

### ***On Summary Execution and Disappearance of Criminals***

During the crime summit held at the Manila Hotel on July 9, 2002 for the purpose of discussing the peace and order situation in the country, attended by the President and heads of law enforcement agencies, Davao City Mayor Rodrigo Duterte commented among others, that: "Summary Execution of criminals remained the most effective way to crush kidnapping and illicit drugs" or words to that effect. His comment drew varied reaction from different sectors. Human rights groups expressed their concern over the issue of extra-judicial execution, saying that shortcuts in enforcement of law that would violate due process should not be tolerated and that what is important is always to uphold the rule of law and the protection of human rights. In this on-going debate on the issue, the Commission on Human Rights hereby issues this advisory in pursuance of its constitutional mandate of protection and promotion of human rights.

The practice of summary or extra-judicial executions which also results in disappearance is violative of human rights. Summary execution, disappearance or "salvaging", a term coined by the military for liquidating or disposing of an individual who is considered a threat to national security or public order, is condemned by the domestic and international human rights community as a grave violation of human rights and that the systematic practice thereof is of the nature of a crime against humanity. Summary execution or "salvaging" is arbitrary in the sense that it is done without fair, solid and substantive cause, that is, without cause based on law.

Summary execution is prohibited under the Constitution of the Philippines more particularly under Section 1, Art. III thereof, which provides:

*"No person shall be deprived of life, liberty or property without due process of law nor shall any person be denied the equal protection of the laws."*

Summary execution is also violative of human rights and against a state policy provided by the Philippine Constitution more particularly Sec. 11 of Article II thereof which provides:

*"The State values the dignity of every human person and guarantees full respect for human rights."*

The international human rights community calls upon all nations signatory to the International Covenant on Civil and Political Rights to adhere to the protection of human life more particularly Article 6, Section 1 of the convention which reads:

*"Every human being has the right to life . This right shall be protected by law. No one shall be deprived of his life."*

Since the International Covenant on Civil and Political Rights partakes of a generally accepted principle of international law, the Philippines should comply with the aforesaid provision. Sec. 2, Art. II of the Philippine Constitution provides, viz:

*"The Philippines renounces war as an instrument of national policy adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace and equality - justice, freedom, cooperation and amity with all nations."*

Conformably with its constitutional mandate, the Commission on Human Rights recommends the following measures and remedies to obviate extra-judicial executions and disappearance:

#### Judicial Remedies

1. When petitions for *habeas corpus* are filed, courts must find the respondents (military or police) guilty of contempt for failing to produce the bodies of the disappeared and ordering them imprisoned until they do so. Rule 71, Sec. 8 of the

Rules of Court of the Philippines has to be strictly implemented. The rule provides: "*When the contempt consists in the refusal or omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it.*"

2. Court must adopt the following rules as *ration decidendi* in order to become precedents that may defer the practice of disappearances;
  - a) When respondents allege, in their Return to a writ of *habeas corpus* that the person to whom the writ was issued have been released, the burden of proof of release rests upon respondents and can be discharged only by clear and convincing evidence;
  - b) In such cases, the following circumstances raise the inference that the detained persons were not released. Failure of the police or military authorities to release them to their families and when they have no families to a responsible civilian; failure of the police or military authorities to produce an appropriate order of release from a Court; failure of the military or police authorities to show an order of release immediately upon demand therefore stating clearly the name of the detainee, the exact date and time of his release, and printed name and signature of the person who effected his release; failure of the police or military authorities to bring the detainees to the proper judicial authority within the period s fixed by laws; the detainees supposedly released have not communicated with their families within a reasonable period after their release and that their families despite diligent search, have not been able to find them;
3. Review and change court decisions that provide a climate favorable to political killings;
4. Put up a human rights academy for judges and lawyers.

#### Legislative Remedies

1. Repeal repressive laws that encourage political killings;
2. Disapproval by the Commission on Appointments of appointments of officers of the armed forces, from the rank of colonel or naval captain if these officers are facing complaints involving human rights violations before administrative bodies or civil courts;
3. Allocate a high budgetary priority to human rights education;
4. Popularize laws that will give representation to human rights groups in national and local government bodies;
5. Popularize laws on witness protection, security and benefits and laws on compensation to victims of human rights violation.

#### Executive Remedies

1. Vigorously pursue peace negotiations with the rebels of the left and of the right;
2. Dismantle armed vigilante groups and train civilian volunteers on respect for human rights;
3. Require the government's investigation and prosecutorial agencies to actively investigate and prosecute all reports of human rights violations;
4. Disarm members of military or police forces or paramilitary groups implicated in political killings and forthwith remove them from positions of power or control over complainants, witnesses, investigators and lawyer;
5. Prohibit the practice of red-labeling of critics and opponents by government authorities and by government backed-security forces;
6. Give incentives to policemen or military personnel turned human rights witnesses;
7. Disallow use of safehouses and illegal detention centers;

8. Appointment of military or police office officers shall not be made unless their human rights record have been thoroughly examined and it has been shown that they are not facing any complaint for human rights violations;
9. Instruct government officials to recite a human rights oath when they assume office and every December 10 of each year which marks the Universal Declaration of Human Rights day;
10. Require military and police academies to include human rights education in their curricula;
11. Include in government sponsored examinations questions about human rights.

#### People's Initiatives

1. Give annual awards to military or police officers, judges and prosecutors who helped in the promotion and protection of human rights;
2. Sponsor oratorical contests and songfests whose themes focus on human rights;
3. Place human rights posters in airports, seaports and bus terminals;
4. Place human rights stickers in cars and other moving vehicles;
5. Grant incentives to individuals who cooperate as witnesses.

The government should assure that the commission of a "disappearance" is a criminal offense, punishable by sanctions commensurate with the gravity of the practice. The prohibition of "disappearances" and the essential safeguards for their prevention must not be suspended under any circumstance, including states of war or other public emergency.

The Philippine government and all non-state actors should strictly comply with its obligation to implement the International Covenant on Civil and Political Rights and its first Optional Protocol which provides for individual complaints. The government and non-state actors should ensure full implementation of the relevant provisions of these and other international instruments, including the UN Declaration on the Protection of all Persons from Enforced Disappearance, and comply with the recommendations of intergovernmental organizations concerning these abuses.

*Quezon City , 7 May 2004*