

# **Bicol (Philippines) - The Masbate landmining incident three years hence: “One country, two systems” of justice**

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**Three years after the 6 June 2021 Masbate landmining incident, the questions are not so much about the identity of the perpetrators as they are about holding them accountable and liable so that justice is rendered to them and to their victims.**

The victims were awarded Far Eastern University (FEU) footballer Kieth B. Absalon, 21, his cousin labor union leader Nolven T. Absalon, 40, and the latter’s son Chrysvine Daniel C. Absalon, then 14, all of Masbate City. Kieth and Nolven were killed, and Chrysvine was seriously wounded, when they were hit by shrapnel from an improvised explosive device (or landmine) and by ensuing assault rifle gunfire (at least in the cases of Kieth and Nolven) deployed and unleashed against them by a unit of the New People’s Army (NPA) while they were biking with four other biking companions in the Masbate Bikers Cub along a coastal road in Purok 4, barangay Anas going toward barangay B. Titong, Masbate City, Masbate province around 6:45 a.m. on 6 June 2021.

The NPA commands for the Bicol region (Romulo Jallores Command, RJC) and Masbate province (Jose Rapsing Command, JRC) soon after, on 8 June 2021, criticized themselves for this “failed demolition action” which “unintentionally” and “wrongfully” damaged civilian life and safety, and “unhesitatingly accepted” the occurring “weakness and error” in the said “military action.” This was seconded later that same day by Marco Valbuena, chief information officer of the Communist Party of the Philippines (CPP), and added that “The entire CPP and NPA take full responsibility for the tragedy.”

The investigation, prosecution and trial of the concerned NPA perpetrators of what we refer to as the Masbate landmining incident of 6 June 2021 has taken two roads - that of the Philippine legal system and that of “the legal system of the People’s Democratic Government” under the CPP-NPA-National Democratic Front of the Philippines (NDFP). How have these two legal systems proceeded and what have they achieved so far to render justice to both the perpetrators and the victims? Let us deal first with the Philippine legal system. Under this system, there have actually been two forums: investigation by the independent constitutional Commission on Human Rights (CHR); and investigation, prosecution and trial under the Philippine criminal justice system involving the police, the prosecution service and the courts.

## **(1) CHR Investigation and Resolution**

The CHR Region V office investigation of the Masbate landmining incident as a human rights violation was speedily and commendably completed just about a month after the incident with the issuance of three Resolutions dated 7 July 2021 in **CHR-V-2021-0268 to 0270**, one Resolution each for the three victims. All three cases were designated as being “**For: Arbitrary Deprivation of Life (EJK)** - Art. 3 of UDHR, Art. 6 of ICCPR, Article III of Geneva Convention of 1949, Art. 13 of

Protocol II of the Geneva Convention, CARHRIHL, Sec. 1 of Art. III of the 1987 Philippine Constitution, R.A. 9851 and Art. 248 of the RPC.” With these several international and domestic human rights instruments as terms of reference, the issue for the CHR in all three cases was whether respondents 24 alleged NPA members led by Eddie “Ka Star” Rosero committed human rights violations against the three victims.

All told, the CHR made reference to four international legal instruments:

1. **Universal Declaration of Human Rights**, Article 3 on the right to life and security of person
2. **International Covenant on Civil and Political Rights**, Article 6(1) on the inherent right to life.
3. **Geneva Conventions of 1949**, Common Article 3(1)(a) prohibition on violence to life and person, in particular murder of all kinds
4. **Additional Protocol II of the Geneva Conventions**, Article 13 on protection of the civilian population, particularly par. (2) that civilians shall not be the object of attack

And to five domestic legal instruments:

1. **1987 Philippine Constitution**, Article III, Section 1 on non-deprivation of life without due process
2. **Philippine Act on Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity** (Republic Act No. 9851), several provisions including on the war crime of directing attacks against civilians not taking direct part in hostilities [this is Section 4(c)(1)]
3. **Revised Penal Code** (RPC), Article 248 on Murder
4. **GRP-NDFP Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law** (CARHRIHL), several provisions including Part III, Article 2(3) on the right of the victims and their families to seek justice for violations of human rights, including adequate compensation or indemnification, restitution and rehabilitation, and effective sanctions and guarantees against repetition and impunity
5. [and particularly for the surviving injured minor victim Chrysvine who had a traumatic amputation of the second or point finger of his right hand] **Special Protection on Children in Situations of Armed Conflict Act** (R.A. No. 11188), Section 9(a) prohibiting grave child rights violations, including (3) intentional maiming of children, as well as the Section 7(f) right to be protected from maiming.

The CHR most significantly posits that “**The CARHRIHL** is not only an agreement between the Government of the [Republic of the] Philippines and the CPP/NPA/NDF but it **is also recognized as a human rights instrument.**” (emphasis mine) For this, the CHR cites the Concurring Opinion of Justice Leonen in the 2014 Decision of the Supreme Court in the case of *Ocampo vs. Abando*:

...This agreement establishes the recognition of the existence, protection, and application of human rights and principles of international humanitarian law as well as provides the following rights and protections to individuals by the CPP/NPA/NDF.

**Stated otherwise, this non-state armed group is recognized as also a duty-bearer for human rights (not just international humanitarian law), and consequently can be held accountable for human rights violations (not just IHL violations) just like states or**

**governments and the security forces.** Note for one the CHR's specification or designation of the herein human rights violation as "**For: Arbitrary Deprivation of Life (EJK)**" or Extra-Judicial Killing, a charge usually levelled against state actors or agents. But in this case, they would appear to be "state agents" of the "People's Democratic Government" of the CPP-NPA-NDFP.

The CHR investigation was based on the Complaint-Affidavits of Vilma B. Absalon (mother of Kieth) and Cristine C. Absalon (widow of Nolgen and mother of Chrysvine) and the supporting papers gathered by the Philippine National Police (PNP) Masbate City Police Station (for its own Investigation Report dated June 19, 2021), including a cited "After SOCO [Scene of the Crime] Report of the PNP Masbate Provincial Crime Laboratory Office dated June 6, 2021. The CHR Investigation notably also made reference to the separate CPP-NPA statements of NPA Bicol Regional Operational (Romulo Jallores) Command spokesperson Raymundo Buenferza and of CPP Chief Information Officer Marco Valbuena, both on 8 June 2021, taking full responsibility for the "June 6 Masbate tragedy," posted in the CPP-NPA website.

On the basis of the above-quoted *Ocampo* case pronouncement of Justice Leonen, the CHR "measures the CPP-NPA's undertaking, based on the provisions contained in the CARHRIHL. Thus, the undersigned [CHR Region 5 Attorney IV Atty. Xaviera Marie V. Revereza, approved by Regional Human Rights Director Atty. Arlene Q. Alangco] rules that the NPA committed not just a plain human rights violation but a grave one." The CHR ruling elaborates:

The claim of the CPP-NPA that the killing of KIETH (and NOLVEN) was done unintentionally appeared to be misled. As positively witnessed by CHRYSVINE, KIETH (and NOLVEN) was still alive after the blast. Had it not [been] for the series of gunshots fired by the respondents, he could have been rescued and given timely medical attention that could have saved his [life]. The respondents targeted the victim and fired gunshots deliberately inflicting severe damage and impunity. The two (2) IED blasts and seventy-nine (79) fired cartridges recovered in the scene of the explosions were proof of disproportionate force tossed to victims who could not afford to counter the attack.... With the death of KIETH (and NOLVEN), respondents' acts were willful disregard of the victim's rights to life and security as embodied under [the above cited international and domestic instruments].

The three CHR Resolutions all conclude that the subject victim "suffered human rights violation/abuse, thus granting of financial assistance to him (or his heirs)... is hereby RECOMMENDED.... The subject matter of this complaint for human rights violation is also the subject of a criminal complaint before the Office of the City Prosecutor of Masbate City... hence, let this complaint be CLOSED/TERMINATED." With this conclusion, the CHR considers the human rights violation matter before it to be completed and leaves the rest of the way for the quest for justice to the criminal justice system proceedings.

The CHR, in this and other investigations of local communist armed conflict incidents, has emerged as an independent, competent and credible mechanism for the monitoring and investigation of such incidents. Along with likewise independent, competent and credible civil society peace and humanitarian organizations, the CHR can help fill the gap of the suspended Joint Monitoring Committee (JMC) under CARHRIHL which has unfortunately become a stalemated mechanism that has been used mainly by one side against the other side for scoring propaganda points. This is due to the provision therein whereby complaints of human rights and IHL violations allegedly committed by one party are to be investigated by that party itself which is complained against. In other words, the AFP to investigate AFP units complained against, and the NPA to investigate NPA units complained against. Unfortunately, the warring parties have so far proven to be untrustworthy in honestly dealing with violations by their own respective forces.

## **(2) Criminal Justice System Investigation, Prosecution and Trial**

The Philippine criminal justice system for the investigation, prosecution and trial of criminal offenses and which processes involve mainly the police, the prosecution service and the courts. There are two general levels of investigation: police investigation, and preliminary investigation by the prosecution service to determine probable cause for bringing cases to court for trial and judgment. In the case of the Masbate landmining incident of 6 June 2021, these two levels of investigation were conducted speedily enough. As mentioned earlier, the Masbate City Police Station (MCPS) issued its Investigation Report on June 19, 2021 and filed a total of seven (7) complaints against 24 respondents with the Masbate City Prosecution Office (MCPO) on June 21, 2021. In turn, the MCPO, after also hearing the three Suson sisters respondents, issued its preliminary investigation Joint Resolution on July 30, 2021, resulting in the **initial filing of five (5) Informations** or formal charges which were docketed and eventually referred to **RTC Branch 48 Masbate City**, a Family Court (considering that one victim was a minor), as follows:

1. **Crim. Case No. 21293** - Violation of Sec. 6(a) of RA 9851, **Crime Against Humanity**
2. **Crim. Case No. 21294** - Violation of Sec. 4(c)(25)(iv) of RA 9851, **War Crime**
3. **Crim. Case No. 21295** - **Murder** (of Kieth Absalon)
4. **Crim. Case No. 21296** - **Murder** (of Nolgen Absalon)
5. **Crim. Case No. 21296** - **Attempted Murder** (of Chrysvine Absalon)

The MCPO had **earlier dismissed two (2) other charges**, as these were considered as “necessary means” that are “absorbed” in the crimes of Murder, Attempted Murder, and Violation of RA 9851, namely Violation of RA 10591, **illegal possession of firearms**, and Violation of RA 9561, **illegal possession of explosives**.

However, after a later MCPS complaint for Terrorism against the original 24 plus an additional 6 new respondents, the MCPO issued a second preliminary investigation Joint Resolution on February 24, 2022, resulting in the filing of the sixth Information or case, which was docketed and referred to RTC Branch 48 Masbate City, as follows:

6. **Crim. Case No. 21692** - Violation of Sec. 4(a) of RA 11479, **Terrorism**

The Terrorism cases against all the said additional 6 new respondents and 2 of the original 24 accused were dismissed on preliminary investigation by the MCPO for lack of probable cause, thereby reducing the number of accused to 22 for the Terrorism case only. It is interesting to note though that among the additional 6 new respondents whose cases were dismissed were no less than CPP Founding Chairman Jose Maria C. Sison, Rogelio Suson @ “Ka Manong/Julio” (father of the three original accused Suson sisters), and Dindo Monsanto @ “Ka Buddy” who would be later captured.

In the Terrorism, War Crime and Crime Against Humanity cases, the public complainant was the Masbate City Police Station or its Chief of Police PLTCol Steve N. dela Rosa. In the Murder and Attempted Murder cases, the private complainants were the victims’ next of kin Vilma Absalon and Christine Absalon.

It is these above-said six court cases that matter in the final analysis, not the earlier investigation stages, even as there are important, even crucial, pieces of information that can be drawn for one’s own judgment.

### (3) **The Judicial Quest for Justice So Far**

The first significant trial development was the **RTC Branch 48 Masbate City Joint Order of Judge Designate Jose Ronald M. Bersales dated June 16, 2022** in all six cases, which granted the defense Demurrer to Evidence (a motion to dismiss for insufficiency of prosecution evidence) of accused Mariel Suson, represented by private defense counsel Atty. Ricar N. Vasquez. Mariel, a public elementary school teacher but whose father Rodelio Suson is “tagged by the Army as member of the CPP/NPA,” was the only accused who was arrested and had come under the court’s jurisdiction at the time. She, her two sisters Maila and Marla Suson, and three others Richard Lurio, Lloyd Mores Escorel, and Lenie Cabarles on board two motorcycles were charged as “spotters” and “sweepers” in aid of the ambushing NPA unit. The 18 others among the 24 accused were identified by two eyewitnesses and charged as commanders and fighters of this ambushing NPA unit, a platoon led by the principal accused Eddie Rosero @ “Ka Star” under Larangan 1 (Guerrilla Front 1, northern Masbate), KP 4 (Komiteng Probinsya or Provincial Committee 4 for Masbate), BRPC (Bicol Regional Party Committee) who went “down the hill” after the landmine explosion towards its fallen victims. By the said Joint Order, Mariel was acquitted in all six cases due to the materially inconsistent and not credible testimony of the lone prosecution witness, a *habal habal* driver, who purportedly identified her. The three Suson sisters appear to be victims of “guilt by association” through family ties with their father as a wanted NPA.

What followed seemed like an anarchy of litigation and tribunals. With the filing of the new or additional sixth case for Terrorism, RTC Branch 48 Masbate City soon after referred it to **RTC Branch 23 Naga City**, the nearest “Anti-Terrorism Court” under the Supreme Court’s **A.M. No. 21-08-07-SC** dated 22 March 2022, and here it was re-docketed as **Crim. Case No. 2022-0849**. The rest of the above-listed initial five cases stayed with RTC Branch 48 Masbate City. But after all the Judges in RTC Masbate City there inhibited themselves from hearing those cases, after the private complainants of the aggrieved Absalon family expressed “fear that they may not be able to have an impartial trial in Masbate City,” and upon separate requests of both the prosecution and defense, the Supreme Court Second Division only on October 4, 2023 ordered the transfer of venue of the five cases to **RTC Taguig City**, Metro Manila, with the RA 9851 cases to be raffled between the two “IHL Courts” in Taguig City under the Supreme Court’s **A.M. No. 18-07-25-SC** dated 7 August 2018, and the Murder and Attempted Murder cases to be raffled to any regular RTC in Taguig City. As things stand now, these five cases are lodged and docketed there, as follows:

A. **At RTC Branch 70 Taguig City**, an “IHL Court” -

1. **Crim. Case No. 7812-D** - Violation of Sec. 6(a) of RA 9851, **Crime Against Humanity**
2. **Crim. Case No. 7813-D** - Violation of Sec. 4(c)(25)(iv) of RA 9851, **War Crime**

B. **At RTC Branch 153 Taguig City**, a regular court—

3. **Crim. Case No. 7814** - **Murder** (of Kieth Absalon)
4. **Crim. Case No. 7815** - **Murder** (of Nolgen Absalon)
5. **Crim. Case No. 7816** - **Attempted Murder** (of Chrysvine Absalon)

As may be expected, with these court venue transfers, the trials of these cases as to six newly arrested or surrendered accused has moved much slower than the earlier police and prosecution service investigation stages which together took only less than two months. Now, three years hence the Masbate landmining incident of 6 June 2021, where do things stand in all the afore-mentioned six court cases? One case is in RTC Branch 23 Naga City, two cases are in RTC Branch 70 Taguig City, and three cases are in RTC Branch 153 Taguig City. The said six newly arrested or surrendered

accused are the two other Suson sisters Maila and Marla, also public elementary school teachers, and Eddie Esser @ "Ka Nono," Jomar Tugbo @ "Ka Alden," Rolly Hermina, and Noel Flores @ "Ka Jesmar." The last four accused had been identified to be part of the ambushing NPA unit. Noel Flores @ "Ka Jesmar" had been identified by two eyewitnesses as the NPA unit member who finished off with assault rifle gunshots at close range the fallen but still alive Nolgen Absalon. Principal accused then at large Eddie Rosero @ "Ka Star" had in turn been identified by the same two eyewitnesses as the NPA unit leader who likewise finished off with assault rifle gunshots at close range the fallen but still alive Kieth Absalon.

It is ironic that it is the latest filed court case, **the Terrorism case**, itself transferred from RTC Branch 48 Masbate City to **RTC Branch 23 Naga City** where it was re-docketed as **Crim. Case No. 2022-0849**, that was the next one among the six court cases to have a significant resolution. This was the **Order of Presiding Judge Valentin E. Pura, Jr. dated 14 November 2023** which granted the defense Demurrers to Evidence for all above-said six accused who had come under the jurisdiction of the court at the time. Just like the earlier dismissed cases against accused Mariel Suson, this lone Terrorism case against the said six accused turned on the issue of prosecution witnesses' "reliability and credibility of identification" of the accused being "seriously impaired" by "the totality of circumstances," no less than 21 of which were enumerated by the court. Based on this insufficiency of positive identification of the accused, "the court finds no further need to dwell on the second element of the crime charged," particularly the terrorist purposes of the acts undoubtedly intended to cause death and serious bodily injury to persons under the charged violation of Sec. 4(a) of RA 11479, i.e. *Terrorism* in general. Note that this pertains to certain acts that have a terrorist purpose, and does not entail the characterization of the perpetrators' organization (in this case the NPA) as "terrorist" whether by designation under Sec. 25 or by proscription under Sec. 26.

On the other hand, in **the three murder and attempted murder cases, Crim. Cases Nos. 7814 to 7816** in **RTC Branch 153 Taguig City**, the **Order of Presiding Judge Mariam C. Bien dated 05 February 2024** denied the defense Demurrers to Evidence for the same six accused in this general way: "After an assessment of the arguments of the parties and the evidence adduced by the prosecution, this court finds that there is sufficient basis to support the charges in the informations against" them. As of this writing, a defense Motion for Reconsideration thereof is pending resolution. If denied, the defense would have "to present controverting evidence."

In **the two RA 9851 violation (Crime Against Humanity, and War Crime) cases, Crim. Cases Nos. 7812-D and 7813-D** in **RTC Branch 70 Taguig City**, the **Order of Presiding Judge Bernard Pineda Bernal dated 12 April 2024** set the cases of the same six accused for "the initial presentation of defense evidence." But as of this writing, the defense had just filed a manifestation adopting their Demurrers in the Branch 153 cases.

It might be noted that much, if not all, of the prosecution evidence for all six cases (initially against accused Mariel Suson only) in RTC Branch 48 Masbate City was adopted when these cases were broken up by category and transferred to RTC Branch 23 Naga City as "Anti-Terrorism Court," RTC Branch 70 Taguig City as "IHL Court," and RTC Branch 153 Taguig City as regular court. It remains to be seen whether the same arrangement will be made as far as defense evidence is concerned.

Justice in the Philippine court system is typically slow but worse than that sometimes elusive. By justice we mean giving what is due the victims and the perpetrators. This includes holding liable and punishing the truly guilty while sparing the innocent, those wrongly or wrongfully implicated, including by mere association and family ties. **Philippine court justice in the herein Masbate landmining incident case would be (or would have been) better served by less anarchy of litigation and tribunals like that described above.** Ideally, all related six cases arising from one

incident with the same parties would have been **better heard as consolidated cases for joint trial before just one court** as close as possible, by location and by mother tongue, to the parties, the victims' family, the witnesses and even the prosecution and defense lawyers. After all the RTC Masbate Judges inhibited from the cases and "that private complainants have every reason to fear that they may not be able to have an impartial trial in Masbate City," that one court could have been the still relatively nearby RTC Branch 23 Naga City, an "Anti-Terrorism Court," which had already heard the prosecution case in the one Terrorism case against six accused (albeit largely adopting the prosecution evidence earlier presented in RTC Branch 48 Masbate City for all six cases but against accused Mariel Suson only). There is no reason why RTC Branch 23 Naga City, which is also a regular court, could not have also similarly and impartially heard the five other cases that instead were transferred to two RTC Taguig City branches, Branch 70 an "IHL Court" and Branch 153 a regular court. But in fact, there is also the still relatively nearby "IHL Court" of RTC Branch 3 Legazpi City. Where is "the method in the madness"?, one might ask.

Instead of judicial economy, coherence and consistency, which also make for speedier justice, there are now instead elements of dissonance, chaos and anarchy as well as concomitant delays among three court venues for three categories of cases: Terrorism, IHL and regular. A fourth category is Family Court when a minor accused or victim is involved, like the Masbate landmining incident's minor surviving victim Chrysvine Absalon. Thus, all six cases arising from this incident were initially lodged with the RTC Masbate City Family Court, Branch 48. But later, we see that for the same six accused in one incident, there are conflicting rulings on basically the same defense Demurrers to Evidence. RTC Branch 23 Naga City (and even earlier RTC Branch 48 Masbate City) granted the Demurrers thus dismissing the Terrorism case against the six accused, while the two RTC Taguig City branches (at least Branch 153) denied the Demurrers thus proceeding to defense evidence presentation in continuation of trial in the five other cases against the same accused.

The anarchy of litigation has to do not only with tribunals but also with the kind of criminal cases filed and/or not filed arising from incidents clearly in the context of the local communist armed conflict (and for that matter the Moro armed conflict) as shown in already many court cases. One often sees the simultaneous and selective filing of various combinations of cases taken from this menu: Terrorism (RA 11479), Terrorist Financing (RA 10168), War Crimes (RA 9851 Sec. 4), Crimes Against Humanity (RA 9851 Sec. 6), Rebellion (RPC, Art. 134), Murder (RPC, Art. 248), Kidnapping (RPC, Art. 267), Arson (PD 1613), Illegal Possession of Firearms (RA 10591), Illegal Possession of Explosives (RA 9561), and likely soon enough Grave Child Rights Violations (RA 11188). The selective filing of charges sometimes seems like a "favor of the month" syndrome, especially after certain new special laws such as on war crimes and then on terrorism came into effect.

**Where an act of armed hostility like an ambush has been clearly committed by a NPA unit or elements especially against government armed forces, Rebellion for one should be charged as a rule.** Sometimes it is, but sometimes it is not, depending on the investigating prosecutor/s or prosecution panel. It was not charged in the Masbate landmining incident case, likely to allow the filing of Murder charges that are generally easier to prosecute than Rebellion. Otherwise, common crimes like Murder, Kidnapping and Arson (but not all common crimes) that are committed in furtherance of Rebellion would be considered absorbed in, as inherently part of, this political offense, under the old Huk-period but still governing 1956 *Hernandez* doctrine. But not War Crimes and Crimes Against Humanity, per the above-mentioned *Ocampo* case Concurring Opinion of Justice Leonen. And also not Terrorism, which is distinct but not mutually exclusive from Rebellion, per Justice del Castillo's majority ruling in the 2017 Supreme Court Decision in *Lagman vs. Medialdia*.

**The usual prosecution prerogative in determining which criminal cases to file arising from one incident needs better guidance for when there is a clear context of rebellion and**

**internal armed conflict.** Note also then Chief Justice Sereno's Dissenting Opinion in *Lagman* pointing out the distinction between rebellion (under domestic criminal law) and armed conflict (even internal, under IHL) based on their respective elements and factors, with corresponding different applicable legal regimes. The charging of the proper offense/s based on the facts and circumstances with the best possible ascertainment from the available evidence at the preliminary investigation stage is also part of substantive due process, with a view to giving both the victims and the perpetrators their just due. This militates against weaponization of the law for counter-insurgency or for propaganda in violation of fair play, truth and justice that are the established parameters of court proceedings. This may have some bearing too on the peace process or whatever is left of it. On the other hand, the peace process, if successfully completed to include a component of transitional justice, might be able to address whatever remains unfulfilled in the judicial quest for justice. Unfortunately, a just peace does not appear to be forthcoming on the horizon, whether in the back channels or in the front lines in the field.

#### **(4) Relevant Field Developments**

Later in the same day of the Masbate landmining incident of 6 June 2021, government forces launched hot pursuit operations against the ambushing NPA unit of Eddie Rosero @ Ka Star and briefly encountered part of it in a firefight in barangay Mapiña, Masbate City. No casualties on both sides, "but government troops recovered eight pieces 8mm round bar as Bomb Enhancement, one improvised blasting machine, more or less 70 meters firing wire," among others. And then, just two days later, on June 8, three NPA rebels believed to be part of the said ambushing NPA unit were killed by pursuing government forces in another encounter in the same barangay Anas, Masbate City where the Masbate landmining incident earlier occurred. Government troops also recovered a number of assault rifles and "bomb parts in a nipa hut at the boundary of barangays Anas and Bolo." Such encounters, including tactical offensives by the NPA, have since continued intermittently in various parts of Masbate province.

On April 18, 2022, one of the named accused members of the ambushing NPA unit, Rolly Hermina, was captured in a manhunt operation based on an arrest warrant issued by RTC Masbate City, and thus came under the court's jurisdiction. A few other named accused ambushing NPA unit members were similarly arrested in the course of the continuing local communist armed conflict.

Around the last two weeks of March 2023, starting March 20, there were armed hostilities between the NPA and the Philippine Army (PA)/ Philippine National Police (PNP) involving the use of explosive weapons near several countryside public elementary and secondary schools that traumatized and adversely affected such schooling in the seven municipalities of Dimasalang, Placer, Cawayan, Esperanza, Cataingan, Uson and Pio V. Corpuz. This made national headlines. News reports indicate at least 55,199 students, 2,815 teachers and 140 schools constrained to shift their classes from in-person to modular distance learning to ensure their safety from the crossfire and cross-explosions.

On May 9, 2023, Dindo Monsanto @ Boy was arrested in a collaborative effort of the PA and the PNP in Malabon City. Monsanto was said to be the then commanding officer (CO) of the Regional Operations Command (ROC) of the BRPC, in other words, commander of the NPA-Bicol Romulo Jallores Command (RJC), and also said to be a member of the Central Committee (CC) of the CPP. His "counterpart," the PA 9<sup>th</sup> Infantry Division (9ID) and Joint Task Force Bicolandia (JTFB) commander MGen Adonis Bajao described him further as "the mastermind behind major terroristic attacks in Bicol," including the Masbate landmining incident of 6 June 2021. It will be recalled that his name Dindo Monsanto @ "Buddy" appeared as one of the six new respondents (including Jose Maria Sison and Rogelio Suson, added to the original 24 accused in the first five non-terrorism cases) in three new Terrorism complaints by the MCPS, but the charges against all six new



respondents as well as two original accused were dismissed at the preliminary investigation level of the MCPO before it filed just one Terrorism case, the last of six various cases, with the RTC Masbate City.

And then on August 19, 2023, the principal accused in the Masbate landmining incident cases Eddie Rosero @ "Ka Star" was himself killed with three others in the mountainous area of barangay Jagnaan, San Jacinto, Ticao island, north of mainland Masbate. 9ID spokesperson Maj Frank Roldan said that "Justice has finally been served to the Absalon family and to the rest of the members of the communities who fell prey to the abuses caused by Communist Terrorist Group (CTG) members. The perpetrators behind the tragic killing of football player Kieth Absalon and his cousin Nolven have answered to (sic) the consequences of their actions." That may be so, but one must also ask about the quality, the kind or the desirability of "justice" that is delivered through military operations by one or the other side, by both sides. What is clear is that the judicial quest for justice as far as Rosero is concerned has come to the end of that road because, with his death during the pendency of his cases, these are deemed dismissed as to him. Victims and complainants in such cases would normally not be happy about that kind of escape from court justice. Not of small consolation though to Kieth's family is his life-size statue as a footballer near the entrance of the Masbate Provincial Athletic Grounds, Masbate City to mark the first anniversary of his death as unveiled on 6 June 2022.

On the other hand, on August 22, 2023, the NPA-Masbate Jose Rapsing Command (JRC) issued a "Red Salute" statement of "highest honor" to Eddie Rosero whom "the Masbateño masses knew as Ka Star/ Art/ Picolo. For the masses, he was the great hero of the Masbateño people... He was one of the most highly regarded Red commanders of the revolutionary movement in the province... Because of his skill in advancing the armed struggle, he was elected as a regular member of the provincial committee (of the CPP)." With regards to the local communist armed conflict, it seems like almost two worlds (not just countries), in terms not only of justice systems but also of pantheons of heroes, martyrs and victims. At the same time, the JRC condemned the "massacre" of the "three civilian women" in the proximity of Rosero - who were "indiscriminately killed by the military despite their clear civilian status." One might also point out or ask (how) about the "clear civilian status" of the victims Kieth and Nolven Absalon in the Masbate landmining incident.

In the most recent International Crisis Group (ICG) Report of 19 April 2024 on the local communist armed conflict titled "Calming the Long War in the Philippine Countryside," it notes that "The number of incidents in Masbate has traditionally been disproportionate to its small size. The island has been one of the most politically contested provinces in the Philippines." The Report's overall assessment is as follows:

While the government has weakened the rebels politically and militarily over recent years, the movement remains afloat. Conflict continues in parts of the Philippines, while in December 2023 the CPP issued a statement encouraging its members to redouble the struggle despite the challenges it faces....

The Maoist insurgency in the Philippines is at its lowest ebb in decades. But it has not been vanquished, and the armed conflict remains both a challenge for the state and a threat to public safety in pockets across the country. The government's military successes in the last few years have lent it confidence in its capacity to end the rebellion once and for all. But Manila may be underestimating the rebels' resilience; moreover, the political, social, and economic grievances that have driven the rebel cause over decades could stoke last-ditch resistance among parts of the guerrilla force or new manifestations of violence.

#### **(5) CPP-NPA-NDFP Investigation?**

It will be recalled that two days after the Masbate landmining incident of 6 June 2021, or on June 8, CPP chief information officer Marco Valbuena admitted it as “errors in the military action mounted by an NPA unit... The entire CPP and NPA take full responsibility for the tragedy. There is no justification for the aggravation this has caused the Absalon family... We are aware that an investigation is already being carried out by the Party’s Bicol Regional Committee and Masbate Provincial Committee of the Party and the higher commands of the NPA to identify the errors and weaknesses that led to this tragedy.” Earlier that same day (June 8), NPA Bicol Regional Operational Command (Romulo Jallores Command) spokesperson Raymundo Buenfuerza issued a statement saying, among others, that “The Romulo Jallores Command and the Jose Rapsing Command (NPA-Masbate) will ensure the immediate just solution of the error committed by the NPA-Bicol.”

However, three days later, on June 11, the NDFP through no less than its Chief International Representative Luis Jalandoni and its Negotiating Panel Interim Chairperson Julieta de Lima issued the statement “NDFP expresses condolences to the Absalon family, asserts its authority and duty to investigate the case.” This included the following significant passage relevant to this NDFP assertion, that **appears however to push back or back track** from the above-said initial statements of the CPP and of NPA-Bicol:

It is correct for the people and all other entities to expect the investigation of the Masbate incident within the NPA command structure and within frameworks of the CPP, NDFP and the People’s Democratic Government.

Under the responsibility and direction of the NDFP and within the legal system of the People’s Democratic Government, the investigation must be started and completed within the NPA command structure to fully and completely establish the facts and prepare any appropriate charges before any procedure to prosecute and try the case before the military court of the NPA or people’s court.

The NDFP will make sure that certain questions are answered by a thoroughgoing investigation. The questions include the following: 1) If true, which NPA unit and personnel are involved?; 2) Is there no case of the enemy committing the crime and falsely ascribing it to the NPA?; and 3) Is there no local feud involved?

There should be no rush to judgment, presumption or insinuation to the effect that the entire revolutionary movement and entire revolutionary forces are guilty of a criminal offense, negligence or error for which certain individuals may be liable on the basis of a full and complete investigation. Crimes or errors of individuals cannot be taken against the whole organization or movement.

About three years hence today, there has been **no publicly issued report or statement on the status and results of that NDFP announced “investigation** of the Masbate incident within the NPA command structure and within frameworks of the CPP, NDFP and the People’s Democratic Government.” **It is reasonable and even safe to conclude that such a CPP-NPA-NDFP investigation has not been completed** “to fully and completely establish the facts and prepare any appropriate charges before any procedure to prosecute and try the case before the military court of the NPA or people’s court.” In other words, the NDFP and CPP announced “investigation” has turned out to be not serious or sincere but looks to have been just for propaganda. There could be “delays and limitations due to intensified military and police operations,” but three years is more than sufficient time to adjust and complete an investigation even in wartime. What happened to the promised “immediate just solution of the error committed by the NPA-Bicol”?

The particular investigating organ/s of the CPP-NPA-NDFP need really just investigate the ambushing NPA unit. Contrary to the above-quoted Jalandoni-de Lima statement’s “certain questions” 2) and 3), it should have been soon enough apparent that there was “no case of enemy

committing the crime” and “no local feud involved” – as definitely no military and/or police enemy (as may have returned fire) and definitely no feuding local clans were at the scene of the Masbate landmining incident. To even raise these as “certain questions [to be surely] answered by a thoroughgoing investigation” — even after the NPA-Masbate command had already clearly admitted the occurring “weakness and error” in the “military action” of the involved local NPA unit – looks like a fatuous and pathetic attempt to deflect attention and responsibility from the NPA or its involved unit. Because a NPA unit was undeniably involved, the only above-quoted Jalandoni-de Lima “certain question” that is pertinent is “1) ...**which NPA unit and personnel are involved?**”

The police investigation, based on intelligence and rebel returnee information, identified the NPA unit to be a platoon led by Eddie Rosero @ “Ka Star” under Larangan 1 (Guerrilla Front 1, northern Masbate), KP 4 (Komiteng Probinsya or Provincial Committee 4 for Masbate), BRPC (Bicol Regional Party Committee). It also identified Rosero and 17 other unit members — by full name, alias, and last known place of residence — who went “down the hill” after the landmine explosion towards its fallen victims. **The NPA-Masbate command would be in the best position to identify its own involved NPA unit and personnel for its own investigation purposes.** It would be interesting to compare its findings as to NPA unit and personnel involved with the NPA unit and personnel identified by the police investigation, presumably with the help of military intelligence.

As for the key merits or facts of the Masbate landmining incident, it is really no longer whether or not the ambushing NPA unit used banned anti-personnel landmines under the 1997 Ottawa Treaty, meaning those which are victim-activated or contact-detonated. As it is, the MCPS “Investigation Report on Explosion and Shooting Incident” found that “pieces of evidence [including the explosive remnants recovered from the scene of the crime (SOCO) by the PNP Masbate Provincial EOD (Explosive Ordnance Disposal) and Canine Unit] clearly established that the armed group of CPP/NPA operating in Masbate City, willfully attacked the innocent victims by means of **controlled Improvised Explosive Device (IED-Landmines)**, followed by series of gunshots.” A controlled or command-detonated anti-personnel landmine is **not a banned anti-personnel landmine**. But directing it against civilians is of course prohibited as they are not legitimate military targets.

The NPA-Bicol and NPA-Masbate commands criticized themselves for this “failed demolition action” which “unintentionally” and “wrongfully” damaged civilian life and safety, and “unhesitatingly accepted” the occurring “weakness and error” in the said “military action.” **A sincere and honest NPA-Bicol and NPA-Masbate investigation should be able to reveal why the targeted bikers were not priorly ascertained, such as by the ambushing NPA unit’s own “spotters,” to be not legitimate military targets but civilians or non-combatants, as a precaution with sufficient lead time before the two anti-personnel landmines were detonated against them.** The bikers were familiar members of the Masbate Bikers Club and wearing athletic attire, with Keith Absalon wearing a prominent “FEU” marking on its heart portion. None of them were bearing firearms like rifles as may have been slung on their shoulders. Was there a failure of NPA intelligence, including for the purpose of complying with IHL required precautions in attack?

But even with the failure to timely ascertain that the targeted bikers were not legitimate military targets but civilians or non-combatants, **there appears to have been an even graver error and violation by the ambushing NPA unit.** After the three Absalon family bikers fell due to the landmine explosion, the eventual survivor then 14-year old Chrysvine saw that both his father Nolgen and uncle Kieth were “still alive after the blast,” according to the earlier cited CHR Resolutions. Two such explosive blasts were followed by gunfire from a hill beside the road that must have come from the ambushing NPA unit which detonated the landmines. At least a dozen members of that unit then went “down the hill” towards the fallen Kieth and Nolgen. Two other eyewitnesses to this, a *habal-habal* driver and a construction worker, say they then saw two

members of the unit each separately finish off Kieth and Nolven with assault rifle gunshots at close range. Of particular note in the Masbate City Health Office Postmortem Findings are the “Gunshot wound... on the right eye” of Kieth and the “Gaping wound on the left occipital area of the head... with brain tissues exposed” of Nolven. As earlier quoted from the CHR Resolutions for the separate cases there of Kieth and Nolven, “Had it not [been] for the series of gunshots fired by the respondents, he could have been rescued and given timely medical attention that could have saved his [life].” It is safe to say that the causes of their deaths were the just quoted fatal gunshot wounds to the head, rather than the landmine blasts which caused shrapnel wounds in less vital parts of their bodies and were survivable. Still, the CHR Resolutions, as earlier quoted, said “The two (2) IED blasts and seventy-nine (79) fired cartridges recovered in the scene of the explosions were proof of disproportionate force tossed to victims who could not afford to counter the attack.”

**The available forensic and medico-legal as well as testimonial evidence tends to show that the ambushing NPA unit killed Kieth and Nolven Absalon while they were persons *hors de combat* (out of combat), defenseless because of wounds and not committing any hostile act. In the first place, Kieth and Nolven were non-combatants. This should have been apparent to the NPA unit members even before they went “down the hill” after the initial landmine blasts and gunfire directed at the three Absalon family bikers, and more so after at least two unit members approached the fallen Kieth and Nolven at close range and then finished them off. **Could they not readily see that the two were still alive and had no guns, much less firing at them? To finish them off in those circumstances is a war crime** - whether under RA 9851, Sec. 4(b)(1) [NOT the charged Sec. 4(c)(25)(iv)], or under the *Rome Statute of the International Criminal Court*, Art. 8(2)(c)(i) which is referred to as the “War crime of murder.” Of course, it is also Murder under the RPC, Art. 248. Unlike Rebellion (RPC, Art. 134), a War Crime does not absorb Murder, at least not yet by statutory amendment or jurisprudence. The right thing to do under IHL would have been for the ambushing NPA unit to instead without delay provide medical care to Kieth and Nolven as persons *hors de combat*, as the NPA often claim provide to wounded soldiers they come across after a successful ambush. **A sincere and honest NPA-Bicol and NPA-Masbate investigation should be able to reveal why the fallen, still alive and unhostile Kieth and Nolven were still finished off by the ambushing NPA unit or its two members who “appear to be the most guilty.”****

Precisely, the NDFP had promised three years ago “a full and complete investigation” as “the basis” for holding “liable” or “guilty of a criminal offense, negligence or error” only “certain individuals,” not “the whole organization or movement.” We have to ask again, whatever happened to that? The apparent failure of “revolutionary justice” undoubtedly reflects now on “the whole organization or movement.”

## **(6) Questions on Revolutionary Justice**

Apart from leaning “the truth, the whole truth, and nothing but the truth” about the Masbate landmining incident of 6 June 2021 that might have been helped by “a full and complete investigation” on the CPP-NPA-NDFP side of things, there are questions not only about the outcome, findings and results of that investigation but also about the parameters and process of “revolutionary justice.” The NDFP “asserts its authority and duty to investigate the case... within the NPA command structure and within frameworks of the CPP, NDFP and the People’s Democratic Government,” including its “legal system”... “to fully and completely establish the facts and prepare any appropriate charges before any procedure to prosecute and try the case before the military court of the NPA or people’s court.” Thus, as also an assertion of the right of the people to information on matters of public concern, “it is correct for the people and all other entities to expect” some answers from the NDFP on questions about that incident and about “revolutionary

justice. Allow us to for now pose some of these questions:

1. What stage is the NDFP announced asserted investigation of the Masbate Incident of 6 June 2021? Has it started, been completed-concluded, or is still ongoing? When did it start and when was it completed if at all? Is there an available status, progress or final report on this investigation?
2. If the said investigation has not started or been completed, how come, what are the reasons or problems?
3. If the said investigation has been completed-concluded, what were its findings, conclusion and results? Again, is there an available report or documentation of this?
4. Has the said investigation answered "certain questions" as assured by the NDFP: "1) If true, which NPA unit and personnel are involved?; 2) Is there no case of the enemy committing the crime and falsely ascribing it to the NPA?; and 3) Is there no local feud involved?"
5. "Within [what] NPA command structure" was the investigation started, conducted and completed if at all? Was it (to be) the NPA-Masbate Jose Rapsing Command (JRC), or the NPA-Bicol Romulo Jallores Command (RJC), or some higher commands of the NPA? Or was it (to be) by the CPP's Bicol Regional Party Committee or Masbate Provincial Party Committee? Which is which?
6. Were "any appropriate charges made"? What charges and against whom (at least which NPA unit did they belong to)? Was the case (to be) prosecuted and tried before "the military court of the NPA or people's court"? Were "certain individuals" held liable either after investigation or after trial? Are there available papers or records of the charges, proceedings and judgment?
7. What specific parts or aspects of the "frameworks of the CPP, NDFP and the People's Democratic Government" and provisions of the "legal system of the People's Democratic Government" were the basis of and guidance for the investigation, the charges, the trial and the judgment if at all? What particular criminal law and procedure of the "legal system of the People's Democratic Government" was (to be) applied?
8. Whether or not the case was actually tried either "before the military court of the NPA or people's court," what is different if at all between the jurisdictions or coverages of these two courts in terms of cases or crimes charged as well as in terms of the accused, such as whether NPA or non-NPA elements? Either way, what are the measures, mechanisms or rules for procedural fairness and for evidence credibility weighing in these two kinds of courts?
9. Was there (to be) any independent observation by any neutral, impartial and competent entity or persons during the investigation and/or trial proceedings? What organizations if any did the independent observers belong to or represent?
10. Has there been any CPP, NPA or NDFP reparation or indemnification provided or offered to the families of the three Absalon victims?

The NDFP leadership, which has "assert[ed] its authority and duty to investigate the case" of the Masbate landmining incident of 6 June 2021, has not responded (as in *dedma*) to questions such as these aired from time to time for about three years already, especially on the occasion of its anniversary. What we said on this one year ago for its second anniversary is thus unfortunately still applicable:

Nothing but *dedma* has been heard from the CPP-NPA-NDFP since then on the Masbate landmining incident. To ask again whatever happened to their promised investigation thereof, is like speaking to

a wall or to the wind. One cannot but think how this continuing silence instead speaks volumes about the CPP-NPA-NDFP sense of transparency, accountability and justice, or lack of it. What is at stake here is not only primarily the justice that the Absalon family cries for, but also the consequential credibility of the CPP-NPA-NDFP and their so-called “revolutionary justice” system. This system will also be judged by at least the minimum judicial standards applicable to the prosecution and punishment of criminal offenses related to the armed conflict per the 1977 *Protocol II* of the *Geneva Conventions* which the CPP-NPA-NDFP avow adherence to... It is correct for the people to expect knowing more about this system being the harbinger of an offered alternative future. Can this system render justice? Can it be trusted to render justice? Is it revolutionary justice or “revolutionary” impunity?

Is it a better, including speedier, alternative to the admittedly slow, flawed and skewed-for-the-rich Philippine justice system? Does it represent a better alternative to the current ruling system characterized by social injustice? In practice, not in theory. In its present conduct, not in its promised future. If the promised “principled and peaceful resolution of the armed conflict” is not viably forthcoming yet or at all, “the long war in the Philippine countryside” may eventually have to be decided by force. Hopefully not so much by the force of arms as rather better by the force of the better argument or idea as shown in conduct and in practice. The hope also is that the people, including “the masses,” would know well enough when the crucial time may come to make the right choice for the country’s course, which is or should not be limited to only two choices. This too has bearing on the continuing quest for justice one way or the other around the Masbate landmining incident of 6 June 2021, and for that matter many other incidents related to the local communist armed conflict, that cannot seem to rest yet in genuine peace and calm.

By **Soliman M. Santos, Jr.**

Naga City, 2 June 2023

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## **P.S.**

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