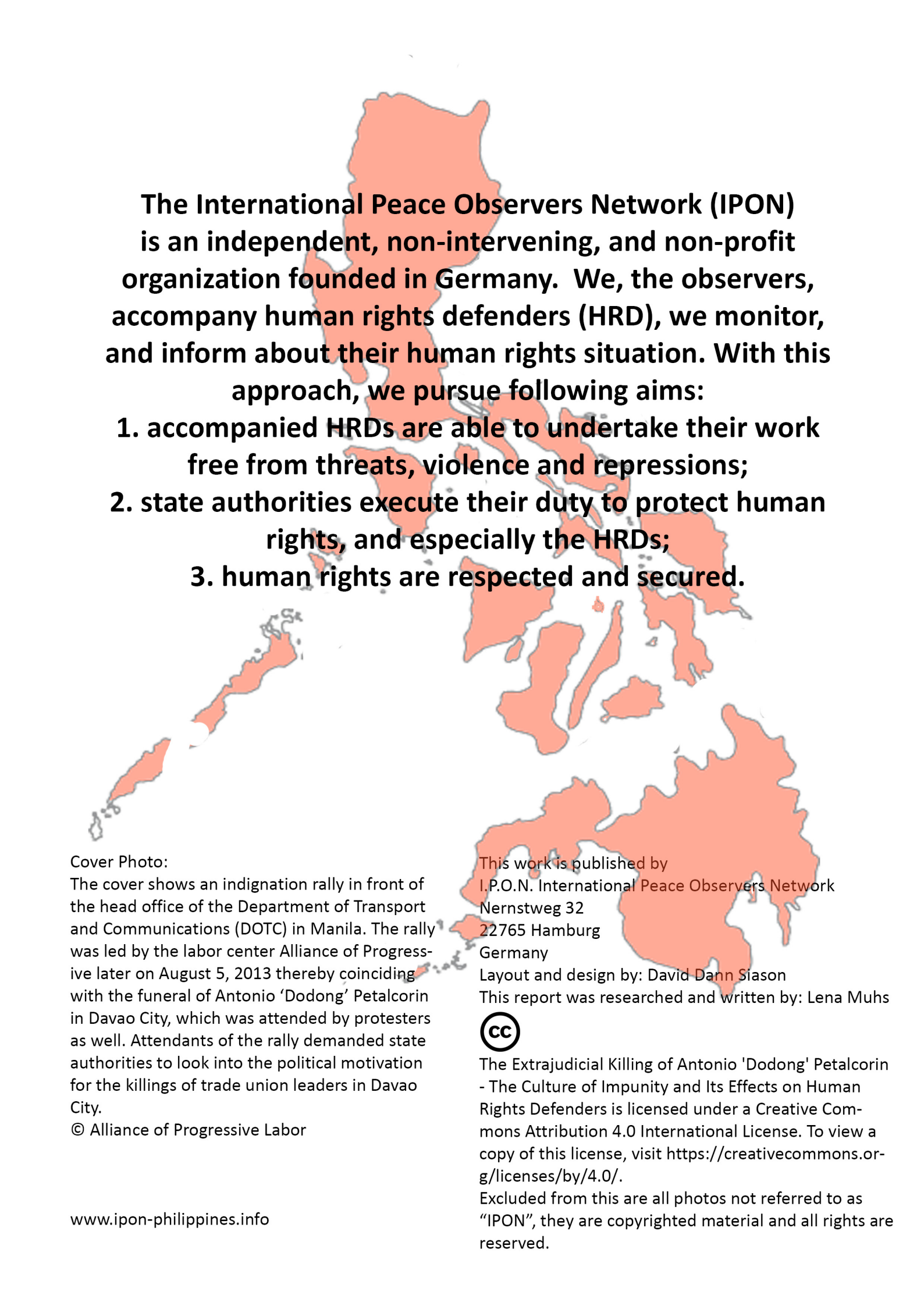


The Extrajudicial Killing of Antonio “Dodong” Petalcorin



**The Culture of
Impunity and its Effects on Human Rights Defenders**



The International Peace Observers Network (IPON) is an independent, non-intervening, and non-profit organization founded in Germany. We, the observers, accompany human rights defenders (HRD), we monitor, and inform about their human rights situation. With this approach, we pursue following aims:

- 1. accompanied HRDs are able to undertake their work free from threats, violence and repressions;**
- 2. state authorities execute their duty to protect human rights, and especially the HRDs;**
- 3. human rights are respected and secured.**

Cover Photo:

The cover shows an indignation rally in front of the head office of the Department of Transport and Communications (DOTC) in Manila. The rally was led by the labor center Alliance of Progressive later on August 5, 2013 thereby coinciding with the funeral of Antonio 'Dodong' Petalcorin in Davao City, which was attended by protesters as well. Attendants of the rally demanded state authorities to look into the political motivation for the killings of trade union leaders in Davao City.

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List of Abbreviations

AFP	Armed Forces of the Philippines
AO35	Administrative Order 35
APL	Alliance of Progressive Labor
CASE	Coalition Against Summary Execution
CCTV	Closed Circuit Television
CFA	Committee on Freedom of Association
CHR	Commission on Human Rights
CPP	Communist Party of the Philippines
DDS	Davao Death Squad
EJK	Extrajudicial Killing
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labor Organization
IPON	International Peace Observers Network
ITF	International Transport Workers' Federation
LTRFB	Land Transportation and Franchise Regulatory Board
LTO	Land Transportation Office
MATRANSCO	Matina Apalaya Transport Cooperative
NBI	National Bureau of Investigation
NCTU	National Confederation of Transportworkers' Unions
NDF	National Democratic Front
NETO	Network of Transport Organizations
NGO	Non-Governmental Organization
NPA	New People's Army
PHP	Philippine Peso
PNP	Philippine National Police
RA	Republic Act
SENTRO	Sentro ng mga Nagkakaisa at Progresibong Manggagawa (United and Progressive Workers' Center)
UN	United Nations

Executive Summary

Antonio ‘Dodong’ Petalcorin is an exemplary case of politically motivated extrajudicial killings in the Philippines. Petalcorin had been a trade union leader in the Southern Philippines City of Davao since the year 2000. As president of the Network of Transport Organizations (NETO) he has been the target of intimidation attempts and harassments for years. In 2012 Petalcorin jointly initiated a campaign exposing the rampant corruption at the LTFRB Davao with transport leaders Emilio de Jesus Rivera and Carlos “Toto” Cirilo. The campaign culminated in a report televised by a local channel in October 2012 in which all three labor leaders were shown and interviewed. Shortly after, Petalcorin filed a complaint against regional LTFRB director Benjamin A. Go for violations of the Anti-Graft and Corruption Practices Act. Only two months later, Rivera was killed by a contract killer in front of the LTFRB office. Several attacks on Cirilo’s life followed but were unsuccessful. On July 2, 2013 Antonio Petalcorin was also shot to death in front of his house by an unidentified gunman.



Trade unionists in Davao and the author of the television report are certain that the **attacks on all three activists were in response to their anti-corruption campaign and their appearance in the television report.** Despite a Davao City Council resolution confirming that the killings were politically motivated, a range of evidence and persistent campaigning of trade unions, there was **no adequate investigation into the killings.** Instead, the case remains classified as pending with the local police. Similarly attempts to admit the case to the AO35 committee, an interagency committee investigating extrajudicial killings and other grave human rights violations, failed. While the local Commission on Human Rights initially classified the case as extrajudicial killing, it later revoked that classification in their report submitted to the AO35. Additionally, the report filed by the National Bureau of Investigation to the AO35 committee ignored the political motivation of the killing. By the same token, the murder of Petalcorin’s co-complainant Rivera and the attacks against Cirilo were never fully investigated and a police escort for Cirilo was denied. Therefore, IPON considers the killing of Antonio Petalcorin an extrajudicial killing.

Extrajudicial killings have no specific definition in international law. Instead, it is defined by experts as “unlawful and deliberate killings carried out by order of a government or with its complicity or acquiescence”¹. It is first and foremost a violation of the right to life and therefore a violation of the International Covenant on Civil and Political Rights (ICCPR). As a signatory party to the ICCPR, the Philippines is obliged to respect, protect and fulfil the right to life of individuals. The duty to protect the right to life has been interpreted as including the duty to “investigate promptly and thoroughly all killings”² specifically those who are killed “for reasons

¹ Amnesty International. (2017). *“If you are poor, you are killed” – Extrajudicial Executions in the Philippines’ “War on Drugs”*, p.14.

² United Nations General Assembly. (2006). *Extrajudicial, summary or arbitrary executions*. (A/RES/61/173), p.3.

related to their activism as human rights activists”.³ **A lack of inadequate investigations therefore signals acquiescence of the government and can in itself constitute a violation of the right to life.** While there is no evidence that the killing of Antonio Petalcorin was committed by a state party, the circumstances of his death point to the conclusion that it was commissioned by a state actor or at least tolerated by it. Additionally, the state has failed to fulfil its duty to investigate the case promptly and thoroughly. Instead, false rumors about the killer’s motivation were spread thereby effectively hindering the investigation. The failure of PNP, NBI, CHR and the AO35 committee to investigate the case adequately has contributed to the climate of impunity in Davao City.

According to local NGOs, the lack of adequate investigations is partly attributable to the wider issue of extrajudicial killings in Davao City. Since the 1990s, several local and international NGOs have reported on the Davao Death Squad, a vigilante group that mostly targets petty criminals in an attempt to rid the city from crime. As stated by activists from Davao, members of the death squad also take other paid assignments such as the killing of unwanted activists. Consequently, impunity is particularly rampant as attempting an investigation in a single case would threaten to unveil the system of extrajudicial killings that makes up the Davao Death Squad. Since the election of Rodrigo Duterte as 16th president of the Philippines, the climate of violence and impunity seems to be spreading to the rest of the country. With over 7,000 reported killings of suspected drug users as of March 2017 and drug pushers carried out by the police or unknown armed assailants, the lack of adequate investigations into these killings points to near-complete impunity. Similarities between the Davao Death Squad and the vigilante killings under the ‘war on drugs’ give rise to concerns that killings will soon spread to other groups such as political opponents and human rights activists.

Meanwhile in Davao, the effects of this climate of impunity can be felt among the transport sector until today. In his 2007 report then UN Special Rapporteur Philip Alston concluded that the victims were carefully selected to maximize the **chilling effect on other activists and therefore constitute a serious endangerment to the wider situation of human rights.**⁴ A similar mechanic can be observed in the Petalcorin case. With Antonio Petalcorin, Emilio de Jesus Rivera and Carlos Cirilo all three trade union leaders that were featured in a TV documentary were targeted. The lack or inadequacy of investigations and judicial inquiries into the attacks against these three trade union leaders has created a culture of impunity, which in turn reinforces the **climate of violence and insecurity that endangers the exercise of peaceful activism.** Trade unionists continue to report a climate of fear hindering the effective exercise of trade union rights. This climate of fear has prompted a number of unionists to cease their activism altogether; others have adopted strategies to avoid repercussions such as refraining from pinpointing individual persons responsible for violations of labor standards. Additionally, media practitioners are similarly hindered in the exercise of their rights. A follow-up report on the Petalcorin case was stopped due to threats against both the journalist and the cameraman.

³ United Nations General Assembly (2006), p.3.

⁴ Human Rights Council. (2008). *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Mission to the Philippines.* (A/HRC/8/3/Add.2)

The culture of violence and impunity that is exemplified by the extrajudicial killing of Antonio Petalcorin has therefore led to a serious curtailment of human rights that stretches beyond the violation of the right to life of Petalcorin himself.

In order to combat impunity and establish a social climate conducive to the effective exercise of human rights, the Government of the Philippines should comply with its obligations under international law, specifically with its duty to respect, protect and fulfil the right to life. It should **end the culture of impunity that enables further killings of activists by promptly, impartially and efficiently investigating all extrajudicial executions.** The Commission on Human Rights as well as the National Bureau of Investigation should reconsider its reports on the Petalcorin killing and give attention to its political nature. The AO35 committee should accept the Petalcorin case as an extrajudicial killing and ensure a prompt and independent investigation. The Philippine National Police should dedicate appropriate resources to identify groups of paid killers and dismantle them. It should investigate any allegations of threats made against trade unionists, human rights activists and media practitioners. Victims of human rights violations should be ensured access to effective remedies including compensation and bringing those responsible to justice.

Methodology

The report is based on both literature review and interviews conducted by the author and previous members of the International Peace Observers Network (IPON). The information about the case study of Petalcorin was gathered through interviews conducted with Petalcorin's family and non-governmental organizations acting on his behalf over a period of four years. IPON received the first communication about this case in 2013 from Task Force Detainees of the Philippines, one of the largest human rights organizations in the Philippines. Following the first contact, IPON members have met ten times with SENTRO Davao officials, who are monitoring the case closely. Additionally, Petalcorin's widow was interviewed in August 2013. Additional interviews have been conducted with the Regional Office of the Commission on Human Rights in Davao City, the Police Regional Office 11 of Davao City, specifically the Taloma Police Station in Matina, Davao City that was directly tasked with the Petalcorin murder, and the Office of the City Prosecutor. Most recently, in 2016, a number of interviews have been conducted with members of transport unions in Davao clarifying whether the killing of Petalcorin and the following impunity was still affecting the community. For the chapter on extrajudicial killings, the author reviewed the provisions of Philippine and international law. The chapter on the effects of impunity is based on comparative reports by domestic and international human rights organizations as well as information gathered in interviews with human rights defenders. For the chapter on the 'war on drugs' waged by the current administration, media reports have been examined as well as initial reports by human rights organizations. Due to fear of reprisals, the names of human rights defenders have been altered.

The report adopts the legalistic approach that is at the basis of IPON's work approach. The international human rights treaties are the backbone for IPON's work. Amongst others the work of IPON refers especially to the United Nations Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Only states can sign and ratify the international human rights conventions and are, therefore, the only ones who can violate human rights. Correspondingly, IPON tries to hold the state responsible for violating its duties and to improve the human rights situation.

Extrajudicial Killings in International and Philippine Law

The term extrajudicial killing (EJK) is widely used today and has a strong political connotation. Since the election of President Duterte on May 9, 2016, this term has come to define the international media coverage of the Philippine 'war on drugs'. In this media coverage it is used to symbolize a state power exerting force beyond its mandate and uncontrollable levels of state-sponsored violence. Before Duterte's presidency, however, EJKs had a quite different connotation of killings that are politically motivated to silence opponents or activists. Following the legalistic approach, the definition of extrajudicial killings as it is used in international and Philippine law will be taken up here.

In international law, extrajudicial killings are not explicitly defined in any of the major human rights treaties. Instead, it has been discussed within the United Nations as part of a wider discussion on human rights since the 1980s. This discussion, among other things, has led to the establishment of a separate mandate on extrajudicial killings – the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. The Special Rapporteur is tasked to “pay special attention to extrajudicial, summary or arbitrary executions where the victims are individuals who are carrying out peaceful activities in defense of human rights and fundamental freedoms”⁵. His or her mandate covers threats or extrajudicial executions by state officials and paramilitary groups as well as private individuals, groups or death squads that are cooperating with or tolerated by the government.⁶ Extrajudicial killings are primarily treated as a violation of the right to life. Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) and Article 3 of the Universal Declaration of Human Rights provide for the right to life⁷. The signatory parties to the ICCPR have the duty to respect, protect and fulfill this right. Applied to the right to life, that means the signatory party is obliged not to deprive anyone of the right to life (respect), to prevent other private parties from depriving someone of the right to life (protect) and to take adequate steps to ensure that the right to life is guaranteed (fulfil). The killing of individuals by police officers or soldiers in their functions as agents of the state and therefore as a state policy constitutes a violation of the state's obligation to respect the

⁵ Ndiaye, B. W. (1996). Report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions. (A/51/457).

⁶ Ibid.

⁷ United Nations General Assembly. (1966). *International Covenant on Civil and Political Rights* (GA resolution 2200A).

right to life. The Human Rights Committee, which oversees the implementation of the ICCPR, prescribes that state parties are required to “prevent arbitrary killings by their own security forces”⁸ and considers the “deprivation of life by the authorities of the state [as] matter of the utmost gravity”⁹. A state furthermore has the obligation to protect individuals from violations of their right to life. The United Nations General Assembly specifies that states have the duty to “ensure effective protection of the right to life of all persons under their jurisdiction and to investigate promptly and thoroughly all killings”¹⁰. It specifically mentions the killing of persons “for reasons related to their activism as human rights activists”¹¹. A state’s duty to protect the right to life includes an obligation to ensure that killings are not condoned or sanctioned by state officials or personnel. In fact, instead of condoning states are under an obligation to prosecute extrajudicial killings, which is considered a critical step towards preventing further killings. Article 2(3) of the ICCPR stipulates that states are under an obligation to “ensure that any person whose rights [...] are violated shall have an effective remedy”¹². The Human Rights Committee has authoritatively interpreted this article as including a “general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies”¹³. Failing to investigate alleged violations can itself constitute a breach of the state’s obligations under international law. The UN Human Rights Council refers to “the obligation of all States to conduct exhaustive and impartial investigations into all suspected cases of extrajudicial, summary or arbitrary executions, to identify and bring to justice those responsible, while ensuring the right of every person to a fair and public hearing by a competent, independent and impartial tribunal established by law, to grant adequate compensation within a reasonable time to the victims or their families and to adopt all necessary measures, including legal and judicial measures, in order to bring an end to impunity and to prevent the recurrence of such executions, as stated in the Principles on the Effective

International Criminal Court (ICC)

In October 2016, the prosecutor of the International Criminal Court (ICC) Fatou Bensouda has released a statement that “any person in the Philippines who incites or engages in acts of mass violence [...] is potentially liable to prosecution before the court”. She clarified that she will be closely monitoring the situation to determine whether to open a preliminary investigation. The Rome Statute does not provide for immunity of acting state officials including heads of states. While being immune from prosecution within the Philippines, President Duterte could potentially be subject to prosecution by the ICC.

(Retrieved from <https://www.icc-cpi.int/Pages/item.aspx?name=161013-otp-stat-php>, accessed on 03/29/2017)

⁸ Human Rights Committee. (1982). *General Comment No. 6: Article 6 (Right to Life)*.

⁹ Ibid.

¹⁰ United Nations General Assembly. (2006). *Extrajudicial, summary or arbitrary executions*. (A/RES/61/173), p.3.

¹¹ Ibid, p. 3.

¹² United Nations General Assembly. (1966). *International Covenant on Civil and Political Rights* (GA resolution 2200A).

¹³ Human Rights Committee. (2004). *General Comment No. 31: The Nature of the General Legal Obligation Imposed on State Parties to the Covenant*. (CCPR/C/21/Rev. 1/Add.13), p. 6.

Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions”¹⁴. These UN Principles further prescribe protection from violence, threats of violence and any form of intimidation for complainants, witnesses and those conducting the investigation.¹⁵

Furthermore, extrajudicial, summary or arbitrary executions are crimes under the Rome Statute that created the International Criminal Court and prescribes its rules of procedure.¹⁶ Extrajudicial killings can fulfil the elements of murder “committed as a widespread or systematic attack directed against any civilian population”¹⁷ and therefore amount to a crime against humanity. While extrajudicial killings do not always constitute a crime against humanity, the Special Rapporteur for Extrajudicial, Summary and Arbitrary Killings functions as an “early warning mechanism in preventing [...] crimes against humanity”¹⁸. Extrajudicial killings are therefore in any case considered as contributing towards a crime against humanity. As such, they receive considerable attention from the international human rights mechanisms, which has a direct effect on the laws governing extrajudicial killings in the Philippines itself.

The Philippines has ratified most of the international human rights treaties and is therefore bound by its provisions. It has ratified the International Covenant on Civil and Political Rights in 1986 and acceded to the Rome Statute in 2011. The Philippine government, including government agencies such as the Philippine National Police (PNP), is therefore obliged to follow these provisions of the ICCPR and all citizens of the Philippines are subject to the jurisdiction of the International Criminal Court. Furthermore, the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions’ mandate covers the Philippines. This would be the case even if the Philippines had not ratified the ICCPR as the mandate covers all countries

UN Special Rapporteur

2007 - Then Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions Philip Alston visited the Philippines in response to extrajudicial killings under the Arroyo administration.

2016 - Special Rapporteur Agnes Callamard was formally invited by President Duterte in October 2016. At the time of writing the Special Rapporteur had not yet followed the invitation as it was subjected to specific conditions that are incompatible with the mandate of the Special Rapporteur.

independent of ratification status. Consequently, the Philippine state is required by international law to (1) respect and protect the right to life, (2) investigate all killings suspected to qualify as extrajudicial killings, and provide adequate protection for victims, witnesses and complainants, (3) bring perpetrators of extrajudicial killings to justice and (4) provide remedy and redress for victims¹⁹.

On the national level, the right to life, human dignity and due process are embedded in the Philippine constitution. While there is no law explicitly

the Special Rapporteur on extrajudicial, summary or arbitrary

¹⁵ United Nations Economic and Social Council. (1989). *Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*.

¹⁶ Human Rights Council. (2014). *Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions*. (A/HRC/RES/26/12).

¹⁷ Rome Conference (2002). Rome Statute of the International Criminal Court (A/CONF.183/9), Art. 7.

¹⁸ Human Rights Council. (2014). *Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions*. (A/HRC/RES/26/12), p.2

¹⁹ Amnesty report 2017

criminalizing extrajudicial or extra-legal killings, these killings, whether perpetrated by a law enforcement official or by a civilian, fall under the legal definition of homicide or murder of the Revised Penal Code of the Philippines. Furthermore, extrajudicial killings have a special place in Philippine legislation. Most of the directives and agencies tasked with extrajudicial killings still existing today were created in response to heavy criticism from the international community and local activist groups in light of the rampant numbers of extrajudicial killings under former president Gloria Macapagal-Arroyo (2001-2010).²⁰ After the high incidence of extrajudicial killings under the Marcos regime from 1965 to 1986, EJKs experienced another peak under Arroyo with numbers of victims ranging from 300 to over 800 depending on the statistics used.²¹ The spate of killings under Arroyo triggered a number of reports that laid out the mechanics of the EJK phenomenon: the Melo report, reports of the mission to the Philippines of UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Killings and of the International Labor Organization (ILO) as well as reports by NGOs such as Human Rights Watch and Forum Asia. The reports came to similar conclusions about the dynamic behind the increase in extrajudicial killings. Most killings happened in connection to the government's counterinsurgency against left wing rebels of the New People's Army (NPA). In the course of identifying targets, many activists were associated with leftist groups and quickly categorized as 'enemies of the state'.²² It is noteworthy that extrajudicial killings in the Philippines usually share the same method of execution. In most cases it is executed by two masked perpetrators on one motorbike and has been termed as 'riding in tandem'.²³ Under Arroyo's successor, former president Benigno S. Aquino III, who had won the elections on promises to end killings and establish human rights, the number of EJKs dropped slowly. Nevertheless, extrajudicial killings remained widespread and only few were investigated showing that the underlying dynamics remain. Under the newly elected president Rodrigo "Rody" Duterte the Philippines have become globally known for the amount of extrajudicial killings. However, under the new president EJKs are most commonly committed as part of the war against drugs and predominantly target alleged drug addicts and drug pushers. Statements of the president are clearly condoning the killings and are promising impunity for members of the law enforcement as well as the military. National provisions against extrajudicial killings therefore remain of high significance.

Consequentially, and despite the general provisions against murder and excessive use of force of state agents in Philippine law, the significance of EJKs has led to the establishment of provisions specific to the phenomenon of extrajudicial killings. Over the years, several of these have been issued with overlapping mandates and slightly different definitions of what falls under its mandate. The most recent one is Administrative Order 35 that created an inter-agency committee in 2012, called AO35 committee, tasked with addressing the phenomena of

²⁰ Parreño, A. A. (2011). *Report on Philippine Extrajudicial Killings 2001-2010*. The Asia Foundation.; Human Rights Watch. (2007). *Scared Silent; Impunity for Extrajudicial Killings in the Philippines*. Vol. 19/9.

²¹ Human Rights Watch. (2007). *Scared Silent; Impunity for Extrajudicial Killings in the Philippines*. Vol. 19/9.

²² Parreño, A. A. (2011). *Report on Philippine Extrajudicial Killings 2001-2010*. The Asia Foundation.

²³ Ibid.

extrajudicial killings, enforced disappearances, torture, and other human rights violations. The committee is comprised of representatives of 11 government agencies including the Department of Justice, the Commission on Human Rights and the office of the Ombudsman. It is aimed at addressing past impunity and establishing accountability. For extrajudicial killings, the AO35 lays out certain criteria a killing has to fulfil in order to qualify as EJK. These are (1) the membership of the victim in an organization, individual activism, status as media practitioner, or false identification as one of these, (2) the targeting of the victim due to their real or perceived activism and (3) a deliberate intent to kill. The classification as EJK happens regardless of whether the perpetrator is a state agent or non-state agent and is not limited to successful assassinations. Attempted or frustrated killings are therefore included in the definition as well. If passing the criteria of EJKs, the AO35 Committee is mandated to assign special investigation teams, oversight teams and tracker teams to the case in order to work towards a rapid investigation. AO35 requires the committee to report to the president in regular intervals. However, activists in the Philippines have been deeply disappointed by the AO35 committee. As of March 2017 the committee has yet to submit its first report and no convictions have been achieved with its help.

Despite the attention that has been paid to the incidence of extrajudicial killings by international organizations and by the Philippine legislative, extrajudicial killings remain a tool of political oppression and impunity for these crimes persists. The effect is a civil society deeply affected by a permanent threat as the Petalcorin case shows.

Antonio ‘Dodong’ Petalcorin

Antonio ‘Dodong’ Petalcorin is an exemplary case of politically motivated extrajudicial killings in the Philippines. Petalcorin had been a transport workers’ union leader in the Southern Philippines City of Davao since the year 2000. As trade union activist he has been the target of intimidation attempts and harassments for years. In the year of 2008 Petalcorin had already been named as rebel under the ‘Know Your Enemy’ campaign of the Armed Forces of the

Transport Organizations in the Philippines

NETO is a sub-organization of the National Confederation of Transport-workers Union (NCTU) and member of Sentro ng mga Nagkakaisa at Progresibong Manggagawa (SENTRO), formerly the Alliance of Progressive Labor (APL). Consistent with its belief in social movement unionism, SENTRO has built itself as a *multi-form centre*, drawing into its fold various forms of labour organizations and not just trade unions. It unites 18 federations and 150,000 individual members consolidated along industry and geographical lines. With its head office in Manila, it is one of the most important actors in relation to labor rights in the Philippines. IPON has been working with SENTRO/APL in a number of regions.

Philippines (AFP). The campaign has been criticized by human rights organizations for showing power point presentations with the names of alleged rebels or terrorists in rural areas.²⁴ Petalcorin was named with a number of other human rights defenders who were equally known to the authorities as political opponents and targeted with several forms of harassments. The association with communist rebel

²⁴ Human Rights Council. (2008). *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Mission to the Philippines.* (A/HRC/8/3/Add.2)

groups is a widely used strategy against human rights defenders. The identification as communist rebels is here used as a pretext for intense observation or politically motivated criminalization. Affected human rights defenders have to defend themselves from random accusations and trumped up charges. Trumped up or fabricated charges are charges that are filed despite lacking evidence or based on false information and that are intended to force the accused to discontinue their work. IPON has observed this strategy termed “red-baiting” in many cases of human rights defenders being threatened, harassed or criminalized due to their alleged status as communist rebels. Petalcorin continued his activism despite these harassments.

In 2012, Petalcorin started focusing his activities on irregularities at the Land Transportation Office (LTO) and the Land Transport and Franchise Regulatory Board (LTFRB). As president of the Network of Transport Organization (NETO), Petalcorin had been hearing concerns from drivers and other workers in the transport sector about corruption in the franchise certification of both the LTO and the LTFRB. Together with Emilio de Jesus Rivera and Carlos “Toto” Cirilo, Petalcorin initiated a campaign exposing the bribery and corruption at the LTFRB Region XI in Davao. Rivera was the leader of the Matina Apalaya Transport Cooperative (MATRANSCO), while Cirilo was the leader of a local transport group in Davao City. The three activists discovered that high officials had been involved in corruptive practices. The campaign showed that the regional LTFRB Director Benjamin Go was at least complicit in charging higher fees per vehicle for the issuance of a franchise while increasing the number of vehicles required to establish a franchise. At the same time he had allowed a rapid increase of taxi drivers. As a result of higher franchise fees, the vehicle rentals for taxi drivers increased while their profits decreased due to the upswing in competition. Consequentially, drivers were earning less while the LTFRB officials implicated in the corruption accepted high amounts in bribes. Petalcorin, Rivera and Cirilo’s joint campaign aimed to expose the corrupt practices and ultimately end them. It culminated in a report televised by a local channel in October 2012 in which all three labor leaders were

Timeline of Events	
09/22/2012	Meeting at APL Davao about LTFRB irregularities
09/25/2012	APL Davao requests coverage by GMA 7 Davao
10/17/2012	Mobilization at LTFRB-XI
10/27/2012	Airing of Television Report
11/07/2012	NCTU meeting with Nat’l LTFRB Chairperson Jacob
11/28/2012	Petalcorin files Ombudsman case vs. Go
01/25/2013	† Rivera killed
04/21/2013	Attack on Cirilo
05/21/2013	Attack on Cirilo
07/02/2013	† Petalcorin killed
07/09/2013	Davao City Council resolution

shown and interviewed. The report was presented to the National Chairperson of the LTFRB Jaime Jacob in a meeting with the National Confederation of Transport Workers. Following the television coverage, Petalcorin filed a complaint against the regional director of the LTFRB Benjamin A. Go for violations of the Anti-Graft and Corruption Practices Act (RA 3019) with the Office of the Ombudsman. Emilio De Jesus Rivera is co-complainant in the case against Go.

Throughout the year 2013, only a few months after the television report had aired and the complaint had been handed in, the transport sector in Davao suffered from attacks on the lives of all three proponents of the anti-corruption campaign. On January 25, 2013, Emilio Rivera, co-complainant in the case with the Ombudsman, was assassinated by a contract killer – so called “gun-for-hire” – near the LTFRB Office. This was followed by two attempted grenade attacks against Carlos Cirilo on April 21 and May 21, 2013. Lastly, in the morning of July 2, 2013, Antonio Petalcorin was also shot by an unknown perpetrator on his way to work. He was hit by four bullets as he was leaving his house. All help arrived too late and he succumbed to his injuries caused by the fired bullets. According to Petalcorin’s wife, the family did not receive any threats preceding Petalcorin’s death. Instead, the murder of Emilio Rivera can be considered a first indication of an existing threat against Petalcorin. For transport unionists and the author of the anti-corruption television report it is obvious that the attacks on the three leaders were due to their exposure of the corruption at the LTFRB and their appearance in the report. They consider the killings as one of several attempts to silence those campaigning against the corruption at the LTFRB.

Following the killings, there were no adequate attempts by state authorities at investigating the case. SENTRO pressed the PNP, who had been hesitant at first, to start investigation the killing and had several meetings with the local government. In turn, shortly after the killing of Petalcorin, the Davao City Council had passed a resolution condemning the murders and harassment against transport leaders and demanding a speedy investigation to bring the perpetrators to justice. It thereby admitted that the killings were politically motivated. However, the resolution was never followed by action. Despite CCTV footage that provided critical information about the identity of the perpetrator, the police did not start investigations proactively. Instead, SENTRO moved to mobilize then president Benigno S. Aquino and the Commission on Human Rights to exert pressure on the police and to demand an investigation. To prove the political motivation of the killing SENTRO tried to establish that the killer was assigned to shoot Petalcorin on behalf of someone else. In fact, the Mindanao broadcast journalist who had reported on the corruption at the LTFRB and Petalcorin’s campaign was contacted by an incarcerated contract killer, who had seen the second airing of the report in response to the killings of the featured activists. This contract killer had originally been tasked with killing Petalcorin. He was able to refer the journalist to the person who supposedly forwarded the assignment from LTFRB director Go to the actual killer, also called a “fixer”. SENTRO was hoping that charging the fixer would reveal the connection to regional LTFRB director Go, but the clues did not lead to further police action. While the regional police confirmed the political motivation of the killing in interviews with IPON, no serious investigative efforts were spent. Instead, the police officers in charge continued to use the non-cooperation of the family as reason to not proceed with their investigations.²⁵ Consequently, despite the numerous leads submitted to the PNP the case is still pending at the investigative stage as of March 2017.

Simultaneously with the PNP, the regional Commission on Human Rights had started investigations into the killing on its own initiative. The CHR finished its investigation approximately one year after the killing concluding that the murder was motivated by a

²⁵ Philippine National Police Region XI. (2015). Personal Communications.

personal conflict. It was only after addressing then Chairperson of the CHR Etta Rosales that the CHR Davao issued a second report acknowledging the political motivation of the killing while falling short of classifying it as extrajudicial killing. Contrary to the definition of extrajudicial killing under both international law and domestic provision, the CHR Davao maintained that they could not classify the killing as extrajudicial as the perpetrator was not proven to be a state actor.²⁶ With insufficient investigations by both PNP and CHR, it was possible to file the case with the National Bureau of Investigation (NBI). However, doing so requires a plaintiff. After having received threats themselves, both the family and the broadcast journalist were no longer willing to act as a plaintiff in this case.

As the investigations were stagnant, SENTRO instead submitted the case to the AO35 inter-agency committee on extrajudicial killings. As part of standard procedure in such cases, the regional office of the NBI released a report with their estimation of whether the killing of Petalcorin should be termed EJK. This report stated that the killing of Petalcorin was a result of “business gone wrong” and had no relation to his activism. In response to this, SENTRO members and the Mindanao broadcast journalist presented the documentary about the corruption at the LTFRB and other evidence pointing to the political motivation of the killing to the national head office of the NBI. No reaction followed and the false accusations were picked up again by the Commission on Human Rights in their report submitted to the AO35 committee. Consequently, in May 2015 the committee rejected the case under referral to the NBI and CHR reports. With the rejection of admittance to the AO35 committee, all investigative remedies within the Philippines are exhausted. By the same token, the murder of Petalcorin’s co-complainant Rivera and the attacks against Cirilo were never fully investigated. In fact, in Rivera’s case, the police had identified a suspect, who had ties to the subordinates of the regional LTFRB director Go, as suspected murderer. However, the suspect was later released and no other suspects were ever prosecuted. Similarly to the Petalcorin case, also the Rivera killing remains classified as “pending” with the PNP Davao.²⁷ In the case of Cirilo, the regional police rejected a request for police escort following the two failed attempts on his life. According to Frontline Defender, killings of human rights defenders often occur after a series of threats and warnings. However, in most cases authorities do not take action to protect human rights defenders thereby “enabling an environment in which killings are permitted to occur”²⁸. The Davao state authorities have therefore not only violated their obligation to conduct swift, effective and impartial investigations but also failed to provide protection from violence against human rights defenders. SENTRO has stopped its efforts at

ILO Complaint

As the campaign against impunity in Petalcorin’s murder on the national level remained fruitless, SENTRO has shifted its strategy to the international level. In February 2016, SENTRO in collaboration with the International Transport Workers Federation filed a complaint with the Commission on Freedom of Association (CFA) of the International Labor Organization (ILO). The case is still under review by the CFA as of March 2017.

²⁶ Commission on Human Rights Region XI. (2015). Personal Communications.

²⁷ Prosecutor’s Office Region XI. (2014). Personal Communications.

²⁸ Front Line Defenders. (2016). *Annual Report on Human Rights Defenders at Risk in 2016*, p. 6.

making Philippine investigative forces comply with their mandates due to the minimal chances of success.

Additionally to the apparent unwillingness of state agency to investigate the case adequately, the media coverage of the campaign also came to a halt. After receiving a call from the incarcerated contract killer originally hired for killing Petalcorin, the Mindanao broadcast journalist covering the campaign visited the prison despite kidnapping threats against him. He had planned to compile a follow-up report featuring the interview with the contract killer and the struggles against impunity in Petalcorin's case. However, the journalist as well as his cameraman were repeatedly threatened. The cameraman was followed by unidentified men two consecutive nights and was visited by another in his boarding house. Similarly, the house of the journalist was observed for several nights. Both reported these incidents to the police, but were not informed about any investigative efforts. As the journalist had experienced threats before, he filed a request for protection to his channel. The Philippines are known to be one of the most dangerous countries for journalists and it is a common practice for journalists to seek protection from their broadcasting stations.²⁹ However, in this case the journalist in question was not granted protection by his channel. The journalist himself suspects this to be the result of one of the news anchors being a member of the same fraternity as LTFRB Director Go. Indeed, it was that particular news anchor who advised him not to proceed with the reports about Go's involvement. With the existing threats and without the protection of his channel, the journalist was forced to stop working on the case and there were no further reports about the Petalcorin case.

According to local human rights defenders and trade unionists the local authorities' unwillingness to investigate in the Petalcorin, Rivera and Cirilo cases can be traced back to a number of reasons. Firstly, it is believed that Benjamin Go's family and business ties to then Davao City mayor and current president Rodrigo R. Duterte were protecting him from further investigations and prevented the case from being accepted into the AO 35 Committee.³⁰ Even though Duterte had first publicly condemned the killing and promised a swift resolution of the case, his words were never followed by serious investigative efforts. Instead, SENTRO members were warned to refrain from pushing the case further when directly approaching former mayor Duterte for help with the stagnant investigations. Furthermore, it has been argued that the systematic use of contract killers as part of the so-called "Davao Death Squad" (DDS) brings a general impunity for contract killers with it. The Davao Death Squad has been reported to be a vigilante group working closely with the local government and mostly targeting petty criminals in an attempt to rid the city from crime. International human rights organizations as well as the Philippine Commission on Human Rights have suspected a potential administrative and criminal responsibility of then mayor Rodrigo R. Duterte for these killings.³¹ Duterte himself has at times assumed responsibility and at other times denied any connection to the vigilantes.³² According

²⁹ Reporters Without Borders. (2016). Philippines – Constant Death Threats. Retrieved from <https://rsf.org/en/philippines>, accessed on 3/23/2017.

³⁰ Ibanez, M. (2015). Personal Communications.

³¹ Amnesty International. (2017). *"If you are poor, you are killed" – Extrajudicial Executions in the Philippines' "War on Drugs"*.

³² Cf. "They say I am the death squad? True that is true." In Hegina, A. J. (2015). *Duterte confirms 'ties' with Davao Death Squad*. Retrieved from <http://newsinfo.inquirer.net/693373/duterte-confirms-ties-with-davao-death-squad>,

to activists from Davao, the death squad has been repeatedly used for unwanted activists as well. Activists from the transport sector specifically stated that while corruption and harassment against activists are happening in other cities in the Philippines as well, it is only in Davao that activists have to fear for their lives due to the existence of the DDS. As the DDS is allegedly supported by local power-holders, all 'riding in tandem' and therefore all potential DDS cases are not moving forward in the investigation. Consequently, impunity is particularly rampant as attempting an investigation in a single case would threaten to unveil the system of extrajudicial killings that makes up the Davao Death Squad.

The Effects of Impunity

In addition to the mere amount of extrajudicial killings happening in the Philippines, impunity for these crimes is also widespread. Former UN Special Rapporteur Alston concluded in his 2009 report that a culture of impunity pervades the Philippines. As outlined above, under international law, part of the state's obligation to protect the right to life is the duty to prosecute violations. Impunity in contrast has been defined as the "failure to apply remedies to victims of human rights violations"³³. Among others, prosecution is a widely cited remedy to victims of human rights violations. This is due to the fact that a culture of impunity has been identified as a leading factor to the recurrence of human rights violations and establishing accountability as a means to curb impunity. A state therefore violates its duty to protect citizens from human rights violations when it allows or fosters impunity. Hence, this chapter considers the effects of impunity.

Impunity affects the situation of human rights defenders in several ways. Firstly, impunity in EJKs generates fear among the population, particularly activists that were close to the victim or belong to the same group. Impunity for killings can serve as qualification as EJK since it implies a condoning or sanctioning of the state. This generates widespread fear of further abuses making witnesses and families afraid to cooperate with the police for fear of becoming targets of reprisals.³⁴ It also affects the broader human rights community as the climate of fear may result in a breakdown of support networks, self-censorship and a decrease in cooperation between HRDs across sectors and with the communities on whose behalf they work.³⁵ According to Alston, the killings of carefully selected individuals such as prominent figures or leaders have an intimidating effect on the wider activist community. During the Arroyo administration most of the victims were members of activist groups that are associated with communist groups in the Philippines - the Communist Party of the Philippines (CPP)/New People's Army (NPA)/National Democratic Front (NDF).³⁶ This is due to the fact that the AFP

accessed on 3/23/2017; "There's no such thing as a DDS." In Robillos, A. J. (2015). *Duterte: There is no Davao Death Squad*. Retrieved from <http://cnnphilippines.com/news/2015/05/27/Davao-City-Mayor-Rodrigo-Duterte-Davao-Death-Squad.html>, accessed on 3/23/2017.

³³ Penrose, M. M. (1999). "Impunity – Inertia, Inaction and Invalidity: A Literature Review", *Boston University International Law Journal* 17:269, p. 274.

³⁴ Human Rights Watch. (2007). *Scared Silent; Impunity for Extrajudicial Killings in the Philippines*. Vol. 19/9.

³⁵ Front Line Defenders. (2016). *Annual Report on Human Rights Defenders at Risk in 2016*, p. 6.

³⁶ Human Rights Watch. (2007). *Scared Silent; Impunity for Extrajudicial Killings in the Philippines*. Vol. 19/9.

considers leftist organizations as ‘enemies of the state’, which are to be fought as part of a broad counter-insurgency attempt which is laid out in government directives such as Oplan Bantay Laya³⁷³⁸. Aggressive intelligence gathering and so-called ‘Know Your Enemy’ seminars conducted by the army are often a first step towards identifying potential rebels and in turn targets for extrajudicial killings. In his report on extrajudicial killings in the Philippines, UN Special Rapporteur Philip Alston concluded that the victims were carefully selected to maximize the chilling effect on other activists and therefore constitute a serious endangerment to the wider situation of human rights. He noted a consequential “narrow[ing] of the political discourse”³⁹. Extrajudicial killings - especially when followed by impunity of the perpetrators - can therefore be an efficient way of intimidation, to create panic and to deter organization of the workers.⁴⁰

The devastating effects of such a climate of impunity on the social dynamic of labor unions is exemplified in the case of the transport unions in Davao. Following the deaths of Petalcorin and his colleague Rivera as well as the attacks on Cirilo, the transport workers union in Davao practically ceased its activities. According to SENTRO members, the assaults’ effect was exactly as allegedly intended. The violence against fellow activists and the following



impunity of these crimes had a “chilling effect” on other activists. According to the ITF the climate of violence and impunity that manifested itself in the Petalcorin case has a damaging effect on the exercise of trade union rights.⁴¹ In fact, several leaders who had tried to continue Petalcorin’s struggle resigned when they were threatened with the same fate. Cirilo, who co-headed the anti-

corruption campaign, has been in hiding since the attempted grenade attacks against him. Out of fear for his life, he ceased his advocacy for the transport sector. Petalcorin’s son decided against taking over the presidency of the union after receiving threats himself. One of Petalcorin’s successors as president of NETO later fled Davao out of fear of further violence.⁴²

³⁷ Parreño, A. A. (2011). *Report on Philippine Extrajudicial Killings 2001-2010*. The Asia Foundation.

³⁸ Ibid.

³⁹ Human Rights Council. (2008). *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Mission to the Philippines*. (A/HRC/8/3/Add.2)

⁴⁰ Kaufman, E. and Weiss Fagen, P. (1981). “Extrajudicial Executions: an Insight into the Global Dimensions of a Human Rights Violation”, *Human Rights Quarterly* 3, pp. 94-97, accessed November 22, 2016, doi: 10.2307/762112

⁴¹ International Transport Workers’ Federation. (2016). *ITF brings complaint against Philippines over murder of trade unionist*. Retrieved from <http://www.itfglobal.org/en/news-events/press-releases/2016/february/itf-brings-complaint-against-philippines-over-murder-of-trade-unionists/>, accessed on 3/24/2017.

⁴² Cf. The former Vice-President of NETO resigned saying “I am old. I don’t wanna die by a bullet.” Rodriguez, J. Personal Communications. (2016).

The remaining activists shifted their focus to other issues or are careful not to apportion blame to local powerholders in their campaigns. Activists explicitly name this “neutral” way of addressing issues as strategy to avoid further violence.⁴³ In its complaint to the ILO the ITF therefore concludes a curtailment of the freedom of association and freedom of expression resulting from the impunity in EJKs against trade unionists and activists⁴⁴. It explains that “an independent trade union movement cannot develop in a climate of violence and uncertainty”⁴⁵. The union slowly recovered only years after Petalcorin was shot and members became more active again. By now, the local transport sector has a completely new leadership. Nevertheless, activists give to account that the memory of Petalcorin’s death is still in the back of their heads and that it continues to have an intimidating effect on them. As a consequence, the corruption at the LTFRB continues and drivers continue to complain about deteriorating working conditions.

Secondly, impunity encourages further human rights violations. In fact, the Human Rights Council, when formulating the mandate of the Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions named “impunity, the negation of justice, [as] the main cause of the continued occurrence of extrajudicial, summary or arbitrary executions”⁴⁶. In the case of extrajudicial killings in Davao committed through the Davao Death Squad, former Special Rapporteur Alston documented that impunity had led to death squads in other cities such as General Santos City and Tagum City.⁴⁷ In fact, the death squad that operated in Tagum City under the auspices of former mayor Uy between 1998 and 2013 shares many of the features of the Davao Death Squad. While it was originally initiated by the local government to “rid Tagum City of [...] undesirables: street children, petty criminals, alleged drug dealers”⁴⁸, the hitmen started to take assignments from other “clients” in 2005. As a consequence, a judge, a tribal leader and a journalist were among the victims of the death squad⁴⁹. It can be concluded that similarly to the Davao Death Squad the systematic killing of undesirables was not confined to alleged criminals but to victims who were threatening the status or interests of local powerholders. These politically motivated killings are taking advantage of an already existing “gun-for-hire” infrastructure. Due to its links to the mayor, the operations were protected from police investigations and potential witnesses were threatened or even killed.⁵⁰

⁴³ Rodriguez, J. Personal Communications. (2016).

⁴⁴ NCTU and ITF. (2016). Complaint to the Committee on Freedom of Association Regarding the Government of the Republic of the Philippines.

⁴⁵ NCTU and ITF. (2016). Complaint to the Committee on Freedom of Association Regarding the Government of the Republic of the Philippines.

⁴⁶ Human Rights Council. (2014). *Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions*. (A/HRC/RES/26/12), p.2.

⁴⁷ Human Rights Council. (2009). *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Follow-up country recommendations – Philippines*. (A/HRC/11/2/Add.8)

⁴⁸ Human Rights Watch. (2014). *Philippines Death Squad Killings – Interview with Former Hitman*. Retrieved from <https://www.youtube.com/watch?v=aQBPx-VbUK8>, accessed on 3/23/2017, 00:41-00:51.

⁴⁹ Ibid.

⁵⁰ Ibid.

By the same token, the extrajudicial killing of Petalcorin should be seen in light of the violence and impunity that had already been long established in Davao at the time of his death. This particular killing can therefore be considered an effect of impunity itself. As explained before, Petalcorin was shot in broad daylight in front of his own house, which is an indicator of the lawlessness within which the perpetrators of these crimes act. In fact, in the reigning climate of impunity, in spite of witnesses members of the Davao Death Squad do not have to fear prosecution. Additionally, Petalcorin was not the last transport leader to be killed in Davao City. Instead, his death and the following impunity constitutes one case of many and is just one factor adding to the climate of violence and culture of impunity. In fact, NCTU recorded the deaths of six transport leaders during the first three years of Aquino's presidency.⁵¹ It established that the Philippines has an "international reputation as a place where union leaders are targets for extrajudicial killings and where a culture of impunity is allowed to exist"⁵².

Thirdly, impunity leads to an erosion of democratic institutions and to a loss of faith in the rule of law. Criminal laws and punishments are essential in a government's ability to establish and defend social norms. The penal law is doing this by defining what actions are liable and what the penalties are. This is underlined by court decisions and police behavior confirming that the criminal law is not a mere threat. Punishment has a special function as it "neutralizes the demoralizing consequences that arise when people witness crime being perpetrated."⁵³ In the case of widespread impunity, the promises of criminal law remain unfulfilled since court decisions and police behavior no longer correspond to their legal requirements. As a consequence "the legal and judicial systems, or at least parts of them, are suspended"⁵⁴. The concept of legality itself is undermined as individuals seem to have primacy over the laws and citizens lose faith in the rule of law.⁵⁵ Impunity causes a feeling of powerlessness in victims due to the absence of remedies for the injustice that happened to them. Therefore it leads to re-victimization and fear among the victims.

In the Philippines, the impunity for state sponsored violence is coupled with more general shortcomings of the Philippine justice system that discourage victims from confiding into state agencies. Among other factors, the lack of cooperation between police and prosecutors and the inadequate witness protection program have been identified as factors preventing effective investigations.⁵⁶ The Asia Foundation established that of the cases of extrajudicial killings documented between 2001 and 2010 only little over half were investigated at all, only 1% have been convicted.⁵⁷ In cases where the suspect is a member of the armed forces, no conviction

⁵¹ International Transport Workers' Federation. (2013). *ITF condemns Philippine killings*. Retrieved from <http://www.itfglobal.org/en/news-events/press-releases/2013/august/itf-condemns-philippines-killings/>, accessed on 3/27/2017.

⁵² Ibid.

⁵³ Andenaes, J. (1966). The General Preventive Effects of Punishment. *University of Pennsylvania Law Review* 114:7, p. 950.

⁵⁴ Zur, J. (1994). The Psychological Impact of Impunity. *Anthropology Today* 10:3, p.12.

⁵⁵ Roht-Arriaza, N. (Ed.) (1995). *Impunity and Human Rights in International Law and Practice*. Oxford University Press.

⁵⁶ Human Rights Council. (2008). *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston. Mission to the Philippines*. (A/HRC/8/3/Add.2)

⁵⁷ Parreño, A. A. (2011). *Report on Philippine Extrajudicial Killings 2001-2010*. The Asia Foundation.

has been achieved.⁵⁸ Even in the cases where charges have been filed, the criminal process often takes very long. Forum Asia has documented an average of over five years during Arroyo's term. Reasons for the delay are not only inherent flaws of the Philippine justice system but also threats against witnesses and lawyers involved in the proceedings and in turn problems in evidence-gathering. Consequently, the only outcome the families of the victims expect from police and military investigations is impunity for the perpetrators of the killings.⁵⁹

In the Petalcorin case, this loss of faith can be observed in the decision of Petalcorin's immediate family to leave the Philippines. Even though the case of Petalcorin officially still holds the status of being "under investigation" by the Philippine police as of March 2017, the family has concluded that they cannot expect serious investigative efforts as the police has shown unwillingness to solve the crime. Moreover, Petalcorin's family was left with a feeling of great physical vulnerability after the killings and threats against other family members. In their perception the government's incapability to mitigate this impact urged the family to emigrate from the Philippines in order to evade any further violence.⁶⁰ The same rationale compelled Petalcorin's co-complainant Cirilo to leave the City of Davao after his request for police protection had been rejected. Similarly, the remaining activists, who have not yet fled Davao or terminated their activities, rather changed their campaigns to less confrontational formats than relying on protection through state agencies. Similarly, the Mindanao broadcast journalist shifted the focus of his work to less sensitive topics. In each of the three affected groups it can be observed that a lack of faith in the state's ability or willingness to prevent further abuses leads to developing own strategies to avoid further violence.

From the effects of impunity described above results the need to establish accountability for these crimes. In fact, Philippine law acknowledges that countering impunity is a step towards preventing human rights violations. Section 2 (e) of the Act Defining and Penalizing Crimes against International Humanitarian Law requires to "put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes"⁶¹. While accountability can entail many things, prosecutions have to be the cornerstone, because "only prosecutions truly exemplify a respect for and adherence to the law recited in the numerous international treaties governing gross violations of human rights"⁶². The Philippine state has acknowledged the reigning culture of impunity and the need to reverse it in the preamble of the resolution establishing the AO35 Committee. This Committee was tasked with ensuring that investigations and prosecutions would take place with the explicit goal to eliminate impunity.⁶³ However, as elaborated before, the Committee has failed to live up to its promise and has in fact never published any report. Instead of ensuring investigations and

⁵⁸ Human Rights Watch. (2007). *Scared Silent; Impunity for Extrajudicial Killings in the Philippines*. Vol. 19/9.

⁵⁹ Ibid.

⁶⁰ Petalcorin. (2013). *Personal Communications*.

⁶¹ Congress of the Philippines. (2009). *Republic Act No. 9851*.

⁶² Penrose, M. M. (1999). "Impunity – Inertia, Inaction and Invalidity: A Literature Review", *Boston University International Law Journal* 17:269, p. 309.

⁶³ President of the Philippines. (2012). *Administrative Order No. 35*. Official Gazette.

thereby “exemplify[ing] a respect for and adherence to the law”⁶⁴, the AO35 Committee has perpetuated impunity and has augmented the “sense of wrong-doers escaping justice”⁶⁵. The Special Rapporteur on Extrajudicial Killings specifically noted that the special commissions of inquiry in the Philippines such as the AO35 became “tools to evade the obligation to undertake thorough, prompt and impartial investigations into violations of the right to life”⁶⁶.

The ‘War on Drugs’ – DDS extended?

On May 9, 2016, former Davao City Mayor Rodrigo Duterte was elected the 16th president of the Philippines. During his first six months as president, Duterte and his administration established the ‘war on drugs’ in the daily routine of the citizens. From election to the end of 2016, on average 36 suspected drug pushers and drug users were killed – totaling to over 7,000 as of March 2017. Of these roughly one third were killed in police operations with the remaining two thirds being so-called “deaths under investigations”. These death are referred to by the media as vigilante killings, at least some of which were proven to be committed or ordered by police officers. Others were argued to have been killed by drug criminals that were aiming to prevent being incriminated themselves. Many of the victims had a cardboard taped to the corpse reading “drug pusher ako” (“I am a drug pusher”) therefore directly referring to Duterte’s ‘war on drugs’ and his calls to kill drug pushers. The mode of operation of these “vigilante killings” shows striking similarities with the Davao Death Squad. In both cases, victims are usually shot at close range on the street by a masked assailant ‘riding in tandem’ on a motorbike.⁶⁷ The work of the death squads is furthermore enabled by ready-made lists of suspected drug users and pushers. One way of doing so is the registration of suspected drug users and pushers in “watch lists” of the municipal government under the so-called Oplan Tokhang (Operational Plan “knock and plead”). Government officials on the municipal level compile these lists not only based on prior offenses that may have happened years ago, but also based on hear-say of other community members. Amnesty International therefore describes these watch lists as unsubstantiated backlists that provide “a way to get rid of personal or political rivals”⁶⁸. Additionally, Duterte has publicly read out names of high-level drug suspects such as members of drug cartels and government officials allegedly involved in the drug business. The supply of lists as battle order is another characteristic that the ‘war on drugs’ shares with the Davao Death Squad. In fact, Duterte once read out the names of 500 suspected criminals on TV when he was still mayor of Davao City.⁶⁹

⁶⁴Penrose, M. M. (1999). “Impunity – Inertia, Inaction and Invalidity: A Literature Review”, *Boston University International Law Journal* 17:269, p. 309.

⁶⁵ Ibid, p. 273.

⁶⁶ Ndiaye, B. W. (1996). Report of the Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions. (A/51/457), p. 32.

⁶⁷ Amnesty International. (2017). “If you are poor, you are killed” – *Extrajudicial Executions in the Philippines’ ‘War on Drugs’*.”

⁶⁸ Ibid, p.20.

⁶⁹ Ranada, P. (2016). *Duterte announced drug lists when he was mayor, too*. Retrieved from <http://www.rappler.com/newsbreak/in-depth/142731-duterte-list-mayor-tv-show>, accessed on 03/29/2017.

Organizations familiar with the Davao Death Squad such as the Coalition against Summary Executions (CASE) have argued that Duterte has simply extended the death squad strategies that he allegedly supported and directed but at least tolerated in Davao to act nationwide.⁷⁰ His statements, though regularly denied by presidential spokespersons, support that claim. Even before assuming office Duterte made statements that directly encouraged the use of violence against suspected drug criminals. Under his presidency, the constant incitement of violence has led to a climate of tolerance for killings by unknown armed assailants.

Similarly to the DDS none of the killings are investigated effectively. None of the approximately 4,000 “deaths under investigation” has led to charges being filed even though killings are often committed with witnesses present. In the case of killings perpetrated by police forces, the reports of the “armed encounters” show striking similarities. Almost all of the reports state that the suspects shot at the police officers, many of the reports would then specify that the gun malfunctioned but all claim that the use of deadly force by police officers was required by the actions of the suspect. Contrary to this, many eye-witnesses of such incidents have reported to international organizations that the suspect actually surrendered and was unarmed. Several organizations have also reported that police officers routinely plant evidence to cover their tracks.⁷¹ What makes the official police reports even less credible is the near-perfect record of killing in the “armed encounters”. In very rare cases a suspect was reported to be wounded or a police officer hurt. Especially in light of these hints, the absence of effective investigations points to a state-sponsored impunity for killings committed in the context of the ‘war on drugs’. It seems that police officers can act outside the law and do not have to fear any reprisals, but rather get monetary incentives for killing the suspect as a report by Amnesty International suggests.⁷² Duterte himself has repeatedly stated that he would protect those killing drug pushers on his behalf⁷³ - the Inspector General, who is in charge of investigating every use of violent force by police officers, was Davao’s Inspector General when Duterte was mayor there. As a consequence, witnesses do not expect a fair and unbiased investigation when reporting the cases.

These similarities allow for the conclusion that the experiences made with the Davao Death Squad over several years, can to a certain extent, be applied to the national ‘war on drugs’ that started with Duterte’s presidency. Therefore, it has to be expected that just as in the case of the DDS the killings will spread from suspected drug users and pushers to activists, human rights defenders and unionists. In fact, Duterte has confirmed this fear when he threatened human rights defenders critical of his strategy against drug criminality to be included in the list of potential victims. During the first months of his presidency those speaking

⁷⁰ Coalition Against Summary Executions. (2016). *Personal Communications*.

⁷¹ Amnesty International. (2017). *“If you are poor, you are killed” – Extrajudicial Executions in the Philippines’ “War on Drugs”*.

⁷² Ibid.

⁷³ Cf “I will not allow these guys to go to prison, even if the NBI says it was murder.” In Placido, D. (2016). *Police in Espinosa ‘rubout’ won’t go to prison: Duterte*. ABS CBN News. Retrieved from <http://news.abs-cbn.com/news/12/07/16/police-in-espinosa-rubout-wont-go-to-prison-duterte>, accessed on 3/28/2017.

out against the ‘war on drugs’ have been intimidated and defamed as supporters of drug cartels.⁷⁴ The community organizer Orlando Abangan is one of the first victims of the ‘war on drugs’ who is a human rights defender. Abangan was killed by an unidentified assailant after he had complained about the illegal arrest of his nephew and violations of due process. He was known to be a vocal critic of the extrajudicial killings under the ‘war on drugs’.⁷⁵ Shortly after the death of Abangan, the suspected perpetrator was killed, thereby leaving little options for investigation. Fellow human rights defenders are expecting that the killing will remain unpunished.⁷⁶

Generally, there is a rising concern that the impunity for killings under the ‘war on drugs’ has led to “copycat murders not related to drugs”⁷⁷. The abundance of unpunished murders and fatal armed encounters with the police have normalized extrajudicial killings thereby lowering the political cost of murder. Additionally, Duterte’s inciting language has contributed to a climate “where murder is being promoted as an acceptable method of dealing with certain problems”⁷⁸. While extrajudicial killings of human rights defenders have been observed during other administrations, the impunity and degradation of human life accompanying the ‘war on drugs’ under Duterte significantly raise the risk of human rights defenders threatening the interests of powerholders. Analogically to the Davao Death Squad, the nationwide ‘war on drugs’ creates an infrastructure for politically motivated extrajudicial killings and promises impunity.

Conclusion

International law prohibits and strongly condemns extrajudicial killings as a violation of the right to life. If extrajudicial killings do happen, international law requires states to provide access to justice for victims to establish accountability for the committed crime and to prevent future violations of the same kind. These provisions are also reflected in Philippine national law, specifically in the mandate of the Interagency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons created under Administrative Order 35. Nevertheless, extrajudicial killings have been rampant in the Philippines for years with heightened attention to the phenomenon under the Arroyo administration. Most recently, extrajudicial killings in the Philippines have regained international attention under the ‘war on drugs’ waged by the Duterte administration. Now president Duterte was mayor of Davao City at the time of the killing of Antonio Petalcorin, which allows for transferring some of the insights from the analysis of extrajudicial killings in Davao to the nationwide phenomenon under his presidency.

⁷⁴ Amnesty International. (2017). *“If you are poor, you are killed” – Extrajudicial Executions in the Philippines’ “War on Drugs”*.

⁷⁵ Partido Ng Manggagawa. (2016). *Factsheet: Abangan EJK*.

⁷⁶ Quezon, A. Personal Communications. (2017).

⁷⁷ Amnesty International. (2017). *“If you are poor, you are killed” – Extrajudicial Executions in the Philippines’ “War on Drugs”*, p.51.

⁷⁸ Front Line Defenders. (2016). *Annual Report on Human Rights Defenders at Risk in 2016*.

The killing of Antonio ‘Dodong’ Petalcorin fulfils the criteria of extrajudicial killing as given by both international and domestic law. The killing was politically motivated since it was directed against Petalcorin’s activities as trade union leader, specifically his anti-corruption campaign against the regional LTFRB. Indications of the political motivation are the testimony of an incarcerated contract killer originally tasked with the assignment, the timing of the incident, the coincidence with the attacks on his co-campaigners and the ensuing threats against his successors and colleagues. Following the killings, there have only been insufficient investigations by local state authorities. The ITF concluded that “the steps taken by the government of the Philippines to investigate these crimes clearly fall woefully short of what is expected in instances of such violence and victimisation”⁷⁹. Equally as the vast majority of extrajudicial killings in the Philippines, the killing of Antonio Petalcorin was met with impunity.

The Philippine state’s insufficient attempts at investigating extrajudicial killings, often displaying an apparent unwillingness to do so, creates a climate of impunity and denies the victims the right to an adequate remedy. As a consequence, human rights defenders generally have to fear reprisals for their activism effectively limiting their scope of action. The impunity for extrajudicial killings therefore has an adverse effect on the wider exercise of human rights. As exemplified by the killing of Petalcorin, human rights defenders were deeply intimidated thereby interrupting their trade union activities. Many lost faith in the protection that state institutions can provide, but instead expect reprisals from reporting violations to official authorities. Additionally, impunity triggers the perpetration of more violations. In fact, the killing of Petalcorin itself can be considered the effect of widespread impunity for extrajudicial killings in Davao City in connection with the Davao Death Squad. The danger for human rights defenders emanating from the existence of a death squad acting with impunity and being at least condoned by the government can be felt also at the national level after former Davao City mayor Duterte became president. Human rights organizations therefore expect more violations against human rights defenders in the future.

In situations of impunity, it is necessary to reestablish accountability for the violations committed. Swift, effective and impartial investigations and prosecutions are not only useful for reestablishing faith in the rule of law and democratic institutions but also become “a kind of unofficial apology, giving official voice and legitimacy to those who spoke up”⁸⁰. A climate of accountability for human rights violations is essential for the wider exercise of human rights.

Recommendations

To the Government of the Philippines

- Comply with its obligations under international law, specifically with its duty to respect, protect and fulfil the right to life.

⁷⁹ International Transport Workers’ Federation. (2016). *ITF brings complaint against Philippines over murder of trade unionists*. Retrieved from <http://www.itfglobal.org/en/news-events/press-releases/2016/february/itf-brings-complaint-against-philippines-over-murder-of-trade-unionists/>, accessed on 3/28/2017.

⁸⁰ Roht-Arriaza, N. (Ed.) (1995). *Impunity and Human Rights in International Law and Practice*. Oxford University Press, p. 8.

- Immediately take all necessary steps to stop extrajudicial killings committed by government officials.
- Publicly denounce extrajudicial killings and other human rights abuses.
- Ensure that the culture of impunity enabling killings of activists no longer persists.
- Ensure a social climate conducive to the effective exercise of trade union rights.
- End public statements inciting violence.
- Permit the visit of the UN Special Rapporteur without any unnecessary restrictions.

To the AO35 Committee

- Admit the Petalcorin case and ensure a prompt and independent investigation.

To the Philippine National Police

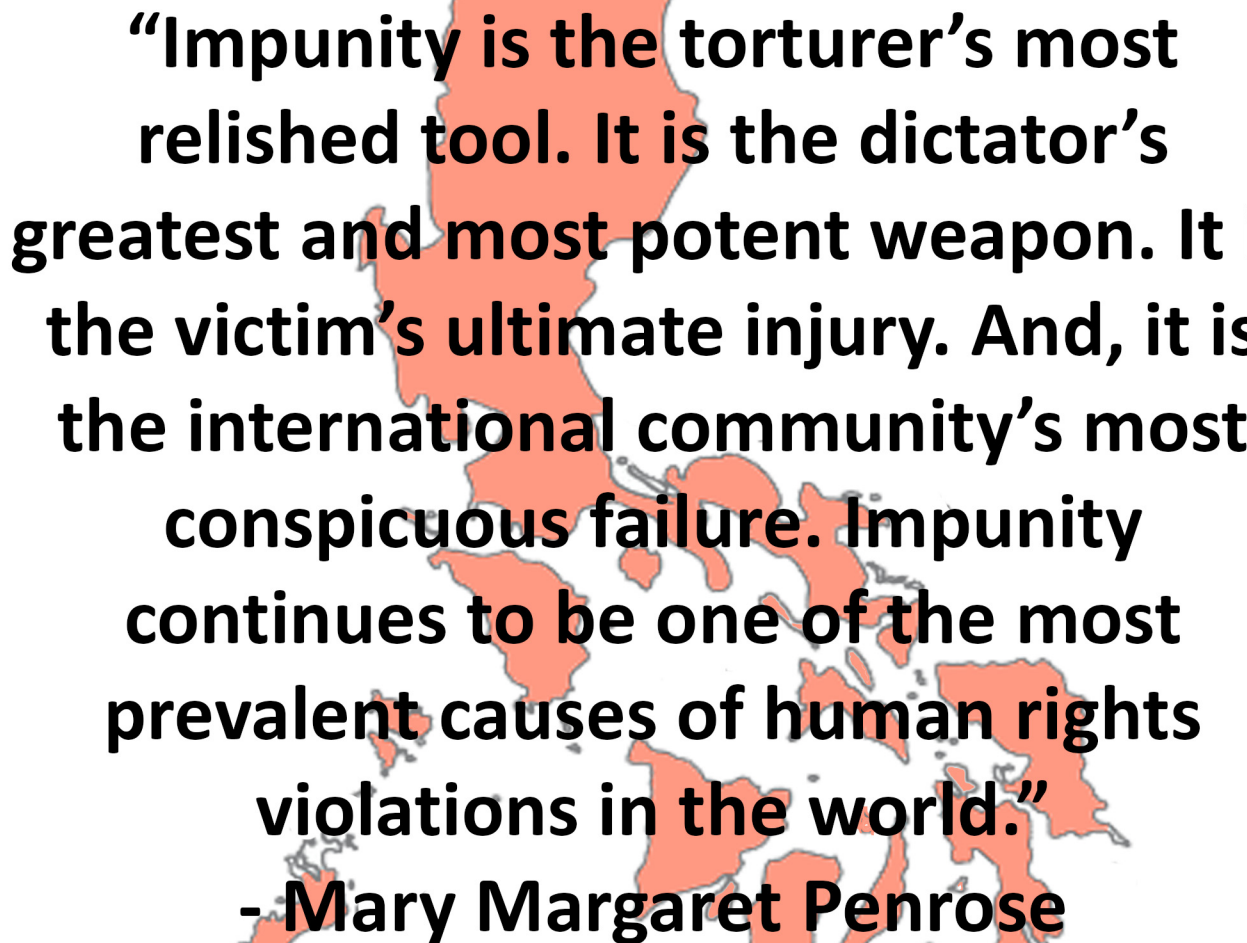
- Resume investigations in the Petalcorin case and ensure a swift and impartial resolution of the investigation.
- Investigate promptly, efficiently and impartially all killings by unknown armed persons.
- Immediately take all necessary steps to stop threats and retaliation against witnesses and complainants committed by police officers.

To the Department of Justice

- Direct the National Bureau of Investigation to review its report on the Petalcorin case regarding the political nature of the killing.
- Direct the National Bureau of Investigation (NBI) to investigate promptly, efficiently and impartially all cases of extrajudicial killings.
- Investigate and prosecute promptly, efficiently and impartially all incidences of gun-for-hire.
- Commit appropriate resources to identify paid killers and dismantle the underlying organizational structures.
- Investigate all allegations of violence, threats of violence or any form of harassment against witnesses, complainants or their families.
- Ensure effective remedies including compensation and rehabilitation for victims.
- Adopt measures to provide for the safe filing of complaints and testimonies by victims of human rights violations committed by government officials.

To the Commission on Human Rights

- Review its report on the killing of Petalcorin regarding the political motivation of the killing.
- Investigate promptly, efficiently and impartially all cases of extrajudicial killings and other human rights violations and threats thereof, especially if committed against human rights defenders.



“Impunity is the torturer’s most relished tool. It is the dictator’s greatest and most potent weapon. It is the victim’s ultimate injury. And, it is the international community’s most conspicuous failure. Impunity continues to be one of the most prevalent causes of human rights violations in the world.”
- Mary Margaret Penrose

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