THE STATE OF POLITICAL DETAINEES: PHILIPPINE SETTING

JESUS P. CASILA*
EDWIN R. CATACUTAN
GODOFREDO C. DE GUZMAN
MARIO E. HISULER
RUFUS B. RODRIGUEZ

INTRODUCTION

In understanding the state of Political Detainees in the Philippines today, it is imperative that its historical background be presented.

The existence of political detainees can be traced back to as early as the Spanish rule when those who opposed it were arrested and imprisoned. Arrests and detention for the same reason continued during the American regime. During the Japanese occupation, detention in another form was employed. The Philippine independence granted in 1946 did not result in true independence, and dissent became more organized and more violent. The years 1967-1972 saw the upsurge of protests resulting in the proclamation of martial law on September 21, 1972, and the arrest and detention of thousands of our people. The period of martial law, i.e. from 1972 to the present, saw a sustained drive of the government to silence all opposition to the martial law regime. This period also brought about the escalation of the Muslim-Marcos conflict.

The first part of this paper presents the historical background of activism and dissension with primary focus on 1) student activism; 2) the worker and farmer rebellion; and 3) the Muslim conflict. A knowledge of the history of dissension and political detainees will be helpful in the proper understanding of the discussion in the second part of this research.

The second part of this paper deals with the rights of the political detainees. For clarity, we have divided the rights of political detainees into: 1) Rights in General; 2) Rights upon Arrest, Search

* Member, Student Editorial Board, Philippine Law Journal.

and Seizure; 3) Rights under Detention; and 4) Rights During Preliminary Investigation, Trial and Appeal.

PART I — HISTORICAL BACKGROUND

A. *A History of Student Activism*

1. Spanish

The beginning of student activism can be traced back to as early as 1869, during the term of Governor Carlos de la Torre, a more liberal Spanish Governor-General. The first known nationalist student movement in the Philippines was organized by a group of Filipino students of the University of Santo Tomas. The society was called "Juventud Escolar Liberal" (Young Liberal Students) to whom Dr. Jose Rizal dedicated his famous poem "A la Juventud Filipino." Felipe Buencamino, Sr. was the society's president.

It was during Gov. de la Torre's term that Filipino students first began to discuss openly public issues of the day, voicing their praise or criticism on the state of affairs and administration of government in their country without fear of reprisal.[1]

On March 1, 1888, an anti-friar demonstration participated by students was held in Manila.[2] Marcelo del Pilar and others wrote articles against abuses by the friars. The propaganda movement sparked the flames of the Philippine Revolution.

2. American

In 1904, the "Asosacion Escolar de Filipinas" was organized composed of students from various schools in Manila.[3]

The first student demonstration during the American regime was in support of the UP Filipino President Ignacio Villamor who was maligned by the Manila Times managed by an American, to the effect that no Filipino was fit to occupy the UP presidency.[4]

In 1919, the Inter-Alumni Association was founded eventually becoming the National Civic League with Camilo Osias as its president. In 1925, the National Federation of Students was organized by Cipriano Cid and others of the UP College of Law.[5]

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[1] Carmencita Acosta, "Close-up: First Nationalist Student Group," Variety Magazine, February 23, 1969, p. 10.

[2] NATIONAL HISTORICAL COMMISSION, EMINENT FILIPINOS 205 (1965).

[3] Wenceslao Q. Vinzons, Sr., "A Brief History of the Youth Movement," Intercollegiate Press, January, 1934, p. 15.

[4] Students to make protest, University men and women resent attack, Support Villamor, Manila Times, July 19, 1918, p. 1.

[5] Vinzons, *op. cit., supra*, note 3 at 15, 24.

On September 20, 1929, 500 UP students paraded around the campus, asserting their exclusive right to manage the Philippine Collegian without restrictions from the University Council and without supervision from the faculty.[6]

In 1931, two American lawmakers came to visit the Islands to sound off Philippine opinion on the independence question. Students from different colleges and universities joined the peaceful demonstration and a parade was held on July 12, 1931. The Tribune estimated the crowd at 250,000.[7]

In June 1933, the UP students led by Restituto Aquino, Vice President of the University Council, demonstrated against increased school fees.[8]

On December 27, 1933, a group of young men from different colleges and universities met at the house of Speaker Roxas to frame the manifesto of the Young Philippines.

The Young Philippines put up lawyer Wenceslao Vinzons, Sr. as its candidate for the Constitutional Convention in 1934. Vinzons was elected the youngest member of the Convention as delegate from Camarines Norte.

The Young Philippines was headed by Lorenzo Sumulong after Vinzons' election. Arturo Tolentino took over in the late 1930's. It merged with the Nacionalista Party in 1949.[9]

3. Commonwealth

In protest against the "Self-Pay Law" (3 years back pay for congressmen) passed by Congress, 10,000 students staged an indignation rally on October 12, 1945 at Plaza Guipit in Sampaloc, Manila.[10]

4. Republic

The first issue where students participated was on collaboration and amnesty. Other issues were: 1) demonstration against Senate junket to the Inter-Parliamentary Conference in Rome, Luxembourg and Genoa on August 10, 1948 by 5,000 students, led by the College Editors' Guild;[11] 2) protest against political intervention in UP in

[6] "Palma Rules out Petition," Tribune, October 25, 1929, p. 1.
[7] "Unprecedented Crowd Attends Greatest Demonstration Ever Held Here For Independence," Tribune, July 14, 1931, pp. 1-2.
[8] "UP College of Education Will Stage Demonstration Next Monday, Protesting Fee Increases," Tribune, June 3, 1933, p. 1.
[9] L.D. SANTIAGO, A CENTURY OF ACTIVISM 37-38 (1972).
[10] "10,000 Hear Congress Denounced," Manila Post, October 13, 1945, p. 1.
[11] "UP Joins Protest Against Senate Junket," Philippine Collegian, August 16, 1948, p. 1.

1951 and 1962;[12] 3) protest against UP Board of Regents with demand for a University President in 1957;[13] 4) demonstration to demand the cessation of the investigation by the Committee on Anti-Filipino activities (CAFA) of alleged infiltration of communists in the State University in 1961;[14] 5) protest against unemployment by the "Kilusang Makabansa ng Kabataan" on May 16, 1961;[15] and 6) demonstration of Vietnam Aid Bill on February 11, 1966 led by UP Student Council Chairman Tristan Catindig, and on February 21, 1966, led by the Kabataang Makabayan, which was founded on November 30, 1964.

5. Six (6) Years of the Republic (1967-1972) : Upsurge of Protests

The Student Council Association of the Philippines held a rally before Congress on January 23, 1967 to protest against spiralling prices, repeal of the Vietnam Aid Law, the recall of Philcag.[16]

On October 24, 1967, eight student organizations joined forces and expressed the first public indignation over the proposed Constitution Amendments that was to be presented to the Filipino electorate in the November 1967 elections. The two questions answerable by yes or no were on the increase of the number of congressmen (from 120 to 180) and the retention in Congress of legislators in case they would be elected delegates to the Constitutional Convention.

The "Filipino Youth for a Meaningful Plebescite Movement" which was launched by the National Union of Students of the Philippines was composed of the NUSP, NSL, National Students Conference, CONDA, College Students Y Council, Youth for Villegas Movement, Student Civic Action Front, and the KM.[17] The two amendments lost.

The SCAP again rallied before the opening of Congress in January 22, 1968.

On March 8, 1968, the Philippine Council of the Bertrand Russell Peace Foundation held a peace rally to protest the involvement of the Philippines in the Vietnam War.[18]

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[12] "Rally," Philippine Collegian, April 17, 1951, p. 32 and "Students Affirm Trust in Regents, Protest Macapagal's Appointment of C.P. Romulo," Philippine Collegian, January 5, 1962, p. 1.

[13] "5,000 Diliman Students Staged Walkout; 3,000 Agricultural Students Join Strike," Philippine Collegian, December 18, 1957, pp. 1-2.

[14] "CAFA Chief Hits UP Rally," Manila Times, March 15, 1961, p. 23.

[15] "Student Group Wants Labor Nationalized," Philippines Herald, May 17, 1961, p. 10.

[16] "Students Stage Rally Tomorrow," Manila Chronicle, January 22, 1967, pp. 1-2.

[17] "Solons Effigies To Be Hanged," Philippine Herald, October 24, 1967, p. 18.

[18] "Peace Rally Held March 8," Philippine Collegian, March 6, 1968, p. 1.

On August 16, 1968, the National Trade Union (NATU) and the Kabataang Makabayán (KM) joined ranks and protested the killing of Rogelio Gonzales, 18-year old bootblack, by U.S. Marine Cpl. Kenneth Smith, allegedly for stealing. A riot followed. They were also joined by the Samahang Demokratikong Kabataan (SDK).[19]

Students from different colleges and universities affiliated with the NUSP demanded swift administration of justice. From Malacañang, the students marched to Congress in the afternoon of January 27, 1969.

In the afternoon of January, 28, 1969, the Christian Socialist Movement of the Philippines marched from the Agrifina Circle to Congress, demanding for a non-partisan Constitutional Convention.

These were followed by more demonstrations and rallies in various schools which continued for the rest of the year 1969.

The degree of the clamor for change increased tremendously since 1969 as evidenced by 91 demonstrations in 1969, 123 in 1970, and 360 in 1971.

The issues propounded by the students dealt more and more with problems that beset the country which were due to "fascism, imperialism, and feudalism."

Violence to life in student demonstration began on January 30, 1970 with the death of Ricardo Alcantara of UP, Fernando Cabatay of MLQU, Felicisimo Roldan of FEU, and Bernardo Tausa of Mapa High School of Manila. The demonstration which was termed "Battle of Mendiola Bridge" saw burnt cars, bloody pavements, stoned windows, students pitted against government law enforcers.

President Marcos, on January 31, 1970, after the so-called "Malacañang Siege" threatened that the government will act to defend itself.

On January 30, 1971 saw the beginning of intensified demonstration with the death toll increasing to 38 as of October 5 when the Caloocan City demonstration took place to protest the suspension of the privilege of the writ of *habeas corpus*. On August 21, the Liberal Party proclamation rally at Plaza Miranda was bombed.

On September 21, 1972, Martial Law was declared. Those who have participated seriously in these turbulent times of the republic are now either dead, fighting in the hills, or are political detainees.

[19] "7 Hurt in Anti-US Riot," Philippines Herald, August 17, 1968, pp. 1, 9.

There are indeed students who are political detainees. Students are picked up, arrested, detained, tortured. Some are released. Some are still languishing in detention camps.

B. *Worker and Farmer Rebellion*

The Philippine society throughout the years of its existence has always been beset with social unrest. There were major rebellions at least once every generation under the Spanish rule.[20] The Americans also experienced these problems which prompted them, through the local lawmaking body—the Philippine Commission—to adopt measures restricting peoples' freedom in order to counter dissident activities.[21] Such period saw the formation of the Communist Party of the Philippines (CPP), different labor groups both militant and conservative as well as religious groups which carried the fight for liberty. The Japanese occupation gave the people an opportunity to arm themselves which became a problem later, when people refused to surrender their arms. The guerilla movement in Central Luzon gave rise to the present army of the liberation movement—The New Peoples' Army.

1. The American Occupation

The Filipinos did not readily accept the Americans as their new masters. They wished to keep their independence. The strained relations between the military government of Gen. Meritt and that of the Philippine Republic precipitated the so-called Filipino-American War. However, through superior military force and the help of conservative Filipinos—the ilustrados, the Americans subdued the opposition by 1901.[22] The Americans adopted a policy of attraction. The President of the United States issued an amnesty proclamation declaring:

> ***full and complete pardon and amnesty to all persons in the Philippine Archipelago who have participated in the insurrection, or who have given aid and comfort to persons participating in said insurrection for offences of treason or sedition and for all offences POLITICAL in their CHARACTER, committed in the course of insurrection. . .[23]

However, very few were willing to accept the benevolent offer. Instead, the Filipino resentment was manifested by lingering guerilla activities, pre-Assembly attempts to organize independent parties

[20] LACHICA, EDUARDO, HUK—PHILIPPINE AGRARIAN SOCIETY IN REVOLT 62 (1971).

[21] Sedition Law, Brigandage Act, Reconcentration Act, Flag Law.

[22] AGONCILLO, HISTORY OF THE FILIPINO PEOPLE 280 (1967).

[23] US Statutes at Large, Vol. 32, Part. 2, p. 2014.

and some conspiracies to influence the Conservative Roosevelt-Taft policy towards Philippine independence.[24]

The capture of Aguinaldo in Palanan, Isabela brought even more nationalism to the people. The people, minus the ilustrados, confronted the Americans. The chronology of numerous skirmishes and battles, ambushes and raids of the resistance fighters proved only one thing—they had mass support.[25] A brief account of these uprising against the American will be helpful in assessing the magnitude of the opposition born out of the American domination.

General Luciano San Miguel formed the New Katipunan and operated in Rizal and Bulacan. Later on, he was succeeded by Faustino Guillermo, the execution of whom, ended the uprising in May, 1904.[26]

Macario Sakay conducted his guerilla activities in the provinces of Rizal, Laguna, Cavite and Batangas. Later on, Sakay together with Julian Montalan and Cornelio Felizardo organized the Tagalog Republic. The republic ended with the execution of Sakay and Luciano de Vega on September 13, 1907.[27]

In Bicol area, Simeon Ola and Lazaro Toledo led the resistance movement. Ola led a very effective guerilla warfare that won the admiration of his opponent—Col. Bandholtz. On September 25, 1903, Ola surrendered after suffering heavy losses.[28]

In the North, Roman Manahan led a resistance movement that operated in the Pangasinan and Zambales area. The movement ended with Manahan's death in January, 1903 during a battle.[29] In Isabela, Manuel Tomines led the resistance movement until April 10, 1905 when he was hanged.[30]

Another aspect of the resistance movement was the quasi-religious character that characterized some resistance groups. Ruperto Rios of Tayabas was able to convince people that he was a son of God and he had the power to give amulets (anting-anting) which would make people invulnerable to enemy bullets. His movement died with his execution in December 1903 in Atimonan.[31]

Felipe Salvador of Bulacan established his movement called Santa Iglesia. This served as the manifestation of rebellion as well as

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[24] B. SALAMANCA, FILIPINO REACTION TO AMERICAN RULE 1901-1913, 187 (1968).
[25] R. CONSTANTINO, THE PHILIPPINESS A PAST REVISITED 257 (1975).
[26] *Ibid.*, p. 261.
[27] *Ibid.*, p. 267.
[28] *Ibid.*, p. 289.
[29] *Ibid.*, p. 269.
[30] *Ibid.*, p. 270.
[31] *Ibid.*, p. 272.

a natural morale-booster for the mass of Filipinos who needed some supernatural sanction and assistance for their struggle for equality. In 1906, the organization was broken up, and in 1910 he was captured and sentenced to die by hanging.[32]

In the island of Negros, Dionisio Magbullos carried his own resistance movement until August 6, 1907 when he was sentenced to die by hanging.

The early resistance movement will not be complete without the Pulajanes of Cebu. The group was led by brothers Quintin and Anatolio Tabal. The movement died when the brothers surrendered after some negotiations with then Governor Sergio Osmeña, Sr.[33]

In Leyte, Pulajanes under Faustino Ablen proved to be successful. Originally called Dios-Dios, the leader claimed to have supernatural powers which attracted the attention of many adherents. The government, alarmed by his success, launched all out offensive against him which lead to his capture on June 11, 1907 thus ending the Leyte Rebellion.[34]

In Samar, Dios-Dios were very active until 1911. More than seven thousands pulajanes lost their lives in the span of their courageous but doomed attempt to free the island from American control.[35]

On the whole, what the rebels proved was that they kept the revolutionary spirit kindled by the Katipunan.

The American government adopted some restrictive measures to counter the mounting insurgency. On November 4, 1901, the Philippine Commission enacted what is considered to be the harshest law promulgated by that body—the Sedition Law. The law defined the crimes of treason, insurrection and sedition and provided heavy penalties for those found guilty. This was the time when Filipinos who adhered to the ideals of independence were harshly suppressed by the authorities and the law.[36]

To complement the Sedition Law, the Philippine Commission passed on November 12, 1902 the Brigandage Act.[37] It made membership in an armed band, even if proved by circumstancial evidence only, punishable by death or life imprisonment. On June 1, 1903, another repressive measure was passed, the Reconcentration Act.[38]

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[32] *Ibid.*, pp. 273, 276.
[33] *Ibid.*, p. 280.
[34] *Ibid.*, p. 283.
[35] *Ibid.*, p. 286.
[36] T. AGONCILLO, *op. cit., supra,* note 22 at 300-301.
[37] *Ibid.*, p. 301.
[38] Act 781.

It empowered the Governor-General to authorize the provincial governor to reconcentrate the residents of the town infested with ladrones and outlaws in the poblacion or larger barrios of the municipality. The authorities passed the law after realizing that the entire populace were protecting the rebels to the extent that the Constabulary felt insecure.

The Sedition Law led to the capture of many Filipino nationalists—the early political detainees. Juan Abad was indicted for his play "Tanikalang Ginto." Aurelio Tolentino's "Kahapon, Ngayon at Bukas" earned for him life imprisonment. Later on, he was pardoned, only to write another play—"Luhang Tagalog." Another playwright, Juan Matapang Cruz wrote the play "Hindi Ako Patay" as a result of which was meted a long prison term.[39]

In the field of journalism, the nationalists were also active. The publication of El Renacimiento was stopped because of an editorial entitled "Aves de Rapina." Martin Ocampo, the owner and Teodoro Kalaw, the editor were sentenced to pay Dean Worcester moral damages and to serve jail terms.[40]

Another measure to suppress nationalism was the passage of the Flag Law.[41] The law prohibited the display of all flags, banners and emblems used by the resistance movement against the United States as well as the flags, emblems and banners of the Katipunan.

Political parties favoring independence were also prohibited.

The decade following the period of suppressed nationalism can be considered as the period of assimilation. The people tired of endless battles settled down and tried the offer of the new master. However, as can be seen, adverse effects came in the early thirties.

Colorum organizations were very active in different provinces during the 1900's. These were groups not related to one another organizationally or even in terms of beliefs and practices. However, two striking similarities can be seen. First, all colorum groups were characterized by religious fanaticism similar to the original colorum organization founded by Hermano Pule in 1840's. Second, membership was recruited from the peasantry and the urban poor. The colorum movements were articulations of the oppressed people who sought in messiahs the means of their redemption.[42]

The notable colorum uprisings in the early twenties were the Samar, Leyte and Agusan uprisings of 1924 and the Kapisanan Ma-

[39] T. AGONCILLO, *op. cit., supra,* note 22 at 291.
[40] *Ibid.,* p. 293.
[41] Act 1696.
[42] R. CONSTANTINO, *op. cit., supra,* note 25 at 356.

kabola Makarinag uprising organized by Pedro Kabola in 1923 in Nueva Ecija with 12,000 members. In the Visayas, Florencio Intrensherado led a colorum movement which spread through six provinces and gathered a following estimated to be 26,000. The movement ended when Intrensherado surrendered to prevent a blood bath. In Pangasinan, Pedro Caloso formed a colorum group in 1929 and attacked the municipality of Tayug in 1931. The group was overpowered by the military after a battle. Guardia de Honor was another Pangasinan colorum group originally founded by Dominican friars. The colorum groups may not be considered as espousing nationalistic motives but it cannot be denied that they were voicing out their sentiments because oppression was no longer bearable.

On November 7, 1930, the Communist Party of the Philippines was born.[43] Crisanto Evangelista, a leader of printers union was the first Secretary-General. The party was formed out of a meeting between organized labor unions. The worst economic condition brought about by the great depression plus the exploitative character of the employers forced the group to be very militant. The end result of all these activities was a court declaration making CPP an ilegal organization.[44]

The CPP was very active in peasant and labor organization. Patrocino Dionisio, a member of the Central Committee formed a group known as Tanggulan. He quit the Party in 1931 during the government crackdown. Although without very clear political objectives and well-defined program, it can be gleaned that the group's aim was independence through armed struggle. But before the plan could materialize, Dionisio was captured and charged with sedition.

Teodoro Asedillo, another CPP member led an armed struggle against the government. He organized in Laguna a group known as Katipunan ng mga Anak-pawis which had its base among the peasantry. Later on, he joined forces with another group headed by a former Katipunero Nicolas Encallado and included Tayabas as an area of operation. Asedillo was looked upon as a sort of Robin Hood among the peasants. His death in an encounter with the Constabulary led to the breakdown of the group in 1936.[45]

The popular movement with the greatest immediate impact spawned by the turbulent thirties was the Sakdalista Rebellion led by Benigno Ramos. The group gained large followings in Bulacan, Rizal, Cavite and Laguna. The objective was immediate independence. The movement despite of its opportunist and fascist-inclined leader-

[43] A. SAULO, COMMUNISM IN THE PHILIPPINES 22 (1969).
[44] People v. Evangelista, 57 Phil. 354 (1932).
[45] R. CONSTANTINO, *op. cit., supra*, note 25 at 371.

ship was the genuine expression of protest and a milestone in the politicization of the people. The insights of the colonial establishment that it propagated, its projection of the interrelation between colonialism and poverty of the people, its denunciation of the elite leaders and its exposure of the economic strings attached to the independence granted by the Americans—all raised the level of consciousness of the masses. But the greatest educative factor was the economic reality. Exploitation taught the masses to act collectively in self-defense. However, the movement was short-lived because, while Ramos was in Japan, the local leaders, disorganized and poorly armed, decided to take political power, a decision from below. Disowned by the leadership, the peasants drifted away.[46]

The discussion of past political detainees will not be complete without mention of the Socialist Party of the Philippines founded by Pedro Abad Santos. He believed that "if masses were to be saved", it should be "by their own efforts." However, mass action envisaged by Abad Santos excludes armed struggle. He advocated radicalism through legalism.

The largest and most militant group during this turbulent decade was the Pambansang Kapisanan ng mga Magbubukid (PKM). It was the product of the merger of two powerful organizations led by CPP leaders—del Castillo of Pambansang Katipunan ng Magbubukid sa Pilipinas (PKMP) and Feleo of Aguman Ding Madlang Tagapagobra (AMT). Later on, this PKM supplied the foot soldiers of the army of the resistance movement—the Hukbalahap.

2. The Japanese Occupation

The outbreak of the Pacific War on December 8, 1941 gave the CPP its long-sought chance to raise an army of its own—the Hukbo ng Bayan Laban sa Hapon or Hukbalahap. The CPP was the architect, mentor and leader of the resistance organization although it kept itself at the background for the duration of the war so as not to alienate the non-communist progressive elements who were actively supporting the Hukbalahap, convinced that it was a genuine people's resistance movement. The CPP, years before the war, had already warned the country of the Japanese invasion and CPP itself merged with SPP (Socialist Party) in a United Front to put down fascism.[47]

The CPP conducted the resistance movement in three fronts: military, political and economic. The military objective was to harass the enemies continuously, keeping it constantly off-balanced to that

[46] *Ibid.*, p. 376.
[47] T. AGONCILLO, *op. cit., supra,* note 22 at 529.

it could not concentrate on the activities aimed at winning the goodwill and cooperation of the people. Politically, its aim was to discredit the Japanese-sponsored republic and at the same time build the concept of a functioning democracy through the development of people's councils on the grass-roots level. Economically, the aim was to prevent enemy looting of the country and to increase the food production for the people's benefit.[48]

The PKM, which provided foot soldiers and mass-support to the Hukbalahap was dissolved and reconstituted as Barrio United Defense Corps (BUDC). It acted as an invisible government providing intelligence service. It imposed taxes and communized barrio economy so that provisions could be laid aside for Huk operations.[49] The Huks were at their fightingest in the first nine months from March 1942 to December 1942. They lapsed into passivity after absorbing their worst defeat in the hands of the Japanese but regained the initiative when the liberation forces of MacArthur arrived.[50]

The Huk forces were considered to be the most effective single guerilla unit; comprised of 5,000 armed men, 10,000 lightly armed men and 35,000 unarmed reserves.[51] During the day, the guerilla took up his plow. During the night, he struck. Central Luzon became a no-man's land for the Japanese. During the three years of their resistance, the Japanese rarely ventured out in groups smaller than ten.[52]

The Filipino nationalists during the Japanese occupation were of two persuasions: those who craved for the return of America and those who wanted American authority terminated after the war. Both, however, had one thing in common: they were fiercely anti-Japanese.[53] It is significant to note that when Filipinos won their independence, their nationalism suffered athropy because of the parity rights and military base agreement. According to Recto, the American policy can never have an objective other than security, welfare and interest of the American people.[54]

The lesson taught by the Japanese occupation with reference to the plight of our political detainees was that in the face of the common enemy, differences can be shed off and hand in hand, Filipinos will fight the common invader.

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[48] A. SAULO, *op. cit., supra,* note 43 at 36.
[49] *Ibid.,* p. 39.
[50] E. LACHICA, *op. cit., supra,* note 20 at 109.
[51] *Ibid.,* p. 114.
[52] M. VENTURA, US-PHILIPPINE COOPERATION AND CROSS-PURPOSE 148 (1974).
[53] H. ABAYA, BETRAYAL IN THE PHILIPPINES 213 (1946).
[54] T. AGONCILLO, FILIPINO NATIONALISM—1870-1972 35 (1974).

3. The Philippine Republic

After the liberation, one of the first things CPP did was to disband the Hukbalahap and convert it into the Hukbalahap Veterans League with Casto Alejandrino as the national chairman. The party mapped out a postwar program for the former Huk guerillas who were mostly landless farmers.[55]

Later on, the cadres became active in many fronts of Philippine society. They penetrated labor unions, peasant unions and even political parties. The Congress of Labor Organization (CLO) and PKM merged with the Democratic Alliance (DA), a neophyte political party which was anti-collaboration, to field candidates for the coming elections. DA included names such as Jesus Barrera, J. Antonio Araneta, J.B.L. Reyes, Dr. Vicente Lava, Manuel Crudo, Vicente Hilario and supported by these groups: Civil Liberties Union, Free Philippines, Blue Eagles, PKM, Huk Veterans League and CLO.

In the election of April, 1946, although the NP (Nacionalista Party)-DA coalition lost in the presidential race, they won in all the six congressional districts in Central Luzon. However, the Liberal Party-dominated Congress passed two quick resolutions ousting them on grounds of fraud and terrorism in election. When the case was brought to the Supreme Court, it was found that: the ejection had nothing to do with fraud or terrorism but with the parity issue—whether or not American citizens should be given equal rights as Filipinos in the exploitation and development of natural resources and public utilities. The expelled solons were known to be anti-parity. The resolution for parity rights required a three-fourth (3/4) vote from both houses and if the votes of these solons were counted, the 3/4 vote required by the resolution would not be reached.[56]

The unseating of six DA congressmen shook the faith and confidence of the peasants of Central Luzon in the government. The pacification campaign of the Roxas administration failed. Huk leaders became more recalcitrant. Luis Taruc, the wartime Supremo, del Castillo of PKM and Feleo of AMT helped the government in pacifying the areas. However, Feleo was kidnapped and killed by an unknown group while being escorted by the military police. The killing of Feleo provoked an ultimatum from Taruc to Roxas. Taruc revived the wartime GHQ of the Hukbalahap and civil war ensued in Central Luzon. Roxas pledged to solve the Huk problem in sixty days and countered the Huk movement by a proclamation on March 6, 1948 outlawing the Hukbalahap and PKM. Roxas failed in his promise because he died five weeks later due to a heart attack.

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[55] *Ibid.*, p. 48.
[56] Mabanag v. Lopez Vito, 78 Phils. 1 (1947).

The incumbent President Quirino started his administration with accommodation rather than confrontation. He offered amnesty to Huks to win them back to the fold. The implementation of the amnesty bogged down on the arms question. The Huks insisted on retaining their arms after having them registered. Because of this, fighting was resumed. The election that occurred on November, 1949, turned to be the bloodiest election in the history of the Philippines.[57]

The CPP abandoned all the legal and parliamentary struggle after the 1949 unseating of the DA congressmen. But the CPP was also suffering from internal conflicts between Taruc and Lava. Taruc questioned the 1950 resolution of the Politburo declaring the existence of a revolutionary situation in the Philippines. Undoubtedly, Taruc was a socialist, not a communist.[58] The Lava, del Castillo, Alejandrino group was beyond doubt supporting a strong leftist orientation. The Lava group always overruled Taruc's proposal, plans or programs. When Taruc came with an open letter called "Call for Peace" calling for a peaceful settlement of disputes, the party leaders suspended him from the CPP. His brother Peregrino was expelled for breach of party discipline. The fundamental difference between the two policies was that Taruc's peace proposal was to be achieved through negotiations in line with the Soviet policy of peaceful coexistence, while Lava's anti-war policy also wanted peace but through the liquidation of war-mongers by armed struggle.[59]

The Secretariat of CPP after gathering enough evidence against Taruc expelled him from the party. The main reason was his unauthorized negotiation for peace with Quirino. Taruc, in his instinct for self-preservation, suspected that CPP was out to eliminate him. So, instead of engaging himself into military confrontation with his comrades-in-arms, on May 16, 1951, he decided to surrender to the government.[60] The loyal supporters of Taruc, realizing the futility of the struggle and tired of intra-fighting, believed that Taruc's decision was the best and followed the same.

Because of the failure of his peace plan, Quirino made a move to win the people's confidence. He eliminated unfit military personnel including the Secretary of National Defense, at that time, Kangleon. He was replaced by a young and vigorous person in the person of Ramon Magsaysay.

When Magsaysay became the Secretary of the DND, he tackled the Huk problem from two different approaches: a ruthless "mailed

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[57] A. SAULO, *op. cit., supra,* note 43 at 45.
[58] A. SAULO, *op. cit., supra,* note 43 at 49.
[59] C. TARUC, HE WHO RIDES THE TIGER—A BIOGRAPHY 97 (1967).
[60] A. SAULO, *op. cit., supra,* note 43 at 66.

fist" policy and a policy of attraction. These two policies complemented each other.

The establishment of the Economic Development Corps (EDCOR) was the focal point in attracting Huks to surrender. From the time Magsaysay became the Secretary in September 1950 up to 1955, a total of 9,458 Huks—2,000 less than those killed or captured—surrendered voluntarily to the authorities as a result of the policy of attraction.[61] Then, operation after operation, Magsaysay was able to pacify the area, and, during Operation Milagrosa, top Politburo officers were captured: Jose Lava, Federico Maclang, Ramon Espiritu, Honofre Manguila, Magno Bueno, Federico Bautista, Angel Baking, and Sammy Rodriguez.[62]

Hand in hand with the cleaning of the AFP, Magsaysay launched a full-scale psychological warfare on the grass roots level aimed at winning the hearts and mind of the masses whom the Huks depended for aid and support. EDCOR gave lands to surrendered or captured Huks who had no prior conviction or indictment. It also trained former dissidents to enable them to pursue some gainful occupation. The surrender of Taruc which triggered mass-surrenders gave Magsaysay a very good atmosphere in implementing his designs and programs. The expulsion of Taruc caused discontent and disillusionment among the members of the fold.[63]

When Jesus Lava fell to the government hands, the Huk movement was already on the decline. Their strength dropped from its peak of 12,800 armed men in 1950 to about 75 and few hundred cadres in 1965. Their area of influence was its origin—Eastern Pampanga with Angeles City as its new base. The group was renamed Hukbong Magpapalaya ng Bayan (HMB). Pedro Taruc, a distant cousin of Luis was named Secretary-General of the CPP and Supremo. However, it seemed that Taruc was there only for the family name because in truth, it was Faustino del Mundo alias Commander Sumulong who was really running the HMB. In 1965, HMB split into two feuding camps—the main force was won by Sumulong and a rebel faction was led by Cesarea Manarang alias Alibasbas. This resulted in the assasination of Alibasbas, the death of other leaders opposing Sumulong, and the surrender of many HMB members to the government. Freddie (Efren Lopez), another leader in disagreement with Sumulong, sought the assistance of a friend, Bernabe Buscayno alias Dante who was the dominant figure in Tarlac. He was a young lieutenant under Sumulong. When Freddie was trying to evade the

[61] *Ibid.*, p. 67.
[62] QUIRINO, MAGSAYSAY OF THE PHILIPPINES 67 (1964).
[63] A. SAULO, *op. cit., supra,* note 43 at 59.

liquidation squad of Sumulong led by Fonting, he fell into a government trap and died in battle. This was considered the greatest AFP victory in two decades.[64]

As a result of Freddie's death, Dante pulled out his men from Sumulong's organization. All efforts to win him back failed. Dante was determined and he formed his group and name it—The New People's Army.

The New People's Army continued to wage its war against the government. It received the support of the people in Central Luzon and the Cagayan Valley.

When martial law was declared in 1972, the NPA was acknowledged as the primary problem of the government. The latter intensified its military operation in the NPA strongholds. Faced with overwhelming military personnel and war materials, the NPA declined.

In 1976, Victor Corpuz, an NPA ranking official was arrested. This was followed by the arrest of Commander Dante. In 1977, Jose Maria Sison, chairman of the Community Party, was also arrested. The NPA suffered a temporary setback in leadership. But soon other leaders surfaced.

At present, the NPA has again regained strength. The new stronghold now is in Samar, Leyte and the Bicol Region, aside from its traditional bases in Central Luzon and the Cagayan Valley.

Through this history of worker and farmer struggle it can be shown that the Filipino people have always fought for freedom and true independence. It has constantly fought against dictatorship, feudalism and American imperialism.

The result of this struggle is the oppressive counter-measures of the government. Counter measures sometimes result in the arbitrary arrest, detention, torture and even death of the so-called "political detainees."

C. The Muslim Conflict

The commission of "political crimes" was not the exclusive preserve of the Christian North. Indeed, fiercer battles have been fought by the Muslims in the South against the government.

Under the American regime, the Lake Lanao Maranaws launched the Tungul attack, (1902); Maciu Resistance (1902); Taraca Defiance, (1903-1909); Bayang dispute (1916); Binaning Defiance

[64] *Ibid.*, p. 61.

(1921); The Tugaya and Ganassi Troubles (1923) and Pandak movement (1924) to defy the imposition of American control and laws on the Muslims. For same reason, the Tausogs of Sulu engaged the Americans in the Libut Incident (1901); Tagbili Encounter (1903); Hassan Uprising (1903-1904); Usap Rebellion (1904); Pala Uprising (1904-1905); Bud Dajo (1906) and Bud Bagsak (1913) battles; Sanda Uprising (1919) and Untong Revolt in 1920. During the same period the Maguindanaos of Cotabato defied the Americans in the Ali Rebellion (1903-1904). Alamada Resistance (1913); Ambang Threat (1917) and Santiago Resistance (1927).[65]

The bloodiest conflicts[66] however were the kutah fights during the Commonwealth period between 1936 and 1941 during which the Lanao Muslims desperately and unsuccessfully resisted the government. Several important forts were destroyed and captured by government forces especially those in Mintring, Saguiaran, Taraca, Binidayan, Tagbilao, Maciu, Bundang, Macaguiling, Dilausan, Pinduluhan, Tugaya, Gas, Bacolod and Lalabuan.[67]

At the time of independence in 1946 the Muslim population became part of the new Philippine state against the wishes of many Muslims.[68] This resentment burst into overt resistance notably in the Kamlon insurrection in Sulu in the 1950's. What started as a sense of alienation among a group of Muslims was soon dramatized by a secessionist movement.[69] Three events in particular helped to precipitate this crisis (1) the 1968 Corregidor Incident, in which AFP personnel executed some 28 Muslims recruits under circumstances never fully made public convinced many Muslims that the government had a callous disregard for Muslim lives; (2) the 1971 election campaign and its results which in a number of places in Cotabato and northern Lanao formalized a shift from Muslim to Christian Filipino political power. In this struggle for local political power in Christian "Ilagas", alleged to have collaborated with Philippine Army, and the Muslim "Barracudas" in Lanao were locked in a rather fierce fratricidal war; (3) the 1972 imposition of Martial Law and disarming of the population which, from the point of view of the Muslim, further centralized power in the hands of Christians and threatened to leave them (Muslims) without any means of defending themselves.[70]

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[65] Names and dates of revolts and movements were taken from Appendix A of Tan's The Filipino Muslim Armed Struggle, 1900-1972. Manila: Filipinas Foundation. Inc., 1977.

[66] Excluding the Muslim struggle in the contemporaneous 70's.

[67] Tan, *op. cit., supra*, note 65 at 43.

[68] Magdalena, Federico, *Muslim-Chhristian Violence in the Philippines*, ASIAN PROFILE 438 (1977).

[69] *Ibid.*

[70] Gowing, Peter, "Muslim Preserve their Islamic Community," Philippine Panorama, Vol. VIII, No. 34, September 2, 1979.

The Muslim independence movement in the form of secession has historical roots in the 1920's. In 1924, Datu Pandak of Lanao initiated a small movement for independence. But it did not prosper because he was killed in one of the encounters with the Americans. In 1927, when the Bacon Bill was introduced, Muslim leaders in Mindanao and Sulu favored it because it would mean independence from the Christian Filipino government. The petition of Lanao datus in 1935 involved opposition to Philippine independence because independence merely involved freedom of the Filipinos from American control. It did not involve giving similar independence to the Muslims.[71]

On May 1, 1968, former governor Datu Udtong Matalam of Cotabato issued a Manifesto as the "principal signatory" manifesting to the whole world the desire of the Muslim inhabitants of Mindanao, Sulu and Palawan to secede from the Republic of the Philippines.[72] This manifesto declared the formation of Mindanao Independence Movement (MIM).[73] It did not have a long history however and was never more than a local movement in Cotabato. In August 971, the "Blackshirts" MIM's fighting arm prominently figured in a bloody action against the PC in Buldon, North Cotabato.[74]

In 1969, a small groups of Muslim intellectuals and students in Manila angered by the "Jabidah Massacre" began meeting and preparing for anti-government activities, including guerilla warfare, with the secession of Mindanao as the goal. The seeds for what blossomed into the Moro National Liberal Front (MNLF) were sown by this group and cultivated by a prominent Moro Congressman.[75] Later, events made it clear that the MNLF under the leadership of Nur Misuari exercised effective control in the prosecution of the rebellion since 1973 up to the present.

In July 1977, report of emergence of Jeddah-based Bangsa Moro Liberation Organization (BMLO), led by Macapantun Abbas, Jr., and backed by Raschid Lucman and Hashim Salamat was made.[76]

Since Martial Law was declared the armed conflict between the Muslims and the military escalated. Many Muslims died in these encounters. Innocent Muslim civilians were not spared. The military

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[71] Tan, *op. cit., supra,* note 65 at 120.
[72] A. GLANG, MUSLIM SECESSION OR INTEGRATION 75 (1969).
[73] P. GLOWING, MUSLIM FILIPINOS—HERITAGE AND HORIZON 192 (1979).
[74] Noble, Lela, Chronology of Muslim Rebellion in the Southern Philippines, Research Bulletin, Vol. IV, No. 12, Marawi City: Dansalan Research Center, Dansalan College, p. 2.
[75] GOWING, *loc. cit.,*
[76] Noble, *op. cit., supra,* note 74 at 5.

arrested and detained thousands of Muslims in their detention camps spread all over Mindanao.

At present there are many political detainees in the south.

PART II — THE RIGHTS OF POLITICAL DETAINEES

A. *The Rights of Political Detainees in General*

Introduction

We would like to define a political detainee as a person who, on account of his beliefs and acts in relation to the government of his State, is held by the forces of such government.

Political detainees are products of the political milieu of the times. During martial law, it is almost consequential to say that political detainees are persons who oppose the imposition of martial rule.

In the history of the Philippines, from the time of the First Republic in 1898 thru the Second Republic of 1946, and up to the present, never have the number of political detainees astronomically risen and the concept of political crimes broadened than during the period of martial law (i.e., from September 21, 1972 up to the present).

On December 11, 1974, in a nation-wide radio-TV statement, President Marcos said:

> In our jails today, there are 5,234 people under detention in direct consequence of the martial law proclamation. 4,069 of these are ordinary criminal offenders. 1,165 are *political detainees*.[77]

On June 3, 1977, speaking to the Foreign Correspondents' Club of the Philippines, President Marcos denied that there were any political detainees in this country.[78]

Does this mean that all the 1,165 political detainees admitted to being held in December, 1974, have been freed?

This assertion is contradicted by the International Commission of Jurists report of August 1977 that since the inception of Martial Law, the government has arrested some 60,000 people. In May 1975, this number amounted to 50,551 persons, of whom 45,958 had at that time been released from custody, leaving 4,553 still under detention.

In February 1977, precise figures were not available, but the government stated that of the 60,000 persons arrested since the in-

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[77] Historical Papers and Documents, Official Gazette, Vol. 70, No. 51, December 23, 1974, p. 10606.

[78] Bulletin Today, June 4, 1977, pp. 1, 5.

ception of Martial Law, approximately 4,000 were still under detention. Of these, 1,400 were "subversive detainees" and 2,500 were persons who allegedly had participated in the commission of common crimes. None of these had yet been brought to trial.

Of the 1,400 "subversive detainees," it can be reliably estimated that approximately 250 to 300 had been held for long periods of time, many as long as five years, or since the declaration of martial law in September 1972. The remaining 1,100 or so are a floating population which changes from time to time depending upon the incidence of arrest and releases.[79]

In February 1977, missions were sent to the Philippines by the International Commission of Jurists. They attended the *habeas corpus* hearings of ten detainees before the Supreme Court. Each detainee had been held since the inception of martial law and had not at the time of the hearing been formally charged. No explanation for such an unreasonable period of detention was given by the government. The ICJ representatives also visited several detention centers, namely Camp Bicutan, Camp Crame, the Youth Rehabilitation Center, and the Maximum Security Unit at Fort Bonifacio, as well as detention centers in Cebu, Davao City and Tagum. They interviewed approximately 120 detainees as well as military officers responsible for their safety and well-being.

The ICJ Missions conclude that the government, (based on the interviews conducted), especially in cases involving alleged membership in or association with the Communist Party of the Philippines and/or the Moro National Liberation Front, acts in an arbitrary and unreasonable way in that —

1. it fails to obtain the proper arrest warrants and arbitrarily picks up suspects, thereby denying them their legal safeguards;
2. detains these detainees without charges in private houses and places known as "safehouses";
3. it has condoned the infliction of torture by security agents of the military during some times very lengthy interrogation processes, using such methods as water treatment, electric shock, isolation for long periods of time chained to beds, etc., and physical beatings.[80]

We will never know the true number of political detainees. There are many reasons for this. Firstly, the military does allow

[79] The Decline of Democracy in the Philippines, International Commission of Jurists, August, 1977, Geneva, Switzerland, p. 32-33.
[80] *Ibid.*, pp. 33-34.

the exact figure to be known; secondly, even if it does, it will be impossible to be able to physically count and visit the detention centers all over the country; and even if we were able to visit and count all of them, the count would not be accurate because deductions on account of disappearances and deaths, and additions by reason of new arrests would result in fluctuations in the total figure.

It is therefore sufficient to say that there are *many* political detainees.

Regardless of how "political detainees" are defined, people under detention for political reasons as well as for political crimes, like all other detainees, have rights—even under martial law.

President Marcos himself admitted this when he confessed to the World Law Conference on August 22, 977, that "there have been, to our lasting regret, a number of violations of the rights of detainees.[81]

And he reaffirmed this when he issued LOI 621, on October 27, 1977, which, among other things requires:

1. Arrests shall be effected with uncompromising firmness and impartiality but with due regard to the rights and dignity of the persons being arrested....
2. The policy of government against torture or any other form of cruel, inhuman or degrading treatment of detainees shall remain inviolate.
3. Scrupulous adherence to, and respect for, the constitutional rights of detainees, including their right to the speedy disposition of their cases, shall at all times be observed.

People who have plotted to overthrow a government demand rights of that government simply because, no matter what they may have done, or planned to do, they remain people: human beings with inherent dignity and inalienable rights, entitled to be treated everywhere as persons, even in prison.

That is why, under our law, convicts serving sentence must be "treated with humanity;" kept in hygienic and sanitary places of confinement and their health safeguarded; supplied with "proper food and clothing;" allowed "visits of parents and friends;" and assigned to such work only as is "suitable to their age, sex, and physical conditions."

[81] Bulletin Today, August 26, 1977, p. 9.

Bases of Detainees' Rights

The legal rights of political detainees are based ultimately on the 1935 and 1973 Constitutions. Both these constitutions guarantee to every man within Philippine territory "the due process of law and the equal protection of the laws."

These basic guarantees simply mean that, under any circumstance, on every occasion, every action that government takes must show "responsiveness to the supremacy of reason and obedience to the dictates of justice" and must respect "the sporting idea of fair play."

So, not only as a matter of morals, but as a matter of constitutional law "the enforcer and administrator of martial law" must act according to right reason and the elementary rules of fair play.

The constitutional rights of detainees include, among others, the right to remain silent and the prohibition against torture or any other form of compulsory self-incrimination before and during trial; the ban against cruel and unusual punishment; and the guarantee of a speedy, public and impartial trial, with the right to counsel during both the investigation and the trial.

But are not these rights to be respected only during normal times? Can not the government disregard or suspend the constitution during martial law? In theory, at least martial law does not suspend the constitution.

Martial law is not a new set of laws that replace previously existing laws, but a new way of ruling, that is, of enforcing existing laws through the military in time of grave emergency. In no way does martial law displace or diminish the sovereignty of the people. Sovereignty continues to reside in the people even under martial law—it is not transferred to the President or to the military.

Another basis for detainees' rights is international law. The guiding principle in international law is found in Article 4 of the International Covenant on Civil and Political Rights, which entered into force on March 23, 1976, and which reads as follows:

> In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation.[82]

Although the Philippines has not ratified this covenant, it is submitted that the principle contained in this article of universal valid-

[82] The Decline of Democracy in the Philippines, *op. cit.*, *supra*, note 79 at 9.

ity serves to spell out more fully Article 29(2) of the Universal Declaration of Human Rights which states:

> In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.[83]

The African Conference on the Rule of Law held in Lagos, Nigeria, in 1961, under the auspices of the International Commission of Jurists went further in formulating the minimum safeguards which every state should apply in those cases where a Declaration of Martial Law or other state of emergency is justified.

> 5. The proclamation of a state of emergency is a matter of most serious concern as it directly affects and may infringe upon human rights. It is the sense of the Conference that the dangers of survival of the nation such as arise from a sudden military challenge may call for urgent and drastic measures by the Executive which by the nature of things are susceptible only of an *a posteriori* legislative ratification and judicial review. In any other case, however, it is the Parliament duly convened for the purpose that would declare whether or not the state of emergency exists. Wherever it is impossible or inexpedient to summon Parliament for this purpose, for example during Parliamentary recess, the Executive should be competent to declare a state of emergency, but in such a case, Parliament should meet as soon as possible thereafter.
>
> 6. This Conference is of the opinion that real danger exists when, to quote the words of the General Rapporteur, "The citizenry, whether by legislative or executive action, or abuse of the judicial process, are made to live as if in a perpetual state of emergency.
>
> 7. The Conference feels that in all cases of the exercise of emergency powers any person who is aggrieved by the violation of his right should have access to the courts for determination whether the power has been lawfully exercised.[84]

At its Commission Meeting in Vienna in April 1977, the International Commission of Jurists spelled out in more detail the necessary safeguards under Martial Law:

> Where a state of siege or martial law is declared to deal with an exceptional situation the following basic safeguards should be strictly observed:
>
> 1. Arrests and detentions, particularly administrative detentions, must be subject to judicial control, and remedies such as *habeas corpus* or *amparo* must always be available to test the legality of any arrest or detention. The right of every detainee to legal assistance by a lawyer of his choice must at all times be recognized. The holding of suspects in solitary confinement should be strictly limited in accordance with law.

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[83] *Ibid.*, p. 10.
[84] *Ibid.*, p. 10.

2. Effective steps must be taken to prevent torture and ill-treatment of detainees. When it occurs, those responsible must be brought to justice. All detention centers, prisons and camps for internment of detainees must be subject to judicial control. Delegates of accredited international organizations should have permission to visit them.

3. Illegal or unofficial forms of repression practiced by paramilitary or parapolice groups must be ended and their members brought to justice.

4. The jurisdiction of military tribunals should be strictly limited to offenses by the armed forces. Civilians should not be tried in military tribunals.

5. The independence of the judiciary and of the legal profession should be fully respected. The right and duty of lawyers to act in the defense of political prisoners, as of other prisoners, and their immunity by action taken within the law in defense of their clients should be fully recognized and respected.[85]

On August 12, 1949, the Philippines signed the four Geneva Conventions for the Protection of War Victims:

— Convention I, for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field;

— Convention II, for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea;

— Convention III, on the Treatment of Prisoners of War;

— Convention IV, on the Protection of Civilian Persons in Time of War.[86]

The Senate ratified the conventions on May 16, 1950, and they entered into force, with respect to the Philippines, on September 7, 1957.

Although all four conventions deal primarily with wars of an international character, the matter of how to treat prisoners (such as suspected members of the Moro National Liberation Front, MNLF) and New People's Army (NPA) in time of internal war was deemed so important that all four conventions contain the following identical article—the only substantive article identical in all four conventions—to govern such prisoners:

Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those

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[85] *Ibid.*, p. 11.

[86] Philippine Treaty Series, Vol. II, pp. 215, 241, 263, 33.

placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

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

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatments;

(d) the passing of sentences and carrying out of execution without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

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

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavor to bring to force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Under the 1973 Constitution, treaties are part of the law of the land, and are to be interpreted and applied with utmost good faith.

The martial law administration is, therefore, bound to observe the standards set out, as a minimum, in the Geneva Conventions in dealing with political prisoners, namely: treat them humanely, eschew all torture, all cruel, degrading or humiliating treatment, and try them only by regularly constituted courts affording all judicial guarantees recognized as indispensable by civilized people.

Even if the Philippines had not signed the Geneva Conventions, the martial law regime would still be bound by the standards that the conventions set.

For these conventions constitute "generally accepted principles of international law" and the martial law constitution had adopted such principles as "part of the law of the land."

In addition to the Geneva Conventions, the Universal Declaration of Human Rights, adopted unanimously by the General Assembly of the United Nations on December 10, 1948 and cited and applied by our Supreme Court, the standard Minimum Rules for the Treatment of Prisoners, approved by the First United Nations Congress on the Prosecution of Crime and the Treatment of Offenders

on August 30, 1955, and endorsed by the United Nations Economic and Social Council on July 31, 1957, and the Declaration for the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, adopted unanimously by the United Nations General Assembly on December 9, 1975, all bind the martial law regime.

First, like the Geneva Conventions, these documents set forth generally accepted principles of international law on basic freedoms that cannot be denied political detainees, and so are also part of the law of the land.

Besides, the Philippines is an original signatory to the Charter of the United Nations. The preamble to the Charter commits the signatories "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person." Article 2 of the Charter proclaims that one of the purposes of the United Nations is "to achieve international cooperation... in promoting and encouraging respect for human rights and for fundamental freedoms for all...." Article 55 binds the member states to "promote universal respect for, and observance of, human rights and fundamental freedoms." And by Article 56, "all members pledge themselves to take joint and separate action... for the achievement of the purposes set forth in Article 55." Since the Universal Declaration of Human Rights, the Standard Minimum Rules for the Treatment of Prisoners, and the Declaration Against Torture all implement the pledge of member states of the United Nations to respect and observe human rights and fundamental freedoms, the Philippines, as a member state, is bound by these declarations and standards.

B. *Rights Upon Arrest, Search and Seizures*

1. Introduction

The imperative necessity to inquire into the legal rights of a political detainee under the constitutional injunction against unreasonable search and seizures cannot be over-emphasized. It is in this light that this paper undertakes to discuss the Philippine law on search and seizure with emphasis on remedies to unlawful search and seizure.

2. The Principal Laws

The principal laws governing search and seizure and arrests of political detainees under martial law are the 1973 Constitution, Article IV, Sections 1, 3, 19 and 20; G.O. 60 dated June 24, 1977

and Letter of Instruction No. 621, dated October 27, 1977.[87] Incidentally, President Ferdinand E. Marcos in his speech at the AFP Loyalty Day at Camp Crame, September 10, 1979, ordered among others, that (1) all military tribunals to be phased out as soon as possible, (2) no arrest, search and seizure orders will be issued without the approval of the President unless the accused is caught in *flagrante delicto,* (3) the release of all detention prisoners against whom no charges have been filed.[88] To this extent the aforesaid orders and instructions are deemed modified.[89]

3. Arrest

Definition. — Arrest is the taking of a person into custody in order that he may be forthcoming to answer for the commission of an offense.[90] It is effected by either actual restraint of the person to be arrested or by his submission to the custody of the person making the arrest.[91] Thus, it was held that a person is under arrest where he is taken to a police station kept in the constant custody of the law enforcement officers, and subjected to continuous interrogation, even though he agreed to go to the station with the officers and was told while there that he was free to leave at any time.[92]

When May an arrest warrant/ASSO Issue.—The 1973 Constitution[93] explicitly provides "no warrant of arrest shall issue except upon probable cause to be determined by the judge or such other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and the witnesses he may produce."

It is required that before a warrant of arrest can be issued by the judge or other responsible officer[94] authorized by law he must be satisfied that an offense has in fact been committed and there is reasonable ground to believe that the accused committed it.[95]

An offense is deemed not committed in law where there is instigation. Instigation occurs when a criminal act is performed but the criminal design originates with the officials of the government, and they implant in the mind of an innocent person, the dis-

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87 Legal Rights of Political Detainees Under Martial Law, Civil Liberties Union of the Philippines, Free Legal Assistance Group, Makati: CLUP, 1977, p. 13.

88 Daily Express, September 11, 1979, p. 6.

89 It is unlikely that limitations imposed by G.O. 59 of the crimes upon which the Minister of Defense may issue an ASSO will apply to the President.

90 Sec. 1, Rule 113, REV. RULE OF COURT.

91 Sec. 2, *Ibid.*

92 Seal v. US CCA., 325 F. 2nd. 1005 (1963).

93 Art. IV, sec. 3.

94 Criterion of responsible officer discussed, *infra.*

95 Sec. 6, Rule 112, RULES OF COURT.

position to commit the alleged offense and induce its commission in order to prosecute.[96]

A warrant of arrest/ASSO issues only for a person to answer a commission of a crime.[97] Thus, persons cannot be arrested as a precautionary measure on claims that such arrest is necessary to prevent from involving themselves in actions against the government or to protect them from harm by others who would blame the government for it.[98] Martial law cannot furnish the justification. For when martial law is declared no new powers are given to the executive. No extension of arbitrary authority is recognized. No civil rights of the individuals are suspended. The relation of the citizens to their State is unchanged.[99]

Preventive arrest provides a dangerous potential for totalitarian control for it can be used to silence dissent and to isolate political opposition.

It is held that when a municipal judge investigates a complaint in order to determine whether or not to issue a warrant of arrest it is not required that all reasonable doubt of the accused's guilt must be removed, but the evidence be sufficient to establish probable cause that the accused committed the offense charged.[100] In the determination of probable cause the municipal judge issuing a warrant of arrest must personally examine under oath the witnesses by searching questions and answers which are to be reduced in writing.[101] It will be considered non-substantial compliance to the requirement for the judge to rely upon the preliminary investigation by the fiscal.[102]

Contents of warrant of arrest/ASSO.—An ASSO is an order composed of two paragraphs, addressed to a military officer or unit, directing the latter, in the first paragraph, to take into custody a named person to answer for a specified offense; and, into the second paragraph, to search the premises described in the ASSO for things designated with particularity, and to seize them if found. The ASSO must be signed, dated and serially numbered.

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[97] Sec. 3, art. IV, NEW CONST.

[96] Sorrels v. US, 287 U.S. 435 (1973); United States v. Russel, 411 U.S. 423 (1973); Sherman v. United States, 356 U.S. 369 (1958); U.S. v. Phelps, 16 Phils. 440 (1910); People v. Galicia, 40 O.G. 4476 (1941).

[98] Civil Liberties Union of the Philippines, Free Legal Assistance Group, *op. cit., supra,* note 87.

[99] MARTIN, PHILIPPINE POLITICAL LAW 195 (1967), citing Willoughby, 2d., Sec. 1046, pp. 1591-1592.

[100] Algas v. Garrido, 51 SCRA 62 (1974); De Mulata v. Irizari, 61 SCRA 210 (1974).

[101] Doce v. Branch II, CFI, Quezon, 22 SCRA 1028 (1968); Luna v. Plaza, 26 SCRA 310 (1968).

[102] Minutes of the Committee on Civil and Political Rights of the 1971 Constitutional Convention (January 25, 1972), p. 3.

A warant of arrest is an order directed to a peace officer to take a named person in custody to answer for a specified offense and to produce him before the court that issued the warrant.[103]

Authorities who may issue warrant of arrest/ASSO.—Presently, an ASSO issues only upon approval of the president.[104]

Warrant of arrests can be issued only by civil and military courts, that it: Municipal Courts, City Courts, Courts of First Instance, Provost Court and Military Commissions (LOI 621, sec. 2b). The Court of Appeals and Supreme Court have authority to issue warrants, but appellate courts rarely, if ever, exercise this power. Some administrative officials may also make arrests but such powers do not normally concern political.[105] The named authorities are the only authorities who may also issue search warrant.

It has been held that a fiscal has no authority to issue a warrant.[106]

Service of warrant of arrest/ASSO.—Warrants of arrests/ASSO may be served by a member of the Constabulary or of the armed forces,[107] a mayor,[108] officers and members of Integrated National Police,[109] provincial sheriffs in their respective provinces, Director and officers and members of the NBI.[110]

Method of arrest by virtue of warrant of arrest/ASSO.—When making an arrest by virtue of a warrant of arrest/ASSO the officer shall inform the person to be arrested of the cause of the arrest and of the fact that a warrant of arrest/ASSO has been issued for his arrest, except when he flees or forcibly resists, before the officer has opportunity so to inform him, or when the giving of such information will imperil the arrest. The officer need not have the warrant/ASSO in his possession at the time of the arrest, if the person so requires, the warrant/ASSO shall be shown to him as soon as practicable.[111]

In affecting arrest no unnecessary or unreasonable force shall be used.[112]

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[103] Civil Liberties Union of the Philippines, Free Legal Assistance Group, *op. cit., supra,* note 87 at 19.
[104] See note 88.
[105] Civil Liberties Union of the Philippines, Free Legal Assistance Group, *op. cit., supra,* note 87 at 18.
[106] See Lim v. Ponce de Leon, 66 SCRA 299 (1975).
[107] Cayaga v. Tangonan, 66 SCRA 216 (1975).
[108] US v. Vicentillo, 19 Phils. 118 (1911).
[109] See Pres. Decree No. 765 and Sec. 594, 1978 REV. ADM. CODE.
[110] Sec. 336, 1978 REV. ADM. CODE.
[111] Sec. Sec. 8, Rule 113, RULES OF COURT.
[112] Sec Sec. 2, Rule 113, RULES OF COURT; People v. Oanis, 74 Phils. 257 (1943).

4. Warrantless Arrest

As a general rule a person cannot be arrested without a warrant of arrest/ASSO pursuant to Section 3, Article IV of the New Constitution. An exception is recognized and that a peace officer or private person may without warrant arrest a person when:

a. the person to be arrested has committed, is actualy committing, or is about to commit an offense in his presence.
b. an offense has in fact been committed; and he has reasonable ground to believe that the person to be arrested has committed it;
c. the person to be arrested is a prisoner who has escape from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escape while being transferred from one confinement to another.[113]

An offense is committed in the presence or within the view of an officer, within the meaning of the rule authorizing an arrest without a warrant when the officer sees the offense although at a distance or hears the disturbances created thereby and proceeds at once to the scene thereof; or the offense is continuing or has not been consumated at the time of the arrest is made.[114]

However, the officer must not be a trespasser at the time he sees or otherwise senses the conduct constituting the crime. If he is not a trespasser he can act on what he observes.[115]

It is held that a peace officer has no power to arrest without warrant except in those cases expressly authorized by law.[116] Persons arested without warrant have a right to prompt judicial determination of probable cause of the arrest.

C. *Search Incident to Arrest*

Search as incident of a lawful arrest does not require search warrant.[117] But court must be wary in allowing a broad interpretation of the search incident exception lest the exception swallow the rule.[118]

It has long been settled that if a person is arrested in one place, the fact of arrest, even though the arrest is valid, confers no license

[113] Sec. 6, Rule 113, RULES OF COURT.
[114] US v. Samonte, 16 Phils. 516 (1910).
[115] E.g., People v. Wright, 41 Ill. 2d 170, 242 N.E. 2d. 180 (1968).
[116] Sayo v. Chief of Police, Manila, 80 Phils. 859 (1948).
[117] Roldan v. Arca, 65 SCRA 336 (1975).
[118] US v. Rabinowitz, 339 U.S. 56 (1950), 71-72 Frankfurter, J. (dissenting).

on officers to search another physically, remote place.[119] Search and seizure incident to custodial arrest must be limited to the immediate area within the arrestee's reach and control.[120]

A search incident to arrest to be valid must meet the three component elements of search-incident exception. First, geographical scope, second, intensity and third, contemporaneousness.[121] Geographical scope refers to the permissible area surrounding the arrestee in which a police officer may search and seize evidence. If the arrest is on the street, no premises may be searched without a warrant.[122] Intensity refers to the extent to which an officer is allowed to search and seize evidence located within the permissible geographical scope and for what purposes.[123] Search should be limited merely to a pat-down search of the defendant for the purpose of discovering hidden weapons and destructible evidence.[124] Contemporaneousness refers to the time frame in which search must be effected in order it might be classified as incident to arrest.[125] Any lapse of time after an arrest would invalidate a subsequent warrantless seizure.[126]

If was likewise held that search incident to arrest is unlawful if the claimed arrest is only a subterfuge to what otherwise would be an unconstitutional search and seizure.[127]

1. Presentment of Arrestee to proper Authorities

Persons arrested for political crimes must be brought to the inquest authority without unnecessary delay, and in no case beyond the following periods.

a. Eighteen (18) hours, if the arrest has been made for light offenses, punishable by imprisonment from one to thirty days and/or a fine of less than ₱200.00.
b. Forty-eight (48) hours, for less grave offenses punishable by imprisonment for one month and one day to six months and/or a fine of not more than ₱6,000.00.
c. Seventy-two (2) hours, for grave offenses punishable by imprisonment for more than six months and/or a fine of more than ₱6,000.00.[128]

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[119] Agnello v. United States, 269 U.S. 20 (1925).
[120] Chimel v. California, 396 U.S. 869 (1969).
[121] Butler, *Broadening the scope of a search incident to custodial arrest: the Burger court's retreat from Chimel*, 24 EMORY L.J. 151 (1975).
[122] James v. Louisiana, 382 U.S. 36 (1965).
[123] See Butler, *op. cit., supra*, note 121.
[124] Terry v. Ohio, 392 U.S. 1 (1968).
[125] Butler, *op. cit., supra*, note 121.
[126] Chimel v. California, *op. cit., supra*, note 120, see however, US v. Robinson, 414 U.S. 218 (1973); Gustafson v. Florida, 414 U.S. 260 (1973); U.S. v. Edwards, 415 U.S. 800 (1974).
[127] Jones v. United States, 357 U.S. 493 (1958).
[128] LOI 621, sections 4 and 7 cited in CLUP Free Legal Assistance Group, *op. cit., supra*, note 87.

LOI section 4129 designates the following as inquest authorities:

a. The Judge Advocate General as Chief Inquest Authority.
b. For arrests by the Metrocom and Metropolitan Police Command, the Staff Judge Advocate, PC Metropolitan Command.
c. For all other arrests, the Constabulary Judge Advocate.
d. Zone or Regional Staff Judge Advocates, for arrests made in provinces and cities where a PC Zone or Regional Headquarters is located.
e. In other provinces or cities, military lawyers designated by the Judge Advocate General, and, in their absence, the city and municipal judges for arrests made within their territorial jurisdiction.

Detention beyond the period prescribed under sections 4 and 7 of LOI 621 shall subject the arresting officers to criminal liability.[130]

D. *Search and Seizure*

1. Definition

Any physical entry into protected premises (that is, areas where a person may, reasonably expect privacy) by law enforcement officers or any physical penetration of such premises by a surveillance device is a search [C. Silverman v. United States, 365 US 501 (1961)]; and even electronic surveillance without physical penetration into protected premises is also deemed to be a search [Katz v. United States, 389 US 347 (1967)]. The hallmark of a search is always some degree of intrusion into privacy [United States v. Dionisio, 410 US 1, 13-15 (1973)]. Protected places include a person's home, apartment, hotel room, his friend's hotel room [Jones v. United States, 362 US 257, 265-267 (1961)], place of business, even though shared with co-workers [Mancusi v. Deforte, 392 US 364 (1968)], his automobile, and even a taxi cab or telephone booth he temporarily occupies [Lanza v. New York, 370 US 139, (1962)]; Katz v. United States, *supra*.[131]

2. Requisites of a valid search and seizure

A search and seizure to be reasonable must be effected by means of a search warrant and for a search warrant to be valid (a) it must be issued upon probable cause, (b) probable cause must be determined by himself and not by the applicant or any other person, (c) in the determination of probable cause, the judge must examine under oath or affirmation, the complainant and such wit-

129 *Ibid.*
130 Art. 125, REV. PENAL CODE.
131 CLUP Free Legal Assistance Group, *op. cit., supra*, note 87 at 22.

nesses the latter may produce; and (d) warrant issued must particularly describe the place to be searched and persons or things to be seized.[132]

Probable cause are meant such facts and circumstances antecedent to the issuance of the warrant, that are in themselves sufficient to induce a cautious man to rely upon them and act in pursuance thereof.[133] The true test of sufficiency of an affidavit to warrant issuance of a search warrant is whether it has been drawn in such manner that perjury could be charged thereon and affiant be held liable for damages caused.[134]

Under the new Constitution probable cause shall be determined by the judge or other responsible authorized by law. Before an officer other than a judge can determine probable cause for purposes of issuing warrant two requisites are required by the Constitution. First, he must be authorized by law and second, he must be a responsible officer. Responsible officer is one who is competent and neutral that is one whose role is not prosecutorial.[135] Therefore, it is required that probable cause be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the competitive enterprise of ferreting out crime.[136]

A search warrant/ASSO must be limited to objects related to one specific offense only.[137] Very great particularity is required in those cases where the privacy of man's premises is allowed to be invaded by the minister of the law.[138] General warrants are outlawed because they place the sanctity of the domicile and the privacy of communication and correspondence at the mercy of the whims, caprice or passion of peace officers.[139]

2. Objects subject to search warrant/ASSO

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[132] Lim v. Ponce de Leon, *op. cit., supra,* note 106.

[133] People v. Sy Juco, 64 Phils. 667, 674 (1937).

[134] Rodriguez v. Villamil, 65 Phils. 230, 237 (1937).

[135] Opinion of Joaquin Bernas in Quisumbing and Bonifacio, Human Rights in the Philippines, UP Law Center, Diliman, Quezon City, Philippines (1977). It is surprising to note that although the Minister of Defense has been issuing ASSO since martial law imposition the Supreme Court in 1976 decision held "until now only the Judge can determine the existence of probable cause and can issue the warrant of arrest. No law or presidential decree has been enacted or promulgated vesting the same authority in a "particular responsible officer" (Collector of Customs v. Villaluz, 71 SCRA 356 (1976) at p. 380).

[136] Johnson v. US, 333 US 10 (1948) at 14; Giordenello v. US, 357 US (1958); Mancusi v. de Forte, 392 US 365 (1968); Coolidge v. New Hampshire, 403 US 443 (1971); Shadwick v. Tampa, 92 S. Ct. 2119 (1972).

[137] Secretary of Justice v. Marcos, 76 SCRA 301 (1977), see section 3, Rule 126, RULES OF COURT.

[138] People v. Rubio, 57 Phils. 384 (1934).

[139] Stonehill v. Diokno, 20 SCRA 883 (1967).

A search warrant/ASSO may be issued for the search and seizure of the following personal property:

a. Property subject of the offense;

b. Property stolen or embezzled and other proceeds or fruits of the offense; and

c. Property used or intended to be used as the means of committing an offense.[140]

It was held that the enumeration as provided by law, as to what may lawfully be seized under a search warrant is exclusive.[141]

E. *Warrantless Search and Seizures*

There are instances when search and seizure may be made without warrant. These are knowing and intelligent "consent" search,[142] search and seizure incident to arrest (supra) and search and seizure by custom officers.[143]

F. *Remedies to Unlawful Search and Seizures*

1. By the private party proper

There are several remedies of varying degrees of effectiveness to unreasonable search and seizures namely: (a) application of the exclusionary rule; (b) right to resist or self-defense; (c) civil action; (d) criminal action; and (e) administrative action.

a. *Exclusionary rule.* — The 1973 Constitution[144] expressly mandates that evidence obtained in violation of the right against unreasonable search and seizure shall be inadmissible for any purpose in any proceeding. Pursuant to this constitutional provision a motion to quash the search warrant/ASSO or motion to suppress as evidence the objects illegally taken may be filed against the unlawful search and seizures. The remedy for questioning the validity of a search warrant should be sought in the very court that issued it and not through replevin.[145] Likewise a return of the properties illegally seized may be demanded. However, the illegality of search

[140] Section 2, Rule 126, RULES OF COURT.

[141] Yee v. Almeda, 70 Phils. 141 (1940); Rodriguez v. Villamil, *op. cit., supra*, note 134.

[142] People v. Malasugui, 63 Phils. 221 (1936); Lopez v. Commissioner of Customs, 68 SCRA 320 (1975), *cf.* Vda. de Garcia v. Locsin, 65 Phils. 689 (1938).

[143] Sections 2208-2212 of Tariff and Customs Code; In Pacis v. Pamaran, 56 SCRA 16 (1974), the Supreme Court held that except in case of the search of a dwelling house, persons exercising police authority under the Customs law may effect search and seizure without a search warrant in the enforcement of customs laws. See also, Sec. 178 of National Internal Revenue Code.

[144] Sec. 4(2) in relation to Section 3, article IV, CONST.

[145] Pagkalinawan v. Gomez, 21 SCRA 1275 (1967).

and seizure does not call for the return of the things seized, the possession of which is which is prohibited by law.[146]

It is also that in unreasonable search made in violation of the prohibition against unreasonable search and seizure, it is not merely the material seized that cannot be admitted in evidence. The government may not use the information thus improperly gained as a means of finding proper evidence.[147] Thus, a confession may be excluded from evidence even though it otherwise meets the constitutional standards laid down in *Miranda v. Arizona*[148] if the confession itself can be viewed as fruit of the poisonous tree of an unreasonable search and seizure.[149]

b. *Right to resist or self-defense.* — An initial remedy to unlawful search seizure[150] is to resist it without being liable therefor.

Under article 429 of the New Civil Code the owner or lawful possessor of a thing may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property. If the law is so charitable as to grant the right to use force to protect one's property there's no plausible reason why in case of violation of personal privacy and liberty through unreasonable search and seizure the use of force should be denied. It must be pointed out that the prohibition against unreasonable search and seizure occupies a higher place in the hierarchy of civil liberties than the right to property. This right to use force acquires more urgency in Philippine jurisdiction in view of the fact that great bulk of the potential arrestees are living under grinding poverty,[151] and as such the right to bail[152] has become illusory. It is also of common knowledge that trial of cases in the Philippines takes too long although the constitution[153] guarantees speedy disposition of cases. Indeed in recognition of the plight of detainees

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[146] Castro v. Pabalan, 70 SCRA 478 (1976); Magancio v. Palacio, 80 Phils. 770 (1948); Yee Sue Kong v. Almeda, *op. cit., supra*, note 141; Uy Kheytin v. Villareal, 42 Phils. 886 (1920).

[147] Silverthorne Lumber Co., Inc., Inc. v. United States, 251 US 385 (1920). This is giving substance to the right against self-incrimination, sec. 20, art. IV, NEW CONST.

[148] 384 U.S. 436 (1966).

[149] J. George, CONSTITUTIONAL LIMITATIONS ON EVIDENCE IN CRIMINAL CASES; PRACTISING LAW INSTITUTE 103 (1973), citing Wong Sun v. United States 371 US 471 (1963); Fahy v. Connecticut, 375 US 85 (1963).

[150] The term search and seizure comprehends arrests, Vivo v. Montesa, 24 SCRA 155 (1968); Qua Chee Gan, et al v. Deportation Board, L-2028, September 30, 1963; Morano v. Vivo, 20 SCRA 162 (1967); Ang, et al v. Galang, L-21426, Oct. 22, 1975.

[151] UP School of Economics and Development Academy of the Philippines reported that families living below poverty level in 1975 were 69.9% and 84% respectively. (J. Encarnacion et al, Philippine Economic Problems in Perspective, 1976, Table 7, 4, p. 229 cited in Neo-Colonialism: Root of Our Discontent, CLUP, Philippines, 1977).

[152] Sec. 18, art. IV, CONST.

[153] Secs. 16 and 19, art. IV, CONST.

1971 Con-Con Delegate Eriberto B. Misa of Lone District of Surigao Sur introduced resolution No. 3111 which provides "no person shall be held in detention for a period longer than the minimum sentence that may have been imposed on him had he been found guilty and convicted."

Likewise unlawful search and seizure furnishes an occasion analogous to instigation which our criminal justice system condemns. As Chevigny[154] aptly puts it:

> "The intent of the citizen in refusing to submit or in struggling is not criminal, but rather an intent to protest an injustice and to reject an arbitrary action. The resistance is an act which but for the acts and encouragement of the police, would never have occurred. Analytically, this provocation has an effect similar to entrapment.[155] The police have a crime where none would otherwise have occurred, by a "temptation" which the citizen should not be expected to resist, and under the circumstance there is no real criminal intent."

To abolish the right to resist or interfere with illegal arrest[156] is to create a situation where the citizen could be trapped by the legal system. If he obeys a patently false or provocative arrest, he has submitted to oppression, and if he resists or interferes, he may be convicted for his resistance and interference.[157]

It has been held that an arrestee has a right to resist unlawful arrest to the extent of taking the life of the aggressor if it be necessary in order to regain his liberty.[158]

It is submitted that above rulings are applicable in this jurisdiction in view of justifying circumstances provision exempting criminal liability found in our Revised Penal Code to wit:

> Article 11. Justifying circumstances. — The following do not incur any criminal liability.
>
> (1) Anyone who acts in defense of his person or rights provided the following circumstances are present:
>
> First. Unlawful aggression.
>
> Second. Reasonable necessity of the means employed to prevent or repel it.
>
> Third. Lack of sufficient provocation on the part of the person defending himself.

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154 Chevigny, *The Right to Resist an Unlawful Arrest*, 78 YALE L.J. 1128 (1969) at 1146.

155 Instigation in this jurisdiction.

156 This also applies to illegal search.

157 *Obstruction of Justice-Illegal Arrest, Third Party's Right to Interfere with a Peace Officer Arrest*, 18 ST. LOUIS U.L.J. 283 (1973) at 290.

158 State v. Poinsett, 250 S.C. 293, 157 S.E. 2d 570 (1967); Gordy v. State, S.E. 2d 737 (1956).

In similar vein a third party may go to the defense[159] of a person unlawfully arrested when the officer is using unreasonable and unnecessary force and the need exists to interfere to prevent and protest against serious injury to the person being arrested.[160]

Exemption from criminal liability includes a case where one assaults or resists a police officer without knowing his official character and under circumstances which would justify the assault if the person assaulted were not a police officer[161] such as when the accused believes the arresting officers to be "tulisanes."[162]

c. *Criminal action.* — Depending upon the circumstances in which arrest is made an officer may be charged of unjust vexation[163] complex grave coercion, arbitrary detention[164] complex crime of arbitrary detention with slight physical injuries,[165] homicide[166] or other crimes under the penal statutes whenever applicable.

Except in those instances wherein a search may be made without a warrant, a public officer who effects a search without a warrant may be liable for violation of domicile,[167] and the private individual, for trespass to dwelling.[168] A public officer or employee who exceeds his authority or uses unnecessary severity in executing the warrant is liable under 129 of the Revised Penal Code.[169] If the required number of witnesses is not secured in conducting a search the public officer is liable under Article 130 of the Revised Penal Code.

However, as a practical matter prosecutions are rarely brought against offending police officers unless the incident results in death of a citizen. In part this is because the victims of an unlawful arrest, search and seizure are unwilling to bring a complaint because of the trouble it may cause them in the future; and in part because the district or prosecuting attorney is reluctant to prosecute mem-

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159 Art. 11, paragraph 3, REV. PENAL CODE.

160 City of St. Louis v. Treece, 502 S.W. 2d 432 (Mo. Ct. App., 1973).

161 US v. Alvear, 35 Phils. 626 at 629-30 (1916), citing US v. Ah Chong, 15 Phils. 488 (1910).

162 US v. Bautista, 31 Phils. 308 at 310 (1915). LOI 621, section 11(a) requires "arrest" shall be affected with uncompromising firmness and impartiality but with due regard to the rights and dignity of the persons being arrested. The arrested officer shall be of such rank/grade and so attired and be of such comportment as to generate respect for and confidence in authority as well as to insure a most judicious conduct of the arrest.

163 U.S. v. Fortaleza, 12 Phils. 472 (1909).

164 US v. Ancheta, 68 Phils. 45 (1939).

165 People v. Laure, 1 Philajur 483 (CA) (1976).

166 Art. 128, REV. PENAL CODE.

167 Art. 128, REV. PENAL CODE.

168 Art. 280, *id.*

169 Regidor v. Araullo, 5 Official Gazette 955 (1904).

bers of the police force on which he relies for the preparation of the criminal cases that he tries.[170]

d. *Civil action.* — Article 32 of the New Civil Code[171] recognizes the liability for damages including moral and exemplary damages any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or any manner impedes or impairs the rights of others to the privacy of communication and correspondence and to be secure in ones person, house, papers, and effects against unreasonable searches and seizures.

It is not necessary that the defendant under Article 32 should have acted with malice or bad faith. To make such a requisite, would defeat the main purpose of said article which is effective protection of individual rights. Public officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties. Precisely, the object of the article is to put an end to the official abuse by the plea of good faith.[172]

It is submitted however, that with respect to a private person who assists a known officer the question of whether he acted in good faith or bad faith is a material issue. A private person who responds to the call of one whom he knows to be an officer should be protected by the call from being sued for rendering requisite assistance even though the officer may not be acting legally and is therefore a trespasser[173] a citizen called by an officer known to him as such, is not required at his peril to ascertain whether the sheriff has a proper warrant, or whether the offense charged against the person to be arrested is a felony.[174]

The instances in which private citizen might be liable for his act, when summoned to assist the officer, would be where (1) he acts wantonly, maliciously or beyond what he is required to do, (2) if the party making the arrest is not a known officer, (3) if the unlawful arrest was instigated by the assisting citizen, (4) if the private citizen summoned by a peace officer to aid in making arrest has

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[170] J. GEORGE, *op. cit., supra,* note 149 at 94.

[171] Action based on this article may be filed before the Sandiganbayan or regular courts (PD 1601 penultimate paragraph of section 4).

[172] Memo of Dr. Jorge Bocobo, as Chairman of the Code Commission, dated July 22, 1950 submitted to Joint Committee of Codification of the Congress of the Philippines cited in Lim v. Ponce de Leon, *op. cit., supra,* note 106.

[173] Rule 113, section 11 of Rules of Court provides "any officer making a lawful arest may orally summon as many persons as he deems necessary to aid him in making the arest. Every person so summoned by an officer shall aid him in making of such arrest, when he can render such aide without detriment to himself." In US v. Pompeya, 31 Phils. 245 (1915), the defendant a private individual was convicted for failure to comply with his patrol duties to assist in the apprehension of thieves and bandits.

[174] See Moyer v. Meier, 205 Okla. 405, 238 P. 2d 338, 29 A.L.R. 2d 818 (1951).

affirmative knowledge of the illegality of the arrest and extends aid.[175]

As a rule, civil action for damages is ineffective as remedy to unlawful searches and seizures for the obvious reason that the amount of recovery is dependent among others, on the social and economic standing of the plaintiff. Most police action operates at lower levels of society and the great majority of the persons who are therefore potential tort plaintiff come from the lowest economic levels. It is not surprising that attorneys are reluctant to take their cases because of the small chances of a recovery "sufficient to justify the action and the fear of police retribution may also be a substantial factor in deterring such plaintiffs from bringing suit.[176]

e. *Administrative action.* — Simultaneously or independently of other actions and action against the offending officers may be filed by plaintiff before the respective adjudication boards of the enforcement agencies to which the offending officers belong.[177]

2. B the state with private citizen as nominal party.

By the mandate of the 1973 Constitution Presidential Decree 1607 created the office of the ombudsman known as Tanodbayan which office according to the constitution,[178] "Shall receive and investigate complaints relative to public office[179] x x x and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil or administrative case before the proper court of body."

Under Presidential Decree 1602 as amended by Presidential Decree 1630 the Tanodbayan may investigate and prosecute a complaint by any person or on his own motion, any administrative act amounting to criminal offense or not of any administrative agency.[180]

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[175] *Ibid.*

[176] Foote, *Tort Remedies For Police Violations of Individual Rights*, 39 MINN. L. REV. 493 (1955) 500.

[177] Administrative charges against Integrated National Police officers are filed in accordance with P.D. 12-A as amended by 12-B.

[178] Section 6, art. XIII, CONST.

[179] Public office is defined as the right authority and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government to be exercised by him for the benefit of the public, by Mechem, Public offices and officers, Sec. 1 cited in GONZALES, ADMINISTRATIVE LAW, LAW OF PUBLIC OFFICERS AND ELECTION LAW 170 (1972). See art. 203, REV. PENAL CODE, definition of public officers. A constabulary soldier is a public officer, US v. Gimenia, 24 Phils. 464 (1913).

[180] Administrative agency means any department or other governmental unit xxx any official or any employee acting or purporting to act by reason or connection with the government xxx. (sec. 9, PD 1607).

Clearly, under the aforesaid provisions of law the active participation of the party aggrieved by unlawful arrests, searches and seizures is dispensable.

G. *Standing To Challenge Unreasonable Search and Seizure—The Principle of Jus Tertii.*

Under the present state of the Philippine jurisprudence, the Supreme Court has held that the legality of a search and seizure can be contested only by the party whose rights have been impaired thereby, and that the objection to an unlawful search and seizure is purely personal and cannot be availed of by third parties.[181]

The Supreme Court adherence to the rule above enunciated gives rise to an anomalous situation which merits serious consideration. Thus, evidence unlawfully seized was used against a person who was not the owner of the premises in which the search and seizure was conducted.[182] Clearly, this defeats the very purpose of the exclusionary rule enshrined in our constitution.

Under US jurisprudence[183] the US Supreme Court has granted standing to a third party to assert the constitutional right of others on the principle of *jus tertii.* The court in determining the scope of standing in these instances takes into account (1) the interest of the assailant, (2) the nature of the right asserted, (3) relationship between the assailant and the third parties, and (4) the practicability of assertion of such rights by third parties in an independent action.[184]

Applying the four factors formula by Prof. Sedler to unlawful search and seizure it is very obvious that the third party against whom illegally seized evidence is used suffers substantial injury, directly related to the violation of the right against unreasonable search and seizure of the victim. It is likewise clear that said third party cannot maintain an independent action to assert the rights of the victim of the unlawful search and seizure.[185] It is therefore desirable that the third party be allowed to invoke the principle of *jus tertii.*

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[181] Lim v. Ponce de Leon, *op. cit., supra,* note 106; Nasiad v. CTA, 61 SCRA 238 (1974). Ermita-Malate Hotel and Motel Operators' Asso., Inc. v. City Mayor of Manila, 21 SCRA 451 (1967); Stonehill v. Diokno *op. cit., supra,* note 139; People v. Rubio, 57 Phils. 384 (1934).

[182] Stonehill v. Diokno, *op. cit., supra,* note 139.

[183] Truax v. Raich, 36 S. Ct. 7 (1915); Pierce v. Society of Sisters, 45 S. Ct. 570 (1925); Barrows v. Jackson, 73 S. Ct. 1031 (1953); NAACP v. Alabama, 357 US 449 (1958); Griswold v. Connecticutt, 85 S. Ct. 1678 (1965); Eisenstadt v. Baird, 92 S. Ct. 1029 (1972).

[184] Sedler, *Standing to Assert Constitutional Jus Tertii in the Supreme Court,* 71 YALE L.J. 599, 627 (1962).

[185] See Ermita-Malate Hotel and Motel Operator's Association, Inc. v. City Mayor of Manila, *op. cit., supra,* note 181.

It can be also argued that standing is a judicially created doctrine of great flexibility designed to insure that a conflict capable of judicial resolution is presented to the court. Where standing requirement defeats rather than enhances enforcement of constitutional rights, the rule must fail.

The characterization that the right to contest the legality of search and seizure is purely personal and therefore cannot be invoked by third party is with due respect rather unfortunate. It must be observed that the other rights under the Bill of Rights[186] such as right to life, property, liberty, etc. are equally personal rights.

C. *Rights Under Detention*

1. Laws and regulations governing the treatment of Prisoners

In the absence of any other special laws and regulations governing the treatment of political detainees the laws and regulations governing the conduct of prisoner should not least apply.

> "Detainees should not be referred to as 'convicts' or even 'prisoners' considering the usual connotations of such terms. Having been convicted of no crime, the detainees should not have to suffer any punishments as such, whether 'cruel and unusual.'
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> x x x x x x x x x
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> . . . conditions for pre-trial detention must not only be equal to, but superior to, those permitted for prisoners serving sentence for the crimes they have committed against society."[187]

The following laws, regulations and documents would basically govern the treatment of political detainees:

a. Letter of Instruction (LOI) No. 621, dated October 27, 1977, addressed to the Secretary of National Defense;
b. The pertinent provisions of the Revised Administrative Code (RAC) of 1917;
c. The Bureau of Prisons' Rules for the Treatment of Prisoners (RTP), dated January 7, 1959;
d. The Standard Minimum Rules (SMR) for the treatment of Prisoners endorsed by the United Nations Economic and Social Councel (UNESCO) on July 31, 1957, and embodied in the Declaration against Torture adapted unanimously by the United Nation General Assembly on December 9, 1975. This Standard Minimum Rules state generally accepted principles

[186] Art. IV, CONST.
[187] Hamilton v. Love, 328 F. Supp. 1191 (1971).

of international law and are, for that reason, part of the law of the land.[188]

e. The 1973 Constitution of the Republic of the Philippines.

2. Rights under detention.

a. To be treated as human beings.[189]

b. To a speedy, impartial and public trials.[190]

This right must commence upon arrest and not only when the Charge Sheet is filed with a Military Commission since arrests must only be done on probable cause that the person have committed a crime, that is, only after evidence has been gathered of probable guilt.[191] With evidence at hand there is no reason to delay the filing of the charges.

c. To due process[192] which must also comprise the following rights while detained: to be informed of the written regulations governing the detention center; not to be punished for any act except in accordance with those regulations, after being notified of the breach of discipline imputed to him, informed of the evidence against him and given an opportunity to defend himself in a fair hearing held by an impartial official; to be subjected to such punishment for breaches of discipline only in so far as necessary to maintain the order and security of the detention center; not to be subjected to total isolation.[193]

d. To be kept separate from convicts serving sentence.[194] Pre-trial detainees constitutes a special category of inmates.[195]

e. To receive visits from his family, friends, and lawyers.[196] It has been generally held that pre-trial detainees are entitled to the rights of other citizens except to the extent necessary to assure their appearance at the trial and the security of the institution.[197] Some

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[188] CONST. (1973), art. II, sec. 3, provides: "The Philippines renounces war as an instrument of national policy, *adopts the generally accepted principles of international law as part of the law of the land,* and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

[189] LOI 621, sec. 11a, c; RAC, sec. 1726; Universal Declaration of Human Rights, sec. 16; Geneva Convention of August 12, 1949, art. 3; RTP.

[190] CONST. (1973), art. IV, sec. 19; LOI 621, sec. 11d; Geneva Convention of August 12, 1959, art 3, par. (1)c.

[191] LOI 621, sec. 1a.

[192] CONST. (1973), art. IV, sec. 1.

[193] SMR, secs. 27-36; art. X, sec. 1; Rhem v. Malcolm, 396 F. Supp. 1195 (1975); Collins v. Schoonfield, 344 F. Supp. 257 (1972).

[194] LOI 621, sec. 11e; SMR, sec. 85; RTP, art. IV, sec. 3; art. XXI, sec. 1c.

[195] Pell v. Procunier, 417 US 817, 71 Ohio Op. 2d 195 (1974).

[196] RAC, sec. 1726; RTP, art. XXIII, sec. 1i, j; SMR, secs. 37-39, 92-93.

[197] Rhem v. Malcolm, *op. cit., supra,* note 193.

courts have held that for pre-trial detainees, restrictions on access by visitors must be justified by compelling interest.[198]

Several United States cases have dealt with delineating the particular rights of visitation for pre-trial detainees, the general thinking appears to be that the detainees should be afforded at least reasonably controlled contact visits.[199] Even the use of telephones for such inmates has been litigated. The court reasoned in Dillard v. Pitches[200] that there was no need to substantially restrict a pre-trial detainee in his ability to be in telephone contact with the outside. The court added that the detainees' interests could be served by making pay phones reasonably accessible at reasonable times.

The right to receive visits of a lawyer is premised on the basic constitutional right to counsel.[201] Jurisprudence, in fact, has expanded this right to include the right to consult with counsel in private. Several cases have established the duty of officers having custody of a suspect to afford him a reasonable opportunity to consult privately with his attorney. Conversations between an attorney and his client are said to be privileged and no officer has the right to be present and hear what is said during the interview, nor does he the right to listen or to record the interview by means of "bugging" devices.[202] Lawyers and detainees have the right to confer as long as may be necessary at any hour of the day, and, in urgent cases, even at night.[203]

f. To practice his religion.[204] The 1973 Constitution, Article IV, Section 4, Section 8, provides that "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof . . ." This provision prohibits the state from establishing religion and at the same time inhibits from prohibiting it. The need to balance these two interests is all the more profound when applied to detainees and inmates, for the exercise of the right to practice one's religion does not stop at the prison gates. As stated in the case of Barnett v. Rodgers:[205]

> "To say that religious freedom undergo modification in prison environment is not to say that it can be suppressed or ignored without adequate reason. And although within the prison society as well as without, the practice of religious beliefs is subject to reasonable regulation necessary for the protection and welfare of the commu-

198 Wolfish v. Levi, 406 F. Supp. 1243 (1976).
199 Dillard v. Pitchess, 399 F. Supp. 1225 (1975).
200 *Ibid.*, at 1240.
201 CONST. (1973), art. IV, sec. 19.
202 State ex rel. Tucker v. Davis, 130 Pac. 962 (1930).
203 Rule 113, sec. 18, RULES OF COURT, art. 125, REV. PENAL CODE.
204 CONST. (1973), art. IV, sec. 8; 21 RTP, art. II, secs. 1-3, 5; SMR, secs. 41-42.
205 410 F. 2d 995 (1969).

> nity involved, the mere fact that the government as a practical matter, stands a better chance of justifying curtailment of fundamental liberties where prisoners are involved, does not eliminate the need for reasons imperatively justifying the particular retraction of rights challenged at bar. Nor does it lessen governmental responsibility to reduce the resulting impact upon those rights to the fullest extent consistent with the justified objective."

g. To adequate food and if he so desires, to procure food from outside, through the administration of the detention center or through family and friends.[206]

h. To a minimum standard of sanitation, hygiene and medical facilities and activities:

(1) to wear his own clothing unless he has none, in which case the detention administration shall supply it, but such clothing must be different than that supplied to convicts.[207]

(2) to healthful accommodations, with sufficient light and ventilation, and adequate sanitary and bathing facilities.[208]

Segregation procedures based upon consideration of sex, morality, security and other cogent factors shall be observed.

A detainee may be isolated from other detainees for a limited period when his conduct poses a serious threat to his own safety or the others or when the security of the institution requires it and there is no other less severe way of meeting the threat. The use of isolated cells is seen as a valid means of protecting the general prison population and for preventing disobedience, disorders, or escapes. However, the conditions of isolated confinement must not be disproportionate to the offense involved or used for an improper means. Furthermore, the procedure by which the isolation is enforced must fulfill the basic requisites of "due process."[209]

He must still be allowed contact with his family; to exercise, shower and enjoy other privileges; his cell must be adequately ventilated and lighted; and he must receive medical visits to ensure that isolation is not adversely affecting his physical and mental health.[210] The conditions of solitary confinement, called "bartolina," are inhuman and degrading and constitute cruel and unusual punishment.[211]

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[206] LOI 621, sec. 11e; RAC, sec. 1731; RTP art. XXIII, sec. 1g; SMR, secs. 41-42.

[207] LOI 621, sec. 11e; RTP, art. IV, secs. 41-42.

[208] LOI 621, sec. e.

[209] Howard v. Smyth, 365 F. 22 428 (1966); Landman v. Peyton, 370 F. 2d 135 (1967).

[210] Collins v. Shoonfield, 344 F. Supp. 257 (1972); Sinclair v. Henderson, 331 F. Supp. 1121 (1971); SMR, sec. 32; RTP, art. X, sec. 1.

[211] Wright v. McMann, 387 F. 2d 519 (1967).

A woman detainee who is pregnant or gives birth during detention may apply for a temporary release on humanitarian grounds.[212]

A child born of a female detainees is allowed to stay with the mother for a year after birth during which time the mother must also be allowed and supplied with what is needed to nurse the child.[213]

(3) to a separate bed and sufficient bedding.[214]

(4) to at least one hour's daily outdoor exercise.[215]

(5) to competent medical and dental services, and to be treated by his own doctor or dentist if there is reasonable ground for it and he could affort it.[216]

i. Not to be compelled to work unless he wishes to.[217]

j. To be furnished with or to procure reading and writing materials.

D. *The Rights of Political Detainees during Preliminary Investigation, Trial and After Trial*

1. Criminal Procedure in Military Tribunals

Three systems of criminal procedure are universally recognized: (1) the inquisitorial; (2) the accusatorial; and (3) the mixed.

Under the inquisitorial system, the prosecution of crimes rests exlusively in the hands of the officers or agents of the State who conduct investigations under a cloak of secrecy, but they are without authority to withdraw appeals save in those cases involving interlocutory order not finally disposing criminal actions. A judgment of conviction imposing the death penalty under the system does not acquire finality unless reviewed by the Supreme Court to which it is automatically appealed even without the consent of both parties.[218]

Under the accusatorial system, the prosecution of offenses are left in the hands of the prosecuting arm of the government, except in those cases involving crimes against chastity. The accusatorial system retained the inquisitorial system's automatic appeal to the Supreme Court whenever the trial court imposes the death penalty.

Under the mixed system, the features of both inquisitorial and accusatorial systems are consolidated.

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[212] LOI 621, sec. 12c.
[213] RTP, art. X, sec. 4.
[214] LOI 621, sec. 11e; SMR, sec. 19.
[215] SMR, sec. 21.
[216] SRM, secs. 91, 22-26; RTP, art. XXIII, sec. 1h.
[217] RTP, art. XXIII, sec. 1i, g; SMR, secs. 40, 90; Collins v. Schoonfield, 344 F. Supp. 257 (1972).
[218] US v. Samio, 3 Phils. 691 (1904).

The system followed in the prosecution of offenses before the military tribunals is the accusatorial system. Charges are filed against persons by private complainants, by local police or law-enforcing authorities or by the military authorities.[219] The complaints may be filed before the fiscal, government prosecutors, or judge, or before the military authorities.

In the absence of any statute or regulation governing the proceedings of military tribunals, the same are commonly conducted according to the rules and forms of governing courts-martial. Section 2 of the Manual for Courts-Martial provides that unless otherwise provided, military tribunals shall be guided by the applicable rules or procedure and evidence prescribed for court-martial. Presidential Decree No. 39 provided, among other things, for the procedure before military tribunals created under General Order No. 8. As a general guidance, the said Presidential Decree provides that in all matters of procedure not specifically covered in the rules, other general orders, decrees or letters of instructions issued by higher authority, the Articles of War and Manual for Courts-Martial shall be applied in so far as strictly essential to serve the ends of justice.[220] Under the same decree, however, provisions of the Manual for Courts-Martial and all other laws, rules and regulations which are inconsistent with the rules are amended, superseded and modified to conform to the decree.[221]

Criminal procedure, therefore, in so far as military offenders are concerned—whether they be military personnel or civilians—may be defined as the method provided under Presidential Decree No. 39 and amendatory Presidential Decree No. 328, not only for the prosecution of persons who commit crimes in the Philippines under martial law but also the imposition of the proper penalty in case of conviction.[222]

2. Preliminary investigation

After a person is arrested by military authorities, he is subjected to an inquest proceeding as provided under Letter of Instruction No. 621, promulgated on October 27, 1977. This is a proceeding where a person arrested by military is brought to a military lawyer who determines whether he should be committed to a detention center or to a civilian jail or be released.

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[219] The charge must be filed against all persons who appear to be responsible therefor. The determination as to who are the person responsible for the commission of crimes lies within the discretionary authority of the prosecuting officer. People v. Agasang, 60 Phils. 182 (1934).

[220] Sec. 6, Pres. Decree No. 39 (1973).

[221] Sec. 7, Pres. Decree No. 39 (1973).

[222] T. NAÑADIEGO & W. LAURETA, THE PHILIPPINE LAWS ON MILITARY TRIBUNALS AND MILITARY JUSTICE 119 (1974).

After the inquest, comes the preliminary investigation. Preliminary investigation,[223] within the contemplation of Presidential Decree No. 39, is a summary preliminary investigation made upon a complaint filed against a person imputing the commission of an offense for the purpose of determining whether or not there is a prima facie evidence warranting referral to a military commission for trial[224] or for the filing of an information before a civil court.[225]

The proceeding is summary in nature not intended as an occasion for the full and expansive display of the evidence of the parties. Rather, it is for the presentation of such quantum of evidence as is sufficient to engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.

The conduct of the preliminary investigation, except those provided under Rule 112 of the Revised Rules of Court and the respective charters of the chartered cities, is governed by the following:

a. Joint Department of Justice-Department of National Defense Circular dated April 29, 1974;[226]

b. Presidential Decree No. 39 dated November 7, 1972, as amended by Presidential Decree No. 328 dated October 31, 1973;

c. Presidential Decree No. 77 dated December 6, 1972, and

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[223] Presidential Decree No. 39 does not authorize/ provide for right to counsel to respondent during summary preliminary investigation. Amendatory Presidential Decree No. 328, by etending the procedure set forth in Presidential Decree No. 77, affords respondent the right to counsel but the presentation of evidence is limited to sworn scatements of the parties. Cited in Nañadiego & W. Laureta, p. 136.

[224] Presidential Decree No. 328 dated October 31, 1973, amends paragraph 4a of the procedural rules governing the creation, composition, jurisdiction and other matters relevant to military tribunals promulgated under Presidential Decree No. 39. This particular provision prescribes the procedure relating to summary preliminary investigation as a requirement for referral of a case before a military tribunal for trial. Cited in Nañadiego & W. Laureta, *op. cit., supra,* note 222 at 132.

[225] Sec. 3, Rule 110, REV. RULES OF COURT.

[226] This Joint Circular became effective on April 29, 1974. It modified Department of Justice letter dated October 27, 1972 and the letters of Chief State Prosecutor Rodolfo A. Nocon dated February 12, 1974 and January 14, 1974, relating to conduct of preliminary investigations. Under the Joint Circular all cases already filed before the civil courts pending arraignment or trial or duly filed with the Clerk of Military Tribunals as of the promulgation of the Circular shall continue to be prosecuted before the civil courts and the military tribunals, respectively. Under the Department of Justice letter to all district judges, circuit criminal court judges, city and municipal judges, provincial and city fiscals, district state prosecutors and state prosecutors, a distinction is made with respect as to who filed the complaint where the case is within the concurrent jurisdiction of the military tribunals and the civil courts. Under the said letter, when the complaint is filed by military authorities, the judge or fiscal shall instead of dismissing the complaint or filing the appropriate information before a civilian court, submit a report with the appropriate recommendation to the Secretary of National Defense. The Joint Circular removed this distinction. Cited in Nañadiego & W. Laureta, *op. cit., supra,* note 222 at 133.

d. Presidential Decree No. 911 dated March 23, 1976.

Under this summary preliminary investigation, a copy of a complaint is given to the detainee and he is notified that, on a specified date, he will be brought to the investigating officer who is a military lawyer or panel of military lawyers. There, prosecution witnesses sign and swear to their affidavits, and copies are given to the detainee. The latter is required to submit his counter-affidavits within a fixed period. After that, the investigating officer determines, on the basis of the prosecution and defense affidavits, whether there is a probable cause to charge the detainee formally, that is, if there is reasonable ground to believe that a crime has been committed and that he is probably guilty of it. An investigation report is submitted by the investigating officer which shall contain a summary of the evidence, the acts constituting the offense or offienses committed, and his findings, conclusions and recommendations. The report is evaluated by the Military Tribunals Branch to determine whether or not there exists prima facie evidence warranting referral to a military commission. If warranted, the charge sheet is drafted by the Office of Prosecution Staff. Thereafter, the investigation report is forwarded to the Judge Advocate General, AFP, who shall determine for either the Minister of National Defense (if the accused is a civilian) or the Chief of Staff, AFP (if the accused is a military person) whether the case shall be referred for trial by a military commission. If the Judge Advocate General, AFP, determines that referral to a military commission is proper the formal charges are signed by a commissioned officer designated by him and filled with a military commission.[227]

The charge is the instrument in which the offense against an accused person is set forth. It consists of two parts: the "technical charge" which is a statement of the Articles of War or law violated and the "specification" which is a statement of facts and circumstances constituting the violation. The formal charge, duly subscribed, is filed with the Clerk of Military Tribunals for assignment thereof to be served upon the accused and a copy thereof given to aim at least five days in advance of the date of initial hearing. In cases where there is allegation of conspiracy and one or more accused are available for trial and others are not, trial may proceed against all, provided that the indictment shall have been published at least once a week for two consecutive weeks in any newspaper of general circulation and a copy of notice of trial shall have been served on the accused or on his next of kin or at his last known residence or business address with a person of sufficient discretion

[227] Par. 4a(1) and (2), Pres. Decree No. 39 (1973).

to receive the same. The charge may be withdrawn at any stage of the proceedings prior to promulgation of the findings and sentence by the Military Commission.[228]

3. Trial

a. *Arraignment.*—Once a case is filed with a military commission, a notice of arraignment and trial with a copy of the charge sheet is given to the detainee. On the date fixed, he is brought to the military commission that will try his case. In this proceeding the prosecution and defense are asked whether they have challenges to any member of the commission, to disqualify a member from trying the case. Only challenges for cause as provided under the Manual for Courts-Martial, such as bias, personal interest, relationship, etc., may be entertained to insure impartiality and good faith.[229]

After challenges are disposed of, comes the arraignment, which consists of reading the charge to the detainee. The object or purpose of arraignment is to obtain from the accused his answer to the charges and specification which, under the law, is his plea. The rule recognizes the necessity of arraignment in order to fix the identity of the accused, to inform him of the charge and to give him the opportunity to plead.[230] The detainee's counsel can make special pleas to attack the legality or sufficiency of the charges. If these are denied, the detainee is asked if he pleads guilty or not guilty. If he refuses to plead, a plea of not guilty is entered for him.[231]

b. *Statement for prosecution.*—After the arraignment, comes the trial. After the accused has entered his plea, and the issue or issues are accordingly joined, the military prosecutor, called the Trial Counsel, will proceed with the opening statement for the prosecution which consist of a brief resume of the issues to be tried and what he expects to prove. The rule enjoins him to avoid including or suggesting matters as to which no admissible evidence is available on record and which he does not intend to offer.[232]

As a rule, this opening statement is made only immediately before the introduction of evidence for the prosecution. In exceptional cases, however, when the interest of justice so requires and, at the same time, consistent with avoiding unnecessary delay in the trial of the case, the military commission, may, in the exercise of

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[228] Par. 4a(5) (c, par. 4a(3), Pres. Decree No. 39 (1973).
[229] Par. 4b(2), Pres. Decree No. 39 (1973).
[230] US. v. Sobrevinas, 35 Phils. 32 (1916).
[231] Par. 4b(8)(b), Pres. Decree No. 39 (1973).
[232] Par. 4b(8)(c), Pres. Decree No. 39 (1973); sec. 75(b), Manual for Courts-Martial, AFP.

its discretion, allow similar statements to be made at a later stage of the proceeding.[233]

The trial counsel or military prosecutor then presents the witnesses, documents and things he believes are evidence against the accused. The defense has the right to cross-examine every prosecution witness, that is, question him to show that his testimony is not accurate, not complete, or not reliable.[234]

At the close of the case for the prosecution, the commisison may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before it supports the charge against the accused. The commission may grant, deny or defer action onsuch motion.[235] The motion must specifically indicate wherein the evidence is legally insufficient, to enable the commission to determine what action to take.

c. *Statement for defense.*—Before the defense presents its case, the defense counsel[236] may make an opening statement which he seeks to prove to justify a verdict of acquittal.

Accordingly, the witnesses and other witnesses for the defense shall then be heard or presented. The defense may require its witnesses and evidence to appear the military commission by subpoenas. The trial counsel has the right to cross-examine all defense witnesses. The detainee may testify in his own behalf, but is not compelled to do so. After all the defense evidence is presented, the prosecution may offer rebuttal evidence. That normally closes the evidence. Then the defense argues orally, and the prosecution closes the argument. The detainee can make a statement, even if he has not testified, in addition to his lawyer's argument.[237]

(d) Judgment

The commisison shall close after the prosecution and defense have delivered their respective summations, and deliberate on the findings and sentence, and shall not adjourn until it has arrived at and announced the findings and sentence.[238]

The commission votes, by secret ballot, on each specification, on each count, and on the penalty to impose. Then they resemble publicly, and in the presence of the accused announce their judgment and sentence.[239]

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[233] T. NAÑADIEGO & W. LAURETA, *op. cit., supra,* note 222 at 195.
[234] T. NAÑADIEGO & W. LAURETA, *Id.* at 195, 201.
[235] Par. 4b(8)(d), Pres. Decree No. 39 (1973).
[236] Par. 4b(8)(c), Pres. Decree No. 39 (1973).
[237] T. NAÑADIECO & W. LAURETA, *op. cit., supra,* note 222 at 201-2.
[238] Par. 4b(2)(h), Pres. Decree No. 39 (1973).
[239] Par. 4b(8) (i), Pres. Decree No. 39 (1973).

To convict, for an offense carrying a mandatory death penalty, the affirmative vote of at least five members is required; for other offenses at least two-thirds of the members present at the time the vote is taken must vote thereon.[220]

The penalties imposes are those prescribed in martial law orders or decrees and in their absence, the penalties prescribed by applicable laws. In the absence of both, the penalties prescribed by the Articles of War and Manual for Courts-Martial shall be the guide.[241]

4. After Trial

Every record of trial by military commission shall be forwarded to the convening authority — the Chief of Staff, AFP — for proper action.[242]

Action that the convening authority may take on the proceedings of a military commission would depend upon the decision rendered, whether for acquittal or conviction, and the gravity of the penalty imposed. In those cases where the judgment is one for acquittal, the review is limited only to determining jurisdictional errors.

In those cases where the decision of the military commission is one of conviction, a distinction must be made with respect to review. Where the sentence imposes an imprisonment of 20 years or less, or a fine of ₱20,000 or less, then such judgment may be reviewed by the Staff Judge Advocate fo rthe Chief of Staff, AFP. However, where the sentence imposes an imprisonment for more than 20 years or a fine of more than ₱20,000, the Chief of Staff, AFP, shall refer the record of trial to a Board of Review composed of three lawyer members created by him for appropriate review.[243]

The Board of Review shall transmit its opinion, together with the record of trial to the Chief of Staff, AFP, for proper action.[244] Where the sentence imposed by a military commission is death or if the Chief of Staff, AFP recommends that a penalty of death should be imposed, in a case where the sentence imposed by the military commission is less than death, the record of trial shall be forwarded to the President, through the Minister of National Defense, for confirmation or approval. In any case, the President is empowered to

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[240] *Ibid.*
[241] T. NAÑADIEGO & W. LAURETA, *op. cit., supra,* note 222 at 204.
[242] Par. 4c(i), Pres. Decree No. 39 (1973).
[243] Memorandum of Chief of Staff, AFP to TJAG, dated February 8, 1974.
[244] Par. 4c(1), Pres. Decree No. 39 (1973).

reverse, confirm, increase the penalty imposed or otherwise modify any decision of the military commission.[245]

Except those not requiring Presidential action, no sentence of a military commission shall be executed unless approved by and ordered by the President. An order is published announcing, among other things, the approval and ordering of execution of the sentence.[248]

Under Presidential Decree No. 978, a Court of Military Appeals has been created. Until now, however, the President has not appointed the judges who will compose the Court. Under Presidential Decree No. 1165, when the Court of Military Appeals is organized, the appeal will go from the Board of Review to the Court of Military Appeals, whose decision, except in cases where the sentence is death, shall be final, but subject to discretionary review by the Supreme Court on questions of law only. Presidential Decree No. 1165 also provides that the Supreme Court must review findings of fact and rulings of law in all death penalty cases; and, in its discretion, may review both facts and law in life imprisonment cases.

5. Summary Of Rights During Preliminary Investigation, Trial And After Trial

From all of the foregoing, the Rights of a political detainee during preliminary investigation, trial and after trial may be summarized as follows: not to be held for trial unless the regular procedure established by law is followed; to be presumed innocent until the contrary is proved beyond reasonable doubt; to defend by himself and by counsel; to be informed of the nature and cause of the accusation against him; to a speedy, impartial and public trial; to meet the witnesses face to face; to have his witnesses and other evidence subpoenaed; not to be compelled to testify against himself; not to be twice tried or put in danger of being convicted for the same offense; to have any evidence and all fruits of such evidence obtained as a result of an unreasonable search or a forced confession excluded; not to be punished for an act that was not a crime when when it was commited; not to be sentenced to pay an excessive fine or to suffer cruel or unusual punishment; and to be entitled to a review of his cause by the higher authorities including the Supreme Court.

The detainee is also entitled to the defenses normally available such as to show that the acts proved do not constitute a crime; to prove that he did not commit the acts imputed to him; to create a reasonable doubt, that is, to show that the prosecution evidence is

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[245] Par. 4c(2), Pres. Decree No. 39 (1973).
[246] *Ibid.*

not sufficient to prove that he committed the acts charged; and, to admit that he did commit the acts charged, but that there are circumstances that lessen his culpability or exempt him from any liability at all, such as, that he acted because of uncontrollable fear or in self-defense, or that the crime has prescribed, and the like.

CONCLUSION

The paper has presented the history of our people's struggle for liberty and equality. We have presented the aspirations of other people to assert their rights and achieve their common welfare. We have also shown how our people suffered under regimes of exploitation and oppression.

In the second part, the paper in detailed manner, discussed the various specific rights of the people who have voiced out their opinions and who have vigorously fought, either by armed struggle or by peaceful crusades, for what they believed in. These are the political detainees.

This paper hopes to make the military aware of its obligations with regards to treatment of political detainees. It also intends to enlighten the political detainees now languishing in jail about their legal rights. And lastly, it encourages and supports our people in their fight for true independence, equality, and liberty.