

The Ampatuan Massacre¹

PRELIMINARY REQUEST FOR AN URGENT PRONOUNCEMENT
ON THE 23 NOVEMBER 2009 MASSACRE
IN SITO MASALAY, BARANGAY SALAMAN, AMPATUAN TOWN,
MAGUINDANAO PROVINCE, THE PHILIPPINES,
CALLING ON THE STATE TO ENSURE THAT THE PERPETRATORS
OF THE HEINOUS HUMAN RIGHTS VIOLATION
— WHO ARE ALL AGENTS OF THE PHILIPPINE STATE —
ARE BROUGHT TO JUSTICE AND THAT ADEQUATE REPARATIONS AND
SATISFACTION
ARE MADE TO THE HEIRS OF THE VICTIMS
UNDER APPLICABLE RULES OF INTERNATIONAL LAW



A group of relatives of the victims of the Ampatuan massacre and their lawyers present their case submission to the media, prior to submitting the case to the AICHR.

¹ SAPA TFAHR, *Hiding Behind Its Limits, A Performance Report of the First Year of The ASEAN Intergovernmental Commission on Human Rights (AICHR), 2009-2010*, FORUM ASIA: 2011, pp. 98-118

3 February 2010

The ASEAN Intergovernmental Commission on Human Rights
(AICHR)
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I. PETITIONERS

1. This preliminary request is being filed on behalf of the following Petitioners:
 - a. MA. REYNAFE MOMAY-CASTILLO
 - b. ZENaida O. DUHAY
 - c. JULIET PALOR EVARDO
 - d. MA. CIPRIANA GATCHALIAN
 - e. GLENNA G. LEGARTA
 - f. ARLYN D. LUPOGAN
 - g. DODIE LUPOGAN
 - h. MARY JEAN M. MERISCO
 - i. CATHERINE NUÑEZ
 - j. NOEMI E. PARCON
 - k. MYRNA P. REBLANDO
 - l. RAMONITA S. SALAYSAY
 - m. EDITHA MIRANDILLA TIAMZON
 - n. ERLYN IDALO UMPAD

All the Petitioners have the following contact details:

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4. Petitioners hereby make a preliminary request for an urgent declaration from the Commission calling on the Philippine State to ensure that the perpetrators of the heinous human rights violation – who are all agents of the Philippine State – are brought to justice and adequate reparations are made to the heirs of the victims under applicable rules of international law.

The request is being made under Article 14 of the ASEAN Charter and pursuant to the relevant goals of the Commission, namely,

(1.1) To promote and protect human rights and fundamental freedoms of the peoples of ASEAN;

(1.2) To uphold the right of the peoples of ASEAN to live in peace, dignity and prosperity;

- (1.3) To contribute to the realisation of the purposes of ASEAN as set out in the ASEAN Charter in order to promote stability and harmony in the region, friendship and cooperation among ASEAN Member States, as well as the well-being, livelihood, welfare and participation of ASEAN peoples in the ASEAN Community building process;
- (1.4) to promote human rights within the regional context, bearing in mind national and regional particularities and mutual respect for different historical, cultural and religious backgrounds, and taking into account the balance between rights and responsibilities;
- (1.5) to enhance regional cooperation with a view to complementing national and international efforts on the promotion and protection of human rights; and
- (1.6) To uphold international human rights standards as prescribed by the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and international human rights instruments to which ASEAN Member States are parties.

II. ASEAN MEMBER STATE AGAINST WHICH THE PRELIMINARY REQUEST IS BROUGHT.

Republic of Philippines

III. FACTS DENOUNCED

1. Petitioners are heirs of some of the journalists slaughtered in the 23 November 2009 massacre in Masalay, Brgy. Salman, Ampatuan, Maguindanao, Philippines.

2. On 23 November 2009, Buluan Vice Mayor Esmael "Toto" Mangudadatu (hereinafter "Vice Mayor Mangudadatu") was scheduled to file his certificate of candidacy (COC) for the forthcoming Philippine May 2010 elections before the Commission on Elections office in Shariff Aguak town, Maguindanao, Philippines, for the position of Governor of Maguindanao.

3. In order to cover the supposedly landmark filing of the COC, thirty two (32) journalists and media workers from all over Mindanao were invited to join the convoy to Shariff Aguak town. They are:

- 3.1 Adolfo, Benjie, *Gold Star Daily*, Koronadal City
- 3.2 Araneta, Henry, dzRH, General Santos City
- 3.3 Arriola, Mc Delbert "Mac-Mac," UNTV, General Santos City
- 3.4 Bataluna, Rubello, *Gold Star Daily*, Koronadal City
- 3.5 Betia, Arturo, *Periodico Ini*, General Santos City
- 3.6 Cabillo, Romeo Jimmy, *Midland Review*, Tacurong City
- 3.7 Cablitas, Marites, *News Focus / dxDX*, General Santos City
- 3.8 Cachuela, Hannibal, *Punto News*, Koronadal City
- 3.9 Cadagdagon, Jephon, *Saksi News*, General Santos City
- 3.10 Caniban, John, *Periodico Ini*, General Santos City
- 3.11 Dalmacio, Lea, *Socsargen News*, General Santos City
- 3.12 Decina, Noel, *Periodico Ini*, General Santos City
- 3.13 Dela Cruz, Gina, *Saksi News*, General Santos City
- 3.14 Duhay, Jhoy, *Gold Star Daily*, Tacurong City
- 3.15 Evardo, Jolito, UNTV General Santos City
- 3.16 Gatchalian, Santos, DXGO, Davao City
- 3.17 Legarte, Bienvenido, Jr., *Prontiera News*, Koronadal City
- 3.18 Lupogan, Lindo, *Mindanao Daily Gazette*, Davao City
- 3.19 Maravilla, Ernesto "Bart," Bombo Radyo, Koronadal City

- 3.20 Merisco, Rey, *Periodico Ini*, Koronadal City
- 3.21 Montaña, Marife “Neneng,” *Saksi News*, General Santos City
- 3.22 Morales, Rosell, *News Focus*, General Santos City
- 3.23 Nuñez, Victor, UNTV, General Santos City
- 3.24 Perante, Ronnie, *Gold Star Daily* correspondent, Koronadal City
- 3.25 Parcon, Joel, *Prontiera News*, Koronadal City
- 3.26 Razon, Fernando “Ranny,” *Periodico Ini*, General Santos City
- 3.27 Reblando, Alejandro “Bong,” *Manila Bulletin*, General Santos City
- 3.28 Salaysay, Napoleon, *Mindanao Gazette*, Cotabato City
- 3.29 Subang, Francisco “Ian”, *Socsargen Today*, General Santos City
- 3.30 Teodoro, Andres “Andy,” *Central Mindanao Inquirer*, Tacurong City
- 3.31 Tiamzon, Daniel, UNTV, General Santos City
- 3.32 Momay, Reynaldo “Bebot”, *Midland Review*, Tacurong City, remains missing and is presumed dead.

4. Between 7:30 AM and 8:00 AM of that fateful day, Buluan town Vice Mayor Esmael “Toto” G. Mangudadatu (hereinafter “Vice Mayor Mangudadatu”), requested by phone Col. Medardo Geslani (hereinafter “ Col. Geslani”), Commander of the 601st Infantry Brigade, for security escorts. Vice Mayor Mangudadatu explained thoroughly to the official the verified information he received on a possible ambush against the convoy, the heated political atmosphere in the province of Maguindanao, and the overwhelming support the military and police have been extending to the Ampatuans.

5. Vice Mayor Mangudadatu made these requests for security escorts several times.

6. Nevertheless, according to Vice Mayor Mangudadatu, Col. Geslani of the 601st Infantry Brigade refused to provide even a single military personnel. At that time, the Army officer commanded an Army unit which has immediate jurisdiction over Ampatuan town.

7. At this point, Vice Mayor Mangudadatu realized that the officer had no plans of ever providing security to the Vice Mayor’s representatives.

8. Journalists on the convoy also called the commanding general of the 6th Infantry Division of the Philippine Army, which has responsibility over the entire province of Maguindanao, for security.

9. Indeed, the Vice Mayor’s statements are supported by the testimony of Manila Standard Today corespondent Joseph T. Jubelag, one of the journalists invitd to cover the convoy.

10. Jubelag said that just a few hours before the convoy took off, he heard Alejandro “Bong” Reblando relay to the group of journalists and media workers invited to the convoy that Maj. Gen. Cayton had just told him (Alejandro “Bong” Reblando) that the reason why Respondent Col. Geslani had to turn down the request of the Mangudadatus is that his troops had to attend a send-off ceremony that morning for the 46th Infantry Battalion, which was to be sent to Samar.

11. Jubelag also heard the Philippine Daily Inquirer's Aquiles Zonio ask Respondent Maj. Gen. Cayton about the security situation in Shariff Aguak.

12. Zonio told Jubelag and that Maj. Gen. Cayton gave him (Aquiles Zonio) assurances that it was safe to travel through the national highway to Shariff Aguak from Buluan because there was a deployment of soldiers and Cafgu there.

13. Jubelag said he was sitting only an arms-length away from both Alejandro "Bong" Reblando and Aquiles Zonio so he could hear their telephone conversations with Respondent Maj. Gen. Cayton.

14. He said after hearing Maj. Gen. Cayton's assurances, he felt relieved, as everyone in the group was, considering that the assurances came from no less than the highest military commander in the area.

15. Joseph T. Jubelag also assumed, on the basis of such assurances, that Respondent Maj. Gen. Cayton was in touch with his man in the area, Col. Geslani, commanding officer of the 601st Brigade, which had jurisdiction over the provinces of Maguindanao and Sultan Kudarat.

16. Jubelag could sense the immediate relief felt by everyone upon hearing that Maj. Gen. Cayton had in fact given such assurances of a safe journey through the national highway after two hours of trying to get a firm hold on the security situation in the area.

17. In order to ease the tension between the Mangudadatus and the Ampatuans, Vice Mayor Mangudadatu decided to send his wife, two sisters, aunt and two female lawyers in the belief that their womanhood will be respected.

18. According to Vice Mayor Mangudadatu, he received reports that the Ampatuans, whom he will challenge in the gubernatorial race in next year's elections, had threatened to chop him into pieces once he filed his candidacy.

19. So Vice Mayor Mangudadatu sent an all-woman team and journalists, the Vice Mayor reasoning that "Under our tradition, Muslim women are being respected. They should not be harmed just like innocent children and the elders."

20. According to Buluan Councilor Toy Khadafi Mangudadatu, "We really decided to send the women to file the CoCs on our behalf thinking that they will be protected and spared from violence and the men won't hurt them."

21. The Mangudadatu women who were in the convoy are:

- (a) Bai Genalin Mangudadatu (his wife);
- (b) Bai Eden Mangudadatu (his sister);
- (c) Bai Farina Mangudadatu (his sister);
- (d) Bai Rowena Mangudadatu (his aunt);
- (e) Atty. Cynthia Oquendo-Ayon (his lawyer); and
- (f) Atty. Connie Brizuela (his lawyer).

22. The convoy of Vice Mayor Mangudadatu was composed of six (6) vehicles:
- (a) 4 Toyota Grandia vans (one grey, one green, and two white); and
 - (b) 2 two media vehicles – a Pajero owned by a DZRH broadcast journalist and a Mitsubishi L-300 van owned by UNTV.

There was a seventh vehicle, a Grandia boarded by mediamen, but it lagged behind and decided to turn around once the passengers sensed something was wrong.

23. Two (2) other vehicles were not part of the Mangudadatu convoy but happened to be traveling on the same highway:

- (a) a red Toyota Vios; and
- (b) a light blue Toyota Tamaraw FX.

24. The Vios had five (5) passengers: Eduardo Lechonsito, a government employee who was bound for a hospital in Cotabato City after suffering a mild stroke Monday morning. He was with his wife Cecille, co-workers Mercy Palabrica and Daryll delos Reyes, and driver Wilhelm Palabrica. The FX was driven by Anthony Ridao, employee of the National Statistics Coordination Board, and son of Cotabato City councilor Marino Ridao.

25. The Mangudadatu convoy, along with the Vios and Toyota Tamaraw FX, was intercepted in Ampatuan, Maguindanao by more than a hundred (100) armed men. Everyone in the convoy was brought to a nearby killing field in a hilly area of Sitio Masalay, Barangay Salman, Ampatuan town, Maguindanao province, the Philippines.

26. At about 10:30 in the morning of 23 November 2009, 1st Lt. Gempesao received a phone call from his intelligence personnel, in the person of Cpl. Emelio Ysita, informing him that they are in the vicinity of Brgy. Salman, Ampatuan town, and that they have observed several persons clad in police camouflage uniforms on board a vehicle marked with "PNP." Further, they have also observed a number of vehicles mostly vans escorted by armed men on board a pick-up and a Sports Utility Vehicle (SUV) vehicle going to the hilly part of the area.

27. Immediately after receiving the said phone call, 1st Lt. Gempesao informed his Commanding Officer, Lt. Col. Rolando Nerona, that their intelligence personnel who were dispatched to the area observed that several vehicles were taken at gunpoint and were moved to the hilly part of the area.

28. At about 10:40 in the morning, Staff Sergeant Coronel received a call from 1st Lt. Gempesao for him, together with Cpl. Ysita and Sgt. Rodriguez, to proceed to the Masala Detachment in Brgy. Masalay, Ampatuan, Maguindanao, to confirm if there were captured Mangudadatu supporters.

29. But before they can proceed to the Masalay Detachment they were blocked on the highway by numerous armed men consisting of uniformed policemen and militamen.

30. According to Staff Sergeant Coronel's estimate, there were about five hundred (500) armed men who blocked them, together with the armed men on high ground surrounding the checkpoint.

31. At this point, Staff Sergeant Coronel's group turned around and stopped about 100 meters away to observe. They have observed that there was a back hoe being unloaded from a long bed truck or heavy equipment carrier parked near the road that was facing them or towards Shariff Aguak.

32. The back hoe was running and entering the crossing to Brgy. Salman, Ampatuan, Maguindanao. After about twenty (20) minutes, Staff Sergeant Coronel's group was permitted to enter, and they proceeded to the Masalay detachment.

33. On the other hand, at about 11:00 o'clock, Buka Sakilan Ali (a member of the Cafgu Active Auxiliary (CAA) based along the National Highway of Sitio Masalay, Brgy. Matagabong, Ampatuan, Maguindanao) observed that police personnel of the Regional Mobile Group of the ARMM flagged down eight (8) units of vehicles loaded with passengers along the National Highway of Sitio Masalay, Barangay Matagabong, Ampatuan, Maguindanao.

34. He told investigators the vehicles were signaled by two (2) patrol police vehicles going to the mountainous area of Barangay Salman, Ampatuan, Maguindanao more or less FIVE (5)kilometers away from the national highway of the said place wherein their detachment is located. After several minutes, he heard simultaneous gun fire believed to be within their area of responsibility.

35. Upon hearing the said simultaneous gun fire, Ali stated that their Commanding Officer sent a message through mobile cellular phone to the 38th Infantry Battalion Headquarters located at Brgy. Semba, Dos Shariff Kabungsuan, Maguindanao.

36. On the other hand, at about 10 minutes later from 10:30 in the morning of 23 November 2009, 1st Lt. Gempesao again received another cell phone call from Cpl. Ysita again informing him that they have sighted a trailer loaded with a "back hoe" going to the same direction where the several vans were sighted.

37. During 1st Lt. Gempesao's conversation with his intelligence personnel, in the person of Cpl. Ysita, 1st Lt. Gempesao's cellphone was on a loudspeaker mode, thus, his Commanding Officer together with Ex-Officer in the person of Major Navarro, and 1st Lt. Reyes, overheard their conversation hence their Commanding Officer, in the person of Lt. Col. Nerona, immediately called up the 601st Infantry Brigade and talked to the Brigade Commander, in the person of Col. Medardo Geslani, explaining the whole situation that took place in Brgy. Salman, Ampatuan.

38. At least fifty-seven (57) women and men were brutally murdered by the perpetrators at the massacre scene. Amongst the victims of the carnage were ALL of the 32 journalists and media workers who joined the Magundadatu convoy.

39. Of 32 journalists and media workers, thirteen (13) are represented by their respective heirs in this preliminary request, namely:

- (a) McDELBERT ARRIOLA (for UNTV in General Santos City);
- (b) JHOY DUHAY (for *Goldstar Daily* in Cagayan De Oro City);
- (c) JULITO EVARDO (for UNTV in General Santos City);
- (d) SANTOS “JUN” P. GATCHALIAN, JR. (for *Metro Gazette* in Davao City);
- (e) BIENVENIDO LEGARTA (for *Periodico Ini* in Koronadal City);
- (f) LINDO T. LUPOGAN (for *Metro Gazette* in Davao City);
- (g) REY MERISCO (for *Periodico Ini* in Koronadal City);
- (h) VICTOR NUÑEZ (for UNTV in General Santos City);
- (i) JOEL V. PARCON (for *Prontiera News* in Koronadal City);
- (j) ALEJANDRO “Bong” M. REBLANDO (for *Manila Bulletin* in General Santos City);
- (k) NAPOLEON SALAYSAY (for *Clearview Gazette* in Cotabato City); and
- (l) DANIEL BECOLLADO TIAMZON (for UNTV in General Santos City).
- (m) ROBERT “Bebot” MOMAY (for *Midland Review* in Tacurong City) who is still missing but is presumed dead, based on available forensic evidence.

40. The slaughtered journalists and media workers are represented in this suit by:

- (a) PETITIONER MA. REYNAFE MOMAY- CASTILLO, the daughter of ROBERT “Bebot” MOMAY (for *Midland Review* in Tacurong City);
- (b) PETITIONER ZENAIDA O. DUHAY, wife of JHOY DUHAY (for *Goldstar Daily* in Cagayan De Oro City);
- (c) PETITIONER JULIET PALOR EVARDO, mother of JULITO EVARDO (for UNTV in General Santos City);
- (d) PETITIONER MA. CIPRIANA GATCHALIAN, wife of SANTOS “JUN” P. GATCHALIAN, JR. (for *Metro Gazette* in Davao City);
- (e) PETITIONER GLENNA G. LEGARTA, wife of BIENVENIDO LEGARTA (for *Periodico Ini* in Koronadal City);
- (f) PETITIONERS DODIE LUPOGAN & ARLYN D. LUPOGAN, brother and wife, respectively, of LINDO T. LUPOGAN (for *Metro Gazette* in Davao City);
- (g) PETITIONER MARY JEAN M. MERISCO, wife of REY MERISCO (for *Periodico Ini* in Koronadal City);
- (h) PETITIONER CATHERINE NUÑEZ, mother of VICTOR NUÑEZ (for UNTV in General Santos City);
- (i) PETITIONER NOEMI E. PARCON, wife of JOEL V. PARCON (for *Prontiera News* in Koronadal City);
- (j) PETITIONER MYRNA P. REBLANDO, wife of ALEJANDRO “Bong” M. REBLANDO (for *Manila Bulletin* in General Santos City);
- (k) PETITIONER RAMONITA S. SALAYSAY, wife of NAPOLEON SALAYSAY (for *Mindanao Gazette* in Cotabato City);
- (l) PETITIONER EDITHA MIRANDILLA TIAMZON, wife of DANIEL BECOLLADO TIAMZON (for UNTV in General Santos City); and
- (m) PETITIONER ERLYN IDALO UMPAD, mother of the minor Japhet Elidan Umpad Arriola, her child with McDELBERT ARRIOLA (for UNTV in General Santos City).

41. Indeed, various members of the Ampatuan clan, which includes two governors and several mayors, have been pointed to by witnesses as masterminds and direct participants in the mass murder.

42. They were allegedly part of a conspiracy in which the leading figures were former governor Andal Ampatuan Sr. and Mayor Andal “Unsay” Ampatuan Jr.

43. Paradoxically, both the Magundadatus and the Ampatuans are close allies of the present Arroyo administration and belong to the same ruling party, the Lakas-NUCD-CMD. However, it is to the Ampatuans that President Gloria Macapagal-Arroyo are heavily indebted.

44. During the 2004 Presidential elections, President Gloria Arroyo was caught on tape talking with election commissioner Virgilio Garcillano asking the latter to ensure that she wins by one million votes.

45. The commissioner mentioned Maguindanao, ruled by the Ampatuans, as a vote-rich region that will ensure that she will win by said number of votes.

46. True enough, in the last senatorial elections, the Ampatuans delivered a 12-0 win for the administration ticket even if the administration consistently lost in virtually all the other provinces. Because of terrorism by the Ampatuans, there are consistent reports that voters were not actually allowed to vote in Maguindanao and that Ampatuan goons just filled up the ballots.

47. Consequently, opposition candidates incredibly received zero votes in many of Maguindanao's towns. There were also consistent reports that the Arroyo administration channelled large chunks of government funds to ghost projects in Maguindanao, and a substantial part of said funds are paid back to Arroyo, her relatives, and favored allies.

48. The Arroyo administration armed the Ampatuans against the secessionist Moro Islamic Liberation Front (MILF) in the region, granting the clan much leeway to establish its own paramilitary units.

49. In the end, it was the key members of the Ampatuan political clan who are local chief executives of various LGUs in Maguindanao who would be involved in the planning, staging, and execution of the gruesome massacre.

50. Militiamen and officers and members of the Philippine National Police (PNP) under the direct control of the Ampatuans were among the perpetrators. In addition, officers and men of the Armed Forces of the Philippines (AFP) were also complicit in the carnage.

51. Mrs. Gloria Macapagal-Arroyo, as President of the Republic of the Philippines, has general supervision over these officials of Philippine LGUs.

52. Mrs. Gloria Macapagal-Arroyo, as President of the Republic of the Philippines, has supervision, control and command responsibility over officers and members of the PNP who were among the perpetrators of the Ampatuan Massacre.

53. Mrs. Gloria Macapagal-Arroyo, as Commander-In-Chief of the AFP, has supervision, control and command responsibility over members of the militia who were among the perpetrators of the Ampatuan Massacre.

54. Mrs. Gloria Macapagal-Arroyo, as Commander-In-Chief of the AFP, has supervision, control and command responsibility over officers of the Philippine Army who refused to give security to the Mangudadatu convoy heading to Shariff Aguak.

55. Clearly, all of those responsible for the carnage are agents of the Philippine State; as such, their acts in connection with the 23 November 2009 Maguindanao massacre are attributable under International law to the Republic of the Philippines, herein represented by its head of State, Mrs. Gloria Macapagal-Arroyo.

IV. AVAILABLE EVIDENCE

56. Petitioners submit the following documentary evidence:

(ANNEX A) Corporal Zaldy V. Raymundo's *Sinumpaang Salaysay* [Sworn Affidavit] dated 02 December 2009.

(ANNEX B) 1st Lt. Rolly Stefen A. Gempesao's Sworn Statement dated 29 November 2009.

(ANNEX C) Staff Sergeant Jimmy Coronel's *Sinumpaang Salaysay* [Sworn Affidavit] dated 28 November 2009.

(ANNEX D) Buka Sakilan Ali's Sworn Affidavit dated 26 November 2009.

(ANNEX E) Vice Mayor Esmael "Toto" G. Mangudadatu's Affidavit Complaint dated 30 November 2009.

(ANNEX F) Manila Standard Today correspondent Joseph Jubelag's Affidavit.

(ANNEX G) testimony of Vice Mayor Esmael Magudadatu in the bail hearings before the Quezon City Regional Trial Court, given on 28 January 2010.

V. Factual grounds for the preliminary request

57. The urgency in this preliminary request for the appropriate declaration is based on strong evidence of complicity on the part of agents of the Republic of the Philippines – including those who occupy top posts of the Arroyo cabinet – in the massacre. At the very least, these agents of the Philippine State had been complicit in the massacre through failure to prevent the massacre, which they had clearly foreseen, as well as their failure to protect the Right to Life of the victims.

58. In his testimony last January 28, 2010 in the bail hearings before the Quezon City Regional Trial Court, Vice Mayor Esmael "Toto" Mangudadatu said that just before his wife Genalyn was killed, she managed to place a call on her mobile to him to inform him that armed men led by Andal "Unsay" Ampatuan Jr. had just waylaid their convoy. She also told him that Unsay slapped her on the face.

59. In his tearful testimony, Vice Mayor Magudadatu also said that then Defense Secretary Gilbert Teodoro (the administration's Presidential candidate in the forthcoming elections) and other Presidential Palace officials knew of the violent nature of the Ampatuans but failed to stop them

from bullying their political rivals in Maguindanao.

60. He told the court that weeks before the massacre, former Congressman Prospero Pichay, also of the ruling Lakas-Kampi-CMD party, told him to be careful because the Ampatuans are given to violence.

61. In his one-and-a-half-hour testimony, Vice Mayor Mangudadatu said President Gloria Macapagal-Arroyo's chief political adviser, Gabriel Claudio, brokered two "reconciliatory meetings" on July 20 and Aug. 11 last year between the Mangudadatus and the Ampatuans.

62. In those meetings, Andal Ampatuan Sr. strongly demanded that he declare that he would not contest Ampatuan Jr.'s gubernatorial run, Mangudadatu said. He said he replied to clan patriarch that he was running for governor because of the clamor from his constituents.

63. Moreover, complicity by the Philippine State in the carnage is established by the following points:

64. First, the Republic of the Philippines could have disarmed the Ampatuans. Its top officials have pronounced that they are "violent people" but continued to supply them with high-powered firearms so that the clan could maintain a private army.

65. Second, the Republic of the Philippines could have sent police and military personnel to accompany Mangudadatu's supporters to the capitol but it did not, despite intelligence reports received from personnel on the ground of the massing of armed men along the highway leading to Shariff Aguak.

66. This security provision could have prevented the massacre. Yet the Republic of the Philippines' top Army officers in the region refused to heed requests by the Mangudadatus and their media companions, on the lame excuse that they did not have enough personnel for the purpose. Worse of all, they gave assurances that the highway leading to the capitol is safe and secure.

67. The avoidance by both the police and the military officials in the region of security duty on that ill-fated day is inexplicable, given that the violent tendencies of the Ampatuans are well-known to them and to the high civilian officials of the Republic of the Philippines and the abundant intelligence information passed on from the ground to the chain of command about the massing of armed men along the highway.

68. Too, this avoidance of duty by responsible officers and men of the Philippine national police and armed forces constitutes a failure to prevent impunity under international law.

69. It is clear from the above-discussion that the Philippine State is responsible under international law for the acts of its agents who were either complicit in the 23 November Massacre or were its direct perpetrators.

70. By reason of the above, there are well-founded fears that the Philippine State will be under very heavy pressure from the Ampatuans to whitewash the investigation or to cover up crucial evidence and witnesses. Thus, the need on the part of the Commission to issue an urgent declaration calling on the Philippine State to abide with its obligations under international law and ensure the prosecution and conviction of the perpetrators of the massacre as well as the provision of adequate reparations, including compensation and satisfaction, to the victims and their heirs.

VI. Legal grounds for the preliminary request

71. As a member of the ASEAN, the Republic of the Philippines pledged to support the aims and objectives of the Commission towards the protection and promotion of human rights within its territory and in the region as a whole.

72. Indeed, it gave its full support to the creation of the Commission, signing on 23 October 2009 the “Cha-am Hua Hin Declaration on the Inauguration of the AICHR, pledging full cooperation with this new ASEAN body and emphasizing the member-States’ commitment to further develop cooperation to promote and protect human rights in the region.

73. The slaughter of innocents perpetrated by agents of the Philippine State in the 23 November Maguindanao massacre violated the Right to Life of the victims under Art. 6(1) of the International Covenant on Civil and Political Rights (ICCPR) , among other human rights instruments under which the Philippine State is a party.

74. Indeed, it has the obligation under international law to protect the fundamental rights of individuals, especially the rights to life, to dignity, and to be provided with adequate remedies for the violation of fundamental rights.

75. Moreover, it also violated the duty of the Philippine State not to provide impunity, considering that its very own agents were behind the slaughter and it failed to prevent them from carrying it out.

76. This obligation is rooted in human rights treaties to which the Philippines is a party. In particular, the International Covenant on Civil and Political Rights and the United Nations Charter—as interpreted by the subsequent practice of State Parties -- impose the obligation to promote and protect human rights.

77. Moreover, the Philippines has the same obligation under customary international law, as evidenced by the widespread acceptance of numerous international conventions and instruments stating this hallowed principle, such conventions being evidence of the existence of a customary norm.

78. All the nations of the world would be entitled to invoke the liability of the Philippines if it violates this duty.

79. It is in the interest of the Commission and of the ASEAN to express its concern on behalf of the victims of the massacre and their heirs, and to engage the commitment of the Republic of the Philippines to ensure that (a) all its agents responsible for the egregious human rights violation are brought to justice; and (b) adequate reparations are given to the heirs of the victims of the carnage, including compensation and satisfaction.

80. Under international law, Every State has a legal duty to respect and enforce human rights and humanitarian law, and this obligation includes the duty to “afford remedies and reparation to victims.”

81. The Permanent Court of International Justice ruling in the 1928 Chorzow Factory case that the obligation to make prompt, effective and adequate reparation for an international wrongful act is a “general principle of law” has now developed into a legal and moral duty.

82. Indeed, the Women’s International War Crimes Tribunal, citing what is now known as the 1993 Van Boven guidelines, has ruled that in regard to reparation, “particular attention must be paid to gross violations of human rights and fundamental freedoms, which include at least the following: genocide, slavery and slavery-like practices...and systematic discrimination, in particular based on gender.”

83. The acts committed in the slaughter of civilians by State agents belong to this class of gross human rights violations for which the State must answer.

84. Moreover, the Republic of the Philippines also has a duty to provide compensation and satisfaction to the victims and their families under international law.

85. According to current international law, satisfaction covers public acknowledgement of the State’s wrongdoing, along with concrete steps to repair the relationship between the victim and the State and the civil society as a whole.

86. It embraces symbolic measures taken for moral and collective reparation and arises in part from the duty to remember. This may include:

- (a) XXXX;
- (b) verification of the facts and full public disclosure of the truth to the extent that such disclosure does not cause further unnecessary harm or threaten the safety of the victim, witnesses, or others;
- (c) the search for bodies of those killed or disappeared and assistance in the identification and reburial of the bodies in accordance with the cultural practices of the families and communities;
- (d) an official declaration or a judicial decision restoring the dignity, reputation and legal and social rights of the victim and of persons closely associated with the victim;

- (e) apology, including public acknowledgement of the facts and acceptance of responsibility;
- (f) judicial or administrative sanctions against persons responsible for violation of memory;
- (g) commemoration and tributes to the victims;
- (h) inclusion of an accurate account of the violations that have occurred in international human rights and humanitarian law training and in educational materials at all levels;
- (i) preventing the recurrence of violations.

87. This preliminary request is consistent with the principle enunciated in the Commission's Terms of Reference, which adopts an evolutionary approach that would contribute to the development of human rights norms and standards in the region.

Petitioners: (signed)

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