

THE PHILIPPINES: A HUMAN RIGHTS SCRAPBOOK

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PREFACE

In the past two years, the Minnesota Lawyers Committee has sent three delegations of lawyers to investigate human rights issues in the Philippines. In February 1987, attorneys Nancy Arnison and Ron Rosenbaum visited the Philippines as part of a study tour led by the Augsburg College Center for Global Education. In July 1988, Minnesota Lawyers Committee Board member Wood R. Foster, Jr. attended an International Lawyers Forum in support of human rights lawyers in the Philippines who had been subjected to grave and continuing human rights violations because of their representation of controversial clients. In March and April 1989, a delegation of 15 Minnesotans spent two weeks in the Philippines on a study tour, again organized by the Augsburg Center for Global Education.

These delegations have gathered substantial information about the complex political and human rights situation in the Philippines since the "People's Power" revolution brought Corazon Aquino to power in February 1986. Contacts with Filipino lawyers, doctors, church workers, mayors, congressmen, and government officials have allowed various members of these delegations a firsthand view of ongoing violations of human rights during the Aquino presidency.

This document is a collection of personal reflections and human rights findings by members of the three Minnesota Lawyers Committee delegations to have visited the Philippines. It does not pretend to be a comprehensive report on the human rights situation in the Philippines but, instead, to present the reader with snapshots of personal experiences that allowed the individual writers to draw their own personal conclusions about the current human rights situation and the prospect the improvement under the current government. Because of the complexity of the political and human rights situation in the Philippines, you will find a significant variety of opinions expressed in the following articles. These opinions belong to the individual authors and do not necessarily represent the position of the Minnesota Lawyers International Human Rights Committee.

The Philippines is a study in contrasts: the richness of the land in contrast to the poverty of its people; the kindness and beauty of the Filipino people in contrast to the brutality of human rights violations committed against them. This collection of writings is put together in the hope that more people will become aware of the human rights problems in the Philippines and commit themselves to their solution.

June 1, 1989

MINNESOTA LAWYERS INTERNATIONAL
HUMAN RIGHTS COMMITTEE

FOREWORD

by Hon. Donald M. Fraser

A study mission from the Minnesota Lawyers International Human Rights Committee visited the Philippines from March 28 to April 8, 1989. The delegation of 15 spent much of their time in Manila but, for three days, they divided into three groups and visited communities in the provinces of Negros, Mindanao, and Cebu.

The trip was organized by the Augsburg College Center for Global Education. Interviews were conducted with human rights groups, mayors, congressmen, religious leaders, civilian self-defense organizations, victims of human rights violations, and other leading government officials including President Aquino.

I was left with two overall conclusions. The first is that, after 14 years under martial law, the Philippine people have regained basic political rights including a new constitution which strongly emphasizes the protection of human rights, and a functioning, open, multi-party political system, and a vigorous, free press. The second is that rights involving the integrity of the person are being systematically violated by forces operating under the authority of the government. Violations include arbitrary killings, disappearances, and torture. The frequency of serious violations has been increasing as reported by Philippine and international human rights organizations and by the U.S. State Department.

This apparent anomaly of a freely elected government and an increasing number of human rights violations arises from several circumstances:

- (a) The military (and the police which are controlled by the military) operated for 14 years without constraint under martial law and at the end was no longer the professional force it was at the beginning, and continues to frequently operate outside the policies and rules promulgated from the top.
- (b) The judicial system remains anachronistically slow and is often unable to provide timely relief.
- (c) The communist insurgency continues to challenge the government in about 20% of the provinces.
- (d) The effort to replace the Civilian Home Defense Forces, now outlawed under the Constitution because of their role in violating human rights, has not succeeded thus far in effectively curbing the serious rights violations.
- (e) Serious inequities in the social and economic system and widespread poverty along with human rights violations continue to energize "cause oriented" organizations which are too easily and too frequently labeled as communist or communist-leaning, making their members vulnerable to over-zealous military and paramilitary attacks. Of special concern were the killings of human rights lawyers and the lawyers' own perception that they are at risk of death or serious injury.

- (f) The constitutionality mandated Commission on Human Rights appears burdened with bureaucratic inertia and has not been able to effectively police or curb serious rights violations.
- (g) Corruption continues to impede the work of institutions important to the maintenance of the rights of the people.

I believe that the outlook for an improved observance of human rights depends heavily upon the will of the top leadership of the Philippines. That leadership appears committed to curbing violations. That is the fundamental difference between this government and the Marcos government. Beginning with President Aquino and including the leadership of the Justice Department, the Commission on Human Rights, the Defense Department, and the Supreme Court, I sensed a desire to see the protections of the Constitution extended to all citizens of the Philippines and a belief that this would help to curb the insurgency.

I found several encouraging signs. During our visit, Congress was actively considering measures to withdraw the police from military control and to abolish or amend the decree which makes the military sole judge of all violations committed by military personnel. The Supreme Court has ordered courts in several areas to speed up court proceedings.

These changes appear to be essential but not sufficient steps to reverse the trend of increasing violations of human rights. Serious institutional and bureaucratic obstacles combined with pressure to take shortcuts, such as the use of torture, in dealing with the threat of insurgency will make further progress difficult. It is here that the will of the top leadership must be translated into more effective action.

The Aquino administration has been in power for three years. That is a relatively short time given the magnitude of the problems faced by this administration. But forceful action is needed now to bring the growing human rights problem under control.

The new Civilian Armed Forces Geographic Units (CAFGU) which are designed to take over from the now-banned Civilian Home Defense Forces (CHDF) are of special concern. The recruitment and training of these forces appear to be seriously deficient. Control of the CAFGUs continues to pose a major challenge to the military under whose authority they operate. The concept of a home defense force to supplement regular military personnel undoubtedly has merit, but wholly irresponsible actions including arbitrary killings by some of these forces appear to generate widespread fear among civilians caught between the insurgents and these units.

Finally, a word must be said about the communist insurgents operating as the New People's Army (NPA). Although the communist efforts began years before Marcos used then as an excuse to impose martial law, once martial law was imposed the use of force to effect a change could be defended since peaceful political change was not permitted. But continued military action by the NPA to overthrow a government which springs from the free exercise of the ballot by the people of the Philippines is totally unjustified.

The political objectives of the communists, including closing the U.S. military bases, are shared by a number of Philippine citizens. There are structural problems in the Philippine society which will not be easily solved. Adequate land reform, improved labor conditions, and more equity including improved housing and social services are needed. But every democratic nation in the world has faced these challenges, and with active political organization and effective campaigning it is possible to make change through peaceful political processes. To use force to accomplish these objectives constitutes a violation of the fundamental rights of the people.

I believe there is almost no prospect that within the next several decades the NPA will succeed in overthrowing the government. But it can succeed in slowing development aimed at overcoming the widespread poverty so evident in the Philippines. With enough effort it might even succeed in destroying democracy in the Philippines by once again eliciting a new authoritarian regime from the right. In the meantime the killing and coercion which are part of the communists' strategy are indefensible in the face of a democratically elected regime which is seeking to improve the lot of the Philippine people. The efforts of the NPA will serve only to make more difficult the restoration of the full observance of human rights in the Philippines.

These are my observations about human rights in the Philippines today. Following are further observations by members of the study mission.

HUMAN RIGHTS VS. THE APPLICATION OF JUSTICE

by Kenneth E. Tilsen

The chairman of the Free Legal Assistance Group of the Philippines (FLAG), the leading organization of human rights lawyers in the Philippines, was invited to speak at a seminar for military officers. The topic they proposed for him was "Human Rights vs. the Application of Justice."

At first blush, the suggested subject appeared shocking; on reflection, I now believe it was entirely appropriate from the military point of view. Furthermore, it embodied within it a central conflict and contradiction which I observed in our study tour of the Philippines.

Three years after the overthrow of the Marcos government and the installation of a new government under President Aquino, the Philippines remains a deeply divided society. Our trip explored and revealed to me the extent of that division by focusing on the conflicting attitudes of the human rights organizations and the organs of government.

From the government point of view, the essential problem remains the elimination of the armed insurgency.

The army's program to eliminate the insurgency is described as a "three-tiered defense system." It consists essentially of (1) using mobile military forces to clear areas of insurgency; (2) a "holding phase" to neutralize the political machinery of the resistance involving the use of intelligence networks, the local media, etc.; and (3) a consolidation phase involving, like phase 2, armed civilian volunteer organizations designed to "re-establish democracy."

The army and the government view this program as the application of justice. Some supporters of this program describe it as drying up the sea in which the revolutionary fish swim.

While "hamletting" and bombing of villages and areas suspected of being insurgency strongholds do not appear to be part of this program at the present time, other aspects of the program seem much like the counterinsurgency measures used or developed by the United States in Vietnam and Central America. In urban areas, entire communities have been "zoned" or confined, while house-to-house searches are undertaken for urban guerillas. We were told that hooded informers accompanied the forces and pointed out the enemy, who often were killed or kidnapped on the spot. In rural areas, attacks by army units and armed civilian groups have created thousands of internal refugees.

The army described in detail its program for careful selection and training of members of the armed civilian units which it considers essential to its program. Victims of torture, assaults, and kidnapping, their families, and human rights organizations claim otherwise. They describe the program as giving badges and automatic weapons to goons and hoods -- a license to kill and maim at will. Secretary of Defense General Fidel Ramos described to us the care with which the Civilian Armed Forces Geographical Units (CAFGU) program has been undertaken and the requirement that members of the CAFGU wear their uniforms and name insignia at all times. The day after our interview with Ramos, the newspapers described the killing and wounding of

persons at roadblocks in Cebu City. A priest and a counselor were killed by two drunken military men at one roadblock and, at another roadblock, a young woman was killed and five wounded when the car in which they were riding was strafed by security forces in civilian clothes. This was particularly chilling. Just the evening before, we were listening to the families of human rights victims and their attorneys on the second floor of a Catholic church in Cebu while thousands gathered for a "solidarity rally" in the hall below. As we left, our host walked us to the street and expressed concern that it was late and the roadblocks would now be up. She wondered how she would get home but rejected our offer to accompany her.

Nowhere were the different points of view more clearly defined than in the fight for representation of the workers at the Atlas Mine in Toledo City, about two hours' drive from Cebu City. The union (PAMA), alleged by many Filipinos to be communist-led, was engaged in a representation election among the 12,500 miners who work this mammoth copper, silver and gold mine. The mine, owned by various multinationals, once represented 28% of the export income of the Philippines. The head of the PAMA local described the killing of its union leaders, strafing of their offices, and other attacks by CAFGU in the weeks leading up to the election. Nine members of the competing union, apparently its executive committee, were members of CAFGU. A congressional committee took testimony and suggested that these nine persons be relieved by the army of their active duty in CAFGU until after the election. The general in charge of the army disagreed and refused the request, stating, "As far as they (CAFGU) are concerned, there is no reason to disqualify them from the organization since they are effective in our counterinsurgency."

But the dispute over the extent of human rights violations and the proper place to lay responsibility is not the core problem. Sr. Mariani Dimaranan, head of the leading human rights monitoring group, Task Force Detainees; Mercy Countrevas, Deputy Secretary General of the Philippine Alliance of Human Rights Advocates; Congressman Bonifacio Gillego; and many human rights attorneys suggest a more fundamental problem: They believe the government's program is destined to fail because it can maintain itself only by escalating human rights abuses and other repressive measures. To support their argument, they presented the following facts: Up to 70% of the people in the Philippines live below the poverty line. This poverty in a nation of rich natural resources has its roots in the status of the Philippines first as a colony of Spain and later as a colony of the United States. It has produced a mass landless peasantry. It has given rise to a resistance movement in various forms dating back to at least the Japanese occupation during World War II.

From 1972 to the fall of Marcos in February 1986, the status quo was maintained by a military dictatorship. The birth of Corazon Aquino's new government gave rise to widespread expectations of fundamental change. Human rights advocates like Sr. Dimaranan were appointed to the newly-formed Presidential Commission on Human Rights. Hundreds of attorneys and others from various human rights organizations entered the new government at various levels. The government entered into negotiation with the insurgents. Untold numbers of insurgents returned to the community from exile, fighting in the provinces or the underground.

Now, three years later, Sr. Dimaranan is out of the government. She and her Catholic Church-based organization are called communists by Cardinal Sin. Few of the human rights attorneys or other representatives of peasants and workers remain in government. Negotiations with the insurgency have broken off. Thousands have been arrested for political reasons, mostly through mass arrests affected during saturation drives in slum areas, breaking up of protest actions, and military operations in rural communities.

There is talk, but little evidence, of real land reform. Indeed, Congressman Gillego, who spoke to us, wrote the original proposed land reform law. He now argues that the proposal has

been so gutted that it is a repressive measure adversed to the interest of the farmers and peasants.

The new Philippine Constitution, President Aquino and, indeed, General Ramos proclaim their commitment to human rights and the need to address poverty, land reform, and the resultant widespread social ills of the people. Sincerity issues aside, there is little evidence or perceived hope for progress. Forty-four percent of the national budget is required to pay the interest on the nation's debt. While there is some disagreement, most reports available to us describe the Philippine economy as a basket case with pervasive graft and inefficiency.

In this setting, human rights organizations see themselves as part of a broad-based movement for social change and the government's and army's efforts to wipe out the insurgency as aimed at preserving the status quo.

The human rights organizations view the government's program as a pacification program. They describe it as simply a new form of the United States "Phoenix" program -- a new progression of death squads to assassinate the leaders of the people who work for social change. They point to the murder of six well-known human rights attorneys in one and one-half years - - the most recent killing on March 21st of this year, a few days before our arrival. Others describe the government program as "low intensity conflict." They argue that the infrastructure which the program is designed to destroy is not the infrastructure of the armed insurgency but rather that of citizens working to promote social change. From this point of view, the army's most successful pacification programs are those which are the most destructive of human rights.

There is little doubt that Secretary of Defense General Ramos understands this problem. He described human rights as the army's "Achilles heel." If he meant to indicate that the army's program and the program of the human rights organizations are inevitably in conflict with each other, then I believe he is correct.

One final question: Is there reason to be hopeful? Can the Aquino government make the necessary changes in the direction of social justice? Or is the country inevitably moving toward greater repression?

I have some lasting impressions. The newspaper cartoon asking a child of five: "What do you want?" The answer: "To be alive." The life expectancy at birth is less than five years. Our visit to "Smoky Mountain," where tens of thousands live directly on a massive dump and hundreds of thousands live in adjoining makeshift shacks. Indescribable. Our visit to Kidapawan, where a 16-year-old described the murder of her 6-year-old sister in her arms to a relatively indifferent local director of the Commission on Human Rights.

At a luncheon, I was asked by a table neighbor my impressions of the Philippines. I made an innocuous statement concerning the high expectations of the people and their apparent disappointment. Response: "What people?" Answer: "Those who helped bring down Marcos." Response: "The people had nothing to do with it. We deposed Marcos. The people have no expectations."

I am not hopeful.

U.S. MILITARY BASES IN THE PHILIPPINES: A PERSPECTIVE

by James V. Roth

The United States operates military facilities in the Philippines at Clark Air Base and Subic Naval Base. Although perhaps not a human rights issue in the narrow sense, the relationship between the United States and the Philippines regarding these military bases is an important concern to the people in the Philippines. The issue of the bases was raised again and again as we talked with a great variety of people during our recent trip to the Philippines.

Both Clark and Subic Bases were established close to the beginning of this century, during the periods of the Philippine-Spanish War and the Philippine-American War. The original agreement provided the United States with a 99-year lease. The agreement has been renegotiated several times. In 1979, the bases reverted to Philippine "control", purportedly confirming Philippine ownership and sovereignty. The 1979 agreement also provided for a review of the Military Bases Agreement every five years. The current extension of the agreement will expire in 1991. Unless there is a new agreement, it is contemplated that the existing arrangement may be terminated by either side on one year's notice. The United States government and the Philippine government are currently in the process of negotiating a new agreement.

There is some strong opposition among certain groups of people to renewing the agreement. One of the primary arguments against the bases is that the agreement was never truly an arms-length negotiation between two sovereign governments. In fact, the Philippines was a United States possession following the Philippine-United States War when the bases were initially established. Many argue that the military bases now constitute an infringement on the national sovereignty of the Philippine government. Other arguments against renewing the bases agreement are that the land would be more economically useful for other purposes, that the presence of the military bases increases the likelihood of a nuclear attack or nuclear accident, and that numerous social problems such as prostitution and drug abuse are caused by the presence of the bases. Our brief visit to Olonogapo, the site of the Subic Naval Base, confirmed that the base has a negative social impact on the local people with serious drug and prostitution problems tied to its presence.

The arguments in favor of continuation are that the location of the bases continues to be strategically important for defense purposes, that the military bases are a significant benefit to the local economies and a source of jobs, and that the United States has paid and will continue to pay a substantial amount of money for their use (an average of \$180 million per year over the period 1985-89). Although the U.S. position is that the U.S. aid is not tied to the military bases, it is highly unlikely that the current level of aid would be continued in the future without the existence of the military bases.

We encountered strong feelings on the part of most people we talked to regarding these issues, including peasants, people living and working near the bases, human rights groups, local government officials, national government officials, and even vigilante group leaders. Of those I spoke to, most were against continuing the military bases. The issues are further complicated by the change in leadership from Marcos to Aquino and the ongoing warfare between the military and the insurgents. Accordingly, despite the fact that it is not a human rights issue

in the narrow sense, it is an issue which must be resolved as part of an overall effort to re-establish the Philippine government as a democratic and sovereign government.

In the final analysis, the issue of the bases must be decided by the elected officials of the Philippine government in response to political pressures from their constituency. Only in this manner will the Philippine people feel that their status as a sovereign nation has been acknowledged and respected. President Aquino herself seems uncertain over the issue. While campaigning, she spoke against continuing the military bases. More recently, she has been neutral on the issue.

Unfortunately, the years of martial law under President Marcos enormously eroded the respect of many Philippine people for the United States government. Despite systematic and widespread human rights abuses by the Marcos government, the United States government continued to pay millions of dollars in foreign aid to the Philippines. Many Philippine people blame the United States government for propping up a corrupt dictatorship. Persuasive evidence exists that Marcos and his political friends, family, and cronies diverted enormous sums of money from the United States and a variety of other sources to their own benefit.

Because of this unfortunate background, the Philippine people continue to look with skepticism and, in some cases, anger and hostility, toward the United States' role in the Philippines. The future of U.S. military bases in the Philippines, and of U.S.-Philippine relations, largely depends on the ability of government officials -- both U.S. and Philippine -- to take a strong stance against the human abuses and corruption which have plagued the U.S.-Philippine relationship in recent years, and to nurture democracy and economic development. While I believe the weight of the evidence, from a Philippine perspective, supports discontinuing the U.S. military bases, I firmly support the idea that the issue be decided by the Philippine people and their government through their own democratic political process.

EXCERPTS FROM A REPORT ON THE INTERNATIONAL LAWYERS FORUM

by Wood R. Foster, Jr.

I. Introduction

In July 1988, the Minnesota Lawyers International Human Rights Committee was urgently requested to send a delegate to a hastily planned International Lawyers Forum in Manila, Republic of the Philippines, to focus domestic and international attention on human rights violations against Filipino human rights lawyers in recent months. Minneapolis attorney Wood R. Foster, Jr., a member of the Minnesota Lawyers Committee's Board of Directors, was chosen to represent the Committee in the Philippines.

The precipitating events leading to the call for the International Lawyers Forum were the assassinations of three human rights lawyers¹ in a span of 12 days in late June and early July. In one of the cases, an assassin had turned himself in and had admitted receiving 500 pesos from a Major in the Army Security Forces to murder Cebu City attorney Alfonso Surigao. In the other cases, no arrests had been made. Overall, five human rights attorneys had lost their lives at the hands of assassins during the eight months preceding the July 7 Forum, a death toll which human rights organizations quickly pointed out exceeded the total number of comparable deaths during some 20 years of Marcos administrations.

The conference was convened by several Filipino lawyers organizations with primary logistical support coming from the Free Legal Assistance Group (FLAG) and the Protestant Lawyers League of the Philippines (PLL).

II. Background Information

The popular impression in the United States is that after Corazon Aquino took power in early 1986, the Philippines emerged from a dark period of dictatorship to a bright new era of political freedom and opportunity. Because President Aquino supports and pays regular homage to the importance of human rights, herself a victim of one of the world's most well-known human rights violations, it is assumed that human rights for Filipinos must be in much better shape now than under the Marcos government.

This impression is quickly dispelled upon immersion in the Philippine reality:

1. The civil war in the Philippines is very real and involves large numbers of combatants and casualties. Some 300,000 soldiers bear arms for the Armed

¹ "Human rights lawyers" as used in this report, and by the Filipinos themselves, are those who represent popular organizations in land disputes; who civilly prosecute human rights violations on behalf of victims or their families; who seek the release of political detainees; and who accept unpaid cases referred from the central offices of the Free Legal Assistance Group (FLAG), and the Protestant Lawyers League of the Philippines (PLL) and related groups. All or most of these lawyers also maintain general private practices to earn a living. They sometimes receive modest compensation for human rights cases.

Forces of the Philippines (AFP); armed "New People's Army" (NPA) troops are estimated at between 15,000 and 25,000. Skirmishes, ambushes and encounters occur virtually daily in various parts of the country.

2. No part of the country seems to be spared from the war, which has found its way to all the larger islands. NPA "Sparrow Units" (assassination squads) operate in larger cities. In 1987, Manila "Sparrow Units" claimed the lives of nearly 100 Manila police and army personnel. (Police in the Philippines are a branch of the Armed Forces.)
3. Despite the war, life seemed to go on "normally" in the areas I visited. Inter-island flights are not carefully screened; people are free to move about without restriction. Domestic travel security precautions are lax at best, and extremely lax compared to current international flight security precautions.
4. Due to raging poverty and unemployment, crime is rampant. Murders and other serious crimes are frequent; economic crimes are a fact of life. Nearly all stores and eating establishments in portions of the cities visited employ armed security guards. At one of the ubiquitous McDonald's restaurants in Makati, an affluent section of Manila, four armed guards patrolled one small area. Hotel doormen are often armed guards. Visitors are warned about use of taxis, and taxi cab license numbers are recorded by many hotels as a measure of protection for their patrons. Homes of affluent citizens are often surrounded by high walls topped with barbed wire or broken glass.
5. Perhaps most frightening is the rise over the last two years of armed vigilante groups. Much has been written about these groups, and their purposes and legitimacy are the subject of spirited public debate. Almost all are right-wing and anti-communist. Some are allegedly funded by private land owners. In some areas, armed vigilante groups are actually billeted on large plantations. Many such groups are paramilitary organizations which assist the AFP on counterinsurgency missions against suspected NPA enclaves. Many are involved in shrill anti-communist "education" efforts. Some are more blatantly threatening. The Lawyers Committee for Human Rights published an exhaustive and well-documented study of these groups which documented case after case of "salvagings" (the Philippine euphemism for extra-judicial executions), threats, assaults, strafings, and other activities by numerous vigilante groups. Prior to the International Forum in July 1988, President Aquino had not taken an unequivocal stand against these groups, but rather chose to refer to them as "civilian volunteer organizations." Her government had promulgated official "guidelines" for such groups (they must be defensive, unarmed, contain no "criminal element", etc.) of questionable effectiveness. At the same time, the NPA has itself indulged in numerous human rights abuses. Civilian non-combatants have been similarly executed, hostages have been taken, and violence has been used to enforce involuntary "taxes" levied by the NPA.
6. The combination of civil war, high crime, dire poverty, high unemployment, and vigilante groups is rapidly polarizing Philippine society. Leftist, labor-oriented, and "peace and justice" groups are liberally branded "communists" by extremists. "Death lists" are rumored and sometimes surface. Organizations of the left have been heavily mauled by salvagings, disappearances, and threats. The right tends to shrug off the killings and blame them on internal rivalries within the NPA, of which organization most such victims are alleged to be members. Salvagings and other human rights violations are rarely investigated at more than a cursory

level by the army or the civil authorities; even more rare is a prosecution. When a warrant is issued for the arrest of suspected perpetrators, the army/police frequently fails or refuses to serve the warrant. Conviction for such crimes is almost unknown.

It is in this climate of fear, accusation, charged rhetoric, intimidation, and privatization of military functions that the judicial system is forced to operate. Not surprisingly, the system has failed to respond. Nonetheless, Filipinos appear to place great faith in lawyers and the rule of law. There are many lawyers and many courts. There are private judicial remedies for families of human rights victims. The new Philippine Constitution places the protection of human rights and due process at a more exalted position than does the U.S. Constitution. Defendants' rights are constitutionally well-protected. Human rights lawyers report that they have enjoyed a measure of success in defending persons detained as NPAs or without warrant. More than once, comments were heard from persons who have been labeled communists to the effect, "If they think I am a communist, let them bring their case in court." Such cases are not, however, usually seen in the courts. The would-be plaintiffs in such cases seem to prefer to seek extra-judicial "verdicts" written in blood.

Further contributing to the plight of the human rights lawyers is the fact that many of them formally represented the Communist Party/NPA or various factions thereof during formal peace talks in 1986. When peace talks broke down, these lawyers were left "high and dry" and were, thenceforth, viewed by rightists as the "legal front" for the NPA. President Aquino's present stance toward the NPA is one of "total war". Under the circumstances, these lawyers are natural targets for vigilante groups and right-wing elements in the military.

It is in this context that five Filipino lawyers have been killed and many others terrorized during the past two years. The purpose of the International Lawyers Forum was to draw international attention to the harsh realities and to bring pressure on the Aquino government to take strong measures to protect human rights lawyers and other activists.

III. The International Lawyers Forum

The International Lawyers Forum formally took place on July 21 and 22, 1988 at the headquarters of the National Council of Churches of the Philippines in Quezon City, the Philippines. Attending the Forum were lawyers and judges from Asia, Europe, and the U.S. See Appendix I for entire list. The entire first day of the Forum consisted of the presentation of testimony and case histories by lawyers directly affected by the increasingly dangerous political atmosphere. Some attempt was made to allow family members of assassinated lawyers to make presentations with respect to the lawyers' cases, but this system broke down quickly when the widow of attorney Ramos Cura was unable to speak due to her fragile emotional condition.

It was my impression that the lawyers involved were competent, serious, and dedicated. While some were quite young, several had obviously been involved in human rights work for most of their careers. The murdered lawyers were all members of FLAG or PLLP. In each case except the case of Alfonso Surigao, investigation has stalled. All were shot by one or more assassins, usually at home or in a vehicle. They practiced law and made their homes in widely varied parts of the country, ranging from Laoag City in the far north to Davao City in the far south.

In some of the cases, there are witnesses who believe they can identify the killers but are afraid to come forward and will not testify, feeling that they cannot and will not be protected if they do.

In the case of Alfonso Surigao, one man was in custody and another under "technical arrest" by the military. The man in custody turned himself in, apparently as a result of entreaties from his father to do so. The suspect has signed a confession in which he admits he was paid 500 pesos by Major Palcuto of the Army Security Forces to assassinate attorney Surigao. Also implicated are two other individuals who accompanied the gunman to the Surigao home, and who are still at large.

Threats against lawyers have taken a number of different forms. Attorney Archie Baribar of Bacolod City, Negros Occidental, was advised in May 1987 by a long-time friend who was an informant for the military that a group of former police and right-wing citizens had made a formal decision to "terminate" Baribar. Subsequently, in the course of a trial against three military men, Baribar was told that his name had been placed on a military "Order of Battle."² In July 1987, Baribar received a letter from a group known as "KKK-CGFI", a local vigilante group composed of young planters and military men. The letter simply said, "Your days are numbered" and was signed with the initials of the organization. Baribar left the country for a period of time on the advice of an uncle who is high in military circles in Negros. Baribar returned home several months later, and continues to represent various human rights clients as well as other clients in his private practice.

Just before Christmas 1987, FLAG attorney Oscar Musni received a gift-wrapped bullet with a note informing him that "Xmas of 1987 will be your last". He had previously been accosted by a military intelligence agent in the restroom of a local restaurant and accused at gunpoint of being a communist. He complained to the military, who refused to divulge the name of the individual who pointed the gun. The military agent was later transferred to another island. Musni has subsequently been fingerprinted by the National Bureau of Investigation (NBI), ostensibly for the purpose of determining whether his fingerprints were on the threat note which he had turned over to the NBI.

Other testimony from credible witnesses suggested strongly that a pattern of threatening and harassing human rights lawyers does exist in the Philippines and that several of the lawyers are, indeed, in serious jeopardy. In particular jeopardy, it would appear, are human rights attorneys in Manila, Cebu, and on the island of Mindinao. One of the attorneys in the latter location, Bernadette Encinareal of the province of Misamis Occidental, is receiving phone protection at this time at her request. Another lawyer from Kidapawan, North Cotabato, also in Mindinao, found a death threat actually carved in the door of her home. Threatening episodes which have occurred in the life of Manila attorney Romeo Capulong are clearly planned, orchestrated, and highly intimidating. Capulong appears to be in serious danger.

IV. Statement of the International Lawyers Forum, Quezon City - July 22, 1988

The following statement was issued by the Forum participants after receiving testimony about the situation facing human rights lawyers in the Philippines:

We, the participants in the International Lawyers Forum, view with the utmost concern and dismay the recent killings, threats, and harassment of human rights lawyers in the Philippines. We strongly condemn these acts.

² The military apparently denies the existence of documents known as "Order of Battle," which purportedly establish a system of rewards (i.e. bounties) for the death or arrest of certain individuals. I was given a document purporting to be an "Order of Battle" which apparently dates back to 1981 or 1982. Whether such documents are currently in use is unknown to me.

The rule of law is essential to a civilized society. It requires that lawyers zealously defend the constitutional and legal rights of all people regardless of the nature of the accusations against them and regardless of their political ideology. All individuals have a right to effective counsel. It is vital not to attribute a client's views or acts to lawyers who are obligated to protect legal rights.

The judiciary and bar associations have a special responsibility to uphold the rule of law, including the protection of their colleagues who are engaged in human rights work.

To achieve the foregoing, we recommend the following:

1. The Philippine government, at the highest civilian and military levels, should publicly and unambiguously express its commitment to the protection of human rights lawyers and its condemnation of the killings, threats, and harassment. This commitment would be consistent with its accessions to such international instruments as the International Covenant on Civil and Political Rights, the Convention Against Torture, and Protocol II to the Geneva Convention.
2. The Philippine government must take concrete steps to ensure that all persons whatsoever who kill, threaten, and harass human rights lawyers, including "vigilantes" and those who arm and supervise them, are vigorously investigated and prosecuted.
3. Investigations into reported human rights violations, including those involving members of the security forces or civilian groups operating in conjunction with them, should be conducted by impartial agencies independent of the security forces.
4. Any member of the military or police accused of human rights offenses should be tried by a civil court. Accordingly, Presidential Decree 1850 should be repealed. Until it is, the President should waive military jurisdiction in cases involving alleged human rights abuses.
5. The government should adopt additional methods to ensure fair proceedings and remedies against alleged human rights violators, including:
 - a. independent prosecutors;
 - b. effective measures for protecting witnesses and other participants in the judicial process;
 - c. effective sanctions against military or police officers who fail to enforce the law in human rights cases; and
 - d. education in human rights for military and police personnel.
6. The Philippine government should publicly condemn, and take action to halt or curb, the illegal acts of any groups or individual, including "vigilante" groups, that interfere with the ability of human rights lawyers to perform their professional obligation to represent their clients pursuant to the rule of law.
7. The organized bar should raise its voice against all human rights violations, including the killings, threats, and harassment of human rights lawyers, and the judiciary should take all appropriate steps to ensure the protection of human rights lawyers and witnesses in human rights cases.

The signatories to this statement pledge themselves and their organizations to continue their efforts to assure the full protection of human rights in the Philippines.

Adopted this 22nd day of July 1988, at Quezon City, Philippines.

V. Conclusions

Based on the two-day International Lawyers Forum and three days of independent investigation, the Minnesota Lawyers Committee delegate reached a number of conclusions:

1. The human rights situation in the Philippines is much worse than the apparent public and media perception in the United States.
 - a. Human rights violations against lawyers are more numerous in two years under President Aquino than in nearly 20 under Marcos.
 - b. Additional threats, murders, and human rights violations against lawyers in the Philippines may be expected. The situation is dangerous, and there seems to be escalating violence.
 - c. Government response has been less than what is called for and less than is reasonably necessary to suggest that the situation will improve soon.
 - d. The judicial system is not up to the task of coping with the enormity of the human rights challenge currently facing the Republic of the Philippines.
 - (1) The testimony of lawyers reflected that, while the legal/judicial system is viewed with respect, it does not seem able to cope with the kinds of human rights violations now confronting it.
 - (2) It was the opinion of United States Ambassador Nicholas Platt that the ineffectiveness of the judicial system was a major contributing factor in the problem of mounting human rights violations.
 - (3) The wheels of justice in the Philippines grind very slowly. One news article during the visit reported that the Supreme Court was remanding to the trial court for new proceedings in a case which had started in 1928!
 - e. The Commission on Human Rights does not appear to be equipped to deal with the problem, nor do its members appear to have a high level of concern with finding a solution or assigning responsibility for specific human rights violations. Instead, the primary mission of the Commission on Human Rights appears to be one of deflecting attention or responsibility away from government agents, including the military, whenever necessary to protect the image of the Aquino government.
 - f. The overall situation is badly complicated by the very real civil war which is going on and the perception that human rights violations by the NPA are at least as bad as violations by the military and/or the vigilante groups. A good deal of justifiable "finger pointing" goes on by each side; charges and counter charges are commonplace, but resolution and assignment of responsibility is rare, indeed.

2. Human rights lawyers in the Philippines badly need the support of the international community. They welcome such support. Concomitantly, pressure from international human rights groups appears to be useful and may, indeed, assist in alleviating a dangerous situation. This conclusion is supported by testimony of the lawyers before the Forum, the opinion of Ambassador Platt, and the active interest shown by the Philippine media in the deliberations of the International Lawyers Forum.
3. Vigilante groups present a serious threat to the Republic of the Philippines and to lawyers in particular. Disarming these groups is a first, but not necessarily a last, step in lowering the level of violence. This conclusion is supported by reports of the Lawyers Committee on Human Rights and Amnesty International, the perception of the United States Ambassador, the perceptions of lawyers who testified before the Committee, and related facts. Failure to disarm these groups can quickly lead to the kind of death squad activity which horrified the world when it occurred in El Salvador in the early 1980s. While generalizations about vigilante groups are necessarily difficult, since there are well over 100 such groups with differing agendas and points of view, it is beyond dispute that some of these groups are, indeed, engaged in acts of terror, torture, and death. Some are affiliated with religious cult groups which seem to promote violence. The "guidelines" promulgated by the Philippine government which are supposed to regulate these groups do not appear to be enforceable and are allegedly disregarded by the majority of the vigilante groups. There is evidence of the involvement of the vigilante group *Alsa Masa* in the death of attorney Alfonso Surigao. Attorney Archie Baribar of Bacolod City has received a death threat signed by *KKK-CGFI*, a local vigilante group.
4. The situation in the Philippines is likely to get worse before it gets better unless the war is brought quickly under control by the government. In order to do this, the government seems inclined to involve more and more private citizens in the military effort. There is a current movement afoot which will attempt to replace vigilante groups with more of a "national guard" type organization charged with local vigilance in rural areas. In the past, this kind of military privatization has not been particularly effective and has led to a close association of military and vigilante groups. Whether this will continue under the new policies remains to be seen. A second planned reform is the removal of the police from military control. An independent police force would undoubtedly be a welcome change for the Philippines, but it could be many years before the police establish a truly independent investigative apparatus and become a viable force in dealing with the violence from either the left or the right. If and when the police are separated from army control, there will still be the problem of urban guerrilla warfare which will necessarily remain the province of the AFP.

APPENDIX I

ASIA

1. Justice P.N. Bhagwati - Former Chief Justice, Supreme Court of India; International Commission of Jurists; Centre for the Independence of Judges and Lawyers
2. Justice Doreb Patel - Former Justice, Supreme Court of Pakistan; Asian Human Rights Commission
3. Minoru Ishimaru - Director, Keiyo Culture and Education Centre, Inc., Japan

UNITED STATES

4. Mr. Norman Dorsen - Lawyers Committee for Human Rights; City of New York Bar Association; International League for Human Rights
5. Mr. Lance Lindblom - American Bar Association; City of New York Bar Association; International League for Human Rights
6. Ms. Nadine Strossen - Asia Watch
7. Mr. David Pierce - Asia Watch
8. Mr. Wood Foster, Jr. - Minnesota Lawyers International Human Rights Committee

EUROPE

9. Mr. Guido Hildner - Institute of International Law, University of Bonn; Federal Republic of Germany
10. Mr. Ian Martin - Secretary General, Amnesty International [Observer]
11. Mr. Nick Banton - Amnesty International [Observer]

PHILIPPINES

12. Prof. Enrique Syquia - International Bar Association; Swedish Bar Association [Observer]

THE COMMISSION ON HUMAN RIGHTS: ADVOCATE OR APOLOGIST?

by Barbara A. Frey

I. Introduction

As one of her first official acts as President of the Philippines, Corazon C. Aquino created the Presidential Committee on Human Rights. The establishment of this investigatory body signaled the intent of the Aquino government to begin a new era of human rights protection.

After three years in existence, however, the Presidential Commission on Human Rights (PCHR) and its constitutional successor, the Commission on Human Rights (CHR), have little to show for their efforts. The governmental investigatory body has come to be seen by Filipinos and outside human rights observers as a bureaucracy that delays justice for human rights victims and an apologist for continuing human rights violations under the Aquino government.

This paper will discuss the mission and procedures of the PCHR and the CHR and evaluate the effectiveness of the Commissions' work. The paper will also offer recommendations for improvements to the CHR and for effective governmental investigation into human rights abuses.

II. The Presidential Commission on Human Rights

By her Executive Order No. 8 on March 16, 1986, President Corazon C. Aquino established the Presidential Committee on Human Rights and charged it with investigating human rights violations committed by government officers or agents. The PCHR was mandated specifically to investigate complaints of unexplained or forced disappearances, extrajudicial killings, or "salvagings," massacres, torture, hamletting, food blockades, and other egregious violations of human rights.

President Aquino appointed seven commissioners, with Jose W. Diokno as Chair and Jose B.L. Reyes as Vice Chair. The Committee included respected human rights advocates from the church, academic, and legal communities, as well as a representative of the Judge Advocate General's office. The members appointed were Zeneida Q. Avancena, Sr. Mariani Dimaranan, Gen. Samuel Soriano, Gov. William Claner and Haydee B. Yorac.¹

At first, the PCHR aggressively undertook to issue policy recommendations designed to investigate and punish past human rights abuses and to prevent new ones. The PCHR's recommendations included ratification of international human rights covenants and Protocol II of the Geneva Conventions of 1949, disbanding of the Civilian Home Defense Forces and other paramilitary units, speedy preliminary investigation and trial of human rights violators, and education and training of all police and military personnel.

¹ Attorney Haydee Yorac was subsequently appointed to the Commission on Elections and on October 1, 1986, President Aquino appointed Attorney Abelardo Aportadera, Jr. to serve on the PCHR in her place.

Although President Aquino adopted several of the PCHR's recommendations, the Committee's initially aggressive human rights agenda was frustrated by the Aquino administration's failure to repeal certain existing presidential decrees which gave investigative and judicial authority to military courts concerning all criminal charges against military personnel. The PCHR also encountered a lack of commitment by the military to discipline field officers and prosecute human rights complaints referred by the Committee. The continued existence of paramilitary units and vigilante groups responsible for many of the grossest violations of human rights helped prevent realization of the PCHR's hope of shaping the Philippines "into a country that respects and protects human rights and freedoms on a national scale."²

Despite its inability to bring to justice any members of the military for past human rights abuses, the PCHR found itself under pressure from the military to investigate "human rights violations" by members of the Communist Party of the Philippines (CPP) and the New People's Army (NPA). Firmly abiding by Executive Order No. 8, which limited the PCHR's investigative power to cases of human rights violations committed by government officials, the PCHR argued that evidence showing injury by a particular CPP-NPA rebel to another person could be dealt with as an ordinary crime by regular prosecutory agencies of government.³

By the end of 1986, the Committee's first year in operation, the PCHR had received 708 complaints of human rights violations including 483 incidents occurring under the Marcos administration and 225 under the Aquino administration. Out of the 708 complaints, 249 cases were referred to other agencies for lack of jurisdiction and 23 cases were closed.⁴

Frustration mounted among members of the PCHR at the slow pace of implementation of their human rights recommendations. Ongoing allegations of serious human rights violations including massacres and salvagings increased the cynicism of those members of the PCHR who had previously worked with nongovernmental human rights organizations. This dissatisfaction culminated in the submission of resignations by four of the seven PCHR commissioners on January 23, 1987, one day after the "Mendiola Massacre," where uniformed military officers opened fire on a demonstration of farmers, killing 13 and injuring 72. The resignations submitted by Chair Jose Diokno, Vice Chair Jose Reyes, and Commissioners Zeneida Avancena and Sr. Mariani Dimaranan were never acted upon by the Aquino government. Instead, in May 1987, President Aquino issued Executive Order No. 163 creating the Commission on Human Rights to take over the powers of the defunct PCHR. The PCHR commissioners who had submitted their resignations were not reappointed to serve.

III. Commission on Human Rights

On February 26, 1987, the Filipino people overwhelmingly approved a new Constitution for the country. The Constitution had been drafted by a commission of independent experts chaired by Justice Cecilia Muñoz Palma, the first female Supreme Court Justice in the Philippines. The drafters enshrined a commitment to human rights in Article II, Section 11 of the Constitution: "The State values the dignity of every human person and guarantees full respect for human rights."

² Presidential Committee on Human Rights Annual Report for 1986 at 20.

³ *Id* at 8.

⁴ The PCHR statistics do not differentiate between cases closed because the investigation was completed and the case referred for prosecution and cases which were closed because of dismissal for lack of merit.

The new Constitution created an independent office called the Commission on Human Rights.⁵ The CHR assumed the investigations of all complaints that had been filed with PCHR. The mission of the CHR had been broadened to include the investigation "on its own or on complaint by any party, [of] all forms of human rights violations involving civil and political rights."⁶

President Aquino appointed Mary Concepcion Bautista as Chair of the CHR but, in January 1989, the Congressional Commission on Appointments rejected her nomination. The debate over Ms. Bautista's qualifications to serve arose out of allegations of graft and corruption during her service on the Presidential Commission on Good Government, which was established by President Aquino to pursue and reclaim former President Marcos's illegally obtained wealth. President Aquino appointed another commissioner, Hesiquio R. Mallillin, to serve as Acting Chair in place of Bautista. The other commissioners appointed were Gen. Samuel Soriano, retired Judge Advocate General, and Abelardo Aportadera, a law professor at the Ateneo Law School. Commissioners are appointed to seven-year terms without provision for reappointment.

Ms. Bautista petitioned the Supreme Court to review the constitutionality of the Commission on Appointments' action to reject her appointment. In May 1989, the Supreme Court ruled in favor of Bautista and reinstated her as Chair of the Commission on Human Rights. The human rights community in the Philippines has expressed concern about Ms. Bautista's reappointment, because of the lack of public confidence in her ability to carry out her duties objectively.

The CHR has a large staff. As of August 1988, the CHR employed 415 people to staff the central office in Manila and 12 regional offices. The headquarters in Manila occupies three floors of a large office building. Various divisions are charged with investigation, documentation, public education, and overall administration.

Despite its size and elaborate organizational structure, the CHR can boast few real results. As of June 1988, the CHR had received a total of 1,811 complaints including 872 cases that were filed originally with the PCHR.⁷ When asked for the total number of convictions resulting from its investigation of these complaints, the CHR staff produced the following list of six convictions against military defendants for human rights violations:

CHR Case No. 78

Killing of Catalino Belen: co-accused Rustom Bemas convicted and sentenced to life imprisonment.

CHR Case No. 901

Torture of Leonardo Binoya: three of the four Police Constabulary soldiers were found guilty of harassment, illegal detention and physical injuries. They were demoted in rank.

CHR Case No. 1281

Harassment of Urbano Illuminado: Cpt. Felipe Ochate found to have "committed acts of indiscretion by utilizing armed civilians in military operations." He was reprimanded administratively.

⁵ 1987 Constitution, Article 28, Section 17.

⁶ 1987 Constitution, Article 28, Section 18; Executive Order No. 163, Section 3, 1987.

⁷ The most recent published figures given by the CHR staff to the Minnesota Lawyers Committee delegation were from June 1988.

CHR Code No. 197

Killing of Medel Sacal: Court found accused, Sgt. Constancio Tuyan, not guilty. However, Sgt. Tuyan was discharged from the military service and the case was closed.

CHR Case No. 177

Fr. Favali:⁸ Manero brothers of the Civilian Home Defense Force convicted August 28, 1987. No sentence indicated in CHR summary.

CHR Case No. 0688

Esteban Maamboug:⁹ Jeremias Baguhin and Pfc. Marino Paquidupan given one year suspension without pay.

The CHR justifies these meager results by explaining that it has no prosecutory power but only the power to recommend prosecution in individual cases. Although the Filipino Department of Justice deputizes CHR lawyers to assist in the prosecution of human rights cases, the authority to prosecute still lies with the offices of the Secretary of Justice and the Judge Advocate General. Still, as of November 27, 1988, the CHR had only proffered recommendations for prosecution in 170 cases to either of those offices.¹⁰

From the delegation's observations, it appeared that the primary reason for the CHR's failure to recommend more cases for prosecution is its inability or lack of will to investigate complaints adequately. The CHR's explanation for its difficulty in completing investigations is that the Commission lacks resources necessary to handle the large number of cases, and that witnesses are often hesitant to testify in human rights investigations.

It is difficult to sympathize with the CHR's complaints about being overburdened with cases because it is the CHR itself which has chosen to define its mandate so broadly that its effectiveness is diluted. The CHR defines its constitutional mandate¹¹ to include violations by any person, including the NPA insurgency. As a result, the CHR has been inundated with complaints alleging "human rights violations" by the insurgent forces. Stacks of these complaints are ceremoniously filed by military officials at the CHR offices, with press photographers on site to document each filing.

NPA acts of violence do constitute a serious problem which must be addressed by the Philippine government. Such acts, however, are ordinary crimes which should be prosecuted by the local fiscals under the jurisdiction of the Department of Justice. As stated by the Free Legal Assistance Group (FLAG), an association of lawyers giving free legal aid to the poor and human rights victims in the Philippines, "The entire machinery of the armed forces of the Philippines and all civilian law enforcement agencies have been brought to bear against these rebels. The CHR should concentrate on abuses by governmental entities, since such abuses are,

⁸ charge not listed.

⁹ charge not listed.

¹⁰ Manila Chronicle, November 27, 1988. This figure is cumulative, including recommendations by the PCHR.

¹¹ ". . .to investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights." 1987 Constitution, Article 28, Section 18.

by their nature, most insidious and damaging to Philippine society."¹² By allowing insurgent crimes to be defined as "human rights violations," the CHR ignores the intent of international human rights law and gives the appearance of being manipulated by the military for the sake of public relations. By accepting complaints from the military against the NPA, the CHR has become quickly overburdened with cases and has scared off many potential witnesses in cases filed against the military witnesses who have reason to doubt the sincerity and impartiality of the Commission.

The CHR has also concerned itself with complaints of theft of property and animals. Its attention to these type of property matters detracts from its efforts on more serious violations. The CHR's investigation into theft of animals has even been dubbed cynically by the press as defense of "animal rights."¹³

The Minnesota Lawyers Committee observed that another reason for the CHR's poor record of completed investigations is that its investigators do not aggressively pursue the facts in human rights cases. Of the many human rights victims and lawyers we interviewed in Manila, Negros, Cebu, and Davao, not one expressed any faith in the CHR investigatory process. Few victims were even aware of the CHR and, of those who were, and who had filed complaints, none had been notified of any active CHR investigation.

Several members of the Minnesota Lawyers Committee delegation had the opportunity to witness an impromptu investigative hearing conducted by the regional investigator in Kidapawan, Davao del Sur. According to FLAG attorney Sol Jubilan, this was the first-ever visit by any regional CHR official to Kidapawan despite numerous requests for on-site visits. The investigator, a lawyer, took testimony from a 16-year-old girl whose 6-year-old sister was shot and killed while in her arms by a group of armed men. The investigator asked approximately five minutes of questions to establish the facts of the case, including the witness' inability to immediately identify her assailants, and then turned to our delegation and announced, "At this point, I'm tempted to stop because I don't know whom to pursue."

Lawyers in the visiting delegation, aghast at this premature conclusion, suggested several lines of questions that could be asked, such as the existence of other witnesses, descriptions of the perpetrators' clothing, and what they said. The investigator continued his questioning of the witness in the manner suggested by the viewers and, eventually, decided to leave the case open pending further investigation of the charges. Delegation members also suggested that the investigator interview other family members and subpoena military records regarding personnel in the area at the time of the incident.

The impression given to the Minnesota Lawyers Committee delegation by this particular hearing is that CHR investigators have little training and less enthusiasm for thorough investigation of human rights cases. Commissioner Soriano admitted to the Minnesota Lawyers Committee delegation that it is sometimes difficult to get investigators to pursue cases aggressively. This hesitation to push for a thorough investigation is most evident in the provinces, where local military and police personnel are less inclined to allow their actions to be scrutinized. Commissioner Soriano confirmed that the CHR does have the power to subpoena military records and take testimony of military officials under threat of perjury. This subpoena

¹² Free Legal Assistance Group, Response to the Report of the Government of the Philippines concerning the Implementation of the International Covenant on Civil and Political Rights (March 15, 1989) at 24.

¹³ "Animal Rights' also Probed", Manila Bulletin, March 12, 1989.

power, however, did not appear to us to have been translated into effective investigations of complaints against the military.

In its materials, the CHR explains that it has met many investigative dead ends because "parties involved could not be located and had not been replying to various communications sent by the Commission."¹⁴ Commissioner Soriano told us that the CHR had a problem with "recalcitrant witnesses" and emphasized that the Commission was working on a witness protection program to assist in its investigative efforts. While it is difficult to investigate a case without the cooperation of witnesses, the burden should fall on the CHR to come up with other types of corroborative evidence and to go to extraordinary means to protect witnesses, who are more vulnerable to persecution in human rights cases than perhaps in any other type of criminal investigation. Testimony from witnesses should be heard in camera and the identity of informants or witnesses should be kept confidential when possible. The CHR should also use other forensic practices in gathering evidence such as fingerprinting, ballistics identification, and autopsies. The burden to prove a human rights violation should not fall on the shoulders of relatives and witnesses who stand to become the next statistic in the CHR's files.

IV. Conclusions and Recommendations

The establishment of an independent human rights commission charged with the investigation of human rights abuses was an important and well-received gesture by President Aquino. Unfortunately, many of the benefits of such an independent body have been lost due to an overly broad mandate, an unmanageable caseload, and a lack of aggressive investigations.

The PCHR, inspired by the "People Power" revolution, set an aggressive agenda for the new government in the area of human rights. Hope turned to cynicism, however, when policy delays, stalled investigations, and continuing human rights violations by the military slowed the PCHR's efforts to a grinding halt.

The constitutionally mandated CHR began its tenure amidst criticism from the left and right and without a clear precedent for investigative action. President Aquino's selection of Mary Concepcion Bautista as chair of the CHR dragged the Commission itself into a mire of public controversy because of personal allegations of graft and corruption. Ms. Bautista's temporary removal and consequent constitutional challenge left the CHR without clear leadership or public trust. Her subsequent reappointment as CHR chair has been met with criticism in the human rights community.

Although the CHR may be able to regroup its forces after several early political snafus, precious time has been lost. The Commission has few recommendations for prosecution and even fewer convictions to show for hundreds of complaints received. While the commissioners and CHR staff claim that prosecutorial power would increase their conviction rates, our delegation saw little to indicate that the CHR would prosecute cases any more effectively than it is investigating them at the present time. If anything, the CHR should be required to show a substantial improvement in completed investigations and cases recommended for prosecution before the government, sorely lacking in funds for many of its programs, expands the CHR's jurisdiction.

Based on its evaluation of the mission and functioning of the CHR, the Minnesota Lawyers Committee would recommend the following:

¹⁴ The Commission on Human Rights, The Filipino Experience, August 1988 at page 30.

1. That the CHR restrict its mandate to investigation of governmental human rights abuses and refer all complaints against the CPP-NPA to the ordinary criminal prosecutorial arm of government. International human rights obligations apply only to governments and their agents. By broadening its mandate to investigate abuses by insurgent forces, the CHR is diluting its effectiveness and raising questions about its objectivity.
2. That the CHR establish a priority system for its investigations, focusing first and foremost on violations of internationally recognized, non-derogable, civil and political rights, including arbitrary execution (such as salvagings and massacres), torture, and detention without charge. Lesser crimes such as theft of material possessions, including animals, should be given lower priority. The CHR needs to establish public credibility quickly by completing investigations and recommending prosecution in the most serious and visible cases.
3. That the CHR seek out aggressive, competent and thorough investigative attorneys to carry out its work and that it provide training on methods of investigation such as effective questioning of witnesses and the use of forensic and other technical information as evidence. The commissioners and central staff should closely monitor the progress of investigations, especially outside of Manila, encouraging promptness and thoroughness and providing protection and support for CHR lawyers and other investigative staff.
4. That the CHR place great emphasis on establishing an effective witness protection program including the use of in camera testimony and corroboration of confidential testimony by forensic evidence. Security for witnesses, and even witness relocation, should be utilized in serious cases. While no witness protection program can ever guarantee safety, the CHR must make a much greater effort than it is now doing before justifying the closing of cases because of "recalcitrant witnesses."
5. That the CHR work energetically to reestablish important ties with the nongovernmental human rights organizations in the Philippines, including FLAG and other lawyers groups, Task Force Detainees, Medical Action Group, Children's Rehabilitation Center, and the Philippine Alliance of Human Rights Advocates. While these groups have been painted broad-brush as having a political bias against the Aquino government, by ignoring them, or undercutting their legitimate data-gathering and victim assistance activities, the CHR is adding credence to the public perception that it is merely an institutional defender of the Aquino government's human rights record and not an independent advocate for human rights victims.
6. That the CHR issue quarterly public statistics about the progress of its caseload, including the number of cases filed and in progress, completed investigations, and recommendations for prosecution. Independent, verifiable statistics of current human rights violations must also be issued.

The CHR must work quickly to restore its credibility as an independent and effective human rights investigating body. Acting effectively, the CHR could have a tremendous impact in the Philippines today by exposing perpetrators of human rights abuses and, thereby, deterring future abuses. Without such initiative, the CHR might serve only as another sad chapter in the history of the Philippine government's inability to abide by its international obligation to protect the human rights of its citizens.

PRESIDENTIAL DECREE 1850

by Mark S. Wernick

I. Introduction

According to human rights lawyers in the Philippines, primary legal impediment to the protection of human rights in the Philippines is Presidential Decree 1850. This Decree immunizes military and police officials from criminal prosecutions in the civil courts. Legislation is currently pending in the Philippine Congress which would repeal Presidential Decree 1850. This legislation is likely to become law. Although this legislation appears to be a step toward democratic control over military and police institutions, many human rights lawyers question how significant a step it actually will be.

II. History of Military Court Jurisdiction

Prior to the declaration of martial law in 1972, the law governing military court jurisdiction in the Philippines was much like the law governing military court jurisdiction in the United States. Civilian courts had exclusive jurisdiction over all criminal offenses alleged against police officials. Military courts had jurisdiction over criminal offenses alleged against military officials only if the offenses were "service connected." If the offenses alleged against military officials were not service connected, then the civil courts had exclusive jurisdiction.

After the declaration of martial law, President Marcos issued a series of decrees expanding the jurisdiction of military courts. The decrees culminated in 1982 with the issuance of Presidential Decree 1850. That Decree provided for military court jurisdiction over all criminal offenses alleged against military and police officials, regardless of whether such offenses were service connected. Under Decree 1850, President Marcos retained the exclusive authority to waive military court jurisdiction in any particular case. In the event of a waiver, the accused military or police official would be tried in the civil courts.

Those opposed to Presidential Decree 1850 viewed it as a tool designed by Marcos to perpetuate his dictatorship. They argued that Marcos was able to use the Decree to enhance the loyalty of military and police officials to him by letting their crimes go unpunished in the military courts when he chose to do so.

After the fall of Marcos in February 1986, and until July 1987, when the new Philippine Congress was convened, President Aquino had the legal authority to repeal Presidential Decree 1850. The newly established Presidential Commission on Human Rights called on President Aquino to repeal the Decree. She declined to do so.

III. Proposed Repeal of Decree 1850

Legislation is now pending in the Philippine Congress which would repeal Presidential Decree 1850. President Aquino supports this legislation. Secretary of National Defense, Fidel Ramos, told our group that he, too, now supports this legislation because "the height of the insurgency is over."

Those who have worked over the years to repeal Presidential Decree 1850 have done so with the hope that civil courts will be more likely than military courts to punish military and police officials who commit human rights violations. However, a question exists as to whether the civil courts in the Philippines have the political power to make and enforce decisions that are not favored by military and police institutions.

Human rights lawyers presented evidence to our group which suggests that, in criminal cases having political implications, the military can exert influence to limit the power of civil courts to interpret and enforce the law. In the case of People v. Rodolfo Salas, the alleged leader of the Communist Party Philippines, who was arrested in September 1986, is being tried for rebellion. Salas is being prosecuted in a civilian court by a military lawyer and a civilian prosecutor pursuant to a joint military-civilian committee that handles political cases. As the trial slowly proceeds, Salas is being held in jail without bail in violation of Philippine law.

Rule 114, Section 3, Philippine Rules of Criminal Procedure, provides that all persons are "entitled to bail as a matter of right, except those charged with a capital offense. . ." This Rule is derived from Article III, Section 13 of the Philippine Constitution which provides for a constitutional right to bail except in capital cases.

At the time of Salas' arrest, a Marcos presidential decree was in effect which made rebellion a capital offense. Accordingly, at the prosecution's request, the trial judge ordered that Salas be held without bail. In early 1987, President Aquino repealed the decree making rebellion a capital offense. Immediately after President Aquino repealed this decree, the defense asked the trial judge to set bail for Salas. The prosecutors asked the judge to deny bail to Salas on the grounds that there exists a national security exception to a defendant's right to bail. The trial judge rejected the prosecution's position and he set bail for Salas.

The military petitioned the Philippine Supreme Court to reverse the ruling of the trial judge. That petition has been pending before the Supreme Court without decision for over two years. Rather than deciding an important issue against the military, it appears that the Supreme Court is simply not deciding the issue at all.

During our interview with the Acting Chief Justice of the Philippine Supreme Court, Andres Narvasa, we asked about the progress of the Salas case. At first, Justice Narvasa said that he was not aware of the case and that he could not understand why there would be an issue about a defendant's right to bail. Justice Narvasa's law clerk then reminded him that the Salas case was pending and that all briefs had been submitted. Justice Narvasa said that if the papers have been submitted, the case would be decided promptly.

Members of our group asked the trial judge in the Salas case his opinion as to why the Supreme Court had not decided the bail issue. The trial judge smiled. He said that when there is a conflict between what the law says and what the military wants, then the Supreme Court "sits on the horns of a dilemma."

Based on our observations of the Salas case, therefore, the repeal of Presidential Decree 1850 may have little effect on the conduct of military officials, even assuming the civilian courts have the political power to take action in the face of military or police opposition.

If Presidential Decree 1850 is repealed, military courts would retain jurisdiction over offenses committed by military officials if those offenses were "service connected." According to Secretary Ramos, he would make the final decision as to whether any alleged criminal offense by a military official was service connected. Human rights lawyers expect that the phrase "service connected" will be given a broad interpretation. If so, civil courts in the Philippines will see few criminal cases involving military officials, even if Decree 1850 is repealed.