FACT-FINDING DURING ARMED CONFLICT

REPORT OF THE 2009 VERIFICATION MISSION TO THE PHILIPPINES TO INVESTIGATE ALLEGATIONS OF ANTI-PERSONNEL LANDMINE USE BY THE MORO ISLAMIC LIBERATION FRONT

GENEVA CALL
APPEL DE GENÈVE  LLAMAMIENTO DE GINEBRA

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Fact-Finding during Armed Conflict:

Report of the 2009 Verification Mission to the Philippines to Investigate Allegations of Anti-Personnel Landmine use by the Moro Islamic Liberation Front
This Report is dedicated to the memory of the victims of mines and other explosives devices during the conflict in Mindanao. Also to the 57 civilians - politician’s family members, journalists and human rights workers - murdered in the ‘Maguindanao Massacre’ on 23 November 2009, at a time when the Mission was conducting its enquiries in the vicinity. Although not victims of the conflict between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front, that conflict is without doubt the backdrop to this atrocity.
Part 1 and Part 3 of this Report were written by Chris Rush, Senior Programme Officer at Geneva Call and the Head of Mission. Part 2 of this report was written by the Mission Team, that is Professor Eric David, Phil Halford and Chris Rush.

Particular thanks go to all of the witnesses, whether civilians, AFP or MILF personnel, who took the time to meet the Mission Team, and were key to establishing the facts.

Warm thanks to Professor Eric David and Phil Halford for participating in the Mission and the Mines Advisory Group for facilitating Mr Halford’s participation. Thank also to Elzbieta Mikos-Suza and Nick Guest for being ready to participate until schedule changes.

Thanks to Non-Violent Peace Force - in particular Atif Hameed, Jeya Murugan, Kristine Marie Mansilla, Lemuel Artiaga and Sittie Sundang Monato - for providing invaluable logistical and linguistic support to the mission.

Thanks also go to the Government of the Republic of the Philippines and the Moro Islamic Liberation Front for their facilitation of this mission. In particular, we would like to thank Lt Col Hidalgo and Eid Kabalu for co-ordinating arrangements for each party; the Government and Moro Islamic Liberation Front Ceasefire Committees - in particular General Reynaldo Sealana and Toks Ibrahim (the respective Chairmen) for agreeing to provide accompaniment to the Mission, and Major Carlos Sol and Rashid Ladiasan (the respective Heads’ of the Secretariat) for ensuring the necessary arrangements were in place. Thanks also to Bobet Dimaukom, Toks Upham and Alex Mujahid.

Thanks also go to the Government of the Kingdom of Belgium, without whose support the Mission would not have been possible.

Lastly, thanks to all of the staff at Geneva Call, who actively contributed to the conceptualisation and actualisation of this Mission.
This report details the preparation, implementation, results and impact of the Verification Mission, detailing a process that took over 18 months. The above acknowledgements mention all of the different actors that made this Mission possible. However one of them is missing, and it is my duty, as President of Geneva Call, to congratulate and thank Chris Rush, Head of the Mission, and Geneva Call staff member for his intensive and patient work, his diplomacy in building trust with the parties to the conflict and other stakeholders; he made this Mission a reality and ensured that it was conducted in the best possible conditions.
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<th>Description</th>
</tr>
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<tbody>
<tr>
<td>AFP</td>
<td>Armed Forces of the Philippines</td>
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<tr>
<td>AP</td>
<td>Anti-Personnel</td>
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<tr>
<td>BIAF</td>
<td>Bangsamoro Islamic Armed Forces</td>
</tr>
<tr>
<td>CCCH</td>
<td>Co-ordinating Committee on the Cessation of Hostilities</td>
</tr>
<tr>
<td>GRP</td>
<td>Government of the Republic of the Philippines</td>
</tr>
<tr>
<td>HoM</td>
<td>Head of Mission</td>
</tr>
<tr>
<td>ICBL</td>
<td>International Campaign to Ban Landmines</td>
</tr>
<tr>
<td>ICRC</td>
<td>International Committee of the Red Cross</td>
</tr>
<tr>
<td>IHFFC</td>
<td>International Humanitarian Fact Finding Commission</td>
</tr>
<tr>
<td>IHL</td>
<td>International Humanitarian Law</td>
</tr>
<tr>
<td>IHRL</td>
<td>International Human Rights Law</td>
</tr>
<tr>
<td>IMT</td>
<td>International Monitoring Team</td>
</tr>
<tr>
<td>JCCCH</td>
<td>Joint Co-ordinating Committee on the Cessation of Hostilities</td>
</tr>
<tr>
<td>LFE</td>
<td>(Mission) Legal and Fact Finding Expert</td>
</tr>
<tr>
<td>MILF</td>
<td>Moro Islamic Liberation Front</td>
</tr>
<tr>
<td>MTE</td>
<td>Mission Technical Expert</td>
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<tr>
<td>NP</td>
<td>Non Violent Peace Force</td>
</tr>
<tr>
<td>NSA</td>
<td>(armed) Non-State Actor</td>
</tr>
</tbody>
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Geneva Call is a neutral and impartial humanitarian organization dedicated to engaging armed non-State actors (NSAs) towards compliance with the norms of international humanitarian law (IHL) and international human rights law (IHRL). The organization focuses on those NSAs involved in situations of armed conflict, operate outside effective State control and are primarily motivated by political goals. These include armed movements, de facto authorities, and non- or partially internationally recognized States.

Geneva Call engages NSAs in a constructive dialogue aimed at both sensitizing and inviting them to respect of specific humanitarian norms. It was founded in 2000 and started with a focus on promoting the ban on anti-personnel (AP) mines, following the realisation that the landmine problem would not be effectively addressed unless NSAs were included in the solution. The organization is in the process of expanding its advocacy work with NSAs to also include the protection of women and children in situations of internal armed conflict.
An immortalized quote from Albert Einstein reads, “It has become appallingly clear that our technology has surpassed our humanity.” The backdrop against which this statement was made was a time when advances in science had been in the midst of a dazzling pace never before seen in the centuries prior. And just when the breadth of our technological leap was dawning on mankind, it coincided with the worst of bloodshed mankind would ever witness, the World Wars.

Indeed, it had been argued, time and again, that technology is propelled by our humanity. Our seemingly limitless creativity, ingenuity and hunger to learn, understand and discover are such distinctly human characteristics. But the spread of human character is not limited plainly to advancing technology – it lends to all fields, all strata of life. We find our ever-evolving humanity in every field from Economics, Astrophysics and Mathematics, to Development, Environmentalism, Education, Peace and Human Rights. All of these benefit from the advancement of technology hand in hand with our humanity.

However, we have had a long, modern history, rife with vestiges of a rift and imbalance between inventiveness and humanity. The landmine stands out as the bleakest surviving symbol of obsolescence and incongruity between human creativity and humanity. It had been a device intended as a passive defensive implement for security.

However, war and peace in this day and age is so vastly different from decades ago. War and peace center on ethno-central, ultra-nationalism – it is about freedom, self-determination rather than about conquest. Military tactics have long departed from inflicting the most damage – now, it is achieving very precise objectives with a minimum of damage. Special care for civilians is a paramount parameter, the greatest limitation on the use of any force, passive or active.

Yet the landmines remain, carrying with them the detached cruelty of indiscriminate carnage, a consequence acceptable only in bygone eras. It is no longer justified for its original purpose of passive security – it has become a killer unmindful of war and peace, uncaring of combatants or civilians, humans or animals.

The Geneva Call Report of its Verification Mission to the Philippines to Investigate Allegations of Landmines use by the Moro Islamic Liberation Front is in itself a very tangible reminder of how far forward humanity has gone. The Report is not just a referee’s report on rule violations, but a representation of the critical role of Non-State Actors (NSAs) in achieving peace. It suggests that there is no fiction of law, international or domestic, that is more compelling than the voluntary adherence and participation of involved parties, under a standard of moral uprightness, the real basis for lasting peace. It represents that there is no political objective that justifies the bloodiest of Machiavellian ends, be it that of the State or the NSA. Finally, it represents a wave of agreement, on a far larger scale that now includes NSAs, that the use of landmines is grotesquely inconsistent with any human purpose.

The Commission on Human Rights of the Philippines is acutely aware and tremendously moved by the scale of the efforts from everywhere, not the least of them from Geneva Call, to
lend human hands in building towards permanent peace in Muslim Mindanao. Indeed, it is not laws, not peace pacts, not military objectives, not development plans, not anything, but fundamentally, it is people from all sectors, all nationalities and with varying competencies, with the most human of purposes that truly bring peace. It is your humanity upon which we build peace for the Filipino people.

3 June 2010, Manila, Philippines.

Leila M. De Lima
Chairperson
Commission on Human Rights of the Philippines
The Need for a Verification Mission

The Geneva Call Deed of Commitment

Anti-Personnel (AP) mines kill and maim combatants and non-combatants, both during and after conflict. They have been increasingly recognised as having a humanitarian impact that far outweighs their military utility. Whilst, since 1998, States have been able to ban these devices by acceding to the Convention on the Prohibition of the Use, Stockpiling, Production, Transfer of Anti-Personnel Mines and on Their Destruction [hereafter ‘the Mine Ban Convention’], armed-Non State Actors (NSAs) are not able to sign international treaties. It was in this context that Geneva Call developed, with the central and valuable contribution of a Filipino Lawyer, the Deed of Commitment for Adherence to a Total Ban on Anti-personnel Mines and for Cooperation in Mine Action (hereafter the ‘Deed of Commitment’) through which NSAs could commit to adhere to a total ban on the use of AP mines and to cooperate in humanitarian mine action activities [Annex 1]. The main operative provisions of the Deed of Commitment in respect of actualising the mine ban are contained in Article 1 of that instrument, which reads as follows:

‘We the [name of the NSA], through our duly authorized representative(s).
Now therefore hereby solemnly commit ourselves to the following terms:

To adhere to a total ban on anti-personnel mines. By anti-personnel mines, we refer to those devices which effectively explode by the presence, proximity or contact of a person, including other victim-activated explosive devices and anti-vehicle mines with the same effect, whether with or without anti-handling devices. By total ban, we refer to a complete prohibition on all use, development, production, acquisition, stockpiling, retention and transfer of such mines, under any circumstances. This includes an undertaking on the destruction of all such mines.’

It is important to emphasise that the Deed of Commitment is a ban on victim-activated AP mines and associated devices, not a ban on all types of device that might be categorized as ‘landmines’. Most notably not included in the definition are anti-vehicle mines and command-detonated devices which are currently not subject to an international ban, although other International Humanitarian Law (IHL) provisions govern their use.

The Deed of Commitment is signed by representatives of the respective NSA, as well as by representatives of Geneva Call [usually the President] and the Government of the Republic and Canton of Geneva. The Government of the Republic and Canton of Geneva also acts as the custodian of the signed Deeds of Commitment. At the time of writing [May 2010] 41 NSAs, operating in 10 countries, have signed this Deed of Commitment.

For Geneva Call, getting signatures for the Deed of Commitment is only the first part of the story. It then plays an active role in both monitoring and supporting the implementation of the obligations under the Deed of Commitment, including, as necessary, facilitating and support-
ing the verification of allegations of non-compliance. In the 10 year history of Geneva Call, the need for verification has been rare, with processes being launched on three previous occasions and two Verification Missions being conducted (a third such Mission has not been possible because of opposition from the concerned State). This report details the latest verification process in respect of allegations made against the Moro Islamic Liberation Front (MILF), a signatory to the *Deed of the Commitment*, by the Government of the Republic of the Philippines (GRP).

**The MILF and the Geneva Call *Deed of Commitment***

The MILF signed the Geneva Call *Deed of Commitment* banning AP mines in March 2000, thus becoming one of two initial signatories to this instrument. The MILF re-affirmed - and extended - its obligations by signing a revised and current version of the *Deed of Commitment* in 2002.

In 2000, during the so-called ‘all out war’ between the MILF and the GRP, there were allegations made that the MILF had violated the mine ban provision in the original *Deed of Commitment*. This led, in 2002, to Geneva Call convening a Verification Mission to investigate these allegations. Unfortunately the GRP, citing safety concerns, did not give the necessary clearances to international members of the Mission to visit the areas of Mindanao where the allegations were made, and only the Filipino members were able to travel to Mindanao. However, the Mission was able to meet relevant actors, including representatives of the MILF. Whilst the MILF denied the use of devices banned under the *Deed of Commitment*, it did acknowledge that ‘string-pull’ explosive devices had been utilised by its Forces. Because the Mission was unable to visit relevant locations, it felt that it was not in a position to definitively conclude whether there had been the use by the MILF of devices in contravention of its obligations under the *Deed of Commitment*. In respect of the acknowledged use of ‘string-pull’ devices by the MILF, the Mission Team considered that command-detonation required an electronic (as opposed to manual) firing mechanism. Furthermore, in certain instances, ‘string-pull’ devices had the potential to become victim-activated. After dialogue with its leadership, the MILF agreed to desist from using such devices in future. The full documentation and findings of this Mission were later published by Geneva Call1.

**2008/9 - New Allegations of AP Mine Use**

From 2002 until the middle of 2008, there were few allegations of mine use made against the MILF. An allegation in May 2008 was investigated in a routine Geneva Call field mission that took place the following month. Geneva Call consulted with representatives of the MILF, the AFP and other stakeholders. Representatives of the AFP asserted that a command-detonated device was used in an attack against an AFP vehicle, whilst the MILF maintained that the explosion was caused by a Rocket Propelled Grenade (RPG) that did not explode immediately on impact with its target, but shortly thereafter. Irrespective of the differing accounts, it was considered that the incident did not involve the use of a device banned under the *Deed of Commitment*, and therefore did not raise any issues as to the MILF’s compliance with that instrument.

The sharp upsurge in conflict that occurred in August 2008 brought a number of allegations of

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MILF mine use. These allegations appeared on AFP websites and within newspapers, mainly in the period from August to October. Some allegations were vague as to the circumstances or the type of device that was alleged to have been used, whilst others were more specific. Geneva Call compiled a table detailing all of the allegations that came to its attention [see Annex 2].

It is perhaps notable that both the Chief Negotiator of the MILF and the Chief of Staff of the Bangsamoro Islamic Armed Forces [BIAF] – the MILF’s military wing – were reported as categorically denying the use of mines during this period².

In the period from August to early October 2008 Geneva Call sought to gather more information about the allegations to ascertain whether there were questions raised as to the MILF’s implementation of its obligations under the Deed of Commitment. The MILF was contacted for a more detailed response to specific allegations. Concurrently, Geneva Call also contacted the GRP and other actors including civil society organisations for more details about the alleged incidents that had been identified. Perhaps unsurprisingly, given that these enquiries were made during a time of increasingly fierce conflict, limited information was obtained.

It was decided that Geneva Call would take the opportunity provided by a routine field visit in October 2008 to further pursue these enquiries. Geneva Call met with the Chief Negotiator of the MILF, the Chairman of the MILF Co-ordinating Committee on the Cessation of Hostilities [CCCH] and the Chief of Staff of the BIAF. The MILF representatives reiterated their categorical denial of the use by BIAF forces of devices banned under the Deed of Commitment. The table of mine allegations was reviewed, and the MILF representatives gave initial responses to the alleged incidents (Annex 2, final column).

Geneva Call also communicated with the AFP. The AFP not only stood by the allegations of mine use, but also confirmed its assertion that some of the devices that were utilized during or recovered after – confrontations with the MILF were victim-activated anti-personnel devices, and thus called into question the MILFs adherence to its obligations under the Deed of Commitment. The AFP agreed to provide information on the specific incidents.

Geneva Call also met with the International Monitoring Team (IMT) – the ceasefire monitoring body that was at that time made up of representatives of the Governments of Malaysia, Brunei, Libya and Japan. Whilst the IMT had heard of allegations of the use of landmines, it had not been able to confirm this as it had been unable to visit the affected areas.

During the visit, Geneva Call also met with other relevant actors, such as the International Committee of the Red Cross (ICRC), NGO and other civil society actors operating in the affected areas. Most organisations had heard of the allegations of MILF mine use, but were not able to provide substantive information in this respect.

It was apparent that whilst the enquiries conducted during Geneva Call’s routine field mission provided important additional information to supplement that which was already gathered.

remotely, it was not possible to categorically conclude whether there had been a violation of the *Deed of Commitment* by the MILF. Most importantly, specific and detailed information about alleged incidents or devices was not available, nor had there been communication with those with first hand experience of the events in question. Geneva Call concluded that a Verification Mission, conducted by experts with an intimate knowledge of matters relevant to establishing the veracity of allegations, would be the only realistic way to ascertain whether there had indeed been violation[s] of the *Deed of Commitment* by the MILF, and began to make preparations accordingly.

## Arranging the Verification Mission

The operative Article of the *Deed of Commitment* in respect of monitoring and verification (Article 3) requires that signatory groups:

> ... allow and co-operate in the monitoring and verification of our commitment to a total ban on anti-personnel mines by Geneva Call and other independent international and national organizations associated for this purpose with Geneva Call.

Geneva Call approached MILF to request agreement to, and facilitation of, a Verification Mission to scrutinize the allegations. MILF’s obligations under Article 3 were highlighted in this respect. Positively, in several meetings and in correspondence, representatives of the MILF indicated that it would both welcome and co-operate with a proposed Verification Mission. At a later point the MILF took the initiative to publicly declare its willingness to co-operate with the Verification Mission on its website:

> 'The Moro Islamic Liberation Front (MILF) was delighted to say welcome to the upcoming verification mission of the Geneva Call on reported incidents of landmine explosions during the almost year-long period of clashes between the government and MILF forces since August last year.' [full text at Annex 3].

Of course, the agreement of the GRP was also necessary to allow the Verification Mission to take place. Whilst the GRP has no specific obligations under the *Deed of Commitment*, it does have an obligation under Article 9 of the AP Mine Ban Convention to take measures to ensure that the Convention’s terms are abided by all actors. Geneva Call asserted to representatives of the GRP that its facilitation of a Verification Mission could be considered as falling under this requirement. In meetings with the President of Geneva Call, both General Yano, the (then) Chief of Staff of the AFP and Secretary Esperon the (then) Presidential Adviser to the Peace Process expressed in-principle support for this initiative. This support was echoed by General Maclang, the (then) Deputy Chief of Staff of the AFP, who led the GRP delegation to the 9th Meeting of State Parties to the AP Mine Ban Convention [9MSP] in November 2008.

On 27 April 2009, written approval for the Verification Mission was given by General Oban, on behalf of the Chief of Staff of the AFP, stating:

> 'It is my honour to inform you of the approval of the conduct of the planned Verification Mission by the Geneva Call on the alleged violations of the Moro Islamic Liberation Front of the *Deed of Commitment* under *Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Co-operation in Mine Action* it signed in 2000.'
The AFP believes that the Verification Mission is a significant step that will ascertain the veracity of the reported incidents against the MILF and will in turn help to ensure the terms of the Mine Ban Treaty are abided by those who have made a solemn commitment of following its terms and conditions. (full text at Annex 4).

At Geneva Call’s request the AFP reviewed the list of allegations that had been reported in the media. In May 2009, a representative of the AFP informed Geneva Call that there were only 3 incidents that the AFP could identify that could be subject to scrutiny by the forthcoming Verification Mission. All of these incidents had been in the original table of allegations prepared by Geneva Call and presented to the AFP. It should be noted that the AFP asserted that the MILF had also used devices in breach of their obligations on other occasions, including some of the other incidents that had been on the original list of allegations, but corroborative evidence was no longer available.

As the necessary permissions had been granted and the incidents to be scrutinised had been identified, the next step was to develop Terms of Reference (ToRs) for the Mission (Annex 5). Three key objectives of the Mission were under consideration:

1. To ascertain whether any of the devices used or recovered in western Mindanao in the period between 30 July 2008 and 31 October 2008 would be considered as anti-personnel mines within the terms of Article 1 of the Geneva Call Deed of Commitment;

2. In any instance where a device fulfils the criteria so as to be considered as an anti-personnel mine within the terms of the Deed of Commitment (as per objective 1), to ascertain whether the production, acquisition and/or use of the said device is attributable to the MILF, using the analogy to generally accepted standards under public international law as guidance; and,

3. In any instance where the MILF has been found in violation of Article 1 of the Deed of Commitment, to investigate whether such violation(s) were or should have been known by persons in the MILF command structure, and to enter in to dialogue with MILF leadership on appropriate measures to improve enforcement as per Article 4 of the Deed of Commitment.

Considering the objectives, the specific expertise needed from the Mission Team was identified, and ToRs for the collective and specific roles of the Head of Mission (HoM), Mission Technical Expert (MTE) and Legal Fact-finding Expert (LFE) were developed (Annex 5). Chris Rush, Geneva Call’s Senior Programme Officer responsible for the organisation’s work in the Philippines, was tasked with the role of HoM; the Mission was extremely fortunate that Professor Eric David, a distinguished legal scholar and member of the International Humanitarian Fact Finding Commission (IHFFC), agreed to be the LFE, and, after consultation with Mines Advisory Group (MAG), Phil Halford of that organisation was identified as being ideally suited for the MTE role.

To ensure that the MILF and the GRP were clear as to the nature of the upcoming Mission, and the expectations as to their roles and responsibilities, Geneva Call developed a ‘Mission Document’ (Annex 6) which was shared with them as well as other stakeholders. Aspects of the Mission Document, particularly in respect of issues of access, security and neutrality, were elaborated on and shared with both parties (Annex 7).

A major challenge was ensuring that the Mission had appropriate logistical support. A representative of the AFP had made it clear that it was not in agreement with the original suggestion that the Mission be supported by Bantay Ceasefire, a local network of civilian ceasefire
monitors, which had already agreed to participate, but insisted that such a role should be played by an international organisation. Although a setback, Geneva Call considered that this should not serve to jeopardize the Mission, so it approached Non Violent Peace Force (NP), an International NGO with a significant field presence, which agreed to participate. NP agreed not only to provide logistical support but also to provide two staff members to act as interpreters. Moreover, NP agreed to accompany the Mission during its field enquiries, which would help to emphasise the international humanitarian and neutral nature of the Mission.

Identifying a suitable timeframe for the Verification Mission also proved challenging. Until the declaration of a Suspension of Military Operations (SOMO) by the AFP, and a reciprocal Suspension of Military Activities (SOMA) by the MILF in late July 2009, there was still sporadic fighting between the parties, including in the vicinity of the incidents of alleged mine use. In the immediate aftermath of the SOMO and SOMA declarations, Geneva Call sought the views of the GRP and the MILF as to the possibility of safely conducting field enquiries in the new circumstances. Geneva Call suggested that the two parties should convene a ‘non-meeting’ of the Joint Co-ordinating Committee on the Cessation of Hostilities (JCCCH) to finalize the arrangements for the Mission. On 29th July 2009, a representative of the MILF indicated that it was ‘not yet possible’ to convene such a meeting. Positively, on 11th August a representative of the MILF CCCH gave the assurance that it would ‘fully cooperate as required and agreed upon, particularly on the security coordination for the mission.’

After several postponements, it was agreed by both the GRP and the MILF that the Mission should take place in the latter part of November. The HoM travelled to the Philippines the week before the Mission was planned in order to seek to ensure that all the necessary arrangements were in place. Meetings were held with both parties in this respect. Relevant documentation was obtained and the itinerary of the mission was finalised. The Explosive Ordnance Disposal (EOD) Unit of the 6th Infantry Division presented details of devices that it had allegedly recovered in the previous year that included four devices that, it was claimed, fell within the scope of the Missions ToR’s, but details of which had not previously been provided. However, the recovery of two of these devices during 2009 fell outside of the timeframe of the enquiries as specified in the ToR’s. Citing the humanitarian nature of the enquiries, Geneva Call sought approval from the MILF for a variation of the temporal limits contained within the ToR’s to allow these two devices to also be investigated. After internal consultation, the MILF agreed to this request. The finalised list of allegations to be investigated by the Mission is contained at Annex 8.

The itinerary of the Mission was discussed with the GRP and the MILF. It was agreed that in respect of the field enquiries, the GRP and the MILF would each be given two days to present their evidence in relation to the allegations, including visits to field locations and arranging meetings with witnesses. The itinerary was then agreed by both parties (Annex 9).

Although both parties had given separate assurances in relation to the security of the Mission Team and those associated with it, Geneva Call made it clear that the ‘green light’ for the Mission would only be given as and when there were appropriate security arrangements in place, particularly in respect of co-ordination between the parties. Co-operation between the MILF and GRP CCCHs was seen as vital in this respect. On the part of the MILF it was clear that there was reluctance to return to having meetings of the respective CCCH’s prior to the anticipated return to the Philippines of the International Monitoring Team. After some discussions with the HoM, the MILF agreed to allow representatives of its CCCH to meet informally with their opposite numbers in the GRP CCCH to address this issue. It was clear that neither party would agree to meet in the offices of the other. Geneva Call booked a room in a hotel for
this low-key meeting to take place. Positively, it was agreed that both of the CCCH’s would accompany the Mission Team throughout the course of its enquiries in Mindanao.

It was only the day before the arrival of the Mission Team that the HoM considered that the arrangements were in place to ensure the safe and effective execution of the Mission, and he conveyed this to the parties and other key stakeholders. The Mission was ready to proceed.

The following section contains the Mission Report. It should be mentioned that this report is an edited version of the Reports that were shared with the MILF and the GRP. Of particular note in this respect is the fact that the ‘context’ section has been significantly reduced, to avoid duplication with the first part of this report.
Report of the Verification Mission to the Philippines

Investigate Alleged Breaches of Geneva Call’s
‘Deed of Commitment for Adherence to a Total Ban on
Anti-Personnel Mines and for Cooperation in Mine Action’
by the Moro Islamic Liberation Front

Introduction

1. From 16 to 26 November 2009, after confirming the existence of credible allegations of the use of anti-personnel (AP) mines, Geneva Call conducted a fact-finding mission [hereafter ‘the Mission’] in the Philippines in order to verify if the Moro Islamic Liberation Front (MILF) had violated its obligations under the Geneva Call ‘Deed of Commitment for Adherence to a Total Ban on Anti-Personnel Mines and for Cooperation in Mine Action’ [hereafter ‘the Deed of Commitment’] by using AP mines during the previous 18 months. The Mission was conducted with the agreement and facilitation of both the Government of Republic of the Philippines (GRP) and the MILF.

2. The Report will address in turn the context and conduct of the Mission [A.], before turning to consider the qualification of the incidents [B.].

A. The Context and Conduct of the Mission

A.1 Mission Objectives

1. The Objectives of the Mission - as contained in the Mission Terms of Reference are:

a. To ascertain whether any of the devices used or recovered in western Mindanao in the period between 30 July 2008 and 31 October 2008 would be considered as anti-personnel mines within the terms of Article 1 of the Geneva Call Deed of Commitment;

b. In any instance where a device fulfils the criteria so as to be considered as an anti-personnel mine within the terms of the Deed of Commitment [as per objective 1] to ascertain whether the production, acquisition and/or use of the said device is attributable to the MILF, using the analogy to generally accepted standards of attribution under public international law as guidance; and,

c. In any instance where the MILF has been found in violation of the Deed of Commitment to investigate whether such violation[s] were or should have been known
by persons in the MILF command structure, and to enter in to dialogue with MILF leadership on appropriate measures to improve enforcement as per Article 4 of the Deed of Commitment.

2. It should be mentioned that at the commencement of the Mission, the Team was presented with additional allegations in the form of AFP Explosive Ordnance Disposal [EOD] reports of four devices that had allegedly been recovered by the AFP over the previous year or so. The recovery of two of these devices during 2009 fell outside the timeframe of the enquiries as specified in the Mission Terms of Reference. Citing the humanitarian nature of the enquiries, Geneva Call sought approval from the MILF for a variation of the timeframe to allow these two devices to also be investigated. After internal consultation, the MILF agreed to this request [infra Paras 75-82].

A.2 Membership of the Mission

3. The members of the Mission (hereafter ‘the Mission Team’) were Mr Chris RUSH, Head of the Mission [HoM] and staff member of Geneva Call, Mr Philip HALFORD, staff member of the Mines Advisory Group (MAG) who acted as Mission Technical Expert (MTE) and Mr Eric DAVID, Professor of International Law at Brussels Free University and member of the International Humanitarian Fact-Finding Commission (IHFFC) who acted as Legal and Fact Finding Expert (LFE).

A.3 When the Mission was Conducted

4. The Mission Team was in the Philippines from 17 to 26 November 2009. During that time the team was in Mindanao from 19 to 24 November and in Manila, both prior to and after those dates [see Annex 9].

A.4 Methodology of the Mission

5. The Mission delivers its opinion on the incidents which occurred in 2008 and 2009 and which were alleged to violate the Deed of Commitment. The opinion of the Mission Team is based on the testimonies of witnesses and inspection of relevant documentation and visits to field locations. All the persons that the Mission Team met were interviewed in order to ascertain their interpretation of the incidents. Also valuable to the Mission were meetings with other relevant persons who presented their experiences, views and perspectives and answered questions put by the Mission Team. These persons included high personalities of the Philippines administration including the AFP and high representatives of the MILF. The Mission Team also paid visits to sites where incidents occurred – sometimes accompanied by witnesses – and examined the remnants of explosive devices allegedly used during the incidents and brought to the Mission by the AFP and the MILF.

6. In terms of interviewing the witnesses the Mission followed the procedure whereby witnesses were welcomed by the Mission Team which explained:

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3 The Commission has been established on the basis of Art. 90 of the 1st 1977 Protocol Additional to the 1949 Geneva Conventions on the Protection of the War Victims; however, Prof. E. David is a member of the Verification Mission in his personal capacity and does not officially represent the IHFFC.
• the identity of the members of the Mission Team;
• the goal of the Mission: the establishment of the truth in the events for which the witnesses were invited to state their version of the incident, i.e. what they saw and heard;
• the non-judicial character of the investigation;
• the confidentiality of their testimony;
• their full freedom of speech;
• the live tape recording of their testimony and their freedom to refuse to be recorded.

7. For all the interviews that could not be undertaken in English, the Mission Team was assisted by independent interpreters in respect of witnesses who wished to be interviewed in Maguindanao, Visayas or Tagalog;

8. The Mission Team also paid visits to sites where incidents allegedly occurred, and examined the remnants of explosive devices allegedly recovered by the AFP and, in one instance, the MILF. Thanks to these observations, the Mission Team feels generally able to assess if the devices which were used or recovered can be considered as meeting the definition of an anti-personnel mine under the Deed of Commitment.

9. The Mission has decided to apply the standard of 'beyond reasonable doubt' in seeking to meet the first two objectives of the mission, that is, whether the devices investigated were AP Mines within the terms of the Deed of Commitment and, in instances where this is established, whether their use is attributable to the MILF. It should be emphasised that this standard of proof reflects the circumstances of this particular Mission rather than constituting a general Geneva Call standard.

10. The Mission would like to observe that it is not a judicial organ and that it has neither the legal power nor the material means to act and behave as a tribunal. However, it stresses that the present report has been written with an overarching concern to remain as impartial and independent as would a judicial organ towards litigant parties and perhaps to inspire itself, as and where possible, from the methodology of relevant judicial organs.

11. Finally, the Mission would like to take advantage of this opportunity to pay a warm tribute to the excellent spirit of cooperation both parties brought to its work. It does not often happen that a State and an NSA, in a situation of armed conflict, co-operate in the quest to establish the truth, even in respect of humanitarian matters. It is hoped that this example should serve to inspire parties to other armed conflicts, not only in the region but in other parts of the world.

A.5 Mission Programme: 17-19 November - Courtesy Calls and Briefings

12. The Mission Team arrived in Manila on 17 November and was immediately briefed and provided with relevant documentation by the HoM.

13. The programme on 18th November was primarily focussed on making calls on GRP representatives. Political and historical context to the 2008 incidents from the perspective of the GRP was provided by Major General Oban [J5] of the AFP, Mrs. Annabelle Abaya, Presidential Adviser at the Peace Process, Mrs. Leah M. Basinang-Ruiz, Director of the UN and International Organisations Service at the Philippines Department of Foreign Affairs and Ambassador Rafael Seguis, also of the DFA, and Chair of the Government Peace Panel in talks with the MILF.
14. It was recalled by the Mission’s various interlocutors that the Philippines is a State Party to the Mine Ban Convention. The Mission was informed how the peace process involving the MILF was currently progressing. It was hoped that there would soon be progress not only in respect of the MILF Peace Process, but other similar processes with other NSAs operating in the country.

15. The Mission also had informal meetings with representatives of the ICRC delegation in the Philippines and members of the diplomatic community who provided more background information on the upsurge in the conflict in 2008 and the current state of play of the Peace Process.

16. The Mission Team travelled to Mindanao on the 19 November and made a call on Brigadier Limbo of the 6th Infantry Division (6ID), who received the team on behalf of General Cayton, the Commanding General. Immediately afterwards the Mission Team participated in a final planning conference with the AFP that was tasked with ensuring the successful implementation of the programme. There were some 16 Officers of the 6ID participating in the conference, including field commanders from the locations that the Mission Team were scheduled to travel to. The AFP provided a presentation of the current state of play with respect to the use of explosive devices by NSAs. It was reported that between mid-August 2008 and mid-September 2009, 49 incidents of the use of explosive devices occurred in Mindanao. It was apparent that these incidents included not only victim-activated devices but also command detonated devices and those utilising timers. The fact that the latter two types of devices fell outside the Deed of Commitment definition of an AP mine was made clear by the Mission Team.
17. The Mission Team then travelled to Sultan Kudarat to meet the MILF. The Mission Team was received by a delegation of representatives led by Ghazali Jafar, the Vice Chairman for Political Affairs. Mr Jafar warmly welcomed the Mission Team and declared that the MILF continued to respect its obligations under the Deed of Commitment. However, he expressed the MILF’s disappointment that it continues to be treated as an “enemy” by many in the GRP, whereas it feels that it should be considered as a partner in the search for a solution to the conflict with the Philippines government. He recalled that the ongoing conflict was very costly for the country. He suggested that a solution acceptable to all the parties should be found as soon as possible.

A.6 Mission Programme: 20-23 November Field Investigations

18. The field enquiries took place between the 20 and 23 November (details of the locations visited appear in the following section). The Mission Team was accompanied throughout its enquiries by representatives of the MILF and GRP Ceasefire Committees and members of the Non Violent Peace Force (NP), an International Non-Governmental Organisation (INGO) that conducts what it terms as civilian peacekeeping. NP has a field presence and a familiarity with the locations visited by the Mission Team, and provided interpreters for interviews with witnesses. In addition, at the site of enquiries the Mission Team was met by representatives of the parties of the conflict. Although accompanied and received as described, the Mission Team conducted all its interviews with witnesses and undertook its deliberations in confidential settings.

19. For ease of scheduling the GRP was responsible for facilitating the first two days of the field programme (20-21 November) (i.e. identifying locations to visit, identifying and presenting witnesses) and the MILF the second part (22-23 November).
A.7 Mission Programme: 24-25 November Mission Debriefing

20. After the field enquiries were conducted, the Mission Team provided debriefings to the Parties and other stakeholders. On 24 November the team met with representatives of the MILF, again headed by Ghazali Jafar. The following day the team returned to Manila and met with representatives of the AFP working group that was responsible for co-ordinating the GRP’s arrangements for the Verification Mission. In both meetings the Mission Team provided information as to implementation of the programme, and did not discuss its substantive findings, as more time was needed for analysis of evidence, reflection and deliberation.

21. The Mission Team’s last meeting before leaving the Philippines was a briefing for interested members of the diplomatic community at an event organized by the Embassy of Switzerland.

B. The Qualification of the Incidents

B.1 Incidents investigated

22. As has been mentioned, the Mission was initially only scheduled to investigate three incidents of alleged use of landmines by the MILF. These three incidents occurred in 2008, on 19 August, 12 and 17 October, respectively, in Dunguan (Aleosan, North Cotabato), Tukanalipao (Mamasapano, Maguindanao) and Kitango (Datu Saudi Ampatuan, Maguindanao). However in the week prior to the Mission, representatives of the AFP provided documentary evidence in respect of a further 4 incidents that it was considered would fall within the mission’s remit. All of the new incidents involved the alleged recovery of devices that were asserted to meet the definition of an AP mine within the Deed of Commitment, and all were attributed to the MILF. Whilst two of these incidents were within the temporal limits established within the Mission Terms of Reference, the two others – both in Matanog – were alleged to have taken place more recently, in April and May of 2009. In the circumstances, the Head of Mission consulted with the MILF which, after consultation, agreed that all of the new alleged incidents of AP mine use should be investigated. The Final List of Incidents investigated by the Mission appears at Annex 8.

B.2 The 19 August 2008 Incident and 2 and 3 October Finds in Dunguan, Aleosan, North Cotabato

B.2.1 Context

23. On 20 August 2008 the Sun Star Davao reported that a soldier:

“... of the 602nd Brigade was hit on both legs when he stepped on a landmine around 10 a.m. Tuesday while he and his companions were conducting patrol operations in Barangay Dunguan.”

24. On 22 October 2008 Geneva Call met with representatives of the MILF and sought their response to the allegation. Whilst not familiar with the specific incident, the MILF representatives pointed out that Barangay Dunguan:
“….is a fully Muslim area, why would the MILF risk hurting their own?”

**B2.2 Testimonies by witnesses identified by the GRP**

25. The Mission went to Dunguan (Aleosan, North Cotabato) on 21 November and heard the testimonies of witnesses identified by the GRP.

26. The first witness, ‘A’, introduced himself as being a Private 1st class in the army. He reported the incident as follows:

“I had received information from the battalion commander indicating that a landmine had been planted by the MILF. A dog had probably been hit by a landmine in the area. Somebody of the Explosive Ordnance Disposal Detachment (EOD) was called to the area. When we get to the place where the dog had been hit, we were ordered to secure the area. We scattered. ‘B’ had stepped on a landmine, 20m far away from the dog’s body. This occurred near a house usually inhabited by civilians, but the civilians had already been displaced from the area, about a month before.

My colleague (witness ‘B’) was on the opposite side of the road where the dog had been hit. I could see my colleague moving. However, I did not see the flash of the explosion. I heard the bang, and saw the smoke, which was black. The device was surely buried. My colleague activated it by the place where it was buried. At the time, it was rainy and the road was muddy. I am certain that it was an IED.

When the explosion happened, I thought what’s happening? The EOD technician went to the victim. I did not see his injuries because he was immediately evacuated to the nearest medical facility. I did not speak with the victim.

Then, I withdrew from the area but the rest of the team stayed in the area. The EOD team cleared the area. They took photos of the site. I have only seen pictures of the devices.

The MILF was in the vicinity as well as the AFP. The Detachment post was already set up.

I was already in this area before the explosion. Nongovernmental forces (MILF) use similar devices. These devices, in general, explode when somebody steps on them. Only the MILF was here at that time. The MILF controlled the area, even if this military detachment post already existed. In fact, the MILF forces surrounded the camp. There were no more civilians in the area by that time. There were probably 1000 MILF in the area around the camp at the time. It was only possible to get food through the Bantay Ceasefire group. Before the incident there were encounters between the AFP and the MILF, but not after the incident because the MILF withdrew shortly after.

We made patrols when we were informed of the presence of devices. We knew that we could be attacked by the MILF, but we had fire support.

The area had no strategic importance. Before the device exploded, military had already cleared the area. This happened the month before. During the clearance there was nothing to indicate that the place could be mined. Anyway, by the time of the explosion the area could be described as a no man’s land.
Nobody was here except the MILF. Even before the dog was killed, I was already informed of the presence of devices by an informant. The informant did not know where the devices were situated exactly.

The goal of the devices was to inflict casualties on the military.

The road where the mines were laid was used by the military only rarely. Regular vehicles also used the road.

The MILF Command in the area was the 105th. The Commander is Kato and the local commander is Bravo who is the under-commander. He is not the same Bravo who commands MILF forces in Lanao.

The second witness ‘B’ was also a Private in the Army; he said:

“I am in the 40 Infantry Brigade. We were informed that landmines were planted in the area and that a dog had been killed in a blast. My platoon [about 30 people] walked 1 km from the camp and was ordered to secure the area. I went to the right side of the area, looking at the ground and at the surroundings when the explosion happened that injured me.

The location of the explosion was 200 m from where the dog had been killed. That explosion had been in front of where we were. I was told that a dog had been hit but did not see its body because of the bushes in the area.

In terms of the explosion that injured me, I had walked to the side of the road. I felt something had touched my leg at the height of my ankle. I supposed it was a grass stem which was against my ankle – it was not a lot of pressure. Suddenly, an explosion occurred behind me and to my right, and something hit my right leg. It was like a slicing and not a punching sensation. I was pushed forward and was initially deaf because of the ringing in my ears.

My right leg and my shoulder were wounded. The doctor withdrew fragments of shrapnel from my wounds. I did not keep the shrapnel. I got some scars on my leg and my shoulder.

The AFP and the MILF were the only military forces in the area. In terms of the AFP it was the 40 and 38 infantry brigades The AFP did not control the whole area. At the time of the incident, there was no fighting in the vicinity. There was no fire support that I know about. We had already been informed about the possible presence of landmines in the vicinity as there had been the earlier blast.

There were no civilians in the area as they had all left. The commander of the MILF was Mr. Kato.”

The 3rd witness, ‘C’, a Corporal, said:

“We were informed that explosions happened in the vicinity. We went with the CAFGU to clear the area. When we approached the area, some of our men were securing it. On the side of the road there had already been an explosion in which a dog was killed. I cannot estimate how far away that was. Somebody went to a mango tree on the left side of me. I was about 20-30m from the mango tree, with Major Lorente. Then, there was an explo-
sion near the mango tree. 'B' was hit. I did not know what the distance was between the places of the two explosions. I saw the smoke (black) of the explosion. The device was probably installed by the MILF because the area was surrounded by the MILF before the incident. I do not know where the MILF was exactly located. There commanders in the area were Mr. Kato and Mr. Bravo of the 105th Base Command. It was the 1st time that this kind of device was used in this area. The informant had given us good information. The Battalion would not have responded without proof.’

29. The 4th witness, 'D', was not in the AFP. He said:

"I am a member of the CAFGU (Citizen Armed Forces Geographical Unit). On the day of the incident I was inside the detachment [Camp]. The CAFGUs heard a blast from down the road. The blast took place at 3:00 a.m. The military patrolled at 7:00. During the patrol, I was with the military. We saw the dead body of the dog, and the remains of a wire before the dog. We did not go close to the dog because of the wire. We returned to the base and contacted 40IB to give them information about what we had seen on the road. When the 40IB went to the area I did not accompany them.

I did not know who was the detachment commander of the AFP.

No one else was fighting in the area apart from the MILF.”

B.2.3 Testimonies of witnesses identified by the MILF

30. The Mission went to Dunguan (Aleosan, North Cotabato) on 22 November 2009, and heard three testimonies of witnesses that had been identified by the MILF.

31. The first witness ['E'] introduced himself as being a Commander in the BIAF. He stated as follows:

"I am a Commander in the Bangsamoro Islamic Armed Forces, Central Mindanao Front. Under the front are the 105 and 116 Base Commands as well as the General Headquarters. Although my command covers a wide area I was in the vicinity around the time of the incident.

On August 8, 2008, the MILF and GRP CCCHs along with the Malaysian facilitator, met to discuss different things such as the repositioning of the governmental forces. The Civilian Volunteers Organisation (CVO) attacked during this meeting. This attack took place in Barangay Maamburok, about 4-5km from here. The following day the AFP also attacked. We withdrew to Dunguan. The AFP continued to pursue us so on August 13, we completely repositioned and withdrew from the area.

In terms of the devices that were allegedly planted I can say that we planted no such devices. The order was given to stop using these over a year ago ..... actually, I recall that it was in 2003. Since the leadership of the MILF decided not to use explosive devices, we did not use them any longer. The order which was passed in writing and verbally and is very strict. That order concerned devices that cannot be controlled, not devices when we are confronted by the enemy.

Before the order, some of us [very few] used devices that could not be controlled.
I understand that the Geneva Call Deed of Commitment prohibits the use of devices that cannot be controlled. This is to stop harm to civilians and to other non combatants. I personally attended a Geneva Call training. However I certainly think it would be good to do new trainings so as to remind people of the obligations.
I am aware that we were supposed to take devices that had previously been planted out of the ground but as there were no records of where devices are, I am not sure if this has been done.

The overall commander of our forces in this area is Umbra Kato, and a lower level commander is ... [Witness ‘F’].

As I mentioned, on August 13, we abandoned our positions in this area, but we came back from times to time for guerrilla operations. This is a fully Muslim area. Some civilians were still in the area during the fighting looking for food.

We do not say that the AFP used these devices but the MILF are very clear that it was not us that used them. I do not think that subordinates have disobeyed orders. The order was disseminated to every level, to everybody, even those on the ground. We have a code of conduct, a disciplinary board courts and disciplinary sanctions in instances of breaches of discipline. I don’t see there being other actors that might have been responsible.

We cleared the mines that had been laid before. This was done after 2003. However, it is possible that some devices have not been recovered.”

32. The second MILF witness ‘F’, was a BIAF Commander. He said:

"I am one of the deputy commanders in the area.

I was in Dunguan in early August 2008. At that time CAFGUs and CVOs tried to force people to sell their lands. The MILF decided to help stop people from being forced to sell. The AFP reinforced the CAFGU and CVO forces; therefore, the MILF were drawn into a fight against the AFP. From August 1 to 13, fighting took place in Sitio Suluk (Silik), Sitio Pobubuyon, Bakayawan (all in Dunguan) Tubak [Pikit] and Bagolibas. It was intense fighting, with artillery bombardments. We never touched the detachment outpost in Dunguan. This is because although there were soldiers and CAFGUs there, they were not involved in the events that lead to the fighting. It was the CAFGUs in Dualing and Pikit who had started all of the problems. We withdrew on August 15 about 10km away. There were no civilians in the area at that time as there was heavy bombardments taking place. We came back with squads of 7 persons for guerrilla actions such as harassments, strafings and ambushes attacking the AFP. The AFP fought back with artillery.

Ambushes were carried out with the use of 3 lookouts and the rest of the squad in the killing zone. However, we did not use explosives in these ambushes.

In terms of the devices allegedly planted in the vicinity of the base I have no knowledge. We were not in the area at the time. I can’t say if other BIAF forces could have used some of anti-personnel devices, but I can say that it is not my own forces, because they would not be able to use these devices. In any event from 2003, we ordered not to use weapons which explode when you step on them. My men knew these rules because I have informed them.”
Other forces were in the vicinity: the 108 and 110. I am in the 105. There was no other force apart from AFP, but some residents here are members of the MNLF; they are armed.

### B.2.4 Technical aspects

33. No physical evidence of the devices was left following the August incident as all three devices were detonated at the scene. One was detonated by the dog, one by witness B and the third was destroyed in place by AFP EOD personnel; all evidence for that incident is therefore, testimonial. The Mission Team were shown, however, a tripwire activated improvised stake mine that had allegedly been recovered from near the scene of the August 2008 incident during later that year [October]. It consisted of a wooden stake that, the Mission Team were told, had an improvised RPG warhead attached to it when it was found, the firing mechanism consisting of an improvised electrical detonator, a 9 volt battery and a simple electrical circuit utilising a plastic clothes peg with two improvised contacts held apart by a plastic “shunt” attached to the tripwire. The device functions when the tripwire is tripped, pulling the shunt out of the peg, the peg then closes completing the electrical circuit and causing the detonator to fire and ignite the main charge. Examples of improvised RPG warheads allegedly used by the MILF were shown to the Mission Team.

34. In terms of testimony, Witness B (who was injured during this incident) states that just prior to the explosion he felt pressure against his leg, what he thought to be a “grass stem”. Immediately after feeling this pressure there was an explosion behind him to the right hand side. This would indicate a tripwire activated device. The injuries to the witness are entirely consistent with what would be expected from a device with a thin casing using the blast effect of the explosive content to cause injury rather than using the casing for fragmentation effect. This would seem to indicate that the device is of an improvised design, as manufactured mines that function by tripwire overwhelmingly utilise the casing as a fragmentation jacket in order to cause the maximum amount of damage to targets within effective range. Manufactured Fragmentation mines normally have a lethal radius of up to 15 metres. The witness was very close to the blast but suffered only superficial injuries; this leads to the conclusion that the device was of an improvised nature consistent with a device containing poor quality explosive. If the device contained high quality explosive, at such close range it would be expected that the blast injuries would have been far more severe. Witness C also testifies that he was 20-30 metres away from the explosion and witnessed black smoke when the explosion occurred. Black smoke is also an indication of poor quality explosive as high quality explosive would normally be expected to give off smoke that is grey/white in colour.

35. Witness C also testifies that when the patrol went to investigate the explosion caused by the dog, he saw a wire close to the dog; this would indicate that the device that killed the dog was tripwire activated. Witness D also confirmed the presence of a wire close to the body of the dog.

36. Witness A also indicates in his testimony that the entire area had been cleared previously by the AFP; the same witness also indicates that intelligence had been gathered from an informant that indicated devices had been laid in the area. The road prior to the evacuation by the local population had been in regular use, a tripwire activated device would have been tripped long ago. This information, coupled with the position of two of the devices found, i.e. on the road, indicates that the devices had recently been placed and were not remnants of a previous action.
B.2.5 Military aspects

37. The site visit enabled the Mission Team to take a closer look at the military aspects of what happened. When questioned the soldiers on the site indicated their normal reaction to dealing with a suspect device or when approaching the site of an unexplained explosion. On the day of the incident, the Mission Team were told that the patrol sent out to investigate the explosion that had killed the dog, a tripwire and device was found on the road (although it must be pointed out that none of the other formal witness statements substantiate this). When a patrol, with EOD support, approached the area to clear the device, the supporting infantry including witness B fanned out to secure the area. This, the Mission Team were told, was the standard drill, and conforms to what the MTE would term as a standard operating procedure (SOP) for dealing with such a task. The weather at the time was wet and rainy and the device, that injured witness B, was placed under the cover of a large Mango tree. The MTE considers this as an action that indicates whoever laid the device was familiar with AFP SOPs and the device was placed in the location of obvious cover from the rain, just off a well used track. This, in the opinion of the MTE, is “classic” use of such anti-personnel devices. The obvious device on the road used as a come on, with the secondary device laid in a place where it would be an obvious route for troops securing the area to use.

B2.6 Mission’s conclusions

38. In fact:

- At the time of the explosion, the main MILF forces had departed from the immediate vicinity but were located not far from the area;
- two devices exploded: one dog was killed and a soldier of the AFP was slightly injured;
- the explosions seemed to have been caused by different devices placed on the road and hidden in the grass near a path, respectively;
- the devices were triggered by contact of a dog with a tripwire for the first explosion, by contact of a soldier with another tripwire for the second explosion;
- on the same day another device was found in the area but was destroyed in situ;
- there was no public warning that mines had been planted in the area;
- at the time of the explosions the area had been deserted by civilians;
- evidence would suggest that the devices were recently planted rather than being remnants of an earlier phase of the conflict as:
  - there was witness testimony that an informant provided information about the recent laying of the devices,
  - the road and path where the devices were laid were both apparently well used,
  - the batteries were still functional on at least two of the devices,
  - the wooden stake that was inspected did not show the signs of deterioration that would be likely if it had been placed in a tropical environment for an extended period of time,
- In October 2008, two similar devices were located in the same and a neighbouring barangay (village);
- the BIAF had been present in the area until a few days before the incidents conducting hostilities against the AFP and were conducting guerrilla raids into the vicinity even after they had withdrawn;
- it is not considered credible [as suggested by one witness] that no one from within these guerrilla forces would have the technical capacity to improvise these devices.
39. In law:

the devices used or found in Dunguan are anti-personnel mines according to Art. 1 of the Deed of Commitment of which defines anti-personnel mines as:

“devices which effectively explode by the presence, proximity or contact of a person, including other victim-activated explosive devices and anti-vehicle mines with the same effect whether with or without anti-handling devices.”

• it is beyond reasonable doubt that these devices had been planted recently (probably within the previous few days) with the clear intention of targeting GRP forces;
• the presence of these devices has not been publicly announced; however, at the time of the August incidents the area had been deserted by civilians and the devices had been planted near a military camp which is a military objective;
• in respect of attribution on the one hand, there is circumstantial evidence that would suggest that the use of these devices might be attributable to the MILF: MILF forces were carrying out raids into the area, it had used victim activated devices before 2003; on the other hand, the MILF witnesses asserted that the organisation had banned the use of anti-personnel mines in 2003, and that it stuck to this prohibition; without more evidence it is considered that it is not proven beyond reasonable doubt that these devices were planted by MILF forces;
• whilst MILF responsibility for these devices is not conclusively proven, the Mission Team would like to make it clear that it is likely that these devices were planted by one of the small BIAF guerrilla forces, possibly without the knowledge or sanction of their senior commanders or the MILF leadership.

A briefing with MILF Commanders and witnesses, near Dunguan.
B.3 The 12 October 2008 Incident in Tukanalipao, Mamasapanao, Maguindanao

B.3.1 Context

40. On 12 October 2008 the Daily Inquirer reported that:

“Eight soldiers, including an Army lieutenant, were wounded when Moro Islamic Liberation Front (MILF) rebels, who were fleeing after harassing a military encampment, set off a landmine against pursuing soldiers in Maguindanao on Sunday, the military said… The harassment triggered a 20-minute firefight, after which the rebels, led by Commander Basit Usman and Bonnie Ayunan fled to the Maguindanao marshland, according to Col. Julieto Ando, 6th Infantry Division spokesperson….the military sent reinforcements, backed by Simba armored vehicles, but the MILF set off a landmine, which injured eight soldiers.”

41. In a meeting with representatives of the MILF on 22 October 2008, whilst stating that they were aware of the incident and denying the involvement of Basit Usman and Bonnie Ayunan, the representatives asserted that the device used was a command detonated IED.

B.3.2 Testimonies of witnesses identified by the GRP

42. The Mission went to Tukanalipao, Mamasapano Maguindanao on 23 November and heard testimony from three witnesses.

43. The Mission Team heard from Witness ‘G’, a soldier.

“I was part of a patrol consisting of two platoons moving up the road; half the patrol was on the left hand side of the road and half were on the right. I was part of the patrol walking on the left hand side of the road. With the patrol were two armoured Vehicles called Simbas. The soldiers were patrolling about 5 metres apart. There were 3 squads of 9 soldiers on each side of the road. I was briefed as to the numbers of enemy troops expected to be in the area; according to intelligence reports there were 60 enemy troops in the area, all lawless MILF. I think that the significance of the word “lawless” indicated they were breakaway groups from the MILF.

I was 7-8 metres away from the blast when it happened; I saw black smoke and some of my peers shouted that there was a mine, this is when the explosion happened. I saw black smoke before the explosion. I could not remember if there was anyone standing right next to the smoke when I saw it, everything was happening so fast.

Following the explosion I fell to the ground and realised that I had been injured on the right arm and the right side of the stomach. There were 2 explosions that were a split second apart although I did not see the second as I had already fallen to the ground. One man died who was close to the second explosion.

Some of the men were walking on the cemented road and some were walking on the grassy verge of the road. Following the explosion and after being thrown to the ground there was sporadic gunfire, and sniping, possibly from a .50 calibre weapon.
I was not sure where the fire was coming from as I realised I was injured and went into shock “a little”, but still had some presence of mind.

The explosion that killed the soldier was the “front” explosion and the one that I saw was the “rear” explosion, some of my peers saw the man killed because he was next to the front explosion, although the rear explosion occurred first. No one stood on the exact spot of the detonations; I therefore suspect that it was a command detonated device. We were at the scene of the explosion for about one hour before we were evacuated, during that time there was continuous sporadic gunfire. Prior to being evacuated, the soldiers move back away from the explosion site “little by little” the company commander made the decision to move back because the site was so open.

9 soldiers were injured and 1 killed because of the explosions, none were injured by the gunfire. The distance between the 2 explosions was approx 15 – 20 metres. The explosion occurred approx half way along the line of the platoon i.e. in the centre of the group of men. We were not chasing anybody along the road; we had not seen any troops - we were just patrolling.

44. The Mission then spoke to witness `H’, a civilian.

“It was around noon time when the army arrived with their military trucks arrived in this area and then a sudden blast exploded in this particular site. I did not give an official statement to the military but as I was here at the time, I was asked by the military what had happened.

At the time of the incident I was in the market of the barangay (village), approx 1.5km away. At the time I did not see any armed group, but there are armed groups moving around the area.

I knew this because MILF groups are seen passing this area and that I am only aware of MILF and no other armed groups in the area.

I heard only one explosion and after the explosion the village people decided to move to other places and I also moved away. The people left everything behind, animals and possessions.

I had never visited the site of the explosion as the road had been closed by the military. After the explosion I heard gunfire [strafing] by the military.”

45. The next witness `J` is also a civilian.

“During the time of the bombing I was in my house. There was a very loud bang, just one big bang. After the explosion I heard some other firings, gunshots .I have only seen the AFP in the area, so I don’t think there are any other “arms”. My house is about 800 metres from the area of the explosions.”

B.3.3 Testimonies of witnesses identified by the MILF

46. The Mission went to Tukanalipao, Mamasapano, Maguindanao on 23 November and heard two witnesses.
“I did not witness the incident. Around 10:00 a.m., there was a blast and a gunfire. I was in my house when the explosion occurred. The blast was very loud. Then the gunfire which was less loud. The gunfire came from the government side as far as I could tell. Armed men from the MILF passed on this road, 3 or 5 days before the incident, going to Sultan Sabarungis which is about 3km away I knew they were going there because they told us. They asked if there were any soldiers in the vicinity. They did not mention any danger. I did not see them come back.

After the incident we fled the area, and went back in the village to get back their belongings.

At the time of the incident, I cannot say that the MILF were in control. However when the Military were not there they came out and when the military were present, the MILF hid.”

“I am a commander in the BIAF, 105 base command under Commander Kato. We planted the device early morning; it was command detonated, by pushing on a button. It was a remote control device. The button fired the device. It was not a mobile phone. I do not know exactly how it worked. The person under my command who pressed the button was about 200m away from the device. There were no wires between the button and the device. The device did not work if somebody stepped on it and there was no anti-handling device. The device was provided by the 105 command. I was not aware of the technical aspects. I know it was not a RPG. It produced fragments. We did not follow up with firing but we know that the enemy responded this way. I think 2 civilians were hurt by the firing of the military.

The instructions were that the remote control should be used only if the enemy came, not if civilians were among the enemy. This was a general rule of the MILF.

We had no other device. We only had this type. There is a general order to use only this type of device. I think this order is to try to stop harm to civilians. We do not use anti-vehicle mines either.

I had full control of my troops.

There was no other armed group in the area. I have heard about the Deed of Commitment, but I did not know the contents. We understood the Deed as meaning that we could only target the military not the civilians. Our men knew this. The orders are disseminated verbally. The MILF had a code of conduct conveyed and its provisions are conveyed through orders.”

B.3.4 Technical aspects

The technical information gathered from the site investigation is limited to the comments by the witnesses, as no physical evidence was available. The witness interviewed who was present at the site of the explosion and who was in fact injured by the blast was able to provide a reliable account of events.
50. From the testimonial evidence the MTE has formed the following opinions:

1. The device detonated at the centre of the patrol as it passed without any person standing on a triggering mechanism. – the testimony from witness G indicated that the explosions occurred next to the soldiers as they passed rather than under a person.

2. The device was command detonated – the witness saw black smoke prior to the explosions, this indicates a certain contact period between triggering and function rather than the instantaneous detonation caused by a victim activated device.

3. The explosion was a pre-planned event and therefore command detonated - The gunfire heard by some witnesses followed the activation of the device which would indicate that there was an ambush laid.

### B.3.5 Military aspects

51. The testimonial evidence suggests what in military terms would be a “classic” ambush. That is to say the site of the explosion was covered by troops in order to take advantage of the chaos caused by the detonation of a device. Immediately following the explosions, gunfire was heard by the witness coming towards the site of the explosion.

52. The explosion was triggered as the middle men in the patrol passed the device, this in military terms would be done in order to split the patrol and also to hit as many troops as possible in the danger radius of the device.

53. The explosion occurred in an area that was open and offered little in terms of cover for the patrol therefore providing the greatest advantage for the attacking troops.

54. The explosion occurred on the one and only route into the area, therefore providing a perfect site for an ambush.

### B.3.6 Mission’s conclusions

55. In fact:

- the device was activated when an AFP patrol was on the road;
- the MILF acknowledge that it was one of their devices but that it was command activated;
- there is no evidence that the device was activated by mere presence of the victim;
- the local MILF commander asserts that his men were given instructions not to harm the civilians;

56. In law:

- the incident does not meet the criterion provided for by the Deed of Commitment, i.e. that it was a type of device:

  "...which effectively explode by the presence, proximity or contact of a person, including other victim-activated explosive devices and anti-vehicle mines with the same effect whether with or without anti-handling devices.” [art. 1]
whilst the use of the device in this incident is clearly attributable to the MILF, this use does not violate the Deed of Commitment.

B.4 The 17 October 2008 Incident in Kitango, Saudi Ampatuan, Maguindanao

B.4.1 Context

57. The Daily Inquirer reported on the 19 October 2008 that:

"Government troops owe their lives to a carabao that stepped on a land mine intended for them in Maguindanao on Friday, a military official reported.

The carabao was killed instantly in Barangay [Village] Kitango, Datu Saudi-Ampatuan town. It had stepped on a land mine believed planted by Moro rebels who were being pursued by soldiers from the 64th Infantry Battalion.

Col. Marlou Salazar, 601st brigade commander, told the Philippine Daily Inquirer by phone on Sunday the mine “could have killed our platoon but a carabao stepped on it first, thus saving our soldiers.”...

The mine that killed the carabao was believed planted by followers of rogue Moro Islamic Liberation Front [MILF] commander Ameril Ombra Kato to slow the military’s pursuit, Salazar said.”

58. The MILF’s initial response to this incident was contained in a report published on its website [luwaran.com] on 17 November 2008 which asserted that this incident was caused by the carabao triggering unexploded ordnance.
59. The Mission went to Kitango on 20 November and heard from three witnesses: a vil-
lager and two men who introduced themselves as being members of the CAFGU, i.e. the civil-
ian and forces geographic unit.

60. The first witness, ‘M’, said:

“I’m living here in Kitango, near the market; At 7:00 in the morning of 17 October 2008, I
was at my house; I heard a blast. The victim was sitting on the top of a carabou that was
pulling a cart filled with rice along a path to his rice field; there was some rice in the
cart which he had harvested the previous day.

There was no gunfire in the surrounding area at the time of the incident. I was standing
at my house and witnessed the incident. The explosion hit the left side of the buffalo. At
that time no vehicles used that path except those used by the military.

I was the first one to be on the place of the explosion. The victim was seriously injured:
part of his body was totally red. The neighbours immediately took him to Cotabato hos-
pital where he died.

I estimate that the explosion happened when he was 100m from a house. A fragment
from the explosion hit the house.

The buffalo had been pulverised, beheaded. When the soldiers came, they took the
meat.

At the time, the path was often used by military in vehicles, or on foot. The military had
used the track this day.

No other persons were hurt. There was no fighting on that day, but, in the past, fighting
occurred, but this was far away from the place of the explosion”

61. The 2nd witness, ‘N’, was a paramilitary, member of the CAFGU. After the usual pres-
entations, answering some questions of the Mission he said:

“I was surprised by the incident because there was no fighting in the area.

I was part of a patrol. I was at the detachment [military post] when we heard the explo-
sion. We went immediately to the place of the explosion. When we arrived, we did not
see the victim who had already been taken away to the hospital. The body of the buffalo
was still there, except the stomach and the head. The legs, including the hooves, were
still in place. We, along with the military, cleared up the place. The owner agreed to give
the carabao meat to the people.

The hole where the mine exploded was 1m away from the body of the buffalo. We looked
into the hole. I saw the remains of what I think were an improvised device. I only saw
splinters, fragments. We did not keep them. The colours of the fragments were green
and red. According to my knowledge of the weapons, the device seemed to have been an
improvised RPG. We did not use RPGs. Our training comprised of the use of 60 and
105mm weapons.
There was no more smoke in the hole at that time, but there was the smell of gunpowder in the air.

We did not see the explosion: we only heard the sound. We were 350m away. There were Simba tanks 100m away from the explosion going towards the area and we initially thought that these must have been targeted, but we were wrong.

There were a group of terrorists there targeting Kato (local MILF commander). I cannot say if the RPG was put there by the MILF or the terrorists. I refer to ‘terrorists’ because it was the term used in the village when people spoke about them. In fact, we monitored and observed the presence of terrorists there."

62. The 3rd witness, ‘O’, was also a paramilitary of the CAFGU. He specified that the area where the device exploded was a place where the AFP used to go. He added:

“I am a CAFGU in the area. We were going to the area when the event took place. I am not sure who was responsible for this incident. However that area is where the ‘other side’ often pass by. We were 600m away, at the detachment, along with other military.

Afterwards I went with the other military to see the site. We did not see the victim who had already been transported. There was a lot of blood, the buffalo was dead - its stomach was destroyed. Wood from the cart was in the buffalo. The legs of the buffalo were still there. The buffalo was around 4m from the hole. Splinters were around the hole. We first checked if other devices were placed in the area. We did not find anything else.

Our officers said that it was a terrorist bomb that caused the incident."

63. At a mini-conference organised by the AFP on the 21 November, the Mission was able to hear testimony from P, who was an Officer of the AFP in the vicinity.

“The event took place on the 17 October in the morning. There had been encounters with the MILF before this – I can’t remember how long before – but not exactly in that vicinity. There had not been fighting in that area for a long time. There were three platoons based at the end of the road where the incident took place – Alpha, Bravo and Charlie. I was head of one of these platoons. This was about another half kilometre beyond the location of the incident. After the place where we were based, the road ends. We used to travel regularly up and down the road. We would travel on foot or in trucks. Also our supplies came down that road. There were also 2 armoured vehicles – AIFD’s – that would take the same route. There were no other roads that would allow us to reach our base.

In terms of groups in the area I can say that it was only MILF that were in the locality.”

B.4.3. Testimony of the witness presented by the MILF

64. The Mission returned to Kitango on the 23 November. The MILF presented ‘M.’ as a witness [as had the AFP]. The witness, answering some questions of the Mission added a few details to her first testimony:

“The path was a major path, because all the civilians pass through, and the military also [with vehicles and on foot].
The victim was usually the first to take the road in the morning, but other civilians also passed on the road. He was the first along the road that morning, but others passed by after the explosion, on foot or with a buffalo pulling a cart.

This morning, the road was dry.

At the time of the incident, a man I know was nearby on the left side, in his rice field, and saw the blast. He is not in the village now.

The AFP usually passed by a maximum of 3 times a day, on foot or in vehicles. In the morning of the incident they had passed between 6 and 7 a.m. It was the case this morning: troops on foot and vehicles passed on the road. The military used to always pass in the morning before the civilians.

The victim was unconscious and died in the hospital.

**B4.4 Technical aspects**

65. The technical appreciation is supported purely by testimonial evidence as no physical evidence was presented. The main evidence from which conclusions can be drawn is the injuries to the buffalo and to the deceased as well as the crater that was formed by the explosion.

66. The witness statements indicate that the injuries to the deceased were to the left hand side of his body focusing mainly on his left lower leg. The injuries to the buffalo concentrated mainly to the animal’s stomach and it was also indicated that the head of the animal had also been removed during the explosion.

67. All of the animal’s legs are intact; this indicates that it was highly likely that the device was not activated by the animal stepping on it.

68. One witness indicates that the animal had wooden fragments embedded in the wound. It might be surmised from this that the cart may have triggered the explosion.

69. The explosion left a crater approx 1 foot deep by 10 feet in diameter, this evidence is supported by a photograph supplied by the AFP.

70. The evidence suggests that the device was of a substantial size although what type of device it was cannot be conclusively determined, nor whether it was designed to specifically attack larger targets such as vehicles. However, considering the fact that an anti-vehicle mine is often loaded with 5 to 10kg of explosive whereas an AP mine has only 100 to 200 grammes of explosive, it does not seem that the device was an anti-vehicle mine, otherwise the buffalo should have been pulverised by the explosion and this was not the case according to the testimonies.

**B4.5 Military aspects**

71. Troops were stationed further along the road. The road was the only access in and out for resupply and troop relief. The road itself is flanked on all side by rice paddies and/or trees in effect funnelling any traffic into a very confined area. This provides an ideal opportunity for ambush or planting ‘harassing’ explosive devices.
The weather at the time of the explosion was warm and dry and therefore would affect the loading on any device that was “dug in”.

**B.4.6 Mission’s conclusions**

On the basis of the foregoing, the Missions drew the following conclusions:

**In fact:**

- at the time of the explosion there was sporadic fighting between the MILF and the AFP in the area (but not in the immediate vicinity) of the incident;
- at that time the area seems to have been under the territorial control of the AFP;
- the explosion was due to an explosive device placed or buried on or next to a dirt road;
- the device exploded because a caribou (water buffalo) or the cart it was pulling activated it, killing the buffalo and giving the civilian fatal wounds;
- the device seems to have been intentionally placed on a dirt road which was used not only by the military, but was also by local people;
- there was no indication warning the users of the road that it was mined;
- the Mission Team was not able to examine any splinter or fragment which could assist in conclusively determining the nature of the device;
- the Mission Team considers that while the device being triggered only by the weight of a vehicle or a similarly heavy weight cannot be ruled out, the evidence suggests that improvised devices used in the conflict by non-governmental forces are not sophisticated enough to discriminate between the weight of a human and the heavier weight of a vehicle. The Mission Team accepts the evidence given by the EOD specialist within the AFP that such devices do not generally have different fuses for anti-vehicle and anti-personnel uses. Moreover, the extent of the damage tends to confirm this conclusion. It is therefore considered more likely - but not certain - to have been a device that could also be triggered by the weight of a person;
- given the conflict situation and presence of MILF forces at the time of incident, the Mission Team considers that member(s) of such forces were likely responsible for planting the device.

**In law:**

- the Mission considers that there remains a margin of uncertainty as to whether the device was an AP mine within the terms of the Deed of Commitment because it is impossible to know what level of pressure was necessary to trigger the device;
- the Mission Team considers that it is likely that the device that exploded in this incident would meet the definition of a landmine within Article 1 of the Deed of Commitment; they consider that whilst it is possible that only the strong and heavy pressure exercised by the buffalo and/or cart triggered the device, such devices are apparently rare in this theatre of conflict;
- the Mission considers that the evidence as to whether the MILF was the author of this incident is not conclusive; however, the Mission Team considers that while forces associated with the MILF are the most likely perpetrators of this incident, the responsibility of the MILF is not “beyond reasonable doubt”.

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B.5 The 23 April and 7 May 2009 finds in Matanog, Maguindano

B.5.1 Context

75. The alleged finds of landmines in Matanog were brought to the attention of the HOM in a preparation session the week before the Mission, when reports of the alleged finds were presented. Therefore this case was not included in the original Terms of Reference of the Mission which confined its mandate to incidents which occurred between 30 July and 31 October 2008. After consultation with the MILF, it was agreed that the Mission Terms of Reference could be varied to allow these incidents to be included.

B.5.2 Testimonies of witnesses identified by the AFP

76. The Mission heard testimony from ‘Q’ who was an Officer in the AFP in that location.

“On the 23.4.09 I was leading my men along a path. One of my men stepped on a very soft area so he withdrew his foot and inspected the area. There was a hole that was covered. When we uncovered it we discovered an IED. It was in a wooden box. The path led to the lake and we patrolled along this route fairly regularly, about 3-4 times a week. However it was around 2 weeks since we had last patrolled the area. The path is about a metre wide. There were no other paths in the area. There are no civilians in the area as it is heavily forested.”

B.5.3 Testimonies of witnesses identified by the MILF

77. The Mission heard testimony about this incident from witness ‘E’, an MILF Commander who was familiar with the location.
“Matanog is in northern Maguindanao, we also have forces there, under the General Headquarters of the Central Mindanao Front, under Brother Jimmy Balitoc, who is the base commander of the area. There was no more fighting in the area in the period between 2008 and 2009. Indeed, there has been no fighting in that area since 2003. Matanog is the area which was on the perimeter of the big MILF Camp Abubakar which fell to the military during the ‘all out war’ of 2000. Although Abubakar fell, our people continued fighting a guerrilla war until 2003 which was the year of the cease-fire.

We did not use these type of devices before. I have no idea who used them. Some devices were, indeed, used by the MILF prior to the 2003 order in special cases, when the situation demanded, for security or defensive reasons. They were not used around the perimeter in Abubakar, because we controlled the area and we did not anticipate any attack from the AFP.”

78. The Mission went to Simuay Junction and was received at the MILF’s compound in order to hear the comments of the MILF in this regard. The 1st witness was ‘R’, a Unit commander. He said:

“I am a unit commander. I take charge of a unit in the vicinity of the area where these devices were allegedly found.

I am not familiar with the type of devices that you show to me. We do not use this kind of landmine which is new to me. The Deed of Commitment and our orders prevent us from using landmines. The MILF did not use landmines before the Deed was signed.

In April-May 2009, there was no fighting in the Matanog area. The last fighting in that area dates back to 2000.

I recognise the improvised RPG, but we only use these as RPGs. This kind of landmine could have been used by the AFP, or by some former members of the MILF could have improvised this kind of RPG, as they have surrendered to and now help the AFP. They can also use 60mm.

There is no such place as Sitio Kabasaran in Matanog.

I never joined MNLF and cannot speak about their devices.

There are about 11km between Camp Abu Bakar [MILF] and Bugasaran Norte (location of the devices). We did not use explosive devices around Abu Bakar because there were civilians in the area. We used command-detonated devices in 2000 along the main roads, but we stopped afterwards because we signed the Deed. We never used anti-vehicle mines or string-pull devices. I am a member of BIAF since 1987.

I command 5 battalions. There is a chain of command to transfer orders. I am confident that they follow my orders. Everybody understands the prohibition.”
79. The second MILF witness, ‘S’, said:

“I am the MILF provincial secretary in the area where these devices were allegedly found. I am in the political wing which is all about governance – I do not bear arms, though I used to.

I am aware of the Deed of Commitment, it is about not using the devices which affect the civilian population.

We do not know anything about the use of landmines in Northern Bugasaran. The MILF is the only armed group in the sector. I never saw a device like the wooden box and the RPG you showed to me.

There is no place called Sitio Kabasaran in Matanog.

I was in the MNLF before and never saw these devices in that organisation either.

I do not know how to use distance command-detonated. I do not know anything about devices. There are other specialists who know about these devices in the MILF.”

B.5.4 Technical Aspects

80. The Mission was provided with EOD reports about the devices, and the MTE had discussions with the AFP EOD Team Commander and had the opportunity to examine the devices that had been recovered. The two IEDs were made from wooden boxes and had an improvised electrical initiation system.

B.5.5 Mission’s conclusions

81. In fact:

- the devices that were recovered by the AFP are improvised victim-activated explosive anti-personnel devices;
- there is limited evidence to allow the Mission to determine who was responsible for planting these devices;
- it is noteworthy that the devices were planted away from the main recent theatre of combat between the AFP and MILF in the North Cotabato-Maguindanao border area (where all of the other devices were placed.)
- the Mission heard evidence from witness ‘E’ [a MILF commander] that before the MILF banned landmines, no record of where devices were planted was kept; it cleared some devices but admits that it is possible that not all devices had been recovered; it is possible that these mines were placed for defensive purposes in the period when the MILF’s camp Abu Bakar’s perimeter was in the vicinity (before the all-out war of 2000).

82. In law:

- the devices would meet the definition of prohibited devices under the Deed of Commitment and also, incidentally, the Mine Ban Convention;
- It is not possible to definitively attribute responsibility for the planting of these devices.
B.6 Devices allegedly found by the MILF

83. During the course of the Mission enquiries on 22 November, the MILF presented to the team two devices that were allegedly found by their forces after being alerted by a farmer. Although it was not clear at that time whether the alleged find would meet the criteria to be investigated under the Mission Terms of Reference, it was decided to inspect the devices and to gather relevant information. The mission heard from the farmer who allegedly found one of the devices and the MILF commander who presented them to the team.

84. The Mission Team was shown the device allegedly found by the farmer near the location of his coconut farm. Following inspection, the device was confirmed as a trip flare. This sort of device, although victim-activated, is not designed to cause harm or injury to the person activating it. Once the tripwire is pulled the flare pot is activated; this is designed to produce an illuminating effect. In military terms they are used as a warning device placed on strategic routes in and around a defensive position or as the trigger for an ambush, the victims being illuminated by the device enabling the attackers to have a better view.

85. The second device allegedly recovered nearby and shown to the Mission Team was an M18 A1 “Claymore” anti-personnel directional fragmentation mine. When the mine is issued, the equipment that is part of the mine set is designed to initiate the mine in a command-detonated role, although it is possible, with the use of either a manufactured booby trap switch or by improvisation, to re-tool this device from command-detonated to victim-activated. The mine the Mission Team was shown looked to be quite old, the plastic casing around the mounting legs was cracked, another indication of its age. It must also be noted that the mine was very clean and did not look like it had been recovered from a field location, no other equipment normally issued with the mine set was shown to the Mission Team. A point to note is that the shipping plug/detonator adaptor had been sawn off. This is a plug that is designed to secure the detonator, which is issued with the mine, in place. The significance of this adaptation to the detonator adaptor is that it may have been adapted in order to take a non-issue detonator.

86. The Mission Team concluded that the devices fall outside the Terms of Reference of the Mission because there are no allegations from any party that these devices were utilized by the MILF. In any event, on the basis of evidence it was clear that one of the devices – a trip flare – did not meet the criteria to be considered as an AP landmine within the terms of the Deed of Commitment. The other device, being a manufactured claymore mine, could be primed in such a way to meet the definition of an AP landmine. However in this instance, it was found in a ‘command-detonation’ mode.

87. As the Claymore device is now in the hands of the MILF, it could now be considered as being part of their weapon stocks. Given the potential for this device to be primed to function as an AP mine, the MILF are urged to destroy it at the earliest opportunity.

B.7 Mission’s conclusions

88. As has been mentioned, the Mission had 3 objectives which will be addressed in turn. Objective one reads as follows:

To ascertain whether any of the devices used or recovered in western Mindanao in the period between 30 July 2008 and 31 October 2008 would be considered as anti-personnel mines within the terms of Article 1 of the Geneva Call Deed of Commitment.
89. It is apparent that the devices found or exploded in Dunguan [supra paras.23-39] and Matanog [supra paras.75-82] met the criterion to be considered as AP mines within the Deed of Commitment. It is not certain whether the device that exploded in Barangay Kitango [supra para. 57-74] met this criterion, though it should be emphasized that the Mission Team considers that it is more likely than not that it did. As the Mission concluded that the device that exploded in Tukanalipao [supra paras. 40-56] was a command-detonated device, the Mission has concluded that this device did not meet the criterion to be considered as a device banned under the Deed of Commitment.

90. The second objective of the Mission states:

To ascertain whether the production, acquisition and/or use of the said device is attributable to the MILF, using the analogy to generally accepted standards of attribution under public international law as guidance in any instance where a device fulfils the criteria so as to be considered as an anti-personnel mine within the terms of the Deed of Commitment (as per objective 1);

91. The clusters of incidents where devices have definitively met the criteria to be considered as AP mines under the Deed of Commitment are those devices utilized or found in Dunguan [supra para 23-39] and Matanog [supra para. 75-82]. In terms of both incidents, it is not beyond reasonable doubt that forces associated with the MILF were responsible for the planting of the devices in question. Thus it is not considered that these incidents are attributable to the MILF. However, in terms of the Dunguan incident in particular, there are substantial grounds for concluding that there may have been such involvement. In the circumstances, the MILF is urged to consider appropriate measures in much the same manner as if there were definitive findings of responsibility made against its forces.

92. In respect of the incident in Kitango [supra paras. 57-74], it is considered that although there is no definitive evidence that this involved an AP mine, there is a very real possibility that
it did. In these circumstances, it is considered that there are enough grounds for addressing
the issue of responsibility for this incident. In this respect, whilst it is not beyond doubt that
the MILF were responsible, there are substantial grounds for concluding that there may have
been such involvement.

108. The third and last objective within the Terms of Reference is:

In any instance where MILF has been found in violation of Article 1 of the Deed of Com-
mitment, to investigate whether such violation(s) were or should have been known by
persons in the MILF command structure, and to enter in to dialogue with MILF leader-
ship on appropriate measures to improve enforcement as per Article 4 of the Deed of
Commitment.

109. As has been mentioned above, although there have been no definitive findings of viola-
tions by the MILF, there are enough grounds for consideration of the taking of appropriate
measures by the MILF. In this respect, it is considered that the focus of such measures
should be on ensuring that the Mine Ban in general and the Deed of Commitment in particu-
lar are incorporated into relevant materials provided to MILF forces (e.g. reissuing of the or-
der banning AP mines, incorporation of the mine ban into the BIAFs Code of Conduct). More-
ever, given the evidence that literacy levels amongst the MILF’s forces varies, (re)sensitization
of such forces about the mine ban (through training, lectures, videos etc) is strongly urged.

110. In addition, the Mission strongly encourages MILF to destroy the Claymore device
that is now in its hands [supra para. 87] at the earliest opportunity.

Addendum

B.8 Seeking a Response from the MILF to the Mission’s Findings

111. Geneva Call takes an ‘inclusive approach’ to its work with NSA’s, and it is in this con-
text that it was considered appropriate to share a draft of the findings of the Verification Mis-
sion with the MILF leadership, both to ascertain their views and to commence a dialogue in
respect of the findings and recommendations contained within the report.

112. A draft Report of the Mission was shared with the MILF on 25 December 2009, with a
request that the organisation respond to the Report in general and the Mission conclusions
and recommendations in particular. In addition the MILF were consulted as to the content of a
‘public’ version of the Report and the modalities of dissemination.

B.9 The MILF’s Response to the Mission’s findings

113. On 28 January 2010 Muhammad Ameen, Secretary to the MILF Chairman and Head of
its Secretariat sent, on behalf of the MILF, an initial e-mail response to the Verification Mis-
sion Report. The relevant part of this mail reads as follows:

'We had reviewed the 46 pp Confidential draft on the Report of the Verification Mission.
It is substantive and informative. We do not have much comment on it. However, we beg
to disagree on the allegation that a small BIAF guerilla force were the one(s) who
planted victim activated devices in Aleosan. The Kitango Incident of 17 October 2008 would be subject to further investigation to ferret out the truth.”

114. The mail ended with an emphasis that the response was provisional, and that a more substantive response would be forthcoming.

115. On 15 March 2010 Muhammad Ameen sent, again by email, the substantive response of the MILF to the Verification Mission Report.

’At the outset, may we extend our heartfelt thanks and gratitude and warm felicitations to the Verification Mission Team in particular and Geneva Call in general for having painstakingly undertaken to have this credible report a reality for domestic and global consumption.

Indeed, after (a) series of meetings and dialogues with MILF representatives, Geneva Call has proven that government allegations of MILF mine use (AP) during the height of war in 2008 were mere propaganda to discredit the MILF both in the domestic and diplomatic arena.

The MILF sincerely adheres to its commitment as of the NSA signatories to the “Deed of Commitment” signed in Geneva, Switzerland on March 27, 2000.

As we know pretty well, the MILF has been pursuing peace talks with the Government of the Republic of the Philippines (GRP) with the end in view to attaining a peaceful, democratic and a negotiated political settlement to the centuries old Bangsamoro Problem and the Mindanao conflict in the south of the Philippines.

The Geneva Call will not find [a] hard time anymore to shuttle between Geneva and the Conflict affected areas and vice versa in the Bangsamoro Homeland once a permanent, comprehensive and just peace is attained for everybody’s benefit.

At this juncture and speaking with candour about the Verification Mission Team Report I would like to share with you these observations and proposals, to wit:

1. We beg to disagree on some of the testimonies by witnesses identified by the GRP regarding the 19 August 2008 and 2&3 October 2008 Dungguan, Aleosan, North Cotabato incidents. Inconsistencies in their statements are obvious and apparent as manufactured just to ventilate the issue in their favor;

2. Pointing an accusing finger to an alleged small BIAF guerrilla forces does not hold water and therefore [is] not binding to the MILF.

3. On the 17 October 2008 Kitango incident in Saudi Ampatuan, Maguindanao, unfair AFP reports are unreliable and these acts deem to undermine the primacy of the peace process and must be avoided.’

116. At the time of publication, confidential discussions with the MILF in relation to the findings and recommendations are ongoing.
Conclusions and Recommendations

It is still too early to fully assess the impact of the Verification Mission. This will only be possible after conclusion of the ongoing dialogue with the MILF, and dependant on future developments in respect of the reported presence of AP mines in the Philippines. Nonetheless, it is possible to draw some lessons, as well as make some tentative suggestions for the future.

Although the most visible and resource-intensive, the Verification Mission was only a small part of the overall verification process.

The verification process started in August 2008 – some 15 months before the Mission took place – with allegations of mine use by the AFP. There followed a process of dialogue and clarification that led to a significant reduction in the number of incidents that were considered as raising questions under the Deed of Commitment. Therefore, even before the Verification Mission took place, the process of preparing for it was demonstrated as being effective in clarifying facts. Thus, although there are time factors to consider (see next point), it is important to ensure that the points at issue are subject to careful analysis and where relevant, clarified.

Some elements of verification are more time-sensitive than others.

Despite the length of time that had passed from when the allegations were first made, the Mission was able to reach firm conclusions in respect to much that was under scrutiny. For instance, in a majority of incidents, the Mission was able to make findings as to the nature of the devices recovered or utilised. It should be mentioned that this was in large part because of the evidence that had been recovered, recorded, analysed and stored by the AFP EOD teams.

However, in the issue of attribution for the acts, it was much more difficult to reach definitive conclusions. It is considered that the length of time that elapsed between the incidents and the investigation actively contributed to this challenge. It is suggested that in the event of future allegations, in the Philippines or elsewhere, all parties should make efforts to ensure that the most expeditious scrutiny is undertaken.

Monitoring and verification are essential to the credibility of humanitarian commitments.

It has always been obvious to Geneva Call that clearly defined monitoring and verification mechanisms are central to the credibility of the Deed of Commitment. This has two, closely related, aspects; firstly, the signatory – and potential signatory – NSAs are aware that their adherence to the ban will be subject to scrutiny. Secondly, the efficacy of engaging NSAs to make humanitarian commitments – which was initially met with some scepticism – can be demonstrated. The Verification Mission clearly shows that not only can NSAs make humanitarian commitments, but they can actively participate in the scrutiny of their adherence to such commitments. It should be highlighted in this respect that Geneva Call emphasises ownership and an inclusive approach, not only in respect of its engagements but also in its monitoring and verification mechanisms; as has been mentioned, Article 3 of the Deed of Commitment requires that the signatory NSA not only allow, but actively co-operate, with ef-
forts to both monitor and verify the implementation of its obligations. In this instance, the MILF was involved and consulted in every stage of the verification process.

**States may be convinced to co-operate with opposition NSAs in respect of fact-finding/verification**

One of the most significant achievements of the Mission was to successfully make the case for the GRP and MILF to co-operate in facilitating the fact-finding process. Although such co-operation has been notable in the past phases of the conflict, the Mission took place at the end of nearly a year of often intensive fighting, where trust between the parties had diminished, and the scope for co-operation had been drastically reduced. Nonetheless, both parties were persuaded to co-operate with each other in relation to a specific humanitarian purpose. It is recommended that other States should not rule out of hand such possibilities in respect of their own internal conflicts.

**Co-operation in respect of humanitarian action may contribute to (re)building trust between parties in conflict**

Although verification is aimed at ensuring compliance with particular standards, there is the potential that there may be some ‘side effects’ – both positive and negative – in this process; it is important to encourage positive effects whilst seeking to address any negative ones. In this instance, it is considered that there was some clear positive impact on the relations between the GRP and MILF at the ground level. Geneva Call has received feedback from various actors that the co-operation in relation to the Verification Mission – particularly at the level of the respective CCCH’s – contributed to the re-establishment of the ground-level relations between the parties. This is an exemplar of the often-noted fact that co-operation and agreements on humanitarian matters may be an excellent way of (re-) establishing confidence between parties in conflict.

**The reasons why this Verification Mission was able to take place should be subject to further analysis**

The Verification Mission was an unusual endeavour, being an international humanitarian enquiry, taking place during conflict with the active agreement, support and facilitation of the parties to that conflict. According to Mission Team Member Professor David:

> As far as I am aware, this is the first time in the history of international relations that such a fact-finding mission has been carried out with the agreement of, and facilitation by, both parties to an armed conflict, in casu, a State and a non-State actor.

Considering that allegations of violations during conflict are legion, the lack of verification is noteworthy. So what were the factors at play in this instance that allowed it to take place? It is beyond the scope of this report to analyse this in depth; however, the following are considered to be relevant factors.

Firstly, it should be mentioned that the scope of the investigation was extremely narrow, being in respect of the prohibition of one type of weapon. Thus other, perhaps more sensitive, aspects of the conflict were not the subject of enquiry.

Secondly, only one party to the conflict was being scrutinised. Whilst the approval for the Mission by the GRP was positive, it has to be said that, beyond the veracity of the allegations it had made against the MILF, it was not opening itself up to scrutiny in the same way. It is difficult to know whether a Mission with a broader remit would have been approved. However it is worthy of note that since the Mission took place, a Civilian Protection Component of the IMT has been established, and it is anticipated that it will have, *inter alia*, an investigative function.
in respect of allegations made against both the GRP and the MILF of violations against civilians.

Thirdly, the Mission itself was 'low-key' in nature. It was not conducted by a body established by Treaty, like the IHFFC, nor did the Mission Team include representatives of States. As an NGO-led endeavour, the Mission was able to work quite flexibly. Although a lack of statutory requirements and operating procedures served to make preparation more resource-intensive than might otherwise have been the case, it also provided the scope to address the challenges that it encountered.

As a final word it is hoped that the Verification Mission contributed – and will continue to contribute – to enhanced protection of civilians in the Philippines. It is also hoped that it may serve as an example for similar endeavours in other conflict settings.
DEED OF COMMITMENT UNDER GENEVA CALL
FOR ADHERENCE TO A TOTAL BAN ON ANTI-PERSONNEL MINES
AND FOR COOPERATION IN MINE ACTION

WE, the [NAME OF THE NON-STATE ACTOR], through our duly authorized representative(s),

*Recognising* the global scourge of anti-personnel mines which indiscriminately and inhumanely kill and maim combatants and civilians, mostly innocent and defenceless people, especially women and children, even after the armed conflict is over;

*Realising* that the limited military utility of anti-personnel mines is far outweighed by their appalling humanitarian, socio-economic and environmental consequences, including on post-conflict reconciliation and reconstruction;

*Rejecting* the notion that revolutionary ends or just causes justify inhumane means and methods of warfare of a nature to cause unnecessary suffering;

*Accepting* that international humanitarian law and human rights apply to and oblige all parties to armed conflicts;

*Reaffirming* our determination to protect the civilian population from the effects or dangers of military actions, and to respect their rights to life, to human dignity, and to development;

*Resolved* to play our role not only as actors in armed conflicts but also as participants in the practice and development of legal and normative standards for such conflicts, starting with a contribution to the overall humanitarian effort to solve the global landmine problem for the sake of its victims;

*Acknowledging* the norm of a total ban on anti-personnel mines established by the 1997 Ottawa Treaty, which is an important step toward the total eradication of landmines;

NOW, THEREFORE, hereby solemnly commit ourselves to the following terms:

1. **TO ADHERE** to a total ban on anti-personnel mines. By anti-personnel mines, we refer to those devices which effectively explode by the presence, proximity or contact of a person, including other victim-activated explosive devices and anti-vehicle mines with the same effect whether with or without anti-handling devices. By total ban, we refer to a complete prohibition on all use, development, production, acquisition, stockpiling, retention, and transfer of such mines, under any circumstances. This includes an undertaking on the destruction of all such mines.

2. **TO COOPERATE IN AND UNDERTAKE** stockpile destruction, mine clearance, victim assistance, mine awareness, and various other forms of mine action, especially
where these programs are being implemented by independent international and national organisations.

3. TO ALLOW AND COOPERATE in the monitoring and verification of our commitment to a total ban on anti-personnel mines by Geneva Call and other independent international and national organisations associated for this purpose with Geneva Call. Such monitoring and verification include visits and inspections in all areas where anti-personnel mines may be present, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.

4. TO ISSUE the necessary orders and directives to our commanders and fighters for the implementation and enforcement of our commitment under the foregoing paragraphs, including measures for information dissemination and training, as well as disciplinary sanctions in case of non-compliance.

5. TO TREAT this commitment as one step or part of a broader commitment in principle to the ideal of humanitarian norms, particularly of international humanitarian law and human rights, and to contribute to their respect in field practice as well as to the further development of humanitarian norms for armed conflicts.

6. This Deed of Commitment shall not affect our legal status, pursuant to the relevant clause in common article 3 of the Geneva Conventions of August 12, 1949.

7. We understand that Geneva Call may publicize our compliance or non-compliance with this Deed of Commitment.

8. We see the desirability of attracting the adherence of other armed groups to this Deed of Commitment and will do our part to promote it.

9. This Deed of Commitment complements or supercedes, as the case may be, any existing unilateral declaration of ours on anti-personnel mines.

10. This Deed of Commitment shall take effect immediately upon its signing and receipt by the Government of the Republic and Canton of Geneva which receives it as the custodian of such deeds and similar unilateral declarations.
### ANNEX TWO

Initial Allegations of mine use made against the MILF from July to October 2008, incorporating the MILF’s responses

| Date of alleged incident | Location of alleged incident | Details of alleged incident | Type of device | Alleged perpetrator | According to | Where reported | When Reported | MILF response
<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>29 Jul</td>
<td>Sindangan, Iligan City, Mindanao</td>
<td>Troops recover a mine beside a bridge</td>
<td>Landmine inside a steel box with fuse blasting</td>
<td>Unnamed</td>
<td>The Army</td>
<td>Army website</td>
<td>31 Jul</td>
<td>This does not mention the MILF; moreover this is in an area where the NPA operates, not MILF</td>
</tr>
<tr>
<td>Before 12 Aug</td>
<td>North Cotabato</td>
<td>Booby traps and landmines were planted whilst forces were retreating</td>
<td>Booby traps and landmines</td>
<td>MILF fighters</td>
<td>Police Chief Inspector</td>
<td>Al-jazeera</td>
<td>Before 12 Aug</td>
<td>They will look into this to see if AP mines were used</td>
</tr>
<tr>
<td>Before 12 Aug</td>
<td>North Cotabato/Maguindanao</td>
<td>MILF rebels planted landmines in the villages that they left</td>
<td>Anti-personnel landmines that can be activated by pressure, tripwire or remote detonator</td>
<td>MILF rebels</td>
<td>Vice Chief of Staff Gen Luna</td>
<td>Philstar</td>
<td>12 Aug</td>
<td>Allegations from the vice chief of staff may not be objective but will look into the incidents</td>
</tr>
<tr>
<td>13 Aug</td>
<td>North Cotabato</td>
<td>Military clearing mines in village</td>
<td>Placing Landmines, explosives, booby traps</td>
<td>Thrown by rebels</td>
<td>Senior military spokesman Armand Roca</td>
<td>Chinneman.com</td>
<td>13 Aug</td>
<td>Will look into the incidents</td>
</tr>
<tr>
<td>Around 12 Aug</td>
<td>Asisan</td>
<td>Soldier tripped a landmine when clearing</td>
<td>Landmines</td>
<td>Muslim rebels</td>
<td>Chinneman.com</td>
<td>Chinneman.com</td>
<td>12 Aug</td>
<td>Will look into the incidents</td>
</tr>
<tr>
<td>12 Aug</td>
<td>Villages in North Cotabato</td>
<td>IDPs should not return to areas may still have booby traps and landmines</td>
<td>Booby traps and landmines</td>
<td>MILF separatists</td>
<td>Pol. Chief of Staff, N. Camarines</td>
<td>abs-cbnnews</td>
<td>12 Aug</td>
<td>This is a general point about potential risks</td>
</tr>
<tr>
<td>12 Aug</td>
<td>North Cotabato</td>
<td>Appeal to dismental/remove landmines</td>
<td>Landmines contrary to national and international law</td>
<td>Renegade MILF members</td>
<td>Executive Secretary</td>
<td>Manila Bulletin</td>
<td>1 Aug</td>
<td>This allegation is made by the Presidential palace. It is general and speculative</td>
</tr>
<tr>
<td>12 Aug</td>
<td>North Cotabato</td>
<td>Removing booby traps planted landmines and booby traps</td>
<td>Booby traps and landmines</td>
<td>MILF rebels</td>
<td>Chief Superintendent</td>
<td>Newsflash.org</td>
<td>12 Aug</td>
<td>Not clear what types of devices were alleged – will look into it</td>
</tr>
<tr>
<td>Around 12 Aug</td>
<td>North Cotabato</td>
<td>Soldier stepped on a landmine (possibly same incident reported on chinneman.net at 51)</td>
<td>Landmine</td>
<td>Apparently rebels</td>
<td>Chief Superintendent</td>
<td>Newsflash.org</td>
<td>1 Aug</td>
<td>The report states apparently rebels therefore not conclusive</td>
</tr>
<tr>
<td>12 Aug</td>
<td>North Cotabato</td>
<td>Troops clearing areas of landmines left behind by MILF forces</td>
<td>Landmines</td>
<td>MILF forces</td>
<td>Lt. Col. Andal L. Balisacan</td>
<td>Lastimes.com</td>
<td>1 Aug</td>
<td>The clearing of mines does not indicate that they found any</td>
</tr>
<tr>
<td>12 Aug</td>
<td>North Cotabato</td>
<td>Booby traps and landmines left in areas where armed personnel carried travel</td>
<td>Booby traps and landmines</td>
<td>MILF rebels</td>
<td>AFP</td>
<td>AFP</td>
<td>1 Aug</td>
<td>Very general, not clear – seems to indicate AV devices</td>
</tr>
<tr>
<td>12 Aug</td>
<td>Alcoy</td>
<td>Bomb disposal team spent 2 days clearing landmines and UXO</td>
<td>Landmines and UXO</td>
<td>MILF insurgents</td>
<td>Lt. Col. Dickson Herrera</td>
<td>AFP</td>
<td>1 Aug</td>
<td>Again does not indicate if they found any. Moreover MILF observers who had been in that area say that there was no such clearance operation taking place</td>
</tr>
<tr>
<td>Date of alleged incident</td>
<td>Location of alleged incident</td>
<td>Details of alleged incident</td>
<td>Type of device</td>
<td>Alleged Perpetrator</td>
<td>According to</td>
<td>Where reported</td>
<td>When reported</td>
<td>MILF Response (if any)</td>
</tr>
<tr>
<td>------------------------</td>
<td>-------------------------------</td>
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<td>----------------</td>
<td>---------------------</td>
<td>--------------</td>
<td>---------------</td>
<td>---------------</td>
<td>------------------</td>
</tr>
<tr>
<td>11 Aug</td>
<td>North Cotabato</td>
<td>Villagers not allowed to return because the MILF rebel planted landmines</td>
<td>Landmines</td>
<td>MILF rebels</td>
<td>Gen. Luis Vicente Chaff of Staff</td>
<td>Sunstar</td>
<td>11 Aug</td>
<td>Specific allegation of landmine use, but does not give location - would need more specific information to investigate thoroughly</td>
</tr>
<tr>
<td>14 Aug</td>
<td>Barangay Dunganon, Dungguen</td>
<td>A US soldier Private Jay Ornelas of 60th Brigade injured in both legs when he stepped on a landmine</td>
<td>Landmine</td>
<td>Suspected MILF rebels</td>
<td>Lt Col. Andes, 6th Infantry Division</td>
<td>GMA News</td>
<td>14 Aug</td>
<td>This is a fully Muslim area, why would the MILF risk hurting their own?</td>
</tr>
<tr>
<td>15 Aug</td>
<td>Adamson, Lanao del Norte</td>
<td>Some rebels spotted planting landmines</td>
<td>Landmines</td>
<td>Moro rebels</td>
<td>Bing Ger Atendidos</td>
<td>Manila Standard</td>
<td>15 Aug</td>
<td>Spotted by what? If so, who? How would they know? Why would they not engage them?</td>
</tr>
<tr>
<td>16 Aug</td>
<td>Not stated</td>
<td>Commanders Kato and Macaspar charged with various offenses including using landmines</td>
<td>Landmines</td>
<td>MILF Commanders Kato and Macaspar</td>
<td>Ministry of Defence</td>
<td>ABS-CBN</td>
<td>16 Aug</td>
<td>These charges laid by the military are political. Most of the abuses carried out during the fighting was carried out by the AFP</td>
</tr>
<tr>
<td>17 Aug</td>
<td>Not stated</td>
<td>Landmines utilized in recent upsurge of conflict involving MILF</td>
<td>Landmines</td>
<td>Not stated</td>
<td>Human Rights Commissioner Lelis de Lima</td>
<td>ABS-CBN</td>
<td>17 Aug</td>
<td>This is something that they say they take seriously. The Army Al Mamar said that Lelis de Lima is a person of influence and therefore another reason for a full investigation. But what is his source?</td>
</tr>
<tr>
<td>18 Aug 1 Oct</td>
<td>Sico Tabika, Barangay Paguiranga, North Cotabato</td>
<td>Landmine as a booby trap discovered by BIAOC company from 42nd Infantry battalion</td>
<td>Landmine made of 10 m of fishing nylon, exposed wires, improvised electric blasting cap, 2 bat of Panasonic battery, 2 feet of duplex wire, cloth pat, thumbtacks, RGG with fuse, two feet rubber band and alcohol</td>
<td>Terrorist group who know who they are</td>
<td>Army Website</td>
<td>10 Oct</td>
<td>Very specific allegations with lots of information - but not conclusive as to who the perpetrators are</td>
<td></td>
</tr>
<tr>
<td>19 Aug 2 Oct</td>
<td>Sico Balete, Buragay Bugti, Akoanon</td>
<td>CAGU detachment found landmine and reported to 42nd Infantry Battalion</td>
<td>Landmine constructed from 8mm ammo</td>
<td>Terrorist group who know who they are</td>
<td>Army Website</td>
<td>2 Oct</td>
<td>Not definite allegation against the MILF - not clear if victim activated</td>
<td></td>
</tr>
<tr>
<td>20 Aug 1 Oct</td>
<td>Maniasapano town near Brgy. Tukkipas, Maguindanao</td>
<td>8 soldiers wounded other landmine blast triggered by MILF</td>
<td>Landmine</td>
<td>MILF forces led by Col. Basil Usman and Brune Ayyanan</td>
<td>Eastmoor.com, spokesman Armand Rico</td>
<td>Inquirer, Panamular</td>
<td>1 Oct</td>
<td>This incident they know about - this was definitely a roadside IED, command detonated. They refute the involvement of Basil Usman who they say is a former MILF fighter, wanted by them as well as by the AFP. They suggest that he is an agent provocateur/nonmilitary asset</td>
</tr>
<tr>
<td>21 Aug 1 Oct</td>
<td>Bagu Mano, Dato, Saudi Ampatuan</td>
<td>Carabao (water buffalo) stepped on landmine planted by MILF</td>
<td>Landmine</td>
<td>Renegade MILF Commander Kato’s forces</td>
<td>60th Brigade Commander Salazar</td>
<td>Inquirer</td>
<td>1 Oct</td>
<td>A report on Lusurian.com 17 November 2007 asserted that this incident was caused by the carabao triggering unexploded ordnance</td>
</tr>
</tbody>
</table>
Article on MILF Website:
www.luwaran.com

MILF welcomes Geneva Call mission

_Moray Islamic Liberation Front (MILF) was delighted to say welcome to the upcoming verification mission of the Geneva Call on reported incidents of landmine explo-
sions during the almost year-long period of clashes between the government and MILF forces since August last year._

Muhammad Ameen, Chairman of the Secretariat of the MILF Central Committee, gave the as-
surances of full cooperation to Chris Rush, Program Officer of the Geneva, during their meet-
ing held two days ago at the Office of the MILF Vice Chairman for Political Affairs at Simuay, Sultan Kudarat, Maguindanao.

Also present during the meeting were Ed Kabalu, MILF Chief for Civil-Military Affairs and Spokesperson, representative of General Staff of the Bangsamoro Islamic Armed Forces (BIAF) and from MILF Coordinating Committee on the Cessation of Hostilities (CCCH).

_MILF spokesperson Ed Kabalu said “the MILF having a Deed of Commitment duly signed by Chairman Al Haj Murad Ebrahim with Geneva Call is duty bound to cooperate and comply with workings of the Geneva Call.”_

_Scores of alleged land mines explosions during the period had reached and caught the attention of Geneva Call._

Chris Rush, for his part, pointed out that the Geneva Call verification mission, most probably by next month, will be composed of highly intellectual and technically competent personalities, adding that some of the reported cases of land mines use will be investigated.

_Geneva Call is an independent international humanitarian non-governmental organization based in Geneva, Switzerland with primary role of engaging Non-State Actors (NSAs) on the campaign to ban land mines in relation to adherence to international humanitarian laws (IHL) and human rights._

_MILF’s Deed of Commitment under Geneva Call for adherence to a ban of anti-personnel mines and for cooperation on mines action was forged in 2002._

_In compliance to its commitment, MILF issued written orders to its officers and men enjoining them to adhere to ban on use of mines under the deed of commitment, conducted information and education campaign such as training on IHL and human rights, and enshrined and emphasized in its Code of Conduct observance of rules of engagement in Islam and adherence to IHL particularly on land mines._
In the context of the peace process between the government and MILF, use of landmines constitutes serious violation of the agreement on the general cessation of hostilities between the two parties.

Upsurge of clashes between the forces of the two parties took following the aborted signing of GRP-MILF Memorandum of Agreement on Ancestral Domain (MOA-AD) slated on August 5, 2008 in Malaysia due to the issuance of restraining order by the Philippine Supreme Court, which eventually declared the MOA-AD as unconstitutional.

Clashes momentarily stopped following the government issuance of suspension of military offensives (SOMO) against the MILF last July 23, 2009 and the counter issuance of MILF of suspension of military actions in all its area of responsibility last July 25, 2009. But fear remains high amongst displaced persons on unexploded ordnance and bombs in the war ravaged areas.

Last Updated [Saturday, 01 August 2009 02:08]

ANNEX FOUR

Letter from Major General Oban on behalf of the Acting Chief of Staff of the Armed Forces of the Philippines to Geneva Call

Ms. Katherine Kramer
Program Director (Asia) of Geneva Call
Geneva Call Headquarters
P.O. Box 334 CH-1211 Geneva 4
Switzerland

Dear Ms. Kramer:

It is my honor to inform you of the approval of the conduct of the planned Verification Mission by the Geneva Call on the alleged violations of the Moro Islamic Liberation Front (MILF) of the Deed of Commitment under Geneva Call for Adherence to a Total Mine Ban on Anti-Personnel Mines and For Co-Operation in Mine Action it signed in 2000.

The AFP believes that the Verification Mission is a significant step that will ascertain the veracity of the reported incidents against the MILF and will in turn help ensure that the terms in the Mine Ban Treaty are abided with by those who have made a solemn commitment of following its terms and conditions.

Should you have any inquiry, POC is LTC LEONIDAS L HIDALGO (CAV) PA at 911-6001 local 6205/6213 or email at freefallincav hurdle@yahoo.com.

Very truly yours,

FOR THE ACTING CHIEF OF STAFF, AFP

EDUARDO SL OBAN JR
Major General
AFP
Terms of Reference for the Mission ('Mission TORs') (Revised 30.10.09)

Context

The Mission TORs should be read in conjunction with the ‘Concept Paper on the Fact-Finding mission to investigate alleged breaches of the Deed of Commitment by the Moro Islamic Liberation Front’ which contains relevant details as to the context of the mission.

Mission Objectives

1. To ascertain whether any of the devices used or recovered in western Mindanao in the period between 30 July 2008 and 31 October 2008 would be considered as anti-personnel mines within the terms of Article 1 of the Geneva Call Deed of Commitment.

2. In any instance where a device fulfils the criteria so as to be considered as an anti-personnel mine within the terms of the Deed of Commitment (as per objective 1), to ascertain whether the production, acquisition and/or use of the said device is attributable to the MILF, using the analogy to generally accepted standards under public international law as guidance.

3. In any instance where the MILF has been found in violation of Article 1 of the Deed of Commitment, to investigate whether such violation(s) were or should have been known by persons in the MILF command structure, and to enter in to dialogue with MILF leadership on appropriate measures to improve enforcement as per Article 4 of the Deed of Commitment.

Composition of the Mission Team

The Mission will be conducted by a team of persons identified by Geneva Call as being well placed to be able to meet the objectives of the mission (hereafter known as the ‘Mission Team’). In this respect, the Mission will consist of a Head of Mission (HoM) from Geneva Call, an external Mission Technical Expert (MTE) (a mines/explosives expert) to provide expertise in respect of explosive devices allegedly utilised or retrieved, and a third member with experience of verification/fact finding missions and an expertise in public international law.

Tasks of the Mission Team

The Mission Team will carry out its tasks collectively. These tasks will include:

- Being briefed by representatives of the Armed Forces of the Philippines (AFP) in respect of the specific allegations of mine use and seek clarifications as appropriate
• Interviewing those with a direct knowledge of the incidents of alleged mine use. This would include (but not necessarily be limited to):
  o Victims of incidents of alleged mine use (military and civilian).
  o Witnesses to such incidents.
  o Medical personnel who treated the victims.
  o Local residents or others who were in the area at the time of the incidents.
  o Explosive Ordnance Disposal (EOD) personnel and other AFP representatives.
  o MILF Commanders, fighters and support personnel.
• Visiting sites of alleged mine use and gathering relevant information and data.
• Obtaining the response of the MILF to specific allegations.
• Making initial findings in respect of the specific allegations.
• Presenting the initial findings orally to the MILF leadership and obtaining their response.
• Drafting and contributing to the finalization of a Full Report and a Summary Report of the Mission.

As well as these General Tasks, the MTE will have specific tasks in relation to technical matters and the HoM in relation to overall co-ordination and logistics.

Findings of the Mission

All members of the Mission are collectively responsible for seeking to meet the objectives of the Mission (cited above). That said, the findings of the MTE on technical matters will be given particular weight in respect of the first Specific Objective. It is expected that findings, inferences and conclusions will be reached and agreed by consensus amongst the members of Mission Team. In circumstances where consensus cannot be reached, such findings, inferences and/or conclusions will be decided by a simple majority.

Dissemination of Findings of the Mission

The findings of the Mission will be incorporated into a Mission Report. A Summary Report will also be produced. Geneva Call will take the responsibility for the dissemination of these Reports to relevant actors. Individual members of the Mission Team shall not disseminate information about the Mission or its findings without the express permission of Geneva Call. Mission members must treat all information received in confidence during the mission as such. This confidence can only be breached upon compulsion by a court of law with due jurisdiction over the respective mission member.

Specific role of the Mission Technical Expert (MTE)

Overview

As well as the general tasks contained within the main text of the Mission TORs, the MTE has specific responsibilities in respect of ascertaining relevant technical information and data, advising the rest of the Mission Team accordingly, as well as reporting on the technical aspects of the enquiries undertaken by the Mission Team, particularly in relation to seeking to meet the first Specific Objective of the Mission.
In this instance the term ‘technical’ relates to the design and function of explosive ordnance and related forensic aspects. It is important to note that the definition of an anti-personnel mine under the Geneva Call Deed of Commitment may differ slightly from definitions utilised in other contexts. Geneva Call will provide the MTE with an elaboration of the scope of this definition prior to the mission.

MTE Tasks

The MTE will:

(Before the Mission)
- Familiarize him/herself with the dossier provided by Geneva Call in respect of the allegations of mine use.

(During the Mission)
- In Mission meetings take the lead role in communicating with relevant stakeholders (eg Army EOD specialists and other AFP personnel, witnesses) to gather relevant technical information and data in respect of explosive devices alleged to have been used or recovered in the relevant areas and seek clarifications as necessary.
- Assess technical information and data gathered, with a view to establishing authenticity of such information.
- Take the lead role in seeking to clarify with relevant persons within the MILF specific technical issues that may have arisen in the course of the Mission.

(Towards the end of the Mission)
- Based on the technical findings, draw up interim conclusions in respect of Specific Objective 1 and brief the other members of the Mission Team accordingly.

(Within 2 weeks of the end of the Mission)
- Produce a detailed Technical Report containing relevant information and data and analysis of specific incidents. This Technical Report will be incorporated into the Mission Report.

Specific Role of the Mission Legal and Fact-finding Expert (LFE)

Overview

As well as the general tasks contained within the main text of the Mission TORs, the Legal and Fact-finding Expert (LFE) will be responsible for taking the lead on any legal/quasi-legal matters pertaining to the objectives of the mission, and to ensure the methodology of the Mission meets acceptable standards.
LFE Tasks

The LFE will:

(Before the Mission)
- Familiarize him/herself with the dossier provided by Geneva Call in respect of the allegations of mine use, specifically with the content of the Deed of Commitment.
- Provide advice towards ensuring that the Mission ToRs are comprehensive and effective towards achieving the mission objectives.
- In cooperation with the HoM, devise a framework for assessing under which circumstances an act proscribed by the Deed of Commitment would be attributable to MILF, using an analogy to generally accepted standards of attribution under public international law as guidance.

(During the Mission)
- Assist in determining reliability of evidence obtained.
- Ensure that the non-technical investigations and interviews of the Mission Team are comprehensive.
- Take the lead on inquiries directed towards determining attribution in the circumstance where proscribed acts have occurred.

(Towards the end of the Mission)
- Identify any issues that require further investigation, including those related to the determination of attribution if necessary, and those related to enforcement and disciplinary sanctions under article 4 of the Deed of Commitment.
- Participate in the drafting of interim conclusions with MILF, taking the lead on issues of attribution if relevant, and on issues regarding enforcement and disciplinary sanctions if relevant.

Specific role of the Head of Mission (HoM)

Overview

The HoM is responsible for the overall planning and co-ordination and of the mission as well as the production of the Mission Report(s), and ensuring necessary follow up action.

HoM Tasks

The HoM will:

(Before the Mission)
- Recruit the other members of the Mission Team.
- Provide the Mission Team with relevant background information.
- Ensure that travel and accommodation arrangements are finalised.
• Liaise with the MILF, GRP and other key stakeholders to ensure that logistical and security arrangements are in place.
• Ensure that the necessary funds are available.
• Schedule meetings with relevant actors.

(During the Mission)
• Lead all Mission Meetings.
• Be the focal point in respect of scheduling and logistical arrangements.
• Be the security focal point of the Mission Team and make decisions in this respect.
• Be responsible for all financial aspects of the Mission.

(Towards the end of the Mission)
• Co-ordinate the drawing up of interim conclusions for discussion with the MILF.
• Lead the Mission Team in its discussions with the MILF leadership in respect of interim findings.

(Within 3 weeks of the end of the Mission)
• Co-ordinate the production of a draft Mission Report (incorporating the Technical Report drafted by the MTE).
• Ensure that the draft report is sent to the MILF for their comment and - as appropriate - proposed remedial action.

(Within 6 weeks of the end of the Mission)
• Accompany a senior Geneva Call representative to a meeting with the MILF to discuss in detail the findings and – as appropriate – remedial action.

(Within 8 weeks of the end of the Mission)
• Ensure that the MILF perspective to the Mission findings and – as appropriate – suggested remedial action is incorporated into the Mission Report.
• Co-ordinate the production of a Full and Summary Mission Report.
• Ensure the Full Mission Report is sent to the MILF and the Summary Mission Report is sent to the GRP.
• In consultation with colleagues, decide on the dissemination of the Mission Reports to other stakeholders and co-ordinate accordingly.
Mission Document

Verification Mission to investigate alleged breaches of the
Deed of Commitment under Geneva Call for
Adherence to a Total Ban on Anti-Personnel Mines and for
Co-operation in Mine Action

1 Background

1.1 The MILF’s Mine Ban Commitment

The Moro Islamic Liberation Front (MILF) signed the Geneva Call Deed of Commitment under Geneva Call for Adherence to a Total Ban on Anti-Personnel Mines and for Co-operation in Mine Action (hereafter the Deed of Commitment) in March 2000, thus becoming one of the initial signatories to this instrument. The MILF re-affirmed - and extended - its obligations by signing a revised version of the Deed of Commitment in 2002. Article 1 of this revised Deed of Commitment contains the main obligations in respect of actualising a mine ban. It reads as follows:

“We the Moro Islamic Liberation Front, through our duly authorized representative[s],
Now therefore hereby solemnly commit ourselves to the following terms:

To adhere to a total ban on anti-personnel mines. By anti-personnel mines, we refer to those devices which effectively explode by the presence, proximity or contact of a person, including other victim activated explosive devices and anti-vehicle mines with the same effect, whether with or without anti-handling devices. By total ban, we refer to a complete prohibition on all use, development, production, acquisition, stockpiling, retention and transfer of such mines, under any circumstances. This includes an undertaking on the destruction of all such mines.”

It is important to emphasise that the MILF has committed to a ban on victim activated anti-personnel mines and associated devices, not a ban on all types of device that might be considered or categorized as ‘landmines’. Most notably not included in the definition are command-detonated devices which are currently not subject to an international ban, although other International Humanitarian Law provisions govern their use.

1.2 Allegations of mine use against the MILF before 2008

In 2000, during the so-called ‘all out war’ between the MILF and the Government of the Republic of the Philippines (GRP), there were allegations made that the MILF had violated the mine ban provision in the original Deed of Commitment. This led, in 2002, to Geneva Call con-
vening a Verification Mission to investigate these allegations. Unfortunately the GRP, citing safety concerns, did not give the necessary clearances to international members of the Mission to visit the areas of Mindanao where the allegations were made. However, Filipino members of the Mission were able to visit certain areas and meet relevant actors. Whilst the MILF denied the use of devices banned under the Deed of Commitment, it did acknowledge that ‘string-pull’ explosive devices had been utilised by its Forces, but these were considered as being command-detonated.

Because the full Mission Team were unable to visit relevant locations and meet relevant actors, the Team felt that it was not in a position to definitively conclude whether there had been the use by the MILF of devices in contravention of its obligations under the Deed of Commitment. In respect of the acknowledged use of ‘string pull’ devices by the MILF, the Mission Team considered that command-detonation required an electronic (as opposed to manual) firing mechanism. Furthermore, in certain instances, ‘string pull’ devices had the potential to become victim-activated. After dialogue with the leadership, the MILF agreed to desist from using such devices in future. The full documentation and findings of this Mission were later published in book form.4

1.3 Allegations of mine use against the MILF in 2008

From 2002 until the middle of 2008 there were no credible allegations that brought into question the MILF’s implementation of their obligations under the Deed of Commitment. An allegation (made by the Armed Forces of the Philippines (AFP) and subsequently reported in the civil media) of MILF mine use against an AFP vehicle in Basilan in May 2008 was investigated in a routine Geneva Call field mission during the following month. Geneva Call consulted with representatives of the MILF, the AFP and other stakeholders. The AFP asserted that a command detonated device was used in the incident, whilst the MILF maintained that the explosion was caused by a Rocket Propelled Grenade round that did not explode on impact with its target. Irrespective of the differing accounts, it was found that the incident did not involve the use of a device banned under the Deed of Commitment, and therefore did not raise any issues as to the MILF’s compliance with that instrument.

The upsurge in conflict that occurred in August 2008 brought with it renewed allegations of MILF mine use. These allegations appeared on AFP websites and within the civil media mainly in the period from August to October. Some allegations were vague as to the specific circumstances or the type of device that was alleged to have been used, whilst others were more detailed. In the circumstances, Geneva Call compiled a table detailing all incidents that came to its attention. It is notable that both the Chief Negotiator of the MILF and the Chief of Staff of the Bangsamoro Islamic Armed Forces (BIAF) – MILF’s military wing – were reported as categorically denying the use of mines during this period.

1.4 Verification of allegations – communications from Geneva

In the period from August to early October 2008, Geneva Call contacted the GRP and other key stakeholders for more details about the alleged incidents. Concurrently, the MILF was contacted for a more detailed response to the specific allegations. Perhaps unsurprisingly given that these enquiries were made during a time of increasing conflict, limited information was

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obtained. It was therefore decided that Geneva Call would take the opportunity provided by a routine field visit in October 2008 to further pursue these enquiries.

1.5 Verification of allegations – routine field mission

The Geneva Call representative met with the Chief Negotiator of the MILF, the Chairman of the MILF Co-ordinating Committee on the Cessation of Hostilities (CCCH) and the Chief of Staff of the BIAF. The MILF representatives reiterated their categorical denial of the use by BIAF forces of devices banned under the *Deed of Commitment*. The table of mine allegations was reviewed, and the MILF representatives gave initial responses to the alleged incidents.

The Geneva Call representative also communicated with representatives of the AFP. It was apparent from these enquiries that the AFP not only stood by these allegations of mine use, but also confirmed its assertion that some of the devices that were utilized during or recovered after confrontations with the MILF were victim-activated. Representatives of the AFP agreed to provide information on the specific incidents where it asserted that the MILF had breached their obligations under the *Deed of Commitment*. (see section 1.8 below)

Geneva Call met with the International Monitoring Team (IMT) the entity which monitored the implementation of the ceasefire. It was apparent that whilst the IMT had also heard about the allegations, it had not been given the necessary permissions to visit the affected areas. Geneva Call also met with other relevant actors, such as the International Committee of the Red Cross (ICRC), Amnesty International and other NGO and civil society actors operating in the affected areas. Most organisations had all heard of the allegations of MILF mine use, but were not able to provide substantive information in this respect.

1.6 Verification of allegations – the need for a Verification Mission

It was apparent that whilst the routine field mission provided important additional information to supplement that which was already gathered remotely, it was still not possible to categorically conclude whether there had been a violation of the *Deed of Commitment* by the MILF. Most importantly, specific and detailed information about alleged incidents or devices was not available, nor has there been dialogue with those with first hand experience of the events in question.

In the circumstances, Geneva Call decided that it was necessary to convene a Verification Mission to gather relevant information in a co-ordinated way by experts with an intimate knowledge of relevant issues. It is hoped that such information may allow Geneva Call to reach a definitive conclusion as to whether there had been a violation of the *Deed of Commitment* by the MILF.

1.7 Verification of Allegations – basis for a Verification Mission and response from key stakeholders

The operative Article of the *Deed of Commitment* in respect of monitoring and verification (Article 3) requires that signatory groups:
‘... allow and co-operate in the monitoring and verification of our commitment to a total ban on anti-personnel mines by Geneva Call and other independent international and national organizations associated for this purpose with Geneva Call.’

To date, the MILF has fully co-operated with Geneva Call’s efforts to monitor the implementation of its obligations under the Deed of Commitment, including replying to relevant enquires and, as mentioned above, co-operating with a previous Verification Mission. During several field missions, representatives of the MILF indicated that it would both welcome and co-operate with a Verification Mission to investigate the allegations made against them, and the MILF has publicized its willingness to co-operate.5

The co-operation of the GRP is also necessary to allow the Verification Mission to take place. Whilst the GRP has no specific obligations under the Deed of Commitment, as a State Party to the Mine Ban Treaty it has an obligation under Article 9 of that instrument to take measures to ensure its terms are abided by all actors. Geneva Call has asserted to representatives of the GRP that its facilitation of this Mission should be considered as falling within the terms of this provision. In meetings with the President of Geneva Call, both the Chief of Staff of the AFP and the Presidential Adviser to the Peace Process expressed in-principle support for this initiative. This support was reiterated by the Deputy Chief of Staff of the AFP who led the GRP delegation to the 9th Meeting of State Parties to the Mine Ban Treaty in Geneva in November 2009. On 27 April 2009, written approval for the Verification Mission was given by General Oban, on behalf the Acting Chief of Staff of the AFP stating:

‘The AFP believes that the Verification Mission is a significant step that will ascertain the veracity of the reported incidents against the MILF and will in turn help to ensure the terms of the Mine Ban Treaty are abided by those who have made a solemn commitment of following its terms and conditions.’

1.8 Verification of Allegations – incidents to be investigated

At Geneva Call’s request, the AFP reviewed the list of allegations that had been reported in the media. In May 2009, a representative of the AFP informed Geneva Call that there were 3 incidents where it was asserted that there was evidence of the use of devices by the MILF that breached their obligations under the Deed of Commitment. All of these incidents had been in the original list of allegations. It was emphasised by the AFP representative that the AFP continues to assert that the MILF used devices in breach of its obligations on other occasions but there is no longer corroborative evidence available.

2. Objectives of the Verification Mission

2.1 Objectives

1. To ascertain whether any of the devices used or recovered in western Mindanao in the period between 30 July 2008 and 31 October 2008 would be considered as anti-personnel mines within the terms of Article 1 of the Geneva Call Deed of Commitment.

5 ‘MILF Welcomes Geneva Call Mission.’
2. In any instance where a device fulfills the criteria so as to be considered as an anti-personnel mine within the terms of the Deed of Commitment (as per objective 1), to ascertain whether the production, acquisition and/or use of the said device is attributable to the MILF, using the analogy to generally accepted standards of attribution under public international law as guidance.

3. In any instance where MILF has been found in violation of Article 1 of the Deed of Commitment, to investigate whether such violation(s) were or should have been known by persons in the MILF command structure, and to enter into dialogue with MILF leadership on appropriate measures to improve enforcement as per Article 4 of the Deed of Commitment.

### 3. Modalities of the Verification Mission

#### 3.1 Mission Personnel

The Mission will be conducted by a team of persons identified by Geneva Call as being well placed to be able to meet the objectives of the mission [hereafter known as the 'Mission Team']. In this respect, the Mission will consist of a Head of Mission (HoM) from Geneva Call, an external Mission Technical Expert (MTE) [a mines/explosives expert] to provide expertise in respect of explosive devices allegedly utilised or retrieved, and a third member with experience of verification/fact finding missions and an expertise in public international law.

#### 3.2 Mission Structure

The Mission would broadly be divided into Manila and Mindanao elements, which might include:

**Manila**

- Courtesy Calls to relevant Government Departments [Department of Foreign Affairs, Department of National Defense, Office of the Presidential Adviser to the Peace Process] and other relevant stakeholders.
- Briefing and debriefing with the AFP Working Group.
- Briefing and debriefing of other stakeholders.

**Mindanao**

- Briefing and debriefing with MILF leadership.
- Interviews and meetings with relevant MILF commands and personnel.
- Inspection of MILF weapon stockpiles.
- Interviews with victims of alleged mine incidents.
- Briefing by AFP Field Command.
- Visits to sites of alleged mine incidents.
- Interviews with witnesses.
- Meetings with other key stakeholders.
- Debriefing with MILF and discussion of provisional findings.
3.3 Role of the GRP/AFP in preparation for the Verification Mission

As the party making allegations of violations of the *Deed of Commitment*, it is expected that the GRP/AFP will:

- Provide technical information, including devices/remnants recovered, reports and photographs, in respect of relevant incidents.
- Allow for the inspection of relevant locations, including the sites of alleged mine use.
- Facilitate interviews with victims and witnesses and relevant GRP/AFP personnel.
- Provide other documentary evidence as considered relevant to the enquires.

3.4 Role of the MILF in preparation for the Verification Mission

As the 'accused' party and signatory to the *Deed of Commitment*:

- Provide relevant technical information.
- Allow for the inspection of relevant locations, including weapons stocks.
- Facilitate interviews with BIAF commanders and fighters.
- Facilitate interviews with other witnesses.
- Provide other documentary evidence as deemed relevant to the enquires.

3.5 Access

Under Article 3 of the *Deed of Commitment*, the MILF has the obligation to allow:

‘...visits and inspections in all areas where anti-personnel mines may be present, and the provision of the necessary information and reports, as may be required for such purposes in the spirit of transparency and accountability.’

It is anticipated that the GRP will also provide full access to relevant locations, pursuant to its obligations under the Mine Ban Treaty (as highlighted in section 1.7, above).

3.6 Security

It is apparent that the Mission Team will visit locations where there has been recent conflict. As some of these areas remain insecure, Geneva Call will carry out a full security assessment prior to the Mission in close co-operation with other actors.

It will be important for both parties to the conflict, as well as other actors, to provide the necessary arrangements to allow the Mission Team to proceed with its enquires with minimal risk. To enable the Mission Team to carry out its enquiries safely and effectively Geneva Call is in the process of seeking the necessary assurances - and where necessary security - from the parties to the conflict. This entails a level of co-ordination and co-operation between the parties, which has been absent since August 2008. Geneva Call is seeking to convene a co-ordination 'non-meeting' between representatives of the parties - primarily the Co-ordinating Committee for the Cessation of Hostilities (CCCH) - in the week before the verification mission takes place.
3.7 Neutrality

Geneva Call is a neutral humanitarian organization and the members of the Verification Mission will also be bound by the principle of neutrality. This means that the Mission personnel will not ‘take sides’ in respect of the conflict in general or in relation to particular incidents. Whilst, as highlighted above, the parties to the conflict are expected to make the necessary arrangements to ensure that the Mission personnel are able to pursue their enquiries safely, it is also important that the Mission Team are allowed to carry out investigations without interference or without any conditions that may compromise – or be seen to compromise – its neutrality, or to impact on its ability to gather evidence. This will entail, inter alia, such aspects as allowing the Mission personnel to interview relevant persons in a confidential setting, respecting the inviolability of personnel and data gathered, and confidentiality of the sources.

4. Dissemination of the Findings of the Verification Mission

Whilst the Mission Team will provide a briefing to the MILF leadership and other stakeholders at the end of the mission, it is anticipated that the Mission Team will not be in a position to fully discuss its findings during the Mission itself. A draft report, including (where applicable) suggestions for corrective action, will be prepared after the Mission. This will be provided to the MILF for its response, and a follow-up meeting with the MILF leadership will be arranged to discuss the findings and recommendations in detail.

For Geneva Call, the key aim of the verification process in general - and the Verification Mission in particular - is to both ensure and promote compliance with the relevant provisions of the Deed of Commitment. Article 7 of the Deed of Commitment commits signatories to:

'Understand that Geneva Call may publicize our compliance or non-compliance with this Deed of Commitment.'

Ensuring compliance will be the primary consideration in respect of the application of Article 7. However, at the very least, the GRP and other key stakeholders will be provided with a Summary Report of the Mission. Whilst it is likely that the Mission reports will be more widely disseminated, Geneva Call reserves the right to determine after the Mission to what extent, and in what manner, such dissemination will be undertaken.
Role of the Government of the Republic of the Philippines [GRP] and the Moro Islamic Liberation Front [MILF] in respect of the Verification Mission to investigate allegations that the Moro Islamic Liberation Front violated its obligations under the Geneva Call Deed Of Commitment For Adherence to a Total Mine Ban on Anti Personnel Mines and Co-operation in Mine Action

Overview

The Moro Islamic Liberation Front (MILF) made a commitment to renounce the use of anti-personnel landmines by signing the Geneva Call Deed Of Commitment for Adherence to a Total Mine Ban on Anti Personnel Mines and Co-operation in Mine Action in 2000. It reaffirmed - and extended- its obligations by signing a revised version of the Deed of Commitment in 2002.

During the period between the end of July and the end of October 2008 there were a number of allegations reported in the media that the MILF were utilizing devices described as landmines. On enquiry, Geneva Call was informed by the Armed Forces of the Philippines (AFP) that a number of these devices were anti-personnel landmines, and therefore prohibited under the Geneva Call Deed of Commitment.

Geneva Call’s informal enquiries into the allegations did not prove conclusive so it was decided that it was necessary to undertake a Verification Mission to investigate these allegations. The Government of the Republic of the Philippines (GRP) has endorsed this Verification Mission. In addition, the MILF –in line with their obligations under the Deed of Commitment- have agreed to fully co-operate with it.

The three-person Mission Team will undertake its enquiries in the Philippines between 17th and 26th November. For the Mission to be both effectively and safely carried out it is important that the GRP and the MILF (hereafter referred to as ‘the Parties’) fully understand their roles and responsibilities in relation to this endeavour. What follows is what is considered to be the minimum expectations of the parties.

Mission Enquiries

The Parties should:

- Provide unhindered access to locations deemed relevant by the Mission Team.
- Access to locations as described above should only be limited on account of legitimate concerns as to the safety of the Mission Team and its associates.
• Not hinder, and as appropriate, facilitate, the Mission Team in conducting confidential interviews with victims, witnesses, any person allegedly involved in activities and others that the Mission Team deem relevant to their enquiries.
• If the security situation should temporarily hinder freedom of movement or investigation, the parties should, as soon as practicable, seek to establish conditions that will overcome these hindrances.

Confidentiality

The Parties should:

• Respect the confidential nature of the Mission enquiries, and in particular:
• Allow and, as necessary, facilitate, the Mission Team to interview relevant persons in private settings.
• Treat Mission documentation, materials and equipment (and information contained therein) as inviolable.

Security of witnesses

The Parties should:

• Not take any measures aimed at obstructing in any way the giving of evidence by potential or actual witnesses.
• Ensure that no person who has been in contact with the Mission Team in relation to the enquiries, his/her relatives or associates will for that reason suffer any acts of violence, intimidation, threats or reprisals of any kind on account of their attendance or testimony, or their wish to meet the Mission Team or provide information.
• Facilitate the Mission Team to monitor compliance with the above provision, both during and after the mission.

Preservation of evidence

The Parties should:

• Take all necessary measures to prevent and deter destruction of, or tampering with material evidence.

Security for the Mission

The Parties should:

• Provide appropriate security to protect Mission personnel, equipment and documentation.
• Provide safe conduct.
• Liaise with relevant actors, including the other party to ensure that security of the Mission is protected at all times.
• Ensure that security measures in no way compromise the confidentiality of the enquiries (as described in the section on confidentiality, above).
**ANNEX EIGHT**

**Final List of Incidents to be investigated**
*(updated following consultation with the AFP 12 November 09)*

<table>
<thead>
<tr>
<th>Date of alleged incident</th>
<th>Location of alleged incident</th>
<th>Details of alleged incident</th>
<th>Type of device</th>
<th>AllegedPerpetrator</th>
<th>According to:</th>
<th>Where reported</th>
<th>When reported</th>
<th>MILF response (in meeting 22/10/08 unless specified)</th>
</tr>
</thead>
<tbody>
<tr>
<td>9th Aug 08</td>
<td>Barangay Dunguan (Dunguan), Aleson</td>
<td>10am Soldier Private Jay D Calo of 602nd Brigade injured in both legs when he stepped on a landmine.</td>
<td>Landmine</td>
<td>'Suspected MILF rebels'</td>
<td>Chief Supt. Khair, head of task force Palma</td>
<td>GMA News</td>
<td>9th Aug 08</td>
<td>This is a fully Muslim area, why would the MILF risk hurting their own?</td>
</tr>
<tr>
<td>2nd Oct 08</td>
<td>Vic. Brgy Rd, So. Baite, Baringay Bagoloabas, Aleson</td>
<td>Device Recovered by AFP</td>
<td>Trip wire activated improvised landmine/booby trap</td>
<td>MILF (asserted only)</td>
<td>AFP EOD Report</td>
<td>Internal to AFP</td>
<td>3rd Oct 08</td>
<td>New Allegation</td>
</tr>
<tr>
<td>3rd Oct 08</td>
<td>Vic. Brgy Rd, Baringay Dunguan, Aleson</td>
<td>Device Recovered by AFP</td>
<td>Trip wire activated improvised landmine/booby trap</td>
<td>MILF (asserted only)</td>
<td>AFP EOD Report</td>
<td>Internal to AFP</td>
<td>5th Oct 08</td>
<td>New Allegation</td>
</tr>
<tr>
<td>12th Oct 08</td>
<td>Mamasapano town Near Brgy. Tukulipao, Maguindanao</td>
<td>8 soldiers wounded after landmine blast triggered by MILF</td>
<td>Landmine</td>
<td>MILF forces led by Cafrin Basid Osman and Bonnie Ayman</td>
<td>Eastmincom spokesman Arman Rico</td>
<td>Inquirer, Peninsular</td>
<td>12th Oct 08</td>
<td>This incident they know about – this was definitely a roadside IED, command detonated. They refuse the involvement of Basid Osman who they say is a former MILF fighter, wanted by them as well as by the AFP. They suggest that he is an agent provocateur/military asset.</td>
</tr>
<tr>
<td>9th Oct 08</td>
<td>Bgy. Killang, Datu Saudi Ampatuan</td>
<td>Carabao (water buffalo) stepped on landmine planted by MILF</td>
<td>Landmine</td>
<td>Renegade MILF Commander: Kato’s forces</td>
<td>60th Brigade Commander Sixtar</td>
<td>Inquirer</td>
<td>19th Oct 08</td>
<td>A report on Luwaran.com 17 November 2009 asserted that this incident was caused by the carabao triggering unexploded ordnance</td>
</tr>
<tr>
<td>23rd Apr 09</td>
<td>Sitio Kasabaraan, Bugasan, Matang, Maguindanao</td>
<td>Device Recovered by AFP</td>
<td>Trip wire activated improvised landmine/booby trap</td>
<td>Lawless MILF Group</td>
<td>AFP EOD Report</td>
<td>Internal to AFP</td>
<td>24th April 09</td>
<td>New Allegation</td>
</tr>
<tr>
<td>7th May 09</td>
<td>Sitio Kasabaraan, Bugasan, Matang, Maguindanao</td>
<td>Device Recovered by AFP</td>
<td>Trip wire activated improvised landmine/booby trap</td>
<td>MILF</td>
<td>AFP EOD Report</td>
<td>Internal to AFP</td>
<td>8th May 09</td>
<td>New Allegation</td>
</tr>
</tbody>
</table>
ANNEX NINE

Verification Mission Itinerary

Day 0 [Mon 16th November] To Philippines

Day 1 [Tue 17th November] Arrive Manila

- Internal briefing among Mission Team.

Day 2 [Wed 18th November] In Manila

Courtesy Calls to:
- Gen Oban (on behalf of the Chief of Staff of the AFP).
- Director Leah M. Basinang-Ruiz, United Nations and International Organisations Office, Department of Foreign Affairs (on behalf of ASec Garcia).
- Ambassador Rafael Seguis Department of Foreign Affairs and Head of GRP Peace Panel.

Day 3 [Thu 19th November]

Am:

Manila
- Meeting with Christoph Sutter, Deputy Head of Delegation, ICRC.

Pm:

To Cotabato
- Courtesy Call to Brigadier Limbo (on behalf of General Cayton) of 6 Infantry Division.
- Final Mission Planning conference with AFP.
- Initial briefing with MILF lead by Ghazali Jafar, Vice Chairman Political Affairs.

Day 4 [Fri 20th November] Mindanao - AFP organised programme

- Visit to Mamasapanao and Kitango, Maguindanao.
Day 5 [Sat 21st November] Mindanao - AFP organised programme

- Visit to Dunguan, North Cotabato.
- Meeting with witnesses and EOD team at 6ID HQ.

Day 6 [Sun 22nd November] Mindanao - MILF organised programme

- Visit to Dunguan, North Cotabato.

Day 7 [Mon 23rd November] Mindanao - Mainly MILF organised programme

- Visit to Mamasapanao and Kitango, Maguindanao.

Day 8 [Tue 24th November]

Am:

Mindanao
- Debriefing with MILF led by Ghazali Jafar, Vice Chairman of Political Affairs.

Pm:

To Manila


- Debriefing with AFP Working Group.
- Briefing for the Diplomatic Community hosted by Switzerland.

Day 10 [Thu 26th November] Depart from the Philippines
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Fax: +41 22 879 1051
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Website: www.genevacall.org