



Republic of the Philippines  
 Supreme Court  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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EN BANC

FELICITAS D. NACINO, HELEN E. RAMACULA, AND THE VOLUNTEERS AGAINST CRIME AND CORRUPTION, INC.,

Petitioners,

- versus -

THE OFFICE OF THE OMBUDSMAN, represented by Ombudsman CONCHITA CARPIO-MORALES, BENIGNO SIMEON C. AQUINO III, ALAN LM. PURISIMA, and GETULIO P. NAPEÑAS,

Respondents.

G.R. Nos. 234789-91

Present:  
 BERSAMIN, CJ.  
 CARPIO,  
 PERALTA,  
 PERLAS-BERNABE,  
 LEONEN,  
 JARDELEZA,  
 CAGUIOA,  
 A. REYES, JR.,  
 GESMUNDO,  
 J. REYES, JR.,  
 HERNANDO,  
 CARANDANG,  
 LAZARO-JAVIER,  
 INTING, and  
 ZALAMEDA, JJ.

Promulgated:

September 3, 2019

X ----- X

DECISION

JARDELEZA, J.:

This is a petition for *certiorari*<sup>1</sup> filed under Rule 65 of the Rules of Court, seeking the annulment and reversal of the Office of the Ombudsman's (Ombudsman) Consolidated Resolution<sup>2</sup> dated June 13, 2017 and Consolidated Order<sup>3</sup> dated September 5, 2017 for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction insofar as they dismissed the complaints for 44 counts of reckless imprudence resulting in multiple homicide filed against private respondents former President Benigno Simeon C. Aquino III (Aquino), former Philippine National Police (PNP) Chief Alan LM. Purisima (Purisima), and former

<sup>1</sup> Rollo, pp. 3-48  
<sup>2</sup> Id. at 53-88.  
<sup>3</sup> Id. at 89-115.

PNP-Special Action Force (SAF) Director Getulio P. Napeñas (Napeñas) in the following cases:

1. *Erlinda D. Allaga, Warlito B. Mejia, and Volunteers Against Crime and Corruption, Inc., represented by Dante LA. Jimenez and Arsenio G. Evangelista v. Benigno Simeon C. Aquino III, Alan LM. Purisima, and Getulio P. Napeñas*, docketed as OMB-C-C-16-0419;<sup>4</sup>
2. *Celistino A. Kiangar, Julie F. Danao, and Felicitas D. Nacino v. Benigno Simeon C. Aquino III, Alan LM. Purisima, and Getulio P. Napeñas*, docketed as OMB-C-C-16-0435,<sup>5</sup> and
3. *Telly R. Submilla, Helen E. Ramacula, and Lorna G. Sagonoy v. Benigno Simeon C. Aquino III, Alan LM. Purisima, and Getulio P. Napeñas*, docketed as OMB-C-C-16-0448.<sup>6</sup>

Senate Committee Report No. 120<sup>7</sup> dated March 18, 2015 otherwise known as “The Committee Report in the Mamasapano Incident” (Senate Report) summarized the core events that ultimately led to the filing of this case, as follows:

Close to midnight of January 24<sup>th</sup> of [2015], after several failed and aborted attempts in the past, almost 400 highly trained commandos belonging to the elite Special Action Force (SAF) of the Philippine National Police (PNP) unilaterally launched *OPLAN EXODUS* to serve standing warrants of arrest against 2 internationally wanted terrorists and mass murderers, namely, ZULKIFLI BIN HIR @ Marwan (“Marwan”) and AHMAD AKMAD BATABOL USMAN @ Basit Usman (“Usman”) in Mamasapano, Maguindanao (“Mamasapano”). A few minutes after 4:00 a.m. the following day, 25 January 2015, the 84<sup>th</sup> Seaborne Special Action Company of the PNP-SAF (“Seaborne”) was able to neutralize Marwan, but Usman slipped away. In the ensuing firefight that lasted for several hours thereafter against hostile forces that included members of the Moro Islamic Liberation Front (MILF), the Bangsamoro Islamic Freedom Fighters (BIFF) and other Private Armed Groups (PAGs) in the area, 44 SAF troopers fell, 15 others were wounded, at least 18 MILF members were officially declared dead, and 5 non-combatants were fatally caught in the crossfire. x x x<sup>8</sup>

This tragedy stunned the nation and led to the opening of investigations by the Senate and the PNP. The Senate Committees on Public

<sup>4</sup> *Id.* at 53, 117-153.

<sup>5</sup> *Id.* at 53, 737-773.

<sup>6</sup> *Id.* at 54, 774-809.

<sup>7</sup> *Id.* at 155-283.

<sup>8</sup> *Id.* at 155.

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Order and Dangerous Drugs, Peace, Unification and Reconciliation, and Finance jointly held public hearings,<sup>9</sup> while the PNP formed its own Board of Inquiry (PNP-BOI).<sup>10</sup> The Senate's findings and recommendations were embodied in the Senate Report.<sup>11</sup> The findings of the PNP-BOI, on the other hand, were embodied in its report entitled "The Mamasapano Report" dated March 2015<sup>12</sup> (PNP-BOI Report).

These reports, in turn, led to the filing of charges, three of which were the aforementioned complaints lodged with the Ombudsman. Complainants were mostly parents of the members of the SAF who were killed in the conduct of the police operation dubbed as *Oplan Exodus*. Except for the names and circumstances of complainants, the three complaints bore essentially the same allegations and called for private respondents Aquino, Purisima, and Napeñas to be held guilty of 44 counts of reckless imprudence resulting in multiple homicide "as a consequence of their deliberate acts of imprudence, inexcusable negligence and lack of foresight and precaution."<sup>13</sup> The complaints outlined the facts that allegedly point to the criminal culpability of each private respondent.

With respect to Aquino, the complaints averred that "[h]e helped plan 'Oplan: Exodus' with gross and inexcusable negligence, and thereafter approved the operation with full knowledge that it was flawed,"<sup>14</sup> as allegedly shown by the following circumstances:

1. He approved the recommendation of Purisima and Napeñas on the dates on which the operation shall be conducted.<sup>15</sup>
2. He had full participation in *Oplan Exodus*;<sup>16</sup> and
3. He allowed then suspended PNP Chief Purisima to participate not only in the planning of *Oplan Exodus* but also in the running of the operation, and even in giving information and intelligence while the operation was ongoing.<sup>17</sup>

Complainants concluded that Aquino's conduct "was illegal and improper, and smacks of criminal and inexcusable negligence, because it is of common knowledge that at the time, Respondent Purisima was incapable of discharging the functions of Chief of the PNP due to a subsisting suspension by the Office of the Ombudsman." Thus, he should not have left the intelligence, planning, control, and command of *Oplan Exodus* to

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<sup>9</sup> *Id.* at 155-156.

<sup>10</sup> *Id.* at 610.

<sup>11</sup> *Supra* note 7.

<sup>12</sup> *Rollo*, pp. 608-736.

<sup>13</sup> *Id.* at 123.

<sup>14</sup> *Id.* at 125. Emphasis and italics omitted.

<sup>15</sup> *Id.*

<sup>16</sup> *Rollo*, pp. 126-132.

<sup>17</sup> *Id.* at 132-138.

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Purisima who then had no authority over the PNP. Complainants accused Aquino of “running roughshod over the PNP’s chain-of-command,” quoting heavily from the reports rendered by the Senate and PNP-BOI to support their allegations.<sup>18</sup>

Complainants also attributed negligence to Aquino for not lifting a finger “to rescue his soldiers” as Commander-in-Chief. They argued that Aquino was in Zamboanga City for the most part of January 25, 2015 with the Secretaries of Defense and Interior and Local Government, the Chief of Staff of the Armed Forces of the Philippines (AFP), and the Officer-in-Charge (OIC) of the PNP.<sup>19</sup> Yet, Aquino allegedly “communicated only with Purisima about the operation.” He could have employed all means at his disposal to rescue the beleaguered troops, but he remained indifferent, used unreliable Short Message Service (SMS), and apprised himself of the situation at Mamasapano through a lone source—Purisima. Consequently, he was unable to monitor the progress of the operation and order forces to timely give succor to the SAF troops.<sup>20</sup>

With respect to Purisima, while complainants alleged that he had already been charged with usurpation of authority before the Sandiganbayan, they nonetheless insisted that he is criminally negligent and thus should be held liable for the death of the 44 SAF members because of the following circumstances:

1. Upon Purisima’s instructions, knowledge of *Oplan Exodus* was kept from the Secretary of the Department of Interior and Local Government (DILG) and the OIC of the PNP until the morning of January 25, 2015, when both the 84<sup>th</sup> Seaborne Special Action Company of the SAF (Seaborne) and the 55<sup>th</sup> Special Action Command (SAC) were already engaged with hostile forces which, according to the Senate Report, is in disregard of the requirements of lateral coordination mandated by the Joint Implementing Rules and Regulations to Executive Order No. 546, series of 2006 and PNP Operational Procedures issued in March 2010.<sup>21</sup>
2. Purisima did not practice his own doctrine of time-on-target since, as shown in the Senate Report, actual coordination was done time-after-target. “Time-on-target” means that the AFP units shall be advised about the operation when the Seaborne troops are at the target area. The Seaborne reached the target area at around 3:00 a.m., but it was only at 5:06 a.m. on January 25, 2015, or more

<sup>18</sup> *Id.* at 133-137. Emphasis omitted.

<sup>19</sup> *Id.* at 76. At the time, the designated OIC of the PNP was Police Deputy Director General Leonardo Espina.

<sup>20</sup> *Id.* at 138.

<sup>21</sup> *Id.* at 140-142.

than two hours after, that Napeñas sent a text message to the AFP.<sup>22</sup>

3. Purisima was criminally remiss in giving intelligence inputs during the planning and execution of the operation. Complainants cited the PNP-BOI Report which states that the planners of *Oplan Exodus* failed to adequately consider the topography of the area of operations. Under the plan, the troops would use the same routes to infiltrate and leave the area of operations. No alternative exfiltration routes were established. At the crucial stage of the crisis, Purisima also kept providing inaccurate and ambiguous information from unreliable sources, which resulted in eventual erroneous decisions.<sup>23</sup>

Finally, as regards Napeñas, complainants alleged that he had been charged by the Ombudsman with usurpation of authority and grave misconduct. Nevertheless, as with Purisima, Napeñas should be found criminally negligent and liable for the death of the 44 SAF members due to the following circumstances:

1. Napeñas unlawfully took orders from Purisima, knowing fully that the latter was divested of the legal right to issue orders to his subordinates by virtue of his suspension.<sup>24</sup>
2. Napeñas planned *Oplan Exodus* negligently, imprudently, unskillfully, and without any forward vision, quoting the following findings in the Senate Report:
  - i.) PNP Intelligence prior to the launch of *Oplan Exodus* indicated that there were more than 1,000 hostile troops at or near the target area, yet SAF deployed only 392 personnel for the entire operation;
  - ii.) SAF mission planners were informed of the possibility of *pintakasi*, a common practice among Muslim armed groups where groups normally opposed to each other would come together and fight side-by-side against a common enemy or intruding force, but SAF leadership failed to address this;
  - iii.) SAF leadership was unaware that the Moro Islamic Liberation Front (MILF) had mortar capability;
  - iv.) There was no properly prepared operation plan; and

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<sup>22</sup> *Id.* at 142.

<sup>23</sup> *Id.* at 143.

<sup>24</sup> *Id.* at 144.

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- v.) Napeñas informed the AFP of SAF's law enforcement operation to get two high-value targets time-after-target, when SAF commandos had been engaged by hostile forces.<sup>25</sup>
3. While *Oplan Exodus* was in progress, Napeñas was transmitting inaccurate intelligence and information which proved fatal.<sup>26</sup>

According to complainants, all of the above circumstances, taken together, indubitably establish probable cause that private respondents acted with inexcusable negligence and imprudence that make them probably guilty of reckless imprudence, as defined and penalized under Article 365 of the Revised Penal Code (RPC).<sup>27</sup>

In its assailed Consolidated Resolution<sup>28</sup> dated June 13, 2017, the Ombudsman dismissed the complaints for reckless imprudence resulting in multiple homicide against all private respondents but found probable cause to charge Aquino with violation of Article 177 of the RPC and Section 3(a) of Republic Act No. (RA) 3019,<sup>29</sup> in conspiracy with Purisima and Napeñas. It thus ordered the filing of the appropriate informations against Aquino.<sup>30</sup>

Preliminarily, the Ombudsman noted that in its Consolidated Decision dated June 25, 2015 in administrative cases docketed as OMB-P-A-14-0333 and OMB-P-A-14-0659, it found Purisima and his co-respondents guilty of grave misconduct, serious dishonesty, and grave abuse of authority for which they were meted the penalty of dismissal from the service with all its accessory penalties.<sup>31</sup> Further, in prior complaints against Purisima, Napeñas, and other PNP officials relative to the Mamasapano incident, docketed as OMB-P-C-15-0434 and OMB-P-C-15-0232 (criminal cases) and OMB-P-A-15-0485 and OMB-P-A-15-0253 (administrative cases), the Ombudsman issued a Joint Resolution dated March 10, 2016, finding probable cause against Purisima and Napeñas, in conspiracy with one another, for usurpation of authority or official functions under Article 177 of the RPC and violation of Section 3(a) of RA 3019, as amended.<sup>32</sup> Thus, the finding of probable cause in the assailed Consolidated Resolution for violation of Article 177 of the RPC and Section 3(a) of RA 3019 pertained only to Aquino.

In ruling that no probable cause exists to charge private respondents with reckless imprudence resulting in homicide, the Ombudsman held that the designation of the offense in a complaint or in a directive to file a counter-affidavit is neither conclusive nor controlling, for it may formulate

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<sup>25</sup> *Id.* at 145-146.

<sup>26</sup> *Id.* at 147.

<sup>27</sup> *Id.* at 149.

<sup>28</sup> *Supra* note 2.

<sup>29</sup> Anti-Graft and Corrupt Practices Act

<sup>30</sup> *Rollo*, p. 86.

<sup>31</sup> *Id.* at 55.

<sup>32</sup> *Id.* at 55-56.

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and designate the offense and direct the filing of the corresponding information on the basis of the evidence presented in the course of the preliminary investigation.<sup>33</sup> In this case, even if private respondents were negligent, the proximate cause of the death of the 44 SAF members, as well as the wounding of the 15 SAF troopers, was the intentional act of shooting by hostile forces that included members of the MILF, Bangsamoro Islamic Freedom Fighters (BIFF), and Private Armed Groups (PAGs). Such act by these hostile forces constituted an efficient intervening cause in the purported negligence of private respondents during the planning, preparation, and actual implementation of *Oplan Exodus*,<sup>34</sup> which may not necessarily be considered as within their full control, whether with a prior and timely coordination with government forces. An efficient intervening cause is the new and independent act which itself is a proximate cause of an injury and which breaks the causal connection between the original wrong and the injury. The Ombudsman held that, at best, the purported criminal negligence on the part of private respondents was only contributory.<sup>35</sup>

The Ombudsman's finding of probable cause against Aquino for violation of Article 177 of the RPC and Section 3(a) of RA 3019 is anchored on the findings of the Senate Report on the actual manner and extent of participation of Purisima in *Oplan Exodus* during the time that he was on preventive suspension *vis-à-vis* the conduct and demeanor of Aquino towards Purisima at the time.<sup>36</sup>

The Ombudsman also accorded merit to Napeñas' claim in his consolidated counter-affidavit<sup>37</sup> that Purisima ordered Napeñas to join him in providing a mission update to the President on January 9, 2015 at Bahay Pangarap in Malacañang, giving Napeñas a strong impression that Purisima was under the direction of the President.<sup>38</sup> The Ombudsman likewise considered the transcript of text messages exchanged between Purisima and Napeñas, and Purisima and Aquino regarding *Oplan Exodus* prior to and on the day of its implementation on January 25, 2015, which purportedly were not repudiated by either Aquino or Purisima.<sup>39</sup>

The Ombudsman held that this exchange of text messages does not agree with Aquino's assertion that he merely utilized Purisima as a "resource person providing vital information" for *Oplan Exodus*. It declared as misplaced Aquino's assertion that as the Chief Executive, he can directly order any subordinate to do what must be done.<sup>40</sup> The Ombudsman observed that despite being under preventive suspension, Purisima played an active role in *Oplan Exodus*, as shown by the record of text messages and findings

<sup>33</sup> *Id.* at 66.

<sup>34</sup> *Id.* at 68.

<sup>35</sup> *Id.* at 72-73.

<sup>36</sup> *Id.* at 74.

<sup>37</sup> *Id.* at 869-901.

<sup>38</sup> *Id.* at 77.

<sup>39</sup> *Id.* at 78.

<sup>40</sup> *Id.* at 80, 1108; citing Aquino's counter-affidavit.

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of the Senate Report, to the point that he was exercising a degree of authority and discretion over Napeñas and, consequently, over the operation.<sup>41</sup>

The Ombudsman moreover echoed the words of the Senate Report that Aquino “assented to, or at the very least failed to prevent” Purisima in the commission of usurpation of authority or official functions under Article 177 of the RPC. In other words, Purisima would not have been placed in such a position of continuing to conduct himself, in relation to *Oplan Exodus*, in a manner as if he was not under preventive suspension at the time, were it not for the complicity and influence of Aquino. The Ombudsman thus concluded that there is probable cause against Aquino for violation of Article 177 of the RPC, in conspiracy with Purisima and Napeñas. Likewise, probable cause exists against Aquino, in conspiracy with Purisima and Napeñas, for violation of Section 3(a) of RA 3019 since, with the complicity and influence of Aquino, the order of preventive suspension issued by the Ombudsman was violated and usurpation of authority or official functions under Article 177 of the RPC was committed.<sup>42</sup>

Aquino filed a motion for partial reconsideration<sup>43</sup> dated July 18, 2017, praying for a partial reversal of the Ombudsman’s Consolidated Resolution for violation of his constitutionally-protected right to be informed of the nature and cause of the accusation against him and for failure to establish and substantiate the presence of the elements of the offense. Complainants Telly Submilla, Felicitas Nacino, Celestino Kiangán,<sup>44</sup> Julie Danao, and Volunteers Against Crime and Corruption, Inc. (VACC), through Dante Jimenez and Arsenio Evangelista, also filed a consolidated motion for reconsideration<sup>45</sup> dated July 19, 2017, insisting that there is probable cause to charge private respondents with 44 counts of reckless imprudence resulting in homicide. In its Consolidated Order<sup>46</sup> dated September 5, 2017, the Ombudsman denied the motions.

Hence, this petition for *certiorari* attributing grave abuse of discretion on the part of the Ombudsman in dismissing the complaint for reckless imprudence resulting in multiple homicide against private respondents. Petitioners insist that the Ombudsman’s treatment of “the intentional act of shooting by hostile forces that included members of the MILF, BIFF, and PAGs” as constituting the efficient intervening cause is contrary to law and existing jurisprudence.<sup>47</sup> According to them, citing an American source, the

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<sup>41</sup> *Id.* at 80-81.

<sup>42</sup> *Id.* at 85-86.

<sup>43</sup> *Id.* at 1126-1144.

<sup>44</sup> *Id.* at 91. As observed by the Ombudsman in its September 5, 2017 Consolidated Order, a certain Victoria Kiangán appeared as signatory to the consolidated motion for reconsideration, but no such person appeared as complainant in any of the three complaints. A Celestino A. Kiangán appeared as complainant in OMB-C-C-16-0435, but he is not among the signatories to the consolidated motion for reconsideration. Nevertheless, the motion for reconsideration was given due course.

<sup>45</sup> *Id.* at 946-960.

<sup>46</sup> *Supra* note 3.

<sup>47</sup> *Rollo*, p. 21.



rule should be that “where harmful consequences are brought by intervening and independent forces the operation of which might have been reasonably foreseen, there will be no break in the chain of causation of such a character as to relieve the actor from liability.”<sup>48</sup> Petitioners also cite American cases, as well as the case of *Abrogar v. Cosmos Bottling Company*,<sup>49</sup> that purport to apply this rule. They then argue that the shooting and killing of the 44 SAF members by the combined elements of the MILF, BIFF, and PAGs cannot be considered as an efficient intervening cause because such event was known and foreseeable to private respondents and could have been avoided by the latter if only they acted with due diligence in the planning and execution of *Oplan Exodus*.<sup>50</sup>

In fact, petitioners add, *Oplan Exodus* was the 10<sup>th</sup> operation planned by the PNP to arrest Zulkifli Bin Hir a.k.a. Marwan (Marwan). Previous operations have been aborted because of risks of heavy resistance from armed groups. Aquino himself admitted in his counter-affidavit<sup>51</sup> that he was “informed that there are an estimated 3,400 hostile forces in the area of operations,” and since it is a “basic and long-standing doctrine that a minimum ratio of 3:1 of attackers to defenders is crucial to the success of the operations,” he “cautioned and stressed the need to respondent Napeñas that he should take consideration of the culture of *pintakasi* x x x.”<sup>52</sup>

Petitioners moreover submit that, since the presence of armed groups in the area of operation was discussed in the January 9, 2015 briefing, the consequences of a firefight were known and foreseeable to private respondents. Further, considering that the operation would involve the attempted arrest of notoriously dangerous and armed terrorists, private respondents were aware that poor planning and execution of the operation will result to casualties for the SAF. Napeñas himself conceded that *Oplan Exodus* was “a high risk mission,” and he anticipated that “SAF will incur at least ten (10) casualties.” Petitioners consequently insist that the proximate cause of the killing of the 44 SAF members was the reckless imprudence and inexcusable negligence of private respondents in the planning and execution of the operation, which was “overwhelmingly established by the Observations/Findings of the Senate Report.”<sup>53</sup>

Petitioners finally allude to portions of the PNP-BOI Report which allegedly “complements the findings of the Senate Report” and details the participation of private respondents in *Oplan Exodus*. They assert that the findings of the Senate and PNP-BOI speak volumes on the inherent defects of *Oplan Exodus* and conclude that, in sending the SAF to a high-risk mission based on an operation plan that the Senate Report summed up as

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<sup>48</sup> *Id.* at 22.

<sup>49</sup> *Id.* at 27-31; G.R. No. 164749, March 15, 2017.

<sup>50</sup> *Rollo*, p. 31.

<sup>51</sup> *Id.* at 843-868.

<sup>52</sup> *Id.* at 31.

<sup>53</sup> *Id.* at 31-32.

“poorly planned and executed,” “intentionally broke the chain of command,” “was not followed to details,” “badly coordinated,” and with “badges of failure from the very start,” private respondents set in motion the chain of events that led to the untimely death of the 44 SAF members. Thus, as shown by the circumstances, “shooting by hostile forces” cannot be deemed as an efficient intervening event that broke the chain of events caused by private respondents’ negligent acts considering that such external act ought to have been reasonably foreseen in the planning of *Oplan Exodus*.<sup>54</sup>

In a Resolution<sup>55</sup> dated December 13, 2017, the Court ordered respondents to file their respective comments on the petition.

On January 25, 2018, the Office of the Solicitor General (OSG) filed a manifestation in lieu of comment (to the petition dated November 2, 2017),<sup>56</sup> stating that it will not represent the Ombudsman in the case and will act as the People’s Tribune. It cited the case of *Rubio, Jr. v. Sto. Tomas*<sup>57</sup> where the Court held that “it is also incumbent upon [the OSG] to present to the Court the position that will legally uphold the best interests of the Government although it may run counter to a client’s position.”<sup>58</sup>

The OSG condemns the Consolidated Resolution of the Ombudsman for having been issued with grave abuse of discretion. It echoes the findings of both the Senate and PNP-BOI and the arguments of complainants, and likewise concludes that private respondents’ liability is grounded on the faulty planning and execution of *Oplan Exodus*, an inexcusable lack of precaution, regardless of the presence of hostile forces in the battle ground.<sup>59</sup> In other words, the shooting of the 44 SAF members by combined elements of MILF, BIFF, and PAGs cannot be considered an efficient intervening cause because such event was known and foreseeable and could have been avoided with due diligence in the planning and execution of *Oplan Exodus*.<sup>60</sup> The proximate cause of the deaths of the 44 SAF members was thus the negligence of private respondents.<sup>61</sup> The OSG prays for the Court to set aside the assailed Consolidated Resolution and Consolidated Order, direct the Ombudsman to file 44 counts of reckless imprudence resulting in homicide against private respondents, and issue a temporary restraining order or writ of preliminary injunction to stall the arraignment of private respondents for usurpation of authority.<sup>62</sup>

On January 26, 2018, Purisima filed his comment<sup>63</sup> on the petition, pointing out that the assailed Consolidated Resolution made no specific

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<sup>54</sup> *Id.* at 37-43.

<sup>55</sup> *Id.* at 961-962.

<sup>56</sup> *Id.* at 966-1010.

<sup>57</sup> G.R. No. 83067, March 22, 1990, 183 SCRA 571.

<sup>58</sup> *Rollo*, p. 579.

<sup>59</sup> *Id.* at 973-979

<sup>60</sup> *Id.* at 994.

<sup>61</sup> *Id.* at 996.

<sup>62</sup> *Id.* at 1005.

<sup>63</sup> *Id.* at 1017-1029.

finding against him and found probable cause only against Aquino for usurpation of official functions and violation of Section 3(a) of RA 3019. This is because he has already been indicted in Criminal Case Nos. SB-17-CRM-0120 (for Usurpation of Official Functions) and SB-17-CRM-0121 [for Violation of Section 3(a) of RA 3019] in connection with *Oplan Exodus*. In fact, he was already arraigned before the Sandiganbayan on February 23, 2017, to which he entered a plea of “Not Guilty.” Since he is already facing trial for intentional offenses, it would be highly irregular and anomalous to charge him again with criminal negligence for the same acts constituting such intentional offenses.<sup>64</sup>

Even then, Purisima reiterates the defenses he raised in the consolidated counter-affidavit<sup>65</sup> he filed before the Ombudsman, which showed why the acts he performed in connection with *Oplan Exodus* while under preventive suspension do not amount to criminal negligence, much less intentional felony.<sup>66</sup> He points out that the Joint Resolution of the Ombudsman dated March 10, 2016 in OMB-P-C-15-0434 and OMB-P-C-15-0232 reveals that there is absolutely no documentary or testimonial evidence to show that he ever participated in the planning of *Oplan Exodus*. There is also absolutely no statement or claim by any witness that he ever attended any of the planning sessions conducted by the SAF for the successive operation plans to capture Marwan and Ahmad Akmad Batabol Usman a.k.a. Basit Usman (Usman), including *Oplan Exodus*. The fact is that he never attended any of the planning sessions because, as early as April 2014, he had already delegated the command and control over law enforcement operations against Marwan and Usman to the SAF Director in accordance with Section 26 of RA 6975<sup>67</sup> which empowers the PNP Chief to delegate his authority to any of his subordinate officers.<sup>68</sup> Not having been involved in the planning and execution of *Oplan Exodus*, whatever action he took during his preventive suspension in compliance with the earlier guidance and instructions of Aquino did not amount to an unlawful exercise of the functions of the PNP Chief, or even criminal negligence. Also, the January 9, 2015 briefing with Aquino was not a planning session but simply a briefing intended to inform and update the latter on the latest developments on the continuing law enforcement operations against Marwan and Usman.<sup>69</sup> In that briefing, Aquino merely reiterated the policy guidance he had already given for the earlier operation plans for which he was also briefed, leaving the tactical details of *Oplan Exodus* to the SAF. Purisima asserts that he participated in the briefing as facilitator or resource person, which should not be deemed as involvement in the planning of the operation. He then prays for the petition to be dismissed for lack of merit.<sup>70</sup>

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<sup>64</sup> *Id.* at 1017-1018.

<sup>65</sup> *Id.* at 810-835.

<sup>66</sup> *Id.* at 1019.

<sup>67</sup> Department of the Interior and Local Government Act of 1990.

<sup>68</sup> *Rollo*, pp. 1019-1020.

<sup>69</sup> *Id.* at 1022.

<sup>70</sup> *Id.* at 1024.

On February 5, 2018, Aquino filed his comment/opposition [to the petition for *certiorari* dated November 2, 2017].<sup>71</sup> He argues that there was no negligence on his part that could have served as the “first act” in the chain of causation leading to the death of the 44 members of the SAF. It is inaccurate to say that he approved *Oplan Exodus* since it was a component of an on-going police operation to serve long-standing arrest warrants against high-value targets which preceded his presidency by seven years. As detailed by both the Senate and PNP-BOI reports, several operations towards the same end had been conducted without his involvement. Given that he was a civilian with no military or police background, he was merely on the receiving end of the reports on the operation and was apprised of the activities before, during, and after the conduct of the operations by the persons-in-charge to whom he would respond with comments, observations, and suggestions. Despite his lack of specialized training and expertise, Aquino said he determined the need for the PNP to coordinate with the AFP to ensure the success of the operation and that SAF will have timely and adequate reinforcement should it be necessary. In this view, he ordered Napeñas to coordinate with the AFP and relied on the latter’s assurance that proper coordination with the AFP will be done. As civilian Commander-in-Chief of the AFP and leader of the PNP, he was ultimately aware only of the broad strokes of the operation and could have contributed only in general matters. He could not have been expected to understand all the details of *Oplan Exodus* and its implementation.<sup>72</sup>

As regards Purisima’s participation in the operation, Aquino alleges that he merely treated Purisima as a resource person whom he could consult, given his extensive experience on such a sensitive matter, not to mention that Purisima had been privy to similar previous operations to arrest the subject high-value targets. Aquino was impelled by good faith and a sense of duty to consider all sources of information which could be vital to the success of the operation.<sup>73</sup>

In response to the allegation that he failed to rescue SAF members when they were trapped in the crossfire, Aquino emphasizes that he was given misleading information during the actual implementation of *Oplan Exodus*. He insisted on being updated regularly on the development of the operation, but on the day hostilities broke out, there was no urgency in the messages that he received or any indication that things had gone awry in the operation. Not having been properly involved, he was prevented from acting promptly during the execution and aftermath of the operation. Thus, the Ombudsman was correct in stating that he was not the proximate cause of the deaths of the 44 SAF members because there was no negligence on his part to speak of.<sup>74</sup>

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<sup>71</sup> *Id.* at 1062-1097.

<sup>72</sup> *Id.* at 1065-1068.

<sup>73</sup> *Id.* at 1068.

<sup>74</sup> *Id.* at 1069.

Aquino, however, alleges grave error and abuse of discretion on the part of the Ombudsman in filing informations for usurpation of official functions and violation of Section 3(a) of RA 3019 against him, as these are charges entirely unrelated to the original charge. He claims that he was denied due process when he was not given opportunity to refute such charges.<sup>75</sup> Moreover, the respective informations filed against him do not show the presence of all the elements of either crime.<sup>76</sup>

Also on February 5, 2018, the OSG filed a motion to elevate the case to the Court *En Banc* (with leave of Court).<sup>77</sup> While stating that it does not doubt the capacity of the Court's First Division to render a lawful, fair, and just resolution of the case, it nonetheless moves for the case to be decided *En Banc* "in view of the factual circumstances attendant in [the] case" and for being "imbued with national interest."<sup>78</sup> In a Resolution<sup>79</sup> dated April 23, 2018, the Court required respondents to file their respective comments on the motion.

On February 6, 2018, public respondent Ombudsman filed its comment (with opposition to the issuance of a Temporary Restraining Order (TRO) and/or writ of preliminary injunction) with manifestation,<sup>80</sup> asserting that it did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the assailed Consolidated Resolution and Consolidated Order which dismissed the complaints for 44 counts of reckless imprudence resulting in homicide against private respondents.<sup>81</sup> It maintains that the circumstances obtaining in the case fail to support a finding of probable cause for reckless imprudence or criminal negligence since the negligence in the planning, preparation, and actual implementation of *Oplan Exodus* was subsequently broken by the occurrence of an efficient intervening cause, which is the intentional act of shooting by hostile forces. This is also the actual, direct, immediate, and proximate cause of the deaths of the 44 SAF members.<sup>82</sup> It strictly adhered to the jurisprudential parameters of probable cause and dismissed the complaints since one of the elements of the crime charged is wanting—that the negligent act must be the proximate cause of the deaths of the 44 SAF members.<sup>83</sup> In any event, it submits that only one count of reckless imprudence resulting in multiple homicide may be charged, regardless of the number of resulting deaths, since Article 365 of the RPC penalizes the negligent or careless act and not its result. It then opposes petitioners' prayer for the issuance of a TRO and/or writ of preliminary injunction on the ground that injunction will not lie to enjoin a criminal prosecution because public interest requires that

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<sup>75</sup> *Id.* at 1075-1076.

<sup>76</sup> *Id.* at 1080-1083.

<sup>77</sup> *Id.* at 1145-1157.

<sup>78</sup> *Id.* at 1147.

<sup>79</sup> *Id.* at 1289-1291.

<sup>80</sup> *Id.* at 1158-1180.

<sup>81</sup> *Id.* at 1160-1161.

<sup>82</sup> *Id.* at 1166.

<sup>83</sup> *Id.* at 1169.

criminal acts be immediately investigated and prosecuted for the protection of society. Moreover, petitioners failed to establish the requirements for their issuance. Hence, it prayed for the denial of the application for provisional remedies and the dismissal of the petition.<sup>84</sup>

In a Resolution<sup>85</sup> dated February 7, 2018, the Court impleaded the Sandiganbayan as party respondent in these cases and issued a TRO enjoining the Ombudsman and all persons acting upon its orders from implementing the assailed Consolidated Resolution and Consolidated Order, and the Sandiganbayan from proceeding with the arraignment of private respondents in the subject cases.

On February 26, 2018, Napeñas filed his comment/opposition (to the petition for *certiorari*).<sup>86</sup> He considers as “dubious, if not outright hilarious” petitioners’ allegation that “the shooting and killing of the [44 SAF members] by the combined elements of the MILF, BIFF and [PAGs] cannot be considered as an efficient intervening cause because such event was known and foreseeable to herein respondents, and the same could have been avoided had respondents acted with due diligence in the planning and execution of ‘*Oplan Exodus*.’”<sup>87</sup> According to Napeñas, all members of the SAF knew, from the time they voluntarily joined the SAF, that they were putting their lives on the line for the fulfillment of the PNP’s motto, “To Serve and Protect,” for the accomplishment of the SAF’s primary mission to counter terrorism and for the love of the country. No person in his right mind would believe that there is no danger associated with trying to arrest one of the most wanted terrorists in the world. Knowing that the targets and mission are lawful and legitimate, proper planning and preparations were done, and the mission was approved by the highest authority. Napeñas alleges that he had no other choice but to carry out the operation lest he will be charged of insubordination.<sup>88</sup>

Napeñas also reiterates the statement in his consolidated counter-affidavit that he did his best to secure the much-needed artillery support from the AFP. All information that the AFP requested had been provided as early as 8:39 in the morning of January 25, 2015, but the artillery support requested did not come until almost 6:00 p.m. Rigorous time and effort were also exerted by Napeñas, other officers of the SAF, and the unit and personnel who would execute the operations in the planning before they came up with the concept of operations and the *oplan* itself. As director of the SAF, Napeñas’ sworn duty is to serve and protect the nation against the evils wrought by international terrorists like Marwan. He was then simply

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<sup>84</sup> *Id.* at 1172-1175.

<sup>85</sup> *Id.* at 1052-1056.

<sup>86</sup> *Id.* at 1182-1195.

<sup>87</sup> *Id.* at 1189. Emphasis and italics omitted.

<sup>88</sup> *Id.* at 1189-1190.

performing his duty in accordance with the knowledge, training, experience, and expertise he possessed as one of the pioneers of the SAF.<sup>89</sup>

Napeñas subscribes to the Ombudsman's finding that the proximate cause of death of the 44 SAF members was not his negligence but "the devious desire of the combined forces of the MILF, BIFF, and other Private Armed Groups, who coddled terrorists like Marwan and Usman, to barbarically and mercilessly take the irreplaceable lives" of these 44 SAF members. Moreover, Aquino, together with Purisima, abandoned his men and placed all the blame on Napeñas. In view of the circumstances, Napeñas submits that the Ombudsman did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in rendering its assailed Consolidated Resolution and Consolidated Order directing the dismissal of the cases against him. The instant petition should thus be dismissed for absolute lack of merit and lack of evidence.<sup>90</sup>

On February 27, 2018, the OSG filed its reply (to the comment filed by the Office of the Ombudsman dated January 26, 2018) with leave of Court,<sup>91</sup> mainly reiterating the position it took in its manifestation (in lieu of comment).

On April 23, 2018, the Court issued a Resolution<sup>92</sup> requiring petitioners to file a consolidated reply on the comment/opposition of Aquino, comment of the Ombudsman, and comment/opposition of Napeñas, among others.

On August 31, 2018, Aquino filed his comment/opposition [to: motion to elevate the case to the Court *En Banc* (with leave of Court) dated November 2, 2017].<sup>93</sup>

On September 17, 2018, petitioners filed their consolidated reply.<sup>94</sup>

On September 26, 2018, Purisima filed his comment (to the motion to elevate the case to the Court *En Banc*), praying for the motion to be denied for utter lack of merit.<sup>95</sup>

On October 8, 2018, the Ombudsman filed its manifestation (in lieu of comment), stating that it interposes no objection to the motion to elevate the case to the Court *En Banc* and submits the determination of its propriety to the sound discretion of the Court pursuant to its internal rules.<sup>96</sup>

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<sup>89</sup> *Id.* at 1190-1191.

<sup>90</sup> *Id.* at 1191-1192.

<sup>91</sup> *Id.* at 1274-1286.

<sup>92</sup> *Supra* note 79.

<sup>93</sup> *Rollo*, pp. 1303-1313.

<sup>94</sup> *Id.* at 1333-1348.

<sup>95</sup> *Id.* at 1360-1368.

<sup>96</sup> *Id.* at 1368-A-1368-F.

On February 20, 2019, the Court's First Division issued a Resolution referring the consolidated cases to the Court *En Banc en consulta*.<sup>97</sup> In its Resolution<sup>98</sup> dated February 26, 2019, the *Court En Banc* accepted the case.

On June 25, 2019, the Court received a manifestation<sup>99</sup> from the Ombudsman, stating that it filed a motion to withdraw information in Criminal Case Nos. SB-17-CRM-2144 to 2145 entitled *People of the Philippines v. Aquino* pending before the Sandiganbayan. The motion to withdraw information<sup>100</sup> attached to the manifestation pertinently states:

After a review of the assailed Consolidated Resolution and Consolidated Order dated June 13, 2017 and September 5, 2017, respectively, in OMB-C-C-16-0419, OMB-C-C-16-0435 and OMB-C-C-16-0448, subject of the TRO, the undersigned finds no sufficient ground and evidence to charge accused Benigno Simeon C. Aquino III for violation of Section 3(a) of Republic Act No. 3019 and for Usurpation of Official Functions under Article 177 of the Revised Penal Code, being then the President of the Republic of the Philippines during the time material to these cases.

**WHEREFORE**, premises considered, it is most respectfully prayed of this Honorable Court that the People of the Philippines be allowed to withdraw the Informations in Criminal Case Nos. SB-17-CRM-2144 and SB-17-CRM-2145 as against accused Benigno Simeon C. Aquino III and, thereafter the same be considered dismissed, without prejudice to the filing of appropriate charges against accused after the conduct of preliminary investigation.

In a Resolution<sup>101</sup> dated July 2, 2019, We noted the Ombudsman's manifestation and required all the parties, including the OSG, to file their comment thereon within a non-extendible period of 10 days from notice.

Aquino filed his comment (to the Office of the Ombudsman's manifestation dated June 24, 2019)<sup>102</sup> on July 15, 2019, averring that the action taken by the Ombudsman is consistent with his position that there is no probable cause to indict him for violation of Section 3(a) of RA 3019 and Article 177 of the RPC. Hence, he is not objecting to the withdrawal of the respective informations filed against him.

In their comment<sup>103</sup> of even date, petitioners similarly expressed no objections to the Ombudsman's motion to withdraw information, and even went further by stating that the charges sought to be withdrawn are

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<sup>97</sup> *Id.* at 1369.

<sup>98</sup> *Id.* at 1370.

<sup>99</sup> *Id.* at 1372-1374.

<sup>100</sup> *Id.* at 1375-1378.

<sup>101</sup> *Id.* at 1379.

<sup>102</sup> *Id.* at 1381-1387.

<sup>103</sup> *Id.* at 1388-1392.



groundless and meant only to protect and insulate Aquino from graver charges. They prayed for the Court to allow the People of the Philippines to withdraw the subject informations and direct the Ombudsman to file 44 counts of reckless imprudence resulting to homicide against Aquino.

On July 17, 2019, Napeñas filed his comment (to respondent Office of the Ombudsman's June 24, 2019 manifestation),<sup>104</sup> stating that he does not question the wisdom of the Ombudsman's decision to withdraw the cases filed against Aquino and defers to the Sandiganbayan's sound discretion as regards its disposition. Nonetheless, he submits that if there is nothing illegal or criminal in Aquino's acts, justice dictates that he should also be held *not* liable for the same offenses since he merely followed Aquino's just, legal, and proper orders to neutralize one of the world's most wanted terrorists.

On July 22, 2019, the OSG filed its comment (to the manifestation of the Office of the Ombudsman dated June 24, 2019).<sup>105</sup> Essentially, it argues that while the Ombudsman has the sole prerogative to withdraw the informations in the exercise of its prosecutory powers under the Constitution, that should not pave the way for Aquino's exoneration from the crime of reckless imprudence resulting in multiple homicide. Moreover, the withdrawal of the informations should be accompanied by the filing of appropriate charges to ensure that all responsible public officials will be held accountable for the "botched" *Oplan Exodus*.

Finally, on July 26, 2019, Purisima filed his comment<sup>106</sup> stating that he has no objections to the withdrawal of the informations filed against Aquino. However, since he merely acted as an adviser to the President and did not exercise the powers or authority of the PNP Chief in relation to the Mamasapano incident, the informations filed against him should also be withdrawn.

The sole issue brought before Us for resolution is whether or not the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaints for reckless imprudence resulting in multiple homicide filed against private respondents. In this view, We do not deal with matters concerning the other charges filed against Aquino, more so pre-empt the resolution of the Ombudsman's motion to withdraw information. The Sandiganbayan retains exclusive jurisdiction and competence to determine the outcome of the criminal cases filed before it and any disposition of these cases rests upon its sound discretion.<sup>107</sup>

Preliminary considerations having been tackled, We deny the petition and hold that there is no probable cause to charge private respondents with reckless imprudence resulting in multiple homicide.

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<sup>104</sup> *Id.* at 1393-1397.

<sup>105</sup> *Id.* at 1411-1422.

<sup>106</sup> *Id.* at 1430-1435.

<sup>107</sup> *Fuentes v. Sandiganbayan*, G.R. No. 154564, July 29, 2006, 495 SCRA 784.



Article 365 of the RPC defines reckless imprudence as follows:

Art. 365. *Imprudence and negligence.* – x x x

x x x x

Reckless imprudence consists in voluntary, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.

x x x x

The Ombudsman held that in reckless imprudence resulting in multiple homicide in relation to the operation of a vehicle, it must be shown that there was a direct causal connection between the negligence and injuries or damages sustained, or that such reckless negligence was the proximate cause of the collision.<sup>108</sup> It cited the definition of proximate cause that We laid down in the case of *Vallacar Transit, Inc. v. Catubig*,<sup>109</sup> to wit:

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. And more comprehensively, the proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom.<sup>110</sup>

Gauging by this standard, the Ombudsman held that the proximate cause of the death of the 44 SAF members was the intentional act of shooting by hostile forces that included members of the MILF, BIFF, and PAGs.<sup>111</sup> This intentional act was an “active external [factor] that may not necessarily be considered as within the full control of respondents, whether


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<sup>108</sup> *Rollo*, p. 67.

<sup>109</sup> *Id.*; G.R. No. 175512, May 30, 2011, 649 SCRA 281. See also *Dumayag v. People*, G.R. No. 172778, November 26, 2012, 686 SCRA 347.

<sup>110</sup> *Supra* note 108.

<sup>111</sup> *Rollo*, p. 68.



with a prior and timely coordination with government forces.”<sup>112</sup> It constituted an “efficient intervening cause in the purported negligence of [private] respondents during the planning, preparation, and actual implementation of *Oplan Exodus*,”<sup>113</sup> that breaks the relation of cause and effect, *i.e.*, the purported negligence and the resulting death or injury.<sup>114</sup>

Petitioners strongly differ. Citing predominantly American cases and *Abrogar v. Cosmos Bottling Company and Intergames, Inc.*<sup>115</sup> *vis-à-vis* the Senate Report, petitioners argue that the proximate cause of the killing of the 44 SAF members was the reckless imprudence and inexcusable negligence of private respondents in the planning and execution of *Oplan Exodus*. They assert that the killing of these SAF members by the combined elements of the MILF, BIFF, and PAGs cannot be considered an efficient intervening cause because such event was known and foreseeable to private respondents and could have been avoided if only they acted with diligence in the planning and execution of *Oplan Exodus*.<sup>116</sup>

Before ruling on whether private respondents had been negligent, whether their negligence was the proximate cause of the death of the 44 SAF members, and consequently, whether probable cause exists in order to charge them with the crime of reckless imprudence resulting in multiple homicide, We should first determine the main actors who were responsible for the planning and implementation of *Oplan Exodus*. This is so because a person who merely had knowledge of the operation cannot stand on the same plane and be legally accountable in the same way as the person who directly conceptualized and executed it. It is fundamental that criminal responsibility is personal and that in the absence of conspiracy, one cannot be held criminally liable for the act or default of another.<sup>117</sup> Here, the three private respondents have different involvements in the operation. Hence, the existence of probable cause to charge them of reckless imprudence must be assessed in accordance with their respective acts. We do not agree with petitioners that all of them are equally negligent.

The record shows that the mission to arrest Marwan and Usman had always been lodged with the SAF, with the first mission to capture Marwan predating the appointment of Purisima as PNP Chief. The Senate Report recounted that local authorities received information in 2003 that Marwan was hiding in Mindanao, for which the SAF launched its first operation to capture Marwan in December 2010.<sup>118</sup> Napeñas personally supervised this operation, code-named “*Oplan Pitag*,” which had been unsuccessful as the target appeared to have been tipped of his impending arrest. In July 2012, Napeñas supervised another operation to apprehend Marwan, dubbed as

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<sup>112</sup> *Id.* at 72.

<sup>113</sup> *Id.* at 68, 72.

<sup>114</sup> *Id.* at 72.

<sup>115</sup> G.R. No. 164749, March 15, 2017, 820 SCRA 301.

<sup>116</sup> *Rollo*, pp. 19-43.

<sup>117</sup> *Vizconde v. Intermediate Appellate Court*, G.R. No. L-74231, April 10, 1987, 149 SCRA 226, 233.

<sup>118</sup> *Rollo*, p. 179.

“*Oplan Smart Bomb*.” The target again managed to escape, giving the SAF a well-founded belief that Marwan’s group had been warned.<sup>119</sup> Several operation plans had been conceived to capture Marwan and Usman, but all proved unsuccessful for various reasons such as failed coordination with the AFP, the presence of heavily-armed groups in the area of operation, and equipment failure.<sup>120</sup> However, one thing is clear: these operation plans emanated from the PNP, with the SAF headed by Napeñas at the forefront.

In fact, Napeñas explained in his consolidated counter-affidavit<sup>121</sup> that the practice of the SAF in conducting mission planning is to start with the unit and personnel executing the operations.<sup>122</sup> Accordingly, in the run-up to *Oplan Exodus*, the mission planning group of the SAF was again organized on December 23, 2014, composed of Napeñas, several officials of the PNP, the Commander of the Seaborne, and the 5<sup>th</sup> Battalion Commander.<sup>123</sup>

In the Senate inquiry held on January 27, 2016, Napeñas testified that he was the one who approved and signed *Oplan Exodus*<sup>124</sup> and the one who handled and directed its operations, not Purisima or Aquino.<sup>125</sup> He decided on the exact date of the operation,<sup>126</sup> and only the entire operating troops knew about it. He did not inform Purisima nor Aquino of its execution.<sup>127</sup> In effect, Napeñas confirmed Purisima’s statement in the same Senate inquiry that “it was the PNP-SAF who approved and crafted the plan” and that *Oplan Exodus* was a “PNP-SAF plan.”<sup>128</sup> The OSG itself acknowledged the Senate Report’s finding that Napeñas was responsible for the planning of *Oplan Exodus*, and even added that Napeñas assumed full responsibility and liability for the effects of carrying out Purisima’s orders.<sup>129</sup> Indubitably, Napeñas, as director of the SAF, was the *driver* of *Oplan Exodus*, having fully managed and controlled the mission from start to finish.

The factors that led to the tragic ending of *Oplan Exodus* may be attributed to the SAF alone. In fact, the Senate Report discussed the SAF’s failure to conduct adequate intelligence, planning, and coordination with the AFP. *First*, the topography of the area of operations was not adequately considered. Less than half of the Seaborne troops were able to reach the target area, with the rest unable to cross the river nearest the target area because the water was much deeper than anticipated and the water current was too strong. The 55<sup>th</sup>, 45<sup>th</sup>, and 42<sup>nd</sup> SACs were not able to reach their designated waypoints, while the 41<sup>st</sup> SAC reached its designated waypoint

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<sup>119</sup> *Id.* at 872-873.

<sup>120</sup> *Id.* at 179-182, 873-877.

<sup>121</sup> *Id.* at 869-901.

<sup>122</sup> *Id.* at 875.

<sup>123</sup> *Id.* at 182-183.

<sup>124</sup> *Id.* at 447.

<sup>125</sup> *Id.* at 446.

<sup>126</sup> *Id.* at 443.

<sup>127</sup> *Id.* at 442.

<sup>128</sup> *Id.* at 434.

<sup>129</sup> *Id.* at 988.

several hours late. The troops were also made to use the same routes to enter and leave the area of operations with no alternative exit route.<sup>130</sup>

*Second*, while intelligence in the possession of the PNP prior to the launch of *Oplan Exodus* indicated that there were more than 1,000 hostile troops at or near the target area, the SAF deployed only 392 personnel for the entire operation, with almost a quarter of them positioned to guard the main supply route that was far away from the theatre of action. Moreover, SAF leadership failed to address the tradition of *pintakasi*<sup>131</sup> and its consequences.<sup>132</sup>

*Third*, the SAF were not aware that the MILF had mortar capability, as revealed by the surviving SAF trooper. Had they known of this fact, the complexion of their preparations would have been different.<sup>133</sup>

*Fourth*, the SAF failed to coordinate with the AFP prior to the launch of the operations. The coordinating instructions of *Oplan Exodus* provide that “lateral coordination with friendly forces before, during and after the operation is highly encouraged,” instead of mandatory. The *oplan* was also designed to be an all-PNP operation, and guidance for request for artillery and air support was made “as necessary” in the exfiltration phase of the operation. The Senate Report observed that this strategy runs counter to the Implementing Rules and Regulations of Executive Order No. 546, series of 2006<sup>134</sup> which provides that the PNP “[must] coordinate with the nearest tactical unit of the AFP to ensure coordinated and focused operations in the particular area.” The strategy also runs counter to the PNP Operational Procedures issued in March 2010, which provides that “PNP units may either operate as a single force or as a part of joint PNP-AFP combat operations. In both cases, lateral coordination is a must.” The Senate Report found that if only Napeñas prepared the *Oplan Exodus* in accordance with the guidelines of the PNP Operational Procedures, it would have been easier for the AFP to provide support or reinforcement even on short notice. Unfortunately, Napeñas did not provide a comprehensive plan to the AFP and merely informed it time-after-target, when the SAF commandos had already been engaged by hostile forces. These facts led the Senate to conclude that the “most fatal mistake made by the mission planners of *Oplan*

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<sup>130</sup> *Id.* at 203-204.

<sup>131</sup> *Id.* at 204-205. *Pintakasi* is described in the Senate Report as a practice common among Muslim armed groups where groups normally opposed to each other would come together and fight side by side against a common enemy or an intruding force. This practice is deeply rooted in the culture, tradition, and religion of Muslim communities in Mindanao. The target area of *Oplan Exodus* is a tightly-knit community in which the people are related by consanguinity.

<sup>132</sup> *Id.*

<sup>133</sup> *Rollo*, pp. 205-206.

<sup>134</sup> Directing the Philippine National Police to Undertake Active Support to the Armed Forces of the Philippines in Internal Security Operations for the Suppression of Insurgency and Other Serious Threats to National Security, Amending Certain Provisions of Executive Order No. 110 Series of 1999 and For Other Purposes.

*Exodus* was their decision against prior coordination with the AFP, x x x” which could have saved lives.<sup>135</sup>

On top of poor planning and execution, the Senate Report also observed that *Oplan Exodus* broke the chain of command, was not followed to the details, was badly coordinated, and had badges of failure from the very start.<sup>136</sup>

It is the foregoing missteps that ostensibly placed the SAF troopers in a compromising situation, as in fact they suffered grievously in the hands of various armed groups in the battlefield and were direly met with heavy casualties. As the foregoing lapses may be attributed to the SAF, with Napeñas at its helm, We hold that among the three private respondents, it is Napeñas *alone* who may be liable for a charge of reckless imprudence resulting in multiple homicide.

Napeñas alleged in his consolidated counter-affidavit that Aquino “ordered, headed and stamped his approval on the high-risk operations conducted against Marwan and Usman,” and even gave orders to Purisima in the conduct of *Oplan Exodus*, one of which states “Basit should not get away.”<sup>137</sup> Moreover, in the Senate inquiry held on January 27, 2016, Napeñas alleged that Aquino participated in the planning and preparation for the operation by approving the suggested alternative date of execution<sup>138</sup> and ordering the increase in the number of troops and coordination with the AFP.<sup>139</sup>

However, these acts barely qualify Aquino as an active player in the entire scheme of the operations, more so point to any criminal negligence on his part.

*First*, as mentioned above, since December 2010, it was the SAF, at most times supervised by Napeñas, that conceptualized and implemented operations to capture international terrorist Marwan after he was earlier reported to be residing in Mindanao. The earliest indication of Aquino’s knowledge of these operations to capture high-value targets is dated April 2014, when Purisima presented the concept of operation of a mission called “*Oplan Wolverine*” to high-ranking government officials, including Aquino and former DILG Secretary Manuel Roxas.<sup>140</sup> In fact, the record shows that it was Purisima who faithfully reported information and updates to Aquino regarding the succeeding operations. There is no indication that Aquino

<sup>135</sup> *Rollo*, pp. 206-210.

<sup>136</sup> *Id.* at 210.

<sup>137</sup> *Id.* at 1208-1209.

<sup>138</sup> *Id.* at 443. The transcript of the Senate inquiry dated January 27, 2016 states:

**THE SENATE PRESIDENT.** You decided on your own when the execution will be and you decided it will be on the 25<sup>th</sup> of January.

**MR. NAPEÑAS.** Yes, Your Honor, based on the recommendation that is approved by the President who said, “Okay,” on the window from 23 to 26, Your Honor.

<sup>139</sup> *Id.* at 311, 317, 446.

<sup>140</sup> *Id.* at 179-180.

sought these information or that Purisima updated him for any other reason than the fact that the subjects are internationally-wanted criminals who have perpetrated murder and other crimes in various jurisdictions, who carried substantial rewards for their capture, who have strong links to terrorist groups in Mindanao,<sup>141</sup> and the arrest of whom the President of the Republic of the Philippines should normally be concerned about.

*Second*, with respect to Aquino's alleged approval of the "secondary date" of the execution of *Oplan Exodus*, records show that following the briefing at Bahay Pangarap on January 9, 2015, Purisima informed Aquino of Napeñas' preference for the "secondary date" through a text message, to which Aquino replied with a simple "Okay."<sup>142</sup> Aside from the fact that this date was recommended by Napeñas himself,<sup>143</sup> Aquino's cursory reply was a mere formality, an acknowledgment of a preference made by the leader of the operating troops. Purisima's message was not an indication of Aquino's involvement in the planning and execution of *Oplan Exodus*, but a form of giving deference to his position. The facts should not be convoluted to add more to what had been clearly intended.

*Third*, Aquino's suggestions during the briefing at Bahay Pangarap in Malacañang to increase the number of troops and coordinate with the AFP appear to be spontaneous remarks to a completed operation plan presented to him for his information. Napeñas himself declared that it is not unusual for the President to know high-level operations.<sup>144</sup> Moreover, Aquino admittedly did not have military or police background<sup>145</sup> and thus could not have influenced Napeñas who, as director of the SAF, had the expertise to conceptualize and implement an operation to serve arrest warrants against international terrorists. The apparent purpose of Aquino's suggestions is to reinforce the desired positive outcome of the operation. His actuations do not constitute a participation in the planning and implementation of *Oplan Exodus* since, as President of the Republic, he does not exercise direct control over the PNP under the doctrine of qualified political agency.<sup>146</sup> Notably, in the end, it was still Napeñas who determined the number of troops to be deployed, and it was still his concept of time-on-target coordination that prevailed,<sup>147</sup> although it was not actually followed.<sup>148</sup>

<sup>141</sup> *Id.* at 176-178.

<sup>142</sup> *Id.* at 320.

<sup>143</sup> *Id.* at 318-319.

<sup>144</sup> *Id.* at 526-527. The transcript of the Senate inquiry dated January 27, 2016 states:

**SEN. TRILLANES.** x x x Director Napeñas, is it unusual for a commander to be aware of an operation plan? Or let's put in this case (*sic*), the commander-in-chief, unusual po ba iyon na malalaman ng Presidente o commander-in-chief ang plano [sa] isang operation plan? x x x x

**MR. NAPEÑAS.** It is usual, Your Honor, that he should know high level of operations.

**SEN. TRILLANES.** Okay. So, is there anything illegal about it na malaman niya about ang operation?

**MR. NAPEÑAS.** No, Your Honor.

<sup>145</sup> *Id.* at 1067.

<sup>146</sup> The PNP is under the executive branch of the government, over which the President exercises the power of control, but not direct control under the doctrine of qualified political agency (*Carpio v. Executive Secretary*, G.R. No. 96409, February 14, 1992, 206 SCRA 290).

<sup>147</sup> *Rollo*, pp. 527-528. The transcript of the Senate inquiry dated January 27, 2016 states:

**SEN. TRILLANES.** x x x

Finally, nothing on record shows that Aquino gave orders to Purisima during the conduct of *Oplan Exodus*. The latter merely forwarded to Aquino the messages sent by Napeñas on the outcome and incidents of the operation, and Aquino, at some points, merely asked for clarification. His statement that “Basit should not get away” is an expression of displeasure, rather than an order. This much may be gathered from the surrounding circumstances.

The Senate Report stated that as the PNP is under the DILG, the President, as Chief Executive, exercises supervision and control over the PNP. Given that the President gave the policy direction to arrest Marwan and Usman, and that he approved *Oplan Exodus* with full knowledge of its operational details, he is ultimately responsible for the success or failure of the mission. It suggests Aquino’s accountability under the doctrine of command responsibility.<sup>149</sup>

Two observations may be made in this regard. *First*, there is no evidence that the policy direction to arrest Marwan and Usman came from Aquino. As mentioned, SAF operations to capture these two high-value targets commenced in 2010, but the Senate Report indicates that the earliest period that Aquino learned of the mission to arrest the two criminals was in 2014, when Purisima presented to him and other high-ranking government officials the concept of operations of *Oplan Wolverine*. The Senate Report evinces that from 2010 until 2014, before *Oplan Exodus* was implemented in 2015, there had been nine unsuccessful attempts to capture Marwan and Usman.<sup>150</sup> The SAF’s operation plans for the succeeding missions evolved, taking into consideration the cause of failure, additional intelligence

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Now, noon bang nag-usap kayo ni Presidente, nagbigay ba siya sa iyo ng ili-limit mo lang iyong gagawin mo or bibigyan ka niya ng latitude para ma-accomplish niyo iyong mission niyo, sir?

**MR. NAPEÑAS.** Hindi nagbigay ng limit at hindi rin niya denifayn (define) iyong latitude na sinasabi niyo, Your Honor.

**SEN. TRILLANES.** Okay. So, in short, kahit isang libong tropa ang ilagay mo diyan, puwede, wala siyang sinabing hanggang ganitong [tropa ka] lang.

**MR. NAPEÑAS.** Yes, Your Honor.

**SEN. TRILLANES.** Okay. So, wala siyang binigay na limitation, hindi siya nag hold back. Ngayon, may binigay ba siya na order sa inyo na huwag mag-coordinate sa Armed Forces?

**MR. NAPEÑAS.** None, Your Honor.

**SEN. TRILLANES.** Okay. So, in short, may binigay ba siya sa inyo na order na mag-coordinate kayo with the Armed Forces?

**MR. NAPEÑAS.** Yes, Your Honor.

**SEN. TRILLANES.** Okay. So, maliwanag na binigyan kayo ng kalayaan para magplano at i-execute iyong plano.

<sup>148</sup> *Id.* at 529-530. The transcript of the Senate inquiry dated January 27, 2016 states:

**SEN. TRILLANES.** x x x

Anyway, pupunta tayo dito sa, specifically, dito sa time on target procedure ninyo. Sinabi niyo sa plano ninyo that na-approve ng Presidente, you will inform the other different agencies once the main effort would reach the target, did you do that, Director Napeñas?

**MR. NAPEÑAS.** Yes, Your Honor, with a little delay because of the situation on the ground.

**SEN. TRILLANES.** Director Napeñas, let’s be truthful. Pag sinabi niyong time on target, pagdating doon *ahora mismo* doon dapat ang coordination, sir. Ginawa ninyo iyan, sir, o hindi?

**MR. NAPEÑAS.** Nagawa namin iyong coordination, Your Honor, na-delay.

**SEN. TRILLANES.** So, hindi time on target iyon, based on your own plan.

**MR. NAPEÑAS.** Yes, Your Honor.

<sup>149</sup> *Id.* at 247-248.

<sup>150</sup> *Id.* at 179-180.



gathered, and other relevant information. It could not be said that the policy direction for *Oplan Exodus* came from Aquino inasmuch as it is the SAF's function to serve arrest warrants and conduct counter-terrorism operations against local and international terrorist groups.<sup>151</sup> No policy direction is required for the performance of the SAF's mandate. As a legitimate police operation, *Oplan Exodus* did not require Aquino's approval, and any purported approval he made was sure to be merely a formality.

Our *second* point is that Aquino cannot be held criminally accountable under the doctrine of command responsibility.

The Senate states that there is always a hierarchical structure in every organization in which authority is exercised. This is supposedly the essence of "chain of command." While the term is often associated with the military, it has been applied to hierarchical structures in civilian government agencies and private enterprises.<sup>152</sup> Accordingly, the Senate continues, where there is a chain of command, the doctrine of command responsibility applies, which also is not restricted to the military<sup>153</sup> after Executive Order No. 226, series of 1995<sup>154</sup> (EO 226) institutionalized the doctrine in all government offices including the PNP.<sup>155</sup>

To be sure, the President of the Republic of the Philippines is not part of the chain of command of the PNP. Under Section 26 of Republic Act No. 6975,<sup>156</sup> the command and direction of the PNP is vested in the Chief of the PNP. That the PNP chain of command does not include the President is further confirmed by the PNP BOI Report itself which clearly stated that with respect to *Oplan Exodus*, the chain of command in the PNP should have been: Police Deputy Director General Leonardo Espina, the Officer-in-Charge of the PNP (OIC-PNP) as senior commander, and Police and SAF Director Getulio Napeñas as intermediate commander, excluding PNP Director General Purisima "who could not legally form part of the Chain of Command by reason of his suspension."<sup>157</sup>

The President's power over the PNP is subsumed in his general power of control and supervision over the executive department of the government. In fact, in *Carpio v. Executive Secretary*<sup>158</sup> We held that "the national police force does not fall under the Commander-in-Chief power of the President. This is necessarily so since the police force, not being integrated with the

<sup>151</sup> See <https://pnp-saf.org.ph/index.php/about-us/function>. Last accessed on August 16, 2019.

<sup>152</sup> *Rollo*, p. 235.

<sup>153</sup> *Id.* at 235-237.

<sup>154</sup> "Institutionalization of the Doctrine of 'Command Responsibility' in All Government Offices, Particularly at All Levels of Command in the Philippine National Police and Other Law Enforcement Agencies."

<sup>155</sup> *Rollo*, p. 237.

<sup>156</sup> "An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and for Other Purposes," also known as the "Department of the Interior and Local Government Act of 1990."

<sup>157</sup> *Id.* at 669.

<sup>158</sup> G.R. No. 96409, February 14, 1992, 206 SCRA 290.

military, is not a part of the Armed Forces of the Philippines. As a civilian agency of the government, it x x x is [only] subject [to] the exercise by the President of the power of executive control.”<sup>159</sup> The case of *Saez v. Macapagal-Arroyo*<sup>160</sup> cited by the Senate described the President as the commander-in-chief of the AFP, not the PNP. As such, he necessarily possesses control over the military that qualifies him as a superior within the purview of the command responsibility doctrine. Given these rulings, as the President is not part of the chain of command in the PNP, it follows that he does not exercise command responsibility over this civilian organization.

Besides, command responsibility has a technical meaning. In *Saez*, We ruled that to hold someone liable under the doctrine of command responsibility, the following elements must obtain: a) the existence of a superior-subordinate relationship between the accused as superior and the perpetrator of the crime as his subordinate; b) the superior knew or had reason to know that the crime was about to be or had been committed; and c) the superior failed to take the necessary and reasonable measures to prevent the criminal acts or punish the perpetrators thereof. In this case, since Aquino is considered a superior of the AFP but not the PNP which is the agency involved in this case, the first element is not satisfied. Likewise, even granting that Aquino may be considered a “superior” of the PNP, the last two elements are also not satisfied since it was not shown by evidence that he knew or had reason to know that a crime was about to be or had been committed, and that he failed to take steps to prevent the criminal act or punish its perpetrators. Indeed, *Oplan Exodus* was a legitimate police operation. Administrative and criminal charges against private respondents and other PNP officials have been lodged not until after its execution, in view of the large casualties incurred by the SAF.

It may be argued that Aquino exercises command responsibility over the PNP under EO 226, Section 1 of which states:

Sec. 1. Any government official or supervisor, or officer of the Philippine National Police or that of any other law enforcement agency shall be held accountable for ‘Neglect of Duty’ under the doctrine of ‘command responsibility’ if he has knowledge that a crime or offense shall be committed, is being committed, or has been committed by his subordinates, or by others within his area of responsibility and, despite such knowledge, he did not take preventive or corrective action either before, during, or immediately after its commission.

Aquino may be included in the catchall phrase “any government official or supervisor,” but he may still not be held liable considering that he had no knowledge of any crime that the PNP was about to commit or has committed, and for which he failed to act. In any event, the provision at most

<sup>159</sup> *Id.* at 302.

<sup>160</sup> G.R. No. 183533, September 25, 2012, 681 SCRA 678.

makes a commander liable *administratively* for neglect of duty. In this connection, We held in *Principe v. Fact-Finding & Intelligence Bureau, Office of the Ombudsman*<sup>161</sup> that administrative liability will not attach absent proof of actual act or omission constituting neglect of duty. In the absence of substantial evidence of gross neglect, administrative liability could not be based on the principle of command responsibility. The negligence of the superior's subordinates is not tantamount to his own negligence.

The Senate found that the most fatal mistake made by the mission planners of Oplan Exodus was their decision against prior coordination with the AFP and that the bare coordination with the AFP units in the area was "time on target."<sup>162</sup> The record bears that Aquino gave directions to Napeñas to increase the number of troops and inform the AFP and PNP OIC of the operation, but Napeñas disregarded these. Apparently, it was Napeñas' failure to reasonably execute Aquino's recommendations that yielded fatal results. Hence, it would be unjust to find Aquino probably guilty of a crime for Napeñas' own negligence or disobedience to his orders.

In all, We do not find probable cause to charge Aquino with reckless imprudence resulting in multiple homicide. If it would be necessary to invoke remote justifications to thrust a respondent to court, then We would have been remiss in our duty to uphold the law and protect the innocent from the torment of a criminal prosecution.

The Court also does not find probable cause to charge Purisima of the same offense.

The Senate Report stated that even before January 9, 2015, Purisima was already barred from performing the functions of the PNP Chief due to his suspension, yet: 1) he made himself present when Napeñas gave a briefing and mission update on *Oplan Exodus* to the President on January 9, 2015 at Bahay Pangarap in Malacañang; 2) after the meeting, Purisima gave instruction to Napeñas: "*Huwag mo munang sabihan iyong dalawa. Saka na pag nandoon na. Ako na ang bahala kay General Catapang.*" Hence, upon Purisima's instructions, knowledge of *Oplan Exodus* was kept from the Secretary of the DILG and the OIC of the PNP until the morning of January 25, 2015; 3) Purisima continued to involve himself in *Oplan Exodus* by exchanging messages with Napeñas before and during the operation; and 4) Purisima provided updates to Aquino on the progress of the operation.<sup>163</sup>

However, Purisima alleges that as early as April 2014, he had already delegated the command and control over the law enforcement operations against Marwan and Usman to then SAF Director Napeñas.<sup>164</sup> The latter

<sup>161</sup> G.R. No. 145973, January 23, 2002, 374 SCRA 460.

<sup>162</sup> *Rollo*, p. 210.

<sup>163</sup> *Id.* at 238-240.

<sup>164</sup> *Id.* at 1020.



admitted this when he testified during the Senate inquiry on January 27, 2016 that he was the one handling and directing the operation, not Purisima or Aquino.<sup>165</sup> Full responsibility over the operation was thus lodged on Napeñas.

Moreover, the actions of Purisima enumerated by the Senate did not put in motion the sequence of events that eventually led to the death of the 44 SAF members. Purisima's presence during the briefing in Malacañang on January 9, 2015, communicating with Napeñas during the operation, and providing updates to Aquino all have nothing to do with the planning and implementation of *Oplan Exodus*.

Purisima explains that he arranged for the briefing on January 9, 2015 to inform the President of the ongoing law enforcement operations to capture internationally-wanted terrorists.<sup>166</sup> If Purisima were the brains behind *Oplan Exodus*, then he should have presented the operation plan to the President himself. His instruction to Napeñas that "*Huwag mo munang sabihan iyong dalawa. Saka na pag nandoon na. Ako na ang bahala kay General Catapang*"<sup>167</sup> was not his original strategy, but rather sprang from Napeñas' own time-on-target<sup>168</sup> concept of informing the AFP and the PNP OIC of the operation. Regardless of this instruction, Napeñas would have done the same thing as in fact, without waiting for Purisima, Napeñas informed the AFP through a text message of the ongoing law enforcement operation at 5:06 a.m. of January 25, 2015, two hours after the troops reached the target area at 3:00 a.m. The Senate Report found that this was the first attempt at "coordination" made by the SAF with a unit of the AFP, which was late as the SAF troopers were already engaged with hostile forces and needed reinforcement to assist them in their exfiltration.<sup>169</sup> During the conduct of the operation, there is no indication that Purisima gave orders to Napeñas. The record bears that he merely gave guidance on the result of his coordination with the AFP and other persons, and asked for updates which he forwarded to the President. Looking at the big picture, Purisima's main role in the entire undertaking appeared merely to connect the SAF to the President. *Oplan Exodus* was admittedly the brainchild of the SAF, led by Napeñas. The fact that Purisima worked on the sidelines is an internal recognition of his lack of authority to act because of his suspension from office. He may have offended the law in that respect, but We are not convinced that his participation *per se* placed in motion the series of events

<sup>165</sup> *Id.* at 446. The transcript of the Senate inquiry dated January 27, 2016 states:

**THE SENATE PRESIDENT.** General Napeñas you were the one handling and directing the operations in Maguindanao area on that day. Kayo po. Hindi po ba?

**MR. Napeñas.** Yes, sir, Your Honor.

**THE SENATE PRESIDENT.** Kayo lahat. Hindi man si General Purisima, hindi si Presidente. Kayo.

**MR. Napeñas.** Yes, sir, Your Honor, ako po.

<sup>166</sup> *Id.* at 1022.

<sup>167</sup> *Id.* at 238.

<sup>168</sup> *Id.* at 196-197. "Time-on-target" means that the AFP shall be advised of the operation when the Seaborne is at the target area.

<sup>169</sup> *Id.* at 197.

that eventually led to the death of the 44 SAF members, and for which he should be prosecuted for reckless imprudence resulting in multiple homicide.

Verily, to the mind of the Court, and as evinced by the record, it is only Napeñas among the three private respondents who *may* be susceptible to a prosecution for reckless imprudence, being the head of the SAF that planned and implemented *Oplan Exodus*. In the same breath, however, We hold that no probable cause exists to charge him of such crime.

In negligence or imprudence, what is principally penalized is the mental attitude or condition behind the act, the dangerous recklessness, lack of care or foresight, the *imprudencia punible*.<sup>170</sup> Among the elements constitutive of the offense of reckless imprudence, what perhaps is most central to a finding of guilt is the conclusive determination that the accused has exhibited, by his voluntary act without malice, an inexcusable lack of precaution because it is that which supplies the criminal intent so indispensable as to bring an act of mere negligence and imprudence under the operation of the penal law. A conscious indifference to the consequences of the conduct is all that is required from the standpoint of the frame of mind of the accused.<sup>171</sup>

We hold that there was negligence on the part of Napeñas in the planning and execution of *Oplan Exodus*, but the confluence of other factors contributing to its tragic ending prevents Us from finding probable cause to charge him with reckless imprudence resulting in multiple homicide.

It is pertinent to note that *Oplan Exodus* was devised by a mission planning group composed of Napeñas and other officials of the PNP.<sup>172</sup> In the course of preparations, SAF units involved in the operation conducted rehearsals, exercises of movements, and live firing exercises. Napeñas and other PNP officials conducted their final mission planning in coordination with all the unit commanders and key personnel involved in the operation near the date of the actual operation.<sup>173</sup>

Despite preparations, the troops encountered setbacks during the actual operation. The first was when the navigator of the Seaborne troops encountered problems with his Global Positioning System (GPS), which required the guides to lead the way. However, since the guides were familiar with the area only during daytime, they became disoriented, causing more than an hour's delay in the movement of the Seaborne.<sup>174</sup> The Seaborne troops also had difficulty negotiating the terrain and the strong river current, which resulted in more delay in reaching the target area. In turn, all

<sup>170</sup> *Rafael Reyes Trucking Corporation v. People*, G.R. No. 129029, April 3, 2000, 329 SCRA 600, 617.

<sup>171</sup> *Caminos, Jr. v. People*, G.R. No. 147437, May 8, 2009, 587 SCRA 348, 358.

<sup>172</sup> *Rollo*, pp. 182-183.

<sup>173</sup> *Id.* at 191-193.

<sup>174</sup> *Id.* at 691.

supporting troops whose movements needed to be synchronized with that of the Seaborne were also delayed, with some even failing to reach their target areas.<sup>175</sup> As found by the PNP-BOI, it took almost six hours for the Seaborne to reach the target area. Because they were running late, their leader decided to raid Marwan's hut with just 13 men<sup>176</sup> out of a total of 38 Seaborne members.<sup>177</sup> There was no force available to raid Usman's hut which was just 100 meters away from Marwan's.<sup>178</sup> Before neutralizing Marwan, a "booby trap" exploded, alerting members of the BIFF. Two members of the Seaborne were wounded in the ensuing initial firefight. As it attempted to exit the target area, the Seaborne was engaged by hostile forces, and was not able to link up with the 55<sup>th</sup> SAC because of the heavy volume of enemy fire.<sup>179</sup>

As discussed, Napeñas informed an AFP unit of the ongoing law enforcement operation at 5:06 a.m. of January 25, 2015. At 6:00 a.m., the PNP OIC called an AFP Unit to seek support for the beleaguered PNP troops. Between 7:00 a.m. and 9:00 a.m., Napeñas and other SAF officers contacted different officers of the AFP for reinforcement and indirect artillery support. The AFP approved the deployment of army troops and mechanized infantry to reinforce the SAF but withheld approval of the request to provide indirect fire support for lack of details of the firefight.<sup>180</sup> In the Senate inquiry conducted on January 27, 2016, several senators expressed dismay in the protracted manner in which the AFP responded to the beleaguered SAF,<sup>181</sup> with one senator observing that no one is taking responsibility, and that PNP and AFP officials were pointing fingers at each other.<sup>182</sup>

Another upset encountered in the conduct of the operation was the failure in communication. At 8:20 a.m., AFP troops were deployed but were unable to link up with the elements of the 55<sup>th</sup> SAC because they could not contact the latter.<sup>183</sup> On this point, the PNP-BOI found that during the firefight, communication was cut off among the troops. The reason could have been that the SAF troopers used a brand of handheld radios that was not meant for use in military-type operations. Many of this type of radios were soaked in water and thus became useless. Also, their batteries were good for only a few hours, being easily discharged due to wear and tear. The troops used their cellphones as back-up communication device, but these cellphones proved unreliable due to erratic signal. The lack of communication among the SAF units involved in the operation affected the situational awareness, reinforcement effort, and decisions of its

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<sup>175</sup> *Id.* at 193.

<sup>176</sup> *Id.* at 691.

<sup>177</sup> *Id.* at 193.

<sup>178</sup> *Id.* at 691.

<sup>179</sup> *Id.* at 194-195.

<sup>180</sup> *Id.* at 197-199.

<sup>181</sup> *Id.* at 370-376, 455-471, 489, 534-546, 553, 570-572, 579-580.

<sup>182</sup> *Id.* at 489.

<sup>183</sup> *Id.* at 199-200.

commanders. The poor interoperability of radios used by the AFP and SAF troopers also made the reinforcement efforts more cumbersome.<sup>184</sup>

With respect to firepower, the PNP-BOI narrated that the lone survivor of the 55<sup>th</sup> SAC reported that several rounds of his M203 grenade launcher were duds.<sup>185</sup>

The PNP-BOI also found that the 55<sup>th</sup> SAC, 35 out of 36 members of which were killed in the firefight, were trapped in the cornfields although there was a defensible position 100 meters from their location, as shown by a row of coconut trees. The standard operating procedure (SOP) when occupying an area or position in an unfamiliar terrain was to secure the perimeter and conduct reconnaissance to look for cover, vantage positions, and observation posts. However, the 55<sup>th</sup> SAC did not follow this SOP.<sup>186</sup>

There is also an indication that the other SAF units, consisting of about 200 commandos, did not provide the necessary assistance to the besieged 55<sup>th</sup> SAC.<sup>187</sup> In the Senate inquiry conducted on January 27, 2016, a sergeant of the Philippine Army who was a part of the unit sent to reinforce the SAF testified that after his group linked up with the 45<sup>th</sup>, 42<sup>nd</sup>, and 41<sup>st</sup> SAC, he found the latter unable to provide support to the 55<sup>th</sup> SAC as in fact they just stayed in their respective positions, unwilling to go inside the site of the battle.<sup>188</sup> This agrees with the finding of the PNP-BOI that the platoon leaders of these SAC units claimed that enemy fire coming from all directions prevented them from reinforcing the 55<sup>th</sup> SAC. However, none of these troopers were wounded, which is inconsistent with the claim that they have been under heavy enemy fire.<sup>189</sup>

The SAF was engaged in gun battle with MILF with whom the government had existing peace talks at the time. According to the Senate Report, the MILF engaged the SAF even if they knew that these were policemen from the uniform they were wearing, with the apparent objective of wiping them out. Prior coordination with the MILF would have mitigated the circumstances, but in this case, there was none. However, while hostilities were ongoing and representatives of the government met with counterparts in the MILF to explain that the SAF was conducting a law enforcement operation in the area, the MILF did not end the fight. They even fired at wounded SAF troopers and shot some of them at close range. They took the firearms, equipment, uniforms, and personal effects of the killed SAF troopers and did not return them.<sup>190</sup> Medico-legal reports on autopsies conducted on cadavers of slain troopers of the 55<sup>th</sup> SAC revealed that 27 (out

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<sup>184</sup> *Id.* at 695-697.

<sup>185</sup> *Id.* at 696.

<sup>186</sup> *Id.* at 693.

<sup>187</sup> *Id.* at 699.

<sup>188</sup> *Id.* at 537-540.

<sup>189</sup> *Id.* at 699.

<sup>190</sup> *Rollo*, pp. 215-219.

of 35) of them were shot in the head as “finishing touches.”<sup>191</sup> The Senate moreover found that the MILF coddled criminals and terrorists. During the Senate hearings, the MILF denied that they knew Marwan and Usman, yet these terrorists had been their residents for almost a decade, with Marwan training recruits in the area to maim and kill.<sup>192</sup>

Without doubt, Napeñas had been negligent, as borne by both the Senate and PNP-BOI reports. However, We find it difficult to isolate the effects of his negligence from the effects of all the other factors that contributed to the loss of lives in the implementation of *Oplan Exodus*.

Lack of prior coordination with the AFP was seen by the Senate as the most fatal mistake made by the mission planners of *Oplan Exodus*.<sup>193</sup> However, Napeñas explained that past law enforcement operations against high-value targets failed because of apparent leak in information.<sup>194</sup> On the belief that the AFP was compromised, he recommended a time-on-target coordination with it.<sup>195</sup> On the other hand, coordination with the representatives of the government in the peace process would not have guaranteed that MILF will not join the fray, in light of the Senate’s finding of MILF’s seeming lack of sincerity that was manifestly demonstrated by its treatment of the SAF in the battlefield and the appearance that it had been coddling Marwan and other terrorists. These factors required Napeñas to make a delicate balancing act in relation to *Oplan Exodus*.

We also cannot discount the sad reality that the equipment and ammunition of our police force can be inferior or deficient. It can adversely affect police operations and spell the difference between life and death. Unfortunately, that is the standard to which our policemen should adapt, unless authorities take serious steps towards the expeditious modernization of the PNP. The apparent lack of training on the part of some members of the SAC, exhibited by their hesitation to enter the battlefield to provide much needed reinforcement to their beleaguered colleagues is much

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<sup>191</sup> *Id.* at 202.

<sup>192</sup> *Id.* at 219.

<sup>193</sup> *Id.* at 209-210.

<sup>194</sup> In his consolidated counter-affidavit, Napeñas narrated that in the failed operation to capture Marwan in December 2010, the text message of the AFP to the representative of the peace panel was found in Marwan’s cellphone which was recovered from the operation. This gave SAF the well-founded impression that Marwan and his troops have been warned of the SAF’s arrival through their spies from the AFP, many of whom married the locals living in the areas controlled by the MILF, BIFF, and Abu Sayyaf (*Id.* at 872). Two years later, in July 2012, another operation to capture Marwan was conceived. Part of the operation plan was to inform the government peace panel representatives who shall in turn inform their counterparts in the MILF. The operation again failed after Marwan escaped just before the SAF troops arrived. Based on the information obtained from the cellphones, computers, and documents recovered from the hideout, Marwan was likely informed by the MILF of the operation (*Id.* at 873). In this view, the Senate Report states:

In December 2010, the PNP-SAF launched an operation to arrest Marwan. Minutes before the arrival of the arresting troops at his location in Sulu, Marwan managed to escape. Another operation of the PNP-SAF to capture Marwan was conducted in July 2012 in Butig, Lanao del Sur. Again, Marwan managed to escape (*Id.* at 179-180).

<sup>195</sup> *Id.* at 444-445.



disturbing. Unfortunately, the Court is not furnished with information on the outcome of any investigation pertaining to this matter.

In any case, to charge Napeñas with reckless imprudence would be to charge under his responsibility the consequences of all incidents that contributed to the death of the 44 SAF members, even those beyond what he and his team may or should have reasonably foreseen during the planning and execution of *Oplan Exodus*—which is not fair. Moreover, it would pose a threat to future law enforcement undertakings if military and police officials would be held susceptible to criminal charges for injury or death resulting from a legitimate operation. It will be like a Sword of Damocles hanging over their heads, which can paralyze them and consequently maim the government's efforts to curb criminality in the interest of self-preservation. There is no perfect law enforcement operation. To the contrary, they are mostly idiosyncratic and risky. There is no guarantee of police officers' safety even in developed countries possessed of sophisticated crime-fighting technology.

In view of all the attendant circumstances, We do not find probable cause to charge Napeñas with reckless imprudence resulting in multiple homicide.

In fine, the Ombudsman did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the complaints for reckless imprudence resulting in multiple homicide filed against private respondents.

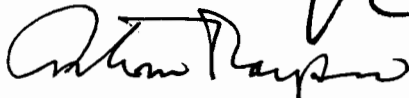
**WHEREFORE**, the petition is **DISMISSED**. The Ombudsman's Consolidated Resolution dated June 13, 2017 and Consolidated Order dated September 5, 2017 issued in OMB-C-C-16-0419, OMB-C-C-16-0435, and OMB-C-C-16-0448 are **AFFIRMED** insofar as they found no probable cause to charge private respondents Benigno Simeon C. Aquino III, Alan LM. Purisima, and Getulio P. Napeñas with reckless imprudence resulting in multiple homicide.


**SO ORDERED.**

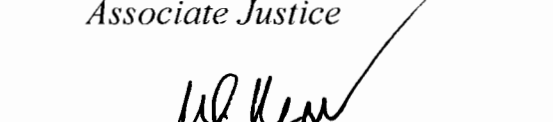
  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

WE CONCUR:

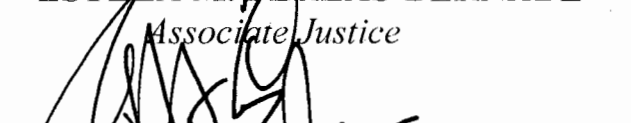
  
**LUCAS P. BERSAMIN**  
*Chief Justice*

  
**ANTONIO T. CARPIO**  
*Associate Justice*


  
**DIOSDADO M. PERALTA**  
*Associate Justice*


  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*


  
**MARVIC M. V. F. LEONEN**  
*Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**ANDRES B. REYES, JR.**  
*Associate Justice*

  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*

  
**JOSE C. REYES, JR.**  
*Associate Justice*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**ROSMARIE B. CARANDANG**  
*Associate Justice*

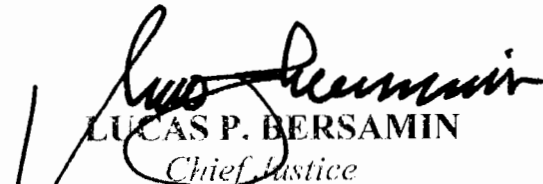
  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

  
**RODIL V. ZALAMEDA**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**LUCAS P. BERSAMIN**  
*Chief Justice*

