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JOINT COMMITTEE REPORT NO. 18

*Of the Committee of Justice and Human Rights and
the Committee of Public Order and Dangerous Drugs,*

*On Proposed Senate Resolution No. 9 by Senator
Leila M. De Lima, Proposed Senate Resolution No.
151 by Sen. Antonio F. Trillanes IV, and Privilege
Speeches of Sen. Leila M. De Lima, Sen. Alan Peter
S. Cayetano and Sen. Risa Hontiveros Baraquel, all
delivered on 02 August 2016 on the subject of the
recent spate of Extra-Judicial Killings and Summary
Executions*

SEPARATE CONCURRING AND DISSENTING OPINION Senator FRANCIS N. PANGILINAN

I concur with the finding of the Joint Committee of the Committee on Justice and Human Rights and the Committee on Public Order and Dangerous Drugs (the "Joint Committee") that there is an urgent need to undertake reforms in law enforcement and to strengthen the criminal justice system to fortify the rule of law.

In particular, I agree with with following:

- (1) That "the doctrine of command responsibility obligates the President to take necessary and reasonable measures to prevent the commission of illegal acts and to punish its perpetrator;"¹
- (2) That erring policemen must be punished and must be refrained "from urging 'surrenderees' to sign 'voluntary surrender certificates' in violation of their constitutional rights, particularly the rights of the accused"³;
- (3) That "the police obviously have not done well and must now do a lot more in preventing, investigating, and solving these killings,"⁵ that "they

¹ *Id.* at p. 83.
³ Joint Committee Report No. 18, p. 54.
⁵ *Id.* at p. 65.

have no license to use overwhelming force, or eliminate criminals acting as judge, jury, and executioner,” and that they must follow the rules of engagement and the rule of law in their operations against illegal drugs;⁶

- (4) That “[t]he President needs to be mindful of his role as head of State and be careful with his words, lest his imprudent statements be construed as imputable to the State. There may also be accusation of tolerance hurled against him because his overwhelming support to the police, manifested by his colorful language against drug pushers, may be perceived as condonation of the violations of human rights and due process that the police are committing, in the guise of putting an end to the drug menace,”⁷ and
- (5) That the war against illegal drugs must be won within the legal system, and with the President who is sworn to “do justice to every man,” be he a drug pusher or a drug lord.⁸

However, I strongly dissent to the factual conclusion of the Joint Committee that “there is no proof that there is a state-sponsored policy to commit extrajudicial killings to eradicate illegal drugs in the country” on the basis of lack of evidence presented.

With due respect to the Joint Committee, I submit the following:

1. THE CONCLUSION THAT THERE ARE NO STATE-SPONSORED KILLINGS RESTS ON TENUOUS LOGIC AND INADEQUATE EVIDENCE. CRUCIAL PIECES OF EVIDENCE SEEM TO HAVE BEEN DISREGARDED

Reliance on murder and homicide numbers problematic and misleading

That killings have been recorded for the past two decades does not negate the reported rise in state-sponsored extrajudicial killings or summary executions in the present administration, which is precisely the subject matter of the legislative inquiry.

The Joint Committee downplayed⁹ the increasing incidence of extrajudicial killings¹⁰ under the Duterte administration. It arrived at this conclusion by

⁶ *Id.* at p. 66.

⁷ *Id.* at p. 83.

⁸ *Id.* at p. 84.

⁹ *Id.* at pp. 41-42. Specifically, it said:

“This shows that no matter who is President (sic), killings have continued and remain unabated. xxx killings have been happening even in the past administrations. The spate of killings that has been so well publicized, with the kind of ‘noise’ President Duterte has created, does not make this series of killings any more gruesome than those that happened in previous administrations.” (*Id.* at p.42)

¹⁰ For purposes of the Senate Committee inquiry, “extrajudicial killings” was defined as—

“Killings where:

1. The victim was:

inaccurately relying on the murder and homicide statistics¹¹ submitted by the Philippine National Police (PNP) and the Philippine Statistics Authority (PSA). Notably, this data covers all deaths in the Philippines including those which do not fall within the Committee-adopted definition of extrajudicial killings. This resulted in *bloating the incidence of extrajudicial killings for the previous administrations.*

Through an inaccurate crunching of the numbers, the death toll during the Duterte administration magically appears to fall within the normal range. It is submitted that no valid conclusions can be made about the national EJK situation using homicide and murder numbers in its entirety.

Even with the homicide and murder data used, improper comparisons were made. For example, killings during the current administration were wrongly added and attributed to the immediately preceding administration (as part of the year 2016). Also, killings in 2004 and 2010 (presidential election years) were improperly attributed to only one administration.

Alternative explanations for the rise in EJKs and summary killings not satisfactorily proven

More importantly, the police testimony to the effect that the killings were attributable to factors¹² other than the war on drugs program of the current administration was neither explained, quantified, nor corroborated by independent evidence.

The alleged factors were as follows: non-remittance of money collected from the illegal drugs trade; violent take-over of drug operations area by another illegal drugs syndicate; and the possibility of the police neutralizing former sources or suppliers of illegal drugs.¹³

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- a. A member of, or affiliated with an organization, to include political, environmental, agrarian, labor, or similar causes; or
 - b. An advocate of above-named causes; or
 - c. A media practitioner or
 - d. Person(s) apparently mistaken or identified to be so.
 2. The victim was targeted and killed because of the actual or perceived membership, advocacy, or profession;
 3. The person/s responsible for the killing is a state agent or non-state agent; and
 4. The method and circumstances of attack reveal a deliberate intent to kill; and
 5. State agents are involved in the commission of the crime or have acquiesced in them by failing to investigate, punish and prosecute when it is in a position to do so." (TSN, 23 August 2016, p.238.)

¹¹ In supporting its argument on the existence of extrajudicial killings across administrations, the Joint Committee relied on the following data from the PNP. (*Id.*; summary table supplied)

Murder and Homicide Cases	Administration		
	Arroyo (2001-2009)	Aquino III (2010-2016)	Duterte (July-early October)
TOTAL	91,762	85,878	4,248
Average/year	10,196	14,313	4,248
Average/month	850	1,193	1,416
Average/day	28	40	47

¹² *Supra* footnote 1, at p. 43.
¹³ *Id.*

While these may be plausible alternatives, no other independent relevant evidence were shown to establish them, apart from the statement of police officers themselves. Given that such statement, when believed, will tend to absolve the police of wrongdoing, it was incumbent upon the Joint Committee to verify such claims with independent sources and state the result of its verification in the report.

Also telling, there was nothing in the committee report that explained the extent—whether geographical (*i.e.* localized in particular areas, or for all drug-affected places) or organizational (*i.e.* at which level/s in the drug manufacturing and distribution system)—to which these factors affected the recent rise in EJKs and summary killings. Without a sense of the magnitude of the direct and indirect effects of these purported causes, one will be hard-pressed to accept the police explanation hook, line, and sinker.

Conflicting data on killings neither explained nor reconciled

The Joint Committee cited a 2016 annual human rights report prepared by the US Department of State to the US Congress to prove the relatively “normal” level of extrajudicial killing incidents in the Philippines.¹⁴

A comparison of the US Department of State’s report *vis-à-vis* the PNP’s will highlight glaring differences. According to the US State Department, the PNP recorded only 146 cases of killings for the years 2001 up to 2008.¹⁵ Also, in a study commissioned by the USAID entitled “Report on the Philippine Extrajudicial Killings (2001–August 2010),” Atty. Al Parreno estimated 305 incidents of EJKs in the country with 390 victims from 2001 to 2010.¹⁶ KARAPATAN, a human rights organization, claimed that there have been more than 900 killings from 2001 to 2008.

Based on the above information, the incidents of EJKs may be pegged within the range of 146–900 incidents for the years 2001 to 2008. Even then, this is a far cry from the 77,467 incidents reported by PNP during the Senate inquiry. This serious discrepancy was not dealt with in the committee report.

Furthermore, if we are to give credence to KARAPATAN’s estimate, the Aquino administration averaged only 69 victims per year while Duterte averages 47 killings per day. Is this an alarming *prima facie* case of a rise of EJKs? If yes, is there a shift in policy or rhetoric that may have helped to bring about this phenomenon?

¹⁴ *Id.* at p. 50. Also, see Annex G of the Committee Report,

¹⁵ *Id.* See Annex “G” of the Joint Committee Report which shows a table summarizing the state of extrajudicial killings in the country for the period 1999-2015. Specifically, it mentioned: “Through the year’s [2008] end, the PNP Task Force recorded 146 cases of killings since 2001, six of which occurred during the year; 90 cases were filed in court, with one conviction during the year. At least one human rights organization, Karapatan, claimed that there have been more than 900 killings since 2001, with both state actors and non-state actors as suspects. It recorded 69 victims of killings during the year.”

¹⁶ Parreno, *Report on Philippine Extrajudicial Killings (2001–August 2010)*, 2011, p. 2.

Crucial pieces of evidence duly submitted seem to have been disregarded

The Office of the United Nations High Commissioner (OHCHR) defines extrajudicial killings as the “deprivation of life without full judicial and legal process, and with the involvement, complicity, tolerance or acquiescence of the Government or its agents.”¹⁷ Notably, the term also includes “death through the excessive use of force by police or security forces.”

The testimonies of witnesses presented before the Joint Committee revealed that a number of alleged drug suspects were killed during shooting incidents involving policemen. The PNP defended the actions of its officers by claiming that suspects resisted arrest, forcing the policemen to defend themselves.¹⁸

A Reuters study of 51 drug-related shooting incidents involving the police established a PNP kill rate of 97% – of 103 drug suspects, 100 were shot dead and 3 injured.¹⁹ The study further stated:

“The figures pose a powerful challenge to the official narrative that the Philippines police are only killing drug suspects in self-defense. These statistics and other evidence amassed by Reuters point in the other direction: that police are pro-actively gunning down suspects.”

To shed light on the circumstances surrounding the death of alleged drug suspects, I requested the PNP to submit copies of the suspects’ drug test results and the Scene of the Crime Operatives (SOCO) reports.²⁰ These documents were submitted to the Joint Committee on 22 September 2016.²¹ A comprehensive scrutiny of the SOCO reports is essential to provide details on police encounters with alleged drug suspects who end up dead. Strangely, the committee report made no reference to these material documents.

2. THE LEGISLATIVE INVESTIGATION WAS PREMATURELY TERMINATED. SEVERAL FACTUAL AND LEGAL QUESTIONS WERE LEFT OPEN THAT NECESSITATE FURTHER INQUIRY.

¹⁷ Human Rights and Law Enforcement - A Manual for Human Rights Training for the Police, Professional Training Series No. 5/Add.2, 2004, Index HR/P/PT/5/Add.2, p. 15. Available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2015/12/Universal-Enforced-Disappearance-and-Extrajudicial-Execution-PGNo9-Publications-Practitioners-guide-series-2015-ENG.pdf>. (Last accessed on 19 September 2016).

¹⁸ TSN, 22 August 2016, pp. 127, 135.

¹⁹ Baldwin, “Police rack up an almost perfectly deadly record in Philippine drug war”, 5 December 2016. Available at <http://www.reuters.com/investigates/special-report/philippines-duterte-police/>. (Last accessed on 13 December 2016).

²⁰ *Id.*, pp. 51-135.

²¹ TSN, 22 September 2016, p. 9.

In failing to dispute the perceived rise in the cases of EJKs and summary killings observed by many quarters and reported by the media, it thus behooved upon the Joint Committee to investigate further. Given the dreadful daily death count in the media and the very real threat to the life of criminal suspects or even those merely caught in the crossfire in the war on drugs, the Senate has the duty to leave no major questions unanswered.

Possibility that increase in EJKs and summary killings were state-enabled or state-inspired

That the recent cases of EJKs and summary killings may not have been state-sponsored does not preclude the possibility that such was at the very least inspired or enabled by various state actors.

The Joint Committee correctly found that erring policemen must be punished and the President has the duty to take necessary and reasonable measures to prevent the commission of illegal acts and to punish its perpetrators. However, it failed to discuss in its report the specific connections, if any at all, between the President's public statements and actions and the reported increase in EJKs and summary killings in the past five months.

This is especially important because the PNP, as the chief implementer of the administration's war against drugs and criminality, is directly reporting and answerable to the President of the Philippines. Given the intensity with which the President had expressed his desire to fulfil his campaign promise to reduce, if not eliminate, drugs and criminality, the police establishment is under immense pressure to deliver. That the Senate exercised its right to conduct legislative inquiries on the matter is a strong indication of the inadequacy of the PNP's built-in regular processes to correct its administrative rules and operational protocols.

As the Senate has properly wielded its power to investigate, it should have followed this through until the Joint Committee has come to the root cause/s of the problem. While the report lists down various recommendations²³ to address the general and long-standing problems encountered by those who want to exact accountability from our uniformed personnel, it was not able to pinpoint the reason for the reported inordinate increase in the number of EJKs and summary killings.

Non-exhaustion of credible leads from media sources or from pending cases

²³ These include: proposing amendments to RA 8551 to enable the Internal Affairs Service to act swiftly on investigations of police personnel, and to strengthen disciplinary mechanisms, such as the People's Law Enforcement Board (PLEB); creating and designating special criminal courts for erring and abusive police, alongside illegal drugs courts; creating a joint congressional oversight committee to monitor killings and para-military units; and adopting better crime-fighting strategies. (*Id.* at pp. 55-64.)

As early as 04 October 2016, *The Guardian*, a British national daily newspaper, published an exclusive report²⁴ detailing an anonymous first-hand account of a police officer who was allegedly part of secret police teams responsible for some of the reported EJKs. In particular, said testimony provided that:

“The officer claims he is part of one of 10 newly-formed and highly secretive police special operations teams, each with 16 members.

“He claims the teams are coordinated to execute a list of targets: suspected drug users, dealers and criminals.

“The killings mostly take place at night, he says, with the officers hooded and dressed in all black. They set their watches, giving themselves one minute or two to extract target individuals from their houses and kill on the spot – swift, precise, no witnesses.

“He claims they then dump the bodies – in the next town or under a bridge – or they plaster masking tape around the head of the corpse and place a cardboard sign on the body that reads ‘drug lord’ or ‘pusher’.

“‘We put placards in order for the media, in order for those investigating [the] bodies to redirect their investigation,’ he explains, leading them to think: ‘Why should I investigate this guy, he is a drug pusher, he is a rapist, never mind with that one, I will just investigate the others. It’s a good thing for him that happened to him.’”

Just a few days later after the above exclusive report, or on 09 October 2016, anti-crime crusader Zenaida Luz, 51 years old, was shot and killed by two policemen on a motorcycle, one wearing a wig and another a ski mask, in Gloria, Oriental Mindoro. The gunmen, who turned out were ranking officers—Senior Insp. Magdaleno Pimentel Jr. and Insp. Markson Almeranez—were only identified after they had been accosted and when they shouted “*Tropa, tropa!*” (*Troops, troops!*)²⁵

The above are only two of the many more sources that the Joint Committee could have explored in order to find out patterns or a prevailing *modus operandi*—crucial information in order to make sound judgments on how to best move forward from the hearings. Unfortunately, the committee report did not mention that any of these credible leads were scrutinized.

In addition, the Joint Committee terminated the legislative investigation before the presentation of the Commission on Human Rights (CHR) and its witnesses. This notwithstanding, the CHR submitted copies of the affidavits of its proposed witnesses to the committee for its consideration.²⁶ Although the Committee Chairman manifested that he will refer the affidavits to the PNP for proper

²⁴ Lamb, Kate. *Philippines secret death squads: officer claims police teams behind wave of killings*. Available at <https://www.theguardian.com/world/2016/oct/04/philippines-secret-death-squads-police-officer-teams-behind-killings>. (Accessed on 12 December 2016.)

²⁵ Virola, Madonna and Cinco, Maricar. *2 cops kill anticrime crusader in Mindoro*. <http://newsinfo.inquirer.net/825201/2-cops-kill-anticrime-crusader-in-mindoro>. (Accessed on 12 December 2016.)

²⁶ TSN, 13 October 2016, pp. 8-279.

investigation, he also assured the CHR that the committee will consider the submitted documents in its report.²⁷

However, these affidavits were not at all discussed in the committee report. To my mind, the failure to consider these material pieces of evidence, together with the exclusion of CHR witnesses, rendered the termination of the legislative inquiry premature.

Also, as the independent government agency constitutionally mandated to investigate alleged violations of human rights, including state-sponsored killings, the CHR presents a practical point of view that would doubtless inform the Joint Committee's discussions and recommendations. Given the CHR's first-hand experience in investigating EJK and summary killings cases, it would have been more prudent to hear out what they had to say.

Had the investigation continued, the Committee could have evaluated similar cases including the killing of Albuera, Leyte Mayor Rolando Espinosa, a high-profile case of EJK.

On 05 November 2016, less than a month after the termination of the hearing, detained Mayor Espinosa was killed under police custody, in what CIDG claims as a shoot-out. Reacting to the incident, President Duterte says there was nothing puzzling in the killing of Mayor Espinosa. "I will not go there to find fault with the police," he said.²⁸ On 05 December 2016, the President further reaffirmed his confidence in the police's narrative. "*Iyong mayor na who was served a warrant and there was a shoot-out. Some say extrajudicial killing. Talagang pinatay daw. xxx Sabi ng police, pag-serve nila ng warrant, lumaban at binaril nila. Tama. And I believe you because the police is under the executive branch of the government. Akin.*"²⁹

In a press statement on 06 December 2016, the NBI deemed the death of Mayor Espinosa as a "rub-out" and not a shoot-out, as claimed by the police raiding team. The Bureau recommended multiple murder and perjury charges against the 24-member team.³⁰

²⁷ *Id.*, p. 280. Specifically:

"THE CHAIRMAN (SEN. GORDON). Second. xxx But I just want to assure you, Mr. Chairman, that all the affidavits you submitted here, we will turn over to the police for proper enforcement and that **we will make sure that, as part of our report, lalabas iyan.** We did not ignore anybody here." (Emphasis and underscoring supplied.)

²⁸ *The ties that bind in the Espinosa killing*, Inquirer.net, 04 December 2016, Available at www.newsinfo.inquirer.net/850399/the-ties-that-bind-in-the-espinosa-killing (Accessed on 13 December 2016).

²⁹ *Duterte says he still believes in cops' version in Espinos killing*, GMA News Online, 05 December 2016, Available at www.gmanetwork.com/news/story/591319/news/nation/duterte-says-he-still-believes-cops-version-in-espinosa-killing (Accessed on 13 December 2016).

³⁰ *NBI: Mayor Espinosa's death a 'rubout'*, Rappler, 06 December 2016, Available at www.rappler.com/nation/154717-nbi-mayor-espinosa-death-rubout (Accessed on 13 December 2016)

***The existence or non-existence of
the Davao Death Squad: material
and relevant***

The 2008 Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, Philip Alston, on the occasion of his visit to the Philippines in February 2007, found that:

1. It is commonplace that a death squad known as the "Davao Death Squad" operates in Davao City;
2. One fact points very strongly to the officially-sanctioned character of these killings: No one involved covers his face;
3. Executions generally respond to suspicions of petty crimes, are preceded by warnings or notifications that clarify their significance, and are carried out publicly and with methodical indifference;
4. It would appear that "assets" who identify targeted individuals for the death squad are often suspected criminals who are recruited after being arrested, with an early release as inducement;
5. Barangay officials are sometimes involved in selecting targets for the death squad, a practice perhaps originating in the role barangay officials have played in naming suspected drug dealers for inclusion in the PNP watch lists.³¹ (*Summary provided.*)

The recent spate of killings bears the unmistakable features of a Davao Death Squad (DDS) kill operation. Thus, establishing the existence of the DDS becomes material and relevant for the purpose of ascertaining whether the recent spate of EJKs and summary executions are state-sponsored. Also, any insight as to how the alleged DDS conducted its illegal operations will be instructive to the Joint Committee when it considers remedial measures to stop or prevent similar operations in the future.

It is true that evidentiary rules³² exclude prior bad acts or conduct and declare such as inadmissible. Evidence that a person committed a crime in the past does not prove that he committed a similar crime at present. Nevertheless, prior acts can be presented to establish a specific intent or knowledge, identity, plan, custom, pattern, design or system of carrying out a crime. On this basis, evidence that will establish the existence of DDS should be considered by the Senate inquiry.

³¹ *Id.* at pp. 16-17. Available at <http://www.ohchr.org/EN/Issues/Executions/Pages/CountryVisits.aspx> and <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/130/01/PDF/G0813001.pdf?OpenElement>. (Accessed on 12 December 2016.)

³² Section 34, Rule 130, Rules on Evidence.

A FINAL WORD

We appreciate the efforts of the Joint Committee and its Secretariat in taking on the gargantuan task of making sense of and investigating the alarming spate of extrajudicial and other summary killings that is plaguing our country. However, we feel that the Joint Committee Report raised even more questions than provided clear answers. If the evidence points to a marked increase in the number of extrajudicial and other summary killings, to what intervention, policy, or action is this attributable? If the evidence relied upon does not point to a noticeable increase in these killings, what then do we make of the massive and unprecedented local and international attention that the Philippines is getting on account of these alleged EJKs and summary killings? Are we ready to accept the absurd explanation that all these are part of a sophisticated media hype and ploy to put the administration in a bad light?

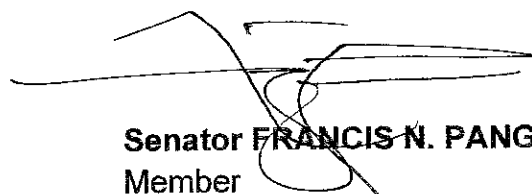
In a little more than five months, these extrajudicial and summary killings have claimed the life of almost 6,000 Filipinos. This dwarfs the 3,257 people alleged to have been killed by the military during President Ferdinand Marcos' dictatorship, specifically over the ten-year period from 1975 to 1985. The gruesome death count continues daily, and we—together with our children—are constantly exposed to and are slowly being desensitized to it.

A culture of fear and death is afoot.

To the thousands who fell victim to the recent spate of EJKs and summary killings, it is too late—no amount of consolation, outrage, or revulsion will change the final death sentence handed down to them without due process of law.

Nevertheless, we must act with courage and boldness. And we must act now.

The Senate, one of the very last bulwarks of our democracy, has time and again proven that its strength and relevance as an institution lies most profoundly in its independence. It is about time that the Senate steps up again and be the irresistible force that puts a stop to the senseless loss of life, family, and future of thousands of Filipinos. It is about time that the Senate wields its constitutional oversight powers to provide an effective check on what appears to be an abusive, incautious, and negligent exercise of government powers that continues to victimize hapless, voiceless, and poor Filipinos.



Senator FRANCIS N. PANGILINAN
Member
Committee on Justice and Human Rights