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# The Philippines: A Country in Crisis— A Report by the Lawyers Committee for International Human Rights

by

Marvin E. Frankel, Jack Greenberg, and Diane F. Orentlicher

*This article is based on a mission of inquiry to the Philippines undertaken during the last three weeks of September, 1983 by a delegation representing the Lawyers Committee for International Human Rights.\* The report reflects both the direct observations of the delegates and the information that they gathered from others in the Philippines whose accounts they judge to be reliable.*

*The delegation was headed by Marvin E. Frankel, who is Chairman of the Lawyers Committee for International Human Rights and a senior partner in the New York law firm of Kramer, Levin, Nessen, Kamin and Frankel. From 1965 until 1978 he served as a federal district court judge in the Southern District of New York. Judge Frankel has participated in human rights missions to Argentina and the Soviet Union.*

*Judge Frankel was joined on the Philippines mission by Jack Greenberg and Diane Orentlicher. Mr. Greenberg is Director-Counsel of the NAACP Legal Defense and Educational Fund, Inc., with which he has been affiliated since 1949, and is also an Adjunct Professor at Columbia University School of Law. Mr. Greenberg has undertaken human rights visits to the Soviet Union, South Africa and India. Diane Orentlicher is Deputy Director of the Lawyers Committee for International Human Rights.*

*In the Philippines, the delegates had substantial and highly informative meetings with First Lady Imelda Marcos, Minister of National Defense Juan Ponce Enrile, the Legal Advisor to the President, the Chief Justice and a number of Associate Justices of the Supreme Court*

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\* The Lawyers Committee for International Human Rights is a public interest law center based in New York, that works to promote international human rights and refugee law and legal procedures.

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*and other Philippine government officials. The delegates also spoke with numerous private citizens, including the Archbishop of Manila, Jaime Cardinal Sin, other religious leaders, lawyers, businessmen, journalists and human rights activists, and many victims and relatives of victims of human rights violations. The delegates met with representatives of the U.S. Department of State in Washington, D.C. and U.S. Embassy officials in Manila, including Ambassador Michael Armacost, who provided invaluable assistance in arranging meetings with Philippine government officials as well as useful insights into the human rights situation in the Philippines.*

*The conclusions of this article are based only on accounts that were consistently presented by various, diverse and apparently credible sources. Whenever possible, corroborating documents and testimony were obtained. While the delegation did not possess the investigative tools or means to verify every account presented to it, clear patterns emerged and those are the subject of this article.*

*One pattern is the pervasive lack of public confidence in the Philippine Government's performance in investigating human rights abuses and establishing effective disciplinary procedures. This problem was reflected in the fact that many of the human rights victims with whom the delegates spoke requested anonymity, fearing government reprisals for cooperating in the preparation of this report. The mission was thought useful in light of this defect, but could not compensate for it. Ultimately, only the Philippine Government can provide the appropriate responses demanded by the accounts contained in this article.*

#### INTRODUCTION

For months, the Philippine nation has been racked by unprecedented waves of anger and protest. Triggered by the assassination of former Senator Benigno S. Aquino, Jr. on August 21, 1983, mass demonstrations since then express grievances that transcend the loss of a popular hero. Crowds numbering in the hundreds of thousands have taken to the streets to demand an end to daily injustices. Their protests reveal that, after 18 years as President, Ferdinand Marcos today rules a country in crisis. The outcome of this anger and anguish is not yet knowable. Its causes are the subject of this report.

For more than a decade, the human rights of Filipinos have suffered brutal violations. State-sanctioned violence, unleashed when martial law was imposed in 1972, did not abate when it was lifted in early 1981. In many respects, it has grown worse.

In the post-martial law years, torture, "disappearances," and political killings by security forces have been the order of the day. Alleged "subversives," undoubtedly including some correctly suspected of being (but not proved to be)

communists, are summarily shot by military officers who already have their victims in custody. The figures for 1983 strongly suggest that, in at least one region, Mindanao, such violence has assumed epidemic proportions.

Those who survive arrest are frequently tortured in barbaric fashion. Suspects are beaten, suffocated, choked with water devices, raped and mutilated. These people are often held for months or years without trial under presidential orders that the courts declare themselves powerless to review. Many detainees who have been acquitted or against whom charges have been dismissed languish in jail without any hope of judicial relief.

Critics of government policies are branded "subversive" and suffer the consequences which that tag invites. Their indefinite detention is justified as a security precaution, their physical abuse as a necessary investigative tool, and their murder as a product of military "encounters." In areas with an active communist insurgency, thousands of innocent civilians have been forcibly relocated under a program that bears a disturbing resemblance to the Vietnamese "strategic hamletting" experiment of a decade ago.

The end of martial law on January 17, 1981 was announced as a return to normalcy. But the normalcy it established was not that of pre-martial law days when the Philippines was praised as the "showcase of democracy in the Orient." In nine years of martial law, President Marcos reordered the Philippine government, laws and institutions so that a state of one-man rule by military force would prevail for the rest of his life.

The process was gradual, focused, and increasingly lacking in any underlying legitimacy. When martial law was first imposed, many Filipinos welcomed the order it brought to their country. Communist insurgents, Muslim rebels, urban terrorists, student demonstrators, and labor activists, as well as economic troubles, had shaken the order of life in the Philippines and were cited to justify martial law.

Before long, martial law's supporters became its detractors, as President Marcos fashioned a society whose primary justification was national security but whose visible object was personal power. Invoked to still an armed revolt whose existence no one doubted, martial law was used to silence critics whom only Marcos feared.

Three years into martial law, 50,000 people had been imprisoned, including democratic opposition figures like Benigno Aquino. As martial law progressed, quasi-legal measures of control were supplemented by extra-legal forms of repression. Prison populations shrank as incidents of political murder, disappearance and torture mounted. Military measures whose professed aim was to defend the state from its internal enemies made the government itself the Filipinos' most feared enemy.

The crescendo of anger triggered by Senator Aquino's murder has alerted the world to the deep rift that over a decade of military abuses has left between

President Marcos and those he rules. The addition of the business community to the ranks of demonstrators has rendered complete President Marcos' loss of credibility as a national leader.

In recent months, protesters have also identified the United States with the government they abhor. The identification may or may not be warranted. It exists, and its source is not hard to trace. Increasing human rights violations in recent years have been matched by frequent expressions of support for the Philippine Government by U.S. officials. Such conduct is not lost on Filipinos. During our visit to the Philippines, we were frequently reminded of Vice President George Bush's toast to President Marcos in September, 1981: "We love your adherence to democratic principles—and to the democratic process."

More recently, when President Marcos' response to the Aquino assassination made his human rights record the subject of international attention, Vice President Bush rushed to his defense. On October 6, 1983, Mr. Bush acknowledged that President Marcos is "less than perfect on human rights," but cautioned against criticizing him. Mr. Bush stated: "We pointed out the imperfections of the Shah and all of that, and today we have something worse."<sup>1</sup> Mr. Bush expressed his concern that "the United States not cut away from a person who, imperfect though he may be on human rights, has worked with us . . ."<sup>2</sup>

Backing the present Administration's verbal defense of the Philippine Government is a steadily increasing flow of military and economic aid to the Philippines. The recently concluded bilateral review of the U.S.-Philippines Military Bases Agreement resulted in the commitment of an unprecedented level of \$900 million in U.S. aid to the Philippines over a five-year period. The swift completion and relative ease with which the two governments concluded this review was interpreted by many Filipinos as a reflection of tacit support by the Reagan Administration for the policies of the Marcos government.

The perception is exaggerated. Military abuses in the Philippines are undoubtedly the subject of "quiet diplomacy." But quiet diplomacy is not heard by Filipinos. Growing numbers of Filipinos interpret the quiet as silence, and the silence as support.

The perception was jarred, but not destroyed, by President Reagan's decision in October, 1983 to cancel his scheduled trip to the Philippines. The decision signalled, at least in part, an implicit recognition of the severity of the current situation and was gratefully acknowledged as such by Filipino crowds. We must now wait and see whether the decision will be used as an important first step toward a new policy in which the United States is no longer seen as condoning the continuing pattern of military brutality in the Philippines. If the United States

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1. *Criticism of Marcos is unfair, Bush says*, Chicago Tribune, Oct. 7, 1983 [hereinafter cited as *Criticism of Marcos*].

2. *Id.*

may not take sides in the political struggle, it may—and must—take sides in the human rights struggle. The time has come to stop being quiet.

## CONCLUSIONS AND RECOMMENDATIONS

### A. *Conclusions*

1. Severe human rights violations infect both the quality of life and long-range security of the Republic of the Philippines.

2. Reports of political killings by government forces have sharply increased in the three years since martial law was lifted. The rate of such murders continued to escalate in 1983. In Mindanao, a region where intense militarization has taken place, almost 200 political killings were documented during the first six months of 1983, compared to ninety-four during the previous six-month period.

3. The number of "disappearances" (the illegal abductions of civilians by government security forces) also increased in 1983. In the first six months of 1983, fifty-seven disappearances were documented in Mindanao alone.

4. In recent years, hundreds of citizens have been arrested and detained under presidential orders that the courts declare themselves powerless to review. Many who are arrested pursuant to presidential orders languish in jail for months or years after charges are dismissed or their sentences served, awaiting an order for their release that can come only from President Marcos. Many more are arrested, held for questioning without formal charges, and subsequently released. During the first six months of 1983, more than 1,000 persons were arrested on political grounds.

5. Barbaric forms of torture, typically applied during periods of incommunicado detention in secret holding places, have become a standard operating procedure of Philippine security and intelligence forces. Persons seized as alleged subversives are beaten, suffocated, choked with water devices, subjected to electric shocks, burned, raped and mutilated.

6. The entire range of military abuses practiced in the post-martial law years has been applied to suppress legitimate dissent as well as armed revolt. Critics of government policies are branded "subversive" and suffer the brutal consequences which that tag is used to justify. Church leaders, labor activists, journalists and human rights workers have been specially targeted for military abuses.

7. In 1981, the Philippine military began a program of forced relocation of civilians living in regions with a substantial insurgent presence. A reign of terror prevails in these operations, which are carried on in (and create) conditions that can be described only as a public health disaster.

8. After a brief expansion of press freedom when martial law was lifted, the Philippine press once again felt the reins of governmental control tighten beginning in the later part of 1982. Since then, two journals that were critical of the government, *We Forum* and the *Philippine Times*, were shut down, and their editors and staff were arrested. Eight journalists were summoned before the

National Intelligence Board to answer for their critical columns. Other outspoken journalists have faced sizeable libel suits by government and military officials. Although a greater degree of critical journalism has been tolerated in the months since Senator Aquino's assassination, official controls on press freedom remain in place, and continue to chill free expression. The closure of the *Philippine Times* following the assassination made clear the government's continued willingness to apply these official restraints even during the current period of greater tolerance.

9. Legal safeguards against military abuses that exist in theory are uniformly disregarded in fact. Political killings, torture, abductions and instances of incommunicado detention are rarely the subject of independent, reliable investigations. Almost no one in the military is punished for these actions. The alarming expansion of military abuses in recent years is due, in part, to a lack of government resolve to curb such abuses.

10. A system of one-man rule supported by military force provides the context in which these violations occur. Vital safeguards inhering in a system of checks and balances no longer operate. A subservient judiciary has acquiesced in President Marcos' assumption of broad legislative powers and important judicial functions, and has largely abdicated its vital role in protecting basic rights.

11. The United States Government's public support for the Marcos government has undermined respect for human rights and jeopardized U.S. interests in the Philippines.

## B. *Recommendations*

### THE GOVERNMENT OF THE PHILIPPINES

1. The Government of the Philippines should undertake a publicly articulated campaign to enforce laws prohibiting political killings, torture and other abuses by military and paramilitary forces. Public statements denouncing such abuses should be matched by vigorous investigations and prosecutions. Intimidation of witnesses and complainants should be closely monitored and strictly punished. Records of all dispositions of complaints of military abuses should be made publicly available.

2. The Preventive Detention Action should be abolished. Judicial review should become a necessary precondition to all arrests. Persons detained pursuant to presidential orders should be released immediately unless their arrest and detention is authorized by civilian judicial authorities.

3. The Philippine Government should rigorously enforce its prohibition of forced relocation of civilian populations. Government resources should be allocated to help people already affected by this program return to their homes and farms.

4. Laws authorizing the closing of newspapers and magazines should be repealed. Laws generally authorizing the seizure of property should be narrowed

to exclude seizure of presses and other instruments of publication. The government should adopt an explicit policy prohibiting the use of general laws to arrest, detain and punish journalists for their writings.

#### THE GOVERNMENT OF THE UNITED STATES

5. The United States Government should publicly criticize the continuing violations of human rights in the Philippines. The Administration should condemn the violence attributable to Philippine armed forces and call for vigorous prosecution of human rights violators.

6. The United States Embassy in Manila should appoint a human rights officer whose principal duty is to compile information about human rights in the Philippines and to strengthen contacts with domestic human rights monitors. The Embassy should continue to intercede in specific cases of human rights violations.

7. The Embassy should continue to encourage visits by private and governmental organizations which are concerned with human rights, and should facilitate meetings for such groups with Philippine officials.

8. The United States Congress should not approve any further requests for military aid to the Philippines without explicitly prohibiting allocation of any part of that aid to the Philippines Constabulary, in accordance with Section 660 of the Foreign Assistance Act.

9. Congress should enact legislation requiring the Administration to prepare and submit a report on the state of human rights in the Philippines every six months, and authorizing Congress to require the Administration to supplement the report if Congress deems it inadequate. The report should address military practices constituting gross violations of basic rights, including political killings, disappearances, torture, incommunicado detention, arbitrary arrests and prolonged preventive detention.

10. Congress should consider the findings contained in this report in deciding whether to authorize further aid to the Philippines. If the report reveals a continuing pattern of serious human rights violations, Congress should consider imposing specific restrictions or conditions on further aid, which are tailored to address these abuses.

### CHAPTER I

#### MILITARY RULE SINCE THE LIFTING OF MARTIAL LAW

##### A. *The Institutionalization of One-Man Rule*

Democratic institutions designed to uphold the rule of law in the Philippines have crumbled under the weight of authoritarian rule. During martial law, President Marcos dismantled the country's deeply-rooted system of checks and



balances<sup>3</sup> with studied deliberation and thorough effect. With this gone, vital safeguards against abuse of individual rights faded into Philippine history.

When he placed the Philippines under martial law, President Marcos restructured the Philippine government, so that virtually all powers were concentrated in him. Of more lasting importance, he did so in a manner ensuring that the eventual lifting of martial law would do little to diminish these vast powers.

### 1. The President's Exercise of Legislative Powers

When President Marcos imposed martial law in 1972, he immediately suspended the Congress of the Philippines and assumed legislative powers himself. In proclaiming martial law, he directed the armed forces to "enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction."<sup>4</sup> By an executive order issued the next day, President Marcos undertook to "govern the nation and direct the operation of the entire government including all its agencies and instruments."<sup>5</sup>

In 1973, President Marcos consolidated his legislative powers through the ratification, under highly controversial procedures,<sup>6</sup> of a new constitution.<sup>7</sup> The "transitory provisions" of the 1973 Constitution, purportedly designed to effect an orderly transition from martial law and the 1935 Constitution to a state of normalcy under the new Constitution, provided that all orders, decrees, instructions and other acts promulgated by the "incumbent President" were to become the law of the land.<sup>8</sup> Such acts were to remain valid and legally binding even after the lifting of martial law, unless modified, revoked or superseded by later acts of

3. The Philippine democracy was closely modeled after that of the United States, which colonized the Philippines from 1898 until 1946. See D. ROSENBERG, *MARCOS AND MARTIAL LAW IN THE PHILIPPINES* 15 (1979) [hereinafter cited as ROSENBERG].

4. Proclamation No. 1081 (Sept. 21, 1972).

5. General Order No. 1 (Sept. 22, 1972).

6. See *Javellan v. Executive Secretary*, L-36142 (March 31, 1973).

7. A popular demand for revision of the Constitution which was adopted in 1935 led to the formation of a Constitutional Convention in 1971. Charges of manipulation of the convention which were directed against President Marcos abated when martial law was imposed. The "transitory provisions" of the new Constitution, together with the manner in which it was ratified, generated further controversy, however, focusing on President Marcos' motives for declaring martial law. See ROSENBERG, *supra* note 3, at 86-94. But for the imposition of martial law, President Marcos' second term would have expired in 1973. Under the 1935 Constitution, he would have been ineligible for another term. The "transitory provisions" of the new Constitution perpetuated the "incumbent President[s]" powers under the 1935 Constitution "until he calls upon the *interim* National Assembly to elect the *interim* President." 1973 CONST., art. XVII, § 3(1) (emphasis in original). This provision set no time limit for the calling of such an election.

8. 1973 CONST., art. XVII, § 3(2).

“the incumbent President” or the regular National Assembly.<sup>9</sup> The 1973 Constitution thus explicitly vested legislative powers in President Marcos.

A 1976 amendment to the Constitution proposed by President Marcos<sup>10</sup> ensured that even after martial law was lifted, he could continue to exercise legislative powers:

Whenever in the judgment of the President . . . there exists a grave emergency or a threat or imminence thereof, or whenever the [interim or regular] National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may . . . issue the necessary decrees, orders or letters of instructions, which shall form part of the law of the land.<sup>11</sup>

The President’s virtually limitless powers to make law are, by now, unassailable in a court of law. Those powers have been sustained<sup>12</sup> by a Supreme Court which, one of its current members explained, had at the time of our visit validated every legislative act of President Marcos that it had considered since the imposition of martial law.<sup>13</sup>

President Marcos has not hesitated to use his legislative powers, both during martial law and since it was lifted. In the eleven and a half years since martial law was imposed, he has issued thousands of decrees, proclamations and other laws.<sup>14</sup>

The threat to individual rights inherent in such concentration of powers has been realized to its fullest extent. As indicated throughout this article, many of the abuses described herein are grounded in draconian presidential decrees.

Significantly, in a virtually unique act of unity, Filipino opposition leaders recently agreed that no opposition candidates would participate in elections to the National Assembly scheduled for May, 1984 unless laws according President Marcos legislative powers were first repealed.<sup>15</sup> Although some participants in this agreement subsequently decided to participate despite President Marcos’ contin-

9. *Id.* In 1978, an interim assembly was elected amid widespread charges of election fraud. Pursuant to a 1976 amendment to the Constitution, that body enjoys the same legislative powers as the regular National Assembly, for which elections are scheduled to take place in May, 1984. Despite the election of a national assembly in 1978, the President continues to exercise broad legislative powers. Most national legislation enacted by the Assembly has been generated by President Marcos’ Cabinet.

10. The President’s power to propose the 1976 amendments was challenged and upheld in *Sanidad v. Comelec*, L-44714 (Oct. 12, 1976).

11. 1976 AMEND., para. 6.

12. *Aquino v. Commission on Elections*, L-4004 (Jan. 31, 1975).

13. In late 1983, the Supreme Court twice issued rulings unfavorable to the government. Neither involved the validity of a legislative act by President Marcos, however. See *infra* ch. VI, § C.

14. See *Tanada v. Tuvera*, S.C.-G.R. No. 63915 #4-5 (May 4, 1983) (petition).

15. This was one of six conditions on which the opposition agreed to base its participation. See *The Search for Unity*, FAR E. ECON. REV. 10 (Feb. 2, 1984) [hereinafter cited as *Search for Unity*].

ued exercise of legislative powers, the initial pact reflects a widely shared conviction that democratic institutions cannot operate as long as President Marcos retains the power to legislate.

## 2. The President's Assumption of Judicial Authority

President Marcos has used his legislative powers to transfer important judicial functions to himself, thereby rendering courts powerless to check executive abuses of power. A series of presidential decrees, described in detail below,<sup>16</sup> have extended President Marcos' power to order preventive detention, without recourse to judicial authorities, into the post-martial law era. Such decrees have been the basis for waves of arbitrary arrests by military authorities, which have been followed by periods of prolonged indefinite detention, in the years since martial law was declared to have ended.<sup>17</sup>

Last year, the Supreme Court upheld the President's power to bypass judicial authorities in ordering the arrest and indefinite detention of persons suspected of national security offenses.<sup>18</sup> The Court also declared the judiciary powerless to review such presidential orders, thereby abdicating a judicial function vital to the protection of individual rights<sup>19</sup> and manifesting a general unwillingness to check the excesses of President Marcos' lawmaking powers.<sup>20</sup>

### B. *A Continued Call to Arms*

Despite the technical lifting of martial law almost three years ago, a state of military rule remains in effect today and provides the context for a reign of terror throughout the Philippines. When he imposed martial law in 1972, President Marcos called on the armed forces to "prevent or suppress lawless violence, . . . insurrection or rebellion."<sup>21</sup> He cited in particular two armed insurgencies: the growing communist rebellion and a Muslim secessionist movement active in parts of Mindanao and the Sulu Islands.<sup>22</sup>

In lifting martial law in 1981, President Marcos asserted that although the communist insurgency "has been substantially contained" and the secessionist movement "effectively overcome,"<sup>23</sup> "the public safety continues to require a degree of capability to deal adequately with elements who persist in endeavoring

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16. See *infra* notes 78-103 and accompanying text.

17. See *id.*

18. *Garcia-Padilla v. Ponce Enrile*, G.R. No. 61388 (April 20, 1983).

19. See *infra* ch. III, § A(5).

20. The independence of the judiciary in the Philippines is discussed in greater detail later in this article. See *infra* ch. VI, § C.

21. Proclamation No. 1081 (Sept. 21, 1972).

22. *Id.*

23. Proclamation No. 2045 (Jan. 17, 1981).

to overthrow the government by violent means . . . .'<sup>24</sup> Accordingly, "the call to the Armed Forces of the Philippines to prevent or suppress lawless violence, insurrection, rebellion and subversion" was to continue in full force.<sup>25</sup>

To Filipinos, these words signalled a continuation of past abuses. Under martial law, the suppression of subversion, insurrection and rebellion had been invoked to justify the arrest of thousands of democratic opponents to the Marcos government. Within three years after martial law was imposed, over 50,000 persons were arrested,<sup>26</sup> including democratic opposition figures such as Senators Benigno S. Aquino, Jr. and Jose Diokno. Most of those arrested were detained without being charged or tried.<sup>27</sup> Many were tortured during periods of incommunicado detention immediately following their arrest.<sup>28</sup>

Several years after martial law was imposed, the number of political prisoners dropped substantially.<sup>29</sup> At the same time, however, there were increased reports of "disappearances" and extra-judicial executions attributable to security forces, principally in the context of counter-insurgency operations.<sup>30</sup> Through the period of martial law, the murders occurred with mounting frequency.<sup>31</sup> In the three years following the end of martial law, this trend has continued unabated.

### C. Expansion of the Military

To Filipinos, it is axiomatic that where there is an active military presence, there are also extensive military abuses. The arrival of military units in a new area typically signals the onset of arbitrary arrests, periods of incommunicado detention, torture, "disappearances" and "salvagings" (the term by which extra-judicial executions have become known in the Philippines).

Against this background, the considerable enlargement of Philippine military forces since 1972, a trend that has continued in the years since martial law was lifted, is cause for serious concern. When President Marcos imposed martial law in 1972, the Armed Forces of the Philippines ("AFP") had 60,000 members.<sup>32</sup> During martial law, its ranks swelled to over 200,000.<sup>33</sup> In the years following the

24. *Id.*

25. *Id.*

26. AMNESTY INTERNATIONAL, *Report of an Amnesty International Mission to the Republic of the Philippines, 11-28 November 1981* (1982) [hereinafter cited as 1982 AI Report].

27. *Id.*

28. See AMNESTY INTERNATIONAL, *Report of an Amnesty International Mission to the Republic of the Philippines* (1976) [hereinafter cited as 1976 AI Report].

29. 1982 AI Report, *supra* note 26, at 4.

30. *Id.*

31. This statement is based on figures compiled by Task Force Detainees of the Philippines, a unit of the Association of Major Religious Superiors of the Philippines, which compiles reliable statistics on military abuses throughout the Philippines.

32. 1982 AI Report, *supra* note 26, at 3, 15.

33. *Id.* at 15.

lifting of martial law, the Armed Forces have grown to an estimated strength of at least 250,000.<sup>34</sup> These forces are supplemented by militias, comprising civilians who are licensed to carry arms and who operate under the direct command of local military authorities. The civilian militias are estimated to include at least 100,000 men.

The Armed Forces of the Philippines comprise four major services: the army, navy, air force and the Philippines Constabulary ("PC"). The PC and AFP intelligence units, together with civilian militias operating under the command of the PC, appear often in accounts of serious abuses. Accordingly, the following discussion focuses on these three forces.

### 1. The Philippines Constabulary

Established in 1901 as a law enforcement agency organized along military lines,<sup>35</sup> the PC currently operates as both the nucleus of the Philippine police forces and a component of the AFP. In 1950, the PC was fully merged with the AFP and placed under the command of the Department of National Defense.<sup>36</sup> In 1975, Presidential Decree No. 765 established the Integrated National Police ("INP"), bringing under one command the PC and local police forces operating throughout the Philippines.<sup>37</sup> The same decree provided that the PC would remain a service of the AFP, although the INP is not part of that structure.<sup>38</sup>

Since martial law was imposed, the PC has been heavily engaged in counter-insurgency efforts.<sup>39</sup> Those efforts have focused on the New People's Army ("NPA"), which is the armed wing of the Communist Party of the Philippines ("CCP"), and the Moro National Liberation Front ("MNLF"), a Muslim insurgency group.<sup>40</sup> The PC's counter-insurgency efforts embrace intelligence functions, combat duties, the administration of detainees arrested by members of the armed forces, and the supervision of civilian militias.<sup>41</sup>

The PC is widely regarded as one of the most abusive forces engaged in counter-insurgency activities. It figured prominently in testimonies we received of grave human rights abuses. Persons we interviewed, whose relatives had been killed or who had been victims of torture themselves, frequently identified PC

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34. See *The Trail of Aquino's Killer*, NEWSWEEK INT'L EDITION (Sept. 26, 1983) at 12.

35. 1982 *AI Report*, *supra* note 26, at 20.

36. *Id.*

37. *U.S. Policy Toward the Philippines: Hearings before the Subcommittee on Asian and Pacific Affairs and on Human Rights and International Organizations of the House Committee on Foreign Affairs*, 97th Cong., 1st Sess. 9 (Nov. 18, 1981) (statement of Daniel O'Donohue, Acting Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, Department of State).

38. *Id.*

39. *Id.*

40. *Id.*

41. 1982 *AI Report*, *supra* note 26, at 21.

members, either acting alone or in concert with other units, as responsible for the abuses they described.<sup>42</sup>

## 2. Intelligence Units

A vast network of intelligence and security units, centrally coordinated by the National Intelligence and Security Authority ("NISA"), is empowered to arrest and detain persons suspected of national security offenses. Reports of abuses committed by such units most frequently involve intelligence and security services of the AFP and its component forces.<sup>43</sup>

Intelligence groups engaged in counter-insurgency operations are frequently dispatched from Manila.<sup>44</sup> Local PC commanders in the provinces frequently coordinate raids, and intelligence personnel from Manila then move in to conduct "tactical interrogation"—questioning that occurs in the days immediately following a suspect's apprehension, often while the suspect is held incommunicado.

Several factors make it particularly difficult for victims of abuses by intelligence forces to obtain redress. It is commonly alleged that the government is particularly tolerant of abuses by intelligence units, NISA being a powerful arm of the Philippine security forces. In addition, because intelligence personnel typically act under cover, it is generally more difficult for victims of abuses by intelligence units to identify those who are responsible.<sup>45</sup>

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42. Typical of these accounts was the testimony received from the wife and father, respectively, of two persons killed in connection with a military raid early in 1983 in Davao City. According to the two relatives, five men and one woman were attending a meeting in a house in Davao City on January 23, 1983. At 3:00 p.m., a composite unit comprising the Tagum PC, the Panabo INP, and the Davao Metropolitan District Command surrounded the house. Newspaper accounts reporting the incident specifically identified these three units. Two of the persons attending the meeting were killed on the spot by machine gun strafing. Neighbors witnessed the other four being taken away, with their hands tied behind their backs, in a Ford Fiera belonging to the PC.

The father of a 23-year-old woman included in the group which was taken into custody explained that he had sought information about his daughter from a local PC officer. Subsequently, this man was shown his daughter's bullet-ridden corpse, as well as the bodies of her five companions, and told they had all been "killed in an encounter." An early press account of the incident quoted unnamed military authorities, however, as saying that two had been killed and four captured in the raid. See *Hearings before the Subcommittee on Human Rights and International Organizations of the House Foreign Affairs Committee*, 97th Cong., 1st Sess. (Sept. 22, 1983) (testimony of A. Whitney Ellsworth on behalf of Amnesty International U.S.A., Appendix I) [hereinafter cited as *Human Rights Hearings*].

43. See 1982 AI Report, *supra* note 26, at 22.

44. Testimony was received about a case in which local intelligence forces in southern Mindanao coordinated a raid resulting in the arrest of 14 people. Intelligence forces dispatched from Manila then conducted "tactical interrogation" of several of those arrested. The local arresting officer admitted to the attorney representing one of the arrestees that his client had been tortured, but said that intelligence personnel from Manila were responsible.

45. One young woman credibly testified that she was raped while being held incommunicado following her arrest by a composite unit led by intelligence personnel. The woman's attorney stated

### 3. The Civilian Militias

The Integrated Civilian Home Defense Force ("ICHDF") is consistently identified as one of the most lawless forces operating in the Philippines.<sup>46</sup> Its members are civilians who engage in paramilitary, counter-insurgency operations under the direct command of the PC.<sup>47</sup> The Office of the Integrated Civilian Home Defense Force of the PC supervises the activities of the ICHDF. Local ICHDF forces operate under the direct command of the local PC detachment commander.<sup>48</sup> If a PC platoon is stationed in the area in which they operate, ICHDF forces act under the direct command of a commissioned officer.

Like the AFP, the ICHDF has greatly expanded in recent years. From an estimated strength of 75,000 in 1979,<sup>49</sup> its ranks have grown to an estimated size of more than 100,000 men today.

Civilians recruited into the ICHDF are given arms and, by all accounts, minimal training. They are commonly assigned front-line combat duties during counter-insurgency operations. Additionally, because they are recruited from the population of the areas in which they operate,<sup>50</sup> ICHDF members are often used to identify local "subversives."<sup>51</sup>

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that when she sought a line-up including the arresting team so that her client could identify the rapist, a local military officer told her that such a line-up would not be possible since it would expose the identity of undercover agents. When this case was raised with Defense Minister Enrile, he assured the authors that he would order the requested line-up. On October 7, 1983, the authors followed up on this assurance with a letter to Minister Enrile, a copy of which was sent to the rape victim's attorney. To date, no reply to the letter has been received, and no line-up has been furnished.

46. ICHDF members figured prominently in testimony the authors received about extra-judicial killings. In June 1983, for example, three farmers were taken from their homes in Masaling, southern Negros Occidental, by members of the ICHDF, PC and police. All three were later found dead. Two months later, two bodies were delivered to the police headquarters in Kabankalan, Negros Occidental. Positive identifications were made by relatives of the two people, including a fifteen year old boy, who had been abducted by ICHDF personnel and members of The Long Range Patrol, a special unit of the PC.

47. The ICHDF was modeled after civilian guards employed by the military to suppress the Hukbalahap rebellion in the 1950's. During that period, civilian guards proved to be an effective counter-insurgency force. Like their present-day counterparts, the civilian guards of the 1950's were known for their brutalities until President Magsaysay instituted a disciplinary program designed to curb the abuses.

48. Amnesty International has received unconfirmed reports that ICHDF forces in Mindanao operate under the direct command of the Army rather than the PC.

49. 1982 *AI Report*, *supra* note 26, at 26.

50. ICHDF forces do not necessarily operate in their home towns, however. Because the force is "integrated," its units may be transferred from one area to another. Several sources indicated that when complaints against a particularly abusive ICHDF unit begin to mount, the unit is typically transferred to another region.

51. Similarly, witnesses to ICHDF abuses are generally able to identify those responsible for the abuse since the ICHDF units live among residents of the community in which they operate.

In their role as informants, ICHDF members are distinguished from mere "informers" by the fact that they are licensed to carry arms.

Accounts of ICHDF abuses include persistent reports that individual ICHDF members pervert this role by identifying as "subversives" persons against whom they have a personal grievance. As noted above, a person's identification as a "subversive" exposes him or her to a substantial risk of being tortured or killed.

The exceptional abusiveness of the ICHDF is generally attributed to the source of its recruits, together with the inadequacy of their training. We were told by numerous persons from various regions of the Philippines that ICHDF recruits are typically the local "bullies" or "boguys," a term that connotes unemployed men who hang out on street corners. In some areas, ICHDF members are said to include a number of common criminals and personal bodyguards of locally powerful figures.<sup>52</sup>

During our visit, a local newspaper in Mindanao reported that the notoriously brutal Lost Command, an irregular paramilitary group, would soon be incorporated into the ICHDF and be "accorded full status" as a component of that "legitimate paramilitary unit."<sup>53</sup> Around the same time that this article appeared, a fact-finding body of the British Parliament was told by Philippine military authorities that the Lost Command would be broken up and its members, except for those with criminal records, offered positions in the ICHDF.<sup>54</sup> Although the head of the Lost Command, Col. Charles Lademora, has publicly claimed formal links to the AFP, the Philippine Government has previously denied any connection with this paramilitary group.<sup>55</sup> The Lost Command is alleged to have perpetrated serious human rights violations in San Francisco, Agusan del Sur, where it is based, and elsewhere.<sup>56</sup> One Lost Command unit reportedly massacred 45 persons, including women and children, in a northern Samar barrio two years ago.<sup>57</sup>

#### 4. Special Combat Units and Irregular Paramilitary Units

In addition to the PC, the intelligence units, and the ICHDF, various special combat units and irregular paramilitary groups are responsible for a large number of serious human rights violations. Special combat units frequently operate as composite task forces made up of various components, often including an intelligence unit. Numerous irregular paramilitary groups allegedly operate with gov-

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52. See 1982 AI Report, *supra* note 26, at 27.

53. *Lost Command Joins ICHDF*, The Mindanao Daily Mirror, Sept. 29, 1983, at 1.

54. PARLIAMENTARY HUMAN RIGHTS GROUP, *The CDC and Mindanao: Report of a Visit to the Philippines by Alf Dubs, MP, and Colin Moynihan, MP, 21 September-1 October 1983* 49 (1983). The fact-finding group was investigating reports that the Lost Command was employed in connection with a development project jointly sponsored by the British and Philippine governments.

55. *Human Rights Hearings*, *supra* note 42, at 7 (testimony of A. Whitney Ellsworth).

56. *Id.*

57. See *id.*; Ellsworth, *Abusing Filipinos' Rights*, New York Times, Sept. 13, 1982, at A19, col. 2.



ernment sanction. Such units are often composed of fanatical religious groups or criminals. Amnesty International has extensively documented the activities of these groups.<sup>58</sup>

## CHAPTER II

### MILITARY ABUSES

#### A. *Political Killings*

##### 1. The Extent of the Problem

While numbers and specific cases have been disputed, there is no serious question that for more than a decade military personnel in the Philippines have repeatedly killed persons seized as alleged subversives, as well as other people against whom no particular charges have been even preliminarily formulated.<sup>59</sup> Although martial law officially ended on January 17, 1981, reports of such slayings have increased significantly in recent years. Statistics compiled by Task Force Detainees of the Philippines ("TFD")<sup>60</sup> reflect 532 documented cases of political killings from 1973 through 1980, and 595 cases for the period from 1981 through August 15, 1983. These figures may give a somewhat exaggerated picture of the contrast between the pre- and post-martial law levels of violence, since TFD's fact-finding capabilities are undoubtedly greater now than in earlier years. Even taking this into account, however, TFD's figures provide an alarming indication of the escalation of violence in the post-martial law period.

Statistics compiled by TFD suggest that the frequency of political killings continues to mount. In Mindanao, a region where such incidents occur with great frequency, TFD has documented 100 cases of "salvaging"—surreptitious murders of individual non-combatants by security forces—in the first six months of 1983, compared with 65 documented cases which occurred in the previous six-month period. TFD has also documented 96 deaths attributable to massacres by government forces during the first six months of 1983, compared with 29 such deaths during the last six months of 1982.

Evidence indicates that summary executions by military forces occur in various regions throughout the Philippines, including Mindanao, Negros Occidental, Samar, Leyte, and, to a very limited extent, even in Metro Manila. The State Department's 1982 report on human rights in the Philippines notes that reports

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58. See 1982 AI Report, *supra* note 26.

59. General references to "military" personnel or forces includes ICHDF forces, unless otherwise indicated.

60. See *supra* note 31.

of extra-judicial murders occur most frequently in Samar, Bicol, Mindanao and northern Luzon.<sup>61</sup>

## 2. Circumstances of Murders

Responsible officials typically explain that such episodes are properly described as "encounters" (armed battles between the military and insurgents),<sup>62</sup> but these claims are rarely persuasive and almost never supported by visibly responsible investigations. Interviews with scores of relatives of persons killed by the military, as well as their attorneys, established that killings officially reported as "encounters" frequently occurred after the victims had been taken into custody by military or police forces, or under other circumstances in which the victims clearly presented no threat to their killers.<sup>63</sup> For example, testimony was received from several people about the recent killing of four men, Celso Maghano, Trifonio Andres, Clemente Espina and Geracleo Paquera, who were taken into custody by a composite military group and were later reported to have died "in an encounter."<sup>64</sup>

In Cebu, we received information concerning a massacre of nine people, including seven children, who, though not taken into custody, clearly presented no immediate threat to their assailants.<sup>65</sup> According to the evidence, on March 23, 1982, Encarnacion Orillo and her eight children were at the nipa hut of neighbors in southern Leyte when armed PC personnel approached them. One neighbor was shot dead. A PC soldier then pulled one of the children from the hut and stomped on her abdomen, causing her death. Those remaining in the hut were taken to another hut, where they were lined up and shot, resulting in the immediate death of four children. Another child later died of wounds he sustained.<sup>66</sup> Two days later, the PC patrol returned and killed another child and the remaining adult, both of whom had been wounded in the earlier massacre.

61. DEPARTMENT OF STATE, *Country Reports on Human Rights Practices for 1982*, at 784 (1982).

62. When persons who are acknowledged to be held in authorized places of detention are killed, military officials reportedly often claim that they were "killed while trying to escape." Testimony or documentary evidence of specific cases involving such murders was not received.

63. Amnesty International has also found that reports of extra-judicial murders that are officially attributed to "encounters" typically prove upon examination to involve the murder of persons who had been taken into custody. See AMNESTY INTERNATIONAL, *Amnesty International Report 1982*, at 231 (1982) [hereinafter cited as *Amnesty International Report 1982*].

64. On August 17, 1983, the four were taken into custody, together with ten others, following a raid on a house in Libungan, North Cotabato where a wedding was to take place later that day. At one point the four victims were separated from their companions, and were later reported to have "died in an encounter." According to an attorney involved in this case, the victims included three NPA members and one person who did not belong to the NPA.

65. An attorney involved in the case was interviewed. He also provided several affidavits of eyewitnesses.

66. Encarnacion Orillo's affidavit states that before the child died, "his side was open so his breath went through the gaping wound. When he coughed, blood went out too from his mouth."

Like the victims described above, Dr. Remberto de la Paz was killed under circumstances in which he clearly presented no threat to his assailant. According to relatives, he was suspected of being an NPA member because he was observed passing freely through barrios that were suspected NPA strongholds in Catbalogan, Samar, where he and his wife practiced medicine. On the afternoon of April 23, 1982, he was alone in his clinic when a plainclothed man came to his office and shot him.<sup>67</sup>

While casualties undoubtedly do occur during military encounters in the Philippines, such cases leave no room for doubting that government forces have been and continue to be involved in the killing of non-combatant civilians. Reliable reports suggest that such incidents occur on a wide scale, and continue to mount.

### 3. Government Response to Allegations

Our conversations with responsible Philippine government officials did not detract from this conclusion. Instead, they tended to buttress it, both by information that was provided and that which was withheld.

During an extended conversation with Defense Minister Enrile and his aides, the former admitted that at least "some" allegations of summary execution are true,<sup>68</sup> but that most are either entirely unfounded or are exaggerated reports of what are properly described as encounters. Consistent with statements he has made in the past,<sup>69</sup> Minister Enrile attributed most of these reports to propaganda efforts of the communist insurgency. He claimed that the Communist Party of the Philippines ("CPP") "uses every means to convince outside elements that something is wrong with the country." He also charged that Task Force Detainees is an instrument of the CPP, and that its purpose in compiling statistics of political killings is "to gather propaganda material against the government." To support this charge, he arranged a meeting with Father Kangleon, a young priest who had confessed to involvement in communist activities and also implicated other

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67. Instead of claiming that the doctor had been "killed in an encounter," an intelligence officer announced on the radio that the NPA was responsible for the murder. In response to public pressure, Defense Minister Enrile ordered a special investigation, resulting in the arrest of Staff Sgt. Arsenio Alcantara, Jr. in late June, 1982. Alcantara did not fit descriptions of the assailant provided by eyewitnesses. Convinced that the defendant was not responsible, the victim's wife, who had hired a private prosecutor to represent her in the trial, withdrew from the case. We asked the victim's relatives why someone would allow himself to be tried for a crime he did not commit. This relative told us it was rumored that such defendants agree to be tried and sentenced with the understanding that following sentencing they will be transferred elsewhere.

68. At another point in the conversation, Minister Enrile said that it is "possible" that military forces sometimes kill persons "perceived to be adversaries" who are defenseless and could have been arrested.

69. See, e.g., *Enrile: CPP launches propaganda offensive*, Bulletin Today, Aug. 2, 1981, at 40.

Church members. In a private conversation, Father Kangleon claimed he had no reason to believe TFD was involved in communist activities.<sup>70</sup>

In contrast to Minister Enrile's assertion, we were told by officials of the U.S. Embassy that the United States Government considers TFD reliable and that the State Department relies upon TFD statistics in compiling its annual country report to Congress on human rights practices.

Finally, Minister Enrile stated that the Defense Ministry has investigated many cases involving allegations of summary executions and has found that the victims were members of revolutionary groups whom the military killed during combat. "If you're encountered," he explained, "you don't ask questions."

### B. *Disappearances*

While persons seized by government forces are often found dead several days later, others cannot be found at all. Several years after martial law was imposed, "disappearances" began to occur in substantial numbers. The trend has continued since then. TFD documented 35 cases of disappearances nationwide in 1976, a noticeable increase over the few isolated cases documented in preceding years. In the first six months of 1983, TFD documented 57 disappearances in Mindanao alone.

Experience has generally proven that missing persons are probably dead if they have not been located within the first few months after their disappearances. In a substantial number of cases, missing persons are located after several weeks in incommunicado detention. As noted below, in a number of cases in recent years, the filing of a petition for habeas corpus has resulted in the production of a missing person by the military.<sup>71</sup>

It appears that in some cases missing persons are compelled to assist the military in counter-insurgency operations. We examined one case in which two men were released after being forced for several days to accompany PC and ICHDF personnel on such operations. Other reports indicate that persons suspected of having NPA connections are often taken on similar operations. According to these reports, such persons are often used as "guides" or "assets"—persons who identify subversives.

Detainees reportedly are often used as guides. An agreement recently signed by the PC/INP Command for Region XI implicitly acknowledged this practice, stipulating that "[d]etainees shall be used as guides only with their consent."<sup>72</sup>

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70. Father Kangleon also acknowledged that his confession, though essentially true, had been prompted by threats of torture. Early drafts of this article deleted reference to the conversation with Father Kangleon for his protection. Sadly, this concern no longer prevents recounting the conversation. Father Kangleon was killed in a car accident in early 1984.

71. See *infra* ch. III, § A(3).

72. See *infra* ch. VII, § B(2).

The ultimate fate of such guides is unclear. In the case mentioned above, the "assets" were released. In other instances guides reportedly have been killed.

### C. Torture

Like summary executions and disappearances, instances of torture have mounted in the past year. While TFD documented 200 cases of torture in Mindanao for the entire year of 1982, 387 cases were documented for the first six months of 1983.<sup>73</sup> As these figures suggest, the torture of persons allegedly seized on national security grounds appears to have become a standard operating procedure of security and intelligence units in the Philippines.

#### 1. Patterns of Torture

Torture typically occurs in the days immediately following a person's arrest for a national security offense such as subversion. In the usual torture case, the victim is arrested, often without a warrant or other order of arrest,<sup>74</sup> blindfolded and taken to a "safehouse"—a secret, unauthorized place of detention. He or she is held there incommunicado for several days or weeks. During that time, he or she is tortured in the course of "tactical interrogation." Often the detainee is tortured immediately, and then interrogated. Sometimes, the detainee is first asked questions and is tortured if he or she does not "cooperate" (e.g., by confessing to involvement in the NPA or supplying names of persons in the movement). Following a day or two of torture the victim's captors frequently ease up and employ the "soft approach," promising to end torture or release the detainee without further harm if he or she "cooperates." After several days in a safehouse the victim is often transferred to another place of detention, where torture sometimes continues.<sup>75</sup>

Rape and other forms of sexual abuse are common forms of torture applied to women. The most common torture method applied to men is "boxing" (beating with fists or the butt of a rifle). Men are often beaten on the chest and abdomen so that bruises will not be evident.

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73. TASK FORCE DETAINEES OF THE PHILIPPINES, MINDANAO REGION, *Semi-Annual Report (Jan.-June 1983)* 4 (Sept. 14, 1983) [hereinafter cited as *TFD 1983 Report*].

74. For discussion of arrest procedures, see *infra* ch. III.

75. Typical of the general pattern is the case of Hilda Narciso. On March 24, 1983, Ms. Narciso and two companions were taken into custody following a late night raid on their home in Davao City by a composite military unit. The three were driven to a "safehouse" where they were immediately interrogated. In the course of interrogation, Ms. Narciso was raped once and subjected to continuous sexual abuse throughout the night. Her female companion was sexually assaulted, and her male companion was beaten. The abuse finally ended the following morning, and Ms. Narciso's captors turned to the "soft approach," promising good treatment in exchange for "cooperation." On March 26, 1983, the three victims were transferred to an authorized place of detention, where they were held under a presidential order until early September, 1983.

Other commonly employed forms of torture include near suffocation and the application of electric shocks, hot peppers, and cigarette burns to sensitive parts of the body. Many of the victims interviewed had been subjected to the "water cure," a form of torture in which victims are forced to consume large volumes of water poured through towels that cover their faces.

Psychological forms of torture are also commonly used, often in connection with physical abuse. Sometimes this takes the form of solitary confinement in small dark cells. Often it involves being interrogated within hearing distance of other detainees who are being tortured. A number of victims who had been physically abused stated that the worst form of torture to which they were subjected was threats of being killed.<sup>76</sup>

While torture typically occurs during the period of tactical interrogation immediately following arrest, not all detainees subjected to interrogation are tortured. As an indication of the extent to which torture is used, TFD has recorded 966 arrests for political offenses in Mindanao in the first half of 1983, and 387 cases of torture during that period.<sup>77</sup> These involved cases where the victims survived. According to many reports and testimonies, the bodies of victims of political killings frequently bear signs of severe torture. Human rights groups in the Philippines state that in some of these cases deaths were apparently an unintended result of torture. In others, the combination of gunshot wounds and marks of torture suggest that the victim was deliberately killed following torture.

### CHAPTER III

#### ARBITRARY ARREST AND PREVENTIVE DETENTION

Arbitrary arrest is one of the most widely practiced forms of abuse in the Philippines. In the first six months of 1983, almost one thousand persons were arrested on political grounds in Mindanao alone.<sup>78</sup> Many of these arrests were effected by presidential orders which authorize indefinite detention without recourse to judicial authorities. Pursuant to such orders, President Marcos can detain persons indefinitely merely by calling them "subversives," and can prevent their release even following an acquittal or dismissal of charges.

Until recently this practice was implemented pursuant to a Presidential Commitment Order ("PCO"), a creature of President Marcos' post-martial law

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76. One detainee described how he and a colleague had been taken to a beachhouse for interrogation, placed in separate rooms, and threatened with murder if they did not "cooperate." Then a gun was fired in another room, leading each to believe the other had been killed.

77. *TFD 1983 Report*, *supra* note 73, at 3-4.

78. *Id.* at 3.

legislative powers. Since August 1983, the same practice has been accomplished pursuant to a Preventive Detention Action ("PDA").<sup>79</sup>

### A. *The Presidential Commitment Order ("PCO")*

#### 1. Evolution of PCO

Originally designed to limit circumstances in which persons could be subjected to preventive detention for national security offenses, the PCO soon evolved into a license to order detention without any meaningful limits. On May 9, 1981, President Marcos issued a directive authorizing preventive detention for national security crimes,<sup>80</sup> pursuant to a PCO, after a finding of probable cause by the judge conducting the preliminary investigation.<sup>81</sup> Following the issuance of a commitment order by the President, a person could be detained "for the period required by the judicial authorities."<sup>82</sup>

On May 25, 1981, these procedures were further circumscribed by Letter of Instructions ("LOI") No. 1125-A. Pursuant to this directive, PCOs were to be based on a finding by the judge or other investigating officer that "the *evidence of guilt is strong*."<sup>83</sup> Once a PCO was issued on this basis, a person could be detained "until the final disposition of the case unless sooner ordered released by the President or his duly authorized representative."<sup>84</sup>

In practice, arrests and detention in national security cases were typically effected without a PCO. When PCOs were obtained, they were commonly issued without reference to judicial authorities.<sup>85</sup> These practices were legitimated by LOI No. 1211, which was issued on March 9, 1982.

#### 2. Final Form of PCO

Letter of Instructions No. 1211 provided that detention for national security offenses should be based "upon proper warrant issued by a judge," but added an important proviso: "the military commander or the head of the law enforcement agency" could apply to the President, through the Minister of National Defense, for a PCO covering persons believed to be engaged in national security offenses

79. The decree establishing the PDA, Presidential Decree No. 1877, is dated July 21, 1983. Its issuance was announced on August 5, 1983. It was published in the *Official Gazette* on August 22, 1983.

80. The crimes specified in the order were rebellion, insurrection, subversion, and conspiracy or proposal to commit such crimes.

81. Letter of Instructions No. 1125 (May 9, 1981).

82. *Id.*

83. Letter of Instructions No. 1125-A (May 25, 1981) (emphasis in original).

84. *Id.*

85. See 1982 *AI Report*, *supra* note 26, at 66.

- a) When resort to judicial process is not possible or expedient without endangering public order and safety; or
- b) When the release on bail of the person or persons already under arrest by virtue of a judicial warrant would endanger said public order and safety.<sup>86</sup>

Through these provisions, President Marcos legalized the already prevalent practice of arrest without resort to judicial process.

Additionally, President Marcos reserved to himself and his representatives the right to decide when someone covered by a PCO would be released. LOI 1211 authorized the continued detention of the persons covered by a PCO "until ordered released by the President or his duly authorized representative." The directive thus reversed the existing rule which had protected detainees by limiting detention either until the final disposition of a case or until sooner ordered released by President Marcos.<sup>87</sup> The rule established by LOI 1211 covered persons already detained pursuant to a PCO.

In practice, PCOs were issued by President Marcos simply upon the request of Defense Minister Enrile, who in turn endorsed recommendations of the Chief of Constabulary, which were based upon reports of his subordinates.<sup>88</sup> Neither the President nor the Minister examined witnesses under oath,<sup>89</sup> despite the fact that the person covered by a PCO would continue to be detained "indefinitely at the pleasure of the President."<sup>90</sup>

### 3. The Suspension of Habeas Corpus

The continuing suspension of the privilege of the writ of habeas corpus in national security cases has precluded judicial relief from arbitrary detention under PCOs. President Marcos consistently cited that suspension as the basis of his power to issue PCOs,<sup>91</sup> and, later, PDAs.<sup>92</sup>

During martial law, the privilege of habeas corpus was suspended throughout the Philippines.<sup>93</sup> When President Marcos lifted martial law, he announced that the privilege would remain suspended in the two autonomous regions of Mindanao and in all other places

86. Letter of Instructions No. 1211 (March 9, 1982).

87. Letter of Instructions No. 1125-A (May 25, 1981).

88. Speech by Cecilia Muñoz Palma, retired Justice of the Supreme Court of the Philippines before the Bishops-Businessmen's Breakfast Meeting (May 20, 1983) [hereinafter cited as *Munoz Palma Speech*].

89. *Id.*

90. *Id.*

91. See Letters of Instruction Nos. 1125; 1125-A; 1211.

92. Presidential Decree No. 1877 (July 21, 1983).

93. The Supreme Court held that such suspension was implicit in the imposition of martial law. *Aquino v. Ponce Enrile*, L-35546 (Sept. 17, 1974).



with respect to persons at present detained as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes,

as well as other crimes committed incident thereto.<sup>94</sup> Although the privilege of the writ of habeas corpus was thus suspended for national security offenses, the writ itself is said to remain available.

In practice, this distinction has meant that detainees may seek a writ of habeas corpus but, in national security cases, courts will not grant the petitioners relief from arbitrary detention. Recognizing this severe limitation, attorneys have generally sought habeas corpus principally in cases where persons are being held incommunicado or are believed to be undergoing torture. When habeas petitions are filed in these cases, courts generally have ordered the respondents to produce the body and respond to the writ immediately. Once this order has been issued, persons held incommunicado are typically produced, and in many cases torture has stopped.

The substantive basis of the detention itself is not, however, reviewed if it was based upon suspicion of committing a national security offense. The detention continues without any hope of judicial relief until the President orders the detainee's release.

#### 4. The PCO in Operation

Equipped with the broad powers granted in LOI 1211, the President, acting through the military, has arrested hundreds of persons without resort to judicial process. Once detained under a PCO, Filipinos have had no hope of release except at the absolute discretion of President Marcos or his representative.

Numerous cases were reported in which persons detained under a PCO have been held in "preventive detention" for periods far exceeding the maximum time they could be sentenced to serve for the crimes for which they were arrested. Similarly, persons who have completed their sentences remain incarcerated, awaiting an order of release that can only come from President Marcos or, under LOI 1211, his representative.<sup>95</sup>

People are often arrested without any form of warrant or presidential order and PCOs are obtained later, if prolonged detention is sought. This practice lends itself to substantial abuse, since the threat of obtaining a PCO can be held over

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94. Proclamation No. 2045 (Jan. 17, 1981).

95. The case of Doris Baffrey, who was arrested in connection with the 1981 bombing of the international travel agents' convention, provides a striking illustration of the problem. In October, 1981, Ms. Baffrey was detained pursuant to a presidential Arrest Search and Seizure Order ("ASSO"), the precursor to PCO's, which was dated April 16, 1977. On January 8, 1982, an information was filed against Ms. Baffrey charging her with membership in a subversive organization, a crime carrying a maximum penalty of six months' imprisonment. At that time she had already been detained for 15

the heads of detainees. In August, 1983, six women were arrested and held incommunicado during several days of tactical interrogation. Four of the women were tortured. After a period of incommunicado detention, they were told they would be released if they promised not to obtain counsel. They were told that unless they made this promise, a PCO would be issued against them. The women agreed to forego counsel and were released.

Several cases were also reported in which PCOs had been issued but not implemented. In some of these cases, it appeared that the threat of implementation was designed to inhibit legitimate activities which were disfavored by the Philippine Government.

### 5. Judicial Validation

On April 20, 1983, the Supreme Court of the Philippines sanctioned the broad powers of arrest and detention which President Marcos had claimed for himself, and declared the courts powerless to review the exercise of those powers. In *Garcia-Padilla v. Ponce Enrile*,<sup>96</sup> the Court held that the PCO operates "to validate . . . the detention of a person for any of the offenses [for which] the suspension of the privilege of the writ of habeas corpus [has been continued], if the arrest has been made initially without any warrant."<sup>97</sup>

Reversing established doctrine,<sup>98</sup> the Court held that the President's issuance of a PCO "may not be declared void by the courts . . . on *any ground*," includ-

months. In the ensuing weeks, the military prosecutors told Ms. Baffrey that they would oppose her release on bail and claimed that since her detention was ordered by an ASSO, the retroactive effect of LOI 1211 prevented the court from ordering her release.

Realizing her release could come only from the President, Ms. Baffrey agreed to plead guilty in exchange for a promise that the military prosecutors would secure her immediate release. Ms. Baffrey also claims that the prosecutors promised not to charge her with any further crimes covering the period preceding the plea, but the prosecutors dispute this claim. See *Baffrey v. Ver*, G.R. No. L-60156 (Oct. 18, 1982) at 7 (petitioners' consolidated memorandum); *Cellano v. Ver*, G.R. No. 60156 (July 30, 1982) at 6 (respondents' memorandum).

On February 10, 1982, Ms. Baffrey pleaded guilty and was sentenced to 4 months imprisonment and other disqualifications. Instead of securing her release as promised, military authorities subsequently charged Ms. Baffrey with attempted murder and illegal possession of explosives. The charges arose from an incident forming one of the specifications in the prior information filed against Ms. Baffrey. The prosecutors did not seek a new detention order. Instead, they relied upon Ms. Baffrey's previous ASSO to continue her detention, claiming that pursuant to the retroactive effect of LOI 1211, the ASSO requires her continued detention until the President orders her release. See *Cellano v. Ver*, G.R. No. 60156 (July 30, 1982) at 19 (respondents' memorandum). At the time of our visit, Ms. Baffrey remained detained, three years after her arrest for a crime carrying a maximum sentence of 6 months, pursuant to the original ASSO.

96. G.R. No. 61388 (April 20, 1983).

97. *Id.* at 8.

98. See *Lansang v. Garcia*, 42 SCRA 448, 473-74 (1971) (Supreme Court has the power to inquire into the factual basis for the suspension of the writ of habeas corpus in order to determine the constitutionality of such suspension).

ing its non-compliance with LOI 1211.<sup>99</sup> The Court reasoned that in a situation of grave threat to national security, "the duty of the judiciary to protect individual rights must yield to the [President], who takes absolute command [and] is answerable only to his conscience, the people and to God."<sup>100</sup>

Finally, the Court held that the President's suspension of the privilege of the writ allows him to defer the prosecution of any of the offenses covered by Proclamation No. 2045 and implies suspension of the right to bail as well.

This decision was widely condemned. Following the decision, prominent figures, including retired Supreme Court Justice Cecilia Munoz Palma, spearheaded a mass drive to abolish the PCO. The Catholic Bishops Conference of the Philippines prepared a message, which was to be read in all Catholic churches throughout the country on August 7, 1983, seeking abolition of the PCO.

Averting this move, President Marcos announced on August 5, 1983 the abolishment of the PCO and its replacement with an instrument he said would afford greater protection to basic rights: the Preventive Detention Action ("PDA").

#### B. *The Preventive Detention Action ("PDA")*

The enthusiasm attending President Marcos' announcement was short-lived. Upon close examination, supposed safeguards incorporated into the PDA proved to afford little genuine protection against prolonged, arbitrary detention. In some respects Presidential Decree ("PD") No. 1877, which established the PDA, authorizes greater presidential powers than those granted by LOI 1211.

Like its predecessor, while PD 1877 requires application to civilian authorities for an arrest warrant in national security cases, it also establishes a far-reaching exception, authorizing military and police personnel to apply to the President for a PDA.<sup>101</sup> Once obtained, the PDA authorizes preventive detention for a period "not exceeding one year." PD 1877, in addition, establishes a procedure for further indefinite detention at the direction of the President. The decree provides that the President "may" constitute a review committee to consider evidence

99. *Garcia-Padilla*, G.R. No. 61388, at 17 (emphasis added).

100. *Id.* at 15.

101. Specifically, when a military commander or head of a law enforcement agency ascertains that a person has committed, is committing or is about to commit a national security offense, "or would probably escape or commit further acts which would endanger public order and safety as well as the stability of the state before proper warrant could be obtained," he can apply to the President

(a) When resort to judicial processes is not possible or expedient without endangering public order and safety;

(b) When in the judgment of the President of the Philippines to apply for a judicial warrant may prejudice peace and order and the safety of the state like when it may jeopardize the continued covert intelligence/counter insurgency operations of the Government . . . .

against a person detained pursuant to a PDA. The committee shall submit a recommendation to the President before one year of detention has expired. After considering the recommendation, the President has the options of ordering release, further detention, or the filing of an information against the person detained. Detention may, therefore, continue as long as the President desires and there is no guarantee that he will review the detention any sooner than one year after it begins. More importantly, at no time is judicial review available.

PD 1877 further states that persons covered by a PDA must be released if they are acquitted or have served their sentences after conviction, but then provides that "if in the meantime there is evidence of the detained person continuing to engage in the acts for which he was detained he may be ordered further detained by the President." Thus, persons acquitted of charges may nonetheless be detained indefinitely for allegedly continuing to engage in the acts for which they initially were detained.

When issued, PDAs constitute authority not only to arrest and detain persons, but also to "sequester all arms, equipment or property used or to be used in the commission of the crime or crimes."<sup>102</sup> Thus, journalists charged with printing seditious articles may lose their printing presses as well as their personal freedom. In this respect, PD 1877 authorizes greater incursions on freedom than LOI 1211.

In short, the PDA procedure does not eliminate the potential for abuse which ultimately led to the demise of the PCO. Indeed, concern about the PDA is so great that a significant sector of opposition leaders recently agreed that they would boycott parliamentary elections scheduled for May, 1984 unless the PDA were repealed first.<sup>103</sup>

#### CHAPTER IV

##### TARGETS OF MILITARY ABUSES

Undoubtedly, a substantial number of Filipinos killed by security forces are victims of what may properly be described as military encounters. A growing communist insurgency and, to a lesser extent, the Muslim insurgency active in some regions, continue to wage armed encounters with government forces. The victims of such encounters are not the subject of this article. Though no one doubts the existence of armed insurgencies in the Philippines, it is equally clear that many non-combatants have been victims of violations that are justified as counter-insurgency measures.

A large proportion of persons illegally killed or subjected to other forms of military abuse live in areas where the New Peoples Army, the armed wing of the

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102. Presidential Decree No. 1877 (July 21, 1983).

103. *Search for Unity*, *supra* note 15, at 10

Communist Party in the Philippines, is active. Counter-insurgency operations in these areas are by no means narrowly focused on NPA members; the operations sweep broadly over entire villages, bringing within the zone of violence many whose only crime is an unfortunate choice of residence.

Many fall victim because of the military's assumption that if the NPA is active in an area, the residents must be active supporters of the insurgents. In this context, people are murdered and subjected to other forms of abuse on minimal grounds of suspicion.<sup>104</sup>

In addition to arbitrarily selected victims of military abuse, many people suffer because they are correctly believed to provide support to insurgent forces, though they are not rebels themselves. While such reports are impossible to verify, they indicate that residents of many rural areas give assistance to NPA rebels, such as food or lodging, without joining the NPA or embracing its objectives. The motivation for such support is threefold.

First, it is believed that in some instances people provide food or lodging to NPA members simply because of the coercion implied in a request for such aid by armed rebels.

Second, it is reported that in some areas NPA rebels provide a rough-and-ready "system of justice" that is perceived to be "more just" than that provided by the government.<sup>105</sup> According to these accounts, local figures known for their abusiveness receive stern warnings from the NPA; if the abuse continues, they are killed. Such actions engender popular support for the NPA for reasons wholly unrelated to its broader objectives.

Finally, it is clear that a growing number of persons have become radicalized by first-hand experiences of military outrages. An NPA presence in a region attracts the military which, in turn, inevitably introduces new levels of human rights violations. Victimized by these abuses, many Filipinos throw their support to any force that they perceive to be effectively opposing the military. It is widely asserted that this pattern is responsible for the considerable expansion of NPA strength in recent years,<sup>106</sup> and the growing defection of some moderate opposition forces to rebel groups.

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104. Thus, Dr. Remberto de la Paz, whose case is discussed above, *see supra* ch. II, § A, was reportedly killed because he was observed moving freely through NPA strongholds.

105. For this reason, a popular joke in the Philippines is that "NPA" stands for "nice people around."

106. Estimates of NPA strength vary widely, but it is generally acknowledged that the NPA's forces as well as its mass base of support have grown substantially in recent years. According to one source the armed forces of the NPA grew from around 4,000 men in the mid 1970's to 6,000 in 1982. *Hearings Before the Subcommittees on Asian and Pacific Affairs and on Human Rights and International Organizations of the House Committee on Foreign Affairs*, 97th Cong., 2nd Sess. 252 (Sept. 28, 1982) (testimony of Prof. Benjamin N. Muego). According to Professor Muego, during the same period the NPA's mass base grew from 700,000 to between 1,500,000 and 2,000,000. *Id.* *See also U.S.-Philippines Relations and the New Base and Aid Agreement: Hearings Before the Subcommittee*

While many Filipinos fall victim to human rights violations because they live in areas of active insurgency, others clearly suffer because they engage in non-violent political activities. From the beginning of martial law, the anti-communist banner has led a systematic campaign against government critics of all kinds. In the words of Jaime Cardinal Sin, the Archbishop of Manila, "anybody who is against the government here is called a communist."<sup>107</sup>

To some extent, repression based on political activities is sanctioned by law. Broadly defined crimes pose the threat of lengthy imprisonment or even death for engaging in activities that are critical of government policies. It is a crime merely to attend a meeting "which is held for propaganda purposes against the Government . . . in order to . . . undermine its authority by eroding the faith and loyalty of the citizenry thereto . . ." <sup>108</sup> An organizer of such a meeting can be sentenced to death.<sup>109</sup> Similarly, persons can be detained pursuant to a PDA and sentenced to death for "writ[ing], publish[ing], or circulat[ing] scurrilous libels against the Government of the Philippines."<sup>110</sup>

While such laws provide legal justification for the arrest and punishment of persons engaged in political activities, the sweeping repression of dissent has extended to lawless actions like murder and torture of dissidents. Various groups, ranging from church workers to labor organizers, are consistently identified as targets of such violations.

#### A. *The Church*

The Roman Catholic Church has been singled out as a target of military abuses. A number of Church officials have been subjected to arbitrary arrest and detention; some have been tortured. Some church workers have been victims of political killings. These practices have been condemned by Cardinal Sin as a "systematic campaign to discredit the church and church workers."<sup>111</sup>

*on Asian and Pacific Affairs of the House Committee on Foreign Affairs*, 98th Cong., 1st Sess. 76 (1983) (prepared statement of Benigno S. Aquino, Jr.) (NPA armed forces have grown from estimated 500 persons in 1972 to between 5,000 and 7,000 in 1982) [hereinafter cited as *Hearings on U.S.-Philippines Relations*]. According to Jose Maria Sison, the alleged former leader of the Communist Party in the Philippines who is now detained in Manila, NPA forces have grown from 250 armed men in 1972 to 10,000 today. *The Trail of Aquino's Killer*, NEWSWEEK INT'L EDITION (Sept. 26, 1983).

107. Interview with Diane Orentlicher (September 16, 1983).

108. Presidential Decree No. 1834, § 10 (1981). The decree is dated January 16, 1981 but did not come to public light until May 10, 1983. At that time, President Marcos said he would not enforce the new law until it was published in the *Official Gazette*, which took place on September 29, 1983.

109. *Id.*

110. *Id.* at § 6.

111. AMNESTY INTERNATIONAL USA, *Arrest, Detention and Political Killing of Priests and Church Workers in the Philippines 2* (Dec. 31, 1982) [hereinafter cited as *AIUSA Report*].

The Philippine Government charges that religious workers affected by military operations are engaged in subversive activities.<sup>112</sup> Church leaders, in contrast, generally claim that although some priests and nuns have gone "underground" and joined insurgent groups, the Church as a whole has been victimized largely because of its work on behalf of human rights and social justice. Throughout the martial law period and in the three and one-half years since it was lifted, the Church has been a strong public critic of government policies and the principal Philippine institution supporting local human rights activities.<sup>113</sup> The Church has for several years promoted the development of Basic Christian Communities, which are lay groups addressing religious, social and economic needs on a community level.<sup>114</sup> Priests, nuns and lay workers have become advocates for the rights of peasants, workers and urban squatters.<sup>115</sup> The Church has been particularly vocal in its criticism of military murders, torture, disappearances and arbitrary arrests and detention. Church workers affiliated with such activities have been specially targeted for arrest and indefinite detention.

Cardinal Sin stated that church workers are branded "subversives" because the Church has been a vocal critic of government policies. The Cardinal also explained that priests in rural areas help anyone in need, regardless of his or her affiliation, giving rise to the charge that they support communists.<sup>116</sup>

The inquiry upon which this article is based confirmed that, while some people identified with the Church actively support insurgent forces,<sup>117</sup> numerous church workers who are not involved with insurgencies have been arrested, tortured and even murdered in recent years.

### B. Human Rights Activists

Numerous human rights organizations function openly and aggressively in the Philippines. While a substantial amount of human rights activity is tolerated by the government, involvement in such efforts entails substantial risks. Several instances were described in which persons engaged in human rights activities were branded "subversives" and subjected to military abuses.<sup>118</sup>

112. *Crackdown on 'Rebel Priests' Widens Church-State Rift in Manila*, The Washington Post, Feb. 18, 1983, at A28.

113. *AIUSA Report*, *supra* note 111, at 3.

114. *Id.*

115. *Id.*

116. Interview with Diane Orentlicher (September 16, 1983).

117. The authors spoke with two priests in detention who were victims of either physical or psychological torture and who acknowledged their support for communist organizations.

118. The authors' experience in the Philippines tended to support reports that human rights activities invite charges of subversion. When Ms. Orentlicher sought an appointment with AFP Chief of Staff General Fabian Ver, a lieutenant in his office advised her to obtain a letter of introduction from the U.S. Embassy. Ms. Orentlicher was told that otherwise she would be subject to surveillance, given the "sensitive" nature of her purpose (a human rights inquiry).

### C. Labor Activists

Trade unions constitute another group that has been subjected to systematic harassment by government forces. From mid-August until early September, 1982, approximately 50 trade unionists were arrested in the Metro Manila area, following a period of increased union activity.<sup>119</sup> In the preceding one and one-half years, there had been a marked increase in strikes.<sup>120</sup> Thirty-two of those arrested were reportedly charged with conspiracy to commit rebellion and sedition.

During several recent incidents, military forces were used to break strikes. In these cases, local military units joined with private company guards to rout the strikers. Some labor organizers have been arrested and detained and others have been beaten and even shot at by military forces when they refused to disband.<sup>121</sup>

## CHAPTER V

### STRATEGIC HAMLETTING

Shortly after martial law was lifted, civilians living in areas with a strong NPA presence fell victim to a new form of military abuse that made no pretense of targeting rebels alone. In 1981, the Armed Forces of the Philippines began to use resettlement tactics against local populations in Mindanao which were reminiscent in some respects of the "strategic hamletting" program utilized by the South Vietnamese and United States armies a decade ago. According to TFD-Mindanao, approximately one-half million people were affected by this practice

Also illustrative of this attitude was the reaction of local military authorities in Davao del Sur to a fact-finding mission sponsored by the Human Rights Committee ("HRC") of the Integrated Bar of the Philippines ("IBP"). In December, 1982, several teams led by IBP attorneys investigated reports of "hamletting" in Davao del Sur. *See infra* ch. V. Following its investigation, the bar group received a report that a member of the team investigating hamlets in Sulop and Kiblawan had been arrested by the military on the charge that he had visited the hamlets as part of a "rebel group." HUMAN RIGHTS COMMITTEE OF THE INTEGRATED BAR OF THE PHILIPPINES, *Fact-Finding Mission, Report of the IBP Davao del Sur Chapter 8* (undated).

Another group investigating reports of "hamletting" in Sitio Marawer was raided by a military force at a cottage where its members were staying for the night. The raiders threatened the bar delegation and prohibited it from leaving the premises. The bar group's cameras, tape recorders, cassettes and notes were confiscated. The next morning the group's members were given a military escort to another town, where they were detained for four hours. While their other materials were returned, rolls of film and cassette tapes containing recorded interviews were permanently confiscated. *Id.* at 16.

119. AMNESTY INTERNATIONAL, *Interim Report on the Philippines Campaign* (Nov. 30, 1982) at 3.

120. *See id.*

121. In addition to the church and human rights and labor activists, human rights organizations in the Philippines report that student activists and organizers of the urban poor are frequent victims of human rights violations.



in Mindanao during 1982.<sup>122</sup> Various justified as a tactic to isolate rebels and a measure to protect civilians from military operations, the program has transformed numerous regions in the Philippines into internal refugee camps, where conditions of poverty and disease provide the backdrop for a concentrated reign of terror.<sup>123</sup>

### A. *San Vicente: The Testing Ground*

#### 1. The Program

The testing ground for the new program was the municipality of San Vicente, located in the region formally known as Laac in Davao del Norte. In October, 1981, following an ambush by the NPA and a boycott by local residents of the 1981 presidential elections, some 20,000 residents of San Vicente were ordered to transfer to the center of their sitios—sub-units of a barrio—and two weeks later were ordered to transfer to the barrio centers.<sup>124</sup>

The evacuees were instructed to dismantle their abandoned homes so that NPA rebels could not use them and were warned that anyone found in the abandoned homes would be presumed to be an NPA supporter. Army commanders explained that this program was necessary because "Laac is like a beautiful lake, in which there are some bad fish." It was necessary, therefore, "to drain all the water from the lake in order to catch those bad fish."<sup>125</sup>

Life in the hamlets was strictly controlled by military authorities. Residents were allowed to leave their hamlets only from 5 a.m. to 5 p.m., and then only to work on their farms. Hamlet residents going out during daylight hours had to secure a permit from their *barangay* (local council) captains.<sup>126</sup>

The curfew placed severe hardships on residents, many of whom had to travel several kilometers to reach their farms. Residents were searched when leaving their hamlets, and were allowed to carry only enough food for one person lest any extra food be given to NPA rebels.<sup>127</sup>

122. TASK FORCE DETAINEES OF THE PHILIPPINES, MINDANAO REGION, *Semi-annual Report (January-June 1983)* 2 (Sept. 14, 1983) [hereinafter cited as *TFD-Mindanao Report*].

123. In the last two years, three exhaustive reports by the Committee on Human Rights and Due Process of the Integrated Bar of the Philippines have been prepared on this program of forced relocation. While the Lawyers Committee for International Human Rights did not undertake an independent on-site investigation of this practice, the delegates carefully reviewed the reports of the Integrated Bar with their authors, and are satisfied that the reports contain reliable accounts.

124. INTEGRATED BAR OF THE PHILIPPINES, *Report of the Commission on Human Rights and Due Process* 3 (Feb. 26, 1982) [hereinafter cited as *February 1982 IBP Report*]. Persons whose sitios were far removed from barrio centers were excepted from the second order, but were required to remain in their sitio centers. *Id.* See also Ocampo, *A little Vietnam*, FAR E. ECON. REV. 38 (Mar. 12, 1982) [hereinafter cited as *Ocampo*].

125. Statement of army commanders.

126. Ocampo, *supra* note 124, at 39.

127. *February 1982 IBP Report*, *supra* note 124, at 4.

Reliable fact-finding bodies report that residents of several barrios were ordered to contribute labor and materials in the construction of PC barracks, and were not paid for either.<sup>128</sup> The February, 1982 delegation to San Vicente sponsored by the Integrated Bar of the Philippines ("IBP") and led by retired Chief Justice J.B.L. Reyes received considerable evidence that residents of some barrios were required to contribute money toward the monthly support of troops stationed in their areas.<sup>129</sup> According to this evidence, which the IBP found credible but requiring further verification, the residents were told that since they had contributed to the NPA before, they should contribute now to the PC.<sup>130</sup>

Living conditions in the hamlets, or "grouping centers" as they were officially called, were abysmal.<sup>131</sup> The residents suffered from a "lack of food, safe drinking water, medical personnel, inadequate sanitation and no schools."<sup>132</sup> As of March 12, 1982, at least thirty children were reported to have died due to the unsanitary conditions of San Vicente hamlets.<sup>133</sup>

## 2. Justification

The IBP delegation was told by military and municipal officials that the transfer of people to grouping centers was done at their own request. This claim was contradicted by the residents' testimony.<sup>134</sup> General Olano, then Regional Commander of the PC, acknowledged to the IBP group that the military had ordered the groupings.<sup>135</sup>

The program was part of a new initiative of the military to counter the communist insurgents' growing influence in rural communities by "winning the hearts and minds" of their residents. Calling this strategy a "war without bullets," Gen. Jose Magno, Chief of the Central Mindanao Command, explained: "We are fighting an invisible enemy." According to Magno, the program's strategic objective was control of the people, not territory.<sup>136</sup>

128. *Id.* at 5. See also Ocampo, *supra* note 124, at 39.

129. February 1982 IBP Report, *supra* note 124, at 5.

130. *Id.*

131. WHO magazine reported that "[c]ongestion, food shortage and the sight of sick people penned in feid shanties all but [made] the hamlets look like concentration camps." *If you can't lick 'em, hamlet 'em*, WHO (Feb. 13, 1982) [hereinafter cited as *If you can't lick 'em*].

132. February 1982 IBP Report, *supra* note 124, at 4.

133. Ocampo, *supra* note 124, at 38.

134. February 1982 IBP Report, *supra* note 124, at 5-6.

135. *Id.* at 6. See also Ocampo, *supra* note 124, at 38.

136. *If you can't lick 'em*, *supra* note 131. To demonstrate the success of their program, government authorities in San Vicente rounded up 7,000 barrio residents less than two months after hamletting began, and required them to take an "oath of allegiance for NPA surrenderees." *Id.* See also Ocampo, *supra* note 124, at 39; February 1982 IBP Report, *supra* note 124, at 3. The dailies reported that 7,000 NPA rebels had surrendered. *If you can't lick 'em*, *supra* note 131.

While isolating and dismantling the NPA's mass base in San Vicente appeared to be the primary reason behind the hamletting, there have been persistent rumors that economic factors also underlay the program. The fertile valleys and forests of Mindanao have been the subject of large-scale development plans, including a plantation program to which the World Bank pledged \$100 million.<sup>137</sup> It is widely believed that hamlets are created to remove settlers from these lands.<sup>138</sup>

### B. *Official Response and Subsequent Developments*

On March 2, 1982, shortly after the IBP furnished him with a report on the San Vicente hamlets, Minister of National Defense Juan Ponce Enrile ordered police and military forces "to desist from participating in any manner of . . . setting up hamlets."<sup>139</sup> Enrile also instructed military authorities to allow residents of existing hamlets to return home and to assist them financially.<sup>140</sup> This directive was followed by assertions by high ranking government officials that forced groupings no longer existed, though in some cases people might be asked to stay temporarily in evacuation centers during military operations.<sup>141</sup>

Despite these assurances, the IBP continued to receive reports that the practice of hamletting was in fact spreading. The IBP heard that the March, 1982, directive of Minister Enrile was being "rampantly violated" in several areas of Davao del Sur.<sup>142</sup> As a result, the Davao del Sur Chapter of the IBP's Human Rights Committee sent five teams to investigate these reports in early December,

137. Ocampo, *supra* note 124, at 39.

138. Such rumors are fueled by reports that, in various regions of Mindanao, paramilitary units have been used to remove settlers from lands desired for development purposes. Adding to such speculation, in December, 1981, Lt. Col. Alejandro Cruz reportedly told residents of a barrio in San Vicente that the barrio captain had given him 900 hectares of land, which he asked the residents to help him clear and plant. When confronted with this charge, Cruz denied making such a statement. *Id.* See also *February 1982 IBP Report*, *supra* note 124, at 4.

139. Ocampo, *supra* note 124, at 40. In a memorandum reportedly sent to AFP Chief of Staff Gen. Fabian Ver and his deputy, Lt. Gen. Fidel Ramos, Minister Enrile said:

As you are very well aware, this ministry or the national government has never authorized and will never countenance the forcible grouping of people in specified residential villages or centres, nor taking private property without compensation as well as compelling people to render forced labour, as all of the above are acts which are violative of the constitutional rights of people.

*Id.*

140. See *id.*

141. HUMAN RIGHTS COMMITTEE OF THE INTEGRATED BAR OF THE PHILIPPINES, *Fact-Finding Mission, Report of the IBP Davao del Sur Chapter 2* (undated) [hereinafter cited as *IBP-Davao Report*].

142. *Id.*

1982. The teams found that hamletting had been continuing in Davao del Sur and had expanded to new sites.<sup>143</sup>

The IBP Davao del Sur Chapter's report discloses patterns of military abuse in hamlet areas. On the whole, the hamlets are heavily patrolled by military forces, including CHDF personnel, who sometimes appear to operate in tandem with barrio captains. The movement of hamlet residents is controlled by military checkpoints. With such an active military presence, military abuses are frequently reported. Thus, in one hamlet visited by the IBP, residents complained of a pattern of "indiscriminate arrest, detention and even manhandling by the military, police and CHDF."<sup>144</sup>

As in San Vicente, residents of several hamlets reported that they were ordered to construct a military detachment using materials that they were required to contribute.<sup>145</sup> After the construction of such a detachment in Kiblawan, the IBP found that the military detachment required each of five hamletted barrios to send two to four civilian "volunteer" guards to the detachment every night. The guards were to secure the detachment from attacks by dissident groups. According to the IBP report, the "volunteer" guards were also required to contribute food each night to the regular military complement at the detachment.<sup>146</sup>

The military detachment officer unsuccessfully tried to get the barrio council to pass a resolution saying that this system was a voluntary initiative, and residents told the IBP team that they opposed the system since it endangered their lives.<sup>147</sup> These residents intimated that they had been told by the military that if they failed to cooperate, they would be considered NPA supporters and would be blamed for any ambushes directed against the detachment. The IBP observed that "[w]ith [this] system, [the residents] became the 'security guards' of the military at the Detachment!"<sup>148</sup>

One of the IBP teams conducted a follow-up investigation of the San Vicente hamlets. This team found that although no new hamlets had been established in San Vicente since the last investigation, at least 90% of the families that were displaced in October, 1981 remained in the hamlets. The team concluded that "fear and anxiety . . . for their life and safety" together with economic factors accounted for the reluctance of San Vicente residents to return to their homes.<sup>149</sup>

143. *Id.* The new hamlets were concentrated in the municipalities of Digos, Sta. Cruz, Bansalan and Matan-ao, as well as in the Arakan Valley of North Cotabato and other areas of Agusan del Sur. INTEGRATED BAR OF THE PHILIPPINES, COMMISSION ON HUMAN RIGHTS AND DUE PROCESS, *Supplementary Report on Activities 1* (April 25, 1983) [hereinafter cited as *Supplementary Report*].

144. *Id.* at 7.

145. *IBP-Davao Report*, *supra* note 141, at 6, 10.

146. *Id.* at 6.

147. *Id.* at 7.

148. *Id.*

149. *Id.* at 20.

The team found that activities of military and CHDF forces lent "credence to the suspicion that the return to the farmlands and homes of those displaced is being discouraged if not obstructed by sowing fear and terror in the area."<sup>150</sup>

The team's report notes in particular a pattern of forced recruitment into the CHDF and abusive conduct of CHDF personnel. It states that each barrio in San Vicente had a quota of 30 recruits, and that barrio leaders resorted to a program known as "panoktok operation," wherein "recruiters knock on the doors of homes at night to forcibly recruit men to the CHDF."<sup>151</sup> The report also notes that those who are willing to "brave the uncertain situation" that they would face if they returned to their homes are unable to do so since their homes were dismantled and they cannot afford to build new ones.<sup>152</sup>

The IBP's Davao del Sur Chapter report was sent to Minister Enrile with a plea that his order of March, 1982 be reaffirmed and enforced. On February 11, 1983, the Minister replied that according to the Ministry's own investigations: (a) "in the main, the people or evacuees who left their original place of abode have done so for economic and security reasons—being overburdened, so they complained, by the CPP NPA's progressive taxation and the ever present threat of liquidation for non-cooperation with the NPA"; (b) that evacuees were not prohibited from returning to their homes, but rather voluntarily remained in grouping centers waiting for a return to normalcy or in fear of terrorist activities; and (c) that the Ministry's earlier directive had been distributed to the operating units.<sup>153</sup>

In view of the discrepancies between the Ministry's assertions and the IBP Davao del Sur Chapter's findings, the IBP National Commission on Human Rights decided to conduct yet another investigation of relevant regions in Davao del Sur and surrounding provinces. Thus, in April, 1983, further inspections were undertaken.

Based upon this investigation, the IBP found that most residents of San Vicente wanted to return to their homes but could not afford to rebuild them, and believed it would be useless to do so since they had no assurance they would not be regrouped again if an encounter took place. Some residents expressed fear of harassment by the military. Others expressed fear because military authorities had said that they could return "at their own risk," which was construed as a denial of future protection. In no case was fear of rebels cited as a reason for their failure to return home.<sup>154</sup>

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150. *Id.* Abusive practices include "[s]olicitation of [a] fee from the already economically-depressed farmers by CHDF and military personnel"; illegal arrests and torture; the killing of a barrio resident following brutal torture "for the only reason that he was carrying a 1981 Residence Tax Certificate and not a 1982 one"; and robberies and other crimes by CHDF forces. *Id.*

151. *Id.*

152. *Id.* at 21-22.

153. *Supplementary Report, supra* note 143, at 1-2.

154. *Id.*

### C. *Related Practices*

In addition to hamletting, a wide range of military practices operate to displace civilian populations in the Philippines. Before hamletting was instituted in Mindanao, civilians in areas with an active Muslim insurgency were forced out of their homes by the designation of their areas as "no man's land" zones.<sup>155</sup> Unlike victims of hamletting, these villagers were usually allowed to return to their homes when the military operations were completed.<sup>156</sup> Similar practices reportedly continue today in regions where the NPA is active.<sup>157</sup> In these situations, persons are forced out of their homes but are not required to live in designated grouping centers.

Additionally, military operations known as "zoning" threaten the security of civilians to such an extent that evacuation is often a virtual necessity. During zoning operations, areas are cordoned off by military units, which conduct house-to-house searches for rebels. Serious military abuses are reported to occur during these operations. During the first half of 1983, zoning operations spanning almost five weeks were conducted in ten barrios in Agusan del Norte and in one barrio in Misamis Oriental. According to TFD-Mindanao, "[t]wenty-two arrests were made during these operations. At least one woman was raped while several others [were] molested. A number of men were mauled; an old man died."<sup>158</sup> In Butan, Barangay officials were said to capitalize on zoning operations through extortion. According to TFD, Butan residents were required to obtain "Barangay clearances" at a cost of 2.50 pesos each.<sup>159</sup>

## CHAPTER VI

### OPERATION OF THE SYSTEM OF JUSTICE

#### A. *Redress for Human Rights Violations*

The increased military violations in recent years must be attributed, at least in part, to a lack of resolve by government officials to curb the practices. Although official disciplinary procedures exist in theory, they are rarely applied in fact.

##### 1. Potential Avenues for Redress

A combination of judicial and administrative procedures exists to process complaints of human rights violations by agents of the Philippine Government.

155. Ocampo, *supra* note 124, at 39.

156. *Id.*

157. *Hearings on U.S.-Philippines Relations*, *supra* note 106, at 77-78 (prepared statement of Benigno S. Aquino, Jr.).

158. *TFD-Mindanao Report*, *supra* note 122, at 3.

159. *Id.*

Various channels exist for filing administrative complaints within the military establishment.<sup>160</sup> Pursuant to decrees issued in 1981<sup>161</sup> and 1982,<sup>162</sup> exclusive jurisdiction over criminal prosecutions of military and police personnel is vested in courts martial. As a result of those decrees, civilian prosecutors no longer handle complaints filed against military personnel, but endorse them to the Judge Advocate General's Office.<sup>163</sup>

Although citizens can file complaints with the Judge Advocate General ("JAG"), only military officials and the President can initiate a court martial procedure. The JAG does not publish the results of his review if he decides not to file a case. When the JAG receives a complaint, he may decide to refer it to the Office of the Inspector General for an administrative investigation rather than to a court martial. Conversely, administrative complaints made within the military structure may result in a recommendation to the JAG that a court martial be convened.

## 2. Operation of Existing Procedures

In practice, complaints rarely produce a visible investigation and investigations said to be underway typically produce no final results. When investigations are completed, they usually exonerate the subject of the charges or, where guilt is established, result in his transfer to another region.

One consequence of this is that many victims of military abuses are unwilling to file complaints, which they regard as futile. Relatives of persons who have been killed despair of finding any fair means to test the bald statement that their spouse, child or sibling was "killed in an encounter."

In the rare case where prosecution has taken place, it has been the product of intense public pressure, including the intervention of international organizations or the personal intervention of influential figures in the Philippines. When prosecutions have been initiated, the results have generally been unsatisfactory: either charges have been dismissed following hearings that were not public, or the punishment has not been commensurate with the offense.<sup>164</sup> For example, courts

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160. In practice, such complaints are filed with the commanding officer of the person against whom a complaint is lodged, the Office of Civilian Relations of the Ministry of National Defense ("MOND"), the Office of Detainee Affairs of the MOND (where current detainees are involved), the Chief of Staff of the AFP, the Minister of National Defense or directly with President Marcos.

Investigations resulting from such complaints have been conducted by various bodies and offices, including specially constituted bodies within the MOND, the Office of the Inspector General of the AFP, the Constabulary Inspectorate General, the Criminal Investigation Service of the PC and the Office of the Constabulary Judge Advocate. See 1982 *AI Report*, *supra* note 26, at 86.

161. Presidential Decree No. 1822 (Jan. 16, 1981).

162. Presidential Decree No. 1850 (Oct. 4, 1982).

163. Filipino attorneys regard the transfer of jurisdiction to military courts as an effort to allow the military to "protect its own."

164. See 1982 *AI Report*, *supra* note 26, at 84.

martial have ordered defendants to be discharged from service, or have imposed short sentences of confinement, ranging from four to six months for crimes as serious as murder.<sup>165</sup> In one notable exception, on November 29, 1983 a court martial convicted and sentenced to 14 years imprisonment First Lt. Leo Degario Adalem and Staff Sgt. Angeles Tanyag for the murder in 1980 of Macli-ing Dulag, the tribal chief of the Kalingas who had led the opposition to the government's Chico River Dam project. Additionally, on May 25, 1983, Col. Vicente Lucero, Jr. and Capt. Bengamin Santiago were sentenced by a civilian court in one of the autonomous Muslim regions to life imprisonment for the massacre of 10 people in 1978.

Cases examined suggest that the dearth of successful prosecutions is due in part to determined efforts by responsible officials to thwart prosecution. When doubts were raised about the guilt of the defendant charged with murdering Dr. Remberto de la Paz,<sup>166</sup> family members requested that the Defense Ministry furnish a picture of the defendant so that witnesses could verify whether he was the person that they had seen shoot the doctor. This request was repeatedly denied. Similarly, military officials have refused to furnish Hilda Narciso a lineup she requested so that she could support her allegations of rape.

Intimidation of witnesses and complainants contributes in large measure to the lack of successful prosecutions. The authors were informed of numerous cases in which complaints were withdrawn because key witnesses had retracted their statements following visits from military personnel. In one case, a person who gave testimony about a political killing that he witnessed was murdered himself two years later. Despite the lapse of time, the circumstances of his death suggest that his previous testimony may have been one reason for his own murder.<sup>167</sup>

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165. *See id.* at 86-87.

166. *See supra* ch. II, § A.

167. On September 5, 1981, a public meeting of a Church-Military Liaison Committee was convened in Hinoba-an, Negros Occidental, to hear testimony about the alleged killing of Rudy del Carmen by the military several weeks earlier. Romeo Sarentas testified at that meeting that he had witnessed del Carmen's murder and had been directed to help the military carry the body away. At the end of his statement, Sarentas expressed the fear that he would "be next."

As a result of the meeting, the Deputy Regional Commander of Region VI ordered an investigation. On September 10, 1981, he announced that the investigation had shown that "Rudy del Carmen was not touched by the military." One week later, Romeo Sarentas signed an affidavit repeating his previous statement. The following month, relatives of del Carmen reportedly received threats that they would be killed if they did not withdraw their case against the military; no such case had in fact been filed. *See 1982 AI Report, supra* note 26, at 43.

On August 20, 1983, uniformed men surrounded the home of Romeo Sarentas at approximately 6:00 a.m. After searching the home, the raiding team made Sarentas leave with them. Sarentas's wife followed the group from a distance of approximately 15 meters. At one point, Sarentas's custodians hid him from his wife's view, and she heard six successive shots. When she neared the group, she saw her husband lying on the ground. She was told to return home or she would be next. As she retreated,



Often, those who try to publicly challenge the military are subjected to harassment. For example, Encarnacion Orillo was charged with rebellion after she filed a complaint against three PC officers for the murder of her children.<sup>168</sup> In another case, the father of a detainee who had been tortured was preparing to file a complaint, a fact known to military authorities. Before the complaint was filed, the detainee was killed. Whether or not the death was related to the contemplated complaint, the father was no longer willing to seek redress after his son was murdered.

Military authorities also try to prevent complaints of torture by requiring victims to sign forms saying they were treated well while in custody as a precondition to release. Similarly, parents of minors held in detention are asked to sign such waivers in order to obtain their children's release. The authors also received several reports that medical examinations requested by torture victims were delayed by military authorities until the evidence of torture had substantially disappeared, making a claim of torture difficult to support.

Several attorneys stated that they discourage their clients from filing complaints. These attorneys indicated that, if the torture of a detainee has stopped, he or she has more to lose than gain by not filing a complaint, because the detention would probably be extended in retaliation.

### 3. Government Silence

Compounding these problems is the apparent unwillingness of the Philippine Government to publicize instances of discipline. Although government officials stated that they were anxious to convey to the public their sincerity in prosecuting cases of military abuse, the same officials were unwilling to disclose instances of punishment.<sup>169</sup>

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she heard another shot. Another witness reported that Sarentas's body was stabbed with a bayonet after he had already died. That witness fled town after his name was published in a local newspaper. Local papers reported that Sarentas was "killed in an encounter."

168. See *supra* ch. II, § A. An attorney stated that Ms. Orillo believes that this charge was related to her complaint because she received notice of the charge in connection with the legally unrelated case against the PC officers. In notifying Ms. Orillo that, in accordance with recent law, the case against the PC officers was to be transferred to a military court, the provincial prosecutor who had handled the case until then also notified her that rebellion charges had been filed against her. Ms. Orillo is now reluctant to testify against the PC officers because she fears that she will risk arrest if she goes to the town where the trial is to take place.

169. Minister Enrile claimed that military offenders are often punished in hearings that are a matter of public record. When asked for examples of this, however, he stated that not a single one could be made available to outsiders, though the authors were free to seek out the public records. "Either you take our word or you don't," the Minister commented. "We don't want others to know how we make our decisions." The Minister invited the authors to observe actual proceedings, but insisted: "We're not about to give you all our records."

This policy of low-profile discipline is consistent with several reports of disciplinary measures being taken on a "strictly private" basis.<sup>170</sup> This practice disservices the government's stated policy of condemning military abuses; the deterrent function of public sanctions remains unexercised. Of far greater concern, however, is the unavoidable conclusion that disciplinary efforts are rarely pursued at all, and that this policy of neglect is condoned at the highest levels of government.

## B. Preventive Measures

### 1. Governmental Initiatives

Preventive measures to curb military abuses suffer from the same lack of serious intent that impairs the functioning of disciplinary procedures. The Philippine Government has adopted various procedures designed to reduce human rights violations, but has largely failed to ensure their implementation.

These efforts have focused on torture. While denying that torture is prevalent, the Philippine Government acknowledges that some abuses occur. Over the last few years, the government has announced a number of steps it claims to be taking to address this problem. Indeed, the Philippine Government has assumed a prominent position in the United Nations discussion of international efforts to end torture. The Philippines was a sponsor of the United Nations Declaration Against Torture adopted by the General Assembly in 1975. In 1979, President Marcos signed Proclamation 1914, committing the Philippine Government to implement the Declaration through national legislation and other measures. In 1980, the Philippines was a sponsor of General Assembly Resolution 35/178 on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of General Assembly Resolution 35/170 which established a Code of Conduct for Law Enforcement Officials.

Similarly, domestic law in the Philippines contains a wide array of provisions designed to reduce opportunities for torture. The Revised Penal Code, for example, prescribes penalties for public officials who fail to deliver detainees to "proper judicial authorities" within stated periods after arrest.<sup>171</sup> Additionally,

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170. For example, in a case in which four men were killed while in military custody, *see supra* ch. II, § A, military officials publicly declared the incident an "encounter" but reportedly privately reprimanded the responsible officer for allowing the murder of men who were already in custody.

171. Under this provision, the time limit for various offenses ranges from six to eighteen hours depending upon the gravity of the offense. Revised Penal Code, art. 125 (1978). The President is authorized, however, to extend this period up to 30 days in national security cases. *Id.* Various directives and internal military regulations issued over the last ten years have prescribed procedures for delivery of detainees within stated periods to an inquest authority to determine the detainee's physical condition and the voluntariness of any confessions. *See, e.g.*, Letter of Instructions No. 621, *cited in 1982 AI Report, supra* note 26, at 69. Another directive requires the immediate reporting of arrests to

the penal code provides that detainees must be allowed to confer with counsel at any time and to be visited by relatives.

In national security cases, these safeguards are often disregarded. A substantial number of detainees arrested on national security grounds are held illegally. In some cases they are held incommunicado in safehouses. In others, there are delays in delivery of detainees to the proper judicial authority.<sup>172</sup> These delays are often justified by "waivers of detention," which reportedly are often obtained by coercive measures. By signing such waivers, detainees agree to continued detention without reference to the judicial authority prescribed by law.<sup>173</sup>

In still other cases, authorities refuse to acknowledge to family and counsel that detainees are being held. In such cases, lawyers and relatives have found that their only effective recourse is to file a petition for habeas corpus. Human rights lawyers explain that when such a petition is filed, military authorities typically produce the detainee and the torture often stops.<sup>174</sup> Because the privilege of the writ of habeas corpus remains suspended in national security cases,<sup>175</sup> further judicial relief is generally unavailable, with limited exceptions. In a recent habeas case involving allegations of torture, the Supreme Court ordered an investigation of the allegations, but after testimony had been taken and before findings were reached, the Court ruled that it was not the appropriate body to consider the evidence taken.<sup>176</sup> In the same decision, the Court held that detainees are entitled to counsel during interrogation and that confessions made in violation of this right are inadmissible as evidence.<sup>177</sup>

While this ruling is encouraging, it offers little hope of an end to brutal practices. Abusive forms of interrogation have been rampant despite their illegality under Philippine law. More pronouncements of their illegality will not end the abuses without a firm government resolve to enforce legal prohibitions against torture.

In the past year, even the official policy regarding safeguards against torture, including the prohibition against incommunicado detention, apparently has been diluted. This past spring, for example, in responding to a habeas petition filed on

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the Minister of National Defense. Department of National Defense, Departmental Order No. 740, § 6 (Jan. 26, 1973).

172. See *Amnesty International Report 1982*, *supra* note 63, at 232-33.

173. *Id.* at 233.

174. See *supra* ch. III, § A(3). See also UNITED STATES DEPARTMENT OF STATE, *Country Reports on Human Rights Practices for 1982*, at 785 (1982) [hereinafter cited as *1982 Country Reports*].

175. See *supra* ch. III, § A(3).

176. *Morales v. Ponce Enrile*, G.R. No. 61016 (Apr. 26, 1983) at 19. The Court cited presidential decrees providing that jurisdiction over complaints against military personnel resides in courts martial. In an earlier case, the Court had ordered the trial court to take evidence on the question of torture, and ordered medical examinations of others allegedly tortured. See *1982 Country Reports*, *supra* note 174, at 785.

177. *Morales*, *supra* note 176, at 5.

behalf of Karl Gaspar, who had been held incommunicado for two weeks, the government argued that "for security reasons, Gaspar's whereabouts were not immediately disclosed."<sup>178</sup> In the state hearing on Gaspar's case, the regional commander justified his refusal to allow relatives to visit Gaspar as "part of the military's operation."<sup>179</sup>

More generally, there are disturbing indications that official statements condemning torture are undermined by contradictory, quieter messages condoning such abuse. Consistent with national policy, Lt. Col. Enrique Lacanilao, the Judge Advocate General for Region XI, explained that torture is not tolerated and that instances of such abuse are prosecuted. Nevertheless, he proceeded to suggest that some degree of maltreatment may be the only way to get information from subversives about their illegal activities since Philippine authorities lack sophisticated computer systems for obtaining information about past criminal activities. The attitude thus expressed by a regional official is effectively conveyed on a national level by the lack of visible disciplinary procedures against persons responsible for torture.<sup>180</sup>

## 2. Initiatives by the Bar

While ostensible government efforts to curb military abuses have lacked force and effect, a recent initiative of the private bar provides an innovative response to this pervasive problem. On July 27, 1983, a Ten Points Statement of Undertaking was jointly executed by the PC/INP Regional Command XI, the Office of the State Prosecutor for Region XI, and the Eastern Mindanao Chapter of the Integrated Bar of the Philippines. Pursuant to this agreement, military and prosecutorial authorities agreed to abide by procedures designed to minimize military abuses and enhance the rights of persons arrested on national security grounds.<sup>181</sup> In many respects, the agreement simply affirms rights that already exist in theory but are widely violated in fact.<sup>182</sup>

Lawyers involved in this undertaking stated that, although they had not yet done any follow-up studies to examine its implementation, they were aware of several instances in which the agreement had in fact had a beneficial effect. It was their impression that military officers were more responsive to the argument that

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178. *Gaspar v. Tangatue*, G.R. No. L-63581 (April 11, 1983) at 5 (Return of the Writ).

179. *Human Rights Hearings*, *supra* note 42, at 3 (testimony of A. Whitney Ellsworth).

180. *See supra* ch. VI, § A(2).

181. For example, problems encountered by persons trying to locate relatives last seen in military custody are addressed by a provision that the "Recom Public Information Officer ("PIO") shall be designated as the point of contact on the status of persons arrested and or detained by the military or police, where . . . any counsel or interested person can verify." Similarly, the undertaking provides that the IBP can request from a designated detention officer a list of detainees.

182. For example, the undertaking provides that "[t]he constitutional rights of persons under custodial investigation shall be observed."

they should respect obligations which their own regional commander had accepted than exhortations to obey laws of general application which are widely disregarded and rarely enforced.

The experience of the Mindanao undertaking reflects what anyone could have known without it—that military abuses in the Philippines can be curbed if members of the armed forces perceive a serious intent by their superiors to enforce basic safeguards. While this intent was recently communicated on a regional level, it remains to be manifested on a national level.

### C. *The Judiciary: Appearance and Performance*

There is prevalent among lawyers concerned with human rights cases a deep cynicism regarding the ability and willingness of judges to enforce the rule of law. This unfortunate sentiment appears to have a foundation in the history of judicial appointments and the performance of the courts, including the Supreme Court of the Republic.

#### 1. History of Judicial Appointments

Since the imposition of martial law, the present government of the Philippines has pursued a series of measures severely compromising the independence of the judiciary. Those measures, continuing to the present day, revolve around procedures for judicial appointments and tenure.

Immediately after he imposed martial law, President Marcos ordered all judges except those of the Supreme Court to submit their resignations.<sup>183</sup> In the next three years, at least 14 resignations reportedly were accepted.<sup>184</sup> The other resignations remained with President Marcos until January 17, 1983, when all existing courts lower than the Supreme Court were abolished pursuant to the Judiciary Reorganization Act. Thus, for more than a decade embracing a period in Philippine history marked by a climate of fear, Filipino judges discharged their functions under the constant threat that one "wrong move" could cause their removal.

On January 17, 1973, President Marcos proclaimed that the 1973 Constitution had been ratified. The controversial "transitory provisions" of that Constitution provided that incumbent members of the judiciary could continue in office until they reached the age of 70, unless sooner replaced by the appointment of their successors.<sup>185</sup> This provision destroyed the protection afforded under the 1935 Constitution, which accorded judges tenure until they reached the age of 70, thereby allowing their removal only for good cause.<sup>186</sup>

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183. Letter of Instructions No. 11 (Sept. 22, 1972).

184. 1982 *AI Report*, *supra* note 26, at 63.

185. 1973 CONST., art. XVII, §§ 9, 10.

186. 1935 CONST., art. VIII, § 9.

Even members of the Supreme Court were subject to this provision. Shortly after President Marcos proclaimed the ratification of the 1973 Constitution, the Justices of the Supreme Court took a new oath of office, thereby removing themselves from the threat directed against members of the judiciary who were "incumbent" at the time the new Constitution came into force. To many, this oath-taking signalled the incumbent members' acquiescence in controversial measures that they would later be called upon to review.<sup>187</sup>

The 1973 Constitution further eroded the integrity of the judiciary by eliminating the 1935 Constitution's requirement that judicial appointments be confirmed by a Commission on Appointments which was independent of the Executive. With this vital check removed, President Marcos has been free to make judicial appointments without the approval of any independent branch of government.

President Marcos' power to accept the resignations of sitting judges ended only in January 1983, when he ordered the implementation of the Judiciary Reorganization Act ("JRA"), which had previously been enacted by the Interim Batasang Pambansa (National Assembly). That act provided for the immediate abolition of all existing courts except the Supreme Court, and the termination of all incumbent judges except those on the Supreme Court.<sup>188</sup> The act provided for the replacement of the courts that were abolished by courts having different names but essentially the same functions as the courts which they replaced.

Pursuant to the 1973 Constitution, President Marcos has had sole power to appoint judges to the new courts. Although Minister of Justice Ricardo Puno established an "Integrity Council" to screen appointees and make recommendations, its recommendations had no binding force on the President and were largely disregarded by him.

With passage of the JRA, any semblance of judicial independence has also passed. Every sitting judge in the Philippines now owes his or her appointment to President Marcos. Moreover, the history of judicial appointments in the past decade teaches those judges that if they incur the displeasure of President Marcos, he can find a way to remove them from office.

## 2. Confluence of Judicial and Executive Branches

Adding to the widely held view that the judiciary lacks independence from the executive is a history of close interaction between the two branches of government. For example, four members of the Supreme Court, including the Chief Justice, served on a presidential commission that proposed guidelines for the drafting of the JRA.<sup>189</sup> The Court subsequently rejected a challenge to the

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187. See *De la Llana v. Alba*, G.R. No. 57883 (Oct. 15, 1981) at 18 (memorandum of *amicus curiae*, Jose W. Diokno).

188. Judiciary Reorganization Act, Cabinet Bill No. 42, § 44.

189. Executive Order 611 (Aug. 11, 1980) (establishing Presidential Commission on Judicial Reorganization).

qualification of the justices who had served on the presidential commission to sit on a case challenging the constitutionality of the JRA itself.<sup>190</sup>

In addition, the appointment on August 25, 1983 of a presidential commission chaired by the present Chief Justice of the Supreme Court to investigate the Aquino assassination provoked charges that the doctrine of separation of powers again had been violated.<sup>191</sup>

Concerns raised by judicial participation in presidential bodies have been compounded by the widespread perception of executive interference in judicial functions. Human rights lawyers repeatedly asserted that judges who handle national security cases receive periodic briefings by intelligence officers on the state of the armed insurgency. While it was not possible to verify such reports, their frequency and basic consistency raise serious concerns that should be fully investigated.

### 3. Operation of Judiciary

The functioning of the judiciary as a whole has been profoundly weakened under President Marcos' rule. The cost has been manifested both in the quality of decisions that are rendered and the withholding of action where judicial functioning is vital.

Illustrative of the first problem is the fact that the Supreme Court has, according to a current Justice, validated every legislative act of President Marcos that it has considered since the imposition of martial law in 1972. This process of judicial acquiescence culminated in the decision of *Garcia-Padilla v. Ponce Enrile*,<sup>192</sup> in which the Court abdicated its traditional role of reviewing the President's exercise of legislative power in the name of national security. In sweeping language, the Court reasoned that when the President takes action to respond to a "grave emergency," whose existence he alone can affirm, "the judiciary can, with becoming modesty, ill afford to assume the authority to check or reverse or supplant the presidential actions."<sup>193</sup>

190. *De la Llana v. Alba*, G.R. No. 57883 (Mar. 12, 1982). The Chief Justice reasoned that he and his colleagues had only proposed guidelines to the legislation, and had not drafted the bill itself. *Id.* at 29. The distinction drawn by the Chief Justice did little to dilute the appearance of partiality on the part of the Justices who were called upon to consider the validity of an act that they had helped shape.

On the question of whether the act violated the constitutional guarantee of judicial tenure, the Court reasoned that the severance of a judge from his or her office by abolishing the office itself does not violate that guarantee if the action is taken in good faith, although the removal of a justice from a continuing office might. *Id.* at 12-17.

191. See *infra* ch. VI, § D.

192. G.R. No. 61388 (Apr. 20, 1983).

193. *Id.* at 15. For fuller discussion of this case, see *supra* ch. III, § A(5). In a decision rendered six days after *Garcia-Padilla*, the Court appeared to retreat somewhat from the position of extreme

The second problem is characterized by a disturbing pattern of judicial inaction on national security cases that raise troubling issues. In recent years, the Supreme Court has simply failed to take action on sensitive cases for months and sometimes even years until they could be dismissed as "moot and academic." Lawyers and the Chief Justice of the Supreme Court explained that habeas corpus petitions are frequently dismissed as "moot" when the government and petitioner reach a plea agreement. Lawyers believe that such agreements are reached only in cases where the government believes it would lose a decision on the merits, and that the Court withholds decision in such cases long enough to allow this type of resolution.

While the erosion of judicial independence has been perceptible, it has not been complete. Several judges have clearly maintained their independence. Most notably, Justice Teehankee has consistently dissented from decisions upholding President Marcos' actions under martial law.<sup>194</sup> Despite this, President Marcos has not attempted to remove him from office.<sup>195</sup>

Furthermore, while executive interference has visibly impaired the quality of justice rendered by Philippine courts, several decisions evidence some degree of independence, such as cases granting interim relief to habeas petitioners pending a final decision on the merits. Additionally, the Supreme Court recently rendered a decision showing a marked degree of independence from President Marcos and the military establishment. On October 25, 1983, the Court overturned a ban issued by the Manila city government against a demonstration protesting U.S. bases in the Philippines.<sup>196</sup> In an outspoken opinion, Justice Vicente Abad Santos criticized the government for being "paranoid" and "blaming the Communists

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deference it adopted in the *Garcia-Padilla* case. In *Garcia-Padilla*, the Court noted that its decision had the effect of "diluting, if not abandoning, the doctrine of the *Lansang* case," which permitted judicial review of a presidential decision to suspend habeas corpus. G.R. No. 61388 at 17. In *Morales v. Ponce Enrile*, G.R. No. 61016 (Apr. 26, 1983), the Court "reiterated" the doctrine of *Lansang*. G.R. No. 61016 at 16. Philippine legal scholars have noted that this pronouncement did not carry the number of votes required to reverse the *Garcia-Padilla* holding. See, e.g., *Muñoz Palma Speech*, *supra* note 88.

194. In a speech delivered to the Philippine Lawyers' Association on September 19, 1983, Justice Teehankee alluded to concerns about the independence of the Supreme Court. He used the occasion "to publicly acknowledge [his] gratitude" for the bar group's recent resolution concerning "the right and duty of our Supreme Court to hear and decide their pending cases freely and independently from any interference from whatever source tending directly or indirectly to impede, obstruct, or degrade the administration of justice."

195. It is widely asserted, though, that a 1980 amendment to the Constitution was designed to prevent Justice Teehankee from assuming the office of Chief Justice. The amendment, raising the retirement age of judges from 65 to 70, was approved on January 30, 1981 and proclaimed ratified on April 1, 1980. On July 25, 1980, Chief Justice Fernando, a Marcos loyalist, would have turned 65 and would have had to retire but for the amendment. Under the Philippine seniority system, Justice Teehankee would have succeeded Fernando as Chief Justice.

196. See *Court Allows Manila Protest*, N.Y. Times, Oct. 26, 1983.



whenever anything negative happens."<sup>197</sup> The Court also ordered the release from military custody of the mother and sister of the man the government claims shot Benigno S. Aquino, Jr.<sup>198</sup> Despite these encouraging developments, there remains a substantial basis in fact for the widely held view that both the vitality and independence of the Philippine judiciary has been badly shaken in recent years.

#### D. *The Aquino Murder: A Government on Trial*

Growing cynicism about institutions designed to support the rule of law erupted into a national cry for justice when, on August 25, 1983, President Marcos appointed a Commission to investigate the murder four days earlier of Benigno S. Aquino, Jr. Chaired by Enrique Fernando, Chief Justice of the Supreme Court and a close friend of the Marcoses, and including four retired Justices of the Supreme Court who had been appointed by President Marcos,<sup>199</sup> the Commission lacked the appearance of unquestionable detachment so vital for its mandate.

Widespread expressions of doubt and derision in response to the presentation of such a group as a disinterested agency of inquiry ultimately led to the Chairman's resignation on September 30, followed by the resignation of the remaining members on October 10.<sup>200</sup> In a letter to the President, the beleaguered Commission members said that they were resigning because of widespread doubts about their impartiality. An entirely new commission, the letter said, would have better public standing if it included "members acceptable to all sectors of society."<sup>201</sup>

On October 14, 1983, President Marcos announced the formation of a new, all-civilian fact-finding board. Corazon Agrava, a former appellate judge, was named as Chairwoman of the new panel, whose other members included an educator, a businessman, a labor leader and a lawyer.

The composition of the new panel appeared to satisfy the public's demand for an impartial board of inquiry, and its rigorous questioning of government witnesses has tended to support this perception. In recent months, the board has been able to obtain testimony from several witnesses who were willing to challenge the official account of the slaying. These developments have enhanced the credibility of the board in the eyes of the Filipino public, which is generally

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197. *Id.*

198. *See Manila Frees Relatives of Accused Assassin*, N.Y. Times, Oct. 28, 1983.

199. A member of the National Assembly was subsequently added to the Commission.

200. Shortly after the Commission's appointment, three challenges to the Chief Justice's participation on the panel were filed in the Supreme Court of the Philippines. On September 8, the Chief Justice inhibited himself from the Commission's deliberations pending resolution of these suits. On September 12, the remaining members of the Commission suspended their deliberations as well.

201. *Philippine Panel on Assassination Dissolves Itself*, N.Y. Times, Oct. 11, 1983, at A1. On the same day, Arturo Tolentino issued a statement declining his designation as Chairman of the

skeptical of such official bodies.<sup>202</sup> The board nevertheless operates in a context of pervasive assaults upon the rule of law in the Philippines. Most notably, in the course of the board's inquiry, key figures in the government's account of the slaying have disappeared, apparently after being abducted by military personnel.<sup>203</sup>

Less drastic problems also cloud the board's operation. Doubts have been expressed about the limited nature of the board's mandate. As one journal noted, the panel "is a fact-finding board and little else," and will not make any judgment about the facts that it establishes to be true.<sup>204</sup>

Additionally, the board's present timetable portends a lengthy delay before any findings are made. When it began operating, the board issued a list of 180 witnesses that it planned to summon. At the rate hearings have progressed, a conclusion of the board's inquiry is not expected until June of 1984, almost a year after Aquino's murder. The Filipino populace that has taken to the streets demanding "justice for Aquino" may regard such a delay as justice denied.

### E. *Independence of the Bar*

The volume of human rights activities by Philippine lawyers bespeaks a bar that operates with considerable independence, even in sensitive national security cases. In recent years, various legal associations concerned with human rights have proliferated. Attorneys belonging to these groups have challenged government practices and military abuses.

The independence of the bar is not absolute, however, and in several cases there have been serious encroachments. On May 11, 1977, Hermon Lagman, an attorney belonging to the Free Legal Assistance Group ("FLAG"), an affiliation of lawyers who handle human rights cases, disappeared and has never been found. And in September, 1981, FLAG attorney Oscar Tonog of Catarman, Northern Samar was stabbed in his office. Less drastic forms of seeming intimidation have included the issuance of PCOs against several human rights lawyers.<sup>206</sup>

Commission, and called for the formation of a new commission composed entirely of private citizens. This new commission, Tolentino urged, would be "an independent body created by law" that would be "nongovernmental and nonpolitical." *Id.*

202. *See Who Didn't Dunit?*, FAR E. ECON. REV. 16 (Jan. 19, 1984); *The gap widens*, FAR E. ECON. REV. 13-14 (Mar. 22, 1984).

203. *See id.* at 14.

204. *Id.* at 14-15.

205. *Who Didn't Dunit?*, *supra* note 202, at 16. Several attorneys expressed the view that such suits are tolerated by the government since it has the judiciary under its control, and therefore has nothing to fear from aggressive legal challenges.

206. On October 22, 1982, lawyers attending the annual FLAG membership conference in Rizal, outside Manila, were told that a PCO had been issued against ten regional coordinators of FLAG and that intelligence men were at the conference looking for those ten. The following day, the ten coordinators went to speak with Minister of National Defense Enrile, who verified that a PCO had

Manila-based attorneys handling national security or labor cases suffer indirect pressure through loss of business.<sup>207</sup> Since a substantial amount of legal practice in Manila involves government work, attorneys who are out of favor with the government likewise lose favor with clients seeking government contracts, licenses or other privileges. Manila-based attorneys active in human rights and labor cases have suffered anywhere from a 50 to 70 percent decrease in business in recent years.

#### F. *Trial of National Security Cases*

For all of their freedom, lawyers handling national security cases are unable to surmount the barriers to justice erected during eleven years of military rule in the Philippines. Though national security cases are no longer triable by military tribunals, as they were during martial law,<sup>208</sup> the military influence on the conduct of such cases remains pervasive.

Military prosecutors generally secure permission from the Ministry of Justice to prosecute "civilian" trials in national security cases, and military investigators develop and present evidence in such cases. Lawyers allege that some civilian judges are intimidated by the military prosecutors handling national security cases, and thus lack independence.

A pervasive military presence also interferes with defendants' ability to defend themselves in national security cases. A human rights lawyer practicing in Cebu and southern Leyte explained that military personnel attend trials in national security cases in substantial numbers, thereby intimidating witnesses for the defense. Outside the courtroom, military personnel reportedly threaten potential witnesses and relatives of defendants.

The most common complaint of defense lawyers handling national security cases is that trials are protracted once they start, and long periods often elapse

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been issued against ten lawyers, including two FLAG coordinators (Abelardo Aportadera, Jr. and Alan Flores). All were charged with "inciting to sedition/rebellion."

Under the circumstances, it was clear that the PCO was issued to interfere with the work of these attorneys in areas disfavored by the government. Nine of the ten were active labor lawyers and the PCO was issued following a period of intense strike activities. The tenth, Abelardo Aportadera, is a leading human rights attorney in Davao City.

Following their meeting with Minister Enrile, the attorneys received assurances that the PCO would not be implemented, but never received word that it had been lifted. One year later, a PDA was issued against Alan Flores.

207. The concept of public interest lawyers familiar in the United States does not exist in the Philippines. All of the human rights attorneys are in private practice, and handle human rights cases on a voluntary basis. For this reason, they are vulnerable to pressure that affects their practice.

208. Shortly after martial law was imposed, President Marcos transferred to the jurisdiction of military tribunals a wide range of national security offenses, pursuant to General Order No. 8. The proclamation lifting martial law also revoked this order. Proclamation No. 2045 (Jan. 17, 1983). Several trials begun during martial law continue to be tried by military tribunals. New cases are tried by civilian courts.

before they are even begun. Although a combination of factors appears to account for such delays, they appear to be partially due to deliberate efforts by the military to string out cases in which there is not enough evidence to support a conviction. Numerous cases were described in which hearings were scheduled but had to be adjourned several times because the military prosecutors or witnesses failed to show up. As a result of these and other delays, few national security cases have been completed on the merits since martial law was imposed, though thousands of people have been arrested on national security grounds.

## CHAPTER VII

### THE PRESS: SOME FREEDOM, SOME PADLOCKS

To an outside observer, the Philippine press is freer than that of many countries where serious human rights abuses occur. In the wake of the Aquino murder, a number of new tabloids appeared which were more outspoken (and sometimes, no doubt, less responsible) than the established journals in expressing anti-Administration sentiments and reporting events that the Marcos regime might have preferred to ignore. Similarly, existing tabloids were emboldened to publish articles strongly critical of the government.

Despite these positive manifestations, it is evident that the Philippine Republic suffers from severe restrictions upon press freedom. The country's major dailies, all of which are owned by close friends and relatives of the Marcos family, rarely print news that reflects poorly on the government and consistently publish pro-Marcos accounts of events.<sup>209</sup> In the past year and a half, these papers suspended publication of the columns of several writers who had repeatedly submitted articles critical of the regime.

While journals with smaller circulations are more outspoken, they publish at considerable risk. The closing down of two journals in the past year and a half, the arrest of dozens of journalists, the summoning of others before a military intelligence board and the government's pursuit of costly libel suits against editors and writers make it clear that Philippine journalists are free to publish whatever they want only if they are willing to risk a heavy price for doing so.

#### A. Press Control Under Martial Law

Before martial law was imposed, the Philippine press was widely regarded as the freest in Asia. Often described as "free-wheeling and licentious,"<sup>210</sup> the pre-martial law media vigorously challenged government policies and expressed a broad spectrum of political views.

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209. See *Anti-Marcos Newspaper Raided and Shut Down by Philippine Soldiers*, Los Angeles Times, Sept. 30, 1983, at 5 [hereinafter cited as *Anti-Marcos Newspaper Raided*].

210. See *The Philippine Press: What Are the Boundaries of Freedom?*, Business Day, Feb. 25, 1983, at 12 [hereinafter cited as *Boundaries of Freedom*].

This state of affairs came to an abrupt halt when President Marcos imposed martial law. The next day, September 22, 1972, the President ordered the closing of all print and broadcast media facilities pending further orders from him.<sup>211</sup> This action was immediately followed by the mass arrest of journalists, in both the print and broadcast media, who were known to be critical of the government.<sup>212</sup>

In the following months, some publications were allowed to resume operations,<sup>213</sup> but they were reborn into a period of strict control. Days after martial law was declared, a system of press censorship had been set into motion.<sup>214</sup> Five weeks later, a system of press licensing was established.<sup>215</sup>

As martial law progressed, formal restraints were gradually eased and were replaced by relatively informal, but nonetheless effective, methods of press control. In May, 1973, the first in a series of media councils comprising representatives of the press was designated to assume licensing responsibilities.<sup>216</sup> Two years after martial law was imposed, President Marcos announced the lifting of formal censorship.<sup>217</sup>

Periodic incidents such as the interrogation and seven-hour detention of columnist Julie Daza in July, 1974 for articles she had written tended to transform the new system of "self-regulation" into one of self-censorship. Moreover, publishers had little need to guess about what type of press coverage would incur government disfavor. The Ministry of Information regularly directed "requests" to newspaper publishers to highlight the government's released stories and to

211. Letter of Instructions No. 1 (Sept. 22, 1972).

212. See CIVIL LIBERTIES UNION OF THE PHILIPPINES, *The State of the Nation After Three Years of Martial Law* 53 (Sept. 21, 1975). These arrests were effected by the military pursuant to General Order No. 2-A, which accompanied LOI No. 1.

213. On September 24, 1972, the Daily Express, a paper strongly identified with the Marcos regime, and its sister facility, TV-Channel 9, were allowed to resume operations. See *Boundaries of Freedom*, *supra* note 210, at 13. In the following months, several other dailies owned by persons closely associated with the Marcos family were allowed to resume operations. See *id.* These included the Times Journal, owned by Benjamin Romuladez, the First Lady's brother and Ambassador to the U.S., and Bulletin Today (formerly the Manila Daily Bulletin), owned by Gen. Hans Menzi, a former aide to President Marcos.

214. The newly-established Department of Public Information ("DPI") issued an order decreeing that, "in all cases, materials for publication and broadcast shall be cleared by the Department . . . [including] all foreign dispatches and cables," and that "any correspondent filing his dispatch shall be held accountable for any alteration in any dispatch that has been [previously] cleared." DPI Order No. 1 (Sept. 25, 1972).

215. Pursuant to Presidential Decree No. 36, no print or broadcast facility could operate without obtaining a certificate signed by the President.

216. During the operation of the first such council, President Marcos retained the power of final approval over licensing applications. See *Boundaries of Freedom*, *supra* note 210, at 13. This led the Civil Liberties Union of the Philippines to charge that the "self-regulatory" body that replaced the governmental licensing authority was "the same dog with a different collar." *Id.* This body was later replaced by a self-licensing authority that had final approval power.

217. See Bulletin Today, Sept. 21, 1974, at 13.

embargo others. Former Information Secretary Francisco Tatad recently confirmed this practice.<sup>218</sup>

### B. *Press Control After Martial Law*

When martial law was lifted in 1981, the Philippine press began to write with visibly greater freedom. Critical commentaries once again appeared in daily papers and were tolerated as long as they did not violate well-known taboos, such as the one against criticizing members of the Marcos family.

In 1982, as the press became accustomed to its regained freedom, restraints were once again tightened. A series of actions in the past year and a half—ranging from the closing down of two journals to the summoning of eight journalists before a military intelligence board—signaled an end to the process of liberalization that the lifting of martial law had introduced.

#### 1. "Padlocking"

The most drastic restraint upon press freedom currently operating is the power to close down and "padlock" papers charged by the executive with seditious or subversive utterances. Although press licensing—and thus the power to revoke licenses—ended shortly after martial law was lifted,<sup>219</sup> a decree issued one year earlier and remaining in effect until July, 1983 authorized the President to "[direct] the closure of subversive publications or other media of mass communications."<sup>220</sup>

Additionally, newspapers could effectively be closed by the seizure of their presses as instruments used to commit one of many post-martial law crimes, such as writing words that "tend to stir up the people against the lawful authorities,"<sup>221</sup> or the catch-all crime of subversion.

The recently established Preventive Detention Action<sup>222</sup> consolidates the military's powers of arrest and seizure of property, thereby making it possible to arrest journalists and padlock their presses under the authority of a single presidential order. Pursuant to Presidential Decree No. 1877, once issued, a PDA constitutes authority to arrest persons charged with national security offenses and "sequester all . . . equipment or property used . . . in the commission of the crime."<sup>223</sup>

The threat to free expression posed by the power to padlock presses is by no means theoretical. On December 7, 1982, military authorities closed down the

218. *Id.*

219. Presidential Decree No. 1786 (Jan. 23, 1981).

220. Presidential Decree No. 1875 (July 21, 1983).

221. Revised Penal Code, art. 142, as amended by Presidential Decree No. 970 (July 24, 1976).

222. *See supra* ch. III, § B.

223. Presidential Decree No. 1877, § 3 (July 21, 1983).

tabloid *We Forum*, seizing its press and other equipment. The *We Forum* raiding team relied on a search warrant to take possession of virtually all of the publication's equipment, ranging from its press to paper clips. The warrant alleged that such articles were used for "subversive activities." The government also arrested *We Forum* editor-publisher Jose G. Burgos, Jr. and nine members of his staff pursuant to a PCO.<sup>224</sup>

Another padlocking incident occurred on September 29, 1983, when ten agents of the Criminal Investigation Service raided the offices of the *Philippine Times*, a weekly paper that had openly speculated that the Marcos government was behind Aquino's assassination.<sup>225</sup> The raiding team was armed with a search warrant authorizing them to seize everything from manuscripts to typewriters, duplicating machines, video machines and other equipment used as "instruments" of the crime of inciting to sedition. Several days later, editor-publisher Rommel Corro, who could not be found on the day of the raid, was arrested pursuant to a PDA.

The suppression of these publications represents the most severe and absolute denial of free expression. The continued availability and unpredictable reliance on this power inhibits the reporting of news and the expression of editorial opinion in the Philippines. Editors and publishers threatened with the loss of property, livelihood and freedom to continue publishing may be expected to employ the kind of self-censorship that is antithetical to a truly free press.

## 2. Capital Offenses

In a measure widely interpreted as an effort to intimidate an increasingly outspoken press, President Marcos recently enacted a decree authorizing the death penalty for certain crimes involving journalists. Presidential Decree No. 1834<sup>226</sup> authorizes the penalties of life imprisonment and death for

any person, who having control and management of printing, broadcast or television facilities, or any form of mass communication shall use or

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224. Based on a series of articles sharply critical of President Marcos, the journalists were charged with subversion "for involvement in the conspiracy to overthrow the government through black propaganda, agitation and advocacy of violence." Before this raid, the continued publication of *We Forum* had frequently been cited by the government as evidence that the press was free to criticize government policies. See *Boundaries of Freedom*, *supra* note 210, at 15.

The *We Forum* defendants were detained in Fort Bonifacio for 10 days, and remain under house arrest as their trial continues. Meanwhile, libel charges have been filed against Burgos in connection with articles published in *We Forum* questioning the authenticity of Marcos' war medals.

225. See *Anti-Marcos Newspaper Raided*, *supra* note 209, at 5.

226. This decree is dated Jan. 16, 1981, but did not come to light until May 10, 1983. At that time, President Marcos claimed that he would not enforce the decree until its publication in the *Official Gazette*, which took place on September 29, 1983.

allow the use of such facilities for the purpose of mounting sustained propaganda assaults against the Government or any of its duly constituted authorities which tend to destabilize the Government or undermine or destroy the faith and loyalty of the citizenry thereto . . . .<sup>227</sup>

The same penalties are authorized for such crimes as publishing "scurrilous libels against the Government of the Philippines . . . ." <sup>228</sup>

The death penalty is in fact rarely applied in the Philippines,<sup>229</sup> but the threat of that sanction for press activities sends an ominous message that no member of the media can safely ignore.

### 3. Military Intelligence Boards, Libel Suits and Government "Requests"

Less drastic restrictions have also tended to limit the free expression and dissemination of information in the Philippines. The major newspapers based in Manila are all owned by persons closely identified with the Marcos administration.<sup>230</sup> The same is essentially true of television and radio stations. It is widely asserted that this leads to severely slanted coverage as well as the omission of opposition views or news casting the Administration in an unfavorable light. Journalists who work for established press organs state that such coverage typically reflects direct "requests" from the governmental Office of Media Affairs regarding treatment of newsworthy events.

Charges of slanted reporting by the mass dailies mounted sharply in the wake of the Aquino assassination. Although hundreds of thousands of people marched through Manila for the funeral, the event received scant coverage in the major dailies. Disturbed by this as well as the three dailies' general adherence to the government's version of the assassination itself, Philippine business leaders strongly criticized the country's media in the months following the assassination. A boycott of the three major dailies instituted during the authors' visit reportedly gained wide support.<sup>231</sup>

Individual journalists who had worked for the established press organs gave further accounts of restrictions on the media. One columnist for *Bulletin Today* described how she and several other journalists were summoned before a military intelligence board shortly after the *We Forum* closure. From December 20, 1982 to early January, 1983, eight writers were individually requested to appear before

227. Presidential Decree No. 1834, § 7 (Jan. 16, 1981).

228. *Id.* at § 6.

229. Only one person has been executed in the Philippines since the imposition of martial law. See *Hearings on U.S.-Philippines Relations*, *supra* note 106, at 76 (prepared statement of Benigno S. Aquino, Jr.).

230. See *Philippine Business Leaders Assail Media for Aquino Coverage*, *International Herald Tribune*, Sept. 28, 1983, at 2.

231. See *id.*



a "special committee" organized by the National Intelligence Board ("NIB") "to shed light on confidential matters." Journalists who were asked to appear were warned:

Your failure to appear on the specified date and place shall be considered as a waiver on your part and this Committee will be constrained to proceed in accordance with the law.<sup>232</sup>

Comprising more than a dozen military officials, the special committee was created to investigate linkages between "subversives" and the press.<sup>233</sup> Those who appeared before the special committee were asked such questions as "Why do you write to agitate the minds and passions of your readers? Don't you think that you are being unwittingly used by those who try to subvert the government? Do you realize that some of your writings are only a hairline away from subversive writing?"<sup>234</sup>

On January 20, 1983, 29 journalists, including several who had been summoned before the special committee, petitioned the Supreme Court to enjoin the functioning of the committee.<sup>235</sup> The petitioners argued that the interrogations abridged the constitutional guarantee of freedom of the press which was presumed to have been fully restored with the lifting of martial law.

Shortly after the petition was filed, the NIB announced the dissolution of the special committee, saying it had completed its task. The Supreme Court asked the petitioners to reformulate their complaint. Before that could be done, several military officers expressed their intention to file a libel suit against writers and editors of *Panorama*. Among those to be sued were several journalists who had been summoned before the special committee. In February, 1983, a 10 million peso libel suit was filed against the editor of and a writer for *Panorama*, charging that an article describing alleged military abuses in Bataan defamed the commander of the Marine brigade operating there.

## CHAPTER VIII

### THE ROLE OF THE UNITED STATES

Since assuming office, the Reagan Administration has placed security interests before humanitarian concerns in the Philippines, believing that vigorous pursuit of the latter would jeopardize the former. Public criticism of the Philippine Government's human rights record has been rejected as a policy option lest it disrupt relations with a leader seen to share long-term U.S. security interests in

232. *Boundaries of Freedom*, *supra* note 210, at 15.

233. See Magno, *The Pen and the Brass: A Very Personal Annotation*, WHO, Mar. 16, 1983.

234. *Id.*

235. Babst et al. v. National Intelligence Board, G.R. No. L-62992 (Jan. 20, 1983) (petition).

Southeast Asia. On several occasions, such concerns have led the Reagan Administration to publicly defend President Marcos' human rights record.

After three years, that policy has jeopardized U.S. security interests in Southeast Asia precisely because it has disserved human rights. Increasingly seen as an apologist for the Philippine Government's deteriorating human rights record, the United States is now included in the sweeping wave of condemnation that threatens the stability of that government. Growing antagonism toward the United States on the part of the Filipino public today poses a serious threat to the security interests that have been central to the Reagan Administration's Philippine policy.

#### A. U.S. Security Interests

U.S. security interests center on two U.S. bases in the Philippines: Clark Air Force Base and the Subic Bay Naval Base. The two represent the largest U.S. military installations outside the United States.<sup>236</sup> Their strategic location near the Soviet Union and amid friendly nations in the Western Pacific has long been a vital factor in U.S. policy decisions concerning the Philippines.

Pursuant to an agreement reached in 1978 extending the 1947 Military Bases Agreement ("MBA"), \$500 million in U.S. military and economic aid was committed to the Philippines for a five-year period, ending in September, 1984, in exchange for continued use of the bases. On June 1, 1983, the Reagan Administration concluded the latest review of the MBA. Under that agreement, in exchange for renewed U.S. rights to Clark and Subic Bay, the Reagan Administration pledged to seek congressional approval of a 5-year military and economic aid package totalling more than \$900 million. Pursuant to the new agreement, the Administration will seek \$125 million in direct military assistance, a 140% increase over the amount committed under the previous agreement, and \$300 million in foreign military sales credits.

#### B. U.S. Policy: Quiet Dialogue and Public Perceptions

To ensure continued U.S. access to the Clark and Subic Bay installations, the Reagan Administration has consciously avoided public criticism of the Philippine military abuses, choosing instead to "deal with human rights issues and problems through a policy of quiet dialogue with the government."<sup>237</sup> The Administra-

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236. Clark Air Force Base serves as headquarters for the 13th Air Force and houses major air force units, including a tactical fighter wing and a tactical airlift wing. Virtually every element of the modern U.S. naval arsenal is represented at the extensive Subic Bay complex.

237. *Hearings before the Subcommittee on East Asia and the Pacific of the House Foreign Affairs Committee*, 97th Cong., 1st Sess. 6 (June 16, 1983) (statement of Paul D. Wolfowitz, Assistant Secretary of State for East Asian and Pacific Affairs).

tion's concern to avoid any public gesture that could be interpreted as criticism of Marcos' human rights record was recently demonstrated by the response of Assistant Secretary of State for Human Rights and Humanitarian Affairs Elliott Abrams to questions posed during congressional hearings on human rights in the Philippines. Asked about the possibility of President Reagan cancelling his scheduled trip to the Philippines in light of turbulence triggered by Aquino's assassination, Abrams replied:

I think that a cancellation at this time of a visit to the Philippines would really constitute an intervention in partisan politics in the Philippines against President Marcos in the eyes of many . . . . I think that a cancellation would be an unwarranted act of intervention . . . .<sup>238</sup>

The Administration's human rights policy of quiet diplomacy has been masked and undermined by a pattern of public praise for and defense of President Marcos' human rights record. During his June, 1981 visit to the Philippines, Vice President Bush extolled President Marcos' "adherence to democratic principles—and to the democratic process." In September, 1982, President Reagan warmly embraced President Marcos during a visit to the United States, and made no mention of the mass arrests of labor activists and other opposition figures shortly before President Marcos' departure.

And recently, when the Philippine nation took to the streets demanding accountability for the assassination of Aquino and the pervasive brutalities his death has come to symbolize, Vice President Bush rushed to President Marcos' defense. Admitting that President Marcos' human rights record is poor, Bush warned against criticism: "We pointed out the imperfections of the Shah [of Iran] and all of that, and today we have something worse."<sup>239</sup> He added that there is "concern out there that the United States not cut away from a person who, imperfect though he may be on human rights, has worked with us . . . ."<sup>240</sup>

Filipinos who have not heard our "quiet diplomacy" have heard these words, and have increasingly identified the United States with the abusive practices of the Philippine Government. As patience with those practices wears thin, the Filipino public's desire to maintain relations with the United States is also waning.

Persistent calls for President Marcos' resignation have increasingly been joined by demands for an end to the U.S. presence in the Philippines. Growing numbers of Filipinos are calling for the total withdrawal of U.S. bases from the Philippines.

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238. *Human Rights Hearings*, *supra* note 42.

239. *Criticism of Marcos*, *supra* note 1.

240. *Id.*

The outcome of this process is uncertain, but the need for a change in U.S. policy is clear. The United States must stand and be seen to stand for the human rights of Filipinos. To this end, the Administration should exercise its power to promote human rights through public as well as private gestures. In addition, Congress should exercise its appropriations power to ensure that the U.S. government does not support human rights violations, either in fact or appearance.

### C. *Recommendations*

#### 1. Public Gestures

The warm response President Reagan received from Filipinos when he decided to "postpone" his scheduled trip to their country showed that, despite the United States' growing unpopularity in the Philippines, appropriate gestures of support for human rights remain a potent force for positive influence. Although the visit was ostensibly postponed to accommodate a busy congressional calendar, the decision was perceived and lauded as an effort to distance the U.S. from the darkly clouded circumstances of the Aquino assassination and investigation.

This gesture should be used as an important first step toward affirming the rights of Filipinos through measures that speak louder than "quiet diplomacy." The Administration should make clear through public, as well as private, statements that it deplores the continuing violations of human rights by Philippine security forces, particularly grave abuses such as political killings, torture, "disappearances" and incommunicado detention. In view of the symbolic importance which resolution of the Aquino case has assumed, the Administration should also continue to make known the importance it attaches to a thorough investigation of that case.

Buttressing public gestures by Administration representatives in Washington, the U.S. Embassy in Manila should also make strong public statements concerning human rights on appropriate occasions. The Embassy should make concerted efforts to strengthen contacts with human rights activists and victims of human rights abuses so that U.S. policy can be better informed by, and be seen to reflect, the concerns they represent.

Strengthening its present involvement in human rights, the Embassy should appoint a human rights officer whose principal duty would be to compile information about human rights in the Philippines, and should continue to intercede in specific cases wherever possible. Finally, the Embassy should continue to encourage visits by private and governmental organizations concerned with human rights and facilitate meetings for such groups with Philippine government officials, as it did for the Lawyers Committee delegation.

#### 2. Congressional Action

In view of rapidly escalating reports that the Philippine Armed Forces kill, abduct, torture and commit other acts of terror against the Filipino populace,

Congress should not approve the Administration's request for additional military aid to the Philippines unless it takes affirmative and concrete steps to ensure that such aid is not used to support military abuses. To this end, Congress should enact legislation requiring the Administration to submit every six months a report on the human rights situation in the Philippines which Congress can consider in deciding whether to authorize continued military aid. The legislation should specifically authorize Congress to require the Administration to supplement its report if Congress finds it inadequate.

If the report reflects serious human rights abuses, Congress should consider options including imposing restrictions or conditions on aid which are precisely tailored to address those abuses, reducing the total amount of aid requested or the military portion of the request, or disapproving altogether the request for military aid.

Additionally, Congress should not authorize any additional direct military aid to the Government of the Philippines until adequate restrictions are imposed to ensure compliance with Section 660 of the Foreign Assistance Act. Since 1974, that provision has prohibited the use of funds available under the act "to provide training or advice, or provide any financial support for police, prison or law enforcement forces for any foreign government."<sup>241</sup>

As presently constituted, the Philippines Constabulary is a police force that is barred from receiving U.S. aid under Section 660.<sup>242</sup> Despite this restriction, the PC has been and is now the beneficiary of direct military aid to the Philippines. As part of the command structure of the Armed Forces of the Philippines, the PC has benefited from \$50 million in direct military aid to the Philippines which was authorized under the 1978 extension of the Military Bases Agreement.

Representatives of the Reagan Administration have sought to justify this by making distinctions that have no basis in reality. When pressed by Congress about the PC's receipt of U.S. military aid in 1981, a State Department representative asserted that to the extent the PC receives U.S. military aid, it is "considered part of the armed forces."<sup>243</sup> On this basis, the State Department maintained that the

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241. 22 U.S.C. § 2420, which was added by § 30(a) of the Foreign Assistance Act of 1974.

242. Despite its integration into the command structure of the armed forces, the PC has retained responsibility for "general police duties." Exec. Order No. 308 (Mar. 30, 1950). In 1974, when President Marcos created the Integrated National Police Force, embracing the police forces, jail custodial guards and fire departments in all seventy-two provinces of the Philippines, he placed all of these agencies under the operational and administrative control and supervision of the Philippines Constabulary.

Since 1974, funds under the control of the Philippines Constabulary have been used to train police and to procure supplies for the Integrated National Police. The PC is responsible, for example, for procuring "within its resources, additional firearms, ammunition, office equipment and supplies, as well as investigative equipment, vehicles and communications equipment for the police." J.R. FARASENAS, PHILIPPINES CONSTABULARY: SEVENTY-FIVE YEARS OF SERVICE 36 (1975).

243. *Hearing before the Subcommittees on Asian and Pacific Affairs and on Human Rights and International Organizations of the House Committee on Foreign Affairs*, 97th Cong., 1st Sess. 9 (Nov.

U.S. provides "no security assistance to the integrated national police." In fact, the PC operates simultaneously as a unit of the armed forces and the head of the Integrated National Police Force.

Unless adequate restrictions are imposed, the PC would also benefit from the increased direct military aid package requested under the more recent Military Bases Agreement. Accordingly, Congress should not authorize any additional direct military aid to the Government of the Philippines without imposing explicit restrictions to ensure that funds are not used by the PC.

By these measures, Congress can begin to address the conditions underlying the increasing violence in the Philippines, and to reverse the growing identification of the United States with those responsible for the current crisis in the Philippines.

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18, 1981) (testimony of Daniel A. O'Donohue, Acting Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, Department of State).