



Republika ng Pilipinas
Komisyon ng Karapatang Pantao ng Pilipinas
(Commission on Human Rights of the Philippines)

**IN RE: EXTRA-JUDICIAL KILLINGS
ATTRIBUTED OR ATTRIBUTABLE
TO THE SO-CALLED DAVAO DEATH
SQUAD**

X-----X

RESOLUTION

I. BACKGROUND

Our Constitution enshrines some of the characteristics with which a civilized society is supposed to be imbued. Thus, no person is to be deprived of life without due process of law, nor is anyone to be denied the equal protection of the laws.¹ Yet in Davao City, bodies have been piling up.

According to news reports at the time, victims of the so-called Davao Death Squad (“DDS”) were “[children in conflict with the law], addicts, drug-pushers, thieves,”² with many of the younger victims being gang members, some having “police records for petty crime(s) (sic) or were drug couriers.”³ And “[t]he usual pattern of the killings involves motorcycle-riding men using the .45 caliber pistol as the weapon of choice to execute their victims,”⁴ although knives were coming into vogue.⁵

In relation to increased reports of extrajudicial killings in the country, the United Nations (“U.N.”) Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston (“Special Rapporteur”), visited the Philippines on 12-21 February 2007. On the existence of death squads in Davao, he stated in his report (“Report”):

“It is a commonplace that a death squad known as the ‘Davao Death Squad’ (DDS) operates in Davao City. However, it has become a polite euphemism to refer vaguely to ‘vigilante

¹ CONST., Art. III, Sec. 1.

² *Killing by Davao Death Squads Continues, Priest Laments*, Jan. 24, 2009, available at www.gmanews.tv/story/145724/Killing-by-Davao-death-squads-continues-priest-laments.

³ *Agence France-Presse, Death Squads Roam Davao—UN, Monitors*, Feb. 13, 2008, available at www.manilatimes.net/national/2008/feb/13/yehey/top_stories/20080213top6.html.

⁴ Froilan Gallardo/MindaNews, *CHR to Probe Vigilante Killings in Davao City; Duterte Vows Support to CHR Probe*, Feb. 15, 2009, available at www.mindanews.com/index.php?option=com_content&task=view&id=5922&Itemid=200.

⁵ *Id.* See also *Agence France Presse, Death Squads in Davao*, Feb. 13, 2008, available at www.francepress.com.

groups' when accounting for the shocking predictability with which criminals, gang members, and street children are extrajudicially executed. **One fact points very strongly to the officially-sanctioned character of these killings: No one involved covers his face.** The men who warn mothers that their children will be the next to die unless they make themselves scarce turn up on doorsteps undisguised. The men who gun down or, and this is becoming more common, knife children in the streets almost never cover their faces. [...]"⁶

Thus, pursuant to its mandate to investigate *motu proprio* human rights violations involving civil and political rights,⁷ and in light of the Report of the Special Rapporteur, the Fourth Commission of Commission on Human Rights ("Commission") resolved, barely a year after assuming office, to hold a public inquiry⁸ to determine the possible existence of a systematic practice of extrajudicial killings attributed or attributable to the DDS during the period of 2005-2009.⁹ These arbitrary executions during the said period were often consummated using methods that display similar and identifiable characteristics, targeted at specific individuals, as will be detailed below.

II. FINDINGS OF THE COMMISSION

A. EXISTENCE OF THE DDS

Rodrigo R. Duterte, then Davao City Mayor ("Mayor Duterte"), categorically denies the existence of the DDS,¹⁰ and denies that the city government sponsors any death squad.¹¹ If any government employee, military or police personnel were involved, they would be doing it on their own.¹² His denial of the existence of the DDS is shared by P/Supt. Antonio Ersando Rivera, Chief of the Investigation and Detection Management Division of the Davao City Police Office ("IDMD-DCPO");¹³ Danilo Dayanghirang, Davao City Councilor;¹⁴ Samson Buenaventura, a retired member of the Davao City Police Office ("DCPO") assigned to the Office of

⁶ U.N. Doc. A/HRC/8/3/Add.2, para. 39, 16 April 2008. See also HUMAN RIGHTS WATCH, "YOU CAN DIE ANYTIME" – DEATH SQUAD KILLINGS IN MINDANAO 22 (2009). "The perpetrators of targeted killings in Mindanao typically make greater efforts to conceal their weapons than their identity." Hereinafter HUM. RTS. WATCH.

⁷ CONST., Art. XIII, Sec. 18(1).

⁸ Public hearings were held at various venues in Davao City on 30-31 March, 17 April, 22 May, and 25 September, all in 2009. See Commission issuances Resolution CHR (IV) No. A2009-015 dated 12 February 2009; Order dated 13 April 2009; Supplemental Order dated 14 May 2009;

⁹ See Resolution CHR (IV) No. A2009-015.

¹⁰ TSN, March 30, 2009 (9:45am), p. 18.

¹¹ *Id.* at p. 19.

¹² *Id.* at p. 20.

¹³ TSN, April 17, 2009 (2pm), p. 16.

¹⁴ TSN, March 30, 2009 (9:45am), p. 81.

the Mayor since 1998;¹⁵ and Amilbansa T. Manding, Punong Barangay of 23-C.¹⁶

Jesus A. Versoza, then Director General of the Philippine National Police (“PNP”) is more cautious. He explains that there is no proof yet that there is indeed a DDS, although it may seem otherwise due to the volume and pattern of the killings.¹⁷ P/Chief Supt. Pedro S. Tango, Regional Director for the PNP in Region XI, notes that something “not ordinary” is happening insofar as killing is concerned, “...the frequency...is so alarming that some attention or much attention should be focused on these killings.”¹⁸ P/Sr. Supt. Benedicto R. Gorospe, Regional Chief of the Criminal Investigation and Detection Group (“CIDG”), PNP, in Region XI, also noticed the almost daily occurrence of vigilante-style killings.¹⁹

P/Sr. Insp. Ranulfo Cabanog, Station Commander of the Sta. Ana Police Station, Davao City, confirms there is vigilante-style killing,²⁰ as does P/Supt. Michael Fernando Dupria, Station Commander of Police Precinct No. 3, Davao City,²¹ particularly when victims are alleged police characters.²² According to the latter, the PNP is open to the possibility that there may be several death squads.²³ In fact, P/Chief Insp. Alden Bacara Delvo, Station Commander of the San Pedro Police Station, Davao City, claims that the PNP has busted crime groups involved in guns-for-hire, which are in existence.²⁴

Alexander Vidal, Punong Barangay of Talomo Proper, has heard of the DDS but has no idea of their identities or whereabouts and will not confirm its existence.²⁵ Rene Estorpe, Punong Barangay of Centro (Agdao), acknowledges that unidentified assailants can be hired killers, though he could not say it was the DDS.²⁶ He does not, however, rule out the possibility that they are vigilantes.²⁷

Only Isaac G. Robillo, Executive Judge of the Regional Trial Court (“RTC Executive Judge Robillo”) of Davao City, believes that there is a DDS.²⁸ Raul D. Bendigo, as Davao City Prosecutor, deals “only with evidence and facts” and, thus, cannot confirm the existence of the DDS.²⁹ But in his personal opinion, “there is too much smoke. There must be fire.”³⁰

¹⁵ TSN, April 17, 2009 (2pm), p. 19.

¹⁶ *Id.*, p. 48.

¹⁷ TSN, March 30, 2009 (2pm), p. 49.

¹⁸ *Id.*, at p. 93.

¹⁹ *Id.*, at p. 96.

²⁰ TSN, March 31, 2009 (10am), p. 20.

²¹ *Id.*, at p. 23.

²² TSN, September 25, 2009 (9am), pp. 22, 25.

²³ *Id.*

²⁴ TSN, May 22, 2009 (1:25pm), p. 83.

²⁵ TSN, April 17, 2009 (2pm), pp. 43, 45.

²⁶ *Id.* at p. 51.

²⁷ *Id.* at p. 52.

²⁸ TSN, March 30 (9:45am), p. 36.

²⁹ TSN, March 30, 2009 (9:45 am), p. 78.

³⁰ *Id.* at p. 80.

B. LISTS OF TARGETS

As per statements given before the Commission over the course of its public inquiries, it appears that local government officials and law enforcement personnel no longer deny the existence of lists containing the names of confirmed or suspected criminals at the barangay level. The source of such lists, however, is not clear. In fact, Human Rights Watch points to “police and barangay officials [collecting] the names of drug users, people with a criminal record, and the like,”³¹ as well as an “order of battle” from the Philippine Drug Enforcement Agency (“PDEA”).³²

Atty. Wendel E. Avisado, Davao City Administrator, confirms that the barangay chairpersons have lists, but only because parents of minors involved in petty crimes allegedly report their own children.³³ Mario Reta, Punong Barangay of Sasa, says that members of the Civilian Volunteer Organization (“CVO”) of his barangay give information as intelligence³⁴ or are used as intelligence,³⁵ and acknowledges that there is a list drawn up of students involved in drug use or drug-related activities,³⁶ which is given to the PNP.³⁷ This is refuted by Noel Sandoval, Chief of the CVO in Barangay Buhangin Proper, who claims that the lists of children who are problematic, meant to identify those whom the Barangay should set up programs for, are drawn up not by CVOs but by “higher ups” (*taas*),³⁸ though he failed to elaborate on who the latter are. Likewise, James C. Salvador, Punong Barangay of Buhangin Proper, acknowledges that there are many reports of summary killings in his barangay,³⁹ but denies his barangay officials give lists of targets.⁴⁰

The vast majority of barangay officials, it seems, get their lists from the PDEA, such as Edgar Ibuyan, Jr., Punong Barangay of Bankerohan;⁴¹ Paolo Duterte, Punong Barangay of Catalunan Grande,⁴² on whose list of 12 one was killed;⁴³ Robert Olanolan, Punong Barangay of 76-A Bucana,⁴⁴ who knows of only one on his list who was killed;⁴⁵ and Fulgencio Pavo, Punong Barangay of Kapitan Tomas Monteverde, who claims he uses his PDEA list

³¹ HUM. RTS. WATCH at 20.

³² *Id.* at p. 55.

³³ TSN, May 22, 2009 (9:30am), p. 61.

³⁴ TSN, April 17, 2009 (2pm), p. 27.

³⁵ *Id.*

³⁶ *Id.* at p. 30.

³⁷ *Id.*

³⁸ TSN, May 22, 2009 (9:30am), p. 103.

³⁹ TSN, April 17, 2009 (2pm), p. 20.

⁴⁰ *Id.* at p. 26.

⁴¹ TSN, May 22, 2009 (9:30am), p. 117.

⁴² *Id.* at p. 111.

⁴³ *Id.*

⁴⁴ *Id.* at p. 121.

⁴⁵ *Id.* at p. 122.

to work on case build-up,⁴⁶ though some people on his list were also killed.⁴⁷ SPO1 Vivencio Jumawan Jr., an official of the IDMD-DCPO, confirms the existence of the PDEA list and that some on the list were killed,⁴⁸ while P/Chief Insp. Joe Neil Estenzo Rojo, Station Commander of Police Station No. 8, Davao City, says he has a list of suspected criminals,⁴⁹ but does not mention the PDEA as its source.

At one of the public inquiries, P/Supt. Glenn De La Torre, Regional Director for the PDEA in Region XI, explained that there are no big time drug syndicates in Davao City, only street level pushers.⁵⁰ He also volunteered that he had a list of 43 suspects in drug-related offenses, (18 of which were in Davao City⁵¹) all 43 of whom were killed.⁵² He denies that PDEA had a hand in the deaths.⁵³

It must be noted, however, that nowhere in the Comprehensive Dangerous Drugs Act of 2002⁵⁴ is the creation or maintenance of such lists mentioned, whether under the powers of the Dangerous Drugs Board⁵⁵ or the PDEA.⁵⁶

In any case, it is established that lists of confirmed or suspected criminals are drawn up, and that some, if not all, of those on such lists somehow end up getting killed.

C. PATTERN OF KILLINGS

RTC Executive Judge Robillo confirms that, based on media reports, there is a pattern as regards the profile of the victims and style of perpetrators.⁵⁷ Renato Gatchalian, Punong Barangay of 8-A, acknowledges that the pattern involves victims with records and unidentified motorcycle-riding assailants,⁵⁸ the latter being confirmed by Robert Olanolan, Punong Barangay of 76-A Bucana,⁵⁹ who adds that the assailants wear bonnets.⁶⁰ P/Sr. Supt. Aaron Aquino, Chief, Regional Investigation and Detection Management at Camp Catitipan in Davao City, also confirms the use of motorcycles.⁶¹

⁴⁶ *Id.* at p. 133.

⁴⁷ *Id.* at p. 134.

⁴⁸ TSN, May 22, 2009 (9:30am), p. 144.

⁴⁹ *Id.* at p. 86.

⁵⁰ TSN, March 31, 2009 (10am), p. 34.

⁵¹ *Id.*, at p. 30.

⁵² *Id.*, at p. 36-37.

⁵³ *Id.*, at p. 39.

⁵⁴ REP. ACT NO. 9165 (Jun. 7, 2002).

⁵⁵ *See id.*, Sec. 81.

⁵⁶ *See id.*, Sec. 84.

⁵⁷ TSN, March 30, 2009 (9:45am), p. 35.

⁵⁸ TSN, April 17, 2009 (2pm), p. 55.

⁵⁹ TSN, May 22, 2009 (9:30am), p. 121.

⁶⁰ *Id.*

⁶¹ TSN, March 31, 2009 (10am), p. 19.

That victims have records or are allegedly involved in illegal activities has led to what Luzviminda Ilagan, GABRIELA Party-List Representative, refers to as the attitude that “the victims got what they deserved.”⁶² Former Davao City Mayor Benjamin De Guzman adds that some victims were shot on mere suspicion of involvement in illegal activity.⁶³

Again, only Mayor Duterte categorically denies that the killings are committed by a particular group, despite the use of motorcycles and .45 caliber handguns, as he claims that there are many firearms in the country.⁶⁴ His position, however, is not borne out by reality. As pointed out by Human Rights Watch, .45 caliber handguns are expensive,⁶⁵ especially for the youth gangs Mayor Duterte is so quick to blame.⁶⁶ This fact might be an indication of the “officially-sanctioned character of the killings,” to use the words of the Special Rapporteur.

D. STATISTICS

1. Records before the Commission

As per the records of the Region XI Office of the Commission, there were 375 recorded killings in the period of 2005 to 2008, of which 63% were allegedly involved in illegal activities.⁶⁷ However, a closer scrutiny of the records of cases before the Region XI Office of the Commission can narrow down the number of killings attributed or attributable to the DDS.

By filtering out deaths the motives of which were directly or indirectly established, and by limiting the profile of victims and manner of killing, the Commission finds that there were 206 deaths attributed or attributable to the DDS during the period of 2005-2009. Of that number, 107 victims had records or were suspected of involvement in illegal activities⁶⁸ (51.94%), which supports the statistical findings of the Special Rapporteur,⁶⁹ though the period from which taken and the aggregate numbers differs. 90 victims were either shot or stabbed by motorcycle-riding assailants (45.14%) and 19 victims were confirmed minors (9.22%), which matches the findings of the Human Rights Watch.⁷⁰

⁶² TSN, March 30, 2009 (2pm), p. 102.

⁶³ TSN, May 22, 2009 (9:30am), p. 40.

⁶⁴ TSN, March 30, 2009 (9:45am), p. 23.

⁶⁵ HUM. RTS. WATCH at 51-52.

⁶⁶ See TSN, March 30, 2009 (9:45am), p. 27.

⁶⁷ TSN, March 30, 2009 (9:45am), p. 12.

⁶⁸ Includes only cases of confirmed involvement in or suspected involvement in drug using/pushing, theft/robbery, firearms possession, gangs, and/or crimes against persons.

⁶⁹ See U.N. Doc. A/HRC/8/3/Add.2, para. 42, note 56, table 2, 16 April 2008. As per the Report, of the 553 victims killed between 1998 and 2007, 274 had records, or 49.54%.

⁷⁰ See HUM. RTS. WATCH at 27. “At least 9 per cent were children.”

As regards the manner of killing, of the 206 deaths attributed or attributable to the DDS, 157 were shot (76.21%), which again supports the statistical findings of the Special Rapporteur.⁷¹ On the other hand, 36 were stabbed (17.47%), or slightly higher than the statistical findings of the latter.⁷²

Finally, of the 206 deaths, 93 were confirmed shot or stabbed by motorcycle-riding assailants (45.14%), while the circumstances surrounding the other killings were not reported or not known.

2. Other Agencies/Organizations

The numbers submitted by the PNP differ vastly from those of the Commission, pointing to 135 unsolved killings in 2005;⁷³ 182 in 2006;⁷⁴ 193 in 2007;⁷⁵ 140 in 2008;⁷⁶ and 92 in 2009.⁷⁷ The large number is explained by the fact that all classes of killings are lumped together, whether murder or homicide,⁷⁸ without any distinction as to victim profile, manner of killing, or circumstances attending the killing.

Likewise, the Special Rapporteur provided different numbers, with 153 deaths attributed or attributable to the DDS in 2005;⁷⁹ 65 deaths in 2006;⁸⁰ 116 in 2007;⁸¹ and 269 in 2008.⁸² As noted above, although the sample periods and aggregate numbers differ, the statistical findings of the Commission and Special Rapporteur match on some key indicators.⁸³

Finally, Human Rights Watch reported that the figures for 2005 were higher than those for 2006,⁸⁴ the latter year having 65 killings.⁸⁵ Suspected DDS killings went up to 116 in 2007;⁸⁶ 124 in 2008;⁸⁷ and 33 in January of

⁷¹ See U.N. Doc. A/HRC/8/3/Add.2, para. 42, note 56, table 1, 16 April 2008. As per the Special Rapporteur, of the 553 victims killed between 1998 and 2007, 420 were shot, or 75.94%.

⁷² See *id.* As per the Special Rapporteur, of the 553 victims killed between 1998 and 2007, 65 were stabbed, or 11.75%.

⁷³ TSN, March 30, 2009 (9:45am), p. 58.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ TSN, March 30, 2009 (9:45am), p. 58.

⁷⁷ TSN, September 25, 2009 (9am), p. 4.

⁷⁸ See e.g. TSN, September 25, 2009 (9am), p. 4.

⁷⁹ U.N. Doc. A/HRC/8/3/Add.2, para. 42, note 56, 16 April 2008.

⁸⁰ *Id.*

⁸¹ U.N. Doc. A/HRC/11/2/Add.8, para. 18, 29 April 2009.

⁸² *Id.*

⁸³ See *supra* notes 69 and 71.

⁸⁴ See HUM. RTS. WATCH at 19, note 34.

⁸⁵ *Id.*

⁸⁶ *Id.* at 18.

⁸⁷ *Id.*

2009.⁸⁸ As with the Special Rapporteur, the statistical findings of the Commission and Human Rights Watch match on some indicators.⁸⁹

III. DISCUSSION ON HUMAN RIGHTS VIOLATIONS

The right to life is “*inherent by nature in every individual.*”⁹⁰

“*No one can be justly killed by design, except by way of legal punishment.*”⁹¹


A. RIGHT TO LIFE

The Universal Declaration of Human Rights states that “[e]veryone has the right to life, liberty, and the security of person.”⁹² Likewise, the International Covenant on Civil and Political Rights⁹³ (“ICCPR”) declares:

“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.”⁹⁴

The foregoing principles are embodied in our Constitution when it provides that “no person shall be deprived of life, liberty, or property without due process of law[.]”⁹⁵

To borrow the phrasing of the Inter-American Court of Human Rights (“IACtHR”), “the protection of the right to life has a dual connotation: first, no one may be arbitrarily deprived of his or her life, and second, the [ICCPR] requires that the State adopt the necessary measures to guarantee to all persons subject to its jurisdiction the inviolability of the right to life and the right to not be deprived of one’s life arbitrarily.”⁹⁶



⁸⁸ *Id.*

⁸⁹ *See supra* note 70.

⁹⁰ SIR WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, Vol. 1, Bk. 1, Ch. 1, 129 (1753).

⁹¹ HUGO GROTIUS, ON THE LAWS OF WAR AND PEACE, Bk. III, Ch. XI, Secs. I & II (A.C. Campbell trans.) (1625).

⁹² U.N. Doc. A/RES/217/A(III) (10 December 1948), Art. 3.

⁹³ 999 U.N.T.S. 171.

⁹⁴ Art. 6(1). 999 U.N.T.S. at 173.

⁹⁵ CONST., Art. III, Sec. 1.

⁹⁶ Report No. 101/01, *Case No. 10.247 et al., Extrajudicial Executions and Forced Disappearances of Persons, Peru*, para. 208 (October 11, 2001), in vol. ICCPR, Art. 2(2), 999 U.N.T.S. at 173.

B. RIGHTS OF CHILDREN

Allusions are made to the effect that, as far as minors are concerned, the Pangilinan Law is to blame. This is the view of Mayor Duterte,⁹⁷ who says the law must be amended⁹⁸ as minors are allegedly “out to cut each other’s throats.”⁹⁹ Atty. Melchor Quitain, Davao City Legal Officer,¹⁰⁰ and Danilo Dayanghirang, Davao City Councilor,¹⁰¹ agree.

This is unacceptable.

First, the ICCPR contains a provision on the special protection to be accorded to children on account of their status as minors,¹⁰² which is provided for in the Universal Declaration of Human Rights¹⁰³ and recognized by our Constitution when it provides that the State is supposed to defend the right of children to special protection from all forms of abuse and cruelty.¹⁰⁴ According to the Human Rights Committee, “the rights provided for in article 24 are not the only ones that the ICCPR recognizes for children and that, **as individuals, children benefit from all of the civil rights enunciated in the ICCPR,**”¹⁰⁵ which includes the right to life¹⁰⁶ and the right against arbitrary arrest or detention,¹⁰⁷ “except on such grounds and in accordance with such procedure as are established by law.”¹⁰⁸

And second, the Philippines signed¹⁰⁹ and ratified¹¹⁰ the Convention on the Rights of the Child¹¹¹ (“CRC”), and “[w]hen a State ratifies the [CRC], it takes on obligations under international law to implement it.”¹¹² “For rights to have meaning, effective remedies must be available to redress violations.”¹¹³

⁹⁷ TSN, March 30, 2009 (9:45am), p. 18.

⁹⁸ *Id.* at p. 29.

⁹⁹ *Id.* at p. 27.

¹⁰⁰ TSN, May 22, 2009 (9:30am), pp. 62, 64.

¹⁰¹ TSN, March 30, 2009 (2pm), p. 82.

¹⁰² Art. 24, 999 U.N.T.S. at 179. *See also* SARAH JOSEPH, et al., THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS AND COMMENTS, Sec. 21.01. (2004).

¹⁰³ *See* Art 25(2).

¹⁰⁴ CONST., Art. XV, Sec. 3(2).

¹⁰⁵ Human Rights Committee General Comment No. 17: Rights of the child (Art. 24) 04/07/1989. Emphasis supplied.

¹⁰⁶ Art. 6(1), 999 U.N.T.S. at 174.

¹⁰⁷ Art. 9(1), 999 U.N.T.S. at 175.

¹⁰⁸ *Id.*

¹⁰⁹ January 26, 1990.

¹¹⁰ August 21, 1990.

¹¹¹ 1577 U.N.T.S. 3.

¹¹² Committee on the Rights of the Child General Comment No. 5: General Measures of implementation of the CRC (Arts. 4, 42, and 44 para. 6), U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II), 27 May 2008, p. 422, para. 2.

¹¹³ *Id.* at p. 427 para. 24.

Under the CRC, “every child has the inherent right to life,”¹¹⁴ as well as the right against the unlawful or arbitrary deprivation of his liberty.¹¹⁵ “The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”¹¹⁶

The foregoing rights are embodied in the Juvenile Justice and Welfare Act of 2006¹¹⁷ which proscribes, among others, subjecting children in conflict with the law to torture¹¹⁸ and imposing upon them capital punishment.¹¹⁹ Thus, the Commission notes that executing a minor for sniffing rugby¹²⁰ is even more reprehensible because persons under 18 cannot even be prosecuted for such offense,¹²¹ much less be executed.

Likewise proscribed is the unlawful or arbitrary deprivation of liberty.¹²² Yet Mario Reta, Punong Barangay of Sasa, admits that when his CVOs “rescue” children in conflict with the law, the real intention is to arrest.¹²³

Contrary to the claims of its critics, children in conflict with the law do not just go scot-free. Under the law, these children are and must be made accountable, but in a system that takes into account their distinct circumstances as children and one that makes possible their rehabilitation and reintegration. Children 15 years old and below or above 15 but who acted without discernment, while criminally exempt, must undergo an intervention program.¹²⁴ And children above 15 who acted with discernment and have committed an offense the penalty of which is not more than 6 years must undergo a diversion program.¹²⁵ And if the children have been found to have committed serious offenses, they must undergo rehabilitation process while their sentences are suspended.¹²⁶ But if there is a failure to comply with the conditions of the rehabilitation program, the children may then be ordered to serve their sentence.¹²⁷ This system was meant to protect and promote the child’s best interest¹²⁸ and the security of and peace in the community.

Finally, the City Legal Officer must be reminded that he is supposed to be at the frontline of protecting human rights and prosecuting violations

¹¹⁴ Art. 6(1). 1577 U.N.T.S. at 47.

¹¹⁵ Art. 37(b). 1577 U.N.T.S. at 55.

¹¹⁶ *Id.*

¹¹⁷ REP. ACT NO. 9344.

¹¹⁸ *Id.*, Sec. 5(a).

¹¹⁹ *Id.*, Sec. 5(b).

¹²⁰ Junivar Divan Canancia, 17, shot on 30 August 2009. Eduardo Pastolero, 16, stabbed by motorcycle-riding assailants on 04 December 2006.

¹²¹ REP. ACT NO. 9344 (Apr. 28, 2006), Sec. 58 *in rel.* PRES. DECREE NO. 1619 (Jul. 23, 1979), Sec. 2.

¹²² *Id.*, Sec. 5(c).

¹²³ TSN, April 17, 2009 (2pm), p. 29.

¹²⁴ REP. ACT NO. 9344, Sec. 6 (1st and 2nd pars.) in relation to Sec. 20.

¹²⁵ *Id.*, Sec. 6 (2nd par.) in relation to Sec. 23.

¹²⁶ *Id.*, Secs. 37 and 38.

¹²⁷ *Id.* Sec. 40, 1st par.

¹²⁸ *Id.* Sec. 2(b).

thereof,¹²⁹ and that he can investigate or cause to be investigated any local official for administrative neglect or misconduct in office.¹³⁰ He should focus on these duties instead of laying the blame on a law he apparently does not understand.


C. OBLIGATION TO PROTECT

Under the ICCPR, a State party undertakes “to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized [thereunder], without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹³¹

Interpreting a similar provision in the American Convention on Human Rights (“ACHR”),¹³² the IACtHR held that:

“Article 1(1) is essential in determining whether a violation of the human rights recognized by the [ACHR] can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized under the [ACHR]. **Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State**, which assumes responsibility in the terms provided by the [ACHR].”¹³³

Thus, “[t]he State has a legal duty to take reasonable steps to prevent human rights violations and **to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction**, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.”¹³⁴ Though the results need not be necessarily satisfactory, the investigation must be “undertaken in a serious manner and not as a mere formality preordained to be ineffective.”¹³⁵



¹²⁹ LOCAL GOV'T CODE OF 1991, REP. ACT No. 7160, Sec. 481(b)(4).

¹³⁰ *Id.*, Sec. 481(b)(3)(iv).

¹³¹ *Id.* at Art 2(1).

¹³² 1144 U.N.T.S. 123. *See* Art. 1(1), 1144 U.N.T.S. at 124.

¹³³ *Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Ser. C No. 4, para. 164. Emphasis supplied.

¹³⁴ *Id.* at para. 174. Emphasis supplied.

¹³⁵ *Id.* at para. 177.

D. INVESTIGATIONS

As far as resolution of such killings is concerned, it appears that, in 2009, there were witnesses in 11 of the 20 killings (55%), but only in 3 were descriptions of perpetrators given (15%). In 2008, there were witnesses in 10 of the 27 killings (37%) and no descriptions. In 2007, there were witnesses in 14 of the 32 killings (43.75%), but no descriptions were given while 5 refused to cooperate (15.62%). In 2006, there were witnesses in 23 of the 57 killings (40.35%), with 12 giving no description (21%) and 9 refusing to cooperate (15.78%). In 2005, there were witnesses in 36 of the 70 killings (51.42%), with 29 giving no description (50.87%) and 6 refusing to cooperate (10.52%).

Thus, for the period of 2005-2009, there were witnesses in 94 of the 206 killings (45.63%), of which 20 outright refused to cooperate (21.27%). Since the Commission records fail to disclose how many cases were solved on account of witness participation, the Commission cannot validate the claim of P/Chief Insp. Joe Neil Estenzo Rojo, Station Commander, Police Station No. 8, Davao City, who estimates that 30% of cases of killings are solved due to cooperation of witnesses.¹³⁶

As observed by the Commission during its public inquiry, there is an over-reliance of the DCPO on testimonial evidence, such that the lack of witnesses is often used as justification for stalled investigations.¹³⁷ Worse, a number of witnesses told Human Rights Watch that once at the crime scene, the police “often failed to take even the most basic steps, such as examining the body, questioning witnesses, or collecting and examining material evidence, including bullet casings.”¹³⁸ Instead, “the police pressured the family to identify the perpetrators, saying that otherwise the family would not be able to file a complaint.”¹³⁹ All of these run contrary to procedure laid down in the PNP Criminal Investigation Manual.¹⁴⁰

This is deplorable.

According to the European Court of Human Rights (“ECtHR”),

“The obligation to protect the right to life, read in conjunction with the State’s general duty to ‘secure to everyone within [its] jurisdiction the rights and freedoms defined in [the]

¹³⁶ TSN, May 22, 2009 (9:30am), p. 91.

¹³⁷ See e.g. statements of P/Sr. Supt. Apolinario, TSN, March 30, 2009 (9:45am), p. 59; P/Sr. Insp. Cabanog, TSN, March 31, 2009 (10am), p. 22; P/Supt. Rivera, TSN, April 17, 2009 (2pm), p. 12; P/Chief Insp. Delvo, TSN, May 22, 2009 (9:30am) p. 81; P/Chief Insp. Rojo, *id.* at p. 91; and PO2 Ayao, *id.* at p. 152. See also statements of CVO Chief Sandoval, TSN, April 17, 2009 (2pm), p. 25; Punong Barangay Laud, Jr., *id.* at p. 35; Punong Barangay Vidal, *id.* at p. 42; and City Administrator Avisado, TSN, May 22, 2009 (9:30am), p. 55.

¹³⁸ HUM. RTS. WATCH at 64.

¹³⁹ *Id.*

¹⁴⁰ See particularly Ch. 2, Para. 2.2.3(a)(3) and (c)(1)-(4) on the search for and treatment of evidence.

Convention', also requires by implication that **there should be some form of effective official investigation** when individuals have been killed as a result of the use of force. The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, **the authorities must act of their own motion**, once the matter has come to their attention. **They cannot leave it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures.**"¹⁴¹

As regards the manner of investigation, "[t]he authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including *inter alia* eye witness testimony, forensic evidence and, where appropriate, an autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death. Any deficiency in the investigation which undermines its ability to establish the cause of death or the person or persons responsible will risk falling foul of this standard."¹⁴²

Although involving a death alleged at the hands of State agents, the following disquisition by the ECtHR on the conduct of investigations is relevant. Thus:

"A requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, **a prompt response by the authorities in investigating a use of lethal force may generally be regarded as essential in maintaining public confidence in their adherence to the rule of law and in preventing any appearance of collusion in or tolerance of unlawful acts.**"¹⁴³

Likewise, "For the same reasons, **there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability** in practice as well as in theory. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next-of-kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests."¹⁴⁴

¹⁴¹ *Case of Hugh Jordan v. United Kingdom*, Application No. 24746/94, para. 105 (May 4, 2001). Emphasis supplied.

¹⁴² *Id.* at para. 107.

¹⁴³ *Case of Paksas v. Lithuania*, Application No. 34932/04, para. 70 (January 6, 2011). Emphasis supplied and internal citations omitted.

¹⁴⁴ *Id.* at para. 71. Emphasis supplied.

If indeed elements of the DCPO, particularly its Heinous Crimes Investigation Section, are involved with the DDS as alleged by some, then the same body accused of being indirectly complicit may not have the independence to conduct a meaningful investigation into killings attributed or attributable to the DDS. Thus, a different body, such as the National Bureau of Investigation (“NBI”), should be directed to investigate such killings.

Moreover, such an investigation should be guided by the U.N. Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions,¹⁴⁵ particularly the Minnesota Protocol, which recommends resorting to “an independent commission of inquiry or similar procedure [...] where a routine investigation is inadequate”¹⁴⁶ due to, among others, **lack of expertise; lack of impartiality; the apparent existence of a pattern of abuse; or complaints from the family of the victim about the above inadequacies.**¹⁴⁷

The African Commission on Human and People’s Rights (“AfrCHPR”) reminds us that “[i]nvestigations must be carried out by entirely independent individuals, provided with the necessary resources, and their findings [...] made public and prosecutions initiated.”¹⁴⁸ This is because, as explained by the IACtHR, any failure to investigate and prosecute those responsible for violations results in impunity.¹⁴⁹

However, although the investigative capabilities of the DCPO appear to be wanting, the Commission believes that the DCPO possesses adequate means to reduce the use of motorcycles in hits, as was evident at the close of the public inquiries six (6) months after they were begun.¹⁵⁰ Indeed, “those responsible for public order must make an effort in these types of operations.”¹⁵¹

E. COMMAND RESPONSIBILITY, DERELICTION OF DUTY

Mayor Duterte, aside from his NAPOLCOM deputization and control over the police force, heads the Peace and Order Council of Davao City,¹⁵² the funds of which are supposedly intended to deal with crimes and

¹⁴⁵ U.N. Doc. E/ST/CSDHA/12 (1991).

¹⁴⁶ *Id.*, Part III(D)(1)(b). Emphasis supplied.

¹⁴⁷ *Id.* Emphasis supplied.

¹⁴⁸ Communication No. 48/90, *Amnesty International v. Sudan*, para. 51.

¹⁴⁹ Report No. 59/01, *Cases 10.626 et al. Remigio Domingo Morales et al., Guatemala*, para. 153 (April 4, 2001). Internal citation omitted.

¹⁵⁰ See TSN, September 25, 2009 (9am), pp. 45-47.

¹⁵¹ AfrCHPR Communication No. 204/97, *Mouvement Bourkinabé des Droit de l’Homme et des Peuples v. Burkina Faso*, para. 43.

¹⁵² TSN, May 22, 2009 (9:30am), p. 48.

insurgency.¹⁵³ These funds, which are administered by the Mayor,¹⁵⁴ trickle down primarily to the police stations and barangay captains, who are the main recipients.¹⁵⁵

The principle of command responsibility “is an accepted notion in military or police structural dynamics,”¹⁵⁶ such that any officer of the PNP can be held accountable for neglect of duty under such principle “if he has knowledge that a crime [...] is being committed, or has been committed by his subordinates, [...] and, despite such knowledge, he did not take preventive or corrective action [...] during, or immediately after its commission.”¹⁵⁷ This principle is embodied in the PNP Reform and Reorganization Act,¹⁵⁸ which provides for the automatic inclusion in the investigation of the superior or supervisor of the personnel or units being investigated.¹⁵⁹

The Commission is likewise guided by international criminal law, which provides that “**a superior who is not a military commander or acting as a military commander may be held criminally responsible for crimes committed by subordinates under his or her effective authority and control**, as a result of his or her failure to exercise control properly over such subordinates, **where:**

- (i) **The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;**
- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) **The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”**¹⁶⁰

Mayor Duterte, as the local chief executive¹⁶¹ and deputized NAPOLCOM representative¹⁶² with general and operational control and supervision over the city police force,¹⁶³ has clearly disregarded information of alleged violation of the right to life committed in Davao City, and has not acted thereon, before or since the public inquiries of the Commission,

¹⁵³ *Id.*, p. 50.

¹⁵⁴ *Id.*, p. 51.

¹⁵⁵ *Id.*

¹⁵⁶ *Reyes v. Rural Bank of San Miguel (Bulacan), Inc.*, G.R. No. 154499, Feb. 27, 2004, 424 SCRA 135, 142.

¹⁵⁷ EXEC. ORDER NO. 226, Sec. 1 (Feb. 17, 1995).

¹⁵⁸ REP. ACT NO. 8551 (Feb. 25, 1998).

¹⁵⁹ *Id.*, Sec. 48.

¹⁶⁰ *See* Rome Statute of the International Criminal Court, Art. 25(b).

¹⁶¹ LOCAL GOV'T CODE OF 1991, REP. ACT NO. 7160, Sec. 455(a).

¹⁶² *Id.*, Sec. 455(b)(2)(v).

¹⁶³ *Id.*

thereby, at the very least, tolerating the commission of offenses, as defined and penalized in the Revised Penal Code.¹⁶⁴

In any event, criminal responsibility is incurred by anyone who “orders, solicits, or **induces the commission of a crime**”¹⁶⁵ or who “in any other way contributes to the commission of a crime by a group of persons acting with a common purpose.”¹⁶⁶ Mayor Duterte should bear this in mind since he admits saying that he would make Davao City the most dangerous city for criminals,¹⁶⁷ except that he claims he says so only in jest, to “uplift” the community.¹⁶⁸ One wonders if the community is uplifted because the statement means exactly what it does. Equally alarming to the Commission is that he justifies the foregoing statement and a similar one about killing human rights activists¹⁶⁹ by simply stating that “*ganun talaga ako*” (that’s the way I am).¹⁷⁰

Finally, while Mayor Duterte may claim that any government official involved with the so-called DDS would be doing so on his own, the fact remains that officials of the PNP have noticed the volume and pattern of the killings,¹⁷¹ to which Mayor Duterte seems to have paid no attention or has chosen to ignore and not have investigated.

IV. CONCLUSION

In light of the foregoing, the Commission concludes that in the period of 2005-2009, there was a systematic practice of extrajudicial killings, which can be attributed or attributable to a vigilante group or groups dubbed in the media as the Davao Death Squad.

These killings were selective: the victim was usually involved or suspected to have been involved in some type of illegal activity. The manner of killing was also distinct: the assailants were usually motorcycle-riding gunmen.

“[D]irect evidence, whether testimonial or documentary, is not the only type of evidence that may be legitimately considered ... circumstantial evidence, *indicia*, and presumptions may be considered, so long as they lead

¹⁶⁴ Art. 208, Revised Penal Code

¹⁶⁵ Rome Statute of the International Criminal Court, Art. 25(3)(b).

¹⁶⁶ *Id.*, Art. 25(3)(d). *See also* Statute of the International Criminal Tribunal for Rwanda, Art. 6(1): A person who planned, **instigated**, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in Articles 2 to 4 of the Statute shall be individually responsible for the crime. *See also* Statute of the International Criminal Tribunal for the Former Yugoslavia, Art. 7(1): A person who planned, **instigated**, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime. (Emphasis supplied)

¹⁶⁷ TSN, March 30, 2009 (9:45am), p. 22.

¹⁶⁸ *Id.* at p. 23.

¹⁶⁹ *Id.* at p. 31.

¹⁷⁰ *Id.* at p. 32.

¹⁷¹ *See supra* notes 17-19 and accompanying text.

to conclusions consistent with the facts.”¹⁷² Thus, the Commission points to the existence of a Davao Death Squad and its responsibility for the killings as described above.


And although there is dearth of evidence to support a finding of direct complicity on the part of the local police or local government officials, the Commission notes that there has been a systematic failure on the part of such local officials to conduct any meaningful investigation into said killings. The statistics of the PNP speak for themselves: according to P/Sr. Supt. Apolinario, in the brief period between January and August of 2009, there were 122 killings,¹⁷³ of which only 30 were allegedly solved,¹⁷⁴ making for a “success” rate of 24.59 % and leaving 75.04% of cases unsolved.

The continuing pattern of killings and the failure to conduct a meaningful investigation of such incidents can be construed as tolerance on the part of the authorities of the crimes heretofore described, thereby contributing to the climate of impunity.

V. RECOMMENDATIONS

“[I]t is not necessary to determine the perpetrators’ culpability or intentionality in order to establish that the rights enshrined in the Convention have been violated, nor is it essential to identify individually the agents to whom the acts of violation are attributed. **The sole requirement is to demonstrate that the State authorities supported or tolerated infringement of the rights recognized in the Convention.** Moreover, the State’s international responsibility is also at issue when it does not take the necessary steps under its domestic law to identify and, where appropriate, punish the authors of such violations.”¹⁷⁵

Thus, “the State can be held liable for violations committed by third parties when it can be shown that the State had knowledge of a real and immediate threat and failed to adopt reasonable measures to prevent it.”¹⁷⁶ And “[e]ven if the killings are not all the work of forces of the government, the government has a responsibility to protect all people residing under its jurisdiction.”¹⁷⁷



¹⁷² IACtHR Report No. 59/01, *Cases 10.626 et al., Morales et al., Guatemala*, para. 110 (April 4, 2001). See also IACtHR Report No. 101/01, *Cases 10.247 et al., Extrajudicial Executions and Forced Disappearances of Persons, Peru*, para. 183 (October 11, 2001).

¹⁷³ 85 cases of murder and 37 cases of homicide.

¹⁷⁴ See TSN September 25, 2009 (9am), p. 4.

¹⁷⁵ Report No. 59/01, *Cases 10.626 et al., Morales et al., Guatemala*, para. 119 (April 4, 2001). Internal citation omitted and emphasis supplied.

¹⁷⁶ IACtHR Report No. 25/09, *Case 12.310, Sebastião Camargo Filho, Brazil*, para. 80 (March 19, 2009).

¹⁷⁷ AfCHPR Communication No. 48/90, *Amnesty International v. Sudan*, para. 50. Emphasis supplied.

Finally, “[t]he institutionalization of human rights through impact assessments and an enhanced role for NHRIs could be further strengthened by **systematically integrating human rights into daily policy-making**, even in areas which, on their surface may seem to present little or no relationship to the fulfillment of human rights.”¹⁷⁸

Considering the foregoing and its mandate to recommend to Congress effective measures to promote human rights,¹⁷⁹ monitor the country’s compliance with international treaty obligations on human rights,¹⁸⁰ and request the assistance of any department, bureau, office, or agency,¹⁸¹ the Commission on Human Rights hereby **RESOLVES** to **RECOMMEND**:

1. That the Office of the Ombudsman investigate the possible administrative and criminal liability of Mayor Duterte for his inaction in the face of evidence of numerous killings committed in Davao City and his toleration of the commission of those offenses;¹⁸²
2. That a serious, impartial, and effective investigation into the facts and circumstances surrounding the deaths attributed or attributable to a so-called Davao Death Squad be conducted by the NBI or other independent task force¹⁸³ and that the Office of the Ombudsman¹⁸⁴ or Department of Justice¹⁸⁵ duly prosecute the persons responsible;
3. That such investigation include the possible omissions, negligence, and obstructions of justice on the part of the local chief executive, local government officials, and local police force;
4. That Congress review the grant to the city mayor of general and operational control and supervision over the city police force,¹⁸⁶ as well as his role to act as deputized NAPOLCOM representative;¹⁸⁷
5. That appropriate measures be taken by the local police to prevent any further killings fitting the pattern herein described, particularly with respect the use of motorcycles and loose firearms; and
6. That the Philippine Government, through the Department of Foreign Affairs,¹⁸⁸ update the incumbent U.N. Special Rapporteur on

¹⁷⁸ OLIVIER DE SCHUTTER, INTERNATIONAL HUMAN RIGHTS LAW – CASES, MATERIALS, COMMENTARY 787, para. 2.4 (2010).

¹⁷⁹ CONST., Art. XIII, Sec. 18(6).

¹⁸⁰ *Id.*, Sec. 18(7).

¹⁸¹ *Id.*, Sec. 18(9).

¹⁸² See TSN, April 17, 2009 (2pm), p. 14.

¹⁸³ See *supra* notes 111-115 and accompanying text.

¹⁸⁴ See generally The Ombudsman Act of 1989, REP. ACT NO. 6770.

¹⁸⁵ See generally Prosecution Service Act of 2010, REP. ACT NO. 10071.

¹⁸⁶ LOCAL GOV'T CODE OF 1991, REP. ACT NO. 7160, Sec. 455(b)(2)(v).

¹⁸⁷ *Id.*

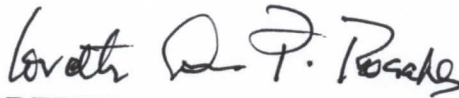
¹⁸⁸ ADMIN. CODE OF 1987, EXEC. ORDER NO. 292 Bk. IV, Tit. I, Ch. I, Sec. 3(4) *in rel.* Sec. 3(2).



Extrajudicial, Summary or Arbitrary Executions, Christof Heyns, of any development in the investigations herein recommended.

SO RESOLVED.

Done this 28th day of June 2012, Quezon City, Philippines.



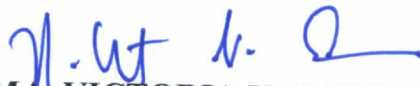
LORETTA ANN P. ROSALES
Chairperson

(On Leave)

CECILIA RACHEL V. QUISUMBING
Commissioner



NORBERTO DELA CRUZ
Commissioner



MA. VICTORIA V. CARDONA
Commissioner



JOSE MANUEL S. MAMAUAG
Commissioner