

Philippines: towards ensuring justice and ending political killings



Memorandum submitted to Her Excellency Gloria Macapagal Arroyo, President of the Republic of the Philippines, by Irene Khan, Secretary General of Amnesty International

14 September 2006

Introduction

On 15 August 2006, Amnesty International issued a report, *Philippines: Political Killings, Human Rights and the Peace Process* (AI Index: ASA 35/006/2006),¹ expressing grave concern at an intensifying pattern of political killings, mainly of members of legal leftist political parties and other leftist activists, which have taken place in the Philippines over recent years.

The report examined the context of the killings and their impact on a long-standing peace process with communist armed groups, and made a series of recommendations to restore respect for human rights by all sides involved in the conflict, particularly by taking steps to ensure that effective investigations lead to those responsible for the killings being brought to justice.

On 21 August, President Gloria Macapagal Arroyo announced the establishment of a special Commission of Inquiry, headed by former Supreme Court Justice Jose Melo, to investigate the killings and to make recommendations for remedial action, including appropriate prosecutions and legislative proposals.

Pledging to “break this cycle of violence once and for all,” President Arroyo stated, “I have directed [the Melo Commission] to leave no stone unturned in their pursuit of justice...the victims and their families deserve justice to be served.”

Subsequently President Arroyo invited the Secretary General of Amnesty International, Irene Khan, to meet in London (UK) on 14 September to discuss these issues in more detail. The Secretary General submitted this memorandum to the President as a basis for discussion for her consideration.

¹ See main report, and its summary, at: <http://news.amnesty.org/index/ENGASA350082006>

The memorandum contains three parts:

- A summary of key recommendations from Amnesty International's report, *Political Killings, Human Rights and the Peace Process*, issued on 15 August 2006.
- A summary of recent reports indicating that political killings are continuing to take place.
- Guidelines and key principles that Amnesty International considers would help ensure that the work of the Melo Commission of Inquiry gains wide public credibility and acceptance as independent, impartial and effective.

Amnesty International believes that by reflecting such guidelines and principles, the Melo Commission's work and eventual recommendations present an important opportunity for the introduction of substantial, durable measures that will strengthen respect for human rights and the rule of law in the Philippines - and put an end to patterns of political killings.

Part 1. Amnesty International's report on political killings, human rights and the peace process: key conclusions and recommendations

The number of killings of political and community activists in the Philippines, predominantly those associated with legal leftist or left-orientated groups has increased in recent years. The killings mostly carried out by unidentified men often wearing face masks who shoot the victims before escaping on motorcycles, have rarely led to the arrest, prosecution and punishment of those responsible.

The methodology of the attacks, including prior death threats and patterns of surveillance by persons reportedly linked to the security forces, the leftist profile of the victims and a climate of impunity which, in practice, has shielded the perpetrators from prosecution, have led Amnesty International to conclude that the attacks are not an unconnected series of criminal murders but constitute a politically-motivated pattern of killings. The organization remains gravely concerned that members of the security forces may have been directly involved in the killings, or else have tolerated, acquiesced to, or been complicit in them.

Amnesty International is concerned that existing serious flaws in the delivery of justice to the victims of such killings represents a failure by the government to fulfil its obligation under national and international law to protect the right to life of every individual in its jurisdiction. The organisation is also concerned that the killings have played a major role in the break-down of a protracted peace process and an accompanying human rights agreement, between the Government and the National Democratic Front (NDF), representing the Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA).

Amnesty International's 14-Point Program for the Prevention of Extrajudicial Executions, based on the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, provides a framework within which the pattern of political killings can be stopped. The organization urges the Government of the Philippines to implement the Program in full.

Given reports of continuing political killings, Amnesty International has made a number of recommendations, addressed to the government, international organisations, civil society organisations and the armed groups. A summary of key recommendations include:

A. Reassert Respect for Human Rights

Official condemnation: Consistently and at every level of government condemn all political killings.

Chain of command control: Prohibit orders from superior officers or public authorities authorizing, inciting or tacitly encouraging other persons to carry out unlawful killings, even through silence or failing to take action to investigate, and ensure that those in command exercise appropriate and effective control over those within their command.

Action against “death squads” and vigilantes: Prohibit and disband any “death squads”, private armies, vigilantes, criminal gangs and paramilitary forces operating outside the chain of command but with official support or acquiescence.

B. Guarantee the Administration of Justice

Investigation: Ensure that all complaints and reports of political killings are investigated promptly, impartially, independently, thoroughly and effectively. An independent and impartial body should exercise oversight to ensure investigations are conducted by the police and other investigative agencies in accordance with international standards.²

Prosecution: Ensure that those responsible for political killings are brought to justice in accordance with international standards of fairness.

Protection against death threats and other intimidation: Take action to fully implement the Witness Protection, Security and Benefit Act (RA 6981) in order to ensure safe, reliable and durable mechanisms guaranteeing the participation in the legal process of witnesses to political killings.

C. The Peace Process: ensure compliance with the Human Rights Agreement

All sides of the armed conflict should recommit to and ensure compliance with the 1998 Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL).

Respect for human rights the ground should be enhanced by taking steps to ensure the operation of the Joint Monitoring Committee of the CARHRIHL.

D. Action by other human rights institutions

National: The Deputy Ombudsman for the Military and Other Law Enforcement should conduct prompt, impartial and effective investigations of all reported political killings which should, as appropriate, lead promptly to recommendations to the Department of Justice to file criminal charges against those found responsible.

International: The Government of the Philippines should access the expertise of relevant UN special mechanisms by inviting the Special Rapporteur on Extrajudicial Executions, the Special Representative on Human Rights Defenders, and representatives of the Working Group on Arbitrary Detention to visit the Philippines.

² Including the Code of Conduct for Law Enforcement Officials; United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules); Basic Principles on the Independence of the Judiciary; Basic Principles on the Role of Lawyers; and Guidelines on the Role of Prosecutors.

Part 2. Reports of further political killings

Between January and June 2006, Amnesty International collated reports of 51 political killings, compared to 66 recorded in the whole of 2005. Between July and the beginning of September, Amnesty International received reports of at least 15 further killings.

Among attacks reported was that on Dr Constancio Claver and his wife, Alyce, on 31 July 2006. Constancio Claver is respected medical practitioner and provincial convenor of the legal political party *Bayan Muna* (People First). Alice was a *Bayan Muna* member and active of behalf of indigenous peoples communities with the Cordillera People's Alliance.

Early on 31 July, Dr Claver, Alyce Claver and their young daughter were on their way to drop off their older daughters at school in Tabuk, Kalinga. Two vans carrying unidentified assailants reportedly appeared on the sides of the highway and shot at their vehicle. Dr Claver received multiple gunshot wounds and Alyce received four gunshot wounds to the neck, head and shoulders. Their seven-year-old daughter was deeply traumatized by the event, and a female bystander was injured by stray bullets. Dr Claver and Alyce were taken to the Kalinga Provincial Hospital in Bulanao. Alyce Claver later died, while Constancio survived.

Attacks have continued following the establishment of the Melo Commission on 21 August. Victor Olayvar, a local leader of the leftist organization Bagong Alyansang Makabayan (BAYAN-New Patriotic Alliance) in Bohol was attacked while travelling by hired motorbike to Tagbilaran City, Bohol early on 7 September. Two men riding a motorcycle blocked the road and one reportedly shot Victor Olayvar several times at close range. He died shortly afterwards.

Prior to the attack, Victor Olayvar had reportedly been receiving death threats, and claimed he was under surveillance. At a local Peace Forum convened on 2 September, BAYAN members and other allied organizations expressed concerns to the local military unit over reports of an alleged military "hit list" which allegedly featured, among six others, Victor Olayvar's name.

Part 3: Investigating political killings, combating impunity and ensuring the delivery of justice

The Melo Commission

Established by Presidential Administrative Order No. 157, the duties and functions of the Independent Commission to Address Media and Activist Killings include the investigation of killings and the reporting to the President of "action and policy recommendations, including appropriate prosecution and legislative proposals if any, aimed at eradicating the root causes of extrajudicial executions and breaking such cycles of violence one and for all." The Melo Commission is empowered under the Administrative Code of 1987, *inter alia*, to summon witnesses, to take testimony or evidence relevant to its investigations, and to deputize the Armed Forces of the Philippines (AFP), the National Bureau of Investigation (NBI), the Philippine National Police (PNP), the Department of Justice (DOJ) and any other law enforcement agency to assist it in the performance of its duties.

Chaired by retired Supreme Court Justice, Jose Melo, the Commission is made up also of the Director of the NBI, the Chief State Prosecutor (DOJ), two representatives of civil society (a Regent of the University of the Philippines and a Bishop of the Roman Catholic Church), and a legal counsel. The government members of the Commission from the NBI and DOJ, are tasked in particular with prioritizing the prosecution of those responsible for the killings.

As the Commission begins its work, and noting concerns expressed by some sectors of civil society as to whether the Commission will be sufficiently independent, Amnesty

International highlights the following guidelines and principles which it believes will help ensure the credibility and effectiveness of its efforts and recommendations, both during its tenure and in the long term.

A. Fulfilling its mandate

i. Types of violations to be investigated

The Melo Commission should exercise its mandate to fully investigate reports of political killings whether committed by, or with the acquiescence or complicity of, government forces, or by the CPP-NPA or other armed groups. It should assess the information collected in light of relevant provisions of international human rights law and international humanitarian law, as well as relevant Philippine laws.

The Commission should recommend further full and impartial investigations into all suspected political killings that, by the end of its tenure, it has not had the time to inquire into, and to make recommendations for future inquiry and investigation as necessary.

Amnesty International also recommends that the Commission include in its investigations a critical analysis of all factors which have led to or facilitated these violations of international human rights law and international humanitarian law, such as institutional structures, policies and practices, and other factors.

ii. Period of operation

Although it is important to indicate a time limit for Commissions of Inquiry to end their operations and report on their findings, it is equally important to make that time limit a realistic one. Early reports suggest that the Melo Commission envisages that it may be able to complete its work by December 2006.

Amnesty International is concerned that such a time limit may prove insufficient. It may also make witnesses more hesitant to come forward as they may have doubts about the process being able to reach its final conclusion. At the same time, the organization recognises that an overly extended period of operation risks losing the public's attention and political momentum.

To some extent, the problem of length of time can be addressed by frequent public reporting and interim conclusions and recommendations. Considering the length and complexity of its investigation, Amnesty International recommends that the Melo Commission publishes regular and frequent interim reports outlining progress made and obstacles encountered. This would help establish and maintain effective communication with the Philippine authorities, civil society organizations and the general public.

B. Powers

i. Broad investigatory powers

Where the Melo Commission considers the police or other investigative agency to have made an inconclusive or otherwise unsatisfactory investigation, it should undertake a prompt, thorough, effective and impartial investigation and not be hampered or otherwise inhibited by following the conclusions of a previous investigation. Investigations should not simply constitute an examination of an existing police investigations file.

Amnesty International believes the credibility of its investigations will be significantly enhanced to the extent that the Commission can rely, where necessary, on its own investigators. Many independent commissions undermine themselves and lose credibility by asking the alleged violators of human rights - such as the armed forces or the police - to investigate allegations of violations of human rights themselves, rather than the independent commission making an investigation itself. Investigators retained by the Melo Commission, should, as necessary, have access to effective and practical training – especially the sharing of skills and best practice from colleagues in the Philippines and abroad. Frequently

investigations undertaken with good will fail because of a lack of training in effective investigative procedures and skills. Investigations conducted by Commission investigators should be informed by knowledge of international human rights law so that they can identify and understand legal issues regarding their investigation

The Melo Commission should be able to count on the services of experts in the relevant fields including psychology, pathology, forensic anthropology, and ballistics. In particular, forensic expertise should be on hand at short notice so that effective investigation and recording of post mortem investigations can be done efficiently, increasing the likelihood of bringing perpetrators to justice. The methodology to be employed in autopsies should conform to the United Nations Principles relating to the effective prevention and investigation of extralegal, arbitrary or summary executions.³ Where the investigation is dealing with unlawful killing, the Commission should have the authority to prevent burial or other disposal of the body or bodies until and adequate post-mortem examination has been carried out.

C. Operations and procedures

i. An open and public inquiry

As a matter of principle, all aspects of the work of a commission of inquiry should be made public. So far as possible, the media and public should be given access to the proceedings and to the evidence on which the Melo Commission bases its findings.

However, the openness of the investigation and of the information it obtains needs to be balanced against the confidentiality of personal information. The media and public may be excluded from all or part of the proceedings, the identities of victims and witnesses may be withheld, and material may be omitted from the Commission's report at the request of individual victims or witnesses, or if the Commission considers that such measures are necessary to protect them.

The Melo Commission may gather information by taking written or oral statements and by conducting hearings. It may conduct both public and confidential hearings. As a general rule, the hearings should be opened to the public. However, the Commission may decide to hold a hearing *in camera* (i.e., to make it confidential), or to prevent one or more individuals from being present, if the security of alleged perpetrators, victims or witnesses is deemed to be threatened. In this case, it may also decide to keep confidential any information relating to the proceedings. The Commission must, however, permit any victim who has an interest in the proceedings concerned to be present.

ii. A victim-centred approach

International standards on the treatment of victims of crimes under international law and other serious crimes focus on three key state responsibilities: to treat victims with humanity; to provide effective protection mechanisms; to ensure effective support.

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power states that victims "should be treated with compassion and respect for their dignity" and that:

"[T]he responsiveness of judicial and administrative processes to the needs of victims shall be facilitated by taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation."⁴

³ United Nations Principles relating to the Effective Prevention and Investigation of Extralegal, Arbitrary or Summary Executions, endorsed by the General Assembly in December 1989 and approved by the Economic and Social Council in 24 May 1990.

⁴ Declaration of Basic 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, Principle 4 and Principle 6(d).

Principle 10 of the Basic Principles on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law states:

“Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.”

Complainants, witnesses, those conducting the investigation and other involved in any way should be protected from violence, threats of violence and any other form of intimidation. The Melo Commission should be granted all necessary human and material resources to devise and implement witness protection measures with the cooperation, if necessary and appropriate, of the DOJ’s Witness Protection Program. Protection measures should be available for all witnesses and the families of victims, staff and others associated with the investigation. In determining which protection measures to take, the Commission should take into account the views of the witnesses on which measures they require and whether the protection measures are proportionate to the seriousness of the risk. The Commissioners should be responsible for overseeing the implementation of all protection measures and a procedure should be established whereby a witness who is not satisfied with protection measures may apply to the Commissioners to address the issue.

Interim reports should include an assessment of the witness protection mechanisms. If witnesses whose cases were detailed in the interim report are subsequently subject to threats, intimidation or violence, action must be taken immediately against perpetrators and the security of the witness ensured.

Protection measures should not be restricted to concealing the identities of witnesses who request it. They may include seeking restraining orders against anyone who poses a threat to the witness or to their family, organizing police protection, safeguarding the whereabouts of the witness and their family from disclosure and providing them with medical and psychological treatment and support. In some cases, such protection measures will need to be long-term and can require relocation and new identities for the witness and their families.

The Melo Commission should have the power to require the relevant authorities to suspend from duty officials and others allegedly involved in cases of extrajudicial executions under investigation, or to transfer them to other duties where they would have no power over victims or witnesses, without prejudice pending completion of the investigations, if there is reason to believe that they may interfere with witnesses or otherwise interfere with the investigation.

iii. A fair procedure

Amnesty International believes that all witnesses, alleged perpetrators and other individuals involved should be guaranteed the following rights, among others, at all stages of the procedure before the Commission:

- The right not to be discriminated against;
- The right to a fair and public hearing by a competent, independent and impartial body;
- The right not to be compelled to testify against themselves or to confess guilt;
- The right not to be subjected to any form of coercion, duress or threat, to torture or to any other cruel, inhuman or degrading treatment or punishment;

- The right to have the free assistance of an interpreter if they cannot understand or speak the language used;
- The right to be informed promptly and in detail of any allegations made against them;
- The right to defend themselves and the right to have legal assistance, where appropriate;
- The right to be presumed innocent until proved guilty according to law;
- If adversely affected by the Commission's decision, the right to seek judicial review;
- In the case of juveniles below 18 years of age, the procedure should take account of their age and the desirability of promoting their rehabilitation.

iv. Collection of evidence and statement-taking

In collecting information, the Melo Commission should seek the cooperation of the widest possible range of sectors of society, paying special attention to information and testimonies provided by the families of victims, national and international human rights organizations and previous research projects.

In the Philippines a wide range of groups, including human rights, legal, political and Church and community-based organizations, have conducted fact-finding missions and compiled documentation into patterns of political killings over recent years. Such groups should be actively encouraged to submit their reports and to participate in the work of the Commission.

In addition, Amnesty International urges the Government, on the advice of the Commission, to seriously consider an expansion of the Commission's membership to include other independent and impartial persons from human rights or other groups with experience of documenting reports of political killings.

The Commission should pursue all available sources of information, including: statements from surviving victims, witnesses and alleged perpetrators; material evidence from sources such as government records, medical records or reports, and police investigation files; court files; media reports; and information from other NGOs, UN human rights monitoring bodies and mechanisms, families of victims, and lawyers. The experience of human rights organizations over the years has resulted in material relevant to the cases of which the Commission should avail.

As a first step in gathering evidence, the Commission should invite people to testify or submit written statements. All interested parties should have an opportunity to submit evidence. Evidence can be submitted to the inquiry in writing, at least initially. The Commission should consider written submissions from, or arrange special interviews with, witnesses who are unable to attend because they are abroad, because they are afraid of retaliations, or for other valid reasons. It should be flexible about the manner of questioning witnesses and adapt its method to the circumstances of the case and the individual interviewees, so as to gather an optimal amount of evidence.

Commissions of inquiry are not bound by such strict rules of evidence as a court, and can consider reliable evidence of any kind, including, for example, hearsay (secondary) evidence. All information received, especially if provided by any individuals or groups which might attempt to use the Commission as an instrument for their own purposes, should be evaluated with caution. The Commission will need to assess all information and evidence it receives to determine its relevance, veracity, reliability and probative value. The reliability of hearsay evidence, in particular, must be considered carefully and must normally be corroborated before it can be accepted it as fact. On no account may the Commission admit statements obtained by torture or other cruel, inhuman or degrading treatment or punishment, unless as evidence that such torture or ill-treatment has been inflicted. Legal counsel should assist the Commission by bringing relevant evidence to its attention and ensuring that evidence produced by the inquiry is admissible in later criminal proceedings.

v. Public information and education campaign

A comprehensive outreach policy is essential to the Commission's impact.

- The Commission should establish contact with representatives of non-governmental organizations, other relevant non-state institutions and the media, to publicize its work and obtain relevant information. It should also seek to access information and advice from appropriate international human rights bodies, including relevant UN Special Procedures such as the Special Rapporteur on Extrajudicial Executions.
- The matters that the Commission will look into should be notified to the public by all appropriate media. This notice should include an invitation to submit information and guidance for doing so.

Special attention should be paid to notifying victims of the violations investigated, or those who otherwise may have an interest. Live broadcasting of the hearings in the media should be considered, subject to evaluations regarding the protection of victims, witnesses and alleged perpetrators (outlined above).

D. Reporting, reparation and prosecution

i. Reporting, recommendations and dissemination

The final report is the most visible outcome of the work of a commission of inquiry. The report must provide details of all aspects of the Melo Commission's work, including investigations, hearings, findings and recommendations for prosecution. The final report should set out:

- the Commission's mandate and terms of reference;
- its procedures and methods for evaluating evidence, as well as the law upon which it relied;
- the background to the investigation, including relevant social, political and economic conditions and information on whether the Commission received the necessary cooperation by the government and other public institutions;
- its findings of fact and a list of documents and other evidence upon which such findings are based;
- its conclusions based upon applicable law and findings of fact, including a critical analysis of institutional structures, policies and practices, and other factors which allowed the extrajudicial executions and other political killings to take place;
- a list of victims of extrajudicial executions and other political killings; and
- its recommendations.

Amnesty International recommends that the Melo Commission's final report be made public and widely circulated without undue delay.

As provided for in its mandate, the Commission should make recommendations to the President with regard to: reparations to victims and their families; the enactment of specific legal, institutional and other reforms that would prevent repetition of past violations; any necessary government actions to be taken in furtherance of its findings. The Commission's recommendations may include for example: reforming laws, administrative procedures and practices; strengthening the justice system; promoting human rights education; organizing training for the police and security forces, continuing investigations or inquiries into particular matters and prosecutions in particular cases.

Recommendations should also include the establishment or enablement of a future monitoring body, be it international, national or combined, to ensure that all future political or

other unlawful killings are promptly and thoroughly investigated, that perpetrators are brought to justice and that the families of victims are ensured full reparation.

Amnesty International urges that a timeline be established for periodic review of the Commission's recommendations, and of the progress of their implementation by relevant government agencies.

E. Preserving evidence for future prosecutions

The work of the Melo Commission should assist and should not prejudice current or future criminal proceedings. If the Commission obtains information indicating that identified individuals may have been responsible for committing, ordering, encouraging or permitting unlawful killings, abductions and enforced disappearances, that information should be passed to the relevant judicial or law enforcement bodies for investigation without delay, with a view to bringing those individuals to justice. Principle 8(e) of the updated Set of Principles to Combat Impunity states:

“Commissions of inquiry shall endeavour to safeguard evidence for later use in the administration of justice”.

In carrying out their mandate, the Commission should bear in mind the rules and conditions for the admissibility of evidence in the criminal process and should ensure that they produce admissible evidence for later criminal proceedings.

The government should ensure that persons identified by the investigation as having participated in the unlawful killings, abductions and enforced disappearances investigated are brought to justice. The Commission should recommend modalities of bringing to justice alleged perpetrators from both sides.

F. Archives

The UN Commission on Human Rights has declared that

“... states should preserve archives and other evidence concerning gross violations of human rights and serious violations of international humanitarian law to facilitate knowledge of such violations, to investigate allegations and to provide victims with access to an effective remedy in accordance with international law”.⁵

In particular, commissions of inquiry should establish at the outset the conditions that will govern access to their documents, including conditions aimed at preventing disclosure of confidential information while facilitating public access to their archives.⁶

⁵ Commission on Human Rights, Resolution 2005/66, Right to the truth, 20 April 2005.

⁶ Updated Set of principles to combat impunity, Principle 8(f).