

# **The Philippines Violations of the Laws of War by Both Sides**

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## **List of Acronyms**

**AFP** Armed Forces of the Philippines

**AOR** Area of Responsibility

**BAYAN** National Patriotic Alliance

**CAFGU** Citizens' Armed Forces Geographical Units

**CBA** Cordillera Bodong Association

**CHDF** Civilian Home Defense Forces

**CHICKS** Candoni, Hinoba-an, Ilog, Cauayan, Kabankalan and Sipalay,  
six towns located in Negros Occidental

**CI** Civilian Informer

**CPLA** Cordillera Peoples' Liberation Army

**CPP** Communist Party of the Philippines

**CVO** Citizen Volunteer Organization or Civilian Voluntary Organization

**DPA** Deep Penetration Agent

**ELJODA** Eastern Laguna Jeepney Operators and Drivers' Association

**IB** Infantry Battalion

**ICCPR** International Covenant on Civil and Political Rights

**ICRC** International Committee of the Red Cross

**INP** Integrated National Police

**MNLF** Moro National Liberation Front

**NCPD** Negros Council on Peace and Development

**NDF** National Democratic Front

**NPA** New People's Army

**PC** Philippines Constabulary

**PCFC** Philippine Constabulary Forward Command

**PKP** Partido Komunista ng Pilipinas

**POT** Propaganda Operation Team or Propaganda Operating Team

**RAM** Reform the Armed Forces Movement

**SCAA** Special CAFGU Active Auxiliary

**SOLCOM** Southern Luzon Command

**SOT** Special Operation Team

**TFD Task Force Detainees**  
**UCCP United Church of Christ**

# **The Philippines**

**Violations of the Laws of War by Both Sides**

**August 1990**

**An Asia Watch Report**

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## **I. INTRODUCTION**

**In September and October 1989, Asia Watch sent a mission to the Philippines to investigate violations of international humanitarian law. We investigated abuses that occur in the context of armed conflict, whether by government forces and civilian groups operating under their direction or with their active support, or by the New People's Army (NPA), the armed wing of the Communist Party of the Philippines.**

**By covering both sides of the conflict, we hope to put to rest the following three myths:**

**1. That the conflict in the Philippines is so polarized that no organization could cover both sides fairly;**

**2. That by covering them both, an organization would run the risk of understating the gravity of abuses committed by each side or reducing the pressure on either to account for their own actions. In recent years, the U.S. State Department entry on the Philippines in its annual *Country Reports on Human Rights Practices* has come close to justifying military abuses by citing NPA attacks on soldiers and police or it has seemingly excused human rights violations because of the exigencies of an internal war. We hope to demonstrate that one could cover NPA abuses without in any way excusing or justifying violations by the military and paramilitary groups, and vice versa.**

**3. That as a result of reporting on both, one side would appear "worse" than the other. The point of covering both sides is not statistics. It is to underscore that in any conflict of this nature, civilians who take no direct part in hostilities constitute the majority of the victims and to put pressure on all those who commit abuses to halt them. Neither side can claim the high moral ground and only by both sides adhering to their professed commitment to protect human rights can these civilian lives be protected.**

**The Asia Watch mission included Jemera Rone, Counsel of Americas Watch who has extensively documented violations of humanitarian law in El Salvador, Nicaragua, Angola and Afghanistan, and Sidney Jones, Executive Director of Asia Watch, who has had extensive experience in monitoring human rights in the Philippines. We traveled to villages in the hinterland of Negros Occidental, Kalinga-Apayao, Zamboanga del Norte, and Quezon, having chosen these areas because of the large numbers of displaced people (internal refugees) reported there, indicating there was fighting in the region. We talked with the refugees themselves, with church workers, with human rights organizations including Task Force Detainees and the Ecumenical Movement for Justice and Peace, with staff from the Commission of Human Rights both in Manila and in the provinces, and with local civil and military authorities. This report is based on those interviews as well as on reports we have received since our return.**

**We would like to acknowledge the contribution of Robert K. Goldman, Professor of Law at American University to the discussion on the application of Protocol II and Common Article 3 of the Geneva Conventions to the Philippines conflict.**

## **Political Background**

**The "People Power Revolution" of February 1986 that led to President Marcos's abrupt departure from the Philippines and Corazon Aquino's accession to the Presidency was seen at home and abroad as an indication that political and civil liberties would be restored and the war with the NPA ended. President Aquino was believed to have a deep**

**personal commitment to human rights, made all the stronger by the assassination of her husband, former Senator Benigno Aquino, Jr. in 1983.**

**If Aquino's image, at the time of the rigged "snap election" in February that culminated in Marcos's overthrow, was that of a saint-like woman who stood above politics, the NPA had a Robin Hood image. They were heroes to many Filipinos, attacking those who had become corrupt and abusive under the Marcos administration and initiating social programs in depressed rural areas and urban slums.**

**Both images have gradually tarnished. President Aquino's early moves to improve human rights were laudable. They were also essential but not sufficient to undo the damage done by Marcos and his "cronies," as the corrupt generals, businesspeople and law-makers around him became known. Aquino quickly released all prisoners charged with specifically political offenses, restored *habeas corpus*, repealed decrees allowing for arbitrary and indefinite preventive detention, acceded to important international human rights agreements such as the International Covenant on Civil and Political Rights, appointed a Constitutional Commission which produced a strong Bill of Rights, appointed a Presidential Committee on Human Rights to investigate past and present abuses, and opened a dialogue with the NPA through the united front organization of the Communist party, the National Democratic Front.**

**But some key actions which should have been taken were not. President Aquino made no move to prosecute members of the military for past abuses. This may have been due to the role played by senior officers from the Marcos-era military, including General Fidel V. Ramos, Aquino's first Commander in Chief and now Secretary of National Defense, in bringing her to power. The Presidential Committee on Human Rights had no prosecutorial powers, although it did have the power to *subpoena* officers to testify. It is open to question whether Aquino could have used her popularity, while at its height in 1986, to investigate those senior**

**officers and members of the "Reform the Armed Forces Movement" (RAM) who committed abuses against leftists activists during the Marcos period.<sup>1</sup> The fact remains that she did not. A rationale frequently used by her supporters at the time was that with a restive military, investigations and prosecutions could lead to instability; better to have known abusers walking free than to risk the possibility of a coup by members of the military already offended by her release of senior members of the Communist party. It is ironic that the series of coup attempts, from the first in August 1987 to the last and most serious in December 1989, have been led by men who might have been in jail had those prosecutions taken place.**

**By the terms of the new constitution ratified in February 1987, private armies and paramilitary groups should have been outlawed. Such groups, working closely with the Armed Forces of the Philippines (AFP) under Marcos, had been responsible for innumerable cases of extrajudicial executions, "disappearances" and torture. The constitution specifically outlawed the Civilian Home Defense Forces (CHDF) and called for the integration of the military police, known as the Philippine Constabulary, into the regular police (See Chapter III). Control over the latter would be returned to civilian authorities. None of this happened. Six months following the breakdown of talks with the NDF in early 1987, not only did the CHDF metamorphose into a new paramilitary group called CAFGU (Citizens' Armed Forces Geographical Units), but President Aquino and her government actively encouraged the rise of "unofficial" paramilitary groups which came to be known as "vigilantes." Activists in the legal left became targets of their attacks just as they had under Marcos.**

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<sup>1</sup> RAM, nurtured by Marcos's Defense Minister Juan Ponce Enrile who became President Aquino's Defense Minister in reward for his last minute defection, was composed largely of members of the 1971 class of the Philippine Military Academy. See Walden Bello, *Creating the Third Force: US Sponsored Low Intensity Conflict*, The Institute for Food and Development Policy (Manila: 1987).

**Finally, some key Marcos-era decrees were never repealed. The most important of these was Presidential Decree (PD) 1850 which required that any member of the military or police charged with a criminal offense be tried in a military court. Thus the few soldiers or officers actually brought to trial for human rights abuses were tried by fellow military personnel who believed that prosecuting soldiers was tantamount to helping the NPA. The trials resulted in acquittals. President Aquino's unwillingness to repeal PD 1850 for fear of antagonizing the military led members of the Philippines Congress to introduce a bill for repeal. It was passed just prior to the December 1989 coup attempt, but President Aquino vetoed it, on the grounds that it would have permitted those who took part in the coup attempt to avoid being tried in military courts. As of mid-1990, PD 1850 remained in force.**

**The public perception of the NPA appears to have changed as well. An apparent split between "moderates" and "hardliners," evident in the debate over whether or not to support Mrs. Aquino's candidacy in early 1986, has only deepened over time. A decision by the hardliners to engage in acts of economic sabotage (blowing up bridges, for example) after talks with the government collapsed in January 1987 was unpopular with villagers. A spate of killings of soldiers and police in Manila in 1987-88 provoked widespread outrage in the capital. Since the Alex Boncayao Brigade (the NPA unit responsible for the killings) was formed in Manila in 1984, more than 200 soldiers, police and civilians have been the victims of the Brigade's attacks.<sup>2</sup> A Reuters report of June 14, 1990 cites the death toll since 1987 as 309, quoting military statistics.**

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<sup>2</sup> The figure of 200 is cited in a letter from Philip Limjoco, allegedly one of the founders of the Alex Boncayao Brigade, which was received by a Manila newspaper, *Diaryo Filipino* on May 30, 1990, according to the *Foreign Broadcast Information Service* (FBIS), June 15, 1990, p.58.

**Several purges appear to have taken place where certain NPA leaders, convinced that setbacks were due to informers in the ranks, have summarily killed dozens of suspected traitors. The first such purge to attract any publicity was in Agdao, Davao City, in 1985 where the level of NPA killing and the extent of the purge led to the formation of the anti-communist group called Alsa Masa.<sup>3</sup> Mass graves reported to be those of NPA victims were uncovered in Quezon just prior to the Asia Watch mission in late 1989.**

**American soldiers and workers at the six American military installations in the Philippines have become targets of NPA attacks, most recently on May 15, 1990 when two U.S. servicemen were killed in Angeles City near Clark Air Base the night before bilateral negotiations on the future of the U.S. bases began. A Japanese aid worker was kidnapped in Bacolod, Negros Occidental two weeks later, apparently by the NPA in an effort to discourage Japanese aid.**

**Asia Watch believes that both sides must be held accountable and calls on both President Aquino and the Central Committee of the Communist Party of the Philippines to demonstrate their willingness to investigate and punish the military and the NPA respectively for human rights abuses and to ensure that the professed commitment of both sides to uphold human rights is made more than a statement issued for external consumption.**

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<sup>3</sup> Alsa Masa or "Masses Arise" became the unfortunate model for the spread of vigilante groups throughout the country. See Chapter III.



## **II. APPLICATION OF PROTOCOL II AND COMMON ARTICLE THREE TO THE GENEVA CONVENTIONS TO THE CONFLICT IN THE PHILIPPINES**

**A debate is raging in the Philippines among the military, the government Commission on Human Rights and local human rights organizations over whether the Geneva Conventions apply to the internal armed conflict in the Philippines.**

**The government and armed forces seek to discredit the active non-governmental human rights organizations for not condemning "human rights" abuses by the New People's Army (NPA). The non-governmental human rights organizations respond that only the government can commit abuses of "human rights." The government and army then retort that the non-governmental organizations should also report on violations of "international humanitarian law," or the Geneva Conventions and Protocol II thereto, which the NPA has violated.**

**Asia Watch concludes that while under international human rights law the NPA as a non-governmental actor is not specifically bound by treaties among governments on human rights, the conduct of the NPA as well as the AFP forces is governed by the rules of war, specifically Article 3 common to the Geneva Conventions of 1949, certain customary armed conflict rules, and possibly even Protocol II to the Geneva Conventions.**

**We urge the non-governmental organizations to study the rules of war and apply their criteria to investigate abuses by both the government and the NPA. At the same time, we believe that the work done on behalf of the victims of government abuses by the non-governmental human rights organizations is essential. The watchdog function of documenting and**

**denouncing government abuses is necessary in any democracy and is required whether or not there is a war. These organizations offer services to the victims that the government has neither the resources nor the desire to provide, such as helping press victims' claims through the legal system. That these non-governmental organizations do not currently apply international humanitarian law in their reporting does not detract from the valuable work they are doing in many offices throughout the Philippines. Task Force Detainees (TFD) of the Philippines, for instance, is a nationwide network with one national, 13 regional and 68 sub-regional offices; the Ecumenical Movement for Justice and Peace has branches throughout the country; and the Free Legal Assistance Group (FLAG) has a national office and 14 regional offices.**

### **The Applicability of Human Rights Laws**

**In 1986, the Philippines acceded to the International Covenant on Civil and Political Rights (ICCPR).<sup>4</sup> This treaty, a component of the International Bill of Rights, enumerates certain basic civil and political rights and judicial safeguards. By acceding to the covenant, the Philippines government assumed an express obligation to respect and to extend to all Filipinos the rights specified therein. The government also agreed to be internationally responsible for redressing acts or omissions of its agents which violate these guaranteed human rights.**

**Since states alone under existing international law are proper parties to treaties and internationally responsible for their violation, non-governmental groups in the Philippines are correct in stating that only the government can legally violate this treaty.**

**While applicable during war, the ICCPR was designed for peacetime. It contains no rules regulating methods and means of**

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<sup>4</sup> G.A. Res. 2200, 21 U.M. GAOR, Supp. (no. 16) 52, U.N. Doc A/63167 (1966).

**combat. It also permits a state party in times of genuine public emergencies to suspend a number of guaranteed rights. In fact, only a few enumerated ("nonderogable") rights cannot be suspended under any circumstances, such as the right to life and the right to physical integrity (*i.e.*, no summary executions and no torture).**

**The conduct of insurgent forces is governed not by human rights treaties such as the ICCPR but by the rules of war, also called international humanitarian law, which comprise the four 1949 Geneva Conventions, the two 1977 Protocols to those Conventions, and the customary laws of war. Unlike human rights law, the rules of war ordinarily apply during armed conflicts and their basic provisions cannot be derogated or suspended. The rules are primarily intended to protect the victims of armed conflicts.**

**Despite their separate origins and fields of application, human rights and international humanitarian law share the common purpose of securing for all persons a minimum standard of treatment under all circumstances. For example, both human rights and humanitarian law conventions absolutely prohibit summary executions, torture and other inhuman treatment.**

### **The Philippines: A Non-International Armed Conflict**

**International humanitarian law makes a critical distinction between international and non-international (internal) armed conflicts. Since the rules governing each type of conflict vary significantly, a proper characterization of the particular conflict is necessary to determine which aspects of humanitarian law apply.**

**For the past 20 years, the government of the Philippines has been engaged in an armed conflict with dissident forces, principally the NPA.**

**This has been an internal (non-international) armed conflict, though over the years the government has requested and received military assistance, advisers and training from the U.S. in its efforts to fight the NPA and other insurgent groups. The United States under treaty arrangements with the Philippines also maintains military bases there. Although the U.S. military presence and assistance are indeed politically significant, they do not make that conflict an international one under humanitarian law.**

**Under Article 2 common to the four 1949 Geneva Conventions, an international armed conflict must involve a declared war or any other armed conflict which may arise "between two or more of the High Contracting Parties" to the convention. The official commentary to the 1949 Geneva Conventions broadly defines armed conflict as any difference between two states leading to the intervention of armed forces.<sup>5</sup> (Only states and not rebel groups may be "High Contracting Parties.")**

**Since no state has either declared war against the Philippines or directly intervened with its armed forces on the side of either party to that conflict,<sup>6</sup> the requisite conditions for the existence of an international armed conflict are not satisfied at this time.**

**The nature of hostilities between the AFP and NPA forces in the**

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<sup>5</sup> International Committee of the Red Cross, *Commentary*, III Geneva Convention, (Geneva: 1960), p. 23.

<sup>6</sup> The exception was the U.S. intervention that briefly occurred in December 1989, when at the request of the Aquino government, U.S. military personnel directly assisted government forces in putting down a coup attempt by dissident members of the AFP. Although lawful under international law, the U.S. military action in support of the Aquino government constituted active participation in hostilities and thereby subjected U.S. military personnel and material directly involved therein to direct attack by dissident AFP forces. (The concept of active participation in hostilities is discussed below.)

**Philippines therefore is that of a non-international armed conflict.<sup>7</sup> As such, government and insurgent forces' conduct is governed by common Article 3 of the Geneva Conventions and customary international law applicable to internal armed conflicts. Even while probably not yet applicable to the Philippines conflict, the 1977 Protocol II to the Geneva Conventions contains rules providing authoritative guidance on the conduct of hostilities by the warring parties, and we apply Protocol II because of the parties' stated willingness to be bound by humanitarian law.**

### **The Application of Article 3**

**Article 3 common to the four Geneva Conventions<sup>8</sup> is virtually a convention within a convention. It is the only provision of the Geneva Conventions that directly applies to internal (as opposed to international) armed conflicts.**

**Common Article 3, section 1, states:**

**In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:**

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<sup>7</sup> Even if the United States or other states were to intervene in hostilities with their armed forces on a more permanent basis, relations between the Philippines government and dissident forces would still be governed by non-international armed conflict rules. The introduction of another state's armed forces in the Philippines conflict would "internationalize" that internal conflict if only for a time.

<sup>8</sup> The Philippines ratified the Geneva Conventions as of October 6, 1952.

- (1) Persons taking no active part in the hostilities, including members of armed forces who had laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.**

**To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:**

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;**
- (b) taking of hostages;**
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;**
- (d) the passing of sentences and the carrying out of executions without previous judgment**

**pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.**

**Article 3 thus imposes fixed legal obligations on the parties to an internal conflict to ensure humane treatment of persons not, or no longer, taking an active role in the hostilities.**

**Article 3 applies when a situation of internal armed conflict objectively exists in the territory of a State Party; it expressly binds all parties to the internal conflict, including insurgents although they do not have the legal capacity to sign the Geneva Conventions.<sup>9</sup> In the Philippines, the government and NPA forces are parties to the conflict.<sup>10</sup>**

**The obligation to apply Article 3 is absolute for all parties to the conflict and independent of the obligation of the other parties. That means that the Philippine government cannot excuse itself from complying with Article 3 on the grounds that the NPA is violating Article 3, and vice versa.**

**Application of Article 3 by the government cannot be legally**

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<sup>9</sup> As private individuals within the national territory of a State Party, certain obligations are imposed on them. International Committee of the Red Cross, *Commentary on the Additional Protocols of 1977* (Geneva: 1987), p. 1345. This study is hereafter cited as *ICRC Commentary*.

<sup>10</sup> Because we have only studied the conflict between the NPA and the AFP, we refer in this section only to the NPA rebels. We recognize that there are other rebel groups engaging the government in armed conflict in the Philippines, specifically the Moro National Liberation Front and various splinter factions on the island of Mindanao.

**construed as recognition of the insurgent party's belligerence, from which recognition of additional legal obligations beyond common Article 3, would flow. Nor is it necessary for any government to recognize the NPA's belligerent status for Article 3 to apply.**

**Unlike international conflicts, the law governing internal armed conflicts does not recognize the combatant's privilege<sup>11</sup> and therefore does not provide any special status for combatants, even when captured. Thus, the Philippine government is not obliged to grant captured members of the NPA prisoner of war status. Similarly, AFP combatants who are captured by the NPA need not be accorded this status. Either can agree to treat its captives as prisoners of war, however.**

**Since NPA and other insurgents are not privileged combatants, they may be tried and punished by the Philippine government for treason, sedition, and the commission of other crimes under domestic laws.**

### **When Protocol II Can Be Applied**

**Protocol II additional to the Geneva Conventions of 1949, acceded to by the Philippines on December 11, 1986, applies only to a situation of**

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<sup>11</sup> The combatant's privilege is a license to kill or capture enemy troops, destroy military objectives and cause unavoidable civilian casualties. This privilege immunizes members of armed forces or rebels from criminal prosecution by their captors for their violent acts that do not violate the laws of war but would otherwise be crimes under domestic law. Prisoner of war status depends on and flows from this privilege. *See* Soli, "The Status of Combatants in Non-International Armed Conflicts Under Domestic Law and Transnational Practice," 33 *American University Law Review* 53, 59 (1953).

**civil war where there is a level of hostilities clearly above that of Article 3, and where the insurgents exercise a high degree of control over part of the national territory.<sup>12</sup> Protocol II develops and supplements Article 3 but does not modify its existing conditions of application.<sup>13</sup>**

**Whether the Protocol presently applies to the hostilities in the Philippines depends on issues of fact, not law:**

**1) Does the NPA have responsible command?**

**2) Does it exercise such control over a part of the territory as to enable it to:**

**a) carry out sustained and concerted military operations and**

**b) implement Protocol II?**

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<sup>12</sup> Protocol II, Article 1, states in part:

**1. This Protocol . . . shall apply to all armed conflicts which are not covered by Art. 1 of the Protocol Additional [Protocol I, which applies principally to international armed conflicts] and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.**

<sup>13</sup> As with Article 3, the NPA can be bound by, although it has not signed, the instrument. The obligation to apply the protocol is absolute for all parties to the conflict and independent of the obligation of the other parties; and since there is no combatant's privilege, there are no prisoners of war and captured NPA combatants may be tried for violations of the criminal code of the Philippines.

**It is not clear that the intensity of ongoing hostilities meets the Protocol's high threshold. Although we do not doubt that the NPA has a responsible command structure and we are aware that it has engaged government forces in almost all of the provinces, its control in these areas does not appear to be equivalent to the authority envisioned by the Protocol. We also do not know enough about the NPA's ability to implement Protocol II, in particular about its ability to afford due process as required in Article 6 of Protocol II which we discuss below.**

**The NPA, nevertheless, has expressed its willingness to abide by the requirements of Protocol II.<sup>14</sup> For the purposes of this report, therefore, we will apply the standards of Protocol II to the NPA, and also to the AFP, which maintains that its conduct is in compliance with humanitarian norms.**

### **Customary International Law Applicable to Internal Armed Conflicts**

**United Nations General Assembly Resolution 2444<sup>15</sup>, adopted by unanimous vote on December 19, 1969, expressly recognized the customary law principle of civilian immunity and its complementary principle requiring the warring parties to distinguish civilians from combatants at all times. The preamble to this resolution clearly states that these fundamental humanitarian principles apply "in all armed conflicts," meaning both international and internal armed conflicts. United Nations Resolution 2444 affirms:**

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<sup>14</sup> Among the many statements by the NPA that it abides by Protocol II is that appearing in an interview with the General Command of the New People's Army in *Liberation*, March-April 1989, p.8, a publication of the National Democratic Front of the Philippines.

<sup>15</sup> *Respect for Human Rights in Armed Conflicts, United Nations Resolution 2444*, G.A. Res. 2444, 23 U.N. GAOR Supp. (No. 18) p. 164, U.N. Doc. A/7433 (1968).

**. . . the following principles for observance by all government and other authorities responsible for action in armed conflicts:**

**(a) That the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited;**

**(b) That it is prohibited to launch attacks against the civilian populations as such;**

**(c) That distinction must be made at all times between persons taking part in the hostilities and members of the civilian population to the effect that the latter be spared as much as possible.**

### **Protection of the Civilian and Other Population under the Rules of War**

**In situations of internal armed conflict, generally speaking, a civilian is anyone who is not a member of the armed forces or of an organized armed group of a party to the conflict. Accordingly, "the civilian population comprises all persons who do not actively participate in the hostilities."<sup>16</sup>**

**Civilians may not be subject to deliberate personal attack since they pose no immediate threat to the adversary.<sup>17</sup>**

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<sup>16</sup> R. Goldman, "International Humanitarian Law and the Armed Conflicts in El Salvador and Nicaragua," 2 *American University Journal of International Law & Policy* 539, 553 (1987).

<sup>17</sup> M. Bothe, K. Partsch, & W. Solf, *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, (1982), hereafter

**The term "civilian" also includes some employees of the military establishment who are not members of the armed forces but assist them.<sup>18</sup> While as civilians they may not be targeted, these civilian employees of military establishments or those who indirectly assist combatants assume the risk of death or injury incidental to attacks against legitimate military targets while they are in the immediate vicinity of them.**

**In addition, both sides use as part-time combatants persons who are otherwise engaged in civilian occupations. These civilians lose their immunity from attack for as long as they directly participate in hostilities.<sup>19</sup> "Direct participation [in hostilities] means acts of war which by their nature and purpose are likely to cause actual harm to the personnel and equipment of enemy armed forces," and includes acts of defense.<sup>20</sup>**

**"Hostilities" not only covers the time when the civilian actually makes use of a weapon but also the time that he is carrying it, as well as situations in which he undertakes hostile acts without using a weapon.<sup>21</sup>**

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referred to as *New Rules* p. 303.

<sup>18</sup> Civilians include those persons who are "directly linked to the armed forces, including those who accompany the armed forces without being members thereof, such as civilian members of military aircraft crews, supply contractors, members of labour units, or of services responsible for the welfare of the armed forces, members of the crew of the merchant marine and the crews of civil aircraft employed in the transportation of military personnel, material or supplies. . . . Civilians employed in the production, distribution and storage of munitions of war . . ." *New Rules* pp.293-94.

<sup>19</sup> *New Rules* p. 303.

<sup>20</sup> *ICRC Commentary* p. 619.

<sup>21</sup> *ICRC Commentary* pp. 618-619. This is a broader definition than "attacks" and includes

**Examples are provided in the United States Army Field Manual which lists some hostile acts:**

**... as including sabotage, destruction of communication facilities, intentional misleading of troops by guides, and liberation of prisoners of war... This is also the case of a person acting as a member of a weapons crew, or one providing target information for weapon systems intended for immediate use against the enemy such as artillery spotters or members of ground observer teams. (It) would include direct logistic support for units engaged directly in battle such as the delivery of ammunition to a firing position. On the other hand civilians providing only indirect support to the armed forces, such as workers in defense plants or those engaged in distribution or storage of military supplies in rear areas, do not pose an immediate threat to the adversary and therefore would not be subject to deliberate individual attack.<sup>22</sup>**

**Once their participation in hostilities ceases, that is, while engaged in their civilian vocations, these civilians may not be attacked, although part-time as well as full-time NPA combatants are liable to prosecution by the Philippine government for acts violating the Philippines criminal code.**

**Persons protected by Article 3 and Protocol II include members of both government and NPA forces who surrender, are wounded, sick or unarmed, or are captured. They are "*hors de combat*," literally, out of**

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at a minimum preparation for combat and return from combat. *New Rulesp.* 303.

<sup>22</sup> *New Rulesp.* 303 (footnote omitted).

**combat, until such time as they take a hostile action such as attempting to escape.**

### **Designation of Military Objectives: CAFGU, Police, Vigilantes, U.S. Servicemen**

**Under the laws of war, military objectives are defined only as they relate to objects or targets, rather than to personnel. To constitute a legitimate military objective, the object or target, selected by its nature, location, purpose, or use, must contribute effectively to the enemy's military capability or activity, and its total or partial destruction or neutralization must offer a definite military advantage in the circumstances.<sup>23</sup>**

**Members of the AFP and NPA are legitimate military targets and subject to attack, individually or collectively, until such time as they become *hors de combat* that is, surrender or are wounded or captured.<sup>24</sup> Thus an engineering brigade composed of engineers who are full-time, uniformed members of the AFP are legitimate military objectives, especially while riding in a military vehicle.**

**Army reservists, such as members of the Citizens Armed Forces Geographical Units (CAFGU), are proper military targets while they directly participate in hostilities, which includes guard and patrol duties. They may not be attacked individually when they are not directly participating or performing CAFGU duties.**

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<sup>23</sup> See Protocol I, Art. 52 (2).

<sup>24</sup> This explains why killing a wounded or captured combatant is not proper: it does not offer a "definite military advantage in the circumstances" because the fighter is already rendered useless or *hors de combat*.

**Other legitimate military objectives are combatants' weapons, convoys, installations, and supplies. In addition:**

**an object generally used for civilian purposes, such as a dwelling, a bus, a fleet of taxicabs, or a civilian airfield or railroad siding, can become a military objective if its location or use meets both of the criteria set forth....<sup>25</sup>**

**Policemen without combat duties are not legitimate military targets. The authors of Protocol II intended to exclude from the definition of "armed forces," or those engaged in hostilities, policemen, customs agents, as well as other government personnel authorized to bear arms.<sup>26</sup> Policemen with combat duties, however, would be proper military targets, subject to direct attack.**

**Unofficial paramilitary groups, often organized and/or equipped by the Philippines military, are popularly termed "vigilantes" in the Philippines. While vigilantes are in most circumstances not actual members of the armed forces, although some have joined CAGU, they like other civilians lose their immunity from attack whenever they assume a combatant's role. Thus, when they prepare for, actively participate in and return from combat (while carrying a weapon or committing hostile acts without using a weapon), they are proper military targets for the NPA.**

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<sup>25</sup> *New Rules* pp. 306-07. The criteria are those in Protocol I, Art. 52 (2). Military objectives are those that 1) by their location or otherwise make an effective contribution to military action and 2) whose destruction or capture offer a definite military advantage, under the circumstances.

<sup>26</sup> Report of Working Group B, Committee I, 18 March 1975 (CDDH/I/238/Rev.1; X, 93), in Levie, Howard S., ed., *The Law of Non-International Armed Conflict*, Martinus Nijhoff Publishers, Dordrecht, Netherlands p. 67 (1987). See Rosario Conde, "Policemen without Combat Duties: Illegitimate Targets of Direct Attack under Humanitarian Law," Columbia Law School, May 12, 1989.

**The Communist Party of the Philippines (CPP) announced in February 1987 that it would treat U.S. citizens and other foreigners "directly involved in the planning, coordination, supply and operations of the U.S. counter-insurgency program" as "combatants."<sup>27</sup>**

**The United States, as previously noted, has not been a party to the internal hostilities between the AFP and NPA, with the exception of the intervention in the December 1989 attempted coup by military dissidents. U.S. military personnel stationed in the Philippines, including those advising the AFP on its counterinsurgency efforts against the NPA, are not members of the AFP or any other armed group of the Philippine government. Therefore, these U.S. servicemen are properly classified as noncombatants and like civilians cannot, individually or collectively, be attacked. However, they temporarily lose their immunity from attack any time they assume a combatant's role, or directly participate in the hostilities, as at least some did during the December 1989 coup attempt when they took defensive measures against the dissidents.**

**In addition, while located within or near a legitimate military target, such as an AFP base or munitions depot, they assume the risk of death or injury collateral to direct attacks against these military targets.**

### **Legitimate military targets**

**While not an exhaustive list, the following persons, groups, and objects may be regarded as legitimate military objectives subject to direct attack:**

**-- Members of the Armed Forces of the Philippines and**

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<sup>27</sup>Richard J. Kessler, *Rebellion and Repression in the Philippines*, Yale University Press (New Haven, Conn., 1989), p. 98.

**CAFGU and other armed personnel assisting the defense of the Philippines, including policemen who have combat duties.**

**-- Members of "self-defense" or vigilante groups, as long as they are directly participating in hostilities.**

**-- Members of the NPA armed forces and their part-time militia, while the latter are directly participating in hostilities.**

**-- Weapons, other war matériel, military works, military and naval establishments, supplies, vehicles, camp sites, fortifications, and fuel depots or stores that are used by any party to the conflict.**

**-- Objects that, while not directly connected with combat operations, effectively contribute to military operations, such as transportation and communication systems and facilities, airfields, ports, and otherwise nonmilitary industries of importance to the ability of a party to the conflict to conduct military operations, such as products destined for export.**

## **Prohibited Acts**

**While not an all-encompassing list, international law prohibits the following kinds of practices, orders, or actions:<sup>28</sup>**

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<sup>28</sup> Protocol II, art. 4, states in part:

**... the following acts ... are and shall remain prohibited at any time and in any place whatsoever:**

**(a) violence to the life, health and**

**-- Orders that there shall be no survivors, such threats to combatants, or direction to conduct hostilities on this basis.**

**-- Attacks against combatants who are captured, surrender, or are placed *hors de combat*.**

**-- Torture, any form of corporal punishment, or other cruel treatment of persons under any circumstances.**

**-- Desecration of corpses.<sup>29</sup> Beheading or mutilation of**

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- physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- (b) collective punishments;
  - (c) taking of hostages;
  - (d) acts of terrorism;
  - (e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
  - (f) slavery and the slave trade in all their forms;
  - (g) pillage;
  - (h) threats to commit any of the foregoing acts.

<sup>29</sup> Protocol II, Article 8, states:

**the dead is never permissible and violates the rules of war.**

**-- The infliction of humiliating or degrading treatment on civilians or combatants who are captured, have surrendered, or are *hors de combat*.**

**-- Assassination of civilian officials, such as barangay captains.**

**-- Hostage taking.**

**Article 3 and Protocol II explicitly forbid hostage-taking. "Hostages" has a specific definition. The *ICRC Commentary* on Protocols I and II defines it as follows:**

**hostages are persons who find themselves, willingly or unwillingly, in the power of the enemy and who answer with their freedom or their life for compliance with the orders of the latter and for upholding the security of its armed forces.<sup>30</sup>**

**-- Shielding.**

**Principles of international humanitarian law forbid the parties from "shielding," that is, using the presence of the civilian population to**

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**Whenever circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay, ... to search for the dead, prevent their being despoiled, and decently dispose of them.**

<sup>30</sup> *ICRC Commentary*, p. 874.

**immunize areas from military operations, or to favor or impede military operations. In addition, the parties may not direct the movement of civilians in order to attempt to shield legitimate military objectives from attack, or to favor military operations.**

### **Protection of Civilians from Displacement for Reasons Related to the Conflict**

**There are only two exceptions to the prohibition on displacement of civilians for war-related reasons: for their own security or for imperative military reasons. Article 17 of Protocol II states:**

**1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.**

**Displacement or capture of civilians solely to deny a social base to the enemy clearly has nothing to do with the security of the civilians. Nor is it justified in this instance by "imperative military reasons," which require "the most meticulous assessment of the circumstances"<sup>31</sup> because such reasons are so capable of abuse. One authority has stated:**

**Clearly, imperative military reasons cannot be justified by political motives. For example, it would be prohibited to move a population in order to exercise more effective**

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<sup>31</sup> *Ibid.*, p. 1472.

**control over a dissident ethnic group.<sup>32</sup>**

**Mass relocation or capture of civilians for the sole purpose of denying a social base to the opposing force where those located are willingly providing support to that force is an obvious attempt to exercise control over persons who are believed to be dissidents, and as such is a political, not a military move. Some forms of control are permitted, such as prosecuting under the criminal code those who provide material support for the rebellion.**

### **Prohibition of Indiscriminate Attacks Affecting Civilians and Civilian Objects; the Principle of Proportionality**

**Article 13 of Protocol II accords the civilian population general protection against attack. The rules in Protocol I that protect civilians from such attacks provide relevant guidance for interpreting the extent of similar protection under Protocol II. Article 51(4) of Protocol I, for instance, expressly protects the civilian population from indiscriminate or disproportionate attacks.<sup>33</sup>**

**As set forth above, to constitute a legitimate military object, the target must 1) contribute effectively to the enemy's military capability or activity, and 2) its total or partial destruction or neutralization must offer a definite military advantage under the circumstances.**

**The laws of war implicitly characterize all objects as civilian unless they satisfy this two-fold test. Objects normally dedicated to**

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<sup>32</sup> *Ibid.*

<sup>33</sup> The Article prohibits attacks that are not directed at specific military objectives or that employ a method or means of combat that a party cannot direct at a specific military objective.

**civilian use, such as churches, houses and schools, are presumed not to be military objectives. (If they in fact do assist the enemy's military action, they can lose their immunity from direct attack.) This presumption applies, however, only to objects that ordinarily have no significant military use or purpose. For example, this presumption does not include objects such as transportation and communications systems that under applicable criteria are military objectives.**

**Even attacks on legitimate military targets, however, are limited by the principle of proportionality. This principle places a duty on combatants to choose means of attack that avoid or minimize damage to civilians. In particular, the attacker should refrain from launching an attack if the expected civilian casualties would outweigh the importance of the military target to the attacker. For example, an attack on an entire town or village in order to destroy a number of clearly separate military targets that could be attacked separately would be indiscriminate. But attacks directed against each military target within that location would not be indiscriminate.**

**The attacker also must do everything "feasible" to verify that the objectives to be attacked are not civilians. "Feasible" means "that which is practical or practically possible taking into account all the circumstances at the time, including those relevant to the success of military operations."<sup>34</sup>**

**For purposes of the Philippine conflict, the following should be considered civilian objects immune from direct attack by combatants:**

- Structures and locales, such as houses, churches, dwellings, schools, and farm villages, that are exclusively dedicated to civilian purposes and, in the circumstances**

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<sup>34</sup> *New Rules* p. 362 (footnote omitted).

**prevailing at the time, do not make an effective contribution to military action.**

**-- Buildings, monuments and other objects defined as "cultural property" by the 1954 Hague Convention for the Protection of Cultural Property, provided that imperative military necessity does not require waiver of their special protection.**

### **Prohibition of perfidy**

**For centuries, combatants have been enjoined from employing treachery in order to gain a military advantage. The prohibition of "treachery" was first codified in the Hague Regulations of 1907. This rule prohibits assassination of both civilians and combatants, recruitment of hired killers, placing a price on the head of an adversary, or the offer of a reward for his capture "dead or alive."<sup>35</sup> The term "treachery" was deemed too restricted in its meaning, and the term "perfidy" was preferred in Article 37, Protocol I, where it is defined as follows:**

**1. It is prohibited to kill, injure or capture an adversary by resort to perfidy. Acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence, shall constitute perfidy. The following acts are examples of perfidy:**

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<sup>35</sup> *ICRC Commentary*, p. 431, and footnote 6.

- (a) the feigning of an intent to negotiate under flag of truce or of a surrender;**
- (b) the feigning of an incapacitation by wounds or sickness;**
- (c) the feigning of civilian, non-combatant status....**

**Such perfidious acts tend strongly**

**... to degrade the protections and restraints developed in the mutual interest of all the Parties, their combatants and civilians. Combatants, in practice, find it difficult to respect protected persons and objects if experience causes them to believe or suspect that their adversaries are abusing the claim to protection ... in order to achieve a military advantage.<sup>36</sup>**

**In contrast, ruses of war, which involve misinformation, deception or other acts to mislead the enemy under circumstances entailing no obligation to speak the truth, are lawful. Examples of such ruses are the use of camouflage, traps, decoys, mock operations and misinformation.<sup>37</sup>**

### **Due Process Requirements**

**Captured civilians and combatants alike are afforded certain due process protections under Article 3 and Protocol II.**

**Neither Article 3 nor Protocol II, as previously indicated,**

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<sup>36</sup> *New Rules*, p. 202.

<sup>37</sup> Protocol I, Article 37 (2).

**precludes a government from punishing armed rebels for the commission of crimes under its domestic laws. Thus, the Philippine government may try captured NPA guerrillas who kill government soldiers for murder, treason, sedition, and other offenses under the Revised Criminal Code. Such trials must be conducted in accordance with the standards set forth in these articles, as well as in accordance with the constitution and laws of the Philippines.**

**The state of national emergency that was declared on December 6, in the wake of a failed military coup d'etat, provides that the State may temporarily take over or direct the operation of any privately owned public utility or business affected with public interest, under Article XII, Section 17 of the Constitution. In declaring the emergency, in Decree 503, the office of the President sought to make it clear that it was not suspending the writ of *habeas corpus* nor was it declaring martial law, and that during the emergency civil courts were to remain functional and operational, Congress was to be open and in session, and local government function in the normal course.**

**Article 3 common to the Geneva Conventions forbids the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.**

**In the Philippines, these requirements apply at a minimum to the government as well as to the NPA.**

**Article 6 of Protocol II lays down judicial guarantees that clarify and strengthen the prohibition against summary conviction without fair trial found in common Article 3. Article 6 of Protocol II states in part:**

**2. No sentence shall be passed and no penalty shall be**

**executed on a person found guilty of an offence except pursuant to a conviction pronounced by a court offering the essential guarantees of independence and impartiality. In particular:**

- (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;**
- (b) no one shall be convicted of an offence except on the basis of individual penal responsibility;**
- (c) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;**
- (d) anyone charged with an offence is presumed innocent until proven guilty according to law;**
- (e) anyone charged with an offence shall have the right to be tried in his presence;**
- (f) no one shall be compelled to testify against himself or to confess guilt.**

**3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time-limits within which they may be exercised.**

**4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.**

**Most of Article 6's fundamental guarantees are patterned on or near verbatim transcriptions of provisions in Articles 14 and 15 of the ICCPR.**

### **Requirement of an Independent and Impartial Tribunal**

**The ICRC Commentary on Article 6 of Protocol II indicates that "some experts argued that it was unlikely that a court could be regularly constituted under national law by an insurgent party."<sup>38</sup> Therefore, the term "regularly constituted court" used in Common Article 3(I)(d) was replaced in Protocol II, Art. 6 (2), by a more appropriate requirement: "a court offering the essential guarantees of independence and impartiality." At the same time, this envisioned coexistence of two sets of national legislation -- that of the State and the other of the rebels.**

**The insurgents as well as the government "... are obliged to have at their disposal an organization of the judiciary which corresponds to the requirements of Article 6."<sup>39</sup>**

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<sup>38</sup> *ICRC Commentary*, p. 1398.

<sup>39</sup> *New Rules*, p. 651.

**Virtually all modern humanitarian and human rights treaties mandate trials by "independent and impartial" tribunals. These terms have been the object of much international study. One United Nations proposal defined in both personal and structural terms the requirements of independence and impartiality as follows:**

**1. individual guarantees that allow every judge to "decide matters before him in accordance with his assessment of the facts and his understanding of the law without any improper influences, inducements, or pressures, direct or indirect, from any quarter or for any reason;" and**

**2. membership in a judiciary which is "independent of the executive and legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature."<sup>40</sup>**

**The developing jurisprudence of the Inter-American Commission on Human Rights ("Commission") on this subject is helpful, particularly its findings of deficiencies in the composition of the Special Tribunals in Nicaragua and the Special Courts in Guatemala.**

**The Sandinista government of Nicaragua created in November 1979 Special Tribunals to try thousands of National Guardsmen, members of the fallen government of Anastasio Somoza Debayle, and suspected collaborators for crimes committed during the Somoza dictatorship.<sup>41</sup>**

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<sup>40</sup> *See* Draft Principles on the Independence of the Judiciary, U.N. Doc. E/CN.4/Sub.2/481/Add. 1 p. 3 (1981); Question of the Human Rights of Persons Subjected to any Form of Detention or Imprisonment: A Preliminary Study with Regard to . . . the Independence and Impartiality of the Judiciary . . . : Report of the Secretary General, 32 U.N. ESCOR (Agenda Item 8) at para. 8, U.N. Doc. E/CN.4/Sub. 2/428 (1979); Basic Principles on the Independence of the Judiciary, CJIJL Bulletin, Oct. 1985, pp.49-52. *See also* Rosen, "The Protection of Judicial Independence in Latin America," Vol. 19 *Inter-American Law Review* p. 304 (1987).

<sup>41</sup> Law of Special Tribunals, Decree No. 185 (Nov. 29, 1979) in 1 Lacayo & Lacayo, *Decretos-*

**Unlike the judges on Nicaragua's ordinary courts, the Special Tribunals' three-member panels consisted of two lay members and one lawyer or law student, all named by the executive. Some were reportedly victims of repression during Somoza's rule and presumably had a pro-conviction bias.<sup>42</sup>**

**The Commission in its 1981 Report on Nicaragua<sup>43</sup> seized on the composition and lack of independence of the Special Tribunals' judges in finding that these bodies violated fair trial guarantees. The Commission pointedly charged:**

**(it) meant submitting the accused Somocistals to the legal judgment of people, some of whom at least, were not lawyers; to the judicial decision of people who were not judges; to the verdict of political enemies and to the judgment of people, influenced by the psychology of their victory, who were more inclined to be severe rather than**

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*Leyes Para Gobierno de un País a Través de una Junta de Gobierno de Reconstrucción Nacional*, 281-82 (1983); See generally Steinberg, "Judicial Independence in States of Emergency: Lessons from Nicaragua's Popular Anti-Somocista Tribunals," *Columbia Human Rights Law Review*, Vol.18(1987), p 359, hereafter referred to as *Steinberg*; see also Lawyers Committee for International Human Rights, *Revolutionary Justice in Nicaragua* (April 1985).

<sup>42</sup> *Steinberg* p. 374. Quote attributed to Dr. Mario Mejía Alvarez, General Coordinator of the Special Tribunals.

In addition, "Members of the Special Tribunals...needed no reminder of the political significance of their function. 'We are the Special Tribunals, a product and consequence of the revolutionary triumph of our people, and therefore, have a standard and procedure special to judge the *reos* Somocistas [defendants]. We are delegates of the people's interest in adjudging the Somoza dictatorship for all its crimes.'" *Ibid.* pp.372-73.

<sup>43</sup> Inter-American Commission on Human Rights ("IACHR") Report on the Situation of Human Rights in Nicaragua (June 30, 1980 (OEA Ser.L/V/II 33).

**fair.<sup>44</sup>**

**Similar considerations led the Commission to condemn the creation of Special Courts in Guatemala by the government of General Efraín Ríos Montt, on July 1, 1982, when he also decreed a state of siege, indicating that the Special Courts were a complementary measure to combat subversion. He stated that he would begin to try all captured rebels, adding, "I stress that those whom the courts find guilty of crimes will be sentenced to death."<sup>45</sup> These Special Courts had exclusive jurisdiction to try persons charged with a broad category of political and related common crimes. Persons found guilty of certain crimes were automatically sentenced to death.**

**The president directly appointed the three members of these courts, "who may or may not have been active members of the bar or officers of the Guatemalan Army."<sup>46</sup> He was also empowered to remove them without cause. In addition, these courts operated in secrecy, and the identities of the judges and prosecutor were unknown.<sup>47</sup>**

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<sup>44</sup> *Ibid.* p. 91.

<sup>45</sup> Americas Watch, *Human Rights in Guatemala: No Neutrals Allowed* (1982), p. 92.

<sup>46</sup> IACHR, Report on the Situation of Human Rights in the Republic of Guatemala pp.89-90 (Oct. 5, 1983) (OEA/Ser. L/V/II/61).

<sup>47</sup> The Commission noted:

**Although the secret nature of their activities had no official justification, the explanation was given that the purpose of such secrecy was to defend the personal security of the civilian officials and personnel on the courts in order to protect them from reprisals and other acts of vengeance, both against themselves and their families.**  
*Ibid.* p. 89.

**The Commission was harsh in its criticism:**

**The Commission wishes to go on record noting that those procedures, carried out without respect for the minimal guarantees of due process, truly constituted a farce and regardless of where they might occur the practice of appointing unqualified judges, defenders who do not defend, a Public Ministry unconcerned with the prompt, fair and effective administration of justice and Law Courts that really are courts martial, devoid of independence and impartiality, that function in secret under military auspices, in fact impede rather than foster justice.<sup>48</sup>**

### **Means of Defense**

**Article 6(2)(a) of Protocol II mandates that the accused *inter alia* be afforded "before and during his trial all necessary rights and means of defense."**

**The Inter-American Commission, finding that the Guatemalan Special Courts were devoid of due process, cited the fact that defendants before these courts did not have a right to be defended by counsel of their own choice or to have counsel present before and during the pre-trial investigation.<sup>49</sup>**

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<sup>48</sup> *Ibid.* p. 96.

<sup>49</sup> *Ibid.*, pp. 91, 95, and 96.

**Although this provision does not expressly provide for a right to counsel, such a right may be implied by the object and purposes of the treaty as a whole, in accordance with canons of treaty interpretation.<sup>50</sup>**

**One authority indicates that "essential guarantees of independence and impartiality" of courts referred to in Article 6 (2) of Protocol II permit "... the application also of other guarantees not expressly mentioned but contained in the [ICCPR] Covenant."<sup>51</sup>**

**Article 14(2)(d) of that Covenant (as well as Article 105 of the Third Geneva Convention and Article 72 of the Fourth Convention) grant the accused the right to "legal assistance" or "qualified counsel" of his choice.**

**The authority particularly notes that the application of the ICCPR's requirements may be of great importance for the conditions under which a death penalty may be imposed and also for the definition of 'all necessary rights and means of defense' (Article 6, para. 2(a)).<sup>52</sup>**

## **Death Penalty**

**While neither Protocol II nor common Article 3 prohibit outright**

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<sup>50</sup> Since the purpose of humanitarian law is protection of the individual in wartime, doubts should be resolved in favor of expanding or maintaining such protection, not restricting or eliminating it. Implying such a right to counsel serves such a protective function. This is not weakened by the *travaux préparatoires* of Article 6, which reveal that an express right to counsel was included in the original Canadian draft of penal provisions in Protocol II. Official Records of the Diplomatic Conference (CDDH), Part III, pp.30-36.

<sup>51</sup> *New Rules*, p. 651.

<sup>52</sup> *New Rules*, p. 653.

**all use of the death penalty,<sup>53</sup> it is significant that the death penalty is illegal under the Philippine Constitution.<sup>54</sup>**

**Although the death penalty is illegal in the Philippines, in fact there are many cases of extrajudicial executions by government agents in violation of international and Philippines law. The NPA, however regards the death penalty as legal under its laws and admits it punishes several crimes with the death penalty.**

**It is anomalous that the NPA applies the death penalty while the Philippine government is prohibited from doing so under its own laws.**

### **III. THE MILITARY, PARAMILITARY GROUPS AND**

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<sup>53</sup> Protocol II, Art. 6 (4) only prohibits the death penalty being pronounced on persons under 18 at the time of the offence and being carried out on pregnant women or mothers of young children.

<sup>54</sup> Bill of rights, sec. 19. (1)

**Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.**

## **COUNTERINSURGENCY**

**The Philippines military from its inception to the present has had three singular characteristics which are relevant to any discussion of the laws of war:**

- 1. It has primarily had an internal security function, trying to quell indigenous insurgencies rather than defending the country against an external threat.**
- 2. Paramilitary auxiliaries, both official and unofficial, have been central to its operations.**
- 3. It has had little legitimacy in the country as a whole, working as it has with the landowning elite on the one hand and foreign powers on the other.**

### **The Central Role of the Philippines Constabulary**

**The Philippines Constabulary (PC) exemplifies many of these characteristics. The oldest, and by all accounts the most abusive, of the four services now making up the Armed Forces of the Philippines (AFP), the PC was organized in 1901 by the United States as an internal security force to supervise local police forces and suppress nationalist guerrilla and "bandit" activity.<sup>55</sup> In the 1930's, it was primarily occupied with putting down peasant rebellions, in cooperation with private guards hired by local landlords, particularly in Central Luzon.**

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<sup>55</sup> Kessler, *op. cit.*, p.120. As another scholar points out, the PC was the first of a series of such forces organized by the U.S. elsewhere, such as the National Guards in Nicaragua, Haiti, the Dominican Republic and Panama.

**When landlords needed help, whether to guard their fields against tenants who wanted to harvest early or to barge in on peasants' meetings, they only had to ask the local PC commander to send detachments.<sup>56</sup>**

**Throughout the Japanese occupation of the Philippines 1941-44, the PC cooperated closely with the occupation forces. It was during this time that the PC began to employ the technique, still in use today, of *zona* or "zoning" where a joint PC-Japanese force would surround an area and have hooded men pinpoint informers or guerrillas of the anti-Japanese resistance, the Hukbalahaps or Huks, who would then be taken away and beaten, tortured or shot.<sup>57</sup>**

**After the Japanese defeat and the return of General MacArthur, the U.S. incorporated the collaborationist PC into a new Military Police, using them to pinpoint and arrest members of the Huk movement which, despite its unparalleled record of fighting the Japanese, the Americans regarded as a dangerous, communist-inspired force. Many Huk leaders were rounded up and summarily executed by the American Counter-Intelligence Corps, the PC-cum-Military Police and its various adjuncts after the war. The repression pushed the Huks into a full-fledged agrarian rebellion by 1946, and the counterinsurgency effort, led by U.S. Army Colonel Edward G. Lansdale, was massive. Heavy artillery and airstrikes were used against peasant bands, and there were forced displacements of civilians suspected of hiding or feeding the Huks -- another foreshadowing of the Philippines in 1989.**

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<sup>56</sup> Benedict Kerkvliet, *The Huk Rebellion* (Berkeley: University of California Press, 1977).

<sup>57</sup> *Ibid.*, p.20 A more recent "zoning" of this kind, also using hooded informers, took place in 1988 when the PC arrested refugees from Leyte who had fled to Manila to escape vigilante persecution.

**"Not only did artillery shells and bombs hit innocent people, but the PC, the civilian guards, and police burned houses, destroyed crops, looted property and shot innocent people. This behavior compelled more peasants to support or join the guerrillas."<sup>58</sup>**

**At its height in 1950-51, the Huk Rebellion had 15,000 men and women under arms, and Lansdale used it as a laboratory for counterinsurgency techniques. He persuaded Washington to provide weapons and training to the Philippines military, still dominated by the PC, and to back the political career of a charismatic young Filipino congressman named Ramon Magsaysay who, as President, would offer free land to the peasants, thereby taking away a key grievance of the Huks. He also developed psychological warfare --"psywar"-- to an artform, using it to terrorize the rural populace. In one of his favorite applications of psywar, a suspected Huk collaborator was summarily executed. Soldiers then punched two holes in his neck, held him upside down to let the blood drain out, and spread the story that the Huk had been killed by a vampire.<sup>59</sup>**

**The Philippines Constabulary continued to be the centerpiece of the AFP under Ferdinand Marcos, elected in a patently rigged election in 1965. Marcos did not particularly favor the PC. On the contrary, according to one scholar, he feared it and its West Point-trained commander, Fidel Ramos (Corazon Aquino's first AFP Chief of Staff and now Secretary of National Defense), and used his enormous patronage resources to build up other branches of the AFP as counterweights, especially after the imposition of martial law in September 1972.<sup>60</sup>**

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<sup>58</sup> *Ibid.*, p.194.

<sup>59</sup> Cecil B. Currey, *Edwin Lansdale: The Unquiet American*, Houghton Mifflin (Boston: 1988), p.103

<sup>60</sup> Kessler, *op.cit.* p.121

**But several factors ensured that the PC would continue to play a dominant role. First, from the time the New People's Army (NPA) was founded in March 1969, the PC was given primary responsibility for fighting it; it was seen, as earlier insurgencies had been, as an internal security problem best handled by military police rather than as a war to be fought by an army. Second, provincial PC commanders with their ties to local landlords tended to have more influence than their army counterparts. This was particularly true after Marcos reorganized the AFP in 1983, giving the army regional commands which were far more extensive than the PC, which retained its provincial commanders. (There were 13 regions and 73 provinces.) And perhaps most importantly, it was the PC which in theory and to some extent in practice recruited, organized, and equipped successive incarnations of the official civilian militia.**

### **The Philippines Constabulary and Paramilitary Forces**

**Human rights abuses under the PC and its various paramilitary auxiliaries went largely unchecked, and the way the latter were recruited, trained (or not trained as was usually the case) and financed was a major factor. Under the Japanese, the PC operated together with Civil Guards: "privately-financed outfits formed to protect the estates of landowners cooperating with the Japanese."<sup>61</sup> By the time of the Huk Rebellion, civil guards were an instrumental part of the counterinsurgency strategy, together with "counter-" or "quasi-guerrillas" including everything from religious cult groups to Negrito tribesmen, and worked as "hunter-killer" teams to seek out and destroy the Huk leadership.<sup>62</sup>**

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<sup>61</sup> Lt.Col. Charles Bohannon and Colonel Napoleon Valeriano, *Counterinsurgency Operations*, (New York: Praeger, 1962), p.128

<sup>62</sup> An unpublished manuscript on counterinsurgency to be published by Pantheon Books, Spring 1991.

**"Civilian guards therefore became basically armed groups that landlords used and that the local government and Military Police sanctioned. Illustrative of this arrangement was that landlords and the Military Police paid the civilian guards' wages."<sup>63</sup>**

**This is virtually identical to the "Special CAFGUs" today, the latest manifestation of the civilian guards (see below). The guards, like their successors, were often composed of local thugs and did the dirty work for the military so that the latter could disclaim responsibility for abuses.**

**The Huk Rebellion was effectively crushed by 1956 but the use of civilian guards continued through the early Marcos years with the new name of "Barrio Self-Defense Units." In 1973, a new citizens' army called the Self-Defense Forces was established by the terms of the 1973 martial law-era Constitution to help fight the Muslim insurgency in Mindanao and in 1976, in yet another name change, the Civilian Home Defense Forces (CHDF) came into being under PC control. The CHDF consisted of three groups: active reservists, private security guards and part-time soldiers, among them the same unemployed thugs looking for guns and a little money. The CHDF, perhaps because of its size (73,000 men at its inception) quickly became the most notorious human rights violators of all, with virtually every major international human rights organization working in the Philippines documenting its abuses, each more grisly than the last.<sup>64</sup>**

**No reliable figures exist for the numbers killed or disappeared by**

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<sup>63</sup> Kerkvliet, *The Huk Rebellion*, p.124

<sup>64</sup> One prominent case, and one of the few cases to lead to a conviction, was the murder of Italian priest Tullio Favali in 1985 in North Cotabato.

**the CHDF. But abuses were such that dissolution of the CHDF became a key demand of the opposition toward the end of the Marcos era, and when President Aquino took office, she vowed to make good her campaign pledge to disband them. The new constitution, ratified in February 1987, provided that "all paramilitary forces including the CHDF shall be dissolved or converted into the regular force."<sup>65</sup> The CHDF and other paramilitary units were ordered dissolved by Executive Order No.275 of July 15, 1987.**

**On paper, they were replaced almost instantly, however, by yet another constitutionally-mandated citizens' army, this time to be called the Citizens Armed Forces - Geographical Unit (CAFGU), which came into being on July 25, 1987. President Aquino's military advisers, especially veteran PC commander-turned-Chief of Staff General Fidel Ramos, believed that with increased supervision from the military, better recruitment and training procedures, and service restricted to the recruit's home area, the worst abuses of the CHDF could be avoided. But as has happened with each name change in the past, the new group has drawn largely on the old. The State Department estimated in a 1989 report that between 25 and 70 percent of those formerly in the CHDF may be allowed to join CAFGUs" and that "previously existing groups have been incorporated *en masse* into the CAFGUs."<sup>66</sup>**

**As of July 1989, some 47,000 CAFGUs had been recruited to replace some 40,000 CHDF members, and the AFP was projecting an annual increase of 20,000 until the optimum figure of 150,000 CAFGUs was reached.<sup>67</sup> Like the original CHDF, there are three kinds of CAFGU: regular**

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<sup>65</sup> Section 24, Article XVIII of the Philippines Constitution, 1987.

<sup>66</sup> U.S. Department of State: "Citizens' Self-Defense Groups in the Philippines" submitted to the Committee on Appropriations, U.S. Senate, and Committee on Appropriations, U.S. House of Representatives, April 28, 1989, p.8.

<sup>67</sup> Sheila Coronel, unpublished manuscript on vigilantes, Philippine Center for

**army reservists, part-time soldiers, and "the Special CAFGU Active Auxiliary" funded by private business and corporation heads and staffed with their own employees.**

**"Special CAFGUs" were authorized by an April 4, 1989 directive of Chief of Staff General Renato de Villa after the Philippines Congress had cut the proposed military budget. The directive states:**

**Due to budgetary constraints, the AFP cannot expand the regular component to fill up the security vacuum left by the phasing out of the ICHDFs. Moreover, the recent budget cut for the ICAFGU program limited the organization of these holding forces designed to support the campaign plan of the AFP.<sup>68</sup>**

**In effect, the directive legitimizes the private armies the 1987 Constitution set out to abolish, with a twist -- these private corporate armies now have arms and training provided by the military. In its 1989 report on Citizens' Self-Defense Groups in the Philippines, the State Department notes:**

**In some areas, for example in Negros Occidental, security patrols formerly supported by sugar planters are being incorporated into local CAFGUs after undergoing the necessary training by military field commanders.<sup>69</sup>**

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**Investigative Journalism, 1989.**

<sup>68</sup> Memo, Renato S. DeVilla, "Guidelines on the Special CAFGU Active Auxiliary (SCAA), April 4, 1989.

<sup>69</sup> U.S. Department of State, *op.cit.*, p.8

**According to the directive, only qualified volunteer reservists employed by a company can be called up as Special CAFGUs. They are provided with arms, ammunition and training by the military but operational costs are all met by the company.**

**Of the 47,000 CAFGUs in July 1989, some 2,200 were organized into 25 companies of Special CAFGUs deployed in Negros Occidental by sugar planters, and in Mindanao and Northern Luzon, mostly by logging and mining companies.<sup>70</sup> In Negros Occidental, 18 Special CAFGU companies are comprised of some 1,600 former members of the Philippine Constabulary Forward Command (PCFC), formerly supervised by the Negros provincial PC command. The PCFC, set up in 1986, was designed as a private army to protect the sugar planters from attacks by the NPA. The planters provided the funds for the establishment of detachments near their plantations, and for salaries, food and uniforms for the recruits, most of whom were already employed by the planters as security guards or workers. The PCFC recruits were often already members of existing clandestine armed groups formed by rightwing planters.**

**The Special CAFGUs formed from the PCFC are paid out of a 4.5 peso deduction on every picul (a weight measure) of sugar produced, for a total of some U.S.\$2-2.5 million annually. Each man is paid twice as much as a regular CAFGU receives due to this subsidy from the planters.<sup>71</sup>**

**With a lineage extending back to the Civil Guards of the turn of the century, it is not surprising that the old trait of abusive behavior continues to surface among CAFGUs, Special and regular, or that most of the abuses attributed to government agents that were reported to us in late 1989 involved members of CAFGU units. But the human rights situation is clouded further by the existence of other paramilitary forces, one step**

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<sup>70</sup> Sheila Coronel, *op. cit.*

<sup>71</sup> *Ibid.*

**removed from the officially-sanctioned CAFGU, which also continue to operate in the Philippines. These are commonly termed vigilantes."**

### **Vigilantes**

**As was mentioned earlier, counterinsurgency tactics used during the Huk Rebellion involved a wide variety of "quasi-guerrillas" outside the PC and civilian guards, including tribal and religious cult groups. There were certainly plenty to choose from. Anywhere in the Philippines at any time:**

**the provinces whirled with a profusion of mystical cabals, secret societies, clandestine brotherhoods, seditious associations and other such groups. Many, rooted in religious factions and messianic movements that dated back centuries, were animated by assorted patriotic zealots and political dissenters. Understandably, they attracted the alienated and aggrieved, who had little to lose from hopeless ventures.<sup>72</sup>**

**Colonel Lansdale's men effectively played on the image of godless Communists in recruiting some of these groups, and the practice was continued under Marcos, who used existing groups and created new ones. He was personally responsible, for example, for the creation of one of the most notorious of the vigilante groups during the 1970's, the Monkees, named after the popular rock group. Among the cults employed**

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<sup>72</sup> Stanley Karnow, *In Our Image: America's Empire in the Philippines* (New York: Random House, 1989), pp.272-3.

by Marcos were the Tadtads (literally, "chop chop" after their practice of mutilating their victims) in Cebu and later Davao; the 4K's in northern Mindanao; the Ilagas in Cotabato and innumerable others. They attacked with impunity members of suspected leftist organizations, aiding the military and CHDF in going outside the law to fight the war. Occasionally they went on joint operations with the regular military; they sometimes received equipment although the Tadtads did their work with long traditional machetes called *bolos*.

While little was heard from these groups in the first year of the Aquino government, they proliferated wildly during the second, as has been well-documented by human rights organizations, and killings and "disappearances" of leftist grassroots organizers shot up.<sup>73</sup> Initially, the military disclaimed all responsibility for their activities: these were unarmed civilian groups or neighborhood associations, organizing to defend themselves against the NPA. The AFP was neither responsible for their supervision nor accountable for their abuses. But evidence of close cooperation between the vigilantes and the military was incontrovertible, and the government, from President Aquino down, was actively promoting their formation. By mid-1987, the Philippine press was reporting over 200 vigilante groups throughout the country. In fact, "vigilante" became a catch-all phrase for any unofficial paramilitary group from village patrols to hardcore cult groups. One no longer heard much of the CHDF, because CHDF members were now enlisted in the ranks of "Alsa Masa" or whatever the local paramilitary group was called. Groups calling themselves Tadtads appeared in areas they had never been under Marcos and hitherto unknown groups made their appearance with names like Power Spirit. By whatever name, they served the familiar counterinsurgency purpose of identifying, tracking down and all too often killing suspected supporters of the NPA.

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<sup>73</sup> See Lawyers Committee for Human Rights, *Vigilantes in the Philippines: A Threat to Democratic Rule* (New York: 1988) and Amnesty International, *Philippines: Unlawful Killings by Military and Paramilitary Forces* (London: 1988).

**The domestic and international outcry against the vigilantes was such that by late 1987, then Chief of Staff General Ramos decided to step in. He issued guidelines formally adopted by an interagency commission in October 1987 which were designed to exert more supervision over the activities of the vigilantes, called by the more proper sounding name of "Citizen Volunteer Organizations" or CVOs. Membership must be voluntary, members authorized to carry firearms must be identified, no illegal activities were permitted, and operations outside their own villages or adjoining villages was prohibited.<sup>74</sup>**

**It is not clear what attempts were made to implement the guidelines but whatever they were, abuses continued. On July 15, 1988, President Aquino stated:**

**This morning I instructed the chief of staff to begin the process of disbanding all so-called vigilante groups in line with the constitutional injunction against paramilitary groups. Every measure must be taken to protect the people's security against communist terrorism while the CVO or *Bantay Bayan* and the CAFGU systems are put in place.<sup>75</sup>**

**By late 1988 and early 1989, vigilante abuses were down, but CAFGU violations were up. Just as the CHDF joined the vigilantes, some members of the various vigilante groups joined CAFGU, thereby shrugging**

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<sup>74</sup> The full text is quoted in Amnesty International, *Unlawful Killings by Military and Paramilitary Forces*.

<sup>75</sup> Government of the Philippines, "Insurgency and the Human Rights Issue", 1989, p.5 *Bantay Bayan* became the new name for CVO and was conceived of as an unarmed village patrol responsible largely for intelligence-gathering.

**off one more discredited label and taking on a new one which had some legitimacy -- and which held out the prospect of getting new guns. Another reason for the serial membership in CHDF, vigilantes and CAFGU was the fear some local officials had of disarming the ill-disciplined, untrained thugs who had joined the CHDF in the first place. It was safer to keep recycling them.**

### **Recent CAFGU Violations**

**In many areas of the Philippines, CAFGU members reportedly have been responsible for the "disappearance" of legal, leftist, activist groups. The following cases are illustrative. Antonio Buenavista, aged 42 and a member of a fishing organization in Bulacan province, *Bangkalis*, was abducted by a group of armed men on January 7, 1990 in the village of Santa Cruz, Hagonoy municipality, Bulacan. Local human rights groups believe his abduction stems from his refusal to join the CAFGU unit in the area. He has not been seen since.**

**Five of the armed men believed to have been responsible for the abduction are Carlos Capili, alias "Vicky" from Santa Cruz, Hagonoy; Joselito Caparas, alias "Tito" and Perfecto Cabantog, alias "Peter", both from San Pascual, Hagonoy; Genaro Capili, alias "Enar" and Antonio Capili, alias "Tony" both from San Roque, Hagonoy. All of the abductors are former rebels who surrendered to the government and as of mid-1990 were active and helping the military in counter-insurgency operations and building CAFGUs in the area.**

**According to reports, at about 7 p.m. in the evening the men, armed with high powered rifles and hand guns, arrived at Buenavista's house in a white car and demanded that Antonio go with them. He refused. The armed men then reportedly tried to drag Antonio outside but he resisted and clung to a piece of furniture.**

**Antonio's wife Ester, who was buying food nearby, was alerted to what was happening by their son, Jesus. As Ester approached the house, she saw her husband being shot in the hand, forcing him to let go of the furniture. When Ester tried to get closer she was shot at by one of the men, but the bullet missed. Antonio continued to resist his abductors until Carlos Capili knocked him unconscious by a blow to the head with his rifle butt. Ester then ran to the house of the village head (*barangay* captain) to seek help, but when she returned, Antonio, the armed men and the car were gone.**

**At around 9 p.m. that night, Ester, accompanied by the *barangay* captain and some neighbors, went to the police headquarters in town to report the abduction. They requested the police to go with them to find Antonio, but the policemen refused, reportedly saying that it would be hard for them to intervene.**

**On January 16 a case of kidnapping and a petition of *habeas corpus* were filed in court against Carlos Capili and his group. The case was heard on March 12, but no decision has been made. The alleged abductors were involved in another case in the area one month later.**

**On February 11, 1990, Efren Concepcion, Nicolas Lopez and Reynaldo Santos "disappeared" after they were detained by members of a joint military and paramilitary force in San Sebastian, Hagonoy, Bulacan province. According to local human rights organizations, Efren Concepcion was beheaded by his captors on or before February 13. Nicolas Lopez, who initially "disappeared" on February 11, and his son Roberto Lopez, who went missing in a separate incident on February 15, both surfaced in the custody of the joint military/paramilitary force from which they subsequently escaped. Reynaldo Santos is still missing.**

**The unit implicated in the "disappearances" was called the "Special Task Force Anti-Illegal Fish Pond" and was reportedly organized by the Philippine Constabulary Provincial Commander of Bulacan. The**

**unit was made up of elements of the Integrated National Police (INP), CAFGU, and former NPA guerrillas, and it was led by Carlos Capili.**

**Efren Concepcion, Nicolas Lopez and Reynaldo Santos were reportedly detained in the early morning of February 11 by 50 armed soldiers in camouflage uniforms who conducted a house-to-house search in the village (*barangay*) of San Sebastian. According to reports, at around 3 a.m. Efren Concepcion was taken from his house and beaten by soldiers. Nicolas Lopez and Reynaldo Santos, who had been staying at the Concepcion house, were taken away separately. It is believed that all three may have been detained in a chapel in the nearby village of Santa Cruz, Hagonoy municipality, which apparently serves as a local CAFGU headquarters. When relatives and human rights advocates made inquiries about the missing men the military authorities denied ever having them in custody.**

**Nicholas Lopez escaped from custody on February 13 after reportedly having witnessed the beheading of Efren Concepcion. He is believed to have had a nervous breakdown and went into hiding soon afterwards. Two days after his escape, his son, Roberto Lopez, was abducted by two policemen thought to have been involved in the February 11 disappearances. The abduction took place around 4:30 p.m. on February 15, 1990 in the village of San Augustine, Hagonoy municipality. The two men reportedly smashed Roberto's head against a cement wall and threatened him with a handgun before forcing him into a waiting Ford Fierra jeep which bore the INP insignia. When Roberto's wife and his mother went to the police headquarters to inquire about his whereabouts, the men on duty denied having him in custody and told them the two police officers that were identified did not exist. On February 19, Roberto Lopez escaped.**

**Efren Concepcion, Reynaldo Santos (both of whom remain missing) and Nicholas and Roberto Lopez were all members of *Bangkalis* in Bulacan. Efren Concepcion was the provincial Vice-Chairman of**

**Bangkalis and General Secretary of *KAMPI*, a human rights organization in Bulacan province.**

### **Private Armies**

**The existence of CAFGU has not meant the end of vigilantes or private armies. The State Department's 1989 report noted:**

**In the past few years, the number of anti-Communist citizens' groups has grown rapidly. Such groups take many forms: some were formed by citizens wishing to protect themselves from the NPA; other groups were formed by AFP units to supplement their own counterinsurgency efforts; still others were pre-existing religious cult groups; and others include pre-existing private armies of landowners or companies.<sup>76</sup>**

**There are still 152 private armies operating in the Philippines according to a government study conducted in November 1989 by the National Peace and Order Council, a joint civilian and military body formed by President Aquino. They have a total strength of 7,000 men equipped with heavy weapons, many in the employ of politicians planning to run for office in 1992, according to a Reuters report. Of the 152 armies, 102 were in Mindanao.<sup>77</sup>**

**In September 1989 in Negros Occidental, Asia Watch documented numerous abuses by unofficial vigilantes known locally as *fanaticos*,**

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<sup>76</sup> State Department, *op.cit.* p.7

<sup>77</sup> Reuters, "Private Armies Raise Alarm in Philippines," November 7, 1989.

quasi-cult groups known by the color of their headbands: *pulahan* for red, *putihan* for white, *greenan* for green. People we interviewed claimed that their friends or relatives were forcibly recruited by the military and given a choice of joining the *fanaticos* or CAFGU. CAFGU was more desirable because regular pay was offered, if not always delivered. But the CAFGU training courses could not accommodate everyone, and those left out joined the *fanaticos*. Some of the latter felt that if they refused, they would be suspected of being an NPA. Others join willingly for vengeance, especially if the NPA caused a death in their family, or protection as described below. In some of these cases, it appears that *fanatico* members adopt superstitious practices and dress, not out of religious impulse but in order to frighten their victims and play on their fears -- just as Colonel Lansdale did with the faked vampire murder 35 years before.

### **Counterinsurgency Strategy of the Military**

The current counterinsurgency strategy of the AFP, termed "gradual constriction", involves some of the same techniques developed by Colonel Lansdale together with tactics borrowed more recently from the NPA.

The failure of the Marcos-era counterinsurgency effort was obvious: In 1981 there were only 17 CPP/NPA guerrilla fronts in the country; by the end of 1988, there

was a total of 61. In 1981, there were only about 5,600 NPA regulars; by the end of 1988, NPA regulars exceeded 23,000. During the same period, the number of influenced *barangays* increased from 1,173 to 3,066, and the number of infiltrated *barangays* rose from 2,147 to 4,993.<sup>78</sup>

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<sup>78</sup> Victor N. Corpus, *Silent War* (VNC Enterprises, Quezon City, Philippines: 1989) p.108. Independent sources reflect a similar growth.

**The strategy developed by Aquino's military advisers had the same key elements as that used under Marcos: clear, hold, consolidate, develop. One difference was a heavier reliance on political and propaganda work than before, and a determination by the military to "organize in reverse": dismantle the CPP/NPA political structures, set up alternative organizations and organize effective intelligence-gathering operations.**

### **The "Clear" Phase**

**As described by Victor Corpus, a Philippine Military Academy graduate who defected to the NPA in 1971 only to return to the AFP fold in 1986 to become a leading theorist on counterinsurgency:**

**The "clearing" phase involves the clearing of the influenced *barangays* of the enemy political structure by our SOTs (Special Operation Teams) and the destruction of the main enemy force through the "venus flytrap." It should be emphasized at this point that "clearing" here does not mean the traditional "search and destroy" operations which, as pointed out earlier, are ineffective and inutile.<sup>79</sup>**

**The success of the clearing phase depends on the Special Operation Teams who are in charge of propaganda, interrogation of prisoners and surrenderees, and intelligence gathering. They are**

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<sup>79</sup> *Ibid.* p. 156. The "venus flytrap" is the tactic of laying traps in *barangays* known to be frequented by enemy forces and has three components: intelligence, pre-selection of battlesites, and strategic and tactical concentration of combat forces.

**responsible for organizing the local *bantay bayan* or village-based civilian intelligence-gathering force (and presumably for organizing some of the vigilantes as well). They conduct "social investigations" to identify local people friendly to the AFP on the one hand and NPA sympathizers and members on the other; the investigation also tries to determine local grievances. Finally, they set out to publicly expose NPA supporters.**

**One of the quickest ways of neutralizing or dismantling the political structure is to call a general meeting in the barrio and...publicly expose the target personalities involved. The offer of amnesty to the rebel returnees by the President may also be invoked.<sup>80</sup>**

**The SOTs at these public meetings present the army's anti-communist and anti-NPA ideology to villagers in an effort to counter NPA propaganda work. They focus on the nature of communism, NPA human rights abuses, and the ideals of Philippine democracy. In this respect, they are the mirror image of the NPA's Propaganda Operation Teams (POTs) which operate in poor rural barrios.**

### **"Clearing" and Human Rights Violations**

**The tactics of the SOTs facilitate human rights violations, particularly in their efforts to publicly identify NPA supporters. Anyone named as an NPA member or supporter becomes a marked man or woman, subject to harassment or in some cases execution by local paramilitary groups once the official military unit departs. No standards of evidence are required before branding someone a communist.**

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<sup>80</sup> *Ibid.*, p.154

**And just as some people may be wrongly identified as guerrillas and targeted for abuse, others may be pressured to "surrender" when they were never involved with the guerrillas in the first place. When the army enters a village and conducts a meeting at which peasants in attendance are publicly accused of being NPA supporters and whose "surrender" is demanded, it is not surprising that some will "surrender" if only because of fear of what will happen if they do not.**

**Military strategists place heavy emphasis on treatment of those who surrender.**

**The neutralization phase involves the proper handling by the SOT of the surrenderees/returnees that may be coming in as a result of SOT activities. This includes proper...interrogation of surrenderees/returnees. The latter are then requested to participate in a 3-day live-in seminar for purposes of reorientation, spiritual guidance and renewal.<sup>81</sup>**

**Asia Watch found that participation in these seminars is not voluntary and the "surrenders" are not real. We documented numerous instances of fake mass surrenders staged by the military in Zamboanga del Norte and Negros Occidental. Typically, the military enters a barrio and conducts compulsory individual interviews with a large number of villagers, asking questions about the NPA's presence in the area, its supporters, and the individual's own involvement with the rebels. From this pool, the military selects certain people to attend a three-day seminar in a larger nearby town. The seminar consists of lectures on the evils of communism and the value of democracy, and it concludes with a ceremony during which participants are expected to show public support for the government and military. Often they have to sign documents forswearing their participation (never proven or admitted) in the NPA**

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<sup>81</sup> *Ibid.*, p.191

**which can be used against them later. They are photographed as "rebel returnees" and frequently, these photographs are distributed to the media. Headlines announce that another 1,000 NPA supporters have "surrendered" or "returned to the folds of the law." While this creates the impression that there are large numbers of NPAs turning themselves into the government, this is not true. A participant in one of these sessions from Zamboanga de Norte, Mindanao, told Asia Watch:**

**On November 18, 1988, the military (16 in all, members of a Special Operations Team) called an assembly for everyone in Lipakan older than 15 to attend. They explained that the NPA was no good, they were communists, and there would be no peace and no justice with them. They are godless. When the people go back to democracy, the barrio will be peaceful. People should trust the government and the military. If the people continue to support the rebels, they will be imprisoned.**

**The military made a list of all the people there, about 200. Then they interviewed them one by one. They asked them if they had seen the rebels or let them sleep in their house. From those who attended the meeting, about 30 people were selected by the military to attend a seminar in Roxas, Zamboanga del Norte, from December 20-24, 1988. During the seminar, they were given "value-training" and taught fundamentals of the government's agrarian reform and other programs. Philippine history was also taught. At the end of the seminar, the military videotaped the participants raising their right fists, marching, and chanting "We will fight against communism!" The film was shown on TV, and the people in it were labelled "surrenderees."**

**In another Quezon province, we learned of similar SOT operations. Residents of *barangay* Pitogo were informed by their *barangay* captain that they had to attend a seminar in July 1989. On the appointed date, a truck full of soldiers arrived at an elementary school where about 100 residents were gathered. The seminar lasted two days and concentrated on the evils of the NPA. On the final day, participants had to carry a placard denouncing the NPA to the town center for a rally. Later they were addressed by the local colonel, who administered oaths to them and referred to them as NPA surrenderees, adding that they were now supporting the military and telling them to ask all their NPA companions to surrender. The mayor and high-ranking military officials were in attendance, as were two ex-NPAs who gave anti-NPA speeches. Participants were given diplomas certifying that they had finished the seminar and were told they could use them at military checkpoints (presumably as evidence that they were not NPAs). The participants heard themselves identified a few days later on the radio as persons from the NPA who had surrendered to the military; several then executed an affidavit with a local human rights group to deny that they were guerrillas.**

**The general effect of these faked mass surrenders appears to be mass resentment.**

### **The "Hold" Phase: CAFGUs and CVOs**

**According to AFP strategy, the second main task after "clearing" is to set up "territorial forces" of CAFGU and CVOs to hold "liberated" areas so that the AFP can go on the offensive. The chief task of the paramilitary CAFGU is defense of the cleared area, according to this strategy; the chief task of the *Bantay Bayan* or civilian volunteer organization is intelligence-gathering.**

**After neutralization of the enemy political structures in**

**the *barangay*, the SOT's next task is to mobilize the local government officials and the populace in forming the "Bantay Bayan", an organization patterned after the CPP/NPA's barrio revolutionary committee. The chief tasks of the Bantay Bayan are intelligence and providing security for the barrio.<sup>82</sup>**

**Intelligence-gathering is obviously key to any military operation, but without proper supervision and control, it becomes a vehicle for setting neighbor against neighbor and exacerbating existing rivalries. It is an invitation for people chosen as "intelligence assets" to settle scores by turning in enemies who have had nothing to do with the NPA.**

**The "hold" phase also entails incorporation of the unofficial paramilitary groups like the religious cultists into the counterinsurgency effort -- a de facto rather than a formal part of the strategy but one with disastrous implications given the gross violations these groups commit.**

### **Consolidation and Development**

**The military appears to have rarely moved beyond the clear and holding phases.**

**The "consolidation" phase usually overlaps with the holding phase, with the base of participation expanded to include not only the local government executives and the Bantay Bayan but also the local populace. This phase aims to re-establish grassroots democracy and totally win back the local people's support through delivery of**

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<sup>82</sup> *Ibid.*, p. 191

**urgently needed services. The military will still play a role in this phase but it will now be the local government executive and official that will play the key role.<sup>83</sup>**

**The "development" phase involves the implementation of social and economic reforms. Provision of government services in rural areas was poor under Marcos, and it has scarcely improved under President Aquino. Until the central government can effectively deliver benefits to such areas, the "development" phase is likely to remain a vision of the military theorists.**

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<sup>83</sup> *Ibid.*, p.176





#### **IV. THE COMMUNIST PARTY OF THE PHILIPPINES AND NEW PEOPLE'S ARMY**

If paramilitary organizations, official and unofficial, have a long history in the Philippines, so do guerrilla insurgencies of every conceivable size and ideology. They range from messianic Christian cults of the 19th century, to the nationalist guerrilla war against the Americans beginning in 1898, to the Huk Rebellion of the 50's, to the Muslim insurgency led by the Moro National Liberation Front (MNLF) in the 1970's, to the New People's Army today. Had Common Article 3 been used as a standard against which their treatment of civilians or fighters rendered *hors de combat* was measured, all, on occasion, would have fallen short. The nationalist guerrillas liquidated suspected supporters of the invaders by methods ranging from burying alive to decapitation. The Huks killed abusive landlords and other enemies of the peasantry. The MNLF has been responsible for a wide range of abuses including indiscriminate killing of civilians and hostage-taking. And the NPA, which has formally announced its adherence to Protocol II to the Geneva Conventions, has been responsible for a wide range of violations of humanitarian law, primarily killings of non-combatants. In this section, we discuss the structure of the CPP/NPA and the kinds of violations it commits.

##### **Origins of the CPP/NPA**

The current Communist Party of the Philippines is a stepchild of the old Stalinist party, the **Partido Komunista ng Pilipinas (PKP)** which was a minor player in Philippines politics until it "adopted" the Huk

**Rebellion in 1948. The presence of senior PKP officials in the Huk leadership led the Americans, and Colonel Lansdale in particular, to label it a communist movement, even though it appears to have been overwhelmingly a non-ideological agrarian uprising. The repression against the Huks was directed as well against the PKP, however, and a combination of military defeats together with arrests, fear and co-optation of PKP cadre led to steady dwindling of party membership.**

**By the end of the 1960s, a group of student radicals thoroughly fed up with the PKP and looking more to Beijing than to Moscow formed a breakaway faction of the party which, in December 1968, became the Communist Party of the Philippines (CPP). Three months later, in March 1969, the New People's Army was established under CPP leadership, commanded by an ex-Huk from Tarlac named Bernabe Buscayno, more commonly known as Kumander Dante.**

**CPP theorists, most notably Jose Maria (Joma) Sison, studied closely the reasons for the failure of the Huks and the PKP and to avoid repetition of that failure adopted a Filipino version of Mao's "prolonged popular war" strategy with its emphasis on building up support in rural areas.<sup>84</sup> Sison also stressed decentralization to take advantage of the unique geography of the Philippines archipelago and disperse the military's strength. Armed struggle was treated as secondary to political struggle, but after a series of disastrous setbacks in the early years of the NPA, the guerrilla forces were reorganized and began gathering strength - - aided enormously by widespread military abuses. The declaration of martial law in 1972 led to an increase in both human rights violations by the military and paramilitary groups and in support for the underground movement. The contrast between the Marcos military and corrupt local**

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<sup>84</sup> The prolonged war strategy consists of three phases, including "strategic defensive" where guerrilla forces are inferior to those of the regular military; "strategic stalemate" where they are equal; and "strategic offensive" where they are superior. The NPA considers itself to be still in the first phase.

**officials on the one hand with the NPA and its various social programs on the other gave the latter a "Robin Hood" image which boosted its popularity and added new recruits to the ranks. By the last years of the**

**Marcos administration, 1984-86, the NPA was fielding 20,000 armed regulars and had begun to fight in companies, rather than in squads or platoons.<sup>85</sup>**

**If Marcos was the NPA's "best recruiter,"<sup>86</sup> Corazon Aquino's victory dealt the guerrillas a major setback. The CPP ordered its members to boycott the "snap election" in February 1986 in which Aquino and Marcos were the two contenders. By refusing to support the hugely popular Aquino, the CPP lost critical grassroots support. More importantly, it led to a split in the leadership from which it still has not recovered, resulting in an increase in defections. The CPP leadership regained some prestige during ceasefire negotiations in December 1986 when key moderate leaders surfaced to take part in the talks. But the breakdown of talks in January 1987 was the signal for a renewed counterinsurgency offensive and the rise of the "vigilantes," with many former rebels joining vigilante ranks. A military program to infiltrate the NPA with "deep penetration agents" (DPAs or "zombies") appears to have been a factor in the capture and arrest of leading CPP/NPA officials in Manila and elsewhere in 1988 and 1989. As had a similar wave of arrests in 1985 in Davao, these arrests seemed to set off a kind of paranoia within the underground regarding informers which in turn led to summary justice and executions of suspected infiltrators or spies.**

### **Organization of the New People's Army**

**The Communist Party of the Philippines is governed by a Politburo of 15 people with a Central Committee elected every five years, and a smaller Executive Committee of three members and two alternates.**

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<sup>85</sup> William Chapman, *Inside the Philippine Revolution*, KEN, Inc. (Quezon City, Philippines: 1987) p.110.

<sup>86</sup> *Ibid.*, p.245

**Under the Central Committee are three bodies, the National Democratic Front (NDF), organized in 1973, which consists of more than a dozen nominally independent organizations and, by a 1986 estimate, over 500,000 members; the Territorial Commission; and the Functional Commission, composed of four commissions, one of which is the National Military Commission which controls the NPA. The CPP/NPA is divided geographically into "fronts:"**

**a politico-military-geographical unit...which consists of (1) a political organization usually made up of a front committee, with districts, sections and barrio revolutionary committees under it; (2) a military organization made up of a regular mobile force or forces varying in size from platoon up to several companies, armed propaganda teams, and local militias; and (3) a front territory or AOR (area of responsibility) consisting of several municipalities. Most of these guerrilla fronts are located along provincial boundaries with mountainous/forested terrain, but there are some which are located in the plains, along coastlines, and in depressed areas of urban centers.<sup>87</sup>**

**The NPA organizes squads of about seven people each called armed propaganda units into Secondary Regional Guerrilla Units of 30 to 60 combatants, and Main Regional Guerrilla Units of 80 to 150 fighters. There is also a civilian militia, not dissimilar to the military's own "civilian volunteer organizations" composed of armed irregulars.**

**Sometime in the early 1980's, as political polarization and opposition to President Marcos increased, the CPP/NPA leadership made a conscious decision to play a more active role in urban areas of the Philippines instead of concentrating most efforts on the countryside.**

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<sup>87</sup> Corpus, *Silent War*, p.139

**About the same time, the so-called "sparrow units" came into existence, hit squads usually composed of three people who targeted military and police in particular for assassination, either to get weapons or simply to eliminate the enemy. In 1981, the first "Armed City Partisan" units were created for urban areas, and these became synonymous, at least in the Philippines press, with the "sparrows."**

**As urban actions increased, the "sparrows" were further divided into Regular Partisan Operations which attacked small targets (lower-ranking soldiers and civilian officials) and Special Partisan Operations which attacked higher-level officials requiring more advance preparation. Logistics were provided by the neighborhood Barrio Revolutionary Committees, the Semi-Legal Teams, the Propaganda Units or local militia forces.**

### **Methods of Operation**

**CPP/NPA penetration of rural villages is accomplished initially through a personal introduction of a member into a village, sometimes through family ties. A social investigation of local problems is conducted, weighing the local balance of forces. Semi-legal teams conduct propaganda work; Armed Propaganda Units or Teams conduct political education and carry out assassinations. They do not teach Marxist ideology as such but voice opposition to the government and the army at meetings which the *barangay* captains give them permission to conduct. The nucleus of a party organization is formed, later expanded and given additional duties culminating in the formation of a parallel government structure, the Barrio Revolutionary Committee (some of whose members may also be the local elected *barangay* captain and council members), and creation of a local militia and recruitment for the NPA's regular troops.<sup>1</sup>**

**In the successful formula that emerged over time, the virgin**

**barrio was first approached by NPA Armed Propaganda Teams which made contact with friends, relatives or others known to be sympathetic. . . . Then began the phase known as "social investigation," a thorough sort of local census often employing long questionnaires (early social investigating teams seemed to have drawn heavily from their college sociology textbooks). . . . This yielded a "class analysis" of every family which, through Marxist categorization, revealed who in the barrio was exploiting whom and which peasants were most likely to support the NPA.<sup>1</sup>**

**Once the class structure and the most pressing problems were identified, the propaganda teams embarked on programs of practical assistance. . . . The early teams were a kind of domestic peace corps. . .**

**Almost inevitably, solving the real problems involved armed force, and at a fairly early stage the NPA's value as a fighting unit came into play. Squatters wanted protection of their lots from land-grabbers. . . . There were more complex relationships in which the NPA provided the muscle to extract concessions from landowners: wage increases for hired hands, lower land rents, and interest costs for tenants. Such ad hoc land reform programs proved extremely successful in many areas of the Philippine countryside.<sup>1</sup>**

**In March 1988, an estimated 20 percent of villages (barrios or *barangays*) throughout the Philippines was under NPA influence, according to government estimates.<sup>1</sup> In 1987, influenced neighborhoods rose to 37 percent with cadres in all 73 provinces of the country.<sup>1</sup>**

## **NPA Violations of the Rules of War**

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<sup>88</sup> Kessler, *Rebellion and Repression in the Philippines*, pp.66-68.

<sup>89</sup> Chapman, *Inside the Philippine Revolution*, pp. 125-26.

**One of the most serious violations of the rules of war by the NPA is the practice of summary executions. These executions may be carried out in two ways: by "sparrows," or NPA assassination teams, usually on urban streets; and by the NPA in rural areas of a captive, after a form of trial or hearing. In the first case there is never due process because the victim is not permitted to defend himself before any tribunal. In the second case, some form of hearing may be held, but the impartiality of the tribunal and the fairness of the procedures are dubious.**

**These executions of nonmilitary persons are central to the political strategy of the NPA and, some feel, are even a factor in accounting for their acceptance and success.**

**In front after front throughout the archipelago, [the NPA] had demonstrated by the mid-1980s that it could win friends by killing their enemies. Those who accepted the NPA as a worthy force which meant to do them well found that the guerrillas could protect them from harassment, or at least avenge their losses. Cattle-rustlers, abusive soldiers, common thieves who preyed on the poor, land-grabbers—all of these came under the NPA guns. Hundreds of local officials were either killed or forced to abandon their barrios after receiving NPA warning letters. Hundreds of others saw the shape of things to come and tacitly cooperated with new local leaders who enjoyed NPA support. . . . Most significantly, the NPA had**

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<sup>90</sup> *Ibid.*, pp. 126-27.

<sup>91</sup> One figure given for the *barangays* is 41,400 nationwide. The NPA claimed that it had 10,000 *barangays* under its influence in 1983-85. Kessler, *op.cit.*, pp.55-57.

<sup>92</sup> *Ibid.*, pp. 55-57.

**shown that it could usually defend the communist front organizers who moved from barrio to barrio spreading the party's propaganda and shaping underground cells which gradually became de facto village governments.<sup>93</sup>**

**For some, these killings of officials and soldiers:**

**. . . were the main source of the NPA's appeal to poor farmers. . . It was not simply that the "liquidations" eliminated farmers' enemies, he said. They endowed the poorest peasant with a sense of power and control, with a conviction that he was not defenseless but could strike back through the NPA. That was of immense psychological importance, the businessman thought. Nothing else could explain the covert support given NPA operations.<sup>94</sup>**

**It appears, however, that an excess of such summary executions may have lead to political reversals for the NPA, particularly in Agdao, a section of Davao City, Mindanao, which was famous for the level of killings that took place there, frequently carried out by the NPA liquidation squads. Then in 1987, a rash of "sparrow" attacks on police and low-level military personnel generated widespread public outrage in Manila and led to the formation of urban "vigilante" groups, organized and trained by the Western Police District in Manila.<sup>95</sup>**

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<sup>93</sup> Chapman, *Inside the Philippine Revolution*, pp. 120-21.

<sup>94</sup> *Ibid.*, p. 119.

<sup>95</sup> Amnesty International, *Philippines: Unlawful Killings by Military and Paramilitary Forces*, March 1988.

## **The Sparrows**

**The "sparrow" units of the NPA have assassinations as their principal task, conducted on the street, of persons who are not in custody at the time.**

**"Most of the sparrow killings are by young boys who have had no training" [an NPA commander] said. "It's sort of an 'on-the-job training.' We select young unknowns for sparrow duty because they can move about easily without being noticed. Some of the people they kill are guilty of committing crimes against the people, but they also kill just to get guns." Some Negros sparrows were not even formally part of the NPA structure, according to a local party official, but mere free-lancers eager to help. "Of course, we encourage them to do it," he said.<sup>96</sup>**

**These tactics are illegal under the rules of war, for several reasons. The primary reason is that most of the targets or victims are not proper military targets.**

**In one recent example of an apparent "sparrow" killing, the security chief of Purefoods, Inc. of Quezon City, Metro Manila, was shot in his car on his way to work on June 5, 1990. Before working for Purefoods, retired Colonel Laudemar Kahulugan had been the Philippines Constabulary chief in Davao City, Mindanao in 1984-86 when PC abuses were rife but also when the NPA there was successfully infiltrated. Colonel Kahulugan had also been PC commander in Angeles City, near Clark Air Base in the 1950's and had fought against the Huks.**

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<sup>96</sup> Chapman, *Inside the Philippine Revolution*, pp. 117-18.

**A secondary reason is that these killings, even on the rare occasions when they are directed at proper military targets, appear to sometimes occur with the use of perfidy, that is, killing an adversary by acts that invite the confidence of an adversary to lead him to believe that he is obliged to accord protection to that person under the rules of war. The principal such act inviting the confidence of an adversary is feigning of civilian, non-combatant status. This is different from an ambush, a classic and legitimate military tactic, because the attacker in an ambush remains concealed from sight; he does not garb himself in the protective clothing of the civilian population.**

**While the rebels have the right and duty to try persons for crimes committed in connection with the conflict, and arguably to apply the death penalty (but see below), Sparrow victims do not benefit from such procedures, since they have no notice of the execution, nor any chance to defend themselves before any fair tribunal.**

### **NPA Assassination Targets**

**It is clear that there are several distinctly different categories of victims targeted for execution by Sparrows or by other NPAs after capture: those accused of spying and committing other military offenses connected with the conflict; those in possession of weapons; those accused of political crimes; and those committing crimes unconnected with the conflict. The due process accorded to each seems to almost nonexistent.**

### **Spies and Informers**

**The NPA learned years ago that "Eliminating informers is a matter**

**of survival—you must kill them."<sup>97</sup> It is a lesson learned and followed by most guerrilla groups, which nevertheless does not justify it under international law.**

**It was considered far too easy for the military to buy information that lead to the deaths or neutralization of NPA cadre.**

**The military from the first had had little difficulty penetrating both the guerilla armies and the barrio party structures. . . . A few pesos per month had proved enough to buy agents among people who lived in NPA-influenced territory and the names they supplied were turned over to CHDF and Constabulary units for punishment. It was easy to identify the party's propaganda teams and organizers assigned to infiltrate a barrio and the local families which sheltered them. The casualty rate among these exposed organizers was said to be extremely high.<sup>98</sup>**

**We learned, from many second-hand accounts, of villagers and sometimes officials who had been killed because they were "too talkative." In most of these cases, those reporting these assassinations knew the victim and had been informed directly or indirectly by the NPA of the reasons why the person was killed. Often the victims had been warned by the NPA but failed to stop their activities.**

**The requirement of due process applies in all trials, including those of spies.**

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<sup>97</sup> *Ibid.*, p. 188.

<sup>98</sup> *Ibid.*, p.188.

## **Infiltrators or "Deep Penetration Agents"**

**The incidence of infiltrators or "deep penetration agents," DPAs, into the CPP/NPA is a continuing problem for the NPA. The use of DPAs has been a key element of psychological warfare to foster suspicion in the ranks of the guerrillas since the time of Lansdale.**

**The failure of the NPA to conduct fair trials with due process compounded the infiltration problem. It has meant that, in the mass purges that took place from 1985-87 in Mindanao, thousands of CPP and NPA cadre and their followers were killed after superficial investigations, torture, and perfunctory trials, if there were trials at all. Many of these people may have been innocent and were unjustly executed. Thousands of others deserted in fear for their lives.**

**Apparently infiltration was possible because the rapid growth of the CPP/NPA movement in the late 1970s and early 1980s strained its ability to screen recruits and ensure their political indoctrination. In other cases, the military recruited persons already in the movement who had a grudge against their comrades. In late 1984 the leadership of the CPP in northern Mindanao suspected infiltration when several NPA operations were detected by the military before they began. An investigation undertaken in mid-1985 led to the arrest of NPA members and supporters throughout Mindanao.**

**Paranoia escalated out of control, leading to the detention of hundreds of guerrillas and party members, summary trials and executions. Again, many innocent people were victims.<sup>99</sup>**

**In one version explained to me by a cadre who had participated in the purge, the crisis was compounded by**

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<sup>99</sup> Gregg R. Jones, *Red Revolution* (Westview Press, Inc. 1989) p. 267.

**the discovery that some initially assigned to investigate suspected informers had themselves been on the military's payroll. The result, he admitted, was the false identification of many innocent party members as government agents.<sup>100</sup>**

**The purge had two results. First, it led to the dramatic conversion of the former CPP stronghold of Agdao, in Davao, Mindanao, nicknamed "Nicaragdao" because of its militancy, into a stronghold of the pioneering anticommunist vigilante group Alsa Masa. And it led to a publicity campaign against the NPA in which the exhumation of graves of suspected executed DPAs -- tagged "the Killing Fields" -- featured prominently.<sup>101</sup>**

**According to the testimony of two escaped suspected DPAs, a purge underway in 1988 in Laguna and Quezon was called to a halt by CPP Politburo member Satur Ocampo on November 1, 1988. The two and 46 others, then captive, were escorted to Laguna province, taken before an extraordinary review board that included acting CPP chairman Benito Tiamzon, Ocampo and other top CPP members. Each captive was officially interviewed by a single member of the panel and exonerated, often with promises of leave and other privileges, and apologies. It is estimated by some that the purge victims numbered between 40 and 60.<sup>102</sup>**

### **Killing Policemen and Others for Weapons**

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<sup>100</sup> Chapman, *Inside the Philippine Revolution*, pp. 188-89.

<sup>101</sup> Army statistics have not caught up to this claim, however; in its "Recapitulation of CPP/NPA Terroristic Activities (1983-1988)," the AFP notes only 14 "liquidations" of CPP/NPA from 1985-88 in the charts.

<sup>102</sup> John McBeth, "Mindless massacre," *Far Eastern Economic Review*, August 3, 1989, p. 117.

**Killing for the purpose of obtaining weapons is not improper if the person holding the weapon is a proper military target and other rules of war are observed.**

**The act of seizing a weapon is an extremely important feat, for in the Philippine revolution each new gun equals one new soldier. It seemed strange, in a world awash in weaponry, to come across a full-blown rebellion which had endured for seventeen years but which still had to struggle daily to find arms. So far as is known, the NPA received one shipment of rifles from abroad, a purchase from the Palestine Liberation Organization in 1981. All others had been taken in battle, stolen, or purchased on the black market from governmental soldiers. Some 10,000 high-powered rifles, pistols, and machine guns had been obtained in this fashion over the years.<sup>103</sup>**

**Killing of policemen who do not have combat duties, however, is a violation of the rules of war because the policemen are not legitimate military targets.<sup>104</sup> To kill solely to obtain weapons is another violation. "Killing for weapons was a casual, sometimes random action quite often planned at low levels of the NPA structure and requiring only a certain tactical expertise."<sup>105</sup> Under these circumstances, the respect for due process is totally absent.**

**Finally, many of the "sparrow" killings of police and military men,**

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<sup>103</sup> Chapman, *Inside the Philippine Revolution*, p. 114.

<sup>104</sup> Rosario Conde, "Policemen without Combat Duties: Illegitimate Targets of Direct Attack under Humanitarian Law," Columbia Law School, May 12, 1989.

<sup>105</sup> Chapman, *Inside the Philippine Revolution*, pp. 117-18.

even of those who may be considered legitimate military targets, take place on busy city streets and in violation of the principle that the civilian population should be protected against "dangers arising from military operations."<sup>106</sup> On May 23, 1990, PC Colonel Reynaldo Dino, his daughter and two bodyguards were killed when eight men opened fire on his car in Kaloocan City, Manila. One civilian pedestrian was also killed and 11 other pedestrians wounded. Colonel Dino was deputy personnel chief of staff of the PC and due to be promoted to Brigadier General the week after he was killed. The NPA has not acknowledged responsibility, and some local observers believed the killings could have been the work of a crime syndicate whose members had been pursued by Dino. A day after his death, however, the NPA's Alex Boncayao Brigade (the unit responsible for organizing "sparrow squads" in Manila) issued a two-page tract announcing the onset of "sustained partisan warfare" in Manila to commemorate its sixth anniversary.<sup>107</sup>

## **Political Murders**

**Persons with political roles, such as abusive mayors, have been targeted for assassination. They are not proper targets.**

**The victim (of a political killing) was selected with care by a special party committee, often after consultation with local cadres and peasant supporters. The impact of his demise was cautiously weighed, for the object was not the mere elimination of an enemy. A political "liquidation," as the party calls it, was performed for the primary purpose of enhancing the NPA's reputation as a**

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<sup>106</sup> Protocol II, Article 13

<sup>107</sup> *Philippine Daily Inquirer*, May 25, 1990, quoted in Foreign Broadcast Information Service, May 25, 1990, pp.56-57.

**protector of the people and a servant of their interests. It had to be a *popular* killing.<sup>108</sup>**

### **Crimes not Connected with the Conflict**

**Ordinary criminals are also punished by the NPA, sometimes with death. Some offenses are not in any conceivable way related to the conflict, and others may have only a tangential connection. For instance, rape has been punished by death, as has "womanizing" and cattle-rustling.<sup>109</sup>**

**Some such assassinations have met with popular approval because of hatred for the victim or because the NPA was filling the law and order void.**

**In village after village, the NPA's initial appeal was its role as dispenser of punishment against the ordinary man's enemies. The NPA killed cattle rustlers, "hold-uppers," coconut thieves, molesters of women, arrogant soldiers, even wife-beaters. Usually, but not always, the penalties followed investigations, warnings, and hearings before a "people's court." In the eyes of people who described such executions, the NPA had introduced into their communities a crude form of legal discipline—a vigilante's justice, true, but still a form of justice. It flourished and became popular only because it replaced something worse, utter lawlessness.<sup>110</sup>**

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<sup>108</sup> Chapman, *Inside the Philippine Revolution*, pp. 117-18.

<sup>109</sup> *Ibid.*, p. 120.

<sup>110</sup> *Ibid.*, p. 179.

**Because of the lack of due process usually attendant on the trials, the imposition of the death penalty is serious violation of the rules of war.**

### **Taking of Hostages**

**Hostage-taking is specifically prohibited by Common Article 3 common to the Geneva Conventions. In a recent violation of this provision, the NPA kidnapped Japanese aid worker Fumio Mizuno, 36, on May 29, 1990 and Peace Corps volunteer Timothy Swanson on June 13. Both were released on August 2. Mizuno is the director of the Tokyo-based Organization for Industrial, Spiritual and Cultural Advancement and had been working on a silkworm farm in the town of Murcia, near Bacolod, Negros Occidental. Swanson had been working outside the town of Silay in Negros.**

**"Let the arrest of Mr. Mizuno serve as a warning to the Japanese Government," an NPA spokesman said in a statement issued on the day of the releases. The apparent motive for the kidnapping was to discourage Japan from providing aid to the Philippines government. The same statement accused the Peace Corps of being "an instrument of the Central Intelligence Agency to support counterinsurgency in the Philippines."<sup>111</sup>**

### **Lack of Due Process**

**Due process as required by Protocol II and Common Article 3 is lacking, in part because the accused has no real opportunity to defend himself. The trial or hearing is a mechanism primarily for determining the**

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<sup>111</sup> *The New York Times*, August 3, 1990.

**political advisability of killing a political target.**

**The formality of political liquidations was taken seriously. Each of the assassinations, according to Negros party leaders, was preceded by a judicial finding that the victim owed a "blood debt" to the people. The assessment of a blood debt was determined by a special district committee of local party members representing from three to five towns. In most cases, . . . the ruling followed a hearing before a "people's" or "revolutionary" court, at which the views of several people--but not the accused--were taken into account. For the party, the hearing served a purpose other than mere guilt-finding. It provided assurance that the liquidation would be a popular one. In that sense, each had a political intent.<sup>112</sup>**

**There does not even appear to be much of a hearing when the target is not a political one, but is merely chosen because he has a weapon.**

**It appears from the one direct account we received of an NPA execution that there was no opportunity for the accused to defend themselves before the tribunal, an essential requirement of due process.**

**We interviewed a CAFGU member who had been an NPA combatant in Laguna from 1986-88. He surrendered because of physical exhaustion and because his son, who joined the NPA before he did, had been killed; according to credible investigations, the son had been executed by the army after capture. This surrenderee, whose name was Sancho, witnessed some of the circumstances surrounding the execution of Modesto Gammara and Rene Gallente. We found his testimony**

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<sup>112</sup> *Ibid.*, pp.119-20.

**credible.<sup>113</sup>**

**Modesto Gammara was the president of the Eastern Laguna Jeepney Operators and Drivers' Association (ELJODA) in Santa Cruz, Laguna. Rene Gallente worked for him.**

**Modesto and Rene were summoned by letter to a meeting with Ka Edmond, a local NPA commander, on February 7 or 8, 1988. Ka Edmond and the NPA had two complaints against Modesto, of which Modesto was informed: he took NPA money to buy bullets and defrauded the NPA (he kept the money). Also, the jeepney drivers complained to the NPA that their association was being defrauded by Modesto. The complaint against Rene was that he was working as Modesto's enforcer and beating the jeepney drivers up when they complained about the mismanagement.**

**Modesto and Rene were taken by NPA operatives to a site only a short distance from a populated area, with rice paddies and a paved highway. Modesto was handcuffed and Rene's hands were tied with a nylon cord. Both were blindfolded. Four special NPA operatives were in charge of them. They had been brought in to execute the prisoners; this was never the responsibility of the local NPA cadre, we were told.**

**Ka Edmond asked them if they had brought with them the NPA money for bullets and if the drivers' complaints were true. Modesto said the complaints were true, and**

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<sup>113</sup> The interview was conducted on a PC base in Santa Clara, Laguna, in private, on October 10, 1989. Sancho was at the time an active member of CAFGU and had just attended the exhumation of the alleged victims.

**repented of his "sin." He pleaded for mercy. Ka Edmond repeated that he could not do any more than he had been ordered to, because the movement does not accept payments for sins already committed, whether or not the embezzler repays.<sup>114</sup>**

**Another NPA cadre arrived with the decision of the court, which was to kill the two. The two pleaded for their lives and vowed to lead new lives if spared. Ka Edmond replied that the decision was final.**

**The four operatives took the two condemned men away. Shortly thereafter, two of the operatives reappeared, wearing personal belongings of the two condemned men.**

**On October 10, 1989, the Philippine Constabulary conducted an exhumation of what was believed to be the bodies of the two men. We attended. The site was near the location where they were last seen by the NPA surrenderee, Sancho. In attendance at the exhumation were friends and political allies of the deceased Modesto. One friend said that the NPA was trying to infiltrate the ELJODA and had received complaints from members about the strong-arm tactics of Modesto in putting down dissent about his alleged embezzlement of association funds. The friend inquired about Modesto's case to the local NPA leaders<sup>115</sup> and was told that the case had been investigated and there were no NPA charges against him. Modesto disappeared a few days before the February 1988 elections. The NPA, when contacted again, said that they did not have him and continued to deny their involvement in his disappearance.**

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<sup>114</sup> Our informant said that the NPA believed that accepting repayment from (rich) embezzlers would be unfair to poor embezzlers who could not afford to repay.

<sup>115</sup> Politicians and ordinary citizens in many parts of the Philippines maintain informal contacts with the NPA, often with NPA cadre whom they knew since childhood.

**Journalists have attended trials by NPA "people's courts" and their accounts underlie the lack of due process in the proceedings. Gregg Jones, in *Red Revolution*, describes an October 1987 trial in the Bondoc Peninsula of southern Quezon.**

**A 23-year-old farmer had been accused of raping and killing an 11-year-old mentally retarded girl, and now he was to face the "revolutionary justice" of the de facto communist government in the interior barrios of southern Quezon province.**

**The trial began . . . under the supervision of a district NPA official and was attended by the father-in-law, grandfather and cousin of the accused. Several witnesses testified that they had seen the defendant, who was drunk, carry the victim away from the barrio on the back of a *carabao* [water buffalo]. Midway through the trial, the defendant was led before the gathering. Hanging his head in shame, he admitted his guilt but pleaded his drunkenness as an excuse. . . .**

**The NPA official asked the crowd to decide the man's fate by moving to one side of the clearing or the other. The vote was unanimous for conviction. . . . A military outpost was not far away, so the execution was carried out with knives: three blows to the chest, two in the back. The victim groaned, fell to his knees, and collapsed in death.<sup>116</sup>**

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<sup>116</sup> Jones, *Red Revolution*, p.85 (footnote omitted).

**The executioners were four communist militia members (local residents) and four NPA regulars.**

**This account of a trial is chilling not only because the death penalty is not imposed under regular Philippine law for rape or murder but because of its quite perfunctory nature and the absence of an opportunity for the victim to have any meaningful defense, such as a person who could play the part of an attorney. Furthermore, such a de facto court, put together solely for the purpose of trying this defendant of this crime, does not offer "the essential guarantees of independence and impartiality" but has the appearance of revenge-taking by persons who knew the victim.**

### **Indiscriminate Attacks: Digos Massacre**

**One incident in 1989 has perhaps drawn more attention to NPA abuses than any other single incident in memory. It also draws attention to the linkages between ideological preference and local clan divisions in the Philippines, since in many tribal areas, the division between government and guerrilla follows clan or other traditional divisions.**

**On June 25, 1989, 37 men, women and children were killed by the NPA at *sitio* Lower Rano, *barangay* Binaton, Digos, Davao del Sur, Mindanao. Some of the dead had been armed and killed in combat, but of the 37 deaths, 31 were women and children. There were also 10 wounded. There were no NPA deaths reported, although one village survivor claimed that the defenders had killed two NPAs.<sup>117</sup> Two of the dead men were beheaded by the NPA.**

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<sup>117</sup> Arnold Endar, 22, an Ituman member, told reporters that vigilante members ran from the chapel under fire to get their weapons and had killed at least two of the guerrillas. "NPA rebels behead 2, gun down 38 in Davao," reprinted from *The Philippine Daily Inquirer*, June 27, 1989, in "Philippines: How Philippine Media Views Human Rights Situation in their country," Rotary Club of Raha Sulayman, Manila, provided by the government.

**These deaths occurred in the context of an encounter between NPA rebels and members of a United Church of Christ (UCCP) congregation, mostly unarmed, who had been organized by the local military into an anti-communist religious cult group called "Ituman."**

**Two days after the massacre, Benjamin Sarabia of the NPA's Menardo Arce Command in Southern Mindanao issued a statement accepting responsibility for the killing and expressing apologies for the death of the women and children who were caught in the crossfire. He added, "What occurred at sitio Rano was more of self-defense than attack." Some of the NPA combatants were related to the victims.**

**Shortly afterwards, the UCCP undertook a fact-finding mission. A separate investigation was conducted later by the National Democratic Front-Southern Mindanao.<sup>118</sup>**

**According to TFD, the Rano residents in 1982 had been avid NPA supporters. In 1986, most of the Rano residents (Bagobo tribe) were converted from animism to Christianity when the UCCP opened an outreach program. The UCCP community was led by Abadya Ayap, 41, and Mente Ayap, 38, elders or spiritual nurturers (not pastors), who earlier had been NPA organizers.<sup>119</sup> Late in 1986, Rano residents began to be harassed and intimidated by the military and local vigilante groups. Abadya Ayap was arrested in 1986 by vigilantes (*pulahans*) and the military and brought to the military detachment at Binaton where he was forced to admit participating in several NPA ambushes. He was then made, with others, to "pinpoint" or name other civilians as NPA suspects. He and**

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<sup>118</sup> Report submitted by the Digos Commission, National Democratic Front (NDF), 12 August 1989.

<sup>119</sup> Task Force Detainees – Mindanao, "Fact Sheet: 37 killed & 9 wounded in Sitio Rano, Brgy. Binaton, Digos carnage."

others then joined the Itumans to avoid further harassment.<sup>120</sup>

On the day of the massacre, the regional command of the NPA was conducting "Operation Love," a political-military campaign intended to dismantle vigilante groups in the province. The NPA sent messages and then intermediaries to the affected villages, followed by mass meetings or dialogues between the NPA unit and the fanatics and villagers. Twenty-two of 25 meetings had been held without a shot being fired in prior months. Subsequently, there were "selective military actions," according to the NDF.

The NPA had sent several communications to Ruben Ayap, known as Kumander Maya, head of the Ituman in Rano, requesting a dialogue and a truce. One was received in November 1988 and the final one in the third week of June 1989.<sup>121</sup> The messages were not answered. In January 1989, a six-man team of NPA fighters with relatives in Rano went to a neighboring village to talk with the Ituman and broached with them the idea of going to Rano to speak with Kumander Maya, who, it turned out, was not interested.<sup>122</sup> According to one press account, the NPA wanted to discuss non-payment of NPA taxes by the villagers in Ranos.<sup>123</sup>

The CPP decided to hold a mass meeting in Rano, despite Kumander Maya's disinterest.<sup>124</sup> A platoon of the NPA set out for Rano on

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<sup>120</sup> *Ibid.*

<sup>121</sup> United Church of Christ in the Philippines (UCCP), *Justice, Not Vengeance: An Open Letter to the National Democratic Front and the Government of the Republic of the Philippines*, July 3, 1989.

<sup>122</sup> NDF report.

<sup>123</sup> "Rebs own Davao carnage," *Philippine Daily Inquirer*, June 28, 1989.

<sup>124</sup> NDF report.

**the morning of June 25, with instructions that their objective was to hold a mass meeting at sitio Rano and to hold a dialogue with the Ituman and other villagers. Should the cultists fire at them, they were to fight back.<sup>125</sup> They were armed with high-powered weapons. A second platoon was sent as well, to provide cover.<sup>126</sup>**

**Arriving near Rano, the NPA was informed that Kumander Maya was not in town, although this proved to be untrue: he was in a Sunday school class. The guerrillas decided to go ahead with a mass meeting in Rano.<sup>127</sup> Before the closing hymn of the Sunday School class, Ituman member Cesar Endar informed Kumander Maya, a lay president of the UCCP United Church Men, that the NPA was coming.<sup>128</sup> Kumander Maya dispatched two youths to inform the military in Binaton and ordered Cesar Endar to meet the NPA.<sup>129</sup>**

**On his way for reinforcements, Endar encountered a squad of the NPA some 40-60 meters from the chapel, advancing with a white cloth tied to a rifle.<sup>130</sup> The NPA claims that Endar shot at them, despite their**

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<sup>125</sup> The NDF says, "The orientation was clear: to hold a dialogue with the Ituman; but those who fight would be dealt with accordingly."

<sup>126</sup> The NPA maintained that they had been working in the area since 1973 and found that the indigenous peoples are culturally and historically peaceful with no roots of fanaticism. Because of military brainwashing, however, their animist beliefs have been twisted. Quite a number of people and several NPAs were assaulted and hacked to death in their attempts to peacefully speak with the Ituman, the NPA said. For that reason they took a protective force into the *sitio*, according to the NDF investigation.

<sup>127</sup> NDF report.

<sup>128</sup> UCCP report.

<sup>129</sup> NDF report.

<sup>130</sup> The NPA says the incident occurred at 60 meters and the UCCP at 40 meters from the

**protestations that they had come to talk, not fight.**

**The UCCP says Cesar Endar and the NPA exchanged fire about 40 meters away from the chapel.<sup>131</sup> Endar was shot in the stomach but fled. On hearing the shots, the NPA's other squads accelerated their pace and Kumander Maya ordered the people who were with him in the chapel to evacuate to the house of Abadya Ayap five meters in back of the chapel. Some obeyed but others dashed off in other directions.<sup>132</sup>**

**Kumander Maya and four others, two male and two female Ituman, positioned themselves at the slope between the chapel and the house of Abadya Ayap and put up a fight there. Kumander Maya was hit and retreated to the house of Abadya and his four companions were felled by bullets, according to the NDF investigation.**

**Two squads, squad K and squad B of the First Platoon of the Main Regional Guerrilla Unit of Southern Mindanao, directly engaged the Ituman in a gunbattle lasting for several hours.<sup>133</sup>**

**Some of the victims were armed, although lightly, compared to the NPA arms. The victims had a 38-calibre pistol, two 12-gauge shotguns, one homemade single-shot M-16 rifle, and two women had *bolos* (traditional machetes).<sup>134</sup>**

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**chapel. The NPA also says that the combatant with the white kerchief on the rifle knew Endar and greeted him by name, indicating they had come to speak, not fight.**

<sup>131</sup> **UCCP report.**

<sup>132</sup> **NDF report.**

<sup>133</sup> **NDF report.**

<sup>134</sup> **UCCP report. The NPA says that they recovered many more weapons inside the house**

**The NPA again called for a dialogue and the Ituman responded with gunfire from inside the house. The NPA claims that they could not see inside the house because the doors were closed and the windows high. Shooting stopped when a child in the shrubs near the chapel wailed and an NPA medic tended to her and discovered a dead woman beside her. The NPA yelled out again an offer to talk, and the Ituman responded with gunfire again. The fighting began again.**

**NPA fighters attempted to enter the front and the back of the house but were shot at. NPA firing at the house resumed.<sup>135</sup> The TFD investigation quoted a survivor inside the house, a 14-year-old boy Randy, who said that the women and children inside the house fell down one after the other, saying their prayers, applying oils, yelling, waving their handkerchiefs around. Another outside the house heard the yelling of those inside as the firing continued. The NDF investigation notes that at different times the NPA fighters heard strange humming noises from inside the house, consistent with the sound of chanting or prayers.**

**Shortly thereafter, the NPA were able to enter the house, and found many dead bodies. One journalist interviewed a survivor who said that the NPAs entered the house and shot at people inside even after seeing they were civilians.<sup>136</sup> The UCCP says that there was an exchange of fire, with the NPA shooting at the home of Abadya Ayap, which resulted in 37 dead and 10 wounded, all on the side of the Ituman.<sup>137</sup>**

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and took them away.

<sup>135</sup> NDF report.

<sup>136</sup> Interview with Bryan Johnson, Manila correspondent, *Toronto Globe and Mail*, October 1989.

<sup>137</sup> UCCP report.

**The NPA commander ordered the NPA combatants to line up the bodies for identification but the fighters were overwhelmed by the sight. The NPA fighters talked to Randy, the survivor, who said that Kumander Maya would not let anyone inside the house leave or surrender. The Ituman behaved as if they were immune to bullets, reciting Latin chants and standing (instead of crouching) inside the house.<sup>138</sup>**

**The bodies of two men, Clemente Ayap and Abadya Ayap, were beheaded by NPAs.<sup>139</sup> As the NPA were preparing to leave, one and then another of the small bands of Ituman from nearby *sitios* arrived and shot at them, with the NPA shooting back. The bands fled and were not pursued. The NPA left about noon and the army arrived about 4 p.m., after residents from nearby villages had converged on the scene. A few days later, the army brought in journalists by helicopter, and widely publicized the massacre, including mass distribution of color photos of the beheaded victims.**

**The United Church of Christ condemned both the terrorism of the NPA and the government policies which, in their view, sowed dissension and hatred. In its statement, it noted that it had received reports from UCCP congregations that the army had been using some churches and chapels as bases of operation, and organizing the congregations into anti-communist vigilante fanatical cults. The church called on both sides to cease hostilities.<sup>140</sup>**

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<sup>138</sup> NDF report.

<sup>139</sup> No Bible was burned and money was not taken from the church building, but congregational funds and some personal belongings kept by Clemente Ayap were missing, according to the UCCP.

<sup>140</sup> Lito Zulueta, "Church Killings Expose Protestant Rift," *The Manila Chronicle*, July 1, 1989. The UCCP has been a strong advocate of human rights and has condemned atrocities by all armed groups, and promoted a non-military solution to the insurgency. Since June 24, 1988,

**Brigadier General Mariano Baccay of the army's Regional Command 11 said he would form two CAFGU units in *barangay* Binaton from the 200 Ituman members to protect the surviving anti-communist cultists from NPA attacks. The Ituman would be trained in the use of firearms. At least 15 Ituman members vowed to avenge their relatives' deaths.<sup>141</sup>**

**The NDF investigators produced a report on August 12, 1989. They concluded that several factors including the fact that it was Sunday, when people from neighboring sitios would gather at Rano, and that armed Ituman forces were present in Rano and surrounding *sitios*, increased the risk of a gunfight and therefore of civilian deaths. They also pointed out that although the first shots by the NPA were in self-defense, against Ituman Cesar Endar, from that point on the NPA had the military offensive and could have "withdrawn from the area or taken other initiatives to avoid a gunbattle inside the community."**

**On June 24, 1990, a year after the killing took place, the NDF (Southern Mindanao) asked the UCCP to serve as a channel for getting financial assistance from the NDF to the families of victims. The government Commission on Human Rights volunteered to serve in this capacity if the NDF were not willing.<sup>142</sup>**

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**134 UCCP pastors and workers have been killed allegedly by soldiers and paramilitary groups**

<sup>141</sup> Noli Cabantug, "CAFGU Volunteers to Protect Davao Cult from NPA," *The Manila Chronicle*, June 30, 1989, in FBIS-EAS-89-125.

<sup>142</sup> *The Manila Chronicle*, June 26, 1990.

## **Violations of the Rules of War**

**Asia Watch was not able to conduct an independent investigation of this massacre. Based on the record compiled by the UCCP and the NDF, however, it is evident that the NPA committed several violations of the rules of war during this event. One was desecration of corpses. Protocol II, article 8, states:**

**Whenever circumstances permit, and particularly after an engagement, all possible measures shall be taken, without delay, . . . to search for the dead, prevent their being despoiled, and decently dispose of them.**

**Beheading of the dead is never permissible and violates the rules of war.**

## **Indiscriminate Attacks on Civilians and the Rule of Proportionality**

**As set forth above, to constitute a legitimate military object, the target must 1) contribute effectively to the enemy's military capability or activity, and 2) its total or partial destruction or neutralization must offer a definite military advantage in the circumstances. An object normally dedicated to civilian use, such as a house, can become a military objective if its use by the enemy meets the criteria above.**

**Therefore, the house from which the Ituman were firing was a legitimate military objective under the rules of war. It became such only because the Ituman used it as a post from which to attack the NPA.**

**The principle of proportionality, however, limits attacks even on legitimate military targets. This principle requires that combatants endeavor to choose means of attack that avoid or minimize damage to civilians. In particular, the attacker should refrain from launching an attack if the expected civilian casualties would outweigh the importance**

**of the military target to the attacker.**

**The attacker must do everything "feasible" to verify that the objectives to be attacked are not civilians. "Feasible" means "that which is practical or practically possible taking into account all the circumstances at the time, including those relevant to the success of military operations."<sup>143</sup>**

**The NPA has said that its combatants did not see the civilians being evacuated into the house and did not know that there were civilians inside. It apparently was not possible for them to find out if civilians were in the house while shooting was coming from the house, aside from doing what they did, which was to shout offers for a cease-fire.**

**The military operation was not one designed to occupy the town; it was an emergency defensive operation, according to the NPA. Since the larger and better-armed NPA contingent was not cornered and could withdraw, however, the success of the self-defense operation did not require them to continue to attack the house, not knowing if there were civilians inside and given the fact that the house was in a populated *sitio* and it was a Sunday. Indeed, Sunday had been picked as the day for the visit to the village because it was hoped the NPA would encounter a lot of civilians there and could hold a mass meeting. Therefore the NPA is responsible for civilian deaths occurring as a result of their attack on the house. If the NPA did know that there were civilians inside and fired anyway, then this was a disproportionate attack on civilians in violation of the rules of war. The NDF's Digos Commission recommended that the various responsible entities of the NPA be investigated and tried for the events.<sup>144</sup> We await publication of the results of these investigations.**

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<sup>143</sup> *New Rules*, p.362, footnote omitted.

<sup>144</sup> The NDF recommended that 1) the officers of the First Platoon of the Main Regional Guerrilla Unit of Southern Mindanao must be investigated and tried for "probable liability in

## **The Government's Double Standard**

**The criterion that the government has applied in this case is quite different from that applied in the case of an AFP massacre of nine fishpond workers on April 28, 1989, in *sitio* Manicnic, Paombong, Bulacan. There, soldiers from the 42nd Marine Company in Sto. Rosario, Paombong, on a night mission fired into a civilian home from which they claimed to have received fire. A gunfight lasted 30-45 minutes according to a government account, resulting in the death of nine civilians in the house, with none wounded. There were no dead or wounded AFP or NPA.**

**The soldiers then heard a small boat pulling away and went to the riverside and fired at it. One soldier was killed and another wounded at this time. A government investigative committee concluded that the nine civilian victims were slain in "an encounter between elements of the Philippine Marines and an armed group believed to [be] the NPA rebels."**

**A fact-finding mission led by the human rights organization Task Force Detainees came to very different conclusions. It determined that five of the victims had bullet wounds in the head and three bore marks of torture, suggesting not that they had died in a firefight but that they had either been shot at close range or while in custody.**

**The government committee noted that there was no way for the soldiers to know that they were civilians inside because of the darkness**

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**ordering their men to engage in a military action that greatly jeopardized the lives of women and children;" and 2) the two Red fighters who admitted responsibility in the beheading of two dead must be investigated and tried.**

**and without any cries or shouts from the people in the house that they were civilians, although the AFP has since apologized to the relatives of the civilian victims and offered 17,000 pesos (U.S. \$725) to each victim's family.<sup>145</sup>**

**If the government were to apply the same standards to the NPA as it applies to the AFP, then it would have to conclude that there was no way the NPA could have known that there were civilians inside the house from which they were receiving fire in *sitio* Rano, Digos, and that therefore there was no violation of the rules of war.**

**We believe that there was indiscriminate fire in both cases.**

## **War Taxes**

**By many accounts, the NPA collects war taxes from large landowners and small farmers, as well as loggers and plantation owners. These taxes are significant for the NPA, because it receives no foreign financing. For the peasants, the mere presence of armed men asking for a "contribution" can be sufficiently intimidating for most to provide the amount requested, which may be small but not insignificant to a poor farmer. Shifting the tax burden to the rich eased this demand on poor peasants, who were the primary source of financial support in the early years. By the late 1980s:**

**a significant share of NPA and Party activities was supported by an elaborate system of taxation primarily targetting larger foreign- and Filipino-owned businesses, large landowners, concerns engaged in ranching, fish and prawn culture, logging and mining, and even**

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<sup>145</sup>"Paombong Tragedy," in "Philippines: Insurgency and the Human Rights Issue," Rotary Club of Raha Sulayman, Manila, provided by the government, pp. 12-19.

**government corporations--all of whom were categorized by the CPP as "class enemies." Tax assessment on class enemies was generally pegged at 1 to 2 percent of gross income. Businesspeople or landowners who refused NPA demands were subject to economic sabotage or assassination.<sup>146</sup>**

**Many business enterprises, especially logging or mining concerns, are said to already be paying protection money to the local military officials, and simply pay the NPA's assessment as another cost of business.<sup>147</sup>**

**There is no bar to insurgent tax collection in Protocol II, but there is a prohibition on violent acts taken against the civilian population to enforce the demand for taxes. The collection methods include assassination, which is strictly a violation of the rules of war, since the person refusing to pay taxes does not thereby become a legitimate military target. Nor does the business refusing to pay taxes thereby become a target, although export enterprises contributing to the financing of the army are legitimate targets. (The textbook example is the cotton exported to finance the Confederacy during the Civil War in the United States.)**

**In 1986, the military reported that the NPA destroyed an estimated 163 million pesos (about \$8 million) worth of property owned by companies refusing to pay rebel taxes.<sup>148</sup>**

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<sup>146</sup> Jones, *Red Revolution*, p. 245.

<sup>147</sup> Kessler, *Rebellion and Repression in the Philippines*, p. 75.

<sup>148</sup> Jones, *Red Revolution*, p. 245.

**These tax burdens have been used as a justification for the military to continue the landlords' private armies as "Special CAFGUs", to protect them from NPA "extortion."**





## **V. NEGROS OCCIDENTAL**

**Of the four provinces the Asia Watch delegation visited, the most severe violations of human rights and humanitarian law were in Negros Occidental. A massive forced displacement of population in April 1989 in the context of a military operation called Operation Thunderbolt appeared to violate humanitarian law provisions that such displacements only be carried out if there is a clear military imperative to do so or if the security of the civilian population requires it. Adequate preparations to maintain the health and hygiene of the evacuees, also required by international law, were not undertaken. And in the course of counterinsurgency efforts in the area before, during and after the evacuation, combined teams of regular forces, CAFGUs and vigilante groups committed a wide range of abuses against the civilian population including torture and extrajudicial executions.**

### **Background**

**Negros, an island in the Visayas chain and the fourth largest island in the Philippines, is divided by a central mountain range into two provinces: Negros Occidental, with its capital, Bacolod, and a largely Ilonggo-speaking population; and Negros Oriental, with its capital of Dumaguete, and a population of Cebuano-speakers.**

**Since sugar production took hold there in the late 19th century, Negros Occidental has been characterized by vast differences in wealth between the plantation owners, or *hacenderos*, and subsistence farmers and seasonal cane cutters called *sacadas* at the opposite end of the**

**economic spectrum. The contrast between ostentatious wealth and appalling poverty, exacerbated during the last several decades by the *hacenderos'* use of their own private armies to prevent agricultural laborers from organizing, provided fertile ground for NPA activity. After one unsuccessful attempt in the early 1970's to set up a front in the province, the NPA had established a strong base in southern Negros by the mid-seventies, particularly in the hinterland around the six towns of Candoni, Hinoba-an, Ilog, Cauayan, Kabankalan and Sipalay (also known as the CHICKS area). Abuses by the Marcos-era military in the context of counterinsurgency campaigns in the late 1970's and the increasing use by the military of quasi-religious anti-communist cult groups in Negros as vigilante strike forces against suspected NPA targets fueled the growth of the rebellion. By the early 1980's, a combination of human rights violations by military and cult groups, with a collapse in world sugar prices leading to sugar mill closures and massive unemployment, increased NPA ranks even more.**

**Negros Occidental was buffeted by many of the same forces operating elsewhere in the Philippines after the triumph of Corazon Aquino in February 1986. The CPP/NPA policy of boycotting the elections led in Negros Occidental, eventually, to the defection or resignation of more than a dozen key CPP and NPA leaders in the province in 1987. The result was the collapse of the underground network in the capital, Bacolod,<sup>149</sup> and serious inroads by the military into rural NPA strongholds during military operations in 1989. (By the military's own estimates, of 1,132 *barangays* in Negros Oriental and Occidental, 58% are "affected" by the NPA: 123 influenced, 237 infiltrated, and 295 threatened.)<sup>150</sup>**

**At the same time, the government policy of organizing anti-**

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<sup>149</sup> Jones, *Red Revolution*, p. 250.

<sup>150</sup> "Philippines: Insurgency and the Human Rights Issue," Rotary Club of Raha Sulayman, Manila, provided by the government, at 20.

communist vigilante groups as part of the counterinsurgency effort from early 1987 onwards led to the appearances of old paramilitaries, cult members, and ex-NPAs in new guises, this time as vigilantes known by the color of the headbands they wore: *greenan*, who wore green; *pulahan*, who wore red; and *putihan* who wore white. They are known locally as *fanaticos* (the "fanatic ones") or *decolores* (the "colored" ones). These vigilantes had the clear support of and were sometimes indistinguishable from the newly formed CAFGU, the government's official paramilitary force.

### **Vigilantes in Negros**

Vigilante violence in southern Negros Occidental beginning in early 1989 led to fear and displacement among people living in upland barrios, and Asia Watch in September 1989 interviewed dozens of "internal refugees" who had fled northward for sanctuary.

The vigilante groups with the colored headbands operating in the area appear to have originated in Bayawan, Negros Oriental in 1986, allegedly to protect civilians from the NPA. The *greenans* were the first and remain the most numerous. Composed in part of former NPAs, they drew recruits from the guerrillas' mass base in the area, many of whom had been forcibly evacuated from their homes by the military. Some told us they had no choice; it was either join the *greenan* or be branded as an NPA. Some of the peasants they persecuted fled across the provincial border to Negros Occidental; in 1988, the NPA in turn drove some of the vigilantes across the border, where they have set up operations with the acquiescence or encouragement of local civilian and military officials.

In one *barangay* of Hinoba-an, San Rafael, *greenan* membership totalled 37 people. Established by one Nilo (a pseudonym), who is the

team leader, the *greenans* conduct military operations, chiefly patrolling by themselves or with military in the mountains of Hinoba-an twice a week, according to a Negros-based research center.<sup>151</sup> For funds, they depend on donations from local residents, local government and the military. As of May 1989, they had had only one encounter with the NPA, in *sitio* Sangke, Hinoba-an, but engaging in combat does not appear to be their main function. They are responsible rather for intimidating and terrorizing communities known to house the NPA's mass base. They do not bear firearms but carry traditional machetes (*bolos*).<sup>152</sup> Their induction ceremony, according to some of the evacuees, includes a prayer and an offering of the blood of their victims, with which they make the sign of the cross on the forehead of the new members. They believe that they cannot be harmed by bullets.

The *greenans* and the other vigilantes appear to enjoy immunity from prosecution and even official condemnation, despite the fact that their identities are known to everyone in the communities where they operate.

This was brought home to us in our interview on September 19, 1989 with the mayor of Sipalay, Soledad Montilla. She told us that there were about 50 *greenans* operating in the area of Sipalay. Recently, the mayor said, they returned from an operation in the interior saying they had killed three NPAs. They brought with them a head. The mayor says she has not talked to them or met with them, and she does not want to. Even accounting for fear, it was disturbing that the mayor did not utter one word of condemnation of these abuses nor voice any desire to see those guilty of the brutal crimes she described brought to justice.

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<sup>151</sup> Research, Documentation and Publication Desk of the Negros Council on Peace and Development (NCPD), "Report of Visit to Hinoba-an and Sipalay on May 21, 1989."

<sup>152</sup> *Ibid.*

**We heard many accounts from different displaced persons of the role of the mayor of Hinoba-an, Nelson de los Reyes, in actively assisting the vigilantes. They report that on February 5, 1989, he called a meeting at *sitio* Sangke, *barangay* San Rafael, Hinoba-an, at which he urged the people to "cooperate and unite for our defense against the NPA." When someone in the crowd pointed out that the NPA is armed, he replied, "Why not use a bow and arrow?" and he reportedly promised a reward if NPAs were killed.**

**Others report that he has paid rice and money to various vigilantes for killing people. He said that the *fanaticos* have been used as guides by the military during operations. "I've told the fanatics they're not authorized to arrest, to kill or even to conduct military operations but they sometimes do things without the knowledge of the local officials," he said.<sup>153</sup>**

**In a letter to Asia Watch dated January 24, 1990, responding to allegations of his support for the vigilantes, Mayor de los Reyes referred to the *fanaticos* as CVOs (Civilian Voluntary Organizations) and said he was encouraging people who were victims of abuses by them to come forward and charge them. He called reports of his handing out rewards "a darn lie," and attached a list of *greenan* and *pulahan* members who had been arrested and jailed for homicide.<sup>154</sup>**

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<sup>153</sup> Unpublished manuscript on vigilantes under the Aquino government by Sheila Coronel, Philippine Center for Investigative Journalism.

<sup>154</sup> The list of *fanaticos* detained by the Hinoba-an police included *pulahan* member Tomasito Minlaud y Tupales, charged with killing Rolando Sangasin y de la Cruz on May 13, 1989 in Buluangan; *greenan* member Leonardo Sarlatan, charged with killing Benson Villaluz on April 16, 1989 in Bacuyangan; and the following *greenans* charged with killing Raymundo, Jose and Ronilo Cuizon on an unspecified date and place: Rodrigo Cumawas y Castillo; Vicente Cumawas y Castillo; Fortunato Cumawas y Castillo; Julito Cumawas y Lariosa; Rosalio Bulado y Lariosa; Mario Palabrica y Buloy; Pablito Lariosa y Yunting; Joel

**One family we interviewed had first encountered the *greenans* when they lived in Santa Catalina, Negros Oriental. After the vigilantes tried to recruit the father, the entire family left for what appeared to be the safer CHICKS area of Negros Occidental. Before they left, the *greenans* also tried to recruit a neighbor by the name of Dorado Rio, who with some family members was killed when he refused to join in November 1988. The Rio family was thrown blindfolded into a deep hole; one woman survived and told this family about it, and they fled, with eight other families.**

**The NPA, however, was not standing quietly by, and had embarked on a campaign of targeted assassinations against the leaders of the *greenans*. At least one of the leaders, Boy Camilotes, left Santa Catalina and moved to Hinoba-an because he heard the NPA was looking for him. He reportedly had been an NPA in Santa Catalina in 1977, but that year, the NPA disciplined him, reportedly for crimes of rape and looting. By 1986 he had formed his own band of *greenans* in Santa Catalina. He reportedly set up operations in Hinoba-an in 1988.**

**Another group, the *pulahan*, was organized in Basay, Negros Oriental, and reportedly came to Hinoba-an also in November 1988 with the same purpose as the *greenans*. The followers of this cult, numbering about 15 and operating in the area of *barangay* Bacuyangan, help out in military operations against the NPA. The members wear an image of the "Santo Nino" on their headband, a red crucifix, and do not carry any metal object except their *bolos* on operations in order to make themselves invulnerable to bullets or stabbing. A third group said to be operating in the same *barangays* of Hinoba-an, the *putihan*, arrived in October 1988,**

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**Villarín y Manilingan; Patricio Bayson y Fabricante; Cesario Osianan y Laredo; Victor Canoy y Lumacang; and Diosdado Lariosa y Bulado.**

**Mayor de los Reyes did not respond to specific queries about some of the killings attributed to *greenans* outlined by Asia Watch below.**

**allegedly from Mindanao, where their founder was a Datu or chieftain.<sup>155</sup>**

**All those we interviewed said that the *fanaticos* work in close cooperation with the army and CAFGU. The only difference between CAFGU and the vigilantes was that the former had been accepted in the CAFGU training program which had a limited enrollment. There appeared to be no difference in function between the two.**

**These *fanaticos* started to displace civilians in Hinoba-an as soon as they arrived in late 1988, forcing them to hide in the hills when they went on patrol; at times the vigilantes robbed and burned their houses. Then, in March and April 1989, the families began to move into the town of Hinoba-an for more permanent shelter from them. As of May 18, 1989, a total of 1,068 families were in Hinoba-an and other coastal communities, mostly fleeing the vigilantes but, after April 24, fleeing the army's "Operation Thunderbolt" as well (see below).<sup>156</sup>**

**Some of the cases of vigilante abuses are described below. All of the information is based on interviews conducted with refugees at the Pulupandan refugee center outside Bacolod.**

**Execution of the family of Francisco Caneta,  
sitio Ga-as, barangay. San Rafael, Hinoba-an, on June 10, 1989**

**The *greenans* had been conducting patrols and burning houses in *sitio* Ga-as, *barangay* San Rafael, Hinoba-an, since November 1988. On**

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<sup>155</sup> Research, Documentation and Publication Desk of the Negros Council on Peace and Development (NCPD), "Report of Visit to Hinoba-an and Sipalay on May 21, 1989," p. 5.

<sup>156</sup> *Ibid.*, p. 1.

June 10, 1989, a patrol consisting of about 32 *fanaticos*, six regular soldiers and ten CAFGUs captured Francisco Canete, 60, in Ga-as. They tied him up and toured him around the *barangay* to look for NPAs. When he could not point any out, the group brought Francisco back to the house about 6 p.m., collected his family members, and shot them all. His wife Patrin, 55, his pregnant daughter Jili, 35, and Jili's daughter, 5, were killed. His son Jeri survived and escaped; neighbors gave him shelter.

The *greenan* then burned the grass-roofed house, using a lighter, while the regular army soldiers stood guard. The bodies were near the house and the house collapsed on them as it burned, leaving all but Francisco's body badly burned. Those who came to bury the bodies when it was light the next morning could not even tell what kind of wounds they had; the body of Francisco was shot in the abdomen, according to a man who helped bury him.

**Execution of Felix Larrosa and barangay councillor  
Trinidad Acosta,  
In sitio Bogainbilla, barangay Talacagay, Hinoba-an, April 17 and 18, 1989**

Many crimes in the area of *sitio* Bogainbilla have been attributed by residents, who have been forced to flee the area, to Jimson Mana-oc. He is a *greenan* who operates out of a neighboring village, *sitio* Tambacanau, Calapyan, San Rafael together with a group consisting of one Nardo Ilisica (a *pulahan*), Rogelio Lingaw-lingaw (a *putihan*), a CAFGU named Danilo, and one Sergeant Perino from the 11th Infantry Battalion (IB) of the Philippines Army. Residents we interviewed believed Jimson Mana-oc reported to Hinoba-an Mayor Nelson de los Reyes, and his *greenans* were under the supervision of the CAFGU. The mayor, it is alleged, releases rice to the *fanaticos* in payment for services rendered, such as killing people. The mayor denies it. Many people repeated the belief that the mayor gives three sacks of rice and 300 pesos to greenans who kill a person.

**According to some of those we interviewed, Jimson Mana-oc, like many of the *fanaticos*, is a former rebel who surrendered to the army. He operated as an NPA in the Bogainbilla area and then formed a *greenan* group and revisited his former allies, to threaten and kill them. Others say he was a member of the leftist political organization, BAYAN, but was accused of absconding with funds for development projects, so he created the *greenan* to protect himself against the "wrath of the people."**

**A witness was 50 meters away when he saw Jimson Mana-oc kill Felix Lariosa in Bogainbilla on April 17, 1989. Felix, who ran a *sari-sari* store (all-purpose kiosk) was beheaded with a *bolo* and his liver was taken out. He was suspected by Jimson and the CAFGU, allegedly because he once gave water to NPAs who were passing through the village.**

**The day after the killing, April 18, 1989, *barangay* Councillor Trinidad Acosta went to Hinoba-an to report the killing to Mayor de los Reyes. She was killed on the way home. Allegedly her left breast was slashed. The same day, at about 9 a.m., a band of some 50, including about 18 CAFGU and the rest *fanaticos*, burned the home of Roberto Da-ulong in Bogainbilla.**

**Less than two weeks later, on April 29, 1989, the NPA ambushed a group of 40 *greenan*, CAFGU and regular army from the 11th Infantry Battalion in *sitio* Bogainbilla, killing four *greenan*.**

#### **Execution of Freddy Grande in *sitio* Bogainbilla, *barangay* Talacagay, Hinoba-an, on May 4, 1989**

**Jimson Mana-oc also reportedly killed Freddy Grande, 20. On May 4, 1989, at about 7:30 a.m., Freddy and a witness were bathing in the river near Bogainbilla. At about 8 a.m., the *fanaticos* arrived. There were about 25 of them, both *greenan* and *pulahan*, with seven CAFGUs. Because an NPA ambush mentioned above had just occurred in the same *sitio* a few**

days before, this may have been a retaliatory killing. The surviving witness, who was not detected because he was a short distance down the river when the *fanaticos* arrived, recognized three people in the patrol: Jimson Mana-oc, Rogilio Linaw-Linaw, and a man named Aguidau, who lived nearby.

While in the NPA, Jimson had sought and received cooperation from Freddy, and had recruited Freddy's family into the NPA mass base. Now Jimson, as a surrenderee, apparently returned to kill Freddy. According to the witness, Jimson and the others did not say anything to Freddy when they captured him. They just slashed him in the back with a knife. Rogilio chopped him with a knife, Aguidau stabbed him under the arm, then Jimson stabbed him in the stomach. The CAFGUs stood by, watching. Aguidau chopped Freddy's head off with a *bolo*, according to the witness. They took the head to Hinba-an, first stopping by the Grande house to burn it to the ground. The family fled.

#### **Execution of Ernesto Gonzalez In sitio Kalapayan, barangay San Rafael, Hinoba-an, on April 2, 1989**

On April 2, 1989, at about 1 a.m., *greenans*, CAFGUs, and regular army numbering about 30 in all, the majority of them *fanaticos*, came to the Gonzalez house in *sitio* Kalapayan and shouted at the family to leave, according to a surviving family member. The patrol went inside the house and searched it, taking knives, axes, and *bolos*. They then tied up the hands of the father, Ernesto, and let the rest of the family, a mother and six boys, go. They took Ernesto off. Ten minutes later, the boys heard their father shouting, as if in pain. They ran to a nearby church for refuge.

The next morning, the elder brother was sent to find out what had happened. He found the body of his father next to the road, dead, without ears or liver. He returned and told his family. The rest then went to see the body, which was sliced from the right shoulder to the left waist with a

***bolo.*** His hands were still tied.

**Execution of Romeo Roberito,  
sitio Sa-an, barangay Talacagay, Hinoba-an, on April 18, 1989**

On April 18, 1989, Romeo Roberito, his wife and uncle Rufino Santa Ana were at home in *sitio* Sa-an eating breakfast when a group of *greenan*, *pulahan* and CAFGU approached their house, in a patrol of about 160 men. The wife recognized one of them, a *greenan* by the name of Bebot, who sold gas in the neighboring *barangay* Culipapan.

The men were ordered out of the house, which was then ransacked. Romeo and Rufino were then taken away.

The wife believes that her husband Romeo was suspected of being an NPA because he refused to join the *greenans* three months before, when one "Estoy" tried to recruit him. She overheard Estoy saying that the *greenan* were given a salary by Mayor de los Reyes.

The body of Romeo was found later that day by a neighbor about 30 minutes away. He had been stabbed in the upper left breast.

**Massive forced displacement and Operation Thunderbolt**

In April 1989, as many as 30,000 villagers living in remote areas of the CHICKS region of southern Negros Occidental<sup>157</sup> were forcibly

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<sup>157</sup> The municipalities of Sipalay and Candoni were the most affected. In 1988 Sipalay had a population of 65,744 and Candoni 11,068. They are both over 110 square kilometers in size and include numerous *sitios* and *barangays*. *Report on the Siplay and Candoni, Negros Occidental Mass Displacement* (May 21-25, 1989), p.3, hereafter referred to as *Fact-Finding Report*.

**evacuated from their homes as the result of a military operation there. Called Operation Thunderbolt, it resulted in the largest displacement of people in Negros since World War II. It also resulted in numerous violations of human rights and humanitarian law.**

**From what we learned of Operation Thunderbolt, it did not meet either of the criteria under Protocol II, Article 17, to justify the displacement of the civilian population: security of the civilians or imperative military reasons. Even if it did meet one of these requirements, the government clearly failed to live up to its subsequent obligation under Article 17 to receive the evacuees in "satisfactory conditions of shelter, hygiene, health, safety and nutrition."**

**Moreover, during the evacuation there were at least eight people reported to us to have been killed outside combat (executed) by the AFP and numerous instances of torture.**

### **Operation Thunderbolt**

**Given its size and scope, Operation Thunderbolt was undoubtedly planned well before April. The area of southern Negros where it took place was well known as an NPA stronghold, and the massive operation may have been considered the first step in "clearing" the area of the guerrillas by dispersing its mass base. The event that put the operation into action, however, was an NPA attack on a military outpost in *barangay* Caningay (near Candoni in the CHICKS area of southern Negros Occidental) on April 18, 1989. The detachment of the Alpha Company of the 7th Infantry Battalion suffered the loss of five soldiers; a soldier's wife was also killed.**

**In retaliation, the military on April 24 launched Operation Thunderbolt, under the command of General Raymundo Jarque. Beginning three days earlier on April 21, there had been mortaring from Sipalay into**

**Cambogi-ot, a small community in the mountainous interior of the CHICKS area where, the army said, the NPA had a base. Planes circled and strafed the area. One resident of Indagawan, about an hour on foot from Cambogi-ot, saw a big hole in the ground behind the house of his neighbor from a bomb dropped during this time. He described it as big enough for a *carabao* (water buffalo) to stand in; miraculously, there was no damage to the house and no civilian casualties.**

**With airplanes and troops on April 24, the army attempted to pursue the NPAs who attacked the detachment. After the air attack at Cambogi-ot, troops from the 7th Infantry Brigade and others fanned out into the area. On April 24, one man, who lived in *sitio* Abo about 2.5 kilometers from Cambogi-ot, said that he heard a firefight in Cambogi-ot that lasted more than an hour, with shelling from a helicopter. Otherwise there was little actual combat during the operation, since the NPA did not attempt to hold or defend any area.<sup>158</sup>**

### **Warning to the Civilians**

**In keeping with the surprise nature of the military operation, the civilians living in Cambogi-ot and surrounding communities did not receive advance warning of the military attack. The mayor of Sipalay, Soledad Montilla, said that she received a radio message from General Jarque on April 24, 1989, asking her to advise the residents of the upland *barangays* Manlocahoc and Cabadiangan to evacuate to Sipalay. She conveyed this message in writing to the *barangay* captains.<sup>159</sup>**

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<sup>158</sup> One publication provided by the government indicated that four other major offensives were carried out after Operation Thunderbolt. In all the operations, there were 84 encounters, 69 AFP-initiated, with 11 dead and 15 wounded for the military and 86 dead and 43 wounded rebels. "Philippines: Insurgency and the Human Rights Issue," p. 21.

<sup>159</sup> *Fact-Finding Report* pp. 8-9.

**We interviewed residents of one community about a half hour's walk from the center of *barangay* Manlocahoc. The *barangay* captain of Manlocahoc, Inting Osmena, had sent word up to these residents that they had to leave, but this warning was only received after the military operation was in progress. People were well aware that remaining there would be dangerous. One man told us that he received a message that everyone would have to evacuate by noon on April 24 because the area would be declared a "no man's land." The military wanted the civilians to leave the area so that they could conduct their operations without fear of civilian casualties.**

**Many people had already evacuated, temporarily, from the areas around Cambogi-ot and had moved in with friends and family to *sitios* closer to Manlocahoc. The *barangay* captain ordered them to evacuate again, all the way to Sipalay, a journey of several hours on foot. Not everyone did; apparently the NPA requested some of its cadre to stay behind.**

**Others simply did not move out quickly enough and were found by the army and held on suspicion of being NPAs. They were forced to assist the soldiers with food and shelter.**

**At the same time, there was almost no provision made to receive the civilian evacuees, so that when they fled as ordered, the government was not ready to provide them with food, shelter and take the necessary hygienic measures to avoid epidemics.**

### **The Evacuation Centers**

**According to the Department of Social Welfare and Development, in late May 1989 there were 14,649 displaced in Sipalay and 3,598 in Candoni as a direct result of the ordered evacuation. Others could be**

**found in Hinoba-an, Ilog, and Cauayan, and it was estimated that there were over 30,000 displaced in all from the CHICKS area as a result of this one military operation.<sup>160</sup> In Sipalay, the displaced were housed in 18 evacuation centers, mostly public buildings such as schools and health centers and churches. Typically, seven families with six children each shared a classroom (about 20 by 30 feet).<sup>161</sup>**

**Over 100 children died as a result of deplorable conditions in the evacuation centers. The villages of origin were extremely poor and the residents lived in what one aid worker delicately termed a "nutritionally precarious" situation. The balance was sharply jolted by the shock of the evacuation and crowding together in temporary and hastily-prepared evacuation centers. Measles spread like wildfire, in some cases killing all the children in a family; there were many infant victims of diarrhea as well. Drinking water was in short supply, and toilet facilities were inadequate and unsanitary.**

**Government efforts to render medical assistance at first met with resistance because of the rough manner of the government's evacuation of the farmers and the ignorance of the latter of rudimentary health rules, since they had no prior government health assistance. But the AFP was also responsible in part for the tragedy of the childrens' deaths, because General Jarque had forbidden the evacuees to seek church help, and the church workers to assist in this emergency.<sup>162</sup>**

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<sup>160</sup> *Fact-Finding Report*, p. 3.

<sup>161</sup> *Ibid.*

<sup>162</sup> **The Catholic church in Negros has been highly critical of the military, and the military periodically accuses local priests and nuns of involvement with the guerrillas. One Catholic priest, Father Fernandez, is the head of the local National Democratic Front.**

## **Political Killings in the Evacuated Areas**

**Five men, all suspected by the army of being NPA fighters, were reportedly executed on April 28, 1989 by a "firing squad" from the 99th Infantry Battalion on the overflow of the river near Manlocahoc, Sipalay, during Operation Thunderbolt. The five were Carlos Poderosa, 22; Roly Gamala (from Manlocahoc); Samuel Moises (from *sitio* Canagcado); and two men whose family names are not known but whose first names were Jaime and Camilo, both from Manlocahoc.**

**All five had evacuated with the other residents to Sipalay on April 24 but left the evacuation center on April 27 to return to their homes. Samuel's body was recovered on the overflow; Carlos' was found downstream in Cabogan; and the bodies of Jaime, Roly and Camilo reached the ocean.<sup>163</sup>**

**Three other bodies were found in late May 1989 after the residents returned to their homes. The corpse of one, Bennie Arcadenia, 22 (from *sitio* Binus-ay), was found about 50 meters from the 7th Infantry Brigade detachment in Manlocahoc with his hands tied. His body was a skeleton but recognizable because of the clothes, said eyewitnesses. Two other bodies found the same day were those of Bernardo Carrobias, 65, from *sitio* Utod-utod and Dominador Matti, 25, from *sitio* Basilan.**

**These three men, and one man who remains disappeared, Bonifacio Bitongga, did not evacuate but stayed behind as a group when everyone else left on April 24. According to a source, the four men encountered members of the 7th Infantry Brigade when they reached the river at Cabilocan and were arrested. The 7th sent a radio message to the**

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<sup>163</sup> We inquired about this case by letter to the Office of Public Affairs of the AFP on October 19, 1989, but to date we have received no reply. The *Fact-Finding Report* on p. 14 lists this case but says that the five were shot when running from Scout Rangers. This is not the version we were told by residents.

**6th Infantry Brigade which came to get them. That was the last time they were seen alive by nonmilitary persons.<sup>164</sup>**

**A fact-finding mission reported nine cases of extrajudicial killings during this period,<sup>165</sup> and two disappearances<sup>166</sup>, all by the military.**

### **Arrests and Torture at the Evacuation Centers**

**It appears that several informers were brought to the evacuation centers where they proceeded to identify NPA suspects from among the evacuees. As a result, several alleged NPAs and those affiliated with them turned themselves in or were captured by the army. People we interviewed said that some of the evacuees had been involved in the propaganda and organizing work of the NPA. They left their arms with their comrades when they evacuated. There were about five alleged POT (Propaganda Operating Team) members who "surrendered" and about 20 alleged members of the "mass base."**

**Among the people who "surrendered" (or were turned in) to the military was one young man who was embittered by the death of his children in the evacuation center. He was reportedly an NPA and POT member who had stayed behind to assist those who did not evacuate. His**

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<sup>164</sup> We inquired about this case by letter to the Office of Public Affairs of the AFP on October 19, 1989, but to date we have received no reply.

<sup>165</sup> They include the five men killed by the river listed above, and in addition Rosalino Andrino, 45, a councilman, Rey Agustin and Remigio Agustin, killed on May 8, 1989 by the military in *sitio* Porong, *barangay* Mambarato, Sipalay; and Jesus Lahaylahay, 54, shot by Scouts on April 24, 1989, in *sitio* Cambogi-ot, *barangay* Camindangan, Sipalay. *Fact-Finding Report*, p. 14.

<sup>166</sup> *Fact-Finding Report*, p. 16.

wife and their three children evacuated to Sipalay, where all three children died of the diseases sweeping the evacuation center. The children of those who stayed behind survived, however, and this man blamed the NPA for not letting his family stay behind with him. It was for this reason that he surrendered.

But after he and another man turned themselves in, they were mistreated. Some evacuees reported seeing soldiers beat them with a rifle outside the Sipalay municipal hall, apparently as an example to others. They were held for a month at the home of a police investigator in Sipalay, Juanito Codibillo, where they were harshly interrogated. One of them was brutally beaten and bruised by the police. They were released after a month on condition that they report weekly to the police, who pressured them to inform on others.<sup>167</sup>

### **The Evacuees Return**

In late May 1989, the evacuees were told by the military that they were permitted to return because there was peace in the area, now that it had been "cleared" of NPAs. The residents, however, say that the situation upon their return was the same as it was before "Operation Thunderbolt." The difference was that, on their return, several people found their houses had been burned or destroyed, and their belongings stolen or destroyed.

Virtually everyone we talked to had had basic kitchen implements, rice, or tobacco stolen from their homes after they left. Farm animals the people could not take with them, such as water buffalos, pigs and chickens, were not fed for a month and died or were taken and eaten

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<sup>167</sup> The *Fact-Finding Report* found three cases of torture and one case of maltreatment in Sipalay; apparently there was another man captured and tortured with these two men, all three of whom were pressured to say that they were POT and were beaten when they refused to admit that. They were released on May 21, according to the report.

**by the soldiers. For the peasants, these losses were significant and, with the help of human rights groups, many petitioned the government to reimburse them for the losses. A team of investigators from the government Commission on Human Rights visited the area during September 1989 in an effort to verify the losses set forth in the affidavits. Asia Watch does not know if any compensation has been paid.**

**Some of the residents who did not evacuate in time but were captured by the military were taken around with them on their operations as guides. They witnessed the military stealing food and other property.**

**The farmers told us that they plant in March and April, and they had not finished planting when they evacuated. The supplies that had been looted were supposed to last them through the planting and growing period, until the next harvest; thus they had no food to last until the harvest, and very little or nothing to harvest, because they were not there to weed the areas that were planted. (Those who went to Bacolod missed an additional season of weeding in August-September.) As of September, they had not planted since the April evacuation.**

### **Military Patrols and Threats by the barangay captain of Manlocahoc**

**In August 1989, organizations sympathetic to the evacuees paid for some of them to go to Bacolod, the capital of Negros Occidental, to present their case to the governor and try and seek compensation for their losses. Most had returned to their villages of origin by September.**

**After their return, former evacuees told us, the Manlocahoc *barangay* captain, Inting Osmena, ordered them on at least three occasions in September to attend a meeting in Manlocahoc. He had a list of all evacuees who had been in the evacuation center, and read off all the names at one of the meetings. He told them they should not ally with the NPA and asked them to join CAFGU. He was upset that NPAs had supposedly**

been seen back in the area, and the people had not reported NPA movements to the military. The residents replied that they had seen nothing.

At a meeting on September 10, the *barangay* captain accused those who went to demonstrate in Bacolod of spreading lies, and threatened to bomb them and the suspected NPAs in their communities. In addition, he was angry because when people left for Bacolod they concealed their true destination from him. It was clear from our interviews that the returned evacuees were fearful for their physical safety and felt there was no agency to turn toward for protection.

Tension has been heightened by the military's new visibility. On some occasions since the evacuation, the military has ventured into the area on patrols of about 20 soldiers and CAFGUs, then left. A new military base has been set up at Manlocahoc, and there have been *greenan* seen at the local market, dealing in scrap iron.

### **Killings by the NPA**

We learned that there were at least five NPA assassinations in the CHICKS area during the evacuation period and earlier.

Three police officers were killed in retaliation for the May 6, 1987, assassination of three left-wing political activists, Junie Academia, Marissa Nombre, and Nenita Villalobos during the congressional elections period. The activists were campaign workers for a human rights lawyers, Attorney Edmundo Manlapao. According to Amnesty International, their vehicle was stopped by eight men in military uniforms in *barangay* Hilamunan, Kabankalan, and they were pushed into the soldiers' vehicle and taken away. Two of the bodies were found later that

month.<sup>168</sup>

**A witness who stepped forward to identify the gunmen "disappeared" in 1988. Although his arm was crippled by polio, his easily-recognizable body was never found. At the trial, because of the absence of witnesses, the indictees, three police officers from Kabankalan, were acquitted. The NPA assassinated these acquitted policemen in 1989 in Kabankalan.**

**From the evacuees, we learned of an assassination by the NPA in 1988 of an informer in a *sitio* of the *barangay* Manlocahoc. The victim was in the CHDF and had been warned several times by the NPA not to continue his activities as an informer. The NPA later told his relatives and others that he was responsible for many deaths and was executed for that reason.**

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<sup>168</sup> Amnesty International, *Philippines: Unlawful Killings by Military and Paramilitary Forces* (March 1988), pp. 23-24.



## **VI. ZAMBOANGA DEL NORTE**

**Zamboanga del Norte is located in northwestern Mindanao, the second largest island in the Philippines, and the one most wracked by war. Mindanao is the site not only of NPA activity but also of Muslim guerrilla movements, primarily the Moro National Liberation Front (MNLF) and various tribal conflicts; in Zamboanga del Norte itself, NPA guerrilla activity has been concentrated in the upland hilly regions bordering the provinces of Misamis Occidental and Zamboanga del Sur. The military commander of the 101st Brigade, General Cesar Fortuno, responsible for counterinsurgency operations in the three provinces, announced shortly before our visit that the army aimed to destroy the NPA's "Front Monterosa," which also covered the three provinces, by September 30, 1989.<sup>169</sup> The Asia Watch delegation documented numerous cases of abuses of human rights and humanitarian law by the regular armed forces, the CAFGU and the NPA.**

### **Strategic Hamletting: Dumogok, Slayan**

**The forced removal of civilians to specially constructed hamlets or "live-ins" was a prominent feature of the internal conflict in Zamboanga del Norte when we visited in late 1989.<sup>170</sup> Such removals bring with them**

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<sup>169</sup> *Press Freedom*, August 7, 1989.

<sup>170</sup> An article in the local newspaper, *Press Freedom*, August 7, 1990, defined "live-in" as "a modified form of hamletting where villagers are concentrated in a bid to keep them from

**several different human rights violations: inadequate provision for the health and welfare of the displaced civilians; military restrictions on movement that make farming impossible or impractical for the peasants; and torture and physical abuse of detained persons to force admissions of involvement in the NPA or to turn in others.**

**Dumogok is about 80 kilometers southwest of the provincial capital, Dipolog. It is a remote *barangay* of the municipality of Siayan and is accessible only by foot, horse, or water buffalo. The hills around Dumogok, utterly devoid of government services, have long been considered NPA strongholds.<sup>171</sup> The father of the man who is currently *barangay* captain and CAFGU commander told us that he, the father, had been a member of the NPA's mass base in the nearby *barangays* of Liput and Polayu as early as 1975.**

**Members of the Subanon tribe make up some 90 percent of the population with the others primarily immigrants from the Visayas. The Visayans hold positions of political and economic power in the hamlet. The Subanon are subsistence farmers and some still practice slash-and-burn agriculture; others work in the logging industry, one of the main industries of the area. At the time of our visit, there were 132 families in the hamlet, 15-20 of whom were Visayan.**

### **Background to the Hamletting**

**The NPA were well-established in the area around Dumogok in 1986. One indication was taxation: farmers were assessed and taxed a**

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**the influence of the rebels." The article cited a "live-in" in Labakid, started by the 32nd IB on May 5, 1989, which involved 107 families.**

<sup>171</sup> **The NPA has three "chapters" in the area: one around Dumogok; one centered around Dinuyog and Guibo; and one around Dinasan, Pasi and Dalongdung.**

**nominal fee in rice or money. Another indication was the occurrence of killings of abusive local officials. Just as they knew they would be taxed, one man told us, they knew the punishment for giving information to the military was death. On February 1, 1986, the NPA killed then Dumogok *barangay* captain, Felipe de Guinan in *sitio* Montai. One witness told us that de Guinan, a Visayan, had been known for "boxing" (punching) and torturing people; the witness himself had been subjected to such treatment when he and others opposed the building of the *barangay* hall on de Guinan's land. De Guinan, who, according to a relative we interviewed, had been suspected by the army of being a rebel, later became the local head of the notorious vigilante group called the Tadtads to allay that suspicion. After his murder, no one dared regroup the Tadtad or any other vigilante group, we were told.**

**A month later, the NPA first shot then stabbed to death Virgilio Basion, a *barangay* councillor (member of the village council), because, according to one source, he had the same "bad attitude" and was known to have boxed and tortured people. After Basion's death, the NPA left a note behind saying that the men had been killed because they were "talkative" and thieves. There is no justification for such killings under humanitarian law.**

**The same *sitio*, Montai, was the site of what may have been the unintentional killing in a crossfire of four members of the Galtac family in Dumogok in January 1988. Asia Watch received two different versions of the incident. In one, soldiers from the 32nd Infantry Battalion were reportedly chasing some guerrillas and shooting at them; two women and two children from the extended Galtac family were killed, one was wounded and four were unhurt as they sought cover. The dead were Lolita Galtac, 24; Penden Galtac, 27; and Penden's two sons, Rogelio, aged 3 and Nelson, aged 1. A second version suggests that the group was seeking refuge as a result of operations and bombings conducted by the military in a neighboring *barangay*. While hiding in bushes to seek cover, they were deliberately strafed from behind by 90 armed men from the Bravo**

### **Company of the 32nd IB.**

**Whichever version is correct, there is no question that the killings caused fear and panic, and many farmers from outlying areas moved into Dumogok proper, only to return to their farms when the military operations were over.**

### **The "Live-In" at Dumogok**

**In early 1989, according to Task Force Detainees, the 32nd IB began to organize CAFGU in the area around Dumogok. According to one source, the NPA decided to retaliate and killed four soldiers, including one Captain Astian, in the neighboring *barangay* of Dinasan. The military began to shell the area with mortars on March 3, 1989 and some 650 people either fled or were forcibly moved to the military-organized "live-in" in Dumogok.<sup>172</sup> One man we interviewed in Dumogok said that people in the neighboring areas of Liput and Sibaud were ordered to move to Dumogok by the 32nd IB during the last week in February.**

### **Restrictions on Freedom of Movement**

**Once they were at the "live-in," civilians were subjected to a series of military controls on their movements. Initially, the military imposed a curfew from 7 p.m. to 6 a.m., which was lifted in the last week of April 1989. Roll-call was taken on a nightly basis at 7 p.m. until May 1989, when it became a monthly ritual. Those who failed to appear were assumed to be NPA. No one could leave the "live-in" without permission from the military or CAFGU authorities. One result was that peasants were not able to harvest their crops and had no source of income; several**

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<sup>172</sup> When we visited, Dumogok was a shantytown of thatched huts, newly constructed. The evacuees had to build their own shelters after they arrived.

ended up as tenant farmers on lands bought up by the *barangay* captain and his family. Such restrictions on freedom of movement had no obvious military imperative.

Even when people are allowed to return to farm their own land, their access has been so restricted as to make farming not viable. One man we talked to in September could go to his fields during the day but his family's absence from the fields at night meant that there was no one to guard against wild pigs and the crops were destroyed.

The military also raises the spectre of NPA harassment to frighten people into staying at the live-in. In September 1989, the *barangay* captain and the military told people in the live-in that while they were free to return to their fields, the NPA would kidnap them if they did so and force them to arm themselves and kill civilians. Even if they do not believe that, based on past experience with the NPA,<sup>173</sup> some are afraid to return because the military will insist on being informed if NPA combatants come and eat or sleep in their huts. If they do not inform, the military will punish them, and if they do, the NPA will punish them.

We were told that shortly before our visit in September 1989, 112 of the 132 families living in Dumogok had been given permission to return home, and many left. Two families, however, were "missing" when the army did a house to house check, so the rest were forced by the military to return to Dumogok. The assumption was that the two families were with the NPA, whether they had been kidnapped (as the army claimed) or joined voluntarily.

## **Torture**

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<sup>173</sup> One man told us that the NPA had tried to recruit him but when he said he was afraid, they told him they would not force him to join. They left him alone.

**Military control also brought with it allegations of torture. According to a reliable resident of Dumogok, two men, William Ambay, 35, and Martin Onkil, both of Sibaud, were captured in the first week in March, just after the "live-in" began. William was taken by CAFGUs and military to a former logging camp, Camp Tracy, used by CAFGUs and tortured with a gallon of water poured down his throat. Both men "surrendered" while receiving this treatment at Camp Tracy and were then used by the military to "pinpoint" or identify others whom the NPA allegedly used to visit at the "live-in."**

### **Inadequate Provisions for Health Care**

**Due to government neglect, 75 children died as a direct result of the military-ordered evacuation to Dumogok, an astoundingly high rate of mortality. The deaths occurred between April 14 and mid-July 1989. There was an epidemic of measles that was not treated quickly by government health authorities; apparently they had not been alerted to the military evacuation plans and had not moved swiftly to assist the displaced once the evacuees had arrived.**

**It was foreseeable that the sudden movement of over 100 families into a small village that had previously accommodated only a few families would produce a health crisis. To begin with, the people had no access to their lands for farming. Secondly, supplying them with food was difficult, because Dumogok was not accessible by road and supplies must be brought by people or animals to the top of the hill over winding narrow paths frequently cut by streams. It appears that there was no urgency on the part of the government to rush necessary food, housing and medical supplies to the area.**

### **The NPA, CAFGU and the Military**

**It was clear that the controls placed on those in the "live-in" were a way of cutting the NPA in the area off from their mass base. After the "live-in" in Dumogok was set up, the NPA called the *barangay* captain, Rosario Abrinica, to a neighboring village for a "dialogue." It is not known what Abrinica told the NPA at the meeting, but shortly afterwards, NPA representatives appeared in Dumogok to talk to the people and told them that if they continued to build houses there, the NPA would burn them.**

**After the NPA visit, Abrinica started to organize a CAFGU unit. It is indicative of the blurred lines between official and unofficial paramilitary forces in the Philippines that some residents called the unit CAFGU while others called it Alsa Masa, the name of the most famous of the vigilante groups organized in Davao City, Mindanao. "Alsa Masa" quickly became a kind of generic name for vigilante groups in the Philippines, and clearly to some in Dumogok, vigilantes and CAFGU members were one and the same.**

**On April 24, 1989, according to several sources, Abrinica called a meeting and warned 14 men who had been branded as NPAs that now was the time to surrender. Some of those present were the people who had been "pinpointed" by William and Martin, after water torture. They were all taken down to Siayan that same day, and threatened there with death by the military if they did not "return to the folds of the government." The 14 (15 by one person's count) joined the CAFGU unit at Siayan which at the time of our visit had a total strength of 85. Most of them were former CHDF; some were "surrenderees". All were given a five-week training course and were then armed with Garands (M-1s). The son of one woman we talked to was one of the original 14, and she said he had no choice but to join. Moreover, he was supposed to be paid a monthly stipend of 540 pesos but in the six months that had elapsed since he had joined, he had been paid only once.**

## **CAFGU and Military Abuses in Zamboanga del Norte**

**The abuses in Dumogok -- forced displacement of civilians, torture, restrictions on freedom of movement, forcible recruitment into an ostensibly voluntary civilian militia -- took place with the confines of one "strategic hamlet." But in the course of our interviews elsewhere in the province, it was apparent that abuses, particularly by CAFGU, were widespread.**

#### **A Beheading in Murop, Bacungan**

**In August 1989, five Subanen brothers by the name of Suma from *barangay* Murop who were members of CAFGU killed and beheaded an NPA commander, Arnais, and reportedly took his head to the 33rd Infantry Battalion to collect the reward. The military had offered a prize to the person who brought in this commander; the offer was communicated by pamphlets in the street, which our sources saw.**

**The five brothers allegedly had been NPAs, and joined CAFGU because their brother was killed by the NPA; Arnais was their former commander. Several townspeople in the marketplace in Bacungan saw the Suma brothers carrying an object in a bloody blanket and asked what it was. They then explained it was the head of Arnais.**

#### **A Beheading in Lower Dinuan, Salug**

***Press Freedom*, a newspaper in Dipolog, the capital of Zamboanga del Norte, reported several similar instances, suggesting that recruitment and training of CAFGU members was little better than its earlier manifestations. On August 7, Philippines Constabulary officers arrested**

seven CAFGU members charged with killing and beheading the brother of a well-known vigilante leader. Santiago Ramirez was shot dead inside a church in the village of Lower Dinuan, Salug, Zamboanga del Norte on July 10, 1989, then beheaded and dismembered with a *bolo*. The head of Ramirez was then brought to the headquarters of the 33rd Infantry Battalion, according to the paper. By late July, a lawyer for the Ramirez family was complaining publicly that despite several eyewitnesses to the murder, warrants for the arrests of the CAFGUs had not been served and that the 33rd IB officers were protecting them. The CAFGUS, all former NPAs who also had been involved with the vigilante group called Tadtads, were finally arrested a month after the killing.<sup>174</sup>

### **Harassment by Special CAFGUs, Sirawai**

Another article noted that thousands of Muslims had left their villages in Sirawai, in the southern part of Zamboanga del Norte, because of harassment by CAFGUs working as security guards at the Sirawai Plywood and Logging Company. The Muslims claimed they were being forced out so that the company could clear the land for additional rubber plantations. The company, according to the article, employed 100 CAFGU members.<sup>175</sup> The Asia Watch delegation asked the Civil-Military Relations office of the Armed Forces of the Philippines about this allegation. Colonel Rudy Asistente said his office had checked with the mayor of Sirawai but had been unable to get specific details on the harassment.

### **Mutilation in Litab, Roxas by Surrendered**

One source we interviewed in Villahermosa, Roxas said that there

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<sup>174</sup> *Press Freedom* (Dipolog, Zamboanga del Norte), July 17, 1989; August 7, 1989.

<sup>175</sup> *Press Freedom*, August 21, 1989.

had been a military operation in early September 1989 led by the 32nd IB in the hinterland of Roxas. After one patrol in *barangay* Litab, a surrenderee named Dagohoy Isu working with 40-50 soldiers from the 32nd IB cut off the ears of a suspected NPA named Bonifacio Bartonico and left them in the Kanibungan Elementary School in Litab as a warning to others not to get involved with the NPA.

### **Death Threat in Salug**

Edgar Guantero, currently the parish priest of Salug, Zamboanga del Norte, was threatened by CAFGU in the town of Mutia in May 1989. The priest was determined to halt all gambling, and because of continued problems, he ordered that there should be no benefit dances or gambling during the town's fiesta. A whole platoon of CAFGU came to his house and said they were going to shoot him, tear him to pieces and cook him unless he halted his efforts to curb gambling.

### **NPA Abuses**

Throughout Zamboanga del Norte we were told of NPA assassinations in violation of humanitarian law. In most cases, the victims are warned three times before being killed; the warnings can be oral or written.

### **Dumogok**

Aside from the killing of the *barangay* captain in 1986 in Dumogok, we learned that Esteban Pon, 62, was killed in *sitio* Titig, Dumuyog, in July 1988 because he was accused of being an informer for the army. He was stabbed and then beheaded, according to his relatives. Shot and killed at the same time was his son Rudy, who was just visiting

**on that day. Our sources said that the NPA shot the lesser offenders and had stabbed to death Esteban because informing was such a major offense. The relative who was a witness to the killing has since left the country.**

### **Charismatics**

**Several people we interviewed around Sindangan, Zamboanga del Norte complained that the NPA was targeting Charismatics, a Catholic mystical movement that is not completely accepted by the church hierarchy. A clergyman told us that while Charismatics are full-fledged members of the church, they believe in the power of special "gifts", like speaking in tongues. They have weekly prayer meetings that rotate from house to house. He said that the NPA dislikes the Charismatics because so many of their members have left the guerrillas after coming into contact with Charismatic proselytizers. They become more spiritual, less interested in trying to fight for change. The Charismatics, who refuse to bear arms, also are suspected at times by the military.**

**Avelino Manunggong, 29, a Charismatic lay leader (*kaabag*) was reportedly shot dead by the NPA on September 29, 1989 in Dinuyog, a base area for an estimated 400 guerrillas. He had personally been warned three times by the NPA to stop his preaching or they would get him. They told him to move; he told them to move, since he had been in the area longer than they. Two other Charismatics were with him when he was shot.**

**One man, Robert Valle, 21, told us he was forced to leave his home in *barangay* Tinuyop, Sindangan, Zamboanga del Norte, because of NPA threats directed against him and his Charismatic teachings. He was also suspected by the NPA of being a local intelligence agent for the government. He received three threats in all, the first in 1986, the second**

in 1987 (when he was accused of being the intelligence leader of a vigilante group, the TadTad) and in early 1989, shortly after the military conducted operations, including bombings, in the area.<sup>176</sup> These warnings were given to him in person. He said the NPA told him to stop the charismatic groups or else they would kill him. He finally left because he believed the NPA, based on their prior actions against others, would make good on their threat.<sup>177</sup>

### **Killings in Roxas, Zamboanga del Norte**

One reliable source told us that the mayor of Roxas, Zamboanga del Norte, Inocencio Perez, 60, was killed by the NPA in January 1988, during the election campaign, before the voting. He was shot during an assembly in *sitio* Punai, Labakid, after being warned three times by the NPA. His alleged offense was being a "playboy."

**Councilman Ismael Renquejo, Sr., 63, was killed in the same place**

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<sup>176</sup>We were told by others that the NPA attacked the military post of the 33rd Infantry Battalion in Tinuyop on May 13, 1989, and the military dropped 18 bombs on Napulong on May 18, a few kilometers from Tinuyop. The military later conducted operations in the area, but without warning the people to evacuate.

<sup>177</sup> This man also told us that the NPA killed several accused men in the past year. They allegedly killed Junior Javier, councilor of San Isidro, *barangay* Bacungan, Zamboanga del Norte, in March 1989, suspected of being a member of a vigilante group. Another man, a member of the Subanen tribe, was killed shortly thereafter in the same town, but his name was not known. He was accused by the NPA of being a commander of the vigilantes. (Although there was TadTad in Bacungan, there was none in San Isidro, and the TadTads did not conduct operations there, our source said.)

In October 1988, Tomas and three other TadTads were killed in *barangay* Tinigigan, Bacungan, by the NPA. A councilman, Mr. Dael, of Bacungan was captured by the NPA in Tinuyop on a visit there and executed in *barangay* Napulong in December 1988, suspected of being a military intelligence agent, all according to Valle.

**shortly before the mayor. He was a landlord and was convicted by the NPA of not giving a fair share of the harvest to his tenants. According to the source, he had a verbal agreement with the NPA to give a certain portion to the tenants, and he reneged on the agreement. He was warned and then killed.**

**Luciano Partosa, 61, the *barangay* captain of Labakid, Roxas, was an NPA sympathizer but gave information about the NPA to the military. He was warned three times by the NPA then killed by them on August 9, 1988. His son, Crisostomo Partosa, joined CAFGU as a result. This source knew of no NPA assassinations in 1989.**



## **VII. KALINGA-APAYAO**

### **Background**

**The NPA started to work in the mountainous interior province of Kalinga-Apayao, in northern Luzon, the largest of the Philippine islands, in the mid-1970s, focusing on local grievances against the government.**

**The most celebrated early breakthrough for the NPA was its defense of the Kalinga tribesmen who resisted the Marcos government's plan to harness the waters of the wild Chico River, which flows through the towering and remote Cordillera Mountains in northern Luzon. A rugged tribe of former head-hunters, the Kalingas were notoriously hostile to all outsiders. The government intruded in 1974 with a plan to construct four dams which would have diverted the Chico River and inundated thousands of tribal homes and farms and many sacred ritual grounds. The NPA moved in to help the Kalingas in 1976, ambushing government patrols, killing a mayor who had organized a 2,000-man defense force, and, some said, executing engineers sent by the power company. Within a few years, after an abortive attempt to crush the resistance with a Constabulary battalion, the government abandoned the project. The NPA became local heroes to the Kalingas and its squads could roam the region**

**unmolested except for occasional military encounters.<sup>178</sup>**

**Beginning May 15, 1989 the military launched Operation Oplan Pakilala, in Upper Tabuk, Kalinga-Apayao, as part of a coordinated military operation to "flush out the insurgents from their strongholds." All provincial commands in the Cordillera participated in the operation, including elements of the 65th IB PA, 1st Special Forces, 54th IB PA, the Regional Special Action Force, CAFGU's and members of the Cordillera Peoples' Liberation Army (CPLA) -- a government-supported paramilitary organization led by an ex-NPA and former priest, Conrado Balweg.**

**Over the course of the following months, the three barangays of Naneng, Dupag and Bagumbayan, which comprise sixteen sitios in the surrounding area, were affected by the hostilities, resulting in the temporary evacuation of over 400 families (in excess of 2,000 individuals) from the area.**

**At the time of our visit, operation Oplan Pakilala was underway. Although we heard some allegations of massive bombings and civilian displacements, there appeared to have been few civilian casualties. Many villagers used the term "bombing" to refer to use of mortars, and while we saw numerous houses damaged by mortars, we could get no confirmation of civilians killed as a direct result of mortar attacks. Nor were there massive population displacements on the scale of Negros Occidental.**

**The army, Philippines Constabulary, CPLA, CAFGU and NPA have all been responsible for abuses in the area. The human rights situation is complicated by the fact that divisions between CAFGU/CPLA and NPA often follow tribal lines, and when killings take place, it is sometimes difficult to tell whether they are motivated by political belief or tribal loyalties.**

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<sup>178</sup> Chapman, *Inside the Philippine Revolution*, pp. 127-28.

### **Blood feud or Ideological Battle?**

**In Gao-gao, Kalinga-Apayao, a series of killings with both tribal and ideological overtones had begun five years earlier and involved people from the Biga tribe, who lived in Suyang, and the Naneng tribe, from Dupag. (The tribe is also called Dupag by some of those we talked to.)**

**None of the people we interviewed could remember the exact date of the first killing, but "about five years ago," a Biga named Bananao from Suyang was killed by the NPA when he went to Dupag to attend a wedding. Papers were reportedly found on his body indicating that he was a "CI" (civilian informer). The Biga took revenge and shot a Dupag named Esteban Paclay, a man who had spent several years in a mental hospital in Manila.**

**When another wedding took place about a year later, a Biga named Nestor Basitao attended. He was shot by the NPA because he, too, was considered a civilian informer.**

**The next in the series was Macario Gunawad from Gao-gao (a Dupag) who was shot by the Biga about seven months after Biga tribesman Basitao was killed. Gunawad was wounded but did not die. The elders of the Biga and Dupag decided to make a peace pact, and the Biga paid for Gunawad's hospital bills. This was about 1986.**

**The next killed was a Biga barangay councillor from Suyang named Saliwan Baglinit. He was killed by the NPA in 1988 because he allegedly supplied arms to cattle-rustlers, after reportedly being warned three times not to.**

**A Dupag villager we interviewed who requested anonymity had**

**been shot by three assailants in Gao-gao in July 1989. There was no apparent reason for the attack (aside from retaliation), but the assailants were three Biga youths who lived in Suyang and Amlao.**

**In mid-August 1989, a (Biga) PC officer and CAFGU commander from Suyang named Francisco Baglinit was shot and killed in front of a coffee plantation in Mabatu. Virtually all the CAFGU in the area are from Suyang where the Biga prevail; the NPA is believed to have strong support in Dupag and Gao-gao among the Naneng. These killings by the NPA are violations of the rules of war.**

### **Abuses by the CPLA**

**The Cordillera People's Liberation Army (CPLA) was founded by a former priest and former NPA commander, Conrado Balweg, who left the NPA in 1986 allegedly because of a falling out with other commanders. His stated reason was that Marxist-Leninist class analysis was not appropriate for the Cordillera region. He then signed a separate peace pact with the Aquino government. (One of his brothers remains with the NPA.)**

**Balweg and the CPLA have been accused of serious human rights abuses since they joined forces with the military against the NPA. Balweg and an aide had been ordered arrested and detained by the Supreme Court in September 1989 for their refusal to answer charges in the killing of Daniel Ngaya-an, former chairman of the Cordillera Bodong Association (CBA), a tribal organization. The victim's body was found after he allegedly was abducted by CPLA members at a government checkpoint in Pasil, Kalinga Apayao, on October 5, 1987.<sup>179</sup>**

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<sup>179</sup> Lito Zulueta, "Balweg decides to face court," *The Manila Chronicle*, September 16, 1989.

**In some of the villages we visited outside Conner, the CPLA manned the military checkpoints. They reportedly receive some funds from the CPLA headquarters in Mansion House, Baguio and solicit in the villages as well. Another source of income is said to be a logging company in Malama, in which the CPLA has an interest and for which it provides guards, thus saving the company from having to pay NPA taxes. The CPLA is acting in effect as Special CAFGUs.**

## **CAFGU Abuses**

### **Hostage Taking**

**In July 1989, the NPA captured and detained two CAFGUs attending a wedding in the village of Butigi, apparently to persuade them to resign from CAFGU. Fellow CAFGUs responded by holding eight families hostage and demanding that the NPA return the two captured CAFGUs. The villagers were rounded up and put in one house, where they were guarded by CAFGU. Such hostage-taking is in clear violation of the Geneva Conventions.**

**Negotiations ensued, with barangay officials acting as mediators. After one week, everyone was released. The two captured CAFGUs promised to resign if they were released, but as it turned out, they did not out of fear of their fellow CAFGUs.**

### **Indiscriminate Shootings in Sabangan, Tabuk, Kalinga- Apayao**

**Three civilians, ages 4 to 16, were killed when some CAFGUs and CPLAs mistakenly shot at another CAFGU coming out of a civilian home they were searching in Sabangan village, Tabuk, Kalinga-Apayao, on May 26, 1989. Four other civilians, two of them children, were seriously wounded.**

**This is a violation of the rules of war because the CAFGU failed to take the necessary precautions to avoid collateral damage to the many civilians, including children, in the houses when they took aim at a man standing in the door of one of the houses. They mistakenly believed him to be an NPA, when in reality he was a CAFGU; if he had been an NPA, however, the violation would have been no less serious. When there are so many civilians and just one armed enemy, the principle of proportionality demands that the combatants hold their fire until they can attack without danger to the civilians.**

**We interviewed several witnesses and survivors to this event. They told us that there were seven houses in a group in this village. The adults left to farm the upland rice fields very early in the morning, leaving the children at home with the elderly and some young mothers.**

**The CAFGUS entered the area on May 26 to search for guerrillas. (Some residents told us that this CAFGU troop was graduated in March 1989 from training, and this was their first exercise.) About 100 men, all in uniform, some of whom the residents knew to be CPLA members, passed by the houses. A CAFGU entered and searched the house of a grandmother. As he was leaving, he was shot several times by his fellow CAFGU and fell wounded from the ladder (the house is on stilts) to the ground. The woman inside the house called out to the CAFGU outside,**

**asking why they had shot their companion; she could see CAFGU members under the house. The wounded CAFGU did not shoot back -- he had dropped his gun -- but the shooting continued for several minutes.**

**The wounded and killed were in the immediately adjacent house. One young mother there, who had a visible scar on her upper arm from a bullet that hit her as she was lying on the floor on top of her baby, said that they had yelled out that they were civilians, but the shooting did not stop.**

**When it was over, three children in the adjacent house were dead: Debbie Layugan, 4; Mitchie Lagansi, 4; and Sulvia Molina, 16. They were killed in the kitchen, which was only about two yards from the place where the CAFGU was shot. The children had run inside to hide there when they saw the soldiers approach.**

**Two other children, a 19-year-old girl, and an older man were all wounded; one of the children was evacuated by helicopter to the hospital with the wounded CAFGU, and the other three were taken to the hospital by land.**

**Some of those identified by survivors as part of the patrol doing the shooting were Bobby Tamayao of the CPLA and Alciyan, from Taloctoc, also in the CPLA.**

**A week after the killing, the NPA ambushed some PC soldiers on foot, killing one and wounding another, at a spot one hour away from the village; the military then warned the residents to leave, because the army was going to bomb the area, and they left for two weeks. Before they left, the helicopters had already started to bomb the rice paddies. They walked an hour to the road and then were trucked to another location, where they slept in a gym on the floor and received donations of food. When they returned to their homes, many found that rice had been stolen, as well as pigs, chickens, and a dog.**

## **Deaths in Custody**

**One pending case against the army in Kalinga-Apayao involves the death of Manuel Perfecto, 40, who was tortured in detention and killed in May 1988, according to our sources, by Lieutenant Ibarra of the 54th Infantry Brigade. Perfecto was a teacher who was arrested with Paul Cuecaco, who survived. The arrests took place shortly after an NPA ambush in May in which a close friend of Lieutenant Ibarra's and seven other soldiers were killed.**

**Lieutenant Ibarra and the assistant commanding officer have been charged in the torture and murder of Perfecto, but the case is pending in the military court of Ilagan, Isabela. Those representing the victim have sought a presidential waiver for a transfer of this case to the civilian courts but had received no answer as of the time of our visit. The surviving witness, who was also mistreated during detention, allegedly was forced to sign a statement on his release stating that Perfecto suffered from high blood pressure and that this was the reason for his death.**

## **Killings**

**Peter Danao, 27, was shot dead in Buluan, Conner, Kalinga-Apayao,**

**on July 6, 1989, according to his family. The military is suspected because he was shot 50 meters from a military checkpoint.<sup>180</sup> At 8 p.m., Danao was walking home alone from his relatives' house. He had not been robbed.**

**He had been in the CAFGU for six months in 1988 but he resigned in protest along with 41 others in December 1988 because they were not being paid and had not been paid for the six months of full time work. They never received any arms (although they were loaned arms when they conducted military operations).**

**Danao's body was riddled with 36 bullets from an Armalite (M-16) and M-14; the residents say only the PC had Armalites. Before his death, the military had accused Danao of the holdups. The other holdups, however, had been done with Armalites, and he did not have any gun, even as a CAFGU. The PC in Bulahan were commonly believed to have been involved in holdups that were occurring there despite the presence of the military checkpoint. It is speculated that Danao, having been in CAFGU, may have known too much of this operation.**

**The family asked the PC to investigate, but they replied that there was no need for an investigation because the NPA killed him. The family did not accept this because there was no NPA presence due to the military checkpoint, and the NPA had not threatened or warned him.**

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<sup>180</sup> There were 20 PC in the detachment in Buluan from the 140 Philippine Constabulary Company.

## **NPA abuses**

### **Abduction of the Mayor of Conner, Kalinga-Apayao in 1988**

**Shortly after the January 1988 election for mayor, the winner, Paul Dalwasan, a candidate of the Nationalist Party, was abducted by the NPA and held for three months.**

**The loser in the mayoral contest was accused by Dalwasan's relatives and the military of fomenting the kidnapping. The mayor had close connections with the military and in 1985, prior to his election, he had been warned by the NPA not to let the PC stay in his house, from which they allegedly committed many robberies. The NPA abducted and killed two of the mayor's first cousins, also suspected in the same robberies, in 1985 and 1986.**

**Dalwasan had also been accused by the NPA in 1988 of participating in a robbery of what turned out to be fake gold and of election fraud. The mayor has relatives in the CPLA as well, which is his strong supporter.**

**Dalwasan was finally released by the NPA, although the second person captured by the NPA in connection with the robbery of the fake gold remains "disappeared."**

### **Killings**

**A civilian informer (CI) of Laylayug, Tuao, Cagayan, located just over the Kalinga-Apayao border, was abducted by the NPA in connection with the cattle rustling going on in that area and killed in August 1989, according to residents.<sup>181</sup>**

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<sup>181</sup> This may have been an attempt to settle a local dispute. The mayor of nearby Tuao,

**In another case, a man named Teddy Ogas, who had resigned from the CPLA, was picked up by the NPA in Gawidan, Kalinga-Apayao from a jeepney (public transport), in February 1989. The NPA kept him for a month, then brought him to his home near Bulagian where they shot him. He had been an NPA but when the CPLA split off he joined them.**

## **VIII. QUEZON PROVINCE AND THE BONDOC PENINSULA**

**Quezon province with its capital Lucena is located in the southern part of the island of Luzon. Just prior to our arrival in September 1989, the NPA had ambushed a group of army engineers working on the construction of an inland road running down the middle of the Bondoc Peninsula. The primary purpose of the road appears to be military, since it brings some NPA strongholds into easy reach of military convoys but does not directly connect the hinterlands to market areas. Given the purpose of the road and the fact that the engineers were uniformed, armed, transported in military trucks, and members of the AFP, they had become**

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**Cagayan, allegedly a warlord in his own right, had branded residents of Daga as cattle rustlers; it is believed that his cattle were actually stolen by people from Laylayug, who have a long-standing feud with the people of Daga.**

**frequent targets of NPA attack. The September ambush was the thirteenth since the construction began and by far the most deadly: eleven engineers and two other AFP personnel were killed.**

**The resulting military operations gave us the opportunity to investigate violations of humanitarian law in the context of ongoing conflict. We found, however, that the biggest problems were theft and harassment and that there were few recent cases of gross abuses by either side.**

**Many *sitios* in the interior of southern Quezon have been under NPA influence and government neglect for years. In one *barangay*, "virtually all the farmers and their families were members of party organizations and attended regular political classes . . . ." They established a barrio revolutionary council and fed and sheltered guerrillas and CPP cadre, contributed portions of their harvests to local rebel units and provided couriers and information on army movements to the NPA.<sup>182</sup>**

### **Army violations**

**In some of the *barangays* we visited, army units came only rarely, but their visits often ended in violence. One incident which took place almost three years before our visit was still recalled in vivid detail. In the *barangay* of Recto, General Sina municipality, in central Southern Quezon, the military first arrived in 1982, returned in 1984, and came again in 1987.**

**In early 1987, soldiers staying overnight in a villager's house started shooting at a house across the way, after seeing someone moving**

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<sup>182</sup> Jones, *Red Revolution*, p. 13.

**outside it. They shot a civilian, Teodoro Enero, 32, in the face; Enero lived with his wife and five children in the same village. The soldiers drew closer and when they saw him starting to crawl away, they shot him dead at close range. The next day, they made the other residents sign affidavits saying that there had been an encounter with the NPA the night before. Finally, they robbed the victim's widow of plates, cassettes, pots and pans.**

**A more recent incident took place in August 1989. According to government sources, on August 23, 1989, the vice mayor of General Luna, Quezon, was to visit the *barangay* of Lavides to meet with the residents. Residents said that the vice mayor's visit was the day before the *barangay* fiesta was to be celebrated. The officials were to witness the branding of water-buffalo and give out residency certificates (*cedulas*) to the villagers.**

**The commander of the 42nd Infantry Brigade sent out an advance security patrol, but it ran into some NPA guerillas along the way. A firefight lasting a few hours ensued, with the only casualty being one wounded horse.**

**The residents heard shooting from the mountain in *sitio* Guiting and *sitio* Catmon about the time the town officials arrived, at 9 am. They concluded that there was some kind of encounter between the military and the NPA.**

**During the firefight, according to the government, the commander requested reinforcements from SOLCOM (Southern Luzon Command) headquarters in Lucena and from the air base in Sandy Point, Cavite. The helicopters flying in picked up TV newsmen at Lucena City. There were four Huey and two Sikorsky helicopters but no planes; one of the Sikorskys was hit in the tail and the troops disembarked from the Hueys. There were no NPAs captured.**

**Residents interviewed by Asia Watch saw two helicopters circle,**

dropping rockets or bombs and shooting machineguns. People who had gathered in the *barangay* hall for the official ceremonies panicked. Others ran to the hall for refuge. Mothers were separated from their children. It quieted down and preparations for the ceremonies continued. In the afternoon, as the ceremonies were underway, there was more bombing and the people panicked again. The officials, together with rural health workers they had brought, left the town, since they felt it was too dangerous to stay.

There were about 100 soldiers in the contingent that reached the town, according to residents at about 3 p.m., led by Lieutenant Crispin K. Malibiran of the 42nd Infantry Brigade. By the time they arrived the bombing had ceased.

Soldiers immediately began interrogating residents about complicity in the NPA attack. They claimed that those who ran away when the military bombed were NPAs. One woman was interrogated by the military with a *bolo* at her head. Others were threatened with the *bolo* and a soldier threw it at one man who ducked it. Others witnessed the soldiers hitting a 61-year-old man with a rifle butt.

One man, a middle-aged father of five, had taken refuge from the nearby bombing at the home of a *barangay* councilman. In front of everyone, and without saying anything, the soldiers struck him, accusing him of being a rebel, and pointed their guns at him. They did not arrest him, however. After menacing others, they took away three men who were forced to carry their military back packs, hitting and kicking them; they were later freed. Since the military threatened them with death if they were ever seen again in another military operation in Lavidés, the men moved away from the *barangay*.

The *barangay* captain was threatened during the military operation by the soldiers, who told him several times that there was an NPA camp in his *barangay*, that he was not a good captain because he

**claimed he had no knowledge of it, and that he should resign.**

**Local officials were later called in to police headquarters and required, under pressure, to sign an untrue statement about the events on the day of the bombing.**

### **Shielding**

**One incident which local residents described as hostage-holding was actually a case of the army using civilians as shields, which is strictly prohibited by the rules of war.**

**This incident occurred in a *barangay* near the town of General Luna in July 1989. A man went to a neighbor to get some *calamansi* (a citrus fruit) when 36 soldiers from the Bravo Company of the 42nd Infantry Brigade, based in General Luna at the time, entered the area and captured him. One by one, members of his family went to look for him.**

**They were all captured, until there were nine family members in custody for a day and a night. The soldiers told a local official that they feared that the family would alert the NPA to their presence and prompt an NPA attack.**

**They admitted that they were holding the residents for protection, as a shield, to prevent an NPA attack. They further told the family that if any soldiers were captured later by the NPA or if there was an encounter on account of this hostage incident, it would be the family's fault. (All residents of this *barangay* are suspected of sympathizing with the NPA.) The local official eventually persuaded the soldiers to release their captives.**

### **Holding hostages**

**Although the following incident took place in 1987, and no recent incidents of hostage-taking were reported, we include it here to illustrate a clearcut case of this abuse under international law.**

**Taking hostages is expressly forbidden by both Protocol II, Article 4, and by Common Article 3. On various occasions, the army has taken hostages.**

**In *sitio* Ilaya, *barangay* Esperanza, Lopez, Quezon, the army held 10 children hostage on September 21, 1987. We were told by a resident that some 30 soldiers from the 49th Infantry Brigade entered the *sitio*, commanded by Sergeant Pajarillo, in search of a man who had been captured by the NPA. Rodolfo Rejoso, the missing man, was believed by the NPA to be an army informer.**

**The military arrested three men, residents of the *sitio*, on that morning and mistreated them, accusing them of not reporting the NPA presence to the army. They were hogtied, beaten, had cigarettes put out in their faces, and their hair cut.**

**The army also detained five women, and held them from 7:30 a.m. to 10 a.m. The army told the women they had to go out to the forest and find the NPA and the informer. To assure that the women would return, the soldiers held the women's children, 10 in all, hostage.**

**The women set off at 10 a.m. to look for the NPA, surreptitiously followed by the army. In the afternoon, the NPA shot off guns to get the attention of the military, which rushed to the location of the shooting. The other residents of the *sitio* freed the 10 children; the women returned, located their children and escaped with them. The military encounter with the NPA lasted about two hours, according to those who heard the shooting, and continued intermittently for four days.**

**Holding the children to ensure that their mothers would comply with army orders fits within the classic definition of hostage: "persons who find themselves . . . in the power of the enemy and who answer with their freedom . . . for compliance with the orders of the latter and for upholding the security of its armed forces."<sup>183</sup>**

### **Beatings and Psychological Torture of Detainees**

**A young man, age 21, was detained at his house near General Luna in southern Quezon by the Philippines Constabulary (PC) on patrol in September 1989. His house was searched without a warrant, and he and others were arrested without a warrant. He was punched in the stomach for 30 minutes by three different soldiers, simultaneously, at the PC camp in Catanauan, Quezon during interrogation. While beating him, they demanded to know where the guns were kept by the NPA and threatened to kill him if he said anything about his treatment. When he was released, the PC said that he had to report back every week to the PC camp.**

**Another man arrested in the same month apparently in the course of the same military operation was taken as a guide by soldiers. The latter had stopped at a house to ask for directions for getting back to the main road and when they were not satisfied with the answers, they got angry and demanded that this man, whom they claimed was an NPA suspect, take them to the road. They made him walk in front after they asked him if there were any land mines on the path.**

**They accused him and his family of being in the NPA. They made him dig a grave beside a big tree on the main road and told him that if he had not joined the NPA, he would be at home now with his family. But since he had not told the truth (i.e., admitted their allegations), they could kill him. They also tormented him by making him clear out an area where a**

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<sup>183</sup> ICRC, *Commentary*, p. 874.

large snake had been seen. Finally, after sending him to various low-level commanders, and harassing him intermittently, they let him go later that afternoon.

### **Detentions of Farmers, Destroying their Copra**

In late July 1989, a team of 19 farmers was at work in southern Quezon picking coconuts when soldiers fired in the air in their direction, according to residents who spoke to the farmers. The farmers dove into ditches nearby to avoid the shooting, which lasted about two hours. The soldiers later said that this was an encounter and ambush by the NPA. Residents of the area heard the shooting.

The soldiers then detained the 19 farmers, accusing them of being NPAs and hitting them with rifle butts. They burned the farmers' coconuts, spoiling about \$250 worth of copra.

They were taken to the military camp at Malaya and released the same day, after harsh interrogations about their contacts with the NPA, but no more beatings.

A week later, at a *barangay* assembly, military officers appeared and threatened the residents. They said that if any soldier had been hurt during the attempted ambush, they would have killed five civilians for each soldier.

### **Robbery**

We received far more complaints of army and PC theft from the villagers than of any other single abuse. One woman, age 61, reported having had her house searched by soldiers who came to arrest her husband as an NPA. She protested that he was too old to be a fighter (in

**fact, he was away from home because he was tending to a sick relative). The soldiers found nothing incriminating in the house, but instead took the family's horse as a kind of collateral until the husband's return. Worth 4,500 pesos (\$225 U.S.), the horse has never been returned and the family has been too intimidated to ask for it.**

## **Torture**

**Behind many arrests are informers, who are often former NPAs who have been captured and tortured by military interrogators as a way of extracting information.**

**One informer was identified to us as Pablito Perez; his case, described by various sources, is fairly typical. An NPA fighter, he had come down from the hills to visit his wife after she had given birth in *barangay* San Francisco-B, Lopez, Quezon, in 1987 when he was captured by the military. He was forced to become a military informant. He then "pinpointed" or identified a number of civilians, including relatives, who had allowed him to sleep in their houses or given him food while he was an NPA, or simply befriended him. They were later arrested and many were said to have been beaten.**

**Two men, both known to Pablito, were killed in March 1987, shortly after Pablito's capture, but it is not certain if they were "pinpointed" by him. Ruben Catan, 37, and Joel Catan, 18, were captured by two truckloads of army soldiers on March 2, 1987, in *sitio* Colon, *barangay* San Francisco-B, Lopez, Quezon. The soldiers surrounded the house and demanded that all males come out. The two cousins were taken away in the direction of the mountain, according to witnesses, and beaten en route.**

**The next day, the family searched for the two and found their bodies in the mountains. Ruben had bullet wounds in his side, and Joel**

had a bullet in his face; his leg was cut with a *bolo*. The bodies were covered with dry coconut fronds in an attempt to hide the crime, according to a witness who saw them.

During this same period, many whom Pablito knew were arrested or sought. Prior to his arrest, people in this area had experienced no such problems.

The military, in 1988, demanded that all the residents of San Francisco-B "surrender." The soldiers conducted a meeting in the *barangay*, and all those suspected of NPA activity were taken aside and questioned one by one. Those who could find somewhere else to live left, but those who had no alternative "surrendered" to the military.

That same year, another relative of Pablito whom he had presumably denounced was captured and beaten by the military at his house and in front of his crying children. He was taken to a military camp at Cugurin, blindfolded, and interrogated, according to testimony he gave Asia Watch. During the interrogation, he was burned with a cigarette, struck on the chest and shoulders, threatened with a knife at his throat, hit repeatedly with a rifle butt, and finally held chained for three weeks, during which time the interrogation and beatings continued. They accused him of being an NPA and being "deeply indoctrinated" by them. He was finally released after a *habeas corpus* petition was granted; during the court proceedings, his treatment improved noticeably. Upon his release, the military threatened to kill him if they saw him again.

### **NPA Violations in Quezon**

We heard many stories of informers who had been executed by the NPA. One was Vicente Vargas, a *barangay* councilor of *barangay* Picipis, Lopez, Quezon. He had denounced several people as members of a

peasants' organization. He is said to have been first warned by the NPA and then arrested on October 28, 1988. He supposedly admitted to the NPA that he had been the informer who "pinpointed" several families for membership in the peasants' group. He was killed by the NPA on the same day that he was arrested, according to one of his victims.

We also learned of the summary execution of a robber. A person in a position to know of NPA activities informed us that seven CAFGUs in civilian clothes robbed a bus in the second week of September 1989 near *barangay* Bagupai, Mulanai, Quezon. They allegedly tied up the men, raped four women passengers, and robbed everyone.

The NPA captured three of the seven, who made a tape supposedly confessing that they committed the robbery, and admitting to being CAFGUs. One of the three escaped but the other two were executed for the crime by the NPA.

### **Mass Graves of NPA Victims and an Exhumation**

Propaganda is a central element in the army tactics used against the NPA, as it was in the days of Lansdale. One propaganda device is the publicity surrounding the discovery of mass graves of supposed victims of NPA abuses. The government stages "exhumations" of the victims, with great fanfare and attendance by local dignitaries and, depending on the victim, associates of the deceased, who are photographed at the gravesite by certain press.

We were invited to attend one of these exhumations on October 10, 1989, near Santa Clara, Laguna, which was being conducted by the PC, an invitation which we readily accepted (see above, pp.50-51). Since these exhumations are conducted with some secrecy, it is not always possible to know ahead of time if and when an exhumation will be done; it

**is not pursuant to a judicial process but done by the PC, with only selective and not public notice.**

**From a forensic point of view, the exhumation was a disappointment, because the identity of the two bodies buried in the already-excavated hole was not established by any relative or friend and no autopsy was conducted at the time; we were told the remains would be taken to the lab for further study. The surrenderee who led the investigators to the site later gave us a statement about the circumstances under which two men were informed of their death sentence by an NPA commander and had disappeared close to this site two years before. Another friend of one of the missing men and local political leader was able to provide more details about the circumstances of the disappearance. In all likelihood, these were the two bodies that were uncovered. However, the exhumation was more of an occasion for picture-taking and propaganda than for actual police work.**

**Sometimes the propaganda is inaccurate. One Commission on Human Rights investigator concluded, after visiting the site of several mass graves near Mauban, Quezon, with military dignitaries and ex-NPAs**

**and speaking to local residents, that the graves in question were not suspected DPAs but were NPA wounded in action who were then later killed (mercy killing) or killed in action.<sup>184</sup>**

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<sup>184</sup> Commission on Human Rights Memo, To: Atty. Apolinario C. Florencio, Regional Field Director, Subject: After Mission Report, Mass Grave Exhumation with Sec. Fidel V. Ramos, Date: 08 June 1989, provided by the Commission on Human Rights.





## **IX. RECOMMENDATIONS AND U.S. POLICY**

**Asia Watch believes that both the Philippines government and the New People's Army are responsible for severe human rights violations, and that the professed commitment of both sides to uphold Protocol II of the Geneva Conventions will be meaningless unless those abuses are addressed. We also believe that international pressure should be brought to bear on both sides to abide by international law and respect the rights of non-combatants. In this respect, the role of the United States government with respect to the Aquino administration is crucial.**

### **Recommendations to the Philippines government**

**1. In keeping with Article 18, Section 24 of the Philippines Constitution, all private armies, and vigilante groups should be disarmed and disbanded, and their members prosecuted to the fullest extent of the law for any offenses committed against the civilian population.<sup>185</sup> In different regions of the Philippines, the Aquino government has actively encouraged the formation or growth of these groups, despite the fact that to do so is unconstitutional. Thus, the Cordillera People's Liberation Army has worked with the Armed Forces of the Philippines against the**

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<sup>185</sup> The section reads, "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 the citizen armed force established in this Constitution shall be dissolved or, where appropriate, converted to the regular force."

**NPA, as have the security forces under a variety of names funded by sugar planters in Negros Occidental.**

**2. "Special CAFGUs," the paramilitary units, trained by the military but funded and equipped by local businesses should be disbanded. Such privatization of the counterinsurgency effort confuses accountability: are the Special CAFGUs security guards or reserve soldiers? To whom do they answer? The allegation that Special CAFGUs were used in Zamboanga del Norte by a logging company to evict Muslim peasants from their homes in order to expand the operations of the company is an example of why these units should be disbanded.**

**3. The military should exercise far stricter control over recruitment and training of CAFGU to ensure that those known to have been abusive in the past as members of the Civilian Home Defense Force or vigilante groups are excluded. In tribal areas, local commanders should ensure that CAFGU members are not all taken primarily from one particular clan, as has apparently happened in parts of Kalinga-Apayao.**

**4. Until Presidential Decree 1850 is repealed, the President should issue a blanket waiver so that all military personnel or CAFGU accused of human rights offenses can automatically be tried in civilian courts. The July 1989 acquittal by a military court of 24 soldiers in what came to be known as the "Lupao massacre" illustrates the need for such a waiver. In February 1987, eyewitnesses saw soldiers deliberately shoot 17 civilians including infants and an elderly couple following an attack in the area by the NPA. The official investigation took place far too late, there was never a line-up of suspects, and the actual military trial was a travesty.**

**5. The practice of forced relocation of civilians should cease unless there is an urgent military imperative for it or the security of civilians demands it. If such a relocation is deemed necessary, careful planning must take place beforehand to ensure that adequate housing and health care facilities are in place so as to avoid epidemics such as that which broke out following Operation Thunderbolt in Negros Occidental, killing hundreds of children. Restrictions on the freedom of movement of civilians in contested areas should cease unless the people in question face physical danger from fighting. In some of the areas we visited, the effect of such restrictions was simply to prevent farmers from returning to their fields and thus deny them a livelihood.**

### **Recommendations to the CPP/NPA**

**1. The urban assassination squads or so-called sparrow units should be disbanded. The majority of their victims are not legitimate military targets according to international humanitarian law.**

**2. The practice of summary executions, whether by sparrow squads or by firing squad following summary "trial" proceedings should cease.**

**3. Persons suspected of criminal or political offenses should be granted full due process; the "people's courts" run by the NPA fall well short of international standards.**

**4. The practice of hostage-taking for any reason should also cease; there should be no further kidnappings of representatives of foreign businesses who refuse to pay NPA "taxes" or aid**

**workers from countries whose policies the NPA leadership finds reprehensible.**

**5. NPA members responsible for human rights abuses as in the Rano, Digos case should be prosecuted to the fullest extent of the law.<sup>186</sup>**

## **The U.S. Role**

**The United States government has no influence over the NPA. It does, however, have considerable influence over the Philippines government. The use of U.S. jets to keep the air power of rebel army officers grounded during the December 1989 coup attempt, the sixth by right wing military rebels against President Aquino since she took office, may have been key to the Aquino government's survival. But despite that military, economic and political influence, neither the Reagan nor Bush administration has been willing to put pressure on the Aquino government to improve its human rights record. Several arguments against such pressure have been implied or explicitly stated by U.S. officials:**

**1) The gravity of the human rights situation has been exaggerated by partisan local human rights organizations; there is not a serious problem.**

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<sup>186</sup> In an article in *The Manila Chronicle* (June 26, 1990) on the first anniversary of the Digos killings, the National Democratic Front (Southern Mindanao) were quoted as saying "corrective and disciplinary measures have been taken against NPA members who committed code infractions [in Digos]."

**2) The investigation of military abuses would exacerbate the restiveness of the military and destabilize the Aquino government, especially since the major immediate threat to national security comes not from the NPA but from disaffected junior officers.**

**3) The Aquino government has made major strides in restoring democratic institutions, and encouragement of these efforts is more important than criticizing human rights abuses. (There is the implication that human rights abuses in a democracy are somehow less egregious than they are in a dictatorship.)**

**4) Military excesses must be expected in the context of a guerrilla war where the other side also commits abuses.**

**None of these arguments stands up to close scrutiny; a forceful denunciation of abuses by both sides is necessary. Deputy Assistant Secretary of State for East Asian and Pacific Affairs David Lambertson in a February 1989 testimony before congress insisted that the administration had raised human rights issues both privately and publicly with the Aquino government. But if such statements were made, they were negated by other actions. In an inexcusable honor to a man widely alleged to have been responsible for several "disappearances" of suspected NPA supporters in Manila, the U.S. embassy in July 1989 gave an award to Lieutenant Colonel Romeo Maganto of the Western Police District, citing his "assistance extended to the U.S. mission on matters of mutual consideration." Turning a blind eye to his role in establishing urban vigilante groups in Manila to attack suspected communist front organizations, the award also cited Maganto's "professionalism."**

**Vice President Dan Quayle visited the Philippines in September 1989, carrying a letter dated September 19 from 22 members of congress which urged him to raise the problem of CAFGU abuses in his talks with President Aquino. Just as he arrived, the NPA killed two U.S. technicians**

**and warned of more attacks to come. The vice president properly expressed outrage and grief, but he then quite improperly suggested that the Bush administration would ask for a waiver of the congressional ban against the use of U.S. foreign aid for police and internal security forces. "This waiver will help protect American lives," he said. Providing aid to security forces who in the past have shown little respect for Filipino lives will not aid the cause of human rights, and even suggesting such a waiver was misguided.**

**Upon his return, the vice president sent a letter to Representative Ted Weiss, one of the signatories of the September letter, saying:**

**While it is our duty to hold the democratic Philippines Government to high human rights standards, we must focus our attention on condemning NPA terrorism and providing Mrs. Aquino's government with the material and training required to defend democracy. At the same time, we should and are considering ways to help the Philippines Government in its continuing effort to improve the human rights performance of its military and police forces.**

**Criticizing government human rights abuses was clearly not on the vice president's agenda.**

**It is up to the U.S. to put itself and its enduring influence, in public and private, firmly behind the professed desire of the Aquino government to improve human rights. It should encourage President Aquino to reallocate resources and personnel into serious investigations and prosecutions of human rights violations, and make it clear to the military that maintenance of aid is dependent on the thoroughness with which its house is cleaned. With regard to vigilantes and private armies, the U.S. should insist on verifiable and successful efforts to disarm and prosecute their leaders and members.**

**While the U.S. on its own cannot determine the course of events in the Philippines, it could make an appreciable impact on the human rights situation by acknowledging that severe human rights abuses occur and that it has a strong interest in seeing the perpetrators brought to justice.**