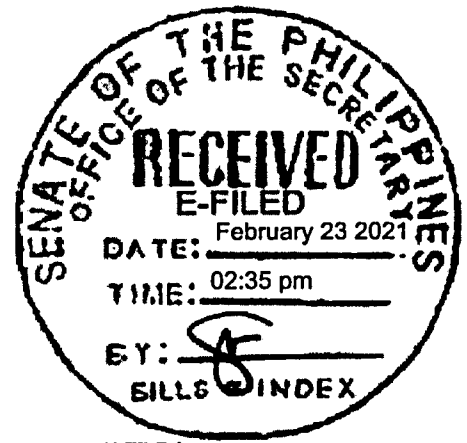


EIGHTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)



SENATE

SEPARATE OPINION OF SEN. LEILA M. DE LIMA
to Committee Report No. 186
of the Committee on National Defense and Security, Peace, Unification and
Reconciliation

Re : PROPOSED SENATE RESOLUTION NO. 559 –
RESOLUTION DIRECTING THE SENATE COMMITTEE
ON NATIONAL DEFENSE AND SECURITY, PEACE,
UNIFICATION AND RECONCILIATION TO EXERCISE
ITS OVERSIGHT AUTHORITY OVER THE DEFENSE
SECTOR ON THE ISSUE OF RED-TAGGING/RED-
BAITING OF CERTAIN CELEBRITIES,
PERSONALITIES, INSTITUTIONS, AND
ORGANIZATIONS, WITH THE END IN VIEW OF
CRAFTING PROPER GUIDELINES THAT WILL
PREVENT MISUNDERSTANDING BETWEEN THE
PUBLIC AND THE MILITARY AND ENSURE THE
PROTECTION OF THE CONSTITUTIONAL RIGHTS OF
THE PEOPLE, THEREBY STRENGTHENING THE
CONFIDENCE AND TRUST OF OUR PEOPLE ON THE
PROFESSIONALISM OF OUR MILITARY IN
CONSONANCE WITH THE CONSTITUTIONAL EDICT
THAT THE ARMED FORCES OF THE PHILIPPINES
(AFP) IS THE PROTECTOR OF THE PEOPLE AND THE
STATE AND THAT CIVILIAN AUTHORITY IS AT ALL
TIMES SUPREME OVER THE MILITARY

Preface

In this Separate Opinion, this representation presents certain issues that need to be highlighted in the Committee Report filed by the Chairperson of the Committee on National Defense and Security, Peace, Unification and Reconciliation on Proposed Senate Resolution No. 559 in the exercise of its oversight authority over the Defense sector on the issue of red-tagging/red-baiting of certain celebrities, personalities, institutions, and organizations.

Committee Hearings

The public hearings were conducted following a Facebook post made by National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) Spokesperson Lt. Gen. Antonio Parlade on 20 October 2020, which allegedly red-tagged actress Liza Soberano for participating in an online event held by Gabriela Youth.¹ Sen. Panfilo Lacson presided over three public hearings conducted on 3 November, 24 November, and 1 December 2020.

The Committee looked into the alleged issue of red-tagging to determine whether there are gaps in our existing laws that need to be filled through legislation to address possible liabilities of public officials making such pronouncements.

Resource persons from the government's security sector sought to prove the alleged links between the CPP-NPA-NDF and the Makabayan bloc of the House of Representatives. For their part, the Makabayan bloc was given adequate opportunity to contribute to the discussion and counter these allegations.

Separate Findings/Recommendations

- 1) The Committee Report presented an exhaustive list² outlining the legal remedies that victims of red-tagging could make use of whenever necessary. As such, it deemed it unnecessary to enact legislation that would define, and let alone criminalize, red-tagging. To wit:

¹ Talabong, R. (22 October 2010). *Parlade warns Liza Soberano on supporting Gabriela: 'You will suffer the same fate' of those killed*. Retrieved <https://www.rappler.com/nation/parlade-warns-liza-soberano-supporting-gabriela-youth>

² Committee Report No. 186, pp. 47-56

Legal remedies, as exhaustively discussed in this Committee Report, are sufficient and available for personalities or groups that have been the subject of the so called "red-tagging", and which some of them have already availed as evidenced by the cases filed in the Ombudsman. Being merely a concept without a definite meaning set within the bounds of the law on the one hand, and the presence of adequate legal remedies available to the aggrieved party on the other, this Committee is of the view that criminalizing "red tagging" is no longer necessary since those who were or may be at the receiving end of red-tagging may avail of the legal remedies under existing laws if the alleged red-tagging violated their constitutional rights.³

This representation argues that while there are legal remedies that can help such individuals and groups, these need to be more proactive rather than reactive. I disagree with the Committee's position and deem it necessary that red-tagging should, at the very least, be clearly defined and prohibited through an act of legislation. This would offer more protection to targets of such attacks and would also serve as a deterrent to the perpetrators of such acts and make it clear which type public statements are or aren't acceptable under the law.

The dangers of red-tagging are real. How many times have we seen red-tagged individuals in the last few years fall prey to attacks on their persons and in their homes even before any evidence of criminal wrongdoings are introduced against them?

I submit that the remedies available under existing laws are wanting. This was demonstrated by the death of human rights activist Zara Alvarez, who was slain before the petition for the writs of *amparo* and *habeas data* could be resolved by the Supreme Court.⁴ The Committee's finding is utterly wanting, for it paints a picture that the laws are enough despite the clear gaps that need to be addressed.

In its conclusion that inadequacy and limitations of the writ of *habeas corpus* have already been addressed when the rules on the writs of *amparo* and *habeas*

³ Committee Report No. 186, pp. 60

⁴ Buan, L. (20 August 2020). *Zara Alvarez asked for protection, but she died before the court could give it*. Retrieved from <https://www.rappler.com/nation/zara-alvarez-petition-writ-amparo-habeas-data-court>

data were promulgated, it is regrettable that it failed to consider the decision in *Agcaoili v. Fariñas* (2018) where the Court held that the remedy of *amparo*, in its present formulation, is confined merely to instances of extralegal killings or enforced disappearances and to threats thereof:⁵

SECTION 1. *Petition.* The petition for a *writ of Amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity.

The writ shall cover extralegal killings and enforced disappearances.

In the landmark case of *Secretary of National Defense, et al. v. Manalo, et al.*, the Court categorically pronounced that the *Amparo* Rule, as it presently stands, is confined to extralegal killings and enforced disappearances, or to threats thereof, and jurisprudentially defined these two instances, as follows:

[T]he *Amparo* Rule was intended to address the intractable problem of "extralegal killings" and "enforced disappearances," its coverage, in its present form, is confined to these two instances or to threats thereof. "Extralegal killings" are killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings. On the other hand, enforced disappearances are attended by the following characteristics: an arrest, detention or abduction of a person by a government official or organized groups or private individuals acting with the direct or indirect acquiescence of the government; the refusal of the State to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of

⁵ G.R. No. 232395. (03 July 2018)

liberty which places such persons outside the protection of law.

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In *Lozada, Jr., et al. v. President Macapagal-Arroyo, et al.*, the Court reiterates that the privilege of the writ of *Amparo* is a remedy available to victims of extra-judicial killings and enforced disappearances or threats of a similar nature, regardless of whether the perpetrator of the unlawful act or omission is a public official or employee or a private individual.

In the aforementioned case, the Court clarified that the writ of *habeas corpus* was devised as a “speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom.” The primary purpose of the writ “is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal.”

It is thus clear that these remedies do not serve as the balm that could relieve the blows of red-tagging. The ramifications of red-tagging go beyond reputation and image, for when one has been subjected to vilification and segregation, he becomes susceptible not only to attacks to his reputation, but as well as to his rights and life. Therefore, the blow must be intercepted before it is cast, and before it produces serious and irreparable damage. Any person or public official must be held accountable for their words lest we stir discord and disunity to the detriment of our democracy and rule of law.

- 2) The Committee Report made it seem like filing criminal cases for libel, slander or cyber-libel would suffice in rectifying statements made against victims, thereby missing the point that these verbal pronouncements produce not only danger to their reputation, but risk to their very person and safety.

While the other remedies which the Report mentioned made it appear that threats, illegal detentions and arrests which stem from red-tagging could be assuaged by the provisions under the Revised Penal Code which define and punish criminal acts such as grave threats, arbitrary detention, and delay in the delivery of detained persons to the proper judicial authorities, it failed to understand that more than remedies that will afford redress, the victims of red-

tagging are seeking protection from future and would-be attacks that could result from being wrongfully tagged.

- 3) The Report noted the defense put forth by the Department of the Interior and Local Government (DILG) Sec. Año stating that red-tagging was not the policy of the Department of National Defense (DND), Philippine National Police (PNP), and Armed Forces of the Philippines (AFP) seemingly implying that the statements by Lt. Gen. Parlade were made in an individual capacity. However, it is not only Lt. Gen. Parlade who has made comments which red-tagged certain individuals and personalities. Moreover, the inaction or cavalier handling of this government on the dangerous pronouncement of Lt. Gen. Parlade, who is known as the spokesperson of the NTF-ELCAC, operates as acquiescence to his words regardless of their personal nature. We must also not forget that Lt. Gen. Parlade is a ranking officer in active duty. His words have power to command government forces and inflict damage. Such tolerance to his red-tagging activities betrays complicity in the part of the government.

The most recent publicized example would be the red-tagging incident of various University of the Philippines (UP) alumni following the DND's unilateral abrogation of the UP-DND accord on 15 January 2021. In this incident, a Facebook post made by the page "Armed Forces of the Philippines Information Exchange" wrongfully listed 27 people who are supposedly "UP students who became NPA (died or captured)."⁶

As a matter of fact, one can easily find multiple reported cases of red-tagging in the past months made by the PNP and AFP which have not involved Lt. Gen. Parlade. The evidence is quite telling as both the PNP and AFP have made it a habit to red-tag individuals and groups and then issue half-hearted apologies after the damage had already been done.

The DND, PNP, and AFP may deny it is part of their official policy but the evidence says otherwise. Thus, I respectfully disagree with the Committee's position.

⁶ Rappler.com. (23 January 2021). *FALSE: List of dead, captured former UP students who became NPA*. Retrieved from <https://www.rappler.com/newsbreak/fact-check/list-dead-captured-former-up-students-mpa>

- 4) The Report, while seemingly placing the blame on Lt. Gen. Parlade for his remarks, was nonetheless too lenient. Most recently, he accused Inquirer.net reporter Tetch Torres-Tupas for “aiding the terrorist by spreading lies” and being a “propagandist” relative to her article on 02 February 2021 about the two Aeta men who were the first to be accused of violating the Anti-Terrorism Act.⁷ I maintain that he should be held accountable to his statements and the Committee should have recommended his removal as NTF-ELCAC Spokesperson.
- 5) The continued acts of red-tagging alternating with unrepentant apologies make a fool out of the Committee whom they have made to think that red-tagging is not an issue that does not need legislative intervention.

Conclusion

Let us not lose sight of the big picture here. The overarching issue is the right of the people to free speech, to petition the government for redress of grievance, and to be presumed innocent until proven guilty. Red-tagging, when made by the military, operates as actual threat of harm by the government against groups and individuals without any accountability. It serves to stifle dissent and criticism against the government, contrary to the principles of democracy and rule of law.

It is unfortunate that an inquiry in aid of legislation has failed to grasp the urgency, if not outright necessity, of addressing the gaps in existing laws that has served as the gateway for human rights abuses and transgressions of rights of the very people that said laws ought to protect.

There is a problem that cannot be downplayed by the mere enumeration of remedies available under the law without fully recognizing the loopholes that allowed threats and attacks to persist.

When the very government and its officials who are tasked with the enforcement of laws and protection of rights are the same entities that permit - worse, embolden - the perpetrators of abuses, action that is not only swift, but more importantly, effective,

⁷ Andrade, J. I., Santos, T. G. (5 February 2021). *Media groups hit Parlade over threat to sue reporter*. Retrieved from <https://newsinfo.inquirer.net/1392237/media-groups-hit-parlade-over-threat-to-sue-reporter>

Separate Opinion of Sen. Leila M. de Lima
23 February 2021

becomes vital. The application of law must never be used as an excuse, or even license, to destroy reputations, rights and lives. The law must always be upheld and enforced at a perfect balance; and when the scales are tipped against the people for whose welfare the laws are written and enforced, serious steps must be taken.

Red-tagging has always been more than an issue of branding an individual or group. It has always been so far-reaching in its consequences - it creeps not only into the destruction of a person's or a group's image and reputation. News reports have revealed that its cuts are often deep and profound that it could deprive a person of his or her rights, and even sever lives.

The failure to outrightly condemn not only the individuals but, more importantly, the institutions that maliciously red-tag people and organizations expressing critical dissent further emboldens such actions and legitimizes it to the point that it becomes normalized. This representation has always stood for human rights and the rule of law and these principles will undoubtedly be endangered should red-tagging be allowed to persist. The Senate should not stand for such injustice which is why this representation must express this Separate Opinion to this Committee Report.


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