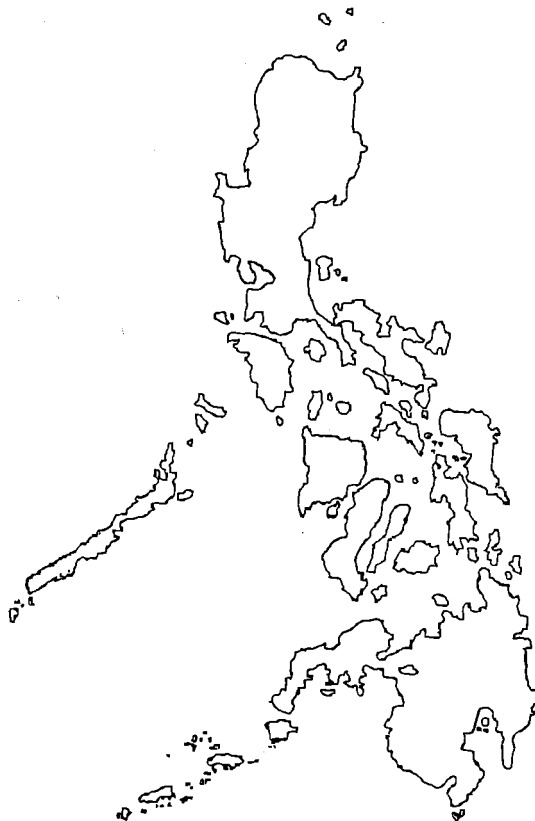


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**THE FAILED PROMISE:
HUMAN RIGHTS IN THE PHILIPPINES
SINCE THE REVOLUTION OF 1986**



THE INTERNATIONAL COMMISSION OF JURISTS
Geneva, Switzerland

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THE FAILED PROMISE:
HUMAN RIGHTS IN THE PHILIPPINES SINCE THE
REVOLUTION OF 1986

Report of a Visit

by

David Bitel, Australia
Justice Marcus Einfeld, Australia
D. J. Ravindran, India
Professor David Weissbrodt, United States

on behalf of

THE INTERNATIONAL COMMISSION OF JURISTS
Geneva, Switzerland

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ISBN 92 9037 052 1

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Abbreviations and Terms

7 2 4) 2 2 3) 1 2 5 2 4))) 1 1 2 3 3 4 4 4 5 5 5 5 8 9 0 2 3	ACMDC ADAMIC ADLO-CL AFP ALMATAG Alyausa ng Maralita ng Taguig (Alliance of the Urban Poor of Taguig) ALRP AMCL AMGL AMRSP ANGLO APD ASSET barangay (bgy.) barrio CAA CADENCE CAFGU CAPCOM CARP CBA CBAMC CHDF CHICKS CIA CLT CONFED CPAR CPLA CPP CVO DA DAR	Atlas Consolidated Mining and Development Corporation Alliance for Democracy and Morality in the Country Alliance of Democratic Labour Organizations- Central Luzon Armed Forces of the Philippines Alyansa ng Magbubikid sa Gitnang Luzon (Farmers' Alliance in Central Luzon) Association of Major Religious Superiors in the Philippines Alliance of Natural and Genuine Labour Organizations Area for Priority Development Anti-Squatting Surveillance and Enforcement Team smallest political unit another term for the smallest political unit CAFGU Active Auxiliary Church Defence Consultative Conference Citizen Armed Force Geographic Unit Capitol Regional Command Comprehensive Agrarian Reform Program collective bargaining agreement Central Bulacan Area Marketing Cooperative Civilian Home Defense Force area in Negros named for the towns of Candoni, Hinobaan, Ilog, Canayan, Kabankalan, and Sipalay US Central Intelligence Agency Certificate of Land Transfer Confederation of Sugar Producers Association Congress for a People's Agrarian Reform Cordillera People's Liberation Army Communist Party of the Philippines Civilian Volunteer Self-Defence Organisation (also known as Bantay Bayan) Department of Agriculture Department of Agrarian Reform
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DND	Department of National Defence
DOLE	Department of Labour and Employment
DPAs	Deep Penetration Agents
DSWD	Department of Social Welfare and Development
EDSA	Epifanio de los Santos Avenue (avenue where the February Revolution occurred)
EILER	Ecumenical Institute for Labour Education and Research
E.M.O.	Emergency Memorandum Order
E.O.	Executive Order
EP	Emancipation Patent
estafa	misappropriation of funds
FLAG	Free Legal Assistance Group
GTWEU	Golden Taxi Workers and Employees Union
H.B.	House Bill
ICJ	International Commission of Jurists
ILO	International Labour Organisation
INP	Integrated National Police
JAGO	Judge Advocate General's Office
KADRE	anti-Communist vigilante group
KBP	Association of Broadcasters in the Philippines (Kapisanan ng mga Broadkaster sa Pilipinas)
KMP	Peasant Movement of the Philippines (Kilusang Magbubukid ng Pilipinas)
KMU	May First Movement (Kilusang Mayo Uno)
LACC	Labour Advisory and Consultative Council
LBP	Land Bank of the Philippines
LIC	low intensity conflict
MABINI	Movement of Attorneys for Brotherhood, Integrity and Nationalism
MMR	MAGMedical Action Group
MNLF	maternal mortality rate
MTRCB	Moro National Liberation Front
NAD	Movie and Television Review and Classification Board
NALFU	National Alliance for Democracy
NAMFREL	National Federation of Labour Unions
NATU	National Citizens Movement for Free Elections
NBI	National Association of Trade Unions
NCMB	National Bureau of Investigation
NCR	National Conciliation and Mediation Board
NDF	National Capital Region (Manila)
NFSP	National Democratic Front National Federation of Sugar Planters

e	NFSWU	National Federation of Sugar Workers Union
it	NGA	National Grains Authority
ts	NPA	New People's Army
it	NTC	National Telecommunications Commission
ie	NUFC	National United Front Commission
l)	OLALIA	Organised Labour Associations in Line Industries and Agriculture
h		
er	PACIWU	Philippine Agricultural Commercial and Industrial Workers Union
er		
at	PAHRA	Philippine Alliance of Human Rights Advocates
ls	PAMA	Panaghiusa Sa Mamumuo Sa Atlas (KMU affiliated union)
ip	PAMA-SPFL	Panaghiusa sa Mamumuo Sa Atlas, Southern Philippines
in	PARC	Presidential Agricultural Reform Council
ill	PARCODE	People's Agrarian Reform Code
ts	PC	Philippine Constabulary
in	PCHR	Presidential Committee on Human Rights
ce	P.D.	Presidential Decree
ce	PDA	Preventive Detention Action
ip	PKP	Partido Komunista ng Pilipinas (predecessor of the CPP)
es		
s)	PLDT	Philippine Long Distance Telephone Company
s)	PNP	Philippine National Police
o)	POEA	Philippine Overseas Employment Administration
cil	PUP	Polytechnic University of the Philippines
es	R.A.	Republic Act
ict	RAM	Reform the Armed Forces Movement
d,	RELAC	Regional Legal Action Committee
up	RFC	Revised Forestry Code
ite	RSU7	Regional Security Unit 7
ont	SALAG	Structural Alternative Legal Assistance for Grassroots
rd	SCAA	Special CAFGU Active Auxiliary unit
ey	SDF	Sugar Development Fund
ns	SFP	Soldiers of the Filipino People
ns	SOTs	Special Operation Teams
ns	salvaging	extrajudicial killing
on	sitio	smaller community than a barangay
urd	Sparrow units	assassination squads organised by the CPP-NPA
la)	TABAK	Network of Advocates for the Indigenous Peoples
ont	TFDP	Task Force Detainees of the Philippines
ers	TUCP	Trade Union Congress of the Philippines

UCCP
ULP
US
WAR
WFTU
YOU

United Church of Christ in the Philippines
Unfair Labour Practice
United States
Workers Alliance Region
World Federation of Trade Unions
Young Officers Union

Preface

This report, based on the visit of a delegation sent to the Philippines in September 1990, is the third to be issued on the situation in the Philippines by the International Commission of Jurists. The first was published in 1977 and documented serious violations of human rights occurring under the state of martial law proclaimed by President Ferdinand E. Marcos in 1972, which was still in force in 1977. The principal recommendation in the report was that martial law be lifted since the situation in the country did not justify its continued imposition.

President Marcos formally lifted martial law in January 1981, but in doing so issued decrees which retained for himself and for the armed forces many of the powers associated with martial law. The ICJ continued to receive reports of gross violations of human rights including frequent extrajudicial killings by members of the armed forces.

Accordingly, the ICJ decided to send a second delegation to the Philippines to assess the human rights situation since the lifting of martial law. The second report was published in 1984, after the assassination of Benigno Aquino; the ICJ recommended the repeal of many of the repressive decrees which had been issued by President Marcos, the end of human rights abuses by government forces, and improvements in the Philippine judiciary to assure its efficacy and independence.

In February 1986 President Marcos was forced to leave the Philippines by a non-violent revolution which promised the restoration of human rights. Hence, the third ICJ delegation to the Philippines was asked to assess human rights developments in the country during the five years since President Corazon C. Aquino took office.

The members of the delegation were Professor David Weissbrodt of the United States, Justice Marcus Einfeld of Australia, Mr. D. J. Ravindran of India, and Mr. David Bitel of Australia. David Weissbrodt, who led the delegation, is the Briggs & Morgan Professor of Law at the University of Minnesota and has published widely in the field of human rights. Justice Marcus Einfeld is a Judge of the Federal Court of Australia and former President of the Australian Human Rights and Equal Opportunity Commission. D. J. Ravindran was formerly the legal officer of the

International Commission of Jurists and has recently returned to India. David Bitel is a practicing lawyer in Sydney, Australia, and is the Secretary-General of the Australian Section of the ICJ.

The delegation was in the Philippines from 16 September to 29 September 1990. The members were able to undertake their visit without interference and to travel freely throughout the country. They interviewed government officials, military officers, opposition leaders, lawyers and members of the judiciary, prisoners and other persons with first-hand information concerning violations, community workers and leaders of various religious denominations including the Catholic Church, university professors, diplomats in foreign embassies, trade unionists, human rights activists, and members of numerous nongovernmental organisations.

Members of the delegation traveled to various parts of the Philippines, including Luzon, Mindanao, and the Visayas, to receive first-hand information. In addition to information obtained through interviews, they also obtained extensive documentation including court decisions, copies of laws, affidavits of victims, newspaper articles, and other published material concerning the status of human rights. Except where otherwise indicated, the report concentrates on the situation up to the end of 1990.

The International Commission of Jurists expresses its appreciation to the government of the Philippines for its cooperation and particularly to the following Ministers, government officials, and their staff who met with members of the delegation at length and provided written documentation:

Mary Concepcion Bautista, Chair, and other members of the Commission on Human Rights
Franklin M. Drilon, Secretary of Justice
Commissioner Frank Fernandez, Presidential Commission for the Urban Poor
Benjamin T. Leong, Secretary, Department of Agrarian Reform
Fidel V. Ramos, Secretary of National Defence
General Renato de Villa, Chief of Staff, Armed Forces of the Philippines*

Judges were of considerable assistance to the delegation, in particular, Chief Justice of the Supreme Court, Marcelo Fernan.

* General de Villa has since retired as Chief of Staff.

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The ICJ delegation was greatly assisted both in Manila and in the provinces by members of the Free Legal Assistance Group (FLAG) and particularly by Socorro (Cookie) Diokno and her staff. The delegation also received assistance from other legal aid and human rights organisations. Meetings were held with labour lawyers and other lawyers defending political prisoners.

Meetings took place with Jaime Cardinal Sin, with Dr. Feliciano Cariño, General Secretary of the National Council of Churches of the Philippines, and with a number of other religious leaders. Much assistance was received from members of the Task Force Detainees of the Philippines (TFDP), a remarkable organisation established in 1974 by the Association of Major Religious Superiors of the Catholic Church. It is actively engaged in the investigation of human rights abuses.

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Information concerning economic and social rights was obtained from government ministers, labour lawyers and trade union members, university faculty members, and community organisations.

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The delegation spent many hours interviewing victims and taking evidence of human rights abuses, including considerable numbers of people who had not previously been interviewed because of their fears of further suffering. The delegation had already obtained access to previous reports of such abuses, in particular the reports of Amnesty International, Article 19, Asia Watch, the Lawyers Committee for Human Rights, the Minnesota Lawyers International Human Rights Committee, and Survival International. In addition, the delegates received detailed statistical reports of abuses from TFDP covering the past several years. It was not possible for the ICJ delegation to conduct enquiries and reach conclusions of a judicial nature. The evidence and the manner in which it was given to the delegation, however, left no doubt about the widespread abuses of human rights in the Philippines. The delegates have lodged their records of the instances reported with the International Commission of Jurists in Geneva. In many cases explicit reference to them would not be in the best interests of the persons interviewed.

The report was initially drafted by D. J. Ravindran and was then edited by other members of the delegation. The final edit was prepared by Professor Weissbrodt.

The report is divided into 21 chapters together with conclusions and recommendations. The report of the ICJ delegation confirms that grave violations of human rights have continued in the Philippines, including torture, arbitrary and summary killings, disappearances, forced evacuation, and displacement of civilians. The government has largely failed to fulfill its often stated objective of curbing human

rights abuses. The legal system and the Human Rights Commission have not been effective in redressing most of the human rights abuses.

The report also focuses on problems of land reform, the urban poor, labour, women, indigenous peoples, children, the Muslim minority, and the educational system, and makes a number of recommendations in the hope that the striving of so much of Philippine society for increased civil, political, economic, and social rights will be successful.

On 26 February 1991 a preliminary draft of the report was given to the Honourable Purificacion V. Quisumbing, the representative of the Philippines to the U.N. Commission on Human Rights in Geneva. On 12 March the draft report was also submitted to President Corazon C. Aquino. The government of the Philippines was invited to comment on the draft by 12 April 1991. On 25 March 1991 the government of the Philippines asked for more time in order to formulate a response, but has still not responded as of June 1991.

The International Commission of Jurists remains willing to discuss the report with the government of the Philippines in order to develop a genuine dialogue and exchange of information about the issues raised in the report and to identify means for implementing the report's recommendations and for improving the human rights situation.

International Commission of Jurists
Geneva, June 1991

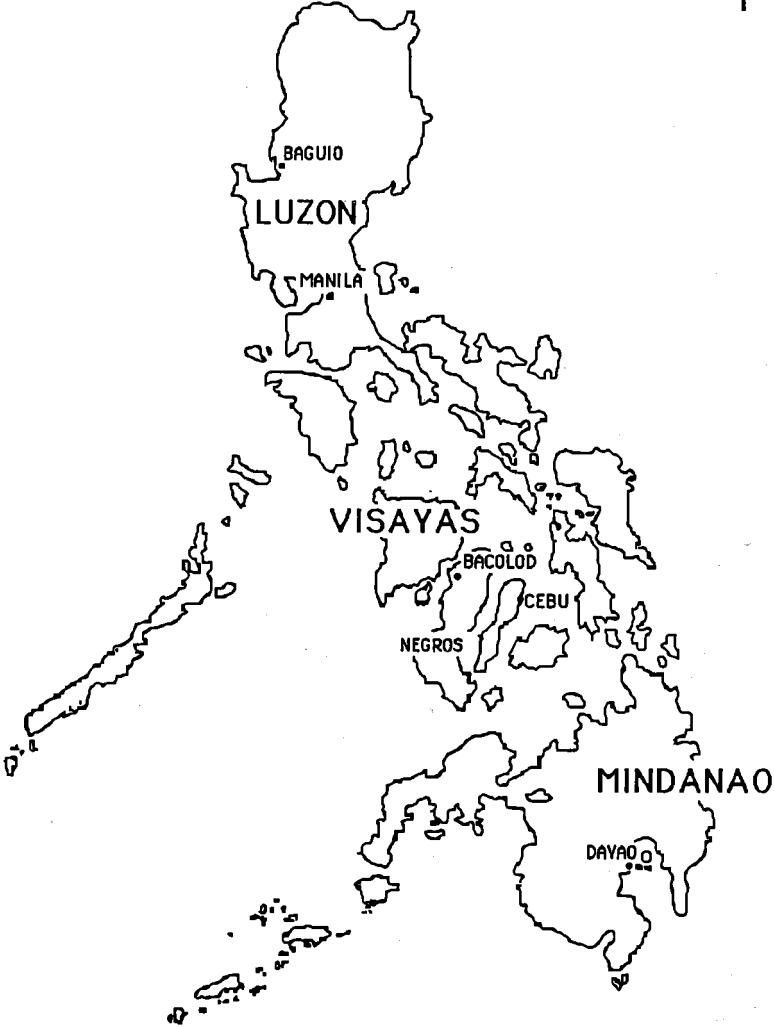
Adama Dieng
Secretary-General

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THE PHILIPPINES



Chapter 1

Introduction

Overview

This chapter gives a brief history of the Philippine situation and an overview of the current state of human rights in the Philippines.

President Ferdinand E. Marcos was the Philippine head of state for over twenty years. In 1972, after serving the two elected terms then permitted by the Constitution, President Marcos secured further power by declaring martial law. Martial law remained in effect until January 1981, when it was officially lifted. Nevertheless, the Marcos rule continued. It was marked by systematic human rights violations by the country's military forces as well as a corrupt bureaucracy and judiciary. In 1983 former Senator Benigno S. Aquino, Jr., an outspoken critic of President Marcos' government, was assassinated. His assassination was a catalyst for change for Filipinos who had become increasingly disenchanted with President Marcos' government.

Under pressure for change, in early February 1986 President Marcos called a "snap" presidential election to obtain a reconfirmation of his political mandate. Nonetheless, Corazon C. Aquino, the widow of Benigno Aquino, was widely considered the winner. Despite public protest, President Marcos announced that he had won the elections. On 24 February 1986, two of Marcos' former associates, General Fidel V. Ramos and then Minister of National Defence Juan Ponce Enrile asked for President Marcos' resignation. They had secured themselves in a military camp with other officers who were dissatisfied with the discredited image of the Armed Forces of the Philippines.

Jaime Cardinal Sin, head of the Philippine Catholic Church, asked the people to surround the camp to prevent President Marcos from reaching General Ramos and Minister Enrile. Thousands responded to the Cardinal's appeal, and the "February Revolution" succeeded. On 26 February 1986, Corazon Aquino was proclaimed the new President of the Philippine Republic. Ferdinand Marcos and his family fled the country, leaving behind a discredited military, an inefficient and corrupt bureaucratic and judicial system, a huge foreign debt, and a steadily sinking economy. Marcos has since died.

After the February 1986 revolution, it was anticipated that the system maintained by former President Ferdinand Marcos would be replaced by a more democratic and responsive government. A new Constitution was written with an extensive Bill of Rights, a bicameral legislature was established, and free elections were held. In the hope of stopping the armed insurgency which had been pursued by members of the Communist Party of the Philippines (CPP) and its military branch, the New People's Army (NPA), since 1968, the government in December 1986 announced that it would conduct peace talks with the insurgents. These changes were hopeful beginnings.

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By January 1990, however, the Philippines was in a state of national emergency. Peace talks with the rebels failed in 1987, and conflict between insurgents and the government has escalated. Since 1987, President Aquino's government has been threatened by a succession of attempted coups d'etat. All the coup attempts have been unsuccessful, but have taken their toll on the government's stability. In response to the coup attempt in December 1989, the bloodiest attempt thus far, President Aquino declared a state of national emergency, requesting special powers from Congress.

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The state of national emergency has since elapsed and the powers granted by Congress ended as well. In June 1990 President Aquino requested an extension of the state of national emergency and the emergency powers, citing the grave economic situation in the Philippines.

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The powers granted by Congress have been described as analogous to those granted to former President Ferdinand Marcos by Amendment 6 to the 1973 Philippine Constitution (which has been superseded by the 1986 Constitution) that allowed President Marcos broad legislative powers. Unlike Amendment 6, the emergency powers requested by President Aquino were somewhat limited by Congress, but were still extremely broad. Several Philippine human rights organisations have expressed concern that the powers would be used to justify violations of human rights. The Philippine government has argued that these powers are necessary to resolve the problems it faces.

The Philippine government is confronted by armed attacks from two sides. On the one hand, the Philippine government has to deal with a significant armed insurgency by the CPP-NPA. On the other hand, there are military officers within the Armed Forces of the Philippines who have been responsible for the attempted coups and repeated bombings against foreign business offices and other visible targets. When the peace talks with the CPP-NPA failed in 1987, the insurgents became bolder, entering urban areas with death squads (called "Sparrow Units"). Police

officers, soldiers, government-sponsored vigilantes, and US military personnel have been targets of these Sparrow Units.

In response to the attacks by the NPA rebels, President Aquino announced a "total war" policy (now called a "total approach policy"). This policy governs the conduct of government and military operations. The civilian population in the provinces has been hardest hit by this policy. In its attempts to destroy the leftist insurgency, the army has used bombs, mortar fire, and other weapons that do not discriminate between rebels and civilians. One major in the army admitted that there is a "guilt by association" policy in which any civilians who appear to be sympathetic with the rebels are targeted by the military. A general stated that civilians "really have to be sacrificed" since there is "no substitute for victory."¹ There have been mass evacuations from areas where the military conducts counter-insurgency operations. The Philippines Supreme Court has also sustained the constitutionality of military operations in which large areas or "zones" are surrounded or checkpoints established, and residents are subjected to searches, questioning, and arrest.

The total war/approach policy called for the establishment of government-sponsored "vigilante" groups. In 1987 President Aquino gradually disbanded the Civilian Home Defense Force (CHDF), a particularly violent vigilante group which had been responsible for repeated human rights abuses under President Marcos. In its place she created the Civilian Armed Forces Geographical Units (CAFGUs). Many CAFGU members are ex-CHDF members. The CAFGUs and other government-sponsored vigilante groups are the most frequent violators of human rights. In March 1990 the Philippine Senate Committee on Justice and Peace recommended that the total war policy and the related vigilante actions be ended because of the heavy toll of civilians injured by its implementation.

Among those injured by the total policy are human rights lawyers and activists. They have become targets of the military and vigilantes. In the five years since the February 1986 Revolution, six human rights lawyers have been killed.² In addition, several members of non-governmental human rights organisations such as the Task Force Detainees of the Philippines (TFDP) and the Philippine Alliance of Human

¹ Philippine Senate Committee on Justice and Peace, Report on the Human Rights Situation in the Philippines, 29 March 1990.

² Free Legal Assistance Group, Incidents of Violence Against Human Rights Lawyers from August 1986 to June 1989 (July 1989).

Rights Advocates (PAHRA) have been killed, disappeared, arrested, and harassed.³
The violations against human rights advocates are due in part to the military practice of characterizing human rights groups as "fronts" for the CPP-NPA.

Immediate Setting for the ICJ visit

During the period just preceding the visit of the ICJ delegation, the Philippines was subjected to a remarkable series of natural disasters and other traumatic events. There were a severe earthquake, a drought followed by a typhoon, an oil-price increase and other economic shocks from the Gulf crisis, a series of labour strikes with related violence, a resumption of the armed insurgency, several attempted coups by disgruntled military officers, bomb explosions apparently set by dissident military personnel, and political instability in the run-up to the 1992 Presidential elections. Very recently Mt. Pinetubo erupted causing widespread damage and loss.

On 16 July 1990, a powerful earthquake rocked the northern Philippines killing more than 400 people and destroying several buildings and bridges. Baguio, a popular tourist resort, was worst hit; several hotels and factories collapsed. The damage caused by the earthquake was estimated at over US\$350 million.

The earthquake was followed by a typhoon causing severe damage and flooding Manila. The disasters came when many parts of the country were already suffering from a drought which had reduced farm production and income, caused factories to be closed, and otherwise adversely affected industry.

The Philippines was hit hard by the crisis in the Persian Gulf after the Iraqi invasion of Kuwait. Among the ASEAN⁴ countries, the Philippines was worst hit by the rise in the price of oil. The nation's oil import bill was expected to exceed US\$1.5 billion and to force the government to cut other imports needed by the country's import-dependent industries. The fragile economy was also threatened by the unexpected return of about 650,000 Filipino contract workers who had been in Kuwait, Iraq, and Saudi Arabia, and the consequent loss of nearly US\$1 billion in salary remittances they had been sending home annually.

³ See Philippine Senate Report, note 1.

⁴ Association of South East Asian Nations, a regional intergovernmental organisation.

With the announcement of increases in oil prices, there were strikes by workers for increases in the minimum wage. At the time of the ICJ delegation's visit, transport companies went on strike demanding an increase in fares and disrupting life in Manila and other cities. A national strike (Welgang Bayan) was held on 24 October. The strike sought approval of an across-the-board wage increase of 38 pesos. The 24 October strike was considered the biggest nationwide strike since President Aquino came to power. Four people were killed and 17 buses were destroyed in fires during the strike. The government blamed underground organisations of the Communist Party. The Armed Forces Chief of Staff General Renato de Villa reportedly said that the burning of vehicles and other acts of terrorism were part of a plan by Communist and military rebels to overthrow the Aquino administration by creating a situation in which an insurrection could occur.⁵

At the time of the ICJ delegation's visit, President Aquino had declared a cessation of hostilities against the New People's Army (NPA) in Manila and the provinces of Benguet, Mountain Province, and Nueva Vizcaya which were severely damaged by the July earthquake. The NPA had earlier declared a ceasefire in those areas to facilitate rescue and relief operations. Even before the ICJ delegates left Manila, the truce broke down and the NPA announced that it was resuming operations in areas where President Aquino had declared a ceasefire. It has since been reported that the "Government is pursuing the peace dialogue with the armed left despite its accusations of leftist provocations and violence in the Welgang Bayan (national strike)."⁶

Immediately before and during the ICJ delegation's visit, there were frequent rumors of coups against the government and nearly every evening was marked by bomb explosions at businesses, hotels, and other visible locations. The bombings caused several casualties. Because of bombings and threats of assassination, Congress took an unprecedented six-day recess on 21 August. Armed Services Committee Chairman Senator Ernesto Maceda was quoted as saying, "We are sitting ducks here."⁷

⁵ [Manila] Daily Globe, 25 October 1990.

⁶ Manila Chronicle, 27 October 1990.

⁷ Far Eastern Economic Review, 6 September 1990.

On 4 October, rebel soldiers led by Lt. Col. Alexander Noble overran three military camps in Mindanao and declared Mindanao independent. On 8 October, however, the rebel leader surrendered. President Aquino in a televised statement called for military reforms in Mindanao to improve command and control of the military units there. She also urged Congress to adopt anti-coup legislation increasing penalties for the offence of rebellion.

At the time of the ICJ visit, President Aquino was entering the last 20 months of her Presidency. She had not confirmed whether she would again stand for the Presidency in the election scheduled for 1992. Manoeuvres by various politicians and political groups in preparation for the 1992 elections apparently add to the uncertainties faced by the country and make it more difficult for the government to resolve its grave political, military, and economic problems. Indeed, the Davide Commission, appointed by the President to enquire into an unsuccessful but quite bloody coup in December 1989, encouraged President Aquino to declare her political plans so as to bring some political stability. At the time of the visit it was too early to say whether human rights would dominate the 1992 election in the same way as it figured in the 1986 election that triggered the "People's Power Revolution."

While the delegation was conducting its visit, the verdict in the Benigno Aquino murder trial was announced. On 28 September 1990, after a seven-year trial, the court sentenced an Air Force General and 15 other military officers to double life imprisonment for the 21 August 1983 assassination of Senator Aquino. Twenty other accused were acquitted and cases against General Fabian Ver, Armed Forces Chief under President Marcos, and two others were set aside pending their arrest.

When the verdict was announced, newspapers and commentators uniformly acknowledged that it did not answer the question as to who master-minded the assassination. As the Court itself acknowledged: "Marcos and his wife Imelda had been condemned by the people through sheer logic but nobody came forward to testify against them, and it acted only on charges filed."⁸ President Aquino announced on television: "I have strong feelings about the verdict However, my position as President prevents me from explaining my true feelings The decision was clear, but I would have wished for a further statement on who ordered his death." She also deplored the "sluggish process of justice."

⁸ Manila Times, 29 September 1990.

The verdict on Aquino's murder, however, revived debate on the achievements of the "People's Power Revolution."

People's Power Revolution

In order to understand the present human rights situation in the Philippines it is necessary to recall the events which gave rise to the present government. The brazen killing of former Senator Benigno ("Ninoy") Aquino by military officers associated with President Marcos on 21 August 1983 has been considered the "beginning of the end of Marcos." The killing shocked the world and reminded Filipinos of the many human rights abuses under the Marcos government. The killing also united diverse sections of Filipino society into open conflict with Marcos. Even within the army a group of young officers opposed Marcos and formed an organisation called "Reform the Armed Forces Movement" (RAM). This organisation surfaced publicly in 1985 and claimed membership of 70 percent of the officers commissioned since 1972.⁹ It was believed then that RAM was planning a coup d'etat to depose Marcos and assume power.¹⁰

Continuous and concerted protest marches and demonstrations by various sections of society and the economic crisis prompted Marcos to announce in November 1985, a "snap" presidential election to restore his legitimacy. Mrs. Aquino ran against Marcos as the candidate of the joint opposition. Some events which followed the election and led to the "Peoples Power Revolution" are as follows:

7 February 1986 -- The polling took place and massive fraud was witnessed by poll watchers, voters, and journalists.

14 February -- The Batasang Pambansa (National Assembly) officially proclaimed Marcos the winner. The same afternoon, Mrs. Aquino stood before an estimated half a million supporters and proclaimed her victory. She announced a nationwide civil disobedience campaign. The Catholic Church denounced the election fraud and declared its support of Mrs. Aquino.

⁹ Far Eastern Economic Review, 30 January 1986.

¹⁰ Anne MacKenzie, *People Power or Palace Coup: The Fall of Marcos in Regime Change in the Philippines, The Legitimation of the Aquino Government, Political and Social Changes Monograph 7* (1987).

22 February -- The then Defence Minister Enrile and Deputy Chief of Staff Ramos went with 300 troops and RAM officers to Camp Aguinaldo, the Defence Ministry's Headquarters. They announced that they no longer accepted Marcos' authority and called on Marcos to resign. Following this General Ramos joined his troops at nearby Camp Crame.

23 February -- General Ver, Chief of Staff, cousin and close associate of Marcos, dispatched about 500 marines with tanks and other armoured vehicles to attack Camp Aguinaldo. Those troops were stopped by tens of thousands of people gathered in response to a call by Cardinal Sin to protect Enrile and Ramos. After a night-long stand off, the troops under Ver returned to their base. Enrile and troops under his authority evacuated Camp Aguinaldo and joined Ramos in Camp Crame.

25 February -- As in previous days, thousands of people kept vigil in the EDSA boulevard leading to Camp Crame. Faced with the total disarray and breakdown of his authority, Marcos, Ver, and their families left at 9:00 p.m. for Clark Air Base to travel to the United States.

The large number of people assembled at EDSA boulevard and their courage in facing Marcos' troops thus resulted in the overthrow of the repressive government of President Marcos. The role played by Enrile and Ramos in tilting the balance of power in favour of Mrs. Aquino, however, also enabled the army (at least those belonging to RAM) to claim credit for the overthrow of Marcos. The combination of a spontaneous popular revolt and a rebellion of some sections of the army has made a Filipino political scientist characterise the "People's Power Revolution" as an "[u]nfinished insurrection and an unfinished coup d'etat."

Francisco Nemenzo, Professor of Political Science at the University of the Philippines, who analyzed the events of February 1986, elaborates as follows: "The country . . . was at the verge of insurrection after Marcos cheated brazenly in the February elections. Cory Aquino's plea for 'active non-violent civil disobedience' prepared the ground. But the process was only starting to gain momentum when all of a sudden Minister Juan Ponce Enrile and Gen. Ramos staged the mutiny on 22 February."

This seminal event was described as follows:

"In his original announcement, Enrile made it appear that the mutiny was a spontaneous response to Marcos' order for their arrest. Now, it is known that it was not all that spontaneous. The RAM boys, with his encouragement and

advice, plotted a coup against Marcos which was all ready by September 1985 . . . and they held it in abeyance when Marcos called for snap elections.

"The coup plan was resurrected immediately after the elections but was discovered by Gen. Ver before the plotters could put it into effect. The arrest on 21 February of the RAM striking force that was tasked with capturing Marcos and his family caused Enrile and his RAM boys to panic. They had to stage the mutiny on 22 February, realizing that a delay could be fatal.

"Thus the plan for a coup was replaced with an unplanned mutiny . . . the goal of capturing Malacanang (Presidential Palace) gave way to the suicidal idea of staking out in Camp Crame and Aguinaldo . . . the mutineers could not pack sufficient strength to cancel out the overwhelming superiority of the loyalist forces in Metro-Manila.

"Only then did people's power became a crucial factor . . . on the other hand, the presence of people prevented the mutiny from escalating into a coup when the balance of forces changed."¹¹

The implications of this "unfinished coup" are discussed later when dealing with the role of the military in the post-Marcos period.¹²

Mrs. Aquino's Revolutionary Government

With Marcos' departure, Mrs. Aquino assumed office as President. On 24 March 1986, she issued Proclamation No.3, "Declaring a national Policy to implement the reforms mandated by the people, protecting their Basic Rights. Adopting a Provisional Constitution, and providing for an orderly transition to a government under a new Constitution." This Provisional Constitution, known as the "Freedom Constitution," reproduced many provisions of the 1973 Constitution under which Marcos ruled, but the President exercised legislative and executive powers with the judiciary remaining intact and free to exercise its judicial functions.

¹¹ Randolph S. David, Francisco Nemenzo, Alexander R. Magno, & Emmanuel Lallana, *Coup d'Etat in the Philippines: Four Essays, the Philippines in the Third World Papers, Series No. 44* (1990).

¹² See Lyons & Wilson, *Marcos and Beyond the Philippines Revolution*, Kangaroo Press (1987).

The legitimacy of Mrs. Aquino's "revolutionary government" was challenged in the Supreme Court. The Court dismissed the petition stating:

"The Aquino Government is not merely a de facto but is in fact and law a de jure government. The people have made their judgment and have accepted the Aquino Government which effectively controls the entire country . . . All the eleven members of the Supreme Court, as reorganized, have sworn to uphold the fundamental law of the Republic under her government."

The proclamation of a "revolutionary government" was considered a bold move since the then Defence Minister Enrile and others had reportedly wanted her to retain the 1973 Constitution.

In other early acts, Mrs. Aquino restored habeas corpus (Proclamation No. 2 of 24 March 1986) and repealed Marcos' Presidential Decrees (P.D.) No. 1836 and P.D. No. 1877/1877-A which had allowed for indefinite detention without charge or trial. P.D. 1834, which had raised the maximum penalty for subversion from life imprisonment to death, was also repealed. She also released many political prisoners, including alleged members of the Communist Party of the Philippines and its armed wing, the New People's Army (NPA). Within the first few months, about 500 political prisoners were released.

The new government ratified the International Covenant on Civil and Political Rights and its Optional Protocol as well as the Covenant on Economic, Social and Cultural Rights. It also ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as Additional Protocol II to the 1949 Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts.

A Presidential Committee on Human Rights (PCHR) was established with a mandate to investigate human rights violations and recommend safeguards to prevent such violations from recurring. Its members included prominent human rights advocates in the Philippines.¹³

Mrs. Aquino deservedly attracted widespread international praise for taking these positive steps immediately in fulfillment of her "human rights mandate." While the

¹³The PCHR and its successor Commission on Human Rights are discussed in Chapter 19.

forms of institutional democracy were initially restored, however, Mrs. Aquino was criticised for not using her legislative powers to deal with fundamental socio-economic problems faced by the country. For example, she was faulted for not proclaiming a comprehensive land reform program and other economic reforms to deal with poverty, unemployment, etc. Her administration also accepted continuing responsibility to repay a crippling foreign debt of US\$ 28 billion, another legacy of the Marcos era.

The 1987 Constitution

In keeping with her promise to establish a constitutional government, Mrs. Aquino appointed a fifty member Constitutional Commission in May 1986. The Commission began its work on 2 June and completed its task of drafting a Constitution in October 1986. On 2 February 1987, the draft constitution was endorsed by the people in a plebiscite, with an 85 percent poll and a 75 percent vote in favour of the new Constitution.

The 1987 Constitution is the third the country has adopted since 1935. The 1987 Constitution contains in its Preamble the objective of "build[ing] a just and humane society and establish[ing] democracy under the rule of law." Other important highlights of the Constitution are contained in its declaration of principles and basic policies.

The role of the Armed Forces of the Philippines is specifically delineated, as is the role of the government. The Philippines declared itself a nuclear-free zone. Protection of human rights, particularly the rights of women, workers, cultural minorities, community organisations, and the right to a healthy ecology are declared state policies.

Bill of Rights

The Constitution adopts in Article III a comprehensive Bill of Rights. Notable features include Section 12, expanding Section 20 of the 1973 Constitution. Under the 1973 Constitution, any person under investigation had the "right to remain silent and to counsel," whereas in the present Constitution the person has a right to remain silent "and to have competent and independent counsel preferably of his own choice." Under the present Constitution, only a judge may issue a search or arrest warrant. Under the 1973 Constitution, this power was exercised by judges and "such other responsible officers authorized by law."

The Bill of Rights also prohibits the arrest of persons solely for their political beliefs and aspirations (Section 18). Torture and intimidation which would vitiate the free will of the accused are prohibited, as well as secret, solitary, incommunicado, or similar forms of detention (Section 12). The Constitution also provides the right to bail (Section 13) and limits the imposition of the death penalty (Section 10).

Legislature

The 1987 Constitution establishes a bicameral legislature, with a Senate composed of 24 Senators elected from the country at large and a House of Representatives composed of not more than 250 members -- most elected from legislative districts with some appointed by the President to represent sectoral groups.

All members of the Congress must make full disclosure of their financial and business interests. They also have to notify the House of potential conflicts of interest that may arise from the filing of proposed legislation of which they are authors.

A system of people's initiatives and referenda is to be established to allow the public to propose and enact laws directly or approve or reject any act or law passed by the Congress.

Executive

Appointment of Cabinet members, heads of government departments and agencies, as well as other positions in the Executive are made by the President, subject to the Congressional Commission on Appointments. The appointed persons remain in office at the President's pleasure subject to good behaviour, etc. Cabinet members are not members of Congress.

Martial Law

The power of the President to declare martial law, as exercised by Marcos, was a cause of serious concern. In the 1973 Constitution, the Prime Minister could in "case of invasion, insurrection or rebellion, or imminent danger thereof, suspend the privileges of the writ of habeas corpus, or place the Philippines under martial law." The present Constitution provides for several safeguards.

For example, the President may suspend the availability of the writ of habeas corpus or declare martial law only for a period of 60 days. The President must report to Congress within 48 hours from the proclamation of martial law or the suspension

of habeas corpus. Congress may revoke the proclamation or suspension and the President cannot set aside Congress' revocation. If the President wishes to extend the period of proclamation or suspension, she must obtain authorization from Congress. The proclamation or suspension may be questioned by any citizen through the filing of a petition with the Supreme Court. The Supreme Court must issue its decision within 30 days from the filing of the petition.

Furthermore, a state of martial law does not suspend the operation of the Constitution or the functioning of the courts or legislature. The suspension of habeas corpus applies only to persons charged for rebellion or offences connected with invasion. During the suspension of the writ, any person arrested or detained must be charged within three days, or be released.

Judiciary

Under the 1973 Constitution, the Prime Minister appointed the members of the Supreme Court and the judges of lower courts. In contrast, under the present Constitution, appointments are made by the President from a list of three nominees prepared by the Judicial and Bar Council. The Judicial and Bar Council consists of seven members of whom three -- the Chief Justice, the Secretary of Justice, and a representative of Congress -- are ex officio members and the other four are a representative of the Integrated Bar of the Philippines, a Professor of law, a retired Supreme Court Judge, and a representative of the private sector.

Autonomous Regions

The Constitution provides for the creation of two autonomous regions in Muslim Mindanao and the Cordilleras. Those regions share common distinctive historical and cultural heritage and economic and social structures. Congress is charged with enacting an organic act for each autonomous region which will come into existence when approved by a majority of the votes cast by the constituent units in a plebiscite. Only provinces, cities, and geographical areas which vote in favour of the act will be included in the autonomous region.

Accountability of Public Officers

The office of the Ombudsman is retained and its powers are set out in greater detail than the 1973 Constitution. The Ombudsman has powers to investigate on his/her own initiative or on complaint of any act or omission by any public official, when such an act or omission appears to be illegal, unjust, improper, or inefficient.

The Ombudsman also has powers to direct any public official to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties, and to request any government agency for necessary assistance and information as well as to examine pertinent records and documents.

Social Justice and Human Rights

A new provision (Article XIII) on social justice and human rights is included in the present Constitution. In its definition of social justice, Article XIII focuses on social and economic rights. Full protection is to be afforded to labour. The just distribution of all agricultural lands is to be promoted and the rights of farmers and fisherfolk respected. A program of urban land reform and housing must also be established, as well as a system of health care. The Constitution specifically recognizes the role of independent people's organisations to enable the people to pursue and protect their legitimate and collective interests and aspirations through peaceful and lawful means.

Under the same Article, a Commission on Human Rights is created. It consists of a chair and four members, the majority of whom shall be members of the bar. The Commission shall have the power to investigate, on its own initiative or on complaint by any party, all forms of human rights violations, provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection. The Commission also has powers to visit jails, prisons, or detention facilities, and to establish a continuing programme to enhance respect for the primacy of human rights.

Chapter 2

Economic and Social Conditions

Economic and Social Background

During the Marcos era, cronyism, corruption, and neglect of the economy became established features of Philippine polity. After his ouster, the growth rate increased from 1.5 percent in 1986, to 5.7 percent in 1987 and 6.58 percent in 1988. In 1989, the economy slowed down and the growth rate was 5.55 percent. In 1990 it continued to deteriorate and the forecast was bleak for 1991.

The economy has been affected by the natural calamities that struck the country and the rise in oil costs due to the Gulf war. Some economists also debate the wisdom of many economic decisions of the Aquino administration -- such as the commitment to repay the foreign debt incurred during the Marcos period. Allegations of serious economic mismanagement and corruption also continue to hamper economic development. The results of the so-called economic recovery itself are also debated by academics and social activists, who believe that it has made little difference to Filipinos living in poverty. According to a 1989 World Bank report, among the problems that the government still has to address over the medium term are the "weak public and social infrastructure, widespread income inequalities and poverty."¹⁴ Similarly, a 1988 World Bank study stated that the Philippines has "one of the most unequal income distributions among the middle income countries." This study estimated that the top 20 percent of the population controlled 51.1 percent of the total income of the country.¹⁵

Among the economic and social concerns studied by the ICJ delegation are poverty, health, housing, literacy and education, the environment, population, overseas employment, and the debt problem.

¹⁴ Philippines Business Journal, 18 September 1990.

¹⁵ Far Eastern Economic Review, 12 July 1990.

Poverty

The number of Filipino families living below the poverty line is estimated to be 5.67 million or 59.3 percent of all families. The National Economic and Development Authority (NEDA) defines the poverty line as "the monthly income required to satisfy almost 100 percent of the nutritional requirements and basic needs of a family of six." NEDA estimates this minimum monthly income for a family of six at 2,382 pesos for the whole country. It is set at 5,282 pesos for Manila, 2,912 pesos for provincial urban areas, and 2,066 pesos for rural areas.¹⁶ Among those living below the poverty line, a large number subsist on incomes well below the minimum defined by NEDA. A study by the University of the Philippines School of Economics found that in 1988, 30 percent of the population was living on an equivalent of US\$ 50 (1,500 pesos) for a month for a family of six.

Nonetheless, President Aquino has repeatedly pointed to one important economic success of her government in reducing the number of Filipinos living below poverty line. She has said: "Given the bankrupt government I inherited, I think you should give me some credit for that."¹⁷

Health

The effect of widespread poverty is reportedly reflected in malnutrition particularly amongst children. "In the Bicol and Eastern Visayas regions, 27 percent of preschool children in 1989 suffered from either second or third degree malnutrition - a five percent rise over 1985 levels."¹⁸

According to the Department of Health (DOH), there were 1,582,469 births in 1987. Only 62 percent of deliveries were attended by medically qualified personnel. Associated with these births were 1,611 maternal deaths and 10,515 fetal deaths which is an indication of poor female health. There were also 50,803 deaths of children under one year old. The DOH also estimates that about a million pregnant women

¹⁶ Randolph S. David, Poverty in the Philippines: Its Social Roots, 4 Philippine Quarterly of Third World Studies No. 4 (1989).

¹⁷ Far Eastern Economic Review, 12 July 1990.

¹⁸ Id.

suffer from malnutrition and anaemia. In addition, endemic diseases such as tuberculosis, malaria, hepatitis, and typhoid make pregnancies more dangerous.¹⁹

Housing

Housing is another major problem, particularly in the urban areas. In Metro Manila alone, there is a backlog of 576,000 dwelling units or 17 percent of the total housing needs of the country. Having a house does not guarantee electricity or water. In Manila only 49.6 percent have their own water connections and only 44 percent have their own toilets. The corresponding figures for the rural areas are not available, but the availability of basic facilities are reportedly minimal or non-existent in remote areas. The observations of the ICJ delegation confirm those reports.

Literacy and Education

Compared to most developing countries, the Philippines' literacy rate is and has historically been very high. The current literacy rate is 83.0 percent with only a small variation between men and women. Public elementary and secondary education is free but the quality is considered uneven. Private schools cater to higher income groups and the students of these institutions garner most of the limited places available in universities. Moreover, there is quite a high dropout rate at all levels. For every 100 Filipino students who enter the school system, only 66 finish the 6-year grade school. Of these, 44 enter high school and only 36 complete it. Of the 20 who enter college only 12 manage to complete their studies.

Taxation

The tax system appears to affect the poor adversely. According to the World Bank,

"The poorest 30 percent of families paid 27 percent of their income, while the richest 30 percent paid no more than 18 percent. The middle income families paid the highest share of their family income to taxes: 32 percent, the great bulk of it in the form of indirect taxes (e.g. sales tax etc). The poorest 30 percent of

¹⁹The Philippine Family Planning Program, 1990-1994, Department of Health (1990).

families pay a much higher percentage of their already insufficient family income (20%) as indirect taxes than the richest 30 percent (11.8%).²⁰

Taxes on personal income and property contribute less than one-fourth of the government's revenue.²¹

Poverty and the Environment

Another concern is the degradation of the environment and its effect on the poor. In the words of Prof. Randolph David:

"Beyond the agrarian question which constitutes the single most important root of rural poverty, the country's rural poor also face new realities that endanger the very base of their livelihood. Both municipal fishing and marginal farming in the countryside are threatened by massive land erosion which has led to the drying up of rivers, sudden flooding, and the permanent destruction of irrigation systems. . . . The culprits are the faceless logging concessionaires who collaborate with big time politicians and military officials to strip the forests. . . . In an earlier period, limited access to the country's rich natural resources may also have saved millions of the rural poor from starvation. But these resources are rapidly vanishing or being depleted as fast as their use or control is being privatized, for such appropriation by private interests has always been at the expense of the livelihood of those who traditionally have established ecologically sound relationships with these natural resources."²²

The following data²³ reveal the extent to which the environment has been destroyed:

- Forest cover has been reduced from 54 percent in 1968 to 22 percent in 1988;

²⁰ See note 17.

²¹ See *id.*

²² See *id.*

²³ IBON Facts & Figures XII, No. 15, 15 August 1989.

- About one billion cubic metres of top soil necessary for effective agriculture is lost to erosion every year;
- Of the country's 59 major watershed areas, 19 are now critically denuded;
- No city in the Philippines has a complete sewerage system. In Manila, only 10 percent of the city has a sewerage system;
- A total of 40 rivers, including all the rivers of Metro Manila are now considered biologically dead due to pollution;
- From about 500,000 hectares in the 1920s, mangrove forests today cover only 30,000 hectares.

A World Bank report on the problems of country's natural resources management confirms the fears that the depletion of natural resources will leave little for the next generation of Filipinos to use. This report states: "The licence terms and associated regulations, the minimal taxes and fees relative to the value of the standing timber, the insecure tenure and the discretionary power of the bureaucracy have encouraged the (logging) operators to 'mine' the forest (or cut and get out) and employ bribery to obtain concessions to evade regulations."²⁴ The impact of these phenomena on indigenous communities is of particular concern.

Recognizing the problem, the Senate is considering two bills. One seeks to contain logging to seven of the country's 73 provinces which have more than 40 percent of forest cover and the other seeks to impose a total logging ban for two years. It is envisaged that a compromise bill may be adopted taking into account the economic factors involved in imposing a total ban on logging. The Ministry of Energy, Environment and Natural Resources also plans to reduce by the end of 1990, the 103 timber licenses (covering 4.4 million hectares of forest) to 30-50 concessions. That policy, if implemented, may considerably arrest deforestation.

The damage to the environment is also aggravated by the growing population and the resulting pressure on natural resources.

Population

The latest estimate of the University of the Philippines Population Institute (UPPI) placed the country's population at 62.0 million. That figure is based on an

²⁴ Far Eastern Economic Review, 23 March 1989.

annual population growth rate of 2.4 percent as of 1988 and is expected to double by 2019.²⁵

The National Population Program was launched in 1970 and according to the DOH document:²⁶ "On the whole, an assessment of the program's performance indicates that its achievements have been modest and limited." In President Aquino's first two years, the Population Commission (POPCOM) came under the administration of the Secretary of Social Welfare and Development, Mita Pardo de Tavera. It is widely believed that Ms. Pardo de Tavera was against any significant efforts at population control. She is reported to have said that "the creation of new life involves religious and spiritual values that the government should not interfere with."²⁷ She confirmed this view in her interview with members of the delegation. This view, of course, reflects the position of the Church hierarchy; although at the grass roots, Church officials are most reactive to the problems of uncontrolled fertility.

In 1988, President Aquino transferred the programme to the Health Department. The population programme, however, suffered as a result of the lack of direction between 1986-1988. It is estimated that despite a revitalised programme, it would take until 1992 for the number of people using birth control to return to 1986 levels, leaving a six year gap in effective family planning. "Demographically, it comes at a particularly bad time for the babies born just before the start of the Marcos population programme in 1970 are reaching their most fertile years."²⁸ Typically, birth control is least practised by those who can least afford large families.

Overseas Employment

For the disadvantaged, one way of breaking out of their cycle of poverty is to work overseas. A total of 618,750 people were officially registered as overseas workers. If unregistered workers and Filipinos illegally residing and employed overseas are included, the figures reached 1,000,000 making the Philippines probably

²⁵ See note 19.

²⁶ Id.

²⁷ See note 17.

²⁸ See id.

the largest exporter of human labour in the world. It was estimated that prior to the Gulf War at least US\$2 billion was being repatriated by overseas workers annually -- representing the major foreign exchange earner for the country. The Gulf crisis thus had a dramatic impact on the national economy, with the repatriation of tens of thousands of workers from Iraq and Kuwait.

Emigration, however, also drains the country of the intellect and manpower needed to rebuild it.

Foreign Debt

A major economic constraint faced by the government which is a legacy of the previous government is the debt burden. When President Aquino took power, her administration was saddled with a US\$29 billion debt. Two thirds of the debt is owed to foreign banks and the rest is owed to governments and multilateral institutions.

A significant portion of the money is believed to have been taken abroad by Marcos and his cronies from loans which were not properly monitored by the lending agencies. At least some of this activity appears to have been encouraged by the foreign banks themselves. The profligate lending practices of the foreign banks have thus led to calls for them to be accountable for their own negligence and misconduct.

The present administration adopted a policy of meeting the debt obligations, even though there were demands from various sections of the Philippine community for the repudiation of the debt. To help reduce the debt, the administration adopted various schemes such as debt-for-equity exchanges, but it appears that such measures have not made any significant dent in the national debt burden. There are also reports that these schemes have been misused by local businessmen.²⁹

The effect of the debt burden has been vividly described as follows:

"Of the 1989 national budget, amounting to P227 billion, exactly P100 billion was set aside for debt service, or 44 percent of the total, making it the biggest single item in the country's budget. On the other hand, only 19.5 percent had been allocated for economic and social services respectively.

²⁹ Philippine debt-equity scheme milked by local firms, Far Eastern Economic Review, 28 June 1990.

"Of the remaining balance of P127 billion after the debt service has been deducted, P55 billion is earmarked for salaries of personnel and P24 billion for maintenance and other operating expenses. This leaves only about P48 billion for actual development projects. Note that this amount still includes defense. Furthermore, a large chunk of the health budget is eaten up by tertiary health care, the same way that a large portion of the education budget goes to support state universities and colleges, which many children of the poor will not even dream of entering. But even assuming that the remaining budget is to be allocated only to the poorest half of the population, (30 million Filipinos), the following are the per capita allocations we would get:

Education, Culture and Manpower Development: P598.40

Health: P146.10

Social Security, Labour and Employment: P32.02

Housing and Community Development: P8.00

Others: P96.06

Total per capita benefits for the poor: P880.58

"The total of P880.58 must be placed alongside the per capita debt service that every Filipino paid in 1989: P1700."³⁰

Various sections of the society favour a policy of at least repudiating those debts which were squandered by the former President and his associates. Even Jaime Cardinal Sin, Archbishop of Manila, who is known for his conservative views and generally supports the present administration's policies, advised the ICJ delegation that he now favoured this option, drawing the analogy that if a family is starving, you buy food before paying off the mortgage. One well known example of ill-advised debt was the debt incurred for the uncompleted nuclear power plant at Bataan. The government is paying US\$133 million a year on the idle US\$2 billion plant.

After the July earthquake, the House of Representatives passed a resolution on 24 July 1990, strongly calling for a two and a half year suspension of debt payments. Prior to this proposal the Senate had considered a bill in 1988 to put a ceiling on debt payments.

Some critics point out that such a step, if taken, is fraught with problems. It would force creditor banks to declare any debts in arrears as nonperforming loans

³⁰ See note 23.

and they could then terminate the revolving trade facility. It is also argued that if the Philippines reneges on the debt, it will never be allowed to raise a foreign loan again, however secured or beneficial.

The Committee on Economic, Social and Cultural Rights in its general comments on "International technical assistance measures" under Article 22 of the International Covenant on Economic, Social and Cultural Rights has identified the debt crisis as one area that requires international assistance. The Committee further stated: "In the light of the debt crisis economic adjustments will be necessary and some austerity measures will be unavoidable. It is at these times that it becomes more, not less important to protect the most basic economic, social and cultural rights."³¹

Conclusions and Recommendations

The overthrow of Marcos and his associates revitalised the economy and contributed to an increase in the economic growth rate. Several natural calamities, the Gulf crisis, and the nation's debt burden have severely affected the economy, further impoverishing those who are already poor. Pervasive inequality and poverty remain, as they have previously been, the major causes of social and political tensions faced by the country.

The Philippines is unable to educate and house its population adequately. Millions live in substandard accommodation without fresh water, sewerage/septic systems, and healthy food. Many lack adequate education and health care. The government must address these problems urgently. The people must be able to see, not merely hear, that the problems are uppermost in the government's and the legislature's concerns.

In view of the complexity and seriousness of the debt burden, it is essential that the government strive for maximum consensus at the national level and seek international assistance and cooperation to deal with the problem. The international community must respond to the debt burden promptly and sympathetically, so as to find solutions that would reduce its effect on the people. It should assist the Philippines in its efforts to recover moneys pilfered by Marcos and his associates. In view of the benefits gained by the countries in which such moneys were invested, a substantial forgiving of foreign debt to the Philippines

³¹ International Service for Human Rights, Human Rights Monitor No. 8 (April 1990).

should be urgently considered and a moratorium on interest and principal repayments voluntarily granted in the meantime.

Chapter 3

Employment and Labour

As of January 1990, the country's workforce stood at 24 million. The unemployment rate was estimated at 8.6 percent and almost one third of those employed were considered underemployed (working less than 40 hours a week).³²

The government remains the largest employer with 1.5 million employed in various government departments (excluding the armed forces). Their number constitutes 6.8 percent of the total employed. The government workforce has historically been disproportionately bloated. The magnitude of the government sector is a reflection of the patronage system that has become an integral part of Filipino society. When President Aquino took power, she promised to trim the bureaucracy and reorganize government corporations. Between 1986 and 1987 the number of persons employed by the government was reduced drastically and was estimated at 565,894. By 1989, however, the number had tripled to 1.5 million, surpassing even the 1985 level. Some critics suggest that there has been no real streamlining of government departments; instead, Marcos' appointees were removed and were replaced by Aquino supporters.

Rights of Public Sector Employees

Article 244 of the Labour Code provides for the right of public sector employees to organize. Members of the armed forces, police, firefighters, and jail guards, however, do not have the right to organize.

The provisions for registration of employee organisations and for certification elections to determine the bargaining agent are similar to those relating to private sector workers. Collective bargaining, however, excludes matters that require "appropriation of funds" or "the exercise of managerial prerogative." Therefore, there cannot be any negotiations over salary increases, appointments, promotions, employment duties, disciplinary measures, and retirement benefits. Under Republic Act 6758 of 1989, public sector employees salaries are to be based on job evaluation studies performed by the Department of Budget and Management.

³² IBON Fact Sheet, Socio-Economic Indicators (1989).

In June 1987 Executive Order 180 promulgated guidelines for the exercise of the right to organise by public sector employees. Under Rule IX of this Executive Order, disputes are to be settled by compulsory arbitration and strikes are not allowed.

Trade Unions

Of the 24 million people in the labour force, not more than 20 percent are unionised. Marcos' policy of "trade off," *i.e.*, curtailing rights for the sake of development, had the maximum impact on the rights of workers. In 1972, with the imposition of Martial Law, there was a total ban on strikes. After the lifting of Martial Law in 1981, some of the more egregious interferences with the rights of workers were removed. The ICJ noted in 1984 however: "Freedom of association and trade union rights are severely curtailed by provisions of the Labour Code. These provisions violate international labour conventions ratified by the Philippines."

Mrs. Aquino's initial appointment for Secretary for Labour, Augusto ("Bobbit") Sanchez, considered by many as a pro-union person, showed that she was breaking away from the previous government's anti-labour stand. At the end of 1986, however, the President replaced Bobbit Sanchez, apparently due to direct pressure from the military and business. The government did make some changes to existing labour laws to remove or modify those provisions on which adverse comment had been made by the ILO and other organizations including the ICJ. The changes included: (a) the repeal of Letter of Instruction 1458 that allowed employers to replace striking workers; (b) permitting a simple majority vote of union members to declare a strike instead of the two thirds vote previously required; (c) allowing workers to strike in cases of union busting without having to go through a cooling off period; and (d) the repeal of the "one union, one industry" provision.

The 1987 Constitution (Article II, Section 18) also reaffirmed the new government's policy by stating: "The state affirms labour as a primary social economic force. It shall protect the rights of workers and promote their welfare."

Further, under Social Justice and Human Rights, the Constitution (Article XIII, Section 3) states:

"The state shall afford full protection to labour, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self organization, collective bargaining and negotiations and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision making process affecting their rights and benefits as may be provided by law."

Nonetheless, arrests and harassment of union leaders and members have continued to occur in recent years, as they did during the Marcos period. The government has failed to reply to charges filed with the International Labour Organisation concerning arrests of labour leaders.

Labour Code

The Labour Code enacted by President Marcos in 1974 was amended in January 1989 by Republic Act (R.A.) 6715. The main proponent of R.A. 6715 was Senator Ernesto Herrera, former chairman of the Trade Union Congress of the Philippines (TUCP) and presently chairman of the Senate Committee on Labour. The new code is commonly known as the "Herrera law." It provides for the right to establish and join trade unions, the right to strike, collective bargaining, and unfair labour practices. Unions may be appointed as bargaining agents for collective bargaining agreements (CBAs) in certification elections by workers at places of employment.

Some of the essential characteristics of the Labour Code as amended by the "Herrera law" are as follows:

The right to organise

Except for resident aliens and managerial employees, all private sector employees have a right to "self-organization and to form, join or assist labour organizations of their own choosing for purposes of collective bargaining."

It is unlawful to "restrain, coerce, discriminate against or unduly interfere with employees and workers in the exercise of their right to self-organization."

Registration of unions

Registration of a union makes it eligible to act as a bargaining representative and, subject to majority support of the members, to be certified as an exclusive collective

bargaining agent. Other facilities are the right to see the employer's audited accounts, the right to own property, and the right to sue and be sued in the union's own name.

A union can register with the Bureau of Labour Relations, provided it has recruited at least 20 percent of the employees in the bargaining unit where it seeks to operate.

Previously at least 30 percent of workers should have been recruited by a union to be registered and this higher percentage was found unreasonable by the ILO. The present requirement of 20 percent has also been criticised by the ILO Committee of Experts on the Applications of Conventions and Recommendations. The Committee in its 1989 Report has recommended to the government to take "remedial action."

For a "federation" or "national union" to obtain registration, it must comprise at least ten trade unions. Each of the member unions should have been recognised as the collective bargaining agent in the establishment or industry in which it is organised. The ILO Committee has recommended "remedial action" to remove this minimum requirement of 10 unions for a "federation" or national union to be registered.

The Bureau of Labour Relations exercises supervisory jurisdiction over union activities and can order cancellation of registration, if a union or federation defaults in its obligations.

Collective bargaining

A Collective Bargaining Agreement (CBA) is initiated by the filing of a petition with the Bureau of Labour Relations, requesting a "certification election." A registered union or an employer can file a petition for an election with government officials called the "Med-Arbiters." The Bureau shall conduct a certification election within 20 days of the request.

At least, a majority of those workers eligible to vote must cast their votes and the union which receives the majority of the votes polled is recognised as exclusive "bargaining agent" for five years. More than one union can claim recognition; however, any challenge to an existing bargaining agent (union) must be supported by at least 25 percent of the work force at the bargaining unit.

Once a bargaining agent has been identified, the employer and the agent (union) have a duty to bargain in good faith. The substance of the agreement is valid for

three years. Sixty days prior to the completion of three years, either party may serve notice to modify or terminate the CBA. If not, it is automatically renewed for another three years. Machinery for resolution of grievances arising from the implementation or interpretation of the CBA is established under the CBA.

Unfair Labour Practice (ULP)

An Unfair Labour Practice can be committed either by employer or union. In addition to civil and criminal liability, resort to strikes and lockouts are legal to counter unfair labour practices. ULPs by unions include restraint or coercion of employees in their right to self-organisation; causing discrimination by the employer against any employee; refusal to bargain collectively with the employer; and demanding payment for union negotiations or settlement of a dispute.

ULPs by employers include interference with the right to self-organization; imposing a condition of non-union membership for recruitment; initiating, dominating, assisting, or otherwise interfering with the formation or administration of a union; and encouraging or discouraging membership in any union by discriminating with regard to wages, hours of work, and other conditions.

Until the adoption of the "Herrera law" all deliberate violations of CBAs were considered as ULPs, but this principle has changed. Under Article 261 of the present Code, only "gross" violations of a CBA constitute a ground for a lawful strike. Gross violations of a CBA are defined as flagrant and/or malicious refusal to comply with economic provisions of the CBA.

Trade union representatives have criticised this new provision stating that employers can disregard CBAs, by arguing that violations were committed without malice. Also, non-economic problems such as union busting and dismissal of union leaders are important aspects of CBAs and they cannot now be countered by resorting to strikes. According to the Bureau of Labour and Employment Statistics, 79.7 percent of the strikes in 1988 (January to September) and 70.7 percent in the same period in 1989 were caused by ULPs involving "union busting" or dismissal of union officers.

The right to strike

While recognising the right to strike, the Labour Code stipulates certain limits and procedures for organising a strike. Prior to commencement of a strike, notice should be filed with the Department of Labour and Employment (DOLE). The notice

period is called "Cooling off period" and it is 30 days in cases of a bargaining deadlock and 15 days in ULP cases. In cases of "union busting," a cooling off period is not necessary, but the union must obtain majority support for the strike and give seven days notice to DOLE. The DOLE has a duty to mediate during the "Cooling off period."

The strike notice in the case of "bargaining deadlock" should state the unresolved issues, the proposals, counter proposals and proof of a request made for a conference to settle the differences. In ULP cases, the strike notice should state the acts complained of and the "efforts taken to resolve the dispute amicably."

For any strike to commence it must be supported by a majority vote of the members of the union recognized as the CBA. If there is an "improved offer" during a strike the National Conciliation and Mediation Board (NCMB) must hold a ballot on the new offer and if a majority of the workers accept the terms, the strike must end.

A union officer who knowingly participates in an illegal strike and a worker or union officer who commits illegal acts during a strike may be declared as having lost their employment "status." It is unlawful for pickets to "commit any act of violence, coercion or intimidation or obstruct the free ingress or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares."

The most controversial provision of the "Herrera law" is Article 263(g). Under that provision, the Labour Secretary and/or the President can assume jurisdiction over any labour dispute, if in their opinion it is likely to cause a strike or lockout in an industry "indispensable to national interests." On assumption of jurisdiction, the dispute will be referred to compulsory arbitration by the National Labour Relations Committee (NLRC). If a strike has already commenced, on the notification of assumption of jurisdiction, all striking employees shall immediately resume work and the arbitration commission may seek the assistance of law enforcement agencies to ensure compliance with this provision. The President has the discretion to determine the industries that are indispensable to the national interest.

This provision is more or less a replication of Article 264(g) of the old code. Using this provision, the previous government had frequently declared strikes to be contrary to the national interest in textile mills, woodwork companies, semi-conductor industries, garment industries, and companies manufacturing plastic bags. Those strikes were certified for compulsory arbitration.

The ILO Committee of Experts in 1983 commented, "prohibition of strikes should be limited to essential services in the strict sense of the term, that is, those whose interruption would endanger the life, personal safety or health of the whole or part of the population . . .".³³

A similar comment has been made by the ILO Committee on Freedom of Association concerning Article 263(g) of the new code.

The Committee in its 268th Report of November 1989, has stated,

"Given that the new definition of industries in which strike action can be banned still does not conform to the Committee of Experts' definition of essential services in which strikes can be prohibited (namely, those whose interruption would endanger the life, personal safety or health of the whole or part of the population) the Committee can only request the Government through the National Tripartite Review Committee, to consider amending the Labour Code so as to bring it into conformity with the standards in this field. The Committee considers such amendment particularly appropriate in view of the proviso which is retained in section 263(g) giving the chief executive authority complete discretion to determine any industries as being 'in his opinion, [. . .] indispensable to the national interest,' and therefore subject to the strike ban."

Despite the recommendations made by the ILO, Article 263(g) still remains the same. A similar clause has been promulgated under Emergency Memorandum Order (E.M.O.) No. 5. This provision was promulgated immediately following the 1989 December coup and empowers the Secretary of Labour and the President to intervene and prevent strikes in any business deemed to be "affected with the public interest." In regard to E.M.O. No. 5, the International Centre for Trade Union Rights has appropriately commented:

"The argument underlying the emergency measures is that a strong economy is the best protection against further military destabilisation and that the right to strike threatens the economy and must be sacrificed where necessary in the interests of a strong economy needed to protect democracy. We do not accept

³³ 1983 Report of the ILO Committee of Experts International Labour Conference, 69th session, 1983 Report III (Part 4A) at 145.

this as valid since the right to strike is itself a basic tenet of a democratic society, democracy cannot be enhanced by suspending or abolishing it."³⁴

In addition to the comment on Article 263(g) of the new code, the ILO Committee on Freedom of Association has also stated:

". . . On the other hand, the Committee observes - as did the Committee of Experts when examining the Act in its draft form - that several major discrepancies with the obligations laid down in Convention No. 87, and its Articles 2, 3 and 5 in particular, are not eliminated in the new legislation. It is particularly concerned about Section 164 of the Penal Code. This relates to illegal strikes and imposes sentences of penal servitude for life for organisers or leaders and imprisonment for participation in strike pickets deemed to be for propaganda purposes against the Government, and was not affected by the amendments to the Labor Code."

The Committee has urged the government to do its utmost to bring the provisions of the Labour Code, as amended, into conformity with ILO Convention No. 87 giving particular attention to the points criticised by the Committee of Experts over the past several years, concerning the penalties for illegal strikes.

Problems Faced by Workers and Trade Unions

As in many developing countries, lack of unionisation is one of the problems faced in general by the workers. Of the approximately 24 million people in the work force (including the agricultural sector) only about 20 percent are unionised. Moreover, unionised workers themselves are fragmented among different unions. In 1989, there were 3,871 active unions with a membership of about 5,864,000 workers. The divisions among unions at times lead to clashes among labourers. For example, in the certification elections to determine the collective bargaining agents bitter clashes reportedly take place among various unions even leading to violence and killings in some instances.

Another problem faced by workers relates to the non-implementation of labour laws. For example, under the existing *minimum wage law* (R.A. 6717) of 1989 (wages were increased 15-25 pesos a day) a fine up to 25,000 pesos and/or imprisonment up

³⁴International Centre for Trade Union Rights, *Living Dangerously - Trade Unions in the Philippines*.

to two years can be imposed for non-payment of minimum wages. A 1989 survey by DOLE found that about 57 percent of planters in the sugar industry in Negros systematically underpaid workers. Despite widespread acknowledgement that minimum wages are not paid by employers, there has been no prosecution for violation of the law. The President responded to complaints that workers are not paid minimum wages by stating in January 1990, "I have standing directives to DOLE to hasten the operationalisation of the Regional Tripartite Wages and Productivity Boards and see to the effective compliance of the daily minimum wage legislation, including application of the proper sanctions particularly against wilful violations." Nonetheless, the ICJ delegation was told by representatives of trade union and non-governmental organizations that laws pertaining to minimum wages, conditions of work, health, and safety of workers were routinely violated by employers, particularly those running small units.

Violence and Intimidation of Workers and Trade Union Officials

Use of direct violence against trade unionists and intimidation in the form of arrests and detention seem to be common. Officials and activists of the militant Kilusang Mayo Uno (KMU) seem to be the main targets of such attacks. In September 1990, six workers were killed and their deaths reportedly linked to their strike action. On 28 September 1990 three striking workers belonging to the Goldilocks Bake Shop in Mandaluyong, Quezon City, were reportedly shot dead by company guards. They were killed in front of the factory and 25 others were reportedly injured. The three killed were Nestor Apolonia, Juan Grepal, and Oriel de la Torre -- all belonging to the striking Goldilocks Employees Labour Union. Two weeks prior to this incident, in another company -- Laws Textile Company -- three trade unionists were allegedly killed by company security men at the height of the certification elections. The three killed were Rogelio Magbuos, President of the Workers Union at the Bavarian Woodcraft Inc. in Caliraya, Laguna; Edwin Fernandez, first Vice President of the KMU affiliate National Federation of Labour Unions (NAFLU), and Jofo Atilano, education officer of the same organization.

In response to the killing of workers at the Goldilocks Bake Shop, Labour Secretary Ruben Torres reportedly "asked Defense Secretary Fidel Ramos to investigate the strike violence and expressed concern over the spate of unresolved killings among the ranks of the trade unionists."

Among the cases of extrajudicial killings that took place in 1990 which the delegation was able to document are:

Cornelio ("Oscar") Tagulao -- On 7 March 1990, Cornelio Tagulao former chairman of SIKLAB, a workers cultural group was shot by three unidentified men. The incident took place in front of the market in barangay San Carlos, Mariveles municipality. According to the deceased's close relatives, the intended victim was the deceased's brother Rufo Tagulao, president of the Alliance of Democratic Labour Organizations-Central Luzon (ADLO-CL), an affiliate of the KMU. The family including the deceased had been threatened by members of the 24th Infantry Battalion, to pressure Rufo Tagulao to discontinue his activities as a labour leader. The local military commander had reportedly told the victim's family that they were on the military's "Order of Battle." In a subsequent meeting, the military commander had accused the KMU of being a CPP/NPA member and threatened that as long as Rufo Tagulao and others remained in KMU, they will face problems.

David Borja -- On 29 April 1990, David Borja, foreman at Iligan Light and Power Company was killed in Iligan City, Lanao del Norte Province. He was President of his Company Union and former Chairman of the KMU in Iligan City and Lanao del Norte. Borja was driving his motorcycle when he was stopped by three armed men who shot him several times at close range causing Borja's instant death. Mr. Borja's house had been raided several times previously by members of the security forces. His killing is attributed to his union activities.

Mariano Caspe -- On 18 March 1990, Mariano Caspe, a machinist in Lianga Bay Logging Co. was shot on his way home after attending a workers rally in St. Christine against militarisation in Surigao. He was an active member of the United Workers of the Philippines (UWP-KMU) in Mindanao. The UWP reportedly had taken militant stand against the company and the local military officials were openly sympathetic to the logging company. Caspe's death is linked to members of the 28th Infantry Battalion, which was deployed at the site of the rally attended by Mariano Caspe.

Killing of Workers Involved in Industrial Disputes

The killing of six trade unionists and one member of management of the Golden Taxi Company is an example of the violence that has accompanied industrial disputes. The Golden Taxi Company is the largest taxi cab company in Metro Manila and is known for its resistance to unionisation. The Golden Taxi Workers and Employees Union (GTWEU) attempted to organise and represent the employees. The GTWEU is affiliated with the Alliance of National and Genuine Labour Organizations (ANGLO), which is in turn affiliated with the KMU. The employer refused to

recognise the union as the workers' representative and took action against its members.

The first strike action of GTWEU took place on 20 February 1989, for the alleged illegal dismissal of about 210 GTWEU officials and members. The strike ended when the management agreed to reinstate the dismissed workers.

A further strike started on 9 June over industrial issues and a few days later company "goons" opened fire injuring three striking workers. The strike paralysed the functioning of the company and on 20 June the management obtained a court order compelling the GTWEU to allow non-striking drivers to work. As a result, around 108 taxis were able to operate with the help of drivers belonging to the rival union. There were also allegations that the company taxis were taken out and subsequently driven by drivers illegally hired to replace the striking drivers. On 24 June, the GTWEU broke the court order and erected a human barricade outside the company premises. On 26 June, Galileo Dinoy, chairman of the GTWEU Board was killed by gunmen when he was walking towards his home in Tatalon, Quezon City. A niece of Dinoy who witnessed the killing identified one of the killers as Evans Altarejos, a police patrolman assigned to the Narcotics Command. The niece was able to identify Altarejos in an identity parade conducted following his arrest. The Union alleged that the suspect was on the payroll of the company.

On the same day Dinoy was shot, Danilo Acua, another GTWEU activist, was attacked in a restaurant near the picket line. He was hacked several times and shot in the stomach. He died two days later at the Philippine General Hospital, but before his death Acua identified two of the assailants. They were Jaime Gumba and Wilfredo Verdejo, bodyguards of the proprietor and employees of the company. The police have not been able to apprehend the two suspects explaining that they have gone into hiding.

On 24 August, an agreement was reached recognizing the GTWEU as the sole bargaining agent and providing for negotiations, as well as reinstatement of the 79 drivers dismissed during the strike.

On 7 September, GTWEU members eating in a restaurant in Paco were sprayed with bullets from a passing car (without a licence plate) by a gunman wearing military fatigues. In the shooting, Arturo Mirasol and Ildefonso were killed while six others were seriously wounded. Those wounded in the incident identified the gunman as Albert Abrera, a former member of the Philippine Marines and a former bodyguard of the proprietor.

On 3 November Sammy Estanil, also a GTWEU member, was shot in the head by someone in a passing car in Anakbayan, near the Golden Taxi terminal in Paco. Estanil died the next day in hospital.

On 24 December, unidentified gunmen shot and killed Jaime Javier, operations manager of the company. He was killed in his house at Pandacan, Metro Manila. The management believes that Javier was killed as a reprisal for the killing of the GTWEU members. The management responded by declaring a lockout on 26 December. On 17 January 1990, the Department of Labour and Employment ordered the company to end the lockout and operations were resumed on 19 January 1990.

Disappearances

The ICJ delegation also found clear evidence that trade union activists are one of the main targets of abductions and subsequent disappearances. KMU activists or members of its affiliate unions seem to be the principal victims. Most of those who were killed or disappeared were local union activists and not prominent union leaders. Some disappearances of trade union activists are described in later chapters of this report. The delegation found a significant tendency among all sections of the privileged end of Filipino society to typecast all such people as "Communists", as if that itself in some way justified violations of their human rights and regardless of the facts in particular cases or the poverty and deprivation which is the source of much union and individual resistance.

Arrests and Detention

Some union leaders of national stature as well as local union activists have been subjected to arrests and are reportedly charged for subversion so as to tarnish their credibility. Following are a selection of the cases brought to the attention of the ICJ delegation:

Crispin Beltran and Others -- In February 1989 Crispin Beltran, the Chairman of the KMU and ten officials of the KMU affiliate PAMA-SPFL (Panaghiusa sa Mamumuo Sa Atlas, Southern Philippines Federation of Labour-KMU) were arrested and charged with illegal associations under Article 147 of the Revised Penal Code. The arrests occurred shortly before a union certification election at the Atlas Mines -- the largest copper mine in Asia. The election was preceded by violence against PAMA-SPFL-KMU members in which ten were killed by vigilantes, as discussed below. Moreover, the arrests also reportedly coincided with a complaint filed by the Union

against a local Philippine Constabulary Commander (347th PC Co.) and an armed anti-Communist group called KADRE. The State Prosecutor alleged that the KMU and its affiliate PAMA-SPFL were "front" organisations for the CPP-NPA and stated: "All these organizations have as their aims, purposes and activities to overthrow the existing government."

Nestor Libalib -- On 6 March 1990, Nestor Libalib, a union leader in the Blue Bar Coconut Philippines Company, Tiaong, Quezon, was arrested without a warrant by Sergeant Honorio Dimaslig (237th PC) accompanied by a CAFGU member Nestor Quito. The military accused Libalib of being an NPA tax collector.

Lydia P. Sicat -- On 26 August 1990, Lydia P. Sicat, a trade union organiser and staff member of the Workers Alliance of Region III (WAR III-KMU) was abducted from her house in Barrio Dolores, San Fernando, Pampanga. At about 6:30 p.m., five armed men, who introduced themselves as operatives of the Narcotics Command from Camp Olivas, forced their way into her house and dragged her out at gun point. Following her abduction, her relatives and colleagues made enquiries at Camp Olivas and in other local police stations to ascertain her whereabouts. As had occurred in similar cases, the authorities denied knowledge of Sicat or her abductors. On 28 August, Sicat managed to escape her military captors from a safe house located in a poultry farm in Barangay Dela Paz, San Fernando, Pampanga. Sicat's captors reportedly belong to a special counter-insurgency unit of the military. While in their custody, she was not ill-treated but was interrogated mainly about the officers and staff of WAR III. She was accused of being an officer of the regional propaganda committee of the CPP-NPA and was told that WAR III-KMU is financed and controlled by the CPP-NPA. In 1989, Sicat, along with other staff members of the Peasants Alliance in Central Luzon were charged with rebellion. After four months in detention, she was acquitted and released by the Regional Trial Court. Two of Sicat's co-accused in that case, Maximiano Mesina Jr. and Felix Dimitri, were abducted in January 1990 allegedly by members of the PC and have been missing since then.

Trade Union seminar participants -- On 25 March 1990, about 60 members of the Capitol Regional Command (CAPCOM) raided a labour seminar in Fairview, Quezon City and arrested 60 participants. Those arrested included two instructors of the sponsoring organization, the Ecumenical Institute for Labour Education and Research (EILER). The seminar house was ransacked and some personal belongings of the workers were taken by the members of the raiding party. The military claimed they found guns and subversive documents but the caretaker of the house stated that these items had been planted. The arrested persons were detained at Camp Karingal,

Quezon City, and subsequently 58 were released. The two instructors were charged with subversion and were released on bail.

Labour Leaders Listed in the Military's "Order of Battle"

The "Order of Battle" is a list of persons wanted by the military for alleged subversion or for membership in the CPP-NPA. The inclusion of a person in an "Order of Battle" places that individual at risk, because it usually leads to arrest and in some cases killing by the military or associated counter-insurgency groups.

National Federation of Sugar Workers (NFSW)

Among the unions engaged in organising rural workers, the NFSW seemed to face major problems. According to the report of the Senate Committee on Justice and Human Rights: "Members of the labour union NFSW suffered from violations of their rights perpetrated by some members of the P.C., the CAFGUs and the Special CAFGU Active Auxiliaries (SCAAs). These may have been due to NFSW having been labelled by the military as a communist front and its members as communists or NPA sympathizers."³⁵

The NFSW was formed in 1971 by progressive priests and some trade unionists associated with Federation of Free Farmers. Due to its militant trade unionism, it has from its inception been labelled a Communist front. The Federation claims a membership of 85,000 but reported that it has lost some 10-15 percent of its members over the past year or two, a reduction it attributes to the harassment of its members by military, CAFGUs, and planters. Since 1986, 36 of its members have been subjected to extrajudicial killings, seven have disappeared, and 280 have been detained. Other members have been named by military in an "Order of Battle." In 49 haciendas a total of 4,311 NFSW members were forced to "surrender" as NPA rebels and a further 2,096 were compelled by the military to withdraw their union membership.³⁶

³⁵ Report of the Senate Committee on Justice and Human Rights on the Human Rights Situation in the Philippines (March 1990).

³⁶ International Centre for Trade Union Rights, Living Dangerously - Trade Unions in the Philippines.

Jaime Tadeo

The ICJ delegation was also apprised of the case of Jaime Tadeo, Chairman of the Peasant Movement of the Philippines (Kilusang Magbubukid ng Pilipinas - KMP) and member of the Constitutional Commission. Tadeo was also a Senate candidate for the Partido Ng Bayan in the 1987 election. He was arrested on 10 May 1990 by members of the National Bureau of Investigation (NBI) in connection with a rally on 3rd May organised by the Peasant Forum. A day after his arrest, however, a commitment order was issued in connection with his earlier conviction on a charge of misappropriation of funds (estafa) which had been filed in April 1982 under the previous administration and was still on appeal.

The background of the case is as follows:

The National Grains Authority (NGA) in 1981 alleged that Tadeo had misappropriated 127,488 pesos worth of unmilled rice (palay) and sacks during his tenure as manager of the Central Bulacan Area Marketing Cooperative (CBAMC). A civil case for "specific performance" and a criminal case of estafa were filed against Tadeo in 1982. The civil case with its lesser standard of proof was dismissed in 1985 by a Regional Trial Court for lack of merit. The court found that there was no evidence that the palay had been misappropriated by Tadeo or that he had personally gained from it. The Marcos government then chose to pursue the criminal case of estafa against Tadeo.

At the time when the civil and criminal cases were filed, it was widely believed that the government was trying to discredit Tadeo and hinder his union activities. At the time of the filing of the cases in 1982, Tadeo was a founder and leader of the Alliance of Farmers of Central Luzon (AMGL), and was actively engaged in protesting against the rising prices of chemicals used in agriculture. Within days of one such large protest at the Ministry of Agriculture, the NGA reportedly issued a "Demand Letter" to Tadeo to account for palay and sacks.

In July 1985 Tadeo formed the KMP which united at the national level farmers' and peasants organisations. Within a short period the KMP became a militant and powerful mass peasant organisation in the country. This development is generally linked to the pursuit of the criminal case against Tadeo in 1985, despite the dismissal of the civil case. Tadeo's case was considered a political one and was defended by leading human rights lawyers in the Philippines including the late Senator Diokno.

Despite appointing Tadeo to the Constitutional Commission, the present administration did not withdraw the criminal charges. In June 1987 Branch 10 of the Regional Trial Court of the Third Judicial Region in Malolos, Bulacan, found Tadeo guilty of estafa. Due to the reorganisation of the judiciary by the new administration, Tadeo's case was concluded by a judge who did not conduct the original trial.

Tadeo remained on bail while the verdict was appealed to the Appeals Court which confirmed the lower court's decision. The Philippine Supreme Court rejected a petition for review as well as a motion for reconsideration. The rejection of the motion for reconsideration by the Supreme Court was made on 25 April 1990 and was received by Tadeo on 8 May 1990, just two days before his arrest. Tadeo's lawyers contend that there is a provision for filing a second motion within 15 days of receipt of the Court order and that Tadeo was effectively denied this right.

On 10 May 1990 following his arrest at the NBI office, Tadeo was informed by the NBI Director that he was only being "invited" to answer complaints arising from the 3rd May rally of the Peasant Forum. That same evening, however, the Quezon City prosecutor before whom Tadeo was brought ordered his continued detention despite his lawyers' insistence that it was an illegal arrest. On the following day, charges of sedition and public disturbance were filed against Tadeo. At around 10 a.m., NBI agents forcibly dragged Tadeo from his place of detention to Branch 10 of the Bulacan Regional Trial Court for sentencing in the estafa case. A commitment order was issued on the same day by the presiding judge sending Tadeo to the National Penitentiary in Muntinlupa.

It is claimed that the Secretary of Justice showed "unusual haste" in handling the court's execution of its decision. Furthermore, Tadeo was detained even before the case was remanded to the lower court. The Secretary of Justice reportedly announced on 10 May 1990 that Tadeo had been detained in accordance with the Supreme Court's denial of the motion for reconsideration. Tadeo told the ICJ delegation that he believes his imprisonment is linked to the negotiations between the governments of the Philippines and the US over the continuation of US bases, because of his leadership in campaigning against the bases. This statement may explain the considerable popular support Tadeo enjoys outside the agrarian community.

Tadeo's incarceration arising from a criminal charge filed by the previous government under doubtful circumstances has generated widespread international criticism. There is a view that the present administration is using the case to disrupt Tadeo's union activities and also to weaken the KMP. Some critics point out ironically that Marcos cronies and officials who embezzled millions of pesos from the

government have not been brought to justice while Tadeo, a staunch critic of Marcos, is in jail for estafa. In this respect, Tadeo's imprisonment is seen as a symbol of the government's attitude towards peasants and their problems. Meanwhile, Tadeo's continued incarceration is increasing the non-cooperation from peasant organisations in the implementation of agrarian land reform (see Chapter 4).

Labelling of Unions as Fronts for the CPP-NPA

The labelling of unions as fronts of the CPP-NPA has also led to violence against union activists from private armed groups. At times, such attacks are reportedly supported by management, military, police, and paramilitary forces. For example, in the Atlas Consolidated Mining and Development Corporation (ACMDC) the KMU-affiliated union Panaghiusa Sa Mamumuo Sa Atlas (PAMA) has been facing repression from vigilantes used by the management and supported by the military. The repression reportedly intensified when PAMA won a certification election to represent the mine workers after many years of domination by the Trade Union Congress of the Philippines (TUCP). At least ten PAMA members were killed, most of them by KADRE, an armed anti-communist group. The union believes that the KADRE members function under the protection of the 347th Philippines Constabulary Company, whose headquarters are inside the Atlas Mines Compound.

The report of the Senate Committee on Justice and Human Rights concluded:

"The members of PAMA suffered violations of their rights such as killings, harassments and other violent acts perpetrated by elements of the local police and members of a vigilante group. This may have been caused by two related factors: first, the military's perception that PAMA is a communist front and therefore a legitimate and fair target of counter-insurgency operation, and second, the involvement of civilian anti-communist groups which were at the same time competing for dominance in the organized labour front in Atlas."

"The Committee found that the ACMDC continued to pay its employees who belong to the vigilante group KADRE, when they underwent one year of training with the Philippine Constabulary."

At the Senate Committee hearings, the ACMDC management justified paying for the workers who underwent military training by referring to P.D. 183. The Senate Committee, however, concluded that P.D. 183 does not justify releasing workers for training by military:

"The Committee is of the opinion that this is an erroneous interpretation of the law and must be subjected to clarification by authorities concerned. P.D. 183, as described in its own title, is a law providing inter-alia, for 'granting security of tenure to reservists employed in private firms while undergoing refresher training, mobilization or assembly tests or annual active duty training in fulfillment of their military obligations.' The word 'reservists' is crucial; it refers to persons who have undergone prior military training. Its purpose is to protect the employment rights of such reservists during the period they are undergoing such training or mobilization tests. Hence, the law cannot be considered justification for training employees with pay as CAFGU members where such employees are not in the list of reservists as registered with the local civil registrars of the city or municipality where they reside."

The Committee found that the employment by ACMDC of CAFGU members was highly questionable, considering that they were formerly members of vigilante groups against whom several complaints of human rights violations had been filed.

The Senate Committee recommended that there be a "stop [to] the training by the military of employees in private companies to become CAFGU members." In spite of the Senate Committee's observations, in July 1990 the ACMDC reportedly sent members of its security forces for training under the Philippine Army's Riverine Battalion based in Lapu-Lapu, Cebu. The training will qualify them to be members of the Special CAFGU Active Auxiliary units (SCAAs). The Senate Committee had recommended disbanding of SCAAs (see section on CAFGUs later).

The problems faced by PAMA provide only one example of military, management, and private armed groups intimidating union leaders and activists brought to the attention of the ICJ delegation. In this regard, the ILO Committee on Freedom of Association in November 1989 stated:

"The Committee deplores the increase in anti-union violence demonstrated by numerous deaths and disappearances documented by the complainants and presses the Government to do all in its power to curb criminality by certain members of the police and armed forces and to adopt vigorous measures to dismantle the vigilante groups."³⁷

³⁷ ILO Committee on Freedom of Association, 268th Report, ILO Doc. GB-244/5/6 (November 1989).

In May-June 1990, the ILO Committee came to a similar conclusion:

"Finally, as regards the general allegations of increased anti-union violence manifested in the spread of vigilante groups (such as KADRE's repression of workers in the Atlas Mining Corporation), the Committee appreciates the Government's denial of any role in encouraging anti-union criminality and its explanation that even its own officials (including the military) as well as other segments of the society have been affected by political violence from both rightist and leftist groups.

"Nevertheless, the Committee must point out the well-documented cases of direct violence and indirect pressure on unionists by paramilitary groups which - despite the Government's denial - indeed appear to be well-armed and acting with relative impunity . . . the Committee can only again urge the Government to dismantle such groups. It particularly calls for such action from the Government since the KMU's latest allegations - which the Government generally denies without giving details - describe, with supporting evidence, the creation and functioning of yet another type of weapons-bearing subgroup known as SCAAs, "Special CAFGU Active Auxiliary" companies. The Committee regrets this disturbing development."³⁸

The Committee further recommended:

"Given the ambiguity of the role of the Civilian Armed Forces Geographical Units and the creation of yet another type of weapons-bearing subgroup known as "Special CAFGU Active Auxiliary" companies, the Committee again urges the Government to dismantle such groups."

Conclusions and Recommendations

Although the previous restrictions on freedom of association and on trade union rights that existed under Marcos have been removed from the labour code, the government has still not taken the actions recommended by the International Labour Organisation (ILO) and the Philippines Senate Committee on Justice and Human Rights. The government should take urgent steps to implement those recommendations and to curtail the disappearances, arrests, and harassment of

³⁸ ILO Committee on Freedom of Association, ILO Doc. GB 246/7/10 (May-June 1990).

unionists attempting to represent the interests of their colleagues and fellow members.

Trade union leaders and workers are targets of attack by the military, paramilitary forces, and related vigilante groups. Trade union activists are among the main victims of abduction and disappearances. Members of the Kilusang Mayo Uno (KMU) or those belonging to its affiliate unions are the most affected. The government should take measures to prevent human rights violations against unionists by the military, paramilitary forces, and related vigilante groups.

The government should amend existing provisions of the Labour Code that are inconsistent with standards set by the ILO. For example, the government's ban on strikes should be limited to situations which endanger the life, public safety, or health of the population. Penalties for illegal strikes should be reduced. The government should conduct a full review of Republic Act 6715 in the light of ILO criticisms.

Complaints of human rights violations against unionists should be promptly and vigorously investigated and the perpetrators brought to justice.

There is an urgent need for an independent high level judicial review of the case of Jaime Tadeo whose conviction and continued incarceration appear to infringe basic concepts of natural justice and the Constitution.

Chapter 4

Agriculture, Fisheries, and Land Reform

Agrarian Sector

Agriculture is the predominant economic sector in the Philippines, accounting for about half of total employment and 30 percent of the gross national product.

According to the Department of Agriculture (DA):

"Despite the large contributions of farmers and fisherfolk to the economy, the majority of agricultural producers remain poor, malnourished and producing at bare subsistence levels. Over 50 percent of rural families live on incomes below the poverty line. . ."³⁹

There are several regional variations within the agrarian sector in the country. These variations include:

- Rice producing areas of Central Luzon and the Southern Tagalog region
- Development of sugar plantations in Negros based on centrally managed haciendas employing hired, often seasonal, labour
- Growth of modern plantations in Mindanao.⁴⁰

Rice Producing Areas of Central Luzon and Southern Tagalog

"Both regions are characterized by pervasive landlordism. However, land holdings in the Coastal Region are relatively small and scattered, whereas inner Central

³⁹The Agricultural Development Plan 1990-1995, a report for members of Congress (September 1990).

⁴⁰Yufiro Hyami et al., Toward an alternative land reform paradigm - A Philippine Perspective, Ateneo University Press (1990).

Luzon saw the development of large estates (haciendas) of several hundreds to thousands of hectares.⁴¹

These two regions represent the largest contiguous rice producing region in the country. The larger landowners are mostly absentee landlords who often have no personal contact or bond with their tenants. The tenants (Kasamasor) are often perpetually indebted and at the harvest time are forced to surrender most of the produce to the hacienda owner. The Central Luzon region has historically been prone to peasant uprisings, and the use of force by the authorities to suppress the peasants.

Negros

The island of Negros is unique. About 90 percent of the population is dependent on the sugar industry that produces 68 percent of the Philippines sugar crop. The poverty and social unrest that exist in the island are so pervasive that in 1987 the Bishop of Bacolod, Monsignor Fortich, characterised it as a "social volcano."⁴² In Negros there are some 33,000 farms of which 53 percent are less than 5 hectares in size. In contrast, seven percent of the planters own farms of more than 50 hectares. In other words less than 2,000 planters control over half of the island's sugar land. Negros sugar farms are closer in character to feudal latifundia than typical capitalist plantations.⁴³

Under the favourable terms of the Laurel-Langley agreement between the Philippines and the US after World War II, the Philippine Sugar Industry had an assured U.S. market -- at prices generally well above the world market price. As a result, the area under cultivation doubled between 1958 and 1978 and the island became a mono-culture economy. The assured U.S. market bred complacency amongst landowners. Subsequently, no efforts were made to improve efficiency, to diversify production, or to reinvest the huge profits reaped by the big planters. As a result, when the Laurel-Langley treaty expired in 1974 (and was not renewed), the

⁴¹ Id.

⁴² War on Want, Social Volcano - Sugar Workers in the Philippines (July 1987).

⁴³ See note 40.

Philippine sugar industry was not able to compete in the already oversupplied open world market. A major crisis ensued.

Some 250,000 sugar workers were laid off after the 1984 milling season. By 1987, 60 percent of sugar lands were idle; two sugar mills were shut; and most of the others were operating well below capacity. The result was poverty and even famine. The reason has been explained as follows:

"The problem of perennial food shortage in sugarlandia may be described as a social and ecological problem. With the transformation of the agricultural landscape from diversified subsistence farming into monocrop widescale production of sugar cane, a majority of the rural based population who were absorbed in the hacienda labour force were forced to obtain their food from markets rather than their own production. Being dependent on their depressed wages, their limited purchasing power has kept their nutritional intake to bare minimum level."⁴⁴

Another characteristic of Negros is the organised and militant nature of big planters who use private armies to oppose any efforts of the sugar workers to organise themselves. Yet the need for organisation is as great as ever for while the famine conditions no longer exist, abject poverty still persists.

Modern Plantations in Mindanao

The island of Mindanao has been seen as the "last frontier for colonisation" for many Filipinos. Due to its isolation and the resistance of indigenous Muslims and tribal Filipinos, the island largely remained outside the influence of Spaniards. During the U.S. colonial period, however, Christian settlers began to encroach on the ancestral lands of Muslims and tribal minorities. The plantation mode of production became common in such settlement areas, mainly spearheaded by multinational corporations. "As early as the 1920's, Del Monte had established pineapple operations in the northern region of Mindanao. This was later followed by the rubber plantation operations of the B.F. Goodrich and Goodyear Tire Companies. The growth of plantations, however, with direct foreign involvement gained momentum during the 1970's. In 1985 about 58 out of 124 multinational agribusiness corporations

⁴⁴ Violet Lopez Gonzaga, Landlessness, Insurgency and the Food Crisis in Negros, 4 Philippine Quarterly of Third World Studies No. 1. (1988).

operating in the Philippines were directly engaged in the cultivation of cash crops using plantation systems in Mindanao."⁴⁵

Under Philippine law, foreign corporations are not allowed to lease lands. Multinational corporations appear to circumvent this law, however, by entering into a contract, called a "grower's agreement", with domestic crop producers who in turn authorize the corporation to undertake the full cultivation of the crop for a specified number of years. The corporation pays a fixed rent to the landowner.

The establishment of large scale plantations has contributed to the increase in employment opportunities and infrastructure development. The encroachment by big plantations, however, has led to violent protests from Muslims and tribal Filipinos. The entry of large hierarchically managed corporations into tribal and peasant economics has also contributed to social disharmony and conflicts in the region.

Agrarian Conflicts and Land Reform

The last two decades, particularly since the beginning of the 1980s, have been marked by agrarian unrest. One of the reasons given by President Marcos to justify his imposition of martial law was to bring about rural development, but his policies in reality aggravated existing social conflicts in rural areas.⁴⁶ The "myth of authoritarian efficiency"⁴⁷ failed to improve the agrarian situation. On the contrary, it had a negative impact. To quote a World Bank consultant:

"In short, rural development strategies to date have failed to provide meaningful benefits to those rural Filipinos most in need of them. Underlying all the rhetoric, concerns for production, control of rural discontent, and maintaining the support for elites are still paramount, as circumstances of most rural Filipinos continue to erode rapidly, perhaps already in an irreversible direction."⁴⁸

⁴⁵ See note 40.

⁴⁶ Walden Bello et al., *Development Debacle, The World Bank in the Philippines* (1982).

⁴⁷ Id.

⁴⁸ Id.

Even the present government's Department of Agriculture candidly acknowledges:

"The delivery of government services has been slow, inefficient, and has had very limited impact on the welfare of the neediest segments of the farming and fishing populace."⁴⁹ One reason attributed to this situation was that Marcos' policies, including his land reform program, failed to alter the existing exploitative agrarian relations.

When President Aquino took office, aware of the explosive agrarian situation, she announced that "the new government will expand the land reform program in the country to reflect a true liberation of the Filipino farmer from the clutches of landlordism and transform him into a truly self-reliant citizen, participating responsibly in the affairs of the nation."⁵⁰

Land Reform during the Marcos Administration

The Philippines has had a large number of legislative enactments on land reform - at least 40 Presidential decrees and 10 Acts of Congress.⁵¹

President Marcos amended the land reform code in 1971 (Republic Act 6389) and created the Department of Agrarian Reform. All sharecropping arrangements were automatically converted into leaseholds and the amount of land which a landholder could retain, known as the retention limit, was lowered from 75 to 24 hectares. With the declaration of Martial Law, Marcos issued Presidential Decree 2, proclaiming the entire country a land reform area. A month later, Presidential Decree 27 was issued, limiting the coverage of the announced reform to rice and corn lands. It also lowered the retention limits to seven hectares.

Under P.D. 27, tenants were entitled to purchase surplus land for 2.5 times the value of average annual production. This amount was payable to the Land Bank at six percent interest within 15 years. When the tenant completed the amortization

⁴⁹ See note 46.

⁵⁰ Land Reform in the Philippines, IBON Primer Series (1988).

⁵¹ Popular Grassroots Initiatives - A Descriptive Report, Congress for People's Agrarian Reform (1989).

payments, the tenant would receive an "Emancipation Patent" (EP) or title to the land, transferable exclusively to the tenant's heirs. In the interim period, the tenant would receive a "Certificate of Land Transfer" (CLT), identifying the area cultivated and promising the right to purchase it.

By mid-1986, Operation Land Transfer (as it was called) had benefited 440,239 farmers occupying 755,172 hectares of rice and corn lands. Only 72 percent of these farmers, however, had actually received their CLTs. Moreover, only one third of those farmers who received a CLT and has also received an EP. Before 1982, EPs were issued after full payment for the land. In 1982, however, EPs were issued after only two payments by the amortizing tenant. In January 1986, as part of his desperate election bid, Marcos authorised EPs to be issued even without any payment by the tenant.

The shortcomings of Marcos' land reform program have been summarised as follows:

"The retention limit was still too high compared with average farm size and was often evaded by registering excess holdings in the names of relatives and friends. The land reform applied only to tenanted rice and corn lands. It did not apply to land under the direct administration of landlords, nor to land used for cash crops such as sugar. Therefore, to evade land reform, landlords expanded areas under their direct management by evicting tenants . . . [and planting] sugar in paddy land. . . . Often, collusion between the landed elite and local officials invalidated the effect of the land reform program. Operation Land Transfer has been particularly slow, and its effect limited."⁵²

It has been said that the history of Philippine land reform has been a story of token reforms and ad hoc appeasement.⁵³

Land Reform during the Aquino Administration

The ouster of Marcos generated an expectation among rural poor that President Aquino would immediately embark on a far-reaching agrarian reform program. "The massive popular support, especially among the middle class, which enabled Mrs.

⁵² See note 40.

⁵³ Id.

Aquino to assume political power, and the fact that the opposition, particularly the landlord bloc, was not yet consolidated, presented a rare opportunity to reform the countryside."⁵⁴

During President Aquino's "Revolutionary Government" (prior to the convening of Congress), the following emerged in relation to land reform:

- The newly ratified Constitution provided the legal franchise for undertaking land reform programs
- the Accelerated Land Reform Program (ALRP) was a document produced by officials after a series of consultations with various sections of the society
- Executive Order (E.O.) No. 229, outlined the mechanics of reform while leaving it to Congress to decide on key elements such as retention limits and priority areas.

Constitutional Provisions

In the 1987 Constitution, the main provisions concerning land reform are found in Article II (Declaration of Principles and State Policies) and Article XIII (Social Justice and Human Rights). The essential elements prescribed in the Constitution are:

- Congress will prescribe phasing and retention limits
- Landowners will be paid just compensation for the lands appropriated from them
- Alternative measures to land distribution, such as voluntary land sharing, will also be pursued
- Landowners will be encouraged to invest in rural based industries
- Corporations can lease up to 1,000 hectares of public agricultural lands and Filipino citizens can lease up to 500 hectares
- The right of farmers, farmworkers, landowners, cooperatives, and other independent farmers' organisations to participate in planning, organising, and managing the program will be recognised by the state.

The Accelerated Land Reform Program (ALRP)

After the Constitution was overwhelmingly ratified in January 1987, peasant organisations demanded that President Aquino proclaim a land reform program

⁵⁴ Id.

without waiting for the Congress to convene. On 22 January 1987, in a demonstration held by the Kilusang Magbubukid ng Pilipinas (KMP) to demand land reform, 19 unarmed peasants were shot by the military at Mendiola Bridge, Manila, close to the Presidential Palace. The "Mendiola Massacre" (as the killings were called) prompted Mrs. Aquino to organise a Cabinet Action Committee on Agrarian Reform to draft a government land reform program.

The Committee after several months of deliberation proposed the ALRP. The ALRP provided for:

- a seven hectare ceiling for all croplands
- the sequencing of land distribution, beginning with large privately owned farms and rice and corn lands covered by Marcos' P.D. 27 and ending with small farms as well as alienable and disposable public lands
- the exemption of ancestral tribal lands and lands used for public service
- tenancy regulations
- alternative schemes such as voluntary land sharing and corporate stock-sharing.

Executive Order (E.O.) 229

E.O. 229 was signed by President Aquino on 22 July 1987 (prior to the convening of Congress), instituting the Comprehensive Agrarian Reform Program. This order was, however, "fundamentally different in spirit and content from ALRP."⁵⁵ E.O. 229 dealt with procedures rather than substance. It did not provide for retention limits, priorities, or a timetable, but delegated the determination of these provisions to Congress.

The drafting process in Congress

Both houses of Congress debated their own versions of an agrarian reform bill. House Bill (H.B.) 400, originally sponsored by members of Congress sympathetic to the peasants, was based on a draft proposed by the Congress for a People's Agrarian Reform (CPAR), a coalition of thirteen major peasant organisations. Some members of Congress supporting the landowners, however, proposed another draft H.B. 941. In the course of discussions on both bills, H.B. 400 was changed drastically by the members of congress supporting the landowners and the final version was closer to H.B. 941. As a result, 14 of the original sponsors of H.B. 400 withdrew their support.

⁵⁵ Id.

In the Senate, Senate Bill (S.B.) 249 was discussed. S.B. 249 was said to have accorded preferential treatment to plantations operated and managed by multinational corporations. The final bill that emerged as the Comprehensive Agrarian Reform Law or Republic Act 6657 of 1988, was a comprehensive document reflecting the wishes of various interest groups represented in both houses. Many concessions and compromises accorded to landowners by the Congress highlighted their strong bargaining leverage vis-a-vis the more numerous but still politically weak peasants and landless workers' groups.

Republic Act 6657

On 10 June 1988, President Aquino signed into law the Comprehensive Agrarian Reform Program (CARP) embodied in R.A. 6657. Its salient features were:

1. Scope

The reform would cover 10.3 million hectares of private and public agricultural lands involving about 3.9 million beneficiaries in ten years (1988-1997). The program will be implemented in three phases:

- Phase I -- covering an aggregate area of one million hectares of rice and corn lands, idle and abandoned lands, as well as surrendered/sequestered lands of Marcos cronies
- Phase II -- covering an aggregate area of 7.7 million hectares including certain public lands and private agricultural lands in excess of 50 hectares
- Phase III -- covering 1.6 million hectares of other private agricultural lands below 50 hectares.

2. Retention Limits

Five hectares is the maximum retention limit for each land owner. Each child of the landowner may be awarded three hectares, provided the child is at least 15 years old and is actually tilling the land or managing the farm.

A landowner whose rice and corn lands were covered by P.D. 27 and were retained by him under that Decree, may continue to hold them. Similarly, owners of original homesteads who continue to own them at the time R.A. 6657 was approved can retain the same areas as long as they continue to cultivate them.

3. Exemptions

The lands exempted under the Act are those "directly and exclusively used and necessary for parks, wildlife, forest reserves, reforestation, fish sanctuaries, breeding grounds, watersheds and mangroves; national defence, school sites and campuses including school-operated experimental farm stations, seeds and seedlings research and pilot production centres; church sites, convents, mosque sites, Islamic centres, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by inmates, research centres, quarantine centres, and all lands with 18 percent slope and over, except those already developed."

4. Deferred coverage

Private agricultural lands devoted to commercial livestock, poultry, swine raising, and aquaculture; fruit, vegetable, and cutflower farms; as well as cacao, coffee, and rubber plantations are subjected to acquisition only after ten years from June 1988. For new farms, the ten years period begins from the first year of commercial production and operation.

5. Compensation to landowners

Just compensation will be paid to those whose lands have been acquired. The following factors will be taken into consideration by the government in determining just compensation: the cost of acquisition of the land; the current value of similar properties; the nature and actual use of the land; income derived from the land; the sworn valuation of the owner; the tax declarations; and the assessed value made by the government.

6. Payment to be made by beneficiaries

For the land awarded, the beneficiary is to pay the Land Bank of the Philippines (LBP) 30 annual amortizations at an interest rate of six percent per annum. The Presidential Agrarian Reform Council may reduce the amounts for the first three payments, provided that the first five payments do not exceed five percent of the value of the annual gross production of the land as established by Department of Agrarian Reform (DAR). If the scheduled annual payments after the fifth year are more than ten percent of the value of the annual gross production, and the low production is not the beneficiary's fault, the LBP may reduce the interest rate or the principal obligation to make the payment affordable to the beneficiary.

The awarded land remains under mortgage to the LBP until fully paid. If the beneficiary fails to pay an aggregate of three annual amortizations, the LBP may foreclose the mortgage and the foreclosed land may be awarded to other qualified beneficiaries. A beneficiary whose land has been foreclosed is permanently disqualified from becoming a CARP beneficiary.

7. Stock distribution option

Corporate landowners who voluntarily divest a proportion of their capital stock, equity, or participation in favour of their workers or other qualified beneficiaries are deemed to have complied with the new law.

8. Production and profit sharing

Pending final land transfer, individuals, or entities who own or operate agricultural land and who have gross sales in excess of five million pesos per year must execute a production sharing plan whereby three percent of the gross sales are distributed to regular and other farm workers. If they have a profit, an additional ten percent of the net profit after tax shall be distributed.

9. Organizational structure

The Presidential Agrarian Reform Council (PARC), chaired by the President, is the highest policy-making and coordinating body. The PARC has an Executive Committee, headed by the Secretary of the Department of Agrarian Reform (DAR). It is responsible for determining the targets and implementation schedule as well as identifying the support requirements of CARP.

10. Financial requirements

The total estimated financial requirements for the ten year period amounts to 221.1 billion pesos.

CARP -- Prospects and Problems

Compared to previous land reform programs, CARP is generally considered a major breakthrough in Philippine agrarian reform legislation. Because it covers both private and public agricultural lands regardless of tenurial arrangements and any crops produced, it is much more ambitious than previous programmes. It is feared, however, that the personnel and finances, as well as the political will and

determination, required to implement such an ambitious program may be hurdles in implementing it successfully.

The CARP is also criticised in particular by peasant groups for being a programme that is inherently biased towards landed interests. Those groups argue that language in the 1987 Constitution which includes "ecological developments and equity consideration" has enabled the landed interests in Congress to restrict the scope of land distribution. Specific criticisms made against CARP include:

- Only between five to ten percent of all private agricultural lands stand to be covered by land transfer as a result of various provisions on retention limits, exemptions, alternative schemes, and grace periods
- The schedule and priorities stipulated in the Act are an indication of the government's reluctance to break up large land holdings and redistribute them to landless farmers.
- The time frame of ten years for acquisition and distribution gives landowners time to subdivide and/or convert their lands for other uses
- The "just compensation" to be paid to the landowners contributes to delays and manipulation by landowners to defraud the government. Just compensation is interpreted as "fair market value."

Paying "just compensation" is the most controversial feature of CARP, since it departs from President Marcos' scheme of paying compensation based on a land's productive value (two and a half times the annual harvest). The case of the Garchitorena estate in Camarines Sur is an example of the problems which arise in assessing the value of land acquired and in paying compensation. In this case, Sharp Marketing International Corporation bought a 1,887.8 hectare estate for 3.01 million pesos in early 1988, from the United Coconut Planters Bank. In May 1988 the Corporation offered this land to the government for 66 million pesos or part of its land distribution program. The joint Clearance Compensation Committee of the Department of Agrarian Reform and Land Bank of the Philippines recommended the price of 62.7 million pesos for the land. Then DAR Secretary Philip Juico ordered its purchase at the recommended price. Because the provisions of the CARP were used effectively to defraud the government, the deal was exposed as corrupt in the newspapers, and became a scandal leading to DAR Secretary Juico's resignation.

One method of estimating the value of land is to compare it with recent land sales in the area. The Sharp Corporation carefully selected sales of more valuable plots in relatively urbanised towns which involved only hundreds of hectares, as compared with the 1,189 hectares of the Garchitorena estate. The Corporation also hurriedly paid inflated taxes which had been due on the property since 1985 to reflect the value they offered for the land. There are allegations of many similar cases of over-valuation.

- By allowing for "other arrangements alternative to the physical redistribution of lands" such as production or profit sharing and distribution of stocks, CARP provides means for landowners to evade the law.

According to a DAR Performance Report covering July 1987-March 1990, 34 firms with a total coverage of 18,539 hectares have submitted plans for stock distribution. Of these proposals only the Hacienda Luisita scheme has been approved so far. Since Hacienda Luisita belongs to President Aquino's family, its stock-sharing scheme has generated much publicity and controversy. In general, the stock-sharing option is criticised as not being "a feasible way of distributing land assets. . . . It is impractical and discriminatory, it creates opportunities for evasion, especially firms which do not own land or directly employ labourers, and those firms which can implement schemes to understate profits."⁵⁶ The President's critics have accused her of evading land distribution in her own estate by taking the option of stock-sharing.

- CARP substitutes public land distribution for redistribution of private lands. Given the land scarcity and increasing population, public lands may not be sufficient to solve the problem of landlessness.
- Landowners have devised schemes to avoid the land reform, for example, by converting agricultural lands to other types of holdings (such as speculative housing development projects) which are not subject to CARP.

Implementation of CARP

The DAR reported that as of March 1990, total lands transferred amounted to 430,730 hectares. Of these rice and corn lands constitute 79.3 percent, 6.6 percent are government owned lands, 13.3 resettlements and landed estates, and 0.8 percent are

⁵⁶Ramiro C. Alvarez, How goes the CARP?, Philippines Free Press, 12 May 1990.

private agricultural lands and 0.1 are surrendered or sequestered properties. A total of 379,974 hectares of public lands had been transferred to 143,041 farmer beneficiaries. Non-governmental organisations consider this achievement grossly inadequate. They point out that the land transferred so far comprises only four percent of the target for the period. Moreover, most of the beneficiaries were those who had already been covered by Marcos' land reform program and DAR has merely distributed the title deed to those beneficiaries. Furthermore, only a very small proportion of private lands have been acquired, indicating to the NGOs that the government lacks the political will to dismantle the high degree of concentration in holdings of land in the country.

The DAR explains that the "low distribution of private agricultural lands is due largely to the land valuation problems experienced from the field to the central office levels. First, as a result of the Garchitorea controversy, claim folders involving 4,706 hectares have been returned to DAR by LBP to be revived and subjected to public hearings. DAR field [representatives] are still experiencing difficulties in the interpretation and application of land valuation formula. There are, for instance, discrepancies between land values submitted and the comparable sales data. Claim folder processing has also been delayed either by erroneous or insufficient documents." A view was also expressed by DAR officials that the targets had been set without taking into account the capability of the implementing agencies. Everyone agrees that for agrarian reform to succeed, procedures must be implemented to ensure just compensation is paid to landowners quickly.

Another major problem faced by DAR is the frequent change in its leadership. Between 1987 and 1990, DAR has had five Secretaries including the present incumbent. The first Secretary Heherson Alvarez resigned when he was elected to the Senate. He was replaced by Philip Juico who resigned following the Garchitorea land purchase scandal. The next two Secretaries, Miriam Defensor Santiago and Florencio Abad, had to resign after serving for short periods, since their appointments were not confirmed by the Commission on Appointments. It is widely believed that Abad's resignation as DAR Secretary severely damaged prospects of genuine agrarian reform. Abad had a history of social activism which reportedly galvanised the support of peasant groups who considered CARP inadequate.

According to a former senior DAR official, most agrarian reform officials claim that militant landowners were behind the rejection of Santiago and Abad by the Commission on Appointments. The same official added: "What has made political

pressure and bureaucratic red tape devastating to the CARP is that these are being exploited by landowners."⁵⁷

Since the programme has been in operation only for a short period, it is difficult to make any final assessment of its effectiveness. It is certainly extremely complex and is working, if at all, very slowly. This delay seems to serve the interests of landowners resisting the reform. The consequent frustration and anger caused to the peasants have been creative of increasing dissent. As a consequence, they are being subjected to more harassment and disruption than ever.

The effective implementation and impact of CARP would therefore be enhanced with the cooperation of intended beneficiaries and their organisations. It is becoming clear that the farmers equate the failure of the government to implement agrarian reform fully with the failure of democracy. Yet there appears to be very little cooperation between DAR and major peasant organizations. CARP was rejected as "fundamentally opposed to the interests of the rural poor" by the Congress for People's Agrarian Reform (CPAR). The CPAR brought together twelve national peasants organisations (both moderate and radical) with a combined membership of about 1.5 million farmers, fisherfolk, agricultural workers, and peasant women. Organized in May 1987, representatives of 70 national peasant organisations, non-governmental organisations, churches, and business groups participated in the CPAR. The CPAR proposed an alternative law, the People's Agrarian Reform Code (PARCODE). The CPAR has launched a campaign to collect 2.5 million signatures to call for a referendum to reject the CARP. The drafting of PARCODE and the coming together of peasant organisations is considered unprecedented in Philippine political history.

The Department of Agriculture's Plan Document had rightly recognised that "the first imperative is for government to empower the small farmers and fisherfolk." Despite such a pronounced policy, peasants' organisations and their representatives face numerous problems in carrying out their legal activities. For example, the majority of victims of human rights violations in general are those living in the rural areas. (See Chapter 3).

⁵⁷ Id.

Fisheries

The Philippines is an archipelagic country with 341,600 kilometres of discontinuous coastline, 132 rivers and 59 lakes. The fishing industry directly employs around one million persons or 4.3 percent of the total labour force. The fisheries sector is further divided into three sub-divisions.

1. Commercial Fishing

Commercial fishing is normally undertaken by big corporations. Under Presidential Decree 704 of 1975, commercial fishing is defined as fishing in waters more than seven fathoms deep with the use of boats of more than three gross tons. A ban may also be imposed for fishing within a seven kilometre range to protect marine resources and ecology. Boats of less than three gross tons, however, can operate within seven fathoms deep if authorised by existing municipal ordinances. The organisations working with small fisherfolk report that commercial fishing firms routinely fish within seven kilometres and contribute to reef destruction. They also overfish and decrease the catch of small fishing operations.

2. Aquaculture

Aquaculture involves the cultivation of fish and other seafood, such as prawns, in an enclosed area. It also includes the gathering of seaweed, oysters, and mussels. In the last few years this sector has grown rapidly due to the intensification of prawn culture for export and the conversion of agricultural lands into fishponds apparently to evade the land reform law. From a mere 8.3 percent share of fish production in 1973, aquaculture now accounts for 26.1 percent.⁵⁸ The development of aquaculture has, however, also displaced small fishing operations. Since aquaculture is a lucrative business, those with political connections and money garner lakes and inland water sources to produce fish. In the words of a leading Filipino social scientist:

"A case in point is the Laguna Lake area, a large body of fresh inland water which drains out into the Pasig River and then into the Manila Bay. In the mid-seventies, a simple technology of growing fish inside floating nets was introduced into the country. It was tried in Laguna Lake, and the success proved fatal to the livelihood of the fisherfolk in the surrounding communities of the Bay. Almost overnight, the entire lake was parcelled out into territories of fisheries owned,

⁵⁸ IBON Facts & Figures, Vol. XII, No. 16, 31 August 1989.

without exception, by big businessmen, politicians, Marcos relatives, and top brass of the military. The result was the enclosure of what used to be traditional public fishing grounds and the violent denial to the small fisherfolk of vital access to their only source of livelihood.⁵⁹

Another negative aspect of aquaculture is said to be the destruction of mangroves along the coast, without regard to their role in the ecosystem. The conflict between small fisherfolk and fishpen owners has also contributed to the militarisation of areas where such conflict exists.

3. Municipal Fishing or Traditional Fishing

About 650,000 persons are engaged in traditional fishing. About half of them operate with boats of three gross tons or less, while the other half use equipment that do not require boats. Fishing is done mainly within municipal waters including streams, lakes, and marine waters within seven kilometres (three nautical miles) from shore, although some of the traditional fisherfolk extend their operations beyond seven kilometres by using boats with motors. Traditional fisherfolk contribute 47 percent of the country's total catch, but they have become increasingly poor and, as a consequence, are now quite marginalised in their own and the general society.

Problems of the fishing industry

The production and productivity of near shore fisheries is on the decline due to overfishing, destructive fishing, and siltation as well as pollution.⁶⁰ Widespread environmental damage has occurred within the coastal zone. About 30 percent of the country's coral reefs have been destroyed; only 100,000 of 450,000 hectares of mangroves remain. Credit and marketing facilities, particularly for the traditional fisherfolk, are completely inadequate thus preventing them from purchasing modern equipment and forcing them to use destructive fishing means. There is also

⁵⁹ Randolph S. David, Poverty in the Philippines, Its Social Roots 4 KASARINLAN (The Philippine Quarterly of Third World Studies) No. 4 (1989).

⁶⁰ National Situation on the Philippines' Fisheries, Structural Alternative Legal Assistance for Grassroots (SALAG) and Centre for People's Law (BATAS), paper presented to the ICJ delegation (1990).

insufficient dissemination of information concerning new and appropriate technology available to the traditional fisherfolk.

The existing laws favour the commercial sector and do not protect the rights of small fisherfolk. Article XIII, Section 7, of the 1987 Constitution, entitled Agrarian and Natural Resources Reform, states:

"The State shall protect the rights of subsistence fisherfolk, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fish workers shall receive a just share from their labour in the utilization of marine and fishing resources."

As with many other positive elements of the 1987 Constitution, the provision concerning subsistence fishermen was non-existent in the previous two Constitutions of the country. In the words of Ms. Marilyn Cape, however, a lawyer working with subsistence fisherfolk:

"The problem is that there has been no new legislation introduced to enforce the Constitutional provision and the old laws remain in place. New legislation must be introduced recognizing their right to manage the resources and participate meaningfully in formulation of policies which are responsive to the needs of subsistence fisherfolk."⁶¹

Conclusions and Recommendations

Land rights and reform for farmers were among the major mandates and promises of the Aquino administration, and constituted an unmistakable compact between the President and the people. The government has enacted the Comprehensive Agrarian Reform Program (CARP), which is a breakthrough in comparison to the previous attempts at land reform programmes.

⁶¹ Marilyn Cape, P.D. 704 and Other Laws Affecting the Fishery Sector, Centre for People's Law (BATAS), briefing paper submitted to the ICJ delegation (1990).

Agrarian reform is, however, proceeding too slowly; the procedures are too complex and real reform is too easily diverted by landowners and others seeking to avoid the distribution of land to the peasants. The programme has also suffered from frequent changes in leadership. In addition, the strong resistance to the programme by substantial landowners has frustrated progress. The administration and Congress have failed to remedy these problems and in some cases have actually contributed to them. The consequences have been continuing poverty for rural workers, increasing dissent, and a strong belief in large numbers of the population that the government is not determined to carry out its obligations in this area. The administration has failed to harness the full support of beneficiaries for the effective implementation and monitoring of the programme.

An urgent inquiry into the successes and failures of CARP, should be established, led by a respected individual such as a former Supreme Court Judge with sympathetic expertise in this subject, and staffed by experts committed to thorough land reform. The inquiry should be given the power to punish for contempt those who do not cooperate with its deliberations and requirements. The inquiry should be required to report within a suitably brief period, such as six months.

Efforts should be made to implement the spirit as well as the letter of CARP by a fearless and courageous implementation of its provisions in accordance with the constitutional mandate. These efforts will require stability and honesty in its administration and a clear cut brief to the administrators. The President should emphasise both by words and actions her continuing commitment to honour her many pledges in these regards.

Chapter 5

Cultural Minorities

The Muslims of Mindanao and various indigenous groups in the mountain regions have retained a separate identity from the Catholic Christian majority. They were totally alienated by President Marcos' policies and there has been only very modest recognition of their separate rights by the present government.

Indigenous Filipinos

Indigenous Filipinos consist of about 4.5 million members of indigenous communities inhabiting remote interiors of Luzon, Mindanao, and some islands in the Visayas. They constitute a diverse collection of over 40 ethnolinguistic groups, each with a distinct language and culture. Influenced least by the colonisers, these groups lived in isolation retaining communal ownership of land, communal rituals, and governance. They still maintain some distinct characteristics though they have been influenced by the dominant Philippine society.

The indigenous population is classified into six groupings, the Mindanao Lumad, the Cordillera Peoples, the Caraballo tribes, the Agta and Aeta, the Mangyans of Mindoro, and the Palawan hill tribes.⁶²

Previous government policies and the alienation of tribal peoples

In the post-Second World War period, there was increasing encroachment on tribal areas. This process reached its zenith under Marcos' declared policy that "Development must reach all regions of the country, even to the remotest area, whether it be in Luzon, Visayas or Mindanao."⁶³ Consequently, licences were granted -- mostly to multinational companies -- for logging, mining, and construction of dams at the expense of tribal lands and livelihood.

⁶² *Struggle Against Development Aggression - Tribal Filipinos and Ancestral Domain*, TABAK Publication (1990).

⁶³ *Id.* at 109 (1990).

The 1984 ICJ report stated: "The survival of the tribal communities in many parts of the Philippines is threatened by the exploitation of the resources of their ancestral lands by Philippine and foreign enterprises." In acknowledging the problems faced by tribal Filipinos, the 1987 Constitution provided: "The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development."

In addition, the Constitution also includes provisions for creation of autonomous regions in Muslim Mindanao and the Cordilleras.

Autonomous Regions

Within the time limit (18 months) stipulated by the Constitution, the Congress adopted Republic Act 6766, providing for an Organic Act for the Cordillera Autonomous Region. The Act covers five provinces and one city (Kalinga-Apayao, Abra, Ifugao, Mountain Province, Benguet, and Baguio City). It provides for a system of regional government with executive, legislative, and judicial branches. The regional government shall have the power to create its own sources of revenues and to levy taxes. This government is to protect the ancestral domain and ancestral lands. Except for strategic minerals such as uranium and others defined by national law, the control and supervision over the exploration, utilisation and development of the natural resources of the autonomous region is delegated to the regional government. The regional assembly shall create a regional police force as integral part of the Philippine National Police. The defence and security of the region shall be the responsibility of the national government. A regional command of the Armed Forces of the Philippines will be created for the autonomous region. The regional government shall exercise legislative powers over regional educational policies and cultural matters, and is required to take steps to develop a common regional language based upon the various languages in the region.

In the plebiscite held in January 1990, only Ifugao voted in favour of joining the autonomous region. The other provinces Kalinga Apayao, Abra, Mountain Province, Benguet, and Baguio City overwhelmingly rejected the Organic Act. The reasons for the rejection are not clear. According to John McBeth, reporter for the Far Eastern Economic Review:

"The reasons for the rejection of the Act appear varied, but most observers feel an underlying fear of the unknown was probably just as an important factor as perceived flaws in the legislation itself, the influence of the traditional politicians

and rumoured money dumping by mining corporations, which feared higher taxation and the possibility of favoured treatment for indigenous miners."⁶⁴

The plebiscite result raised the question of whether it would be practical to make a single province out of an autonomous region, particularly considering its low economic base. Such a province may well have to rely on government subsidies. In any event, the success of the Cordillera autonomous region would have responded to the problems of about 100,000 members of indigenous communities in that region and affected many thousands of indigenous Filipinos living in other parts of the country.

One of the major grievances of the indigenous groups is the non-recognition of their right to ancestral lands. Philippine land laws are based on a fiction known as the "Regalian doctrine" introduced by the Spanish colonisers. Under this doctrine, all public domain lands belong to the state. This doctrine is reflected in the present as well as in the previous two constitutions. The 1987 Constitution states:

"All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the state. With the exception of agricultural lands, all other natural resources shall not be alienated."

Definition of Forest Land

Under Presidential Decree No. 705 of 1975, known as the Revised Forestry Code (RFC), forest land is defined as having a slope of 18 percent or more. As a result, the vast majority of indigenous peoples' land situated in the mountain slopes has become public land or state property unless it was registered or titled before 19 May 1975, in which case it is exempted and considered private land. Such registration also protects against criminal prosecution for illegal entry or occupation of forest lands. If the government finds, however, that the "best land use" demands it, it may still evict persons using registered lands.

Because of the Regalian doctrine and the definition of forest land, indigenous communities believe that they are squatters in their own lands. Indigenous communities could legalise their presence in classified forest areas by securing permits or tenurial programs for social forestry. Obtaining permits, however, implies that they

⁶⁴ Going it Alone on Autonomy, Far Eastern Economic Review, 15 February 1990.

are leasing land from the state and are not owners of their ancestral lands. Moreover, even if title is obtained for released or declared forest land, ownership of land does not include ownership of the natural resources on the land.

The present government, recognising the demands of tribal Filipinos for rights over ancestral domain, established reservations for the exclusive use and enjoyment of particular indigenous communities. For example, a proclamation dated 5 May 1986, established a reservation of 3,198,800 hectares in Esperanza, Agusan del Sur for the Banwaon tribe. Reservations, however, do not deal with the ownership claim of tribal minorities to their ancestral lands.

The Cordillera Autonomous Region Act recognises the ancestral domain subject to the Constitution and national policies. According to some indigenous peoples' organisations, the recognition of ancestral domain in the Cordillera Act is meaningless, since the Constitution does not recognise it.

Lack of a defined legal framework to settle ancestral land claims seems to affect development projects adversely. In Mindanao, the past 50 years of transmigration from other islands further complicates tribal claims for ancestral domain rights. For the last two years, a draft bill has been under consideration by the Senate. The bill proposes the establishment of a special commission to adjudicate claims on ancestral land.

Human Rights Violations

The Marcos government was involved in extensive military operations in the tribal areas allegedly to pacify the indigenous groups who were protesting the destruction of their natural habitat. Those operations resulted in widespread and well documented human rights violations. The discontent of the tribal minorities was used by the CPP-NPA to win over many indigenous supporters.

In the post-Marcos years, the alleged influence of the CPP-NPA in tribal areas has reportedly declined. In the Cordillera mountains, Conrado Balweg, a former priest and CPP-NPA leader, broke away from the party in 1986 and formed the Cordillera People's Liberation Army (CPLA). CPLA members are reportedly used as vigilantes by the military to fight NPA members. There are also reports that CPLA members have attacked other tribal leaders who do not support the CPLA. For example, in October 1987, Daniel Ngaya-An, chairman of the Cordillera Bodong Association and Executive Council member of the Cordillera People's Alliance was reportedly abducted and killed by CPLA members. Daniel Ngaya-An was a respected

leader who was instrumental in bringing together several tribal groups into what later became the Cordillera Bodong Association and played an important role in protecting the rights of the tribal minorities. The Senate Committee on Justice and Human Rights in its report concluded:

"The Cordillera People's Liberation Army (CPLA) has been pointed [out] as one of the perpetrators of human rights violations in the Cordillera region, like abduction, salvaging, strafing and massacre. Twenty seven percent of the cases of human rights presented in the public hearing involved the CPLA. The CPLA's status remained unclear. Questions on whether it is under military authority or civilian authority remain unanswered. . . . Col. Aquias claimed that because of the lack of guidance from the civil authorities, the military adopts a policy of tolerance for the CPLA. There is an urgent need, therefore to clear up the status of CPLA in view of the fact that it is largely being considered as a para-military group."

In the Cordilleras as well as in other tribal areas, the military has adopted a strategy of evacuating people from their villages. According to TABAK (the Network of Advocates for the Indigenous Peoples), between 1986 and 1989, a total of 83 evacuations had taken place affecting 23,555 families. During the first six months of 1990, TABAK has documented six evacuations affecting 1,723 families. The ICJ delegation had an opportunity to meet with one group of evacuees belonging to the Subanon tribe, who confirmed that there were several evacuations in the tribal areas of Mindanao.

At the time of the ICJ delegation's visit there were reports that a large number of Higanon tribal members from Agusan and Surigao were fleeing from army action in their area designed to capture renegade Colonel Alexander Noble. According to reports, "Operation Highlander" as the army action was called, included strafing by helicopter gunships. The Justice and Peace Action Group (JPAG) of Agusan del Sur estimated that by August 1990, a total of 1,193 families and about 6,889 individuals fled as a result of "Operation Highlander" and are now living in evacuation centres in Esperanza and other nearby places in Mindanao.

TABAK also documented other violations such as arbitrary killings, torture, and detentions. TABAK provided the following figures for the period covering 1986 to June 1990:

Bombings/Shellings - 52 cases
Massacres - 12 cases involving 38 persons

Salvaging or arbitrary killings - 28 cases
Food blockades - 12 cases
Disappearances - 5 cases
Illegal detentions/arrests - 19 cases involving 199 persons

The ICJ delegation was not able to verify those figures directly, but they appear to correspond with the prevailing human rights situation in the country.

According to indigenous peoples' organisations, the present government has not changed the type of development programmes pursued in tribal areas and indiscriminate logging and mining operations reportedly continue. Furthermore, the military, CAFGUs, and even private armies are used against those indigenous communities who oppose indiscriminate exploitation of their lands by outsiders. For example, in May 1990, Survival International issued a first hand report concerning the use of a private army by a logging company to terrorise the Lumad tribe members in Sultan Kudarat, Southern Mindanao. According to Survival International, the Magsaysay and Sands company "which has a 1000 hectare concession, obtained government funds to replant trees on Lumad land which had already been logged. Violence erupted when tribal villagers refused to take part in the scheme. In a six months campaign of terror, the loggers' army killed and tortured villagers, burnt down houses and destroyed stores of rice. . . . Thousands of Lumad refugees have fled from their homes to the neighbouring province of Maguindanao. Local relief agencies say that 637 families have gathered in nine different sites, but another 1,500 families are hiding in the forests surrounding their communities."⁶⁵

Similarly, CAFGU units in Kidapawan, North Cotabato, are reportedly used in intimidating indigenous residents who oppose a project of the Philippine National Oil Company.

Muslim Minority

The Muslims, like the tribal Filipinos, have retained a separate identity and live mainly on the island of Mindanao. From the 1950s their numerical majority decreased in areas they consider their "ancestral home." This decrease was attributed to the resettlement of tens of thousands of non-Muslims in Mindanao to relieve pressure on agricultural lands in other provinces. Such transmigration was also

⁶⁵ Survival International - Urgent Action, May 1990.

adopted as a policy in the 1950s to provide land to those persons who surrendered after the crushing of the "Huk rebellion" (a Communist-led peasant struggle).

Muslims resented the large scale settlement of Christians in their areas. They also objected to the exploitation of local natural resources by outsiders. By the late 1960s, unrest in the Muslim areas was on the rise. In 1972, a small group of Muslim rebels occupied Mindanao State University and Camp Keithly for a few days calling for a "Jihad." In the same year the Moro National Liberation Front (MNLF) was established to fight for an independent homeland. Following these events, a full scale armed conflict took place between MNLF forces and the Philippine army.

In 1976, in an attempt to end the insurgency, an agreement was signed in Tripoli by the previous government and MNLF leader Nur Misuari. The MNLF leader, however, continued to live in exile and the insurgency persisted. At present, the scale of conflict has diminished considerably and various Muslim groups have begun fighting amongst each other for territorial dominance. There have been relatively few armed encounters between Muslim forces and government forces. For example, at the height of the MNLF insurgency in the 1970s, 24 battalions, a fighter wing, and four gunboats were based in Jolo. Currently, it is reported that only three battalions, totalling some 2,000 soldiers remain.

The 1987 Constitution mandated the creation of an Autonomous Region for Muslim Mindanao. In August 1989, Republic Act 6734 was enacted to fulfill this Constitutional mandate. The Act covered 13 provinces and 10 cities. It provided for a regional autonomous government with a regional governor and vice-governor to be elected by direct vote and assisted by nine Cabinet members. A legislative branch (regional assembly) and judiciary based on the Shariah were also established. The autonomous region has the power to create its own sources of revenue and to levy taxes. The regional government is to protect the ancestral domain and ancestral lands of indigenous cultural communities. Control and supervision over exploration, utilization, and development of most of the natural resources of the autonomous region is given to the regional government. A regional police force is to be created as an integral part of the Philippine National Police. The defence and security of the autonomous region remains the responsibility of the national government. A regional command of the Armed Forces of the Philippines is to be organised for the autonomous region.

A complete and integrated system of quality education is to be maintained in the region, and an educational framework that is meaningful and relevant adopted. A

regional language may be evolved. In all schools, Arabic is compulsory for Muslims and optional for non-Muslims.

A plebiscite was held in November 1989, to ratify and adopt this Act. The plebiscite was denounced by MNLF leader Nur Misuari. The MNLF rejected the referendum because it was not specifically anticipated in the Tripoli agreement. Another apparent reason for the rejection was the government's refusal to create a regional security force to absorb thousands of MNLF fighters. Despite a call by the MNLF for a boycott of the bill, four Muslim-dominated provinces (out of the 13 provinces and 10 cities) voted to be part of the Autonomous Region, namely Lanao del Sur, Maguindanao, Sulu, and Tawi-tawi. The Christian-dominated provinces rejected the proposal, reflecting the fear that the Muslims would dominate the Christians. The President herself indicated these concerns in her speech on 1 August 1989. While signing the Act, the President stated: "The issue of autonomy remains controversial. Some will reject the law because it does not offer enough powers to the autonomous region; others because it gives away too much."

Criticisms were levelled against the President that she did not fully commit herself to supporting the Act. In fact, the President took the position of "active neutrality" campaigning only for the broadest participation in the plebiscite without necessarily endorsing the legislation. Following the referendum, the government has been proceeding with the implementation of the Act. An "oversight committee" has been established to supervise the transfer of powers and functions to the Autonomous Region.

There is a real risk that the regional government may face a lack of finances to carry out its programmes. The region is expected to receive an annual central government subsidy of 615 million pesos for the next five years. The four provinces that constitute the region, however, reportedly have a very low tax base and will not be able to generate their own finances. The noncontiguous nature of the four provinces that constitute the Autonomous Region and the resource crunch may hamper the development of a viable self-governing body. Despite such problems, if the autonomous government succeeds in its goals, it would help deal with the residual armed opposition by the MNLF. In the words of the Congressman from Sulu and member of the Congressional Oversight Committee, Mr. Arden Anni:

"The MNLF will be a thing of the past if the autonomous government succeeds. But if it's going to fail, then the MNLF will be back stronger than ever. What we need is the rule of law. Without it, the only law is guns, goons and money."⁶⁶

Conclusions and Recommendations

The creation of Autonomous Regions in Muslim Mindanao and the Cordilleras represent positive measures indicating that the present government is concerned and serious about dealing with the problems of minorities.

The continuation of indiscriminate logging and mining of tribal areas, however, disregard the rights of indigenous peoples.

Similarly, human rights violations continue in areas occupied by indigenous peoples and they are particularly affected by forced evacuations.

These violations should be stopped. The government should evolve a comprehensive policy for establishing the rights of indigenous Filipinos to land and natural resources. The government should also reevaluate its present development policies in tribal areas and involve tribal Filipinos and their organisations in the formulation and implementation of such policies.

⁶⁶ Id.

Chapter 6

Women

The ICJ delegation met with representatives of various women's organisations in the Philippines. The principal concerns of Filipino women's groups were stated by representatives of Gabriela -- one of the principal women's groups, as: violence against women; women's health and reproductive rights; rights of children and family; rights of migrant women; women's human rights; and international women's rights.

One victim of a human right violation narrated her experience:

She is now 46 years old. She was arrested on 28 June 1988 without a warrant. She was held at Camp Bagong Diwa, Bicutan, Taguig, Metro Manila. While in the camp, she was stripped of all her clothing, and blindfolded with tape over her face. Her hands were tied behind her. As part of her interrogation, her breasts and other parts of her body were fondled. The interrogators placed several fingers in her vagina. This sexual abuse went on for two hours. The woman was threatened with electric shock. She was charged with subversion. After her release she complained to the commanding officer of the camp, Major Varilla. The victim was able to identify the Regional Intelligence Operations Unit of CAPCOM, but could not, of course, identify the specific officers involved. Nothing was done, because she could not identify the interrogating officer. There was no evidence that the military investigated the ill-treatment.

This example of many related to the ICJ delegation illustrates not only official indifference to violations of the rights of women in custody, but also the inadequacy of the rape/sexual abuse laws in the Philippines. Under present laws, the victim must be able to identify the perpetrator. The kinds of conduct discussed above would not qualify as rape, because there was no penetration by a penis. The conduct described in the example is thus presently characterised as a relatively minor offence of an "act of lasciviousness." The case illustrates that the seriousness of the offence should relate to what was done to the victim and not how the act was performed. In addition, a rape victim must demonstrate that she used the "utmost resistance," which is difficult to prove. The Congress is presently considering a bill that would make a few needed changes, for example, to encourage training of law enforcement officers

about rape cases. The bill would also remove the relevance of past sexual conduct in rape prosecutions.

Sexual violence against women committed in custody is compounded by the fact that many women who have suffered such violence may remain silent to avoid social stigma. Moreover, there is no provision in the criminal procedure code stipulating that women should be arrested or searched only by women military or police officers. Nor is there a requirement that women detainees should be under the custody of women officers and should not be detained in a place where there are no women officers.

According to representatives of women's organisations, the implications of sexual harassment of women in custody and elsewhere would be better understood if seen in the context of the prevalent violence against women in the Philippines. Domestic violence against women receives inadequate attention. There is, for example, only one women's refuge in Manila. The problem is exacerbated by the prohibition of divorce under Philippine law.

Sexual harassment in the workplace is another major problem for women. Currently, sexual harassment is not an offence. There are bills being considered in Congress that would define sexual harassment and establish grievance procedures. The delegation was told that some employers require female employees seeking employment to undergo virginity tests, for the purpose of limiting medical insurance and leave rights for pregnant women. Such is the case in the Export Processing Zones in Bataan.

The Philippine Development Plan for Women 1989-1992 was formulated by various government agencies and non-governmental organisations and submitted to the President. This document deals with violence against women and other relevant issues. The Plan document states:

"Generally, government has been remiss in addressing the problem. Inadequate laws and unsympathetic procedures compound the cloud of silence that victims use to protect themselves, especially in this very conservative largely Catholic country."

The following limitations are likewise noted:

- (a) Immediate medical treatment for victims of sexual abuse or violence is insufficient and inaccessible.

- (b) In police stations, sexist attitudes born out of prejudices against women often prevail. Reports on sexual assault are usually treated as mere statistics in police records, and victims can expect little sympathy.
- (c) Very few legal aid clinics specifically cater to female victims of sex-related violence. The criminal justice system ironically fails to convince victims to sue in court. Obstacles to filing rape charges include pressures to reveal prior sexual history as well as rigid and inhumane evidentiary rules.
- (d) Only a handful of non-governmental organisations have set up crisis centres for the much needed counselling and rehabilitation of victims. Moreover, most of these centres cater to victims of military rapes and violence and face a severe lack of human and material resources.
- (e) Present laws covering rape, child-parent abuse, white slavery, prostitution, and pornography are not only inadequate, but also fail to consider changing realities and the increasing complexity of these crimes. The sanctions and penalties they impose are often too light and outdated to deter would-be offenders firmly.

The Plan also provides comprehensive information on the current status of Filipino women. Although all of this information could not be independently corroborated by the ICJ delegation, it has not been denied or denounced since its publication and its tone and general content were confirmatory of the information received. Following are some of its conclusions:

- In 1988, the projected population was 58,721,000 of which half were women. Rural women constitute the majority of total female population (59 percent in 1988). Women belonging to families with few or no assets are compelled to work harder to augment the inadequate purchasing power of the family and ensure its survival.
- Technology: There are few readily usable technologies which specifically address women's needs and reduce their work load. Hence, opportunities to engage in other productive activities are limited. Additional farm work increases women's daily working hours from 14 to 17 hours, at least eight hours of which are spent fulfilling household chores and child rearing activities.
- Employment and income: In the formal labour sector, employed women comprised 36 percent of the employees in all industries in 1988. The labour force participation rate was 47.2 percent for females and 83.6 percent for males. The

nationwide unemployment figures were higher for females (11.3 percent) than for males (9.3 percent) in 1988. Unemployed females consistently outnumbered the males despite a higher level of educational attainment among females. The average income of women is generally lower than that of men, even for the same type of work. There are indications that not all women workers receive their welfare benefits, especially in businesses that are family-owned and where the employees number less than ten.

-- Working conditions: Notwithstanding protective legislation covering working conditions, reasonable production quotas, and adequate safety devices in work places, women workers report exposure to harmful chemicals, intense cold in electronic firms, unbearable heat in footwear/garment factories, unreasonably high and strict production quotas, inadequate safety devices, abuse of learnership/apprenticeship programmes by extending the period, and sexual harassment where male managers threaten their female workers with the choice of "lay-down or lay off."

-- Education: There is a close parity in literacy rates between the sexes (83.9 percent for men and 82.8 percent for women). Sexism and male stereotyping are still contained in the curricula, textbooks, and instructional materials.

-- Health: Annually, approximately 2 million women are expected to become pregnant. Around 1,800 to 2,000 women die of pregnancy-related causes. In depressed rural, tribal, and urban poor communities, the maternal mortality rate (MMR) is twice as high as the national figure of five deaths per day. In the city of Manila alone, the MMR is 210 per 100,000 live births, two times higher than the national rate. Most of these deaths are preventable. Since induced abortion is illegal in the Philippines, women resort to abortions usually performed under poor sanitary conditions by unskilled and non-medical abortionists, resulting in maternal deaths or serious complications. The estimated number of induced abortions performed every year is between 155,000 to 750,000.

-- Women social workers: Social service agents, a majority of whom are women, are constantly exposed to dangers such as risks of reprisal from either side of warring groups. They are also vulnerable to exploitation. There have been reported incidents of abuse and torture among social service agents in view of their stance on social issues. It is also of general knowledge that despite risks in areas of assignment, workers are given inadequate hazard pay and professional remuneration.

-- Export of Filipino women workers: For the year 1987, the Philippine Overseas Employment Administration (POEA) deployed a total of 382,229 land-based contract

workers, almost one half or 47.2 percent of whom were women. The percentages were distributed as follows:

Middle East - 85,814 (47.5 percent);
Asia - 83,562 (46.37 percent);
Europe/America - 9,486 (5.3 percent); and
Africa/Oceania - 1,579 (.9 percent).

Of all female service workers in 1987, 75.9 percent were domestic helpers; nonetheless, over half (50.3%) of the female workers engaged in professional, technical, and related work were entertainers. Foreign exchange remittances generated by female workers were conservatively estimated at around US\$463 million a year. The export of Philippine women workers overseas is a boon to a beleaguered economy because it brings in much needed foreign exchange and serves as a relief from the pressures of widespread unemployment. It also, however, has its accompanying problems. For example, even before prospective women workers are given the chance of possible employment, many are already victimised by unscrupulous recruiters and promoters. It appears that the labour migration program may actually be leading to the deterioration of the quality of human resources available for the domestic needs of the country and may be removing the best workers from the domestic labour force. The shortage of medical/health workers in the country, for instance, may be attributed not only to prohibitive costs of medical training but also the regular export of many of these types of workers to countries where they are given relatively higher pay. Furthermore, the lack of bilateral labour agreements between the Philippines and most of the labour importing countries has made the task of safeguarding the interests and welfare of overseas workers onerous.

-- Foreign marriages: A number of factors provide the impetus for women to plunge into the mail-order bride system, foremost of which is the dearth of economic and social opportunities in the Philippines and the existence of a demand from foreign mostly developed countries. Another factor is the brides' (and their families') tendency to equate personal advancement/success and fulfillment with material/economic wealth. Their desire for economic improvement at all costs leads to the erosion of values regarding marriage and family including the self-worth of women. This problem is exacerbated by the colonial mentality among Filipinos which makes them regard foreign lands as the centre of golden opportunities. Moreover, many women go into the mail-order bride system due to their low level of awareness/consciousness of the issues and problems related to the phenomenon. Prospective brides go to their countries of resettlement ill-prepared for any untoward eventualities that may arise. Reports point to the fact that a significant number of

disadvantaged and miserable women have been forced into prostitution after being deceived by agencies who purported to arrange marriages with male foreign nationals in their country of destination. Some women who married their prospective partners complained about being beaten, being held in isolation, and being forced to entertain friends of their husbands sexually.

-- Prostitution: Under the 1965 Penal Code, prostitution is classified as a crime against "Public Morals." Article 202 of the Code defines prostitutes as "women who for money or profit habitually indulge in sexual intercourse or lascivious conduct." It further states that "sexual intercourse is not absolutely necessary as lascivious conduct is sufficient ground for the crime." The law ignores the procurer, pimps, and the client. Moreover, Presidential Decrees Nos. 148 and 442 issued by the previous government to promote tourism implicitly recognise prostitution without decriminalising it. Under those two decrees, women working in nightclubs, bars, massage clinics, restaurants, or other such establishments under the effective control and supervision of an employer are considered employees or workers in the "hospitality" industry. These women are also required to submit themselves regularly to vaginal examinations to detect sexually transmitted diseases before they are given a "pink card," which is an assurance to their customers that they are cleared for sex.

The President approved and adopted the *Development Plan* and issued Executive Order No. 348 (Feb. 1989) which states:

"All government departments, bureaus, offices, agencies and instrumentalities, including government owned or controlled corporations, are informed to take appropriate steps to ensure the full implementation of the programs and projects outlined in the plan."

As with many other aspects of Philippine law and policy, there is relatively little evidence that the Plan has been implemented.

Conclusions and Recommendations

The preparation of a comprehensive document on women identifying the problems and policies to be undertaken is a welcome new development. The failure to ensure and achieve the full and prompt implementation of this plan is a violation of, or at least inconsistent with, the constitutional provision (Article 11, Section 14) which states: "The state recognizes the role of women in nation building, and shall ensure the fundamental equality before the law of women and men."

In the Philippines there does not appear to exist any effective agency charged with the responsibility of addressing discrimination against women and particularly redressing violence against women. An agency for equal opportunity should be created, funded, and staffed for these purposes.

Chapter 7

Urban Poor

The term "urban poor" is generally identified with "squatters" or "slum dwellers." In the Philippines, however, all impoverished city dwellers without permanent employment and housing are considered urban poor. They normally live in ramshackle structures erected on private or government lands, along railroad tracks, waterways, market places, and garbage dump sites.

The urban poor constitute about 4 million households in the country. In Metro Manila alone, 3.5 million of the total 8 million population are squatters. The poor account for a significant portion of the urban labour force. They provide cheap labour to industries, operate the public transport system, and provide numerous services to more wealthy households in the form of domestic help, launderers, and the like. They are an integral and functional part of the urban economy. In spite of their contribution to the economy, they live in deplorable conditions and are subject to numerous human rights violations.

The conditions under which the urban poor live are among the most dehumanising in the country. They live in extremely congested, unhealthy neighbourhoods; water and sanitation facilities are seriously inadequate, if not completely absent. Their children suffer from malnutrition and disease leading to high infant mortality, and have limited opportunities for education. These persons have no legal claim to the land they occupy and live under constant fear of eviction and demolition of their homes. They are undoubtedly among those who suffered most from the violence and brutality of military and police atrocities under President Marcos.

Apparently oblivious to the causes and symptoms of its own gross neglect, the previous government actually made squatting a criminal offence. Under Presidential Decree 772, the penalty for squatting became imprisonment ranging from six months to one year or a minimum fine of one thousand pesos. To justify the criminalisation of squatting, the decree stated in its preface that "many persons are found to be unlawfully occupying public and private lands of 'affluent families.'"

In 1978 the Marcos government also issued P.D. 1517 which provided that within the urban land reform zones, legitimate tenants and residents who resided continuously on the land for ten years and under a contract would be allowed to stay on the land and would be given the right of first refusal to purchase the land at a reasonable time and reasonable price. This decree was followed in 1986 by P.D. 2016, under which no person could be evicted if the person had resided on that land for at least ten years from the date of issuance of P.D. 1517. This provision had little effect on the problems to the benefit of the people involved; few qualified for the concessions offered.

The previous government also introduced "on-site development programs" under which amenities were to be provided to identified settlements on the condition that the residents would bear the costs. In most cases, the rate charged for development of sites and providing amenities was far beyond the ability of the affected residents. There were also reports that contractors, with the connivance of officials, overcharged for the services provided. In general, the policy of Marcos' government was to demolish and dislocate the squatter settlements rather than deal with the genuine problems of the people in them.

As a result of his unjust policies, the urban poor were vehement opponents of Marcos and thus supporters of Mrs. Aquino when she contested the February 1986 "snap" election. Their presence in large numbers contributed significantly to the People's Power revolution that brought President Aquino to office. Because of her pledges in the election campaign, they had high hopes of government action to solve their plight under her administration.

President Aquino initially took into account the concerns of the urban poor and promised to remove the scar of Smokey Mountain, a squatter settlement of 30,000 living on a garbage dumpsite, from the landscape of Manila. In December 1986 the President created the Presidential Commission for the Urban Poor to coordinate various activities and services rendered to the urban poor by governmental and non-governmental organisations. The President also declared a week in early December of every year to be "Urban Poor Solidarity Week." President Aquino declared a general moratorium on evictions and demolitions in areas occupied by squatter families before February 1986. In another order, the President suspended the collection of past dues on amortisation arrears and delinquency charges for social housing lots.

The post-Marcos concern for the plight of the urban poor was also reflected in the 1987 Constitution. Article XIII, dealing with Social Justice and Human Rights, provides:

"Sec. 9. The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost decent housing and basic services to underprivileged and homeless citizens in urban centres and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such a program the State shall respect the rights of small property owners.

"Sec.10. Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated."

Those provisions did not exist in the two previous constitutions. Nonetheless, despite such categorical commitment to protect the rights of the urban poor, no major changes in their conditions seem to have occurred.

During the first half of 1990, 33 squatter incidents were reported in Metro Manila alone. As a result, 1,537 houses were demolished and 2,702 families were dislocated. Of these families, only 191 were relocated. In 20 demolitions, military and police were deployed to help the demolition squads. Four persons were shot and wounded, 61 hurt or injured, and 50 were arrested. Figures show that in 1988 as many as 10,000 families were evicted and that in 1989, 8,500 families were evicted.

In some urban poor settlements, there have also been "Saturation Drives" or mass searches of homes. These drives are conducted by the military to identify NPA hitmen thought to be harboured by these communities. During a drive, a large number of army personnel surround a community (very often in the early hours of the morning) and conduct extensive searches and identification parades with the help of hooded informers.

The ICJ delegation had an opportunity to hear from representatives of a settlement that was demolished on 14 - 15 September 1990, just as the delegation was commencing its visit. According to the evicted residents of Sitio Kumunoy, Quezon City, about 160 houses were forcibly demolished by the orders of the Quezon City Mayor, affecting up to 1000 people. The demolition was undertaken without a court

order, without any notice to the residents, and without any plans for relocation. The demolition was undertaken by non-uniformed personnel of Quezon City's Anti-Squatting Surveillance and Enforcement Team (ASSET), accompanied by police personnel from the Northern Police Department. The demolition squad destroyed or confiscated building materials and dumped them in a distant place. It also looted personal belongings including food, cash, jewellery, clothing, and the rudimentary domestic equipment processed by the people.

The ICJ delegation was told that the displaced people were forced to find refuge in a local church. As a result of a meeting with the Mayor and the strong advocacy of a local parish priest, the former residents were allowed to go back to the original site. They have had to rebuild their houses -- a process which takes a considerable amount of time; they have received no assistance and their belongings have not been returned to them.

Commenting on this demolition, Jaime Cardinal Sin, Archbishop of Manila, stated:

"This shameful government action is all the more reprehensible since the community of Kumunoy had been working with the National Housing Authority to become beneficiaries of this administration's community Mortgage Program. Their dreams of buying their land with the help of government financing were shattered by the crowbars of ruffians acting in the name of government."⁶⁷

In this instance as in many others, the ICJ delegation was told that rules and regulations were ignored by the authorities as arbitrary actions were taken against the so-called squatters. As a result of the increasing value of urban land and corresponding gains to be made, property developers use their political connections or bribe officials to evict the people.

A case in Cebu City was brought to the attention of the ICJ delegation, wherein demolitions took place despite an on-going court case and a court order restraining the city government from undertaking demolition in the disputed area. The demolished houses were situated in Sitio Mabuhay, Barangay Luz. The demolition took place to create an access road to a multi-billion peso commercial complex

⁶⁷ When will the poor bless us?, Address to the Bishops Businessmen's Conference Committee on Urban Land Reform and Housing, 2 October 1990, reported in the Manila Chronicle, 5 October 1990.

project by the Ayala Company, one of the country's largest property developers. In 1988, land adjacent to Sitio Mabuhay was sold by the Cebu Province to a consortium led by the Ayala Company. The development plan of the company showed that eviction of houses in Sitio Mabuhay was necessary to construct wide avenues leading to the proposed building complex.

According to lawyers for the urban poor, the site in question was allocated in the 1950s for relocation of fire and demolition victims. In 1980 President Marcos stated that the site came under an Area for Priority Development (APD), which meant that it would be granted to the actual occupants. The residents were further protected by P.D. 2016 of 1986 to which earlier reference has been made, providing that tenants or occupants could not be evicted if they had lived for at least ten years on land proclaimed to be an APD. Despite these legal protections, a portion of Sitio Mabuhay was donated by the Provincial Governor to the city government and assigned as one of the sites for the Ayala access roads. In November 1989, 26 of the 39 families to be evicted are said to have agreed to a voluntary demolition. There were allegations that these families were coerced into agreeing through threats and manipulation by the Company and the Mayor's office. On 4 December 1989 the remaining residents obtained an injunction from the Municipal Trial Court restraining the Mayor from demolishing their houses. Nevertheless, on 25 January 1990, the Mayor demolished their houses on the justification that the restraining order's 20 day limit had lapsed. According to the Municipal Trial Court judge, the demolition was "illegal and uncalled for" and an "act of extreme brutality." Moreover, the demolition was reported to have been carried out in a manner that prevented the owners from using any materials to reconstruct their dwellings. The demolition squad was accompanied by anti-riot police officers and military agents of the regional security unit to intimidate the residents and their sympathizers.

Another demolition was ordered in March 1990 to clear the temporary structures created by the previously evicted families. When representatives of Barrio Luz Confederation of Organizations met the Governor to state their case prior to the demolitions, the Mayor reportedly accused them of being "agitators" trying to exploit the situation. This case and others about which the delegation received information indicate that demolitions are undertaken mechanically without any regard to the resulting human suffering. In the words of Cardinal Sin:

". . . even as all of us profit from the presence of the poor, our laws (Marcos P.D. 772) look on them as criminals. In fact, the way some local governments are treating these people, you would think that they were animals and that our society

is guiltless and more humane to the swine it cares for - and houses - to a slaughter!"⁶⁸

Those are very strong words reflecting the gravity of the problem. It must be accepted, that the problem of squatters cannot be solved without alleviating poverty by raising incomes and improving infrastructure. In the short term, measures such as those proposed by the Urban Poor Forum, a nongovernmental organisation, could be undertaken. The recommended measures are:

-- A moratorium on demolitions, padlockings, and evictions until the government has worked out a comprehensive urban development and land program that will take everyone's needs into consideration.

-- A moratorium on payments on government relocation areas and National Housing Authority project sites should be introduced until a reevaluation of costs is made.

-- The government should desist from introducing CAFGUs and vigilante groups to deal with urban guerrillas, to prevent the escalation of violence in the settlements.

-- Compensation ought to be provided to victims of illegal demolitions. The Anti-Squatting Council and similar bodies should be dismantled. If the government wants to prevent organised squatting, the leaders of syndicates and not the ordinary people, should be arrested and prosecuted.

Urban poor organisations have also been targeted by the military and paramilitary groups. Following is a particularly stark example of the cases brought to the attention of the ICJ delegation:

ALMATAG

The ALMATAG (Alyansa ng Maralita ng Taguig) is an urban poor organisation composed of various local associations in Taguig (encompassing Lower, Upper, and Western Bicutan and Signal Village), Metro Manila. It was organised in 1986 with the approval of President Aquino's administration to enable the urban poor to engage in self-help activities.

⁶⁸ Id.

ALMATAG lobbied for the issuance of Proclamation 172 (16 October 1987), the largest urban land reform scheme in the Philippines. Under it, land in the area is to be sold inexpensively to the occupants (approximately 15 pesos per square metre even though the value in the area is actually 1,000 - 2,000 pesos per square metre and rising). The proclamation ran counter to plans of local government which envisaged industrial and residential development in the area. Its implementation has been hampered by fraud and corruption.

ALMATAG, working for the interests of the urban poor, has been openly denounced as a "communist front" by a military Special Operation Team (SOT). A vigilante-style private organisation called Bantay Bayan operates in the Western Bicutan area with the support of Col. Torina of the Philippine Army. Bantay Bayan participates in SOT activities and is supported by local government through the Mayor, Barangay Chairman, and the local Chief of Police. Its attacks on ALMATAG members have seriously affected the viability of the organisation.

In July 1988 the homes of various ALMATAG leaders were raided by elements of the Philippine Air Force (PAF), using a single search warrant. The searches did not yield anything listed in the warrant but Cresanto Teodoro, Antonio Sabas, and Wilfredo Suyat, Sr., were taken to PAF headquarters. They were later released without charges being filed.

In August 1988 elements of the National Capital Region Defense command (NCRDC) based in Camp Crame again raided the same ALMATAG houses using the July search warrant. Eleven persons were arrested, including the three mentioned above, and taken to Camp Crame. All except one were released without charges. The military stated that a 38 calibre homemade pistol was found in that person's possession. A charge of illegal possession of firearms was filed against him and a warrant was issued for his arrest.

ALMATAG leaders met with the military and were given a written assurance that there would be no further illegal searches/arrests. In November 1989, however, Dionisio Dabuet, Jr., and Roger Dap-og, both officials of ALMATAG-affiliated organisations, were abducted by Bantay Bayan members and taken to the house of ex-Mayor Rodolfo Camino, a leading organiser of the National Alliance for Democracy (NAD). Dabuet and Dap-og were presented to Colonel Floreindo as NPA members who had surrendered. The two escaped and ALMATAG lodged a complaint with the Commission on Human Rights (CHR). Despite the passage of more than 15 months, the case has yet to be resolved. The last "settlement" dialogue requested by Bantay Bayan was held on 19 April 1990 with no results.

In the early hours of 20 April 1990 the Regional Special Force of Capital Region Command (CAPCOM) raided, searched, arrested, and detained nine members of ALMATAG. Among those arrested were Dionio Dabuet, Jr., Roberto Dap-og, and Wilfredo Suyat, Sr. They were all brought to CAPCOM headquarters in Camp Bagong Diwa, Bicutan, where they underwent interrogation. The nine were charged with subversion.

CAPCOM Chief Brigadier General Filarte, stated that the nine were Sparrow Unit members, but they denied the accusations. They indicated that they belong to ALMATAG, which is recognised by the Philippine Commission on Urban Poor (PCUP). Those arrested were charged with violation of Republic Act 1700 and were detained at the PC-INP jail in Camp Bagong Diwa. The charges relate to the death of a Barangay Captain sometime in 1988. In May 1990, CAPCOM grudgingly released the accused on bail.

In the meantime CAPCOM announced its intention of creating more chapters of Bantay Bayan and increasing patrols. Further incidents have followed. On 25 May 1990 Roger Dap-og, the ALMATAG official mentioned above, was arrested by the Bantay Bayan and taken to Camp Bagong Diwa. The Free Legal Assistance Group (FLAG) intervened and he was released without charges being laid.

Other warrantless raids and searches have been conducted on homes of ALMATAG members forcing a number of families to flee Taguig. The Chairman of ALMATAG, Antonio Sabas, a nominee to Congress representing the urban poor, was continually harassed and forced to live in different houses outside Taguig to avoid arrest.

Adriano Abiera, Jr., 39, a former community leader and former Bantay Bayan adherent, volunteered to act as a witness for ALMATAG. Shortly afterwards on 10 March 1990 he was arrested along with Elmer Braza and Jonathon Jonaldo. The two later were released but Abiera has been charged by Bantay Bayana with attempted murder. A case is pending at the Regional Trial Court in Pasig. Abiera is now out on bail. He has been beaten and his house has been stoned. He dares not go into the area without risking further arrest.

On 1 July 1990 Jose Felismonte, a member of Sinagtala, an affiliate of ALMATAG, was shot dead as an NPA suspect by people believed to be members of Bantay Bayan. A news report on 3 July claimed he had been killed by four suspected drug addicts.

Despite the insistence of the military that ALMATAG members are communists, government officials, even within the Presidential Office (notably Secretary Elfren Cruz and PCUP Chairman Fernandez), still vouch for these same people.

Conclusions and Recommendations

The urban poor comprise about 4 million households in the country. They live in deplorable conditions, and are subject to numerous human rights violations. In particular, the demolition and dislocation of squatter settlements continue unabated.

The practice of demolishing and evicting urban poor settlements should be discontinued. Where people have been illegally evicted, compensation should be provided to the victims and they should also be provided proper alternative sites.

The government should repeal Presidential Decree 772 which makes squatting a criminal offence and should enact a new law to take into account the genuine problems of shelterless urban poor communities.

The government should implement the short term measures proposed by the Urban Poor Forum and should fully involve representatives of urban poor organisations in the formulation and implementation of policies on urban planning and development.

Chapter 8

Children

During the 14 years of martial law under President Marcos, approximately 4.5 million children were directly or indirectly affected adversely by internal armed conflict. The increasing militarisation under the five years of the Aquino government has already produced a further 2 million child victims of the conflict.

Violations of international human rights and humanitarian law by military and paramilitary groups include massacres, severe woundings when parents were killed, arrests and torture, sexual molestation, indiscriminate firing, and forced displacement. Examples of each of these violations received by the delegation are as follows:

Massacre

In Bangon, Samar, elements of a special operations team (SOT) under Maj. Edilberto Tiu of the 62nd Infantry Battalion base in Bgy. Trinidad, Calbayog, killed a family of four on 18 February 1989. The fatalities were Pedro Pagao, 45; his wife Encarnacion, 40; and their children Eduardo and Rosie, 12 and 6 years old respectively. In a press conference the following day, the military claimed victory in an "encounter" in Sitio Bangon with nine New People's Army members killed.

Severe woundings

On 7 May 1990, Edna Losande, a young peasant mother, was killed and two of her children -- Christian, 2 years old, and Crisanto, 8 months old -- were wounded when elements of the 225th PC Company (under Maj. Owen Dabe) strafed their hut in Sitio Pasong Putik, Bgy. San Juan, Antipolo, Rizal. The following day, newspaper accounts of the incident announced the killing of an NPA "amazon."

Arrest/Torture

On 20 June 1988, Rustom Jalmasco, 14 years old, was arrested in Preito Diaz, Sorsogon, on his way to visit his sister. He was charged with subversion, double murder, and robbery in bands as a result of his alleged involvement in a raid by the NPA in Preito Diaz. He was brought to a camp in Sorsogon where he was beaten and tortured "submarine style" (his head was forcibly submerged in a dirty toilet bowl

several times) so that he would admit the charges. He was brought to the Sorsogon Provincial Jail where he was detained until 21 March 1990.

Detention

On 15 March 1989, five uniformed men from the PC-SAF intercepted Florencia Opsimar, 41 years old, and Roel Cadavida, 8 years old, on suspicion that they were NPA supporters. The two were on their way home from their farm. They were hogtied and brought to the 336th PC Headquarters in Magbagang, Sta. Catalina, Negros Oriental, where they were detained without formal charges.

Sexual molestation

During the afternoon of 6 May 1990, ten soldiers suddenly entered the home of the Azcarranga family in Libmanan, Camarines Sur, where Alma, 13 years old, and her younger siblings, Mario and Gigi, were left alone when their father was illegally arrested and tortured by Army troopers for allegedly being an NPA sympathiser. The soldiers were searching the house for guns allegedly belonging to the NPA. Finding none, one trooper ordered Alma to strip to her underwear and in front of the other children, sexually fondled Alma. He stopped only when Alma began to cry.

Indiscriminate firing

In Mlang, Cotabato, five year old Ivy Ofilan was hit on the right thigh by stray bullets from an M16 rifle indiscriminately fired by an unknown number of a CAFGU unit and elements of the 27th Infantry Battalion during the afternoon of 6 April 1990. Ivy did not receive medical aid and died due to loss of blood.

Forced displacement

As a result of Operation Thunderbolt launched in April 1989 in the CHICKS area (composed of the municipalities of Candoni, Hinobaan, Ilog, Canayan, Kabankalan, and Sipalay), some 35,000 individuals were forced to evacuate their homes in three weeks. The evacuation caused widespread epidemic diseases that led to the death of 64 Sipalay children and 307 Candoni children.

Other Abuses of Children

Large numbers of children have been subjected to the risk of early death or incapacitation, as well as being orphaned by the activities of military units. Millions

of children also endure unsanitary and unhealthy living conditions, undernourishment due to insufficient and unstable sources of food, lack of social and medical services, and psychological stress as a result of being exposed constantly to uncertainty, threats, fear, and harassment. Profound sentiments of despair, helplessness, and vulnerability pervade their lives as they witness the collapse of parental security and protection. Many parents, oppressed and extremely stressed themselves, are unable to fulfill their roles or compensate for the loss of their spouses to death, detention, or disappearance.

Common health problems in children include respiratory tract infections, skin infections, malnutrition, parasites, gastro-enteritis, broncho-pneumonia, amobiasis, bronchitis, viral infections, otitis media, anaemia, and malaria. Many children suffer from at least two diseases.

Emotional disorders and maladjustments include withdrawal, depression, irritability, excessive dependency on parents, aggressiveness, intense generalised fear triggered by specific environmental stimuli such as sudden commotions and sounds of gunfire, excessive fantasising, loss of appetite, physical complaints such as fever and recurring pains that accompany emotional and psychological disturbances, insomnia, nightmares and other sleep disturbances, unclear or distorted concept of a family particularly about the role and place of the detainee (or ex-detainee) in the context of homelife or family role patterns, and regression in school performance and social integration.

Access to reasonable opportunities in life for these children is negligible, and urgent steps must be taken to address the problems created. The Philippines ratified the United Nations Convention on the Rights of the Child on 26 July 1990 with effect in the Philippines from 20 September 1990. All of the current abuses being suffered by children contravene the Convention (especially Articles 37 and 39) as well as Article 24 of the Fourth Geneva Convention and Article 77 of the First Additional Protocol to the Geneva Conventions.

The delegation received uncorroborated reports of other neglect and abuse of children. These reports indicated that children were being bought and sold off Palawan and Cebu as child labour for the Muro-Ami fishing operation; that they were exchanged for debt forgiveness in sugar cane communities; that they were used in "sweat" shops making garments, sometimes where they were not allowed to go home. The delegation also received unverified information that children, especially Amerasian children, were sold for adoption for US\$200 per child with the assistance or connivance of the Department of Social Welfare.

Conclusions and Recommendations

All reports of child abuse outlined in the report should be investigated by relevant governmental, nongovernmental, and international agencies. The government should urgently establish an independent agency for the protection of children to investigate and monitor abuses against children and to provide for their protection and welfare. The perpetrators of the abuses should be called to account and promptly brought to justice. The provisions of the United Nations Convention on the Rights of the Child should be implemented.

Chapter 9

Insurgency and Counter-Insurgency

History and Growth of the CPP-NPA

Under President Marcos, the Philippines was faced with two major insurgencies; one waged by the New People's Army (NPA), the armed wing of the Communist Party of the Philippines (CPP) and another in Mindanao spearheaded by the Muslim Moro National Liberation Front (MNLF). At present, the MNLF threat seems to be dormant and the CPP-NPA insurgency dominates the country's political environment.

The predecessor of the present CPP is the Partido Komunista ng Pilipinas (PKP) which led a peasant rebellion in the 1940s. This rebellion was known as the Huk rebellion and originally developed in Central Luzon as a resistance movement against the Japanese in World War II.

After World War II, as a result of the refusal of the new Philippine government to recognise the services in war as well as the grievances of the Huks, the Huk rebellion continued as an agrarian uprising. In the early 1950s, then Defence Secretary Ramon Magsaysay, with guidance from the US, waged a combination of military and civic political action to suppress the rebellion.

After the defeat of the Huk movement, the PKP's membership dwindled and the organisation became insignificant in Philippine politics. In 1968, student radicals following a Maoist ideology formed the CPP. In 1969 the New People's Army was established. The CPP is publicly represented by the National Democratic Front (NDF), a coalition of groups which claims a membership of 500,000 persons. The CPP-NPA has a broader program, which was described by the NDF in 1977 as relying on "the people's armed revolution to overthrow and replace the fascist dictatorship with a coalition government of the national democratic form." In the 1980s the CPP-NPA extended its armed struggle to the urban areas by establishing "Armed City Partisan" units popularly known as "Sparrow units." As part of their military action, "sparrows" assassinate soldiers, police officers, and government figures.

Between 1969 and 1986, the CPP-NPA increased its strength enormously. The 1984 ICJ report attributed the growth of the NPA to "the repressive nature of the Marcos government." The overthrow of President Marcos reduced the number of

CPP-NPA sympathisers. Moreover, the NDF's decision to boycott the February 1986 "snap" presidential election reportedly damaged its credibility and further reduced its support in urban areas.

According to the Department of Defence, the CPP-NPA's membership increased from 95 in 1968 to a high of 25,200 in 1987, but then declined to 18,640 members in 1990. Those numbers do not reflect the actual number of NPA members involved in combat operations, which is much smaller.

The military says that the number of villages "influenced" by the CPP-NPA rose from 1,551 in 1983 to 8,496 in 1986. In 1989, this number was reportedly reduced to 6,539. CPP-NPA influenced villages are defined by the military as villages with at least 50 percent support for the CPP, a CPP political organisation, and/or a CPP militia. The imposition of CPP-NPA taxation on the population and the failure of the government's political organs to function are further characteristics of CPP influenced villages.

The PKP was banned in 1957 by R.A. 1700. R.A. 1700 was amended on several occasions. The amendment outlawing the CPP was first adopted in P.D. 1835 which was reaffirmed in 1987. (See Chapter 16).

CPP-NPA Violence

The CPP-NPA regularly engages in violent activities, killing members of the military, security forces, informers, and persons whom the NPA considers oppressors of the people.⁶⁹

The 1984 ICJ Report concluded:

"The NPA attack and kill primarily members of the military, intelligence and security forces. They rarely attack the civilian population. Abuses by the NPA against civilians usually take the form of assassinating suspected informers or inflicting 'justice' by killing persons they consider have been exceptionally oppressive towards the population. Nevertheless, it is widely reported that the rural population in many areas prefer the presence of the NPA to the presence

⁶⁹ See also Asia Watch, *The Philippines: Violations of the Laws of War by Both Sides* (1990).

of government forces which engage in more indiscriminate and random attacks on civilians."

After the overthrow of Marcos, however, more information emerged concerning the abuses committed by the CPP-NPA. The present military leadership systematically documents cases of what it considers violations by the CPP-NPA. For example, a document made available to the ICJ and prepared by the Civil Relations Research Group, Civil Relations Service, states that "the research on CPP/NPA/NDF atrocities was initiated by this group to counter the prevailing perceptions that the AFP is the number one human rights violator."

According to the AFP document, in the first six months of 1990, there were 365 incidents of CPP-NPA "atrocities" all over the country. A total of 182 were actions against army and police personnel, 121 were against CAFGU/civilian volunteers, 8 against government officials, and 109 civilians were killed. Although the ICJ delegation spoke with several individuals whose families had been attacked by NPA fighters or who had themselves been wounded, it was not able to verify the AFP statistics independently. The AFP document further states:

"The CPP/NPA/NDF human rights atrocities and violations were classified into eight categories namely liquidations, kidnappings and abductions, robberies, bombings, arson, sabotages, extortions and ambushes. Among the atrocities, the CPP/NPA/NDF figured a lot in ambushes resulting in the death and wounding of innocent civilians and CAFGU elements. Among the celebrated cases of human rights atrocities are the kidnapping of Timothy Swanson, a member of the American Peace Corps Volunteers. . . and the Japanese development worker Fumio Mizuno in Negros Occidental and the liquidation of Col. Saturnino Dumlaog in Metro Manila."⁷⁰

Swanson was apparently kidnapped because the CPP/NPA believes the Peace Corps is a US CIA backed organization. Mizuno was kidnapped as a warning to the Japanese government to stop providing foreign aid to the Philippines government. Both were released in August 1990.

⁷⁰Memorandum on CPP/NPA/NDF Human Rights Atrocities, report by the Civil Relations Research Group, Civil Relations Service, Camp Aguinaldo (August 1990).

The Civil Relations Research Group study listed the case of Barangay Captain Ricarte Damo y Calingagan of Barangay Sacsil, Bangui, Ilocos Norte, who was abducted in July 1986 by five unidentified armed men, allegedly members of the NPA. The current whereabouts of Damo remain unknown. The study also reported the kidnapping of Vice-Mayor Henry Benemerito and four members of a town council at Sitio Aquibaquib, Barangay Subec, Pagudpud, Ilocos Norte in January 1988. The five men were kidnapped by ten heavily armed men, believed to be members of the NPA. Two of the town council members -- Angelito Valdez and Simplicio Sagando, Jr. -- were reportedly killed by the NPA. Vice-Mayor Benemerito and the two other council members -- Eddie Lorenzo and Edito Ramos -- were able to escape. Damo, the Vice-Mayor, and the council members were all civilians and should not have been targets of the NPA, regardless of their positions in the local government.

There have been also reports of CPP-NPA purges of its own ranks and the killing of informers or "Deep Penetration Agents" (DPAs). In 1989 the military with the assistance of former NPA rebels uncovered graves in Southern Luzon. According to the military, 48 bodies were exhumed from these graves. Former CPP-NPA rebels who helped identify the graves stated that at least 140 suspected DPAs were executed by the NPA in the Quezon and Laguna provinces.⁷¹ The victims were reportedly convicted and executed on the mere suspicion of being double agents. The government has stated that the reported purges in Luzon were not isolated incidents and that similar purges have taken place in Mindanao as well.

In March 1987, two brothers, Elpidio and Dominador Ranjo of Barangay Dadaeman, Pasuquin, Ilocos Norte, were reportedly killed by seven NPA members because they were suspected informers. They were apparently executed by being shot in the head at close range. A month later, Antonio Agtarab of Barangay Malasig, Vintar, Ilocos Norte, was also killed by the NPA. A note was left by his body stating that the victim was a civilian informer.

The best known case of the indiscriminate killing of unarmed civilians by the NPA is the Digos massacre. The incident took place on 25 June 1989, at Sitio Lower Rano, Barangay Binaton, Digos, Davao del Sur, Mindanao. In that incident 37 persons, including women and children, were killed by the NPA. The victims belonged to the United Church of Christ in the Philippines (UCCP). According to a report of UCCP and TFDP, the background to the killing was as follows:

⁷¹ Far Eastern Economic Review, 3 August 1989.

The residents of Rano, who were members of the Bagobo tribe, supported the NPA for some years. Abadya Ayap and Neste Ayap were two NPA organisers. In 1986 the residents were converted from animism to the UCCP. In the same year the military and the local anti-communist vigilante group (Pulahans) began to harass and intimidate the Rano residents. Abadya Ayap was arrested, forced to confess his NPA connections, and identify other NPA members. The residents were also organised into an anti-communist religious cult group called "Itumans."

On the day of the incident, a platoon of the NPA approached Rano for a mass meeting and dialogue with the Ituman and other residents. The Ituman leader and lay-president of the UCCP, Ruben Ayap, known as Kumander Maya, was told about the approaching NPA platoon. Kumander Maya was in the chapel conducting Sunday school. He dispatched two youths to inform the military and also asked Cesar Endar, an Ituman member, to meet the NPA.

Endar encountered a squad of NPA fighters about 40 metres from the chapel and there was an exchange of fire. Endar reportedly started the shooting. On hearing the gunfire, Kumander Maya asked the assembled people in the chapel to move to the house of Abadya Ayap situated five metres away from the chapel. Meanwhile, Kumander Maya and four others positioned themselves at the slope between the chapel and the house of Abadya Ayap; they began firing and the NPA returned the fire. Kumander Maya was hit and retreated to the house, the other four were fatally wounded. The NPA called for a dialogue and were answered with gunfire from the house. According to the UCCP report, exchange of fire resulted in 37 dead and 10 wounded, all Ituman victims. There were also reports that the NPA entered the house and shot at people inside even after seeing that they were civilians. Two dead men, Clemente and Abadya Ayap, were beheaded by the NPA fighters.

In a press release dated 21 August 1989 and issued in September, the NDF stated:

"our findings showed that the commanding officers of [our] first platoon of the main regional guerilla unit in Southern Mindanao [were] involved in the gunfight which resulted in the death of 37 people mostly women and children including fanatical Ituman leaders and followers. . . . [The troop's actions] gravely jeopardized the lives of unarmed women and innocent children which violated the principles of the New People's Army. . . . Commanding officers of the platoon

had a responsibility in the Digos tragedy for failing to exercise political wisdom and restraint to prevent the loss of innocent lives."⁷²

In a statement issued on 3 July 1989, the UCCP addressed both the NDF and the government. To the NDF it said: "You claim to be a responsible alternative to the present government. The massacre in Digos raises grave questions about the consistency of your efforts toward social transformation based on justice." To the government it stated:

"[W]e have received reports from our congregations in Southern Mindanao that the Armed Forces of the Philippines has been using some of our churches and chapels as bases of operation. Our pastors tell us that rural congregations have been organized into anti-communist vigilante units and fanatical cults. Worse yet, government forces have armed these groups, using them as instruments in their counter-insurgency effort. . . . In the case of the UCCP church in Lower Rano, our members there have told that the military enticed and coerced members of the community into forming their anti-communist movement This of course in no way excuses the attack on the unarmed congregation. But neither does the attack excuse the tragedy which is now unfolding and for which we must hold the government responsible."

The UCCP called on the NPA and the AFP to cease hostilities. It also called on the NDF and the government to enter into negotiations for peace.

Violations of the Geneva Conventions

The nature of the continuing struggle between the NPA and the APF indicates that Common Article 3 of the Geneva Convention applies to this armed conflict. From the early 1970s, the NPA has been responsible for violations of international humanitarian law. The applicable norms of international human rights and humanitarian law are set forth in Chapter 11. Though forbidden by Common Article 3 of the Geneva Conventions, the NPA has subjected civilians and persons "hors de combat" to "violence to life and person." The NPA has also taken civilian hostages, has passed sentences on civilians, and executed them without fair trial procedures. Furthermore, the NPA has often endangered civilians, thus violating Article 13 of

⁷² Manila Chronicle, 8 September 1989.

Protocol II, which provides that the civilian population be given protection against attack.

Specific Violations of Protocol II

Violence to Life and Persons

The NPA has assassinated Philippine military and paramilitary personnel, police officers, US military personnel, and local government officials. These persons are killed not only for political reasons, such as retaliation or publicity, but also to obtain weapons or to collect NPA taxes. NPA "Sparrow units" are often responsible for the killings.

International humanitarian law prohibits the killing of military personnel, police officers, members of paramilitary forces, and soldiers who are "hors de combat." Local government officials are civilians and are thus not proper targets for NPA military action. In addition, assassinations usually occur in broad daylight and in public areas, thus endangering members of the civilian population. The NPA has also killed civilians, in contravention of Common Article 3. The most publicised abuse committed by the NPA during the past few years was the Digos massacre discussed previously. It is fairly clear that in the Digos incident the unarmed civilians were killed by the NPA without military necessity.

The AFP Civil Relations Research Group study also contained a report from the Headquarters of the Constabulary/Integrated National Police in Ilocos Norte, which provided short summaries of NPA abuses from 1986 to 1989. According to the report, in October 1987 Barangay Councilman Rodrigo Subia of Barangay Dampig, Pagudpud, Ilocos Norte, Luzon, was shot to death in his home by the NPA. In the same month, Jimmy Alupay, an ex-member of the Civilian Home Defense Forces (CHDF) was killed in Sitio Baruybaruy, Barangay Payak, Bangui, Ilocos Norte, allegedly for his former activities with the CHDF. Both men were civilians and the Geneva Conventions prohibit the killing of civilians in an applicable armed conflict.

Extrajudicial executions and lack of fair trial

The NPA sometimes conducts trials in "people's courts" of suspected spies, informers, and others who are charged by the NPA with having exploited their communities. These "courts" and executions have been criticised for lack of "judicial guarantees which are recognized as indispensable" by the community of nations in Common Article 3.

Counter-Insurgency

The Defence Department provided the ICJ delegation with a briefing which concluded:

"Although the rightist threat stands as the immediate or short term threat to our national security, the Communist insurgency still poses as the most potent and long term threat to our national security."⁷³

In its Report for 1989 submitted to the President, the Department of Defence states:

"The principal efforts of the Department were directed against the armed threats to national security with the . . . main thrusts [of] launching an all-out offensive against the Communist insurgents giving priority to 16 guerilla fronts."⁷⁴

As discussed earlier in this report, to deal with the Communist insurgency, the military follows what it calls a "total approach" policy. This policy consists of "clear[ing], hold[ing], consolidat[ing] and develop[ment]" phases. This strategy, formalised in 1987, is called by human rights activists and critics of the government as it was earlier by the government itself, as the "total war" policy. It is also known as a policy of "Low Intensity Conflict."

Background to the present strategy

The main justification given by former President Marcos for imposing martial law was what he alleged was the threat of communist rebels. Abuses by the military and a deteriorating economic situation, however, actually helped the CPP-NPA increase its strength during the martial law period. Moreover, toward the later part of his rule, Marcos was reportedly more concerned with defending his palace. For example, eight battalions (about 25 percent of the combat forces) were deployed under the

⁷³DND Information Kit, Update on the Communist Insurgency Situation in the Philippines as of June 1990, prepared by Alexander M. Arevalo, Captain, PC, Military Assistant to the Secretary of National Defence.

⁷⁴Id.

Presidential Security Command.⁷⁵ As a result, counter-insurgency was not pursued systematically. The main strategy reportedly followed was to identify and target individual NPA leaders.

After the overthrow of Marcos, the CPP-NPA was apparently on the defensive since it did not directly contribute to the People's Revolution that ousted Marcos. Pro-and anti-Marcos factions of the elite reunited to support the local army commanders in dealing with the insurgents. The US government has also been linked to the post-Marcos counter-insurgency program because it has provided advisers and other support for the programme. The mandate of the present ICJ mission did not cover the Filipino-U.S. relationship and the ICJ delegation did not investigate it or the related issue of the US military bases in the Philippines.

The use of vigilantes evolved at the initiative of local commanders in Visayas and Mindanao and later spread to other parts of the country. This experiment coincided with the appointment of General Ramos as Defence Secretary in January 1988. One analyst stated:

"Even after he moved from Chief of Staff to Secretary of National Defense, Ramos maintained his factional favorites in GHQ and still controlled counter-insurgency. Rather than commit his resources to a conventional campaign against NPA main force units, a move that required a looser political grip over the AFP, the Ramos faction instead devised a small unit civic action-cum-militia program that, in effect, legitimated the spread of local vigilante organizations."⁷⁶

The strategy that emerged was summarized as follows by Brigadier General Ramon E. Montano, then acting Deputy Chief of Staff for Operations:

". . . large scale sweeping operations backed up by air power and artillery . . . failed to destroy the enemy's combat capacity or reduce his freedom of action to raid. . . . Instead of such conventional operations against NPA main force units, the AFP would break its battalions into squads to attack the communist mass base. . . . As long as the NPA maintained its mass base, conventional AFP operations would produce two results. If the NPA forces were inferior, they

⁷⁵ Alfred McCoy, Demystifying LIC, 4 Philippine Quarterly of Third World Studies No. 3 (1989).

⁷⁶ Id.

would retreat, if superior, they would ambush the AFP. This mass base support system gives the CPP-NPA force maximum freedom of movement and limits severely government initiatives. . . ."⁷⁷

"The AFP strategy indicated that the military should, instead of chasing the NPA, break battalions into small Special Operation Groups (later termed Special Operation Teams or SOTs). Those groups occupy NPA villages backed by vigilante groups who provide intelligence. The groups conduct widening prophylactic patrols on the periphery of the targeted barangays. The patrols do not seek and destroy the rebels, but act as socio-economic patrols to show military presence to the people. Gradually, as patrols build mass support, the government will translate the barangays' loyalty into local Peace and Order Councils that will isolate the insurgency for "easier neutralization by law enforcement operations."⁷⁸

The "total approach" policy emerged in four phases:

Clearing phase

This phase consists of interdictions and combat operations in the areas controlled by the enemy, the primary target being the NPA regulars or armed guerilla units of the NPA. The purpose is to neutralise the coercive hold of the NPA and the task is mainly the responsibility of AFP mobile forces. The military either chooses a particular area and launches an attack; or attacks an area following an encounter with NPA forces. Some areas considered NPA strongholds are targeted specially for large scale offensives. As discussed in Chapter 8, a major offensive known as "Operation Thunderbolt" was mounted in June 1989, in the CHICKS area (near the towns of Candoni, Hinobaan, Ilog, Canayan, Kabankalan, and Sipalay). The area in Negros was considered an NPA stronghold. In this and other offensives, the military reportedly resorted to bombing and shelling villages. Normally, after an offensive, the area is considered secured by the military. There have been reports, however, of arson and destruction in secured villages. In addition, large scale evacuation of villagers from their villages is also pursued by the military to achieve the strategy of

⁷⁷ As quoted by Alfred McCoy from a confidential memo, see id.

⁷⁸ Id.

"tak[ing] the water away from the fish."⁷⁹ There seems little doubt that this strategy was pursued in Operation Thunderbolt.

Holding phase

This phase comes immediately after the clearing phase to enable the mobile forces to move to other places. During this phase, Special Operation Teams (SOTs) are introduced in secured villages which remain to neutralise the political machinery of the underground movement. The SOTs consist of members of military, CAFGUs, and very often vigilantes.

In the holding phase one common method reportedly used is the coercion of villagers into identifying NPA supporters in their village. Normally, the SOT calls a village meeting or "Pulong-pulong" and gives lectures on the dangers of communism. At the end of the meeting the participants are asked to publicly identify the alleged NPA supporters among them. Alternatively, a "black box" is used in which people drop a slip containing the names of alleged NPA sympathisers in the village.

Those identified as NPA members are interrogated and made to sign documents expressing allegiance to the Constitution and the military. They are also counted as "surrenderces" or "returnees" and the media is frequently used to publicise such "surrenders." As a result of this strategy, some villagers are branded as NPA supporters without any proof. Those named as supporters suffer the consequences of being identified as NPA rebels. Participation in meetings conducted by the military is compulsory and the presence of the military, CAFGUs and vigilantes offers villagers no choice except to attend such meetings. Moreover, those who are active in the local community or have connections with trade unions or church organisations are invariably identified as NPA supporters. For example, a report by the Association of Major Religious Superiors in the Philippines found: "Frequently, the person collecting church offerings was listed as the underground tax collector and barangay officials were named as the 'movement' leaders."⁸⁰

Two members of the ICJ delegation visited a barangay in Negros where the local members of the National Federation of Sugar Workers Union (NFSWU) had been

⁷⁹ Far Eastern Economic Review, 11 January 1990.

⁸⁰ The Iceberg and the Cross, Violence Against the Church, Association of Major Religious Superiors in the Philippines (1990).

identified as NPA supporters and were made to sign a statement that they were surrenderees. It appeared that in some cases personal grievances between villagers influence their accusations against NPA sympathizers.

The following conclusion of the Association of Major Religious Superiors in the Philippines (AMRSP) concerning the military's method in identifying and neutralising NPA supporters reflects the views of Philippine human rights organisations:

"Spying-on-your-neighbour methods such as the 'black box' are abusive of constitutionally guaranteed civil rights including the right to due process, right to counsel, right to privacy, right to confront an accuser on a legally constituted judicial setting. Even worse, perhaps are the long-term outcomes: distrust, fear and unwillingness to freely exchange ideas."⁸¹

Consolidation phase

This phase usually overlaps with the holding phase and includes CAFGUs and the Civilian Volunteer Self Defense Organizations (CVOs or Bantay Bayan). The purpose of the phase is to provide "urgently needed service on an emergency basis and reestablish grassroots democracy and confidence of the community."

CAFGUs and vigilantes accompanying the SOTs remain in the area to follow the operations conducted by the SOTs. The establishment of CAFGUs and CVOs who often overlap with pro-government vigilante groups is justified on the assumption that they secure the villages from NPA members and also help provide services to the villagers. It appears, however, that services are rarely provided and CAFGUs and vigilantes more often intimidate the villagers rather than help them. In many cases, villagers are forced to join the vigilantes and those who refuse are targeted as NPA supporters. Hence, the presence of vigilantes does not apparently contribute to reestablishing a grassroots democracy, which is a stated goal of this phase.

More importantly, CAFGUs and vigilantes are not confined to defensive purposes such as intelligence gathering, but are commonly used for offensive purposes. The high number of CAFGU casualties indicate that they are used in combat situations. For example, in the first six months of 1990, a total of 121 members of CAFGUs

⁸¹ Id.

were killed in action.⁸² It is believed that CAFGUs are very often used as "buffers" by the military in their operations against NPA units. Consequently, the military is reluctant to discipline CAFGUs for abuses committed by them, since they face the brunt of the rebels' attacks.

The ICJ delegation received information about numerous cases of human rights violations for which CAFGUs and vigilantes were directly responsible. The abuses by CAFGUs and vigilantes raise doubts as to the effectiveness of the military in achieving its goal (during the "consolidation phase") of reestablishing confidence and solidarity in the community.

Development phase

This phase involves full implementation of long-term projects that strike at the roots of insurgency. Of the various phases of the "total approach," this last phase seems to be the least implemented. According to the Far Eastern Economic Review:

"While the military may be gaining ground, the government has been slow to follow up. Unlike in Thailand, where anti-guerilla operations and development work often went on in concert and in some cases merged, Philippine authorities have still to grasp the full importance of a coordinated approach to the insurgency problem."⁸³

Lack of development in the countryside is one of the concerns stated in the Defence Department's report to President Aquino. The report states:

"Projects undertaken in the insurgent-affected areas are inadequate and the delivery of basic services is oftentimes neglected. There is a need to speed up developmental and livelihood-generating projects in the countryside."⁸⁴

⁸² Memorandum of the Civil Relations Research Group, Civil Relations Service (August 1990).

⁸³ John McBeth, Hollow Victory, Far Eastern Economic Review, 11 January 1990.

⁸⁴ See note 74.

Other concerns expressed in the Defence Department report include the abuse of democratic space and the lack of legal weapons. On the "abuse of democratic space," the document states:

"Our new democracy is being exploited by the CPP/NPA/NDF to infiltrate the different sectors of society to win them into the so-called National Democratic Front. Their targets for propaganda include the peasants, laborers, professionals, students and youth, and the media, government and religious sectors."⁸⁵

The document adds:

"In our judicial system, procedures and laws tend to protect more the rights of subversives and rebels to the prejudice of the law-abiding majority. Thus convicting persons charged with national security cases is a very difficult and tedious effort because of the many legal technicalities that can be resorted to subvert the judicial process, harass the prosecutor's witnesses and even the judges. The laws on detention are the same for ordinary criminals as well as subversives and rebels, making it difficult to send the latter to jail."⁸⁶

Both those military concerns seem to confirm the fears of Filipino human rights organisations who worry that the military is prone to reducing democratic space rather than expanding it. Another fear is that the military is not averse to using extra-legal methods to achieve its goals. Moreover, those military concerns seem to explain its suspicion of non-governmental organisations, trade unions, and other community organisations. The overall counter-insurgency strategy including the military's attitude towards NGOs appeared to the ICJ delegation not to reflect the "total approach" claimed by the military leadership.

The evidence is overwhelming that the insurgency is not ideologically driven, but is created by the economic and social inequalities endemic in Philippine society. If the government is to succeed against the insurgency, therefore, these problems must both be addressed and resolved. This objective is the general goal of the development phase and the failure of the government to be effective in this regard must raise doubt as to the ultimate success of their counter-insurgency strategy. In any case, it appears clear that the insurgency will not be overcome by military means alone.

⁸⁵ Id.

⁸⁶ Id.

Chapter 10

The Militarisation of Philippine Society

The total strength of the armed forces of the Philippines is estimated as 147,500 persons, with 65,000 belonging to the Army, 23,000 to the Navy, 16,000 to the Air Force, and 43,500 to the Philippine Constabulary (PC). In addition, there are about 70,000 members of paramilitary forces and 48,000 reserves.

The Integrated National Police (INP), independent from the armed forces, consists of 60,000 members. The INP is responsible for routine law enforcement and is supposedly answerable to the National Police Commission while the local police are answerable to the local mayors. Unlike the INP, the PC functions as part of the armed forces and is primarily responsible for dealing with rebellion and criminal gangs. In practice, however, INP and PC units report to a common commander who is usually a PC officer.

The 1987 Constitution mandates the establishment and maintenance of a national police force, civilian in character, to be administered and controlled by a national police commission. The creation of a united civilian police force as mandated by the Constitution would clearly separate the roles of the police and military. This division would reduce the role of the military in civilian life and reverse the trend of militarisation of the society. Accordingly, the Senate and the House are at present debating separate bills to create a Philippine National Police (PNP) which would be completely outside and independent of the military forces. Both the PC and INP, however, are reportedly against the bills. The INP is against admitting PC members to a civilian force, since PC training is military in nature. The INP personnel are also concerned that integration of the two forces would lower their chances of further promotion, since the PC has more senior officers than the INP. Similarly, PC personnel are also concerned about the entrance examination requirements for joining the INP. The integration of the PC and INP has been slowed by the Defence Department's concern that removal of the PC would affect counter-insurgency operations.

The "militarisation" of Philippine society effectively began during the Marcos administration, as documented by several human rights organisations including the

ICJ. President Marcos used the military as his private army and as a tool of oppression. As a result, the military gradually became a politicised institution.

The People's Power Revolution raised the hope that the military would revert to its role during pre-martial law days and that militarisation would end. Because of the role played by then Defence Minister Juan Ponce Enrile and Chief of Staff Fidel Ramos with members of the Reform the Armed Forces Movement (RAM) in ousting Marcos, however, the military's role in society appears to have become an entrenched part of the Aquino administration virtually from its inception.

In the immediate aftermath of the People's Power Revolution, the armed forces changed its name to "New Armed Forces of the Philippines" symbolically stating that it would be different in the post-Marcos period.

A Defence Department "Information Kit" states, even today:

"The Department of National Defence actively supports the Aquino administration's human rights program. . . . High on the curriculum of all military courses is the inculcation of respect for human rights as a prime value. . . ."

The developments in the last four years, however, indicate a different picture. Earlier chapters of this report have documented cases indicating that human rights violations by the military and paramilitary continue. Moreover, several coup attempts by some sections of the armed forces have threatened the very democratic framework reinstated after the February 1986 Revolution.

Coup Attempts by Military Rebels

Between July 1986 and October 1990, there were seven coup attempts as follows:⁸⁷

-- July 1986

Lt. Colonel Reynaldo Cabauatan, a Marcos loyalist, with 300 military men took over the Manila Hotel and proclaimed ex-Senator Arturo Tolentino as President. There

⁸⁷ Arnel de Guzman and Tito Craize, Handbook on Militarization, Ecumenical Movement for Justice and Peace (1990).

were three Generals among the coup plotters. The coup ended without any loss of life.

-- November 1986

The government foiled a plot code-named "God save the Queen." Coup plotters were reportedly Marcos loyalists and a faction supporting then Defence Minister Enrile.

-- January 1987

Col. Oscar Canlas and his men took over television station Channel 7. Other rebels tried to capture Sangley Point Naval Base, Villamor Air Base, and television station Channel 4.

-- April 1987

Military rebels took over an army building in Fort Bonifacio and held 62 hostages, including military officers, in an attempt to free soldiers detained for taking part in the previous coup attempt.

-- August 1987

Col. Gregorio Honasan and other dissident officers from RAM attacked the Presidential palace and Camp Aguinaldo. The President's son was wounded and 58 others died in the attack.

-- December 1989

Rebels belonging to RAM, the Young Officers Union (YOU), and Soldiers of the Filipino People attacked and controlled parts of Camp Crame, Camp Aguinaldo, and all of Villamor and Sangley bases. They also occupied Makati, Manila's financial district. The President was forced to seek US military intervention to support government troops.

-- October 1990

Renegade Colonel Alexander Noble and his supporters seized (without firing a shot) two key military bases in the Mindanao cities of Butuan and Cagayan de Oro. The rebellion ended when Colonel Noble and his men surrendered without resistance.

In addition to these coup attempts, rebel soldiers are reportedly behind several bombings in Manila which have generated fear among the people of impending coups.

Of the seven coup attempts, the December 1989 attempt is considered the most serious. It involved elite units, the Scout Rangers and the Marines. There were also indications that a broad section of officers took part. According to the Department

of Defence's own estimate, a total number of 2,549 personnel took part in the rebellion. Of this number, 470 participants were officers and 2,079 were enlisted personnel.⁸⁸ The Defence Department report also stated:

"The failed 1989 coup attempt, the sixth against the government since the 1986 EDSA Revolution, has exacted a high toll in terms of human casualties, property damages, lost economic opportunities and worsening security problems. The last coup attempt resulted in 669 confirmed casualties; government forces -- 31 killed and 253 wounded; civilians -- 50 killed and 239 injured; and rebel forces -- 17 killed and 79 wounded. In addition to human casualties the coup caused considerable damages. The total book value of damages to the Armed Forces amounts to some P 468,928,016 and for civilians P 17,813,880."⁸⁹

In the aftermath of this coup attempt, President Aquino appointed a commission headed by Hilario Davide to investigate it. The Davide Commission submitted its 609 page report in October 1990. The commission stated:

"When analyzed collectively, the series of coup attempts present a pattern of interwoven factors that put forward the idea of a continuing effort by a group of determined military officers, backed by their civilian supporters, to overthrow the administration of President Aquino and install [a] military junta."

Political analysts and human rights groups worldwide are concerned about repeated coup attempts, since they have grave consequences for protecting the newly reestablished institutions of democracy. One explanation for the coup attempts is that they are a continuation of the February 1986 unfinished coup by then Defence Minister Enrile and members of RAM.⁹⁰ A related explanation is that the military in the post-Marcos period wants to be recognised as an equal partner in running the country and each coup attempt is a way of driving this point home. Indeed, assessing the July 1986 failed attempt (which was a weak effort compared to those that followed it), Prof. Randolph David concluded: "The Armed Forces of the Philippines has indeed begun to style itself as a co-equal partner in government. Perhaps, this is what is

⁸⁸ Department of Defence, Information Kit (1990).

⁸⁹ Id.

⁹⁰ Francisco Nemenzo, Reflection on the Philippine's Coup d'etat.

'new' in the New Armed Forces of the Philippines."⁹¹ The military rebels' demands and the government's readiness to appease the rebels strengthen the view that the military is "no longer just one more institution under the command of civilian authority."⁹²

Government response to the coups has been appeasement. According to the Ecumenical Movement for Justice and Peace:

"Every single coup attempt has been followed by significant concessions to the military. This was done presumably to strengthen the allegiance of rank and file military troops to the government, but, in fact, the gains may have simply whetted the rebels thirst for power."⁹³

Some commonly cited appeasement measures are:

- Salary hikes (twice between July 1986 and April 1987) announced immediately after coup attempts
- Removal of Cabinet members who are considered "left leaning" such as Augusto Sanchez in 1986 and Joker Arroyo in 1987
- Leniency in punishing the rebels. For example, those who participated in the July 1986 coup attempt were let off without any punishment. They were just asked to do a certain number of "push ups" as penance. They were reportedly told by then Defence Minister Juan Enrile Ponce that they will not be "prosecuted, humiliated or embarrassed."

Similarly, those who surrendered after the most serious December 1989 coup were allowed to return to their barracks with loaded weapons. In effect, they were not surrendering, but were "returning to their barracks after an attempted coup." Of the 2,500 or so soldiers who participated in the December 1989 coup attempt, only about 180 were taken into custody. The rate of conviction for participating in coup attempts is also low. According to the Defence Department's own statistics, for the three coup attempts between January and August 1987, a total of 2,574 military

⁹¹The July 6 Manila Hotel Incident: A Coup in Search of a Reason, Mimeographed paper, Third World Studies Center, University of the Philippines.

⁹²Id.

⁹³Handbook on Militarization, note 87.

personnel were investigated. Of this number, 156 were convicted and 1,456 were exonerated.⁹⁴

After the December 1989 coup attempt, the Far Eastern Economic Review stated that "if Aquino is going to change her leadership style, then teaching the rebels a hard lesson would appear to be the logical place to start. It is felt that the leniency she has shown in the past has been her undoing."⁹⁵ Another explanation for the numerous coup attempts is that they are a "logical conclusion of the process begun by Marcos and that the civilian authorities have become vulnerable to the power play of a military bureaucracy politicized by the past dictatorship."⁹⁶

The politicisation of the armed forces under Marcos is reflected in the emergence of rebel organisations within the Armed Forces of the Philippines. As previously discussed, the most well known of them is the Reform the Armed Forces Movement (RAM). Created in 1982, it surfaced in 1985 and was headed by former Lt. Colonel Gregorio Honasan, a close associate of former Defence Minister Enrile. In 1986, RAM claimed membership of 70 percent of the officers commissioned since 1972. RAM was involved directly in the August 1987 and December 1989 coup attempts. Honasan was arrested following the 1987 coup attempt but escaped with the connivance of his guards. It is reliably reported that Honasan's whereabouts are known to the authorities, but he has not been rearrested.

Honasan's Movement for a Better Philippines proposes a "multi-partisan council" under the "protection of the soldiers of the people" to implement a 24 point program including "justice to the Marcoses, farmers, Christians, Muslims and pauper litigants."⁹⁷

The December 1989 coup revealed another military rebel organisation called the Young Officers Union (YOU). YOU's origin is obscure. In the December 1989

⁹⁴ See note 88.

⁹⁵ Far Eastern Economic Review, 21 December 1989.

⁹⁶ Alexander R. Magno, *Coup de Talk: The Invisible Coups of November*, University of the Philippines.

⁹⁷ See note 87.

coup attempt, YOU was responsible for much of the "tactical decision making."⁹⁸ YOU is considered a "shadowy cellular organization whose leadership core is believed to comprise of a collection of junior intelligence officers using the experience they had gained in the underground war against the Communist Party of the Philippines."⁹⁹ YOU characterizes itself as the "non-communist left" and advocates dismantling of traditional power brokers. According to its leaders, its political line is the nationalist revolution which, under the current conditions, takes the form of a "coup-cum-revolution." Furthermore, YOU believes that "a military uprising supported by the majority of the Filipino people is the correct vehicle for the complete overhaul of the current socio-economic political system that will bring about genuine national and social liberation in the country."¹⁰⁰

Another military rebel group is the Soldiers of the Filipino People (SFP) led by General Jose Zumel, a Marcos loyalist. Another organisation called the "Guardians" was identified by those who surrendered after the July 1986 coup attempt. An investigation conducted by the Defence Department following the December 1989 coup concluded that "the 1989 coup is a continuation of past coup attempts and demonstrative of the emerging unity of forces between RAM-SFP group of Honasan and the Marcos loyalist group of Zumel who were bitter foes before and during the 1986 EDSA Revolution."¹⁰¹

It is unclear what efforts have been made to weed out rebel organisations within the armed forces. In February 1987 then Chief of Staff General Fidel Ramos issued a directive dissolving all fraternal organisations or associations in the AFP except those composed of AFP or ex-AFP personnel and their dependents and which utilize AFP resources for their existence. The memo also instructed all unit commanders to take strict disciplinary action against those who act contrary to the policies outlined in the directive.

The military rebels appear to justify their attempts to overthrow the civilian government on the basis of the civilian government's failure to deal with socio-

⁹⁸ Far Eastern Economic Review, 7 June 1990.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ See note 88.

economic problems and the corruption and inefficiency of the civilian government. For example, Commodore Proceso Maligulig, one of those accused of the December 1989 coup attempt said: "What is seen is that we have a political grid-lock of sorts wherein various vested interests compete for scarce public resource and for patronage while the rest of the country suffers."¹⁰²

The connection between the civilian leadership's failure and the coup attempts has been summarised as follows:

"Many members of the officer corps reserve their highest contempt for corrupt and opportunistic politicians, greedy government officials and top military officers, insensitive bureaucrats, arrogant cabinet members and senators and insatiable big businessmen. These undeserving political and economic elites are precisely the cause of the insurgency which they now expect the military to solve by arms. Given their talent, discipline and training in both military and civilian skills, young military officers see themselves as perhaps the only remaining hope of the country. Accordingly, they regard it as their patriotic duty to put the country in order and thus prevent its self destruction by a bloody revolution."¹⁰³

The Davide Commission urged President Aquino "to review existing policies and programs -- particularly in the area of basic services -- and to enforce the same principle of accountability among government appointees that is required of military." The Commission also recommended that Congress implement constitutionally mandated legislation to preempt criticism that elections are meaningless because in practice only the traditionally influential dynastic families and clans participate. Furthermore, the Commission requested that the government appoint civilians to head the Department of National Defence, National Security Council, and the National Intelligence Coordinating Agency -- jobs which in the past have been held by retired military officers."¹⁰⁴

¹⁰² See note 95.

¹⁰³ The December First Coup: Persistent Questions and Tentative Responses, 5 Philippine Quarterly of Third World Issues Nos. 1 & 2 (1990).

¹⁰⁴ Far Eastern Economic Review, 18 October 1990.

Paramilitary Forces and other Armed Groups

The Philippine army has always included paramilitary forces.¹⁰⁵ President Marcos created the Civilian Home Defence Force (CHDF), which was notorious for human rights abuses. The CHDF was supposedly affiliated with the Philippine Constabulary. In practice, however, very little control was exercised over CHDF members. Opponents of President Marcos, including Mrs. Aquino, demanded the dismantling of CHDF. In the February 1986 snap presidential election, Mrs. Aquino demanded that CHDF be disarmed so that they would not intimidate the voters.

Subsequently, the drafters of the 1987 Constitution included a provision specifically banning the use of private armies and paramilitary forces (Article XVIII, Sec. 24). On 15 July 1987, President Aquino issued Executive Order No. 275 (prior to the convening of the Congress) stating "all paramilitary units including the CHDF, shall be dissolved within one hundred eighty days from the effectivity of this Executive Order."

It is still unclear why Mrs. Aquino took more than a year after her election to dismantle the CHDF. According to some analysts she was reportedly persuaded by then Defence Minister Juan Ponce Enrile and Chief of Staff Fidel Ramos that the abrupt dismantling of the CHDF would create a potential rebel force that would not easily be controlled. However that may be, the fact is that despite strong pleas from human rights advocates, such as the late Senator Diokno, for the immediate dismantling of CHDF, Mrs. Aquino chose to delay the process. This delay provided support for the view that the CHDF was beyond the control of the armed forces. Some within the military considered the CHDF a liability in dealing with the insurgents. Moreover, in keeping with its new image of the "New Armed Forces of the Philippines," there were efforts to remove CHDF members known for their abuses.

Even after the promulgation of Executive Order No. 275, the CHDF was not immediately dismantled. There was no systematic effort to recover the firearms supplied by the government or held illegally by members of CHDF. There were reports that by mid-1989, around 20,000 CHDF personnel were still officially on the military rolls. At the time of the ICJ delegation's visit, there were no reports that CHDF members were functioning in the name of the CHDF. There was evidence,

¹⁰⁵For more details on the history of paramilitary forces, see Lawyers Committee for Human Rights, *Militia Abuses in the Philippines* (August 1990).

however, that former CHDF personnel were active as vigilantes or had been inducted into the Citizens Armed Force Geographical Units (CAFGUs).

Citizen Armed Force Geographical Units (CAFGUs)

On 25 July 1987, a mere ten days after issuing Executive Order No. 275, President Aquino issued E.O. No. 264 creating a "Citizen Armed Force" pursuant to Article XVI, Section 4, of the 1987 Constitution. This article states:

"The Armed Forces of the Philippines shall be composed of a Citizen Armed Force which shall undergo military training and serve, as may be provided by law. It shall keep a regular force necessary for the security of the state."

E.O. 264 also refers to Article II, Section 4, of the Constitution under which the Government "may call upon the people to defend the State . . . and all citizens may be required . . . to render personal military or civil service."

Article XVIII entitled "Transitory Provisions" prohibits paramilitary forces which are inconsistent with the Citizen Armed Force established in the Constitution. This article, in effect, foresaw the creation of a new paramilitary force. The practical considerations cited for creating the CAFGUs in the wake of dissolving the CHDF are:

- lack of a paramilitary force would leave gaps in the security situation, particularly in areas where the government forces have removed the insurgents
- it is more economical to deploy a paramilitary force than a regular army. Government spends approximately 23 million pesos a year to maintain a regular army battalion while a paramilitary unit would cost only six million pesos a year.¹⁰⁶ Funds thus saved can be utilized for providing basic services
- they are essential for the "total approach policy" adopted in the post-Marcos period to deal with the insurgency (as discussed in Chapter 9).

According to a Defence Department "Information Kit" issued at the end of 1989, a total of 720 CAFGU companies with 64,000 members have thus far been activated.

To implement E.O. 264, a separate order was issued in June 1988, setting out the basic regulations concerning development, organisation, staffing, training, mobilisation,

¹⁰⁶ Id.

and utilisation of the Citizen Armed Forces. Under this order, the CAFGU is a reserve unit organised within a locality consisting of officers and soldiers in the active force and qualified reservists residing in the locality.

CAFGUs maintained in an inactive state are called the CAFGU inactive category, with those persons who are called upon to assist the regular forces of the Philippine army known as the CAFGU Active Auxiliary (CAA). The CAAs are commonly known as CAFGU. They are attached to and under the control and supervision of a regular AFP formation.

People who have undergone Citizen Military Training as part of high school education and who have been issued orders as reservists, graduates of basic military training, and honourably discharged ex-servicemen, are eligible to become members of the CAA. In places where there are not enough reservists, the AFP can select able-bodied male citizens from the area and train them to become CAFGUs. At least five weeks of basic military training must be provided. Persons who are physically and mentally unfit, living abroad, convicted of criminal offences, or with derogatory records are disqualified from becoming CAFGU members.

Officially, CAFGUs are supposed to be used primarily for the defence of their localities and should not be vested with law enforcement and police functions. Area commanders must maintain a station list and a personnel file for every CAFGU member. CAFGUs are entitled to receive a basic subsistence allowance, insurance coverage, combat clothing and hospitalisation, and/or medical care for injuries or sickness incurred in line of duty. In case of death, burial expenses will be provided. All CAFGU members are subject to military law and articles of war.

CAFGUs are used in three types of military mobilisation:

1. Total or National Mobilisation in which all reservists and Citizen Armed Forces are mobilised under a joint act of Congress and the President to expand the regular armed forces.
2. Partial mobilisation in which ready reserve units and citizen soldiers are mobilised to meet a particular national contingency and/or operational war plan.
3. Selective mobilisation under which selected units of ready reservists meet a local threat or emergency situation.

CAFGUs currently activated are mobilised under "Selective Mobilisation." Contrary to the concept of selective mobilisation, however, nearly 70,000 CAFGUs

all over the country have been activated in the last three years. In the process, there have been serious lapses in the screening and recruitment of CAFGU members.

Recruitment and Screening

There are no specific guidelines concerning recruitment and screening of CAFGU members. The regulations state that the Peace and Order Council in cities and municipalities must be consulted in the screening of volunteers. This regulation is designed to involve the civilian authorities in screening potential recruits. According to a military official, however, in differences of opinion between the civilians and the military, the opinion of the Senior Military commander prevails.¹⁰⁷ As a result there has been large scale recruitment of former CHDF members. This fact was confirmed by Defence Under-Secretary Eduardo Ermita in December 1988. He told a House hearing that 36,000 members of the CHDF were being trained for recruitment as CAFGUs. Similarly, Col. Lisandro C. Abadia told a Senate hearing that 44,000 members of the CHDF were qualified to form CAFGUs after retraining.¹⁰⁸

The justifications provided for the induction of ex-CHDF members into CAFGUs are that first, if the former members of the CHDF are disarmed they will be easy targets for the CPP-NPA, and second, that their valuable experience in counter-insurgency should not be wasted. Another source of recruitment has been rebel "surrenderees" or former NPA insurgents on the justification that "surrenderees" are better protected as CAFGUs.

The induction of ex-CHDF members and some former NPA members violates the regulation that those with "derogatory records" are disqualified from becoming CAFGUs. This violation raises the question of the screening of CAFGU recruits. It appears that in several instances there have been blanket recruitments without screening of individuals. The best known case of "blanket recruitment" is the induction of 200 Ituman cult members belonging to Obo and Bagobo tribes in Digos, Davao del Sur. They were relatives of the 39 massacred by NPA guerrillas in the Digos Massacre. Following the incident, Brig. Gen. Mariano Baccay said that two companies of CAFGUs would be formed consisting of surviving Ituman cultists.¹⁰⁹

¹⁰⁷Gen. Ernesto Calupig, quoted in Handbook on Militarization, note 87.

¹⁰⁸Quoted in the Lawyers Committee report, note 105.

¹⁰⁹Manila Chronicle, 30 June 1989.

Such blanket recruitment is against the principle of creating a citizens' force consisting of properly trained reservists to be called when necessary to aid the army. The dangers involved in recruiting undesirable elements and lack of control became apparent when CAFGU members joined rebel Governor Rodolfo Aguinaldo of Cagayan Province who participated in the December 1989 coup. He killed Brig. Gen. Oscar Florendo who was sent to arrest him. According to the Defence Department's "Information Kit," 100 rebel CAFGUs who were fighting in support of Aguinaldo surrendered. The CAFGUs in Cagayan were reportedly functioning as Aguinaldo's private army and were also involved in gambling and protection of illegal logging.¹¹⁰

The fact that CAFGUs are often used as private armies was confirmed by Maj. Gen. Gerardo Flores, Chief of the Philippine Constabulary Intelligence. Testifying before the House Committee on constitutional amendments, Gen. Flores stated that "CAFGU has become [a] convenient escape hatch for members of private armies." He added: "There are those (war lords) who want to make private armed groups legal by forming CAFGUs."¹¹¹

Like the CAFGU, the CHDF was known for functioning as a paramilitary force as well as a private army for local vested interests. In the case of CAFGUs, the military has officially sanctioned financing of local CAFGU units by corporations and individuals.

Special CAFGU Active Auxiliaries (SCAAs)

Unlike regular CAFGUs who receive small food allowances from the AFP, members of SCAAs are paid by private employers. SCAAs were created by separate guidelines issued by Chief of Staff General Renato S. de Villa on 4 April 1989. The guidelines authorise all Area Commanders to recruit and form CAFGU units from the personnel of private business establishments for the purpose of selective mobilisation. The SCAA volunteers must be on the payroll of the companies or institutions requesting activation. Moreover, the company must attest that the candidate resides in the same area. SCAAs must be utilised principally for the defence of the business establishments, to deter the imposition of taxes and other demands by NPA insurgents.

¹¹⁰Manila Chronicle, 7 March 1990.

¹¹¹Philippine Daily Inquirer, 22 November 1989.

The guidelines provide safeguards. First, SCAAs are not allowed to operate independently from the local security forces. Second, they are to be controlled by an AFP unit and not the security services of the company. The AFP's lack of financial resources is cited as a justification for authorising private support for the SCAAs. A specific case which illustrates the problems of SCAAs and their funding follows.

The Sugar Development Foundation and SCAAs

In April 1988 the National Federation of Sugar Planters (NFSP) and Confederation of Sugar Producers Association (CONFED) created the Sugar Development Foundation. The Foundation collects 5 pesos for every picul of sugar milled by NFSP and CONFED members to create the Sugar Development Fund (SDF). It is estimated that at least 50 million pesos for every crop year will be collected.

The Sugar Development Fund is to be used for research and other activities that contribute to increasing in production, marketing, and sales. A major portion of the fund, however, is spent for maintaining SCAAs. The Senate Committee on Justice and Human Rights estimated the initial outlay for the SDF's security program at 28 million pesos. The Senate Committee has also concluded that aside from the support of training and allowances of the SCAAs, the SDF also contributed directly to the operations of patrol bases, which included construction of 57 CAFGU-military detachments, repair of military vehicles, acquisition of communications equipment, provision for uniforms and boots, and counter-insurgency propaganda.

The Senate Committee found that as of April 1989, the SDF funded the training of 1,405 members of the SCAA, each of whom received a monthly salary of 1,250 pesos or 700 pesos more than the salary of a regular CAFGU member. Furthermore, 220 regular PC soldiers who act as team leaders receive 1,100 pesos monthly in addition to their regular salary. The Senate Committee correctly concluded:

"The use of private funds from SDF for the SCAAs may also be contributing to the polarization of the sugar planters on one side and the sugar workers on the other, contributing to the rise of hostility, antagonism and even violence. The fact that Col. Coronal, the provincial commander, was an incorporator and sat as Chairman of the Board of Trustees of the SDF further complicates the situation as he would have been representing conflicting interests."

The Senate Committee found that the organisation of SCAAs may violate the constitutional provision outlawing private armies. Section 4 of Executive Order 264

does not encompass SCAAs as defined in their guidelines. Hence, SCAAs may not have acquired legal status by virtue of these guidelines. The Committee found private funding of SCAAs legally questionable because it meant that government forces could be used mainly for the personal security needs of a private sector. The fact of public forces receiving extra pay from private organisations, whose members belong to the upper strata of society, also has serious moral implications. It allows those with means to command the primary loyalty of public servants and put these military forces at their own personal disposal.

The establishment of SCAAs indicates that the military is willing to use private armed groups to deal with insurgents. Known commonly as "vigilantes", these groups have been actively associated with the military in its counter-insurgency operations.¹¹²

Vigilantes

In the Philippines private armies have been used for many years in political mobilisation. Private armies and widespread possession of guns emerged following the second World War during which Filipino armed guerrillas fought the Japanese occupation army.

When Marcos proclaimed martial law citing widespread violence in the country, he resolved to disarm private armies and break the autonomy of local warlords. Following the imposition of martial law, the military claimed that it disbanded 145 private armies of political warlords and confiscated nearly 500,000 firearms. 1.5 million rounds of ammunition, enough to equip 35 army divisions, were also said to have been confiscated.¹¹³

By 1988, however, it was estimated that 512,678 guns were back in civilian hands, many of them controlled by the 1,000 or so organised crime syndicates and private

¹¹²See Vigilantes in the Philippines: A threat to Democratic Rule (1988); Report of the Asian Human Rights Commission Study Mission to the Philippines (1988); Philippines: Unlawful Killings by Military and Paramilitary Forces, Report of Australian Fact-Finding Mission (1988).

¹¹³Eric S. Gumchoi, A Nation Under the Gun, Manila Chronicle, 24 July 1988, quoted in Beyond Patron-Client Relations: Warlordism and Local Politics, 4 Philippine Quarterly of Third World Studies No. 3 (1989).

armies identified by the Philippine Constabulary.¹¹⁴ In November 1989 Maj. Gerardo Flores, PC Intelligence Chief, testified to the House Committee on Constitutional Amendments, that in certain parts of Luzon and Mindanao alone there are a total of 102 private armed groups with at least 5,900 men and about 3,000 firearms.¹¹⁵

The use of private armed guards is also common in the Philippines. In Manila, for example, a very large number of stores, hotels, restaurants, office buildings, other places of business, and more affluent residential communities employ heavily armed guards. In the countryside, major employers, plantation owners, and others have employed armed guards to protect their private interests. Evidence of the widespread use of guns may be found at the entry of public buildings where notices are posted requesting that visitors deposit their firearms at the reception desk.

Given such a situation, vigilantism is quite common and in some poor rural communities it combines with fanatical religious beliefs and bizarre rituals. As a result, beginning with the Huk rebellion in the 1940s, vigilante groups were used directly and indirectly by the authorities to deal with the communist insurgency. They resurfaced in 1987 with the so-called success of a group called *Alsa Masa* (*Masses arise*) in dealing with NPA rebels in Davao City, Mindanao. During the last years of the Marcos administration, the CPP-NPA was able to increase its support in Davao City. To counter the gains of the CPP-NPA, Davao City Commander Lt. Col. Franco Calida encouraged the growth of *Alsa Masa* which was then only a small armed group. The NPA's purge of suspected government informers helped *Alsa Masa* grow with the induction of disillusioned NPA cadres. It soon became a city wide organisation conducting counter-insurgency operations against the urban guerrillas. With backing from Commander Calida and Radio Announcer Jun Pala, local people were given the choice of either supporting the *Alsa Masa* or being branded as members of the NPA. Calida admitted that there was no formal membership of *Alsa Masa*. He said it existed "in the hearts and minds of the people." When persons refuse to join *Alsa Masa*, Calida perceived their refusal as "choosing sides" without "any middle ground."¹¹⁶ With the breakdown of talks between the government and

¹¹⁴ Philippine Daily Inquirer, 22 November 1989.

¹¹⁵ Philippine Daily Inquirer, 28 November 1989.

¹¹⁶ Right Wing Vigilantes and U.S. Involvement, Report of a U.S.-Philippine Fact-Finding Mission, May 1987.

the NDF in early July 1987, the Alsa Masa experiment spread to other parts of the country. Some major vigilante groups which emerged or became prominent after 1987 are:

Luzon

ANAGPU (Anti-NPA Guerilla Unit)
Counter-Insurgency Command
Kilusan Laban Sa Kommunismo - Movement Against Communism People's Militia Force
Special Anti-terrorist Group

Metro Manila

Alsa Bayan
Citizens for Peace and Order
Magic Eye
United Vigilantes Association of the Philippines
Youth Intelligence Group

Mindanao

NAKASAKA (United People for Peace) based mainly in Davao del Sur

Visayas

KADRE (Freedom through Democracy and Reforms)
EL TIGRE (Military arm of the Concerned Citizens Group to Fight Insurgency)
National Movement for Freedom and Democracy

Religious Fanatical Groups

ANDASAN (Lord Divine Service)
Greenans
Knights of Rizal
The Philippine Benevolent Missionaries Association
Power Spirit
Pulahan
Salvatore

TADTAD (Chop Chop), also known as Sagrado Corazon Señor. This group is known for using long bolos and hacking its victims.

Initially, the government welcomed the roles played by vigilantes, despite the constitutional provision calling for dismantling of all private armies and other armed groups not recognized by duly constituted authority (Art. XVIII, Sec. 24). The vigilante groups were justified as a "spontaneous rising" of people against the NPA. In March 1987 President Aquino called NAKASAKA an example of "people's power." Similarly, in October 1987, in Davao City, she praised Alsa Masa and stated: "While other regions are experiencing problems in fighting the insurgency, you here . . . have set the example." Those statements of the President came amidst reports that vigilante groups were involved in widespread human rights abuses.

As a result of increasing criticism about the conduct of vigilantes by local and international human rights organisations, an Inter-Agency Sub-Committee issued guidelines on "Civilian Volunteer Self-Defence Organisations" (CVOs) on 30 October 1987. The guidelines were signed by the Secretary of Defence, Chief of Staff, Under-Secretary of the Department of Local Government, and by Ms. Conception Bautista, Chairperson of the Commission on Human Rights. The preamble to the guidelines implicitly recognises vigilante groups by stating:

". . . civilians in many parts of the country have formed themselves into volunteer organizations for community self-defence against criminals and other lawless elements. . . . Due to the spontaneous proliferation of these volunteer organizations for community self-defence all over the country, it is necessary to define the policy guidelines and limitations for such organizations, in order that respect for the law and human rights is observed."

The guidelines provide that:

- CVOs are only for self-defence and protection
- those authorised to carry firearms must be identified and listed in order to pinpoint responsibility when needed
- CVOs must not engage in activities contrary to law
- CVOs shall avoid being identified as private armies or political groups
- CVOs shall help the armed forces in collecting intelligence and conducting neighborhood watch activities.

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The guidelines appear to have been completely ignored and there seems to be no mechanism to enforce them. As a result, the guidelines remain on paper while vigilante abuses continue. Those abuses are described later in this report.

In April 1988 the Senate Committee on Justice and Human Rights conducted an inquiry into vigilante groups. Then Secretary of Defence Rafael Ileto told the Senate Committee:

"It was impossible to disband the vigilantes and disbanding them would just drive them (further) outside the law. It would take time to enforce the guidelines and in the meantime those groups not operating according to the guidelines would be allowed to continue so long as they don't act outside the law."¹¹⁷

After holding public hearings, the Senate Committee issued a report which documented vigilante abuses and called for the dismantling of all vigilante groups. Responding to the Senate Committee findings and international outcry on vigilante abuses, President Aquino announced on 25 July 1988 that she had instructed the Army Chief of Staff to begin disbanding all so-called vigilante groups. Nevertheless, the groups still exist and continue to operate with the knowledge and active involvement of local military units. There have been no concerted efforts to disarm them and, where necessary, to prosecute them. It is believed that local officials freely issue firearm licenses to vigilantes and thereby legalise their carrying of firearms.

Military officers consider vigilante groups essential for counter-insurgency operations by military officers. In a statement made after the President's instruction to dismantle the vigilante groups, Defence Secretary Ramos stated that armed anti-communist civilian groups must not be disbanded because they were helping to "turn around" the fight against the communist insurgents. Instead, he said "only scalawags" would be ousted from the groups. Ramos explained that the anti-Communist groups provided "crucial support for military operations." He added: "The Department of National Defence and the Armed Forces firmly believe that we must retain the 'Bantay Bayan' (Civilian groups)".¹¹⁸

¹¹⁷As quoted in the Report of the Asian Human Rights Commission Study Mission to the Philippines (January 1988).

¹¹⁸As quoted in Lawyers Committee for Human Rights, Militia Abuses in the Philippines (August 1990).

The policy outlined by Defence Secretary Ramos still continues, explaining the support vigilante groups receive from the military. There is ample evidence that vigilante groups are responsible for widespread human rights violations.

Conclusions and Recommendations

Philippine society continues to be highly militarised. Such militarisation constitutes a threat to democratic civilian control over the government. Several coup attempts mounted by sections of the armed forces have also threatened the democratic framework that was reinstated after the February 1986 revolution.

There is an urgent need to reduce the level of militarisation of Philippine society in order to be able to address the social and economic needs of the society. In view of the assertions of the military leaders that they are gradually overcoming the threat posed by the insurgents, there may be an opportunity to review the size and cost of the military establishment with the intent of redirecting resources to alleviate poverty. This reallocation would in turn undercut popular support for the insurgency.

The government should implement the recommendation of the Philippine Senate Committee on Justice and Human Rights that the Special CAFGU Active Auxiliary units (SCAAs) be disbanded because of their record of human rights violations.

The government should forbid any joint military activity with vigilante groups. These groups should be refused all financial training and weapons assistance from any government source, and should be disarmed and disbanded.

The civilian police should be completely separated from the Armed Forces of the Philippines, established and protected by its own legislation, and placed under completely independent leadership. Police pay should be increased to attract better quality recruits and to minimise corruption.

Common Article 3 of the Geneva Conventions for the Protection of Victims of Armed Conflict and Additional Protocol II to the Geneva Conventions should be declared applicable to the current conflict in the Philippines -- particularly in light of the humanitarian purposes of those treaties to protect civilians and others not directly involved in the conflict from violations of their most basic rights.

Chapter 11

Violations of International Human Rights and Humanitarian Law Applicable to the Philippines

Because of the insurgency and counter-insurgency as well as the abuses reported to the ICJ, it is necessary to review the international human rights and humanitarian law applicable to the country.

The Philippines was an original member of the U.N. and has become a state party to many of the principal treaties establishing human rights and humanitarian law. The Philippines ratified the International Covenant on Economic, Social and Cultural Rights on 7 June 1974, the International Covenant on Civil and Political Rights on 23 October 1986, and its Optional Protocol in 1989. The Philippines has also become a state party to the International Convention on the Elimination of All Forms of Racial Discrimination (15 September 1967), the Convention on the Elimination of All Forms of Discrimination Against Women (5 August 1981), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (18 June 1986), and the Protocol Relating to the Status of Refugees (22 July 1981). The Philippines has not asserted any reservations or other limitations in regard to these treaties, although the Philippines has not accepted the state v. state or the individual communication procedure under the Treaty against Torture.

Similarly, on 7 March 1951 (Convention I) and 6 October 1952 (Conventions II, III, and IV) the Philippines ratified the four Geneva Conventions on the Protection of Victims of War of 12 August 1949. On 11 December 1986 the Philippines acceded to the 1977 Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II).

The 1987 Constitution provides that the Philippines "adopts the generally accepted *principles of international law as part of the law of the land . . .*"

Application of International Humanitarian Law to the Philippines

Although the Philippines has ratified the four Geneva Conventions of 1949 and Additional Protocol II of 1977, the Philippine government has not been willing to recognise the application of Common Article 3 in the four Geneva Conventions or the

application of Additional Protocol II to the non-international armed conflict which has been occurring in its own country.

Common Article 3 applies a limited number of very basic protections to "armed conflict not of an international character." It does not define non-internationalised armed conflict so as to distinguish it from unorganised and short-lived insurrections or mere acts of banditry.

Nonetheless, the authoritative ICRC commentary draws upon the travaux préparatoires of the Geneva Conventions in identifying a number of non-obligatory but significant criteria for applying the basic protections of Common Article 3. Common Article 3 was intended to reflect the "few essential rules" that governments should follow in peacetime and in war as well as in dealing with common criminals or rebels.¹¹⁹ The drafters intended that Common Article 3 would protect those basic and fundamental rights that deserve respect at all times. For example, Common Article 3 forbids torture; cruel, humiliating and degrading treatment; mutilation; murder; and the passing of sentences in proceedings lacking judicial guarantees, with respect to civilians and other persons taking no active part in the hostilities. Accordingly, the humanitarian purposes of Common Article 3 urge a broad application of this provision.

The situation in the Philippines appears to fit the criteria for the application of Common Article 3. One of the criteria proposed during the discussion preparatory to the adoption of Common Article 3 was that "the Party in revolt against the de jure Government possesses an organized military force, an authority responsible for its acts, acting within a determinate territory and having the means of respect and ensuring respect for the Convention." For the past two decades the Philippine government has been attempting to suppress armed insurgents, principally associated with the New People's Army. During the past two or three years, the NPA has been capable of fielding 200 and 300 fighters in coordinated actions. During the last year or so, the NPA apparently determined that such large units are not militarily effective and has thus used smaller numbers. The NPA evidently uses sophisticated electronic communication devices to keep in touch with its forces and has been able to attack several government targets with a unified strategy. In a nation of many islands like the Philippines it is difficult to identify a "determinate" territory in which the NPA is acting. The NPA appears to be in effective control of mountainous or otherwise

¹¹⁹Commentary on the Geneva Conventions of 12 August 1949, at 49-50 (J. Pictet ed. 1952).

inaccessible areas of several islands. In several additional areas NPA members impose and collect taxes; they purport to function as an alternate government. During the last year it appears that NPA-controlled areas have diminished in size and number, but it would nonetheless appear that the conditions for Common Article 3 are still present. Furthermore, the NPA has expressed its willingness to abide by humanitarian law by publicly announcing its intention to apply Additional Protocol II. It appears that the NPA has translated and has engaged in some training of its members with respect to the humanitarian norms contained in Additional Protocol II. NPA members have been captured in possession of copies of the Protocol translated into Tagalog.

In addition to the New People's Army, the Philippine government has been faced with insurgencies in the island of Mindanao, principally the Moro National Liberation Front and other armed opposition groups based in the Muslim minority. Furthermore, there are armed opposition groups based in indigenous communities of Mindanao as well as the Cordillera Peoples' Liberation Army. The Armed Forces of the Philippines have made no significant effort to exert military control over the Muslim areas of Mindanao, unless attacked; but there have been military and political conflicts between various armed groups in that area as well as between the Muslims and their Christian neighbors. Similarly, it does not appear that the Armed Forces of the Philippines have attempted to exert military control over other areas controlled by indigenous armed opposition groups.

A second alternative criterion proposed for the application of Common Article 3 is that "the legal Government is obliged to have recourse to the regular military forces against insurgents organized as military and in possession of a part of the national territory." There is no question that the Armed Forces of the Philippines has deployed regular military force involving hundreds and, in some cases, thousands of personnel in actions against the NPA and areas thought to be sympathetic to the NPA.

A third alternative criterion inquires whether the "de jure Government has recognized the insurgents as belligerents." Despite the factual position which exists, the Philippine government has not been willing to acknowledge the NPA as belligerents. Indeed, one of the reasons for the government's unwillingness to accept the application of Common Article 3 or Additional Protocol II to the insurgency is because it does not want to give any political recognition to the NPA as a belligerent. Common Article 3 provides clearly that its application "shall not affect the legal status of the Parties to the conflict." Nonetheless, the internal political implications of accepting the application of humanitarian law represent the major impediment to the

government's willingness to comply with Common Article 3 or Additional Protocol II. The government's refusal to accept the application of humanitarian law does not prevent a finding that at least Common Article 3 and probably Additional Protocol II should be applied to the armed conflict in the Philippines.

A fourth alternative set of criteria relates to organisations of the insurgents purporting to have the characteristics of a State, exercising de facto authority over persons within a determinate territory, being prepared to observe the laws of war, and willing to apply the Geneva Conventions. In view of the humanitarian purposes of Common Article 3, this analysis indicates that the criteria are sufficiently satisfied in today's Philippine situation.

Additional Protocol II attempts to define more precisely than Common Article 3 the types of "armed conflicts not of an international character" to which the Protocol applies. Hence, Article 1(1) of Additional Protocol II specifies several of the criteria that have been suggested solely for the interpretation of Common Article 3:

"This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts . . . which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized groups which, under responsible command or other organized groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol."

For the same reasons as discussed with respect to Common Article 3, it appears that Additional Protocol II should be considered to be applicable to the armed conflict in the Philippines. Certainly, the conditions for application of Additional Protocol II were present during 1988 and 1989 when large scale military operations were being conducted by both the NPA and the Armed Forces of the Philippines. While the NPA's military actions and territory of activity have diminished since then, it seems to the ICJ delegation that Additional Protocol II should be applied, particularly in light of the humanitarian purposes of that treaty to protect civilians and others not directly involved in the conflict from violations of their most basic rights.

Humanitarian Law Norms Applicable to the Philippines

Since the non-international armed conflict presently occurring in the Philippines establishes the basis for the application of Common Article 3 and most likely Additional Protocol II as well, it is necessary to review the humanitarian law norms that should be used.

Common Article 3 requires that each Party to a non-international armed conflict "shall be bound to apply, as a minimum, the following provisions:

"(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

"To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

"(2) The wounded and sick shall be collected and cared for. . . ."

Additional Protocol II to the four Geneva Conventions adds more specific provisions as to non-international armed conflicts for the protection of children,

persons deprived of their liberty, persons subjected to criminal prosecution, medical personnel and equipment, civilians, places of worship, and relief societies. For example, Article 13 of Additional Protocol II provides:

"1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

"2. The civilian population as such, as well as individual civilians shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. . ."

Table of Human Rights Violations

The following table provides an overview of the human rights violations reported to be occurring in the Philippines during the period January 1987 to August 1990. The figures are based on information gathered by the Task Force Detainees of the Philippines (TFDP). Although the ICJ delegation was not able to verify all of the information underlying these figures, the delegation was able to check a sample of the cases identified by the TFDP. Moreover, the data provided is consistent with the scope of the problems occurring in the National Capital Region (NCR), *i.e.*, Manila, and other regions of the Philippines, as reported to the delegation from all sources.

Torture and Ill-treatment

Year	NCR (Manila)	Luzon	Visayas	Mindanao	Total
1987	118	326	301	188	933
1988	57	285	228	148	718
1989	39	140	149	58	386
1990	7	74	52	16	149

(Jan 6-Sep.)

Salvaging¹²⁰

Year	NCR (Manila)	Luzon	Visayas	Mindanao	Total
1987	13	100	109	69	291
1988	19	91	89	59	258
1989	11	54	71	43	179
1990	16	14	21	8	59

(Jan 6- Sep)

Massacre or Attempted Massacre¹²¹

Year	NCR (Manila)	Luzon	Visayas	Mindanao	Total
1987	2	5	14	14	35
Killed	18	32	55	100	205
Wounded	91	18	-	26	135
1988	1	9	13	15	38
Killed	3	40	55	65	163
Wounded	8	8	7	23	46
1989	3	8	13	11	35
Killed	11	39	54	32	136
Wounded	10	9	25	10	54
1990	-	4	-	1	5
(to Sept)	-	15	-	3	18
	-	5	-	-	5

¹²⁰"Salvaging" is a term used in the Philippines to refer to summary execution or extrajudicial killing of individuals by military or associated groups. The person "salvaged" usually disappears after being detained by the military or related forces and is found dead some time later.

¹²¹A massacre or attempted massacre is defined as a single incident in which three or more persons are killed or attacked by government authorities or persons acting on their behalf.

Forced Evacuations

Year	NCR (Manila)	Luzon	Visayas	Mindanao	Total
1987	-	35	57	78	170
Families Affected	-	2,471	3,414	15,055	20,960
1988	-	28	49	63	140
Families Affected	-	1,437	11,839	11,647	14,923
1989	-	23	33	35	91
Families Affected	-	1,179	918	4,665	6,762
1990	-	8	13	13	34
Families Affected	-	1,146	590	2,193	3,929

Illegal Arrests and Detention¹²²

Year	NCR (Manila)	Luzon	Visayas	Mindanao	Total	Released
1987	5489	970	836	593	7,888	7,426
1988	843	1,147	658	342	2,990	2,598
1989	807	559	458	336	2,160	1,715
1990 (Jan-Sept 6)	962	390	433	204	1,989	1,363

In the following chapters are some cases of violations that are reported to have occurred during 1990 (some during 1989) in the regions visited by the ICJ delegation. They provide a sample of the overall pattern of violations. Documentation received by the ICJ delegation on all cases investigated, including those not reported here, have been filed at the ICJ Secretariat in Geneva.

¹²²Arrests made without warrant or on the basis of an invalid warrant.

Chapter 12

Torture

As set forth in Chapter 11, the government of the Philippines has ratified several treaties pledging to prevent torture and other cruel, inhuman, or degrading treatment or punishment.

Nonetheless, interviews conducted by the ICJ delegation in September 1990 revealed a consistent pattern of torture and ill-treatment by military and particularly intelligence personnel. The pattern indicated that the lower the social status of the accused, the greater were the chance and severity of ill-treatment. Torture appeared to be more prevalent in some areas than others; for example, the delegation heard more complaints of torture in Cebu than it did in Negros Occidental. In most cases, the individuals were punched or hit ("boxed") until they were willing to make a statement. Some persons were subjected to the "handshake" in which pencils, bullets or similar objects were placed between their fingers and their hands were then squeezed. Others were subjected to the "water mask," that is, they were forced to lie with their heads looking up; a cloth was placed over their faces and liquid was poured on the cloth so that they experienced difficulty in breathing. Some detainees were burned with cigarettes, choked with a plastic bag over their heads, nearly suffocated by having their heads lowered in dirty water, threatened with death, threatened that their families would be killed or harmed, and subjected to other abuse. Sexual torture has been commonly practised on female detainees. It appeared to be the custom of military personnel to obtain a statement by whatever force was required. In some cases the detained individuals cooperated more promptly and were thus subjected to less coercion.

The following are a representative selection of the reports of torture cases received by the ICJ delegation:

Teodoro Sericon

Sericon was arrested after midnight on 1 February 1990. He was brought to Camp Sotero Cabahug in Cebu City and was interrogated by members of the Intelligence Unit (M2) of the Metrodiscom (Metropolitan District Command). He was blindfolded with large tape over his face. Both of his legs were punctured by a nail just below the knee and his legs still bear scars consistent with such wounds. A

gun was placed inside his mouth and he was threatened with being killed. He was ordered to lie face down on a table and beaten. His chest was hit several times by fists and a rifle butt. He still bears a displacement of his lower rib cage which is consistent with his report that his ribs were broken during the interrogation. He also stated that the interrogators put a plastic bag over his head and almost suffocated him. Although actual torture stopped after the first day, threats of further torture continued.

Louie Francis Mendoza

Mendoza was arrested on 25 May 1990, at Zuluete Street, Paco, Manila. According to his attorney, the Regional Intelligence Operations Unit of CAPCOM arrested Mendoza and planted a "paltik" (locally manufactured gun) on Mendoza. Mendoza's wife tried to see him but was not permitted to do so for several days. The attorney was the first to see Mendoza on 6 June. He stated that he had been beaten by his interrogators and had a bruise on his stomach. The bruise was 19.8 cm by 13.2 cm. The attorney went to the Commission on Human Rights and asked them to send a doctor to see Mendoza at the Capital Regional Command (CAPCOM) detention facility at Camp Bagong Diwa, Bicutan, Taguig, Metro Manila. On 7 June 1990, the Commission sent its Chief of the Forensic Division, Rene A. Basas, M.D. who visited Mendoza at 11:30 a.m. Doctor Basas' medical notes corroborate the bruise seen by the attorney. Mendoza's attorney then filed a motion with the Regional Trial Court asking for a transfer of the prisoner so as to preserve his physical safety. The attorney enclosed the doctor's notes. The attorney also asked the Chair of the Commission on Human Rights to write to General Mariano Filarte, CAPCOM, who was responsible for the detention facility asking for a transfer of the prisoner to another facility. On 8 June 1990 this request was reluctantly acceded to and the prisoner was transferred on Saturday 9 June.

A statement dated 26 May 1990 was signed under duress by the defendant on 6 June 1990. The statement says that the defendant was assisted by a named counsel of his choice. The facts are apparently that the attorney's name was not inserted into the statement by the defendant who does not know and has never met the attorney.

Bonifacio Cometa

Cometa was interviewed by a member of the ICJ delegation in a detention facility at Camp Sotero Cabahug in Cebu City. Cometa, 30 years of age, was arrested on 31 January 1990 at his home on Amos Street in Cebu City. After his arrest, he was taken by officers including a Sergeant Gaking to the Reclamation Area near Pier 4

in Cebu City. He was blindfolded after reaching the area and ordered to kneel down. An object was placed in his mouth, and he was told that it was the barrel of a gun. Cometa's hands were tied. His ankles and neck were hit. He was forced to confess to the killing of Sgt. Julieta Adriano.

The day after his arrest Cometa was again questioned. He was forced to kneel down and eat a cigarette wrapper. He was then hit in the stomach and vomited the paper. He was given a bottle of beer and forced to drink very fast. While he was drinking the officers hit the back of the bottle into his mouth, which started to bleed. He was also hit on his head with a .45 revolver. His head began to bleed. He also said that his lips were swollen for three days and that he could not eat properly during that period. He showed the ICJ delegation injuries consistent with the ill-treatment he said he suffered.

Cometa has been charged with three murders and highway robbery with homicide.

Juanito Salibo

This 24-year-old resident of Barangay Canlandog, Murcia, and a full time organiser of the National Federation of Sugar Workers (NFSW), was travelling on 6 April 1990 with two colleagues in a jeepney from Talisay to Bacolod city. About one kilometre away from Talisay, a black jeep stopped in front of the jeepney and halted it. Salibo recognised Cris Artifice an "NPA returnee" who approached the jeepney with a companion. The second man grabbed Salibo, pulled him, and hit him until he was out of the jeepney. His companions who tried to hold him back were threatened with a gun.

Salibo was first taken to the 331st PC Headquarters and was later moved to a house in Villa Angela Subdivision. There he was stripped naked and hung by a rope around his neck with the tips of his toes touching the floor. Salibo was told to admit accusations of his and his union's involvement in CPP-NPA activities. A clip was put on his genitals and he became unconscious as a result of the severe pain. He was driven to another place where they started the interrogation all over again. He was not allowed to sleep the whole night. Very little water and food was provided. He was hit with hard objects all over the body and his genitals were pricked with acupuncture needles. Whenever he lost consciousness, water was thrown on him to revive him. His interrogators told Salibo to resign from NFSW and instead join the Democratic and Independent Worker's Association (DIWA).

On 8 April at around 2 pm, he was abandoned in a secluded place near Barangay Mansilingan. From there he took a jeepney to Bacolod City and went directly to the NFSW office. From there he was taken to a hospital where he remained for four days.

Adelmo Ihapon

On 23 July 1990, at around 2 p.m., Adelmo Ihapon of Barangay Ilog, Infanta, Quezon, was detained by military men under the command of PC Sergeant Barreto on suspicion of being a member of the NPA. He was held in a PC detachment in Barangay Anoling, Gen. Nakar, Quezon. On his release the following day, he complained to his sister that he had been tortured and that Sergeant Barreto had thrust a rifle barrel into his stomach. On that same day he was admitted to the Sta. Cruz hospital, Laguna, where he died. Doctors stated that the immediate cause of his death was septic shock and laceration of the ileum (pelvis). This conclusion seems to confirm the deceased's complaint against Sergeant Barreto, yet no action has been taken against him.

Wilson Leonidas

On 22 February 1990, Wilson Leonidas, 27 years, of Las Pinas, Metro Manila, was abducted by six armed men near Carriedo St., Sta Cruz, Manila, when he was returning from a protest rally organised to commemorate the overthrow of President Marcos. After being missing for six days Leonidas appeared at his sister's house on 28 February, with two armed men who reportedly identified themselves as members of the Military Intelligence Group (MIG-15). Leonidas told his sister that he was surrendering to the military and that he intended to cooperate with them. The military men told her that her brother was in their protective custody.

On the following day, Marilyn Soriano and another sister were called to Camp Bagong Bantay and were told that their brother committed suicide the previous night by hanging himself with a cloth wire. The authorities declined to show them or produce the wire. An autopsy report dated 1 March 1990 by Dr. Irineo G. Bayudan of the Philippine Constabulary Crime Laboratory (PCCL) camp concluded:

"The ligature mark level anteriorly is not the usual level of ligature in cases of suicidal hanging although the direction of the ligature (upward from anterior neck to posterior neck) is compatible with that of suicidal hanging. The presence of ligature marks without the presence of knot marks is also not compatible with suicidal hanging."

The relatives of the deceased have stated that Leonidas was not known to have been associated with the NPA. He was an activist of the Kongreso ng Pambansang Maralitang taga Lunsod (National Congress of the Urban Poor), a legal organization. No inquiry has apparently been conducted by the military on the illegal arrest and death in custody of Leonidas.

Carlito Apan

Carlito Apan (19 years), Joseph Diaz (25 years), and Raymond Lumido (22 years) -- all workers at Cathay Metal Company -- were abducted by armed men in civilian clothes on 10 March 1990 in front of their company's premises near P. de la Cruz St., Bagbag, Novaliches, Quezon City. All three surfaced when they were released from military custody in Bicutan on 30 March 1990.

According to Apan, he was blindfolded and taken to an undisclosed place where he was kicked and punched several times as well as beaten with a rifle. The following day, he was stripped to his underwear and made to stand on a wet cement floor. A soaking t-shirt was tied on his head. A live electric wire was attached to his handcuffs and when he passed out, he was revived with another dose of electric current.

Apan and his companions were accused of being NPA members. Before releasing them, they were warned that if they filed any charges concerning their abduction and torture, they would be killed. The delegation was unable to meet Joseph Diaz and Raymond Lumido to confirm this torture as they were allegedly too frightened to come forward.

Isidro de Lima

De Lima (40 years) of Virata Street, Pinagbarilan, Pasay City, was arrested on 25 March 1990, by soldiers of the Capital Regional Command-South Sector Command (CAPCOM-SSC). He was arrested at his house at about 2 a.m. in the morning and was taken to a safe house. He was subjected to electric shocks in his penis, suffocation through the covering of his head with a sack, and beatings. De Lima was accused of being a team leader of a "Sparrow unit" and of being involved in the shooting of two CAPCOM soldiers in December 1989.

On 28 March, he was produced before the Pasay City Fiscal and charged with illegal possession of firearms in furtherance of rebellion, theft, and murder. He was imprisoned in the Pasay City jail. His arrest and torture were reported to the Commission on Human Rights and at its request a medical examination was

conducted. The medical examination report dated 30 March 1990 and signed by Dr. Irineo G. Bayudan, concluded that "physical injuries were inflicted on the person of Isidro de Lima."

On Wednesday 11 April 1990, at about 10 p.m., de Lima was summoned by a jail guard saying that policemen wanted to see him. He was brought to a room on the third floor where three men in civilian clothes were waiting. These men handcuffed and blindfolded de Lima and placed a bag over his face. Despite his protests, he was forcibly brought outside the jail and pushed into a jeepney, where he was threatened with death. He was taken to a safe house and pushed inside a shallow grave and the three men played Russian roulette on him. Later while he was being interrogated, he was given electric shocks. The blindfold and the cover on his head were only removed after nearly 24 hours when he was given food. On Friday afternoon, he was brought back to the jail.

De Lima's attorney filed a complaint with the Commission on Human Rights concerning the removal of de Lima from the city jail and his torture. De Lima's case was also brought to the attention of the Presidential Committee on Human Rights chaired by the Secretary of Justice. No action has apparently been taken against the concerned jail officials for allowing the illegal removal of de Lima from their custody, still less have his torturers been brought to justice.

Gonzalio Caballero

Caballero (26 years) of Barangay Nopulan, Pagadian City, was shot and killed by a CAFGU member on 20 September 1990. His common law wife Evangeline Cuizon was severely wounded in the stomach and was hospitalised. Prior to his murder, Caballero was arrested on 6 March 1990 by members of the CAFGU from Sugbay 11, Pitogo, and military elements of the 4th Infantry Battalion stationed in the barangay. Caballero was interrogated and beaten. He told his lawyer that he was also stabbed with a knife in his neck during the interrogation and there was a wound consistent with his complaint. Caballero was occasionally deprived of food during his detention.

After being detained for five months without charges or a trial, Caballero was released on 17 August 1990. Capt. Abalard Colalfo, intelligence officer for the 102 Infantry Battalion warned Caballero to leave town to avoid being killed by the NPA. Upon his release, Caballero said that he refused to cooperate with the authorities, but it is believed that he confessed to being a NPA member.

Romeo Delas

This 27 year old resident of Barangay Bagumbayan, Pagsanjan, Laguna, was abducted by armed men on 13 May 1990 while he was shopping at Sta. Cruz, 10 kilometres from Pagsanjan. His abductors included Arthur Principe from Army Intelligence and Eric Pensacola a CAFGU member and an NPA rebel returnee. Delas was held in custody in different military camps until 9 August 1990. During this period, he was physically ill-treated and forced to admit that he was an NPA member. He was released on the condition that he cooperated with the military in identifying NPA members. After his release, fearing for his life, he moved to another area under the protection of a human rights organisation. A medical examination conducted by Medical Action Group on 14 August 1990 concluded that Delas had evidence of physical injuries inflicted on him during his detention.

This case is significant because an attempt to secure his release by habeas corpus was frustrated when the witnesses to the abduction were too afraid to provide affidavit evidence in the face of threatened military retribution. The habeas corpus action was therefore dismissed. This case is only one of many indicating the inadequacy of habeas corpus procedures.

Conclusions and Recommendations

There appears to be a consistent pattern of torture and ill-treatment by military and particularly intelligence personnel in many areas of the Philippines. The pattern indicates that the lower the social status of the accused, the greater are the chance and severity of ill-treatment.

The government should comply with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, the government should investigate all complaints or other information indicating that torture or ill-treatment has occurred. The government should ensure that all those responsible for torture or ill-treatment are brought to prompt and effective justice.

Chapter 13

Disappearances, Abductions, and Kidnappings

As discussed in Chapters 11, the Philippines has become a state party to a number of human rights treaties which contain several provisions that are violated by disappearances and related practices. The treaties protect the right to security of the person; freedom from arbitrary arrest; the right to a fair trial; the right to recognition as a person before the law; the right to humane conditions of detention; freedom from torture, cruel or degrading treatment or punishment; and the right to be free from arbitrary deprivation of life.¹²³ Nonetheless, interviews conducted by the ICJ delegation during September 1990 reflected a significant number of disappearances. Some of the reported cases include:

Wilfredo Villaruy, Ladislaw Pillonos, and Ernesto Biasong

Villaruy (36 years), Pillonos (55 years), and Biasong (45 years) were forcibly abducted on 11 August 1990 by a group of Greenans (a vigilante group). All three lived in Sitio Marabo, Barangay Mambaroto, Sipalay, Negros Occidental, and all were members of the Basic Christian Community. They were also volunteer workers of the Community Garden Promotion (CGP) program of UNICEF and the Institute of Rural Reconstruction. A Basic Christian Community (BCC) is a church-based organisation which tries to improve the health, nutrition, and livelihood of the community. The BCC is based on the principles of Christian family life. Father Carlos Ybesate is the BCC priest of Bgy. Mambarato. The BCC in Bgy. Mambarato was destroyed by the CAFGU associated with the 7th Infantry Battalion and the Greenans, another vigilante group who also work with the military. The military suspected the BCC of being a front for the rebels, although this accusation was denied. A CAFGU detachment headed by two sergeants (Sgt. Joselito Gallos and his assistant Sgt. Mordece) threatened that if Panimbahson (Bible sharing) continued among the BCC, the members of the BCC would be harmed. These threats caused the BCC to stop functioning as a community in 1988, but the leaders continued attending church together. The Greenans then came to the community and forced the residents to join them or move to the lower, less desirable part of the Barangay.

¹²³Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. E/CN.4/1435, at 79 (1981).

The Greenans were centered at Sitio Camp Valdez, Bgy. Mambarato and Sitio Dunga, Bgy. Maricalum. When the BCC complained to Sgt. Gallos, he said that the Greenans were not under the control of the CAFGU or the military. This statement was simply untrue. The Greenans could not conduct any action without CAFGU approval, and were seen in the CAFGU camp.

On the evening of 11 August 1990 a group of six Greenans came to the homes of Biasong, Villaruy, and Pillonos. The Greenans could be identified by their green head bands and the green wrappings around their bolos. They were armed with one long rifle, guns, and bolos. The Greenans said that they wanted to "borrow" the three men, because they had a matter to settle. The wives asked to accompany their husbands, but the Greenans refused. The men refused to go, but the Greenans pushed them. One of the Greenans was recognised as Pedyot Flores. The six Greenans and three men were last seen heading for the main road when they disappeared into the darkness. The three abducted men have not been seen again, nor has Pedyot Flores.

The next day, 12 August 1990, family members went to see Capt. Miguel Josue, who was the head of the CAFGU in Mambarato. He already knew about the abduction and said that he would find the missing husbands. It is unclear what he actually did, but he said that he had already dispatched troops to find the men. The family members saw two of the Greenans responsible for the abduction near the CAFGU Camp that day, but since then, the two Greenans have not been seen. The CAFGU unit and the related Greenans left Camp Valdez on 13 August and have not returned. The Greenan unit is said to have transferred to Bayawan, Negros Occidental, which is where the Greenans were evidently formed. The three men are still missing. Their abduction appears to be related to their association with the Basic Christian Community and to the military's assessment of this group as a Communist front.

Leonardo de los Santos

De los Santos (age 30) from Barrio Punta, Jalajala, Rizal, was abducted from his house about 1 a.m. on 16 May 1990 by armed men in civilian clothes wearing black bonnets. He is still missing. De los Santos was the Vice President of the local fisherfolk organisation called SAMA-KAMPU. He had been previously arrested in February 1989 by the local military and was interrogated about his activities as the leader of SAMA-KAMPU. No direct evidence has emerged to link his abduction with the local military but it is difficult to see who else might have been responsible. His case remains unsolved.

Bonifacio Sabanal and others

On 6 July 1990 at around 3:30 p.m., Bonifacio Sabanal (19 years), Rufino Sabanal (40 years), and Mamerto Lupicio (25 years) were reportedly taken into custody at Barangay San Antonio, Himamaylan, Negros Occidental, by members of a CAFGU unit and members of the 61st IB.

The three men were proceeding to Sitio Cunalum, Barangay Carabalan, Himamaylan, to harvest the palay (rice) of Marcos Sabanal. Two female companions, Artillana Aiperto and Wilma Sorillo, were reportedly told by the military that they wanted to question the three men about their activities in the mountains. The two women were threatened with dire consequences if they did not return home.

On 9 July 1990, after hearing about the arrest, the relatives of the three men inquired about their whereabouts at the Carabalan detachment. They were told that the three men had been released on the evening of 7 July. On 13 July, the relatives again visited the detachment, this time accompanied by staff of the Commission on Human Rights (CHR) and TFDP. The reply was the same.

A habeas corpus petition was filed before the Regional Trial Court Himamayalan Branch and in response the military gave the same reply -- that the three men had been released. The petition was dismissed for lack of witnesses to present the case on behalf of the complainant. The three men are still missing.

Carlito Caluag

On 2 July 1990, at around 10 a.m., Carlito Caluag (26 years) was abducted by four armed men in a jeep near the Alyansa ng Magbubukid sa Bulacan (Farmers' Alliance of Bulacan) office in Barasaoin, Malolos. Caluag was reportedly hit in the abdomen with the butt of an M-16 and dragged inside the jeep. It is believed that the abductors belong to Carlos Capili or "Vicky's group," a group headed by an NPA rebel returnee. Carlito Caluag is still missing.

Antonio Buenavista

On 7 January 1990, armed men belonging to the Carlos Capili's group entered house of Antonio Buenavista (42 years) and ordered him to leave with them. When he refused and resisted, he was hit with a rifle butt and dragged into a car. The officials at the police headquarters refused to search for Buenavista saying that "it is hard to intervene." Buenavista had previously been detained in April 1989 and

charged with being a CPP-NPA member. He was out on bail when he was abducted, and is still missing.

Maximiano "Jun" Mesina and Felix Dimitui

Maximiano Mesina, aged 33 from Concepcion, Tarlac (known as "Jun"), and Felix Dimitui, 23 from Santo Tomas, Pampanga, were both staff members AMGL (Alyansa ng Magbubikid sa Gitnang Luzon, Farmers' Alliance in Central Luzon). On the morning of 2 January 1990 between 11:30 a.m. and 12:00 noon they were abducted at the corner of Santo Cristo St. and M.H. del Pilar St. Tarlac, Tarlac. A witness states that the two were walking near the bus terminal of the Philippines Rabbit Line when they were kidnapped by three elements of the 181st PC Company Makabulos, Tarlac, led by Sgt. Dominador Soluta.

On the same day a group composed of AMGL leaders, members of TFDP as well as relatives of the victims, went to the PC provincial headquarters at Camp Makabulos to inquire about the alleged arrest of the two men but received no clear information. The following day, 3 January, the same group returned to the camp and spoke to PC Assistant Commander Rodolfo Inocencio. He denied any knowledge of the incident and told the group that Sgt. Soluta was away from camp and could not be reached. Efforts by the Provincial Governor to locate Sgt. Soluta have proved futile.

On 9 January 1990, an application for a writ of habeas corpus for the production of Dimitui and Mesina was filed in the Supreme Court in Manila. On 12 January 1990, a sworn statement was made by Reynaldo Tipay, a resident of Rm. 9, Dungca building, M.H. del Pilar St. Tarlac, Tarlac stating that he was a witness to the 2 January abduction. In a later affidavit he said that on 24 April 1990 near the office of the Philippine Long Distance Telephone Company, he sighted one of the abductors and identified him as Frank Salvador, a resident of Villa Bacolor, Tarlac. The two men are still missing. Neither Soluta nor Salvador have been produced, despite the fact that Soluta is, or was, a professional army officer.

Reynita Melgar, Prospero Agudo, and Jessie Lachica

On 18 March 1990 Felix Melgar and Jessie Lachica were arrested by military intelligence personnel from a Regional Security Unit at the Dalampasigan Restaurant in Los Banos, Laguna, and taken to a safe house in Canlaubang, Laguna. They were later transferred to another military safe house at 1166 Sampaguita St, Employees Village, Lucena City near Camp Nakar. There they were forced to identify a house

at 158 Lanzones St, Market View Sub-division in Lucena City. The military raided this house at about 2:00 a.m. the following morning and arrested Melgar's wife, Reynita, and Prospero Agudo.

The four of them were interrogated and tortured at the safe house in the Employees Village. Reynita was threatened and Felix was subjected to electric shocks to the stomach. They were also handcuffed and blindfolded; all 4 were kept in separate rooms. In April Reynita Melgar and Prospero Agudo were transferred to Camp Vicente Lim in Canlubang, Laguna. The military forced them to admit membership of the NPA and to sign false documents relating to their arrest and the accusations made against them. Agudo and Lachica were also taken to Camp Vicente Lim. On 16 May 1990 the Melgars escaped from the military while their abductors were busy with guests during a wedding reception held at the safe house.

The relatives of Agudo and Lachica sought the assistance of the TFD in Quezon and the Ecumenical Commission for Justice and Peace. Both groups put out press and radio releases. The relatives also went to Camp Nakar in Lucena City to verify information from Antonio Leagas, a CAFGU member, that the victims were in military custody, but to no avail. Complaints were filed at the Commission on Human Rights (CHR) with no success.

On 29 June 1990 Agudo and Lachica were released without any charges having been laid against them. They were made to sign a waiver and given a 90 day safe conduct pass.

Conclusions and Recommendations

Under the Aquino administration a significant number of people have been abducted and kidnapped. Many of the victims have disappeared altogether and must be presumed dead. The government appears unable or unwilling to put an end to these practices which can in many cases be unmistakably attributed to military officers or associated groups. No mechanism functions to obtain information about the whereabouts of such people. The military is not required to produce relevant officers or their notebooks and other written records to verify their involvement at the relevant times. The police regularly refuse to investigate disappearances and the Commission on Human Rights rarely does so.

The obligations of the Philippines under international law are regularly flouted by this conduct and neglect. Procedures should be immediately put in place to enable prompt investigation after a kidnapping is reported. Prosecution of offenders

should follow detention. The military's supply of relevant information should be made compulsory and immediate.

Chapter 14

Summary and Arbitrary Executions

Despite the obligations of the Philippines under the human rights treaties discussed in Chapter 11, interviews conducted by the ICJ delegation during September 1990 reflected a widespread practice of summary and arbitrary executions.

Extrajudicial Killings and Abductions by CAFGU Members

Following are a representative selection of cases documented for the ICJ delegation.

Rufino Gumulid

Rufino Gumulid and his son Norbing were abducted at around 7:30 a.m. of 8 October 1989 from their home by Felipe Agapay, Fernando Lumbay, Dionido Lunangcag, Leonardo "Yoli" Pardillo, Sofronio "Apron" Sumibay, and Nonoy Pakanti. The men were all wearing uniforms indicating that they were members of the CAFGU unit at Don Mariano Marcos and were carrying weapons. Rufino and Norbing went voluntarily with the CAFGU members. Orlando, another son, followed his father and brother a short distance behind. They travelled about four to five kilometres. The CAFGU members then stopped and two minutes later, Orlando heard two shots. Some of the CAFGU members ran off while others dug a shallow grave behind some brush. When the shooting started, Norbing hit one of the CAFGU members and was able to escape. Four CAFGU members followed him but were not able to capture him. Later Norbing returned home to say that Apron Sumibay had shot his father. He has now left town and is in hiding because he fears he will be killed. The family has told the authorities that Norbing has not been seen again.

Orlando waited for the CAFGU members to leave the site of the killing and burial. Orlando uncovered his father, who was already dead. He had been shot in the left chest and his right side. Orlando reburied his father. The family is reportedly very frightened and has moved to another barangay. They are still afraid to farm.

Perfecto Sumibay, 38 years old, a member of the Municipal Council of Sitio Descallar, Lalud, heard about the killing of Gumulid on the same day. As a leader of the Subanon indigenous community of which Gumulid was a member, Sumibay went to investigate on 9 October and found the body. He disinterred the body with the local priest, Father Jerry. There was no doctor present, although photos of the body were taken. There were two wounds in the body. They reburied the body at the same place.

On 18 October 1989, Sumibay went to the grave site with several others to investigate the killing. They were unable to reach the site of the killing because when they reached about a kilometre from the grave site, members of a CAFGU unit were on either side of the road and began shooting. The CAFGU supervisor told Perfecto and the others that they should not investigate the killing that day because there was active conflict with the NPA in the region. It is believed that the CAFGU staged the shooting to deter the investigation.

The CAFGU members involved in this 18 October 1989 incident reportedly included an army officer Edgar Pilapil, a unit supervisor named Cardoso, Junior Caparosa, INP member Antonio Marababon, and CAFGU members Dionido Lunangcag, Yoli Pardillo, Apron Sumibay, and Nonoy Pakanti.

Rufino's relatives and others believe that he was killed because he was suspected of being an NPA member. NPA members had stayed in the home of Rufino. Of the CAFGU members involved Yoli Pardillo, Nonoy Pakanti, and Apron Sumibay had previously been members of the NPA. Apron had been a tax collector for the NPA before he switched sides in August 1989.

The family and Perfecto Sumibay complained to the Chief of Police of Don Mariano Marcos. Affidavits were taken by the police about the incident from the relatives. Nothing has happened in the investigation. The family also complained to the Commission on Human Rights where Attorney Tan has received information about the case but no investigation has occurred.

Other Unarmed Persons

There have been a number of other incidents in the same region. For example, on 28 October 1989, three rebels were killed and their arms were taken. The incident occurred in Sitio Bagaan, Napangan, Don Victoriano Marcos (formerly Don Mariano) about two kilometres from Sitio Descallar.

Later in 1989, a person was shot by the CAFGU in Sitio Gitason, Tono, Don Victoriano. The community had been troubled by a talismanic religious community called "ADAMIC." Most Subanon community members do not know what ADAMIC is, but they perceive it as a religious/political group. The initials stand for Alliance for Democracy and Morality in the Country. ADAMIC members believe that they are invincible and cannot be harmed. Their recruits work closely with the army and are then selected to become members of the CAFGU working with the army. The army is using the ADAMIC religion as a way of gathering support in the community.

Killing of five-year-old girl and two men

On 5 September 1990, a five-year-old girl and two men were killed when paramilitary forces belonging to the 606th Special Forces strafed four houses in Sitio Pata, Barangay Mailum, Bago City, Negros Occidental.

According to the child's mother, at around noon, seven armed men including CAFGU members Eric Pianu, Munding Garcia, and Otay Garcia started shooting without provocation at two unarmed men standing near the mother's house. Her daughter Analic was hit on the head and died instantly. Later the dead bodies of the two men were removed by an army helicopter.

Following the incident, the parents of the two murdered men produced the payrolls of the farm in which the two were working to prove that their sons were farm workers (civilians) and not NPA rebels. The inquiry team identified 77 empty bullet shells of M-16 and M-203 armalite rifles.

Rolando Tesalona

On 3 August 1990, Rolando Tesalona (30 years) and two companions, Ego and Odong, were reportedly confronted by members of the 606th Special Forces at Crossing Narra, Sitio Culesap, Barangay Mailon, Bago City. Tesalona was a local organiser of the National Federation of Sugar Workers (NFSW). He and his companions were reportedly accused of being members of the NPA and despite strong denials, Tesalona was abducted. At the time of the incident, Ronnie Tesalona, a cousin of Rolando and a CAFGU member, was also present. The place where the arrest took place is about 80 metres from the 606th Headquarters under the command of Captain Arturo Ortiz.

Upon hearing of her husband's arrest, Tesalona's wife went to the 606th Headquarters looking for her husband. When she failed to get any satisfactory answer,

she inquired with residents near the site where he was arrested. She was informed that gunshots were heard near the sugar cane fields close by. She searched a nearby sugar cane field and found the severely mutilated body of Tesalona in a shallow grave. His throat was slit, his fingers were cut, and he had been blindfolded. There were no gun wounds, but the 606th Special Forces are known to carry knives as well. The cloth used for blindfolding the deceased was identified by his wife as Ronnie's handkerchief. Ronnie Tesalona had apparently threatened her husband for being a member of the NPA and the relationship between them had become strained after Tesalona's refusal to join the CAFGU.

The death of Tesalona is linked to his NFSW activities. He may have been accused of being an NPA member because NFSW is considered by the army and the CAFGU to be a communist front.

Leonidos Abuda

On 4 July 1990 Leonidos Abuda (17 years) of Sitio Lunboy, Barangay B1-90, Binalbagan, Negros Occidental, was visiting his cousin Jose at Sitio Pitog, also in Bgy. B1-90. At around midnight Abuda and his cousin were awakened by CAFGU members and Greenans led by Kisin Rela who took Abuda along with them. The Greenans are a pro-government vigilante group with talismanic religious beliefs and which work closely with the CAFGUs and the military. Abuda's cousin was beaten but left behind. The CAFGU members and Greenans accused Abuda of being an NPA member.

On 13 July, neighbours and family found Abuda's body in a muddy grave in the nearby fields. The corpse was in a state of decomposition and was only identified by the clothes he was wearing on the night he was abducted. It bore multiple stab wounds and his hands were tied.

Pascual Villagos

On 11 June 1990, Pascual Villagos (44 years), his son Carlito, and daughter Susanna were working in the pineapple fields at Sitio Dianspa, Barangay Pinayawan, Don Salvador, Negros Occidental. At around noon, while they were on their way home, the Villagos family encountered some CAFGU members and Pulahans. The Pulahans are another pro-government vigilante group with talismanic religious beliefs who work closely with the CAFGUs and the military. Four people, namely Aveline Larida, Ronnie Manongsong, Larry Abarquez, and Muling Albwerque, were recognised as Pulahans because of the red headbands they were wearing.

It is reported that Abarquez grabbed Villagos and accused him and his son of being NPA sympathizers. The father and son were tied together and taken by the CAFGU members and Pulahans. Other members of the family heard about the abduction and fled out of fear to another barangay where they had relatives. The next day, following a report, they found Pascual Villagos' dead body in Sitio Nangka. They also found Carlito Villagos still alive with gunshot wounds in the stomach and left thigh.

Indiscriminate Killing and Wounding

Meriam Sarol and Felipe Sarole Jr.

On the afternoon of 1 September 1990, two strangers sought shelter from the rain in the house of Felipe Sarol at Sitio Barandal, Barangay San Francisco, Lipa City, Batangas. It is believed that when the two strangers left the house there was a burst of gunfire and the bullets hit Felipe Sarol's house. When the firing stopped, the dead body of Meriam Sarol (9 years) was found. Felipe Jr. (3 years) had been seriously wounded and was taken to Lipa City District Hospital where he was pronounced dead on arrival.

According to a report published in the local tabloid, the military claimed that they were engaged in an encounter with NPA rebels in which two ranking NPA members were killed and two innocent children were caught in the crossfire. According to the family of the two deceased children, however, the father's house was strafed without any provocation or warning.

Funeral March Case

On 28 June 1990, a funeral procession following the cortege of Benjamin Tabuenawas was shot at and dispersed resulting in the death of two persons who were among the mourners. The procession was attacked by about 20 masked members of the North Sector Command (CAPCOM) under Lt. Col. George Alino. It is believed that the mourners were shot because the funeral was for a suspected member of the Alex Boncayo Brigade (ABB), an urban guerilla unit of the NPA. According to one of the relatives attending the funeral, when the cortege was about to enter the cemetery in La Loma, a volley of shots was fired at the mourners without provocation. In the shooting, Jose Dy (34 years) and Gilberto Lopez (24 years) were instantly killed. Twenty-one other mourners were arrested and detained in the Kalookan City Police Headquarters. They were charged with illegal possession of firearms in

furtherance of rebellion. All except one, Benedick Alvarado, were released on bail. The armed men also confiscated films from press photographers covering the funeral.

Brig. Gen. Marino Filarte, the CAPCOM Chief, justified the shooting of the mourners by saying: "Soldiers opened fire because a mourner was about to throw a grenade and also because the mourners openly displayed their revolutionary intent by waving flags of the outlawed Communist Party of the Philippines." A confidential assessment by the PC Liaison office, however, criticised the military's action in violently dispersing the funeral procession.¹²⁴ According to this paper, the ambush was "an eloquent picture of police and military brutality. . . . Assuming that the men saw someone from the procession about to lob a grenade, it was not a justification for them to fire at the mourners, many of whom are friends, neighbours and relatives of the slain rebel but not necessarily communist rebels themselves."

Tigwala Incident

On the night of 11 May 1990, the people living in Sitio Tigwala, Barangay Poypoy, Calintaan, Occidental Mindoro, reportedly heard gunshots. The next morning, villagers found four dead bodies riddled with bullets. The dead bodies were identified as Felix Del Monte (12 years), Aswit Santo (18 years), Tony Magtanggol (30 years), and Riglo Gonzales (28 years). All four belonged to Malpalon Calintan a nearby barangay and they were in Tigwala for employment as agricultural workers. Their identities were confirmed by their barangay captain Pancho Villa. The barangay captain claimed that he saw some CAFGU members collecting bullet shells at the site of the shooting. The National Bureau of Investigation conducted an enquiry into the killings and the results are not available. The residents of Tigwala fled the area as a result of the gruesome incident.

Dedione Largo

On 8 February 1990, at Barangay Roxas, Pandanon, Murcia, Negros Occidental, a group of military men, including CAFGU members, came to the local "sari-sari" store owned by Dedione's father and questioned him about two strangers who had visited the shop earlier. The military helped themselves to beer, bread, and cigarettes from the shop and did not pay. Before leaving, they strafed the shop and Dedione (15 years) was seriously injured. The boy is not able to speak any more as a result of the injury he sustained in the jaw. A CAFGU member named Kiting Topic is

¹²⁴ Philippine Daily Inquirer, 3 July 1990; Malaya, 3 July 1990.

apparently the person who shot the boy, but there has been no investigation of the matter and Topic has not been charged or even requested to explain his activities at the relevant time.

Conclusions and Recommendation

The cases of summary and arbitrary executions discussed in the report are indicative of many others documented by the ICJ delegation, which met the families of many victims and several witnesses to the events. Yet no one appears to have been required to answer for any one of them. The people can have little confidence in their system of government and respect for the rule of law while such conduct persists and goes unpunished.

Chapter 10 of this report recommends the disbanding of all vigilante groups and the separation of the civilian police from the military. Chapter 18 calls for the repeal of Presidential Decree No. 1850. Chapter 19 suggests a substantial overhaul of the Commission on Human Rights. Pending these developments, there is an urgent need to establish a strong and competent team of independent and trained persons to investigate the murder and serious wounding of civilians by military, paramilitary, and police forces. Internal investigation of such occurrences has been proven elsewhere in the world to be quite unsatisfactory. The current militarised state of the Philippines makes it even more inappropriate there.

With the repeal of P.D. 1850, the perpetrators of such heinous crimes should be brought promptly to trial before the ordinary courts of justice. Priority should be given to such trials as a means of demonstrating that the organs of the state are determined to protect the people and to bring serious violators of the law to account.

Chapter 15

Forced Evacuation and Displacement of Civilian Population

During the Marcos administration, civilians in villages were often relocated to centres called hamlets, as a counter-insurgency strategy. A large number of people were displaced as a result of hamletting. Moreover, the militarisation and armed conflict also contributed to evacuation and displacement. According to an ICRC report, "between 1972 and the first quarter of 1984, a total of 5,704,913 persons or 1,040,206 families were evacuated as a result of armed clashes between the military and the rebels."¹²⁵

Forced displacements continue under the present administration. It appears that the evacuation of the civilian population is used by the military as a deliberate strategy to deny the insurgents a mass base. According to the Department of Social Welfare and Development:

- in 1988 (January-September) a total of 31,728 families or 192,443 persons were affected by forced evacuations
- in 1989, 40,165 families or 221,302 persons were affected by forced evacuations
- in 1990 (January-June), 27,210 families or 139,278 persons were affected by evacuations. In the same period, 866 persons died and 307 persons were injured in the evacuation process.

The Ecumenical Centre for Displaced Families and Communities has identified the following causes of evacuations:

- military offensives (49 percent)
- military operations following armed encounters with rebels (17 percent)
- threats and abuses by military men, paramilitary forces, and vigilantes (12 percent)
- NPA operations or harassments (5 percent).

¹²⁵ Quoted in the Report of the Office of the Peace Commissioner, Office of the President of the Philippines (1990).

The Department of Social Welfare and Development has admitted that military offensives are the main cause of evacuations. This view has also been confirmed by the information collected by the ICJ delegation.

As previously discussed, a well known military offensive "Operation Thunderbolt" was mounted in the CHICKS area (the towns of Candoni, Hinobaan, Ilog, Canayan, Kabankalan and Sipalay) of Negros Occidental. The CHICKS area was considered by the military to be an NPA stronghold. The operation was pursued between April and June 1989 and caused the evacuation of at least 35,000 villagers. The military sought to clear the area by bombing and by other military actions. As a result the residents of the area fled to hastily established evacuation facilities. Conditions in the evacuation facilities were overcrowded without adequate food, sanitation, or health care. A number of the refugees were already ill when they arrived at the evacuation centres. One report about the evacuation camps attributed the death of more than 300 children to measles, diarrhoea, poor sanitation, and lack of medical care.¹²⁶

On the one hand, the military claimed that some NPA members among the evacuees surrendered. On the other hand, the military reportedly tortured some evacuees to force them to identify NPA suspects among the evacuees. There were also reports that church workers and representatives of non-governmental organisations were denied access and harassed by the military on the basis that any help provided to the evacuees is support for the NPA.

Evacuees found it extremely difficult to return to their villages and start life anew. In many instances their houses were burned, their belongings looted, their livestock killed or dispersed, and the agricultural cycle disrupted. Evacuees were also reportedly concerned about their physical safety, since the military, paramilitary, and vigilante groups continued to operate in the areas from which they originally fled.

The ICJ delegation met a group of evacuees who expressed a similar fear of returning to their original place of residence. These evacuees belong to the Subanon tribe and were originally from Namut Tudeca, Misamis Occidental. In July 1989, they fled their residences and settled in the municipality of Josefina, Zamboanga del Sur, where a local church and convent provided shelter and food. The Subanons indicated that over 40 houses in their village had been burned. Another was burned later. The houses were sufficiently separated so that the soldiers of the 55th Infantry Battalion

¹²⁶Exodus from Counter Insurgency Warfare, Council for People's Development (1990).

had to start each of the fires individually. The fires were set by about 200 soldiers and a related CHDF unit, who suspected that the village was sympathetic to the NPA. There had not been any incidents relating to the NPA in the area, so the inhabitants did not understand the army's suspicions. No villager was shot during the burning, but a number of farm animals, including pigs, were killed or were taken. A factfinding mission sponsored by the Provincial Government of Misamis and a Human Rights Advocates Group visited Namut in August 1989. The information received by the ICJ delegation corroborates their findings.

The residents of Namut fled into the forests. Seven died of diarrhoea and exposure during the period the tribe wandered in the nearby forest. Another seven died once the community reached Josefina in September 1989. Of the 14 people who died during that period, 2 were adults and 12 were children.

Since the Namut community arrived in Josefina, they have not been bothered by the military. Their life is very hard in Josefina, since they have less land to farm and fewer agricultural animals. The Subanons of Namut, if assured of their safety, would like to return to their village and lead a normal life. For this group as well as for others, there does not seem to be a coordinated effort to assist with resettlement in their place of origin. It is believed that in some areas, vigilantes and CAFGUs exercise control over the property and belongings of those who have fled and therefore prefer the status quo.

The forced evacuation and displacement of people is considered by many as a counter productive strategy. One observer has said: "The long term impact could be the creation of a new generation of NPA recruits."¹²⁷ Moreover, the government is spending millions of pesos to remedy the damage caused by its own military. For example, the Department of Social Welfare and Development has spent nearly 6.5 million pesos in 1988 and 1989 to provide immediate relief to the evacuees. Many claim that this money would have been better spent on long term development plans rather than on relief.

More importantly, forced evacuations and displacements violate the basic human rights of the displaced persons. The 1987 Constitution (Article II, Section 6) takes into account the previous government's practice of hamletting and thus safeguards the liberty of abode except upon lawful order of a court. In contrast with the 1973

¹²⁷Far Eastern Economic Review, 11 January 1990.

Constitution, the 1987 Constitution does not include "national security" as a reason for interfering with the right of abode of citizens.¹²⁸

Used as a deliberate strategy of war, forced evacuations and displacement also violate the laws of war. Under Article 17 of Additional Protocol II to the Geneva Conventions, civilians may be displaced only for their own security or for imperative military reasons. In the present context, displacement of civilians to deny support to the enemy has nothing to do with the security of the civilians. Moreover, such political objectives are not "imperative military reasons."

Conclusions and Recommendations

Evacuations, hamletting, and the deliberate creation of "internal refugees" should be stopped.

If evacuation of civilians is undertaken for "imperative military reasons", the authorities should ensure that:

- **civilians are prepared sufficiently prior to such evacuations**
- **the evacuees are enabled to take as many of their possessions with them as possible, especially those needed to assist them to earn an income**
- **particular care be taken that the homes and lands evacuated and the property and possessions left behind are protected**
- **civilians are provided at the evacuation centres with adequate food, sanitation facilities, and medical care**
- **access to the evacuation centres are provided to NGOs so they can give the necessary social services to the evacuees and to the Commission on Human Rights so that violations of human rights can be reported and expeditiously investigated**
- **adequate compensation is provided for loss of life or property resulting from evacuations**
- **security and assistance is provided on their return so as to enable them to resume a normal life as soon as possible.**

¹²⁸ Article II, Section 5, of the 1973 Constitution reads: "The liberty of abode of and travel shall not be impaired except upon lawful order of the court or when necessary in the interest of national security, public safety of public health."

Chapter 16

Criminal Law and Procedure Including the Right to Fair Trial

During the 14 years after the declaration of martial law, President Marcos extensively amended the Penal Code, particularly in regard to provisions dealing with Crimes Against Public Order. Those provisions were amended six times; each amendment either increased the penalties or created new crimes or both. There were other amendments, for example, providing that a person may be held in custody up to 30 days without being brought before a judge. Marcos also issued Presidential Decree No. 1877 which authorized the arrest of any person on the order of the President. In practice, an arrest was made and then an order known as "Preventive Detention Action" (PDA) was obtained from the President¹²⁹

When President Aquino took office, she repealed most of Marcos' decrees and restored the protective provisions in Articles 135 to 147 and 177 to 179 of the Penal Code as they existed before the amendments made by Marcos. Those provisions related to rebellion, sedition, insurrection, illegal association, illegal assembly, assault on a public officer, misrepresentation as a public officer, use of an alias, misuse of an official uniform, and conspiracy to commit several offences.

In addition to the provisions of the Criminal Code dealing with Crimes Against Public Order, there exists a separate law on subversion known as the Anti-Subversion Act or Republic Act No. 1700 of 1957. The Act had originally outlawed the Communist Party of the Philippines and its military arm, but Marcos broadened its coverage by deleting references to the Communist Party and substituting: "Any association, organization, political party, or group of persons of organized for the purpose of overthrowing the Government . . . shall be considered and is hereby declared an illegal organization." Marcos also added mandatory penalties of loss of citizenship and loss of all private property.

President Aquino at first repealed the Anti-Subversion Act but after the failure of peace talks with the CPP-NPA in 1987, she revived it. In the revived Act, some of the Marcos period amendments were deleted. The Act as it stands now states that:

¹²⁹ For more details of changes made in the Penal Code, see ICJ, *The Philippines Human Rights After Martial Law 40-63* (1984).

- the Communist Party of the Philippines is declared to be an organised conspiracy to overthrow the government; the party and any other organisation with the same purpose are declared illegal and outlawed
- the Communist Party of the Philippines is defined to include the organisation now known as the Communist Party of the Philippines (CPP) and its military arm the New People's Army (NPA)
- any person who affiliates or is a member of the CPP shall be punished by the penalty of arresto mayor (1 to 6 months imprisonment) and shall be disqualified from holding any public office
- in case of a second conviction the principal penalty shall be prision correccional (6 months to 6 years imprisonment) and in all subsequent convictions the penalty of prision mayor (6 to 12 years imprisonment) shall be imposed
- an officer or ranking leader of the CPP who takes up arms against the government shall be punished by a minimum sentence of prision mayor to a maximum of reclusion perpetua (life imprisonment)
- persons may be sentenced under this act with a minimum sentence of prision mayor to a maximum of reclusion perpetua only on the testimony of at least two witnesses to the alleged overt act or on the confession of the accused in open court.

At the time of writing this report, there were two bills pending before the Senate seeking to amend the existing law on rebellion or insurrection. Senate Bill No. 1395 seeks to penalize those who "finance" a rebellion or insurrection. That bill imposes the death penalty for leading the rebellion, engaging in rebellion while in public office or employment, or committing serious violence while in rebellion.

Senate Bill No. 1396 seeks to impose the higher penalty of reclusion perpetua if civilians are killed or taken hostage during the rebellion or if the offender is a government official, police officer, or member of the armed forces.

Presidential Decree No. 1866

Presidential Decree No. 1866 was promulgated by President Marcos and was not repealed by President Aquino. The decree provides for a minimum sentence of reclusion temporal (12 to 20 years) to a maximum sentence of reclusion perpetua for illegal possession of firearms and ammunition.

The retention of Marcos' P.D. 1866 and its provision imposing the death penalty for illegal possession of arms in connection with the crimes of rebellion, insurrection, or subversion has generated a considerable amount of criticism. P.D. 1866 is

anomalous, since under Republic Act 1700, a subversive (member of the CPP) who takes up arms is only liable to between prision mayor and reclusion perpetua.

The constitutionality of P.D. 1866 was challenged in the Philippine Supreme Court by a petitioner who was charged for illegal possession of firearms in furtherance of subversion.¹³⁰ The grounds of the challenge were that, first, it disregards established Filipino jurisprudence, particularly the Hernandez principle which states that when a person is charged with rebellion and with common crimes, the common crimes are absorbed in the rebellion charges. Hence, armed subversives should be distinguished from common criminals illegally possessing firearms and charged with subversion or rebellion absorbing the illegal possession of firearms charge. The petitioner argued that he should have been charged with subversion or rebellion instead of illegal possession of firearms.

The second ground of the challenge to P.D. 1866 was that it cannot be considered a law passed by a regular legislature and is therefore unconstitutional, because it was a decree of President Marcos. The Supreme Court dismissed the petition on the grounds that first, the Hernandez principle did not apply since the petitioner was not charged with a complex crime of subversion, but with illegal possession of firearms. The Court also stated that if the legislature has deemed it fit to provide for two distinct offences of rebellion and illegal possession of firearms, the Court cannot inquire into their decision.

Justice Sarmiento was one of two dissenters. In a remarkable judgment, Justice Sarmiento revealed that originally there was a majority of 8-5 declaring P.D. 1866 unconstitutional. To quote from the dissent:

"By July 18, 1989, my ponencia had been pending in the office of the Chief Justice for promulgation. It carried signatures of concurrence of eight justices (including mine), a slim majority, but a majority nonetheless. . . . Subsequently, and as events would soon unfold quickly and dramatically, the Chief Justice returned my decision to the Court en banc, and declared that unless somebody changes his mind, he was promulgating my decision. Justice Edgardo Paras, who was one of the eight who had stamped their imprimatur on my decision, indicated that he did not want to 'clip the wings of the military' and that he was changing his mind. This sudden reversal, under the circumstances surrounding its manifestation,

¹³⁰ Arnel P. Misolas v. Hon. Benjamin V. Panga, G.R. No. 83341.

took me aback for which is strongly voiced my protest for a case that I had thought was a settled matter."

Justice Sarmiento stated that P.D. 1866 was unconstitutional for the following reasons:

- it is a bill of attainder or an enactment which indicts punishment without trial
- it is vague and in violation of the double jeopardy clause of the Constitution. It is vague because it is unsure which offence to punish, that is, illegal possession or subversion. A person convicted with illegal possession qualified by subversion may still be held guilty of subversion later
- it was not passed by a regular legislature.

Human rights lawyers and activists cite numerous examples of P.D. 1866 being misused by the military to arrest persons on the false charge of illegal possession of firearms. The delegation also came across many cases in which the accused had been charged under P.D. 1866 in doubtful circumstances. The delegation is not in a position to say whether all these persons were falsely charged, but it is clear that P.D. 1866 is likely to be misused. In addition, the inadequacies of the Philippine criminal law process make P.D. 1866 all the more hazardous.

The Right to Fair Trial

The Philippine criminal law process reflects its origins in both the Spanish and the US criminal law, without the protections afforded by either system. This combination has resulted in several problems for persons accused of committing criminal offences.

Preliminary Investigations, Arrests, and Inquests

The Philippine criminal process normally begins with an arrest. The 1989 Rules of Criminal Procedure¹³¹ state that preliminary investigations must be conducted by a duly authorised official and a warrant must be obtained before an individual is arrested.¹³² In practice, however, investigations are rarely conducted before an arrest and warrantless arrests have become common. Under Philippine law warrantless arrests are permissible if the accused is caught while committing the

¹³¹Rules 110-27, Philippine Rules of Court, 1989 Revised Edition (1990).

¹³²Rule 112, Section 3 and 6, 1989 Rules on Criminal Procedure (1990).

offence, immediately after an offence is committed, or while attempting to escape from prison.¹³³

In July 1990 the Philippine Supreme Court apparently gave their imprimatur to the increased use of warrantless arrests. In Umil v. Ramos,¹³⁴ the Supreme Court sustained the legality of warrantless arrests of members of the New People's Army (NPA) on the ground that membership in the NPA is a "continuing" offence.

In the decision the Court held that "subversion being a continuing offense, the arrest of Rolando Dural without a warrant is justified as it can be said that he was committing an offense when arrested. The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes or offenses committed in furtherance thereof or in connection therewith constitute direct assaults against the State and are in the nature of continuing crimes."

This case is considered in more detail in Chapter 17. As a result of this decision any person believed by the authorities to be an NPA member may be arrested at any time or any place, without a warrant. Accordingly a suspected NPA member may be arrested while sleeping, eating, or otherwise pursuing daily activities which are not otherwise criminal. The reasoning for the Supreme Court's decision is questionable. If the authorities possess the factual basis to make an arrest for NPA membership, they would ordinarily have enough evidence to seek an arrest warrant in advance.

Arraignment

After arrest, a detainee is required to be brought within a short time before a "judicial authority" for arraignment. In urban areas the detained individual may be brought before a fiscal (more recently known as a "prosecutor") while in rural areas the detained person must be brought before a regional trial court judge.¹³⁵

¹³³Rule 113, Section 5(a), (b), and (c), 1989 Rules on Criminal Procedure (1990).

¹³⁴This decision involves six consolidated cases with G.R. Nos. 81567, 84581-82, 84583-84, 83162, 85727, and 86332. It was issued on 9 July 1990.

¹³⁵Article 125 of the Revised Penal Code of the Philippines read in conjunction with Articles 112 and 113 of the 1989 Rules on Criminal Procedure.

Article 125 of the Revised Penal Code of the Philippines states that a detainee can be kept up to 36 hours before being brought to a judicial authority. The same article, as amended in 1987 by E.O. 272, provides that a person arrested for crimes punishable by light penalties can be kept for not more than 12 hours. For crimes punishable by correctional penalties, a person can be kept for 18 hours, and for crimes punishable by capital punishment (now changed to reclusion perpetua), a person can be kept for 36 hours before being brought to the proper judicial authorities. A Department of Justice employee indicated to the delegation that these periods had been extended from 12 to 36 hours and from 36 to 72 hours depending on the seriousness of the offence. The delegation received the impression that it is not uncommon for persons to be detained for more than three days, and sometimes even up to a week before being arraigned. Such detention is a clear violation of Article 125 of the Penal Code.

The Code imposes the following penalties for delay in the delivery of detained persons:

- penalty of prision correccional as a maximum or arresto mayor, if the detention has not exceeded three days
- penalty of prision correccional in its medium and maximum periods, if the detention has continued more than three but not more than fifteen days;
- penalty of prision mayor if the detention has continued for more than fifteen days but not more than six months; and
- penalty of reclusion temporal if the detention has exceeded six months.

A strict application of this rule would contribute to preventing torture and disappearances. There is no one in the Philippine criminal law system, however, assigned to assure that arrested persons are actually arraigned, permitted to post bail, and charged with a recognisable criminal offence. There is evidently no prison official, prosecutor, court, lawyer, or government employee responsible for ensuring that a detainee is actually arraigned. Lawyers are appointed for detainees only at arraignment.¹³⁶ Before arraignment, detainees must retain an attorney.¹³⁷ Some detainees do not know they have the right to an attorney; many cannot afford one.

¹³⁶Rule 115, Section 1(c), 1989 Rules on Criminal Procedure (1990).

¹³⁷Rule 113, Section 14, Rules on Criminal Procedure (1990).

Justice Department Circular No. 9 dated 22 June 1987 directs fiscals to submit monthly reports of co-ordination and inspection of provincial/city/municipal jails indicating the total number and names of detainees, the duration of detention, the cause for detention, and other pertinent information. The circular directs the assignment of a fiscal to coordinate with the provincial/city/municipal jail wardens and to assist the executive judge in the monthly personal inspections of the nearest jails. It also directs assigned fiscals to act with dispatch towards the immediate or early release of persons illegally detained.

This circular is either not respected by fiscals or the information submitted by them is not processed immediately by the Ministry of Justice. A strict enforcement of the circular would reduce the number of persons illegally detained and help expedite the cases of those prisoners who are awaiting trial.

Such jail visitations as are conducted by staff of the Commission on Human Rights do not seem to have helped those who are illegally detained or who are awaiting trial. In their jail visits CHR officials apparently only receive complaints from detainees and do not monitor the progress of their cases through the legal system or demand appropriate action.

Habeas Corpus Petitions

While illegally detaining a person, the police or military may coerce confessions and collect information which will retroactively justify the arrest. If a detained individual retains an attorney to file a habeas corpus petition, the prosecutor ordinarily responds by filing criminal charges against the detainee without further investigation or inquest. Upon the filing of a criminal charge, the courts deny relief in habeas corpus, even if the accused has been held for a prolonged period.¹³⁸ In a case decided during the Marcos period, the court held that habeas corpus would not lie after the warrant of commitment was issued by the court on the basis of the information filed against the accused.

In Ilagan v. Enrile,¹³⁹ a habeas corpus petition was filed on behalf of two detained lawyers by the IBP, FLAG, and the Movement of Attorneys for Brotherhood, Integrity and Nationalism (MABINI). On 10 May 1985, Attorneys

¹³⁸ Cruz v. Director of NBI, 136 SCRA 511 (1985).

¹³⁹ G.R. No. 70748.

Ilagan and Arellano were detained on the basis of an unsigned order. Despite a decision of the Supreme Court of 23 May for the temporary release of the two lawyers, they were not released by the military. Instead, an urgent motion for reconsideration was filed on 28 May. The motion stated that an "information" for rebellion was filed on 27 May 1985 against the detained attorneys before the Regional Trial Court and that a warrant of arrest had been issued against them. On its reconsideration, the court dismissed the habeas corpus petition as having become moot and academic, since the petitioners were being detained by virtue of a warrant of arrest in relation to the criminal case filed against them before the Regional Court.

In the Umil case discussed earlier, the post-Marcos Supreme Court reiterated that the habeas corpus remedy is not available to a person who has been legally arrested and against whom an information has been filed. Hence, the Court refused to abandon the doctrine in Ilagan v. Enrile. In a dissenting judgment, Justice Sarmiento stated: "The Ilagan doctrine does not rightfully belong in the volumes of Philippine jurisprudence. . . . An information is not a warrant of arrest and the fact that an information exists does not mean that a warrant will be issued."

Existing Filipino jurisprudence thus generally renders habeas corpus petitions ineffective in dealing with illegal arrests and detention. Consequently, there is virtually no sanction against many human rights violations of this type. In view of the procedures usually followed by the fiscals, this lack of an effective habeas corpus is a devastating loss of protection for detained people.

Lengthy Pre-trial Detention

Individuals familiar with the prison system in the Philippines have regularly each year discovered 60-80 prisoners who have remained in pre-trial detention for greater than three years. Many of those prisoners were being held for offences which carried sentences shorter than the time they had served. Although the number of cases of prolonged pre-trial detention has diminished since the advent of the "continuous" trial (discussed below), a major problem still persists in this regard.

Investigation and Prosecution

Under the 1989 Rules on Criminal Procedure the fiscal (prosecutor) is expected to investigate an offence before issuing an arrest warrant.¹⁴⁰ Since a pre-arrest

¹⁴⁰Rule 112, Sections 3 and 6.

investigation is a rarity, the fiscal usually begins the investigation (called an inquest) after the arrest. Accordingly, virtually all arrests are illegal, yet they are not remediable by habeas corpus for the reasons given earlier. One major purpose of bringing the detained individual before the fiscal is to assure that the individual's rights are protected. Since fiscals have begun to be known and to function as prosecutors in cooperation with law enforcement officials, they no longer actually serve as independent judicial officials to protect the rights of detained persons. There exists close coordination between the military and fiscals, now institutionalised by the creation of Regional Legal Action Committees (RELACs). Each RELAC is composed of fiscals and local military officials; their purpose is to increase coordination between the two departments concerning prosecution of cases. There can thus be no expectation that the fiscals will demonstrate independence and impartiality.

In any case, detained individuals are rarely, in practice, brought before the fiscal or a regional trial court judge within periods even close to the time limits prescribed by law. The impact of such delays is discussed later. Furthermore the arrested individual need not be produced at the inquest conducted by the fiscal if the individual is detained in a hospital, or production will involve a security risk.¹⁴¹

When the inquest commences after the arrest, the prosecutor relies principally upon affidavits to justify the arrest and support a criminal charge. This dependence on affidavits has resulted in several problems.

1. First, affidavits can be and are often faked. Since affidavits need not be produced before an arrest warrant is issued, law enforcement personnel have a strong motivation to justify the arrest by producing affidavits to strengthen the case against the accused. One particularly dramatic example of this problem arises in regard to the use of "John Doe" warrants. It appears to be the practice of law enforcement authorities that after an arrest for a criminal offence attributed to the NPA, the prosecutor issues a warrant listing the arrested individual as well as a number of other persons who are unknown at the time as "John Doe." When another individual is arrested for an unrelated criminal offence and/or for suspicion of NPA membership, an affidavit is frequently prepared by a law enforcement official to identify the second person as one of the "John Does" mentioned in the original warrant. Indeed, the

¹⁴¹Department of Justice, Circular No. 5, Prescribing a Uniform Procedure for the Disposition of Inquest Cases, paragraphs 4 and 5, 1 March 1989.

second person may be charged with numerous offences, pursuant to several "John Doe" warrants.

The following is a reproduction of a "John Doe" warrant:

"The undersigned Assistant Provincial Prosecutor accuses Carlota Boromeo, Elsie Monteiro, Magdalena Tina, Violeta Carman, Marites Projido, Irene Calsado, Francisco Sandoval, Andres Fortuna, Cesar Batralo, Gloria Petargue, Augusto Mergino, Enrique Delgado, Larry Pasion, Peter Doe, John Doe and Richard Doe of the crime of violation of Presidential Decree No. 1866 committed as follows . . ."

Signed

Felipe L. Argicial Jr., Assistant Provincial Prosecutor

As a result of such "John Doe" warrants, the list of accused in any given case can be never ending. For example, Criminal Case No. 4921 (People v. Leopoldo Mabilangan) for kidnapping with illegal detention had 19 known defendants and 100 "John Does." The military has used this case as a convenient legal basket to make arbitrary arrests.

As discussed later, law enforcement affidavits are often found to be without support when tested at trial. Nonetheless, the authorities apparently use this technique to hold persons for long periods of time while each of the various charges are brought slowly to trial. Further, the ICJ delegation found no indication that the authors of falsified affidavits are subjected to prosecution for perjury. The following cases illustrate some of the problems in the process of arresting and charging individuals.

Sixto Tumulak

On 1 February 1990, at 10 a.m., Sixto Tumulak went to the house of Teodoro Sericon to pay for a pair of pants which Tumulak had purchased. Sericon was conducting a ready-to-wear clothing business. Tumulak did not know that Sericon had been arrested early that morning. The military intelligence unit still at the home of Sericon arrested and searched Tumulak. They found his wallet, identity card, and watch. All of these items were taken.

Tumulak was taken to Camp Sotero Cabahug. He was blindfolded, hit in the chest, and threatened with death. His head was put into a toilet. His wife went to the camp, but the officers at the camp denied that Tumulak was there. Nevertheless,

she saw him there, dishevelled and dirty. After his arrest, Tumalak was charged with the same offence as Sericon. In addition, Tumalak was identified as one of the "John Does" in other cases. Tumalak was, for example, charged with robbery with homicide of Major Quilaton. That charge has now been dismissed, but because charges of robbery with homicide (of ex-policeman Eddie Rama) and frustrated homicide (of Patrolman Bering) are still pending, Tumalak remains in prison. Another charge of highway robbery (against Pacific Traders Manufacturing Corp.) is also pending against Tumalak, but that offence is bailable. Tumalak's wife is trying to convince the officer who filed the affidavit on the robbery with homicide and frustrated homicide to change his mind. The officer has virtually admitted that the affidavit is false, and no evidence of Tumalak's guilt has been produced, *but the charge still stands and he remains incarcerated almost 18 months later.*

Federico Martizano

On 6 July 1990, personnel of the 606th Special Forces stationed at Horcia, Bajo City, arrested without warrant Federico Martizano (38 years) at Sitio Tabidiao, Barangay Bumbuhan, La Carlota City, Negros. According to the military, Martizano was an NPA propaganda organiser. At the time of his arrest, Martizano was apparently resting in a sugar cane field close to his home.

A habeas corpus petition was filed at the Regional Trial Court, Branch LXII at Bago City. After two adjournments at the military's request, the petition was finally heard on 2 August. Lt. Mario Demaisip (appearing on behalf of the respondent Captain Arturo Ortiz) admitted to the court that the military had committed an error in the detention of Martizano and agreed that he would be released to the court. Demaisip mentioned nothing about any other proposed charges and the court ordered his immediate release. Within 20 minutes of Martizano's release, he was rearrested. The military justified the rearrest without a warrant by citing the Supreme Court decision that subversion is a continuing offence and they need not secure a warrant. He was charged under the Anti-Subversion Act of 1981 for being a "Team Leader" of the "Propaganda Organizing Team of the CPP-NPA." That charge does allow the accused to be freed on bail.

City prosecutor Antonio S. Arboleda filed the charge on the basis of an affidavit filed by the same Lt. Mario Demaisip as had been at the court on 2 August. The affidavit stated that he had recovered a .38 calibre revolver and live ammunition from Martizano on 6 July 1990. A copy of the affidavit was made available to the ICJ delegation. It clearly showed that the date on the affidavit had been changed from 7 July to 3 August.

This case is illustrative of typical Philippine arrest and charge procedures in that the individual is arrested and then a case is developed to substantiate the arrest. It is also a good example of the misuse and falsification of affidavits. Martizano continues to be held in detention, awaiting trial and presumably ultimate release. He would undoubtedly obtain habeas corpus in many other countries.

2. A second problem with the charging process is that coercion is often used to obtain statements from arrested individuals or witnesses. Interviews conducted by the ICJ delegation revealed a consistent pattern of torture and ill-treatment by military and particularly intelligence personnel. This practice is discussed more fully in Chapter 12. In some cases the detained individual cooperated more promptly and was thus subjected to less coercion.

3. Third, the Philippine courts have decided to apply the US Supreme Court decision in Miranda v. Arizona¹⁴² which requires the authorities to apprise the accused of the right to remain silent and to have the assistance of counsel during interrogation.¹⁴³ This right, however, is often circumvented by Philippine law enforcement authorities. For example, the delegation found cases where the detained individuals had signed a statement reciting that they had received the opportunity to consult with an attorney of their choice and an attorney's name had been written in the affidavit. The detainees denied, however, that they had met with the attorney, that they had chosen the attorney, or that they were even aware of the identity of the named attorney. It appeared that the attorney's name was inserted into the form by the law enforcement officers without actually implementing Miranda requirements for taking a voluntary statement. Several detainees were compelled to sign statements that were in English although they did not speak English and no interpreters had been made available. Statements taken in Filipino, Visayan, or another Philippine language can be submitted to the courts only for the purpose of identifying the statement. If any portion of the statement is read in open court, it must be translated into English, since English is the official language of the courts. It is clear that some law enforcement officials do not bother to follow this approach when they obtain statements from the accused by coercion.

4. A fourth problem arising from the dependence on affidavits relates to the difficulty in developing cases against military or police officials for violations of human

¹⁴²384 U.S. 436 (1966).

¹⁴³Morales v. Ponce Enrile, 121 SCRA 538 (1983).

rights. Because of the dependency on affidavits, victims and witnesses must come forward to make sworn statements. These victims and witnesses are often reluctant to testify for fear of retaliation from the military or police. These difficulties prevent the effective use of habeas corpus as a means of investigating disappearances and unjust incarceration of people taken into custody by the authorities. There is no true witness protection programme. Indeed, the authorities appear content with the situation that many cases of injustice are never brought before the courts because of the inability to support apparently genuine cases with affidavits.

5. Since criminal charges against the military or the police must ordinarily be pursued before a military court-martial, the investigation is undertaken by the military. Indeed, the investigator is usually from the same military unit as the alleged offender, which makes witnesses and victims very reticent about presenting complaints. Many are fearful of entering military camps to complain. A procedure for pursuing an investigation by a unit of the military other than that of the alleged offender exists, but this procedure is used only in the most well-publicised cases of alleged military abuse. Similarly, military jurisdiction can be waived by the President, so that a case against a police or military officer can be prosecuted in civilian courts. Although the delegation was told that the President has not refused to waive military jurisdiction in any case submitted, the military is ordinarily responsible for the investigation and waivers are only requested by the authorities in the most publicised cases. Civilian complainants are generally unaware of their right to seek waiver.

6. Furthermore, the fiscal is supposed to investigate the accuracy of the information contained in the affidavits prior to arrest and in an inquest after the arrest. Yet the witnesses are rarely examined to verify the truth of the written statements received. Instead, the affidavits are accepted at face value. There is a procedure whereby the suspected individual is permitted to file counter-affidavits, but this procedure is apparently not used in many cases. The issues of costs and fear appears to loom large in this respect.

7. In addition, defence counsel are reluctant to file counter-affidavits because doing so effectively places the burden of proof on the suspected individual. Several defence counsel also observed that the filing of counter-affidavits only assisted the prosecution in perfecting their cases prior to trial and were not useful in convincing the prosecutor to drop a criminal charge. Once again, the Philippine criminal law system's misplaced reliance on the independence of the fiscal undermines the justice afforded to the detainee.

Pre-trial hearing

At no point prior to trial does the Philippine criminal law system require that the evidence underlying a criminal charge be tested before an independent neutral judicial authority. In preliminary investigations, the fiscal may call for a hearing if s/he feels there are matters to be clarified. The decision to hold such a hearing is discretionary.¹⁴⁴ In many civil law countries a juge d'instruction or fiscal is expected to investigate impartially the information collected by the police, personally examine the witnesses, and independently pursue the facts, prior to bringing criminal charges. In common law countries, a judge or magistrate conducts a preliminary hearing to examine the evidence underlying a criminal charge before trial. The Philippine criminal law system mandates neither of these procedures for protecting the accused from being forced to face a trial on unsubstantiated charges and often remain in prison until the trial can occur.

Bail

If the offence is bailable, bail is determined during inquest proceedings, if such proceedings are held. Bail is often set at amounts which are too high for the ordinary detainee to afford. For offences punishable with a term of imprisonment longer than one year, bail is recommended to be set at 10,000 pesos per year based on the median penalty that may be imposed for the offence.¹⁴⁵ For crimes punishable with a penalty of less than one year of imprisonment, bail is set at the rate of 1,000 pesos per month for the average sentence envisaged.¹⁴⁶ Such bail levels effectively prevent the release of many accused, particularly for persons accused of national security or political offences carrying long sentences. For example, the bail set in 1987 for 26 farmers from Leyte charged with rebellion was 100,000 pesos (US\$

¹⁴⁴Rule 112, section 2(e).

¹⁴⁵Ministry of Justice Circular No. 10, Revising the Rules in Fixing the Amount of Bail, 3 July 1987.

¹⁴⁶Id.

3,333.00).¹⁴⁷ This amount was far beyond their means and was tantamount to a refusal of bail in contravention of the law and the Constitution.

Furthermore, class connections and class distinctions play a part in determining bail. A former government official who is far more affluent than the Leyte farmers and was also charged with rebellion had bail set at 50,000 pesos (US\$1,666.00). Bail can be denied¹⁴⁸ for some offences, such as those involving the use or possession of firearms which carry a maximum sentence of life imprisonment.

An individual who has been charged and who cannot afford or is ineligible for bail, languishes in prison for many months or even years prior to trial. Law enforcement officials then continue their investigation to find evidence to support the charges while the individual is deprived of his income to pay for his counsel, is unable to prepare for his defence, and is kept apart from his family. As the following case indicates, bail may be denied for political reasons.

Rodolfo Salas

Salas, a trade union organiser, was arrested without warrant on 29 September 1986, by members of a Constabulary Security Group. On 1 October, he was formally charged with rebellion and detained at Camp Crame. He was first permitted to meet with his lawyers only on 3 October. Prior to his arrest Salas had been an organiser for the National Association of Trade Unions (NATU) and the National Federation of Labor Unions (NAFLU). He was also executive secretary of the Filipino Employees Union at the United States military bases.

¹⁴⁷The farmers were thus effectively denied bail. Of the 26 farmers detained, only one was able to afford bail. On 10 May 1990, however, 13 farmers were released, when the Regional Trial Court of Cebu found that evidence submitted by the prosecution was insufficient to bring charges against them. The other 13 are still in detention.

¹⁴⁸ Constitution of the Republic of the Philippines, Art. III, Sec. 13: "All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law.... Excessive bail shall not be required."

In May 1987, his lawyers petitioned for bail but the prosecution objected on the grounds that he was a ranking member of the CPP-NPA. The prosecution further stated that to release him on bail would place national security in jeopardy and would pose a "clear and present danger to the democratic institutions we uphold so dearly." The court rejected the prosecution's argument and granted Salas bail on 7 July 1987. The court stated that "the law is very explicit that when it comes to bailable offenses, an accused is entitled as a matter of right to bail."

The prosecutor filed a motion for reconsideration on 17 July. The Regional Trial Court rejected the motion but raised the bail bond from 30,000 to 50,000 pesos. The prosecution petitioned the Supreme Court to issue a temporary restraining order against Salas' release and the Supreme Court granted the order. Normally, a temporary restraining order is valid only for 20 days and the Supreme Court has to resolve the case within 24 months but Salas has now been in jail without trial for 4 years. Salas has therefore petitioned the Supreme Court arguing that denial of bail to him on a temporary restraining order and the length of his detention violate his constitutional rights to due process. He has also stated that he cannot help but think that "continued denial of his liberty by means of a temporary restraining order is due solely to his alleged political beliefs and aspirations." The matter is still pending.

Salas' case is compared by many activists with that of Senator Enrile who was charged with rebellion but the Supreme Court granted bail to him immediately after his arrest. The Supreme Court's expeditious disposal of Enrile's bail application was commented on by Senator Tanada as follows:

"I respect the decision of the Supreme Court. . . . But I hope petitions for bail of small people will be acted upon as expeditiously and as fast as the petition of Enrile was acted upon."

Trial Delays

Defence counsel prefer not to object to the prosecution's affidavits prior to trial. Instead, they challenge the validity of the witnesses' statements in court and file motions to dismiss the case. This tactic has often been successful in regional trial courts. The ICJ delegation found the regional trial courts to be one of the strengths of the Philippine criminal law system, frequently showing their independence and impartiality in deciding cases.

A normal Philippine trial, however, is marked by delay. There were a number of available dispositive motions until the introduction of the "continuous" trial which was

authorised in 1989, began as late as 1990, and is still not universally applied. These motions could and can in many instances still be made and litigated one at a time at various stages of the trial.¹⁴⁹ Decisions on these motions could also be appealed one at a time from the municipal courts or regional trial courts all the way through to the Supreme Court. An interlocutory appeal can take from five months to several years to litigate through the Court of Appeals and the Supreme Court, depending on the briefing schedule, the likelihood of reversal, and the backlog of cases to be decided. Even a clear affirmance could take three to five years if appeals are litigated all the way to the Supreme Court.

Reversals by the Supreme Court may take two years or more. In addition, Department of Justice and defence attorneys will frequently request extensions in the briefing schedule, which could prolong the appeal time by many months. If the defence availed itself of all proceedings (motions and appeals), a trial could take from ten to fifteen years to litigate. All this time, the defendant who cannot afford bail will remain in jail. After the prosecution has presented its case, the defence can file a demurrer to the evidence before presenting its own case. This demurrer could also take months or years to be litigated through the appellate courts. If the demurrer is granted, the accused is released. If the defence loses and appeals the decision, the defendant remains in jail while the appeal is litigated. From the information gathered by the ICJ delegation, occurrences of this or a similar kind are not rare.

Amicable Settlements

Amicable settlements are arrangements wherein the victims of human rights or criminal violations or their relatives agree to drop their complaints against the perpetrator in exchange for money, livestock, or land. Such settlements are often reportedly made, since criminal prosecution may be prohibitively expensive and involve hardship for the complainant. Moreover, filing a case may result in further harassment from the perpetrator. The following cases exemplify the way amicable settlements frustrate the institution of justice:

¹⁴⁹These motions include: motion to quash (Rule 117); motion to dismiss; motion for new trial; motion for reconsideration; and various other interlocutory appeals from judgments, orders, resolutions, or awards during the course of pretrial procedures and trial hearings.

Pastor Zenaido Ruelo

On 16 April 1989, Pastor Ruelo was shot by someone named Labostro, a CAFGU member, outside Labostro's store in Pitogo, Western Mindanao. He died three days later in hospital. Labostro was allegedly drunk at the time of the shooting. Labostro offered to pay funeral expenses and also offered Mrs. Ruelo a large amount of cash for an amicable settlement. The final agreement was for 20,000 pesos as compensation, 34,000 pesos for hospital and funeral expenses, and an additional 9,900 pesos to pay debts incurred by the family. The payment was conditioned on Mrs. Ruelo's not filing a criminal complaint. If she did, she would have to return the money received.

Mrs. Ruelo subsequently publicly signed a settlement with those conditions. Present at the time of the signing were the Mayor of Pitogo, the PC Provincial Commander, and Police Superintendent Col. Gene M. Tulawic, as well as a number of soldiers and local citizens. Two weeks after Ruelo's death, Labostro was himself shot and killed by unidentified men alleged to be NPA members. The substantial payments due to Mrs. Ruelo were never paid.

Prior to Pastor Ruelo's case, Labostro had been implicated in another double homicide in 1986, and he made a similar amicable settlement for 20,000 pesos with the widow of one of the two killed. He was never prosecuted for that case and was even allowed to become a member of CAFGU.

Francisco Damiles

Francisco Damiles of Josefina, Misamis Occidental, received 400,000 pesos as an amicable settlement from police patrolman Pablo Baritua who killed Damiles' 17 year old son Alan on 17 December 1988. As a result, no prosecution occurred.

Problems with Amicable Settlements

There is no law prohibiting such private settlements in criminal cases. Normally, when a settlement is agreed between the parties in a criminal case, based on an "affidavit of desistance" from the complainant, the prosecutor files a motion for dismissal of the case which the judge grants. It is believed, however, that in some instances judges and prosecutors play an active role in encouraging the complainants to seek an amicable settlement.

There are also instances where the settlement is officially acknowledged by the prosecutors. For example, an order dated 15 February 1989 by the Pagadian Provincial Prosecutor reads:

"Capt. Joel Ybanez, 5th Infantry Battalion officially informed that respondent Wilfredo Buen . . . is about to consummate an amicable settlement with the private offended party and as such affidavits of desistance of all prosecution witnesses would be filed before this office as soon as possible. . . . In view thereof, respondent Wilfredo Buen through Capt. Joel Ybanez, P.A. is hereby directed to submit the pertinent papers of the alleged amicable settlement as well as all the affidavits of desistance of the prosecution witnesses within fifteen days."

The practice of "amicable settlement" violates the principle that criminal offences are of public concern and cannot be settled privately. Moreover, it violates the principle that all are equal before law and are liable for any violation thereof. The practice also give the notion to wealthy perpetrators of human rights and criminal law violations that they can escape the consequences of their conduct by entering into a private financial settlement with impecunious complainants.

The Human Rights Committee established under the International Covenant on Civil and Political Rights holds the view that those responsible for human rights violations should be prosecuted and also provide compensation to victims. In a decision concerning a case of a man who has been abducted in Uruguay, the Committee urged the Uruguayan government "to bring to justice any persons found to be responsible for his death, disappearance or ill-treatment; and to pay compensation to him or his family for any injury which he has suffered."¹⁵⁰

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Execution adopted by the ECOSOC in May 1989, include the principles that the investigative authority shall have the power to oblige witnesses to appear and testify. Therefore, unwillingness of the witnesses should not be an excuse for failing to prosecute those responsible for summary or arbitrary executions.

¹⁵⁰Communication No. 30/1978, reported in Human Rights Committee Selected Decisions Under the Optional Protocol (1985).

Conclusions and Recommendations

The Philippine criminal law and procedure is characterised by excessive technicality and formality unsuited to the society in which it operates. In order to improve its efficiency and fairness, the following recommendations are made:

1. The procedure in criminal cases of requiring affidavits from accused people whose innocence is supposed to be presumed is inherently unjust and is particularly unfair in the present state of Philippine society. It should be urgently reviewed and reformed.
2. In the interim, there should be a judicial mechanism to test the validity of affidavits before trial without putting the burden of proof on the accused. For example, the courts should either establish preliminary hearings to test affidavits or require investigation by truly independent fiscals.
3. If affidavits supporting criminal charges are found to be manifestly unsupported and false, the persons responsible should be brought to justice for perjury. Prosecutions for perjury should take place to discourage the faking of affidavits.
4. Statements obtained through coercion or duress should not be allowed into evidence.
5. Greater protection from threats, risk of interference, or other forms of duress should be given to witnesses and to the accused persons themselves.
6. There should be some court official responsible for ensuring that detainees are arraigned, charged, and permitted to post bail, so they do not remain in jail for prolonged periods of time. Those detainees held without charges should be released immediately.
7. No person held on a bailable offence who is genuinely unable to raise bail should continue to be held in custody without a review by a court of the bail conditions.
8. The courts should strictly implement the rules relating to continuous trials so that trials are held without interruption for interlocutory appeals. Appeals in interlocutory aspects of criminal trials should not be permitted except in the most extraordinary circumstances. To address the huge backlog and delays in trials and appeals, more judges and acting judges should be appointed. Senior and experienced trial lawyers could volunteer or be recruited on a roster basis, as is

done in other countries, to serve as acting judges. Civil and commercial disputes should be referred to arbitration or other alternate dispute resolution to clear the court dockets of matters not involving the liberty of the subject or human rights, at least until the backlog is substantially reduced. The legal profession should examine its own practices and, in conjunction with the judges, establish procedures designed to shorten the time between the arrest and trial of persons charged with criminal offences or for cases involving human rights abuses.

9. There have been no or almost no prosecutions of such cases in the five years of the existence of the Commission on Human Rights, despite the thousands of complaints it has received and processed. Special provision should be made, perhaps in a special court or tribunal, to try cases of human rights violations promptly.

10. The Philippine authorities, with the assistance of human rights lawyers and activists, should undertake a study of the practice of amicable settlements in criminal and human rights cases and evolve measures to pursue prosecutions where justice requires punishment for offenders.

11. A Criminal Law and Justice Inquiry should be urgently established to examine all aspects of the criminal justice system. The inquiry should be headed by a respected individual such as a former Supreme Court Judge with a particular interest in civil liberties, should be staffed by lawyers with similar concerns and experience, and should perhaps include one foreign judge or lawyer. The inquiry should focus on the way in which legal procedures, the legal profession, and the courts are failing to provide equality before the law, and fair, impartial, speedy and independent justice. The inquiry should be required to report within a suitably brief period, for example, six months.

12. The government should submit to Congress, or Congress should initiate, legislation to overcome the effects of the Supreme Court decisions in Umil v Ramos and Ilagan v Enrile. P.D. 1866 should be repealed or revoked.

Chapter 17

Independence of the Judiciary and the Legal Profession

A major characteristic of the Marcos administration was the destruction of the separation of powers among the various branches of government. In addition to the former government's efforts to destroy the independence of the judiciary, the judiciary itself, including the Supreme Court, acquiesced and abdicated its role in protecting its own independence as well as the basic rights of the people. The previous government's reorganization of the judiciary meant that security of judicial tenure was subject to interference.

The 1984 ICJ report concluded:

"The Supreme Court decisions on the legitimacy of the 1973 Constitution, the constitutionality of the Judiciary Re-organization Act 1980, and its failure to intervene in cases of alleged gross violations of human rights as well as its support of President Marcos' power to legislate by decree, has led to the conclusion that the Supreme Court, as well as Lower Courts, has abdicated its independence and become subservient to the Executive."

After the overthrow of Marcos, the judiciary needed to regain its independence and restore its credibility as well. In one of her earliest actions, President Aquino restored the independence of the judiciary. The 1987 Constitution reaffirmed the separation of powers and contains some additional safeguards to protect the independence of the judiciary.

New provisions in the 1987 Constitution compared to the 1973 Constitution are:

-- Article VIII, Section 1, grants the judiciary the power to determine the existence of grave abuses of discretion in political cases. This provision was incorporated following the experience of Marcos' martial law period when the Supreme Court refused to review the actions of the executive on the ground that they involved political questions. For example, in Garcia Padilla v. Enrile, the previous Supreme Court held that ". . . a Presidential Commitment Order, the issuance of which is the exclusive prerogative of the President under the Constitution, may not be declared void by the courts under the doctrine of 'political question.'" The present Supreme Court has not yet had an opportunity to define the scope of this new provision.

- Article VIII, Section 2, provides that no law shall be passed reorganising the judiciary if it undermines the security of tenure of its members.
- Salaries of the members of the judiciary shall not be decreased during their continuance in office: Article VIII, Section 10.
- The judiciary shall enjoy fiscal autonomy: Article VIII, Section 3.
- Members of the Supreme Court and other courts shall not be designated to any agency performing quasi-judicial or administrative functions.

As mentioned earlier, the new constitution has also strengthened the independence of the judiciary by establishing a Judicial and Bar Council to recommend to the President suitable candidates for appointment to the Supreme Court and lower courts. This move is considered very important since under the previous government, only President Marcos and his close associates chose the appointees. As a result there were improper appointments to the judiciary which led to further erosion of confidence in the judiciary. The present Judicial and Bar Council, consisting of seven members, prepares a list of three nominees for each vacancy for consideration by the President.

Previously, the military used to pressure judges at court hearings and briefed judges as to the state of armed insurgency. By contrast, the present administration is credited with respecting the independence of the judiciary. At the lower court level, however, the local military and military-supported armed groups seem to continue the practice of trying to intimidate the judiciary. For example, on 26 March 1989, Leyte Regional Trial Court Judge Gervanio Cadavos was shot and killed. The National Bureau of Investigation (NBI) believes that Judge Cadavos was killed because he was considered a "communist sympathizer," since he had dismissed 67 out of 80 cases before him that involved accused NPA members. There have been no arrests so far although the NBI has filed murder charges against PC Capt. Asdali Abah and PC Lt. Virgilio Tibayan and former CHDF members Mario Humawan and Alberto Beloy as well as four unidentified individuals. It is extraordinary that serving military officers and paramilitary associates have not been able to be found to answer these charges.

In another case, the local military removed a detainee from the court while his habeas corpus petition was being heard. Concordio Condiman, an organiser of the militant peasant organisation Panaghugpong sa mga Nag-uuma sa Sugbu (Federation of Peasants in Cebu), was arrested by members of 46 RSAF on 5 April 1990 at his house in Bgy. Bangkito Tuburan, a town located 97 kilometres from Cebu City.

Condiman was accused of helping wounded NPA rebels who had sustained injuries in an encounter with the military close to Condiman's village. The soldiers also accused the peasant organisation of being a front for the NPA. At the time of his arrest, Condiman was beaten and threatened with death. The military even measured Condiman's body with a stick to determine the dimensions of the grave to be dug for him. Later Condiman was taken away and the soldiers told his wife not to follow them. She was threatened with arrest if she attempted to follow.

Mrs. Condiman and several human rights workers searched for Condiman in various military camps. They located him on 9 April at RSAF 7 headquarters in Cebu City. Meanwhile, on 9 April, a habeas corpus petition was filed on behalf of Condiman. The petition was heard on 11 April at Branch XVII of the Regional Trial Court in Cebu City. For the hearing Condiman was produced to the court where he complained to his relatives and friends that he was suffering from abdominal and back pains due to torture inflicted on him by the soldiers. While describing the treatment he received from his captors, one of his military escorts grabbed him and forcibly took him outside the court room. When confronted by Condiman's lawyer, the soldier told him it was none of his business. Condiman's relatives and friends prevented the military from removing him from the court compound whereupon the judge ordered the military to commit Condiman to the Cebu Provincial Detention and Rehabilitation Centre and that he be referred to a government doctor for a physical examination. The military totally disregarded the court order and did not arrange the medical examination. Moreover, Condiman was only transferred to the Detention Centre on 16 April after a lapse of five days.

In another case in Cebu, in April 1990, Regional Trial Court Judge Burgos granted bail to several defendants arrested in September 1989 for subversion. A rally to protest his decision was called by KADRE, a vigilante group, and the National Alliance for Democracy. Three armed persons went inside to see the judge. Judge Burgos then took himself off the case on the motion of the prosecution.

Delays, Corruption, and Inefficiency

The 1984 ICJ report concluded that insufficient finances for the legal system had a bearing on corruption and inefficiency. The report also commented on the substantial backlog of untried cases. Budgetary constraints still continue to affect the judicial system. Although budget appropriations for the judiciary have more than doubled from 774 million pesos in 1986 to 1,703 million in 1990, its share in the total budget is still less than 2 percent. The major portion (90 percent) of the allotted money is spent on salaries. As a result, courts apparently have inadequate materials,

books, and equipment. The lack of funds even adversely affects the delivery of subpoenas and other court orders.

The salaries of Philippine judges are not sufficiently attractive to entice successful lawyers to join the bench. Consequently, the filling of vacancies is a major problem. There are 762 vacancies in courts excluding the Supreme Court. The Municipal Circuit Trial Court has the maximum number of vacancies -- 169 out of 462 authorised slots¹⁵¹ -- thus indicating that it is more difficult to fill vacancies where the salaries are lowest.

Judicial corruption was not raised as a major problem although lack of competence and other elements of unsuitability continue to be troublesome. It appears that the Supreme Court is at least exercising its supervisory control sufficiently to decrease corruption and other irregularities at various levels. For example, as of March 1990, about 510 of the 1,844 trial court judges were facing administrative examination compared to only 34 in 1983.¹⁵²

Delay and a severe backlog of cases still affect the judicial system. The 1987 Constitution has mandated that all cases filed in lower courts must be resolved within 12 months and cases filed in the Supreme Court within 24 months. Although these requirements are regularly unable to be kept, the problem of delay is recognised and measures have been taken by the Supreme Court and the Department of Justice to address the constitutional requirement. The Supreme Court issued an administrative circular in 1988 on the expeditious disposition of cases in Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts.¹⁵³ This circular (No. 4) launched a pilot project for "continuous" trials to expedite trials and eliminate case backlogs. This project was deemed a success and in 1989, the Supreme Court mandated the use of "continuous" trials or hearings in the

¹⁵¹ IBON Facts and Figures, Vol. XIII No. 15, 15 August 1990.

¹⁵² Id.

¹⁵³ Administrative Circular No. 4, signed by Marcelo B. Fernan, Chief Justice of the Philippine Supreme Court, 22 September 1988.

Regional Trial Courts, the Courts of Appeals, and other courts, except the Supreme Court.¹⁵⁴ As noted earlier, this reform is not yet universally applied.

Circular No. 1/89 provided that in criminal cases, arraignments were required and pre-trial conferences were encouraged. If the accused did not agree to a pre-trial proceeding, the court was then required to fix dates for presentation of the evidence by the parties. The trial fiscal, the accused, and defence counsel had to indicate their availability on the dates set by the court.¹⁵⁵

"Continuous" trials are supposed to be concluded within 90 days from the initial date of the trial. Each party is bound to complete the presentation of their evidence within the trial dates assigned, unless counsel can provide "serious reasons" for additional dates. Postponements are supposed to be discouraged and the judge is mandated to conduct the trial with "utmost dispatch" to avoid delay.¹⁵⁶

The "continuous" trial approach has helped reduce backlogs in the Regional Trial Courts, although in Cebu, the courts are just maintaining their backlog, disposing of cases at a rate only equal to the number of new cases filed. In 1989 a total of 2,673 cases were filed in the Regional Trial Courts and there was a backlog of about 6,000 cases. A total of 2,956 cases were resolved.

The Justice Department for its part tried to expedite the commencement of trials by issuing a circular¹⁵⁷ in September 1988, requiring fiscals to certify, as a condition of payment of their salaries, that they do not have any preliminary investigations pending longer than 60 days. In July 1989, there were reports in the press that salaries of 120 fiscals in Metro Manila had been withheld because they had failed to dispose of cases assigned to them.¹⁵⁸ President Aquino went one step further. In August 1989 she placed all fiscals on probation stating: "I want the Department of

¹⁵⁴Supreme Court Circular No. 1/89, signed by Chief Justice Fernan, 18 January 1989.

¹⁵⁵Id. at section I.B.

¹⁵⁶Id. at Section II.

¹⁵⁷Department of Justice Circular No. 27, 15 September 1988.

¹⁵⁸Manila Chronicle, 26 July 1989.

Justice to do its work with a greater sense of urgency at all levels. If I am not satisfied, I will not hesitate to exercise my power to remove appointees."¹⁵⁹

Despite such strong measures, delays continue. For example, the rules applicable to the "continuous" trial process do not appear to have been rigorously applied in practice. Some Regional Trial Courts are still permitting defence counsel to file a demurrer to the evidence before presenting their own cases. Either side can appeal a decision on the demurrer. If a demurrer is litigated and appealed, and the defence loses, it must then present its own case. Litigating and appealing a demurrer can take two to four years, with the defendant often remaining in jail during the process.

There is no better example of the extreme delays in the Philippine criminal law system than the prosecution of those accused of killing former Senator Benigno Aquino on 21 August 1983. The trial was assigned to the Sandiganbayan, which is a special court usually responsible for cases involving governmental graft and corruption. While that court has had an infusion of new cases to deal with the "cronies" of former President Ferdinand Marcos, the Sandiganbayan has a much smaller backlog of cases than many Regional Trial Courts. As of 30 June 1990 the Sandiganbayan had a backlog of 402 cases.

Clearly, the prosecution of the killers of the late husband of President Corazon Aquino required special care and attention. Nonetheless, the judgment was only announced on 27 September 1990. After the announcement of the judgment President Corazon Aquino expressed her concern at the extraordinary delay in resolving the case. Unfortunately, such delays are not extraordinary in the Philippines.

Supreme Court of the Philippines

Another source of delay is the backlog of cases in the Philippine Supreme Court. The Supreme Court is composed of 15 justices who sit en banc or in panels. The Supreme Court hears every case that is brought before it, whether it is on appeal or on original writ.¹⁶⁰ The Philippine Supreme Court does not possess a system similar to that of high appellate courts in other countries for deciding whether to hear cases. The Supreme Court must hear all appeals brought before it, although it disposes of

¹⁵⁹ Asiaweek, 15 September 1989.

¹⁶⁰ Rule 35, Rules of Court, 1989 Revised Edition (1990).

some cases by "minute resolutions" without argument or written judgment. It also possesses a special, often used but perhaps unique, jurisdiction to reconsider its own decisions in any case. Invoked by motion, this jurisdiction results in what is effectively a re-hearing of a case just decided. This procedure clearly adds to the delays both in the Supreme Court itself and the trials involved.

Because the Supreme Court has so little apparent control over its docket and because of its growing number of cases, it has not resolved many of the cases brought before it and suffers from an endemic problem of backlogs. From 1972 to the present, the Supreme Court has never had a backlog smaller than the 341,891 matters pending in 1986.¹⁶¹ From 1972 to the present, the number of cases annually filed with the Supreme Court has increased (from 1,419 in 1975 to 5,494 in 1989). Although the number of cases considered by the Supreme Court has fluctuated from year to year, the Court struggles to dispose of the same numbers of cases as are newly filed each year. Some years, the Supreme Court was able to dispose of more cases than were filed (for example, 1974, 1975, 1977, 1978, 1983, and 1989). In 1972, 1973, 1976, 1979-1982, and 1984-1988, however, the Supreme Court decided less cases than were filed. In 1988, for example, 5,118 cases were filed; 2,494 cases were the subject of minute resolutions; and 1,399 were resolved through penned decisions or extended resolutions. Hence, another 308 cases were added to the already huge backlog of 345,609. In 1989 the Supreme Court seemed to make some headway, disposing of 6,033 cases (4,807 through minute resolutions and 1,226 in penned decisions or extended resolutions) when 5,494 new cases were filed. The backlog has been reduced from 430,000 in 1982, but as of the most recent data on 30 June 1990, the Supreme Court still had a backlog of 358,795. Some of these matters are relatively minor and some are now moot, but the number of current serious unresolved cases is very large and may be unique for any similar court throughout the world.

Because of all these delays, some cases, particularly civil disputes, have taken over 30 years to resolve. In cases involving criminal offences, defendants not bailed remain in detention during trial. Innocent individuals can be and have been detained without justification for prolonged periods of time. In the interests of justice and efficiency, the Philippine Supreme Court must reduce its backlog and find ways to achieve speedier disposition of cases. One such measure would be a requirement that parties obtain leave to appeal. Motions for reconsideration of decisions might also be

¹⁶¹All figures concerning the Supreme Court were supplied by the Philippines Judicial Records Office.

restricted or eliminated. Interlocutory appeals should perhaps be considered only in the most exceptional circumstances involving the liberty of the individual.

Supreme Court's Recent Judgments

Some of the cases decided by the Supreme Court in the last year or so seem to have created much public debate and concern as to its commitment to human rights. Many lawyers and NGOs expressed concern to the ICJ delegation about some of these judgments. There were even public rallies and demonstrations against the Supreme Court's ruling on warrantless arrests in Umil v. Ramos, discussed in Chapter 16 and below.

The controversial cases and decisions include the following:

(1) Misola v. Panga, et.al. (G.R. No. 83341, 30 January 1990) discussed in Chapter 16 on *Philippine Criminal Laws and Procedure*.

According to FLAG, the practical effect of this decision is to legitimise the present practice of the military to charge alleged CPP members with common crimes instead of political offences. Moreover, the possibility of double jeopardy arises when one element of an offence is allowed to be tried separately from the whole, as pointed out by Justice Abraham Sarmiento in his dissenting opinion. (See Chapter 16.)

(2) Guazon v. De Villa (GR No. 80508, 30 January 1990).

In this case residents of a locality in Manila petitioned the Supreme Court for an order prohibiting the military from carrying out "zoning" or "saturation drives." Such operations are searches conducted by the military in a community suspected of harbouring NPA rebels, normally in such a manner as to frighten and intimidate the residents.

While agreeing that search warrants could have been secured before such drives and that the courts must protect the rights of individuals, the Supreme Court stated that it was not within the Court's power to provide a remedy. "Where not one victim complains and not one violator is properly charged, the problem is not initially for the Supreme Court, it is basically one for the executive departments and for trial courts. Well meaning citizens with only second hand knowledge of the events cannot keep on indiscriminately tossing problems of the executive, military and the police to the Supreme Court as if we are the repository of all remedies for all evils." The Supreme Court added that the "problem is appropriate for the Commission of Human Rights."

Justice Isagani Cruz strongly criticised the majority opinion. He stated in his powerful dissent:

"While acknowledging that the military is conducting the saturation drives, the majority practically blinks them away on mere technicalities. . . . The approach is to me too much simplification. . . . The ponencia says that we cannot take judicial notice of the facts and figures given by the petitioner regarding these saturation drives conducted by the military and police authorities. Maybe so. But we can and should take judicial notice of the saturation drives themselves which are not and cannot be denied by the government.

"I urge my brethren to accept the fact that those drives are per se unconstitutional. I urge them to accept that even without proof of the hooded figure and the personal indignities and the loss and destruction of properties and other excesses allegedly committed, the mere waging of the saturation drives alone is enough to make this Court react with outraged concern. . . . While they may be allowed in the actual theatre of military operations against the insurgents, the Court should also make it clear that Metro Manila is not such a battleground."

(3) Valmonte v. De Villa (GR No. 83988, 7 June 1990).

In this case, the legality of checkpoints and warrantless searches were challenged in the Supreme Court. The Supreme Court ruled that it "is a practice not constitutionally objectionable because it is founded on public interest, safety and necessity."

The majority added:

"If vehicles are stopped and extensively searched, it is because of some probable cause which justifies a reasonable belief of the men at the checkpoints that either the motorist is a law-offender or the contents of the vehicle are or have been instruments of some offense."

Recognising the apparent reversal of the presumption of innocence in these words, Justice Isagani Cruz dissented. He stated:

"I was not aware that the failure of the authorities to suppress crimes was an excuse to suspend the Bill of Rights. It has always been my impression that even

criminals, and more so the innocent, are entitled to the right against unreasonable searches and seizures.

"The protection of the security of the state is a convenient pretext of the police state to suppress individual rights. Constitutional short-cuts should not be allowed in a free regime where the highest function of authority is precisely to exalt liberty."

(4) Umil v. Ramos (GR No. 81567, 9 July 1990).

This case is the most controversial decision of all. On 1 February 1988, while undergoing treatment in hospital, the principal accused, Rolando Dural, was arrested without warrant for the 31 January 1988 killing of two CAPCOM soldiers. On July 9, 1990, the Supreme Court pronounced judgment jointly on eight petitions¹⁶² for habeas corpus contesting the same issue. The Supreme Court held:

"As to Rolando Dural, it clearly appears that he was not arrested while in the act of shooting the two (2) CAPCOM soldiers aforementioned. Nor was he arrested just after the commission of the said offense for his arrest came a day after the said shooting incident. Seemingly, his arrest without warrant is unjustified.

"However, Rolando Dural was arrested for being a member of the New People's Army (NPA), an outlawed subversive organisation. Subversion being a continuing offense, the arrest of Rolando Dural without warrant is justified as it can be said that he was committing an offense when arrested. The crimes of rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offences committed in furtherance thereof or in connection therewith constitute direct assaults against the State and are in the nature of continuing crimes."

Justice Abraham Sarmiento, in his dissenting opinion, pointed out that Dural was not charged with subversion but with "Double Murder and Assault upon Agent or Authority" which could not be covered by the definition of the "continuing crime of subversion." Justice Sarmiento pointed out that subversion means knowingly, wilfully, and by overt acts affiliating oneself with, becoming, or remaining a member of the Communist Party of the Philippines and/or its successors or any subversive

¹⁶² Roque v. Ramos (GR No. 84581-82), Anonuevo v. Ramos (GR No. 84583-84), Ocaya v. Aguirre (GR No. 83162), Espiritu v. Limet (GR No. 85727), and Nazareno v. Station Commander of Muntinlupa Police Station (GR No. 86332).

associations. "Logically, the military could not have known that Dural, at the time he was taken, was a member of the NPA because he was not performing any overt act that he was truly a rebel." Justice Sarmiento added:

"By stamping validity to Rolando Dural's warrantless arrest, I am afraid that the majority has set a very dangerous precedent. With all due respect, my brethren have accorded the military a blanket authority to pick up any Juan, Pedro, and Maria without a warrant for the simple reason that subversion is supposed to be a continuing offense."

(5) Cases decided with Umil

(a) In resolving the case of Roque v. De Villa, the Supreme Court relied on the supposed admission of the accused that they were officers and members of the Communist Party of the Philippines which was not, according to the Court, controverted by the accused and was therefore admitted. Therefore, following Umil, the arrest was justified. Justice Sarmiento against dissented. He said:

"That both parties had admitted to be members of the Communist Party of the Philippines (the National United Front Commission) is a naked contention of the military. This very Court has, to all intents and purposes, condemned the duo for a crime (subversion and/or illegal possession of firearms) the bone of contention, precisely, below."

(b) In the case of Anonuevo v. Ramos, the Supreme Court held:

"The petitioners' (Anoneuvo and Casiple) claim that they were unlawfully arrested because there was no previous warrant of arrest, is without merit. The record shows that Domingo Anoneuvo and Ramon Casiple were carrying unlicensed firearms and ammunition in their person when they were apprehended."

Justice Sarmiento stated:

"I also fear that by the majority's strong language (that Anonuevo and Casiple are admitted NUFC officers) the majority has pronounced the petitioners guilty, when the lower courts have yet to sit in judgment. I think we should be the last to preempt the decision of the trial courts. We would have set to naught the presumption of innocence accused persons enjoy."

(c) In the case of Ocaya v. Aguirre, the warrantless arrest was made when Vicky Ocaya arrived in a car at a house being searched by virtue of a search warrant. Her car was searched and, allegedly, some subversive documents and ammunition were found in it. Ocaya claimed that the articles were "planted" on her to justify the illegal arrest. The Supreme Court held that Ocaya was arrested in flagrante delicto so that her arrest without warrant is justified. As to Ocaya's claim that the articles were "planted," the Court held that the petitioner did not introduce any evidence to support her claim. The burden of proof was, in effect, shifted to the accused.

(d) In the case of Espiritu v. Lim, the accused was the General Secretary of PISTON, an organisation of jeepney drivers. He was arrested at 5 a.m. on 23 November 1988 while he was sleeping at his house, because of a speech he gave the day before. In this speech, he allegedly uttered seditious remarks when he urged all drivers and operators to go on nationwide strike to demand the lowering of the prices of spare parts and other commodities. In justifying the arrest, the Supreme Court held that the remarks were seditious, that sedition is covered by the "continuing crime" doctrine, and that, in any event, habeas corpus will no longer lie since an information was already filed in the lower courts, even if it was after the warrantless arrest.

The Supreme Court limited its own power to inquire into the legality of detention in a habeas corpus petition by holding:

"The rule is that if the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge, and that the court or judge had jurisdiction to issue the process or make the order, or if such person is charged before any court, the writ of habeas corpus will not be allowed."

(e) In the case of Nazareno v. Station Commander of Muntinlupa Police Station, the accused was arrested on 28 December 1988 without warrant for a crime allegedly committed on 14 December 1988. The arrest was justified by the Supreme Court by holding that habeas corpus will no longer lie if an information had already been filed.

Human rights lawyers and activists expressed to the ICJ delegation the fear that these decisions of the Supreme Court, particularly that of Umil and related cases, pave the way for further abuses by the military. Some of the cases brought to the attention of the delegation seem to justify these concerns. For example, Concordio Condiman (discussed earlier in this chapter), arrested on 5 April 1990 without a warrant, was tortured and detained for about five days before he was brought before a court. The day before the hearing of the habeas corpus petition, a complaint was

made for a crime committed in July 1986 and he was charged for a crime of robbery with force. Consequently, the habeas corpus petition was dismissed on the ground that the release of the accused has been rendered moot and academic as a result of the existence of a warrant of arrest dated 11 April 1990. This decision represents a serious derogation from the effectiveness of and the right to habeas corpus.

Federico Martizano, whose case is also discussed in Chapter 16, was arrested by the military without warrant and released by the court on a habeas corpus petition. He was re-arrested by the military, however, within twenty minutes of his release. The military justified the second arrest without a warrant by citing the Supreme Court decision in Umil that subversion is a continuing offence and there is no need to secure a warrant.

Hence, by seeming to give priority to the military's concerns for national security over the civil liberties, the Supreme Court Justices may have lost their image as independent and vigorous defenders of human rights. Consequently, their credentials as the ultimate bulwark of the people against oppression seem to have eroded.

While the ICJ delegation was in the Philippines, Acting Chief Justice Andres Narvasa of the Philippines Supreme Court addressed the Philippine Bar Association on 19 September 1990. Noting that there was a motion for reconsideration of the Umil cases before the Supreme Court, Justice Narvasa said that he would not and could not discuss the merits of the decision because the case was still sub judice. Nevertheless, obviously in response to and stung by widespread criticism of the decision, the Judge did, in fact, defend and explain it. The speech was reported in the press, but the ICJ delegation obtained the official text.

The Judge said that rules of court permit a warrantless arrest in three instances of which two are relevant to this case:

1. When in the presence of the arresting officer the person to be arrested is actually committing or attempting to commit an offence.
2. When an offence has, in fact, just been committed and the arresting officer has personal knowledge of facts indicating that the person to be arrested has committed it.

Only in the Dural case was evidence of relevant facts even presented by the prosecution. Dural had been convicted of double murder and was serving his sentence at the time. The other seven petitioners had effectively been acquitted of

either rebellion or subversion. Yet the Acting Chief Justice stated that the "undisputed facts" brought the cases in question within those rules of court.

This approach fundamentally undermines the basic tenets of the right to habeas corpus. It is not for the defence to state or agree to any "facts" at such a stage of the proceedings. All the court had were the allegations of the prosecutor. To assume that these allegations were facts at all, let alone "undisputed," was extraordinary.

Even in the Dural case, Justice Narvasa's defence of the decision appears insupportable. The "facts" said to be "undisputed" were (emphasis added):

1. Dural was arrested while being treated for a gunshot wound in the hospital.
2. He had been admitted to the hospital under a fictitious name.
3. There was confidential information that he was a member of the NPA Sparrow Unit which is why the arresting officers had gone to the hospital.
4. Shortly after his arrest, Dural was "positively identified" as the gunman who fired at and killed two soldiers of the Capital Regional Command in a patrol car.
5. Dural was thereafter charged with and convicted of double murder.

A warrantless arrest cannot be justified under the rules of court quoted by Justice Narvasa on the basis of evidence obtained after arrest. Nor can "information" be evidence if it is "confidential" to the arresting officers. The rules require that the officer have personal, not hearsay, knowledge. The court must be satisfied that the evidence and the knowledge existed at the time of arrest. Further, a person cannot be detained without warrant on a charge of rebellion or subversion when the particulars on which the officer relied are precisely those on which the person has been convicted of murder and nothing extra was personally known to the arresting officer that rebellion/subversion had just been or was being committed.

There is a second problem with the Umil decision as explained by Justice Narvasa to the Philippine Bar Association. The majority judgment stated at page 7 that the crimes of "rebellion, subversion, conspiracy or proposal to commit such crimes, and crimes or offences committed in furtherance thereof or in connection therewith constitute direct assaults against the State and are in the nature of continuing crimes".

In his speech, Justice Narvasa explained:

"Rebellion and subversion are offences not usually constituted by single acts but by a succession of acts. Rebels and subversives do not confine themselves to the perpetration of a single act of assault against the Government. They plan and expect to undertake a continuing series of acts geared toward the attainment of their objective. What is utterly unacceptable of course is where the concept of rebellion and subversion as continuing offences is invoked to justify arrests on mere suspicion [without warrant]. . ."

The Judge said that the statement concerning "continuing crimes" was made with particular reference to Dural. To reach its decision the majority quoted a much criticised decision of the Marcos years, Garcia-Padilla v Enrile, [1983] 12 SCRA 472, in support of its "continuing crimes" argument. As Justice Narvasa himself admitted, that case "appears to defend and justify the repression of the past regime".

But the decision is also impeachable on legal grounds. Firstly, the principle expressed was applied to all eight cases, not merely Dural. There were no proven cases against the other accused. Second, if the rebellion, subversion, etc. are proved by a combination of several acts, what were they in Dural's case? What knowledge did the arresting officers have of these offences? Where were the offences "admitted" or how were they "undisputed" in any of the cases?

Following upon the Guazon and Valmonte decisions, it is understandable that Umil has been described by many reputable mainstream lawyers in the Philippines as "the final nail in the coffin" of civil liberties in the country or at least the Supreme Court's upholding of them. Many believe that the Justices, by accepting the military's argument for national security over the defence of human rights, have undermined the Supreme Court's constitutional obligation to be the independent and final protector of the people's liberties. It is yet to be seen whether on the motion for reconsideration in Umil, the Court will be able to restore its rapidly eroding credibility and image in these regards. Meanwhile, at least some of the persons involved continue in custody.

The Legal Profession

Imposition of martial law by Marcos and the repression that followed led to the emergence of a group of committed human rights lawyers and several human rights lawyers organisations were established (see Chapter 20). They played a significant role in defending human rights under the government of President Marcos. After 1983, a majority of the legal profession opposed Marcos.

Even the conservative Integrated Bar of the Philippines (IBP) became active against Marcos. The IBP is a body created by the Supreme Court, bringing together the entire legal profession of the Philippines under one organisation. It is compulsory for a practising or functioning lawyer to belong to the IBP. As an official agency, the IBP enjoys an influence that ordinary bar associations do not have. The IBP's opposition to Marcos after the Aquino assassination was significant because of its prestige and influence. Local chapters of the IBP even conducted factfinding missions and publicised human rights violations.

In short, opposition to Marcos by lawyers' and lawyers organisations resulted in human rights-related work becoming routine for many lawyers. This fact, which has not changed, has a bearing on the post-Marcos developments concerning the legal profession in the Philippines.

Before discussing the developments in the post-Marcos period, it is useful to provide some basic statistics concerning the legal profession. As of March 1989, there were 33,305 registered lawyers in the country, most of them do not practise law. There is an uneven distribution of lawyers among various regions of the country. The following table gives the break down of lawyers according to regions:¹⁶³

Northern Luzon	2,255
Central Luzon	3,353
Manila and Quezon City	10,230
Southern Luzon	6,321
Bicol	1,448
Eastern Visayas	2,966
Western Visayas	3,049
Eastern Mindanao	1,991
Western Mindanao	1,692

With less than 25 percent of these persons actually practising law, the availability of lawyers in some regions is low. Moreover, even among those practising law, not every lawyer is willing to accept criminal or human rights cases. Consequently, heavy demands are made on those lawyers who are prepared to help human rights victims.

With the overthrow of Marcos, the previous dichotomy between human rights and other lawyers manifested itself again. Whereas most lawyers went back to more

¹⁶³IBON Facts and Figures Vol. XIII, No. 15, 15 August 1990.

traditional forms of income-producing work, the human rights lawyers, who had so creatively used law under Marcos' repressive government and dependent judiciary, retained their enthusiasm for defending the rights of political prisoners and other victims in the context of a democratic government and an independent judiciary. Many human rights victims, however, are considered by the military to be identified with the CPP-NPA. Since even labour unions and other people's organisations are branded as communist fronts, lawyers who defend members of legal organisations have found themselves also labelled communist sympathizers.

The military, or at least local commanders, have developed or simulated an attitude that the legal system is protecting the rebels. This fear was expressed by the Defence Department in terms of "abuse of democratic space" by the rebel movement and also "lack of legal weapons to prosecute the rebels." (See Chapters 9 & 10). After the breakdown of peace talks between the government and the rebels in 1987, the antagonism between the armed forces and human rights lawyers intensified. In October 1987, the Free Legal Assistance Group (FLAG) complained to then Defence Secretary Rafael Ileto about harassment of and threats to FLAG lawyers. As a result, General Ramos issued guidelines to military commanders on relations with FLAG. Acknowledging that there were cases where "some AFP operating elements were involved in deplorable acts," General Ramos ordered regional commanders of the Philippines Constabulary (PC) to (1) function as contact points with FLAG, (2) institute regular dialogues with FLAG at all levels, (3) cooperate with FLAG lawyers on reports of human rights abuses, and (4) invite them to give seminars in military camps.

Despite such guidelines and other assurances, the attacks on lawyers continued. Lawyers were increasingly and openly identified as NPA supporters by military and military-backed vigilante groups. This fact was evident at the time of the ICJ delegation's visit. For example, in Cebu, the ICJ delegation was told by a leader of a right-wing organisation that a well known human rights lawyer in Cebu was a communist. The reason given was that majority of the cases handled by that lawyer involved defending suspected rebels. This perspective is evidently not uncommon. At best, it manifests, of course, a gross misrepresentation and misunderstanding of the role and work of lawyers, and represents a further example of typecasting everyone who is not on the side of the official authorities as a communist or a fellow traveller.

The consequences of identifying lawyers with their clients has been tragic. Killing and intimidation of lawyers increased to an unprecedented level as compared with the Marcos period. Between October 1987 and June 1989 seven lawyers were killed.

Between July 1989 and June 1990, two lawyers working with the government were killed. The decline in the number of incidents is believed to be a result of, or has at least been influenced by, international and national public attention.

The Centre for Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists played a leading role in documenting and publicising the problems faced by human rights lawyers in the Philippines. The CIJL's campaign in support of Filipino human rights lawyers is acknowledged by lawyers and lawyers' organisations in the Philippines and was given prominence in the edition of the IBP's newsletter to its members which was current during the visit of the ICJ delegation.

The following cases are reproduced from the CIJL's 1989 Report on the Harassment and Prosecution of Judges and Lawyers:

Rodolfo A. Acido -- human rights and labour lawyer in Cebu City. Atty. Acido testified before an international lawyers' forum held in Manila in July 1988 that he had been attacked verbally and over the radio as a "communist" because he was a human rights lawyer. On 2 April 1987, he resigned as City Attorney of Toledo City, a post he had held since April 1986, and resumed his law practice. He has continued to receive death threats.

Deolito Alvarez -- attorney in Cebu City and a member of FLAG since 1984. Atty. Alvarez was assigned in 1988 to represent suspected members of the New People's Army (NPA), who were accused of the murder of three policemen gunned down in the "Colon Massacre." In May 1988, Alvarez received death threats in telephone calls, as well as a "symbolic" death threat in the form of a black veil that was mailed to him. An anonymous telephone caller gave Alvarez two months to withdraw from the human rights cases he handled, saying there was a "program" on human rights lawyers. Furthermore, within hours of the murder of Alfonso Surigao (see below), Alvarez received an anonymous telephone call stating that Surigao was only the first of three Cebu human rights lawyers targeted for killing. As a result, Alvarez has withdrawn from the human rights cases he was handling.

Vic Balbuena -- a human rights lawyer and a colleague of Alfonso Surigao (below) who reported being followed by members of the military on 6 July 1988 following a hearing in the Leyte refugees case. (In November 1987, the military in Manila arrested a group of 26 Leyteno farmers from among the several hundred residents of Leyte who had fled the island because of ongoing human rights abuses. They were charged with rebellion as supporters of the New People's Army, and were being tried in Cebu.)

Archie Baribar -- attorney in Bacolod City, Negros Occidental, and member of FLAG since 1981. Baribar received a written death threat from KKK-CCGFI, a local vigilante group in July 1987. Shortly after the May 1987 congressional elections, he was informed that a group of suspended Bacolod policemen and right-wingers had met and agreed to have him "eliminated without the use of guns." In March 1989, the MASA KONTRA KOMUNISTA, another local vigilante group, circulated a mimeographed list calling for the immediate execution of a number of persons, including Baribar.

Procopio Beltran -- an attorney and colleague of the murdered human rights lawyer Emanuel Mendoza (below), Beltran received an anonymous telephone call hours after Mendoza's murder on 2 July 1988 threatening him that he would be "next."

Letty Buenaseda -- lawyer of Northern Samar, and former director of the Commission on Human Rights in Northern Samar. Ms. Buenaseda has been receiving death threats. On one occasion, some armed men in military uniforms entered her home. While she was away, a political detainee held in Samar confessed to his mother that he was being ordered by a certain Captain to liquidate Ms. Buenaseda and another human rights lawyer in Samar.

Romeo T. Capulong -- human rights lawyer in Makati, Metro Manila. Capulong has represented clients in many prominent human rights and political cases, and participated in drafting a petition from the Philippine Alliance of Human Rights Advocates to the United Nations Commission on Human Rights alleging human rights violations by the Aquino government. He told an international lawyers' forum in July 1988 that he has been "continuously subjected to surveillance, harassment and death threats by forces whom I believe are police and military agents or persons operating under their command." Capulong moved from his apartment house in Quezon City after two men with hand-held radios were seen in the vicinity in April and May 1988. Also in April, Capulong was tailed by two cars with armed men in plain clothes after holding a press conference to expose the alleged seizure of cash in a raid in which top members of the Communist Party of the Philippines were arrested. Capulong also reported surveillance by three men after he exposed a mass grave in Manila South cemetery in June 1988. Among the bodies unearthed was that of a "disappeared" activist who had worked among the urban poor. In April 1989 and March 1991, Capulong was again under surveillance by armed men in civilian clothing. In addition, he was labelled a "communist" in various daily newspapers.

Ernesto Clarete -- lawyer for FLAG and mayor of Plaridel, Misamis Occidental. Just before the local elections in January 1988 a local army commander publicly

announced that he considered Clarete as an enemy because, he claimed, Clarete mixed with NPA members. Clarete had previously aroused resentment among the local military because the municipal government of Plaridel refused to organise CAFGUs. In July 1988 he was told that unknown men were looking for him and he has since taken a police bodyguard. In 1989, Clarete was again publicly labelled a "communist" by various military commanders in the region (see also Orcullo below). He was included in a list of persons to be liquidated by vigilantes in the area. Clarete continues to be harassed.

Francisco B. Cruz -- lawyer in Bacolod City and FLAG Regional Coordinator for Region VI-AA (Negros Occidental). In March 1989, the MASA KONTRA KOMUNISTA, a local right-wing vigilante group, circulated a mimeographed list calling for the immediate execution of a number of persons, including Cruz.

Ramos Cura -- human rights lawyer who had represented suspected members of the New People's Army (NPA). Cura was shot and killed on 18 June 1988, in front of his home in Angeles City, Luzon, near Clark Air Force Base. Right-wing vigilantes were believed to have carried out the murder in reprisal for earlier killings in the city by the NPA. Cura was one of the first human rights lawyers in his area and helped to organise two human rights-oriented groups. Since the murder, Cura's wife and children have been followed and fear for their own safety.

Bernadette ("Babe") Encinareal -- FLAG Regional Coordinator for Northern Mindanao and Mayor of Tudela, Misamis Occidental. Encinareal frequently represented the victims of human rights abuses and individuals suspected of insurgent activity. She told the international lawyers' forum held in Manila in July 1988 that she continues to receive death threats from vigilante groups. The most persistent and menacing threats have come from Kuratong Baleleng, a local vigilante group believed to have the support of the military, which is said to maintain a death list that includes human rights workers, government officials, church workers, and others perceived as "communists." On 14 November 1987, the family driver was killed by soldiers and vigilantes. Ms. Encinareal is now in the United States.

Henrick F. Gingoyon -- human rights lawyer in Cebu and a member of FLAG since 1980 and of the Protestant Lawyers' League of the Philippines (PLL) since 1985. Gingoyon received frequent death threats in 1987 and 1988. On 4 June 1988, while working for the release of a member of the United Farmers' Organization in Cebu City, he was threatened with death by a Major Olano at military headquarters. In May 1988, a member of a vigilante group used a radio talk show to identify Gingoyon and other FLAG attorneys targeted for death. Beginning in January 1988, vigilante

groups operating in Cebu City released a "death list," listing Gingoyon as number two for immediate execution. Since then, he and another FLAG lawyer have repeatedly been called "communists" in public. On 10 April 1989, a policeman was shot in front of Gingoyon's home. During the shooting incident, Gingoyon's daughter was hit in the jaw and shoulder by a "stray bullet." While no suspects for the shooting incident have yet been arrested, reports indicate that elements within the military may be responsible. Witnesses also claim that the shooting was directed at the home of Gingoyon. In January 1988 Gingoyon also had reports that his name was on the death list of KADRE, a local vigilante group. As result of the continuing threats, and in deference to his family, Gingoyon has been forced to leave Cebu City, and to find a home and work elsewhere.

Manuel Goyena -- one of two FLAG lawyers (see Efren Mercado below) in Manila who have been defence counsel for three alleged NPA members who said they were tortured after their arrest. Goyena reported being followed in March 1988. Mercado and Goyena have testified to the Commission on Human Rights that they saw men in plain clothes whom others present identified as military men followed them out of the building. As they drove away they noticed two cars full of armed men following their car, at one point apparently attempting to ambush it at a traffic light. Former Armed Forces Judge Advocate General, now Commissioner on Human Rights, Samuel Soriano, told them that he suspected that this was a military tactic to frighten them.

Solema Jubilan -- legal counsel for Task Force Detainees in Kidapawan and a member of FLAG and the PLLP. Jubilan filed cases against fanatic cultists and vigilantes in Kidapawan, North Cotabato, and received a death threat in early 1986. Etched one morning on her office door was a message which read "it would be nice to kill to you." She testified in July 1988 that she has been warned repeatedly by reliable sources that the military has had her under surveillance, and that she should not travel alone. In May 1990, five anonymous telephone calls were made to staff members of Jubilan's office. Most of the callers directly threatened Jubilan and her family with death.

Marvic Leonen -- lawyer of Quezon City, Metro Manila, and active member of FLAG. During May and June 1989, Leonen was apparently under surveillance by two vehicles marked "PLDT." These vehicles were stationed outside Leonen's home. In the evenings (between 8:30 and 9:00 p.m.), two men were seen sitting inside these vehicles, apparently watching over Leonen's home. When FLAG inquired with the Philippine Long Distance Telephone Company (PLDT), it was informed that these

two vehicles are "beyond the jurisdiction" of the maintenance department of that company. In April 1990, unidentified persons broke into his home.

Emmanuel "Noel" Mendoza -- human rights lawyer who had worked on behalf of members of the youth organisation KADENA. Mendoza was shot dead by two unidentified gunmen on a motorcycle on 2 July 1988, when he stopped his car at a busy intersection in downtown Manila. At the time, Mendoza was representing a group of people accused of having links with the Communist Party. Mendoza was a professor at the Polytechnic University of the Philippines and a close friend of PUP President Nemesio Prudente, who survived a second assassination attempt on 30 June 1988. Mendoza had been the target of earlier death threats and it is believed that his murder had been ordered by members of the police or security forces.

Efren Mercado -- FLAG attorney in Makati, Metro Manila. Mercado was followed in a threatening manner on 6 March 1988, by men who appeared to be armed. At the time, Mercado was returning with his client from the Commission on Human Rights after testifying about torture and abuses of prisoners by the military.

Vicente Mirabueno -- human rights lawyer. Mirabueno was fatally shot by a lone gunman on 6 February 1988 in the public market of General Santos City, South Cotabato. Mirabueno, a former vice mayor of the city, had been a member of FLAG since 1978 and was the FLAG coordinator for South Cotabato province and General Santos City in Mindanao. Mirabueno had been the target of death threats for some time. Since his death, Mirabueno's widow and children have experienced continuing threats.

Oscar Musni -- lawyer representing the family of Alfonso Surigao, a human rights lawyer who was killed in July 1988 (see below). After the arraignment in September 1988 of Major Palcuto, the military man accused of ordering Surigao's murder, a friend of Musni was informed by an associate of Major Palcuto that Musni would be killed. Since then Musni has been followed by unidentified men in motor vehicles without licence plates. Musni, who is a regional coordinator for FLAG, has been subjected to harassment previously. In December 1987, he received in his law office a gift wrapped box containing an envelope with the words in red letters, "XMAS" and "RIP XMAS." A live bullet was taped to the letter. In December 1989 he and two other lawyers were arrested and detained by the military for five hours while on their way to investigate a food blockade by the military of the village of Lantad.

Wenifredo L. Orcullo -- member of FLAG and counsel to the Southern Philippines Federation of Labour. Orcullo was advised in early 1988 by military friends to call

off what they described as his "militant" labour activities. Orcullo had complained vocally of harassment, threats, and violent incidents committed against union officers, members, and their families in the Visayan district. In 1987 he had been told that his name was on a death list of KADRE, the vigilante group (discussed in Chapter 10). In January 1988 vigilante groups operating in Cebu City released a "death list" and, as with Ernesto Clarete and Henrick Gingoyon (above), Orcullo was listed as a person scheduled for immediate execution. Since then, like Clarete, he has been repeatedly called a "communist" in public.

Inocencio Pagalaran -- lawyer of Calamba and FLAG Regional Coordinator for Region X-C, Northern Mindanao. He has been repeatedly and publicly labelled by various military commanders in the region as a "communist." In addition, Pagalaran has received death threats apparently emanating from the military establishment in the region. Following the murder of Pastor Minda Gran of Misamis Occidental, Pagalaran received a threat from certain elements within the military of the region that he would be the next victim. As a result of these threats, Pagalaran has been forced to leave his home and practice, and to relocate himself and his family elsewhere.

Andres ("Aling") Rio -- leading human rights advocate in Hilongos, Leyte, and neighbouring municipalities. According to witnesses, Rio was arrested by members of the military on 30 January 1988, taken to an open field and shot dead, together with Manuel Betollo, a 16-year-old companion. At the time, he had in his possession tapes of interviews with women detainees. Rio was chairman of the local human rights organisation in Hilongos, and was being considered for the post of Provincial Coordinator of the Commission on Human Rights.

Pepito Rivas -- lawyer of Catarman, Northern Samar, and currently FLAG Regional Coordinator for FLAG Region VIII, Samar. Rivas has been receiving death threats from elements within the military. A political detainee held in Samar confessed to his mother that he was being ordered by a certain captain to liquidate Rivas and another human rights lawyer in Samar. In June 1990, a member of the military informed him that he was targeted for assassination.

Roy Lago Salcedo -- FLAG attorney in Cagayan de Oro. Salcedo learned from friends in late 1987 that members of the military were planning to kill him. On 16 July 1988, two men were seen in Salcedo's neighbourhood, inquiring about him. On 1 August he received a suspicious phone call and believes he has been followed since.

Arno Sanidad -- lawyer and member of FLAG in Quezon City. He was harassed and watched by seven apparently armed men while attending a meeting of lawyers representing top leaders of the Philippine Communist Party on 5 April 1988.

Romeo Subaldo -- lawyer in Bacolod City and active member of FLAG. The mimeographed list circulated by MASA KONTRA KOMUNISTA in March 1989, referred to earlier, called for the immediate execution of a number of persons including Subaldo.

Alfonso Surigao -- lawyer who had for many years represented victims of human rights abuses in Cebu and his native Leyte. FLAG coordinator for Region VII, Central Visayas, Chairman of the Visayas Regional Consultative Council of the Protestant Lawyers League of the Philippines, and Vice Chairman of the Cebu Alliance of Human Rights Advocates, Surigao had received many death threats from Regional Security Unit 7 (RSU7), a military agency before being shot and killed at his home in Pardo, Cebu City, on 24 June 1988 in front of his daughter. A local member of the Alsa Masa, a vigilante group under the control of the military, Allan Climaco, was arrested. Climaco asserted that he had carried out the murder on the orders of Maj. Rico Palcuto, who was the head of RSU7 and had been at odds with Surigao since 1987. Climaco was tried, convicted, and sentenced to life imprisonment for the murder of Surigao. In July 1988, Major Palcuto was relieved of his duties, placed under "technical arrest" and charged. P.D. 1850, the presidential decree that prevents military personnel from being tried in civilian courts, was waived by President Aquino more than two months later, on 28 September 1988. Major Palcuto was subsequently investigated by the civil judicial authorities and all charges against him were dropped.

A petition for review was subsequently filed before the Department of Justice challenging the dismissal of charges against Major Palcuto. The Department of Justice reversed the finding of the Cebu Fiscal on 18 October 1989, ordering him to file the case against Palcuto. On 16 November 1989, Palcuto filed with the Department of Justice a motion for reconsideration of the 18 October decision and the setting aside of its order to the Cebu Fiscal. This motion was refused on 12 January 1990. On 29 January 1990, Palcuto filed a petition for preliminary injunction before the Supreme Court, to restrain and prohibit the Department of Justice and the Cebu Fiscal from filing any criminal action against him in connection with Surigao's murder. The Supreme Court, after seeking the Department of Justice's comments, dismissed the petition on 24 May 1990. On 10 July 1990, Palcuto was indicted for Surigao's murder. A warrant is yet to be issued for Palcuto's arrest, and astonishingly, he remains at liberty.

Oscar Tonog -- lawyer of Catarman, Northern Samar, member of FLAG since 1979, and vice president of the local chapter of the Integrated Bar of the Philippines. On 21 March 1989, Tonog was shot and killed in front of his wife at Poblacion, Catarman. Just prior to his murder, he had been representing a client arrested in Catarman, suspected of being a member of the New People's Army. Tonog had succeeded in having this client released on bail. Shortly thereafter, on a live local radio broadcast, an intelligence officer warned all human rights lawyers that their "day was near." Tonog had also received individual death threats. The IBP has done nothing to assist Mrs. Tonog or to urge action to arrest and charge his killers.

Arnedo Valera -- lawyer with Structural Alternative Legal Assistance for Grassroots, who has been representing families and victims of the Mendiola massacre of 22 January 1987 where more than a dozen land rights demonstrators were killed. On 21 January 1989 a molotov cocktail was thrown in front of his parked car. He was not in the car at the time. Valera has also periodically received threatening telephone messages and calls. Valera is currently in the United States.

Murder of Government Lawyers

Gil Getes -- Provincial Fiscal (prosecutor) of Bayugan, Agusan del Sur, and member of FLAG prior to joining the government. He was murdered at his home on the evening of 4 March 1990, reportedly by CAFGU members, for his prosecution of several individuals active in the CAFGU. The NBI is currently investigating the murder, though, as of July 1990, no one had been arrested or charged.

Eliodoro Gonzales -- lawyer and lieutenant colonel of the Philippine military, assigned to the regional staff of the Judge Advocate General's Office (JAGO). On the morning of 9 October 1989, Gonzales was slain at Galas, Quezon City, by three unidentified assailants, apparently either because of his work as a lawyer or for belonging to the military. It is alleged that he was killed by members of a Sparrow unit (assassin squad) of the CPP-NPA. JAGO, the legal unit of the armed forces, work closely with the fiscals who prosecute cases in civil courts against alleged CPP-NPA members.

Investigation and Prosecution of Murders and Harassment of Human Rights Lawyers

Human rights lawyers expressed their concern to the ICJ delegation that very few of those involved in murder and harassment of lawyers have been brought to justice. In the case of Alfonso Surigao, the civilian killer was convicted but Major Rico Palcuto, who is charged with ordering the murder, has not been arrested and remains

at liberty. In the cases of David Bueno, Ramos Cura, Emmanuel ("Noel") Mendoza, and Oscar Tonog -- all murdered -- no arrests have been made. In the case of Vicente Mirabueno who was also murdered, a suspect known as "Cedic" escaped from custody under mysterious circumstances. He was not indicted and there have been no other arrests in the case.

The ICJ delegation understands that complaints of harassment and even serious threats against lawyers are normally not investigated by law enforcement agencies. Although for the present the problems faced by lawyers seem to have abated, possibly due to official intervention following the CIJL report and other international protest, there still exist residual anxieties among them. Vigorous investigation and prosecution of past cases would help reduce the anxiety of human rights lawyers. The delegation understands that the IBP has not taken any major steps to protect the security of its members or to care for the widows and families of those killed.

The past attacks on lawyers and continuing threats faced by some lawyers violate the Basic Principles on the Role of Lawyers adopted in September 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Article 16 (a) of the Basic Principles calls for governments to ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference." Article 17 states that "where the security of lawyers is threatened as a result of discharging their functions they shall be adequately safeguarded by the authorities."

It is regrettable that apart from publishing a brief summary of the CIJL's report in its newsletter to the profession, the IBP appears to have taken no steps to support its members under threat or their families. The ICJ delegation was informed that the IBP's Human Rights Committee has no or few members and never meets. The IBP does not appear to have regarded this problem as serious, despite the proven facts and the organisation's pre-eminent role in the profession. Nor does it seem to have acted to diffuse the problem by introducing schemes to spread the responsibility for taking human rights cases among many more of its members.

Conclusions and Recommendations

To reduce its backlog and lighten the intolerable load on its judges, the Supreme Court should limit the cases it decides to matters of national importance. The Supreme Court should also reduce its backlog considerably through procedures similar to continuous trials.

Continuing education of judges is important as is periodic review of their performance and handling of their caseload. A judicial commission should be established to ensure and oversee these needs.

The government should ensure that all persons who kill, threaten, and harass judges and human rights lawyers are vigorously investigated and prosecuted.

The legal profession should take steps to protect, defend, and support human rights lawyers from killings, threats, and harassment. The legal profession should also raise its voice against all human rights violations and play a more active part in promotion and protection of human rights.

The Integrated Bar of the Philippines (IBP) and all bar associations should have functioning committees for human rights and defence to receive, examine, and report promptly on all complaints by lawyers of abuses of their human rights by military, paramilitary, and police forces. The violations should be immediately prosecuted at the initiative of bar associations where a prima facie case is found. A benevolent fund should be established by the IBP, funded by a levy on its members, to assist lawyer victims of abuse and their families.

It should be a professional requirement for all trial lawyers to accept briefs in cases involving human rights abuses. If necessary, these briefs should be undertaken without fee. Alternatively, a Legal Defence or Human Rights Fund could be established, funded by a levy on lawyers, to ensure the availability of legal representation in appropriate cases. Lawyers who refuse to participate in such schemes should be subject to disciplinary procedures.

Chapter 18

Presidential Decree No. 1850

A major impediment to the prosecution and conviction of security forces for committing human rights violations is their immunity from prosecution in the civil courts.

Under Presidential Decree No. 1850 promulgated by Marcos and still not repealed by Mrs. Aquino, members of the Armed Forces and Integrated National Police (INP) must be tried only by military courts regardless of the offences for which they are accused. In effect, P.D. 1850 vests military courts with exclusive jurisdiction over criminal cases when the accused are military or police personnel. This decree was promulgated by Marcos to shield security forces from prosecution and conviction in the civil courts in respect of abuses committed by them.

Prior to 1981 when Marcos modified the then existing law, the civilian courts had jurisdiction over members of armed forces and police personnel. Under Commonwealth Act No. 408, also known as the "Articles of War," the civilian courts had exclusive jurisdiction in times of peace over all members of the Philippine Constabulary accused of criminal offences. Civilian courts also had jurisdiction over the members of the Armed Forces of the Philippines if the offence was committed outside a military reservation and any one of the victims of the crime was a civilian.

Similarly, under Republic Act 4864 (Police Act of 1966) all members of the INP, including firefighters and prison guards, could be prosecuted and tried by civilian courts for any violations of the criminal laws of the Philippines. Moreover, past interpretation of the "Articles of War" was that the civilian courts had concurrent jurisdiction with military courts-martial over military personnel accused of criminal offences. Therefore, if the military authorities chose not to prosecute a military offender, the offender could be charged and tried in the civil courts. The "Articles of War" provided for the delivery of military offenders to the civilian authorities for civilian trial if the offender was not undergoing trial or punishment by court-martial.

In 1981, 1982, and 1984, Marcos issued Presidential Decrees Nos. 1822, 1850, and 1952 respectively. Decree No. 1822 of 1981 provided that members of AFP charged with offences "related to the performance of their duties" must be tried exclusively by military courts. In 1982 Marcos issued Decree No. 1850 repealing Decree No. 1822

and broadening the exclusive jurisdiction of military courts to include members of the INP, firefighters, and prison guards as well as members of the AFP accused of "any crime or offense cognizable by the civil courts." The decree made no distinction between crimes related to the performance of their duties and those ordinarily committed outside these duties. In 1984 Marcos promulgated Decree No. 1952, effectively amending P.D. 1850, by enabling the President to waive military jurisdiction and allow civilian courts to try a defendant belonging to the AFP or INP.

Hence, with the promulgation of decrees 1822 and later 1850, the civilian courts were stripped of their judicial power and jurisdiction over military and police personnel. Under President Marcos there was not a single prosecution or conviction of military personnel for a violation of human rights. Presidential Decree No. 1850 was considered by human rights activists as an indication of the official protection given to members of the armed forces who had committed human rights violations. Therefore, when Mrs. Aquino came to power, there was a strong demand for the repeal of P.D. 1850. For example, the Presidential Committee on Human Rights in its Resolution No. 2 urged the repeal of decrees 1822, 1850, and 1952 and sought the restoration of the law as it existed before these three decrees were enacted.

Filipino human rights advocates and activists contend that the continued existence of P.D. 1850 contravenes the civilian supremacy clause of the 1987 Constitution. First, the decree makes military courts superior to and supreme over civilian courts. Second, the decree places all military and police personnel above and beyond the reach of the civilian authorities for all offences, even for those that are not service-related or strictly military in nature. Third, civilian victims cannot enforce their constitutional right to speedy and proper conduct of trial as military courts do not recognise all the constitutional safeguards inherent in trials by civilian courts. Fourth, no matter how gross the abuse of due process by military courts, the civilian courts including the Supreme Court cannot review their decisions. Fifth, civilian victims cannot retain a civilian private prosecutor to represent them in a military court.

Courts-Martial

The Judge Advocate General's Office (JAGO) of AFP General Headquarters or the Staff Judge Advocate of a service branch of a military command are responsible for prosecutions in courts-martial. The process begins when the JAGO or Staff Judge Advocate receive the "case folder" from the commanding officer of a suspect's military unit with a recommendation that the case merits prosecution.

The Military Justice Division is the JAGO unit that handles prosecutions. It entrusts an "Action Officer" to evaluate the evidence in the case folder and to determine whether there is a basis for the accusation. Based on the conclusions of the "Action Officer," the Deputy Judge Advocate General recommends to the Judge Advocate General whether a pretrial investigation should be conducted. If the Judge Advocate General approves the deputy's recommendation to undertake such an investigation, a Pretrial Investigating Officer is designated to conduct a pretrial investigation. The pretrial investigation is normally expected to be completed within 10 to 15 days. In conducting the pretrial investigation, the officer is not required to visit the site of the incident. Such visits are left to the officer's discretion.

The recommendations of the Pretrial Investigating Officer are submitted to the Staff Judge of the Chief of Staff for Pretrial Advice. He may recommend that the case be dropped; that administrative sanctions be imposed; that the offender be dismissed from the AFP; or that a trial be conducted before a General Court-Martial. In the event of a recommendation for a General Court-Martial, the Judge Advocate General returns the folder to the Military Justice Division. The Division refers the case to a Trial Judge Advocate of the General Court-Martial and also designates a military prosecutor.

From information presented to the ICJ delegation including material derived from interviews with and documents from the Judge Advocate General and his staff, the length of this process appears to prolong the pre-trial phase and provide an opportunity for suspected offenders to destroy evidence and intimidate witnesses. Furthermore, the pre-trial delay helps remove the case from public scrutiny and reduces pressure on the prosecution. It seems that the likelihood that proceedings will be initiated against officers is much less than in relation to enlisted men.

If the case is referred from the pre-trial investigation to a court-martial, the proceedings tend to be further delayed. Already skeptical of the military courts, complainants become discouraged from pursuing the case. Moreover, in many instances, complainants and witnesses reportedly refuse to attend courts-martial because they fear retribution by the accused or the military. From their past experiences, many victims are convinced that courts-martial would rather protect military personnel than find the truth and prosecute human rights violators.

The "Lupao Massacre Case" is cited as an example of the tendency of military judges to protect military personnel from conviction. The case concerned the killing of 17 civilians, including six children, and the wounding of eight others on 11 February 1987 in Barangay Namulandayan, Lupao, Nueva Ecija. Two days before the incident,

some NPA rebels had spent the night in the village. On the next day, the NPA ambushed a military patrol of the 14th Infantry Battalion killing its leader Lt. Edgardo Dizon and wounding another soldier. The villagers said that they hid themselves in nearby paddy fields during the fighting. When the shooting stopped, they emerged announcing their civilian status. The soldiers accused them of being rebels and stabbed one man to death. The villagers were then herded together and shot. Their houses were also set on fire. The version of the army was that the villagers had been caught in the crossfire.

The massacre provoked a national and international outcry questioning Mrs. Aquino's commitment to human rights. Mrs. Aquino visited the surviving villagers, reaffirmed her commitment to human rights, and ordered a thorough investigation.

The initial report of the Provost Marshal General was that "there was no indication of a massacre" and was mainly based on the military's version that the civilians were killed in crossfire. Meanwhile, the provincial governor of Nueva Ecija submitted another report based on the version of the surviving civilians which contradicted the findings of the Provost Marshal. President Aquino then ordered the Provost Marshal General's team to look into all aspects of the incident. The Provost Marshal General's team, a month later, concluded that the civilians of Lupao "were deliberately killed by the soldiers."

A similar conclusion was reached by the Presidential Committee on Human Rights (PCHR), the predecessor to the present Commission on Human Rights. The PCHR concluded that, "the civilians were massacred by the soldiers after the NPAs had fled, and not in the cross-fire as earlier claimed by the military."

A court-martial was conducted in which 21 enlisted men of the 124th Infantry Battalion were charged with murder, multiple murder, and frustrated murder. In the 17-month long trial, six adult survivors provided enough evidence to indicate that the villagers had been deliberately killed by the soldiers, yet on 14 July 1989 the court-martial unanimously acquitted all the 21 military defendants. The judgment was based on last minute testimony by two of the accused soldiers that was given after both the prosecution and defence had concluded their cases. In their testimony, the two soldiers acknowledged that the civilians were murdered by the military and blamed it on three members of a reinforcement team. These three had not been included in the original charge sheet.

The court-martial justified its decision to acquit the soldiers by stating:

"The court honestly believes in good faith that the identification made by (the) accused . . . carries great weight considering the fact that they are more familiar with their co-soldiers, they belong to the same company and battalion, whereas identification made by prosecution witnesses is inherently unprovable, inconsistent with human experience or against the natural course of things."¹⁶⁴

The court-martial did not explain why it considered the survivor's identifications as "inherently unprovable" or what it had in mind as "the natural course of things."

The decision of the court-martial became all the more controversial when two military prosecutors involved in the case questioned the verdict by formally writing to the AFP Chief of Staff General De Villa. In their report made available to the Far Eastern Economic Review, Maj. Victoria Tabanguil and Maj. Jose Montero stated that they "believe at least four of the accused should have been found guilty, based on positive identification made by six witnesses." Furthermore, "the prosecution still maintains that the 20 accused in the said case should have been convicted by the court."¹⁶⁵

President Aquino, however, endorsed the military's version by stating:

"In the report . . . given to me . . . apparently there was a hesitancy on the part of witnesses to really come out and give additional information which would constitute substantial evidence."¹⁶⁶

There has evidently been no move to prosecute the three soldiers who were identified by the two acquitted defendants or to prosecute for perjury all those acquitted of murder.

The verdict and the lack of follow-up reinforces the fears of the Filipino human rights activists that the military court system is inherently biased in favour of the military and that it is not possible to obtain proper justice from it. Therefore, they

¹⁶⁴Far Eastern Economic Review, 28 September 1989.

¹⁶⁵Id.

¹⁶⁶Id.

demand the repeal of P.D. 1850 to allow civilian courts to try military defendants who are accused of human rights violations. It may very well be contrary to the many freedoms and rights set out in the Constitution.

Officially, the Department of Defence favours the restoration of the jurisdiction of civilian courts over members of the AFP and INP.¹⁶⁷ Similarly, the Justice Department also favours repeal or at least some amendment of P.D. 1850. Accordingly in October 1989, the Senate and House agreed on a Consolidated Bill repealing P.D. 1850 and restoring jurisdiction to civilian courts for trying members of armed forces when civilians are either co-accused or victims, unless the offence is "service-connected." President Aquino vetoed the Bill, however, justifying her veto by citing the state of emergency imposed after the December 1989 coup attempt. She stated: "The enrolled bill which was approved by the House of Representatives on October 12, 1989 and by the Senate on October 18, 1989, did not take into account the recent violent December military-civilian rebellion." She added: "I find good cause for the Secretary of National Defence and the Chief of Staff of the Armed Forces of the Philippines in recommending the veto of the enrolled bill." The argument of the Chief of Staff was that repeal of No. 1850 would deprive military courts of jurisdiction to try the military personnel involved in the coup attempt. This argument is incorrect as the Bill provided for acts of mutiny and sedition to remain under the jurisdiction of military courts.

The government's failure to repeal or significantly amend P.D. 1850 is at variance with its claim that it will not tolerate human rights violations by members of the security forces. The continued existence of P.D. 1850 remains a blot on the newly restored institutions of democracy. Indeed, the 1984 ICJ report on the Philippines recommended that to "ensure a return to democratic government and the protection of the human rights of its citizens the government should give the civilians courts sole jurisdiction to try members of the armed forces and the police for offenses committed against civilians."

Presidential waiver

As stated previously, P.D. 1850, as amended by P.D. 1952, empowers the President to waive the decree to enable civil courts to try military defendants. President Aquino has exercised this power in only a few celebrated cases, the total

¹⁶⁷DND Information Kit under "Update on DND-AFP Certified/priority Bills" include House Bill 13399 and Senate Bill 748 repealing P.D. 1850.

number of which is not available. According to officials of the Justice Department, in the first six months of 1990 presidential waiver was given in five cases. It is unclear whether that number includes only cases specifically recommended by the Justice Department or represents all presidential waiver cases. The ICJ delegation also learned of several requests for presidential waivers to which there has been no reply for many months. Failure to communicate even refusals prevents a test of the decree's constitutionality.

It is also not clear under what circumstances waivers is approved. Human rights lawyers contend that the administration has not evolved a policy concerning the exercise of presidential waiver and has not been consistent in establishing accountability of security forces. This view was also confirmed by lawyers of the Commission of Human Rights. It appears that the President is more likely to exercise waiver when there is strong national and international outcry concerning a particular case.

Even where P.D. 1850 is waived, the conviction rate in civilian courts of military defendant has been minimal. Some of the problems that affect courts-martial such as delay, intimidation of witnesses, and the fear of complainants to pursue the case, similarly affect human rights prosecutions of military personnel in civilian courts. A further problem seems to be the reluctance of many fiscals (prosecutors) to initiate and then pursue such cases. They very often depend on the complainant to collect the evidence to provide a successful prosecution. This approach is simply unacceptable. Complainants are often poor, frightened, and unable to travel distances across the country to attend government offices. It seems that the fiscals at least share their fear. The Justice Department acknowledges the fiscals' lack of initiative by virtue of the fact that it sends special prosecutors from its office in Manila to monitor and even conduct some of the more publicised cases.

Recommendations

Presidential Decree No. 1850 should be repealed so that jurisdiction over human rights abuses by military personnel can be exercised by civilian courts. Meanwhile, Presidential waivers should be granted in the current and future cases so that civilian trials can proceed promptly. The Justice Department should provide a

competent prosecution team to ensure that the cases are fully investigated and vigorously pursued.¹⁶⁸

The Supreme Court of the Philippines should be given jurisdiction to review decisions of courts-martial especially on serious offences, and decisions by military authorities not to prosecute members of the Armed Forces or Constabulary of major human rights violations. The rights to fair and speedy trials should extend to trials by court-martial and should be enforceable in the civilian courts at the instance of any person with an interest in the outcome such as a victim or the family of a victim.

¹⁶⁸ After the present ICJ report was submitted to the government of the Philippines, but just before it was printed, this recommendation was implemented by the adoption of Republic Act No. 7055 on 20 June 1991, repealing Presidential Decree No. 1850 and returning to the civil courts jurisdiction over most offences committed by the military, the Philippine National Police, and other persons subject to military law.

Chapter 19

Commission and Committees on Human Rights

The 1987 Constitution (Article XIII, Section 17) provided for the establishment of a Commission on Human Rights (CHR). It is the only known constitutionally-based Human Rights Commission in the world. In discussing its importance, mention should also be made about its predecessor the Presidential Committee on Human Rights (PCHR), a new Presidential Committee on Human Rights established by the President in 1989, and the Committee on Justice and Human Rights created by the Philippines Senate. This chapter discusses each of the four human rights bodies.

The Presidential Committee on Human Rights (PCHR)

Immediately after assuming power, President Aquino promulgated Executive Order No. 8 creating the Presidential Committee on Human Rights (PCHR). The PCHR was authorised to investigate complaints of human rights violations committed by officers or agents of the government or persons acting under their express or implied orders.

Senator Jose W. Diokno was appointed Chair of the PCHR. Senator Diokno was well-known for his untiring commitment to human rights and played a leading role in defending the rights of victims during the Marcos period. The other members of the committee were similarly respected persons, including Justice Jose B.L. Reyes and Sr. Marianni Dimaranan, Chair of TFDP.

The PCHR had no powers to prosecute and could only make recommendations on the basis of its findings. By 31 December 1986 the PCHR had received 708 complaints, 225 of which occurred during that year and 483 in previous years. According to the PCHR's 1986 annual report, only 23 cases had been resolved by the end of the year. On the recommendation of the PCHR, the government issued an order under which all personnel involved in investigating and arresting suspects were required to undergo training in human rights. The PCHR also undertook factfinding missions to the provinces to inquire into specific allegations of human rights abuses.

The PCHR initially engaged in conducting meticulous investigation of some of the well-known cases of human rights violations that occurred under Marcos to establish a strong precedent for investigating and prosecuting such cases in the future. This

strategy was apparently also adopted to provide the new government time to consolidate itself without upsetting the military establishment. With the sudden collapse of the Marcos administration, however, government machinery was in total disarray and it took some time for the PCHR to set itself in motion. Meanwhile, the military became restive and there were two coup attempts by the end of 1986. The military rebels even referred to the PCHR as an example of the government's leniency towards the NPA, because the PCHR investigated only the military for alleged human rights violations. They apparently forgot that this mandate was given to the PCHR by the President.

Following the "Mendiola incident"¹⁶⁹ in January 1987, all the PCHR members except one resigned as an expression of their protest against the use of force against unarmed demonstrators. Shortly afterwards when the remaining member Senator Diokno died, the PCHR lost its momentum and its credibility among Filipino human rights activists.

Commission on Human Rights

The powers and functions of the Commission as stipulated under the Constitution are:

- to investigate, on its own motion or on complaint by any party, all forms of human rights violations involving civil and political rights
- to adopt operational guidelines and procedures and initiate contempt proceedings for violations of its procedures
- to provide appropriate legal measures for the protection of the human rights of all Filipinos residing in the country and abroad
- to provide preventative measures and legal and other services to the underprivileged whose human rights have been violated or need protection
- to exercise visitorial powers over jails, prisons, or detention facilities
- to establish a continuing program of research, education, and information to enhance respect for human rights
- to recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights
- to monitor the Philippine government's compliance with international treaty obligations on human rights

¹⁶⁹In this incident, the military fired without provocation upon unarmed farmers who were peacefully demonstrating near the Presidential Palace.

- to grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it
- to request the assistance of any department or agency in the performance of its functions.

The CHR's constitutional status and mandate make it unique. It will be helpful to explain its procedures and methods of work.

Investigations

Investigations normally commence once a complaint is filed by any person who claims that his/her civil or political rights have been violated. Alternatively, the CHR can also take action on a complaint by a friend or member of the family of the victim or on its own initiative.

Complainants are firstly interviewed by CHR investigators and a written statement is prepared and signed. Based on the complaint, a legal officer in the appropriate local office then takes a sworn statement or affidavit from the victim and witnesses. Once the local Regional Director determines that the case falls within the CHR's mandate, a copy of the complaint is sent to the respondent who, by way of summons, is then advised to submit counter-affidavits within ten days for consideration by the Commission. A hearing is then held to determine whether to recommend prosecution, usually in the presence of the respondent.

Resolution of Investigations

When investigations of a specific complaint are completed, the investigation officer transmits the case file to the legal officer. The legal officer may resolve the case in any one of the following ways:

1. Archive -- If the legal officer believes there is insufficient evidence, the case is deferred until witnesses are willing to cooperate and provide more information. Before final archiving, the CHR head office reviews each case to determine whether pressure from the respondent or someone else forced the complainant to withdraw the case.

2. Dismissal -- A case is dismissed if the legal officer finds there is no probable cause to believe that the victim suffered a violation of human rights. A dismissal by

the CHR will not bar a complainant from pursuing other remedies. Moreover, the CHR itself can reopen the case later.

3. Referral for Prosecution -- If a legal officer believes that the respondent probably committed the alleged violation, the complaint is referred to prosecuting authorities. The reference is in form of a recommendation, with the prosecuting authorities maintaining their discretion and power to accept or reject the CHR's recommendation.

The Mandate of the CHR

According to the CHR, the following violations are under its jurisdiction:

1. Deprivation of life, liberty, or property without due process of law, particularly the right to shelter, especially of poor dwellers who may not be evicted, nor their dwellings demolished, except in accordance with law and in a just and humane manner.
2. Violation of the right to the equal protection of the law.
3. Violation of the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose.
4. Commission of acts constituting illegal arrest and procurement or issuance of illegal search warrants.
5. Violation of the privacy of communication and correspondence.
6. Violation of the freedom of religion and of speech.
7. Violation of the right to take part in a peaceable assembly and to petition the government for redress of grievances, and of the right to be free from involuntary servitude in any form.
8. The use of torture, force, violence, threat, intimidation, and other means that vitiate the free will of any person to do anything or to sign any document against his/her will.

9. Holding a person in secret places of detention, in solitary confinement or incommunicado, or other similar forms of detention.
10. Employment of physical, psychological, and degrading punishment against a prisoner or detainee.
11. Unexplained or forced disappearances and extralegal executions (salvagings).
12. Violation of the freedom of suffrage, and of the liberty of abode and changing of abode.
13. Abridgement of the right of workers/employees to form/join labor unions, associations, or societies for purposes not contrary to law.
14. Detention of a person solely by reason of political beliefs and aspirations.
15. Imprisonment of a person for non-payment of debt.
16. Violation of the right of the people to information on matters of public concern.
17. The taking of private property for public use without just compensation.
18. Commission of any of the Crimes Against the Fundamental Laws of the State as defined in Title Two of the Penal Code.¹⁷⁰

¹⁷⁰These include:

- a. Arbitrary detention
- b. Delay in the delivery of detained persons to the proper judicial authorities
- c. Delaying the release of a prisoner
- d. Expulsion of any person from the Philippines or compelling any person to change residence
- e. Violation of domicile
- f. Maliciously obtaining a search warrant or abuse in service of those legally obtained
- g. Searching a domicile without witnesses
- h. Prohibition, interruption, and dissolution of peaceful meetings
- i. Interruption of religious worship
- j. Offending a religious worshipper.

19. Commission of any of the Crimes Against Persons as defined under Section One, Chapter One, and Chapter Two, Title Eight of the Revised Penal Code.¹⁷¹

20. Commission of any of the Crimes Against Personal Liberty and Security as defined in Section One, Two and Three, Chapter One, and Chapter Two, Title Nine of the Revised Penal Code.¹⁷²

21. Commission of any of the Crimes Against Chastity as defined in Chapter Two, Three and Four Title Eleven of the Revised Penal Code.¹⁷³

22. The refusal or neglect by a public servant or employee, without just cause, to perform his official duty.

23. Violation of the visitorial powers of attorneys.

This list indicates the unwieldy nature of the CHR's mandate.

Staff and Finances

The Commission itself consists of a Chair and four Commissioners. Ms. Mary Concepcion Bautista has been the Chair since the Commission's inception in May 1987.

¹⁷¹These offences include parricide, murder, homicide, attempted homicide, and physical injuries.

¹⁷²These offences include:

- a. Kidnapping and illegal detention
- b. Unlawful arrest
- c. Kidnapping of minors
- d. Slavery and servitude
- e. Trespass to dwelling
- f. Threats and coercion.

¹⁷³These offences include rape, acts of lasciviousness, seduction, corruption of minors, white slavery, and forcible abduction.

The CHR has its central office in Metro Manila which includes the regional office for the National Capital Region (NCR). There are twelve regional offices and four sub-offices sited around the country.

There are 634 staff members of the CHR of which 324 are in Manila and the rest are in the regional offices. There is an average of 27 personnel in each regional office. The 1990-1991 budget is approximately 73 million pesos. It appears that about 70 percent of this amount is spent on personnel and overhead; only a small portion is spent directly for victims. For example, only 4.5 million pesos is annually earmarked for human rights victims and the witness protection programme.

Achievements of the CHR

Despite the CHR's constitutional status and relatively substantial finances, many Filipino human rights advocates and many other opinion leaders in the country, including people in the Commission itself, told the ICJ delegation that they considered the CHR's performance to be dismal.

According to the Commission's September 1990 report, a total of 6,638 cases have been filed with the CHR between its inception in 1986 and June 1990. This figure includes 901 incidents before 1986 and 652 cases without specific dates. Of the total filed only 881 cases have been referred to courts and other agencies. The distribution of these 881 cases are as follows:

Civil courts	276
Regional and Provincial Offices of Department of Justice (including fiscals)	147
National/regional/provincial units of military agencies	273
Administrative agencies	77
Other agencies (including Banks and various government departments)	<u>108</u>
Total	<u>881</u>

Of these 881 cases, only 53 have been tried or resolved by the courts or agencies. Of these 53 people, the following results were achieved:

Dismissal from service	1
Conviction	4
Suspension	3
Demotion	1
Acquittals	7
Dismissed	34
Unspecified	<u>3</u>
Total	<u>53</u>

These data mean that in a country where, on the evidence and information gathered by the ICJ delegation, there are literally hundreds of human rights violations, if not more, taking place every year, the CHR have had "results" in only 53 cases during four years of which 41 have failed. A cameo breakdown of the figures, by way of example, obtained from CHR offices in Bacolod and Cebu correspond with this pattern. The office in Bacolod city is a sub-office of the Region VI office situated in Iloilo City. The sub-office has one lawyer and three investigators. From 1988 to August 1990, the sub-office received 235 cases, 188 of which are pending and 47 investigations are completed. Only 14 of the 47 investigations have been submitted for further action to either the Judge Advocate General's office or to fiscals.

Cases in which NPA rebels are suspected perpetrators constitute 40 of the 235 cases. As none of the alleged NPA perpetrators have been identified, these cases are kept pending. One of the problems expressed by the sub-office staff was a lack of vehicles and the office's resulting dependence on military transport to visit remote areas. The CHR cannot be independent if its staff travel with the military as is common when they are investigating allegations against military officers and associated people. The staff also complained that funds for witness protection are grossly inadequate.

A similar picture emerged from the Cebu office which covers the whole of central Visayas. The office has, in addition to a coordinator, 11 investigation officers, 5 legal officers, 2 public information officers, and 10 administrative staff members.

The Cebu office recorded 232 cases in 1989. The status of these cases are as follows:

Under preliminary investigation	21
Under further investigation	109
With JAGO	3
Civilian courts	18
Archived	80
Philippine Overseas Administration	<u>1</u>
Total	<u>232</u>

Cases received by the Cebu office have included 73 killings/salvaging or massacres, 10 disappearances, 10 torture cases, 47 arson/bombing/strafing cases, and 23 illegal arrest/ searches. Of these matters, 85 cases implicated members of the armed forces and paramilitary units (including the PC, INP, CAFGUs, vigilantes, and unidentified armed groups). In 27 cases NPA rebels are suspected perpetrators and in 50 cases civilians (government officials and the like) are suspected perpetrators. No trials have ensued and a third of the cases have not proceeded.

According to its report, between 1988 and June 1990, the CHR has conducted 626 seminars/training sessions/lectures and other information-dissemination activities. It is very difficult to evaluate the educational work of the Commission except that there is no sign that it is yet adequately fulfilling the role assigned to it by the Constitution or meeting even a reasonable minimum of the hopes and intentions of the President or the people. Certainly no semblance of an attitudinal change to human rights observance can be detected as a result of the Commission's efforts.

Financial Assistance to Victims and Witnesses

The CHR has a programme to provide financial assistance to victims and to provide shelter and subsistence for complainants and witnesses until the CHR resolves their cases. According to the CHR, through June 1990 a total of 32,319 persons have benefitted from this programme. Of this number 105 were victim beneficiaries, 281 were heirs of victims, 11 were witnesses, and 31,920 were community recipients, mainly evacuees and those affected by demolitions. It is clear that very little money has been expended on the witness protection programme. Yet the Commission had a budget of 4,784,000 pesos for 1989, but only spent 2,098,233.35 pesos. The number of people who received financial assistance represent only a small portion of reported cases of killings and other serious violations. If account is taken of the number of

such violations which have occurred in the Philippines, the proportion of victims receiving financial assistance is so tiny as to be negligible.

There is considerable question whether the Commission is the correct agency to be dispensing financial assistance to human rights victims. It must first be decided whether the money is provided as charity or as compensation. If it is the latter, it requires more stringent rules and a strict set of priorities. It would also need a specially trained staff. It is questionable whether compensation is a proper function of the Commission and whether it diverts the Commission from its primary tasks. If it is the former, it certainly ought not to be a function of the Commission.

Problems with the Commission

The primary work of the Commission must be the investigation and prosecution of wrongdoers. Some of the reasons for the CHR's abysmal performance in those fields are obstruction by the military, the formality of its procedures, its unwieldy mandate, its lack of prosecutorial powers, and ineffective leadership. These reasons are discussed in detail below.

Obstruction by military

Even according to the CHR's own statistics, military, police, and paramilitary forces are the main perpetrators of human rights violations. For example, of the 2,603 incidents that were reported to the CHR in 1988, military, police, and paramilitary forces were suspected in just over 50% of the cases (1,314). A similar percentage has been reported by the CHR for 1989 and 1990. As a result, the CHR's investigatory staff reportedly face strong resistance from local military units. The military often prevents CHR representatives from conducting their work. For example, the Bacolod office was forced to file a complaint against a Lieutenant Papellero of the 7th IB for harassing the CHR investigators on a case. Similarly, in July 1990 CHR officers complained about a Captain Bernales over an incident on 24 June 1990 at a camp in Bgy. Villaeste, Carmen, Bohol, when he ordered the CHR investigators from the camp and refused to cooperate. After Captain Bernales' conduct, which itself is an offence, was brought to Defence Secretary Ramos, Bernales was promoted to the rank of major. These cases are not isolated. In other cases, the military has accused local CHR officials of being members of the NPA and have refused to cooperate in CHR investigations.

Some CHR staff members expressed a fear that there were military informers working within the CHR, leading to "tip offs" about pending CHR investigations.

Hence, there have been cases when CHR staff went to exhume bodies of human rights victims from graves to secure evidence to support complaints, they found that the bodies had already been removed. An associated example of this problem occurred in March 1989 when relatives of the Pagao family asked the CHR office in Calbayog, Samar, to assist them to take custody of the bodies of their slain relatives. The CHR sent an exhumation team consisting of an officer from the NBI, a city health officer, and a representative from the Medical Action Group (MAG). The military, citing operations in the area, prevented the exhumation team from entering and refused to make a later convenient appointment for the work to be done.

Formal Procedures

Excessively formal procedures adopted by the CHR discourage victims from seeking its help or in cooperating with it, and cause inexcusable delays. In general, the CHR seems to have acquired a reputation for formalism and bureaucratic procedure. The information and documentation supplied to the ICJ delegation, and its interviews with members and staff of the CHR, strongly support this judgment. The following case is a typical example of the procedures and delays affecting the CHR's effectiveness in the Manila area.

1988

- 28 June Elisa Tita P. Lubi was arrested without a warrant by a team of five police officers from Station 1, Western Police District, when she left a restaurant on Remedios Street, Ermita, Manila. Ms. Lubi was sexually molested and tortured after her arrest. Two of her persecutors were Lt. Col. Maganto and Major Varilla.
- 14 July Central Records Receiving Section of CHR received a letter of complaint in Lubi's handwriting.
- 1 Aug. CHR Investigating Unit representatives visited Ms. Lubi at the Manila City Jail to inform her that her letter of complaint did not meet legal requirements, and she should therefore prepare an affidavit to be duly signed before a notary.
- 16 Aug. First scheduled CHR hearing on Ms. Lubi's complaint was postponed because Lt. Col. Maganto had not been provided a copy of her affidavit in time.
- 17 Aug. CHR Commissioners Aportadera and Mallilin and doctors from the Medical Action Group visited the Manila City Jail to see Ms. Lubi and other political detainees.

- 30 Aug. First hearing. Ms. Lubi and police escorts came too late for the hearing because the truck they travelled in ran out of gas near Nagtahan Bridge. Lt. Col. Maganto attended, Major Varilla did not.
- 6 Sept. Second hearing. Ms. Lubi was not able to be present because the CHR Legal Department forgot to send a produce order to the Manila City Jail to produce her.
- 8 Sept. Third hearing. Ms. Lubi finally made it. Major Varilla was there, Lt. Col. Maganto was not.
- 15 Sept. Fourth hearing. Ms. Lubi and Varilla were there, while Maganto sent a representative.
- 27 Sept. Last scheduled hearing was postponed indefinitely. Ms. Lubi was later informed that no more hearings would be conducted.
- 23 Nov. Central Records Receiving Section of CHR received a letter from Ms. Lubi dated 21 November inquiring about the status of her case.

1989

- 7 Feb. Ms. Lubi wrote to then Acting CHR Chair Mallilin asking about her case again since she did not receive a reply from CHR Chair Bautista.
- 17 Feb. Mallilin replied to Ms. Lubi's letter and informed her that the documents she had submitted and those gathered by the Commission have all been evaluated and submitted for resolution.
- 3 July Ms. Lubi received Notice of Order/Resolution from the CHR stating that the Commission found enough grounds for filing of charges against Lt. Col. Maganto for unlawful arrest and denial of visitorial rights of lawyers.
- 14 July Ms. Lubi wrote to CHR acknowledging receipt of the Order/Resolution and following up further the investigation of her charges of denial of visitorial rights and acts of lasciviousness against Major Varilla and his men.
- 6 Sept. Office of the Constabulary Judge Advocate (JAGO) summoned Ms. Lubi to testify in the hearing on charges filed by the CHR against Lt. Col. Maganto. Ms. Lubi's lawyers wrote to JAGO that they will not participate in the proceedings because they do not believe that Ms. Lubi would receive justice in a military court.

There has been no further word from the CHR concerning the matter. Ms. Lubi has not been brought to trial on a single charge and her molesters are still at large. The Commission has done nothing to secure Ms. Lubi's release.

The requirement that complaints must be verified by affidavit is onerous and inappropriate. Many victims live in remote areas and are poor. They cannot afford

to come to offices in towns or cities, at least unless and until someone will drive them. They certainly cannot come two or three times. They are not accustomed to giving statements at all, let alone swearing to their truth. They live in fear that the military and their vigilante allies will return to do more harm and violence. The methods used by the CHR mean that their intimidation by their persecutors is greatly amplified by an intimidation by "the system". Like the court and legal system discussed in Chapter 16, the CHR has chosen to use methods of complaint, investigation, and the gathering of evidence more appropriate to other countries not sharing the problems in the Philippines. The sophistication and formalism of these methods operate to inhibit rather than facilitate the work of the CHR and actually have the effect of reversing the burden of proof by putting far too much of the responsibility of proving cases on the very people whom the CHR is supposed to be protecting.

Mandate of the CHR

The constitutional provision establishing the CHR has mandated that it "investigate all forms of human rights violations involving civil and political rights." This language has been interpreted by the present leadership of CHR to include a wide variety of violations, some of which do not appear to be human rights violations, such as complaints concerning defamation, nuisance, and breach of contract. Moreover, crimes arising out of purely private disputes are dealt with by the CHR. For example, the CHR Bacolod office investigated and continues to monitor a case of double murder committed by a certain Rago belonging to the 332nd Detachment, who shot and killed two persons as a result of private quarrel. Similarly, in another case pursued by the Bacolod office, military Sergeant Dislathi shot and killed a person for selling him a defective gas stove and refusing to refund the money. The ICJ delegation was told by a CHR official that these types of cases are covered by the CHR's mandate and are handled on the same basis as other cases.

Similarly, in the Cebu office the ICJ delegation learned of a typical example of how the CHR is not giving priority to the very serious human rights violations occurring in the Philippines. In this case, the respondent was the Mayor of Cebu and the complainant was a pavement food stall vendor. The vendor was instructed by the municipality to stop preparing and selling barbecue sticks in front of a supermarket. On 22 May 1990, the Mayor himself visited the site and reprimanded the vendor for continuing to sell there. The Mayor reportedly threw some barbecue sticks on the floor and stamped on them. The complaint against the Mayor filed by the vendor was accepted by the CHR. This case received wide publicity in the local press. Apart from the misallocation of resources, the disrepute attracted by the Commission from such dealings is immeasurable.

It is the conclusion of the ICJ delegation that the CHR's leadership itself does not possess adequate clarity concerning the mandate or the priorities of the Commission. The Commissioners are divided in their views concerning the interpretation of CHR's mandate. For example, according to CHR Chair Bautista, demolition of squatter settlements come under its mandate. This view is reflected in the following picturesque statement contained in a CHR report:

"This Commission has blazed new trails in the treatment of human rights. It has upheld the rights of the squatters to just and humane treatment, to be relocated to new homesites and to be protected from violent demolitions of their homes."

Two other commissioners, however, have taken the position that the Commission is "being converted into a super body which has the plenary power to act on every conceivable case of human rights violation." The two commissioners believe that such wide powers will result in a "grotesque situation where the CHR [will] hav[e] concurrent jurisdiction with every agency and instrumentality of the government over any complaint dubbed as involving 'human rights violations.'" The two commissioners added:

". . . the squatters problem and cases of illegal demolition. . . [are] political in nature . . . [and] can be best addressed by the local governments, the regular courts and Presidential Committee on Urban Poor."¹⁷⁴

Despite disagreement from these two commissioners, Chair Bautista strongly supports the view that the squatters' problems come under the CHR mandate and has admitted several complaints. It appears that by expanding its mandate and by lacking any sense of priorities, the CHR is trying to avoid confrontations with the military. Problems of squatters, pavement dwellers, and individual disputes are less controversial and confrontational with powerful forces and therefore receive immediate attention from Chair Bautista. In any event, the information gathered by the ICJ delegation suggests that the boasts of "trail-blazing" in the protection of squatters' rights are wildly exaggerated.

The CHR has also interpreted the constitutional provision "to investigate all forms of human rights violations" to include violations committed by non-state entities such

¹⁷⁴CHR Case No. 90-1580. Position Paper by Commissioner Mallilin and concurrence of Commissioner Aportadera.

as the NPA and MNLF rebels. It has recently "reiterated its commitment to protect the human rights of all -- not only of those apprehended, killed or otherwise abused for political or subversive activities, but also those of the soldier, policeman, worker, farmer, women, children and all other individuals whose rights are violated." In the circumstances persisting in the Philippines today, this type of statement is at best mischievous.

According to CHR statistics, it has received from 1988 to June 1990 a total of 811 cases of violations in which NPA rebels are suspected as perpetrators. By attempting to investigate complaints against the insurgents, the Commission may have sought to appear evenhanded. These actions have not increased the confidence of the military in the Commission and have, in fact, substantially diminished the willingness of human rights victims to present their cases to the Commission. Furthermore, the CHR's staff acknowledged that it has been almost completely unsuccessful in investigating abuses by the CPP-NPA and has gained no co-operation from the military in either those cases or complaints against the military.

This question of whether to investigate alleged human rights abuses by the CPP-NPA had earlier been considered by the PCHR. The PCHR maintained that "no investigation of human rights violations by members of the CPP/NPA can serve the interest of justice under the circumstances now prevailing. Such investigations cannot expect to be able to receive evidence from the side of the rebels, because the latter are liable to be shot on sight or subjected to reprisals together with their families. Hence, whatever findings can be made by the investigators in such cases must perforce be predicated on one-sided proof. . . . The PCHR adheres to the point that if there is any evidence showing a particular rebel having abused another person[']s human rights, the case can be dealt with by the regular prosecutory agencies of the government like the fiscals or the prosecutors of the Ministry of Justice, for it would be an ordinary crime." The ICJ delegation fully agrees with this wise and balanced assessment

Prosecutorial powers

The failure of the Commission to achieve successful prosecutions of human rights violations has another aspect. The Commission has not been given the power to prosecute human rights violations and the Department of Justice has opposed the dilution of its own prosecutorial powers to give the Commission the right to prosecute violators. If the Commission does recommend prosecution, it must rely upon fiscals for the pursuit of criminal cases against civilians and the military for disciplinary or other proceedings for military defendants. The fiscals and military prosecutors must

independently investigate any offences before they initiate action. Hence, bringing a case to the Commission on Human Rights can and often does actually delay the pursuit of a prosecution. Since most prosecutors do not assist victims and simply wait for evidence to be developed by the police, the military, or the victim, investigations by the Commission could enhance the chances of successful prosecution, if an adequate investigatory job is done.

Because civilian courts lack jurisdiction over military defendants and military officials are reluctant to pursue prosecutions against their fellow officers (see Chapter 18), the Commission cannot assure victims that their complaints will result in the perpetrators being brought to justice. The Commission has also not effectively monitored the activities of civilian or military prosecutors to assure that charges are laid, prosecutions pursued, and trials begun.

It is nonetheless possible that despite its limitations, the CHR could be effective if it develops a sense of priorities for cases to investigate, actively pursues cases of serious violations rather than passively waiting for complainants to present witnesses, and generally uses its existing powers more dynamically. For example, the Commission apparently has not used its powers to initiate contempt proceedings against those officials who obstruct its officers from carrying out their duties. Even when CHR staff have made formal complaints that some of members of the military obstruct their functioning, the Commission did not institute any contempt proceedings. The Commission's predecessor, the PCHR, took the alternative position. In September 1986, while investigating an alleged massacre, Atty. Astudillo was assaulted by the Negros Oriental PC Provincial Commander Lt. Col. Tiburcio Fusillero. This incident prompted the PCHR to subpoena the Commander. Upon his refusal to appear before the PCHR, the Commander was found guilty of contempt. Lt. Col. Fusillero was consequently relieved of his duty in Negros Oriental and faced investigation by a military tribunal on various charges connected with his conduct in that incident.

Similarly, the CHR has not effectively used its visitorial powers over jails, prisons, or detention facilities. Its officers have conducted routine tours of some detention facilities and received complaints from prisoners, but the CHR has not generally visited detention facilities when urgently required to locate a person held illegally or to prevent torture, despite its uniquely enforceable and ample powers to do so. Some staff members -- particularly in the Metro Manila area -- have visited prisons in situations where there have been allegations of ill-treatment or torture and the CHR has occasionally facilitated transfers of detainees from one prison to another to reduce the chances of torture or ill-treatment. But these are exceptional cases. They prove

the point that the CHR's powers could be used for actually protecting human rights and preventing abuses.

It is not beyond the Commission's powers to conduct effective investigations, but it must have the organisational competence, the right sense of priorities, and the political will to pursue its proper work. Moreover, investigation and reporting may by themselves contribute to prevention of violations in that the prompt involvement and vigour of action by the Commission can dissuade or deter would-be violators. Based on its investigations, the Commission could also recommend governmental policies and programmes to safeguard human rights.

The granting of prosecutorial powers to the Commission in its present state would not represent a solution to anything.

The leadership

The leadership of the Commission has been ineffective in focusing the organisation's priorities and in using its existing powers. More importantly, there is abundant evidence that the CHR has not maintained its independent status as mandated by the Constitution. Indeed, the evidence demonstrates, and many in the Commission itself believe, that the Chair in particular has tended to side with the military. To the ICJ delegation, the Chair sought to explain clearly established cases of involuntary disappearances by saying that persons have disappeared as a result of internal purges in the NPA. Such statements not only reflect a prejudice about cases being investigated by the Commission, but also discourage human rights victims from seeking the Commission's assistance and Commission staff from pursuing their work with enthusiasm and commitment. Similarly, an official report of the CHR states:

"There are reports that many have voluntarily disappeared or gone into hiding to avoid possible injury or violence against their persons. All these reports are being investigated."

As a statement of fact, this is simply untrue. In any event, it is regrettable that the CHR has chosen to make a value judgment on the complaints, even before completing its own investigations. More importantly, relatives of disappeared persons only file complaints with the Commission when the disappeared person has been arrested or abducted by the military or paramilitary forces or their associated groups. Therefore, the CHR's contention that many have voluntarily disappeared is contrary to the complaints made and the very definition of involuntary disappearances.

The Commission has not encouraged its staff to investigate human rights violations with vigour. In one well known case the Chair of the CHR chose to side with the military against her own staff. This case occurred in July 1989 when the CHR sub-office in Catbalogan investigated the role of the military in the mutilation, rape, and murder of Guarina Celso and Raquel Gortido in Northern Samar. A colonel from Samar is said to have visited the central office and met with Chair Bautista, claiming that the military had no role in the crime. Subsequently, one of the eye witnesses was reportedly brought to Manila at the CHR's expense and pressured to withdraw the complaint. Atty. Leticia Buenaseda, the head of the CHR Catbalogan sub-office, was transferred to another office. She protested and wrote a letter to Senator Wigberto Tañada, Chair of the Senate Committee on Justice and Human Rights, expressing concern about the future of the Samar case. Chair Bautista thereupon instituted proceedings against the officer for "conduct unbecoming of a government official and prejudicial to the service." Atty. Buenaseda was also charged with "grave disrespect and insubordination" for reportedly raising her voice in a meeting with Chair Bautista on 16 February 1990.

The Commission has developed a reputation as an apologist for the government. Some victims are afraid to file complaints because of their perception that the Commission is really a spokesperson for the government. Victims have an understandable fear of the government which often causes their suffering. The interview the ICJ delegation had with the Commission clearly corroborated justification for that attitude on the part of the Chair of the Commission.

Unfortunately, court cases involving the Chair personally have also contributed to further erosion of the CHR's status. At the time of the ICJ delegation's visit, a fifth graft charge was filed against her in connection with her former service with the Presidential Commission on Good Government. Chair Bautista was cleared of the previous four cases but much of the evidence, which received considerable publicity, was very damaging to her stewardship of the CHR and to the CHR itself.

In conclusion, the CHR has failed to generate confidence among victims, their families, lawyers, and politicians interested in human rights, as well as human rights activists. It has not used its powers to protect human rights and seems to have become formal, bureaucratic, and marginal. Most importantly, the Commission -- and particularly its leadership -- has failed to establish its independence from the military and to secure its status as an impartial agency.

New Presidential Committee on Human Rights

Presumably reflecting her own and widespread dissatisfaction with the CHR, President Aquino issued Administrative Order No. 101 on 13 December 1989 creating the Presidential Committee on Human Rights. If the CHR was truly effective, this new committee would hardly be necessary. It is a demonstration of the President's continuing concern for human rights.

The Committee functions as a forum for representatives of various government departments and NGOs to meet and formulate steps to deal with human rights problems. The Committee does not have a secretariat and is serviced by the Department of Justice. The Secretary of Justice chairs the Committee and the other members are the Chair of the Commission on Human Rights, the Presidential Legal Counsel, a representative of the Department of Defence, representatives from both houses of Congress, and two representatives from private human rights organizations.

The Committee has the following duties:

- to assess and monitor the Philippine human rights situation and to advise the President on measures to be taken
- to assist relatives of disappeared persons to locate the disappeared and those believed to be detained illegally
- any other functions that may be necessary to meet the objectives of the committee.

The Committee was reportedly established by the President after a personal appeal by the relatives of disappeared persons to help locate their family members. The Committee, however, now considers all human rights-related problems.

The Committee's programmes for 1990, as approved by its meeting held on 30 January 1990 are:

- to receive monthly reports from the Commission on Human Rights regarding cases filed with the Judge Advocate General's office and the courts
- to monitor and follow up these cases
- to prepare a list of ten priority cases for monitoring
- to direct Provincial and City Prosecutors who have been designated to pursue human rights complaints and requests
- to assist or participate in factfinding missions on a case-by-case basis so as to monitor human rights violations

- to conduct countrywide information campaigns on human rights
- to work for the repeal of P.D. 1850
- to endorse and support the enactment into law of pending bills in Congress providing for a witness protection programs
- to direct the Department of National Defence to submit a list and location of PC/INP and military detention centres throughout the country and the names of detainees confined in such centres.

The Committee has formulated Guidelines on the Visitation of Detainees by Private Physicians. The Committee has also helped in the creation of a Memorandum of Agreement between the Department of Defence and the Medical Action Group (MAG) which would provide access for the delivery of health services to remote rural areas and evacuation centres.

The two NGOs represented in the Committee are the Free Legal Assistance Group (FLAG) and the Philippine Alliance of Human Rights Advocates (PAHRA). The ICJ delegation understands that the monthly meetings of the Committee provide a forum for FLAG and PAHRA to raise specific issues. Constructive dialogue also takes place in the committee meetings. The establishment of the Committee is considered by many as an implicit acknowledgement that the Commission on Human Rights has failed to fulfill its mandate. It is a positive step in the protection of human rights in the Philippines, but is no answer to a properly functioning Commission.

Senate Committee on Justice and Human Rights

Under the 1987 Constitution (Article VI, Section 21), committees of the Senate or the House of Representatives are allowed to conduct enquiries.

Pursuant to this authority, the Senate Committee on Justice and Human Rights under the leadership of Senator Wigberto E. Tañada has conducted two major hearings concerning human rights. The Committee issued its first report in April 1988, after holding hearings on the issues of vigilantes. The second set of hearings was on the general Philippine human rights situation and the Committee issued its report in March 1990. The purpose of the second enquiry was to:

- determine the state of the human rights in the country
- discover who commits human rights violations
- determine how the government, through its agencies, has responded to the demands of the situation

-- propose necessary legislative measures to help the protection and promotion of human rights.

Between December 1988 and July 1989, the committee conducted public hearings in all the regions of the country. Based on the testimonies received, the Committee produced a comprehensive report on the human rights situation in the country and recommended several measures to deal with the problems. It is testimony to many hours of dedicated work and to deepseated commitment.

The Senate Committee report is also an indication that the Philippine legislature can play an important role in investigating the human rights situation and recommending remedial measures. The Senate Committee on Justice and Human Rights, unlike the Commission on Human Rights, appears to have contributed to regaining the confidence of Philippine NGOs in the commitment of the institutions of government to work to alleviate the plight of so many in the country who endure deprivation, fear, and violence.

Conclusions and Recommendations

Human rights are not some abstract theoretical set of legal entitlements. Some terrible human wrongs have occurred in the Philippines in recent years because human rights have been widely violated. In addition to the human suffering they have caused, these wrongs have presented, and continue to be, a major impediment to the Aquino government's quest for consensual, as opposed to merely constitutional, legitimacy.

In view of the unique human rights compact forged by Mrs. Aquino with the Filipino people at the outset of her presidency, the extent and importance of this tragedy cannot be overemphasised. While the primary culprits must be the violators themselves, the findings of the ICJ delegation leave no room for doubt that the majority of these people have been agents of and have been paid and equipped by the state. One of the landmark differences between criminalities of this kind under the Aquino administration and the unpunished excesses of the Marcos period was intended to be the Commission on Human Rights (CHR). The Commission has failed both the President and the people in this regard. The ICJ delegation found that virtually no element of Philippines society has any confidence in the CHR. Without a record of successful prosecutions or a reputation for fierce independence from all elements of the administration, no climate has been created which is conducive to human rights observance and redress for abuses. It is essential to the

peace and unity of the Republic that these failures be urgently addressed and that confidence in the integrity of the system be built.

Human rights investigation and exposure are difficult and essentially thankless tasks. Yet strong and fearless leadership is essential if anything is to be achieved in developing respect for human rights and the attitudinal changes which alone can ensure that respect. First and foremost, the leadership structure of the CHR will require change.

Further, the entire operation of the CHR needs a thoroughgoing review and overhaul, including its philosophies, priorities, complaint handling and investigation, personnel management, administrative structures, and all its procedures.

The CHR was not established to defend members of the armed forces in respect of events occurring while they are performing duty in connection with the insurgency. The CHR should thus accept the view of its predecessor, the Presidential Committee on Human Rights, that regular law enforcement agencies are better suited than a human rights organisation to investigate and prosecute abuses committed by members of the CPP-NPA. To that end, the CHR should concentrate its efforts on complaints against the state, or agencies of or acting in the name of the state. It should not dissipate its efforts by pursuing matters involving non-state entities. It should give priority to the most serious human rights violations and subject them to prompt, expert, and scrupulous investigation.

The CHR should use its existing powers of entry and compulsion with courage and more effectively than hitherto. It should not hesitate to assert its authority over alleged perpetrators of serious abuses. In particular, it should promptly and unhesitatingly enter military, prison, and police complexes whenever there is reason to believe that personnel or records would there be available to assist enquiries into complaints. There should be no reluctance to require the production of official records that might fix the whereabouts and activities of personnel suspected of involvement in human rights violations.

The procedures of the CHR require substantial review to remove formalism and reduce the pressure on victims. The first focus of complaint handling should be to put the alleged perpetrators, not the victims, under investigation. The Commission should, therefore, immediately drop the requirement or practice that complainants sign affidavits before any investigation is begun or action contemplated. In recognition of the position that many complainants are without funds or legal and other support, the CHR should actively investigate the complaints rather than rely

on complainants to develop evidence. It must not place the onus of proving cases on victims. It must accept that complainants and their families are witnesses to what occurred no less than anyone else and must recognise that independent witnesses are quite likely to be fearful of coming forward, especially soon after the events in question. The emphasis should be on examining, not the complaints which are often obvious -- murder, kidnapping, violence, etc. -- but the answers, explanations, and corroboration of the alleged perpetrators.

Delay serves only the interests of those who have violated human rights. The CHR should substantially expedite its complaint handling at all levels and monitor much more closely the progress of cases referred for prosecution. It should more actively assist in the prosecution of cases and should pressure prosecuting authorities for much greater priority to be given to human rights cases.

As presently structured, the CHR is not able to manage an effective prosecution authority although ideally the CHR should possess such authority. Urgent *consideration should, however, be given to the establishment in the Department of Justice or independently, of an Office of Special Prosecutions to prepare and present human rights cases. A specialist human rights tribunal, along the lines of the Sandiganbayan, to try human rights cases should also be considered until at least the large backlog of cases has been significantly reduced.*

The task of compensating victims or providing them with urgent financial relief should be transferred from the CHR to a department or agency of government experienced in such matters.

A proper witness protection programme is essential for the successful prosecution of violators of human rights. Such programmes exist in some countries which may be used as a model for the Philippines.

Senator Wigberto E. Tañada, Chair of the Senate Committee on Justice and Human Rights, is to be commended for the Committee's initiatives and report. The government should take effective measures to implement the recommendations of the Senate Committee.

The Senate Committee may be a suitable body to conduct the reviews of the CHR suggested here. Alternatively, a retired judge might chair a suitable review panel. The Senate Committee should be constituted as a permanent legislative overseer of the CHR and should closely monitor its activities. The CHR should be made fully accountable to the legislature through the Senate Committee.

Chapter 20

Human Rights Organisations

A remarkable feature of Philippine society is the existence of a wide range of nongovernmental (NGOs) or sectoral organisations. During the Marcos period, the existence of active independent NGOs impressed those who followed the events in the Philippines. Despite numerous problems, including arrests and torture, these organisations continued to oppose Marcos and thus contributed to his overthrow. No doubt due to their opposition to Marcos as well as her own commitment, President Aquino gave at the outset enthusiastic outspoken encouragement to their work.

Following are some of the Philippine NGOs engaged in human rights and related work:

Free Legal Assistance Group (FLAG)

The best known lawyers' organisation in the Philippines is the Free Legal Assistance Group (FLAG).¹⁷⁵ Founded in 1975 by the late Senator Diokno, FLAG seeks to foster respect for constitutional rights and the rule of law. It provides legal services to political detainees and human rights victims. FLAG has 14 regional offices with 307 volunteer lawyers of which 200 are active. The national office in Manila has 18 full-time employees, including three full-time lawyers. FLAG handles about 3,000 cases per year.

Other Lawyers' Organisations Including the Protestant Lawyers' League of the Philippines (PLL)

The PLLP was founded in 1980, at the initiative of the Protestant churches. Its aims and activities are similar to those of FLAG in terms of assisting political detainees and human rights victims.

There are several other lawyers' organisations known as Community Centred Legal Resource Groups. These organisations provide valuable services to

¹⁷⁵For a detailed discussion of the problems faced by FLAG lawyers in carrying out their work, see Chapter 17.

disadvantaged sections of society such as the urban poor, fisherfolk, cultural minorities, and the rural poor. The Centre for People's Law (BATAS), the Structural Alternative Legal Assistance for Grassroots (SALAG), the Developmental Legal Aid Centre, the Legal Rights and Natural Resource Centre, and the Paralegal Training Services Centre are all community centred legal resource groups.

Task Force Detainees of the Philippines (TFDP)

TFDP was established in 1974 by the Association of Major Religious Superiors of the Catholic church. It has a nationwide network of 80 regional and local units. TFDP extends its support to political prisoners and other victims of human rights violations through facilitating legal assistance, protest and information campaigns, personal relief and rehabilitation services, and detailed research and documentation services. TFDP offices in various parts of the country document cases of human rights violations by interviewing victims or their relatives. TFDP has documented an impressive number of cases over the 17 years of its work and has an effective network throughout the country which ensures that few human rights abuses go unnoticed.

Other Organisations

KAPATID (Association for the Release and Amnesty of Political Detainees in the Philippines) was established in 1985 in Cebu and brings together relatives and supporters of political detainees to work together more effectively for the release of loved ones.

The Philippine Alliance of Human Rights Advocates (PAHRA) was established in August 1986 and now consists of more than a hundred allied human rights organisations. PAHRA seeks to address the strong demand for respect for human rights and justice to all victims of repression.

GABRIELA is a coalition of women's organisations bringing together about 40,000 women. It works toward the elimination of unjust and discriminatory practices and promotes programs and projects to uplift the condition of women.

PILIPINA, founded in 1981 by women engaged in social-development, works for women's dignity, autonomy, and equality.

There are also sectoral organisations for indigenous peoples, the urban poor, fisherfolk, and others. The labour and peasant unions are discussed in Chapters 3 and 4.

In addition to individual organisations and coalitions of sectoral organizations, there are also issue-based coalitions. Following are some examples of such coalitions:

-- The Congress for a People's Agrarian Reform (CPAR) is a coalition of 12 national organisations of marginalised farmers, subsistence fisherfolk, and peasant women, working toward the enactment of an alternative land reform code in the place of the existing one.

-- The Coalition for Peace advocates for an end to the insurgency through negotiations between the government and the rebels. Its initial aim is to establish Peace Zones at regional and provincial levels as declared by communities within the areas. The communities then lobby for local ceasefires and peace negotiations.

-- Urban Poor Forum is a coalition of organisations working with the urban poor.

In most of these organisations individual members of both the Catholic and Protestant churches play an active role. Furthermore, church-related organisations are also engaged in various social and development programmes.

This small sampling exemplifies the existence of a wide range of organisations undertaking many diverse programmes.

The Approach of the Government to NGOs

During the Marcos period, the relationship between NGOs and the government was antagonistic. The government considered NGOs its enemies. Its belief was in essence correct.

With the advent of the "People's Revolution," NGOs expected that their role would be recognised and that they would become more effective in pursuing their goals. Many NGO representatives initially joined the new government. President Aquino's initial appointments to her administration and to the Constitutional Commission indicated her faith in NGOs and other people's organisations. The 1987 Constitution also acknowledged the "Role and Rights of people's organizations" -- a provision which did not exist in the previous two constitutions. The present Constitution guarantees that the role of these organisations must be respected "to

enable the people to pursue and protect . . . their legitimate and collective interests and aspirations through peaceful and lawful means. . . ."

The 1987 Constitution also recognised the right of organisations to participate in social, political, and economic decision-making. Further, the government promised to consult these organisations on certain issues. The collaborative relationship between NGOs and President Aquino's administration, however, did not last long. According to Alexander R. Magno, a Filipino social scientist:

"The lingering insurgency and the counter-insurgency posture adopted by the new government have presented the non-revolutionary people's movements with peculiar difficulties. The government's counter-insurgency effort includes the deployment of often unwieldy "vigilante" groups and the extensive militarization of the countryside. This effort has effectively reduced the democratic space for mass organizing and has invited numerous human rights violations."¹⁷⁶

The military's attitude toward NGOs was determined by its perception that:

"the new democracy is being exploited by the CPP/NPA/NDF to infiltrate the different sectors of society to win them into the so-called National Democratic Front. Their targets for propaganda include: the peasants, laborers, professionals, students, and youth, and the media, government and religious sectors."¹⁷⁷

Inevitably, organisations that took up the cause of different disadvantaged sectors of society were suspected of supporting the CPP-NPA. Human rights organisations, documenting violations by the military, and human rights lawyers who defended the rights of victims, became the most suspect. Indeed, in October 1988 Defence Secretary Fidel V. Ramos stated that cause-oriented groups form the "underground structure" of the Communist Party of the Philippines. He said that this "underground structure" is composed of "civic organizations operating within the bounds of the law and which could generate funds, get recruits, get propaganda and which continue to produce NPA followers to replace those killed or neutralized by the military." Ramos

¹⁷⁶Alexander R. Magno, Between Advocacy and Opposition: The Popular Movements Two Years After the Philippine February Revolution, 4 *Philippine Quarterly of Third World Studies* No. 1 (1989).

¹⁷⁷Department of National Defence Information Kit.

also stated that the thrust of the military is to dismantle the structures which compose the front network of the CPP-NPA. Similarly, in December 1988, the then Under-Secretary of Defence Fortunato Abat stated that there are plans to "outlaw cause-oriented groups suspected of being communist fronts."

Similar allegations were made in international forums by Filipino government representatives. For example, at the February 1990 meeting of the United Nations Commission on Human Rights, a government representative criticised Filipino groups for submitting their reports to various international bodies. Somewhat ingeniously, the representative said:

"... one suspects that either these reports and statistics are inaccurate or that the submission of these reports directly to international fora is part of a hidden agenda known only to them."

Suspicion against church workers

The churches played a major role in the ouster of Marcos. Numerous church organisations continue to be active in human rights and other related issues. Church organisations, therefore, are also suspected of being CPP-NPA fronts. For example, in September 1988, Col. Apolinario Castano (VISCOM - Visayas Command) publicly stated that 1,000 priests and nuns were "guerilla commanders of the NPA in the Visayas."¹⁷⁸

According to a report published in the Far Eastern Economic Review:

"The military mindset is that church workers either have direct links with the NPA or have been duped into work which benefit its activities -- either political or military. However, it has been careful, not to attack the church as an institution and even less the bishops as a group, but rather those it considers to be progressive and therefore dangerous."¹⁷⁹

In order to deal with the problems between the military and the Church, the AFP formed the Church Defence Consultative Conference (CADENCE) in June 1988.

¹⁷⁸ Manila Chronicle, 12 September 1988.

¹⁷⁹ John McBeth, Critical Solidarity, Far Eastern Economic Review, 1 June 1989.

Wary of giving an impression that an alliance was forged between the military and the church, however, the Catholic bishops disclaimed membership in CADENCE. Nevertheless, the military's categorisation of some Church groups, as well as individual nuns and priests, has had an effect on both the Church leadership as well as the public at large. Cardinal Sin himself told the ICJ delegation that he believes some of his clerics are communists or at least fellow travellers.

Views expressed by high level military officers to the ICJ delegation confirm that the military considers some NGOs front organizations of the CPP-NPA. The military leadership considers other groups legitimate but infiltrated by the CPP-NPA and only some that really help people. The NGOs as well as church organisations believe that this labelling by the military is unjustified. According to Fely Cariño, the General Secretary of the National Council of Churches:

"Simply because some church bodies have taken up positions that conform with those of the NDF does not mean they are part of that front."¹⁸⁰

A major criticism made particularly against human rights organisations by the military is that they do not monitor the abuses committed by the NPA rebels and are therefore biased against the military. This view is not corroborated by interviews conducted and information collected by the ICJ delegation. Not only do human rights NGOs not condone abuses committed by NPA rebels, they consider such abuses to be violations of the Philippines' international obligations under human rights and humanitarian law and to represent positive hindrances to the release of the people from their current plight. Their attitude is that respect for human rights by the military and the implementation of development programmes to relieve poverty would contribute to ending the cycle of violence. Violations by the rebels do not justify violations by the military and vice versa. The NGOs report that the victims with whom they work would prefer an end to the fighting and the violations rather than a political debate on the identity of perpetrators.

The politicisation of human rights and the labelling of NGOs as communist fronts has resulted in church workers and NGO representatives themselves becoming victims of human rights abuses. Vigilante groups associated with the government particularly target human rights workers. "Unable to engage the NPA, the vigilantes found their

¹⁸⁰Id.

victims among legal cause- oriented organizations."¹⁸¹ Bishop Antonio Tobias of Pagadian, expressed the views of church workers by stating: "We cannot speak our minds without being harassed, tortured or even killed."¹⁸² During the period between February 1986 and November 1989, a total of "162 church people were killed of whom 15 were priests or pastors, 3 nuns, 67 lay church workers and 77 were lay people."¹⁸³

The killings of Pastor Vizminda Gran and her husband Lovella Gran, Sr. by unidentified armed men on the evening of 1 May 1989 at around 7 p.m. are examples of the human rights violations directed at church workers. At the time, their children were watching television with their friends and the couple were resting in the bedroom on the second floor. Bryant, a boy from the neighbourhood, was forcibly taken by several armed men and made to knock at Pastor Gran's door. One of the Gran children in the front room opened the door slightly. She called her father. When he was near the stairs, four men with armalite weapons and one with a short firearm pushed open the front door and entered. Without warning, the man with the pistol fired at Mr. Gran Sr. Upon hearing the shot, Pastor Gran ran down and was met with a hail of bullets. To make sure she was dead, the men also shot several rounds at her head.

Pastor Gran was well known for her human rights work and unsuccessfully ran for Congress in 1987 as a candidate of the Partido ng Bayan (People's Party). Prior to her killing, she received several death threats in letters placed in front of her church. Those letters accused her of being a member of the NPA and said that she would be killed. The immediate reason for her killing was reportedly the assistance she provided to evacuees who fled from an area considered an NPA stronghold.

The police investigation conducted after the killing of Pastor Gran and her husband determined that one of the firearms used in the killing was an M-16 assault rifle which had been issued to a CAFGU commander. Subsequently, Agne Yap, a commander of the CAFGU and three other unknown conspirators were charged with double murder and robbery. Agne Yap was arrested and is being held in custody

¹⁸¹ Alfred W. Meloy, Demystifying LIC, 4 Philippine Quarterly of Third World Studies No. 3 (1989).

¹⁸² See note 179.

¹⁸³ Parables and Miracles, 4 Promotion of Church Peoples Rights No. 1.

awaiting trial. Agne Yap is the brother of the local Mayor Agapito Yap. The Justice Department has assigned State Prosecutor Barrios to prosecute the case.

The trial was scheduled for October 1990 at the Regional Trial Court, Branch 13, in Oroquieta city. The relatives of the deceased told the ICJ delegation that they are concerned about the Mayor's influence in the city and would prefer a change of venue. According to the relatives there have been several attempts to discourage them from pursuing the case. The judge before whom the case is listed is reported to have asked a lawyer from Manila: "What is the purpose in pursuing the case when nobody can identify the perpetrators?" The Protestant Lawyers' League considered filing a motion at the Supreme Court to change the venue to ensure that the Yap family cannot influence the trial or intimidate the witnesses.

Evidence received by the ICJ delegation indicates that members of NGOs are facing frequent threats and are functioning under pressure. Yet many arms of government continue to stress the important role of NGOs in achieving social and economic progress. The attacks against NGOs and church workers totally contradict the views of various government departments that they need the assistance of NGOs to implement their programmes. For example, the Department of Agriculture's Plan Document 1990-1995 states: "Government programs have given very little attention to the development of farmer's and fisher's organizations in order to help build the social infrastructure needed to participate and share more in the development task."

Similar views on the need for NGOs have been made by the Department of Agrarian Reform, the Department of Health and Social Welfare, among others. President Aquino herself announced the formation of Kabisig or Linking Arms Movement on 12 June 1990. By creating an NGO herself, the President has acknowledged the role of people outside the government. Moreover, it is ironic that NGOs are branded as communist fronts during President Aquino's administration, since she herself was accused by Marcos of supporting the communists. It is widely believed, however, that more concrete measures are needed by the government to "win back the NGOs whom Aquino effectively abandoned four years ago."¹⁸⁴

Conclusions and Recommendations

Despite their vital role in overthrowing Marcos and reestablishing democracy, nongovernmental organisations face problems from the military or groups

¹⁸⁴Far Eastern Economic Review, 5 July 1990.

associated with the military. People who take up the cause of the disadvantaged are themselves labelled subversives and are then susceptible to attack by the forces of the state. Yet many nongovernmental organisations continue to play an important role in promoting human rights and social justice and demonstrate great courage and persistence in their work.

The military accuses many NGOs of being "communist fronts". These allegations are often unjust and unjustified. The identical activities many carry out would, if pursued in most other democratic countries, be quite unexceptionable and might even go unnoticed. Yet because of the military's labelling of them in the Philippines, NGOs have become significant targets for human rights violations perpetrated by military and military associated groups.

Nongovernmental organisations deserve and should be given a strong unequivocal reaffirmation of the support of the President, her administration, and the military authorities. Such support will help address the problem of the polarisation in Philippine society, give renewed confidence to the organisations and their leaders and provide the people with a sense of protection from the violence, fear, and deprivation which mark their daily lives.

Chapter 21

Freedom of Religion and Expression

International Standards on Freedom of Religion

The Universal Declaration of Human Rights (Articles 2 and 18) proclaims the right of freedom of religion. Article 2 states: "Everyone is entitled to all the rights and freedoms . . . without distinction of any kind, such as . . . religion."¹⁸⁵ Article 18 declares: "Everyone has the right to freedom of thought, conscience and religion" and includes the right to change and manifest religion.¹⁸⁶

The International Covenant on Civil and Political Rights also protects the right to freedom of thought, conscience, and religion as a non-derogable right, which must be respected even in states of emergency (Article 4(2)).¹⁸⁷ The only limitations on the freedom to manifest religion or belief are those prescribed by law as "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." (Article 18(3)).¹⁸⁸ The right to believe or to be free from discrimination on the ground of religion is without limitation.

On 25 November 1981, the United Nations General Assembly adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The Declaration forbids discrimination on the basis of religion or belief and assures rights to worship, establish religious institutions, observe

¹⁸⁵ Universal Declaration of Human Rights, adopted Dec. 10, 1948, GA res. 217A (III), UN Doc. A/810, (1948).

¹⁸⁶ Id.

¹⁸⁷ International Covenant on Civil and Political Rights, Dec. 16, 1966, GA res. 2200A (XXI), 21 UN GAOR, Supp. (No. 16), UN Doc. A/6316 (1966), entered into force Mar. 23, 1976.

¹⁸⁸ Id.

religious holidays, teach religion, and designate appropriate religious leaders.¹⁸⁹ The Declaration also forbids religious discrimination.

The Current Philippine Situation

The 1987 Philippine Constitution provides for the free exercise of religion and prohibits discrimination on the basis of religion.¹⁹⁰ Article II, Section 6 also provides for the separation of Church and State.¹⁹¹

Roman Catholicism was introduced by the Spanish and is the principal religion of the Philippines. Until this century, Roman Catholicism controlled the educational, social, cultural, and political life of the Filipinos, through various religious orders. Church and State were not separate institutions. In reaction to abuses committed by some of the Spanish religionists, a Protestant community also developed. This community was strengthened when the United States annexed the Philippines and Protestant missionaries took charge of the educational system. In the Southern Philippines there remained a strong Muslim population who were never fully colonized by the Spanish. In addition, a small Jewish community developed. Three centuries of Roman Catholicism, however, ensured that the Catholic religion would remain dominant.

In the Philippines today, freedom of religion is recognised and upheld. Religious denominations have no problem establishing themselves and each religious community has the right to practise its religion without fear of suppression or punishment although they must all confine their practice to traditional religious rituals. When members of any denomination encourage community development projects or protect human rights, they become potential victims of human rights violations. For example, a Catholic bishop, several nuns, and priests in Negros who were promoting the rights of internal refugees received death threats. In 1988, two Protestant deacons were

¹⁸⁹ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted on Nov. 25, 1981, GA res. 36/55 (1981).

¹⁹⁰ Article III, Section 5.

¹⁹¹ Article II, Section 6: "The separation of Church and State shall be inviolable."

arrested, tortured, and killed by a group of soldiers and vigilantes. The military insisted that the deacons were members of the NPA killed during a gun battle.

Layworkers are also targets of abuse. Basic Christian Communities (BCCs) are small organisations of Philippine Christians established in areas inaccessible to priests/pastors where lay people are trained to supervise religious activities and to use the Bible in analysing the problems of the community. Aside from religious work, BCCs also initiate community development projects. In Negros, the military accused the BCCs of being sympathetic to the insurgency. As a result, leaders of BCCs have been victims of extrajudicial executions, abductions, and massacres. Several examples of these human rights violations are found in other parts of this report. Chapter 19 describes other abuses against church workers.

A second problem is the inordinate amount of leverage held by the Roman Catholic Church over public policy. Current Philippine laws prohibit divorce and abortion consistent with and influenced by Roman Catholic views. The national population control program was stalled in 1986 for two years. As mentioned in Chapter 2, Social Welfare and Development Secretary Mita Pardo de Tavera, in urging the government to stall the program, stated that "[t]he creation of new life involves religious and spiritual values that the government should not interfere with." These religious and spiritual values were Catholic views, since Ms. Pardo de Tavera was herself a devout Catholic and received support from the Catholic hierarchy.

The power of the Catholic Church is evidenced by current features of Philippine society. For example, the monument to commemorate the EDSA Revolution is a statue of Mary, primarily a Catholic symbol. Anniversary ceremonies of the EDSA Revolution include a Catholic mass with a Protestant church leader only invited to make a short statement. Only Christian holidays are recognised. The Muslim community has registered protests against the lack of recognition of Islamic holidays and days of rest.

In addition, the educational system favours Catholicism. Private schools are often run by Catholic religious orders. In government as well as private schools, Catholic prayers are recited and Catholic books used. "Values Education," a developing aspect of the Philippine educational curriculum, primarily furthers Catholic values.

In addition, there has been a long-standing conflict in Mindanao between Christian settlers and the Muslim population, who were the original inhabitants of the island. The disputes are over land claims or involve property rights, but the confrontations are often drawn on religious lines.

Many of the other religious groups seek equal recognition with the Catholic Church or at least a position where the Catholic Church is not accorded greater influence than the other denominations.

Freedom of Expression

The 1987 Constitution (Article III, Section 4) guarantees the right of freedom of speech, expression, and of the press. Article III, Section 7, guarantees the Filipino people's right to access to information "on matters of public concern." In addition, the Philippines is bound by the International Covenant on Civil and Political Rights, which guarantees the right to freedom of opinion and expression.

There are currently 31 daily newspapers published in Manila and about 240 weekly newspapers published in the rest of the country. The breadth of coverage and the aggression shown by some is testimony to the country's general compliance with its legal obligations in this respect, as well as the courage of some journalists and their editors. Philippine journalists contend, however, that a policy of self-censorship is maintained and encouraged. Internal memoranda within newspaper offices request media personnel to "tone down" or "play safe."¹⁹² The existence of self-censorship would seem to explain why major newspapers often tend to report counter-insurgency efforts without mentioning related human rights abuses. Indeed, many media reports appear to contain little more than government press releases and do not reflect independent investigation of the events or the contrary views of human rights, church, and other informed organisations.

There are a number of government and privately owned television and radio stations. Radio stations are monitored by the National Telecommunications Commission (NTC) and the Association of Broadcasters in the Philippines (*Kapisanan ng mga Broadkaster sa Pilipinas* or KBP).¹⁹³ Films and television programmes are subject to review by the Movie and TV Review and Classification Board, which can censor material which "undermine[s] the faith and confidence of the people in their government" or "incites subversion, insurrection, rebellion or sedition against the

¹⁹²Article 19 World Report, Philippines (1990).

¹⁹³Id.

state."¹⁹⁴ According to a report by the international watchdog organisation, Article 19,¹⁹⁵ censors prohibited the showing of an episode of "The Filipino Mind" concerning the urban poor. The film "The Last Temptation of Christ" was also banned.

There are several overt restrictions on the print media. For example, both Philippine and foreign journalists must be accredited by the International Press Centre, under the Office of the President, before they are allowed access to government events and information. Various governmental offices have also begun to require press cards for coverage of specific matters or events. Philippine journalists believe that these requirements can be used to limit the access to information of certain reporters the government perceives as "left-leaning."¹⁹⁶

The 1987 Constitution (Article VII, Section 18) allows restrictions on freedom of expression during "rebellion" or for "public safety." The attempted coups d'etat have apparently triggered such restrictions. Furthermore, in response to the numerous coup attempts, Congress passed Republic Act 6826 on 20 December 1989 (also known as the National Emergency Law) which allows the President to take temporary control of any private business "affected with public interest." This provision applies to the media.¹⁹⁷

Even more disturbing is the number of journalists who have been killed since 1986. According to the Philippine Movement for Press Freedom, the average number of slain journalists has risen from 2.3 per year in 14 years of President Marcos' administration to six in the first four and a half years of President Aquino's administration. Journalists have also reported cases of abduction, torture, physical and verbal harassment and threats by members of the military.¹⁹⁸ To address this

¹⁹⁴ Id.

¹⁹⁵ Id.

¹⁹⁶ *Is the Pen Mightier than the Sword of Damocles?*, A report submitted by the Philippine Movement for Press Freedom (PMPF) to the ICJ, 16 September 1990.

¹⁹⁷ See note 192.

¹⁹⁸ See note 196.

situation, the National Press Club and representatives of the military signed a bilateral memorandum of understanding on 14 September 1990 to protect the rights of journalists.¹⁹⁹

Conclusions and Recommendations

Although Philippine law guarantees freedom of religion and the government generally allows free practice of different denominations, there are problems of discrimination against non-Catholic communities which need to be addressed.

Freedom of expression exists and many newspapers and other media compete for public attention. Nonetheless, the freedom of the press is impeded by some administrative and military practices. These problems should be addressed by the relevant authorities.

¹⁹⁹ Id.

Conclusions and Recommendations

General

President Aquino and her administration have restored institutional democracy, have introduced institutional safeguards to protect human rights, and have repealed most of the repressive decrees and laws promulgated during the rule of President Marcos. Nonetheless, the solemn compact on these matters between President Aquino and rank and file Filipinos, as manifested in particular in the overwhelming support of the people spontaneously expressed during the People's Power Revolution of February 1986, has not been fully honoured by the administration so as to achieve social justice and maximum protection of human rights. In consequence, after the initial expectation and hope, a sense of disillusionment now prevails.

Economic and Social Conditions

The overthrow of Marcos and his associates revitalised the economy and contributed to an increase in the economic growth rate. Several natural calamities, the Gulf crisis, and the nation's debt burden have severely affected the economy, further impoverishing those who are already poor. Pervasive inequality and poverty remain, as they have always been, the major causes of social and political tensions faced by the country.

The Philippines is unable to educate and house its population adequately. Millions live in substandard accommodation without fresh water, sewerage/septic systems, and healthy food. Many lack adequate education and health care. The government must address these problems urgently and explicitly. The people must be able to see, not merely hear, that the problems are uppermost in the government's and the legislature's concerns.

In view of the complexity and seriousness of the debt burden, it is essential that the government strive for maximum consensus at the national level and seek international assistance and cooperation to deal with the problem. The international community must respond to the debt burden promptly and sympathetically, so as to find a solution that would reduce its effect on the people. It should assist the Philippines in its efforts to recover moneys pilfered by Marcos and his associates. In view of the benefits gained by the countries in which such moneys were invested, a substantial forgiving of foreign debt to the Philippines should be urgently considered.

and a moratorium on interest and principal repayments voluntarily granted in the meantime.

Employment and Labour

Although the previous restrictions on freedom of association and on trade union rights that existed under Marcos have been removed from the labour code, the government has still not taken the actions recommended by the International Labour Organisation (ILO) and the Philippines Senate Committee on Justice and Human Rights. The government should take urgent steps to implement those recommendations and to curtail the disappearances, arrests, and harassment of unionists attempting to represent the interests of their colleagues and fellow members.

Trade union leaders and workers are targets of attack by the military, paramilitary forces, and related vigilante groups. Trade union activists are among the main victims of abduction and disappearances. Members of the Kilusang Mayo Uno (KMU) or those belonging to its affiliate unions are the most affected. The government should take measures to prevent human rights violations against unionists by the military, paramilitary forces, and related vigilante groups.

The government should amend existing provisions of the Labour Code that are inconsistent with standards set by the ILO. For example, the government's ban on strikes should be limited to situations which endanger the life, public safety, or health of the population. Penalties for illegal strikes should be reduced. The government should conduct a full review of Republic Act 6715 in the light of ILO criticisms.

Complaints of human rights violations against unionists should be promptly and vigorously investigated and the perpetrators brought to justice.

There is an urgent need for an independent high level judicial review of the case of Jaime Tadeo whose conviction and continued incarceration appear to infringe basic concepts of natural justice and the Constitution.

Land Reform

Land rights and reform for farmers were among the major mandates and promises of the Aquino administration, and constituted an unmistakable compact between the President and the people. The government has enacted the Comprehensive Agrarian Reform Program (CARP), which is a breakthrough in comparison to the previous attempts at land reform programmes.

Agrarian reform is, however, proceeding too slowly; the procedures are too complex and real reform is too easily diverted by landowners and others seeking to avoid the distribution of land to the peasants. The programme has also suffered from frequent changes in leadership. In addition, the strong resistance to the programme by substantial landowners has frustrated progress. The administration and Congress have failed to remedy these problems and in some cases have actually contributed to them. The consequences have been continuing poverty for rural workers, increasing dissent, and a strong belief in large numbers of the population that the government is not determined to carry out its obligations in this area. The administration has failed to harness the full support of beneficiaries for the effective implementation and monitoring of the programme.

An urgent inquiry into the successes and failures of CARP, should be established, led by a respected individual such as a former Supreme Court Judge with sympathetic expertise in this subject, and staffed by experts committed to thorough land reform. The inquiry should be given the power to punish for contempt those who do not cooperate with its deliberations and requirements. The inquiry should be required to report within a suitably brief period, such as six months.

Efforts should be made to implement the spirit as well as the letter of CARP by a fearless and courageous implementation of its provisions in accordance with the constitutional mandate. These efforts will require stability and honesty in its administration and a clear cut brief to the administrators. The President should emphasise both by words and actions her continuing commitment to honour her many pledges in these regards.

Cultural Minorities

The creation of Autonomous Regions in Muslim Mindanao and the Cordilleras represent positive measures indicating that the present government is concerned and serious about dealing with the problems of minorities.

The continuation of indiscriminate logging and mining of tribal areas, however, disregard the rights of indigenous peoples.

Similarly, human rights violations continue in areas occupied by indigenous peoples and they are particularly affected by forced evacuations.

These violations should be stopped. The government should evolve a comprehensive policy for establishing the rights of indigenous Filipinos to land and

natural resources. The government should also reevaluate its present development policies in tribal areas and involve tribal Filipinos and their organisations in the formulation and implementation of such policies.

Women

The preparation of a comprehensive document on women identifying the problems and policies to be undertaken is a welcome new development. The failure to ensure and achieve the full and prompt implementation of this plan is a violation of, or at least inconsistent with, the constitutional provision (Article 11, Section 14) which states: "The state recognizes the role of women in nation building, and shall ensure the fundamental equality before the law of women and men."

In the Philippines there does not appear to exist any effective agency charged with the responsibility of addressing discrimination against women and particularly redressing violence against women. An agency for equal opportunity should be created, funded, and staffed for these purposes.

Urban Poor

The urban poor comprise about 4 million households in the country. They live in deplorable conditions, and are subject to numerous human rights violations. In particular, the demolition and dislocation of squatter settlements continue unabated.

The practice of demolishing and evicting urban poor settlements should be discontinued. Where people have been illegally evicted, compensation should be provided to the victims and they should also be provided proper alternative sites.

The government should repeal Presidential Decree 772 which makes squatting a criminal offence and should enact a new law to take into account the genuine problems of shelterless urban poor communities.

The government should implement the short term measures proposed by the Urban Poor Forum and should fully involve representatives of urban poor organisations in the formulation and implementation of policies on urban planning and development.

Children

All reports of child abuse outlined in the report should be investigated by relevant

governmental, nongovernmental, and international agencies. The government should urgently establish an independent agency for the protection of children to investigate and monitor abuses against children and to provide for their protection and welfare. The perpetrators of the abuses should be called to account and promptly brought to justice. The provisions of the United Nations Convention on the Rights of the Child should be implemented.

Military

Philippine society continues to be highly militarised. Such militarisation constitutes a threat to democratic civilian control over the government. Several coup attempts mounted by sections of the armed forces have also threatened the democratic framework that was reinstated after the February 1986 revolution.

The government should implement the recommendation of the Philippine Senate Committee on Justice and Human Rights that the Special CAFGU Active Auxiliary units (SCAAs) be disbanded because of their record of human rights violations.

The government should forbid any joint military activity with vigilante groups. These groups should be refused all financial training and weapons assistance from any government source, and should be disarmed and disbanded.

The civilian police should be completely separated from the Armed Forces of the Philippines, established and protected by its own legislation, and placed under completely independent leadership. Police pay should be increased to attract better quality recruits and to minimise corruption.

Common Article 3 of the Geneva Conventions for the Protection of Victims of Armed Conflict and Additional Protocol II to the Geneva Conventions should be declared applicable to the current conflict in the Philippines -- particularly in light of the humanitarian purposes of those treaties to protect civilians and others not directly involved in the conflict from violations of their most basic rights.

Torture

There appears to be a consistent pattern of torture and ill-treatment by military and particularly intelligence personnel in many areas of the Philippines. The pattern indicates that the lower the social status of the accused, the greater are the chance and severity of ill-treatment.

The government should comply with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In particular, the government should investigate all complaints or other information indicating that torture or ill-treatment has occurred. The government should ensure that all those responsible for torture or ill-treatment are brought to prompt and effective justice.

Disappearances, Abductions, and Kidnappings

Under the Aquino administration a significant number of people have been abducted and kidnapped. Many of the victims have disappeared altogether and must be presumed dead. The government appears unable or unwilling to put an end to these practices which can in many cases be unmistakably attributed to military officers or associated groups. No mechanism functions to obtain information about the whereabouts of such people. The military is not required to produce relevant officers or their notebooks and other written records to verify their involvement at the relevant times. The police regularly refuse to investigate disappearances and the Commission on Human Rights rarely does so.

The obligations of the Philippines under international law are regularly flouted by this conduct and neglect. Procedures should be immediately put in place to enable prompt investigation after a kidnapping is reported. Prosecution of offenders should follow detention. The military's supply of relevant information should be made compulsory and immediate.

Summary and Arbitrary Executions

The cases of summary and arbitrary executions discussed in the report are indicative of many others documented by the ICJ delegation, which met the families of many victims and some witnesses to the events. Yet no one appears to have been required to answer for any one of them. The people can have little confidence in their system of government and respect for the rule of law while such conduct persists and goes unpunished.

Chapter 10 of this report recommends the disbanding of all vigilante groups and the separation of the civilian police from the military. Chapter 18 calls for the repeal of Presidential Decree No. 1850. Chapter 19 suggests a substantial overhaul of the Commission on Human Rights. Pending these developments, there is an urgent need to establish a strong and competent team of independent and trained persons to investigate the murder and serious wounding of civilians by military, paramilitary, and

police forces. Internal investigation of such occurrences has been proven elsewhere in the world to be quite unsatisfactory. The current militarised state of the Philippines makes it even more inappropriate there.

With the repeal of P.D. 1850, the perpetrators of such heinous crimes should be brought promptly to trial before the ordinary courts of justice. Priority should be given to such trials as a means of demonstrating that the organs of the state are determined to protect the people and to bring serious violators of the law to account.

Forced Evacuations

Evacuations, hamletting, and the deliberate creation of "internal refugees" should be stopped.

If evacuation of civilians is undertaken for "imperative military reasons", the authorities should ensure that:

- civilians are prepared sufficiently prior to such evacuations
- the evacuees are enabled to take as many of their possessions with them as possible, especially those needed to assist them to earn an income
- particular care be taken that the homes and lands evacuated and the property and possessions left behind are protected
- civilians are provided at the evacuation centres with adequate food, sanitation facilities, and medical care
- access to the evacuation centres are provided to NGOs so they can give the necessary social services to the evacuees and to the Commission on Human Rights so that violations of human rights can be reported and expeditiously investigated
- adequate compensation is provided for loss of life or property resulting from evacuations
- security and assistance is provided on their return so as to enable them to resume a normal life as soon as possible.

Criminal Law and Procedures

The Philippine criminal law and procedure is characterised by excessive technicality and formality unsuited to the society in which it operates. In order to improve its efficiency and fairness, the following recommendations are made:

1. The procedure in criminal cases of requiring affidavits from accused people whose innocence is supposed to be presumed is inherently unjust and is particularly unfair in the present state of Philippine society. It should be urgently reviewed and reformed.

2. In the interim, there should be a judicial mechanism to test the validity of affidavits before trial without putting the burden of proof on the accused. For example, the courts should either establish preliminary hearings to test affidavits or require investigation by truly independent fiscals.

3. If affidavits supporting criminal charges are found to be manifestly unsupported and false, the persons responsible should be brought to justice for perjury. Prosecutions for perjury should take place to discourage the faking of affidavits.

4. Statements obtained through coercion or duress should not be allowed into evidence.

5. Greater protection from threats, risk of interference, or other forms of duress should be given to witnesses and to the accused persons themselves.

6. There should be some court official responsible for ensuring that detainees are arraigned, charged, and permitted to post bail, so they do not remain in jail for prolonged periods of time. Those detainees held without charges should be released immediately.

7. No person held on a bailable offence who is genuinely unable to raise bail should continue to be held in custody without a review by a court of the bail conditions.

8. The courts should strictly implement the rules relating to continuous trials so that trials are held without interruption for interlocutory appeals. Appeals in interlocutory aspects of criminal trials should not be permitted except in the most extraordinary circumstances. To address the huge backlog and delays in trials and appeals, more judges and acting judges should be appointed. Senior and experienced trial lawyers could volunteer or be recruited on a roster basis, as is done in other countries, to serve as acting judges. Civil and commercial disputes should be referred to arbitration or other alternate dispute resolution to clear the court dockets of matters not involving the liberty of the subject or human rights, at least until the backlog is substantially reduced. The legal profession should examine its own practices and, in conjunction with the judges, establish procedures designed to shorten the time

between the arrest and trial of persons charged with criminal offences or for cases involving human rights abuses.

9. There have been no or almost no prosecutions of such cases in the five years of the existence of the Commission on Human Rights, despite the thousands of complaints it has received and processed. Special provision should be made, perhaps in a special court or tribunal, to try cases of human rights violations promptly.

10. The Philippine authorities, with the assistance of human rights lawyers and activists, should undertake a study of the practice of amicable settlements in criminal and human rights cases and evolve measures to pursue prosecutions where justice requires punishment for offenders.

11. A Criminal Law and Justice Inquiry should be urgently established to examine all aspects of the criminal justice system. The inquiry should be headed by a respected individual such as a former Supreme Court Judge with a particular interest in civil liberties, should be staffed by lawyers with similar concerns and experience, and should perhaps include one foreign judge or lawyer. The inquiry should focus on the way in which legal procedures, the legal profession, and the courts are failing to provide equality before the law, and fair, impartial, speedy and independent justice. The inquiry should be required to report within a suitably brief period, for example, six months.

12. The government should submit to Congress, or Congress should initiate, legislation to overcome the effects of the Supreme Court decisions in Umil v Ramos and Ilagan v Enrile. P.D. 1866 should be repealed or revoked.

Independence of the Judiciary and Legal Profession

To reduce its backlog and lighten the intolerable load on its judges, the Supreme Court should limit the cases it decides to matters of national importance. The Supreme Court should also reduce its backlog considerably through procedures similar to continuous trials.

Continuing education of judges is important as is periodic review of their performance and handling of their caseload. A judicial commission should be established to ensure and oversee these needs.

The government should ensure that all persons who kill, threaten, and harass judges and human rights lawyers are vigorously investigated and prosecuted.

The legal profession should take steps to protect, defend, and support human rights lawyers from killings, threats, and harassment. The legal profession should also raise its voice against all human rights violations and play a more active part in promotion and protection of human rights.

The Integrated Bar of the Philippines (IBP) and all bar associations should have functioning committees for human rights and defence to receive, examine, and report promptly on all complaints by lawyers of abuses of their human rights by military, paramilitary, and police forces. The violations should be immediately prosecuted at the initiative of bar associations where a prima facie case is found. A benevolent fund should be established by the IBP, funded by a levy on its members, to assist lawyer victims of abuse and their families.

It should be a professional requirement for all trial lawyers to accept briefs in cases involving human rights abuses. If necessary, these briefs should be undertaken without fee. Alternatively, a Legal Defence or Human Rights Fund could be established, funded by a levy on lawyers, to ensure the availability of legal representation in appropriate cases. Lawyers who refuse to participate in such schemes should be subject to disciplinary procedures.

Presidential Decree No. 1850

Presidential Decree No. 1850 should be repealed so that jurisdiction over human rights abuses by military personnel can be exercised by civilian courts. Meanwhile, Presidential waivers should be granted in the current and future cases so that civilian trials can proceed promptly. The Justice Department should provide a competent prosecution team to ensure that the cases are fully investigated and vigorously pursued.²⁰⁰

The Supreme Court of the Philippines should be given jurisdiction to review decisions of courts-martial especially on serious offences, and decisions by military authorities not to prosecute members of the Armed Forces or Constabulary of major

²⁰⁰After the present ICJ report was submitted to the government of the Philippines, but just before it was printed, this recommendation was implemented by the adoption of Republic Act No. 7055 on 20 June 1991, repealing Presidential Decree No. 1850 and returning to the civil courts jurisdiction over most offences committed by the military, the Philippine National Police, and other persons subject to military law.

human rights violations. The rights to fair and speedy trials should extend to trials by court-martial and should be enforceable in the civilian courts at the instance of any person with an interest in the outcome such as a victim or the family of a victim.

Commission on Human Rights

Human rights are not some abstract theoretical set of legal entitlements. Some terrible human wrongs have occurred in the Philippines in recent years because human rights have been widely violated. In addition to the human suffering they have caused, these wrongs have presented, and continue to be, a major impediment to the Aquino government's quest for consensual, as opposed to merely constitutional, legitimacy.

In view of the unique human rights compact forged by Mrs. Aquino with the Filipino people at the outset of her presidency, the extent and importance of this tragedy cannot be overemphasised. While the primary culprits must be the violators themselves, the findings of the ICJ delegation leave no room for doubt that the majority of these people have been agents of and have been paid and equipped by the state. One of the landmark differences between criminalities of this kind under the Aquino administration and the unpunished excesses of the Marcos period was intended to be the Commission on Human Rights (CHR). The Commission has failed both the President and the people in this regard. The ICJ delegation found that virtually no element of Philippines society has any confidence in the CHR. Without a record of successful prosecutions or a reputation for *fierce independence* from all elements of the administration, no climate has been created which is conducive to human rights observance and redress for abuses. It is essential to the peace and unity of the Republic that these failures be urgently addressed and that confidence in the integrity of the system be built.

Human rights investigation and exposure are difficult and essentially thankless tasks. Yet strong and fearless leadership is essential if anything is to be achieved in developing respect for human rights and the attitudinal changes which alone can ensure that respect. First and foremost, the leadership structure of the CHR will require change.

Further, the entire operation of the CHR needs a thoroughgoing review and overhaul, including its philosophies, priorities, complaint handling and investigation, personnel management, administrative structures, and all its procedures.

The CHR was not established to defend members of the armed forces in respect of events occurring while they are performing duty in connection with the insurgency. The CHR should thus accept the view of its predecessor, the Presidential Committee on Human Rights, that regular law enforcement agencies are better suited than a human rights organisation to investigate and prosecute abuses committed by members of the CPP-NPA. To that end, the CHR should concentrate its efforts on complaints against the state, or agencies of or acting in the name of the state. It should not dissipate its efforts by pursuing matters involving non-state entities. It should give priority to the most serious human rights violations and subject them to prompt, expert, and scrupulous investigation.

The CHR should use its existing powers of entry and compulsion with courage and more effectively than hitherto. It should not hesitate to assert its authority over alleged perpetrators of serious abuses. In particular, it should promptly and unhesitatingly enter military, prison, and police complexes whenever there is reason to believe that personnel or records would there be available to assist enquiries into complaints. There should be no reluctance to require the production of official records that might fix the whereabouts and activities of personnel suspected of involvement in human rights violations.

The procedures of the CHR require substantial review to remove formalism and reduce the pressure on victims. The first focus of complaint handling should be to put the alleged perpetrators, not the victims, under investigation. The Commission should, therefore, immediately drop the requirement or practice that complainants sign affidavits before any investigation is begun or action contemplated. In recognition of the position that many complainants are without funds or legal and other support, the CHR should actively investigate the complaints rather than rely on complainants to develop evidence. It must not place the onus of proving cases on victims. It must accept that complainants and their families are witnesses to what occurred no less than anyone else and must recognise that independent witnesses are quite likely to be fearful of coming forward, especially soon after the events in question. The emphasis should be on examining, not the complaints which are often obvious -- murder, kidnapping, violence, etc. -- but the answers, explanations, and corroboration of the alleged perpetrators.

Delay serves only the interests of those who have violated human rights. The CHR should substantially expedite its complaint handling at all levels and monitor much more closely the progress of cases referred for prosecution. It should more actively assist in the prosecution of cases and should pressure prosecuting authorities for much greater priority to be given to human rights cases.

As presently structured, the CHR is not able to manage an effective prosecution authority although ideally it should possess such authority. Urgent consideration should, however, be given to the establishment in the Department of Justice, or independently, of an Office of Special Prosecutions to prepare and present human rights cases. A specialist human rights tribunal, along the lines of the Sandiganbayan, to try human rights cases should also be considered until at least the large backlog of cases has been significantly reduced.

The task of compensating victims or providing them with urgent financial relief should be transferred from the CHR to a department or agency of government experienced in such matters.

A proper witness protection programme is essential for the successful prosecution of violators of human rights. Such programmes exist in some countries which may be used as a model for the Philippines.

Senator Wigberto E. Tañada, Chair of the Senate Committee on Justice and Human Rights, is to be commended for the Committee's initiatives and report. The government should take effective measures to implement the recommendations of the Senate Committee.

The Senate Committee may be a suitable body to conduct the reviews of the CHR suggested here. Alternatively, a retired judge might chair a suitable review panel. The Senate Committee should be constituted as a permanent legislative overseer of the CHR and should closely monitor its activities. The CHR should be made fully accountable to the legislature through the Senate Committee.

Human Rights Organisations

Despite their vital role in overthrowing Marcos and reestablishing democracy, nongovernmental organisations face problems from the military or groups associated with the military. People who take up the cause of the disadvantaged are themselves labelled subversives and are then susceptible to attack by the forces of the state. Yet many nongovernmental organisations continue to play an important role in promoting human rights and social justice and demonstrate great courage and persistence in their work.

The military accuses many NGOs of being "communist fronts". These allegations are in the main unjust and unjustified. The identical activities many carry out would, if pursued in most other democratic countries, be quite unexceptionable and might

even go unnoticed. Yet because of the military's labelling of them in the Philippines, NGOs have become significant targets for human rights violations perpetrated by military and associated groups.

Nongovernmental organisations deserve and should be given a strong unequivocal reaffirmation of the support of the President, her administration, and the military authorities. Such support will help address the problem of the polarisation in Philippine society, give renewed confidence to the organisations and their leaders and provide the people with a sense of protection from the violence, fear, and deprivation which mark their daily lives.

Freedom of Religion and Expression

Although Philippine law guarantees freedom of religion and the government generally allows free practice of different denominations, there are problems of discrimination against non-Catholic communities which need to be addressed.

Freedom of expression exists and many newspapers and other media compete for public attention. Nonetheless, the freedom of the press is impeded by some administrative and military practices. These problems should be addressed by the relevant authorities.

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