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185256
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ID: 185256 CORRESPONDENCE TRACKING WORKSHEET PAGE D01
INCOMING CORRESPONDENCE DATE 831209 RECEIVED DATE 831213
(PREFIX) (FIRST) (LAST) (SUFFIX)
MR. MARVIN E. FRANKEL
TITLE: CHAIRMAN

ORGANIZATION: THE LAWYERS COMMITTEE FOR
INTERNATIONAL HUMAN RIGHTS
STREET: 36 WEST 44TH STREET

CITY: NEW YORK STATE: NY ZIP: 10036
COUNTRY:

SUBJECT: FORWARDS REPORT ON STATE OF HUMAN RIGHTS
IN THE PHILIPPINES

AGY/OFF ACTION CODE TRACKING DATE
PLSHOR ORG 831213 C 83/12/20⁶

STAFF NAME: PRESIDENT REAGAN MEDIA: L OPID: RS TYPE: IBA
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CODES: REPORT PL INDIV: USER:

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Enclosures filed in 8516
Oversize Attachments #

UNCLASSIFIED
(Classification)

DEPARTMENT OF STATE
EXECUTIVE SECRETARIAT
TRANSMITTAL FORM

S/S 8339273

Date December 29, 1983

For: Mr. Robert C. McFarlane
National Security Council
The White House

Reference:

To: President Reagan From: Mr. Marvin E. Frankel

Date: December 9, 1983 Subject: Forwards Report on State of
Human Rights in the Philippines

WH Referral Dated: December 22, 1983 NSC ID# 185²⁵⁶26
(if any)

 The attached item was sent directly to the
Department of State.

Action Taken:

 A draft reply is attached.

 A draft reply will be forwarded.

 A translation is attached.

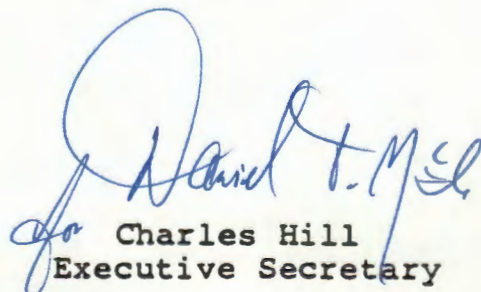
 X An information copy of a direct reply is attached.

 We believe no response is necessary for the reason
cited below.

 The Department of State has no objection to the
proposed travel.

 Other.

Remarks:


Charles Hill
Executive Secretary

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United States Department of State

Washington, D.C. 20520

December 28, 1983

Mr. Marvin E. Frankel
Chairman
The Lawyers Committee for
International Human Rights
36 West 44th Street
New York, New York 10036

Dear Mr. Frankel:

The Office of the President has asked that I reply to your letter to him, dated December 9, 1983, enclosing a report on human rights conditions in the Philippines prepared by a delegation sponsored by the Lawyers Committee for International Human Rights.

The Department of State's annual report to the U.S. Congress on human rights practices in the Philippines is currently in the final stages of preparation. Your report was thus extremely timely, and we shall be studying it in this connection.

Sincerely,

Ulrich A. Straus
Director
Philippine Affairs

8339273

T H E W H I T E H O U S E O F F I C E

REFERRAL

DECEMBER 22, 1983

TO: DEPARTMENT OF STATE
ATTN: ABRAMS

ACTION REQUESTED:
DIRECT REPLY, FURNISH INFO COPY

DESCRIPTION OF INCOMING:

ID: 185256
MEDIA: LETTER, DATED DECEMBER 9, 1983
TO: PRESIDENT REAGAN
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CHAIRMAN
THE LAWYERS COMMITTEE FOR
INTERNATIONAL HUMAN RIGHTS
36 WEST 44TH STREET
NEW YORK NY 10036

SUBJECT: FORWARDS REPORT ON STATE OF HUMAN RIGHTS
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PROMPT ACTION IS ESSENTIAL -- IF REQUIRED ACTION HAS NOT BEEN
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SALLY KELLEY
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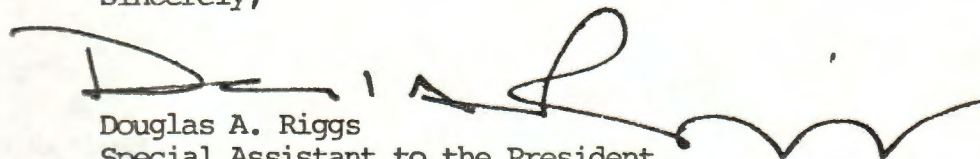
8339273

THE WHITE HOUSE
WASHINGTON
December 19, 1983

Dear Mr. Frankel:

The President has asked me to respond to acknowledge your letter dated December 9, 1983, which you forwarded to him your report entitled "The Philippines: A Country in Crises." I have taken the liberty of forwarding a copy of your letter and your report to Assistant Secretary of State Abrams. Thank you for communicating your views to the President.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas A. Riggs". The signature is fluid and cursive, with a long horizontal stroke at the end.

Douglas A. Riggs
Special Assistant to the President
for Public Liaison

Mr. Marvin E. Frankel
Chairman
The Lawyers Committee for International Human Rights
36 West 44th Street
New York, New York 10036

The White House
Washington

1983 DEC 12 PM 2 41

185-256



THE LAWYERS COMMITTEE
FOR INTERNATIONAL
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M. Shontley

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EXECUTIVE DIRECTOR

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POLITICAL ASYLUM PROJECT

CHAIRMAN
Marvin E. Frankel

December 9, 1983

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Honorable Ronald Reagan
President of the United States
The White House
Washington, D. C. 20500

Dear Mr. President:

In September 1983 I chaired a fact-finding delegation that visited the Philippines to explore the current state of human rights observance in that country. The delegation, sponsored by the Lawyers Committee for International Human Rights, has completed the enclosed report on this subject.

As the report indicates, we believe that the grave human rights situation in the Philippines has important implications for American policy in Southeast Asia. For this reason, I send the report in the hope you will find it useful.

Respectfully,
Marvin E. Frankel
Marvin E. Frankel
Chairman

MEF:PHP

THE PHILIPPINES:

A COUNTRY IN CRISIS



December 1983

The Lawyers Committee for International Human Rights

36 West 44th Street, New York, NY 10036, (212) 921-2160

THE PHILIPPINES:
A COUNTRY IN CRISIS

A Report by the Lawyers Committee for
International Human Rights

36 West 44th Street
New York, New York 10036
(212) 921-2160

712 "G" Street, S.E.
Washington, D.C. 20003
(202) 546-9336

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The Lawyers Committee for International Human Rights

Since 1978 the Lawyers Committee for International Human Rights has served as a public interest law center. The Lawyers Committee works to promote international human rights and refugee law and legal procedures in the United States and abroad.

Copies of this report are available from the Lawyers Committee for International Human Rights for \$6.00.

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PREFACE

This report is based upon a mission of inquiry to the Philippines undertaken during the last three weeks of September 1983 by a delegation representing the Lawyers Committee for International Human Rights.^{1/} The report reflects both the direct observations of the delegates and information they gathered from others in the Philippines whose accounts they have judged to be reliable.

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

He was joined on the Philippines mission by Jack Greenberg and Diane Orentlicher. Mr. Greenberg is Director-Counsel of the N.A.A.C.P. Legal Defense and Educational Fund, Inc., with which he has been affiliated since 1949, and is also an Adjunct Professor at Columbia University School of Law. Mr. Greenberg has undertaken human rights visits to the Soviet Union, South Africa and India.

^{1/} One of the delegates, Diane Orentlicher, was in the Philippines from September 9 until October 1. The other delegates joined her for the third week of the visit.

Diane Orentlicher is Deputy Director of the Lawyers Committee for International Human Rights. Ms. Orentlicher was previously associated with the Washington, D.C. law firm of Steptoe & Johnson Chartered.

In the Philippines, the delegates had substantial and highly informative meetings with First Lady Imelda Marcos, Minister of National Defense Juan Ponce Enrile, the Legal Advisor to the President, the Chief Justice and a number of Associate Justices of the Supreme Court and other Philippine government officials. They also spoke with numerous private citizens, including the Archbishop of Manila, Jaime Cardinal Sin, other religious leaders, lawyers, businessmen, journalists and human rights activists, as well as many victims and relatives of victims of human rights violations. The delegates met with representatives of the U.S. Department of State in Washington, D.C. and U.S. Embassy officials in Manila, including Ambassador Michael Armacost, who provided invaluable assistance in arranging meetings with Philippine government officials as well as useful insights into the human rights situation in the Philippines.

The conclusions of this report are based only upon accounts that were consistently presented by various, diverse and apparently credible sources. Whenever possible, corroborating documents and testimony were obtained. While the delegation did not possess the investigative tools or means to verify every

account presented to it, clear patterns emerged and those are the subject of this report.

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

We would like to thank the organizations and individuals who have assisted in the preparation of this report, including Amnesty International, the Committee to Protect Journalists, the Free Legal Assistance Group, Task Force Detainees of the Philippines, Joker Arroyo, Jose Diokno, Guy Sacerdoti, Abelardo Aportadera, Jr., Anthony Goldstone, Jonathan Fine, A. Whitney Ellsworth, Roger Plant and Brad Bickett.

The Lawyers Committee gratefully acknowledges the assistance of the J. Roderick MacArthur Foundation in publishing this report.

INTRODUCTION

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

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

In the post-martial law years, torture, "disappearances," and political killings by security forces have been the order of the day. Alleged "subversives," undoubtedly including some correctly suspected of being (but not proved to be) Communists, are summarily shot by military officers who have their victims safely in custody. The figures for 1983 strongly suggest that, in at least one region, Mindanao, such violence has assumed epidemic proportions.

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

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

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

The process was gradual, focused, and increasingly lacking in any underlying legitimacy. When martial law was first

imposed, many Filipinos welcomed the order it brought to their country. Communist insurgents, Muslim rebels, urban terrorists, student demonstrators, labor activists, as well as economic troubles had shaken the order of life in the Philippines and were cited to justify martial law.

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

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

The crescendo of anger triggered by Senator Aquino's murder has alerted the world to the deep rift that over a decade of military abuses has left between President Marcos and those he rules. In recent weeks, protesters have also increasingly identified the United States with the government they abhor.

The identification may or may not be warranted. It exists. Its source is not hard to trace. Increasing human

rights violations in recent years have been matched by frequent expressions of support for the Philippine Government by U.S. officials. Such conduct is not lost on Filipinos. During our visit to the Philippines, we were frequently reminded of Vice President Bush's toast to President Marcos in September 1981: "We love your adherence to democratic principles -- and to the democratic process."

More recently, when President Marcos's response to the Aquino assassination made his human rights record the subject of international attention, Vice President Bush rushed to his defense. On October 6, 1983, Mr. Bush acknowledged that President Marcos is "less than perfect on human rights," but cautioned against criticizing him: "We pointed out the imperfections of the Shah and all of that, and today we have something worse."^{2/} Mr. Bush expressed his concern that "the United States not cut away from a person who, imperfect though he may be on human rights, has worked with us"^{3/}

Backing the present Administration's verbal defense of the Philippine Government is a steadily increasing flow of military and economic aid to the Philippines. The recently concluded bilateral review of the U.S.-Philippines Military Bases Agreement resulted in the commitment of an unprecedented level of

^{2/} "Criticism of Marcos is unfair, Bush says," Chicago Tribune (Oct. 7, 1983).

^{3/} Id.

\$900 million in U.S. aid to the Philippines over a five-year period. The swift completion and relative ease with which the two governments concluded this review was interpreted by many Filipinos as a reflection of tacit support by the Reagan Administration for the policies of the Marcos government.

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

The perception was jarred, but not destroyed, by President Reagan's decision in October to cancel his scheduled trip to the Philippines. The decision signalled, at least in part, an implicit recognition of the severity of the current situation and was gratefully acknowledged as such by Filipino crowds. We must now wait and see whether the decision will be used as an important first step toward a new policy in which the United States is no longer seen to condone the continuing pattern of military brutality in the Philippines. If the United States may not take sides in the political struggle, it may -- and must -- take sides in the human rights struggle. The time has come to stop being quiet.

Marvin E. Frankel
Jack Greenberg
Diane F. Orentlicher

December 1983

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

1. In 1983 severe human rights violations infect both the quality of life and long-range security of the Republic of the Philippines.

2. Reports of political killings by government forces have sharply increased in the three years since martial law was lifted. The rate of such murders continues to escalate. In Mindanao, a region where intense militarization has taken place, almost 200 political killings were documented during the first six months of 1983, compared to 94 during the previous six-month period.

3. The number of "disappearances," the illegal abductions of civilians by government security forces, is also increasing. In the first six months of 1983, 57 disappearances were documented in Mindanao alone.

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

first six months of 1983, more than 1,000 persons were arrested on political grounds.

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

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

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

8. Following a brief expansion of press freedom when martial law was lifted, the Philippine press once again felt the reins of governmental control tighten during the past year. In that period, two journals that were critical of the government,

We Forum and the Philippine Times, were shut down and their editors and staff arrested. Eight journalists were summoned before the National Intelligence Board to answer for their critical columns. Other outspoken journalists have faced sizeable libel suits by government and military officials.

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

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

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

B. Recommendations

The Government of the Philippines

1. The Government of the Philippines should undertake a publicly articulated campaign to enforce laws prohibiting

political killings, torture and other abuses by military and paramilitary forces. Public statements denouncing such abuses should be matched by vigorous investigations and prosecutions. Intimidation of witnesses and complainants should be closely monitored and strictly punished. Records of all dispositions of complaints of military abuses should be made publicly available.

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

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

4. Laws authorizing the closure of newspapers and magazines should be repealed. Laws generally authorizing the seizure of property should be narrowed to exclude seizure of presses and other instruments of publication. The government should adopt an explicit policy prohibiting the use of general laws to arrest, detain and punish journalists for their writings.

5. Election reforms guaranteeing free and meaningful participation of opposition candidates in the upcoming elections to the National Assembly should be implemented immediately. An

election commission comprising persons having the actual capacity for, as well as the appearance of, fairness, should be empaneled.

The Government of the United States

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

7. The Reagan Administration should use two significant opportunities to support human rights in the Philippines. First, it should continue to press for a fair and unhampered investigation and prosecution of the murder of former Senator Benigno Aquino. It should make known to President Marcos its concern that the government comply fully with requests for information or testimony from the body investigating the assassination, and provide that body resources necessary to conduct a proper investigation. Second, the United States Government should urge meaningful electoral reforms before the May 1984 elections to the National Assembly.

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

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

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

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

12. Congress should consider the findings contained in this report in deciding whether to authorize further aid to the Philippines. If the report reveals a continuing pattern of serious human rights violations, Congress should consider imposing specific restrictions or conditions on further aid, tailored to address these abuses; reducing the total amount of U.S. aid requested for the Philippines by the Administration; or reducing or disapproving the military aid requested.

CHAPTER I

MILITARY RULE SINCE THE LIFTING OF MARTIAL LAW

A. The Institutionalization of One-Man Rule

Democratic institutions designed to uphold the rule of law in the Philippines have crumbled under the weight of authoritarian rule. During martial law, President Marcos dismantled the country's deeply-rooted system of checks and balances^{4/} with studied deliberation and thorough effect. With these gone, vital safeguards against abuse of individual rights faded into Philippine history.

When he placed the Philippines under martial law, President Marcos lost no time in restructuring the Philippine government so that virtually all powers would be concentrated in him. Of more lasting importance, he did so in a manner ensuring that the eventual lifting of martial law would do little to diminish these vast powers.

1. The President's Exercise of Legislative Powers

When President Marcos imposed martial law, he immediately suspended the Congress of the Philippines and assumed

^{4/} The Philippine democracy was closely modeled after that of the United States, which colonized the Philippines from 1898 until 1946. See D. Rosenberg, Marcos and Martial Law in the Philippines (1979) at 15.

legislative powers himself. In proclaiming martial law, he directed the armed forces to "enforce obedience to all the laws and decrees, orders and regulations promulgated by me personally or upon my direction."^{5/} By an executive order issued the next day, Marcos undertook to "govern the nation and direct the operation of the entire government including all its agencies and instruments."^{6/}

In 1973, President Marcos consolidated his legislative powers through the ratification, under highly controversial procedures,^{7/} of a new constitution.^{8/} The "transitory provisions" of the 1973 Constitution, purportedly designed to effect an orderly transition from martial law and the 1935 Constitution to

^{5/} Proclamation No. 1081 (Sept. 21, 1972).

^{6/} General Order No. 1 (Sept. 22, 1972).

^{7/} See Javellan v. Executive Secretary, L-36142 (March 31, 1973).

^{8/} A popular demand for revision of the Constitution adopted in 1935 led to the formation of a Constitutional Convention in 1971. Charges of manipulation of the convention directed against President Marcos abated when martial law was imposed, but the "transitory provisions" of the new Constitution, together with the manner in which it was ratified, generated further controversy focusing on President Marcos's motives for declaring martial law. See D. Rosenberg, Marcos and Martial Law in the Philippines (1979) at 86-94. But for the imposition of martial law, President Marcos's second term would have expired in 1973. Under the 1935 Constitution, he would have been ineligible for another term. The "transitory provisions" of the new Constitution perpetuated the "incumbent President['s]" powers under the 1935 Constitution "until he calls upon the interim National Assembly to elect the interim President." 1973 Constitution, Art. XVII, Sec. 3(1) (emphasis in original). This provision set no time limit for the calling of such an election.

a state of normalcy under the new Constitution, provided that all orders, decrees, instructions and other acts promulgated by the "incumbent President" were to become the law of the land.^{9/} Such acts were to remain valid and legally binding even after the lifting of martial law unless modified, revoked or superseded by later acts of "the incumbent President" or the regular National Assembly.^{10/} Thus, the 1973 Constitution explicitly vested legislative powers in President Marcos.

A 1976 amendment to the Constitution proposed by President Marcos ^{11/} ensured that even after martial law was lifted, he could continue to exercise legislative powers:

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

^{9/} 1973 Constitution, Art. XVII, Sec. 3(2).

^{10/} Id. In 1978 an interim assembly was elected amid widespread charges of election fraud. Pursuant to a 1976 amendment to the Constitution, that body enjoys the same legislative powers as the regular National Assembly, for which elections are scheduled to take place in May 1984. Despite the election of a national assembly in 1978, the President continues to exercise broad legislative powers, and most national legislation enacted by the Assembly has been generated by Marcos's Cabinet.

^{11/} The President's power to propose the 1976 amendments was challenged and upheld in the case of Sanidad v. Comelec, L-44714 (Oct. 12, 1976).

which shall form part of the law of the land.^{12/}

The President's virtually limitless powers to make law are, by now, unassailable in a court of law. Those powers have been sustained ^{13/} by a Supreme Court which, we were told by one of its current members, had at the time of our visit validated every legislative act of President Marcos it had considered since the imposition of martial law.^{14/}

President Marcos has not hesitated to use his legislative powers, either during martial law or since it was lifted. In the eleven years since martial law was imposed, he has issued thousands of decrees, proclamations and other laws.^{15/}

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

^{12/} 1976 Amendments, para. 6.

^{13/} Aquino v. Commission on Elections, L-4004 (Jan. 31, 1975).

^{14/} In recent weeks, the Supreme Court has twice issued rulings unfavorable to the government, although neither involved the validity of a legislative act by President Marcos. See Chapter VI, Section C, infra.

^{15/} See Petition, Tanada v. Tuvera, S.C.-G.R. No. 63915 (May 4, 1983) at 4-5.

2. The President's Assumption of Judicial Authority

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

In a recent decision, the Supreme Court upheld the President's power to bypass judicial authorities in ordering the arrest and indefinite detention of persons suspected of national security offenses.^{18/} In the same decision, the Court declared itself and other courts powerless to review such presidential orders. While fuller discussion of this decision is deferred until later,^{19/} we note here that, with this decision, the Court

^{16/} See Chapter III, infra.

^{17/} See id.

^{18/} Garcia-Padilla v. Ponce Enrile, G.R. No. 61388 (April 20, 1983). (This decision is sometimes cited as Parong v. Ponce Enrile.)

^{19/} See Chapter III, Section A.5., infra.

abdicated a judicial function vital to the protection of individual rights. At the same time, the case stands as a testament to the Court's general unwillingness to check the excesses of President Marcos's lawmaking powers. 20/

B. A Continued Call to Arms

Despite the technical lifting of martial law almost three years ago, a state of military rule remains in effect today and provides the context for a reign of terror throughout the Philippines. When President Marcos proclaimed the end of martial law, he also declared that the call to the armed forces he had issued nine years earlier would "continue to be in force and effect."21/

He made it clear, moreover, that the function of the armed forces after martial law would be virtually identical to their role during martial law. When he imposed martial law, President Marcos called on the armed forces to "prevent or suppress all forms of lawless violence, as well as any act of insurrection or rebellion."22/ He cited in particular two armed insurgencies: the growing Communist rebellion and a Muslim

20/ The independence of the judiciary in the Philippines is discussed in greater detail in Chapter VI, Section C, infra.

21/ Proclamation No. 2045 (Jan. 17, 1981).

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

secessionist movement active in parts of Mindanao and the Sulu Islands.^{23/}

In lifting martial law, President Marcos asserted that although the Communist insurgency "has been substantially contained" and the secessionist movement "effectively overcome,"^{24/} "the public safety continues to require a degree of capability to deal adequately with elements who persist in endeavoring to overthrow the government by violent means"^{25/} Accordingly, "the call to the Armed Forces of the Philippines to prevent or suppress lawless violence, insurrection, rebellion and subversion" was to continue in full force.^{26/}

To Filipinos, these words signalled a continuation of past abuses. Under martial law, the suppression of subversion, insurrection and rebellion had been invoked to justify the arrest of thousands of democratic opponents to the Marcos government. Within three years after martial law was imposed, over 50,000 persons were arrested,^{27/} including democratic opposition figures such as Senators Benigno S. Aquino, Jr. and Jose Diokno. Most of

^{23/} Id.

^{24/} Proclamation No. 2045 (Jan. 17, 1981).

^{25/} Id.

^{26/} Id.

^{27/} Report of an Amnesty International Mission to the Republic of the Philippines (1982) [hereinafter cited as "AI Report"] at 3.

those arrested were detained without charge or trial.^{28/} Many were tortured during periods of incommunicado detention immediately following their arrest.^{29/}

Several years after martial law was imposed, the number of political prisoners dropped substantially.^{30/} At the same time, however, there were increased reports of "disappearances" and murders attributable to security forces, principally in the context of counter-insurgency operations.^{31/} Through the period of martial law, they occurred with mounting frequency.^{32/} In the three years following the end of martial law, this pattern has continued.

C. Expansion of the Military

To Filipinos, it is axiomatic that where there is an active military presence, there are extensive military abuses. The arrival of military units in a new area typically signals the onset of arbitrary arrests, periods of incommunicado detention,

^{28/} Id.

^{29/} Report of an Amnesty International Mission to the Republic of the Philippines (1976).

^{30/} AI Report, supra note 27, at 4.

^{31/} See id.

^{32/} This statement is based upon figures compiled by Task Force Detainees of the Philippines, a unit of the Association of Major Religious Superiors of the Philippines, which compiles reliable statistics on military abuses throughout the Philippines.

torture, "disappearances" and "salvagings," the term by which extra-judicial executions have become known in the grim slang of this time. Similarly, the expansion of a military presence in a region usually heralds a perceptible increase in such abuses.

Against this background, the Lawyers Committee views with grave concern the considerable enlargement of Philippine military forces since 1972, a trend that has continued in the years since martial law was lifted. When President Marcos imposed martial law in 1972, the Armed Forces of the Philippines (AFP) had 60,000 members.^{33/} During martial law, its ranks swelled to over 200,000.^{34/} In the years following the lifting of martial law, the Armed Forces have grown to an estimated strength of at least 250,000.^{35/} These forces are supplemented by militias comprising civilians who are licensed to carry arms and who operate under the direct command of local military authorities. The civilian militias are estimated to include at least 100,000 men.

The Armed Forces of the Philippines comprise four major services: the army, navy, air force and the Philippines Constabulary (PC). The PC and AFP intelligence units, together with civilian militias operating under the command of the PC, appear

^{33/} AI Report, supra note 27, at 3; 15.

^{34/} Id.

^{35/} See "The Trail of Aquino's Killer," Newsweek Magazine (Sept. 26, 1983) at 12.

most often in accounts of serious abuses. Accordingly, this discussion focuses on those three forces.

1. The Philippines Constabulary

Established in 1901 as a law enforcement agency organized along military lines,^{36/} the PC now operates as both the nucleus of the Philippine police forces and a component of the AFP. IN 1950, the PC was fully merged with the AFP and placed under the command of the Ministry of National Defense.^{37/} In 1975, Presidential Decree No. 765 established the Integrated National Police (INP), bringing under one command the PC and local police forces operating throughout the Philippines.^{38/} The same decree provided that the PC would remain a service of the AFP, although the INP is not part of that structure.^{39/}

In the years since martial law was imposed, the PC has been heavily engaged in counter-insurgency efforts.^{40/} Those efforts have focused on the New People's Army (NPA), which is the

^{36/} See AI Report, supra note 27, at 20.

^{37/} Id.

^{38/} Hearings before the Subcommittees on Asian and Pacific Affairs and on Human Rights and International Organizations of the House Committee on Foreign Affairs, 97th Cong., 1st Sess. (Nov. 18, 1981), Statement of Daniel O'Donohue, Acting Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, Department of State, at 9.

^{39/} Id.

^{40/} Id.

armed wing of the Communist Party of the Philippines (CPP), and the Moro National Liberation Front (MNLF), a Muslim insurgency group.^{41/} The PC's counter-insurgency efforts embrace intelligence functions, combat duties, the administration of detainees arrested by members of the armed forces, and the supervision of civilian militias.^{42/}

The PC is widely regarded as one of the most abusive forces engaged in counter-insurgency activities. Our inquiry supported this perception. The PC figured prominently in testimonies we received of grave human rights abuses. Persons we interviewed whose relatives had been killed or who had been victims of torture themselves frequently identified PC members, either acting alone or in concert with other units, as responsible for the abuses they described.

Typical of these accounts was the testimony we received from the wife and father, respectively, of two persons killed in connection with a military raid early this year in Davao City. According to the two relatives, five men and one woman were attending a meeting in a house in Davao City on January 23, 1983. At 3:00 p.m., a composite unit comprising the Tagum PC, the Panabo INP, and the Davao Metrodiscom surrounded the

^{41/} Id.

^{42/} AI Report, supra note 27, at 21.

house.^{43/} Two of the persons attending the meeting were killed on the spot by strafing. Neighbors witnessed the other four being taken away, their hands tied behind their backs, in a Ford Fiera belonging to the PC.

The father of a 23-year-old woman included in the group taken into custody told us he had sought information about his daughter from a local PC officer. This man was shown his daughter's bullet-ridden corpse, as well as the bodies of her five companions, and told they had all been "killed in an encounter." However, an early press account of the incident quoted unnamed military authorities who said that two had been killed and four captured in the raid.^{44/}

The wife of a young man who was also included in the group taken into custody told us she observed signs of torture on her husband's corpse. His eyes were bruised, there were cuts between his fingers and cigarette burns on his forehead, and his ears and lips were swollen.

^{43/} Newspaper accounts reporting the incident identified these three units.

^{44/} Hearings before the Subcommittee on Human Rights and International Organizations of the House Foreign Affairs Committee (Sept. 22, 1983), testimony of A. Whitney Ellsworth on behalf of Amnesty International U.S.A., Appendix I.

2. Intelligence Units

A vast network of intelligence and security units, centrally coordinated by the National Intelligence and Security Authority (NISA), is empowered to arrest and detain persons suspected of national security offenses. Reports of abuses by such units most frequently involve intelligence and security services of the AFP and its component forces.^{45/} Specifically, such reports often involve the Intelligence Service of the AFP (ISAFP), "J-2," whose operating units are known as Military Intelligence Groups (MIGs); the PC Intelligence Service, "C-2," whose operating arms are Regional Security Units (RSUs)^{46/}; other PC units with intelligence functions, such as the Criminal Investigation Service (CIS), and the Philippine Army Intelligence Service, "G-2," whose operating arms are Military Security Units (MSUs).^{47/}

Intelligence groups engaged in counter-insurgency operations are frequently dispatched from Manila. We were told that local PC commanders in the provinces frequently coordinate raids, and then intelligence personnel from Manila move in to conduct "tactical interrogation" -- questioning that occurs in

^{45/} See AI Report, supra note 27, at 22.

^{46/} A particularly abusive RSU in Davao is known locally as the "Regional Salvaging Unit." According to a priest in Mindanao, that unit recently took three men from their homes, requested their neighbors to come outside, and shot the three in front of their neighbors.

^{47/} See AI Report, supra note 27, at 22.

the days immediately following a suspect's apprehension, often while the suspect is held incommunicado.

It is commonly alleged that the government is particularly tolerant of abuses by intelligence units, NISA being a powerful arm of the Philippine security forces. Human rights attorneys claim that this attitude compounds other problems making it difficult to obtain redress for violations committed by intelligence forces. The fact that intelligence personnel are often based in Manila and typically act under cover makes it difficult in many cases for victims of abuses by intelligence units to identify those who are responsible.

Our inquiry lent some support to this concern. We interviewed one young woman who credibly testified that she was raped while being held incommunicado following her arrest by a composite unit led by intelligence personnel.^{48/} The woman's attorney told us that when she sought a line-up including the arresting team so that her client could identify the rapist, a local military officer told her that such a line-up would not be possible since it would expose the identity of undercover agents.^{49/}

^{48/} An investigation conducted by the Office of the Inspector General, AFP disclosed that the arresting team included Constabulary Intelligence, Headquarters Philippine Constabulary, RECOM Intelligence, RECOM II and the Davao Metrodiscom.

^{49/} When we raised this case with Minister Enrile, he assured us he would order the requested line-up. On October 7, 1983 we followed up on this assurance with a letter to Minister (footnote continued)

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

3. The Civilian Militias

The Integrated Civilian Home Defense Force (ICHDF) is consistently identified as one of the most lawless forces operating in the Philippines.^{50/} Its membership consists of civilians who engage in paramilitary, counter-insurgency operations under the direct command of the PC.^{51/} The Office of the Integrated Civilian Home Defense Force of the PC supervises

Enrile, a copy of which we sent to the rape victim's attorney. To date we have received no information as to whether the line-up was furnished.

^{50/} Amnesty International has received persistent reports of abuses committed by members of the ICHDF, acting both alone and in concert with armed forces personnel. AI Report, supra note 27, at 27.

^{51/} The ICHDF was modeled after civilian guards employed by the military to suppress the Hukbalahap rebellion in the 1950's. During that period, civilian guards proved to be an effective counter-insurgency force. Like their present-day counterparts, the civilian guards were known for their brutalities until President Magsaysay instituted a disciplinary program designed to curb the abuses.

the activities of the ICHDF, and local ICHDF forces operate under the direct command of the local PC detachment commander.^{52/} If a platoon is stationed in the area in which they operate, ICHDF forces act under the direct command of a commissioned officer.

Like the AFP, the ICHDF has greatly expanded in recent years. From an estimated strength of 75,000 in 1979,^{53/} its ranks have grown to an estimated size of more than 100,000 men today.

Civilians recruited into the ICHDF are given arms and, by all accounts, minimal training. They are commonly assigned front-line combat duties during counter-insurgency operations. Additionally, because they are recruited from local residents of the areas in which they operate,^{54/} ICHDF members are often used to identify local "subversives."^{55/}

^{52/} Amnesty International has received unconfirmed reports that CHDF forces in Mindanao operate under the direct command of the Army rather than the PC.

^{53/} AI Report, supra note 27, at 26.

^{54/} ICHDF forces do not necessarily operate in their home towns, however. Because the force is "integrated," its units may be transferred from one area to another. We were told by several sources that when complaints against a particularly abusive CHDF unit begin to mount, it is typically transferred to another region.

^{55/} By the same token, witnesses to ICHDF abuses are generally able to identify those responsible for the abuse since the ICHDF units live among residents of the community in which they operate.

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

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

The exceptional abusiveness of the ICHDF is generally attributed to the source of its recruits, together with the inadequacy of their training. We were told by numerous persons from various regions of the Philippines that ICHDF recruits are typically the local "bullies" or "boguys," a term that connotes unemployed men who hang out on street corners. In some areas, ICHDF members are said to include a number of common criminals.^{56/}

During our visit, a local newspaper in Mindanao reported that the Lost Command, an irregular paramilitary group notorious for its brutalities, would soon be incorporated into the ICHDF and be "accorded full status" as a component of that "legitimate paramilitary unit[]." ^{57/} Around the same time this article appeared, a fact-finding body of the British Parliament was told by Philippine military authorities that the Lost Command would be broken up and its members offered positions in the ICHDF, except

^{56/} See AI Report, supra note 27, at 27.

^{57/} "Lost Command Joins ICHDF," The Mindanao Daily Mirror (Sept. 29, 1983) at 1.

for those with criminal records.^{58/} Although the head of the Lost Command, Col. Charles Lademora, has publicly claimed formal links to the AFP, the Philippine Government has previously denied any connection with this paramilitary group.^{59/} Based in San Francisco, Agusan, del Sur, the Lost Command is alleged to have perpetrated serious human rights violations both there and elsewhere.^{60/} For example, one Lost Command unit reportedly massacred 45 persons, including women and children, in a northern Samar barrio two years ago.^{61/}

Like the Philippines Constabulary and Armed Forces intelligence units, the ICHDF figured prominently in testimonies and other evidence we received of serious human rights offenses. In Bacolod, for example, we were given documentation of a case involving the disappearance and apparent murder of a person last seen in the custody of ICHDF, military and police personnel. In a sworn statement, the victim's father stated that

^{58/} Parliamentary Human Rights Group, The CDC and Mindanao: Report of a Visit to the Philippines by Alf Dubs, MP, and Colin Moynihan, MP, 21 September - 1 October 1983 at 49. The fact-finding group was investigating reports that the Lost Command was employed in connection with a development project jointly sponsored by the British and Philippine governments.

^{59/} Hearings before the Subcommittee on Human Rights and International Organizations of the House Foreign Affairs Committee (Sept. 22, 1983), testimony of A. Whitney Ellsworth on behalf of Amnesty International U.S.A. at 7.

^{60/} Id.

^{61/} See id.; A. Whitney Ellsworth, "Abusing Filipinos' Rights," New York Times (Sept. 13, 1982).

in September 1982, approximately 50 soldiers, members of the ICHDF and policemen surrounded his home in Hinoba-an, Negros Occidental. The raiding team ransacked the father's home and physically abused him and others who were in his home. The raiding team stayed overnight. On the following morning, they took the man's son with them, claiming he was needed to help them carry their rice supply to the other side of a nearby river. As of March 15, 1983, the son had not returned, and the father had received information that his son had been killed.

In June 1983, Constancio Caballero, Pastor Layan and Pablito Gonzales, all farmers in Masaling, southern Negros Occidental, were taken from their homes. Their abductors were members of the ICHDF, PC and police. All three men were later found dead. Although they had been taken into custody before their murders, military authorities claimed the three men were "killed in an encounter."

Two months later, two bodies were delivered to the police headquarters in Kabankalan, Negros Occidental, where they were buried. Relatives of two people who had been missing, including a 15-year-old boy, had the bodies exhumed and made positive identifications. Before the two victims disappeared, they had been seen in the custody of several ICHDF members and the Long Range Patrol, a special unit of the PC.

4. Special Combat Units and
Irregular Paramilitary Units

In addition to the PC, intelligence units and the ICHDF, various special combat units and irregular paramilitary groups are responsible for a large number of serious human rights violations. Special combat units frequently operate as composite task forces made up of various components. For example, Task Force Kanlaon, which operates in Negros Occidental, includes PC, ICHDF and INP personnel. Composite task forces often include an intelligence unit. One task force alleged to have perpetrated acts of severe torture, Task Force Makabansa, is made up of various intelligence services of the AFP, including the Metrocom Intelligence Service Group (MISG), the ISAFP, MIG-15, MIG-14 and the Naval Intelligence Service Group.

We were also told of numerous irregular paramilitary groups which allegedly operate with government sanction. According to reports we received, such units are often composed of fanatical religious groups or criminals. Amnesty International has extensively documented the activities of these groups.^{62/}

^{62/} See AI Report, supra note 27.

CHAPTER II

MILITARY ABUSES

A. Political Killings

1. Extent of the Problem

While numbers and specific cases have been disputed, there is no serious question that for more than a decade military personnel in the Philippines have repeatedly killed persons seized as alleged subversives, as well as others against whom no particular charges have been even preliminarily formulated.^{63/} The extent of the problem is reflected in the complex terminology that has evolved to describe such killings. Groups that document military abuses in the Philippines typically compile statistics for three or four distinct varieties of political killings by military forces. Thus, Task Force Detainees (TFD) of the Philippines, a unit of the Association of Major Religious Superiors of the Philippines, separately documents incidents of "salvaging," a term that generally connotes surreptitious murders^{64/} (in the typical "salvaging" case, the body of a person last seen in the

^{63/} General references to "military" personnel or forces will hereinafter include ICHDF forces unless otherwise indicated.

^{64/} A church in Negros Occidental separately documents incidents of "salvaging" and other killings not involving massacres or strafing incidents. The "other killings" category reflects open slayings of single victims, while the "salvaging" category includes only secret killings.

custody of military personnel later turns up in a hidden place or a shallow grave); "massacres," killings involving the murder of several people in one incident;^{65/} and "strafings," random firing incidents that typically claim the lives of more than one person.^{66/}

Although martial law was officially ended on January 17, 1981, reports of such slayings have increased significantly in recent years. Statistics compiled by TFD reflect 532 documented cases of political killings from 1973 through 1980 and 595 cases for the period from 1981 through August 15, 1983. These figures may give a somewhat exaggerated picture of the contrast between the pre- and post-martial law levels of violence since TFD's fact-finding capabilities are undoubtedly greater now than in earlier years. Even taking this into account, however, TFD's figures provide an alarming indication of the escalation of violence in the post-martial law period.

Statistics compiled by TFD suggest that the frequency of political killings continues to mount. In Mindanao, a region where such incidents occur with great frequency, TFD has documented 100 cases of "salvaging" in the first six months of 1983, compared with 65 documented cases occurring in the previous

^{65/} Eleven massacre incidents documented by TFD in Mindanao for the first six months of 1983 claimed 96 victims.

^{66/} In Mindanao, fourteen strafing incidents documented by TFD in the first six months of 1983 took the lives of 27 people.

six-month period. It has also documented 96 deaths attributable to massacres by government forces during the first six months of 1983, compared with 29 such deaths during the last six months of 1982.

We received evidence that summary executions by military forces occur in various regions throughout the Philippines, including Mindanao, Negros Occidental, Samar, Leyte, and, to a very limited extent, even in Metro Manila. The State Department's 1982 report on human rights in the Philippines notes that reports of extra-judicial murders occur most frequently in Samar, Bicol, Mindanao and northern Luzon.^{67/}

2. Circumstances of Murders

Responsible officials typically explain that such episodes are properly described as "encounters" (armed battles between the military and subversives),^{68/} but these claims are rarely persuasive and almost never supported by visibly responsible investigations. Our interviews with scores of relatives of persons killed by the military as well as their attorneys established that killings officially reported as "encounters"

^{67/} Department of State, Country Reports on Human Rights Practices for 1982 at 784.

^{68/} We were told that when persons who are acknowledged to be held in authorized places of detention are killed, military officials typically claim they were "killed while trying to escape." We did not receive testimony or documentary evidence of specific cases involving such murders.

frequently occurred after the victims had been taken into custody by military or police forces, or under other circumstances in which the victims clearly presented no threat to their killers.

For example, we received testimony from several people about the recent killing of four men, Celso Maghanoy, Trifonio Andres, Clemente Espina and Geracleo Paquera, who were taken into custody by a composite military group and were later reported to have died "in an encounter." On August 17, 1983, the victims were at a house in Libungan, North Cotabato, where a wedding was to take place later that day. At around 10:30 a.m., the house was surrounded by approximately 30 heavily armed men belonging to a composite military group. The raiding team charged that one of the men attending the wedding was a member of an NPA liquidation squad. After several hours of interrogation, eight men and six women were led away in several cars. The convoy made stops at PC headquarters in various towns. One of the men taken into custody, Pastor Ben Barloso, was released at the second stop in Amas. Three of the other men and the six women eventually arrived in Davao City, where they were detained and interrogated for varying lengths of time. One of these men, Father Jun Evasco, was still in detention at the time of our visit. The four men who never reached Davao were transferred in Bansalan, a town near Digos, Davao del Sur, from the custody of the arresting officer to that of the provincial commander. Two days later,

it was reported that the four men were "killed in an encounter."^{69/}

In Cebu, we received information concerning a massacre of nine people, including seven children, who, though not taken into custody, clearly presented no immediate threat to their assailants.^{70/} We were told that on March 22, 1982, Encarnacion Orillo and her eight children evacuated their farm in Masaymon, Hinunangan, southern Leyte because a PC patrol had entered the town and its members were recklessly firing their guns.^{71/} The next day at around 2:00 p.m., Ms. Orillo and her children were at the nipa hut of neighbors when armed PC personnel approached them. Ms. Orillo and Usting Caberte, both of whom were outside when they spotted the approaching patrol, started to flee. Mr. Caberte, who had been chopping wood, was shot dead and Ms. Orillo escaped shots directed at her. Two other adults also escaped unharmed.

A PC soldier pulled one of the children from the hut and trampled on her abdomen, causing her death. Those remaining in

^{69/} According to an attorney involved in this case, the victims included three NPA members and one person who did not belong to the NPA.

^{70/} We interviewed an attorney involved in the case, who also provided several affidavits of eyewitnesses.

^{71/} The attorney told us that the PC patrol was enforcing an order requiring people to leave that town and move to a neighboring barrio. According to this lawyer, the raided area had been declared a free-fire zone. In the course of the raid, homes were reportedly burned after being ransacked.

the hut -- two adults and seven children -- were taken to another hut. One of the two adults managed to escape en route. From her hiding place, she saw that the others were lined up and shot, resulting in the immediate death of four of the children. Another child later died of wounds he sustained.^{72/} Two days later, the PC patrol returned and killed another child and the remaining adult, both of whom had been wounded in the earlier massacre.^{73/} One child survived with only a wound on her arm from the earlier assault, since her mother had taken her away before the second attack.

In Manila, we spoke with relatives of a young doctor, Remberto de la Paz, who had been killed in Catbalogan, Samar on April 23, 1982. Like the victims described above, Dr. de la Paz was killed under circumstances in which he clearly presented no threat to his assailant. According to relatives, he was suspected of being an NPA member because he was observed passing freely through barrios that were suspected NPA strongholds. On the afternoon of April 23, 1982, he was alone in his clinic when a plainclothed man came to his office and shot him.

^{72/} Encarnacion Orillo's affidavit states that before the child died, "his side was open so his breath went through the gaping wound. When he coughed, blood went out too from his mouth."

^{73/} Ms. Orillo's affidavit states that the child had "grave wounds and her shoulders were cut off because of the gunshot."

In this case, instead of claiming that the victim was "killed in an encounter," an intelligence officer announced on the radio that the NPA was responsible for the murder. In response to public pressure, Defense Minister Enrile ordered a special investigation resulting in the arrest of Staff Sgt. Arsenio Alcantara, Jr. in late June 1982. Alcantara did not fit descriptions of the assailant provided by eyewitnesses. Convinced that the defendant was not responsible, the victim's wife, who had hired a private prosecutor to represent her in the trial, withdrew from the case.^{74/}

Amnesty International has similarly found that reports of extra-judicial murders that are officially attributed to "encounters" typically prove upon examination to involve the murder of persons who had been taken into custody.^{75/} While casualties undoubtedly do occur during military encounters in the Philippines, we believe that government forces have been and continue to be involved in the killing of hundreds of non-combatant civilians.

^{74/} We asked one of the victim's relatives why someone would allow himself to be tried for a crime he did not commit. This relative told us it was rumored that such defendants agree to be tried and sentenced with the understanding that following sentencing they will be transferred elsewhere.

^{75/} See Amnesty International Report 1982 at 231.

3. Government Response to Allegations

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

In an extended conversation with Defense Minister Enrile and his aides we were told that at least "some" allegations of summary execution are true,^{76/} but that most are either entirely unfounded or are exaggerated reports of what are properly described as encounters. Consistent with statements he has made in the past,^{77/} Minister Enrile attributed most of these reports to propaganda efforts of the Communist insurgency. He claimed that the Communist Party of the Philippines (CPP) "uses every means to convince outside elements that something is wrong with the country." His explanation included the charge that Task Force Detainees is an instrument of the CPP. As such, he claimed, its purpose in compiling statistics of political killings is "to gather propaganda material against the government," a charge he was unable to support. In contrast to Minister Enrile's assertion, we were told by officials of the U.S. Embassy that the

^{76/} At another point in the conversation, Minister Enrile said that it is "possible" that military forces sometimes kill persons "perceived to be adversaries" who are defenseless and could have been arrested.

^{77/} See, e.g., "Enrile: CPP launches propaganda offensive," Bulletin Today (Aug. 2, 1981) at 40.

United States Government considers TFD reliable and that the State Department relies upon TFD statistics in compiling its annual country report to Congress on human rights practices.

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

B. Disappearances

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

Lawyers from various regions throughout the Philippines told us of more recent cases of disappearances in their areas. In Mindanao, we were able to interview several people whose relatives had disappeared in recent months. One of those cases involved three young men -- Sergio Garcia, Carlito Tan and Rene Java -- who were last seen on September 8, 1983 and as of September 28, 1983 had not been located. Witnesses (who have

subsequently retracted their statements) said they saw the three being arrested at a military checkpoint in General Santos City, South Cotabato as they boarded a jeepney. Records for this period of local military authorities obtained by relatives make no mention of the arrest of these three men.

Experience has generally proved that missing persons are probably dead if they have not been located within the first months after their disappearances. In a substantial number of cases, missing persons are located after several weeks in incommunicado detention. As noted below, in a number of cases in recent years the filing of a petition for habeas corpus has resulted in the production of a missing person by the military.^{78/}

We received information indicating that in some cases missing persons are compelled to assist the military in counter-insurgency operations. An attorney in Negros Occidental furnished us affidavits concerning a case in which two men who had disappeared later returned home. On April 16, 1983, the two men, Pantaleon and Vicente Bocog, were on their way to another town to buy rice when they were accosted by a combined PC and ICHDF force. Over the next few days the wife of Vicente Bocog went to various PC headquarters in the region, but was unable to locate her husband and his nephew.

^{78/} See Chapter VI, Section B.1., infra.

One week after his disappearance, Pantaleon Bocog executed an affidavit describing his experiences during several days of captivity by PC and ICHDF forces. The forces, who had in their custody another man when they came upon the Bocogs, accused Pantaleon Bocog of belonging to the NPA. He denied this charge, explaining that he occasionally gave food to NPA members passing his home but never participated in their operations. In response,

[t]he soldier accused me of being a liar; they boxed me three (3) times in the stomach; I was hit with the butt of an armalite [rifle] on my side and right shoulder; they pointed the armalite on my forehead, my eyes, my mouth, threatening to kill me because I would not tell the truth. they took off my clothes [and] placed me against the side of the logging road, and one of them aimed his armalite and told me all he needed was to pull the trigger.

The abuse ended when a man who appeared to be an officer told the soldiers to stop.

The group proceeded to several sitios (sub-units of barrios) over the next few days. At one point, Pantaleon Bocog heard a volley of shots. His captors told him there had been an ambush, and that the third man who was in their custody had been shot.^{79/}

^{79/} An attorney familiar with this case believes the victim was summarily executed. He noted that the captive victim was the only casualty in an alleged encounter.

In the course of the journey, the two men were made to carry supplies, prepare food and help search for arms. Three days after their capture they were released and sent home. At no time were they charged with any crime or brought before a judge. Nor was any reason given for their eventual release.

This account is similar to several other reports we received of persons suspected of having NPA connections being taken on counter-insurgency operations with military or ICHDF personnel. According to these reports, such persons are often used as "guides" or "assets," terms that describe persons who identify subversives.

Detainees reportedly are often used as guides. An agreement recently signed by the PC/INP Command for Region XI implicitly acknowledged this practice. In that agreement, discussed in Chapter VI, Section B.2., infra, the signatories promised that "[d]etainees shall be used as guides only with their consent."

The ultimate fate of such guides is unclear. In the case described above, the "assets" were released. We were told of other cases, which we were not able to investigate thoroughly, in which guides were reportedly killed.

C. Torture

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

1. Patterns of Torture

Torture typically occurs in the days immediately following a person's arrest on national security grounds. In the usual torture case, the victim is arrested, often without a warrant or other order of arrest,^{80/} blindfolded and taken to a "safehouse," a secret, unauthorized place of detention. He or she is held there incommunicado for several days or weeks. During that time, he or she is tortured in the course of "tactical interrogation." Often the detainee is tortured immediately, and then interrogated. Sometimes, the detainee is first asked questions and is tortured if he or she does not "cooperate," e.g., by confessing to involvement in the NPA or supplying names of persons in the movement. Following a day or two of torture

^{80/} For discussion of arrest procedures, see Chapter III, infra.

the victim's captors frequently ease up and employ the "soft approach," promising to end torture or even release the detainee without further harm if he or she "cooperates." After several days in a safehouse the victim is often transferred to another place of detention, where torture sometimes continues.

Typical of the general pattern is the case of Hilda Narciso. Ms. Narciso and two other young people were staying at the house of a German priest in Davao City. On March 24, 1983, Ms. Narciso was sleeping when she heard a loud knocking on a door near her room. The house was raided by approximately 30 heavily armed men from different military units, only six of whom were in uniform. The men presented a search warrant, and proceeded to search the house. Around midnight, the raiding team took the three young people into custody, leaving the priest behind for questioning in his house. Requests to contact counsel were denied.

Ms. Narciso's companions were taken in one car and she in another. She was placed in the back seat with one man on either side of her and was blindfolded. As they drove, the men sitting next to Ms. Narciso repeatedly touched her breasts and threatened to throw her into the sea they were then passing when she struggled.

After 20 minutes the car pulled into a remote safehouse and Ms. Narciso, still blindfolded, was led inside. Almost immediately, a group of men molested her while she was still

blindfolded. Throughout the night she was interrogated by a group of men while they continued to molest her. At one point, one of Ms. Narciso's interrogators said he was going to cut off her nipple because she wasn't responding properly to questions. Finally, Ms. Narciso was led upstairs and left in a room with one man. He loosened her blindfold and raped her. Afterwards, she was blindfolded again and led downstairs for further interrogation. While being molested, she was questioned about her knowledge of church people believed to be members of the Communist Party of the Philippines. Following further sexual abuse by several men she was allowed to rest at approximately 9:00 a.m. on March 25, after she complained of terrible pains all over her body. Thereafter, she was interrogated without further physical abuse.

In the meantime her two companions, who had been taken to the same safehouse, had also been interrogated and abused. Her female companion had been sexually assaulted but not raped. Her male companion had been beaten.

On the morning of March 26 the three were given breakfast and the "soft approach." According to notes Ms. Narciso made shortly after her capture, "we were advised by some man trying hard to be good to us that [if] we will just be honest [and] cooperate with them we will be alright." After breakfast, the three were taken, blindfolded, to Camp Catitipan in Davao City, and then to the 431st PC Barracks.

While rape and other forms of sexual abuse are common forms of torture applied to women, the most common form of torture applied to men is "boxing" -- beating with fists or the butt of a rifle. Men are often beaten on the chest and abdomen so that bruises will not be evident.

Both men and women are often subjected to the "plastic bag treatment," a form of torture that was developed because it leaves no marks. If the detainee refuses to "cooperate," a plastic bag is placed over his or her head, tied around his or her neck with masking tape, and kept there until he or she is about to suffocate. Sometimes, a hand is placed over the victim's mouth and nose while the plastic bag is held over his or her head. If the detainee still refuses to cooperate when the bag is removed, the process is repeated.

Other commonly employed forms of torture include the application of electric shocks and cigarette burns to various parts of the body (in one case, a lit cigarette had been applied to the inside of the victim's mouth), and the placement of hot chili peppers in eyes, noses, genitals and other sensitive parts of the body.

Many of the victims we interviewed had been subjected to the "water cure," a form of torture in which victims are forced to consume large volumes of water poured through towels that cover their faces. We heard of numerous variations on the "water cure," such as the substitution of carbonated drinks for water,

thus enhancing the pain as liquid is forced through the victim's nostrils, and the placement of victims on ice as they are bombarded with water.

Psychological forms of torture are also commonly used, often in connection with physical abuse. Sometimes this takes the form of solitary confinement in small dark cells. Often it involves being interrogated within hearing distance of other detainees who are being tortured.

A number of victims who had been physically abused told us that the worst form of torture to which they were subjected was threats of being killed. One detainee who told us this described how he and a colleague had been taken to a beachhouse for interrogation, placed in separate rooms, and threatened with murder if they did not "cooperate." Then a gun was fired in another room, leading each to believe the other had been killed.

Humiliation is often employed as a form of psychological torture. One evening Father Tison, a political detainee held at the stockade of the PC barracks in Davao City, was taken from his cell to an office where he was made to strip and was photographed nude. The next evening he was shown the photographs, retouched to give him female sexual organs, and was told the photos would be distributed to newspapers if he did not "cooperate."

While torture typically occurs during the period of tactical interrogation immediately following arrest, not all detainees subjected to interrogation are tortured. We inter-

viewed one woman who had been arrested and taken to a safehouse, where she was interrogated but not tortured (she believes her captors may have spared her because she was visibly pregnant). In another case, six women arrested during a raid were taken into custody; four were tortured. (One of the two who were spared had a young child with her.) As an indication of the extent to which torture is used, TFD has recorded 966 arrests for political offenses in Mindanao in the first half of 1983, and 387 cases of torture during that period.

These involved cases where the victims survived. We note that, according to many reports and testimonies, the bodies of victims of political killings frequently bear signs of severe torture. Human rights groups in the Philippines state that in some of these cases deaths were apparently an unintended result of torture. In others the combination of gunshot wounds and marks of torture suggest that the victim was deliberately killed following torture.

CHAPTER III

ARBITRARY ARREST AND PREVENTIVE DETENTION

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

Until recently this practice was implemented pursuant to a Presidential Commitment Order (PCO), a creature of President Marcos's post-martial law legislative powers. Since August 1983, the same practice has been accomplished pursuant to a Preventive Detention Action (PDA).^{81/}

A. The Presidential Commitment Order (PCO)

1. Evolution of PCO

Originally designed to limit circumstances in which persons could be subjected to preventive detention for national

^{81/} The decree establishing the PDA, Presidential Decree No. 1877, is dated July 21, 1983. Its issuance was announced on August 5, 1983 and it was published in the Official Gazette on August 22, 1983.

security offenses, the PCO soon evolved into a license to order detention without any meaningful limits. On May 9, 1981, President Marcos issued a directive authorizing preventive detention for national security crimes,^{82/} pursuant to a PCO, after a finding of probable cause by the judge conducting the preliminary investigation.^{83/} Following the issuance of a commitment order by the President, the person could be detained "for the period required by the judicial authorities."^{84/}

On May 25, 1981, these procedures were further circumscribed by Letter of Instructions No. 1125-A. Pursuant to that directive PCOs were to be based on a finding by the judge or other investigating officer that "the evidence of guilt is strong."^{85/} Once a PCO was issued on this basis a person could be detained "until the final disposition of the case unless sooner ordered released by the President or his duly authorized representative."^{86/}

In practice arrests and detention in national security cases were typically effected without a PCO, and when PCOs were

^{82/} The crimes specified in the order were rebellion, insurrection, subversion, and conspiracy or proposal to commit such crimes.

^{83/} Letter of Instructions No. 1125 (May 9, 1981).

^{84/} Id.

^{85/} Letter of Instructions No. 1125-A (May 25, 1981) (emphasis in original).

^{86/} Id.

obtained they were commonly issued without reference to judicial authorities. These practices were legitimated by Letter of Instructions No. 1211, issued on March 9, 1982.

2. Final Form of PCO

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

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

b) When the release on bail of the person or persons already under arrest by virtue of a judicial warrant would endanger said public order and safety.

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

President Marcos reserved to himself and his representatives the right to decide when someone covered by a PCO would be released. LOI 1211 authorized the continued detention of persons covered by a PCO "until ordered released by the President or his duly authorized representative." The directive thus

reversed the existing rule which had protected detainees by limiting detention either until the final disposition of a case or until sooner ordered released by President Marcos.^{87/} The rule established by LOI 1211 was to cover persons already detained pursuant to a PCO.

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

3. The Suspension of Habeas Corpus

The continuing suspension of the privilege of the writ of habeas corpus in national security cases has precluded judicial relief from arbitrary detention under PCOs. President

^{87/} Letter of Instructions No. 1125-A (May 25, 1981).

^{88/} "National Security Versus Individual Rights," speech delivered by retired Justice of the Supreme Court of the Philippines Cecilia Munoz Palma before the Bishops-Businessmen's Breakfast Meeting, May 20, 1983.

^{89/} Id.

^{90/} Id.

Marcos consistently cited that suspension as the basis of his power to issue PCOs,^{91/} and, later, PDAs.^{92/}

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

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

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

In practice, this has meant that detainees may seek a writ of habeas corpus but, in national security cases, courts will not grant the petitioners relief from arbitrary detention. Recognizing this severe limitation, attorneys have generally

^{91/} See LOI 1125; LOI 1125-A; LOI-1211.

^{92/} Presidential Decree No. 1877 (July 21, 1983).

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

^{94/} Proclamation No. 2045 (Jan. 17, 1981).

sought habeas corpus principally in cases where persons are being held incommunicado or are believed to be undergoing torture. When habeas petitions are filed in these cases, courts generally have ordered the respondents to produce the body and respond to the writ immediately. Once this order has issued, persons held incommunicado are typically produced, and in many cases torture has stopped.

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

4. The PCO in Operation

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

We learned of numerous cases in which persons detained under a PCO have been held in "preventive detention" for periods far exceeding the maximum time they could be sentenced to serve for the crimes for which they were arrested. Similarly, persons who have completed their sentences remain incarcerated, awaiting

an order of release that can only come from Marcos or, under LOI 1211, his representative.

In October 1981 Doris Baffrey was detained pursuant to a presidential Arrest Search and Seizure Order (ASSO), the precursor to PCOs, which was dated April 16, 1977. On January 8, 1982, an information was filed against Ms. Baffrey charging her with membership in a subversive organization, a crime carrying a maximum penalty of six months imprisonment. At that time she had already been detained for 15 months. In the ensuing weeks the military prosecutors told Ms. Baffrey they would oppose her release on bail and claimed that since her detention was ordered by an ASSO, the retroactive effect of LOI 1211 prevented the court from ordering her release.

Realizing her release could come only from the President, Baffrey agreed to plead guilty in exchange for a promise that the military prosecutors would secure her immediate release.^{95/} On February 10, 1982, she pleaded guilty and was sentenced to 4 months imprisonment and other disqualifications.

^{95/} Ms. Baffrey also claims that the prosecutors promised not to charge her with any further crimes covering the period preceding the plea, but the prosecutors dispute this claim. See Petitioners' Consolidated Memorandum, in re Baffrey v. Ver, G.R. No. L-60156 (Oct. 18, 1982) at 7; Respondents' Memorandum, in re Cellano v. Ver, G.R. No. 60156 (July 30, 1982) at 6.

Instead of securing her release as promised, military authorities subsequently charged Ms. Baffrey with attempted murder and illegal possession of explosives. The charges arose from an incident forming one of the specifications in the prior information filed against Ms. Baffrey. The prosecutors did not seek a new detention order. Instead they relied upon Ms. Baffrey's previous ASSO to continue her detention, claiming that pursuant to the retroactive effect of LOI 1211, the ASSO requires her continued detention until the President orders her release.^{96/} Today Ms. Baffrey remains detained, three years after her arrest for a crime carrying a maximum sentence of 6 months, pursuant to the original ASSO.

People are often arrested without any form of warrant or presidential order and PCOs are obtained later if prolonged detention is sought. This practice lends itself to substantial abuse since the threat of obtaining a PCO can be held over the heads of detainees. In August 1983, six women were arrested and held incommunicado during several days of tactical interrogation. Four of the women were tortured. After a period of incommunicado detention, they were told they would be released if they promised not to obtain counsel. They were told that unless they made this promise, a PCO would be issued against them. The women agreed to forego counsel and were released.

^{96/} Id. at 19.

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

5. Judicial Validation

On April 20, 1983, the Supreme Court of the Philippines sanctioned the broad powers of arrest and detention President Marcos had claimed for himself, and declared itself powerless to review the exercise of those powers. In Garcia-Padilla v. Ponce Enrile,^{97/} the Court held that the PCO operates "to validate . . . the detention of a person for any of the offenses [for which] the suspension of the privilege of the writ of habeas corpus [has been continued], if the arrest has been made initially without any warrant."^{98/}

Reversing established doctrine,^{99/} the Court held that the President's issuance of a PCO "may not be declared void by the courts . . . on any ground," including its non-compliance with LOI 1211.^{100/} The Court reasoned that in a situation of

^{97/} G.R. No. 61388 (April 20, 1983).

^{98/} Id. at 8.

^{99/} See Lansang v. Garcia, 42 SCRA 488 (1971).

^{100/} Id. at 17 (emphasis added).

grave threat to national security, "the duty of the judiciary to protect individual rights must yield to the [President], who takes absolute command [and] is answerable only to his conscience, the people and to God."^{101/}

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

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

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

B. The Preventive Detention Action (PDA)

The enthusiasm attending President Marcos's announcement was short-lived. Upon close examination supposed safeguards

^{101/} Id. at 15.

incorporated into the PDA proved to afford little genuine protection against prolonged, arbitrary detention. In some respects the decree establishing the PDA (Presidential Decree (PD) No. 1877) authorizes greater presidential powers than those granted by LOI 1211.

Like its predecessor, while PD 1877 requires application to civilian authorities for an arrest warrant in national security cases, it also establishes a far-reaching exception. When a military commander or head of a law enforcement agency ascertains that a person has committed, is committing or is about to commit a national security offense, "or would probably escape or commit further acts which would endanger public order and safety as well as the stability of the state before proper warrant could be obtained," he can apply to the President

- (a) When resort to judicial processes is not possible or expedient without endangering public order and safety;
- (b) When in the judgment of the President of the Philippines to apply for a judicial warrant may prejudice peace and order and the safety of the state like when it may jeopardize the continued covert intelligence/counter insurgency operations of the Government

Once issued, the PDA authorizes preventive detention for a period "not exceeding one year." PD 1877 establishes a procedure, however, for further indefinite detention at the direction of the President. The decree provides that the President "may" constitute a review committee to consider evidence against a

person detained pursuant to a PDA, which shall submit a recommendation to the President before one year of detention has expired. After considering this recommendation, the President has the options of ordering release, further detention, or the filing of an information against the person detained. Thus, detention may continue as long as the President desires and there is no guarantee he will review the detention any sooner than one year after it begins.

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

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

In short, the PDA procedure does not eliminate the potential for abuse which ultimately led to the demise of the PCO. Most Filipino lawyers expect those abuses to continue unabated under the new system.

CHAPTER IV

TARGETS OF MILITARY ABUSES

Though no one doubts the existence of armed insurgencies in the Philippines, it is equally clear that many non-violent activists have been victims of violations that are justified as counter-insurgency measures. From the beginning of martial law, the anti-Communist banner has led a systematic campaign against government critics of all kinds. In the words of Cardinal Sin, "anybody who is against the government here is called a Communist."^{102/}

To some extent repression based upon political activities is sanctioned by law. Broadly defined crimes pose the threat of lengthy imprisonment or even death for engaging in activities that are critical of government policies. It is a crime merely to attend a meeting "which is held for propaganda purposes against the Government . . . in order to . . . undermine its authority by eroding the faith and loyalty of the citizenry thereto"^{103/} An organizer of such a meeting can be

^{102/} Interview with Diane Orentlicher, September 16, 1983.

^{103/} Presidential Decree 1834, Sec. 10. This decree is dated January 16, 1981 but did not come to public light until May 10, 1983. At that time, President Marcos said he would not enforce the new law until it was published in the Official Gazette, which took place on September 29, 1983.

sentenced to death.^{104/} Similarly, persons can be detained pursuant to a PDA and sentenced to death for "writ[ing], publish[ing], or circulat[ing] scurrilous libels against the Government of the Philippines."^{105/}

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

A. The Church

The Roman Catholic Church has been singled out as a target of military abuses. A number of Church officials have been subjected to arbitrary arrest and detention; some have been tortured. Some church workers have been victims of political killings. These practices have been condemned by Jaime Cardinal Sin, the Archbishop of Manila, as a "systematic campaign to discredit the church and church workers."^{106/}

^{104/} Id.

^{105/} Id., Sec. 6.

^{106/} Amnesty International USA, "Arrest, Detention and Political Killing of Priests and Church Workers in the Philippines" [hereinafter cited as "AIUSA Report"] (Dec. 31, 1982) at 2.

The Philippine Government charges that religious workers affected by military operations are engaged in subversive activities.^{107/} As noted earlier, Minister Enrile told us that TFD engages in propaganda activities for the CPP.

Church leaders, in contrast, generally claim that although some priests and nuns have gone "underground" and joined insurgent groups, the Church as a whole has been victimized largely because of its work on behalf of human rights and social justice. Throughout the martial law period and in the three years since it was lifted, the Church has been a strong public critic of government policies and the principal Philippine institution supporting local human rights activities.^{108/} Priests, nuns and lay workers have become advocates for the rights of peasants, workers and urban squatters.^{109/} The Church has for several years promoted the development of Basic Christian Communities, lay groups addressing religious, social and economic needs on a community level.^{110/} The Church has been particularly vocal in its criticism of military murders, torture, disappearances and arbitrary arrests and detention. Church workers affi-

^{107/} "Crackdown on 'Rebel Priests' Widens Church-State Rift in Manila," The Washington Post (Feb. 18, 1983) at A28.

^{108/} AIUSA Report, supra note 106, at 3.

^{109/} See id.

^{110/} Id.

liated with such activities have been specially targeted for arrest and indefinite detention.

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

Our inquiry confirmed that, while some people identified with the Church actively support insurgent forces,^{111/} numerous church workers who are not involved with insurgencies have been arrested, tortured and even murdered in recent years.

B. Human Rights Activists

Numerous human rights organizations function openly and aggressively in the Philippines. While a substantial amount of human rights activity is tolerated by the government, involvement in such efforts entails substantial risks. We learned of several instances in which persons engaged in human rights activities were branded "subversives" and subjected to military abuses.^{112/}

^{111/} We spoke with two priests in detention who were victims of either physical or psychological torture and who acknowledged their support for Communist organizations.

^{112/} Our experience in the Philippines tended to support reports that human rights activities invite charges of subversion. When Ms. Orentlicher sought an appointment with AFP Chief of Staff General Fabian Ver, a lieutenant in his office advised (footnote continued)

Illustrative of this pattern was the reaction of local military authorities in Davao del Sur to a fact-finding mission sponsored by the Human Rights Committee (HRC) of the Integrated Bar of the Philippines (IBP). In December 1982, several teams led by IBP attorneys investigated reports of "hamletting" (see Chapter V, infra) in Davao del Sur. Following its investigation, the bar group received a report that a member of the team investigating hamlets in Sulop and Kiblawan had been arrested by the military on the charge that he had visited the hamlets as part of a "rebel group."^{113/}

Another group investigating reports of "hamletting" in Sitio Marawer was raided by a military force at a cottage where its members were staying for the night. The raiders threatened the bar delegation and prohibited it from leaving the premises. The bar group's cameras, tape recorders, cassettes and notes were confiscated. The next morning the group's members were given a military escort to another town, where they were detained for four hours. While their other materials were returned, rolls of film and cassette tapes containing recorded interviews were permanently confiscated.^{114/}

her to obtain a letter of introduction from the U.S. Embassy. Otherwise, Ms. Orentlicher was told, she would be subject to surveillance, given the "sensitive" nature of her purpose, a human rights inquiry.

^{113/} Report of the IBP Davao del Sur Chapter, Human Rights Committee Fact-Finding Mission (undated) at 8.

^{114/} Id. at 16.

C. Labor Activists

Trade unions constitute another group that has been subjected to systematic harassment by government forces. From mid-August until, early September 1982, approximately 50 trade unionists were arrested in the Metro Manila area following a period of increased union activity.^{115/} In the preceding one and one-half years, there had been a marked increase in strikes.^{116/} Thirty-two of those arrested were reportedly charged with conspiracy to commit rebellion and sedition.

During our visit, we learned of several recent incidents in which military forces were used to break strikes. In these cases, local military units joined with private company guards to rout the strikers. During such incidents, labor organizers were sometimes arrested and detained and on other occasions beaten and even shot at by military forces when they refused to disband.^{117/}

D. Victims of Counter-Insurgency Operations

A large proportion of persons illegally killed or subjected to other forms of military abuse live in areas where

^{115/} Amnesty International, "Interim Report on the Philippines Campaign" (Nov. 30, 1982) at 3.

^{116/} See id.

^{117/} In addition to the three groups identified above, human rights organizations in the Philippines report that student activists and organizers of the urban poor are frequent victims of human rights violations.

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

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

Thus Dr. Remberto de la Paz, whose case is discussed in Chapter II, Section A, supra, was reportedly killed because he was observed moving freely through NPA strongholds. Another young man was killed in southern Leyte shortly after he returned home after an absence of several years. His father believes he was suspected of subversion since he was unknown to military authorities in the area.

On September 11, 1983, Hospicio Tabilog, a 58-year-old deaf and mute man in Negros Occidental, was reportedly beaten unconscious and subsequently detained because he resisted giving military authorities notes he was carrying. The notes were used to communicate with others. Military personnel justified their abuse by claiming they had found a note bearing names of several people, that those listed were donors of money found in the victim's pocket, and that the money was a collection for subversives.

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

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

Second, it is reported that in some areas NPA rebels provide a rough-and-ready "system of justice" that is perceived to be "more just" than that provided by the government.^{118/} According to these accounts, local figures known for their abusiveness receive stern warnings from the NPA; if the abuse continues, they are killed. Such actions engender popular support for the NPA for reasons wholly unrelated to its broader objectives.

Finally, it is clear that a growing number of persons have become radicalized by first-hand experiences of military

^{118/} For this reason, a popular joke in the Philippines is that "NPA" stands for "nice people around."

outrages. An NPA presence in a region attracts the military which, in turn, inevitably introduces new violence. Victimized by these abuses, many Filipinos throw their support to any force they perceive to be effectively opposing the military. It is widely asserted that this pattern is responsible for the considerable expansion of NPA strength in recent years,^{119/} and the growing defection of some moderate opposition forces to rebel groups.

^{119/} Estimates of NPA strength vary widely, but it is generally acknowledged that the NPA's forces as well as its mass base of support have grown substantially in recent years. According to one source the armed forces of the NPA grew from around 4,000 men in the mid 1970's to 6000 in 1982. Hearings before the Subcommittees on Asian and Pacific Affairs and on Human Rights and International Organizations of the House Committee on Foreign Affairs, 97th Cong., 2nd Sess., testimony of Prof. Benjamin N. Muego (Sept. 28, 1982) at 252. According to the same source, during the same period the NPA's mass base grew from 700,000 to between 1,500,000 and 2,000,000. Id. See also Prepared Statement of Benigno S. Aquino, Jr. before the Subcommittee on Asian and Pacific Affairs of the House Committee on Foreign Affairs (June 23, 1983) at 7 (NPA armed forces have grown from estimated 500 persons in 1972 to between 5,000 and 7,000 in 1982). According to Jose Maria Sison, the alleged former leader of the Communist Party in the Philippines who is now detained in Manila, NPA forces have grown from 250 armed men in 1972 to 10,000 today. "The Trail of Aquino's Killer," Newsweek Magazine (Sept. 26, 1983) at 12.

CHAPTER V

STRATEGIC HAMLETING

Shortly after martial law was lifted, civilians living in areas with a strong NPA presence fell victim to a new form of military abuse that made no pretense of targeting rebels alone. In 1981, the Armed Forces of the Philippines began to use resettlement tactics against local populations in Mindanao, reminiscent in some respects of the "strategic hamletting" program utilized by the South Vietnamese and American armies a decade ago. According to TFD-Mindanao, approximately one-half million people were affected by this practice in Mindanao during 1982.^{120/} Variousy justified as a tactic to isolate rebels and a measure to protect civilians from military operations, the program has transformed numerous regions in the Philippines into internal refugee camps, where conditions of poverty and disease provide the backdrop for a concentrated reign of terror.

In the last two years three exhaustive reports have been prepared on this program of forced relocation. These reports, which were prepared by the Committee on Human Rights and Due Process of the Integrated Bar of the Philippines, are cited extensively in the following account. While the Lawyers Committee did not undertake an independent on-site investigation of

^{120/} Task Force Detainees of the Philippines, Mindanao Region, Semi-annual Report (January - June 1983) (Sept. 14, 1983) at 2.

this practice, the delegates carefully reviewed the reports of the Integrated Bar with their authors, and are satisfied that the reports contain reliable accounts.

A. San Vicente: The Testing Ground

1. The Program

The testing ground for the new program was the municipality of San Vicente, located in the region formally known as Laac in Davao del Norte. In October 1981, following an ambush by the NPA and a boycott by local residents of the 1981 presidential elections, the residents of San Vicente were ordered to transfer to the center of their sitios -- sub-units of a barrio -- and two weeks later were ordered to transfer to the barrio centers.^{121/} Some 20,000 residents of San Vicente were thus relocated.^{122/}

The evacuees were instructed to dismantle their abandoned homes so that NPA rebels could not use them. Anyone found in the abandoned homes would be presumed to be an NPA supporter. Army commanders explained that this program was

^{121/} Report of the Commission on Human Rights and Due Process, Integrated Bar of the Philippines (Feb. 26, 1982) [hereinafter cited as "February 1982 IBP Report"] at 3. Persons whose sitios were far removed from barrio centers were excepted from the second order, but were required to remain in their sitio centers. Id.

^{122/} "A little Vietnam," Far Eastern Economic Review (Mar. 12, 1982) at 38.

necessary because "Laac is like a beautiful lake, in which there are some bad fish. Thus it is necessary to drain all the water from the lake in order to catch these bad fish."^{123/}

Though emanating from the military, the orders were implemented by barangay (local council) captains and municipal authorities. Penalties were established for failure to obey the grouping order, and residents were told that their former homes would be burned if they were not dismantled.^{124/} Some residents were told that failure to dismantle their homes would cause them to be considered NPA members.^{125/}

Life in the hamlets was strictly controlled by military authorities. Residents were allowed to leave their hamlets only from 5 a.m. to 5 p.m., and then only to work on their farms. Hamlet residents going out during daylight hours had to secure a permit from their barangay captains.^{126/}

The curfew placed severe hardships on residents, many of whom had to travel several kilometers to reach their farms. When they left their hamlets they were searched, and were allowed to carry only enough food for one person lest any extra food be given to NPA rebels.^{127/}

^{123/} "Strategic Hamletting in Laac: An Overview" (Jan. 1982) at 3.

^{124/} February 1982 IBP Report, supra note 121, at 3.

^{125/} Id.

^{126/} "A little Vietnam," Far Eastern Economic Review (Mar. 12, 1982) at 39.

^{127/} February 1982 IBP Report, supra note 121, at 4.

Reliable fact-finding bodies report that residents of several barrios were ordered to contribute labor and materials in the construction of PC barracks, and were paid for neither.^{128/} The February 1982 delegation to San Vicente sponsored by the Integrated Bar of the Philippines (IBP) and led by retired Chief Justice J.B.L. Reyes received considerable evidence that residents of some barrios were required to contribute money toward the monthly support of troops stationed in their areas.^{129/} According to this evidence, which the IBP found credible but requiring further verification, the residents were told that since they had contributed to the NPA before, they should contribute now to the PC.^{130/}

Living conditions in the hamlets, or "grouping centers" as they were officially called, were abysmal. WHO Magazine reported that "[c]ongestion, food shortage and the sight of sick people penned in fetid shanties all but ma[d]e the hamlets look like concentration camps."^{131/} According to the IBP, the army had made no provision to prepare the hamlets before the people

^{128/} Id. at 5. See also "A little Vietnam," Far Eastern Economic Review (Mar. 12, 1982) at 39.

^{129/} February 1982 IBP Report, supra note 121, at 5.

^{130/} Id.

^{131/} "If you can't lick 'em, hamlet 'em," WHO Magazine (Feb. 13, 1982).

were ordered to move.^{132/} The residents suffered from a "lack of food, safe drinking water, medical personnel, inadequate sanitation and no schools."^{133/} These conditions led to an increase in serious diseases, particularly among children. Poor conditions of roads to and within San Vicente led to the deaths of six children whose lives, the IBP found, could have been saved had medical facilities been more accessible.^{134/} According to one journalist, as of March 12, 1982 as many as 30 children were reported to have died due to the unsanitary conditions of San Vicente hamlets.^{135/}

2. Justification

The IBP delegation was told by military and municipal officials that the transfer of people to grouping centers was done at their own request, a claim that was contradicted by the residents' testimony.^{136/} General Olano, then Regional Commander of the PC, acknowledged to the IBP group that the military had ordered the groupings.^{137/}

^{132/} February 1982 IBP Report, supra note 121, at 4.

^{133/} Id.

^{134/} Id.

^{135/} "A little Vietnam," Far Eastern Economic Review (Mar. 12, 1982) at 38.

^{136/} February 1982 IBP Report, supra note 121, at 5-6.

^{137/} Id. at 6; see also "A little Vietnam," Far Eastern Economic Review (Mar. 12, 1982) at 38.

The program was part of a new initiative of the military to counter the Communist insurgents' growing influence in rural communities by "winning the hearts and minds" of their residents. Calling this strategy a "war without bullets," Gen. Jose Magno, Chief of the Central Mindanao Command, explained: "We are fighting an invisible enemy." According to Magno, the program's strategic objective was control of the people, not territory.^{138/}

To demonstrate the success of their program, government authorities in San Vicente rounded up 7,000 barrio residents less than two months after hamletting began, and required them to take an "oath of allegiance for NPA surrenderees."^{139/} The dailies reported that 7,000 NPA rebels had surrendered.^{140/}

While isolating and dismantling the NPA's mass base in San Vicente appeared to be the primary reason behind the hamletting, there have been persistent rumors that economic factors also underlay the program. The fertile valleys and forests of Mindanao have been the subject of large-scale development plans, including a plantation program to which the World Bank pledged

^{138/} "If you can't lick 'em, hamlet 'em," WHO Magazine (Feb. 13, 1982).

^{139/} Id.; "A little Vietnam," Far Eastern Economic Review (Mar. 12, 1982) at 39; February 1982 IBP Report, supra note 121, at 3.

^{140/} "If you can't lick 'em, hamlet 'em," WHO Magazine (Feb. 13, 1982).

\$100 million,^{141/} and it is widely believed that hamlets are created to remove settlers from these lands. Such rumors are fueled by reports that, in various regions of Mindanao, paramilitary units have been used to remove settlers from lands desired for development purposes. Adding to such speculation, in December 1981 Lt. Col. Alejandro Cruz reportedly told residents of a barrio in San Vicente that the barrio captain had given him 900 hectares of land, which he asked the residents to help him clear and plant. When confronted with this charge, Cruz denied making such a statement.^{142/}

B. Official Response and Subsequent Developments

On February 26, 1982, the IBP submitted a report on the San Vicente hamlets to Minister of National Defense Juan Ponce Enrile. On March 3, 1982, Minister Enrile ordered police and military forces "to desist from participating in any manner of . . . setting up hamlets."^{143/} In a memorandum reportedly sent to AFP Chief of Staff Gen. Fabian Ver and his deputy, Lt. Gen. Fidel Ramos, Minister Enrile said:

^{141/} "A little Vietnam," Far Eastern Economic Review (Mar. 12, 1982) at 39.

^{142/} Id.; February 1982 IBP Report, supra note 121, at 4.

^{143/} "A little Vietnam," Far Eastern Economic Review (Mar. 12, 1982) at 40.