The Arroyo government was forced to project an image that it is, as the cliché goes, “on top of the situation”. These include the creation of the Melo Commission and Task Force Usig, bodies tasked to investigate and bring to trial the perpetrators of extrajudicial killings particularly of journalists, activists, leaders and members of progressive party-list groups, human rights lawyers, church people, etc. There is also the invitation extended to Prof. Philip Alston, the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, to conduct investigations on extrajudicial, summary or arbitrary executions. Professor Alston conducted his investigation on February 12-21, 2007.


3. In a nutshell, my visit was prompted by reports of a large number of extrajudicial killings, especially of leftist activists and journalists, over the past six years or so. While the estimates vary from 100 to 800 or more, I concluded that it is not productive to play the numbers game and seek to confirm any definitive number. No one disputes that large numbers have been killed. Especially problematic is the fact that the impact has been to intimidate vast numbers of civil society actors, to send a message of vulnerability to all but the most well connected, and to severely undermine political discourse.

6. The consequences of a failure to end extrajudicial killings in the Philippines will be dire. Efforts to resolve the various insurgencies will be set back significantly. Incentives to opposition groups to head for the hills rather than seek to engage in democratic politics will be enhanced, and international support for the Government will be undermined. A multifaceted and convincing governmental response is thus urgent.

7. In essence, the problem must be tackled at two different, but complementary, levels. At one level there is indeed a need for more staff, more resources, and more specialist expertise, a better witness-protection programme and the strengthening of key institutions. The recent Government actions noted above have gone a considerable way in that direction. But such steps are premised almost entirely on the assumption that the key interventions required concern resources and expertise. The hope seems to be that if there can be better investigators, more forensic capacity, more focused judicial action, and more sustained action by the joint military/police task force, the problem will be resolved. But the strong risk is that these measures will treat only some of the symptoms of the crisis, and will fail to address meaningfully two of the most important underlying causes of a great many of the killings.

8. Those causes constitute the second level at which an effective national response is required. The first cause has been variously
Human Rights to the effectiveness of many of the military deems “illegitimate”. Members of organizations which the government refers to as “fronts” and then as “enemies of the State” are accordingly considered to be legitimate targets. The second cause is the extent to which aspects of the Government’s counter-insurgency strategy encourage or facilitate the extrajudicial killings of activists and other “enemies” in certain circumstances. The final report will elaborate at length on this issue.

9. While these two causes tend to operate separately from one another in many settings, they also come together in various ways. The most dramatic illustration is the “order of battle” approach adopted systematically by the Armed Forces of the Philippines (AFP), and in practice often by the Philippines National Police (PNP). In military terms an order of battle is defined as “an organizational tool used by military intelligence to list and analyze enemy military units.” The AFP adopts an order of battle in relation to the various regions and sub-regions in which they operate. A copy of a leaked document of this type, from 2006, was provided to me and I am aware of no reason to doubt its authenticity. The document, co-signed by senior military and police officials, calls upon “all members of the intelligence community in the [relevant] region … to adopt and be guided by this update to enhance a more comprehensive and concerted effort against the CPP/NPA/NDF …”. The document, some 110 pages in length, lists hundreds of groups and individuals who have been classified, on the basis of intelligence, as members of organizations which the military deems “illegitimate”.

10. One of the key impediments to the effectiveness of many of the measures [in response to EJK] announced by the Government in recent weeks is the fact that many of the accountability mechanisms which are involved as checks on governmental abuses have been rendered ineffectual in dealing with such issues. On paper, they remain strong. In practice, they are of all too little use, and often this is the result of official design.

11. There is passivity, bordering on an abdication of responsibility, which affects the way in which key institutions and actors approach their responsibilities in relation to such human rights concerns. For example, in discussions with me, the chair of the Senate Committee on Justice and Human Rights insisted that there were no role for Congress because no new legislation was required, given that murder was already a punishable offense. He openly denied that Congress should play any proactive oversight role regarding the executive’s execution of the law. He added that military promotions of those widely suspected of human rights violations were no concern of his Committee and had not been held up by the Congressional Commission on Appointments because no witnesses had come forward to object. He had not and did not intend to hold hearings into the widespread problem of extrajudicial killings because it was a matter for the executive, rather than the Congress.

15. I recommend that:

(a) The Government should immediately direct all military officers to cease making public statements linking political or other civil society groups to those engaged in armed insurgencies…;

(b) The Government should commit to restoring the effectiveness of constitutionally mandated accountability arrangements, especially in relation to the role of Congressional oversight;

(c) In conjunction with the executive branch of Government, the Supreme Court should use its constitutional powers over the practice of law to impress upon prosecutors that they have a duty to the public to uphold and protect human rights by acting to ensure the effective investigation of cases and protection of witnesses;

(d) The Ombudsman’s office should begin to take seriously its independent constitutional role in responding to extrajudicial killings plausibly attributed to public officials;

(e) The Government should provide the Special Rapporteur with a copy of an “order of battle” relating to one of the zones in the country in which significant conflict is currently occurring.