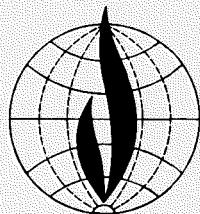


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# **THE PHILIPPINES: HUMAN RIGHTS AFTER MARTIAL LAW**

**Report of a Mission**

by

**Professor Virginia Leary, United States**

**Mr A.A. Ellis, QC, New Zealand**

**Dr Kurt Madlener, Federal Republic of Germany**

**THE INTERNATIONAL COMMISSION OF JURISTS  
Geneva, Switzerland**

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Geneva, Switzerland**

C. number 783

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ISBN 92 9037 023 8

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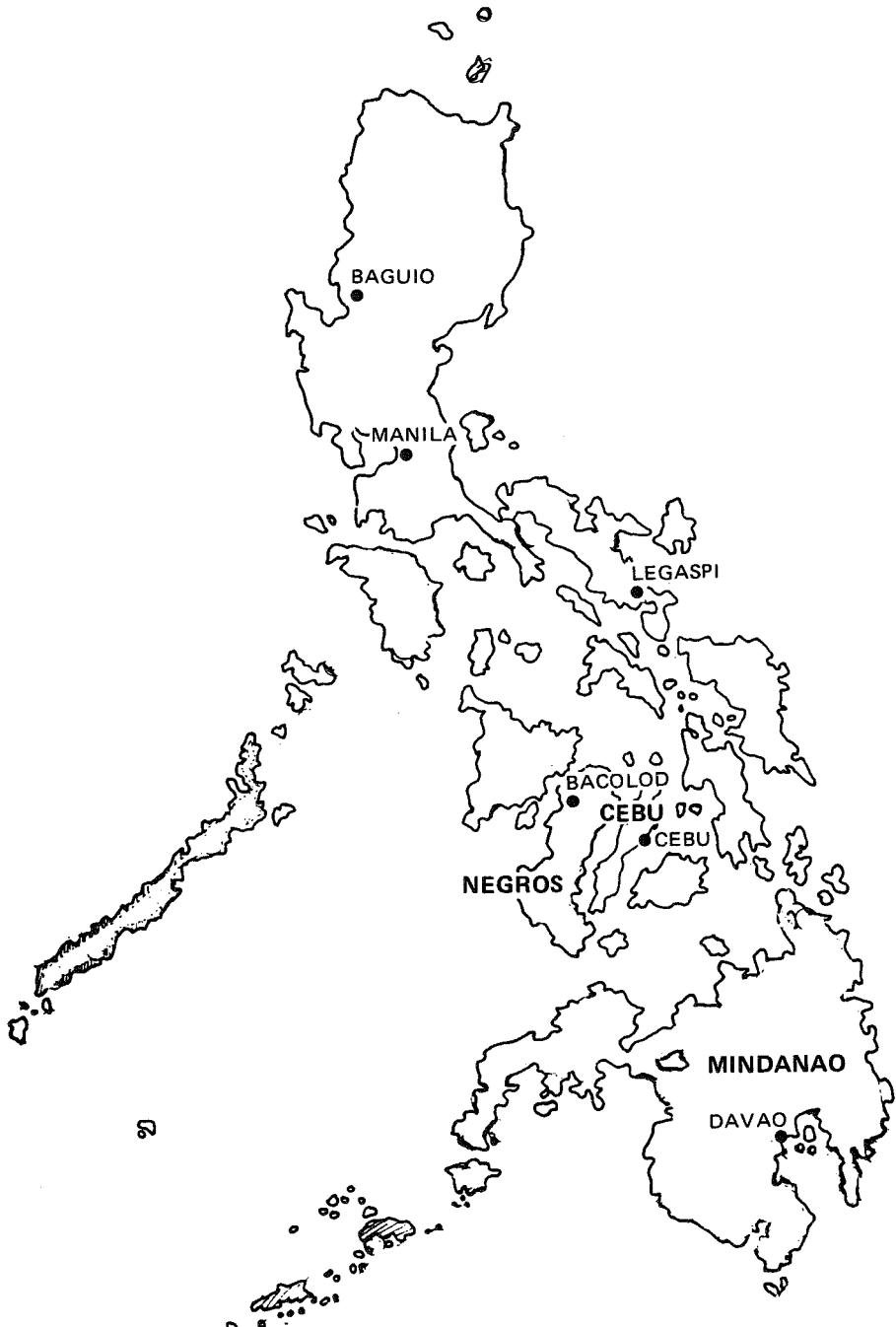
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## Abbreviations and Terms

Barangay	Smallest political unit of the Philippines
BEPZ	Bataan Export Processing Zone
CLT	Certificate of Land Transfer
EP	Emancipation Patent (an agrarian reform land title)
FAO	Food and Agriculture Organisation of the United Nations
FAS Committee	ILO Committee on Freedom of Association
Fiscal	Public prosecutor
FLAG	Free Legal Assistance Group
Haciendas	Large land estates
IBP	Integrated Bar of the Philippines
ICHDF	Integrated Civilian Home Defense Force
ICJ	International Commission of Jurists
ILO	International Labour Organisation
INP	Integrated National Police
KBL	Kilusang Bagong Lipunan, the political party of President Marcos
KMU	Kilusang Mayo Uno (May 1st Movement, a trade union organisation)
MNLF	Moro National Liberation Front
MOLE	Ministry of Labor and Employment
NFSW	National Federation of Sugar Workers
NPA	New Peoples Army
NLRC	National Labor Relations Commission
PANAMIN	Presidential Assistance on National Minorities (a government agency)
PC	Philippine Constabulary
PCO	Presidential Commitment Order
PD	Presidential Decree
PDA	Preventive Detention Action
PMP	Pagakakaisang Manggagawang Pilipino (Solidarity of Filipino Workers, a trade union organisation)
Sitio	A hamlet
TFD	Task Force Detainees
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
WHO	World Health Organisation

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(Note: Philippine spelling has been retained in the names of offices and organisations, and in quotations. Otherwise, in accordance with the practice of the International Commission of Jurists, English spelling has been adopted throughout the report.)



## Preface

This report, based on a mission sent to the Philippines in January 1984, is the second to be issued on the situation of human rights in the Philippines by the International Commission of Jurists. The first was published in 1977 following a mission undertaken by William J. Butler, Professor John P. Humphrey and G.E. Bisson. Their report documented serious violations of human rights occurring under the state of martial law proclaimed by President Marcos in 1972, which was still in force in 1977. The principal recommendation in the report was that martial law be lifted since the situation in the country did not justify its continued imposition.

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

Accordingly, it was decided to send a new mission to the Philippines to assess the human rights situation since the lifting of martial law. The mission was asked to enquire, as far as possible in the time available, into economic and social rights as well as civil and political rights. While the mission was in preparation there occurred the assassination in August 1983 of the opposition leader, Benigno S. Aquino, Jr. as he set foot in the Philippines and while under military escort. It was decided that the ICJ mission should not seek to enquire into or report upon the circumstances of his death.

The members of the mission were Professor Virginia A. Leary of the United States, Mr. A.A.T. Ellis QC of New Zealand, and Dr. Kurt Madlener of the Federal Republic of Germany. Virginia Leary, who led the mission, is professor of international law at the State University of

New York at Buffalo and has published widely in the field of human rights. She is the author of *Ethnic Conflict and Violence in Sri Lanka*, a report of a mission undertaken for the ICJ in 1981. Anthony Ellis is a Queen's Counsel in private practice in Wellington and a leading member of the New Zealand Bar. Dr. Madlener is a specialist in comparative criminal law and procedure on the staff of the Max Planck Institute for Foreign and International Criminal Law at Freiburg in Breisgau. He has undertaken previous human rights missions in Chile, Central America and Spain.

The mission was in the Philippines from 31 December 1983 to 14 January 1984. The members were able to undertake their mission without interference and to travel freely throughout the country. They interviewed government officials, military officers, opposition leaders, lawyers and members of the judiciary, prisoners and other persons with first-hand information concerning human rights violations, community workers and members of the hierarchy of the Catholic Church, university professors, diplomats in foreign embassies, trade unionists and human rights activists.

Members of the mission travelled north to Baguio and Legaspi in Luzon, and south to Davao City in Mindanao, Cebu City, Cebu and Bacolod, Negros, to receive first-hand information. In addition to information obtained through interviews they also obtained extensive documentation including court decisions, copies of presidential decrees, affidavits of victims, newspaper articles and other published material concerning the status of human rights after martial law. Except where otherwise indicated, the report deals with the situation up to January 1984.

The government cooperated with the mission and the International Commission of Jurists expresses its appreciation to the following Ministers and their staff who met with members of the mission at length and provided written documentation:

Conrado F. Estrella, Minister of Agrarian Reform  
Estelito P. Mendoza, Solicitor General  
Blas F. Ople, Minister of Labour  
Ricardo C. Puno, Minister of Justice  
Antonio N. Acosta, Deputy Minister of Health.

A member of the mission also met with Brigadier General Hamilton B. Dimaya, Judge Advocate General of the Armed Forces and Colonel

Ciriaco B. Cruz, Philippine Constabulary Judge Advocate.

Present and former justices of the Supreme Court were of considerable assistance to the mission, in particular, former Chief Justice Roberto Concepcion, Vice-President of the International Commission of Jurists who arranged many appointments, and former Justice J.B.L. Reyes, Chief Justice Enrique Fernando, Justices Claudio Teehankee, Vicente Abad-Santos and Jose De Castro. A member of the mission was able to attend a session of the Agrava Commission investigating the killing of Aquino and a Supreme Court hearing concerning cruel and unusual punishment.

The organised bar and private attorneys were helpful in providing information on legal assistance, the independence of the judiciary and individual cases of human rights violations. Camilo D. Quiason, Chairman of the Philippine branch of the International Commission of Jurists, facilitated contact with members of the Bar. The mission was greatly assisted both in Manila and in the provinces by members of the Free Legal Assistance Group (FLAG) and other legal assistance organisations, and especially by Jose Diokno, founder of FLAG, human rights advocate, former Senator and Minister of Justice. Meetings were held with labour lawyers and lawyers defending political prisoners.

Interviews were obtained with Jaime Cardinal Sin, Most Reverend Antonio L. Mabutas, Archbishop of Davao and President of the Catholic Bishops' Conference and Very Reverend Luis Hechanova, Chairman of the Association of Major Religious Superiors of Men in the Philippines. Much assistance was received from members of the Task Force Detainees (TFD), a remarkable organisation established in 1974 by the Association of Major Religious Superiors of the Catholic Church. It is actively engaged in the investigation of human rights abuses, assistance to the families of detainees and the collection of statistics regarding abuses.

Information concerning economic and social rights was obtained from government ministers, labour lawyers and trade union members, university faculty members and two community organisations, ACES (Agency for Community Educational Services) and PROCES (Participatory Research and Organisation of Communities through Education and Self-help).

The mission spent many hours interviewing victims and taking evidence of human rights abuses, including people who had not been interviewed before. The mission had already had access to previous reports of such abuses, in particular the 1982 Amnesty International Report, and the Report of the New York based Lawyers Committee for Interna-

tional Human Rights. In addition the mission received detailed statistical reports of abuses in Mindanao from TFD covering the past three years. It was not possible for the mission to conduct enquiries and reach conclusions of a judicial nature. However the evidence and the manner in which it was given to the mission left them in no doubt about the widespread abuses of human rights in the Philippines. The mission has lodged its records of the instances reported to it with the International Commission of Jurists in Geneva. In many cases explicit reference to them would not be in the best interests of the persons interviewed.

The following report of the mission confirms that, despite the lifting of martial law, President Marcos has retained emergency powers to arrest and detain individuals; extra-judicial killings ("salvaging") by security forces and torture during detention are widespread; dissent continues to be suppressed; the legal system retains many of the oppressive features of the martial law period; and the government has failed to act effectively to curb human rights abuses.

Since the visit of the mission to the Philippines, elections have been held to the Philippine Batasan (National Assembly). Controversy exists concerning the fairness of the May 1984 election, and since President Marcos retains extensive legislative powers, the role of the Batasan is relatively unimportant. However, there was considerable freedom of expression, assembly and demonstration in the months before the election, and the consequent election of a substantial number of opposition members to the Batasan may be a hopeful sign of a step towards the return to democracy and improved human rights. Less hopeful signs, however, are statements made by President Marcos a month after the elections and reported in the international press hinting at a possible return to a state of martial law in view of "communist threats", particularly in Mindanao and Northern Luzon. The International Commission of Jurists considers that a return to martial law in the Philippines would be a retrograde step. The killing of Aquino was the catalyst which unleashed latent opposition to the continued suppression of human rights in the Philippines. A return to martial law would be perceived not as a response to communism but as a means of suppressing the desire of Filipinos for a more humane and just society. The ICJ hopes that the many elements in Philippine society that are striving for increased civil, political, economic and social rights will prevail.

International Commission of Jurists  
Geneva, August 1984

*Niall MacDermot*  
*Secretary-General*

# **Chapter 1**

## **An Overview of Human Rights**

The members of the mission decided to focus their enquiries on four main subjects: human rights abuses by the military and security forces; economic and social rights; legal limitations and restrictions on human rights; and the independence of the judiciary and the legal profession.

Each of these topics is the subject of a separate chapter. To assist the reader, a general overview of the present situation of human rights in the Philippines is given in this chapter, outlining matters which will be examined in greater detail later in the report.

The principal legacy of the martial law period (September 1972 to January 1981) is the massive increase in the size and role of the armed forces, leading to an extensive 'militarisation' of the society. Much of the martial law legislation has been retained. There are now estimated to be over 400,000 men under arms in the regular and para-military armed forces and police, and these remain powerful institutions within the society.

In their efforts to overcome the insurgent forces of the New People's Army and the Muslim Moro National Liberation Front in Mindanao, the armed forces had recourse to gross violations of the right to life and security of the person. These abuses have continued since the lifting of martial law, as these forces know themselves to be largely outside the reach of the law. Their repressive measures have extended beyond the struggle against insurgency to the suppression of dissent and the restriction of trade union activities. The armed forces are also used to facilitate the penetration of commercial firms and plantations in rural areas, which often prove destructive of their societies. Military officers also hold influential positions in the civilian economy.

On 21 August 1983, Benigno S. Aquino, Jr., opposition political leader, returned to the Philippines after three years in exile abroad and was assassinated within minutes of stepping onto Philippine soil. The killing shocked the world and galvanized previously latent opposition to the Marcos regime. The government was widely suspected of complicity in Aquino's death since he was in military custody at the time.

The death of Aquino was but one among many others of less well-known persons in a pattern of political killings in the Philippines. The Task Force Detainees of the Philippines, a respected human rights organisation, estimates that in the first nine months of 1983 there were 191 individual killings, 126 killed in group massacres and 74 disappearances attributed to government security forces in the southern island of Mindanao alone<sup>1</sup>. A legal aid group in the Philippines wrote concerning Aquino's death, "In the current context of the human rights conditions in the country the murder came as no great surprise but for the shocking audacity of it"<sup>2</sup>. *The Washington Post* (USA) reported on 12 April 1984 that "illegal executions by military, police or other government units have aroused public concerns and drawn condemnation from local and foreign human rights activists... human rights groups say most of the victims of the murders have been opponents of the government of President Ferdinand Marcos"<sup>3</sup>.

An insurgent force known as the New Peoples Army (NPA) is active in many rural areas of the Philippines. The NPA is frequently described by the government and others as the military wing of the Communist party in the Philippines, and this description was accepted in the 1977 report of the previous ICJ mission to the Philippines.<sup>4</sup> We heard from Cardinal Sin and others that those now joining the NPA are opponents of the government but not necessarily committed to a communist or marxist ideology. The NPA engages in killing of military and security forces and occasionally of civilians. Following such killings, government forces frequently detain not only suspected NPA members or sympathizers but also known government opponents who may have no links with the NPA. Their bodies are often found later, showing signs of tor-

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- 1) Mindanao is an especially troubled region of the Philippines. Precise statistics concerning human rights abuses are difficult to document but TFD considers these figures to be conservative estimates.
  - 2) MABINI Newsletter, Occasional Issue No. 40, August 26, 1983, p. 2.
  - 3) *The Washington Post*, April 12, 1984, p. A 21.
  - 4) *The Decline of Democracy in the Philippines*, International Commission of Jurists, August 1977, p. 5.

ture. In some cases, government forces deny any involvement; in others, they contend the individuals were killed in 'an encounter' or while trying to escape. In some areas, massacres of civilians, including women and children and attributed by witnesses to the members of the armed forces or police, follow NPA action in an area.

We received accounts of many such killings and massacres by persons with direct knowledge of the circumstances. In many cases we received documentation confirming the information. Three examples may be given. On 24 October 1983, the badly mutilated body of Pedro Segura, 24, was found near Pagatpatan, Butuan, Agusan del Norte, after he had last been seen detained by police and a Philippine Constabulary member on October 21. His body was hog-tied and showed signs of severe torture. Segura was suspected of having been involved in the murder of a policeman because he had a motorcycle similar to that believed to have been used by the murderer<sup>5</sup>. On 19 October 1983, Tranquilino Cabarubias was shot and killed at close range by two armed men who entered his house in Sangay, Buenavista, Agusan del Norte. He was killed in the presence of his family, who identified the armed men as members of the 36th Infantry Battalion stationed in Nasipit near Buenavista. Cabarubias had previously led farmers in a protest against the Manila Paper Mills Inc., had participated in election boycotts and had been suspected of involvement in an ambush of policemen. On 23 March 1982, a squad of soldiers killed seven children of Encarnacion Orillo in Sitio Hinlasan, Hinunangan, Leyte, according to eyewitness accounts. Her husband was a suspected rebel. We were told that the case was personally, but not thoroughly, investigated by the Minister of Defense, Juan Ponce Enrile.

In addition to illegal killings by government forces (referred to in the Philippines as "salvaging"), human rights abuses include wide-spread arrest and detention for broadly-defined political crimes such as incitement to rebellion or subversion, as well as torture during detention. Task Force Detainees report a total of 2,088 political arrests and detentions in 1983 and a total of 1,551 released during the year leaving 855 political detainees at the end of 1983. A large majority of these (526) were in the southern island of Mindanao. Cases of arbitrary arrest and torture are detailed elsewhere in this report. The practice of "hamletting" (herding the whole population of a village into a camp, ostensibly for their protection) continues to occur in some areas, despite govern-

5) *Philippine Signs*, Dec. 10-16, 1983, p. 1.

ment orders prohibiting the practice.

Not surprisingly, the excesses committed by the armed forces, police and civilian militia are greatest in the areas of greatest activity by the NPA and in Mindanao where the Moro National Liberation Front (MNLF) is active. These are also among the areas of greatest poverty, where the rebel forces win greatest support, due both to the miserable conditions of life, with widespread unemployment, and to indiscriminate repression of the population. There is an escalating spiral of violence and counter-violence, which is likely to continue until the social conditions of the rural poor are improved.

The Philippines is at present in a severe economic crisis, both internationally and internally. Since the second World War the Philippines has witnessed a substantial increase in its gross national product, which has benefitted greatly a ruling elite and a growing middle class. The lot of the rural poor has, however, worsened and the great majority of the population live below the poverty line with deplorable housing and health conditions. These conditions have been aggravated in some cases by intensive agro-industrial development by transnationals, leading to increased rural unemployment.

On 17 January 1981 President Marcos issued a decree terminating martial law (except for two autonomous regions in Mindanao). The International Commission of Jurists had recommended its termination in its report in 1977 which extensively documented the violations of human rights occurring under martial law. The lifting of martial law had some positive effects: civilians are no longer tried by military commissions, fewer persons are in detention and the climate of repression is somewhat lessened, at least in Manila and nearby regions. The lifting of martial law was welcomed since it signalled a hoped for return to normalcy and democratic rule. Unfortunately, the hopes were short-lived: the 1973 Constitution, considered by many to be illegitimate since it was ratified in an unusual procedure under martial law conditions, remains in force; President Marcos retains extensive legislative powers even when the National Assembly is in session; the Supreme Court has upheld the extraordinary personal power of Marcos to issue law-making decrees. A state of one-man rule with strong military support continues in the Philippines despite the lifting of martial law.

In 1976, during martial law, Amendment No. 6 to the Constitution came into force, permitting President Marcos to issue decrees, orders or letters of instruction which form part of the law of the land. This Amendment, which remains in force, permits President Marcos to legis-

late freely without any interference. Until the Amendment is repealed there will be no return to normalcy or democratic government in the Philippines. Amendment No. 6 reads,

"Whenever in the judgment of the President (Prime Minister), there exists a grave emergency or a threat or imminence thereof, or whenever the *interim* Batasang Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action, he may, in order to meet the exigency, issue the necessary decrees, orders or letters of instructions, which shall form part of the law of the land."

Under this Amendment, President Marcos has issued more than 900 decrees, orders and letters of instruction. Amendment No. 6 has been used by Marcos as the ordinary method of legislating rather than as an exceptional authorisation. The most notorious of the Marcos decrees are those permitting issuance of Presidential Commitment Orders (PCO) and Preventive Detention Action (PDA). The PCO was a detention order; the PDA which replaced the PCO is both a warrant of arrest and a search warrant<sup>6</sup>. Using a PCO, and now a PDA, the President has total discretion to arrest and detain alleged subversives indefinitely without bail and without trial.

Under other presidential decrees, a meeting for propaganda against the government has become a crime as well as the giving of aid or comfort to persons allegedly committing rebellion or subversion. Presidential decrees have also imposed severe penalties, including life sentences and death, not only for armed insurrection or rebellion, but even for non-violent opposition to the government.

The Integrated Bar of the Philippines called for an end to President Marcos' decree-making powers in March 1984<sup>7</sup>. During the campaign for election to the Philippine National Assembly in the spring of 1984, opposition leaders called for the repeal of Amendment No. 6 of the 1973 Constitution and decrees issued under the Amendment. In an interview on government television, President Marcos defended his decree-making powers, stating that the current system was "a less odious way

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6) See below under sections on Arrests and Detention and on Criminal Procedure for further information about PCOs and PDAs.

7) News Wire Services, Manila, Philippines, *Buffalo News* (New York, USA), March 12, 1984.

of exercising power" than declaring martial law every time there was an emergency<sup>8</sup>.

During martial law the independence of the judiciary was seriously compromised. President Marcos demanded and received letters of resignation from all judges below the Supreme Court. He accepted some resignations and held other letters until January 1983 when the Judiciary Reorganisation Act came into force. This Act was thought by many to be unconstitutional as it deprived judges of their offices. However it was upheld by the Supreme Court on the grounds that it was enacted in good faith to remove incompetent and corrupt judges. It abolished all lower courts and replaced them with new courts. Some sitting judges were not re-appointed to the new courts.

The courts have been criticised for lack of independence from the executive. However, some recent cases have been interpreted as evidence of greater independence.

Corruption, political influence on judges and slowness of judicial procedure are admitted problems of the Philippine judicial system. Courts are understaffed and the judges underpaid.

A number of lawyers in the Philippines have shown exceptional courage in the defence of political prisoners. This is particularly true of members of such organisations as FLAG and MABINI, but in some areas, the Integrated Bar of the Philippines (IBP) has also been active.

While journals and newspapers which are critical of the government and document human rights abuses are available in the Philippines, harassment of journalists through arrest and libel suits has seriously prejudiced the freedom of the press.

Labour activity is controlled through severe limitations on the right to organise and strike, arrest of militant labour leaders, and government and employer dominated unions.

Prior to the National Assembly elections in May 1984 a number of opposition leaders called for a boycott of the elections, contending that participation in the elections would constitute acceptance of the 1973 Constitution which they considered had never been legitimately ratified<sup>9</sup>. They pointed out that under that Constitution, the National Assembly was basically a powerless body since essential legislative power remained with President Marcos.

8) *Ibid.* Some of the repressive decrees were apparently lifted during the election campaign. They were reinstated on June 1, 1984.

9) See *The Decline of Democracy in the Philippines*. A report of an ICJ mission, 1977; pp. 13-17.

They also pointed out that, in view of the repressive decrees, it would be difficult for persons to feel free to vote according to their conscience, especially in rural areas where most human rights abuses are occurring. Election results showed the Marcos KBL party winning 113 of the 183 contested seats, the opposition winning 59 (as compared to 13 in the previous Assembly) and independents winning 11 seats. Marcos also may appoint an additional 17 deputies, giving a substantial majority to the Marcos party. As a result of amendments adopted in a referendum on 27 January 1984, the speaker of the Assembly will be the interim successor to President Marcos in the event of his death or disability. On 23 July 1984 Nicanor Yniguez, a long-time ally of President Marcos, was named speaker. The vote for the National Assembly evidences substantial opposition to the Marcos regime, particularly in view of the boycott and the climate of fear reigning in many parts of the country as well as doubts concerning the fairness of the election. The elections to the National Assembly do not, however, signify any real transfer of power out of the hands of President Marcos.

The effects of nine years of martial law are not easily eradicated. Corruption in the government, favours to cronies of Marcos, repression, a severe economic crisis, neglect of the social needs of the population and an increased role for the armed forces are considered by many to be the legacy of 18 years of rule by President Marcos. The widespread outbreak of public demonstrations against the government following the killing of Aquino was hardly surprising.

International attention was focussed on the Philippines after the killing of Aquino and during the election campaign. Attention has lessened since the elections in May. On 28 June 1984, *Le Monde* reported that President Marcos announced several days earlier that he envisaged the restoration of martial law in view of the intensification of 'communist guerrilla activity' in Mindanao. The 1977 report of the mission of the International Commission of Jurists to the Philippines concluded that martial law was not then being imposed to quell rebellion or insurrection "but rather to perpetuate the personal power of the President and his collaborators and to increase the power of the military to control Philippine society"<sup>10</sup>. We also conclude that, at present, the extensive powers of President Marcos are being used for that same purpose and that the restoration of martial law or further repressive measures would more probably be a response to the recent demonstrations of opposition

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10) *Ibid.*, p. 46.

to the regime than a response to the armed insurgency. A widespread and growing rebel movement does exist in Mindanao and other regions of the Philippines. In the view of many with whom we spoke in the Philippines, the rebel opposition cannot be contained by repression but only by a more just and democratic government in power.

## **Chapter 2**

### **Abuses by the Armed Forces and Police**

#### **Militarisation Continues After Martial Law**

Since the imposition of martial law in 1972 the armed forces of the Philippines have grown from 60,000 to an estimated strength of 250,000 to 300,000 men. In addition, para-military units, intelligence organisations, counter-revolutionary and fanatical sects armed by the authorities have swollen their number by a further estimated 100,000 men under arms.<sup>1</sup> The military budget rose from 604 million pesos in 1972 to 8.8 billion pesos in 1984.<sup>2</sup> Military and security forces have become powerful institutions within Philippine society. The growing role of military forces in Philippine society is commonly referred to as militarisation. This process, set in motion from 1972 to 1981, is continuing despite the lifting of martial law. International attention was focused on the role of the Philippine armed forces following the assassination of Marcos' political opponent, Benigno S. Aquino, Jr., at Manila airport in August 1983 while in custody of the army.

In lifting martial law, President Marcos claimed that the martial law period had "significantly defused the dangers of subversion, sedition and rebellion." Yet the justification for the continued military build-up is the insurgent activity of the New People's Army (NPA), and the activities of the Moro National Liberation Front (MNLF), a Muslim Group in Mindanao and the Sulu Islands. Increasing militarisation and

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1) 1982 Amnesty International Report of Mission to the Philippines, August 1982, p. 15, and *Mindanao, The Bleeding Land*, 1983, Task Force Detainees, p. 11.

2) *Bulletin Today*, March 9, 1984.

human rights abuses, however, appear to be augmenting the ranks of the NPA. This increased support for the NPA from the civilian population in certain areas of the country is evidence of the dissatisfaction of many elements in Philippine society.<sup>3</sup>

The militarisation of Philippine society has been decried by many. The Catholic Bishops of the Philippines in their annual assembly in January, 1983, cited militarisation as one of the major causes of social unrest in the country. The insidious effects of militarisation are apparent in the extra-judicial killings by the military, arbitrary arrest of suspected persons, torture, prolonged detention, and hamletting; all carried out by military or security forces. The armed forces are also increasingly active in roles normally carried out by civilians.

In a letter to the President of the National Conference of Bishops of the United States in September, 1981, Jaime Cardinal Sin of the Philippines wrote, "Daily we experience the increasing militarisation of our lives; the pervasive surveillance of citizens who dissent democratically by military intelligence; the lack of mercy and prudence shown by special military units against suspected criminals; the use of torture to extract information; the unexpected wealth of many military officers."<sup>4</sup> In an address on "Militarization — An Issue Facing Philippine Society Today" Bishop Frederico Escaler, S.J. on 14 January, 1984, cited the extent of military involvement in Philippine civilian affairs:

"Apart from external defense, the military's role to secure law and order has included the suppression of insurrection, rebellion and lawless violence, the enforcement of Presidential decrees and regulations, the expansion of the Presidential Security Command into an elite intelligence corps and a trusted striking force Military tribunals were set up to try military personnel and other cases. The absence of a clear cut definition of subversion further ex-

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3) The Far Eastern Economic Review Asia Yearbook, 1983, reported, p. 231:

"The radical Left, however, increased its influence in the countryside through dedicated propaganda and recruitment activities of cadres and New People's Army (NPA) guerillas. Between 1979 and 1981, the NPA claimed significant gains in terms of arms procurement — mainly from ambushing government troops — and recruitment. They claimed to have guerilla fronts in 43 out of 72 provinces throughout the country. The National Defense College recently estimated NPA strength at between 3,000 and 3,500 armed men with a mass base of 180,000. It added that 20 percent of barangays (villages) have been infiltrated or controlled by the NPA."

4) Letter to John R. Roach, President of the National Conference of Catholic Bishops, United States Catholic Conference, 4 September 1981.

tended the power of these tribunals and the military to apprehend dissenters. Decrees suspending the writ of habeas corpus in several 'critical areas', the issuance of the P.C.O. and upon its repeal, the P.D.A. and subsequent decrees penalizing dissent most severely — all these completely placed civilians under seemingly arbitrary control of the military and the government. ...

"[T]hus the military has involved itself in land reform, collection of farmers' loans, monitoring the 'backsliding' of local political officials, evacuation of families from areas designated as developmental priorities, etc.

"All the above has entrenched more firmly and widespread the involvement of military personnel in civilian life.<sup>5</sup>"

The Armed Forces of the Philippines consist of the Army, Navy, Air Force and Philippine Constabulary (PC). Both the Philippine Constabulary and the Integrated National Police (INP) have police functions and are united in a single command under the Ministry of Defence. The intelligence services of the Armed Forces and the Philippine Constabulary engage in counter-insurgency efforts and are most frequently cited as perpetrators of such abuses as summary killings, arbitrary arrests, torture and hamletting. The Integrated Civilian Home Defense Force (ICHDF) is composed of civilians who are given arms and minimum counter-insurgency training. We were told that the ICHDF is also frequently involved in serious human rights abuses. All these forces are hereafter referred to as 'the armed forces'.

Not all members of the armed forces are guilty of abuses. Bishop Escaler has publicly stated that Marines in Mindanao have curbed abuses and been exemplary in behavior, while pointing out that other members of the armed forces with little training have engaged in many human rights violations. Reports of abuses by the armed forces are so widespread and well documented by lawyers and human rights organisations that they must be given credence. Our interviews with witnesses confirmed these allegations. Few incidents of abuses are investigated and few military personnel are prosecuted for abuses.<sup>6</sup> The climate of fear created by militarisation results in witnesses fearing to

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5) Quoted by Bishop Frederico Escaler, S.J. in an address at a workshop in Manila on the role of the military, sponsored by the Bishop's-Businessmen's Conference, 14 January 1984.

6) For an instance of military men brought to justice in a particularly notorious case, however, see the reference to the *Lucero* case in Chapter 4.

testify against the armed forces. Despite the violence of the NPA, many persons claim that the armed forces are more feared by the general population than the NPA. The abuses of the armed forces are more random and unpredictable than those of the NPA.

### Mindanao: The Bleeding Land<sup>7</sup>

Although militarisation and abuses of human rights by the military are prevalent in many areas, they are particularly pervasive in the southern island of Mindanao. An estimated 60 percent of the armed forces of the Philippines are concentrated in Mindanao, although its population is less than one-fourth of the total population of the country. "The tremendous concentration of armed forces makes Mindanao the most highly militarized area in the country as well as in the whole ASEAN region."<sup>8</sup> There is one soldier for roughly every 100 persons in Mindanao while the national ratio is one to 250 and the ASEAN ratio, one to every 345. The military concentration in Mindanao results from a number of factors. The NPA is particularly active in the island and has been attracting increasing support from the population.<sup>9</sup> In addition, the Muslim population of the island has long objected to centralised rule from Manila and has fought for greater autonomy or separation. At present the Moro National Liberation Front (MNLF) is carrying out an armed struggle for secession. Although martial law has been lifted in other parts of the country, it continues in two autonomous regions of Mindanao.

Many persons whom we interviewed stated that the army is extensively deployed in Mindanao not only to combat the MNLF and the NPA, but also to suppress dissent and to facilitate the penetration of multi-national business concerns. Since the 1960s Mindanao has been the scene of a massive build-up of commercial crop plantations, particu-

7) The characterisation of Mindanao as "The Bleeding Land" has been taken from a publication of that title by the Task Force Detainees.

8) *Mindanao, The Bleeding Land*, 1983, Task Force Detainees, p. 13.

9) *The Asia Yearbook of the Far Eastern Economic Review* 1983, reported p. 231:

"A U.S. consul in a confidential report, stated that NPA growth in eastern and northern Mindanao followed the same pattern as the Lanao provinces, which was described as slow but steady despite a military presence. It was also stated that in eastern Mindanao alone the NPA strength had increased 30-50 percent over the past two years, with 950 men carrying around 288 weapons."

larly coconut, pineapple, sugar and rubber. While this has led to increased wealth for the firms controlling the plantations, the vast population of Mindanao remains poor. In many cases they have lost their land to plantation developers. A majority of the population of Mindanao is malnourished. Mindanao food crops are exported. The resulting social unrest is being suppressed by the army.<sup>10</sup> "Since martial law was declared, the military has been used to repress the agricultural and industrial labor force, to evict settlers and tribal groups from their lands and to intimidate those who have very legitimate grievances to express."<sup>11</sup>

### 'Salvaging', Massacres, 'Disappearances' and 'Burnings'

'Salvaging' is a term used in the Philippines to refer to summary execution or extra-judicial, surreptitious, killing of individuals by the armed forces. The person 'salvaged' disappears after being picked up by the military or security forces and is found dead some days later. There is often evidence of torture. We were informed by numerous observers — lawyers, church workers and human rights activists — that 'salvaging' was widespread and increasing, particularly in Mindanao. In January, 1984 the Integrated Bar of the Philippines, Davao del Sur Chapter, (Mindanao) appointed a Special Commission on Law and Justice composed of five "courageous" senior members of the Bar to look into the "increasing incidents of 'salvaging' and military abuses in Davao City and Davao del Sur." The Task Force Detainees (TFD) estimate that in the first nine months of 1983, there were 191 'salvagings', 126 massacres and 74 'disappearances' carried out by the armed forces in Mindanao alone. This number was considerably greater than in the comparable period of 1982. These figures are necessarily approximate, but they err, if at all, on the conservative side since many incidents are unreported. It is difficult to obtain precise figures on the extent of these practices. The TFD have cited difficulties in obtaining precise statistics: manpower trained in documentation is limited, workers run exceptional risks in gathering information due to opposition from the armed forces,

10) Causes of the social unrest in Mindanao are discussed in TADEM, Eduardo C., *Mindanao Report, A Preliminary Study on the Economic Origins of Social Unrest*, Afrim Resource Center, Davao City, 1980.

11) *Mindanao, The Bleeding Land*, 1983, p.9.

active assistance to detainees and their families takes priority over data gathering. It is not always clear who is responsible for the killings and 'disappearances' since the NPA kill informers and collaborators as well as military and police officials. Nevertheless, the involvement of the armed forces in the overwhelming number of cases is proved by eye-witness accounts and other evidence.

Davao City and nearby areas in Mindanao were the scene of exceptional violence in 1983. The *Davao Star* of December 23-25, 1983 reported,

"Bodies of dead persons found along deserted highways, canals and rivers in the city also marked the extent of the violence Davao went through this year. At least ten cadavers of persons suspected to have been 'salvaged' by either cops, dissidents or military men during the last 12 months were found scattered all over this city. Some bodies were found to have been hogtied before being peppered with bullets. Some bodies had no heads, no arms and no legs. Most of these bodies remain unidentified up to press time. Local journalists have no easy way of knowing the progress or result of investigations by authorities, if any, into all these bloody incidents since the military here have not been very open with the press."

In Davao City alone an average of three policemen were killed every month by elements suspected to be NPAs.

A notorious case of 'salvaging' of three young men by the armed forces occurred in November 1983 in Digos, some 60 kilometers from Davao City. The bodies of the three men were exhumed on December 20, 1983, shortly before our arrival in Davao City. We were able to interview parents of one of the men 'salvaged', attorneys connected with the case and a priest who was present at the exhumation of the bodies. The ICJ is also in possession of photographs taken at the exhumation and documentation concerning the case prepared by the Davao del Sur chapter of the Integrated Bar of the Philippines. There is overwhelming evidence that the armed forces summarily executed the three young men and surreptitiously buried them without informing their families.

The men were apparently killed by the armed forces on the assumption they were implicated in the shooting of two members of the security forces. On November 13, 1983, Lieutenant Roberto Merca of the

INP was killed in Digos while having a haircut in a barbershop and on the same day, Conrado Olarte of the Integrated Civilian Home Defense Force was also killed. Both men were presumably killed by the NPA Sparrow Unit. Colonel Laudemar Kahulugan, the PC/INP Provincial Commander of Davao del Sur with headquarters in Digos, immediately launched an intensive search for NPA suspects. Shortly afterwards, Rodolfo Juabinga, Robertson Ignacio and Emmanuel Rosales, all in their twenties, were apparently picked up in Digos and killed by the armed forces. The armed forces originally stated that they were killed in an encounter and later that three men were killed trying to escape. They did not identify them as Juabinga, Ignacio and Rosales although it was subsequently found that they knew who the men were.

Relatives of the young men learned inadvertently that the three had been detained and identified by the army. They also learned that three young men had been killed by the armed forces on November 13 or 14 in Digos supposedly while "attempting to escape". The army authorities denied that the men killed were Juabinga, Ignacio and Rosales but admitted apprehending three men known by various aliases. The men had been buried at the Digos Municipal Cemetery on November 14 without death or burial certificates. Attorneys for the families attempted to obtain exhumation of the bodies to determine their identity. The exhumation was forcibly resisted by PC/INP soldiers who were guarding the graves. The armed forces permitted the exhumation only after a court order was obtained. The bodies were identified as Juabinga, Ignacio and Rosales after the exhumation was carried out on December 20, 1983, 36 days after they were killed. One of the bodies was beheaded and another had a broken femur not due to a gunshot wound. Each of the bodies had 8-14 gunshot wounds.

The Integrated Bar of the Philippines (IBP) (Davao del Sur Chapter) reported that it had conducted its own investigation of the incident and concluded that

- there had been unusual haste in burying the bodies, depriving the next of kin of the right to claim the bodies
- the burials were illegal because of a lack of death certificates
- the burials were unchristian and inhumane; the bodies had been simply dumped in a grave
- "considering the circumstances surrounding the case there is strong reason to believe that the three did not die while attempt-

ing to escape (the oldest story in the book) but were 'salvaged' by the military."

The IBP also stated that it faced a blank wall in investigating the case because witnesses were afraid to testify because of fear of reprisals by the armed forces. Colonel Lauderer Kahulugan was considered responsible for creating the climate of fear. "The desire of the IBP to gather sufficient evidence to bring to court the persons responsible for military abuses and 'salvaging' is frustrated by the fear of the witnesses for their lives and safety and reprisals from Col. Kahulugan. For as long as Col. Kahulugan stays as Provincial Commander of Davao del Sur, there is not much IBP can do to protect the citizenry against military abuses and violation of human rights,"<sup>12</sup> reported the Davao del Sur chapter of the IBP. They requested the IBP National Board to assist in obtaining the transfer of Colonel Kahulugan and should the evidence warrant, the institution of criminal charges against him.

The ICJ believes that this case warrants a complete investigation, in particular, concerning the involvement of Colonel Kahulugan. It is not a unique case; it is one of many cases of apparent extra-judicial killing by the armed forces. Military forces are obviously under siege in Mindanao; military men are themselves the victims of grave abuses of human rights by the NPA, who kill with impunity. Nevertheless, arbitrary killings by the military of persons merely suspected of links with the NPA cannot be justified. Persons suspected of offences are entitled to be charged and given a fair trial regardless of how reprehensible the accusation.

We were told that persons 'salvaged' were frequently cases of mistaken identity or simply persons opposed to the government but without NPA links. The President and Governor of the IBP for Eastern Mindanao, Cesar Europa, reported on January 9, 1984:

"Recently, the military has intensified its operations to neutralize the NPA's. Raids and arrests are being conducted in known NPA lairs and hideouts. In many occasions, it happens that in the eagerness of the military to get immediate results, shortcuts are adopted and legal procedures are sacrificed. Not a few innocent

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12) Letter to Justice J.B.L. Reyes, Chairman, National Commission on Due Process and Human Rights, Integrated Bar of the Philippines, from Cesar S. Europa, President and Governor for Eastern Mindanao, IBP, January 9, 1984.

civilians, caught in the crossfire, are picked up and detained by the military on mere suspicion of being involved with the NPA. In the process, their rights are violated and cases of torture and 'salvaging' are no longer unusual occurrences."<sup>13</sup>

These accusations by the respected official body of lawyers in Mindanao warrant serious investigation by the government.

In addition to our investigation of the Digos case, we also interviewed persons with personal knowledge of a number of other recent cases of 'salvaging' and massacres. Among these cases were the following:

- On November 1, 1983, Rafael Silaw, aged 32, and married with two children, was picked up in Davao by two policemen and taken away in a military car. On November 2 his dead body was found dumped in Timohol, Santa Cruz, Davao del Sur with 13 gunshot wounds in his back.
- The Manila newspaper, *Bulletin Today*, reported on November 22, 1983, that "a constabulary captain and seven New People's Army rebels were killed in a clash between soldiers and some 40 rebels in Sitio Daan, Tago." Similar accounts were published in the *Mindanao Mirror* and the *Surigao Star*. We heard accounts from witnesses, which differed completely from the news accounts. The killings occurred in Sitio Adlay, Anahao Daan, Tago, Surigao del Sur, and appeared to be massacres by the military rather than killings during an encounter. The residents of Adlay went to Tago PC/INP station on November 19, 1983 to ask for help after a woman in their *sitio* had been killed, apparently by the NPA. They were denied their request for help for security reasons and they returned to Adlay. While maintaining a vigil over the dead body, the residents were surrounded by armed men identified by the residents as members of ICHDF and other military units. The group of residents was fired on by the armed men, without provocation. Four of the residents were killed and four wounded. A member of the armed forces was also killed. The residents claimed that he was not killed by them since they were unarmed; they reported hearing an isolated gunshot during an argument among the military. The killings were reported to the media as resulting from an 'encounter'. The residents of Adlay have left the

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(13) *Ibid.*

sition because of continued fear for their lives. They deny that the killings occurred during an encounter and they have asked that the military men whom they identified be prosecuted, without result.

- In April 1983, six farmers who were members of the ICHDF in Tono, Don Mariano Marcos town, Misamis Occidental, Northern Mindanao, were apparently murdered by the armed forces because their arms had been taken by the NPA. The farmers had been pressured to join the ICHDF and were issued with arms. They signed documents attesting that they agreed to face military execution should they lose their government-issued firearms to the NPA. On April 16, 1983, more than 70 armed NPA went to the homes of the farmers and confiscated their guns. The men reported the loss to the local army command and asked pardon for their disarming, which they claimed they could not avoid. A group of military subsequently asked the six men to go out on patrol. The farmers never returned and were subsequently found neatly in a row, all dead with gunshot wounds. The evidence is strong that they were shot at close range by the military for having lost their arms.

The above four incidents of 'salvaging' and massacres are only a small sample of many similar cases reported to us and confirmed by us in interviews with witnesses and by written documentation. In many cases the military report that the killings occurred during an 'encounter' or while persons were attempting to escape. Investigation of the facts disclose otherwise. In addition to the cases on which we were able to hear personal testimony, human rights lawyers provided documentation concerning a large number of other cases. The information we obtained confirms allegations of extensive 'salvaging' and massacres by the military made by other human rights organisations.<sup>14</sup> Killings by the military are increasing. Lawyers and the TFD confirm that they are currently receiving reports of fewer cases of arrests than formerly and more cases of 'salvaging'.

Although most of the evidence we heard concerned abuses in Mindanao, we also heard evidence concerning 'salvagings' and massacres by the military in Leyte, Samar, Negros and other areas of the country,

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14) See *Amnesty International Report of Mission to the Philippines*, August 1982 and *The Philippines in Crisis*, report by the Lawyers Committee for International Human Rights, (New York) December 1983.

including Northern Luzon, the provinces of Nueva Ecija and Quezon, and Southern Luzon. Such acts do not appear to be confined solely to Mindanao. The area close to Manila appears to have fewer 'salvagings' and massacres than the rest of the country.

We also received reports of 'burnings' of hamlets by military personnel in Mindanao and Luzon following activities of the New People's Army in the vicinity. Anonymity was requested by one of our informants who reported that in October 1983, following an ambush killing by the NPA of five members of the Civilian Home Defense Force and five civilians in a barangay in Mindanao, houses, crops and small animals in several sitios in the barangay were burned by military men. Carabou and cows were shot. One thousand persons were left homeless without food or medicine. The burnings were reported to the local mayor who stated that he could not control the military, and to the local commander of the infantry batallian who accused the residents of the sitios of being rebels. The only assistance provided to the homeless residents has come from the Red Cross and church groups. The governor of the province has promised financial aid, which had not arrived by the date of our interview in January 1984. We were convinced of the authenticity of the above accounts and names and details are on record at the ICJ office in Geneva.

A case of burning and killing on 6 May 1983 in the village of Be-Ew (Abra province) received national publicity due to the gruesome details of the killing of a pregnant woman. It does not seem that an effective inquiry has been made, but the journalist who discovered the matter is being constantly harassed.

Another terrible case of burning occurred on 6 November 1983 in the village of Pilar near Legaspi where a whole family (parents and four children) were burnt alive by armed men, who, the circumstances indicated, must have been related to the armed forces. Again, no effective investigation seems to have been carried out.

Frequently, witnesses of these violations are too terrified to lodge complaints or testify.

### **Arbitrary Arrests and Torture**

The Universal Declaration of Human Rights, which the Philippines supports, provides that "(n)o one shall be subjected to arbitrary arrest..." We received ample evidence during our mission that arbitrary

arrests of individuals was a widespread occurrence in the Philippines. Evidence of concern for the poor and oppressed, participation in activities to aid the underprivileged and dissent from government policies have been taken as evidence of incitement to rebellion, subversion or affiliation with the New Peoples Army. Church workers, human rights activists, legal aid lawyers, militant labour leaders and recently outspoken journalists, have been particularly subject to arrest on flimsy grounds. In many cases, such persons are held for lengthy periods and then released often without trial because of insufficient evidence.<sup>15</sup> Often they are tortured. Detention, fears of torture and instances of actual torture are powerful means used to suppress dissent.

The Task Force Detainees have received reports of 2,088 arrests in 1983 on national security grounds and 1,551 released during the year leaving 855 detainees at the end of 1983 (526 of these were in Mindanao). The number arrested in 1983 was somewhat greater than the figures reported by TFP in 1982 and considerably greater than in 1981. Towards the end of 1983, however, TFD reported they were receiving an increasing number of reports of extra-judicial killings ('salvaging') and a decreasing number of reports of arrests.

Cardinal Sin, Archbishop of Manila, has repeatedly called for the release of all political prisoners as a necessary step toward national reconciliation.

Persons may be arrested in the Philippines and detained indefinitely solely on the personal order of President Marcos. Under Amendment No. 6 of the Transitory Provisions of the 1973 Constitution, President Marcos may issue decrees which have the force of law. Under this authority he issued PD 1877 in August 1983, which provided that a military commander or head of a law enforcement agency could apply to the President for a "Preventive Detention Action" (PDA) which would give authority to arrest solely on Presidential action. The PDA replaced the Presidential Commitment Order (PCO).<sup>16</sup>

An extensive campaign against the use of the PCO was launched in mid-1983 by a number of Philippine organisations and groups including

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- 15) A particularly striking recent example is the release from detention in Bacolod, Negros in June 1984 of Reverends Brian Gore, Niall O'Brien, Vicente Dangan and six Church laymen. The charge of murder against the nine was dismissed for insufficient evidence, but the six laymen had been in detention for many months.
  - 16) The PDA is discussed more extensively in the chapter of this report concerning Criminal Law and Procedure.

the Catholic hierarchy. The Archbishop of Manila, Jaime Cardinal Sin called the PCO an "abomination" and the Catholic Bishops Conference of the Philippines branded the PCO "immoral" as it "curtails freedom unjustly and violates human dignity".<sup>17</sup> In response to this widespread campaign, President Marcos announced the abolition of the PCO. This news was greeted with relief and satisfaction by those leading the campaign against the PCO. Shortly afterwards, however, the PDA was instituted. This was, in effect, the PCO by another name.

As mentioned elsewhere in this Report the Philippine Supreme Court in April 1983 in *Garcia-Padilla v. Enrile* held that the issuance of a PCO was the exclusive prerogative of the President under the Constitution and may not be declared void by the courts on any ground since it concerns a "political question". The decision of the Court in the *Garcia-Padilla* case has been strongly criticized.<sup>18</sup>

The reasoning of the Court upholding the PCO would also apply to the PDA. Many cases of arrest were reported to us in which a PDA was not issued at all or was issued only after the arrest.

Inhumane treatment and torture during detention are also widely reported. In August 1982, 79-year-old Felixberto Olalia, a militant labour leader was arrested for alleged subversion. It is widely believed that the more likely reason for the arrest was his aggressive pursuit of justice for workers. A sickly man with heart and blood pressure problems, he was made to lie on the bare cement floor in Camp Crame immediately after his arrest on August 13, 1982. According to MABINI, a lawyers human rights group, his health deteriorated seriously because of the conditions of his detention. He was released under house arrest in May 1983, apparently because of fear that he might die in custody. He died while still under house arrest in December 1983.

Elpidio Blase, a farmer from Asturias, Cebu, was arrested in May 1982 while attending the wedding reception of a friend. Together with 42 other persons he was charged with rebellion. The failure to provide adequate medical treatment for him during detention was reported to us by his wife. While in detention at the Bagong Buhay Rehabilitation Center he developed pulmonary tuberculosis and severe anaemia. Six hundred and thirty one detainees were housed in a prison meant to

17) Quoted in "National Security Versus Individual Rights" by former Supreme Court Justice Cecilia Huñoz Palma before the Bishops-Businessmen's Conference Breakfast Meeting, Makati Sport Club, May 20, 1983.

18) *Ibid*. See also discussion of the *Morales* case in Chapter 4.

accommodate 250. Cells measuring 5.5 feet by 5 feet were shared with common criminals. Food and sanitary conditions were deplorable. The illness of Blase was well-advanced by October when he was brought to the Cebu Medical Center with bound hands and feet and placed in a filthy room next to the morgue.

He was transferred later the same month to the Southern Islands Hospital.<sup>19</sup> Blase's lawyers filed an urgent motion for bail on humanitarian grounds before Judge Mauro Navarro of RTC Branch 19 and sent an urgent appeal to Brig. Gen. Alfredo Olano asking for his release. No reply was received. Blase died on December 16, 1983 still under detention.

The United Nations has adopted Standard Minimum Rules for the Treatment of Prisoners, which provide that there must be adequate diet, lighting, sanitation, ventilation and health facilities for prisoners. A fact-finding mission to the Philippines conducted by six United States scientific and medical organisations in late 1983 reported:

"In the six detention facilities inspected, we found the following conditions to be common: overcrowding with common criminals and political detainees sharing the same cell; meager food rations (roughly 6 pesos or 42 U.S. cents a day); insufficient medicines for a variety of ailments... and irregular visits by prison health personnel. These conditions were further aggravated by the fact that many detainees had been held for a year or more under such circumstances..."

"Our observations encompass only a fraction of over 100 detention facilities for political prisoners in the Philippines. Nonetheless, if the poor living and health conditions we observed are, in fact, representative of detention facilities as a whole, then such facilities fall short of the guidelines set forth in the United Nations Standard Minimum Rules for the Treatment of Prisoners."<sup>20</sup>

In June 1983, a group of political prisoners in Davao City went on a hunger strike because of inhuman conditions of detention. Their statement read

19) See *Report of a Fact-Finding Mission to the Philippines, 28 November-17 December 1982*, American Association for the Advancement of Science et al, p. 11.

20) *Ibid.*, pp. 10-11.

"Poor food, restricted time for physical exercise, being padlocked in our small and crowded cells 23 hours a day, denial of health treatment even in acute cases, visits limited to immediate family members only, restriction of pastoral visits, detention of minors, denial of release of mentally disturbed prisoners..., illegal transfer of prisoners for interrogation and detention purposes, detention for months without formal charges, delay of legal processes. These are the conditions we have to face as political prisoners in the Davao City PC/INP Detention Center."<sup>21</sup>

Conditions of detention of the prisoners improved and the strike was ended.

In addition to inhumane conditions of detention we heard evidence of the widespread use of torture<sup>22</sup> by military and security forces and received signed affidavits attesting to torture. References to traces of torture on the bodies of salvaged victims has already been mentioned. Task Force Detainees reported that they had received reports of 644 cases of torture in the Philippines in 1983. This was a great increase over the numbers reported in 1982. TFD stated that the figures indicated "an alarming trend unprecedented during the martial law era".<sup>23</sup>

Two cases on which we received personal testimony show how far these torture practices have been carried. On 16 January 1982 seven persons were arrested at the home of Rolieto and Purificacion Trinidad in Tagum, Davao del Norte, Mindanao, while they were preparing a human rights symposium to celebrate the second anniversary of the lifting of martial law. The seven were active lay church workers and had also been occupied in documenting 'hamletting' in Laac, Davao del Norte (see below on 'hamletting'). The charge against them was subversion. Mrs. Purificacion Trinidad was released in November 1983 to the Bishop of Tagum because of nervous depression — after 21 months in detention. According to a sworn affidavit by her husband Rolieto

21) *Katawhan*, Official Publication of the CCJP-Davao, July 1983, p.7.

22) In 1975 the United Nations adopted a Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment, which defined torture as, "... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him, or a third person, information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons".

23) Mid-Year Report 1983, TFD, *Mindanao Update*, July/August 1983.

Trinidad, he was blindfolded and tortured repeatedly by blows to his body, hot pepper inserted into his eyes and genitals, cigarettes against his skin, water forced into his nose and mouth and plastic bags over his head to obstruct breathing. The torture was carried out at Tagum Philippine Constabulary headquarters and at the Intelligence Center of Camp Catitipan in Davao City by military or Philippine constabulary officers. He was able to stop the torture only by fabricating stories involving contact with rebel movements. Rolieto Trinidad was still in detention when we were in the Philippines but we understand charges against him and the others arrested at the same time were dropped and he was released in early 1984 – after two years in prison and apparent extensive torture.

Hilda Narciso, a 32-year-old woman, was arrested in Davao City, Mindanao on 24 March 1983 while delivering a package to Volker Schmidt, a German pastor who was planning to leave shortly for the Federal Republic of Germany. She had recently arrived in Mindanao from Manila to work for a priest in Cotabato and had been asked by the priest to deliver a package to Schmidt to mail in Germany, which apparently contained an application for a grant. Three others, including Schmidt, were also arrested with her. She was blindfolded, handcuffed, taken to a "safehouse", threatened with 'salvaging' and accused of being a member of the Communist Party. She denied all accusations and stated that she was working for the church and had come to Mindanao to organise basic Christian communities. While at the safehouse and blindfolded she was raped by a soldier and subjected to sexual intimacies by other soldiers interrogating her. She was moved later to Camp Catitipan in Davao City and was allowed to see lawyers to whom she stated that she had been raped. She asked for a medical examination on April 5 but was given the examination only in May, two months after her arrest and was then told that there was no trace of the rape. She believed that she could identify the soldier who raped her by his voice and asked for an opportunity to do so, which was denied by local military officials. In July 1983 charges against the four individuals were dropped but she was released only on 11 September 1983. When we interviewed her in January 1984 she was still concerned to obtain justice against the soldier who had committed the rape. A case is apparently pending in the military courts on the Narciso complaint.

Torture appears to exist most commonly in remote areas and particularly in Mindanao and other areas where rebel forces are active, such as

Northern Luzon and the provinces of Nueva Ecija and Quezon. As mentioned elsewhere in this report, the police and military in these areas appear to be free to act with impunity. The Republic of the Philippines was one of the sponsors for the Declaration against Torture adopted by the United Nations General Assembly in 1975 and it is one of the few governments to have made a Unilateral Declaration indicating its intent to comply with the Declaration. It was also the sponsor of UN Resolution 35/170 on a Code of Conduct for Law Enforcement Officials prohibiting torture.<sup>24</sup>

In accordance with these international commitments, the Marcos government should thoroughly investigate all accusations of torture and prosecute members of the armed forces guilty of such acts.

#### 'Hamletting'

'Hamletting' is the herding of rural residents into special camps by military or civilian authorities. The authorities inform the farmers that they should vacate their homes and relocate in special grouping centres, in order to be protected from the rebels of the NPA. It has been estimated that 500,000 Filipinos have been forced into such hamlets since 1981.<sup>25</sup> The farmers frequently claim that danger from the rebels is not such as to require these evacuations; they claim that the true purpose of hamletting is to force them off their land so that it may be used by powerful corporations or officials. Hamletting causes severe economic and personal disruption to large numbers of individuals and is a serious violation of the rights of the individuals involved.

Following protests against hamletting, the Minister of National Defense, Juan Ponce Enrile, issued a Memorandum in March 1982, stating that the hamletting had not been authorised by the national government and ordering a stop to the practice, the dismantling of existing hamlets and the allowing of victims to go back to their farms with specific instructions to give financial assistance to the victims.

Despite the Enrile Memorandum it is reported as recently as November 1983 that forced evacuations are continuing in Mindanao. In addition, many of the persons in Mindanao who were forcibly moved before

24) Report of an Amnesty International Mission to the Philippines, 1982, p. 5.

25) *The Expanding Strategic Hamlets of Mindanao*, the Mindanao Documentation Committee for Refugees, 1983.

the Enrile order are remaining in hamlet centres out of fear that if they return to their homes they will be treated as subversives.<sup>26</sup> In some cases, the military order the people not to move back. The *Mindanao Daily Mirror* reported on October 4, 1982 that four farmers were killed in Asuncion, Davao del Norte, Mindanao, after having been threatened with death by the military if they left their hamlets. Where the military have withdrawn, farmers have returned to their homes without incident. But this is apparently rare in Mindanao.

Hamlet centres have been reported to have nearly tripled since the Enrile Memorandum and to have been set up in Agusan del Sur, Davao del Sur, Zamboanga del Norte, and North Cotabato. Organised protest by the people of Dumalinao, Zamboanga del Sur, resulted in a court order forbidding hamletting, which had been contemplated there in August 1983.<sup>27</sup>

The Enrile Memorandum of March 1982 was in response to a Report of the Commission on Human Rights and Due Process of the Integrated Bar of the Philippines (IBP) which alleged that 'hamlets' or barangay centres were established in the Agusan and Davao Provinces of Mindanao and that residents in some barangays of San Vincente, Davao del Norte, Mindanao, were ordered by the military to contribute labour and materials for the construction of Philippine Constabulary barracks for which they were not adequately compensated. The IBP report dated February 26, 1982 was prepared by a distinguished seven-member Commission led by J.B.L. Reyes, former Justice of the Supreme Court. The IBP report documented the existence of hamlets or grouping centres to which the residents of Laac, San Vincente, Davao del Norte, were forced to move by the military. They had been ordered to dismantle their previous homes before moving so that they could not be used by the NPA. The report noted that before the people were ordered to move, no provision was made to prepare the hamlets or grouping centres and that the residents suffered from lack of food, safe drinking water and sanitation. Housing was inadequate. They reported serious health problems, particularly among the children. The residents of the hamlets were permitted to leave the centres only during daylight hours. They had difficulty planting and tending their fields because of the restrictions.

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26) *Ibid.*

27) *The Expanding Hamlets of Mindanao*, p. 4; *Political Detainees Update*, March 31, 1984, p. 3, "Report on the Fact-Finding Mission of the Hamlets in Sitio Nabundansan, New Panay, Tulunan, North Cotabato," conducted October 4, 1983 by University of Mindanao Legal Assistance Group and others.

The IBP report pointed out that restricting freedom of movement violated constitutional rights to liberty of abode and travel, that requiring persons to demolish and dismantle their homes was unconstitutional deprivation of property without due process and that forcing people to work without compensation constituted involuntary servitude under the Constitution. It emphasized that incidents of violence by the NPA in San Vincente did not constitute sufficient military necessity to justify hamletting. One of the purposes of hamletting is to win the rural residents to the side of the government. The IBP reported that the effort appeared to have the contrary effect, since hamlet residents evidenced great fear of the military.

In December 1982, ten months after the first IBP report and nine months after the Enrile order, the Davao del Sur chapter of the Integrated Bar of the Philippines set up another Fact-Finding Mission to make a follow-up investigation of the status of hamletting in San Vincente (Laac), Davao del Norte, and the reported existence of hamlets in several other areas of Mindanao. The purpose was to establish the veracity of reports that 'forced groupings' or 'hamletting' was still practised notwithstanding the Enrile Memorandum. Five teams were organised to conduct separate visits and investigation in reported 'hamlet' areas. The teams visited a number of areas and determined that hamletting continued to take place.

The Fact-Finding Mission found hamletting had occurred in various areas even after the Enrile Memorandum, but that no further hamletting had occurred in Laac and other sitios or barangays of San Vincente. They found, however, that not more than 10 percent of the families in this latter area displaced by hamletting had returned to their homes. Fear, uncertainty and economic reasons were given as causes.

The Fact-Finding Mission concluded:

"The continued use of 'strategic groupings' or 'hamletting' by the military as a strategy of counter-insurgency is alarming. Aside from being patently violative of the victims' human and constitutional rights and an affront to their dignity, the practice causes them to suffer from severe economic hardships. Its continued practice only reinforces the fears of civilians on the growing militarization in the area considering that the continued and in fact spreading use of hamletting strategy is a patent disregard by the military of the Memorandum issued by a civilian authority — Defense Minister Juan Ponce Enrile himself.

"Hamletting as a strategy could even alienate the people from the government. Instead of separating the population from the NPA, the program as it is creates the danger of making NPA's out of the people.

"Efforts of concerned sectors such as the Integrated Bar of the Philippines in investigating and protesting against hamletting are being misinterpreted as anti-military and subversive."<sup>28</sup>

The Task Force Detainees (TFD) reported in March 1984 that four children died in a hamlet centre in Zamboanga del Norte set up as recently as November 10, 1983. Residents of the centre were required to secure permits to leave the centre and poor health conditions were said to have caused the death of the children.<sup>29</sup> Health has consistently been a problem in the hamlets due primarily to close, cramped living conditions and malnutrition. In Laac, church records indicated that from November 1981 to March 1982, 145 residents died in the hamlets — approximately ten times the expected death rate for the same population over a comparable period of time.<sup>30</sup>

The process of hamletting which violates so many of the human rights of the victims is based on extreme psychological pressure.

"... Whatever cause the government officials may have to require the evacuation to a hamlet center by the people, they had no right whatsoever to resort to the process they used... a process which submitted the people to both psychological and physical coercion... a process which communicated its authority to the people not from any soundness of legal or civil principles but rather from the weight of personal prerogative exercised by the powerful. As a result the people are left in such a fear of being labeled as subversive that they are no longer willing to pursue the legal avenues of protesting wrong and seeking redress precisely because they fear even such legal action may result in charges of subversion."<sup>31</sup>

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28) Updated report of IBP Davao del Sur Chapter Human Rights Committee Fact-Finding Mission, which investigated the reported existence of strategic groupings of hamlets in December 1982.

29) *Political Detainees Update*, March 31, 1984, p. 3.

30) *The Expanding Strategic Hamlets of Mindanao*, p. 7.

31) *Op. cit.*, n. 3, *supra*.

"Hamletting" is not a new phenomenon nor unique to the Philippines. It was practiced by the Spanish in the 16th Century in the Philippines under the term *reducciones*. The ostensible purpose then was to gather villagers together in one area to protect them from Moro slave raids. The real purpose was to facilitate their indoctrination and administration. The British practised similar programmes in Malaysia in the 1950s and the Americans organised strategic hamlets in Vietnam.

There are widespread allegations that hamletting is being undertaken in Mindanao as a means of implementing government development programmes. "Hamletting... is becoming widespread in the upland areas at the same time that the government programs are progressively being implemented there. In fact, in many if not most hamleted areas, the government program had not been explained to the people until after they were subjected to the hamletting operation."<sup>32</sup>

The evidence is strong, based on the careful reports of the respected Integrated Bar of the Philippines and others, that hamletting under orders of the armed forces is continuing in some areas despite the order of Minister Enrile. The practice is a serious infringement of the rights of the hamleted residents to freedom of abode and movement. It subjects them to extreme psychological pressure and physical and economic deprivation.

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32) *The Expanding Hamlets of Mindanao*, p. 47.

## Chapter 3

# Criminal Law and Procedure

### Criminal Law after Martial Law

The revised Penal Code<sup>1</sup> at present applicable in the Philippines came into effect in 1932. Although at that time Spanish rule over the *Islas Filipinas* had ended more than 30 years before, the influence is clearly perceptible of the Spanish *Código Penal* of 1848 introduced in the Philippines by *Real Decreto* of September 4, 1884, and *Real Orden* of December 17, 1886. However, the Special Part of the Code ("Book Two: Crimes and Penalties") has been substantially modified, and it has also been superseded by enactments outside the Code.

Title Three of Book Two of the Penal Code deals with "Crimes against public order" and, in Chapter One, with rebellion and insurrection, the type of criminal activity which the Philippine government took as justification for the imposition of martial law (see Proclamation Nr. 1081 Proclaiming a State of Martial Law in the Philippines of September 21, 1972: "... an armed insurrection and rebellion against the Government of the Philippines..."). Title three was amended by Presidential Decree (PD) No. 942 of June 10, 1976 and PD No. 970 of July 24, 1976, i.e. after the imposition of martial law, and again by PD No. 1834 of January 16, 1981 (one day before the lifting of the martial law) and consists now of Art. 134 to 142-B. Furthermore, "Rules and Regulations for the Implementation of Presidential Decrees No. 960, 969 and 970" were promulgated by the Chief of Constabulary and Director

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1) The Penal Code and the Presidential Decrees are in general cited from the 1983 edition of "The Revised Penal Code" (Central Law Book Publishing Co., Inc., Manila).

General of the Integrated National Police with the approval of the Secretary of National Defense, Juan Ponce Enrile, and spell out police powers in this respect.

PD No. 1834 has been surrounded by considerable confusion, and the history of this martial law / post-martial law piece of presidential legislation sheds some particular light on the way President Marcos uses criminal law.

It is dated January 16, 1981 but was not published till more than one year later on May 10, 1983. It then aroused public outrage, whereupon it was announced that this Decree was not in force since it had not been published in the official Gazette. However, the publication seems to have taken place subsequently.

#### *Rebellion, Insurrection and Sedition*

Art. 134 of the Penal Code specifies that “the crime of *rebellion or insurrection* is committed by rising publicly and taking arms against the Government...”, Art. 135 makes punishable “conspiracy and proposal to commit rebellion or insurrection”, and Art. 139 makes punishable “... any person who... shall incite others to the execution of any of the acts specified in Article 134 of this Code, by means of speeches, proclamations, writings, emblems, banners or other representation tending to the same end.”

*Sedition*, according to Art. 139,

“... is committed by persons who rise publicly and tumultuously in order to attain by force, intimidation, or by other means outside of legal methods, any of the following objects:

1. To prevent the promulgation or execution of any law or the holding of any popular election;
2. To prevent the National Government, or any provincial or municipal government, or any public officer thereof from freely exercising its or his functions, or prevent the execution of any administrative order;
3. To inflict any act of hate or revenge upon the person or property of any public officer or employee;
4. To commit, for any political or social end, any act of hate or revenge against private persons or any social class; and
5. To despoil, for any political or social end, any person, municipality or province, or the National Government, (or the Government of the United States), of all its property or any part thereof.”

The penalties have been raised substantially from pre-martial law levels by PD No. 942 of June 10, 1976:

**Before PD No. 942 of 1976**

**After PD No. 942 of 1976**

*Rebellion or insurrection (leaders)*

<i>Min.:</i>	6 years and 1 day	14 years, 8 months and 1 day
<i>Max.:</i>	12 years	17 years and 4 months

*Rebellion or insurrection (participants)*

<i>Min.:</i>	6 years and 1 day	12 years and 1 day
<i>Max.:</i>	8 years	14 years and 8 months

*Conspiracy to commit rebellion or insurrection*

<i>Min.:</i>	4 years, 2 months and 1 day	10 years and 1 day
<i>Max.:</i>	6 years	12 years

*Proposal to commit rebellion or insurrection*

<i>Min.:</i>	2 years, 4 months and 1 day	8 years and 1 day
<i>Max.:</i>	4 years and 2 months	10 years

*Inciting to rebellion or insurrection*

<i>Min.:</i>	6 years and 1 day	12 years and 1 day
<i>Max.:</i>	8 years	14 years and 8 months

*Sedition (leaders)*

<i>Min.:</i>	6 years and 1 day	12 years and 1 day
<i>Max.:</i>	8 years	14 years and 8 months

*Sedition (participants)*

<i>Min.:</i>	4 years, 2 months and 1 day	10 years and 1 day
<i>Max.:</i>	6 years	12 years

*Conspiracy to commit sedition*

<i>Min.:</i>	2 years, 4 months and 1 day	8 years and 1 day
<i>Max.:</i>	4 years and 2 months	10 years

*Inciting to sedition*

<i>Min.:</i>	4 years, 2 months and 1 day	10 years and 1 day
<i>Max.:</i>	6 years	12 years

The increases in penalties imposed by Presidential Decree are, as can be easily seen from the above schedule, very substantial. They raise not only the maximum period of imprisonment, in some instances to more than double that which previously applied, but also the minimum, thereby reducing the courts' power to inflict lesser penalties in less important cases (those convicted of rebellion and sedition are also excluded from the application of Act No. 4103 of 1933 which provides for an indeterminate sentence and parole which allows for a lower minimum penalty; see Sec. 1 and 2 of that Act).

Furthermore, PD No. 942 inserted Art. 142-A into the Penal Code, which provides for a higher penalty if another offence is committed in connection with any of the aforementioned crimes.

PD No. 970 amended Art. 138 and 142 of the Penal Code by penalising behaviour which was previously outside the scope of those articles, namely

"acts which... tend to incite rebellion or sedition or the undermining, in any manner, of the faith and confidence of the people in their government and/or duly constituted authorities and which penalty (*prision mayor* or fine) shall be imposed upon:

1. Those who shall publicly expound or proclaim doctrines openly rebellious or seditious;
2. The authors of rebellious or seditious literature, published with their knowledge in any form; the editors publishing such literature; and the owners/operators of the establishment selling the same;
3. Those who, in theaters, fairs, cinematographs or any other place, exhibit rebellious or seditious plays, scenes, acts or shows which incite or tend to incite rebellion or sedition; and
4. Those who shall sell, give away or exhibit films, prints, engraving, sculptures, or literature which are rebellious or seditious in character."

The higher penalties provided by Presidential Decree during the martial law period certainly have to be seen as exceptional legislation during an exceptional period. However, when the state of martial law was lifted, the criminal law sanctions indicated above were not reduced to their pre-martial law level. On the contrary, one day before the lifting of martial law, the penalties were again raised by Presidential Decree (PD No. 1834 of January 16, 1981). The following schedule indicates the

change from pre-martial law levels to the present situation:

**Before Martial Law**

**After PD No. 1834 of 1981**

*Rebellion or insurrection (leaders)*

<i>Min.:</i>	6 years and 1 day	life sentence
<i>Max.:</i>	12 years	death

*Rebellion or insurrection (participants)*

<i>Min.:</i>	6 years and 1 day	life sentence
<i>Max.:</i>	8 years	death

*Conspiracy to commit rebellion or insurrection*

<i>Min.:</i>	4 years, 2 months and 1 day	life sentence
<i>Max.:</i>	6 years	death

*Proposal to commit rebellion or insurrection*

<i>Min.:</i>	2 years, 4 months and 1 day	life sentence
<i>Max.:</i>	4 years and 2 months	death

*Inciting to rebellion or insurrection*

<i>Min.:</i>	6 years and 1 day	life sentence
<i>Max.:</i>	8 years	death

*Sedition (leaders)*

<i>Min.:</i>	6 years and 1 day	life sentence
<i>Max.:</i>	8 years	death

*Sedition (participants)*

<i>Min.:</i>	4 years, 2 months and 1 day	life sentence
<i>Max.:</i>	6 years	death

*Conspiracy to commit sedition*

<i>Min.:</i>	2 years, 4 months and 1 day	life sentence
<i>Max.:</i>	4 years and 2 months	death

*Inciting to sedition*

<i>Min.:</i>	4 years, 2 months and 1 day	life sentence
<i>Max.:</i>	6 years	death

PD No. 1834 also added Art. 142-B to the Penal Code, which reads as follows:

"The Penalty of *reclusion perpetua* to death shall be imposed on any person who, on occasion of a rebellion or sedition, gives aid and comfort to the perpetrators of such crimes. The penalty of *reclusion perpetua* to death shall also be imposed upon any person, who having control and management of printing, broadcast or television facilities, or any form of mass communication shall use or allow the use of such facilities for the purpose of mounting sustained propaganda assaults against the Government or any of its duly constituted authorities which tend to destabilize the Government or undermine or destroy the faith and loyalty of the citizenry thereto, or who shall use or allow the use of such facilities for any plot or conspiracy to accomplish any of the acts which constitute rebellion or insurrection or sedition.

Conviction for the offenses provided under this Section shall carry with it the forfeiture and/or sequestration of the mass media facilities, firearms and explosives, and all other instruments, equipment or tools used in their commission."

It needs no further explanation that to threaten with the death penalty "sustained propaganda assaults against the Government... which tend to... destroy the faith and loyalty thereto" (for instance by revealing that the Government is graft-ridden or that it is unable to cope with an economic crisis) means using criminal law as an instrument of terror, and is completely incompatible with the "democratic form of Government" which President Marcos purports to protect. Paragraph 2 of Art. 142-B shows clearly that it is intended to impress the owners of printing, broadcast or television facilities with the possibility that their installations can be forfeited if they allow them to be used for vigorously criticising the Government.

### *Illegal Assemblies and Associations*

Another striking change in the penalties provided in the Penal Code by PD No. 1834 appears in Chapter Three: "Illegal assemblies and associations".

**Before PD No. 1834 of 1981**

**After PD No. 1834 of 1981**

*Illegal assemblies (organizers or leaders)*

<i>Min.:</i>	4 years, 4 months and 1 day	life sentence
<i>Max.:</i>	10 years	death

*Illegal assemblies (persons merely present, unarmed)*

<i>Min.:</i>	1 month and 1 day	6 months and 1 day
<i>Max.:</i>	6 months	6 years

*Illegal assemblies (persons merely present, armed)*

<i>Min.:</i>	6 months and 1 day	6 years and 1 day
<i>Max.:</i>	6 years	12 years

However, not only have the penalties provided for in Art. 146 (Illegal assemblies) been dramatically raised, as appears from the comparison above, but a new alternative for the commission of the crime of illegal assembly has been created. Before PD No. 1834, Art. 146 embodied only the following alternatives:

1. "Any meeting attended by armed persons for the purpose of committing any of the crimes punishable under this Code"
2. "Any meeting in which the audience is incited to the commission of the crime of treason, rebellion or insurrection, sedition or assault upon a person in authority or his agents".

PD No. 1834 has now added the following alternative (making punishable organisers or leaders and persons merely present, unarmed or armed, as specified in the schedule above):

3. "Any meeting which is held for propaganda purposes against the Government or any of its duly constituted authorities in order to destabilize the Government or undermine its authority by eroding the faith and loyalty of the citizenry thereto, or for the purpose of supporting any plot or conspiracy to accomplish any of the acts which constitute rebellion or insurrection, or sedition."

This means then that the opposition leaders, when they organise a meeting "for propaganda purposes against the Government... in order to destabilize the Government or undermine its authority by eroding

the faith and loyalty of the citizenry..." (stating for instance that in view of its record the Government does not deserve any faith or support and should resign), risk a life sentence or even the death penalty! This is obviously not only a dramatic modification of the penalties provided by Art. 146 but a complete change in the definition of "illegal assembly". Before PD No. 1834 an "illegal assembly" was one which fostered the commission of crimes (see alternatives 1 and 2 above). Now a mere propaganda meeting "against the Government" falls into that category, and a person merely present (unarmed) risks six years of imprisonment!

It is obvious that the criminal law is used here to suppress by extremely drastic penalties opposition to the present government.

Art. 147 (Illegal associations) has also been modified by PD No. 1834 as far as penalties are concerned:

**Before PD No. 1834 of 1981**

**After PD No. 1834 of 1981**

*Illegal associations (founders, directors, presidents)*

<i>Min.:</i>	6 months and 1 day	6 years and 1 day
<i>Max.:</i>	2 years and 4 months	12 years

*Illegal associations (mere members)*

<i>Min.:</i>	1 month and 1 day	6 months and 1 day
<i>Max.:</i>	6 months	6 years

However, although the wording of Art. 147, apart from the penalties as indicated above, has not been changed, its meaning after PD No. 1834 is different from what it was before. Since it refers to "associations totally or partially organized for the purpose of committing any of the crimes punishable under this Code", it applies now also to associations "who having control of... any form of mass communication" (for instance a newsletter) "shall use or allow the use of such facilities for the purpose of mounting sustained propaganda assaults against the Government" (Art. 142-B) or to associations which organise "any meeting which is held for propaganda purposes against the Government..." (Art. 146 par. 1 no. 3). This means that when opposition groups engage in anti-government criticisms by mass communication (Art. 142-B) or meetings (Art. 146 par. 1 no. 3), not only those who participate in the criticisms, but all the members are punishable (mere members with imprisonment up to six years). Apparently these are tools with which any opposition group can be destroyed or at least hindered in bringing its

criticisms to the public. It is all the more apparent that PD No. 1834 is directed at any and all opposition groups, since "the Communist Party of the Philippines and its military arm, the New People's Army" are dealt with specifically by PD No. 1835 (also of January 16, 1981, the day before martial law was lifted).

Of particular importance at present are the articles of the Penal Code on sedition and conspiracy to commit sedition since they have been used to charge in court participants of the demonstrations which erupted on September 21 and 23, 1983, as a consequence of the assassination of Aquino. According to press reports, President Marcos announced that upon the recommendation of the Integrated Bar of the Philippines all such cases (more than 50) would be dropped (Daily Express, January 13, 1984, p. 3). However, there is no indication that the penalties prescribed by the Penal Code for these cases would be reduced to pre-martial law levels.

For the moment the Government seems to be intent on keeping these extraordinarily high penalties in order to intimidate the opposition. Obviously there is hardly any democratic country in the world where demonstrations against the government would be considered to be sedition and threatened with a life sentence.

### *Anti-Subversion Legislation*

An example of the evolution of criminal law outside the Penal Code is the so-called "Anti-Subversion Act". Republic Act No. 1700 of June 20, 1957 outlawed the "Communist Party of the Philippines and its military arm, the Hukbong Mapagpalaya ng Bayan, formerly known as HUKBALAHAPS". Sec. 4 provided the following penalties for acts committed after the approval of the Anti-Subversion Act:

Member:

*arresto mayor* (first offence), *prisión correccional* (second offence), *prisión mayor* (further offences).

Officer or ranking leader or armed member:

*prisión mayor* to death.

The "Revised Anti-Subversion Law" (PD No. 885 of February 3, 1976, amended by PD No. 1736 of Sept. 12, 1980) was designed "to broaden the coverage" of Republic Act No. 1700 (second preambular clause of PD No. 885). This was done through Sec. 2 which does not refer to the Communist Party, but states as follows:

“Subversive Associations and Organizations. — Any association, organization, political party, or group of persons organized for the purpose of overthrowing the Government of the Republic of the Philippines with the open or covert assistance and support of a foreign power by force, violence, deceit or other illegal means shall be considered and is hereby declared an illegal organization.”

The Decree also provided a number of rules of evidence designed to facilitate conviction of suspects, but did not modify the penalties provided in Republic Act No. 1700 (expressly repealed by Sec. 7). However, the Decree authorised in Sec. 8

“the sequestration of the property of any person, natural or artificial, engaged in subversive activities against the Government and its duly constituted authorities...”

and set out that the “seizure of private property or assets... shall include the taking over and assumption of the management, control and operation of the private property or assets seized.”

A further step along the line of Sec. 8 of PD No. 885 is found in PD No. 1735 of September 12, 1980. Sec. 1 reads as follows:

“Any person found guilty of subversion, rebellion or insurrection, or sedition whether committed within or outside the territorial jurisdiction of the Philippines, shall suffer the penalty of forfeiture of his rights as a citizen of the Philippines, if he is a Philippine citizen, and confiscation of his property, real or personal, in favor of the State, in addition to the penalties prescribed for the offense under existing law.”

Sec. 2 provides for trial *in absentia* after the arraignment of an accused who later fails to appear without justification. In the case of judgment *in absentia* the confiscation may be carried out immediately.

It is patently clear that the additional mandatory penalties under PD No. 885 — loss of citizenship and loss of all private property — are really draconian and conflict with universally accepted human rights standards.

#### *Rumour-mongering*

Another example of the way in which criminal law is used to suppress any critical utterances of the population against the Government

is PD No. 90 of January 6, 1973 "declaring unlawful rumour-mongering and spreading false information". The Decree is a typical martial-law period product, but it is still on the statute book and its essential part reads as follows:

"NOW, THEREFOR, I, FERDINAND E. MARCOS, in my capacity as Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081 dated September 21, 1972, do hereby order and decree that any person who shall offer, publish, distribute, circulate and spread rumors, false news and information and gossip, or cause the publication, distribution, circulation or spreading of the same, which cause or tend to cause panic, divisive effects among the people, discredit of or distrust for the duly constituted authorities, undermine the stability of the Government and the objectives of the New Society, endanger the public order, or cause damage to the interest or credit of the state shall, upon conviction, be punished by *prisión correccional*".

The penalty, which for example applies to "gossip... which... tend to cause... distrust for the duly constituted authorities... or cause damage to the interest or credit of the state", is imprisonment from 6 months and 1 day to 6 years. It does not apply to false bomb threats and the like which are dealt with by PD No. 1727 of October 8, 1980.

#### *Other Presidential Decrees*

The following are also examples of Presidential Decrees creating criminal law provisions, but not inserted into the Penal Code:

- 1) PD No. 9 (October 2, 1972) as amended by PD No. 1811 (January 16, 1981),  
Declaring violations of General Orders No. 6 and No. 7 dated September 22, 1972 and September 23, 1972, respectively, to be unlawful and providing penalties therefor.
- 2) PD No. 33 (October 28, 1972),  
Penalising the printing, possession, distribution and circulation of certain leaflets, handbills and propaganda materials and the inscribing or designing of grafitti.

The Decree provides a penalty from 6 months and 1 day to six years for

"any person who, without taking up arms or being in open hostility against the government or without inciting others to the execution of any act of rebellion, shall print or publish any handbill, leaflet, poster or other similar materials, or shall possess, distribute or circulate any such printed or published materials, or shall draw, write or sketch any immoral or indecent picture or word on any wall, fence, sidewalk or any other visible or private place, which incites or tends to incite people to violence or to disregard, ridicule, defy or ignore any lawful order or act of the government or any of its officers or which, in any case, tends to undermine the integrity of the government or the stability of the State."

3) PD No. 169 (April 4, 1973),

Requiring attending physicians and/or persons treating injuries resulting from any form of violence, to report such fact to the Philippine Constabulary and prescribing penalties for any violation thereof.

The Decree threatens with imprisonment from 1 to 3 years physicians or medical practitioners who disobey this decree "with malicious intent or gross negligence". Particularly serious is the additional sanction provided:

"In addition, the government license or permit of the attending physician to practice his profession shall be cancelled by the Civil Service Commission after the sentence imposed by the Military Tribunal has become final and executory."

4) PD No. 656 (February 11, 1975),

Declaring unlawful the use of highpowered inboard/outboard engines in watercraft of less than one hundred gross tons that are capable of providing propelling power/speed in excess of 15 knots and providing certain exceptions and penalties therefor.

Although the title of the Decree refers only to the *use* of high-powered engines, Sec. 1 covers the mere installation of high-powered engines, and Sec. 2 also mere ownership. This means that no relation whatsoever to subversion, sabotage, rebellion, insurrection, criminality or smuggling enumerated in the second preambular clause of the Decree has to be established. Furthermore, crew members "who shall knowingly cause or allow the installation of such high-powered engines" are also punishable. The penalty is 2 to 4 years of imprisonment.

5) PD No. 1110-A (March 29, 1972) as amended by PD No. 1743 (Nov. 11, 1980),

Penalising any attempt on, or conspiracy against the life of the Chief Executive of the Republic of the Philippines, any member of his cabinet, or their families.

This Decree provides a mandatory penalty of death not only for an attempt on or a conspiracy against the life of the Chief Executive and his cabinet or their families, but also against the life of members of the Supreme Court and the Constitutional Commissions, and general officers of major services and commands of the Armed Forces and their families.

The mandatory penalty of death applies also when there is no attempt on or conspiracy against the lives of those protected by the Decree, but any firearm or deadly weapon is used against those persons.

While most of these Presidential Decrees refer to the martial law situation which serves as their justification, they continue to be in force even after the lifting of martial law, thereby *de facto* perpetuating certain features of the martial law period, i.e. penalising acts not normally falling within the criminal law, or providing disproportionately harsh punishment for those acts. In some cases (e.g. PD No. 1834, see above) at the end of the martial law period, precisely at the time when martial law was lifted, considerably higher penalties than ever before were provided for, especially the death penalty.

As a result of the continuing validity of amendments and additions to the criminal law, mostly through Presidential Decrees issued during the martial law period and by virtue of the special powers conferred upon the President, the effects of martial law are perpetuated in the criminal law. It is true that these extremely harsh and at least in part undemocratic criminal law provisions are not frequently applied. For instance, no death penalty has been carried out for many years. However, this is in part because the armed forces and the police have developed the well known technique of "salvaging" (i.e. assassinating) guerillas and suspects, completely avoiding thereby the judicial process. Nevertheless these criminal law provisions serve the purpose of intimidating the public, and especially the opposition, since at any time they can be used to drag someone to court and to seize his property and even deprive him of his citizenship. So even when not extensively applied the continuing martial-law legislation serves the purpose of the Government as a permanent threat to the opposition.

## Criminal Procedure

Prior to the American occupation of the Philippines, the *Ley de enjuiciamiento criminal* was applied by the courts which were organised under the *Ley provisional de organización judicial* (both laws are still in force in Spain, although many times revised).

Whereas the occupying power kept in force the Spanish substantive criminal law, it soon replaced the Spanish criminal procedure. By General Order No. 58 of April 23, 1900, the US Military Governor promulgated a Code of Criminal Procedure based upon the principles of American criminal procedure. This Code remained in force until 1940 when it was replaced by the Rules of Court promulgated by the Supreme Court pursuant to Section 13 of Article VII of the 1935 Constitution. These now embody criminal procedure as well as civil procedure and have been extensively revised. Basic guarantees which are important in this context are also to be found in the constitution, e.g. the writ of habeas corpus, the prohibition of cruel or unusual punishment, etc.

### Arrest

Rule 113 of the Rules of Court defines arrest as "the taking of a person into custody in order that he may be forthcoming to answer for the commission of an offense" (Sec. 1).

When making an arrest by virtue of a warrant, the officer shall inform the person to be arrested of the cause of arrest and the warrant shall be shown to him as soon as practicable (Sec. 8). When making an arrest without a warrant, the officer shall inform the person of the cause of the arrest (Sec. 9).

If the arrest is made by virtue of a warrant of arrest, the arrested person has to be taken "without unnecessary delay" before the judge or before some other person in authority who issued the warrant (Sec. 3).

"Any person making arrest for legal ground shall, without unnecessary delay and within the time prescribed in Art. 125 of the Revised Penal Code, ... take the person arrested to the proper court or judge for such action as they may deem proper to take" (Sec. 17).

"Any attorney entitled to practice in the courts of the Philippines shall, at the request of the person arrested or of another acting on his behalf, have the right to visit and confer privately with such person, in the jail or any other place of custody at any hour of the day or, in urgent cases, of the night (Sec. 18)."

The foregoing constitutes an abridged version of the law of arrest as

it is found in the Rules of Court, which seems to be in accordance with internationally accepted standards.

There is, however, an important deviation from the traditional standard of Philippine law of arrest through modifications to Art. 125 of the Penal Code by PD No. 1404 (June 9, 1978). Before this, a person arrested without a warrant had to be delivered to the proper judicial authorities within 6 to 18 hours, depending on the gravity of the offence. Now, according to PD No. 1404,

“the President may, in the interest of national security and public order, authorize by Executive Order longer periods, which in no case shall exceed 30 days, or for as long as the conspiracy to commit the crime against national security and public order continues or is being implemented, for the delivery of persons arrested for crimes of offenses against public order as defined in Title III, Book II of this Code, namely: Articles 134, 136, 138, 139, 141, 142, 143, 144, 146 and 147, and for acts in violation of Republic Act No. 1700, as amended by Presidential Decree No. 885, taking into consideration the gravity of the offense or offenses, the number of persons arrested, the threat to national security or to public safety and order, and/or the occurrence of a public calamity or other emergency situation preventing the early investigation of the cases and filing of the corresponding information before the civil courts.”

This means that “the public officer or employee who shall detain any person for some legal ground” (Art. 125 Penal Code) may, under the conditions specified in PD No. 1404, hold the arrested person for a period of up to 30 days without delivering such person “to the proper judicial authorities”. It is well known that torture frequently occurs where police are allowed to hold suspects for long periods of time without judicial control. Based on the numerous complaints about police brutality and torture in the Philippines, PD No. 1404 must be regarded as a particularly unfortunate deviation from the traditional Philippines law.

However, PD No. 1404 goes considerably further than the 30-day period mentioned above, since it allows a person to be held

“for as long as the conspiracy to commit the crime against national security and public order continues or is being implemented, for the delivery to the proper judicial authorities of persons arrested

for crimes or offenses against public order as defined in Title III, Book II of this Code, ...”.

This means, for all practical purposes, that the “public officer or employee who shall detain any person” can hold that person for an indeterminate period of time under the authority of the President, without ever having to present that person to a judicial authority. This is indeed not merely a theoretical possibility, but current practice. It is obvious that all procedural safeguards for the protection of the individual embodied in Rule 113 of the Rules of Court are thereby rendered ineffective.

#### *Bail*

The 1973 Philippine Constitution provides for the right to bail in the “Bill of Rights” (Art. IV) as follows (almost textually copied from Art. III of the 1935 Constitution):

“Sec. 18. All persons, except those charged with capital offenses when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties. Excessive bail shall not be required.”

The Minister of Justice, Mr. Ricardo C. Puno, has set out in Ministry Circular No. 36 of September 1, 1981 (a copy of which was handed to us when we visited him) rules “to achieve uniformity in the amount of bail to be recommended for each crime by prosecutors and fiscals”. These rules apparently influence court practice very much although “fixing of the amount of the original bail, the increase or reduction thereof is a question that addresses itself to sound judicial discretion” (Moran, Comments on the Rules of Court, Vol. IV, 1970 edition, p. 164).

For serious crimes the rule given by the Minister of Justice reads as follows:

“If the medium period of the penalty prescribed by law for the crime is less than one (1) year the amount of bail shall be computed at the rate of P 100 per month; and if the medium period of the penalty prescribed by law for the offense is one (1) year or more, the amount of bail to be recommended shall be at the rate of P 1,000 per year.”

As at present 15 Pesos are roughly equivalent to US\$1, it is apparent that bail fixed according to these rules is not very high, at least not for

the middle class and for individuals backed by organisations. Indeed the schedule of bail known as "Bail Bond Guide of 1981" and attached to the Ministry Circular No. 36 indicates nearly 1,000 crimes or variations of crimes, mostly with relatively modest bail amounts. For instance, for attempted murder the amount of bail indicated is 6,100 pesos, for "frustrated murder" 12,500 pesos. The highest amount recommended in any case for bail is 30,000 pesos (for instance in the case of rape).

The Constitution excludes from the right to bail "those charged with capital offences when evidence of guilt is strong" (Art. III, Sec. 18). Since President Marcos has in many cases raised by Presidential Decree the penalty provided for in the Penal Code to capital punishment, bail is now excluded in many cases which formerly were bailable. Prior to the transformation to capital offences of rebellion and insurrection (including conspiracy, proposal and inciting) etc., the Ministry of Justice Circular No. 4 of January 30, 1981, had already enjoined fiscals (prosecutors) not to recommend bail when the accused was "under detention pursuant to an order of the President" when the offence charged was

"the crime of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, or... a crime or offense committed in furtherance of or on the occasion thereof, or incident thereto, or in connection therewith."

Consequently, even leaving aside the Preventive Detention Action not subject to judicial control (see below), the constitutional right to bail is largely inoperative, especially as a result of Presidential Decrees.

#### *Habeas corpus*

The constitutional safeguard of *habeas corpus* was expressly suspended by Proclamations No. 2045 and 2045-A, which were upheld by the Supreme Court and remained in force for the whole of the Philippines up to the end of the martial law period. President Marcos then decreed that the privileges of the Writ

"remain suspended in the two autonomous regions of Mindanao and in all other places with respect to:

"persons at present detained as well as others who may hereafter be similarly detained for the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and for all other crimes and offenses committed by them in fur-

therance or on the occasion thereof, or incident thereto, or in connection therewith" (Proclamation No. 2045 as reproduced in PD No. 1877).

The exclusion of part of Mindanao from the reinstitution of the writ of *habeas corpus* calls as such for little debate if conditions in that part of Mindanao are in fact such as to justify the continuation of martial law and the suspension of the writ. However, it is obvious that the reinstitution is more apparent than real.

According to Proclamation No. 2045 the writ is *not* reinstated with respect to persons detained for the crimes of insurrection or rebellion, subversion and related crimes or offences, and the continuation of the suspension with respect to these persons applies in all of the Philippines. Now, if we go back to Proclamation No. 1081 (September 21, 1972) instituting martial law, we see that the reason given for that move by President Marcos was essentially "an armed insurrection and rebellion against the Government". This reason had already been given in Proclamation No. 889 (August 21, 1971) for suspending the writ of *habeas corpus*. Although the suspension of the writ and the imposition of martial law applied then to everybody, it was obvious that it was directed against those whom the Government perceived as engaged in insurrection or rebellion, that is to say the same group as that referred to in Proclamation No. 2045. In other words: The lifting of martial law and the reinstitution of the privileges of *habeas corpus* do not change the legal situation of those suspected of being engaged in insurrection or rebellion. Those suspects do not enjoy the privileges of the writ, and accordingly, the procedural safeguards of Rule 119 of the Rules of the Court cannot be invoked by them.

The question arises whether *habeas corpus* has in practice now been restored for anyone who would have been denied it under martial law. As before, anyone suspected of insurrection or rebellion or related crimes is denied the protection of the writ. The Government has only to say that it suspects a person of such a crime for the writ to be denied. This means that no person in detention can be sure of enjoying his constitutional right to *habeas corpus* as the Government is able at will to prevent him from invoking it.

#### *The Preventive Detention Action*

PD No. 1877 of July 21, 1983 states in Section 1 that "all cases involving the crimes of insurrection, rebellion, subversion, conspiracy or

proposal to commit such crimes" etc. "shall be referred to the Provincial or City Fiscal, or to the proper Court for preliminary examination or investigation with existing laws". Section 2 begins by stating that "only upon proper warrant issued by the Court or other responsible officer as may be authorized by law, after examination under oath or affirmation of the complainant and his witnesses, shall the person or persons charged with the above-mentioned crimes be arrested and detained...".

The objective of this decree is clearly not to affirm these rules, which were already part of the law of the land, but to abrogate them for all practical purposes. That is obvious from the continuation of Sec. 2:

"... should a military commander or the head of a law enforcement agency ascertain that the person or persons to be arrested has/have committed, is/are actually committing, or is/are about to commit the above-mentioned crimes, or would probably escape or commit further acts which would endanger public order and safety as well as the stability of the state before proper warrant could be obtained, the said military commander or the head of a law enforcement agency may apply to the President of the Philippines for a preventive detention action against the person or persons ascertained to be participants in the commission of the crimes referred to in Section 1 hereof, under the following circumstances:

- a) When resort to judicial processes is not possible or expedient without endangering public order and safety;
- b) When in the judgment of the President of the Philippines to apply for a judicial warrant may prejudice peace and order and the safety of the state like when it may jeopardize the continued covert intelligence/counter insurgency operations of the Government, or endanger the lives of intelligence and undercover agents whose identities would be revealed by the evidence against the person or persons covered by a preventive detention action."

This means that arrest is now possible under an order of the President of the Philippines, rather than a judicial warrant. In practice it seems that the police and military arrest on their own initiative, and obtain the "Preventive Detention Action" (PDA) from the President afterwards. Among the many cases of arrest reported to us, there were none in which the person arrested was informed of a PDA against him or her at the moment of arrest. Invariably that information was given weeks

later, obviously because the PDA had to be obtained from Manila after the arrest.

It is difficult to imagine cases in which the circumstances indicated in a) and b) of Sec. 2 would apply so as to warrant the removal of all judicial control and justify a purely executive or administrative detention, especially if one bears in mind that Art. 125 of the Penal Code, as amended, already authorises such detention up to 30 days (see above).

The purpose of PD No. 1877 becomes even clearer on reading Sec. 3 and 4 which establish that a PDA may be the basis of detention for up to one year, and can be extended indefinitely without such extension ever being subject to judicial control. The review committee set up by the President according to Sec. 4 only confirms the fact that the objective of PD No. 1877 is to bring the arrest and detention of suspects under the exclusive control of the executive branch of government, thereby avoiding any judicial interference. While something could be said for the contention that in a situation of armed rebellion not every arrested suspect can be presented at once to the judge, nothing in the present Philippine situation can justify the need to detain suspects for weeks, months and even years without ever letting these cases be reviewed by the courts. PD No. 1877 therefore represents a regulation typical of a dictatorship, and the reference in the 6th paragraph to "the democratic form of government" which it claims to protect is sheer cynicism.

Finally, a comment is called for on Sec. 7 which reads as follows:

"If the person or persons covered by a preventive detention action is/are acquitted or has/have served sentence after conviction, he or they shall be released from proper (sic!) custody Provided that if in the meantime there is evidence of the detained person continuing to engage in the acts for which he was detained he may be ordered further detained by the President."

The sense of the second half of this Section 7 seems to be unclear. If it means that further detention is possible on the basis of new facts, it seems superfluous. Moreover it is difficult to understand how a person in detention could continue "to engage in the acts for which he was detained". The suspicion therefore arises that it shall be the basis for renewed detention for the same facts, for which the person has been acquitted or has served a sentence, thereby further reducing the role of the judiciary to a *negligible quantity*.

## Redress for Abuses by the Armed Forces

The previous discussion showed how President Marcos has raised the penalties for a number of offences to a level of severity unknown before the martial-law period and also extended the definition of punishable behaviour, a set of measures hardly reconcilable with the "democratic form of government" he claims to protect. At the same time procedural safeguards embodied in the Constitution and the Rules of Court have practically been eliminated, leaving the decision on personal freedom and the application of judicial safeguards to Presidential discretion.

In conclusion, this examination of the state of criminal law and criminal procedure in the post martial-law period demonstrates that the Executive, by virtue of its almost unlimited legislative powers, has created a set of legal instruments which allows the detention not only of those engaged in rebellion or insurrection but also of vocal opponents of the Government without the safeguards of judicial control, or subjects them to the judicial process in order to impose absolutely draconian penalties. This is the legal framework of the post martial-law period which is clearly designed to uphold one-man-rule and suppress not only rebellion but also vocal opposition.

However, from the mass of testimony which the mission gathered in various parts of the country, it is clear that the police force is not subject to this legal framework designed expressly for the purpose of suppression. It is indeed general and public knowledge in the Philippines that the police resort to torture and so-called 'salvaging'.

In this section the term 'armed forces' includes the Philippine Constabulary / Integrated National Police (PC / INP) and the Integrated Civilian Home Defense Force (ICHDF) as well as the armed forces in general. For several reasons it seems adequate to treat these different units together.

All these forces have in effect been integrated under the Ministry of Defense. Furthermore, they are all participating in anti-guerilla activities out in the provinces where most of the reported brutalities occur.

The Constitution of the Philippines expressly outlaws torture in Art. IV (Bill of Rights), Sec. 20:

"Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against

him. Any confession obtained in violation of this section shall be inadmissible in evidence.”

Accordingly, the Penal Code in Chapter Six “Other offenses or irregularities by public officers” provides for a prison sentence of 6 months and 1 day to 6 years for the maltreatment of “a prisoner or detention prisoner” in Art. 235, par. 2:

“If the purpose of the maltreatment is to extort a confession, or to obtain some information from the prisoner, the offender shall be punished by *prisión correccional* in its minimum period, temporary special disqualification and a fine not exceeding 600 Pesos, in addition to his liability for the physical injuries or damage caused.”

It is therefore absolutely clear and beyond discussion that the use of torture by the armed forces is illegal. Nevertheless, it continues to occur frequently, and it does not seem that those in charge take energetic action to eliminate this illegal practice.

‘Salvaging’ is a Filipino expression understood nowadays by everyone in the Philippines. When a newspaper headline announces “Three salvaged”, for instance, every reader in the Philippines knows that these three have not been saved, as an outsider might think, but that they have been killed by the armed forces of the government. The dismal fact that ‘salvaging’ has become something of a household word to Filipinos says something about how widespread this practice is.

There is no need to refer to the Constitution or the Penal Code in order to demonstrate that this practice is illegal. Obviously, it is murder, and while we have received much testimony from many parts of the country on such killings (mostly perpetrated with ghastly cruelty), very little action seems to be taken by the authorities to control the armed forces units and punish the culprits.

It is baffling to see that after the creation of all the legal instruments described above, which give the executive the power to detain anybody at will and to subject to draconian penalties those engaged in rebellion or vocally opposing the government, the armed forces do not restrict their action to the use of these wide powers conferred by Presidential Decrees, but rather resort frequently to torture and murder. It is obvious that there is not even a tactical justification for this since the legal instruments at their disposal are more than sufficient to eliminate any opponent they can get their hands on. While the true reasons are only a

matter of conjecture, it seems that probably one major reason is that the units out in the country fighting the NPA and the Moros are somewhat out of control. An example of such a unit which later had to be dissolved because it proved impossible to discipline, was given to us by the Solicitor-General (who denied, on the other hand, any police abuses such as torture or 'salvaging', although many such cases are notorious). Behind this seemingly surprising phenomenon is probably what is called the "militarization" of the Philippines. This expression describes the fact that during the martial-law period the armed forces were increased from about 80,000 to nearly 300,000 men. There is no doubt that inflation of the armed forces in such a short time did not permit a high military standard to be maintained. Police officers who gave evidence before the Agrava-Commission investigating the murder of Mr. Aquino showed clearly that this lack of professionalism extends to the PC / INP. It must be added, though, that even at high command levels, the will to redress the situation with energy does not seem to exist. Proceedings initiated against members of the armed forces are not frequent and mostly seem to be carried on half-heartedly.

While the commanding officers do not appear to be really interested in eliminating these illegal practices, the victims and their families have practically no means of obtaining redress. They cannot commence a criminal action on the basis of Rule 110 of the Rules of Court since these rules apply only to civilian courts. All military personnel on active service, including the Philippine Constabulary, are subject to the Articles of War (Commonwealth Act No. 408 as amended, Title I, Art. 2). This means that a criminal charge against them can only be brought before a court martial. While a civilian may of course bring to the attention of the military authorities information concerning a supposed offence committed by a person subject to military law, he cannot himself lodge a formal complaint against military personnel and thus initiate a criminal action before a court martial. Only a person subject to military law may prefer charges against military personnel (Manual for Courts-Martial Armed Forces of the Philippines, Manila 1969, p. 16), and it depends on the decision of the military authorities whether a prosecution of military personnel is carried through. All too often it seems that they are not eager to prosecute, and even if a court martial takes place, sanctions imposed on military personnel are in general mild.

An alternative means of redress for civilians who are victims of brutality by the armed forces could be to seek damages in the civil courts. There seems to be no legal impediment to bringing a civil action against

soldiers and officers of the armed forces. Art. 235 Penal Code (see above) expressly mentions their liability in case of maltreatment of prisoners. However, personal liability of members of the armed forces is no solid basis for receiving compensation since they will often not be able to pay considerable damages when the father of several children has been 'salvaged', or houses have been burnt, etc. Also, it will often be difficult to identify individual wrongdoers within a particular unit in the field. In these cases only a damages suit against the armed forces or the State would be of use, but it seems that there is no statutory basis for the presentation of such claims.

Absence of any meaningful possibility of redress against police brutality — be it through the institution of criminal proceedings against the culprits or of actions for damages against the State — is perhaps the most serious deficiency perceptible in the present legal system. It is quite obvious from the testimony gathered in a number of provinces during the mission that the rural population in particular feels quite helpless when confronted with police units who proceed to make arbitrary arrests, kill suspects ('salvaging'), burn houses, and often also steal villagers' belongings. The Government of the Philippines cannot claim that the country has returned to a democratic way of life, quite apart from the question of elections, as long as the rural population is subject to what appears to amount in some regions to a genuine reign of terror. Even high-placed government officials admitted to members of the mission that the population in some regions has turned to the NPA simply out of despair about the state of affairs in the official administration, with the consequence that the NPA has been able to set up a kind of parallel administration, dispensing, for instance, a kind of (rather brutal) justice.

## **Chapter 4**

# **Independence of the Judiciary and Bar**

### **The Judiciary**

The 1977 ICJ report found that the “Government has severely undermined the independence of the judiciary in that it has demanded and received the written resignations of all lower court judges and it has taken the power to remove all the Supreme Court judges ‘by appointing their successors’ ”. The report recommended that the independence of the judiciary should be restored and the letters of resignation, which had been demanded by the President, should be returned to the judges. It was also recommended that the constitution be amended to guarantee the life appointment of Justices of the Supreme Court. While the present writers do not consider that life appointment is essential, we do emphasise that security of tenure until retirement age is essential, as is every aspect of security of office and guarantees of independence of the judges. To assess matters since 1976, we first summarise the position up to then.

The 1935 Constitution provided in Article VIII –

“Sec. 9. The members of the Supreme Court and all judges of inferior courts shall hold office during good behaviour, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. They shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office. Until the Congress shall provide otherwise, the Chief Justice of the Supreme Court shall receive an annual com-

pensation of sixteen thousand pesos, and each Associate Justice, fifteen thousand pesos.”

The day after the Declaration of martial law on 21 September 1972, the President issued Letter of Instruction no. 11, which required all officers of the National Government who were presidential appointees to submit their resignations not later than 15 October 1972. This included lower court judges but not the Chief Justice and Associate Justices of the Supreme Court, the Auditor General and the Chairman and Members of the Commission on Elections (COMELEC). This was ostensibly designed to facilitate the reorganisation of the Government. Those who refused were to be considered “notoriously undesirable” and faced disciplinary proceedings. The outcome was that many independent-minded judges and other officers of executive appointment were thereby dismissed from office. In the three years following we understand some 14 resignations were accepted and others held by President Marcos until 17 January 1983 (when the new Judiciary Reorganisation Act came into force).<sup>1</sup>

The 1973 Constitution, “ratified” by referendum held on 15 January 1973 and by the Supreme Court resolutions dated 31 March 1973, had the following transitory provisions –

“Sec. 8. All courts existing at the time of the ratification of the Constitution shall continue and exercise their jurisdiction, until otherwise provided by law in accordance with this Constitution, and all cases pending in said courts shall be heard, tried and determined under the laws then in force. The provisions of the existing Rules of Court not inconsistent with this Constitution shall remain operative unless amended, modified, or repealed by the Supreme Court of the National Assembly.

“Sec. 9. All officials and employees in the existing Government of the Republic of the Philippines shall continue in office until otherwise provided by law or decreed by the incumbent President of the Philippines, but all officials whose appointments are by this Constitution vested in the Prime Minister shall vacate their respective offices upon the appointment and qualification of their successors.

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1) Report of an Amnesty International Mission to the Philippines (1982), p. 63.

"Sec. 10. The incumbent members of the Judiciary may continue in office until they reach the age of seventy years, unless sooner replaced in accordance with the preceding section hereof."

Some months later Supreme Court Judges took an oath of office under the 1973 Constitution. There was no apparent legal need to do so, since they continued in office without such oath. That they did so caused many to believe that it was, as indeed it turned out to be, futile to question the validity of the 1973 Constitution with its elimination of security of tenure for the judiciary<sup>2</sup>. Every judge, including those of the Supreme Court, was susceptible to replacement by the appointment of his or her successor. In addition, there was the possibility that their tenure of office could be affected by legislation or presidential decree.

The compulsory retirement age of 70 for judges was subsequently lowered to 65 and then raised to 70 again. We were told that this was to secure a further 5 years service for the present Chief Justice and thereby prevent the elevation of Justice Claudio Teehankee to that office. Justice Teehankee is well-known for his strong dissenting judgments on questions of civil rights and the role of the executive under the Constitution.

The following additional factors militate against public confidence in the judiciary and judicial independence:

- The existence of martial law itself created a climate of fear from which member of the bench and bar were not immune. It conferred unprecedented powers on the military which gave them the mistaken belief that whatever they considered to be necessary could override the demands of the administration of justice. This generated a feeling of impotence on the part of many litigants, lawyers and courts then confronted by the military, and in turn this contributed to the decline of confidence in the judiciary and impaired its independence.
- Military commissions were created with wide jurisdiction taken from 'Courts of First Instance. This induced belief that those courts were not fit to handle cases they used to handle before, and diminished their stature in the eyes of the people.

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2) Memorandum of J. Diokno as amicus curiae in *De la Llana v. Alba*, G.R. No. 57883, p. 18, dated 15.10.81.

- Vacancies in all courts were left unfilled and some presiding judges were transferred to executive positions. The case flow slowed down and dockets piled up.
- The 1973 Constitution did away with the Commission on Appointments, itself a safeguard against improvident appointments to the bench. Obtaining recommendations from the Integrated Bar of the Philippines did not prove an adequate substitution for such recommendations and they could be and were disregarded. In time, lack of adequate safeguards allowed some who were incompetent to enter the judiciary and this led to further erosion of confidence in the administration of justice.<sup>3</sup>

In this situation, and with the widely held view that many judges were corrupt, President Marcos appointed a Presidential Committee on Judicial Reorganisation on 11 August 1980. The Committee comprised Chief Justice Enrique Fernando and the Minister of Justice as co-Chairmen, Supreme Court Justices Aquino, Melencio Herrera and Antonio and the Deputy Minister of Justice as members. The Committee worked quickly and submitted its report on 17 October 1980. On 30 October 1980 the President submitted a draft bill to the Batasan. Public hearings took place and with minor amendments it was enacted on 27 July 1981 as the Judiciary Reorganisation Act 1980. The Act is a draconian reform of all courts except the Supreme Court and the Sandiganbayan.<sup>4</sup> The President declared the Act in force in January 1983.

The 1980 Act empowered the President to implement it by Executive Order. When the reorganisation of the courts was completed the President had by declaration abolished the Court of Appeals, Courts of First Instance, the Circuit Criminal Courts, the Juvenile and Domestic Relations Courts, the Courts of Agrarian Relations, the City Courts, the Municipal Courts and the Municipal Circuit Courts. The judges of those courts ceased to hold office. The workload of those courts thereupon devolved upon the newly created Intermediate Appellate Court, Regional Trial Courts, Metropolitan and Municipal Regional Trial Courts, and Municipal Circuit Trial Courts. There was provision for a gratuity to be paid to judges and personnel separated from office.

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3) Diokno Memorandum (*supra*).

4) A special court to try cases of corruption in the Civil Services: 1973 Constitution, Art. XIII, Sec. 5. We are told that this Tribunal only dealt with the "little fish".

The abolition of the courts involved 1,662 judicial posts with 1,180 incumbent judges (at 26 January 1982 there were 482 vacancies).<sup>5</sup> The 1980 Act increased the total number of judicial positions to 1,893. As will be seen later, the reorganisation appears to have resulted in the loss of judicial office of approximately 85 judges.

Many thought the 1980 Act unconstitutional and proceedings were brought in the Supreme Court to test the Act: *De la Llana v. Alba*, G.R. no. 57883. The decision given on 12 March 1982 upheld the Act, 12 judges in favour and Justice Claudio Teehankee dissenting.

The arguments against the Act centred primarily on the patent interference with the security of tenure of the judges presently appointed. The 1973 Constitution (as amended in 1980) provides for tenure in Article X —

“Sec. 7. The Members of the Supreme Court and judges of inferior court shall hold office during good behaviour until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court shall have the power to discipline judges of inferior courts and, by a vote of at least eight Members, order their dismissal.”

It was argued therefore that the 1980 Act deprived judges of their constitutional right to continue during good behaviour, a question triable by the Supreme Court, and gave their reappointment into the hands of the President personally.<sup>6</sup> The suggested consequences would be that the judges would thenceforth be painfully aware that their tenure was in the hands of the President (bearing in mind his present powers), and that they were therefore beholden to him personally. This in turn would destroy the people’s confidence in the courts who would be suspected rightly or wrongly of being predisposed to favour the President and his government in cases of conflict between the citizen and state. It was also argued, quoting an earlier Supreme Court decision, that “... under the Constitution, Congress may abolish existing courts, *provided that it does not remove the incumbent judges*, such abolition to take effect upon termination of their incumbency...” (underscoring added).<sup>7</sup> Secu-

5) Diokno Memorandum (*supra*) and decision of Teehankee, J., in *De la Llana v. Alba*, p. 1.

6) Art. X, Sec. 4.

7) *Ocampo v. Secretary of Justice*, 51 O.G. 147 (1955).

rity of tenure for judges would thus be preserved although a reorganisation of the judiciary could be carried out.

Rejecting these arguments, the Supreme Court held in *De la Llana v. Alba* that, under the Constitution, the power of the National Assembly to create an office also included the right to terminate it in good faith. The court ruled, “[t]here can be no tenure to a non-existent office”. Abolition of an office was distinguished from removal of an incumbent from office. The abolition was carried out in good faith, according to the court, and the Judiciary Reorganisation Act was therefore not contrary to the Constitution.

The Court also ruled that there was no undue delegation of legislative powers to the President by the Act since there was a clear standard contained in the Act to serve as his guideline. The essence of the decision was that the Act was a bona fide exercise of lawmaking power: *grandes males* justifying *grandes remedios*. Justice Barredo in his opinion in the *De la Llana v. Alba* case, pointed out the serious problems which led to adoption of the Act.

“I have come to the conviction that at least on this day and hour there are justifiable grounds to uphold the Act, if only to try how it will operate so that thereby the people may see that we are one with the President and the Batasan in taking what appear to be immediate steps needed to relieve the people from a fast spreading cancer in the judiciary of our country.

“... Different sectors of society are demanding urgent reforms in their respective fields. And about the most vehement and persistent, loud and clear, among their gripes, which as a matter of fact is common to all of them, is that about the deterioration in the quality of performance of the judges manning our courts and the slow and dragging pace of pending judicial proceedings.”

In his lone dissent, Justice Teehankee maintained that any reorganisation should at least allow the incumbents of the existing courts to remain in office unless removed for cause, thus preserving security of tenure for the judiciary.

It should also be noted that in the *De la Llana v. Alba* decision the Supreme Court was upholding an Act in the preparation of which four of its members had taken an active role. As mentioned earlier, the Chief Justice and three Associate Justices had been members of the Committee named by the President which submitted a report on judicial reorga-

nisation which led to the adoption of the Judiciary Reorganisation Act by the National Assembly. The Chief Justice rejected a challenge to his and the other justices' qualifications to sit on the case on the grounds that they had no role in the actual drafting of the bill.<sup>8</sup> The confusion of the executive, legislative and judicial roles in the adoption of the Act and the determination of its constitutionality is apparent.

The Minister of Justice established an Integrity Council to assess all judges who wished to be reappointed or promoted and all those who sought appointment to the bench under the Reorganisation Act. Seminars were conducted to test the three I's, Integrity, Industry and Intelligence. The views of the practising Bar were obtained. As a result of these assessments recommendations were made to the President for appointments. Some 64 Regional Trial Judges and 109 Municipal Trial Judges were not recommended for reappointment. However, the President did in fact reappoint approximately half of these, on the basis that they had not themselves been given due process,<sup>9</sup> namely an opportunity to answer the criticisms inherent in the Integrity Council's decision not to recommend them. We understand that in the case of these judges the President may hold written resignations from them which could be used if they do not perform satisfactorily.

We heard from members of the Bar representing a wide range of practice that the Integrity Council rejected the recommendations of the Integrated Bar of the Philippines in many cases. The Minister of Justice did not agree with this assessment. Members of the Bar also expressed grave concern over the President reappointing approximately 15% of the bench against the Integrity Council's recommendations.

It is clear that overcrowded dockets, the slowness of the judicial process and the corruption of some members of the judiciary called for remedy. Nevertheless, the adoption of the Judiciary Reorganisation Act of 1980 as a remedy for these deficiencies aroused "some amount of cynicism" among those who considered that it provided the President with the power to abolish courts, reappoint former judges or appoint new ones.<sup>10</sup>

8) G.R. No. 57883, at 29. Lawyers' Committee for International Human Rights Report on the Philippines (1983), p. 108.

9) Told to us by the Minister of Justice.

10) "It [the Judiciary Reorganisation Act] boasts of drastic, total and far-reaching upheavals within the existing judicial order, altering both the structure of our courts as well as government policy with respect to the manning thereof. But its creation does not come without some amount of cynicism." Batas Pambansa Blg. 129 and Judicial Innovation: A Closer Look by Arcinas, Davis, Gastardo, Lagmay and Sarmiento, 57 *Philippine Law Journal* 238, at 264 (1982).

It was one of the expressed intentions of the government when promoting the 1980 Act to remove corruption from the courts. We have done our best to assess the present position but as the reorganisation was less than twelve months old when we made our enquiries, the people we spoke to found some aspects hard to assess. It is important to distinguish between two forms of corruption: the acceptance of bribes and the subjection of the judges to political or social pressure. As to bribery, we were told by all we asked that it is still prevalent both at fiscal and judicial levels. We were given estimates of how many judges were involved. We were told that by and large susceptible judges and fiscals (public prosecutors) were well-known and estimates as high as 50% of a particular bench were given. Generally speaking, the higher the rank of the judge the less was he thought susceptible to bribery. While we were in the Philippines there was a report of an appeal by an attorney who had been fined for contempt of court. He had sought to disqualify an R.T.C. Judge from hearing a case on the grounds that the plaintiff, a rich woman, could "buy" the judge. The attorney was convicted, sentenced to five days in prison and fined p200 and his appeal was dismissed by the Intermediate Appellate Court. To us what was significant was the reported statement by the R.T.C. Judge concerned –

"Modesty aside, he had the resources, outside of being an R.T.C. judge, to sustain him and his family and to enjoy the good life without compromising his principles and his oath of office..."<sup>11</sup>

This confirmed what we were told elsewhere that judges are not paid "above the corruption line". Implicit in the judge's reported statement is the admission that without private means a judge is susceptible to bribery. No one denies the problem. At this stage is it not possible to say whether the judicial reorganisation has improved the position. Probably it has not.

At this stage we record that there have been few if any instances of judges having been dismissed for corruption or misbehaviour, notwithstanding the fact that corruption and incompetence were universally accepted as rife. We were given an instance of a complaint which was never processed and where the judge was promoted notwithstanding. It was considered that the decision to promote incidentally resolved the complaint. We were told of several impeachment proceedings before the

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11) *Bulletin Today* 8.1.84, p. 32.

National Assembly against Supreme Court Justices, and received two reports of the National Assembly Committee on Justice, Human Rights and Good Government of which the Minister of Justice is the Chairman. These complaints were not relevant to the overall assessment of judicial integrity or competence.<sup>12</sup>

It is necessary to mention the Ericta affair. In 1982 the son of Supreme Court Associate Justice Ericta was sitting his bar examinations. The level of achievement necessary to pass is controlled by the judges. Justice Ericta learned that his son had failed by a small margin to achieve the proposed mark and prevailed on his fellow judges to reduce the standard so that his son would pass. All but two agreed, but the matter became public. All Supreme Court Justices resigned but the President re-appointed all but Justices Ericta and Fernandez. It is difficult for outsiders to assess the significance of this incident as it appears to highlight the fact that other values, such as the support for family and friends, are in conflict with the general standards of integrity recognised as essential for independence of the judiciary and the resultant public confidence in it. We understand that even after the reappointment the Supreme Court confirmed the pass of Justice Ericta's son and the Supreme Court itself is supposed to be reporting on the matter, but no report is publicly available to date. We would hesitate long before saying that the President should not have reappointed the Justices, but it is obvious from criticisms we heard that the incident had done little to allay the accusation that the Supreme Court is in the power of the Executive Government.

The judiciary absorbs less than 1% of the total government expenditure and the judiciary is described as reduced to subsistence level.<sup>13</sup> All seem to accept that judicial salaries, libraries, staff and courts are inadequate. This must be viewed against the overall financial position of the Philippines government, which is extremely poor to the point of insolvency. Overseas aid alone will save it. All that can be urged is that the Government adjust its priorities to recruit more judges and provide better emoluments and facilities. This question plainly bears on the question of bribery and corruption, but even more on efficiency. It is accepted that there is a substantial backlog of untried dockets in all courts and that it is increasing. We were told that the present position is —

12) Reports on Barredo, J., 5.6.82; Fernando, C.J., 2.11.82; there are complaints outstanding.

13) *Bulletin Today*, 8.1.84, p. 1. This assessment is not wholly accepted by the Minister of Justice.

dockets outstanding (backlog)	438,000
new dockets 1983	380,000
dockets disposed of 1983	319,000

Notwithstanding the widespread criticisms of the judiciary we heard and have related above, the President of the Integrated Bar of the Philippines has recently called for support of the judiciary, saying –

“But the time for debate on and publicised scrutiny of the members of the Judiciary, is over. The superior public need for independence of the Judiciary requires the Bar to speak in defence of members of the Court. The separation of powers should now shield the Judiciary from undue attention and publicised investigation.

“Further public and continuous scrutiny of the members of the Bench will erode and may even result in the total loss of faith in the Judiciary. The IBP must fight against this possibility.

“The erosion of the Judiciary, erodes the faith in the law profession. The erosion of belief in the legal profession, erodes belief in the Rule of Law. To that extent, it becomes difficult to uphold the principle that our Republic is governed by laws and not by men.

“The Rule of Law cannot be perceived to exist without the Supreme Court and without respect for the Supreme Court. The human condition requires that an abstract idea must be associated with a visible symbol. Today, in our Land, the symbol of the Rule of Law is the Supreme Court.”<sup>14</sup>

Criticism and scrutiny of the judiciary will undoubtedly continue, however, as long as corruption and bribery continue within the ranks of the judiciary. Relatives of detained persons whom we interviewed shared the widely held belief that bribery expedited the release of detainees. The degree of corruption cannot be separated from the issue of judicial salaries. Corruption will not be removed until salaries are increased to a reasonable level which will enable judges to live in conditions befitting their status.

We also heard from many sources that most judges are susceptible to political and social pressures, and the military in particular blatantly tried to use such influence, for example, by mounting an unwarrantably large presence at a court hearing, or briefing judges as to the current

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14) Inaugural Address, 7.7.83, Journal IBP, Vol. XI, No. 3, pp. 67–69.

state of armed insurgency.<sup>15</sup> It is hard to assess this except by reference to the decisions handed down by the courts. The Supreme Court's decisions on the legitimacy of the 1973 Constitution, the constitutionality of the Judiciary Reorganisation Act 1980, and its failure to intervene in cases of alleged gross violations of human rights as well as its support of President Marcos' power to legislate by decree, have led to the conclusion that the Supreme Court, as well as lower courts, has abdicated its independence and become subservient to the executive. There have, however, been some encouraging signs recently of a more independent stance taken by the courts.

Some recent cases of special interest are summarised below:

- (a) *Garcia-Padilla v. Enrile*, G.R. No. 61380, 20 April 1983  
*Morales v. Enrile*, G.R. No. 61016, 26 April 1983.

These two cases were both petitions for the issuance of writs of habeas corpus and for the release of detainees on bail. In both cases, the petitioners were arrested without warrants on suspicion of rebellion and Presidential Commitment Orders were issued only after their arrest. In both cases, the Court dismissed the petitions, upheld the validity of the continued detentions and denied bail. However, in the *Morales* decision, the Supreme Court reiterated the doctrine enunciated in the 1971 leading case of *Lansang v. Garcia*, 42 SCRA 448, *i.e.*, that the power of the Chief Executive to suspend the privilege of the writ of habeas corpus is neither absolute nor unqualified and the Court may therefore enquire whether the Executive has acted arbitrarily in suspending the privilege. The leading opinion of Justice Concepcion, Jr., in the *Morales* case stated:

“We hold that under the judicial power of review and by constitutional mandate, in all petitions for habeas corpus the court must enquire into every phase and aspect of petitioner's detention — from the moment the court passes upon the merits of the petition. Only after such a scrutiny can the court satisfy itself that the due process clause of our Constitution has in fact been satisfied.”

However, six days prior to the decision in the *Morales* case the Supreme Court, in *Garcia-Padilla v. Enrile*, expressly did not follow the *Lansang* principle. In the leading opinion Justice De Castro said:

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15) Lawyers' Committee for International Human Rights Report on the Philippines (1983), p. 109.

“... [T]he judiciary can, with becoming modesty, ill afford to assume the authority to check or reverse or supplant the presidential actions. On these occasions, the President takes absolute command, for the very life of the Nation and its government, which, incidentally, includes the courts, is in grave peril. *In so doing, the President is answerable only to his conscience, the people and to God.* For their part, in giving him the supreme mandate as their President, the people can only trust and pray that, giving him their own loyalty with utmost patriotism, the President will not fail them.”  
(emphasis added)

The Court’s opinion further stated that “... a Presidential Commitment Order, the issuance of which is the exclusive prerogative of the President under the Constitution, may not be declared void by the courts under the doctrine of ‘political question’.” From our reading of the *Morales* and *Garcia-Padilla* decisions it is unclear whether the *Lansang* principle is still the law. The two decisions are in apparent conflict.<sup>16</sup>

At the time of our mission in the Philippines the *Garcia-Padilla* decision was not yet final since there was still pending a motion for reconsideration filed by the lawyers for the petitioner. If the *Lansang* principle is no longer the law it will be a severe blow to those who look to the Supreme Court for judicial control of the President’s executive power and the value of the writ of habeas corpus. The wording and style of the judgments of the majority in favour of revoking the *Lansang* principle in the *Garcia-Padilla* case would justify a conclusion that the judges had failed to take an important opportunity for judicial intervention to ensure that the human rights enshrined in the Constitution were not infringed by Presidential power. That failure gives strong support to the allegations we heard that judges display a pro-executive bias. There are many who believe that *Garcia-Padilla* represents the present law and conclude that the Supreme Court has failed to protect the individual against the state.

Another important aspect of the *Morales* decision is the question of bail following the laying of charges against a person charged with a political offence such as rebellion or sedition. In the *Morales* case there are four powerful dissenting opinions to the effect that bail should be available (or at least may be grantable subject to the ordinary rules of law

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16) The apparent conflict is analysed by Alan F. Pagua in the Journal of the IBP, Vol. XI, no. 3, p. 117.

and the facts of the case). It is possible that these opinions may sooner or later find favour with the majority. The majority may come to agree with one of those dissenting Judges, Justice Teehankee, when he said:

"The late Justice Pedro Tuason emphasised that 'To the plea that the security of the State would be jeopardised by the release of the defendants on bail, the answer is that the existence of danger is never a justification for courts to tamper with the fundamental rights expressly granted by the Constitution. These rights are immutable, inflexible, yielding to no pressure of convenience, expediency or the so-called 'judicial statesmanship'. The legislature itself cannot infringe them, and no court conscious of its responsibilities and limitations would do so. If the Bill of Rights are incompatible with stable government and a menace to the Nation, let the Constitution be amended, or abolished. It is trite to say that, while the Constitution stands, the courts of justice as the repository of civil liberty are bound to protect and maintain undiluted individual rights.'

"And former Chief Justice Cesar Bengzon then made the same forceful plea echoed these days by men of goodwill that respect for constitutional and human rights and adherence to the rule of law would help in the fight against rebellion and movement for national reconciliation..."

(b) *Reyes v. Bagatsing*, G.R. No. 65366, 9 November 1983

In this case retired Justice J.B.L. Reyes, on behalf of the Anti-bases Coalition as petitioner, obtained an injunction to require the respondent Mayor of the City of Manila to issue a licence to permit peaceful demonstration against the American Bases to take place outside the American Embassy. A memorable leading opinion was given by Chief Justice Fernando who said, "The mere assertion that subversives may infiltrate the ranks of the demonstrators does not suffice" as a reason to refuse the permit. The Court also indicated that it considered the right to free speech and peaceful assembly to be more important than certain treaty obligations. The decision has been hailed as important and beneficial. We respectfully agree.

(c) Two other cases are worth mentioning.

*Philippines Constabulary v. Carlos R.T.C. Pasig*, 11 October 1983

Carlos was charged with being a subversive and a member of the Communist Party and NPA. The judge held that "the testimony of the witnesses presented by the prosecution has not risen to the 'dignity of legal evidence'" and dismissed the charge. We refer to this as a recent case when a judge has patently dealt with a man accused of a political offence fairly and in the highest judicial tradition.

*People of the Philippines v. Lucero and Santiago*, R.T.C. Basilan,  
4 April 1983

Col. Lucero and Lieut. Santiago were charged with murdering two Muslims and forcing local religious and community leaders to eat the mutilated ears of the victims. The events took place in 1978. The R.T.C. Judge convicted them and sentenced them to life imprisonment, to indemnify next of kin in the sum of p12,000 for each victim, and to pay costs.

These recent cases show that it is still possible for a gross violation of human rights by military personnel to receive proper judicial treatment.

Another case to our mind shows a deficiency in the law in that a citizen tortured by military personnel may have no remedy against the State: *Aberca v. Ver*.<sup>17</sup> Gross violations of human rights such as torture, wrongful arrest or extra-judicial killings would undoubtedly found good claims against the perpetrators. However, the identity of these is often impossible to establish except for evidence that they are military or para-military personnel and, in any event, they may not be worth suing. The operations of plain clothes men add to the difficulty. One impediment to the claim for damages is the constitutional immunity of government authorities (Article VII (15) of the 1973 Constitution). We understand that the State authorities, e.g., the Minister of Defence, the Chief of the Staff or the President could agree to submit to the jurisdiction of the Courts in civil proceedings but do not do so. It seems to us the apparent immunity of the State from vicarious liability for the acts of its servants committed during and pursuant to their employment deprives many citizens who suffer grievous injury from any redress.

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17) *Aberca v. Ver*, R.T.C. Quezon City, Case No. L-37487, 8.11.83. A motion is pending to set aside the dismissal of the civil action for damages filed by several political detainees against military authorities for violation of the detainees' constitutional rights.

## The Bar

As in other countries, lawyers have an important role to play in sustaining and defending the independence of the judiciary and in upholding the rule of law. While great support and succour can be gained from other sectors, especially the church, it is clear that members of the legal profession, from the President down, hold a position of great influence and power.

The Integrated Bar of the Philippines (IBP) is a body created by the Supreme Court under its constitutional powers in 1972. It is compulsory for a lawyer to belong to the IBP and we are told there are some 32,000 members comprising the judiciary, the practising bar, and lawyers in other employment. Before 1972 there were voluntary bar associations, the oldest being the Philippine Bar Association. Voluntary associations continue and include the Philippine Bar Association, National Bar Association of the Philippines, Philippine Lawyers Association, Association of Trial Lawyers of the Philippines, United Philippine Women Lawyers Association and others. We had the opportunity to speak with members of several of them.

It is not possible, however, to say that all members of the IBP support it. We were told that perhaps only 5,000 of the 32,000 are subscribing members. Nevertheless as an official agency the IBP enjoys an influence in society that the ordinary Bar Associations can never have. This in turn indicates a weakness and leads to the criticism that it has suffered from cliques and government interference, and the intrusion of politics. Indeed most powerful bar associations in the world are similarly criticised. We were told that office in the IBP was sought by some who used corrupt methods to become chapter presidents or higher and that the "cost" of securing election put it beyond the reach of many. One such allegation has resulted in a petition to the Supreme Court which is still unresolved.<sup>18</sup> In the political and social scene that now exists in the Philippines perhaps the above is not surprising. Nevertheless in the context of this report there is one very important aspect of lawyers' activities that reflects great credit on the profession. That is the provision of Legal Aid. No particular agency has a monopoly of this service and it takes several forms.

The Bill of Rights included as Art. IV of the Constitution provides that any person under investigation for the commission of an offence

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18) *Suntay v. IBP*, GRL 57654.

shall have the right to counsel. This right extends to the hearing of the case by due process. In addition free access to the courts shall not be denied to any person by reason of poverty. As other parts of this report will show, some citizens are severely repressed by the State and stand in much need of this protection. The real reforms needed are in the hands of the State, and are not due to deficiencies at the bar.

The Ministry of Justice runs the Citizens Legal Assistance Office (CLAO). In 1983 it served a total of 141,846 indigents and handled a total of 135,758 cases for them. The CLAO lawyers assisted 13,605 detention prisoners and 2,570 youthful offenders. CLAO also has a round the clock assistance programme for persons involved in police investigations or custodial interrogations in Metro Manila and in the cities of Tacloban, Davao, Cebu, Legaspi, Cagayan, de Oro, Iloilo and Zamboanga. The number of assisted totalled 28,795.<sup>19</sup> It is plain that this government agency performs a wide range of work and benefits many citizens. We heard some criticism of the work at some of its offices but for the purposes of this report the only significant matter raised is that there is felt to be some conflict of interest when CLAO lawyers are employed to represent citizens who are in political or severe conflict with the government, especially the military. This is understandable and the bar handles the problem by having such cases referred to non-governmental legal agencies.

The IBP has a National Committee on Legal Aid headed by former Chief Justice Roberto Concepcion. Every Chapter of the IBP has as one of its principal activities a committee on legal aid. These committees despite financial difficulties have served an estimated 100,000 persons in need of legal service. In addition the IBP has a Commission on Due Process and Human Rights. While we understand there has been some reluctance on the part of the IBP to become fully involved in human rights issues, it has now given its support to such groups as MABINI and FLAG (to mention but two). We were told that in one area at least the work of the local IBP committee has been subsumed by another bar agency. A significant example of achievement of an IBP legal aid committee is the ten point agreement reached by the Davao del Sur, Eastern Mindanao, Chapter of the IBP with the PC/INP Regional Command and the Office of the State Prosecutor for Region XI. Under this, military authorities and prosecutors have agreed to follow procedures which will minimise abuses and respect the rights of persons accused of rebellion or subversion.

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19) Draft State of the Nation Message of the President dated 25.11.83.

A most significant part played by lawyers has been by the privately organised groups or societies expressly formed to assist those who suffer at the hands of the executive. We mention only four but there are many other groups which carry out similar work to a greater or lesser extent:

- Movement of Attorneys for Brotherhood Integrity and Nationalism (Inc.)

MABINI is named, with the typical Filipino penchant for acronyms, after the lawyer hero of the revolution. It was founded in 1980. It has taken stands on the secret decrees, boycott of elections, asbestos, the sociology and economics of protest as well as representing political detainees and accused. It is actively political as its newsletters proclaim. Indeed it appears fearless and outspoken. We were told members face government reprisals. It operates only in Metro Manila.

- Free Legal Assistance Group (FLAG) was organised in 1975 from the law offices of former Senator Diokno and has members throughout the Philippines, other than in Manila. It is non-political and provides legal services only to political detainees and human rights victims. It publishes comprehensive pamphlets, "Your Human Rights", "Political Detention and Related Human Rights Violations in the Philippines — causes, hints and remedies", "Paralegal craftsmanship" and "Legal Rights of Students". We had discussions with FLAG lawyers from Davao City, Cebu, Bacolod, Liloilo, Baguio, Legaspi and elsewhere. They too, work closely with Task Force Detainees.
- Protestant Lawyers League of the Philippines — PROTEST. This is a group of protestant lawyers. Its aims are similar to those of FLAG. It works separately but in harmony with them.
- The Roman Catholic Church in Bacolod runs its own Legal Aid Office as part of its Social Action Service. It employs three attorneys to handle human rights cases. If the cases are political in nature the attorneys handle them as FLAG lawyers. They only handle poor people's cases and do not charge a fee. We were told wryly by one lawyer that he was known as the lawyer who had never won a case, a sad reflection on the plight of the poor.

We were told of conflicts between the agencies providing legal services to the poor. This would occur in any country. What is of overwhelming importance is the vigour and dedication of those lawyers providing legal services to those in conflict with government agencies, especially the

military. The combined efforts of these lawyers and church agencies are the real basis of hope for improvement. If their efforts are recognised by the Executive Government, especially the military/police, and if they are supported by the judiciary at all levels, substantial improvements may be to hand. What we were not able to observe was any real evidence that the law and proper procedures were actually adhered to at the interface between the government forces and the people.

## **Chapter 5**

### **Economic and Social Rights**

The Philippines is at present in a serious economic crisis. The severity of the crisis is caused primarily by political factors. Following the killing of Aquino in August 1983, opposition to the repressive nature of the Marcos regime became public. Businessmen and the middle class joined with the poor in public demonstrations. Widespread fears of political instability led to extensive capital flight with serious repercussions on many aspects of the economy. Tourism fell precipitously, causing major losses for five-star hotels that found it difficult to repay construction loans. The Philippines is at present attempting to renegotiate some of the country's enormous debt of \$23.9 billion and simultaneously attempting to arrange \$1.65 billion in new financing. International and foreign banks and agencies hesitate to prop up a regime which demonstrably lacks popular support and continues to rule by repression. Lacking the influx of new foreign exchange for trade financing, many industries have been forced to close or slow down, causing thousands of workers to lose their jobs. New financing from the IMF may be contingent on austerity measures which would cause further difficulties for the poorest segment of the population.

The Marcos government, in power since 1966, must bear the major responsibility for the present economic and political crisis which is primarily due to loss of confidence in that government. Corruption and inefficiency abound in the government bureaucracy. The governor of the country's central bank resigned recently after overstating the country's reserves. "Cronyism" is widespread. Close friends of President Marcos have been granted monopolies over the marketing of sugar and coconuts which has led to strong opposition from sugar planters and

workers. The economic power turned over to Marcos cronies has not led to benefits for the country as a whole. Inflation and high prices have been devastating for the poor and the administration has done little to cope with their effects. It is reported that 80 percent of the population in the Philippines live below the poverty line. Housing is grossly inadequate and squatting is widespread. Malnutrition is extensive.

The Philippines has ratified the International Covenant on Economic, Social and Cultural Rights and is thus obligated to take steps to achieve progressively the full realisation by Filipinos of the right to work, the right to adequate food, clothing, housing, education and the right to the highest attainable standards of physical and mental health. By the same Covenant it has undertaken to ensure trade union rights. The extent to which the Marcos regime has lived up to these obligations as regards trade union rights, land reform and health is discussed below.

### Trade Union Rights

“The absence of civil liberties removes all meaning from the concept of trade union rights” (Resolution of the International Labour Conference, 1970).

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Trade union rights must be evaluated within the context of the general situation of human rights in the Philippines. The limitations on civil liberties which are referred to elsewhere in this report constitute serious limitations on the rights of workers. The Philippines is a member of the International Labour Organisation (ILO); in 1970 the annual Conference of the ILO adopted a resolution which stated that:

“the rights conferred upon workers’ and employers’ organisations must be based on respect for those civil liberties which have been enunciated, in particular, in the Universal Declaration of Human Rights and in the International Covenant on Civil and Political Rights... the absence of these civil liberties removes all meaning from the concept of trade union rights”<sup>1</sup>.

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1) ILO: Record of Proceedings, ILO, 54th Session, 1970, p. 733.

According to the ILO resolution, the rights essential to safeguard freedom of association for workers are (a) the right to freedom and security of the person and freedom from arbitrary arrest and detention; (b) freedom of opinion and expression; (c) freedom of assembly; (d) the right to a fair trial by an independent tribunal, and (e) the right to protection of the property of trade union organisations. Since significant infringements on these rights exist in the Philippines, the right to freedom of association for trade union purposes is not satisfactorily guaranteed. Infringements of civil liberties are discussed elsewhere in this report; this chapter concerns more direct limitations on the right of workers.

The Philippines has ratified a number of international treaties concerning worker and trade union rights. The most important are the International Covenant on Economic, Social and Cultural Rights (Articles 6-9), the ILO Convention on Freedom of Association and Protection of the Right to Organise (No. 87) and the ILO Convention on the Right to Organise and Collective Bargaining (No. 98). The obligations contained in these international conventions have been voluntarily assumed by the Philippines and constitute the criteria by which its law and practice should be judged. The ILO has pointed out that a number of provisions of the Philippine Labor Code are contrary to the ILO conventions.

### *Labour Legislation: Criticisms by the International Labour Organisation*

#### Right to strike

With the lifting of martial law in 1981, some of the more egregious direct interferences with the rights of workers were removed. The IJC 1977 report on the Philippines recommended that the ban on the right to strike should be terminated without delay. The total prohibition of all strikes embodied in Decree 823 has now been lifted but extensive limitations on the right to strike are still in effect.

The Committee of Experts has found that continued limitations on the right to strike in the Philippines exceed permissible limits under Convention No. 87. The right to strike is not expressly mentioned in the ILO freedom of association conventions, but the ILO Freedom of Association Committee and the Committee of Experts have stated that the right to strike is one of the essential means available for the promo-

tion and protection of workers' economic and social interests; a ban or limitation on the right to strike may contravene articles of ILO freedom of association conventions which guarantee the rights of workers to defend their interests and organise their activities. The ILO Committee of Experts has recognised that restrictions on the right to strike are acceptable in essential services or in the public service so long as adequate guarantees are provided to protect the workers' interests, but has found the right to strike in Philippine legislation to be unduly restricted.

Article 264 of the Philippine Labor Code provides that legitimate labour unions may strike or picket in cases of bargaining deadlocks or unfair labour practice with 15 or 30 days notice. But section (g) of this article severely restricts this right to strike.

Article 264(g) of the Philippine Labor Code reads:

"(g) When in his opinion there exists a labor dispute causing or likely to cause strikes or lockouts adversely affecting the national interest, such as may occur in but not limited to public utilities, companies engaged in the generation or distribution of energy, banks, hospitals, *and export-oriented industries including those within export processing zones*, the Minister of Labor and Employment shall assume jurisdiction over the dispute and decide it or certify the same to the (National Labor Relations) Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Minister may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

"The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries where in his opinion labor disputes may adversely affect the national interest, and from intervening at any time and assuming jurisdiction over any labor dispute adversely affecting the national interest in order to settle or terminate the same." (Emphasis added)

The ILO Committee of Experts noted "with regret" in 1983 that this article "contains a very broad and non-limitative list of labour disputes in which a strike could affect the national interest." The Committee especially noted that "export-oriented industries including those within export-processing zones were included among those in which strikes were prohibited, and that under Regulation no. 815, the semi-conductor industry is deemed a vital service." The expression "notes with regret", used by the Committee on this occasion, is a term employed when it wishes to indicate a serious infringement of a convention.

The Committee reminded the government that "prohibition of strikes should be limited to essential services in the strict sense of the term, that is, those whose interruption would endanger the life, personal safety or health of the whole part of the population." It concluded that the restrictions in Article 264 "go well beyond this concept".<sup>2</sup>

Article 264(g) gives wide discretionary powers to the Minister of Labor and to the President to declare strikes to be contrary to the national interest, thereby rendering them illegal. This power has been used in industries which would not meet the ILO definition of essential services. The Minister of Labor has declared strikes at, *inter alia*, textile mills, woodwork companies, semi-conductor industries, garment industries and companies manufacturing plastic bags, to be contrary to the national interest and certified disputes at these plants to the National Labor Relations Commission for compulsory arbitration. The government has adopted export-oriented industrialisation as a major aspect of its economic plans; the companies referred to above were all engaged in the export trade.

On February 11, 1983, the Supreme Court of the Philippines decided in the case of *United CMC Textile Workers Union v. Hon. Blas F. Ople, Minister of Labor*, that the legislative provision permitting strikes to be prohibited in export-oriented industries was not contrary to the Philippine constitutional provision on the rights of workers. It also held that the determination by the Minister of Labor that the strike against Central Textile Mills Inc. was contrary to the national interest was justified in view of the depressed state of the textile industry and the resulting damage to the national economy. The Union, which had requested a restraining order setting aside the Minister of Labor's orders in the dispute, contended that while the industry was economically depressed,

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2) 1983 Report of the ILO Committee of Experts, International Labour Conference, 69th Session, 1983. Report III (Part 4A), p. 145.

the Central Textile Mills, Inc., against which the strike was launched, was not.

While approving the certification of the case for compulsory arbitration, the Court's opinion referred to the "undue hostility of management to unquestioned rights of workers" and stated that "It is an error for the management of any firm beset by labor disputes to feel that it can do anything short of criminal or tortious acts to obstruct or weaken unionism simply because the firm may happen to fall under those industries covered by compulsory arbitration." The language of the Court suggests that Article 264(g) had been used by the company as an excuse for anti-union activity. The limitations on strikes in export industries, despite workers' allegations of inadequate labour conditions, appears to result in workers becoming victims of the government's industrial policy.

Strikes have also been declared contrary to the national interest in non-export-oriented industries. In February, 1983 the Minister of Labor declared a strike at the *Bulletin Today*, the largest circulation newspaper in the Philippines, to be contrary to the "national interest," ordered strikers back to work and certified the dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration.

During our stay in the Philippines, labour leaders strongly criticised the provisions for compulsory arbitration as an alternative to striking. While we heard conflicting statements as to whether the National Labor Relations Commission was pro-management or pro-labour, there was consistent criticism of the severe restrictions on the right to strike and on the long delay which ensued once compulsory arbitration was ordered. The dilatory tactics of the NLRC in deciding labour cases were a common complaint. As has been frequently pointed out, real industrial peace is not achieved by compulsion of law. The severe restrictions on strikes and provisions for compulsory arbitration are not conducive to healthy industrial relations in the Philippines and are contrary to the Philippines' commitments under ILO conventions.

Article 264 of the Labor Code also provides that the decision to declare a strike must be approved by at least two-thirds of the total union membership in the bargaining unit concerned, obtained by secret ballot. In 1982, the ILO Committee of Experts stated that the imposition by law of such a requirement was incompatible with the principles of Convention No. 87. The Committee stated in its 1983 report that it considered that the provisions of Article 264 and of the Labor Code "considerably restrict the right of workers' organisations to organise their activities (Article 3 of the Convention) and possibilities open to trade

unions to further and defend the interest of their members (Article 10).” The Committee requested the government to take the necessary measures to bring its legislation into conformity with the principles of Convention No. 87. In 1984 it raised the same point.

The Committee referred in 1984 to Article 273 of the Labor Code which provides for sanctions of up to six months’ imprisonment for participation in strikes that are considered illegal. The Committee pointed out to the government that penal sanctions should only be imposed where there are violations of strike prohibitions which are in conformity with the principles of freedom of association and that penalties of imprisonment should not be imposed in the case of peaceful strikes. It suggested that the government consider bringing this provision into conformity with the Convention in the near future.<sup>3</sup>

### Right to organise

Article 2 of ILO Convention No. 87 states that:

“Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.”

Article 5 of the same Convention provides:

“Workers’ and employers’ organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.”

Under Article 234(c) of the Philippines Labor Code a trade union may be registered under Philippine law and thus acquire the status of a legitimate organisation if at least 30 percent of the workers in a bargaining unit belong to it. Legislation in 1982 reduced the percentage from 50 to 30. The Committee of Experts found in 1983 that 30 percent was not a reasonable level and still constituted an obstacle to the right of workers to establish organisations of their own choosing.

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3) 1984 Report of the ILO Committee of Experts, International Labour Conference, 70th Session, 1984, Report III (Part 4A), observation concerning convention No. 87, the Philippines.

The Committee also criticised Articles 237(a) and 238 of the Labour Code. Article 237(a) stipulates that, in order to obtain registration, a federation or national union must comprise at least ten trade unions of the same branch, each of which is recognised as the collective bargaining agent in the establishment or industry in which it operates. Article 238 precludes more than one federation or national union from being registered for any one branch of activity in any given area or region. The Committee pointed out that these provisions were not in conformity with Articles 5 and 6 of the convention. E.M. Villegas has written:

“It appears that the real intent of Article 238 is to insure a more effective overseeing by the government of the labor movement of this country and to control its direction because with only one union in one industry, interested parties would have to influence only a handful of labor leaders to preserve ‘industrial peace’ for the owners of production.”<sup>4</sup>

At the present time there are two cases pending before the Supreme Court of the Philippines contesting the constitutional validity of the “one-union-one-industry” concept.

#### Picketing

Article 265(e) provides that:

“No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress or egress from the employer’s premises for lawful purposes, or obstruct public thoroughfares.”

We heard from a number of union leaders and members that this provision is widely used by security forces to disrupt peaceful picketing during labour disputes and to escort strike breakers in and out of premises.

In 1984 the ILO Committee of Experts asked the government to provide information on the penalties that may be imposed on a worker for participating in picketing or other similar group action. Article 264 of

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4) Villegas, Edberto M., “Notes on the Labor Code and the Conditions of the Industrial Working Class in the Philippines.” *The Philippines in the Third World Papers*, Series, No. 23, June 1980, *Third World Studies*, University of the Philippines.

the Labor Code permits the right to strike and picket, but Presidential Decrees 1834 and 1835 of January 1981, published in the Official Gazette of 25 July, 1983, provide that any person participating in picketing or in similar group actions who is deemed to be acting against the government shall be punished with life imprisonment with no possibility of pardon. The Committee requested clarification of the relationship of these two provisions.<sup>5</sup>

In 1982, 1983 and 1984, the ILO Committee of Experts reiterated essentially the same criticisms of the labour legislation of the Philippines, although the government had been provided an opportunity to explain its point of view at the 1982 and 1983 International Labour Conference. The comments of the respected Committee of Experts indicate that Philippines legislation, even following the lifting of martial law, contains serious violations of the fundamental principles of freedom of association and trade union rights.

### *Arrest and Harassment of Trade Unionists*

Although martial law was lifted in 1981, President Marcos has retained the power to arrest persons arbitrarily by Preventive Detention Action (and prior to August 1983 under Presidential Commitment Orders). The President may act on his own without judicial or legislative authority. Arrests by Presidential orders and harassment of union leaders and members have been common since the termination of martial law. In February 1982, a striking textile worker was shot by guards while picketing outside a factory, the sixth person to die in labour violence up to that time since the lifting of martial law. Amnesty International reported that between mid-August and early September 1982 about 50 trade unionists were arrested in the Manila area. In January, 1983, troopers with truncheons broke up a picket line of more than 100 striking cement workers in Davao City and arrested a union leader and seven followers for sedition.<sup>6</sup> In July, 1983, dozens of persons were arrested when public transport drivers staged a one-day strike in Davao to protest against increases in prices of basic commodities.<sup>7</sup>

5) 1984 Report of the ILO Committee of Experts, *op cit.*

6) Associated Press, January 23, 1983.

7) Reuters, July 11, 1983.

Among the many unionists arrested on orders of President Marcos in September 1982 were Felixberto Olalia, chairman of Kilusan Mayo Uno (KMU), May 1st movement, and chairman of Pagakakaisang Manggagawang Pilipino (PMP or Solidarity of Filipino Workers) and Crispin Beltran, Vice-Chairman of KMU and Vice President of the Philippine Alliance of Nationalist Labor Organizations. KMU is a confederation of workers' organisations representing 150,000 union members.

The unionists arrested in August and September 1982 were subsequently released, except Olalia and Beltran. The 80-year-old Olalia, who has been described as the firebrand leader of a militant union, died while still under house arrest in December, 1983. Beltran remains under arrest and is currently being tried for sedition and conspiracy to commit rebellion. He has been adopted as a prisoner of conscience by Amnesty International. At the time of the arrests of Olalia and Beltran the KMU offices and other trade union offices were ransacked by security forces. The KMU and PMP were alleged by the government to be under the umbrella of the Communist Party of the Philippines whose objective is the overthrow of the government by armed struggle. The accusation was denied by the jailed leaders. Opposition leaders accused Marcos of trying to terrorise labour by linking a powerful labour chief to a campaign of violence.

The KMU or May 1st Movement is a small militant movement founded by Mr. Olalia in 1980. It is not affiliated with any of the three international trade union confederations. In 1981 it joined with other independent unions to form the PMP or Solidarity of Filipino Workers whose purpose is "to present a common and united position on important labor issues, such as the right to strike." The KMU and PMP have been in the forefront of efforts to defend workers rights in the Philippines. PMP members were active in organising a sympathy strike in August 1982 in the Bataan Export Processing Zone during which a number of strikers were arrested. When the Batasang Pambansa (national legislature) was considering the adoption of legislation severely restricting strikes and picketing, the KMU and PMP prepared position papers arguing strongly against adoption of the legislation. In November, 1983, the KMU organised a picket-rally at the Ministry of Labor and Employment urging wage increases, the unconditional release of union detainees and the immediate restoration of the rights of workers to strike and conduct picketing activities through the repeal of restrictive laws. The militant actions of the relatively small KMU are to be contrasted with the inaction of the large government sponsored union, the Trade Union

Congress of the Philippines, which has generally maintained silence about the problems of workers. Approximately 24.9 percent of wage and salary workers in the Philippines belong to unions, but most of them are government or company dominated.

The evidence is strong that the arrests of KMU leaders were intended to curb militant labour activities of this union. The *Economist* reported in December, 1983, that the KMU had been "hobbled by the continued imprisonment of the leaders on subversion charges".<sup>8</sup>

A formal complaint against the Philippine government was filed by KMU with the ILO Committee on Freedom of Association (FAS Committee) in Geneva in April 1983, alleging arrests and harassment of its union leaders. The text of the detailed complaint, Case No. 1192, was immediately transmitted to the government for its observations. The government failed to reply to the complaint at the May, 1983 meeting, the November, 1983 meeting and the March, 1984 meeting of the FAS Committee. At the March, 1984 meeting the Committee addressed an "urgent appeal" to the Philippine government to reply to the detailed allegations regarding arrests and harassment of union leaders.<sup>9</sup> The continued failure of the government to reply to the ILO concerning serious allegations of infringements of freedom of association for trade union purposes must be severely criticised, since the Philippines has assumed international obligations through membership in the ILO which oblige it to collaborate with ILO supervisory procedures.

The present labour unrest in the Philippines appears to be caused by legitimate demands of the workers. The *Economist* reported in December, 1983 that the "18 percent increase in minimum wages announced last month was... far short of the 30 percent increase in food and transport costs over the past three months. The government has excused more than 350 companies, mainly in so-called vital industries, from paying a minimum wage. Many other employers simply break the law".<sup>10</sup>

### *Labour Conditions in the Bataan Export Processing Zone*

The ILO and international trade union federations have become increasingly concerned about the situation of workers in export processing

8) *The Economist*, December 10, 1983, p. 72.

9) 233rd Report of the Committee on Freedom of Association, GB. 225 9/9, 225th Session, Geneva, 25 February-2 March 1984, paras. 17-18.

10) *The Economist*, December 10, 1983, p. 72.

zones in recent years. For the last several years, the ILO Committee of Experts has requested information from governments concerning the conditions of workers in these zones. Because of the current international concern, a member of our delegation interviewed workers in the Mariveles, Bataan Export Processing Zone (BEPZ) of the Philippines. The interviews confirmed that Article 264(g) of the Labor Code has been used to restrict the right to strike within the Bataan Export Processing Zone and that the conditions of workers in this Zone are unsatisfactory. The problems of workers in the Zone and the resulting labour unrest is confirmed in a 1982 study by the Philippine Ministry of Labor and Employment.<sup>11</sup>

Legislation creating the Bataan Export Processing Zone (BEPZ) was adopted in 1969, but the Zone was not actually established until two months after martial law was declared in 1972. The Zone was established as part of the export-oriented industrialisation policy of the Marcos regime. It was modeled on other successful export platforms which had been set up in Asia. Firms locating in the Zone are provided various benefits such as 100 percent permissible foreign ownership, permission to impose a wage lower than in Manila and certain tax holidays.<sup>12</sup> A docile labour force is considered an important incentive for firms to invest in export processing zones. Article 264(g) of the Philippines Labor Code attempts to guarantee this docility by providing that disputes in export-oriented industries including those within export processing zones may be certified for compulsory arbitration and employees thereby prohibited from striking. The Article also provides that the Minister of Labor may seek the assistance of law enforcement agencies to ensure compliance with this provision.

Despite Article 264(g) of the Labor Code, strikes have occurred within recent years in the Bataan Export Zone and security forces have been called in to arrest strikers. The labour unrest results from unsatisfactory conditions affecting the workforce in the Zone which is composed primarily of young unskilled, single women. In August, 1982, female workers comprised 71 percent of the 19,000 persons in the labour force in the Zone. More than half of the labour force were under 25 and almost 88 percent were under 30. Seventy percent of the workers were

11) The Bataan Export Processing Zone, Ministry of Labor and Employment (MOLE) survey undertaken August 1982.

12) Bello, Kinley and Elinson, *Development Debacle: The World Bank in the Philippines*, 1982, pp. 135-146.

single. Most of the vacancies in the Zone required no experience whatsoever. Approximately 89 percent of the factory workers in the Zone are unionised. The unions in the Zone are affiliated with six major labour federations.<sup>13</sup>

In June, 1982, workers at Interasia Container Industries, Inc., struck because of illegal termination of union members' employment and inhumane conditions of work (requiring one worker to operate six looms). The Ministry of Labor (in accordance with Article 264 of the Labor Code) declared that the industry was in the national interest and ordered the workers back to work at the company (which manufactures plastic bags for export). The strike and picketing continued and 54 strikers were arrested. According to the workers interviewed, the strikers were detained in inhumane conditions following an excessive bail requirement. As a result of the arrest and the conditions of detention of the arrested strikers, 14,000 workers in the Zone participated in a mass sympathy strike.

The widespread nature of the strike and resulting international publicity were said to be responsible for an agreement which provided that all arrested strikers would be released and workers would be reinstated. The original strike was subsequently declared illegal for failure to conform to notice requirements. Appeals against this decision are pending. Strike leaders lost their jobs.

Renewed labour conflict arose again in late 1983 in the Zone. Astec Electronics, Inc. was one of six non-unionised companies in the Zone. In September 1983, an affiliate of the National Federation of Labor Unions won a certification election at the plant. The certification followed many years of efforts to unionise the plant which were strongly resisted by the Company. Two weeks following recognition of the union the management laid off several hundred workers. Believing this was an attempt to break the union, the workers went on strike in October protesting the layoffs. Women on the picket line were harassed and molested by Zone police and strike breakers, according to testimony we heard. Other workers in the Zone then went out on a general strike over the harassment of the Astec workers. According to workers interviewed, many strikers in the Astec plant were blacklisted by the company and unable to obtain work elsewhere in the Zone. On December 16, 1983, Astec laid off all its workers and announced a total closure

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13) Ministry of Labor report on the Bataan Export Processing Zone, survey conducted August 1982.

of the plant. Workers were given sick leave and vacation leave pay.

Following the 1982 sympathy strike the Ministry of Labor and Employment (MOLE) undertook a comprehensive study of working conditions in the Zone. The detailed study covers all facets of the employment situation, provides valuable statistics and includes reports of interviews with management, workers and union officials.

The Ministry of Labor found that wages, overtime and lack of social amenities in the Zone are problem areas, and that most strikes in 1981 and 1982 pertained to violation of labour standards such as underpayment of wages, illegal dismissals and unfair labour practices. Management resistance to union activities in the Zone, which included harassment and intimidation of union members, caused suspicion, distrust and antagonism. The study recommends a dialogue between management and labour unions regarding the chronic problems of allocation of overtime and production targets and suggests that an industrial relations council should be initiated by MOLE, composed of labour, management and government representatives as a regular forum for discussion of problems such as "over-strict" security personnel in the Zone. It suggests a permanent MOLE staff unit in the Zone to conciliate and arbitrate disputes as they arise, and plant-level grievance machinery. The MOLE unit would maintain a staff of labour regulation officers and safety inspectors.

The study makes a number of important recommendations concerning the improvement of social amenities in the Zone: the necessity for affordable housing near the Zone (not limited to dormitories), for more recreational facilities and improved hospital facilities. It also notes that prices of basic commodities in and near the Zone are higher than in Metro Manila, although the minimum wage is lower than in Manila. It recommends the setting up of government centres through which workers could buy lower or reasonably priced food. The study notes that work-related illnesses are "fairly common" in the Zone: eye irritation and hypertension in the electronics industry; conjunctivitis in plastics and metal fabrication; upper respiratory throat infection in garments and food industries and sinusitis in footwear and leather industries. It also notes the prevalence of observations both by management and union officials of the "almost inhuman and unfair conduct especially vis-à-vis workers" of BEPZ security personnel.

It is apparent from the MOLE study that labour conditions are unsatisfactory in the Zone and that remedial measures are urgently needed. Harassment and suppression of labour activities are not the solution to

documented unsatisfactory labour conditions. The creation of employment opportunities is often cited as a benefit resulting from the establishment of export zones, but exploitative labour conditions are no justification for the amount of employment created. Workers in export zones are generally young, unskilled and female; as an especially vulnerable group of employees their labour conditions should receive special scrutiny.

The Ministry of Labor is to be commended for its thorough and careful study of conditions in the Zone. Unfortunately, further labour unrest broke out in the Zone even after the MOLE report. The recommendations contained in the MOLE study should be implemented by the government but conditions in the Zone require a change in the labour laws which would permit collective strike action over inadequate working conditions even in export-related industries. This fundamental change was not suggested in the MOLE study.

The BEPZ is not prospering. The Ministry of Labor study noted that at the end of 1981 the Zone had only 56 firms or only 49.6 percent of the 1980 target of 113 firms. Although the BEPZ was intended to attract foreign firms, in 1982 26.9 percent were wholly owned by Filipinos while only 32.7 percent were wholly owned by foreign nationals. Joint ventures by Filipino and foreign nationals comprised 34.6 percent of the firms and joint ventures by only foreign nationals comprised 5.8 percent. Asians, particularly Japanese and Chinese, comprised the major foreign participation in the Zone. By May 1982, several firms had ceased operations reducing the total number of operating firms to 52. "The reasons for the firms' closure seemed to be lack of market outlets for their products and financial difficulties. But it is not known to what extent or whether recent labor relations problems in the Zone or labor cost increases contribute to firm closures."<sup>14</sup>

### *Labour Conditions on Sugar Plantations (Negros)*

The island of Negros has a mono-culture economy with the overwhelming majority of the two million residents of the island dependent for their livelihood on sugar production. Sugar is one of the main exports of the Philippines, currently comprising approximately ten percent of the country's exports; Negros produces sixty percent of Philippine

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14) MOLE study, p. 5.

sugar. Sugar is produced in Negros on haciendas owned by planters. The situation of workers on these haciendas may be accurately characterised as semi-feudal. Dr. Alfred McCoy of the University of New South Wales, Australia, has described their situation:

"[T]he Negros farm laborer works in gangs for wages and depends on the hacienda for free housing, rice, water, light and medical care. Negros workers have almost no savings and get interest free loans from the hacienda to cover education, food shortages, weddings and baptisms. In 1976, a Ministry of Labor survey of Negros plantations confirmed this worker dependence: 87.2 percent of workers had free housing; 78 percent borrowed money from the hacienda to meet daily food requirements; 43.3 percent were children of sugar workers; and 40 percent had no skills for alternative employment... Once displaced from plantation employment, a Negros worker would have few job alternatives on the island and no savings or skills to migrate elsewhere."<sup>15</sup>

This paternalistic relation between hacienda owners and workers obviously leaves the workers in an unhealthy situation of dependence. Consequences of this relationship will be discussed further below.

The sugar industry in the Philippines has gone through difficult times in recent years. The Philippines sold its sugar to the United States at a price above the world market price until 1974 when a treaty between the two countries terminated and the U.S. decided to end sugar quotas. In complacent reliance on the U.S. guaranteed market the Philippines sugar industry had long been non-competitive in the world market. When suddenly forced to compete in that market it found itself at a competitive disadvantage. The failure of the Marcos regime to respond to the crisis in the sugar industry is documented by Dr. McCoy.<sup>16</sup> While sugar producers in other countries had long since mechanised production, the Philippines had failed to mechanise and had continued to rely on a cheap and dependent labour force. During the period of martial law (1972–1981) President Marcos appointed Roberto Benedicto, former Philippine ambassador to Japan and a sugar and shipping magnate,

15) Alfred W. McCoy, "In Extreme Unction: The Philippine Sugar Industry" in *Political Economy of Philippine Commodities*, Third World Studies Center, University of the Philippines, 1983, p. 162.

16) *Ibid.*, pp. 135–147.

to head the Philippine Sugar Commission, an affiliate of which, Nasutra, was given a monopoly over both domestic and export marketing of sugar.<sup>17</sup> Benedicto has become a veritable 'czar' of the sugar industry and hence of Negros. Dr. McCoy has written, "Never before has one man held so much power over a major Philippine primary industry."<sup>18</sup> There has been strong opposition to the government sugar monopoly among both planters and plantation workers recently. Planters have contended that the monopoly has deprived them of fair profits, and has made it difficult to increase workers' pay.<sup>19</sup>

Sugar planters in Negros are now turning to mechanisation of production as the only feasible method of remaining competitive in world markets. In view of the mono-crop economy of Negros, mechanisation is certain to result in massive unemployment of workers who are essentially totally dependent on their employers and without savings or other useful skills. While mechanisation seems an essential means for saving the sugar industry, government and planters must see to it that measures are taken to avoid the disastrous social cost which may result for the sugar workers. One solution tried by some planters has been to turn some of the land over to rice production as a means of using workers displaced by mechanisation on sugar haciendas.

To obtain information concerning conditions of sugar workers in Negros, we interviewed church leaders, lawyers, labour leaders, union members and sugar plantation workers. The interviews confirmed that not only are sugar workers seriously exploited but efforts to organise the workers to demand their rights have been met with harassment and opposition from planters and security forces. Persons interviewed attested that the government, planters and the military have combined forces to keep workers in a state of semi-serfdom. We were told that the Ministry of Labor has confirmed that there is rampant violation of minimum wage laws in the haciendas, that the low wages of workers affect their health, education and housing. At the age of ten, many children are already casual workers in the plantations in an effort to add to the family income. The situation of casual sugar workers, or *sacadas*, is

17) Bello, Kinley and Elinson, *Development Debacle: The World Bank in the Philippines*, p. 185; McCoy, *op. cit.*, pp. 145-147.

18) McCoy, *op. cit.*, p. 147.

19) Henry Kamm, "Philippine Planters and Workers Fight Sugar Controls", *New York Times*, Sec. A, p. 7, Col. 1, February 5, 1981; Galang, Jose, "The Monopoly Game," *Far Eastern Economic Review*, 1 March 1984, pp. 42-43.

particularly difficult. Many sugar workers have been laid off because of the low current sugar price on the world market. When mass dismissals take place the laid off workers who have been living on the haciendas are often driven off the land as illegal squatters.

In Bacolod, we interviewed three Catholic priests and six church lay leaders accused of the murder of Pablo Sola, mayor of Kabankalan, Negros. The priests charged were Rev. Brian Gore, an Australian, Rev. Niall O'Brien, an Irishman and Rev. Vicente Dangan, a Filipino. Fathers Gore and O'Brien are members of the Columban missionary order. The charges against these nine men have focused international attention on the poverty and labour conditions of sugar workers on the island. It is widely believed that the charges are a frame-up resulting from local opposition among sugar planters to the social action work of the priests in developing 'basic Christian communities'. The Catholic Church in Negros has been active in drawing attention to the plight of sugar workers. "In 1975 the Association of Major Religious Superiors in the Philippines published the first comprehensive survey of conditions on the sugar farms. This brought an immediate attack by the sugar planters on the Church in Negros."<sup>20</sup> The accused priests have strongly denied the murder charge or that they have ever taught violence. They maintain that they have helped the sugar workers stand up for their rights as part of the obligations of their Christian faith. At the time of writing, they were being tried on the charges. A large number of foreign observers were present at the opening of the trial, evidencing international concern that the nine men might not be given a fair trial in the politically charged atmosphere of Negros.<sup>21</sup>

Unions exist among the sugar workers but they are almost all planter or government dominated. An exception is the National Federation of Sugar Workers (NFSW) which has been active in organising workers to protest against their conditions. In 1981, Rev. Edgar Saguinsin, then Chairman of the NFSW, was quoted as referring to Negros as "a province whose distinctive feature is social injustice — disparity in society between the very few rich and the vast majority of poor workers and the inequity in law... Wages are a bone of contention. We have to fight for even the minimum stipulated by law. We don't even get

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20) *Columban Mission*, January 1983, p. 3.

21) On 3 July 1984 all charges against the accused were dismissed. An ICJ observer, Mr. Dermot Kinlan, senior counsel of the Irish Bar, attended the trial.

that.”<sup>22</sup> Father Saguinsin had previously been jailed for leading workers who occupied a plantation. Workers who attempt to join the NFSW are met with constant harassment which includes withdrawal of the rice ration, ejection from housing in the hacienda, refusal to hire for work in the haciendas and intimidation. Complaints filed against the management of the haciendas are routinely dismissed. Efforts of union organisers to enter haciendas are met with harassment, intimidation and threats of violence.

Bishop Antonio Y. Fortich of Bacolod has long been a defender of the rights of the sugar workers. He has pointed out that workers have a right to organise in unions and that “Violence is not limited to labor or strike. You can be violent by not giving people what is due them.”<sup>23</sup> The appalling living and labour conditions on the sugar plantations in Negros should be a major concern of the government, the planters and the sugar czar Roberto Benedicto. Ultimately, however, it will only be by accordinng sugar workers the right to organise freely without harassment and the right to protest against their conditions that improvement will take place. Permitting workers the right to organise (free of government or planter domination) is the first step which should be taken. Concerted efforts should also be made to provide alternative work for the numbers of sugar workers likely to be displaced by mechanisation.

### Land Reform

Shortly after martial law was declared in 1972, President Marcos announced an extensive agrarian reform programme. On October 21, 1972, he issued Presidential Decree No. 27, otherwise known as the Tenant’s Emancipation Act, decreeing Operation Land Transfer. It decreed the “emancipation of tenants from the bondage of the soil” and is compared by government officials to Abraham Lincoln’s Emancipation Proclamation freeing slaves in the United States. President Marcos stated that “Land reform... has been aptly called the cornerstone of the New Society that is emerging. It is certainly the major strategy by means of which we hope to bring to the masses of our people the benefits of economic and social modernization.”

22) Kamm, “Philippine Planters and Workers Fight Sugar Controls,” *New York Times*, Sec. A, p. 7, Col. 1, February 5, 1981.

23) *Ibid.*

Clearly land reform was urgently needed in 1972. The Philippines has primarily an agriculture economy and absentee landlordism and share-tenancy predominated. The present Minister of Labor stated that "the Huk movement, more than any other force, compelled our society to pay closer attention to problems of land injustice, to go into a more decisive agrarian reform programme, to turn outward to the rural areas and promote the development of this neglected sector."<sup>24</sup>

Today, twelve years after agrarian reform was first proclaimed, there are differences of opinion on the results. The Marcos administration proclaims agrarian reform as one of its major accomplishments; it contends that the programme has been highly successful, providing security of tenure to more than one million farm families. Other observers point out that few farmers have yet received full title to land on which they are tenants, that many of them are far behind in payments for their land and may never receive title, that serious problems plague the programme and that it is behind schedule.

The land reform programme covers rice and corn land; it does not apply to land on which crops are raised for export and fruit and root crop land. Thus a substantial part of Philippine agriculture land is not included in the programme, (approximately four million hectares). Originally it was intended to involve 1.8 million hectares of rice and corn land and benefit one million peasants by giving them full title to the land they were tilling. Tenant-farmers were to be entitled to own three hectares of irrigated land or five hectares of unirrigated land. Subsequently it was decided that the transfer of ownership would not apply to parcels less than seven hectares. Tenants on parcels less than seven hectares would receive leaseholds — a change from the share tenancy arrangements which they had previously. It has been pointed out that a holding of seven hectares is very large in the Philippines and that the average landholding is only 1.5 hectares.<sup>25</sup> A total of 400,000 tenant farmers were then to become owners and 620,000 to become leaseholders.

Operation Land Transfer involves a number of steps:

1. Identification of tenants, landowners and land covered.
2. Mapping to determine boundaries.
3. Issuance of Certificates of Land Transfer (CLT). The certificates

24) Blas F. Ople, *Frontiers of Labor and Social Policy, Selected Speeches*, 1979, Ministry of Labor, pp. 205–206.

25) Bello, Kinley and Elison, *Development Debacle: The World Bank in the Philippines*, Institute for Food and Development, 1982, p. 73.

constitute provisional title pending final payment.

4. Valuation of the land, to be determined by agreement between the landlord and tenant (Landlord-Tenant Production Agreement) or on the recommendation of a Barangay (local community) Committee on Land Production.
5. The granting of an Emancipation Patent (EP) evidencing ownership when the tenants have paid in full for the land.

The programme is administered by the Ministry of Agrarian Reform.<sup>26</sup>

The government buys land from the landowners to sell to the tenants. The value of the land is determined by the methods mentioned in step 4 above. The Land Bank of the Philippines is the financing arm of the programme and landowners are paid by the Bank in cash and bonds of the Bank, or preferred stock and bonds of the Bank, or by direct payments by tenant-farmers in 15 equal amortized installments, guaranteed by the Bank. Tenant-farmers are to pay the value of the land to the Land Bank or directly to the landowner in 15 equal amortized payments at 6% interest.<sup>27</sup>

According to government statistics (1982 Annual Report of the Ministry of Agrarian Reform), 597,033 CLTs had been "generated/issued" by 1982 covering 679,690 hectares (to 393,192 farmers). It is not clear from the government report what "generated/issued" means. In 1981, Rolando B. Modina, of the non-governmental Agency for Community Educational Services, asked the government for a clarification of the figure of 509,892 CLTs issued up to that date. He was informed that approximately 75,000 CLTs had been handed out; 125,000 were given but had been retrieved due to some errors; more than 250,000 were at the Land Bank pending completion of requirements of assessment or survey.<sup>28</sup> It thus appears that the number of provisional titles actually received by tenant-farmers may be far less than the 597,033 which were "generated/issued" by 1982.

The 1982 Annual Report of the Ministry of Agrarian Reform stated that by that date 39,011 Emancipation Patents (EPs) had been "gener-

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26) A description of the agrarian reform programme is available in numerous pamphlets and reports of the Ministry of Agrarian Reform, Diliman, Quezon City, Manila.

27) "Land, People and Political Stability Through Agrarian Reform," speech delivered by Miss Milagros A. German, Associate Justice, Court of Appeals, Manila, during Second World Congress on Land Policy at the Harvard Law School, USA, on June 20, 1983.

28) Modina, Rolando B., "A Critique of the BCLP Land Valuation Aspect of the Land Reform Program with a Barrio Case Study," Agency for Community Educational Services, No. 12, 11th Avenue Murphy, Cubao, Quezon City, Metro Manila, Philippines.

ated/issued" and that the "generation/issuance" had been tremendously accelerated during 1982 by virtue of the Ministry's new policy of allowing the "generation" of EP's upon payment of two annual land amortizations. Again the terms "generation/issuance" are not explained. The EP constitutes a certificate of title or ownership; it is highly unlikely that farmer tenants would receive an EP after only two of the fifteen year annual payments. "Generation" perhaps means "printed" and given to the Land Bank for eventual transfer to tenant-farmers. This appears likely, since under the previous policy of the Ministry, it was reported that only 1,799 tenants had received EPs by May 31, 1981. At the end of June 1982, it was reported that EPs had been issued to only 2,351 farmers who had paid for their land in full. The sudden jump in number of EPs by late 1982 (from 2,351 to 39,011) is not understandable from the government's reports.

The unexplained and confusing use of the terms "generation/issuance" in the annual report of the Ministry of Agrarian Reform makes it difficult to evaluate the progress of the agrarian reform programme. However, the government's own statistics lend support to the conclusion of many observers that the programme is proceeding at a snail's pace, at least as regards transfer of ownership. The programme may be more successful with regard to the change from share-tenancy to leaseholdings. The 1982 annual report states that the total of tenant farmers with leasehold contracts has reached 500,165.

It is perhaps not surprising that few tenant-farmers have received EPs since they are given a 15 year period to complete payments for their land and the agrarian reform programme has been in effect for only 12 years. However, it has been alleged that tenant-farmers have been unable to make the annual amortized payments and have thus defaulted; that they have used their CLTs as collateral for loans to pay for fertiliser and other improvements and have become deeply indebted to such an extent that they will never be in a position to complete payment for their land and receive EPs. In the absence of complete and comprehensible government statistics and investigation of these allegations, they remain unrefuted. The 1983 World Labour Report of the International Labour Office stated that the "effects of a redistributive land reform can also be short-lived if debt leads peasants back into the hands of suppliers and merchants."<sup>29</sup>

29) World Labour Report, ILO, Geneva. Reported in *Far Eastern Economic Review*, February 1984, p. 64.

In the early years of the programme the price of the lands to be transferred to the tenants was generally determined by agreement between the tenant and landowner. The result was excessive prices forced or coerced on the tenants. The University of the Philippines Institute of Agrarian Reform estimated that as a result of excessive prices, 88 percent of all amortizing owners in 1979 whose land prices had been reached by agreement could not pay on a regular basis, with a large percentage defaulting for as long as four to six years.<sup>30</sup> A different method for collecting data in order to arrive at a fair determination of the value of the land was instituted. Barangay (smallest government unit) Committees on Land Production were to collect data relevant to the determination of the land value but the Committees could not set the price. It was still necessary to obtain the landowners agreement on the price or for the tenant to resort to court proceedings. Confusion over whether a price had been set has resulted in tenants terminating rent payments and commencing amortization payments to the Land Bank and then finding themselves subject to court proceedings by the landowner for failure to pay rent.<sup>31</sup> Modina points out that one of the major causes of delay in the agrarian reform programme lies in the land valuation process in which the landlord has an upperhand. He concludes, "If the present effort of land reform can still be circumvented by the forces of feudalism to the advantage of the rich and powerful by way of high land pricing and half-hearted enforcement, one begins to question the sincerity of the programme's avowed intention to 'emancipate the tenants from the bondage of the soil.'"<sup>32</sup>

In 1983 the United Nations Development Programme (UNDP) and the Food and Agriculture Organization (FAO) sent a three-man evaluation mission to assess the agrarian reform programme. The mission included a representative of UNDP, a representative of the FAO and a representative of the Philippine government. The full report of the mission was not available to us, but a summary provided to us notes that the Operation Land Transfer and Leasehold Operation, coupled with the Landed Estates and Resettlement programmes, had benefitted just under one million persons and 2,000,000 hectares had been directly involved in the reform. This constituted 28 percent of farm operator families and 20 percent of the arable land. The summary of the report of

30) Modina, *op. cit.*, p. 4.

31) Modina, *op. cit.*, p. 13.

32) *Ibid.*

the mission stated that "No land reform in the past twenty years has involved so large a fraction of any country's farmers, farm land or food output. The Philippine people can be justly proud of this accomplishment."<sup>33</sup>

A confidential survey by the World Bank in 1978 was less sanguine. The survey reported that the agrarian reform programme had become stalled owing to "(a) incomplete records of land titles and land rights; (b) lack of dynamic leadership within the principal agencies; (c) inefficient management and shortage of trained manpower; and (d) opposition to the land reform programme by landlords, coupled with lack of power on the part of the Department of Agrarian Reform to enforce the reform legislation." The Bank's agricultural loan officer for the Philippines contended that Marcos lacked the political will to confront the landlord class: "Land reform is not amenable to halfway measures. Either the landlord owns the land, or the tiller does. To make that radical change requires more commitment and energy than the Marcos administration has yet been able to demonstrate."<sup>34</sup>

On January 9, 1984, speakers at a congress of 7,000 farmers and agricultural workers from Central, Southern and Northern Luzon stated that the government's land reform has been a failure, that land resources are increasingly concentrated in the hands of transnationals and other agri-business concerns as a result of the government's policy of export-oriented agro-industrialisation. They urged that coconut and sugar lands (which are not at present subject to land reform) be submitted to real land reform and recommended interest-free amortization of lands under reform and free use of irrigation facilities. They stressed the need for the institution of democratic decision-making processes in the formulation of agricultural policies and programmes with representation from organisations of farmers and rural workers.<sup>35</sup>

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33) Report of the Government of the Philippines UNDP/FAO Evaluation Mission for PHI/79/012 Expanded Assistance to the Agrarian Reform Programme of the Philippines, 21 November to 6 December 1983.

34) World Bank, "Desk Review of Support Services for Food Production, Land Reform, and Settlement," Washington, DC, undated, p. 5, quoted in Bello, Kinley and Elinson, *Development Debacle op. cit.*, p. 75.

35) Report of 4th national congress of Aniban Ng Mga Manggagawa Sa Agrikultura (AMA-KATIPUNAN) at Tabang, Guiguinto, Bulacan, *Bulletin Today* (Manila newspaper), January 9, 1984, p. 10. Speakers included former Congressman Rogaciano Mercado and trade unionist, Vic Bate, chairman of the Labor Party of the Philippines.

Conrado F. Estrella, Minister of Agrarian Reform, replied to criticisms of the land reform programme in a monograph entitled *Tenant Emancipation in the Philippines*. He stated that the apparent slowness of the programme was due to its adherence to legal processes. "Every time a landowner registers an objection, whether valid or not he is given his day in court... The same process is made available to tenants." He pointed out that delays also resulted from the shortage of personnel in the Bureau of Lands which meant that surveying could not be carried out expeditiously. He admitted that landowners, large and small, opposed the programme and that sometimes tenants were reluctant to participate in the programme because of fear of landlord vengeance. Finally, he stated that it was not true that the Marcos government lacked the political will to push the programme to a successful conclusion.<sup>36</sup>

Any extensive programme of land reform is bound to be a complex, difficult and slow process. That the Philippines has undertaken agrarian reform is certainly a positive step. The aims of the programme and the governmental machinery to implement it are impressive. A large number of lease-holding tenants now have security of tenure. Nevertheless, numerous observers have noted that the implementation of the programme is deficient and questioned whether any substantial progress is being made towards tenant-farmer ownership. Extensive agricultural lands are not included in the programme. Concern exists about the increasing indebtedness of tenant-farmers under the programme. There is doubt whether the government has the political will to implement agrarian reform. Criticism has been made of the method of land valuation. Government reports and statistics are not sufficiently clear and unequivocal to assess progress adequately, although assertions of its success abound. It seems, in conclusion, that the conception of the programme is a worthy one, but that it is not yet possible to maintain that it has been successfully implemented.

## Health

### *General Health Situation*

The health situation in the Philippines, as in most developing countries, is sadly deficient. Government statistics note that in 1982 infant

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36) Estrella, Conrado, *Tenant Emancipation in the Philippines*, Fifth Edition, June 30, 1982, p. 61.

mortality in the first year of life was 60.55 per 1,000 live births; 17.2 percent of children under seven years of age were moderately or severely underweight. Acute malnutrition was found in 9.5 percent of children. Severe malnutrition was found in 18.4 percent of children below six years old. Tuberculosis, diarrhoeal diseases and nutritional diseases are among the ten leading causes of death. Malaria is widespread. In some regions of the Philippines more than 50 percent of the population do not have safe drinking water; 35.46 percent of the country as a whole does not have safe drinking water. Only 53 percent of households have sanitary toilet facilities while almost one-fifth (19.2 percent) are without any toilet facility.<sup>37</sup> It is reported that in one region of the country, South Cotabato, Mindanao, 68.8 percent of preschoolers are malnourished.<sup>38</sup> Obviously, the poverty of the country is reflected in these statistics.

In late 1983 a three-member delegation representing five United States medical and scientific organisations visited the Philippines to observe health and human rights conditions.<sup>39</sup> The preliminary report of the mission issued in January 1984, stated,

“For the majority of Filipinos, access to primary health care, as in many underdeveloped countries, is a luxury. Often those in greatest need live in desperate poverty where living conditions foster illness and disease. Inadequate transportation and communication systems hamper the ability of rural residents to reach health facilities in central towns and cities. Even in urban centers the high cost of prolonged institutional medical care often is far beyond the means of the average wage earner.

The health picture in the Philippines is grim. Well over half of all Filipinos live in rural areas where communicable diseases, which are preventable and curable, account for 43 percent of total deaths. According to government statistics, pneumonia and tuberculosis have consistently been the first and second causes of death for more than thirty years. The country has the highest incidence of

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- 37) Ministry of Health 1982 Annual Report; 1983-1987 Health Plan, Ministry of Health; Food and Nutrition Research findings reported in *Bulletin Today*, January 10, 1984, p. 24.
  - 38) *The Mindanao Daily Mirror*, December 29, 1983, p. 9.
  - 39) The Mission consisted of Dr. Jonathan Fine, president of the American Committees for Human Rights, Dr. Robert Lawrence, director of the Harvard Medical School's Division of Primary Health Care, and Mr. Eric Stover, staff officer of the American Association for the Advancement of Science Committee on Scientific Freedom and Responsibility.

TB, schistosomiasis and polio in the Western Pacific. Sadly enough, children suffer and die from pneumonia, nutritional deficiencies, gastroenteritis, and colitis at such a rate that they make up nearly 25 percent of total deaths in the country.

The Philippines Eye Institute estimates a prevalence rate for blindness of 2.13 percent, which means there are about 1.1 million blind Filipinos, one of the highest rates in the world.<sup>40</sup>

On the more positive side, it should be noted that there has been a slight but steady improvement in the health situation each year. Government statistics note annual decreases in infant mortality. The United Nations Children's Fund (UNICEF) reported that between 1961 and 1981, the Philippine's rate of infant mortality was more than halved.

### *Ministry of Health*

In 1981, Primary Health Care was adopted as the key strategy of the Ministry of Health. The concept of primary health care was elaborated by the World Health Organisation (WHO) in 1978 as a means of reaching the target of the attainment by all peoples of the world by the year 2000 of "a level of health that will permit them to lead a socially and economically productive life." (Declaration of Alma-Ata, WHO, 1978). Primary health care emphasizes preventive programmes such as immunisation, education concerning health problems, adequate supply of safe water and basic sanitation. It requires and promotes maximum community and individual self-reliance and participation in the planning and operation of health care. The WHO has asked all governments to adopt plans for primary health care. The Philippines has responded to the WHO recommendation.

The Ministry of Health has been reorganised to implement PHC. Both curative and preventive medicine sections have been combined into one service. The Deputy Minister of Health, Dr. Antonio N. Acosta, pointed out to us that funds are more willingly appropriated for curative medical services, such as hospital construction, which have more political appeal

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40) Preliminary Report of a Fact-Finding Mission to the Republic of the Philippines, January, 1984, sponsored by the American Association for the Advancement of Science, American College of Physicians, American Committees for Human Rights, American Nurses' Association, Institute of Medicine of the National Academy of Sciences, pp. 12-13.

than preventive programmes such as immunisation. However, with the adoption of PHC there will be increased emphasis on preventive health. When PHC is fully implemented there will be a midwife in every barangay and a voluntary health worker under the supervision of the midwife for every 20 families in a barangay. The voluntary health workers will be trained to recognise the most common symptoms of illness and to refer cases to doctors. They will have health worker kits with thermometers, first aid equipment and common medicines. Public health workers will visit the villages regularly with a government doctor. The most common medicines will be available in local village drugstores. It is hoped that the programme will lead villagers to take more responsibility for their own health.<sup>41</sup> According to the Ministry of Health, 91 percent of 37,000 barangays have already been organised to carry out primary health care. The main focus is on control of communicable diseases, cleanliness and sanitation, care for expectant and lactating mothers, young children, proper nutrition and health education. The adoption of primary health care is a positive development and if properly implemented should considerably improve the health situation in the Philippines. It is too early to assess its effectiveness since it was adopted only two years ago. The preliminary report of the Fact-Finding Mission on health care in the Philippines, referred to above, stated

“Although the government manages primary health care schemes and provides help on a limited basis — for example, immunization programs and the distribution of oral rehydration packets — we found that local government hospitals and clinics often ran short of medicines. Hospital staff in the Southern Islands Hospital in Cebu City, the Ifeugo Provincial Hospital and the Bacolod Provincial Hospital told us that in recent months, they have had inadequate supplies of x-ray film, bed linens, and antibiotics. The shortage of x-ray film at the Philippines General Hospital in Manila, the country’s largest referral hospital has meant that physicians are unable to provide x-rays for many patients for whom they are essential. Many of those we spoke with expressed grave concern that the worsening economic situation would restrict the availability of medicines and hospital supplies.”<sup>42</sup>

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41) Interview with Antonio N. Acosta, M.D., Deputy Minister of Health.

42) Preliminary Report, *op. cit.*, p. 13.

The Deputy Minister of Health confirmed in our conversation that the use of breast milk substitutes has contributed to infant malnutrition in the Philippines in the past. The Philippines strongly supports the International Code of Marketing of Breast-Milk substitutes adopted by the World Health Organisation, which limits the type of selling techniques which may be used by multinational companies to promote breast milk substitutes. The Philippines plans to adopt legislation implementing the Code. The contemplated legislation would provide criminal penalties of imprisonment and fines for violation of the prohibited selling techniques. The draft law is currently in the office of President Marcos for consideration, but it has met opposition from the companies concerned. They are apparently willing to accept the code but not the penalty clause. The Deputy Minister suggests that the law would be ineffective without the sanction of imprisonment since the multinational companies would be able to pay any fines imposed. The Ministry of Health has a national programme for the promotion of breast-feeding involving the private sector.

An additional problem relating to multinational corporations concerns the cost of importing pharmaceutical drugs, many of which are considered by the Ministry to be unnecessary for the Philippines. The Philippines, as other developing countries, is especially vulnerable to the promotional strategies of multinational pharmaceutical companies. In order to avoid the excessive cost to the country in foreign exchange for the importation of non-essential drugs, the Ministry of Health is developing a list of essential generic drugs which would then be the only permitted drug imports. The list is not yet completed but opposition to the restrictive list has come from medical and drug associations and multinational pharmaceutical companies.

The question of abuses in the marketing of drugs in developing countries has been discussed recently at the World Health Organisation. An international code of marketing of drugs similar to the code for marketing breast-milk substitutes, has been suggested. Allegations have been made that inappropriate and sometimes undesirable products have been promoted, that overprescribing and improper prescribing of medicines has been prevalent and a variety of techniques have been used to inflate the price of drugs.<sup>43</sup> The Ministry of Health is attempting to deal with these problems in the Philippines.

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43) *South*, August 1982, p. 29.

### *Brain Drain of Health Personnel*

Despite the health problems of the Philippines there has been a massive brain drain of medical personnel. At the present time, fewer doctors are apparently leaving the Philippines since the United States has virtually ceased accepting foreign physicians. Some doctors are still leaving for work in Africa and the Middle East. It was reported to us that 9,500 Filipino doctors are now working abroad. Many Filipino nurses continue to go abroad to work, particularly to the U.S., but fewer do so than formerly. The Republic of the Philippines is the number one exporter of nurses in the world. Nearly all developing countries suffer from the brain drain of trained personnel and it is difficult to know how to stem the tide. The Philippine government requires Philippine citizens working in some countries to remit to the government a substantial portion of dollars earned abroad; these are to be exchanged for pesos which are turned over to the relatives in the Philippines. The Philippines thus acquires substantial dollars for foreign exchange. We were told that because of the dollar remittances the government actually encourages migration of professional workers.

### *Arrest and Harassment of Medical Workers*

The report of the U.S. Fact-Finding Mission on health care referred to efforts by the Catholic Church and private health professionals to provide health care. Since 1978, AKAP, a private non-profit organisation committed to primary health care, has trained many village workers in basic health skills. Catholic Church primary health care projects have been organised on the islands of Leyte and Mindanao and in the Tondo slums of Manila.

Efforts by these private organisations to bring primary health care to remote communities and depressed areas have, however, encountered difficulties from the military. The Fact-Finding Mission reported hearing testimony from several sources

"regarding the harassment, arbitrary detention, or suspected murder of health workers because they were accused of delivering medical assistance to those whom the military regarded as subversives. Often the definition was demographic: only subversive elements passed safely and easily through the rural barrios or urban

squatter settlements; therefore, a physician or paramedic, and especially young graduates of the University of Philippines Medical College, who visited or worked in these areas must be suspect.”<sup>44</sup>

The Fact-Finding Mission reported the murder in 1982 of Dr. Bobby de la Paz, a physician who went to Catbalogan, Samar Island, with his wife, also a physician, to work in a medical outreach programme. According to the Mission report, when Dr. de la Paz and his fellow medical workers went into isolated rural areas they were followed by military intelligence officers and labelled “NPA doctors” because the areas were known to contain members of the New People’s Army. Dr. de la Paz’ wife stated that he probably treated members of NPA since he treated everyone who came to him for medical care. On April 23, 1982 Dr. de la Paz was shot while working in his clinic. Witnesses who saw the killing told his wife that the assailant was a military man in civilian clothes. Subsequently, an Army Staff sergeant was apprehended and charged with murder. The family claims, however, that the suspect does not fit the description given by the witnesses.

The health problems of the Philippines result primarily from the poverty of the country. Inadequate sanitation and unsafe drinking water are main causes of health problems. Some relatively poor countries, however, have been able to improve substantially the health of their people despite a low economic level. The World Health Organisation has cited China, Cuba and, to a certain extent, Tanzania, as having relatively successful programmes for meeting basic health needs. Sri Lanka, which is classified by the World Bank as a poorer country than the Philippines, has a lower infant mortality rate. By adopting primary health care, the marketing code for breast milk substitutes and a restrictive list of imported drugs, the Philippine Ministry of Health appears to be following the wise guidance of the World Health Organisation. The success of these efforts and the general improvement of health in the Philippines will depend on the political will of the government to remedy the extremely serious health situation. The promotion of primary health care should be made a priority aim of the government.

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44) Preliminary Report, *op. cit.*, p. 15.

## Tribal Lands

A major human rights problem which we were unable to investigate thoroughly in the time available to us concerns the rights of the tribal peoples of the Philippines. We were told that ancestral lands traditionally occupied by tribal peoples are increasingly being taken from them in the name of development. The problems of the tribal peoples were mentioned to us by many persons and we obtained extensive documentation on the subject.<sup>45</sup>

While precise statistics appear to be lacking, it is estimated that there are approximately 3.5 million tribal Filipinos. These tribal Filipinos, except for Negritos, are of Malayo - Polynesian origin, as are other Filipinos. They are distinguished from other Filipinos by their style of life and indigenous cultural heritage. Most of them are engaged in subsistence agriculture and fishing. They were never conquered by colonial invaders.

The tribal groups, who are also referred to as cultural minorities, belong to "more than 100 ethno-linguistic groups and except for the eastern Visayas, can be found throughout the archipelago."<sup>46</sup> The tribal peoples are not united among themselves. The largest group of the hill tribes is the Cordillera peoples or Igorots of northern Luzon. Negritos, who have dark skin and are the original inhabitants of the Philippines, are also included in this group.

The rights to land of the tribal peoples have traditionally been based on indigenous customary law and they have generally not been aware of, or have not taken advantage of, the legal procedures of Philippine law in order to obtain recognition of their ancestral rights. Their cultural, legal and economic status has made them peculiarly vulnerable to the onslaught of both Philippine and transnational corporations who wish to develop the natural resources found on their tribal lands. Since these ancestral lands are considered to be part of the public domain, the tribal peoples are often considered "squatters". Their ancestral land rights are apparently not recognised legally. The lack of legal title adds to their vulnerability.

45) See especially *The Philippines*, Anti-Slavery Society, London, Indigenous Peoples and Development Series; Report No. 1 - 1983, p. 15.

46) Lynch, Owen James, Jr., "Native Title, Private Right and Tribal Land Law: An Introductory Survey," 57 Philippine Law Journal 268 (June, 1982).

The Philippine government has extensive plans for dam development in areas now occupied by tribal peoples. These dams would deprive the minority groups and other poor farmers of extensive farmland and would dislocate large numbers of persons. It is contended that the electricity and irrigation generated by the dams would benefit rich land-owners, but not the tribal groups. In the late 1970s the opposition of the Kalinga and Bontoc peoples to construction of a dam in the Chico valley in northern Luzon resulted in the postponement of its construction. In April 1980, Macli-ing Dulag, a chief of the Kalinga peoples and their spokesman in opposition to the dam, was murdered by men subsequently identified as members of the 44th Infantry Battalion. There was widespread national and international reaction to this killing. Charges were filed against four members of the battalion and the Judge Advocate General recommended that the case be referred to a General Court Martial.<sup>47</sup> According to Amnesty International, the case was not tried and at least one of the accused was said to have returned to active duty.<sup>48</sup>

Other cultural minorities are also present in Mindanao. As mentioned elsewhere in this report, Mindanao has been the scene of intensive economic development, which it is contended has been at the expense of tribal groups and cultural minorities who have been pushed off their land. Agro-business, logging and dam construction and settlements of non-tribal peoples throughout the Philippines threaten tribal lands. Most of these developments receive government assistance. "They are ventures backed militarily and often financially by the central government and incorporated in development plans formulated by the regime in collaboration with its international backers in the IMF, World Bank and other financial institutions."<sup>49</sup>

A government agency, PANAMIN (Presidential Assistance on National Minorities) is concerned with problems of tribal peoples and cultural minorities. An extensive study of the problem of tribal persons in the Philippines points out that it has "brought the full force of the martial law 'New Society' down upon the minority areas". It is widely believed that the PANAMIN does not represent the interests of the tribal peoples

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47) Philippine Government Response to Report of an Amnesty International Mission (1982).

48) Amnesty International Report on a Mission to the Philippines, 1982.

49) *The Philippines*, Anti-Slavery Society, London, Indigenous Peoples and Development Series, Report No. 1 - 1983, p. 131.

but rather the economic enterprises and individuals interested in exploiting their lands.<sup>50</sup>

The Episcopal Commission on Tribal Filipinos of the Catholic Bishops' Conference of the Philippines stated in 1981

"Our tribal and Muslim brothers are at a critical juncture in their history. Their very *survival* is under threat of a manifold attack centered at the very basis of their culture and livelihood — their land."<sup>51</sup>

From information we received the situation does not appear to have improved since 1981.

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50) *Ibid.*, pp. 120–129.

51) *Tribal Forum*, September–October, 1981, p. 26.

# **Conclusions and Recommendations**

## **Conclusions**

### *Human Rights Abuses*

1. Widespread abuses of human rights by military and security forces, including extra-judicial killings ('salvaging'), massacres, 'burnings', arbitrary arrests and torture are prevalent throughout rural areas of the Philippines, but are especially pervasive in Mindanao where armed insurgency is occurring.
2. The victims of the illegal killings by the armed forces are not only suspected rebels; massacres of groups of civilians are increasingly reported in rural areas.
3. Torture is a common practice of Philippine security and intelligence forces. Evidence of torture is often found on the bodies of victims of 'salvaging'. Beatings, mutilation and water torture are used by security and intelligence agents on detainees, particularly during periods of incommunicado detention immediately after arrest.
4. The practice of 'hamletting' (forcing rural residents into strategic camps) is continuing in some areas despite a ministerial order forbidding government agents to engage in the practice. The ostensible reason for 'hamletting' is protection of the civilian population; the more likely reason appears to be to prevent the rebels obtaining food or support from the population. Hamletting causes severe personal discomfort and economic loss and has been accompanied by serious health problems.
5. The "militarisation" of Philippine society is continuing despite the lifting of martial law in 1981. The number of men under arms has

increased many-fold over pre-martial law figures and the military budget has grown dramatically. The role of military and security forces in civilian life is increasing. With the exception of particularly notorious cases, military abuses of the civilian population are rarely investigated; military officers guilty of abuses are rarely prosecuted. This is sometimes due to the fear of witnesses to testify against the military.

6. Armed insurgency against the government is increasing in rural areas and appears to be gaining support from the general population. The New Peoples Army (NPA) as well as the Moro National Liberation Front of Muslim rebels are active in Mindanao. The NPA attack and kill primarily members of the military, intelligence and security forces. They rarely attack the civilian population. Abuses by the NPA against civilians usually take the form of assassinating suspected informers or inflicting "justice" by killing persons they consider have been exceptionally oppressive towards the population. Nevertheless it is widely reported that the rural population in many areas prefer the presence of the NPA to the presence of government forces which engage in more indiscriminate and random attacks on civilians. The repressive nature of the Marcos government appears to be the main reason for the growth of the NPA.
7. Although journals critical of the government have been shut down and journalists arrested or subjected to libel suits, publications opposing the government are available and widely distributed within the Philippines. Threats of arrest and harassment of editors and journalists, however, have considerably curtailed freedom of the press.
8. Human rights organisations such as the Task Force Detainees legal aid groups such as the Free Legal Assistance Group (FLAG), MABINI and PROTEST continue to function openly and actively aid political detainees and persons subjected to government repression despite occasional repressive government actions against their own members. International human rights organisations are freely able to meet with national human rights groups.

### *The Legal System*

9. Despite the lifting of martial law in 1981, numerous features of the law indicate clearly that the Philippines is still a dictatorship,

and not the democratic form of government which President Marcos claims to protect. Amendment No. 6 of the 1973 Constitution (adopted in 1976 during the martial law period) permits President Marcos to issue decrees and letters of instruction which form part of the law of the land. President Marcos has freely availed himself of this right to legislate. He has issued more than 900 decrees, orders and letters of instruction. His decree-making powers have been upheld by the Supreme Court.

10. Numerous offences have been created by Presidential Decree for political activities which are considered normal in any democracy, including organising or attending anti-government meetings or demonstrations, or printing, distributing or possessing anti-government leaflets, or other propaganda materials, or even spreading 'rumours, false news and information or gossip'.
11. Extremely severe penalties, including life sentences and death, can be imposed not only for armed insurrection or rebellion, but even for non-violent opposition to the government.
12. The fact that these offences and penalties are at times not enforced is immaterial. To use the criminal law in this way as an instrument of terror and intimidation is incompatible with a democratic form of government.
13. Safeguards under the Constitution and under the Rules of Court concerning arrest and detention have been completely set aside by Presidential Decrees. A person may be held indefinitely under a so-called Preventive Detention Action on the authority of the President, and he has no means of obtaining judicial redress even if his detention lasts for years.
14. The claimed restoration of *habeas corpus* is of nominal effect as it is not available to persons detained for a whole range of 'security' offences.
15. It has been made a criminal offence for a doctor not to report to the police a patient's injuries resulting from violence, punishable on conviction by cancellation of his licence to practice. Such legislation is to be found only in a police state.
16. The lifting of martial law in 1981 was, nevertheless, a positive step despite the continuation of many of its features. It signalled a move towards normalisation; civilians are no longer tried by military courts or commissions; fewer persons are held in detention.

17. No effective civil remedies are available against the State for injury, loss and damage caused by illegal abuses by the armed forces and police.
18. The police remain part of the armed forces under the Ministry of Defense rather than being a separate civilian force under civilian control.

### *The Judiciary and the Bar*

19. Widespread and serious criticism is directed against judges for being unduly pro-executive and failing in their duty to protect the citizens' fundamental rights contained in the Constitution and Bill of Rights.
20. Letters of resignation demanded of judges during the martial law period, followed by the Judiciary Reorganization Act of 1980 which abolished a number of judicial positions, have created a sense of insecurity of tenure which militates against judicial independence and confidence.
21. Up to the passing of the Judiciary Reorganization Act of 1980 there was serious and justified criticism of the judiciary and fiscals (public prosecutors). Many were considered corrupt and incompetent. Many too were considered subservient to the Executive Government.
22. Little or no action has been taken by the judiciary to purge its own ranks. It has been said that this is because no complaints have been made to them. This is a sad reflection on all those lawyers, judges, law officers and members of the public who have failed to take advantage of the Constitutional procedures available.
23. Since the 1980 Act was implemented in early 1983 it is not possible to assess whether and to what extent the extensive purge of the judiciary has improved its integrity or independence. Most judges are not paid "above the corruption line" and many are still suspected of accepting bribes, especially at the lower levels of the bench. If the judges, lawyers and the community as a whole are unable to eradicate this form of corruption, the position will no doubt worsen and the trauma of the 1980 Act will have been in vain.
24. The quality of justice is adversely affected by the lack of funds, personnel and facilities available to the courts.

25. There are serious delays in bringing cases to a hearing (even habeas corpus proceedings) due to clogged dockets.
26. On the positive side, there are many people on and off the bench who appreciate the problems and are willing to tackle them given the necessary means and support. A dictatorship in which constitutional and conventional restraints are ignored is a poor environment for improvement. The solution will involve a change in the political climate so that judges can deal with their cases with confidence and secure from interference.
27. As in other countries, lawyers have an important role to play in maintaining and defending the independence of the judiciary.
28. Many members of the bar, lately supported by the Integrated Bar of the Philippines, take a leading role together with the church agencies in the fight to obtain better treatment and justice for victims of the present political conflict in the Philippines.
29. Some lawyers, including the fiscals (public prosecutors) are parties to and condone corruption, usually bribery, within the judicial system.
30. Lawyers as a whole are now more actively involved in the issues involving human rights and the rule of law. In part this is a post Aquino assassination phenomenon, and not limited to the legal profession.
31. Lawyers, including the Government Agency, CLAO, take a full and active role in providing legal aid throughout the country.

#### *Economic and Social Rights*

32. The Philippines is in a serious economic crisis. Its external debt is enormous; new international financing is pending and not assured. Fears of political instability following the assassination of Aquino in August 1983 as well as lack of confidence in the government have led to extensive capital flight, aggravating the economic crisis.
33. The severity of the present economic crisis is attributable in major part to the Marcos Administration which has been in power since 1966. Corruption, inefficiency, 'cronyism', government spending on prestige projects and an export oriented industrialisation policy have contributed to the crisis which is depriving Filipinos of their economic and social rights.

34. The health situation in the Philippines is bad. Malnutrition is widespread, curable diseases take many lives and health facilities are unavailable for much of the population, particularly in rural areas. The adoption of primary health care as a key strategy by the Ministry of Health is a positive step towards improved health conditions but remains to be implemented.
35. Inflation and high prices not compensated by equal wage increases have been devastating for wage earners and have resulted in labour unrest. The great majority of the population lives below the poverty line. Housing is grossly inadequate and squatting is widespread.
36. Freedom of association and trade union rights are severely curtailed by provisions of the Labor Code. These provisions violate international labour conventions ratified by the Philippines.
37. Arrests and harassment of union leaders and members have occurred in recent years. The government has failed to reply to charges filed with the International Labour Organisation concerning arrests of labour leaders.
38. Unsatisfactory living and working conditions of workers in the Bataan Export Processing Zone and of sugar plantation workers on the island of Negros are particularly egregious examples of the sub-standard situation of workers in the Philippines.
39. The agrarian reform programme of the government is a laudable objective and has had some positive results. Very few farmer-tenants, however, have become owners, many have defaulted on payments and are deeply in debt. Doubts persist as to the ultimate successful implementation of the programme.
40. The survival of the tribal communities in many parts of the Philippines is threatened by the exploitation of the resources of their ancestral lands by Philippine and foreign enterprises.

### **Recommendations**

In order to ensure a return to democratic government and the protection of the human rights of its citizens, the Philippine government is respectfully urged to consider at an early date the following measures:

1. The repeal of Amendment No. 6 of the Constitution which permits the President to legislate by decree and to modify at will constitutional safeguards, criminal law and criminal procedure.
2. The abolition of Preventive Detention Action and any form of administrative detention beyond judicial control.
3. Restoration of the privilege of habeas corpus for all arrested persons.
4. A return to pre-martial law levels of penalties at least for non-violent “crimes against public order”.
5. The repeal of all laws and decrees which render ordinary non-violent political activities criminal offences.
6. Separation of the police and army, putting at least the police under civilian administrative and judicial control.
7. Giving the civilian courts jurisdiction to try members of the armed forces and police for offences committed against civilians.
8. Providing means by which a civilian victim of brutality or other transgressions by the armed forces or police can obtain compensation from the State.
9. Terminating human rights abuses by government forces, in particular extra-judicial killings, disappearances and torture, by:
  - clear and unequivocal orders within the armed forces and police that such practices must cease, and start disciplining measures to enforce these orders;
  - investigation of allegations of such abuses by qualified personnel independent of the forces against whom the allegations are made;
  - in the most serious and extensive cases, an independent judicial enquiry;
  - the prosecution and trial before civilian courts of all members of the armed forces and police against whom there is evidence of their having committed such abuses against civilians.
10. The repeal of labour legislation which severely limits the right to organise and strike and which violate international labour conventions ratified by the Philippines.
11. Ending arrests and harassment of militant labour leaders solely by reason of legitimate trade union activities.

12. Remedying unsatisfactory conditions of workers in the Bataan Export Processing Zone and sugar plantation workers on Negros.
13. The provision of accurate and understandable statistics on the implementation of agrarian reform, particularly on the extent of indebtedness among tenant farmers.
14. The vigorous implementation of the Primary Health Care Strategy adopted by the Ministry of Health.
15. The raising of the salaries of judges to a level which would permit them to live in the manner expected of them.
16. The guarantee of security of tenure for members of the judiciary on good behaviour; the return to democratic government and the repeal of constitutional provisions or decrees permitting executive interference with security of tenure of judges.

## RECENT ICJ PUBLICATIONS

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### Rural Development and Human Rights in South Asia

*Report of a Seminar in Lucknow, December 1982.  
Published jointly by the ICJ and the Human Rights Institute, Lucknow (ISBN 92 9037 022X).  
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In spite of much progressive legislation, the impoverishment and misery of the rural poor in South Asia is largely a product of socio-economic structures at village level, resulting in their domination, intimidation and exploitation by wealthy farmers, traders and money-lenders. The Lucknow seminar brought together activists with grass-roots experience in rural development and concerned human rights lawyers to consider how they could work together to make law a resource for the rural poor leading to self-reliance and effective participation in the development process. The conclusions and recommendations of the seminar are set out in full together with the working papers, the opening speech of Y.V. Chandrachud, Chief Justice of India, and the key-note addresses of Dr. Clarence Dias and Professor Upendra Baxi.

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### Rural Development and Human Rights in South East Asia

*Report of a Seminar in Penang, December 1981.  
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In addition, widespread human rights abuses are taking place including systematic extra-judicial killings by the armed forces in rural areas, known as 'salvaging'.

The report also gives a detailed analysis of the relevant legal provisions currently in force in the Philippines. It ends with 40 recommendations for remedial action.