

HUMAN RIGHTS ADVOCACY IN THE PHILIPPINES

Report by

**HELEN A CULL
DAVID W. ALLEN**

on a Mission to the Philippines

August 1985

New Zealand Section and Australian Section

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



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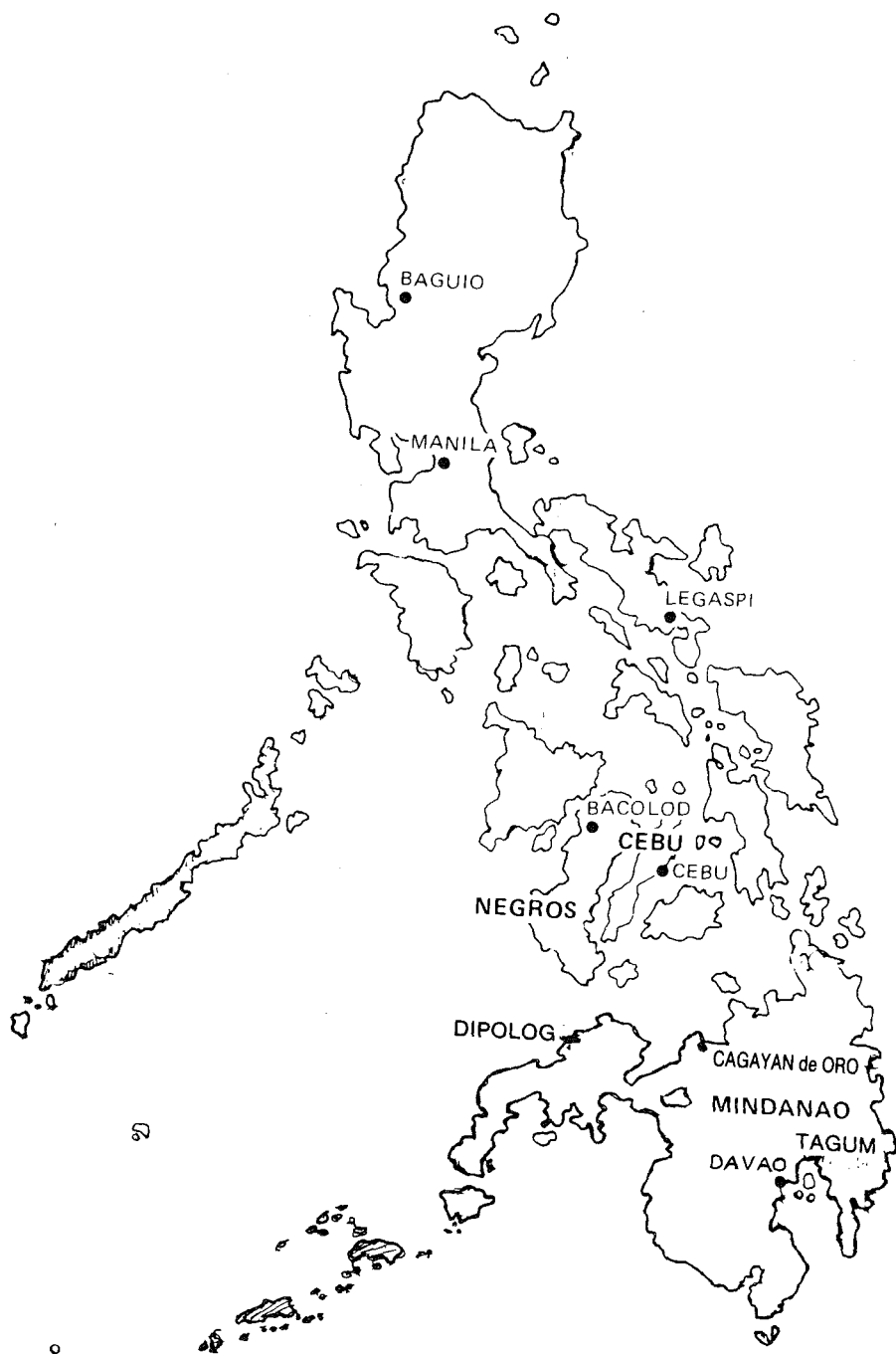
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DEFINITIONS

AFP	Armed Forces of the Philippines
CPP	Communist Party of the Philippines
FLAG	Free Legal Assistance Group
IBP	Integrated Bar of the Philippines
ICHDF	Integrated Civilian Home Defence Force
INP	Integrated National Police
MUSAD	Multi-Sectoral Alliance for Democracy
MABINI	Movement of Attorneys for Brotherhood Integrity and Nationalism
NPA	New People's Army
1984 ICJ Report	The Philippines Human Rights after Martial Law
PC	Philippine Constabulary
SWORD	Solidarity of Workers in Davao Province
TFD	Task Force Detainees



Preface

The report which follows was prepared in January 1986.

Before it could be printed the events in Manila of February 1986 took place.

The report is therefore a record of the position that applied in the Philippines prior to the overthrow of the Marcos regime.

It is now published as such, and as a tribute to the courage of the lawyers in the Republic who opposed the regime while it was in power and to Mrs Corazon Aquino and all her supporters who set an example for the world which it is hoped will never be forgotten.

Among those lawyers was FLAG'S Chairman Jose W. Diokno. He had been the force behind the group from its beginnings. That force was evident when the Mission was in the Philippines in August, 1985, as was the cancer from which he was then suffering. Nevertheless he continued to work on FLAG'S affairs with characteristic courage and disregard of himself. He continued to do so after the events of February, 1986, serving Mrs. Aquino's government in various ways including representing it in negotiations with the N.P.A. during the Ceasefire.

Mr. Diokno's death in February 1987 is a sad loss not only for his country which he served so well but also for lawyers everywhere who are concerned with human rights and maintenance of the rule of law.

At the end of this report is, what in effect becomes, an epilogue written in January 1987, some six weeks before her father died, by Mr. Diokno's daughter, Ms. Maria Socorro I. Diokno, as the Administrator of FLAG.

Introduction

To an outsider the Republic of the Philippines is not only a country of contradictions and acronyms —it is also an enigma. Its government's ministers proudly proclaim both its long lineage from the days of the Spaniards and its democratic constitution and systems derived from those of the USA. The same ministers will then talk in the most articulate and effective way about the Rule of Law and insurgency.

The enigma lies in the fact that at the same time in 1985 in the Philippines — lawyers are being murdered, gaoled and terrorised. To this they and many other lawyers in the country are responding with great dignity and courage.

The lawyers who are threatened in this manner are those involved in what has loosely been called "Human Rights Lawyering". The situation is therefore one which requires close and constant attention by lawyers throughout the world and we hope that in doing so, and in responding to the situation which exists in the Philippines, lawyers outside the Philippines will find some of the courage which their beleaguered colleagues in the Philippines provide each day.

Between 17 and 28 August 1985 a mission of five lawyers, from New Zealand, New York, Japan, Thailand and Australia, were in the Philippines. They were there because FLAG (the Free Legal Assistance Group of the Philippines) had asked organisations of lawyers throughout the world

(including ICJ (Geneva) and its Centre for the Independence of Judges and Lawyers (CIJL)), to send a fact finding mission to the Philippines to investigate "the state of human rights advocacy in the Philippines" with, in effect, special reference to the five lawyers who were then, and still are, detained by the Armed Forces of the Philippines (AFP) and to the murder of three others in April and July 1985.

The Mission consisted of:

Helen A. Cull — a barrister and solicitor of the High Court of New Zealand and a member of the Council of N.Z. section of ICJ;

R. Scott Greathead — a member of the Association of the Bar of the City of New York and First Assistant Attorney General of the Office of the Attorney General of the State of New York. He was present in the Philippines representing the Association's Committee of International Human Rights;

Yasunobu Sato — of the Takahasi Law office in Tokyo and representing the Civil Rights Union of Japan;

Chanchai Siljaru — a practising attorney in Bangkok and representing Law Asia Thailand; and

David Wigram Allen — a recently retired solicitor of the Supreme Court of New South Wales and a member of the Executive Committee of the International Commission of Jurists (Australian Section).

Most of the members of the Mission arrived in Manila on August 17th. The following day involved a protracted briefing by various attorneys, justices and university staff on the legal, political and economic situation in the Philippines.

In the remaining 9 days we went to the Military

Rehabilitation Centre at Taguig SE of Manila to see the three Davao lawyers detained in that camp and drove to Northern Luzon to interview the two Bangued, Abra FLAG lawyers held there at Camp Villamor.

We returned to Manila in time to observe on 22nd August the two large demonstrations in the City and at Makati on the second anniversary of the Aquino assassination. Both were moving and intense and received scant attention in the Government controlled press and television.

There followed various ministerial and judicial interviews after which we flew to Cagayan de Oro in Northern Mindanao where we interviewed TFD and FLAG lawyers about the murder in that area of Attorney Cailing. We then flew to Davao in Southern Mindanao — went to Tagum in Davao del Norte to talk to those who had knowledge of the murder of FLAG Attorney Taojo and met in Davao with FLAG and TFD personnel and with the family of one of the Davao lawyers then being held in Manila Camp.

On our return to Manila we had conferences with the Acting President of the Integrated Bar of the Philippines (IBP), with the Minister of National Defence, Juan Ponce Enrile (which included General Ramos the acting head of the AFP), and with other FLAG lawyers in Manila.

It would be remiss if this report did not acknowledge the time and effort put into the Mission's programme by FLAG's Chairman, Jose W. Diokno (the former Senator and Minister of Justice), his daughter Mrs. Socorro I. Diokno, and members of his office, and by all the FLAG lawyers in Luzon and Mindanao whom we saw.

It was at Mr Diokno's request that the Government's Ministers agreed to meet the Mission and authorised our visits to the Military Camps.

The Ministers —

Pacifico A. Castro (Foreign Affairs),

Estelito P. Mendoza (Justice and Solicitor General),
and

Juan Ponce Enrile (National Defence)

were generous with the time they gave to the Mission, as was the Chief Justice, Felix V. Makasiar.

The co-operation and assistance which we received from all is gratefully acknowledged by the Mission.

In many respects this Mission was following in the tracks of the members (Leary, Ellis and Madlener) of the ICJ Mission of January 1984. Their report "The Philippines: Human Rights after Martial Law" was published by ICJ in August 1984 (1984 ICJ Report).

That report provides a comprehensive background to the issues with which this report deals. The 1984 report should, in our view, be regarded as compulsory background reading for any person who is interested in and concerned with the Philippines and the matters covered by this report.

The Mission's records of this report, as with the records of the 1984 report, have been lodged with ICJ in Geneva but, except to the extent that those records are covered by this report, we do not think any more explicit reference to them would be in the interests of the persons whom we saw and from whom statements were taken for this report.

It will be clear from this report that the Mission was a fact finding one and was not a judicial inquiry.

The factual situation which we found is set out in the report which is entirely the result of the intensive work of Ms Cull.

Because of the factual basis of the report, we think the following general observations should be made if lawyers outside the Philippines are to grasp fully the crisis which faces lawyers and the Rule of Law in the country.

It was put to us that the Philippines was in August 1985, and undoubtedly still is, in a state of incipient revolution.

The state of the economy, the social inequalities, the lack of capacity of the AFP to function as a properly structured disciplined force under the control of a civilian government and the restrictions on the capacity of the courts to enforce their orders, have all been reported upon previously.

The President through his Ministers pays lip service to the Rule of the Law and so called constitutional guarantees while the Security Forces exercise his decree-making powers in a manner which to all intents and purposes emasculates the courts and ignores the same guarantees. The fear is that the Administration's position is strengthened by what would appear to be a subservient Supreme Court. Hence it was also put to us that nothing stands between the Administration and the great mass of an impoverished population except the lawyers pursuing, on behalf of that mass, such rights as they are able to obtain from the courts.

It follows that in a so-called democracy which purports to recognise the Rule of Law, the Administration, if it can control and suppress the activity of the country's lawyers, has unfettered control over the population.

Despite the above comments, it should not be forgotten that from time to time there have been members of the Philippine Supreme Court who have delivered some courageous dissenting judgments and statements against the Administration in areas involving the Rule of law, compliance with the Constitution and the protection of civil rights and liberties generally.

Similarly, it should also be noted that it appears that lawyers in the Philippines are not under attack in their ordinary work of representing their clients provided such work is outside the area of human rights. Hence the exceptions with which this report deals are the relatively small number of lawyers involved in defending individual clients or organisations in areas where human rights cases conflict with the Administration at the political or security level. It is at that level that members of organisations like FLAG and MABINI are under threat. If the threats succeed and FLAG lawyers are forced by intimidation to

abandon their work then the Filipinos who are detained by the Military, or are before the courts on so-called security charges, will have no effective representation. Without that representation they will lose any remaining faith they may have in the justice system and it should surprise no one if those afflicted and their families then turn more and more to the alternatives offered by the Communist Party of the Philippines (C.P.P.) and its military arm, the New People's Army.

It is, we think, of significance that in all the cases we investigated, the dead, the detained, or the threatened lawyers were not only doing their FLAG legal work without fee but all were also engaged in other socially responsible community work. Thus they were, or were becoming, leaders of their own communities and for an Administration obsessed with its own power, the need to remove or confine such leaders was an inference that could easily be drawn from the information before us. We did not accept the Administration's statements that the lawyers who were detained or threatened were all security risks involved in aiding and abetting the N.P.A. or that some were members of it. It should also be noted that the Administration appeared to have done very little if anything to investigate the murder of the three lawyers. Those lawyers share with, it seems, numerous press reporters and some priests, the dubious distinction of being "salvaged" by the Administration's security forces.

The enigma has been stated. In the Philippines the basis is there for a properly structured democracy and the effective functioning of the Rule of Law — neither applies and the blame lies at the feet of the Administration which has had the power to correct its own excesses and carry out essential reforms. It has not done so. The divisions and the frustrations it has created will have the inevitable result of bloodshed. The tragedy of the Philippines is that the regime of President Marcos could have avoided that bloodshed.

Sydney and Wellington
January 1986

Chapter I

Human Rights Abuses and Legal Assistance

Human Rights Conditions in the Philippines

Much has been written¹ about human rights conditions in the Philippines over recent years and particularly following the imposition of martial law by President Ferdinand Marcos in September 1972.

By way of background to this report, it is pertinent to highlight simply some of the effects of martial law on the Constitution of the Philippines and the ensuing effect on human rights.

Although martial law was lifted in January 1981, much of the legislation from the martial law period still remains. In particular, the principal law making tool (amendment No. 6 to the Constitution) has been retained by President Marcos,

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1. (i) "The Decline of Democracy in the Philippines" 1977 ICJ Report, Butler, Humphrey & Bisson.
 - (ii) "The Philippines: A Country in Crisis" report by the Lawyers Committee for International Human Rights, December 1983.
 - (iii) "The Philippines: Human Rights after Martial Law" ICJ 1984 —Leary Ellis & Madlener. These are some examples of the recent reports which have been written detailing the constitution changes and human rights conditions in the Philippines.

allowing him to “issue (such) necessary decrees, orders or letters of instructions, which shall form part of the law of the land.”²

As noted in the 1984 ICJ Report, “Amendment No. 6 has been used by President Marcos as the ordinary method of legislation rather than as an exceptional authorisation”³ and he has used it to “issue more than 900 decrees, orders and letters of instruction”. In particular, on 21 July 1983 the President used the legislative powers under Amendment No. 6 to issue Presidential Decrees 1877 and 1877A. These decrees enable him to issue a Preventive Detention Action (PDA), for the arrest and detention for up to one year of any person who, in the President’s judgment would endanger public order and safety. There is also provision to extend the detention beyond one year without recourse to judicial control or review. The PDA is the successor to the Presidential Commitment Order (PCO) which was also a detention order and with these instruments the President has retained complete discretion to arrest and detain alleged subversives without bail and often without trial.

Since the publication of the 1984 ICJ report which recommended, inter alia, that there be “a return to pre-martial law levels of penalties at least for non-violent ‘crimes against public order’ ”⁴ Presidential Decree No. 1974 was passed on 2nd May 1985 reducing the penalties for rebellion or insurrection, conspiracy and/or proposal to commit rebellion, sedition and conspiracy to commit sedition. However the reduced penalties can only come into effect upon the publication of the decree in the Official Gazette. At the time of the Mission’s visit to the Philippines in August 1985, and at the time of writing, the decree had still not been published. Thus the higher penalties still remain in force.

A further legacy from the martial law period has been the

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2. *ibid* (1) (iii) at p14
 3. *ibid* (1) (iii) at p15
 4. 1984 ICJ report supra at p122

increase in the size of the armed forces. At the time martial law was declared the Muslim Moro National Liberation Front was fighting in the Muslim areas in the south, principally in Mindanao, and the insurgent forces of the New People's Army (NPA) were emerging. Since 1972 the numbers in the Armed Forces of the Philippines (AFP) have risen from approximately 60,000 to more than 200,000.

The AFP comprise the military as well as the Philippine Constabulary (PC) and the Integrated National Police (INP). In addition, there is a civilian militia force known as the Integrated Civilian Home Defence Force (ICHDF) and it operates under the control of the PC.

Against this background widespread abuses by the military, together with gross human rights violations by suspected military or government personnel, have been reported and extensively documented in numerous reports.⁵ The 1984 ICJ Report reported that, in addition to illegal killing by government forces (referred to in the Philippines as "salvaging"), human rights abuses included widespread arrests and detention for broadly defined political crimes such as incitement to rebellion or subversion, as well as torture during detention.⁶

Arbitrary arrests, torture of detained prisoners and suspects and unexplained disappearances of civilians without trace have been commonplace since the imposition of martial law.⁷

Since the publication of the 1984 ICJ Report, Task Force Detainees (TFD),⁸ which collects and publishes statistics on

5. See the reports listed in footnote 1, *supra* and November 1981 Amnesty International Report to the Republic of the Philippines, *Trends* January — June 1984 TFD Report, and *Trends* July — December 1984 TFD Report.

6. *supra* at p13

7. 1977 ICJ Report *supra* documented human rights violations which occurred since 1972, when martial law was imposed.

8. TFD is an organisation which was established in 1974 by the Association of Major Religious Superiors of the Catholic Church.

human rights abuses, and assists detainees and their families, reported that "salvagings" or summary executions by government security forces had risen from 368 in 1983⁹ to 538 in 1984.¹⁰ In addition, TFD has recorded an increase in the disappearances of persons, with no body having been found, and an increase in the instances of torture of prisoners presently detained by government forces. We were told that there were approximately 675 political prisoners detained at the time of our visit to the Philippines which is approximately 176 less than the figures for the previous year. There was grave concern expressed that people are now being "salvaged" rather than being charged and/or detained, and that the principal area where this is occurring is in the southern island of Mindanao.

Legal Assistance Groups

With the erosion of constitutional safeguards, (particularly with) the introduction of Amendment No. 6 to the Constitution, and the increasing human rights violations, a number of concerned lawyers formed organisations and associations to uphold, defend and promote human rights as well as the constitutional rights of the Filipino people. Among such organisations are The Free Legal Assistance Group (FLAG); Movement of Attorneys for Brotherhood, Integrity and Nationalism Inc. (MABINI); and the Human Rights committees of local chapters of the Integrated Bar of the Philippines (IBP).

Lawyers in these groups provide free legal services to the poor and, in particular, to those arrested principally, although not exclusively, for offences of a national security or political nature.

Because the majority of this *pro bono publico* legal work relates to the infringement of human rights, be it the deprivation

9. Trends January — June 1984 p32.

10. Trends July — December 1984 p45.

of liberty, land or freedom of expression and association, it has been loosely termed "human rights advocacy".

The largest and oldest of the legal human rights associations is FLAG and it has members in all provinces of the Philippines. In addition to rendering legal services to "the poor, the oppressed and the dispossessed"¹¹ a principal aim of its work is to foster respect for and observance of constitutional rights, and to advance the rule of law. Thus, not only do its members provide legal representation in a court setting, but also give legal advice to labour and student groups and the urban and rural poor.

An important facet of FLAG's legal work is to attend on prisoners or detainees as soon as they have been arrested. The importance of immediate representation is to diminish the possibilities of torture or "salvaging" taking place. Hence, the FLAG lawyers, by the very nature of the work they undertake, have a close association with the local fiscals (i.e. the prosecuting lawyers of the relevant government department) and their local military personnel.

This work which the human rights lawyers and FLAG in particular have undertaken has met with a very high degree of success resulting in acquittals or reduction of the gravity of the charges and in some cases in the release of the detainees. FLAG has also undertaken a number of class actions on behalf of special interest groups.

To date these have included the filing of six cases on behalf of 800-1000 students who were suspended and expelled by their university administrations for participating in demonstrations; 205 persons accused of squatting; 75 families involved in a land title dispute and the filing of a petition for a writ of prohibition on behalf of the sugar workers of Negros. Although this latter writ of prohibition was not granted FLAG has filed a motion for reconsideration, and this motion, together with all but one of the class action cases, still awaits determination by the

11. FLAG information sheet pl.

respective courts. FLAG was successful in the one student-related case that has been determined by the courts.

It was therefore of extreme concern to the community of FLAG lawyers when its members appeared to be targets for military and/or government attack. Apart from the unexplained disappearance of Herman Lagman, a FLAG lawyer and a labour law specialist, who disappeared from a street corner in Metro Manila on 11 May 1977, three further FLAG lawyers were murdered within a year. On 23 September 1984, Zorro C. Aguilar was shot at Dipolog City, Zamboanga del Norte, on 2 April 1985, Romrafo R. Taojo was shot at Tagum, Davao del Norte and, on 6 July 1985, Crisostomo Cailing was shot at Balingasag, Misamis Oriental. All three were shot by unidentified men, believed by FLAG to be members of the military or government security forces.

In April 1985 two FLAG lawyers in Bangued, Abra and three FLAG lawyers in Davao City were arrested and detained by military authorities. FLAG also received a number of complaints from its members of death threats, surveillance and harrassment by the military, as well as a list of "priority targets" or hit-list, compiled by the military, and which comprised four FLAG lawyers.

Because of the serious implications for human rights and the administration of justice if the right to counsel were lost, the gravity of the situation led FLAG to appeal to international lawyer's groups to undertake a fact-finding mission to the Philippines to investigate the state of human rights advocacy in the Philippines.

The following chapters represent the results of the interviews the Mission conducted and the final chapter presents the conclusions the Mission reached.

Chapter II

The Plight of the Human Rights Lawyer

Objects of the Mission:

The object of the Mission was to undertake an investigation into the state of Human Rights Advocacy in the Philippines. This included an investigation into the murders of FLAG lawyers and an enquiry into the continuing intimidation of FLAG lawyers by arrest and detention or by death threats, hit lists, and other unofficial means.

In carrying out its objectives, the Mission travelled to Bicutan Rehabilitation Centre at Taguig, Metro Manila and to Camp Villamor in Bangued, Abra to see the lawyers detained in those respective prisons. At the time of the Mission, five lawyers in total were detained and the members of the Mission were able to visit and interview them all.

In addition the Mission interviewed FLAG lawyers and Human Rights Lawyers in Northern Luzon, Metro Manila, and in Northern and Southern Mindanao including Cagayan de Oro, Davao City and Tagum. The following information results from the interviews which the Mission conducted with lawyers and from interviews with a political prisoner, relatives and detained lawyers, church workers, including representatives from TFD (Task Force Detainees) in various regions, and representatives of the Integrated Bar of the Philippines,

including the acting Vice President in Metro Manila.

Detained Lawyers:

The Abra Lawyers' Case:

Two lawyers, Romeo Astudillo and Alberto Benesa were both arrested on April 27, 1985 and are being detained at Camp Villamor Bangued, Abra.

On or about March 25, 1985, three charges were laid jointly against Astudillo and Benesa of subversion namely: (1) aiding the New Peoples Army in that they gave 8,000 pesos to the NPA; (2) recruiting for the NPA; and (3) giving the NPA inter alia, rounds of ammunition and a walkie-talkie radio. In addition Mr. Benesa was charged with giving 1,000 pesos to the NPA for the purchase of medicine.

The informations were filed with the Fiscal's office on March 25 and, after the preliminary investigation, the defendants elected not to file counter affidavits. The charges were then filed in the Regional Court at Abra and warrants of arrest were issued by the Regional Trial Judge. The lawyers were not arrested as they voluntarily surrendered to the Court and filed an application for bail. This was granted after the two lawyers had entered into the appropriate bail bonds.

Three days after bail was granted they were arrested by the Military on the strength of a PDA (Preventive Detention Action) which was sent to the Military offices at Abra by way of telegram. The PDA authorises the detention of the lawyers until the end of the trial, notwithstanding the granting of bail by the Regional Court.

Their trial has started but there are 20 more prosecution witnesses to be heard. It was expected that the trial would be prolonged, as there is no wish on the part of the prosecution to have it dispensed with quickly. In addition, each session of the Regional Court in Bangued, Abra lasts only 2-3 days and there are many other matters to deal with. Political trials therefore

can take several months and sometimes years to complete.

ISSUES ARISING:

1. The Effect of Preventive Detention Actions (PDA's):

In our discussions with all members of the profession, including present and former members of the Supreme Court bench, much concern has been expressed at the use of the PDA to override rulings and orders of the Court system in the Philippines.

The concern is that the executive discretion in issuing a PDA is not subject to review by any Court, and if the President on application by a Military Commander or head of an enforcement agency¹ determines that an accused is or might be a risk to national security, then a PDA is issued for the continued detention of the accused.

In this case, despite the granting of bail, a PDA was issued three days later to secure the detention of the aforesaid lawyers.

2. The Effect on Human Rights Representation in the Area:

From 1979 until the present time, Astudillo and Benesa were the only two lawyers who defended political and national security cases in the province of Abra and were involved in what are termed Human Rights cases. They were the only representatives of FLAG in the area and, since their incarceration, no other lawyers have replaced them in doing this legal aid work. It is also worthy of note that both lawyers have achieved a high success rate. For all cases defended by them which involved charges of a political nature (such as subversion, and matters of national security), for the period 1979 to 1985, they achieved acquittals.

1. Section 4 Presidential Decree No. 1877 as amended by Presidential Decree 1877-A.

3. Political Activities:

In addition to their being the only Human Rights lawyers in the province, Benesa and Astudillo ran unsuccessfully for Governor and Board Member respectively in the local Government elections. Both felt they had the support of the community and that had the elections been held fairly they would have been successful. In addition, Benesa also stood for election as an Assembly representative in 1984, but was unsuccessful.

Both lawyers felt strongly that their political involvement was necessary, as the level of graft and corruption in the administrative positions of power in their province, was unacceptable in a system which purported to be democratic and constitutionally sound.

4. Reasons for Continued Detention:

It was believed by those members of the Philippine Bar whom we interviewed, that the reason for the continued detention of the lawyers was two-fold.

First, the effectiveness of the two lawyers in conducting their cases has led to the acquittals of a large number of alleged political subversives. With the continued detention of the two Abra lawyers, no other lawyer is available or prepared to defend such cases. Such action by the military was seen to be a warning to all other lawyers in the area who may attempt similar work.

Second, particularly in the case of Benesa, his detention was seen to remove him from the political arena and to weaken his community support.

The Davao Lawyers' Case:

Three lawyers, Laurente Ilagan, Antonio Arellano and Marcos Risonar, were, at the time of the interview detained at the Bicutan Rehabilitation Centre at Taguig, Metro Manila.

All three had been arrested by the Military in Davao City, Mindanao; two were arrested on 10 May and one was arrested

on 12 May 1985. The basis for effecting the arrests were mission orders issued by the Military. A mission order is simply a command directing an officer of the Military to carry out a specific mission or military operation. In Risonar's case, the mission order was signed by a General (the Regional Unified Commander), but for Ilagan and Arellano, the mission order was unsigned. These orders did not state the offences for which the lawyers were arrested and they were not, and nor can they replace, warrants of arrest.

On 14 May 1985 their counsel filed a petition for writs of habeas corpus in the Supreme Court in Manila and the three lawyers were brought from Davao to Manila for the habeas corpus hearing on 23 May 1985. Following the hearing, the Supreme Court ordered their immediate temporary release and the order was served by their counsel on the Military at Bicutan Rehabilitation Centre at Taguig on the same day.

The Military personnel refused to release the detained Davao lawyers and told counsel (one of whom was a former Supreme Court Judge who acted as senior counsel in this case) that the Court's release order "had to be verified from higher authorities".

Three days later, on the morning of 27 May 1985, the Military filed complaints against the three lawyers with the Fiscal's Office in Davao. In the afternoon of the same day, the Fiscal's Office laid in the Regional Court in Davao informations charging the three lawyers jointly with rebellion. The normal procedure, as provided in Presidential Decree No. 911 and Rule 112 of the 1985 Rules on Criminal Procedure², requires that no information for an offence cognizable by the Regional Trial Court shall be filed by the City Fiscal without a preliminary investigation having been first conducted. A preliminary investigation allows respondent ten days from the date of service of the initial complaint in which to submit counter-affidavits and examine all other evidence submitted by the complainant.

2. 1985 Rules on Criminal Procedure, Supreme Court, Manila. Effective on 1 January 1985.

This procedure was clearly not followed here. On the filing of the informations of rebellion, as is customary, a warrant of arrest was issued by the Regional Court and, at the time of writing, the issue of bail was complicated by the habeas corpus orders and subsequent proceedings.

To further complicate the legal position, it transpired that a PDA had been issued on 25 January 1985 for the immediate arrest of the three Davao lawyers. A PDA is issued "when resort to judicial processes is not possible or expedient without endangering public order or safety"³ and is therefore issued in the interests of national security. The implementing rules issued by the Minister of National Defence require that upon receipt of a PDA it must be enforced within 24 hours in the Metro Manila area or within 48 hours outside Metro Manila.⁴

The Davao lawyers were not arrested until May 1985. There had been no lack of opportunity since January when the PDA issued, to arrest the lawyers. They had continued in the intervening months between January and May 1985 to attend on their detained clients, to confer with the Military personnel at the Military camp, and with the Judge Advocate-General's Office to discuss their respective clients' cases. It appears that the arrests in May 1985 by way of mission orders were effected pursuant to a PDA, a photocopy of which formed part of the Government's pleading in the habeas corpus hearing. The signed original PDA has not been sighted by the three Davao lawyers or their counsel.

ISSUES ARISING:

Although the trial has not yet commenced, there are many aspects of this case which cause grave concern.

The first involves the constitutional crisis of a failure by the

3. Section 4(3) Presidential Decree No. 1877 as amended by Presidential Decree No. 1877-A.
4. Section 5 Rules and Regulations Implementing Presidential Decree No. 1877 as amended by Presidential Decree No. 1877A, 7 September 1983.

Military to obey a Supreme Court order. If an order of the Supreme Court which is the highest tribunal in the Philippines is not enforceable, it indicates a serious erosion of the Rule of Law. Even if the failure by the Military to obey the order for release was based on the existence of a PDA, the supremacy of the Executive arm of Government over the judiciary reinforces the view held by many members of the Philippine Bar that there is no check on Executive power in the Philippines.

The second aspect is the failure of the prosecution to comply with the procedure of preliminary investigations prior to laying the information of rebellion in the Regional Court. The irregularity in this procedure and the haste with which it was done, being only three days after the successful habeas corpus hearing, seem to indicate an attempt to legally justify the Military's continued detention of the three lawyers.

The third is the failure by the Military to action and enforce the PDA pursuant to the implementing rules which the Minister of Defence himself issued. If a PDA is obtained in the genuine belief that public order or safety is endangered, and resort to judicial process is not possible, it follows that arrests should be effected immediately. The delay of four and a half months in arresting the three lawyers neither suggests that matters of national security were so endangered that urgent action was justified, nor excuses the Military for failure to comply with its own rules.

The fourth concern is that the arrests and detention of the lawyers were undertaken in order to ensure that they could not continue acting for political prisoners as well as working within the community giving people advice on human rights. A press statement issued by the Military Headquarters in Davao gave credence to this concern when it said:

“The arrest of Ilagan who had lately been engaged in human rights lawyering for suspected persons detained for subversion, rebellion and other charges was long overdue.”⁵

5. 13 May 1985 *Business Day* p.11.

A motion for reconsideration of the habeas corpus orders was filed by the Solicitor-General and the Supreme Court has determined that application. The majority opinion of the Supreme Court Justices held that the petition for habeas corpus “has been rendered moot and academic by virtue of the filing of an Information against them for Rebellion, a capital offence, before the Regional Trial Court of Davao City and the issuance of a warrant of arrest against them”.⁶ Because the detention of three lawyers was due to a judicial order (which authorised the arrest and did not grant bail) and arose from criminal cases subsequently filed against them, the Supreme Court held that the remedy of habeas corpus was no longer available.

The answer to the Petitioners’ submission that the information for rebellion is void, as the three lawyers were not given the benefit of a preliminary investigation and were therefore denied their constitutional right to due process, was in the majority opinion of the Supreme Court which noted that appropriate remedy was not a petition for a Writ of Habeas Corpus but a Motion before the Trial Court to quash the Warrant of Arrest and/or the Information, or to seek an investigation of the case.

Justice Teehankee delivered one of the three written dissenting opinions and it is important in the context of this report to quote from his decision the strong reasons for his dissent.

“I submit that on the basis of these *established facts* [‘as established by the pleading and annexures of record and the hearing held by the Court on 23 May’] the “sacred constitutional rights [and] also the *right to ‘due process’* which is fundamental fairness” as imperatively stressed by the majority decision in the recent case of *Galman v. Hon P. J Pamaran*⁷ have been *grossly denied* the three lawyers - detainees. This Court’s ‘immediately executory’ *release order* of 23 May (issued over four

6. *IBP v. J P Enrile et al* GR No. 70748 pp3-4.

7. GR Nos 71208-09 decided jointly with *People v Sandiganbayan*, GR Nos 71212-13 on 30 August 1985.

months ago) should be forthwith honoured and complied with. Far from having rendered the petition as moot and academic, all the *railroaded proceedings and orders* charging the three petitioners - lawyers with *instant rebellion in gross disregard of pendency of this case and of the assurance given in open court that the petitioners -- lawyers would be entitled to a hearing and a preliminary investigation in obedience to the constitutional mandate that 'no person shall be deprived of life liberty or property without due process of law' and 'no person shall be held to answer for a criminal offence without due process of law'*⁸ should be declared null and void. They were patently void, having been issued without jurisdiction under the well-settled rule that "a violation of a constitutional right divests the court of jurisdiction, and as a consequence its judgment [or order] is null and void and confers no rights."⁹

At the very least, all proceedings in the *instant rebellion case* before the Davao trial court should be suspended and enjoined until the petitioners-lawyers are granted their right to a preliminary investigation and the opportunity to confront their accusers and disapprove the charges; meanwhile it is but part of *due process* that *they be set free as ordered by the Court and be enabled to prepare their defence*. The petition under the great writ of habeas corpus to set them at liberty should accordingly be granted ..."¹⁰

It was urged in an "additional opinion" by Justice Melencio-Herrera, who delivered the majority opinion that as the detained lawyers were not entitled to bail, the Regional Trial Court in Davao should be directed to determine whether the

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8. Article IV Bill of Rights, sections 1 and 17, Philippine Constitution.
 9. PBM Employees Organisation v. PBM Co Inc 51 SCRA 189, 211 per Makasiar J. (5 June 1973).
 10. P16, Justice Teehankee's dissenting judgment, GR No. 70748.

evidence of guilt against them is strong, and "should be required to hear the case to completion with deliberate speed so that their guilt or innocence may be determined without delay."¹¹

Given the long delays in completing trials in the Philippines as evidenced in the Abra lawyers case this direction seems most apposite. However as the majority did not concur with this view, it is doubtful whether this direction will be followed at all.

The Involvement of the Philippine Bar

The Integrated Bar of the Philippines (IBP) is the national Bar association to which all practicing lawyers must belong. As a measure of its concern for the Davao lawyers, it took the unprecedented step of joining itself as a petitioner in the habeas corpus proceedings.

Following the failure of the Military to obey the Supreme Court order for the release of the detained lawyers, the Board of Governors of the IBP passed a resolution¹² expressing "its deep concern over the continued detention and delay in the release of the detained persons despite being [ordered to do so]... by the Supreme Court" and urged "the Minister of Justice, the Minister of National Defence and the Acting Chief of Staff to take steps for the formulation of a procedure for [their] seasonable release". This resolution was sent to President Marcos with a letter requesting that the three lawyers be released from detention.¹³

The motivation for reaching such a resolution was the IBP's concern that a refusal by Police or Military authorities to follow judicial orders eroded public confidence in the judicial system and compromised the independence and integrity of the Courts, both of which are essential to democracy and the Rule of Law.¹⁴

11. P1, Additional Opinion, GR No. 79748.
12. 6 August 1985 IBP Board of Governors (Executive Committee) Resolution No. VIII-85-34, annexed in Appendix I of this report.
13. Letter from IBP to President Marcos dated 19 August 1985, annexed in Appendix II of this report.
14. Preamble to Resolution *ibid.*

At the time of the Mission's visit to the Philippines five lawyers were detained, three lawyers had been shot during the preceding year, one lawyer had disappeared in 1977 and numerous lawyers had been threatened by the Military, either with firearms or verbally, or had complained of being on a Military "hit list". All of these lawyers were engaged in human rights work and acting for political detainees. The IBP were satisfied that those lawyers undertaking human rights work were at risk, and arranged a meeting with the Military in an attempt to protect the interests of its members.

The Military were receptive to the plea from the IBP¹⁵, but the question still remains — how is subversive activity defined? If the Military suspect a person, lawyer or otherwise to be involved in subversive activity, an arrest will be made in the interests of national security and charges may be laid. The way in which "subversive activity" is viewed by the Military differs markedly from the view held by members of the Philippine Bar. Those interviewed, including the IBP Acting President, were concerned that because a lawyer may be representing a political prisoner, or may be engaged in educating the poor or the uneducated about human rights, or may be vocally critical of the existing administration or of abuses occurring within it, such lawyers risk being labelled "subversive".

Murdered Lawyers:

At the time of the Mission, three lawyers¹⁶ had been murdered and one had disappeared.¹⁷ The Mission was able to inquire into the circumstances surrounding the deaths of two most recent murders: Romraflo R. Taojo of Tagum, Davao del Norte, and Crisostomo Cailing in Balingasag, Misamis Oriental.

15. Interview of Mission with Acting Vice President Millora.

16. Zorro C. Aguilar shot on 23 September 1984 at Dipolog City, Zamboanga del Norte; Romraflo R. Taojo shot on 2 April 1985 at Tagum, Davao del Norte; Crisostomo Cailing shot on 6 July 1985 at Balingasag, Misamis Oriental.

17. Hermon Lagman, a Labour Law specialist, disappeared at a street corner in Metro Manila.

C. Cailing:

Cailing was a member of FLAG and a member of the IBP Human Rights Committee. He conducted his law practice in Balingasag, Misamis Oriental, and took all the human rights cases in the region, which included the seven municipalities east of Cagayan de Oro. In the 1980 elections he had stood for Mayor in the local government elections but was unsuccessful.¹⁸

Shortly before his death, the Military had instigated food blockades in Claveria under the Government policy of population and resource control. The area had been "hamletted" (which is the forced relocation of a population in a village, to a camp) and a plan for zoning the land was to be implemented. Cailing was acting for a very vocal farmer who was actively critical of the Government's plans and was openly objecting to food control in the area. In June 1985 the farmer was shot by two assailants who, we were told, have been identified by certain members of the local community as Military men. They were riding a motorcycle; the passenger shot the victim and the driver immediately drove away from the scene. However, no official investigation has been carried out, and no person has been charged with the murder.

On July 6 Cailing was sitting inside his house, leaning against the window which faced the street, with his head resting on the window sill. He was shot through the back of the head by an assailant who had walked up to the window and had placed a gun through the grill. Eye witness accounts allege that the assailant had hidden near the house and after the shooting had occurred he ran approximately one block away where a driver on a motorcycle was waiting for him to make the escape.

18. The Mission received numerous complaints from the Philippines Bar that the elections in 1980 and in 1984 were not properly conducted. Among the abuses enumerated were vote buying, intimidation tactics by armed supporters, of the ruling party (KBL) incorrect returns, forgeries, and incorrect counting procedures. In addition, in some areas it appeared that opposition parties were not entitled to advertise as widely as the KBL Party.

The Mission was unable to interview the witnesses to Cailing's murder (as they resided some distance from Cagayan de Oro), nor were we permitted an interview with the local Senior Military Official for the area. The veracity of the eye witness accounts of the incident and the several explanations we received alleging the identities of the assailants and the reasons for the killing, were not able to be tested in any satisfactory or judicial way.

One fact was clear however: whilst no clear explanation could be given for the murder, no steps were being taken by the Police or the Government to provide an answer. There appeared not to have been any official investigation conducted into the circumstances of the killing (although we were told the Military had completed a report of the incident) and no persons were being held for questioning or had been charged for the offence.

R. Taojo:

Taojo had been a member of FLAG for six years prior to his death. He was the first Chairman of the IBP chapter in Davao del Norte in 1981 and held the position for two years. He also established the first Human Rights Committee of the IBP in Davao del Norte.

As a human rights lawyer Taojo together with one other FLAG lawyer took the bulk of the human rights cases in the area. He was also a member of an opposition group called MUSAD¹⁹ and was the legal adviser to SWORD²⁰, an umbrella organisation of various labour groups in and around Davao. In October 1984 he was the head of a panel of negotiators in respect of a labour strike at a local plantation. The strike had lasted four weeks and as a result of the negotiations which took place the management did meet some of their demands.

Taojo's involvement in human rights activities included

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19. Multi-Sectoral Alliance for Democracy.
 20. Solidarity of Workers in Davao Province.

speaking at rallies and demonstrations and discussing human rights violations.

Approximately one year before his death, Taojo was informed that the Military were preparing to take some action against him. He was warned to keep a low profile as he was being too vocal against administrative and Military abuses in the area. Some precautions were taken by him; he no longer went jogging at dawn and he stopped going out at night. He bought a car on the premise that it would give him more mobility and safety while travelling.

In the four to five months prior to his death further warnings were received by a close friend that Taojo would be shot by Military "assets"²¹ or intelligence agents.

On the night of 2 April 1985, Taojo had been talking with his relatives about an impending court case for which they were going to file proceedings. When his relatives left he was alone in the house except for a niece who was cooking in the kitchen. Taojo took a seat in his living room, which abuts the road, and was watching television. There were no curtains at the windows and he was seated by the front window. A few minutes later, Taojo was shot. The house was situated near the school and witnesses saw someone standing around the front of the house. A pedi-cab driver said the killer had ridden in his cab and he had been instructed to drop him off near the house.

After the shooting some witnesses saw two men walking away from the house hurriedly. Taojo was shot five times by a .45 calibre weapon and it was aimed through the open folding door leading from the street into the living room. It is estimated that at least four or five witnesses must have clearly seen the killers, but nobody will come forward or talk. It is believed that some know the identity of the killer, but nobody is prepared to identify him.

As with our inquiry into Cailing's execution, the Mission was

21. "Assets" is a term used to describe people who are used by the Military to carry out assassinations or provide information.

unable to interview witnesses, or interview the Senior Military Official for the area. We received information alleging the identity of the killer and the explanations for such killing, but again these were not able to be tested in any satisfactory or judicial way.

No steps have been taken by the Police or the Government to provide an explanation for the murder and no official investigation appeared to have been conducted.

Lack of Formal Investigation:

In addition to the murders of Cailing and Taojo, H. Lagman, a labour law specialist, disappeared at a street corner in Metro Manila on 11 May 1977 and Zorro Aquilar, a FLAG lawyer from Dipolog City, was killed together with a journalist, Jacobo Amatong, on 23 September 1984. No satisfactory investigation has been conducted into the disappearance or murders, and no person has been brought to trial or charged with an offence, despite the lapse of time.

Similarly, in the more recent murders of Cailing and Taojo, no official investigation appears to have been conducted and no results have been obtained or publicised.

The lawyers we interviewed throughout the Philippines suggested that without an official inquiry being conducted, the suspicion that the Military were responsible becomes greater. The failure even to attempt to bring the assailants to trial suggests that the matter is not viewed as important by the Government or that the actions of the assailants are condoned.

Other Forms of Harassment and Intimidation:

The Mission interviewed numerous lawyers, principally FLAG officials, in Manila, Northern Luzon, Northern and Southern Mindanao, and Davao City. In those interviews we received many accounts of lawyers being intimidated by death threats from the Military, being placed under surveillance by the

Military, and being placed on an "Order of Battle" which is a list of priority targets compiled by Military Intelligence.

Intimidation of Lawyers:

We were able to conduct three interviews with FLAG lawyers who had been warned they were on a Military "hit list" and one of those had already survived an attempt on his life.

The first involved a lawyer²² who has been in practice for some ten years, who is member of the IBP and has been a FLAG member and co-ordinator for many years. In addition to acting for corporate clients as part of his practice, he conducts human rights cases defending suspected subversives, and has a regular radio programme in which he can air his views about human rights violations and civil liberties issues. As with other FLAG lawyers in his area, he gives free legal advice to organisations from many sections of society, such as the students sector, labour and farmers groups and the urban poor.

In November 1984 he was told by a family friend in the Military to leave the area. The family friend was being recruited to be trained as a secret marshal to kill criminal elements and enemies of the Government and this lawyer was at the top of the list.

He received a further but similar warning the following day from a different source. In the days that followed he noticed he was being shadowed by plain clothed men in Military vehicles. In his radio programme that week he decided to make public knowledge of the fact that he was being followed, and through his programme invited the Military to visit him for such information as they should want, as he had nothing to hide. Immediately following that broadcast the shadowing stopped.

Shortly after this event he was invited to come to the army camp in the area, where he was confronted with intelligence reports that he had been conducting subversive teachings over

22. This lawyer requested anonymity.

his radio programme. He defended his statements on the basis that they were teachings on fundamental human rights.²³

No charges were brought against him although, from information he has received from reliable sources, he understands that local Government officials are recommending that a PDA be issued against him (as well as two other FLAG lawyers in the area) for allegedly being subversive.

In mid-July 1985 (approximately 1½ months before we interviewed him) after completing a dinner engagement, as he was approaching his vehicle he noticed two people lounging over its bonnet. The two men were surprised by his sudden appearance and he was immediately suspicious. It became clear that one of the men was fumbling for a gun which appeared to be caught up in his clothing. The lawyer shouted for help, got into his car and immediately drove away. He feels sure that the two men in civilian clothing would have shot him through the window but for the fumbling of the gun.

This lawyer believes that the Military want to prevent the work of the FLAG lawyers because they are at present being effective in defending political detainees, giving legal advice on human rights to interest groups, and addressing rallies and demonstrations on civil rights abuses.

Despite the danger to his life, he feels he has a legal and moral duty to continue to do his work in the human rights area as he is committed to the Rule of Law. In his view, lawyers must overcome their fear and set an example by displaying courage and determination.

The second interview involved a FLAG lawyer²⁴ who is involved in an opposition party, and who is the legal adviser to a labour-related organisation and a local Church which receives complaints of human rights violations.

23. He referred us to one of the texts upon which he relies: former Chief Justice Fernando's book on *Human Rights*.

24. This person must remain anonymous.

He has received information that his life is in danger and that he risks being "salvaged" by the Military. He has confronted his local Military Chief with this information and it was denied. At the time of interview he was taking precautions to protect himself by ensuring that he arrives home before dusk and does not leave until full daylight.

Both of the above lawyers had had close friends shot within the previous 18 months of the interview. One of these murdered friends had always known of the danger of being "salvaged" and he had vowed that should this occur, his murder would not remain unsolved. To this end he had placed a loaded firearm in his bedroom so that in the event of an attack, he would be able to wound his assailant and thereby mark him for future identification.

While he was having breakfast with his family, three men barged in and fired 17 bullets at him. Even though he was dying from wounds to the head and shoulder, he went from the dining room to the adjoining room to get his firearm. He was too weak to accomplish this, but, even so, he managed to grab hold of one of his assailants before collapsing. The witnesses have given statements which identify one of the assailants as an army captain. Later when the case was filed by the Fiscal, the witnesses refused to testify out of fear.

The third lawyer²⁴ who was interviewed described an incident where the receptionist at the lawyer's place of work received a phone call making a bomb threat and indicating that the bomb was placed in the lawyer's room. Within minutes the Military had arrived to search the room and no bomb was found. This lawyer, who had been involved and active in human rights activity for some years, believed that the threat and subsequent search was a deliberate attempt to create fear.

Further Harassment of Lawyers:

The Mission also received accounts from FLAG officials of other incidents involving the intimidation and harassment of FLAG and human rights lawyers.

During the course of a trial in the Regional Court in Butuan City a copy of the Military's "Order of Battle", a list of "priority targets" of alleged "communist-terrorists", was produced by the Military during cross-examination by Attorney Jose T. Gonzalez. He was shocked to find that his name, together with those of three other FLAG lawyers in the region, was on this list of wanted subversives.

We were informed by FLAG officials that Attorney Fausto M. Lingating was informed by the Chief of Police that he had overheard the conversation of two Military officials that Lingating "should be eliminated". Since 31 May 1985 Lingating has reported that he has been followed by armed men in civilian clothes who are monitoring his activities.

Other incidents of harassment of FLAG lawyers involve a near-fatal "accident" when a Military vehicle bumped the vehicle of a lawyer in an attempt to force him off the road; the aiming of firearms at two lawyers who were each investigating matters for their respective clients; the aiming of a firearm at a lawyer in a restaurant; and the Military surrounding the house of one lawyer and keeping another lawyer under constant Military surveillance.

Treatment of Witnesses:

Specific examples were given to members of the Mission of people who had witnessed murders or abuses carried out by Military personnel, but who were too fearful or intimidated to present their evidence. We cannot comment on these examples as we were unable to interview the witnesses concerned.

We were able, however, to interview a prosecution witness²⁴, who after being tortured²⁵ by the Military made a false

25. On his statement the torture consisted of burning his penis with matches, and being subjected to ice treatment.

statement implicating a number of lawyers, whose trial was pending. He had also been threatened with subversion charges himself if he failed to co-operate. The Mission has documented the process of torture in his case and received accounts of other witnesses who have been tortured for false information.

It is of grave concern to the Mission that such an attempt to pervert the course of justice by obtaining evidence in this way could happen in a legal system which professes to uphold the Rule of Law.²⁶ The motives behind the arrest and detention of political detainees in the face of such abuses immediately raises doubts as to the bona fide exercise of power in the circumstances. In the case of lawyers who have been doing pro bono publico work, their arrests and detention on charges which require fabricated evidence to justify such charges gives credence to the submission of counsel in the petition for the Writ of Habeas Corpus in the Davao lawyers' case:

“Beyond the harassment and the illegal arrest and detention of these three advocates, are grave implications for the craft! Their arrest appears to be a prelude to a campaign to ultimately deprive the accused in national security cases of the services of counsel in violation of the Constitution.”²⁷

26. All Ministers of the Government whom we interviewed believed in the Rule of the Law and that it was upheld in the Philippines legal system. See Chapter 3 post.

27. Paragraph 16: Petition for Habeas Corpus of L. Ilagan, A. Arellano and M. Risonar, dated 14.5.85.

Chapter 3

The Government Response

“The Philippine Government has always stood firm in its resolve to uphold and preserve human rights. Authorities have observed great caution in the treatment of those arrested and detained for violating criminal laws ... No person has been detained for merely being *politically* or ideologically opposed to the present administration, provided such opposition is held within the bounds of law and order.”¹

These sentiments expressed by the Philippine Government in a position paper on human rights were echoed by the Government Ministers in the interviews held with the Mission. That the rule of law and the independence of the judiciary were of equal importance to the Philippine Government as well as the international legal community was firmly stressed by all of the Ministers we interviewed.

The Government considers that the principal problem facing the Philippines today, a problem that it feels is not appreciated fully by other western nations, is the threat to national security posed by the Communist Party of the Philippines (CPP) and the New People's Army (NPA) which is described by the Government as the military arm of the CPP. It is the Government's belief that the CPP/NPA has increased its strength and armaments over recent years, and now has approximately 10,000 to 12,000 NPA guerrillas, two-thirds of whom are armed.

1. “Position Paper on Human Rights” released to the Mission by Minister Juan Ponce Enrile, Minister of Defence, p1.

The Government also believes that the CPP/NPA has expanded its insurgent operational areas and has likewise accelerated subversive activities in the urban centres.² Describing the members of the CPP/NPA as "dissidents" the Philippine Government maintains that "to persuade the people supporting the communist cause, they generally exploit such issues as alleged military abuses and government's inability to deliver basic services to the rural areas. As a means of coercion, they have increasingly resorted to terroristic activities such as liquidations, raids and ambushes."³

The Ministers all stressed that because the Philippines has an insurgency problem they must deal with it in the best way possible within the legal system. In a country where emergency powers must be balanced against the requirements of a criminal justice system, they believed that an independent judiciary plays a crucial role in resolving any conflicts and provides the necessary balance.

It was stressed to the Mission that the Government believed in upholding the rule of law and that the Philippines, in their view, has an effective legal system and an independent judiciary. To substantiate the claim that the judiciary in the Philippines is independent the Minister of Justice and Solicitor-General, E. P. Mendoza, cited two examples of Supreme Court Justices who had recently spoken out on issues that concerned them. Justice Teehankee, who has been described as a perennial dissenter particularly in cases involving human rights and constitutional issues, and Chief Justice Makasiar both are able to, and do, criticise the shortfalls in the legal system and the exercise of executive power.

It has already been noted in the 1984 ICJ report⁴ that changes in the compulsory retirement ages for judges (moving from 70 to 65 and then being raised again to 70) secured a further 5 years of

2. "The Insurgency of Situation & Government Counter Measures" 30 April 1985 Ministry of National Defence, Republic of the Philippines. p3.
3. Ibid p.3.
4. 1984 ICJ Report supra at p66.

service for the former Chief Justice Fernando and thereby prevented Justice Teehankee from being elevated to the Office of Chief Justice. At the time of the Mission's visit to the Philippines in late August 1985, Justice Makasiar had just been appointed to the position of Chief Justice even though he was due to retire in four months time, in December 1985, when he would reach the age of 70 years. Again this appointment was seen to avoid the elevation of Justice Teehankee to the position of Chief Justice. As one of the newspaper articles noted "By seniority and tradition, Teehankee should have succeeded Justice Enrique Fernando to the post when Fernando, 70, retired last month."⁵

It was also of note that Chief Justice Makasiar made his first public criticisms of the administration, in criticising the immunity clause in the Constitution,⁶ and he did so, from the position of Chief Justice, only some four months from retirement.

From the Government's viewpoint, the Supreme Court has the jurisdiction to determine the validity of presidential decrees and constitutional amendments, and is thus independent of executive influence or power. The cases of *Garcia Padilla v. Enrile*⁷ and *Morales v. Enrile*⁸ inter alia were cited as examples of the Supreme Court reviewing the validity of continuing detention pursuant to Presidential Commitment Orders.⁹ These decisions were therefore seen to be a sufficient check on executive power, rebutting the criticisms that the judiciary was taking a pro-executive stance and was not independent.

However, in both of those cases, the petitions for habeas

5. 18.8.85: 'Panorama', Sunday magazine of the *Bulletin Today*, p5.

6. See Chapter 4, Footnote 15.

7. GR No. 61380, 20 April 1983: see chapter 4 post for commentary on this case.

8. GR No. 61016, 26 April 1983: see chapter 4 post for commentary on this case.

9. A presidential Commitment Order was the forerunner to a PDA (see Chapter 4, footnote 11).

corpus were dismissed, and the Court upheld the validity of the continued detentions and denied bail in both cases. Further, the Solicitor-General in the Davao lawyers case of *IBP v. JP Enrile et al*⁸ acting for the respondents, the Minister of Defence, Lieutenant General F V Ramos and Brigadier General Tangue, relied on the ruling in *Garcia-Padilla v. Enrile et al* that the Courts lack the authority to inquire into the cause and validity of detention of persons in certain regions when by virtue of the Presidential Proclamation No. 2045A the writ of habeas corpus is suspended in those regions in the Philippines. Proclamation No. 2045A issued by the President on 23 July 1983 still remains in full force and effect and suspends the writ of habeas corpus in the two autonomous regions in Mindanao and in all other regions in respect of persons detained for crimes against public order or public safety.

The necessity to have such emergency powers as the presidential decree making powers, particularly the Preventive Detention Actions was seen by the Government to be intrinsic to maintaining national security in the Philippines in view of the insurgency threat. Both Ministers Mendoza and Enrile told us that once a PDA is issued, it may not be appropriate or "wise" to action it immediately.

Yet the implementing rules¹⁰ signed and promulgated by the Minister of Defence J P Enrile require that a PDA must be enforced within 24 hours in the Metro Manila area or within 48 hours outside Metro Manila. In the Davao lawyers case, *IBP v. J P Enrile*, the PDA was issued on 25 January 1985 and the arrests were effected some four months later. This was commented upon by Justice Melencio-Herrera who in his additional opinion referred to the Implementing Rules and observed that a four month gap between issuing a PDA and serving it can give room for doubt as to its authenticity and to the question as to whether the detained persons pose "any appreciable danger to national security and public order".

In response to the issue of the continued detention of the five

10. GR No. 70748, 21 October 1985.

FLAG lawyers, both Ministers Enrile and Mendoza were adamant that there was no immunity for lawyers under the Philippines Constitution and if they had committed a violation of the law, they would be subject to the same procedures as any other citizen. Minister Mendoza went further in stating that in his view lawyers who have represented political detainees and been involved in human rights cases have acquired a privileged status and the Military have been careful not to harrass them. Since 1972, lawyers have been charged and appeared before the Courts for various offences and in his view partiality has been exercised in their favour. He did not think the lawyers were being harrassed, detained or charged because they acted for political prisoners or because they were involved in human rights cases.

In response to the allegations of torture, salvaging and other abuses perpetrated by the military, the Minister of Defense, J P Enrile, indicated that he himself moves about the provinces in order to check on the conduct of the military. Where breaches in military procedure and rules have occurred, the matter is investigated and the perpetrators are court martialled. The Mission was furnished with a schedule entitled "Data on Military Justice Armed Forces of the Philippines (AFP)".¹¹ It records that there are 871 general court martial (GCM) cases for pre-trial investigation; 347 GCM on trial; 180 GCM cases acquitted and 111 convicted; 11 matters are undergoing investigation before the AFP Efficiency Separation Board (which determines whether any officer shall be discharged or separated from AFP)¹² and 190 matters are considered closed by the AFP Efficiency Separation Board. However, it is unclear from the schedule the period of time to which the statistics relate and the type of misdemeanours or breaches which have occurred in each case. As officers of the AFP can be disciplined for all types of misconduct, it is unclear whether any of the cases investigated or heard involved allegations of torture, salvaging or other abuses.

11. See Appendix III annexed hereto.

12. Executive Order No. 475.

One incident, involving a FLAG lawyer and his two clients, was brought by FLAG lawyers to the attention of the Acting Chief of Staff, Lieutenant General **Fidel V. Ramos**, with a request for an investigation. A colonel under the influence of alcohol, "mauled" the two clients in the presence of their lawyer and threatening the lawyer, cocked an armalite rifle, with the intention of aiming it at him. The lawyer was advised to leave for his safety. The FLAG request was actioned and an investigation was instigated by the National Defence Ministry. In its reply the Ministry noted that the two clients "were hesitant to give statements on the matter" and the officer concerned was reprimanded for the incident.¹³ Similarly, in response to a request for an investigation into death threats received by FLAG lawyer F. Lingating and the surveillance of FLAG lawyer G. Andolano, the National Defence Ministry did direct that immediate steps be taken to investigate the allegations by requesting the attendance of the lawyers with the Regional Commander of the AFP.

It is clear that there are forums available to review military procedures, to hear complaints and to review administrative action, and the Government wishes to be seen to support such institutions.

However, from our observations and the information we received, the climate of fear is such that those who exercise their right to protest or complain, are placing themselves and their families at risk. We received accounts of witnesses being afraid to testify against military abuses for fear of reprisals, and others who were bribed or tortured to make statements for the prosecution. It is the same climate of fear which may well deter other lawyers from undertaking the work that has led to the detention, harassment or death of their colleagues and has left some areas in the Philippines bereft of counsel available to deal with cases involving human rights violations.

13. Letter dated 30 May 1985 annexed hereto in Appendix IV.

Chapter 4

The Role of the Judiciary

It has been of international concern that the independence of the judiciary in the Philippines has been perceptively eroded.

In 1977 the ICJ Report¹ concluded that the Government had severely undermined the independence of the judiciary in that it demanded and received the written resignations of all Lower Court Judges and has given itself the authority to remove all the Supreme Court judges by appointing their successors.² The 1984 ICJ Report urged that security of tenure for judges until retirement age was essential for the independence of the Judiciary³ and recommended a repeal of all constitutional decrees permitting executive interference with security of tenure of judges.⁴ The Lawyers' Committee for International Human Rights reported⁵ that "The erosion of judicial independence has not been completed but it has been perceptible"⁶ and concluded that "A subservient judiciary has acquiesced in President

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1. "The Decline of Democracy in the Philippines" 1977 ICJ Report, Butler Humphrey & Bisson.
 2. *Ibid*, p47.
 3. "The Philippines: Human Rights After Martial Law", ICJ 1984 — Leary Ellis & Madlener, p64.
 4. *Ibid*, p123.
 5. "The Philippines: A Country in Crisis", report by the Lawyers' Committee for International Human Rights, December 1983.
 6. *Ibid*, p109.

Marcos' assumption of broad legislative powers and important judicial functions, and has largely abdicated its vital role in protecting basic rights.”⁷

In the 1984 report the ICJ⁸ reported that “The Supreme Court decisions on the legitimacy of the 1973 Constitution, the constitutionality of the Judiciary Reorganisation Act 1980, and its failure to intervene in cases of alleged gross violations of human rights as well as its support of President Marcos' power to legislate by decree, has led to the conclusion that the Supreme Court, as well as Lower Courts, has abdicated its independence and become subservient to the Executive.” It was noted, however, in that report that there had been some encouraging signs at that time of a more independent stance taken by the Courts. In particular, the report focused on the cases of *Garcia-Padilla v. Enrile*⁹ and *Morales v. Enrile*¹⁰.

These cases have relevance to this Mission as in both of them the prisoners were arrested without warrants on suspicion of rebellion and a Presidential Commitment Order (the forerunner of a PDA) was issued after their respective arrests. Further, in both cases there was a petition for the Writs of Habeas Corpus and the prisoners' release on bail was sought. The Court dismissed the petitions in both of the cases, upheld the validity of the continued detentions and denied bail. In *Garcia-Padilla v. Enrile* the Court expressed extreme reluctance to interfere or check in any way the Presidential powers, noting that:

“The judiciary can, with becoming modesty, ill-afford to assume the authority to check or reverse or supplant the Presidential Actions. On these occasions the President takes absolute command for the very life of the Nation and its government, which, incidentally, includes the

7. *Ibid*, p8.

8. 1984 ICJ Report, p74.

9. G.R. No. 61380, 20 April 1983.

10. G.R. No. 61016, 26 April 1983.

Courts, is in grave peril. In so doing, the President is answerable only to his conscience, the people and to God.”¹¹

In the *Morales v. Enrile* decision, however, the Court referred to the earlier doctrine enunciated in the 1971 case of *Lansang v. Garcia* 42 SCRA 448 and noted that the Court may enquire into the Executive exercise of power and in particular, enquire whether the Executive has acted arbitrarily.

Despite the encouraging view of the Supreme Court in the *Morales* decision, more recent decisions from the Supreme Court indicate an extreme reluctance to review and rule upon the constitutional validity of Executive power and action.

In particular, criticism was directed at the Supreme Court’s reluctance to deal with important constitutional issues, especially in national security cases where the Court has been required to scrutinise a Presidential decree or detention action. Because of the inordinate delays in dealing with such cases, when they are finally heard they bear no relevance to the situation of the detainees at the time of hearing. In such cases, the Supreme Court is able to dismiss the constitutional issues raised by such cases as being “moot and academic” in the circumstances.

In the case of *Renato Canete v. Pedrito De Guzman et al*¹² the Supreme Court dismissed a petition for habeas corpus, for being “moot and academic” in that the petitioner was released from custody on May 7 1983, three months before the decision. On February 25 1983, the trial court had dismissed the charge of illegal possession of subversive documents on the grounds of insufficient prosecution evidence and ordered the release of the petitioner. The military (the respondents in the petition for habeas corpus) refused to release the petitioner on the ground that only the President of the Philippines could order his release as he was being detained pursuant to a Presidential Commitment

11. *Garcia-Padilla v. Enrile* Majority opinion delivered by Justice De Castro.

12. G.R. No. 63776, August 17, 1984.

Order (PCO).¹³ In that case the petitioner sought an order from the Trial Court that the Provincial Commander was in contempt of court for failure to obey the Court's Release Order. The Trial Court refused to make the order on the ground that the 1981 Constitutional Amendment gave immunity to the President for official acts done by him or by his officers.

In his dissenting judgment, Justice Teehankee together with Justice Santos formulated the issue in the case as being "What is the effect of a decision of acquittal upon a PCO?" At page 2 of the dissenting opinion, the Justices observed "the issue at Bar is a decisive and fundamental issue of public interest and importance that demands to be resolved, rather than emasculated with dismissal of the case as moot." The dissenting judgment observes:

"To further hold that the Court's acquittal of the accused does not entitle him to release from detention unless and until the PCO is lifted would be a subordination to the Executive of the judicial power which is exclusively vested in the Judiciary. As submitted by petitioner's counsel 'of what use would Courts be? Acquittal without freedom — would be a meaningless ceremony.'"¹⁴

Similarly in the *Sarmiento* decision¹⁵, the petition for habeas corpus was dismissed as being "moot and academic" because the *Sarmiento* spouses were no longer in detention at the time the Supreme Court heard the petition. In that case the petition for the writ for habeas corpus was filed on May 16 and the Military

13. Presidential Commitment order (PCO) was a detention order, which was replaced by a PDA. A PDA has the effect of being both a warrant of arrest and a search warrant. (1984 ICJ report page 15.)

14. *Ibid* dissenting judgment page 3.

15. Petition for the issuance of a writ of habeas corpus for Aristedes Sarmiento and Laura Del Castillo Sarmiento in *Sarmiento v. Enrile*. G.R. No 62119, August 27, 1984.

(the respondents in the case) were required to comment on the urgent motion. After considerable delay they did so on July 14 1984 and in their reply were able to note that the release of the remaining spouse had occurred on July 11 1984.

In a motion for reconsideration in *Garcia-Padilla v. Enrile*, the Supreme Court on 19 July 1985 ruled that the motion for reconsideration filed by the petitioners should have been granted, and the Writ of Habeas Corpus ordering the release of the detainees issued, because they had been detained for more than one year pursuant to a PCO. By the time of this hearing, all but one of the detainees has been released. In regard to those released, the petition for habeas corpus was declared "moot and academic". As to the remaining detainee, Dr Aurora Parong, the petition for her release was likewise declared "moot and academic" as a warrant of arrest against her was issued by the Municipal Court of Bayombong on August 4 1984 on a charge of illegal possession of a firearm and ammunition.

As a result of the long delays in obtaining a hearing in all of the three cases cited above, the majority of the Supreme Court did not make a finding on the constitutional issues involved in each case, but dismissed the cases on the practical considerations at the time of hearing.

Even in cases where the Supreme Court has ruled that a prisoner is to be set at liberty where he or she has been preventively detained without charges for over one year, as in the case of *Jimenez* G.R. No. 65623 and *Villaber* G.R. No. 68657, steps may be taken to continue the detention. In *Villaber's* case, a few hours after Villaber had been released, having been kept in detention without charges for over 2½ years, formal charges were then filed against him by the Fiscal, for his alleged complicity in a plot to assassinate the President, and he was arrested again.

With the judiciary being reluctant to rule on the invalidity of Preventive Detention Actions, or other such orders, or on constitutional issues that may involve national security issues, the members of the Philippine Bar hold out little hope for an

effective and independent Judiciary which could protect the constitutional rights and freedoms of the individual against the abuses and use of power by the State. The failure by the Military to obey the Supreme Court order for the release of the three Davao lawyers after their successful habeas corpus petition hearing, provided the members of the Philippine Bar with yet another example of the subservience of the Judiciary to the Executive and emphasised the need for an effective and independent Judiciary to uphold the rights of the individual.

It must be noted here that the Supreme Court has recently dismissed the Davao lawyers petitions for habeas corpus as being "moot and academic" because informations alleging rebellion have been filed in the Regional Trial Court at Davao and warrants of arrest were issued¹⁶ by that court, thereby validating their continued detention.

The depth of the concern of the Philippine Bar about the constitutional validity of certain Presidential Decrees and their highly repressive effects on the individual is marked by a resolution of the IBP at its board meeting held on March 2 1984. The IBP Board resolved that it would use all necessary judicial remedies to challenge the constitutionality and validity of Presidential Decree No. 1834 (which increases the penalties for rebellion, sedition, and related crimes), Presidential Decree 1835 (which increases the penalties for membership in subversive organisations), Presidential Decree 1836 (which defines the conditions under which the President may issue orders of arrest or commitment orders during Martial Law or when the provision of the writ of habeas corpus is suspended), and Presidential Decree 1877 as amended by Presidential Decree 1877A (which provides for Presidential Detention Actions), in an effort to obtain relief from the Court to nullify the effects of such Presidential Decrees. A "petition for prohibition with preliminary injunction" was filed on 9 March 1984.¹⁷ Although the Government, being the respondents, have filed in reply, and

16. For a full discussion of this case see Chapter 2, footnote 6.

17. *IBP v. R C Puno & J P Enrile et al*, GR No. 66610.

the petitioners have counter-replied, at the time of publishing this report, the case has not yet been heard.

Vacancies in Judiciary

Members of the Philippine Bar were critical of the Judiciary in the Philippines both at the regional and municipal levels as well as at the Supreme Court level.

We received account of bribery occurring at the Lower Court level throughout the Philippines. The most common criticism however, was the delays in having cases heard and concluded. It is not uncommon for a case to be conducted on a part-heard basis as and when the Court is available to hear it. In this way a case may take months, sometimes years to complete. At the time of the Mission's visit to the Philippines, there were approximately 55 vacancies in the Municipal Circuit Trial Courts, 56 vacancies in the Municipal Trial Courts and 13 vacancies in the Municipal Trial Courts in the cities, 10 vacancies in the Metropolitan Trial Courts, 128 in the Regional Trial Courts, 17 vacancies in the Intermediate Appellate Court and 1 vacancy in the Supreme Court.¹⁸ As a result there is an enormous backlog of cases in all of the Courts in the Philippines. In the Supreme Court the number of "cases" pending as of 30 June 1985 was 4,720; in the Intermediate Appellate Court, there were 10,860, in the Regional Trial Courts there were 168,700; with 57,547 in the Metropolitan Trial Courts, 35,311 in the Municipal City Trial Courts, 56,941 in the Municipal Trial Courts and 33,127 in the Municipal Circuit Trial Courts.¹⁹

With the large numbers of vacancies and the long delays in having cases heard, members of the Bar were concerned that this was adding to the increasing lack of confidence in the Judiciary.

18. These figures from the Office of the Court Administrator include those Courts which are yet to be "organised".

19. These figures are annexed in the Tables in Appendix V.

Immunity for Government Action:

One of the principal problems confronting a lawyer taking human rights cases, and being involved in the human rights area, is the immunity from legal action granted to the President or to his officers for any official acts done by them pursuant to the President's specific orders during his tenure. This immunity clause is enshrined in Article 7, section 15 of the 1981 Constitutional Amendment. This has meant in effect that the Government is not accountable to the people of the Philippines for any action that can be said to be done in the course of duty, or Government administration.

The area of greatest concern is the way in which Military abuses can go unchecked or unchallenged, unless the Government itself takes action against its own officers. In Article XV, s. 16 of the 1981 Constitutional Amendments, the constitution provides that "The State may not be sued without its consent."

There are however, two institutions both situated in Manila which can receive citizens complaints. The first is Tanodbayan which is the equivalent of an Ombudsman's Office and investigates complaints against those in public office and, where appropriate, is the prosecuting arm of the Government. Sandiganbayan is the court which has jurisdiction over criminal and civil cases involving graft and corruption, and adjudicates civilians' claims against Government officials. In the latter court we were informed that the Judge Advocate General's office carries out the prosecuting of Government officials, and the field personnel conducting investigations in the regional area are also from the Judge Advocate General's office. Lawyers often find that it is impractical to send their clients to Manila to have their grievances aired before either of these two institutions, because there is a strong Government involvement in these institutions and the client is likely to be unable to pay the travelling expenses and the costs of bringing themselves and their witnesses to any such hearing. Hence the ability of a lawyer to adequately seek a review of Government action or redress by

way of civil or criminal action on behalf of a client, is severely limited.

At the time of the Mission's visit to the Philippines, in a formal address, the five year old constitutional amendment granting the President lifetime immunity from suit for his official actions, was described by Chief Justice Makasiar as "a barrier to the full implementation of the rule of law." He was reported as urging that all public offices must be accountable to the people and was quoted as saying "The greater the power, the greater the responsibilities; the greater the trust, the greater the accountability."²⁰

20. 23 August 1985 *Daily Express*, page 1 and page 6.

Chapter 5

Conclusions and Recommendations

In undertaking its investigations, the authors did not have the resources or the time to act as a Commission of Inquiry or quasi-judicial body into the murders, detention and intimidation of lawyers. However, the evidence which was received, and the manner in which it was given, left us in no doubt as to the following conclusions. We conducted extensive interviews throughout the Philippines with Government Ministers, lawyers and present and former Justices of the Supreme Court and the conclusions we have reached are by way of a fact-finding mission based upon those interviews conducted and reported upon in the foregoing chapters of the report.

CONCLUSIONS:

Human Rights Advocacy:

It is essential to the Rule of Law and to a functioning democracy that citizens are able to seek redress against the arbitrary exercise of executive power, by having access to the Courts to safeguard their human rights.

To facilitate such access, legal representation must be freely available and those lawyers in turn must be able to represent their clients' interests and conduct their cases without interference or personal risk.

It was clear to us that those lawyers undertaking "human rights cases" in the Philippines and acting for political detainees,

are at risk of being labelled "subversive" and in specific instances, in very real danger of losing their lives.

All of the FLAG and human rights lawyers we saw were active in expressing their concerns about any administrative abuse of power, in publicising human rights violations and in participating in legal education programmes. Some lawyers were active in local body politics; others sought office in politics at a national level; but in all instances, we were satisfied that the lawyers were striving for legitimate and democratic changes within the existing structures.

We were particularly concerned at the apparent continuing failure of the present Philippine government to discern the differences between legitimate dissent within a democratic system on the one hand and subversion on the other. We endorse the statements of the Philippine Catholic Bishops Conference which said: "Individuals and groups of Bishops have repeatedly called the attention of civil and military authorities to instances of arbitrary arrest and detention. Legitimate dissent is all too easily construed as rebellion and reason, as subversive in its conveniently amorphous definition."¹

We were satisfied that:

1. Lawyers presently undertaking human rights work in the Philippines and in particular those representing political detainees and advising local community groups are at risk of:
 - (i) being intimidated by Government security forces, or
 - (ii) endangering their own lives in continuing their work.
2. Human rights lawyers who are vocally critical of the present Government or of human rights violation and/or who seek office in the national or local body opposition parties risk being labelled as "subversives" and face the possibility of detention, and/or death.

1. Catholic Bishops Conference of the Philippines Pastoral Letter, Lent, 1983.

3. The lawyers who believe they are presently on a "hit list" or "Order of Battle" **are** in real fear of losing their lives.
4. In relation to the recent murders of the three human rights lawyers, we cannot make a definite finding as to the identity of the assailants. However the failure to conduct any criminal investigations or take any action to identify and bring the assailants to trial, leaves a strong inference that a Military or Government security force may well be responsible.
5. With the deaths and detention of human rights lawyers and the intimidation of others, a climate of fear has been created in which it is difficult for lawyers practising in the human rights area to carry out their functions. It is feared that the numbers of lawyers who are able to undertake such work in certain areas of the Philippines are diminishing, and in areas such as Abra in Northern Luzon this is already the case.

The Judiciary:

6. Serious concern has been expressed at the pro-Executive stance taken by the Supreme Court in cases involving issues of a constitutional nature, with cases often being deferred for such periods of time as to render the substance of the case no longer relevant.
7. With appointments to the Judiciary being made solely by the President there is widespread criticism that a sense of allegiance by the Judiciary to the Executive contributes to the pro-Executive stance taken by the Judiciary, particularly at the Supreme Court level. It is also essential that security of tenure for members of the judiciary should be secured and that all existing legislation allowing executive interference with the security of tenure be repealed.
8. The long delays experienced in having cases heard and resolved are principally due to the number of vacant positions in the Judiciary. The Regional and Municipal

Trial Courts appear to be the worst affected. This has resulted in gross delays in completion of trials and inevitability erodes the quality of justice. In the case of the **Abra** lawyers, for example, their trial is being conducted on a part-heard basis as it cannot be heard on consecutive days of hearing.

The Legal System:

9. The “immunity clause” in Article 7, Section 15, of the Constitution grants the President and his officers immunity from legal action and thus prevents citizens seeking legal redress for Executive action. In the interests of the Rule of Law and fairness, the clause should be repealed.
10. The Sandiganbayan is the only Court in which civilian complaints against abuses by Government officials can be heard. This Court is situated in Manila and does not sit elsewhere. This makes it difficult for the citizen living outside Manila to have recourse to this Court.
11. Amendment No. 6 of the Constitution gives the President wide decree-making powers and these powers have been exercised too freely. If recourse to the law is required in an emergency, or in a matter of national security, there are sufficient safeguards within the legal system and the Philippine Constitution without the need for Amendment No. 6.

RECOMMENDATIONS:

To ensure that the Rule of Law is upheld and to enable the legal system in the Philippines to function properly we respectfully but firmly urge the Philippine Government to consider the following:

- 1) A complete review of all Military and Police procedures to prevent human rights lawyers being harrassed and intimidated. In particular, a thorough investigation should be undertaken of all Military “hit lists” or “orders

of battle” in existence to ensure their immediate destruction.

- 2) Issuance of clear instructions to prevent the arrests of lawyers who are:
 - i. participating in legitimate protest action;
 - ii. providing legal advice to community groups such as the trade unions, labour groups or the rural poor;
 - iii. participating in local or national political elections.
- 3) A thorough investigation of the three recent murders of human rights lawyers, with a view to bringing the assailants to trial.
- 4) The repeal of all legislation, including any constitutional amendment or Presidential Decree, which allows for the Executive to interfere or threaten the security of tenure of the Judiciary. The security of tenure of office for all members of the Judiciary to be guaranteed.
- 5) Ensuring that all vacancies in the Judiciary are filled to ensure a speedy and efficient system of justice.
- 6) An immediate repeal of Article 7, Section 15 (the immunity clause) to ensure accountability of all Executive action.
- 7) The repeal of Amendment No. 6 which gives the President the power to legislate by decree.
- 8) The abolition of the PDA (Preventive Detention Action) and any form of administrative detention which is not capable of judicial review.
- 9) Restoration of the privilege of habeas corpus for all arrested persons.
- 10) The immediate publication of Presidential Decree No. 1974 which upon publication in the Official Gazette reduces the penalties for rebellion or insurrection, conspiracy and/or proposal to commit rebellion, sedition and conspiracy to commit sedition. Although passed on 2

May 1985, at the time of writing it still has not been published in the Official Gazette, and therefore not become law.

- 11) Separation of the police and army, putting at least the police under civilian administrative and judicial control.
- 12) Positive steps to terminate human rights abuses by government forces, in particular extra-judicial killings, disappearances and torture, by:
 - clear and unequivocal orders and disciplinary measures within the armed forces and police that such practices must cease;
 - investigation of allegations of such abuses by qualified personnel independent of the forces against whom the allegations are made;
 - in the most serious and extensive cases, an independent judicial enquiry;
 - the prosecution and trial before civilian courts of all members of the armed forces and police against whom there is evidence of their having committed such abuses against civilians.

In conclusion, we observe that recommendations 4, 7, 8, 9, 11 and 12 above, were also the recommendations of the 1984 ICJ report. From our observations these recommendations have not yet been implemented and in endorsing those recommendations from the 1984 ICJ report we would urge the Philippine Government to give those matters and those listed above its immediate attention.

EPILOGUE



FREE LEGAL ASSISTANCE GROUP (FLAG)

The international fact finding mission on the state of human rights advocacy in the Philippines took place barely seven months before the demise of the martial law dictatorship. During its final years, that government sought to maintain itself in power by instituting a trend towards sharper repression in the country. A clear indication of this trend was the systematic attack on human rights lawyers.

One of the mission's purposes was to counter this trend by applying international pressure on the martial law government. The mission was successful in meeting this purpose: after the mission, the persecution of lawyers actively engaged in human rights defence and promotion ceased. The mission, however, failed to secure the release of the detained lawyers nor to elicit a positive murders of the FLAG lawyers.

The fall of the previous regime and the peaceful transition into the present government wrought improvements in the field of human rights in the country. Shortly after her assumption into power, President Corazon C. Aquino ordered the release of some political prisoners, among them the five detained FLAG lawyers. The brutal murder of FLAG member Atty. Zorro C. Aguilar has finally been resolved. Lt. Wilson Galido, Andy Anicete and two John Does, all belonging to the Intelligence Unit, 44th Infantry Battalion, 1st Infantry Division (Tabak), Philippine Army, are currently under military court martial for the murder of Atty. Aguilar.


While there have been some achievements in the human rights record of the Philippines under the present government, it is unfortunate that human rights violations have not been completely eradicated. Human rights abuses still occur, although on a more limited scale, scope and magnitude than during the previous regime. In addition, many of the laws, decrees, general orders and other mandates enacted and enforced by the previous regime have not yet been repealed. These laws, which institutionalized martial law in the country and bred gross violations of human rights are still in force and in effect today.

The initial steps the country has taken to promote respect for and observance of human rights are steps in the right direction. Indications are hopeful that sometime in the future, the Philippines will achieve full and unconditional respect for and observance of human rights.

But until that time, Philippine human rights lawyers, with the support of international organizations like the International Commission of Jurists (ICJ), will continue to defend and protect the rights of the Filipino people.

Quezon City, Philippines, 12 January 1987.

Administrator


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BOARD OF GOVERNORS (EXECUTIVE COMMITTEE) RESOLUTION NO. VII-85-34

WHEREAS, public confidence in the judicial system and the independence and integrity of the courts is essential to democracy and the rule of law;

WHEREAS, the reported refusal by military or police authorities to release detained persons despite judicial orders for their immediate release, erodes public confidence in the judicial system and the independence and integrity of the courts.

NOW, THEREFORE, be it resolved, as it is hereby resolved, by the Board of Governors at the instance of the Executive Committee of the Integrated Bar of the Philippines, to express its deep concern over the continued detention and the delay in the release of detained persons despite being ordered released by the courts, even by the Supreme Court, and to urge the Minister of Justice, the Minister of National Defense, and the Acting Chief of Staff to take steps for the formulation of a procedure for the seasonable release of said persons.

Done in Pasig, Metro Manila, Philippines this 6th day of August, 1985.

Simeon M. Valdez
SIMEON M. VALDEZ
President

Vicente D. Millora

VICENTE D. MILLORA
Executive Vice President

Jose J. Ferre, Jr.
JOSE J. FERRE, JR.
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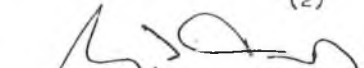
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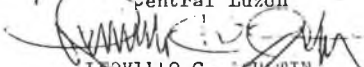
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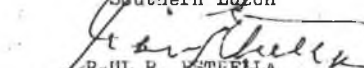
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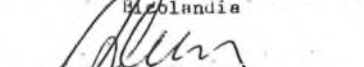
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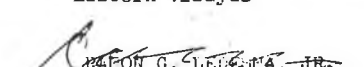

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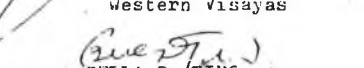

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Ex Officio Vice President for
Southern Luzon

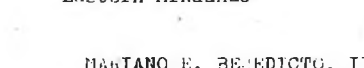

RAUL R. ESTRELLA
Ex Officio Vice President for
Basilandia


ESTANISLAO L. CESA, JR.
Ex Officio Vice President for
Central Luzon



LEOVILLO C. AGUSTIN
Ex Officio Vice President for
Eastern Visayas


RAMON G. LEDESMA, JR.
Ex Officio Vice President for
Western Visayas


BELLA D. TIRO
Ex Officio Vice President for
Eastern Mindanao


MARIANO E. BENEDICTO, II
Ex Officio Vice President for
Western Mindanao

attested:


CECILIO L. PE
Secretary & Executive Director



INTEGRATED BAR OF THE PHILIPPINES

DORA JULIA VARGAS AVENUE, PASIG, METRO MANILA

Cable Address: INBARPHIL

Tel. Nos.: 673-22-70, 673-51-16 to 18

CONSULTANTS

JOSE B. L. REYES
*President Emeritus &
Adviser-Consultant
to the Board of Governors*

ROBERTO CONCEPCION
*Chairman, National
Committee on Legal Aid*

NATIONAL OFFICERS (1985-1987)

SIMEON M. VALDEZ
President

VICENTE D. MILLORA
Executive Vice President

CECILIO L. PE
Secretary & Executive Director

MARIANO U. ABANILLA
Assistant Secretary

TERESITA CRUZ SISON
Treasurer

AMY L. WONG
Assistant Treasurer

BOARD OF GOVERNORS

SIMEON M. VALDEZ
Chairman

VICENTE D. MILLORA
Vice Chairman

JOSE J. FERRER, JR.
*Chairman, House of Delegates
& Ex Officio Governor*

ROMEO R. BRINGAS
*Ex Officio Vice President
for Northern Luzon*

ESTANISLAO L. CESA, JR.
*Ex Officio Vice President
for Central Luzon*

LEOVILLO C. AGUSTIN
*Ex Officio Vice President
for Greater Manila*

PRESBITERO J. VELASCO, JR.
*Ex Officio Vice President
for Southern Luzon*

RAUL R. ESTRELLA
*Ex Officio Vice President
for Bicolandia*

DANILU H. DEEN
*Ex Officio Vice President
for Eastern Visayas*

RAMON G. LEDESMA, JR.
*Ex Officio Vice President
for Western Visayas*

BELLA D. TIRO
*Ex Officio Vice President
for Eastern Mindanao*

MARIANO L. BENEDICTO, II
*Ex Officio Vice President
for Western Mindanao*

HOUSE OF DELEGATES

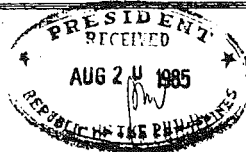
JOSE J. FERRER, JR.
Chairman

PLARDEL C. JOSÉ
Vice Chairman

MARIANO U. ABANILLA
Secretary

AMY L. WONG
Treasurer

GABRIEL J. BROCKO
Sergeant-at-Arms



19 August 1985

*His Excellency Ferdinand E. Marcos
President of the Philippines
Malacanang, Metro Manila*

S I R :

In its Resolution No. VII-85-34, copy of which is hereto attached, the Board of Governors of the Integrated Bar of the Philippines expressed its deep concern over the continued detention and delay in the release of detained persons ordered released by the Supreme Court.

On behalf of the Integrated Bar of the Philippines allow me to appeal to your Excellency to order the release of detained persons ordered by the Supreme Court to be released from detention.

With our profound thanks, and with assurances of our highest esteem, we are

Very truly yours,

Integrated Bar of the Philippines

Vicente D. Millora
VICENTE D. MILLORA
Acting President

APPENDIX III

DATA ON MILITARY JUSTICE

ARMED FORCES OF THE PHILIPPINES (AFP)

1. General Court Martial (GCM) Cases for Pre-trial Investigation	871
2. General Court Martial (GCM) Cases on Trial	347
3. General Court Martial (GCM) Cases Terminated	
a — Acquitted	180
b — Convicted	111
4. AFP Efficiency Separation Board (AFPESB)	
a — Undergoing Investigation	11
b — Considered Closed	190

APPENDIX IV

Republic of the Philippines
MINISTRY OF NATIONAL DEFENSE
Camp General Emilio Aguinaldo
Quezon City

MAY 30 1985

[Handwritten signature]
5/31/85

MAY 30 1985

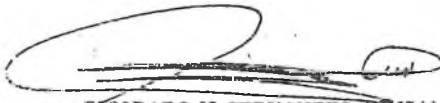
Atty Jose W Diokno
Free Legal Assistance Group
55 Third Street, New Manila
Quezon City

Dear Atty Diokno:

With reference to your letter regarding the involvement of PC Provincial Commander Col Roy Alzate of Ilocos Sur in an alleged mauling and grave threats incidents, please be informed that in a report submitted by The Inspector General, AFP, it appears that Jimmy Chua and Hermenegildo Jovinar, who were the alleged victims thereof, were hesitant to give statements on the matter. However, they admitted having been invited at the PC detachment and were thereafter charged for violation of PD 885. Notwithstanding the foregoing, LTC Alzate was reprimanded under Article of War 105.

Very truly yours,

FOR THE MINISTER OF NATIONAL DEFENSE:


DIOSDADO N CERVANTES (MNSA)
Chief, MOND Action Center

ANNEX V
 STATISTICS ON THE NUMBER OF POSITIONS,
 INCUMBENTS, AND VACANCIES IN THE JUDICIARY
 AS OF AUGUST 16, 1985

<u>C O U R T S</u>	<u>NUMBER OF POSITIONS</u>	<u>NUMBER OF INCUMBENTS</u>	<u>NUMBER OF VACANCIES</u>
SUPREME COURT	15	14	1
INTERMEDIATE APPELLATE COURT	50	33	17
SANDIGANBAYAN	9	9	0
COURT OF TAX APPEALS	3	3	0
REGIONAL TRIAL COURTS	720	592	128 (78 of which are unorganized *)
SHARIA DISTRICT COURTS	5	3	2 (all of which are unorganized)
METROPOLITAN TRIAL COURTS	82	72	10 (3 of which are unorganized)
MUNICIPAL TRIAL COURTS IN CITIES	124	111	13 (1 of which is unorganized)
MUNICIPAL TRIAL COURTS	455	399	56 (1 of which is unorganized)
MUNICIPAL CIRCUIT TRIAL COURTS	463	408	55
SHARIA CIRCUIT COURTS	51	6	45 (all of which are unorganized)
T O T A L	<u>1,977</u> vvvvv	<u>1,650</u> vvvvv	<u>327</u> vvv (130 of which are unorganized)

LIST OF UNORGANIZED COURTS*

(Except Shari'a District & Circuit Courts)

REGIONAL TRIAL COURTS

1. National Capital Region	32 branches
Manila	27 branches
Quezon City	1 branch
Pasay City	2 branches
Caloocan City	1 branch
Makati, M. Manila	1 branch
2. 1st Judicial Region	6 branches
3. 2nd Judicial Region	0
4. 3rd Judicial Region	3 branches
5. 4th Judicial Region	5 branches
6. 5th Judicial Region	6 branches
7. 6th Judicial Region	12 branches
8. 7th Judicial Region	3 branches
9. 8th Judicial Region	5 branches
10. 9th Judicial Region	4 branches
11. 10th Judicial Region	0
12. 11th Judicial Region	0
13. 12th Judicial Region	2 branches

TOTAL 78 branches
vvv

METROPOLITAN TRIAL COURTS

Manila	2 branches
Pasig	1 branch
TOTAL	<u>3</u> branches vvv

MUNICIPAL TRIAL COURTS IN CITIES

Bacolod City	<u>1</u> branch vvv
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MUNICIPAL TRIAL COURTS

Bulacan	<u>1</u> sala vvv
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STATISTICS ON CASES FOR THE YEAR 1985
(JANUARY TO JUNE, 1985)

COURT	PENDING CASES AS OF 12-31-84	JANUARY TO JUNE, 1985		PENDING CASES AS OF 6-30-85
		CASE INFLOW*	CASE OUTFLOW**	
INTERMEDIATE APPELLATE COURT	10,602	3,656	3,398	10,860
SANDIGANBAYAN	2,725	700	472	2,953
COURT OF TAX APPEALS	852	68	47	873
REGIONAL TRIAL COURTS	170,802	64,427	66,529	168,700
METROPOLITAN TRIAL COURTS	58,828	37,824	39,105	57,547
MUNICIPAL TRIAL COURTS IN CITIES	35,536	22,143	22,368	35,311
MUNICIPAL TRIAL COURTS	56,853	28,433	28,345	56,941
MUNICIPAL CIRCUIT TRIAL COURTS	<u>34,720</u>	<u>18,250</u>	<u>19,843</u>	<u>33,127</u>
T O T A L	<u>370,918</u> vvvvvv	<u>175,501</u> vvvvvv	<u>180,107</u> vvvvvv	<u>366,312</u> vvvvvv

* Includes cases newly filed and cases revived/reopened.
** Includes cases decided/resolved and cases archived.

Statistics
Office of the Court Administrator
August 21, 1985

SUPREME COURT

	<u>Jan. 1 to Dec. 31, 1984</u>	<u>Jan. 1 to June 30, 1985</u>
Number of Cases Filed:	3560	1708
Number of Cases submitted for Deliberation:	2729	2529
Number of Cases Pending but not yet submitted for deliberation:	1391	2191
Number of Cases Pending as of June 30, 1985:	-	4720
Number of Cases disposed of:	3541	1589