

REPUBLIC OF THE PHILIPPINES
OFFICE OF THE OMBUDSMAN
Agham Road, Quezon City

Karapatan Alliance Philippines
Secretary General CRISTINA E.
PALABAY,

Complainant,

-versus-

OMB PC No. _____

OMB PA No. _____

HERMOGENES ESPERON JR.,
ANTONIO PARLADE, JR.,
LORRAINE MARIE T. BADOY,
ESTHER MARGAUX
"MOCHA" USON,

Respondents.

x-----x

COMPLAINT-AFFIDAVIT

I, CRISTINA E. PALABAY, for myself and in representation of Karapatan Alliance Philippines Inc., Filipino, of legal age and with office address at #1 Maaralin cor. Matatag Sts., Brgy. Central, Quezon City 1100, after having been sworn in accordance with law, depose and state:

1. I am currently the Secretary General of the National Council of Karapatan Alliance Philippines, Inc. (KARAPATAN).
2. I have been working with KARAPATAN for 10 years.
3. KARAPATAN is a national alliance of organizations, human rights desks and individuals working for the promotion and defense of human rights and people's rights in the Philippines. It was established in 1995.
4. Currently, it has 16 regional chapters, member organizations and human rights desks and numerous individual advocates, among the various sectors of Philippine society such as workers, peasants, indigenous peoples, urban poor, women, youth, church people, relatives of victims of enforced disappearances, extrajudicial killings and torture, relatives of political prisoners, Moro peoples, doctors and health workers, artists, lawyers, children's

rights advocates, and those from the lesbian, gay, bisexual, transgender, and queer (LGBTQ) communities.

5. As a human rights organization, KARAPATAN monitors and documents human rights violations. We mobilize various resources to provide for the welfare and legal needs of victims of human rights violations and their families. We conduct advocacy and lobby activities, come up with publications and reports on the human rights situation, and conduct capacity building and training activities for human rights defenders and communities. We establish partnerships with human rights groups, people's organizations, and individual advocates, within and outside the country.

6. Over the past years, KARAPATAN has monitored and documented the cases of *desaparecidos* Jonas Burgos, Sherlyn Cadapan, Karen Empeño, victims of extrajudicial killings of human rights activists Eden Marcellana, Benjaline Hernandez, KARAPATAN Negros Oriental Coordinator Elisa "Nene" Badayos, paralegal of KARAPATAN member organization Kawagib Moro Human Rights Alliance Mariam Uy Acob, and Escalante City Councilor Bernardino "Toto" Patigas, also a human rights worker of Karapatan, and Karapatan paralegal Zara Alvarez, among others.

7. KARAPATAN also provides services and paralegal support for political prisoners and victims of torture including that of the cases of the Morong 43 health workers, Filipino-American activist Melissa Roxas, security guard Rolly Panesa, trade unionists Rowena and Oliver Rosales, consultants in the peace process arrested by state agents and maliciously charged with trumped-up cases, including the routinary charges of common crimes such as murder, arson and illegal possession of firearms and explosives, and other non-bailable fabricated charges in order to jail human rights defenders.

8. In carrying out its mandate, KARAPATAN is actively utilizing domestic mechanisms in reporting human rights abuses such as filing of complaints before courts and administrative bodies, the Commission on Human Rights and the Joint Monitoring Committee of the Government of the Republic of the Philippines (GRP) and the National Democratic Front of the Philippines (NDFP). It has on many occasions lodged petitions before the Supreme Court,

9. It also engages in international solidarity work and accesses UN mechanisms through the UN Human Rights Council,

Special Procedures and treaty bodies. KARAPATAN also submits alternative reports during the UN Periodic Reviews.

10. Considering the track record of KARAPATAN over the years as a human rights watchdog and as such, has gathered recognition both domestically and internationally for its active monitoring of cases of human rights violations and in assisting victims and survivors of human rights abuses, KARAPATAN and I, CRISTINA PALABAY, have in this context experienced relentless attacks from the following Respondents in the form of malicious red/terrorist-tagging or red-baiting, which consists of baseless and dangerous imputations of being a front organization of the Communist Party of the Philippines and the New People's Army (CPP-NPA):

- a. GEN. HERMOGENES ESPERON JR., who is impleaded in his capacity as National Security Adviser and as *ex-officio* member of the National Task Force to End the Local Communist Armed Conflict (NTF-ELCAC), who incidentally is also vice-chair of the Anti-Terrorism Council (ATC), with office address at NICA Compound, V. Luna Road corner East Avenue, Quezon City, 1100 Metro Manila, where he may be served with summonses, notices and processes ;
- b. LT. GEN. ANTONIO PARLADE, JR., who is impleaded in his capacity as the, Chief of the Armed Forces of the Philippines (AFP) Southern Luzon Command (SOLCOM) and spokesperson and *ex-officio* member of the NTF-ELCAC, with office address at Camp Guillermo Nakar, Lucena City, Quezon Province, 4301, where he may be served with summonses, notices and processes;
- c. LORRAINE MARIE T. BADOY, who is impleaded in her capacity as the Undersecretary of the Presidential Communications Operations Office (PCOO) for New Media and External Affairs and as spokesperson of the NTF-ELCAC Strategic Communications Cluster, with office address at 21F, New Executive Building, Malacañang Compound, J.P. Laurel Street, San Miguel, Manila, 1005 where she may be served with summonses, notices and processes; and,

- d. ESTHER MARGAUX "MOCHA" USON, who is impleaded in her capacity as Undersecretary of the Overseas Workers and Welfare Administration (OWWA), with office address at 460 Solana St., Intramuros, Manila, 1002, where she may be served with summons, notices and processes.

11. Since October 2017, I and my organization KARAPATAN have been repeatedly and persistently tagged as terrorist members or supporters of the CPP-NPA by the Respondents.

12. I and other national officers of KARAPATAN, GABRIELA and the Rural Missionaries of the Philippines (RMP) also filed a Petition for Writ of Amparo and Habeas Data before the Supreme Court in May 2019 because we have been the subject of vicious and unrelenting attacks by Respondent Parlade¹, including

¹ The following are among the instances by which Respondents Parlade and Badoy maliciously red-tagged KARAPATAN and these are cited in KARAPATAN's Petition for a Writ of Amparo which remains pending review with the Supreme Court of the Philippines:

- a. On 22 February 2019, Respondent Parlade conducted a briefing at the Palais des Nations in Geneva, Switzerland before an audience of representatives of at least 20 countries, including Italy, Pakistan, Egypt, Thailand, Brazil, France, US, Croatia, Canada, Uruguay, Mexico, Switzerland, and Nigeria. Respondent Parlade, joined by Ambassador Garcia, said that only the Philippine government can be the source of correct information on the state of human rights in the Philippines. They moreover attempted to persuade their audience that the Philippine government has a legal framework and mechanisms by which it addresses human rights violations.
- b. In a news article entitled "*In-depth probe of CPP's EU funding vowed*" published by the Philippine News Agency (PNA) on 5 March 2019, it was reported that following its engagements with European officials, the NTF got the latter's assurance to look into the funding of EU member countries for "CPP activities" of "communist terrorist organizations" like RMP disguised as marginalized and pro-poor programs." The report further stated that these organizations, including KARAPATAN, have been falsely depicting respondent Duterte as a "tyrant" and his administration as "oppressive.
- c. In a press conference in Malacanang on 13 March 2019, Respondents Parlade, Egco, Catura and Badoy took turns in maliciously labeling KARAPATAN and RMP as communist fronts.

An excerpt from the transcript of the said press conference, reads:

GEN. PARLADE: *Magandang umaga po sa inyong lahat. Probably, I will give you some of the slides that we showed doon sa UN, sa Bosnia and sa Geneva and then the EU para lalong maintindihan ninyo kung ano iyong engagement - ano ang itsura ng engagement na ginawa namin sa Europe. But this one, this engagement all started when the CPP celebrated its 50th anniversary last December 26. So, nakita natin na napakatagal na nitong insurgency na ito at iyong grupo ni Joma doon sa Utrecht, eh halos hindi natin nagagalaw and true enough*

sa ating pagre-research na nakita natin na ang dami po nung funding na nakukuha nitong mga organizations na ito, specifically from the European Union. Ang nakita natin na very clear is the release of some 622,000 Euros para doon sa rural missionaries of the Philippines and they are proudly displaying the logo of the European Union without the EU knowing na ito pala ay mga front organizations.

So, noong nag-research kami, we engaged the Ambassador of EU in Manila and we found out that the EU is also planning to release another 1.3 million euros para doon sa mga succeeding projects nila, also, being undertaken by the Rural Missionaries of the Philippines. So, medyo nabahala tayo, dahil baka sa laki ng natatanggap nila, lalong matagalan itong insurgency na pinipilit natin na matapos especially now that we have this national task force.

So, naging magandang opportunity iyong invitation ng United Nations for the Philippine government to present its case on the 625, iyong missing na 625. This was the 117th session of the working group on enforce and involuntary disappeared persons, sa Bosnia. At meron ding invitation sa Geneva on human rights also, kaya minarapat namin na i-engage na iyong UN and then iyong EU dahil paulit-ulit iyong invitation na wala tayong pini-present na data sa kanila at ang umiiral naman na narrative ay iyong narrative ng mga makakaliwa, especially these organizations like KARAPATAN and Ibon at ginagamit iyong UN system at iyong kanilang connection sa UN system para itong mga hindi magandang balita na ito at saka iyong mga fabricated reports nila ay paratingin sa UN and sa European Union - so, ganoon ang naging kuwento.

But, I'll probably show to you some of the slides that we presented. Can you flash the first slide please! Actually on the 625, we emphasized to the UN that many of these 625 probably disappeared during the purging years of the Communists Party of the Philippines which was from the period of 1983 to 1986. Inamin po ito ng Communist Party of the Philippines sa kanilang anniversary statements. Bago lang itong anniversary statements na ito, compilation of anniversary statements at kung nababasa n'yo po, inamin nila diyan that they tortured and murdered more than 950 of their cadres - 950 po, more than the 625 na hinahanap natin.

Itong graph na ito ay pinapakita lang na si Joma Sison, siya po ang head ng International Coordination Group (ICG). I have here a document signed by Joma Sison inviting all these members throughout the world, including all this ILPS [International League of Peoples' Struggle] organizations or affiliates, kasama iyong IBON, KARAPATAN, KMU. Lahat ito nandito sa listahan na ito, kung gusto ninyong tingnan, nasa website po nila iyan. Kaya ako ay natatawa doon sa mga lumalabas na balita na red tagging daw iyong gobyerno, iyong NICA red tagging. Hindi po. Si Joma ang nag-red tag ng mga

organization na ito kasi nilagay niya sa kaniyang website itong mga organisasyon na iyan.

But anyway, *sige po*, next slide. These are just some of the officers, *at makikita ninyo*, sa buong mundo, *iyang mga pangalan na 'yan eh-well-represented ang maraming bansa diyan*.

Next slide, next slide po. Okay. Ito, it's just an explanation *paano nila in-infiltrate iyong UN*. *Kaya po ang narrative doon sa UN*, consistent. Consistent *sila doon sa mga narrative* because they have people in the UN Rapporteur, may IP Rapporteur *sila doon*. Actually, *iyong rapporteur na iyon, nasa listahan iyan ng ... as a member of the Communist Party noong pinaylan (filed) natin ng kaso iyong Communist Party as a terrorist organization*.

Sige po, next, next slide *po*. This is just to show you *kung gaano sila ka-systematic*. *Mayroon silang tinatawag na clearing house, ang tawag nila diyan ay Mindanao Indigenous Peoples' Conference*. *Iyan po ang clearing house ng lahat ng projects nila sa Mindanao*. *At mayroon kang nakikita diyan na Mindanao Interfaith Services Foundation, Inc. at nakikita ninyo diyan iyang Rural Missionaries of the- Philippines*. *Ang Rural Missionaries of the Philippines ay mga madre po iyan, mga sisters ang nagpapatakbo ng mga projects nito; one of them is being funded by the European Union*. And when we engaged the Belgian parliament, we found out *na mayroon din pala silang malaking pondo na binibigay dito .sa mga organization na ito*.

But please take note, *ang end state nila doon ay dalhin ang kaso sa international iinternationalize iyong kasi*. I-try *iyong ating Presidente, o kung sinumang presidenteng nakaupo sa International People's Tribunal*. So *iyang ang objective nila*. So *talagang sisirain nila kung sinuman ang nakaupo para i-try dito sa International People's Tribunal*. Of course, *hindi na nakalagay ang isa sa mga objectives nila talaga is iyong talagang mag-generate ng funds*.

ARJAY BALINBIN/BUSINESS WORLD: Sir, what's the school again? What do we call this?

BGEN. PARLADE: *Salugpungan Schools, Alcadev, merong TRIFFS, may Clans- iba-iba*.

ARJAY BALINBIN/BUSINESS WORLD: These are schools for terrorism?

BGEN. PARLADE: No, I did not say that. These are alternative learning schools *na pinut-up nitong mga rural missionaries, ng mga organizations na allied sa kaliwa*. Supposedly *para turuan iyong mga kabataan, kasi merong pagkukulang nga, merong pagkukulang ng eskuwelahan sa mga malalayong lugar*. *But you will be surprised many of these schools are actually inside the guerrilla bases, the guerrilla zones*. So, *hindi sila accessible doon sa mga teachers natin, sa DepEd*.

President Rodrigo Roa Duterte himself in his speeches that he delivered in several public gatherings since 2017.² In addition, I was also the subject of attacks as a human rights worker.

So, it's by design na nandoon sila. So iyon yun so, iyong curriculum nila ang nagpo-produce ang mga radical. Natututo naman silang magbasa, natututo naman sila ah, iyon nga lang ang abakada nila is armas, bala - so iyon. Ang isang sample nilang isang declarative statement, halimbawa: ang sundalo ay human rights violator. Iyon malinaw iyan doon sa mga dokumento nila. Kung ikaw ay nagugutom, ang sagot: matutulog ka na lang; magsusumikap kang para na-overcome ang iyong gutom or magtrabaho para ano; o umalsa, iyan iyong mga choices doon. But I will show you all these documents para kayo mismo ang mag-ano at sabihin ninyo kung tama bang itong curriculum na ito na pinapatupad ng mga schools na funded nitong mga rural missionaries of the Philippines na ito. (Emphasis supplied)

- d. In an interview broadcast on PTV4 posted by the latter in its Facebook page, Respondent Parlade showed the media purported "evidence" allegedly gathered by the AFP of KARAPATAN's links to the CPP-NPA. The said evidence, however, are composed of KARAPATAN's publications on the human rights situation in the Philippines and documents regarding the Jabidah Massacre in 1968. The Jabidah massacre took place decades before KARAPATAN has been founded.
- e. On 19 March 2019, the Philippine News Agency (PNA) published an online article where Respondent Parlade confidently warned that submission of evidence linking KARAPATAN with the CPP is forthcoming. Respondent Parlade further "belittled KARAPATAN's claims that it is a protector of human rights (HR) in the country." The news report, states:

Earlier, Parlade scored KARAPATAN secretary general Cristina Palabay for alleging that the military does not have solid evidence to link them to the communist rebels.

"We have a lot and KARAPATAN is worried about all these truth coming out now," he said.

Parlade belittled KARAPATAN's claims that it is a protector of human rights (HR) in the country.

"Where were you when the NPAs have been killing the IP (indigenous peoples) in Mindanao, until now? Where is KARAPATAN when non-participating civilians were killed by NPAs?"

KARAPATAN is a kind of organization that is very selective in dealing with human rights. Selective in a sense that it only uses human rights to defend its NPA allies," he said.

Parlade also asked where KARAPATAN was when the Alliance of Concerned Teachers (ACT) and Bayan Muna reportedly trafficked children in Davao last year.

² The following include the public speeches delivered by President Duterte where he labelled KARAPATAN as one of the CPP-NPA legal front organization in the Philippines:

13. On July 20, 2017, I received a phone call from a man who refused to identify himself and was using the mobile number +639260779448. The unidentified caller repeatedly asked me if I was “Tinay Palabay,” asked my whereabouts, and ordered me to stop what I was doing, obviously referring to my human rights work and advocacies. He also told me that I was in a list of people considered as “courageous,” and that he called to inform me that I am included in his “AOR” (area of responsibility). He accused me of being involved in the alleged ambush of members of the Presidential Security Group by the NPA in Mindanao. The calls further warned me to be “careful” because he would soon meet me.

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- a. In a speech delivered in Marawi City on October 17, 2017, President Duterte claimed that KARAPATAN is a “legal cover” of the Communist Party of the Philippines and accused it of capitalizing on the Filipino people’s poverty and acting in conspiracy with other “legal front organizations” of the CPP and the NPA.
 - b. President Duterte enumerated legal NGOs, including KARAPATAN, as legal fronts of the Communist Party of the Philippines and accused these organizations of committing rebellion. He made the accusations in a speech which he delivered in San Jose, Pili, Camarines Sur.
 - c. In the speeches at Camp Manuel T. Yan, Jr. in Barangay Tuburan, Mawab, Compostela Valley on 22 January 2018; at the Davao International Airport on 27 January 2018; and at the Heroes Hall, Malacanang Palace on 7 February 2018, President Duterte alleged that the Nationalist Alliance for Justice, Freedom and Democracy and KARAPATAN are one and the same.
 - d. On 9 February 2018, President Duterte threatened to come up with “something” against KARAPATAN, on account of its being a “legal front” of the CPP and the NPA.
 - e. On August 6, 2019, the Philippine News Agency posted on its Twitter account a quote from the speech of President Duterte on that day accusing KARAPATAN as a front organization of the Communist Party of the Philippines. The caption reads:

“READ I President Rodrigo Duterte chides communist sympathizers including #HumanRights group @karapatan for being “fronts” of communist rebels in the Philippines.”

President Duterte was quoted saying: “The countryside is infested with parasites like you. You do not work, you exact taxation.”

In this speech, President Duterte has publicly vilified KARAPATAN as an “organization of demons.” This was the 7th time when he mentioned KARAPATAN in his speeches. KARAPATAN submitted a communication to UN Special Procedures regarding these forms of public vilification and incitement to violence by the President.

14. The said Petition for Writ of Amparo and Habeas Data remains pending with the Supreme Court on appeal.

15. Despite our filing and the pendency of our Petition for Writ of Amparo and Habeas Data, the attacks against me and my organization KARAPATAN, persisted as Respondents continued with their terrorist-/red-tagging slander.

MATERIAL ALLEGATION/S PERTAINING TO RESPONDENT ESPERON

16. Respondent Esperon Jr., in his capacity as National Security Adviser and Vice Chairperson of the NTF-ELCAC, permitted the publication of several slanderous and offensive statements of the NTF-ELCAC against us in KARAPATAN in the NTF-ELCAC's Facebook page. The statements contain baseless and malicious allegations that KARAPATAN is one of the many front organizations of the CPP-NPA.

- a. On April 24, 2020, NTF-ELCAC came out with an incomplete list of so-called "legal fronts" of the NPA. This was purportedly sourced out from a speech of President Duterte on the same day. Included in that list is KARAPATAN Alliance Philippines.
- b. On May 29, 2020, NTF-ELCAC published a statement accusing KARAPATAN as a "CPP-led Open Human Rights Alliance."

Screenshots of these posts on Facebook are herewith attached as Annexes "A" and "B" respectively.

MATERIAL ALLEGATIONS PERTAINING TO RESPONDENT PARLADE

17. Respondent Parlade was quoted in an article by the Philippine News Agency (PNA) entitled "Denounce Reds over brutal slay of CAFGU member, Karapatan told", written by Priam Nepomuceno and published on June 2, 2019. He challenged KARAPATAN, among others, to denounce the NPA, whom he accused as responsible for the killing of the said CAFGU member. He

alluded to a supposed connection between the NPA and KARAPATAN. He stated:

“Here is another brutal killing by the NPAs and we are not hearing from you. It’s your chance to prove you have nothing to do with this organization who has been killing defenseless people. Indeed, what color do you want to be tagged now?”

You only have another three years until next election and if you cannot turn the tide to your favor, your Makabayan bloc will face extinction. NUPL (National Union of Peoples’ Lawyers), Karapatan, RMP (Rural Missionaries of the Philippines), Gabriela. Ibon Foundation, and the rest of the Makabayan bloc, please we urge you. Condemn this terrorist killing now and be the champions of the oppressed as you claim. The people are waiting. Your European and foreign funders you have duped are watching.”³

18. The foregoing statement was also shared on the Facebook page of the Civil Relations Service AFP, as well as in a poster published online by the Loreto Municipal Police Station in Surigao del Norte on its Facebook page on February 14, 2019. Copies of the said article by PNA and poster published online are herewith attached as Annexes “C”, “C-1” and “C-2”.

19. On March 7, 2019, Respondent Parlade, in a poster shared from the account of the Civil Relations Service AFP, referred to KARAPATAN as a terrorist front organization, told the European Union (EU) and the United Nations (UN) falsehoods in regard to the human rights situation in the country, and sought material support from EU member states on the basis of these false claims.⁴ A copy of the said online poster is attached herewith as Annex “D”.

³ <https://www.pna.gov.ph/articles/1071309> (last accessed on December 3, 2020).

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https://www.facebook.com/photo?fbid=442948546444589&set=basw.AbruQ6Msm9EbT_pPZBkMrGFvhY44rweMNRT39ZsouVWj-GxkSuElaCdzDeIrf9BZYAV1-OkPwjG_xicHAMFAhNVwKC8TU2L4MTRSy-tLTw9EmPxI9Ef2LbyYXzrSStuH84AziydIDhL2QfYV_hnXAuzUVzBXkEkKpB2qmqzDZ1xbCfA&opaqueCursor=AboQpIu8UCF1pwITn3GsKW8vbOnEcL-uirhqMEzyIJ2EHEmLaEWnrM7Ddpcdfb0AlR28qItm4iTntN6Un-Mqg-

20. Thereafter, on April 9, 2019, Respondent Parlade utilized the social media as his platform to spread lies against me and my organization KARAPATAN. In a story published by Kalinaw News (Annex "E") in its website, Respondent Parlade was quoted:

"It's been days since I challenged Ibon and Karapatan but still no response. Ms. Palabay please review your diary in 2004, when the Special Forces in Batangas killed 4 NPAs and captured 3 in an encounter. We welcomed you to our camp to see for yourself how they were being treated. They were served with fried chicken and ice cream by their Army captors and we offered you ice cream also, remember?"⁵

A photo containing the quote from Respondent Parlade with the caption "A Challenge to NGOs frontlining CPP-NPA-NDF" was likewise published on Kalinaw's Facebook page, a copy of which attached as herein as Annex "E-1."

21. On August 19, 2019, an online poster was shared by the Bayabas Police Station in Surigao del Sur in its Facebook account, where Respondent Parlade was quoted to have said: "We ask you instead, to cooperate with us in exposing some more the evil deeds of those who infiltrated your ranks. Many among your staff at Karapatan, RMP and Gabriela have already come out and executed statements about what the underground cadres in your ranks have done to aid the NPAs, and drag you with them into their terrorist and violent actions." A copy of the said online poster is herewith appended as Annex "F."

22. Respondent Parlade continued red-tagging KARAPATAN, that even our support for the calls for press freedom insofar as the franchise renewal issue of ABS-CBN is concerned was

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W9DWhMyAoxm9fRZudpqaHSfDbZ92uHlbgpHL1conwcWojzu-5r4O6nDnNC7qWS_Ow
⁵ <https://www.kalinawnews.com/on-the-connection-of-karapatan-ibon-foundation-and-other-ngos-with-the-terrorist-groups-cpp-npa-ndf/>

smearred with malicious and baseless accusations against us. In a statement, Parlade said:

“We dare Inday Varona and the other long time cohorts of the CPP in the media to expose themselves some more. The same ILPS network already did: Karapatan, NUPL, NUJP, CEGP, Anakbayan, Bayan, Bulatlat, Altermidya, Kodaog, Tudla, Kilab, Northern Dispatch, UJP, all of which were creations of the CPP itself.

We don't need to red tag them. Just go to their websites and read how they build this franchise issue into an OUST Duterte move. xxx”

Respondent Parlade arrogantly claimed in the same statement that we were exploiting the issue to justify our call for the ouster of President Duterte, alleging once again that my organization KARAPATAN was established by the CPP itself. This statement was published in the NTF-ELCAC Facebook page on May 12, 2020 (Annex “G”) and shared in the Facebook account of the 6th Civil Relations Group of the Armed Forces of the Philippines (Annex “G-1”).

MATERIAL ALLEGATION/S PERTAINING TO RESPONDENT BADOY

23. Respondent Badoy, for her part, published in the Facebook page of the NTF-ELCAC a slanderous statement against KARAPATAN on May 12, 2020. She accused KARAPATAN and other non-government organizations critical of the current administration's policies of meddling with the ABS-CBN franchise renewal issue and of exploiting the same to advance their ideology. She categorically called these organizations as front organizations of the CPP-NPA, to wit:

“Let us keep BAYAN, Amnesty International Phil, NUJP, CEGP, AHRW, Karapatan, IBON, ARTISTA, and the International League of People's Struggle of Jose Ma Sison, especially the CPPs underground mass organizations

amongst them (Artista at Manunulat ng Sambayanan or ARMAS, Christians for National Liberation, KM, Lumaban, etc.) OUT of this issue, lest we allow them to drag us into their trap and swallow the narrative they force down our throats - tyranny.

We subscribe to the fact that the franchise issue is a legal issue within the purview of Congress and in the case of the cease and desist order (CDO) issued by the National Telecommunications Commission, the Supreme Court.

But while we defer to the wisdom and separate powers of the legislature and the judiciary, we will not stand idly by and do nothing as these communist terrorist front organizations feast on the issue by harping on their twisted and false narratives and concocted lies to deceive the people. This is where NTF-ELCAC comes in - to debunk these vicious anti-government propaganda (sic) in order to protect public interest."

A screenshot of this post in the NTF-ELCAC Facebook page is attached as Annex "H."

MATERIAL ALLEGATION/S PERTAINING TO RESPONDENT USON

24. Respondent Uson has consistently published statements alluding to KARAPATAN's supposed connections with the CPP-NPA in her Facebook page, which is popularly known as "Mocha Uson Blog".

25. In her Facebook page, Respondent Uson shared on December 14, 2019 a News5 photo depicting Makabayan solons, Atty. Edre Olalia of the National Union of Peoples' Lawyers (NUPL) and herein complainant during their visit to Sen. Leila de Lima on December 13, 2019, at the PNP Custodial Center. This photo, a copy of which is hereto attached as Annex "I," bore the caption:

“GUMAGALAW NA ANG PERA NG OLIGARKIYA. Join Forces na ba? Para saan ang Meeting? Tungkol sa Human Rights? ULUL! KWENTO NIYO SA KAPRE.

Bakit hindi kayo magrally dahil sa ilang taong pang-aabuso ng Water Concessionaires sa Ordinaryong Pilipino?

#DutertePaRin #ProtectDuterte
#DefendDuterte”

26. On September 24, 2019, the same Facebook page shared KARAPATAN’s statement assailing Respondent Uson’s interview with convicted Maj. Gen. Jovito Palparan (Ret.) at the National Bilibid Prison (NBP). The caption stated:

“Nag react na ang mga komunistang grupo. Sino kayo para ipagbawal niyo na ma-interview si GEN PALPARAN? May court order ba na bawal??? Bakit ayaw niyo madinig ang totoong dahilan bakit nakulong si Gen Palparan??? Dahil binunyag niya na hindi naman estudyante and sinasabi ninyong namatay? Dahil ba sinabi niya na NPA na ang mga estudyante na sinasabi ninyo? Kung noon nadaan niyo sa palakasan sa panahon ni De Lima at Aquino ngayon malalaman na ng tao ang katotohanan.”

Copies of this Facebook post is herein attached as Annex “J.”

GROUND FOR THE CRIMINAL COMPLAINT

27. Given the persistent, relentless and malicious red-tagging and vilification of KARAPATAN and myself, I, CRISTINA E. PALABAY, for myself and in representation of KARAPATAN, charge the Respondents of violating Section 6(h) of RA 9851, in relation to the principle of distinction under International Humanitarian Law.

**RED-TAGGING VIOLATES THE PRINCIPLE OF
DISTINCTION UNDER INTERNATIONAL AND
DOMESTIC HUMANITARIAN LAW.**

28. It is our studied view that international humanitarian law (IHL) applies in the prevailing armed conflict between the government and the CPP-NPA-NDFP. Moreover, both parties signed the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL) in 1998, recognizing their duties under IHL and international human rights law.

29. Under IHL and the CARHRIHL, both parties affirmed the applicability of the 1949 Geneva Conventions and its 1977 Additional Protocols, which are main IHL treaties. The Rome Statute of the International Criminal Court has parallel provisions and principles on this.

30. Our assisting counsels underscored that one of the hallmark principles of IHL is the principle of distinction, which restricts targets of attacks to military objectives only, thus protecting civilian persons and objects.

31. This principle should be respected, regardless of the nature of the conflict. For non-international armed conflicts, Article 13(2) of the Additional Protocol II prohibits the parties to an armed conflict from making civilians the object of their attack. As a State Party to the Additional Protocol II, this prohibition is binding on the Philippine Government.

32. Moreover, the principle of distinction has also been recognized as part of customary IHL, which under Article II, Section 2 of the Constitution, is deemed part of the law of the land.

33. In fact, violation of the principle of distinction is considered a grave violation of IHL and is punishable as a war crime. Under Philippine law, in "An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity "or RA 9851, Section 4(c)(1) thereof penalizes any act of "internationally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities."

34. Our counsels explained to us that "red-tagging" or such other similar acts or expressions, can be considered a violation of the

principle of distinction. Through red-tagging, civilians are deemed to be affiliated with or even members of the CPP or NPA. Consequently, red-tagged civilians become targets of different forms of attacks and even armed violence by State forces.

35. The dangers of red-tagging are not mere conjectures. A number of red-tagged individuals have been abducted or brutally murdered by State forces or their agents and proxies, including, among others:

- a. KARAPATAN counsel Benjamin Ramos, Secretary General of the Negros Chapter of NUPL, who was gunned down on 06 November 2018 in Negros;
- b. Former KARAPATAN Secretary General of the Southern Mindanao Regional Chapter Honey Mae Suazo, who was abducted and last seen last 02 November 2019;
- c. Bayan-Muna Regional Coordinator Jory Porquia, who was shot dead in his rented house on 30 April 2020;
- d. Kadamay Secretary-General Carlito Badion, who was found dead on a highway on 28 May 2020;
- e. National Democratic Front of the Philippines Peace Consultant, Anakpawis Chair and Kilusang Magbubukid ng Pilipinas Deputy Secretary General Randall "Randy" Echanis, who was killed by police forcers inside his own apartment on 10 August 2020; and
- f. KARAPATAN member Zara Alvarez, was brutally murdered in the streets of Negros on 17 August 2020.

36. And yet, despite these, respondents have continued to red-tag us in KARAPATAN, willfully violating the principle of distinction under both domestic and IHL.

37. As stated earlier, this blatant disregard of the principle of distinction resulting in the deaths of civilians constitutes the war crime defined under RA 9851, Section 4(c)(1). Respondents, as members of NTF-ELCAC, are liable either as superior/commander or for performing/ordering/soliciting/inducing/tolerating the commission of a war crime.

38. As members of the NTF-ELCAC, Respondents Parlade, Esperon and Badoy, among others, are in charge of the “whole-of-nation” approach under Executive Order No 70 in the government’s anti-insurgency efforts. However, instead of instilling respect for IHL and human rights law, respondents are the first to violate them by publicly declaring civilians to be part of CPP or NPA and thus can be, quite wrongly, considered by State forces as combatants and proper targets of armed attacks.

39. As high-ranking government officials, respondents occupy key positions in the bureaucracy or military hierarchy and exercise effective authority, control or supervision over State forces and agencies involved in ending the local communist armed conflict under the framework of EO 70. Thus, they are required by their functions not to commit themselves or to prevent any violation of IHL, or at the very least, submit the matter to the competent authorities for investigation and prosecution.

40. Instead, they even encouraged the targeting of civilians by their incessant red-tagging. Hence, we submit that Section 10 of RA 9851 deems them to be principals in the war crime of killing civilians.

41. But assuming without conceding that they cannot be classified as superiors, they can still be held liable for ordering, soliciting, inducing or tolerating the commission of a war crime.

42. We were oriented by our counsels that this mode of liability requires the following elements: (a) the person exerts influence over another person to either commit a crime which in fact occurs or is attempted or to perform an act or omission as a result of which a crime is carried out; (b) the inducement has a direct effect on the commission or attempted commission of the crime; and (c) the person is at least aware that the crimes will be committed in the ordinary course of events as a consequence of the realization of the act or omission.⁶

43. We in KARAPATAN submit that all the elements are present.

44. *First*, the NTF-ELCAC, as the foremost task force that deals with the armed communist insurgency, exercises influence –

⁶ ICC, *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute, June 9, 2014, ¶153.

even control and supervision - over State forces, their agents and proxies. Moreover, its key members include alter egos of the President and high-ranking officials of the military and the police. Respondents, therefore, exert influence over State agents.

45. *Second*, the inducement in the form of red-tagging has a direct effect on the commission of the crime of murder and other forms of attacks. As discussed earlier, red-tagging exposes the subject to armed hostilities from State forces as what indeed happened to several activists and human rights defenders who were previously red-tagged.

46. *Third*, respondents knew that red-tagging results in the murder of civilians. In fact, it was specifically their aim in red-tagging individuals – to misrepresent them as combatants who can be made targets of armed violence.

47. Considering the foregoing, we in KARAPATAN agree that respondents should be held liable for violating the principle of distinction under domestic and IHL, committing a war crime in the process.

II

RED-TAGGING CONSTITUTES THE CRIME AGAINST HUMANITY OF PERSECUTION.

48. Republic Act No. 9851 (RA 9851) or the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity penalizes, under domestic law, crimes which have been quintessentially international crimes, namely, genocide, war crimes, and crimes against humanity.⁷

49. One such crime is the crime against humanity of persecution. Under Section 3(p) of RA 9851, persecution refers to “the intentional and severe deprivation of fundamental rights contrary to international law by reason of identity of the group or collectivity.”

50. This crime against humanity is committed when there is persecution “against any identifiable group or collectivity on **political**, racial, national, ethnic, cultural, religious, gender, sexual

⁷ The law was enacted even before the Philippines ratified the Rome Statute of the International Criminal Court on August 30, 2011.

orientation, or other grounds," committed as part of a widespread or systematic attack directed against any civilian population.⁸

51. Our counsels told us that Philippine jurisprudence has yet to deal with a case concerning the crime against humanity of persecution. Thus, pursuant to Section 15 of RA 9851, treaties, customary international law, decision by international courts and tribunals as well as commentaries on the subject may be consulted for guidance.

52. In this respect, it is worthy to note that RA 9851's definition of this crime is lifted almost word-for-word from the Rome Statute, which defines the crime against humanity of persecution as follows:

Article 7
Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

x x x

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; x x x

53. Similar to RA 9851, Article 7(2)(g) of the Rome Statute also describes persecution as the "intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity."

⁸ RA 9851, Section 6(h).

54. Given this similarity in wording, our counsels explained to us that the “Elements of Crimes”⁹ utilized by the International Criminal Court is persuasive in our jurisdiction. Guided by the “Elements of Crimes,” the crime of persecution under RA 9851, Section 6(h) is committed when the following requisites concur:

- a. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
- b. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
- c. Such targeting was based on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law.
- d. The conduct was committed in connection with any act referred to in Section 6 or any crime defined in RA 9851.
- e. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
- f. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

55. As will be shown below, Respondents’ acts of red-tagging constitute the crime against humanity of persecution.

56. Public vilification of and incitement of violence against certain groups can constitute the crime of persecution under humanitarian law and its doctrinal jurisprudence on the matter.¹⁰

⁹ Under Article 9(1) of the Rome Statute, the “Elements of Crimes” adopted by a two-thirds majority of the members of the Assembly of States Parties and assist the International Criminal Court in the interpretation and application of the crimes under its jurisdiction.

¹⁰ This doctrine can be traced to the jurisprudence of the International Military Tribunal at Nuremberg (IMT). At the IMT, one of those accused is Julius Streicher. He was indicted for publicly vilifying Jews in his writings and speeches:

For his twenty-five years of speaking, writing, and preaching hatred of the Jews, Streicher was widely known as "Jew-Baiter Number One." In his speeches and articles, week after week, month after month, he infected the German mind with the virus of anti-Semitism and incited the German people to active persecution. Each issue of *Der Stürmer*, which reached a circulation of

57. From these sources, it can be gleaned that public denigration, vilification, and calls for violence against a targeted group, especially when they come from high-ranking government officials, result in the violation of fundamental rights, most notably the rights to life, liberty, security, and dignity as human beings.

600,000 in 1935, was filled with such articles, often lewd and disgusting. (IMT Judgment of 01 October 1946, p. 501.)

The IMT ruled that Streicher's incendiary speech and writings against the Jews constitute persecution on the basis of political and racial grounds:

Streicher's incitement to murder and extermination, at the time when Jews in the East were being killed under the most horrible conditions, clearly constitutes persecution on political and racial grounds in connection with War Crimes, as defined by the Charter, and constitutes a Crime Against Humanity. (Id. at 502.)

In *Prosecutor v. Ruggio*, (ICTR-97-32, Judgment and Sentence, 01 June 2001) the International Criminal Tribunal for Rwanda (ICTR) affirmed that public radio broadcasts that discriminated and attacked members of an ethnic minority, which deprived them of the fundamental rights to life, liberty and basic humanity, can constitute the crime of persecution:

Those acts were direct and public radio broadcasts all aimed at singling out and attacking the Tutsi ethnic group and Belgians on discriminatory grounds, by depriving them of the fundamental rights to life, liberty and basic humanity enjoyed by members of wider society. The deprivation of these rights can be said to have as its aim the death and removal of those persons from the society in which they live alongside the perpetrators, or eventually even from humanity itself. (Id. at ¶22)

As discussed further by our assisting counsels, in *Prosecutor v. Nahimana, et al.*, (ICTR-99-52-A) the ICTR Trial Chamber convicted the owners of a radio station and a newspaper of persecution for actively encouraging violence against the Tutsi ethnic minority:

[H]ate speech targeting a population on the basis of ethnicity, or other discriminatory grounds, reaches this level of gravity and constitutes persecution under Article 3(h) of its Statute. x x x Hate speech is a discriminatory form of aggression that destroys the dignity of those in the group under attack. It creates a lesser status not only in the eyes of the group members themselves but also in the eyes of others who perceive and treat them as less than human. The denigration of persons on the basis of their ethnic identity or other group membership in and of itself, as well as in its other consequences, can be an irreversible harm. (Id. at ¶1072)

The ICTR Appeals Chamber subsequently affirmed the conviction for persecution. It observed that speech that incites violence against a group on the basis of ethnicity, or any other discriminatory ground, violates the right to respect for the dignity and security of the members of the targeted group. (ICTR-99-52-A, Appeals Judgment, 28 November 2007, ¶¶986-987.)

In *Prosecutor v. Seselj*, (MICT-16-99-A, 11 April 2018) the International Residual Mechanism for Criminal Tribunals ruled that a speech calling for the expulsion of Croats from Serbia violated the right to security of the targeted group and thus constituted the crime against humanity of persecution. (Id. at ¶163)

58. Hence, our counsels pointed out that our own domestic law reflects this expansive protection against persecution of the fundamental rights to life, liberty, security, and dignity under international law.

59. Article III, Section 2 of the 1987 Constitution vouchsafes the right to security against unreasonable search and seizure into one's person, houses, papers, and effects. Elaborating on this right, the Supreme Court in *Secretary of Defense v. Manalo*¹¹ explained that “[a]t the core of this guarantee is the immunity of one's person, including the extensions of [their] person— houses, papers, and effects— against government intrusion.”

60. Thus, this constitutional mantle of protection inoculates not only against the state's power over a person's home and possessions, but more importantly, it also protects the privacy and sanctity of the individuals themselves.¹²

61. The right to security emanates from each person's right to life, safeguarding as it does the right to quality life. As *Manalo* affirms:

The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property... pervades the whole history of man. It touches every aspect of man's existence.” In a broad sense, the right to security of person “emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the right to enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according

¹¹ G.R. No. 180906, October 7, 2008. While this case deals with an application for the issuance of a writ of amparo, the Supreme Court's discussion of the right to security was foundational and may be applied to other cases.

¹² *Id.*

to the nature, temperament, and lawful desires of the individual.”¹³

62. The right to security also yields several derivative rights and freedoms including: (1) the right to live free from fear and (2) the right to security of person is a guarantee of bodily and psychological integrity or security.¹⁴

63. Here, the red-tagging by respondents, who are members of the NTF-ELCAC, has exposed complainant to actual and threats of violence against her life, liberty, and security and those of her colleagues in KARAPATAN.

64. Simply put, red-tagging or red-baiting refers to acts of harassment or persecution of a person because of known or suspected communist sympathies.¹⁵

65. A journal article (which was cited in Justice Leonen’s Dissenting Opinion in *Zarate v. Alvarez*¹⁶) defines red-tagging as “the act of labelling, branding, naming and accusing individuals and/ or organizations of being left-leaning, subversives, communists or terrorists (used as) a strategy...by State agents, particularly law enforcement agencies and the military, against those perceived to be ‘threats’ or ‘enemies of the State’.”¹⁷

66. Justice Leonen adds in *Zarate* that red-tagged persons and organizations “are stereotyped or caricatured by the military as communist groups, making them easy targets of government military or paramilitary units.”¹⁸

To make it easy for military and paramilitary units to silence or cause untold human rights abuses on vocal dissenters, government agents usually resort to stereotyping or caricaturing individuals. This is accomplished by providing witnesses who, under coercive and intimidating conditions, identify the leaders of organizations critical of the

¹³ *Id.* Citations omitted.

¹⁴ *Id.*

¹⁵ Vera Files Fact Sheet, *Why ‘red-tagging’ is dangerous*, October 11, 2018.

¹⁶ G.R. No. 220028, November 10, 2015 (J. Leonen, Dissenting Opinion).

¹⁷ Dr. Nymia P. Simbulan, *Red Baiting: A Tool of Repression, Then and Now*, OBSERVER: A JOURNAL ON THREATENED HUMAN RIGHTS DEFENDERS IN THE PHILIPPINES Vol. 3, No. 2, pp. 12- 15 (2011).

¹⁸ G.R. No. 220028, November 10, 2015 (J. Leonen, Dissenting Opinion).

administration as masterminds of ordinary criminal acts. Not only does this make these leaders' lives and liberties vulnerable, a chilling effect on dissent is also generated among similar-minded individuals.

67. Philip Alston, former United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, observed that those who belong to organizations that are red-tagged by government officials have become targets of the government's counterinsurgency programs:¹⁹

17. The public vilification of "enemies" is accompanied by operational measures. The most dramatic illustration is the "order of battle" approach adopted systematically by the AFP and, in practice, often by the PNP. In military terms an order of battle is 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 it operates. 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". Some 110 pages in length, the document lists hundreds of prominent civil society groups and individuals who have been classified, on the basis of intelligence, as members of organizations which the military deems "illegitimate". While some officials formalistically deny that being on the order of battle constitutes being classified as an enemy of the state, the widespread understanding

¹⁹ Philip Alston, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, A/HRC/8/3/Add2, April 16, 2008.

even among the political elite is that it constitutes precisely that.

68. The recent UN Human Rights Council Report on the Situation of Human Rights in the Philippines has stressed that the government's red-tagging of activists and human rights defenders exposes their targets to unimaginable danger:

52. Such public labelling has proved extremely dangerous. In 2018, for instance, posters and hit lists claiming to depict Communist Party of the Philippines-NPA-National Democratic Front of the Philippines personalities were circulated in the island of Negros. At least four of the human rights defenders listed were subsequently murdered: activist Haide Flores, lawyer Benjamin Ramos Jr., city councillor Bernardino Patigas and lawyer Anthony Trinidad. All four murders remain unsolved.

53. Numerous human rights defenders have shared with OHCHR death threats that they have received in text messages or phone calls or on social media. One red-tagged rights defender, Honey Mae Suazo, has been missing since 2 November 2019. She had previously received many threats in relation to her work documenting violations against peasant farmers and indigenous peoples in southern Mindanao. Other women human rights defenders have additionally been threatened with rape and been harassed with sexual slurs.

54. The police and the military reportedly use visits and raids to intimidate nongovernmental organizations and civil society; this has also occurred during the COVID-19 lockdown. Some individuals are detained and released, while others face charges, such as illegal possession of firearms, abduction and sedition. While judicial remedies such as the Supreme Court's writ of

amparo are available, in one recent case, members of civil society seeking such temporary protection orders against the Government were themselves charged with perjury.

69. My experience and that of the other members of KARAPATAN confirm these astute observations. After terrorist/red-tagging us, we have continued to receive threats through texts or through social media accounts of respondents. In addition, several of my colleagues in KARAPATAN who were red-tagged had been killed, abducted or illegally arrested on the basis of trumped-up criminal charges.

70. Far from being mere neutral statements, red-tagging has far-reaching consequences and implications. We now fear for our lives and safety as well as our families and colleagues. Our activities and advocacies have been severely restricted by concerns regarding our security.

71. And when we sought the protective writs of amparo, we were subsequently charged with perjury by the very government officials we sought protection from.

72. In sum, Respondents' red-tagging constitutes a direct violation of complainants' fundamental rights to life, liberty, security, and dignity, satisfying the first element of the crime of persecution.

73. According to our assisting counsels, the crime of persecution requires a specific intent to discriminate on political, racial, or religious grounds. In other words, there should be specific intent to cause injury to a human being because she or he belongs to a particular community or group. This discriminatory intent may be inferred from the circumstances surrounding the persecutory acts.²⁰

74. If out of a group of persons selected on the basis of racial, religious, or political grounds, only certain persons are singled out and subjected to mistreatment, it may be inferred that the mistreatment was carried out on discriminatory grounds.²¹

²⁰ *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2-A, Judgement (AC), December 17, 2004, para. 110-112:

²¹ *Prosecutor v. Vlastimir Dorđević*, Case No. IT-05-87/1-A, Judgement (AC), January 27, 2014, para. 876.

75. Hence, when there is discrimination on the basis of a person's political beliefs, this satisfies the requirement of targeting on political grounds.²²

76. In our case, the persecution is based on political grounds. Evidently, the practice itself of red-tagging our organization KARAPATAN, implies that the government and respondents have singled us out because they attribute that we supposedly espouse a communist ideology while doing our human rights work.

77. Quite notably, groups or persons who are perceived to be proponents of other beliefs are never subjected to red-tagging, even if they in fact embrace odious views, such as sexism, holocaust denialism, and the like. The discriminatory intent is so palpable that Justice Leonen was compelled in *Zarate* to liken it to McCarthyism.

78. As civilians, I as complainant and my colleagues are entitled to be protected from the armed conflict between the government and communist groups.

79. However, far from fulfilling its duty to comply with the principle of distinction, respondents have publicly red-tagged me and my organization, dangerously depicting us as combatants who can be targeted in armed hostilities.

80. As stated, our counsels pointed out that Section 6 of RA 9851 provides that a crime against humanity is committed when there is a "widespread or systematic attack directed against a civilian population". This contextual requirement can be bifurcated into two points: *first*, the presence of an attack; and *second*, that the attack is either widespread or systematic.

81. As to the first point, it should be clarified at the outset that the term "attack" in the context of crimes against humanity is not synonymous with the use of lethal force in the context of armed conflicts. Rather, an "attack" refers to the course of conduct involving the multiple commission of acts referred to in Section 6 of RA 9851 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.

- a. Thus, with respect to the crime against humanity of persecution, an "attack" means the course of conduct

²² *Prosecutor v. Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgement (TC), September 2, 1998, para. 583.

involving multiple commission of acts of persecution, pursuant to or in furtherance of a State or organizational policy to commit such attack.

- b. As discussed earlier, the acts of respondents in red-tagging us in KARAPATAN, have been incessant and unrelenting. Moreover, it is pursuant to and in furtherance of a State policy to persecute us in KARAPATAN and other activist groups and individuals.
- c. Indeed, the chief evidence of this State policy is Executive Order No. 70, which established the NTF-ELCAC. Moreover, the statements of the President himself reveal a State policy to persecute activist groups and their members.
- d. Thus, it cannot be denied that there is an attack directed against me and my colleagues, who belong to the civilian population.

82. As to the second point, it should be noted that the qualifiers “widespread” or “systematic” are disjunctive.²³ In other words, an attack need not be both widespread and systematic. The presence of one is sufficient. In any case, the attack against us in this case is both widespread and systematic. We, in KARAPATAN, submit that:

- a. The term “widespread” refers either “to the [large] number of victims”, “to the multiplicity of victims”, or to the commission of the acts “on a large-scale”.²⁴ The ICC has used “widespread” to refer to the relationship of the large-scale nature of the attack and the number of targeted persons.²⁵ In *Prosecutor v. Blaskić*, the ICTY ruled

²³ Otto Triffterer and Kai Ambos, *THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY*, p. 167 (2015).

²⁴ *Prosecutor v. Kayishema and Ruzindana* (Trial Chamber Judgment), ICTR-95-1-A, para. 123.

²⁵ *Prosecutor v. Gbagbo*, No. ICC-02/11-01/11-656-Red, Decision on the Confirmation of Charges, Pre-Trial Chamber I, June 12, 2014. See also Pre-Trial Chamber I, “Decision on the Prosecution Application under Article 58(7) of the Statute”, April 27, 2007, ICC-02/05-01/07-1-Corr, para. 62; *id.*, “Decision on the confirmation of charges”, September 26, 2008, ICC-01/04-01/07-717, para. 394; *id.* “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir”, March 4, 2009, ICC-02/05-01/09-3, para. 81; Pre-Trial Chamber II, “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, June 15, 2009, ICC-01/05-01/08-424, para. 83; Pre-Trial Chamber I, “Decision on the Prosecutor’s Application for a Warrant of Arrest against Callixte Mbarushimana”, September 28, 2010, ICC-01/04-01/10-1, para. 24; Pre-Trial Chamber III, “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against

that the attack against more than 400 individuals was found to be widespread.²⁶

- b. Here, the attack is widespread. It encompasses the whole Philippines. It also targets not only complainants but also all groups the government has red-tagged. These groups count thousands, even millions of members nationwide.
- c. In fact, the Department of Justice erroneously yet recklessly impleaded 649 individuals, most of whom are activists, in a petition to designate the CPP and NPA as terrorist groups under the old Human Security Act. Among those impleaded include known human rights defenders and a UN Special rapporteur. While most have been dropped from the case, they have continued to experience harassment from State agents, some of whom have been arrested and even murdered.
- d. Hence, with the wide geographic scope of the attack, along with the multiplicity of targeted groups and persons, we believe respondents' red-tagging fulfills the widespread requirement.
- e. The attack is also systematic. The term "systematic" means the non-accidental repetition of similar criminal conduct on a regular basis pursuant to a preconceived policy or plan.²⁷ It refers to the organized nature of the acts and the improbability of their random occurrence.²⁸
- f. There is no requirement that this policy be adopted formally as the policy²⁹, nor must the policy or plan

Laurent Koudou Gbagbo", November 30, 2011, ICC-02/11-01/11-9-Red, para. 49; Trial Chamber II, "Jugement rendu en application de l'article 74 du Statut", March 7, 2014, ICC-01/04-01/07-3436, para. 1123.

²⁶ *Prosecutor v. Blaskic*, No. IT-95-14-T, Judgment, Trial Chamber, March 3, 2000.

²⁷ *Kenya Authorisation Decision*, ICC-01/09, March 31, 2010, ¶96.

²⁸ *Prosecutor v. Kordic and Cerkez*, (Appeals Chamber), December 17, 2004, para. 94. See also *Prosecutor v. Blaskic*, (Appeals Chamber), July 29, 2004, para. 101; *Prosecutor v. Limaj et al.*, (Trial Chamber), November 30, 2005, para. 183; *Prosecutor v. Simic, Tadic, and Zaric*, (Trial Chamber), October 17, 2003, para. 43; *Prosecutor v. Stakic*, (Trial Chamber), July 31, 2003, para. 625; *Prosecutor v. Naletilic and Martinovic*, (Trial Chamber), March 31, 2003, para. 236.

²⁹ See *Prosecutor v. Akayesu*, No. ICTR-96-4-T, Judgment, Trial Chamber, September 2, 1998, para. 580; See also *Prosecutor v. Tadic*, No. IT-94-1-T, Opinion and Judgment, Trial Chamber, May 7, 1997, para. 653; *Prosecutor v. Rutaganda*, No. ICTR-96-3-T, Judgment, Trial Chamber, December 6, 1999, para. 69; *Prosecutor v. Musema*, No. ICTR-96-13-A, Judgment and Sentence, Trial Chamber, January 27, 2000, para. 204; *Prosecutor v. Kupreskic et al.*, No. IT-95-16-T, Judgment, Trial

necessarily be declared expressly or even stated clearly and precisely.³⁰ The existence of the policy may be inferred from the conduct, which must be “clearly encouraged” or be of a nature that “clearly fits within” a general policy.³¹

- g. Here, there is no need to infer an implied State policy. This can be shown by explicit pronouncements from high-ranking officials, including the President, and the issuance, among others, of Executive Order No. 70, which established the NTF-ELCAC.
- h. These concrete pieces of evidence, taken together, reveal a State policy to discriminate, persecute, and even eradicate human rights, activist, and progressive groups because of their supposed links to communist armed groups.
- i. Indeed, the pattern of conduct against me and my colleagues, our organization, and other groups shows a coordinated effort to vilify and incite violence against those who are critical of government.
- j. Thus, we submit that the element of systematicity is also present.

83. What is more, respondents knew that their acts of persecution are part of the widespread or systematic attack against activist groups and their members, which include us in KARAPATAN.

84. At the outset, respondents Parlade, Esperon and Badoy all hold key and responsible positions within the NTF-ELCAC. As NTF-ELCAC leaders and members, they not only have intimate knowledge of the State policy against activist groups, it can be said that they are active implementors thereof. Consequently, they cannot feign ignorance as they are in the forefront and center of government efforts to violate me and my colleagues’ fundamental rights.

III.

Chamber, January 14 2000, para. 551; see *Prosecutor v. Blaškić*, No. IT-95-14-T, Judgment, Trial Chamber, March 3, 2000, para. 204.

³⁰ See *Prosecutor v. Blaškić*, No. IT-95-14-T, Judgment, Trial Chamber, March 3, 2000, para. 205.

³¹ *Prosecutor v. Kupreškić* ICTY T. Ch. II 14.1.2000 ¶¶554-5.

**RED-TAGGING OF COMPLAINANTS
CONSTITUTES VIOLATIONS OF SECTION 3€ OF
RA 3019 (ANTI-GRAFT AND CORRUPT
PRACTICES ACT).**

85. We in KARAPATAN maintain that Respondents have likewise violated Section 3 (e) of RA 3019, which provides that:

“Section 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.”

86. As explained by our counsels, in *Garcia vs. Sandiganbayan*³², the Supreme Court enumerated the three (3) essential elements of the crime of graft and corrupt practices under Sec. 3 (e) of RA 3019, to wit:

“The three essential elements for violation of Section 3(e) of RA 3019 are: (1) that the accused is a public officer discharging administrative, judicial or official functions; (2) that the accused acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) that the accused caused undue injury to any party including the Government, or giving any

³² G.R. No. 197204, March 26, 2014.

private party unwarranted benefits, advantage or preference in the discharge of his functions.” (Citations omitted.)

87. As pointed out by our counsels, all the elements of the offense are present in our case.

88. *First*, there is no question as to the public position held by the Respondents. Respondents Parlade, Esperon and Badoy are key officials of the NTF-ELCAC and have been introducing themselves in that capacity when they maliciously vilified us in KARAPATAN and baselessly accused us of being one of the front organizations of the CPP-NPA. Respondent Uson is known to be a public officer as well in different capacities.

89. *Second*, Respondents acted with manifest partiality and evident bad faith when they recklessly engaged in red-tagging me and KARAPATAN publicly, absent any competent, admissible, much less credible evidence to prove their claims.

90. *Lastly*, the red-tagging and vilification against us have indubitably already caused us undue injury not only by threatening our lives, liberty, security but also discrediting our work and advocacy and besmirching our reputations.

91. These acts by the respondents have become more and more vicious and perpetrated with gross impunity. They have made use and taken advantage of attacks from netizens, who are in truth and in fact paid hacks or “trolls,” further placing us, members of KARAPATAN, in harm’s way. We have documented a number of social media users who have called for the infliction of physical violence and punishment against us for being alleged legal fronts of the CPP-NPA or maintaining links with alleged terrorists. Among them are the following:

- a. A certain Vincent de Guzman Andrade shared Robert Kniazeff Lopez-Pozas’ Facebook post pertaining to President Duterte’s threats to behead human rights advocates and placed his own caption. The post reads: “What about beheading the Fake Human Rights Group KARAPATAN and its boss Tinay Palabay.” A copy of this post is attached herein as Annex “K.”

- b. A Facebook page that goes by the name Quiet No More PH has consistently red-tagged and propagated lies about human rights defenders and civil society organizations. One (1) post that it published on March 10, 2020 shows three (3) photos of members of KARAPATAN in Southern Mindanao Region and a statement that KARAPATAN is a CPP-NPA front organization. A screenshot of this post is attached to this Complaint-Affidavit as Annex "L".
- c. Another Facebook page under the name Bantay Terrorista posted on February 28, 2020 a photo and an excerpt from a KARAPATAN statement regarding our opposition to the then Anti-Terrorism Bill No. 1083. To quote: "Mga terorista takot sa Anti-Terrorism Bill 1083 dahil matatapos na ang kanilang panggugulo at pananakit ng mga inosenteng tao. Kung terorista ka dapat ka lang matakot!" Attached is a copy of this Facebook post as Annex "M."

92. Three (3) days after Bantay Terrorista published the foregoing defamatory post in Facebook, I learned of a warrant of arrest issued against me while I was leading a delegation of non-government organizations at the United Nations Human Rights Council session in Geneva, Switzerland. After I arrived in the Philippines, I was served with the said warrant on July 7, 2020 by two (2) men posing as private couriers from the LBC . These two men were later identified to be SP03 Luisito Johnson Ubias and SP01 Joelon De Tomas Rafael from the Quezon City Police District (QCPD) based in Camp Karingal.

93. Again, these pernicious acts of red-tagging have already placed the lives of some of my colleagues on the line. My colleagues in KARAPATAN, former City Councilor Bernardo "Toto" Patigas and Zara Alvarez, who are both from Negros Occidental, were brutally murdered. Prior to their killings, they were subjected to red-tagging. Their photos were included in a rogue's gallery of alleged CPP-NPA personalities in the province by the Moises Padilla Municipal Police.

GROUND FOR THE ADMINISTRATIVE COMPLAINT

94. Having shown that red-tagging or such other similar acts or expressions constitute the crime of persecution, I charge the respondents and maintain that they should be held criminally and administratively liable.

95. While RA 9851 is a penal statute, its violation can also give rise to administrative liability, according to our counsels. In particular, violations of penal law can be treated as gross misconduct. In *Re: Allegations made under oath at the Senate Blue Ribbon Committee Hearing held on September 26, 2013 against Associate Justice Gregory S. Ong, Sandiganbayan*, the Supreme Court described “gross misconduct” as follows:³³

Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior; while “gross” has been defined as “out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused.”

96. Commission of a crime against humanity not only transgresses ordinary laws or rules, it is a most serious crime of concern to the international community as a whole. Indeed, it violates several fundamental rights and strikes at the heart of civilization itself.

97. Thus, we in KARAPATAN submit that the violation of RA 9851 should not be considered only through the lens of penal law. Rather, it should also be regarded as a serious administrative infraction. After all, those who are found guilty of its commission do not deserve at all to keep their public offices.

98. In addition to the administrative liability arising from the clear violations of RA 9851 and from the abovementioned incidents showing the pernicious and persistent acts of red-tagging and vilifying KARAPATAN and its members, I, CRISTINA PALABAY, for myself and in representation of KARAPATAN, likewise charge the Respondents of violating Section 19 of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989, which provides that:

³³ A.M. No. SB-14-21-J, September 23, 2014.

“Section 19. Administrative Complaints. - The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

- (1) **Are contrary to law or regulation;**
- (2) **Are unreasonable, unfair, oppressive or discriminatory;**
- (3) Are inconsistent with the general course of an agency's functions, though in accordance with law; Proceed from a mistake of law or an arbitrary ascertainment of facts; Are in the exercise of discretionary powers but for an improper purpose; or are otherwise irregular, immoral **or devoid of justification.**” (Emphasis supplied.)

99. Respondents are publicly accusing us in KARAPATAN of being a “legal front” of the CPP-NPA, which they have alleged to be “terrorists” or organizations engaging in acts of terrorism.

100. Without even providing a scintilla of evidence to support their self-serving yet slanderous claims against us, these respondent public officers have been going around different media platforms and even the Senate to malign and vilify us and the human rights work and advocacy that we do.

101. Aside from the violations of law under RA 9851, such vilifications in many forms and forums are clearly unreasonable, unfair, oppressive or discriminatory and devoid of any reasonable or acceptable justification.

102. These acts may even constitute the crime of libel both in the 1930 Revised Penal Code and the 2012 Cybercrime Prevention Act.

103. As discussed to us by our assisting counsels, libel has three elements, namely:

1. There must be a defamatory imputation;

2. There must be publication to third persons of the libelous matter; and
3. The person defamed must be identified in the libelous publication.

104. In the case of *Manila Bulletin vs. Domingo*³⁴, the Supreme Court expounded on what constitutes the crime of libel. Thus:

“An allegation is considered *defamatory* if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt, or which tends to blacken the memory of one who is dead. In determining whether a statement is *defamatory*, the words used are to be construed in their entirety and should be taken in their plain, natural, and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense. Moreover, a charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses or are sufficient to impeach the honesty, virtue or reputation or to hold the person or persons up to public ridicule.

Malice connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive. It is the essence of the crime of libel.

There is *publication* if the material is communicated to a third person. It is not required that the person defamed has read or heard about the libelous remark. What is

³⁴ G.R. No. 170341, July 5, 2017.

material is that a third person has read or heard the libelous statement, for "a man's reputation is the estimate in which others hold him, not the good opinion which he has of himself." Simply put, in libel, publication means making the defamatory matter, after it is written, known to someone other than the person against whom it has been written. "The reason for this is that [a] communication of the defamatory matter to the person defamed cannot injure his reputation though it may wound his self-esteem. A man's reputation is not the good opinion he has of himself, but the estimation in which others hold him."

On the other hand, to satisfy the element of *identifiability*, it must be shown that at least a third person or a stranger was able to identify him as the object of the defamatory statement. It is enough if by intrinsic reference the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the person alluded to; or if the latter is pointed out by extraneous circumstances so that those knowing such person could and did understand that he was the person referred to." (Citations omitted.)

105. From what we in KARAPATAN have experienced, we submit that the red-tagging by the respondents against us has all the elements of the crime of libel.

106. *First*, Respondents have maliciously accused us of being a legal front organization of the CPP-NPA, when in truth and in fact, KARAPATAN is a prominent, recognized and registered non-government organization or civil society organization - distinct and independent from any group - and which is openly, publicly and exclusively engaged in absolutely non-armed legal work, campaigns, advocacies and engagements with governments and other NGOs/CSOs both here and abroad as human rights defenders. That could not be any clearer.

107. By lumping us with the CPP-CPA, Respondents have likewise imputed upon us crimes alleged to have been authored by alleged members of the CPP-NPA.

108. We reiterate that KARAPATAN does not engage itself in any illegal activities as its advocacies include protection and promotion of basic human rights. Its work constitutes monitoring of cases of human rights violations and assisting victims and survivors of such atrocities. Additionally, Respondents have failed to provide evidence to support their self-serving allegations against us. It is an elementary principle, as discussed by our counsels, that “bare allegations, unsubstantiated by evidence, are not equivalent to proof.”³⁵

109. *Second*, these defamatory remarks have been published and circulated widely through different media platforms. Particularly, Respondents Parlade and Badoy even went out of the country to personally red-tag us and spread lies about us before the European Union.

110. *Lastly*, in all these defamatory publications, Respondents have clearly identified me and KARAPATAN as the subject of all these malicious imputations.

111. Pursuing a criminal case for libel or cyberlibel against Respondents is one among many options. For reasons of principles and other considerations, however, we shall confine for now the present charges against the respondents.

112. From the foregoing discussions, it is evident that the malicious red-baiting and terrorist-tagging by Respondents have proven to be dangerous for human rights defenders like us in KARAPATAN. It cannot be tolerated and those responsible held to account before impartial and independent bodies with the guarantees of due process effectively respected.

113. It is not innocuous. The implication of progressives to made-up charges has led to the killings of human rights defenders, enforced disappearances, illegal arrests and detention, torture, criminalization of their jobs and advocacies, and other defilements of their civil and political rights.³⁶

³⁵ *Gatan v. Vinarao*, G.R. No. 205912, October 18, 2017.

³⁶ Human Rights Council, Philippines, *UN report details widespread human rights violations and persistent impunity*, June 4, 2020,

114. These ill effects have been observed in the international arena. In fact, in its letter to President Rodrigo Duterte dated August 28, 2019, the New York City Bar Association succinctly said that red-tagging puts individuals at great risk and exposes them to threats, harassment, intimidation, physical injury, and even death.³⁷ In his report, former United Nations Special Rapporteur Philip Alston also said that before being neutralized, victims of extrajudicial killings were red-tagged and vilified first.³⁸ This is true, as in the cases of Jory Porquia, Atty. Benjamin Ramos, Randall Echanis, and Zara Alvarez, among others.

115. Ultimately, red-tagging has no place in a country that supposedly aspires to be egalitarian. It smears the very fabric of democracy as it suppresses an intellectual discussion on an informed thought or opinion. It tries to sweep every different yet valid idea under the rug just because the same is espoused by an individual or by a legitimate aggrupation of individuals critical of the powers that be.

116. This has to stop. Instead of denigrating and imperiling people for their lawful exercise of their constitutionally-guaranteed freedom of expression, the government should take note and address legitimate criticisms of its policies and practices.

117. In the final analysis, ensuring that human rights defenders are able to perform their activities free from harassment, threats, and harm is a fundamental element of the promotion and protection of human rights in the country.

118. Indeed, respondent public officers should be held criminally and administratively liable for the aforementioned acts that malign, vilify and baselessly red-tag me and KARAPATAN along with its officers and members.

<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25924&LangID=E> (last accessed November 28, 2020).

³⁷ New York City Bar Association. *Re: Continuing Attacks on Judges, Prosecutors, Lawyers, and Other Legal Professionals*, August 28, 2019, <https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-president-duterte-concerning-attacks-on-legal-professionals> (last accessed November 28, 2020).

³⁸ Philip Alston, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary executions: Mission to the Philippines*, 2008, https://www.hrdp.org/files/2014/06/27/Mission_to_Philippines_2008.pdf (last accessed November 28, 2020).

119. I am executing this Complaint-Affidavit to attest to the truth of the foregoing statements.

IN WITNESS WHEREOF, we have hereunto set our hands this ____ day of December 2020 in Quezon City.

CRISTINA E. PALABAY
Complainant

SUBSCRIBED AND SWORN TO before me, a notary public for and in _____ this ____ day of December 2020 at _____, with affiant presenting her _____ as competent evidence of her identity.

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2020.