the following initiatives:

- Memorandum of Agreement (MOA) between the PNP and the Office of the Court Administrator (OCA) for the facilitation of firearms license/permit of judges;
- Direct coordination with judges regarding the schedule of court hearings;
- Provide security to court premises (Halls of Justice);
- Conduct of firearms proficiency;
- Eased requirements for the detail of security to judges, lawyers and prosecutors;
- Continuous dialogues with judges, prosecutors and IBP members at the Regional, Provincial and City/Municipal levels;
- Activation of the PNP Human Rights Affairs Office.¹³⁴

(ii) NBI initiatives

The NBI informed the IVFFM about the creation of Task Force Judiciary Protection (TFJP) in March 2007, that has conducted various programs in cooperation with the Committee on Security of the Judiciary and the Office of the Court Administrator (OCA), including:

- Status of crime cases and threats involving members of the judiciary;
- Production of a Security Manual for the Supreme Court;
- Production of the Court Disaster Preparedness and Crime Prevention Manual;
- Production of Interim Security Protocols for 1st and 2nd Level Courts;
- Security survey of courtrooms in Metro Manila and nearby provinces;
- Formulation of the Judicial Reward Program, and
- Case study for the creation of the Court Security and Protective Service (CSPS).

The proposed CSPS would be '*a protective service similar to the United States Marshall Service*', that would be entrusted '*not only to secure court premises and documents, but also the persons of threatened judges and court personnel by providing a personal protective unit (bodyguards) for high risk court personalities*'.

¹³³ Briefing for Dutch Lawyers for Lawyers Foundation, November 10, 2008 Camp Crame, Quezon City, attached to this report as Annex 6, hereinafter referred to 'PNP presentation 2008'.

¹³⁴ Philippine National Police Human Rights Development Program ("PAMANA"), attached to this report as Annex 7.

(iii) Initiatives of the Judiciary

Although it is the main duty of the executive branch to provide protection to the members of its judiciary, the IVFFM observed that most government initiatives were actually initiated and (partly) financed by the Supreme Court or the Committee on the Security of the Judiciary, which was reconstituted by the Supreme Court in May 2007.¹³⁵ This may explain why most of these initiatives solely focus on the security of judges.

The creation of the TFJP, for instance, was a joint initiative of the Supreme Court and the NBI, while the Committee on the Security of the Judiciary was responsible for the completion of the Supreme Court Security Manual. As pointed out by the NBI, all programs of the TFJP are conducted in cooperation with the Committee on Security of the Judiciary and the Office of the Court Administrator (OCA).¹³⁶

The government initiatives add up to other security measures that had already been taken in previous years by the Supreme Court to curb the work-related killing of judges.

On August 23, 2007, Chief Justice Reynato S. Puno issued Memorandum Circular No. 10-2007, providing an interim security procedure to improve the security for justices and judges. The 2007 security protocol designated two contact persons whom justices and judges under threat should contact in order to provide them with additional security.¹³⁷

The protocol was based on recommendations of the Committee on Security of the Judiciary, in response to the spate of violence and killings against members of the Judiciary, especially judges in the lower courts who are '*continuously exposed to violent attacks from would-be assassins*'.¹³⁸

Since 2005, judges are being trained in personal security and taught how to assess if they are '*soft targets for attacks*', amongst others, through orientation field seminars on personal security protection of judges.

¹³⁵ The Committee on Security of the Judiciary was reconstituted on May 11, 2007, through Memorandum Order No. 18-2007, issued by the Chief Justice of the Supreme Court.

¹³⁶ Another example is the 'Reward System for information that will lead to the expeditious solution of crime cases involving attacks against members of the Judiciary'. It were members of the Committee on the Security of the Judiciary that began negotiations with the Judges Foundation Association (JFA) regarding their sponsorship of the said reward system. The system was approved in June 2008 and, according to the NBI, shall be (partially) financed by the Supreme Court and the JFA.

¹³⁷ Assigned as contact persons are Deputy Court Administrator (DCA) Reuben dela Cruz and Atty. Allan C. Contado, who is also the Liaison Officer to the Supreme Court for the NBI's Task Force for Judiciary Protection.

¹³⁸ Memorandum Circular No. 10-2007, providing an interim security procedure to improve the security for justices and judges, issued on August 23, 2007 by Chief Justice Reynato S. Puno, Chief Justice of the Supreme Court, Manila.

In 2004, the Court also abolished the Heinous Crimes Courts, because *'the set-up makes a heinous crime court judge easily identifiable, making him/her an easy prey to vindictive litigants'*.¹³⁹ Heinous crimes are now cognizable by all second-level courts.

Representatives of the Supreme Court further told the IVFFM that the Office of the Court Administrator is seriously considering to provide judges with guns, although it is acknowledged that this is not the *'ultimate solution'* to the problem.¹⁴⁰

3.2.3 Are the protection and safety measures effective?

(i) Evaluation

Although the IVFFM welcomes the fact that the need for security and protection of lawyers and judges is recognized, it found it hard to establish how the government evaluates the effects of its measures.

The NBI told the IVFFM that *'[N]one of the judges who received death threats have so far befallen any form of bodily harm'*, however, without providing concrete data on any of these cases.¹⁴¹

At the same time, the NBI informed the IVFFM that even during its presence in the Philippines a murder attempt on a judge occurred. On November 8, 2008, RTC Branch 64 Judge Mario Oca Trinidad was wounded while his security escort was shot dead in an ambush by unidentified armed men. Judge Trinidad was apparently on his way home driving a multi-cab with his security escort riding a motorcycle behind his vehicle.¹⁴²

The NBI nor the PNP explained whether and if so, how the above mentioned initiatives were implemented or had led to concrete (follow up) measures.

The NBI said, for instance, that *'the various city hall buildings being structures open to the public, exposes the court and its personnel to various forms of dangers, both direct and indirect'*. Although it also informed the IVFFM that in March 2008, the Interim Security Protocols for 1st and 2nd Level Courts were submitted by the TFJP to the Committee on the Security of the Judiciary *'in order to address security lapses in court rooms throughout the country'*, it

¹³⁹ Court News Flash January 2008, <http://judiciary.gov.ph/news/courtnewsflash/2008/01/01150801.php>

¹⁴⁰ Interview with Chief Justice Puno of the Supreme Court and representatives of the Office of the Administrator on November 4, 2008.

¹⁴¹ NBI presentation 2008.

¹⁴² NBI presentation 2008; According to Senior Supt. Augusto Marquez, the provincial police director, the police would take a close look at the cases handled by Judge Trinidad, while *'it appears he was handling some high profile cases'*, in: *'Negros judge ambushed, wounded; bodyguard dies'*, in: Philippine Daily Inquirer November 9, 2008, p. 14.

remained unclear whether the current security practices have been upgraded to address the identified security concerns.

It also remained unclear whether the Technical Working Group formulated '*a comprehensive plan for the security of judges*' or whether the various Manuals were implemented indeed or how the '*continuous dialogues with judges, prosecutors and IBP members*' have contributed to their safety and protection.

With respect to the Judicial Reward Program, the IVFFM was informed by the NBI that the Program was 'approved' in June 2008, but needed the financial support of the Supreme Court and the Judges Foundation Association (JFA).

After its mission, the IVFFM learned that the Judiciary has set aside a total of PHP 1 million as reward money for informants and witnesses whose information and testimonies can lead to the arrest, prosecution, and conviction of the perpetrators and masterminds of the killings and attempts on the life of its magistrates. The announcement appeared on December 11, 2008, a few days after Judge Philip G. Labastida of the San Juan Metropolitan Trial Court was found dead with several stab wounds in his Quezon City house on December 7, 2008.¹⁴³

The IVFFM further found that not all initiatives were new. For example, the PNP Task Force to secure Judges, Prosecutors and IBP Lawyers was established in January 2006. The MOA between the PNP and the Office of the Court Administrator (OCA) - allowing members of the judiciary to carry licensed firearms even outside their stations - as well as the eased requirements for the detail of security to judges, have already been in place since 2005.¹⁴⁴ The PNP did not explain what has been changed since these measures were established in order to make them successful in terms of protection and safety of lawyers and judges.

In this regard it is worth noting that the IVFFM in 2006 found that with the exception of the PNP, no individual, official agency or organization was familiar with the existence of the above mentioned Task Force to secure Judges, Prosecutors and IBP Lawyers. Two months later, General Avelino I Razon Jr. even informed the Hong Kong Mission for Human Rights and Peace

¹⁴³ '*PHP 1 million Reward for Informants, Witnesses in Judge's Killings; Security training for Judges continue*', in: Court News Flash December 2008, posted on December 11, 2008, by Jay B. Rempillo, <http://sc.judiciary.gov.ph/news/courtnews%20flash/2008/12/12110801.php>

¹⁴⁴ In 2005, the Court approved the Guidelines for Detail of Court Personnel as Security of Judges. Under the Guidelines, a judge who receives a direct threat may apply with the PNP for protective security. If the judge is under an imminent threat or if his request to the PNP is denied, the judge concerned may apply with the Court's Security Committee for authority to designate a member of the judges' staff as an escort. In that same year, the Supreme Court, through the Office of the Court Administrator, has inked a Memorandum of Agreement with the PNP '*to work and coordinate with each other in the processing of Permits to Carry Licensed Firearms for the members of the Judiciary, especially those who are receiving death threats. With the MOA, Judges are granted permits to carry their firearms even outside their stations*', in: Court News Flash January 2008, <http://judiciary.gov.ph/news/courtnewsflash/2008/01/01150801.php>

in the Philippines that no special task force for judges, prosecutors and IBP lawyers was set up.¹⁴⁵

(ii) Lack of resources

In addition, the IVFFM found it worrisome to learn that some measures may not be implemented due to a lack of resources. It is said, for instance, that the creation of the proposed Court Security and Protective Service (CSPS) *'may take a while, due to lack of money'*. Chief Justice Puno also called the attention of the IVFFM to the serious budget constraints the judiciary is facing, saying that the Supreme Court would actually need a security unit of its own.

Lack of money may also lead to a situation that the measures taken are not sufficient to protect all judges adequately. This can be illustrated when looking at the case of Judge Pampilo who received death threats *'because of the high profile cases he is handling'*. Judge Pampilo handled cases involving First Gentleman Jose Miguel Arroyo, convicted five Manila policemen, and also has a case involving Manila Mayor Lim. Pampilo's office received several calls warning him his days were *'numbered'*.

Judge Pampilo told the IVFFM that in the beginning of the year, the threats became very serious.¹⁴⁶ On 1 February 2008, returning from class where he was teaching, Judge Pampilo found a big note on his car's wiper stating: *"Handsome, I will kill you. Are you ready?"* When he left the place, Judge Pampilo was followed by two motorcycle-riding men, each of them at one side of his car. On February 4, 2008, another note was placed on his car, stating: *"I will drop you dead, are you ready?"*

After these incidents, Judge Pampilo reported the threats to the Supreme Court. Upon his request, the NBI assigned him with bodyguards, but they only accompanied him to the Court. Judge Pampilo: *"They check if you are ok and then they leave."*

Other incidents show that Judge Pampilo's protection may have proved not to be sufficient. In May 2008, for instance, after his bodyguards had left, two men appeared in his courtroom pointing at him saying: *"Today or tomorrow you will die"*.

The threats are not limited to the court buildings or their surroundings. According to Judge Pampilo there are also *'motor-riding men circling around his house; following him wherever he goes'*.

Although the threats declined after Chief Justice Puno issued a statement on July 21, 2008 indicating that the death threats against Judge Pampilo should stop and that the threats would

¹⁴⁵ Hong Kong Mission for Human Rights and Peace in the Philippines, July 23-38, 2006, *'Mission Report on the extrajudicial killings and other human rights abuses in the Philippines'*, November 14, 2006, p. 5.

¹⁴⁶ Interview with Judge Silvino T. Pampilo Jr. on November 9, 2008.

be investigated, they still continue. Since the authorities could not sufficiently protect him, Judge Pampilo was forced to hire his own civilian bodyguards.

3.2.4 Labelling, surveillance and threats of lawyers and judges still continue

The threats of Judge Pampilo are not an incident. Despite the measures taken by the government and the judiciary for the protection and security of members of the legal profession, the IVFFM found that lawyers and judges are still threatened or subject to intimidation or other forms of harassment.

The IVFFM learned from the NBI that since its creation in March 2007, *'the TFJP has investigated not less than 24 cases involving threats against the lives of judges based in various parts of the country as of November 10, 2008.* This included security survey and risk assessment of the level of threat being faced by each judge and a recommendation as to the appropriate level of protection they should be given by government.¹⁴⁷

In his interview with the IVFFM, Chief Justice Puno also acknowledged that there are still judges and lawyers who are threatened, especially *'in relation to high profile cases'*.

Other lawyers and judges who were interviewed by the IVFFM confirmed that members of the legal profession are still threatened and intimidated on a large scale. They also noted that the practice of labelling lawyers as *'communist'*, *'member or supporter of the NPA'* or *'enemy of the state'* still continues. This will be further explained below.

They all believe that the threats and other forms of harassment are mainly work related. Most of them handle cases with respect to human rights violations or land, labour and mining disputes. They often deal with high profile cases where the interests of the (political) elite are at stake, such as those of big (mining) companies or large landowners. The lawyers also represent poor farmers, workers, fishermen or civil society groups, such as trade unions.

A remarkable number of them also handle rebellion cases where they represent political leaders or ordinary people accused of being member of the NPA or they filed petitions for a Writ of *Amparo* on behalf of victims (or their relatives) of abductions. The opposite party in those cases is always the military.

Atty. Trixie Cruz-Angeles,¹⁴⁸ for instance, told the IVFFM that she is not political involved in any group. In fact, her father was a military man who is now retired and until 2006 she did not receive any threats. However, since she represents soldiers facing charges before the military's court martial, including charges of coup d' etat, she has been under close surveillance and

¹⁴⁷ NBI presentation 2008.

¹⁴⁸ Interview with Atty. Trixie Cruz-Angeles on November 9, 2008.

receiving death threats. Angeles said to have no doubt that the threats are related to her coup cases, because she started receiving death threats by e-mail and on both her cellular and landline phone in July 2007, when these cases started to heat up.

Angeles has also been followed consistently. In the beginning of 2008, when she visited a client who is detained in Rizal for an alleged attempted coup, she was followed by two surveillance cars. One of the cars overtook her and slowed her down, while the other car stayed close behind. She managed to stop by a small variety shop and waited there for about 45 minutes till she was sure that the cars had left. Close to her house, she saw the two vehicles again. In September 2008, while Angeles was driving her car, she was forced to stop by another car, without license plate. The driver pointed at her and said: "be careful" (*Mag-iingat ka*).

Other lawyers shared similar stories with the IVFFM. They all have received anonymous notes, e-mails, phone calls or text-messages with threats like '*you are near*', "*you are about to die*", '*your time is going to come*', '*you have only one month to go*', etc. They are either under surveillance, being tailed, subject to intimidation or their offices are monitored or being photographed by military men. Some of them are tagged by the military as '*communist*' or '*friend of the NPA*'.

The threats refer to specific cases or clients or they coincide with certain developments in high profile cases, such as court hearings or filing documents. One lawyer was simply told by the military that he was under surveillance because he handles high profile cases.

Atty. Harry Roque said to believe that threats and killings of lawyers and judges serve one goal: terror. They try to scare us of so as '*to silence you*'. The IVFFM found that his view is widely shared among lawyers, judges and representatives of civil society groups. One lawyer even said: '*[M]aybe those government people think that if they can kill lawyers and judges, they can also do this with ordinary people.*'

The following examples are only a selection from a range of incidents shared with the IVFFM.

Atty. Emiliano Deleverio, former president of the local IBP chapter and human rights lawyer, has received death threats since the end of 2005 in connection with cases he handles.¹⁴⁹ Military men who visited his office asked him to stop representing political detainee Angelina Ipong, a consultant for the National Democratic Front (NDF), because she was '*a dangerous person*'. He has also received threatening text messages indicating that he should stop handling other cases. One time he received a text-message warning him not to proceed with a case while he attended a court hearing. A driver he had employed recently, turned out to be an informant for the AFP.

¹⁴⁹ Interview with Atty. Emiliano Deleverio, Mindanao, on November 6, 2008.

Atty. Harry Roque¹⁵⁰ has been receiving death threats via his mobile phone, including one saying that he would experience the same fate as Jonas Burgos.¹⁵¹ The phone number was reportedly traced as coming from a military camp where the ISAF (intelligence branch of the military) is based.

Sometime in January 2007, Atty. Roque received the following messages: *'Dura lex sed lex, our law may be harsh but it's still our law. Not all the time you are lucky. Your end is near and your family,'* and: *'Atty. Roque RIP [Rest in Peace]. We, the New Army of the Nation, have noted your treacherous acts against the nation. We repeat our warning: Shut your fishy mouth.'*

Another message read: *'To all interested parties: We are giving away P5 million/\$100,000 reward for the capture of Atty. Harry Roque, dead or alive. Atty. Roque is lawyer of terrorist communist group in the Philippines. A destabilizer, insurgent, an anti-American. Caution: He's armed and dangerous.'*

Especially this last message was perceived as very dangerous *'because - given the extreme poverty -some people would really take their chance and kill him'.*

Atty. Roque teaches lawyers and judges how to handle various cases of extrajudicial killings and he handles the class suit filed by 43 Filipino journalists against President Arroyo's husband, Mike Arroyo. The plaintiffs are suing Arroyo for abuse of power, among many other abuses, professional and existential.

Atty. Beverly Musni told the IVFFM that she has been under surveillance by suspected military agents for the last two years.¹⁵² From time to time, she has been followed by two motorcycled man. Military agents also visited her house, asking questions about her guests. Musni said to be listed in the briefing presentation of the AFP, entitled 'Knowing the enemy'.

Various lawyers, including Attys. Castillo and Musni, told the IVFFM that military men were asking their clients or their neighbours about their whereabouts.

Atty. Musni's neighbours were, for instance, asked to report to the AFP when people visiting her house looking suspicious and *'when you are asked by the AFP to do surveillance you can't say no'.*

¹⁵⁰ Interview with Atty. Harry Roque, Manila, on November 9, 2008.

¹⁵¹ Jonas Burgos is an activist and son of the late press freedom fighter Joe Burgos. He was abducted on April 28, 2007 and has not surfaced since. Witnesses claim to have seen how gunmen dragged Jonas to a waiting car whose license plate was traced to another vehicle that was impounded at a military camp. His disappearance is big news in the Philippines..

¹⁵² Interview with Atty. Beverly Musni, Mindanao, on November 5, 2008.

Atty. Castillo's clients who are detained in prison, were visited three times by the military in the last couple of months.¹⁵³ The military asked Atty. Castillo's clients about her whereabouts, her address, when she would come to visit them and how long she used to stay in prison on visits, etc. Her clients were also told by the military that she is in the NPA and that she is the legal counsel for the NDF, which is, according to Atty. Castillo, not the case. When the IVFFM asked her what would be the aim of the military of saying such things, Castillo answered: "[T]hey hope that my clients will get rid of me'.

Atty. Robert Pahilga, who was already interviewed by the IFFM in 2006, told the IVFFM that he is still being harassed and intimidated.¹⁵⁴ Pahilga is the Executive Trustee of SENTRA, an organization that provides free legal services to farmers, fishermen and indigenous people. He is also the counsel of – amongst others - the farm workers of Hacienda Luisita,¹⁵⁵ Representative Rafael Mariano, one of the members of the so-called Batasan 6 in the rebellion case filed against him in 2006, Anakpawis Partylist, the Peasant Movement of the Philippines (KMP), the Philippines' Fisher folk Organization (PAMALAKAYA) and he serves as the co-counsel of Randall Echanis, who is one of the accused in the multiple murder case (14 counts) in Hilongos, Leyte.

In February 2008, while he was visiting his family in the province, he was approached by investigators of the Office of the Ombudsman (OMB) who wanted him to take up corruption cases against local politicians. Later on, however, Pahilga learned that he was approached by elements of the Intelligence Services of the Armed Forces of the Philippines (ISAFP), only pretending to be investigators of the Office of the Ombudsman. In addition, he had not heard of any corruption case being investigated by the OMB involving the local politicians in his home province. Since he kept his visit low profile – he only discussed it with his sister - Pahilga still wondered how the AFP knew that he was visiting his family.

Atty. Tirsendo Poloyapoy, who has been a human rights and criminal lawyer since 1972, has also experienced different forms of harassment such as labelling, death threats and surveillance by suspected police and military agents.¹⁵⁶ He is a member of the Free Legal Assistance Group (FLAG) and the UPLM. FLAG was labelled as a front organization of the CPP-NPA in a presentation of the AFP entitled 'Knowing the enemy'. From time to time he has been receiving text messages such as '*NPA ka!*', meaning: '*You are a member of the NPA*' and '*May oras ka rin!*', meaning '*Your hour is near*'. After he filed a complaint before the Office of the

¹⁵³ Interview with Atty. Katrina Castillo on November 8, 2008.

¹⁵⁴ Interview with Atty. Jobert Pahilga on November 9, 2008.

¹⁵⁵ Hacienda Luisita is a very large sugar mill and plantation in Tarlac, which is owned by the family of former President Corazon Aquino. It became famous when during a strike on November 16, 2004, twelve picketers and two children were killed and hundreds of workers badly injured when 1,000 police and soldiers stormed a blockade. The alleged perpetrators from PNP and AFP were immediately officially exonerated. In the following negotiations for land redistribution, a number of the workers' negotiators were killed.

¹⁵⁶ Interview with Atty. Tirsendo Poloyapoy on November 6, 2008.

Ombudsman against a high military official, reliable sources in the AFP warned Atty. Poloyapoy to be careful.

Another lawyer told the IVFFM that acts of harassment and surveillance on him and his colleagues were intensified heavily after they filed multiple murder and multiple frustrated (attempted) murder charges against members of a military battalion. He himself survived a murder-attempt shortly thereafter.

Lawyers, representing clients accused of being member of the NPA, said to be frequently tagged as 'communist' themselves. They would also regularly be threatened in relation thereto.

One lawyer told the IVFFM that when he became less active in his work for security reasons, his clients were told by military men that the reason for his rare appearance was that he stayed in the jungle with the NPA. He also received threatening messages on his mobile phone, warning him to stop handle cases of so-called '*communist clients*'.

Another lawyer told the IVFFM that he is already used to '*being tagged as lawyer for the communists*'. The same lawyer also said he knew that he is '*on the list of people being watched*'. When asked by the IVFFM how he got to know this he replied: '*[I] have clients who are police officers and low ranking officials and they warned me that I am on the Watch list.*'

A third lawyer said that he had clients who turned out to be members of the NPA. He only found out later that they were members of the NPA, '*but anyway they also have a right to a lawyer*'. He added: '*[L]ast April 2008, I got them out of jail on bail. The government did not have any witnesses for the charges so I asked for their release. Afterwards, the military condemned me for helping the NPA.*'

A couple of interviews with lawyers indicated that the vilification campaigns against lawyers are not limited to label them as '*communist*' or '*member or friend of the NPA*'. In addition, other forms of harassment were mentioned to the IVFFM, including interception of email and phone traffic and intimidation in Court.

(i) Vilification campaigns

Atty. Roque, for instance, was accused of supporting – amongst other things - a coup against the government, while in the case of Atty. Angeles the military reportedly started to tell rumours about her - she is the only woman handling coup cases - indicating that she was sleeping with her male clients.

(ii) Interception of email and phone traffic

Several lawyers informed the IVFFM that they have reason to believe that their phones are being tapped and their computers hacked. Atty. Angeles, for instance, was informed by reliable sources that her e-mail is tapped. Her office and telephone are also bugged. For this reason, lawyers are used to having separate phones for their work and private life, while they change their number regularly.

Recently, phone traffic is also said to be intercepted in another way. Atty. Pahilga's family was led to believe that something terrible had happened to Jobert. On November 2, 2008, his brothers and sisters received a text message stating: "I am in danger, please help." Although it looked as it came from Pahilga (his number was shown), he didn't send it and he still has his phone. His mother was so worried that he had to go all the way to her home to personally convince her that he was all right. Pahilga believes that the military are behind it, although he cannot pinpoint who are the persons who sent this message and how this was done.

A few other lawyers shared similar experiences with the IVFFM.

(iii) Intimidation in Court

Military men, either in uniform or wearing civilian clothes, are ostentatiously present in the courtroom, where they reportedly intimidate lawyers, but also their clients or witnesses. As one lawyer put it: *'[M]ilitary are inside a courtroom just to scare off witnesses.* Atty. Castillo told the IVFFM that while defending clients in rebellion cases in court, she was openly intimidated by military men in uniform.

Atty. Poloyapoy, who filed one of the first Writs of Amparo, also said that his client in that case was intimidated before and during the court hearing. The respondents were army colonels and a general. Every time his client answered the judge's questions, he looked at the Colonel who was standing in the back of the courtroom.

Military men would also take pictures with their mobile phones of lawyers and witnesses.

When the IVFFM asked the authorities about the phenomenon of lawyers, victims' relatives and witnesses being threatened, Atty. Raul M. Bacalzo, Police Chief Superintendent and Commander of Task Force USIG, acknowledged that *'threats are always considered as a violation'* [of human rights], but that *'threats are not our [Task Force USIG] mandate; only killings'*. Ms. Lina C. Sarmiento, Chief, PNP Human Rights Affairs Officer (HRAO), added: *'[T]he PNP is reaching out. If there are threats we invite people to come forward'*.

The NBI stated that *'if you feel that family is threatened it is normal procedure to approach them and to offer them witness protection'*. Later on the NBI added that *'[W]e can assure that*

everything can be done to secure the families of victims, and *'filing cases in court'* would occur *'in close cooperation with the family'*. When a case is pending, witnesses could be held in custody of the DoJ or witnesses that have to appear in court could be escorted.

Despite these measures, the NBI nevertheless admitted that *'cases often cannot be solved due to the lack of witnesses'*. The IVFFM also learned from the NBI that *'some cases under investigation'* were *'temporarily'* closed, *'since the family of victim is no longer interested in pursuing the case for fear of their lives'*, while in another case *'none of the eyewitnesses wanted to assist [the] police for fear of their lives'*.¹⁵⁷

The Philippine Commission on Human Rights confirmed to the IVFFM that one of the problems in addressing the extrajudicial killings is the fact that there is lack of cooperation to testify. According to the Commission *'[W]itnesses are hesitant to come forward because of fear for their lives'*.

In this regard, it is also worth noting that representatives of PAHRA found a connection between filing charges in court and the need for more safe houses for victims and witnesses: *'[W]hen filing charges, you are obliged to go to every hearing in court, which results in heavy security problems and the need for more safe houses for them'*.¹⁵⁸

Law offices under surveillance

Lawyers organizations such as the Pro-Labor Legal Assistance Center (PLACE), the Public Interest Law Center (PILC) and the Union of Peoples' Lawyers in Mindanao (UPLM) are reportedly also under close surveillance.

(i) Pro-Labor Legal Assistance Center (PLACE)

Lawyers of PLACE, a small Quezon City-based office that provides legal services to mainly labour union and workers, have experienced harassment, surveillance and intimidation by state agents, especially since they started handling the case of Hacienda Luisita workers. Their office has been monitored by surveillance teams round-the-clock while their neighbours have been questioned about the office and the lawyers' whereabouts. Although the members of the surveillance team are wearing civilian clothes, there would be no doubt that they are military men. The IVFFM was told that staff members of PLACE wrote down the plate numbers of the cars used by the surveillance teams. Every time they made inquiries about certain plate numbers they were told that no information could be provided because the said numbers were a matter of military secrecy.

¹⁵⁷ NBI presentation 2008.

¹⁵⁸ Interview with representatives of PAHRA on November 11, 2008.

On October 9, 2006, the Asian Human Rights Commission forwarded a News Release from the KMU-May First Movement of October 5, 2006, which said that military officials had confirmed that the law office of PLACE was under military surveillance.¹⁵⁹ On that day, a group of workers from the Food Terminal Inc (FTI), who were clients of PLACE, visited the office. The group had a paralegal assistant with them who was in *barong*.¹⁶⁰ Apparently mistaking him for a lawyer, the FTI workers were tailed all the way to Taguig, by men on board of two motorcycles. The FTI workers sought help from the FTI police who was able to apprehend one of the motor riding men. Investigation revealed him to be Pfc. Rommel Felipe Santiago of the Intelligence Service Group of the AFP. Santiago was allegedly on 'official mission' at the time of the incident so that the police had to release him. According to Santiago, it was just a case of mistaken identity, their real targets were the lawyers of PLACE.

Elmer Labog, National Chairperson of KMU said in a response: '*While big companies are able to hire big-shot lawyers, workers who are already hard-pressed of finding money to feed their families, find it even more difficult to hire lawyers to assist them in their legal cases. PLACE tries to help workers by providing legal service, but even this small service is now under threat*'.

On November 6, 2006, PLACE formally filed a complaint to the Commission on Human Rights of the Philippines.¹⁶¹ During the mission of the IVFFM in 2008, the CHR had yet to make its findings and/or resolution with regard to the complaint of PLACE. The IVFFM was also informed that the threats, harassment and surveillance of (lawyers of) PLACE still continue.

(ii) Public Interest Law Center (PILC)

PILC Managing Counsel Atty. Rachel Pastores and five of her colleagues told the IVFFM that their office has also been frequented by suspected intelligence agents.¹⁶² On April 23, 2008, for instance, three men, who all wore caps, visited the massage shop at the ground Floor of the building where the office is located. One of them said to a masseur that he wanted to make use of the services of the PILC that he allegedly had seen in an advertisement. He then asked a lot of questions, including whether the rooms in the building were similar in design, what time the lawyers used to go home, which vehicles were theirs, etc. In May and June respectively, the security guard of the building and Rachel Pastores saw a man taking pictures of their office. The PILC issued security alerts to its clients.

¹⁵⁹ A Forwarded Press Release from Kilusang Mayo Uno by the ACHR (ACHR-FP-008-2006) '*Philippines: Law office under tight military surveillance*', October 5, 2006.

¹⁶⁰ Barong tagalog is a traditional Philippine shirt, worn - amongst others - as a formal garment by lawyers in court.

¹⁶¹ The IVFFM has been provided with a copy of the Letter of Complaint.

¹⁶² Interview on November 9, 2008.

(iii) Union of Peoples' Lawyers in Mindanao (UPLM)

Lawyers of the UPLM are reportedly harassed because of their work as human rights lawyer.¹⁶³ They believe that their movements are monitored. One of them said to the IVFFM to be '*more afraid of those in political power than for the mafia*'. Staff of the UPLM reported that military men took pictures of the UPLM main office in June 2008.

¹⁶³ Interview with representatives from the UPLM on November 5, 2008.

3.2.6 No adequate action by the authorities

The IVFFM was informed that the police and the NBI had hardly acted upon reported threats or requests for protection. Although more lawyers and judges seem to have reported the threats to the police since the IFFM in June 2006, the IVFFM observed that they did not expect to get any results. The police would usually admit that the threats and attacks against lawyers and judges are work related, but the perpetrators thereof would not be seriously investigated or prosecuted. The reported threats would merely be written down for record purposes only. When the IVFFM asked why threats were still reported to the police one telling answer was: *'also for the record'*.

Even more striking were the reasons given to the IVFFM for not reporting threats to the police. One lawyer said: *'[I]t is useless because I know for a fact that these are the same people that were tailing me.'* Another lawyer believed that he had been followed by the PNP and he *'did not want to tell the police about his fear'*. A third lawyer told the IVFFM that he had not reported threats to the police anymore, because he knew that *'there will never be an investigation'*, while a fourth lawyer said *'I don't think they can solve my problem. Why should I trust them?'* Atty. Angeles went to the NBI because she did not trust the PNP, noting *'I am sure that the PNP won't do an investigation'*. Atty. Brizuela was told by her colleagues to talk to the media; *'[T]hat would offer better protection than to go to the police'*.

Many other lawyers said the same thing in different words boiling down to the following: *'[W]e cannot trust the government to protect us'*. Harry Roque, who was offered security for one year even said he felt safer without official security.

3.2.7 Can lawyers and judges still practice law?

All lawyers and judges who were interviewed by the IVFFM had to admit that their work and personal life are heavily impacted by the continuous threats and harassments. Their day-to-day life is coloured by fear to become a victim themselves: they all believe that there is a fair risk that they will be killed or abducted or have to face other forms of harassment.

Atty. Castillo, for instance, told the IVFFM that she *'can be killed, because I am labelled by the military as a friend of the NPA'*. She added: *'Atty. Dacut was also active in human rights cases, he was branded as NPA-member and later he was killed'*.

When the threats became more serious in the beginning of 2008, Judge Pampilo was informed that the NBI, PNP and the intelligence service of the AFP had an intelligence report indicating *'that hired killers and gunmen were given instructions to get him within thirty (30) days from February 4, 2008'*.

3.2.7.1 Impact on work

When asked how the threats and harassments affect their work, the IVFFM found that they especially hamper lawyers in their contact with clients. Since they have reason to believe that their phones may be tapped and their offices are monitored, lawyers are forced to meet their clients outside their offices or get in touch with them secretly. Case files are often preserved outside the office as well.

It also became clear that living in fear takes a toll on both lawyers and their clients. Several lawyers said that they don't dare to take up high profile cases anymore or are afraid to go to Court or loose focus.

One lawyer told the IVFFM: *'[T]hese threats and harassments definitely affect my work. Sometimes, I could not concentrate on doing pleadings and motions as the threats preoccupied my mind.'*

Referring to the round-the-clock surveillance of their office, lawyers of PLACE wrote to the Commission on Human Rights: *'[T]his has a negative effect on our clients, too, who now avoid our office like a plague for fear of being harassed.'*

A majority of the lawyers and judges said to be limited in their freedom of movement: One lawyer said: *'In the evening I am at home and not outside. Defence at home is better than when you are outside'*, while Atty. Pastores said that she never stays late in the office. Another lawyer shared with the IVFFM that he is not able to go out with his family. A third lawyer said that he doesn't feel free in his own city; *'only in another city I feel free to go into town and to leave my gun at the apartment'*. Pahilga said as well: *'When I am at home, I seldom go out of the house for fear that these men are just in the neighbourhood.'* Judge Pampilo: *'[S]ince August 2008, my life has somehow been back to normal as I could already attend my lectures and professional engagements unlike before where my actions were very much limited.'*

3.2.7.2 Impact on private life

The threats and harassments also put a burden on family life. Atty. Pahilga said: *'[M]y wife and children are all fine. I suppose they have already overcome the trauma we have had to experience. But we remain cautious and wary of motorcycle riding men.'*¹⁶⁴

¹⁶⁴ In May 2006, Atty. Pahilga was told by his neighbours and bystanders that two men on a motorcycle, wearing jackets and sunglasses, and looking like military men with a military hair cut, had been looking for Pahilga and his family's house. They had asked them for Pahilga's schedule, specifically of the time that he leaves and arrives at home. According to his neighbours, the said persons told them that they wanted Pahilga to handle their case. Since then, two men on a motorcycle had continuously tailed on him in his neighbourhood and in his court hearings. A source from inside the military confirmed to Pahilga that the men tailing him were from Fort Magsaysay in Nueva Ecija under the tutelage of General J. Palparan jr. This source also told him that aside the monitoring of his movements, his cell phone

Some lawyers moved to another place, because they did not feel safe anymore in their hometown or they are separated from their family, because they do not want their family to be exposed to any danger.

A few lawyers live in a city where they practice law, while their family lives far away (distances of 200 km were mentioned) in the province. One lawyer moved with her family to another part of the country, because she didn't want her *'family to be affected by the threats'*. As a consequence, she has to travel a long distance to work, which costs a lot of money.

Judge Pampilo even moved with his family to the United States for a while: *'[D]ue to my situation at that time, my wife has suffered from vertigo, and I had to put her and my children in a safe place. As I was always away from my family during that period, I decided to bring them all to the United States in May 2008 so we could have time for each other.'* He added: *'[S]ince August 28, 2008, I can stay with my family again, the tension has subsided, and I can sleep well at night again.'*

Family members were also affected in other ways. One lawyer said to have a brother who could not join the PNP because the PNP found out that he was representing clients who were accused of being NPA members.

3.2.7.3 Determination to continue

Despite the difficulties they are facing, the IVFFM found that lawyers and judges are still very determined to continue their work. Judge Pampilo told the IFFM that he briefly considered to resign after receiving threats in the beginning of 2008, but *'if there are no brave judges then the people who threaten him have work'*. Pahilga said likewise: *'[B]ut just like other human rights lawyers here in the country, we have to go on with our work, otherwise our people will suffer. We are just taking extra precautions.'* Atty. Brizuela also took the effort of taking extra precautions, since she *'can serve the people better alive than under the ground.'*

activity was likewise being monitored. Pahilga himself also noticed that he was being watched. Around the time of his interview with the IFFM in June 2006, the threats against Pahilga became so imminent that he was forced to go into hiding. Pahilga informed the IFFM that the harassment and surveillance had affected not only his work but also his family: *"I am now living like a drifter, staying and moving from one place to another. I seldom go home to see my family or to report to the office"*, IFFM report 2006, p. 24 and 36.

3.2.7.4 Precautions

When asked what kind of precautions were taken, the IVFFM was presented with a range of different kinds of measures, including the following.

One lawyer said: *'I cannot go out without a buddy' and 'I don't stay in the same place'.* She added that *'[E]ven if I have a buddy, I will still be monitored, and it doesn't prevent a possible killing, but then I know at least that it will be reported to my parents and office and someone will testify.'*

Atty. Cyril Yap rented a house close to his office so that he did not have to travel all the way to another town.

A third lawyer said that he doesn't go to court without a bodyguard: *'Even now I am with a bodyguard'*, while a fourth lawyer said that he doesn't tell anyone where he is going, because of his safety. When he is going to a court in another city, *'I even don't tell my wife where I am going'*.

A lawyer who is being tailed told the IVFFM that as a precaution he kept changing his patterns; *'I never take the same way to office'*. When the threat level was high, Judge Pampilo was likewise using different vehicles everyday.

Judge Pampilo decided to stay for a while in different places everyday in order *'not to put the lives of my wife and three children at risk.'* In addition, he instructed his staff that *'no information about me should be given to anyone.'* And *'during hearings in my sala, the door is always closed and only the parties and counsels are allowed to be inside. My security personnel are likewise inside my sala during hearings, and two police men are stationed outside the door.'*

Atty. Angeles writes a column for an internet newspaper; *'[E]veryone knows me, that is my protection'*. Judge Pampilo noted as well that: *'[I] have learned that when a person under threat speaks up, and the media and other institutions are sought for help, that induces the culprits to back down.'*

The IVFFM observed a total lack of confidence that the threats and other forms of harassment will come to an end. Some lawyers even fear that the situation will deteriorate in the near future. As Atty. Brizuela pointed out: *'Death threats do not stop. Anything can happen in preparation of the 2010 elections'*.

3.3 The impact of the Melo Commission

3.3.1 Recognition of the problem of extrajudicial killings in a wider context

It is generally acknowledged that the extrajudicial killings can only be stopped when the underlying causes are addressed effectively.

As discussed in chapter 2 of this report, the government's counter-insurgency strategy, that increasingly targets civil society groups as fronts for communist insurgents, and the culture of impunity are identified as the two main root causes for the recent spate of killings.

The IFFM concluded in 2006 that *'the Arroyo administration (..) has neither responded seriously to strong allegations that its own security forces are involved in the killings nor has it taken effective measures to improve the poor record of prosecutions of the perpetrators'*.

Consequently, it recommended to the government *'to leave no stone unturned in investigating the serious allegations that its own security forces are involved in the killings'* and *'to take all other measures needed to end the culture of impunity'*.¹⁶⁵

The IVFFM shares the view of Amnesty International expressed in its 2008 report that: *'[T]he link between the military and political killings was further established by international and national institutions'*.¹⁶⁶

Hopeful signs of improvement

In view of the foregoing, the IVFFM welcomed the establishment of the Melo Commission, the government's willingness to have accepted the UN Special Rapporteur on extrajudicial, summary or arbitrary executions' visit to the country as well as the EU Needs Assessment Mission that was organized by the European Union upon request of the Philippine government.

The IVFFM has the impression that since the IFFM in 2006, the issue of extrajudicial killings has become easier to discuss openly within the Philippine society. The Melo Commission's report may well have added thereto.

In this regard, it is worth noting that the Melo Commission held *'a certain group in the military'* responsible for the killings, *'by allowing, tolerating, and even encouraging the killings'*. The

¹⁶⁵ IFFM report 2006, p. 37-39.

¹⁶⁶ Amnesty International report 2008, www.amnesty.org

Commission stated in particular that *'the circumstances clearly show that such killings (..) [take place] pursuant to an orchestrated plan by a group or sector with an interest in eliminating the victims'*.

It added: *'[M]ore telling is the fact that, with the CPP-NPA out of the question, **only** a group with certain military capabilities can succeed in carrying out an orchestrated plan of eliminating its admitted enemies'*.¹⁶⁷

The IVFFM was also encouraged that the government announced that it would implement the Melo Commission's recommendations. This could be a great step forward in addressing the extrajudicial killings effectively, including those of the members of the legal profession.

However, the starting point of the IVFFM, was and remains that what counts, are the results that *'have been achieved, not what has been done'*.¹⁶⁸ Despite the hopeful signs that the extrajudicial killings would be addressed seriously, there are also signs indicating otherwise.

Signs indicating otherwise

In June 2007, the EU Mission found that *'[T]here has been no coherent and comprehensive problem analysis of the spate of extrajudicial killings; for example, there are difficulties in assessing whether efforts undertaken so far to curb these killings have targeted the causes as well as the symptoms of the problem'*.¹⁶⁹

During the interactive dialogue of the Universal Periodic Review (UPR) in April 2008, various country delegations recommended to the Philippine government that it should address the root causes of the issue of extrajudicial killings in the context of the appropriate reform of the judiciary and the security forces. In its response to the recommendations the government stated, however, that this recommendation did not enjoy its support.¹⁷⁰

The IVFFM also observes that the government has not followed the Melo Commission's recommendation to establish a *'civilian investigative agency (...) independent of, and not under the command, control or influence of the Armed Forces'*, to *'ensure that all reports and complaints of extrajudicial killings against the military are investigated promptly, impartially, and effectively'*.¹⁷¹

¹⁶⁷ Melo Report, p. 6, 53-56.

¹⁶⁸ EU NAM report 2007, p. 16.

¹⁶⁹ EU NAM report 2007, p. 6 and 14.

¹⁷⁰ Response of the Government of the Philippines to the recommendations made by various country delegations during the interactive dialogue of the Universal Periodic Review (UPR) Working Group held on 11 April 2008.

¹⁷¹ Melo report, p. 73-74.

Instead, the government ordered the Department of Justice and the Department of National Defense to coordinate with the Commission on Human Rights to constitute a joint fact finding committee that would look further into the investigations and the findings of the Melo Commission.¹⁷²

The IVFFM has not identified any individual that was familiar with any activities or results of this joint fact finding committee.

3.3.2 The impact of the Melo Commission on extrajudicial killings of lawyers and judges

The authorities have so far failed to analyze the killings of lawyers and judges in the context of other killings that have occurred in the Philippines since 2001, including the killings of members of leftist groups. Neither were the underlying causes of these killings addressed effectively.

While the presentation of the DILG and the PNP did not refer to the underlying causes of the killings of lawyers and judges, the NBI only emphasized that *'[A]ttacks against members of the judiciary is a phenomenon not exclusive to the Philippine social environment'*.

However, *'[U]nlike in developed societies where the majority of attacks against the judiciary is often carried out by criminal elements, in the Philippine environment, attacks on those who plot them can be found "on both sides of the fence"'*.

According to the NBI this means *'that those who plot and carry out these heinous acts are not confined to the realm of organized crime, politics or business, but also involves elements of a personal nature and at times conflict with a person or people's cultural, religious and traditional beliefs'*.¹⁷³

When the IVFVM asked representatives of the DILG, PNP, Task Force USIG and the NBI whether they concur with the facts as established by the Melo Commission as being *'undisputed'*,¹⁷⁴ they replied that the Melo Commission had only looked into the killings of activists and media personnel. As Henry Q. Libay of Task Force USIG put it: *'Lawyers and judges is a different mandate, it is not under the mandate of the Melo Commission. It never mentioned lawyers and judges'*.

The PNP added that Task Force USIG was created to investigate and solve cases of activists and media personnel only. It is not involved in cases of the killings of lawyers and judges.

¹⁷² *'Palace: Quick action on Melo commission recommendations'*, Press Statement, Office of the President, February 26, 2007, www.gov.ph/news.

¹⁷³ NBI presentation 2008.

¹⁷⁴ Melo report, p. 5-6.

The NBI explained to the IVFFM that it has no task force for the killing of lawyers and judges *'so their cases are treated as ordinary crime'*.

The PNP and NBI further stated that no state agents are involved in the killings of lawyers and judges.

With respect to the conclusion of the Melo Commission that a certain group in the military is responsible for the killings, the PNP and NBI stressed that the PNP nor the NBI condone extrajudicial killings. The involvement of state agents in such killings were *'incidents'*.

Various national and international institutions have established that the elements of extrajudicial killings of leftist activists and militants identified by – amongst others - the Melo Commission, also apply to most of the killings of lawyers and judges. The IVFFM found it therefore quite remarkable that the PNP and the NBI did not consider the Melo Commission's findings relevant for the extrajudicial killings of lawyers and judges.

Examples of similar elements in extrajudicial killings of lawyers and judges

1. A first example is the manner in which lawyers and judges were killed. It is clearly established that the method of killing lawyers and judges has the same characteristics as the manner of killing members of activist groups.¹⁷⁵
2. It is also undisputed that the rise in the number of killings of lawyers and judges coincided with the rise in the extrajudicial killings of activists and militants between 2001 and 2006.¹⁷⁶
3. Prior to the attacks, lawyers and judges were likewise threatened and some of them were labelled as members or supporters of the CPP/NPA or its *'fronts organizations'* or as *'enemies of the state'*. Some were also warned to be in the military's order of battle or a so-called hit-list.¹⁷⁷

¹⁷⁵ In 2006, the IFFM concluded that *'[A]lmost all assassinations [of lawyers and judges] were carried out by two unidentified men on a motorbike without licence plate. The killings are shooting incidents with a hit-and-run character committed at any given time and place, even in broad day light. Given the "visibility" of the killings, the killers seem to be very self confident in getting away with it.'* IFFM report 2006, p. 24.

¹⁷⁶ In 2006, the IFFM noted that *'[S]ince 2001, fifteen lawyers and ten judges were killed, the last one till now being Attorney (Atty.) Evelyn Guballa who was killed on June 21, 2006 in Quezon City, Manila. Atty. Guballa is the fourth lawyer to be killed this year'*, IFFM report 2006, p. 20.

¹⁷⁷ In 2006, the IFFM founded: *'[T]hey have all been threatened. Many were warned to stop with their work as human rights lawyer or with a specific case or other activities "or else...". They are often subjected to surveillance by the (para)military, "vigilantes" or alleged members of death squads. And: [T]hey are mostly threatened by means of text messages, letters or phone calls. Other forms of harassment are – amongst others - the surveillance of the lawyers' houses and offices by men on motorcycles, tailing and tapping of cell phones'*, IFFM report 2006, p. 21-22.

4. The Melo Commission concluded that the PNP has not made much headway in solving extrajudicial killings of activists.¹⁷⁸ As will be explained in further detail below in paragraph 3.4.4 of this report, the same goes for killings of lawyers and judges.¹⁷⁹

By not taking into account these similarities, the law enforcing authorities seem to ignore the fact that various institutions, including the EU mission, found that the AFP considers lawyers who represent alleged supporters or members of the CPP/NPA legitimate military targets.¹⁸⁰ The AFP would put such legal representation on par with giving support to the counter-insurgency. As a result, senior officials and military officers publicly label these lawyers as '*communist*' or '*supporter or member of the NPA*' and thus classify them as '*enemies of the state*'.

As stated by the mission's first report in 2006, at least seven lawyers were labelled by the military as member or supporter of the NPA or enemy of the state, including Attys. Pahilga and Deri-on. The underlying reason, according to both of them, was that they served clients who were allegedly members of the NPA. Atty. Pahilga: "*A lawyer will be labelled as NPA as soon as his clients are labelled as such*". Their view was widely shared by other lawyers the IFFM spoke to.¹⁸¹

Atty. Deri-on told the IFFM that he had a meeting with General Jovito S. Palparan jr. in June 2005. During this meeting General Palparan warned him to stop handling cases for alleged NPA members. He said: "*If you have to choose between your life and that of your clients, I presume you will choose for your own*".¹⁸² As previously pointed out, the Melo Commission openly blamed now-retired Major Palparan for the killings of leftist activists.

Two lawyers, Attys. Bocar and Dacut, who were told to be included in the so-called military order of battle were killed within weeks thereafter.¹⁸³

As was previously shown in paragraph 3.2.4 of this report, the practice of labelling lawyers who represent clients accused of being NPA members as '*communist*' or '*friend or supporter of the NPA*', continues up until today.

¹⁷⁸ Melo report, p. 5-6.

¹⁷⁹ In 2006, the IFFM noted that '*[T]he fact that cases remain unsolved, creates a culture of impunity. The IFFM sometimes had the impression that the PNP considers a case as solved as soon as the perpetrators in certain cases are allegedly identified. Fact is, however, that none of the cases have been solved: to this date, no killers of lawyers and judges have been convicted*,' IFFM report 2006, p. 34.

¹⁸⁰ EU NAM report 2007, p. 35.

¹⁸¹ IFFM report 2006, p. 22.

¹⁸² IFFM report 2006, p. 35. The IFFM was also told that Atty. Magsino started to receive threatening text messages after she had a meeting with General Palparan.

¹⁸³ The IFFM was informed by Atty. Penaflor that Atty. Dacut told him 13 days before he was killed, that he was on the list, IFFM report 2006, p. 22.

The same goes for the practice of lawyers and judges being threatened or subjected to other acts of harassment, including being listed in the military's order of battle. As stated in chapter 2 of this report, other national and international institutions confirm that the lawyers taking up cases against members of the army or the police are generally harassed and threatened.

The fact that the authorities consider the cases of extrajudicial killings of lawyers and judges as individual cases, also clearly affects the way of investigating or prosecuting these killings. In this regard it is worth noting that the EU mission found that '*[T]here is no systematic cross-reference of cases with similarities in modus operandi or forensic findings*'. The IVFFM shares the EU mission's view that '*[B]earing in mind that extrajudicial killings are of a serial character, this is an issue of paramount importance and concern*'.¹⁸⁴

The government ordered the creation of various Task Forces with different mandates, including Task Force USIG, Task Force for the security of Judges, Prosecutors and IBP Lawyers, Task Force for the Security of Judges, Task Force 211 and the above mentioned Joint Fact Finding Committee, to name just a few. Although they are all dealing with extrajudicial killings, there seems to be little or no coordination between their activities, nor with the regular law enforcing agencies, such as the Department of Justice, PNP and NBI. For example - as demonstrated below - the PNP and NBI presented differing data to the IVFFM, while their data also differed from the records on extrajudicial killings published by Task Force 211 on its website.¹⁸⁵

It also remained unclear for the IVFFM how the establishment of the various Task Forces has contributed to address the reasons for the failure to investigate extrajudicial killings effectively and to prosecute the perpetrators. As noted in chapter 2 of this report, these reasons include the lack of witnesses and resources, sloppy police investigations, the unwillingness of the police to investigate the military, the inadequate implementation of the legal framework, the ineffective accountability mechanisms and the passive and politicised criminal justice system.

While conducting its investigations, the IVFFM observed the following with respect to the above mentioned reasons.

Lack of resources

Both the PNP and the NBI supported the Melo Commission's recommendation to improve and enhance their investigative capabilities, confirming to the IVFFM that there is still a lack of

¹⁸⁴ EU NAM report 2007, p. 15-16.

¹⁸⁵ In his most recent follow-up report, Philip Alston noted: '*despite Executive Order 181 designed to encourage intra-governmental cooperation, the Government has failed to reconcile the number of confirmed cases of extrajudicial killings between its own agencies, including the Supreme Court, Task Force Usig, the PNP task force to address extrajudicial killings, and Task Force 211. While Task Force 211 updates its website monthly, Task Force USIG does not issue public reports and its website is out of date*', par. 25, p. 8. in: 'Follow-up to country recommendations – Philippines', A/HRC/11/2/Add.8 of 29 April 2009, par. 30, p. 10 (Alston report 2009).

resources. Representatives of the PNP said: *'[W]e still face shortcomings in terms of capabilities, especially technical capabilities'*, although *'[T]hey [the government] have found some donors from European countries'*. The NBI stated that *'[C]rimes should be solved, so we want to have modern investigation methods'*. (..) and *'[T]echnical investigative instruments are very important in investigation'*.

Unwillingness of the police to investigate the military

From the Melo report it appears that General Razon of Task Force USIG (TFU) stated before the Melo Commission that *'military operations are beyond the scope of the TFU, since the military conducts its own operations'*¹⁸⁶ and that *'General Palparan is not under the jurisdiction of the PNP or TFU'*. He added that *'there was still no basis/evidence to summon or investigate a personality such as Gen. Palparan'*. Since the PNP *'needs to operate within the law'*, it would need *'evidence before it can investigate officers'*.¹⁸⁷

In reply, Atty. Vinluan of the Melo Commission pointed out *'that the purpose of investigation is precisely to gather evidence. PNP does not need evidence before it can investigate Gen. Palparan'*.¹⁸⁸

The IVFFM also looked specifically into the PNP's mandate to investigate crimes allegedly committed by military men. In line with UN Special Rapporteur Philip Alston's findings, it found that no one questioned that the PNP has the authority and the duty to investigate the military. When addressing this issue in its interview with the PNP and Task Force USIG, Henry Q. Libay only said that *'Task force USIG is not involved [in an investigation against General Palparan]'*, adding that he did not know whether a case had been filed against Palparan.

Representatives of the Office of the Ombudsman confirmed to the IVFFM that a case was pending against General Palparan, but it was *'only filed before the Supreme Court, not before their office'*.

Passive criminal justice system

The representatives made it clear that the Office of the Ombudsman has the power to investigate and prosecute on its own - i.e. without a complaint - any alleged crime of military men, thus also against General Palparan. However, when it actually comes to conducting investigations, they claimed to be very dependent on the PNP, NBI and AFP due to a lack of resources. *'We only have 25 lawyers; we have limited resources'*. The Office of the

¹⁸⁶ Melo report, p. 10.

¹⁸⁷ Melo report, p. 9.

¹⁸⁸ Ibid.

Ombudsman could therefore *'not conduct an investigation like PNP or NBI, but it asks the assistance of the PNP'*. Although the PNP should follow the orders of the Office of the Ombudsman, the representatives admitted to the IVFFM that *'[T]he PNP sometimes does not follow their order. That is one of the problems'*. They added that in practice this could mean that *'in the case of extrajudicial killings, we should ask the AFP to do their own investigations; that is difficult'*.

In addition, the IVFFM was informed that the Office of the Ombudsman had not really changed its attitude with respect to the treatment of extrajudicial killings after the Melo report. Although it recognized that the extrajudicial killings are an issue, it still does not *'recognize it as a special category.'* It is *'just a heavy or a light case, like any other case'*. And *'[P]riority to high ranking cases is stated in the rules'*. It was further added that *'[T]he Melo commission did not file a case with the Ombudsman nor did it provide its report to the Ombudsman'*.

When asked about the killings of lawyers and judges, the representatives of the Office of the Ombudsman said that *'[M]urders of judges and lawyers happen for several reasons'* but, *'[S]o far, their Office had not received these cases.'*⁴⁸⁹

The IVFFM further found that with regard to the role of the prosecutors in criminal investigations, the ruling opinion among lawyers, judges, the police and prosecutors of the Department of Justice seems to be that prosecutors should stay very inactive when a case is investigated by the police so as to avoid being considered as biased. The IVFFM had the impression that this was not something prescribed by law, but merely an unwritten rule or understanding between the prosecutor and the police.

3.3.3 Public opinion

The lawyers, judges, representatives of Congress and civil society groups who were interviewed by the IVFFM, hereinafter collectively referred to as 'the Interviewees', had differing opinions about the Melo Commission's report and its recommendations. Although most of them said that they had no or low expectations of the Commission's work, they considered it a good report or welcomed it as a first step forward. In the words of Atty. Brizuela: *'[W]e were surprised that the Melo commission came with these conclusions because there were so many government people in it'*.

¹⁸⁹ In his most recent follow-up report, Philip Alston noted: *'[L]ikewise, no progress appears to have been made with respect to improving the office of the Ombudsman's ability to effectively fulfil its independent constitutional role in responding to extrajudicial killings plausibly attributed to public officials. (..)Numerous documented cases exist that would fall under the jurisdiction of the Ombudsman, but little response has occurred'*, in: Alston report 2009, par. 30, p. 10..

However, many were disappointed about the Melo Commission's finding that there is no state policy which calls or allows for extrajudicial killings. The IVFFM observed a general belief that state agents are behind the killings. In this regard, it has been noted that they have a motive since *'they are the usual respondents or accused in the cases filed by human rights lawyers'* and *'they have the resources to carry out the threats.'* The government would at least condone the killings; otherwise it would have done more to bring the perpetrators to justice.

Many of the Interviewees were also disappointed that the Melo Commission held General Palparan responsible only through the principle of command responsibility, while it did not take strong actions against him or the 'rogue soldiers' that were involved in the extrajudicial killings nor recommend to the government to do so.

Moreover, the IVFFM was told that President Arroyo immediately had absolved the AFP by declaring that 99,9 percent of the military were "*good, hardworking and patriotic Filipinos*".¹⁹⁰ The President would keep saying that the killings were done mostly by the NPA and by a few soldiers, acting on their own.

These factors supported their belief that the Melo Commission's establishment was only an attempt to satisfy the international community that something was done to address the killings.

The Interviewees all agreed that the victims and the human rights community could not be blamed for their reluctance – out of fear and distrust - to cooperate with the Melo Commission. Their fear and distrust was justified, considering the Commission's composition and the way it was established.

The IVFFM was told that the Melo Commission was constituted without transparency and consultation with relevant sectors of civil society, including the victims, their families and human rights advocates. Two Commission members were from the executive branch, thus not perceived as independent, while the other members were virtually unknown to the human rights community and without any track record in human rights work. As one lawyer put it: *'[S]o they could not be sure that information provided [by victims, witnesses and representatives of the human rights community] would be handled with care.'*

In addition, the Melo Commission was not given the powers necessary to seriously investigate human rights violations of the nature concerned. In this regard it was noted that the Melo Commission was *'like a dog without teeth'*. The commission could investigate, and formulate recommendations, but could not prosecute itself, nor could it give instructions to the office of the prosecutor.

¹⁹⁰ President Arroyo said indeed *'[W]hile the Armed Forces deal decisively with the issue of unexplained killings, I extol the 99 percent of our good and valiant soldiers who are on 24 by 7 alert to safeguard the people and the nation'* in: *'PGMA vows resolution of extrajudicial killings; AFP to continue as vanguard for freedom'*, Press Statement, Office of the President, February 22, 2007, www.gov.ph/news. See also footnote 118 of this report.

When asked by the IVFFM whether the Interviewees would cooperate if the Melo Commission would continue its work, most of them said “no” because nothing has changed in terms of its composition and safety guarantees for victims and witnesses.

Although the idea of a new investigative body in itself was widely supported, nobody was even sure whether he or she would cooperate if such a new body would be created. This would still be dependent on the body’s composition and safety issues.

When asked how and by whom a new investigative body should be composed, they all agreed that a new investigative body should be fully independent from and not under the influence of the government, while its composition would need the involvement of a wide range of civil society and human rights groups to ensure that representatives are chosen that are known for their independence and integrity. In addition, it was suggested to involve an international body or person with an outstanding reputation.

The view that the government has hardly done anything with the report was also widely shared. Many qualified the government’s measures as ‘*window dressing*’ or ‘*lip-service*’. As one lawyer put it: ‘[T]hey [the Philippine government] *only say that they have taken measures*’.

When the IVFFM asked to explain this view, it was informed that the measures the government claimed to have taken to implement the report’s recommendations, had not led to any concrete results; they would only exist on paper. In this regard, the Interviewees noted the following.

- for the Melo Commission to continue its work and submit supplemental reports as the need arises

Although the government stated that the Melo Commission was supposed to continue its work so as to finish its job, the Commission’s final report has not been published so far nor any other supplemental report. Since the Commission’s chair, Former Chief Justice Melo, was appointed by President Arroyo as Chairman of the Commission on Election,¹⁹¹ it is not expected that this will ever happen.

In November 2007, Newsbreak reported that the disbanded Melo Commission would have submitted its final report to President Arroyo in September 2007. Melo would have confirmed to Newsbreak that the report has not been made public, saying ‘[I]t’s just a letter to the President (...) reiterating our recommendations [in the earlier report]’. The news item continued stating:

¹⁹¹ ‘Retired Justice Melo Assumes Post Due To COMELEC Director’s Murder’, by Sheila Crisostomo (STAR) March 26, 2008, <http://www.newsflash.org/2004/02/hl/hl107277.htm>.

"[B]ut according to a lawyer who had access to the four- or five- page final report, the Melo Commission recommended the investigation of General Palparan".¹⁹²

Another comment shared with the IVFFM in this regard was that '[W]hat will be done with the findings and advice of the Melo Commission, is entirely up to the discretionary will of the President.'

Although the IVFFM had the intention to ask the Melo Commission for its final report, it was not able to do so, since none of the members of the Commission had – during the twelve days that the Mission stayed in the Philippines - time to meet.

- for the Department of National Defense (DND) and the AFP to come up with an updated document on command responsibility

On February 4, 2007, the AFP issued a document on the '*Strict adherence to the doctrine of command responsibility*'.¹⁹³ Many of the Interviewees wondered, however, what the purpose was of only asking these bodies to come up with an updated document. What really matters was the question whether the government would be willing to use this principle to keep military men accountable for the extrajudicial killings. Some of them even feared that the document would only be used to argue that Palparan and other unnamed generals could not be held accountable under the principle of command responsibility.

It also became clear that there is a discussion in the Philippines as to whether the principle of command responsibility can be used on the basis of international law, without a national law. Atty. Roque, for instance, said to the IVFFM that '*no bill is necessary to use this principle*', while Judge Pampilo is of the opinion that '*we need to have a law*', because '[T]here is no jurisprudence; there is no law; it is a grey area'.

In this regard, it is worth noting that the government has not followed the Melo Commission's recommendation to propose legislation to require police and military forces and other government officials to maintain strict chain-of-command responsibility with respect to extrajudicial killings and other offenses committed by personnel under their command, control or authority.

According to the Melo Commission, such legislation should deal specifically with extralegal, arbitrary, and summary executions and forced disappearances and provide appropriate penalties which take into account the gravity of the offense. It should also penalize a superior

¹⁹² '*Investigate Palparan, says Melo Commission in New Report to GMA*', written by Carmela Fonbuena, in: Newsbreak online, Saturday, 10 November 2007.

¹⁹³ '*Strict adherence to the doctrine of command responsibility*', signed by Hermogenes C. Esperon Jr., General AFP, February 4, 2007, attached as Annex 8 to this report.

government official, military or otherwise, *'who encourages, incites, tolerates or ignores, any extrajudicial killing committed by a subordinate'* and the failure of such a government official *'to prevent an extrajudicial killing(...) or his failure to investigate and punish his subordinate, or to otherwise take appropriate action (..) should be criminalized'*.¹⁹⁴

The NBI said that no legislation was needed in this regard, because *'we have a criminal procedure to follow'*.

The PNP confirmed to the IVFFM that legislation in this regard could be seen as a welcome instrument, but added that *'[W]e [have] already an Executive Order from 1995'*. Undersecretary Melchor P. Rosales of the DILG also emphasized that: *'[W]hen you enter PNP and AFP you already learn that you are responsible for your acts'*.

Representatives of the Office of the Ombudsman told the IVFFM: *"[W]e use the command responsibility only in administrative and not in criminal cases, unless it is conspiracy."* When asked whether this principle could also be used in criminal cases on the basis of international law, it was said that: *'[T]he Statute of Rome is not yet implemented in national law. They [the government] have signed the Statute but not yet ratified. You cannot use it until it is ratified'*.

The Commission on Human Rights confirmed to the IVFFM that *'the difficulty with the principle of Command responsibility is the fact that there is no law'*, but it also said that [such a law] *'is now being discussed in the legislation branch'*.

According to representatives of the Office of the Ombudsman, the Congress was also working on a law on extrajudicial killings, noting that without such a law, *'extrajudicial killing is not a crime'*.

Members of Congress told the IVFFM that there is still no law on command responsibility, extrajudicial killings, enforced disappearances or (anti)torture. They added that if the government would be addressing the extrajudicial killings seriously, such laws could already have been in place. However, President Arroyo has not used her power to certify those laws as urgent before Congress, which was seen as proof for the lack of political will.

They also said that a law on command responsibility was necessary to criminalize its violation. On the basis of the existing order on command responsibility, commanders could only be held *'administratively accountable'*.¹⁹⁵

¹⁹⁴ Melo report, p. 76.

¹⁹⁵ Section 4 of Executive Order Nr. 226, 17 February 1995, stipulating: *'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'*.

- for the Department of Justice to broaden and enhance the government's witness protection program to cover all witnesses

Although the Department of Justice was ordered to broaden and enhance its Witness Protection Program, the program would still *'lack credibility'* and be *'highly ineffective'*. The importance of creating witness protection programs outside the DoJ was generally acknowledged *'since victims and/or witnesses are afraid to make use of the witness protection programs of the DoJ, because they do not trust the DoJ.'*

Asked for the reason for this distrust, the IVFFM was told that the Witness protection program of the government had *'too many loopholes'*. The protected witnesses would *'face intimidation and threats'*, while *'the perpetrators are able to visit them in the so-called safe houses'*. Victims would, therefore, *'prefer the protection of sanctuary programs conducted by Philippine churches offering shelter to relatives of victims or victims themselves who were kidnapped but were released or escaped or to potential witnesses'*.

The fact that the Writ of Amparo may accredit private individuals or institutions to provide witness protection is seen as a recognition – even by the Supreme Court - of the ineffectiveness of the government's witness protection program.

The Commission on Human Rights of the Philippines confirmed to the IVFFM that victims are hesitant to make use of the government Witness Protection Program. The Commission added, however, that there is not only a witness protection program under the government but also under the Commission. Although the Commission would be able to conduct the witness protection in coordination with the DoJ, it had to admit that *'witnesses are hesitant when perpetrators are state agents'*. The Commission also said that its capacity to provide witness protection was limited due to a lack of resources and accommodation. So far, very little witnesses have made use of the witness protection programs of either the DoJ or the CHR.

- for the Department of Foreign Affairs to formally invite the President of the EU, as well as the governments of Spain, Finland and Sweden to send representatives to the Philippines and participate in the ongoing investigation of the Melo Commission.

Gabriel Munuera Viñals, Head of Political Economic, Trade & Public Affairs Section, of the Delegation of the European Commission, confirmed to the IVFFM that the Philippine government put a request to the European Commission in March 2007 *'for technical support in conducting investigations into the extrajudicial killings'*. Following this request, *'the EU is currently negotiating a Memorandum of Understanding (MOA) with the Government of the Republic of the Philippines to carry out a technical assistance program'*.

The EU has the intention to send European experts to the Philippines in the field of police investigation and prosecution, human rights awareness and judiciary. According to Munuera Viñals, this technical assistance program shall *'genuinely help the Philippines to tackle the problem of extrajudicial killings'*.

The IVFFM observed broad support for EU involvement in the investigations of extrajudicial killings among the Interviewees. However, there were also concerns that it took such a long time before the MOA was signed, supporting fears that the government does not genuinely want to sign the MOA or is trying to limit the framework in which these investigators have to work as much as possible.

- for the presidential Chief Legal Counsel, Sergio Apostel, to draft a letter to the Supreme Court seeking the creation of special courts for the trial of cases involving extrajudicial killings

Although the efforts of the Supreme Court to speed up the court cases of extrajudicial killings were highly appreciated, it was explained to the IVFFM that no extra courts were created to deal with the extrajudicial killings; 99 existing Regional Trial Courts were assigned to function as 'Special Courts' in this regard. The IBP emphasized that the courts cannot initiate cases themselves, but are dependent on law enforcing agencies to refer cases to court.

So far, the assignment of the Special Courts would not have led to visible results in terms of an increase in convictions of the perpetrators or more progress (and less delays) in pending trial cases. The government would not even have taken a serious effort to prosecute those perpetrators identified by the Melo Commission, including General Palparan.

When the IVFFM asked Chief Justice Puno about the functioning of the 99 special courts that were assigned to solely deal with cases of extrajudicial killings, the IVFFM was informed that those special courts were abolished. Now all Regional Trial Courts may deal with cases of extrajudicial killings and enforced disappearances.

Judge Pampilo, who is judge of Branch 26, Regional Trial Court in the City of Manila that used to be the first of the three special courts on extrajudicial killings and enforced disappearances in Manila, believes that the special courts are abolished for the same reason that led to the decision to get rid of the Heinous Crimes Courts: *'because it was too dangerous'*.

3.4 Impact of measures on the number of killings

Taking into account that the majority of the Interviewees shared the view that the government had hardly done anything with the recommendations of the Melo report, the IVFFM asked the

Interviewees to comment on the government's claim that there had been a significant drop in the number of extrajudicial killings.

3.4.1 Drop of extrajudicial killings?

The Interviewees generally acknowledged that in the last two years fewer killings were reported than in 2006, although some of them noted that this does not necessarily mean that the actual number of killings has declined. They all emphasized, however, that the situation in the Philippines has not improved. Atty. Brizuela: '[I]t [the Melo report] *did not have any effect at all. Nothing has changed since 2006. There are not less cases* [of human rights violations]'

As previously noted in paragraph 3.2.4 of this report, the pattern of labeling, threats and harassments of lawyers and judges has continued unabated. Atty. Brizuela: '[I] *have the same day-to-day life.*'

In addition, it was stressed that the killings have not ended, while enforced disappearances and torture are said to be on the rise as well as other forms of harassment. The Interviewees also pointed to the government's record of '*zero convictions*' of perpetrators of extrajudicial killings and other human rights violations, representing the persistence of the culture of impunity in the country.

3.4.2 The killings of lawyers and judges still continue

Based upon CODAL and NUPL's monitoring and documentation, 22 lawyers have been killed since 2001 and 15 judges have been murdered since 1999. Fourteen of the deaths happened under the Arroyo administration.

The data of slain judges provided to the IVFFM by the NBI¹⁹⁶ are identical to those recorded by the Supreme Court. They both listed 15 murder cases of judges since 1999, the same amount as CODAL and NUPL. As previously pointed out, a sixteenth judge was killed in December 2008.

¹⁹⁶ NBI presentation 2008. Hon. Roberto Navidad, Regional Trial Court Branch 32, Calbayog City (January 14, 2008); Hon. Orlando Velasco, Regional Trial court Branch 63, Bayawan City, Negros Oriental (July 27, 2007); Hon. Nathaniel C. Pattugalan, Municipal Trial Court in Baggao, Cagayan (January 19, 2007); Hon. Sahara Silongan, Regional Trial Court Branch 15, Cotabato City (Decembber 3, 2006); Hon. Henrick F. Gingoyon, Regional Trial Court Branch 117, Pasay City (December 31, 2005); Hon. Estrellita M. Paas, Pasay City Metropolitan Trial Court Branch 44 (September 23, 2005); Hon. Milnar T. Lammawin, Regional Trial Court Branch 25, Tabuk, Kalinga (August 9, 2004); Hon. Paterno G. Tiamson, Regional Trial Court Branch 69, Binangonan, Rizal (February 21, 2004); Hon. Voltaire Y. Rosales, Regional Trial Court Branc 83 of Tanauan, Batangas (June 10, 2004); Hon. Pinera A. Biden, Municipal Circuit Trial Court of Kabugao, Apayao (May 17, 2003); Hon. Eugenio R. Valles, regional Trial Court Branch 3, Nabunturan, Compostel Valley (April 25, 2002); Hon. Oscar Gaby M. Uson, Regional Trial Court Branch 52 in Tayug, Pangasinan (September 27, 2002); Hon. Ariston L. Rubio, Regional Trial Court Branch 17, Batac, Ilocos Norte (October 31, 2001); Hon. Hassan T. Ibhohajil, Regional Trial

The NBI listed 21 murder cases of lawyers, including those of Attys. Dacut, Dojillo, Hilbero, Magsino, Siobal and Yongco. The fact that the IVFFM was not familiar with most of the other cases listed by the NBI, while various other cases investigated or reported to the IVFFM were not listed in the NBI's update, including those of Attys. Ballacillo, Bocar, Dote, Gojol, Guballa and Tapel, indicates that the actual number of lawyers that has been killed since 2001, may be higher.

The figures presented to the IVFFM by the DILG and PNP indicate a higher number of slain lawyers and judges in the same period indeed. According to their figures, 40 lawyers have been killed since 2001 and 17 judges have been murdered since 1999, amounting to a total number of 57 victims. Between 2004 and 2006, also 6 prosecutors were killed.¹⁹⁷

The IVFFM was not able to trace many of the reported cases of slain lawyers and judges in Task Force 211's status overview of cases of extrajudicial killings.

Although the government reported a drop in the extrajudicial killings, roughly speaking, after 2006, the lawyers' groups CODAL and NUPL noted an increase in the overall number of the killings of lawyers from 15 victims in 2006 to 22 by 2008, and an increase in the overall number of killings of judges from 10 in 2006 to 15 by 2008.¹⁹⁸

According to the NBI, five lawyers were killed in 2007¹⁹⁹ and two in 2008.²⁰⁰ Other sources informed the IVFFM that another lawyer was also gunned down in 2007.²⁰¹

The DILG and PNP informed the IVFFM that six lawyers were killed in 2007 and three in 2008. They did not provide names or any further information regarding the cases.

The figures on murder cases of judges from the NBI, Supreme Court, DILG and PNP all indicate that two judges were killed in 2007 and one in 2008. Judge Roberto Navidad was gunned down on January 14, 2008. He reportedly was receiving death threats in the 12 months before he was killed. With the last killing of Judge Philip G. Labastida on December 7, 2008, the total number of judges that have been killed since 2001 amounts to 15.

Court Branch 45, San Jose, Occidental Mindoro (February 5, 2001); Hon. Celso F. Lorenzo, Sr., Regional Trial Court Branch 1 in Borongan, Eastern Samar (November 1, 1999).

¹⁹⁷ PNP presentation 2008.

¹⁹⁸ NBI presentation 2008.

¹⁹⁹ (Attys. Romel W. Dissen, (April 7, 2007); Demetori Hilbero, (June 16, 2007); Vilma Rosillo Agias, (August 2, 2007); Conrado Soriano, (August 27, 2007); Alejo Dojillo, (September 10, 2007))

²⁰⁰ (Attys. Christian Garcia, (February 2008) and Richard W. Sison, (May 21, 2008).

²⁰¹ Atty. Luis Dote, (June 17, 2007).

3.4.3 Other forms of harassment: fabricated charges

When the IVFFM asked what was meant by other forms of harassment that would be on the rise, Karapatan's director Marie Hilao-Enriquez explained: *'[C]ivilians are increasingly abducted. After a couple of days they turn up in provincial jails charged with trumped up criminal charges, such as murder or attempted murder.'*²⁰²

Fabricated cases are not new in the Philippines. It was said to be common practice under the dictatorship of President Marcos. However, human rights organizations and lawyers told the IVFFM there is now a new wave of filing fabricated charges.

Apparently, leaders of organizations who are critical to the government, are often accused of common crimes, non-bailable offences, to silence them. The judicial system would be exploited by using fabricated charges to paralyse cause-oriented groups.²⁰³

As discussed in chapter 2 of this report, several national and international institutions referred in this regard to the creation of the Inter-Agency Legal Action Group (IALAG) on January 17, 2006, that would organize the systematic filing of fabricated charges against leftist political activists suspected of being members or supporters of the CPP.²⁰⁴

A group of lawyers expressed their concern towards the IVFFM that they may also be subjected to fabricated criminal charges which could land them in jail.

IALAG

It was hard for the IVFFM to form an opinion about the Inter-Agency Legal Action Group's (IALAG) activities and Philip Alston's findings in this regard. Representatives of the DILG, PNP, Task Force USIG, Task Force for the Security of Judges, Prosecutors and IBP Lawyers, PNP Human Rights Office and IALAG were only willing to meet with the IVFFM in a joint meeting of two hours. As a result, the IVFFM could hardly address any question to IALAG due to time limits.

The IALAG was formed in 2006 *'to provide effective and efficient handling and coordination of the investigative and prosecutorial aspects of the fight against threats to national security and is chaired by the Office of the National Security Adviser.'*²⁰⁵

²⁰² Interview with representatives of KARAPATAN on November 4, 2008.

²⁰³ *'RP report card on HR: Abysmal'*, in: Philippine Star Online, by Katherine Adraneda, January 3, 2009.

²⁰⁴ *'On paper, IALAG is tasked to investigate, prosecute, monitor and handle litigation processes of cases involving national security.'* However *'its unwritten primary objective is to organize the systematic filing of imagined criminal lawsuits against political activists suspected of being members or partisans of the CPP'*, Karapatan report 2008, p. 11. See also SU report 2007, p.10-14; Alston report, p.19.

²⁰⁵ IALAG was established by Executive Order 493 of January 17, 2006 and comprises the DOJ, DILG, Department of National Defence, National Intelligence Coordinating Agency, AFP, PNP and NBI.

The IVFFM was told that national intelligence services believe that some civil society organizations and party lists are fronts of the CPP/NPA; it would be up to the IALAG to dismantle them and bring them to court.

It would be due to the efforts of the IALAG that charges have been brought against a number of leftist lawmakers, human rights activists and people who had been given immunity guarantees to facilitate peace negotiations between the Philippine government and the National Democratic Front of the Philippines (NDFP).

UN Rapporteur Alston said that this agency distorts the criminal justice system's priorities because it focuses on the prosecution of civil society leaders rather than their killers.

Alston explained; *'[T]he reason why this ad hoc mechanism [IALAG] was established was to bring charges against members of civil society organizations and party list groups who have seldom committed any obvious criminal offence.'*

He added that while the Congress has never reversed its decision to legalize membership of the CPP, *'the executive branch, through the IALAG, has worked resolutely to circumvent the spirit of these legislative decisions and use prosecutions to impede the work of these groups and put in question their right to operate freely.'*²⁰⁶

Six representatives of party list groups Bayan Muna, Gabriela and Anakpawis (aka Batasan 6), along with leaders of people's organizations, were charged with rebellion in February 2006. It was the first case assembled by the IALAG. The Supreme Court later discarded the case against them saying the use of "antics" and the injection of political considerations in the proceedings had turned them into a veritable "sham." The High Court even mentioned that the DOJ had "prostituted" the office of the prosecutor for political ends.²⁰⁷ Alston said that while he received no evidence that the IALAG was designed or generally functions to plan extrajudicial executions, he deemed that the most "deleterious" role played by the IALAG may be to encourage prosecutors to act as team players with the military and police in the counterinsurgency program and to de-prioritize cases involving the deaths of leftists activists.²⁰⁸

²⁰⁶ Alston report 2007, p. 18.

²⁰⁷ The Supreme Court said in its decision of June 1, 2007: *"The obvious involvement of political considerations in the actuaciones of respondent Secretary of Justice and respondent prosecutors brings to mind an observation we made in another equally politically charged case. We reiterate what we stated then, if only to emphasize the importance of maintaining the integrity of criminal prosecutions in general and preliminary investigations in particular, thus:*

[W]e cannot emphasize too strongly that prosecutors should not allow, and should avoid, giving the impression that their noble office is being used or prostituted, wittingly or unwittingly, for political ends, or other purposes alien to, or subversive of, the basic and fundamental objective of observing the interest of justice evenhandedly, without fear or favor to any and all litigants alike, whether rich or poor, weak or strong, powerless or mighty. Only by strict adherence to the established procedure may be public's perception of the impartiality of the prosecutor be enhanced."

²⁰⁸ Alston report 2007, p. 19. The EU Mission had also noted that *'[M]any prosecutors are not sufficiently active in their cases'*; EU NAM report 2007, p. 26.

Alston, as well as the Inter-Parliamentary Union²⁰⁹, called for the abolishment of the IALAG.

The Asian Human Rights Commission has remarked that prosecution may not be a political tool.²¹⁰

However, according to Philip Alston's most recent follow-up report on the Philippines, the Government has up to this day '*not taken any steps to abolish IALAG*':²¹¹ On the contrary, the IVFFM has been informed about new cases, this time also against a human rights lawyer.

Case of Atty. Remigio Saladero Jr.

The IVFFM learned about Atty. Remigio Saladero Jr.²¹² a few months before its visit to the Philippines in November 2008. Atty. Saladero would have been labelled as a member of the NPA by the military intelligence group and had been time and again the subject of surveillance.²¹³

The IVFFM was further informed that Atty. Saladero was suddenly forcibly taken from his office in Antipolo City by the police on October 23, 2008. His desktop computer, laptop and mobile phone were confiscated. He was first reported disappeared, since the police would have refused him permission to contact his family after his arrest. Atty. Saladero would not have known that he had been charged until the police arrested him; he was not questioned before. The warrant of arrest, which bore a name and address different from his own, was based upon multiple murder and multiple frustrated murder cases from 2006. Later he was also accused of arson and conspiracy to commit rebellion. Atty. Saladero was charged together with others; all known activists from the same area.

²⁰⁹ In the Resolution adopted unanimously by the IPU Governing Council at its 183rd session, Geneva October 15, 2008, the IPU seriously doubts IALAG's "*utmost respect for the fundamental human rights of due process, equal protection, and the rule of law*". In its 118th session in Cape Town on April 18, 2008 it had already said about the Batasan 6-case: "*All these proceedings are part of an ongoing effort of the government in their area through IALAG, aimed at removing them and their political parties from the democratic political process.*"

²¹⁰ AHRC statement of November 4, 2008.

²¹¹ Alston also noted that the IALAG '*continues to label members of civil society organizations as suspected members of the CPP/NPA/NDF*' while its '*central purpose*' would remain to prosecute and punish individuals perceived as enemies of the state, thus '*the temptation to execute such individuals remains*', Alston report 2009, par. 29, p. 9-10.

²¹² Atty. Saladero Jr. is a veteran human rights and labor lawyer and chief legal counsel of Kilusang Mayo Uno (KMU), Pro Labor Legal Assistance Center's (PLACE) Board Chairman, Anakpawis Partylist's Legal Counsel, National Federation of Labor Unions (NAFLU)-KMU chief legal counsel and a member of the National Union of People's Lawyers (NUPL), among others.

²¹³ The IVFFM therefore intended to have an interview with Atty. Saladero. However, due to bad weather conditions, the IVFFM was not able to meet with him.

His lawyers²¹⁴ told the IVFFM that his right to due process was violated, considering that he was never informed about the complaint and was not able to defend himself before the warrant of arrest was issued. He was a practicing labor lawyer, openly litigating in courts, not a fugitive.

According to Saladero's lawyers, the manner in which the names of respondents are included was also arbitrary. In the original complaint from 2006, only one respondent was named, while the others were described as John Does. Their identities would have been provided by credible witnesses who had personal knowledge of the incident, as required by law. However, court records would show that only one witness had been able to identify all of respondents - which is considered highly unlikely in practice. This anonymous witness would have appeared two years after the arson occurred and would not have mentioned anything about his personal background. Apparently there was no clarificatory hearing to confront the witness.

Some of the other accused persons in this case would have quite plausible alibis: one was reportedly confined in hospital on the day he would have committed the arson, while it was said that another accused was able to prove that he was in jail during the alleged occurrence of the crime.

The IVFFM was told that the prosecution brought the case immediately to court, without checking the evidence, whereas in normal non-political cases a case like this would have been rejected immediately by the prosecution for lack of probable cause.

Saladero's lawyers believe that the profile of all persons charged and those subject to arrest, affiliation and background of their work, illustrates the continued pattern of targeted attacks against the activists in the country. They consider it not a coincidence that the use of the prosecution service, by way of filing highly questionable and incomprehensible charges in court, has increased although extrajudicial killings have dropped there.

According to some Interviewees, this illustrates the *de facto* use of the prosecution system against those critical of the government.

The Asian Human Rights Committee noted on Atty. Saladero's case: *'Observers have perceived that prosecutors act as accomplices of the police in the filing of fabricated charges in court, their judgment and reasoning are incomprehensible; they are neglecting and are abusing their authority. The costly price of this abuse and their complicity to being used as a de facto political tool is the security, life and liberty of those persons falsely accused.'*²¹⁵

The IVFFM learned that on February 5, 2009, the Regional Trial Court released Atty. Saladero and the others. The Court did not dismiss the case for lack of probable cause, but ruled on a technical point: multiple crimes filed under only one case was not permissible.

²¹⁴ Interviews with, amongst others, Atty. Rachel Pastores of the Public Interest Law Center on November 9, 2008.

²¹⁵ AHRC Statement of November 4, 2008.

However, a few days after their release, Saladero and his colleagues were once again informed that they had been charged concerning another murder that took place in July 2008. According to the Asian Legal Resource Center, Saladero and other respondents were once again in this new case not informed of the charges against them until a friend told Saladero that their names were included in the charges. He was not informed officially.²¹⁶

Serious concerns

The IVFFM is concerned about these reported developments. The IVFFM shares the view that prosecution may not be used as a political tool, as the Supreme Court had pointed out in its *Batasan 6*-judgement.

It is the duty of the prosecution not only to find evidence to warrant continuation of the criminal process against an accused, but also to protect the innocent from hasty, expensive and useless trials. A criminal complaint should be dismissed when there is an insufficient factual and legal basis. In the conduct of the preliminary investigations, the public prosecutors may not be biased., they must exhibit *'the cold neutrality of an impartial judge'*.²¹⁷

In this regard it has been noted that the DOJ's alliance with the other members of the IALAG in the persecution of political enemies of the Government would make it very difficult to be neutral, independent and impartial.²¹⁸

Fabricating charges, using the courts to target activists, undermine the rule of law in the Philippines. It seems that activists are increasingly facing questionable criminal charges which are produced through the subversion of court procedures and rules on evidence.

Even if these kinds of cases are later dismissed in court , the accused is always hampered in his work, since the warrants of arrest are reportedly always for non-bailable offences; he or she will be in jail or forced to go into hiding. No (substantive) damage money is paid afterwards.

CHR chair Leila de Lima recently stressed as well that cases of human rights abuse have now seemingly shifted to *'different angles'* of human rights violations, referring to the *'pattern'* that they have observed involving wanton arrests and abduction, and the filing of cases against militant personalities.²¹⁹ These different kinds of harassment appear to be escalating, and could

²¹⁶ Statement of the Asian Legal Resource Centre of February 28, 2009.

²¹⁷ House Resolution 881, November 25, 2008.

²¹⁸ In its most recent follow-up report on the Philippines, Alston noted: *'the Special Rapporteur received no information from the Government or civil society that IALAG has ceased its encouragement of prosecutors to act as "team players" with the AFP and PNP in counterinsurgency operations, and to de-prioritize cases involving the deaths of leftist activists'*, Alston report 2009, par. 29, p. 10.

²¹⁹ *'RP report card on HR: Abysmal'*, in: Philippine Star Online, by Katherine Adraneda, January 3, 2009.

become, according to De Lima, the country's top human rights abuse, replacing unexplained killings.

3.4.4 Government's record of convictions

The Philippine government reported that prosecutions in cases of extrajudicial killings are on the rise. Lawyers groups, however, are not aware of any perpetrator who has been actually convicted for any of the cases of slain lawyers and judges.

CHR chair Leila de Lima, recently said as well that *'[I]n terms of successful prosecution of cases of unexplained killings and enforced disappearances, the country retains a long-standing and abysmal record. There have yet to be any court-sanctioned convictions of perpetrators of these crimes.'*²²⁰

Figures presented to the IVFFM by the DILG and PNP on the status of crimes cases involving the members of the judiciary would show, however, that the criminal justice system was working hard to bring the perpetrators of these killings to justice. It was indicated that 16 cases of killed lawyers had already been filed in court, 6 had been referred to the prosecutor and 18 were still under investigation. In the murder cases of judges the presented figures were 8, 3 and 6 respectively. The DILG and PNP also listed one conviction in 2006.

Based upon the updates of the PNP and the NBI on the one hand and interviews, news reports and other governmental sources such as Task Force 211's update on cases of extrajudicial killings on the other, the IVFFM also made its own analysis.

To get a real insight into the status of the crime cases presented by the DILG and the PNP, the IVFFM is of the opinion that more detailed information is required. While the figures from the DILG and the PNP indicate that all 63 identified cases of slain judges, prosecutors and lawyers are still actively dealt with by the law enforcing authorities, the NBI listed at least 6 'closed' cases in which no person has been convicted.

Task Force 211's overview of the status of cases of extrajudicial killings also indicates that many cases 'under investigation' are 'cold cases', while cases can also be 'archived' or 'terminated'. Apparently, cases are archived when the accused is at large, but other records of Task Force 211 show that also many suspects in cases 'on trial' are still at large or not yet identified (John Does).

The same picture appears from the update on the status of cases of slain lawyers and judges that was presented to the IVFFM by the NBI. When looking at the 6 murder cases of judges that the NBI said had been filed in court, the IVFFM found no case in which all alleged perpetrators – mostly hired killers - were identified and arrested.

²²⁰ 'RP report card on HR: Abysmal', in: Philippine Star Online, by Katherine Adraneda, January 3, 2009.

In one case all the suspects were at large; in another case only one suspect was arrested while two others were still at large and in a third case the question whether the suspects were arrested or still at large remained unanswered.

In the case of Judge Gingoyon, the alleged gunmen were 'awaiting trial', while the alleged mastermind behind the killing was still at large.

In Judge Lorenzo's case it was just the other way around: while the alleged mastermind behind the killing, former Balangkayan Mayor Abraham Elpedez, was said to be arrested and awaiting trial, the other two gunmen were still at large. News items, however, reported that Elpedez is out on bail after posting a PHP 200,000 bond.²²¹

The last case 'on trial' had already been dismissed due to lack of evidence.

A look at the cases of slain lawyers on trial presented by the NBI gave a similar result. In the case of Atty. Siobal, murder charges were filed '*against several personalities*'; however, the case was '*dismissed due to insufficiency of evidence*'. In the case of Atty. Hilbero the suspects were still at large, in at least three cases the question whether the suspects were arrested or at large or (not) yet identified remained unanswered, while in two cases '*several*' or a '*number*' of suspects have been arrested and are '*awaiting trial*'.²²²

In an audit conducted in the second half of 2008, the IBP also found that the identities of the perpetrators or assailants in many cases have not been established or determined.²²³

The need for further information to get a picture of the status of cases of extrajudicial killings can also be illustrated on the basis of the cases the IVFFM specifically looked at.

3.5 Status of cases that were already investigated in 2006

In June 2006, the IFFM found that none of the perpetrators of the killings of lawyers and judges had been convicted. The IFFM looked specifically at the deaths of Pasay City Judge Henrick Gingoyon (December 31, 2005) and lawyers Norman Bocar in Samar (September 1,

²²¹ 'CIDG records show that except for the case of Borongan (Eastern Samar) Judge Celso Lorenzo, all those who were charged in court were hired killers. In Lorenzo's case, former Balangkayan Mayor Abraham Elpedez was identified as the brains behind the killing. Elpedez, who surrendered to the police, is out on bail after posting a P200,000 bond. In some cases, the masterminds were powerful and influential enough that the police would rather look the other way, complains the family of Tayug Judge Oscar Uson in Pangasinan', in: 'A Cry for Justice: 44 Judges Killed in Recent Years', by Aries Rufo in: Newsbreak <http://newsbreak.com.ph/index.php?option=com_content&task=view&id=4058>.

²²² However, in the case of Atty. Segundo Gonzalo Sotto Jr, who was killed in 2004, '*relevant charges*' were filed against '*suspects who were subsequently convicted for murder*', NBI presentation 2008.

²²³ IBP report 2008, p. 40-42.

2005), Felidito Dacut in Leyte (March 14, 2005), Arbet Yongco in Cebu City (October 11, 2004) and Juvy Magsino in Mindoro Oriental (February 13, 2004).

In the cases of Attys. Yongco and Magsino and Judge Gingoyon, court cases were pending, but legal proceedings were progressing slowly. Family members of slain lawyers and judges considered the information provided by the authorities about the criminal cases insufficient, especially with respect to the slow handling of the cases. None of them trusted that the proceedings would lead to any results. They all believed that there was a mastermind behind the assassinations, but that the authorities preferred to ignore this.²²⁴

As of today, still none of the perpetrators in the cases of Attys. Yongco and Magsino and Judge Gingoyon has been brought to justice.

Atty. Magsino

The IVFFM was informed by the NBI that the case against the alleged killer(s) of Juvy Magsino was closed and that no other data were available.²²⁵ From Task Force 211's status overview of cases of extrajudicial killings it appears, however, that the accused²²⁶ in the Magsino case was acquitted on March 18, 2008, '*[F]or failure of the prosecution to establish the guilt of the accused beyond reasonable doubt.*'²²⁷

Atty. Yongco

The murder case of Atty. Yongco is said to be handled by the PNP Cebu. The NBI informed the IVFFM that a number of suspects were arrested and awaiting trial.²²⁸ News items, however, reported that two of the suspects, including an Army Sergeant, had been acquitted by an order of the Regional Trial Court of August 3, 2007, after the prosecution failed to prove their involvement in the crime.²²⁹

Judge Gingoyon

In the murder case of Judge Gingoyon, the NBI noted that six suspects were identified and subsequently arrested and that appropriate charges were filed at the Office of the Prosecutor, Imus, Cavite. The alleged mastermind, Alimuddin Musthapha, would still be at large.²³⁰

²²⁴ IFFM report 2006, p. 25 and 34.

²²⁵ NBI presentation 2008..

²²⁶ From Task Force 211's records it appears that the accused, Reynante Antenor, also seems to be the suspect in another murder case, see TF 211 file number 50150, www.taskforce211.com.ph

²²⁷ http://74.125.77.132/search?q=cache:cQe0nEfCKnoJ:www.taskforce211.com.ph/tf211_sub/statements/attachments/Report%25205-16-08.xls+TF+211+Juvy+Magsino&hl=nl&ct=clnk&cd=1&gl=nl In April 2007, Magsino's mother told another fact finding mission, '[B]esides Gina, there was a certain witness in the crime-scene. But, because of the threat, the witness does not want to testify in court', in: '*Report on Extrajudicial Killings and Enforced Disappearances in the Philippines*', Human Rights Now, April 2008.

²²⁸ NBI presentation 2008.

²²⁹ See also '*Court acquits Yongco slay accused*', by Jolene Bulambot, Cebu Daily News, August 9, 2007.

²³⁰ NBI presentation 2008.

The IVFFM has examined Gingoyon's case file, which shows that four of the identified suspects have been detained since January 2006. However, at least two eye-witnesses, heard by the public prosecutor, have declared that the four accused were not the men they saw immediately before and after the killing. For reasons that remain unclear, the witnesses concerned have not been heard by the Court, although they were present at its hearings two times. The same applies to another eye-witness, which has neither been heard by the public prosecutor.

The IVFFM's findings directly support parts of the information received by the IFFM in 2006 in relation to this case. The IFFM was informed that the police had asked eye-witnesses to sign a different statement than the one made by them. The police identified five men as the killers. Although these men were not identified as the killers by the eye-witnesses, they still had to face criminal charges in court.²³¹

It also appeared from the case file that the accused identified another mastermind behind the killing of Judge Gingoyon than the one identified by the NBI. However, the IVFFM was unable to find a trace in the case file showing that any action was taken by the police or the prosecution to verify these allegations. Neither did the case file show that anything has been done with Gingoyon's letter to his wife in which he wrote down the name of the person he assumed would be guilty if he would be killed.

The IVFFM further found that no real progress has been made in the murder cases of Attys. Bocar and Dacut. Both cases were initially dealt with by the PNP, Tacloban City Police Office, Leyte (hereinafter referred to as: 'PNP Leyte'). The PNP Leyte created its own task forces: 'Task Force Bocar' and 'Task Force Dacut' to lead the investigations. Upon Atty. Dacut's widow's request, the case of Atty. Dacut had been transferred to the NBI in Leyte.

Atty. Dacut

In June 2006, the IFFM was informed by the NBI in Leyte that there was no specific lead in the Dacut case. The PNP Leyte also acknowledged that it was *'still facing a blank wall'* insofar as the identity of the killers and their motives were concerned. Asked about the investigations in the Dacut case, the NBI nor the PNP could hardly come up with any concrete results. The IFFM noted in this regard that given the duration of the investigations (fifteen months and almost a year) the files shown to the IFFM were also remarkably thin.²³²

In view of the foregoing, the IVFFM found it quite remarkable that in August 2006 – thus only two months later - Task Force USIG reported that the killing of Atty. Dacut was ordered by the CPP-NPA leadership in the Eastern Visayas Region after he was allegedly found guilty of

²³¹ IFFM report 2006, p. 25.

²³² IFFM report 2006, p. 28-30.

financial opportunism.²³³ Task Force USIG's report would have been based upon reliable information it had gathered.

Other sources informed the IVFFM that investigations carried out by the Philippine Commission on Human Rights would have proven that Task Force USIG's findings as regards to Atty. Dacut were fabricated. The IVFFM also learned that Atty. Dacut's widow has never been informed by Task Force USIG nor by other authorities about Task Force USIG's findings. Moreover, the NBI informed the IVFFM that the case of Atty. Dacut is '*handled by the NBI in Tacloban*' and that the '*investigation is still on-going*'.²³⁴ Task Force 211 has classified the case of Atty. Dacut as a '*cold case*', which means that there has been no development or progress for more than a year.²³⁵

Atty. Bocar

In 2006, The IFFM was told by the PNP Leyte that the murder of Atty. Bocar had remained unsolved 'because the two witnesses in that case were unwilling to co-operate and even in hiding for unknown reasons'.²³⁶ On May 11, 2008, however, the DILG announced that murder charges were filed before the Regional Trial Court in Borongan City against suspects Elejandro Aragon Jr. and one still unidentified person for the killing of Atty. Bocar.²³⁷ The DILG did not mention in its press release that Aragon had yet to be arrested. Since the accused is still at large, the case has been 'archived'.²³⁸

Atty. Gil Gojol

The IVFFM also looked at the case of Atty. Gil Gojol, who was killed after the IFFM in June 2006.

Atty. Gil Gojol was gunned down by motorcycle-riding men in the morning of December 12, 2006. That day, Atty. Gojol left the Municipal Trial Court with driver Danilo France from a court hearing.

The IVFFM was informed that Atty. Gojol received dead threats in the months before he was killed. The threats were similar to those received by other human rights lawyers in the area. Atty. Gojol received death threats by SMS and a month before his death there were motor riding men cycling around his house.

²³³ '*PNP tags Reds in killing of 3*', by Raymond Africa, in: Malaya issue, August 20, 2006; '*Task Force "Usig" says NPA behind recent Leyte killings*'; Philippine Information Agency (PIA) Press Release, August 28, 2006.

²³⁴ NBI presentation 2008. See also US Country report 2008 noting on March 11, 2008 that '[T]here were no developments in the cases of the 2005 killings of Bayan Muna leader Felidito Dacut and (..)', p. 2.

²³⁵ http://www.taskforce211.com.ph/bk_sub/bk_sub/ejk/coldcases/cc_reg8/ccreg8_2039.html

²³⁶ IFFM report 2006, p. 30.

²³⁷ DILG News: '*PNP Orders arrest of suspect in killing of CPP-NPA supporter*', May 11, 2008, <http://www.dilg.gov.ph/news.aspx?NewsID=500>

²³⁸ TF 211 File number, EJK list of cases

http://www.taskforce211.com.ph/bk_sub/bk_sub/ejk/arc_alacc/reg8_arc/reg8_arc1071.html

Furthermore, the IVFFM was informed that an eye-witness of the killing was not heard by the police.

The police allegedly assumed that it was the NPA who was behind the killing. The IVFFM found that this assumption was generally rejected, since Atty. Gojol was the legal council of the NPA.

According to Task Force 211's case records, the case against the suspected killer of Atty. Gojol was dismissed on February 21, 2007, without indicating the reason. The case files would have been forwarded to PNP Gubat Sorsogon *'for further investigation'*.²³⁹

3.6 Reasons for drop in killings

Although it is generally acknowledged that in 2007 fewer extrajudicial killings were reported than in 2006, the IVFFM found that the number of and the reasons for this decline are not undisputed.

Government

As previously pointed out, the government claimed that the decline in the number of killings is the result of the firm measures it has taken to address the problem of extrajudicial killings.

PNP

In its interview with the IVFFM, the PNP contributed the decline in the number of killings in the first place to the *'enhanced security awareness of lawyers, judges and prosecutors'*. It added that the PNP initiatives *'may have served as deterrence'*.

Task Force USIG

In its accomplishment report, Task Force USIG used a much stronger wording: *'Since the creation of Task Force USIG on May 13, 2006, there was a significant decline in killings (..) which makes it one way or the other, a deterrent in the commission of this crimes'*. Task Force USIG referred to killings *'related to Task Force USIG mandate based on statistics handled by the task force'*. It continued by noting that it had recorded only 7 incidents for the year 2007 [by August 2008], which would *'send a strong message to the potential perpetrators of EJK that the government is serious in addressing this issue and resolving these crimes the soonest while pursuing the truth in defense of human rights'*.²⁴⁰

²³⁹ TF 211 file number 3025.

²⁴⁰ Task Force USIG Accomplishment report, as of August 8, 2008, p. 5.

As previously pointed out by the PNP and Task Force USIG, the killings of lawyers and judges do not fall under the task force's mandate. This may explain why Task Force USIG only recorded 7 incidents in 2007, although - according to their own figures - in that same year also at least 6 lawyers and 2 judges were killed.

Commission on Human Rights

The Philippine Commission on Human Rights (CHRP) told the IVFFM that the decline in the number of killings was the result of education c.q. human rights training and regular dialogues with various participants, including the PNP, AFP and representatives of the legislative branch. The CHRP would have a comprehensive training program in the military sector as well as in other sectors. Since several years, no police cadet would graduate from the Police Academy without passing the exam on human rights. The CHRP also pointed to the establishment of the human rights offices within the PNP and the AFP. Already 15 officers would have been assigned.

As previously pointed out, the IVFFM was able to meet with the PNP Human Rights Officer, Lina C. Sarmiento, who presented the IVFFM with an update on the PNP Human Rights development program ('PAMANA'). The main objective is to develop the PNP as a 'fortress of human rights protection'. The program consists of various institutional mechanisms as well as advocacy programs, including, for instance, the opportunity to report anonymously abuses committed by police officers and the integration of human rights education in the curriculum of mandatory training programs.²⁴¹

The Interviewees

None of the Interviewees, however, said that they believe that the decrease in the number of killings is a result of the measures taken by the government. The decline is merely seen as the result of the intensified international pressure on the Arroyo administration - amongst others from the UN, EU and the US in particular as well as from international civil society organizations - to stop the killings. They further believe that the decline will only last temporarily: It is feared that the number of killings will rise again as soon as the international attention for the Philippines decreases.

Other relevant factors would be the domestic media attention and the strong campaign against the extrajudicial killings and enforced disappearances in the Philippines conducted by human rights advocates and many other sectors, including the church and trade unions. Even the business sectors would have been critical of the government's inability to stop the extrajudicial killings.

²⁴¹ See footnote Annex 7.

Some of the Interviewees noted that the decline in the number of killings took place while the perpetrators of these killings were never arrested or prosecuted. They also found it remarkable that the decline happened quite suddenly in a short period of time *'as if an order to 'stand down' was given from above in the face of growing international pressure'*.

Members of Congress informed the IVFFM that the human rights offices within the PNP and the AFP exist already for many years. After the Melo report, however, they have been reactivated. They confirmed that police and military personnel receive human rights training, and that they work together with the Commission on Human Rights in this regard. They also said that they have reasons to believe that the content of the training may be out-dated.

The IVFFM has not looked into the training programs or tools to educate on human rights.

3.7 Political will / Lack of trust

The IVFFM fully agrees with the Melo Commission that *'[I]f extrajudicial executions are to be stopped, the political will to do what is right however great the cost must pervade all levels of government' (..); it must start with the President who must pursue the prevention and prosecution of extrajudicial killings with urgency and fervor'*.

The IVFFM also endorses the recommendation of Amnesty International and the Melo Commission that the government must *'consistently and at all levels condemn political killings'*. Its first mission in 2006 also called on the government to *'condemn the killings publicly and in strong terms'*.

In addition, the IVFFM welcomes the Melo Commission's further explication that *'[T]he President and all the departments of the Government should make clear to all members of the police and military forces that extrajudicial executions will not be countenanced under any circumstances'*.²⁴²

Furthermore, the IVFFM realizes that addressing the root causes of the extrajudicial killings effectively requires a cultural change, that clearly needs broad support from all layers of society.

Through its investigation, however, the IVFFM observed a lack of trust among lawyers, judges, their relatives and representatives of civil societies as to whether the government is sincere in addressing the problem of the extrajudicial killings.

²⁴² Melo report, p. 73.

The IVFFM also recognized the observation of the EU mission that *'[T]here is a rooted mistrust in the criminal justice system from the general public. Officials within the system also have little confidence in the system, in particular when it comes to confidence in the levels of professionalism outside their own institutions.'*²⁴³

When the IVFFM asked various authorities whether trust must be considered a prerequisite for solving such a huge problem, only the Commission on Human Rights agreed with it. The Commission called for a dialogue with all parties concerned, including civil society organizations. It remained unclear, however, to what results this call has led.

Undersecretary Melchor P. Rosales of the DILG acknowledged that there is a lack of trust between certain civil society organizations on the one hand and the government on the other. This lack of trust would be a result of the insurgency. Rosales: *'[I]n the Philippines, we regret that we still have rebellions who are opposed to the government'*. The government would have a legitimate reason to distrust some organizations because they trump up (the number of) killings for propaganda purposes so as to discredit the government. Rosales: *'[S]ometimes people were alive while they were reported dead. Task Force USIG has received 800 cases, but many appeared not to be true'*, referring to an accomplishment report of Task Force USIG.

In the said report, Task Force noted that *'KARAPATAN's allegations of 836 victims killed in EJK are blown up and misleading. In fact, many of the alleged victims were killed in legitimate military encounters, 23 of them are ASG terrorists who were killed in a foiled jailbreak, and six of them were found out to be alive.'*²⁴⁴

Representatives of the PNP and Task Force USIG added that they wanted to cooperate with KARAPATAN, so as to jointly resolve cases, but KARAPATAN would have refused to talk about specific cases. They also said that they had invited KARAPATAN three times and asked the organization whether witnesses could be interviewed. However, KARAPATAN would not have accepted their invitations.

Task Force USIG noted: *'it is deplorable that some cause-oriented groups, particularly those who are pointing their fingers to the military and the police as the culprits in the killings, refused to cooperate with the Melo Commission and TF USIG and prejudged the two investigating bodies.'*²⁴⁵

As previously pointed out, the Interviewees are all of the opinion that the victims and the human rights community could not be blamed for their reluctance – out of fear and distrust - to cooperate with the Melo Commission. Their reasoning is set out in paragraph 3.3.2 of this report.

²⁴³ EU NAM report 2007, p. 14.

²⁴⁴ Task Force USIG Accomplishment report, as of August 8, 2008, p. 4.

²⁴⁵ Ibid. p. 5.

In 2006, the IVFFM concluded that *'So far, Task Force USIG has not proven to be an independent body; it is chaired by the PNP which has a poor record as far as the effective investigation of the killings is concerned and which is mistrusted by the Philippine people.'*

The IVFFM's interview with the PNP and Task Force USIG demonstrated that the lack of trust against Task Force USIG still exists. Various Interviewees confirmed to the IVFFM that they do not trust Task Force USIG because it is under the control of the police. As one lawyer put it: *'[T]he military and the police are the suspects. So we could not expect that their brethren in uniform would put the blame on them.'*

A second much-heard reason for distrusting Task Force USIG was that it would maintain that many of the killings were perpetrated by members of the CPP/NPA without presenting concrete evidence to support its claims. The Interviewees presented the IVFFM with various concrete examples of such allegations. One lawyer also mentioned the example of a Pastor who was murdered: *'[T]wo days later the PNP already claimed that the NPA was behind it'*. This is in line with the IVFFM's findings in the case of Atty. Dacut.

The same lawyer told the IVFFM that she had bad experiences with Task Force USIG. Last year, in a case well known to her, family members of the victim were forced to state a false accusation against the victim's colleagues, however, to no avail. The family members refused to do so.

3.8 Writ of Amparo

On September 25, 2007, the Supreme Court issued the Rule on the Writ of Amparo, which took effect on October 24, 2007.²⁴⁶ The Writ allows courts to order the temporary protection, inspection and production of documents in cases where an individual's life, liberty or security has been violated or is under threat.

The Writ of Amparo was the result of the National Consultative Summit on Extrajudicial Killings and Forced Disappearances, organized by Chief Justice Puno. Although Chief Justice noted that *'[W]hile protection of human rights is traditionally entrusted to the political or electorally accountable branches of the government rather than the non-political judiciary'*, the Judiciary took the initiative in this regard, since *'this notion has been significantly eroded in recent years due to the lack of political will of these branches of government to sometimes take the unpopular stance in order to protect human rights and uphold the right to life.'*²⁴⁷

²⁴⁶ Not long after, the Supreme Court issued the Rule on Habeas Data, which took effect on February 2, 2008. The Writ of Habeas data aims to protect and ensure the individual's right to privacy.

²⁴⁷ Summit report 2007, p.3.

The IVFFM observed that this initiative of the Supreme Court was highly appreciated and enjoyed a broad support among the Interviewees. It was also acknowledged, however, that the Writ should be more developed in terms of implementation and enforcement. In this regard it was noted that after the initial successes,²⁴⁸ the courts are more inclined to dismiss petitions filed under the Writ of Amparo. More specifically, the following issues were put forward to the IVFFM:

- 1) In various cases, petitions filed under the Writ of Amparo were dismissed due to a lack of jurisdiction, while in fact, the courts had jurisdiction;
- 2) In various cases, where the courts had dismissed the petition citing insufficiency of evidence, the courts would have applied an unreasonable standard of asking the victims for 'clear evidence' of 'apparent or visible' threats. In fact, the judges were asking too much evidence (more than the Writ itself asks for). As one lawyer said: '[T]hey *shift the burden on the petitioner*'. Another lawyer noted: '[T]*here is a need to protect victims, not listen to stories of the military*'.
- 3) The execution of court orders that were favourable to the victims would be hampered or ignored: All too often, the military would refuse or delay inspections of their camps, giving them the opportunity to move persons allegedly in their custody to another place;

One lawyer told the IVFFM that she filed a Writ of Amparo, granting her the inspection of a military camp. However, the military refused her access to the military camp, claiming that they had no custody of her client. The following day, her client was brought to a hospital by the military and afterwards he was brought home. The family had to sign a document indicating: 'We received a living body'. The judge declined her request for protection under the Writ of Amparo claiming that her client was not under custody when he was in hospital, so there was no threat.

²⁴⁸ Through the writ of Amparo, the military, was compelled to surface and eventually release Ruel Muñasque on November 7, 2007 and Luicito Bustamante on November 14, 2007, by virtue of two separate petitions for their protection. Raymond and Reynaldo Manalo, two brothers who were abducted by soldiers in February 2006 but escaped from detention 18 months later, claimed they were illegally arrested and tortured. They filed for a Writ of Amparo, telling the courts they remained under threat from members of the military. In granting the writ, the appellate court ordered military officials to give the brothers all reports, whether official or unofficial, concerning their cases. The Supreme Court added in its October 7, 2008 decision that the circumstances of the brothers' "abduction, torture and escape reasonably support a conclusion that there is an apparent threat that they will again be abducted, tortured and this time, even executed." They were granted protection and still remain in a safe house.

- 4) In several cases, the military would have claimed that the victims had sought voluntary custody with the AFP, while pressuring the victims to state the same;

The IVFFM was informed that the above identified problems were caused by several reasons, including the fact that judges were not trained on the new law.

Very often, judges would also be afraid because the opponents are usually high ranking military officers. As a result, the effectiveness of the Writ of Amparo would be heavily dependent on the judge dealing with the petition.

What is seen as another complicating factor is that the Writ of Amparo is not only applicable with respect to acts committed by state security forces and other public officials, but also by private individuals or entities. In this respect, the Writ of Amparo differs from similar writs in Latin American countries. Their writs are usually limited to acts or omissions of public officials.

Chief Justice Puno considered this extension an advantage in comparison to its Latin American counterparts, because murder is always devastating, regardless by whom it is committed. Others, however, feared that it would leave room for the military to misuse the Writ. Petitions for Writs of Amparo were filed against two progressive party lists, the KABATAAN and BAYAN MUNA, and another against the human rights organization Karapatan. Lawyers from the PILC representing the party lists and Karapatan in these cases, stated that although the petitioners are the relatives of the alleged victims, the petitions were *'clearly filed with strong intervention from the military or state forces with the intention to muddle and abuse the use of the Writ of Amparo.'*

Various lawyers were of the opinion that it may help if the Writ would get the status of law. In this regard it was noted that Chief Justice Puno was the driving force behind the writ. Some feared that if the Chief Justice would end his term, the writ's existence would also become uncertain. It was also noted that the status of law would give the writ more authority. However, some others feared that *'[I]f during the term of this government the bill would be voted, the writ would be ruined.'*

3.9 What should be done to improve the situation?

When the IVFFM asked what was needed to improve the situation in the country, it was generally acknowledged by the Interviewees that continuous international pressure was a prerequisite to reach any improvement at all.

In various interviews, Interviewees expressed their hope to the IVFFM that pressure from the international community would intensify and that the IVFFM and other international fact finding missions would continue to visit the Philippines. Official expressions of concern, linking military aid to human rights records, pressure to implement the recommendations of UN Special Rapporteur Philip Alston, resolutions from foreign parliaments condemning the killings were all considered to be important actions by the international community.

A visit of UN Special Rapporteur on the Independence of Judges and Lawyers Leandro Despouy to the country would also be welcomed.

It was further noted that important recommendations of Philip Alston had not been implemented so far, including the abolishment of IALAG and transparency of the military's order of battle. In its most recent follow-up report on the Philippines, Philip Alston noted that *'[W]hile an important informal message was clearly sent to the military, most of the Government's formal actions in response to the Special Rapporteur's recommendations have been symbolic, and lack the substantive and preventive dimensions necessary to end the culture of impunity.'*²⁴⁹

All Interviewees agreed that a breakthrough of the impunity would be a necessary step in addressing human rights violations in the Philippines, *'otherwise it keeps on adding to itself'*. Curbing impunity would obviously require that perpetrators were arrested and prosecuted. However, the various comments as how to reach that, made it clear that a culture of change is needed. As one Interviewee put it: *'[T]he extrajudicial killings are one manifestation of the problem with human rights in the Philippines'*.

The Philippine Commission on Human Rights acknowledged that a change of mind was necessary, especially within the police and the military, which could be achieved by human rights training and education. Human rights should also be promoted at all levels of society. Although the government would already have taken important measures in this regard, for instance, the establishment of the Presidential Committee on Human Rights, it also stated that the government *'must double-up its actions'*, adding: *'[W]e cannot expect it to be done overnight. We have to be patient'*.

Many Interviewees were of the opinion that a change in politics was needed. *'[I]t is important that a president should protect human rights.'* The IVFFM observed a lack of trust that such change would happen under the current government: *'[W]e need a change in politics but with GMA [President Gloria M..Arroyo] that is impossible'* and *'[A]fter GMA will be off in 2010 she will not dictate the military anymore'*.

Many also pointed to the need of judiciary reforms and the fact that human rights victims have lost faith in the criminal law system. As one representative of PAHRA noted: *'[W]e need judges*

²⁴⁹ Alston report 2009, par. 9, p. 5.

with integrity, popular support, conscience on ground level and moral courage. A lawyer said: *'[T]he rule of law should be respected. Now we can only count on the Supreme Court* and *'[T]he PNP, prosecution, ombudsman and some lower court judges are not independent enough*. It should not be possible anymore that judges were appointed by political bodies. The DoJ and the Office of the Ombudsman were also blamed to be passive.

Other much-heard recommendations were the need to pass a law on the principle of command responsibility, and technical assistance to human rights groups, such as preserving evidence, DNA technology and resources for these groups. This would improve witness protection outside the official governmental witness protection program.

4. FINDINGS AND CONCLUSIONS

Before summarizing its findings and conclusions with respect to the impact of the government's initiatives on the position of lawyers and judges, the IVFFM would first like to emphasize that if extrajudicial killings are to be stopped once and for all, it must start with the President who should consistently and at all levels condemn the killings and pursue structural reforms to materialize a cultural change. Such change is necessary to address the underlying causes of the killings which seem to be deeply entrenched in institutional beliefs.

Since the first international fact finding mission of lawyers and judges in June 2006, President Arroyo has indeed publicly condemned extrajudicial or politically motivated killings and repeatedly stated that her administration is working hard on putting an end to these killings.

However, the IVFFM is deeply concerned about the gap between what the government on the one hand has said it has been doing to address the extrajudicial killings, and on the other hand the actual results of its initiatives, as well as about the lack of the prerequisites for solving a problem of this magnitude. It takes time and – as pointed out by Chief Justice Puno - requires the political will to sometimes take the unpopular stance in order to protect human rights and uphold the right to life. Above all, the government's initiatives need the support of its citizens at all levels and to gain this support, its citizens must have faith in the government's good will to solve the problem however great the cost.

To solve the issue of extrajudicial killings and to prevent the same effectively, the government has been urged to follow several concrete recommendations, including to bring all perpetrators to justice and to create an independent, credible and impartial investigative body to investigate the extrajudicial killings.

The government welcomed all recommendations as well as all support in resolving extrajudicial killings. Although the government has ordered, indeed, a range of initiatives to various departments and offices to follow up national and international recommendations, it has not sufficiently implemented substantive and preventive measures necessary to materialize the recommendations, if materialized at all. This is what happened, for example, with most of the Melo Commission's recommendations.

The government further rejected some crucial recommendations, including the one to address the root causes of the issue of extrajudicial killings in the context of the appropriate reform of the judiciary and the security forces.

Nevertheless, the government claimed to be very successful in addressing the issue: the number of extrajudicial killings would have declined significantly, while prosecutions are up.

The IVFFM found, however, that lawyers and judges in the Philippines are still threatened, intimidated and killed as a consequence of which they encounter difficulties in carrying out their legal profession. Although the exact number of lawyers and judges that has been killed since the first mission in June 2006, could not be determined, it is undisputed that in the period 2007/2008 at least nine lawyers and three judges were killed. After its mission, the IVFFM learnt that a fourth judge was killed on December 7, 2008.

Lawyers also fear for being silenced by fabricated charges. It seems that activists are increasingly facing questionable criminal charges which are produced through the subversion of court procedures and rules on evidence. The IVFFM was informed that now for the first time also a fabricated charge against a human rights lawyer was filed.

The IVFFM is concerned about these reported developments. Fabricated charges, using the courts to target activists, as well as the continuous threats, intimidation and other forms of harassment, undermine the rule of law in the Philippines. Even if these kind of cases are later in court dismissed, the accused is always hampered in his work, since the warrants of arrest are reportedly always for non-bailable offences; he or she will be in jail or forced to go in hiding. No (substantive) damage money is paid afterwards. For the constitutional state to function properly, it is essential for lawyers and judges to be able to practice law freely and independently.

With respect to the impact of the government's measures on the position of lawyers and judges, the IVFFM has reached the following findings and conclusions:

1. Contrary to its 2006 position, the government acknowledged that profession related killings of lawyers and judges (hereinafter 'these killings') are a serious problem.
2. The government has taken a range of initiatives to protect and secure lawyers and judges. Most government initiatives were initiated and (partly) financed by the Supreme Court or the Committee on the Security of Judges and focus mainly on the security of judges.
3. Despite these protection and security measures, lawyers and judges still fear for their lives or for being silenced by fabricated charges.
4. As of today, lawyers and judges are subject to (death) threats, intimidation, surveillance and other acts of harassment. Some of them are labelled as 'enemy of the state', especially lawyers who represent clients who are accused of being a supporter or a member of the National People's Army (NPA).
5. As a result of the foregoing, lawyers and judges are still increasingly hampered in carrying out their legal profession.

6. Although the number of these killings has declined, they still occur; it must be emphasized that every killing is one to much.
7. The number of and the reasons for this decline are not undisputed. The IVFFM has not been able to establish to what extent the government's measures contributed to this decline.
8. The Philippine government claims to have taken firm measures to address the problem of extrajudicial killings. Indeed it has established various Task Forces. Human rights awareness programs were also issued, which must be welcomed. Nevertheless, in terms of investigation and prosecution of the perpetrators, preventing other human rights violations related to the killings and institutionalizing or implementing necessary structural reforms, these measures have not led to visible results.
9. Apparently only 1 (one) person has been convicted for these killings and this occurred in 2006. So impunity still seems to be the rule rather than the exception.
10. In the cases that were investigated by the first mission in 2006, little or no progress has been made so far. In many other cases – also in cases on trial - the accused are still at large or not yet identified (John Does) or cases are cold cases, which means that there has been no development or progress for more than a year.
11. So far, the authorities have failed to analyze the killings of lawyers and judges in the context of other killings that have occurred in the Philippines since 2001, including the killings of members of leftist groups.
12. There seems to be little or no coordination between the various Task Forces and agencies concerned; for instance, different data were seen in their presentations.
13. It has also remained unclear how the establishment of the various Task Forces has contributed to address the other identified reasons for the failure to investigate and prosecute extrajudicial killings effectively.
14. Witnesses and family members of slain lawyers and judges are still hesitant to come forward out of fear for their lives and distrust of the authorities.
15. The IFVVM observed a lack of trust among lawyers, judges, their relatives and civil society organizations as to whether the government is sincere in addressing the problem of these killings. Solving this problem clearly needs broad support of all layers in society.
16. The Melo Commission stated that *'the circumstances clearly show that such killings (...) is pursuant to an orchestrated plan by group or sector with an interest in eliminating*

the victims (..). The governmental measures merely focus on protection and security of lawyers and judges, where they should also address the underlying causes.

17. The willingness to investigate upon serious allegations of involvement of state agents in these killings is still lacking by the governmental authorities concerned. It would increase their credibility, if the authorities would successfully investigate accusations of extrajudicial killings perpetrated by members of the military or other state agents.
18. The IVFFM observed that according to the ruling opinion in the Philippines the principle of command responsibility cannot be used in criminal cases. The government has not followed the Melo Commission's recommendation to propose legislation in this regard.
19. Although the government said that it looked forward to actual concrete programs of partnerships between the Philippines and the EU, it has still not signed the Memorandum of Agreement necessary to implement the EU technical assistance program.
20. The initiative of the Supreme Court to introduce the Writ of Amparo must be welcomed. As previously explained in paragraph 3.8 of this report it is highly appreciated and broadly supported. A further development in terms of implementation and enforcement is needed to make the Writ more effective.

5. RECOMMENDATIONS

It is the primary duty of the Philippine government to protect the life of its citizens. The government is also legally obliged to take steps to ensure the compliance with all other human rights and to investigate and prosecute perpetrators of violations thereof.

In order to stop the killings, threats and harassment of lawyers and judges, the IVFFM calls on the Philippine government to:

1. consistently condemn all forms of attacks against lawyers and judges publicly, at all levels and in strong terms;
2. immediately further enhance steps taken to protect the safety of lawyers and judges, which steps should include the prosecution of alleged perpetrators with urgency and fervor;
3. fully comply with the Basic Principles on the Role of Lawyers, in particular articles 16 and 17, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990;²⁵⁰
4. address the underlying root causes of the extrajudicial killings effectively and to leave no stone unturned in investigating the serious allegations that its own military forces are involved in the killings;
5. create and fully support an independent, credible and impartial body, i.e. not under the control or the influence of the government, composed of members selected exclusively from nominees from lawyers organizations, civil society, the Church and the like in a transparent way, who are known for their human rights record, independency and integrity; this civilian investigative body must be entrusted with the necessary investigative and prosecutorial powers to investigate promptly, impartially and effectively - under international supervisory mandate - all reports and complaints against state security agents with respect to extrajudicial killings, threats and other

²⁵⁰ Article 16 reads as follows: '*Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.*'

Article 17 reads as follows: '*Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.*'

forms of harassment; the recommendations of this investigative body should be immediately followed by the government.

6. fully implement a framework within which the pattern of extrajudicial killings can be stopped in accordance with the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Declaration of Basis Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly in Resolution 40/34 of 29 November 1985;
7. immediately use the principle of command responsibility as a basis for criminal liability of perpetrators; if and to the extent that this principle cannot be used within the current applicable legal framework in the Philippines, certify as urgent before Congress legislation on the principle of command responsibility in line with the Melo Commission's recommendations;
8. immediately sign and implement the Memorandum of Agreement with the European Union regarding the EU technical assistance program in the field of police investigation and prosecution, human rights awareness and judiciary;
9. fully comply with requests of International bodies such as the UN Special Rapporteurs to visit the Philippines and carry out fact finding missions and to fully support these missions and follow its recommendations;
10. take all other measures needed to end the culture of impunity and to restore the people's faith in the functioning of the constitutional state and the rule of law.

LIST OF ANNEXES

Please find the following annexes on the Lawyers for Lawyers website:
<http://www.advocatenvooradvocaten.nl/cms/content/view/29/31/>

- Annex 1: Mission Statement

- Annex 2: Initial Findings of the International Verification and Fact Finding Mission 2008

- Annex 3: Interviews with representatives of the Philippine executive and legislative branch, the judiciary, lawyers, judges, lawyers groups and civil society organizations

- Annex 4: Founding document of TF Judges, Prosecutors and IBP Lawyers

- Annex 5: NBI Presentation to Lawyers for Lawyers, 'Addressing the Security Concerns for Philippine Judges', November 11, 2008.

- Annex 6: Briefing for Dutch Lawyers for Lawyers Foundation, November 10, 2008 ("PNP Initiatives")

- Annex 7: Philippine National Police Human Rights Development Program ("PAMANA")

- Annex 8: '*Strict adherence to the doctrine of command responsibility*', signed by Hermogenes C. Esperon Jr., General AFP, February 4, 2007.

LIST OF SOURCES

In addition to the testimonies, the Annexes 1 to 8 and other documents provided by the individuals, agencies and organizations the IFFM has interviewed, the IFFM has also made use of the following public sources:

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- International Covenant on Civil and Political Rights and its Protocols

Laws

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- Party-List System Act [RA 7941]

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- LAWASIA Statement on Violence against Judges and Lawyers in the Philippines – issued November 7, 2005, available at <http://www.lawasia.asn.au>
- Lawyers' Rights Watch Canada, available at <http://www.lrwc.org>
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