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March 22, 2007

H.E. Gloria Macapagal-Arroyo
President of the Philippines
Malacañang Palace,
JP Laurel St., San Miguel
Manila, Philippines

Dear President Arroyo:

We read with interest the report of the Independent Commission to Address Media and Activist Killings, also known as the Melo Commission. The creation of this body and the public release of the report are important steps in a much-needed process to halt the surge in extrajudicial killings in the Philippines. Victims have included political activists, human rights defenders, and journalists.

We would like to take this opportunity to note some important findings of the report, raise concerns about its limitations, and provide constructive comments on the government's response to the report's recommendations.

Due to concerns about the Commission's independence and fears of retribution, eyewitnesses, victims, and human rights organizations did not participate in the hearings. However, the Commission was able to conclude that the killings have increased, that those killed were non-combatants, that the police have made little headway, and that the killings are "pursuant to an orchestrated plan by a group or sector with an interest in eliminating the victims."

Police and military representatives did participate, and presented views that demonstrated a degree of denial and lack of concern for accountability. Both the Deputy Director of the Philippines National Police (PNP), General Avelino Razon, Jr., and the Chief of Staff of the Armed Forces of the Philippines (AFP), General Hermogenes Esperon, attributed the killings to an internal purge by the communist insurgency. The statements of these officials helped underscore the initial findings of the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, that the military is "in a state of almost total denial" of the need to respond effectively to killings attributed to them. To its credit, the Commission also rejected the theory as "somewhat improbable" and unsupported by evidence. However, we are concerned by the persistent references to this discredited explanation by senior officers, as accountability is impossible if those in positions of responsibility do not acknowledge the problem.

Statements by the police and military officials also highlight the absence of effective legal mechanisms to hold perpetrators accountable. The case of recently retired Major General Jovito Palparan exemplifies the problem. Gen. Palparan has a history of public comments that seem to condone the killings of civilian activists, and there is evidence of increased extrajudicial executions in areas under his command. The police representative made it clear that he did not consider Gen. Palparan to have been under the jurisdiction of the PNP or Task Force Usig, the police commission that looked into the killings late last

year. However, under Philippine law, primary responsibility for investigating all criminal offenses lies with the police. The military chief of staff even used this fact as a basis for inaction, explaining to the Commission that “the AFP deemed it more appropriate to let the [police] task force conduct any investigation.” As a result, Gen. Palparan reportedly never faced more than an informal inquiry in which no records were kept.

The Commission’s role in getting official statements regarding extrajudicial killings on the record is a helpful one. The Commission also identified several factors contributing to the killings, including impunity for those responsible, and the labeling of lawful parties and organizations as “communist fronts” and “terrorists.”

However, the Commission itself repeats these patterns by quickly exonerating senior officials and hinting that NGOs did not cooperate because they may be communist fronts. Having rejected the “purge theory,” the Commission report notes that “only a group with certain military capabilities can succeed in carrying out an orchestrated plan of eliminating its admitted enemies.” However, the Commission then uses a rather restrictive finding that circumstantial evidence links “some elements in the military to the killings.” The Commission swiftly dismisses the possibility of high-level responsibility for the killings, stating emphatically: “there is no official or sanctioned policy on the part of the military or its civilian superiors to resort . . .” to extrajudicial executions. In fact, some NGOs and the U.N. Special Rapporteur have found a link between the killings and the military’s counter-insurgency strategies and operations.

Concerning civilian authorities, the inclusion of senior administration officials on the Commission, such as the National Bureau of Investigation Director and the Chief State Prosecutor, led to concerns that the body could not effectively evaluate the possible involvement of the executive branch of government in the killings. Although commissioners raised the President’s use of the term “all-out war” during their inquiries, they seem to accept the official explanation that this refers to support for social programs, not direct or indirect permission to engage in violence against civilians. Definitive statements clearing the government of responsibility reduce the likelihood of either a more robust inquiry or a change in policy and behavior at the highest levels of government.

The Commission also notes that when senior military officials label lawful parties and NGOs as communist fronts and “enemies of the state,” it increases that the likelihood that non-combatants may be targeted for violence. However, some passages of the report seem to accept this labeling. The report states, “If these activist groups were indeed legitimate and not merely NPA fronts, as they have been scornfully tagged, it would have been to their best interest to display the evidence upon which they rely for their conclusion that the military is behind the killings It would not even be unreasonable to say that their recalcitrance only benefits the military’s position that they are indeed mere fronts for the CPP-NPA and thus, enemies of the state.” The Commission’s use of the very language that it found to be fueling attacks on activists is puzzling.

In response to the Commission’s report, your government announced a six-point plan. The plan is a useful first step, and the focus on better witness protection and the role proposed for European Union investigators are particularly commendable. However, the plan does not adequately address the two priorities raised above: 1) the need to address the question of responsibility for policies and practices at every level of the civilian and military hierarchy. While further inquiry is needed, law enforcement agencies should not wait for new special courts or task force reports to properly investigate and prosecute those suspected of being involved in these killings; and 2) the need to end the practice of labeling political parties and NGOs as “enemies of the state” or “communist front organizations,” which places individuals a serious risk.

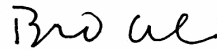
As you address these issues, we urge you to consider the principles and recommendations from outside bodies, including Amnesty International’s Fourteen Point Plan, and the U.N. Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (both of which are referenced in the commission report).

Public debate on the extrajudicial killings has increased significantly in the last year, and we hope that effective reforms can now begin to show an impact on the ground. Since the release of the report, activists have continue to come under attack, including Ms. Siche Bustamante-Gandinao, killed just days after providing testimony to the U.N. Special Rapporteur. We believe that unless you, your government, and the security forces make it a priority to end the killings and find justice for victims, little will change.

Thank you for your attention to this urgent matter.



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