



**International covenant  
on civil and  
political rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Second periodic report**

**The Philippines\***

[26 August 2002]

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\* The report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session in July 1999.

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## Introduction

1. The Government of the Republic of the Philippines (GRP) submits this combined 2nd and 3rd Report to the Human Rights Committee in accordance with Article 40 of the International Covenant on Civil and Political Rights.
2. The Philippines signed the Covenant on 19 December 1966, ratified it on 28 February 1986 and submitted the instrument of ratification on 23 October 1986. The treaty entered into force in the country on 23 January 1987, three months after the date of deposit of the instrument of ratification. The Philippines submitted its Initial Report to the Committee on 22 March 1989 (CCPR/C/50/Add.1/Rev.1), which was considered by the Committee on 7 April 1989.
3. The Philippine Report was prepared in accordance with the general guidelines adopted by the Committee regarding the form and context of periodic reports (CCPR/C/20/Rev.2 dated 28 April 1995). It seeks to provide information on the measures passed and implemented which aim to give effect to the rights recognized in the Covenant, the progress made in the enjoyment of these rights and the factors and difficulties affecting the implementation of the Covenant. It contains a detailed description of the legislative, executive and administrative measures that aim to promote and protect civil and political rights, as well as a summary of judicial decisions that reflect the government's commitment to uphold these rights. Copies of the relevant documents are annexed to the Report.
4. The Report was prepared by the Coordinating Committee on Human Rights (CCHR) which was established through Administrative Order (AO) No. 370, dated 10 December 1997, among other things, to prepare Philippine country reports to the human rights treaty monitoring bodies and to respond to allegations of human rights violations (HRVs). The CCHR is chaired by the Department of Foreign Affairs with 15 other government departments and agencies as members.
5. The drafting committee was composed of representatives from the Department of Foreign Affairs (DFA), the Department of Justice (DOJ), the Department of the Interior and Local Government (DILG) and its attached agencies, the National Police Commission (NAPOLCOM) and the Philippine National Police (PNP), and the Department of National Defense (DND) and its attached agency, the Armed Forces of the Philippines (AFP).
6. The Report incorporated inputs and information received from the Philippine Commission on Human Rights (CHR) and various non-governmental organizations (NGOs), particularly the Philippine Alliance of Human Rights Advocates (PAHRA) and Families of Victims of Involuntary Disappearances (FIND). The earlier drafts of sections deemed sensitive and controversial were circulated to selected NGOs for their comment. In particular, on allegations of militarization of insurgency-affected communities in connection with military activities to enhance political stability, random interviews were conducted among residents of the affected areas, which formed part of the Report.

7. The present Report spans the period from April 1989 to December 2000. It covers the remaining half term of the administration of President Corazon C. Aquino (April 1989 June 1992), the entire six years of the administration of President Fidel V. Ramos (July 1992-June 1998), and the 31-month tenure of President Joseph Ejercito Estrada (July 1998 January 2001). However, mention is made of the policies of President Gloria Macapagal-Arroyo as pronounced during her inaugural address as well as her first official acts concerning the peace process.
8. The EDSA “People Power” Revolution in 1986 restored democracy in the Philippines. It ushered in the Aquino administration, which promised a new sense of order and made poverty alleviation one of its main thrusts. President Aquino also laid the foundation for economic liberalization the effects of which were not fully realized partly due to a succession of attempted coups d’etat and the occurrence of natural disasters.
9. Since 1986, “people power” has proceeded to be a tool for political assertion and intensified popular participation. The mushrooming of people’s organizations (POs), the vibrant non-government organizations (NGOs) community and the high rate of voter turnout in the last five major elections, all indicate a decisive passage to active participation from apathy during the martial law years under the administration of President Ferdinand Marcos.
10. President Ramos continued the thrust of the Aquino administration. He formulated and adopted a Social Reform Agenda as his government’s centerpiece program hand in hand with the goal to transform the Philippines into a newly-industrializing country by year 2000. Thus was enunciated the battle cry “Philippines 2000.”
11. Reforms instituted by President Ramos accelerated the country’s economic growth. The full restoration of civil liberties and the relative political stability enjoyed by the country attracted more foreign investors. Topmost priority was given to stemming criminality and in the continued search for a lasting solution to the country’s problem of insurgency and rebellion.
12. The Philippines was not exempted from the economic crisis that plagued the Asian region in 1997, but its effect was not as serious as that suffered by other member countries of the Association of Southeast Asian Nations (ASEAN). Most local and foreign economists attributed this resiliency to the soundness of the country’s economic fundamentals.
13. The administration of President Estrada was ushered into the height of the economic crisis and a political environment that, in order to preserve national stability and growth, required the continuation of the momentum generated by the Ramos administration.
14. President Estrada anchored his program of government on a ten-point agenda that would eradicate poverty, to wit: governance, fiscal policy, monetary policy and financial reforms, exports and investments, infrastructure, agriculture, safety nets and social services, education, science and technology and environmental protection.
15. Natural and man-made disasters and calamities adversely affected the economy and caused a major setback to whatever gains the country had begun to realize. The eruption of Mt. Pinatubo in 1991 produced “lahar” (volcanic lava) that buried whole communities. Up to

now, there is no comprehensive program to address the resulting massive homelessness. Typhoons of record-breaking intensity devastated a number of provinces in 1995. In 1998, El Nino hit the country at its worst since the post war period. In 2000 alone, calamity funds distributed all over the country amounted to PhP328,182,500, a clear case of depleted resources and minimal recovery.

16. Armed clashes between government troops and Muslim secessionists continued to threaten the country's stability. More disturbing developments were the reported increase in the traffic of loose firearms and the engagement of some insurgent groups in crime and terrorism. Pressed by the momentum of the national unification process, President Estrada picked up the peace efforts initiated by Presidents Aquino and Ramos and set a definite deadline for the peace negotiations.

17. In the year 2000, the country suffered a drop in foreign investor confidence, by and large, attributed to three major factors: escalation of armed conflict in Mindanao between the military and a Muslim separatist group between March and August; a series of kidnappings of foreigners and Filipinos in Malaysia and southern Mindanao by the extremist Abu Sayyaf Group (ASG) and, a slew of corruption scandals allegedly involving President Estrada.

18. Through military action and fortunate turn of events, the first two problems found interim solutions that minimized their national impact in October. The third problem, however, came to a head with accusations by a provincial politician-friend of President Estrada that the latter received gambling kickbacks and skimmed a percentage of public funds for his personal use. This snowballed into more revelations of ill-gotten wealth, triggering a wave of protests and Cabinet resignations. By early December, the Senate began impeachment proceedings against the President on four counts: bribery, graft and corruption, betrayal of public trust and culpable violation of the Constitution.

19. The daily, televised impeachment hearings experienced a significant breakthrough on 22 December 2000, when a senior bank executive offered testimony directly linking the President to accounts alleged to be used for gambling profits. With the resumption of the hearings at the start of 2001, the president's lawyers were put increasingly on the defensive. On 16 January, senator-jurors voted 11-10 to reject the admission of evidence congressman-prosecutors described as crucial in proving its case. The vote, which the public perceived as a telling indicator of how the final verdict would go, prompted tens of thousands of people to protest the suppression of truth. Protesters assembled in front of the EDSA Shrine, a monument dedicated to the 1986 people power movement. Within three days, crowds demanding the President's resignation swelled to almost 1 million in Metro Manila and thousands more in other cities.

20. On 19 January 2001, a number of Cabinet officials resigned and switched to then Vice-President Gloria Macapagal-Arroyo, the constitutional successor. Despite this crucial loss of support, Estrada steadfastly rejected calls for his resignation. The following day, thousands of "EDSA" protesters marched toward Malacanang where Estrada supporters gathered. To avert further chaos and possible bloodshed, the Supreme Court issued a resolution invoking the

principle “*salus populi est suprema lex* to” facilitate the assumption of Vice President Macapagal-Arroyo to the presidency. The Chief Justice of the Supreme Court swore her into office as the 14th President of the Republic of the Philippines on 20 January 2001.

21. In her inaugural address, President Macapagal-Arroyo stressed that her program of government would converge on four core beliefs: 1) alleviate poverty within the decade; 2) improve moral standards in government and society to provide a strong foundation for good governance; 3) change the character of Philippine politics from personality and patronage to party programs and process of dialogue in order to create fertile ground for true reforms; and 4) leadership by example.

## **PART I. GENERAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS**

### **A. General information**

#### **1) Land and people**

22. The Philippines is an archipelago located 966 kilometers off the southeastern coast of mainland Asia. It is bounded on the west and southwest by the South China Sea, on the east by the Pacific Ocean, on the south by the Sulu and Celebes Seas.

23. Its territorial waters measure 2.2 million square kilometers. Its total coastline, the longest discontinuous coastline in the world, spans 34,600 kilometers.

24. The country is composed of 7,107, islands which are subdivided into three major groups, each having an area in square kilometers, as follows: Luzon - 141,395; Mindanao - 101,999; and, Visayas - 56,606.

25. Since 1995, the country has been subdivided into 16 regions: Regions I to XII; National Capital Region (NCR); Cordillera Administrative Region (CAR); CARAGA Region (Region XIII); and, Autonomous Region of Muslim Mindanao (ARMM). It has 76 provinces, 61 cities, 1,543 municipalities and 41,876 *barangays* (villages).

26. The Philippines is vulnerable to natural calamities. It lies within the Pacific seismic belt, has 22 active volcanoes and is visited by an average of 19 typhoons a year, one-third of which are destructive.

27. The Filipino is of Malay racial stock. The indigenous culture is a mixture of Malay, Chinese, Indian, Japanese, Arabic, Spanish and American influences.

28. There are 110 ethno-linguistic groups in the country who speak at least 70 recorded languages, eight of which are major languages. Filipino is the national language. It is also the official working language along with English.

29. Eighty-five percent of Filipinos are Christians, comprised mostly of Roman Catholics. A little over 10 percent are followers of Islam, and the rest belongs to other religious groups.



30. Latest figures from the National Statistics Office (NSO) obtained from the 2000 Census of Household and Population showed that the country's population reached 76.5 million and is projected to double in 29 years. Annual population growth rate remains at 2.36 %. More than half of the population resides in the largest Philippine island of Luzon. Males comprised 50.4% of the population, and females, 49.6%. The Philippine population continues to be dominated by the youth where 66.73% falls under 30 years old. Of this sector, 50.68 % are males and 49.32 % are females.

## **2) General political structure**

31. The Philippines is a democratic and republican state with a presidential form of government.

32. The Philippines is the first democratic state in Asia. Filipinos liberated themselves from more than 300 years of Spanish colonial rule with the proclamation of Philippine independence on 12 June 1898. The first Republic was short-lived, ending with the occupation of the Philippines by the United States of America under the Treaty of Paris on 10 December 1898. A four-year war ensued between the Filipinos and the Americans from 1899 to 1903. In 1935, a Constitution was adopted providing for a 10-year Commonwealth Government of the Philippines under American auspices. On 4 July 1946, the Philippines regained its independence.

33. Since 1946, the country has had a presidential form of government, except for the periods 1972-1982 under Martial Law and 1982-1986 under a parliamentary set-up. The 1935 Constitution was replaced by the 1973 Constitution, which was later replaced in 1986. Approved in a referendum in February 1987, the present constitution restored the presidential form of government under a system of separation of powers with checks and balances by the three branches: executive, legislative and judiciary.

34. Executive power is exercised by the President of the Philippines with the assistance of his Cabinet secretaries. The President is both the head of State and of the Government. The Vice-President assists the President in the performance of his duties and responsibilities and may also be appointed as the head of one of the executive departments. The President and the Vice-President are elected by direct vote of the people for a term of six years without re-election.

35. Legislative power is vested in the two houses of Congress, namely the Senate and the House of Representatives. The Senate is composed of 24 senators elected every six years. The House of Representatives is composed of 250 members. They are elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area based on population size and on a uniform and progressive ratio. Their term of office is three years. One-half of the seats allocated to representatives of the party-list system - a mechanism of proportional representation - are filled-up through selection or election from the labor, peasant, urban poor, indigenous cultural communities, women, youth, war veterans, persons with disability, and other sectors.

36. Judicial power is vested in the Supreme Court and other lower courts as may be established by law. The decisions of the Supreme Court are binding on all lower tribunals. The other courts under the Supreme Court are: the Court of Appeals, which is composed

of 51 justices with one presiding justice; the lower courts, namely: Regional Trial Courts (a total of 950); the Municipal Trial Courts in every city/municipality, totaling 649, broken down into 82 for Metropolitan Manila, 143 for other cities, and 424 in the provinces; the Municipal Circuit Trial Courts (475), which have jurisdiction over one or more cities or one or more municipalities grouped together; and Shari'a District Courts (5) and Shari'a Circuit Courts (51) in predominantly Muslim areas.

37. At sub-national levels, governance is assumed by the local government units (LGUs) in each administrative area, i.e. province, city, municipality and barangay (village). Each LGU is composed of both elective and appointive officials. Elective officials include the governor and vice-governor for the province, mayor and vice-mayor for the city or municipality, and chairman for the barangay, and as members of the councils, i.e. *Sangguniang Panlalawigan* (Provincial Council), *Sangguniang Panlungsod* (City Council), *Sangguniang Pambayan* (Municipal Council) and *Sangguniang Barangay* (Village Council).

38. The democratic structure and processes are further enhanced by the constitutional provisions on social justice and human rights, protection of labor, women and children, and the strengthening of the autonomy of the LGUs. The Local Government Code of 1991 devolved to the LGUs the responsibility to deliver basic services in agriculture, health, social welfare and development, public works, environment and natural resources.

### 3) Economic indicators

39. According to the International Labor Organization (ILO), the Philippine economy had to grow by an average of 8-10 % annually to generate enough jobs for labor entrants.

40. Between 1989 and 1993, the country suffered from a generally negative economic growth. But in 1994, the country's gross national product (GNP) started to rebound with a 4.5% growth rate. Gross domestic product (GDP) also grew. Expansion peaked in 1996 with the economy achieving a real growth of 6.9 % for GNP and 5.7 % for GDP. Industry and services drove the GDP growth in 1993-1997, with annual growth rates of 4.4 % and 4.8 %, respectively.

41. Growth was fueled by sustained increases in investments and merchandise exports. Investments surged at an annual average of 9.0 % when stimulated by the liberalization of the production sectors and greater private sector participation in infrastructure development. On the other hand, in real terms, exports of goods - led by semi-conductors and electronics - reached new heights, growing at 12.4 % annually.

42. The Philippine economy proved its resilience when, in 1998, it registered a growth of 0.4% in GNP amid the El Nino phenomenon and the Asian financial crisis that plunged many economies into recession. Between 1999 and 2000, GNP rose by 3.7% and GDP by 3.3%.

43. The country's economically active population or labor force, contracted by 1.7 % from 33.444 million in April 1999 to 32.874 million in April 2000. In 1998, the labor force participation rate (LFPR) in rural areas indicated figures of 85.2% for men and 49.3% for women, while the LFPR in urban areas reflected 77.9 % for men and 50.6% for women.

44. Economic growth translated to new jobs, lower poverty incidence and a better array of consumer goods in the market.

45. In 1991, 91.0 % of the 25.24 million total labor force was employed. The employment rate improved in the preceding years up to 1997. However, following the Asian financial contagion that began in mid-1997, the employment rate slid to 90.4 % which meant, in real terms, some 2.1 million to 2.3 million jobless persons at any given year from 1992 to 1997. Unemployment continued to increase to 10.1 % in the year 2000 which corresponded to some 3.13 million jobless members of the labor force.

46. In 1999, employment rates were 90.8% for women and 90.5% for men. Among the employed women in October 1999, 19.8% completed secondary education while 12.1 % completed tertiary education. The corresponding rates for men were 21.7% and 8.5%, respectively.

47. The war on poverty continued. Poverty incidence among families decreased to 32.1% in 1997 from about 35.5% in 1994 and 40% in 1991. This translated to a reduction of about 250,000 poor families particularly in the urban areas in 1994. The reduction in poverty incidences could also be traced to improved income distribution marked by a 0.1 % increase in the income of the lowest income deciles from 1991 to 1994.

#### **4) Human resource development**

48. A freedom-loving people, the Filipinos have time and again, fought for independence, sovereignty and individual rights. They fought more than 100 revolts against Spain, a number of battles against America, and a war against Japan. Filipinos fought to become rulers of their own destiny.

49. More recently, they have earned the respect of the whole world for their direct participation in governance. Within the span of 15 years, i.e. 1986 - 2001, the Filipinos overthrew two presidents. In everyday life, expect the ordinary Filipino to aspire and work for empowerment, justice, peace and full development.

50. Various human development interventions were undertaken in the past years to enable all sectors of society to properly respond to available development opportunities. These were mostly in the form of direct interventions to increase access to basic social services and to improve delivery of services on education, health, nutrition, housing and community development, and social welfare, among other things.

51. At the international level, the Philippines expressed its commitment to human development through its active participation in several international forums such as the International Conference on Population and Development (Cairo, 1993), the World Summit for Social Development (Copenhagen, 1995) and the World Summit Conference on Women (Beijing, 1995). Such participation has helped strengthen the country's cooperation and collaboration with other countries on important social development issues.

52. At the national level, the commitment to human development was reaffirmed with the formulation of the Philippine National Development Plan for the 21st Century, 1999-2025 (PNDP) and the Philippine Human Rights Plan, 1996-2001 (PHRP) (Annex 1: PHRP) which serve as framework for the formulation and implementation of national policies, legislative measures, programs and projects for vulnerable and disadvantaged groups.
53. Access to education and human resource development increased as shown by the increasing participation rates for elementary and high school students from 85.10% in 1991 to 96.40 % in 2001 at the elementary level, and from 55.42 % to 72.25 % at the high school level for the same period. In sum, the education sector expanded its basic education enrolment level from 14.1 million to 18 million.
54. To meet the increasing demand for basic education and make it more accessible, more school buildings were constructed particularly in municipalities and barangays previously without schools. Classroom shortage in primary and secondary levels declined from 26,490 in 1993 to 14,615 in 1998
55. The impact of these trends can be seen in the improvement in basic and functional literacy rates. Basic literacy rates slightly increased from 93.5 % in 1989 to 93.9% in 1994 while functional literacy rates significantly improved from 75.4% to 83.8% for the same period. In 1994, the basic literacy rate in urban areas was still higher than in the rural areas because of the presence of more learning centers. Nevertheless, the gap between urban and rural literacy incidence went down from 9.2 % in 1989 to 5.3 % in 1994 (urban, 94.4; rural, 86.2).
56. The Philippines has progressed considerably in expanding coverage of contraceptive use. Data on trends in contraceptive prevalence rates for women aged 15-49 showed a steady increase in the use of contraceptives. From 40 % in 1993 (National Demographic Survey), contraceptive prevalence rate for women of childbearing age increased to 46.5 % in 1998 (National Demographic Health Survey). The percentage of married women of reproductive age using artificial methods of contraception increased from 24.9% in 1993 to 28.2% in 1998. In 1999, 49.3% of currently married women used at least one contraceptive method. Of this figure, 65.72% used modern methods, while 34.28% used traditional methods. Married women who graduated from college or at least reached the college level comprised the greatest percentage of contraceptive users.
57. The health status of Filipinos also improved over time as shown by increasing life expectancy and declining infant mortality rates. The average life expectancy at birth of Filipinos rose from an average of 61.6 years in 1980 to 64.6 years in 1990. Life expectancy further increased from 67.43 in 1995 to 68.6 years in 1999.
58. Life expectancy of females has always been higher than males: 70.98 and 71.28 years for females, and 65.73 and 66.03 years for males, in 1998 and 1999, respectively.
59. The infant mortality rate (IMR) declined from an annual average of 47.4 in 1996 to 44.3 per 1,000 live births in 1998. IMR had slightly dropped from 57 in 1990 to 49 in 1995. Maternal mortality rates (MMR) slightly improved from 209 per 100,000 live births in 1990 to 180 per 100,000 live births in 1995.

60. However, there tends to be a wide disparity in human development among the different regions, as evident in infant and maternal mortality rates and malnutrition rates. In 1995, there was a 32-point difference between the National Capital Region (NCR) (32 per 1,000 live births) and Eastern Visayas (64 per 1,000 live births). There was a glaring 106-point difference between the MMR of NCR (119 per 100,000 live births) and Northern Mindanao (225 per 100,000 live births). In addition, there are still regions that have a high prevalence of all forms of malnutrition among pre-school children (0-6 years old) and school children (7-10 years old), namely, Eastern Visayas, Western Visayas, Bicol and the ARMM regions.

## **5) Physical environment**

61. The country's infrastructure base improved significantly since 1989. Specifically, power generation increased from 26,581 gigawatt/hours in 1993 to 39,815 gigawatt/hours in 1997. The proportion of paved national roads improved from 57 % in 1993 to 62 % in 1996. In addition, telephone density increased from 2 lines per 100 persons in 1995 to 9 lines per 100 persons in 1999.

62. However, the carrying capacity of Philippine ecology is being stretched to its limits as a consequence of development and due to a relatively high population growth rate. Declining capacity is shown by the following indicators: (a) only 21 % of total land area remains under cover with less than 1 million hectares of virgin forests; (b) only 30 % of coral reef remain in good condition; (c) traditional fishing grounds are depleted; (d) several species of flora and fauna are classified endangered; (e) soil loss is higher than the acceptable limit of 3-10 tons per year; (f) surface waters suffer from degradation; (g) annual average of total suspended particles exceed the air quality standard by 200 %; (h) withdrawals from ground water are high; (i) land use conversion is rapid; and (j) problems exist in waste disposal and sewerage system efficiency, and water scarcity.

## **B. Enhancing political stability**

63. Government efforts to promote national unity and achieve political stability effectively found their way to the pursuit of peace and development. Top priority was given to addressing the root causes of the decades-old insurgency and rebellion through social reforms, anti-poverty and other development programs.

64. Strategies for solving the insurgency problem. Critical to the efforts in pursuit of growth and stability are:

- The mobilization of the AFP for civilian development, and
- The holding of peace talks with rebels and insurgents through presidential initiatives

### **1) The AFP as an Agency for Civilian Development**

65. The Aquino, Ramos and Estrada administrations employed a multi-level and multi-sectoral approach in addressing poverty, ignorance, disease and injustice. The AFP was

tapped as an agency for civilian development, leading other relevant government agencies in implementing various plans / strategies to effect developmental objectives in target areas.

**1-a) Campaign Plan *Lambat Bitag***

66. *Lambat-Bitag* (1988-1995) employed the triad strategy requiring the traditional application of combat, intelligence and civil-military operations. The Plan's Strategy of Holistic Approach (SHA) focused on security and development and encompassed a graduated four-step process intended to "clear, hold, consolidate and develop" (CHCD) communities "affected" by insurgents. "Affected" is to be differentiated from "influenced" "infiltrated" or "threatened" - all of which are defined in military parlance to indicate the varying levels and intensity of insurgency or degrees of dissident terrorist (DT) activities.

67. An affected barangay is one where DTs are engaged in guerilla operations even as they continue to engage in non-violent actions. Terrorist actions such as murder, kidnapping, liquidation, extortion and arson are intended to sow fear and force cooperation among the local populace. Another objective of this terrorist action is to show that government security forces are not capable of providing adequate security to the people, thereby creating an atmosphere of cynicism, hopelessness and helplessness.

68. An influenced barangay is one where the DTs have established a Barrio Mass Organization, Party Branch, Barrio Revolutionary Committee, a militia to act as an auxiliary of the DT armed components, and majority (above 50%) of the populace can be mobilized for party political activities.

69. An infiltrated barangay is one where the DTs have established Organizing Committees but there is as yet no militia although a sizeable portion (25-50%) of the population is sympathetic to the DTs by giving them aid and comfort and can be mobilized for party political activities.

70. A threatened *barangay* is one where the DTs have established contacts that could be friends of a party member or persons with strong anti-government sentiments. These contacts are expected to organize Barrio Liaison Groups that will facilitate the entry of DTs in the *barangay* and assist in the formation of Organizing Groups. This *barangay* is usually located adjacent to either infiltrated or influenced *barangays* where the DT organizational and expansion activities could probably take place.

71. Under *Lambat Bitag*, the AFP (Armed Forces of the Philippines) took the first step in the SHA. This process is applied ideally to carry out the coordinated and integrated efforts of the entire government machinery, especially counting on the active participation of the LGUs and the PNP (Philippine National Police), and in collaboration and coordination with NGOs (Non-Governmental Organization) or civil society. The overlapping and interrelated phases of this methodology may be conducted sequentially at a specific target or simultaneously in a general area.

72. The clearing stage is the first in the SHA, or interchangeably known as CHCD operational methodology. This stage ensures the decisive defeat of the insurgent armed groups and the neutralization of the insurgents' politico-military infrastructures in targeted priority fronts. It involves the "gradual constriction" of the guerilla front by the AFP and the PNP mobile forces with the aim of gaining possession or control of strategic areas or key terrain to allow holding forces to come in for the next stage or operation.

73. The holding stage aims to preserve the initial gains of clearing forces through occupation and control of cleared and adjacent areas. This stage signals the start of strengthening the local defense system to secure cleared areas from the re-entry or incursions of armed groups. It also initiates the re-establishment of government control and authority in cleared areas.

74. The consolidation stage involves the collaborative participation of the military and the police and concerned civilian government agencies and instrumentalities and the people themselves to strengthen and consolidate government control and authority in cleared areas. This stage includes stepping up activities meant to assist concerned LGUs in the delivery of basic services and gaining the people's trust and confidence to collectively bind them in self-defense against insurgent threat and strongly assert the control and authority of the government.

75. The development stage as the last in the CHCD process bares the stage for the interplay of governmental plans and programs intended to address the root causes of insurgency. It involves the implementation of socio-economic, psychosocial and political reforms and the sustained delivery of basic human development services to the people.

76. While *Lambat Bitag* succeeded in enabling the AFP to reduce insurgent ranks from its peak in 1988, its civilian counterparts, in most instances, fell short of fulfilling their corresponding tasks. Despite that, the AFP was committed to pursue the SHA for its counter-insurgency campaign. It was estimated that the NPA had strength of over 11,000-armed regulars in year 2000, down from a previous total strength of 26,000 in 1986. Also, military statistics showed that the number of affected barangays was 1,279 as of June 2000, out of which 628 are located in Luzon, 263 in Mindanao and 388 in the Visayas.

#### **1-b) Total Approach Strategy**

77. The AFP sought to enhance Campaign Plan *Lambat-Bitag* through the formulation of a Total Approach Strategy. However, this strategy was misinterpreted by some quarters to mean "total war" or "all-out war" approach that exposed the military to allegations of HRVs (Human Rights Violation) in the course of their offensive operations against the communist insurgents. The AFP, nonetheless, has consistently stressed full support for the government's initiatives towards the attainment of peace, unity and progress. In fact, security operation is an option to be implemented on a limited and graduated scale, i.e., only when necessary to respond to or address a threat situation.

78. This strategy contained the AFP's manifold developmental activities previously consisting of traditional activities conducted independently of other government agencies. In other words, this strategy seeks the participation of other government agencies and POs and

NGOs in the consolidation and development stages. It includes socio-economic uplift; search and rescue, relief and rehabilitation; enhancement, protection, preservation and conservation of natural resources and environment; and, civil works.

79. The total approach policy of the Aquino and Ramos administrations resulted in a series of military operations in areas affected by the CPP-NPA, notably in the province of Kalinga (formerly Kalinga-Apayao). Sometime in the late 80s, heavy encounters between the military and the NPA happened in the peripheral areas of the town proper of Tabuk. HR groups reported huge losses in terms of human lives, destruction of civilian property, especially dwellings / houses, missing animals and the temporary displacement of residents. When these areas were cleared in the early 90s, many rebels returned to the fold of the law availing of the government's Amnesty and the *Balik-Baril* Program. The holding phase consisted of the training and activation of CAFGUs (Citizens Armed Forces Geographical Unit).

80. The visit of President Ramos in the early part of his presidency signaled the start of the consolidation and development phases. Immediately, the Department of Public Works and Highways constructed and concreted the Tuguegarao Province-Tabuk National Highway and the Mallig Plains-Tabuk Road. The eastern part of Isabela Province was linked to Mallig Plains-Tabuk Road by a long bridge spanning the mighty Cagayan River, thus, significantly shortening the distance from western to eastern Isabela. Two years later, Tabuk was being ushered into an era of economic boom, as evidenced by the mushrooming of small and big buildings. Investor confidence made this capital town - formerly called *Tapok / Tachuk*, which is the native term for dust as in dusty, rough and rugged road - vibrant, alive and full of hope.

81. The Total Approach Strategy also proved to be successful in Marag Valley, which covers the towns of Luna and Calanasan in Apayao Province and portions of Pamplona town in Cagayan Province. The Valley was picked as a good operational base by DTs because of its vast natural resources and rugged terrain, thus very suitable for guerilla activities. It was considered to be the bastion of the Communist Party of the Philippines/New People's Army (CPP/NPA) strength in the Cordillera Region. Following clearing operations, the Department of National Defense/AFP (DND/AFP) formed an inter-agency task force composed of 24 concerned government agencies to plan, coordinate and implement a rehabilitation and development package.

82. The absence of any major armed conflict in the area indicated improved security situation that enabled the government to facilitate the return of its displaced residents and set into motion development projects without fear of disruptions from the DT groups. The task force boasts of the construction of a 12-km road from Luna, Bucao or Marag Centro by the AFP Engineering Brigades; a two-room school building and a multi-purpose building in Bucao; an artesian well; four houses to shelter new evacuees and transients; and a Marag Cooperative Poultry Project, the seed fund provided by the AFP.

83. More information on the promotion and protection of human rights in Marag Valley is discussed in the section on the Right to Life. Meanwhile, the clear and hold phases without the accompanying phases of consolidation and development defeat the very purpose of the SHA as it invites the resurgence of insurgency. Observers note that this happened in a locality not far from



Marag Valley. Residents attested that Barangay Mabaca (in the Municipality of Balbalan, Province of Kalinga) was once the seat of the CPP/NPA Probationary Government and served as their military training ground. Their activities went on normally and unchecked for almost 12 years until the late 80s, when government troops launched a Brigade-sized combat operation in the so-called Mabaca-Buaya Complex, the latter is situated in Barangay Puguin, Municipality of Conner, Province of Apayao. Again, this resulted in heavy encounters between the military and the NPA, and HR groups documented loss of human lives and animals, destruction of dwellings and the temporary displacement of the residents.

84. As in the case of Tabuk, when these areas were cleared in the early 90s, many rebels returned to the fold of the law and availed of the government's amnesty program and the *Balik-Baril* Program. This was followed by the training and activation of CAGFU Units. The promise of consolidation and development has remained elusive though. The story goes that the residents badly need just an unsophisticated rice mill - then costing about Php10,000.00 or USD200.00 - to replace their hand threshing mechanism. The threshing of *palay* is done three times a day, i.e., before every cooking-time because of the strenuous nature of the work.

85. The military official then assigned in the area lamented that this extremely backward and difficult life of the residents still persists, and he surmises that their small population has made unattractive, and nothing of a compulsion, for government to make its presence felt. The bitter experiences of the people during the armed encounters have greatly affected their emotional and psychological make-up. Elementary school children run away and cry hysterically when a helicopter rotor, a plane sound or gunshot is heard. The lone school principal in the area suggested that the best way to help make these children forget their horrible experiences is to provide them with recreational facilities and bring them to educational tours outside of the province.

#### **1-c) Campaign Plan *Unlad Bayan*.**

86. The AFP's involvement in civilian development activities paved the way for the adoption of Campaign Plan *Unlad Bayan* in 1994. The Plan enhanced the AFP's task of nation-building through the adoption of programs covering seven areas of concern: infrastructure; human resource development; crisis management; reserve force utilization; humanitarian and social services; environmental protection, preservation and conservation; and livelihood opportunities.

87. The Army Literacy Patrol System (ALPS) is the AFP's support to the country's education in the countryside. Its primary objectives are to reduce illiteracy rate, provide clientele with basic academic tools, and generate or augment income through the integration of skills training. Selected soldiers are trained as teachers / illiteracy facilitators, who in effect help disseminate government activities and goals, develop self-reliance, create worthwhile endeavors, and integrate ALPS graduates into the formal education system.

88. The ALPS, which later became known as the Barefoot Soldiers Program, traced its beginnings in Central Luzon during the mid-70's, when insurgency was at its peak. Considering that insurgency can never be eradicated with guns and bullets alone, the Army focused its attention on the safety of the people and on the socio-economic development of the area. It was claimed that one of the main reasons of trouble in Muslim Mindanao is the lack of even just the

basic foundation of education because of poverty and ignorance. Most Muslims then could hardly cope with the latest skills and techniques in farming, business and other income-generating projects.

89. Soldiers climb mountains and cross rivers to reach the most disadvantaged citizenry - the farmers, cultural minorities, and out-of-school youth - in the hinterland barrios. Classes are conducted on Saturdays and Sundays or some other days when the clientele are free from their daily chores, using existing day care centers or school buildings in the localities as classrooms. Each literacy class consists of an average 25 learners. The clientele undergoes the Philippine Educational Placement Test (PEPT), which is administered by the National Educational Testing and Research Center (NETRC) of the Department of Education (DepEd) so that graduates can be accredited through a Certificate of Literacy issued by the education secretary. This certificate, which can be used to pursue the country's formal educational system, is issued to a learner who has attained the desired 200 contact hours.

90. Every Army Literacy Patrol System (ALPS) class is handled by at least two soldier-facilitators, selected from the best in their unit. They should have at least finished two years in college, are instructor-potential based on the academic evaluation of the Philippine Army Training and Doctrine Command and are good examples to their peers and subordinates. They undergo a facilitator training at the Dep-Ed's Bureau of Non-Formal Education. They are taught the principles of adult learning, teaching methods and strategy, advocacy and social mobilization, Project Divine (Dynamic Integration of Values in Non-Formal Education) and other knowledge and skills necessary in equipping them to become effective and efficient Army Instructors or Facilitator.

91. The ALPS proved to be very effective for the Moro National Liberation Front (MNLF) candidate soldiers who were integrated in the AFP by virtue of the Government of the Republic of the Philippines (GRP)- MNLF Peace Agreement.

92. This Plan also takes into account human resource development within the AFP, such as: opportunities for higher education to fully professionalize the military personnel; value programs to preserve the efficiency and integrity of the military service; and, off-base housing projects.

93. In 1998 to 2000, the AFP conducted 1,053 local training courses benefiting 39,843 of its personnel and conducted 2,986 unit-training exercises involving 103,053 participants. A total of 503 military personnel availed of 561 foreign training courses. The AFP undertook 19 unilateral joint training exercises involving 7,128 personnel and took part in 58 bilateral combined training exercises involving some 5,720 personnel in the implementation of defense commitments.

94. For the same period, the AFP initially identified 12 priority military reservations with underdeveloped areas of 541.39 hectares that can provide housing units to some 38,842 beneficiaries. Also implemented are projects and reforms to address the welfare of soldiers and veterans, such as: simplified requirements for burial assistance and for transfer of pension of deceased veterans to their surviving spouses; the increase of old-age pension; and, the launching of the *Kalusugan para sa Kawal at Beterano* program to institutionalize the provision of adequate and quality health service for soldiers, veterans and their dependents.

95. Further, the AFP engages in development activities and livelihood projects for its personnel and their dependents, reservists, retirees and veterans. These include Command and Troop Information, Military Values Education Programs; and Military Livelihood Enhancement involving enhancement of livelihood skills, the productive use of idle AFP assets and the establishment of cooperatives.

**1-d) Campaign Plan *Pagkalinga***

96. The complementary campaign plans of *Unlad Bayan* and *Pagkalinga* maintained the AFP's lead role in countering internal threat while paying increasing attention towards external defense. Campaign Plan *Pagkalinga* confined the role of the AFP to operations against local communist terrorists (LCTs) or DTs in designated areas, operations against Southern Philippines Secessionist Groups (SPSGs), and police support operations. The responsibility for internal security operations is transferred to the PNP when an area has been declared free of the insurgency problem.

97. The three major objectives of this Plan are: to conduct intensified security operations in identified problem areas against the LCTs' active guerrilla fronts; to assist the PNP, the Presidential Task Force on Intelligence and Counter-Intelligence (PTFICI) and other law enforcement agencies in the campaign against lawless elements and syndicated crime groups; and, to assist the Commission on Elections (COMELEC) in the conduct of clean, peaceful and orderly elections.

**1-e) Campaign Plan *Kaisaganaan***

98. Launched in 1997, Campaign Plan Kaisaganaan aims to address the AFP's multi-faceted concerns on national security, peace efforts, national development and international commitments on defense and security cooperation. Under this plan the AFP seeks to support the formulation of the AFP Modernization Program and to enhance closer ties with the armed forces of other countries through bilateral and multilateral defense and security arrangements.

99. The AFP Modernization Program (AFP MP) has its legal basis on RA 7898, or the AFP Modernization Law, which was approved by President Ramos on 23 February 1995. The law declares that it is the policy of the state to modernize the AFP to a level where it can fully and effectively perform its constitutional mandate of upholding the sovereignty and preserving the patrimony of the Republic. The AFPMP depicts the capability of the future Armed Forces in terms of personnel, equipment and facilities. It aims to develop the AFP into a responsive and effective force that is highly capable of performing its dual role, i.e., external defense or warfighting force, and peacetime functions or developmental force.

100. The AFP aspires to be prepared at all times - to win decisively and quickly during war, to assist in relief operations during crisis, and to participate in nation-building efforts during peacetime. But more than merely acquiring modern fighter planes, tanks and vessels and training a lean and mean fighting and nation-building force, the AFPMP is meant to be an investment to the security of the nation and the Filipino people. The AFPMP intends to maintain the nation free at all times from any potential threat, which can mar the country's development and the people's well-being.

101. For decades, the AFP virtually engaged all its resources in internal security operations, since the presence of the United States in the country some years ago served as effective deterrent to external threats. Not surprisingly, the AFP's capability to operate with other armed forces and to address contemporary threats remained in a dismal state.

102. To strengthen the AFP, the Philippines enhanced its bilateral defense and security relations with its neighbors through the conduct of combined exercises between the AFP and counterparts from navies, armies and air forces of the United States as well as the navies of Thailand, Australia, United Kingdom, France, Japan, Indonesia, India, Bangladesh and a fleet review with the Korean Navy.

103. Peace initiatives under *Kaisaganaan* mandate the AFP to undertake, independently or in coordination with other concerned government agencies the following activities, among others:

- Implementation of the Letter of Instruction No. 41/96 which mandates (a) the integration of the members of the MNLF into the AFP, (b) the provision of support for other programs undertaken by other government agencies in pursuit of the final peace agreement forged by the government with the MNLF in 1996 and (c) the provision of socio-economic and cultural projects for displaced MNLF members;
- Observance of cease-fire agreements and those entered into between the government and recognized threat groups;
- Support for the NPUD (National Program for Unification and Development) consisting of the DND/AFP *BALIK-BARIL* (Return of Firearms) Project, rebel authentication, livelihood facilitation, cooperative development and other related activities for rebel returnees and civilian victims of armed conflict.
- These activities are discussed extensively under the topic on the Strategy for Peace Process in this Report.

104. Under *Kaisaganaan*, the AFP extends support to other government agencies, POs and NGOs through its Civic Action (CIVAC) Program involving civil works, infrastructure projects, humanitarian health services, medical and dental services and disaster rescue, relief and rehabilitation assistance; Community Relations (COMREL) activities involving national, historical, religious-cultural, special events, community activities, inter-agency coordination and public assistance; Mass Communication (MASSCOM) involving public information and media relations; and Support Programs for the protection, preservation, conservation and enhancement of natural resources and environment.

#### **1-f) National Peace and Development Plan**

105. President Estrada adopted the AFP's Campaign Plan *Lambat-Bitag* in his National Peace and Development Plan (NPDP) institutionalized through Presidential Memorandum Order (MO) 88 (21 Jan 2000). The NPDP carried the "strategy of Total Approach" backed up with concrete proposals to alleviate poverty as the primary cause of insurgency and involved the entire machinery of government and its resources.

106. The Cabinet Oversight Committee (COC) on Peacekeeping and Development Operations created under Administrative Order (AO) 90 (6 Oct 1999) provided direction and supervision at the national level but the command and control remained with the President. Area Coordinating Committees (ACCs) were established at the regional, provincial, city and municipal levels to serve as the nerve center for collaborative planning, direction, supervision and implementation of government operations.

107. The National Peace and Development Plan (NPDP) total approach was grouped into seven main efforts: Security, Political, Socio-Cultural, Diplomatic, Information, Economic and Legal. The intention was to resolve the threat posed by the local communist movement (LCM) by addressing the root causes of insurgency through the “left-hand” effort, i.e., economic, socio-cultural and political reforms and development while defeating the armed elements and dismantling the dissidents’ political and military structure and the grassroots level through the “right-hand” effort, i.e., internal security operations. With regard to the Moro Islamic Liberation Front (MILF), the intention was to seek peace through dialogue and negotiation to redress the legitimate grievances of the Muslim populace and to pour government resources to develop depressed Muslim communities. As for the ASG and other lawless elements, the government pursued strong anti-terrorist operations and law enforcement actions without letup.

108. The NPDP continued to tap the military for national development, especially in undertaking infrastructure projects, disaster preparedness, rescue/rehabilitation and environmental protection. In coordination with the PNP, the AFP formulated an Internal Security Operation (ISO) Campaign Plan codenamed *Makabayan* to enhance peace efforts without negating the commitment to the peace process.

109. The ISO operations resulted in the apprehension of 2,583 CPP and NPA rebels, recovery of 1,046 firearms from the insurgents, and reduction of 14 influenced *barangays*. In Mindanao, the AFP and the PNP cleared the Narciso Ramos Highway and the Talayan-Shariff Aguak road of MILF checkpoints. Hundreds of tunnels-turned-bunkers were overrun making the highway safe for civilian travel. In the process, the joint operations neutralized a total of 868 MILF members, recovered 533 firearms and dismantled 4 major and 26 satellite MILF camps. On the ASG kidnapping cases, the AFP rescued most of the 57 teachers and students taken by the ASG in Basilan and 20 foreign and 2 Filipino hostages snatched in April 2000 from the Malaysian island resort of Sipadan in Sabah.

110. The AFP Office of Civil Defense (OCD) responded to 39 natural and 142 man-made disasters affecting some 373,575 families and damaging infrastructure and agricultural produce estimated at P865.0 million. The amount of P2.2 billion in calamity funds was released through the OCD to rehabilitate and reconstruct communities affected by these disasters, particularly in Southern Philippines. The OCD in coordination with LGUs organized 4,930 local Disaster Coordinating Councils (DCCs) and 708 Disaster Control Groups (DCGs), 304 search and rescue teams, and 19 volunteer groups. The DCC/DCG also established 790 disaster operation centers in disaster-stricken areas.

111. The OCD also undertook a Geo-Hazard Mapping Assessment Program to generate data information on the vulnerability of specific parts of the country to various geological hazards as input to land use planning and development. The OCD developed 225 hazard/risk maps and profiles of 1,039 vulnerable areas, hence, was able to prioritize 158,689 potential evacuees should disaster strike these areas.

112. The DND/AFP vigorously pursued a massive drive to preserve and protect the natural resources in support of a balanced ecology. The AFP units supported the Department of Environment and Natural Resources by utilizing its manpower and equipment for anti-logging activities and the protection of marine life resources. The anti-illegal logging operation resulted in the apprehension of 2,773 individuals engaged in illegal logging and illegal fishing. In support of reforestation, the DND/AFP undertook the Adopt-A-Mountain Project in Mt. Manunggal/Inagayan in Cebu City, Mt. Makulot in Batangas Province, Mt. Pulangi in Pampanga Province, among others. The AFP also planted 1,414,705 seedlings of various types of trees covering 82 hectares of land. To sustain its reforestation program, the AFP maintains 80 tree nurseries containing approximately 200,000 tree saplings in various military camps.

### **1-g) The AFP Corps of Engineers**

113. The Engineering Brigades of the three major services - Army, Navy and Air Force - have become an indispensable contingent in implementing civil works projects envisioned in various AFP Campaign Plan. They constructed roads, bridges, school buildings and low-cost housing and other infrastructure projects. Throughout the counter-insurgency (COIN) campaign, these developmental activities became an effective weapon in winning the insurgency war without bloodshed.

114. Most of their construction works are located in the depressed communities. To name a few: (a) Northern Samar - 11 reinforced concrete bridges, two footbridges and roads linking the municipalities of Dango-Catubig and Pangpang-Palapag-Mapanas; (b) Mindanao - roads, concrete river footbridges and various civil work projects in Cotabato, Zamboanga, Basilan and Sarangani Provinces and the municipalities of Shariff Aguak, Sultan sa Barongis, Datu Piang and Tamontaka of Maguindanao; (c) Luzon - the Mansoysoy-Tinoc and Daligan Roads in Kiangan, Ifugao and the Lopez-Catanauan Road in Quezon Province.

115. Between 1999 and 2000, they constructed a total of 194.4 lineal meters of bridges and built/rehabilitated 139.403 kms of roads. They rehabilitated 9,340 sq/m of airport runway, and onstructed 15 flood control projects, 12 well drilling projects, 184 lineal meters of bridges and five school-buildings. Civil work projects were undertaken through memoranda of agreement with other government agencies. The Bases Conversion Development Authority (BCDA) projects, which amounted to Php579M, were funded by proceeds from the sale of military camps under RA 7227 or the Bases Conversion and Development Act of 1992.

### **2) The GRP Peace Process**

116. For decades, the Filipino people have suffered the scars of internal armed conflict, which has cost the nation dearly. From 1973 to 1992, before the government peace process began, the

casualty count for government soldiers, rebels and civilians reached over 55,000 dead, 34,000 wounded, 2,000 missing, and 1.5 million displaced from their homes and sources of livelihood. The cost of counter-insurgency operations totalled over PhP 200 billion - funds that could have had an enormous net economic impact if spent on basic services and infrastructure.

117. When President Aquino assumed the presidency, she strove to heal the wounds of war and strengthen the gains of democracy by releasing political prisoners and opening talks with rebel groups. However, the peace talks with both communist insurgents and Muslim secessionists failed. At the same time, a new threat arose from the RAM-SFP-YOU, the military faction that staged a mutiny against President Ferdinand Marcos in 1986. Aquino quelled attempted *coup d'état* by these military rebels but the country's efforts in pursuit of lasting peace and economic recovery suffered heavy blows.

118. Upon his assumption to office, President Ramos gave the nation's journey to peace a fresh start. The basic premise was that in attaining the twin goals of national development and social transformation, peace was vital. On 28 July 1992, President Ramos issued Presidential Proclamation No 10-A which declared that in order "to address the problem of bringing back the rest of the rebels in our society to the folds of the law, there is need to undertake a comprehensive and participative peace process which will involve all concerned sectors of society in order to generate the collective political will to attain peace with justice."

119. Following the Proclamation, the President created the National Unification Commission (NUC) in September 1992 as an action agency for peace to serve as *ad hoc* advisory body "to formulate and to recommend to the President a viable general amnesty program and a peace process that will lead to a just, comprehensive and lasting peace."

## **2-a) The National Unification Commission**

120. To fulfill its mission, the NUC conducted nationwide public multi-sectoral consultations to gather first-hand insights on the people's perception on the root causes of social unrest and internal armed conflicts and to seek proposals for achieving peace. For the NUC, peace is not merely the absence of armed conflict. Peace provides an environment where individuals, communities or peoples are able to fully develop their potentials for progress, freely exercising their rights with due regard to the rights of others and equally mindful of their responsibilities. Peace is a state where there is no graft and corruption in government, where there is growth, progress and sustainable development, where there is alleviation of poverty, and where justice, freedom and truth prevail.

121. Executive Order No. 125. The NUC report became entirely the basis of President Ramos for issuing EO 125, or Defining the Approach and Administrative Structure for Government's Peace Efforts (15 Sept 1993). EO 125 has the following major features: the creation of the Office of the Presidential Adviser on the Peace Process (OPAPP), the Government of the Republic of the Philippines Negotiating Panels (GRP-NP or GPNP), the National Amnesty Commission (NAC), and the National Program for Unification and Development (NPUD); and, the Six Paths to Peace.

122. EO 125 contained the three basic principles governing the Philippine peace process, namely:

- Must be community-based, reflecting the sentiments, values and principles important to all Filipinos, thus, must be defined not by Government alone nor by the contending armed groups, but by the entire Filipino nation.
- Seeks to forge - through administrative action, legislation, or even constitutional amendments - a new social compact for a just, equitable, humane and pluralistic society, where all individuals and groups are free to engage in peaceful competition to promote their political programs without fear, to compete for political power through an electoral system that is free, fair and honest, and to exercise the rights and liberties guaranteed by the Bill of Rights, and
- Seeks a principled and peaceful solution of the armed conflicts, with neither blame nor surrender, but with dignity for all concerned.

## **2-b) OPAPP / GRP PNP**

123. The Presidential Adviser on the Peace (PAPP) is charged with the overall management of the comprehensive peace process and reports directly to the President, who in turn provides active leadership and policy direction for the government's peace program. He coordinates all other government agencies tasked to implement the Six Paths to Peace. These are the: GPNP, which conducts talks with rebel groups; NAC, which implements the government's amnesty program; and NPUD, which carries out economic assistance for rebel returnees and for communities in conflict areas.

## **2-c) The Six Paths To Peace**

124. The pursuit of an integrated, multi-track peace process was conducted along the *Six Paths To Peace*, as follows: Path 1 - Reforms to address the root causes of the armed conflict; Path 2 - Continuing consultations, consensus building and empowerment for peace; Path 3 - Peace negotiations; Path 4 - Reconciliation, reintegration and rehabilitation; Path 5 - Reduction of violence and protection of civilians caught in armed conflict; and, Path 6 - Creating a positive climate for peace.

### **2-c-i) The First Path**

125. Addressing the Root Causes. The root causes noted by the NUC were poverty and economic inequity, systemic political inequity, injustice, mal-governance, and the exploitation of indigenous cultural communities. Government recognizes that long-term political stability depends on its ability to carry out reforms that strengthen democracy and bring justice, socio-economic development, and prosperity to the greatest number of Filipinos. These reforms have begun to take shape, the most significant of which have been in the electoral and socio-economic areas.



**2-c-i-a/) Leveling the Political Playing Field**

126. Electoral Reform. This was sought through RA 6646, or Electoral Reform Law of 1987, which was certified urgent by President Ramos for passage by Congress. The Act, among others, sought to level the political playing field, instituting a party-list system and banning political dynasties. The party-list system has the following features: 1) A party or organization registers with the COMELEC with a list of nominees; 2) The maximum number is provided by law and the nominees arranged by the party or organization according to an order of priority; 3) In every election to the House of Representatives there are to be two votes, one for *district representative* and another for a *party or organization*; 4) the votes cast for a party or organization are totaled nationwide; 5) the number of party-list seats that a party or organization will get, depends on the number of votes it receives in proportion to the total number of votes nationwide.

127. Elimination of warlordism and gangsterism. This effort included aggressive drives against private armies and loose firearms by the joint efforts of the DILG/PNP and the DND/AFP. Its aim was to encourage small, marginalized political groups as well as rebel groups to opt for participation in legal parliamentary processes to achieve their political goals. The leader of the Reform the Armed Forces Movement/ Soldiers of the Filipino People/Young Officers Union (RAM-SFP-YOU) was elected and re-elected senator of the republic in the 1995 and 2001 national elections.

**2-c-i-b/) Social Reform Agenda**

128. A series of multi-sectoral consultations led to the formulation in 1994 of the Social Reform Agenda (SRA), which was the centerpiece of the path to peace. It provided the framework for social reform policies and program initiatives of the Ramos administration. It sought to address the basic inequities in society through a systematic, unified and coordinated social reform package consisting of quality basic services, economic opportunities, productive resources and sustainable development; and, opportunities and resources for participation in economic and political governance.

129. The SRA was the main instrument for the integration of the marginalized sectors into mainstream society and a major mechanism for government-private sector partnership. Its implementation was defined and pursued at two levels. First, it was beneficiary-focused to cover sectoral groups (landless farmers and rural workers, coastal fishermen, indigenous peoples, urban poor, unskilled workers and other disadvantageous groups) and specific geographical areas (the 19 poorest provinces and poverty pockets). Second, it was intervention-focused directed at giving the poor access to quality basic services and better means to earn a living and enabling ordinary Filipinos to take active part in decision making processes on matters affecting their welfare and interests. (The SRA is extensively discussed in the section of this Report on Collaboration Between Government and Civil Society and on Article 1- Right to Self-determination.)

130. Pursuant to RA 8425, The Social Reform and Poverty Act (11 Dec 1997), President Estrada issued AO 11 on 27 July 1998 creating the National Anti-Poverty Commission (NAPC) which was tasked to respond appropriately to new situations of social unease that may lead to the resurgence of armed conflict.

## **2-c-ii) The Second Path**

131. The policy of continuing consultations and consensus-building and empowerment for peace ensured the people's direct participation at the national and local levels in the peace process particularly in so far as issues that directly impinge on their lives.

132. For the period 1999 - 2000, OPAPP supported and facilitated the formulation of the Integrated Conflict Management and Resolution Program in Cordillera which involved pre- and actual boundary dispute negotiations, and settled 11 out of 52 inter-*barangay* and inter-municipality boundary conflicts.

## **2-c-iii) The Third Path**

133. Peace negotiations provided the mechanism by which the GRP can hold talks with three identified rebel groups for a peaceful and honorable settlement of their legitimate grievances and put an end to the armed rebellion. The rebel groups were the Communist insurgents (CPP/NPA/NDF), the Southern Philippine Autonomous Groups (MNLF-MILF), and the military rebels (RAM/SFP/YOU and ALTAS).

134. Even if observers criticized the negotiation process as moving slowly, Government pursued this talk believing in the spirit of compromise, accommodation and reconciliation, in reaching an accord for a lasting peace.

135. Cognizant of the role of women in several areas of armed conflict, the GRP has given key roles to women in the various aspects of the peace process, particularly those sponsored by the OPAPP and the DND.

### **2-c-iii-a) GRP-CPP/NPA/NDF Peace Negotiations**

136. Exploratory talks with Communist Party of the Philippines/ New People's Army/ National Democratic Front (CPP/NPA/NDF) began in August 1992 in The Netherlands, where the CPP leadership is based, which resulted in the forging of The Hague Joint Declaration paving for the holding of formal talks to end the armed conflict. After nearly three years of more exploratory talks, the Parties signed on 24 February 1995 the Joint Agreement on Safety and Immunity Guarantees (JASIG). The JASIG was intended to create a favorable atmosphere conducive to free discussion and free movement during peace negotiations and avert any incident that may jeopardize it. (Annex 2: The Hague Joint Declaration)

137. Under the JASIG, the GRP undertook to issue upon request regular passports to NDF duly accredited personnel without obliging them to take an oath of allegiance to the government. JASIG also ensured that NDF personnel who use such travel documents to enter, stay in and depart from, the Philippines would not be subjected to any form of punitive action, obstruction or similar acts in the course of travel, entry, stay or departure. Further, the immunity guarantee ensured the protection of all duly accredited persons from surveillance, search, arrest, detention, prosecution and interrogation or any other similar punitive actions due to any involvement or participation in the peace negotiations.

138. When the formal talks opened in Brussels on 26 June 1995, both Panels signed the Joint Agreement on the Formation, Sequencing and Operationalization of the Reciprocal Working Committees (RWC), defining the process of the negotiations. However, the formal talks were suspended the next day because of the capture of an NPA leader whose presence in Brussels the NDF demanded before substantive discussions could proceed.

139. Formal talks resumed in The Hague in June 1996, but it was only on 16 March 1998 when the talks reached a breakthrough with the signing by the Parties of two important documents, namely, the Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law (CAHR/IHL) and the Joint Agreement in Support of Socio-Economic Reforms. (Annex 3: CAHR/IHL)

140. The CAHR/IHL aimed to: a) confront, remedy and prevent the most serious HRVs in terms of civil and political rights; b) find principled ways and means of rendering justice to all the victims of such violations; c) guarantee the promotion and protection of all human rights and fundamental freedoms, i.e., civil, political, economic, social and cultural rights, particularly freedom from torture and other cruel, inhuman or degrading treatment or punishment of all Filipinos under all circumstances, especially the workers, peasants and other poor people; and, d) ensure observance of the principles of international humanitarian law.

141. In Articles 6 and 7, Part I of the Agreement, the Parties expressed their awareness that the armed conflict in the Philippines necessitated the application of the principles of human rights and the principles of international humanitarian law and affirmed their constant and continuing mutual commitment thereto in recognition of each other's good intention to be bound by and to comply with these principles.

142. Article 14 of Part IV of the Agreement provided: "The Parties shall promote and carry out campaigns of education on international humanitarian law, especially among the people involved in the armed conflict and in areas affected by such conflict."

143. The Joint Agreement in Support of Socio-Economic Reforms (JASSER) contained the programs, projects and activities for the people's empowerment and their socio-economic development, e.g., research and planning; promotion and protection of the rights of workers, peasants, women, youth, children and indigenous peoples; relief, rehabilitation and development beneficial to poor communities, families and individuals who have been victimized by human rights violations; rural and urban cooperatives to promote self-reliance; and, livelihood and employment generation for victims of HRVs and released political detainees.

144. In a memorandum order dated 7 August 1998, newly-installed President Estrada approved the CAR-HR/IHL but set the limits of its implementation within Philippine constitutional and legal processes. The NDF interpreted this presidential approval as a "de facto recognition" of their belligerency status that reinforced their stand against the prescribed mode of implementation. The non-resolution of the modality issue forced both parties to declare a recess as it became clear that the primary issue of constitutional sovereignty and political authority was non-negotiable for both sides.

145. For a while, President Estrada suspended the talks - and automatically the JASIG - when the NPA abducted government personnel but recalled the same after the captives' release. On 30 May 1998, the NDF unilaterally withdrew from the talks when the Philippine Senate ratified the RP-US Visiting forces Agreement (VFA), accusing the GRP of violating the principle of national sovereignty cited in the Hague Joint Declaration.

146. The GRP pointed out the ironic stand of the NDF in invoking the issue of national sovereignty when the latter's claim to sovereign powers under a self-proclaimed "People's Democratic Government" posed a direct threat to Philippine sovereignty. The Government Panel reminded the communist leadership that it did not only reject basic constitutional and legal processes, but that it also engaged in terrorist acts, e.g., assassination, kidnapping and extortion, even while the GRP was faithfully conducting confidence-building measures (CBM) to ensure resolution of the armed conflict.

147. Major reforms instituted by the government in the political, economic and social sphere complemented by other CBM initiatives. Among others, these were: the repeal of Republic Act (RA) 1700, or Anti-Subversion Act, which resulted in the release on bail, temporary release or pardon of many political detainees, including high-ranking rebel leaders identified as "consultants" to the NDF peace panel; the offer of cease-fire arrangements; suspension of counter-insurgency operations; the issuance of safe conduct passes for NDF participants to the peace talks; and, the GRP's readiness to hold the talks in the Netherlands.

#### **2-d-iii-a/i) Localized Peace Process**

148. In view of the termination of the talks, the government shifted its strategy in addressing the communist insurgency. President Estrada issued EO 115 (21 June 1999) creating the National Peace Forum (NPF) to oversee the *localization of the peace process*. Hence, the Local Peace Forum (LPF) was formed to reach out and encourage the participation of the communities and insurgent groups in the forum in order to identify issues and concerns creating unpeace or potential armed conflict on the ground, recommend appropriate action, and coordinate or cause the resolution of these issues / concerns. The local peace efforts, however, did not inhibit the government from pursuing other peace initiatives such as revival of peace talks.

149. The LPF is composed of not more than seven members representing the LGUs and the civil society who are appointed by the President upon the recommendation of the NPF. At the national level, the NPF is supported by four Task Forces: 1) Problem-Solving and Issue-Resolution; 2) Formulation of the Basic Reform Agenda for Peace; 3) Area Identification for LPF Formation and Coordination of LPF Activities; and 4) Information, Education and Communication. Already in place are the LPF in Bohol Province, Bicol Region, and Davao areas.

150. The localized peace process has two parallel tracks: Creation of a problem-solving mechanism to immediately address grievances/issues through dialogues, consultations and peace-building sessions and the implementation of a "Quick Response Program" to address them; and, negotiation of a peace settlement with local insurgent groups through selected local insurgent leaders with the assistance of identified intermediaries. The local talks may cover

“ground rules” and other concerns to humanize the armed conflict, such as stopping the recruitment of minors as combatants, bombing of business establishments, schools, churches, municipal halls, and other civilian structures, kidnapping / hostage-taking, and terrorist extortion that hamper economic activity.

151. Under the supervision of the NPF, the GRP Panel for Talks with the *Rebolusyonaryong Partido ng Manggagawa* (Revolutionary Proletariat Party) *Alex Bongcayao Brigade* (RPM-P/RPA-ABB) had conducted informal and discreet meetings with the Group since 26 January 2000. Safe conduct passes were issued by the NPF to 11 members, consultants and staff of the RPM-P/RPA-ABB Panel. The two Panels completed an *Agreement on Ground Rules for the Conduct of Formal Peace Talks*. Confidence-building measures were discussed in preparation for the formal peace talks. The technical committees from each side were tasked to discuss the details of proposals and draw up initial positions/recommendations for presentation to the Panels.

152. Peace dialogues at the local level looked promising. The three LPF areas already received “feelers” from some of the insurgent groups, expressing their intent to participate in the peace consultations to flesh out issues and problems relevant to the unpeace on the ground.

#### **2-d-iii-b/) GRP-MNLF Peace Negotiations**

153. Among Filipino Muslims, the raging desire to preserve their ethno-religious identity and their rights to their ancestral lands, and to pursue their development as a people through self-determination, caused the MNLF war of secession in 1972 claiming thousands of lives and destroying properties of untold proportions. The MNLF is one of the two groups comprising the Southern Philippines Autonomous Groups (SPAG); the other is the MILF.

154. The Philippine Government, with support from the Organization of Islamic Conference (OIC), signed with the MNLF on December 23, 1976 the Tripoli Agreement. The agreement bound the MNLF to dropping its demand for secession in exchange for the grant of political autonomy. Unfortunately, differences arose in the interpretation and implementation of the Tripoli Agreement Accord.

155. Under President Ramos, GRP-MNLF formal talks resumed, the agenda of which was on the modalities for the full implementation of the Tripoli Agreement. On 2 September 1996, after 47 months of negotiations, the parties signed the GRP-MNLF Peace Agreement, which merited the OIC’s approval as a just, comprehensive and lasting fulfillment of the Filipino Muslims’ quest for effective autonomy and meaningful governance under the Philippine Constitution. It brought the MNLF elements to the mainstream of society and raised hopes for an end to the prolonged years of the costly war. (Annex 4: GRP-MNLF Peace Agreement)

156. The peace talks started with the signing of the Statement of Understanding on October 3, 1992 in Tripoli, Libya. A subsequent Statement of Understanding was signed in Cipanas, West Java on 14 April 1993. The first round of talks in October 1993 resulted in a formal Interim Ceasefire Agreement. As agreed upon, the four rounds of the formal talks were hosted by the Indonesian Government in Jakarta. In between these rounds, nine GRP-MNLF

Mixed Committee Meetings were held in various places in Mindanao and several meetings of the Five Support Committees and the Joint Ceasefire Committee were held in Mindanao and in Metro Manila.

157. Under the peace accord, the GRP committed to implement the following programs: political development aimed at empowering Muslim Filipinos in the pursuit of peace and progress in Mindanao; economic development designed to accelerate growth and development in Mindanao; and, integration of MNLF personnel into the AFP and the PNP. A joint monitoring committee with membership from the GRP-MNLF and the OIC was activated to monitor the timely and efficient implementation of the Agreement. On April 6, 1999, President Estrada issued AO 63 constituting the Cabinet Supervisory Committee (CSC) to address a broad range of executive issues and concerns affecting its implementation.

158. The Agreement was implemented in two phases pursued on all aspects: political, socio-economic, military/police aspects. Phase 1 covered a three-year period reckoned from the issuance of Executive Order (EO) 371 (2 Oct 1996) establishing the Special Zone of Peace and Development (SZOPAD), the Southern Philippines Council for Peace and Development (SPCPD) and the Consultative Assembly (CA). The MNLF chieftain was appointed chairman of the SPCPD. The integration of MNLF elements into the AFP and the PNP took place under this phase. Phase 2 involved the amendment of RA 6734, or The 1989 Organic Act of the Autonomous Region in Muslim Mindanao (ARMM), in order to establish a new autonomous government in southern Philippines and the expansion of coverage of the ARMM.

159. On the political aspect, the GRP instituted legal measures to expand the area of autonomy. In special elections held in September 1996 for the ARMM, the MNLF chieftain ran and won handily as ARMM Governor with the support of the political party in power. He was appointed SPCPD Chairman. (Detailed information on the implementation of the SZOPAD and the SPCPD is contained in paragraphs 57-70 of the Philippine Report to the CERD and is updated in the relevant section of this Report.)

160. President Estrada twice extended the term of EO 371 through his issuance of EOs 161 and 288 in order to reset the regular ARMM elections to May 2001. As a CBM, he issued EO 161 (30 Sept 1999) extending the term of the SPCPD to serve as the development coordinating body for areas covered by the Agreement. He also issued AO 63 (6 April 1999) creating the Cabinet Supervisory Committee (CSC) to address a broad range of executive issues and concerns pertaining to the implementation of the Peace Agreement.

161. On the socio-economic aspect, SZOPAD was the focus of intensive peace and development efforts under the coordination of the SPCPD and the CA. SZOPAD consists of 14 provinces and 10 cities. The provinces are: Sulu, Tawi-tawi, Maguindanao, Basilan, Zamboanga del Norte, Zamboanga del Sur, North Cotabato, Sultan Kudarat, Lanao del Norte, Lanao del Sur, Davao del Sur, South Cotabato, Sarangani and Palawan. The cities are: Cotabato, Dapitan, Dipolog, General Santos, Iligan, Marawi, Pagadian, Zamboanga, Puerto Princesa and Kidapawan.

162. For socio-economic development, the national government through its line agencies released and spent PhP41.50 Billion - from the combined cost of all government resources poured into the SZOPAD, including the ARMM and the SPCPD/CA amounting to PhP67.73 Billion from 1996 to June 2000. Projects included public infrastructure, i.e.: roads and bridges, energy development, agrarian reform credit, capacity-building and livelihood assistance, trade and investment promotion, skills training, village electrification, irrigation and post-harvest facilities, formal and non-formal education, transportation projects, housing, health services, social welfare and development, and promotion of culture and arts.

163. During the same period, SZOPAD received PhP8.60 Billion in credit assistance from specialized agencies for the MNLF and Muslim communities and Lumads or highlanders for livelihood projects, skills training, technology transfer and other development programs. A total of PhP809 Million worth of funds were released by the national government for programs undertaken in coordination with foreign multilateral institutions of the United States, Canada and Australia.

164. The military / police aspect under Phase 1 is considered the most successful in the implementation of the Agreement. It called for the integration of 5,750 MNLF elements into the AFP, of whom 250 were to be absorbed into the auxiliary services. Whereas in the PNP, 1,500 vacancies were allocated and another 250 for special auxiliary services. The AFP/PNP integration was conducted in three phases: processing, individual training and on-the-job training/development.

165. MNLF integrees into the AFP reached a total of 5,250 or 91% of the agreed quota; from the PNP, integration of 1,500 MNLF was completed. There are five-to-seven-year educational programs for educationally deficient integree officers and enlisted personnel. For school year 1999-2000, 54 officers and 556 enlisted personnel availed of government educational grants. The AFP is conducting an internalization program for their personnel to develop mutual trust and understanding and a sense of oneness. Regular dialogues are being conducted to facilitate final assimilation of the MNLF units into the mainstream AFP units.

166. The PNP and the Commission on Higher Education formulated a separate educational program for those who finished high school and the non-high school graduates. The NPUDC has offers for study grants, skills training and livelihood assistance for the MNLF combatants not absorbed by the AFP/PNP. From 1966 to 2000, special projects for the integration amounted to almost 18 million pesos.

#### **2-d-iii-c/) GRP-MILF Peace Negotiations**

167. The GRP-MILF peace talks were an indispensable continuation of the GRP-MNLF negotiated settlement. During the first formal meeting held on 7 January 1997, the MILF presented its 9-point agenda: ancestral domain; displaced and landless Bangsamoro; destruction of properties and war victims; human rights issues; social and cultural discrimination; corruption of the mind and moral fiber, economic inequities and widespread poverty, exploitation of natural resources, and agrarian reforms.

168. The parties have since forged significant agreements, resolutions, joint statements and acknowledgements. These include the Agreement for General Cessation of Hostilities (AGCH), 18 July 1997, and the Agreement of Intent (AOI), August 1997. The latter document reaffirmed the parties' commitment to bring an end to the armed conflict in Mindanao. Other agreements signed relate to administrative procedures for the GRP-MILF Technical Committee meetings, the operational guidelines of the AGCH, the creation of a Quick Response Team (QRT), and the creation of a Joint Monitoring Contingent (JMC). (Annex 5: AGCH)

169. The General Framework of Agreement of Intent Between the GRP-MILF (28 August 1998) renewed the parties' commitment to pursue the talks and to further agree on: respect for human rights; to implement all joint agreements/arrangements previously signed; to refrain from the use of threat or force to gain advantage while talks are ongoing; and, to recognize the virtues of trust, justice, freedom, and tolerance for identity, culture, way of life, and aspirations of all its people as the foundations for peace in Mindanao.

170. The Joint Acknowledgement (10 Feb 1999) signified the parties' recognition of Camps Abubakar and Busrah Somiorang. The Agreement on Safety and Security Guarantees, 9 March 2000, stipulated that MILF members shall not be restrained, searched, seized, and harassed on their persons and property in connection with, and for the duration of, their participation in the peace talks.

171. The GRP's sincerity in pursuing the talks was evident in many ways amid major stumbling blocks. The GRP initiated confidence-building measures, mostly in the form of infrastructure projects in areas largely inhabited by MILF supporters: 50-hectare irrigation system in Camp Abubakar, the central headquarters of the MILF; domestic water system complete with storage tanks, distribution lines and solar-powered water pump in the Camp; 10,000-hectare Malitubog-Maridagao Irrigation Project, of which 2,000 are already irrigated; concrete road from the main highway to the Camp; 12,000-hectare Kabulnan Irrigation Project, of which 77 % is completed and with facilities in 4,200 hectares; village with mosque for displaced and landless residents in the vicinity of the Malitubog-Maridagao Irrigation Project; and, provision of farm implements and farm animals to farmers.

172. There were occasional armed confrontations between Government and MILF forces resulting in casualties, property damage, displacement of families and stagnation of the local economy. There were occasions where the MILF was seen as insincere because of its propensity to engage in a public word war with the GRP. There was the problem of perceived incompatibility of the GRP-MNLF Peace Accord with a future GRP-MILF Peace Pact. Lastly, the MILF refused to recognize Philippine sovereignty by objecting to the application of Philippine laws in the talks.

173. Unlike the GRP-MNLF talks, the GRP-MILF did not have the OIC as "referee." Both sides relied on the Independent Fact-Finding Committee (IFFC) and the QRT (both composed of GRP, MILF and NGOs as members) to investigate incidents and accusations of alleged violations of the AGCH. On 30 April 2000, the MILF unilaterally suspended the peace talks due to attacks by the military on the various MILF camps. Massive clashes ensued between



government troops and MILF forces in Lanao del Norte, Lanao del Sur, Cotabato and Maguindanao provinces. Hence, the Fourth Round of formal Peace Talks scheduled on 01 May 2000 was cancelled.

174. Government by then had come to believe that it had gone a long way in bringing the rebel groups to the negotiating table. In the case of the MILF, even when the peace talks were ongoing, they had already committed 227 cease-fire violations, e.g., Kauswagan incident where the MILF rebels taking of the Municipal hall; attack on nine AFP detachments in Lanao del Norte; more than 200 civilians traversing a national highway as hostages; kidnapping of an Italian missionary priest in Zamboanga del Norte; occupation and burning of the Municipal Hall of Talyan, Maguindanao Province and the planting of bombs on the Lady of Mediatrix boat docked at Ozamiz City which exploded and killed 49 innocent civilians.

175. Recorded violations and abuses committed by the MILF adversely affected economic growth in Southern Mindanano. A local parish priest was brutally tortured and killed, and innocent children and soldiers were murdered in broad daylight. After the June 30 deadline set for peace talks with the MILF had elapsed, President Estrada ordered the Armed Forces to meet head-on what had now become a full-scale military challenge to government authority.

176. In an Executive Order issued on 24 July 2000, President Estrada imposed two conditions for the continuation of the talks, i.e., for the MILF to renounce its bid for an independent Islamic state and to stop its terrorist criminal acts. Top MILF officials and members were charged in court and issued arrest warrants for the spate of bombings, ambushes and harassment executed in some provinces and cities in Central Mindanao and in Metro-Manila.

177. On 2 August 2000, the MILF officially announced its withdrawal from the talks and the dismantling of its peace panel. They denounced the two conditions imposed by President Estrada and his offer of PhP9 million as reward money for the arrest of the three top MILF officials charged in court. They claimed all they wanted was the resolution of the Bangsamoro problem, which would in turn provide the basis for their laying down of arms.

178. President Estrada's subsequent orders to carry out massive military assaults brought about the fall of all MILF camps, and the retaking of the MILF HQ, Camp Abubakar. But even as military operations were being carried out, President Estrada kept the door open for peace negotiations with the MILF - but for as long as they drop their demands for cessation and accept autonomy, and desist from undertaking terrorist activities. In the meantime, the entire machinery of the government continued relief operations for displaced families in Mindanao. To coordinate the development efforts, the Mindanao Coordinating Council (MCC) was created to orchestrate all aspects of rehabilitation, reconstruction and development. The President was its chairman and leaders and representatives of Mindanao were members.

179. As a gesture of magnanimity, the GRP exhausted all efforts to woo the MILF back to the negotiating table. On 6 November 2000, the National Security Council (NSC) decided to:

- a) reconstitute the GRP negotiating panel by including Muslim local chief executives and MNLF representatives;
- b) declare a unilateral ceasefire at the start of the oncoming Ramadan season;
- c) to sustain its coordinating efforts with the NPUD Council, the NAC and other agencies involved in the implementation of various policies and programs towards attaining peace and

development in Mindanao; and, d) maintain an open mind with regard to the venue of the talks. Ten days later, the GRP-MILF representatives met to discuss the preconditions set by the MILF for the resumption of the talks, namely, the holding of the talks under the auspices and mediation of the OIC and the implementation of all agreements already entered into by both parties.

180. President Macapagal-Arroyo, on January 2001, her first day of office as President of the Philippines ordered the resumption of talks between the GRP and the 13,000-strong MILF. To pave the way for to and after meeting with her top security advisers, immediately the peace talks and immediate rehabilitation and developmental projects in conflict areas, the President ordered the Suspension of Military Operations (SOMO) vis-à-vis the MILF which was reciprocated by the MILF with its own SOMO. Both parties have once again committed to negotiate with sincerity and mutual trust, justice and freedom, and respect for the identity, culture and aspirations of all peoples of Mindanao.

#### **2-d-iii-d/) GRP-RAM/SFP/YOU Peace Negotiations**

181. The martial law regime of President Marcos served as fodder to the growth of disgruntled factions in the armed forces. It gave birth to the RAM, which evolved into a movement with a political agenda when its members launched their first attempt at military intervention in the February 1986 EDSA People Power Revolution. Joining the RAM were the SFP and the YOU. The RAM/SFP/YOU staged eight coup attempts from 1986 to 1989. The coup attempts included one led by the *Alyansang Tapat sa Sambayanan* (ALTAS) also known as the Marcos Loyalist group.

182. In 1993, President Ramos formed the GRP Panel Negotiating With the Military Rebels, which was mandated to conduct peace negotiations with the ALTAS and the RAM. In mid-1993, the GPNP forged a memorandum of agreement (MOA) with ALTAS and RAM on the Conduct of the Talks and Security Arrangement. Both groups thus, submitted their respective proposed agenda for discussion and action during the substantive phase of the peace negotiations. The substantive reform issues sought to be addressed by the Government were embodied in documents entitled “Issues of Grave Concern” for ALTAS and “Talking Points” for the RAM.

183. The GRP-RAM signed a Preliminary Agreement on 23 December 199, under the auspices of the National Unification Council (NUC), for the immediate cessation of hostilities and the determination of the formal talks. The substantive agenda items for the talks included the RAM Talking Points submitted during the first regular meeting on 29 January 1993 to wit: procedural and administrative matters; security issues; attrition of its members; alleged harassment and detention of its members; issuance of authority to carry side arms and safe conduct passes; and, pay and duty status of personnel.

184. The GRP-ALTAS first round of formal talks in January 1993 significantly set the pace for its logical conclusion. At the outset, ALTAS made assurances that prevented adversarial atmosphere. As a result of the discussions, six agreements embodied in Joint Resolutions were signed by the GRP-ALTAS Panels from 1993 to mid-1994 on the following areas: a) the return of the remains of President Marcos from Hawaii; b) desired reforms in the military; c) administration of justice; and, d) Local government.

185. Meanwhile, Joint Technical Working Committees (JTWCs) were created in the latter part of 1993 to undertake discussions on the RAM's substantive reform issues to wit: a) electoral reforms; b) political reforms; c) socio-economic reforms; d) military reforms and, e) administration of justice. Later, the GRP-RAM Panels agreed to forego JWC discussions in favor of Panel-to-Panel talks to fast-track the negotiations. But negotiations got because of the continued detention of some RAM members, thereby putting in issue the GRP's sincerity in pursuing the talks.

186. The discussions on electoral reforms with the RAM Panel culminated in the signing of the Agreement on Electoral Reforms, together with its companion Joint Resolutions (26 August 1994). The Agreement precipitated the holding in late 1994 of tripartite meetings (GRP-ALTAS-RAM) that led to the mapping out of coordinated efforts in campaigning for the enactment of various electoral reform measures. Consequently, the three panels visited the Senate, the House of Representatives and the Commission on Elections and to lobby for the passage of proposed electoral reforms deemed crucial in conducting the forthcoming elections. This led to the passage of RA 7941, or The Party List System Act.

187. During the tripartite meeting of 12 December 1994, the GRP presented a draft peace covenant, which, as expected, underwent extensive and thorough scrutiny. The forging of the Agreement Between the GRP and the ALTAS in the Matter of the Disposition of Forces on 29 May 1995, marked a major turning point in the Talks. The Agreement contained the following key provisions: complete and permanent cessation of hostilities between the GRP and ALTAS; retrieval of government-owned weapons and equipment in the possession of ALTAS forces; grant of amnesty to eligible members; disposition of members in the active service; and, continuation of the talks on substantive reform issues. (Annex 6: GRP/ALTAS Peace Agreement)

188. On 13 October 1995, the GRP-RAM panels forged the General Agreement for Peace, which stipulated the following: cessation of hostilities; national reforms; disposition of weapons and other materiel; grant of amnesty; disposition of military, police and civilian government personnel; and grant of livelihood, material and technical assistance. (Annex 7: GRP-RAM/SFP/YOU Peace Agreement)

189. The GRP-ALTAS and GRP-RAM peace agreements were implemented in varying tracts. Immediate attention was given to the stipulation on the cessation of hostilities, i.e., the commitment of these two groups to forsake resort to arms in seeking redress for their grievances against the GRP as specified in their Issues of Grave Concern / Talking Points. Between December 1995 and March 1996, RAM turned over to the GRP weapons and other materiel under its possession.

190. Majority of the issues concerning national reforms had been essentially addressed by pertinent legislative enactment. There were 243 new laws of national application for the period 01 July 1992 to 30 September 2000 excluding 31 resolutions and 60 treaties or international conventions and agreements. Under the Estrada Administration, these reforms were addressed to accelerate services to the poor in the form of housing, employment, education, health and social services.

**2-d-iv) The Fourth Path**

191. The reconciliation, rehabilitation, reintegration program included measures that respond to the legal status and security of surfacing rebels, e.g., issuance of safe-conduct passes and grant of amnesty for qualified members. This path also includes community-based assistance programs that address the economic, social, and psychological rehabilitation needs of former rebels, demobilized combatants, civilian victims and communities adversely affected by internal armed conflicts. The NPUD was created specifically to pursue reconciliation within the framework of countryside development, addressing both former combatants and civilian victims. Discussions on grant of amnesty and the NPUD are under separate sections of this Report.

**2-d-v) The Fifth Path**

192. The conflict reduction program sought to ensure the welfare and protection of civilians, and to reduce the impact of the internal armed conflicts on them, as hostilities may continue even as negotiations are pursued with the different rebel groups. Efforts along this path include, first, the strict implementation of laws and policies for the protection human rights through inter-agency coordination and human rights education and conscientization programs for both civilians and government forces; second, the unilateral SOMO for fixed periods at the discretion of local government officials in consultation with local military commanders, and, third, the recognition of Peace Zones as determined by concerned sectors of the community. The local SOMO in the province of Eastern Samar allowed the implementation of development projects in conflict areas within the province.

193. Office of the Presidential Adviser on the Peace Process (OPAPP) launched a total of seven peace zones in different parts of the country during the height of armed conflict in the late 1980s to early 1990s. A peace zone is a people-initiated, community-based response to the situation of raging armed conflicts in the country. The community declares its desire to be free of violence and of the presence of arms and armed groups and to deal with its problems in non-violent ways by the process of a continuing dialogue with the combatants.

194. OPAPP documented the experiences of the peace zones in popularized literature based on materials generated from peace-building / conflict resolution workshops that began in 1999 and attended by community leaders from different sectors of the peace zones. The documentation was designed as a peace education module intended to present an alternative peace paradigm that is responsive to emerging realities confronting the peace zones. OPAPP also conducted Peace Zone consultations, focusing on assessment of peace building activities and status of implementation of projects under the Special Development Area Concept of NPUD.

195. During the Estrada administration, OPAPP led an inter-agency effort for the development of a Comprehensive Program Framework for Children in Armed Conflict (CIAC) and, the Handling and Treatment of Children Involved in Armed Conflict, both in response to the situation of children being utilized as couriers, spies, cooks and instruments of war by armed groups. CIAC has three components: prevention, advocacy and mobilization. On 27-30 November 2000, OPAPP conducted a four-day Communication and Advocacy Planning Workshop attended by representatives from concerned national government agencies, local level social workers, church representatives and indigenous peoples.

**2-d-vi) The Sixth Path**

196. Building, nurturing and enhancing a positive climate for peace included continued confidence-building measures (CBM) between government and different rebel groups, as well as peace advocacy and education within the society. CBMs include the temporary release under varying conditions of arrested rebels, as well as the suspension of court proceedings against rebels upon their concurrence. Arrested rebels are released.

197. Preparatory to talks with the CPP / NPA / NDF, the OPAPP and the GPNP-initiated an interagency audit of alleged political offenders as a first step toward decisively addressing this problem and as basis to further enhance government CBMs. Since 1992, a total of 800 allegedly political offenders (APOs) have been released and in December 1998, amnesty was granted to 6,406 NPA guerrillas. In addition, more persons have been released with the repeal of the Anti-Subversion Law, which decriminalized membership in the Communist Party.

198. Also a major concern along this path was the development of a “culture of peace” and the advocacy of nonviolent means of conflict resolution and social change especially in the face of growing anxieties over crime, violence, and lawlessness that plague many communities. Based on a concept paper prepared by OPAPP, the UNESCO funded the Philippines’ hosting of the Second International Forum on the Culture of Peace in late 1995. UNESCO has also funded projects under the program titled “Supporting and Developing the Filipino Peacemaker.”

199. The OPAPP Peace Education Program aims to propagate and nurture, among Filipinos, a culture of peace that is consistent with the goals and principles of the comprehensive peace process. It seeks to encourage, support, sustain and coordinate national, regional and local initiatives in educating for peace. This program is instituted through peace education in the formal school, and through non-formal or community-based peace education programs. The OPAPP has conducted internal peace advocacy with government agencies, provided briefings on the Six Paths, and worked with these agencies in identifying contributions to the peace process.

200. The OPAPP Promotion of the Culture of Peace Program recognizes the importance of dialogue in the peace process and the role of various sectors in all levels in peace building and peacemaking. Thus, an Executive Order was issued by President Estrada declaring Year 2000 the *Philippine Year for the Culture of Peace* in recognition of the gains from previous peace dialogues, among which are as follows: the Mindanao Bishops-Ulama dialogue series; on women’s efforts as catalysts for peace and sustainable development; holding of relevant courses for the military; a series of seminars for civil servants, and for children and youth; tripartite dialogues for peace and development. among Muslims, indigenous peoples (Lumads) and Christians; peace advocacy through the Media on freedom and responsibility.

**2-e) National Amnesty Commission**

201. The grant of amnesty is guaranteed under Section 19, Article VII of the 1987 Philippine Constitution as it states thus: “(Quote text) the President shall have the power to grant amnesty with the concurrence of a majority of all members of Congress.” Under Philippine jurisdiction,

amnesty extinguishes any criminal liability but without prejudice to the grantee's civil liability for injuries and damages caused to private persons. The grant shall also effect the restoration of civil and political rights suspended or lost by virtue of criminal conviction.

202. President Aquino initiated the national amnesty process for the benefit of all rebels and insurgents who had committed unlawful acts in furtherance of their respective political beliefs and who have expressed the desire to be reintegrated into the mainstream of society. It came in the wake of the *coup* attempts against her administration. It highlighted the need to institute reforms within the AFP and PNP in regard to, among others, the members' welfare, e.g., compensation and the promotion system.

203. Pursuant to her National Reconciliation and Development Program (NRDP) President Aquino issued EO 350, prescribing the guidelines governing the filing and processing of manifestations for amnesty. It covered all individuals who, of their own free will, have returned or have promised to return to the folds of the law after having committed an act or acts in violation of existing laws in furtherance of their political beliefs. These acts included treason, conspiracy and proposal to commit treason, misprision of treason, espionage, rebellion or insurrection, inciting to rebellion or insurrection, inciting to sedition, illegal assemblies, illegal associations, direct assaults, indirect assaults, resistance and disobedience to a person in authority or agents of such persons, subversion, and illegal possession of firearms or explosives.

204. As a follow through, President Ramos issued amnesty proclamations, to wit

- 27 July 1992 - Presidential Proclamation 10 granted amnesty to all persons who have filed or will file applications for amnesty under EO 350 and whose applications were already being processed and awaiting final disposition.
- 28 July 1992 - PP 10-A amended PP 10 to reflect the total number of persons who had applied for amnesty. Significantly, it included a new section creating the NUC, which served as the basis for addressing the need for a comprehensive peace process involving all sectors of society in order to generate collective political will to attain peace with justice and to bring the rest of the rebels back into the folds of the law.
- 5 March 1994 - PP 347 further extended the amnesty process with the creation of the National Amnesty Commission (NAC), an agency tasked to receive and process applications for amnesty.
- In 1994, PP 348 granted amnesty to certain AFP and PNP personnel who have or may have committed certain acts or omissions punishable under the Revised Penal Code, the Articles of War, or other Special Laws, or in furtherance of, incident to or in connection with counter-insurgency operations. PP 348, later amended by PP 377, which provides specific exceptions, e.g., it prohibits amnesty to AFP and PNP personnel who committed acts or omissions which constitute serious HRVs, such as acts of torture, extra-judicial execution, arson, massacre, crimes against chastity, or robbery of any form, and any acts committed for personal ends.

- 17 May 1996 - PP 723 granted amnesty to members and supporters of the RAM/SFP/YOU who have or may have committed crimes against public order, violations of the Articles of War and other crimes committed in furtherance of political ends.
- 17 May 1996 - PP 724 extended for a further 60 days the period of application for the grant between the 22 February 1986 to 23 December 1992 of amnesty under PP 347.

Joint Congressional concurrence for PPs 347 / 348, 723 and 724 were issued through three Joint Resolutions issued on 02 June 1994, 09 October and 20 December 1996.

205. One of President Estrada's first acts affirming his support for the government peace process was his issuance of PP 21 (23 Sept 1998), as an amendment to PP 347 to allow the re-opening of the application period for amnesty for one year from the date of effectivity, as well the cut-off date for amnestiable crimes. Congressional concurrence was given on 24 March 1999 by virtue of a Joint Resolution.

206. PP 21 resulted in the filing of 5,403 applications for amnesty. Surprisingly, majority of the applications - 3,015 or 55.8% of total applicants - came from Mindanao. However, the amnesty met with only little success because those who desired to apply, failed to make it due to the early cut-off period set on 31 December 1999.

207. The NAC Consultative Meeting held on 28 July 2000 yielded a consensus for the appropriateness of issuing a new amnesty proclamation for MILF members. Thus, President Estrada issued PP 390 (29 Sept 2000) followed by PP 405 (29 Oct 2000) granting amnesty to members and supporters of rebel organizations other than the MILF. Both PPs are now awaiting congressional concurrence for their effectivity.

208. As of May 1998, the NAC has granted a total of 10,448 amnesties and denied 542 applications. A total of 4,994 applications were pending while 21 others had been noted. Amnesties were granted to 46 AFP members, 12 PNP members, 3,846 RAM-SFP-YOU members, 672 RAM/ALTAS members, and 152 MNLF/MILF members.

209. The CPP/NPA/NDF comprised the majority of the beneficiaries of the amnesty program. Out of 10,148 applications filed, 5,688 members were granted amnesty under presidential proclamations (PP) 347 and 724, which represented 54 % of the total number of persons granted amnesty.

210. As of 1999, a total of 2,061 amnestied military rebels have been acted upon through various modes of personnel disposition by the Major Services, AFP and the PNP. This does not include 190 (18 Officers and 172 EP's) whose manifestations have not been acted upon. Of this total, 139 are officers and 1,922 are enlisted personnel.

211. At the end of year 2000, the NAC issued a total of 3,250 Certificates of Amnesty to members and supporters of the RAM under PP 723. Under PP 21, a total of 79 RAM/ALTAS were granted amnesty. For PPs 347 and 724, respectively, eight and twenty from the RAM

whose names were included in the Master List of PP 723 availed of the grant. Three grantees likewise included in the Master List of PP 723 have pending applications under PP 724. (Annex 8: Amnesty Statistics)

212. All amnesty proclamations exclude as amnestiable torture, massacre and crimes against chastity and other crimes committed for personal ends. Significantly, all grants of amnesty pass through the Philippine Commission on Human Rights (PCHR) for verification to ensure that the crimes committed did not involve HRVs. Applications already denied for this reason included an application by two brothers who were convicted of killing an Italian priest in South Cotabato and those of three AFP-CAFGU members who were convicted for summarily executing a civilian.

## **2-f) National Program for Unification and Development**

213. The significant number of rebels returning to the folds of the law is primarily attributed to the government's efforts of winning back their confidence. The NPUD is the government agency tasked to address the socio-economic reintegration needs of former rebels (FR), demobilized combatants and civilian victims of internal armed conflicts (CVIACs). The NPUD delivers various forms of assistance to the beneficiaries in a concerted effort with LGUs, government corporations and development institutions.

214. The NPUD adheres to a policy of holistic scheme to effectively respond to the needs and challenges of reconciliation, rehabilitation and reintegration through its socio-economic assistance, i.e., Emergency Assistance, Capability Building, Livelihood Loan Assistance (LLA) and Special Projects. It has adopted a program strategy called *Balik Loob*, which is a barangay-level delivery system of socio-economic intervention for former rebels (FR), their families and certain communities. The projects introduced are community-driven to inculcate collective responsibility and stakeholdership and culturally sensitive for the beneficiaries so that they implement their own community development initiatives in accordance with the distinctiveness of their culture and customary way of life.

215. An emergency assistance (EA) is extended to cover basic needs such as food, emergency shelter and domestic items to mitigate the conditions of re-entry into the community. From July 1998 to December 2000 alone, the NPUD provided EA to 5,245 FRs amounting to PhP10,065,250, most of which was released through the Land Bank of the Philippines. The MILF registered the highest number of surrenderees, followed by the LCM.

216. Capacity building (CB) activities in the form of technological, vocational and cooperative formation, management and development training are provided to FRs to make their income generating projects more viable. NPUD-assisted FRs were provided with CB activities such as cooperative pre-membership education seminar (PMES), book keeping, value formation, cooperative management. The beneficiaries may form a cooperative of their own, or join the existing Bank-Assisted Cooperatives (BACs) as the latter are more stable and could provide better access to credit, skills training, technology transfer, etc. Notably, 22 cooperatives were set up under the Estrada administration that resulted in the packaging of 36 income-generating projects.



217. LLA is a soft loan payable in three years with an annual interest of 3 %. This is a start-up capital to fund income-generating projects of FRs that can be pursued through a Land Bank-Assisted Cooperative or an FR cooperative organized for the purpose. From July 1998 to December 2000 alone, the NPUD had provided LLA to 8,311 FRs in the amount of PhP52,748,470.

218. The breakdown of livelihood loan assistance released is: 4,625 former MNLF members, PhP23,048,970; 2,061 former LCM members, PhP15,631,00; and 1329 former MILF members, PhP11,857,500. All funding assistance has been released to amnestied military rebels under PPs 347 and 723. The PEA and LLA for every amnestied personnel were released through a multi-purpose cooperative organized by the RAM and ALTAS.

219. The NPUD implements special projects as follows:

- Special Development Areas (SDA) - to alleviate and restore peace and order in a municipality or a group of contiguous *barangays* where the people are among the poorest and where the communities are either rebel infiltrated or influenced, to be able to create a concrete CBM by supporting the people's initiatives for conflict prevention and transformation. The SDA Project made its breakthrough in June 1993 when seven of thirteen Peace Zones were declared as SDAs.
- Expanded College Study Grant Program is jointly being implemented with the Commission on Higher Education to qualified beneficiary applicants. At the end of year 2000, the 1,635 scholarship slots have been allocated nationwide.
- Training on Conflict Management and Conflict Resolution for NPUD Council Members and Partner Institutions.
- Institutional Linkages to identify additional sources of technical assistance and to encourage the participation of other government agencies, NGOs and other sectors in the reconciliation, rehabilitation and reintegration program. Between 1999 and 2000, the *Balik-Baril* Program (Bring A Rifle, Improve Your Life) of the DND/AFP which provided additional financial and livelihood assistance in exchange for the surrender of firearms and explosives, resulted in the surrender of 1,259 NPA rebels and 1,545 secessionist rebel who returned a total of 1,138 firearms and 78 explosives.

### **C. Policy initiatives for human rights**

220. Policies enhancing the protection and promotion of human rights and fundamental freedoms in the country reflect a successful implementation in many aspects due to the confluence of three important factors to wit, the return of the Filipino people's democratic way of life, the achievement of relative political and economic stability, and the strengthening of people empowerment. These policies include the:

- Repeal, abolition or amendment of laws which were deemed repressive;
- Release of alleged political offenders;

- Strengthening of civilian rule over the military; and,
- Institution of major reforms in the structure and functioning of law enforcement agencies.

### 1) **Repeal/Abolition/Amendment of Laws**

221. As stated in the Initial Report, presidential decrees (PDs) that were deemed repressive and already repealed are: PD 1404 (authorizing a longer period for detention of persons arrested for political offenses including rebellion, inciting to sedition and subversion); PD 1834 (raising the maximum penalty for subversion from life imprisonment to death); PD 1836 (defining the conditions for the issuance of arrest orders); and, PDs 1877 and 1877-A (empowering the President to issue preventive detention action). Other relevant laws that were repealed later are discussed hereunder.

222. RA 7636, (22 Sept 1992) repealed RA 1700, as amended, and PDs 885, 1736, 1835, 1975 and all other laws, Letters of Instructions, issuances, orders, rules and regulations inconsistent with it. RA 7636 aims to attain enduring peace by reaching out to communist rebels and facilitating their return to the folds of the law. RA 1700 outlawed the CPP and penalized participation or membership in any similar organization committed to overthrow the government. (Annex 9: RA 1700; Annex 10: RA 7636)

223. In 1987, EO 276 (15 July 1987) amended RA 1700. EO 276 was criticized for amending Section 5 of RA 1700 which prescribed the conduct of preliminary investigation as a legal safeguard to be followed in the filing of a complaint for subversion. The amendment was intended to provide strong legal measures to effectively carry out the Government's program of adequately neutralizing the threat of communist insurgency and to contain the massive liquidation and assassination of public servants and civilians.

224. RA 8294, (6 June 1997) amended specifically the sections on penalties deemed stiff and excessive. The new law imposes the penalty of *prision correccional* in its maximum period and a fine of no less than PhP15,000 upon any person who shall unlawfully manufacture, deal in, acquire, dispose or possess any low-powered firearm or ammunition, provided no other crime was committed. The penalty of *prision mayor* in its minimum period and a fine of PhP30,000 shall be imposed if the firearm is classified as high-powered, provided however that no other crime was committed by the person arrested. The penalty of *prision mayor* in its maximum period to *reclusion temporal* and a fine of not less than PhP50,000 shall be imposed upon any person convicted of unlawful manufacture, sale, acquisition, disposition or possession of explosives.

225. RA 8294 provided that, if the violation is in furtherance of or incident to, or in connection with the crime or rebellion or insurrection, sedition, or attempted *coup d'état*, such violation shall be absorbed as an element of that crime. However, if homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance. If the charge were illegal possession of firearms alone, the convicted person would be faced this time with a lesser penalty.

226. PD 1866, as amended, imposed stiffer penalties for certain violations of this law. An imprisonment of 20 years to life is the basic punishment for violations. The punishment is qualified if the prohibited act is committed in furtherance of, or incident to, or in connection with rebellion, insurrection or subversion, in which case it is punishable with death.

227. The Philippine Government was urged to repeal PD 1866 which was criticized for allowing the filing of separate charges of illegal possession of firearms against a person suspected guilty of political offenses. Human rights groups deplored the perceived practice of the military of charging armed subversives or rebels with “qualified” illegal possession of firearms instead of subversion or rebellion. The first was easier to prove and has a higher penalty, i.e., *reclusion perpetua* to death, while the second was punishable only with *prision mayor* to *reclusion perpetua*. The SC was criticized for several rulings that were deemed easier for government to implement.

228. In the case of *Misolas v. Panga* (181 SCRA 648, 30 January 1990), the SC upheld the constitutionality of paragraph 3, Section 1 of PD 1866 which penalizes illegal possession of firearms and ammunition committed in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection or subversion. The Court denied the petitioner’s assertion that the nature of the acts imputed to him constituted *subversion* or *rebellion* punishable under RA 1700 and not *qualified illegal possession of firearms and ammunition* punishable under PD 1866. Accordingly, the accused was not being charged with the complex crime of subversion with illegal possession of firearms nor separately for subversion or for illegal possession of firearms.

229. The Court noted that it was undeniably easier to prove that a person is unlawfully in possession of a firearm and or ammunition under PD 1866 than to establish that he had knowingly, willfully and by overt acts affiliated himself with, became or remained a member of the CPP and or its successor or of any subversive organization under the Anti-Subversion Act. Penalizing the same act under two different statutes with different penalties, even if considered highly advantageous to the prosecution and onerous to the accused would not necessarily call for the invalidation of the said provision. The SC added that the situation could be corrected only by the legislature through remedial legislation upon a finding of failure of logic and reason in the existing statutes on political offense.

230. In a later SC ruling, *Baylosis v. Chavez* (3 October 1991, 202 SCRA 405), it was held that it is within the power of the legislature to determine what acts or omissions other than those set out in the RPC or other existing statutes are to be condemned as separate, individual crimes and their corresponding penalties. It added that the difference in the penalty prescribed in RA 1700 and PD 1866 does not necessarily establish that the heavier penalty imposed by the latter is excessive, disproportionate or cruel.

231. In this case, petitioners invoked the *Hernandez* doctrine holding that common crimes like murder are absorbed in the bigger crimes, and it is but logical to treat the crime of illegal possession of firearms as a simple common crime absorbable in the crimes of rebellion, subversion and insurrection. However, the High Court ruled that the practice of filing charges

under PD 1866 instead of filing a charge for rebellion or subversion is based on the RPC that treats rebellion or insurrection as a crime distinct from murder, homicide, arson or other felonies that might conceivably be committed in the course of the rebellion.

232. Petitioners also argued that PD 1866 works against the equal protection clause of the Constitution in that government prosecutors may arbitrarily choose whether to prosecute under PD 1866 or under Article 135 of the RPC or under RA 1700. But the SC noted that even if a criminal act may have elements common to more than one offense this does not rob the prosecutor of the option to choose which crime to file and mandatorily require him to charge the lesser offense although the evidence before him may warrant prosecution of the more serious one. However, they cannot choose whom to prosecute under a particular law. They cannot exclude from the indictment certain individuals against whom there is the same evidence as those impleaded. If they did, the fault is not in the law but in the prosecutors themselves whose duty it is to file the corresponding charges in court against all persons who appear to be liable for the offense. If that duty is not performed evenhandedly, aggrieved persons may avail of the remedy of *mandamus* to compel compliance with that duty.

233. RA 7055 (20 June 1991) repealed PDs 1822 and 1850. These PDs gave mandatory jurisdiction to court martial over offenses committed by members of the Philippine Constabulary/Integrated National Police (PC/INP, now the PNP) and members of the AFP. RA 7055 RA 7055 is described in more detail in another section of this report.

234. RA 7659, or An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for the Purpose the Revised Penal Code, as Amended, Other Special Laws, and for Other Purposes (13 Dec 1993), repealed PD 1110-A (29 March 1977), as amended by PD 1743 (5 June 1987), which imposed the death penalty on any person who shall make any attempt on, or conspire, against the life of the Chief Executive of the Republic of the Philippines, any member of the cabinet or their families. PD 1110-A contained a list of specific heinous crimes for which the death penalty is imposable. Philippine policy on the death penalty is discussed in another section of this Report.

235. EO 29 (16 July 1986) repealed PD 33 (28 October 1972) which penalized the printing, possession, distribution and circulation of certain leaflets, handbills and propaganda materials and the inscribing or designing of graffiti. Section 1 imposed the penalty of *prision correccional* in its minimum period against any person who, without taking up arms or being in open hostility against the government or without inciting others to the execution of any act of rebellion, shall print or publish any handbill, leaflet, poster or other similar materials, or shall possess, distribute or circulate any such printed or published materials, or shall draw, write or sketch any immoral and indecent picture or word on any wall, fence, sidewalk or any other visible public or private place, which incites or tends to incite people to violence or to disregard, ridicule, defy or ignore any lawful order or act of the government or any of its officers or which, in any case, tends to undermine the integrity of the government or the stability of the State.

236. EO 65 (21 Nov 1986) repealed PD 90 (6 Jan 1973), which declared unlawful rumor mongering and spreading false information and imposed the penalty of *prision correccional* to any person who shall utter, publish, distribute, circulate and spread rumors, false news and information and gossip, cause the publication, distribution, circulation or spreading of the same,

which cause or tend to cause panic, divisive effects among the people, discredit of or distrust for the duly constituted authorities, undermine the stability of government and the objectives of the New Society, endanger the public order or cause damage to the interest or credit of the State.

237. EO 212 (10 July 1987) amended PD 169 (4 April 1973) which required any attending physician or any hospital, medical clinic, sanitarium or other medical establishments or any medical practitioner who had treated any person for serious or less serious physical injuries or for injuries arising from any form of violence to report to the PC (now PNP) the fact of treatment.

238. EO 212 requires attending physicians to submit the report of treatment to the nearest government health authority. Upon a written request, the physician's report shall be made available to the law enforcement agencies. EO 212 noted that PD 169 imposed this requirement in order that the law enforcement agencies could keep track of all violent crimes, conduct timely investigation and effect the immediate arrest of the perpetrators. The duty to maintain peace and order in the community principally belongs to these agencies and, although the cooperation of the citizenry particularly the medical practitioners may be enlisted for the common good, it would encroach upon their freedom to compel them under pain of penal and administrative sanctions to make certain reports to these agencies that have no functional or administrative control or supervision or even regulatory powers over them.

239. House Bill (HB) No. 2301 was filed during the 10<sup>th</sup> Congress and proposed to strengthen medical neutrality by repealing PD 169 as amended.

240. EO 99 (18 Dec 1986) repealed PD 1804 (16 January 1981) which prohibited and penalized the granting of permits for holding public rallies, assemblies and similar meetings to persons found guilty of rebellion, sedition or subversion or who have not been granted amnesty and to persons charged with any of said crimes. Section 2 of the decree imposed the penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period to any public officer or employee who violates the provisions of this law.

241. General Orders 66 and 67 (8 Oct 1980) authorized the defunct PC (now PNP) to set up checkpoints and conduct searches and seizures and to punish refusal to be inspected. But the AFP and the PNP had since then regulated the conduct of checkpoints to prevent abuses and HRVs from being committed by law enforcement authorities. As indicated in the relevant section of this Report, a MOA was signed among concerned government agencies that strictly regulate the conduct of checkpoints. In 1991, the Joint DILG-DND Memorandum Circular as well as the 1997 PNP Police Operations Procedure also specified the instances when checkpoints may be conducted and provided rules and regulations to be strictly followed by its personnel.

242. The Philippine Government has yet to repeal the following laws:

- Batas Pambansa Blg. 880, or An Act Ensuring the Free Exercise by the People of their Right to Peaceably Assemble and Petition the Government for Other Purposes, or the Public Assembly Act of 1985, is deemed to be repressive because it restricts and controls the right of citizens to peaceful assembly. The Act requires that before any person or persons can organize or hold a public assembly in a public place,

he/she/they must first secure a permit from the local mayor. Although still in effect, the Act has not been strictly enforced by local authorities since the 1986 EDSA Revolution. Its other provisions, however, remain binding, i.e., definition of terms; measures to prevent undue or grave public inconvenience; non-interference by law enforcement authorities in a public assembly except to ensure and maintain peace and order; guidelines on proper conduct of members of the law enforcement agencies when it becomes necessary to disperse an assembly because it has become violent; list of prohibited acts and penalties; establishment of freedom parks. The Act is described in more detail in the section of this Report dealing with Article 23.

- EO 264 (25 July 1987) provides for the creation of the Citizen Armed Force and their organization into Geographical Units (CAFGUs) throughout the country. RA 7077, or The Citizen Armed Forces of the Philippines Reservist Act, (27 June 1991) was subsequently enacted providing for the development, administration, organization, training, maintenance and utilization of the Citizen Armed Forces of the Armed Forces of the Philippines. EO 264 is deemed consistent with RA 7077 and has remained in force in light of the continuing need to address the insurgency problem in the country. The necessity for the existence of the CAFGU is described in more detail under the section of this Report on the Right to Life.
- EO 272 (25 July 1987) as an amendment to Article 125 of the RPC doubles the period of detention within which to file corresponding charges against a person without warrant. Thus: (a) 12 hours for offenses punishable by light penalties; (b) 18 hours for offenses punishable by correctional penalties; and, (c) 36 hours for offenses punishable by afflictive penalties. The extension of the period is accordingly in “the interest of public safety and order” by providing law authorities with “a reasonable and sufficient period within which to conduct adequate and thorough investigation of persons detained for some legal grounds”.

## 2) Release of Alleged Political Offenders

243. The repeal of the Anti-Subversion Law enabled the Ramos Administration to release detainees who had been arrested for alleged membership in the CCP. Those still under detention or serving sentence in prison and had appealed to the Philippine Government to be regarded as political prisoners are referred to *alleged political offenders* (APOs). In response to their request to be released, President Ramos created the Presidential Committee for the Grant of Bail, Release or Pardon (PC-BREP), chaired by the Secretary of Justice, to review their cases and make the necessary recommendations to the President for their release through the grant of pardon or release on recognizance.

244. The Implementing Guidelines for the PC-BREP (11 Aug 1992) had been recommended for amendment by the Secretaries of the DOJ, DILG and DND, the Chief Presidential Legal Counsel and the Chairperson of the CHR. However, the proposed amendment was not approved by President Ramos as his term was coming to an end. Congressional support for its approval was expressed through House Resolution No. 384/27 (21 Dec 1997), appealing to President Ramos to release the remaining 218 APOs still under detention in 52 different penal colonies, regional and provincial jails and other detention centers throughout the country.

245. The proposed guidelines extended the cut-off date of commission of the crime from 11 August 1992 to 31 December 1997 and stipulated that persons who believed were covered and wanted to avail of its benefits might petition the PC-BREP for holding in abeyance the service of their arrest warrant until there was a determination on whether or not the crimes/offenses were committed in pursuit of political objectives or in furtherance of rebellion, insurrection, sedition and other crimes/offenses against national security and public order or violations of the Articles of War.

246. The proposed guidelines expanded the crimes/offenses covered to wit: treason; conspiracy and proposal to commit treason; misprision of treason; espionage; rebellion or insurrection; conspiracy and proposal to commit rebellion or insurrection; disloyalty of public officers and employees; inciting to rebellion or insurrection; sedition; conspiracy to commit sedition; inciting to sedition; acts tending to prevent the meeting of the legislature; illegal assemblies, if the meeting is one in which the audience is incited to the commission of the crime of treason, rebellion or insurrection, sedition or assault upon a person in authority or his agents; illegal associations; direct assault, resistance and disobedience to a person in authority or agents of such person committed in relation to rebellion or insurrection, sedition or subversion; violation of PD 1866, as amended, where the illegal possession of firearms and/or explosives is alleged to have been committed in furtherance of or incident to or in connection with the crimes of rebellion, or insurrection or subversion; and violations of the Articles of War on desertion, absence without leave, mutiny or sedition, failure to suppress mutiny or sedition, various crimes, conduct unbecoming an officer and a gentleman, disorders and neglects to the prejudice of good order and military discipline.

247. As of mid-year 1998, a consolidated list for the application of 188 APOs was presented by three human rights NGOs, namely, *KAPATID* (Organization of Families of Detainees), Task Force Detainees of the Philippines (TFDP), and the Philippine Alliance of Human Rights Advocates (PAHRA). The number of APOs may increase if the latest proposal to extend the coverage from the previous cut-off date of August 1992 to 31 December 1997 would be approved.

### **3) Civilian Supremacy over the Military**

248. The 1987 Philippine Constitution, Article II, Section 3, enunciates: "Civilian authority is, at all times, supreme over the military." This is because under Article VII, Section 8, the President of the Republic is the commander-in-chief of all the country's armed forces. Furthermore, the military is dependent upon the Congress, which is a civilian body, for its support, i.e., arms, transport (helicopters, battleships, tanks, trucks) and other budgetary expenses, through the latter's mighty power of appropriations of government funds. Even the confirmation of all appointments from the rank of colonel or navy captain goes through another civilian body - the Commission on Appointments (Article VII, Section 16).

249. Strengthening the implementation of civilian supremacy over the military only became more real in the wake of the attempted military *coups* that plagued the first half of the Aquino Administration (1986-1989). A critical Congress enacted a law that created a civilian national police force provided for in Article XVI, Section 6. This law specifically states that no element of the police force shall be military in character nor shall any position thereof be occupied by

active AFP members. This was complemented by the passage of laws that repealed existing laws vesting military courts with the sole jurisdiction to try crimes committed by military or police authorities.

250. RA 6975, or An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government (13 Dec 1990), provides, thus: "Upon the effectivity of this Act, the present National Police Commission, and the Philippine Constabulary-Integrated National Police shall cease to exist. The Philippine Constabulary, which is the nucleus of the PC/INP, shall cease to be a major service of the Armed Forces of the Philippines. The Integrated National Police, which is the civilian component of the PC/INP, shall cease to be a national police force and in lieu thereof, a new police force shall be established and constituted pursuant to this Act."

251. RA 6975 provides for the return of jurisdiction over offenses committed by PNP members to the civil courts. But courts martial created pursuant to PD 1850 shall continue to try cases of PC/INP members who have already been arraigned prior to the effectivity of RA 6975. As of June 1998, there was only one case remaining and this involved the trial of a police officer. (RA 6975 is discussed extensively in this Report under the topic Reforms in the Philippine National Police.)

252. RA 7055, An Act Strengthening Civilian Supremacy Over the Military (20 June 1991), complements RA 6975 by providing for the return to the civil courts of jurisdiction over certain offenses involving AFP members, other persons subject to military law, and PNP members, in effect repealing PDs 1822, 1822-A and 1850. The exception is when an offense is determined before arraignment by a civil court to be service-oriented, it will be tried by a court martial. But the Chief Executive may, in the interest of justice, order or direct at any time before arraignment that any such crimes or offenses be tried by the proper civil courts.

253. RA 7975, or An Act Strengthening the Functional and Structural Organization of the *Sandiganbayan*, amending for that Purpose PD 1606, as Amended (30 March 1995) provides for the strengthening of the functional and structural organization of the anti-graft special court *Sandiganbayan*. Section 4 grants the *Sandiganbayan* (anti-graft special court) jurisdiction over crimes involving violation of RA 3019 (*Anti Graft and Corrupt Practices Act*) where one or more of the principal accused are occupying positions in the government at the time of the commission of the offense, e.g., PNP officers with the rank of chief superintendents and higher. The *Sandiganbayan* also assumes jurisdiction over other offenses or felonies committed by these public officials in relation to their office, but only where at least one of the accused are occupying positions with the rank of regional director or higher, or PNP officers with the rank of superintendent or higher, or their equivalent. Otherwise, exclusive jurisdiction shall be vested in appropriate courts.

254. The jurisdiction of the *Sandiganbayan* is further defined under RA 8249, or An Act Further Defining the Jurisdiction of the *Sandiganbayan* (5 Feb 1997) to include army and air force colonels, naval captains and all officers of higher rank and PNP officers with the position of provincial director and those with the rank of senior superintendent or higher.



255. *People vs. Judge Asuncion*, (11 March 1994, 231 SCRA 211) clarified that members of the PNP are subject to the jurisdiction of the *Sandiganbayan* with respect to (a) violations of RA 3019 as amended, RA 1379 and Chapter II, Section 2, Title VII of the RPC; and, (b) other offenses and felonies committed by them in relation to their office where the penalty prescribed by law is higher than *prision correccional* or imprisonment of 6 years, or a fine of 6,000 pesos. All other offenses committed by them are cognizable by the appropriate courts.

256. For jurisdiction to vest in the *Sandiganbayan*, the indictment sheet must allege that the accused public officers or employees committed the crime *in relation to their office*. This was unequivocally stated in *Aguinaldo v. Domagas* (GR No. 98452, 26 September 1991, SCRA) when the SC in an *en banc* resolution stated that the mandate of Section 46 of RA 6975 is to divest military courts of any jurisdiction over criminal cases involving PNP members and to return or transfer that jurisdiction to the civil courts. The *Sandiganbayan*, which is also a regular court, is nonetheless a court with special jurisdiction because its creation as a permanent anti-graft court is constitutionally mandated and its jurisdiction is limited to certain classes of offenses.

257. In *Aberca et al. vs. Ver et al.* (15 April 1988, 160 SCRA 590), the SC held that a civil action for damages may be filed against erring military and police officials and their subordinates who had directly or indirectly committed HRVs while in the performance of their official duties or functions. In reversing the trial court's ruling that defendants were immune from liability for acts done in the performance of their official duties, the SC stressed that the duty of defendants to protect the country cannot be "construed as a blanket license to disregard or transgress upon the rights and liberties of the citizen." Moreover, Article 32 of the Civil Code of the Philippines, which renders any public officer or employee liable in damages for violating the constitutional rights of another, "does not exempt the respondents from responsibility" whether they are directly or indirectly liable for such violations.

258. To ensure compliance of the *Aberca* ruling, DOJ MC No. 02 (15 April 1994) directs all prosecutors of the National Prosecution Service to follow uniform guidelines on jurisdiction over cases involving PNP members.

#### **4) Reforms in the Philippine National Police**

259. Continued reforms in the structure and operations of the PNP involved decisive civilian orientation, considering that most of its ranking officers and enlisted men served in the now defunct Philippine Constabulary, formerly a major service command of the AFP during the martial rule regime of President Marcos. This is in consonance with the constitutional mandate which provides: "The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a national police commission. The authority of local executives over the police units in their jurisdiction shall be provided by law." Thus, the Congress enacted RA 8551 amending for the purpose certain provisions of RA 6975.

**4-a) RA No. 6975, as amended by RA No. 8551**

260. RA 6975, or An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government, and for Other Purposes, (13 Dec 1990), provided for the organization and training of the police force to perform primarily police functions, based on the State policy to promote peace and order, ensure public safety and further strengthen local government capability through a highly efficient and competent police force.

261. RA 8551, or the Philippine National Police Reform and Reorganization Act of 1998 (25 February 1998), declares as State policy the establishment of a highly efficient and competent police force one that is community and service oriented responsible for the maintenance of peace and order and public safety and, one that is organized to ensure accountability and uprightness in police exercise of discretion, as well as to achieve efficiency and effectiveness of its members and units in the performance of their functions.

262. RA 6975, or also known as the “Department of the Interior and Local Government Act of 1990” (Section 1), provides for the reorganization of the Department of Local Government into what is now called the DILG (Section 4). The DILG consists of the Department Proper, the existing bureaus and offices of the Department of Local Government, the National Police Commission, the Philippine Public Safety College, and the following bureaus: Philippine National Police, Bureau of Fire Protection, and Bureau of Jail Management and Penology.

263. To effect reforms, the PNP was placed under the administrative control (RA 6975) and operational supervision (RA 8551) of a National Police Commission (NAPOLCOM) which was vested the following mandates:

- Develop policies and promulgate a police manual prescribing rules and regulations for efficient organization, administration and operation, including criteria for manpower allocation, distribution and deployment, recruitment, selection, promotion and retirement of personnel and the conduct of qualifying entrance and promotional examinations for uniformed members;
- Examine and audit and thereafter establish the standards for such purposes on a continuing basis, the performance, activities and facilities of all police agencies throughout the country;
- Conduct an annual self-survey and compile statistical data for the accurate assessment of the crime situation and the proper evaluation of the efficiency and effectiveness of all police units in the country;
- Affirm, reverse, modify, through the National Appellate Board (NAB), personnel disciplinary actions involving demotion or dismissal from the service imposed upon members of the PNP by the Chief of the PNP;
- Exercise appellate jurisdiction through the regional appellate boards over administrative cases against policemen and over decisions on claims for police benefits;

- Monitor and investigate police anomalies and irregularities; and,
- Inspect and assess the compliance of the PNP on the established criteria for manpower allocation, distribution, and deployment and their impact on the community and the crime situation, and thereafter formulate appropriate guidelines for maximization of resources and effective utilization of the PNP personnel.

264. Under RA 8551, NAPOLCOM was authorized to conduct a management audit, and prepare and submit to Congress a proposed reorganization plan of the PNP not later than December 21, 1998, based on the following criteria: increased police visibility through dispersal of personnel from the headquarters to the field offices and by the appointment and assignment of non-uniformed personnel to positions which are purely administrative, technical, clerical or menial in nature; and, efficient delivery of police services to the communities.

#### **4-a-i) Professionalism, Welfare and Basic Needs**

265. Performance Evaluation System. RA 6975 mandates the establishment of a performance evaluation system administered by NAPOLCOM for PNP members. The PES is intended to foster the improvement of individual efficiency and behavioral discipline as well as the promotion of organizational effectiveness and respect for the constitutional and human rights of citizens, democratic principles and ideals and the supremacy of civilian authority over the military.

266. Promotions. Requirements for promotion to a higher rank in the PNP include: passing the corresponding promotional examination given by NAPOLCOM, or the Bar or board examinations for technical services and other professions; satisfactory completion of an accredited course in the PNPA or equivalent training institutions; satisfactory passing of the required psychiatric/psychological and drug tests; and clearance by the People's Law Enforcement Board (PLEB) and / or the office of the Ombudsman.

267. Special promotion may be extended to any member of the PNP for acts of conspicuous courage and gallantry at the risk of his life above and beyond the call of duty or selected as such in a nationwide search conducted by the PNP or any accredited civic organization.

268. Upgrading of qualifications. In addition, RA 8551 provides for the upgrading of qualifications for PNP members to ensure professionalism in the service. An applicant must possess the following minimum qualifications: (a) Filipino citizenship; (b) good moral conduct; (c) passing marks of psychiatric, psychological, drug and physical tests to be conducted randomly; (d) formal college degree from a recognized institution of learning; (e) eligibility as per the standards set by NAPOLCOM; (f) height of 1.62 meters for men and 1.57 meters for women; (g) weigh not more or less than 5 kilograms from the standard weight corresponding to his or her height, age and sex; (j) for a new applicant, must not be less than 21 nor more than 30 years of age; (h) must not have been dishonorably discharged from military employment or dismissed for cause from any civilian position in the government; and, (i) must not have been convicted by final judgment of an offense or crime involving moral turpitude.

269. The age, height, weight and educational requirements for initial appointments may be waived in the event that the number of qualified applicants falls below the minimum annual quota, e.g., second year college or 72 collegiate units leading to a bachelor's degree; allowance of 4 years to obtain the required educational requirement; applicants from Indigenous Cultural Communities are exempted from height requirement.

270. Upgrading of salaries, other benefits. RA 8551 may well manifest the government's appreciation of the promotion of the indivisibility of all human rights - civil, political, economic, social, cultural. It recognizes that for the police to reach maximum effectiveness in providing a peaceful and orderly society, their economic needs must be reasonably met. Reforming society necessarily carries with it reforming the police force, but which may be far-fetched if government is indifferent towards their economic well-being. Thus, complementary to the provisions on upgrading qualifications in the appointment and recruitment of personnel and in institutionalizing a performance evaluation system under RA 6975 are provisions on welfare and basic needs under RA 8551.

271. Section 36 provides for the upgrading of salaries and other benefits of PNP members intended not only to improve and uplift their morale but also to discourage any tendency towards graft and corruption, inefficiency and ineffectiveness. The salary increases are designed to be always at par with those of the country's public school teachers.

272. Assistance to qualified dependents for education and scholarships has been expanded to include those of all policemen in active service and those who died due to illness or injury in the line of duty. In the amended law, the grant was limited to the children of policemen killed in action.

273. Also addressed under RA 8551 are the housing needs of PNP members to provide them with adequate, decent and affordable shelter at reasonable proximity to PNP camps and stations, with access to basic social and community facilities. Reportedly, only 21% of the police force was housed in government quarters or in their own private homes. Others were living with their in-laws in cramped or congested conditions, or were paying barely affordable rents for apartments or boarding houses, while the rest were forced to live in squatter communities.

274. For this purpose, a total of 100,000 subsidized housing units will be constructed at the eight-hectare property owned by NAPOLCOM at the Bases Commission Development Authority (BCDA) and in other areas. So far, only 5,000 units have been completed and distributed for occupancy.

#### **4-a-ii) Disciplinary Mechanisms in the PNP**

275. RA 6975 specifies the administrative disciplinary machinery applicable to the police force. Any complaint against any PNP member shall be brought before the following: (a) chiefs of police, where the offense is punishable by the withholding of privileges, restriction to specified limits, suspension or forfeiture of salary for a period not exceeding 15 days; (b) mayors of cities and municipalities, where the offense is similarly punishable for a period of not less

than 16 days but not exceeding 30 days; (c) People's Law Enforcement Board or PLEB (Section 43 of the Act), where the offense is similarly punishable for a period exceeding 30 days or by dismissal.

276. The PLEB was created as a local community mechanism principally tasked to investigate and decide citizen's complaints initiated against erring members of the PNP. It is a concept of people empowerment in the police administrative disciplinary system with the legal prescription under Section 43 thereof, that "there shall be created by the sangguniang panglunsod/bayan in every city and municipality such number of PLEBs as may be necessary," stressing that "there shall be at least one (1) PLEB for every five hundred (500) city or municipal police personnel". The local government units and the community must have a substantial and more meaningful participation, particularly in the area of discipline. The law, RA 6975, creates two (2) administrative disciplinary machineries for the PNP. One is internal, and the other, is external. Constituting the first are the commanding officers of the PNP who have jurisdiction for breaches of internal discipline within the organization. Moreover, the Chief, PNP and PNP regional directors are vested with summary dismissal powers on grave offenses mentioned in Section 42 thereof, Under the second are the PLEBs which, together with mayors of cities and municipalities, have jurisdiction to hear and decide citizen's complaints filed against erring members of the PNP. To enhance the efficiency and competence of the PLEB in discharge of its adjudicatory function, the Napolcom has designated its former hearing officers as PLEB's legal consultants.

277. NAPOLCOM established the NAB and the regional appellate boards, which are, respectively, the formal administrative disciplinary and appellate machinery for the members of the police force. The NAB shall decide cases on appeal from decisions rendered by the chief of the PNP, while the regional appellate boards shall decide cases on appeal from decisions rendered by officers other than the PNP chief, the mayor and the PLEB.

278. Every citizen's complaint, regardless of the penalty imposed for the offense alleged, shall be filed with the PLEB of the city or municipality where the offense was allegedly committed. The PLEB, after determining whether or not the offense alleged is grave or less grave, shall assume jurisdiction to hear and decide the complaint by serving summons upon the respondent within three days from receipt of the complaint. If the PLEB finds that the offense committed was minor, it shall refer the complaint to the mayor or chief of police, as the case may be, of the city or municipality where the PNP member is assigned, within 3 days of receipt of complaint. No member of the police shall be eligible for promotion during the pendency of his or her administrative and/or criminal case or unless he or she has been cleared by the PLEB and the Office of the Ombudsman of any complaints proffered against him/her.

279. Under RA 8551, an Internal Affairs Service (IAS) is created. It is mandated, among others, to investigate complaints and gather evidence in support of an open investigation; conduct summary hearings on PNP members facing administrative charges; file appropriate criminal cases against PNP members before the courts and assist in the prosecution of the case before any judicial proceedings. It shall also conduct, *motu proprio*, automatic investigation of incidents where death, serious physical injury or any violation of human rights occurred in the conduct of a police operation.

280. The IAS is headed by an Inspector General. Any personnel who joins the IAS is prohibited from joining any other unit of the PNP or to sit in a committee deliberating on the appointment, promotion or assignment of any PNP personnel. Recommendations by the IAS for the imposition of disciplinary measures against erring PNP personnel, once final, cannot be revised, set aside, or unduly delayed by any disciplining authority without just cause. Decisions rendered by the National IAS shall be appealable to the NAB or to the civil courts.

#### **4-a-iii) Reforms in the Operations of the Police**

281. RA 6975 redirected the PNP's role and function into a community-oriented service, compatible with its mission to enforce all laws and ordinances relative to the protection of lives and properties; maintain peace and order and take all necessary steps to ensure public safety; investigate and prevent crimes; effect the arrest of criminals, bring them to justice, and assist in their prosecution; exercise the general powers to arrest, search and seizure in accordance with the Constitution and pertinent laws; detain an arrested person for a period not beyond what is prescribed by law, informing the person detained of all his constitutional rights; and issue licenses for the possession of firearms and explosives in accordance with the law.

282. The PNP's amended role is made more pronounced with the passage of RA 8551, which amended Section 12 of RA 6975 mandating the DILG/PNP (1 Jan 1995) to assume primary responsibility on matters affecting internal security, including suppression of insurgency. Section 3 of RA 8551 provides that the DILG shall be relieved of the primary responsibility on matters involving the suppression of insurgency and other serious threats to national security. The PNP shall, through information gathering and performance of its ordinary police functions, support the AFP on matters involving suppression of insurgency, except in cases where the President shall call on the PNP to support the AFP in combat operations.

283. To bring about improvement in the operations of the police, the Ramos Administration institutionalized mechanisms enhancing the partnership between government and the community. The citizenry is placed at the forefront of, and the community empowered in, anti-crime efforts. Thus the creation of the Community-Oriented Policing System (COPS), the *Barangay at Pulisya Laban sa Krimen*, the *Barangay Intelligence Networks*, and enhanced Police-Community Feedback Mechanisms.

284. As early as 1994, an important progress in the counter-terrorist operations of the PNP Intelligence Group was sparked by a simple accident in a rented room somewhere in a thickly populated district in Manila. Some residents complained of an "explosion" and the smell of acrid fumes coming from the room. The apartment security called in the Fire Department and the police to check on the origin of the smoke. The firemen discovered there was no fire but that the fumes came from a chemical reaction/explosion. During the stake-out being conducted by the PNP-IG as a consequence, one of the occupants of the room came back and was immediately arrested. The PNP operations produced substantial leads that triggered the international manhunt on Ramzi Yousef, the alleged mastermind in the 1993 bombing of the World Trade Center in New York City and the primary suspect in the December 1994 explosion aboard Philippine Airline Flight 434 from Manila to Tokyo. Yousef was captured in Pakistan and after his extradition to the United States he was convicted by a federal court and is now serving his sentence.

285. Under EO 309, as amended, (11 November 1987), Peace and Order Councils were organized at the national, regional, provincial, city and municipal levels to establish a unified and strongly coordinated mechanism that could carry out a national program to address the problems of insurgency, rebellion, criminality, terrorism, or disruption of public order which threaten national unity and security. It is guided by the general objective of establishing and maintaining a system of coordinated government efforts and citizen's participation in the promotion, preservation, and maintenance of peace and order throughout the country. Discussions on the POCs are incorporated in relevant portions of this Report.

286. In 1995, the PNP developed the *National Strategic Action Plan POLICE Program* which summarizes its functions, as follows:

- P* - prevention and control of crimes primarily through Community-Oriented Policing System (COPS);
- O* - order, maintenance, peace-keeping and internal security;
- L* - law enforcement without fear or favor;
- I* - image and credibility enhancement and improvement of community support;
- C* - coordination with other government agencies, NGOs and the international police community; and
- E* - efficiency and effectiveness in the development of human and material resources.

287. Pursuant to RA 8551, the *POLICE Program* was reiterated with the adoption in 1998 of the *DREAMS Strategy*:

- D* - dispersal of the police from headquarters into the streets and enhancement of crime prevention and control;
- R* - restoration of the trust and confidence of the people on their police and gain the community support;
- E* - elimination of street and neighborhood crimes and improvement of public safety;
- A* - arrest of all criminal elements common or organized in coordination with other pillars of the criminal justice system and law enforcement agencies;
- M* - mopping up and removal of scalawags and misfits from the police rank;
- S* - strengthening of the management capability of the PNP and to undertake/support the DREAM operations and activities.

288. The Police Beat System (PBS) is akin to the “*koban*” system in Japan and the “*Neighborhood Watch*” in Singapore. It was employed to meet rising public expectation for police visibility, since the police are supposed to be in the blocks where they serve, working closely with the residents. The PBS is also intended to help improve the image of the police through its strategy of ‘Confrontational’ Police Community Relations as it employs immediate positive action at the level of command to preempt the development of an issue that might cause bad publicity for the organization. Thus, in 1994, the PNP adopted a new concept of community-based policing, dubbed as the Community-Oriented Policing System (COPS), with the primary purpose of increasing police visibility as a principal crime prevention measure.

289. The essence of COPS is: patrolmen are to motivate barangay officials, especially the *Tanods*, of their roles and responsibilities in the prevention and suppression of crime. It is being implemented through the “New Cops on the Block” program in the National Capital Region and the COPS-Kababayan Centers nationwide. The new Cops on the Block conduct house visitations, the purpose of which is to establish good rapport with the citizenry and enlist its active support in reducing, if not eradicating, criminal activities in the community. They also conduct patrols especially in crime-prone areas.

290. Police visibility resulted in an intensified campaign against private armed groups, crime syndicates, and terrorist hit squads nationwide. In 1992, *OPLAN SANDUGO* was launched to effectively neutralize DTs. From June 1992 to April 1995, a total of 607 were captured, 1,122 killed, and 2,397 surrendered to the authorities. This was followed in 1993 with the launching of *OPLAN PAGLALANSAG* to dismantle private armed groups (PAGs) and enhance intelligence and operational capabilities against organized and syndicated crime groups. Since its implementation up to 1995, 493 PAGs were disbanded, 119,106 loose firearms recovered, and 5,790 persons arrested. In 1996, the PNP disbanded 13 private armed groups, file 2,292 cases in court, and confiscated 5,909 firearms.

291. The *Barangay Intelligence Networks* are tasked to assist in anti-terrorist operations. In 1996, Barangay Intelligence Services significantly reduced the number of encounters between DTs and the PNP (56%) and between the SPAG Terrorists and the PNP (38%) compared to the previous year.

292. Identified Problem: Lack of uniformed personnel. On the average, the manning levels of the PNP are approximately in accordance with a police-to-population ratio of one policeman for every 500 persons. The actual strength, by city and municipality, depends on the state of peace and order, population density, and actual demands of the service in a particular area. But the provision states that the minimum of police-to-population ratio should not be less than one policeman for every 1000 persons, and that urban areas must have a higher minimum police-to-population ratio.

293. The Detective Beat System (DBS) is meant to improve the PNP’s capacity for effective investigation. DBS is a parallel set-up to the PBS but the two differ in their functional responsibilities. The Detective Beat concerns itself with crime solution while the Police Beat has the primary role of crime prevention and control. The Detective Beat is responsible for the first



response in all cases reported for investigation purposes. In other words, *detectives* are charged with total investigation responsibility while the *patrolmen* respond to the radio call, make an arrest if possible, and protect the scene until the detectives arrive to conduct the investigation. In some areas, however, the patrolman may make the first response to cases originating in his beat and then file the corresponding report.

294. The DBS arose due to pressure from within the police organization itself. Hence, the issuance of LOI 49/96, or *Detektib* (2 July 1996), outlining the PNP's mission of a special campaign for reinvention and reform consistent with the *POLICE* Program, and specifying the objectives of *Detektib*, among other things, to wit: to improve the levels of investigation and solution efficiency, the monitoring of criminal cases and wanted persons, arrest and conviction rates for PNP filed cases, and other performance parameters relative to investigation; to set minimum qualifications for investigators; to establish a concrete mechanism towards regaining the trust of the people particularly in the resolution of cases emanating at the community level.

295. The DBS focuses on the gathering of evidence gleaned at the crime scene, which should be strong enough to warrant a conviction. Reliance on extra-judicial confessions is discouraged since *confessions are the weakest evidence* and also that any illegally obtained confession is inadmissible in court. Detectives are trained to rely primarily on scientific findings as the best evidence and be bound by the principle of *adherence to the rule of law*. They must avoid effecting illegal arrests as well as the illegal seizure of documents, papers and things for these have bearing on the legality of the investigation. Correspondingly, the detective is duty-bound to testify in court. Failure to do so is a ground for the removal of the title *detective* and the accompanying emoluments without prejudice to the filing of administrative charges against him.

296. The *Barangay at Pulisya Laban sa Krimen* was implemented in the areas of intelligence networking, investigation and crime detection, crime prevention and drug control, human rights, among other things. For this purpose, barangay officials and tanods are required to undergo the needed trainings.

297. Scene of the Crime Operations (SOCO). Regrettably, numerous crime incidents have remained unsolved or have been dismissed by the trial courts on ground of insufficiency of evidence. Vital pieces of physical evidence recovered in the crime scene are either left out or destroyed by incompetent and/or unscrupulous investigators. To address this problem, the PNP leadership instituted in the latter part of 1995 measures to enhance the scene of the crime operations. In order to assist investigators in applying scientific approaches in criminal investigations, especially heinous crimes, the PNP Crime Laboratory (PNP CL) acquired a new and modern equipment.

298. In the PNP CL Guidelines for the Conduct of Scene of the Crime Operations, SOCO's primary mission is to preserve the crime scene for proper search, collection, care, handling, preservation and transport of pieces of evidence from the crime scene to the PNP CL until it reaches the court for final disposition of the case. The Guidelines also stress that the rule of law and respect for human rights of the victims and suspects will always be upheld in all SOCO operations.

299. The Investigation and Management Program. NAPOLCOM issued Resolution No. 97-032, or Investigation and Detective Management Program (24 Feb 1997), providing for the creation of a School for Investigation and Detection under the supervision and control of the Directorate for Investigation and Detective Management (PNP-DIDM). The Program provides a continuing academic training aimed among others, on developing police investigators to prevent in resorting to strong-handed tactics, and to develop skills for obtain results through scientific and systematic investigation.

300. The implementing rules, MC 97-003 (Oct 1997) provided for a 34-day-300-hour course consisting of several modules. The Human Rights Module is a total of 24 hours, including the rights of the child, women's rights, international bill of rights and humanitarian law.

301. National Crime Information System (NCIS). Upgrading police operations can count on the National Crime Information System (NCIS), which was created pursuant to EO 386 (19 Dec 1989). The NCIS is a computer-based crime reporting system involving all the five pillars of the Philippine Criminal Justice System (CJS): *Law Enforcement, Prosecution, Judiciary, Corrections* and *Community*. With it, the detective is updated of developments in the information highway as the solution of his case might just be at the tip of his fingers.

302. The NCIS has a central database containing all information on matters related to the administration of justice based on reports submitted by the pillars of the CJS. Phase I of the implementation of the NCIS consists of the formulation of an Offender-Based Crime Information System which shall monitor incidents of arrests, dispositions, convictions, confinement and release of offenders. Phase II includes activities such as computer equipment upgrading networking, systems link-up and development, and manpower training and development. Phase I is now operational.

303. PNP Blue Uniform. Efforts to repair and rebuild the credibility of the police also took the form of changing their uniform. From the previous fatigue color, PNP Circular No. 98-008 (16 Oct 1998) directs all PNP personnel to wear the standard authorized PNP Blue Uniform for proper identification. It prohibits patrolmen and detectives from wearing black or beige sweatshirt, camouflage uniform (except for the PNP Special Action Force), olive fatigue uniform, civilian/military shirts, or other unauthorized uniform while on foot and mobile patrol (motorcycle, car, jeep). The authorized headgear is part of the uniform so that motorcycle cops must wear the authorized PNP helmet. Motorcycles must be painted also with the proper markings (unit and number) on both sides for easy identification.

304. Women/Children's Desk. Significantly, RA 8551 requires the establishment of women's desks in all police stations throughout the country to attend to cases involving crimes against chastity, sexual harassment, abuse committed against women and children, and other similar offenses. As required, the PNP has, within the first five years, prioritized the recruitment and training of women who serve in the Women's Desks.

305. NAPOLCOM has put in place the required Gender Sensitivity Program under RA 8551.

#### **4-b) Collaboration with Civil Society**

306. As part of the strategy for reform, the PNP forged several MOAs with various civil society groups in order to strengthen their links with the community. This collaboration was expected to enhance the confidence and trust of the community in the police and improve the latter's capacity to relate and work with local residents in maintaining peace and order.

307. The areas of collaboration include the following: giving support and assistance to the PNP through the gathering and/or dissemination of information vital to combat lawlessness, crime, public disorder and threats to public safety and dissidence; promoting martial arts skills for more peaceful law enforcement; promoting moral and ethical conduct through value formation program and cultural and non-sectarian religious (scriptural studies and prayer meetings) activities and fellowships in police offices/stations; conducting joint massive information drive through seminars, troop information, dialogues, meetings and reduction of criminality, and the attainment of peace and order.

### **D. Legislative framework**

308. For the provisions of the 1987 Philippine Constitution relevant to the implementation of the Covenant, reference is made to the Philippines' Initial Report to the Human Rights Committee and is updated in this Report.

#### **1) Ratification of Human Rights Treaties**

309. During the period under review, the Philippines ratified the Optional Protocol to the International Covenant on Civil and Political Rights (24 July 1989), the Convention on the Rights of the Child (21 August 1990), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (6 June 1995). By ratifying the Optional Protocol, the Philippines expressly recognized the competence of the Human Rights Committee to receive and consider communications from Philippine individuals who allege that their civil and political rights have been violated.

310. Article II, Section 2 of the 1987 Constitution provides that the Philippines "adopts the generally accepted principles of international law as part of the law of the land." Thus, treaties and other international instruments ratified by the Philippine Government become an integral part of Philippine laws and the obligations embodied therein form part of domestic policy and are enforceable in Philippine courts. For instance, any person residing in the Philippines may go to court to redress any violation of his rights covered under said covenants.

311. Between a treaty and a statute in a domestic forum, the latter in time prevails. However, the Philippines is cognizant of the well-accepted principle in international law that State Parties cannot interpose their domestic legislation as an excuse for not complying with international commitments and that they have the obligation to harmonize their domestic laws with the provisions of said instruments. The provisions of the International Covenant on Civil and Political Rights are enshrined in the Philippine Constitution and other domestic laws.

## 2) **Enactment of Laws and Other Legislative Agenda**

312. During the period under review, the Philippine Congress passed several enabling laws aimed at further promoting and protecting civil and political rights in the country largely as a result of the enhanced efforts of the PCHR in tandem with HR groups. These laws, which are explained in detail in the sections dealing with the implementation of relevant articles of the Covenant, are as follows:

- RA 7309 (An Act creating a Board of Claims under the DOJ for victims of unjust imprisonment or detention and victims of violent crimes and for other purposes, 03 April 1991)
- RA 6981 (An Act providing for a witness protection, security and benefit program and for other purposes, 24 April 1991)
- RA 7438 (An Act defining certain rights persons arrested, detained or under custodial investigation as well as the duties of the arresting, detaining, and investigating officers and providing penalties for violations thereof, 27 April 1992)
- RA 8493 (An Act to ensure the speedy trial of all criminal cases before the *Sandiganbayan*, Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, appropriating funds therefore, and for other purposes, 12 February 1998)

313. During the 9<sup>th</sup> and 10<sup>th</sup> Congress (1992-1995 and 1995-1998), several House and Senate bills (HBs and SBs) filed proposed the establishment of a comprehensive juvenile justice system, the institution of penal reforms and jail integration, the strengthening of the functional and structural organization of the CHR and the establishment of HR Desks abroad, and, reforms in the administration of justice.

314. For Youth Offenders. SB 568 sought to (a) promote the correction and rehabilitation of youth offenders; (b) provide opportunities for their reformation; and, (c) prevent the commission of offense by the youths. It proposed to establish the following: (a) PNP Youth Relations Unit responsible for handling and investigating cases of youth offenders; (b) DILG Youth Detention Center for youths awaiting trial; (c) DOJ Special Prosecution Group; (d) DSWD Youth Rehabilitation Center; and, (e) city and municipal Community Youth Welfare Office to provide follow up care and services for released youth offenders.

315. For Penal Reforms. Most bills filed and sought to professionalize the practice of prison management by establishing the qualifications for superintendents of the national prison system and for wardens of provincial, city or municipal jails; (b) proposed the provision of a community service program for convicted prisoners, such as Community Work Camps, that would separate them from recidivists or habitual delinquents or hardened criminals and assure them of rehabilitation and integration into society; and, (c) authorized the Bureau of Corrections to institute a rehabilitation program to consist of a non-formal elementary, high school and college education, skills and livelihood training and sports training.

316. For Human Rights Education and Training. HB 7303 or SB 197 proposed the provision of a mandatory and continuing HR training course as part of the curriculum of all educational and training institutions of agencies, for all officers, members and trainees of the AFP, the PNP, the NBI and other law enforcement agencies such as the BJMP, Bureau of Corrections and BFP, as a requirement for recruitment and admission into service of trainees, and for promotion in said agencies. The bill intended to ensure continuing HRET for law enforcers involved in counter-insurgency operations, intelligence work and the maintenance of peace and order.

317. HB 3055 proposed the provision of mandatory HRET as part of the curricula of government-owned or financed training facilities for all officials and employees in the executive, legislative and judicial branches of government, especially those involved in the administration of justice, intelligence work and maintenance of peace and order. It also directed the Civil Service Commission (CSC), in collaboration with the CHR, Non-Governmental Organizations (NGOs) and People's Organizations (POs), to include basic knowledge on HR in all qualifying career service examinations and in all human resource development programs, and that such training is required for promotion. It also sought the establishment of a HR Desk in every government agency.

318. In order to institutionalize the teaching of respect for HR in the educational system of the country, SB 736 (and also SB 1319 and SB 1433) proposed the mandatory inclusion of a subject and/or course on HR in the curricula of all public and private elementary, secondary and tertiary schools, police and military schools and academies, and including non-formal, indigenous learning and out-of-school programs.

319. For Prevention of Torture and Extra-Judicial Executions. HB 4882 and HB 7084, which adopted the UN definition of torture, sought to declare torture a crime, prescribing penalties for its commission. SB 1489 proposed for a comprehensive program of support for the victims of torture. The proposed bills are discussed in more detail in the relevant section of this report.

320. HB 6906 sought to penalize the commission of arbitrary executions. Draft House Resolution (DHR) 817 urged the Philippine Government to support the draft optional protocol to the Convention against Torture as an important step towards the prevention of HRVs in the country. DHR 58 directed the House Committee on Human Rights to conduct an investigation and public hearing on the extent of the practice of extra-judicial killings by law enforcers. Finally, DHR 264 proposed to direct the Committee on Civil, Political and Human Rights to conduct an inquiry, in aid of legislation, on the reported widespread commission of HRVs, including torture, in the course of detention.

321. For Rights of the Accused. HB 2730 sought to provide for the rights of the accused and persons under investigation for the commission of a crime and for civil and criminal penalties in case of violation thereof. It aimed to codify all the rights of persons arrested, accused of or under investigation for the commission of a crime accorded under existing laws. A related bill HB 5250, sought to amend Section 4 of RA 7438 (An Act defining certain rights of persons arrested, detained or under custodial investigation as well as the duties of the arresting, detaining and investigating officers, and providing penalties for violations thereof.)

322. HB 1505 sought to prohibit the public display in a degrading manner of persons arrested, accused, or under custodial investigation and to amend for this purpose RA 7438.

323. For Rights of the Victims of Crime and Protection of Witnesses. HB 238 sought to define the rights of victims of crimes and to establish the Office of Victims of Crime under the DOJ. SB 316 went farther to define the duties of responsible officers and the penalties for violations. SB 1040 aimed to protect the rights of victims of crime as it sought the ordination of institutional responsibility in giving testimony in criminal cases. This implies that any law enforcer or public employee working for any law enforcement agency who, after due notice, failed or refused, intentionally or negligently, to appear either as prosecution or defense witness in any criminal proceeding without any valid reason would be penalized. Command responsibility would bind the agency head.

324. HB 2210 and SB 768 both aimed to protect and preserve the dignity of victims of crimes by prohibiting the showing of images of their faces and dead bodies on television and newspapers upon their discovery. The CHR submitted a position paper for the need of a *magna carta* for crime victims pursuant to the equal protection clause to provide a counter-balance to the rights of accused persons under the Bill of Rights. The CHR cited the observation that the Bill of Rights provides safeguards for the protection of the accused but neglects their victims in a way that results in further damage or injury caused by such crimes. SB 768 also took note of the physical and psychological trauma that crime victims usually suffer from, and therefore should be treated with respect, dignity and compassion throughout the criminal justice process.

325. HB 262 and SB604 sought to amend RA 6981 (Witness Protection, Security and Benefits Act). HB 262 sought to strengthen while SB 604 proposed the admission of law enforcement officers into the Witness Protection, Security and Benefit Program, working on the premise that any peace officer subpoenaed to become a witness is as prone to possible reprisals as an ordinary individual. The proposed amendment is viewed as an encouragement for law enforcers to testify against their superiors and / or other powerful officials facing criminal investigation or prosecution.

326. For Prevention of Disappearances. HB 3223 and HB 2282 sought to criminalize enforced or involuntary disappearance, prescribing penalties for their commission. These bills are discussed in more detail in the relevant section of this Report.

327. For Compensation for Human Rights Violations. SB 267 sought to provide higher compensation to victims of unjust imprisonment or detention and victims of violent crimes. For the latter, a maximum of PhP100,000 is proposed to cover costs of hospitalization and medical treatment. The bill also would provide victims medical treatment in any government hospital to help them recover from psychiatric, psychological or emotional trauma.

328. SB 83 sought to enforce the constitutional mandate to render a measure of justice to the victims of HRVs as a consequence of the proclamation of martial law from 21 September 1972 to 25 February 1986 or thereafter, particularly victims of salvaging, disappearances, torture, rape, and unlawful arrest of indefinite detention without charges. The bill tasked the CHR to receive,

evaluate, process and adjudicate applications for compensation, to conduct investigations and administrative hearings, and to award compensation up to the maximum amount of PhP50,000.

329. A related bill, SB 999 sought to grant first preference to the claims for damages of victims of HRVs over all other claims in the disposition of the estate or property of the offender. Such claims would require adjudication by the proper courts of domestic or foreign jurisdictions.

330. Finally, HB 1336 sought to provide reasonable compensation and benefits for the loss of lives, injuries and damages to property suffered by non-combatant individuals in the course of military or police operations.

331. For Command Responsibility in the Violation of Human Rights. SB 473 and HB 795 sought to impose liability upon superior officers for gross HRVs committed by law enforcement authorities. Concerned superiors, up to the level of department head, would be jointly liable for purposes of criminal prosecution. In applying the principle of command responsibility, the superior officer would have the burden to prove that he took conscientious measures to prevent such violations.

### **E. Administrative measures**

332. Under the Aquino, Ramos and Estrada administrations, specific measures to enhance the promotion and protection of human rights in the country were instituted by concerned government agencies in compliance with various presidential directives or solely on their own initiatives. Discussion of these measures is extensively incorporated under the relevant topics in this Report.

#### **1) DILG Directives/Initiatives on Human Rights**

333. The DILG issued various directives requiring strict observance of respect for human rights. These are discussed in the relevant topics of this Report, e.g., treatment of suspects in criminal cases, treatment of prisoners, and dissemination of relevant information that instill among the citizens greater awareness of their rights through public information campaigns, seminars, lectures and other educational methods. For this purpose, the DILG mandated all its bureaus and line agencies to update their respective programs, projects and activities that are relevant to human rights promotion and protection.

##### **1-a) PNP Police Operations Procedure**

334. The PNP POP is extensively discussed in the section of this Report on the Right To Life.

#### **2) DND Directives/Initiatives on Human Rights**

335. On 2 January 1989, the DND issued the following guidelines stressing, among other things, command responsibility in the promotion and protection of human rights and the improvement of discipline in the AFP to wit:

- Commanders duly proven to have abetted human rights abuses by way of summarily dropping complaints, intimidating the complainants or witnesses, cover-up of incidents, failure to report to superiors and/or inaction on the complaint shall be held accountable for conduct unbecoming of an officer or as accessory after the fact.
- Respect for human rights shall be inculcated repeatedly to the troops with emphasis on the rule of law and respect for the dignity of man. This is done in conferences, seminars, dialogues, troop information and regular training courses.
- The commander's performance shall be evaluated on the basis of his track record of preventing violations and upholding human rights laws and consistent with the policy of transparency.
- Consistent with the AFP's initiative to expand and strengthen linkages with other government agencies and NGOs, human rights complaints shall be acted upon in coordination with corresponding offices of the CHR, DOJ and active NGOs in the area.
- The Civil-Military Operations Staff Offices at the level of Major Services, Area Commands and AFP-Wide Special Support Units shall take the lead in coordinating human rights cases. However, the Inspector General Services remains the office of primary responsibility for the investigation of human rights complaints against AFP personnel.

336. The DND also ensures that no HRVs will be countenanced or tolerated. Officers charged with alleged HRVs cannot be assigned to any key posts. Senior officers with the rank of colonel/navy captain and higher are required to secure a CHR certification attesting that they have no pending cases of HRVs. Human rights education and training is a requirement for promotion at every level. Training programs for human rights and humanitarian law also include reservists and members of the CAFGU.

## **2-a) The AFP Human Rights Desk**

337. As reported in the Philippines' Initial Report, a Joint Declaration of Undertaking (8 June 1988) was forged among the DND, the AFP, NAPOLCOM, and the PC/INP (now the PNP). This Joint Declaration subsequently led to the creation of the AFP Human Rights Desk (J7) through Department Order No. A-117 (12 September 1989), which is mandated to:

- establish an effective awareness program on human rights based on existing constitutional provisions, policies, treaties, covenants, declarations and practices;
- conduct continuing research, education and training programs and projects to enhance respect for human rights;
- coordinate with other departments, international agencies and NGOs in the promotion and protection of human rights;



- render support to government offices and agencies in the matter of compliance with or reporting on international agreements or covenants on human rights;
- serve as the point of contact in the DND for human rights and humanitarian affairs;
- act and respond to complaints or reports brought to the attention of the DND involving HRVs and, if necessary, refer them to the appropriate offices or agencies for remedial or other actions;
- monitor and maintain records or data on human rights cases;
- represent the DND in activities related to human rights; and
- prepare periodic reports and assessments on status of HRV cases committed not only by members of the DND/AFP but also by others, including subversive forces against the duly constituted government.

338. The AFP HR Desk, in coordination with the CHR, produced an AFP Human Rights Manual which was launched in September 1999.

## **2-b) AFP Rules of Engagement**

339. The AFP formulated its Rules of Engagement on Internal Security Operations Campaign Plan (10 Aug 1998) in the conduct of its armed initiatives against rebel forces, particularly on the ground operations of the army and the naval and aerial delivery of gunfire. Extensive discussion is incorporated under the relevant topic of this Report.

## **3) DOJ Directives/Initiatives on Human Rights**

340. DOJ initiatives on human rights began in 1988 with the creation by the Secretary of Justice of a four-person *Task Force on Human Rights* that was tasked to attend to all human rights matters referred to the Department. The Justice Secretary later directed all provincial and city prosecutors to designate a counterpart prosecutor to attend to HRV complaints and requests for assistance in their respective jurisdiction. This task force conducted fact-finding missions and/or investigations of cases of human rights violations in different parts of the country together with other government agencies and NGOs.

341. The DOJ formulated the guidelines in the conduct of arrests, searches, saturation drives and the guidelines on the release of detainees or accused persons from the custody of authorities. Its attached agency, the Bureau of Corrections (BUCOR), effected the segregation of political prisoners in the New *Bilibid* Prison (National Penitentiary) and a regular visiting time by NGOs.

342. The DOJ also conducted human rights education and training (HRET) programs for AFP and PNP personnel. A total of 4,700 officers and over 40,000 enlisted men participated in these training programs that dealt primarily with immersion in human rights and humanitarian law concepts and principles.

343. The DOJ HR task force, acting as secretariat for the Presidential Human Rights Committee, conducted joint visits to penal institutions with and upon the initiative of concerned NGOs reminding prison officials to ensure respect for the basic human rights of prisoners. In this regard, the DOJ upheld the significant role of the Medical Action Group, Inc. (MAG), an NGO composed of medical/dental/nursing professionals engaged in providing services to whomsoever regardless of religion, political affiliation and social and economic status. MAG's access even to areas classified by the military as rebel-infested was granted upon the intervention of DOJ.

**(d) Joint/Inter-Agency Circulars**

344. Presidential Memorandum Order (MO) No. 393 (09 Sept 1991) directed the AFP and the PNP to reaffirm their adherence to the principles of human rights and international humanitarian law in the conduct of security and police operations. Implementing guidelines for MO 393 were contained in the Joint DILG-DND Circular No. 2-91 (2 Dec 1991). The MO described the rules of behavior for soldiers/police during security/police operations to wit: high level of discipline; strict adherence to the AFP/PNP code of honor and ethics; utmost restraint and caution in the use of armed force; humane and respectful treatment of wounded suspects and enemies who are out of combat; avoidance of unnecessary military or police actions that cause destruction to private and public property. (The Joint DILG-DND Circular is also discussed in this Report in the section on the Right To Life.)

345. The Joint Circular provides that "all HR-related violations allegedly committed by AFP and PNP members in the course of security/police operations shall be immediately investigated and, if evidence warrants, the perpetrators charged in court. Reports of investigation as well as actions taken thereon shall be submitted to the officers GHQ within 15 days after receipt of information about the alleged HRV. Family members, relatives, friends, legal counsel of detainees or arrested persons must be granted free access to the detention center/jail where the detainees are held in accordance with legally prescribed rules and regulations."

346. The MOA among the DOJ, DILG, DND, DOH, DFA and the CHR and PAHRA, FLAG and MAG (10 December 1990) granted private physicians and health personnel free access to detainees.

**5) Inter-Agency Measures on Human Rights**

347. The Presidential Human Rights Committee (PHRC) was created by authority of AO 101 (13 Dec 1988). Discussion on this subject is extensively incorporated under the topic on Government Institutions.

348. National Inter-Agency Chamber of Human Rights (NIACHR) was created to strengthen an inter-agency HRET arrangement that has been in place since 1987 with the issuance of Presidential MO 20 (04 July 1986). The inter-agency members saw the need to expand the scope of the arrangement and drew up the NIACHR MOA among the CHR, DOJ, DILG, and DND (7 Feb 1995) after a series of consultative meetings.

349. Under the MOA, the Chamber shall serve as a coordinating body on human rights with the following functions:

- Provide a forum for: (a) monitoring and addressing issues, problems and concerns affecting education and training on human rights; (b) investigation, prosecution and speedy disposition of cases of human rights violations; (c) addressing conditions of prisoners and detainees; (d) addressing other human rights concerns.
- Formulate and recommend policies and programs as well as administrative and legislative measures for consideration and implementation by the heads of the member agencies of the Chamber.

350. Member agencies commit to undertake the following duties and responsibilities: (a) assign proper key officers to the Chamber and Committee membership; (b) establish a Human Rights Desk in their respective agencies; (c) provide and maintain an office for the Secretariat/Human Rights Desk; (d) support the Secretariat/Human Rights Desk with logistics; and (e) mobilize their respective central and field offices for the coordinated implementation of human rights programs, projects and activities nationwide.

351. The Chamber has four committees to wit: Committee on Education and Training (CET), Committee on Investigation and Prosecution (CIP), Committee on Jails and Other Detention Center (CJOD), and Committee on Monitoring (CM) (of government compliance with its treaty obligations). At present, only the CET functions effectively. The rest of the committees have yet to be activated.

352. The activities of the Chamber are being carried out through the following: CHR, through its Education and Training Implementation Division; DOJ, through its Task Force on Human Rights; the PNP, through its Directorate for Police Community Relations, Directorate for Human Resource and Doctrine Development and Directorate for Operations; the PPSC; the BJMP; and the AFP through the Deputy Chief of Staff for Education and Training (J8) and the Deputy Chief of Staff for Civil-Military Operations.

353. The NIACHR has identified the problems and issues in implementing its programs as follows: fast turnover of regular/alternate members; delayed implementation of finalized programs; lack of funding and resources (no fixed budget appropriation per member agency); lack of monitoring scheme; NIACHR is not operational in all regions; and lack of commitment by agencies.

354. Presidential MO No. 259. President Ramos issued MO 259 mandating HRET for police, military and prison personnel. MO 259 aimed to enhance the implementation of the 1988 Joint Declaration of Undertaking by directing the DILG, DND and DOJ, in collaboration with the CHR, to include in their continuing education and training the study of the various HR international treaties and conventions to which the Philippines is a state-party. For this purpose, the CHR is mandated to periodically review HRET courses. Successful completion of the appropriate HRET courses is a prerequisite for the recruitment, promotion and transfer/reassignment of personnel, especially those directly involved in investigation and arrest.

355. HRET for AFP Personnel. In compliance with MO 259, the Office of the Deputy AFP Chief of Staff for Education and Training (OJ8) and the AFP Joint Service Command and Staff College promulgated an *Instructional Guide on International Humanitarian Law (IHL) or Law of Armed Conflict* (22 Nov 1996). This manual was designed to provide direction as well as teaching modules on IHL or LAC for use during regular courses by trainers, faculty, staff and students of the AFP.

356. The AFP Chief of Staff approved for inclusion in the Basic, Pre-entry, Advanced and Command, and General Staff College courses for all career officers and men, modules on the Geneva Convention, Protocol I and II, principles of the International Committee of the Red Cross (ICRC). In terms of hours, HR and IHR subjects are conducted as follows: Pre-entry courses, HR and IHL subjects are conducted six hours each; Basic courses four hours for HR and six for IHL; and for the Advanced Courses level four hours for IHL classes.

357. The Masters curriculum included subjects on Introduction to Human Rights, IHL, Law on Armed Conflict, and International Committee of the Red Cross (ICRC) Movements. For the enlisted personnel, the study of human rights take up a total of 12 hours while IHL subjects are taught for a total of 17 hours. In the Masters curriculum for AFP officers, HR and IHL courses are taught for a total of 10 hours each. The Staff College included under Study Area 1 (Introductory Studies) courses on IHL (the teaching of which also contains the right against torture) and a module on human rights.

358. HRET for PNP Personnel. The PNP Trainee Basic Course consists of five modules on perspectives/orientation, management of self, of work, of work environment and criminal investigation. The course consists of a total of 682 hours, of which eight hours were devoted to HR subjects. In addition, all PNP personnel are required to undergo training and seminars in the following courses: law enforcement enhancement course; practical traffic law enforcement; crime scene investigation and detection; drug enforcement; police intelligence; and firearm proficiency training.

359. HRET at the PPSC. The PPSC Public Safety Advanced Course (PSAC) is a 20-week course for PNP officers with the rank of Senior Inspector and Chief Inspector, who handle middle level management responsibilities, including practices that directly apply to public safety services. Its Module VI (Institutional Linkages) includes a syllabus on Human Rights Advocacy (24hours). The course focuses on administration and management concepts, theories and practices that directly apply to public safety services. The course provides an “analysis of the relationship of the PNP with other sectors of society, the concept of police community relations, the relationship of the different components of the criminal justice system, the concept of community oriented policing system and the police as advocates of human rights.”

360. HRET for PNP-SAF/DIDM. Both the PNP SAF Commando Course and the DIDM Criminal Investigation and Detective Development Course (CIDDC) include a 24-hour HR lecture to all police personnel who are directly assigned with or earmarked for assignment to the Investigation Unit. Special emphasis is given on the human rights of the accused during custodial investigation and tactical interrogation.

361. Measures on HRET for the Citizenry. As stated in the Initial Report, EO 27 (4 July 1986) directed the DECS to: (a) include the study and understanding of HR in the curricula of all levels of education and training in all schools; (b) adopt the scope and treatment of HR subjects or courses to the respective educational levels; and, (c) initiate and maintain regular programs and special projects to provide venues for information and discussion of HR including the utilization of informal education. DECS was encouraged to utilize the formal and informal systems of education in enhancing citizen awareness for respect for HR as the best deterrent to any and all forms of HRVs. The CSC is also directed to include basic knowledge of HR in the qualifying examinations for government service.

362. HRET for DECS. Pursuant to Department Order No. 61, Series of 1987, the DECS committed to include the study of HR in all levels of the educational system including non-formal, technical and vocational educational programs, fully convinced that for HR values to be imbibed in the consciousness of the people, educational intervention must begin at the earliest or formative years of the young and be sustained in all levels of the system. Furthermore, the passage of pertinent pending bills in Congress is expected to further strengthen administrative efforts to integrate the study of human rights in the country's educational system.

363. A Memorandum Order (MO) was issued by President Estrada to commemorate the observance of the 50<sup>th</sup> anniversary of the Universal Declaration of Human Rights. The MO directed all department secretaries, heads of agencies and government-owned and controlled corporations to integrate peace and human rights concepts in their education and training programs as these concepts may serve to deter possible abuses and exploitation. This directive also encouraged the private sector to undertake similar training / education activities.

364. HRET for Judges and Lawyers. The Supreme Court in its *En Banc* Resolution No. 850 (8 August 2000) adopted the rules on the Mandatory Continuing Legal Education for Members of the Integrated Bar of the Philippines. The rule required members of the bar to complete every three years at least 36 hours of continuing legal activities, out of which at least two hours shall be devoted to international law and international conventions.

## **F. Reforms in the criminal justice system**

365. The Initial Report touched on efforts by the Philippine Government to improve the criminal justice system in the country. As pointed out by a prominent member of the judiciary, for democracy to perform well, the criminal justice system must be efficient, effective, impartial, fair, objective and credible and must provide a venue for the genuine redress of grievances for the citizens. He also noted that the people's faith in the judicial system was eroding because of sloppy investigative work, incompetent prosecution of cases, innumerable delays and clogging of court dockets, laxity at penal institutions and lack of a keen sense of responsibility at the community level for the reporting of crimes. He pointed out the critical importance of ridding the system of misfits, incompetents and scalawags and entrusting the administration of justice only to professionals who are honest, fit and qualified, as well as inculcating gender-sensitivity in the police force, the prosecution service and the courts.

366. The mounting insistent calls for judicial reforms were caused by the widespread belief that the poorer sectors of society were not enjoying their fair share of protection before the courts. Human rights activists were particularly critical of a situation where an accused indigent was charged with an offense punishable by death. Hence, the government undertook efforts for a thorough review, assessment and evaluation of the country's administration of justice in order to preserve and strengthen the people's trust in the judicial system as an integral part of a democratic society.

## **1) Presidential Task Force on the Improvement of the Administration of Justice**

367. As indicated in the Initial Report, the goal of improving the administration of justice led to the creation of the Presidential Task Force on the Improvement of the Administration of Justice by virtue of AO 75 (21 June 1988). Yet, despite these remedial measures, the prevailing sentiment remained to be that the dispensation of justice in the country was slow and tedious. Hence, the urgent need for new innovative measures aimed at expediting litigation proceedings, particularly cases involving law enforcement authorities and influential persons.

368. The reforms recommended to be instituted during the period under review are as follows: implementation of the 90-day continuous trial system in all courts; implementation of a witness protection and benefit program; strengthening of the *Katarungang Pambarangay* (Village-level Justice) Program through joint efforts of the DILG, DOJ and the SC; expansion of the coverage of the free legal assistance program and the legal outreach program; and, launching of the inquest lawyer system and the barangay legal aid clinic.

## **2) Mobilization of the Five Pillars of the CJS**

369. Government saw the need to address the public's negative perception of the criminal justice system by mobilizing its five pillars (law enforcement, prosecution, courts, corrections and community). A series of National Summit on Peace and Order from 1993 to 1995 was conducted by the National Peace and Order Council (NPOC), in collaboration with the National Police Commission (NAPOLCOM) technical Committee on Crime Prevention and Criminal Justice. This committee serves as a forum for the articulation of issues and interchange of ideas emanating from the five pillars of the criminal justice system. The discussion provides the basis for the Prevention Program, as mandated under Section 4(k) of R.A.8551, within an interdisciplinary and holistic context. The 2000 National Crime Prevention Plan major thrusts were geared towards the improvement of the internal capability of the individual pillars, and the maintenance of close inter-agency coordination toward the effective reduction of criminality, and the attainment of peace and order.

370. The fourth National Summit on Peace and Order held in April 1996 resulted in the formulation of a Five-Year Master Plan of Action for Peace and Order (1997-2001) as the blueprint for concerted government program against criminality. Each pillar has identified its goals, strategies and priority projects, to wit:

- The law Enforcement Pillar's goals are to: (a) reduce the incidence of crime and crime rate; (b) improve crime solution efficiency; (c) maximize linkages with other CJS and international law enforcement agencies; and (d) enhance the credibility of

law enforcement organizations. Among the pillar's strategies are the replication of pilot-tested projects and the active participation of the community in crime prevention and control. In line with this strategy, the implementation of its flagship project titled "Community Oriented Policing System (COPS) was undertaken to strengthen the three-way partnership of the police, community and local government. The project was piloted and replicated nationwide, thus, the formulation, development and publication of the COPS operations manual in March 2000 was envisioned to clarify and identify the basic concept, philosophy and core components of the COPS program. Training and dialogues for COPS implementors were conducted in three regions in 2000.

- One of the goals of the Prosecution Pillar is an 85% disposition rate of cases under preliminary investigation. The NPS achieved a 88.9 % disposition rate in 2000. Among the pillar's strategies are: (a) continuing training program for non-chemists in dangerous drugs identification because of the low conviction rate on drug cases which was traced, from among others, the dearth of government chemists who can testify as expert witness in court. The graduates of this training program are called Drug Identification Accredited Professionals (DIAPs). Another pillar project is the Prosecution, Law Enforcement and Community Coordinating Service (PROLECCS) which provides a forum to achieve and sustain closer linkages among prosecutors, law enforcers and the community in evidence gathering. Likewise, a series of seminar-workshops on enhancing investigative capability were conducted nationwide in order to update knowledge on latest trends regarding issues and concerns in prosecutorial procedures.
- The Courts Pillar identified its specific goals of deciding all cases (with dispatch) in accordance with due process without sacrificing the quality of justice. One of its strategies is the continuing dissemination of information regarding the workings and procedures of the courts. The pillar has conducted symposia on the "Operational Systems and Workings of the Court" which aims to enhance the understanding of the public on the processes involved in the administration of justice. In support of the project, a Handbook on the workings of the Court was published in 1997.
- Among the goals of the Corrections Pillars, specifically on enhancing rehabilitation, are: (a) increase in the rate of successful termination from probation; (b) increase in the rate of successful termination of parole/conditional pardon; and, (c) reduction in the rate of recidivism in the entire correctional system. The pillar's strategies, among others, are the establishment of halfway homes and professional advancement of correction workers/upgrading of qualification standards. Various projects were implemented such as the operation and maintenance of Philippines-Japan halfway house, vocational courses for jail inmates, Seminar-Workshop on enhancing correctional officers' capability: from Jail Management to Parole/Probation Supervision and Procedures, Trainers Training in Behavioral Management and Milieu Therapy, Seminar-Workshop on Records Management and Trainers' Training on Therapeutic Community Modality.

- The Community Pillar aims to: (a) inform 80 % to 90 % of all *barangays* on the concept of the Criminal Justice System (CJS) and, (b) develop mechanism for interaction and communication between the community and the other pillars of the criminal justice system. Among the identified strategies are: (a) maximize the participation of development workers organizing community to fight criminality; (b) expand the existing anti-drug programs involving the community; and, (c) information networking among anti-crime groups. In line with these strategies, the community pillar has undertaken the airing of a radio program on CJS called “Bantay Katarungan” and the printing and distribution of the CJS Primer. The pillar also conducted the 1<sup>st</sup> National Conference Workshop on Drug Abuse Prevention and Control in year 1997. The pillar likewise conducted the CJS Trainers’ Training Program to achieve a more effective dissemination of information, particularly on the workings of the criminal justice system. In between the conduct of this program was the production of a 60-second TV and radio plug aired in all major TV and radio stations nationwide. Criminal Justice System posters were disseminated nationwide. In relation to the Criminal Justice Trainers’ Training Program, the community pillar has submitted to the DECS a resolution for the criminal justice system to be integrated in the elementary and high school curricula. The authorities have already approved this recommendation in principle and training for teachers/implementors has been conducted. The integration of the CJS in the DECS curriculum shall be an educational breakthrough.

### 3) **RA No. 8557 (Philippine Judicial Academy Act)**

371. RA 8557, or The Philippine Judicial Academy Act, (26 Feb 1998) [Annex 11: RA 8557] mandated the strengthening of the Philippine Judicial Academy, noting that an important aspect of judicial reform is judicial education. PHILJA, which was earlier created by an administrative issuance of the Supreme Court as its component, now offers courses to justices, judges and court personnel aimed at enhancing judicial competence and expertise, and provides a mandatory course for all aspirants to the Bench. The PHILJA has its curricular departments and corps of professors and has given several courses in fulfillment of its mandate. Lectures and discussions on civil and political rights as enunciated by international covenants and provided for in domestic law are always a part of PHILJA programs.

### 4) **Public Attorney’s Office (PAO)**

372. The Philippine government also had to strengthen the Public Attorney’s Office by upgrading the skills and capability of its members and increasing their salaries and compensation. The PAO had its beginnings in 1954 with the enactment of RA 1199 creating the Agricultural Tenancy Commission (ATC) to provide free legal assistance to agricultural tenants and their dependents. ATC was later renamed the Tenancy Mediation Commission and provided enhanced legal assistance through the Office of the Agrarian Counsel, which was also abolished with the creation of the Citizen’s Legal Assistance Office (CLAO) under PD 01 (24 Sept 1972).

373. CLAO was later renamed Public Attorneys’ Office pursuant to EO 292 (Administrative Code of 1987) dated 25 July 1987. Under its new mandate, the PAO has been relieved of agrarian reform cases which are now handled by the Bureau of Agrarian Legal Assistance of the



Department of Agrarian Reform. PAO lawyers are tasked with litigation work before the courts and the quasi-judicial administrative bodies. In addition, they handle all kinds of appealed cases before said bodies.

374. Lack of lawyers is a major problem that greatly affects PAO's performance. As of 31 December 1998, at least 1,047 PAO positions were slated for the 2,074 existing courts nationwide. However, PAO was able to fill only 877 positions (84%), when the ideal set up is to provide at least one PAO lawyer for every court.

375. The magnitude of work strained the health of PAO lawyers and adversely affected the quality of their performance. PAO statistics showed that from 1989 to 2000, more than 30 million cases were handled by PAO lawyers involving criminal, civil, administrative, limited services and non-judicial disputes. As of April 1999, there are a total of 889 PAO lawyers nationwide distributed among the national capital region, the Cordillera Administrative Region and the thirteen other regions of the country. (Annex 12: PAO Statistics)

376. The very low salaries further aggravated the situation. From an initial gross salary of PhP13,715 per month (Grade 18 for Associate Public Attorney I), PAO lawyers only get a maximum gross salary of PhP21,090 per month when they reach Salary Grade Level 28 for Public Attorney V. The few lawyers who joined the PAO have either just passed the Bar Examinations or have no experience at all in litigation work. Most of them joined the PAO to gain experience, knowledge and training in litigation and after awhile sought to be appointed either as prosecutors or judges because of the relatively higher salaries. Others ventured into the private practice of law, which offered more lucrative professional fees.

377. Efforts to improve the PAO lawyers' skills and to upgrade their salaries and retirement benefits were not vigorous enough to obtain the needed legislative measures. Budget proposals to bring their salaries at par with government prosecutors and draft legislative enactment seeking to ensure the availability of at least one PAO lawyer in every court has not been acted upon.

#### **G. National Institution for the Promotion and Protection of Human Rights: the Commission on Human Rights (CHR)**

378. Section 11, Article II of the 1987 Philippine Constitution stresses the government's commitment to human rights: "The State values the dignity of the human person and guarantees full respect for human rights." This policy is reinforced by Section 17 (1), Article XIII, which states: "There is hereby created an independent office called the Commission on Human Rights." President Aquino signed EO 163 on 5 May 1987, creating the Commission on Human Rights, which is tasked to promote the protection of, respect for, and enhancement of the people's inherent human rights, including all civil and political rights.

379. During the period under review, the CHR was faced with increased vigilance in the promotion and protection of human rights. It was looked upon as the vital link among various sectors of society, such as the military, the police, the judiciary, other government agencies, NGOs, and victims of alleged HRVs or their violators. To fulfill its mission, the CHR identified two main approaches: HR protection and HR promotion.

380. For HR protection, the CHR works through its free legal assistance, investigation services, assistance and visitorial services, witness protection and financial assistance programs. It comes indirectly in the form of monitoring the country's compliance with international HR covenants to which the Philippines is State Party. HR promotion is pursued through its public information and education and training services. Strategies for the efficient delivery of these services involve organizational and operational networking all over the country and collaborative working arrangements and linkages with concerned government agencies and with NGOs, both local and international, as well as lobbying for remedial legislation.

381. The operational priorities of the CHR are contained in Res. No. A95-069 (5 Dec 1995), as follows:

- sustained and vigorous investigation of alleged violation of civil and political rights;
- investigative monitoring of incidents and/or conditions which are violative of civil, political, economic, social and cultural rights;
- inter-agency collaborative undertakings with national and local government agencies and NGOs in order to enhance advocacy of HR principles among the grassroots through volunteerism in the basic units of local governments in securing civil, political, economic, social and cultural rights;
- organization and operational support and assistance for the development and implementation of the various legislative, administrative and program measures identified in the Philippine Human Rights Plan for the protection of the vulnerable and disadvantaged sectors of society.

**a) Legal and Investigation Services**

382. The CHR is committed to protect the HR of everyone: those apprehended, killed or otherwise abused for political and subversive activities; and soldiers, police, workers, farmers, women, children and all others whose rights are violated. This resulted in the influx of complaints from all sectors that felt aggrieved, abused or neglected. HRVs filed by military and police officers, government officials and civilians against the CPP/NPA involved murder, massacre, robbery, physical injuries, torture, etc.

383. In order to prevent itself from being unduly saddled with, and its resources channeled to, "borderline cases" of alleged HRVs, the CHR issued Res. No. A88-045 (26 July 1988) classifying HRVs into (a) HRVs *per se* and (b) other cases of HRV. The first refers to those which are, by their very nature, easily and readily discernible as palpable transgressions of the rights defined in the Universal Declaration of Human Rights, the international bill of rights and other international human rights covenants and treaties to which the Philippines is a State Party. These rights are immediately given due course by the CHR. Other HRV cases are referred to the concerned government agencies for being outside CHR jurisdiction.

384. CHR redefined its jurisdiction in its Res. No. A96-005 to include the investigation of violations of civil and political rights of all persons within the Philippines as well as of Filipinos residing abroad, to wit:

- rights of prisoners or detainees against physical, psychological and degrading punishment
- right against torture, force, violence, threats, intimidation and other means that vitiate the free will of persons or force him to do anything or sign anything against his will
- right to a fair and public trial
- right to life/right against summary or extra-judicial execution
- liberty of abode
- right of individuals to be secure in their persons, houses and effects against unreasonable searches and seizures
- rights of persons arrested, detained or under custodial investigation
- right to peaceful assembly and to petition the government for redress of grievances
- freedom from involuntary servitude

free exercise and enjoyment of religious profession and worship.

385. CHR's revised rules for investigation or hearing of complaints are contained in Res. No. A89-109-A (19 July 1989) under which the CHR exercises powers and functions as follows: to investigate and hear all forms of HRV involving civil and political rights and may issue subpoena *duces tecum* or *ad testificandum* for the purpose of taking sworn statements or depositions conformably with procedures prescribed by the Revised Rules of Court; to cite or hold any person in direct or indirect contempt; grant immunity from criminal prosecution; call upon any government entity for assistance; and, to appoint counsel *de officio* for pauper litigants. (Annex 13: CHR Procedure for Complaints and Investigation of HRVSs)

386. Under CHR Resolution No. A93-047, a complaint may be filed by an aggrieved party, or by a third party, or by any government institution, or at the Commission's own initiative. All investigations shall be treated as confidential. After the issuance of the resolution, the CHR investigator is tasked to coordinate with the government prosecutor and monitor the court proceedings.

387. In 1990, the CHR incorporated medico-legal investigation into its investigative work through the active participation of its Forensic Medicine Services Office. The results of its investigation are forwarded to other government offices, such as the Judge Advocate General's

Office (JAGO), NAPOLCOM, civil courts or other administrative bodies that have jurisdiction. As an intermediary solution to the CHR's lack of prosecutory powers, the DOJ deputized CHR lawyers as special prosecutors so that they can file complaints directly with the prosecutor's office based on the results of their investigation.

388. To ensure a more responsive and effective operation of its legal program, (Res. No. A95-025, 5 April 1995), the three units under its Legal Office are enjoined to provide legal assistance and to recommend measures to Congress for legislation on HR and monitoring compliance of the Philippine Government with its international HR treaty obligations. As regards the latter, the CHR issued a National Human Rights Advisory to all heads of departments, bureaus, offices and agencies, government corporations, local government units and all others concerned. For this purpose, CHR also forged a MOA with the Philippine Human Rights Information Center (PhilRights).

389. HR cases acted upon by the CHR from 1988 to 2000 reached 17,002 out of 18,132 cases filed during the period. Of these cases, a total of 7,159 cases were filed in courts for prosecution or administrative action; 6,837 were closed/terminated; and 3,006 were archived. As of December 1999, a total of 1,407 of the cases filed in courts were decided upon, resulting in conviction, acquittal or dismissal. (Annex 14: CHR Summary of Statistical Information).

**b) Witness Protection**

390. Res. No. A88-049 (19 Sept 1988) embodies the CHR witness protection program in the form of custodial protection of victims, their immediate family members and their witnesses from any form of harassment or threat. The program covers shelter and subsistence allowances for the duration of the hearing or for as long as it may be deemed necessary.

**c) Legal Assistance**

391. The program is in pursuit of the equal protection clause of the Constitution and is intended to help indigent HR victims obtain legal remedies. In 1990, the CHR started implementing this program for the underprivileged i.e., the urban poor, students and human rights advocates, children, workers and trade unionists.

**d) Financial Assistance Program**

392. The CHR's financial assistance program (Res. No. A89-125) is designed to alleviate the sufferings of victims of HRVs and / or their families. The guidelines and procedures for the disposition of claims were revised (Res. No. A96-060, 10 Sept 1996) to provide a simpler and more responsive financial package. Requests for financial assistance need the claimant's full cooperation in the investigation and identification of witnesses and respondents or alleged perpetrators. The following must be shown: (a) the act being complained of is a HRV; (b) the evidence submitted by the claimants engender a well-founded belief that a HRV was committed; and (c) the respondents, if known, are liable of the violation charged. In case respondents are not known, compliance of (a) and (b) is sufficient provided there is a showing that their identities cannot be ascertained despite diligent efforts.

393. The amount to be granted is determined by these factors: (a) gravity of the HRV committed; (b) economic status and social history of the victims and their families; and, (c) expenses incurred as a result of the infliction of HRV. Approved claims can only be collected by the (a) victim; (b) parents, if the victim was single; (c) surviving spouse and the children of the victim in their concurring capacities, if the victim was married; or (d) brothers and sisters, if the victim is survived only by the latter.

394. Res. No. A96-060 also ensures that financial claims are not awarded for common crimes as determined by the following qualifying standards:

- case involves deprivation of life or infliction of injuries on persons (i.e., extra-judicial execution and torture);
- act was committed with abuse of authority by persons of authority or their agents or any other person/s under their employ or order or by person with the duty to administer and enforce laws or their agents;
- victim was deprived of life or injured or maimed because of ideological or non-partisan political or religious beliefs or because of cultural or ethnic causes, regardless of who committed the act;
- circumstances surrounding the occurrence of the act were of such nature as to arouse public outcry and condemnation;
- incidents or violations resulting from or arising out of or those committed in the course of military/police operation or armed conflict shall likewise entitle the civilian victims injured or maimed or killed to financial assistance;
- act was committed in willful disregard of the basic rights of the child or violates the provisions of Republic Act No. 7610 (Special Protection of Children against Child Abuse, Exploitation and Discrimination); and,
- violations not included in the above description will be taken into consideration on a case-to-case basis.

395. On a case-to-case basis, the following may qualify as grantee: military, police or paramilitary personnel who are recognized or who, under the circumstances, are recognized to be *hors de combat* but were nevertheless killed, injured or maimed by the adverse party shall be entitled to financial assistance, as follows:

- Survivor's Benefit. The amount of PhP15,000 per victim shall be granted to the immediate surviving heirs of the victim.
- Medical Assistance. An amount not to exceed PhP7,500 shall be extended to those wounded or injured to help defray the cost of medical treatment and/or hospitalization expenses incurred.

- Incidental Emergency Expenses. An amount of PhP8,000 per region per month shall be provided to cover the cost of providing the urgent needs of the victims of HRVs such as transportation expenses, meals, medicines and other similar expenses. Sub-regional offices shall be provided PhP2,500 per month as emergency financial assistance for similar expenses.
- Community Assistance. Covered under this plan are communities or groups of families who are uprooted from their place of abode as a result, or in the course of or by reason of the commission of HRVs. They shall be entitled to a dislocation allowance of PhP3,000 per family per month, without prejudice to the incidental emergency expenses allowed in the preceding section.
- Livelihood Assistance. This includes technical assistance to these displaced families to help them start a new life in coordination with similar efforts extended by the government and NGOs. HRVs shall include the following: (a) dislocation of innocent civilians affected by AFP counter-insurgency operations; (b) dislocation of civilians affected by the so-called “development aggression”; (c) dislocation of civilians whose abode has been demolished in violation of RA 7279 (Urban Development and Housing Act).
- Special Assistance. In all other cases where the victims of HRVs who are not covered under the existing guidelines on financial assistance are in dire need of financial grant because their life, health and security are threatened and it appears that there is no government agency which can provide immediate assistance to the victims, the amount extended shall be determined on a need-basis which in no case shall exceed PhP5,000 per claimant/victim.
- Rehabilitation Assistance. For victims of unjust imprisonment or detention, the financial assistance shall be based on the number of months of imprisonment or detention and every fraction thereof shall be considered one month, provided however that in no case shall such financial assistance exceed PhP1,000 per month and provided further that the maximum amount of financial assistance shall not exceed PhP10,000.
- Assistance shall be given to: (a) any person who was unjustly accused, convicted and imprisoned but subsequently released by virtue of a judgment of acquittal; (b) any person who was unjustly accused, imprisoned but subsequently released by virtue of a judgment of acquittal, provided that the judgment is coupled with a pronouncement that the accused did not commit the crime; (c) any person who was unjustly detained and released without being charged.
- Any person under detention who was subjected to cruel, inhuman and degrading punishment by the prison authorities shall be entitled to financial assistance in an amount not exceeding PhP10,000 subject to the documentary requirements under CHR Resolution No. A89-125.

- Any person under custodial investigation who was subjected to cruel or inhuman punishment in order to extort confession or for any other purpose shall, likewise, be entitled to financial assistance in the amount not exceeding PhP10,000 subject to the above-mentioned requirements.
- Any person who has been detained on charges of committing crimes in pursuit of his political belief or who has been convicted of committing similar offenses and later on released after serving sentence or by virtue of the grant of amnesty or executive clemency shall be entitled to financial assistance in the amount of PhP10,000 to enable him to start a new and productive life.

396. Financial assistance given include the following: (a) survivor's benefit to heirs of victims, up to PhP15,000 per victim; (b) medical and hospitalization benefit not to exceed PhP7,500; (c) witness protection fund; (d) community assistance to evacuees; (e) special assistance to released prisoners and families involved in demolitions; and (f) legal and incidental expenses incurred in litigation.

397. From the period 1990 to June 2000, the CHR disbursed the amount of PhP45.623 million to 10,294 beneficiaries in all 16 regions of the country. In addition, from 1995 to June 2000, the CHR disbursed the amount of PhP2.53 million to 258 beneficiaries of the Families of Victims of Involuntary Disappeared (FIND). (Please See Annex 13)

**e) Visitorial Services**

398. The CHR Assistance and Visitorial Services program looks into the conditions of jails, prisons and detention facilities as well as the humane treatment of prisoners. Since the launching of its Inter-Agency Cooperation Plan (5 May 1989), the CHR has conducted more than 100 jail visitations in military and police detention cells throughout the country, in response to reports of torture or maltreatment of prisoners/detainees, illegal arrests and lack of adequate basic facilities. The CHR may require the presence of doctors from government civilian agencies such as the NBI and the Philippine General Hospital (PGH).

399. These jail visitations yielded at least two concrete positive results: (a) the inclusion of detention centers / jails in the on-going nationwide construction of judicial complexes to address the congestion problem and the provision of humane and sanitary facilities; (b) the commitment of concerned agencies to address the failure of the courts to immediately dispose of detention cases involving minor offenses and or when the accused is unable to post bail. The DOJ directed government prosecutors under pain of administrative sanctions to terminate preliminary investigations within the given 60-day period. The Supreme Court incorporated its response in its over-all administrative efforts to improve the delivery of justice.

400. Upon the CHR's representations, a total of 859 prisoners/detainees were released from 1988 to 2000. Some of them were serving sentence beyond the term imposed; others were granted parole or pardon. A recent CHR *habeas corpus* petition was directed to the RTC of Pasay City and the Bureau of Corrections for the release of a prisoner who was charged and

imprisoned in 1993 after having been found guilty of drug pushing. The CHR cited the amendment to the Dangerous Drugs Law based on which the prisoner should have been imposed a penalty of less than seven years which had already been covered by his detention.

**f) The Philippine Human Rights Plan**

401. President Ramos issued M.O. 258 (7 Feb 1995) establishing an Inter-Agency Task Force for Strategic Planning and Research for Human Rights Protection, in response by the Philippine Government to the United Nations' call of drawing up a national action plan identifying steps whereby the State would improve the promotion and protection of human rights.

402. The CHR, as task force chair, undertook national, regional and sectoral dialogues and consultations to address the issues and concerns of the vulnerable sectors for inclusion in the national plan. On 21 August 1995, the *Philippine Human Rights Plan* or the PHRP (1996-2000) was adopted during a National Public Hearing attended by representatives of both Houses of Congress, LGUs, the diplomatic corps, international organizations, NGOs, the academe, the business sector, the media and sectoral umbrella organizations.

403. The PHRP initially covered 13 vulnerable sectors which were later increased to 16 to wit: women, children, youth, indigenous cultural communities, Muslim communities, elderly, persons with disabilities, mentally disabled persons, prisoners/detainees, internally displaced persons, migrant workers, private sector labor, public sector labor, rural workers, and informal labor.

404. The PHRP also serves as the overall framework of the CHR's programs and services for the vulnerable sectors. The CHR performs secretariat functions in the implementation of the Plan, which includes coordination, monitoring and facilitation functions and networking and inter-agency collaboration with government, NGOs and POs. The Plan's implementation requires extensive advocacy policies and programs and relies mainly on the mobilization and participation of all sectors of society from the national down to the barangay level. The CHR thus forged partnerships with NGOs and the POs that espoused, as their primary cause, the promotion and protection of HR.

405. The PHRP precipitated the advocacy work of the CHR in, among others things, successfully lobbying for the passage of laws beneficial to the sectors covered. The PHRP is in the process of pushing forward several legislative agenda with the 11th Congress. The PHRP Progress Report listed the following major accomplishments:

- Organized and activated Sectoral Working Groups (SWGs): migrant workers, indigenous peoples, public sector labor, persons with physical and mental disabilities. SWGs for women, children and the urban poor have been sustained.
- Implemented of a workshop output that formulated the advocacy of the passage of priority bills by the CHR and the participating government agencies.



- Monitored various legislative, administrative and program measures stated in the Sectoral Plans reveal the following results: 9 new laws covering children, women, urban poor, prisoners/detainees, informal labor workers and indigenous peoples; 29 administrative or program measures completed and several on-going programs and projects.
- Monitored developments which revealed that the PHRP was gaining ground in Regions IV and VI which together issued 62 resolutions, ordinances and local enabling instruments at the provincial, municipal and city levels covering sectoral concerns and the Barangay Human Rights Action Centers (BHRAC).
- Developed inter-agency cooperation programs and projects through the forging of individual MOAs with government agencies and NGOs for the implementation of PHRP administrative measures for the youth, migrant workers and women.

**g) Human Rights Education Programs**

406. To achieve a 100% HR literacy rate, the CHR embarked on education programs and advocacy campaigns through seminars, workshops, lectures, training, information dissemination and research. The extensive efforts exerted for HRE won for the Philippines in 1994 the *UNESCO 1st Prize Award on Human Rights Education*, which specifically recognized the CHR's pioneering efforts towards HRE for the military, the police and other law enforcement personnel. The training sessions were able to cover all their units in the national and regional levels.

407. In response to the Plan of Action for the UN Decade for Human Rights Education (1995-2004) adopted at the 1993 Vienna World Conference on Human Rights, the CHR initiated the creation of a national committee for HRE composed of representatives from the public and private sectors. In 1994 the CHR prepared a Plan of Action with the objective of achieving a 100% human rights literacy rate for all Filipinos. This resulted in the forging of a MOA among the CHR and the DECS, CHED and Amnesty International-Philippines Chapter, calling for the formulation of a long term vision of National Plan of Action on Human Rights Education.

408. Under the MOA, the parties committed to undertake a nationwide GO-NGO-Academe Consultative Workshop on Human Rights Education as well as to document the gains already achieved by all sectors in the field of HRE. The first workshop, held in early 1997, emphasized the principle that the success of HRE depends on the active involvement and mobilization of community based organizations, NGOs and other key sectors in society bearing in mind their own peculiar HRE needs. The Workshop succeeded in identifying the target sectors for HRE to wit: Women, Elderly, Youth and Children; Academe and Basic Education; Peasant, Labor, Overseas Contract Workers and Urban Poor; Media and Professionals; Indigenous Cultural Communities and Filipino Muslims; Police, Military and Law Enforcers; Prisoners, Detainees and Refugees; Persons with Disabilities and the Mentally Disabled.

**g-1) The Philippine Human Rights Education Decade Plan**

409. A significant output of the Workshop was the drafting of the Philippine Human Rights Education Decade Plan, which became entirely the basis of President Ramos for issuing PP 1139 (10 Dec 1997) declaring 1998 as Human Rights Year and the Years 1998-2007 as Human Rights Education Decade in the Philippines. (Annex 15: PHREDP)

410. Subsequently, the PCHR and the DECS jointly launched a project on the development of HR modules for elementary and secondary schools nationwide. Participants to the 11-day writing workshop included 20 curriculum writers, HR practitioners and classroom teachers. The workshop showcased 120 teaching exemplars with an average of 10 lesson guides per grade and year level. The modules, which were intended for integration in the academic curricula in both public and private school from primary to high school were pilot-tested in selected schools for the school year 1997-1998 and for implementation in the 1998-1999 school year. The first batch of teachers, principals and district supervisors who attended the orientation course on the modules came from Regions 1, 3, 4 and 5 and the succeeding batch, from Regions 6, 7, 11 and Caraga.

411. The CHR carried out the National Education Project on Human Rights from 1995 to June 1999. The project involved lectures, training, seminars, workshops, and advocacy course on the rights and situation of children in armed conflict. The Commission also conducted a baseline survey of services for children and women caught in situations of armed conflict.

412. From 1990-2000, the CHR public information and education program conducted a total of 13,695 seminars and training for various groups consisting of 664,355 participants from all sectors. In 1990, a total of 10,783 police and military personnel and 8,310 public officials and government employees participated in the CHR's human rights training program. From the period 1991-2000, at least 105,716 members of the PNP, 43,099 members of the AFP and 97,439 public officials and government employees were recorded to have attended the human rights training, information and education activities of the CHR. (Please see Annex 14)

**h) Barangay Human Rights Action Center (BHRAC)**

413. Since its creation on 5 May 1987, the CHR has established a nationwide network consisting of a central office in Manila, 16 regional offices, and six sub-regional units that are strategically located in capital and population centers across the country. As of June 2000, these offices are being complemented by 14,095 *Barangay* Human rights Action Centers (BHRAC) manned by *Barangay* Human Rights Action Officers (BHRAO). The BHRAC fulfills the CHR's need to touch base with the grassroots level of society to be mobilized into advancing HRE programs. The program involves the introduction of HR concepts and tools for action for *barangay* officials and teaching them the mechanics of filing and receiving HR complaints and in giving appropriate administrative and/or legal assistance to their constituent. (Annex 16: BHRAC Report as of Year 2000)

414. The BHRAC brings the CHR to the heart of every locality, especially in far-off regions. It serves a multi-purpose function: complaints-center, information and education, coordination, referrals and documentation. Provincial, City and Municipal HR Coordinators as well as the BHRAOs are designated to serve as action officers. The activation of the BHRAC presents the advantage of saving time, effort and money in the filing of complaints. Also, education and information campaigns can be readily brought to the grassroots level.

415. Any person can go to the BHRAC to file a complaint. The BHRAO determines if the complaint is a HRV. If so, he proceeds to assist the complainant to accomplish CHR Form No. 9 and requests him / her to submit evidence/supporting documents. The BHRAO then accompanies the victim to the municipal lawyer who shall assist him / her in the execution of an affidavit that will be forwarded to the City/Municipal Planning and Development Center officer, who in turn transmits the documents to the CHR Regional Field Office or Sub-Office, whichever is nearer. If the complaint deals with a common crime, the BHRAO forwards the complaint to the *Lupong Tagapamayapa* or to the *Barangay* Mediation/Conciliation Board.

416. As of year 2000, a total of 14,406 BHRACs were set up all over the Philippines, a great majority (73 %) of which were established in 1996 and 1997. The most number of BHRACs have been put up in Regions I, IV and VIII. Statistics provided by the CHR for the period 1994 - 2000 show that of the BHRAC basic program (i.e. complaints processing, education and training, coordination and referral, and mobilization) education and training (73%) appeared to be the Centers' primary activity.

#### **i) Collaboration with GOs, NGOs and International Organizations**

417. To fully implement its mandate, the CHR initiated collaborative projects with government agencies, NGOs and international HR organizations and institutions. In addition to those outlined in the other sections of this Report, the MOAs signed during the period under review reflect the expanded efforts of the CHR in enlisting public and private sector support for its manifold activities.

418. CHR-DECS Joint Declaration of Undertaking (2 Dec 1992). The Agreement noted the joint consultative and seminar workshops on HR curricula development and training undertaken by the CHR and the DECS from 1988-1990 which resulted in the development of prototype instructional materials on HR for both formal and non-formal education from elementary, secondary to higher education. The Agreement sought to further this collaborative effort in the following areas: curriculum development; training and capability building; monitoring, research and evaluation; policy and legislative support; cooperative programs and networking.

419. MOA with the Department of Labor and Employment (DOLE) and Philippine Overseas Employment Administration and the Overseas Workers Welfare Administration, PAO, KAIBIGAN, FLAG, Ateneo Human Rights Center, San Beda College Para-Legal Volunteers Group, DCI Women Lawyers Club, Federation of Free Workers and UST Legal Aide Clinic (2 April 1993). The Agreement enabled all parties to adopt a project that will render free legal services to overseas Filipino workers meant to strengthen the protection of their rights and welfare.

420. MOA with the DILG, through the Local Government Academy (LGA) and the Liga ng Mga Barangay (16 Nov 1994). The *Liga ng Mga Barangay* is an organization of barangay chairmen or village chiefs. The Agreement noted the ongoing HRET projects of the CHR and the DILG/LGA since 1992 for DILG officials, personnel and persons under its administration. The Parties committed to formulate and implement a continuing National HR Advocacy Program for LGUs, especially for barangay chairpersons. The MOA was based on the desire of the parties to establish a HR Action Center/Unit in every barangay, municipality and province as they stressed the crucial role of the barangay officials and local executives in multi-sectoral endeavors. In protecting and promoting the HR of their constituents, these officials must be equipped with the knowledge and skills necessary in instilling HR awareness.

421. MOA with the University of the Philippines Foundation, Inc. (1995). Under the Agreement the UP Foundation Inc undertook to implement the CHR's pilot project titled "Human Rights Education Package for Government Physicians Regarding Torture - The First Workshop" funded by the CHR in the amount of PhP250,000 during the period 01 February 1996-30 June 1996.

422. MOA with the DILG-Local Government Agency/Liga ng Mga Barangay (20 June 1996). The above parties entered into another MOA to jointly implement a continuing National HR Advocacy Program and to institutionalize the BHRACs in the LGUs. The CHR provided the costs of the technical inputs of the program and the preparation of the training design and other materials necessary for the training of barangay officials. The LGA extended technical and financial assistance in the implementation of the BHRAC program and assisted the CHR in the selection of participants as well as the evaluation and monitoring of the program. The *Liga* assisted in the dissemination of the HR program among its 42,000-member barangays.

423. MOA with the DOJ (2 Aug 1996). This Agreement sought to coordinate the efforts of both agencies for the speedy prosecution and disposition of HRV cases. The DOJ directed the provincial/city prosecutor to designate an assistant prosecutor in his / her office to handle the prosecution of HRV cases. The DOJ issued the appropriate authorization for CHR lawyers to assist the designated prosecutors.

424. Statement of Undertaking with the NCRFW (5 Sept 1996). Both Parties agreed to hold regular consultation meetings and engage in concerted efforts for the effective implementation of the Philippine Plan for Gender-Responsive Development (PPGD) and the Women's Sectoral Plan of the PHRP.

425. MOA with the DILG-League of Provinces / League of Cities / League of Municipalities / Liga ng Mga Barangay (10 Dec 1996). The Agreement sought to institutionalize the cooperation between the CHR and all LGUs in the continued implementation of the National Human Rights Advocacy Program and the BHRACs.

426. MOA with the Soroptimist International of the Philippines Region (SIPR) (19 March 1997). The Agreement enabled both parties to jointly undertake HRE and information dissemination programs for women and girl child sectors and to establish/operationalize the BHRACs. The SIPR committed to, among other things, (a) mobilize local government

operations officers/provincial development coordinators to perform their role as HR Coordinators as well as transform part of their offices as HR coordination centers; (b) organize trainers' training programs for provincial, city and municipal LGOOs/PDCs; (c) serve as a member of the BHRAC's sectoral advisory group, and, (d) extend legal, medical, civic, educational and other *pro bono* services to victims of child abuse, domestic violence and torture.

427. MOA with the *Sentro ng Manggagawang Pilipina* (7 May 1997). Both Parties agreed to jointly undertake advocacy programs for the promotion of rights and development of women and women migrant workers.

428. MOA with the Lawyers Against Monopoly and Poverty or LAMP (30 May 1997). LAMP committed to assist the CHR in providing *pro bono* legal assistance by acting as private prosecutors or defense attorneys in HR cases referred to it by the CHR. The legal services do not include legal fees that the proceedings may entail, e.g., docket fees, bail bond and other judicial expenses.

429. MOA with the NCWP (26 July 1997). NCWP undertook to integrate HR training in all its education and information campaigns and to provide financial/medical assistance to women victims of HRVs. The CHR agreed to provide services and technical assistance to the NCWP's Anti-Poverty Program, developed HRE and information materials for the women sector and conduct sessions on women empowerment.

430. MOA with the Office on Muslim Affairs (10 Sept 1997). Both parties committed to: (a) implement the three-pronged agenda for the promotion and protection of Muslim Communities under the PHRP; (b) promote and encourage the Filipino Muslims to establish BHRACs as a means to achieve their full potentials and the promotion and protection of their inherent rights; and, (c) implement a continuing HR Advocacy/Trainers Training Programs.

431. MOA with the Office for Northern Cultural Communities (30 Sept 1997). Both parties committed to (a) operationalize and implement the three-pronged agenda for the promotion and protection of Indigenous Cultural Communities under the PHRP; (b) encourage the establishment of BHRACs as a means to achieve their full potentials in the promotion and protection of their inherent rights; and, (c) implement a continuing HR advocacy/trainers training program.

432. MOA with the Federation of Senior Citizens Association of the Philippines (5 Dec 1997). Both parties committed to undertake HRE and information dissemination programs for the elderly. The CHR would develop and produce HRE and information materials while the FSCAP would serve as member of the BHRAC's sectoral advisory group and extend *pro bono* services, e.g., legal, civic, educational, to promote the rights of the elderly.

433. MOA with the PPSC (5 May 1998). The Agreement enable both Parties to implement both long-term concerns (curriculum development; training and capability building/faculty development; materials development and production; monitoring, research and evaluation; policy and legislative support; cooperative programs and networking; resource mobilization) as well as short term concerns (trainor's training program; pilot testing, critiquing, evaluation and

finalization of the HRE curricula; development and institutionalization of inter-agency monitoring and evaluation system; testing the effectiveness of instructional materials and reading supplements; development of Human Rights resource book and training manual for the police, jail and firemen).

434. MOA with the National Movement of Young Legislators (NMYL) (7 July 1998). The Agreement noted the success of both Parties in implementing a series of trainor's training for the youth leaders called Integrated Sangguniang Kabataan Organizational Leadership and Re-integration Program (ISKOLAR). Both parties agreed to strengthen this cooperation in the following areas: local-level HR legislation; local-level HR protection and promotion program; local-level HR situation sensing; joint programs, projects and activities such as capability building, trainor's training program, resource generation, consensus-building on HR national legislation.

435. MOA with the People's Television Network, Radio Philippines Network and International Broadcasting Corporation (21 Oct 1998). The Agreement sealed the cooperation of the parties in focusing public awareness and knowledge of the 50th Anniversary of the UDHR.

436. MOA with the International Commission on Jurists, Philippine Chapter (ICJ) (10 April 2000). The ICJ agreed, on its own or upon request of the CHR, to assist in promoting the speedy prosecution and disposition of HRV cases that the CHR investigated and filed in court.

437. With grants given by the Australian government and the UNICEF, the CHR was able to expand the reach of its education and information program. The PAHRA and its member organizations such as the Ecumenical Movement for Justice and Peace (EMJP), TFDP and *KAPATID* participated in these education programs either as trainees or as resource persons. The ICRC handled a special module on IHL and a UNICEF-funded inter-agency group helped mount a module on Children in Situations of Armed Conflict (CSAC). With the FIND, the CHR initiated a project to help locate 1,200 Filipinos who have been missing over the past 20 years. With the MAG and with funding from the UN Voluntary Fund for Torture Victims, the CHR implemented a rehabilitation program for victims of torture.

#### **H. Government institutions: Presidential Human Rights Committee (PHRC)**

438. The Presidential *Committee* on Human Rights ceased to exist with the issuance of EO 163 on 5 May 1987 creating the *Commission* on Human Rights. However, a separate inter-agency advisory body, the Presidential Human Rights Committee (PHRC), was created pursuant to AO 101 on 13 December 1988. Its two major functions were: to assess and monitor the Philippine HR situation and advise the President so that proper measures can be taken immediately; and, assist relatives to locate persons who have disappeared and are believed to be detained illegally.

439. The PHRC was composed of the Secretary of Justice as chairman and the following as members: CHR Chairman; Presidential Legal Counsel; representatives from the DND, DILG, DFA, DOH, DSWD, a Senator and a Congressman as the Senate President and the Speaker of

the House may designate, and two representatives of private HR NGOs nominated from among themselves for appointment by the President. Other HR NGO representatives were, however, allowed to attend PHRC meetings.

440. The PHRC was envisioned to complement the work of the CHR without unduly encroaching into the latter's responsibilities. It undertook numerous activities from the period 1989 to 1992. Together with concerned NGOs, the PHRC facilitated fact-finding investigations/missions especially in uninhabitable areas that were reputed to be bastions of insurgency and where entry was allegedly totally banned by government forces. The presence of PHRC prosecutors ensured entry into these areas and guaranteed the peaceful conduct of the investigations/missions. They also conducted joint visits to penal institutions to remind prison officials of the need to respect the basic HR of prisoners.

441. The results of its fact-finding investigations in *Marag Valley* prompted the DND through then Defense Secretary (later President) Ramos to create an inter-agency task force within the context of the AFP's Campaign Plan *Lambat-Bitag*, which successfully effected the development of Marag Valley into a peaceful and modern community.

442. During the Ramos Administration, the PHRC served mainly as an adviser to the President on HR concerns. In 1998, in response to mounting demands by HR groups, the DOJ sought, but failed, to revive the PHRC as a forum where NGOs could ventilate all concerns on alleged HRVs.

### **I. Collaboration between government and civil society in the promotion and protection of human rights**

443. The 1986 EDSA Revolution ushered in a new era of intensified collaboration between the government and the private sector. The emergence and proliferation of cause-oriented groups, NGOs and POs ensured the participation of all sectors of society, including the vulnerable and disadvantaged groups. Government was determined to build stronger networks with these groups in recognition of their constitutional right to participate in governance, as guaranteed under Article II, Section 23 of the 1987 Constitution, thus: "The State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation." In all these, the promotion and protection of human rights were highlighted on a day-to-day basis in all aspects of governance, including the administration of justice.

444. As indicated in previous sections of this Report, NGOs were regularly consulted at the grassroots level and became active partners of the military in their counter-insurgency campaign and of the PNP in maintaining peace and order. NGOs now have seats in the POCs in all level, e.g., local-screening committees for members of the CAFGU. Fact-finding bodies include church groups and NGOs, e.g., TFDP, MAG and PAHRA.

445. Human rights NGOs were instrumental in the passage of many laws relating to human rights and in the adoption of legislative resolutions that looked into reported cases of HRVs. These included inquiries into alleged (a) AFP strafing and bombing during counter-insurgency operations in an area in Mindanao which resulted in the death and wounding of indigenous civilians; (b) the plight of children in situations of armed conflict; (c) pattern of human rights

abuses in the conduct and administration of forest management program; (d) overstaying prisoners who have already served their sentences as a result of bureaucratic red tape; (e) illegal arrest and detention, extra-judicial killing and enforced disappearances; and (f) ancestral domain rights and the alleged HRVs perpetrated against certain members of the indigenous cultural communities.

446. This collaboration further resulted in the creation of the National Social Action Council a tri-sectoral council composed of the government, religious and private sector groups in the pursuit of social welfare and progress. The NASAC acts as a national and local advisory and consultative council in their various programs and projects, consolidating and coordinating these activities while maintaining and respecting their respective roles and responsibilities. The three sectors were then able to organize national tri-sectoral bodies to carry out the effective implementation, integration and coordination of projects and activities for socio-economic development.

## **PART II. INFORMATION ON THE IMPLEMENTATION OF ARTICLES 1-5 OF THE COVENANT**

### **A. Article 1 (Right to self-determination and free disposal of natural wealth and resources)**

447. This Report wishes to reiterate the information provided in the Initial Report and to provide the following update:

#### **1) Political Developments**

448. The past 11 years saw lasting gains in the restoration of the country's democratic traditions and political institutions. These were evident in the electoral exercises held in the country after the 1986 snap presidential elections, and in the emergent new norms of relationships between the government and the various sectors of civil society.

#### **1-a) National Elections**

449. While the elections were marred by instances of violence, vote buying and protests, these were generally regarded as peaceful, orderly and credible. The general elections held in 1992 and 1998, which resulted in the victories, respectively, President Ramos and President Estrada, further strengthened the country's political stability. The regular elections held after the 1986 "snap" presidential elections and their respective voters turn-out are as follows:

11 May 1987	Congressional Elections (85.59%)
18 January 1988	Local Elections (78.90%)
28 March 1989	Barangay Elections (67.49%)
12 February 1990	ARMM Elections (80.09%)
11 May 1992	Synchronized Elections (75.46%)
25 March 1993	ARMM Elections (82.39%)
9 May 1994	Barangay Elections (64.76%)



8 May 1995	National and Local Elections (70.68%)
12 May 1997	Barangay Elections (63.79%)
11 May 1998	National and Local Elections (86.46%)

### **1-b) Empowerment of Civil Society**

450. For the second time in the country's political history, the Filipino people took a direct hand in forcing out of power a sitting president through a spontaneous "people power" movement. In January 2001, President Estrada stepped down as President of the Republic and, by operation of law, then Vice President Gloria Macapagal-Arroyo assumed the presidency. While a handful of political analysts and leaders criticized this mode of succession as "mob rule", such political action is enshrined in the country's Constitution.

451. People empowerment gained more significance as a key element in improving the quality of life for the Filipino people. Since 1986, government has upheld the view that human capability and poverty alleviation could best be achieved through the direct and combined efforts of civil society, those who could best articulate and work for their own civil, political, economic, social, cultural and spiritual aspirations. The post-Marcos regime saw civil society take root and flourish.

452. Recognizing and upholding the country's democratic tradition, President Arroyo declared at the start of her administration that she would adopt multi-sectoral consultations and consensus as the principal strategy in formulating government policies and programs, in monitoring their implementation, and in resolving urgent issues. The adoption of this democratic process was seen in the executive-legislative partnership, in development planning at the national and local levels, and in the active participation of women in the formulation of plans and programs.

453. RA 7640 and enactment of the Legislative-Executive Development Advisory Council (LEDAC) forestalled the occurrence of gridlock and partisan politics that commonly plague executive-legislative relations in many democracies. The main task of LEDAC was to constitute a consultative mechanism to ensure consistency in executive development planning and congressional budgeting. Consensus-building, common grounding and issue-based coalitions within and between each chamber of Congress allowed the formulation of programs aimed at reducing poverty and enhancing the socio-economic development programs, such as the Social Pact for Empowered Economic Development in 1993 and the Social Reform Agenda in 1994.

454. Devolution is a direct outcome of the strategy of empowerment. The 1991 Local Government Code, was enacted to carry out the government's commitment to genuine local autonomy. The Code allocated a substantive portion of government funds and devolved extensive powers to the LGUs which now set priorities and decide matters in their own spheres of competence. The law recognized that LGUs are more closely attuned to the needs of their communities and are better able to act. The law further strengthened direct participation in governance of civil society as it provided that at least 25 % of the membership in the local development bodies are to be drawn from civil society organizations.

455. EO 505 (February 1992) reorganized the Regional Development Councils (RDCs) in order to make them more responsive to the increased needs of LGUs for technical assistance in the areas of planning, investment programming and project development. RDCs, which now include legislators as regular members, are given additional functions relative to the devolution process. EO 512 (March 1992) subsequently created the Mindanao Economic Development Council to ensure the increased viability of the programs and projects in the four administrative regions of Mindanao and the Autonomous Region in Muslim Mindanao.

456. An appraisal conducted after five years of implementation of the Code showed a positive trend for: (a) greater participation of POs, NGOs and the private sector in local government planning, decision making and implementation; (b) increase local government revenues and revenue generating capability; (c) inter-LGU and government-agency collaboration and coordination; and (d) greater appreciation and confidence by LGU executives of their role with regard to devolved functions. LGUs can now directly access financial grants, enter into Build-Operate-Transfer schemes, contract loans, float bonds and invest in certain enterprises.

## **2) Socio-economic Developments**

457. The government adopted the policies of decentralization, deregulation, reliance on the private sector, encouragement of cooperatives, and removal of bureaucratic hindrances and penalties to small enterprises. During the Ramos Administration, structural reforms to achieve international competitiveness such as liberalization and privatization were implemented. At the macroeconomic level, the government worked hard to maintain stability and transparency. A regime of low inflation, controlled deficits, steady growth of money supply, and stable and competitive exchange rates was pursued.

458. Government strategy to actively involve the basic sectors in poverty alleviation was embodied in the Social Reform Agenda (17 June 1994). The SRA was a systematic and comprehensive package of measures and interventions aimed at improving the quality of life initially in the 20 identified poorest provinces of the country. As stated in the section on the peace process, the SRA was drawn from a series of multi-sectoral consultations and stressed the partnership between government and the basic sector in decision-making for social reform.

459. As the country's blueprint for poverty alleviation, the SRA adopted the twin approach of localization and convergence. Localization was meant to adjust government policies and programs to the peculiar needs of particular areas or social sectors, while convergence was to lead the synchronization of the delivery of national and anti-poverty programs and resources to priority areas and target groups.

460. The localization of the SRA in the grassroots level directed government interventions to: (a) provide farmers and landless rural workers ownership to land and access to other productive resources towards increased productivity and incomes; (b) ensure the small fisherfolk's exclusive rights to municipal waters and access to credit and post-harvest facilities for their livelihood and food security; (c) recognize and protect the indigenous people's claim to their ancestral domain for the sustainability of their socio-economic and cultural traditions and cultures; (d) provide the urban poor with decent and affordable housing and settlements; (e) recognize the rights and

the role of the women in development; (f) protect the children from abuse, violence and harm; (g) ensure persons with disabilities social protection and employment; (h) provide senior citizens adequate social services and privileges; (i) ensure the rehabilitation of victims of disasters to bring them back into the mainstream of society; (j) ensure the basic sectors access to adequate and effective delivery of services which meet their basic requirements on health, nutrition, education and livelihood; and (k) strengthen and expand basic sector participation and representation in all processes and levels of governance.

461. By the end of 1995, SRA localization had been implemented at the provincial level in the Club 10 (priority provinces). By June 1996, majority of Club 20 members had localized SRA at the municipal and *barangay* levels. As of June 1997, a total of 1,543 convergence areas in the 5th and 6th class municipalities had been identified. Of this total, 33 % were Agrarian Reform Communities (ARCs) occupied by farmers and landless rural workers, 23 % were Coastal Communities in Priority Bays and Lakes (CCBPBLs) occupied by fisherfolks, 7 % were Certificates of Ancestral Domain Claim (CACD) Areas occupied by indigenous people, 5 % were Urban Areas, Resettlement Sites and Growth Centers (UARGCs) occupied by the urban poor, 3 % were Disaster Victim Resettlement Sites (DVRS) occupied by victims of calamities, and another 29 % were Comprehensive and Integrated Delivery of Social Services (CIDSS) Areas.

462. RA 8425, or Social Reform and Poverty Act (11 Dec 1997), provided for the creation of the National Anti-Poverty Commission (NAPC), with the President as chairman. The major powers and functions of NAPC are: to coordinate with the different national and local government agencies and the private sector in the formulation and implementation of social reform and poverty alleviation programs at the national, regional and local levels in conformity with the National Anti-Poverty Action Agenda; and, institutionalize and ensure basic sectoral and NGO participation in effective planning, decision-making, implementation, monitoring and evaluation of the SRA at all levels.

463. RA 8425 also provided for the creation of the People's Development Trust Fund Allocation for trust fund to be obtained from earnings of the Philippine Amusement and Gaming Corporation (PAGCOR), appropriations from Congress, and donations, grants and contributions within a 10-year period. The Fund would be used for consultancy and training services for micro-finance institutions, community organizing for micro-finance, livelihood and micro-enterprises training services, establishment of monitoring systems, surveys and socio-economic mapping, legal and other management support services, among others.

## **B. Article 2 (Right against discrimination)**

464. Updated information on this Article is provided in the following Philippine Reports:

- Philippine Consolidated Report to the Committee on the Elimination of All Forms of Racial Discrimination, submitted in August 1997
- Fourth Report submitted to the Committee on the Elimination of Discrimination Against Women on January 1997

- Latest Philippine Reports on ILO Convention No. 100 (Equal Remuneration) submitted to the ILO Committee in response to Direct Request 1989
- Direct Request 1992 (Remarks) and Observation 1992 (Remarks); Direct Request 1992; Observation 1994
- Latest Philippine reports on ILO Convention No. 111: Discrimination (Employment and Occupation) submitted to the ILO Committee in response to Observation 1995; Direct Request 1995 *bis*; as contained in its report ending on 31 August 1997; Direct Request 1998; and Observation 1998
- Detailed Report on ILO Convention 100 on Equal Remuneration for the period ending August 1999; Direct Request 1999 [DOLE]
- Beijing Platform of Action

465. The Philippine Reports on ILO Convention 100 provided information on the following: (a) PD 633 which created the National Commission on the Role of Filipino Women; (b) RA 6725, or An Act Strengthening the Prohibition of Discrimination Against Women with Respect to Terms and Conditions of Employment of 1989, which increased women's leverage for equal remuneration by prohibiting discrimination against women workers and criminalized acts of discrimination; (c) RA 6728, or Wage Rationalization Act of 1989, which spelled out the manner of determining the minimum wage rates for workers in general, regardless of sex; (d) mandate of the Bureau of Women and Young Workers; Bureau of Working Conditions and the Field Offices; (e) statistical data on average earnings of workers by occupation and by sex.

466. The Philippine Reports on ILO Convention 111 contained the following information:

- 1987 Philippine Constitution: Article II, Section 14, recognizes the role of women in nation-building; and, Article XIII, Section 3 guarantees full protection to labor, local and overseas, and equality of employment opportunities for all;
- PD 442, or Labor Code of the Philippines, as amended: Article 135, prohibits discrimination against women employees; Article 136 penalizes discrimination against married women employees; Article 137(a) prohibits acts of discrimination by employers against women employees;
- RA 7877, or Anti-Sexual Harassment Act of 1995: makes unlawful all forms of sexual harassment in the employment, education or training environment on the basis of the principle that sexual harassment constitutes an act or form of discrimination. The law penalizes all acts of sexual harassment committed by an employer, his or her immediate family, manager, supervisory officers and other high ranking officers, against employees, union officers and members, applicants for employment, customers, clients, agents of the employers, or any other person transacting business within the employment environment in both public and private sectors. The significant factor for indictment is the "moral ascendancy" of the offender over his or her victim;

- RA 6725, or Amending for the purpose Article 135, Labor Code of the Philippines, as amended: mandates the DOLE to raise awareness and advocacy prohibiting discrimination against women employees, as well as issuing specific directives for implementation of attached agencies; and, DOLE's Equal Employment Opportunities (EEO) incorporates priority gender and development concerns, one of which is the promotion of EEO, in their contract or personal commitment forms;
- 1991 DOLE AO 80 on the Department Policy Against Sexual Harassment, amended in 1992 as AO 68; Accomplishments for Phases I and II of the DOLE Project "Elimination of Sexual Harassment at the Workplace"; and,
- Proposed SB 119 which provides for mandatory membership of qualified representatives from the indigenous cultural communities in the Board of Directors of government and government-owned institutions: Government Service Insurance System (GSIS), Social Security System (SSS), National Power Corporation (NAPOCOR), Philippine National Bank (PNB), Philippine Coconut Authority (PCA), Philippine Charity Sweepstakes Office (PCSO), National Housing authority (NHA), and the Movie and Television Regulatory and Censorship Board (MTRCB).

467. Recent legislative measures intended to give teeth to the constitutional provision against discrimination include the following:

- RA 7277, or An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and their Integration into the Mainstream of Society of 1992.
- RA 8972, or Solo Parents' Welfare Act of 2000, protects "solo" parents against discrimination with respect to terms and conditions of employment on account of their status.
- RA 8371, or Indigenous Peoples' Rights Act of 1997, defines, protects and promotes the rights of indigenous peoples and indigenous cultural communities within the framework of national unity and security.
- RA 7875, or The National Health Insurance Act of 1995, establishes the Philippine Health Insurance Corporation (Philhealth) and aims to improve the implementation and coverage of the old Medicare program by including the self-employed and the poor who cannot otherwise avail of health insurance. This law sets priority for the needs of the underprivileged, sick, elderly, women, and children.
- RA 8187, or the Paternity Leave Act of 1996, allows every married male employee in the private and public sectors not to work for seven days but continue to earn his compensation on the condition that his legitimate spouse has delivered a child or suffered a miscarriage for purposes of enabling him to effectively lend support to his wife in her period of recovery and or in the nursing of the newly-born child.

However, the law grants the benefit to married employees only. It somehow discriminates against unmarried fathers and mothers, without impediment to marry each other, because their choice not to be married bar them from availing of this benefit.

- SB 56 and SB 1078 would allow natural-born citizens of the Philippines, who have lost their citizenship to retain certain rights and privileges, subject to certain constitutional limitations.
- HB 7165 and HB 9095 are intended to recognize the rights of lesbians and gays against discrimination and to provide a mechanism for its implementation and also the corresponding penalties for their violation. The bill has been scheduled for a series of Committee hearings at the Lower House.

### **1) Legislative measures / policy issuances on Women**

468. Recent legislation and policy issuances reinforce the constitutional provision of equality between the sexes and pay special attention to women's special needs. Laws on women's health, economic and political participation, those that seek to protect them from violence and prostitution, safeguard their marital and material welfare and laws that seek to protect the girl-child have been passed in the past few years.

- RA 6955, or An Act to Declare Unlawful the Matching of Filipino Women to Marriage to Foreign Nationals on a Mail-Order Basis of 1990, bans the practice of marriage matching for a fee and the exportation of domestic workers to certain countries that cannot ensure the protection of their rights. All Filipino fiancées are required to attend guidance and counseling sessions through the Commission on Filipinos Overseas (CFO) in order to minimize potential interracial marital problems.
- RA 8371, or The Indigenous People's Rights Act of 1997, provides that indigenous cultural communities and indigenous women shall enjoy land rights and opportunities with men in all spheres of life. It provides for her participation in the decision-making process in all levels as well as full access to education, maternal and child care, health, nutrition, and housing services, and training facilities.
- RA 7941, or the Party-List System Act (03 March 1995), is the enabling law for the constitutional provision (Art. VI, Sec. 5(2)), which states that there shall be party-list representatives and the women sector shall be allocated a seat therein. Under this law, the election of party-list representatives includes the women sector, whereas before, women sectoral representatives were appointed by the President.
- Presidential MC 8, (1999), or Policy on Equal Representation of Women and Men in Third Level Positions in Government, was issued to increase the number of women in the career executive service.

- An Inter-Agency Committee on Intermarriages was created in 1998 to strengthen the mechanisms to address the problem of trafficking of Filipino women. The CFO Foreign Sponsor Watchlist System was put in place to facilitate access to information on foreign partners who have racist backgrounds or may have petitioned Filipino women more than once, especially those with a history of domestic violence. The CFO Case Monitoring System effectively documents and monitors cases involving Filipinos overseas referred to CFO for assistance, and an Information System to generate sex-disaggregated data and develop and maintain gender-sensitive information systems, is also in place.
- The Migrants Advisory and Information Network (MAIN) was established in September 1995, where ten government agencies signed a MOA with the view of harmonizing the approaches and system by which information on migration concerns can be effectively disseminated to the public. MAIN Desks at the regional, provincial, city, municipal and *barangay* levels provide access to services at the grassroots.
- To complement the MAIN, the Migrants Advisory and Information System (MAIS), a computer-based information tool designed to address the information needs of Filipinos who are considering migration as an option, seeks to make information on migration readily available to the public so as to help people appreciate the realities of migration and guide them toward an informed decision.
- The CFO provides the Nationwide Guidance and Counseling Service to the fiancées, fiancés and spouses of foreign nationals for the purpose of assisting Filipino women involved in interracial marriages and migration. The service is intended to help them cope with difficulties inherent in interracial marriages and settlement overseas, by providing them with information about migration laws affecting them, marriage concerns, and ways of coping with difficult situations, available welfare and support services abroad, and of their individual and conjugal rights. From 1989 to 1998, a total of 162,286 fiancées, fiancés and spouses of foreign nationals were provided services. Of this figure, 91.2 % were women.
- During the UN Special Session of the General Assembly for the Review of the Implementation of the Platform for Action, one of the concerns the RP delegation strongly pushed for in the Further Actions and Initiatives to Implement the Beijing Declaration and the Platform for Action (Outcome Document) was the reference to women migrant workers for all paragraphs that contain the work migrants: Paragraph 132 b. “Promote and protect the human rights of all migrant women and implement policies to address the specific needs of documented migrant women and, where necessary, tackle the existing inequalities between women and men migrants to ensure gender equality...”
- The RP delegation also worked hard towards strengthening international cooperation and measures to address trafficking in women and girls, as contained in paragraphs 104a, 104b, 104c, 104d, 131a, 131b, and 131c of the Outcome Document.

## 2) Jurisprudence

469. Sarah B. Vedana vs. Judge Eudario B. Valencia, (Adm. Matter No. RTJ-96-1351, September 3, 1998). The Supreme Court ruled, thus: “Before closing, it is apropos to discuss the implications of the enactment of RA 7877, or the Anti-Sexual Harassment Law, to the judiciary. x x x It would not be remiss to point out that no less than the Constitution itself has expressly recognized the invaluable contributions of the women sector to national development, thus the need to provide women with a working environment conducive to productivity and befitting their dignity.”

470. “In the community of nations, there was a time when discrimination was institutionalized through the legalization of now prohibited practices. Indeed, even within this century, persons were discriminated against merely because of gender, creed or the color of their skin, to the extent that the validity of human beings being treated as mere chattel was judicially upheld in other jurisdictions. But in humanity’s march towards a more refined sense of civilization, the law has stepped in and seen it fit to condemn this type of conduct x x x Ultimately, this is what humanity, as a whole, seeks to attain as we strive for a better quality of life or higher standard of living x x x In disciplining erring judges and personnel of the judiciary then, this Court can do no less.”

471. People vs. Edwin Julian, et. al. (G.R. Nos. 113692-93, April 4, 1997) The Supreme Court said: Rape is chilling, naked sadism. It is marked by the savagery and brutality of the assault on the helpless victim’s person and privacy. Thus, a severe penalty is meted out by the State, as *parens patriae*, for this abhorrent crime, revealing the clear legislative intent to “protect women against the unbridled bestiality of persons who cannot control their libidinous proclivities.

472. People vs. Leo Echagaray (G.R. No. 117472, February 7, 1997). In defining the right to life, the Supreme Court said: The evil of a crime may take various forms. There are crimes that are, by their very nature, despicable, either because life was callously taken or the victim is treated like an animal and utterly dehumanized as to completely disrupt the normal course of his or her growth as a human being. The right of a person is not only to live but to live a quality life, and this means that the rest of society is obligated to respect his or her individual personality, the integrity and the sanctity of his or her own physical body, and the value he or she puts in his or her own spiritual, psychological, material and social preferences and needs.

473. Marites Bernardo, et al. vs. National Labor Relations Commission and Far East Bank and Trust Company (12 July 1999, 310 SCRA 186). The Supreme Court held that the Magna Carta for Disabled Persons mandates that qualified disabled persons be granted the same terms and conditions of employment as qualified able-bodied employees. Once they have attained the status of regular workers, they should be accorded all the benefits granted by law, notwithstanding written or verbal contracts to the contrary. This treatment is rooted not merely on charity or accommodation, but on justice for all.

474. International School Alliance of Educators vs. Hon. Leonardo Quisumbing, et.al. (June 01, 2000, 333 SCRA 13). The Supreme Court reversed the decision of the Secretary of Labor and ruled that Filipino teachers in the International School were being discriminated against, in violation of their human right of equal protection. The Supreme Court held that there



is no reasonable distinction between the services rendered by foreign-hires and local-hires. As such, the school's practice of affording higher salaries to foreign-hires contravenes public policy, which holds that employees should be given equal pay for work of equal value. That is the principle long honored in this jurisdiction.

475. The Philippines also continues to support UN efforts to combat racism, racial discrimination, xenophobia and related intolerance, including those directed against migrant workers. The Philippine Government is working for the protection and promotion of the rights and welfare of the country's Filipino migrant workers based in other countries. It has therefore consistently initiated and supported the adoption of UN resolution, which express deep concern at the increasing manifestations of racism, xenophobia and other forms of degrading treatment against migrants, particularly women migrant workers, in different parts of the world and which call on member countries of the UN to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

### **C. Article 3 (Equal rights of men and women)**

476. The Philippine Government wishes to reiterate the information provided in the Initial Report with regard to Article 3 of the Covenant on the equal rights of men and women and to once again refer to information provided by the following Philippine Reports:

- Fourth Report both submitted to the Committee on the Elimination of Discrimination Against Women in January 1997.
- Latest Philippine Reports on ILO Convention No. 100 (Equal Remuneration) submitted to the ILO Committee in response to Direct Request 1989; Direct Request 1992 (Remarks) and Observation 1992 (Remarks); Direct Request 1992; Observation 1994.
- Latest Philippine Reports on ILO Convention No. 111: Discrimination (Employment and Occupation) submitted to the ILO Committee in response to Observation 1995; Direct Request 1995 bis; and as contained in its report ending on 31 August 1997.
- Beijing Platform of Action.

477. The 4th CEDAW Report contained information on the Philippine Plan for Gender-Responsive Development (PPGD), 1995-2025, which is the Philippine Government's 30-year perspective framework for pursuing full equality and development for men and women. The PPGD, which succeeded the Philippine Development Plan for Women (PDPW) 1989-1992, is the government's blueprint for gender mainstreaming. The Report also described various laws that were enacted during the period aimed at enhancing women's equality with men:

- RA 6809, or An Act Lowering the Age of Majority From 21 to 18 Years of 1989, equals the age of majority for women to that for men.

- RA 7192, or Women in Development and Nation-Building Act of 1992, recognizes the role of women in nation building and sought to ensure the fundamental equality before the law of women and men.
- RA 7688, or An Act Giving Representation to Women in the Social Security Commission (SSC) of 1994, reserves two out of nine seats in the Board of Commissioners for women, one each representing labor and management.
- RA 7882, or An Act Providing Assistance to Women Engaging in Micro and Cottage Business Enterprises of 1995, provides all possible assistance to women in their pursuit of owning, operating and managing small business enterprises.
- RA 7877, or Anti-Sexual Harassment Act of 1995, defines and provides for penalties for acts of sexual harassment in the workplace and in education/training setting.

478. The role of women in nation building is strengthened in RA 7192, which provides women equal rights and opportunities with men in all areas of social and economic life. In particular, it declares that women of legal age, regardless of civil status, shall have the capacity to act and enter into contracts, which shall in every respect be equal to that of men under similar circumstances. To this end:

- women shall have the capacity to borrow and obtain loans and execute security and credit arrangements under the same conditions as men;
- women shall have equal access to all government and private sector programs granting agricultural credit, loans and non-material resources and shall enjoy equal treatment in agrarian reform and land resettlement programs;
- women shall have equal rights to act as incorporators and enter into insurance contracts;
- married women shall have rights equal to those of married men in applying for passports and securing visas and other travel documents, without need to obtain the consent of their spouses;
- women shall enjoy equal access to membership in all social, civic and recreational clubs, committees, and associations and similar other organizations devoted to public purpose and be entitled to the same rights and privileges accorded to their spouses if they belong to the same organization;
- women managing household and family affairs are entitled to voluntary insurance coverage; and,
- women are given a substantial part of development assistance and equal access to enrollment in the Philippine Military Academy and other military and police schools and equal membership in all organizations devoted to public purpose.

479. Other legislative and administrative measures that enhance the equality of women with men that were put in place since the submission of the above reports, include:

- RA 6972, or An Act Establishing a Day Care Center in Every Barangay of 1990, mandates the establishment of Day Care Centers in every *barangay* to free women for other activities such as taking a job or going back to school. This is just one of a number of relevant laws containing provisions aimed at promoting equal rights of married male and female employees or workers.
- RA 7305, or Magna Carta for Public Health Workers of 1992, allows married couples, both of whom are public health workers, to be employed or assigned in the same municipality, although not in the same office.
- RA 7322, or An Act Increasing Maternity Benefits in Favor of Women Workers in the Private Sector of 1992, amending for the Purpose Section 14-A of RA 1161, as amended.
- RA 7796, or Technical Education and Skills Development Act of 1994 (25 Aug 1994), mandates the President of the Philippines to appoint members of the Technical Education and Skills Development Authority (TESDA) Board from the private sector, i.e., employer and industry organization, labor sector, and the National Association of Private Technical Vocational Education and Training Institutions. It is further directed that at least one woman is appointed from each of these sectors.
- RA 7875, or National Health Insurance Act of 1995, specifically identifies women as one of the vulnerable and disadvantaged groups to be covered and provided medical benefits. Although the household is still the basis of enrolling indigent members, efforts are now underway to include more women concerns and equal access to the medical benefits being offered. The Implementing Rules and Regulations of the NHI Act are now being considered.
- RA 7941, Party-List System Act of 1995, mandates the election of sectoral party-list representatives through the party-list system, among which is the women sector.
- RA 8171, or An Act Providing for the Repatriation of Filipino Women Who Have Lost Their Philippine Citizenship By Marriage To Aliens and Of Natural-Born Filipinos of 1995, provides for the reacquisition of citizenship by Filipino women, through repatriation.
- RA 8187, or Paternity Leave Act of 1996, grants paternity leave of 7 days with full pay to all married male employees in the private and public sectors for the first 4 deliveries of the legitimate spouse to ensure that husbands are able to share in the parenting responsibility.

- RA 8289, or Magna Carta for Small Enterprises of 1997, addresses the needs of small and medium entrepreneurs, and benefits the poor, including women, as it gives them opportunities to set up and manage their own businesses.
- RA 8371, or The Indigenous People's Rights Act of 1997, recognizes, protects and promotes the rights of indigenous cultural communities or indigenous people, including indigenous women.

480. Administrative measures to further emphasize equality instruments for women's participation in public and political life include the following:

- EO 209, or The New Family Code of 1987, provides more equal rights to women in the following ways: (a) age requirement for marriage was rendered equal at 18 years of age; (b) joint authority to choose the family residence; (c) joint authority to manage conjugal property; (d) wife's right to exercise her profession or career without the consent of the husband; (e) wife's right to accept gifts through donation without the need for her husband's consent; (f) widow's right to retain parental authority over children even after marriage; (g) widow's right to remarry before the expiration of 300 days after her husband's death; and (h) joint custody of children.
- EO 368 approves the membership of the National Women's Machinery to the Social Reform Council acting as technical adviser in ensuring the integration of women's concerns in the SRA programs.
- Presidential MO dated 19 May 1995 mandates the CSC to develop and implement programs that will institutionalize support mechanisms and provide women with adequate time and opportunities for career advancement.
- The Department of Agrarian Reform's (DAR) MC 18, series of 1996, ensures that spouses of male beneficiaries have equal rights of access to credit and loan with emancipation patents/certificates of land ownership (EP/CLOA) as collateral. Thus women are given the opportunity to avail of productive and employment support systems.
- To supplement measures to provide credit, training and employment opportunities for women, an MOU was entered into between the NCRFW and Landbank, Development Bank of the Philippines and other financial institutions to expand loan windows and relax lending procedures for women.
- In 1996, the Philippine Information Agency pursued an internal policy on equal participation in management down to the provincial level.
- In 1999, the CSC, in partnership with the NCRFW, adopted an MC on Equal Representation of Women and Men in Third Level Positions in Government. This circular is a major policy issuance for the career advancement of women in government service as its objectives include the following: (a) the promotion and

nomination and appointment of both women and men to third level positions; (b) the maintenance of a pool of qualified women and men nominees for every vacant third level position in government; and (c) the encouragement of a 50-50 representation of either sex in third level positions, as deemed practicable. As a parallel effort, a “Directory of Women on the Move” was developed as primarily a listing of possible women nominees for third level positions in government that could be used by appointing officials in carrying out the proposed policy objectives.

- The Career Advancement Program for Women in Government Service (CAPWINGS) was adopted to mainstream women into positions of power and influence by enhancement of support mechanisms, policy strengthening and development, capacity building and advocacy, training and other enabling mechanisms. The program is currently being pursued in various line departments and their attached agencies and regional offices. Thirteen line agencies also established Women in Government Service (WINGS) desks in their employees’ unions to mobilize and monitor support for the program.
- SRA-CIDDS Flagship Commitment promoting the election of local sectoral representatives, including women, and the increase to at least 30 % of women representation in decision-making bodies at national and local levels.
- To consolidate women’s gains in the business sector, a Women’s Business Council was established to provide a venue for women entrepreneurs to address their concerns. The Women’s Business Code of the Philippines (WBCP) sponsored entrepreneurial development courses for differently-abled women and Business Improvement and Survival Courses to develop entrepreneurial awareness and skills among women participants, and to improve their decision-making abilities.

481. Art. 370, New Civil Code of the Philippines, as amended, states “A married woman may use: (1) Her maiden first name and surname and add her husband’s surname; (2) Her maiden first name and her husband’s surname, or; (3) Her husband’s full name, but prefixing a word indicating that she is his wife, such as “Mrs.” This right was articulated in an opinion of the Secretary of Justice rendered on 25 April 2000, based on a query by a married civil servant seeking to revert to the use of her maiden name through the execution of an affidavit. He said the word “may” in the Code indicates that the wife’s use of the husband’s surname is permissive rather than obligatory. There is no law that compels the wife to change her surname to that of the husband upon marriage; it is an option, not a duty. This is consistent with the principle that surnames indicate descent. Accordingly, as long as no confusion or damage is caused as a result of such change, or the change is done in good faith, the exercise of the option under Art. 370 of the Civil Code may be upheld.

482. Policies and measures to increase women’s participation in decision-making currently being proposed include:

- The Women Empowerment Bill, is a proposed policy directive that would address women’s limited participation in decision-making. This proposed bill was included in the priority legislative agenda of the Congress.

- HB 5221 and HB 946 are envisioned to be major steps toward the attainment of equitable distribution of power and decision-making in all levels of government. Another policy measure being proposed is an enabling law on women's sectoral representation in the local council. This will put in place the provision in the 1991 Local Government Code, which states that there shall be one sectoral representative from the women sector among others in the local legislative bodies.
- SB 546 is envisioned to enhance the role of women in nation-building and optimize the equality of women before the law by giving retroactive effect to Section 45 of the Property Registration Decree, PD 1529.
- SB661 is envisioned to grant women equal opportunity to athletic scholarships and to sports prizes.

483. In its report to the CEDAW, the Philippine Government stressed the considerable progress made in the promotion and protection of the civil, political, economic, social and cultural rights of women, particularly in the context of enhancing their equality with men, and, at the same time, acknowledged the many existing areas of concern in ensuring the advancement of women in these rights.

484. It was noted, for example, that various legislative and administrative measures have been put in place to empower women and effect genuine and widespread gender mainstreaming in the society. Yet there are still few women who are in top echelons of power in politics, business and other fields of competence. An in-depth assessment of progress achieved since the start of the decade is expected to be presented in the country's fifth and sixth periodic report to the CEDAW which is expected to be submitted in 2002.

#### **D. Article 4 (Non-derogation of rights)**

485. The Philippine Government wishes to reiterate the information provided in the Initial Report.

#### **E. Article 5 (Prohibition of limited interpretation of rights)**

486. The Philippine Government wishes to reiterate the information provided in the Initial Report.

### **PART III. INFORMATION ON THE IMPLEMENTATION OF ARTICLES 6-27 OF THE COVENANT**

487. As shown by the country's experiences, the observance of human rights and freedoms is at greatest risk under a martial law regime, and during armed conflict as exemplified by fighting for secession in some areas in southern Philippines, and the protracted rebellion mounted by the communist groups. These lessons spurred the post-Marcos administrations to effect changes and institute major political, economic and social reforms and measures that would enhance the protection and promotion of human rights in the country.

488. This section outlines the specific measures taken to promote the rights and freedoms in Articles 6-27 and also reflects Philippine jurisprudence on these rights. It discusses the issue of alleged HRVs and, in this regard, the factors and difficulties encountered in the protection and promotion of civil and political rights.

#### **A. Article 6 (Right to life)**

489. The Philippine Government wishes to reiterate the information provided in the Initial Report that outlined the constitutional and legislative provisions protecting the right to life. The right to life means that no one shall be arbitrarily or summarily deprived of his life, particularly while in the official custody and safekeeping of law enforcement authorities. The right to life also means that if the death penalty is imposed, it is only for the most serious crimes and carried out conformably with due process of law and pursuant to a final judgment rendered by a competent court. Pertinent laws must also ensure that death convicts have the right to seek pardon or commutation of sentence.

490. The death penalty shall not be imposed when the guilty person is below 18 years of age at the time of the commission of the crime or is more than 70 years old or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases, the penalty shall be *reclusion perpetua*. The execution of the death sentence shall be suspended in the case of a pregnant woman and within one year after her delivery.

491. The Philippine Government also adheres to the view that the right to life means the right to enjoy a dignified and fulfilling existence that is made possible by an adequate standard of living and by efforts to achieve the total development of each person's humanity. Information on the laws and administrative measures and policies implemented to realize this right is contained in the latest Philippine reports on Articles 6-15 of the International Covenant on Economic, Social and Cultural Rights (E/1984/7/Add.4; E/1986/3Add.17, 1994; E/1989/5/add.17) and the initial Philippine Report on the Rights of the Child (CRC/C/3/Add.23, 1993), which outline the measures taken to increase the life expectancy of the male and female population and to reduce infant mortality through the prevention of malnutrition and epidemics. A consolidated report on these articles to update the information already given is also being prepared for submission to the Committee on Economic, Social and Cultural Rights (CESCR).

492. Philippine information on this article will focus on government efforts dealing with the right to life in relation to the:

- Death penalty;
- Protection of civilians caught in situations of armed conflict; and
- Protection of persons who come in conflict with the law.

## 1) Death Penalty

493. From the effectivity of the 1987 Constitution up to the passage of RA 7659, no death penalty ever was imposed by any judge in Philippine courts. Death penalties already meted out prior thereto were automatically commuted to life imprisonment. Initiatives to institute the death penalty were undertaken during the Ramos administration amid the rash of violent drug-related crimes in 1994. The move was inspired by Section 19(1) of Article 3 of the Constitution, which states that the death penalty shall not be imposed “unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it.”

494. RA 7659 cites as compelling reason of the restoration of the death penalty the “alarming upsurge of such crimes which has resulted not only in the loss of human lives and wanton destruction of property but has also affected the nation’s effort towards sustainable economic development and prosperity while at the same time has undermined the people’s faith in the Government and the latter’s ability to maintain peace and order in the country.”

495. The implementation of RA 7659 started during the Estrada administration, which took a hardcore position to exact the severest punishment against the guilty. Several convicts on death row were consequently executed by lethal injection, but a one-year moratorium on further executions was proclaimed in deference to the celebration of the Catholic Jubilee Year of 2000.

496. A few months before he was forced out of power, Estrada, through the media, issued statements seeking to amend the law by downgrading death penalty to life imprisonment. It will be noted that as of 2002, several bills for the abolition of the death penalty have been filed with and are being hotly deliberated before both houses of Congress.

497. RA 7659 amended relevant provisions of the Revised Penal Code and other special penal laws. It defines heinous crimes as “grievous, odious and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society.”

498. Heinous crimes are punishable by *reclusion perpetua* (minimum) to death (maximum) and includes: treason; qualified piracy and mutiny; parricide, murder, infanticide; kidnapping and serious illegal detention (if committed for the purpose of ransom or when the victim is killed or dies as a consequence of the detention or is raped or subjected to torture or dehumanizing acts); robbery with violence against or intimidation of persons; destructive arson (if, as a consequence, death results); and rape when committed with the use of a deadly weapon or by two or more persons or when, because of the rape, the victim becomes insane or a homicide is committed.

499. Rape is also considered heinous when committed with attendant circumstances such as: the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; the victim is under the custody of the police or military authorities; the rape is committed in full view of the husband, parent, any of the children or other relatives



within the third degree of consanguinity; the offender knows that he is afflicted with AIDS; when committed by any member of the AFP or the PNP or any law enforcement agency; when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

500. Qualified bribery is a heinous crime under the following circumstances: if any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by *reclusion perpetua* or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted. If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of death.

501. Plunder as a heinous crime is committed by “Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1(d) hereof in the aggregate amount or total value of at least PhP50 million. It amended Section 2 of RA 7080, in that the amount involved was the total value of at least 70 million pesos, and the penalty ranged from life imprisonment with perpetual absolute disqualification from holding any public office to death.

502. RA 6425, or the Dangerous Drugs Act of 1992, as amended, is further amended, to include the following as heinous crimes: importation of prohibited drugs; maintenance of a den, dive or resort for prohibited drug users or for regulated drug users, when the prohibited or regulated drug is administered, delivered or sold to a minor who is allowed to use such den, dive or resort or when the prohibited or regulated drug is the proximate cause of the death of a person using the same in such den, dive or resort; cultivation of plants which are sources of prohibited drugs; sale, administration, dispensation, delivery, transportation and distribution of regulated drugs, when the victim of the offense is a minor or should a regulated drug involved in the offense be the proximate cause of the death of a victim.

503. The maximum penalty (death) is imposed upon government functionaries and officers and members of the police and the military who commit the offenses listed in the Act or who planted any dangerous drugs in the person or in the immediate vicinity of another as evidence to implicate the latter. When in the commission of a crime, advantage as taken by the offender of his public position, the maximum penalty shall be imposed regardless of mitigating circumstances. It shall also be imposed if the offense was committed by any person who belongs to an organized or syndicated crime group. Any apprehending or arresting officer who misappropriates or misapplies or fails to account for seized or confiscated dangerous drugs or plant sources of dangerous drugs or proceeds or instruments of the crime shall after conviction be meted the penalty of *reclusion perpetua* to death.

504. RA 7659 amended Section 14 of RA 6529, or Anti-Carnapping Act of 1972, by including as a heinous crime carnapping in the event the owner, driver or occupant of the carnapped motor vehicle was raped in the course of the commission of the offense or on occasion thereof. The old law referred only to an instance when the owner, driver or occupant of the carnapped motor vehicle was killed.

505. Execution by lethal injection under RA 8177, or An Act Designating Death By Lethal Injection as the Method of Carrying Out Capital Punishment of 1996, is seen as more humane than either electrocution under the RPC, Art. 81), or gas poisoning under RA 7659.

506. Under the Implementing Rules and Regulations of RA 8177, the following principles are to be observed at all times: (a) there shall be no discrimination in the treatment of a death convict by reason of race, color, religion, language, politics, nationality, social origin, property, birth or other status; (b) in the execution of the death penalty, the death convict shall be spared from unnecessary anxiety or distress; and (c) the religious belief of the death convict shall be respected. Death convicts shall also enjoy the following services and privileges to maintain his/her self-respect and dignity: a) medical and dental, b) religious, guidance and counseling, c) exercise, d) visitation, and e) mail.

507. As of 31 December 1998, a total of 780 cases were meted the death penalty since the effectivity of RA 7659 in 1994. Of this total, there were 763 male death convicts and 17 female death convicts. There were 12 death convicts of foreign nationality, all of whom were male (9 Chinese, 1 Japanese, 1 Taiwanese and 1 Libyan). Except for the latter, who was convicted of rape, the rest will suffer the death penalty for violation of RA 6425.

508. The nature of crimes committed were as follows:

Complex Crime of Murder with Homicide	(1 male)
Forcible Abduction with Rape	(1 male)
Kidnapping and Serious Illegal Detention	(11 male; 2 female)
Kidnapping for Ransom	(32 male; 4 female)
Kidnapping for Ransom with Homicide	(6 male)
Kidnapping with Murder	(3 male; 1 female)
Kidnapping with Rape	(1 male)
Murder	(154 male; 3 female)
Murder with Frustrated Murder	(5 male)
Murder as accomplice	(1 female)
Parricide	(9 male; 1 female)
Rape	(340 male)
Qualified Rape	(1 male)
Rape with Homicide	(51 male)
Statutory Rape	(13 male)
Robbery with Multiple Homicide	(4 male)
Robbery with Multiple Rape	(3 male)
Robbery with Rape	(8 male)
Robbery with Homicide	(68 male; 2 female)
Robbery with Murder	(1 male)
Frustrated Robbery with Homicide and	
Violation of PD 1866	(1 male)
Highway Robbery with Kidnapping for Ransom	(5 male)
Highway Robbery/Brigandage Resulting in Death	(1 male)
Violation of Section 17, RA 7659 Amending RA 6425	(2 male)
Violation of RA 6425	(23 male)

Violation of Section 8, Article II, RA 6425	(1 female)
Violation of Section 4, Article III, RA 6425	(1 female)
Drug Trafficking	(1 female)
Violation of RA 6539 and PD 532	(4 male)
Carnapping and Murder	(10 male)
Illegal Possession of Firearms	(4 male)
Illegal Possession of Firearms with Homicide	(1 male)

509. Most of the crimes for which the death penalty was imposed were rape, almost a third of which were committed by male persons who abused their children or other relatives. More than 250 cases have been elevated to the Supreme Court for automatic review. Sixty-eight cases were settled as follows: 21 were affirmed (20 male, 1 female); 31 were modified, including commutation to life imprisonment (30 male, 1 female); 10 were acquitted (9 male and 1 female); and 4 were remanded to the lower courts (all male).

510. Decisions on specific cases are as follows: affirmation of the death penalties of Leo Echegaray, Cresencio Tabugoca, Jurry Andal, Ricardo Andal, Edwin Mendoza, Jesus Morillos, Archie Bulan, Dante Piandong, Pablito Andan and Marlon Parazo; acquittal of Danny Godoy, Silvino Salarzo, Gregorio Mejia, Edwin Bento, Pedro Paraan, Joseph Fabito and Fernando Galera; remanding to the trial courts due to procedural and substantive flaws of the cases of Ariel Alicando and Alberto Diaz; commutation to life imprisonment of the death penalties of Jesus Saliling and Alejandro Atop.

511. The Philippine Government has instituted the following safeguards with regard to the implementation of the death penalty:

- The death penalty is imposed only for the most serious crimes.
- Execution by lethal injection shall not be inflicted upon persons below 18 years of age at the time of the commission of the crime; upon a woman within one (1) year after delivery or while she is pregnant; nor upon any person over 70 years of age. In the latter case, the death sentence is commuted to the penalty of *reclusion perpetua* with the accessory penalties provided in Article 40 of the Revised Penal Code.
- The penalty is carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial and to adequate legal assistance at all stages of the proceedings.
- Death sentences are subjected to automatic review by the Supreme Court.
- Under Section 19, Article VII of the 1987 Constitution, the President may grant reprieves, commutation of sentence and pardon or clemency to death convicts.
- The government has implemented measures to ensure that the penalty is carried out as humanely as possible with minimum suffering.

512. On the view that the right to life is to live a dignified and fulfilling life, the Philippine Government wishes to highlight the passage of RA 7486 (30 Dec 1994). The law, which is an amendment to PD 996, requires compulsory immunization against Hepatitis-B for infants and children below 8 years old and contains an expanded list of diseases against which children should be immunized.

513. Another law, RA 8172, or An Act for Salt Iodization Nationwide of 1995, mandates salt iodization and promotes nutritional fortification of food to combat micro-nutrient malnutrition, particularly iodine deficiency disorders, through cost-effective preventive measure of salt iodization. It requires all manufacturers and producers of food-grade salt to iodize the salt they produce, manufacture, import, trade or distribute in accordance with standards set by the BFAD to meet national nutritional needs.

## **2) Protection of Individuals in AFP/PNP Operations**

514. The Philippines is also a signatory to the 1949 Geneva Conventions and the 1977 Additional Protocol (II) to the four Geneva Conventions relating to non-international armed conflicts. As such, the government has put in place measures to ensure the protection of civilians in times of armed conflict and of individuals in conflict with the law.

### **2-a) Joint AFP-PNP Circular**

515. Joint DILG-DND Circular No. 2-91 (2 Dec 1991) is the implementing guidelines for Presidential MO 393 (9 Sept 1991) which directs both AFP and PNP to reaffirm their adherence to the principle of International Humanitarian Law and Human Rights in the context of military and police operations. The Circular contains the rules of behavior to be observed during security or police operations to prevent any abuses against innocent civilians and hostile or lawless elements considered out of combat, such as the wounded, captured or who surrendered, and to reduce the destruction that may be inflicted upon lives and properties. The rules require AFP and PNP members to:

- Maintain a high level of discipline and to strictly adhere to the AFP/PNP code of honor, ethics, loyalty, valor and solidarity or otherwise face dismissal from the military or police service.
- Exercise utmost restraint and caution in the use of armed force; in the event its use is inevitable, to exercise strict controls in a way that only reasonable force necessary to accomplish the mission shall be taken and directed only against hostile elements, not against civilians or non-combatants.
- Treat out-of-combat suspects and enemies, e.g., wounded, surrendered or captured, humanely and with respect and, at the earliest time feasible, to turn them over to higher echelons of command or office for proper disposition.

- To avoid unnecessary military or police actions that could cause destruction to private and public property; as a matter of AFP/PNP Civic Action, to undertake whenever practicable measures utilizing available unit manpower and equipment to repair the damage caused on private properties in the course of the operation.
- To respect all persons and objects bearing the emblem of the Red Cross/Crescent, White Flag of Truce or emblems designating cultural property.

516. The Circular also provides that the conduct of military and police operations where the use of crew-served weapons or indirect fire support may become imperative, the use of artillery or mortar fires for interdiction and harassment is strictly prohibited especially when the **fire missions** are unobserved, when populated areas are near and civilian casualties or material damages are expected.

517. Finally, the Circular stresses the principle of command responsibility, where AFP/PNP commanders are:

- Held responsible for the conduct and behavior of personnel under their control and supervision; and, accountable under pertinent provisions of the Articles of War in the case of military personnel and the PNP Rules and Regulations and the Revised Penal Code in case of PNP personnel, or as accessory after the fact, subject of a valid complaint or warrant of arrest, in cases where they refuse to act or otherwise aid or abet the wrongdoing of their subordinates.
- To brief and debrief all participants in every security and police operation to ensure their proper behavior and an understanding of their mission and in order to assess the overall impact of the operation to AFP/PNP goals and objectives; and, to immediately undertake corrective legal measures on any misconduct committed.
- Subject to the requirements of public safety and security, to closely coordinate with local government officials and/or concerned government agencies prior to the conduct of security/police operations to provide for urgent and convenient delivery of services, relief and rehabilitation where civilians are temporarily evacuated for safety.
- To ensure that the provisions of this Joint Circular and other relevant AFP/PNP policies, the pertinent provisions of the Constitution, the Geneva Conventions and the UN declarations on HR and IHL are understood by all their members; and, thus to integrate these provisions into the regular program of instructions for AFP and PNP troop or police information and education sessions in all levels of command and office.

## **2-b) The AFP Rules Of Engagement**

518. AFP CS Memo Circular dated 17 Nov 1995 contains the AFP ROE in internal security operations by ground forces. It directs all military combat units to prevent civilian casualties, damage, harm and all forms of violence not required in overpowering the enemy. Section D

(*Crisis Situation*), Subsection (d) (*Respect for Human Rights*) of the Rules provides that “in all these actions in any situation, all AFP personnel shall respect the human rights of the victims and the perpetrators.” Command responsibility impels unit commanders to ensure that their subordinates abide by these rules.

519. MC dated 27 Aug. 1997, in amending MC dated 17 Nov 1995, included the naval and air force components. Rules covering them are discussed in the AFP ROE on Internal Security Operations Campaign Plan, or AFP CS MC (17 Nov 1998). The ROE provides that in the conduct of military operations, attack, defense, movements, small unit operations and indirect fire support, any action or decision that results in the unnecessary destruction of life and property of civilians is strictly prohibited. The ROE reiterates its directive for all AFP personnel to respect the human rights of both victims and perpetrators and for the unit commanders to assume command responsibility.

520. The ROE is a major item for discussion in all military training and regular briefings. Reminders to adhere to specific aspects of the ROE are given before the conduct of operations. Post-operation debriefings include a thorough analysis and assessment on the compliance with the ROE.

## **2-c) The PNP Police Operations Procedure**

521. With the issuance of the PNP Police Operations Procedure on 26 January 1997 revising the PNP ROE dated 14 January 1993, the appellation Rules of Engagement was dropped for easier distinction from the AFP ROE. It thereby emphasizes the civilian character of the police force. More importantly, the PNP POP aims to cure the negative public impression on the quality and effectivity of police performance as it pertains to its most important duty of protecting lives.

522. A case in point to illustrate the foregoing observation is the attempt to rescue a teenage girl named Charlene Sy from her kidnappers in 1994. Rescuing police officers fired into the getaway car of the kidnappers, killing the kidnappers as a consequence thereof, but unfortunately, also hitting the girl in the neck. Worst, the television audience were aghast at the sight of the body of the slain kidnap victim along side those of the kidnappers.

523. The PNP POP stresses that in all police matters, respect for human rights is of paramount importance. All PNP personnel are regularly reminded to strictly observe prescribed procedures in the performance of their daily tasks and in the conduct of police operations so as to avoid unnecessary or excessive use of force.

524. The PNP POP ensures the protection of the people’s right to life at all times. The underlying principle of maximum tolerance provides that the use of force, especially firearms, shall be applied only as a last resort, that is, when all other peaceful and non-violent means have been exhausted. The force employed must be necessary, reasonable and sufficient to subdue and overcome a clear and imminent danger or resistance being put up by a malefactor or group, and / or to neutralize the vehicle of the suspects.

525. The police siren and megaphone shall be used to influence or warn the offenders or suspects to stop and peacefully give up. In case of an actual shoot-out with the suspect, *panic firing* shall be avoided. Panic firing occurs when one member of the apprehending team opens fire and the others follow suit. The police officer shall ensure that no innocent bystanders are hit. Hence, extreme caution shall be observed when firing a weapon in congested areas. After a shoot-out, the police officer shall check whether or not the suspect still poses danger or has been wounded and disabled. The suspect shall then be immediately brought to the nearest hospital for medical treatment. The team leader of the police of the operation exercises control over his men.

526. The PNP POP ensures that the rules shall be thoroughly disseminated in all police stations and that these rules are thoroughly internalized by all members. For this purpose, reputable government prosecutors, CHR lawyers, and other qualified resource persons are invited as resource persons to discuss the POP.

527. As a standard operating procedure, all police officers are given pre-operation briefings on the general rules as well as the special rules applicable to the type of operations to be conducted or functions to be performed before any unit or element is dispatched. A post-operation debriefing is also conducted to enable participants assess lessons learned and check compliance with the rules. Superior officers are imposed with command responsibility.

## **2-d) Alleged Violations Against the Right to Life**

528. Some military and police authorities have been accused of committing violations on the right to life. These violations allegedly occurred in the course of armed conflict. The government also received criticisms for allegedly using paramilitary forces in the anti insurgency campaign and for allegedly encouraging self-help community groups and vigilantes for their protection against the incursion of DTs.

529. Statistics varied according to sources. Between January and June 1998, the AFP Human Rights Desk listed 276 cases of killing, murder, multiple killing, massacre and homicide allegedly committed by military personnel. On the other hand, CHR records from 1989 to 1997 showed 390 cases of alleged HRVs involving murder, homicide or execution allegedly committed by PNP members.

530. With regard to allegations of HRVs by police personnel for a five-year period 1993 and 1998 the PNP documented 73 and 77 cases of homicide and murder, respectively. On the other hand, from 1989 to 1997, the CHR recorded a much larger figure of 839 cases of HRVs involving murder, homicide or execution allegedly committed by PNP members.

531. As extensively discussed earlier, military and police action are governed by standard procedures that uphold, and are consistent with the basic principles of HR and IHL. Allegations of HRVs are therefore investigated by appropriate mechanisms established within and outside the military and police establishments. Appropriate punishments and / or corrective measures are instituted following investigations and due process. Measures undertaken to address/correct allegations of HRVs and to compensate victims are discussed in relevant sections of this Report.

**2-d-i) Alleged Mass Evacuations or *Hamletting*, Food Blockades and Other HRVs**

532. There had been occasions when military authorities were accused of resorting to “hamletting” in Mindanao. It must be clarified, however, that none of the post-Marcos administrations, subscribed to hamletting as a policy to control populations. What could have been misperceived and wrongly reported by the media as “hamletting” activities were actually voluntary evacuations by residents from conflict-affected areas to safer grounds. These evacuations took place particularly during the thick of skirmishes between government and enemy forces.

533. As a matter of policy, the AFP did not impose these civilian evacuations, although to ensure the security and welfare of civilians, the AFP coordinated with the DSWD and NGOs to respond to the needs of the evacuees, i.e. temporary shelter, food, clothing, and medical supplies. Moreover, the AFP has not resorted to food blockades and other tactics that are clearly violative of HR.

534. It may be necessary at this point to, once and for all, state for the record that so-called militarization, of which the Philippine Government has been unfairly accused of, has not occurred, particularly since after Martial Law.

535. Militarization is equated by HR groups to the presence of a large number of military personnel to control particular communities or populations. In this sense, the AFP denies allegations of militarization.

536. Indeed, military units have been deployed to insurgency-affected areas to reclaim the territorial integrity of the Government, but these deployments have always been implemented within the framework of security and development, and without sacrificing the safety and well-being of the populations. Under any given situation, civilian populations have remained under civilian rule. The military’s program on security and development is extensively discussed under the section on Enhancing Political Stability.

537. During military deployments, armed encounters are unavoidable. In any conduct of operations, AFP units, particularly those in combat duty, are briefed and debriefed to prevent any civilian from getting injured, maimed or killed; to exert best efforts to reduce the social costs of the conflict; and, to protect civilian lives by ensuring that they do not go hungry or suffer all forms of deprivation as a result of these operations.

538. The DND directive (15 July 1988) on the protection and rehabilitation of innocent civilians underscored the social and political impact of tactical operations. The directive mandated all levels of command to implement policies in the conduct of military operations, as follows:

- Civilian-military operations (CMO) shall be a supporting command function of tactical forces engaged in counter-insurgency operations. Priority in the overall CMO efforts shall be the provision of support for and prevention of civilian interference with tactical operations.



- The shelter or stay-put policy is given more emphasis than the evacuation of the civilian populace immediately prior to or during a combat operation. This is due to the insufficiency of warning times and the difficulty of controlling large-scale movements of civilians. Official orders to move large groups of civilians will be given where serious combat operation is expected to occur between troops and hostile forces.
- However, movements of civilians may take place whether ordered or not, but military support plans must anticipate this problem and provide for it by assigning tasks to appropriate military units. While such tasks normally will be performed in cooperation with civil authorities, under some circumstances, the military may have to exercise complete control and to direct people into holding areas where controlled movement can be subsequently organized to return them to their homes.
- Displaced persons/evacuees shall be allowed and/or persuaded to return to their homes as quickly as tactical considerations permit. This shortens the period of time they are under the responsibility of the military commander and lessens the danger of diseases that accompanies the grouping of people in confined areas.
- Medical teams must be made available to provide emergency medical attention or evacuation to injured civilians caught in the crossfire.
- Military civic action shall be undertaken immediately after the operation, including such tasks as providing medical aid to sick and wounded civilians, procuring and distributing food and shelter to displaced persons and restoring vital facilities.
- Post operation activities includes coordination and liaison with national and local government agencies to immediately undertake the following tasks: assessment of damage; restoration of utilities; rescue, evacuation and hospitalization; issue of food and essential supplies; emergency provision of prepared food and facilities for food preparation; recovery and disposition of the dead.
- In order to protect troops from false charges of looting, abuse and other forms of misbehavior, civil relations groups are required to immediately conduct a survey of the residents and make proper documentation including the taking of photographs, obtaining affidavits from witnesses and local residents, and paying for damaged property. The settlement of all requests for financial relief or loss of life or for property damage or loss shall be the concern of the unit or command responsible for the conduct of the operations.
- A documented report of the CMO, including the residents' testimonies shall be released to the media for publication to preempt adverse publicity from other interested groups.

539. On 22 September 1990, the AFP Chief of Staff issued the following guidelines to ensure delivery of goods and services to the countryside:

- Government line agencies and NGOs concerned with the delivery of goods and services shall not be prevented from operating in areas unless their lives and personal safety are jeopardized as a result of on-going military operations. Tactical unit commanders shall provide the necessary security especially when requested.
- Personnel manning checkpoints shall not unduly delay the transport of agricultural, industrial and commercial products intended for use/consumption of law-abiding citizens as part of the normal flow of commerce in rural communities.
- Coordination and liaisoning with government line agencies such as the Peace and Order Council and the DSWD is required so as not to impede the movement and flow of persons and of basic goods and services under normal conditions, i.e. medical personnel and patients; medical supplies and equipment; foodstuffs and other basic necessities; and relief goods.
- But, in areas where actual tactical operations are going on, control of movements of non-combatants and the delivery of goods and services may be imposed for safety reasons.

540. The MOA executed by the DILG, DND, DOJ, DOH, DFA, CHR, PAHRA, FLAG and the MAG (10 Dec 1990) gave access to the medical team of MAG in the delivery of much-needed health services to far-flung areas and evacuation centers where health resources were inadequate or nil. Conditions set under the MOA were: MAG shall notify and coordinate with the local officials and military commanders in the area to ensure smooth conduct of the mission; should the MAG team refuse any military escort, they may proceed to their destination at their own risk; MAG shall inform the same officials of the termination of the medical mission. Correspondingly, military field commanders were tasked to prevent the harassment of health workers.

541. Despite these measures, the military in several instances was taken to task for the evacuation of communities. The so-called "Operation Thunderbolt" in 1989 in the province of Negros Occidental reportedly resulted in the death of 257 children in evacuation camps, and the death from measles of 74 children who sought refuge in the caves in Marag Valley during offensives in 1990-1991.

542. Regarding reported military abuses, the HRC directed the DOJ Task Force on Human Rights, in coordination MAG, PAHRA and media practitioners, to investigate the plight of indigenous communities in Marag Valley. Witnesses who appeared before the fact-finding mission identified soldiers suspected of raping and forcing the womenfolk to commit perverse sexual acts. The soldiers, whose names were withheld, were charged before civilian and military courts.

543. The report of the Task Force also indicated that the large-scale military operations resulted in the death of more than 100 civilians and the forced evacuation of Marag residents in Luna, Kalinga, Apayao. Witnesses alleged that the soldiers harassed residents fleeing the Valley. Its recommendations included the (1) immediate indemnification, through the CHR, of 133 local residents who lost their children, homes and property, and (2) the suspension of military operations in, and the declaration of, the war-torn valley as an “ancestral domain” of the villagers. As already indicated in the section under Enhancing Political Stability, the DND thereafter successfully implemented a rehabilitation and development plan for Marag Valley.

544. In light of these experiences, the PHRC issued Resolution No. 91-001 (26 March 1991) delineating the guidelines acceptable to both NGOs and military/paramilitary agencies in the conduct of evacuation that ensure the safety and protection of civilians. The AFP was enjoined to strictly observe the following:

- Members of the same family must stay together.
- The military is prohibited from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population such as foodstuffs, agricultural means for the protection of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.
- The evacuees shall be provided with free transportation facilities.
- Acts or threats of violence and various forms of inhuman treatment committed by government forces, including paramilitary groups and other agents of authority for the purpose of spreading terror among the evacuees are prohibited.
- Non-government health workers, e.g., doctors, nurses, dentists, trained community health workers, and other allied professionals, e.g., social workers and volunteer relief workers, shall be allowed entry to evacuation centers to render medical/relief assistance to evacuees.
- Medicine and relief goods, whether coming from the government or NGOs, shall be given to the evacuees without delay.
- Hamlets or grouping centers shall be forbidden.
- Evacuees shall be returned to their houses at government expense as soon as the reason for evacuation ceases.
- The government shall indemnify the people of damages for the injuries they have suffered, particularly (a) for all houses which were destroyed or which were ordered dismantled and demolished; and (b) for reasonable value of their personal properties as a result of the evacuation.
- Both the government and NGOs shall help in the rehabilitation of evacuees through socio-economic projects, skill formation and education.

- Relocation centers declared as zones of peace by the evacuees shall be respected.
- The government shall ensure that the schooling of children evacuees are not be prejudiced.

545. In response to reports of instances wherein certain government agencies impeded or controlled the delivery of basic commodities and services to barangays in the countryside, Presidential MO 398 (26 Sept 1991), provided, thus, “Consistent with the needs of public safety, the free flow of goods and services to the countryside shall be allowed and facilitated by all concerned government agencies such as the DILG, DSWD, DOH, DND, AFP and the PNP.”

546. Furthermore, the AFP was directed under Presidential MC 139 (19 Dec 1991) to observe the following operating procedures:

- Under normal circumstances, government agencies shall follow their standard operating procedures in the delivery of goods and services even to “influenced” and “infiltrated” areas. Only during actual tactical operations may control of the movement of non-combatants and the delivery of goods and services be imposed for safety reasons, provided that in no case should such control lead to the starvation of civilians.
- The flow of goods and services from government line agencies directly to their field units shall be facilitated and assured.
- To ensure the prompt, safe and effective delivery of goods and services, there shall be coordination between NGOs, the POC chairman of the area or his duly designated representative, and appropriate line agencies.
- Any dispute arising from the restriction by any agency of the flow of goods and services shall be resolved by the POC. Should the POC uphold their temporary restriction because of actual and on-going tactical operations, said action must not cause or lead to the starvation of concerned communities. The POC shall have the responsibility of expediting their release and in no case shall the delivery of goods and services be suspended for more than three days.

#### **2-d-ii) The Use of Paramilitary Forces in Counter-insurgency Campaigns; the Activities of Civilian Self-help Groups and the Vigilantes**

547. The existence and activities of unarmed civilian self-help groups, so long as they remain lawful, are viewed as an expression of the members’ constitutional right to collectively promote and protect their welfare and interests. However, the AFP had been severely criticized for allegedly using paramilitary forces and civilian self-help groups and vigilantes in counter-insurgency operations. Some of these groups have allegedly committed HR abuses and extra-judicial killings. In light of this misconception, the AFP categorically denied recognition, endorsement or linkage with armed self-help or vigilante groups whose members were not

subject to military law, rules and regulations, and whose activities were not within the bounds of military operations. Moreover, the AFP denied condoning or tolerating the reported HRVs or abuses committed by these armed groups.

548. Legally, however, the AFP may be authorized by law to utilize paramilitary forces in addition to its regular forces. Article XVI, Section 4 of the Constitution provides that the armed forces shall also be composed of civilian units which shall undergo military training and serve, as provided by law.

#### **2-d-ii/a) Role of CAFGUs in Counter-Insurgency Operations**

549. Pursuant to EO 264 (25 July 1987), the AFP strictly regulates the operations of the Citizen Armed Force Geographical Units. The CAFGUs consist of able-bodied citizens residing in the locality who have undergone military training as well as officers and enlisted men on inactive status who may be called to render service as the need arises, individually or as a unit. Since these are subject to military law, rules and regulations, concern is focused not so much on their existence but on the issues of discipline and the HRVs allegedly perpetrated by their members.

550. EO 264 provides that the President may, on recommendation of the secretary of national defense, call on the CAFGU to complement the operations of the regular force of the AFP or to support the regular force formations or units. For this purpose, the CAFGU Active Auxiliary Units (CAA), composed of volunteers screened in consultation with the local executives and civic/business leaders, may be activated but short of full active duty status, i.e. without being vested with law-enforcement functions.

551. CAA helps provide protection to the communities where they are organized and their activities are monitored by the local POC. The CAA is an integral part of the AFP but is different from the Integrated Home Civilian Home Defense Forces (IHCDF) and other paramilitary or armed groups which had been disbanded by virtue of Section 24, Article XVIII of the 1987 Constitution, thus: "Private armies and other armed groups not recognized by duly constituted authority shall be dismantled. All paramilitary forces including Civilian Home Defense Forces not consistent with citizen armed force established in this Constitution, shall be dissolved or, where appropriate, converted into the regular force."

552. The Implementing Rules of EO 264 provide that all "citizen-soldiers shall be accounted for, their records updated, and they shall be classified according to their age, permanent residences, profession, special skills and military training and experience, if any. The Area Commanders or other appropriate military commanders concerned shall have primary responsibility in the administration (selection, documentation, accounting, payment, arming, equipment, reporting, etc.), supervision and utilization of CAFGU Active Auxiliaries.

553. The AFP Guidelines on the conduct of organization, development, training and management of Special CAFGU Active Auxiliary (SCAA), which, like the regular CAA, shall complement the AFP regular units as Active Auxiliary, took note of the budgetary constraints of the AFP. The AFP was unable to expand its regular component to fill-up the security vacuum left

by the phasing out of the ICHDFs. As such, SCAA companies have been authorized on a case-to-case basis, and on conditions stipulated in the directive. The Guidelines specify the following:

- All qualified volunteer reservists gainfully employed by duly accredited business establishments within a particular locality may be called upon to meet local emergency situations such as civil disturbances, natural calamities and insurgency.
- Qualified candidates for the SCAA shall be trained under the CAA Training Program and, upon completion of training, qualify as AFP Reservist and subsequently as SCAAs.
- The SCAA mission is to assist the AFP regular forces and the local government authorities in the protection of life and property within the business companies' territorial jurisdiction. They are entitled to be provided with military-type weapons for the purpose.
- SCAA volunteers must be within the paying jurisdiction of companies or institutions requesting for their activation. The company must attest to the candidates' residency in the area where the business company operates.
- For the enhancement of command and control of the SCAAs, an appropriate number of cadres composed of officers and enlisted personnel of the AFP regular force similar to the regular CAA shall be assigned with them.
- SCAAs shall be subject to military laws, rules and regulations. Their tactical employment shall be limited to the business companies' territorial jurisdictions and must be integrated with the other tactical units operating in the same locality.
- As part-time soldiers, SCAAs receive their pay and allowances from the company/institution that hire them. They must not be utilized for other purposes such as personal security of VIPs and the like. The SCAA shall remain under the command and control of an AFP unit designated by the area commander and not under the chief security or security consultant of the company that is to be protected.

554. The CHR, based on its conduct of spot investigations on the performance of the CAFGU, was prompted to strongly recommend to the AFP the disbandment of units where the situation no longer needed their presence. The AFP responded favorably after concerned POCs expressed their confirmation on the basis of the DILG's assessment of local conditions. As a result, the AFP deactivated more than 80 CAFGU units in 1992 and 1993 consisting of more than 10,000 members. The CAFGU members declined from 87,000 to the present 65,000 members.

555. The Philippine Government undertook to phase out all CAFGU units according to a five-year program commencing in 1993, to give way to the government peace process. To date, demobilization of the CAFGU, which was partially implemented from 1995 to 1996, was halted due to the renewal of DT activities in areas where CAFGU units were deactivated.

**2-d-ii/b) Activities of Civilian Self-Help Groups: the CVOs**

556. The Philippine Government also regulated the formation of the so-called Civilian Volunteer Organizations (CVOs), or *Bantay Bayan*. CVOs are formed by a group of interested and concerned citizens who have exercised their constitutional right to form organizations for community self-defense and to protect their interest and safety against criminals and other lawless elements. They are not military units but they assist in providing urgently needed social services in their communities. As part of the government's total approach in countering insurgency, CVOs operate exclusively for self-defense and protection. They are under local civil government supervision and their activities must be sanctioned by the village and municipal authorities and coordinated with local and military police. A monthly report on the location, leaders and members of these organizations is required to be submitted to the DILG.

557. CVO members must possess the following qualifications: a respected and law-abiding Filipino citizen; at least 18 years of age; of sound mental disposition; no police/criminal/court record; a *bonafide* resident of the area where he seeks to join as *BB* volunteer for at least 6 months immediately before the filing of his application.

558. The POC chairman at each level is required to create a three-man committee which shall (1) receive, process and appraise applications for membership; (2) refer applicants to the Provincial Health Officer, City Health Officer or any government physician as the case may be, for medical and physical examination; (3) recommend approval of application for membership of qualified applicants to the POC chairman, who shall approve or disapprove the application, and, (4) assist in the formal organization of CVOs. The POC secretariat coordinates and monitors the organization and administration of the CVOs and keeps a complete list of their officers and members. The organized CVOs shall be under the supervision of the local chief executive who shall be assisted by the police and/or the military elements in the community.

559. CVOs are required to undergo training in the following subject areas: basic intelligence, community security, self-defense, use of firearms, civilian arrest and due process and public information. They are allowed to engage primarily in unarmed civilian assistance which include: (a) intelligence or information gathering; (b) neighborhood watch or *rondas*; (c) medical, traffic or emergency assistance; (d) assistance in the identification and implementation of community development projects; (e) gathering of relevant information and data as inputs to peace and order planning and research activities. CVOs are not allowed to carry firearms. Only those licensed to possess firearms, veterans, retired members of the AFP, PNP and private security guards who have permit to carry firearms outside their residence may be allowed to bear arms.

560. The formation of CVOs started in Claveria, Misamis Oriental Province, sometime in 1982 in response to the wave of liquidation, kidnapping, arson, extortion, torture, harassment and other forms of HRVs perpetrated by the local DTs. Since then, CVOs had been regarded by DTs as groups of unarmed civilians organized to perform intelligence and undercover work for the military in their respective areas.

561. In order to make CVOs stronger and more cohesive, a group of pioneers organized the *Bantay Bayan* Foundation Inc (BBFI) in 1984 and, subsequently, registered it with the Securities and Exchange Commission. The main activity of the BBFI involves the conduct of security

lectures and seminars at the provincial, city, municipal and barangay levels. The BBFI registered 9,018 chapters nationwide and a membership totaling 4,509,000 or an average of 500 members per chapter. There has been no recorded case of human rights violations by BBFI members, although there were some reports of misdeeds within the organization.

#### **2-d-ii/c) Activities of Armed Civilian Groups: the Vigilantes**

562. The phenomenon of vigilantism allegedly sprung in the late 1960s in Mindanao as a result of the land dispute between Christian and Muslim communities. Visayan settlers organized the so-called "*Ilagas*" (Rats) in Cotabato to repel Muslim attacks, in turn prompting the latter to organize their own groups, i.e., "Blackshirts" or "Barracudas," in the early 1970s. In the mid 1980s, intensified communist partisan operations in Davao City reportedly led to the creation of the vigilante group "*Alsa Masa*" (Masses Arise), composed mostly of former NPA members and civilian volunteers. The formation of vigilante groups was reported widespread in Mindanao (Regions 9, 10, 11 and 12).

563. It was at the height of the armed conflict between the military and the insurgents that armed civilian groups or vigilantes proliferated. Their avowed aim was to help the military fight communism and the insurgent forces. Proponents of vigilante activities felt that such activities were particularly necessary in areas where the secessionist and communist forces were at their strongest and where there was less military presence. At the height of insurgency activities in the country, the presence of vigilantes was noted in some parts of Southern Tagalog in Luzon, Western Visayas and in almost all areas of Mindanao.

564. Vigilantes were believed to have come largely from ordinary folks in the community, but that their membership is not openly acknowledged. In Mindanao, members were reportedly composed of businessmen, government employees, former soldiers and farmers. Vigilantes reportedly had the support of the community because of their capacity to provide some measure of protection from the various threats presented by DTs, e.g., including extortion/"taxation" and forcible recruitment into the communist ranks.

565. However, the reported tendency of some vigilantes to become abusive made the civilian population fear both vigilantes and communist forces alike. Allegedly, some vigilantes believed they were on the same level with the military in light of their real or imagined ability to keep the communist forces at bay. The perception that the military and the vigilantes were allies might have caused some vigilantes regard themselves as powerful and influential members of the community.

566. Some local residents came to the conclusion that because of the similarity in objectives, the activities of vigilante groups and the operations of the military in the area were collaborative efforts in the intensified warfare between the government and the communist forces. So abuses committed by the vigilantes were believed to be with the knowledge of, and sanctioned, by the military. The same reaction was given when military operations in an area happened to be conducted simultaneously with, although independently of, the activities of vigilante groups. In either case, the armed conflicts resulted in the evacuation of civilians caught in the crossfire.



567. Considered most feared of the reported vigilante groups was the *Alsa Masa* in Davao Province whose ex-NPA members feared retribution from their former comrades because of their defection from the dissident ranks. This vigilante group was credited with having largely contributed to the containment of insurgency in that province. Media reports claimed that the vigilante group *Pulahan*, which was composed of former members of the *Alsa Masa* in Negros Occidental Province (central Philippines), Binalbagan town, continued to exist. This group claimed responsibility for the mysterious disappearance of close to 30 people during the 1980s and 1990s at the height of insurgency in the province. Members were reportedly recruited based on their military connections and anti-communism principles, while some were allegedly former military informants or former members of the defunct CAFGUs in the area. These vigilantes were reportedly armed with their trademark bolos with the handle wrapped in a strip of red cloth, while others allegedly carried firearms.

568. Vigilante activities in a community, including those reportedly conducted by fanatic, cult or religious groups, were expected cease to exist once the threat posed by dissident forces and similar groups had been cleared in the area. Vigilantes disbanded on their own accord, returned to their normal life and resumed full time engagement with their occupations or professions. To promote self-reliance, some even established cooperatives and enjoyed good business because of the “service” they rendered to the community.

569. Several cooperative groups established the Confederation of *Alsa Masa*, accordingly a tested mass base support movement, as a manifestation of unequivocal support for the government’s “call for grassroots cooperation” in maintaining peace and order in Mindanao. *Alsa Masa* proponents believed that poverty was the main factor that drove most people to crime and rebellion. Their goal was therefore to transform the *Alsa Masa* movement into a vehicle for people empowerment and socio-economic upliftment, in addition to its being a mass-based movement for the drive against communism and crime.

### **3) Alleged Violations Against the Right to Life by Insurgents**

570. Rebels and insurgents were also allegedly guilty of violating the right to life of non-combatant civilians, who included residents of rural communities, trade unionists, government officials and rebels or insurgents suspected of spying for the military. One prime example was the *Digos* Massacre (so-called because it occurred at Sitio Rano, Barangay Binatol, Digos town, Davao del Sul Province) committed by communist rebels in June 1989, killing 39 civilian worshippers including women and children.

571. It was observed that while HR instruments focus on the responsibility of governments for the protection and promotion of the rights of their citizens, these do not take into account the atrocities committed by non-government entities. HRVs committed by rebels and insurgents are treated as ordinary crimes. Even so, the Philippine Government wishes to highlight in this Report the fact that in its anti-insurgency campaign, insurgents are also held accountable for HR abuses. This flows from the view that it has the legal responsibility to bring to justice all alleged perpetrators of HRVs.

572. The Philippine Government, through a DILG letter directive (12 Aug 1991) also decided to mount a counter legal offensive by properly documenting all infractions committed by the CPP/NPA and other subversives and by filing the corresponding cases with the CHR or with the proper courts. Similarly, the AFP directed its military commands to document cases of torture and summary execution committed by DTs. The CHR also provides financial and rehabilitation assistance to the victims of HRVs rebels or insurgents who are accused of or for which they have taken responsibility.

#### **4) Factors and Difficulties Affecting the Protection of the Right to Life**

573. HR groups asserted that the commission of extra-judicial executions by members of the military, including its paramilitary component, was made possible by the government's so-called "total war strategy." This strategy was allegedly used as the banner under which the military could freely label individuals and cause-oriented groups as "communist subversives" and subject them to harassment. HR groups have accused the military of portraying their victims as legitimate targets in their counter-insurgency operations, i.e., "killed in an armed encounter," or as having attempted to escape from custody, or of treating political killings as an inevitable by-product of the armed conflict. The perceived impunity was exacerbated by the seeming failure of government to prosecute military and police personnel suspected of this crime.

574. As already indicated under the topic in this Report on Enhancing Political Stability, the government's "total war strategy" was the AFP's "strategy of total approach" to counter-insurgency, which involved the military's twin objectives of fighting the war being waged by the armed dissidents and of contributing to the government's efforts in addressing the roots of the insurgency problem. The military organization, and also law enforcement authorities, expressed full awareness of the effect of the repeal of the Anti-Subversion Law, which granted members of the CPP the right to freely emerge from underground in achieving their avowed goals of political, economic and social reforms peacefully and not through armed means, and, that its members as well as persons perceived to be sympathetic to their cause could no longer be legally apprehended for engaging in "communist subversive" activities.

575. As protector of the people, the military asserts its concern over the activities and movements of armed dissident groups that continue to wage war in the countryside and pose a risk to the nation's security and integrity. It has to contend with these forces even as it risks continued scrutiny by the media for any ensuing encounter. Military authorities have noted that, all too often, dissidents have taken advantage of the democratic space in the country and of the laws and measures to promote and protect human rights that seem to bend in their favor. Dissidents allegedly have conveniently used the media to advance their anti-government campaign at the expense of the military. The other battle is thus waged through the newspapers, television and radio as to which is the credible version of what transpired during an armed encounter, i.e., a "*legitimate armed encounter where soldiers as well as dissident terrorists were killed*" versus "*extra-judicial execution of suspected armed insurgents and communist sympathizers.*"

576. In all its operations, the AFP provides financial support or assistance to any person or institution that in any way falls victim due to military operations or training and other related circumstances. This policy is contained in the AFP Standing Operating Procedures (30 May 1990) entitled Financial Relief for Disability/Loss of Life and Damages to Property Caused by AFP Operations, and in the AFP Comptrollership Manual Number 6-3 Series of 1995.

577. The AFP SOP provides a uniform procedure for the filing, submission, processing and granting of financial relief for actual or direct damages to or loss of life and private property in cases where the damage or loss is caused directly by incidents related to training, practice, operation and maintenance of the AFP. The grant of financial relief is purely gratuitous in nature and is in no way intended as an acknowledgment of legal liability. The assistance does not include relief based upon wrongful taking or injury to private property or life caused by acts involving depredation, waste, spoil, riot, willful destruction, willful misconduct, or such reckless disregard of property right as to carry an implication of guilty intent.

578. Payment of financial relief is the concern of the unit or command responsible for the conduct of training, exercise or operation that caused the disability or loss of life or damage to the property. The proceeds may be authorized from savings of the AFP for the benefit of informers, guides, *cargadores*, civilian volunteers and disabled civilians or their beneficiaries in the event of death, in the following cases:

- death of an informer, guide, *cargador*, or civilian volunteer while actually working in the AFP, not to exceed PhP20,000;
- death of a civilian resulting from crossfires between elements of the AFP and dissidents, lawless elements or criminals; for the death of a civilian caused by members of the AFP due to mistaken identity; for the death of a civilian caused by an amuck or berserk soldier; and for the disability of an informer, guide, *cargador* or civilian volunteer while actually working with the AFP, not to exceed PhP12,000;
- disability of a civilian resulting from crossfires between elements of the AFP and dissidents, lawless elements or criminals; for the disability of a civilian caused by members of the AFP due to mistaken identity; and for the disability of a civilian caused by an amuck or berserk soldier of the AFP, not to exceed PhP6,000.

579. The Comptrollership Manual also provides for the financial relief for disability and death and loss or destruction of private property caused by AFP operations. Financial relief for disability ranges from PhP6,000 to PhP12,000 depending on the circumstances resulting in the disability while relief for loss of life ranges from PhP12,000 to PhP20,000. The AFP may authorize the release of funds from its savings to be given as financial relief for damage to private properties. However, such authorization is always subject to availability of funds.

580. Compensation given to the beneficiaries of a civilian killed in a crossfire between the military and lawless elements may not exceed PhP12,000. Military documentation of the encounter as well as testimonies of local officials are the basis to establish as to whether or not

the person killed was one of the armed/fighting insurgents, hence, not a case of summary execution, or an innocent civilian caught in the crossfire. This does not preclude the filing of criminal cases before the civil courts against the suspected military perpetrators of reported extra-judicial executions.

581. Military and police personnel, as indicated in their statistics, are aware that some of their members are accused of HRVs, including extra-judicial executions, murder, homicide or multiple killing or massacre. Records however show that most of these cases did not prosper because of the lack of witnesses and / or of supporting evidence. Responsibility for an alleged killing or execution was difficult to pinpoint especially in cases where witnesses could only provide hazy evidentiary details. To illustrate, an eyewitness may provide details such as: the perpetrators were dressed in plain clothes or in fatigue uniforms without insignias or were riding in an unmarked army-type vehicle when they abducted or “arrested” the victim.

582. Still, in most other instances, investigation of cases failed to take off because the families of persons allegedly killed or summarily executed agreed to negotiate an out-of-court settlement usually in the form of payment of undisclosed sums of money as compensation. It is logically impossible for the government to secure a verdict of conviction in the absence of able and willing witnesses. The CHR reported that its efforts were most often hampered by the lack of cooperation and support from concerned families and witnesses. The Philippine Government has addressed the concerns affecting intimidated witnesses with the implementation of the DOJ witness protection program to encourage them to come forward and testify.

583. The due process clause of the Philippine Constitution is seen to have worked two ways: positively, as it prevented undue filing of alleged HRVs cases, be they against a military or civilian; and, negatively, as it made difficult to secure a verdict of conviction due to strict evidentiary requirements.

584. As indicated in the Initial Report, the existence of the insurgency problem would continue to adversely affect government efforts to promote and protect human rights in the country. It was felt that in containing insurgency and combating criminality, the Philippine Government needed to redouble its efforts to train and educate the military and the law enforcement authorities in the matter of safeguarding human rights. It also needed to put in place measures to boost their morale, welfare and efficiency as protectors of peace and security in the community. For this reason, the efforts undertaken by past and incumbent administrations are geared toward socio-economic reforms and poverty alleviation aimed at enhancing political stability and national unity.

585. This Report wishes to raise the issue as to whether it is appropriate to label at the outset an offense committed, i.e., murder, homicide and extra-judicial execution, as human rights violation or a common crime. It is noted that the figures given by the CHR and other concerned agencies lumped together the reported cases of murder, homicide and execution. The Philippine Government believes that two factors, or either of these two factors, must first be proved before a seemingly conclusive “labeling” is made, to wit: the motive behind an alleged extra-judicial execution should first be determined and or whether it was committed while in the custody of law enforcement authorities (during arrest, investigation or detention).

586. Thus, this Report will endeavor to examine the motivations why a member of the uniformed force who has sworn to protect and preserve the right to life might resort to extra-judicial killing. Ruling out the element of personal gain, one possible reason might be the apprehension on the part of a police officer to fail to secure the conviction of a suspect or accused person who, in the face of a strong suspicion of guilt, there is not enough evidence gathered to prove his guilt beyond reasonable doubt. The police officer would then reason out that the only way to prevent the suspect from posing danger to society is to summarily execute him. What seems to emerge is the picture of a law enforcement officer who, due to over-zealousness in the performance of his duties against lawless elements or perceived enemies of government, willingly takes extra-legal measures to achieve a satisfactory result to his organization's objectives.

587. There is thus a need to differentiate between a killing in the hands of law enforcement authorities in the course of the performance of their duties and one that is committed for personal ends. In the former, the identified perpetrator would most likely justify the killing by claiming that the prisoner or accused person was attempting to escape or to put up a fight, thereby prompting the former to open fire in order to prevent either of the two possible incidents to materialize. It is therefore only during the court trial when a certain offense can be classified as a HRV or not. In other words, in coming up with statistics it is best to classify murder or homicide (except for alleged massacres or mass killings) as HRV attributed to members of the military or to the law enforcement agencies as tentative until decided upon by the Court.

588. In 1990, concerned local human rights groups brought to the attention of the PHRC the murder of a RTC judge and his friend who was a member of the municipal council. the Report pointed to two military captains, an enlisted soldier and a civilian as principals in the commission of the crime, suspecting that the double murder was due to the pro-left, thus, anti-government, stand of the judge. The PHRC prosecutor who handled the case reported several years later that only the accused civilian was convicted of the double murder charge and that there was nothing in the prosecution evidence to prove the premature allegation of the complaining victims that the motive of the killing was the political belief of the slain judge.

589. In the same manner, any killing or execution allegedly done by vigilantes or civilian self-help groups should be tentatively listed as a common crime for which they should be held liable before the courts. Ordinary citizens, including vigilantes, are allowed by law to make a citizen's arrest but they are to immediately turn over the arrested person to law enforcement authorities for proper disposition. If in the course thereof, the arresting civilian killed the arrested person because the latter was trying to escape or that the former was simply defending himself from the attack of the latter, the arresting person should not be at the outset accused of extra-judicial execution pending determination by the proper court.

#### **B. Article 7 (Prohibition of torture or cruel, inhuman or degrading treatment and punishment)**

590. While reiterating the information provided in the Initial Report, the Philippine Government wishes to emphasize that the practice of torture or cruel, inhuman, or degrading treatment or punishment is prohibited and penalized under Article III, Section 12(2) of

the 1987 Constitution. It states that no *torture*, force, violence, threat, intimidations, or any other means which vitiate the free will shall be used against any person under investigation for the commission of an offense. The information in this section should be read with Article 9 in this Report.

591. Philippine policy also prohibits any person from being subjected without his free consent to medical or scientific experimentation.

592. During the period under review, CHR, AFP and PNP records all showed a declining trend in the reported incidence of torture. From 1988 to 1997, AFP data listed a total of 36 cases of torture, 64 cases of harassment, 20 cases of grave threat, 8 cases of rape, 68 cases of physical injury, 14 cases of arson, 8 cases of looting, 4 cases of mauling and 1 alleged indiscriminate firing. For the period PNP data showed that from 1993 to 1998 only one case of alleged torture was filed in court; while for the period 1989 to 1997, CHR received a total of 67 cases of torture.

593. Based on case records, torture was allegedly resorted to by the military for the following reasons: to extract information on the whereabouts of NPA rebels; confessions of membership in the NPA organization; for being sympathetic to the NPA cause by providing assistance; and / or to coerce alleged victims to become members of paramilitary troops/CAFGU or act as guides in search of NPA hideouts. In other cases, instead of employing torture, military troops allegedly looted and burned houses and properties in order to extract the required information or secure their cooperation. Torture was also allegedly employed by the police to extract extra-judicial confessions from arrested persons and to coerce them to cooperate in an investigation.

## **1) Measures to Prevent Torture**

594. The Philippine Government undertook to implement legislative, administrative and other measures aimed at preventing torture and ensuring prompt, impartial and thorough investigation of allegations of torture against the police and the military.

### **1-a) RA No. 7438**

595. During a congressional study on the law on arrest, a retired SC Justice pointed out that a great number of persons eventually taken into custody to answer criminal charges were not legally arrested but were simply “invited.” Not having been arrested, these individuals could not claim protection under the law on arrest. From the moment of “invitation” until the actual booking and preparation of the arrest report, there was *no dividing line between a general inquiry and a custodial investigation* focusing upon the invited person as the one particular suspect.

596. To address this irregularity, Congress enacted RA 7438, or An Act Defining Certain Rights of Person Arrested, Detained or under Custodial Investigations as well as the Duties of the Arresting, Detaining and Investigating Officers and Provides Penalties Thereof (07 July 1992). (Annex 17: RA 7438) Section 1 of the Act declares that it is the policy of the State to value the dignity of every human being and guarantee full respect for human rights. The law does not differentiate between an “invited” person and an arrested person, therefore entitles every person the same rights.

597. As used in the Act, custodial investigation (that is, an investigation conducted while a suspect is in detention following his arrest without warrant) includes the practice of issuing an “invitation” to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the “inviting” officer for any violation of law. As many acts of torture were reportedly committed during custodial investigation, RA 7438 reiterates the constitutional rights of a person under investigation of an offense, or the so-called *custodial rights*, namely, the rights to remain silent and to have a competent and independent counsel preferably of his own choice, and to be informed of these rights (Art. III, Sec 12(1), 1987 Constitution).

598. Section 2 prescribes procedural safeguards to ensure protection of the constitutional rights of persons arrested, detained or under custodial investigation, thus:

- He shall at all times be assisted by counsel;
- The concerned public officer or employee, or anyone acting under his order or in his place, shall inform such person, in a language known and understood by him, of his custodial rights;
- The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumb-marked if such person does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation report shall be null and void and of no effect whatsoever;
- Any extra-judicial confession made by such person shall be in writing and signed by him in the presence of his counsel or in the latter’s absence, upon a valid waiver, and in the presence of any of the parents, older brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extra-judicial confession shall be inadmissible as evidence in any proceeding;
- Any waiver by such person shall be in writing and signed by him in the presence of his counsel; otherwise, such waiver shall be null and void and of no effect;
- Such person shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national NGO duly accredited by the CHR or by any international NGO accredited by the Office of the President. The person’s “immediate family” shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, guardian or ward;

- The provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape.

599. Section 3 provides that an assisting counsel is any lawyer, except those directly affected by the case, those charged with conducting preliminary investigation or with the prosecution of crimes. In the absence of any lawyer, no custodial investigation shall be conducted and the suspected person can only be legally detained by the investigating officer for the allowable period provided for in Article 125 of the RPC, or the so-called “12-18-36 hours” (as per amendment under EO 272 dated 25 July 1987).

600. Art 125 provides that a public officer or employee who shall detain any person for some legal ground should deliver such person to the proper judicial authorities (i.e., Supreme Court and such inferior courts as may be established by law) within the period of: 12 hours for crimes or offenses punishable by light penalties or their equivalent, like *arresto menor*, public censure; 18 hours for crimes or offenses punishable by correctional penalties or their equivalent, like *prision correccional*, *arresto mayor*, *destierro*; and, 36 hours for crimes or offenses punishable by afflictive or capital penalties or their equivalent, like death penalty, *reclusion perpetua*, *reclusion temporal*, *prision mayor*.

601. Section 4 provides that any person who obstructs, prevents or prohibits the person arrested, detained or under custodial investigation of his visitorial rights mentioned in Section 2 at any hour of the day or, in urgent cases, of the night, shall suffer the penalty of imprisonment of not less than four years nor more than six years, and a fine of Php4,000.00.

602. Further, it provides that any arresting or investigating officer or employee who fails to inform such person shall be fined Php6,000 or face a penalty of imprisonment of not less than eight years but not more than ten years or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a similar offense.

603. Significantly, the visitorial rights given to a person detained, arrested or under custodial investigation makes easier the detection of signs of torture like fresh marks on the body, or, the visitorial rights of the detained person may prevent the possibility of the commission of torture. The strict requirements for the execution of extra-judicial confessions help avoid the influence of threat or torture.

604. But RA 7438 also provides safeguards for law enforcement authorities against false accusations of torture. An arrested person who signed an extra-judicial confession in the presence of his lawyer may not successfully later recant his confession by alleging that he was tortured into admitting his guilt.

### **1-b) Relevant Jurisprudence**

605. In the case of *People vs. Barlis* (231 SCRA) the SC ruled that the right to counsel during custodial investigation is guaranteed merely to preclude the slightest coercion as would lead the accused to admit something false, not to prevent him from voluntarily telling the truth. In



People vs. Ramon Bolanos (3 July 1992, 211 SCRA 262), the SC held that extra-judicial confession given by the accused during custodial investigation and without assistance of counsel is inadmissible in evidence. Being already under custodial investigation while on board the police patrol jeep on the way to the police station where formal investigation may have been conducted, the appellant should have been informed of his constitutional rights to remain silent.

606. In People vs. Jovito Tujon, et. al., (19 Nov 1992, 215 SCRA 559), the petitioners allegedly confessed to the commission of the crime during a custodial investigation. In the said extra-judicial confessions that were conducted separately, both accused were reportedly apprised of their constitutional rights. The prosecutor in charge of the case testified that, when the two accused were brought to his office for investigation, he asked the accused if the statements given to the police were freely given and they answered in the affirmative. He then let them affix anew their respective signatures on the said statement in his presence.

607. The Court noted that the interrogation was made in the absence of counsel *de parte* or *de officio* and the waiver of counsel, if made at all, was not made with the assistance of counsel as required. While the right to counsel may be waived, such waiver must be done voluntarily, knowingly, intelligently, and made (in writing) in the presence of the lawyer of the accused. If the records do not show that the accused was assisted by counsel in making his waiver, this defect nullifies and renders his confession inadmissible in evidence. Extra-judicial confessions taken without the assistance of counsel is inadmissible in evidence.

608. In People vs. Samontanez (04 Dec 2000, 837 SCRA 346), the SC held that in the absence of a valid waiver, any confession obtained from the accused during the police custodial investigation relative to the crime, including any other evidence secured by virtue of the said confession, is inadmissible in evidence even if the same was not objected to during the trial by the counsel for the accused.

#### **1-b) Visitation of Detainees by Private Physicians and Other Health Personnel**

609. As indicated in the Initial Report, the CHR issued Guidelines on Visitation and the Conduct of Investigation, Arrest, Detention and Related Operations (6 May 1988), which gives non-government medical personnel (private physicians, dentists, nurses, social workers, physical therapists and psychologists) access to visit and conduct an independent physical and medical examination of detainees, but subject to its implementing rules and regulations. This privilege enables a detainee to make known any acts of *torture* inflicted on him for independent verification by any doctor of his choice.

610. To ensure the urgent reporting of any incidence of torture, a MOA (10 Dec 1990) was forged by the DFA, DILG, DOH, DND, AFP, PNP, PAHRA and MAG to facilitate access by medical personnel to detained persons. Requirements for the visit are as follows: physicians and other health personnel must submit two photocopies of their IDs on or before the visit for counter-checking; the written consent or confirmation of the detainee that he/she desires treatment by a private physician since all expenses incurred as a consequence thereof shall be borne by the requesting detainee. The MOA also allows the conduct of exhumations and autopsies by independent forensic experts from government and NGOs. The representatives of signatory agencies may participate therein as observers.

611. Furthermore, under the Joint DND-DILG Circular No. 2-91 (2 Dec 1991) family members, relatives, friends, legal counsels, private physicians of detainees or accused persons are granted free access to the detention center or jail where the detainees are held, but subject to existing laws and corresponding AFP-PNP policy.

### **1-c) AFP/PNP Rules of Engagement and Guidelines**

612. AFP, as well as PNP, members are enjoined to respect the right against torture of dissidents captured during an armed encounter. The military is required to turn over captured dissidents to the police for proper disposition within the period allowed by law. As a matter of procedure, the police require that documents turned over include a medical certificate attesting to the physical and mental condition of the arrested person for the entire period of military custody.

613. Under the principle of command responsibility, it is deemed easier for the alleged victims of torture by military forces to report such violations to the provincial or regional commander. Allegations of looting or burning of houses and properties may also be investigated by the military authorities and independently by the CHR. However, there were claims that alleged victims were discouraged from reporting the incidents for fear of a possible military retaliation.

614. The AFP ROE for Internal Security Operations Campaign Plan (10 Aug 1998) provides that: military personnel shall respect the HR of both victims and perpetrators at all times and under any circumstance; arrest during the conduct of operations must be effected pursuant to existing laws; and, no violence or unnecessary force shall be used in making an arrest, and the person arrested not subjected to any greater restraint than is necessary for his detention.

615. AFP CS MC dated 17 Nov 1998 specifies the rules for the conduct of operations, attack, defense, movements, small unit operations, and indirect fire support guidelines. It strictly prohibits any action or decision that would result in unnecessary destruction of life and property of civilians in areas where military operations are underway. Subsection (d) "Respect for Human Rights", under Section D (Crisis Situation), of the Rules also provides "in all these actions in any situation, all AFP personnel shall respect the HR of the victims and the perpetrators." Command responsibility is stressed and there is no exception in, or justification for, committing torture even if there is an order by a superior officer.

616. The PNP Police Operations Procedure (26 June 1997) enjoins strict observance of HR at all times by all PNP members, especially in the conduct of police operations, so as to preclude unnecessary or excessive use of force, which on occasion had resulted in fatalities. It provides that: 1) under any circumstance, the use of force, including firearms, is justifiable only in self-defense and defense of stranger and only as a last resort when all other peaceful and non-violent means have been exhausted; 2) whenever resorted to, only necessary and reasonable force sufficient to employ self-defense, defense of a stranger or overcome the clear and imminent danger posed or resistance being put up by a malefactor or group shall be applied; 3) a reasonable force to neutralize the vehicle and resistance of the suspects is sufficient; and, 4) no violence or unnecessary force shall be used in making an arrest, and the person arrested shall not be subject to any greater restraint than is necessary for his detention.

**1-d) Reforms in Criminal Investigation and Detection Methods**

617. The enactment of RA 7438 helped speed up efforts of the PNP to ensure that police investigators (or detectives) are given proper training for their work. In evidence gathering, detectives are trained not to rely on extra-judicial confessions but on systematic and scientific investigation. The PNP issued Guidelines for the Conduct of the Scene of Crime Operations (SOCO) to help improve scientific crime detection and investigation and ensure the preservation of the crime scene to allow proper searching, collection, care, handling, preservation and transport of pieces of evidence from thereon to the PNP Crime Laboratory until these reach the court for final disposition.

618. In 1995, the PNP Crime Laboratory initiated the acquisition of new and modern equipment, while the PNP was updating a special training program for its personnel under the Criminal Investigation and Detective Development Course. The course has a HR Module (24 hours) that includes a dissection of RA 7438 as well as the rights of the child and international humanitarian law.

**1-e) Human Rights Education and Training**

619. Part I of this Report enumerated the contents of the training and education programs for the military and the police, particularly for the new entrants or recruits. It was hoped that the inclusion of HR as a subject, with particular emphasis on the right against torture, would strengthen and reinforce respect and observance of HR.

**1-f) Compensation for Victims of Torture**

620. Article III, Section 12(4) of the 1987 Constitution provides that the law shall provide for penal and civil sanctions for violations of human rights, as well as compensation to and rehabilitation of victims of torture or similar practices and their families. The enactment in 1991 of RA 7309, or An Act Creating the Board of Claims Under the DOJ for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes (see also Articles 9 and 14), assures the grant of financial assistance to victims of unjust imprisonment or detention and victims of violent crimes. The Act states that violent crimes include rape and likewise refer to offenses made or committed with malice resulting in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or committed with torture, cruelty or barbarity.

621. For victims of violent crimes, the maximum amount of claim the Board may approve shall not exceed Ten Thousand Pesos (PHP10,000) or the amount necessary to reimburse the claimant the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to the injury, whichever is lower. This is without prejudice to the right of the claimant to seek other remedies under existing laws. Also explained in Part I of this Report, victims of torture may also claim financial assistance from the CHR, through its financial assistance program.

**1-g) RA No. 8049**

622. RA 8049, or An Act Regulating Hazing and Other Forms of Initiation Rites in Fraternities, Sororities and Organizations of 1995, regulates and penalizes this method of torture often employed by leaders of college or university organizations to gauge the physical, mental and emotional determination of neophytes to join such organizations.

623. Hazing is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury. The term organization shall include any club of the AFP, PNP, Philippine Military Academy (PMA) or officer and cadet corps of the Citizen's Military Training (CMT) or Citizen's Army Training (CAT).

624. The person or persons who participated in hazing shall suffer the penalty of (a) *reclusion perpetua* if death, rape, sodomy or mutilation results therefrom; (b) *reclusion temporal* in the maximum period if, as a consequence of the hazing, the victim shall become insane, imbecile, impotent or blind; (c) *reclusion temporal* in its medium period if in consequence of the hazing, the victim lost the use of speech or the power to hear or to smell, or lost an eye, hand, foot, arm or leg or became incapacitated for the activity or work in which he was habitually engaged; (d) *reclusion temporal* in its minimum period if in consequence of the hazing, the victim becomes deformed, disabled or incapacitated for the activity or work in which he was habitually engaged for more than 90 days; (e) *prision mayor* in its maximum period if the victim becomes ill or incapacitated for more than 30 days; (f) *prision mayor* in its medium period if he becomes ill or incapacitated for 10 days or more or if the injury sustained shall require medical attendance for the same period; (g) *prision mayor* in its minimum period if he becomes ill or incapacitated for 1-9 days or if his injury requires medical attendance for the same period; and (h) *prision correccional* in its maximum period for less serious physical injuries.

**2) Recommendations of the UN Special Rapporteur on Torture**

625. The following recommendations offered by the Special Rapporteur on Torture have been implemented in the Philippines by virtue of the provisions of the 1987 Constitution:

- Abolition of secret places of detention and the imposition of penalty for any law enforcement official who maintains an unofficial place of detention and conducts interrogations in such places. Any evidence obtained from a detained or accused person during investigation in an undisclosed location and in the absence of his/her own counsel shall be inadmissible in court.
- Providing penalty for incommunicado detention and allowing detainees to communicate with relatives and secure the services of a counsel of their own choice within 24 hours of detention. Arrested persons are even presented immediately before the tri-media during which they could presumably disclose any alleged torture that was perpetrated upon their persons. Pictures of the arrested

persons have been printed also in newspapers or splashed across television screens in full view of the public, as may be possible to see discernible signs of torture during such public display.

- However, in response to the calls from various sectors, a bill is now being deliberated upon in both Houses of Congress providing for the prohibition of such practice, with the aim of preserving the dignity of the arrested person and in order that he does not run the risk of being tried by publicity.
- The CHR is mandated to carry out inspection of places of detention, including prisons. CHR investigators are granted ready access to these places and can request for a private audience with prisoners and detainees. Copies of reports of these visits were made available to the media.
- Military personnel effecting an arrest are required to turn over the arrested persons to the nearest police station for proper disposition within the 12-18-36 hour period with an accompanying medical certificate. As a police SOP, a detainee is examined by an independent physician before transfer to another place of detention while awaiting trial.
- RA 7438 requires interrogating officer/s, to submit a written report on the entire custodial investigation. The arrested person's *conforme* shall be affixed to the report in the presence of his / her lawyer.
- The detainee or relative or lawyer can file an administrative and / or criminal complaint on allegations of torture and / or arbitrary detention before appropriate civilian quasi-judicial bodies including the CHR. The CHR is mandated to investigate any allegation and, if according to its judgment, a HRV was perpetrated, to compensate the victim even without waiting for the court to decide on the case. A person suspected of torture or severe maltreatment is liable for prosecution under the RPC. There are no laws or amnesty provisions that grant convicted torturers exemptions from criminal responsibility.
- The CHR regularly provides training courses for police and military personnel. All modules emphasize respect for the dignity of arrested persons and their right against being tortured and harmed in any way. These also include instructions on the Code of Conduct for Law Enforcement Officials, the Standard Minimum Rules for the Treatment of Prisoners, and the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.

### **3) Factors and Difficulties Affecting the Implementation of the Right Against Torture**

626. The above measures, including the repeal of repressive laws and the strengthening of the witness protection program, not only prohibit and help prevent torture. They also serve to foster increasing popular confidence in the efficacy of the justice system and in the government's

commitment and resolve to investigate alleged HRVs and punish the alleged perpetrators. If full use is made of these measures, the difficulties encountered in the past in investigating and proving torture would in some measure be surmounted.

627. In a case still pending automatic review by the SC, five accused were convicted and meted out the death penalty by the lower court for the murder in early 1996 of PC Col. Rolando Abadilla, who was reputed to be one of the henchmen of the late deposed President Marcos. The accused averred that they were tortured by the arresting police operatives. In their defense, they denied that they committed the crime and claimed that they were just picked up by police elements days after the commission of the crime and then detained incommunicado for more than one week, during which they were subjected to many forms of bodily and mental torture and made to sign an extra-judicial confession. To strengthen their claim of torture, the suspects filed a separate case of physical injuries against their captors which until now has remained pending for resolution by the prosecutor's office. The police operatives said that the injuries were self-inflicted in order to justify the suspects' claim that their arrest was arbitrary. These conflicting claims may well be a matter of credibility to be weighed by the court, but the Filipino viewing public recalled that when the accused were presented to the media prior to the filing of the complaint before the prosecutor's office, there were very noticeable signs of physical injuries on the body of each of the accused.

628. One common difficulty torture victims encounter in filing a case is the alleged use of torture methods that bear no physical signs or indications of such treatment, e.g., by tying plastic bags over the heads to suffocate the alleged victim; by forcibly holding the head under water, including toilet bowl water; by applying electric shocks; and, by threatening the victim with rape, if female, and other physical punishment. To address this problem, the government would therefore need to upgrade the forensic capabilities of its medico-legal practitioners in investigation particularly HRVs, including torture, that result in death.

629. For a start, the CHR entered into a system of accreditation with funeral establishments to have better access to information on medico-legal cases. The CHR is optimistic that the system will provide aspiring forensic practitioners a decent training ground, and source of technically equipped practitioners in forensic science.

630. To date, the prevention of torture hinges on the inadmissibility of extra-judicial confession not duly executed. Congress has yet to deliberate on the floor pending bills that propose to codify the various acts of torture and provide corresponding penalties. These bills define torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by, or at the instigation of a public official, on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed, or intimidating him or other persons.

631. The bills include, but are not limited to, the following: physical torture (beatings, electric shocks, cigarette burning, inducing near suffocation, being tied or forced to assume fixed bodily position, administration of drugs, such as truth serum, to induce confession or for other purposes, and other forms of cruel, inhuman or degrading physical treatment or punishment); and, mental torture (blindfolding, parading the victim in public places, confining him in cells put up in public places, shaving his head or putting marks on his body against his will, threatening the victim or

his family with bodily harm, execution or other wrongful acts, maltreating a member of the victim's family, and other forms of cruel, inhuman or degrading mental treatment or punishment).

632. Hereunder among other things, are proposed provisions of pending bills:

- A commanding officer or equivalent senior officer shall be held liable for any acts of omission or negligence on his part that may have led to overt acts of torture by his subordinates.
- Acts of torture that result in death shall be considered as murder and punishable as such. Mental torture shall be punishable with imprisonment from 6 months to 1 year or a fine of not less than PhP2,000 or both, at the discretion of the court. A public official or employee found guilty of torture shall be permanently disqualified from holding any appointive or elective position in the government. These penalties shall be without prejudice to other legal remedies available to the victim under the law.
- A victim of torture shall be entitled to compensation as provided for under the Board of Claims and other financial relief programs that may be available to him.

### **C. Article 8 (Prohibition of slavery and slavery-like practices)**

633. The Philippine Government wishes to reiterate the information given in the Initial Report that under Article III, Section 18(2) the 1987 Constitution "No involuntary servitude in any form shall exist except as a punishment for a crime whereof a party shall have been duly convicted."

634. Reference is also made to the Philippine Reports on the implementation of ILO Convention No. 105 (Abolition of Forced Labor), which was submitted to the ILO as a result of Direct Requests in the years 1989 and 1991; Observation in 1993 and 1995 *bis*; and Philippine Reports ending 30 June 1995 and August 1997.

635. The reports contained information on the following:

- Reiteration by the Philippine Government that forced or compulsory labor is not imposed, nor imposable as a penalty for any crimes under Philippine laws, and that prison labor is primarily intended as part of the system of reform and rehabilitation and an opportunity for the prisoner to lead a productive and useful life.
- Criminal sanctions imposed under the RPC of the crimes of slavery, exploitation of child labor and services rendered under compulsion in payment of debt.
- Non-adherence to, and penalization by the Philippine Government of, the use of any form of forced or compulsory labor as a method of mobilizing and using labor discipline; and as a means of racial, social, national or religious discrimination.
- Judicial decisions involving questions of principle related to the application of the ILO Convention on the Abolition of Forced Labor.

### **D. Article 9 (Right to liberty and security of person)**

636. Reference is made to the provisions and measures already mentioned in the Initial Report (CCPR/C/50/Add.1). This Report wishes to reiterate that the right to liberty and security of person is protected in the Philippines in the manner discussed hereunder.

#### **1) Safeguards to Ensure Lawful Arrests and Detention**

637. Philippine laws on arrest are clearly defined by the SC in its numerous rulings. A person is considered to be taken into custody of law by a law enforcement officer when he is deprived of his freedom of action in any significant way (*Mendoza vs. CFI-Q.C.*, 27 June 1973, 51 SCRA 369). The application of actual force, manual touching of the body, physical restraint or a formal declaration of arrest is not required. It is enough that there be an intent on the part of one of the parties to arrest the other and an intent on the part of the other to submit, under the belief and impression that submission is necessary (*Sanchez vs. Demetriou*, 227 SCRA 627, 09 Nov 1993). No violence or unnecessary force shall be used in making arrest (*US vs. Campo*, 06 Feb 1908, 10 Phil. 97). Resorting to dangerous means in effecting arrest is not allowed (*Torres vs. Sandiganbayan*, 28 July 1986, 143 SCRA 139). Only necessary restraint is necessary. A peace officer cannot claim exemption from criminal liability if he uses unnecessary force or violence in making an arrest (*People vs. Oanis*, 27 July 1943, 74 Phil. 257).

#### **1-a) Revised Rules of Court on Arrests**

638. In a petition for certiorari and prohibition in the case of *Posadas vs. Ombudsman* (29 Sept 2000, 388 SCRA 341), the SC held thus: In view of Article III, Section 2 of the 1897 Constitution, the rule is that no arrest may be made except by virtue of a warrant issued by a judge after examining the complainant and the witnesses he may produce and after finding probable cause to believe that the person to be arrested has committed the crime. The exceptions when an arrest may be made even without a warrant are provided in Rule 113, Section 5 of the Rules of Criminal Procedure which reads:

- When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- When an offense has in fact just been committed, and he has personal knowledge of the facts indicating that the person to be arrested has committed it; and
- When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

639. Effective 01 December 2000, paragraph 2 of the above rules has been amended to read as follows: When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it. In the *Posadas* case, the SC explained what constitutes “personal knowledge” on the part of the arresting officers in arrests without warrant as thus: “Personal knowledge” of facts must be



based upon “probable cause” which means an “actual belief or reasonable grounds of suspicion.” The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.

640. The SC succinctly reminded the arresting officers: “The rule, of course, is that a criminal prosecution cannot be enjoined. But as has been held, infinitely more important than conventional adherence to general rules of criminal procedure is respect for the citizen’s right to be free not only from arbitrary arrest and punishment but also from unwarranted and vexatious prosecution. x x x x We understand that the highly publicized death of Dennis Venturina caused a public clamor to bring to justice those responsible therefor. We also recognize the pressures faced by law enforcement agencies to effect immediate arrests and produce results without unnecessary delay. *But it must be remembered that the need to enforce the law could not be justified by sacrificing constitutional rights.*”

641. The High Court faulted the NBI (National Bureau of Investigation) agents for their inability to arrest the suspect. It said: If the NBI believed the information given to them by the supposed eyewitnesses, the NBI should have applied for a warrant before making the attempted arrest instead of taking the law into their own hands. (Annex 18: *Posadas vs. Ombudsman*)

642. The procedure for arrest by arresting officer with warrant of arrest is as follows:  
a) inform the person to be arrested of the cause of the arrest and the fact that a warrant has been issued for his arrest; b) show warrant of arrest when the person arrested so requires; c) may summon assistance of other persons to make arrest; d) may break into any building or enclosure to effect arrest and break out therefrom; e) deliver the person arrested to the nearest police station or jail; and f) inform the person arrested of his constitutional rights.

643. The procedure for warrantless arrest by arresting officer is as follows: a) inform the person to be arrested of his authority to arrest and the cause of arrest; b) may summon assistance of other persons to make arrest; c) may break into any building or enclosure to effect arrest or break out therefrom; d); and e) inform the persons arrested of his constitutional rights.

644. The procedure for warrantless arrest by a private individual (so-called citizen’s arrest) is as follows: a) inform the person to be arrested of his intention to arrest him and the cause of his arrest and deliver the person arrested to the nearest police station. Unlike the procedure for arrest by an arresting officer, a private individual: a) cannot summon assistance of other persons to make arrest, and b) cannot break into any building or enclosure to effect arrest.

645. In all the three procedures for arrest, informing the subject of arrest is not necessary in the following instances: a) the person to be arrested is engaged in the commission of an offense; or b) the person to be arrested is pursued immediately after the commission of an offense or after an escape; or c) the person to be arrested flees; or d) the person to be arrested forcibly resists before the person making the arrest has opportunity to inform him; or e) when giving of such information will imperil the arrest. Unlike the procedure for arrest by arresting officers, a private

individual cannot deliver the person arrested to the nearest police station or jail, cannot summon assistance of other persons to make arrest; and cannot break into any building or enclosure to effect arrest.

646. A detained person has the right to a speedy disposition of his case. As mentioned in the section on Torture, the allowable periods of detention of persons lawfully arrested without warrant of arrest is “12-18-36 hours” as provided in Article 125 of the RPC. The SC ruled that the means of communication as well as the hour of arrest and other circumstances, such as the time of surrender and the material possibility for the prosecutor to make the investigation and file in time the necessary information must be considered in determining the criminal liability of an officer detaining a person beyond the legal period (*Sayos vs. Chief of Police of Manila*, 12 May 1948, 80 Phil. 859). Local conditions, changes in the weather or the like are considered in determining the validity of detention of a suspect beyond the legal period (*US vs. Vicentillo* 18 Mar 1911, 19 Phil 118).

647. By way of summary of the rules: At the time a person is arrested, it shall be the duty of the arresting officer to inform him of the reason of the arrest, if any. He shall be informed of his constitutional rights to remain silent and to counsel, and that any statement he might make could be used against him. The person arrested shall have the right to communicate with his lawyer, or relative, or anyone he chooses by the most expedient means, e.g., telephone, letter, messenger. No custodial investigation shall be conducted unless it be in the presence of counsel engaged by the person arrested or by any person on his behalf. The right to counsel may be waived but the waiver shall be valid only when expressly made in writing in the presence of counsel. Any statement made in violation of the foregoing procedure shall be inadmissible in evidence.

648. Rule 113, Section 6 of the Revised Rules of Court, as revised by SC Administrative Circular No. 12-94 (1 October 1994) provides that an arrest may be made on any day and at any time of the day or night.

649. In addition to the above rules, NAPOLCOM Resolution No. 87-01 (19 March 1987) contained the following:

- Command responsibility is observed at all levels of command; he is responsible for the strictest adherence by his men to the laws that secure the rights of persons under custodial interrogation or preventive detention.
- The visitorial rights of a persons arrested, detained or under custodial investigation shall be subject to reasonable regulations and security which, when no secure visitor’s room is available, shall at least ensure that both visitors and visited shall be within sight but out of hearing distance of the guards.
- In all cases where injury to or death of the person arrested or invited occurs on the occasion of or in relation to an arrest or invitation by a police officer, the latter shall 1) Immediately place himself at the disposition of his Station Commander, who is not himself involved in such injury or death, and surrender any firearm he may have used or fired on the occasion of or during such arrest or investigation related to such arrest;

2) Within 24 hours from and after such incident of injury or death the arresting or investigating officer shall make a written report of the same to his immediate superior; 3) The arresting officer involved in the incident shall be placed under restriction while a mandatory summary investigation of the incident is undertaken to determine the existence of a violation of any law or prescribed police procedure for arrest; and, 4) The investigation shall be under the direction and control of the Station Commander of the police officer under restriction and shall be completed within 72 hours from the time of the incident.

- Invitations for questioning, whether accepted or not, and all arrests made shall be duly recorded within one hour from the time the same was made at the barangay office where the suspect was invited or arrested indicating the identity of the arresting/inviting officer, his station, the identity of the person arrested/invited and their destination.
- Such invitations shall be resorted to only when evidence exists to warrant the same and when the suspect voluntarily goes with the inviting officer. It is the primary duty of the arresting officer to inform or advise the next-of-kin or anyone specified by the invited or arrested person immediately upon his voluntary submission or arrest.

#### **1-b) DOJ Circular on John Doe Arrests**

650. DOJ Circular No. 50 on John Doe Arrests (29 Oct 1990) prohibits the issuance of general warrants in a “John Doe” information (indictment sheet).” The Circular drew attention to the practice of some prosecutors of filing information against persons who, apart from being merely identified as John Doe, are not particularly described to distinguish them or set them apart from other persons. This practice has resulted in situations where the names of persons who are subsequently arrested are substituted in place of the John Doe even though the evidence in the case records does not show any substantial identity between the former and the latter.

651. The Circular stresses that warrants of arrest against John Does, the witnesses against whom could not or would not identify them, is of the nature of general warrants and one of a class of writs long proscribed and anathematized as “totally subversive of the liberty of the subject” and is therefore held violative of the constitutional injunction that warrants of arrest shall particularly describe the person or persons to be seized.

652. The Circular thus prescribes, as a matter of policy, that whenever a complaint implicating a John Doe is filed, DOJ prosecutors are directed to (a) elicit from the witnesses other appropriate descriptions to particularly describe a John Doe, and, (b) place a new name in the information in lieu of a John Doe only when the description appearing in the sworn statement of a witness substantially tallies with the description of the person placed in John Doe’s stead.

#### **1-c) AFP Rules of Engagement**

653. As discussed in the section on Torture, the AFP Chief of Staff issued the AFP ROE for Internal Security Operations for armed engagements in the conduct of internal security operations. The AFP ROE mandates that all arrests be effected with respect for the HR of both

victims and perpetrators under any given circumstance and that they shall be effected pursuant to existing laws, and that the person arrested is not subjected to any greater restraint than is necessary for his detention.

#### **1-d) PNP Police Operations Procedure (ROE)**

654. The 1997 PNP ROE provides that in all arrests the provisions of the Rules of Court must be strictly observed in order to preserve the dignity, and protect the right, of the individual to be arrested. Unless dictated by grave urgency, an arrest shall not be carried out in the middle of the night and during Saturdays, Sundays or legal holidays, to give the suspect the opportunity to exercise his right to bail.

655. When arresting a motorized suspect/s, the siren/megaphone shall be used to warn the occupants to park their vehicle and give up peacefully. The arresting officer shall approach the person on foot with proper back up from his companions. The driver and the other suspects shall be requested to get out of the car with both hands visible to the apprehending officer.

#### **1-e) Guidelines for the Conduct of Saturation Drives and Checkpoints**

656. Police and military operations/campaigns against subversive or lawless elements took the form of saturation drives. As in the case of arrest, these operations were conducted to take a person/s into custody for the filing of appropriate charges, as well as to search for dangerous weapons or objects or materials used or taken in the course of or during the commission of a crime. Charges of HRVs, however, accompanied these drives which allegedly followed a common pattern, to wit: target areas of more than one residence, sometimes the whole village, would be cordoned-off by the police/military units; residents were scandalously roused from sleep by armed men in civilian clothes and without any means of identification and without search/arrest warrant; they were flushed out of their houses and lined up to be looked over and identified; they were herded within the cordoned-off area for purposes of making them strip to determine whether there were tattoo marks or other imagined marks which would supposedly lay the basis for a person's membership in a subversive organization; then their houses were subjected to search and seizures without civilian witnesses from the neighborhood; and, finally, they were arrested with on-the-spot beatings, interrogated, and tortured during detention.

657. To improve the conduct of these operations and prevent HRVs, a MOA forged by the CHR, DOJ, DND and DILG/PNP (19 Sept 1990) provides guidelines as follows:

- Saturation drives shall be conducted strictly in conformity with existing laws on arrest, search and seizure, and with due regard for HR, including those of other persons in the area.
- Saturation drives shall not be used to assault a person and his dignity but only to apprehend criminals and/or confiscate prohibited articles, and only when there is probable cause that a crime has been committed; actual arrests shall, whenever possible, be limited to the specific residences or areas where the suspects may be found, except in cases of hot pursuit.

- To prevent wanton and unreasonable invasion of privacy and liberty of an individual and the community, as well as to protect one's person, house, papers and effects, saturation drives shall be conducted only in specified areas, such as hide-outs of criminals and subversives who have pending cases in court and have not been brought into custody to answer for the commission of the offense; prostitution dens, lairs of prohibited drugs, and places where illegal gambling and other illegal activities proliferate.
- In all instances of saturation drives, the agents must be led by an officer of responsible and accountable position accompanied by any of the duly elected barangay officials of the area. The names of the persons arrested, the arresting officer and the reason for the arrest must be entered in the barangay docket. Whenever possible, the arresting officer shall furnish the barangay official with a certified copy of the extract of police blotter reflecting the name(s) of persons arrested and the properties taken during the saturation drives.
- During the conduct of saturation drives, law enforcement agents must not brandish their weapons and point indiscriminately at the residents; beating, mauling and maltreatment shall be avoided; when called for, only reasonable force may be allowed to protect the life or limb, or bring the prisoner into safe custody, or prevent violence, or resistance to arrest; or prevent the escape of the person to be arrested.
- Intrusions of residences and acts tantamount to invasion of privacy are strictly prohibited; saturation drives must be conducted in an orderly and disciplined manner, insuring that the dignity of the residents within is preserved; banging walls, kicking doors, herding half-naked men to assemble for examination of tattoo marks are especially prohibited.
- Personal properties, papers and other valuables shall not be taken without a search warrant, except dangerous weapons or articles that may be used as proof of the commission of an offense.
- Checkpoints shall only be established in red alert situations or when there is a need to arrest a criminal or a fugitive from justice; searches or arrests shall be conducted with civility and with due regard to the innocent passersby and commuters; checkpoints must be properly lighted and legible and clear signs exhibited to show that searches are being conducted; enforcement officers shall at all times be in uniform with their IDs and namecloth on.

658. DILG MC 91-003 (25 April 1991) regulates the establishment and operation of police checkpoints. Checkpoints shall be set up only in places where, during abnormal times when, there are actual plots to destabilize the government, or there is an alarming rise in lawlessness and violence which necessitates urgent State action to protect its existence. These checkpoints shall be conducted within the constitutional guarantee against unreasonable searches and seizure and with the least inconvenience, discomfort and unnecessary irritation to the citizens.

659. All the above guidelines and regulations are reiterated in the PNP POP. In addition, in the event that checkpoints or roadblocks are ignored and the motorists or suspects bump the roadblock in an attempt to elude arrest or avoid inspections, the team leader shall automatically contact the adjacent units to request them to conduct hot pursuit. Warning shots are not encouraged due to the confusion it can create to the driver and passenger of the vehicles.

660. In the case *Integrated Bar of the Philippines v. Hon. Ronaldo B. Zamora, et al.* (15 Aug 2000, 81 SCRA 338), the IBP filed a petition before the SC for the issuance of a temporary restraining order, seeking to nullify on constitutional grounds LOI 02/2000, which contained President Estrada's order commanding the deployment of the Philippine Marines to join the PNP in visibility patrols around the metropolis. The SC upheld the LOI by declaring that the deployment of the Marines does not constitute a breach of the civilian supremacy clause and constitutes permissible use of military assets for civilian law enforcement. Under the LOI, the Marines had limited participation. Real authority was not diverted from the local police, who were tasked to brief and orient the soldiers on police patrol procedures, to direct and manage their deployment as well as to provide the necessary equipment and render logistical support.

## **2) Rights of Persons Arrested, Detained or Under Custodial Investigation**

661. As mentioned in the section on Torture, RA 7438 reiterates the constitutional rights of a person under custodial investigation, or the so-called "custodial rights." In a long line of cases, the SC ruled that the detained person must be asked whether he wants to exercise these rights. These rights must be explained to him by the investigating officer. Recitation of these constitutional rights is not enough (*People vs. Flores*, 165 SCRA 71). While the rights of a person under custodial investigation may be waived, such waiver, to be valid, must be voluntarily, intelligently, with counsel's presence and assistance, knowingly, and the suspect yielded his consent to such waiver in writing *People vs. Rodriguez*, 205 SCRA 791).

662. An arrested or detained person has the right to compensation under the DOJ Board of Claims if his / her arrest or detention has been determined by the court to be unlawful and the arresting officer may be held liable therefor. (Please see section on Compensation for Victims of HRVs).

## **3) Measures to Prevent Enforced or Involuntary Disappearances**

663. There were incidents involving detained persons whose release from custody was evidenced by documents but who reportedly immediately disappeared and remained unheard of. To prevent the recurrence of this kind of disappearance and in order to dispel any suspicion of the release being a mere simulation and, further, to clearly establish responsibility for any improper release of such persons, a MOA on the Procedures to be Followed in the Release from Custody of Detainees or Accused Persons was forged by the CHR, DND, DILG and DOJ (18 June 1991).

664. The release of the detainee shall be witnessed by his spouse or adult children, or if he is unmarried or any of the foregoing are not available, by his parents, grandparents, legal guardian or other adult relatives with the detained person's approval. If none of the above persons are

available or if the person being released so chooses, his release shall be witnessed by his counsel or attorney engaged by him or his relatives or appointed by the court or by a person he so chooses. In the event none is available, the release must be witnessed by a representative of the CHR.

665. In all cases, the release shall be witnessed by the prosecutor having jurisdiction over the area of detention or confinement or the judicial district where the person has been charged, or by a representative of the CHR, the parish priest, pastor, imam, or religious leader or by a well-known and respected member of the community. If the person to be released is a minor who has no parents or relatives, he / she shall be released to a representative of the DSWD or any charitable institution for the purpose of giving shelter and rehabilitation to the minor.

666. All releases must be evidenced by a document that states clearly the name of the person, the exact date and time of his/her release, the printed name and signature of the person or persons receiving his/her living body indicating relationship to the person being released, if any, and the custodian, all of whom must sign over the printed names in the document, with specific designation of their position, rank, unit or office, as the case may be. The prison warden, jail warden, precinct commander, detachment headquarters commander or the head of the unit or office, or any authorized person having custody of the person being released shall maintain within the premises a separate official log book (notwithstanding the existence of a police blotter or any other official logbook) that shall indicate the names of all persons arrested or brought in and detained, the name of the arresting person or officer, the time and date of his arrival at the premises of detention, the reason for his detention, and the date and time of his release. Such logbook shall be open for perusal by the relatives, lawyer, friends and the general public.

667. The burden to prove compliance with prescribed rules regarding the release of a detainee who disappeared shall be on his captor or custodian. Ensuring compliance thus rests upon the jail warden, precinct commander, detachment headquarters commander, camp commander or the head of the unit or office, or any authorized person having custody of the detainee. Administrative and penal sanctions are provided for their failure to do so.

668. Presidential MO 88 (8 Feb 1993) created an inter-agency Fact-Finding Committee on Involuntary Missing Persons, chaired by the CHR and which determines the NGO representation. The members are the following agencies: DOJ, DND, DILG, AFP, PNP and NBI. The Committee is tasked to dig mass graves and to document scientific explanations surrounding each missing person in order to preserve evidence of identity and causes of death.

669. The incidence of disappearances in the Philippines led to the formation in 1985 of a group called FIND by eight families whose relatives were the first victims of involuntary disappearance in 1975. FIND sought to play an active role in the search for the missing persons and to rehabilitate the families and relatives of the missing persons from the trauma of loss. Congress initiated the appropriation of PhP4 million for FIND's Search and Welfare Program that included financial assistance for the families of missing persons. Upon the effectivity of the disbursement of funds on 1 January 1993, the amount was channeled to FIND and any other similarly oriented NGO through the CHR.

670. Out of the PhP4 million 1993 budget allocation for the disappeared families welfare program, the CHR approved more than 68 claims for financial assistance to the heirs of FIND. The CHR also provided Rehabilitation Program, as well as Skills Training Program for the benefit of the families and surviving heirs of the disappeared victims. Moreover, a MOA was signed by the CHR and FIND for the establishment of cooperatives for which the CHR approved the release of PhP614,000.

#### 4) Compensation for Victims of Human Rights Violations

671. Article III, Section 12(4) of the 1987 Constitution states that the “law shall provide for penal and civil sanctions for violations of human rights as well as compensation to and rehabilitation of victims of torture or similar practices, and their families”. Compensation for a wider range of HRVs is provided for in Article XIII, Section 18(6), which states that one of the functions of the CHR is to “recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families.”

672. As outlined in Part I of this Report, the CHR, through its Financial Assistance Program and Rehabilitation and Assistance Program, gives financial assistance to victims of HRVs to help them and their families cope with their immediate needs.

673. With the enactment of RA 7309 creating the Board of Claims under the DOJ (3 April 1991). (Annex 23: RA 7309 and Implementing Rules and Regulations), victims or their heirs are accorded the proper venue for seeking compensation, through an expeditious and less tedious administrative procedure, for the wrong they have unjustly suffered. The compensation is minimal, but it nonetheless shows the genuine concern of the State for these victims. Several bills are pending in Congress which seek to amend RA 7309 in order to expand and strengthen the compensation program of the government.

674. Section 3 provides that any person who was unjustly detained and released without being charged or any victim of arbitrary or illegal detention by the authorities as defined in the RPC under a final judgment of the court or any victim of a violent crime may file claims for compensation before the Board.

675. Arbitrary detention as defined in Article 124 of the RPC occurs when any public officer or employee detains a person without legal grounds for which he / she shall suffer the following penalties: *arresto mayor* in its maximum period to *prision correccional* in its minimum periods, if the detention has not exceeded 3 days; *prision correccional* in its medium and maximum periods, if the detention has continued more than 3 but not more than 15 days; *prision mayor*, if the detention has continued for more than 15 days but not more than 6 months; *reclusion temporal*, if the detention shall have exceeded 6 months. Illegal detention occurs when a person arrested without a warrant is detained beyond the prescribed “12-18-36” period in Article 125 of the RPC.

676. From April 1992, when the Board of Claims became operational, up to December 2000, the Board received a total of 13,320 applications, of which 9,270 were acted upon and approved. The majority of approved applications were lodged by victims of violent crimes (9,151) while



only 119 approved applications were lodged by persons who were unjustly accused. The Board disbursed a total of PhP89,012,730.10 million during this entire period. (Annex 20: Board of Claims Accomplishment Report, Y1992 - 2000).

677. In the case of *People vs. Burgos* (4 September 1986, 144 SCRA 1), the Supreme Court recognized the general rule that all arrests must be made under a judicial warrant. The Court held that, while there are certain exigent situations that would exempt the requirement of a warrant, such exceptions must be strictly construed. If the warrantless arrest is “unlawful at the moment it is made, generally nothing happened or is discovered afterward can make it lawful” (doctrine of the fruit of the poisoned tree). The ruling also stated, “courts indulge every reasonable presumption against waiver of fundamental constitutional rights and do not presume acquiescence in the loss of fundamental rights.”

678. Certain SC decisions involving the right to liberty and security of persons are highlighted in this Report, not only because these decisions reflect the collective interpretation of the members of the judicial branch of government on how these rights should be applied in practice and in the context of the prevailing conditions of the times, but also because of the criticisms which they generated from HR groups.

679. *Valmonte v. De Villa* (29 Sept 1989 178 SCRA 211) on the issue of checkpoints which result in warrantless searches, seizures and arrest. Pursuant to AFP CS LOI 02/87, the National Capital Region District Command was activated on 20 January 1987 with the mission of conducting security operations in the area in order to maintain peace and order, establish an effective territorial defense and provide an atmosphere conducive to the development of the region. As part of its duty, the NCRDC installed checkpoints in various parts of Valenzuela, Metro Manila.

680. Petitioners sought the declaration of these checkpoints as unconstitutional and the banning and dismantling of the same or, as an alternative, the formulation of guidelines in the implementation of checkpoints for the protection of the people. They averred that the checkpoints had caused worries to the residents of Valenzuela because of harassment considering that they were being subjected to regular searches and check-ups without the benefit of a search warrant or a court order, and their safety placed at the arbitrary, capricious and whimsical disposition of soldiers manning them. Allegedly, the installation of the checkpoints gave respondents a blanket authority to make warrantless searches and seizures, in violation of the Constitution and that instances of harassment have occurred.

681. The SC held that petitioners’ concern for their safety and apprehension at being harassed by the military were not sufficient grounds to declare the checkpoints *per se* as illegal. No proof had been presented showing that in the course of their routine checks the military committed specific violations of the right against unlawful search and seizure or other rights. Individual petitioners who did not allege that any of their rights had been violated were not qualified to bring the action as real parties in interest. The constitutional right against unreasonable searches and seizures is personal and can be invoked only by those whose rights have been, or threatened to be, infringed.

682. Petitioner's general allegation to the effect that he was stopped and searched without a search warrant by the military manning the checkpoints, without stating the details of the incidents amounting to an infringement of his right, is not sufficient to enable the Court to resolve that there was an unlawful search and seizure. Not all searches and seizures are prohibited. Those that are reasonable are not forbidden and a reasonable search is not to be determined by any fixed formula but is to be resolved according to the facts of each case. Where, for example, the officer merely draws aside the curtain of a vacant vehicle parked on the public fair grounds, or simply looks into a vehicle, or flashes a light therein, such acts do not constitute unreasonable search.

683. In resolving the petitioner's motion for reconsideration, the Court again took judicial notice of the shift of the insurgency movement from rural to urban centers and their suburbs and ruled that the setting up of checkpoints in Valenzuela or other places may be considered a security measure enabling the NCRDC to pursue its mission of establishing effective territorial defense and maintaining peace and order, or a measure to thwart plots to destabilize the government. Under exceptional circumstances, as where the survival of organized government is on the balance, or where the lives and safety of the people are in grave peril, checkpoints may be allowed and installed by the government. Between the State's inherent right to preserve its existence and promote public welfare, and an individual's right against warrantless search, albeit reasonably conducted, the former should prevail. But at the cost of occasional inconvenience, discomfort and even irritation to the citizen, checkpoints during these abnormal times when conducted within reasonable limits are part of the price we pay for a peaceful and orderly society.

684. *Guazon v. De Villa* (30 Jan 1990, 181 SCRA 211) on the issue of saturation drives resulting in warrantless arrests, searches and seizures. This is a taxpayer's suit seeking a prohibition with preliminary injunction to prohibit the military and police officers from conducting "Areal Target Zonings" or "Saturation Drives" in the critical areas in Metro Manila pinpointed as places where subversives are hiding. Zonings are conducted for the purpose of flushing out "subversives and criminal elements" particularly because of the rash of assassinations of public officials and police officials by elements supposedly coddled by the said communists.

685. The respondents belied the petitioners' allegation that several abuses were committed and that there was a deliberate disregard for human rights. Stressing their legal authority to conduct saturation drives they argued that the operations were intelligently and carefully planned months ahead and executed in coordination with barangay officials who pleaded with their constituents to submit themselves voluntarily for character and personal verification. Local and foreign correspondents reportedly joined the operations and recorded the events that transpired, which was the reason why in all the drives conducted, the alleged victims had not filed any complaint.

686. The SC ruled that nothing in the Constitution denies the authority of the Chief Executive to order police actions to stop unabated criminality, rising lawlessness and alarming communist activities. Under ordinary circumstances, police action of the nature described by petitioners would be illegal and blatantly violative of the express guarantees of the Bill of Rights. If the military and police must conduct concerted campaigns to flush out and catch criminal elements,

such drives must be consistent with constitutional and statutory rights. At the same time, the Constitution grants Government the power to seek and cripple subversive movements that would bring down constituted authority and substitute a regime where individual liberties are suppressed in the name of State security. However, all police actions are governed by the limitations of the Bill of Rights.

687. It is clear that there was no rebellion or criminal activity similar to the attempted *coup d'etat*. There appeared to have been no impediment to securing search warrants or warrants of arrest before any houses were searched or individuals roused from sleep and arrested. There is no strong showing that the objectives sought by the "areal zoning" cannot be achieved even as the rights of the squatter and low-income families are fully protected.

688. The SC noted it was highly probable that some violations were actually committed. Police actions of the magnitude described in the petitions and admitted by respondents could not be undertaken without some undisciplined soldiers and policemen committing certain abuses. Where a violation of HR is involved, it is the duty of the court to stop the transgression. It is the court's duty to take remedial action even in cases where petitioners do not complain and where no names of thousands of alleged victims are given, as long as the court is convinced that the event actually happened. But the remedy is not to stop all police actions, including essential and legitimate ones. A show of force is sometimes necessary as long as the rights of people are protected and not violated. A blanket prohibition such as that sought by the petitioners, would limit all police actions to one-on-one confrontations where search warrants and warrants of arrest against specific individuals are easily procured. Anarchy may reign if the military and police decide to sit in their offices because all concerted drives where a show of force is present are totally prohibited. It is not police action *per se* which is impermissible and which should be prohibited. Rather, it is the procedure used or in the words of the Court, methods which "offend even hardened sensibilities."

689. The SC said it could not rule on this general relief unless it was convinced by clear and sufficient evidence showing that the saturation drive had been actually committed without due regard to and respect for HR by identified perpetrators who could be prosecuted. The remedy was not an original action for prohibition brought through a taxpayer suit. Where not one victim complained and not one violator is properly charged, the problem was not initially for the SC but for the trial courts and the administration officials to determine the policy implications of the prayed for blanket prohibition. The problem was also appropriate for the CHR. A high-level conference should bring together heads of the concerned agencies to devise procedures to prevent abuses. The SC also referred to the CHR, DOJ, DND, and the PNP the matter of drawing up and enforcing clear guidelines to govern police actions during saturation drives.

690. In the meantime and in the face of *prima facie* showing that abuses were probably committed and could be committed during future police actions, the SC temporarily restrained the alleged banging on walls, kicking in of doors, herding of half-naked men to assembly areas for examination of tattoos, violation of residences even if these were humble squatter shanties and the other alleged acts which were shocking to the conscience. Acts violative of human rights alleged by the petitioners were ENJOINED until such time as permanent rules to govern such actions were promulgated.

691. *People v. Malmstedt* (19 June 1991, 198 SCRA 401), on the issue of warrantless search and seizure and subsequent warrantless arrest. The accused is a Swedish national who was apprehended at a checkpoint in Mt. Province for possession of illegal drugs following a search of his personal effects. During the trial, it was established that: the NARCOM officers received reports that vehicles coming from Sagada in that province were transporting marijuana and other prohibited drugs; a Caucasian coming from Sagada on that particular day had prohibited drugs in his possession; when the bus containing the accused reached the checkpoint, the NARCOM officers merely conducted a routine check of the bus and the passengers and no extensive search was initially made; it was only when one of the officers noticed a bulge on the waist of the accused during the inspection that he was asked to present his passport and, when he failed to do so, to open his pouch bag where the prohibited drugs were found.

692. In his defense, the accused claimed that: the discovered drugs were planted evidence and that the two bags he had with him where more drugs were found were not his but belonged to an unidentified Australian couple whom he met in Sagada; and the search of his personal effects was illegal because it was made without a search warrant and, therefore, the prohibited drugs confiscated during the illegal search were not admissible as evidence against him.

693. The court ruled that where the search was made pursuant to a lawful arrest, there was no need to obtain a search warrant. In this case, there was lawful arrest made by a peace officer in accordance with paragraph 1 of Section 5 of the Rules on Criminal Procedure which allowed a peace officer or private person to arrest a person without a warrant when, in his presence, the person to be arrested had committed, was actually committing or was attempting to commit an offense. The accused was searched and arrested while transporting prohibited drugs. A crime was therefore actually being committed by the accused and he was caught in *flagrante delicto*. While it was true that the Narcotics agents were not armed with a search warrant when the search was made over the personal effects of the accused, however, under the circumstances, there was sufficient probable cause for said officers to believe that the accused was then and there committing a crime.

694. *Umil et al., v. Ramos et al.* (3 Oct 1991, 202 SCRA 251), petition for habeas corpus. The case involved eight consolidated petitions for *habeas corpus* of several individuals who were arrested without warrant and who invoked the right to a preliminary investigation. The petitioners sought reconsideration of the Court's decision dated 09 July 1990 dismissing the petitions, thus: "The decision merely applied long existing laws... [including] those outlawing the Communist Party of the Philippines and similar organizations and penalizing membership therein." The SC found no merit in the motions for reconsideration. To ascertain whether the detention of petitioners was illegal or not, the Court looked into whether their questioned warrantless arrests were made in accordance with the law. If these were so, the detention resulting from such arrests would likewise be legal.

695. One of the petitioners was accused of having participated in a murder and was arrested 14 days after the crime took place when one of the accused pointed to him as one of the killers. Another petitioner was arrested at a hospital by military agents on 1 February 1988 for allegedly being a member of the "Sparrow Unit" (an urban hit squad) and for killing two officers of the Capital Command (CAPCOM) mobile patrols the day before on 31 January 1987.

According to the Court, the second arrest was a valid warrantless arrest, specifically section 5 of Rule 113 [(a) when the person arrested had committed, was actually committing or was attempting to commit an offense; (b) when an offense had in fact just been committed had committed it. He was committing an offense when arrested, because he was arrested for being a member of the NPA, an outlawed organization where membership was penalized, and for subversion which, under the doctrine enunciated in the case of *Garcia vs. Enrile* (20 April 1983, 181 SCRA 472), was a continuing offense.

696. In the Garcia doctrine, the crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offences committed in furtherance thereof, or incident to, or in connection therewith are all in the nature of continuing offenses which set them apart from the common offenses. Unlike common crimes, the commission of subversion and rebellion is anchored on an ideological base that compels the repetition of the same acts of lawlessness and violence until the overriding objective of overthrowing the government is attained. That the said hospitalized petitioner had shot two policemen as part of his mission did not end there and then. Given another opportunity and soon as he had recuperated from his wounds, he would have shot other policemen as government agents or representatives. Section 5(a) of Rule 113 would therefore apply in this instance.

697. Nor can it be said that his arrest was grounded on mere suspicion of his membership in the CPP/NPA. His arrest was based on probable cause, as supported by facts. Personal knowledge of facts (Section 5b of Rule 113) in arrests without warrant must be based upon probable cause, which means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause, coupled with good faith on the part of the peace officers making the arrest.

698. The warrantless arrests of the other petitioners were also justified since they were searched pursuant to search warrants issued by a court of law and were found to have unlicensed firearms, explosives and/or ammunition in their persons. Therefore, they were caught in *flagrante delicto* which justified their outright arrests without warrant under Section 5(a) of Rule 113 of the Rules of Court. The arrests were carried out under the following circumstances: (a) search warrant was duly issued to effect the search; (b) the search resulted in the finding of petitioners who were in possession of unlicensed firearms, ammunition, communications equipment and subversive documents to which they admitted ownership; (c) said petitioners admitted membership in the CPP/NPA at the time of their arrest and shortly thereafter, they were positively identified by their former comrades in the organization as CPP/NPA members.

699. In ascertaining whether the arrest without warrant was conducted in accordance with the conditions set forth in Section 5, Rule 113, the SC ruled that the persons arrested need not be found guilty of committing the crime for which they were arrested. Not evidence of guilt, but probable cause was the reason that can validly compel the peace officers, in the performance of their duties and in the interest of public order, to conduct an arrest without warrant. Thus even if the arrested persons were later found to be innocent and acquitted, the arresting officers were not liable. Only if they did not strictly comply with the conditions for a valid arrest without warrant

can the arresting officers be held liable for the crime of arbitrary detention. In the balancing of authority and freedom, which obviously becomes difficult at times, the Court has tilted the scale in favor of authority but only for purposes of arrest (not conviction).

700. The SC took into account the admissions of the arrested persons of their membership in the CPP/NPA as well as their ownership of the unlicensed firearms, ammunition and documents in their possession. These admissions strengthened the Court's perception that the grounds upon which the arresting officers based their arrests without warrant were supported by probable cause. To note these admissions, however, was not to rule that the persons arrested were already guilty of the offenses upon which their warrantless arrests were predicated. The task of determining the guilt or innocence of persons arrested without warrants is not proper in a petition for *habeas corpus*. It pertains to the trial of the case on the merits.

701. The petitioners also argued for the abandonment of the Ilagan doctrine (refers to Ilagan v. Ponce Enrile 139 SCRA 349, 1985 that involved a petition for *habeas corpus* of a group of human rights lawyers who actively participated in the 1985 *Welgang Bayan* in Mindanao against the Marcos dictatorship). Accordingly, a petition for *habeas corpus* was rendered moot and academic by the subsequent filing of information and/or the issuance of a warrant of arrest even if the arrest was initially without a warrant. In its ruling the Court stated that the function of a special proceeding of *habeas corpus* was to inquire into the legality of one's detention. When the lawyers were detained by virtue of a judicial order in relation to criminal cases subsequently filed against them before the RTC of Davao City, the remedy of *habeas corpus* no longer lay.

702. In resolving the petitioners' argument praying for the abandonment of the doctrines of *Garcia v. Enrile* (subversion is a continuing offense) and *Ilagan v. Enrile* (the filing of an information cures a defective arrest), the SC found no compelling reason at this time to disturb said ruling, particularly in the light of the prevailing conditions where national security and stability were still directly challenged perhaps with greater vigor from the communist rebels. What was important was that every arrest without warrant was tested as to its legality via *habeas corpus* proceedings. The high tribunal enjoined the lower courts to promptly look into the legality of the arrest without warrant so that if the conditions under Section 5 of Rule 113 were not met, the detainee shall forthwith be ordered released.

703. Finally, the Court reiterated that mere suspicion of being a Communist Party member or a subversive was absolutely not a ground for the arrest without a warrant of the suspect. The Court predicated the validity of the questioned arrests without warrant in these petitions not on mere unsubstantiated suspicion, but on compliance with the conditions set forth in Section 5.

704. In a subsequent case, Go vs. Court of Appeals (11 Feb 1992, 206 SCRA 138), the SC held that there was no lawful warrantless arrest because the "arrest" took place days after the crime which none of the arresting officers had witnessed; moreover, the arresting officers only relied on the statements of alleged witnesses and therefore had no personal knowledge of the facts indicating that the petitioner was the perpetrator of the crime. The Court also held that the petitioner's action of posting bail was not tantamount to a waiver of any irregularities with respect to his "arrest."

705. The SC decisions in the cases of *Valmonte*, *Guazon* and *Umil* were denounced by HR advocates as anathema to the cause of HR. They asserted that these decisions rendered the Bill of Rights a “fussy redundancy” that might just as well be deleted. As an independent branch of government, the SC is in the process of reviewing the Rules of Court that includes the rules on habeas corpus. Amendments to existing remedial procedures could therefore be initiated through this review. (Annex 21: *Valmonte vs. de Villa*; Annex 22: *Guazon vs. de Villa*; and Annex 23: *Umil vs. Ramos*)

#### **6) Alleged Illegal Arrest and Arbitrary Detention, Illegal Searches and Seizures**

706. AFP records showed that from 1988 to 1998, the military was accused of having committed 174 cases of illegal arrest/detention and four cases of illegal search. CHR figures showed a total of 266 illegal arrests or detention allegedly committed by the military that showed a steadily declining trend.

707. On the other hand, PNP files showed that for the period 1993 to 1998, the police were accused of having committed eight cases of illegal arrest/detention and four cases of illegal search/seizure. The CHR data for 1989 to 1997 placed the total number at 979 cases.

708. Prior to the passage of RA 7438, various HR groups pointed out that a critical aspect of the detention process in the country was the so-called “administrative detention” or “police custody,” i.e., pending judicial intervention - when most of a detainee’s rights are violated. HRVs may include the following: (a) persons are arrested without a warrant, i.e., merely “invited” for questioning, but are treated no differently from those legally arrested; (b) “invited” persons were not informed of their constitutional rights nor were entitled to the services of a lawyer.

709. These HR groups also cited the alleged practice by the authorities of “extended,” “repeated” and “legalized” detentions. Accordingly, “extended detention” occurs when police prolong detention beyond the allowable period by filing an initial charge pending the collation of enough evidence to support the actual charge, or by filing charge after charge that are usually trumped up. “Legalized detention” occurs when an illegal detention is followed with the filing of a criminal charge to ensure continued detention. “Repeated detention” occurs when an illegally detained person is released before the lapse of the allowable period only to be re-arrested for the same or a different offense.

710. Furthermore, they also decried the military’s alleged tendency to “red-label” all left-leaning organizations as communist fronts resulting in many illegal arrests as well as other acts of harassment. Suspected political offenders (despite the repeal of the Anti-Subversion Law decriminalizing membership in communist organizations), notorious criminals and suspicious-looking persons were easy prey to the “*in flagrante* clause” of Section 5, Rule 113 through the use of planted evidence. A fabricated non-bailable offense could allegedly be filed against such person to guarantee his incarceration. Warrantless searches and seizures allegedly made possible the occurrence of planted or fabricated evidence. Unfortunately, a person so charged may languish in jail awaiting his fate since planting of evidence, also called frame-up, can only be addressed during the trial of the case, as enunciated in *People v. Malmstedt*.

711. The above HRVs noted by HR groups point to a situation wherein, despite the constitutional and legal guarantees against illegal arrest, search and seizure, individuals find themselves vulnerable to a variety of cases involving illegal possession of firearms, possession, use and selling of illegal drugs, even vagrancy, and other cases where the testimony of a private complainant is not required.

#### **8) Alleged Enforced or Involuntary Disappearances**

712. The Philippine Government recognizes that enforced or involuntary disappearances are serious HRVs that impinge upon the individual's basic right to life, liberty and security; the right against torture; the right to legal remedies and due process. HR groups attributed these disappearances mainly to government forces, including paramilitary and vigilante groups. These disappearances were allegedly preceded by warrantless or arbitrary arrests and detention then followed by interrogation and, possibly, torture, in suspected secret detention places. The common assumption is that disappeared persons had been killed and buried or mutilated beyond recognition.

713. AFP records showed a steadily declining trend with its recorded 70 cases of alleged enforced disappearances that were attributed to the military/paramilitary groups for the period 1988 to 1998. The CHR had 60 cases. PNP files showed not a single case of disappearances attributed to its members during the same period, but the CHR recorded a total of 75 cases.

714. There were total of 494 unresolved cases of alleged disappearances for the period 1975-1993 referred to the Philippine Government by the Working Group on Enforced and Involuntary Disappearances (WGEID). The figure is broken down as follows: from 1975 to 1986, 137 cases; 28% from 1987 to 1992 and 7 in 1993; 2 cases in 1994, 2 in 1995, 1 case in 1996, and 4 cases in 1997. The WGEID list showed that it was in 1984 and 1985 when almost 38 per cent of the total number of disappearances was alleged to have occurred (128 and 59 cases, respectively). Twenty-four (24) cases were listed for 1978, 38 for 1979 and 28 for 1980. The yearly breakdown for 1987-1992 was as follows: 6; 45; 31; 36; 11; and 8. It is noted that the most number of alleged disappearances occurred at the height of the insurgency in 1988-1990.

715. HR groups criticized the CHR as ineffective in solving cases of disappearances. The statistics on disappearance in the Philippines under the administrations of Marcos up to Estrada provided by FIND are as follows: (a) 1,716 reported cases; (b) 1,437 documented cases; (c) 992 still missing; (d) 267 persons surfaced alive; and, (e) 177 persons surfaced dead.

716. To help victims and families of victims of enforced or involuntary disappearances, the CHR through FIND, under the existing MOA provides financial assistance and welfare and rehabilitation services to victims; investigation and documentation of cases of disappearances; and the conduct of a systematic conscientization campaign for the families of disappeared persons. For the period 1975 to June 2000, the CHR disbursed the amount of PhP2.53 million to 258 beneficiaries of FIND.



717. The CHR also created regional task forces on disappearance to investigate reported cases and coordinate with government prosecutors who were designated as HR coordinators. These investigations revealed that some missing persons were either found dead and positively identified by their relatives, or alive and serving jail sentences but not discovered to be not disappeared. Still others were reported to have voluntarily disappeared or gone into hiding to avoid possible injury or violence against their persons.

718. Criminal, civil and administrative remedies are available in cases of alleged or enforced disappearances. Concerned families and relatives may request the CHR or other relevant government agencies to trace and locate the missing person. A petition for a writ of habeas corpus may be filed against the alleged perpetrators. However, such remedies have been criticized as ineffective because:

- Of the clandestine nature of the offense, most arrests were warrantless so that the exact identities of the perpetrators were often difficult to pinpoint.
- Of the difficulty of proving these cases in court due to the stringent evidentiary and documentary requirements under the Philippine justice system and the lack of credible witnesses. Even if witnesses were available, they refused to testify for various reasons, i.e., fear of reprisal, intimidation, threat and harassment.
- SC decisions usually would not grant the expected habeas corpus (which extends to all cases of illegal confinement or detention and which may be granted by the Supreme Court or the Court of Appeals) relief and sometimes simply “referred the case to the CHR for investigation and appropriate action.” But as pointed out by HR groups, what exacerbates the problem is that the CHR lacks the resources required to undertake a long-drawn out investigation of disappearances.
- Of the failure of law enforcement authorities to apprehend HR violators, or their perceived attempt to cover up or conceal the crime or the criminal.

719. In *Dizon vs. Eduardo* (03 Mar 1988, 158 SCRA 470, 1988) on a petition for habeas corpus in behalf of two disappeared persons, the SC said it regretted it could not grant the relief being asked for since it “is not the repository of all remedies for every grievance, is not a trier of facts nor does it have the means and facilities to conduct such investigations of the whereabouts and facts of *desaparecidos*.”

720. HR groups have suggested possible remedies to address the issue of disappearances, to wit: (a) enact law on disappearance; (b) review the habeas corpus procedure; (c) adoption of court rules that would deter the practice of disappearance, e.g., the burden of providing clear and convincing evidence as proof of release should be made to rest upon the respondents who should not be allowed to simply allege in their return that the persons to whom the writ was issued have been released; (d) adopt of safeguards for release of detained persons, e.g., release of such persons to their families or to a responsible civilian, requirement to produce an appropriate order of release from a Court or an order of release immediately upon demand therefor stating clearly the name of the detainee, the exact date and time of his release and printed name and signature of the person who effected his release; (e) implement of a witness protection program and the

policy of transferring hearings to another jurisdiction; (f) make available to the public a complete and updated list of all persons apprehended or arrested and of those detained in all detention centers; and (g) repeal of PD 1850.

721. To show its commitment in the prevention of EID, the Philippine Government invited the WGEID to the country from 27 August to 7 September 1990 and extended utmost cooperation for the success of the mission. The WGEID report noted that the alleged missing persons were mostly students and HR activists, church workers, trade union members and farmers who were suspected to be subversives or sympathizers of the NPA. It also cited various factors that made possible the continued occurrence of these alleged disappearances.

722. The Philippine Government noted that the steady decline of EID incidence during the post-martial law era was on a steady decline. The reduction could be attributed to the following:

- Structural changes and socio-economic reforms that brought about the country's economic recovery, which in turn strengthened efforts to address poverty, unemployment and social inequalities.
- Relative political and economic stability enabled the Philippine Government to embark on a policy of peace and national reconciliation, beginning with the repeal of the Anti-Subversion Law, which had been blamed for the widespread illegal arrests and interrogations and disappearances during the martial law period.
- Repressive laws that helped create a climate of impunity were repealed, e.g., PD 1850, which granted sole jurisdiction on military courts over cases involving military and police personnel; the subsequent transfer of jurisdiction to the civil courts raised hopes for enhancing efforts to bring erring law enforcers to justice.
- Creation of the DOJ Witness Protection Program to encourage victims of crimes and witnesses to come out in the open. President Ramos ordered the release of 50 million pesos from his discretionary fund as additional budget for the program. The CHR's very limited Witness Protection Program now collaborates with the DOJ to effect maximum protection and assistance to witnesses.
- The inter-agency MOA forged with a designated NGO outlining the procedure for the orderly release of arrested persons and detainees and reiterating existing sanctions under the law for non-compliance.
- AFP ROE and PNP POP contain additional procedures for making arrests, such as informing and making available to barangay officials or other responsible persons in the community the names of persons arrested or detained following the conduct of "saturation drives" or the operation of mobile checkpoints; command responsibility promotes the effectiveness of the procedure.

- The restoration of freedom and democracy in the country made possible the strengthening of HR protection and promotion through intensive and continuing HRET among military and police authorities; to ensure that adherence to HR values filter down to the last man in all military or police units.
- PNP or AFP members with pending cases of alleged HRV cannot secure CHR clearance certificates, which is a requirement for appointment and promotion.

723. Government efforts to locate the whereabouts of alleged missing persons included the creation of a Fact-Finding Committee on Involuntary Missing Persons in 1993. The Committee's dismal record indicated the difficulties in solving cases of alleged disappearances. To initially address this situation, the Philippine Government undertook to review in late 1997 494 outstanding cases listed by the WGEID. It was hoped that, by taking a fresh look at these cases, at least 16 % of which were alleged to have occurred more than 20 years earlier ago - fresh approaches leading to their resolution might emerge.

724. A preliminary examination of the information contained in each case summary provided by the WGEID enabled the Philippine Government to make the following observations:

- Out of 494 cases, a total of 121 alleged disappearances were attributed to the police authorities. A total of 364 cases under the military authorities, which included 41 reports containing no specific identification of any forces as alleged perpetrators except for descriptions such as "armed men in civilian clothes" or "agents" or "plainclothesmen". 1 case was attributed to a dissident group and 6 cases to vigilantes or civilian self-help/volunteer groups that are not classified as military, paramilitary or police forces. Two names in the WGEID list, one of which was a first name only, had no information whatsoever as to the date and place of arrest as well as the alleged responsible forces.
- Many cases contained incomplete data, e.g., incomplete name of alleged missing person, date and place of arrest; no indication of forces as alleged perpetrators; no indication of specific units of military or police forces operating in the locality where the disappearance allegedly took place. Other reports did not indicate the place of arrest or the home address given was misspelled and/or incorrect.
- Some reports gave no information on how the alleged disappearance took place and practically without basis for verification. Still others gave no personal circumstances of the alleged missing person (age, profession/occupation or complete home and work addresses) that could start off a meaningful investigation.
- For alleged cases of disappearance which date back to many years ago, it may be necessary, even if the reports seem to have sufficient required data or information, to find out from the source or the family of the alleged victim whether or not he/she has subsequently reappeared. It was felt that a renewed indication of interest from the family of the alleged victim was necessary to securing additional information or making it possible for witnesses to surface and avail of the newly strengthened witness protection program of the DOJ. Such a verification was also necessary since,

given the nature of their activities, the alleged enforced disappearances might have been a conscious effort on the part of the alleged missing persons to go into hiding to escape capture, recapture or arrest.

725. The above comments were transmitted to the WGEID in April 1998, with the request that some of the names be deleted from the list and that some names be referred back to the source or complainant for more information to enable the Philippine Government to conduct a meaningful verification. The government undertook to commence review of majority of the cases contained in the WGEID list.

726. Finally, there are pending bills in Congress proposing to call EID by its correct name. Since EID is not considered a crime under Philippine laws, the 14 cases filed in court are lodged as kidnapping, murder or serious illegal detention or a combination of the last two cases. EID is defined as having occurred when a person is arrested, detained or abducted against his / her will or otherwise deprived of his / her liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the person concerned or a refusal to acknowledge the deprivation of his / her liberty, which places such person outside the protection of the law.

727. The bills also propose the following provisions:

- The following persons shall be meted with the penalty of *reclusion perpetua* if the victim of EID surfaced dead: (a) those who directly committed the act; (b) those who directly forced or induced others to commit the act; (c) those who cooperated in the act by another act without which the act of enforced disappearance would not have been accomplished; (d) those officials who allowed the act of enforced disappearance when it is within the official's power to stop the commission of this act and (e) those who cooperated in the execution of the act by previous or simultaneous acts. If the victim surfaced alive, the above persons shall be meted with *reclusion temporal*.
- EID shall be considered a continuing offense as long as the perpetrators continue to conceal the fate and whereabouts of persons who have disappeared and these facts remain unclarified; there shall be no time limit to the prosecution of a person responsible for the commission of this crime.
- Persons liable for the commission of EID shall not benefit from any exempting circumstance provided under any law.
- Victims of EID may claim for compensation under RA 7309 and under any existing financial relief program of the State without prejudice to other legal remedies that may be available to them. Rehabilitation shall also be provided to the family of the victim and surfaced victim of EID.
- Creation of a Monitoring Group tasked to periodically monitor compliance with this Act.

### **E. Article 10 (Treatment of prisoners)**

728. The Philippine Government fully subscribes to the principle that all detention and convicted prisoners are entitled to humane treatment and shall be accorded respect for their dignity as a person. The country's prison system is mandated to accord detention prisoners separate treatment and accommodation from convicted prisoners; ensure that detention juvenile prisoners are separated from adult prisoners and are treated in a manner appropriate to their age and legal status; and implement activities to promote the reformation and social rehabilitation of all prisoners.

729. The country's efforts to accord prisoners their rights are described in the following three sections, which deal on the

- Care and treatment of prisoners,
- Status of jail accommodations and
- Alleged maltreatment of prisoners.

#### **1) Care and Treatment of Prisoners**

730. The DILG Primer on Human Rights (July 1996) for police personnel emphasizes that persons under detention possess the following rights:

- To be treated as a human being.
- To due process of law, which comprises 1) the right to be informed of the written regulations governing the detention centers; 2) not to be punished for any act except in accordance with these regulations; 3) to be subjected only to such punishment for breaches of discipline as are the least restrictive means to maintain order and security in the detention center; and 4) not to be subjected to corporal punishment or confinement in a dark cell or total isolation.
- To receive visits from their families, friends and lawyers.
- To practice their religion.
- To adequate food and, if they desire, to procure food from outside through the administration of the detention center or through family and friends.
- To wear their own clothing unless they have none, in which case the detention administration shall supply it, but such clothing must be different from that supplied to convicts.
- To healthy accommodations, with sufficient light and ventilation, and adequate sanitary and bathing facilities.

- To a separate bed with sufficient bedding.
- To at least one hour daily outdoor exercises.
- Not to be compelled to work unless they wish to.
- To competent medical and dental service, and to be treated by their own doctor or dentist if there is reasonable need for it and they or their families or friends will pay for it.
- To be furnished with or to procure reading and writing materials.
- To be kept separate from convicts serving sentences.
- To a speedy and impartial public trial.

731. The Bureau of Jail Management and Penology (BJMP) is responsible for the administration, management and operations of district jails, city jails and municipal jails nationwide. The Bureau of Corrections (BuCor) is responsible for the administration, management and operations of provincial jails, the Bilibid Prison (National Penitentiary) and the various penal colonies in the country.

732. The BuCor Operating Manual (1 March 1990) pursuant to the Administrative Code of 1987 ensures the provision of adequate care and a variety of proper treatments to prisoners to eliminate the pattern of criminal behavior and reform them to be law-abiding and constructive citizens. The treatment of prisoners is focused on the provision of services designed to encourage and enhance the inmates' self-respect, dignity and sense of responsibility. The programs and services for the rehabilitation of prisoners are geared towards providing the following: (a) basic needs of prisoners, i.e., food, shelter, clothing, water, lighting and soap; (b) medical and dental services, with each prison providing at least one qualified medical doctor and dentist and ensuring that prisoners requiring more extensive treatment will be referred to hospitals outside the prisons; (c) education and skills training; (d) religious guidance and counseling services; (e) recreation and sports activities; (f) work programs, such as livelihood projects; (g) visitation services; (h) communication assistance; and (i) legal and paralegal assistance.

733. The BuCor gives considerable attention to the education of prisoners. The College Degree Program for Prisoners of the National Penitentiary has produced a total of 300 graduates since its inception in 1982. It has also embarked on a study program through correspondence. The types of educational and training programs comprise the following: (a) adult basic education programs designed to improve communication through reading and writing as well as computation skills which would earn prisoners certificates of completion; (b) secondary education program with the end in view of enabling them to be awarded high school diplomas; (c) if available, college education in collaboration of accredited colleges or universities; (d) occupational education which enhances the prisoners' employable skills through the provision of Exploratory Training, Vocational Training, On-the-Job Training and Apprenticeship Training.

734. The BuCor adopted changes in traditional practices as follows: (a) no prisoner upon admission and on regular security classification is subjected to solitary confinement; (b) application of restraint is limited to cases where prisoners are to be transported and never in relation to disciplinary and related administrative penalties; (c) prisoners under penalty for prison rule infraction are not to be subjected to any form of corporal punishment.

735. Prisons provide the necessary medical and dental services to each prisoner. Upon admission and prior to transfer to any prison or penal farm, all prisoners are required to undergo mental and physical examination, medical observation and consultation, diagnosis, treatment, immunization and protection from health hazards and communicable diseases. The medical unit of prisons inspects and supervises the quantity, quality, preparation and serving of food rations, hygiene and cleanliness of prison cells and surroundings, sanitation, lighting and ventilation, suitability and cleanliness of prisoners' clothing and bedding. Medical services include psychiatric services and treatment of mental abnormality, if required. In correctional institutions for women, pregnant prisoners can avail of all the necessary pre-natal care and treatment and, where practicable, arrange for their delivery in prison. Any prisoner requiring special treatment is referred to a more capable hospital outside the prison.

736. Prisons provide religious guidance and counseling, in the form of all religious services, activities and meetings, to enable prisoners to freely exercise their religious beliefs and practices as an essential part of their rehabilitation. The guidelines require that a Prison Chaplain be made available to each penal institution to ensure that spiritual, moral and pastoral care are available to all prisoners, the correctional staff and the civilian community. Pastoral activities include guidance and counseling, crisis-intervention services, education, formation and indoctrination programs, worship, prayer and liturgical services, ritual or ministerial services, visits and pre-release religious services.

737. Recreation and sports activities and facilities are provided to prisoners in the form of library services, indoor and outdoor sports facilities, establishment of individual and team sports and group entertainment such as movies, videos and stage shows. Prisoners who are not employed for outside work, especially those serving solitary confinement, shall have at least one hour daily of physical exercise in the open air.

738. Each prison facility has a work program to develop penal farmlands into productive areas and profit centers, to give inmates compensation for their labor and to keep them busy while serving their prison sentences. Inmates who are regularly selected and assigned as administrative and technical assistants to the various offices and facilities of the prison receive monthly compensation at rates approved by the Director of Corrections or the head of the prison. Falling under this category are office janitors and orderlies, assistant clerks, typists and office messengers and couriers, motor pool assistants and field equipment operators and maintenance crew. Inmates working in prison agri-industrial projects on regular, seasonal or contractual basis are paid compensation at duly approved rates.

739. Only medium-and minimum-security prisoners are assigned to work in agricultural field projects. Maximum-security prisoners are assigned to work in handicraft or indoor projects in their own compounds or dormitories. Hard labor is prohibited and is not a part of prison employment or of any other required assignment. The female prisoner is assigned work on jobs suitable to her age, sex and physical condition.

740. BJMP Rules and Regulations also provide for a similar array of programs for its prisoners. Prisoners are provided with basic items necessary for daily life - food, shelter, clothing, water, lighting and soap. A prisoner is not required to work but may be made only to clean his cell and perform such other labor as may be deemed necessary for hygienic reasons.

741. For other privileges, detention prisoners can: 1) wear their own clothes while in confinement; 2) write letters, subject to reasonable censorship and provided expenses shall be borne by them; 3) receive visitors during daytime, although visiting privileges may be denied in accordance with the rules and whenever public safety so requires (visitors are prohibited from entering cells or brigades and from physical contact with inmates); and 4) receive books, letters, magazines, newspapers and other periodicals that the jail authorities may allow.

742. They could be treated by the BJMP's Health Services Personnel, by their own physician and dentist at their own expense upon proper application and approval or in a government or private hospital, provided it is authorized by the court at the prisoners' own expense.

743. Prisoners are also allowed to grow hair in the customary style provided it is decent and allowed by the rules; receive fruits and food, subject to inspection and conformity by the jail officials; smoke cigars and cigarettes, except in prohibited places; and read books and other literature in the jail library.

## **2) Status of Jail and Prison Accommodation**

744. There are seven penitentiaries in the Philippines - two in the National Capital Region, two in Luzon, one in the Visayas and two in Mindanao. These are the Bureau of Corrections in Muntinlupa, Metro Manila, the Correctional Institution for Women in Mandaluyong, Metro Manila, Iwahig Prison and Penal Colony in Palawan, Sablayan Prison and Penal Colony in Occidental Mindoro, Leyte Prison and Penal Colony in Abuyog, Leyte, San Fernando Prison and Penal Colony in Zamboanga City and Davao Penal Colony in Davao. As of February 2001, these penitentiaries had a total of 23,319 inmates. More than half of them (14,886) are at the National Penitentiary in Muntinlupa, which is the most crowded.

745. There are 77 provincial jails (one for every province in the country), and 29 sub-provincial jails, with 12,646 and 1,249 inmates, respectively. The inmates in the provincial jails receive a subsistence allowance of PhP30.00 per day, which may be increased to PhP40.00 per day if subsidized by the local government unit concerned. Inmates also are provided medical allowance of PhP5.00 per year. The provincial jails are operated by 2,569 personnel while the sub-provincial jails are manned by 325 personnel. Moreover, there are 71 city jails, 99 district jails and 1,147 municipal jails all over the country that altogether hold a total of 33,473 prisoners.



746. Most jails in the country are plagued with the problem of overcrowding. As of February 2000, at least 232 jails - of which 55 are district jails, 57 are city jails and 226 are municipal jails - were congested, with the percentage of congestion ranging from 880 % to 4 %. In the National Capital Region, 18 jails were identified as congested, ranging from a high of 275 % to a low of 10 %. Statistical data as of February 2000 highlighted the rate of congestion in a number of jails outside the NCR. The NCR, Makati City Jail, Pateros and San Juan Municipal Jails have ideal capacity for inmate population. The Manila City Jail has the most number of inmates at 3,161. With an ideal capacity of 1,200 only, the Manila City Jail has a congestion rate of 165%.

747. As of December 2000, the BJMP has constructed additional seven district jails nationwide with the following facilities: cell building (separate cells for male, female and minor inmates), administration building (warden's office, deputy warden, records, etc.), rehabilitation building, visiting area and conjugal area, kitchen, basketball court, tower house, guard house, and perimeter fence. With regard to the inmates' cells, the size of the windows was increased to enhance ventilation and comfort. Two new city jails nationwide were also constructed where the facilities enumerated above are combined in only one building. The facilities for the new 9 municipal jails are similar to the city jails but smaller. The design of the different jails took into consideration the projected jail population and the ratio of the area with regard to the inmate. Jails have been classified into Type A, Type B and Type C.

### 3) Alleged Maltreatment of Prisoners

748. The CHR, through its visitorial service, has inspected 65 % of all jails, prisons and detention centers in the country. These jails range from the national penitentiary in Metro Manila to penal farms in the provinces, detention centers in police detachments and military camps, provincial and city jails, and small municipal jails in distant towns. The objectives of the visits were: (a) to check the jail conditions and facilities and the situation of the prisoners against the standards set by BuCor as well as the UN Minimum Standards for Prisoners and Detainees; (b) to review the case status of each detainee; and (c) to inculcate HR awareness among prison officials and prisoners. The ultimate goal was to formulate recommendations for humane treatment and enhanced respect for the prisoners' HR through policy reforms.

749. CHR findings emphasized the inadequacies of the penal and detention system, which are attributed to its meager budget -- insufficient food and water supply, lack of medical and dental care, lack of basic facilities for hygiene (some even have no comfort rooms), and overcrowding and dilapidated facilities. Some jails that house about 100 inmates have only one toilet, shower and drinking facilities.

750. The CHR received reports of HRVs allegedly perpetrated by the authorities, such as failure to segregate youth offenders from adult prisoners, torture and maltreatment of prisoners and detainees, including rape, solitary and *incommunicado* confinement, extortion of money, and denial of family visits. With regard to torture and maltreatment of prisoners, the BuCor noted that no case of torture and related institutional violence has been lodged against any prison officer.

751. Since 1987, the CHR has embarked on numerous HRE and awareness programs for BJMP and BuCor officers, personnel and guards as well as prisoners and detainees. Among these are the National Trainors Courses, National Advocacy Courses, Regional Trainors' Training Program (RTTP) lectures, orientations, symposiums and BHRAO Training. With the implementation of the PHRP in 1996, the Government initiated a two-day basic HR orientation seminar for jail officers, employees and prisoners in the different penitentiaries of the country from March to September 1997.

752. For its part, the BuCor established an Information Office and Monitoring Team in all its prisons and penal farms all over the country and a Research Office which monitors, evaluates and addresses problems relating to all policies and institutional capabilities in all correctional facilities. It supports the establishment of a HR desk - to be manned by a HR Officer - that is tasked to oversee the extension of technical, administrative and other rehabilitation-based service to all prisoners.

753. Which monitors, evaluates and addresses problems relating to all policies and institutional capabilities in all correctional facilities. It supports the establishment of a HR Desk - to be manned by a HR Officer - that is tasked to oversee the extension of technical, administrative and other rehabilitation-based service to all prisoners.

754. The operation of the country's jail and prison system is severely hampered by inadequate funding. An increase in budgetary allocation and the institution of necessary penal reforms are required to address all the problems cited by the CHR. The deficiency of food supply has even moved several NGOs, usually church-based associations, to donate food items and to offer professional health and legal services to prisoners.

**F. Article 11 (Prohibition of imprisonment on the ground of inability to fulfil a contractual obligation)**

755. The Philippine Government wishes to reiterate the information provided in the Initial Report.

**G. Article 12 (Right to liberty of movement and of abode)**

756. The 1987 Philippine Constitution, Article II, Section 6 provides "The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law." This right includes the right to leave or enter again the country.

757. RA 8239, or the Philippine Passport Act of 1996, upholds the people's constitutional and inviolable right to travel by obliging the government to issue passports or travel documents to any of its citizens who comply with the minimum requirements. This right may be impaired only when national security, public safety and public health require. However, the SC has ruled that the right to return to one's country is not among the rights specifically guaranteed in the Bill of Rights, which treats only of the liberty of abode and the right to travel. A case in point is Marcos, et al. vs. Manglapus, et al. (15 Sept 1989, 177 SCRA 668).

758. As an update to the Initial Report on this article, the Philippine Government wishes to inform the Committee that the remains of former President Marcos are finally allowed to be finally allowed to be brought home by President Ramos for burial in his home province. The decision was made possible with the greater political and economic stability already achieved by the country and that the return of the remains no longer posed as a grave threat to the security and integrity of the country. Similar restrictions that had been imposed on other individuals, including members of the Marcos family, were also lifted, thus enabling them to return and resume residence in the country.

759. The Marcos family petitioned the SC for mandamus and prohibition to order concerned government agencies to issue them travel documents and to enjoin the implementation of the President's "ban Marcos" policy. The persons who sought to return to the country were the deposed dictator and his family at whose door the travails of the country were laid and from whom billions of dollars believed to be ill-gotten wealth were sought to be recovered. The SC ruled that the individual right involved is *not* the right to travel within the Philippines or from the Philippines to other countries, but essentially the right to return to one's country, a totally distinct right under international law, which is independent from, although related to, the right to travel. The "right to liberty of movement and freedom to choose [his] residence" and the right to "be free to leave any country, including [his] own" may be restricted by such laws as "are necessary to protect national security, public order, public health or morals or the separate rights and freedoms of others."

760. On the question of whether or not then President Aquino had the power under the Constitution to bar the Marcos family from returning to the Philippines, the SC declared that the power involved was the President's residual power implicit in the paramount duty to safeguard and protect the general welfare. The President was not only clothed with extraordinary powers in times of emergency but was also tasked with attending to the daily problems of maintaining order and ensuring domestic tranquility in times of peace. The problem was one of balancing the general welfare and the common good against the exercise of rights of certain individuals.

761. As to whether or not there existed factual bases for the President to conclude that it was in the national interest to bar the Marcoses' homecoming, the SC took judicial notice of the fact that the country was besieged from within by a well-organized communist insurgency, a separatist movement in Mindanao, rightist conspiracies to grab power, urban terrorism, and the murder with impunity of military men, police officers and civilian officials. The return of the Marcoses at that time would only exacerbate and intensify the violence directed against the State and instigate more chaos. Thus, the President cannot be said to have acted arbitrarily and capriciously in determining that the return of the Marcos family poses a serious threat to national interest.

762. SC Circular No. 62-96 (9 Sept 1996) directed all inferior courts to furnish the DFA the prepared list of all active and or unrevoked hold departure orders and decisions within 48 hours after receiving them.

763. In HR Advisory CHR-A3-2000 (20 Jan 2000), the CHR expressed its concern about possible infringement on the right to liberty of movement. The mayor of the City of Marikina reportedly issued an order to “forcibly evict” the residents of particular streets “who will not change their ways” in accordance with Ordinance No. 245, series of 1997, which declared, among other things, “drug risk areas.” The PCHR opined that the ordinance was a “tolerable exercise of police power and if properly enforced, may not adversely affect the rights of individuals to travel.” It added, however, that the eviction order, if carried out, would “clearly violate the human right to travel,” as guaranteed by the ICCPR, Philippine Constitution and the landmark case of *Villavecencio vs. Lucban* (39 Phil. 776, 1919).

#### **H. Article 13 (Prohibition against arbitrary expulsion of aliens)**

764. The Philippine Government recognizes the right of aliens not to be forcibly expelled except in pursuance of a decision reached in accordance with law. It also recognizes the right of aliens facing deportation to submit reasons against his expulsion and to have his case reviewed by a competent authority.

765. The Philippine Government wishes to reiterate the information contained in the Initial Report and to provide the following update.

##### **1) Domestic Laws Affecting Aliens**

766. Section 2 of RA 7919, or Alien Social Integration Act of 1995 (24 February 1995), declares that the State shall control and regulate the admission and integration of aliens into its territory and body politic. This law provides aliens with unlawful residence status the means to become integrated into the mainstream of Philippine society, subject to national security and interest, and in deference to internationally recognized human rights.

767. Under the law, all aliens, except for alien refugees, whose stay in the Philippines is otherwise illegal under existing laws and who entered the country prior to 30 June 1992, including those who availed in good faith of the benefits of EO 324, whose applications have been approved before or after 21 November 1988 are qualified to apply for legal residence status from 01 June 1995 to 31 December 1996 and, upon compliance with the provisions of the Act, will be granted an alien certificate of registration (ACR).

768. Accepted applicants will not be prosecuted for crimes defined under Commonwealth Act No. 613, or The Immigration Act of 1940. The bar to prosecution shall apply only to such crimes or felonies committed due to acts necessary or essential to maintain a false or fraudulent or illegal residence, such as falsification of marriage, birth or baptismal certificates or travel documents, visas or ACRs. An alien who is granted an alien certificate of registration (ACR) under this Act shall be eligible to apply for naturalization after five years from the approval of his/her application. Alien refugees in the country are not qualified to apply under this Act.

769. Applicants who violate their oath or affirmation by knowingly making untruthful statements on any material matter in their application shall be liable for perjury under the Revised Penal Code. In addition to the impossible penalty for perjury, a subsequent conviction carries the revocation of the legal residence granted an applicant and to deportation proceedings.

770. Certain provisions of RA 7919 were amended by RA 8247, or An Act exempting aliens who have acquired permanent residency under EO 324 from the Coverage of RA 7919, (20 Dec 1996), by granting legal residence to aliens who have availed in good faith of the benefits of EO 324. RA8247 also extended the period of application from 1 June 1995 to 28 February 1997.

771. On 10 April 1998, the Philippine Government became the first ASEAN country to have adopted a national refugee status determination procedure. Under DOJ Order No. 94 establishing a procedure for processing applications for the grant of refugee status, the Refugee Processing Unit within the DOJ was tasked to assess which asylum seekers qualified as refugees in accordance with the universal definition enshrined in the 1951 Convention relating to the Status of Refugees, to which the Philippines is a State Party. Persons determined to be refugees shall be granted ACRs under Section 47 (b) of the 1940 Philippine Immigration Act. The Order also incorporates into domestic law international legal safeguards against the harboring of criminals while protecting refugees from being sent to a country where there are valid reasons to believe that their life or liberty would be threatened.

772. The Vietnamese boat people currently staying in the Philippines could be divided into two categories: asylum-seekers (those who did not qualify for refugee status numbering about 1,538) and the ODP long-stayers (about 278 of them whom the US Government originally committed to take for resettlement to the US). The CPA for the Vietnamese Refugees expired in June 1996. However, for humanitarian considerations, the Philippines allowed the temporary stay in the country of the Vietnamese asylum-seekers, governed by two frameworks: (a) an MOU between the DSWD and the Center for Assistance to Displaced Persons, Inc. (CADP) in May 1996 and (b) Rules and Regulations Implementing the MOU signed on 15 October 1997. It should be stressed that both documents allowed only a temporary stay in the country while the asylum-seekers were being encouraged to apply for voluntary repatriation to Vietnam. There is no existing legal framework for continued stay in the Philippines of Vietnamese asylum-seekers after the termination of the CPA on 30 June 1996, and hence, their only option is to return to Vietnam.

## **2) Extradition Treaties**

773. The Philippines has ratified extradition treaties with the United States, Switzerland, Micronesia, Korea, Hong Kong, Canada, Indonesia, Australia and Thailand with the aim of strengthening the country's criminal justice system and providing just solution to numerous cases of Filipinos, evading criminal prosecution in the Philippines by fleeing to other countries. The Philippines' implementation of such treaties would also apply to aliens residing in or visiting the country who may be facing criminal charges in their countries of residence.

774. The RP-US Extradition Treaty adopts a dual criminality approach in defining extraditable offenses and excludes political and military offenses as well as those where the person sought to be extradited has been tried and convicted or acquitted in the requested state.

775. The RP-Switzerland and RP-Micronesia Extradition Treaties embody the usual fundamental principles of an extradition treaty which include the following: (a) the State is not under any obligation to surrender a fugitive from justice in the absence of an extradition pact;

(b) a person extradited shall not be prosecuted, sentenced or detained for any offense other than that for which he was extradited; and (c) the crime allegedly committed must have been perpetrated within the jurisdiction of the requesting State.

776. The RP-Republic of Korea Extradition Treaty contains the following salient points:

(a) adoption of the dual criminality approach in defining extraditable offenses; (b) inclusion of offenses punishable by a deprivation of liberty for a maximum period of at least one year or by a more severe penalty; (c) exclusion of political offenses, except the taking or attempting to take the life of a head of state or government, etc; (d) adoption of the rule of specialty; (e) inclusion of offenses committed before its entry into force; and (f) expeditious action against criminals who flee from the jurisdiction of the contracting parties to evade punishment.

777. The RP-Hong Kong Agreement for the Surrender of Accused and Convicted Persons adopts a “list-type” approach in defining extraditable offenses. The Treaty does not permit extradition for political offenses as well as offenses which might lead to the prosecution or punishment of a person on account of his race, religion, nationality or political opinion. It applies to requests made after its entry into force regardless of the date of the commission of the offense.

778. The RP-Canada Extradition Treaty adopts the “dual criminality” approach in defining extraditable offenses. It does not permit extradition for political offenses as well as offenses which might lead to the prosecution or punishment of a person on account of his race, religion, nationality or political opinion. It applies to requests made after its entry into force regardless of the date of the commission of the offense.

779. The RP-Indonesia Extradition Treaty provides for the surrender of persons proceeded against or charged with, found guilty or convicted of, certain enumerated crimes punishable under the laws of both Parties by death penalty or deprivation of liberty for a period exceeding one year. The requested Party may refuse to extradite a person accused of a crime regarded by its laws as having been committed in whole or in part in its territory. The national laws of the Parties govern determination of their respective territories. It provides for exemption from extradition in cases of double jeopardy, prescription and infraction against military law or regulations not considered as a crime under ordinary criminal law. It also provides for the provisional arrest of the person sought to be extradited.

780. The RP-Australia Extradition Treaty adopts the “non-list double criminality” approach. It does not include political offenses and provides for the surrender of property found in the requested State that has been acquired as a result of the offense or that may be required as evidence upon request of the Requesting State and after extradition is granted.

781. The RP-Thailand Extradition Treaty provides for the surrender of persons proceeded against or charged with, found guilty or convicted of, certain enumerated crimes punishable under the laws of both Contracting Parties by death penalty or deprivation of liberty for a period exceeding one year. It allows Parties to grant extradition, at their discretion, in respect of any other crimes for which extradition can be granted according to the laws of both Parties. The requested Party may refuse to extradite a person accused of a crime regarded by its laws as having been committed in whole or in part in its territory.

782. In accordance with the above extradition treaties, an offense shall be extraditable if it is punishable under the laws of both countries, by deprivation of liberty, for a period of more than one year or by a more severe penalty.

783. The RP-US and RP-Australia Mutual Legal Assistance Treaties decree that the Contracting Parties shall grant and provide to each other assistance in all matters relating to investigation or proceedings in respect of criminal matters.

784. The Philippines is about to conclude an agreement with Hong Kong for the Transfer of Sentenced Persons. Once signed, this agreement will serve as model for similar agreements the Philippines intends to propose to, and conclude with, other countries. The agreement provides for the transfer of sentenced persons from the jurisdiction of the Transferring Party to the jurisdiction of the Receiving Party under the following conditions:

- The conduct on account of which the sentence has been imposed would constitute a criminal offence according to the law of the Receiving Party if it had been committed within the jurisdiction of its courts.
- Where the Hong Kong SAR is the Receiving Party, the sentenced person is a permanent resident of, or has close ties with the Hong Kong SAR.
- Where the Republic of the Philippines is the Receiving Party, the sentenced person is a citizen of the Philippines.
- The sentence imposed on the sentenced person is for a period of three years or more of which at least one year remains to be served at the time of the request or transfer.
- The judgment is final and no further proceedings relating to the offence or any other offence are pending in the Transferring Party.
- The Transferring and Receiving Parties and the sentenced person all agree to the transfer, provided that where either party considers it necessary, the sentenced person's consent may be given by any person entitled to act on his behalf.

#### **I. Article 14 (Rights of the accused)**

785. As stated in the Initial Report, Philippine laws enshrine the right of the accused to equality of all persons before the courts or tribunals and to entitlement to a fair and public hearing by a competent, independent and impartial tribunal. An accused person has the right to be presumed innocent until proven guilty according to judicial procedures that ensure:

- He/she is informed promptly and in detail in a language which he/she understands of the nature and cause of the charge against him/her
- He/she is given adequate time and facilities to prepare for his/her defense and communicate with counsel of his/her own choosing

- He/she is tried without undue delay
- He/she is tried in his/her presence and is adequately provided with legal assistance, to be given freely if he/she is indigent
- He/she is able to examine witnesses against him/her and obtain witnesses in his/her behalf
- He/she is given free assistance of an interpreter if he/she cannot understand or speak the language used in court
- He/she is not compelled to incriminate himself/herself.

786. A convicted person has the right to appeal his/her sentence to a higher tribunal. He/she shall not be tried nor convicted again for the same offense. He/she shall be compensated if his conviction is reversed or he/she has been pardoned on the ground that there has been a miscarriage of justice. The special situation of juvenile persons in conflict with the law is also taken into account in judicial proceedings (this portion is extensively discussed in the section on the rights of the child).

787. The Philippine Government wishes to reiterate the information contained in the Initial Report and provides the following updates on:

- Revised Rules of Criminal Procedure (RULES 110-127, RULES OF COURT), as Amended, and further amended effective 01 December 2000
- Measures to Ensure Speedy Trial of Cases
- The DOJ Witness Protection Program
- The DOJ Board of Claims

**a) On the Conduct of a Preliminary Investigation**

788. A preliminary investigation (PI) is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

789. Except when the accused is lawfully arrested without warrant, a PI is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months and one day without regard to the fine.

790. The officers authorized to conduct PI are the following: (a) provincial or city prosecutors and their assistants; (b) judges of the Municipal Trial Courts and Municipal Circuit Trial Courts; (c) national and regional state prosecutors and their assistants; and other officers as may be authorized by law. Their authority to conduct PI shall include all crimes cognizable by the proper court in their respective territorial jurisdictions. The PI shall be conducted as follows:



791. The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his/her witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of whom must certify that he/she personally examined the affiants and that he/she is satisfied that they voluntarily executed and understood their affidavits.

792. Within 10 days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents. The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense. Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photocopying at the expense of the requesting party.

793. Within ten days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his/her counter-affidavit and that of his witnesses and other supporting documents relied upon for his/her defense. The counter-affidavits shall be subscribed and sworn to and certified with copies thereof furnished by him/her to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

794. If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten-day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant. The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned. The hearing shall be held within ten days from submission of the counter-affidavits and other documents from the expiration of the period for their submission. It shall be terminated within five days.

795. Within ten days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. If the investigating officer finds cause to hold the respondent for trial, he/she shall prepare the resolution and information. He/she shall certify under oath in the information that he/she, or as shown by the record, an authorized officer, has personally examined the complainant and his/her witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty thereof; that the accused was informed of the complaint and of the evidence submitted against him/her; and that he/she was given an opportunity to submit controverting evidence. Otherwise, he/she shall recommend the dismissal of the complaint.

796. Within five days from his/her resolution, he/her shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his/her deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten days from their receipt thereof and shall immediately inform the parties of such action.

797. No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his/her deputy.

798. Where the investigating prosecutor recommends the dismissal of the complaint but his/her recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his/her deputy on the ground that a probable cause exists, the latter may, by himself/herself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting preliminary investigation.

799. If upon petition by a proper party under such Rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justice reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he/she shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. the same Rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman.

800. Within ten days after the PI, the investigating judge shall transmit the resolution of the case to the provincial or city prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction, for appropriate action. The resolution shall state the findings of facts and the law supporting his action, together with the record of the case which shall include: (a) the warrant, if the arrest is by virtue of a warrant; (b) the affidavits, counter-affidavits and other supporting evidence of the parties; (c) the undertaking or bail of the accused and the order for his/her release; (d) the transcripts of the proceedings during the PI; and (e) the order of cancellation of his bail bond, if the resolution is for the dismissal of the complaint.

801. Within thirty days from receipt of the records, the provincial or city prosecutor, or the Ombudsman or his deputy, as the case may be, shall review the resolution of the investigating judge on the existence of probable cause. Their ruling shall expressly and clearly state the facts and the law on which it is based and the parties shall be furnished with copies thereof. They shall order the release of an accused who is detained if no probable cause is found against him/her.

802. A warrant of arrest may be issued by the Regional Trial Court. Within ten days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He/she may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he/she finds probable cause, he/she shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the PI or when the complaint or information was filed against an accused lawfully arrested without warrant. In case of doubt on

the existence of probable cause, the judge may order the prosecutor to present additional evidence within five days from notice and the issue must be resolved by the court within 30 days from the filing of the complaint or information.

803. A warrant of arrest may also be issued by the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court. If the judge's findings in a PI conducted by him/her is affirmed by the concerned persons, and the corresponding information is filed, he/she shall issue a warrant of arrest. However, without waiting for the conclusion of the investigation, the judge may issue a warrant of arrest if he/she finds after an examination in writing and under oath of the complaint and his/her witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order to frustrate the ends of justice.

804. When a person is lawfully arrested without a warrant involving an offense which requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing Rules. In the absence or unavailability of an inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court on the basis of the affidavit of the offended party or arresting officer or person.

805. Before the complaint or information is filed, the person arrested may ask for a PI, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within 15 days from its inception. After the filing of the complaint or information in court without a PI, the accused may, within five days from the time he learns of its filing, ask for a PI with the same right to adduce evidence in his defense as provided in the Rules.

806. Article 125 of the RPC penalizes, in varying degrees, delay in the delivery of detained persons to the proper judicial authorities by any public officer or employee within the period of: 12 hours, for crimes and offenses punishable by light penalties; 18 hours, for those punishable by correctional penalties; and 36 hours for those punishable by afflictive or capital penalties - or their equivalent in all three instances.

**b) Right to Counsel**

807. Rule 113 (Section 14) provides that any member of the Philippine Bar shall, at the request of the person arrested or of another acting in his behalf, have the right to visit and confer privately with such person in the jail or any other place of custody at any hour of the day or night. As provided for under RA 7438, this right shall also be exercised by any relative of the detained person, any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the CHR or by any international NGO accredited by the Office of the President, subject to reasonable regulation.

808. Rule 116 (Section 7) provides that the court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel *de officio* such members of the bar in good standing who, by reason of their experience and ability, can competently defend the accused. But, in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused.

**c) Right to Litigate as Pauper Litigant**

809. In *Teofilo Martinez vs. People of the Philippines* (31 May 2000, 332 SCRA 694), the SC resolved the question on whether the Court of Appeals gravely abused its discretion in denying the petitioner's motion to appeal as a pauper litigant. The petitioner executed an affidavit stating that he and his immediate family were not earning a gross income of more than P3,000 a month, and that their only real property, a hut, could not be worth more than P10,000. He also submitted a joint affidavit executed by his neighbors attesting to the veracity of the petitioner's allegations. The high court ruled in favor of the petitioner by setting aside the questioned Resolution and remanding the case to the Court of Appeals to allow him to litigate as pauper and to return to him the docket fees he already paid.

**2) Measures to Ensure Speedy Trial of Cases**

810. The judicial and the legislative branches, as well as relevant agencies of the executive branch continuously sought for ways to speed up the trial of cases and unclog court dockets of unresolved cases that accumulated through the years. A major concern in these efforts is the need for all trial courts to possess modern and sophisticated office equipment for the speedy preparation of court records and performance of other services. This quest for efficiency largely depends on wholesale reforms in the judicial system, which indispensably includes the availability of funds.

**a) The Continuous Trial System**

811. SC Administrative Circular No. 4 (22 Sept 1988) was issued to establish a mandatory continuous trial system, which was envisioned as a mode of adjudication conducted with speed and dispatch so that trials are held on the scheduled dates without needless postponements. The factual issues are well-defined at pre-trial and the whole proceedings terminated and ready for judgment within 90 days from the date of initial hearing, unless for meritorious reasons, an extension is permitted. The system requires that the Presiding Judge (a) adhere faithfully to the session hours prescribed by law; (b) maintain full control of the proceedings and (c) efficiently allocate and use time and court resources to avoid court delays.

812. Subsequently, SC Adm. Circular No. 134 (20 Dec 1988) was issued designating the branches of trial courts that would participate in the pilot project. SC Circular No. 1-89 (19 Jan 89) provided for specific guidelines to be observed by the designated trial courts. Successful test runs were implemented in 84 trial courts from February 1989 and half of all the courts in September 1989. A study conducted by the University of the Philippines Institute of

Judicial Administration revealed that the system reduced the period of litigation and the number of pending cases. The study showed that 99 % of the 173 cases pending in the 83 pilot courts were decided within an average period of six months.

813. The SC also noted an increase in amicable settlement for civil cases and plea bargaining for criminal cases since the test runs began. This was because, in criminal cases, judges are required to encourage the accused to plead guilty to a lesser offense than that charged.

814. Congressional contribution came in the form of RA 8493, or An Act to Ensure a Speedy Trial of All Criminal Cases Before the Sandiganbayan, Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Appropriating Funds Therefor, and For Other Purposes (12 Feb 1998). The Act contains the following provisions:

- Section 2 (Mandatory Pre-Trial in Criminal Cases) provides that the justice or judge shall, after arraignment, order a pre-trial conference to consider the following: plea bargaining; stipulation of facts; marking for identification of evidence of parties; waiver of objections to admissibility of evidence; other matters that will promote a fair and expeditious trial.
- Section 6 (Time Limit of Trial) provides that “in criminal cases involving persons charged with a crime, except those subject to the Rules on Summary Procedure, or where the penalty prescribed by law does not exceed six (6) months imprisonment, or a fine of One thousand pesos (PhP1,000.00) or both, irrespective of other impossible penalties, the justice or judge shall, after consultation with the public prosecutor and the counsel for the accused, set the case for continuous trial on a weekly or other short-term trial calendar at the earliest possible time to as to ensure speedy trial. In no case shall the entire trial period exceed one hundred eighty (180) days from the first day of trial, except as otherwise authorized by the Chief Justice of the Supreme Court pursuant to Section 3, Rule 22 of the Rules of Court.”
- Section 7 (Time Limit between Filing of Information and Arraignment, and Between Arraignment and Trial) provides that “the arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs. Thereafter, where a plea of not guilty is entered, the accused shall have at least fifteen (15) days to prepare for trial. Trial shall commence within thirty (30) days from arraignment as fixed by the court.”

815. Section 10 of the Act allows for the following periods of delay to be excluded in computing the time within which trial must commence:

- Any period of delay resulting from other proceedings concerning the accused, including but not limited to the following reasons: an examination of the accused, and hearing on his/her mental competency, or physical incapacity; trials with respect to charges against the accused; interlocutory appeals; hearings on pre-trial motions: Provided that the delay does not exceed 30 days; orders of inhibition, or proceedings relating to change of venue of cases or transfer from other courts; the finding of the

existence of a valid prejudicial question; and, delay reasonably attributable to any period, not to exceed 30 days, during which any proceeding concerning the accused is under advisement.

- Any period of delay resulting from the absence or unavailability of the accused or an essential witness (whereabouts unknown or cannot be determined by due diligence).
- Any period of delay resulting from the fact that the accused is mentally incompetent or physically unable to stand trial.
- If the information is dismissed upon motion of the prosecution and thereafter a charge is filed against the accused for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.
- A reasonable period of delay when the accused is joined for trial with a co-accused over whom the court has not acquired jurisdiction, or as to whom the time for trial has not run and no motion for severance has been granted.
- Any period of delay resulting from a continuance granted by any justice or judge *motu proprio* or on motion of the accused or his or her counsel or at the request of the public prosecutor, if the justice or judge granted such continuance on the basis of his or her findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

816. Section 13 provides that if the accused is not brought to trial within the time limit required by Section 7 of this Act, the information (indictment) shall be dismissed on motion of the accused. The accused shall have the burden of proof of supporting such motion but the prosecution shall have the burden of going forward with the evidence in connection with the exclusion of time under Section 10 of the Act. Failure of the accused to move for dismissal prior to trial or entry of a plea of guilty shall constitute a waiver of the right to dismissal under this section.

817. In light of the successful test runs and the passage of RA 8493, SC Adm. Circular No. 3-90 was issued enjoining the holding of continuous trials in all of the 1,900 trial courts nationwide beginning 15 February 1990. Trial judges were directed to resolve within the succeeding 90 days all cases pending in their courts. Extensions of specific cases could be made only with written permission from the Chief Justice. Following trial, the Circular gave judges 90 more days in which to write their decisions. The nationwide continuous trial system was to be implemented in all 720 regional trial courts (RTCs), 82 metropolitan trial courts (MTCs), 124 municipal trial courts in cities, 437 municipal trial courts, 481 municipal circuit trial courts, 5 *shari'a* district courts and 51 *shari'a* circuit courts. Further, SC Adm. Circular No. 3-99 (15 Jan 1999) enjoins trial courts to strictly observe session hours and to effectively manage their cases.

818. To complement the continuous trial system, DOJ Circular No. 38 (17 June 1994) directed the National Prosecution Service thus, “no postponement of the trial or other proceedings of a criminal case shall be initiated or caused by the trial prosecutor except in instances where the subject postponement is occasioned by the absence of material witnesses or other causes beyond his control or not attributable to him.” Subsequently, a set of Rules of Procedure was issued by the Supreme Court in 1997 to simplify the manner by which litigation is conducted at all levels of the judicial system.

819. With the objective of expediting the disposition of cases, RA 8249 further defined the jurisdiction of the Sandiganbayan, amending for the purpose PD 1606, as amended (10 Dec 1978). The law provided that cases originating from the three geographical regions (Luzon, Visayas, Mindanao) be tried in those regions subject to exemptions arising from greater inconvenience to the accused and the witnesses as well as other compelling considerations. PD1006 provided that the Presiding Justice of the *Sandiganbayan* may authorize any division or division of court to hold sessions at any time and place outside Metro Manila to hear and decide cases emanating from any of the existing judicial districts.

820. Finally, the passage of RA 8246, or An Act Creating Additional Divisions in the Court of Appeals, Increasing the Number of Justices from 51 to 69, Amending for the Purpose *Batas Pambansa*, as amended, Otherwise Known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefore, and for Other Purposes (30 Dec1996), in order to provide convenience and expediency to court litigants and the general public who were otherwise forced to go the National Capital Region to follow up their cases.

821. The continuous trial scheme involved giving the prosecution and defense 45 days each to present their respective evidence and arguments. This necessarily recommitted the mandatory holding of pre-trial where factual issues for trial were well-defined and the whole proceedings thereafter terminated from the date of the initial hearing. Another 90 days were provided for the promulgation of the decision that was counted from the date of the submission of the case for resolution.

822. The scheme was criticized by both the Bench and Bar for various reasons. The trial courts were saddled with cases (ranging from 200 to more than 400) which far exceeded those which judges could, within human endurance and available resources, decide and dispose. Some complex cases involved a number of parties and to attentively and conscientiously hear two or more witnesses a day was taxing to a trial judge.

823. The courts were also forced to hear more than the three prescribed number of cases a day, thus causing most trial judges to haphazardly decide and dispose of their cases in order to accommodate new ones. The limited time available to deliberate thoroughly on a judgment affected the quality of decision-making that could easily result in more appeals being elevated to the higher courts. During appellate review, many trial court decisions were reversed and the cases remanded to the courts *a quo* for further proceedings. The cycle thus caused more delays and clogging in all court levels.

824. But judicial resolve to expedite the resolution of cases clearly manifested in a *per curiam* resolution issued on 20 March 1990 when the SC chastised a Malabon judge (Metro Manila), who was perennially criticized for foot-dragging and procrastinating, for neglect of duty and fined him PhP10,000 for exceeding the mandated 90-day period for rendering judgment after the case had been submitted for decision.

825. Similarly, in its resolution dated 15 September 1998, the SC also denied for lack of merit a motion for reconsideration filed by a Toledo City RTC judge who was fined PhP50,000 for failing to decide some cases within 90 days. The Court resolution stated that matters like lack of a stenographer and a courtroom, inadequacy of materials and small office space “may only mitigate and cannot completely absolve” the respondent judge from administrative liability. The Court stressed: “When a judge accepts his appointment as judge, he is presumed to know his unyielding duty to dispose the court’s business promptly and decide cases within the period fixed by law.” It added that personal problems should not excuse a judge’s non-compliance with the mandate to decide cases within the 90-day period.

#### **b) The 1991 Revised Rule on Summary Procedure**

826. SC *En Banc* Resolution dated 15 October 1991 contained the Revised Rule on Summary Procedure for MeTCs, MTCs in Cities, MTCs and MCTCs which became effective 15 November 1991 and covered the following cases:

- Civil Cases: (i) all cases of forcible entry and unlawful detainer, irrespective of the amount of damages or unpaid rentals sought to be recovered; (ii) all other civil cases, except probate proceedings, where the total amount of the plaintiff’s claim does not exceed 10,000 pesos, exclusive of interest and costs.
- Criminal Cases: (i) violations of traffic laws, rules and regulations; (ii) violations of the rental law; (iii) violations of municipal or city ordinances; (iv) all other criminal cases where the penalty is prescribed by law for the offense charged is imprisonment not exceeding 6 months or a fine not exceeding PhP 10,000 or both, irrespective of other impossible penalties, accessory or otherwise, or of the civil liability arising therefrom: Provided, however, That in offenses involving damage to property through criminal negligence, this Rule shall govern where the impossible fine does not exceed PhP 10,000.

827. From the time the summons was served and received, up to the time judgment is rendered, a maximum total of 115 days would have elapsed in a summary proceeding, compared to 180 days in the continuous trial scheme.

#### **c) *Lupong Tagapamayapa* (Mediation/Conciliation Board)**

828. Also, in an effort to unclog court dockets, the Revised *Katarungang Pambarangay* Law under RA 7160, or Local Government Code of 1991, (01 Jan 1992), established the *barangay*-level mediation and resolution of disputes (Chapter 7 of Book III). There is created in each *barangay* (village) the *Lupong Tagapamayapa* (Mediation/Conciliation Board) or the *Lupon* composed of the *Barangay* Chairman as chairman and 10 to 20 members, to be



constituted every three years. Any person actually residing or working in the *barangay*, not otherwise expressly disqualified by law, and possessing integrity, impartiality, independence of mind, sense of fairness, and reputation for probity, may be appointed member of the *Lupon*. The law also provides that in *barangays* where majority of the inhabitants are members of indigenous cultural communities, local systems of settling disputes through their councils or *datus* or elders shall be recognized without prejudice to the applicable provisions of the Code.

829. The *Barangay Lupon* shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of disputes except the following:

- Where one party is the government, or any subdivision or instrumentality thereof.
- Where one party is a public officer or employee and the dispute relates to the performance of his official functions.
- Offenses for which the law prescribes a maximum penalty of imprisonment exceeding one year or a fine of over 5,000 pesos.
- Offenses where there is no private offended party.
- Where the disputes involve real properties located in different cities and municipalities unless the parties thereto agree to submit their differences to amicable settlement by an appropriate *Lupong Tagapamayapa* (Mediation or Conciliation Board).
- Disputes involving parties who actually reside in *barangays* of different cities or municipalities, except where such *barangay* units adjoin each other and the parties thereto agree to submit their differences to amicable settlement by an appropriate *Lupong Tagapamayapa*.
- Any class of disputes which the President may determine in the interest of justice or upon the recommendation of the Secretary of Justice.

830. With regard to non-criminal cases not falling within the authority of the *Lupon*, the court may, at the time before trial, *motu proprio* refer the case to the *Lupon* concerned for amicable settlement.

831. In order to prevent circumvention of this law, the SC and the DOJ each came up with guidelines for all concerned trial courts and prosecutors, respectively. SC Adm. Circular No. 14-93 (15 July 1993) requires all disputes to be brought for Barangay conciliation as a pre-condition to the filing of the complaint in court or any government offices. Cases exempted under the guidelines are as follows:

- Any complaint by or against corporations, partnerships or juridical entities, since only individuals shall be parties to such proceedings either as complainants or respondents.

- As provided in Section 412 of the law, parties may directly go to court where urgent legal action is necessary to prevent further injustice from being committed: when the accused is under police custody or detention; petitions for habeas corpus by a person illegally deprived of his rightful custody over another or a person illegally deprived of his liberty or one acting in his behalf; actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support during the dependency of the action; actions which may be barred by the Statute of Limitations.
- Dispute arising from the Comprehensive Agrarian Reform Law.
- Labor disputes or controversies arising from employer-employee relations.
- Actions to annul judgment upon a compromise.

832. Under the DOJ *Katarungan Pambarangay* Rules and Regulations, the certification for filing a complaint in court or any government office to be issued by Barangay authorities must attest to any of the following: (a) the fact that there had been a confrontation of the parties involved that had taken place and that a conciliation or settlement had been reached but that the same had been subsequently repudiated; (b) a confrontation of the parties took place but no conciliation or settlement had been reached; (c) no personal confrontation took place before the mediation council through no fault of the complainant; and (d) where the dispute involves members of the indigenous cultural community which shall be settled in accordance with customs and traditions of that community, or where one or more of the parties belong to a minority and the parties have mutually agreed to submit their dispute to the indigenous system of amicable settlement, there had been no settlement as certified by the datu or tribal leader or elder.

833. Statistics provided by the DILG showed that there are a total of 38,916 organized *Lupon* all over the country that are distributed in 40,983 barangays. With regard to the number of *Lupon* per region, data showed that Region 8 has the most number of *Lupon* (43,476), followed by Region 9 (32,376) and the CAR (32,339). From January 1987 to December 1998, the total number of disputes submitted to the *Lupong Tagapamayapa* was 2.6 million cases, of which 1.28 million were criminal (49%) and 0.95 million, civil (36.6%). A total of 2.27 million cases (87%) were settled, 174,405 (6.72%) cases were forwarded to the courts, 144,476 (5.55%) were pending, and the rest were dismissed.

834. Unfortunately, the DOJ stopped the implementation of the Program in 1998. It is estimated that government savings realized in the handling of disputes by the *Lupon* amounted to more than PhP17 billion pesos from January 1987 to December 1998. (Annex 24: Total Number of *Lupon* Organized by Region and Summary Report of Cases Filed Before the *Lupong Tagapamayapa*, January 1987-1998)

### **3) The Witness Protection Program**

835. A major initiative to ensure the security of witnesses and the speedy and continuous trial of cases was the passage of RA 6981, or Witness Protection Security and Benefit (WPSB) Act (20 May 1991 / 19 Sept 1991. (Annex 25: RA 6981 and Implementing Rules and Regulations) The Act provides the framework for the security protection of witnesses to crimes and provides them monetary and other benefits to ensure their appearance before investigative bodies and the courts. Since its implementation, the Program has proven to be a major component in the fight against criminality and a valuable aid in the administration of criminal justice.

836. The WPSB is placed under the DOJ. Applicants are entitled to the following rights and benefits upon admission:

- A secure housing facility until he/she has testified or until the threat, intimidation or harassment disappears or is reduced to a manageable or tolerable level.
- When the circumstances warrant, relocation and/or change of personal identity which may be extended to any member of the family within the second degree of consanguinity or affinity.
- Whenever practicable, assistance in securing means of livelihood. Any relocated witness will be given financial assistance for support of his family in such amount and duration as the Department shall determine.
- Not to be removed from or demoted in work because of or on account of his absences due to his attendance before any judicial, quasi-judicial or investigating authority, including legislative investigation in aid of legislation. In case of prolonged transfer or permanent relocation, the employer shall have the option of removing the witness from employment after securing clearance from the Department upon the recommendation of the DOLE.
- To be paid his equivalent salaries or wages corresponding to the number of days of absence occasioned by the Program.
- To be provided reasonable traveling expenses and subsistence allowance by the Program.
- To be provided free medical treatment, hospitalization and medicines, for any injury or illness incurred or suffered by him because of Witness duty in any private or public hospital or clinic.
- If killed because of his participation in the Program, to have his heirs indemnified by burial benefit of not less than PHP10,000 exclusive of any other similar benefits he may be entitled under existing laws.

- In case of death or permanent incapacity, his minor or dependent children shall be entitled to free education, from primary to college level in any state or private school, college or university as may be determined by the Department, as long as they shall have qualified thereto.

837. There was a marked increase in the number of applications for coverage in the Program as a result of massive tri-media information campaign, coupled with the recent convictions secured by the State in a number of celebrated cases utilizing witnesses covered under the Program. From only 6 admissions in 1991, the WPSB recorded a total of 2,554 applications from the period covering 1991 to 2000. Out of this number, 1,849 witnesses were admitted. (Annex 26: WPSBP Performance Indicators, 1991-2000).

838. Despite budgetary constraints, the WPSB has made possible a total of 215 convictions, including high profile and sensational cases involving a congressman, an ex-mayor, the son of a Supreme Court Chief Justice and a businessman, as well as those involved in several cases including a massacre, a kidnapping and a double murder involving the heiress of a major transportation company in the Visayas and Mindanao.

839. The WPSB has among its priority the following projects:

- The enhancement and modernization of its Security and Intelligence Services nationwide through the provision of additional vehicles to improve the mobility of security officers, additional recruits and comprehensive training program for security officers to man additional safehouses or temporary shelters for witnesses, and purchase of security and communications equipment.
- Continued coverage and grant of financial assistance and other benefits to witnesses.
- Assistance to witnesses in transferring them to new localities to address continuing threats to their personal safety.
- Improvement of socio-civic services, counseling and training for witnesses to upgrade their skills and reduce boredom and to prepare them to resume normal productive lives upon separation from the Program. The Program has initiated livelihood seminars that encourage entrepreneurial activities of witnesses to help them attain some measure of economic alternative or option.
- Develop linkages with government institutions that could provide soft financing package and provide social and other assistance.

840. The WPSB's budgetary constraints have resulted in very minimal monthly allowance a witness receives for food and personal expenses. Most of the witnesses have families averaging about five members per family. The Program also provides temporary housing and absorbs expenses for light, water, telephone and security. Housing the witness poses a problem because of high rental rates in Manila. For 1997, the Program was able to increase the financial allowance of witnesses through the grant of PHP50 million from the Ramos Administration.

**4) Compensation Following Reversal of Conviction or Upon Grant of Pardon Resulting from Miscarriage of Justice**

841. Reference is made to the section of this Report that provides information on RA 7309 creating the Board of Claims under the DOJ for victims of unjust imprisonment or detention and victims of violent crimes. Section 3 of the Act provides that any person may file a claim for compensation before the Board when he was unjustly accused, convicted, and imprisoned but subsequently released by virtue of a judgment of acquittal, provided that the judgment is coupled with a pronouncement that the accused did not commit the crime.

842. For victims of unjust imprisonment or detention, the financial assistance shall be based on the number of months of imprisonment or detention and every fraction thereof shall be considered one month, provided however that in no case shall such financial assistance exceed PhP1,000 per month and provided further that the maximum amount of financial assistance shall not exceed PhP10,000.

843. Any person who has been detained on charges of committing crimes in pursuit of his political belief or who has been convicted of committing similar offenses and later on released after serving sentence or by virtue of the grant of amnesty or executive clemency shall be entitled to financial assistance in the amount of PhP10,000 to enable him to start a new and productive life.

844. The BOC has so far granted compensation to a total of 87 former convicted prisoners whose sentences were reversed by the Supreme Court or who were given a grant of pardon upon finding that there was a miscarriage of justice. From 1989 to the first quarter of 1998, 247 prisoners who were incarcerated for illegal possession of firearms and illegal assembly and who were subsequently acquitted were provided with financial compensation amounting to PhP1.557 million.

**J. Article 15 (Prohibition against ex post facto law)**

845. The Philippine Government wishes to reiterate the information provided in the Initial Report.

**K. Article 16 (Right to recognition as a person before the law)**

846. The Philippine Government wishes to reiterate the information provided in the Initial Report.

**L. Article 17 (Prohibition of arbitrary or unlawful interference with privacy, family, home or correspondence, honor and reputation)**

847. The Philippine Government wishes to reiterate the information provided in the Initial Report.

848. The case of *Ople vs. Torres, et. al.*, (23 July 1998, 293 SCRA 141) ensures to prevent untoward violation of privacy, particularly by the State. The SC granted the petition praying for the invalidation of AO 308 entitled “Adoption of a National Computerized Identification Reference System,” which was issued by President Ramos on 12 December 1996. AO 308 was issued with the aim of providing Filipino citizens and foreign residents a facility to conveniently transact business with basic service and social security providers and other government instrumentalities. The required a computerized system to identify properly and efficiently persons seeking basic services on social security and reduce, if not totally eradicate, fraudulent transactions and misrepresentations.

849. Petitioner raised two important constitutional grounds against the validity of AO 308: it is a usurpation of the power of Congress to legislate; and, it impermissibly intrudes on the citizenry’s protected zone of privacy. On the other hand, respondents contended that the petition is not a justiciable case that would warrant a judicial review; that AO 308 was issued within the executive and administrative powers of the President without encroaching on the powers of Congress; and, that AO 308 also protected the individual’s interest in privacy.

850. The SC rejected the respondents’ argument that AO 308 implemented the legislative policy of the Administrative Code of 1987. It would establish for the first time a National Computerized Identification Reference System, which would require the delicate adjustment of various contending state policies - the primacy of national security, the extent of privacy interest against dossier-gathering by government, the choice of policies, etc. As the AO redefined important parameters of some basic rights of the citizenry vis-à-vis the State as well as the line that separated the administrative power of the President to make rules and the legislative power of Congress, it is evident that it dealt with a subject that should be covered by law. Although administrative regulations are entitled to respect, the authority to prescribe rules and regulations was not an independent source of power to make laws.

851. Further, the SC said: Nor is it correct to argue that the AO 308 is not a law because it confers no right, imposes no duty, affords no protection and creates no office. In fact, a citizen cannot transact business with government agencies delivering basic services to the people without the contemplated ID card. No citizen can refuse to get this card for no one can avoid dealing with government. It is thus clear that without the ID, a citizen will have difficulty exercising his/her rights and enjoying his privileges. Assuming that AO 308 need not be the subject of a law, it still cannot pass constitutional muster as an administrative legislation because facially it violates the right to privacy - a fundamental right guaranteed by the Constitution. Hence, it is the burden of government to show that AO 308 is justified by some compelling State interest and that it is narrowly drawn. It is debatable whether the interests presented therein are compelling enough to warrant its issuance. But what is not arguable is the AOs broadness and vagueness, which if implemented will put the people’s right to privacy in clear and present danger.

852. The heart of AO 308 is the provision on Population Reference Number (PRN) as a “common reference number to establish a linkage among concerned agencies” through the use of “Biometrics Technology” and “computer application designs”. Biometrics has now evolved into a broad category of technologies that provide precise confirmation of an individual’s identity

through his physiological and behavioral characteristics (i.e., fingerprint, retinal scan, hand geometry or facial features as well as voice print, signature and keystroke, respectively). AO 308 does not specify whether encoding of this data is limited to biological information alone for identification purposes nor does it state who shall control and access the data, under what circumstances and for what specific purpose. These factors are essential to safeguard the privacy and guarantee the integrity of the information.

853. The lack of safeguards may interfere with the individual's liberty of abode and travel by enabling authorities to track down his/her movement; it may also enable unscrupulous persons to access confidential information and circumvent the right against self-incrimination; it may pave the way for "fishing expeditions" by government authorities and evade the right against unreasonable searches and seizures. The possibilities of abuse and misuse of the system are accentuated when it is considered that the individual lacks control over what can be read or placed on his ID, much less verify the correctness of the data encoded.

854. In another case, the questions raised were the possible violation of the doctrine of presumption of innocence and the right to privacy and communication. In January 2000, the Secretary of the Interior and Local Governments began a campaign to spray-paint red signs on the houses of suspected drug traffickers.

#### **M. Article 18 (Right to freedom of thought, conscience and religion)**

855. The Philippine Government wishes to reiterate the information provided in the Initial Report.

856. Recent Philippine jurisprudence on the freedom of exercise of religion was enunciated in the case of *Ebralinag, et al. vs. The Division of Superintendent of Schools of Cebu and Amolo, et al.* (1 March 1993, 219 SCRA 256) With regard to the separate cases of the expulsion of 68 high school and grade school students for refusing to salute the Philippine national flag and take part in the flag ceremony on the ground that it is contrary to their belief and religion as Jehovah's Witnesses. The SC held that the expulsion of the students transgresses their constitutional rights to religious freedom. The sole justification for a prior restraint or limitation on the exercise of religious freedom is the existence of a clear and present danger of a character both grave and imminent, of a serious evil to public safety, morals, health or any other legitimate public interest, that the State has a right to prevent the absence of such a threat to public safety, the expulsion of the petitioners from the school has not justified.

857. However, the petitioners' right not to participate in the flag ceremony did not give them a right to disrupt such patriotic exercises. If they quietly stood at attention during a flag ceremony while their classmates and teachers saluted the flag, sang the national anthem and recited the patriotic pledge, it was obvious that such conduct would not disturb the peace or pose "a grave and present danger of a serious evil to public safety, morals, health or any other legitimate public interest that the State has a right to prevent."

## **N. Article 19 (Right to freedom of expression)**

858. The Philippine Government wishes to reiterate the information provided in the Initial Report. Article III, Section 4 of the 1987 Constitution provides thus: “No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”

859. The right to freedom of expression includes the freedom to speak, receive and impart information and ideas through any media of choice. Section 7 of the same article provides “The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.”

### **1) Applicable Jurisprudence**

860. The SC in the case of *Ariel Non, et al., vs. Hon. Sancho Dames II, et al.* (20 May 1990, 185 SCRA 523) once again upheld the basic constitutional rights to free speech and assembly when it reversed its ruling in the case *Alcuaz, et. al. vs. PSBA*, (02 May 1988, 161 SCRA 7). The exercise of this fundamental right was threatened when school authorities refused to readmit or re-enroll students who participated in mass actions against the school in the preceding semester. The school authorities invoked the SC ruling in the *Alcuaz case*, wherein it was held that a college student, once admitted by the school, is considered enrolled only for one semester and, hence, may be refused readmission after the semester is over, as the contract between the student and the school is deemed terminated.

861. The SC, in abandoning the “termination of contract theory” in the *Alcuaz case*, ruled that the contract between the school and the student was not an ordinary contract. It was imbued with public interest, considering the high priority given by the Constitution to education and the grant to the State of supervisory and regulatory powers over all educational institutions. Quoting paragraph 107 of the Manual of Regulations for Private Schools, the Court ruled that save for academic delinquency and disciplinary regulation, the student was presumed qualified for enrolment for the entire period he was expected to complete it.

862. This turnabout by the SC was prompted not merely by the recognition of the basic right to education over and above the school or institution’s right to refuse admission of students based on the termination of contract theory and under the guise of academic freedom, but more so, by what the Court saw as the real motive behind such refusal: *the students’ participation in the mass action directed against it*.

863. In this case, the Court found that the school’s refusal to readmit the students allegedly on the ground of failing grades was a mere afterthought, and that the students were really being punished because they caught the ire of the school authorities when they participated in the mass actions. The Court then emphasized that “the protection to cognate rights of speech and assembly is similarly available to students” and that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”



864. Philippine jurisprudence on the issue of access to official records is shown in *Morato vs. Sarmiento* (13 Nov 1991, 203 SCRA 515), wherein the SC held that the refusal by the MTRCB to allow the examination of its records pertaining to the decisions of the review committee as well as the individual voting slips of its members, violated the petitioner's constitutional right of access to public records.

865. The Court ruled against the respondent's contention that what was rendered by the members of the board in reviewing films and reflected in their individual voting slips was their individual vote of conscience and as such made it purely private and the exclusive property of the members concerned. As may be gleaned from PD 1986, the existence of the MTRCB was no doubt public in character as it was created to serve public interest. The right to privacy belongs to the individual acting in his/her private capacity and not to a government agency or officer tasked with, and acting in, the discharge of public duties.

866. The decisions of the Board and the individual voting slips are acts made pursuant to their official functions, and as such, are neither personal nor private in nature but rather public in character. They are, therefore, public records access to which is guaranteed to the citizenry by no less than the fundamental law of the land. The constitutional recognition of the citizen's right of access to official records cannot be made dependent upon the consent of the board members concerned, otherwise, the said right would be rendered nugatory. In *Subido vs. Ozaeta* (1948, 80 Phil.383), the SC stated: "Except, perhaps when it is clear that the purpose of the examination is unlawful, or sheer, idle curiosity, we do not believe it is the duty under the law for registration officers to concern themselves with the motives, reasons, and objects of the person seeking access to the records."

#### **O. Article 20 (Prohibition of propaganda for war)**

867. The Philippine Government wishes to reiterate the information provided in the Initial Report.

#### **P. Article 21 (Right of peaceful assembly)**

868. The Philippine Government wishes to reiterate the information provided in the Initial Report and to highlight the provisions of BP 880, or An Act Ensuring the Free Exercise by the People of their Right Peaceably to Assemble and Petition the Government (also known as Public Assembly Act of 1985). This section should be read with the section on Article 19, The Right to Freedom of Expression.

869. Section 4 of the BP 880 requires a written permit before any person or persons can organize and hold a public assembly in a public place. Public places include any highway, boulevard, avenue, road, street, bridge or other thoroughfare, park, plaza, square and or any open space of public ownership where the people are allowed access. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or on the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of the said institution.

870. Section 6(a) provides that it shall be the duty of the mayor or any official acting in his behalf to issue or grant a permit unless there is clear and convincing evidence that the public assembly poses a clear and present danger to public order, safety, convenience, morals or health. If the application permit is denied or the terms thereof are modified in the permit, the applicant may contest the decision in an appropriate court of law.

871. Section 9 provides that law enforcement agencies shall not interfere with the holding of a public assembly. However, to adequately ensure public safety, a law enforcement contingent under the command of a responsible officer may be detailed and stationed in a place at least 100 meters away from the area of activity ready to maintain peace and order at all times.

872. Section 10 provides the guidelines for law enforcement authorities in ensuring freedom of expression and peaceful assembly: (a) they must be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of “maximum tolerance;” (b) they shall not carry any kind of firearms but may be equipped with baton or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards; (c) they should not use tear gas, smoke grenades, water cannons or any similar anti-riot device unless the public assembly is attended by actual violence or serious threats of violence or deliberate destruction of property.

873. Acts prohibited under Section 13 of the Act include the following: obstructing, impeding, disrupting or otherwise denying the exercise of the right to peaceful assembly; acts in violation of Section 10 of this law; unnecessary firing of firearms by any member of any law enforcement agency or any person to disperse the public assembly.

#### **1) Police Guidelines on Public Assembly**

874. BP 880 and other relevant laws, including the Labor Code of the Philippines, as amended, are implemented by the police through its Rules on Civil Disturbance Control (CDC) Operations, during rallies, strikes, lockouts, labor disputes, demonstrations or other public assemblies. Section 10 states that law enforcement agents shall at all times exercise maximum tolerance. Further, no arrest of any leader, organizer or participant shall be made during the public assembly unless he/she is violating a law, statute, ordinance or any provisions of this Act.

#### **Q. Article 22 (Right to freedom of association and to form and join trade unions)**

875. The Philippine Government wishes to reiterate the information provided in the Initial Report. Reference is also made to the following Philippine reports to the ILO:

- Report on implementation of ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organize) in response to Observation 1990; Direct Request 1993; Observation 1993; Observation 1995; and Direct Request 1995.
- Report on the implementation of ILO No. 98 (Right to Organize and Collective Bargaining) in response to Direct Request 1989 and as indicated in the Philippine report for the period ending August 1997.

876. In the case of the *Social Security System vs. Court of Appeals* (28 July 1989, 175 SCRA 686), the SC ruled that the right of government employees to organize, as guaranteed by the Philippine Constitution and in view of the provisions of the ILO Convention, is only limited to the formation of unions or associations. The right of government employees to organize excludes the conduct or participation in strikes which are considered detrimental or which would unduly paralyze the basic machinery of government and affect the effective delivery of public service.

877. The Philippine Reports on ILO 87 provided the following information: reason why foreign workers are not granted the right to organize and unionize workers in the Philippines; RA 6715 (New Labor Relations Law) which provides, among others, for the power of the Secretary of Labor and Employment to terminate a strike and to assume jurisdiction over compulsory arbitration following deadlock in collective bargaining negotiations; 20 % requirement for union registrations to establish a federation.

878. The Philippine reports on ILO 98 provided the following information: government activities to implement its voluntary arbitration program; constitutional and enabling laws to ensure enforcement and protection of the right of the people to self-organization; assessment of effectiveness of government protection against unfair labor practices; extent of the ILO's application to public sector employees, including the members of the law enforcement authorities. RA 6715 was enacted to extend protection to labor, strengthen the constitutional rights of workers to self-organization, collective bargaining and peaceful concerted activities, foster industrial peace and harmony, promote the preferential use of voluntary modes of settling disputes, and reorganize the National Labor Relations Commission, amending for the purpose PD 442 or the Labor Code of the Philippines.

879. The 1997 Report informed the ILO Committee that the guarantees provided in the Convention do not apply to the members of the armed forces and the police who are not allowed to form unions or organizations nor to participate in any concerted activities such as strikes as these are inimical to the security of the State. Section 4 of EO No. 180 dated 01 June 1987 states that the Order shall not apply to the members of the Armed Forces of the Philippines, including police officers, policemen, firemen and jail guards.

880. The PNP Rules on Civil Disturbance Control Operations provide the following code of conduct in case of strikes, lockouts and labor disputes:

- The involvement of the police in general shall be limited to the maintenance of peace and order, enforcement of laws and legal orders of duly constituted authorities. Any request for police assistance issued by duly constituted authorities shall specify the acts to be performed or conducted by PNP personnel. Unless directed by the President or personally by the Chairman of the NAPOLCOM upon consultation with the Secretary of Labor and Employment or when requested by the latter, the military shall not intervene nor be utilized in any labor dispute.

- Personnel detailed as peacekeeping force in strike or lockout areas shall be in uniform, with proper nameplates at all times. They are to exercise maximum tolerance and observe courtesy and strict neutrality in their dealings with all parties to the controversy, and shall not inflict any physical harm upon strikers and / or picketers or any person involved in the strike or lockout. When the situation calls for it or when all other peaceful and non-violent means have been exhausted, the police may employ as a last resort only such force as may be necessary and reasonable to prevent or repel an aggression.
- The peacekeeping detail shall not be stationed in the picket (or confrontation) but so positioned that their presence may deter the commission of criminal acts or any untoward incident. They shall stay outside a 50-meter radius from the picket line, except when this area is in a public thoroughfare that they may station themselves there to ensure the free flow of traffic.

881. Arrests and searches in strike and lockout areas shall be strictly based on existing laws. When arrests are made on the basis of a valid warrant, the arresting officers shall coordinate with the leaders and representatives of the union and management, as the case may be.

882. The police shall immediately inform the DOLE of any violence in the picket line.

#### **R. Article 23 (Protection of the family)**

883. The Philippine Government wishes to reiterate the information contained in the Initial Report. Reference is also made to relevant information contained in the Philippine Report on Articles 10-12 of the Convention on Economic Social and Cultural Rights which was submitted in September 1994, specifically paragraphs 86-136 of the Report.

884. Article XV, Section 1 of the 1987 Constitution recognizes the Filipino family as the foundation of the nation. The right of men and women of marriageable age to marry with their free and full consent and to found a family in accordance with their religious convictions and the demand of responsive parenthood are also recognized and protected. The Philippine Government has also taken the necessary steps to ensure equality of rights and responsibilities of spouses during marriage.

885. Enacted during the period under review was RA 8187, or An Act granting paternity leave of seven days with full pay to all married male employees in the private and public sectors for the first four deliveries of the legitimate spouse with whom he is cohabiting, and for other purposes (6 Nov 1996). The grant of leave is based on the condition that the male employee's legitimate spouse has delivered a child or suffered a miscarriage and he could help take care of the child or assist in the spouse's recovery. Moreover, Section 8 of RA 8972 provides that "in addition to leave privileges under existing laws, parental leave of not more than seven (7) days every year shall be granted to any solo parent employee who has rendered service of at least one (1) year."

886. RA 8369, or Family Courts Act (28 Oct 1997) ensures the protection of the rights and welfare of the family by establishing family courts that are vested with exclusive jurisdiction over child and family cases. The law amends BP 129 or Judiciary Reorganization Act of 1980.

887. In Article II, Section 12, the State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. This State policy is emphasized in RA 8369, which mandates family courts to try to preserve the solidarity of the family, provide procedures for the reconciliation of spouses and the amicable settlement of family controversy. Further, the State shall provide a system of adjudication for youthful offenders that would take into account their peculiar circumstances.

888. To be established in every province and city, the Family Court shall have jurisdiction to hear and decide on the following cases:

- Criminal cases where one or more of the accused is below 18 years of age but not less than 9 years of age, or where one or more of the victims is a minor at the time of the commission of the offense, provided the minor is found guilty, the court shall promulgate sentence and ascertain any liability which the accused may have incurred. The sentence shall, however, be suspended without need of application as provided in PD 603 (Child and Youth Welfare Code);
- Petitions for guardianship, custody of children, *habeas corpus* in relation to the latter;
- Petitions for adoption of children and their revocation;
- Complaints for annulment of marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains;
- Petitions for support and or acknowledgment;
- Summary judicial proceedings brought under the provisions of EO 209 (Family Code of the Philippines);
- Petitions for declaration of status of children as abandoned, dependent or neglected children; petitions for voluntary or involuntary commitment of children; the suspension, termination, or restoration of parental authority and other cases covered by PD 603, EO 56 (Series of 1986) and other related laws;
- Petitions for the constitution of the family home;
- Cases against minors covered by RA 6425 (Dangerous Drugs Act), as amended;

- Violations of RA7610, or Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act, as amended by RA 7658, or An Act prohibiting the employment of children below 15 years of age in public and private undertakings; and
- Cases of domestic violence against: a) Women - acts of gender-based violence that result, or are likely to result in physical, sexual or psychological harm or suffering to women; and other forms of physical abuse such as battering or threats and coercion which violate a woman's person, integrity and freedom of movement; and, b) Children - include the commission of all forms of abuse, neglect, cruelty, exploitation, violence, and discrimination and all other conditions prejudicial to their development.

889. All hearings and conciliation of child and family cases shall be consistent with the promotion of the child's and family's dignity and worth, and shall respect their privacy at all stages of the proceedings, by treating records of the cases with utmost confidentiality and the identity of parties not to be divulged unless necessary and with authority of the judge.

890. Under Section 7, in cases of violence among immediate family members living in the same domicile or household, the Family Court may issue a restraining order against the accused or defendant upon a verified complaint for relief from abuse. The court may order the temporary custody of children in all civil actions. The court may also order support *pendente lite*, including deductions for support from the salary and use of conjugal home and other properties in all civil actions.

891. The presiding judge of the Family Court, who shall undergo training in dealing with child and family relations cases, shall have direct control and supervision of the youth detention home that the LGU shall establish to separate the youth offenders from the adult criminals. Alternatives to detention and institutional care shall be made available to the accused such as counseling, recognizance, bail, community continuum or diversions from the justice system and that the HR of the accused are fully respected in a manner appropriate to their well-being.

892. The law also provides for a Social Services and Counseling Division (SSCD), under the guidance of the DSWD, which shall be established in each judicial region as the SC shall deem necessary based on the number of juvenile and family cases existing in each jurisdiction. The SSCD shall cater to all juvenile and family cases filed with the court and recommend the proper social action. It shall also develop programs, formulate uniform policies and procedures, and provide technical supervision and monitoring of all SSCD in coordination with the judge.

893. SC Circular No. 44-98 (10 Sept 1998) required all RTC judges to take an inventory of cases falling under the jurisdiction of the Family Courts. Section 5 of the Family Courts Act of 1997 provides that Family Courts shall have exclusive original jurisdiction to hear and decide criminal and civil cases and special proceedings. This move enabled the Office of the Court Administrator (OCAD) to determine the present actual number of cases within the jurisdiction of Family Courts filed with and handled by the RTC.

894. OCAD Circular No. 11-99 (23 Feb 1999) required all judges and clerks of the RTC, MeTC, MTC in cities or CTC, MTC, and MCTC to transfer to the RTC cases falling within the jurisdiction of the Family Courts.

895. A number of bills were filed in the 11<sup>th</sup> Congress for the protection of the family. One such bill is HB 360 on Anti-Domestic Violence. Domestic violence is belatedly being recognized as a serious threat to the safety and security of the vulnerable members of the family, particularly women and children.

896. The bill seeks to define the crime of domestic violence to mean as (a) forcible detention or other forms of torment employed by any person against any member of his or her family or relative within the 4th degree of consanguinity or affinity; (b) any unjust or unwarranted exercise of force or abuse of force through beating, assault and or wounding employed by any person against any member of his or her family or relative within the 4th degree of consanguinity or affinity resulting in physical pain, physical injuries or death. The bill proposes that any person who commits the crime of domestic violence shall be imposed the death penalty, which is one degree higher than that prescribed under Articles 262 to 266 of the RPC.

#### **S. Article 24 (Rights of the child)**

897. The Philippine Government wishes to reiterate the information contained in the Initial Report and makes reference to the relevant portions on the implementation of the Convention on the Rights of the Child, which was submitted in September 1993. As an update to the Initial Report, the following information, taken from the preliminary draft of the Philippines' Second Report to the Committee on the Rights of the Child are being submitted.

898. As an ardent proponent of the protection and promotion of the rights of children, the Philippines ratified the Hague Convention on Inter-Country Adoption in June 1996, and ILO Conventions 138 and 182 in 1997 and 2000, respectively. Further, in 2000, the Philippines signed two optional protocols to the Convention on the Rights of the Child (CRC) on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography. (Note: *These two protocols to the CRC were ratified on 23 April 2002*).

899. It is important to note that long before the CRC entered into force, the Philippines in 1974, had already enacted the Child and Youth Welfare Code, which defined the rights and responsibilities of the child. Clearly, the country's basic legislative framework on children preceded the CRC by 16 years.

900. After the CRC was approved by the United Nations on 20 November 1989, the Philippines immediately undertook measures to pave the way for its ratification, and became the 31<sup>st</sup> State to ratify the Convention on 26 July 1990. By way of compliance, the Philippine Government immediately formulated the framework of the *National Plan for Children in the 1990s*.

901. In the same year, the Philippines joined the world Summit for Children, and consequently updated its National Plan of Action to come up with the long-term *Philippine Plan of Action for Children (PPAC): The Filipino Children 2000 and Beyond*.

902. Since the Philippines' ratification of the CRC, 22 child-friendly national laws have been passed, the most notable of which are as follows:

**1) Legislative Measures**

903. During this period, legislative enactments aimed at protecting and promoting the rights of the child included the following:

- RA 6809, or An Act lowering the age of majority from twenty-one to eighteen years, amending for the purpose executive order 209 [Family Code of the Philippines], and for Other Purposes (13 Dec 1989), provides that emancipation shall terminate parental authority over the person and property of the child who shall then be qualified and responsible for all acts of civil life. However, contracting marriage shall still require parental consent until the age of 21.
- RA 6972, or the *Barangay Level Total Development and Protection of Children Act* (23 Nov 1990), declares that it is the policy of the State to defend the right of children to assistance including proper care and nutrition and to provide them with special protection against all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development. The Act requires the establishment of a day care center in every *barangay* with a total development and protection of children program instituted in each and every *barangay* day care center.
- RA 7610, or An Act providing for stronger deterrence and special protection against child abuse, exploitation and discrimination, and for other purposes (17 June 1992), contains provisions for the protection of the rights of children as specified in a Program on Child Abuse, Exploitation and Discrimination, which was subsequently incorporated into the Philippine Plan of Action for Children drafted in 1991 and revised the following year. It institutes stiff penalties for those engaged in child abuse, child prostitution and child trafficking, obscene publications and indecent shows, as well as other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development. It also provides sanctions for establishment of enterprises engaged in activities mentioned previously, gives guidelines in the employment of children, and recognizes and protects the rights of children of indigenous communities and children in situations of armed conflict.
- RA 7658, or An Act prohibiting the employment of children below fifteen years of age in public and private undertakings, amending for the purpose Section 12, Article VII, RA 7610 (9 Nov 1993), seeks to prevent the employment of children below 15 years of age except when under the sole responsibility of his or her parents or legal guardian and where only members of the employer's family are employed. It also prescribes certain requirements for children's employment or participation in public entertainment or information through cinema, theater, radio or television, thus:



The employment contract is conducted by the child's parents or legal guardian, with express agreement of the child concerned, if possible, and the approval of the DOLE, and, provided further that the employer shall be required in all instances to comply with the following:

(a) Shall ensure the protection, health, safety, morals and normal development of the child;

(b) Shall institute measures to prevent the child's exploitation or discrimination taking into account the system and level of remuneration, and the duration and arrangement of working time; and,

(c) Shall formulate and implement, subject to the approval and supervision of competent authorities, a continuing program for training and skills acquisition of the child.

- RA 8043, or Inter-Country Adoption Act of 1995 (07 June 1995), establishes the rules to govern inter-country adoption of Filipino children and provides for measures to ensure that inter-country adoptions will be beneficial to the child's best interest, and serve and protect his/her fundamental rights. It created an Inter-Country Adoption Board to act as the central authority in matters relating to inter-country adoption in consultation and coordination with the DSWD, the different child-care and placement agencies, adoptive agencies, as well as non-governmental organizations engaged in child-care and placement activities.
- RA 8044, or the Youth in Nation Building Act (07 June 1995), created the National Youth Commission and established a National Comprehensive and Coordinated Program on Youth Development through which the youth will be enabled to fulfill their vital role in nation-building.
- RA 8353, or the Anti-Rape Law of 1997 (30 Sept 1997), penalizes the crime of rape against a child under 12 years of age or who is demented. The Act imposes the death penalty if the crime of rape is committed against a child below 7 years old.
- RA 8369, or An Act Establishing Family Courts (28 Oct 1997), provides for the establishment of Family Courts in every province and city. It is vested with the exclusive original jurisdiction over child and family cases, i.e. criminal cases where one or more of the accused is below 18 but not less than 9 years of age, petitions for support, guardianship, custody and adoption of children, cases of domestic violence against women and violations of RA 7160, among others.
- RA 8370, or the Children's Television Act (28 Oct 1997), aims to support and protect the interests of children by providing them television programs that reflect their needs, concerns and interests without exploiting them. The Act provided for the creation of the National Council of Children's Television (NCCT), which is attached to the Office of the President. The NCCT is mandated, among others things, to formulate and recommend plans, policies and priorities for government and private

sector (i.e., broadcasters, producers and advertisers) action towards the development of high quality locally-produced children's television programming. It shall also monitor, review and classify children's television programs and advertisement aired during child-viewing hours and shall act on complaints committed in violation of this Act.

- RA 8552, or Domestic Adoption Act of 1998 (25 Feb 1998), establishes the rules and policies on the domestic adoption of Filipino children and for other purposes and aims to provide alternative protection and assistance through foster care and adoption for every child who is neglected, abandoned or orphaned.

904. DOLE Department Order No. 18 (12 May 1994) sets forth the Rules and Regulations Implementing RA 7658. Pursuant to RA 7610, the DOJ issued the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases (Oct 1993). To implement Article IV of RA 7610 on "Child Trafficking", the DOJ issued the Rules and Regulations on the Trafficking of Children (24 Jan 1994), which specified the steps to be taken by the concerned government agencies to prevent trafficking of children and the penalties for violations of the regulations. The DOJ, pursuant to Section 32 of RA 7610, issued the Rules and Regulations on Children of Indigenous Communities (24 Nov 1993) for implementation by the DECS (access to formal education, alternative education and non-formal education), the DOH (access to health services) and the DSWD (access to basic services and social welfare).

## 2) Administrative and Other Measures

905. A Memorandum of Understanding (Pledge of Commitment to the Rights of Filipino Children) signed by concerned government agencies and the CHR on 18 April 1994, led to the creation of the CHR Child Rights Center. The CRC is tasked to spearhead the investigation of and initiate legal action for and in behalf of child victims of HRVs and monitor government's compliance. It shall also coordinate the national network of special prosecutors and para-legal volunteers, develop training programs on children's rights and serve as a clearing house for government agencies and NGOs. Presidential MO 257 (7 Feb 1995) directed the continuance of the CHR/CRC and appropriated funds for its operations.

906. The CHR/CRC shall: (a) investigate HRVs against children; (b) initiate legal action for and in their behalf; (c) monitor and report on government compliance of the Convention on the Rights of the Child; (d) coordinate with GOs and NGOs in the promotion of child rights and protection of the welfare of children; and (e) develop and implement awareness programs on children's rights. The Center's monitoring activities include working with the Council for the Welfare of Children, the DOJ and other concerned government agencies as well as NGOs to monitor the incidence of violations of the civil rights and freedoms of children and guarantees for their special protection.

907. EO 275 (14 Sept 1995) created a Special Committee for the Protection of Children from all forms of neglect, abuse, cruelty, exploitation, discrimination and other conditions prejudicial to their development. The Special Committee is tasked to coordinate inter-agency and GO-NGO efforts implementing national laws specifically designed to protect the rights of children who are victims of various forms of child abuse and commercial sexual exploitation. The Committee

reports to the President such actions taken to address specific issues on child abuse and exploitation, and directs other agencies to immediately respond to the problems brought to their attention and report to the Committee on action taken.

908. The Committee is chaired and co-chaired by the secretaries of the DOJ and the DSWD, respectively, and includes as members the CHR Chairperson, the Commissioner of the Bureau of Immigration, the respective undersecretaries of the DOLE, the Department of Tourism, the DILG and the DFA, as well as three representatives of private organizations to be nominated by said groups and appointed by the President, as members. The Council for the Welfare of Children acts as Secretariat of the Committee.

909. PP 731 declared the second week of February every year as “Protection and Gender-Fair Treatment of the Girl Child Week.” EO 241 further amended EO 203 (27 Sept 1994), as amended by EO 256 (July 1996), mandating the creation of a separate Children’s Sector in the Social Reform Council and encouraging the representation of children in all relevant political, social and cultural structures of government.

910. The Philippine Government launched several campaigns through national and local radio and television to focus attention on the specific rights of children: right to special protection from abuse and exploitation including child labor; survival and development rights; and rights of all children to participate as active members of the Philippine society.

911. Government efforts to uphold the principle of non-discrimination in the enforcement of laws and in the implementation of programs for children continued to focus on educating government workers in various line agencies towards attitudinal change. Policies and guidelines within multi-sectoral and inter-agency organizations such as the Council for the Welfare of Children (CWC) are periodically reviewed to assess whether or not existing or proposed programs or measures will be inadvertently prejudicial to specific groups of children.

912. As part of government measures to create an attitudinal change with regard to specific groups of children who are considered at high-risk for discrimination, PP 759 declared the fourth week of March 1996 and every year thereafter as “Protection and Gender-Fair Treatment of the Girl Child Week.”

913. A study conducted in 1997 to assess child rearing and gender socialization in the Philippines found that specific expectations of masculine and feminine behaviors exist in Philippine society and provide the cultural perspective on how womanhood is defined in Philippine culture. The findings are expected to intensify efforts of government agencies to focus on the education of children and parents on gender issues to address deep-seated cultural practices and attitudes that cause the differences in opportunities between Filipino men and women and that obstruct the optimum development of the latter.

914. Children with disabilities are also considered as a special group needing special attention and protection against discrimination. The DSWD has introduced the community-based rehabilitation approach as a system of basic service delivery to these children by building on and maximizing the resources of the community.

915. SC issuances within the period covered and aimed at protecting and promoting the rights of the child are as follows:

- SC Circular No. 44-98 (10 Sept 1998) directed all judges of the RTC to make an inventory of all cases falling within the jurisdiction of the Family Courts by indicating the status of each case, whether for pre-trial, trial or submitted for decision.
- SC Circular No. 11-99 (1 March 1999) specified the transfer to the RTC of cases falling within the jurisdiction of the Family Courts from the CTCs, MeTCs, MTCs and MCTCs.
- SC Circular No. 33-98 (3 June 1998) directed all judges of the CTCs, MeTCs, MTCs and MCTC to make an inventory of all criminal cases falling within the jurisdiction of the Family Courts filed with their respective courts and to submit the same to the Court Management Office, SC.

### **3) Programs to Prevent Exploitation and Abuse of Children**

916. The Philippine Government enacted laws and issued EOs and PPs in response to the problem of abuse and exploitation of children. These consisted of RA 7610, or Special Protection of Children Against Abuse, Exploitation and Discrimination Act, which provides that every child has the right to protection against exploitation, improper influences, hazards and other conditions or circumstances prejudicial to his/her physical, mental, emotional, social and moral development; EO 275 and EO 56, which mandated the DSWD to take into protective custody children victims of prostitution and other sexual abuses); PP731, which declared the 2<sup>nd</sup> week of February of every year as “National Awareness Week for the Prevention of Child Sexual Abuse and Exploitation,” and PP759, which declared the fourth week of March 1996 as “Protection and Gender-Fair Treatment of the Girl Child Week.”

917. The government embarked on a continuing drive against the abuse, sexual exploitation and trafficking of children by foreign and local pedophiles through intensified prosecution of cases against the perpetrators in accordance with existing laws and international cooperation standards. Round table discussions participated in by the DSWD, DOT, DTI, DFA, Association of Tours and Travel Agents, Hotel and Restaurant Owners and Security Association were held to discuss measures for the purpose. Law enforcement authorities were tasked to conduct relentless surveillance of establishments and rescue missions of children trapped in prostitution in said establishments, and thereafter recommend their closure.

918. As lead agency in the government’s efforts to curb abuse and exploitation of children, the DSWD instituted the following measures:

- Maintenance of DSWD Desks at international airports to screen minors traveling abroad unaccompanied by parents. AO 114 requires all minors traveling abroad to secure travel certificate from the DSWD if traveling without their biological parents or legal guardians.

- Setting up of *Bantay Bata* Hotline Project, *Sagip Batang Manggagawa* and, recently, a TV Program “Helpline sa 9” to enable the public to be aware of and understand the plight of and rights of children and facilitate reporting of cases for immediate access to social services.
- Establishment of residential facilities for sexually-abused and exploited children; development and enrichment of Psycho-Social Intervention Programs and Services, e.g., individual and family therapy, livelihood assistance, educational assistance, medical assistance and legal assistance; capability building for direct service implementors for efficient and effective delivery of services.
- Setting up of a data bank to improve monitoring of cases of children victims of child prostitution and pedophilia.
- International networking in terms of exchange of strategies/resources in dealing with the problem of prostitution and pedophilia. Coordination and networking with NGOs for complementation of services.
- Intensification of advocacy and social mobilization activities of the public and authorities towards prevention and protection of the children. Review and assessment of existing laws related to child abuse and exploitation and promulgation of new laws.
- Implemented Sections 4 and 5 of the Rules and Regulations on the Reporting and Investigations of Child Abuse Cases in 1993, which provided the rules that the placing of an abused child in protective custody, the head of any public or private hospital, medical clinic and similar institutions, as well as the attending physician and nurse, is required to make an oral or written report to the DSWD of the examination and / or treatment of a child who appears to have suffered abuse within 48 hours from knowledge of the same.
- Implemented Rules and Regulations on the Domestic Adoption Act of 1998, (02 Dec 1998), which governs the adoption of Filipino children within the Philippines.

#### **4) Legislative Agenda for the Welfare and Development of Children**

919. Pending in the Congress are several bills which deal with concerns for the protection and development of children:

- HB 34, or An Act creating the Department of Youth and Sports, establishing a National Comprehensive Program on Youth and Sports and Development
- HB 189 and 828, or An Act penalizing the employment of children in any public or private undertaking or occupation which is considered hazardous to his/her life, safety, health and morals or which unduly interferes with his/her normal development

- HB 192 and 338, or An Act establishing a comprehensive juvenile justice system
- HB 457, An Act increasing the age of statutory rape from 12 to 16 years old, amending for the purpose Article 335 of the RPC
- HB 620 and SB 54, or An Act instituting a Children's Welfare Fund for the protection and rehabilitation of abandoned, abused and sexually exploited children amending for the purpose RA 7610 otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act"
- HB No. 625 (An Act strengthening further the right of daughters against incestuous rape by penalizing mothers who refrain from proceeding against the father-rapist or who tolerate its commission)
- SB No. 298 (Children's Media Protection Act)
- SB No. 308 (Child Safety Firearms Act)
- SB No. 351 (Child Testimony Act that would provide protection to children who testify in court by allowing live testimony by closed-circuit television and videotaped deposition to shield any child, particularly those testifying as a victim or witness to a sex crime, from any further emotional and psychological stress)
- SB No. 493 (An Act to increase the penalty for Child Exploitation or Child Labor)
- SB No. 734 (Rights of Young Workers in Hazardous Occupation or Employment)
- SB No. 1011 (*Barangay* Level Total Development/Protection of Children Act that seeks to prescribe the creation and filling up of at least one mandatory position of day care worker in every *barangay* to augment the present 33,239 day care workers working in 31,183 day care centers nationwide)
- SB No. 1054 (Gifted Children's Act)
- SB No. 1091 (Children's Environmental Protection Act)
- SB No. 1263 (Child Protection Fund)
- SB No. 1283 (An Act prohibiting the sending of children abroad for employment)
- SB No. 1448 (National Strategic Missing Children Recovery Program Act)
- SB No. 1459 (Women and Children Crisis Survivors Assistance Act)
- SB No. 1472 (An Act penalizing the employment of children in hazardous work)

- SB No. 1477 (Safe Havens for Children Victims of Violence Act)
- SB 568 establishes a comprehensive juvenile justice system in the country
- SB 351 provides protection to children who testify in court.
- HB 615 provides for the imposition of the death penalty for child prostitution, sexual abuse of children and child trafficking, amending for the purpose RA7610 as amended. HB 640 also seeks to amend RA7610 by strengthening further this law which provides for stronger deterrence and special protection against child abuse, exploitation and discrimination by criminalizing and penalizing pedophilia or sexual intercourse or other sexual abuse and child trafficking committed by certain persons overseas or outside Philippine territory.

## **5) Children's Rights and Freedom**

920. Article XV, Section 3(2) of the Constitution provides that the State shall defend the right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitations, and other conditions prejudicial to their development. The protection covers the right of every child against any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, and the right to adequate protection as a minor. Every child has the right to be registered immediately after birth, to have a name and to acquire a nationality.

### **5-a) Name and Nationality**

921. While the State guarantees every Filipino child the right to a name, nationality and preservation of his/her identity, it is a fact that in the Philippines, not all childbirths, for one reason or another, are duly registered with the authorities.

922. To improve the registration of births, PP 326 was issued declaring as a national state policy the free registration of births, deaths, marriages and foundlings. The National Statistics Office requires all civil registrars to strictly comply with the proclamation. Measures to further improve the registration of childbirth include mobile registration, establishment of the *barangay* registration system and provision of out-of-town reporting of births.

923. AO 2 (1992) established a Civil Registration System for Muslim Filipinos. Local authorities are also encouraged to eliminate registration fees. Civil registrars and provincial statistics officers of the NSO are evaluated annually to monitor compliance. In 1995-1996, the NSO requested the Philippine Information Agency to produce television, radio and movie spots/plugs to promote the importance of civil registration. These public service messages were broadcast nationwide.

924. The child's right to a name is violated if the child's birth is not registered. The absence of a birth certificate will pose difficulties for a child later on life and could, in effect, hamper enjoyment of his right. A birth certificate is required for school admission and for church religious ceremonies such as baptism, First Communion and marriage. It is also a requirement

for the processing of employment papers, social security and insurance benefits. Although the DECS has waived this requirement for purposes of enrolment at age 6, there is still a need to present a birth certificate as the child progresses through the formal educational system.

925. EO 209, or the Family Code of the Philippines (06 July 1987) provides that children conceived and born of parents who are lawfully married shall have the right to bear the surnames of the father and the mother, in conformity with the provisions of the Civil Code of the Philippines on Surnames. The law further provides that children conceived and born outside a valid marriage shall use the surname of their mother. This provision of law stands even if the father asserts paternity, pursuant to the SC ruling in *Marissa A. Mossesgeld vs. Court of Appeals and Civil Registrar General* (23 Dec 1998, 300 SCRA 464).

926. In this case, a single mother gave birth to a child in a hospital. The presumed father, who was married to another woman, signed the birth certificate as the informant and even executed an affidavit admitting the paternity of the child. Both parents attested to the veracity of the information contained in the birth certificate. After the hospital staff refused to place his surname as the child's surname, the presumed father himself submitted the birth certificate for registration to the Office of the Local Civil Registrar. He later received a copy of denial of the registration as being contrary to law.

927. The presumed father filed a case for mandamus to compel the Local Civil Registrar to register his child's birth certificate using his surname. This petition was denied by the lower court and affirmed by the Court of Appeals and further affirmed by the Supreme Court. The Local Civil Registrar was thus correct in refusing to register the birth certificate of petitioner's child. Mandamus does not apply to compel the performance of an act prohibited by law.

#### **5-b) Freedom of Expression**

928. The Philippine Government continues to implement activities that respect and promote the children's freedom of expression. Children's congresses are convened annually at the regional and national levels that usually culminate in the celebration of the Children's Month in October. These congresses were initiated in 1986 by the DSWD and NGO partners in the National Street-Children Project such as Childhope and the National Council for Social Development. Since then, these congresses have been organized by other NGOs in cooperation with the DSWD.

929. The LGUs' efforts included the convening of children's congresses starting in 1991 which aimed to broaden participation of children at the grassroots level and, at the same time to help local officials accept this activity as a continuing part of their work. The National Youth Commission convened a media conference called "Youthspeak '97" in November 1997 after the Asian Summit on Child Rights and the Media to encourage children to maximize various forms of media for self-expression as well as to be actively involved in dialogues with media practitioners as a venue for self-expression.



930. On 28-30 August 1996, the DECS convened a National Children's Forum for 700 schoolchildren from all regions of the country where they were able to freely express their views through interactive workshops and during their dialogue with the President. Many of the workshop activities focused on children's rights. The Department also organized teacher-training programs on the needs and rights of children as learners.

931. The 1998 National Educators' Congress, which carried the theme "The Quality of the Learner: A Closer Look at the Learner", discussed during keynote presentations and workshops the rights of the child to survival, development, special protection and participation. Children participated in the panel discussion of the National Congress which was attended by 1,200 educators and leaders of public and private educational system.

932. The DSWD organized a special activity called "Children's Hour with the President" wherein the children in especially difficult circumstances dialogued with the President and members of the Cabinet for two hours. Two such dialogues were held in 1997 involving 50 children each. These dialogues helped heighten the government's awareness and understanding of the realities of these children's lives and gave the children the opportunity to articulate their views and to ask questions about the government's plans and commitments with regard to the promotion and protection of children's welfare and rights. In February 1998, the participants of the 4<sup>th</sup> National Congress of Street-children also engaged the President in a dialogue to communicate their views, consensus and recommendation on issues concerning street-children.

933. In *Oposa vs. Factoran, Jr.* (30 July 1993, 224 SCRA 792) where petitioner minors asserted that they represented their generation as well as generations yet unborn, the SC found no difficulty in ruling that petitioners can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.

934. SC *En Banc* Resolution No. 00-4-07-SC (21 Nov 2000) provides for the Proposed Rule on Examination of a Child Witness. Unless otherwise provided, the Rule shall govern the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime. It shall apply in all criminal and non-criminal proceedings involving child witnesses. It aims to create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings, and facilitate the ascertainment of truth. The Rule shall be liberally construed to uphold the best interest of the child and to promote maximum accommodation of child witnesses without prejudice to the constitutional rights of the accused.

#### **5-c) Freedom of Thought, Conscience and Religion**

935. Filipino children are encouraged to practice their own religion within their families and their churches where they are also taught about their faith. The public school system is committed to integrate in the study of civics and culture the teaching of Values Education which does not prescribe nor promote a specific religious doctrine but promotes values that are founded

on respect for HR and a social and civic responsibility to Philippine society and the global community of nations. A revised version of the DECS Value Education Program was jointly prepared with the UNESCO National Commission of the Philippines in 1997.

#### **5-d) Freedom of Association and Peaceful Assembly**

936. Children who are employed in industries can join labor unions provided they belong to the bargaining unit comprised of the rank and file and their supervisors, as stipulated under Article 212 of the Labor Code. However, these children cannot organize themselves as a separate unit.

937. Children and youth are encouraged to join various organizations in their own communities, schools or, in the case of 15 to 17 year-olds, in the workplace. The CWC encourages school-based and community-based youth organizations to contribute to the strengthening of children's organizations and associations, in response to the desire of children who have participated in various regional and national conferences.

#### **5-e) Protection of Privacy**

938. The DSWD and other government agencies, as well as NGOs, have taken steps to engage media practitioners (print and broadcast) in dialogue and to send letters to editors and news directors of television networks to complain about the violation of children's privacy in light of the increased media coverage of cases involving children who are victims of abuse and exploitation or who are alleged offenders. In all these, it was stressed that under RA 7610, children have the right to be protected from undue and sensationalized media publicity. While most media practitioners have been responsive, the government needs to be vigilant to ensure that this particular right of the child is not violated. The DSWD had always taken measures to shield child victims from cameras when they were required to be present in court.

#### **5-f) Access to Appropriate Information**

939. RA 8370, or The Children's TV Act, provides in Article 17 for the right of children to have access to appropriate information. The law mandates the organization of a national council for children's television that will develop a comprehensive media plan for children and promote the development of high-quality local programs that meet the developmental needs of children. The council is mandated to work closely with members of the broadcast industry to formulate standards and monitoring mechanisms that are truly in the best interests of children as consumers and users of broadcast media. The law requires broadcasters to allocate 15 % of daily airtime for educational children's programs, and provides for a Special Fund for Children's Television to help achieve the goal of developing more enriching and interesting local television programs for children.

940. Initiatives by NGOs and the private sector within the media industry and by educators continue to address the right of children to information as well as their right to protection from harmful media exposure. Such initiatives were either pro-active (i.e., the production of more local programs for children by local independent producers and some television networks) or protective (i.e., engaging in dialogues with broadcasters and advertisers about the matter of

programming and the choice of programs aired on television). While 70 % of children's programs and overall programming continue to be imported mainly from the United States and Japan and are therefore mostly in English, there has been an increase in the number of children's programs in the national language that reflect the culture and social context most relevant to Filipino children.

941. In 1997, UNICEF-Philippines, in cooperation with the Philippine Children's Television Foundation, published a series of 10 children's picture books on the Rights of Children. The books are written in Filipino and are designed specifically for children but also include information about the UN Convention on the Rights of the Child for parents and teachers. These books are being distributed for free to public schools and day care centers all over the country.

#### **5-g) Right against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment**

942. HR groups and NGOs actively monitor the situation of youths in detention to ensure that reports of illegal detention and torture of children are immediately investigated. The Special Committee for the Protection of Children, in cooperation with NGOs, organized child-focused training activities for law enforcement authorities to familiarize them with the national laws and policies for the protection of children. From 1996 to 1997, a total of 23 training activities were organized involving 718 personnel of the PNP at the national, regional and local levels. A total of 14 Women's and Children's Desk Relations Officers from various regions of the country also participated in the training program on skills and techniques for investigation and interviews in cases involving children.

#### **6) Rights of Children in Conflict with the Law**

943. The Child and Youth Welfare Code, provides for the care and treatment of children who are in conflict with the law, from the time of apprehension up to the termination of the case, to wit: (a) physical and mental examination of the youth after apprehension; (b) detention cell is separate from adult offenders; (c) release on recognizance to the custody of his or her parents or other suitable persons; (d) suspension of the sentence and commitment of the youth offender to the care and supervision of the DSWD or to a rehabilitation center based on social case study reports submitted to the court.

944. The Rules and Regulations on the Apprehension, Investigation, Prosecution and Rehabilitation of Youth Offenders (20 Feb 1995) provide that, whenever a youth is taken into custody for an alleged act of delinquency, the arresting police officer shall immediately inform the youth of the reason for his apprehension and advise him/her of his/her legal rights in a language that he/she understands and that the arresting police shall not employ unnecessary force or abusive language in arresting or searching the youth. A female youth shall be searched by a female officer only. Unless absolutely necessary, handcuffs or other instruments shall not be used. The youth shall then be brought immediately to the nearest police station where the particulars of the apprehension shall be recorded in the police blotter. The police should duly notify the DSWD and the parents or guardian of the youth within eight hours from the time of his/her apprehension.

945. A youth shall only be investigated or his/her statement secured in the presence of his/her legal counsel and whenever possible his/her parents, guardian or social worker. The parents or guardian shall be informed of the nature of the offense allegedly committed and of the constitutional rights of the offender. The interview of the child shall, as far as practicable, be held privately. The youth shall also be made to undergo a physical and mental examination.

946. After consultations with the DSWD, and if the interest of the youth will be served, the arresting officer shall release the youth to the custody of a social worker or a responsible person in the community for supervision, counseling or provision of other intervention measures or services. If his findings warrant, the arresting officer shall forward the records of the case of the youth to the prosecutor or judge concerned for the conduct of an inquest and/or preliminary investigation to determine whether or not the youth should remain under custody and correspondingly charged in court. The document transmitting said records shall display the word "YOUTH" in bold letters. The arresting officer, prosecutor or judge shall ensure that the youth is represented at all times by counsel before proceeding with investigation or trial.

947. A youth held for physical and mental examination, investigation, trial or pending appeal, if unable to furnish bail, shall from the time of his arrest be committed to the care of the DSWD or the local rehabilitation center or in a detention home distinct and separate from jails which shall then be responsible for the appearance of the youth before the police, prosecutor or judge whenever required. In the absence of a local rehabilitation center or detention home within reasonable distance from the venue of the investigation or trial, the provincial, city or municipal jail shall provide quarters for the youth separate from the other adult detainees. The DSWD is required to establish regional rehabilitation centers that are distinct and separate from the local jails and, as far as practicable, have a home-like environment.

948. Sentence imposed upon the youth shall be suspended if the court, upon application of the youth, finds that the best interest of the public as well as that of the offender shall be served. He shall be committed to the custody of the DSWD or to any government-operated training institution or any other responsible person until he has reached the age of 21 years old. The youth offender whose sentence is suspended shall be subject to visitation and supervision by the DSWD or training institution. A youth offender who has once enjoyed suspension of sentence under the provisions of the Code or who has been convicted of an offense punishable by death or life imprisonment shall not be entitled to a suspension of his sentence.

949. The DSWD operates 10 regional rehabilitation centers for the youth whose respective sentences have been suspended. Each center, which is also an open institution, has an average of 50 youths. These centers have no bars or guards and provide intensive psychological treatment in a home-like atmosphere. These centers extend formal or informal education and prepare the youth for reintegration into their families and communities. However, it is acknowledged that programs and services for the rehabilitation of youth offenders are still insufficient. The activities provided by the church and NGOS are centered on socio-cultural, recreational, sports and religious/spiritual activities. Livelihood and vocational skills training are limited.

950. Upon the release of the offender to his/her parents, after-visits are made. In 1993, 1996 and 1999, the DSWD served a total of 11,664, 7,057 and 8,998 youth offenders respectively. The DSWD has in recent years opted for rehabilitation programs for youth offenders through community-based services rather than institutional programs. However, financial resources and educational programs for these youths are still inadequate.

951. A youth offender shall be protected from public identification. Neither his/her name, biographical information nor his/her image, by means of still or moving pictures, shall be made public in connection with the criminal proceedings instituted against him/her. When a youth is acquitted of the charge, or the case against him/her is dismissed, or if he/she is committed to a training institution and is subsequently released pursuant to the Rules, all the records of his/her case shall be considered as privileged and may not be disclosed directly or indirectly to anyone except to the extent necessary to answer inquiries received from another court or from the DSWD to determine possible suspension of sentence or probation or from any victim of the youth offender relating to the final disposition of the case against the offender.

952. The Rules provide that a youth offender shall not be held liable or guilty for perjury, concealment, or misrepresentation by reason of his/her failure to disclose, or acknowledge the criminal case against him/her or to recite any related fact in response to any inquiry made to him/her for any purpose.

953. The following dispositions have in effect been made available to Filipino children in conflict with the law:

- A youth who committed a misdemeanor or an offense is pre-empted from going through the juvenile justice system through mediation and amicable settlement at the *barangay* level with the assistance of the *barangay* chairman. The social worker mediates on behalf of the youth from the time of apprehension and works for his/her release to parents, relatives or other responsible persons in the community. Only cases that are not resolved at this level are forwarded to the police.
- A youth below 18 years of age who has committed a minor offense may also be released on recognizance while arraignment or trial is pending. The social worker conducts a case study and recommends to the court the release of the youth to parents, relatives or other responsible persons.
- Custody supervision provides the youth with an opportunity to serve a suspended sentence and to undergo rehabilitation while living with the family or a responsible person in the community. The social worker shall visit and provide guidance.
- If found guilty, the youth is not committed to the municipal jail. Instead he/she is sent to the regional youth rehabilitation centers managed by the DSWD. The residential rehabilitation provides the youth in conflict with the law with a chance to serve a suspended sentence and undergo treatment and rehabilitation in a residential facility. An interdisciplinary team composed of social workers, psychologists, house parents, teachers and medical staff provide the treatment, care and education for the youth.

954. Government agencies and NGOs undertook several consultations with government agencies and NGOs for a better understanding of the situation of youth offenders. A priority issue on the administration of juvenile justice raised in these consultations was the need to restore the Juvenile and Domestic Relations Courts. Following the abolition in 1983, the SC designated certain RTC to handle criminal, juvenile and domestic relations cases. The SC prepared special rules for this purpose. According to a report of the Court Deputy Administrator, directives were regularly issued to the designated courts. These directives covered the issues on the priority of scheduling cases for trial, continuing trial whenever feasible, confidentiality of the child's identity and of the proceedings, chamber hearings to provide a less intimidating environment for the child as litigant or witness.

955. In 1996, several dialogues between SC administrators and the Board of the Council for the Welfare of Children (CWC) noted that many of the regular courts could not effectively handle cases of children whether as alleged offenders, as complainants or as witnesses since special training and professional interest were needed to effectively serve the child's best interests within the justice system.

956. In 1997, the CWC-Working Group on the Legislative Agenda for Children conducted a series of dialogues with the presiding judges of designated courts for children. These dialogues paved the way for the enactment of RA 8369, which, among others, provides for the automatic suspension of sentence of a minor regardless of the offense.

957. Government social workers regularly visit jails to ensure prompt action on cases involving children. The Court appoints legal counsels from the PAO when the youth are unable to afford the services of private counsel. The Supreme Court has also issued directives for all regular courts to expedite disposition of cases involving children either as victims/complaints or youth in conflict with the law.

958. NGOs have also taken the initiative to focus on more center-based and community-based programs for youth in conflict with the law and to assist them in their cases through socio-legal defense programs. Among these NGOs are the Children and Family Service Philippines, DCI-Philippines and Virilanie Foundation. Academic institutions such as the Ateneo HR Center-AKAP and the University of the Philippines (through the para-legal program of the College of Law) also provide legal services for children. HR organizations of lawyers such as the FLAG and the IBP have been tapped by child-focused NGOs to provide legal services pro bono for children especially those outside major cities.

959. The Philippine Government has established a monitoring system for the efficient tracking of the progress of cases involving children as well as measures intended to reform the juvenile justice system. Community volunteers have been mobilized in fulfillment of the Beijing Rules to assist social workers in the supervision of the youth who have been released and are living in their own communities.

960. Continuing efforts for capacity building focused on key people involved in the five pillars of the criminal justice system. These efforts seek to ensure that international standards in the administration of juvenile justice will serve as theoretical frameworks for their concrete practical application in all situations. From 1995-1996, the Special Committee for the Protection of

Children and the CWC organized seminars for judges, law enforcement officials and personnel, social workers and NGOs to inform them about the national laws, the UN Convention and international standards such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (or Beijing Rules), the Riyadh Guidelines and the UN Rules for the Protection of Juveniles Deprived of their Liberty. A national and a regional conference on the theme "Justice for Children" were organized in 1998 in Manila.

961. Seminars designed to sensitize judges to the needs of children in conflict with the law were also organized by the following private sector groups: Philippine Judicial Academy (PHILJA), the Institute of Judicial Administration (IJA) and the Philippine Women Judges Association (PWJA). The PHILJA established linkages with the UP-PGH's Child Protection Unit to jointly explore the issues related to the role of the courts and the medical profession in cases of child abuse and other violations of RA 7610. Trial court judges assigned to handle youth and family-related cases who were sent by the SC for training program in other countries served as resource persons for these seminars and training programs organized in the country.

962. In line with the Beijing Rules, which stipulates that special police units shall be established to exclusively deal with juveniles, the PNP issued MC No. 92-010 (22 Oct 1992) setting forth the guidelines on the establishment of a Children and Youth Relations Section (CYRS) in the National Capital Region (NCR) and highly urbanized city police stations, the designation of a Children and Youth Relations Officer (CYRO) in other police stations and the adoption of a handbook for police officers on the management of children in especially difficult circumstances (CEDC). In other police stations that do not require the creation of a CYRS, the Station Commander/Chief of Police shall designate a Children and Youth Relations Officer (CYRO) who will handle cases involving CEDC.

963. The CYRS is a separate functional unit within the station assigned to attend to all matters relating to CEDC. Guided by the philosophy that children should be handled differently from adults, the CEDC shall perform the following tasks: (a) enforce laws and ordinances relating to the exploitation of CEDC; (b) investigate cases of CEDC and provide proper disposition geared towards the best interests and welfare of children; (c) prepare a plan of action to assist the CEDC in direct support of, and in coordination with, the other agencies concerned; (d) implement programs designed to detect and prevent conditions that may result in child neglect, abuse toward children, deviant behavior among children, or such other circumstances that are detrimental to the total development of the youth; (e) operate a separate detention facility for youth offenders and determine and implement programs for their welfare and rehabilitation; (f) keep a separate record of cases of CEDC and youth offenders handled, including those referred to the DSWD rehabilitation centers and other institutions; (g) monitor detained youth offenders in jail who are made to share cells with adult offenders and recidivists, and report/refer their cases to the DSWD; and (h) maintain close coordination and collaboration with the other pillars of the juvenile justice system.

964. Personnel assigned to the CYRS are trained to manage CEDC cases. Specially chosen are those imbued with compassion, care and dedication to the cause and welfare of children and youth. All CYROs and their personnel are trained in children and youth management and control and rehabilitation. Trainings are in direct coordination with the Bureau of Child and Youth Welfare (BCYW) of the DSWD. The British Embassy provided instructors from the Durham

Constabulary in the United Kingdom who conducted training for police officers on skills and techniques for investigation and interviews in cases involving children. The Australian Government also provided training for child and youth relations officers on the proper way of handling children in conflict with the law.

## **7) Situation of Youth Offenders**

965. Statistics show an increasing trend among youth offenders. As of April 1995, a total of 741 minor offenders were confined at the BJMP jails all over the country. This increased to 1,380 in 1996. During the first four months of 1997, the figure was 589. The most common crimes reported were crimes against property.

966. The DSWD reported a total of 12,878 youth offenders served by them during the period of 1990-1992. DSWD's record for the next three years are as follows: 6,580 (1994); 7,278 (1995), 7,295 (1996).

967. Youth offenders may serve their sentence in a city or provincial jail or at the medium security compound of Camp Sampaguita of the National Penitentiary or at the Correctional Institution for Women in Welfareville Compound, Mandaluyong City.

968. Their basic and other needs are met as follows: (a) every inmate is allotted 25 pesos daily for food ration; (b) medical and dental services are provided; (c) family members and registered friends are allowed supervised visits five times a week except Fridays and Saturdays; (d) religious guidance and counseling are provided by civic and religious organizations during weekends which the inmates are free to participate in depending upon their religious orientation; (e) the National Bureau of Prisons provides elementary, secondary and college education, adult literacy classes and vocational courses such as electronics, refrigeration, tailoring; and (f) they are allowed to receive and send mail but these are subject to review by prison authorities to prevent the entry of contraband items and information that will be detrimental to prison security.

969. As part of the BuCor's rehabilitation and treatment program, youth offenders are required to participate in work programs as long as they are physically and mentally fit to perform the assigned jobs. These include livelihood programs with corporations like Samsung Philippines and institutions like the Prison Inmate Labor Contract Office and the Prison School of Applied Arts.

970. Two separate studies conducted by the Philippine Action for Youth Offenders, a coalition of NGOs, and government agencies including the DSWD, and the DSWD-BCYW and NAPOLCOM revealed that the food rations were inadequate and the quality was poor so that youth prisoners often rely on food brought by family members. The basic facilities for sleeping and toilet needs were also inadequate.

971. The CHR Child Right Center documented cases of violations of the rights of children during apprehension, investigation and detention. Some of these complaints were brought to the attention of the CRC by the DSWD or by NGOs. Many of these cases highlighted the urgent need for continuing HRE on children's rights among local law enforcers.



972. The segregation of youth from adults also continues to be a cause for concern. The country has only 479 out of 1,402 jails (34 %) with separate detention cells for youth offenders. As of 1997, only 209 out of the 1,430 jails managed by the BJMP/PNP had separate cells for minor male offenders. There were no separate provisions for minor female offenders.

## **8) Rights of Children in Situations of Armed Conflict**

973. Under RA 7610, children are declared as Zones of Peace who must not be made as objects of attack. They shall be entitled to special respect and to be protected from any form of threat, assault, torture or other cruel, inhumane or degrading treatment. The Act prohibits the recruitment of children into the AFP or its civilian units, or other armed groups or from taking part in the fighting or from being used as guides, couriers or spies. Delivery of basic social services such as education, primary health and emergency relief services shall be kept unhampered. They shall be given priority during evacuation as a result of armed conflict and, in places of temporary shelter, they shall be given additional food in proportion to their physiological needs.

974. If children are arrested for reasons related to armed conflict, either as combatant, courier guide or spy, they are entitled to the following rights: (a) separate detention from adults except where families are accommodated as family units; (b) immediate free legal assistance; (c) immediate notice of such arrest to the parents or guardians of the child; and (d) release of the child on recognizance within 24 hours to the custody of the DSWD or any responsible member of the community as determined by the court. If after hearing the evidence in the proper proceeding the court should find that the child has committed the acts charged against him, the court shall determine the impossible penalty, including any civil liability chargeable against him. However, instead of pronouncing judgment of conviction, the court shall suspend all further proceedings and shall commit the child to the custody or care of the DSWD or to any training institution operated by the government or duly licensed agencies or to any responsible person until he has reached 18 years of age or for a shorter period as the court may deem proper.

975. Pursuant to Section 32 of RA 7610, the DOJ issued the Rules and Regulations on Children in Situations of Armed Conflict (21 Jan 1994), which stipulates the actions to be taken by concerned government agencies in the protection of children so situated. The DSWD social worker shall obtain from the chairman of the concerned *barangay* a list of the children evacuated and to ascertain their whereabouts. The DSWD shall establish the minimum standards for evacuation centers and to ensure that, whenever possible, members of the same family shall be housed in an evacuation center or other temporary shelter; are given separate accommodations from other evacuees; and provided with facilities to enable them to lead a normal family life. Children shall be given opportunities for early childhood care and development, alternative learning system, physical exercise, sports and outdoor games. They shall be given immunization and protection from endemic diseases and, when necessary, to be provided with psychosocial intervention.

976. The social worker shall identify the children who have been separated from their parents or guardians during an evacuation. Said children shall be provided with individual and sustained care in the evacuation center to minimize stress. The name of the unaccompanied child shall be

registered by the head of the evacuation center or social worker in a record book to be opened and maintained for this purpose. Whenever practicable, the child shall be photographed and an individual file shall be made containing all available information about him/her.

977. A child who is taken into custody by government forces in an area of armed conflict shall be treated humanely and accorded his/her constitutional rights. Government forces shall ensure his/her physical safety, provide him with food and the necessary medical attention or treatment and remove him/her from the area of armed conflict and transfer him/her at the earliest possible time to higher echelons of command/office for proper disposition. Within 24 hours after the child is transferred to a military camp, his/her parents or guardian or the DSWD social worker shall be informed of the presence of the child in the camp.

978. The military commander concerned shall immediately transfer custody over the child to the nearest police station, preferably to the Child and Youth Relations Unit thereof. Whenever possible, the parents of the child shall be given prior notice of the said transfer. Immediately after the child is taken custody by the police, the police officer shall: (a) arrest/detain the suspect and notify the parents or guardian of the child and the Commission or the DSWD social worker of the detention; (b) refer the case to the nearest free legal assistance public or private office; and (c) give the child a thorough physical and mental examination (Article 10, PD 603, or Child and Youth Welfare Code, as amended).

979. Reports that children are being used by rebel groups as combatants - in violation of RA 7610 and the 1949 Geneva Conventions - is shown by the increasing number of children from the age of 18 to as young as 13-14 years old, being captured or otherwise becoming casualties of armed encounters between government military troops and armed rebels. The visits of members of humanitarian missions in alleged NPA camps also confirmed that most of the NPA combatants are children. This phenomenon could be attributed due to extreme poverty, which makes as easy prey children, especially those belonging to the cultural communities. Others are reportedly forcibly recruited or abducted.

#### **T. Article 25 (Right to take part in public affairs)**

980. The Philippine Government wishes to reiterate the information provided in the Initial Report. This Report also wishes to inform the Committee that there are pending bills in Congress which propose the establishment of a system of absentee voting for qualified Filipinos abroad.

981. Public participation in the country's electoral process is exemplified by the efforts of the private sector to ensure orderly, clean and honest elections. Filipinos from all walks of life have decided to take positive action to preserve democracy in the country by making elections work as the basic means for achieving peaceful change. Towards this end, a large number of the citizenry have joined the NAMFREL, a non-partisan, nationwide organization of individual citizens and civic, religious, professional, business, labor, educational, youth and non-government organizations, voluntarily working for the cause of free, orderly and honest elections.

982. Formally organized in October 1993, NAMFREL's roots can be traced back to 1957 with the establishment of the Operations Registration Committee. As a Filipino citizens group composed of 500,000 volunteers, NAMFREL's commitment is to actively participate in

strengthening democratic institutions and processes, particularly the electoral process. It is organized at the national level into a National Council consisting of the heads of major national organizations participating in the NAMFREL. There are over 120 participating organizations. At the local level, NAMFREL is organized into 78 provincial chapters and 1,608 city and municipal chapters throughout the country. Each chapter is responsible for manning all the polling places in all the voting centers within the city or municipality in the conduct of NAMFREL's Operation Quick Count (OQC).

983. NAMFREL is regarded to have succeeded in mobilizing the Filipino citizenry to take control of their destiny through active participation in an electoral process. Internationally, NAMFREL volunteers have worked as trainers, observer team members, election administrators and resource persons in 26 countries: Argentina, Bangladesh, Bulgaria, Cambodia, Chile, China, Cote D'Ivoire, Haiti, Hong Kong, Indonesia, Lebanon, Mexico, Mozambique, Nepal, Pakistan, Portugal, Peru, Romania, Russia, South Africa, South Korea, Sri Lanka, Thailand, USA and Zambia. NAMFREL also deployed around 100 volunteers to Indonesia as the Philippine Electoral Observer Team to the 7 June 1999 elections.

#### **U. Article 26 (Equality of all persons before the law)**

984. The Philippine Government wishes to reiterate the information provided in the Initial Report and to refer to the information provided in this Report on efforts to improve the country's administration of justice, thus ensuring equal protection of the law for both the rich and poor members of society.

#### **V. Article 27 (Rights of ethnic, religious or linguistic minorities)**

985. The 1987 Philippine Constitution mandates the State to "protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social and cultural well-being," with the Congress given the option to provide for the "applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain." In the formulation and implementation of national policies and programs, the State carefully takes into consideration respect for their customs and traditions, beliefs - religious or otherwise, language and interest within the framework of national unity and development.

986. Reference is made to the 1997 Philippine Report to the Committee on the Elimination of Racial Discrimination, which contains more detailed information on government measures and policies to address the welfare and needs of the indigenous cultural communities, including the Muslim Filipinos.

987. Under AO 28 (10 Jan 1993) President Ramos declared 1993 as the Year of the Indigenous Peoples in the Philippines to focus the attention of both the government and private sectors to the problems and needs of the country's ICCs and to build consensus on how the same could be solved or satisfied. Subsequently, the years 1995-2005 was also declared as the National Decade for Indigenous Peoples to underscore the government's sustained efforts to draw up a national program that will give due recognition to the ICCs.

988. To highlight the government's concern, the Philippines hosted the Global Youth Earthsaving Summit (Global Yes) and National Conference of Indigenous People in April 1993 and the Asia-Pacific Indigenous Youth Earthsaving Summit (APIYES) in April 1994. Both summits became the venues for packaging various resolutions presented to the President and to the various departments seeking action on their requests.

989. The development of the ICCs to become distinct and fully potent contributors to national development is a continuing process that apparently slowed down by illiteracy and insufficient basic social and infrastructure support services, such as roads, bridges and transportation facilities. The overall situation is aggravated by the political instability in communities often caught in "crossfire" or "encounters" between insurgent and government forces.

### **1) Indigenous Peoples' Rights Act of 1997**

990. RA 8371, or The Indigenous Peoples Rights Act of 1997 (29 Oct 1997), was enacted after years of deliberation by the legislature. The Act defines "indigenous peoples" (IP) or "indigenous cultural communities" (ICC) as a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, become historically differentiated from the majority of Filipinos. (Annex 28: 8371)

991. ICCs or IPs shall likewise include peoples who are regarded as indigenous on account of their descent from the populations that inhabited the country, at the time of conquest or colonization, or at the time of inroads of non-indigenous religions and cultures, or the establishment of present State boundaries, who retain some or all of their own social, economic, cultural and political institutions but who may have been displaced from their traditional domains or who may have resettled outside their ancestral domains. It is estimated that there are more than 10 million ICCs in the Philippines divided into 110 ethno-linguistic groupings with varying degrees of socio-economic development.

992. The Act provides that the State shall recognize, respect, protect and promote all the rights of the ICCs. In doing so, the State shall institute and establish the necessary mechanisms to enforce and guarantee the realization of these rights. The State shall also ensure that they benefit on an equal footing from the rights and opportunities that national laws and regulations grant to other members of the population.

993. One of the rights enshrined in the Act is the minorities' rights to ancestral domains which consist of the following: right of ownership; right to develop lands and natural resources; right to stay in the territories; right in case of displacement; right to regulate entry of migrants; right to claim parts of reservations; right to resolve conflict; and right to ancestral lands which include the right to transfer land/property or to redeem these lands/property.

994. The right to self governance and empowerment is ensured through government support for: autonomous regions, justice system, conflict resolution institutions and peace building processes; right to participate in decision making; right to determine and decide priorities for development; tribal *barangays*.

995. Chapter V of the Act on Social Justice and Human Rights enshrines equal protection and non-discrimination; rights during armed conflict; freedom from discrimination and right to equal opportunity and treatment; unlawful acts pertaining to employment; basic services for all; rights of women, children and youth; integrated system of education.

996. Chapter VI on Cultural Integrity guarantees the following: protection of indigenous cultures, traditions and institutions; equal access to educational systems without prejudice to their right to establish and control their educational systems and institutions by providing education in their own language; recognition of cultural diversity; community intellectual right; right to religious, cultural sites and ceremonies; right to indigenous knowledge systems and practices and to develop own sciences and technologies; access to biological and genetic resources; sustainable agro-technical development; funds for archaeological and historical sites.

997. To carry out the policies set forth in the Act, a National Commission on Indigenous Peoples (NCIP) under the Office of the President was created to be the primary government agency responsible for the formulation and implementation of policies, plans and programs to promote and protect the rights and well-being of the indigenous cultural communities or indigenous people and the recognition of their ancestral domains with due regard to their beliefs, customs, traditions and institutions.

998. Finally, the Act codified the procedures to be followed for the delineation and recognition of ancestral domains, which shall be financed through the Ancestral Domains Fund, and the jurisdiction and procedures for the enforcement of rights.

999. The Rules and Regulations Implementing RA 8371 (9 June 1998) resulted from broad-based nationwide consultations with the ICCs. As an instrument of empowerment, the Rules provide details on how the “free, prior and informed consent” of the IPs may be secured; how IP communities may choose to reject any project or program that may impact on them; procedures for titling of ancestral lands and domains; principles, i.e. cultural diversity, consensus and peace building, cultural integrity, human dignity, subsidiarity, solidarity and total human development, and transparency and capacity building.

1000. The NCIP has yet to issue the rules and regulations that will govern the hearing and disposition of cases filed before it and those that pertain to internal functions. These rules shall detail the process by which customary law and indigenous systems may be used. These shall also include rules on evidence so that appellate courts shall favorably appreciate the unique indigenous knowledge systems that may not be in congruence with the mainstream.

1001. Critics of RA 8371 characterize the law as “the triumph of private property” and erodes indigenous property concepts on land. They assert that indigenous property concepts do not support individual ownership over land or portions of the ancestral domain and that IP lands are jointly owned by the community. The provisions on the titling of ancestral lands to families, family groups or individuals supposedly contradict IP concepts.

1002. Private citizens led by a retired SC justice filed a petition questioning the constitutionality of certain provisions of RA 8371 which they claimed amounted to an unlawful deprivation of the State’s ownership over lands of the public domain as well as minerals and other natural resources. They asserted that the law violated the rights of private landowners by providing for an all-encompassing definition of “ancestral domains” and “ancestral lands,” which might even include private lands. They also questioned the provisions defining the powers and jurisdiction of the NCIP and making customary law applicable to the settlement of disputes involving ancestral domains and ancestral lands.

1003. The NCIP believes that the provisions on ancestral lands are not applicable to all IP communities since there are communities that do not subscribe to the concept of private property. However, there are IP communities that subscribe to family, family group or individual ownership over parcels of land and it is to these communities where the pertinent ancestral land provisions shall be applied. In a ruling issued on 6 December 2000, the SC effectively *dismissed* the petition following a 7-7 vote, in accordance with the Rules of Civil Procedure on deadlock voting.

1004. RA 8371 was criticized as an instrument of the State in its alleged design of development aggression, where the IPs would end up as victims. It feared that RA 8371 would facilitate the entry of natural resource-extractive industries like mining and logging into the ancestral domains of the IPs. The law is also criticized for supposedly allowing government to implement projects that will have adverse impact upon IP communities.

1005. Notably, the law requires “free, prior and informed consent” for any program and/or project to be implemented, which guarantees that IP communities are consulted at all stages of any program or project and can reject any proposal that is deemed undesirable. It is thus, incorrect to conclude that the law would facilitate the entry of destructive industries.

1006. Notably under the law and its implementing rules, indigenous resource management systems shall prevail in the planning of any development initiative within ancestral domains. IPs have the right to choose, using their traditional decision-making processes and indigenous socio-political institutions, whether or not to allow any project or program in their ancestral domains. IPs are empowered to allow the entry of resource-extractive industries or to emphatically deny such entry.

1007. As of December 2000, the NCIP still had to commence the processing of Certificates of Ancestral Domain Title (CADTs). The records of Certificates of Ancestral Domain Claim (CADCs) and Certificates of Ancestral Land Claims (CALCs) and pending applications for

CADCs and CALCs had yet to be turned over to the NCIP by the Department of Environment and Natural Resources (DENR). The delay was also compounded by the need to resolve the continued existence of the previously created Presidential Task Force on Ancestral Domains that had been tasked to process CADCs and CALCs.

1008. Except for salaries, funds were not being released as a result of the petition before the SC challenging the constitutionality of RA 8371. With the dismissal of the petition, the NCIP is expected become fully operational.

## **2) Establishment of the Cordillera Autonomous Region (CAR)**

1009. The protection and promotion of the rights of minorities is enshrined Article X, Section 15 of the 1987 Constitution, which mandates the establishment of the Cordillera Autonomous Region (CAR) in the provinces, cities, municipalities and geographical areas which share common and distinctive historical and cultural heritage, economic and social structures and other relevant characteristics within the framework of the Constitution and the national sovereignty as well as territorial integrity of the Republic.

1010. RA 8438, or An Act to Establish the Cordillera Autonomous Region (22 Dec 1997) was enacted on the basis of Article II, Section 2, which ensures for the people of the Cordillera “the right to secure for themselves their ancestral domain, develop their economy, promote their cultural heritage, and establish a system of self-governance within the framework of the Philippine Constitution and national sovereignty, as well as the territorial integrity of the Philippines.” The law provided for the holding of a plebiscite in the CAR which is composed of the provinces of Benguet, Mountain Province, Ifugao, Abra, Kalinga, Apayao, and the chartered City of Baguio which shall constitute the autonomous region. (Annex 28: RA 8438)

1011. RA 8438 was rejected by the Cordillera people in a referendum held in March 1998. Hence, Congress is expected to enact another law on Cordillera autonomy which fate will be placed in the hands of the Cordillerans through a plebiscite.

1012. As used in the Act, autonomy meant that local indigenous customs, traditions, practices and institutions were recognized and may be availed of by appropriate parties. Under the RA 8438, the autonomous government would have had the power to exploit, explore, develop, enjoy and utilize the natural resources of the region, consistent with the conservation and protection of ecological balance and for the benefit and advantage of the people of the Cordilleras.

1013. The Act envisaged a CAR that:

- promotes social justice by enacting and implementing measures to minimize disparities between the rich and the poor, and the rural and urban areas, by providing equal or equitable access to essential services, employment and other opportunities and equitable sharing of wealth and resources, without distinctions based on ethnic origin, sex, language, political conviction, economic or social status or religious belief;

- upholds the *Cordillerans* right to participate and be equitably represented at appropriate levels of social, economic and political decision-making and in the formulation and implementation and monitoring of local, regional, and national priorities, plans, programs and projects;
- provides incentives to investors, corporations and business, but at the same time adopts measures to prevent the exploitation of natural and human resources;
- provides the best quality of education, both formal and non-formal. One that, responds to the needs of the Cordillera communities;
- recognizes health as a basic HR and its attainment, maintenance and protection as the responsibility of the autonomous government;
- promotes the well-being of the physically disabled and mentally handicapped, the elderly, the homeless, widows and orphans, retirees, and veterans, and assist victims of calamities, abused children and women in crisis situation;
- promotes a harmonious balance between women's personal, family and work obligations and their participation in public life; and
- promotes and supports duly established peoples' organizations and encourages the formation of organizations, especially those of the underprivileged.

### 3) The Situation of the Muslim Filipinos

1014. As a sub-sector of the ICCs, the Filipino Muslims, who profess the Islamic religion, number to about 6.7 to 7.5 million. They are concentrated in the islands of Mindanao, Sulu, Palawan, Basilan and Tawi-Tawi. The Filipino Muslims are divided into different major linguistic groups such as the Iranons of Cotabato and Lanao, the Kalagans of Davao, the Maguindanaos, Maranaos, Tausugs, Yakans, Samals and the so-called Balik Islam or converts to Islam who have been growing in number.

1015. The GRP-MNLF Peace Agreement (see section on Enhancing Political Stability re the GRP Peace Process) aims to address the long-standing need for political and socio-economic development of the Muslim Filipinos. The Agreement paved the way for the creation of the SZOPAD, the SPCPD and the Consultative Assembly.

1016. Government programs have also been strengthened to enhance, preserve and develop the Islamic culture. Through the Office of Muslim Affairs (OMA) under the Office of the President, the government continues to implement the Shari'ah court system based on the Code of Muslim Personal Laws of the Philippines (PD 1087), the Madrasah (arabic school) accreditation program and the Qur'an reading competition as part of Islamic-institution building strategy. The Philippines has in fact produced world-class Qur'an readers as shown by the impressive performance of Philippine Qur'an reading contestants in international competitions.



#### **PART IV. STATISTICS ON ALLEGED HUMAN RIGHTS VIOLATIONS**

1017. Previous sections of this Report show that the restoration of democratic institutions in the country has considerably facilitated the implementation of government policies and measures to protect and promote human rights and fundamental freedoms. While this development is widely recognized, there remain criticisms and reports from HR groups that HRVs continue to be committed. There is reason to believe so.

1018. Media attention has, in particular focused, on problems cited in the protection of the (a) right to life, due to instances of alleged arbitrary, summary or extra-judicial executions and issues of forced mass evacuations and food blockades during military encounters with insurgent elements; (b) right against torture, due to instances of alleged torture or cruel and inhuman treatment of accused persons and detainees; (c) right to liberty and security of person, due to alleged illegal arrests, detention, searches and seizures, particularly as a result of the setting up of military/police checkpoints or during the conduct of saturation drives, as well as to instances of alleged enforced or involuntary disappearances; (d) right to humane treatment of prisoners, due to issues of inadequate and overcrowded jail facilities; (e) rights of the accused, due to alleged delays in the administration of justice and alleged failure to ensure that all persons, particularly the poor, are given adequate and equal representation in trials of cases where they are the accused or victims; (f) rights of the child; and, (g) the rights of ethnic, religious and linguistic minorities.

1019. CHR figures from 1989 to 1998 show a total of 15,339 cases of alleged HRVs of which 6,281 were filed in courts for prosecution or administrative action; 6,000 were closed/terminated; and 3,058 were archived. As of December 1998, a total of 1,152 of the cases filed in courts were decided upon, resulting in conviction, acquittal or dismissal. (Please see Annex 14).

1020. Based on the CHR records, the PNP allegedly committed a total of 5,592 HRVs, most of which consisted of illegal arrest or detention, murder, homicide or arbitrary execution. Significantly, the number of violations allegedly committed by the PNP declined from a high of 656 cases in 1990 to a low of 402 cases in 1997. In particular, torture cases dropped from 18 cases in 1989 to one in 1997.

1021. Also based on CHR files, the military allegedly committed 2,120 HRVs, majority of which involved murder, homicide or execution and illegal arrest or detention. As in the case of the PNP, the AFP exhibited a great improvement in its HR records with HRV cases plunging from 328 in 1989 to only 75 cases in 1997. Torture cases were particularly minimal during the period.

1022. Not surprisingly, the number of HR cases monitored by the DND/AFP Human Rights Desk was considerably lower than that recorded by the CHR. From 1988 to 1998, the AFP recorded 1,037 reported cases against AFP personnel, with yearly totals showing a generally declining trend. The AFP list included the following reported cases: killing (200); murder (42); multiple killing (18); massacre (13); homicide (3); torture (36); harassment (64); grave threat (20); physical injury (68); illegal arrest or detention (174); illegal search (4); and enforced disappearance (70). These cases are, by and large, the same cases filed and acted upon by the

CHR (i.e., referred to the DOJ for preliminary investigation and prosecution. Others were directly reported to the DND/AFP through its regional commands, the HR Desk or the Judge Advocate General's Office. 8)

1023. Statistics on HR are not limited to reported HRVs. There are also available statistics that show the results of HRV cases filed with the authorities. These figures prove that police personnel are not exempt from the operations of the law. A January-December 1994 report on disposition of cases filed against members of the police at the People's Law Enforcement Boards (PLEBs) showed that a total of 2,302 cases handled in 1994, of which 1,117 caseloads were new and 1,185. Of the total, almost half or 1,027 were disposed, with 285 policemen suspended, 62 demoted, 7 dismissed from the service, 16 had salaries forfeited, and 32 penalized by a combination of withholding of privileges, restriction of specified limits, suspension and forfeiture of salary.

1024. A police action program for reform and renewal (*Complan Pagbabago*) also showed that, as of 31 December 1994, there were 28 caseloads for members of the NAPOLCOM; 4,948 for the PNP; 217 for the BFP; 356 for the BJMP for a total of 5,549 cases. Of these cases, a total of 4,344 cases were disposed. Offenders involved in 3,111 cases were penalized as follows: dismissed from the service (1,300); suspended (1,290); demoted (91); forfeited their salaries (136); reprimanded (235); admonished (57); and restricted (2).]

1025. PNP records listed criminal and administrative cases, including infractions of police rules and regulations that were filed against the members of the police from 1993 to 1998 and the status of each case. The list included at least one case of torture; 8 cases of alleged arbitrary detention/illegal arrest; 4 cases of illegal search/seizure; 73 cases of homicide; 77 cases of murder; and 281 other cases of alleged human rights violations.

1026. It will be noted that HR statistics generated by the CHR do not tally with those of the AFP, the PNP and HR NGOs. These differences in figures have been the subject of debate in the country, particularly since the figures presented by the HR groups are considerably larger than those presented by either the CHR or the AFP/PNP.

1027. Explanations have been put forward to account for statistical discrepancies. One is motive. It is observed that NGOs aim to expose and highlight to the public the perceived seriousness of HRVs and therefore tend to list all reported HRVs even if alleged victims do not report their case to the CHR or to the authorities for investigation and filing of criminal charges. The CHR list is determined by the quantum of evidence in its case build-up of alleged HRVs, hence, if the investigations reveal that the case could not stand in court, the CHR does not count it as HRV. Also, the CHR's figures are higher than those presented by either the AFP or the PNP because CHR figures represent HRVs allegedly committed by dissident and secessionist forces, government officials and even civilians.

1028. The other probable source of discrepancy is trust/confidence in the institutions concerned. Understandably, complainants and witnesses to an alleged HRV would generally prefer to approach NGOs rather than the CHR or the AFP or PNP on the belief that they would get tangible results more quickly, like media expose, and pre-empt any possibility of harassment, intimidation, reprisal or retaliation.

1029. The Philippine Government recognizes the critical importance of a comprehensive database on alleged HRVs in order to effectively address alleged violations. Creating such a database would, however, depend on a clear set of parameters recognized and acceptable to all interested parties, of what acts constitute HRV and, necessarily, their corresponding penalties.

1030. Meanwhile, the Government realizes the necessity for the CHR, the AFP and the PNP to agree on the manner by which alleged HRVs will be tabulated. For instance, as pointed out in this Report, the statistics from CHR and AFP and PNP on alleged extra-judicial execution were lumped together with the reported cases of murder, homicide and execution. This is because the motive for the crime allegedly perpetrated by military or police elements are not clearly determined and may even be classified as personal vendetta.

1031. Hence, to facilitate verification, follow-up and updating of cases of alleged HRVs, there is a need to establish a uniform system of properly identifying alleged HRV. This system of reporting should also specify the administrative body where the complaint is lodged, or the courts where the appropriate civil or criminal cases are filed, and the status of the complaint/case. In the case of PNP members, the administrative bodies consist of the NAPOLCOM, the PLEBs, the IAS, the Chief of the PNP, police regional directors or police provincial directors or equivalent supervisor, Chiefs of Police or equivalent supervisors, the Mayors or heads of local government units; while in the case of AFP personnel, it is the Secretary of National Defense and the Judge Advocate General's Office (JAGO).

1032. At present, efforts to draw up uniform and consistent statistical data on HRVs are hampered by the absence of a law that codifies all acts considered as violations of the International Covenant on Civil and Political Rights and of the Philippine Bill of Rights enshrined in the Constitution. Cases filed in courts are docketed according to the Revised Penal Code (RPC).

1033. An initial step toward this direction may be to examine the offenses penalized by the RPC and to see how these are correlated as HRVs as defined by the ICCPR and the Philippine Constitution. The results of such a study should enable the Philippine Government to speedily determine whether or not it would be necessary to amend or revise pertinent and existing laws or enact a comprehensive code that would cover all violations of civil and political rights. In this regard, and to facilitate such a study, the Philippine Government wishes to seek from the UN Commission on Human Rights technical assistance as well as information on the experiences of other countries.

## **PART V. CONCLUSION**

1034. The trend in the Philippines has been towards greater respect for, and fuller exercise of, human rights, that is economic and social progress and political stability are merely support mechanisms for this purpose.

1035. With democratic institutions restored, and a climate of peace and security achieved, the emphasis is now to strengthen these institutions for the economic and social well-being of the people.

1036. All Philippine presidents since the EDSA People Power Revolution of 1986 are strong advocates of human rights, and their administrations have given emphasis to the upholding of these inherent rights. In this regard, the Philippine Government has, through the years, endeavored to respect, safeguard, protect and ensure the enjoyment of human rights by Filipinos even in times of armed conflict, and economic and financial crises.

1037. Legislative, executive and judicial measures put in place after the martial law regime indicate the commitment of the Philippine Government to strengthen the protection and promotion of human rights.

1038. There has been a clear recognition by the Philippine Government to empower the Filipino people in the enjoyment of these rights. Hence, priority was given to the peace process, national reconciliation, economic recovery and social reforms, with poverty alleviation as top concern, to pave the way for genuine enjoyment of HR by the people.

1039. Undoubtedly, the Philippines has been in the forefront of HR promotion, particularly in terms of legislation but has regrettably fallen short of expectation when it comes to implementation. This failure is recognized and is being addressed through constructive collaboration with civil society institutions, which are authorized to participate in government-initiated special bodies and mechanisms formed to promote HR or investigate HR violations. Examples are the Presidential Human Rights Committee, barangay HR action centers nationwide and the implementation of various memorandums of agreement signed with NGOs and private groups.

1040. While it appears, as indicated by statistics, that human rights violations have not been totally eradicated, government has been working hand-in-hand with NGOs and civil society groups in efforts to intensify and optimize campaigns to heighten awareness on and understanding by ordinary Filipinos of HR.

1041. Moreover, the Philippine government recognizes that it is not enough that the incidence of HRVs has consistently diminished, but that renewed efforts must be exerted to improve the rate of successful prosecution.

1042. Notwithstanding, there can be no denying that HR protection and promotion has considerably advanced since the Initial Report was submitted in 1989. Not only were significant laws on civil and political rights enacted, but also the capacity of the government to implement and enforce these laws has been considerably enhanced.

1043. It is hoped that through close cooperation between Government and civil society, HRVs would continue to diminish to assure the citizenry that any violation of HR will be meted the appropriate punishment. The Philippine Government places great emphasis in educating every citizen of the Philippines, especially the young, to value, respect, safeguard and preserve human rights as a way of life. The Government will strive to improve every citizen's well-being, morale and status even as it pursues ways to make every government functionary understand, cherish, uphold human rights for the enjoyment of all.

1044. The strategy for improving the country's human rights record focuses on the maintenance of peace and political stability, economic uplift of the poorest and most vulnerable sectors of society, passage of necessary laws, improvement of morale and efficiency of the bureaucracy, intensive education and training on HR values and principles.

1045. The Philippine Government firmly believes that the holistic and integrated approach to human rights is imperative to our highly globalizing world, and therefore, it is inextricably linked to peace and sustainable development.

## **LIST OF ACRONYMS**

ACC - Area Coordinating Committee

ACR - Alien Certificate of Registration

AFP - Armed Forces of the Philippines

AFP MP - AFP Modernization Program

AFP OCD - AFP Office of Civil Defense

AGCH - Agreement for General Cessation of Hostilities

ALPS - Army Literacy Patrol System

ALTAS - *Alyansang Tapat sa Sambayanan*

AO - Administrative Order

AOI - Agreement of Intent

APO - Alleged Political Offender

ARMM - Autonomous Region of Muslim Mindanao

ASEAN - Association of Southeast Asian Nations

ASG - Abu Sayyaf Group

ATC - Agricultural Tenancy Commission

BAC - Bank-assisted Cooperative

BCDA - Bases Conversion Development Authority

BFP - Bureau of Fire Protection

BHRAC - Barangay Human Rights Action Center

BHRAO - Barangay Human Rights Action Officer

BJMP - Bureau of Jail Management and Penology

BuCor - Bureau of Corrections

CA - Consultative Assembly

CA - Court of Appeals

CADC - Certificate of Ancestral Domain Claim

CADT - Certificate of Ancestral Domain Title

CAFGU - Citizen Armed Force Geographical Unit

CAFGU CAA - CAFGU Active Auxiliary Units

CALC - Certificate of Ancestral Land Claim

CAPCOM - Capital Command

CAR - Cordillera Autonomous Region  
CAHR/IHL - Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law  
CAT - Citizens Army Training  
CB - Capacity-building  
CBM - Confidence-building measure  
CCHR - Coordinating Committee on Human Rights  
CET - Committee on Education and Human Rights  
CHDC - Clear, Hold, Consolidate and Develop  
CEDC - Children in Especially Difficult Circumstances  
CHR - Commission on human Rights  
CIAC - Children in Armed Conflict  
CIP - Committee on Investigation and Prosecution  
CJOD - Committee on Jails and Other Detention Centers  
CJS - Criminal Justice System  
CLAO - Citizens' Legal Assistance Office  
CM - Committee on Monitoring  
CMO - Civilian-Military Operation  
CMT - Citizens Military Training  
COC - Cabinet Oversight Committee  
COIN - Counter-insurgency  
COMELEC - Commission on Elections  
COPS - Community-Oriented Policing System  
CPP - Communist Party of the Philippines  
CSC - Cabinet Supervisory Committee  
CSC - Civil Service Commission  
CVO - Civilian Volunteer Organizations  
CVIAC - Civilian Victim of Internal Armed Conflict  
CWC - Council for the Welfare of Children  
CYRO - Children and Youth Relations Officer  
CYRS - Children and Youth Relations Officer  
DAR - Department of Agrarian Reform

DBS - Detective Beat System

DCC - Disaster Coordinating Council

DFA - Department of Foreign Affairs

DECS - Department of Education, Culture and Sports

DepEd - Department of Education

DHR - Draft House Resolution

DILG - Department of Interior and Local Government

DND - Department of National Defense

DOH - Department of Health

DOJ - Department of Justice

DOLE - Department of Labor and Employment

DSWD - Department of Social Welfare and Development

DT - Dissident Terrorist

DTI - Department of Trade and Industry

EA - Emergency Assistance

EID - Enforced or Involuntary Disappearance

EO - Executive Order

FIND - Families of Victims of Involuntary Disappearances

FR - Former Rebel

GAP - General Agreement for Peace

GDP - Gross Domestic Product

GNP - Gross Domestic Product

GO - General Order

GO - Government Organization

GRP - Government of the Republic of the Philippines

GRP-NP - GRP Negotiating Panel

HB - House Bill

HR - Human Right

HRET - Human Rights Education and Training

HRV - Human Right Violation

IAS - Internal affairs Service

ICC - Indigenous Cultural Community



ICRC - International Committee of the Red Cross  
IFFC - Independent Fact-Finding Committee  
IHCDF - Integrated Home Civilian Defense Forces  
ILO - International Labor Organization  
IP - Indigenous People  
JAGO - Judge Advocate General's Office  
JASIG - Joint Agreement on Safety and Immunity Guarantees  
JASSER - Joint Agreement in Support of Socio-Economic Reforms  
JMC - Joint Monitoring Contingent  
JTCW - Joint Technical Working Committee  
LCM - Local Communist Movement  
LCT - Local Communist Terrorist  
LFPR - Labor Force Participation Rate  
LGU - Local Government Unit  
LLA - Livelihood Loan Assistance  
LPF - Local Peace Forum  
MAG - Medical Action Group  
MC - Memorandum Circular  
MCC - Mindanao Coordinating Committee  
MCTC - Municipal Circuit Trial Court  
MILF - Moro Islamic Liberation Front  
MNLF - Moro National Liberation Front  
MO - Memorandum Order  
MOA - Memorandum of Agreement  
MTC - Municipal Trial Court  
NAB - National Appellate Board  
NAC - National Amnesty Commission  
NAMFREL - National Movement for Free Elections  
NAPOLCON - National Police Commission  
NARCOM - Narcotics Command  
NBI - National Bureau of Investigation  
NCIP - National Commission on Indigenous Peoples

NCIS - National Crime Information System

NCR - National Capital Region

NDF - National Democratic Front

NETRC - National Educational Testing and Research Center

NGO - Non-Governmental Organization

NIACHR - National Inter-Agency Chamber of Human Rights

NPA - New People's Army

NPDP - National Peace and Development Plan

NPF - National Peace Forum

SOCO - Scene of the Crime Operations

SOMO - Suspension of Military Operations

SPCD - Southern Philippines Council for Peace and Development

SPSG - Southern Philippines Secessionist Group

SRA - Social Reform Agenda

SSCD - Social Services and Counseling Division

SZOPAD - Special Zone of Peace and Development

TFDP - Task Force Detainees of the Philippines

WGEID - Working Group on Enforced or Involuntary Disappearances

WPSBP - Witness Protection, Security and Benefit Program

YOU - Young Officers Union

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