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SENATE

Committee Report No. 120

RECEIVED BY: J.

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Submitted jointly by the Committees on Public Order and Dangerous Drugs;  
Peace, Unification and Reconciliation; and Finance on  
MAR 18 2015

Re: Proposed Senate Resolution Nos. 1133, 1134, 1135, 1136, 1137, 1138, and  
1146; Senate Bill No. 2603; and the privilege speech of Sen. Teofisto L.  
Guingona III delivered on February 2, 2015, entitled "Tiwala"

Recommending the adoption of the recommendations as contained in this  
Report and for its full and immediate implementation.

Sponsors: Senators Grace Poe, Teofisto L. Guingona III, Francis "Chiz" G.  
Escudero, Vicente C. Sotto III, Jinggoy Ejercito-Estrada, Joseph Victor G.  
Ejercito, Miriam Defensor-Santiago, Paolo Benigno Aquino IV, Aquilino  
"Koko" Pimentel III, Cynthia A. Villar

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Mr. President:

The Committees on Public Order, Dangerous Drugs; Peace, Unification  
and Reconciliation; and Finance, to which were referred  
Proposed Senate Resolution No. 1133, introduced by Sen. Sotto entitled:

**"RESOLUTION  
DIRECTING THE PROPER SENATE  
COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF  
LEGISLATION, ON THE FACTS AND  
CIRCUMSTANCES SURROUNDING THE DEATH OF  
AT LEAST 43 MEMBERS OF THE PHILIPPINE  
NATIONAL POLICE IN AN ENCOUNTER WITH THE  
MORO ISLAMIC LIBERATION FRONT (MILF) AND  
THE BANGSAMORO ISLAMIC FREEDOM FIGHTERS  
(BIFF)"**

**Proposed Senate Resolution No. 1134, introduced by Sen. Ejercito-Estrada entitled:**

**“RESOLUTION  
URGING THE SENATE COMMITTEES ON PUBLIC ORDER AND DANGEROUS DRUGS; PEACE, UNIFICATION AND RECONCILIATION; LOCAL GOVERNMENT, AND OTHER APPROPRIATE COMMITTEES TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, ON THE DEATH OF AT LEAST FIFTY (50) MEMBERS OF THE PHILIPPINE NATIONAL POLICE- SPECIAL ACTION FORCE (SAF) IN A CLASH WITH THE MORO ISLAMIC LIBERATION FRONT (MILF) AND OTHER ELEMENTS IN MAMASAPANO, MAGUINDANAO ON JANUARY 25, 2015”**

**Proposed Senate Resolution No. 1135, introduced by Sen. Poe entitled:**

**“RESOLUTION  
URGING THE SENATE COMMITTEE ON PUBLIC ORDER AND DANGEROUS DRUGS TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE KILLINGS OF MEMBERS OF THE SPECIAL ACTION FORCE (SAF) OF THE PHILIPPINE NATIONAL POLICE (PNP) IN MAMASAPANO, MAGUINDANAO IN RELATION TO THE PROPOSED PNP MODERNIZATION PROGRAM”**

**Proposed Senate Resolution No. 1136, introduced by Sen. Guingona III entitled:**

**“RESOLUTION  
DIRECTING THE PROPER COMMITTEE TO CONDUCT AN INQUIRY IN AID OF LEGISLATION ON THE POLICE OPERATION IN MAMASAPANO, MAGUINDANAO WHICH RESULTED IN THE DEATH OF FORTY FOUR POLICE OFFICERS AND EIGHT MEMBERS OF THE MORO ISLAMIC LIBERATION FRONT (MILF) AND THE BANGSAMORO ISLAMIC FREEDOM FIGHTERS (BIFF) AND INJURIES TO OTHERS”**

**Proposed Senate Resolution No. 1137, introduced by Sen. Ejercito entitled:**

**“RESOLUTION**

**URGING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE ALLEGED ATTACK OF PHILIPPINE NATIONAL POLICE IN MAGUINDANAO MILF CONTROLLED AREA WITHOUT PROPER COORDINATION WITH THE SPECIAL ACTION FORCES CAUSING THE DEATH OF 44 SAF MEMBERS AND 12 WOUNDED IN ACTION”**

**Proposed Senate Resolution No. 1138, introduced by Sen. Defensor-Santiago entitled:**

**“RESOLUTION**

**DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE FIREFIGHT BETWEEN GOVERNMENT AND REBEL FORCES THAT LEFT 44 POLICE COMMANDOS DEAD IN MAGUINDANAO”**

**Proposed Senate Resolution No. 1146, introduced by Sen. Legarda entitled:**

**“RESOLUTION**

**COMMENDING THE BRAVERY AND HEROISM OF THE PHILIPPINE NATIONAL SPECIAL ACTION FORCE (PNP-SAF) OPERATIVES WHO WERE KILLED AND WOUNDED IN MAMASAPANO, MAGUINDANAO AND DIRECTING THE APPROPRIATE SENATE COMMITTEE TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, TO DETERMINE POSSIBLE LAPSES IN THE PLANNING AND IMPLEMENTATION OF THE SAID OPERATION AS WELL AS OTHER CONTRIBUTING FACTORS THAT LED TO IT'S UNFAVORABLE OUTCOME”**


Senate Bill No. 2603, introduced by Sens. Guingona III, Aquino IV, Pimentel III and Villar entitled:

**“AN ACT  
CREATING A FACT-FINDING COMMISSION, TO BE  
CALLED THE “MAMASAPANO TRUTH  
COMMISSION,” WITH PLENARY POWERS TO  
INVESTIGATE AND REPORT UPON THE DEATHS AND  
INJURIES OF MEMBERS OF THE SPECIAL ACTION  
FORCE UNIT OF THE PHILIPPINE NATIONAL POLICE  
IN MAMASAPANO, MAGUINDANAO”**

and the Privilege Speech of Senator Teofisto Guingona III entitled “Tiwala” delivered on February 2, 2015 and the interpellations thereon (Journal for Session No. 47, pages 890-895)

have considered the same and have the honor to submit its report on its inquiry back to the Senate, recommending adoption of the recommendations as contained in this Report and for its full and immediate implementation.

**RESPECTFULLY SUBMITTED:**

  
**GRACE POE**  
Chairperson

Committee on Public Order and Dangerous Drugs



**FRANCIS "CHIZ" G. ESCUDERO**  
Chairperson  
Committee on Finance


**TEOFISTO L. GUINGONA III**  
Chairperson  
Committee on Peace,  
Unification and Reconciliation

Vice Chairpersons:

*with reservations and may amend*

  
**AQUILINO "KOKO" PIMENTEL III**

*may amend.*  
  
**GREGORIO B. HONASAN II**

  
**SERGIO R. OSMEÑA III**

Members:

*(may amend)*  
FERDINAND R. MARCOS, JR.

*may amend*  
LOREN B. LEGARDA

*Cynthia Villar*  
CYNTHIA A. VILLAR  
*with manifestation attached*

*will enter lot file separate observation amendment*  
*Pro S. Cayetano*  
PIA S. CAYETANO

*Bam Aquino with reservations and will amend*  
PAOLO BENIGNO "BAM" AQUINO IV

*to file separate explanation*  
SONNY M. ANGARA

ANTONIO "SONNY" F. TRILLANES IV

MANUEL "LITO" LAPID

MIRIAM DEFENSOR-SANTIAGO

*will submit amendments*  
*Ram*  
RAMON "BONG" REVILLA, JR.

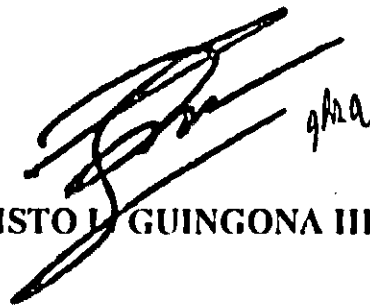
JOSEPH VICTOR EJERCITO

*(may amend)*  
MARIA LOURDES NANCY S. BINAY

**RESPECTFULLY SUBMITTED:**

  
**GRACE POE**  
Chairperson

Committee on Public Order and Dangerous Drugs

  
**TEOFISTO L. GUINGONA III**

**RESPECTFULLY SUBMITTED:**



**GRACE POE**

Chairperson

Committee on Public Order and Dangerous Drugs



**MIRIAM DEFENSOR SANTIAGO**



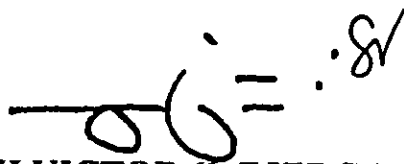
**RESPECTFULLY SUBMITTED:**



**GRACE POE**

Chairperson

Committee on Public Order and Dangerous Drugs



**JOSEPH VICTOR G. EJERCITO**

— may amend!

*Vicente C. Sotto III*  
**VICENTE C. SOTTO III**  
Acting Minority Leader

*Jinggoy Ejercito-Estrada*  
**JINGGOY EJERCITO-ESTRADA**  
will submit separate opinion

Ex-Officio Members:

*As a partial report. w/ separate findings/opinion w/ reservations, and strong recommendations to amendments and, To continue and complete the investigation!*

**JUAN PONCE ENRILE**  
Minority Leader

**ALAN PETER S. CAYETANO**  
Majority Leader

*will submit additional observations*  
**RALPH G. RECTO**  
Senate President Pro-Tempore

**FRANKLIN M. DRILON**  
Senate President

## THE COMMITTEE REPORT ON THE MAMASAPANO INCIDENT


### I. SUMMARY

Close to midnight of January 24<sup>th</sup> of this year, after several failed and aborted attempts in the past, almost 400 highly trained commandos belonging to the elite Special Action Force (SAF) of the Philippine National Police (PNP) unilaterally launched *OPLAN EXODUS* to serve standing warrants of arrest against 2 internationally wanted terrorists and mass murderers, namely, ZULKIFLI BIN HIR @ Marwan ("Marwan") and AHMAD AKMAD BATABOL USMAN @ Basit Usman ("Usman") in Mamasapano, Maguindanao ("Mamasapano"). A few minutes after 4:00 a.m. the following day, 25 January 2015, the 84<sup>th</sup> Seaborne Special Action Company of the PNP-SAF ("Seaborne") was able to neutralize Marwan, but Usman slipped away. In the ensuing firefight that lasted for several hours thereafter against hostile forces that included members of the Moro Islamic Liberation Front (MILF), the Bangsamoro Islamic Freedom Fighters (BIFF) and other Private Armed Groups (PAGs) in the area, 44 SAF troopers fell, 15 others were wounded, at least 18 MILF members were officially declared dead, and 5 non-combatants were fatally caught in the crossfire. An undetermined number of other combatants from the BIFF and other PAGs could have been killed or wounded in the incident.

Pursuant to Senate Resolution Nos. 1133, 1134, 1135, 1136, 1137, 1138 and 1146 filed by Senators Sotto, Ejercito-Estrada, Poe, Guingona, Ejercito, Defensor-Santiago and Legarda, respectively, calling for an investigation regarding the Mamasapano incident on 25 January 2015, as well as Senate Bill No. 2603 introduced by Senators Guingona, Aquino, Pimentel and Villar

regarding the creation of a "Mamasapano Truth Commission", the Committees on Public Order and Dangerous Drugs, Peace, Unification and Reconciliation, and Finance (the "Committees") jointly held 5 public hearings and 5 executive sessions over a span of 3 weeks. A total of 37 resource persons and/or witnesses appeared before the Committees and testified under oath.

While the Committees would have preferred to personally hear from President Benigno Aquino III (the "President") on the facts relating to this incident as personally known to him, the Committees had chosen not to seek the President's attendance at its hearings out of respect for the head of a co-equal branch of the government. The Committees have thus relied on public statements made personally by the President in its attempt to determine the facts relating to *Oplan Exodus* as personally known to him.

 This Committee Report is presented without prejudice to the submission of a supplemental report after the Committees shall have received the reports on the separate investigations on the incident conducted by the National Bureau of Investigation (NBI) and the MILF, should the submission of such supplemental report be warranted.

## II. BACKDROP/Framework

### A. Mindanao and the Bangsamoro Peace Process.

Maguindanao is one of the poorest provinces in the Philippines. Poverty incidence in the province is pegged at 54.5% (as of December 2013), which is more than twice the national average of 19.7%.<sup>1</sup> Other social development indicators for Maguindanao have consistently been dismal: literacy rate is very low (66.27%); maternal and child mortality rates are very high; and life expectancy (62 years for males and 64 years for females) are among the lowest in the country.<sup>2</sup>

It has been argued that the underdevelopment of Mindanao has been largely due to neglect by the national government. This has spurred the separatist movement to continue their struggle for self-determination. The conflict and violence have, in turn, become obstacles to development. The Moro secessionist movement traces its beginnings in 1969 when Nur Misuari, together with other Muslim dissidents like Hashim Salamat, formed the Moro National Liberation Front (MNLF) in the aftermath of the Jabidah Massacre. What followed was a long period of intermittent war in Mindanao, broken only by periodic cessation of hostilities and peace initiatives like the 1976 GPH-MNLF Peace Agreement. This agreement, also known as the *Tripoli Agreement*, was entered into during the term of President Ferdinand Marcos ("President Marcos").

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<sup>1</sup> National Statistical Coordination Board's "2012 Full Year Poverty Statistics."

<sup>2</sup> Retrieved at <http://web0.psa.gov.ph/content/maguindanao-quickstat-september-2014>.

Almost every president since the time of President Marcos had tried to establish peace in Mindanao, with varying degrees of success.

In 1986 President Corazon Aquino ("President Cory") met with Nur Misuari and resurrected the peace talks. Congress enacted Republic Act (R.A.) No. 6734, the Organic Act of the Autonomous Region of Muslim Mindanao (ARMM) and by 1990, the first-ever ARMM elections were held in the 4 provinces that opted for ARMM inclusion, namely; Lanao del Sur, Maguindanao, Sulu and Tawi-Tawi.

In 1996, President Fidel Ramos ("President Ramos") signed the Final Peace Agreement (FPA) with the MNLF. The peace pact with the MNLF, however, resulted to the birth of the MILF. Led by Hashim Salamat, the break-away MILF faction asserted that the peace agreement deviated from the framework of the original Tripoli Agreement and thus rejected the FPA. Despite this, the Ramos government succeeded in negotiating a **General Cessation of Hostilities Agreement with the MILF in 1997.**

In 2000, President Joseph Estrada's ("President Estrada") policy shift towards an "All Out War" succeeded in capturing several major MILF camps in Central Mindanao, but it led to the displacement of nearly a million individuals.

Over the years, violent conflict has been the main driver of displacement in Mindanao. Such displacement was frequently associated with suffering

(77%), economic losses (42%), loss of home (37%), delayed education (30%) and loss of cattle (20%).<sup>3</sup>

One of the very first issuances of President Gloria Macapagal-Arroyo ("President Arroyo") upon assuming the presidency in 2001 was Executive Order ("E.O.") No. 3 on "Defining Policy and Administrative Structure for the Government's Comprehensive Peace Efforts." Under the Arroyo administration, the New Organic Act for ARMM, R.A. No. 9054, was passed and the peace talks with the MILF were re-initiated through the assistance of Malaysian Prime Minister Mahathir Mohammad and Indonesian President Abdulrahman Wahid. Among the notable highlights of the peace process during this period were: (a) the signing of the Joint Communiqué between the GRP and the MILF on 6 May 2002 which provided for the creation of the **Ad Hoc Joint Action Group (AIJAG)** to undertake the "isolation" and "interdiction" of all criminal syndicated and kidnap-for-ransom groups, including so-called "lost commands" operating in or near MILF areas; and (b) the **Memorandum of Agreement on Ancestral Domain (MOA-AD)** finalized and signed on 27 July 2008." However, the Supreme Court later on struck down the MOA-AD for being "contrary to law and the Constitution." Thereafter, a new round of hostilities broke out between the MILF and government forces in the aftermath of the Supreme Court decision which left nearly 700,000 persons displaced in Mindanao.

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<sup>3</sup> "Violent conflicts and Displacement in Central Mindanao." World Bank-World Food Program Study retrieved at <http://www.wfp.org/content/conflict-and-displacement>.

Developing a peace and development agenda for Mindanao has always been an avowed priority of the President. In fact, the issue of peace in Mindanao was 14<sup>th</sup> in the President's 16-point agenda in his Social Contract with the Filipino People, which was published as a full-page advertisement when he and Manuel Roxas II ("Roxas") filed their certificates of candidacy for the 2010 elections in November 2009.

When the President assumed the presidency in 2010, he reiterated his commitment towards the attainment of peace and development in Mindanao during his inauguration speech, to wit;

"My government will be sincere in dealing with all the peoples of Mindanao. We are committed to a peaceful and just settlement of conflicts, inclusive of the interests of all – may they be Lumads, Bangsamoro or Christian."

In 2011, the President met with MILF Chairman Al Haj Murad in Tokyo, Japan as part of his confidence-building efforts towards the resumption of the peace talks. Under the current administration, the notable highlights of the ongoing peace process include the following:

- **Signing of the Framework Agreement on the Bangsamoro (FAB) on 15 October 2012 at the Heroes Hall in Malacañang;**
- **Signing of the Comprehensive Agreement on the Bangsamoro (CAB) on 27 March 2014 at the Malacanang; and**



- Submission of the draft **Bangsamoro Basic Law (BBL)** to both Houses of Congress on 10 September 2014.

Today, there are several armed groups in Mindanao, primarily among them are the MNLF, MILF, BIFF, Justice for Islamic Movement (JIM) - the newly formed splinter group of the BIFF, Abu Sayyaf Group (ASG) and other PAGs. Among these groups, the MILF is the largest and most organized. The MILF has a leadership component and an armed component known as the Bangsamoro Islamic Armed Forces (BIAF).

Prior to the Mamasapano incident, no skirmishes had been recorded since 2011 between government forces and the MILF. This was quite an achievement since the agreements on the Cessation of Hostilities had been violated in the past and technically, the government is still in conflict with the MILF.

#### **B. Ceasefire Mechanisms Under the GPII- MILF Peace Process.**

The **Coordinating Committee on the Cessation of Hostilities (CCCII)** is one of the ceasefire mechanisms under the GPII-MILF peace process. It is composed of representatives from both the government and the MILF.<sup>4</sup> It is tasked to oversee that both parties “shall desist from committing any prohibited

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<sup>4</sup> Article III, paragraph 4, “Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities” dated 14 November 1997.

hostile and provocative acts.”<sup>5</sup> A joint CCCH was established as provided for by the Agreement on the Cessation of Hostilities and was designed to respond immediately to de-escalate any reported hostile armed confrontation between the government and MILF forces, with no need for Presidential nor Cabinet Secretary level instruction.<sup>6</sup>

The Ad Hoc Joint Action Group (AIJAG) was formed to coordinate and work in tandem with the Joint CCCH.<sup>7</sup> It is composed of representatives from both the government and the MILF.<sup>8</sup> It is specifically tasked to implement the isolation and interdiction of all criminal syndicates, kidnap-for-ransom groups and other criminal groups including the “lost commands” or splinter armed groups operating in MILF areas and communities.<sup>9</sup> It was established in May 2002 through the Joint Communiqué between the government and MILF and formally organized in 2005. Its mandate is to coordinate, monitor and disseminate information between and among the Armed Forces of the Philippines (AFP) and the PNP for the government, and the BIAF for the MILF, to effect the apprehension and arrest of the identified criminal elements within the “MILF areas/communities.”<sup>10</sup>

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<sup>5</sup> Article III, paragraph 4, “Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities” dated 14 November 1997.

<sup>6</sup> Article III, paragraph 4, “Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities” dated 14 November 1997.

<sup>7</sup> Paragraph (VII)(2), “Implementing Guidelines on the Joint Communiqué of 6 May 2002” dated 10 February 2011.

<sup>8</sup> Paragraph (V)(A), “Implementing Guidelines on the Joint Communiqué of 6 May 2002” dated 10 February 2011.

<sup>9</sup> Paragraph (II), “Implementing Guidelines on the Joint Communiqué of 6 May 2002” dated 10 February 2011.

<sup>10</sup> Paragraph (VI), “Implementing Guidelines on the Joint Communiqué of 6 May 2002” dated 10 February 2011.

A third party, the **International Monitoring Team (IMT)**, composed of representatives from Malaysia, Brunei, Indonesia, Norway, and Japan, observes and monitors the ceasefire between the government and MILF. It conducts field verification for reported violations of the ceasefire agreement and coordinates closely with the CCCH of the government and the MILF for this purpose.<sup>11</sup>

The AHJAG, CCCH and the IMT are vital to the implementation of the ceasefire agreement signed by the government and MILF in 1997. Simply put, these bodies were created to operationalize and/or enforce the peace policies.

To prevent armed skirmish, the government and MILF committed to desist from committing hostile and provocative acts. Moreover, movement of MILF forces outside of their identified areas are coordinated to the government forces for prior clearance.

Further, the GPH-CCCH conducts troop visits, community visits, peace dialogue/advocacy, establishes early warning systems, and coordinates with other stakeholders to disseminate information on the ceasefire agreement with a view of avoiding violations thereto.<sup>12</sup>

In the event of violent confrontations, the CCCH of the government and the MILF shall conduct investigation to establish what circumstances led to the

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<sup>11</sup> FAQs on the GPH-MILF Ceasefire Mechanisms, Prepared by the AHJAG/CCCH Secretariat.

<sup>12</sup> FAQs on the GPH-MILF Ceasefire Mechanisms, Prepared by the AHJAG/CCCH Secretariat; Article III, paragraph (4)(d). "Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities" dated 14 November 1997.

armed skirmish. They report their findings to the negotiating panels. The GPH-CCCH and MILF-CCCH also discuss possible measures to prevent the occurrence of similar future altercations. When violations are proven, the CCCH of either side files a protest against their counterpart. The IMT mediates to resolve the subject matter of the protest with a view of preventing its similar occurrence in the future.

### **C. Relevant Security Policies of Aquino Government.**

#### **1. Primacy of the Peace Process and OPAPP.**



The "primacy of the peace process" is formally established in the 2011-2016 Philippine Development Plan (PDP), the 2011-2016 National Security Plan of the Philippines (NSPP), and the Internal Peace and Security Plan of the Armed Forces of the Philippines (IPSP).

The PDP states that development cannot be achieved without political stability and national security.<sup>13</sup> Armed groups are perceived to be a threat to national development. However, the PDP does not privilege the peace process. It is only one of several strategies involved in producing the final sector outcome of establishing a stable national security environment.<sup>14</sup>


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<sup>13</sup> The 2011-2016 Philippine Development Plan.

<sup>14</sup> The 2011-2016 Philippine Development Plan.

Furthermore, the PDP does not give the MILF priority over other armed groups. In fact, the PDP states that the Aquino government's aim is "Permanent and peaceful closure of ALL armed conflicts", which could only be achieved through "Negotiated political settlement of ALL ARMED CONFLICTS".

Even if the peace process is "the centerpiece" of the government's internal security plan, it does not privilege one armed group above the others. Neither does it say that the peace process will be pursued above all other aims. One passage is worth pointing out:



The government therefore will invite *all rebel groups* to become advocates and partners in advancing the peace process for the greater good of the country and people. The peace process shall be pursued comprehensively. *However, it will not come at any price nor at the cost of the sovereignty and territorial integrity of the Republic.*<sup>15</sup>

The Office of the Presidential Adviser on the Peace Process (OPAPP) is the office mandated to oversee, coordinate, and integrate the implementation of the comprehensive peace process. OPAPP was created through E.O. No. 125, s. 1993, which was later amended in 2001 by the signing of E.O. No. 3, s. 2001, as reaffirmation of the government's commitment to achieving just and lasting peace through a comprehensive peace process.<sup>16</sup>

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<sup>15</sup> The 2011-2016 Philippine Development Plan; emphasis supplied.

<sup>16</sup> Retrieved from the website of the OPAPP at <http://www.opapp.gov.ph/about-opapp#sthash.lDHTisN.dpuf>.

## **2. Anti-Terrorism Policies.**

### **a. Domestic laws**

There are existing domestic laws on anti-terrorism and national security that are relevant to the discussion of the Mamasapano incident. R.A. No. 9372, also known as the "*Human Security Act*," is the primary law on anti-terrorism. R.A. No. 9372 defines "terrorism" under its Section 3, to wit:

**SEC. 3. Terrorism.-** Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);

b. Article 134 (Rebellion or Insurrection);

c. Article 134-a (Coup d' Etat), including acts committed by private persons;

d. Article 248 (Murder);

e. Article 267 (Kidnapping and Serious Illegal Detention);

f. Article 324 (Crimes Involving Destruction), or under

1. Presidential Decree No. 1613 (The Law on Arson);

2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);


3. Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968);

4. Republic Act No. 6235 (Anti-Hijacking Law);

5. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and

6. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.



The Anti-Terrorism Council (ATC) was designated as the implementing agency of R.A. No. 9372. Section 53 of R.A. No. 9372 created the ATC and enumerated the agencies which shall serve as support. It also included its functions such as the formulation of anti-terrorism plans:

**SEC. 53. *Anti-Terrorism Council.***—An Anti-Terrorism Council, hereinafter referred to, for brevity, as the "Council," is hereby created.xxx

The Council shall implement this Act and assume the responsibility for the proper and effective implementation of the anti-terrorism policy of the country. The Council shall keep records of its proceedings and decisions. All records of the Council shall be subject to such security classifications as the Council may, in its judgment and discretion, decide to adopt to safeguard the safety of

the people, the security of the Republic, and the welfare of the nation.

The National Intelligence Coordinating Agency shall be the Secretariat of the Council. The Council shall define the powers, duties, and functions of the National Intelligence Coordinating Agency as Secretariat of the Council. The National Bureau of Investigation, the Bureau of Immigration, the Office of Civil Defense, the Intelligence Service of the Armed Forces of the Philippines, the Anti-Money Laundering Council, the Philippine Center on Transnational Crime, and the Philippine National Police intelligence and investigative elements shall serve as support agencies for the Council.

The Council shall formulate and adopt comprehensive, adequate, efficient, and effective anti-terrorism plans, programs, and counter-measures to suppress and eradicate terrorism in the country and to protect the people from acts of terrorism. Nothing herein shall be interpreted to empower the Anti-Terrorism Council to exercise any judicial or quasi-judicial power or authority.



**b. Treaties and other Agreements Entered into by RP on Anti-Terrorism.**

The Philippines has supported the United Nations (UN) Security Council Resolutions 1269 (1999), 1368 (2001) and 1373 (2001), which call on all States to cooperate, through bilateral and multilateral agreements and arrangements, to prevent and suppress terrorist acts, protect their nationals and other persons against terrorist attacks, and bring to justice the perpetrators of such acts.<sup>17</sup>

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<sup>17</sup> Page 95, TSN of 23 February 2015 hearing.



The Philippines also adopted the ASEAN Convention on Counter Terrorism in 2007.

Furthermore, the Philippines has developed bilateral agreements and cooperation in transnational crime, counter terrorism, law enforcement and mutual legal assistance, thereby enhancing the country's international counter terrorism cooperation. In this area, the PNP has a Memorandum of Understanding (MOU) with the New York Police Department (NYPD) and the Australian Federal Police, and it also has existing agreements with New Zealand, China and Thailand.<sup>18</sup>

The Philippines has been closely engaged with the United States of America to strengthen the country's domestic counter-terror capabilities. In 2002, because of the presence of Islamist terrorist networks, the country was declared as a front-line state in the global war on terrorism. In 2003, the United States designated the Philippines as a major Non-NATO Ally. This designation opened the doors for increased US assistance in the fight against terrorism, including eligibility for joint counter terrorism projects as well as the purchase of excess defense articles.

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<sup>18</sup> Page 96, TSN of 23 February 2015 hearing.

## D. About the PNP and the Special Action Forces (SAF)

### 1. The PNP

The PNP is the national civilian law enforcement agency of the country. It was created by virtue of R.A. No. 6975 entitled, "*An Act Establishing the Philippine National Police under a reorganized Department of the Interior and Local Government and Other Purposes.*"<sup>19</sup> It is a product of the merger of the former Philippine Constabulary and the Integrated National Police.<sup>20</sup>

The primary mission of the PNP is to enforce the law, prevent and control crimes, maintain peace and order and ensure public safety and internal security. In particular, it is vested with the following powers and functions:

- 
1. Law Enforcement;
  2. Maintain peace and order;
  3. Prevent and investigate crimes and bring offenders to justice;
  4. Exercise the vested powers from the Philippine Constitution and pertinent laws;
  5. Detain an arrested person for a period not beyond what is prescribed by law;
  6. Implement pertinent laws and regulations on firearms and explosives control; and

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<sup>19</sup> Philippine National Police. (2015). Retrieved from <http://pnp.gov.ph/portal/index.php/features11>

<sup>20</sup> Center for Police Strategy Management. (2012). Retrieved from <http://www.cpsm.ph/pnp-history.xml>

7. Supervise and control the training and operations of security agencies.<sup>21</sup>

Section 24 of R.A. No. 6975 bestows upon the PNP the mandate to “enforce all laws and ordinances relative to the protection of lives and properties”; “maintain peace and order and take all necessary steps to ensure public safety”; and “exercise the general powers to make arrest, search and seizure in accordance with the Constitution and pertinent laws”, among others.

According to the former PNP Chief Alan Purisima (“Purisima”), upon his assumption as Chief, PNP, several continuing law enforcement operations were already launched against high priority targets, including Marwan and Usman.<sup>22</sup>

(Please see Annex “A” on the PNP Organizational Chart.)

## 2. The SAF

The PNP-SAF is the elite unit of the PNP. It was created on 16 May 1983 under then Lt Gen. Fidel V. Ramos, Vice Chief of Staff of the AFP and Chief of Philippine Constabulary.<sup>23</sup> It is formed primarily to serve as a Rapid Deployment Force, specifically for situations with national and international implications such as Hostage Rescue, Commando-Type Unconventional Warfare, Search and Rescue in times of calamities and disasters, Civil

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<sup>21</sup>Philippine National Police. (2015).

<sup>22</sup> Purisima’s Affidavit submitted to the PNP BOI dated 19 February 2015.

<sup>23</sup> PNP Special Action Force. (2015). The Philippine National Police Special Action Force. Retrieved from <http://pnp-saf.org.ph/index.php/10-front-page/11-special-action-force>

Disturbance Management during national emergency, and other Special Operations.

The PNP-SAF is mandated to perform the following functions:

1. Conduct counter terrorism operations against local and international terrorist groups;
2. Conduct hostage rescue operations of national or of international significance;
3. Conduct search & rescue operations in times of calamities, disaster and national emergencies;
4. Conduct civil disturbance management operations during mass actions in support to local police unit;
5. Develop and train organic personnel including other PNP units and agencies in the furtherance of the mission; and
6. Provide security to vital installations such as foreign embassies and the PNP National Headquarters.<sup>24</sup>

It is noteworthy to mention that under R.A. No. 6975, the SAF is assigned the function of serving as a mobile strike force or reaction unit to augment regional, provincial, municipal and city police forces for civil disturbance control, counterinsurgency, hostage-taking rescue operations, and other special operations.

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<sup>24</sup> PNP Special Action Force. (2015). About US. Retrieved from <http://saf.pnp.gov.ph/index.php/about-us>

### 3. The Complementary Relationship of the PNP and the AFP.

R.A. No. 6975 spelled out the relationship of the PNP under the Department of Interior and Local Government (DILG) and the AFP under the Department of National Defense (DND) in relation to internal security, suppression of insurgency and matters affecting serious threats to national security and public order, to wit:

*Section 12. Relationship of the Department with the Department of National Defense. – During a period of twenty-four (24) months from the effectivity of this Act, the Armed Forces of the Philippines (AFP) shall continue its present role of preserving the internal and external security of the State: Provided, That said period may be extended by the President, if he finds it justifiable, for another period not exceeding twenty-four (24) months, after which, the Department shall automatically take over from the AFP the primary role of preserving internal security, leaving to the AFP its primary role of preserving external security. However, even after the Department has assumed primary responsibility on matters affecting **internal security, including the suppression of insurgency, and there are serious threats to national security and public order,** such as where insurgents have gained considerable foothold in the community thereby **necessitating the employment of bigger tactical forces and the utilization of higher caliber armaments and better armored vehicles,** the President may, upon recommendation of the peace and order council, call upon the Armed Forces of the Philippines to assume the primary role and the Philippine National Police (PNP) to play the supportive role in the area concerned.*

In times of national emergency, all elements of the PNP, the Bureau of Fire Protection, and the Bureau of Jail Management and Penology shall, upon direction of the President, assist the Armed Forces of the Philippines in meeting the national emergency.

The complementary relationship between the Department of the Interior and Local Government and the Department of National Defense in any of the preceding eventualities shall be jointly prescribed by their respective Secretaries in a memorandum of agreement that shall thereafter be published and implemented.<sup>25</sup>

It would seem that the enumerated function of the SAF regarding counter insurgency and other special operations, in which counter-terrorism falls, finds basis in this law.

On 25 February 1998, R.A. No 8551, entitled, *"An Act Providing For The Reform And Reorganization of the Philippine National Police And For Other Purposes, Amending Certain Provisions of Republic Act Numbered Sixty Nine Hundred and Seventy-Five Entitled, "An Act Establishing The Philippine National Police Under A Re-Organized Department of the Interior and Local Government, And For Other Purposes"* was passed. Although there was no direct amendment on the operational units of the PNP, it is submitted that the function of the SAF was accordingly amended. Section 3 of said law amended Section 12 of R.A. No. 6975, to wit:


Section 3. Section 12 of Republic Act No. 6975 is hereby amended to read as follows:

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<sup>25</sup> Emphasis supplied.

“SEC. 12. Relationship of the Department with the Department of National Defense.- The Department of the Interior and Local Government shall be *relieved of the primary responsibility on matters involving the suppression of insurgency and other serious threats to national security.* The Philippine National Police shall, through information gathering and performance of its ordinary police functions, *support the Armed Forces of the Philippines on matters involving suppression of insurgency, except in cases where the President shall call on the PNP to support the AFP in combat operations.*”

In times of national emergency, the PNP, the Bureau of Fire Protection, and the Bureau of Jail Management and Penology shall, upon the direction of the President, assist the armed forces in meeting the national emergency.”<sup>26</sup>

 Note that the 1998 amendment provided a shift in the functions of the PNP-SAF. In fact, the law has effectively relieved the SAF of its particular duty regarding counterinsurgency and other special operations relative to serious threats to national security and public order. The Committees recommend that this concern on the seemingly implied repeal on the part of the function “counterinsurgency” and the phrase “other special operations” be looked into as a further discussion between the PNP and AFP in the future.

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<sup>26</sup> Emphasis supplied.

#### 4. Current Vacuum in PNP Leadership

Purisima was appointed as Chief of the PNP by the President in December 2012. He was placed under preventive suspension due to a supposed anomalous contract with a courier service in 2011. He officially received a copy of the suspension order last 9 December 2014,<sup>27</sup> and his suspension is to last for 6 months. The suspension of Purisima is an unprecedented case. He is the only PNP Chief who has been suspended by the Office of the Ombudsman ("Ombudsman").

### III. STATEMENT OF FACTS: BEFORE, DURING AND AFTER THE MAMASAPANO INCIDENT.

#### A. The targets of *Oplan Exodus*.

The targets of *Oplan Exodus* were 2 internationally-wanted terrorists, both of whom carried substantial rewards for their capture. The primary target of the operation was Marwan. Marwan was a US-trained engineer.<sup>28</sup> He headed Kumpulan Mujahidin Malaysia and was a member of the Jemaah Islamiyah's central command.<sup>29</sup> He was wanted in the Philippines and the United States in connection with various crimes such as:

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<sup>27</sup> Africa, R. (11 Dec 2014). Purisima Suspension in Effect, says DILG. Malaya Business Insight. Retrieved from <http://www.malaya.com.ph/business-news/news/purisima-suspension-effect-says-dilg>

<sup>28</sup> Page 32, TSN of 9 February 2015 hearing.

<sup>29</sup> Page 32, TSN of 9 February 2015 hearing.



- Criminal case for Multiple Murder and Multiple Frustrated murder (Crim Case 552-2007);
- P7,400,000 reqrd under JO Nr 11-2009;
- \$5,000,000 reward for Justice Program under the US State Department;
- US Warrant CR 07-00501-02 JF.<sup>30</sup>

Marwan also trained Islamic militants in bomb-making.<sup>31</sup> Marwan is said to have masterminded the 2002 Bali bombing in Indonesia which killed 202 and injured 209 people.<sup>32</sup> Marwan was also wanted by the Malaysian government for the killing of a Christian member of their parliament in 2000, in an attack backed by Osama Bin Laden's infamous terrorist organization, Al Qaeda.<sup>33</sup> He personally carried out attacks using explosives detonated through remote control using cellular phones.<sup>34</sup> Marwan had strong links with the ASG, in fact, he even married the widow of ASG leader Khadaffy Janjalani.<sup>35</sup>

Intelligence reports indicate that Marwan had been hiding in Mindanao since 2003, under the protection of the ASG, the BIFF and the MILF.<sup>36</sup>

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<sup>30</sup> Page 3 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>31</sup> Page 32, TSN of 9 February 2015 hearing.

<sup>32</sup> Page 32, TSN of 9 February 2015 hearing.

<sup>33</sup> Page 50, TSN of 9 February 2015 hearing.

<sup>34</sup> Page 32, TSN of 9 February 2015 hearing.

<sup>35</sup> Page 50, TSN of 9 February 2015 hearing.

<sup>36</sup> Pages 49 to 50, TSN of 9 February 2015 hearing.

Marwan's terrorist activities in the Philippines alone resulted to the death of 46 innocent civilians and injury to 207 others.<sup>37</sup>

The secondary target of *Oplan Exodus* was Usman. Like Marwan, Usman is also a bomb maker and bomb-making trainor. He is a leading commander of the BIFF. There are multiple standing warrants of arrest against him for murder and frustrated murder, including the 21 April 2002 General Santos City bombing that killed 15 people and injured 55 others. Usman's bombs have killed at least 17 civilians and injured 62 others in Mindanao from 2002 to 2008. Usman is also wanted in connection with the following:

- Criminal Case for Multiple Murder and Multiple Frustrated Murder (Crim Case 515-2006); and
- Wanted by US Federal Government.<sup>38</sup>

**B. Previous Attempts to Arrest Marwan and Usman.**

The PNP-SAF was tapped to carry out missions against Marwan and Usman. R.A. No. 6975 expressly mandates the PNP to conduct law enforcement operations and to implement warrants of arrest issued by courts of competent jurisdiction.<sup>39</sup>

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<sup>37</sup> Page 32, TSN of 9 February 2015 hearing.

<sup>38</sup> Page 19 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>39</sup> Purisima's Affidavit dated 19 February 2015.

As early as 2003, local authorities received information that Marwan was hiding in Mindanao.<sup>40</sup> Prior to *Oplan Exodus*, several attempts to arrest Marwan were unsuccessful. Below is a table of PNP's previous operations against Marwan:

NAME OF OPERATION	AREA OF OPERATION	DATE IMPLEMENTED	REMARKS
OPLAN "PITAS"	Parang, Sulu	December 2010	Executed
OPLAN "SMARTBOMB"	Butlg, Lanao del Sur	July 2012	Executed
OPLAN "WOLVERINE"	Mamasapano, Maguindanao	December 2012	Mission Aborted
OPLAN "CYCLOPS"	Marawi City	April 2013	Executed
OPLAN "CYCLOPS 2"	Marawi City	June 2013	Mission Aborted
OPLAN "WOLVERINE 2"	Mamasapano, Maguindanao	March 2014	Mission Aborted
OPLAN "WOLVERINE 3"	Mamasapano, Maguindanao	May 2014	Mission Aborted
OPLAN "TERMINATOR"	Mamasapano, Maguindanao	November 2014	Mission Aborted
OPLAN "TERMINATOR 2"	Mamasapano, Maguindanao	December 2014	Mission Aborted
<b>OPLAN "EXODUS"</b>	<b>Mamasapano, Maguindanao</b>	<b>January 2015</b>	<b>MARWAN KILLED</b> (As confirmed by the US FBI) 44 SAF troopers KIPO Allegedly 18 MILF fighters and 4 civilians were killed


In December 2010, the PNP-SAF launched an operation to arrest Marwan.<sup>41</sup> Minutes before the arrival of the arresting troops at his location in Sulu, Marwan managed to escape.<sup>42</sup> Another operation of the PNP-SAF to

<sup>40</sup> Page 53, TSN of 9 February 2015 hearing.

<sup>41</sup> Page 53, TSN of 9 February 2015 hearing.

<sup>42</sup> Page 53, TSN of 9 February 2015 hearing.

capture Marwan was conducted in July 2012 in Butig, Lanao del Sur. Again, Marwan managed to escape.<sup>43</sup>



In April 2014, *Oplan Wolverine* was crafted to capture Marwan and Usman in Barangay Libutan, Mamasapano, Maguindanao.<sup>44</sup> *Oplan Wolverine* was to be carried out by the PNP-SAF in coordination with the Joint Special Operations Group of the 6<sup>th</sup> Infantry Division of the Philippine Army (6ID, PA).<sup>45</sup> The concept of operation for *Oplan Wolverine* was approved by then PNP Chief Purisima, who presented the operation to several high-ranking government officials, including the President Aquino and Secretary Roxas of the DILG, in an executive session at the PNP headquarters.<sup>46</sup> *Oplan Wolverine* was personally presented to PDDG Leonardo A. Espina (“Espina”), the then Deputy Chief for Operations of PNP, by PDIR Getulio Napeñas (“Napeñas”), the then Director of the PNP-SAF.<sup>47</sup> *Oplan Wolverine* was, however, aborted because 6ID, PA withdrew its commitment to provide mechanized infantry for the operation.<sup>18</sup>

On 30 May 2014, the PNP-SAF, together with 6ID, PA, launched another operation to capture Marwan and Usman.<sup>49</sup> This operation was again aborted due to the presence of heavily armed men at the target area, particularly at the Vehicle Drop-Off Point (“VDOP”).<sup>50</sup> Days later, on 10 June 2014, 6ID, PA

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<sup>43</sup> Page 53, TSN of 9 February 2015 hearing.

<sup>44</sup> Page 53, TSN of 9 February 2015 hearing.

<sup>45</sup> Pages 53 to 54, TSN of 9 February 2015 hearing.

<sup>46</sup> Page 54, TSN of 9 February 2015 hearing.

<sup>47</sup> Page 54, TSN of 9 February 2015 hearing.

<sup>48</sup> Page 53 to 54, TSN of 9 February 2015 hearing.

<sup>49</sup> Page 55, TSN of 9 February 2015 hearing.

<sup>50</sup> Page 55, TSN of 9 February 2015 hearing.

launched its own operation against Marwan and Usman.<sup>51</sup> The operation failed to capture either Marwan or Usman, and they only managed to recover bomb-making equipment.<sup>52</sup>

On 29 November 2014, the PNP-SAF launched *Oplan Terminator* to capture Marwan and Usman at a new location at Barangay Tukanalipao, Mamasapano, Maguindanao.<sup>53</sup> This operation was also aborted due to "equipment failure."<sup>54</sup> Another operation, *Oplan Terminator 2*, was again aborted because the PNP-SAF assault force encountered rebel forces while aboard their boats about 3 kilometers from the target.<sup>55</sup>

After the aborted *Oplan Terminator* and *Oplan Terminator 2*, PNP considered the use of precision-guided munition bomb to neutralize Marwan and Usman.<sup>56</sup> This possibility was raised in a coordination meeting held at the General Headquarters of the AFP in Camp Aguinaldo, Quezon City during the AFP anniversary on 19 December 2014.<sup>57</sup> The attendees of this meeting were General Gregorio Pio Catapang, Chief of Staff, AFP ("Catapang"), LTGEN Rustico Guerrero, Commander, Western Mindanao Command, ("Guerrero") MGEN Edmundo Pangilinan, Commanding General, 6ID, PA, ("Pangilinan") Purisima and Napceñas.<sup>58</sup> Guerrero mentioned that the AFP has special

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<sup>51</sup> Page 55, TSN of 9 February 2015 hearing.

<sup>52</sup> Page 55, TSN of 9 February 2015 hearing.

<sup>53</sup> Page 58, TSN of 9 February 2015 hearing.

<sup>54</sup> Page 58, TSN of 9 February 2015 hearing.

<sup>55</sup> Page 59, TSN of 9 February 2015 hearing.

<sup>56</sup> Page 59, TSN of 9 February 2015 hearing.

<sup>57</sup> Page 59, TSN of 9 February 2015 hearing.

<sup>58</sup> Page 59 to 60, TSN of 9 February 2015 hearing.

munitions which were recently used in Basilan.<sup>59</sup> A coordination meeting was arranged for 23 December 2014 with the 3<sup>rd</sup> Air Division of the Philippine Air Force (PAF) at the latter's headquarters in Zamboanga City.<sup>60</sup> At that meeting, MGEN Emerald Magnaye, Commander of the 3<sup>rd</sup> Air Division, PAF ("Magnaye") informed Napeñas and the others present that his unit did not have any of the adverted special munitions, contrary to the information given by Guerrero.<sup>61</sup> Thus, the use of such munitions to neutralize Marwan and Usman was ruled out.<sup>62</sup>

### C. *Oplan Exodus* as Envisioned.

Also on 23 December 2014, the mission planning group of the PNP-SAF was again organized.<sup>63</sup> Another operation to get Marwan and Usman was hatched. The mission planning group in previous attempts was composed of Napeñas, PCSupt Noli Taliño, Deputy Director ("Taliño"), PSSupt. Amando Clifton Empiso, Chief Directorial Staff ("Empiso"), PSSupt Richard Dela Rosa, Chief Intelligence and Investigation ("Dela Rosa"), Psupt Gregory Bognalbal, Chief of Operations ("Bognalbal"), PSupt Michael John Mangahis, Commanding Officer of 3<sup>rd</sup> Battalion ("Mangahis"), PSupt Abraham Abayari, Commanding Officer of Rapid Deployment Battalion ("Abayari"), PSupt Train ("Train") and PSI Recardo Marasigan ("Marasigan").<sup>64</sup> Later on, the

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<sup>59</sup> Page 60, TSN of 9 February 2015 hearing.

<sup>60</sup> Page 60, TSN of 9 February 2015 hearing.

<sup>61</sup> Page 60, TSN of 9 February 2015 hearing.

<sup>62</sup> Page 60, TSN of 9 February 2015 hearing.

<sup>63</sup> Page 61, TSN of 9 February 2015 hearing.

<sup>64</sup> Page 57, TSN of 9 February 2015 hearing.

Commander of the Seaborne and the 5<sup>th</sup> Battalion Commander were also included in the mission planning.<sup>65</sup>

Before the month ended, 3 communication systems were installed at the Headquarters of 43<sup>rd</sup> Special Action Company (SAC) at the Maguindanao Police Provincial Office in Shariff Aguak, Maguindanao.<sup>66</sup> This headquarters would serve as the Tactical Command Post (TCP) for this latest operation.<sup>67</sup>

On 8 January 2015, Purisima informed the President through text message at 5:29 p.m., "Sir good afternoon. May I know on your convenient time when can I report to you to brief regarding the impending operation against HVT's in Maguindanao. Thank you sir."<sup>68</sup> Purisima received by 5:51 p.m. the President's reply – "Bukas pagbalik mula sa Romblon".<sup>69</sup>

Accordingly, the following day of 9 January 2015, Purisima, Napeñas, and the Director of the Intelligence Group (IG) presented the mission update and the new concept of operation to President Aquino at the Bahay Pangarap in Malacañang.<sup>70</sup> The operation was codenamed *Oplan Exodus*. Under *Oplan Exodus*, coordination with the AFP will be "time-on-target" to avoid another compromise.<sup>71</sup>

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<sup>65</sup> Page 58, TSN of 9 February 2015 hearing.

<sup>66</sup> Page 61, TSN of 9 February 2015 hearing.

<sup>67</sup> Page 62, TSN of 9 February 2015 hearing.

<sup>68</sup> Position Paper of Purisima.

<sup>69</sup> Position Paper of Purisima.

<sup>70</sup> Page 61, TSN of 9 February 2015 hearing

<sup>71</sup> Page 61, TSN of 9 February 2015 hearing.

Merriam-Webster defines "Time On Target" as "a concentration of artillery fire on a target in which the time of firing by each unit participating is so regulated that all the projectiles reach the target simultaneously." An old World War II Third US Army cannoneer explained the term as "coordination of artillery fire from varied points - mortars, field cannons, battleships, bombers — so all weaponry arrived on target at the same moment."<sup>72</sup> The PNP, however, had an entirely different definition and application of this military term. According to Napenas, "Time On Target" means that coordination and/or information dissemination regarding the operation was to be made upon the arrival of the assault force, the Seaborne, on their main target, Marwan.<sup>73</sup>

Thereafter, at 1:27 p.m. on 13 January 2015, Purisima sought the clearance and approval of the President by endorsing the verbatim message of Napenas to him:

"SIR FROM: DSAF Sir good PM, In consideration of the comments of the Pres during our meeting re number of pers to be deployed on the opns, recommend that we follow the secondary date as the additional pers to be used are deployed in Tacloban for the Pope's visit. Also, the primary date is too tight while we have a longer window on the secondary date. For your consideration & approval."<sup>74</sup>

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<sup>72</sup> McGuigan, P. (Nov 2013). Time on Target: Memories and Gratitude. Oklahoma Watchdog. Retrieved from <http://watchdog.org/115286/time-target-memories-gratitude/>


<sup>73</sup> Page 119, TSN of 9 February 2015 hearing.

<sup>74</sup> Annex to Position Paper of Purisima dated 12 March 2015.



The President replied "OK" and thus approved the recommendation of Purisima and Napenas.<sup>75</sup>

Napeñas testified that the President, in the presence of Purisima, ordered them to coordinate the operation with the AFP.<sup>76</sup> The President confirms this that indeed he gave Napeñas specific instructions to coordinate with the AFP during that 9 January 2015 meeting.<sup>77</sup> In the Question and Answer portion of the Prayer Gathering with religious leaders in Malacañang on 9 March 2015, the President said:

 "Yung AFP po kasi – kausap ko dito si Dir. Napeñas – yung AFP po ay may kanyon, may armored vehicles, may eroplano. Kapag sinabing coordinate – sabi nya sa akin, "Sir, kung magko-coordinate kami, sa jump off." Kumbaga pagkilos. Sabi ko, "Hindi pwede yung pagkilos, dahil patungo pa lang doon sa objective. Kailangang iposisyon yung kanyon. Kailangang iposisyon yung tangke. Kailangang iposisyon yung eroplano. Kailangang iposisyon yung tao. Kailangan iposisyon yung gasolina at tsaka yung bala nung kanyon, yung bomba nung eroplano, etc. Hindi mo naman magagawa yan in 30 minutes or less." Sabi nya, "Sir yung operational security." "Kausapin nyo yung pinakamataas na kailangang kausapin na pwede nyong utusan, lahat itong subordinate units na pumunta sakani-kanilang mga pwesto para ready na umalalay." Okay. Ngayon po, yung sagot nya sa akin noong una, "Jump off," hindi ako pumayag. In-insist ko, several days before, pinakamataas, dahil nabllinan ko na po beforehand, doon sa ibang operations, chief of staff ng AFP at tsaka director general ng PNP, "Mag-coordinate kayo para hindi kontrahan yung ginagawa nyo, para matugis yung dalawang ito." So,


<sup>75</sup> Annex to Position Paper of Purisima dated 12 March 2015.

<sup>76</sup> Page 61, TSN of 9 February 2015 hearing.

<sup>77</sup> In the Question and Answer portion of the Prayer Gathering with religious leaders in Malacañang on 9 March 2015.

sinagot po nya sa akin, "Yes, Sir." Dumating yung araw, January 25, medyo matatanong ninyo bakitandang-tanda ko yung petsa, birthday po kasi ng nanay ko yun e, at tumungo kami sa Zamboanga dahil doon sa pambobomba na nangyari, kung saan lagpas 50 katao ang nasugatan, may 2 patay. Una kong natanggap na text, nandito pa po sa teleponoko. Parang pinadalang 5:45."<sup>78</sup>

The President also declared that Napeñas had no intention of complying with his instructions to coordinate with the AFP saying, "*Pero pag-alis na pag-alis niya sa akin noong January 09, or thereabouts, mukhang lumalabas ngayon, wala siyang intensyon na tuparin yung utos ko sakanyang makipag-coordinate.*"<sup>79</sup>

 The President also impliedly admitted that he gave his approval to the implementation of *Oplan Exodus* when he declared, "*Pero ang bottom line ho, kung alam ko na ganito ang gagawin niya from the start, eh hinindian ko ho itong misyon na 'to.*"<sup>80</sup>

To Napeñas, notwithstanding the President's instruction to coordinate with the AFP, the absence of negative guidance on the part of the President, after the presentation of *Oplan Exodus*, meant that the operation was a "go."<sup>81</sup> Napeñas also testified that after the President advised about the need to coordinate with the AFP, he appealed that prior coordination with AFP would

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<sup>78</sup> Emphasis supplied.

<sup>79</sup> The President made this statement during the Question and Answer portion of the Prayer Gathering of March 9, 2015.

<sup>80</sup> The President made this statement during the Question and Answer portion of the Prayer Gathering of March 9, 2015.

<sup>81</sup> Pages 47 and 49, TSN of 10 February 2015 hearing.

compromise the mission and to which the President allegedly said nothing.<sup>82</sup> However, after Napenas left the meeting room, Purisima had a brief one-on-one meeting with the President after which, Purisima told Napeñas, “*Huwag mo munang sabihan iyong dalawa. Saka na pag nandoon na. Ako na ang bahala kay General Catapang.*”<sup>83</sup> Napenas confirmed at the public hearing that “iyong dalawa” referred to OIC of the PNP Espina DILG Secretary Roxas.<sup>84</sup>

*Oplan Exodus* was to be executed within a window period from 23 to 26 January 2015.<sup>85</sup> The target area, Barangay Pidsandawan, Mamasapano, Maguindanao is generally described as a “marshland crisscrossed by rivers with wide-open cornfields and irrigation canals.”<sup>86</sup>

The Primary Target was the house of Marwan and the Secondary Target was the house of Usman.<sup>87</sup> The two targets are about 70 to 90 meters apart, with a mosque in between them.<sup>88</sup> The houses of Marwan and Usman are located near but outside MILF-controlled areas.<sup>89</sup> The area is populated by various armed groups including the MILF, BIFF other PAGs. In fact, the MILF has 3 base commands in the general area of Mamasapano: the 105<sup>th</sup>, 106<sup>th</sup> and 118<sup>th</sup>

<sup>82</sup> Pages 181 to 182, TSN of the Executive Session on 12 February 2015.

<sup>83</sup> Page 61, TSN of 9 February 2015 hearing.

<sup>84</sup> Page 108, TSN of 9 February 2015 hearing.

<sup>85</sup> Page 167, TSN of 9 February 2015 hearing.

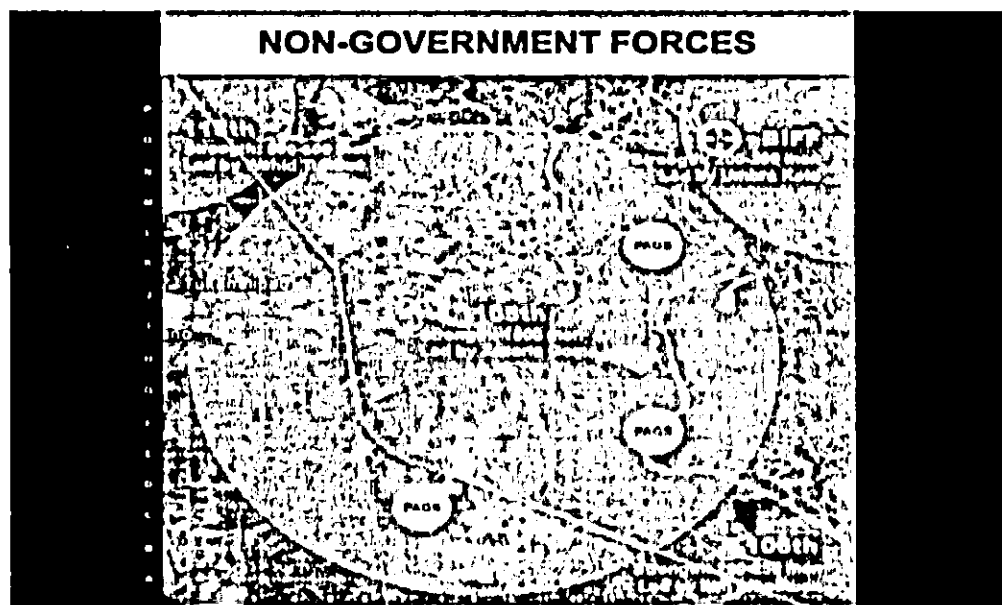
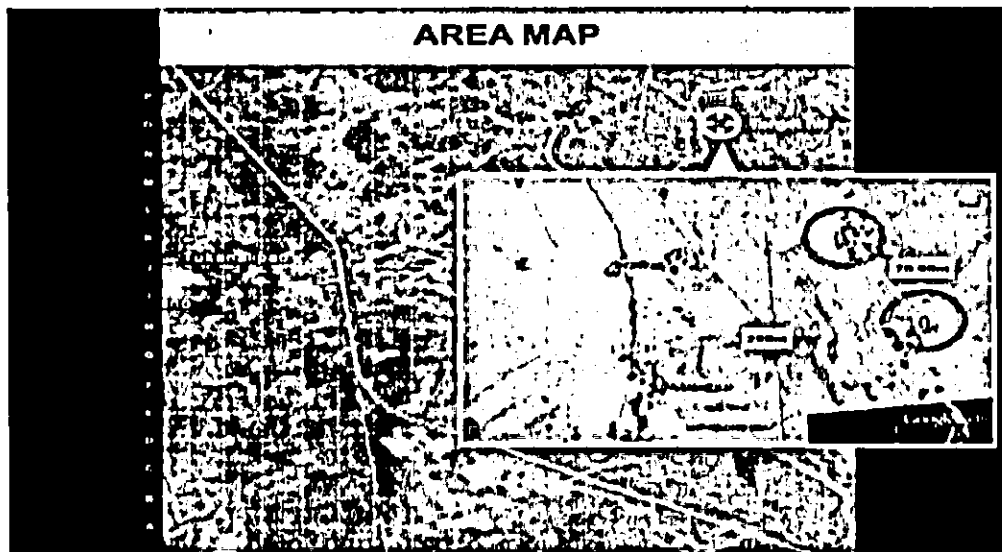
<sup>86</sup> Page 38, TSN of 9 February 2015 hearing.

<sup>87</sup> Page 32, TSN of 9 February 2015 hearing.

<sup>88</sup> Page 37 of the PDF format of the BOI's presentation entitled, “Facts of the Mamasapano Incident.”

<sup>89</sup> Presentation of ARRM Gov. Hataman during the 12 February 2015 hearing.

Base Commands.<sup>90</sup> (Below are illustrations entitled "AREA MAP" and "NON-GOVERNMENT FORCES" for reference.)



The Maharlika Highway was designated as the Main Supply Route (MSR) of the operation.<sup>91</sup> The VDOP and the Advance Command Post (ACP) were likewise located along the Maharlika Highway.<sup>92</sup>

<sup>90</sup> Page 39 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

A total of 392 officers and troopers of the PNP-SAF would be deployed for *Oplan Exodus*. The Seaborne would be the "main effort" (ME) of the operation.<sup>93</sup> It was tasked to assault the huts of Marwan and Usman and effect their arrests.<sup>94</sup> The 55<sup>th</sup>, 45<sup>th</sup>, 42<sup>nd</sup> and 41<sup>st</sup> SACs of PNP-SAF would be the "support efforts" (SE), providing security along the entry and exit routes of the Seaborne.<sup>95</sup> The 55<sup>th</sup> and the 45<sup>th</sup> SACs would serve as "blocking forces," while the 42<sup>nd</sup> and the 41<sup>st</sup> SAC would provide route security.<sup>96</sup> The 43<sup>rd</sup> SAC, supported by 2 V-150 armored vehicles, would serve as a containment force and would provide route security along the MSR.<sup>97</sup>

The distance in a straight line between the VDOP and the target area is 2.8 kilometers.<sup>98</sup> *Oplan Exodus* established 21 waypoints (WPs) from the VDOP to the target area.<sup>99</sup> Using these WPs, the total distance from the VDOP to the target area is 4.4 kilometers.<sup>100</sup> (Below is an illustration entitled "AREA MAP" for reference.)

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<sup>91</sup> Page 39, TSN of 9 February 2015 hearing.

<sup>92</sup> Page 39, TSN of 9 February 2015 hearing.

<sup>93</sup> Page 39, TSN of 9 February 2015 hearing.

<sup>94</sup> Page 39, TSN of 9 February 2015 hearing.

<sup>95</sup> Page 39, TSN of 9 February 2015 hearing.

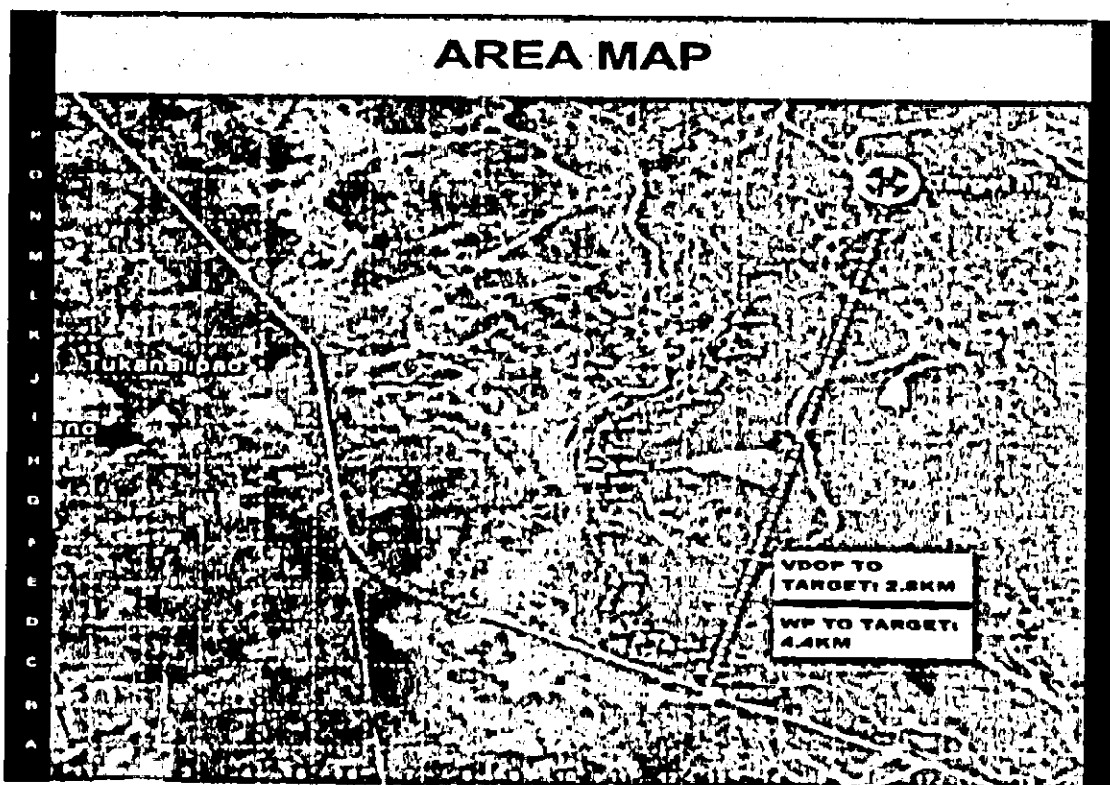
<sup>96</sup> Page 39, TSN of 9 February 2015 hearing.

<sup>97</sup> Page 40, TSN of 9 February 2015 hearing.

<sup>98</sup> Page 43 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>99</sup> Page 41 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>100</sup> Page 43 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."



Based on the *Oplan Exodus*, the 84<sup>th</sup> SAC is supposed to leave the VDOP by 9:30 p.m. of 24 January 2015 and reach the target area and carry out the assault between 2:30 a.m. and 3:00 a.m. on 25 January 2015.<sup>101</sup> By 2:30 a.m. on 25 January 2015, the 55<sup>th</sup>, 45<sup>th</sup>, 42<sup>nd</sup> and 41<sup>st</sup> SACs are supposed to reach and hold at WPs 19, 15, 9, and 6, respectively.<sup>102</sup> After hitting its targets, the Seaborne was to exit via the WPs it used as entry and link up with the 55<sup>th</sup> SAC at WP 19.<sup>103</sup> The Seaborne and the 55<sup>th</sup> SAC would then link up with the 45<sup>th</sup> SAC at WP 15.<sup>104</sup> Thereafter, the Seaborne, 55<sup>th</sup> and the 45<sup>th</sup> SACs will move

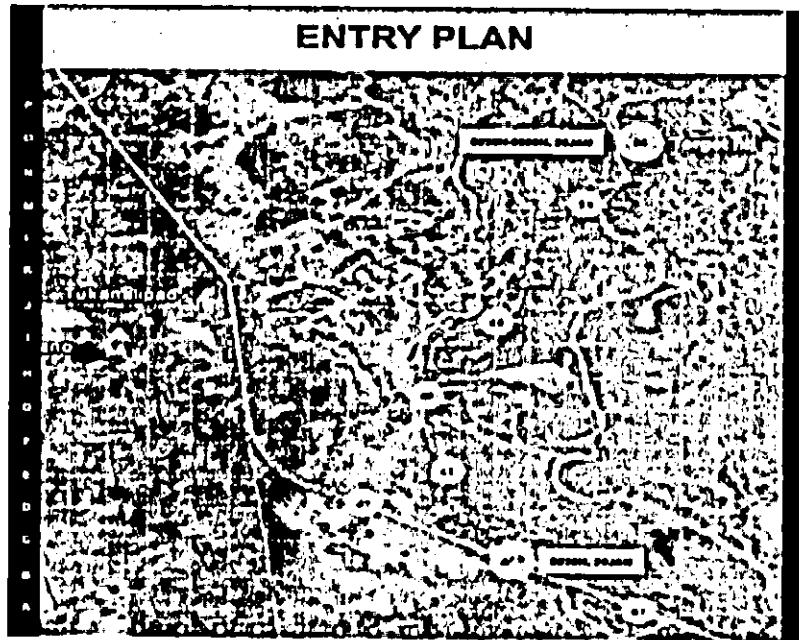
<sup>101</sup> Page 45 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>102</sup> Pages 47 to 55 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>103</sup> Page 60 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>104</sup> Page 61 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

closer to the VDOP and link up with the 42<sup>nd</sup> SAC at WP 9,<sup>105</sup> and then with the 41<sup>st</sup> SAC at WP 6. All 5 SACs would then move back to the VDOP/ACP at the Maharlika Highway.<sup>106</sup> (Below is an illustration entitled "ENTRY PLAN" for reference.)



*aps*

**D. Final Preparations.**

On 18 January 2015, the PNP IG Director, PSSUPT Dela Rosa, and the commanders of the 3rd Special Action Battalion and the Rapid Deployment Battalion proceeded to Zamboanga City.<sup>107</sup> The team linked up with the

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<sup>105</sup> Page 62 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>106</sup> Pages 63 to 64 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>107</sup> Page 62, TSN of 9 February 2015 hearing.

Seaborne and the 55<sup>th</sup> SAC to finalize the preparations for the operation.<sup>108</sup> These preparations included rehearsals, exercises of movements, and live firing exercises. At the same time, equipment was prepared for the operation. Civilian trucks were then rented to transport the PNP-SAF troopers to the area of operation to avoid suspicion.<sup>109</sup>

At around 6:28 p.m. on 19 January 2015, Purisima sent a text message to Napeñas.<sup>110</sup> The message read, "Leo, whats our plan?"<sup>111</sup> to which Napeñas replied, "Sir, good pm. The plan for the opns is go on the timeline. The troops will move from Zambo to CenMin on January 21 to 22, 2015 while intel will closely monitor the situation on the route of entry. There is no problem in the target area, preps continue so the troops are ready once situation is good. The warring faction engaged & the entry of the PA is the factor denying us safety Sir."<sup>112</sup>

 The participating troops of the PNP-SAF from Zamboanga City, Davao del Sur, North Cotabato, Agusan Sur, Cotabato City, and General Santos City moved to their respective staging areas from 21 to 23 January 2015.<sup>113</sup> Subsequently, Napeñas, Taliño and PNP IG Director moved to General Santos City from Zamboanga for their final mission planning.<sup>114</sup> The final mission

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<sup>108</sup> Page 62, TSN of 9 February 2015 hearing.

<sup>109</sup> Page 62, TSN of 9 February 2015 hearing.

<sup>110</sup> Page 7 of Purisima's Affidavit dated 19 February 2015 submitted by the PNP Board of Inquiry.

<sup>111</sup> Page 7 of Purisima's Affidavit dated 19 February 2015 submitted by the PNP Board of Inquiry.

<sup>112</sup> Page 7 of Purisima's Affidavit dated 19 February 2015 submitted by the PNP Board of Inquiry.

<sup>113</sup> Page 62, TSN of 9 February 2015 hearing.

<sup>114</sup> Page 62, TSN of 9 February 2015 hearing.



planning was done in coordination with all the unit commanders and key personnel involved in the operation.<sup>115</sup>

#### E. Execution Gone Awry.

The Seaborne, assisted by 2 local guides, departed from the VDOP at 10:15 p.m. on 24 January 2015, instead of 9:30 p.m. as planned, and reached the river near the target area around 3:00 a.m.<sup>116</sup> The river is about 250 meters from the target area.<sup>117</sup> Due to the difficult terrain and the strong river current, only 13 of the 38 members of the Seaborne were able to reach the target area<sup>118</sup> and engage Marwan and his companions in a firefight.<sup>119</sup>

Consequently, the departure of the 55<sup>th</sup>, 45<sup>th</sup>, 42<sup>nd</sup> and 41<sup>st</sup> SACs from the VDOP were also delayed because of the need to synchronize their movements with that of the Seaborne.<sup>120</sup> The 55<sup>th</sup> SAC did not reach WP 19, making it only as far as WP 12 as of 2:15 a.m.<sup>121</sup> The 45<sup>th</sup> SAC did not did not reach its designated position at WP 15, as it only reached an area between WPs 8 and 9.<sup>122</sup> The 42<sup>nd</sup> SAC did not reach WP 9, and instead, got stuck with the 45<sup>th</sup>

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<sup>115</sup> Page 62, TSN of 9 February 2015 hearing.

<sup>116</sup> Page 84 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident;" Page 38 of the TSN of the Executive Session held on 12 February 2015.

<sup>117</sup> Page 38 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>118</sup> Page 40, TSN of 9 February 2015 hearing.

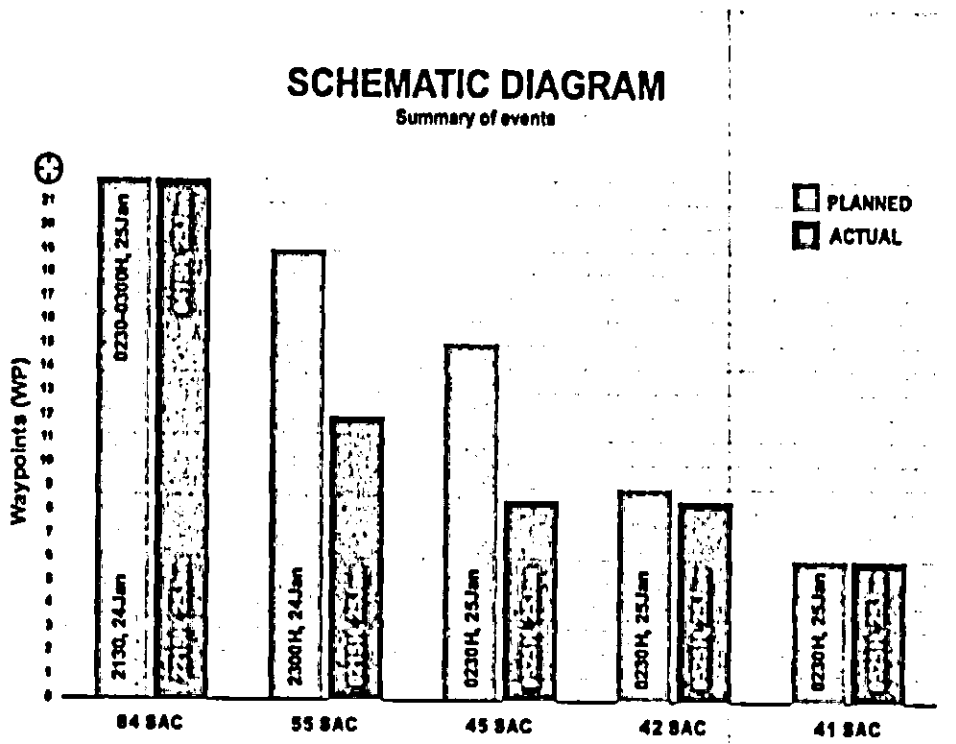
<sup>119</sup> Page 42, TSN of 9 February 2015 hearing.

<sup>120</sup> Page 40, TSN of 9 February 2015 hearing.

<sup>121</sup> Page 81 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>122</sup> Page 84 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

SAC between WPs 8 and 9.<sup>123</sup> The 41<sup>st</sup> SAC reached its designated position at WP 6 at 5:25 a.m., instead of 2:30 a.m. as planned.<sup>124</sup> (Below is an illustration entitled "SCHEMATIC DIAGRAM" for reference.)



At 4:15 a.m. on 25 January 2015, the Seaborne informed the TCP that Marwan had been killed.<sup>125</sup> At about this time, BIFF elements were alerted as to the presence of the PNP-SAF troopers on account of the explosion of a "booby trap" around Marwan's house<sup>126</sup> shortly before the latter was

<sup>123</sup> Page 84 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."


<sup>124</sup> Page 84 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>125</sup> Page 42, TSN of 9 February 2015 hearing.

<sup>126</sup> Page 42, TSN of 9 February 2015 hearing.

neutralized. 2 members of the Seaborne were wounded during the initial firefight.<sup>127</sup>

The Seaborne made its exit from the target area under fire following the planned exit route until WP 14.<sup>128</sup> At about 5:20 a.m., the 55<sup>th</sup> SAC was engaged by hostile forces belonging to the MILF at WP 12.<sup>129</sup> The Seaborne was ordered to link up and reinforce the 55<sup>th</sup> SAC but was unable to do so because of the heavy volume of enemy fire.<sup>130</sup> Instead, the Seaborne was advised to move away from the designated exit route.<sup>131</sup> The Seaborne continued to engage hostile forces, presumably BIFF elements and other PAGs, until they were rescued by combined elements from the 62<sup>nd</sup> Division Reconnaissance Company (DRC) of 6ID, PA and the PNP-SAF<sup>132</sup> before midnight on 25 January 2015. 17 troopers from the Seaborne were rescued unharmed, 9 were killed and 11 were wounded.<sup>133</sup> (Below is an illustration entitled "ACTUAL" for reference.)



In the meantime, the 55<sup>th</sup> SAC was trapped and heavily engaged by MILF fighters at WP 12 from around 5:20 a.m.<sup>134</sup> until around 1:30 p.m. to 2:00 p.m. when the TCP lost radio contact with the 55<sup>th</sup> SAC.<sup>135</sup> 35 out of the 36 members

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<sup>127</sup> Page 42, TSN of 9 February 2015 hearing.

<sup>128</sup> Page 40, TSN of 9 February 2015 hearing.

<sup>129</sup> Pages 84 and 89 of the PDF format of the BOI's presentation entitled, "Facts of the Mamasapano Incident."

<sup>130</sup> Pages 40 to 41, TSN of 9 February 2015 hearing.

<sup>131</sup> Pages 40 to 41, TSN of 9 February 2015 hearing.

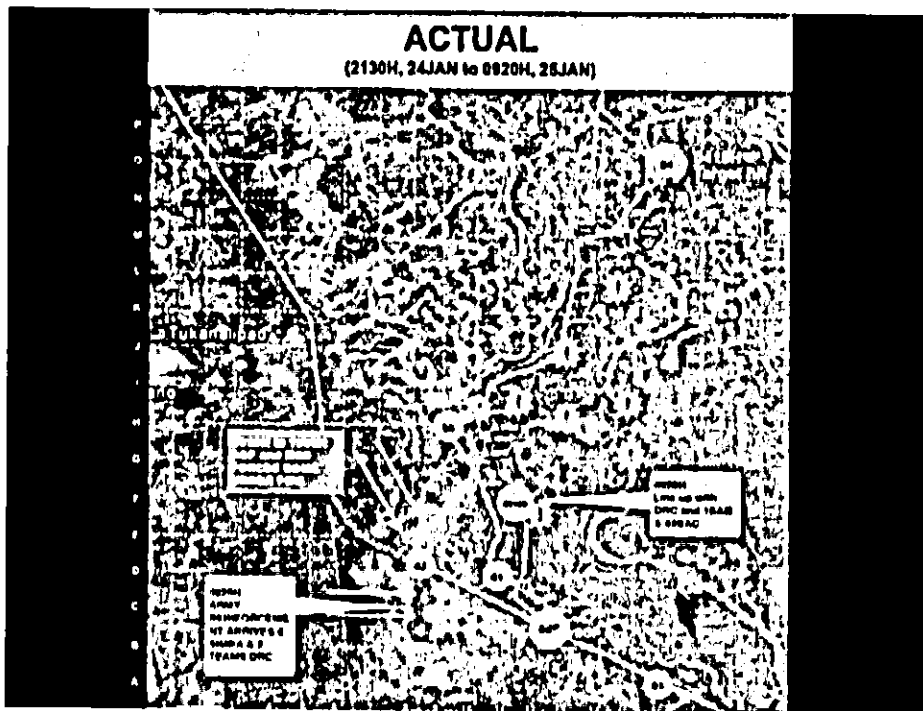
<sup>132</sup> Page 92, TSN of 9 February 2015 hearing.

<sup>133</sup> Page 93, TSN of 9 February 2015 hearing.

<sup>134</sup> Page 41, TSN of 9 February 2015 hearing.

<sup>135</sup> Pages 128 to 129, TSN of 12 February 2015 hearing.

of the 55<sup>th</sup> SAC were killed in action.<sup>136</sup> (Below is an illustration entitled "ACTUAL" for reference.)



**F. "Time AFTER Target" Coordination.**

While both Purisima and Napeñas claimed that it was necessary that coordination of *Oplan Exodus* with other government forces be "time on target," actual coordination was done time AFTER target. The CONPLAN which was prepared by Napeñas and upon which OPLAN EXODUS was based explicitly requires that the task of coordination with the respective heads of the CCCH, AHJAG, 6ID and the Mechanized Brigade (MechBde), among other concerned units, was lodged with Napeñas and which coordination shall be

<sup>136</sup> Page 41, TSN of 9 February 2015 hearing.

carried out "ME -TOT".<sup>137</sup> This means that the aforementioned units shall be advised about the operation when the Main Effort (the Seaborne) is at the target area. Napeñas failed to strictly comply with his task. The Seaborne reached the target area around 3:00 a.m.<sup>138</sup> and it was only at 5:06 a.m. on 25 January 2015, or more than 2 hours after when Napeñas sent a text message to 6ID Commander MGEN Pangilinan<sup>139</sup> which reads, as follows:

"Ed, good am. For your info, on January 25, 2015, at about 0230, PNP-SAF supported by Mag PPO, PRO-ARMM shall be conducting LEO and serve warrant of arrest or WA against high value targets in Mamasapano, Maguindanao. Troops are underway. Coordination was also done with CO 1Mech and 45th IB."<sup>140</sup>

This was the first attempt at "coordination" made by the PNP-SAF with a unit of the AFP. At this time, the Seaborne had already neutralized Marwan and was then already engaged with hostile forces as it was withdrawing from the target area. The 55<sup>th</sup> SAC would, minutes later, be engaged by hostile MILF forces. The "coordination," while late, was urgently necessary as the PNP-SAF troopers were already engaged with hostile forces and needed reinforcement to assist them in their exfiltration.

The message was also partly false, as *Oplan Exodus* was a purely PNP-SAF operation and neither the Maguindanao Provincial Police Office nor the Police Regional Office for the ARMM was aware of the operation. Further

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<sup>137</sup> "Task Coordination Table" submitted by Napeñas.


<sup>138</sup> Page 38, TSN of Executive Session held on 12 February 2015.

<sup>139</sup> MGEN Pangilinan was able to read this message at around 6:00 a.m.

<sup>140</sup> Page 78, TSN of 9 February 2015 hearing.

coordination with the Commanding Officer of 1<sup>st</sup> Mechanized Brigade (C, 1MB) of the Philippine Army took place several minutes later, at 5:20 a.m.<sup>141</sup> The Assistant Chief of Staff for Operations (G3) of 6ID received a call about the operation from one PSSUPT Dela Rosa at 5:28 a.m.<sup>142</sup> At 5:37 a.m., Napeñas called BGEN Manolito Orense, the Assistant Division Commander, 6ID, PA and government chairman of the AHJAG, asking the latter to coordinate the operation with the MILF AHJAG co-chair. Even then, Napeñas did not inform BGEN Orense that the operation was already well underway, and that the PNP-SAF troopers were already engaged with hostile forces.

Apparently, the AFP initially thought that it was only the 55<sup>th</sup> SAC that was trapped in a firefight with hostile forces.<sup>143</sup> The 6ID found out that the Seaborne was also engaged with hostile forces only at 5:15 p.m.<sup>144</sup>



Similarly, no prior coordination was made by the PNP-SAF with the government's peace process mechanisms, namely the CCCH and the AHJAG.

**G. Requests for Reinforcement and Indirect Fire Support; the AFP's Response.**

Shortly after 6:00 a.m. on 25 January 2015, PNP Officer-in-Charge Espina called Guerrero asking for the AFP's support for the beleaguered PNP-

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<sup>141</sup> Page 81, TSN of 9 February 2015 hearing.

<sup>142</sup> Page 76, TSN of 9 February 2015 hearing.

<sup>143</sup> Page 92, TSN of 9 February 2015 hearing.

<sup>144</sup> Page 92, TSN of 9 February 2015 hearing.

SAF troops.<sup>145</sup> Purisima also spoke to Guerrero and asked for reinforcements.<sup>146</sup> Between 7:00 a.m. and 9:00 a.m., a certain PSUPT Mangahas of the PNP-SAF, PSSUPT Noli Taliño, the Deputy Commander of the PNP-SAF and PDIR Napeñas requested different officers of the AFP for reinforcements and indirect fire (artillery) support.<sup>147</sup>

Pangilinan approved the deployment of Army troops and mechanized infantry to reinforce the PNP-SAF troops but withheld approval of the request for indirect fire support, "until we (the 6ID) have complete details of the firefight."<sup>148</sup> One of the reasons given was the presence of non-combatants.<sup>149</sup> Testifying before the Committees, Pangilinan stated that the doctrinal rule is that before indirect fire support can be provided, the following requisites must be present, namely: (a) the location of friendly forces, (b) the location of hostile forces; (c) area of operations, to know the location of civilians if there are any; (d) a forward observer; and (e) communication on the ground between the "firing battery" or "fire direction center" and the Command Post.<sup>150</sup> He further stated that only the location of the 55<sup>th</sup> SAC was made known to the AFP.

At approximately 8:20 a.m. on 25 January 2015, AFP troops were deployed to reinforce the PNP-SAF.<sup>151</sup> They secured the MSR from Shariff Aguak to Brgy. Tukanalipao, Mamasapano, while a section of 62nd DRC established and secured extrication point 300 meters above the position of

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<sup>145</sup> Page 79, TSN of 9 February 2015 hearing.

<sup>146</sup> Pages 79 to 80, TSN of 9 February 2015 hearing.

<sup>147</sup> Pages 83 and 85, TSN of 9 February 2015 hearing.

<sup>148</sup> Page 85, TSN of 9 February 2015 hearing.

<sup>149</sup> Page 74, TSN of 23 February 2015 hearing.

<sup>150</sup> Page 74, TSN of 23 February 2015 hearing.

<sup>151</sup> Page 86, TSN of 9 February 2015 hearing.

combined army forces.<sup>152</sup> At 9:20 a.m., soldiers from the 23rd Mechanized Company, 14th Mechanized Company and 62nd DRC tried to link-up with elements of 55<sup>th</sup> SAC.<sup>153</sup> They failed to do so because they could not establish contact with the 55<sup>th</sup> SAC and the area was an open field.<sup>154</sup> Army troops, together with PNP-SAF elements, again tried to link up with the 55<sup>th</sup> SAC at 10:40 a.m. but were fired upon by hostile forces.<sup>155</sup> As of 12:15 p.m., this group was still being fired upon.<sup>156</sup>

## II. Ceasefire with the MILF.

At 6:38 a.m. on 25 January 2015, BGEN Carlito Galvez (the Government co-chairman of the CCCH) received a call from his MILF counterpart, Atty. Rashid Ladianan ("Ladianan"), who informed him of the ongoing firefight between MILF fighters and the PNP-SAF.<sup>157</sup> Ladianan also suggested that a ceasefire be put in effect.<sup>158</sup>

A Joint Ceasefire Coordinating Team (JCCT) composed of representatives from the government CCCH, the MILF CCCH, the Joint Ceasefire Monitoring Post (JCMP) and the IMT assembled at the IMT headquarters in Cotabato City at 9:00 a.m. on 25 January 2015.<sup>159</sup> Thereafter, the JCCT proceeded to Barangay Kuloy, Shariff Aguak, Maguindanao to meet

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<sup>152</sup> Page 86, TSN of 9 February 2015 hearing.

<sup>153</sup> Page 87, TSN of 9 February 2015 hearing.

<sup>154</sup> Page 87, TSN of 9 February 2015 hearing.

<sup>155</sup> Page 87, TSN of 9 February 2015 hearing.

<sup>156</sup> Page 89, TSN of 9 February 2015 hearing.

<sup>157</sup> Pages 128 to 129, TSN of 9 February 2015 hearing.

<sup>158</sup> Pages 128 to 129, TSN of 9 February 2015 hearing.

<sup>159</sup> Page 86, TSN of 9 February 2015 hearing.



with Ustadz Zacaria Guma, Commander of MILF's 105th Base Command and Ustadz Wahid Tundok, Commander of the MILF's 118th Base Command.<sup>160</sup> The meeting with the 2 MILF commanders took place at around 11:45 a.m.<sup>161</sup> The JCCT arrived at the PNP-SAF's TCP in Barangay Tuka, Mamasapano, Maguindanao at approximately 1:10 p.m.<sup>162</sup> While the JCCT was there, the TCP was fired upon by unknown gunmen, resulting to the disabling of 3 Simba armored vehicles of the Army.<sup>163</sup>

A total ceasefire with the MILF took effect at approximately 4:00 p.m. on 25 January 2015.<sup>164</sup> By this time, the 55<sup>th</sup> SAC was all but decimated, with only one survivor. However, the Seaborne, which was engaged with BIFF forces and other PAGs, continued to be under fire.



**I. Rescue and Recovery.**

At approximately 5:00 p.m. on 25 January 2015, the AFP and PNP-SAF were able to synchronize their communications. At 5:15 p.m., Pangilinan learned that another PNP-SAF unit, the Seaborne, was still trapped in the area and was still under fire.<sup>165</sup> At about 5:30 p.m., Army troops together with PNP-SAF elements mobilized to rescue the 84<sup>th</sup> SAC.<sup>166</sup> The Army fired 3 White Phosphorus Artillery ("WPA") rounds at the estimated location(s) of the hostile

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<sup>160</sup> Pages 86 to 87, TSN of 9 February 2015 hearing.

<sup>161</sup> Page 89, TSN of 9 February 2015 hearing.

<sup>162</sup> Page 90, TSN of 9 February 2015 hearing.

<sup>163</sup> Page 90, TSN of 9 February 2015 hearing.

<sup>164</sup> Page 92, TSN of 9 February 2015 hearing.

<sup>165</sup> Page 92, TSN of 9 February 2015 hearing.

<sup>166</sup> Page 92, TSN of 9 February 2015 hearing.

forces engaging the Seaborne at 5:48 p.m.<sup>167</sup> At 7:30 p.m., elements from the Army and the PNP-SAF were able to rescue 17 unharmed and 11 wounded troopers from the Seaborne, and recovered 8 bodies of their dead, with their weapons, equipment and other belongings intact.<sup>168</sup> Representatives of the Joint CCCH, the IMT and the Local Government Unit of Mamasapano began rescue and recovery efforts for the 55<sup>th</sup> SAC likewise at around 7:30 p.m. on 25 January 2015.<sup>169</sup> One of the wounded PNP-SAF troopers from the Seaborne would later die in the hospital.<sup>170</sup>

The bodies of all the 35 dead troopers from the 55<sup>th</sup> SAC were recovered by about 12:46 p.m. on 26 January 2015.<sup>171</sup> They were stripped off of their weapons, equipment, uniforms and other personal belongings.<sup>172</sup> Medico-legal reports on the autopsies conducted on their cadavers would later reveal that at least 27 of them were shot in the head, in what OIC-PNP PDDG Espina referred to as "finishing touches."

The lone survivor from the 55<sup>th</sup> SAC was rescued by elements of Bravo Company, 45<sup>th</sup> Infantry Battalion, Philippine Army at around 2:10 p.m. on 26 January 2015. Thereafter, said survivor was turned over safely to the SAF's TCP at around 3:00 p.m.<sup>173</sup>

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<sup>167</sup> Page 186, TSN of 9 February 2015 hearing.

<sup>168</sup> Page 93, TSN of 9 February 2015 hearing.

<sup>169</sup> Page 93, TSN of 9 February 2015 hearing.

<sup>170</sup> Page 94, TSN of 9 February 2015 hearing.

<sup>171</sup> Page 93, TSN of 9 February 2015 hearing.

<sup>172</sup> Page 45, TSN of 9 February 2015 hearing.

<sup>173</sup> Page 6 of the AFTER OPERATIONS Report of PNP-SAF.

Ground operations were concluded in the afternoon of 26 January 2015.<sup>174</sup> All Philippine Army troops pulled out from the area at 3:45 p.m.<sup>175</sup> On the other hand, all PNP-SAF personnel left the area at 6:30 p.m.<sup>176</sup>

#### IV. OBSERVATIONS/FINDINGS

##### A. Inadequate Intelligence, Poor Planning and Lack of Coordination with AFP were Fatal Mistakes.

##### The Rough Terrains of Mamasapano.

As narrated to the Committees, less than half of the Seaborne was able to reach the target area.<sup>177</sup> The rest of the Seaborne could not cross the river nearest to the target area because the water was much deeper than anticipated and the water current was strong.<sup>178</sup> Also, for reasons that remain unclear, the 55<sup>th</sup>, 45<sup>th</sup> and 42<sup>nd</sup> SACs were not able to reach their respective designated WPs. The 41<sup>st</sup> SAC reached its designated waypoint several hours late. Apparently, the planners of *Oplan Exodus* failed to adequately consider the topography of the area of operations.

<sup>174</sup> Page 94, TSN of 9 February 2015 hearing.

<sup>175</sup> Page 94, TSN of 9 February 2015 hearing.

<sup>176</sup> Page 94, TSN of 9 February 2015 hearing.

<sup>177</sup> Page 42, TSN of 9 February 2015 hearing.

<sup>178</sup> Page 241, TSN of 10 February 2015 hearing; In the Question and Answer portion of the Prayer Gathering with religious leaders in Malacañang on 9 March 2015.

Under *Oplan Exodus*, the operating elements would use the same routes to infiltrate and to leave the area of operations.<sup>179</sup> No alternative exfiltration routes were established.

### *Pintakasi*

Intelligence in the possession of the PNP prior to the launch of *Oplan Exodus* indicated that there were more than 1,000 hostile troops at or near the target area where Marwan and Usman were believed to be hiding.<sup>180</sup> Yet the PNP-SAF deployed only 392 personnel for the entire operation where almost a quarter of them are positioned to guard the MSR that was so far away from the actual theater of action.

In addition, the PNP-SAF mission planners were informed of the possibility of a *pintakasi*, a practice common among Muslim armed groups where groups normally opposed to each other would come together and fight side by side against a common enemy or an intruding force, as described by ARMM Governor Mujiv Hataman ("Governor Hataman") in this testimony before the Committees.<sup>181</sup> Governor Hataman described the bloody encounter as a case of *Pintakasi*, a jargon for collective work or *bayanihan*.<sup>182</sup>

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<sup>179</sup> BOI's presentation entitled, "Facts of the Mamasapano Incident."


<sup>180</sup> AFP estimates place the number of hostiles at more than 600.

<sup>181</sup> Pages 74 to 75, TSN of 12 February 2015 hearing.

<sup>182</sup> Page 73, TSN of 12 February 2015 hearing.

*Pintakasi* is "a century-old indigenous community activity."<sup>183</sup> People who have helped each other with no money or personal interest involved so as to benefit all the members of the community."<sup>184</sup> *Pintakasi* is the same concept that brings people together to help each other during activities such as weddings, farming, and church activities.<sup>185</sup> *Pintakasi* is also applicable in times of threat, where the enemy of one becomes the enemy of all.<sup>186</sup>

In the case of the Mamasapano clash, the community came together to protect its territory deemed to have been intruded by outsiders. A survivor said gunfire came from the community.<sup>187</sup> Applying the concept of *pintakasi*, civilians united to protect their people, land, and properties and shot at the "outsiders". *Pintakasi* is deeply rooted in the culture, tradition and religion of Muslim communities in Mindanao. Furthermore, the target area is a tightly knit community whose people are connected by consanguinity.

 The SAF leadership obviously failed to prepare accordingly to address this tradition of *Pintakasi* and its consequences.

Also, the PNP-SAF was unaware that the MILF had mortar capability. This was admitted by one of the surviving PNP-SAF troopers in executive

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<sup>183</sup> Noguera, R. "Pintakasi: when a poor community empowers itself to deal with peace and security issues, implications for the practice of psychology." *Peace Stud J* 4.3 (2011): 16-36.

<sup>184</sup> Noguera, R. "Pintakasi: when a poor community empowers itself to deal with peace and security issues, implications for the practice of psychology." *Peace Stud J* 4.3 (2011): 16-36.

<sup>185</sup> Noguera, R. "Pintakasi: when a poor community empowers itself to deal with peace and security issues, implications for the practice of psychology." *Peace Stud J* 4.3 (2011): 16-36.

<sup>186</sup> Pages 74 to 75, TSN of 12 February 2015 hearing.

<sup>187</sup> Page 13, TSN of Executive Session on 12 February 2015.

session.<sup>188</sup> The firepower was allegedly massive. According to the SAF survivor, if they had known about the mortar, the complexion of their preparations would have been different.<sup>189</sup>

The PNP-SAF's intelligence preparation of the battlefield was, therefore, grossly inadequate.

### Failure to Coordinate with the AFP Prior to Launch of Operations

*Oplan Exodus* provides under its coordinating instructions that "*lateral coordination with friendly forces before, during and after the operation is highly encouraged.*" Coordination with the AFP units in the area is just encouraged and not mandatory. The OPLAN to get the High Priority Targets Marwan and Usman was obviously designed to be an all PNP operation, including primary reinforcement, which explains the number (392) of PNP personnel mobilized for the mission. In fact, under said OPLAN, the guidance to request for Artillery and Air Support was just secondary "*as necessary*" in the exfiltration phase of the operation.

In this connection, it is important to note the pertinent provisions of the **Joint Implementing Rules and Regulations to Executive Order No. 546, Series of 2006 "Directing the PNP to Undertake Active Support to the AFP in ISO for the Suppression of Insurgency and Other Threats to National Security"**

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<sup>188</sup>Pages 11 and 25, TSN of the Executive Session on 12 February 2015.

<sup>189</sup>Pages 11 and 25, TSN of the Executive Session on 12 February 2015.

**"GENERAL PRINCIPLES:**

e. *PNP units may either operate as a part of a joint AFP-PNP force or as single force in the conduct of combat operations, subject to the following:*

1) *When operating jointly with the AFP, tasked PNP units shall be attached or placed under operational control (OPCON) of the AFP unit with operational responsibility on the Area of Operation (AO).*

2) *When operating independently as a single force, PNP units shall take orders from its parent unit, but MUST coordinate with the nearest tactical unit of the AFP to ensure a coordinated and focused operations in the particular area. The AFP unit that has operational responsibility over the AO shall be furnished with the PNP unit's Operational Plan and After Operations Report."<sup>190</sup>*

 In addition, the **Philippine National Police Operational Procedures** issued in March 2010 provide:

**Rule 28. INTERNAL SECURITY OPERATIONS:**

**SECTION 1. General Mandate**

*The PNP is mandated to provide active support to the Armed Forces of the Philippines (AFP) in Internal Security Operations*

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<sup>190</sup> Emphasis supplied.

*(ISO) for the suppression of the Communist Terrorist Movement (CTM) and other serious threats to national security.*

*SECTION 2. The PNP in Active Support Role*

*The PNP shall perform the following:*

*a. Conduct sustained law enforcement actions against CTM (Communist Terrorist Movement) atrocities;*

*b. In urban areas, the PNP may assume the lead role in ISO against the CTM, other threat groups and organized crime groups engaged in armed offensives;*

*c. The PNP units may either operate as a single force or as a part of joint PNP-AFP combat operations. In both cases, lateral coordination is a must.*

*d. x xx*

*e. x xx<sup>191</sup>*

It is clear that Purisima and Napeñas disregarded the requirements of lateral coordination mandated under the above-cited Executive Order and the PNP's own manual of operational procedures.

Under ideal conditions and pursuant to the afore-quoted guidelines, the required information for PNP operating units to effectively coordinate and fit into another's operational activities like the AFP are contained in a properly

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<sup>191</sup> Emphasis supplied.



prepared Operational Plan or OPLAN. This is covered under the acronym SMEAC: situation (threat, enemy, friendly units, weather, terrain); mission (concept of operations, including air, artillery, movement); execution (tasks of units involved in the operation); administration & support (medical, evacuation, supply, ammunition, meals); and, command & control (identifies who is in charge and the succession of command and its location, call signs used and communications operating instructions).<sup>192</sup> There are also required annexes to the OPLAN containing the following: Intelligence Annex, Synchronization Matrix of all units and activities, Target Reference Points (TRPs) for Artillery's initial plotting of its fires (for the AFP), radio communications nets, movement routes to and from the objectives, casualty evacuation points, consolidation or rallying points.<sup>193</sup>

If only the *Oplan Exodus* that was prepared by Napeñas contained all the foregoing, it might have made it easier for the nearby AFP units in the area to provide support or reinforcement plans for execution even on short notice, even on the so-called "Time on Target" basis. Regrettably, this was not the case during the Mamasapano incident as no such comprehensive plan was made available to the reinforcing Army units by Napeñas. Napeñas merely informed the AFP Time-After-Target regarding the PNP-SAF's "Law Enforcement Operation" to get two HVTs and that the SAF commandos had been engaged by hostile forces.

Indeed, the most fatal mistake made by the mission planners of *Oplan Exodus* was their decision against prior coordination with the AFP, and that the


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<sup>192</sup> The Committees' research on the "Standard Operating Procedures" of the AFP.

<sup>193</sup> The Committees' research on the "Standard Operating Procedures" of the AFP.

bare coordination with the AFP units in the area was “time on target.” As earlier stated, the PNP-SAF’s coordination with the AFP was not even “time on target.” It was “time AFTER target,” as the PNP-SAF informed the AFP units in the area about their operation only after Marwan was killed, and both the Seaborne and the 55<sup>th</sup> SAC were already under heavy fire from hostile forces.

Had there been prior coordination with the AFP, reinforcing elements could have been easily placed on stand-by, air assets could have been pre-positioned and forward observer units from the Army could have been embedded with the PNP-SAF operating units in case the need for indirect fire support arose. More lives could have been saved and fewer lives could have been lost.

 In sum, *Oplan Exodus* was poorly planned and executed. It intentionally broke the chain of command. The Oplan was not followed to details. It was badly coordinated. *Oplan Exodus* had badges of failure from the very start.

#### Option to Abort.

The President has mentioned in his public address that Napeñas could have aborted the execution in view of several factors.<sup>194</sup> It bears stressing, however, that the text of *Oplan Exodus* provides for only 3 “Abort Criteria,” namely:


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<sup>194</sup> In the Question and Answer portion of the Prayer Gathering with religious leaders in Malacañang on 9 March 2015.

1. Compromised by the lawless elements/armed groups;
2. Serious physical injuries that may require serious medical treatment; and
3. No extra rounds of ammunition.

Obviously, based on the facts established at the hearings, the moment the Seaborne has reached its target near Marwan's hut, none of the criteria was present to justify the team leader or even the Over-all Commander to abort the operation. Members of the commandos are expected to rely on their own OPLAN.

**B. What happened in Mamasapano on 25 January 2015 was a Massacre, Not a Misencounter.**



The gory details, the overkill reactions of the combined groups of BIFF, MILF and PAGs as indicated in their massive and heavy firing all point to massacre.


The Merriam-Webster Dictionary defines the term "massacre" as "the act or an instance of killing a number of usually helpless or unresisting human beings under circumstances of atrocity or cruelty", while Oxford Dictionary describes it as "indiscriminate and brutal slaughter of people."

The Seaborne and the 55<sup>th</sup> SAC effectively walked into a trap. There was nowhere they could go because their escape routes were fully covered by the

gunfire of the enemy.<sup>195</sup> All the MILF and BIFF did was to go there and shoot them individually, one by one.<sup>196</sup>

The particulars of the grim tragedy were revealed when the public saw the video of the shootings of the PNP-SAF commandos by the MILF. In the video, an alleged MILF member executed hapless PNP-SAF men while they lay on the ground, injured and unable to move. The autopsy report on the 44 fallen cops is strong evidence that further proved that the Mamasapano incident was not a "misencounter," as close to 30 policemen bore gunshot wounds to the head. While not formally presented as evidence during the public hearings, the video depicted brutal barbarism of a massacre. And although not fully authenticated, a SAF officer identified one of the victims as his comrade.<sup>197</sup>

The use of high-powered firearms, the .50-caliber Barrett Sniper Rifles, indicated that what happened was a massacre. The said firearms are so powerful that it crushed the skulls of the fallen troopers. The utilization of mortars by the hostile forces added to the ghastliness of their murderous behavior.

 The Mamasapano incident was overkill. Labelling the tragedy as a "misencounter" would do injustice to the fallen 44 PNP-SAF heroes.

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<sup>195</sup> TSN, February 12, 2015, pp. 36-37

<sup>196</sup> Ibid

<sup>197</sup> Testimony of a SAF officer, in the House of Representatives inquiry

**C. MILF and BIFF fighters and members of other PAGs committed murder, robbery; no self-defense.**

In an interview, Mr. Iqbal stated that the actions of the MILF fighters in Mamasapano against the PNP-SAF troopers were not sanctioned by the MILF leadership and were not part of any MILF operation. Mr. Iqbal claimed that the MILF fighters acted in "self-defense" as armed men were entering their communities.


Under Article 11 of the Revised Penal Code, any person who acts in defense of his person or rights does not incur any criminal liability provided that the following circumstances concur: (a) unlawful aggression; (b) reasonable necessity of the means employed to prevent or repel it; and (c) lack of sufficient provocation on the part of the person defending himself.<sup>198</sup> There can be no self-defense, whether complete or incomplete, unless the victim had committed unlawful aggression against the person who resorted to self-defense.<sup>199</sup> The MILF cannot claim that its fighters acted in self-defense because of the absence of the element of unlawful aggression on the part of the troopers of the 55<sup>th</sup> SAC, or all of the PNP-SAF troopers for that matter. The troopers were stationary at the cornfield. The MILF fighters approached and surrounded the 55<sup>th</sup> SAC, and later on, initiated the firefight with them. On the contrary, the unlawful aggression was on the part of the MILF fighters. The MILF's claim of self-defense is, therefore, unavailing.

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<sup>198</sup>Flores v. People, G.R. No. 181354, February 27, 2013

<sup>199</sup> Ibid.

Thus, the following criminal charges may be instituted against the MILF fighters, as well as those from the BIFF and the members of other PAGs involved in the Mamasapano incident:


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- (1) As to the deaths of the PNP-SAF troopers: Murder as qualified by the qualifying circumstances of "taking advantage of superior strength" and "with the aid of armed men" pursuant Article 248 of the Revised Penal Code (with respect to the deaths of the PNP-SAF troopers who are proven to have been given "finishing touches," the additional qualifying circumstance of "employing x xx means to insure or afford impunity" may also be appreciated);
  - (2) As to the injuries suffered by some of the PNP-SAF troopers: Frustrated or attempted murder, depending upon the nature of the injuries sustained; and
  - (3) As to the taking of the weapons, equipment, uniforms and personal effects of the fallen PNP-SAF troopers: Robbery as defined in Article 293 and qualified under Articles 294 and 295 of the Revised Penal Code.

Given that the MILF has declared that the actions of its fighters were not sanctioned by their organization, and were committed in their private individual

capacities, the MILF fighters involved in the incident should be charged in their individual and personal capacities as common criminals.

All those who qualify as accomplices and accessories to the above crimes as defined in Articles 18<sup>200</sup> and 19<sup>201</sup>, respectively, of the Revised Penal Code should also be charged.

- D. The MILF leadership does not have absolute control over their ground troops. This raises doubts as to the sincerity of the MILF as our "partner" in the peace process and it has implications upon the safety of government troops who must conduct law enforcement operations within MILF controlled territory.**

 Under the Implementing Operational Guidelines and Ground Rules on Cessation of Hostilities, it is accepted by the parties that police and military actions shall continue to be undertaken by the government throughout Mindanao. In the pursuit thereof, confrontational situations between the

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<sup>200</sup>Art. 18. Accomplices.— Accomplices are those persons who, not being included in Art. 17, cooperate in the execution of the offense by previous or simultaneous acts

<sup>201</sup>Art. 19. Accessories. - Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime;
2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery;
3. By harboring, concealing, or assisting in the escape of the principals of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

government and MILF forces shall be avoided by *prior coordination* with the

latter.

In the Mamasapano operations, it was established that no *prior* coordination was undertaken by the PNP with the AHJAG or CCCH. Hence, the MILF was eventually informed on the day of the operation itself. At that point the MILF soldiers had already engaged the SAF in a gun battle.

However, we expect that upon being informed that the SAF was conducting a legitimate law enforcement operation in the area, the MILF should have ended the firefight. The lone survivor from the 55<sup>th</sup> SAC testified in executive session that:

"Paedating namin sa may tulay, narinig namin iyone mga putukan sa banda ng Seaborne, 84<sup>th</sup> Company. So that was around four o'clock.

"So noong nasasa gitna kami ng tulay, nakarinig ako ng challenge sa amin. Hindi ko alam kung anong salita iyon pero sinisigawan kami. So analyze namin na kalaban iyon. Napatras kami.

"From that time on, nakikita namin through our night vision goggles, dumarami sila; mabilis na pagdami - apat muna, tapos iyan, marami na, marami na.



*"Mamaya na, nagsisigawan na sila. Naramdaman namin na lalo pa silang dumarami at nagsisigawan sila.*

*"Pero ang order ng opisyal namin, "Huwag kayong pumutok hangga't hindi sila pumuputok."*

*"Matagal kaming hindi pumuputok. Lampas isang oras na nagtitinginan lang pero walang putukan.*

*"Sa pagdating ng mga oras na 5:30-6 ng umaga, ma-recognize mo na iyong 100 meters na ano, puwede mong Makita, doon na pumutok na sila. Pumutok na sila, doon na kami na engage."<sup>202</sup>*

The PNP-SAF troopers were in uniform, yet, the firefight went on for hours. The fighters from the MILF, our so-called "partner" in the peace process, fired at the troopers of the 55<sup>th</sup> SAC even when they already knew that they were engaging policemen.

It has been raised in the committee hearings that de-escalation of hostilities is difficult once a firefight has begun. But in this case, there appeared to be no attempts at all to de-escalate. Instead, the MILF soldiers continued

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<sup>202</sup> Transcript of Executive Session, February 12, 2015 (Survivor 2)

firing on the outnumbered SAF soldiers with the apparent objective of wiping out the entire SAF force.

Survivors recount how their company was decimated and they were hunted down.<sup>203</sup> They said that even wounded SAF soldiers were fired upon.<sup>204</sup> This was supported by the autopsy reports which showed that the SAF commandoes were shot at close range.

If the MILF leadership had already sent word to the ground troops to cease fire, but did not have the capability to stop the action of their ground troops, then this shows that the leadership does not exercise a strong command or control of the BIAF.

Further, the MILF has not returned the rest of the firearms, equipment, uniforms and personal effects taken by MILF fighters from the corpses of dead troopers of the 55<sup>th</sup> SAC. Though these may be considered "spoils of war", it would have shown good faith on the part of the MILF to return these weapons and personal effects immediately after the incident.

The sincerity of the MILF's proclaimed quest for peace is, thus, put in serious doubt. A group that claims to seek peace with the government should have exercised restraint. It does not massacre policemen on a legitimate law enforcement operation simply because the policemen did not give them prior


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<sup>203</sup> TSN of the Executive Session held on 12 February 2015.

<sup>204</sup> TSN of the Executive Session held on 12 February 2015.

notice about their operations. This also has implications upon the safety of government troops who must conduct law enforcement operations within MILF controlled territory.

It bears emphasizing that the first sin in the Mamasapano incident is the fact that the MILF leadership and community allowed themselves to coddle criminals and terrorists. During the hearings, there were blanket denials on knowing the presence of Marwan, Usman and a host of other elements in their midst, and yet, these terrorists have been their residents for almost a decade. Marwan, in fact, has been training recruits in the area and breeding people who will maim and kill.

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- E. **The Ceasefire mechanism between GPI and MILF, was unable to effectively end the firefight involving the 55<sup>th</sup> SAC but was successful in containing the firefight in Tukanalipao area.**

In a report<sup>205</sup> by BGen. Galvez, Chairman of the CCH , Gen. Galvez said that the ceasefire mechanism's failure in ending the firefight involving the 55<sup>th</sup> SAC, may be attributed to the following:

- The GPI CCCH was informed more than two hours after the first encounter. The information delay and the intensity of the fight gave both the GPI and MILF ceasefire mechanisms a hard time to separate

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<sup>205</sup> Report of BGen. Galvez, Chairman of the CCH to Gen. Catapang, Chief of Staff of the AFP, dated 4 Feb 2015.

emotional heightened protagonists due to heavy casualties and natural intention of both parties to gain advantage and survive the fight.

- The Chairman, GPH CCCH arrived in Camp Awang from Iligan only at 12:10 p.m. The situation might have been better if prior coordination with the Chairman (only) was made. With this arrangement, mechanisms can be put into place immediately be able to facilitate coordination with different SAF, AFP and MILF commanders in the operational area.

- Lack of information on the actual situation on the ground due to intentional withholding of information by PNP-SAF greatly affected and restrained our mediation and negotiations for ceasefire.

- The presence of other third parties (BIFF, PAGS, Lawless and Armed Civilians) in the encounter complicated everything.

 There are 2 agreements between the government and the MILF that must be given scrutiny in any discourse relating to the Mamasapano incident:

(a) The "Agreement on the General Cessation of Hostilities (AGCH)" dated 20 July 1997; and

(b) The "Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities" dated 14 November 1997 (the "Guidelines on Cessation of Hostilities").

## The Agreement on the General Cessation of Hostilities

On 20 July 1997, almost as soon as the negotiations between the government and the MILF started, the parties signed the Agreement on the General Cessation of Hostilities (AGCH). This commitment to a general ceasefire was necessitated by the dire effects to the ongoing peace talks of eruptions of violence between the government and MILF forces. Thus were created the parties' respective CCCHs to monitor the parties' compliance to the ceasefire agreement.<sup>206</sup>

The GPH-CCCH and the MILF-CCCH are tasked to supervise the maintenance of ceasefire between the parties. They conduct inquiries, prepare reports, and recommend appropriate action on alleged and proven violations to the ceasefire.<sup>207</sup> The conduct of their operations is directed by the Guidelines on Cessation of Hostilities.

## The Guidelines on Cessation of Hostilities

The Guidelines on Cessation of Hostilities basically spells out the "prohibited hostile acts"<sup>208</sup> (e.g. bombings, grenade throwing, summary execution, aggressive actions such as attacks, offensive military actions, etc.) as well as "prohibited provocative acts"<sup>209</sup> (e.g. providing sanctuary or assistance to criminal or lawless elements, other acts that endanger the safety

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<sup>206</sup> FAQs on the GPH-MILF Ceasefire Mechanisms prepared by the GPH-CCCH.

<sup>207</sup> FAQs on the GPH-MILF Ceasefire Mechanisms prepared by the GPH-CCCH.

<sup>208</sup> Article I, paragraph 3 of the Guidelines on Cessation of Hostilities.

<sup>209</sup> Article I, paragraph 4 of the Guidelines on Cessation of Hostilities.

and security of the people and their properties and/or that which contribute to the deterioration of peace and order, etc.). The government and the MILF undertook to desist from committing any of said prohibited hostile and/or provocative acts.<sup>210</sup>

Said guidelines, however, provided for "actions exempted from cessation of hostilities".<sup>211</sup> Such exempted actions are mainly categorized as "police and military actions and administrative/logistic activities" of the government, including but not limited to peacekeeping and police actions (e.g. arrests, searches and seizures, etc.). In order to avoid "confrontational situations" between the government and the MILF, "prior coordination" should be made in the carrying out of exempt actions.<sup>212</sup>

It bears emphasizing that forces not identified by the government and the MILF are not covered by the Guidelines on Cessation of Hostilities.<sup>213</sup>

The Coordinating Committees on Cessation of Hostilities ("CCCH") is the entity tasked with the observation of cessation of hostilities and any inquiry and resolution regarding any violation of the agreement's provisions.<sup>214</sup>

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<sup>210</sup> Article III, paragraph 1 of the Guidelines on Cessation of Hostilities.

<sup>211</sup> Article II of the Guidelines on Cessation of Hostilities.


<sup>212</sup> Article II of the Guidelines on Cessation of Hostilities.

<sup>213</sup> Article III, paragraph 3 of the Guidelines on Cessation of Hostilities.

<sup>214</sup> Article III, paragraph 4 of the Guidelines on Cessation of Hostilities.

In the event of any violation of the Guidelines on Cessation of Hostilities, past or on-going, the CCCH "shall inform immediately the commanders of the (government) and MILF forces whose units or members are alleged to be violating (the Guidelines)".<sup>215</sup> It shall be the government and the MILF that are responsible to carry out necessary and immediate actions to **stop any violation and punish the responsible forces.**<sup>216</sup>

With regard to coordination, the government members of the CCCH shall coordinate directly or through the Chain of Command or authority of the government agencies concerned.<sup>217</sup> The MILF members of the CCCH shall coordinate with MILF units directly or through their own channels of command.<sup>218</sup> Note that the CCCH is just an advisory body to the Peace Panels of the government and the MILF with regard to the implementation of the Guidelines on Cessation of Hostilities,<sup>219</sup> and unresolved matters within the CCCH shall be elevated to the Peace Panels for disposition.<sup>220</sup>



We would be remiss in our task of evaluating these mechanisms fairly if we fail to take note of law enforcement operations that were successfully carried-out following the protocols under the ceasefire agreement and operational guidelines for the AHJAG. These successful operations include the following:

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<sup>215</sup> Article III, paragraph 4 (b) of the Guidelines on Cessation of Hostilities.

<sup>216</sup> Article III, paragraph 4 (b) and Article III, paragraph 5 of the Guidelines on Cessation of Hostilities.

<sup>217</sup> Article IV, paragraph 1 of the Guidelines on Cessation of Hostilities.

<sup>218</sup> Article IV, paragraph 1 of the Guidelines on Cessation of Hostilities.

<sup>219</sup> Article IV, paragraph 2 (a) of the Guidelines on Cessation of Hostilities.

<sup>220</sup> Article IV, paragraph 2 (b) of the Guidelines on Cessation of Hostilities.

• On 2 November 2013, a military operation under the Army's 103rd Infantry Brigade and its 1st Infantry Division made a significant blow against the Killafah Islamiyah Mindanao at Lumbaca Unayan, Lanao del Sur. The joint CCCH and AHJAG were notified at least 24 hours prior to the actual combat operation.<sup>221</sup>

• On 2 February 2014, a joint operation was conducted by operatives of the PNP, the military's 61D, and the Joint Task Force Central Mindanao to run after key leaders of the BIFF in the town of Shariff Saydona Mustapha, Maguindanao province. A major camp of the BIFF, where the regional terrorist group Jemah Islamiyah had established a foothold, was seized and their armaments were confiscated. In said case, the CCCH and the AHJAG of both the GPH and the MILF were notified at least 72 hours prior to the conduct of operation. The coordination led the fighters of the MILF to "pull-out of the area to pave the way for the successful operation."<sup>222</sup>

• In November 2014, the military launched an operation against bomb-making expert Usman and his cohorts, who are members of the BIFF in Barangay Libutan, Mamasapano, Maguindanao. The operation resulted to the death of Usman's father-in-law. "These operations were coordinated through the ceasefire/AHJAG mechanisms and resulted in the recovery of sizeable improvised explosive devices and other bomb-making

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<sup>221</sup> Based on reports submitted by the OPAPP to the Committees.

<sup>222</sup> Based on reports submitted by the OPAPP to the Committees.




components including high-powered firearms and other war materials.<sup>223</sup>

It would seem that the AHJAG and ceasefire mechanisms are effective in so far as the prevention of hostilities is concerned. And this is borne out by the cases where there was coordination and success was achieved, i.e. targets were captured or neutralized and casualties were mitigated.

However, once a firefight has erupted, such as the case in Mamasapano, the mechanisms appear not to be as effective. This should warrant a search for new approaches to the de-escalation of hostilities.

**F. The ICC has no jurisdiction over the crimes committed by members of the MILF against the PNP-SAF troopers.**



In his testimony before the Committees, Mr. Iqbal stated that the MILF will only surrender its fighters to the International Criminal Court (ICC) if they are charged with committing war crimes.<sup>224</sup>

The ICC is an international tribunal created by virtue of the Rome Statute, a multilateral treaty which came into force on 1 July 2001. The Philippines became a signatory to the Statute on 28 December 2000. The Philippine Senate ratified the Statute on 30 August 2011.

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<sup>223</sup> Based on reports submitted by the OPAPP to the Committees.

<sup>224</sup> Page 164, TSN of 24 February 2015 hearing.

The ICC's jurisdiction is limited to the following crimes: genocide, crimes against humanity, war crimes, and offenses against the administration of justice.<sup>225</sup> The ICC may take cognizance of a crime only in cases where the crime is referred to the Prosecutor, whose office was created by the Rome Statute, by a state party or by the U.N. Security Council or where the Prosecutor has *motu proprio* initiated an investigation into a crime.<sup>226</sup> In addition, the ICC will assume jurisdiction over a crime if the State is unwilling or unable to prosecute the offender.<sup>227</sup>

None of the above requisites for the ICC's assumption of jurisdiction is present. The crimes committed by the MILF fighters do not fall within the categories of crimes over which the ICC may exercise jurisdiction. The acts of the MILF fighters cannot be considered as war crimes committed in the course of a non-international armed conflict since, as declared by the MILF, its fighters were acting in their individual capacities, and not as part of an MILF operation. There has been no referral to the ICC by either the Philippines or by the U.N. Security Council. The Prosecutor is not conducting an investigation into the incident. The Philippine government appears willing and able to prosecute the offenders, as the Secretary of Justice has ordered a team of prosecutors and agents of the NBI to investigate the incident for the purpose of the filing of charges in court. Thus, Mr. Iqbal's statement that the MILF will surrender its fighters involved in the Mamasapano incident to the ICC if charged with war crimes is without basis.

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<sup>225</sup> See Articles 5 and 70, Rome Statute

<sup>226</sup> Article 13, Rome Statute

<sup>227</sup> Article 17, Rome Statute

- G. There was no need for PNP to engage in prior coordination with the AHJAG, but guidelines on this matter should be reviewed.**

Since the PNP's *Oplan Exodus* was essentially a law enforcement operation, it was pointed out that coordination with AHJAG might have ensured a better outcome. In a report on the Mamasapano incident, Major General Pangilinan said that:

"The LEO in the area of Mamasapano, which is a known lair of various armed groups such as the MILF, BIFF and PAGs, is a complicated matter in balancing the application of the law and the peace process. Had there been prior coordination made with the AFP troops on the ground and ceasefire mechanisms (AHJAG and CCCH) before launching the LEO, the means could have justified the end. Had there been prior coordination, the loss of lives could have been totally prevented."<sup>228</sup>

The relevant documents needed in determining the necessity for the PNP to inform or engage in prior coordination with the AHJAG include the following:

(1) The "Joint Communiqué Between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front" dated 6 May 2002 (the "Joint Communiqué"); and

(2) The "Implementing Guidelines on the Joint Communiqué of 6 May 2002 dated 10 February 2011 (the "Guidelines on the Communiqué").

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<sup>228</sup> Report of Major General Pangilinan, to Commander of the Western Mindanao Command, AFP, dated 3 February 2015.

## The Joint Communiqué

The subject of the Joint Communiqué between the government and the MILF is the "isolation and interdiction of all criminal syndicates and kidnap-for-ransom groups, including so-called 'lost commands' operating in Mindanao."<sup>229</sup> The Joint Communiqué came about due to the mutual agreement and understanding between the government and the MILF that the activities of the criminal groups impede the peace process, the effective pursuit of development programs and the efficient delivery of basic services to the poor.<sup>230</sup>

Thus, both the MILF and the government agreed to support police and military actions that would be undertaken by the government throughout Mindanao.<sup>231</sup> In the pursuit thereof, it was agreed that confrontational situations between the government and the MILF forces shall be avoided by prior coordination with the latter.<sup>232</sup>

The AHJAG was created to coordinate, monitor and disseminate information between and among the AFP and PNP for the government, and the

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<sup>229</sup> Paragraph 1 of the Joint Communiqué.

<sup>230</sup> Paragraph 2 of the Joint Communiqué.

<sup>231</sup> Article II, "Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities" dated 14 November 1997.

<sup>232</sup> Article II, "Implementing Operational Guidelines of the GRP-MILF Agreement on the General Cessation of Hostilities" dated 14 November 1997.

BIAF for the MILF, to effect the apprehension and arrest of the identified selected criminal elements within the "MILF areas/communities."<sup>233</sup>

The AFP/PNP shall submit to the MILF an "Order of Battle" containing names and identities of criminal elements suspected of hiding in MILF areas/communities.<sup>234</sup> The pursuit and apprehension of said criminal elements shall be under an Ad Hoc Joint Action Group Against Criminal Elements ("AHJAG") to be formed by the government and the MILF.<sup>235</sup> The AHJAG is to "operate in tandem" with the CCCH.<sup>236</sup> The enforcement of the Joint Communiqué, on the other hand, shall be handled by the government and the MILF through their respective CCCH members.<sup>237</sup>

It is important to note that the Joint Communiqué provides that "criminals operating outside MILF areas/communities are considered beyond the purview of the peace process."<sup>238</sup> The MILF is obligated to "block the entry of criminals into MILF areas/communities."<sup>239</sup>

#### The Guidelines on the Communiqué

The scope of the Guidelines on the Communiqué explicitly provided that it does not apply to criminal elements that are outside MILF

<sup>233</sup> Paragraphs 4 and 5 of the Joint Communiqué.

<sup>234</sup> Paragraph 3 of the Joint Communiqué.

<sup>235</sup> Paragraph 4 of the Joint Communiqué.

<sup>236</sup> Paragraph 4 of the Joint Communiqué.

<sup>237</sup> Paragraph 7 of the Joint Communiqué.

<sup>238</sup> Paragraph 5 of the Joint Communiqué.

<sup>239</sup> Paragraph 6 of the Joint Communiqué.

areas/communities<sup>240</sup> The pertinent portions of the "Mechanics of Implementation"<sup>241</sup> provide that:

a. The MILF through the AHJAG shall validate and subsequently act on the information as contained in the Order of Battle;<sup>242</sup>

b. The MILF further shall provide information, as available, on other suspected criminal elements in the areas/communities that come to their attention;<sup>243</sup>

c. The AHJAG shall coordinate with the AFP/PNP and MILF/BIAF to effect the apprehension and arrest of the suspected criminal elements;<sup>244</sup> and

d. Except for operations against high priority targets, a list of which shall be provided by the GPH Panel to the MILF Panel, the AHJAG shall inform the GPH and the MILF CCCH at least 24 hours prior to the conduct of the AFP/PNP operations in order to allow sufficient time for the evacuation of civilians and to avoid armed confrontation between the GPH and MILF forces.<sup>245</sup>

The PNP-SAF did not attempt to inform or coordinate with the officers of the AHJAG regarding *Oplan Exodus* prior to 24 January 2015. In fact, BGEN Carlito Galvez, the Chairman of the government CCCH first learned of the

<sup>240</sup> Article III of the Guidelines on the Joint Communique.

<sup>241</sup> Article VI of the Guidelines on the Joint Communique.

<sup>242</sup> Article VI, paragraph 2 of the Guidelines on the Joint Communique.

<sup>243</sup> Article VI, paragraph 3 of the Guidelines on the Joint Communique.


<sup>244</sup> Article VI, paragraph 4 of the Guidelines on the Joint Communique.

<sup>245</sup> Article VI, paragraph 6 of the Guidelines on the Joint Communique.

operation through his counterpart, Atty. Rashid Ladiasan, Chair of the AHJAG-MILF who sent Galvez a text message at 6:38 a.m. of 25 January 2015, informing Galvez that a firefight was already going on.

In paragraph 6, Part VI of the Ad Hoc Joint Action Group Implementing Guidelines on the Joint Communique of 6 May 2002, a rule regarding informing the AHJAG and the CCCH reads, as follows:

**"6. Except for operations against high priority targets, a list of which shall be provided by the GPH Panel to the MILF Panel, the AHJAG shall inform the GPH and the MILF CCCH at least 24 hours prior to the conduct of the AFP/PNP operations in order to allow sufficient time for the evacuation of civilians and to avoid armed confrontation between the GPH and MILF forces."**  
(Emphasis supplied)



However, since the Mamasapano operations involved high-value targets or high priority targets, it would seem that the rule requiring the PNP to inform the officers of the ceasefire mechanisms, *at least 24 hours prior to the launch of law enforcement operations*, was not applicable. A cursory examination of the afore-quoted provision points to the indubitable conclusion that the absence of notice is allowed but is restricted only to operations against those high priority targets that are in a list. This list must be previously submitted by the GPH to prevent unilaterally determining or declaring high priority targets.

Another justification in support of such position is provided under Article III of the same Implementing Guidelines:

"Article III : SCOPE

These Implementing Guidelines apply only to operations against criminal syndicates/kidnap-for-ransom groups, lost commands and other criminal element within MILF areas/communities."

The location of Marwan and Usman per the intelligence package upon which *Oplan Exodus* was built and pursued was within the BIFF identified area and not within the MILF controlled territory. Strictly speaking, the houses of Marwan and Usman were outside the MILF area, as such, the Implementing Guidelines would not be applicable. However, *Oplan Exodus* was designed to have SAF forces entering and exiting various way points which were close to the MILF base commands. This proximity to MILF communities placed the SAF troopers in vulnerable positions.


Given these parameters, it appears that the SAF's interpretation of the rules--which meant that it did not have to inform the AHJAG or the CCCH--was correct. However, the fact of the matter is that the SAF's entry into an area populated by MILF soldiers, without prior coordination with the ceasefire mechanisms, resulted in dire consequences for them.

It is the position of BGEN Galvez, that prior coordination between the SAF leadership and the AHJAG-AFP could have mitigated the loss of lives for the government forces. Though the SAF did not have to comply with this rule,



the opinion of Galvez merits consideration. The rules must be revisited and the lessons from the Mamasapano incident should be used to craft new guidelines which would be more responsive to the situations on the ground. This way, disastrous encounters between government and MILF forces can be avoided.

The LEO in the area of Mamasapano, which is a known lair of various armed groups such as the MILF, BIFF and PAGs, is a complicated matter in balancing the application of the law and the peace process. Had there been prior coordination made with the AFP troops on the ground and ceasefire mechanisms (AHJAG and CCCH) before launching the LEO, the means could have justified the end. Had there been prior coordination, the loss of lives could have been totally prevented.<sup>246</sup>

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- II. The PNP's tactical plan to act autonomously was detrimental to the strategic plans of the government. By intentionally disobeying the agreements on protocol for the conduct of Law Enforcement Operations, the PNP caused a crisis with repercussions on the peace process.**

The Ceasefire Agreement was signed on behalf of the government and MILF. However, in reality only the AFP faithfully comply with the existing mechanisms. The PNP-SAF had previously disregarded protocol. PNP-SAF had conducted LEOs in areas with MILF communities and Base Commands without

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<sup>246</sup> Report of Major General Pangilinan, to Commander of the Western Mindanao Command, AFP, dated 3 February 2015.

prior coordination and complete disregard of the existing ceasefire mechanisms.<sup>247</sup>

The higher interest of upholding and protecting the gains of the peace process between the government and the MILF should have been the main consideration in launching a tactical action which could have a strategic implication.<sup>248</sup>

The incident exacted heavy toll as regards human lives (killed) and human cost (displacements) which dented the government and MILF resolve to politically settle the Moro problem. Public perception is polarized and the strategic implication is tremendous.<sup>249</sup>

**I. The applicability of the chain of command principle to the PNP; the doctrine of command responsibility.**

Appearing before the Committees, the Secretary of Justice declared that the "chain of command" principle is not applicable to the PNP.<sup>250</sup> She stated that the "chain of command" applies only to the AFP, which is headed by the President in his capacity as the Commander-in-Chief.<sup>251</sup> The Secretary of

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<sup>247</sup>Report of BGen. Galvez, Chairman of the CCH to Gen. Catapang, Chief of Staff of the AFP, dated 4 Feb 2015.

<sup>248</sup>Report of Major General Pangilinan, to Commander of the Western Mindanao Command, AFP, dated 3 February 2015.

<sup>249</sup>Report of Major General Pangilinan, to Commander of the Western Mindanao Command, AFP, dated 3 February 2015.

<sup>250</sup>Pages 33 to 34, TSN of 10 February 2015 hearing.

<sup>251</sup>Pages 33 to 34, TSN of 10 February 2015 hearing.

Justice reasoned that, since the PNP is a civilian agency, the principle of "chain of command" and, further, that the doctrine of "command responsibility," does not apply to it.<sup>252</sup>

The Committees disagree. In every organization, whether in the government or the private sector, there is always a hierarchical structure through which authority is exercised. This is the essence of a "chain of command." While the term is often associated with the military, it has been applied to hierarchical structures in civilian government agencies and private enterprises as well.

With respect to the PNP, the Supreme Court has categorically stated that, "[s]uch command of the Chief, PNP may be delegated to subordinate officials under a chain of command in accordance with rules and regulations prescribed by the National Police Commission" and that, "[t]he police organization must observe self-discipline and obey a chain of command under civilian officials."<sup>253</sup>

Where there is a chain of command, the doctrine of command responsibility also generally applies. The doctrine of command responsibility has been defined by the Supreme Court as follows:


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<sup>252</sup> Pages 33 to 34, TSN of 10 February 2015 hearing.

<sup>253</sup> *Canson v. Hidalgo*, G.R. No. 121889, August 4, 2000, and reaffirmed in *Manalo v. Calderon*, G.R. No. 178920, October 15, 2007.

The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict." In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility, foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then formulated, command responsibility is "an omission mode of individual criminal liability," whereby the superior is made responsible for crimes committed by his subordinates for failing to prevent or punish the perpetrators (as opposed to crimes he ordered).<sup>254</sup>

In another case,<sup>255</sup> the Supreme Court ruled that the doctrine of command responsibility applies to the President, and outlined the conditions under which liability attaches under this doctrine, as follows:



To hold someone liable under the doctrine of command responsibility, the following elements must obtain:

a. the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate;

b. the superior knew or had reason to know that the crime was about to be or had been committed; and

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<sup>254</sup> Rubrico v. Macapagal-Arroyo, G.R. No. 183871, February 18, 2010

<sup>255</sup> Saez v. Macapagal-Arroyo, G.R. No. 183533, September 25, 2012, citing Rodriguez v. Macapagal-Arroyo, G.R. No. 191805, November 15, 2011

c. the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof.

The president, being the commander-in-chief of all armed forces, necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine.

Thus, liability under the doctrine of command responsibility attaches only when the subordinate commits a criminal offense, and the superior has knowledge of the subordinate's commission of the offense, and fails to either prevent its commission or punish the perpetrator.

The doctrine of command responsibility is not restricted to the military. In fact, E.O. No. 226<sup>256</sup> institutionalized the doctrine of command responsibility in all government offices, including the Philippine National Police. Section 1 of E.O. 226 provides:

*Sec. 1. Neglect of Duty Under the Doctrine of "Command Responsibility". - Any government official or supervisor, or officer of the Philippine National Police or that of any other law enforcement agency shall be held accountable for "Neglect of Duty" under the doctrine of "command responsibility" if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take*

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<sup>256</sup> Issued on February 17, 1995

preventive or corrective action either before, during, or immediately after its commission.

#### J. The PNP Chain of Command was Violated.

On 4 December 2014, the Ombudsman issued an order preventively suspending Purisima, together with 11 other PNP officials and personnel, for a period of 6 months, on account of a pending graft case filed against them. In all cases of preventive suspension, “the suspended official is barred from performing the functions of his office and does not receive salary in the meanwhile.”<sup>257</sup>

Thus, even before 9 January 2015, Purisima was already “barred from performing the functions” of the Office of the Chief of the PNP. Yet, he made himself present when Napeñas gave a briefing and mission update on *Oplan Exodus* to the President at the 9 January 2015 meeting held at the Bahay Pangarap in Malacañang. Being on preventive suspension, Purisima should not have been at this meeting, where a highly classified police operation was being discussed. The President should have excluded Purisima from this meeting. After the said meeting, Purisima even gave the following instructions<sup>258</sup> to Napeñas: “*Huwag mo munang sabihan iyong dalawa. Saka na pag nandoon na. Ako na ang bahala kay General Catapang.*”<sup>259</sup> Upon these instructions, Secretary of Interior and Local Government and the Officer-in-Charge of the PNP were deliberately kept unaware of *Oplan Exodus*. Upon the President’s

<sup>257</sup>Aldovino, Jr. v. Commission on Elections, G.R. No. 184836, December 23, 2009,

<sup>258</sup>He claims that this was merely an “advice.”

<sup>259</sup>Ibid.

instructions to coordinate the operation with the AFP, Purisima took it upon himself to inform the Chief of Staff, AFP of the operation, which he did at 5:51 a.m. on 25 January 2015.<sup>260</sup>

Despite being on preventive suspension, Purisima continued to involve himself in *Oplan Exodus*. In a message that he sent to Napeñas on 19 January 2015, Purisima inquired, "Leo, what s our plan?"<sup>261</sup> To this, Napeñas responded, "Sir, good pm. The plan for the opns is go on the timeline. The troops will move from Zambo to CenMin on January 21 to 22, 2015 while intel will closely monitor the situation on the route of entry. There is no problem in the target area, preps continue so the troops are ready once situation is good. The warring faction engaged & the entry of the PA is the factor denying us safety Sir."<sup>262</sup>

It was even Purisima who informed the President of the neutralization of Marwan in a text message at 5:15 a.m. on 25 January 2015.<sup>263</sup> Until late in the afternoon of 25 January 2015, it was Purisima who was providing the President with updates on the progress of the operation.<sup>264</sup> While the President was in Zamboanga City for most of 25 January 2015 with the Secretaries of Defense and of Interior and Local Governments, as well as the Chief of Staff of the AFP and the OIC of the Philippine National Police, the President communicated only with Purisima about the operation. A text message about the ongoing operation

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<sup>260</sup> Page 44, TSN of 23 February 2015 hearing.

<sup>261</sup> Page 8 of Purisima's Affidavit dated 19 February 2015.

<sup>262</sup> Ibid

<sup>263</sup> Page 33, TSN of 23 February 2015 hearing.

<sup>264</sup> Pages 33 to 38, TSN of 23 February 2015 hearing.

sent by Secretary Roxas to the President at 8:09 a.m.<sup>265</sup> deserved only a curt, “thank you”<sup>266</sup> from the President.

Upon Purisima’s instructions, knowledge of *Oplan Exodus* was kept from the Secretary of the DILG and the OIC of the PNP until the morning of 25 January 2015 when both the Seaborne and the 55<sup>th</sup> SAC were already heavily engaged with hostile forces. Purisima informed PDDG Espina of the operation and the neutralization of Marwan in a 5:30 a.m. telephone conversation.<sup>267</sup> At about the same time, Napeñas sent PDDG Espina a text about the operation. Secretary Roxas, on the other hand, was informed of the operation through a text message from the Director of Intelligence of the PNP, forwarding to him what seems to be a text message from Napeñas to the senior officers of the PNP, at 7:43 a.m.<sup>268</sup>

#### **K. Criminal and administrative liabilities of Purisima and Napeñas**



##### **On Purisima:**

Purisima’s actions with respect to *Oplan Exodus* during the period of his suspension were in violation of Article 177 of the Revised Penal Code which provides, as follows:

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<sup>265</sup> Page 42, TSN of 23 February 2015 hearing.

<sup>266</sup> Page 31, TSN of 24 February 2015 hearing.

<sup>267</sup> Page 122, TSN of 9 February 2015 hearing.

<sup>268</sup> Pages 41 to 42, TSN of 23 February 2015 hearing.



**Usurpation of authority or official functions.** - Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prision correccional* in its minimum and medium periods.

Further, Purisima may be held administratively liable for grave misconduct under Section 36(b)(4) of Presidential Decree No. 807<sup>269</sup> in relation to Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service. Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."<sup>270</sup> On the other hand, when the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are manifest, the public officer shall be liable for grave misconduct.<sup>271</sup> Purisima should also be held administratively liable for conduct prejudicial to the best interest of the service.<sup>272</sup>

The acts of Purisima exercising the functions of the Office of the Chief, PNP despite his preventive suspension is unlawful behavior. His actions show a clear and manifest intent to defy the preventive suspension order of the Ombudsman. His acts constitute grave misconduct.

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<sup>269</sup> The Civil Service Decree of the Philippines

<sup>270</sup> Alconera v. Pallanan, A.M. No. P-12-3069, January 20, 2014


<sup>271</sup> Office of the Ombudsman v. Magno, G.R. No. 178923, November 27, 2008

<sup>272</sup> Section 36(b)(27), Presidential Decree No. 807

Purisima may also be held in indirect contempt by the Ombudsman for “disobedience of or resistance to a lawful writ, process or order” of the Ombudsman.<sup>273</sup>

*On Napeñas:*

Similarly, Napeñas may be held administratively liable for grave misconduct under Section 36(b)(4) of Presidential Decree No. 807<sup>274</sup> in relation to Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service. As a star-ranked officer of the PNP, Napeñas knew that Purisima was already under preventive suspension long before the 9 January 2015 meeting with the President at the Bahay Pangarap. This notwithstanding, he continued to take orders from Purisima.



The PNP-SAF is a national operational support unit of the PNP under the direct control of the Chief, PNP. During the period of PDG Purisima’s preventive suspension, Napeñas, as the Director of the PNP-SAF, could only legitimately take and follow orders and directives from PDDG Espina, who was designated Officer-in-Charge of the PNP by the President. Certainly, Napeñas should not have followed orders given by the suspended Purisima.

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<sup>273</sup> Section 15(9), Republic Act No. 6770 in relation to Rule 71 of the Rules of Court

<sup>274</sup> The Civil Service Decree of the Philippines

Napeñas may also be held administratively liable for inefficiency and incompetence in the performance of official duties<sup>275</sup> and for conduct prejudicial to the best interest of the service<sup>276</sup> on account of the poor planning and execution of *Oplan Exodus* and his failure to coordinate the operation with the AFP.

Similarly, Napeñas may be held administratively liable for grave misconduct. As a star-ranked officer of the PNP, Napeñas is presumed to have known that PDG Purisima was already under preventive suspension long before the 9 January 2015 meeting with the President at the BahayPangarap. Besides, Purisima's preventive suspension by the Ombudsman was well-reported in the news media. Despite the foregoing, he continued to report and take orders from Purisima. The PNP-SAF is a national operational support unit of the PNP under the direct control of the Chief, PNP. During the period of Purisima's preventive suspension, Napeñas, as the Director of the PNP-SAF, could only legitimately report and take and follow orders and directives from PDDG Espina, who was designated Officer-in-Charge of the PNP by the President. Certainly, Napeñas should not have reported and accordingly followed orders given by the suspended Purisima.

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<sup>275</sup> Section 36(b)(8), Presidential Decree No. 807

<sup>276</sup> Section 36(b)(27), Presidential Decree No. 807

- L. **The President failed to prevent PDG Purisima for the latter's violation of Article 177 of the Revised Penal Code (Usurpation of authority or official functions).**

The President assented to, or at the very least failed to prevent PDG Purisima for the latter's violation of Article 177 of the Revised Penal Code.


It is the opinion of the Committees that the acts of PDG Purisima in exercising the functions of the Office of the Chief, PNP despite his preventive suspension, constituted unlawful behaviour and is punishable under Article 177 of the Revised Penal Code which provides, as follows:



**“Usurpation of authority or official functions. – Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prision correctional* in its minimum and medium periods.”**

It is beyond doubt that the President was fully aware that PDG Purisima was preventively suspended by the Office of the Ombudsman on 4 December 2014, and that PDDG Espina was designated Officer-in-Charge of the PNP on 12 December 2014. Yet, the President:

1. Allowed PDG Purisima to join the 9 January 2015 meeting at the Bahay Pangarap, where a sensitive and classified PNP operation was being discussed;<sup>277</sup>
2. Instructed PDG Purisima to coordinate Oplan Exodus with the AFP;<sup>278</sup>
3. Communicated exclusively with PDG Purisima in regard the progress of Oplan Exodus on 25 January 2015;<sup>279</sup>
4. Gave Instruction to PDG Purisima to conduct of *Oplan Exodus* on 25 January 2015, as when the President sent PDG Purisima a text message reading, "Basit should not get away."<sup>280</sup>

 The President himself admitted that all the communication regarding Oplan Exodus emanating from him to PDR Napeñas, and vice-versa, was being coursed through a then suspended PDG Purisima. The President said:

"...Una kong natanggap na text, nandito pa ho sa telepono ko, parang pinadala ng 5:45---aminin ko nakapatay 'yungtelepono ko, 7:00 more or less 'nung pagbangon (ko) binuksan, sinagot ko siya about 7:30 or so—at sinabi sa akin doon sa text ni Director General (Alan) Purisima... Sa kanya ko ho dinadaan kasi paratimpisa 'yung mga mensahe ng director ng SAF. Hindi ko ho kausap 'yung director ng SAF e, diretsuhin, mula 'nungumpisa.

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<sup>277</sup> Page 61, TSN of 9 February 2015 hearing.

<sup>278</sup> Page 61, TSN of 9 February 2015 hearing.

<sup>279</sup> Pages 33 to 38, TSN of the 23 February 2015 hearing.

<sup>280</sup> Pages 33 to 38, TSN of the 23 February 2015 hearing.

So naabot si Marwan, na-neutralize, nagkaroon ng firefight at napaatras sila. Sa dulo ho sa palitan naming, tinanong ko-kasi nakalagay ho sa text niya 15 hanggang 20 katao ang lumaban ditto sa puwersa natin—so ang tanong ko sa kanya: ‘160 ‘yung ipinadala ninyo, mayroong suporta ng AFP at saka PNP units pa, bakit aatras ‘yung 160 kung ang lumalaban 15 hanggang 20?’” (Emphasis supplied)<sup>281</sup>

The foregoing shows that the President knew that PDG Purisima was exercising official functions despite the latter’s preventive suspension, and did nothing to prevent it. The President must bear responsibility for giving assent to and failing to prevent the unlawful exercise by PDG Purisima of official functions.



**M. The President and the principles of supervision and control.**

In the context of “supervision and control”, the 1987 Philippine Constitution in Section 17, Article VII provides that, “[t]he President shall have control of all the executive departments, bureaus, and offices.” Complementing this constitutional provision, the Administrative Code of 1987 in Section 38(1), Chapter 7, Book IV “supervision and control” in the following manner:


“Supervision and Control. – Supervision and control shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; directly the

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<sup>281</sup> The President’s statements during the Question and Answer portion of the Prayer Gathering of March 9, 2015

performance of duty; restrain the commission of acts; review, approve, reverse, or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standard, guidelines, plans and programs. Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word 'control' shall encompass supervision and control as defined in this paragraph

The Supreme Court defined the term this way:

 "In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform such duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgement of the former for that of the latter."<sup>282</sup>

As the PNP is under the DILG, the President, as the Chief Executive, exercises supervision and control over the same. Thus, given that the President gave the policy direction to arrest Marwan and Usman, and that he approved *Oplan Exodus* with full knowledge of its operational details, the Chief Executive is ultimately responsible for the success or failure of the mission.

*Oplan Exodus* was a legitimate law enforcement operation and the implementing PNP officers were not alleged to have committed a criminal offense. While these facts may be raised as a defense to escape liability under

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<sup>282</sup> Office of the Ombudsman v. Valera, G.R. No. 164250, September 30, 2005.

the doctrine of command responsibility, the President should still account for having assented to the unlawful participation by PDG Purisima in *Oplan Exodus*.

- N. The roles of Americans who were present during the operation cannot be readily dismissed as those of mere observers. Their investment in this operation is evidenced by the equipment and training they supplied.**

**Participation of Americans in Oplan Exodus.**

When questioned about the alleged American participation in the operations at Mamasapano, the Department of Foreign Affairs (DFA) submitted that based on their discussions with the United States authorities, they were able to ascertain that the planning and the execution of the *Oplan Exodus* were 100% Filipino planned and implemented.<sup>283</sup>

 As a caveat, the DFA said that it would defer if the same can be said too in the case of operational details<sup>284</sup> The DFA emphasized, "the only constitutionally restricted activity in Philippines cooperation with the US under existing agreements is that, they may not and have not, in the case of Mamasapano either, engage in combat operations."<sup>285</sup>

The testimonies of various resource persons, particularly during the executive hearings, appear to contradict the statement of the DFA that *Oplan*

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<sup>283</sup> Page 99, TSN of 23 February 2015 hearing.


<sup>284</sup> Page 100, TSN of 23 February 2015 hearing.

<sup>285</sup> Page 99, TSN of 23 February 2015 hearing.



*Exodus* was 100% purely Filipino planned and implemented. The following facts were attested to:

- Napeñas, brought 3 Americans into the Army Brigade HQ. A helicopter arrived and 3 more Americans came into the HQ and joined Napeñas at his work table.<sup>286</sup>
- One of the Americans, identified by Napeñas as Mr. Al Katz, supposedly handled the training of the Seaborne.<sup>287</sup>
- One of the Americans ordered Pangilinan to fire the artillery. However, Pangilinan refused and told him "Do not dictate to me what to do. I am the commander here!"<sup>288</sup>
- The Americans provided surveillance in the area through their ISR. TV monitors were brought in by the Americans to the HQ.<sup>289</sup>



Briefly, ISR in the United States is shorthand for "...the system of collection assets and analysts which brings information about the enemy or potential enemy to the decision-maker, whether that decision-maker is a top general in Washington, DC or a soldier on the ground facing an armed attacker."<sup>290</sup>

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<sup>286</sup> TSN of 23 February 2015 Executive Session, p. 183.

<sup>287</sup> TSN OF 16 February 2015 EXECUTIVE SESSION, pp. 187-188

<sup>288</sup> TSN of 23 February 2015 Executive Session, p. 113.

<sup>289</sup> TSN of 24 February 2015 Executive Session.

<sup>290</sup> Chizek, J.G. "Military Transformation: Intelligence, Surveillance and Reconnaissance" *Report for Congress* (January 17, 2003. Retrieved from <http://www.dtic.mil/dtic/tr/fulltext/u2/a469293.pdf>)

During the public hearings on the Mamasapano incident, Napeñas admitted that a "U.S. counterpart" was involved in at least three aspects - intelligence cooperation, training and equipment provision:

MR. Napeñas. Your Honor, *tumulong iyong US counterpart doon sa intelligence...* Mayroon kaming isang US counterpart doon sa Seaborn who is working with them in terms of training at saka iyong...equipment provision, Your Honor. Kasama po iyon na ibinibigay nila iyong maps na ginagamit for operation. But never nakasama iyong US counterpart in actual combat operation.<sup>291</sup>

In the words of Napeñas, "this is in connection with the ongoing continued exercises that the country has with the US forces in the fight against terrorism."<sup>292</sup>



**U.S. Involvement in *Oplan Exodus* and the Global War on Terror.**

U.S. involvement in *Oplan Exodus* must be viewed in the context of the global war on terror. The extent of U.S. involvement in *Oplan Exodus* will only make sense when read in this context.

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<sup>291</sup> Page 105, TSN of 24 February 2015 hearing.


<sup>292</sup> Page 71, TSN of 10 February 2015 hearing.

The United States launched the global war on terror in response to the 11 September 2001 attacks. However, the United States did not merely retaliate against Al Qaeda but instead declared war on terrorists and the states that harbor or abet them.<sup>293</sup>

Strengthening ties with U.S. allies was a key part of the strategy against terrorism. The U.S. strategy was to provide its allies with the "military, law enforcement, political and financial tools" needed to engage terrorists in their jurisdictions.<sup>294</sup>

#### **U.S.-Philippines Defense Relationships and Mechanisms for Counter-Terrorist Cooperation.**

U.S.-Philippine cooperation on counter-terrorism must be seen in the light of the existing defense relationship and mechanisms between the two.



The defense relationship between the Philippines and the United States is defined in various treaties. The backbone of the RP-US defense relationship is the 1951 Mutual Defense Treaty (MDT). Articles II and IV describe the nature of the obligations of the parties:

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<sup>293</sup> This is known as the "Bush Doctrine" in journalistic and diplomatic parlance. It was initially formulated in President Bush's address to the nation following the 9/11 attacks: "We will make no distinction between the terrorists who committed these acts and those who harbor them." The "Bush Doctrine" would be reiterated and strengthened in a series of speeches. Its formal embodiment is the 2002 National Security Strategy of the United States.

<sup>294</sup> The direction of U.S. counter terrorist policy appears to have remained largely unchanged under President Barack Obama. On this matter, refer to Mcrisken, T. "Ten Years on: Obama's war on terrorism in rhetoric and practice" *International Affairs* (2001: Vol. 87, No. 4).

ARTICLE II. In order more effectively to achieve the objective of this Treaty, *the Parties separately and jointly by self-help and mutual aid will maintain and develop their individual and collective capacity to resist armed attack.*

ARTICLE IV. Each Party recognizes that *an armed attack in the Pacific area on either of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common dangers* in accordance with its constitutional processes.

Aside from the MDT and the VFA, there are other agreements which pertain to strengthening the defense relationship between the U.S. and the Philippines. These are the 2002 Mutual Logistics Support Agreement, the 2006 Exchange of Notes which established the Security Engagement Board, and the 2014 Enhanced Defense Cooperation Agreement (EDCA).

 The Security Engagement Board (SEB) serves as the mechanism for liaison and consultation on non-traditional security concerns such as terrorism, transnational crimes, maritime security and safety and natural and man-made disasters. Undersecretary Garcia of the DFA emphasized the role of the SEB as mechanism for cooperation on counter-terrorist cooperation:


“The aforementioned Security Engagement Board that I earlier alluded to, provides the framework for cooperation on non-traditional security issues, including counter terrorism. Every year, the Mutual Defense Board and the Security Engagement Board meet to agree on a set of joint activities under the legal framework of the MDT and the VFA. *Philippine security agencies such as the*

*PNP and the Philippine Coast Guard have benefitted from activities like training, intelligence exchange, and so forth.”<sup>295</sup>*

The 2014 Enhanced Defense Cooperation Board (EDCA) further deepens defense cooperation between the Philippines and the United States by providing the terms by which U.S. military and civilian personnel, contractors, vehicles, vessels and aircraft may access “agreed locations”. It also defines the activities which may be undertaken in these agreed locations.

**Permissible extent of U.S. involvement in domestic operations.**

The case of *Lim v. Executive Secretary*<sup>296</sup> is instructive in determining the permissible extent of U.S. involvement Philippine operations. In that case, the U.S. deployed troops in Basilan and Mindanao in 2002, to take part, in conjunction with the Philippine military, in “Balikatan 02-1.”



The Exercise would involve the conduct of mutual military assisting, advising and training of RP and US Forces with the primary objective of enhancing the operational capabilities of both forces to combat terrorism.

A petition was filed in court questioning whether the Mutual Defense Treaty or the VFA legitimized these exercises. The Court found that the “Balikatan 02-1” is permitted under the terms of the VFA. The Court was also

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<sup>295</sup> Opening Statement of Undersecretary Evan P. Garcia on February 23, 2015. P. 2

<sup>296</sup>G.R. No. 151445, 11 April 2002.

faced with the question of what kind of activities may US forces legitimately do in furtherance of their aim to provide advice, assistance and training in the global effort against terrorism? Differently phrased, may American troops actually engage in combat in Philippine territory?

The Court held that the Terms of Reference of the Exercise, Paragraph 8 of section 1, stipulates that US exercise participants may *not* engage in combat "*except in self-defense.*" Furthermore, it was the opinion of the Court that, "neither the MDT nor the V FA allow foreign troops to engage in an offensive war on Philippine territory."<sup>297</sup>

However, the Court said that while U.S. troops could not engage in combat itself, it could engage in *combat-related activities*. The definition of combat-related activities was deliberately left ambiguous by the parties and therefore could mean a range of activities such as training on new techniques of patrol and surveillance, disaster relief operations, etc.



Given these precedents, and in light of the Mamasapano incident, there is a need to refine and delineate the defense relationship between the Philippines and the United States including cooperation on matters relating to anti-terrorism.


Working with an ally such as the United States apparently gives us access to information and resources that have assisted us in our local operations.

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<sup>297</sup>Ibid.

However, the question is, what must we give in return? Are there any consequences to working with the United States in pursuing its global war on terror? Obviously, in the Mamasapano operation, the consequence of that mission to get Marwan and Usman was the death of a large number of Filipino soldiers and civilians.

The second consideration is, "Who is driving the cart?" Was the Mamasapano operation authored by Filipinos? It must be remembered that the US offered a reward of USD \$5 million (approximately P200 million pesos) for Marwan. Clearly, the staggering amount could have enticed law enforcers to conduct operations to support the interests of others despite the high risks involved.

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- O. **Should the AFP have fired the white Phosphorus or artillery Artillery rounds much earlier? Did the strategy to promote the peace process hinder the AFP from engaging in a more aggressive response?**


**The objective was to extricate the troops, not join the fight.**

When news of the Mamasapano incident first broke out, questions were raised regarding the role of the AFP. Why didn't the AFP send help immediately? Why didn't the AFP fire the artillery or at least the WPA rounds immediately? Today, that question still lingers.

This was compounded by the peculiar statement that AFP Chief of Staff Catapang made on 29 January 2015:

*"The Armed Forces [could not] join the firefight because of the ceasefire agreement. That will destroy the entire ceasefire agreement and that will be like a bushfire that will spread up to Lanao and the entire peace talks with our Muslim brothers will fail."*<sup>298</sup>

The AFP was then attacked by the public that believed the AFP leadership refused to help the PNP in Mamasapano. General Catapang immediately clarified that the AFP was not remiss in their duty to assist and reinforce the beleaguered SAF.<sup>299</sup> "Everything," according to General Catapang, "that could be done was done under the circumstances."<sup>300</sup> However, the AFP's objective was to extricate the troops, not to join the fight. They had to uphold the "primacy of the peace process."<sup>301</sup>

 In the public hearings conducted by the Committees, General Catapang reiterated his account that the AFP was supposed to extricate the PNP-SAF but not engage the MILF.<sup>302</sup> In particular, he said that the MILF might interpret an

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<sup>298</sup> Mangosing, F. "Why the Military did not reinforce SAF" *Philippine Daily Inquirer* (January 29, 2015). Retrieved from <http://newsinfo.inquirer.net/668995/why-the-military-did-not-reinforce-saf>

<sup>299</sup> Armed Forces of the Philippines. "On Mamasapano, Maguindanao Encounter" (February 02, 2015). Retrieved from <http://www.afp.mil.ph/index.php/8-afp-news/239-on-mamasapano-maguindanao-encounter>

<sup>300</sup> *Ibid*

<sup>301</sup> Fonbuena, C. "AFP Chief: We were there to extricate SAF, not fight" *Rappler* (February 04, 2015). Retrieved from <http://www.rappler.com/nation/82913-catapang-mamasapano-peace-talks>

<sup>302</sup> Page 193, TSN of 9 February 2015 hearing.



attack on them as a breach of the ceasefire and make them assume that war had resumed.<sup>303</sup>

**The Peace Process as the centerpiece of the Internal Security Program of the Aquino Administration.**

General Catapang's remarks must be understood in the context of the Aquino administration's national security policy. The "primacy of the peace process" is formally established in the 2011-2016 Philippine Development Plan (PDP), the 2011-2016 National Security Plan of the Philippines (NSPP), and the Internal Peace and Security Plan of the Armed Forces of the Philippines (IPSP).

The NSPP's overall plan has a specific component for internal socio-political security. Two aspects are worth pointing out. First, the government pledged to "Launch a Holistic Program to Combat Terrorism."<sup>304</sup> Second, the government pledge to "Promote the Peace Process as *the Centerpiece* of our Internal Security Program".<sup>305</sup>

The IPSP explains the concept of the "primacy of the peace process". It also defines the role of the AFP, and consequently, the nature of their conduct

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<sup>303</sup> Page 193, TSN of 9 February 2015 hearing.

<sup>304</sup> Fonbuena, C. "AFP Chief: We were there to extricate SAF, not fight" Rappler(February 04, 2015). Retrieved from <http://www.rappler.com/nation/82913-catapang-mamasapano-peace-talks>

<sup>305</sup> Fonbuena, C. "AFP Chief: We were there to extricate SAF, not fight" Rappler(February 04, 2015). Retrieved from <http://www.rappler.com/nation/82913-catapang-mamasapano-peace-talks>

vis-à-vis non-state armed groups. The IPSP defines the concept of the “primacy of the peace process” as one wherein “AFP internal security operations shall be within the national government’s peace framework.”<sup>306</sup> The primacy of the peace process is done in three ways. First, the AFP shall “deploy forces and only when necessitated by the security situation in the Area”.<sup>307</sup> Second, the AFP shall “adhere to agreements entered into by the government on cessation of hostilities or suspension of military activities.”<sup>308</sup>

The AFP shall “ensure that the group with whom the government is talking peace with will not use force or the threat of force as leverage at the negotiating table.”<sup>309</sup> In this regard, the AFP “shall be ready to undertake accurate and precise operations against threats attempting to initiate hostilities.”<sup>310</sup>

In dealing with the MILF, the AFP is given a specific strategy. The AFP “shall maintain a credible deterrent posture”<sup>311</sup> against the MILF and “shall emphasize its readiness and willingness to use legitimate force to swiftly and decisively deal with any attempt from the MILF to provoke or initiate armed hostilities.”<sup>312</sup> However, the military shall use force only to protect communities and the people from rogue elements of the MILF who resort to atrocities.”<sup>313</sup>

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<sup>306</sup> AFP Internal Peace and Security Plan.

<sup>307</sup> Ibid.

<sup>308</sup> Ibid.

<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

<sup>311</sup> Ibid.


<sup>312</sup> Ibid.

<sup>313</sup> Ibid.

### The AFP, the Peace Process and Oplan Exodus.

Two provisions in the IPSP are crucial to understanding the AFPs role in Mamasapano: the provision mandating them to "maintain a credible deterrent posture" and the provision mandating the AFP to "adhere to agreements entered into by the government on cessation of hostilities or suspension of military activities."

Presumably, the AFP must treat each armed groups with a different strategy. However, carrying out this strategy was complicated because at least 3 different armed groups were present in Mamasapano - the MILF, BIFF and other PAGs. Perhaps the AFP could have engaged the BIFF and the PAGs. But the AFP could not have engaged the MILF readily because the IPSP limits the AFP to "deterrence" in dealing with them.

 Second, the IPSP binds the AFP to the ceasefire agreement. The AFP still had to adhere to the mechanisms between the GPH and the MILF. If the AFP had acted otherwise, they could have endangered the peace process. And the AFP could not "sacrifice" the peace process because the AFP "subscribes to the primacy of the peace process".

To be fair to the AFP, it was explained and reiterated in all hearings that the artillery support which the PNP asked for could not be given without proper information. Gen. Pangilinan explained the doctrinal requirements that were needed before firing artillery. The Committee agrees, that to have fired the

artillery without verifying the location of the government forces, the location of the enemies, and the location of the civilians, would have been reckless and irresponsible. The Committee also agrees that in a situation with possible dire consequences, it was preferable to err on the side of caution.

However, the option of firing the white phosphorous, though potentially harmful, may not have been as fraught with risk as that of firing the artillery. Since the PNP was able to provide some coordinates that would determine the troops' location, and the PNP officers had determined that there were no more civilians in the area, the AFP could have seriously considered this option much earlier in the day.

In the larger scheme of things, it must be asked if their action that day was determined by the guidelines in the Internal Peace and Security Plan of the AFP. The peace process was certainly not envisioned to get in the way of law enforcement operations, yet, the view that it may have constrained the AFP in their actions in Mamasapano should be explored.

Though the Committees support the primacy of the peace process, the realities on the ground may have to be addressed with strategies and guidelines that allow our AFP, as well as our PNP, to be flexible and effective.

Nevertheless, there is no doubt that the AFP did give support to the PNP on that fateful day and was instrumental in the rescue of the beleaguered SAF.

In fact, it appears that on that day, the SAF benefited much from the maturity, expertise and courage of the AFP soldiers and its officers.

**P. The ATC and the NICA were left out.**

The ATC was created under R.A. No. 9372 (the Human Security Act of 2007). The ATC's mandate is to "implement this Act and assume the responsibility for the proper and effective implementation of the anti-terrorism policy of the country." One of its functions is to, "coordinate all national efforts to suppress and eradicate acts of terrorism in the country and mobilize the entire nation against terrorism prescribed in this Act."


Thus, consistent with the mandate of the ATC, *Oplan Exodus*, an operation carried out by the PNP-SAF to arrest Marwan and Usman, both internationally-wanted terrorists, should have been brought to the official cognizance of the ATC prior to its execution. This would have ensured that the operation is consistent with our anti-terrorism policy, as well as allowed coordination of the operation with other agencies involved in counter-terrorism at the highest levels.

However, *Oplan Exodus* was carried out by the PNP-SAF without the knowledge or participation of the ATC. This is evident from the fact that the Secretary of Interior and Local Government and the Secretary of National Defense, both members of the Council, learned of the operation after it had already been launched. The heavy casualties suffered by the PNP-SAF could have been minimized, if not avoided, through prior coordination with, and

timely reinforcement by, AFP units operating in the area. Also, the ATC could have ensured that the operation would be in consonance with our counter-terrorism policy, particularly in relation to the ongoing peace process with the MILF.

There is, therefore, a need to amend R.A. No. 9372 in order to strengthen the ATC and enhance its powers to ensure that it is able to successfully carry out its mandate and perform its functions.

On the other hand, the National Intelligence Coordinating Agency (NICA) was created pursuant to E. O. No. 246 (24 July 1987). It replaced the Marcos-era National Intelligence and Security Agency (NISA) and Civil Intelligence and Security Agency (CISA). The NICA is under the Office of the President. Its principal function under E.O. 246 is to be the "focal point for the direction, coordination and integration of government activities involving national intelligence, and the separation of intelligence estimates of local and foreign situations for the formulation of national policies by the President."<sup>314</sup>



On 8 April 2003, the President issued Administrative Order (A.O.) No. 68, which gave the NICA the "principal authority to direct, coordinate and integrate all government activities involving national intelligence and continue to serve as the focal point for the preparation of intelligence estimates of local and foreign situations for the formulation of national policies by the President." It was also designated as the "lead intelligence collection agency of the national


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<sup>314</sup> Section 2, E.O. 246

government.” A.O. 68 further institutionalized the Counter-Terrorism Intelligence Center (CTIC), a multi-agency body under the direction and control of the NICA Director-General, tasked with providing overall coordination in the conduct of intelligence operations to facilitate gathering, processing, disseminating and sharing of intelligence on terrorism. A.O. 68 also established Area CTICs in the various area commands of the AFP which were tasked to “capture and fuse” intelligence on terrorism.

Under the Section 53 of the R.A. No. 9372, the NICA is designated as the Secretariat of the ATC. Consistent with A.O. 68, R.A. No. 9372 should be amended to give statutory authority to the CTIC as the principal body charged with handling intelligence and information related to terrorism.

**Q. The Government Peace Panel Should Stand for the Government and not for the MILF.**




The long-standing peace process with the MILF that commenced in 1997 underwent several hurdles. The Committees appreciate the efforts of the government peace panel to enact a solution to decades-old conflict in Mindanao through a just and lasting peace and deal with the Moro rebels.

The effort is particularly relevant considering what continuing conflict means in terms of lives lost and displaced and economic costs.

But the Committees cannot abandon its responsibility of questioning the acts of Presidential Adviser on the Peace Process Teresita Deles (“Deles”) and

government peace panel negotiator Miriam Coronel-Ferrer ("Coronel-Ferrer") in defending the MILF. In the process of achieving peace in Mindanao, we should not overlook the seeming inadequacies of our partner in this process, the MILF, such as their lack of control over their ground forces and their disrespect for legitimate government operations.

The OPAPP and the peace panel, while advocating peace on a high ground as it should, are suffering from a wanton excess of optimism—optimism that blinded them to negotiate a fair agreement for the government. The BBL, in fact, is an exemplar in this regard: while founded on a noble vision of harmony for Mindanao, indications show that there are major problem areas including but not limited to the largesse found in its high cost of appropriations and allegedly allowing the creation of a sub-state.



Time and again, peace is the most potent agenda of the nation. Peace is for the marginalized. Peace is a tool for development.


The OPAPP and the government should start speaking for the country and for the government.



## V. RECOMMENDATIONS

A. One of the most urgent actions that the President should consider at this time is the appointment of a permanent Director-General of the PNP. In the appointment of the new Director-General, the President must consider worthy integrity, strong patriotism and the ability to uphold the law and the capacity to inspire the 120,000-strong police force.


B. Congress must immediately consider the PNP Modernization Program. The modernization will transform the country's police force in order to be at par with the world's best. The policy will make the PNP well equipped, well-trained and pro-active to the demands of modern Philippine society in ensuring peace and order and public safety. By improving the organizational structure, the operational readiness and mission capabilities of PNP would be addressed.



In the cognizance of the PNP Modernization Law, the legislation providing for a Magna Carta for the PNP should be assessed in asymmetry. The existing policy measure seeks to guarantee the improvement of the well-being of PNP personnel. The exercise of vast power and wide discretion in the utilization of manpower and material resources, particularly in the areas of promotion, development and grant of opportunities for career advancement, are said to be presently concentrated in the hands of a few, thereby giving rise to widespread discontent, demoralization, professional conflict and jealousy.

C. The guidelines, policies and issuances governing hazard pay and combat pay of the members of the PNP and the AFP must be updated.

During the hearings, it was ferreted out that police personnel assigned in danger zones received hazard pay in the amount of Php240.00 monthly and combat pay in the amount of Php1,020.00 on a quarterly basis.<sup>315</sup> For their part, the field soldiers in the AFP receive Php240.00 per month as combat pay.<sup>316</sup>

 D. The early recognition of legislation aimed at eradicating mobile phone-aided terrorism and criminal activities. In the issue on the Mamasapano incident, it was established that the terrorist Marwan is an expert bomb maker, trainer and personally detonated explosives by remote control using cellular phones.<sup>317</sup> At present, there is a piece of legislation that primarily intends to be a remedial measure requiring the registration of all prepaid cellular phone subscribers by asking valid ID at purchase, and in turn start build databases, and come up with profiles of buyers the same way police detectives profile criminal suspects. This will also mandate service providers to integrate security devices to counter criminal activities, such as financial frauds and kidnapping.

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<sup>315</sup> Page 201, TSN of 10 February 2015 hearing.

<sup>316</sup> Page 202, TSN of 10 February 2015 hearing.

<sup>317</sup> Transcript of Stenographic notes, February 9, 2015, page 32

E. To make permanent the establishment of a One-Stop Shop for Claims and Benefits of killed or injured policemen: Processing scholarships, death benefits, burial and financial assistance to wives, kin and relatives, among others.


F. One of the problems identified during the Mamasapano massacre was the lack of coordination between and among security government agencies. The National Security Council should be convened for the purpose. Likewise, the country is bereft of a Comprehensive National Security Plan and thus, the security cluster of the government should provide a mechanism for the coordination of departments and agencies in addressing the multi-dimensional facet of national defense and security. The country needs a realistic, coherent and purposive blueprint to ensure the country's defense and development.



In the consideration of a Comprehensive National Security Plan, the role of key players – military and non-military actors, government and non-government stakeholders – in addressing security concerns should be studied anew. Likewise, contemporary trends focus not only on rationalizing and streamlining the functions of said key players but as well as harmonizing their security strategies and programs for achieving superior performance. The formulation of a Comprehensive National Security Plan is thus more timely than ever.

**G.** The Committees should conduct a review of the Human Security Law with the Mamasapano massacre and similar incidents as backdrop. More so, said law needs to be reviewed in the light of domestic and global trends relevant to our domestic counter-terrorism drives and other public order-related concerns.

The law had been in force since 2007. The review will enable Congress to propose changes in the law in response to domestic and global trends and contexts that bear on our domestic counter-terrorism drives and other public order-related concerns. We would like to also ascertain that the law and its objectives remain in step with peace and related aspiration and goals of the people and government.

 For the purpose, the Anti-Terrorism Council (ATC) which was established under the Human Security Act and is chaired by the Executive Secretary and co-chaired by the Secretary of the Department of Justice, to initiate the comprehensive review of areas suggested below and to undertake and/or recommend appropriate and necessary actions and reforms:


(a) Strategic and operational policies, plans, and programs of all executive agencies, inter-agency, coordinative, and similar bodies and mechanisms, which directly or indirectly pertain to, address, or impact on

counter-terrorism and relate public order and internal security concerns; and

(b) Internal organizational structures, internal and inter-agency coordinative arrangements, formal lines of coordination, specific or concurrent mandates, specific or concurrent authorities, specific and concurrent jurisdictions, internal and inter-agency lines of authority, among others.

(c) Strengthening and enhancing the powers of the ATC ensuring that it is able to successfully carry out its mandate and perform its functions.

(d) Consider giving statutory authority to the Counter-Terrorism Intelligence Center.

 II. Create a more responsive coordinating mechanism with explicit rules between and among the armed forces, the PNP and other law enforcement groups. The rules should be able to strike the balance between preventing the leak of critical information, and the welfare of the forces executing the operation.

I. Create a more responsive set of guidelines for the mechanisms on the cessation of hostilities with explicit rules between GPH and the MILF. Ensure that all units of GPH adhere to protocol. Explore the possibility of imposing for violations or non-compliance on both GPH and MILF.

J. Balance national interest vis-as-vis treaty obligations to allies such as the U.S. Balance the interest of the government to abide by its international commitments versus the interest or welfare of the police officers who must carry out the mission.


The Committees suggest that the Executive branch in particular the DFA and the VFA Commission consider taking steps to clarify and address issues regarding U.S. role and involvement in domestic counter-terrorism and internal security that surfaced in our legislative inquiry into the Mamasapano incident. For example:

(a) What should be the policy of the Philippine government, in this regard, that best upholds Philippine sovereignty and interests and promotes compliance with the Philippines' human rights and similar legal obligations under domestic and international law?

These obligations—from our understanding—are binding on all State organs like those assumed by the

Philippine government under multilateral and bilateral defense and security agreements, specifically with the U.S. We note that there is emerging international practice that supports the primacy of human rights protection over other considerations.

(b) Given policy-level, strategic, and operational (and ground-level) arrangements and protocols presumably negotiated and agreed on by the Philippines and the U.S., how are these translated into complementary, coherent, and accountable structures, systems, and procedures at all stages of counter-terrorism and internal security-related campaigns – from policy setting, planning, execution, and post-law enforcement operation?



K. Apply the full force of the law against those found liable for criminal, civil and administrative liabilities.

Copies of this Committee Report should be given to the Office of the Ombudsman and the Department of Justice for additional legal determination of facts related to the incident, including actions of individuals punishable under administrative, criminal and civil laws. The relevant offices should then complete its investigation into the Mamasapano incident, identify the perpetrators and, after due


proceedings, file the appropriate cases in court against the perpetrators, their accomplices, and accessories.

In the case of former Director General Purisima, the following should be filed:

a. An administrative complaint should be filed with the Ombudsman for grave misconduct and conduct prejudicial to the best interest of the service;

b. A criminal complaint should be filed for violation of Article 177 of the Revised Penal Code; and

c. A petition for indirect contempt against Purisima should be filed with the Ombudsman.



In the case former SAF Director Napenas, an administrative complaint should be filed with the Ombudsman for grave misconduct, inefficiency and incompetence in the performance of official duties and for conduct prejudicial to the best interest of the service.


L. The adoption of Senate Resolutions authored by various senators honoring the bravery and heroism of the PNP-SAF troopers who were killed and wounded in Mamasapano, Maguindanao. Copies of the



approved Resolution should be given to the families, their kin and to the PNP.

## **VI. EPILOGUE**

In this Report, the Committees have proposed legislative measures which aim to strengthen and enhance the capability of our security institutions with a view of preventing the repetition of the Mamasapano botched operation in the future. We have also proposed non-legislative measures that include findings of culpability of public officers whose actions or inaction led to the carnage at Mamasapano on 25 January 2015. We hope that this identification of where responsibility, and the consequent accountability, lies would address justified cries for justice of the families and loved ones of the 44 SAF troopers killed, not to mention the growing indignation of an evident majority of our people.



We should not forget that a majority of the SAF 44 lost their lives at the hands of fighters belonging to the MILF, our so-called "partner" in the ongoing peace process. Many of the SAF 44 were shot at close range as they lay injured at that now infamous cornfield in Mamasapano. They were stripped off of their weapons, equipment, uniforms and even their personal belongings. They were treated with ignominy, with videos of their corpses posted on the Internet.

Hence, of equal, if not greater, importance to our nation moving forward is the impact of the Mamasapano incident on the ongoing peace process the government is undertaking with the MILF where the required implementing

Bangsamoro Basic Law is pending in Congress for committee deliberations. We are one in the search for a lasting peace in Mindanao. Every effort must be exerted to achieve this goal. However, there can be no peace without justice. The avowed purpose of our ceasefire mechanisms is to prevent or end conflict so that both parties to the peace agreement can live harmoniously, and allow law enforcers to accomplish their official duties. Thus, the massacre of the outnumbered SAF soldiers cannot be rationalized by claiming non-adherence to the ceasefire guidelines. It would be the greatest irony, to excuse the commission of a massacre, by citing a peace agreement.

This Report has also examined the Mamasapano incident in the context of the ongoing peace process with the MILF, because we believe that the efforts of our government to arrive at a just, sustainable and lasting peace in Mindanao, while ensuring the socio-economic, political and cultural equity, must not be at the expense of our sovereignty and national integrity. The laws of our Republic must be enforceable and enforced within our territorial boundaries, without exception.

Thus our way forward as a nation after this incident that we hope has been captured in this Report can be summarized in three words: **KATOTOHANAN, KATARUNGAN and KAPAYAPAN.**

**KATOTOHANAN** – In this Report, the Committees comply with its duty to inform our people of the events leading to, during and after the Mamasapano incident. The findings and recommendations drawn are based on the testimonies of resource persons and witnesses from both the government

and the MILF sides during the public hearings, those given from the executive sessions, and materials submitted directly to the Committees.


Accordingly, for the PNP and the AFP, the Mamasapano incident should serve as a hard lesson and become a new beginning. These two agencies, which wield the instruments of force of our government, must maximize their cooperation and improve their respective capabilities so that they can be effective security instruments of the State and protectors of our People. Those from among their ranks who had been found to be liable, whether administratively or criminally, should admit their culpability and allow their organizations to move forward for the betterment of our nation.

Furthermore, those in government who are responsible for crafting our foreign policies on security must endeavor to understand the truth behind these international agreements whether such agreements genuinely serve our national interest.

While representatives from the MILF were present at our hearings, they have been less than forthright. Today, almost 2 months after the Mamasapano incident, the Committees have not been furnished copies of the promised results of the internal investigation conducted by the MILF. In fact the MILF has categorically refused to furnish the government altogether with its Report. The MILF, particularly its Chairman Al Haj Ebrahim Murad and Commander Wahid Tundok, had refused to cooperate when they denied the request of the Department of Justice for an interview to present its findings of the incident. The MILF continues to refuse to divulge the names of their fighters responsible

for the deaths of the SAF troopers. MILF Chief Negotiator Mohagher Iqbal had told media long ago that the MILF will not surrender them to the government. This is a clear indication of the MILF's unwillingness to work with us in our search for the truth, much less justice.

**KATARUNGAN**—The Report contains findings on the different culpabilities of government officials and personalities who may be held liable for this tragedy. However, justice cannot be achieved unless those directly responsible for the deaths of SAF 44, be they members of the MILF, the BIFF or any other PAGs, are prosecuted and convicted in accordance with our laws. The burden now lies with the Executive – no less than the President himself – to ensure that all the members of the armed groups who took the lives of our policemen are brought before the bar of justice and are punished for their crimes.



The Mamasapano incident raises serious questions about whether the President, as well as some other high-ranking officials of the government, could have done more to minimize the number of deaths which resulted from the incident. The President has publicly acknowledged that he approved *Oplan Exodus*. He knew of the importance and magnitude of the operation, as well as the dangers that it posed to the operating troops.

On 25 January 2015, the day the incident at Mamasapano occurred, the President, along with DILG Secretary Roxas, PDDG Espina, GEN Catapang, together with Defense Secretary Voltaire Gazmin, flew together to Zamboanga

City, where they spent practically the entire day together. They were joined in Zamboanga City by LTGEN Guerrero, the WESTMINCOM Commander.


At various times, each of these officials received information regarding the ensuing operation at Mamasapano:

- At 5:45 a.m. on January 25, 2015, PDG Purisima informed the President by text message that the operation was ongoing and that Marwan had been killed, although the President said that he saw the text message at about 7:00 a.m.
- Both PDDG Espina and GEN Catapang were informed about the operation by PDG Purisima before 6:00 a.m.
- Secretary Roxas learned about the operation and that the PNP SAF troops were engaged in a "heavy firefight" and were suffering casualties before 7:43 a.m.
- At 11:00 a.m. LTGEN Guerrero briefed the President and Sec. Gazmin and Sec. Roxas on the ongoing incident, although Guerrero admitted to the President that his information was vague.

If we are to believe the testimonies of the resource persons who were in Zamboanga, it appears that the ongoing operation at Mamasapano was not discussed further.

Did any of them endeavor to get more information about the incident? More importantly, did any of them take action to reinforce or rescue the beleaguered PNP SAF troops? It appears, that the President, along with Sec. Roxas, Sec. Gazmin, Gen. Catapang, could have done more.

Perhaps, if the President the key security officials who were with him in Zamboanga City discussed the incident and shared information with each other at the early stages of the day, coordination between the Army and the PNP might have been hastened and fewer lives would have been lost.



As the Commander-in-Chief of all armed forces of the Philippines<sup>318</sup> the President exercises supreme operational command of the nation's military forces.<sup>319</sup> The President also controls all the executive departments, bureaus, and offices.<sup>320</sup> He wields the awesome powers of government, and has its vast resources at his disposal. The President's decision, as well as that of his men, *not* to use their resources at that instance, must be explained.

In police or military operations, the decisions are made by ground commanders. However, in this instance, what was required was inter-agency

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<sup>318</sup> Section 18, Article VII of the Constitution

<sup>319</sup> Section 1, Article VII of the Constitution

<sup>320</sup> Section 17, Article VII of the Constitution

coordination which might have been easily ordered by the Commander-in-Chief. The President might have stepped in and taken responsibility, especially since he was familiar with the plan. In his defense, the President says he was given inaccurate information, and his orders to coordinate with the PNP hierarchy and AFP were disobeyed.

If there is one thing the President should be commended for his unwavering commitment to finding a genuine and lasting peace in Mindanao. Under his term, finding a political solution to the decades-long violent conflict has been made a priority, and rightly so.


Unfortunately, the ongoing peace process between the government and the MILF has also become a casualty of the Mamasapano massacre. Can a just and lasting peace in Mindanao be achieved through a peace process exclusively with the MILF, which refuses to surrender its fighters involved in the killing of our 44 police officers or to even disclose their identities? Should the government continue to deal with the MILF which refuses to submit the findings of its internal investigation into the incident, and now says that it will only share its findings with a foreign country? How can the families of the murdered police officers expect to obtain justice, when the perpetrators of a previous atrocity committed by MILF fighters, the 2009 killing and mutilation of 19 soldiers from the Army's Special Forces in Al Barka, Basilan, remain free?

In this regard, in fact, the OPAPP and the Government Peace Panel must pursue justice and bring all the guilty MILF members to account for their

criminal actions against not just the SAF Commandos in the Mamasapano massacre but also against the 19 marines who were killed in the 1999 Al Barka incident. Let not the OPAPP or the DOJ be remiss again this time in their sworn duty to protect the interest of our people in the quest for justice for all our fallen heroes.

Our efforts towards peace in Mindanao, to be successful, must have the acceptance and support of our people. The peace that we seek must be based on justice, where the rule of law reigns supreme, and where criminals are brought before the bar of justice and punished. The blood and heroism of the fallen SAF 44 should not be dishonored by inaction. Our people will accept nothing less.

At this crucial time in our history, it is imperative that the President display unquestionable leadership, be forthright and candid with our people, accept responsibility for all decisions he makes as President, and admit the mistakes that may have been committed in connection with the Mamasapano massacre.



We also look to our President, as the commander-in-chief of the AFP and the PNP, as well as the head of our nation, for leadership in this dark hour. Leaders must have the courage to make hard decisions, and the strength to own up to them. We understand that to be in a position saddled with enormous responsibility is most difficult. But our President must not forget that he was elected to his position because the people have faith in him and his capacity to do what is right.




**KAPAYAPAAAN**—Nobody can argue against the nation's aspiration to realize the long-standing dream to have genuine peace in Mindanao. It has been said after all these years that peace can only be achieved through a political settlement based on compromise and mutual concessions. However, before our government, including Congress, compromise with, and grant concessions to, the MILF, we must be sure that the peace we seek to attain is both permanent and all-encompassing. More importantly, peace must be reached without compromising our sovereignty or the territorial integrity of our country. The peace we seek to achieve must be in full accord with the Constitution.

The events at Mamasapano on 25 January 2015, after we had signed peace agreement with the MILF, shows that the peace brought about by the peace agreement is not permanent, but is fleeting and temporary. All that was needed to break the peace was a police law enforcement operation at or near a territory controlled by the MILF.

The peace agreement with the MILF is not all-encompassing. As again shown by our Mamasapano experience, the MILF is not the only armed group engaged in open hostilities with government forces in Mindanao.

As we move forward in our efforts to achieve peace, we must not forget to look back and learn from our lessons of the past. We all thought that, with the establishment of the ARMM, a lasting peace in Mindanao was finally achieved. But this was not the case. Perhaps, this failure lies in the fact that the creation of the ARMM was the product of negotiations undertaken by the government with only one of the several armed groups in Mindanao.

In the quest to make the peace process all-inclusive, the Committees are aligned with the views of Ateneo School of Government Dean Antonio La Viña that the Bangsamoro Basic Law (BBL) under consideration by Congress must not only comply with the Constitution, it must also conform to the Final Peace Agreement (FPA) with the Moro National Liberation Front (MNLF) that, to this day, subsists. The MNLF must accept the Bangsamoro as the successor entity of the ARMM that is an implementation measure of the FPA. Otherwise, the same will be another line to legally impugn the BBL. It would be advisable then to bring the MNLF into the consultations, as well as the Lumads or the indigenous people of Mindanao who themselves had been marginalized for a long time and had been excluded from the first as well as this current peace process. The Lumads have their own historical narrative that is as legitimate as that of Bangsamoro people because the Lumads too are legitimate stakeholders and inhabitants of Mindanao.

 Relatedly, it is also important from hereon that the AFP and the PNP, as our nation's instruments of security, should be strengthened, so that they can perform their duties as enforcers of the peace. These organizations do not operate in a vacuum, hence, they must have adequate resources. They must be supported so that they can afford to work with integrity and resolve to promote the national interest and not the interest of others.

If there is a silver lining to the tragic events that happened in Mamasapano on 25 January 2015, it is that national attention been focused on the proposed Bangsamoro Basic Law. As we go through the process of

deliberating this proposed piece of legislation, all these factors will weigh heavily on our minds and on our consciences. While our country grieves for all those who died at Mamasapano, combatants and civilians, their deaths have brought these issues to our consciousness as a nation.

7

# **ANNEXES**

1. Manifestation of Senator Cynthia A. Villar
2. Clarification of Senator Bam Aquino on the Observations/findings and recommendations
3. Observations and Comments of Senator Jinggoy Ejercito-Estrada
4. Letter intent of Senator Joseph Victor G. Ejercito to submit separate opinion and/or findings



Republic of the Philippines  
**SENATE**

*Cynthia Villar*  
Senator

17 March 2015


**HON. GRACE L. POE**  
Chairperson, Committee on Public Order and Dangerous Drugs  
**SENATE OF THE PHILIPPINES**  
Pasay City

Dear Sen. Poe:

I am transmitting to you herewith my Manifestation relative to the Inquiry of the Committee on Public Order and Dangerous Drugs on the Mamasapano Incident.

Thank you.

Very truly yours,

  
**CYNTHIA A. VILLAR**  
Member, Committee on Public Order and Dangerous Drugs

## Manifestation of Senator Cynthia Villar on the Senate Inquiry on the Mamasapano Clash

- **Lack of equipment and personnel of the Armed Forces of the Philippines (AFP)**

The country's armed forces' lack of adequate equipment and personnel became even more apparent and glaring after hearing the incident reports or commentaries of resource persons during the Senate Inquiry. AFP seemed ill-equipped to respond to emergency and rescue operations, so that places doubts on their capability when engaged in armed conflicts or operations. What is particularly alarming is their lack of artillery and air support capabilities. To aggravate that, the number of personnel is also inadequate. Thus, the immediate response expected to address the cry for help of SAF personnel did not happen.

Given that, we need to review and revisit the AFP modernization program of the government (1995 AFP Modernization Program under Republic Act 7898 and revised under Republic Act 10349). I read a news report that the military needs at least P600 billion for the modernization of the country's armed forces. The release of the funds and implementation of the project should be fast-tracked. According to the said report, "the military should have been allocated with P331 billion for its modernization program. However, only P33 billion was given to AFP". The procurement of much-needed equipment relies on the said funds, so timely release is important. For instance, procurement of air defense surveillance radar, long-range patrol aircraft, combat utility helicopter, and close air support aircraft among others are already scheduled upon release of funding. Those equipments are very crucial to any high-risk operations such as what took place in Mamasapano.

(Source: GMA News report <http://www.gmanetwork.com/news/story/400002/news/nation/p600b-needed-for-afp-modernization-defense-usec>)

- **Assess military strategy in Mindanao**

I am not an expert on military tactics or strategies. But based from what I heard during the Senate Inquiry on the Mamasapano clash, the strategy there seemed to be a disaster. I just think that strategies in urban areas, for instance, will obviously not work in areas such as Mamasapano considering the terrain there, the risks involved or even the time of day. Was the area of operation even thoroughly assessed prior to the mission? There seemed to be no area of exit or escape planned even. Is the so-called "time on target" really applicable there?

If we really wanted to succeed in our fight against terrorism and other threats to our country's security, we better strategize better. The fact that the lives of our armed forces, people and even the country's security are at stake, calls for better planning and strategizing.

- **What happened to the chain of command?**

It baffles me and almost everyone that such a basic concept as chain of command was not observed and followed by those involved in the plan or mission in Mamasapano, considering that it was a high-stake operation. This should be ingrained and inculcated in every uniformed personnel as well as any public official. There should be no

confusion about its flow, whether upward or downward. The outcome of the Mamasapano clash illustrates that any deviation from the chain of command has serious repercussions.

- **Improve relationships between and among armed forces (i.e. the AFP and the PNP)**

The Senate Inquiry into the Mamasapano clash, in most parts, turned into fault-finding and pinning blames. It was one person's word against the other. There was obviously inadequate coordination and communication between and among the armed personnel. Even in the simplest of tasks, communication is of key importance. How much more in an armed clash? The AFP and the PNP should exert all efforts and exhaust all means to improve their relationship, particularly the top brass among them. They should lead by example.

- **Goodwill and trust-building between MILF and government/military crucial**

Admittedly, the Mamasapano clash, one way or the other has tainted the trust and goodwill between the MILF and the government, particularly in our quest for lasting peace in Mindanao. It has put the spotlight on the peace process. And I agree with the sentiments of others that the MILF should exert more efforts in cooperating with the government in putting together the 'puzzle' of what really transpired in Mamasapano. It may be a cliché but we really cannot talk peace with guns in our hands. Yes, there is a ceasefire in place, and yet the Mamasapano clash took place.

In fact, it is puzzling that despite the heightened attention and security on Mindanao, terrorists are still at large in the area. Most of them have even started their own families there. Also, the information on the whereabouts of Marwan and Usman were not relayed early on to the authorities. Thus, we cannot blame those who speculate that they are being protected or coddled by some people in Mamasapano, for instance. We must get to the bottom of it, did they have coddlers? It also points towards weak law enforcement and intelligence in the area.

Let us also evaluate whether our peace panel negotiators are not remiss in validating the integrity of the information presented to them in the peace negotiations. It should be clear to the Philippine peace negotiating panel that they are representing the Philippine government alone in the peace negotiations.

Submitted by

  
Senator Cynthia Villar

March 17, 2015



Republic of the Philippines  
**SENATE**

**SENATOR BAM AQUINO**

March 18, 2015

**SENATOR GRACE L. POE**

*Chairperson*

*Committee on Public Order and Dangerous Drugs*

Dear Senator Poe,

As a member of the Committee on Peace, Unification and Reconciliation, I seek clarification on the observations/findings and recommendations as found in the draft Committee Report, as follows:

1. The Bangsamoro Basic Law:

- a) "While founded on a noble vision of harmony for Mindanao, indications show that there are major problem areas including but not limited to the largesse found in its high cost of appropriations and allegedly allowing the creation of a sub-state<sup>1</sup>."
- b) "The on-going peace process between the government and the MILF has also become a casualty of the Mamasapano massacre."<sup>2</sup>
- c) "The events at Mamasapano on 25 January 2015, after we had signed peace agreement with the MILF, shows that the peace brought about by the peace agreement is not permanent, but is fleeting and temporary."<sup>3</sup>

With all due respect, the substantive provisions of the comprehensive agreement and the BBL itself were not extensively discussed during any of the hearings conducted on the Mamasapano incident. I find it worrisome that conclusions regarding the comprehensive agreement and the BBL (i.e. creation of a sub-state) are drawn without having these properly presented during our hearings.

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<sup>1</sup> Page 110, draft Committee Report on the Mamasapano Incident.

<sup>2</sup> Page 125, draft Committee Report on the Mamasapano Incident.

<sup>3</sup> Page 127, draft Committee Report on the Mamasapano Incident.





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**SENATOR BAM AQUINO**

These matters should continue instead to be deliberated in the subsequent hearings on the BBL under the jurisdiction of the Committees on Local Government and Constitutional Amendments and Revision of Codes.

2. The Office of the Presidential Adviser on the Peace Process (OPAPP) and the peace panel were blinded by optimism in the negotiation for a fair agreement for the government<sup>4</sup>.

This is a far-reaching statement that was not based on the findings on the merits by the Committees. Let us not forget that the Comprehensive Agreement on the Bangsamoro was the product of four years of intensive and rigorous negotiations between the GPH and MILF peace panels, including three years to establish the framework for the agreement. To simply claim that the OPAPP and the government peace panel "suffered from a wanton excess of optimism" in these negotiations reflects a narrow and short-sighted view on the part of the Committees and falls to take into consideration readily accessible documentation and reports on the debates and discussions during various stages, and the challenges and historic milestones of the peace process.

3. The acts of Presidential Adviser on the Peace Process Teresita Quintos-Deles and government peace panel negotiator Miriam Coronel-Ferrer "in defending the MILF" were questioned<sup>5</sup>.

In the course of the hearings, Sec. Deles and Prof. Ferrer were not given the opportunity to properly respond to the questions and manifestations being posed by the senators in relation to the peace process. In many instances, the statements of the resource persons were usually cut-off and they were not allowed to finish their manifestation.

4. The applicability of the chain of command principle to the Philippine National Police (PNP); the doctrine of command responsibility<sup>6</sup>.

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<sup>4</sup> Pages 110, draft Committee Report on the Mamasapano Incident.

<sup>5</sup> Pages 109-110, draft Committee Report on the Mamasapano Incident.

<sup>6</sup> Page 80, draft Committee Report on the Mamasapano Incident.



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**SENATOR BAM AQUINO**

As much as I agree that the President is "ultimately responsible" as he in fact stated in his speech dated 06 February 2015, to wit:

"xxx xxx . At bilang Pangulo at Commander-in-Chief, pasan ko naman po ang responsibilidad para sa anumang resulta, sa anumang tagumpay, pasakit o trahedya na maari nating maaari nating matamasa sa paghahangad ng pangmatagalang seguridad at kapayapaan.

xxx xxx

Responsibilidad ko po sila, kasama ang buong puwersa ng SAF sa operasyong ito, pati na ang amga nagligtas sa kanila na nalagay din sa panganib ang buhay."

there is a need to review the findings that when there is a chain of command, the doctrine of command responsibility also generally applies. The report cited a Supreme Court case wherein the doctrine of command responsibility applies to the President and outlined the conditioned under which liability attaches under this doctrine. The Committees should take into consideration the excerpts of the deliberations of the Constitutional Commission (CONCOM) dated 01 October 1986, to wit:

*"MR. RODRIGO. Just a few questions. The President of the Philippines is the Commander-in-Chief of all the armed forces.*

*MR. NATIVIDAD. Yes, Madam President.*

*MR. RODRIGO. Since the national police is not integrated with the armed forces, I do not suppose they come under the Commander-in-Chief powers of the President of the Philippines.*

*MR. NATIVIDAD. They do, Madam President. By law they are under the*



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*supervision and control of the President of the Philippines.*

**MR. RODRIGO.** *Yes, but the President is not the Commander-in-Chief of the national police.*

**MR. NATIVIDAD.** *He is the President.*

**MR. RODRIGO.** *Yes, the Executive. But they do not come under that specific provision that the President is Commander-in-Chief of all the armed forces.*

**MR. NATIVIDAD.** *No, not under the Commander-in-Chief provision.*

**MR. RODRIGO.** *There are two other powers of the President. The President has control over departments, bureaus and offices, and supervision over local governments. Under which does the police fall, under control or under supervision?*

**MR. NATIVIDAD.** *Both, Madam President.*

**MR. RODRIGO.** *Control and Supervision.*

**MR. NATIVIDAD.** *Yes, in fact, the National Police Commission is under the Office of the President. (CONCOM RECORDS, Vol. 5, p. 296)*

*It thus becomes all too apparent then that the provision herein assailed precisely gives muscle to and enforces the proposition that the national police force does not fall under the Commander-in-Chief powers of the President. This is necessarily so since the police force, not being integrated with the military, is not a part of the Armed Forces of the Philippines. As a civilian agency of the government, it properly comes within, and is subject to, the exercise by the President of the power of executive control.<sup>7</sup>*

The draft Committee Report concluded that the President, along with Sec. Roxas, Sec. Gazmin, Gen. Catapang, could have done more.<sup>8</sup> But records will show that the President was given *inaccurate information* and his orders to coordinate with the PNP and AFP were disobeyed<sup>9</sup>. These facts as revealed in the hearings and the

<sup>7</sup> Carpio vs. Executive Secretary, G.R. No. 96409 February 14, 1992.

<sup>8</sup> Page 124, draft Committee Report on the Mamasapano Incident.

<sup>9</sup> Refer to pages 33-38, TSN 23 February 2015.



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executive session are not clearly stated in the Committee Report. Moreover, if the Committee acknowledges these facts, there would be a contradiction on the assertion that "more" could have been done.

As stated in the Committee Report, I intend to take these matters up during the period of amendments. Of course, we welcome the Committee's views on these points even before then.

Very truly yours,

  
**BAM AQUINO**

**OBSERVATIONS AND COMMENTS TO THE COMMITTEE REPORT  
ON THE MAMASAPANO INCIDENT**

By Senator Jinggoy Ejercito Estrada

The Committee on Public Order and Dangerous Drugs, Joint with the Committees on Peace, Unification and Reconciliation; and Finance, conducted the investigation on the Mamasapano Incident with fairness and impartiality. It exhausted all possible references and resource persons despite limited time. Its immediate submission of Committee Report is a timely response to the nation's quest for truth regarding the said Incident, and serves as the Senate's humble contribution to our people's call for justice for the Fallen 44 of the Philippine National Police – Special Action Force (PNP-SAF). The investigation and the subsequent Committee Report echo our countrymen's plea for genuine and lasting peace.

The Committee Report submitted by the Committee on Public Order endeavoured to embody the opinions and sentiments of its members. Being an author of one of the resolutions that called for the investigation of the Mamasapano Incident, this Representation agrees with the presentation, findings, and recommendations of the Committee.

Despite my inability to participate in the deliberations during the public hearings and to attend the executive sessions, I would like to put into the record my additional observations and recommendations to the Report:

- 1) In addition to the analysis of the Committee regarding the PNP's plan to act autonomously in carrying out their objective (Item "H" on page 79 of the Committee Report), it should be pointed out that there was an apparent lack of strategic direction from the President who was knowledgeable on Oplan Exodus vis-a-vis the peace agreement and the Bangsamoro Basic Law (BBL). The president, as head of the government that has invested much political effort over many years to arrive at the comprehensive peace agreement with the Moro Islamic Liberation Front (MILF), and is now in the crucial stage of institutionalizing this agreement into the BBL, should have been more circumspect in authorizing law enforcement operations against high value targets (HVTs) in MILF communities. The strategic implications of the SAF operations in Mamasapano vis-a-vis the resultant effect on the peace agreement and the passage of the BBL should have been first considered prior to the operations.



2) It is worth noting some specific flaws in Oplan "Exodus" that, in one way or another, were ingredients to the fateful result of the operation:

- a. Oplan "Exodus" did not identify or classify the MILF in relation to the operation – MILF was neither a "Friendly Force" nor an "Enemy Force". Guidance on how the operatives will relate to and treat the MILF, who are immensely present in the area of operation, was vague from the very beginning. This determination is even more important in the context of the intelligence report that, quoting from the Committee Report itself, "Marwan had been hiding in Mindanao since 2003, under the protection of the ASG, the BIFF and the MILF" and the fact that MILF is the partner of the government in the peace process. Whether it is a mere oversight or an intentional omission, it is undeniably a flaw in the very operational plan that could have otherwise addressed the differing positions on how to deal with the MILF.
- b. Also stated in the Oplan's Execution is that the "Maguindanao PPO, PRO-ARMM" will "provide one (1) company to serve as reserved force". This provision in the Oplan made the operatives, the higher authorities and the approving authorities, including the President of the Philippines, that indeed, local police units will be tapped to support the operations. However, it was revealed in the testimonies of the resource persons during the hearings that these police units were not even aware of the operation. This inconsistency was even aggravated when Police Director Getulio Napeñas, Director of the PNP-SAF, in its belated coordination with the Armed Forces of the Philippines (AFP), informed the officials of the AFP that the law enforcement operation of PNP-SAF in Mamasapano is supported by Maguindanao Provincial Police Office (Maguindanao PPO) and Police Regional Office-Autonomous Region of Muslim Mindanao (PRO-ARMM). If the authors of the Oplan did not intend to involve these local units in the first place, this deceitful provision should not have been included in the Oplan.
- 3) The Committee, in its Report, should expressly acknowledge that in light of the fact that the 84<sup>th</sup> Seaborne Special Action Company was able to neutralize Zulkifli Binhir @ Marwan and weakened Ahmad Akmad Batabol Usman @ Basit Usman, the mission was accomplished. This is to emphasize that the efforts and effectiveness of the SAF troopers who carried out the mission are not diminished.

- 4) In relation to the above, the said SAF troopers should be commended, basically for accomplishing their mission, and more importantly for sacrificing their lives for this purpose.
- 5) As a manifestation of respect, honor and gratitude to the 44 men who exhibited gallantry and heroism in the performance of their duties, let their names be enumerated in the Committee Report so it will form part of the records of the Senate of the Philippines:

1. Sr. Insp. Ryan Ballesteros Pabalinas
2. Sr. Insp. John Garry Alcantara Erana
3. Sr. Insp. Max Jim Ramirez Tria
4. Sr. Insp. Cyrus Paleyan Anniban
5. Sr. Insp. Gednat G. Tabdi
6. Insp. Joey Sacristan Gamutan
7. Insp. Rennie Tayrus
8. SPO1 Lover L. Inocencio
9. PO3 Rodrigo F. Acob Jr.
10. PO3 Virgel S. Villanueva
11. PO3 Andres Viernes Duque Jr.
12. PO3 Vitoriano Nacion Acañ
13. PO3 Noel Onangey Golocan
14. PO3 Junrel Narvas Kibete
15. PO3 Jed-In Abubakar Asjall
16. PO3 Robert Dommolog Aliaga
17. PO3 John Lloyd Rebammonte Sumbilla
18. PO2 Amman Misuari Esmulla
19. PO2 Peterson I. Carap
20. PO2 Roger C. Cordero
21. PO2 Nicky DC Nacino Jr.
22. PO2 Glenn Berecio Badua
23. PO2 Chum Goc-Ong Agabon
24. PO2 Richelle Salangan Baluga
25. PO2 Noel Nebrida Balaca
26. PO2 Joel Bimidang Dulnuan
27. PO2 Godofredo Basak Cabanlet
28. PO2 Franklin Cadap Danao
29. PO2 Walner Faustino Danao
30. PO2 Jerry Dallay Kayob
31. PO2 Noble Sungay Klangan
32. PO2 Ephraim G. Mejia
33. PO2 Omar Agacer Nacionales
34. PO2 Rodel Eva Ramacula
35. PO2 Romeo Valles SenIn II
36. PO1 Russel Bawaan Bilog
37. PO1 Angel C. Kodlambat
38. PO1 Windell Llano Candano
39. PO1 Loreto Guyab Caplnding

- 40. PO1 Gringo Charag Cayang-o
- 41. PO1 Romeo Cumanoy Cempron
- 42. PO1 Mark Lory Orloque Clemencio
- 43. PO1 Joseph Gumatay Sagonoy
- 44. PO1 Oliebeth Ligutan Viernes

  
JINGGOY EJERCITO ESTRADA  
Senator 





REPUBLIC OF THE PHILIPPINES  
Senate

Hon. Joseph Victor G. Ejercito  
Senator

March 19, 2015

SENATOR GRACE POE  
Chairman  
Committee on Public Order and Dangerous Drugs  
Senate of the Philippines  
Pasay City

Dear Sen. Poe,

This is in reference to the Committee Report prepared by the Committee on Public Order and Dangerous Drugs regarding the Mamasapano Incident under your Chairmanship.

I would like to signify my intention to submit separate opinion and/or findings on the Mamasapano Incident.

Thank you.

Respectfully yours,

JOSEPH VICTOR G. EJERCITO

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