

Masbate City (Philippines): Justice for the Absalons, Two Investigations: Quo Vadis?

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On the occasion of International Humanitarian Law (IHL) Month this August and of the second month “anniversary” of the Masbate Incident of 6 June 2021 that saw the tragic killings of 21-year old scholar-athlete Kieth Absalon and his 40-year old cousin union leader Nolven Absalon who were riding on bicycles when hit by a landmine blast admittedly caused by a New People’s Army (NPA) unit in the Masbate City coastal outskirts, we take pause to ask where the calls for justice, especially by the aggrieved Absalon family, are going. The Masbate Incident was initially admitted by the Communist Party of the Philippines (CPP) chief information officer Marco Valbuena last June 8 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.” Needless to say, reactions to this initial CPP acknowledgment of responsibility have been mixed — whether genuinely felt or propaganda-motivated. One has to constantly separate the chaff from the grain in this time of propaganda hyper-drive by both sides.

The quest for justice is often premised on investigations to ferret out the facts, the evidence and the truth about subject incidents. In the case of the Masbate Incident, there appear to be at least two significant tracks of investigation, if not also prosecution and trial towards judgment: [1] that of the Philippine government; and [2] that of the National Democratic Front of the Philippines (NDFP) which includes the CPP and NPA as its leading organizations.

The Philippine Government Investigation

Last June 24 came the news report that “24 face murder raps over Masbate land mine blast,” referring to the charges filed by the Masbate City Police Station last June 21 with the City Prosecution Office naming 24 suspected local NPA rebels led by Eddie Rosero @ Ka Star. In fact, one of them, Mariel Suson, was arrested last June 22 although for a separate murder case. It turns out that what were filed, based on reliable sources, were not only charges of **Murder** and **Frustrated Murder** (the latter pertaining to Nolven’s 16-year old son Chrysvine Daniel Absalon who was not killed but was wounded in the blast) under the Revised Penal Code (Article 248) but also charges for violations of the following special criminal laws:

1. **RA 10591** — Comprehensive Firearms and Ammunition Regulation Act, including illegal possession thereof

2. **RA 9516** — *on Unlawful Manufacture, Sales, Acquisition, Disposition, Importation or Possession*

of an Explosive or Incendiary Device

3. **RA 9581** (“The IHL Law”), Section 4 (c) (25) (iv) — war crime of “(c) (25) Employing means of warfare which are prohibited under international law, such as:… (iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.” [Note: This applies to victim-activated or contact-detonated anti-personnel landmines, the kind totally banned by the 1997 Ottawa Treaty.]

4. **RA 9581** (“The IHL Law”), Section 6 (a) — **crime against humanity** of “(a) Willful killing”

5. **RA 11479** (Anti-Terrorism Act) - particularly where the perpetrator “uses… explosives… when the purpose of such act, by its nature and context, is to intimidate the general public or a segment thereof, create an atmosphere or spread a message of fear…”

Unfortunately, despite the reliable information that these were the charges filed, we have not seen the supporting papers and evidence for these charges. These have been turned over to the Masbate City Prosecution Office which formed a panel for the preliminary investigation of the charges. Except for the arrested respondent Mariel Suson, it is doubtful whether the usual subpoenas to the other respondents - all suspected NPA rebels with “No Permanent Addresses” --- could be actually served upon them, so as for them to submit counter-affidavits within 10 days from receipt of the subpoenas with the accompanying Complaints and their supporting evidence. In which case of non-service or of non-comment after the opportunity given, the investigating prosecutors panel would resolve the preliminary investigation based on the submissions before it, even if only coming from the complainant police. It would issue its (Joint) Resolution either finding probable cause to file the corresponding Informations (prosecution office formal charges) in Court OR finding no probable cause and consequently dismiss the Complaints. As of this writing, those Informations have not yet been filed before the Regional Trial Court (RTC) of Masbate City.

Interestingly, no rebellion charges were filed by the police. We surmise that this was done to preclude the absorption of the murder charges in any rebellion charge pursuant to the Supreme Court Decision in *People vs. Hernandez* (1956) which espoused the political offense doctrine, whereby rebellion absorbs common crimes like murder, kidnapping and arson when committed in furtherance of the rebellion. *Misolas vs. Panga* (1990), however, appeared to in effect rule that rebellion (and also subversion then) does not absorb illegal possession of firearms (even if committed in furtherance of rebellion or subversion) as these were treated as separate and distinct offenses. In *Ocampo vs. Abando* (2014), the Concurring Opinion of Justice Leonen deemed that war crimes, genocide and crimes against humanity in violation of RA 9851 cannot be considered to be in furtherance of and absorbed in rebellion. And most recently, *Lagman vs. Medialdia* (2017) ruled that “terrorism neither negates nor absorbs rebellion” and vice-versa. They can co-exist together, they are not mutually exclusive of each other, “one cannot absorb the other as they have different elements.” All told, it would be interesting to see how the above-listed several charges for the Masbate Incident interplay with each other come the prosecution and court trial, if it ever comes to this.

Of course, in all this legal discourse, we ought not to lose sight of the prime objective of justice for the Absalons, Let this justice be based on a fair and informed appreciation of the evidence as well as a fair and informed application and interpretation of the applicable law, jurisprudence and rules. Let the quest for justice not be made to bend to instead serve the cause of propaganda for one or the other side of the local communist armed conflict. This brings us now to the other side, to the other significant track of investigation.

The CPP-NPA-NDFP Investigation

The initial June 8 statement of CPP spokesperson Valbuena that "The entire CPP and NPA take full responsibility for the [June 6 Masbate Incident] tragedy" also included this point: "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." That same day (June 8), NPA Bicol Regional Operational Command (Romulo Jallores Command) spokesperson Raymundo Buenfuerza had issued a statement saying, among others, that "Titiyakin ng RJC at JRC ang kagyat na makatarungang paglutat sa naging pagkakamali ng BHB-Bikol." [Translation: 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, last 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 < in brackets > relevant to this NDFP assertion, that appears however to push back or back track from the above-said initial statements of CPP spokesperson Valbuena and NPA-Bicol spokesperson Buenfuerza:

"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.

There must be no rush to judgment against the entire revolutionary mass movement and such revolutionary forces as the CPP, NPA and others...

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." (end of quote)

Given the reality that the CPP-NPA-NDFP will not surrender its concerned personnel to the Philippine justice system which it considers a coercive instrument of the ruling state and its on-the-record undertaking to conduct its own "thoroughgoing" investigation of the Masbate incident "within the NPA command structure... and within the legal system of the People's Democratic Government," then let it to prove that it can render justice for the Absalons and for the responsible NPA individuals, which may also include a reasonable degree of command responsibility.

Let it not be a Red-wash in the same way that we say let there be no government whitewashes of its investigations of its own erring soldiers and policemen for gross violations of human rights and IHL. Let there be justice for the Absalons as well as for the responsible NPA individuals but let whatever justice process be characterized as “affording all the judicial guaranties which are recognized as indispensable by civilized peoples” – at least by 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 1949 Geneva Conventions. By this, the CPP-NPA-NDFP so-called revolutionary justice system will also be judged.

A Role for Independent Investigations and Observers

The problems with both the Philippine and the CPP-NPA-NDFP justice systems, in the context of a highly-charged and highly partisan local communist armed conflict, occasion some consideration of a salutary role for independent, competent and credible investigations and observers. Although part of the Philippine government, in fact no less than an independent constitutional commission thereunder, the Philippine Commission on Human Rights (CHR) has proven its independence in investigating human rights and IHL violations by both sides. It was in fact reported last June 9 that the CHR would look into the deaths of the Absalon cousins, including the use of land mines leading to that. In this connection, the independent civil society humanitarian organization Philippine Campaign to Ban Landmines (PCBL) has offered to provide the CHR with technical assistance on investigating the landmine aspect of the Masbate Incident and for that matter other landmine incidents especially those resulting in civilian casualties.

It would also be ideal if whatever prosecution and trial of the concerned NPA personnel “before the military court of the NPA or people’s court” could be attended by independent observers subject to the necessary security arrangements. Would both sides allow this in the interest of justice? On the other hand, any prosecution and trial of the accused NPA personnel before the RTC of Masbate City would as a rule be open to the public and even the media with reasonable regulation. On the second month-anniversary this August 6 of the Masbate Incident, and before we forget about these things as usual, it is about time that we ask those who have the answers: How are the two tracks of the Philippine and the CPP-NPA-NDFP investigations of the same coming along? What is needed to enhance them in terms of reliable evidence, procedural fairness and achieving justice? — #

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P.S.

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