

EXECUTIVE SUMMARY

The Committee on Public Order and Dangerous Drugs, with the Committees on Peace, Unification and Reconciliation, and Finance drafted a Joint Committee Report on the bloody Mamasapano operation conducted on 25 January 2015.

The Committees' findings and recommendations are based on the testimonies given under oath by the 37 resource persons who attended the five public hearings and five executive sessions, as well as documents submitted, including the PNP Board of Inquiry report, the President's public statements, and all applicable laws.

The following are indicative findings of liability and the Committees leave the conclusive determination of liability to the prosecutorial arm of the government:

1. The concerned members of the Moro Islamic Liberation Front (MILF), Bangsamoro Islamic Freedom Fighters (BIFF), and other armed groups murdered and robbed the Philippine National Police (PNP) Special Action Force (SAF) Commandos.

The SAF troopers were outnumbered by various armed groups in the *Pintakasi* which included the MILF, BIFF and private armed groups (PAGs). The members of the 55th and 84th Special Action Company (SAC) were no match for the firepower coming from the hundreds of armed men surrounding them.

Survivors recount how their companies were surrounded and decimated—even wounded SAF soldiers were fired upon. This was supported by the autopsy reports which showed that the SAF commandos were shot at close range. At least 26 out of the 44 SAF agents were shot in the head. Of the 26, 7 were shot through the back of the head; 7 were shot near or between the eyes; 5 were shot through the forehead; the rest were shot through the temples or through the jaws.¹

The trajectories of the bullets further indicate that the shots were fired while victims lay on the ground. One skull was so severely injured that the point of exit could no longer be determined. The autopsy report also found it possible

¹ Pages 81 to 86 of the PDF format of the BOI Report entitled The Mamasapano Report.

that a number of the SAF troopers had their vests removed before they were shot.

Clearly, there was no intent to let any of these men live.

Under Article 11 of the Revised Penal Code (RPC), 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. 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. The assailants cannot validly claim that its fighters acted in self-defense because of the absence of the element of unlawful aggression on the part of the PNP-SAF troopers. Based on the testimony of the lone survivor from the 55th SAC, the troopers were stationary at the cornfield. The MILF fighters approached and surrounded the 55th 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.

Although the Committees leave the responsibility of identifying the particular assailants to the Department of Justice, 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:

(1) As to the deaths of the PNP-SAF troopers: **Murder** as qualified by the circumstances of "taking advantage of superior strength" and "with the aid of armed men" pursuant to Article 248 of the RPC (with respect to the deaths of the PNP-SAF troopers who are proven to have been given "fatal, finishing blows," the additional qualifying circumstance of "employing xxx 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 on the nature of the injuries sustained; and

(3) As to the taking of the weapons, equipment, uniforms and personal effects of the killed 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 and 19, respectively, of the Revised Penal Code should also be charged.

The Committees found unmeritorious and without basis the statement of Mr. Mohagher Iqbal before the committees 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 and, therefore, such acts were individual acts on the part of the MILF fighters, who claimed that they acted in in “self-defense” as “armed men” entered their communities.

2. Police Director General Alan LM Purisima committed Usurpation of Authority or Official Functions, violating Article 177 of the Revised Penal Code (RPC) and Section 36(b)(4) of Presidential Decree No. 807, in relation to Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service:

On 4 December 2014, the Ombudsman issued an order preventively suspending Purisima for a period of six months. 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.”

However, 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.*” Purisima received by 5:51 p.m. the President’s reply – “*Bukas pagbalik mula sa Romblon.*”

Accordingly, on 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.

Thus, even before 8 January 2015, Purisima was already “barred from performing the functions” of the Office of the Chief of the PNP. Yet, he personally took charge over the presentation of the updated plan to get Marwan and Usman before the President and accordingly made himself present when Napeñas gave the 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 to Napeñas: *“Huwag mo munang sabihan iyong dalawa. Saka na pag nandoon na. Ako na ang bahala kay General Catapang.”* Upon these instructions, the 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 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.

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 Napeñas 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.”

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?”* 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.”

It was even Purisima who informed the President of the neutralization of Marwan in a text message at 5:45 a.m. on 25 January 2015. 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. 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.

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 55th 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.

Clearly, PDG 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:

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 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.” 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. Purisima should also be held administratively liable for conduct prejudicial to the best interest of the service.

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

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 anti-graft body.

3. PDIR Getulio Napeñas committed grave misconduct, violating Section 36(b)(4) of Presidential Decree No. 807, in relation to Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service:

Given that PDIR Getulio Napeñas’ actions in directly coordinating and reporting with suspended PDG Purisima instead of the PNP OIC PDDG Espina, PDIR Napeñas broke the PNP Chain of Command and for which he may be held administratively liable for grave misconduct under Section 36(b)(4) of Presidential Decree No. 807 in relation to Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service. PDIR Napeñas had known that Purisima was already under preventive suspension by the Office of the Ombudsman long before the 9 January 2015 meeting with the President at the Bahay Pangarap. This notwithstanding, he continued to follow the “instructions” of PDG 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, PDIR Napeñas should not have followed orders given by the suspended Purisima.

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

4. The President must bear responsibility for giving assent to and failing to prevent the unlawful exercise of official functions by PDG Purisima in connection with *Oplan Exodus*.

It is beyond doubt that the President was fully aware that PDG Purisima was preventively suspended by 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;
2. Instructed PDG Purisima to coordinate *Oplan Exodus* with the AFP;
3. Communicated exclusively with PDG Purisima in regard the progress of *Oplan Exodus* on 25 January 2015; and
4. Gave instructions to PDG Purisima as to the conduct of *Oplan Exodus* on 25 January 2015, as when the President sent PDG Purisima a text message reading, “Basit should not get away.”

The President himself admitted that all the communication regarding *Oplan Exodus* emanating from him to PDIR 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 ‘yung telepono ko, 7:00 more or less ‘nung pagbangon (ko) binuksan, sinagot ko siyang about 7:30 or so—at sinabi sa akin doon sa text ni Director General (Alan) Purisima... **Sa kanya ko ho dinadaan kasi parati mula nung umpisa ‘yung mga mensahe ng director ng SAF. Hindi ko ho kausap ‘yung director ng SAF e, diretsuhan, mula ‘nungumpisa.** So naabot si Marwan, na-neutralize, nagkaroon ng firefight at napaatras sila. Sa dulo ho sa palitan namin, tinanong ko—kasi nakalagay ho sa text niya 15 hanggang 20 katao ang lumaban dito sa puwersa natin—so ang tanong ko sakanya: ‘160 ‘yung

ipinadala ninyo, mayroong suportang AFP at saka PNP units pa, bakit aatras 'yung 160 kung ang lumalaban 15 hanggang 20?'..." (Emphasis supplied)

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 assented to PDG Purisima's unlawful exercise of official functions, and continued to communicate with PDG Purisima in regard the *Oplan Exodus*.

5. The President must show leadership.

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.

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 by the President and the key security officials who were with him.

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 and 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, the President exercises supreme operational command of the nation's military forces. The President also controls all the executive departments, bureaus, and offices. He wields the awesome powers of government, and has its vast

resources at his disposal. The President's decision *not* to use these resources at that instance, must be explained by him. The President is ultimately responsible for the outcome of the mission.

In police or military operations, the decisions are made by ground commanders. However, in this instance, what was required was inter-agency 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, it is 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 priority and rightly so.

At this crucial time, 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 he made along the way.

6. There are indications that the planning and the execution of the *Oplan Exodus* were not 100% Filipino planned and implemented.

The testimonies of various resource persons, particularly during the executive hearings, provide indications that the US had significant participation in *Oplan Exodus*. This is contrary to the submission of the Department of Foreign Affairs (DFA) 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.

The following facts, based on testimonies which the Committees had approved to be made public, were attested to:

- Napeñas brought three Americans into the Army Brigade headquarters (HQ). A helicopter arrived and three more Americans came into the HQ and joined Napeñas at his work table.

- One of the Americans, identified by Napeñas as Mr. Al Katz, supposedly handled the training of the Seaborne unit.
- One of the Americans ordered Maj. Gen. Edmundo Pangilinan to fire the artillery. However, Pangilinan refused and told him, “Do not dictate to me what to do. I am the commander here!”
- The Americans provided surveillance in the area through their Intelligence Surveillance Reconnaissance (ISR). TV monitors were brought in by the Americans to the HQ.

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.”

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 Seaborne 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.”

Although the DFA emphasized that “the only constitutionally restricted activity in Philippine cooperation with the US under existing agreements is that, they (US) may not and have not, in the case of Mamasapano either, engage in combat operations” and which nonparticipation in combat was affirmed by PDIR Napeñas, the Committees recommend that the executive branch, in particular the DFA and the VFA Commission, consider taking steps to clarify and address issues regarding US 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 laws?

(b) Given policy-level, strategic, and operational (and ground-level) arrangements and protocols presumably negotiated and agreed on by the Philippines and the US, 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?

In this connection, the Committees note that the Anti-Terrorism Council (ATC), which was established under the Human Security Act, may be well within its mandate and functions under this law to initiate discussions and propose appropriate actions within the executive branch. The ATC's membership includes the secretaries of foreign affairs, national defense, justice, and interior and local governments. These are executive agencies that are directly concerned with addressing the foregoing and related issues. The chairpersonship of the ATC by the Executive Secretary and the membership in it of the Presidential Adviser on National Security, in our view, enhance the diversity of positions, perspectives, and interests that need to be taken into account in the deliberation of these matters.

6. Should the Armed Forces of the Philippines (AFP) have fired the white phosphorus or artillery rounds much earlier? Did the strategy to promote the peace process hinder the AFP from engaging in a more aggressive response?

The AFP did not fire artillery support for the 55th SAC in the morning of 25 January, owing to incomplete information from the PNP-SAF. On the other hand, the white phosphorous, which appears to be crucial in the retreating 84th Seaborne unit, was only fired at 5:48 p.m., almost 11 hours after gun battle ensued.

If the AFP had been allowed by circumstances to respond earlier in the day to support the pinned down 55th SAC, it is possible that the battle might have ended sooner. The AFP, as a party to the cessation of hostilities with the MILF

may have been constrained by the peace process, considered as the centerpiece of our current national security program. Had the AFP been more decisive, proactive, and swifter in their actions in seeking ways to comply with the doctrinal requirements for firing artillery support, would the loss of lives have been minimized?

7. The Office of the Presidential Adviser on the Peace Process (OPAPP) should pursue peace with justice

The President should be commended for his unwavering commitment to finding a genuine and lasting peace in Mindanao. It was in his term that the primacy of the peace agreement was put in effect as the centerpiece of the country's national security policy.

The OPAPP was at the helm of executing this policy, however, it is impossible to have peace without justice. Should the government continue to deal with the MILF which refuses to submit the findings of its internal investigations into the incident or disclose the identities of those involved in the massacre? The peace that we must seek must be based on justice where the rule of law reigns supreme, and where criminals are prosecuted and punished accordingly. #