

NDF has no relation with terrorism

As the counsel of the NDFP negotiating panel, an intervener in this action, I am here to present its position in support of Prof. Jose Maria Sison's position that his listing as a so-called "terrorist" by the Netherlands, the European Union and other states is politically-motivated and has not been proven to have a valid legal basis. In our view, the main purpose of adding Mr. Sison, who is the Chief Political Consultant of the NDF peace-negotiating panel, to these lists is to pressure the NDF into surrender through the signing of a so-called final peace agreement and a demobilization of the forces of its allied organizations.

By way of background, the NDF is an alliance of 17 organizations working for the liberation and democracy of the people in the Philippines. Its member organizations include, the Christians for National Liberation, the Communist Party of the Philippines, the New Peoples Army, the Revolutionary Organization of Trade Unions and other revolutionary organizations such as those of women, youth, writers and artists, lawyers, teachers, health personnel, scientists and technologists and national minorities. The allied organizations represented by the NDF have appointed a 5-member negotiating panel

in the peace negotiations with the Government of the Republic of the Philippines (GRP).

Your Court is informed about the fact that the United Nations have not put Mr Sison on the black list. Your Court has the submitted Philippine Human Development Report 2005 (See Annex 1 of Interveners Observations, NDFP Negotiating Panel in case T-47/03, dated 3 February 2006). An expert report in cooperation with the United Nations. Therefore a report of unimpeachable authority.

The motivation of the Council to brand Sison as a terrorist is very superficial. There are only secret reports of the Dutch Intelligence Service, which allege that Sison is a terrorist.

A lot of evidence has been submitted by the NDFP that Sison is not a terrorist. Interesting is the summary of the arguments of the Council under number 231 of the report for the reading, dated 3 May 2006. All the arguments of the NDFP preclude -according to the Council- the applicant being associated with terrorism.

This is, the Council states, a typical fallacy of terrorist organizations to use concepts of humanitarian law and of the law relating to armed conflicts.

By the way, is the Council stating that the NDFP is a terrorist organization?

How correct is this accusation of the Council?

To understand the position and interest of the NDFP it is relevant to make a brief overview.

I will not repeat 35 years of civil war in the Philippines.

Is there reason for this civil war?

In the latter report (PHDR) there are some interesting pages about this civil war. I especially ask your attention for pages 86 – 96.

In this report we can read (page 95 – 96):

“Finally, related to those subjected forces of the revolution are the objective conditions. Capitalism (or semi-feudalism in the CPP’s view of the mode of production) has not been much of a success in the country. Over the past few decades, the Philippines has lagged behind its neighbors in economic growth. Massive and abject poverty and economic inequity continue to be there, if not worsen [Box 3.3]. On the political side, there is revulsion against traditional elite politics. Beyond the regime

change in 1986, various social and political scientists point to the persistence of “local political bosses”, “caciques” or “local authoritarian enclaves”, especially in rural areas. In these enclaves, the martial-law regime has not ended: despotic local elites, whether inside or outside the state apparatus, have continued to rule ruthlessly. For the poor peasants, these despotic elites represent the system that needs to be overthrown.”

So there is an objective observation that there is a lot of abuse of power, which causes a lot of suffering for the people.

The NDF has declared that they are respecting the Geneva conventions of 1949 and protocol I of 1977 (appendix 6). This declaration was made in July 1996. Earlier, in 1991, the NDF also declared accession to protocol II of the Geneva Conventions and to the overall principles of international humanitarian law.

Visitor

Comment: Need to check year.

If the question is about legitimacy, we must not forget that at this moment President Arroyo’s election to the Philippine presidency 2004 is under question. We refer the Court to the internationally publicized scandal of the Hello Garci tapes. The “Garci” referred to in the tapes has been identified as Virgilio Garcillano, a member of the commission on elections. Upon the orders of Arroyo, Garci helped to manipulate the counting of votes to make her win by at least 1,000,000 votes. She

ordered: “Make sure that I my margin of victory will be at least 1,000,000 votes”. It is exactly this number of votes which gave Mrs. Arroyo a so-called “victory” in the last Philippine presidential elections in 2004. However, we draw the Court’s attention to expert testimony before a hearing of the Philippine Senate that on the basis of computer analysis Arroyo actually lost by about 400,000 votes. That means electoral fraud and falsification of 1.4 million votes.

Because such abuses of power can be proven and demonstrated in the Philippines, but yet the political and justice system appears to be unable or unwilling to correct them, is one of the reasons for the civil war in the Philippines. Power is being abused in the Philippines and justice is being denied to the Filipino people.

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Comment: We should review the order of the flow and whether these two paragraphs should be here or not.

The effect of putting professor Jose Maria Sison on the terrorist list hampers, blocks, hinders and places obstacles to the work of the panel in the peace negotiations. What we see is that these states, by stigmatizing Mr Sison as a “terrorist, ” are engaged in crass opportunism and hypocrisy. For example, Mr Sison is a “terrorist” according to the Dutch government, but yet is always granted *laissez-passers* for negotiations in Norway, as the Chief Political Consultant of the panel. Otherwise Mr Sisson cannot freely visit those countries, which are relevant for the peace negotiations. Again, we submit that the attempt to put a stigma on Mr Sison is only politically motivated. This can be demonstrated by a review of the facts in what we call the “pre-

terrorist” period and the “post-terrorist” period. In the climate of the “pre-terrorist” period, before Mr Sison was put on the blacklist, the goal between the Philippine Government and the NDFP was to find ways to build a genuine peace and to work for reforms that address the roots of the armed conflict. In the “post-terrorist” period and climate, with the mechanisms of the terrorist listing being frequently and arbitrarily used by these states, the only attitude of the GRP in the peace talks has been to pressure the NDF to surrender. This pressure is not only implicit, but was already made explicit on 1 February 2003, when the GRP Foreign Affairs Secretary Blas Ople, stated that communist rebels must sign a peace accord with Manila if they want to be removed from international terror list (see Appendices 10 & 11):

Once there is an peace agreement I will request the EU, the United States and other countries to delist Sison and the NPA as terrorist. If they sign, they will no longer be terrorist. Our entire focus now is for Sison to sign a final peace agreement. If he signs a peace agreement, then he will be covered by the blanket authority...

Let me point out some further contradictions in the position of these states. By saying Mr Sison is a terrorist and the NPA must sign a peace agreement, it implies that the NPA is the NDF. But the NDF is composed of 17 allied organizations, with the NPA as only one of these organizations. It is, thus, further implied that it is not just the NPA that

must surrender, but the NDF itself must surrender. We submit that this shows that putting Mr Sison on these so-called “terrorist” lists is a politically-motivated act and is not based on any concrete and proven facts against Mr. Sison.

We view this as an arbitrary and dangerous abuse of power. There can be valid arguments for not to inform before blacklisting to protect the problem of warning, but this is complete different from the situation after being put on the blacklist. Than, in every case, the Court has to judge on the principles of jus cogens. Professor Sison asked three times for disclosure of the grounds of the blacklisting. No information at all was given. This is against jus cogens.

This case, and that is the key question, does this Court accept that people can get blacklisted declared outlaw without proven grounds.

Interesting in this matter is the judgment of the Bundesverfassungsgericht dated 23 May 2006 that in the war on terror the police cannot without reasonable grounds scrutinize electronic data bases on search of a possible terrorist.

This emphasizes that in the rule of law a decision must be checked content wise. The High Court of Germany did not accept the argument of the state of Germany that closure, keeping things secret, is necessary in the war on terror. In the war on terror there are also limits.

And what to say about the value of the secret information of the Dutch Intelligence Service. Last Friday President Bush and the British Prime Minister Tony Blair admitted that they started the war against Irak on the bases of false information. Do we remember Colin Powel with his photos produced by the Intelligence Services before the United Nations Security Council?

The consequence is that Mr Bush started a war in violation of international law (respect for sovereignty).

The war on terror is not a license to declare people outlaw without reasonable grounds.

And what is fallacy as the Council insinuates?

There are peace negotiations from 1986.

In 1992 The Hague Joint Declaration was signed. There are four basic agenda items:

- respect for human rights and international humanitarian law;
- social and economic reforms;
- political and constitutional reforms;
- end of hostilities and disposition of forces.

Already the peace negotiations produced the Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL).

There is already an Joint Secretariat office in Manila with representatives of both parties. They received already about 800 complains regarding the implementation of CARHRIHL.

So there are concrete results of the peace negotiations regarding human rights and international humanitarian law.

Relevant is also that in the report of the UNDP the statement is made:

“In fairness to the CPP-NPA’s historical record of armed struggle, it has not, as a policy – and has not generally in practice – engaged in terrorism or acts of terrorism by deliberately targeting civilians. Unlike the Abu Sayyaf or the MILF, the CPP-NPA has no Islamic connection that could possibly put in the network of Al-Qaeda or Jemaah Islamiyah. The CPP-NPA and, for that matter, the MILF, through its antecedent the MNLF, have pre-dated Al-Qaeda-type terrorism by several decades, having instead come from the tradition of national liberation movements of the 1960s.”

And in the light of negligently bundling in one basket Mr Sison has publicly condemned the terrorist acts of Osama Bin Laden/Taliban. The NDFP and Mr Sison condemned any action that causes death and injury to civilians. That this is not an empty declaration but a matter of basic principle and policy, as also confirmed by the aforesaid UNDP report.

This concern, this basic principle cannot be applied to the Government of the Republic of the Philippines (GRP).

Under the illegally functioning President of the Philippines more people have been summarily killed than in the time of Marcos and with complete impunity. At this moment more than 600 people have been extra judicially executed by military and military connected assassins. More than 200 frustrated killings and more than 150 disappearances. For example, human rights lawyer, Eden Marcellana (April 2003), a woman, was investigating a human rights incident for several months. On the way, *locus delicti* they were stopped by car at a military checkpoint. She and a companion were taken by the military. The next day they were found executed and shot in the head.

From the first of January 2006 to 22 March 2006, there have been 4 killings and 1 disappearance every week.

This terrorist listing ends up being used as a justification for the military and police to arbitrarily kill civilians.

Only suspicion is enough and even suspects are not necessary. There are many examples of just plain intimidation by the Philippine Government that also create an atmosphere of fear and terror in the Philippines.

Not recorded by the Dutch Intelligence Service but non disclosure available by Amnesty International, report 2005 Philippines starts with:

And it appears that the European states do not understand the effect of their listing decision on the situation in the Philippines. There is a causal relation between the blacklisting of Mr Sison and the increase of killings and torture of innocent civilians. That means that if the issue was to

support the President of the Philippines to bring peace in the Philippines by isolating Mr Sison, looking back the answer is counter productive. There is an increase of victims and the position of the President and her administration is more and more isolated.

More and more the discussion is starting in the world: where are the limits of the instruments in this war on terror. Is it a coincidence that the UN condemned Guantanamo Prison? Is it a coincidence that the High Court in the United States condemned Guantanamo Prison? Is it a coincidence that President Bush and Prime Minister Blair admit that there was no basis for invading Irak? It is a coincidence that the Bundesverfassungsgericht reprimands the German state for its implementation of the war on terror?

War on terror is not longer unlimited in the use of power. More and more in the public discussion there are big questions about the way this war is being conducted. More and more people are becoming very critical about what is happening, whether the means used are worse than the objectives.

It is no coincidence that last week in the Dutch lawyers magazine (Nederlands Juristen Blad, jaargang 81, 19 mei 2006, blz. 1090 e.v.) a very critical article was published by two scientific experts with the title "European watch dogs for the World Council?" They discuss the role of

the European judges in tense relation between the battle against terror and respect for human rights.

They plead that judges have in all circumstances the competence to judge on decisions of states and the Council and even the UN in relation to jus cogens.

That there is more and more doubt about unscrupulously setting aside human rights, Norway shows in its recent statement, through its Foreign Minister, that they no longer “align” themselves to the terrorist listing of the European Union.

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Comment: Either we should append the statement or quote from it here.

The situation gets more and more bizarre. In the Philippines there is a President without legitimacy. Because of her threatened and isolated position, she and factions of the military loyal to her are intensifying repression to stay in power. This escalation leads to more and more violence against unarmed civilians and that is where the NDF stands: They have nothing to do with terrorism. What is terrorism? Who is the terrorist? Who needs to be on the terrorist list?

In a clear demonstration of the intensifying repression of civil liberties and human rights in the Philippines, Arroyo declared a state of national emergency on 24 February 2006 even as the opposition grew against her administration and its lack of legitimacy due to massive electoral fraud.

As a concrete result of this declaration, 6 politicians from the Philippine Congress were charged with rebellion. One, a 73-year old congressman, Crispin Beltran, has been detained since 25 February 2005. The five others were confined to the Congress building and only recently asserted their freedom. They had to stay in the Congress for 70 days and nights under the threat of warrant less arrest should they leave the confines of Congress.

On 2 May 2006 the Supreme Court of the Philippines declared warrant less arrests and other acts taken by the Arroyo government illegal. Again, I ask who is the terrorist? Already Parliaments throughout the world, including the Dutch Parliament, protested against the political persecution of these fellow parliamentarians. Before the terrorist listing there was a mutual goal to find a peaceful solution. Therefore there were peace talks. After the terrorist listing the violence has significantly increased.

In conclusion, the NDF as an intervener in this case, asks the Court to critically examine the political and social context of the Philippines. By doing so, it will become readily apparent that neither the NDF nor Mr Sison is in any way associated with terrorism, but that the attempt to stigmatize Mr Sison is only a politically-motivated action meant to put up roadblocks in the peace negotiations. The accusation that Mr Sison is a terrorist is false and baseless and we support the petitioner's request that it be declared as a violation of the principles of the Convention.