

## **Human Rights Report - Davao Death Squads**

### ***Submission to Leila de Lima, Chairman of the Commission on Human Rights***

#### **Summary**

The purpose of this report is to highlight the need for further investigation and, critically, action in light of the numerous extrajudicial killings occurring in Davao city. It contends that, considering these repeated killings which have been taking place since 1998 and seem to be increasing as well as the apparent lack of convictions, there are egregious breaches of human rights occurring.

These include breaches of the right to life, the right to a fair trial and the presumption of innocence, the right to an effective remedy and the prohibition of the execution of minors.

Further, this report contends that Mayor Rodrigo Duterte should be held accountable for neglect of duty under the doctrine of command responsibility due to his conduct in endorsing the killings and failure to take corrective steps over the past 11 years.

#### **1. Background**

##### **1.1 Davao Death Squads**

As noted by Philip Alston in his ‘Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions’ (“**Alston’s Report**”)<sup>1</sup>, it is common place that there is a death squad known as the “Davao Death Squad” (“**DDS**”) which operates in Davao City.

These death squads consist of men on motorcycles who will either gun down or stab victims ranging from minors accused of petty theft to adults involved with the Davao

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<sup>1</sup> Philip Alston, “Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Mission to the Philippines (12-21 February 2007)”

drug trade<sup>2</sup>. One notable fact which points to official sanctioning, as emphasised in Alston's Report<sup>3</sup>, is that these perpetrators almost always never wear disguises and the victims are warned before their death that continued offences will bring about their execution.

Between 1998 to February 2007, there were 553 extrajudicial executions by the DDS<sup>4</sup>, while recent figures have quoted the current figure of executions as 814<sup>5</sup>. Despite the publication of Alston's Report, which heavily criticized the killings and lack of government action, the killings seem to have increased. In 2006 65 executions occurred, however, this relatively low number proved the exception when in 2007 116 were recorded and again in 2008 when 124<sup>6</sup> were recorded.

Mayor Rodrigo Duterte has on many occasions endorsed these extrajudicial killings, publicly stating that the victims deserved to die because of their (suspected) criminal connection. The following is a list of his quotations when appearing before the 'multisectoral dialogue on the issue of summary killings in Davao City'<sup>7</sup>:

- "If you are doing an illegal activity in my city ... you are a legitimate target of assassination";
- "If you give drugs to my children, I will not go to the police and report you. What I will do is to grab a gun and go to you and kill you. If my daughter is raped, I will not go to the NBI, what I will do is kill you" (sic);
- (if you are a criminal resisting arrest, I will order the police to) "shoot you and aim for your head to make sure that you are dead"; and
- "I do not do extrajudicial killings ... (but) when I was voted by the people to become the mayor, I promised them to restore peace and order in the city ... by law, I am supposed to provide security to the people".

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<sup>2</sup> Alston's Report p17

<sup>3</sup> Alston's Report p16

<sup>4</sup> Alston's Report p44

<sup>5</sup> Inquirer Mindanao, "Where crime suspects live dangerously" by Jeffrey M. Tupas, 15 February 2009 A15

<sup>6</sup> Inquirer Mindanao, "Where crime suspects live dangerously" by Jeffrey M. Tupas, 15 February 2009 A15

<sup>7</sup> Inquirer Mindanao, "Where crime suspects live dangerously" by Jeffrey M. Tupas, 15 February 2009 A15

## **1.2 International and Domestic Human Rights Law**

As a founding member of the United Nations and signatory to all seven core human rights treaties, the Philippines has an extensive human rights tradition. Specifically, the Philippines is a signatory to the following treaties:

- International Covenant on Civil and Political Rights (“**ICCPR**”) and both the Optional Protocols;
- International Covenant on Economic, Social and Cultural Rights;
- International Convention on the Abolition of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Racial Discrimination Against Women and the Optional Protocol;
- Convention on the Rights of the Child and both the Optional Protocols on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography;
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- International Convention on the Protection of All Migrant Workers and Members of their Families; and
- Geneva Convention of 1947.

Most of these international law rights have been enshrined in the 1987 Constitution of the Republic of the Philippines (“**Constitution**”) at Article III and Article XIII. The rights applicable in the present instance include:

- Right to life;
- Right to a fair trial and the presumption of innocence;
- Right to an effective remedy; and
- Prohibition of the execution of minors.

## **2. Breaches of Human Rights**

### **2.1 Right to life**

The right to life in international law is contained in:

- Article 3 of the Universal Declaration of Human Rights (“UDHR”), “Everyone has the right to life, liberty and security of person”; and
- Article 6 of the ICCPR, “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”.

These principles have been integrated into Philippine law in the Constitution at Article III<sup>8</sup> Section 1, “No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws”.

It is submitted that the extrajudicial executions occurring in Davao City constitute a breach of this right to life. Specifically, the reported 814 executions<sup>9</sup> show that this human right has been breached consistently since 1998. The key fact to note is that in many cases, victims were warned beforehand that their continued behaviour would result in death and this, along with official sanctioning of these killings by Mayor Duterte and the subsequent lack of convictions resulting from these numerous killings suggest that they are a state sponsored deprivation of the right to life and denial of equal protection of the law.

Incontrovertibly, the weight of evidence suggests that the right to life in both international and Philippine law is being breached by these numerous and un-prosecuted killings occurring as a result of alleged criminal offences. As Mayor Duterte has stated on numerous occasions, he believes (suspected) criminals are legitimate targets for assassination.

## **2.2 Right to a fair trial and the presumption of innocence**

The right to a fair trial and the presumption of innocence in international law is contained in:

- Article 7 of the UDHR, “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection

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<sup>8</sup> All references to the Constitution will hereafter denote sections in Article III unless mentioned otherwise

<sup>9</sup> Inquirer Mindanao, “Where crime suspects live dangerously” by Jeffrey M. Tupas, 15 February 2009 A15; or at the least, 553 executions as reported in Alston’s Report

against any discrimination in violation of this Declaration and against any incitement to such discrimination”; and

- Article 14 of the ICCPR, “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law... Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law”.

These principles have been integrated into Philippine law in the Constitution at Section 14, “No person shall be held to answer for a criminal offense without due process of law ... the accused shall be presumed innocent until the contrary is proved”.

Following on from 2.1 above, the Mayor suggests that these killings were justified as the deceased were criminals. If this is the case, and the killings have occurred as a result of official direction (which the evidence<sup>10</sup> strongly suggests as the case), the killings have thus consisted of ‘summary justice’ where persons were executed without trial. This fundamentally undermines the presumption of innocence and, as evidenced by the Mayor’s quotation above that he will order police to shoot suspected criminals in the head if they resist arrest, is indicative of an overall lack of regard for the right to a fair trial and the presumption of innocence.

Therefore, the 814 deaths since 1998 attributed to the DDS<sup>11</sup> evidence a continued and egregious breach of the right to a fair trial and the presumption of innocence under both international and Philippine law.

### **2.3 Right to an effective remedy**

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<sup>10</sup> Alston’s Report p17, “One fact points very strongly to the officially-sanctioned character of the killings: No one covers his face”

<sup>11</sup> Inquirer Mindanao, “Where crime suspects live dangerously” by Jeffrey M. Tupas, 15 February 2009  
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The right to an effective remedy for acts violating human rights in international law is contained in:

- Article 8 of the UDHR, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”; and
- Article 2 of the ICCPR, “Any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any persons claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy”.

It is submitted that a total lack of convictions for the extrajudicial executions consists a breach of this right and a failure of the Philippine government to meet its obligations under the ICCPR, as a signatory to the UN Charter, and as a recognized state bound by customary international law<sup>12</sup>. A right to an effective remedy cannot be effective if the large majority of cases remain unsolved and witnesses are afraid to come forward to due fears for their own safety<sup>13</sup>. That is, any apparent remedy offered such as the right to charge an accused by lodging a complaint with the prosecutor is ineffective and merely a sham. It is farcical to suggest that the unsolved nature of the 814 deaths rests with the reluctance of witnesses to come forward, rather, this points more strongly to the ineffectiveness of both the witness protection laws and failure of local law enforcement to implement it<sup>14</sup>.

#### **2.4 Prohibition of the execution of minors**

The prohibition of the execution of minors is contained in Article 6 of the ICCPR, “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age”.

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<sup>12</sup> It is asserted that Art 8 of the UDHR has gained the status of customary international law

<sup>13</sup> Alston’s Report p17

<sup>14</sup> *ibid*

This obligation is embodied in Philippine law in Section 22 Article 4 of the Revised Penal Code which states, “The (death) penalty shall be imposed in all cases in which it must be imposed under existing law, except when the guilty person is below 18 years”.

As reported<sup>15</sup>, 73 out of the 814 killings since 1998 have been of children. Following on from 2.1 and 2.2 above, the summary executions of these children due to their alleged (and unsubstantiated, due to their lack of a fair trial) criminal acts, evidences an egregious breach of the international obligation and Philippine Revised Penal Code prohibiting the execution of minors.

### **3. Attributing responsibility**

#### **3.1 Principles of command responsibility and Mayor Rodrigo Duterte**

The principles of command responsibility have been integrated into international law since the 1907 Hague Convention IV and X. They were then refined by Article 86(2) Additional Protocol 1 of the Geneva Convention. This article states that,

“The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from ... responsibility ... if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or about to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach”.

This doctrine is embodied in Philippine law in Executive Order No.226. This law at Section 1 states that,

“Any government official or supervisor ... shall be held accountable for ‘neglect of duty’ under the doctrine of command responsibility if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by

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<sup>15</sup> Inquirer Mindanao, “Where crime suspects live dangerously” by Jeffrey M. Tupas, 15 February 2009  
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others within his area of responsibility and, despite such knowledge, he did not take preventative or corrective action either before, during or immediately after its commission”.

Additionally, there is a presumption of knowledge at Section 2, “A government official ... is presumed to have knowledge of the commission of irregularities or criminal offences ... when the irregularities or illegal acts have been repeatedly or regularly committed within his area of responsibility”.

It is submitted that Mayor Rodrigo Duterte is, under the doctrine of command responsibility as stated in Executive Order No.226, accountable for ‘neglect of duty’.

Considering the presumption in Section 2, Mayor Duterte would have presumed knowledge of the offences taking place. These offences, or murders, have occurred 814 times over the past 11 years (since 1998) which necessarily characterises them as repeated and regular. All of them were within his area of responsibility in Davao City, in which he is the Mayor.

Further, Mayor Duterte has failed to take preventative or corrective action either before, during or after the commission of the offence. There has been an evident and unacceptable lack of convictions over the past 11 years and, as stated above at 1.1, he has even expressly encouraged these killings.

#### **4. Inadequacy of current measures**

##### **4.1 Task Force Usig**

Task Force Usig (“TFU”) was created in 2006 to investigate and prosecute those responsible for killings of ‘high risk personalities’. These include media personalities and political party members and, as such, do not cover the type of executions occurring in Davao City.

Notwithstanding the apparent ineffectiveness of TFU as noted in the Karapatan Report<sup>16</sup>, an alternative remedy is required. This is reinforced by the statistics which show that there has been no decline in extrajudicial executions in Davao City since TFU's creation in 2006. Rather, as already noted, the number of killings has increased.

#### **4.2 Melo Commission**

As per TFU, the Melo Commission's ("**Commission**") main purview was the investigation of extrajudicial executions against mainly 'high risk personalities'. The Commission is known for its recommendation in the Melo Report for further investigation of Major General Jovito Palparan<sup>17</sup>. While this is a positive step, NGOs have commented on its ineffectiveness, particularly with the failure of the Commission to adhere to Amnesty International guidelines on investigation and failure to earn the victims trust due to the involvements of the National Bureau of Investigation Director and Chief State Prosecutor, two parties thought to be aligned with these killings<sup>18</sup>.

Notwithstanding the assertions of these NGO groups, the statistics show that since the release of the Melo Report in 2007, the killings are still increasing and any remedial action taken in reliance of the report has been ineffective.

#### **4.3 Writ of Amparo and Habeas Data**

The Writ of Amparo and Habeas Data (Collectively, the "**Writs**") were declared by the High Court in September 2007<sup>19</sup> in an attempt to provide practical measures against enforced disappearances and extrajudicial killings. The Writs allow plaintiffs to require the military or government to produce missing persons, or access information about persons to allow them to rectify any incorrect personal data.

While these Writs have proved effective at procuring detained persons, it should be noted that these Writs are merely remedial and not preventative. So while Luicito Bustamante

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<sup>16</sup> Karapatan 2007 Human Rights Report ("**Karapatan**") p15

<sup>17</sup> <http://www.tingog.com/politics/the-melo-report.html>

<sup>18</sup> Karapatan p15

<sup>19</sup> Karapatan p17

was released just over two weeks after being taken into military detention at a checkpoint in Davao City, these Writs do not serve to prevent extrajudicial executions. Further, it has been shown that detained victims are often tortured<sup>20</sup> during the interim period (the Writs allow 10 days by which a military agency may respond), with little or no consequences to the offending officials.

As the Asian Human Rights Council noted in their report, “The Supreme Court’s adoption of this new rule is greatly welcomed, as it addresses practical remedies for victims seeking legal action, yet it also reflects the failure of established institutions—the legislative bodies—to take action”<sup>21</sup>.

Therefore, while the Writs are clearly effective remedies, they are by no means preventative as evidenced by the continued high number of executions occurring in Davao City.

## **5. CHR Investigation March 2009**

### **5.1 Moving forward**

A failure to enforce existing laws prohibiting summary executions, to hold those responsible accountable for their actions, and to investigate thoroughly all cases has led to a sense of impunity in Davao City. This along with the public support of Mayor Rodrigo Duterte makes it unsurprising that the number of killings is continuing to increase.

Your announcement<sup>22</sup> earlier this month that you will conduct an investigation into the extrajudicial executions in Davao City was extremely welcome, and we implore you to learn from the shortcomings of the previous measures. The noted measures were and are clearly insufficient and it is only the accountability in the form of convictions of all those responsible for the killings which will bring peace to the victims.

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<sup>20</sup> Karapatan p18

<sup>21</sup> <http://www.gmanews.tv/story/62409/Writ-of-amparo-not-enough--Hong-Kong-rights-group>

<sup>22</sup> [http://newsbreak.com.ph/index.php?Itemid=88889051&id=5850&option=com\\_content&task=view](http://newsbreak.com.ph/index.php?Itemid=88889051&id=5850&option=com_content&task=view)