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As you are very well aware, this ministry or the national government has never authorized and will never countenance the forcible grouping of people in specified residential villages or centres, nor taking private property without compensation as well as compelling people to render forced labour, as all of the above are acts which are violative of the constitutional rights of people.<sup>144/</sup>

Enrile also instructed military authorities to allow residents of existing hamlets to return home and to assist them financially.<sup>145/</sup> This directive was followed by assertions by high ranking government officials that forced groupings no longer existed, though in some cases people may be asked to stay temporarily in evacuation centers during military operations.<sup>146/</sup>

Despite these assurances, the IBP continued to receive reports that the practice of hamletting was in fact spreading. It heard that the March 1983 directive of Minister Enrile was being "rampantly violated" in several areas of Davao del Sur.<sup>147/</sup> As a result, the Davao del Sur Chapter of the IBP's Human Rights Committee sent five teams to investigate these reports in early December 1982.

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<sup>144/</sup> Id.

<sup>145/</sup> See id.

<sup>146/</sup> Report of the IBP Davao del Sur Chapter, Human Rights Committee Fact-Finding Mission (undated) [hereinafter cited as "IBP-Davao Report"] at 2.

<sup>147/</sup> Id.



The teams found that hamletting had been continuing in Davao del Sur and had expanded to new sites. The new hamlets were concentrated in the municipalities of Digos, Sta. Cruz, Bansalan and Matan-ao as well as in the Arakan Valley of North Cotabato and other areas of Agusan del Sur.<sup>148/</sup>

The second IBP report discloses patterns of military abuse in hamlet areas. On the whole, the hamlets are heavily patrolled by military forces, including CHDF personnel, who sometimes appear to operate in tandem with barrio captains. The movement of hamlet residents is controlled by military checkpoints. With such an active military presence, military abuses are frequently reported. Thus, in one hamlet visited by the IBP, residents complained of a pattern of "indiscriminate arrest, detention and even manhandling by the Military, police and CHDF."<sup>149/</sup>

On November 25, 1982, four residents of Kibongbong, Davao del Sur, were detained on suspicion of NPA sympathizing. No evidence was offered by the detaining officers implicating these people in rebel activities. Release was effected upon

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<sup>148/</sup> IBP, Commission on Human Rights and Due Process Supplementary Report on Activities, (April 25, 1983) [hereinafter cited as "Supplementary Report"] at 1.

<sup>149/</sup> Id. at 7.

"payment" of "one goat and a fighting cock."<sup>150/</sup> The same month, 18-year old Panfilo Flores was reportedly tortured in Sitio Libaton, San Vicente, on suspicion of killing a local militia member. Witnesses claimed Flores was in church at the time of the murder.<sup>151/</sup>

As in San Vicente, residents of several hamlets reported that they were ordered to construct a military detachment using materials they were required to contribute.<sup>152/</sup> After the construction of such a detachment in Kiblawan, the IBP found that the military detachment required each of five hamletted barrios to send two to four civilian "volunteer" guards to the detachment every night. The guards were to secure the detachment from attacks by dissident groups. According to the IBP report, the "volunteer" guards were also required to contribute food each night to the regular military complement at the detachment.<sup>153/</sup>

Although the military detachment officer unsuccessfully tried to get the barrio council to pass a resolution saying this system was a voluntary initiative, residents told the IBP team

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<sup>150/</sup> IBP-Davao Report, supra note 146, at 7.

<sup>151/</sup> Id. at 21.

<sup>152/</sup> Id. at 6; 10.

<sup>153/</sup> Id. at 6.



they opposed the system since it endangered their lives.<sup>154/</sup>  
These residents intimated that they had been told by the military that if they failed to cooperate, they would be considered NPA supporters and would be blamed for any ambushes directed against the detachment. The IBP observed that "[w]ith [this] system, [the residents] became the 'security guards' of the military at the Detachment!"<sup>155/</sup>

One of the IBP teams conducted a follow-up investigation of the San Vicente hamlets. This team found that although no new hamlets had been established in San Vicente since the last investigation, at least 90% of the families that were displaced in October 1981 remained in the hamlets.

The team concluded that "fear and anxiety of the people for their life and safety" together with economic factors accounted for the reluctance of San Vicente residents to return to their homes.<sup>156/</sup> They found that activities of military and CHDF forces "len[t] credence to the suspicion that the return to the farmlands and homes of those displaced is being discouraged if not obstructed by sowing fear and terror in the area."<sup>157/</sup>

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<sup>154/</sup> Id. at 7.

<sup>155/</sup> Id.

<sup>156/</sup> Id. at 20.

<sup>157/</sup> Id.

The report notes in particular a pattern of forced recruitment into the CHDF and abusive conduct of CHDF personnel. It states that each barrio in San Vicente had a quota of 30 recruits, and that barrio leaders resorted to a program known as "panoktok operation," wherein "recruiters knock on the doors of homes at night to forcibly recruit men to the CHDF."158/

The report also recounts a series of abusive practices of military and CHDF forces in the period since hamletting began. These include "[s]olicitation of [a] fee from the already economically-depressed farmers by CHDF and military personnel";159/ illegal arrests and torture; the killing of a barrio resident following brutal torture "for the only reason that he was carrying a 1981 Residence Tax Certificate and not a 1982 one";160/ and robberies and other crimes by CHDF forces.

The IBP report notes that those who are willing to "brave the uncertain situation" they would face if they returned to their homes are unable to do so since their homes were dismantled and they cannot afford to build new ones.161/

The IBP's second report was sent to Minister Enrile, with a plea that his order of March 1982 be reaffirmed and

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158/ Id.

159/ Id.

160/ Id.

161/ Id. at 21-22.



enforced. On February 11, 1983, the Minister replied that according to the Ministry's own investigations, (a) "in the main, the people or evacuees who left their original place of abode have done so for economic and security reasons -- being overburdened, so they complained, by the CPP NPA's progressive taxation and the ever present threat of liquidation for non-cooperation with the NPA"; (b) that evacuees were not prohibited from returning to their homes but voluntarily remained in grouping centers waiting for a return to normalcy or in fear of terrorist activities; and (c) that the Ministry's earlier directive had been distributed to the operating units.<sup>162/</sup>

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

Based upon this investigation, the IBP found that most residents of San Vicente wanted to return to their homes but could not afford to rebuild them, and believed it would be useless to do so since they had no assurance they would not be regrouped again if an encounter took place. Some residents expressed fears of harassment by the military. Others expressed

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<sup>162/</sup> Supplementary Report, supra note 148, at 1-2.

fear because military authorities had said they could return "at their own risk," which was construed as a denial of future protection. In no case was fear of rebels cited as a reason for their failure to return home.<sup>163/</sup>

C. Extent of Hamletting

The IBP's report of April 1983 found that, at that time, hamlets existed in Davao del Norte, Davao del Sur and in neighboring provinces, "involving thousands of families."<sup>164/</sup> Other reports have established the existence of hamlets in other regions, such as Abra in northern Luzon,<sup>165/</sup> and Cagayan in northeastern Luzon.<sup>166/</sup>

In September 1983, TFD-Mindanao reported that protests against hamletting had prevented its widescale implementation in 1983, but that grouping centers created in 1982 remained despite orders for their dismantling.<sup>167/</sup> It estimated that half a million people were affected by hamletting in Mindanao during 1982, and that some new hamlets were being established.

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<sup>163/</sup> Id.

<sup>164/</sup> Id. at 4.

<sup>165/</sup> Philippine Coalition for Human Rights, "Abra Fact Finding Mission Report" (Apr. 9, 1982).

<sup>166/</sup> Philippine Coalition for Human Rights, "Cagayan: Hamletting and Other Cases" (Nov. 1982).

<sup>167/</sup> Task Force Detainees of the Philippines, Mindanao Region, Semi-annual Report (January-June 1983) (Sept. 14, 1983) at 2.



#### D. Related Practices

In addition to hamletting, a wide range of military practices operate to displace civilian populations in the Philippines. Before hamletting was instituted in Mindanao, civilians in areas with an active Muslim insurgency were forced out of their homes by the designation of their areas as "free-fire" zones.<sup>168/</sup> Unlike victims of hamletting, these villagers were usually allowed to return to their homes when the military operations were completed.<sup>169/</sup> Similar practices reportedly continue today in regions where the NPA is active.<sup>170/</sup> In these situations, persons are forced out of their homes but are not required to live in designated grouping centers.

Additionally, military operations known as "zoning" threaten the security of civilians to such an extent that evacuation is often a virtual necessity. During zoning operations, areas are cordoned off by military units, which conduct house-to-house searches for rebels. Serious military abuses are reported to occur during these operations. During the first half of 1983, zoning operations spanning almost five weeks

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<sup>168/</sup> "A little Vietnam," Far Eastern Economic Review (Mar. 12, 1982) at 39.

<sup>169/</sup> See id.

<sup>170/</sup> See Prepared Statement of Benigno S. Aquino, Jr. before the Subcommittee on Asian and Pacific Affairs of the House Foreign Affairs Committee (June 23, 1983) at 8-9.

were conducted in ten barrios in Agusan del Norte and in one barrio in Misamis Oriental. According to TFD-Mindanao,

[t]wenty-two arrests were made during these operations. At least one woman was raped while several others [were] molested.<sup>171/</sup> A number of men were mauled; an old man died.<sup>171/</sup>

In Butuan, Barangay officials were said to capitalize on zoning operations through extortion. According to TFD, Butuan residents were required to obtain "Barangay clearances" at a cost of 2.50 pesos each.<sup>172/</sup>

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<sup>171/</sup> TFD-Mindanao, Semi-Annual Report (January-June 1983) (Sept. 14, 1983) at 3.

<sup>172/</sup> Id.



## CHAPTER VI

### OPERATION OF THE SYSTEM OF JUSTICE

#### A. Redress for Human Rights Violations

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

##### 1. Potential Avenues for Redress

A combination of judicial and administrative procedures exists to process complaints of human rights violations by agents of the Philippine Government. A decree issued in 1981<sup>173/</sup> and another issued in 1982<sup>174/</sup> vested exclusive jurisdiction over criminal prosecutions of military and police personnel in courts martial. As a result of those decrees, civilian prosecutors no longer entertain complaints filed against military personnel, but endorse them to the Judge Advocate General's Office.<sup>175/</sup>

Although citizens can file complaints with the Judge Advocate General (JAG), only military officials and the President

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<sup>173/</sup> Presidential Decree No. 1822 (Jan. 16, 1981).

<sup>174/</sup> Presidential Decree No. 1850 (Oct. 4, 1982).

<sup>175/</sup> Several Filipino attorneys expressed the view that the transfer of jurisdiction to military courts was designed to allow the military to "protect its own."

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

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

Investigations resulting from such complaints have been conducted by various bodies and offices, including specially constituted bodies within the MOND, the Office of the Inspector General of the AFP, the Constabulary Inspectorate General, the Criminal Investigation Service of the PC and the Office of the Constabulary Judge Advocate.<sup>176/</sup>

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<sup>176/</sup> See AI Report, *supra* note 27, at 86.



## 2. Operation of Existing Procedures

In practice, complaints almost never result in prosecutions. In the rare case where a court martial proceeding has taken place, it has been the product of intense public pressure, including the intervention of international organizations or the personal intervention of influential figures in the Philippines. When prosecutions have been initiated, the results have generally been unsatisfactory: either charges have been dismissed following hearings that were not public, or the punishment has been incommensurate with the offense.<sup>177/</sup> For example, courts martial have ordered defendants to be discharged from the service, or have imposed short sentences of confinement, ranging from four to six months for crimes as serious as murder.<sup>178/</sup> In one notable exception, on November 29, 1983 a court martial convicted and sentenced to 14 years imprisonment First Lt. Leo Degario Adalem and Staff Sgt. Angeles Tanyag for the murder in 1980 of Macli-ing Dulag, the tribal chief of the Kalingas who had led the opposition to the government's Chico River Dam project. Additionally, on May 25, 1983, Col. Vicente Lucero, Jr. and Capt. Benjamin Santiago were sentenced by a civilian court in one of the autonomous Muslim regions to life imprisonment for the massacre of 10 people in 1978.

More often than not, complaints result in no visible investigation or investigations said to be underway produce no

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<sup>177/</sup> See id. at 84.

<sup>178/</sup> See id. at 86-87.

final results. When investigations are completed, they typically exonerate the subject of the charges or, where guilt is established, result in his transfer to another region.

One consequence of this is that many victims of military abuses are unwilling to file complaints, believing them to be futile. One after another relative of someone who has been killed despairs of finding any fair means to test the bald statement that their spouse, child or sibling was "killed in an encounter."

Cases we examined suggest that the dearth of successful prosecutions is due in part to determined efforts by responsible officials to thwart prosecution. When Dr. Remberto de la Paz was killed in his clinic in Catbalogan, Samar,<sup>179/</sup> the Chief Intelligence Officer of the Eastern Samar Military Command, Col. Ernani Figueroa, announced over the radio that the NPA was responsible for the slaying before any investigation was conducted. When witnesses insisted that the army was responsible and public pressure for an arrest mounted, Staff Sgt. Arsenio Alcantara, Jr. was put forward as the defendant. On several occasions, Dr. de la Paz's family requested then Deputy Minister of National Defense Carmelo Barbero to produce a photograph of the defendant from his files so that witnesses to the murder could advise the family whether the defendant was the person they saw kill Dr. de la Paz. This request was repeatedly denied. When the defendant appeared in court, the victim's widow observed

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<sup>179/</sup> See Chapter II, Section A, supra.



that he did not match the witnesses' description. Convinced that the defendant was innocent, Mrs. de la Paz withdrew from participating in the case through a private prosecutor. Similarly, local military officials refused to furnish Hilda Narciso a line-up so that she could take steps to support her allegations of rape. When we brought this to his attention, Minister Enrile assured us he would order the requested line-up.

Intimidation of witnesses and complainants contributes in large measure to the lack of successful prosecutions. We learned of numerous cases in which complaints were withdrawn because key witnesses had retracted their statements following visits from military personnel.

Often, those who try to publicly challenge the military are subjected to harassment. An attorney in Cebu informed us that Encarnacion Orillo was charged with rebellion after she filed a complaint against three PC officers for the murder of seven of her children.<sup>180/</sup> This attorney believes this charge was related to Ms. Orillo's complaint because she received notice of the charge in connection with the legally unrelated case against the PC officers. In notifying Ms. Orillo that, in accordance with recent law, the case against the PC officers was to be transferred to a military court, the provincial prosecutor who had handled the case until then also notified her that rebellion charges had been filed against her. Ms. Orillo is now reluctant to testify against the PC officers because she fears

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<sup>180/</sup> See Chapter II, Section A, *supra*.

that she will risk arrest if she goes to the town where the trial is to take place.

We took evidence of another case involving a man who was murdered two years after he gave testimony about the slaying of another person. Despite the lapse of time, the circumstances of his death suggest that his previous testimony may have been one reason for his own murder.

On September 5, 1981, a public meeting of the Church-Military Liaison Committee (CMLC)<sup>181/</sup> was convened in Hinoba-an, Negros Occidental, to hear testimony about the alleged killing of Rudy del Carmen by the military several weeks earlier. Romeo Sarentas testified at that meeting that he had witnessed del Carmen's murder and had been directed to help the military carry the body away. At the end of his statement, Sarentas expressed the fear that he would "be next."

As a result of the meeting, the Deputy Regional Commander of Region VI ordered an investigation. On September 10, 1981, he announced that the investigation had shown that "Rudy del Carmen was not touched by the military." One week later, Romeo Sarentas signed an affidavit repeating his previous statement. The following month, relatives of del Carmen reportedly received threats that they would be killed if they did not with-

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<sup>181/</sup> CMLCs were established both locally and at the national level in 1973 to resolve conflicts involving the church and the military.



draw their case against the military; no such case had been filed.<sup>182/</sup>

On August 20, 1983, uniformed men surrounded the home of Romeo Sarentas at approximately 6:00 a.m. After searching the home, the raiding team made Sarentas leave with them. Sarentas's wife followed the group from a distance of approximately 15 meters. At one point, Sarentas's custodians hid him from his wife's view, and she heard six successive shots. When she neared the group, she saw her husband lying on the ground. She was told to return home or she would be next. As she retreated, she heard another shot. Another witness reported that Sarentas's body was stabbed with a bayonet after he had already died.<sup>183/</sup> Local papers reported that Sarentas was "killed in an encounter."

We received evidence concerning many cases in which no complaint was ever filed or formal statement given because of fears of reprisal. In some of these cases we were told that there had been no actual threats. In others, there had. Most of the victims with whom we spoke on this subject requested strict confidentiality because they continue to fear for their own safety.

In one case the father of a detainee who had been tortured was preparing to file a complaint, a fact known to military

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<sup>182/</sup> See AI Report, supra note 27, at 43.

<sup>183/</sup> That witness fled town after his name was published in a local newspaper.

authorities. Before the complaint was filed, the detainee was killed. Whether or not the death was related to the contemplated complaint, the father was no longer willing to seek redress after his son was murdered.

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

Several attorneys told us they discourage their clients from filing complaints. These attorneys told us that, if the torture of a detainee has stopped, he or she is better off not filing any complaint because the detention would probably be extended in retaliation.

### 3. Government Silence

Compounding these problems is an apparent unwillingness by the Philippine Government to publicize instances of discipline. Although government officials assured us they were anxious to convey to the public their sincerity in prosecuting



cases of military abuse, the same officials are unwilling to disclose instances of punishment.

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

This policy of low-profile discipline is consistent with several reports we received of disciplinary measures being taken on a "strictly private" basis. We were told that in a case in which four men were killed while in military custody,<sup>184/</sup> military officials publicly declared the incident an "encounter" but privately reprimanded the responsible officer for allowing the murder of men who were already in custody. The policy reflected in this incident disservices the government's stated policy of condemning military abuses. The deterrent function of public sanctions remains unexercised.

Of far greater concern, however, is the unavoidable conclusion that disciplinary efforts are rarely pursued at all,

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<sup>184/</sup> See Chapter II, Section A, supra.

and that this policy of neglect is condoned at the highest levels of government.

B. Preventive Measures

1. Governmental Initiatives

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

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



Resolution 35/170 which established a Code of Conduct for Law Enforcement Officials.

Similarly, domestic law in the Philippines contains a wide array of provisions designed to reduce opportunities for torture. The Revised Penal Code prescribes penalties for public officials who fail to deliver detainees to "proper judicial authorities" within stated periods after arrests. Under this provision, the time limit for various offenses ranges from six to eighteen hours depending upon the gravity of the offense.<sup>185/</sup> The President is authorized, however, to extend this period up to 30 days in national security cases.<sup>186/</sup> Various directives and internal military regulations issued over the last ten years have prescribed procedures for delivery of detainees within stated periods to an inquest authority to determine the detainee's physical condition and the voluntariness of any confessions.<sup>187/</sup> Another directive requires the immediate reporting of arrests to the Minister of National Defense.<sup>188/</sup> Additionally, the penal code provides that detainees must be allowed to confer with counsel at any time, and to be visited by relatives.

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<sup>185/</sup> Revised Penal Code, Art. 125.

<sup>186/</sup> Id.

<sup>187/</sup> See, e.g., Letter 621.

<sup>188/</sup> Department of National Defense, Departmental Order No. 740, Sec. 6.

These safeguards are rarely afforded in fact. It appears that most detainees are held illegally. In some cases they are held incommunicado in safehouses. In others there are delays in delivery of detainees to the proper judicial authority.<sup>189/</sup> These delays are often justified by "waivers of detention" signed by the detainee, in which he or she agrees to continued detention without reference to the judicial authority prescribed by law.<sup>190/</sup> The waivers, it is reported, are commonly obtained by coercive measures.

In still other cases authorities refuse to acknowledge to family and counsel that detainees are being held. In such cases lawyers and relatives have found that their only effective recourse is to file a petition for habeas corpus. Human rights lawyers told us that when such a petition is filed, military authorities typically produce the detainee and the torture often stops.<sup>191/</sup> Because the privilege of the writ of habeas corpus remains suspended in national security cases,<sup>192/</sup> further judicial relief is generally unavailable, with limited exceptions: In a recent habeas case involving allegations of torture, the Supreme Court ordered an investigation of the allegations,

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<sup>189/</sup> See Amnesty International Report 1982 at 232-33.

<sup>190/</sup> Id. at 233.

<sup>191/</sup> See also Department of State, Country Reports on Human Rights Practices for 1982 at 785.

<sup>192/</sup> See Chapter III, Section A.3., supra.



but after testimony had been taken and before findings were reached, the Court ruled that it was not the appropriate body to consider the evidence taken.<sup>193/</sup> In the same decision, the Court held that detainees are entitled to counsel during interrogation and that confessions made in violation of this right are inadmissible as evidence.<sup>194/</sup>

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

In this context, we view with grave concern recent indications that even the official policy regarding safeguards against torture, such as the prohibition against incommunicado detention, is being diluted. This past spring, in responding to a habeas petition filed on behalf of Karl Gaspar, who had been held incommunicado for two weeks, the government argued that "for security reasons, Gaspar's whereabouts were not immediately

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<sup>193/</sup> Morales v. Ponce Enrile, G.R. No. 61016 (Apr. 26, 1983) at 19. The Court cited presidential decrees providing that jurisdiction over complaints against military personnel resides in courts martial. In an earlier case, the Court had ordered the trial court to take evidence on the question of torture, and ordered medical examinations of others allegedly tortured. See State Department Country Reports on Human Rights Practices for 1982 at 785.

<sup>194/</sup> Morales v. Ponce Enrile, supra note 193, at 5.

disclosed."<sup>195/</sup> In the state hearing on Gaspar's case, the regional commander justified his refusal to allow relatives to visit Gaspar as "part of the military's operation."<sup>196/</sup>

More generally, we are disturbed by indications that official statements condemning torture are undermined by contradictory, quieter messages condoning such abuse. Consistent with national policy, Lt. Col. Enrique Lacanilao, the Judge Advocate General for Region XI, told us that torture is not tolerated and that instances of such abuse are prosecuted. Nevertheless, he proceeded to suggest that some degree of maltreatment may be the only way to get information from subversives about their illegal activities since Philippine authorities lack our sophisticated computer systems for obtaining information about past criminal activities. The attitude thus expressed by a regional official is effectively conveyed on a national level by the lack of visible disciplinary procedures against persons responsible for torture.<sup>197/</sup>

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<sup>195/</sup> Return of the Writ, in re Gaspar v. Tangatue, G.R. No. L-63581 (April 11, 1983) at 5.

<sup>196/</sup> 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 3.

<sup>197/</sup> See Section A.2., supra.



## 2. Initiatives by the Bar

While ostensible government efforts to curb military abuses have lacked force and effect, a recent initiative of the private bar provides an innovative response to this pervasive problem. On July 27, 1983, a Ten Points Statement of Undertaking was jointly executed by the PC/INP Regional Command XI, the Office of the State Prosecutor for Region XI, and the Eastern Mindanao Chapter of the Integrated Bar of the Philippines (IBP). Pursuant to this agreement, military and prosecutorial authorities agreed to abide by procedures designed to minimize military abuses and enhance the rights of persons arrested on national security grounds.

In many respects, the agreement simply affirms rights that already exist in theory but are widely violated in fact. For example, the undertaking provides that "[t]he constitutional rights of persons under custodial investigation shall be observed."

The agreement addresses a number of basic problems common to many accounts of military abuses. The problem of locating persons last seen in military custody is addressed by a provision that the "Recom Public Information Officer (PIO) shall be designated as the point of contact on the status of persons arrested and or detained by the military or police, where . . . any counsel or interested person can verify." Similarly, the

undertaking provides that the IBP can request from a designated detention officer a list of detainees.

To enhance the operation of disciplinary procedures, the undertaking provides that any person conducting certain types of intrusive operations "shall be in complete uniform with name cloth, to insure easy identification in case of complaint later on." Additionally, it is stated that the "military or police shall provide appropriate security to guarantee the safety of civilian[s] with complaints against military or police personnel."

Lawyers involved in this undertaking told us that, although they had not yet done any follow-up studies to examine its implementation, they were aware of several instances in which the undertaking had had a beneficial effect. It was their impression that military officers were more responsive to the argument that they should respect obligations their own regional commander had accepted than exhortations to obey laws of general application which are widely disregarded and rarely enforced.

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



### C. The Judiciary: Appearance and Performance

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

#### 1. History of Judicial Appointments

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

Immediately after he imposed martial law, President Marcos ordered all judges except those of the Supreme Court to submit their resignations.<sup>198/</sup> In the next three years at least 14 resignations reportedly were accepted.<sup>199/</sup> The other resignations remained with President Marcos until January 17, 1983, when all existing courts lower than the Supreme Court were abolished pursuant to the Judiciary Reorganization Act. Thus, for more than a decade embracing a period in Philippine history marked by

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<sup>198/</sup> Letter of Instructions No. 11 (Sept. 22, 1972).

<sup>199/</sup> AI Report, supra note 27, at 63.

a climate of fear, Filipino judges discharged their functions under the constant threat that one wrong move could bring down the Sword of Damocles, severing them from their offices.

On January 17, 1973, President Marcos proclaimed that the 1973 Constitution had been ratified. The controversial "transitory provisions" of that Constitution provided that incumbent members of the judiciary could continue in office until they reached the age of 70, unless sooner replaced by the appointment of their successors.<sup>200/</sup> This provision destroyed the protection afforded under the 1935 Constitution, which accorded judges tenure until they reached the age of 70, allowing their removal only for good cause.<sup>201/</sup>

Even members of the Supreme Court were subject to this provision. Shortly after President Marcos proclaimed the ratification of the 1973 Constitution, the Justices of the Supreme Court took a new oath of office, thereby removing themselves from the threat directed against members of the judiciary who were "incumbent" at the time the new Constitution came into force. To many, this oath-taking signalled the incumbent members' acquiescence in controversial measures that they would later be called upon to review.<sup>202/</sup>

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<sup>200/</sup> 1973 Constitution, Art. XVII, Secs. 9, 10.

<sup>201/</sup> 1935 Constitution, Art. VIII, Sec. 9.

<sup>202/</sup> See Memorandum of Amicus Curiae, Jose W. Diokno, De la Llana v. Alba, G.R. No. 57883 (Oct. 15, 1981) at 18.



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

President Marcos's power to accept the resignations of sitting judges ended only in January 1983, when he ordered the implementation of the Judiciary Reorganization Act (JRA), which had previously been enacted by the Interim Batasang Pambansa (National Assembly). That act provided for the immediate abolition of all existing courts save the Supreme Court, and the termination of all incumbent judges except those of the Supreme Court.<sup>203/</sup> The act provided for the replacement of the courts that were abolished by courts having different names but essentially the same functions as the courts they replaced.

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

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<sup>203/</sup> Judiciary Reorganization Act, Cabinet Bill No. 42, § 44.

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

2. Confluence of Judicial and Executive Branches

Adding to the widely held view that the judiciary lacks independence from the executive is a history of close interaction between the two branches of government. Illustrative of this history is the background to the JRA itself. On Aug. 11, 1980, President Marcos established a Presidential Committee on Judicial Reorganization, charged "to formulate a plan on the reorganization of the Judiciary . . . [which] shall be the basis for appropriate legislation."<sup>204/</sup> The President named to this committee the Chief Justice of the Supreme Court and the Minister of Justice as Co-Chairmen, and Associate Justices Aquino, Melencio-Herrera and Antonio (since retired) and the Deputy Minister of Justice as members.

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<sup>204/</sup> Executive Order 611 (Aug. 11, 1980).



In a decision rendered on March 12, 1982, the Supreme Court upheld the JRA against constitutional challenge.<sup>205/</sup> The opinion of the Court was written by the Chief Justice. He rejected a challenge to his qualification, as well as that of Justices Aquino and Melencio-Herrera, to sit on the case. In doing so, he reasoned that he and his colleagues had only proposed guidelines to the legislation, and had no hand in drafting the bill itself.<sup>206/</sup> The distinction drawn by the Chief Justice did little to dilute the appearance of partiality on the part of the three Justices who were called upon to consider the validity of an act they had helped shape.

The appointment on August 25, 1983 of a presidential commission chaired by the present Chief Justice of the Supreme Court to investigate the Aquino assassination provoked charges that the doctrine of separation of powers again had been violated.<sup>207/</sup>

Concerns raised by judicial participation in presidential bodies have been compounded by the widespread perception of

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<sup>205/</sup> De la Llana v. Alba, G.R. No. 57883 (Mar. 12, 1982). On the question whether the act violated the constitutional guarantee of judicial tenure, the Court reasoned that the severance of a judge from his or her office by abolishing the office itself does not violate that guarantee if the action is taken in good faith, although the removal of a justice from a continuing office might. *Id.* at 12-17.

<sup>206/</sup> *Id.* at 29.

<sup>207/</sup> See Section D, *infra*.

executive interference in judicial functions. We were repeatedly told by human rights lawyers that judges who handle national security cases receive periodic briefings by intelligence officers on the state of the armed insurgency. While it was not possible for us to verify such reports, we were struck by their frequency and basic consistency and believe they raise serious concerns that should be fully investigated.

### 3. Operation of Judiciary

The erosion of judicial independence has not been complete, but it has been perceptible. We learned of several judges who have clearly maintained their independence and spoke with some of them. Most notably, Justice Teehankee has consistently dissented from decisions upholding President Marcos' actions under martial law. To our knowledge, President Marcos has never attempted to remove him from office.<sup>208/</sup>

Nevertheless, the functioning of the judiciary as a whole has been profoundly weakened under President Marcos's rule. The cost has been manifested both in the quality of deci-

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<sup>208/</sup> It is widely asserted, however, that a 1980 amendment to the Constitution was designed to prevent Justice Teehankee from assuming the office of Chief Justice. The amendment, raising the retirement age of judges from 65 to 70, was approved on January 30, 1981 and proclaimed ratified on April 1, 1980. On July 25, 1980, Chief Justice Fernando, a Marcos loyalist, would have turned 65 and would have had to retire but for the amendment. Under the Philippine seniority system, Justice Teehankee would have succeeded Fernando as Chief Justice.



sions that are rendered and the withholding of action where judicial functioning is vital.

Illustrative of the first problem is the fact that the Supreme Court has, according to a current Justice, validated every legislative act of President Marcos it has considered since the imposition of martial law in 1972. This process of judicial acquiescence culminated in the recent decision of Garcia-Padilla v. Ponce Enrile,<sup>209/</sup> in which the Court abdicated its traditional role of reviewing the President's exercise of legislative power in the name of national security. In sweeping language, the Court reasoned that when the President takes action to respond to a "grave emergency," whose existence he alone can affirm, "the judiciary can, with becoming modesty, ill afford to assume the authority to check or reverse or supplant the presidential actions."<sup>210/</sup>

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<sup>209/</sup> G.R. No. 61388 (Apr. 20, 1983).

<sup>210/</sup> Id. at 15. For fuller discussion of this case, see Chapter III, Section A.5., supra. In a decision rendered six days after Garcia-Padilla, the Court appeared to retreat somewhat from the position of extreme deference it adopted in the Garcia-Padilla case. In Garcia-Padilla, the Court noted that its decision had the effect of "diluting, if not abandoning, the doctrine of the Lansang case," which permitted judicial review of a presidential decision to suspend habeas corpus. G.R. 61388 at 17. In Morales v. Ponce Enrile, G.R. No. 61016 (Apr. 26, 1983), the principle decision of the Court "reiterated" the doctrine of Lansang. Id. at 16. Philippine legal scholars have noted that this pronouncement did not carry the number of votes required to reverse the Garcia-Padilla holding. See, e.g., "National Security Versus Individual Rights," speech delivered by retired Justice of the Supreme Court Cecilia Munoz Palma before the Bishops-Businessmen's Conference (May 20, 1983).



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

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

While executive interference has visibly impaired the quality of justice rendered by Philippine courts, we learned of several decisions evidencing some degree of independence, such as



cases granting interim relief to habeas petitioners pending a final decision on the merits. Additionally, in recent weeks the Supreme Court has rendered two decisions showing a marked degree of independence from President Marcos and the military establishment. On October 25, 1983, the Court overturned a ban issued by the Manila city government against a demonstration protesting U.S. bases in the Philippines.<sup>211/</sup> In an uncharacteristically outspoken opinion, Justice Vicente Santos criticized the government for being "paranoid" and "blaming the Communists whenever anything negative happens."<sup>212/</sup> The Court also ordered the release from military custody of the mother and sister of the man the government claims shot Benigno S. Aquino, Jr.<sup>213/</sup> Despite these encouraging developments, there remains a substantial basis in fact for the widely held view that both the vitality and independence of the Philippine judiciary has been badly shaken in recent years.

D. The Aquino Murder: A Government on Trial

Growing cynicism about institutions designed to support the rule of law erupted into a national cry for justice when, on

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<sup>211/</sup> See "Court Allows Manila Protest," New York Times (Oct. 26, 1983).

<sup>212/</sup> Id.

<sup>213/</sup> See "Manila Frees Relatives of Accused Assassin," New York Times (Oct. 28, 1983).

August 25, 1983, President Marcos appointed a Commission to investigate the murder of Benigno S. Aquino, Jr. four days earlier. Chaired by Enrique Fernando, Chief Justice of the Supreme Court and a close friend of the Marcoses, and including four retired Justices of the Supreme Court who had been appointed by Marcos,<sup>214/</sup> the Commission lacked the appearance of unquestionable detachment so vital for its mandate.

Widespread expressions of doubt and derision in response to the presentation of such a group as a disinterested agency of inquiry ultimately led to the Chairman's resignation on September 30, followed by the resignation of the remaining members on October 10.<sup>215/</sup> In a letter to the President, the beleaguered Commission members said they were resigning because of widespread doubts about their impartiality. An entirely new commission, the letter said, would have better public standing if it included "members acceptable to all sectors of society."<sup>216/</sup>

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<sup>214/</sup> A member of the National Assembly was subsequently added to the Commission.

<sup>215/</sup> Shortly after the Commission's appointment, three challenges to the Chief Justice's participation on the panel were filed in the Supreme Court of the Philippines. On September 8, the Chief Justice inhibited himself from the Commission's deliberations pending resolution of these suits. On September 12, the remaining members of the Commission suspended their deliberations as well.

<sup>216/</sup> "Philippine Panel on Assassination Dissolves Itself," New York Times (Oct. 11, 1983) at A1. On the same day, Arturo Tolentino issued a statement declining his designation as Chairman of the Commission, and called for the formation of a new commission composed entirely of private citizens.  
(footnote continued)



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

The composition of the new panel appeared to satisfy the public's demand for an impartial board of inquiry, and its rigorous questioning of government witnesses in the initial stages of its inquiry has tended to support this perception. Doubts expressed about the new body have centered primarily on its ability to obtain information and make timely findings given its limited resources.

Only five staff members work full time on the investigation. In view of its limited staff resources, the new panel has had to rely largely upon information supplied by the government, having little ability to develop information on its own. With the government itself widely suspected of complicity in Aquino's murder, the Filipino public remains skeptical about the fact-finding board's ability to fulfill its mandate.

Additionally, the board's present timetable portends a lengthy delay before any findings are made. The board has issued a list of 180 witnesses it plans to summon. At the rate hearings have progressed to date, a conclusion of the board's inquiry is

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This new commission, Tolentino urged, would be "an independent body created by law" that would be "nongovernmental and nonpolitical." Id.

not expected until June of 1984, almost a year after Aquino's murder. The Filipino populace that has taken to the streets demanding "justice for Aquino" may regard such a delay as justice denied.

Finally, a large portion of the Filipino public questions the ability of any Aquino commission to function effectively in the climate of fear fostered by eleven years of military rule. We were privately told of several witnesses to the assassination who were afraid to come forward to testify before the first Commission. Although a few non-government witnesses have offered to testify before the new board, concerns about witness protection may hamper its efforts as well.

#### E. Independence of the Bar

The volume of human rights activities by Philippine lawyers bespeaks a bar that operates with considerable independence, even in sensitive national security cases. In recent years, various legal associations concerned with human rights have proliferated. Attorneys belonging to these groups have challenged government practices and military abuses.<sup>217/</sup>

The independence of the bar is not absolute, however, and in several cases there have been serious encroachments. On

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<sup>217/</sup> Several attorneys expressed the view that such suits are tolerated by the government since it has the judiciary under its control, and therefore has nothing to fear from aggressive legal challenges.



May 11, 1977, Hermon Lagman, an attorney belonging to the Free Legal Assistance Group (FLAG), an affiliation of lawyers who handle human rights cases, disappeared and has never been found. In September 1981, FLAG attorney Oscar Tonog of Catarman, Northern Samar was stabbed in his office.

Less drastic forms of seeming intimidation have included the issuance of PCOs against human rights lawyers. On October 22, 1982, lawyers attending the annual FLAG membership conference in Rizal, outside Manila, were told that a PCO had been issued against ten regional coordinators of FLAG, and that intelligence men were at the conference looking for those ten. The following day, the ten coordinators went to speak with Minister of National Defense Enrile, who verified that a PCO had been issued against ten lawyers, including two FLAG coordinators (Abelardo Aportadera, Jr. and Alan Flores). All were charged with "inciting to sedition/rebellion."

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

Following their meeting with Minister Enrile, the attorneys received assurances that the PCO would not be imple-

mented, but never received word that it had been lifted. One year later, a PDA was issued against Alan Flores.

Manila-based attorneys handling national security or labor cases suffer indirect pressure through loss of business.<sup>218/</sup> Since a substantial amount of legal practice in Manila involves government work, attorneys who are out of favor with the government likewise lose favor with clients seeking government contracts, licenses or other privileges. We were reliably told that Manila-based attorneys active in human rights and labor cases have suffered anywhere from a 50 to 70 percent decrease in business in recent years.

#### F. Trial of National Security Cases

For all their freedom, lawyers handling national security cases are unable to surmount the barriers to justice erected during eleven years of military rule in the Philippines. Though national security cases are no longer triable by military tribunals, as they were during martial law,<sup>219/</sup> the

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<sup>218/</sup> The concept of public interest lawyers familiar in the United States does not exist in the Philippines. All of the human rights attorneys we met were in private practice, and handled human rights cases on a voluntary basis. For this reason they are vulnerable to pressure that affects their practice.

<sup>219/</sup> Shortly after martial law was imposed, President Marcos transferred to the jurisdiction of military tribunals a wide range of national security offenses, pursuant to General Order No. 8. The proclamation lifting martial law also revoked this order. Proclamation No. 2045 (Jan. 17, (footnote continued)



military influence on the conduct of such cases remains pervasive.

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

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

The most common complaint of defense lawyers handling national security cases is that trials are protracted once they start, and long periods often elapse before they are even begun. Although a combination of factors appears to account for such delays, they appear to be partially due to deliberate efforts by the military to string out cases in which there is not enough evidence to support a conviction. We were told of

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1983). Several trials begun during martial law continue to be tried by military tribunals, but new cases are tried by civilian courts.

numerous cases in which hearings were scheduled but had to be adjourned several times because the military prosecutors or witnesses failed to show. As a result of these and other delays, few national security cases have been completed on the merits since martial law was imposed, though thousands have been arrested on national security grounds.



## CHAPTER VII

### THE PRESS: SOME FREEDOM, SOME PADLOCKS

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

Despite these positive manifestations, it is evident that the Philippine Republic suffers from severe restrictions upon press freedom. The country's major dailies, all owned by close friends and relatives of the Marcos family, rarely print news that reflects poorly on the government and consistently publish pro-Marcos accounts of events.<sup>220/</sup> In the past year, the columns of several writers for these papers, who had repeatedly submitted articles critical of the regime, were suspended.

While journals with smaller circulations are more outspoken, they publish at considerable risk. The closing down of two journals in the past year, the arrest of dozens of journal-

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<sup>220/</sup> See "Anti-Marcos Newspaper Raided and Shut Down by Philippine Soldiers," Los Angeles Times (Sept. 30, 1983) at 5.

ists, the summoning of others before a military intelligence board and the government's pursuit of costly libel suits against editors and writers make it clear that Philippine journalists today are free to publish whatever they want to only if they are willing to risk a heavy price for doing so.

A. Press Control Under Martial Law

Before martial law was imposed, the Philippine press was widely regarded as the freest in Asia. Often described as "free-wheeling and licentious,"<sup>221/</sup> the pre-martial law media vigorously challenged government policies and expressed a broad spectrum of political views.

This state of affairs came to an abrupt halt when President Marcos imposed martial law. The next day, September 22, 1972, the President ordered the closure of all print and broadcast media facilities pending further orders from him.<sup>222/</sup> This action was immediately followed by the mass arrest of journalists, in both the print and broadcast media, who were known to be critical of the government.<sup>223/</sup>

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<sup>221/</sup> See "The Philippine press: What are the boundaries of freedom?," Business Day (Feb. 25, 1983) at 12.

<sup>222/</sup> Letter of Instructions No. 1 (Sept. 22, 1972).

<sup>223/</sup> See Civil Liberties Union of the Philippines, The State of the Nation After Three Years of Martial Law (Sept. 21, 1975) at 53. These arrests were effected by the military pursuant to General Order No. 2-A, which accompanied LOI No. 1.



In the following months, some publications were allowed to resume operations,<sup>224/</sup> but they were reborn into a period of strict control. Days after martial law was declared, a system of press censorship had been set into motion.<sup>225/</sup> Five weeks later, a system of press licensing was established.<sup>226/</sup>

As martial law progressed, formal restraints were gradually eased and were replaced by relatively informal, but nonetheless effective, methods of press control. In May 1973, the

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<sup>224/</sup> On September 24, 1973, the Daily Express, a paper strongly identified with the Marcos regime, and its sister facility, TV-Channel 9, were allowed to resume operations. See Business Day, supra note 221, at 13. In the following months, several other dailies owned by persons closely associated with the Marcos family were allowed to resume operations. See id. These included the Times Journal, owned by Benjamin Romualdez, the First Lady's brother and Ambassador to the U.S., and the Bulletin Today (formerly the Manila Daily Bulletin), owned by Gen. Hans Menzi, a former aide to President Marcos.

<sup>225/</sup> The newly-established Department of Public Information (DPI) issued an order decreeing that

in all cases, materials for publication and broadcast shall be cleared by the Department . . . [including] all foreign dispatches and cables

and that

any correspondent filing his dispatch shall be held accountable for any alteration in any dispatch that has been [previously] cleared.

DPI Order No. 1 (Sept. 25, 1972).

<sup>226/</sup> Pursuant to Presidential Decree No. 36, no print or broadcast facility could operate without obtaining a certificate signed by the President.

first in a series of media councils comprising representatives of the press was designated to assume licensing responsibilities.<sup>227/</sup> Two years after martial law was imposed, President Marcos announced the lifting of formal censorship.<sup>228/</sup>

Periodic incidents such as the interrogation and seven-hour detention of columnist Julie Daza in July 1974 for articles she had written tended to transform the new system of "self-regulation" into one of self-censorship. Moreover, publishers had little need to guess about what type of press coverage would incur government disfavor. The Ministry of Information regularly directed "requests" to newspaper publishers to highlight the government's released stories and to embargo others, a practice former Information Secretary Francisco Tatad recently confirmed.<sup>229/</sup>

#### B. Press Control After Martial Law

When martial law was lifted in 1981, the Philippine press began to write with visibly greater freedom. Critical

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<sup>227/</sup> During the operation of the first such council, President Marcos retained the power of final approval over licensing applications. See Business Day, supra note 221, at 13. This led the Civil Liberties Union of the Philippines to charge that the "self-regulatory" body that replaced the governmental licensing authority was "the same dog with a different collar." Id. This body was later replaced by a self-licensing authority that had final approval power.

<sup>228/</sup> See Bulletin Today (September 21, 1974) at 13.

<sup>229/</sup> Id.



commentaries once again appeared in daily papers and were tolerated as long as they did not violate well-known taboos, such as the one against criticizing members of the Marcos family.

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

1. Padlocking

The most drastic restraint upon press freedom operating today is the power to close down and padlock papers charged by the executive with seditious or subversive utterances. Although press licensing -- and thus the power to revoke licenses -- ended shortly after martial law was lifted,<sup>230/</sup> a decree issued one year earlier and remaining in effect until July 1983 authorized the President to "[direct] the closure of subversive publications or other media of mass communications."<sup>231/</sup>

Additionally, newspapers could effectively be closed by the seizure of their presses as instruments used to commit one of many post-martial law crimes, such as writing words that "tend to

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<sup>230/</sup> Presidential Decree No. 1786 (Jan. 23, 1981).

<sup>231/</sup> Presidential Decree No. 1875 (July 21, 1983).

stir up the people against the lawful authorities,"<sup>232/</sup> or the catch-all crime of subversion.

The recently established Preventive Detention Action (PDA)<sup>233/</sup> consolidates the military's powers of arrest and seizure of property, making it possible to arrest journalists and padlock their presses under the authority of a single presidential order. Pursuant to Presidential Decree 1877, once issued, a PDA constitutes authority to arrest persons charged with national security offenses and "sequester all . . . equipment or property used . . . in the commission of the crime."<sup>234/</sup>

The threat to free expression posed by the power to padlock presses is by no means theoretical. On December 7, 1982, military authorities closed down the tabloid We Forum, seizing its press and other equipment. The We Forum raiding team relied on a search warrant to take possession of virtually all of the publication's equipment, ranging from its press to paper clips. The warrant alleged that such articles were used for "subversive activities."

The government also arrested We Forum editor-publisher Jose G. Burgos, Jr. and nine members of his staff pursuant to a

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<sup>232/</sup> Revised Penal Code, Art. 142, as amended by Presidential Decree No. 970.

<sup>233/</sup> See Chapter III, Section B, supra.

<sup>234/</sup> Presidential Decree 1877, Section 3 (July 21, 1983).



PCO. Based upon a series of articles sharply critical of President Marcos, the journalists were charged with subversion

for involvement in the conspiracy to overthrow the government through black propaganda, agitation and advocacy of violence.

Before this raid the continued publication of We Forum had frequently been cited by the government as evidence that the press was free to criticize government policies.<sup>235/</sup>

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

Another padlocking incident occurred during the last days of our stay. On September 29, 1983, ten agents of the Criminal Investigation Service raided the offices of the Philippine Times, a weekly paper that had openly speculated that the Marcos government was behind Aquino's assassination.<sup>236/</sup> The raiding team was armed with a search warrant authorizing them to seize everything from manuscripts to typewriters, duplicating machines, video machines and other equipment used as "instruments" of the crime of inciting to sedition. Several days later,

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<sup>235/</sup> See Business Day, supra note 221, at 15.

<sup>236/</sup> See "Anti-Marcos Newspaper Raided and Shut Down by Philippine Soldiers," Los Angeles Times (Sept. 30, 1983) at 5.

editor-publisher Rommel Corro, who could not be found on the day of the raid, was arrested pursuant to a PDA. He remains detained today.

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

## 2. Capital Offenses

In a measure widely interpreted as an effort to intimidate an increasingly outspoken press, President Marcos recently enacted a decree authorizing the death penalty for certain crimes involving journalists. Presidential Decree No. 1834<sup>237/</sup> authorizes the penalties of life imprisonment and death for

any person, who having control and management of printing, broadcast or television facilities, or any form of mass communication shall use or allow the use of such facilities for the purpose of mounting sustained propaganda assaults

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<sup>237/</sup> This decree is dated Jan. 16, 1981 but did not come to light until May 10, 1983. At that time, President Marcos claimed he would not enforce the decree until its publication in the Official Gazette, which took place on September 29, 1983.



against the Government or any of its duly constituted authorities which tend to destabilize the Government or undermine or destroy the faith and loyalty of the citizenry thereto . . . .<sup>238/</sup>

The same penalties are authorized for such crimes as publishing "scurrilous libels against the Government of the Philippines . . . ."<sup>239/</sup>

The death penalty is in fact rarely applied in the Philippines<sup>240/</sup> but the threat of that sanction for press activities sends an ominous message that no member of the media can safely ignore.

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

Less drastic restrictions have also tended to limit the free expression and dissemination of information in the Philippines. The major newspapers based in Manila are all owned by persons closely identified with the Marcos administration.<sup>241/</sup>

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<sup>238/</sup> Presidential Decree No. 1834 (Jan. 16, 1981), Section 7.

<sup>239/</sup> Id., Section 6.

<sup>240/</sup> Only one person has been executed in the Philippines since the imposition of martial law. See 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.

<sup>241/</sup> See "Philippine Business Leaders Assail Media for Aquino Coverage," International Herald Tribune (Sept. 28, 1983) at 2.

The same is essentially true of television and radio stations. It is widely asserted that this leads to severely slanted coverage as well as the omission of opposition views or news casting the Administration in an unfavorable light. Journalists with established press organs told us that such coverage typically reflects direct "requests" from the governmental Office of Media Affairs regarding treatment of newsworthy events.

Charges of slanted reporting by the mass dailies mounted sharply in the wake of the Aquino assassination. Although hundreds of thousands of people marched through Manila for the funeral, the event received scant coverage in the major dailies. Disturbed by this as well as the three dailies' general adherence to the government's version of the assassination itself, Philippine business leaders have strongly criticized the country's media in recent weeks. A boycott of the three major dailies instituted during our visit reportedly gained wide support.<sup>242/</sup>

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

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<sup>242/</sup> See id.



National Intelligence Board (NIB) "to shed light on confidential matters." Journalists who were asked to appear were warned:

Your failure to appear on the specified date and place shall be considered as a waiver on your part and this Committee will be constrained to proceed in accordance with the law.<sup>243/</sup>

Comprising more than a dozen military officials, the special committee was created to investigate linkages between "subversives" and the press.<sup>244/</sup> Those who appeared before the special committee were asked such questions as "Why do you write to agitate the minds and passions of your readers? Don't you think that you are being unwittingly used by those who try to subvert the government? Do you realize that some of your writings are only a hairline away from subversive writing?"<sup>245/</sup>

On January 20, 1983, 29 journalists, including several who had been summoned before the special committee, petitioned the Supreme Court to enjoin the functioning of the committee.<sup>246/</sup> The petitioners argued that the interrogations abridged the con-

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<sup>243/</sup> Business Day, supra note 221, at 15.

<sup>244/</sup> See A. Magno, "The Pen and the Brass: A Very Personal Annotation," WHO Magazine (Mar. 16, 1983).

<sup>245/</sup> Id.

<sup>246/</sup> Petition, Babst et al. v. National Intelligence Board, G.R. No. L-62992 (Jan. 20, 1983).

stitutional guarantee of freedom of the press which was presumed to have been fully restored with the lifting of martial law.

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



## CHAPTER VIII

### THE ROLE OF THE UNITED STATES

For three years, the Reagan Administration has placed security interests before humanitarian concerns in the Philippines, believing that vigorous pursuit of the latter would jeopardize the former. Public criticism of the Philippine Government's human rights record has been rejected as a policy option lest it disrupt our relations with a leader seen to share our long-term security interests in Southeast Asia. On several occasions, such concerns have led the Reagan Administration to publicly defend President Marcos's human rights record.

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

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

Those interests center on two U.S. bases in the Philippines: Clark Air Force Base and the Subic Naval Complex.

The two represent the largest U.S. military installations outside the United States.<sup>247/</sup> Their strategic location near the Soviet Union and amid friendly nations in the Western Pacific has long been a vital factor in U.S. policy decisions concerning the Philippines.

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

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<sup>247/</sup> Clark Air Force Base serves as headquarters for the 13th Air Force and houses major air force units, including a tactical fighter wing and a tactical airlift wing. Virtually every element of the modern U.S. naval arsenal is represented at the extensive Subic Bay Complex.



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

To ensure continued U.S. access to the Clark and Subic Bay installations the Reagan Administration has consciously avoided public criticism of Philippine military abuses, choosing instead to "deal with human rights issues and problems through a policy of quiet dialogue with the government."<sup>248/</sup> The Administration's concern to avoid any public gesture that could be interpreted as criticism of Marcos's human rights record was recently demonstrated by the response of Assistant Secretary of State for Human Rights and Humanitarian Affairs Elliott Abrams to questions posed during congressional hearings on human rights in the Philippines. Asked about the possibility of President Reagan cancelling his scheduled trip to the Philippines in light of turbulence triggered by Aquino's assassination, Abrams replied:

I think that a cancellation at this time of a visit to the Philippines would really constitute an intervention in partisan politics in the Philippines against President Marcos in the eyes of many . . . . I think that a cancellation would be an unwarranted act of intervention . . . .<sup>249/</sup>

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<sup>248/</sup> Hearings before the Subcommittee on East Asia and the Pacific of the House Foreign Affairs Committee (June 16, 1983), statement of Paul D. Wolfowitz, Assistant Secretary of State for East Asian and Pacific Affairs, at 6.

<sup>249/</sup> Hearings before the Subcommittee on Human Rights and International Organizations of the House Foreign Affairs Committee (Sept. 22, 1983).

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

And recently, when the Philippine nation took to the streets demanding accountability for the assassination of Aquino and the pervasive brutalities his death has come to symbolize, Vice President Bush rushed to President Marcos's defense. Admitting that President Marcos's human rights record is poor, Bush warned against criticism: "We pointed out the imperfections of the Shah [of Iran] and all of that, and today we have something worse."<sup>250/</sup> He added that there is "concern out there that the United States not cut away from a person who, imperfect though he may be on human rights, has worked with us . . . ."<sup>251/</sup>

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<sup>250/</sup> "Criticism of Marcos is unfair, Bush says," Chicago Tribune (Oct. 7, 1983).

<sup>251/</sup> Id.



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

Persistent calls for Marcos's resignation have increasingly been joined by demands for an end to the U.S. presence in the Philippines. An already popular opposition group formed in the wake of recent upheavals, led by former Senator Lorenzo Tanada, includes in its platform a call for the total withdrawal of U.S. bases from the Philippines.

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

C. Recommendations

1. Public Gestures

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

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

Elections for the Philippine National Assembly scheduled to take place in May 1984 present an important opportunity for



the Reagan Administration to support a return to genuine democracy in the Philippines. Electoral fraud and control of the election process by the ruling party during past elections have created a widespread skepticism about the electoral process, even among moderate opposition forces. Opposition leaders boycotted the presidential election of 1981 and have indicated they will not participate in the 1984 elections to the National Assembly unless meaningful electoral reforms are undertaken.

In this context, the Reagan Administration should publicly support reforms ensuring the appointment to the Commission on Elections of persons enjoying a popular reputation for fairness and impartiality and meaningful participation by opposition candidates in the election process, including full access to the media. Such expressions would be particularly appropriate coming from an Administration that has made the international promotion of democracy a special component of its foreign policy program.

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

Strengthening its present involvement in human rights, the Embassy should appoint a human rights officer whose principal



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

## 2. Congressional Action

In view of rapidly escalating reports that the Philippine Armed Forces kill, abduct, torture and commit other acts of terror against the Filipino populace, Congress should not approve the Administration's request for additional military aid to the Philippines unless it takes affirmative and concrete steps to ensure that such aid is not used to support military abuses. To this end, Congress should require the Administration to prepare periodic reports on the human rights situation in the Philippines which Congress can consider in deciding whether to authorize continued military aid. Congress should enact legislation requiring the Administration to submit such a report every six months. The legislation should specifically authorize Congress to require the Administration to supplement its report if Congress finds it inadequate.

Based upon the findings contained in these reports, Congress should decide whether to authorize the requested aid



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

Additionally, Congress should not authorize any additional direct military aid to the Government of the Philippines until adequate restrictions are imposed to ensure compliance with Section 660 of the Foreign Assistance Act. Since 1974, that provision has prohibited "the use of funds available under the act to provide training or advice or provide any financial support for police, prison or law enforcement forces of any foreign government."<sup>252/</sup>

As presently constituted the Philippines Constabulary (PC) is a police force that is barred from receiving U.S. aid pursuant to this provision. Despite its integration into the command structure of the armed forces, the PC has retained responsibility for "general police duties".<sup>253/</sup> In 1974 when President Marcos created the Integrated National Police Force (INP), embracing the police forces, jail custodial guards and fire departments in all 72 provinces of the Philippines, he

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<sup>252/</sup> 22 U.S.C. §2420, added by §30(a) of the Foreign Assistance Act of 1974.

<sup>253/</sup> Exec. Order 308 (Mar. 30, 1950).

placed all of these agencies under the operational and administrative control and supervision of the Philippines Constabulary.

Since 1974 funds under the control of the Philippines Constabulary have been used to train police and to procure supplies for the Integrated National Police. The PC is responsible, for example, for procuring "within its resources, additional firearms, ammunition, office equipment and supplies, as well as investigative equipment, vehicles and communications equipment for the police."<sup>254/</sup>

Although the PC is thus prohibited under Section 660 from receiving U.S. aid, it has been and is now the beneficiary of direct military aid to the Philippines. As part of the command structure of the Armed Forces of the Philippines, the PC has benefited from \$50 million in direct military aid to the Philippines authorized under the 1978 extension of the MBA. Representatives of the Reagan Administration have sought to justify this by making distinctions that have no basis in reality. When pressed by Congress about the PC's receipt of U.S. military aid in 1981, a State Department representative asserted that to the extent the PC receives U.S. military aid, it is

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<sup>254/</sup> Philippines Constabulary: Seventy-Five Years of Service, J. Rod Farasenas (1975) at 36.



"considered part of the armed forces."<sup>255/</sup> On this basis, the State Department maintained that the U.S. provides "no security assistance to the integrated national police." In fact, the PC operates simultaneously as a unit of the armed forces and the head of the INP.

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

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

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<sup>255/</sup> Hearing before the Subcommittees on Asian and Pacific Affairs and on Human Rights and International Organizations of the House Committee on Foreign Affairs, 97th Cong., 1st Sess. (Nov. 18, 1981), testimony of Daniel A. O'Donohue, Acting Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, Department of State, at 9.

PUBLICATIONS OF THE LAWYERS COMMITTEE  
FOR INTERNATIONAL HUMAN RIGHTS

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Nicaragua: Comments on the Nicaraguan Government's Report to the U.N. Human Rights Committee; March 1983, 34 pp, \$3.00.

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Critique: Review of the Department of State's Country Reports on Human Rights Practices for 1982 (with Helsinki Watch and Americas Watch); February 1983, 115 pp, \$5.00.

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Update: Justice in El Salvador, A Case Study (A report on the investigation into the killing of four U.S. churchwomen in El Salvador); February 1983, 54 pp, \$5.00.

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Refugees and Asylum:

Immigration and Naturalization Service v. Stevic (amicus brief submitted to the U.S. Supreme Court); August 1983, 48 pp, \$4.00.

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The Substantive and Procedural Law of Political Asylum in the United States: Update; November 1983, 19 pp, \$2.00.

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Training Program on the Representation of Haitian Asylum Applicants; October 1982, 168 pp, \$5.00.

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