



## **NATIONAL FACT-FINDING & SOLIDARITY MISSION**

Sta. Catalina, Manjuyod & Canlaon, Negros Oriental

**APRIL 4-8, 2019**

### **INITIAL REPORT OF THE NATIONAL FACT-FINDING AND SOLIDARITY MISSION TO NEGROS ORIENTAL April 4-8, 2019**

#### **FINDINGS, OBSERVATIONS, and ANALYSIS**

Certain facts concerning the events of March 30, 2019 are undisputed. To summarize, in the early hours of the said date, the Philippine National Police and the Philippine Army carried out a broad operation consisting of raids in civilian communities in Canlaon City and the municipalities of Manjuyod, and Sta. Catalina as part of *Oplan Sauron*.

Fourteen (14) persons were killed by state security forces during the raids in Canlaon City, Manjuyod, and Sta. Catalina, while a total of fifteen (15) persons were reportedly arrested in the said localities.

As to the crucial details of the operation, however, the PNP's official statements on the matter are glaringly inconsistent with numerous eyewitness accounts.

PNP officials, including then Negros Oriental Provincial Director Police Col. Raul Tacaca and PNP Director General Oscar Albayalde maintain that:

- a) The raids were carried out to enforce search warrants for loose firearms and explosives;
- b) All persons killed during the raids resisted security forces attempting to enforce the search warrants; and
- c) All persons killed were suspected members of the CPP-NPA-NDF or were alleged rebel sympathizers or supporters.

The body of evidence however, tells a different story. Eyewitness accounts and documents secured by the NFFM team establish that the raids conducted on March 30,



2019 were part of a well-orchestrated and broad operation, by state security forces, aimed at either KILLING or ARRESTING, on trump-up charges of illegal possession of firearms and explosives, persons suspected of being members or supporters of the CPP-NPA-NDF, as part of the government's counter-insurgency efforts.

As shown by the facts discussed in this report, the search warrants issued against the victims were nothing more than a *pretext* for the conduct of the operation; the use of lethal force was *premeditated*; the crime scenes were disturbed by the same raiding teams in an effort to conceal the crimes committed; and the PNP's statements to the effect that all 14 victims attempted to fight back are being used to evade liability for the murders.

With regard to those victims whose families and associates were interviewed by the NFFM team, eyewitness accounts are consistent as to the following facts concerning the operation in Canlaon City, Manjuyod, and Sta. Catalina:

- a) The raids occurred under cover of darkness, between 2:00 and 5:00 in the morning, with the victims and their families asleep.
- b) State security forces involved in the operations were armed with high-powered rifles, donning combat attire (either camouflage or all-black uniforms) and wore masks or bonnets to hide their faces. None of their uniforms bore visible nameplates that could be used for identification. These facts assured anonymity for the actions that would follow.
- c) State security forces immediately surrounded the victims' houses and forced their way inside, without previously identifying themselves as law-enforcement officers or giving the occupants the opportunity to read the search warrants or request assistance from barangay officials.
- d) No barangay officials were present at the time of entry into the victims' houses or at the time of the alleged search.
- e) State security forces dragged or forced other family members out of their sleeping quarters and into the adjacent rooms or outside their houses, where they were held at gunpoint, leaving the victims alone with the armed operatives.
- f) The victims were defenseless and already under the custody and control of state security forces when they were killed. Some of the victims were shot while still inside their sleeping quarters. Franklin Lariosa, on the other hand, was shot outside his house by armed operatives immediately after they had ascertained his identity.
- g) The victims were unarmed when they were killed by state security forces.
- h) Except for victim Sonny Palagtiw, the victims were shot multiple times. Said victims sustained wounds inconsistent with the PNP's claims that they had engaged with government forces.



- i) The victims' bodies were dragged by state security forces from the crime scene, placed into waiting vehicles and, then, taken away. The bodies were moved *without* SOCO or police investigators having processed the crime scenes.
- j) The families of the victims were ordered by state security forces to exit their homes. The operatives, then, planted small-caliber firearms, ammunition, hand grenades or rifle grenades inside the victims' houses. Thereafter, they reported that the victims were armed and had attempted to resist when government forces raided their homes.
- k) Copies of search warrants were either given to the victims' families only after the killings took place or such copies were never provided at all.
- l) Family members, relatives, and other acquaintances, including minors, witnessed the raids and the actual killings.
- m) Barangay officials, including those who signed the PNP inventories of items allegedly recovered from the crime scenes, arrived only hours *after* the raids and the killings had taken place.
- n) The PNP had declared all of the victims as either suspected members of the CPP-NPA-NDF or suspected sympathizers and supporters.

### ***Irregular Search Warrants***

The search warrants used by the PNP to justify the raids carried out on March 30, 2019, as well as the application filed by the PNP for the issuance of such warrants, were riddled with defects or irregularities.

To begin, numerous search warrants used in the operation were issued by a single judge, Judge Soliver C. Peras of Branch 10 of the Regional Trial Court of Cebu City.

This is a significant departure from standard court procedure which, as a general rule, requires applications for search warrants to be filed with the trial court which has jurisdiction over the territory where the crime is being committed.<sup>1</sup> In this case, the applications for search warrants for the seizure of loose firearms in Canlaon City, Manjuyod, and Sta. Catalina should have been filed with the Regional Trial Courts in Negros Oriental.

The fact that a single RTC judge all the way from Cebu City, Judge Peras, issued multiple search warrants used during the bloody operation on March 30, 2019, notwithstanding the presence of Regional Trial Courts in Dumaguete City, Bais City, Guihulngan, Bayawan City and Tanjay City, raises questions as to the propriety of proceedings leading up to the issuance of the search warrants in question.

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<sup>1</sup> Sec. 2(a), Rule 126, Rules of Criminal Procedure.



It is equally noteworthy that Judge Peras of RTC – Branch 10 of Cebu City also issued search warrants used in a similarly-broad police operation also in Negros Island back in December 2018, which led to the deaths of six (6) farmers. This fact suggests a scheme on the part of the PNP to abuse court procedures in order to secure warrants from a court official whom they may perceive as inclined to issue warrants for the purpose of counter-insurgency operations. This tactic undermines the legal safeguards intended to ensure the judiciary's impartiality in relation to applications for search warrants and to protect private individuals and property from unreasonable searches.

Second, the search warrants used during the March 30, 2019 operation fail to describe the places to be searched with sufficient particularity. While the warrants refer to the barangays in which the victims' homes are located, they do not include sketches or other details that should confine the search to a limited location, violating a procedural requirement that search warrants must particularly describe the place to be searched.<sup>2</sup>

Third, documents secured by the family of Nestor Kadusale, among those arrested in Manjuyod on March 30, 2019, showed that false information and wholly-fabricated testimony were used by the PNP to secure the search warrant.

According to the PNP's application for a search warrant against Kadusale, undercover police officers confirmed Kadusale's possession of the loose firearms when, pretending to be businessmen, they met with him on March 14, 2019, during the market day of Sitio Sampiniton, Brgy. Bantolinao, in Manjuyod town. At the said meeting, they expressed their interest to purchase firearms and, according to the undercover police operatives, Kadusale brought them to his home and showed him a .45 caliber pistol and a .38 caliber pistol.

Kadusale denied these allegations, pointing out that: (a) Sitio Sampiniton's market day fell on a Friday, a fact known to all residents of Barangay Bantolinao, and (b) Kadusale spent the entirety of March 14 harvesting sugarcane along with other farmers who could testify to this fact.

Even disregarding the veracity of Kadusale's defense, however, the PNP's application for a search warrant is rendered questionable by the very documents used by the police officers against him. Even as the undercover police operatives claimed that they conducted the surveillance and confirmed Kadusale's possession of loose firearms only on March 14, 2019, police records show that the request for Firearm Holder Verification filed with Camp Crame in Quezon City was executed on March 8, 2019, six days *before* the actual surveillance. This clearly suggests that the PNP had made false statements in its application for a search warrant.

The serious irregularities in the PNP's application for the search warrant against Nestor Kadusale is, at the very least, indicative of malicious intent behind the actions of its personnel during the events leading up to the operation on March 30, 2019. This fact also makes the bases of the applications for all search warrants used by the PNP, at best,

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<sup>2</sup> Sec. 4, Rule 126, Rules of Criminal Procedure.



suspicious and, at worst, unreliable as it significantly raises the probability of fabricated testimony used by the applicants.

### ***Irregularities in the Enforcement of the Search Warrants***

Eyewitness accounts revealed that state security forces immediately and forcibly broke into the victims' homes *without* giving *prior* announcement as to their presence and intention to enforce the search warrants. This was a violation of an established rule that a law-enforcement officer may break into a house to execute the warrant *only* if he is refused admittance to the place *after* giving notice of his purpose and authority.<sup>3</sup>

The said operatives also ordered the occupants to leave their houses as they supposedly searched the different rooms. Both the rules of criminal procedure and the PNP's operational rules strictly prohibit the conduct of a search of a house, room, or any other premises except in the presence of the lawful occupant, a member of his family or, in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.<sup>4</sup> With all the victims' family members kept outside the premises, and the barangay officials arriving only hours *after* the raid and the purported search, the operatives involved therein were in clear breach of the aforementioned rules.

The irregularities in the process of securing the search warrants and the above-discussed violations of explicit procedural rules as to their enforcement are explained by the actions of state security forces immediately after they broke into the victims' homes.

### ***Extra-Judicial Killings / Summary Executions***

Eyewitnesses interviewed by the NFFM team were all consistent in their accounts of circumstances surrounding the victims' deaths. These accounts disprove the PNP's claims that the victims resisted and engaged state security forces; rather, the facts show that the victims were executed and that the operation carried out on March 30, 2019 was launched for the purpose of carrying out extra-judicial killings or summary executions.

State security forces involved in the raids were in combat attire, with their faces and nameplates covered to prevent identification.

Immediately after gaining entry into their homes, state security forces proceeded directly to the victims' sleeping quarters. Family members were dragged out of the rooms, leaving the victims alone with multiple armed operatives. Victim Steve Arapoc,

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<sup>3</sup> Sec. 7, Rule 126 of the Rules of Criminal Procedure. Rule 14.5 of the PNP Revised Operational Procedures.

<sup>4</sup> Sec. 8, Rule 126, Rules of Criminal Procedure. Rule 14.6 PNP Revised Operational Procedures.



on the other hand, was forced down the stairs at gunpoint where he was physically abused before being killed.

Without provocation and while they were already under the custody and control of the raiding teams, the victims were shot and killed by the said operatives. Victim Franklin Lariosa was shot and killed outside his house immediately after he was identified by the raiding team.

The parallels in the killing of several persons within a span of a few hours in three different localities in Negros Oriental constitute a pattern indicative of a *conspiracy* to summarily execute the targets of the government's counter-insurgency campaign. Such conspiracy renders all persons who took part in the operation on March 30, 2019 equally liable for the murders.

With similar incidents in December 2018, the widespread use of search warrants as a pretext for the conduct of raids by state security forces leading to the murder of defenseless civilians has become notably pervasive in Negros Island. The PNP and Malacañang have defended the December 2018 operation and the one conducted only recently by flippantly pointing out that search warrants had been issued and that resistance to the enforcement thereof justified the killings. There is no legal basis for this claim:

The warrants issued for the search of the victims' homes do not, in any way, justify summary execution. A warrant, whether for the arrest of a person charged with a crime or the search of any premises, cannot justify the use of lethal force against the subject thereof. Similarly, mere suspicion of involvement in any offense does not authorize lethal action.

Even the PNP's operational rules state that the use of firearm is justified only if: (a) the offender poses an imminent danger of causing death or injury to the police officer or other persons, (b) in case of self-defense or the defense of another person where there is a *real threat* to the officer's his life, and the peril sought to be avoided is *actual, imminent and real*.<sup>5</sup>

None of the aforementioned conditions were present when the victims were killed by state security forces on March 30, 2019. The victims were unarmed and under the control of the said operatives when they were killed.

Alarminglly, the recent murders, and similar incidents that also took place in Negros Island in December 2018, are akin to the summary execution of drug suspects made vulnerable by the Duterte administration's *Tokhang* campaign in that the principle of *presumption of regularity* in the performance of law enforcement functions is heavily relied on to defeat claims of misconduct by state agents.

Such reliance on the *presumption of regularity* also lacks legal basis and should not shield the perpetrators of the recent killings from culpability. In the first place, no such

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<sup>5</sup>Rule 8.1, PNP Revised Operational Procedures.



presumption exists when a person is killed during police operations, regardless of any search warrant or warrant of arrest. The absolute necessity of the use of lethal force in the performance of one's duty is a matter of *defense*, and the law-enforcement officer who takes a life *bears the burden* of proving such necessity.

Second, no legal presumption can override clear accounts from *multiple eyewitnesses* that the officers in question shot and killed unarmed and defenseless persons already under their custody and control. Such are the circumstances attendant during the operation carried out on March 30, 2019.

The wounds sustained by the victims are also inconsistent with the PNP's narrative that they attempted to fight back. Except for Sonny Palagtiw, the victims were shot multiple times. Moreover:

- The seven (7) gunshots sustained by Valentin Acabal included wounds to his genital area and wounds that completely decimated his right thigh;
- Steve Arapoc was shot both in his back and chest as he was lying on the floor;
- Edgardo Avelino was shot twice in the chest and once in the center of the forehead, execution-style;
- Ismael Avelino's torso was riddled with at least eight (8) gun shots that his intestines burst from his body.

The horrific nature and extent of the victims' wounds belie any claim that the force used against them was – by any stretch of the imagination – reasonable, and erodes the PNP's credibility as to its claim that the killings were carried out under justifiable circumstances.

Finally, the fact that the raiding teams immediately "cleaned" the crime scenes by *removing the bodies* supports eyewitness accounts of summary execution. Such disturbance of a crime scene is *strictly prohibited* as it removes potential evidence of foul play.

Police procedural rules mandate the steps to be taken after an armed confrontation, including strict instructions that the site of the confrontation must be secured and "*all persons who died on the spot are not moved from their original position.*"<sup>6</sup>

The eyewitness accounts clearly and categorically attesting to the fact of summary executions, the additional fact that the raiding teams ensured anonymity by masking their faces and concealing their nameplates, and the immediate clean-up of the crime scene with the removal of the victims' bodies all point to no other conclusion than that state security forces committed murder on March 30, 2019.

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<sup>6</sup> Rule 8.5(e), PNP Revised Operational Procedures.



To be clear, the subject of this report does not involve mere irregularities in the procurement or enforcement of search warrants which resulted in the victims' deaths, or in the proper application of the presumption of regularity in the performance of a police officer's functions. Eyewitnesses explicitly stated that the victims were killed in cold blood by government forces, under the guise of a police operation for the search and seizure of loose firearms and explosives, and that, thereafter, firearms were planted in the victims' homes to convey the appearance of a firefight. The facts surrounding the deaths are consistent with their accounts.

### ***Planting of Evidence, Physical Abuse and Threats***

Eyewitness accounts are similarly consistent that, in the course of the raids conducted on March 30, 2019, state security forces planted firearms and explosives in the victims' residences.

The inventories of items allegedly confiscated from the victims' houses contained the purported signatures of barangay officials, serving as witnesses to the search of the victims' residences. Yet, these signed acknowledgments carry no weight since eyewitness accounts confirm that these officials arrived only hours *after* the raid and the killings.

The victims' family members also recounted that they were made to sign the same inventories. These signatures, however, were procured under the most intimidating and coercive of circumstances, with dozens of masked men carrying high-powered firearms present, without the assistance of local officials or lawyers, after the raiding teams had carried out the executions, and with the family members fearing for their own lives.

The aforementioned statements concerning the planting of evidence against the victims are also given credence by the significant variation between the firearms and explosives the PNP claimed were in the victims' possession when they applied for search warrants, and those allegedly recovered from their residences.

For instance, the search warrant against Nestor Kadusale claimed that he was in possession of one (1) .38 caliber pistol, one (1) .45 caliber pistol, and one (1) hand grenade; yet, the search of his house allegedly yielded only one (1) .38 caliber pistol.

The search warrant against Steve Arapoc claimed that he was in possession of one (1) .45 caliber pistol; yet, the raiding team claim they found one (1) .38 caliber pistol.

The search warrant against Corazon Javier claimed that she was in possession of one (1) .45 caliber pistol; yet, the alleged search yielded one (1) .38 caliber pistol, one (1) hand grenade, and ammunition for a .38 caliber revolver, but *no* .45 caliber pistol.

The search warrant against Azucena Garubat claimed that she was also in possession of one (1) .45 caliber pistol; yet, the inventory indicates that no such firearm was found. Instead, the raiding team alleged that they found one (1) rifle grenade, even though no rifle was recovered from her possession.



These inconsistencies cannot be disregarded as insignificant considering that the PNP personnel who apply for such search warrants attest, under oath, to the veracity of the information of their “confidential informants” and the accuracy of their surveillance operations. And yet, the actual searches lead to the “recovery” of entirely different firearms, along with rifle grenades (but without the rifles that would make them useful) which render the prospect of being released on bail significantly difficult. At the very least, these inconsistencies support eyewitness accounts that state security forces planted the evidence against the victims of their operation on March 30, 2019.

The victims’ family members were also subjected to physical abuse and the unnecessary use of force. Steve Arapoc’s younger brother, Mc Khillif Jun, was assaulted and handcuffed even though he never posed any threat to the raiding team. His sister, Keren Arapoc, was also molested and harassed when a male member of the raiding team profusely frisked her entire body.

The above-described acts make the operatives involved criminally liable for *coercion*, *physical injuries*, and *sexual abuse*.

### ***Violations of the Rights of Arrested Persons***

Of the fifteen (15) persons reportedly arrested by state security forces on March 30, 2019, the NFFM team was able to locate and interview four such persons detained at Canlaon City. Their accounts revealed that none of the said persons were read their *Miranda Rights*, as required by the 1987 Constitution, Republic Act No. 7438, and even the PNP’s own procedural rules.<sup>7</sup>

### ***Divestment of Property***

The victims’ family members who were interviewed by the NFFM team also reported the taking of money and other valuable items by state security forces during the raids.

In the course of the raids, armed operatives stole money and valuables in the total amount of Php 100,000.00 from the family of Sonny Palagtiw, Php 37,000.00 from the family of Valentin Acabal, Php 2,000.00 from the family of Edgardo Avelino, and Php 2,300.00 from Armogena Caballero. Cash in the total amount of Php 26,000.00 and cellphones were also stolen from the family of Steve Arapoc.

Property that may be the subject of search warrants and confiscation are limited merely to the following items: (a) personal properties subject of the offense; (b) stolen or

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<sup>7</sup> Rule 20.1(b), PNP Revised Operational Procedures.



embezzled personal properties and other proceeds, or fruits of the offense; or (c) personal properties used or intended to be used as the means of committing an offense.<sup>8</sup>

Furthermore, police operational guidelines explicitly state that lawful personal properties, papers, and other valuables not specifically indicated or particularly described in the search warrant shall not be taken.<sup>9</sup>

In stealing the aforementioned monies and valuables, the members of the raiding teams committed theft which, in the context of an internal armed conflict, constitutes a violation of international humanitarian law prohibiting the destruction or divestment of civilian property.

### ***Trauma***

The eyewitnesses interviewed by the NFFM team were mostly family members who were themselves inside the houses raided by state security forces on March 30, 2019. Said witnesses gave detailed accounts of the incidents, from the sudden and forced entry of armed operatives to the killings that took place soon after.

Notably, some of the witnesses to the executions are minors. Franklin Lariosa's two children were only 4 and 9 years old when they saw their father gunned down by state security forces. Lariosa's four-year-old son was right beside him when he was shot and killed by the raiding team.

Edgardo Avelino's son and daughter were twenty-one (21) and sixteen (16) years old, respectively, at the time of his murder. His daughter suffered a nervous breakdown after the incident. Ismael Avelino's children were ten (10) years old and five (5) years old when they were forced out of the room just before he was shot multiple times while lying in his bed.

Three of Steve Arapoc's 10 siblings – aged 14, 10, and 6 – were also in the house when Arapoc was shot several times while lying sprawled across the sala.

The victims' family members had to endure the sight of their loved ones' bodies bearing horrific wounds, carried or dragged away by members of the raiding teams, and unceremoniously dumped into trucks.

The trauma brought upon the family members – both adults and underage alike – cannot be overlooked or underestimated. Verily, the delivery of psycho-social assistance to the said families is both warranted and necessary.

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<sup>8</sup> Sec. 3, Rule 126, Rules of Criminal Procedure. Section 14.1(a) of the PNP Revised Operational Procedures.

<sup>9</sup> Rule 14.6(b), PNP Revised Operational Procedures.



## ***Recommendations***

Based on the foregoing and the demands expressed by the respondents, the NFSM recommends the following:

1. Demand justice for the 14 slain farmers and other victims of human rights abuses in Negros Island, as well as the unconditional release of the 15 reported arrested, the four identified are currently detained on fabricated trumped up charges in line with the PRO-7's anti-insurgency Oplan Sauron;
2. Hold the perpetrators accountable including those identified such as Regional Director of Police Regional Office (PRO)-7 PSupt. Debold M. Sinas, Negros Oriental Police Chief Colonel Raul Tacaca, Canlaon City Police Chief Lieutenant Colonel Patricio Degay, Manjuyod Police Chief Lieutenant Roy Mamaradlo, Santa Catalina Police Chief Captain Michael Rubia, the 94th Infantry Battallion of the Philippine Army, Judge Soliver C. Peras of Branch 10 of the Regional Trial Court of Cebu City, PNP Spokesperson Bernard Banac, and PNP Chief Oscar Albayalde;

*Proof of involvement of the officers above on the operations:*

1. *"The law enforcement operations were legitimate and covered with warrants issued by the court,"* PNP spokesman Col. Bernard Banac told The STAR in a text message yesterday.

*"We are certain there was resistance because ample force will not be used if there is no threat to the lives of our police officers,"* Banac said.

(<https://www.philstar.com/nation/2019/04/01/1906183/pnp-defends-bloody-police-ops-negros>)

2. .... *So meron pong hindi nanlaban at naaresto. Itong mga 14 ito 'yung mga sinasabi nilang nanlaban. Hindi naman siguro magpapaputok 'yung ating mga pulis kung hindi naman talaga nanlaban itong mga taong ito dahil kung talagang ang intensyon dyan ay talagang patayin lahat yan, then all of them probably including the 12,"* said PNP Chief Oscar Albayalde in a press conference in Camp Crame.

(<https://www.sunstar.com.ph/article/1799524/Manila/Local-News/PNP-Killing-of-14-farmers-in-Negros-Oriental-not-a-massacre>)

3. Sinas said that during the operation, they were able to recover short firearms, lists of sketches of police camps, names of police officers, and time they will be patrolling.

(<https://www.philstar.com/the-freeman/cebu-news/2019/04/02/1906675/sinas-its-not-massacre#YHuHuoJPhYq5iVVI.99>)



3. Scrap all the anti-insurgency programs including the Executive Order 70 establishing a whole-of-nation approach in ending local insurgency, the Memorandum Order 32 placing Negros Island, Bicol, and Samar, under the "state of emergency", the local synchronized enhanced management of police operations (SEMPO) and its sequel SEMPO II dubbed as "Oplan Sauron", and stop militarization of peasant communities.

***Stop the Killings!***

***Justice For Negros<sup>14</sup>!***

***Drop All Trumped Up Charges!***