

# THE HUMAN RIGHTS SITUATION UNDER THE AQUINO GOVERNMENT

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## INTRODUCTION

It will not do to study human rights in the Philippines from a purely theoretical perspective. Certainly not in a society where acts of violence are everyday occurrences. Certainly not where human rights is a matter of life and death to many Filipinos, especially those crushed by the weight of the enormous gap between the rich and the poor and, in particular, those caught between the deadly crossfires of the communist insurgents and the military and police establishments. This had been the case during the days of martial rule under former President Ferdinand Marcos, and, it is claimed, so it has also been under the rule of his successor, Corazon Aquino.

This paper will try to explore the reasons why, despite the restoration of democratic rule, the violation of human rights has remained a grave problem in the Philippines. In this connection, it will inquire into the problem areas in the promotion and protection of human rights under Mrs. Aquino's rule. It will also try to contribute, even in a very minimal way, to the betterment of the situation by recommending some remedial steps that could be taken by the government. The author cannot pretend that his ideas are original. One way or the other, these must have surfaced in local and international discussions about the human rights situation in the Philippines. Rather, the objective of the this paper is to develop these ideas within a functional legal framework.

For the purposes of this study, the term "human rights" should be understood as analogous to civil and political rights, for the reason that the Philippine Constitution gives emphasis to civil and political rights. Moreover, while the author recognizes the indivisibility and interdependence of civil and political rights and economic,<sup>1</sup> social and cultural rights, it is the former set of rights that is most visibly violated in Philippine society.

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<sup>1</sup>CONST., art. XIII, sec. 12, par. 1.

Also, it must be clarified that the coverage of this paper are human rights violations attributable to the government. The author agrees with defenders of the Philippines' human rights record that even groups opposed to the government are guilty of human right abuses, but he has deliberately chosen to concentrate on those that may be traced to the government for the reason that under the Constitution and international instruments, it is State abuse that is primarily sought to be checked.

### THE CONTEXT OF HUMAN RIGHTS ISSUES

#### *The Political Background*

The relatively bloodless EDSA Revolt of 1986 ushered in an initial euphoria among the people of the Philippines. The assumption by Mrs. Corazon Cojuangco Aquino of the presidency, the restoration of democratic government structures, and the ratification of a new Constitution ended two decades of autocratic rule. Needless to say, these events heightened the expectations of a people hungry for political, economic and social changes.

The Aquino government initially showed signs of its commitment to effect these changes. It considered paramount the promotion and protection of human rights.<sup>2</sup> Human rights was one of the key issues of the campaign of Mrs. Aquino and she pledged to always uphold the human rights of the Filipino people.<sup>3</sup>

Immediately after her ascension to the presidency, Mrs. Aquino took several steps for the advancement of human rights. She announced that all political prisoners would be released by February 27, 1987; restored the writ of habeas corpus; and established a Presidential Committee on Human Rights (PCHR) chaired by Sen. Jose W. Diokno, a leading human rights advocate.<sup>4</sup> The Philippines ratified the Convention Against Torture and the International Covenant on Civil and Political Rights in June and October of 1986 and a revised bill of rights, which expressly prohibited torture and the imposition of the death penalty, was made the cornerstone of a new Constitution which was being drafted by the Constitutional Commission.<sup>5</sup> In November of 1986,

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<sup>2</sup>OFFICE OF THE PRESS SECRETARY AND PHILIPPINE COMMISSION ON HUMAN RIGHTS, A PRIMER ON THE HUMAN RIGHTS ISSUE IN THE PHILIPPINES: ISSUES AND ANSWER 1 (1991).

<sup>3</sup>*Id.*, at 1-2.

<sup>4</sup>AMNESTY INTERNATIONAL, 1987 AMNESTY INTERNATIONAL REPORT 260 (1987).

<sup>5</sup>*Id.*, at 261.

Mrs. Aquino repealed, among others, Presidential Decrees No. 1877 and 1877-A issued by Mr. Marcos, which authorized the detention without recourse to the courts of persons accused of national security offenses.<sup>6</sup> She also restored the original penalties for these offenses, which Mr. Marcos had drastically increased during his tenure.<sup>7</sup>

Amnesty International received fewer reports of human rights violations in 1986 than in previous years. In that year, over 500 political prisoners detained by Mr. Marcos without charges through Presidential Commitment Orders (PCOs) or Preventive Detention Actions (PDAs) were released.<sup>8</sup>

However, the promise of the Aquino government was marred by two significant political factors.

First, the reestablishment of the electoral system has resulted largely in the resurrection of the power of the traditional corporate and landholding elites.<sup>9</sup> Elite democracy had once again reared its ugly head. The failure of the Aquino government to effect fundamental changes is due to the fact that the social structure founded on wealth, upon which the present leadership is based, has remained intact. Conservative forces, which dominated the national and local leadership, failed to address the problem of poverty and seek solutions to close the widening gap between the rich and the poor. This victory of conservative powers is most evident in the Congress of the Philippines where the law enacted failed to provide for a genuine agrarian reform program.<sup>10</sup>

This observation is echoed by Mr. Mahbub Ul Haq, special adviser to the U.N. Development Program Administrator, who cited the "elitist" government in the Philippines as the source of instability.<sup>11</sup> He observed that "the Filipino military, industrial and landlord classes dominated the formulation of government policies and blocked major political changes needed for Philippine economic and social development."<sup>12</sup>

Secondly, after realizing in the EDSA Revolt of 1986 the pivotal role it plays in the balance of power, the Philippine military has taken it upon itself to play a dominant role in post-Marcos politics.

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<sup>6</sup>*Id.*

<sup>7</sup>Exec. Order No. 187 (1987).

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

<sup>9</sup>*Human Rights in Asia*, 2 CURRENTS 1 (1989).

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

<sup>11</sup>The Chronicle, Oct. 10, 1991, p. 1.

<sup>12</sup>*Id.*

There had been seven (7) failed *coup d'etats* since Mrs. Aquino's ascension to the presidency.

Also, the military has been resistant to the human rights initiatives of Mrs. Aquino. The need for a tough counter-insurgency policy has often been cited as a rationale for this apparent resistance.<sup>13</sup>

On the policy level, these factors have pushed the Aquino government into abandoning a political solution to the communist insurgency in favor of a military solution, *i.e.*, a policy of "total war" against the insurgents. Pivotal in this policy shift was the collapse of the peace negotiations between the government and the National Democratic Front in January 1987 following a massacre of peasants who staged a demonstration in the vicinity of the presidential palace.<sup>14</sup> This policy shift was effected on two fronts: (a) through escalated military activity; and (b) through the appointment of retired military officers to administrative positions in the executive branch.<sup>15</sup>

### *The Military Strategy*

Since the Marcos regime, the Philippine military has espoused a counter-insurgency strategy popularly known as Low Intensity Conflict (LIC).<sup>16</sup> Essentially, it is "total war at the grassroots levels."<sup>17</sup> It has been defined as:

... a limited politico-military struggle to achieve a political, social, economic or psychological objective. It is often protracted and ranges from diplomatic, economic and psychological pressures through terrorism and insurgency. LIC is generally confined to a geographic area, and is often characterized by constraints on weaponry, tactics and the level of violence.<sup>18</sup>

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<sup>13</sup>See D. Vizmanos, *Fanning the Flames of Insurgency*, NATIONAL MIDWEEK, January 30, 1991.

<sup>14</sup>*Aquino Says Answer to Terrorism is Military Action Not Land Reform*, Philippine News, March 25-31, 1987, pp. 1-2 in D. B. SHIRMER and S. R. SHALOM, THE PHILIPPINES READER 419 (1987).

<sup>15</sup>This is most clearly demonstrated by the decision, a part of the Armed Forces 1988 Action Plan, to appoint retired generals and military officers to direct the country's Export Processing Zones and head other civilian positions, and the President's proposal, in Exec. Order No. 292, that Defense Secretary Fidel Ramos be elevated to the new post of Vice-Commander-in-Chief of the Armed Forces. Philippine Daily Globe, Nov. 17, 1988; Pintig ng Bayan, Sept. 15, 1988.

<sup>16</sup>INTER-AGENCY WORKING GROUP IN LIC, TOTAL WAR: BASIC DOCUMENTS USED IN THE CONFERENCE ON LOW INTENSITY 15 (1987).

<sup>17</sup>*Id.*

<sup>18</sup>F. M. GLYNN, SECURITY ASSISTANCE AND LOW INTENSITY CONFLICT: A CHALLENGE TO EXCELLENCE 1 (1987).

The LIC Program of global counter-revolution is popularly known as the Reagan Doctrine. The goal of this doctrine was not only to contain Soviet power in the Third World but to reverse Soviet gains by a process of attrition of the perceived periphery of Soviet influence.<sup>19</sup> LIC, therefore, is not conventional warfare at a lower scale, but is essentially a political warfare between antagonistic socio-political systems: western liberal democracy and communism.<sup>20</sup>

The LIC program emphasizes three main elements: (1) restricting the scope of activity of critics of or political opposition to the government; (2) increasing the role played by civilians in the war, both as agents and targets of the military; and (3) escalating the scale of direct military action.<sup>21</sup>

Before the EDSA Revolt of 1986, Mrs. Aquino, as a presidential candidate, pledged to solve the insurgency problem through peaceful means. Her approach was two-pronged: addressing the economic problems of the people and conducting peace talks with the National Democratic Front. Unfortunately, positions hardened and with the collapse of the peace talks, the prospects for a peaceful solution dimmed.

Thus, in a major speech delivered some two months later, Mrs. Aquino announced the policy reversal after a failed bomb attack. She said:

To our enemies, let me say that nothing will intimidate this President, . . . Death holds no fear for us, neither for the Commander-in-Chief nor for soldiers in the line . . . One nation, one armed forces, acting the energy and direction of a single hand, will smite the foes on the left and on the right. *The answer to the terrorism of the left and the right is not social and economic reform but police and military action.*<sup>22</sup>

Understandably, despite statements made by Mrs. Aquino and the military establishment, the government has denied that it has adopted a "total war" policy. Rather, it refers to a "total approach" strategy in dealing with the insurgency. According to an official report:

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<sup>19</sup>B. CARR and E. MCKAY, *LOW INTENSITY CONFLICT: THEORY AND PRACTICE IN CENTRAL AMERICA AND SOUTH-EAST ASIA* 9 (1988).

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

<sup>21</sup>CURRENTS, *supra* note 9, at 23.

<sup>22</sup>D. B. SHIRMER and S. R. SHALOM, *THE PHILIPPINES READER* 419 (1987) (emphasis supplied).

... this strategy consists of three simultaneous approaches to insurgency - (1) Development, (2) Security Operations, and (3) Reconciliation. Development seeks to eradicate the root causes of insurgency. Security Operations provide the conditions of stability and a basic situation of peace and order to enable development to proceed with the least interruption. Reconciliation gives the insurgents an honorable option to return to society.<sup>23</sup>

This shift in policy has resulted in the intensification of counter-insurgency operations. It has also resulted in an intense campaign of intimidation and harassment aimed at non-governmental organizations suspected of being "communist fronts."<sup>24</sup> The government's "total war" approach in counter-insurgency has, in the eyes of the police and the military, blurred the distinction between lawful non-violent opposition to the government and armed opposition to the State.<sup>25</sup> The suppression of lawful opposition and the encouragement of acts of repression, including serious human rights violations, have been the inevitable consequences.

Another aspect of the "total war" approach is the increased use of civilian participation in the counter-insurgency effort. There are reports of the creation and proliferation of Civilian Volunteer Self-Defense Organizations (CVSDOs) and vigilante groups sponsored by the military.<sup>26</sup> These groups have been accused of being among the major perpetrators of human rights violations. It was reported that there were approximately 207 existing vigilante groups in September 1988.<sup>27</sup>

Thus, a human rights monitoring group reported that "[a]s of the end of August 1987, it has recorded a total of 205 major armed right-wing civilian groups including fanatical groups and bandits operating nationwide. Of this, 127 are right-wing vigilante type, 63 are religious fanatical groups, and 15 are armed bandit groups."<sup>28</sup>

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<sup>23</sup>OFFICE OF THE PRESS SECRETARY AND DEPARTMENT OF NATIONAL DEFENSE, A PRIMER ON WINNING THE WAR AGAINST INSURGENCY 3 (1991).

<sup>24</sup>CURRENTS, *supra* note 9. On November 11 1987, a list attributed to the military intelligence office was published in which 25 prominent non-governmental groups were accused of being "communist fronts." Included among them were the United Church of Christ in the Philippines, most national human rights groups such as Task Force Detainees of the Philippines (TFDP) and the Philippine Alliance of Human Rights Advocates, and the nation's largest trade union and peasant organizations.

<sup>25</sup>Amnesty International, *Workers, Human Rights and the Agents of Death*, NATIONAL MIDWEEK, August 14, 1991, p. 18.

<sup>26</sup>*Id.* See Comm. on Justice and Human Rights, S. Rpt. on Vigilante Groups, 8th Cong. (1988) [hereinafter Vigilante Report].

<sup>27</sup>CURRENTS, *supra* note 9.

<sup>28</sup>Vigilante Report, *supra* note 26, at 8.

Another essential component of the counter-insurgency strategy and an often-cited source of human rights violations are the paramilitary groups. Although the notorious Civilian Home Defense Forces (CHDFs) of the Marcos regime were disbanded in 1988, they were replaced by another paramilitary group-the Civilian Armed Forces Geographical Units (CAFGUs) which had an initial membership of 45,000.<sup>29</sup>

The Chief of Staff of the Armed Forces has also issued guidelines on the formation of the Special CAFGU Active Auxiliary (SCAA). The concept of the SCAA, according to the directive, is as follows:

All qualified volunteer reservists gainfully employed by duly accredited business establishments within a particular locality may be called upon under selective mobilization to render auxiliary service to meet local emergency situations, such as *civil disturbances*, natural calamities and *insurgency*. Just like the regular CAA, it shall complement the AFP regular units as Active Auxiliary. *They shall be provided with military type weapons for the purpose.*<sup>30</sup> (Emphasis supplied.)

Furthermore, while the guidelines provide that the SCAAs shall be used principally to defend business establishments against extortion from the New People's Army and the Moro National Liberation Front, the SCAAs have been accused of harassing, and even killing, trade unionists.<sup>31</sup> Considering that radical trade unions have often been tagged as communist front organizations, the anti-labor activities of the SCAAs have been justified as part of the legitimate counter-insurgency efforts of the military.

The third aspect of the "total war" approach is the escalation of military operations in the countrysides consisting of aerial bombings, strafings and mortar bombardments. The objective of these operations is to flush out the insurgents and to deprive them of their mass base. These operations have resulted in the forced mass evacuations of civilians residing in the areas of operations. Needless to state, the real victims are the civilians caught in the crossfire of armed conflict.

Thus, from January 1988 to September 1989, the International Committee of the Red Cross rendered relief services to 194,734 internal

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<sup>29</sup>CURRENTS, *supra* note 9, at 24.

<sup>30</sup>R. E. Alfonso, Jr., 'Special' CAFGUS VS. Trade Unions, NATIONAL MIDWEEK, May 2, 1990, p. 8.

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

refugees.<sup>32</sup> Other non-governmental organizations have documented as many as 400,000 internal refugees.<sup>33</sup> It has been estimated that more than one million people have been displaced by the government's "total war" approach.<sup>34</sup>

### *Legislation*

Although Mrs. Aquino, during the time that she exercised legislative power in the early days of her tenure, had already repealed several repressive statutes promulgated during the Marcos regime, still in effect are certain laws that put in doubt the present government's resolve to safeguard human rights.<sup>35</sup>

Presidential Decree No. 1866 provides for a very stiff penalty for "illegal possession of firearms, ammunition and/or explosives in furtherance of rebellion, insurrection or subversion." Considering that the crime of rebellion is more difficult to prove, that persons found guilty of rebellion were, until the amendment of the law, meted a lighter penalty, and that under Philippine jurisprudence rebellion absorbs common crimes,<sup>36</sup> the government's prosecutors have resorted to charging insurgents under this decree in lieu of charging them with rebellion. Thus, an insurgent is often reported apprehended with a firearm or grenade, which is claimed by those arrested to have been

<sup>32</sup>ECUMENICAL MOVEMENT FOR JUSTICE AND PEACE and THE PHILIPPINE ALLIANCE FOR HUMAN RIGHTS ADVOCATES, EXODUS FROM COUNTERINSURGENCY WARFARE: REPORT OF THE INTERNATIONAL FACT-FINDING MISSION ON INTERNAL REFUGEES OF THE PHILIPPINES 8 (1990).

<sup>33</sup>*Id.*; other NGOs assisted the internal refugees. Citizens Disaster and Rehabilitation Center documented 430,186 internal refugees. Ecumenical Commission for Displaced Families and Communities assisted 186,730 and the Ecumenical Movement for Justice and Peace registered 464,652 refugees.

<sup>34</sup>The Manila Chronicle, Dec. 11, 1991, p. 7.

<sup>35</sup>Aquino issued among others: Exec. Order No. 59, repealing Pres. Decree Nos. 1404, 1836, 1877 and 1877-A (1986), which authorized longer periods of delivery of arrested persons (by the former President) under P. D. 1404; the presidential order of arrest or commitment order under P. D. 1836; and the preventive detention action under P. D. 1877, as amended by P. D. 1877-A; Exec. Order No. 167 which revived Republic Act No. 1700 Entitled "An Act to Outlaw The Communist Party of the Philippines and Similar Associations, Penalizing Membership Therein and For Other Purposes" and repealed P. D. 1835, entitled, "Codifying The Various Laws on Anti-Subversion and Increasing the Penalties for Membership in Subversive Organization"; and Exec. Order No. 187, repealing Presidential Decrees Nos. 38, 942, 970, 1735, 1834, 1974, and 1996 and Articles 142-B and 142-B of the Revised Penal Code and restoring Articles 135, 136, 137, 138, 140 141, 142, 143, 144, 146, 147, 177, 178, and 179 to Full Force and Effect as They Existed Before Said Amendatory Decrees (1987), which restored the original penalties for political offenses. However, the Philippine Congress in Rep. Act No. 6968 (1990) again increased the penalties for these offenses.

<sup>36</sup>*People v. Hernandez*, 99 Phil. 515 (1956); *People v. Geronimo*, 100 Phil. 90 (1956); *Enrile v. Salazar*, 186 SCRA 217 (1990).



"planted" by the arresting officers, just so that the suspect can be charged under this decree which provides for a greater penalty.

More directly related to the matter of seeking redress for human rights violations is the jurisdiction of the courts. Presidential Decree No. 1850 grants courts martial exclusive jurisdiction over crimes committed by men in the military, although the President may waive this jurisdiction in favor of civilian courts. Considering that the majority of human rights abuses are committed by men in uniform, this decree has effectively prevented the trial of human rights cases before civilian courts and has rendered nugatory the impartial application of constitutional and statutory guarantees on the protection of human rights. It was only very recently that this decree was repealed by Congress.<sup>37</sup>

Moreover, the Supreme Court has upheld the validity of the warrantless search and arrest of persons suspected of being subversives on the ground that subversion is a continuing offense.<sup>38</sup> It has been reported that as a result of this ruling, 1,074 "illegal" arrests and detentions were made in the period from July to December 1990 in Metropolitan Manila alone.<sup>39</sup> The Supreme Court has also upheld the legality of the establishment of police and military checkpoints in the metropolis.<sup>40</sup> It has also validated the "zoning" operations or saturation drives conducted by the police and military in slum communities to flush out common criminals and "subversives."<sup>41</sup>

Another law promulgated during the Marcos regime but still in effect is Batas Pambansa Blg. 880 or the Public Assembly Act, which requires a written permit before any mass activity can be held in a public place and allows the dispersal of rallies without permits.<sup>42</sup>

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<sup>37</sup>Pres. Aquino signed Rep. Act 7055 entitled "An Act Strengthening Civilian Supremacy Over The Military By Returning To the Civil Courts the Jurisdiction Over Certain Offenses Involving Members Of the Armed Forces Of The Philippines, Other Persons Subject To Military Law, And The Members Of The Philippine National Police, Repealing For The Purpose Certain Presidential Decrees" last June 20, 1991.

<sup>38</sup>Umil v. Ramos, 187 SCRA 311 (1990); see also Oliveros, *One Year of Warrantless Arrests*, NATIONAL MIDWEEK, August 7, 1991, p. 19.

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

<sup>40</sup>Valmonte v. De Villa, 178 SCRA 211 (1989); see also *The Philippine Human Rights Situation: A Look into the State's Obligations*, PHILIPPINE HUMAN RIGHTS UPDATE November 15-December 14, 1990, p. 14.

<sup>41</sup>Guazon v. De Villa, 181 SCRA 623 (1990).

<sup>42</sup>*The Philippine Human Rights Situation: A Look into the State's Obligations* [hereinafter *Situation*], PHILIPPINE HUMAN RIGHTS UPDATE [hereinafter PHRU], November 15-December 14, 1990, p. 14.

Lastly, Pres. Aquino issued Executive Order No. 212 amending PD 169 which requires physicians who have treated persons with serious physical injuries to report such treatment to the Philippine Constabulary.<sup>43</sup> Instead of reporting such treatment to the Philippine Constabulary, Executive Order No. 212 now requires physicians to report to the nearest government health authority and such report, upon written request, shall be made available to law enforcement agencies.<sup>44</sup> This new law is not really different from PD 169, since medical reports will still be required of physicians and will be furnished to law enforcement agencies. Moreover, the promulgation of implementing regulations by the Secretary of Health has to be in consultation with the Philippine Constabulary.<sup>45</sup>

### VIOLATIONS OF FUNDAMENTAL RIGHTS

Cases of human rights violations were at its lowest in 1986 and it peaked in 1987 and 1988, following the collapse of the peace negotiations with the communist insurgency. Task Force Detainees of the Philippines (TFDP),<sup>46</sup> a church-based human rights monitoring organization, reported that there was a decline in human rights violations during the first half of 1991 compared to a similar period last year.<sup>47</sup> It also noted that there was a decline last year in reported violations compared to 1989 which was attributed to the decline in military operations, resulting from a large portion of the military being kept inside the barracks after the most serious coup attempt in 1989.<sup>48</sup> Another reason advanced was the "lull" in public protests.<sup>49</sup>

#### *Arrests and Detentions*

According to TFDP, the arrest and detention cases reported from the time Mrs. Aquino became President in 1986 up to September 30, 1991 totalled 19,067.<sup>50</sup> This exceeded by 6,366 the number of cases reported

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<sup>43</sup>Exec. Order No. 212, Amending Presidential Decree No. 169 (1987); Comm. on Justice and Human Rights, Human Rights Situation in the Philippines, S. Rpt. 1025, 8th Cong. (1990).

<sup>44</sup>*Id.*

<sup>45</sup>*Id.*

<sup>46</sup>TFDP maintains a nationwide network of trained workers and systematic documentation procedures. For all subsequent statistical figures, please refer to TFDP's monthly publication PHRU and periodic Statistical Report on Human Rights Violations [hereinafter Statistics].

<sup>47</sup>*Human Rights Situation: For the First Half of 1991*, 6 PHRU, July 15-August 14, 1991, p. 8.

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

<sup>49</sup>*Id.*

<sup>50</sup>See Statistics.

during the last three years of Mr. Marcos' rule. The government attributes this increased number of reported cases to the restoration of freedom of the press and the more liberal access to information.<sup>51</sup>

Most of the cases of arrests were mass arrests, done during protest demonstrations and rallies and saturation drives on slum communities suspected of harboring communist rebels.<sup>52</sup>

While detention following a mass arrest was usually only for a short duration, nevertheless, those detained faced the risk of torture or physical abuse. There was also the grave danger of involuntary disappearance following an arrest.

Short-term detention has also been used as a means of threatening or intimidating those who oppose the government. In some cases, those detained were released only after they signed documents stating that they were rebel surrenderees.<sup>53</sup>

TFDP also reported that as of September 30, 1991 there were still 708 political prisoners under detention.<sup>54</sup>

#### *Denial of Due Process*

Even if the law requires that persons arrested be brought before judicial authorities within a specified number of hours depending upon the crime charged, this requirement is not religiously followed in all cases.<sup>55</sup> Many times, a person is detained without even being informed of his rights or of the accusation against him.<sup>56</sup> Philippine jurisprudence requires that the constitutional rights of the accused be explained to him before a written statement is taken from him.

#### *Torture*

Torture is "any act which inflicts severe pain or suffering, whether physical or mental, on a person, at the instigation of or with

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<sup>51</sup>OFFICE OF THE PRESS SECRETARY AND PHILIPPINE COMMISSION ON HUMAN RIGHTS, A PRIMER ON THE HUMAN RIGHTS ISSUE IN THE PHILIPPINES 12-13 (1991).

<sup>52</sup>*The Three-Year Human Rights Record of the Aquino Government* [hereinafter *Record*], 5 PHRU, Nov 15-Dec 14, 1989, p. 10; *Situation*, *supra* note 42, at 15.

<sup>53</sup>CURRENTS, *supra* note 9, at 25.

<sup>54</sup>*Situation*, *supra* note 42, at 16.

<sup>55</sup>*Record*, 5 PHRU, Nov 15-Dec 14, 1989, p. 10; Exec. Order No. 272 specifies that apprehended persons must be produced in court after 12 hours for crimes punishable by light penalties, 18 hours for crimes punishable by correctional penalties and 36 hours for crimes punishable by capital penalties.

<sup>56</sup>*Id.*

the consent of a public official or other person acting in an official capacity."<sup>57</sup> It may be practiced to obtain information, to extract a confession, as a punishment for any actual or imagined offense or activity, to break one's spirit or force one to renounce his principles, political beliefs and affiliations, or to stifle dissent and opposition.<sup>58</sup>

Although on a decline, torture still remains a pressing human rights problem in the Philippines. TFDP reported 2,756 cases of torture for the period from March 1, 1986 up to September 30, 1991.<sup>59</sup> This would constitute roughly 15% of those arrested and detained for political reasons. Torture usually takes the form of severe beatings, water cure, electric shocks, stabbings, suffocation, sexual abuse and threats of death or injury to loved ones.<sup>60</sup> Torture is often used to extract information or testimonies from detainees, usually as regards their or other persons' membership in the communist party or in the New People's Army or as regards participation in subversive activities.

Testimonies of victims indicate that incidents of torture usually occurred during *incommunicado* detention in military "safehouses" and in other places in or near military headquarters.<sup>61</sup>

#### *Involuntary Disappearances and Extra-Judicial Killings*

A total of 279 individuals disappeared from 1986 to September 30, 1991.<sup>62</sup> From January 1990 to September 30, 1991 alone, there were 80 who disappeared after being arrested and 20 who disappeared without record of any arrest.<sup>63</sup>

A total of 167 persons was reported by TFDP to have been "salvaged" or extra-judicially executed.<sup>64</sup> Amnesty International reports 300 such cases since the beginning of 1989.<sup>65</sup> Notwithstanding the discrepancy in the number of reported cases, the fact remains that the incidence of extra-judicial executions remains a grave problem.

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<sup>57</sup>FREE LEGAL ASSISTANCE GROUP, KNOW YOUR RIGHTS 15-16 (1986).

<sup>58</sup>*Id.*, at 16.

<sup>59</sup>*Record*, 5 PHRU, Nov 15-Dec 14, 1989, p. 10; *Situation*, *supra* note 42, at 15; Statistics.

<sup>60</sup>CURRENTS, *supra* note 9, at 26.

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

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

<sup>63</sup>*Situation*, *supra* note 42, at 16; Statistics.

<sup>64</sup>*Record*, 5 PHRU, Nov 15-Dec 14, 1989, p. 10; *Situation*, *supra* note 42, at 16; Statistics.

<sup>65</sup>Amnesty International, *Workers, Human Rights and the Agents of Death*, NATIONAL MIDWEEK, August 21, 1991, p. 14.

Among the cases of extra-judicial killings reported by Amnesty International are those involving human rights activists, peasants, journalists, church workers, trade unionists and civilians living in areas of suspected rebel activity.<sup>66</sup> Notable cases include the killing of: Rolando Olalia, head of the leftist Kilusang Mayo Uno (May First Movement) trade union;<sup>67</sup> Leandro Alejandro, secretary-general of Bagong Alyansang Makabayan (New Nationalist Alliance), a major leftist political party; and several human rights lawyers.

The communist New People's Army has also resorted to selective executions as part of their propaganda strategy. Police and military officers, local government officials and pro-government civilians have been assassinated in urban areas by so-called "sparrow units," which are squads of young men and women armed with handguns who just fade into the population after a kill.

Those responsible for extra-judicial executions have largely escaped conviction. Amnesty International reports that from 1986 up to mid-1990 only 43 police and military personnel have been convicted for human rights violations.<sup>68</sup>

### *Massacres*

Killings are considered massacres if in a single incident three or more persons are killed by government forces or those acting on their behalf.<sup>69</sup> From 1986 up to September 30, 1991, 153 massacres have been reported which have resulted in 743 dead and 297 wounded.<sup>70</sup> For the same period, there have been 182 similar incidents where less than three persons have died.<sup>71</sup>

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<sup>66</sup>See AMNESTY INTERNATIONAL, 1991 AMNESTY INTERNATIONAL REPORT (1991) [hereinafter AI REPORT].

<sup>67</sup>See Amnesty International Report as reported in NATIONAL MIDWEEK, August 14, 21, 28, 1991.

<sup>68</sup>However, Amnesty International reported that it was unclear whether all had in fact been convicted of human rights-related offenses or for common crimes. Other than the two listed by the authorities, no other member of the police or military was known to have been convicted of human rights offenses in 1990. A military officer accused of killing labor leader Rolando Olalia in 1986 was acquitted after a three-year trial; others accused in the same case went into hiding or were given immunity to testify for the state. Some alleged violations were officially investigated but generally the findings were not made public; AI REPORT, *supra* note 66, at 188.

<sup>69</sup>CURRENTS, *supra* note 9 at 28.

<sup>70</sup>Record, 5 PHRU, Nov 15-Dec 14, 1989, p. 12.

<sup>71</sup>*Id.*

***Forced Mass Evacuations, Hamletting and Food Blockades***

Forced mass evacuation refers to the displacement of villages and communities, regardless of territorial boundaries, geopolitical divisions and number of persons affected.<sup>72</sup> Usually, persons affected leave their communities because of intensive counter-insurgency operations conducted by government forces. In some cases, people are forced to evacuate because of the harassment done by armed groups connected with the military.<sup>73</sup>

Strategic hamletting refers to the military strategy of controlling local insurgency by relocating communities to areas under its control in order to deprive the insurgents of their mass base and support structures.<sup>74</sup>

Victims of forced mass evacuations and strategic hamletting are referred to as "internal refugees." They are persons who flee to a place of safety within their own country without crossing international borders.<sup>75</sup>

As the government intensifies its counter-insurgency efforts, the number of internal refugees continues to grow. They are forced to evacuate to crude refugee centers where basic services are either minimal or non-existent. Estimates vary, ranging from a low of 186,730 to a high of 464,652 persons affected from 1986 up to 1990.<sup>76</sup> These numbers are definitely alarming, despite the discrepancy. The situation becomes even more serious if we consider the number of children who die from disease and malnutrition in these evacuation camps.

The most publicized cases of forced evacuations are those in the province of Negros Occidental in 1989 where 257 children died in evacuation camps after the military launched the "Operation Thunderbolt" and the evacuations that resulted from the Marag Valley offensive in 1990-91 where 74 children reportedly died of measles in the

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<sup>72</sup>Human Rights Committee of the National Council of Churches in the Philippines, Policy Study on Internal Refugees 2 (Nov. 16, 1989) (mimeographed).

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

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

<sup>75</sup>*Internal Refugees in Negros* reprinted from KABALIKAT: THE DEVELOPMENT WORKER, September 1989, p. 2.

<sup>76</sup>ECUMENICAL MOVEMENT FOR JUSTICE AND PEACE and THE PHILIPPINE ALLIANCE FOR HUMAN RIGHTS ADVOCATES, EXODUS FROM COUNTERINSURGENCY WARFARE: REPORT OF THE INTERNATIONAL FACT-FINDING MISSION ON INTERNAL REFUGEES OF THE PHILIPPINES 19 (1990).

caves where they sought refuge.<sup>77</sup> The military has launched a full-scale offensive against communist rebels numbering more than a thousand who have reportedly set up a revolutionary government and a training base in the valley.

Another tactic alleged to have been employed by the military is the setting up of food blockades. The Integrated Bar of the Philippines has recently urged Mrs. Aquino to order a stop to food blockades.<sup>78</sup> It branded as "illegal and unconstitutional" Memo Circular No. 139, which authorizes the Armed Forces of the Philippines to stop the delivery of food and other vital services in conflict areas.<sup>79</sup> As of September 1991, 27 food blockades have been documented affecting a total of 435 individuals and 2,593 families.<sup>80</sup> Only food and supplies sufficient for the actual residents of a community are allowed to enter the area to prevent the insurgents from being supplied with food by the local populace. Residents were constantly investigated on their food purchases and ordered to present residence certificates as clearance forms for transporting food.<sup>81</sup>

#### PERPETRATORS AND VICTIMS

Of the 6,664 perpetrators of human rights violations in 1987 to September 1991, 1,686 were from the Philippine Army, 1,462 were members of the police and 423 were members of vigilante groups.<sup>82</sup> 450 were members of the CHDF or CAFGU.<sup>83</sup>

Of 26,263 victims of human rights violations in the period from January 1, 1987 up to September 30, 1991, 9,093 were workers, 5,819 were students, 5,175 were farmers and 1,153 were service workers.<sup>84</sup> Human rights workers accounted for 228 of the victims.<sup>85</sup> The large number of victims coming from the ranks of workers manifests the government's iron fist approach to militant workers' groups. The number of victims who are students shows the government's hardline approach to student demonstrations.

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<sup>77</sup>Bandiola, *Valley of Tears... and Fears*, 6 PHRU, February 15-March 15, 1991, pp. 13-14.

<sup>78</sup>Manila Chronicle, Dec. 3, 1991, p. 3.

<sup>79</sup>*Id.*

<sup>80</sup>*Record*, *supra* note 70, at 14; Statistics.

<sup>81</sup>*Id.*

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

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

<sup>84</sup>*Record*, *supra* note 70, at 15; *Situation*, *supra* note 42, at 16.

<sup>85</sup>*Id.*

## FINDINGS AND RECOMMENDATIONS

*Senate Findings*

The criticism of the human rights record of the Aquino government has not been limited to local and international NGOs. Even within the government, the disturbing pattern of human rights abuses has caused grave concern.

The Philippine Senate Committee on Justice and Human Rights, in its Report on the Human Rights Situation in the Philippines, submitted on April 4, 1990 after a series of public hearings, made findings and conclusions that reiterated and legitimized those previously made by NGOs.

First and foremost, the Committee focused its attention on the administration's apparent lack of political will to promote and protect human rights:

1. Human rights continue to be violated despite the fact that human rights violations committed by military, police and other government-supported organizations are not in pursuit of any government policy.

Respect for human rights is a state policy and a constitutional mandate. The Committee notes, however, that there is a wide gap between state policy and reality, between institutional response and actual practice in the field. This puts to question the efficiency, if not the political will, of the Administration to effectively enforce the Constitution and the laws providing for the protection of human rights for all.<sup>86</sup>

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14. Many cause-oriented groups and legitimate people's organizations were labeled as communist sympathizers, if not communist fronts.

Government officials, particularly the military, were found to have made loose and at times deliberate statements linking many cause-oriented groups to outlawed organizations such as the NDF-CPP-NPA. As a result of said labelling, such groups were placed in danger of being targetted by military, paramilitary, and anti-communist vigilante groups.

The relatives and friends of victims of involuntary disappearances encountered difficulty in their search as some officers of military camps and detention centers outrightly refused to cooperate with them.

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<sup>86</sup>Comm. on Justice and Human Rights, S. Rpt. 1025, 8th Cong. (1990), at 57 [hereinafter HR REPORT].



They received very little assistance from the government in the actual conduct of the search and in terms of providing required resources.

Several witnesses testified that safehouses are still being used by government agents to interrogate and torture persons who were arrested on suspicion of being NPA rebels or sympathizers.

For as long as torture in safehouses is made part of the interrogation process, the investigation of cases of human rights violations and the successful prosecution of offenders become very difficult.

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15. The investigation of many complaints of human rights violations and the prosecution of many offenders are found to proceed at a very slow pace despite the availability of witnesses and the existence of the appropriate mechanisms and institutions of government. Thus, a number of victims of human rights violations and their families no longer filed their complaints with the Commission on Human Rights, the Fiscal's Office or the military, as many of them expressed lack of trust and confidence in these agencies' ability to respond immediately and effectively to their complaints.

16. The Committee found that some human rights organizations, both domestic and international, including sections of the media, are perceived by government agencies to be merely spreading malicious propaganda and exaggerating the incidence of human rights violations whenever these groups call the government's attention thereto.

The Committee found that among some cause-oriented human rights groups, there is a loss of faith in the government to appreciate their position. Added to this is the attitude of intolerance on the part of some elements in the military. Both factors aggravate the situation of a lack of understanding of human rights.<sup>87</sup>

The Senate Committee also questioned the wisdom of the government's anti-insurgency policy and the ill-effects that it generated:

2. The "total war policy," now referred to as the "total approach" strategy and operationalized through the AFP's Three-Tiered Defense System for Internal Security, is considered a major factor contributing to the continuing human rights violations.

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5. The use by the military of mortars, howitzers, bombs, heavy artillery and other high powered weapons resulted not only in massive

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<sup>87</sup>*Id.*, at 66-67.

displacement of people but also in heavy damages to crops, livestock and other items of productive value, thereby causing serious disruption in the lives of the affected families.

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7. Certain sections of the military establishment have placed primacy in the pursuit of military objectives even when these could involve heavy losses or injury to civilian lives and damage to properties.

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9. Some army and law enforcement authorities, in a number of instances, have demonstrated a lack of capability and determination to enforce the law against "lost commands", fanatical groups and other lawless elements as shown by their failure to serve the many warrants of arrest long ago issued against members of said groups.

10. The Committee found that many vigilante groups continue to exist and operate despite the 1988 directive of President Aquino to disband them. . . .

11. The Committee found that in some instances, there was coercion used in the recruitment of CAFGU members and that some of those who refused to be recruited were intimidated, harassed or killed.

Some CAFGU members had acted arbitrarily and abducted or killed civilians on the mere suspicion that they were communists or their sympathizers.

Several CAFGU soldiers involved in the cases presented in the public hearings were former members of the CHDF and vigilante groups who had previously committed various criminal acts.

... the Committee found that the recruitment and training of many members of the CAFGU were inadequate and deficient.<sup>88</sup>

In addition, the Committee made the following findings:

3. The Committee found that a more effective education program is needed for the military and government personnel in order for them to have a better understanding of their duties and responsibilities in the promotion and protection of human rights in accordance with the Constitution, laws and internationally accepted human rights norms and standards.

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<sup>88</sup>*Id.*, at 57-60.

4. The Committee found that many of the human rights violations complained of were salvagings and massacres.

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6. The Committee found that the evacuation centers were over-filled to capacity and were lacking in food supply and sanitation facilities. It was further found that in the evacuation centers, the government's response and treatment of the sick and dying were slow and inadequate due to lack of doctors, nurses and medicines. The evacuation centers in Negros Occidental in the wake of Operation Thunderbolt registered over 100 child deaths due to diseases.

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8. In many of the cases heard during the public hearings, the witnesses were able to positively identify the perpetrators of human rights violations as members of the Philippine Army, the PC-INP, the Scout Rangers, the local police, military intelligence groups, CAFGUs, vigilante groups, and other paramilitary groups.

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13. The Committee found that human rights violations affected many sectors, primarily the farmers, laborers, youth, women and children, urban poor, church people, lawyers, health, media and other professionals.<sup>89</sup>

Among the recommendations made by the Committee were the following:

1. Recall the total war policy, now referred to as the total approach strategy, and review the three-tiered defense system for internal security.

2. Stop the use of weapons such as mortars, howitzers and bombs during military operations in a manner which does not discriminate between civilians and combatants. Stop also the practice of strafing inhabited areas.

3. Provide evacuees with immediate and adequate relief through the Department of Social Welfare and Development, Department of Health, Department of Local Governments, Department of National Defense, and other appropriate government agencies. Take the necessary steps to facilitate the evacuees' return to their homes.

4. Ensure the protection of the civilian population during armed hostilities between the government and rebel forces.

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<sup>89</sup>*Id.*, at 60-61.

5. Enforce the presidential directive to disband vigilante groups. All para-military groups such as the CAFGU, private armies and SCAAs should likewise be dismantled.

6. Immediately enact the law providing for the citizen armed force as envisioned by the Constitution.

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8. Intensify efforts in the investigation and prosecution of all persons charged with human rights violations.

9. Provide for a permanent system of compensation for victims of human rights violations and their families.

10. Vigorously attend to the need for rehabilitation of victims of human rights violations.

11. Provide for a more effective program for witness protection.

12. Improve the system of monitoring government compliance with its human rights obligations.

13. Urge the Department of Local Governments to set up Human Rights Committees through the provincial and municipal boards and city councils which would coordinate with the Commission on Human Rights, local human rights groups, non-governmental organizations and civic organizations.<sup>90</sup>

On the matter of involuntary disappearances, the Committee made the following specific recommendations:

1. Facilitate the opening of military camps and suspected safehouses for ready access to the relatives searching for the disappeared. Provide them with sufficient financial help to cover costs of the search.

2. Direct all military camps and headquarters to make available an updated listing of all persons detained under their custody.

3. Allow non-governmental organizations (NGOs) to observe and participate in the search for missing persons and in the exhumation and identification of bodies discovered.

4. Require the Department of National Defense, the Department of Justice and the Commission on Human Rights to investigate reports on suspected safehouses and take appropriate action.<sup>91</sup>

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<sup>90</sup>*Id.*, at 72.

<sup>91</sup>*Id.*, at 73.

The Committee also recommended the cessation of the training by the military of employees in private companies to become CAFGU members.<sup>92</sup>

As regards the Commission on Human Rights,<sup>93</sup> the Committee found the following problems that obstructed the capacity of its regional offices to investigate and resolve human rights cases and to provide assistance to the victims: the lack of logistic support for office equipment and materials needed for investigations; the lack of funds for rendering financial assistance to victims; the lack of trained and committed personnel; the lack of prosecutory powers; poor regional set-up; the lack of decision-making powers and financial capability of the regional offices; the lack of cooperation from law enforcement agencies; and the fear of witnesses to testify or cooperate in the investigations.<sup>94</sup> To cure these problems, the Committee made the following recommendations:<sup>95</sup>

1. Increase the budget of the Commission to enable it to more effectively carry out its functions and perform its services, with special focus on field investigations, the assistance and visitorial service program and the witness protection program.
2. Strengthen the Commission's capacity to provide financial and rehabilitation assistance to victims and their families.
3. Enact into law Senate Bill 226 which provides the Commission on Human Rights with prosecutory and other powers and expands its education functions.
4. Strengthen the regional offices and give them autonomy to lessen their administrative dependence on the CHR national office.

Earlier in its Report on Vigilante Groups, the Committee recommended the dismantling of vigilante groups.<sup>96</sup>

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<sup>92</sup>*Id.*, at 74.

<sup>93</sup>A constitutionally created agency with the primary duty of investigating human rights violations.

<sup>94</sup>HR REPORT, *supra* note 86, at 47.

<sup>95</sup>*Id.*, at 74-75.

<sup>96</sup>Comm. on Justice and Human Rights, S. Rpt. on Vigilante Groups, 8th Cong. (1987), at 21.

*Amnesty International Recommendations*

Recently, in a report<sup>97</sup> that was highly critical of the human rights situation of workers in the Philippines, Amnesty International urged the Philippine government to consider the following remedial measures:

1. To prohibit explicitly the "red-labelling" of trade unionists and others engaged in lawful political protest;
2. To initiate urgent investigations into all reports of human rights violations by members of military and paramilitary forces, as well as unofficial armed groups acting with their support or acquiescence;
3. To suspend from active service all members of military and paramilitary forces suspected of committing such violations, or suspected of complicity in violations committed by members of unofficial armed groups;
4. To bring all those suspected of human rights violations to justice before a civil court;
5. To ensure strict control, including a clear chain of command, over all officials responsible for arrest, detention and imprisonment, as well as over all officials authorized to use force and firearms;
6. To review the regulations governing the use of force and firearms and to take effective measures to ensure that only those fully authorized to bear arms are permitted to do so; and in particular to ensure that arms are not provided to "vigilantes" and other unofficial groups;
7. To disband both CAFGUs and SCAAs as soon as possible; in the meantime to ensure that all paramilitary units are immediately brought under effective control by the military authorities;
8. To uphold constitutional provisions prohibiting the maintenance of private armies; to dismantle all armed "vigilante" groups and to adopt legislation prohibiting the operation of such groups;
9. To enact legislation prohibiting the participation of company guards and "vigilantes" in counter-insurgency operations; and

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<sup>97</sup>Amnesty International reports of human rights situation in the Philippines are based on information collected from a wide variety of sources, including notarized affidavits, court documents and press reports. All information is evaluated at the organization's International Secretariat in London. In addition, AI has sent missions to the country, during which representatives conducted interviews with a wide range of government officials, military officers, members of human rights groups and victims of human rights violations. AMNESTY INTERNATIONAL, PHILIPPINES: UNLAWFUL KILLINGS BY MILITARY AND PARAMILITARY FORCES 3 (1988).

prohibiting the private funding of official paramilitary forces involved in counter-insurgency operations;

10. To ensure that trade union members and others are not subjected to arbitrary arrest and imprisonment solely for their non-violent political or trade union activities; and

11. To ensure that domestic and international guarantees of due process and fair trial are not undermined by executive or judicial reinterpretations which invoke the "national interest" or the need to combat the insurgency.<sup>98</sup>

The Amnesty International Report 1991, which covers the period from January to December 1990, made the following additional recommendations: that the government ensure the independent investigation of alleged extrajudicial executions and disappearances; that those accused of human rights violations be tried in civil courts; that prisoners of conscience be released; the prompt, fair trial or release of other political detainees; the review of the cases of prisoners sentenced after apparently unfair trials; the repeal of Presidential Decree No. 1850 which gave courts martial exclusive jurisdiction to try crimes committed by military men; and the review of the policy of using civilian paramilitary forces in the government's counter-insurgency campaign.<sup>99</sup>

#### *Agenda of Philippine NGOs*

On December 10, 1990, on the occasion of the 42nd anniversary of the Universal Declaration of Human Rights, several non-governmental organizations came up with "an immediate agenda upholding the right to life, survival and human dignity."<sup>100</sup> The agenda was referred to "as an initial and necessary step towards relieving the deteriorating state of human rights as well as the deepening economic and political crisis ravaging the country."<sup>101</sup> This agenda provided, among others, the following items:

2. Stop all current military operations in the countryside particularly those in disaster areas, and move to dismantle CAFGU and paramilitary units, in a bid towards ending the government's destructive total war policy. Provide relief and rehabilitation to internal refugees and compensation to other victims of military

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<sup>98</sup>Amnesty International *Workers, Human Rights and the Agents of Death*, NATIONAL MIDWEEK, August 28, 1991, p. 43.

<sup>99</sup>AMNESTY INTERNATIONAL, 1991 AMNESTY INTERNATIONAL REPORT 188 (1991).

<sup>100</sup>People's Caucus, *Human Rights in Crisis: An Immediate Agenda for Relief* [hereinafter *Crisis*] NATIONAL MIDWEEK, November 15-December 14, 1990, p. 13.

<sup>101</sup>*Id.*, at 19.

campaigns. Punish the perpetrators of military atrocities and other human rights violations.

3. Immediately release political prisoners on humanitarian and legal grounds: these include one of detained couples, nursing and pregnant mothers, the sick and the elderly, minors and those heavily tortured; those granted bail or whose cases have been dismissed in court but remain in detention and those without charges. Surface and account all victims of involuntary disappearances.

4. Repeal all decrees and other laws that violate constitutional rights of political prisoners and political dissenters. Stop the "criminalization" of political offenses. Stop the practice of warrantless arrests and searches and zoning of urban poor areas.

5. Stop the harassment and persecution of people's organizations and mass actions. Scrap the Public Assembly Act restricting the right to freedom of speech and assembly.<sup>102</sup>

The same agenda was also presented at the Human Rights Summit of the People's Caucus on December 9, 1990. It provides:

A. To arrest the continuing devastation of the people's lives and properties, and continuing violations of the people's human rights:

1. End government's total war policy. Stop all current military operations in the countryside.

2. Abolish CAFGUs and all para-military forces.

3. Indemnify the victims of total war. Punish the perpetrators of military atrocities and other human rights violations.

4. Provide relief and rehabilitation to internal refugees. Withdraw all military troops from their barrios and ensure their safe return.

5. Reorient the armed forces and police towards upholding human rights and the people's interests and sovereign will.

B. To immediately address the spate of political repression and ensure the defense of people's democratic rights:

1. Repeal all repressive decrees, letters of instruction, executive orders and other laws that violate human rights and inflict injury on the people.

2. Stop harassment and persecution of people's organizations.

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<sup>102</sup>*Id.*



3. Towards the release of all political prisoners, expedite concrete cases, uphold their right to bail. Release political detainees based on legal and humanitarian grounds (*i.e.* detained couples, nursing mothers, ailing detainees).

4. Scrap the Public Assembly Act and uphold the people's right to freedom of speech and assembly.

5. Dismantle all urban paramilitary forces and stop the practice of zoning and warrantless searches and seizures.<sup>103</sup>

The consistency of the findings and recommendations of the Philippine Senate, Amnesty International and local non-governmental organizations highlights the need for the government to immediately and effectively address the human rights situation in the Philippines. The gravity of the situation cannot be ignored. It demands a forceful, positive response from the government.

#### THE RESPONSE OF THE AQUINO GOVERNMENT

Among the first acts of Mrs. Aquino when she assumed the presidency in 1986 were the creation of a Presidential Committee on Human Rights, the ratification on February 28, 1986 of the International Covenant on Civil and Political Rights (ICCPR), the ratification in April 1986 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the accession to Protocol II of the Geneva Convention Relating to the Protection of Victims of Non-International Armed Conflicts, and the signing on August 6, 1987 of the instrument of ratification of the Optional Protocol to the ICCPR.<sup>104</sup>

A new Constitution was ratified by the Filipino people on February 2, 1987. The protection of human rights was one of the cornerstones of this new Constitution. Not only was the bill of rights strengthened by adding more provisions protective of human rights,<sup>105</sup> but the Constitution also provided for the creation of an independent Commission on Human Rights.<sup>106</sup>

As a reaction to the high incidence of torture during the tenure of Mr. Marcos, the new Constitution includes in its bill of rights a provision banning the practice. It provides that "[n]o torture, force, violence,

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<sup>103</sup>*Crisis*, *supra* note 100.

<sup>104</sup>OFFICE OF HUMAN RIGHTS AND HUMANITARIAN AFFAIRS, DEPARTMENT OF FOREIGN AFFAIRS, 2 CIVIL AND POLITICAL RIGHTS IN THE PHILIPPINES: THE PHILIPPINE INITIAL REPORT TO THE HUMAN RIGHTS COMMITTEE 2 (1989) [hereinafter REPORT].

<sup>105</sup>*Id.*, at 3.

<sup>106</sup>CONST., art. XIII, sec. 17; *see also* REPORT, *supra* note 104, at 7.

threat, intimidation or any other means which vitiate the free will shall be used" against the accused.<sup>107</sup> It also prohibits "secret detention places, solitary, *incommunicado*, or other similar forms of detention."<sup>108</sup> To discourage the use of torture in obtaining information, the Constitution makes inadmissible in evidence any confession or admission obtained through the means above-mentioned.<sup>109</sup> It also commands the Congress to provide for penal and civil sanctions against violators as well as for compensation to and rehabilitation of victims of torture or similar practices and their families.<sup>110</sup>

In this connection, the new Constitution provides that "[t]he employment of physical, psychological or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law."<sup>111</sup> Even then, the maltreatment of prisoners has for several decades been a crime under the penal code.<sup>112</sup>

Another new provision in the bill of rights is that "[n]o person shall be detained solely by reason of his political beliefs and aspirations."<sup>113</sup>

In its transitory provisions, the new Constitution provides that "[p]rivate armies and other armed groups not recognized by duly constituted authority shall be dismantled. All paramilitary forces including Civilian Home Defense Forces not consistent with the citizen armed force established in the Constitution, shall be dissolved or, where appropriate, converted into the regular force."<sup>114</sup>

The new Constitution gives the Commission on Human Rights the following powers and functions:

(a) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;

(b) Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;

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<sup>107</sup>CONST., art. III, sec. 12, par. 2.

<sup>108</sup>*Id.*

<sup>109</sup>CONST., art. III, sec. 12, par. 3.

<sup>110</sup>CONST., art. III, sec. 12, par. 4.

<sup>111</sup>CONST., art. III, sec. 19, par. 2.

<sup>112</sup>REVISED PENAL CODE, art. 235.

<sup>113</sup>CONST., art. III, sec. 18, par. 1.

<sup>114</sup>CONST., art. XVIII, sec. 24.

(c) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection;

(d) Exercise visitorial powers over jails, prisons, or detention facilities;

(e) Establish a continuing program of research, education and information to enhance respect for the primacy of human rights;

(f) Recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;

(g) Monitor the Philippine Government's compliance with international treaty obligations on human rights;

(h) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;

(i) Request the assistance of any department, bureau, office or agency in the performance of its functions;

(j) Appoint its officers and employees in accordance with law;

(k) Perform such other functions as may be provided by law.<sup>115</sup>

In this connection, the Congress may provide for other cases of violations of human rights that shall fall within the authority of the Commission on Human Rights.<sup>116</sup> Evident from this last provision, read together with the Commission's primary function, is the intent of the framers of the Constitution to initially limit the coverage of the Commission's powers to civil and political rights.

Interpreting its mandate, the Commission on July 26, 1988 approved CHR Resolution No. A88-045 which delineated the cases of human rights violations that were covered by its investigatory powers.

The standard adopted in attending to cases is as follows:

(1) Human rights violations *per se*, which are those enumerated in the resolution (*i.e.*, the civil and political rights guaranteed in the

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<sup>115</sup>CONST., art. XIII, sec. 18.

<sup>116</sup>CONST., art. XIII, sec. 19.

constitution and in statutes), or are "easily and readily discernible as palpable transgressions of any of the basic rights of a human being as defined in the Universal Declaration of Human Rights and international covenants and treaties on human rights to which the Philippines is a signatory" shall be investigated or given due course by the Commission without unnecessary delay.

(2) Other human rights violations, or those which are not human rights violations *per se*, shall be referred to an evaluation committee. The committee shall determine and recommend whether such cases should be given due course by the Commission, referred to another government agency or private legal aid organization, or dropped outright for not being within its jurisdiction.<sup>117</sup>

The Commission's enumeration of what are human rights violations *per se* gives one an idea of the present scope of the protection of human rights under Philippine domestic law, namely:

1) Deprivation of life, liberty or property without due process of law (Sec. 1, Art. III: Bill of Rights of the Constitution and Art. 32, par. 6, New Civil Code), and of the right to shelter, especially of poor dwellers who may not be evicted, nor their dwellings demolished except in accordance with law and in a just and humane manner (Sec. 10, Art. XIII of the Constitution);

2) Violation of the right to the equal protection of the laws (Sec. 1, Art. III: Bill of Rights of the Constitution; and Art. 32, par. 8, New Civil Code);

3) Violation of the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose (Sec. 2, Art. III: Bill of Rights of the Constitution, and Art. 32, par. 9, New Civil Code);

4) Commission of acts constituting illegal arrest and procurement or issuance of illegal search warrants (Sec. 2, Art. III: Bill of Rights of the Constitution; Art. 32, par. 4., New Civil Code; Arts. 124, 267, 268 and 269, Revised Penal Code);

5) Violation of the privacy of communication and correspondence (Sec. 3, Art. III: Bill of Rights of the Constitution; and Art. 32, par. 11, New Civil Code);

6) Violation of the freedoms of religion, of speech, and to write for the press or to maintain a periodical (Art. 32, pars. 1, 2 & 3, New Civil Code);

7) Violation of the right to take part in a peaceable assembly to petition the Government for redress of grievances, and the right to be

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<sup>117</sup>S.M. Soriano, *Prosecution and Mediation of Human Rights Cases*, 3 THE JUDGE'S JOURNAL 32-34.

free from involuntary servitude in any form (Art. 32, pars. 13 & 14, New Civil Code);

8) The use of torture, force, violence, threat, intimidation and other means that vitiate the free will of any person, or to do anything or to sign any document against his will (Sec. 12(2), Art. III: Bill of Rights of the Constitution; Art. 32, par. 17, New Civil Code);

9) Holding a person in secret detention places, in solitary confinement or *incommunicado*, or other similar forms of detention (Sec. 12(2), Art. III: Bill of Rights of the Constitution);

10) Employment of physical, psychological and degrading punishment against a prisoner or detainee;

11) Unexplained or forced disappearances and extralegal executions (salvagings);

12) Violation of the freedom of suffrage, and the liberty of abode and of changing the same (Art. 32, pars. 5, 9 & 10, New Civil Code);

13) Abridgement of the right of employees to form or join labor unions, associations or societies for purposes not contrary to law (Sec. 8, Art. III: Bill of Rights of the Constitution; Art. 32, par. 12, New Civil Code);

14) Detention of a person solely by reason of his political beliefs and aspirations;

15) Imprisonment of a person for non-payment of debt;

16) Violation of the right of the people to information on matters of public concern (Sec. 7, Art. III: Bill of Rights of the Constitution);

17) The taking of private property for public use without just compensation (Sec. 9, Art. III: Bill of Rights of the Constitution; Art. 32, par. 7, New Civil Code);

18) Commission of any of the CRIMES AGAINST THE FUNDAMENTAL LAWS OF THE STATE as defined in Title Two of the Revised Penal Code:

a) Arbitrary detention (Art. 124);

b) Delay in the delivery of detained persons to the proper judicial authorities (Art. 125);

c) Delaying the release of prisoners (Art. 126);

d) Expulsion of any person from the Philippines or compelling such person to change his residence (Art. 127);

e) Violation of domicile (Art. 128);

f) Maliciously obtaining search warrant or abuse in the service of those legally obtained (Art. 129);

g) Searching domicile without witnesses (Art. 130);

h) Prohibition, interruption and dissolution of peaceful meetings (Art. 131);

i) Interruption of religious worship (Art. 132);

j) Offending the religious feelings (Art. 133);

19) Commission of any of the **CRIMES AGAINST PERSONS** as defined under Section One, Chapter One and Chapter Two, Title Eight of the Revised Penal Code:

a) Parricide, murder and homicide, whether consummated, frustrated or attempted (Art. 246 to 250); and

b) Physical injuries (Art. 262 to 266);

20) Commission of any of the **CRIMES AGAINST PERSONAL LIBERTY AND SECURITY** as defined in Sections One, Two and Three, Chapter One and Chapter Two, Title Nine of the Revised Penal Code:

a) Kidnapping and illegal detention (Art. 267 & 268);

b) Unlawful arrest (Art. 269);

c) Kidnapping of minors (Art. 270 & 271);

d) Slavery and servitude (Art. 272 & 274);

e) Trespass to dwelling (Art. 280 & 281);

f) Threats and coercion (Art. 282 to 289);

21) Commission of any of the **CRIMES AGAINST CHASTITY** as defined in Chapters Two, Three and Four, Title Eleven of the Revised Penal Code:

(a) Rape and acts of lasciviousness (Art. 335 & 336);

(b) Seduction, corruption of minors, and white slave trade (Art. 337 to 341); and

(c) Forcible abduction (Art. 342)

22) The refusal or neglect by a public servant or employee, without just cause to perform his official duty; and

23) Violation of the visitorial powers of attorneys under Republic Act 857.<sup>118</sup>

It is readily apparent that, in accordance with its constitutional mandate, the Commission's concern is, by its own interpretation, limited to civil and political rights.

Despite the existence of the Commission on Human Rights, Mrs. Aquino issued Administrative Order No. 101, dated December 13, 1988, creating a Human Rights Committee chaired by the Secretary of Justice.<sup>119</sup> The primary functions of this committee are to monitor the Philippine human rights situation and advise the President so that proper measures can be forthwith taken effectively and to assist relatives to locate persons who have disappeared and are believed to be detained illegally.<sup>120</sup> The committee also receives complaints of human rights violations.<sup>121</sup>

In its Initial Report to the Human Rights Committee in 1989 submitted pursuant to Article 40 of the ICCPR,<sup>122</sup> the Philippine government stated the following measures that had been taken to ensure the implementation of the provisions of the ICCPR:

(1) the establishment of the Commission on Human Rights;

(2) the abolition of the Civilian Home Defense Forces (CHDFs) and the dismantling of private armies and other armed groups (However, Mrs. Aquino approved the creation of the Citizen Armed Force Geographical Units or CAFGUs, another paramilitary organization cut in the same mold as the CHDFs);

(3) the imposition of the death penalty was prohibited in the new Constitution (However, under the same Constitution, the Congress may re-impose the death penalty for compelling reasons involving heinous crimes);

(4) the issuance by Mrs. Aquino of a memorandum providing for the education on human rights of arresting and investigating personnel;

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<sup>118</sup>*Id.*

<sup>119</sup>REPORT, *supra* note 104, at 8.

<sup>120</sup>*Id.*

<sup>121</sup>*Id.*, at 9.

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

(5) the issuance by the Chief of Staff of the Armed Forces of the Philippines of a troop information and education letter-directive to all military commanders on the subjects of human rights, bill of rights and humanitarian laws, criminal procedure, the law on arrest, search and seizure, and spiritual and moral enhancement;

(6) the issuance by Mrs. Aquino of an executive order providing for human rights education in schools and the inclusion of questions on human rights in the civil service examinations;

(7) the publication by the constabulary and police of a training memorandum on the education of arresting and investigating personnel on human rights;

(8) the issuance by the National Police Commission of a resolution prescribing policies on arrests and "invitations";

(9) the organization of Civilian Volunteer Organizations (CVOs);

(10) the issuance by the Chief of Staff of guidelines regarding human rights matters;

(11) the issuance by the Secretary of National Defense of a directive to the Chief of Staff concerning the respect for and observance of human rights; and

(12) the issuance by the Secretary of Justice of circulars on prosecutorial assistance to victims of human rights violations and the inspection of jails.<sup>123</sup>

It must also be added that the Department of Justice has taken several initiatives which include the designation of city and provincial prosecutors as special prosecutors for human rights cases; the setting-up of a search network in cases of involuntary disappearances; and the continuous trial of human rights cases.<sup>124</sup>

Pending in the Congress are bills to give the Commission on Human Rights prosecutorial powers.<sup>125</sup> As stated earlier, Rep. Act No. 7055, which grants civil courts jurisdiction over crimes committed by military men, has recently been signed.

What is not stated in the initial report of the Philippine government, however, is that the effort to comply with human rights standards is confined largely to the undertakings of the Commission on

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<sup>123</sup>*Id.*, at 9-12.

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

<sup>125</sup>S. No. 226, 8th Cong., 2nd. Sess (1987). See also S. No. 1727, 8th Cong., 4th Sess. (1991) which gives fiscal autonomy to the Commission on Human Rights.



Human Rights. It is therefore not possible to evaluate the government's response to the human rights situation in the Philippines without thoroughly reviewing the accomplishments of the Commission. The best gauge, then, is the report of the Commission itself on its performance.

In the Summary Report on CHR Operations for 1990, the Commission reported that, in connection with its primary function of investigating human rights violations, the CHR resolved a total of 2,229 complaints/cases in 1990 disposed as follows: 621 filed in courts/agencies, 200 archived, 364 closed/terminated and 1,044 cases resolved at the regional level for archive/termination and submitted to the Commission for confirmation. These cases included incidents of 1990 and previous years. Out of the 2,229 resolved cases, 621 were established human rights violations and were correspondingly filed in courts/appropriate agencies for prosecution and/or administrative action.<sup>126</sup>

It should be added that from 1987 up to September 1990, a total of 922 human rights cases were filed by the Commission with the appropriate agencies for prosecution and/or administrative action. However, of these 922 cases, only 6 have so far resulted in convictions while 37 of these cases have been dismissed.<sup>127</sup> This low rate of conviction shows the need for clear-cut laws on violations of human rights, as the violators are actually being tried under the general penal laws. This result also manifests the delay and inadequacies in the prosecution of human rights cases.

In this connection, the Commission and some members of the Congress have proposed the enactment of a Social Justice and Human Rights Code and the creation of special human rights courts.<sup>128</sup> As stated by the Commission itself, the creation of these special courts "answers the problem of delayed administration of justice involving human rights cases."<sup>129</sup> In essence, these special courts would have jurisdiction over cases where the acts complained of: (a) were committed with abuse of authority; (b) resulted in the deprivation of life, injury, maiming or torture of the victim for political, religious or cultural or ethnic reasons; or (c) resulted in the violation of civil and political rights.

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<sup>126</sup>COMMISSION ON HUMAN RIGHTS, SUMMARY REPORT ON CHR OPERATIONS FOR 1990 2 (1990) [hereinafter SUMMARY].

<sup>127</sup>*Id.*, at 3-4.

<sup>128</sup>*Id.*, at 7.

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

In an effort to prevent government abuse, the Commission, together with the law enforcement agencies, had drawn up guidelines in the conduct of arrests, searches and saturation drives, and the establishment of checkpoints.<sup>130</sup> The enactment of guidelines was a reaction to the directive of the Philippine Supreme Court in decisions that had upheld the validity of saturation drives and checkpoints.<sup>131</sup> These decisions of the High Court had been roundly criticized by legal scholars for their weak constitutional premises and by human rights advocates for being contrary to the basic tenets of the protection of individual rights.

Also, the Commission has recently approved a set of guidelines on the evacuation of the civilian population during counter-insurgency operations.<sup>132</sup> The guidelines allow access by NGOs and prohibit the military from attacking civilian targets and resorting to the practice of hamletting. Apparent from these guidelines is the Commission's policy condoning the creation of internal refugees. The central concern in these guidelines is that the displacement be as tolerable for those affected as possible. In fact, the Commission readily accepts the government's view that "the displacement of families or so-called internal refugees [is] an unfortunate side effect of a counterinsurgency strategy that aims to cut insurgents off from their base of support."<sup>133</sup>

What is noteworthy is that the Commission, by taking the lead in the drawing up of these inter-agency guidelines, has in the minds of human rights advocates put its independence in doubt by accepting

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<sup>130</sup>*Id.*, at 8.

<sup>131</sup>See *Valmonte v. De Villa*, 178 SCRA 211 (1989) and *Guazon v. De Villa*, 181 SCRA 623 (1990). The Guidelines in the Conduct of Arrest, Searches and Saturation Drive was signed on September 19, 1990 by the heads of the Commission of Human Rights (CHR), Department of Justice (DOJ), Department of National Defense (DND) and the Philippine Constabulary/Integrated National Police (PC/INP). The salient points of the guidelines include: (1) Rule 113 of the 1985 Rules on Criminal Procedure, as amended, shall be observed in cases of arrests, searches and seizures made in the course of saturation drives; (2) saturation drives shall be conducted only in areas identified as hide-outs of criminals or subversive elements or fugitives from justice, prostitution dens, lairs of prohibited drugs, and places of illegal gambling and other illegal activities; (3) saturation drives shall be led by a responsible and accountable officer accompanied by any elected barangay official of the area. The name/s of the person/s arrested and the arresting officer and the reason for the arrest must be entered in the barangay docket; (4) checkpoints shall only be established in red alert situations or when there is a need to arrest a criminal; (5) exercise maximum tolerance by law enforcers during rallies, strikes and demonstrations. Law enforcers shall be in uniform with their identification card and namecloth on in all instances, as well as in the conduct of arrests and searches.

<sup>132</sup>See 2 A PRIMER ON THE HUMAN RIGHTS ISSUE IN THE PHILIPPINES: ISSUES AND ANSWERS 7-9 (1990).

<sup>133</sup>*Id.*, at 7.

without question the compatibility of government policies with international human rights standards. Also, by doing what the justice department of the executive branch should be doing, the Commission has put itself at the level of a law enforcement agency.

Furthermore, the Commission, in accordance with its secondary functions under the Constitution, conducted visitation of jails and detention centers. In 1990, it conducted 807 jail visitations and determined that in 383 of these jails there were human rights violations and inhuman prison conditions.<sup>134</sup> The Commission recommended remedial measures which on the whole related to the need to provide more funds for the penitentiaries to address the problems of meager food rations, poor sanitary conditions and inadequate facilities.<sup>135</sup> As an offshoot of its jail visitation program, the Commission was able to obtain the release of persons who were wrongly jailed.<sup>136</sup>

Moreover, the Commission was able to grant some four million pesos (about US\$ 150,000) in financial assistance to victims of human rights violations.<sup>137</sup> Most of the amount were given to the heirs of those who were killed.<sup>138</sup> Admittedly, the amounts given as assistance were relatively small. But it must be considered that these amounts only constituted assistance and not compensation for victims of human rights abuses that the Constitution spoke of.<sup>139</sup>

The Commission was also active in the dissemination of human rights information. It conducted seminars for thousands of soldiers and policemen, government officials and employees, students, workers, and members of NGOs. According to the Commission, "[a]ll in all, 58,288 persons attended HR information undertakings inclusive of the seminars/trainings."<sup>140</sup> The Commission also launched six (6) regular human rights information radio programs.<sup>141</sup>

In fulfillment of its duty to monitor compliance with the obligations of the Philippines under international conventions and

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<sup>134</sup>SUMMARY, *supra* note 126, at 11.

<sup>135</sup>*Id.*, at 12.

<sup>136</sup>*Id.*; See also Commission on Human Rights, Summary Report on CHR Operations (January-March 1991) (mimeographed).

<sup>137</sup>SUMMARY, *supra* note 126, at 14.

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

<sup>139</sup>Pending in the Senate with regard to compensation of victims of human rights abuses are: S. No. 366, 8th Cong., 1st Sess. (1987) which will provide for a compensation scheme for the victims of unjust imprisonment and S. No. 367, 8th Cong., 1st Sess. (1987) which will provide a compensation program to victims of violent crimes.

<sup>140</sup>*Id.*, at 17.

<sup>141</sup>*Id.*, at 18.

human rights treaties, the Commission has submitted comments to various committees and working groups of the U.N. Commission on Human Rights and has answered queries from international sources regarding violations of human rights in the Philippines.<sup>142</sup> At this point, one again wonders whether the Commission is really as independent as it has been envisioned to be by the framers of the 1987 Constitution. It appears that the Commission has become the spokesman of the Philippine government on international human rights issues. This observation is bolstered by the fact that the Acting Chairman of the Commission was one of the official representatives of the Philippine government who presented the initial report of the Philippines before the Committee on Human Rights and was also one of two representatives who answered the questions posed by members of the Committee. This peculiar circumstance finds explanation from the fact that, aside from human rights advocates (whom the government accuses of being stooges of the communist National Democratic Front), it is only the Commission which has information on the human rights situation in the Philippines. The Department of Foreign Affairs, although it has an Office for Human Rights and Humanitarian Affairs, has no human rights data base of its own and relies exclusively on the data of the Commission. Thus, while the Commission is, on the domestic front, investigating human rights abuses committed by persons in the government, internationally, it is defending the human rights record of the same government. This mixture of roles makes the integrity and independence of the Commission open to suspicion.

Even domestically, the Commission has been criticized because of its seeming inability to prevent human rights violations committed by those in government. But then, we have to consider that the Commission was envisioned to be an independent watchdog, not a regular branch of government tasked with the enforcement of laws. While it can initiate measures to prevent human rights abuses from occurring, it is only secondary to its primary function of investigating cases of violations. The prevention of violations by those in authority is a matter that is the primary concern of the executive branch of the government.

The result is that the Commission, in trying to please its critics, is now asking Congress that it be granted the power to prosecute human rights violations.<sup>143</sup> If this would be granted, the Commission will cease to be a watchdog but will become a line prosecutorial agency no different from the prosecutorial bodies in the executive branch. Who will evaluate the Commission to determine if it is properly performing its

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<sup>142</sup>*Id.*, at 19.

<sup>143</sup>2 A PRIMER ON THE HUMAN RIGHTS ISSUE IN THE PHILIPPINES: ISSUES AND ANSWERS 17 (1990).

functions as prosecutor? How then can it effectively monitor Philippine compliance with its obligations under international human rights instruments if its very performance as prosecutor is one of the main areas to be monitored? In the rush to grant the Commission more powers, these questions have somehow been ignored.

### COMMENTS AND RECOMMENDATIONS

#### *Reportorial*

While the Philippine delegation has been commended by the Chairman of the Human Rights Committee for the systematic way in which it has taken the questions and for the comprehensiveness and frankness of its answers, much is to be said regarding the picture that the report paints of the human rights situation in the Philippines today. While the report makes the annual report of the Commission on Human Rights an annex,<sup>144</sup> it conveniently fails to include in the body of the report statistics on violations of human rights.

Moreover, the initial report limits itself to the provisions of Philippine law relating to the specific provisions of the ICCPR.<sup>145</sup> It is common knowledge that the existence of laws alone does not prevent violations of human rights or ensure redress and compensation therefor. What is essential is that these laws be enforced with certainty, celerity and uniformity against those who violate them.

The true picture of the human rights situation in the Philippines came out only when the experts questioned the representatives of the Philippines on particular violations such as involuntary disappearances, forced mass evacuations, extrajudicial executions, the killing of human rights lawyers and the activities of vigilante groups.<sup>146</sup> But even then, what was revealed in the dialogue were only bits and pieces of the whole picture.

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<sup>144</sup>See OFFICE OF HUMAN RIGHTS AND HUMANITARIAN AFFAIRS, DEPARTMENT OF FOREIGN AFFAIRS, 2 CIVIL AND POLITICAL RIGHTS IN THE PHILIPPINES: THE PHILIPPINE INITIAL REPORT TO THE HUMAN RIGHTS COMMITTEE 51-57 (1990) [hereinafter REPORT II].

<sup>145</sup>*Id.* But from a technical point of view, the Philippine report was in full compliance with the requirements of the Committee for an initial report (CCPR/L/5). The guidelines require that the first part of the report describe the general legal framework within which civil and political rights are protected, with particular emphasis on constitutional provisions, enforcement mechanisms, jurisdiction of courts, legal remedies and related measures. The second part of the initial report is on information relative to the rights protected in specific provisions of the Convention, particularly: legislative, administrative and other measures; restrictions or limitations on the of the right; factors or difficulties altering the enjoyment of the rights. State reports are required to follow that format.

<sup>146</sup>*Id.*

It should be borne in mind that the purpose of reporting is to determine the problems concerning the observance of and respect for human rights and to find solutions to these problems. This explains the involvement of human rights experts in the reporting process. A country could not claim that such process "interferes" with their national sovereignty as the country itself, by being a state party to a human rights instrument, has voluntarily assumed the obligation to periodically report on its compliance. As stated in the U.N. Manual on Human Rights Reporting:

The submission of reports to treaty monitoring bodies is a legal obligation incumbent upon the governments of States parties. Since this obligation by its nature requires positive action, the political will to prepare an honest and comprehensive report, and to allocate the necessary resources accordingly, is a prerequisite for its realization.

The political leadership may perceive the obligation to report to an international treaty monitoring body on the country's human rights performance as an impairment on sovereignty. It may see this obligation as a "crowbar", by the use of which other States might seek to obtain foreign policy leverage against the reporting State. Such reporting may be exploited by unsympathetic non-governmental organizations (NGOs). These and similar considerations may lead to the preparation of reports that contain insufficient or inaccurate information upon which the expert bodies are expected to base their actions in effectively executing the tasks entrusted to them under the various conventions.

But such an approach reflects a number of unfortunate misconceptions. The fact that a government has ratified a particular human rights instrument is itself evidence of an initial commitment by the political leadership to the international protection of human rights. It affirms very clearly that the act of reporting is not considered by any State to infringe domestic sovereignty. Moreover, the reporting system is a way of showing NGOs and other interested parties that the government is complying with the relevant international procedures and is not concealing anything.

A government should recognize the important functions which reporting may serve in the national policy making process, and should welcome the contribution that the non-judgmental, constructive dialogue with expert bodies makes toward the promotion and protection of its citizens' human rights. To this end, the political leadership should seek and evaluate all information, favourable and less favourable, in preparing a comprehensive and accurate report under any of the human rights treaties dealt with in this Manual.<sup>147</sup>

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<sup>147</sup>UNITED NATIONS HUMAN RIGHTS COMMITTEE, UNITED NATIONS MANUAL ON HUMAN RIGHTS REPORTING 17 (1990).

But it is heartening to note that the representatives of the Philippine government, after answering the questions posed by the members of the Committee, have recognized that indeed there is a grave problem to be addressed. Thus, the Assistant Foreign Secretary has stated:

. . . The question that had been generally asked and the observation that has been made: We seem to have good laws. We seem to have the correct institutions. What then is the problem? Is it, as one of the distinguished committee members said, the lack of political will? Leadership? Structural?

As we have said in our initial statement - it is to some extent a combination of many factors. I think that we must point out that three years in transition is relatively a short time considering deep rooted problems, some of which are with historical sources. Three years is too short to expect that all sources of human rights violations in the Philippines could be addressed to full satisfaction. But, we submit, we have come before this Committee, we have given you a full account of what measures had been taken and those we hope to take, and we assure you that we will continue whatever progress we have started and we also would want to assure you that the leadership and its political will at present is at full accord with the Covenant.<sup>148</sup>

The Acting Chairman of the Commission on Human Rights, while recognizing problems in the human rights situation in the Philippines, tried to offer an explanation that would exculpate the government of Mrs. Aquino. He said:

Before I conclude, one question kept ringing into my ears: Yes, we have all the rules and regulations. Yes, we have the agencies implementing these rules and regulations. Yet, there persists to be alleged human rights violations. What could be the reason? I would like to venture and say, Mr. Chairman, that when Mr. Marcos destroyed the democratic structures of the nation by imposing martial law, he also destroyed the moral order of the Filipino people. It is for this reason that President Aquino has put forward the issue of human rights as the centerpiece of her administration with the hope of creating a new moral order, where the Filipino people despite ideological differences and ethnic and cultural origins, may live in peace and harmony.<sup>149</sup>

These statements were made more than two years ago. Although the Commission on Human Rights had noted a decrease of 17% in the number of cases of human rights violations reported to it in 1990,<sup>150</sup> the fact remained that much still had to be done to fulfill the

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<sup>148</sup>REPORT II, *supra* note 144, at 45.

<sup>149</sup>*Id.*, at 57.

<sup>150</sup>SUMMARY, *supra* note 126, at 1.

constitutional mandate for a regime founded on respect for human rights and to materially comply with the standards of international human rights instruments.

*Policy, Substantive and Procedural Matters*

*1. The Commission on Human Rights*

Before there can be any meaningful discussion on Philippine substantive and procedural law on human rights, the exact role of the Commission on Human Rights must first be clarified. As stated earlier, it appears that the Commission, and the public, are not really too certain about what the former's role really is. While it has been originally envisioned to be a human rights watchdog, there is now a demand that it assume the role of state prosecutor for violations of human rights. The Commission itself has lobbied for the grant of prosecutorial powers. In the words of a member of the Commission, "[it] has been the experience of the Commission that monitoring a human rights case in court is not sufficient. . . . Unless the Commission is given prosecutory power, its intervention and assistance may not necessarily be futile but may be weak to truly enforce adherence to human rights safeguards and legal measures."<sup>151</sup> The clamor is largely due to the public perception that the regular prosecutorial agencies of the government are ineffective in prosecuting human rights cases.

But it must again be pointed out that if the Commission is made to assume the role of prosecutor, it will now be essentially playing the part of the regular government prosecutorial service. How then may the Commission be an effective watchdog when one of the agencies it has to watch over and monitor would be itself? A solution that does not put the integrity and independence of the Commission in doubt should therefore be found. Perhaps an Office of Special Prosecutor for Human Rights should be created to prosecute reported violations referred to it by the Commission, the presidential committee, non-governmental organizations, private individuals and others.<sup>152</sup>

The Commission's effort to be given prosecutorial powers implies that its concern largely lies with abuses that have already occurred. The approach of NGOs has been to coordinate closely with church

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<sup>151</sup>A. Aportadera, Jr., *Problems and Issues on Human Rights Cases*, 3 THE JUDGE'S JOURNAL 23.

<sup>152</sup>Under Art. XI of the Philippine Constitution on the accountability of public officers, the Ombudsman investigates any act or omission of any public official, employee, officer or agency, where such act or omission appears to be illegal, unjust, improper or inefficient. The prosecution of these erring public officers is a task given by the constitution to the Office of the Special Prosecutor.



groups and to monitor military counter-insurgency operations in an effort to discover possible human rights abuses and prevent further violations. The Commission, on the other hand, comes in only when a violation is reported or becomes of public knowledge, for the purpose of determining whether there is probable cause to refer the case to the appropriate agency for prosecution. This is regrettable since under the Constitution, it may "[p]rovide appropriate legal measures for the protection of human rights of all persons within the Philippines."<sup>153</sup> It should include taking the appropriate steps to ensure that violations are prevented from occurring. So far, the thrust of Commission action has been to participate in the formulation of guidelines to govern police, military and paramilitary action relative to the conduct of counter-insurgency operations. What is ideal is for the Commission to observe in areas where human rights violations may almost surely occur, i.e., in areas where insurgency is a problem. As a start, the Commission might field observers to monitor major counter-insurgency operations in order to ensure the safety of civilians. Strictly speaking this will expand the Commission's concern to humanitarian matters, but this is essential if human rights are to be effectively protected.

## *2. Human Rights Courts*

There is also the common complaint that the civil courts and military tribunals are not doing a good job in trying cases for violations of human rights. Thus, the Commission itself has proposed the creation of special human rights courts. This appears to be a sound proposal. However, before these courts are created or special prosecutors for human rights are appointed, it must first be definitely ascertained what Philippine laws may be invoked by one whose human rights have been violated. It is unnecessary that these disparate provisions of law be actually codified as the Commission and some members of the Congress suggest; all that is necessary is that these be identified, compiled and classified in relation to the nature of the available remedies. Furthermore, the matter of how the provisions of the international human rights instruments to which the Philippines is a state party may be invoked in Philippine courts should also be explored and explained. So far, human rights litigation in the Philippines has focused mainly on the violations of specific provisions of Philippine statutes. It would help the victims of human rights violations if they are also apprised of the provisions of international instruments which they may invoke in Philippine courts or administrative bodies, in addition to the provisions of Philippine statutes. Thereafter, an effort should be made to publish this comprehensive compilation at the

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<sup>153</sup>CONST., art. XIII, sec. 18, par. 3.

expense of the government so that the people may know of their rights and remedies.

Preparatory to or simultaneous with the creation of special human rights courts and the appointment of special human rights prosecutors, military courts should be deprived of jurisdiction over crimes committed against civilians. This step has already been partially accomplished with the repeal of Presidential Decree No. 1850 through the promulgation of Republic Act 7055 signed last June 20, 1991. Republic Act 7055<sup>154</sup> states in part:

Members of the Armed Forces of the Philippines and other persons subject to military law, including members of the Citizens Armed Forces Geographical Units, who commit crimes or offenses penalized under the Revised Penal Code, other special penal laws, or local government ordinances, regardless of whether or not civilians are co-accused, victims, or offended parties which may be natural or juridical persons, shall be tried by the proper civilian court, except when the offense, as determined before arraignment by the civil court, is service-connected, in which case the offense shall be tried by the court martial; Provided, that the President of the Philippines may, in the interest of justice, order or direct at anytime before arraignment that any such crimes or offenses be tried by the proper civil courts.

As used in this Section, service-connected crimes or offenses shall be limited to those defined in Articles 54 to 70, Articles 72 to 92, and Articles 95 to 97 of Commonwealth Act No. 408, as amended.

The repeal of Presidential Decree No. 1850 had earlier been opposed by the military "on the ground that the rebels can paralyze military operations by using civilian courts to subpoena soldiers on the front, and even assassinate them on their way to the court."<sup>155</sup> It was also contended that "the military system is faster, more efficient and less hampered by the technicalities that enable the accused to evade the civilian courts."<sup>156</sup> This argument has merit if the systems work as intended. However, these do not consider the basic complaint on the failure of the military to prosecute its members who commit human rights abuses. One should also consider the natural tendency of a victim

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<sup>154</sup>entitled "An Act Strengthening Civilian Supremacy Over The Military By Returning To The Civil Courts The Jurisdiction Over Certain Offenses Involving Members Of The Armed Forces Of The Philippines, Other Persons Subject To Military Law, And The Members Of The Philippine National Police, Repealing For The Purpose Certain Presidential Decrees."

<sup>155</sup>P. Ambrosio, *Should CHR be Empowered to Prosecute Cases?* PHILIPPINE HUMAN RIGHTS MONITOR 7 (Special Issue on the 40th Anniversary of the Universal Declaration of the Bill of Rights).

<sup>156</sup>*Id.*

of abuse to desist from complaining to the military establishment because of fear of retaliation.

Although the repeal of P. D. No. 1850 is a welcome development, the problem lies in the implementation of the new law. Moreover, while human rights lawyers' groups like the Free Legal Assistance Group (FLAG) have said that it is a step in the right direction, they have noted that what is needed is a reorientation of the military mindset that believes itself to be above the law and cares little for human rights.<sup>157</sup> According to FLAG, "until these pervasive psychological attitudes are changed, we cannot expect the military to behave any differently than it did under the past regime."<sup>158</sup>

Once the special human rights courts have been created, a system for "fast-tracking" cases should be developed. This would involve the speedy disposition of human rights cases through the adoption by the court of certain measures, like continuous trial, but without denying the accused procedural due process.

### 3. *Government Counter-Insurgency Policy*

Another matter that should be considered is the reexamination of the government's counter-insurgency policy. While it is recognized that defeating an insurgency is not an easy matter in any given situation, the government should be reminded that it has to fight its war given certain well-established rules that cannot be disregarded for reasons of expediency. The protection afforded to individuals by the Constitution, statutes or international instruments may not be cast aside.

This would mean, among others, the review of the policy of using civilians to combat insurgents through the establishment and deployment of paramilitary groups.<sup>159</sup> It would also mean the reassessment of the policy of allowing the use of the security forces and employees of large agro-industrial corporations against the insurgents.<sup>160</sup> The use of these personnel provides the opportunity for human rights violations to arise because of the absence of control and supervisory mechanisms that will ensure their accountability. Moreover, it would be easier to give training on human rights, and monitor compliance, to persons who are under a formal structure and who

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<sup>157</sup>*Republic Act No. 7055: Restoring civilian supremacy over the military*, PHRU, June 15-July 14, 1991, p. 13.

<sup>158</sup>*Id.*

<sup>159</sup>*See* Comm. on Justice and Human Rights, S. Report on Vigilante Groups, 8th Cong. (1988).

<sup>160</sup>*See* R. E. Alfonso, Jr., 'Special CAGUS' vs. Trade Unions, NATIONAL MIDWEEK, May 2, 1990.

are responsible under a chain of command. In practical terms, this would mean strictly enforcing the ban on private armies and vigilante groups and integrating all paramilitary units within the regular military forces. The CAFGUs would have to be disbanded and their members integrated into the police or army. The security personnel of business firms should never be used in counter-insurgency operations. They should not also be allowed to break up pickets and demonstrations or to engage in other offensive security measures outside their employer's premises.

In answer to queries from members of the Human Rights Committee, the Acting Chairman of the Human Rights Commission in describing their formal structure unintentionally provided the rationale for the dismantling of paramilitary units:

The civilian volunteer organizations and the CAFGUs are different from the vigilantes. The CVOs and CAFGUs are part of the entire strategy of the military in combatting insurgency and common crimes.

The CVO is purely a neighborhood watch which gathers intelligence reports, and conducts neighborhood patrol against common crimes and insurgents.

The CAFGU or the Civilian Armed Force Geographical Unit is the armed counterpart. It has two components, the active cadre group and the auxiliary group which acts as back-up, assistant-helper. The CAFGUs are confined within their geographical units.

The Commission on Human Rights being a signatory to the Guidelines of the Civilian Volunteer Organization has been monitoring the manner of recruitment. Certain strict measures have been prescribed in order that the experience with the CHDF will not be repeated.

In the same manner, the Commission is likewise monitoring the creation and activities of CAFGUs in all parts of the country. The Commission has received five cases of CAFGU related human rights abuses and during its fact-finding mission in Bacolod last month, 173 CAFGU members were dropped from the rolls due to various offenses from murder to robbery.<sup>161</sup>

It must be added that based on the statistics of the Commission on Human Rights in 1989, there were 126 reported cases of human rights violations where CAFGUs were the suspects while in 1990, there were 148 such cases.<sup>162</sup> Clearly, there is a need to reassess their participation

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<sup>161</sup>REPORT II, *supra* note 144, at 53-55.

<sup>162</sup>SUMMARY, *supra* note 126, at 2.

in the government's counter-insurgency efforts in view of the increasing number of abuses attributed to them.

The review of government policy would also mean reconsidering the policy of harassing and intimidating NGOs and religious groups active in the human rights issue by labeling them "communist front organizations." The government and the police and military establishments should recognize that the protection of human rights is a legitimate undertaking that is in fact encouraged under the constitutional order which they have sworn to protect. It is an encouraging development that in some areas the military and some groups of human rights lawyers have entered into agreements that would allow the latter access to persons captured and detained by the military. However, one wonders why there has to be an agreement forged with the military commanders when the right to counsel is a constitutionally protected right.<sup>163</sup>

Considering the effects of intensive military operations on the innocent civilian population, particularly the resulting mass evacuation and displacement, the government must be prepared to provide the necessary relief services. If it cannot assure the evacuees of their physical safety and ensure temporary employment opportunities and decent evacuation camp conditions, it should not even engage in military operations that would give rise to the need for these measures. In other words, this policy of the government which results in the creation of internal refugees should be seriously reexamined, not only because of its negative consequences but also since the government itself contributes to the sad plight of the evacuees due to its inability to provide them with relief services.

Then there is the matter of testing the political will of the national leadership through its reactions to complaints of human rights violations. It has been observed that the national government adopts a defensive stance whenever such complaints are aired against it. The military and the police are always quick to deny the accusations against their members even before investigations could be conducted. While Mrs. Aquino has been publicly photographed sympathizing with the victims of human rights abuses, remedial actions on the part of her subordinates have been very slow. As mentioned earlier, the initiative is left to the Commission on Human Rights which, aside from limited funding, also suffers from the hesitation of other government agencies to cooperate in investigations.

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<sup>163</sup>Rep. Act No. 857, as amended by Exec. Order No. 155, penalizes a public officer who obstructs, prohibits or otherwise prevents an attorney from visiting and conferring in private with a client under detention.

#### 4. *Funding, Assistance and Compensation*

Also, while it is true that the Philippine government is cash-strapped such that the national budget has to be trimmed down, still there is a need to appropriate more funds to sustain the constitutionally-mandated effort to promote and protect human rights. If the national leadership is really serious about this effort then it should find ways to provide it with a realistic appropriation. As things stand, the Commission on Human Rights operates on a very limited budget such that the operations of its regional offices are greatly restricted.

The question of funds also comes in when we consider that while the Constitution provides for a system of compensation for victims of violations of human rights, such a system is still inexistent after five years from its ratification.<sup>164</sup> As mentioned earlier, the Commission of Human Rights has tried to alleviate this deficiency by providing for financial assistance to victims of abuses. But the assistance given by the Commission, which is roughly 10,000 pesos (US\$370) per victim or heir of a victim<sup>165</sup> is grossly insufficient considering that the minimum indemnity in homicide cases is already five times that amount. Even the latter is insufficient, considering the economic straits the Philippines is in. As it is, the hope of the victim in being given compensation hinges on the success of a civil case for damages filed against the person accused of committing the human rights violation. But then we have to consider that most victims of human rights abuses are persons of very limited means who do not have the resources to engage in an expensive long-drawn civil litigation.

In this connection, assistance should also be given to victims seeking to vindicate their rights. While the Commission has a legal aid office to help walk-in complainants and officers to conduct investigations of reported violations,<sup>166</sup> it does not have a system of assistance to victims after their cases have been referred to the prosecutorial agencies of government. The Commission has incurred expenses for witness protection and other legal expenses<sup>167</sup> but these have to do with expenses incurred while the cases were still being investigated by the Commission. It cannot be denied that even where cases are prosecuted by government lawyers, additional costs will still have to be incurred by the victims or their relatives in following up

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<sup>164</sup>As stated earlier, pending in Congress are bills providing for compensation for victims of human rights violations, namely: S. No. 366 and S. No. 367.

<sup>165</sup>SUMMARY, *supra* note 126, at 14.

<sup>166</sup>*Id.*, at 3.

<sup>167</sup>*Id.*, at 14.

cases and procuring the attendance of witnesses. Perhaps the lack of financial resources on the part of the victims or their heirs is one reason why there is a high incidence of delay in the resolution and dismissal of cases after being referred for prosecution. Thus, not only should there be a system of compensation after a case has been finally decided, but there should also be effective legal and financial support to ensure that these cases are prosecuted up to final judgment.

The Commission could be tasked with monitoring the progress of cases and administering the amounts to be given the victims and their heirs but it, of course, should not interfere in their prosecution. But should the Commission find undue delay in the prosecution of cases, it must be given the power to do more than just resort to the usual administrative remedies. Like an *ombudsman*, it must be able to use both administrative and non-administrative means in order to pressure the special prosecutors and the courts to perform their duties with dispatch.

##### 5. *Rehabilitation of Victims and their Families*

It comes as a surprise that despite the high incidence of human rights violations, there has been very little effort on the part of the Aquino government and the Commission on Human Rights to provide for the rehabilitation of the victims and their families. On the part of the Commission, this is understandable considering its chronic budgetary problems.

Undoubtedly, incidents of abuse may result not only in physical injuries but may also leave deep emotional scars. Compensating victims and their families with amounts of money do not even come close to piecing together their shattered lives.

Some local non-governmental organizations have put up support systems or undertaken programs to assist in the rehabilitation of victims and their families,<sup>168</sup> but there is a need to institutionalize this effort. It is recommended that the government shoulder the responsibility and provide funding for this endeavor. For administrative purposes, the Commission on Human Rights should be given the lead role. The rehabilitation of victims and their families can be considered within

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<sup>168</sup>Task Force Detainees of the Philippines (TFDP) refers victims of torture and other physical abuse to physicians who are members of the Medical Action Group (MAG), a human rights group composed of physicians, nurses and other health workers. Families of Involuntary Disappearance (FIND) conducts rehabilitation programs for political detainees.

the scope of the Commission's constitutional mandate.<sup>169</sup> The necessary funds for this should be allocated.

To carry out this endeavor, the Commission can organize in its regional offices teams of doctors, psychologists and social workers. To cut on costs, the Commission may seek the assistance of the Department of Health and the Department of Social Work and Development in providing them with trained personnel. The Commission may also tap the expertise of some NGOs that have had extensive experience in this area.

One thing that must not be lost sight of is that the victims and their families may be fearful of retaliation and may consequently be effectively prevented from seeking rehabilitation assistance. This can be a real problem, particularly in areas where there is a strong military or paramilitary presence. Thus, for the success of the program, the Commission must not only gain their confidence but must also assure their security.

#### *6. The Commission on Human Rights and NGOs*

Another matter that should be addressed is that of bridging the gap between the Commission and the NGOs. A mutual distrust between them is apparent. The Commission has been criticized as ineffectual and as being a mere government apologist with no mind of its own. NGOs, on the other hand, have been branded as politically motivated and as being communist stooges. This situation is indeed deplorable, considering that it only aggravates the human rights problem in the country. It would certainly be more beneficial to those in need of protection if the Commission and the NGOs could establish areas of cooperation. In real terms, these would mean the creation of joint investigation teams and the sharing of information. The fact that the Commission and the NGOs employ different standards in evaluating human rights cases,<sup>170</sup> such that they result to a great statistical disparity, should not be considered an obstacle to cooperation. It would also mean working together in the area of human rights education. Establishing effective links with the NGOs would also call for the Commission to develop an image of impartiality and assert its independence from the national government. It should not give the impression that it is the official spokesman of the government on human rights issues. Its members should not forget that the Constitution

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<sup>169</sup>The mandate of the Commission under Art. XIII (sec. 18, par. 6) of the Constitution includes the power to recommend to the Congress effective measures to promote human rights.

<sup>170</sup>See Aportadera, *supra* note 151.



mandates the creation of an independent human rights watchdog, not a human rights office in the executive branch.

On the other hand, the NGOs should recognize that they do not have a monopoly of concern for the protection of human rights. As envisioned in the international instruments and the Constitution, it is a matter of primary concern for the governments of the state parties. It is true that the NGOs have carried the torch during the dark years of the Marcos era, and that they have suffered for it, but they should realize that unless they encourage other sectors to share in the responsibility, the promotion and protection of human rights will remain a serious problem and NGOs will for a long time be alone in its crusade.

#### *7. Human Rights Consciousness*

Finally, the biggest problem in human rights protection - that of exposing violations - needs to be addressed. While there are hundreds of cases of alleged human rights abuses reported each year, many more simply go unreported. The reasons are several: fear of retaliation, lack of access to persons to whom it can be reported, ignorance of one's protected rights, or indifference borne out by a feeling of hopelessness. Different measures have to be undertaken to remedy the situation.

Initially, the socio-economic milieu must be conducive for a regime where human rights are respected. Unless the great gap between the rich and the poor is bridged, respect for human rights will always be a problem. This is the basic reason why the appreciation of civil and political rights cannot be divorced from that of economic, social and cultural rights.

But this does not mean that the country should wait for a marked improvement in the economy and the delivery of social services before respect for human rights is observed. There is more reason to be conscious of human rights especially at a time when the people are desperate and there is a greater tendency for abuse.

The people must be informed of their rights. The Commission on Human Rights and the NGOs are continuously undertaking educational campaigns. But their efforts are inadequate considering their lack of resources. Mrs. Aquino had ordered the teaching of human rights in schools,<sup>171</sup> but the teachers themselves have very little knowledge on

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<sup>171</sup>Ministry of Education, Culture and Sports [hereinafter MECS] Memorandum, Strengthening the Development of Education for International Understanding, Cooperation and Peace and Education Relating to Human Rights and Fundamental Freedoms (No. 163) (1986).

this matter. Perhaps the effort should start, not with the students, but with their teachers. Considering that there are hundreds of thousands of teachers in the Philippines, this should take some time to accomplish. The Department of Education, Culture and Sports has already sponsored, and continues to sponsor, several human rights education seminars for teachers, but these are inadequate. For instance, the 15-day training seminar in December 1986 was limited to only 50 teachers coming from all over the country.<sup>172</sup> A non-bureaucratic approach would have to be adopted as regards human rights education and this, again, will entail great expenditure. The private sector and the international community should be encouraged to financially and technically assist the government in this endeavor. There is also a need to produce good local materials on human rights that can be easily understood by its readers. Admittedly, there is a dearth of books on the matter written by Filipino scholars. Philippine materials on human rights are either reports on human rights violations or compilations of statutes and international instruments. Unannotated local materials explaining what the different rights are, both from a municipal law and international law perspective, and how they may be enforced, are sorely needed. Both the Commission on Human Rights and the NGOs should again take a leading role in this endeavor.

Then, the people should be encouraged to expose human rights violations. The government will have to show that those who violate human rights will be prosecuted and punished. This is where the greatest difficulty lies if we consider that in many communities in the rural areas, the only government presence felt by the people is that of the military. This is where hopelessness, fear of retaliation and lack of access to persons who can help are most acute. The Roman Catholic Church and other religious groups have somehow filled the void, but in the process many priests, ministers and other church workers have themselves become targets.<sup>173</sup> It is ideal that the presence of the civilian government be manifested in these areas but it is quite unrealistic due to its lack of resources. The immediate solution would therefore have to be found in the military organization, where a majority of human rights abuses emanate. There is an urgent need to reorient the military on their proper role as protectors, and not masters, of the people. Long years of martial rule under Mr. Marcos have created in the minds of many in the military establishment a distortion as to their proper role under the civilian constitutional order. This is, of

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<sup>172</sup>MECS Memorandum, Leadership Training Seminar on Human Rights for Teachers (No. 218) (1986).

<sup>173</sup>*The Philippine Human Rights Situation*, NATIONAL MIDWEEK, November 15-December 15, 1990, p. 15; *The Three-Year Human Rights Record of the Aquino Government*, 5 PHRU, Nov 15-Dec 14, 1989, p. 15.

course, easier said than done, considering that Mrs. Aquino's continued stay in power is perceived by many to be at the pleasure of the military establishment. Thus, she has easily acceded to the wishes of loyal officers (*i.e.*, those who have supported her in the several attempted *coup d'etats*) to intensify the counter-insurgency effort into a total war, even if this would mean increased hardship for innocent civilians and having retired officers appointed to key civilian positions.

### CONCLUSION

Mrs. Aquino rose to power on the promise of restoring democracy, destroying the vestiges of the Marcos dictatorship, recovering the wealth allegedly stolen by the Marcoses and ushering in a new era of prosperity founded on respect for human rights. After more than five years as President of the Republic of the Philippines, Mrs. Aquino has restored democratic institutions but the economy remains in shambles and the human rights record of her government is far from admirable. What went wrong? Or is it a case of promising too much?

The author would like to think that in the euphoria generated by the fall of the Marcoses, there was also born an honest to goodness effort to promote respect for human rights and to change the tainted image of the Philippine government as one that was blind to the abuse of human rights. This effort found expression in the 1987 Constitution, which made the protection of human rights one of its foundations.

But political and economic factors prevented the full fruition of respect for human rights. The continued concentration of political and economic power in the hands of a few negated the restoration of democratic institutions. Mrs. Aquino was politically beholden to a military establishment that was engaged in a brutal counter-insurgency war. Political instability in the country, exemplified by heightened insurgent activities and the several coup attempts against the Aquino government, led to the near collapse of the economy. The gap between the rich and the poor widened. The number of Filipinos under the poverty line increased.

Despite official efforts to arrest the tide of human rights abuses, the social and economic environment proved to be too much of an obstacle. The unrest of the poor created in the minds of our country's wealthy leaders the need for a military solution. Human rights violations, especially those related to the counter-insurgency operations of the military, became all the more heightened. While there was a decrease in reported cases, human rights violations continued to follow

the same pattern: involuntary disappearances, extrajudicial executions, forced mass evacuations, massacres and the like.

Is the protection of human rights in the Philippines a lost cause? The author would like to think that it is not. Despite the adversities facing it, the government should gather the political will to overcome the adversity. It will not do to always attribute the problem to Mr. Marcos. Neither will it do to use the communist insurgency as a convenient excuse. The need for the protection of human rights becomes all the more necessary when a country is faced with internal threats.

But this is not to say that the government is the only one responsible for promoting human rights. Although the international instruments speak of the obligation of state parties, the promotion of human rights is addressed to everyone. These rights being inherent in every human being, their promotion and protection is a duty for each and every individual. The greater task of the government is to ensure that everyone is given a real opportunity to fulfill this duty and to enjoy its fruits.

### ANNEXES

NOTE: The statistics compiled by the Task Force Detainees of the Philippines (TFDP) and the Commission on Human Rights (CHR) are made annexes to this paper to give the reader an idea of the extent of human rights violations in the Philippines from 1986 to 1991. The statistics from two entities vary, and several reasons may be cited for this: (1) not all cases brought to the attention of TFDP and other non-governmental organizations are brought to CHR; and (2) TFDP and the CHR employ different standards. Despite the disparity in the numbers, the statistics from the two bodies bear witness to the sad state of human rights in the Philippines.

## ANNEX A

STATISTICS FROM  
TASK FORCE DETAINEES OF THE PHILIPPINESTABLE 1. PERSONS ARRESTED FOR POLITICAL OFFENSES  
(March 1, 1986-Sept. 30, 1991)

1986	1,234
1987	8,106
1988	3,082
1989	1,875
1990	3,953
1991	817
<b>TOTAL</b>	<b>19,067</b>

TABLE 2. PERSONS ARRESTED FOR POLITICAL OFFENSES  
(1983-Feb. 1986)

1983	2,088
1984	4,168
1985	5,967
Jan-Feb 1986	478
<b>TOTAL</b>	<b>12,701</b>

TABLE 3. NUMBER OF ILLEGAL AND ILLEGAL ARRESTS  
(1987-Sept 1991)

	<b>ILLEGAL ARRESTS</b>	<b>LEGAL ARRESTS</b>
1987	7,888	129
1988	2,990	92
1989	1,739	136
1990	3,789	164
1991	780	37
<b>TOTAL</b>	<b>17,186</b>	<b>558</b>

TABLE 4. STATUS OF PERSONS ARRESTED FOR  
POLITICAL OFFENSES  
(Mar 1, 1986-Sept 30, 1991)

	MISSING	SALVAGED*	TORTURED	ESCAPED
1986	43	37	438	15
1987	43	37	933	15
1988	70	51	718	25
1989	43	15	312	52
1990	60	17	249	7
1991	20	10	106	1
<b>TOTAL</b>	<b>279</b>	<b>167</b>	<b>2,756</b>	<b>115</b>

\*Extrajudicially executed

TABLE 5. NUMBER OF MASSACRES; NUMBER OF KILLED  
AND WOUNDED IN MASSACRES  
(Mar 1, 1986-Sept 30, 1991)

	MASSACRES	KILLED	WOUNDED
1986	48	198	36
1987	35	205	135
1988	38	163	46
1989	26	95	44
1990	19	67	35
1991	5	18	1
<b>TOTAL</b>	<b>171</b>	<b>746</b>	<b>297</b>

TABLE 6. NUMBER OF FRUSTRATED MASSACRES;  
NUMBER OF KILLED AND WOUNDED IN MASSACRES  
(Mar 1, 1986-Sept 30, 1991)

	FRUSTRATED MASSACRES	KILLED	WOUNDED
1986	53	9	33
1987	64	63	175
1988	36	42	64
1989	29	37	52
1990	26	24	48
1991	10	10	33
<b>TOTAL</b>	<b>218</b>	<b>185</b>	<b>405</b>

TABLE 7. COMPARATIVE AGENCY ESTIMATES OF  
INTERNAL REFUGEES POPULATION (1986-Sept 30, 1991)

YEAR		CDRC	ECDFC	EMJP	ICRC	TFDP
1986	f		23,449			
	p	54,229	117,245		194,000	
1987	f		13,365			18,706
	p	340,425			27,000	112,236
1988	f	42,580	19,884			16,362
	p	341,495		264,477		
1989	f					
	p	173,000	109,859		194,734	
1990	f					8,196
	p					25,465*
1991	f					4,414
	p					3,362

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\*Figure includes those affected by both evacuations and hamlettings

Legend:

f - families

p - persons

CDRC - Citizen's Disaster and Rehabilitation Center

ECDFC - Ecumenical Commission for Displaced Families and Communities

EMJP - Ecumenical Movement for Justice and Peace

ICRC - International Committee of the Red Cross

TFDP - Task Force Detainees of the Philippines



TABLE 8. PERPETRATORS OF HUMAN RIGHTS VIOLATIONS

PERPETRATORS	1987	1988	1989	1990	1991	TOTAL
PHILIPPINE ARMY	587	515	219	173	192	1,686
PC-INP	629	423	144	159	15	1,370
CHDF/CAFGU	93	66	125	115	51	450
NAVY/MARINES	10	290	8			308
AIR FORCE	5	3		5		13
COMPOSITE ALL -AFP	138	290	323	143	110	1,004
VIGILANTES	245	134	24	11	9	423
INDEPENDENT ARMY GROUPS*	40	39	9		2	90
CIVILIAN OFFICIALS	19	44	6		7	76
COMPOSITE NON-AFP	277	133	73	231	17	731
UNIDENTIFIED	185	71	49	57	28	390
OTHERS			12	10	9	31
TOTAL						6,572

\*Lost Commands

TABLE 9. SECTORAL DISTRIBUTION OF VICTIMS OF HUMAN  
RIGHTS VIOLATIONS  
(1987-Sept 30, 1991)

SECTOR	1987	1988	1989	1990	1991	TOTAL
FARMERS						
/FARMWORKERS	1,623	1,498	778	893	388	5,180
INDUSTRIAL						
WORKERS	670	186	7,305	756	176	9,093
SERVICE WORKERS	179	375	424	127	48	1,153
FISHERMEN	84	9	34	77	31	275
STUDENTS	133	174	5,141	223	148	5,819
RELIGIOUS	19	17	18	8	7	69
PROFESSIONAL	22	50	23	27	8	130
BUSINESSMEN	20	22	19		61	
NGO/HR WORKER	27	68	38	72	23	228
OUT-OF-SCHOOL						
YOUTH	60	26	12	15	23	136
PUBLIC OFFICIALS	37	7		13	7	64
MEDIA	3	6	13	1	7	30
SELF-EMPLOYED	56	22	21	82	17	198
UNEMPLOYED	91	99	48	22	12	272
HOUSEWIFE	45	39	36	84	5	209
CHILDREN	20	81	114	294		504
TRIBAL FILIPINOS	7	1	10	66		84
ARTISTS			2	6	1	9
FOREIGNER			3	3		6
UNCLASSIFIED	1,031	596	511	471	134	2,743
<b>TOTAL</b>						<b>26,263</b>

## ANNEX B

STATISTICS FROM THE  
COMMISSION ON HUMAN RIGHTS  
REPORT ON HUMAN RIGHTS VIOLATIONS  
1986-1991

I. Number of Complaints as to Date of Incident Showing Decreasing  
Trend of Incidence of Alleged Human Rights Violations from 1988-1990

YEAR OF INCIDENT	NUMBER	% OF INC./DEC.
Prior to 1986	1,658	
1986	574	
1987	800	
1988	1,658	
1989	1,560	(5.91)
1990	1,494	(4.23)
1991 (1st Quarter)	200	
<b>TOTAL</b>	<b>7,944</b>	

II. Breakdown of Complaints of Alleged Human Rights  
Violations by Type of Complaint

TYPE OF COMPLAINT	1988	1989	% OF INC/DEC	1990	% OF INC/DEC	1ST QTR 1991
MURDER/ HOMICIDE/ EXECUTION	579	492	(15.03)	386	(21.54)	53
ARREST/ DETENTION	193	208	7.77	195	(6.25)	29
TORTURE	49	25	(48.98)	22	(12.00)	2
DISAPPEARANCE	104	62	(40.38)	46	(25.81)	1
OTHER COMPLAINTS	733	773	5.46	845	9.31	115
<b>TOTAL</b>	<b>1,658</b>	<b>1,560</b>		<b>1,494</b>		<b>200</b>

Note: ( ) symbol means decrease.

III. Number of Cases resolved by the CHR from 1987-1990 numbering 4,845 representing 61% of the 7,944 complaints of alleged human rights violations.

	1987-88	1989	1990	1st Qtr. 1991	TOTAL
TOTAL NO. OF RESOLVED CASES	212	1,792	2,229	612	4,845
BREAKDOWN OF RESOLVED CASES:					
A. Established Human Rights Violations Filed and Pending in Courts/Agencies for Prosecution/ Administrative Action	110	621	621	157	1,509
B. Completed Investigation and Resolved by Regional Offices for Confirmation by the Commission		988	1,044	301	2,333
C. Closed/ Terminated	71	144	364	81	660
D. Archived	31	39	200	73	343

IV. Established Human Rights Violations Filed and Pending in  
Courts/Agencies for Prosecution/Administrative Action

<b>A. BY TYPE OF VIOLATION</b>	<b>NO.</b>
1. Murder/Homicide/Execution	603
2. Arrest/Detentionx	119
3. Torture	24
4. Disappearance	19
5. Various Human Rights Violations	467
6. Unspecified	277
<b>TOTAL</b>	<b>1,509</b>
<b>B. BY SECTOR</b>	<b>NO.</b>
1. Military/Police	860
2. Other Sectors(Government Officials, Civilians, Para-Military, etc.)	649
<b>TOTAL</b>	<b>1,509</b>
<b>C. BY COURT/AGENCY</b>	<b>NO.</b>
1. Civil Courts	276
2. Department of Justice	147
3. JAGO/Military Agencies	273
4. Administrative Agencies	77
5. Simultaneous Filing with other Agencies	77
6. Other Agencies	72
7. Unspecified*	587
<b>TOTAL</b>	<b>1,509</b>

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\*Directly filed by the Regional Field Offices with records not yet available at the Central Office.

**D. BY STATUS IN COURTS/AGENCIES  
AS OF DECEMBER 1990\*\***

	<b>NO.</b>
1. Complaints Filed	994
2. Preliminary/Pre-Trial Investigation	30
3. For Resolution (Whether there is a Prima Facie Case against the accused/ Filing of Information)	24
4. Arraignment	1
5. Pre-Trial	77
6. Trial/Presentation of Evidence for Prosecution	54
7. Pending Promulgation of Judgement	32
8. Dismissal from Service	1
9. Case Dismissed	37
10. Acquittal	7
11. Conviction	6
12. Demotion	1
13. Suspension	3
14. Archived by Concerned Courts/Agencies	17
15. Amicable Settlement, etc.	16
16. Unspecified	209
<b>TOTAL</b>	<b>1,509</b>

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**\*\*For updating upon completion of the Individual Case Profile and Monitoring of Cases in the 12 Regions (to include NCR) under the joint project of the CHR and the National Statistical Coordination Board.**

Note: Changes in the figures from previous CHR Summary Reports (1988-1990) were due to new and unreported cases/complaints of previous years reported only in the 1990 and 1991. These adjustments, however, are still subject for verification of double entries of complaints which may bring down the total number of complaints.

