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EXTERNAL (for general distribution)AI Index:ASA 35/05/91
Distr:SC/CO/GR

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International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

FEBRUARY 1991

PHILIPPINES
@ "DISAPPEARANCES" IN THE CONTEXT OF COUNTER-INSURGENCY

1. INTRODUCTION

More than 50 people, most of them alleged critics or opponents of the government, were reported to have "disappeared" in the Philippines during 1990. At least five of the "disappeared" are believed to have died or to have been killed while in custody and some appeared to have been tortured. At least 15 whose detention had originally been denied by security forces in 1990 subsequently reappeared after a period in police or military custody. The majority were still missing at the end of the year and there was concern for their safety.

This report describes a pattern of enforced "disappearances" in the Philippines during 1990 and provides details of the fate of some of those who reportedly "disappeared". It outlines the political, military and legal context within which "disappearances" have occurred, highlighting certain aspects of government policy and military strategy which, in Amnesty International's view, have contributed to the phenomenon of "disappearance". It examines the effectiveness of existing domestic remedies for relocating the "disappeared" and for bringing the perpetrators to justice. The report also provides details of 25 victims of "disappearance", including three who died or were killed while in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

"Disappearances" have occurred against the background of armed conflict between government forces and the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). They have been most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including parts of Central Luzon, Negros, Samar and Mindanao. The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by the security forces as fronts for the NPA and CPP or individuals suspected of NPA or CPP membership.

Amnesty International believes that, notwithstanding the government's stated commitment to the protection of human rights, there are aspects of government and military policy -- in particular aspects of the counterinsurgency campaign -- which have helped to create a climate within which human rights violations, and particularly "disappearances", are more likely to occur. It also believes that there are serious deficiencies in existing judicial and quasi-judicial procedures or remedies aimed at locating the "disappeared" and bringing the alleged perpetrators to justice. By its acquiescence in and reliance upon these mechanisms the government has failed to fulfil its responsibilities under domestic and international law and has, in Amnesty International's view, contributed to the problem of

"disappearances".

2. THE "DISAPPEARANCE" PHENOMENON

2.1 What is a "Disappearance"?

A person has "disappeared" when s/he has been deprived of liberty against his or her will by any government official or by organized groups or private individuals believed to act on behalf of, or with the permission, support or acquiescence of the government.¹

The fate of the "disappeared" is by definition unknown because the arresting authorities refuse to acknowledge that the arrested person is in their custody and may in fact attempt to conceal his or her whereabouts. A detainee who has "disappeared" is effectively denied protection under the law; the right to be promptly informed of the reasons for their arrest. Moreover, when people are held in unacknowledged, secret detention, the risk of their being ill-treated, tortured or killed is increased.

Such risks are especially great when detention occurs in the context of a national emergency or during a counter-insurgency campaign. Under these circumstances, normal legal procedures are likely to be weakened or ignored by the authorities. The protection of human rights may, in practice, be undermined by, or subordinated to, the exigencies of national security. Those responsible for such violations may come to feel free to commit human rights violations with impunity.

The phenomenon of "disappearance" also causes grave suffering to the families of the victims. Denied knowledge of the fate of their relatives, they may spend months or years in a fruitless search for them. Their anxiety, and that of eyewitnesses or others involved in the search, is often heightened by a fear of coming forward to testify or give evidence to the authorities. In many cases, the fear is justified; relatives, witness and lawyers are frequently subjected to threats or actual physical assault by members of the security forces.

2.2 State Responsibilities With Respect to "Disappearances"

Each case of "disappearance" violates or poses a grave threat to a number of specific fundamental rights articulated in the International Covenant on Civil and Political Rights (ICCPR). These include the right to life (Article 6.1), the right to be free from torture or cruel, inhuman or degrading treatment (Article 7), and the right to recognition as a person before the law (Article 16); all of these rights are non-derogable even in times of national emergency. Other rights infringed may include the rights to liberty and security of person, to be free from arbitrary arrest and detention (Article 9.1), and the right of a detained person to challenge the legality of their detention before the courts (Article 9.4).²

Countries like the Philippines which have acceded to the ICCPR have a special obligation under international law to ensure that these rights and freedoms are effectively protected.³ According to Article 2 (3) a) and b) of the ICCPR, it is the responsibility of the state to ensure that judicial or quasi-judicial remedies are available to the victims of human rights violations and that those remedies are effective.

The ICCPR also has force in Philippines national law. Under its 1987 Constitution, the country adopted "...the generally accepted principles of international law as part of the law of the land..."

1 This is the definition adopted by the United Nation's Working Group on Enforced or Involuntary Disappearances.

2 See Appendix I for passages from the ICCPR relevant to the obligations of States Parties in relation to "disappearances".

3 The ICCPR entered into force in the Philippines in January 1987. The President signed the Optional Protocol to the ICCPR in July 1987.

(Section 2 Article II, 1987 Constitution). In response to a question from the Human Rights Committee⁴ in April 1989 concerning this section of the Constitution, the Philippine Government representative stated clearly that "the provisions of the Covenant [i.e. the ICCPR] can be invoked before and directly enforced by Philippine courts and appropriate bodies." Finally, it may be noted that the rights and freedoms enumerated in the ICCPR are also enshrined in the Philippine Bill of Rights, Article III of the Constitution.⁵

Other international human rights instruments, such as the United Nations Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment, also establish standards against which to assess the behaviour of states with regard to various human rights violations as well as guidelines for the improvement of their legislation and practice.⁶ If these principles were effectively implemented, many human rights violations including "disappearances" would be less likely to occur. They recommend, *inter alia*: that all reports of alleged "disappearance" be investigated in good faith by a judicial or other body and that the results of such investigations be made public; and that the legal and other remedies available for the relocation of persons who have "disappeared" and the prosecution of the suspected perpetrators be ensured to be effective.

4 The Human Rights Committee is an international body of 18 experts established under the ICCPR to monitor implementation of that treaty. In this report it will be referred to as the Human Rights Committee (ICCPR) to distinguish it from the national Presidential Human Rights Committee.

5 See Appendix III for excerpts the 1987 Philippine Constitution.

6 See Appendix II for passages from the United Nations Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment which are relevant to the phenomenon of "disappearances".

2.3 State Responsibilities in the Context of Armed Opposition

Government and military authorities sometimes claim that opposition forces are responsible for "disappearances". In the Philippines the government has alleged that some of those who "disappeared" in late 1988 and early 1989 were abducted or killed in an internal purge of the banned Communist Party of the Philippines (CPP) and its armed wing the New People's Army (NPA). Citing captured CPP documents and the testimony of certain "rebel-returnees", the military has said that Pearl Abaya, Lili Mercado and Efren Bonagua, three of the more than 50 people who reportedly "disappeared" in 1988, had been abducted by the NPA.

Amnesty International acknowledges that a small number of those reported to have "disappeared" in previous years in the Philippines, including some of those mentioned above, may have been abducted by opposition forces. It stresses, however, that this does not in any sense alter the government's responsibility with respect to investigating all cases of alleged enforced "disappearance" and bringing those responsible to justice. The government's responsibility is a matter both of immediate practical concern -- relocating the "disappeared person, identifying the perpetrators and stopping the pattern of "disappearance" -- and of principle arising out of international law.

In practice it is only through the prompt and impartial investigation of all reported "disappearances" that there can be any hope of locating the victim, bringing the perpetrators to justice and perhaps preventing future "disappearances". If a government fails to investigate reported "disappearances" on the grounds that they might have been committed by opposition forces or because the identities of the perpetrators are not immediately known, it demonstrates a lack of interest in all of these objectives. By doing so it effectively condones the practice of "disappearance", which may lead to its perpetuation.

Armed opposition can present governments and security forces with particular difficulties which raise issues of principle with respect to international law. Governments bear the responsibility of protecting their citizens from violent crime and for bringing those responsible to justice. In doing so, however, they must ensure that fundamental human rights are respected. As noted above, under international human rights law, certain fundamental rights must be upheld by governments at all times and in all circumstances. However widespread and violent the armed opposition groups, these can never provide a justification for governments to retreat from or ignore their obligations to respect such fundamental human rights. Indeed, in Amnesty International's view, it is precisely in such contexts of armed opposition that fundamental human rights need to be protected with extra vigilance.

States bear a unique and solemn responsibility to uphold the law and to ensure that the rights and freedoms of their citizens are protected. Acts of violence or other abuses committed by criminal elements or armed opposition groups are crimes which are punishable through, and in accordance with, the normal judicial system of the state. The nature of the problem is fundamentally different where the state or one of its branches or agents is complicit in or responsible for the commission of crimes violating the rights and freedoms of its own citizens. For if those responsible for upholding the law and protecting citizens show contempt both for judicial processes and for the rights and freedoms of citizens, there can be no guarantee of effective remedy through the existing mechanisms of the state. When the state or one of its agents violates or poses a grave threat to the rights and freedoms of citizens, then, it is appropriate to speak of a human rights violation.

2.4 Establishing Responsibility for "Disappearances"

Establishing responsibility for "disappearances" is difficult because, as a rule, the perpetrators attempt to conceal their own identities and the whereabouts of the victim. In the Philippines, military and paramilitary operatives often carry out "disappearances" late at night or in isolated locations which limit the chance that they will be identified. They may dress in plainclothes and drive unmarked vehicles thereby making more difficult any positive identification by witnesses. The

victims are sometimes taken to unofficial detention centres -- "safehouses" -- where their detention need not be formally registered. In other cases they are detained in military camps where access by families, lawyers, human rights activists or even government authorities may be effectively limited even if by law it should be permitted.

In spite of such difficulties there are at least four ways in which a plausible case for culpability may be established. First, and most simply, the perpetrators may be identified by clearly visible military insignia either on their uniforms or the vehicles they are driving. Second, the "disappeared" may be released or escape after a period in police or military custody. Third, the victim may be found dead in police or military custody. Finally, even where the perpetrators are not self-evidently members of a military or paramilitary unit, eyewitnesses may be able to identify one or more of them by name or to identify some piece of their property, such as a vehicle, a weapon or an article of clothing.

3. "DISAPPEARANCES" AND THE PHILIPPINE GOVERNMENT

3.1 Government Human Rights Initiatives

Since coming to power in 1986 the government of President Corazon Aquino has taken a number of measures aimed at promoting and protecting human rights. The government has acceded to the most important international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A variety of repressive Presidential Decrees promulgated during the regime of Ferdinand Marcos have been repealed, and the new Constitution ratified in 1987 provides substantial guarantees of fundamental civil and political rights. Human rights education has been included as a regular part of police and military training. In addition to an official Commission on Human Rights (CHR), established in 1987, a new Presidential Committee on Human Rights was established in late 1988 to "monitor the human rights situation in the country and to advise [the President] on the proper measures to be taken".

The government has also taken measures to address the specific problem of "disappearances". In 1988 the government announced the creation of a special task force to investigate some 400 outstanding cases of "disappearances", the majority of which had been reported during the Marcos years. At the same time the President announced the decision to designate city and provincial state prosecutors as "human rights coordinators" whose tasks would include helping relatives search for their missing kin in military and police camps and prisons. The government has cooperated with the United Nations Working Group on Enforced or Involuntary Disappearances by providing information on a substantial number of individual cases. On the invitation of the government a Working Group delegation visited the Philippines in August-September 1990. In January 1991, the Secretary of Justice Franklin Drilon reportedly ordered government prosecutors to coordinate with officials in camps and jails to locate persons reported to have "disappeared".

Government authorities have responded to some, though by no means all, of Amnesty International's inquiries regarding the fate or whereabouts of the victims of "disappearance". Amnesty International welcomes the government's cooperation in this respect. However, it regrets that, in general, the information provided is either of a non-substantive nature -- simply acknowledging the organization's concern -- or is based wholly on the findings of the Commission on Human Rights.

Amnesty International welcomes the steps taken by the Philippine Government to promote and protect human rights. However, it notes that despite the existence of institutional and legal safeguards and the government's often stated commitment to protect and promote human rights, serious human rights violations, including "disappearances" have continued in recent years.⁷ The United Nations

⁷ Other serious human rights violations in the Philippines, such as

Working Group on Enforced or Involuntary Disappearances has recorded 169 cases of "disappearance" from early 1986 to the end of 1990 and it believes that the true dimensions of the situation may be "much graver".

3.2 "Disappearances" in the Philippines -- The Pattern of Responsibility

In an overwhelming majority of the cases in 1990 in which there is clear and substantive evidence, the perpetrators of "disappearances" in the Philippines have been members of government or government-backed security forces. These forces include the Philippine Army (PA), the paramilitary Philippine Constabulary (PC), the official paramilitary auxiliary CAFGU (Citizens' Armed Forces Geographical Unit) and various semi-official "vigilante" groups operating with the support or acquiescence of police and military commanders.⁸

At least five of those who "disappeared" in 1990 are believed to have died or to have been killed while in the custody of government or government-backed forces, and at least 15 whose detention was initially denied subsequently reappeared after a period in police or military custody. In the case of those who remained missing at the end of the year there is also substantial evidence that the perpetrators were members of government or government-backed forces. Details of the fate of 25 of those who "disappeared" in 1990 are provided in Section 5 of this report.

Further evidence of the responsibility of government and government-backed forces is found in information compiled by Amnesty International on the fate of people reported to have "disappeared" in previous years. At least five people who reportedly "disappeared" in 1988 and 1989, and whose detention was originally denied by security forces, subsequently reappeared in or were released from police or military custody; they had been detained for periods ranging from one week to more than two months (see Appendix IV).

This pattern of government responsibility is corroborated by the findings of the United Nations Working Group on Enforced or Involuntary Disappearances. In its report dated January 1991, the Working Group noted that of the total of 595 cases of "disappearance" it had submitted to the Philippine government, only 80 had been clarified by government responses by late 1990. In the great majority of these cases (56) it was confirmed that the victims had once been or still remained in detention. Fifteen were reported to be dead, six were said to be at liberty, two had been located and identified and one was said to be living abroad.⁹ The Working Group concluded that "...most cases of "disappearance" are to be ascribed to members of the military, the police and vigilante groups. Under the present government CAFGUs and, to a lesser extent, civilian volunteer groups should be added."

In short, there can be little doubt that the practice of "disappearance" continues in the Philippines and that government and government-backed forces are principally responsible. Regrettably, the existing institutional and legal human rights safeguards and the government's stated commitment to

extrajudicial execution, torture and ill-treatment, and political imprisonment have been documented in recent Amnesty International reports including: Philippines: Unlawful Killings by Military and Paramilitary Forces (ASA 35/02/88); Philippines: Incommunicado Detention, Ill-treatment and Torture During 1988 (ASA 35/40/88); Philippines: A Summary of Amnesty International's Concerns (ASA 35/02/90).

⁸ The Philippines Constabulary officially ceased to exist in January 1991. In accordance with Republic Act 6975, the police services are to be reconstituted into a single force known as the Philippines National Police (PNP), under the authority of a reorganized Ministry of the Interior and Local Government. However, the PNP will continue to play an important role in counterinsurgency operations for some time.

⁹ Another 18 cases were clarified by non-governmental sources. Of these it was confirmed that 12 had once been or still remained in detention, three were at liberty and three were reported to be dead.

the protection of human rights, have not proved sufficient to prevent "disappearances" and other serious human rights violations. The next part of this report examines some of the reasons why.

4. POLITICAL, MILITARY AND LEGAL CONTEXT OF "DISAPPEARANCES"

"Disappearances" and other serious human rights violations including extrajudicial execution, torture and political imprisonment have occurred in the context of armed conflict between government forces and a number of armed opposition groups, principally the NPA. Amnesty International believes that certain aspects of government policy and military strategy have helped to create a context within which "disappearances" and other human rights violations are more likely to occur. It also believes that there are serious deficiencies in existing judicial and quasi-judicial procedures or remedies aimed at locating the "disappeared" and bringing the alleged perpetrators to justice and that by its acquiescence in and reliance upon these mechanisms the government has contributed indirectly to the problem of "disappearances".

Paramount among the elements of military and government policy which appear to contribute to the problem are two particular features of the counterinsurgency campaign: (i) the creation of and reliance on an ever-widening network of official and semi-official paramilitary forces in conducting the counter-insurgency campaign; (ii) the practice of public labelling or targeting of alleged critics and opponents of the government as "enemies" or NPA/ CPP sympathizers. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

The attitude of some government and military authorities toward reports of "disappearances" has frequently appeared dismissive or formalistic. Comments on the issue of "disappearance" addressed to international human rights bodies and to the media have given rise to questions about the sincerity of the government's efforts to resolve the problem and may have undermined the effectiveness of some of the other measures it has taken toward that end.

An additional factor contributing to the phenomenon of "disappearance" in the Philippines has been the failure to bring to justice members of government or government-backed forces responsible for such acts. Where members of government and government-backed forces are allowed to commit serious human rights violations with apparent impunity, the practice is bound to continue. The problem of impunity has emerged partly as a result of the preponderant influence wielded by the security forces in the formation of national policy in the Philippines and the substantial autonomy with which they are permitted to operate in the context of the counterinsurgency campaign. More concretely, Presidential Decree 1850 has effectively protected members of the security forces from prosecution in civil courts for human rights related offenses.

The problem of "disappearance" has been compounded by the ineffectiveness of existing legal and other remedies for the victims of "disappearance". Both the legal remedy of habeas corpus and the quasi-judicial remedy of filing a complaint with the CHR have been ineffective in relocating the "disappeared" and in preventing further "disappearances". Despite repeated studies by national and international human rights organizations -- including the 1990 report of the Philippine Senate Committee on Justice and Human Rights -- which have identified such deficiencies and offered various practical recommendations, the government has failed to implement significant changes.

In short, through its military and other policies the government has helped to create a climate conducive to the practice of "disappearance". Through its acquiescence in judicial and quasi-judicial procedures and institutions which have been shown to be ineffective in preventing "disappearances", locating those who have "disappeared" and bringing the alleged perpetrators to justice, the government has failed to meet its obligations under international law and has contributed to the problem of "disappearance".

4.1 Counter-insurgency and "Disappearance"

The military element of the government's counter-insurgency strategy has involved the use of regular Philippines Army (PA) forces, the paramilitary Philippines Constabulary (PC), auxiliary paramilitary units known as Citizens' Armed Forces Geographical Units (CAFGU) and semi-official armed groups or "vigilantes" that, while not provided for in law, often function in close cooperation with, or under the direct supervision of, official security forces.¹⁰ Each of these has been responsible for serious human rights violations including "disappearances".

The counter-insurgency strategy relies heavily on the use of a network of roughly 90,000 official and semi-official paramilitary forces which are in general poorly trained, poorly disciplined and possess only a rudimentary understanding of basic human rights and principles of law. Even if it were not the explicit intention of the government, the existence of such a large and undisciplined armed force operating in the climate of a civil war would inevitably increase the risk of serious human rights violations by those forces. The chance of abuse is greater still where, as is frequently the case in the Philippines, police and military authorities appear to encourage such forces to act outside the law in the name of national security. The authority which is given to such forces to carry out arrests increases the particular risk of "disappearances".

In addition to its primary goal of combatting armed opposition groups, the government's counter-insurgency campaign also involves efforts to weaken the organizational base of its legitimate civilian opponents. Dozens of lawful non-governmental organizations -- including human rights groups, church organizations, youth and student groups, farmers' organizations, labour unions and research institutes, among others -- have been publicly labelled by police and military authorities as "fronts" for the NPA and the CPP. These allegations have not been legally tested and they are denied by the organizations in question. In Amnesty International's view political labelling of this kind has invariably served to encourage government and government-backed forces to take precipitate actions, which have often involved serious human rights violations, against alleged or suspected government opponents by portraying them as legitimate "targets" in the government's full-scale war against armed rebels.

Recent Supreme Court rulings have expanded the power of security forces to carry out the arrest of suspected political opponents without a warrant issued by a competent judicial authority. The Supreme Court decision of 9 July 1990 (*Umil v. Ramos*, GR No.81567), for example, rules that any person may be arrested without a court order if s/he is suspected of involvement in the crimes of rebellion or subversion. The ruling is based on an argument that the crimes of rebellion and subversion are "continuing offenses", that those suspected of these crimes are therefore always in flagrante delicto and are consequently subject to arrest without warrant at any time. In view of the practice of "red-labelling" which has become common in the context of the counterinsurgency campaign, this decision would appear to increase the likelihood of the arbitrary arrest of legitimate civilian critics or opponents of the government and therefore to increase the risk of "disappearance".

4.2 Government and Military Attitudes to Reports of "Disappearance"

The nature of the public response by some government and military authorities to reports of "disappearance" has given rise to questions about the government's sincerity in addressing the problem of "disappearances" and may thereby have undermined the effectiveness of other measures it has taken. The government's position with respect to "disappearances" has often been characterized by denials and legalistic formulations which obscure the reality of the problem and diverge from the

¹⁰ Private armies are banned under Article XVI, Section 24 of the 1987 Constitution (see Appendix III).

evidence in important respects. Amnesty International believes that this posture on the part of the government has further undermined the effectiveness of the measures it has taken to prevent the practice of "disappearance" and to protect victims.

Both government and military authorities have attempted to discredit or dismiss reports of "disappearances". Senior military officers have claimed that the reports are part of a propaganda campaign by the political left to discredit the military. In November 1988, Brigadier-General Alexander Aguirre, then PC Capital Region Commander, reportedly said: "It could be that they voluntarily disappeared, or that people went underground. It appears also there is a pattern of [a] smear campaign, of making conclusions that the disappearances were caused by the military".

In its April 1989 report to the Human Rights Committee (ICCPR), the Philippine Government said that while the military were responsible for some "disappearances" others who "disappeared" may have done so "voluntarily": "...some people simply flee to the mountains and join the rebel groups or disappear in the Philippines only to be found in some other countries busy raising funds to overthrow the present government." The government report provided no examples.

In a communication to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1990, the Philippine Government said:

Unacknowledged detention under the present Government is well nigh impossible. The rules on the warrant of arrest are so restrictive that almost always arrests are made with warrants, except in cases where warrantless arrests are allowed by law. Upon detention after the arrest, the detainees must be booked; that is his/her detention is recorded. Denial by the detaining authorities of the detention of a person can be questioned by a petition for writ of habeas corpus.

This is an accurate account of what ought to happen according to Philippine law.¹¹ However, it ignores the regrettable reality that, in the Philippines, unacknowledged detention frequently does occur, that detentions are not always recorded and that, in practice, habeas corpus petitions are seldom effective in cases where the authorities deny holding the victim.

In the same communication the government noted that the Philippine Constitution (Section 12(2), Article III) provides that "...secret detention places, solitary, incommunicado or other similar forms of detention are prohibited". Similarly, in its April 1989 report to the Human Rights Committee (ICCPR), the government denied categorically the existence of "safehouses", citing the following as evidence:

The Commission [CHR] and its regional offices conducted an investigation and found none. Not satisfied with the investigation the Commission wrote a letter to the Secretary of National Defence and the Chief of Staff of the Armed Forces of the Philippines and received an assuring letter that gave me (sic) no safehouses.

Here again, Constitutional provisions and government assurances diverge from the reality. The evidence in this report shows that secret detention places are used by government and government-backed forces and that incommunicado detention continues to be practised.

In early 1991 a Philippine Government representative was reported to have recommended that the more than 500 victims of "disappearance" whose cases had not been clarified should simply be "presumed dead". According to reports the Chairman of the CHR supported this suggestion, saying that it would "clear our dockets of [former President] Marcos' human rights cases". Such an approach reflects an apparent lack of appreciation of the government's responsibilities with respect to

¹¹ It should be noted that recent Supreme Court decisions, mentioned in Section 4.1 above, have made the rules on warrants of arrest considerably less restrictive.

"disappearances". As the Working Group on Enforced and Involuntary Disappearances noted in its report of January 1991: "...the phenomenon [of "disappearance"] does not end as soon as the graph has reached the zero level. It persists until the last of the outstanding cases has been clarified."

4.3 The Problem of Impunity

With rare exception, human rights violations such as those described in this report have gone unremedied and unpunished in the Philippines. In Amnesty International's view, this has created the impression that the security forces, or at least a large part of them, are effectively beyond the reach of the law. Through its failure to bring to justice those responsible for "disappearances", the central government appears to condone the practice.

Despite the existence of penal sanctions for such crimes, Amnesty International does not know of a single police or military officer who has been convicted of an act leading to a "disappearance" since the current government came to power in 1986. In 1990 the government released a list of 43 members of the security forces who had purportedly been sentenced to prison terms for human rights related offenses. The information provided by the government was insufficient to determine whether the acts punished -- in most cases murder or homicide -- were in fact human rights violations as opposed to ordinary crimes. The list did show very clearly, however, that none of those named had been found guilty of crimes associated with "disappearance" -- kidnapping, arbitrary or illegal arrest.

Information supplied by the Philippine Ministry of National Defense to the U.N. Working Group on Enforced or Involuntary Disappearances conflicted with the government's own claim that 43 members of the security forces had been sentenced for human rights related offenses. The Ministry of Defense statistics on the status of human rights complaints which had been referred to the armed forces suggests, in fact, that as of 17 January 1990, no member of the armed forces had been convicted and sentenced to a prison term for a human rights related offence. According to the U.N. Working Group's summary of the Ministry of Defense information: "...of the 68 cases closed or terminated up to 17 January 1990, 15 were declared without merit, 10 with insufficient evidence; 10 were closed for lack of interest to prosecute; 4 were amicably settled; 6 were withdrawn due to death of respondent; 2 became moot and academic; in 3 cases the complainant executed an affidavit of desistance; in 8 cases persons were discharged from the service; in 3 cases the persons were demoted; in one case the person was reprimanded administratively and in 7 cases the persons were acquitted."

In its ten year review (dated January 1990) of the factors contributing to the phenomenon of "disappearances" worldwide, the U.N. Working Group on Enforced or Involuntary Disappearances drew particular attention to the problem of impunity:

Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past ten years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held to account before the law.

According to the U.N. Working Group the problem of impunity, or the general failure of government to bring the perpetrators of human rights violations to justice, is common where: 1) members of the security forces are tried in military rather than civil courts; and 2) where there has been a significant breakdown in the administration of civilian justice. In Amnesty International's view both of these conditions currently obtain in the Philippines. They are discussed in greater detail below.

4.3.1 Presidential Decree 1850

In the Philippines effective criminal investigation and prosecution of alleged human rights violations has been impeded by Presidential Decree 1850 (PD 1850). Promulgated by former President Marcos in 1982, the decree grants members of the security forces immunity from prosecution in civil courts, regardless of the nature of the offence committed. Effectively, this means that civil courts have no jurisdiction over cases involving human rights violations by members of the security forces.

In considering the factors contributing to the problem of impunity the Working Group on Enforced or Involuntary Disappearances, in its report of January 1991, made special the following reference to military courts:

...military courts contribute significantly to impunity. A recurrent theme in times of internal crisis or under the doctrine of national security is that military personnel attested to have engaged in gross misconduct against civilians hardly ever see their cases investigated in any rigorous manner. In the few cases which are brought to trial, they are almost invariably acquitted or given sentences that, by any standard, are grossly disproportionate to the crime committed. Subsequent promotions are even commonplace. The Working Group continues to be concerned about the widespread tendency to grant jurisdiction over human rights abuses to military courts.

Amnesty International regards PD 1850 as one of the most significant legal obstacles to the effective prosecution of members of the security forces for alleged human rights violations, not least because it contributes to the problem of impunity. It believes that the government's failure to repeal or significantly amend the decree contradicts the government's claim that it will not tolerate human rights violations by members of the security forces. It further believes that this failure contributes to a political climate in which widespread human rights violations are more likely to occur.

Parliamentarians and human rights lawyers in the Philippines have called repeatedly for the repeal or amendment of PD 1850. Yet to date, the Philippine Government has refused to do so. According to the government's own account, government inaction has been the result of pressure from the military authorities. Testifying before the Human Rights Committee (ICCPR) in April 1989, the Assistant Secretary for Human Rights and Humanitarian Affairs of the Department of Foreign Affairs explained the government's failure to repeal the decree in 1986 as follows:

Political considerations at that time prevailed, that is the strong objection of the Chief of Staff and the Secretary of National Defense who convinced the President that time was not ripe for its outright repeal.

In December 1989, immediately after the passage of an Emergency Powers Act promulgated following an attempted military coup, President Aquino vetoed Congressional legislation which would have repealed PD 1850. Although the main purpose of the bill was to return to civil courts jurisdiction over human rights violations constituting criminal offenses committed by soldiers and police, the issue of human rights was not mentioned in the President's explanation of her reasons for the veto. Instead, President Aquino cited the continued state of emergency to justify her decision, writing that: "The enrolled bill, which was approved by the House of Representatives on October 12, 1989 and by the Senate on October 18, 1989, did not take into account the recent violent December military-civilian rebellion."

The President also cited the advice of the Secretary of Defense and the Armed Forces Chief of Staff. She wrote: "I find good cause for the Secretary of National Defense and the Chief of Staff of the Armed Forces of the Philippines in recommending the veto of the enrolled bill". The Chief of Staff had argued that the proposed bill would have divested military courts of jurisdiction to try the military personnel involved in the attempted coup of December 1989. A number of Senators, however, argued

that the bill would not have had this effect, because it provided for acts of mutiny and sedition to remain under the jurisdiction of military courts.

An additional Marcos-era decree, PD 1822, empowers the President to waive PD 1850 in selected instances where she deems that it is appropriate for a military defendant to be tried in a civil court. President Aquino has exercised this power in a few notable cases -- including the "disappearance" of two former prisoners of conscience, Maximiano Mesina and Felix Dimitui, detailed in this report -- but on balance has appeared to bow to strong pressure from the military establishment not to waive, repeal or significantly amend PD 1850. Commenting on her veto of PD 1850, Senator Wigberto Tanada, the Chairman of the Senate Committee on Justice and Human Rights, said that it would "give credence to the growing concern that the President is already dominated by militarists and the military around her."

4.4 Ineffective Legal and Institutional Remedies

The January 1991 report of the Working Group cited "institutional paralysis" of the administration of civilian justice as an important factor contributing to the problem of impunity and therefore also to the phenomenon of "disappearance". In the Philippines, such paralysis has contributed both to the difficulty of relocating those reported to have "disappeared" and to the failure to bring suspected perpetrators to justice.

There are, in principle, ample legal and institutional remedies available in the Philippines providing for both the relocation of the "disappeared" and the criminal prosecution of the alleged perpetrators. These include: filing a petition for a writ of habeas corpus; filing a complaint with the Commission on Human Rights; and bringing criminal charges for kidnapping or arbitrary arrest against the alleged perpetrator(s). Unfortunately these remedies have proven to be largely ineffective in resolving both dimensions of the "disappearance" syndrome. In its January 1991 report on the Philippines, the Working Group noted that "...most of the remedies available to the families of disappeared persons were rendered ineffective by existing obstacles."

Where judicial or quasi-judicial remedies for locating or protecting the victims of "disappearance" are ineffective, international instruments and guidelines stipulate that it is the responsibility of the state to ensure that they are made to function properly.

Article 2(3) a) and b) of the ICCPR outlines the basic obligations of States Parties with regard to remedies for those whose rights or freedoms have been violated by agents of the state. As a party to the ICCPR the Philippine Government has undertaken to "...ensure that any person whose rights or freedoms...are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity".

The United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment is a standard against which to assess the treatment of detainees and provides states with guidelines for improving legislation and practice in this respect. Principles 11 and 32 are particularly relevant to the question of "disappearances" (see Appendix II). Principle 11 stipulates that "a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority". Principle 32(2) outlines the minimum standards for such legal remedies. It states that the proceedings shall be "...simple and expeditious and at no cost to the detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority."

4.4.1 Habeas Corpus

In the Philippines the pursuit of legal remedy in the case of "disappearance" is both cumbersome

and ineffective. Habeas corpus petitions have rarely been effective as a method of locating persons last seen in police or military custody. This ineffectiveness has been the consequence of at least three related factors: problems in existing judicial procedures, a lack of cooperation from police and military authorities and the fear of witnesses to testify.

In general the courts have failed to take prompt action to determine the whereabouts and legal status of unacknowledged detainees who are the subject of habeas corpus petitions or to rule firmly against military respondents in such cases. The reason lies, in part, in the fact that the courts have applied procedures in habeas corpus cases similar to those applied in ordinary criminal proceedings. This has frequently resulted in delays of several months in the hearing and resolution of cases; in at least recent one case a habeas corpus proceeding lasted for more than a year without effective resolution (see below).

The courts have also tended to apply standards of evidence similar to those in ordinary criminal proceedings. For example, there has been a tendency for the judiciary to act upon a presumption that the statements of law enforcement agencies must be accepted unhesitatingly, while at the same time dismissing the testimony of witnesses as insufficient proof of culpability. In effect the burden of proof has been placed upon the complainant. The courts have often failed to challenge the statements of law enforcement and military officials that are at odds with the body of independent testimonial and material evidence. Several Filipino jurists have attributed this court practice to a principle described as the "presumption of regularity" in official procedures and institutions.

A presumption of regularity of operation in a situation in which extralegal and covert acts have become a regular methodology for the security forces serves as a significant constraint on the use of those legal remedies which exist in the statute books to protect victims of "disappearance". It has meant, for instance, that where a petitioner cannot definitively prove that the victim is in the custody of a named respondent or where the respondent has simply denied having custody of the victim, the court has generally dismissed the case. This has been the norm even where eyewitnesses have provided testimony concerning the identity of the alleged perpetrators or their institutional affiliation.

The unwillingness of witnesses to testify in habeas corpus proceedings is frequently cited as an impediment to the successful resolution of "disappearance" cases. Amnesty International believes that witnesses to "disappearances" and other human rights violations in the Philippines have a well-founded fear of reprisals which in most cases keeps them from coming forward to testify. The procedural norms with regard to witnesses to detentions resulting in "disappearances" are such as to ensure their optimum exposure to observation and intimidation. Even when a purported eyewitness signs a sworn affidavit concerning the incident, the witness must take the initiative to appear before a court to repeat the statement. The initiative to invoke legal remedies and criminal investigation procedures normally falls to the family or colleagues of the victim. Even when sworn affidavits have been filed with the court to the effect that an unlawful arrest -- in effect a kidnapping -- has been carried out, with implicit or explicit threat to the life of the victim, the matter is not accorded any special priority by the courts.

Many of these problems have been evident in the case of Maria Nonna Santa Clara and Angelina Llenaresas who "disappeared" on 26 April 1989 and remained missing at the end of 1990. They were last seen in the custody of members of the military and the CAGU and were thought to be detained at Camp Bagong Ibalon in Legaspi City, but military authorities denied having them in custody. A petition for a writ of habeas corpus was filed on their behalf in May 1989 before a Regional Trial Court. Relatives of Maria Nonna Santa Clara, three lawyers working on the case and witnesses testifying at the habeas corpus proceedings, reportedly received death threats which they believed came from members of the military. The court submitted its findings, apparently in favour of the petitioners, in a report to the Supreme Court in July 1989. After a delay of more than six months, the Supreme Court finally resolved on 10 January 1990 to refer the matter back to the Commission on Human Rights (CHR) for further investigation, rather than issuing its own decision for or against the petition. (See ASA 35/23/89, ASA 35/24/89, ASA 35/37/89, ASA 35/11/90, ASA 35/02/90)

In Amnesty International's view, the application of such standards and procedures in habeas corpus hearings distorts and undermines the objective of this important legal remedy. Habeas corpus is a judicial mechanism intended to guarantee the liberty and security of a person in detention; it does not involve a decision on the substance of a criminal case. To be effective the process must be prompt and summary in nature. If the procedure results in long delays or if it requires standards of evidence which it is not in the power of the petitioner to supply, then the very nature of the habeas corpus petition has been distorted.

Commenting on obstacles to the effectiveness of habeas corpus, the Working Group on Enforced or Involuntary Disappearances wrote in its 1991 report:

As its success ultimately depends on willingness by the executive to provide information on a disappeared person, habeas corpus is rendered useless if co-operation stops at the barracks' gate. In addition, there are many examples of practical and legal obstacles to its effective use which Governments have seen no reason to remove or which they have purposely put into place. The Working Group feels deeply frustrated that, in this manner, habeas corpus remains virtually inoperative in situations of widespread disappearance. Affected Governments should engage in a systematic revision of habeas corpus procedures, repairing their deficiencies.

Amnesty International believes that, in view of the current ineffectiveness of the remedy in the Philippines, it is incumbent upon the government and the judiciary to undertake a thorough review of existing habeas corpus procedures.

4.4.2 The Commission on Human Rights (CHR)

The Commission on Human Rights (CHR) was established by Executive Order 163 in May 1987 as an independent office to investigate complaints of human rights violations. The CHR replaced the original Presidential Committee on Human Rights, established in March 1986, which effectively disbanded in January 1987 following an incident at Mendiola Bridge in which several demonstrators were shot dead by government forces. From the outset the CHR adopted a much broader definition of human rights than that envisioned by the Presidential Committee on Human Rights. In particular, it assumed responsibility for investigating complaints of "human rights violations" committed both by government and non-government forces.

The authority of the CHR with respect to legal remedy for victims of human rights abuse goes no farther than to make recommendations that a case be referred to the public prosecutors and the courts, to recommend to the President that PD 1850 be waived in specific cases, and to provide modest financial assistance to victims.

In Amnesty International's view the CHR has not been proven to be effective in: 1) providing immediate and effective protection to the complainants in human rights related cases; and 2) providing remedy, in the long term, by bringing to account those responsible for gross human rights abuse constituting criminal offenses under Philippine law. Its effectiveness has been impeded by certain limitations in its own methods of work and by a lack of full cooperation from the security forces.

CHR procedures for investigating alleged human rights violations ought to facilitate the prosecution of public authorities who carry out criminal abuses of human rights. Instead they represent an additional and often impenetrable obstacle to the already complex mechanism of criminal justice. The procedures establish a series of requirements which complainant and witnesses alike must fulfil, often at considerable personal risk, without offering any prospect of the form of remedy available in civil or criminal proceedings. The CHR has introduced quasi-judicial procedures without, in general, offering either the protection to complainants and witnesses that is within the powers of a

court of law, or the authority to see that justice is done. For example, it requires complainants and witnesses to provide public testimony, their names and addresses, and to appear repeatedly before hearings, often at considerable risk and personal expense. As such hearings do not either constitute a part of the criminal justice system or have legal validity in subsequent proceedings before the courts, a judicial remedy requires an entirely distinct procedure through which complainants and witnesses must again put their lives on the line.

The CHR's procedures mimic the judicial procedure through which two individuals of equal standing come before the law to seek arbitration or damages. Rather than to serve as Ombudsman or in another form as intermediary between the citizen and the institutions and agents of the state -- a friend in court for the individual wronged by the state -- the CHR procedure has introduced a false legal symmetry between the citizen and the state. It offers little to those who are powerless in their confrontations with the state and its agents beyond a forum in which to be heard (a provision that should not in itself be belittled). In doing so the CHR places the complainant in the position of a party to a private civil complaint who by reason of the complaint, finds himself on trial. Where the adversary is an individual exercising the power of the state, and it was in that capacity that the alleged abuse took place, there is little in this procedure to comfort the complainant.

Partly as a consequence of these procedures, witnesses and complainants, as well as their relatives and legal counsel, are routinely subjected to harassment, death threats and acts of violence by the named respondents or their agents. Although CHR officials recognize the seriousness of the problem and have reportedly set up a witness protection program, there is to date little evidence that it is operating effectively. Witnesses are therefore disinclined to take the risk of testifying before the CHR and as a consequence a large number of complaints are dismissed or "archived".

Another factor limiting the effectiveness of the CHR in providing remedy in cases of "disappearance" is the public perception that it lacks independence from the government and from the security forces. The CHR has often appeared to adopt uncritically the position of the government and the military with regard to "disappearances". Its chairman, for example, reportedly attributed the rise in reports of "disappearances" from late 1987 to the alleged internal purge of the CPP/NPA, known as "Operation Missing Link", despite substantial evidence of police and military responsibility. In September 1989, she is reported to have said that "Operation Missing Link":

...could be the explanation because the military says they don't pick up these people. As a military strategy, I cannot see the use of the disappearance of these people. It would be to the disadvantage of the military... Who could benefit from a constant exposure of these alleged disappearances? It is propaganda that the leftists can really use against the military.

Statements of this sort have done little to dispel the notion, as expressed by a member of the Philippine Congress, that the CHR acts as a "mouthpiece of the military". Such a perception undoubtedly undermines the CHR's effectiveness as a remedy for the victims of "disappearance" and other human rights violations.

Victims and witnesses of human rights violations as well as their legal representatives have also questioned the thoroughness of CHR investigations. Amnesty International's own observations in the field tend to support the conclusion that CHR investigations, with some commendable exceptions, are all too often a bureaucratic formality. In many cases, CHR officials fail to carry out on-site investigations at all, relying instead on the reports of other organizations or on information provided by government or military authorities. Investigations are frequently stopped and cases "archived" at the smallest indication of resistance from the authorities or where a key witness has failed to come forward to testify. Yet it is precisely in these circumstances that the CHR ought to exert its authority, for example, to overcome official non-cooperation or to ensure that witnesses feel free to testify without fear of reprisal.

On the positive side, the CHR's 12 regional offices do provide some measure of protection to

victims and to their representatives. Particularly in remote areas, where local non-governmental human rights organizations are themselves under threat, the CHR may provide the only mechanism through which complaints are put on the public record and through which a procedure of inquiry, however cumbersome, is set in motion. The extent to which the CHR provides a function of protection depends greatly, however, on the personal qualities and commitment of its regional personnel.

5. CASE STUDIES OF "DISAPPEARANCE" -- 1990

This section details the fate of 25 people who are reported to have "disappeared" during 1990. Their stories illustrate and provide substantive evidence of the general pattern of "disappearance" described earlier in this report. Included here are the cases of three people who died or were killed in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

These case studies reveal some of the common features of "disappearances" in the Philippines. Many of these "disappearances" were carried out late at night or in isolated locations, thereby limiting the chance of identification. The perpetrators generally dressed in plainclothes and drove unmarked vehicles, making positive identification by witnesses more difficult. Some of the victims were taken to unofficial detention centres -- "safehouses" -- where their detention was not formally registered. In other cases they were detained in military camps where access by families, lawyers, human rights activists or even government authorities was denied even if by law it should have been permitted.

In virtually every case documented here there is clear evidence that government or government-backed forces were responsible for the victim's "disappearance". In most cases the relatives or colleagues of the victim spent anxious weeks or months in search of their loved ones. Many made use of the available procedures and remedies -- including petitions for writs of habeas corpus and filing complaints with the CHR -- but with rare exception their efforts were to no avail. In several cases, these efforts resulted in the relatives, witnesses and others involved in the search for the "disappeared", themselves becoming targets of death threats and intimidation by members of the security forces.

"Disappearances" occurred virtually throughout the country but they were most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including parts of Negros, Mindanao, Samar and Central Luzon. The majority of the "disappeared" were members of lawful non-governmental organizations -- including human rights groups, church organizations, youth and student groups, farmers' organizations, trade unions and research institutes -- alleged by the authorities to be "fronts" for the outlawed CPP and NPA, or individuals suspected of having links to the NPA or CPP. Among them were people whose work on behalf of the victims of the war, or of the socially and economically disadvantaged, took them into areas of suspected rebel activity.

5.1 Those Who Reappeared in Custody

The government has noted, correctly, that some people reported as "disappeared" have later reappeared. Amnesty International always welcomes such news. However, contrary to the government's contention that such reappearances cast doubt on the accuracy of the original reports, most such cases actually confirm that the victims were held for some period in unacknowledged military or police custody.

Amnesty International has documented at least 15 cases during 1990 in which the "disappeared" have subsequently reappeared after a period in police or military custody. A number of those who reappeared were formally released from custody, some escaped and still others remained in police or military custody after their illegal detention was acknowledged. Amnesty International also knows of

at least six similar cases from 1989 which are noted in Appendix IV.

Soledad MABILANGAN and Alita BONA

Soledad Mabilangan and Alita Bona, both aged about 22, were detained on 10 March 1990 by members of the security forces in sitio Tubigan, barangay Paranas, Wright, Samar province. Alita was three months pregnant. Military authorities repeatedly denied their detention for over six weeks, but in late April the women were found to be in military custody at the headquarters of the 802nd IB. To Amnesty International's knowledge they remained in custody, without charge, at the end of the year.

Soledad Mabilangan and Alita Bona were reportedly arrested between 1pm and 2pm on 10 March 1990 in sitio Tubigan by armed men believed to be CAFGU members or soldiers attached to the Charlie Company of the army's 52nd Infantry Battalion (IB) based in barangay Casandig. The women had walked from barangay Capul to Tubigan to buy rice at the weekly market there. An eyewitness saw two women in the custody of soldiers in sitio Tubigan at about 2pm the same day. Other witnesses said they had seen two women walking under military escort on the road to the 802nd Infantry Battalion headquarters. These witnesses refused to provide sworn testimony, apparently from fear of military reprisals.

Leanita Mabilangan, Soledad's mother, learned of her daughter's detention four days later through a community leader in Tubigan. She enquired after the whereabouts of her daughter and Alita Bona at Camp Lukban (the headquarters of the army's 8th Infantry Division), at a detachment of the army's 34th IB and at the Charlie Company of the 52nd IB. Authorities in each place denied having the women in custody.

On 27 March Leanita Mabilangan filed a complaint with the CHR and on 6 April CHR officials officially requested information on the whereabouts of the two women from the commander of the 8th Infantry Division. Military authorities acknowledged receipt of the communication but provided no substantive response to the request for information. Two weeks later officials from the CHR received unofficial information - a rumour - that the women were detained at the 802nd IB headquarters, in barangay Bagaca, Samar, and went immediately to search for her there. The acting commander of the camp refused to comment on the whereabouts of the two women and told the CHR officials to return on 23 or 24 April. A special investigator from the CHR who visited the camp on 24 April was threatened at gunpoint by a soldier and denied access.

On 26 April 1990 two CHR officials, an Amnesty International delegation and relatives of Soledad Mabilangan visited the camp and found the two women in custody. Military officials at the camp claimed that Soledad Mabilangan and Alita Bona were held "voluntarily", although they alleged that they and their families were well-known members of the NPA. The camp commander said that the women had not been charged and that they would be released if their husbands -- alleged to be NPA members -- "turned themselves in". The authorities also admitted that no attempt had been made to inform the women's families of their arrest, even when they knew that Soledad Mabilangan's relatives had inquired about their whereabouts at several military installations. According to reports, the women were taken from their cell and hidden when visitors came to the camp.

In a private talk, Soledad Mabilangan and Alita Bona explained that they had not been physically ill-treated in the camp. But they had been encouraged to collaborate with the army's counter-insurgency effort and threatened with prosecution for association with the guerrilla movement if they did not cooperate. They said they had been interrogated about their relatives' alleged connection with the NPA and made to sign affidavits under duress. In one of these they agreed to act as CAFGU informants upon their release. One of the women expressed their special fear that if their husbands were seized or killed while they were in secret detention, they would themselves have almost certainly been killed.

Helen TREMBEVILLA

Helen Trembevilla "disappeared" on 24 July 1990. Military authorities in the area initially denied holding her, but in September they informed Amnesty International that she had been in military custody during July and August; she was released on 17 August. Helen Trembevilla is a member of Fathers and Relatives against Tyranny and Repression, an organization set up to support the relatives of victims of human rights abuses and the girlfriend of a former political detainee who was released in 1989 following the dismissal of charges against him.

Helen Trembevilla was detained shortly after being discharged from the Corazon Locsin Montelibano Memorial Hospital in Bacolod on 24 July 1990. She had been treated there for injuries suffered when soldiers from the 66th IB opened fire at her house on 7 July 1990, believing that members of the NPA were inside the house. As she left the hospital with her parents, eyewitnesses said that men in civilian clothes believed to be members of the 66th IB approached and asked Helen to go with them for questioning. The men told her parents to go ahead and meet them in Kabankalan. However, Helen Trembevilla did not appear at the arranged meeting place and has not been seen since.

Helen Trembevilla's relatives and staff from the Bacolod office of a national human rights organization inquired after her whereabouts at the Negros Island Command, the military base which covers the whole of Negros island, as well as at the 301st Brigade based in Hinigaran, and the 66th IB in Kabankalan. Her custody was denied at all these establishments.

In September 1990 military authorities in Negros Occidental province informed Amnesty International that Helen Trembevilla had in fact been held in military custody at Kabankalan, Negros Occidental. She was released from detention on 17 August and, to Amnesty International's knowledge, no charges were filed against her. (See ASA 35/22/90 and ASA 35/03/91)

Rosario LODRONIO

Rosario Lodronio, aged 30, was reportedly abducted on 18 December 1990. She was arrested by three armed men in military uniforms from her uncle's house in barangay San Benito, Victoria, Laguna province. Military authorities denied that Rosario was being held in custody, but on 22 December she was released from the 202 Infantry Brigade of the Philippines Army at Lumban in Laguna province.

The reasons for Rosario Lodronio's arrest are unclear, but the authorities are believed to have suspected here of being the wife of a commander of the Southern Tagalog district of the NPA. (See ASA 35/30/90 and ASA 35/31/90)

5.2 Those Who Died or Were Killed in Custody

Felipe "Wilson" LEONIDAS

Felipe "Wilson" Leonidas, aged 27, was reportedly detained in Manila by armed men believed to be members of the armed forces. His detention was initially denied by military authorities, but he was subsequently found hanged in his cell in a military camp. He was an active member of the KPML (Kongreso ng Pagkakaisa ng Maralita sa Lunsod), an organization working on behalf of the poor in urban areas.

Felipe "Wilson" Leonidas, aged 27, was detained in Santa Cruz, Manila on 22 February 1990 at a restaurant where he had gone with two friends after participating in an anti-U.S. bases rally organized by the National Movement for Civil Liberties. According to eyewitness reports, approximately six armed men in plainclothes came into the restaurant and pointed a gun at Wilson Leonidas after a young man with them said, "Yes, it's him". He was dragged outside to a waiting vehicle which then drove off to an unknown destination. Another armed man was left behind preventing others from following. Wilson Leonidas was heard shouting for help as he was taken away. His relatives searched for him at local police stations, hospitals and military detention centres, but his custody was denied by the authorities.

On 27 or 28 February, "Wilson" arrived at the home of relatives escorted by members of the Military Intelligence Group (MIG) from Camp Bago Bantay in Pag Asa, Quezon City, Manila. He reportedly told his relatives that he had signed a "surrender paper" and had decided to cooperate with the military. On 1 March the military informed Wilson's sister that "Wilson" had hanged himself in his cell.

Felipe "Wilson" Leonidas had been held in detention by the MIG, thus confirming previous reports that the armed men in plain clothes who abducted him on 22 February were members of the military forces.

Relatives filed an official complaint with the Commission on Human Rights on 6 April 1990. In a case report dated September 1990, the CHR said that an autopsy showed that the cause of death was "asphyxia by hanging" but there was no conclusive evidence that the victim had committed suicide. The report also indicated either that military authorities at Camp Bago Bantay had been uncooperative or that the CHR had not performed its duty with sufficient energy. The report reads: "CHR investigators exerted efforts to confer with [the commanding officer] regarding the circumstances of the death of Felipe. Unfortunately, he was not available at that time." According to the report, there were plans to subpoena military authorities but to Amnesty International's knowledge this had not occurred by the end of the year. (See ASA 35/06/90)

Efren CONCEPCION, Nicolas LOPEZ, Reynaldo SANTOS and Roberto LOPEZ

Efren Concepcion, Nicolas Lopez and Reynaldo Santos "disappeared" after they were detained by members of a joint military and paramilitary force on 11 February 1990 in barangay San Sebastian, Hagonoy municipality, Bulacan province. Roberto Lopez, a construction worker and the son of Nicolas Lopez, "disappeared" in a separate incident on 15 February 1990 after he was detained by armed men in barangay San Agustine, Hagonoy municipality, Bulacan province.

Efren Concepcion was reportedly beheaded by his captors on or before 13 February 1990. Nicolas and Roberto Lopez said they were spared execution because they pretended to be willing to join the CAFGU. Both later escaped from the "safehouse" where they were detained after witnessing the beheading of Efren Concepcion. The whereabouts of Reynaldo Santos were not known at the end of the year.

Efren Concepcion, Nicolas Lopez and Reynaldo Santos were reportedly detained by members of a special unit called the "Special Task Force Anti-Illegal Fish Pond", organized by the PC Provincial Commander. The unit is said to be made up of CAFGU members, "rebel-returnees" (former NPA guerrillas who have come over to the government side) and elements of the Integrated National Police (INP). Members of this unit were reportedly responsible for the arrest and ill-treatment of others in Hagonoy municipality suspected of being NPA members or sympathizers. All three men were members of BANGKALIS, a fisherman's organization in Bulacan. Efren Concepcion was provincial Vice-Chairman of BANGKALIS and General Secretary of KAMPI, the west-Bulacan district chapter of ALLMA, a human rights organization in Bulacan province.

Efren Concepcion was reportedly taken from his house by soldiers at about 3 am in the morning and beaten. Neighbours and relatives reportedly heard him crying out in pain before he was taken away. Nicolas Lopez and Reynaldo Santos, who had been staying at the house of Efren Concepcion, were taken away separately. Relatives and human rights advocates inquired after them at the Provincial PC Command in Malolos, but the authorities there denied having them in custody. It is believed that they were detained in a "safehouse" owned by a CAFGU member in barangay Santa Cruz, which also served as a local CAFGU headquarters.

Roberto Lopez was reportedly detained by two armed men, believed to be police officers, on 15 February in Mababang Lupa, barangay San Augustine, Hagonoy, Bulacan province. Witnesses said the armed men, at least one of whom they identified by name as a police officer, smashed his head against a cement wall and threatened him with a hand gun before tying him up "like a pig". He was then forced into a waiting Ford Fierra jeep which bore INP insignia and taken to the municipal jail. Shortly afterwards he was removed to a house used by the Special Task Force as an unofficial detention centre. Witnesses believed that the two armed men belonged to the Special Task Force thought to be responsible for the 11 February "disappearances" mentioned above. Roberto Lopez' wife and mother inquired after him at the local police headquarters and at the PC Provincial Command in Malolos, but the authorities denied having him in custody. He later escaped from custody. (See ASA 35/07/90 and ASA 35/10/90)

Nestor LOBERIO and Diomedes "Desi" ABAWAG

Nestor Loberio, aged 25, the project director of SAFDI (Samar Assistance for Farmers Development Inc.), a lawful non-governmental organization involved in livelihood projects for poor farmers in Samar, has not been seen since he and Diomedes Abawag, a SAFDI staffworker, were detained by armed men believed to be members of a military intelligence "death squad" on 29 January 1990 in Catbalogan, Samar province.

Diomedes Abawag is thought to have been tortured and beheaded by his captors. His head, reportedly bearing signs of torture, including a deep slash in the lower lip, facial bruises and a hole in the right temple, was found in the sea by fishermen near barangay Butaena, Zumarraga, Samar province, on 1 February 1990. The fishermen reported the discovery to the police in Catbalogan.

The men who detained Nestor Loberio and Diomedes Abawag are believed to be members of a "death squad" called "Banagan", allegedly set up by the Military Intelligence Group of Region 8 (MIG 8) based at Camp Lukban, Catbalogan. The majority of "Banagan" members are thought to be former "vigilantes" from the San Miguel area, Leyte province.

Diomedes Abawag and Nestor Loberio were reportedly detained at about 6 pm in San Francisco Street, Catbalogan, Samar. In a sworn statement, an eyewitness said that the two men were "dragged forcefully" into a maroon-coloured jeep with no number plates, which was waiting in front of an automotive shop. The jeep then drove off in the direction of Ubanon district, Catbalogan province.

On 4 February, two headless bodies, possibly those of the two men above, were found; one in barangay Iquid, Catbalogan, and another in San George Poblacion, Samar. However, Amnesty International could not confirm that these were the bodies of Nestor Loberio and Diomedes Abawag. (See ASA 35/08/90 and correction)

5.3 Those Who Are Still Missing

Maximiano "Jun" MESINA and Felix DIMITUI

Maximiano "Jun" Mesina and Felix Dimitui, two former prisoners of conscience, have not been seen since they were arrested by armed men believed to be members of the 181st PC Company on 2 January 1990. Their detention has been denied by the Provincial PC Command and their whereabouts remain unknown. A petition for habeas corpus filed by relatives on their behalf on 5 January 1990 was denied on 26 January.

Maximiano Mesina, Press Relations officer of the Alyansa ng Magbubukid sa Gitnang Luzon (AMGL), Alliance of Farmers in Central Luzon, and Felix Dimitui, AMGL staff member, were arrested between 11.30 and 12.00 in the morning of 2 January 1990 in Tarlac, Tarlac province. Witnesses said that the two men were walking near a bus terminal when they were detained by armed men in civilian clothes led by a PC sergeant whom witnesses identified as a member of the 181st PC company, based in Camp Makabulos.

On the same day, a group comprising local leaders of AMGL, workers from the local branch of the human rights organization Task Force Detainees (TFD), as well as relatives of Maximiano Mesina and Felix Dimitui, went to the PC provincial headquarters at Camp Makabulos to inquire after their whereabouts. Their detention was denied. On the following day, 3 January, the group met the PC Assistant Provincial Commander at Camp Makabulos and were told that the two had not been arrested and that the PC sergeant who had been identified was away from the camp and could not be reached. Efforts by the Provincial Governor to locate the PC sergeant were also said to have proved unsuccessful.

On 26 January a petition for habeas corpus was filed in the Tarlac Regional Trial Court, Branch 65. The petition was denied for two reasons. First, the court rejected the sworn statement of an eyewitness who refused to testify in person for fear of reprisals. Second, according to the judge, a criminal procedure was more appropriate for the case. The judge argued:

If the persons alluded to in this petition has (sic) been the victims of illegal arrest or detention, they can have recourse to criminal action...The only issue that can be ventilated in a habeas corpus proceedings (sic) is whether or not a person, detained, arrested or restrained of his liberty is entitled to release. (G.R. No. 91456, F.D. et. al. v. Fidel V. Ramos et. al. Decision of January 26, 1990).

Charges of kidnapping were subsequently filed against the alleged perpetrators and in March 1990 relatives appealed to the President to waive PD 1850. According to reports this appeal was successful and the case will be heard before a civil court. (See ASA 35/01/90)

Maximiano Mesina and Felix Dimitui were among 18 people arrested in March 1989 at the AMGL offices in San Fernando, Pampanga province, and adopted by Amnesty International as prisoners of conscience (see ASA 35/25/89, The Arrest and Imprisonment of 18 Activists in Pampanga Province). They were charged with subversion and the illegal possession of weapons and held in custody until September 1989, when the court ruled that there was insufficient evidence against them. Amnesty International is particularly concerned at their arrest and "disappearance" so soon after their release from six months' imprisonment on charges which were found to be groundless.

Antonio BUENAVISTA

Antonio Buenavista, 42, has not been seen since 7 January 1990 when he was taken from his home in barangay Santa Cruz, Hagonoy, Bulacan province, by five armed men in civilian clothes believed to be connected with the 171st Company of the PC.

According to eyewitnesses, Antonio Buenavista was dragged from his home at about 7pm on 7 January. His abductors wore masks and were armed with four automatic weapons (three M-16s, one M-14 and one .45 revolver). When he tried to resist by holding onto a piece of furniture in the house, one of the men shot him in the arm with an M-14 rifle forcing him to release his grip. Outside the

house, he was struck on the back of the head with a rifle butt and knocked unconscious before being put into a waiting white car. When his wife, Esther Buenavista, began to call for help, one of the armed men reportedly shouted "Shut up you bitch. Come any closer and we'll kill you!" One of the men shot at her but reportedly missed because his gun was pushed by her son Jesus Buenavista. Following the shooting, the two ran for safety and sought help from the barangay captain who helped them report the case to the Mayor and the police in the municipality of Hagonoy.

Relatives inquired after Antonio Buenavista's whereabouts at the 171st Company of the PC in Malolos, and at other military and police detachments, but authorities denied having him in their custody.

There were indications of a link between the perpetrators and military and paramilitary authorities in the area. Two days after the incident, the suspected perpetrators were reportedly seen, bearing arms, at a detachment of the 171st PC Company in barangay Santa Cruz. After the incident they were reportedly seen in the barangay, still armed, and fraternizing with military personnel. On the night of the incident, the white car driven by the perpetrators was reportedly seen in front of the Hagonoy Municipal Hall. Residents of nearby Barrio Mercado reported that the same car was seen leaving the neighbourhood at dawn on the morning of the next day, 8 January. Barrio Mercado is the site of a CAFGU detachment under the command of the 171st PC Company.

A petition for habeas corpus was filed on behalf of Antonio Buenavista before the Regional Trial Court (RTC) on 16 January 1990, but it was dismissed. The reasons for the dismissal are not known. According to witnesses, the respondents in the case were present at the hearings bearing arms and two-way radios. Charges of kidnapping and illegal possession of firearms were also filed against the alleged perpetrators, and on 23 April the RTC issued warrants for their arrest. However, according to residents of barangay Santa Cruz, the suspects continued to roam freely in the community, still fully armed, after the warrants had been issued. (See ASA 35/14/90)

Amelia TENA

Amelia Tena, 22, is a member of the Kabataan para sa Demokrasya at Nasyonalismo (KADENA), the Youth for Democracy and Nationalism. She was last seen on 26 May 1990, in Victoria, Laguna province in the custody of armed men believed to be members of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) and a local CAFGU member.

According to reports, the public passenger jeep in which Amelia Tena was travelling collided with a Ford Sierra at between 10am and 11am on 26 May in barangay Masapang, Victoria, Laguna. An eyewitness said that several armed men forced Amelia Tena to leave the jeep and get into the Ford Sierra, which then drove off. After the arrest a witness was reportedly able to identify two of the men by name; however, the witness subsequently went into hiding for fear of reprisals by the security forces. Since the abduction, military authorities in the Laguna region have consistently denied that she is being held in custody.

On 7 June 1990, a relative reported having received two letters. The first, apparently from an ISAFP officer, invited her to meet him at a designated time and place. The relative did not go to the meeting for fear of herself becoming a victim of abduction, particularly as the letter instructed her to attend alone. The second letter was apparently from Amelia Tena herself. It instructed the relative to attend a court hearing of the case of eight political prisoners who, the letter said, would have news of Amelia Tena's whereabouts and the conditions of her detention. The relative attended the hearing but the defendants said they knew nothing of the "disappeared" person.

In January 1991 an eyewitness reportedly testified before the CHR that she had seen Amelia Tena in the custody of soldiers at Los Banos in June 1990. The witness said that Amelia Tena and other detainees had been obliged to address a military seminar at about that time. She also testified that Amelia Tena had been transferred from one "safehouse" to another since her arrest in May 1990.

Allan GITANES

Allan Gitanes, a farmer aged 20, was last seen on 30 April 1990 in the custody of soldiers belonging to the 28th Infantry Battalion (IB) of the Philippines Army.

His "disappearance" followed the evacuation in late April of more than 300 families from rural areas near the town of San Augustine in Surigao del Sur province, where government forces were conducting military operations against the NPA. Several government soldiers were reportedly killed and more than ten taken prisoner during an armed encounter between government troops and NPA guerrillas on 18 April 1990; the situation of the captured soldiers is not known.

According to relatives, Allan Gitanes returned to the family farm in Janipaan, San Augustine, on 30 April in order to collect some food and to check possessions which had been left behind during the evacuation. He failed to return to the evacuation centre that evening. An eyewitness reported on 3 May that he had seen Allan Gitanes, with his hands tied, being taken into the municipal hall in San Augustine at about 8pm on 30 April. The eyewitness said that he was escorted by soldiers of the 28th IB.

Relatives inquired after his whereabouts at the headquarters of the 28th IB, but the authorities there denied having him in custody. They also inquired at the headquarters of the 401st IB where an officer denied any knowledge of Allan Gitanes but promised to assist the family in locating him.

Bonifacio SABANAL, Rufino SABANAL, Mamerto LUPICIO

Bonifacio Sabanal (19), Rufino Sabanal (40) and Mamerto Lupicio (25), all members of the Federation of Internal Refugees in Negros, "disappeared" shortly after their arrest on 6 July by military officers from the Alpha Company, 61st IB and CAFGU members under its command. The military authorities reportedly accused the men, two of whom were recent evacuees, of being couriers for the NPA, an allegation denied by their relatives.

According to eyewitnesses, the three were detained in barangay San Antonio, Himamaylan at about 3.30pm on 6 July, while on their way to help a relative harvest his crops. On 9 July, relatives went to the detachment of the 61st IB in barangay Carabalan, Himamaylan, to inquire after their whereabouts. They were told that the three had been released on the evening of 7 July, and that two local Council members had witnessed the signing of the release papers. According to one report, however, the three men were seen on 8 July at the 61st IB headquarters. The three were said to be "kneeling and pleading" before CAFGU members and to bear signs of having been ill-treated.

Relatives filed a petition for a writ of habeas corpus before the Regional Trial Court of Negros Occidental, at Himamaylan on 10 July 1990. According to reports, the petition was dismissed because the military respondent claimed the three had been released. (See ASA 35/24/90)

In August and September Sister Aquila Sy, a well-known human rights and community activist who had helped relatives search for the three men, received death threats believed to emanate from organizations backed by military and local government authorities. Hundreds of leaflets were reportedly distributed in parts of Negros Occidental inciting acts of violence against Sister Aquila Sy and other religious workers and accusing them of sympathizing with the NPA. (See ASA 35/23/90)

Edmundo CARIAS

Edmundo Carias, 22, "disappeared" after being taken from his house in Davao City on 8 August 1990 at approximately 1am by members of the military Intelligence Security Operations Group (ISSOG).

According to Edmundo Carias' 60-year-old mother, Vicenta, they were both awakened after midnight on 8 August by the barking of dogs and the sound of thudding on the doors of their home. Three armed men burst into their bedroom and ordered Edmundo Carias to hold his hands up. The men, who are alleged to have said they were "the authorities", handcuffed him and dragged him out of the house. When his mother tried to accompany him she was pushed away. She said that other military units were involved in the arrest but she could not identify them.

Some hours later, Vicenta went to look for her son at the ISSOG office but was told he was not there. On 10 August she was informed by the ISSOG's commanding officer that Edmundo was alive but under investigation. Some soldiers at the office reportedly warned a woman who had accompanied Vicenta Carias that she would "also" be considered an NPA member if she continued to accompany Vicenta Carias. There was no formal acknowledgment of Edmundo Carias' arrest.

On 14 August, Vicenta Carias filed a writ of habeas corpus before the 11th Regional Trial Court (Branch 15). The petition was heard on 17 August. The respondents denied having arrested or detained Edmundo Carias and his current whereabouts are unknown. (See ASA 35/25/90)

Jimmy BADAYOS

Jimmy Badayos, aged 34, has not been seen since he was taken into custody by military intelligence officers in Cebu City on 3 October 1990. He was held incommunicado for five days before the military authorities claimed that he had escaped from detention.

According to eye-witnesses, Jimmy Badayos was arrested at his home in sitio Kabulakan, Go Chan Subdivision, Banawa, Cebu City, by members of the Intelligence Division (M2) of the Cebu Metropolitan District Command (Metrodiscom) at about 4am on 3 October. He was interrogated briefly, then taken to the Metrodiscom Headquarters at Camp Sotero Cabahug, accompanied by his wife and two children. He is reported to have been taken first to the office of the Chief of the Intelligence Division, and later to a small room in a logistics building, believed to be used for interrogation.

On 8 October a petition was filed for a writ of habeas corpus before Branch XVI of the Regional Trial Court in Cebu, but the military respondents did not appear in court. When the hearing resumed on the following day, the authorities said that Jimmy Badayos had escaped from an interrogation room at Metrodiscom Headquarters at about 1.40am on 4 October. The court apparently accepted this explanation and rejected the petition for habeas corpus.

Jimmy Badayos is believed to have been accused of being a member of the NPA. During his detention in Camp Sotero Cabahug, the camp was reportedly under heavy guard (red alert) due to an uprising by renegade soldiers in the nearby island of Mindanao. There was no report prior to the court hearing that civilian prisoners had escaped from the closed camp and no evidence was presented to the court to substantiate the claim that Jimmy Badayos had escaped. (see ASA 35/26/90)

Pedro BULALACAO

Pedro Bulalacao, 38, leader of an urban poor organization Katipunan ng Samahang Makabayan (KASAMA), has not been seen since he was detained on 17 June 1990 by two men believed to be members of the police.

According to an eyewitness, Pedro Bulalacao was detained by two men in civilian clothing as he crossed Roxas Boulevard in Pasay City, Metro Manila, at about 5.15pm on 17 June. The men reportedly took him to a group of waiting vehicles, where he was held and punched. The eyewitness said a man who alighted from a light blue Toyota with registration plate number NAW-541 placed handcuffs and a blindfold on Pedro Bulalacao before putting him into a white car.

The white car then drove off, followed by the Toyota, a passenger jeep and a red car. Relatives and colleagues from KASAMA reportedly inquired after his whereabouts at a number of security forces establishments, including the headquarters of the Pasay City police, the Western Police District Headquarters, and Camp Crame, a military camp in the area. Custody of Pedro Bulalacao was denied by all these authorities.

Neighbours reported that police officers from Pasay City had been to Pedro Bulalacao's home at about 3pm the same day, but had not found him because he was at a park in Libertad where he often spent Sunday afternoons teaching karate. (See ASA 35/18/90)

Josefa PADCAYAN, Marcelo BAWAGAN and Arnel HIDALGO

Josefa Padcayan, aged 36, Marcelo Bawagan and Arnel Hidalgo have been held in secret, incommunicado detention since 16 November 1989. The three were last seen in the custody of members of the 17th Infantry Battalion of the Philippine Army (IB PA), in Zinundungan Valley, Cagayan province. While military officials acknowledged in November 1989 that the three had been detained, all access to the prisoners has been denied, and the three remain unaccounted for, more than one year after they were arrested.

During November 1989 the Zindungan area had been the site of intensive military operations against the NPA. Josefa Padcayan, a community health worker and a former government nurse, was

on her way to deliver relief goods to affected villages in the Zindungan valley when she and her two companions were reportedly arrested without warrant by military officers.

Relatives of Josefa Padcayan, together with local priests and human rights workers, tried to locate the three at the local military barracks. They were told by officials that they had been taken from Piat to Santo Nino and then to Alcala, Cagayan Province. The commanding officer of the 17th IB PA acknowledged in the presence of the victims' lawyer, a local priest and two workers from the Cagayan office of a national human rights organization that the three had been arrested. However, access to the three was not granted.

Since the arrests, a petition was filed for a writ of habeas corpus and, after several postponements, the case was heard twice -- in February and March 1990. On both occasions the result was inconclusive as certain participants failed to appear in court. A third hearing in June 1990 was also inconclusive. The court has persistently failed to exercise its right to visit the detention facilities at the 17th IB army base to establish the circumstances of the three prisoners or to rule on the legality of the incommunicado detention. (See ASA 35/21/90)

6. CONCLUSIONS AND RECOMMENDATIONS

"Disappearances" have occurred against the background of armed conflict between government forces and the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). They have been most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including large parts of Central Luzon, Negros, Samar and Mindanao. The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by members of the security forces as fronts for the NPA and CPP.

Despite the existence of elaborate legal and institutional safeguards for the protection of human rights in the Philippines, Amnesty International believes that certain aspects of government policy and military strategy -- in particular aspects of the counterinsurgency campaign -- have helped to create a context within which "disappearances" and other human rights violations are more likely to occur. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

Senior government and military authorities have been reluctant to acknowledge responsibility for "disappearances" claiming instead that they are the work of the NPA and CPP or that the "disappeared" have simply gone into hiding. Amnesty International acknowledges that a small number of people reported to have "disappeared" in previous years may have been detained by opposition forces. It stresses, however, that this does not in any sense alter the government's responsibility with respect to investigating all cases of alleged enforced "disappearance" and bringing those responsible to justice. The government's responsibility is a matter both of immediate practical concern -- relocating the "disappeared" person, identifying the perpetrators and stopping the pattern of "disappearance" -- and of principle arising out of international law.

The available remedies for locating the "disappeared" and bringing the suspected perpetrators to justice have so far proven to be ineffective. Petitions for writs of habeas corpus filed with the courts have seldom led to the reappearance or release of the "disappeared". The government-backed Commission on Human Rights (CHR), hampered by limitations in its terms of reference and methods of work and by a lack of full cooperation from military authorities, has had limited success in locating the "disappeared". Presidential Decree 1850 constitutes an important legal obstacle to the effective prosecution of members of the security forces suspected of responsibility for "disappearances" and other human rights violations. Through its acquiescence in and reliance on judicial and quasi-judicial procedures and institutions which have been shown to be ineffective in preventing "disappearances", locating those who have "disappeared" and bringing the alleged perpetrators to justice, the government has failed to meet its obligations under international law and has, in Amnesty International's view, contributed to the problem of "disappearance".

Amnesty International recognizes that some people reported as "disappeared" may reappear in a matter of weeks or months, but it stresses that their reappearance after a period in unacknowledged military custody does not in any sense diminish the seriousness of the violation. Nor does it necessarily call into question the validity of the original report; to be "disappeared" means simply to be held in unacknowledged, incommunicado detention by government or government-backed forces. The reappearance, alive, of all of the "disappeared" held in secret government custody is Amnesty International's objective.

6.1 Recommendations to the Philippine Government

Amnesty International has welcomed the Philippine Government's ratification of major

international human rights treaties, such as the International Covenant on Civil and Political Rights and other steps it has taken to address the problem of "disappearances". It emphasizes, however, that the terms of these treaties are binding on the government to provide effective human rights protection, not only in principle but in practice. Despite the existence of institutional and legal safeguards for the protection of human rights in the Philippines and the government's often stated commitment to the protection of human rights, "disappearances" and other serious violations continue to occur.

Amnesty International offers the following specific recommendations which, if implemented, it believes would strengthen existing human rights guarantees, and would in particular help to prevent future "disappearances".

To contribute to the creation of a political climate in which "disappearances" are less likely to occur, Amnesty International urges the government:

1. to initiate prompt and impartial investigations to clarify the whereabouts or fate of all those reported to have "disappeared" regardless of when or where the "disappearance" occurred;
2. to ensure strict control, including a clear chain of command, over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as over all officials authorized to use force and firearms;
3. to ensure that Constitutional provisions prohibiting the maintenance of private armies are upheld and enforced;
4. to undertake a thorough review of the use of official and semi-official paramilitary forces in the conduct of the counter-insurgency campaign;
5. to prohibit explicitly the public political labelling of alleged government opponents by government authorities and by members of government or government-backed security forces.

To ensure that arrest and detention procedures provide guarantees against the occurrence of "disappearances", Amnesty International calls on the government:

6. to guarantee that judicial and quasi-judicial bodies shall be granted access to all places of detention where a detainee is suspected of being held;
7. to enforce the legal/constitutional prohibition of incommunicado detention or the use of unofficial places of detention;
8. to establish and maintain centralized public registers of all persons detained in all parts of the country, to be updated on a daily basis and made available to family members, magistrates, attorneys and other authorities.
9. to establish similar registers at each place of detention throughout the national territory;

To ensure that members of government or government-backed security forces are not free to commit violations of human rights with impunity, Amnesty International calls on the government:

10. to bring promptly to justice members of government and government-backed security forces where there is evidence of their responsibility for or their participation in an act leading to

"disappearances";

11. to repeal Presidential Decree 1850, or until such time as it is repealed, to ensure that the jurisdiction of military courts is waived in all cases involving "disappearances" and other grave human rights violations.

**To ensure the effectiveness of judicial and quasi-judicial remedies in cases of Amnesty
International calls on the government:**

12. to review existing judicial procedures with respect to petitions for habeas corpus with a view to ensuring its optimal effectiveness as a remedy in cases of "disappearance";

13. to establish a practical and affordable witness protection program to ensure that complainants, witnesses and those conducting investigations into human rights related cases shall be protected from violence, threats of violence or any other form of intimidation;

14. to enact legislation to ensure that those implicated in "disappearances" or other human rights violations shall be removed from positions of power or control, whether direct or indirect, over complainants, witnesses and their families, and investigators;

15. to undertake a thorough review of the Commission on Human Rights, its terms of reference, procedures and methods of work.

APPENDIX 1

Excerpts from the International Covenant on Civil and Political Rights (ICCPR)

Article 2

(3) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

Article 6

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7 states in part:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9

(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

APPENDIX II

Excerpts from the United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment

Principle 11

- 1.** A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
- 2.** A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
- 3.** A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 32

- 1.** A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
- 2.** The proceedings referred to in paragraph 1 shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such an inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

APPENDIX III Excerpts from the 1987 Constitution of the Philippines

Article III - The Bill of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Section 12.

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Section 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Section 18.

(1) No person shall be detained solely by reason of his political beliefs and aspirations.

Section 19.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Article XVIII -- Transitory Provisions

Section 24.

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 into the regular force.

APPENDIX IV

Reappearances After a Period in Police or Military Custody: Examples from 1988 and 1989

Flaviano RUDAS

Flaviano Rudas reportedly "disappeared" in Concepcion, Mindanao province, in June 1988. The Mayor of Dipolog, Mindanao, claimed in October 1989 that Flaviano Rudas "was never apprehended nor detained for any crime". However, in December 1989 Rudas' parents executed an affidavit stating that he had been "invited by the military for investigation" on 25 June, but that he had subsequently been released and was alive and working in Manila. Amnesty International welcomed information from government and other sources that Flaviano Rudas had reappeared, but noted that this information confirmed that he had been in military custody, despite denials of this at the time of his "disappearance". (See ASA 35/21/88)

Elmer REYES

Elmer Reyes "disappeared" after being detained by unidentified armed men in Manila on 7 September 1988. His family failed to locate him at several local police stations and military detachments. On 15 September 1988, a Philippines Air Force Intelligence unit acknowledged having Reyes in custody and released him four days later. (See ASA 35/29/88 and ASA 35/31/88)

Apolinar PABRICIO

Apolinar Pabricio was reportedly detained in Laguna on 8 February 1989 by personnel of the 16th Infantry Battalion (IB), but military authorities denied having him in custody. In March 1989, he was seen inside the 16th IB camp, and there were reports that he had been ill-treated. Military authorities claimed that he had surrendered voluntarily, then released him from custody at the end of March 1989. (See ASA 35/02/89, ASA 35/05/89 and ASA 35/19/89)

Belen TABAMO

Belen Tabamo "disappeared" after her arrest in Laguna on 10 February 1989 by members of the 16th IB. One month later she was located at the 16th IB detachment in Magdalena where she had reportedly been subjected to death threats and other forms of ill-treatment. She was acquitted of charges of frustrated murder and illegal possession of firearms and reportedly released on 12 September 1989.

In February 1990, the government reported: "Investigators from the Commission on Human Rights (CHR) who visited Ms. Tabamo found no evidence of alleged physical torture inflicted on her". However, the government statement was conspicuously silent on the subject of her "disappearance" while held in unacknowledged detention for one month by military forces. It also failed to consider the evidence that Belen Tabamo had suffered serious mental anguish as a consequence of the death threats to which she was reportedly subjected while in detention. (See ASA 35/01/89, ASA 35/04/89, ASA 35/07/89 and ASA 35/18/89)

Carlos VINA

Carlos Viña "disappeared" after he was detained by armed men who entered his house in Tudela, Misamis Occidental, on 13 April 1989. His family failed to locate him at several military detachments. On 22 June 1989, he was released from military custody. Military authorities claimed that Carlos Viña had been "rescued" from attack by a military operation on 8 June, but he denied this in an interview with a human rights organisation. (See ASA 35/14/89 and ASA 35/20/89)

AMNESTY INTERNATIONAL

PHILIPPINES "DISAPPEARANCES" IN THE CONTEXT OF COUNTERINSURGENCY

FEBRUARY 1991 SUMMARY INDEX: ASA 35/05/91
DISTR: SC/CO/GR

More than 50 people, most of them alleged critics or opponents of the government, were reported to have "disappeared" in the Philippines during 1990. At least five of the "disappeared" are believed to have died or to have been killed while in custody and some appeared to have been tortured. At least 15 whose detention had been denied by security forces in 1990 subsequently reappeared after a period in police or military custody. The majority were still missing at the end of the year and there was concern for their safety.

In an overwhelming majority of the cases in which there is clear and substantive evidence, the perpetrators have been members of government or government-backed security forces. These forces include the Philippine Army (PA), the paramilitary Philippine Constabulary (PC), the official paramilitary auxiliary CAFGU (Citizens' Armed Forces Geographical Unit) and various semi-official "vigilante" groups operating with the support or acquiescence of military commanders.

This report describes a pattern of enforced "disappearances" in the Philippines during 1990 and provides details of the fate some of those who reportedly "disappeared". It outlines the political, military and legal context within which "disappearances" have occurred and examines the effectiveness of existing domestic remedies for relocating the "disappeared" and for bringing the perpetrators to justice. The report also provides details of the fate of 25 victims of "disappearance", including three who died or were killed in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

"Disappearances" and other serious human rights violations including extrajudicial execution, torture and political imprisonment have occurred in the context of armed conflict between government forces and a number of armed opposition groups, principally the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by the security forces as fronts for the NPA and CPP, or individuals suspected of NPA or CPP membership.

Amnesty International believes that, notwithstanding the government's stated commitment to the protection of human rights and the existence of legal and institutional guarantees for this purpose, there are aspects of government and military policy which have helped to create a climate within which "disappearances" and other human rights violations are more likely to occur. Paramount among these are two features of the counterinsurgency campaign: (i) the creation of and reliance on an ever-widening network of official and semi-official paramilitary forces in conducting the counterinsurgency campaign; and (ii) the practice of public labelling or targeting of alleged critics

and opponents of the government as "enemies" or NPA/CPP sympathizers. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

Existing legal and institutional mechanisms for the protection of human rights have in practice proved ineffective in resolving past cases of "disappearance" and in preventing the continuation of the practice. Judicial remedies, such as habeas corpus have systematically failed to locate those who have "disappeared" in military custody. The national Commission on Human Rights, hampered by deficiencies in its procedures and methods of work, has not been effective in locating the "disappeared" or in ensuring that the suspected perpetrators are brought to justice.

An additional factor contributing to the phenomenon of "disappearance" in the Philippines has been the failure to bring to justice members of government or government-backed forces responsible for such acts. Where members of government and government-backed forces are allowed to commit serious human rights violations with apparent impunity, the practice is bound to continue. The problem of impunity has emerged partly as a result of the considerable influence wielded by the security forces in the formation of national policy in the Philippines and the substantial autonomy with which they are permitted to operate in the context of the counterinsurgency campaign. Presidential Decree 1850 has effectively protected members of the security forces from prosecution in civil courts for "disappearances" and other human rights related offenses.

Despite repeated studies by national and international human rights organizations -- including the 1990 report of the Philippine Senate Committee on Justice and Human Rights -- which have identified such deficiencies and offered various practical recommendations, the government has failed to implement significant changes. Through its acquiescence in and reliance on legal and institutional procedures which have been shown to be ineffective at locating the "disappeared", bringing the alleged perpetrators to justice and preventing further "disappearances", the government has failed to meet its obligations under domestic and international law and has, in Amnesty International's view, contributed to the problem of "disappearance".

This summarises a 37-page document, Philippines: "Disappearances" in the Context of Counterinsurgency (AI Index: ASA 35/05/91), issued by Amnesty International in February 1991. Anyone wanting further details or to take action on this issue should consult the full document.

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EXTERNAL (for general distribution)AI Index:ASA 35/05/91
Distr:SC/CO/GR

Amnesty International
International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

FEBRUARY 1991

PHILIPPINES "DISAPPEARANCES" IN THE CONTEXT OF COUNTER-INSURGENCY

1. INTRODUCTION

More than 50 people, most of them alleged critics or opponents of the government, were reported to have "disappeared" in the Philippines during 1990. At least five of the "disappeared" are believed to have died or to have been killed while in custody and some appeared to have been tortured. At least 15 whose detention had originally been denied by security forces in 1990 subsequently reappeared after a period in police or military custody. The majority were still missing at the end of the year and there was concern for their safety.

This report describes a pattern of enforced "disappearances" in the Philippines during 1990 and provides details of the fate of some of those who reportedly "disappeared". It outlines the political, military and legal context within which "disappearances" have occurred, highlighting certain aspects of government policy and military strategy which, in Amnesty International's view, have contributed to the phenomenon of "disappearance". It examines the effectiveness of existing domestic remedies for relocating the "disappeared" and for bringing the perpetrators to justice. The report also provides details of 25 victims of "disappearance", including three who died or were killed while in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

"Disappearances" have occurred against the background of armed conflict between government forces and the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). They have been most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including parts of Central Luzon, Negros, Samar and Mindanao. The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by the security forces as fronts for the NPA and CPP or individuals suspected of NPA or CPP membership.

Amnesty International believes that, notwithstanding the government's stated commitment to the protection of human rights, there are aspects of government and military policy -- in particular aspects of the counterinsurgency campaign -- which have helped to create a climate within which human rights violations, and particularly "disappearances", are more likely to occur. It also believes that there are serious deficiencies in existing judicial and quasi-judicial procedures or remedies aimed at locating the "disappeared" and bringing the alleged perpetrators to justice. By its acquiescence in and reliance upon these mechanisms the government has failed to fulfil its responsibilities under domestic and international law and has, in Amnesty International's view, contributed to the problem of

"disappearances".

2. THE "DISAPPEARANCE" PHENOMENON

2.1 What is a "Disappearance"?

A person has "disappeared" when s/he has been deprived of liberty against his or her will by any government official or by organized groups or private individuals believed to act on behalf of, or with the permission, support or acquiescence of the government.¹²

The fate of the "disappeared" is by definition unknown because the arresting authorities refuse to acknowledge that the arrested person is in their custody and may in fact attempt to conceal his or her whereabouts. A detainee who has "disappeared" is effectively denied protection under the law; the right to be promptly informed of the reasons for their arrest. Moreover, when people are held in unacknowledged, secret detention, the risk of their being ill-treated, tortured or killed is increased.

Such risks are especially great when detention occurs in the context of a national emergency or during a counter-insurgency campaign. Under these circumstances, normal legal procedures are likely to be weakened or ignored by the authorities. The protection of human rights may, in practice, be undermined by, or subordinated to, the exigencies of national security. Those responsible for such violations may come to feel free to commit human rights violations with impunity.

The phenomenon of "disappearance" also causes grave suffering to the families of the victims. Denied knowledge of the fate of their relatives, they may spend months or years in a fruitless search for them. Their anxiety, and that of eyewitnesses or others involved in the search, is often heightened by a fear of coming forward to testify or give evidence to the authorities. In many cases, the fear is justified; relatives, witness and lawyers are frequently subjected to threats or actual physical assault by members of the security forces.

2.2 State Responsibilities With Respect to "Disappearances"

Each case of "disappearance" violates or poses a grave threat to a number of specific fundamental rights articulated in the International Covenant on Civil and Political Rights (ICCPR). These include the right to life (Article 6.1), the right to be free from torture or cruel, inhuman or degrading treatment (Article 7), and the right to recognition as a person before the law (Article 16); all of these rights are non-derogable even in times of national emergency. Other rights infringed may include the rights to liberty and security of person, to be free from arbitrary arrest and detention (Article 9.1), and the right of a detained person to challenge the legality of their detention before the courts (Article 9.4).¹³

Countries like the Philippines which have acceded to the ICCPR have a special obligation under international law to ensure that these rights and freedoms are effectively protected.¹⁴ According to Article 2 (3) a) and b) of the ICCPR, it is the responsibility of the state to ensure that judicial or quasi-judicial remedies are available to the victims of human rights violations and that those remedies are effective.

The ICCPR also has force in Philippines national law. Under its 1987 Constitution, the country adopted "...the generally accepted principles of international law as part of the law of the land..."

¹² This is the definition adopted by the United Nation's Working Group on Enforced or Involuntary Disappearances.

¹³ See Appendix I for passages from the ICCPR relevant to the obligations of States Parties in relation to "disappearances".

¹⁴ The ICCPR entered into force in the Philippines in January 1987. The President signed the Optional Protocol to the ICCPR in July 1987.

(Section 2 Article II, 1987 Constitution). In response to a question from the Human Rights Committee¹⁵ in April 1989 concerning this section of the Constitution, the Philippine Government representative stated clearly that "the provisions of the Covenant [i.e. the ICCPR] can be invoked before and directly enforced by Philippine courts and appropriate bodies." Finally, it may be noted that the rights and freedoms enumerated in the ICCPR are also enshrined in the Philippine Bill of Rights, Article III of the Constitution.¹⁶

Other international human rights instruments, such as the United Nations Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment, also establish standards against which to assess the behaviour of states with regard to various human rights violations as well as guidelines for the improvement of their legislation and practice.¹⁷ If these principles were effectively implemented, many human rights violations including "disappearances" would be less likely to occur. They recommend, *inter alia*: that all reports of alleged "disappearance" be investigated in good faith by a judicial or other body and that the results of such investigations be made public; and that the legal and other remedies available for the relocation of persons who have "disappeared" and the prosecution of the suspected perpetrators be ensured to be effective.

15 The Human Rights Committee is an international body of 18 experts established under the ICCPR to monitor implementation of that treaty. In this report it will be referred to as the Human Rights Committee (ICCPR) to distinguish it from the national Presidential Human Rights Committee.

16 See Appendix III for excerpts the 1987 Philippine Constitution.

17 See Appendix II for passages from the United Nations Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment which are relevant to the phenomenon of "disappearances".

2.3 State Responsibilities in the Context of Armed Opposition

Government and military authorities sometimes claim that opposition forces are responsible for "disappearances". In the Philippines the government has alleged that some of those who "disappeared" in late 1988 and early 1989 were abducted or killed in an internal purge of the banned Communist Party of the Philippines (CPP) and its armed wing the New People's Army (NPA). Citing captured CPP documents and the testimony of certain "rebel-returnees", the military has said that Pearl Abaya, Lili Mercado and Efren Bonagua, three of the more than 50 people who reportedly "disappeared" in 1988, had been abducted by the NPA.

Amnesty International acknowledges that a small number of those reported to have "disappeared" in previous years in the Philippines, including some of those mentioned above, may have been abducted by opposition forces. It stresses, however, that this does not in any sense alter the government's responsibility with respect to investigating all cases of alleged enforced "disappearance" and bringing those responsible to justice. The government's responsibility is a matter both of immediate practical concern -- relocating the "disappeared person, identifying the perpetrators and stopping the pattern of "disappearance" -- and of principle arising out of international law.

In practice it is only through the prompt and impartial investigation of all reported "disappearances" that there can be any hope of locating the victim, bringing the perpetrators to justice and perhaps preventing future "disappearances". If a government fails to investigate reported "disappearances" on the grounds that they might have been committed by opposition forces or because the identities of the perpetrators are not immediately known, it demonstrates a lack of interest in all of these objectives. By doing so it effectively condones the practice of "disappearance", which may lead to its perpetuation.

Armed opposition can present governments and security forces with particular difficulties which raise issues of principle with respect to international law. Governments bear the responsibility of protecting their citizens from violent crime and for bringing those responsible to justice. In doing so, however, they must ensure that fundamental human rights are respected. As noted above, under international human rights law, certain fundamental rights must be upheld by governments at all times and in all circumstances. However widespread and violent the armed opposition groups, these can never provide a justification for governments to retreat from or ignore their obligations to respect such fundamental human rights. Indeed, in Amnesty International's view, it is precisely in such contexts of armed opposition that fundamental human rights need to be protected with extra vigilance.

States bear a unique and solemn responsibility to uphold the law and to ensure that the rights and freedoms of their citizens are protected. Acts of violence or other abuses committed by criminal elements or armed opposition groups are crimes which are punishable through, and in accordance with, the normal judicial system of the state. The nature of the problem is fundamentally different where the state or one of its branches or agents is complicit in or responsible for the commission of crimes violating the rights and freedoms of its own citizens. For if those responsible for upholding the law and protecting citizens show contempt both for judicial processes and for the rights and freedoms of citizens, there can be no guarantee of effective remedy through the existing mechanisms of the state. When the state or one of its agents violates or poses a grave threat to the rights and freedoms of citizens, then, it is appropriate to speak of a human rights violation.

2.4 Establishing Responsibility for "Disappearances"

Establishing responsibility for "disappearances" is difficult because, as a rule, the perpetrators attempt to conceal their own identities and the whereabouts of the victim. In the Philippines, military and paramilitary operatives often carry out "disappearances" late at night or in isolated locations which limit the chance that they will be identified. They may dress in plainclothes and drive unmarked vehicles thereby making more difficult any positive identification by witnesses. The

victims are sometimes taken to unofficial detention centres -- "safehouses" -- where their detention need not be formally registered. In other cases they are detained in military camps where access by families, lawyers, human rights activists or even government authorities may be effectively limited even if by law it should be permitted.

In spite of such difficulties there are at least four ways in which a plausible case for culpability may be established. First, and most simply, the perpetrators may be identified by clearly visible military insignia either on their uniforms or the vehicles they are driving. Second, the "disappeared" may be released or escape after a period in police or military custody. Third, the victim may be found dead in police or military custody. Finally, even where the perpetrators are not self-evidently members of a military or paramilitary unit, eyewitnesses may be able to identify one or more of them by name or to identify some piece of their property, such as a vehicle, a weapon or an article of clothing.

3. "DISAPPEARANCES" AND THE PHILIPPINE GOVERNMENT

3.1 Government Human Rights Initiatives

Since coming to power in 1986 the government of President Corazon Aquino has taken a number of measures aimed at promoting and protecting human rights. The government has acceded to the most important international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A variety of repressive Presidential Decrees promulgated during the regime of Ferdinand Marcos have been repealed, and the new Constitution ratified in 1987 provides substantial guarantees of fundamental civil and political rights. Human rights education has been included as a regular part of police and military training. In addition to an official Commission on Human Rights (CHR), established in 1987, a new Presidential Committee on Human Rights was established in late 1988 to "monitor the human rights situation in the country and to advise [the President] on the proper measures to be taken".

The government has also taken measures to address the specific problem of "disappearances". In 1988 the government announced the creation of a special task force to investigate some 400 outstanding cases of "disappearances", the majority of which had been reported during the Marcos years. At the same time the President announced the decision to designate city and provincial state prosecutors as "human rights coordinators" whose tasks would include helping relatives search for their missing kin in military and police camps and prisons. The government has cooperated with the United Nations Working Group on Enforced or Involuntary Disappearances by providing information on a substantial number of individual cases. On the invitation of the government a Working Group delegation visited the Philippines in August-September 1990. In January 1991, the Secretary of Justice Franklin Drilon reportedly ordered government prosecutors to coordinate with officials in camps and jails to locate persons reported to have "disappeared".

Government authorities have responded to some, though by no means all, of Amnesty International's inquiries regarding the fate or whereabouts of the victims of "disappearance". Amnesty International welcomes the government's cooperation in this respect. However, it regrets that, in general, the information provided is either of a non-substantive nature -- simply acknowledging the organization's concern -- or is based wholly on the findings of the Commission on Human Rights.

Amnesty International welcomes the steps taken by the Philippine Government to promote and protect human rights. However, it notes that despite the existence of institutional and legal safeguards and the government's often stated commitment to protect and promote human rights, serious human rights violations, including "disappearances" have continued in recent years.¹⁸ The United Nations

¹⁸ Other serious human rights violations in the Philippines, such as

Working Group on Enforced or Involuntary Disappearances has recorded 169 cases of "disappearance" from early 1986 to the end of 1990 and it believes that the true dimensions of the situation may be "much graver".

3.2 "Disappearances" in the Philippines -- The Pattern of Responsibility

In an overwhelming majority of the cases in 1990 in which there is clear and substantive evidence, the perpetrators of "disappearances" in the Philippines have been members of government or government-backed security forces. These forces include the Philippine Army (PA), the paramilitary Philippine Constabulary (PC), the official paramilitary auxiliary CAFGU (Citizens' Armed Forces Geographical Unit) and various semi-official "vigilante" groups operating with the support or acquiescence of police and military commanders.¹⁹

At least five of those who "disappeared" in 1990 are believed to have died or to have been killed while in the custody of government or government-backed forces, and at least 15 whose detention was initially denied subsequently reappeared after a period in police or military custody. In the case of those who remained missing at the end of the year there is also substantial evidence that the perpetrators were members of government or government-backed forces. Details of the fate of 25 of those who "disappeared" in 1990 are provided in Section 5 of this report.

Further evidence of the responsibility of government and government-backed forces is found in information compiled by Amnesty International on the fate of people reported to have "disappeared" in previous years. At least five people who reportedly "disappeared" in 1988 and 1989, and whose detention was originally denied by security forces, subsequently reappeared in or were released from police or military custody; they had been detained for periods ranging from one week to more than two months (see Appendix IV).

This pattern of government responsibility is corroborated by the findings of the United Nations Working Group on Enforced or Involuntary Disappearances. In its report dated January 1991, the Working Group noted that of the total of 595 cases of "disappearance" it had submitted to the Philippine government, only 80 had been clarified by government responses by late 1990. In the great majority of these cases (56) it was confirmed that the victims had once been or still remained in detention. Fifteen were reported to be dead, six were said to be at liberty, two had been located and identified and one was said to be living abroad.²⁰ The Working Group concluded that "...most cases of "disappearance" are to be ascribed to members of the military, the police and vigilante groups. Under the present government CAFGUs and, to a lesser extent, civilian volunteer groups should be added."

In short, there can be little doubt that the practice of "disappearance" continues in the Philippines and that government and government-backed forces are principally responsible. Regrettably, the existing institutional and legal human rights safeguards and the government's stated commitment to

extrajudicial execution, torture and ill-treatment, and political imprisonment have been documented in recent Amnesty International reports including: Philippines: Unlawful Killings by Military and Paramilitary Forces (ASA 35/02/88); Philippines: Incommunicado Detention, Ill-treatment and Torture During 1988 (ASA 35/40/88); Philippines: A Summary of Amnesty International's Concerns (ASA 35/02/90).

¹⁹ The Philippines Constabulary officially ceased to exist in January 1991. In accordance with Republic Act 6975, the police services are to be reconstituted into a single force known as the Philippines National Police (PNP), under the authority of a reorganized Ministry of the Interior and Local Government. However, the PNP will continue to play an important role in counterinsurgency operations for some time.

²⁰ Another 18 cases were clarified by non-governmental sources. Of these it was confirmed that 12 had once been or still remained in detention, three were at liberty and three were reported to be dead.

the protection of human rights, have not proved sufficient to prevent "disappearances" and other serious human rights violations. The next part of this report examines some of the reasons why.

4. POLITICAL, MILITARY AND LEGAL CONTEXT OF "DISAPPEARANCES"

"Disappearances" and other serious human rights violations including extrajudicial execution, torture and political imprisonment have occurred in the context of armed conflict between government forces and a number of armed opposition groups, principally the NPA. Amnesty International believes that certain aspects of government policy and military strategy have helped to create a context within which "disappearances" and other human rights violations are more likely to occur. It also believes that there are serious deficiencies in existing judicial and quasi-judicial procedures or remedies aimed at locating the "disappeared" and bringing the alleged perpetrators to justice and that by its acquiescence in and reliance upon these mechanisms the government has contributed indirectly to the problem of "disappearances".

Paramount among the elements of military and government policy which appear to contribute to the problem are two particular features of the counterinsurgency campaign: (i) the creation of and reliance on an ever-widening network of official and semi-official paramilitary forces in conducting the counter-insurgency campaign; (ii) the practice of public labelling or targeting of alleged critics and opponents of the government as "enemies" or NPA/ CPP sympathizers. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

The attitude of some government and military authorities toward reports of "disappearances" has frequently appeared dismissive or formalistic. Comments on the issue of "disappearance" addressed to international human rights bodies and to the media have given rise to questions about the sincerity of the government's efforts to resolve the problem and may have undermined the effectiveness of some of the other measures it has taken toward that end.

An additional factor contributing to the phenomenon of "disappearance" in the Philippines has been the failure to bring to justice members of government or government-backed forces responsible for such acts. Where members of government and government-backed forces are allowed to commit serious human rights violations with apparent impunity, the practice is bound to continue. The problem of impunity has emerged partly as a result of the preponderant influence wielded by the security forces in the formation of national policy in the Philippines and the substantial autonomy with which they are permitted to operate in the context of the counterinsurgency campaign. More concretely, Presidential Decree 1850 has effectively protected members of the security forces from prosecution in civil courts for human rights related offenses.

The problem of "disappearance" has been compounded by the ineffectiveness of existing legal and other remedies for the victims of "disappearance". Both the legal remedy of habeas corpus and the quasi-judicial remedy of filing a complaint with the CHR have been ineffective in relocating the "disappeared" and in preventing further "disappearances". Despite repeated studies by national and international human rights organizations -- including the 1990 report of the Philippine Senate Committee on Justice and Human Rights -- which have identified such deficiencies and offered various practical recommendations, the government has failed to implement significant changes.

In short, through its military and other policies the government has helped to create a climate conducive to the practice of "disappearance". Through its acquiescence in judicial and quasi-judicial procedures and institutions which have been shown to be ineffective in preventing "disappearances", locating those who have "disappeared" and bringing the alleged perpetrators to justice, the government has failed to meet its obligations under international law and has contributed to the problem of "disappearance".

4.1 Counter-insurgency and "Disappearance"

The military element of the government's counter-insurgency strategy has involved the use of regular Philippines Army (PA) forces, the paramilitary Philippines Constabulary (PC), auxiliary paramilitary units known as Citizens' Armed Forces Geographical Units (CAFGU) and semi-official armed groups or "vigilantes" that, while not provided for in law, often function in close cooperation with, or under the direct supervision of, official security forces.²¹ Each of these has been responsible for serious human rights violations including "disappearances".

The counter-insurgency strategy relies heavily on the use of a network of roughly 90,000 official and semi-official paramilitary forces which are in general poorly trained, poorly disciplined and possess only a rudimentary understanding of basic human rights and principles of law. Even if it were not the explicit intention of the government, the existence of such a large and undisciplined armed force operating in the climate of a civil war would inevitably increase the risk of serious human rights violations by those forces. The chance of abuse is greater still where, as is frequently the case in the Philippines, police and military authorities appear to encourage such forces to act outside the law in the name of national security. The authority which is given to such forces to carry out arrests increases the particular risk of "disappearances".

In addition to its primary goal of combatting armed opposition groups, the government's counter-insurgency campaign also involves efforts to weaken the organizational base of its legitimate civilian opponents. Dozens of lawful non-governmental organizations -- including human rights groups, church organizations, youth and student groups, farmers' organizations, labour unions and research institutes, among others -- have been publicly labelled by police and military authorities as "fronts" for the NPA and the CPP. These allegations have not been legally tested and they are denied by the organizations in question. In Amnesty International's view political labelling of this kind has invariably served to encourage government and government-backed forces to take precipitate actions, which have often involved serious human rights violations, against alleged or suspected government opponents by portraying them as legitimate "targets" in the government's full-scale war against armed rebels.

Recent Supreme Court rulings have expanded the power of security forces to carry out the arrest of suspected political opponents without a warrant issued by a competent judicial authority. The Supreme Court decision of 9 July 1990 (Umil v. Ramos, GR No.81567), for example, rules that any person may be arrested without a court order if s/he is suspected of involvement in the crimes of rebellion or subversion. The ruling is based on an argument that the crimes of rebellion and subversion are "continuing offenses", that those suspected of these crimes are therefore always in flagrante delicto and are consequently subject to arrest without warrant at any time. In view of the practice of "red-labelling" which has become common in the context of the counterinsurgency campaign, this decision would appear to increase the likelihood of the arbitrary arrest of legitimate civilian critics or opponents of the government and therefore to increase the risk of "disappearance".

4.2 Government and Military Attitudes to Reports of "Disappearance"

The nature of the public response by some government and military authorities to reports of "disappearance" has given rise to questions about the government's sincerity in addressing the problem of "disappearances" and may thereby have undermined the effectiveness of other measures it has taken. The government's position with respect to "disappearances" has often been characterized by denials and legalistic formulations which obscure the reality of the problem and diverge from the

²¹ Private armies are banned under Article XVI, Section 24 of the 1987 Constitution (see Appendix III).

evidence in important respects. Amnesty International believes that this posture on the part of the government has further undermined the effectiveness of the measures it has taken to prevent the practice of "disappearance" and to protect victims.

Both government and military authorities have attempted to discredit or dismiss reports of "disappearances". Senior military officers have claimed that the reports are part of a propaganda campaign by the political left to discredit the military. In November 1988, Brigadier-General Alexander Aguirre, then PC Capital Region Commander, reportedly said: "It could be that they voluntarily disappeared, or that people went underground. It appears also there is a pattern of [a] smear campaign, of making conclusions that the disappearances were caused by the military".

In its April 1989 report to the Human Rights Committee (ICCPR), the Philippine Government said that while the military were responsible for some "disappearances" others who "disappeared" may have done so "voluntarily": "...some people simply flee to the mountains and join the rebel groups or disappear in the Philippines only to be found in some other countries busy raising funds to overthrow the present government." The government report provided no examples.

In a communication to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1990, the Philippine Government said:

Unacknowledged detention under the present Government is well nigh impossible. The rules on the warrant of arrest are so restrictive that almost always arrests are made with warrants, except in cases where warrantless arrests are allowed by law. Upon detention after the arrest, the detainees must be booked; that is his/her detention is recorded. Denial by the detaining authorities of the detention of a person can be questioned by a petition for writ of habeas corpus.

This is an accurate account of what ought to happen according to Philippine law.²² However, it ignores the regrettable reality that, in the Philippines, unacknowledged detention frequently does occur, that detentions are not always recorded and that, in practice, habeas corpus petitions are seldom effective in cases where the authorities deny holding the victim.

In the same communication the government noted that the Philippine Constitution (Section 12(2), Article III) provides that "...secret detention places, solitary, incommunicado or other similar forms of detention are prohibited". Similarly, in its April 1989 report to the Human Rights Committee (ICCPR), the government denied categorically the existence of "safehouses", citing the following as evidence:

The Commission [CHR] and its regional offices conducted an investigation and found none. Not satisfied with the investigation the Commission wrote a letter to the Secretary of National Defence and the Chief of Staff of the Armed Forces of the Philippines and received an assuring letter that gave me (sic) no safehouses.

Here again, Constitutional provisions and government assurances diverge from the reality. The evidence in this report shows that secret detention places are used by government and government-backed forces and that incommunicado detention continues to be practised.

In early 1991 a Philippine Government representative was reported to have recommended that the more than 500 victims of "disappearance" whose cases had not been clarified should simply be "presumed dead". According to reports the Chairman of the CHR supported this suggestion, saying that it would "clear our dockets of [former President] Marcos' human rights cases". Such an approach reflects an apparent lack of appreciation of the government's responsibilities with respect to

22 It should be noted that recent Supreme Court decisions, mentioned in Section 4.1 above, have made the rules on warrants of arrest considerably less restrictive.

"disappearances". As the Working Group on Enforced and Involuntary Disappearances noted in its report of January 1991: "...the phenomenon [of "disappearance"] does not end as soon as the graph has reached the zero level. It persists until the last of the outstanding cases has been clarified."

4.3 The Problem of Impunity

With rare exception, human rights violations such as those described in this report have gone unremedied and unpunished in the Philippines. In Amnesty International's view, this has created the impression that the security forces, or at least a large part of them, are effectively beyond the reach of the law. Through its failure to bring to justice those responsible for "disappearances", the central government appears to condone the practice.

Despite the existence of penal sanctions for such crimes, Amnesty International does not know of a single police or military officer who has been convicted of an act leading to a "disappearance" since the current government came to power in 1986. In 1990 the government released a list of 43 members of the security forces who had purportedly been sentenced to prison terms for human rights related offenses. The information provided by the government was insufficient to determine whether the acts punished -- in most cases murder or homicide -- were in fact human rights violations as opposed to ordinary crimes. The list did show very clearly, however, that none of those named had been found guilty of crimes associated with "disappearance" -- kidnapping, arbitrary or illegal arrest.

Information supplied by the Philippine Ministry of National Defense to the U.N. Working Group on Enforced or Involuntary Disappearances conflicted with the government's own claim that 43 members of the security forces had been sentenced for human rights related offenses. The Ministry of Defense statistics on the status of human rights complaints which had been referred to the armed forces suggests, in fact, that as of 17 January 1990, no member of the armed forces had been convicted and sentenced to a prison term for a human rights related offence. According to the U.N. Working Group's summary of the Ministry of Defense information: "...of the 68 cases closed or terminated up to 17 January 1990, 15 were declared without merit, 10 with insufficient evidence; 10 were closed for lack of interest to prosecute; 4 were amicably settled; 6 were withdrawn due to death of respondent; 2 became moot and academic; in 3 cases the complainant executed an affidavit of desistance; in 8 cases persons were discharged from the service; in 3 cases the persons were demoted; in one case the person was reprimanded administratively and in 7 cases the persons were acquitted."

In its ten year review (dated January 1990) of the factors contributing to the phenomenon of "disappearances" worldwide, the U.N. Working Group on Enforced or Involuntary Disappearances drew particular attention to the problem of impunity:

Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past ten years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held to account before the law.

According to the U.N. Working Group the problem of impunity, or the general failure of government to bring the perpetrators of human rights violations to justice, is common where: 1) members of the security forces are tried in military rather than civil courts; and 2) where there has been a significant breakdown in the administration of civilian justice. In Amnesty International's view both of these conditions currently obtain in the Philippines. They are discussed in greater detail below.

4.3.1 Presidential Decree 1850

In the Philippines effective criminal investigation and prosecution of alleged human rights violations has been impeded by Presidential Decree 1850 (PD 1850). Promulgated by former President Marcos in 1982, the decree grants members of the security forces immunity from prosecution in civil courts, regardless of the nature of the offence committed. Effectively, this means that civil courts have no jurisdiction over cases involving human rights violations by members of the security forces.

In considering the factors contributing to the problem of impunity the Working Group on Enforced or Involuntary Disappearances, in its report of January 1991, made special the following reference to military courts:

...military courts contribute significantly to impunity. A recurrent theme in times of internal crisis or under the doctrine of national security is that military personnel attested to have engaged in gross misconduct against civilians hardly ever see their cases investigated in any rigorous manner. In the few cases which are brought to trial, they are almost invariably acquitted or given sentences that, by any standard, are grossly disproportionate to the crime committed. Subsequent promotions are even commonplace. The Working Group continues to be concerned about the widespread tendency to grant jurisdiction over human rights abuses to military courts.

Amnesty International regards PD 1850 as one of the most significant legal obstacles to the effective prosecution of members of the security forces for alleged human rights violations, not least because it contributes to the problem of impunity. It believes that the government's failure to repeal or significantly amend the decree contradicts the government's claim that it will not tolerate human rights violations by members of the security forces. It further believes that this failure contributes to a political climate in which widespread human rights violations are more likely to occur.

Parliamentarians and human rights lawyers in the Philippines have called repeatedly for the repeal or amendment of PD 1850. Yet to date, the Philippine Government has refused to do so. According to the government's own account, government inaction has been the result of pressure from the military authorities. Testifying before the Human Rights Committee (ICCPR) in April 1989, the Assistant Secretary for Human Rights and Humanitarian Affairs of the Department of Foreign Affairs explained the government's failure to repeal the decree in 1986 as follows:

Political considerations at that time prevailed, that is the strong objection of the Chief of Staff and the Secretary of National Defense who convinced the President that time was not ripe for its outright repeal.

In December 1989, immediately after the passage of an Emergency Powers Act promulgated following an attempted military coup, President Aquino vetoed Congressional legislation which would have repealed PD 1850. Although the main purpose of the bill was to return to civil courts jurisdiction over human rights violations constituting criminal offenses committed by soldiers and police, the issue of human rights was not mentioned in the President's explanation of her reasons for the veto. Instead, President Aquino cited the continued state of emergency to justify her decision, writing that: "The enrolled bill, which was approved by the House of Representatives on October 12, 1989 and by the Senate on October 18, 1989, did not take into account the recent violent December military-civilian rebellion."

The President also cited the advice of the Secretary of Defense and the Armed Forces Chief of Staff. She wrote: "I find good cause for the Secretary of National Defense and the Chief of Staff of the Armed Forces of the Philippines in recommending the veto of the enrolled bill". The Chief of Staff had argued that the proposed bill would have divested military courts of jurisdiction to try the military personnel involved in the attempted coup of December 1989. A number of Senators, however, argued

that the bill would not have had this effect, because it provided for acts of mutiny and sedition to remain under the jurisdiction of military courts.

An additional Marcos-era decree, PD 1822, empowers the President to waive PD 1850 in selected instances where she deems that it is appropriate for a military defendant to be tried in a civil court. President Aquino has exercised this power in a few notable cases -- including the "disappearance" of two former prisoners of conscience, Maximiano Mesina and Felix Dimitui, detailed in this report -- but on balance has appeared to bow to strong pressure from the military establishment not to waive, repeal or significantly amend PD 1850. Commenting on her veto of PD 1850, Senator Wigberto Tanada, the Chairman of the Senate Committee on Justice and Human Rights, said that it would "give credence to the growing concern that the President is already dominated by militarists and the military around her."

4.4 Ineffective Legal and Institutional Remedies

The January 1991 report of the Working Group cited "institutional paralysis" of the administration of civilian justice as an important factor contributing to the problem of impunity and therefore also to the phenomenon of "disappearance". In the Philippines, such paralysis has contributed both to the difficulty of relocating those reported to have "disappeared" and to the failure to bring suspected perpetrators to justice.

There are, in principle, ample legal and institutional remedies available in the Philippines providing for both the relocation of the "disappeared" and the criminal prosecution of the alleged perpetrators. These include: filing a petition for a writ of habeas corpus; filing a complaint with the Commission on Human Rights; and bringing criminal charges for kidnapping or arbitrary arrest against the alleged perpetrator(s). Unfortunately these remedies have proven to be largely ineffective in resolving both dimensions of the "disappearance" syndrome. In its January 1991 report on the Philippines, the Working Group noted that "...most of the remedies available to the families of disappeared persons were rendered ineffective by existing obstacles."

Where judicial or quasi-judicial remedies for locating or protecting the victims of "disappearance" are ineffective, international instruments and guidelines stipulate that it is the responsibility of the state to ensure that they are made to function properly.

Article 2(3) a) and b) of the ICCPR outlines the basic obligations of States Parties with regard to remedies for those whose rights or freedoms have been violated by agents of the state. As a party to the ICCPR the Philippine Government has undertaken to "...ensure that any person whose rights or freedoms...are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity".

The United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment is a standard against which to assess the treatment of detainees and provides states with guidelines for improving legislation and practice in this respect. Principles 11 and 32 are particularly relevant to the question of "disappearances" (see Appendix II). Principle 11 stipulates that "a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority". Principle 32(2) outlines the minimum standards for such legal remedies. It states that the proceedings shall be "...simple and expeditious and at no cost to the detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority."

4.4.1 Habeas Corpus

In the Philippines the pursuit of legal remedy in the case of "disappearance" is both cumbersome

and ineffective. Habeas corpus petitions have rarely been effective as a method of locating persons last seen in police or military custody. This ineffectiveness has been the consequence of at least three related factors: problems in existing judicial procedures, a lack of cooperation from police and military authorities and the fear of witnesses to testify.

In general the courts have failed to take prompt action to determine the whereabouts and legal status of unacknowledged detainees who are the subject of habeas corpus petitions or to rule firmly against military respondents in such cases. The reason lies, in part, in the fact that the courts have applied procedures in habeas corpus cases similar to those applied in ordinary criminal proceedings. This has frequently resulted in delays of several months in the hearing and resolution of cases; in at least recent one case a habeas corpus proceeding lasted for more than a year without effective resolution (see below).

The courts have also tended to apply standards of evidence similar to those in ordinary criminal proceedings. For example, there has been a tendency for the judiciary to act upon a presumption that the statements of law enforcement agencies must be accepted unhesitatingly, while at the same time dismissing the testimony of witnesses as insufficient proof of culpability. In effect the burden of proof has been placed upon the complainant. The courts have often failed to challenge the statements of law enforcement and military officials that are at odds with the body of independent testimonial and material evidence. Several Filipino jurists have attributed this court practice to a principle described as the "presumption of regularity" in official procedures and institutions.

A presumption of regularity of operation in a situation in which extralegal and covert acts have become a regular methodology for the security forces serves as a significant constraint on the use of those legal remedies which exist in the statute books to protect victims of "disappearance". It has meant, for instance, that where a petitioner cannot definitively prove that the victim is in the custody of a named respondent or where the respondent has simply denied having custody of the victim, the court has generally dismissed the case. This has been the norm even where eyewitnesses have provided testimony concerning the identity of the alleged perpetrators or their institutional affiliation.

The unwillingness of witnesses to testify in habeas corpus proceedings is frequently cited as an impediment to the successful resolution of "disappearance" cases. Amnesty International believes that witnesses to "disappearances" and other human rights violations in the Philippines have a well-founded fear of reprisals which in most cases keeps them from coming forward to testify. The procedural norms with regard to witnesses to detentions resulting in "disappearances" are such as to ensure their optimum exposure to observation and intimidation. Even when a purported eyewitness signs a sworn affidavit concerning the incident, the witness must take the initiative to appear before a court to repeat the statement. The initiative to invoke legal remedies and criminal investigation procedures normally falls to the family or colleagues of the victim. Even when sworn affidavits have been filed with the court to the effect that an unlawful arrest -- in effect a kidnapping -- has been carried out, with implicit or explicit threat to the life of the victim, the matter is not accorded any special priority by the courts.

Many of these problems have been evident in the case of Maria Nonna Santa Clara and Angelina Llenaresas who "disappeared" on 26 April 1989 and remained missing at the end of 1990. They were last seen in the custody of members of the military and the CAGU and were thought to be detained at Camp Bagong Ibalon in Legaspi City, but military authorities denied having them in custody. A petition for a writ of habeas corpus was filed on their behalf in May 1989 before a Regional Trial Court. Relatives of Maria Nonna Santa Clara, three lawyers working on the case and witnesses testifying at the habeas corpus proceedings, reportedly received death threats which they believed came from members of the military. The court submitted its findings, apparently in favour of the petitioners, in a report to the Supreme Court in July 1989. After a delay of more than six months, the Supreme Court finally resolved on 10 January 1990 to refer the matter back to the Commission on Human Rights (CHR) for further investigation, rather than issuing its own decision for or against the petition. (See ASA 35/23/89, ASA 35/24/89, ASA 35/37/89, ASA 35/11/90, ASA 35/02/90)

In Amnesty International's view, the application of such standards and procedures in habeas corpus hearings distorts and undermines the objective of this important legal remedy. Habeas corpus is a judicial mechanism intended to guarantee the liberty and security of a person in detention; it does not involve a decision on the substance of a criminal case. To be effective the process must be prompt and summary in nature. If the procedure results in long delays or if it requires standards of evidence which it is not in the power of the petitioner to supply, then the very nature of the habeas corpus petition has been distorted.

Commenting on obstacles to the effectiveness of habeas corpus, the Working Group on Enforced or Involuntary Disappearances wrote in its 1991 report:

As its success ultimately depends on willingness by the executive to provide information on a disappeared person, habeas corpus is rendered useless if co-operation stops at the barracks' gate. In addition, there are many examples of practical and legal obstacles to its effective use which Governments have seen no reason to remove or which they have purposely put into place. The Working Group feels deeply frustrated that, in this manner, habeas corpus remains virtually inoperative in situations of widespread disappearance. Affected Governments should engage in a systematic revision of habeas corpus procedures, repairing their deficiencies.

Amnesty International believes that, in view of the current ineffectiveness of the remedy in the Philippines, it is incumbent upon the government and the judiciary to undertake a thorough review of existing habeas corpus procedures.

4.4.2 The Commission on Human Rights (CHR)

The Commission on Human Rights (CHR) was established by Executive Order 163 in May 1987 as an independent office to investigate complaints of human rights violations. The CHR replaced the original Presidential Committee on Human Rights, established in March 1986, which effectively disbanded in January 1987 following an incident at Mendiola Bridge in which several demonstrators were shot dead by government forces. From the outset the CHR adopted a much broader definition of human rights than that envisioned by the Presidential Committee on Human Rights. In particular, it assumed responsibility for investigating complaints of "human rights violations" committed both by government and non-government forces.

The authority of the CHR with respect to legal remedy for victims of human rights abuse goes no farther than to make recommendations that a case be referred to the public prosecutors and the courts, to recommend to the President that PD 1850 be waived in specific cases, and to provide modest financial assistance to victims.

In Amnesty International's view the CHR has not been proven to be effective in: 1) providing immediate and effective protection to the complainants in human rights related cases; and 2) providing remedy, in the long term, by bringing to account those responsible for gross human rights abuse constituting criminal offenses under Philippine law. Its effectiveness has been impeded by certain limitations in its own methods of work and by a lack of full cooperation from the security forces.

CHR procedures for investigating alleged human rights violations ought to facilitate the prosecution of public authorities who carry out criminal abuses of human rights. Instead they represent an additional and often impenetrable obstacle to the already complex mechanism of criminal justice. The procedures establish a series of requirements which complainant and witnesses alike must fulfil, often at considerable personal risk, without offering any prospect of the form of remedy available in civil or criminal proceedings. The CHR has introduced quasi-judicial procedures without, in general, offering either the protection to complainants and witnesses that is within the powers of a

court of law, or the authority to see that justice is done. For example, it requires complainants and witnesses to provide public testimony, their names and addresses, and to appear repeatedly before hearings, often at considerable risk and personal expense. As such hearings do not either constitute a part of the criminal justice system or have legal validity in subsequent proceedings before the courts, a judicial remedy requires an entirely distinct procedure through which complainants and witnesses must again put their lives on the line.

The CHR's procedures mimic the judicial procedure through which two individuals of equal standing come before the law to seek arbitration or damages. Rather than to serve as Ombudsman or in another form as intermediary between the citizen and the institutions and agents of the state -- a friend in court for the individual wronged by the state -- the CHR procedure has introduced a false legal symmetry between the citizen and the state. It offers little to those who are powerless in their confrontations with the state and its agents beyond a forum in which to be heard (a provision that should not in itself be belittled). In doing so the CHR places the complainant in the position of a party to a private civil complaint who by reason of the complaint, finds himself on trial. Where the adversary is an individual exercising the power of the state, and it was in that capacity that the alleged abuse took place, there is little in this procedure to comfort the complainant.

Partly as a consequence of these procedures, witnesses and complainants, as well as their relatives and legal counsel, are routinely subjected to harassment, death threats and acts of violence by the named respondents or their agents. Although CHR officials recognize the seriousness of the problem and have reportedly set up a witness protection program, there is to date little evidence that it is operating effectively. Witnesses are therefore disinclined to take the risk of testifying before the CHR and as a consequence a large number of complaints are dismissed or "archived".

Another factor limiting the effectiveness of the CHR in providing remedy in cases of "disappearance" is the public perception that it lacks independence from the government and from the security forces. The CHR has often appeared to adopt uncritically the position of the government and the military with regard to "disappearances". Its chairman, for example, reportedly attributed the rise in reports of "disappearances" from late 1987 to the alleged internal purge of the CPP/NPA, known as "Operation Missing Link", despite substantial evidence of police and military responsibility. In September 1989, she is reported to have said that "Operation Missing Link":

...could be the explanation because the military says they don't pick up these people. As a military strategy, I cannot see the use of the disappearance of these people. It would be to the disadvantage of the military... Who could benefit from a constant exposure of these alleged disappearances? It is propaganda that the leftists can really use against the military.

Statements of this sort have done little to dispel the notion, as expressed by a member of the Philippine Congress, that the CHR acts as a "mouthpiece of the military". Such a perception undoubtedly undermines the CHR's effectiveness as a remedy for the victims of "disappearance" and other human rights violations.

Victims and witnesses of human rights violations as well as their legal representatives have also questioned the thoroughness of CHR investigations. Amnesty International's own observations in the field tend to support the conclusion that CHR investigations, with some commendable exceptions, are all too often a bureaucratic formality. In many cases, CHR officials fail to carry out on-site investigations at all, relying instead on the reports of other organizations or on information provided by government or military authorities. Investigations are frequently stopped and cases "archived" at the smallest indication of resistance from the authorities or where a key witness has failed to come forward to testify. Yet it is precisely in these circumstances that the CHR ought to exert its authority, for example, to overcome official non-cooperation or to ensure that witnesses feel free to testify without fear of reprisal.

On the positive side, the CHR's 12 regional offices do provide some measure of protection to

victims and to their representatives. Particularly in remote areas, where local non-governmental human rights organizations are themselves under threat, the CHR may provide the only mechanism through which complaints are put on the public record and through which a procedure of inquiry, however cumbersome, is set in motion. The extent to which the CHR provides a function of protection depends greatly, however, on the personal qualities and commitment of its regional personnel.

5. CASE STUDIES OF "DISAPPEARANCE" -- 1990

This section details the fate of 25 people who are reported to have "disappeared" during 1990. Their stories illustrate and provide substantive evidence of the general pattern of "disappearance" described earlier in this report. Included here are the cases of three people who died or were killed in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

These case studies reveal some of the common features of "disappearances" in the Philippines. Many of these "disappearances" were carried out late at night or in isolated locations, thereby limiting the chance of identification. The perpetrators generally dressed in plainclothes and drove unmarked vehicles, making positive identification by witnesses more difficult. Some of the victims were taken to unofficial detention centres -- "safehouses" -- where their detention was not formally registered. In other cases they were detained in military camps where access by families, lawyers, human rights activists or even government authorities was denied even if by law it should have been permitted.

In virtually every case documented here there is clear evidence that government or government-backed forces were responsible for the victim's "disappearance". In most cases the relatives or colleagues of the victim spent anxious weeks or months in search of their loved ones. Many made use of the available procedures and remedies -- including petitions for writs of habeas corpus and filing complaints with the CHR -- but with rare exception their efforts were to no avail. In several cases, these efforts resulted in the relatives, witnesses and others involved in the search for the "disappeared", themselves becoming targets of death threats and intimidation by members of the security forces.

"Disappearances" occurred virtually throughout the country but they were most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including parts of Negros, Mindanao, Samar and Central Luzon. The majority of the "disappeared" were members of lawful non-governmental organizations -- including human rights groups, church organizations, youth and student groups, farmers' organizations, trade unions and research institutes -- alleged by the authorities to be "fronts" for the outlawed CPP and NPA, or individuals suspected of having links to the NPA or CPP. Among them were people whose work on behalf of the victims of the war, or of the socially and economically disadvantaged, took them into areas of suspected rebel activity.

5.1 Those Who Reappeared in Custody

The government has noted, correctly, that some people reported as "disappeared" have later reappeared. Amnesty International always welcomes such news. However, contrary to the government's contention that such reappearances cast doubt on the accuracy of the original reports, most such cases actually confirm that the victims were held for some period in unacknowledged military or police custody.

Amnesty International has documented at least 15 cases during 1990 in which the "disappeared" have subsequently reappeared after a period in police or military custody. A number of those who reappeared were formally released from custody, some escaped and still others remained in police or military custody after their illegal detention was acknowledged. Amnesty International also knows of

at least six similar cases from 1989 which are noted in Appendix IV.

Soledad MABILANGAN and Alita BONA

Soledad Mabilangan and Alita Bona, both aged about 22, were detained on 10 March 1990 by members of the security forces in sitio Tubigan, barangay Paranas, Wright, Samar province. Alita was three months pregnant. Military authorities repeatedly denied their detention for over six weeks, but in late April the women were found to be in military custody at the headquarters of the 802nd IB. To Amnesty International's knowledge they remained in custody, without charge, at the end of the year.

Soledad Mabilangan and Alita Bona were reportedly arrested between 1pm and 2pm on 10 March 1990 in sitio Tubigan by armed men believed to be CAFGU members or soldiers attached to the Charlie Company of the army's 52nd Infantry Battalion (IB) based in barangay Casandig. The women had walked from barangay Capul to Tubigan to buy rice at the weekly market there. An eyewitness saw two women in the custody of soldiers in sitio Tubigan at about 2pm the same day. Other witnesses said they had seen two women walking under military escort on the road to the 802nd Infantry Battalion headquarters. These witnesses refused to provide sworn testimony, apparently from fear of military reprisals.

Leanita Mabilangan, Soledad's mother, learned of her daughter's detention four days later through a community leader in Tubigan. She enquired after the whereabouts of her daughter and Alita Bona at Camp Lukban (the headquarters of the army's 8th Infantry Division), at a detachment of the army's 34th IB and at the Charlie Company of the 52nd IB. Authorities in each place denied having the women in custody.

On 27 March Leanita Mabilangan filed a complaint with the CHR and on 6 April CHR officials officially requested information on the whereabouts of the two women from the commander of the 8th Infantry Division. Military authorities acknowledged receipt of the communication but provided no substantive response to the request for information. Two weeks later officials from the CHR received unofficial information - a rumour - that the women were detained at the 802nd IB headquarters, in barangay Bagaca, Samar, and went immediately to search for her there. The acting commander of the camp refused to comment on the whereabouts of the two women and told the CHR officials to return on 23 or 24 April. A special investigator from the CHR who visited the camp on 24 April was threatened at gunpoint by a soldier and denied access.

On 26 April 1990 two CHR officials, an Amnesty International delegation and relatives of Soledad Mabilangan visited the camp and found the two women in custody. Military officials at the camp claimed that Soledad Mabilangan and Alita Bona were held "voluntarily", although they alleged that they and their families were well-known members of the NPA. The camp commander said that the women had not been charged and that they would be released if their husbands -- alleged to be NPA members -- "turned themselves in". The authorities also admitted that no attempt had been made to inform the women's families of their arrest, even when they knew that Soledad Mabilangan's relatives had inquired about their whereabouts at several military installations. According to reports, the women were taken from their cell and hidden when visitors came to the camp.

In a private talk, Soledad Mabilangan and Alita Bona explained that they had not been physically ill-treated in the camp. But they had been encouraged to collaborate with the army's counter-insurgency effort and threatened with prosecution for association with the guerrilla movement if they did not cooperate. They said they had been interrogated about their relatives' alleged connection with the NPA and made to sign affidavits under duress. In one of these they agreed to act as CAFGU informants upon their release. One of the women expressed their special fear that if their husbands were seized or killed while they were in secret detention, they would themselves have almost certainly been killed.

Helen TREMBEVILLA

Helen Trembevilla "disappeared" on 24 July 1990. Military authorities in the area initially denied holding her, but in September they informed Amnesty International that she had been in military custody during July and August; she was released on 17 August. Helen Trembevilla is a member of Fathers and Relatives against Tyranny and Repression, an organization set up to support the relatives of victims of human rights abuses and the girlfriend of a former political detainee who was released in 1989 following the dismissal of charges against him.

Helen Trembevilla was detained shortly after being discharged from the Corazon Locsin Montelibano Memorial Hospital in Bacolod on 24 July 1990. She had been treated there for injuries suffered when soldiers from the 66th IB opened fire at her house on 7 July 1990, believing that members of the NPA were inside the house. As she left the hospital with her parents, eyewitnesses said that men in civilian clothes believed to be members of the 66th IB approached and asked Helen to go with them for questioning. The men told her parents to go ahead and meet them in Kabankalan. However, Helen Trembevilla did not appear at the arranged meeting place and has not been seen since.

Helen Trembevilla's relatives and staff from the Bacolod office of a national human rights organization inquired after her whereabouts at the Negros Island Command, the military base which covers the whole of Negros island, as well as at the 301st Brigade based in Hinigaran, and the 66th IB in Kabankalan. Her custody was denied at all these establishments.

In September 1990 military authorities in Negros Occidental province informed Amnesty International that Helen Trembevilla had in fact been held in military custody at Kabankalan, Negros Occidental. She was released from detention on 17 August and, to Amnesty International's knowledge, no charges were filed against her. (See ASA 35/22/90 and ASA 35/03/91)

Rosario LODRONIO

Rosario Lodronio, aged 30, was reportedly abducted on 18 December 1990. She was arrested by three armed men in military uniforms from her uncle's house in barangay San Benito, Victoria, Laguna province. Military authorities denied that Rosario was being held in custody, but on 22 December she was released from the 202 Infantry Brigade of the Philippines Army at Lumban in Laguna province.

The reasons for Rosario Lodronio's arrest are unclear, but the authorities are believed to have suspected here of being the wife of a commander of the Southern Tagalog district of the NPA. (See ASA 35/30/90 and ASA 35/31/90)

5.2 Those Who Died or Were Killed in Custody

Felipe "Wilson" LEONIDAS

Felipe "Wilson" Leonidas, aged 27, was reportedly detained in Manila by armed men believed to be members of the armed forces. His detention was initially denied by military authorities, but he was subsequently found hanged in his cell in a military camp. He was an active member of the KPML (Kongreso ng Pagkakaisa ng Maralita sa Lunsod), an organization working on behalf of the poor in urban areas.

Felipe "Wilson" Leonidas, aged 27, was detained in Santa Cruz, Manila on 22 February 1990 at a restaurant where he had gone with two friends after participating in an anti-U.S. bases rally organized by the National Movement for Civil Liberties. According to eyewitness reports, approximately six armed men in plainclothes came into the restaurant and pointed a gun at Wilson Leonidas after a young man with them said, "Yes, it's him". He was dragged outside to a waiting vehicle which then drove off to an unknown destination. Another armed man was left behind preventing others from following. Wilson Leonidas was heard shouting for help as he was taken away. His relatives searched for him at local police stations, hospitals and military detention centres, but his custody was denied by the authorities.

On 27 or 28 February, "Wilson" arrived at the home of relatives escorted by members of the Military Intelligence Group (MIG) from Camp Bago Bantay in Pag Asa, Quezon City, Manila. He reportedly told his relatives that he had signed a "surrender paper" and had decided to cooperate with the military. On 1 March the military informed Wilson's sister that "Wilson" had hanged himself in his cell.

Felipe "Wilson" Leonidas had been held in detention by the MIG, thus confirming previous reports that the armed men in plain clothes who abducted him on 22 February were members of the military forces.

Relatives filed an official complaint with the Commission on Human Rights on 6 April 1990. In a case report dated September 1990, the CHR said that an autopsy showed that the cause of death was "asphyxia by hanging" but there was no conclusive evidence that the victim had committed suicide. The report also indicated either that military authorities at Camp Bago Bantay had been uncooperative or that the CHR had not performed its duty with sufficient energy. The report reads: "CHR investigators exerted efforts to confer with [the commanding officer] regarding the circumstances of the death of Felipe. Unfortunately, he was not available at that time." According to the report, there were plans to subpoena military authorities but to Amnesty International's knowledge this had not occurred by the end of the year. (See ASA 35/06/90)

Efren CONCEPCION, Nicolas LOPEZ, Reynaldo SANTOS and Roberto LOPEZ

Efren Concepcion, Nicolas Lopez and Reynaldo Santos "disappeared" after they were detained by members of a joint military and paramilitary force on 11 February 1990 in barangay San Sebastian, Hagonoy municipality, Bulacan province. Roberto Lopez, a construction worker and the son of Nicolas Lopez, "disappeared" in a separate incident on 15 February 1990 after he was detained by armed men in barangay San Agustine, Hagonoy municipality, Bulacan province.

Efren Concepcion was reportedly beheaded by his captors on or before 13 February 1990. Nicolas and Roberto Lopez said they were spared execution because they pretended to be willing to join the CAFGU. Both later escaped from the "safehouse" where they were detained after witnessing the beheading of Efren Concepcion. The whereabouts of Reynaldo Santos were not known at the end of the year.

Efren Concepcion, Nicolas Lopez and Reynaldo Santos were reportedly detained by members of a special unit called the "Special Task Force Anti-Illegal Fish Pond", organized by the PC Provincial Commander. The unit is said to be made up of CAFGU members, "rebel-returnees" (former NPA guerrillas who have come over to the government side) and elements of the Integrated National Police (INP). Members of this unit were reportedly responsible for the arrest and ill-treatment of others in Hagonoy municipality suspected of being NPA members or sympathizers. All three men were members of BANGKALIS, a fisherman's organization in Bulacan. Efren Concepcion was provincial Vice-Chairman of BANGKALIS and General Secretary of KAMPI, the west-Bulacan district chapter of ALLMA, a human rights organization in Bulacan province.

Efren Concepcion was reportedly taken from his house by soldiers at about 3 am in the morning and beaten. Neighbours and relatives reportedly heard him crying out in pain before he was taken away. Nicolas Lopez and Reynaldo Santos, who had been staying at the house of Efren Concepcion, were taken away separately. Relatives and human rights advocates inquired after them at the Provincial PC Command in Malolos, but the authorities there denied having them in custody. It is believed that they were detained in a "safehouse" owned by a CAFGU member in barangay Santa Cruz, which also served as a local CAFGU headquarters.

Roberto Lopez was reportedly detained by two armed men, believed to be police officers, on 15 February in Mababang Lupa, barangay San Augustine, Hagonoy, Bulacan province. Witnesses said the armed men, at least one of whom they identified by name as a police officer, smashed his head against a cement wall and threatened him with a hand gun before tying him up "like a pig". He was then forced into a waiting Ford Fierra jeep which bore INP insignia and taken to the municipal jail. Shortly afterwards he was removed to a house used by the Special Task Force as an unofficial detention centre. Witnesses believed that the two armed men belonged to the Special Task Force thought to be responsible for the 11 February "disappearances" mentioned above. Roberto Lopez' wife and mother inquired after him at the local police headquarters and at the PC Provincial Command in Malolos, but the authorities denied having him in custody. He later escaped from custody. (See ASA 35/07/90 and ASA 35/10/90)

Nestor LOBERIO and Diomedes "Desi" ABAWAG

Nestor Loberio, aged 25, the project director of SAFDI (Samar Assistance for Farmers Development Inc., a lawful non-governmental organization involved in livelihood projects for poor farmers in Samar, has not been seen since he and Diomedes Abawag, a SAFDI staffworker, were detained by armed men believed to be members of a military intelligence "death squad" on 29 January 1990 in Catbalogan, Samar province.

Diomedes Abawag is thought to have been tortured and beheaded by his captors. His head, reportedly bearing signs of torture, including a deep slash in the lower lip, facial bruises and a hole in the right temple, was found in the sea by fishermen near barangay Butaena, Zumarraga, Samar province, on 1 February 1990. The fishermen reported the discovery to the police in Catbalogan.

The men who detained Nestor Loberio and Diomedes Abawag are believed to be members of a "death squad" called "Banagan", allegedly set up by the Military Intelligence Group of Region 8 (MIG 8) based at Camp Lukban, Catbalogan. The majority of "Banagan" members are thought to be former "vigilantes" from the San Miguel area, Leyte province.

Diomedes Abawag and Nestor Loberio were reportedly detained at about 6 pm in San Francisco Street, Catbalogan, Samar. In a sworn statement, an eyewitness said that the two men were "dragged forcefully" into a maroon-coloured jeep with no number plates, which was waiting in front of an automotive shop. The jeep then drove off in the direction of Ubanon district, Catbalogan province.

On 4 February, two headless bodies, possibly those of the two men above, were found; one in barangay Iquid, Catbalogan, and another in San George Poblacion, Samar. However, Amnesty International could not confirm that these were the bodies of Nestor Loberio and Diomedes Abawag. (See ASA 35/08/90 and correction)

5.3 Those Who Are Still Missing

Maximiano "Jun" MESINA and Felix DIMITUI

Maximiano "Jun" Mesina and Felix Dimitui, two former prisoners of conscience, have not been seen since they were arrested by armed men believed to be members of the 181st PC Company on 2 January 1990. Their detention has been denied by the Provincial PC Command and their whereabouts remain unknown. A petition for habeas corpus filed by relatives on their behalf on 5 January 1990 was denied on 26 January.

Maxmiano Mesina, Press Relations officer of the Alyansa ng Magbubukid sa Gitnang Luzon (AMGL), Alliance of Farmers in Central Luzon, and Felix Dimitui, AMGL staff member, were arrested between 11.30 and 12.00 in the morning of 2 January 1990 in Tarlac, Tarlac province. Witnesses said that the two men were walking near a bus terminal when they were detained by armed men in civilian clothes led by a PC sergeant whom witnesses identified as a member of the 181st PC company, based in Camp Makabulos.

On the same day, a group comprising local leaders of AMGL, workers from the local branch of the human rights organization Task Force Detainees (TFD), as well as relatives of Maximiano Mesina and Felix Dimitui, went to the PC provincial headquarters at Camp Makabulos to inquire after their whereabouts. Their detention was denied. On the following day, 3 January, the group met the PC Assistant Provincial Commander at Camp Makabulos and were told that the two had not been arrested and that the PC sergeant who had been identified was away from the camp and could not be reached. Efforts by the Provincial Governor to locate the PC sergeant were also said to have proved unsuccessful.

On 26 January a petition for habeas corpus was filed in the Tarlac Regional Trial Court, Branch 65. The petition was denied for two reasons. First, the court rejected the sworn statement of an eyewitness who refused to testify in person for fear of reprisals. Second, according to the judge, a criminal procedure was more appropriate for the case. The judge argued:

If the persons alluded to in this petition has (sic) been the victims of illegal arrest or detention, they can have recourse to criminal action...The only issue that can be ventilated in a habeas corpus proceedings (sic) is whether or not a person, detained, arrested or restrained of his liberty is entitled to release. (G.R. No. 91456, F.D. et. al. v. Fidel V. Ramos et. al. Decision of January 26, 1990).

Charges of kidnapping were subsequently filed against the alleged perpetrators and in March 1990 relatives appealed to the President to waive PD 1850. According to reports this appeal was successful and the case will be heard before a civil court. (See ASA 35/01/90)

Maximiano Mesina and Felix Dimitui were among 18 people arrested in March 1989 at the AMGL offices in San Fernando, Pampanga province, and adopted by Amnesty International as prisoners of conscience (see ASA 35/25/89, The Arrest and Imprisonment of 18 Activists in Pampanga Province). They were charged with subversion and the illegal possession of weapons and held in custody until September 1989, when the court ruled that there was insufficient evidence against them. Amnesty International is particularly concerned at their arrest and "disappearance" so soon after their release from six months' imprisonment on charges which were found to be groundless.

Antonio BUENAVISTA

Antonio Buenavista, 42, has not been seen since 7 January 1990 when he was taken from his home in barangay Santa Cruz, Hagonoy, Bulacan province, by five armed men in civilian clothes believed to be connected with the 171st Company of the PC.

According to eyewitnesses, Antonio Buenavista was dragged from his home at about 7pm on 7 January. His abductors wore masks and were armed with four automatic weapons (three M-16s, one M-14 and one .45 revolver). When he tried to resist by holding onto a piece of furniture in the house, one of the men shot him in the arm with an M-14 rifle forcing him to release his grip. Outside the house, he was struck on the back of the head with a rifle butt and knocked unconscious before being put into a waiting white car. When his wife, Esther Buenavista, began to call for help, one of the armed men reportedly shouted "Shut up you bitch. Come any closer and we'll kill you!" One of the men shot at her but reportedly missed because his gun was pushed by her son Jesus Buenavista. Following the shooting, the two ran for safety and sought help from the barangay captain who helped them report the case to the Mayor and the police in the municipality of Hagonoy.

Relatives inquired after Antonio Buenavista's whereabouts at the 171st Company of the PC in Malolos, and at other military and police detachments, but authorities denied having him in their custody.

There were indications of a link between the perpetrators and military and paramilitary authorities in the area. Two days after the incident, the suspected perpetrators were reportedly seen, bearing arms, at a detachment of the 171st PC Company in barangay Santa Cruz. After the incident they were reportedly seen in the barangay, still armed, and fraternizing with military personnel. On the night of the incident, the white car driven by the perpetrators was reportedly seen in front of the Hagonoy Municipal Hall. Residents of nearby Barrio Mercado reported that the same car was seen leaving the neighbourhood at dawn on the morning of the next day, 8 January. Barrio Mercado is the site of a CAFGU detachment under the command of the 171st PC Company.

A petition for habeas corpus was filed on behalf of Antonio Buenavista before the Regional Trial Court (RTC) on 16 January 1990, but it was dismissed. The reasons for the dismissal are not known. According to witnesses, the respondents in the case were present at the hearings bearing arms and two-way radios. Charges of kidnapping and illegal possession of firearms were also filed against the alleged perpetrators, and on 23 April the RTC issued warrants for their arrest. However, according to residents of barangay Santa Cruz, the suspects continued to roam freely in the community, still fully armed, after the warrants had been issued. (See ASA 35/14/90)

Amelia TENA

Amelia Tena, 22, is a member of the Kabataan para sa Demokrasya at Nasyonalismo (KADENA), the Youth for Democracy and Nationalism. She was last seen on 26 May 1990, in Victoria, Laguna province in the custody of armed men believed to be members of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) and a local CAFGU member.

According to reports, the public passenger jeep in which Amelia Tena was travelling collided with a Ford Sierra at between 10am and 11am on 26 May in barangay Masapang, Victoria, Laguna. An eyewitness said that several armed men forced Amelia Tena to leave the jeep and get into the Ford Sierra, which then drove off. After the arrest a witness was reportedly able to identify two of the men by name; however, the witness subsequently went into hiding for fear of reprisals by the security forces. Since the abduction, military authorities in the Laguna region have consistently denied that she is being held in custody.

On 7 June 1990, a relative reported having received two letters. The first, apparently from an ISAFP officer, invited her to meet him at a designated time and place. The relative did not go to the meeting for fear of herself becoming a victim of abduction, particularly as the letter instructed her to attend alone. The second letter was apparently from Amelia Tena herself. It instructed the relative to attend a court hearing of the case of eight political prisoners who, the letter said, would have news of Amelia Tena's whereabouts and the conditions of her detention. The relative attended the hearing but the defendants said they knew nothing of the "disappeared" person.

In January 1991 an eyewitness reportedly testified before the CHR that she had seen Amelia Tena in the custody of soldiers at Los Banos in June 1990. The witness said that Amelia Tena and other detainees had been obliged to address a military seminar at about that time. She also testified that Amelia Tena had been transferred from one "safehouse" to another since her arrest in May 1990.

Allan GITANES

Allan Gitanes, a farmer aged 20, was last seen on 30 April 1990 in the custody of soldiers belonging to the 28th Infantry Battalion (IB) of the Philippines Army.

His "disappearance" followed the evacuation in late April of more than 300 families from rural areas near the town of San Augustine in Surigao del Sur province, where government forces were conducting military operations against the NPA. Several government soldiers were reportedly killed and more than ten taken prisoner during an armed encounter between government troops and NPA guerrillas on 18 April 1990; the situation of the captured soldiers is not known.

According to relatives, Allan Gitanes returned to the family farm in Janipaan, San Augustine, on 30 April in order to collect some food and to check possessions which had been left behind during the evacuation. He failed to return to the evacuation centre that evening. An eyewitness reported on 3 May that he had seen Allan Gitanes, with his hands tied, being taken into the municipal hall in San Augustine at about 8pm on 30 April. The eyewitness said that he was escorted by soldiers of the 28th IB.

Relatives inquired after his whereabouts at the headquarters of the 28th IB, but the authorities there denied having him in custody. They also inquired at the headquarters of the 401st IB where an officer denied any knowledge of Allan Gitanes but promised to assist the family in locating him.

Bonifacio SABANAL, Rufino SABANAL, Mamerto LUPICIO

Bonifacio Sabanal (19), Rufino Sabanal (40) and Mamerto Lupicio (25), all members of the Federation of Internal Refugees in Negros, "disappeared" shortly after their arrest on 6 July by military officers from the Alpha Company, 61st IB and CAFGU members under its command. The military authorities reportedly accused the men, two of whom were recent evacuees, of being couriers for the NPA, an allegation denied by their relatives.

According to eyewitnesses, the three were detained in barangay San Antonio, Himamaylan at about 3.30pm on 6 July, while on their way to help a relative harvest his crops. On 9 July, relatives went to the detachment of the 61st IB in barangay Carabalan, Himamaylan, to inquire after their whereabouts. They were told that the three had been released on the evening of 7 July, and that two local Council members had witnessed the signing of the release papers. According to one report, however, the three men were seen on 8 July at the 61st IB headquarters. The three were said to be "kneeling and pleading" before CAFGU members and to bear signs of having been ill-treated.

Relatives filed a petition for a writ of habeas corpus before the Regional Trial Court of Negros Occidental, at Himamaylan on 10 July 1990. According to reports, the petition was dismissed because the military respondent claimed the three had been released. (See ASA 35/24/90)

In August and September Sister Aquila Sy, a well-known human rights and community activist who had helped relatives search for the three men, received death threats believed to emanate from organizations backed by military and local government authorities. Hundreds of leaflets were reportedly distributed in parts of Negros Occidental inciting acts of violence against Sister Aquila Sy and other religious workers and accusing them of sympathizing with the NPA. (See ASA 35/23/90)

Edmundo CARIAS

Edmundo Carias, 22, "disappeared" after being taken from his house in Davao City on 8 August 1990 at approximately 1am by members of the military Intelligence Security Operations Group (ISSOG).

According to Edmundo Carias' 60-year-old mother, Vicenta, they were both awakened after midnight on 8 August by the barking of dogs and the sound of thudding on the doors of their home. Three armed men burst into their bedroom and ordered Edmundo Carias to hold his hands up. The men, who are alleged to have said they were "the authorities", handcuffed him and dragged him out of the house. When his mother tried to accompany him she was pushed away. She said that other military units were involved in the arrest but she could not identify them.

Some hours later, Vicenta went to look for her son at the ISSOG office but was told he was not there. On 10 August she was informed by the ISSOG's commanding officer that Edmundo was alive but under investigation. Some soldiers at the office reportedly warned a woman who had accompanied Vicenta Carias that she would "also" be considered an NPA member if she continued to accompany Vicenta Carias. There was no formal acknowledgment of Edmundo Carias' arrest.

On 14 August, Vicenta Carias filed a writ of habeas corpus before the 11th Regional Trial Court (Branch 15). The petition was heard on 17 August. The respondents denied having arrested or detained Edmundo Carias and his current whereabouts are unknown. (See ASA 35/25/90)

Jimmy BADAYOS

Jimmy Badayos, aged 34, has not been seen since he was taken into custody by military intelligence officers in Cebu City on 3 October 1990. He was held incommunicado for five days before the military authorities claimed that he had escaped from detention.

According to eye-witnesses, Jimmy Badayos was arrested at his home in sitio Kabulakan, Go Chan Subdivision, Banawa, Cebu City, by members of the Intelligence Division (M2) of the Cebu Metropolitan District Command (Metrodiscom) at about 4am on 3 October. He was interrogated briefly, then taken to the Metrodiscom Headquarters at Camp Sotero Cabahug, accompanied by his wife and two children. He is reported to have been taken first to the office of the Chief of the Intelligence Division, and later to a small room in a logistics building, believed to be used for interrogation.

On 8 October a petition was filed for a writ of habeas corpus before Branch XVI of the Regional Trial Court in Cebu, but the military respondents did not appear in court. When the hearing resumed on the following day, the authorities said that Jimmy Badayos had escaped from an interrogation room at Metrodiscom Headquarters at about 1.40am on 4 October. The court apparently accepted this explanation and rejected the petition for habeas corpus.

Jimmy Badayos is believed to have been accused of being a member of the NPA. During his detention in Camp Sotero Cabahug, the camp was reportedly under heavy guard (red alert) due to an uprising by renegade soldiers in the nearby island of Mindanao. There was no report prior to the court hearing that civilian prisoners had escaped from the closed camp and no evidence was presented to the court to substantiate the claim that Jimmy Badayos had escaped. (see ASA 35/26/90)

Pedro BULALACAO

Pedro Bulalacao, 38, leader of an urban poor organization Katipunan ng Samahang Makabayan (KASAMA), has not been seen since he was detained on 17 June 1990 by two men believed to be members of the police.

According to an eyewitness, Pedro Bulalacao was detained by two men in civilian clothing as he crossed Roxas Boulevard in Pasay City, Metro Manila, at about 5.15pm on 17 June. The men reportedly took him to a group of waiting vehicles, where he was held and punched. The eyewitness said a man who alighted from a light blue Toyota with registration plate number NAW-541 placed handcuffs and a blindfold on Pedro Bulalacao before putting him into a white car.

The white car then drove off, followed by the Toyota, a passenger jeep and a red car. Relatives and colleagues from KASAMA reportedly inquired after his whereabouts at a number of security forces establishments, including the headquarters of the Pasay City police, the Western Police District Headquarters, and Camp Crame, a military camp in the area. Custody of Pedro Bulalacao was denied by all these authorities.

Neighbours reported that police officers from Pasay City had been to Pedro Bulalacao's home at about 3pm the same day, but had not found him because he was at a park in Libertad where he often spent Sunday afternoons teaching karate. (See ASA 35/18/90)

Josefa PADCAYAN, Marcelo BAWAGAN and Arnel HIDALGO

Josefa Padcayan, aged 36, Marcelo Bawagan and Arnel Hidalgo have been held in secret, incommunicado detention since 16 November 1989. The three were last seen in the custody of members of the 17th Infantry Battalion of the Philippine Army (IB PA), in Zinundungan Valley, Cagayan province. While military officials acknowledged in November 1989 that the three had been detained, all access to the prisoners has been denied, and the three remain unaccounted for, more than one year after they were arrested.

During November 1989 the Zindungan area had been the site of intensive military operations against the NPA. Josefa Padcayan, a community health worker and a former government nurse, was

on her way to deliver relief goods to affected villages in the Zindungan valley when she and her two companions were reportedly arrested without warrant by military officers.

Relatives of Josefa Padcayan, together with local priests and human rights workers, tried to locate the three at the local military barracks. They were told by officials that they had been taken from Piat to Santo Nino and then to Alcala, Cagayan Province. The commanding officer of the 17th IB PA acknowledged in the presence of the victims' lawyer, a local priest and two workers from the Cagayan office of a national human rights organization that the three had been arrested. However, access to the three was not granted.

Since the arrests, a petition was filed for a writ of habeas corpus and, after several postponements, the case was heard twice -- in February and March 1990. On both occasions the result was inconclusive as certain participants failed to appear in court. A third hearing in June 1990 was also inconclusive. The court has persistently failed to exercise its right to visit the detention facilities at the 17th IB army base to establish the circumstances of the three prisoners or to rule on the legality of the incommunicado detention. (See ASA 35/21/90)

6. CONCLUSIONS AND RECOMMENDATIONS

"Disappearances" have occurred against the background of armed conflict between government forces and the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). They have been most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including large parts of Central Luzon, Negros, Samar and Mindanao. The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by members of the security forces as fronts for the NPA and CPP.

Despite the existence of elaborate legal and institutional safeguards for the protection of human rights in the Philippines, Amnesty International believes that certain aspects of government policy and military strategy -- in particular aspects of the counterinsurgency campaign -- have helped to create a context within which "disappearances" and other human rights violations are more likely to occur. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

Senior government and military authorities have been reluctant to acknowledge responsibility for "disappearances" claiming instead that they are the work of the NPA and CPP or that the "disappeared" have simply gone into hiding. Amnesty International acknowledges that a small number of people reported to have "disappeared" in previous years may have been detained by opposition forces. It stresses, however, that this does not in any sense alter the government's responsibility with respect to investigating all cases of alleged enforced "disappearance" and bringing those responsible to justice. The government's responsibility is a matter both of immediate practical concern -- relocating the "disappeared" person, identifying the perpetrators and stopping the pattern of "disappearance" -- and of principle arising out of international law.

The available remedies for locating the "disappeared" and bringing the suspected perpetrators to justice have so far proven to be ineffective. Petitions for writs of habeas corpus filed with the courts have seldom led to the reappearance or release of the "disappeared". The government-backed Commission on Human Rights (CHR), hampered by limitations in its terms of reference and methods of work and by a lack of full cooperation from military authorities, has had limited success in locating the "disappeared". Presidential Decree 1850 constitutes an important legal obstacle to the effective prosecution of members of the security forces suspected of responsibility for "disappearances" and other human rights violations. Through its acquiescence in and reliance on judicial and quasi-judicial procedures and institutions which have been shown to be ineffective in preventing "disappearances", locating those who have "disappeared" and bringing the alleged perpetrators to justice, the government has failed to meet its obligations under international law and has, in Amnesty International's view, contributed to the problem of "disappearance".

Amnesty International recognizes that some people reported as "disappeared" may reappear in a matter of weeks or months, but it stresses that their reappearance after a period in unacknowledged military custody does not in any sense diminish the seriousness of the violation. Nor does it necessarily call into question the validity of the original report; to be "disappeared" means simply to be held in unacknowledged, incommunicado detention by government or government-backed forces. The reappearance, alive, of all of the "disappeared" held in secret government custody is Amnesty International's objective.

6.1 Recommendations to the Philippine Government

Amnesty International has welcomed the Philippine Government's ratification of major

international human rights treaties, such as the International Covenant on Civil and Political Rights and other steps it has taken to address the problem of "disappearances". It emphasizes, however, that the terms of these treaties are binding on the government to provide effective human rights protection, not only in principle but in practice. Despite the existence of institutional and legal safeguards for the protection of human rights in the Philippines and the government's often stated commitment to the protection of human rights, "disappearances" and other serious violations continue to occur.

Amnesty International offers the following specific recommendations which, if implemented, it believes would strengthen existing human rights guarantees, and would in particular help to prevent future "disappearances".

To contribute to the creation of a political climate in which "disappearances" are less likely to occur, Amnesty International urges the government:

1. to initiate prompt and impartial investigations to clarify the whereabouts or fate of all those reported to have "disappeared" regardless of when or where the "disappearance" occurred;
2. to ensure strict control, including a clear chain of command, over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as over all officials authorized to use force and firearms;
3. to ensure that Constitutional provisions prohibiting the maintenance of private armies are upheld and enforced;
4. to undertake a thorough review of the use of official and semi-official paramilitary forces in the conduct of the counter-insurgency campaign;
5. to prohibit explicitly the public political labelling of alleged government opponents by government authorities and by members of government or government-backed security forces.

To ensure that arrest and detention procedures provide guarantees against the occurrence of "disappearances", Amnesty International calls on the government:

6. to guarantee that judicial and quasi-judicial bodies shall be granted access to all places of detention where a detainee is suspected of being held;
7. to enforce the legal/constitutional prohibition of incommunicado detention or the use of unofficial places of detention;
8. to establish and maintain centralized public registers of all persons detained in all parts of the country, to be updated on a daily basis and made available to family members, magistrates, attorneys and other authorities.
9. to establish similar registers at each place of detention throughout the national territory;

To ensure that members of government or government-backed security forces are not free to commit violations of human rights with impunity, Amnesty International calls on the government:

10. to bring promptly to justice members of government and government-backed security forces where there is evidence of their responsibility for or their participation in an act leading to

"disappearances";

11. to repeal Presidential Decree 1850, or until such time as it is repealed, to ensure that the jurisdiction of military courts is waived in all cases involving "disappearances" and other grave human rights violations.

**To ensure the effectiveness of judicial and quasi-judicial remedies in cases of Amnesty
International calls on the government:**

12. to review existing judicial procedures with respect to petitions for habeas corpus with a view to ensuring its optimal effectiveness as a remedy in cases of "disappearance";

13. to establish a practical and affordable witness protection program to ensure that complainants, witnesses and those conducting investigations into human rights related cases shall be protected from violence, threats of violence or any other form of intimidation;

14. to enact legislation to ensure that those implicated in "disappearances" or other human rights violations shall be removed from positions of power or control, whether direct or indirect, over complainants, witnesses and their families, and investigators;

15. to undertake a thorough review of the Commission on Human Rights, its terms of reference, procedures and methods of work.

APPENDIX 1

Excerpts from the International Covenant on Civil and Political Rights (ICCPR)

Article 2

(3) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

Article 6

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7 states in part:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9

(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

APPENDIX II

Excerpts from the United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment

Principle 11

- 1.** A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
- 2.** A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
- 3.** A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 32

- 1.** A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
- 2.** The proceedings referred to in paragraph 1 shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such an inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

APPENDIX III Excerpts from the 1987 Constitution of the Philippines

Article III - The Bill of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Section 12.

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Section 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Section 18.

(1) No person shall be detained solely by reason of his political beliefs and aspirations.

Section 19.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Article XVIII -- Transitory Provisions

Section 24.

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 into the regular force.

APPENDIX IV

Reappearances After a Period in Police or Military Custody: Examples from 1988 and 1989

Flaviano RUDAS

Flaviano Rudas reportedly "disappeared" in Concepcion, Mindanao province, in June 1988. The Mayor of Dipolog, Mindanao, claimed in October 1989 that Flaviano Rudas "was never apprehended nor detained for any crime". However, in December 1989 Rudas' parents executed an affidavit stating that he had been "invited by the military for investigation" on 25 June, but that he had subsequently been released and was alive and working in Manila. Amnesty International welcomed information from government and other sources that Flaviano Rudas had reappeared, but noted that this information confirmed that he had been in military custody, despite denials of this at the time of his "disappearance". (See ASA 35/21/88)

Elmer REYES

Elmer Reyes "disappeared" after being detained by unidentified armed men in Manila on 7 September 1988. His family failed to locate him at several local police stations and military detachments. On 15 September 1988, a Philippines Air Force Intelligence unit acknowledged having Reyes in custody and released him four days later. (See ASA 35/29/88 and ASA 35/31/88)

Apolinar PABRICIO

Apolinar Pabricio was reportedly detained in Laguna on 8 February 1989 by personnel of the 16th Infantry Battalion (IB), but military authorities denied having him in custody. In March 1989, he was seen inside the 16th IB camp, and there were reports that he had been ill-treated. Military authorities claimed that he had surrendered voluntarily, then released him from custody at the end of March 1989. (See ASA 35/02/89, ASA 35/05/89 and ASA 35/19/89)

Belen TABAMO

Belen Tabamo "disappeared" after her arrest in Laguna on 10 February 1989 by members of the 16th IB. One month later she was located at the 16th IB detachment in Magdalena where she had reportedly been subjected to death threats and other forms of ill-treatment. She was acquitted of charges of frustrated murder and illegal possession of firearms and reportedly released on 12 September 1989.

In February 1990, the government reported: "Investigators from the Commission on Human Rights (CHR) who visited Ms. Tabamo found no evidence of alleged physical torture inflicted on her". However, the government statement was conspicuously silent on the subject of her "disappearance" while held in unacknowledged detention for one month by military forces. It also failed to consider the evidence that Belen Tabamo had suffered serious mental anguish as a consequence of the death threats to which she was reportedly subjected while in detention. (See ASA 35/01/89, ASA 35/04/89, ASA 35/07/89 and ASA 35/18/89)

Carlos VINA

Carlos Viña "disappeared" after he was detained by armed men who entered his house in Tudela, Misamis Occidental, on 13 April 1989. His family failed to locate him at several military detachments. On 22 June 1989, he was released from military custody. Military authorities claimed that Carlos Viña had been "rescued" from attack by a military operation on 8 June, but he denied this in an interview with a human rights organisation. (See ASA 35/14/89 and ASA 35/20/89)

AMNESTY INTERNATIONAL

PHILIPPINES "DISAPPEARANCES" IN THE CONTEXT OF COUNTERINSURGENCY

FEBRUARY 1991 SUMMARY INDEX: ASA 35/05/91
DISTR: SC/CO/GR

More than 50 people, most of them alleged critics or opponents of the government, were reported to have "disappeared" in the Philippines during 1990. At least five of the "disappeared" are believed to have died or to have been killed while in custody and some appeared to have been tortured. At least 15 whose detention had been denied by security forces in 1990 subsequently reappeared after a period in police or military custody. The majority were still missing at the end of the year and there was concern for their safety.

In an overwhelming majority of the cases in which there is clear and substantive evidence, the perpetrators have been members of government or government-backed security forces. These forces include the Philippine Army (PA), the paramilitary Philippine Constabulary (PC), the official paramilitary auxiliary CAFGU (Citizens' Armed Forces Geographical Unit) and various semi-official "vigilante" groups operating with the support or acquiescence of military commanders.

This report describes a pattern of enforced "disappearances" in the Philippines during 1990 and provides details of the fate some of those who reportedly "disappeared". It outlines the political, military and legal context within which "disappearances" have occurred and examines the effectiveness of existing domestic remedies for relocating the "disappeared" and for bringing the perpetrators to justice. The report also provides details of the fate of 25 victims of "disappearance", including three who died or were killed in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

"Disappearances" and other serious human rights violations including extrajudicial execution, torture and political imprisonment have occurred in the context of armed conflict between government forces and a number of armed opposition groups, principally the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by the security forces as fronts for the NPA and CPP, or individuals suspected of NPA or CPP membership.

Amnesty International believes that, notwithstanding the government's stated commitment to the protection of human rights and the existence of legal and institutional guarantees for this purpose, there are aspects of government and military policy which have helped to create a climate within which "disappearances" and other human rights violations are more likely to occur. Paramount among these are two features of the counterinsurgency campaign: (i) the creation of and reliance on an ever-widening network of official and semi-official paramilitary forces in conducting the counterinsurgency campaign; and (ii) the practice of public labelling or targeting of alleged critics

and opponents of the government as "enemies" or NPA/CPP sympathizers. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

Existing legal and institutional mechanisms for the protection of human rights have in practice proved ineffective in resolving past cases of "disappearance" and in preventing the continuation of the practice. Judicial remedies, such as habeas corpus have systematically failed to locate those who have "disappeared" in military custody. The national Commission on Human Rights, hampered by deficiencies in its procedures and methods of work, has not been effective in locating the "disappeared" or in ensuring that the suspected perpetrators are brought to justice.

An additional factor contributing to the phenomenon of "disappearance" in the Philippines has been the failure to bring to justice members of government or government-backed forces responsible for such acts. Where members of government and government-backed forces are allowed to commit serious human rights violations with apparent impunity, the practice is bound to continue. The problem of impunity has emerged partly as a result of the considerable influence wielded by the security forces in the formation of national policy in the Philippines and the substantial autonomy with which they are permitted to operate in the context of the counterinsurgency campaign. Presidential Decree 1850 has effectively protected members of the security forces from prosecution in civil courts for "disappearances" and other human rights related offenses.

Despite repeated studies by national and international human rights organizations -- including the 1990 report of the Philippine Senate Committee on Justice and Human Rights -- which have identified such deficiencies and offered various practical recommendations, the government has failed to implement significant changes. Through its acquiescence in and reliance on legal and institutional procedures which have been shown to be ineffective at locating the "disappeared", bringing the alleged perpetrators to justice and preventing further "disappearances", the government has failed to meet its obligations under domestic and international law and has, in Amnesty International's view, contributed to the problem of "disappearance".

This summarises a 37-page document, Philippines: "Disappearances" in the Context of Counterinsurgency (AI Index: ASA 35/05/91), issued by Amnesty International in February 1991. Anyone wanting further details or to take action on this issue should consult the full document.

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EXTERNAL (for general distribution)AI Index:ASA 35/05/91
Distr:SC/CO/GR

Amnesty International
International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

FEBRUARY 1991

PHILIPPINES "DISAPPEARANCES" IN THE CONTEXT OF COUNTER-INSURGENCY

1. INTRODUCTION

More than 50 people, most of them alleged critics or opponents of the government, were reported to have "disappeared" in the Philippines during 1990. At least five of the "disappeared" are believed to have died or to have been killed while in custody and some appeared to have been tortured. At least 15 whose detention had originally been denied by security forces in 1990 subsequently reappeared after a period in police or military custody. The majority were still missing at the end of the year and there was concern for their safety.

This report describes a pattern of enforced "disappearances" in the Philippines during 1990 and provides details of the fate of some of those who reportedly "disappeared". It outlines the political, military and legal context within which "disappearances" have occurred, highlighting certain aspects of government policy and military strategy which, in Amnesty International's view, have contributed to the phenomenon of "disappearance". It examines the effectiveness of existing domestic remedies for relocating the "disappeared" and for bringing the perpetrators to justice. The report also provides details of 25 victims of "disappearance", including three who died or were killed while in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

"Disappearances" have occurred against the background of armed conflict between government forces and the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). They have been most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including parts of Central Luzon, Negros, Samar and Mindanao. The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by the security forces as fronts for the NPA and CPP or individuals suspected of NPA or CPP membership.

Amnesty International believes that, notwithstanding the government's stated commitment to the protection of human rights, there are aspects of government and military policy -- in particular aspects of the counterinsurgency campaign -- which have helped to create a climate within which human rights violations, and particularly "disappearances", are more likely to occur. It also believes that there are serious deficiencies in existing judicial and quasi-judicial procedures or remedies aimed at locating the "disappeared" and bringing the alleged perpetrators to justice. By its acquiescence in and reliance upon these mechanisms the government has failed to fulfil its responsibilities under domestic and international law and has, in Amnesty International's view, contributed to the problem of

"disappearances".

2. THE "DISAPPEARANCE" PHENOMENON

2.1 What is a "Disappearance"?

A person has "disappeared" when s/he has been deprived of liberty against his or her will by any government official or by organized groups or private individuals believed to act on behalf of, or with the permission, support or acquiescence of the government.²³

The fate of the "disappeared" is by definition unknown because the arresting authorities refuse to acknowledge that the arrested person is in their custody and may in fact attempt to conceal his or her whereabouts. A detainee who has "disappeared" is effectively denied protection under the law; the right to be promptly informed of the reasons for their arrest. Moreover, when people are held in unacknowledged, secret detention, the risk of their being ill-treated, tortured or killed is increased.

Such risks are especially great when detention occurs in the context of a national emergency or during a counter-insurgency campaign. Under these circumstances, normal legal procedures are likely to be weakened or ignored by the authorities. The protection of human rights may, in practice, be undermined by, or subordinated to, the exigencies of national security. Those responsible for such violations may come to feel free to commit human rights violations with impunity.

The phenomenon of "disappearance" also causes grave suffering to the families of the victims. Denied knowledge of the fate of their relatives, they may spend months or years in a fruitless search for them. Their anxiety, and that of eyewitnesses or others involved in the search, is often heightened by a fear of coming forward to testify or give evidence to the authorities. In many cases, the fear is justified; relatives, witness and lawyers are frequently subjected to threats or actual physical assault by members of the security forces.

2.2 State Responsibilities With Respect to "Disappearances"

Each case of "disappearance" violates or poses a grave threat to a number of specific fundamental rights articulated in the International Covenant on Civil and Political Rights (ICCPR). These include the right to life (Article 6.1), the right to be free from torture or cruel, inhuman or degrading treatment (Article 7), and the right to recognition as a person before the law (Article 16); all of these rights are non-derogable even in times of national emergency. Other rights infringed may include the rights to liberty and security of person, to be free from arbitrary arrest and detention (Article 9.1), and the right of a detained person to challenge the legality of their detention before the courts (Article 9.4).²⁴

Countries like the Philippines which have acceded to the ICCPR have a special obligation under international law to ensure that these rights and freedoms are effectively protected.²⁵ According to Article 2 (3) a) and b) of the ICCPR, it is the responsibility of the state to ensure that judicial or quasi-judicial remedies are available to the victims of human rights violations and that those remedies are effective.

The ICCPR also has force in Philippines national law. Under its 1987 Constitution, the country adopted "...the generally accepted principles of international law as part of the law of the land..."

23 This is the definition adopted by the United Nation's Working Group on Enforced or Involuntary Disappearances.

24 See Appendix I for passages from the ICCPR relevant to the obligations of States Parties in relation to "disappearances".

25 The ICCPR entered into force in the Philippines in January 1987. The President signed the Optional Protocol to the ICCPR in July 1987.

(Section 2 Article II, 1987 Constitution). In response to a question from the Human Rights Committee²⁶ in April 1989 concerning this section of the Constitution, the Philippine Government representative stated clearly that "the provisions of the Covenant [i.e. the ICCPR] can be invoked before and directly enforced by Philippine courts and appropriate bodies." Finally, it may be noted that the rights and freedoms enumerated in the ICCPR are also enshrined in the Philippine Bill of Rights, Article III of the Constitution.²⁷

Other international human rights instruments, such as the United Nations Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment, also establish standards against which to assess the behaviour of states with regard to various human rights violations as well as guidelines for the improvement of their legislation and practice.²⁸ If these principles were effectively implemented, many human rights violations including "disappearances" would be less likely to occur. They recommend, *inter alia*: that all reports of alleged "disappearance" be investigated in good faith by a judicial or other body and that the results of such investigations be made public; and that the legal and other remedies available for the relocation of persons who have "disappeared" and the prosecution of the suspected perpetrators be ensured to be effective.

26 The Human Rights Committee is an international body of 18 experts established under the ICCPR to monitor implementation of that treaty. In this report it will be referred to as the Human Rights Committee (ICCPR) to distinguish it from the national Presidential Human Rights Committee.

27 See Appendix III for excerpts the 1987 Philippine Constitution.

28 See Appendix II for passages from the United Nations Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment which are relevant to the phenomenon of "disappearances".

2.3 State Responsibilities in the Context of Armed Opposition

Government and military authorities sometimes claim that opposition forces are responsible for "disappearances". In the Philippines the government has alleged that some of those who "disappeared" in late 1988 and early 1989 were abducted or killed in an internal purge of the banned Communist Party of the Philippines (CPP) and its armed wing the New People's Army (NPA). Citing captured CPP documents and the testimony of certain "rebel-returnees", the military has said that Pearl Abaya, Lili Mercado and Efren Bonagua, three of the more than 50 people who reportedly "disappeared" in 1988, had been abducted by the NPA.

Amnesty International acknowledges that a small number of those reported to have "disappeared" in previous years in the Philippines, including some of those mentioned above, may have been abducted by opposition forces. It stresses, however, that this does not in any sense alter the government's responsibility with respect to investigating all cases of alleged enforced "disappearance" and bringing those responsible to justice. The government's responsibility is a matter both of immediate practical concern -- relocating the "disappeared person, identifying the perpetrators and stopping the pattern of "disappearance" -- and of principle arising out of international law.

In practice it is only through the prompt and impartial investigation of all reported "disappearances" that there can be any hope of locating the victim, bringing the perpetrators to justice and perhaps preventing future "disappearances". If a government fails to investigate reported "disappearances" on the grounds that they might have been committed by opposition forces or because the identities of the perpetrators are not immediately known, it demonstrates a lack of interest in all of these objectives. By doing so it effectively condones the practice of "disappearance", which may lead to its perpetuation.

Armed opposition can present governments and security forces with particular difficulties which raise issues of principle with respect to international law. Governments bear the responsibility of protecting their citizens from violent crime and for bringing those responsible to justice. In doing so, however, they must ensure that fundamental human rights are respected. As noted above, under international human rights law, certain fundamental rights must be upheld by governments at all times and in all circumstances. However widespread and violent the armed opposition groups, these can never provide a justification for governments to retreat from or ignore their obligations to respect such fundamental human rights. Indeed, in Amnesty International's view, it is precisely in such contexts of armed opposition that fundamental human rights need to be protected with extra vigilance.

States bear a unique and solemn responsibility to uphold the law and to ensure that the rights and freedoms of their citizens are protected. Acts of violence or other abuses committed by criminal elements or armed opposition groups are crimes which are punishable through, and in accordance with, the normal judicial system of the state. The nature of the problem is fundamentally different where the state or one of its branches or agents is complicit in or responsible for the commission of crimes violating the rights and freedoms of its own citizens. For if those responsible for upholding the law and protecting citizens show contempt both for judicial processes and for the rights and freedoms of citizens, there can be no guarantee of effective remedy through the existing mechanisms of the state. When the state or one of its agents violates or poses a grave threat to the rights and freedoms of citizens, then, it is appropriate to speak of a human rights violation.

2.4 Establishing Responsibility for "Disappearances"

Establishing responsibility for "disappearances" is difficult because, as a rule, the perpetrators attempt to conceal their own identities and the whereabouts of the victim. In the Philippines, military and paramilitary operatives often carry out "disappearances" late at night or in isolated locations which limit the chance that they will be identified. They may dress in plainclothes and drive unmarked vehicles thereby making more difficult any positive identification by witnesses. The

victims are sometimes taken to unofficial detention centres -- "safehouses" -- where their detention need not be formally registered. In other cases they are detained in military camps where access by families, lawyers, human rights activists or even government authorities may be effectively limited even if by law it should be permitted.

In spite of such difficulties there are at least four ways in which a plausible case for culpability may be established. First, and most simply, the perpetrators may be identified by clearly visible military insignia either on their uniforms or the vehicles they are driving. Second, the "disappeared" may be released or escape after a period in police or military custody. Third, the victim may be found dead in police or military custody. Finally, even where the perpetrators are not self-evidently members of a military or paramilitary unit, eyewitnesses may be able to identify one or more of them by name or to identify some piece of their property, such as a vehicle, a weapon or an article of clothing.

3. "DISAPPEARANCES" AND THE PHILIPPINE GOVERNMENT

3.1 Government Human Rights Initiatives

Since coming to power in 1986 the government of President Corazon Aquino has taken a number of measures aimed at promoting and protecting human rights. The government has acceded to the most important international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A variety of repressive Presidential Decrees promulgated during the regime of Ferdinand Marcos have been repealed, and the new Constitution ratified in 1987 provides substantial guarantees of fundamental civil and political rights. Human rights education has been included as a regular part of police and military training. In addition to an official Commission on Human Rights (CHR), established in 1987, a new Presidential Committee on Human Rights was established in late 1988 to "monitor the human rights situation in the country and to advise [the President] on the proper measures to be taken".

The government has also taken measures to address the specific problem of "disappearances". In 1988 the government announced the creation of a special task force to investigate some 400 outstanding cases of "disappearances", the majority of which had been reported during the Marcos years. At the same time the President announced the decision to designate city and provincial state prosecutors as "human rights coordinators" whose tasks would include helping relatives search for their missing kin in military and police camps and prisons. The government has cooperated with the United Nations Working Group on Enforced or Involuntary Disappearances by providing information on a substantial number of individual cases. On the invitation of the government a Working Group delegation visited the Philippines in August-September 1990. In January 1991, the Secretary of Justice Franklin Drilon reportedly ordered government prosecutors to coordinate with officials in camps and jails to locate persons reported to have "disappeared".

Government authorities have responded to some, though by no means all, of Amnesty International's inquiries regarding the fate or whereabouts of the victims of "disappearance". Amnesty International welcomes the government's cooperation in this respect. However, it regrets that, in general, the information provided is either of a non-substantive nature -- simply acknowledging the organization's concern -- or is based wholly on the findings of the Commission on Human Rights.

Amnesty International welcomes the steps taken by the Philippine Government to promote and protect human rights. However, it notes that despite the existence of institutional and legal safeguards and the government's often stated commitment to protect and promote human rights, serious human rights violations, including "disappearances" have continued in recent years.²⁹ The United Nations

²⁹ Other serious human rights violations in the Philippines, such as

Working Group on Enforced or Involuntary Disappearances has recorded 169 cases of "disappearance" from early 1986 to the end of 1990 and it believes that the true dimensions of the situation may be "much graver".

3.2 "Disappearances" in the Philippines -- The Pattern of Responsibility

In an overwhelming majority of the cases in 1990 in which there is clear and substantive evidence, the perpetrators of "disappearances" in the Philippines have been members of government or government-backed security forces. These forces include the Philippine Army (PA), the paramilitary Philippine Constabulary (PC), the official paramilitary auxiliary CAFGU (Citizens' Armed Forces Geographical Unit) and various semi-official "vigilante" groups operating with the support or acquiescence of police and military commanders.³⁰

At least five of those who "disappeared" in 1990 are believed to have died or to have been killed while in the custody of government or government-backed forces, and at least 15 whose detention was initially denied subsequently reappeared after a period in police or military custody. In the case of those who remained missing at the end of the year there is also substantial evidence that the perpetrators were members of government or government-backed forces. Details of the fate of 25 of those who "disappeared" in 1990 are provided in Section 5 of this report.

Further evidence of the responsibility of government and government-backed forces is found in information compiled by Amnesty International on the fate of people reported to have "disappeared" in previous years. At least five people who reportedly "disappeared" in 1988 and 1989, and whose detention was originally denied by security forces, subsequently reappeared in or were released from police or military custody; they had been detained for periods ranging from one week to more than two months (see Appendix IV).

This pattern of government responsibility is corroborated by the findings of the United Nations Working Group on Enforced or Involuntary Disappearances. In its report dated January 1991, the Working Group noted that of the total of 595 cases of "disappearance" it had submitted to the Philippine government, only 80 had been clarified by government responses by late 1990. In the great majority of these cases (56) it was confirmed that the victims had once been or still remained in detention. Fifteen were reported to be dead, six were said to be at liberty, two had been located and identified and one was said to be living abroad.³¹ The Working Group concluded that "...most cases of "disappearance" are to be ascribed to members of the military, the police and vigilante groups. Under the present government CAFGUs and, to a lesser extent, civilian volunteer groups should be added."

In short, there can be little doubt that the practice of "disappearance" continues in the Philippines and that government and government-backed forces are principally responsible. Regrettably, the existing institutional and legal human rights safeguards and the government's stated commitment to

extrajudicial execution, torture and ill-treatment, and political imprisonment have been documented in recent Amnesty International reports including: Philippines: Unlawful Killings by Military and Paramilitary Forces (ASA 35/02/88); Philippines: Incommunicado Detention, Ill-treatment and Torture During 1988 (ASA 35/40/88); Philippines: A Summary of Amnesty International's Concerns (ASA 35/02/90).

³⁰ The Philippines Constabulary officially ceased to exist in January 1991. In accordance with Republic Act 6975, the police services are to be reconstituted into a single force known as the Philippines National Police (PNP), under the authority of a reorganized Ministry of the Interior and Local Government. However, the PNP will continue to play an important role in counterinsurgency operations for some time.

³¹ Another 18 cases were clarified by non-governmental sources. Of these it was confirmed that 12 had once been or still remained in detention, three were at liberty and three were reported to be dead.

the protection of human rights, have not proved sufficient to prevent "disappearances" and other serious human rights violations. The next part of this report examines some of the reasons why.

4. POLITICAL, MILITARY AND LEGAL CONTEXT OF "DISAPPEARANCES"

"Disappearances" and other serious human rights violations including extrajudicial execution, torture and political imprisonment have occurred in the context of armed conflict between government forces and a number of armed opposition groups, principally the NPA. Amnesty International believes that certain aspects of government policy and military strategy have helped to create a context within which "disappearances" and other human rights violations are more likely to occur. It also believes that there are serious deficiencies in existing judicial and quasi-judicial procedures or remedies aimed at locating the "disappeared" and bringing the alleged perpetrators to justice and that by its acquiescence in and reliance upon these mechanisms the government has contributed indirectly to the problem of "disappearances".

Paramount among the elements of military and government policy which appear to contribute to the problem are two particular features of the counterinsurgency campaign: (i) the creation of and reliance on an ever-widening network of official and semi-official paramilitary forces in conducting the counter-insurgency campaign; (ii) the practice of public labelling or targeting of alleged critics and opponents of the government as "enemies" or NPA/ CPP sympathizers. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

The attitude of some government and military authorities toward reports of "disappearances" has frequently appeared dismissive or formalistic. Comments on the issue of "disappearance" addressed to international human rights bodies and to the media have given rise to questions about the sincerity of the government's efforts to resolve the problem and may have undermined the effectiveness of some of the other measures it has taken toward that end.

An additional factor contributing to the phenomenon of "disappearance" in the Philippines has been the failure to bring to justice members of government or government-backed forces responsible for such acts. Where members of government and government-backed forces are allowed to commit serious human rights violations with apparent impunity, the practice is bound to continue. The problem of impunity has emerged partly as a result of the preponderant influence wielded by the security forces in the formation of national policy in the Philippines and the substantial autonomy with which they are permitted to operate in the context of the counterinsurgency campaign. More concretely, Presidential Decree 1850 has effectively protected members of the security forces from prosecution in civil courts for human rights related offenses.

The problem of "disappearance" has been compounded by the ineffectiveness of existing legal and other remedies for the victims of "disappearance". Both the legal remedy of habeas corpus and the quasi-judicial remedy of filing a complaint with the CHR have been ineffective in relocating the "disappeared" and in preventing further "disappearances". Despite repeated studies by national and international human rights organizations -- including the 1990 report of the Philippine Senate Committee on Justice and Human Rights -- which have identified such deficiencies and offered various practical recommendations, the government has failed to implement significant changes.

In short, through its military and other policies the government has helped to create a climate conducive to the practice of "disappearance". Through its acquiescence in judicial and quasi-judicial procedures and institutions which have been shown to be ineffective in preventing "disappearances", locating those who have "disappeared" and bringing the alleged perpetrators to justice, the government has failed to meet its obligations under international law and has contributed to the problem of "disappearance".

4.1 Counter-insurgency and "Disappearance"

The military element of the government's counter-insurgency strategy has involved the use of regular Philippines Army (PA) forces, the paramilitary Philippines Constabulary (PC), auxiliary paramilitary units known as Citizens' Armed Forces Geographical Units (CAFGU) and semi-official armed groups or "vigilantes" that, while not provided for in law, often function in close cooperation with, or under the direct supervision of, official security forces.³² Each of these has been responsible for serious human rights violations including "disappearances".

The counter-insurgency strategy relies heavily on the use of a network of roughly 90,000 official and semi-official paramilitary forces which are in general poorly trained, poorly disciplined and possess only a rudimentary understanding of basic human rights and principles of law. Even if it were not the explicit intention of the government, the existence of such a large and undisciplined armed force operating in the climate of a civil war would inevitably increase the risk of serious human rights violations by those forces. The chance of abuse is greater still where, as is frequently the case in the Philippines, police and military authorities appear to encourage such forces to act outside the law in the name of national security. The authority which is given to such forces to carry out arrests increases the particular risk of "disappearances".

In addition to its primary goal of combatting armed opposition groups, the government's counter-insurgency campaign also involves efforts to weaken the organizational base of its legitimate civilian opponents. Dozens of lawful non-governmental organizations -- including human rights groups, church organizations, youth and student groups, farmers' organizations, labour unions and research institutes, among others -- have been publicly labelled by police and military authorities as "fronts" for the NPA and the CPP. These allegations have not been legally tested and they are denied by the organizations in question. In Amnesty International's view political labelling of this kind has invariably served to encourage government and government-backed forces to take precipitate actions, which have often involved serious human rights violations, against alleged or suspected government opponents by portraying them as legitimate "targets" in the government's full-scale war against armed rebels.

Recent Supreme Court rulings have expanded the power of security forces to carry out the arrest of suspected political opponents without a warrant issued by a competent judicial authority. The Supreme Court decision of 9 July 1990 (*Umil v. Ramos*, GR No.81567), for example, rules that any person may be arrested without a court order if s/he is suspected of involvement in the crimes of rebellion or subversion. The ruling is based on an argument that the crimes of rebellion and subversion are "continuing offenses", that those suspected of these crimes are therefore always in flagrante delicto and are consequently subject to arrest without warrant at any time. In view of the practice of "red-labelling" which has become common in the context of the counterinsurgency campaign, this decision would appear to increase the likelihood of the arbitrary arrest of legitimate civilian critics or opponents of the government and therefore to increase the risk of "disappearance".

4.2 Government and Military Attitudes to Reports of "Disappearance"

The nature of the public response by some government and military authorities to reports of "disappearance" has given rise to questions about the government's sincerity in addressing the problem of "disappearances" and may thereby have undermined the effectiveness of other measures it has taken. The government's position with respect to "disappearances" has often been characterized by denials and legalistic formulations which obscure the reality of the problem and diverge from the

³² Private armies are banned under Article XVI, Section 24 of the 1987 Constitution (see Appendix III).

evidence in important respects. Amnesty International believes that this posture on the part of the government has further undermined the effectiveness of the measures it has taken to prevent the practice of "disappearance" and to protect victims.

Both government and military authorities have attempted to discredit or dismiss reports of "disappearances". Senior military officers have claimed that the reports are part of a propaganda campaign by the political left to discredit the military. In November 1988, Brigadier-General Alexander Aguirre, then PC Capital Region Commander, reportedly said: "It could be that they voluntarily disappeared, or that people went underground. It appears also there is a pattern of [a] smear campaign, of making conclusions that the disappearances were caused by the military".

In its April 1989 report to the Human Rights Committee (ICCPR), the Philippine Government said that while the military were responsible for some "disappearances" others who "disappeared" may have done so "voluntarily": "...some people simply flee to the mountains and join the rebel groups or disappear in the Philippines only to be found in some other countries busy raising funds to overthrow the present government." The government report provided no examples.

In a communication to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1990, the Philippine Government said:

Unacknowledged detention under the present Government is well nigh impossible. The rules on the warrant of arrest are so restrictive that almost always arrests are made with warrants, except in cases where warrantless arrests are allowed by law. Upon detention after the arrest, the detainees must be booked; that is his/her detention is recorded. Denial by the detaining authorities of the detention of a person can be questioned by a petition for writ of habeas corpus.

This is an accurate account of what ought to happen according to Philippine law.³³ However, it ignores the regrettable reality that, in the Philippines, unacknowledged detention frequently does occur, that detentions are not always recorded and that, in practice, habeas corpus petitions are seldom effective in cases where the authorities deny holding the victim.

In the same communication the government noted that the Philippine Constitution (Section 12(2), Article III) provides that "...secret detention places, solitary, incommunicado or other similar forms of detention are prohibited". Similarly, in its April 1989 report to the Human Rights Committee (ICCPR), the government denied categorically the existence of "safehouses", citing the following as evidence:

The Commission [CHR] and its regional offices conducted an investigation and found none. Not satisfied with the investigation the Commission wrote a letter to the Secretary of National Defence and the Chief of Staff of the Armed Forces of the Philippines and received an assuring letter that gave me (sic) no safehouses.

Here again, Constitutional provisions and government assurances diverge from the reality. The evidence in this report shows that secret detention places are used by government and government-backed forces and that incommunicado detention continues to be practised.

In early 1991 a Philippine Government representative was reported to have recommended that the more than 500 victims of "disappearance" whose cases had not been clarified should simply be "presumed dead". According to reports the Chairman of the CHR supported this suggestion, saying that it would "clear our dockets of [former President] Marcos' human rights cases". Such an approach reflects an apparent lack of appreciation of the government's responsibilities with respect to

33 It should be noted that recent Supreme Court decisions, mentioned in Section 4.1 above, have made the rules on warrants of arrest considerably less restrictive.

"disappearances". As the Working Group on Enforced and Involuntary Disappearances noted in its report of January 1991: "...the phenomenon [of "disappearance"] does not end as soon as the graph has reached the zero level. It persists until the last of the outstanding cases has been clarified."

4.3 The Problem of Impunity

With rare exception, human rights violations such as those described in this report have gone unremedied and unpunished in the Philippines. In Amnesty International's view, this has created the impression that the security forces, or at least a large part of them, are effectively beyond the reach of the law. Through its failure to bring to justice those responsible for "disappearances", the central government appears to condone the practice.

Despite the existence of penal sanctions for such crimes, Amnesty International does not know of a single police or military officer who has been convicted of an act leading to a "disappearance" since the current government came to power in 1986. In 1990 the government released a list of 43 members of the security forces who had purportedly been sentenced to prison terms for human rights related offenses. The information provided by the government was insufficient to determine whether the acts punished -- in most cases murder or homicide -- were in fact human rights violations as opposed to ordinary crimes. The list did show very clearly, however, that none of those named had been found guilty of crimes associated with "disappearance" -- kidnapping, arbitrary or illegal arrest.

Information supplied by the Philippine Ministry of National Defense to the U.N. Working Group on Enforced or Involuntary Disappearances conflicted with the government's own claim that 43 members of the security forces had been sentenced for human rights related offenses. The Ministry of Defense statistics on the status of human rights complaints which had been referred to the armed forces suggests, in fact, that as of 17 January 1990, no member of the armed forces had been convicted and sentenced to a prison term for a human rights related offence. According to the U.N. Working Group's summary of the Ministry of Defense information: "...of the 68 cases closed or terminated up to 17 January 1990, 15 were declared without merit, 10 with insufficient evidence; 10 were closed for lack of interest to prosecute; 4 were amicably settled; 6 were withdrawn due to death of respondent; 2 became moot and academic; in 3 cases the complainant executed an affidavit of desistance; in 8 cases persons were discharged from the service; in 3 cases the persons were demoted; in one case the person was reprimanded administratively and in 7 cases the persons were acquitted."

In its ten year review (dated January 1990) of the factors contributing to the phenomenon of "disappearances" worldwide, the U.N. Working Group on Enforced or Involuntary Disappearances drew particular attention to the problem of impunity:

Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past ten years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held to account before the law.

According to the U.N. Working Group the problem of impunity, or the general failure of government to bring the perpetrators of human rights violations to justice, is common where: 1) members of the security forces are tried in military rather than civil courts; and 2) where there has been a significant breakdown in the administration of civilian justice. In Amnesty International's view both of these conditions currently obtain in the Philippines. They are discussed in greater detail below.

4.3.1 Presidential Decree 1850

In the Philippines effective criminal investigation and prosecution of alleged human rights violations has been impeded by Presidential Decree 1850 (PD 1850). Promulgated by former President Marcos in 1982, the decree grants members of the security forces immunity from prosecution in civil courts, regardless of the nature of the offence committed. Effectively, this means that civil courts have no jurisdiction over cases involving human rights violations by members of the security forces.

In considering the factors contributing to the problem of impunity the Working Group on Enforced or Involuntary Disappearances, in its report of January 1991, made special the following reference to military courts:

...military courts contribute significantly to impunity. A recurrent theme in times of internal crisis or under the doctrine of national security is that military personnel attested to have engaged in gross misconduct against civilians hardly ever see their cases investigated in any rigorous manner. In the few cases which are brought to trial, they are almost invariably acquitted or given sentences that, by any standard, are grossly disproportionate to the crime committed. Subsequent promotions are even commonplace. The Working Group continues to be concerned about the widespread tendency to grant jurisdiction over human rights abuses to military courts.

Amnesty International regards PD 1850 as one of the most significant legal obstacles to the effective prosecution of members of the security forces for alleged human rights violations, not least because it contributes to the problem of impunity. It believes that the government's failure to repeal or significantly amend the decree contradicts the government's claim that it will not tolerate human rights violations by members of the security forces. It further believes that this failure contributes to a political climate in which widespread human rights violations are more likely to occur.

Parliamentarians and human rights lawyers in the Philippines have called repeatedly for the repeal or amendment of PD 1850. Yet to date, the Philippine Government has refused to do so. According to the government's own account, government inaction has been the result of pressure from the military authorities. Testifying before the Human Rights Committee (ICCPR) in April 1989, the Assistant Secretary for Human Rights and Humanitarian Affairs of the Department of Foreign Affairs explained the government's failure to repeal the decree in 1986 as follows:

Political considerations at that time prevailed, that is the strong objection of the Chief of Staff and the Secretary of National Defense who convinced the President that time was not ripe for its outright repeal.

In December 1989, immediately after the passage of an Emergency Powers Act promulgated following an attempted military coup, President Aquino vetoed Congressional legislation which would have repealed PD 1850. Although the main purpose of the bill was to return to civil courts jurisdiction over human rights violations constituting criminal offenses committed by soldiers and police, the issue of human rights was not mentioned in the President's explanation of her reasons for the veto. Instead, President Aquino cited the continued state of emergency to justify her decision, writing that: "The enrolled bill, which was approved by the House of Representatives on October 12, 1989 and by the Senate on October 18, 1989, did not take into account the recent violent December military-civilian rebellion."

The President also cited the advice of the Secretary of Defense and the Armed Forces Chief of Staff. She wrote: "I find good cause for the Secretary of National Defense and the Chief of Staff of the Armed Forces of the Philippines in recommending the veto of the enrolled bill". The Chief of Staff had argued that the proposed bill would have divested military courts of jurisdiction to try the military personnel involved in the attempted coup of December 1989. A number of Senators, however, argued

that the bill would not have had this effect, because it provided for acts of mutiny and sedition to remain under the jurisdiction of military courts.

An additional Marcos-era decree, PD 1822, empowers the President to waive PD 1850 in selected instances where she deems that it is appropriate for a military defendant to be tried in a civil court. President Aquino has exercised this power in a few notable cases -- including the "disappearance" of two former prisoners of conscience, Maximiano Mesina and Felix Dimitui, detailed in this report -- but on balance has appeared to bow to strong pressure from the military establishment not to waive, repeal or significantly amend PD 1850. Commenting on her veto of PD 1850, Senator Wigberto Tanada, the Chairman of the Senate Committee on Justice and Human Rights, said that it would "give credence to the growing concern that the President is already dominated by militarists and the military around her."

4.4 Ineffective Legal and Institutional Remedies

The January 1991 report of the Working Group cited "institutional paralysis" of the administration of civilian justice as an important factor contributing to the problem of impunity and therefore also to the phenomenon of "disappearance". In the Philippines, such paralysis has contributed both to the difficulty of relocating those reported to have "disappeared" and to the failure to bring suspected perpetrators to justice.

There are, in principle, ample legal and institutional remedies available in the Philippines providing for both the relocation of the "disappeared" and the criminal prosecution of the alleged perpetrators. These include: filing a petition for a writ of habeas corpus; filing a complaint with the Commission on Human Rights; and bringing criminal charges for kidnapping or arbitrary arrest against the alleged perpetrator(s). Unfortunately these remedies have proven to be largely ineffective in resolving both dimensions of the "disappearance" syndrome. In its January 1991 report on the Philippines, the Working Group noted that "...most of the remedies available to the families of disappeared persons were rendered ineffective by existing obstacles."

Where judicial or quasi-judicial remedies for locating or protecting the victims of "disappearance" are ineffective, international instruments and guidelines stipulate that it is the responsibility of the state to ensure that they are made to function properly.

Article 2(3) a) and b) of the ICCPR outlines the basic obligations of States Parties with regard to remedies for those whose rights or freedoms have been violated by agents of the state. As a party to the ICCPR the Philippine Government has undertaken to "...ensure that any person whose rights or freedoms...are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity".

The United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment is a standard against which to assess the treatment of detainees and provides states with guidelines for improving legislation and practice in this respect. Principles 11 and 32 are particularly relevant to the question of "disappearances" (see Appendix II). Principle 11 stipulates that "a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority". Principle 32(2) outlines the minimum standards for such legal remedies. It states that the proceedings shall be "...simple and expeditious and at no cost to the detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority."

4.4.1 Habeas Corpus

In the Philippines the pursuit of legal remedy in the case of "disappearance" is both cumbersome

and ineffective. Habeas corpus petitions have rarely been effective as a method of locating persons last seen in police or military custody. This ineffectiveness has been the consequence of at least three related factors: problems in existing judicial procedures, a lack of cooperation from police and military authorities and the fear of witnesses to testify.

In general the courts have failed to take prompt action to determine the whereabouts and legal status of unacknowledged detainees who are the subject of habeas corpus petitions or to rule firmly against military respondents in such cases. The reason lies, in part, in the fact that the courts have applied procedures in habeas corpus cases similar to those applied in ordinary criminal proceedings. This has frequently resulted in delays of several months in the hearing and resolution of cases; in at least recent one case a habeas corpus proceeding lasted for more than a year without effective resolution (see below).

The courts have also tended to apply standards of evidence similar to those in ordinary criminal proceedings. For example, there has been a tendency for the judiciary to act upon a presumption that the statements of law enforcement agencies must be accepted unhesitatingly, while at the same time dismissing the testimony of witnesses as insufficient proof of culpability. In effect the burden of proof has been placed upon the complainant. The courts have often failed to challenge the statements of law enforcement and military officials that are at odds with the body of independent testimonial and material evidence. Several Filipino jurists have attributed this court practice to a principle described as the "presumption of regularity" in official procedures and institutions.

A presumption of regularity of operation in a situation in which extralegal and covert acts have become a regular methodology for the security forces serves as a significant constraint on the use of those legal remedies which exist in the statute books to protect victims of "disappearance". It has meant, for instance, that where a petitioner cannot definitively prove that the victim is in the custody of a named respondent or where the respondent has simply denied having custody of the victim, the court has generally dismissed the case. This has been the norm even where eyewitnesses have provided testimony concerning the identity of the alleged perpetrators or their institutional affiliation.

The unwillingness of witnesses to testify in habeas corpus proceedings is frequently cited as an impediment to the successful resolution of "disappearance" cases. Amnesty International believes that witnesses to "disappearances" and other human rights violations in the Philippines have a well-founded fear of reprisals which in most cases keeps them from coming forward to testify. The procedural norms with regard to witnesses to detentions resulting in "disappearances" are such as to ensure their optimum exposure to observation and intimidation. Even when a purported eyewitness signs a sworn affidavit concerning the incident, the witness must take the initiative to appear before a court to repeat the statement. The initiative to invoke legal remedies and criminal investigation procedures normally falls to the family or colleagues of the victim. Even when sworn affidavits have been filed with the court to the effect that an unlawful arrest -- in effect a kidnapping -- has been carried out, with implicit or explicit threat to the life of the victim, the matter is not accorded any special priority by the courts.

Many of these problems have been evident in the case of Maria Nonna Santa Clara and Angelina Llenaresas who "disappeared" on 26 April 1989 and remained missing at the end of 1990. They were last seen in the custody of members of the military and the CAFGU and were thought to be detained at Camp Bagong Ibalon in Legaspi City, but military authorities denied having them in custody. A petition for a writ of habeas corpus was filed on their behalf in May 1989 before a Regional Trial Court. Relatives of Maria Nonna Santa Clara, three lawyers working on the case and witnesses testifying at the habeas corpus proceedings, reportedly received death threats which they believed came from members of the military. The court submitted its findings, apparently in favour of the petitioners, in a report to the Supreme Court in July 1989. After a delay of more than six months, the Supreme Court finally resolved on 10 January 1990 to refer the matter back to the Commission on Human Rights (CHR) for further investigation, rather than issuing its own decision for or against the petition. (See ASA 35/23/89, ASA 35/24/89, ASA 35/37/89, ASA 35/11/90, ASA 35/02/90)

In Amnesty International's view, the application of such standards and procedures in habeas corpus hearings distorts and undermines the objective of this important legal remedy. Habeas corpus is a judicial mechanism intended to guarantee the liberty and security of a person in detention; it does not involve a decision on the substance of a criminal case. To be effective the process must be prompt and summary in nature. If the procedure results in long delays or if it requires standards of evidence which it is not in the power of the petitioner to supply, then the very nature of the habeas corpus petition has been distorted.

Commenting on obstacles to the effectiveness of habeas corpus, the Working Group on Enforced or Involuntary Disappearances wrote in its 1991 report:

As its success ultimately depends on willingness by the executive to provide information on a disappeared person, habeas corpus is rendered useless if co-operation stops at the barracks' gate. In addition, there are many examples of practical and legal obstacles to its effective use which Governments have seen no reason to remove or which they have purposely put into place. The Working Group feels deeply frustrated that, in this manner, habeas corpus remains virtually inoperative in situations of widespread disappearance. Affected Governments should engage in a systematic revision of habeas corpus procedures, repairing their deficiencies.

Amnesty International believes that, in view of the current ineffectiveness of the remedy in the Philippines, it is incumbent upon the government and the judiciary to undertake a thorough review of existing habeas corpus procedures.

4.4.2 The Commission on Human Rights (CHR)

The Commission on Human Rights (CHR) was established by Executive Order 163 in May 1987 as an independent office to investigate complaints of human rights violations. The CHR replaced the original Presidential Committee on Human Rights, established in March 1986, which effectively disbanded in January 1987 following an incident at Mendiola Bridge in which several demonstrators were shot dead by government forces. From the outset the CHR adopted a much broader definition of human rights than that envisioned by the Presidential Committee on Human Rights. In particular, it assumed responsibility for investigating complaints of "human rights violations" committed both by government and non-government forces.

The authority of the CHR with respect to legal remedy for victims of human rights abuse goes no farther than to make recommendations that a case be referred to the public prosecutors and the courts, to recommend to the President that PD 1850 be waived in specific cases, and to provide modest financial assistance to victims.

In Amnesty International's view the CHR has not been proven to be effective in: 1) providing immediate and effective protection to the complainants in human rights related cases; and 2) providing remedy, in the long term, by bringing to account those responsible for gross human rights abuse constituting criminal offenses under Philippine law. Its effectiveness has been impeded by certain limitations in its own methods of work and by a lack of full cooperation from the security forces.

CHR procedures for investigating alleged human rights violations ought to facilitate the prosecution of public authorities who carry out criminal abuses of human rights. Instead they represent an additional and often impenetrable obstacle to the already complex mechanism of criminal justice. The procedures establish a series of requirements which complainant and witnesses alike must fulfil, often at considerable personal risk, without offering any prospect of the form of remedy available in civil or criminal proceedings. The CHR has introduced quasi-judicial procedures without, in general, offering either the protection to complainants and witnesses that is within the powers of a

court of law, or the authority to see that justice is done. For example, it requires complainants and witnesses to provide public testimony, their names and addresses, and to appear repeatedly before hearings, often at considerable risk and personal expense. As such hearings do not either constitute a part of the criminal justice system or have legal validity in subsequent proceedings before the courts, a judicial remedy requires an entirely distinct procedure through which complainants and witnesses must again put their lives on the line.

The CHR's procedures mimic the judicial procedure through which two individuals of equal standing come before the law to seek arbitration or damages. Rather than to serve as Ombudsman or in another form as intermediary between the citizen and the institutions and agents of the state -- a friend in court for the individual wronged by the state -- the CHR procedure has introduced a false legal symmetry between the citizen and the state. It offers little to those who are powerless in their confrontations with the state and its agents beyond a forum in which to be heard (a provision that should not in itself be belittled). In doing so the CHR places the complainant in the position of a party to a private civil complaint who by reason of the complaint, finds himself on trial. Where the adversary is an individual exercising the power of the state, and it was in that capacity that the alleged abuse took place, there is little in this procedure to comfort the complainant.

Partly as a consequence of these procedures, witnesses and complainants, as well as their relatives and legal counsel, are routinely subjected to harassment, death threats and acts of violence by the named respondents or their agents. Although CHR officials recognize the seriousness of the problem and have reportedly set up a witness protection program, there is to date little evidence that it is operating effectively. Witnesses are therefore disinclined to take the risk of testifying before the CHR and as a consequence a large number of complaints are dismissed or "archived".

Another factor limiting the effectiveness of the CHR in providing remedy in cases of "disappearance" is the public perception that it lacks independence from the government and from the security forces. The CHR has often appeared to adopt uncritically the position of the government and the military with regard to "disappearances". Its chairman, for example, reportedly attributed the rise in reports of "disappearances" from late 1987 to the alleged internal purge of the CPP/NPA, known as "Operation Missing Link", despite substantial evidence of police and military responsibility. In September 1989, she is reported to have said that "Operation Missing Link":

...could be the explanation because the military says they don't pick up these people. As a military strategy, I cannot see the use of the disappearance of these people. It would be to the disadvantage of the military... Who could benefit from a constant exposure of these alleged disappearances? It is propaganda that the leftists can really use against the military.

Statements of this sort have done little to dispel the notion, as expressed by a member of the Philippine Congress, that the CHR acts as a "mouthpiece of the military". Such a perception undoubtedly undermines the CHR's effectiveness as a remedy for the victims of "disappearance" and other human rights violations.

Victims and witnesses of human rights violations as well as their legal representatives have also questioned the thoroughness of CHR investigations. Amnesty International's own observations in the field tend to support the conclusion that CHR investigations, with some commendable exceptions, are all too often a bureaucratic formality. In many cases, CHR officials fail to carry out on-site investigations at all, relying instead on the reports of other organizations or on information provided by government or military authorities. Investigations are frequently stopped and cases "archived" at the smallest indication of resistance from the authorities or where a key witness has failed to come forward to testify. Yet it is precisely in these circumstances that the CHR ought to exert its authority, for example, to overcome official non-cooperation or to ensure that witnesses feel free to testify without fear of reprisal.

On the positive side, the CHR's 12 regional offices do provide some measure of protection to

victims and to their representatives. Particularly in remote areas, where local non-governmental human rights organizations are themselves under threat, the CHR may provide the only mechanism through which complaints are put on the public record and through which a procedure of inquiry, however cumbersome, is set in motion. The extent to which the CHR provides a function of protection depends greatly, however, on the personal qualities and commitment of its regional personnel.

5. CASE STUDIES OF "DISAPPEARANCE" -- 1990

This section details the fate of 25 people who are reported to have "disappeared" during 1990. Their stories illustrate and provide substantive evidence of the general pattern of "disappearance" described earlier in this report. Included here are the cases of three people who died or were killed in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

These case studies reveal some of the common features of "disappearances" in the Philippines. Many of these "disappearances" were carried out late at night or in isolated locations, thereby limiting the chance of identification. The perpetrators generally dressed in plainclothes and drove unmarked vehicles, making positive identification by witnesses more difficult. Some of the victims were taken to unofficial detention centres -- "safehouses" -- where their detention was not formally registered. In other cases they were detained in military camps where access by families, lawyers, human rights activists or even government authorities was denied even if by law it should have been permitted.

In virtually every case documented here there is clear evidence that government or government-backed forces were responsible for the victim's "disappearance". In most cases the relatives or colleagues of the victim spent anxious weeks or months in search of their loved ones. Many made use of the available procedures and remedies -- including petitions for writs of habeas corpus and filing complaints with the CHR -- but with rare exception their efforts were to no avail. In several cases, these efforts resulted in the relatives, witnesses and others involved in the search for the "disappeared", themselves becoming targets of death threats and intimidation by members of the security forces.

"Disappearances" occurred virtually throughout the country but they were most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including parts of Negros, Mindanao, Samar and Central Luzon. The majority of the "disappeared" were members of lawful non-governmental organizations -- including human rights groups, church organizations, youth and student groups, farmers' organizations, trade unions and research institutes -- alleged by the authorities to be "fronts" for the outlawed CPP and NPA, or individuals suspected of having links to the NPA or CPP. Among them were people whose work on behalf of the victims of the war, or of the socially and economically disadvantaged, took them into areas of suspected rebel activity.

5.1 Those Who Reappeared in Custody

The government has noted, correctly, that some people reported as "disappeared" have later reappeared. Amnesty International always welcomes such news. However, contrary to the government's contention that such reappearances cast doubt on the accuracy of the original reports, most such cases actually confirm that the victims were held for some period in unacknowledged military or police custody.

Amnesty International has documented at least 15 cases during 1990 in which the "disappeared" have subsequently reappeared after a period in police or military custody. A number of those who reappeared were formally released from custody, some escaped and still others remained in police or military custody after their illegal detention was acknowledged. Amnesty International also knows of

at least six similar cases from 1989 which are noted in Appendix IV.

Soledad MABILANGAN and Alita BONA

Soledad Mabilangan and Alita Bona, both aged about 22, were detained on 10 March 1990 by members of the security forces in sitio Tubigan, barangay Paranas, Wright, Samar province. Alita was three months pregnant. Military authorities repeatedly denied their detention for over six weeks, but in late April the women were found to be in military custody at the headquarters of the 802nd IB. To Amnesty International's knowledge they remained in custody, without charge, at the end of the year.

Soledad Mabilangan and Alita Bona were reportedly arrested between 1pm and 2pm on 10 March 1990 in sitio Tubigan by armed men believed to be CAFGU members or soldiers attached to the Charlie Company of the army's 52nd Infantry Battalion (IB) based in barangay Casandig. The women had walked from barangay Capul to Tubigan to buy rice at the weekly market there. An eyewitness saw two women in the custody of soldiers in sitio Tubigan at about 2pm the same day. Other witnesses said they had seen two women walking under military escort on the road to the 802nd Infantry Battalion headquarters. These witnesses refused to provide sworn testimony, apparently from fear of military reprisals.

Leanita Mabilangan, Soledad's mother, learned of her daughter's detention four days later through a community leader in Tubigan. She enquired after the whereabouts of her daughter and Alita Bona at Camp Lukban (the headquarters of the army's 8th Infantry Division), at a detachment of the army's 34th IB and at the Charlie Company of the 52nd IB. Authorities in each place denied having the women in custody.

On 27 March Leanita Mabilangan filed a complaint with the CHR and on 6 April CHR officials officially requested information on the whereabouts of the two women from the commander of the 8th Infantry Division. Military authorities acknowledged receipt of the communication but provided no substantive response to the request for information. Two weeks later officials from the CHR received unofficial information - a rumour - that the women were detained at the 802nd IB headquarters, in barangay Bagaca, Samar, and went immediately to search for her there. The acting commander of the camp refused to comment on the whereabouts of the two women and told the CHR officials to return on 23 or 24 April. A special investigator from the CHR who visited the camp on 24 April was threatened at gunpoint by a soldier and denied access.

On 26 April 1990 two CHR officials, an Amnesty International delegation and relatives of Soledad Mabilangan visited the camp and found the two women in custody. Military officials at the camp claimed that Soledad Mabilangan and Alita Bona were held "voluntarily", although they alleged that they and their families were well-known members of the NPA. The camp commander said that the women had not been charged and that they would be released if their husbands -- alleged to be NPA members -- "turned themselves in". The authorities also admitted that no attempt had been made to inform the women's families of their arrest, even when they knew that Soledad Mabilangan's relatives had inquired about their whereabouts at several military installations. According to reports, the women were taken from their cell and hidden when visitors came to the camp.

In a private talk, Soledad Mabilangan and Alita Bona explained that they had not been physically ill-treated in the camp. But they had been encouraged to collaborate with the army's counter-insurgency effort and threatened with prosecution for association with the guerrilla movement if they did not cooperate. They said they had been interrogated about their relatives' alleged connection with the NPA and made to sign affidavits under duress. In one of these they agreed to act as CAFGU informants upon their release. One of the women expressed their special fear that if their husbands were seized or killed while they were in secret detention, they would themselves have almost certainly been killed.

Helen TREMBEVILLA

Helen Trembevilla "disappeared" on 24 July 1990. Military authorities in the area initially denied holding her, but in September they informed Amnesty International that she had been in military custody during July and August; she was released on 17 August. Helen Trembevilla is a member of Fathers and Relatives against Tyranny and Repression, an organization set up to support the relatives of victims of human rights abuses and the girlfriend of a former political detainee who was released in 1989 following the dismissal of charges against him.

Helen Trembevilla was detained shortly after being discharged from the Corazon Locsin Montelibano Memorial Hospital in Bacolod on 24 July 1990. She had been treated there for injuries suffered when soldiers from the 66th IB opened fire at her house on 7 July 1990, believing that members of the NPA were inside the house. As she left the hospital with her parents, eyewitnesses said that men in civilian clothes believed to be members of the 66th IB approached and asked Helen to go with them for questioning. The men told her parents to go ahead and meet them in Kabankalan. However, Helen Trembevilla did not appear at the arranged meeting place and has not been seen since.

Helen Trembevilla's relatives and staff from the Bacolod office of a national human rights organization inquired after her whereabouts at the Negros Island Command, the military base which covers the whole of Negros island, as well as at the 301st Brigade based in Hinigaran, and the 66th IB in Kabankalan. Her custody was denied at all these establishments.

In September 1990 military authorities in Negros Occidental province informed Amnesty International that Helen Trembevilla had in fact been held in military custody at Kabankalan, Negros Occidental. She was released from detention on 17 August and, to Amnesty International's knowledge, no charges were filed against her. (See ASA 35/22/90 and ASA 35/03/91)

Rosario LODRONIO

Rosario Lodronio, aged 30, was reportedly abducted on 18 December 1990. She was arrested by three armed men in military uniforms from her uncle's house in barangay San Benito, Victoria, Laguna province. Military authorities denied that Rosario was being held in custody, but on 22 December she was released from the 202 Infantry Brigade of the Philippines Army at Lumban in Laguna province.

The reasons for Rosario Lodronio's arrest are unclear, but the authorities are believed to have suspected here of being the wife of a commander of the Southern Tagalog district of the NPA. (See ASA 35/30/90 and ASA 35/31/90)

5.2 Those Who Died or Were Killed in Custody

Felipe "Wilson" LEONIDAS

Felipe "Wilson" Leonidas, aged 27, was reportedly detained in Manila by armed men believed to be members of the armed forces. His detention was initially denied by military authorities, but he was subsequently found hanged in his cell in a military camp. He was an active member of the KPML (Kongreso ng Pagkakaisa ng Maralita sa Lunsod), an organization working on behalf of the poor in urban areas.

Felipe "Wilson" Leonidas, aged 27, was detained in Santa Cruz, Manila on 22 February 1990 at a restaurant where he had gone with two friends after participating in an anti-U.S. bases rally organized by the National Movement for Civil Liberties. According to eyewitness reports, approximately six armed men in plainclothes came into the restaurant and pointed a gun at Wilson Leonidas after a young man with them said, "Yes, it's him". He was dragged outside to a waiting vehicle which then drove off to an unknown destination. Another armed man was left behind preventing others from following. Wilson Leonidas was heard shouting for help as he was taken away. His relatives searched for him at local police stations, hospitals and military detention centres, but his custody was denied by the authorities.

On 27 or 28 February, "Wilson" arrived at the home of relatives escorted by members of the Military Intelligence Group (MIG) from Camp Bago Bantay in Pag Asa, Quezon City, Manila. He reportedly told his relatives that he had signed a "surrender paper" and had decided to cooperate with the military. On 1 March the military informed Wilson's sister that "Wilson" had hanged himself in his cell.

Felipe "Wilson" Leonidas had been held in detention by the MIG, thus confirming previous reports that the armed men in plain clothes who abducted him on 22 February were members of the military forces.

Relatives filed an official complaint with the Commission on Human Rights on 6 April 1990. In a case report dated September 1990, the CHR said that an autopsy showed that the cause of death was "asphyxia by hanging" but there was no conclusive evidence that the victim had committed suicide. The report also indicated either that military authorities at Camp Bago Bantay had been uncooperative or that the CHR had not performed its duty with sufficient energy. The report reads: "CHR investigators exerted efforts to confer with [the commanding officer] regarding the circumstances of the death of Felipe. Unfortunately, he was not available at that time." According to the report, there were plans to subpoena military authorities but to Amnesty International's knowledge this had not occurred by the end of the year. (See ASA 35/06/90)

Efren CONCEPCION, Nicolas LOPEZ, Reynaldo SANTOS and Roberto LOPEZ

Efren Concepcion, Nicolas Lopez and Reynaldo Santos "disappeared" after they were detained by members of a joint military and paramilitary force on 11 February 1990 in barangay San Sebastian, Hagonoy municipality, Bulacan province. Roberto Lopez, a construction worker and the son of Nicolas Lopez, "disappeared" in a separate incident on 15 February 1990 after he was detained by armed men in barangay San Agustine, Hagonoy municipality, Bulacan province.

Efren Concepcion was reportedly beheaded by his captors on or before 13 February 1990. Nicolas and Roberto Lopez said they were spared execution because they pretended to be willing to join the CAFGU. Both later escaped from the "safehouse" where they were detained after witnessing the beheading of Efren Concepcion. The whereabouts of Reynaldo Santos were not known at the end of the year.

Efren Concepcion, Nicolas Lopez and Reynaldo Santos were reportedly detained by members of a special unit called the "Special Task Force Anti-Illegal Fish Pond", organized by the PC Provincial Commander. The unit is said to be made up of CAFGU members, "rebel-returnees" (former NPA guerrillas who have come over to the government side) and elements of the Integrated National Police (INP). Members of this unit were reportedly responsible for the arrest and ill-treatment of others in Hagonoy municipality suspected of being NPA members or sympathizers. All three men were members of BANGKALIS, a fisherman's organization in Bulacan. Efren Concepcion was provincial Vice-Chairman of BANGKALIS and General Secretary of KAMPI, the west-Bulacan district chapter of ALLMA, a human rights organization in Bulacan province.

Efren Concepcion was reportedly taken from his house by soldiers at about 3 am in the morning and beaten. Neighbours and relatives reportedly heard him crying out in pain before he was taken away. Nicolas Lopez and Reynaldo Santos, who had been staying at the house of Efren Concepcion, were taken away separately. Relatives and human rights advocates inquired after them at the Provincial PC Command in Malolos, but the authorities there denied having them in custody. It is believed that they were detained in a "safehouse" owned by a CAFGU member in barangay Santa Cruz, which also served as a local CAFGU headquarters.

Roberto Lopez was reportedly detained by two armed men, believed to be police officers, on 15 February in Mababang Lupa, barangay San Augustine, Hagonoy, Bulacan province. Witnesses said the armed men, at least one of whom they identified by name as a police officer, smashed his head against a cement wall and threatened him with a hand gun before tying him up "like a pig". He was then forced into a waiting Ford Fierra jeep which bore INP insignia and taken to the municipal jail. Shortly afterwards he was removed to a house used by the Special Task Force as an unofficial detention centre. Witnesses believed that the two armed men belonged to the Special Task Force thought to be responsible for the 11 February "disappearances" mentioned above. Roberto Lopez' wife and mother inquired after him at the local police headquarters and at the PC Provincial Command in Malolos, but the authorities denied having him in custody. He later escaped from custody. (See ASA 35/07/90 and ASA 35/10/90)

Nestor LOBERIO and Diomedes "Desi" ABAWAG

Nestor Loberio, aged 25, the project director of SAFDI (Samar Assistance for Farmers Development Inc.), a lawful non-governmental organization involved in livelihood projects for poor farmers in Samar, has not been seen since he and Diomedes Abawag, a SAFDI staffworker, were detained by armed men believed to be members of a military intelligence "death squad" on 29 January 1990 in Catbalogan, Samar province.

Diomedes Abawag is thought to have been tortured and beheaded by his captors. His head, reportedly bearing signs of torture, including a deep slash in the lower lip, facial bruises and a hole in the right temple, was found in the sea by fishermen near barangay Butaena, Zumarraga, Samar province, on 1 February 1990. The fishermen reported the discovery to the police in Catbalogan.

The men who detained Nestor Loberio and Diomedes Abawag are believed to be members of a "death squad" called "Banagan", allegedly set up by the Military Intelligence Group of Region 8 (MIG 8) based at Camp Lukban, Catbalogan. The majority of "Banagan" members are thought to be former "vigilantes" from the San Miguel area, Leyte province.

Diomedes Abawag and Nestor Loberio were reportedly detained at about 6 pm in San Francisco Street, Catbalogan, Samar. In a sworn statement, an eyewitness said that the two men were "dragged forcefully" into a maroon-coloured jeep with no number plates, which was waiting in front of an automotive shop. The jeep then drove off in the direction of Ubanon district, Catbalogan province.

On 4 February, two headless bodies, possibly those of the two men above, were found; one in barangay Iquid, Catbalogan, and another in San George Poblacion, Samar. However, Amnesty International could not confirm that these were the bodies of Nestor Loberio and Diomedes Abawag. (See ASA 35/08/90 and correction)

5.3 Those Who Are Still Missing

Maximiano "Jun" MESINA and Felix DIMITUI

Maximiano "Jun" Mesina and Felix Dimitui, two former prisoners of conscience, have not been seen since they were arrested by armed men believed to be members of the 181st PC Company on 2 January 1990. Their detention has been denied by the Provincial PC Command and their whereabouts remain unknown. A petition for habeas corpus filed by relatives on their behalf on 5 January 1990 was denied on 26 January.

Maximiano Mesina, Press Relations officer of the Alyansa ng Magbubukid sa Gitnang Luzon (AMGL), Alliance of Farmers in Central Luzon, and Felix Dimitui, AMGL staff member, were arrested between 11.30 and 12.00 in the morning of 2 January 1990 in Tarlac, Tarlac province. Witnesses said that the two men were walking near a bus terminal when they were detained by armed men in civilian clothes led by a PC sergeant whom witnesses identified as a member of the 181st PC company, based in Camp Makabulos.

On the same day, a group comprising local leaders of AMGL, workers from the local branch of the human rights organization Task Force Detainees (TFD), as well as relatives of Maximiano Mesina and Felix Dimitui, went to the PC provincial headquarters at Camp Makabulos to inquire after their whereabouts. Their detention was denied. On the following day, 3 January, the group met the PC Assistant Provincial Commander at Camp Makabulos and were told that the two had not been arrested and that the PC sergeant who had been identified was away from the camp and could not be reached. Efforts by the Provincial Governor to locate the PC sergeant were also said to have proved unsuccessful.

On 26 January a petition for habeas corpus was filed in the Tarlac Regional Trial Court, Branch 65. The petition was denied for two reasons. First, the court rejected the sworn statement of an eyewitness who refused to testify in person for fear of reprisals. Second, according to the judge, a criminal procedure was more appropriate for the case. The judge argued:

If the persons alluded to in this petition has (sic) been the victims of illegal arrest or detention, they can have recourse to criminal action...The only issue that can be ventilated in a habeas corpus proceedings (sic) is whether or not a person, detained, arrested or restrained of his liberty is entitled to release. (G.R. No. 91456, F.D. et. al. v. Fidel V. Ramos et. al. Decision of January 26, 1990).

Charges of kidnapping were subsequently filed against the alleged perpetrators and in March 1990 relatives appealed to the President to waive PD 1850. According to reports this appeal was successful and the case will be heard before a civil court. (See ASA 35/01/90)

Maximiano Mesina and Felix Dimitui were among 18 people arrested in March 1989 at the AMGL offices in San Fernando, Pampanga province, and adopted by Amnesty International as prisoners of conscience (see ASA 35/25/89, The Arrest and Imprisonment of 18 Activists in Pampanga Province). They were charged with subversion and the illegal possession of weapons and held in custody until September 1989, when the court ruled that there was insufficient evidence against them. Amnesty International is particularly concerned at their arrest and "disappearance" so soon after their release from six months' imprisonment on charges which were found to be groundless.

Antonio BUENAVISTA

Antonio Buenavista, 42, has not been seen since 7 January 1990 when he was taken from his home in barangay Santa Cruz, Hagonoy, Bulacan province, by five armed men in civilian clothes believed to be connected with the 171st Company of the PC.

According to eyewitnesses, Antonio Buenavista was dragged from his home at about 7pm on 7 January. His abductors wore masks and were armed with four automatic weapons (three M-16s, one M-14 and one .45 revolver). When he tried to resist by holding onto a piece of furniture in the house, one of the men shot him in the arm with an M-14 rifle forcing him to release his grip. Outside the

house, he was struck on the back of the head with a rifle butt and knocked unconscious before being put into a waiting white car. When his wife, Esther Buenavista, began to call for help, one of the armed men reportedly shouted "Shut up you bitch. Come any closer and we'll kill you!" One of the men shot at her but reportedly missed because his gun was pushed by her son Jesus Buenavista. Following the shooting, the two ran for safety and sought help from the barangay captain who helped them report the case to the Mayor and the police in the municipality of Hagonoy.

Relatives inquired after Antonio Buenavista's whereabouts at the 171st Company of the PC in Malolos, and at other military and police detachments, but authorities denied having him in their custody.

There were indications of a link between the perpetrators and military and paramilitary authorities in the area. Two days after the incident, the suspected perpetrators were reportedly seen, bearing arms, at a detachment of the 171st PC Company in barangay Santa Cruz. After the incident they were reportedly seen in the barangay, still armed, and fraternizing with military personnel. On the night of the incident, the white car driven by the perpetrators was reportedly seen in front of the Hagonoy Municipal Hall. Residents of nearby Barrio Mercado reported that the same car was seen leaving the neighbourhood at dawn on the morning of the next day, 8 January. Barrio Mercado is the site of a CAFGU detachment under the command of the 171st PC Company.

A petition for habeas corpus was filed on behalf of Antonio Buenavista before the Regional Trial Court (RTC) on 16 January 1990, but it was dismissed. The reasons for the dismissal are not known. According to witnesses, the respondents in the case were present at the hearings bearing arms and two-way radios. Charges of kidnapping and illegal possession of firearms were also filed against the alleged perpetrators, and on 23 April the RTC issued warrants for their arrest. However, according to residents of barangay Santa Cruz, the suspects continued to roam freely in the community, still fully armed, after the warrants had been issued. (See ASA 35/14/90)

Amelia TENA

Amelia Tena, 22, is a member of the Kabataan para sa Demokrasya at Nasyonalismo (KADENA), the Youth for Democracy and Nationalism. She was last seen on 26 May 1990, in Victoria, Laguna province in the custody of armed men believed to be members of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) and a local CAFGU member.

According to reports, the public passenger jeep in which Amelia Tena was travelling collided with a Ford Sierra at between 10am and 11am on 26 May in barangay Masapang, Victoria, Laguna. An eyewitness said that several armed men forced Amelia Tena to leave the jeep and get into the Ford Sierra, which then drove off. After the arrest a witness was reportedly able to identify two of the men by name; however, the witness subsequently went into hiding for fear of reprisals by the security forces. Since the abduction, military authorities in the Laguna region have consistently denied that she is being held in custody.

On 7 June 1990, a relative reported having received two letters. The first, apparently from an ISAFP officer, invited her to meet him at a designated time and place. The relative did not go to the meeting for fear of herself becoming a victim of abduction, particularly as the letter instructed her to attend alone. The second letter was apparently from Amelia Tena herself. It instructed the relative to attend a court hearing of the case of eight political prisoners who, the letter said, would have news of Amelia Tena's whereabouts and the conditions of her detention. The relative attended the hearing but the defendants said they knew nothing of the "disappeared" person.

In January 1991 an eyewitness reportedly testified before the CHR that she had seen Amelia Tena in the custody of soldiers at Los Banos in June 1990. The witness said that Amelia Tena and other detainees had been obliged to address a military seminar at about that time. She also testified that Amelia Tena had been transferred from one "safehouse" to another since her arrest in May 1990.

Allan GITANES

Allan Gitanes, a farmer aged 20, was last seen on 30 April 1990 in the custody of soldiers belonging to the 28th Infantry Battalion (IB) of the Philippines Army.

His "disappearance" followed the evacuation in late April of more than 300 families from rural areas near the town of San Augustine in Surigao del Sur province, where government forces were conducting military operations against the NPA. Several government soldiers were reportedly killed and more than ten taken prisoner during an armed encounter between government troops and NPA guerrillas on 18 April 1990; the situation of the captured soldiers is not known.

According to relatives, Allan Gitanes returned to the family farm in Janipaan, San Augustine, on 30 April in order to collect some food and to check possessions which had been left behind during the evacuation. He failed to return to the evacuation centre that evening. An eyewitness reported on 3 May that he had seen Allan Gitanes, with his hands tied, being taken into the municipal hall in San Augustine at about 8pm on 30 April. The eyewitness said that he was escorted by soldiers of the 28th IB.

Relatives inquired after his whereabouts at the headquarters of the 28th IB, but the authorities there denied having him in custody. They also inquired at the headquarters of the 401st IB where an officer denied any knowledge of Allan Gitanes but promised to assist the family in locating him.

Bonifacio SABANAL, Rufino SABANAL, Mamerto LUPICIO

Bonifacio Sabanal (19), Rufino Sabanal (40) and Mamerto Lupicio (25), all members of the Federation of Internal Refugees in Negros, "disappeared" shortly after their arrest on 6 July by military officers from the Alpha Company, 61st IB and CAFGU members under its command. The military authorities reportedly accused the men, two of whom were recent evacuees, of being couriers for the NPA, an allegation denied by their relatives.

According to eyewitnesses, the three were detained in barangay San Antonio, Himamaylan at about 3.30pm on 6 July, while on their way to help a relative harvest his crops. On 9 July, relatives went to the detachment of the 61st IB in barangay Carabalan, Himamaylan, to inquire after their whereabouts. They were told that the three had been released on the evening of 7 July, and that two local Council members had witnessed the signing of the release papers. According to one report, however, the three men were seen on 8 July at the 61st IB headquarters. The three were said to be "kneeling and pleading" before CAFGU members and to bear signs of having been ill-treated.

Relatives filed a petition for a writ of habeas corpus before the Regional Trial Court of Negros Occidental, at Himamaylan on 10 July 1990. According to reports, the petition was dismissed because the military respondent claimed the three had been released. (See ASA 35/24/90)

In August and September Sister Aquila Sy, a well-known human rights and community activist who had helped relatives search for the three men, received death threats believed to emanate from organizations backed by military and local government authorities. Hundreds of leaflets were reportedly distributed in parts of Negros Occidental inciting acts of violence against Sister Aquila Sy and other religious workers and accusing them of sympathizing with the NPA. (See ASA 35/23/90)

Edmundo CARIAS

Edmundo Carias, 22, "disappeared" after being taken from his house in Davao City on 8 August 1990 at approximately 1am by members of the military Intelligence Security Operations Group (ISSOG).

According to Edmundo Carias' 60-year-old mother, Vicenta, they were both awakened after midnight on 8 August by the barking of dogs and the sound of thudding on the doors of their home. Three armed men burst into their bedroom and ordered Edmundo Carias to hold his hands up. The men, who are alleged to have said they were "the authorities", handcuffed him and dragged him out of the house. When his mother tried to accompany him she was pushed away. She said that other military units were involved in the arrest but she could not identify them.

Some hours later, Vicenta went to look for her son at the ISSOG office but was told he was not there. On 10 August she was informed by the ISSOG's commanding officer that Edmundo was alive but under investigation. Some soldiers at the office reportedly warned a woman who had accompanied Vicenta Carias that she would "also" be considered an NPA member if she continued to accompany Vicenta Carias. There was no formal acknowledgment of Edmundo Carias' arrest.

On 14 August, Vicenta Carias filed a writ of habeas corpus before the 11th Regional Trial Court (Branch 15). The petition was heard on 17 August. The respondents denied having arrested or detained Edmundo Carias and his current whereabouts are unknown. (See ASA 35/25/90)

Jimmy BADAYOS

Jimmy Badayos, aged 34, has not been seen since he was taken into custody by military intelligence officers in Cebu City on 3 October 1990. He was held incommunicado for five days before the military authorities claimed that he had escaped from detention.

According to eye-witnesses, Jimmy Badayos was arrested at his home in sitio Kabulakan, Go Chan Subdivision, Banawa, Cebu City, by members of the Intelligence Division (M2) of the Cebu Metropolitan District Command (Metrodiscom) at about 4am on 3 October. He was interrogated briefly, then taken to the Metrodiscom Headquarters at Camp Sotero Cabahug, accompanied by his wife and two children. He is reported to have been taken first to the office of the Chief of the Intelligence Division, and later to a small room in a logistics building, believed to be used for interrogation.

On 8 October a petition was filed for a writ of habeas corpus before Branch XVI of the Regional Trial Court in Cebu, but the military respondents did not appear in court. When the hearing resumed on the following day, the authorities said that Jimmy Badayos had escaped from an interrogation room at Metrodiscom Headquarters at about 1.40am on 4 October. The court apparently accepted this explanation and rejected the petition for habeas corpus.

Jimmy Badayos is believed to have been accused of being a member of the NPA. During his detention in Camp Sotero Cabahug, the camp was reportedly under heavy guard (red alert) due to an uprising by renegade soldiers in the nearby island of Mindanao. There was no report prior to the court hearing that civilian prisoners had escaped from the closed camp and no evidence was presented to the court to substantiate the claim that Jimmy Badayos had escaped. (see ASA 35/26/90)

Pedro BULALACAO

Pedro Bulalacao, 38, leader of an urban poor organization Katipunan ng Samahang Makabayan (KASAMA), has not been seen since he was detained on 17 June 1990 by two men believed to be members of the police.

According to an eyewitness, Pedro Bulalacao was detained by two men in civilian clothing as he crossed Roxas Boulevard in Pasay City, Metro Manila, at about 5.15pm on 17 June. The men reportedly took him to a group of waiting vehicles, where he was held and punched. The eyewitness said a man who alighted from a light blue Toyota with registration plate number NAW-541 placed handcuffs and a blindfold on Pedro Bulalacao before putting him into a white car.

The white car then drove off, followed by the Toyota, a passenger jeep and a red car. Relatives and colleagues from KASAMA reportedly inquired after his whereabouts at a number of security forces establishments, including the headquarters of the Pasay City police, the Western Police District Headquarters, and Camp Crame, a military camp in the area. Custody of Pedro Bulalacao was denied by all these authorities.

Neighbours reported that police officers from Pasay City had been to Pedro Bulalacao's home at about 3pm the same day, but had not found him because he was at a park in Libertad where he often spent Sunday afternoons teaching karate. (See ASA 35/18/90)

Josefa PADCAYAN, Marcelo BAWAGAN and Arnel HIDALGO

Josefa Padcayan, aged 36, Marcelo Bawagan and Arnel Hidalgo have been held in secret, incommunicado detention since 16 November 1989. The three were last seen in the custody of members of the 17th Infantry Battalion of the Philippine Army (IB PA), in Zinundungan Valley, Cagayan province. While military officials acknowledged in November 1989 that the three had been detained, all access to the prisoners has been denied, and the three remain unaccounted for, more than one year after they were arrested.

During November 1989 the Zindungan area had been the site of intensive military operations against the NPA. Josefa Padcayan, a community health worker and a former government nurse, was

on her way to deliver relief goods to affected villages in the Zindungan valley when she and her two companions were reportedly arrested without warrant by military officers.

Relatives of Josefa Padcayan, together with local priests and human rights workers, tried to locate the three at the local military barracks. They were told by officials that they had been taken from Piat to Santo Nino and then to Alcala, Cagayan Province. The commanding officer of the 17th IB PA acknowledged in the presence of the victims' lawyer, a local priest and two workers from the Cagayan office of a national human rights organization that the three had been arrested. However, access to the three was not granted.

Since the arrests, a petition was filed for a writ of habeas corpus and, after several postponements, the case was heard twice -- in February and March 1990. On both occasions the result was inconclusive as certain participants failed to appear in court. A third hearing in June 1990 was also inconclusive. The court has persistently failed to exercise its right to visit the detention facilities at the 17th IB army base to establish the circumstances of the three prisoners or to rule on the legality of the incommunicado detention. (See ASA 35/21/90)

6. CONCLUSIONS AND RECOMMENDATIONS

"Disappearances" have occurred against the background of armed conflict between government forces and the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). They have been most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including large parts of Central Luzon, Negros, Samar and Mindanao. The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by members of the security forces as fronts for the NPA and CPP.

Despite the existence of elaborate legal and institutional safeguards for the protection of human rights in the Philippines, Amnesty International believes that certain aspects of government policy and military strategy -- in particular aspects of the counterinsurgency campaign -- have helped to create a context within which "disappearances" and other human rights violations are more likely to occur. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

Senior government and military authorities have been reluctant to acknowledge responsibility for "disappearances" claiming instead that they are the work of the NPA and CPP or that the "disappeared" have simply gone into hiding. Amnesty International acknowledges that a small number of people reported to have "disappeared" in previous years may have been detained by opposition forces. It stresses, however, that this does not in any sense alter the government's responsibility with respect to investigating all cases of alleged enforced "disappearance" and bringing those responsible to justice. The government's responsibility is a matter both of immediate practical concern -- relocating the "disappeared" person, identifying the perpetrators and stopping the pattern of "disappearance" -- and of principle arising out of international law.

The available remedies for locating the "disappeared" and bringing the suspected perpetrators to justice have so far proven to be ineffective. Petitions for writs of habeas corpus filed with the courts have seldom led to the reappearance or release of the "disappeared". The government-backed Commission on Human Rights (CHR), hampered by limitations in its terms of reference and methods of work and by a lack of full cooperation from military authorities, has had limited success in locating the "disappeared". Presidential Decree 1850 constitutes an important legal obstacle to the effective prosecution of members of the security forces suspected of responsibility for "disappearances" and other human rights violations. Through its acquiescence in and reliance on judicial and quasi-judicial procedures and institutions which have been shown to be ineffective in preventing "disappearances", locating those who have "disappeared" and bringing the alleged perpetrators to justice, the government has failed to meet its obligations under international law and has, in Amnesty International's view, contributed to the problem of "disappearance".

Amnesty International recognizes that some people reported as "disappeared" may reappear in a matter of weeks or months, but it stresses that their reappearance after a period in unacknowledged military custody does not in any sense diminish the seriousness of the violation. Nor does it necessarily call into question the validity of the original report; to be "disappeared" means simply to be held in unacknowledged, incommunicado detention by government or government-backed forces. The reappearance, alive, of all of the "disappeared" held in secret government custody is Amnesty International's objective.

6.1 Recommendations to the Philippine Government

Amnesty International has welcomed the Philippine Government's ratification of major

international human rights treaties, such as the International Covenant on Civil and Political Rights and other steps it has taken to address the problem of "disappearances". It emphasizes, however, that the terms of these treaties are binding on the government to provide effective human rights protection, not only in principle but in practice. Despite the existence of institutional and legal safeguards for the protection of human rights in the Philippines and the government's often stated commitment to the protection of human rights, "disappearances" and other serious violations continue to occur.

Amnesty International offers the following specific recommendations which, if implemented, it believes would strengthen existing human rights guarantees, and would in particular help to prevent future "disappearances".

To contribute to the creation of a political climate in which "disappearances" are less likely to occur, Amnesty International urges the government:

1. to initiate prompt and impartial investigations to clarify the whereabouts or fate of all those reported to have "disappeared" regardless of when or where the "disappearance" occurred;
2. to ensure strict control, including a clear chain of command, over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as over all officials authorized to use force and firearms;
3. to ensure that Constitutional provisions prohibiting the maintenance of private armies are upheld and enforced;
4. to undertake a thorough review of the use of official and semi-official paramilitary forces in the conduct of the counter-insurgency campaign;
5. to prohibit explicitly the public political labelling of alleged government opponents by government authorities and by members of government or government-backed security forces.

To ensure that arrest and detention procedures provide guarantees against the occurrence of "disappearances", Amnesty International calls on the government:

6. to guarantee that judicial and quasi-judicial bodies shall be granted access to all places of detention where a detainee is suspected of being held;
7. to enforce the legal/constitutional prohibition of incommunicado detention or the use of unofficial places of detention;
8. to establish and maintain centralized public registers of all persons detained in all parts of the country, to be updated on a daily basis and made available to family members, magistrates, attorneys and other authorities.
9. to establish similar registers at each place of detention throughout the national territory;

To ensure that members of government or government-backed security forces are not free to commit violations of human rights with impunity, Amnesty International calls on the government:

10. to bring promptly to justice members of government and government-backed security forces where there is evidence of their responsibility for or their participation in an act leading to

"disappearances";

11. to repeal Presidential Decree 1850, or until such time as it is repealed, to ensure that the jurisdiction of military courts is waived in all cases involving "disappearances" and other grave human rights violations.

**To ensure the effectiveness of judicial and quasi-judicial remedies in cases of Amnesty
International calls on the government:**

12. to review existing judicial procedures with respect to petitions for habeas corpus with a view to ensuring its optimal effectiveness as a remedy in cases of "disappearance";

13. to establish a practical and affordable witness protection program to ensure that complainants, witnesses and those conducting investigations into human rights related cases shall be protected from violence, threats of violence or any other form of intimidation;

14. to enact legislation to ensure that those implicated in "disappearances" or other human rights violations shall be removed from positions of power or control, whether direct or indirect, over complainants, witnesses and their families, and investigators;

15. to undertake a thorough review of the Commission on Human Rights, its terms of reference, procedures and methods of work.

APPENDIX 1

Excerpts from the International Covenant on Civil and Political Rights (ICCPR)

Article 2

(3) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

Article 6

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7 states in part:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9

(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

APPENDIX II

Excerpts from the United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment

Principle 11

- 1.** A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
- 2.** A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
- 3.** A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 32

- 1.** A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
- 2.** The proceedings referred to in paragraph 1 shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such an inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

APPENDIX III Excerpts from the 1987 Constitution of the Philippines

Article III - The Bill of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Section 12.

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Section 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Section 18.

(1) No person shall be detained solely by reason of his political beliefs and aspirations.

Section 19.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Article XVIII -- Transitory Provisions

Section 24.

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 into the regular force.

APPENDIX IV

Reappearances After a Period in Police or Military Custody: Examples from 1988 and 1989

Flaviano RUDAS

Flaviano Rudas reportedly "disappeared" in Concepcion, Mindanao province, in June 1988. The Mayor of Dipolog, Mindanao, claimed in October 1989 that Flaviano Rudas "was never apprehended nor detained for any crime". However, in December 1989 Rudas' parents executed an affidavit stating that he had been "invited by the military for investigation" on 25 June, but that he had subsequently been released and was alive and working in Manila. Amnesty International welcomed information from government and other sources that Flaviano Rudas had reappeared, but noted that this information confirmed that he had been in military custody, despite denials of this at the time of his "disappearance". (See ASA 35/21/88)

Elmer REYES

Elmer Reyes "disappeared" after being detained by unidentified armed men in Manila on 7 September 1988. His family failed to locate him at several local police stations and military detachments. On 15 September 1988, a Philippines Air Force Intelligence unit acknowledged having Reyes in custody and released him four days later. (See ASA 35/29/88 and ASA 35/31/88)

Apolinar PABRICIO

Apolinar Pabricio was reportedly detained in Laguna on 8 February 1989 by personnel of the 16th Infantry Battalion (IB), but military authorities denied having him in custody. In March 1989, he was seen inside the 16th IB camp, and there were reports that he had been ill-treated. Military authorities claimed that he had surrendered voluntarily, then released him from custody at the end of March 1989. (See ASA 35/02/89, ASA 35/05/89 and ASA 35/19/89)

Belen TABAMO

Belen Tabamo "disappeared" after her arrest in Laguna on 10 February 1989 by members of the 16th IB. One month later she was located at the 16th IB detachment in Magdalena where she had reportedly been subjected to death threats and other forms of ill-treatment. She was acquitted of charges of frustrated murder and illegal possession of firearms and reportedly released on 12 September 1989.

In February 1990, the government reported: "Investigators from the Commission on Human Rights (CHR) who visited Ms. Tabamo found no evidence of alleged physical torture inflicted on her". However, the government statement was conspicuously silent on the subject of her "disappearance" while held in unacknowledged detention for one month by military forces. It also failed to consider the evidence that Belen Tabamo had suffered serious mental anguish as a consequence of the death threats to which she was reportedly subjected while in detention. (See ASA 35/01/89, ASA 35/04/89, ASA 35/07/89 and ASA 35/18/89)

Carlos VINA

Carlos Viña "disappeared" after he was detained by armed men who entered his house in Tudela, Misamis Occidental, on 13 April 1989. His family failed to locate him at several military detachments. On 22 June 1989, he was released from military custody. Military authorities claimed that Carlos Viña had been "rescued" from attack by a military operation on 8 June, but he denied this in an interview with a human rights organisation. (See ASA 35/14/89 and ASA 35/20/89)

AMNESTY INTERNATIONAL

PHILIPPINES "DISAPPEARANCES" IN THE CONTEXT OF COUNTERINSURGENCY

FEBRUARY 1991 SUMMARY INDEX: ASA 35/05/91
DISTR: SC/CO/GR

More than 50 people, most of them alleged critics or opponents of the government, were reported to have "disappeared" in the Philippines during 1990. At least five of the "disappeared" are believed to have died or to have been killed while in custody and some appeared to have been tortured. At least 15 whose detention had been denied by security forces in 1990 subsequently reappeared after a period in police or military custody. The majority were still missing at the end of the year and there was concern for their safety.

In an overwhelming majority of the cases in which there is clear and substantive evidence, the perpetrators have been members of government or government-backed security forces. These forces include the Philippine Army (PA), the paramilitary Philippine Constabulary (PC), the official paramilitary auxiliary CAFGU (Citizens' Armed Forces Geographical Unit) and various semi-official "vigilante" groups operating with the support or acquiescence of military commanders.

This report describes a pattern of enforced "disappearances" in the Philippines during 1990 and provides details of the fate some of those who reportedly "disappeared". It outlines the political, military and legal context within which "disappearances" have occurred and examines the effectiveness of existing domestic remedies for relocating the "disappeared" and for bringing the perpetrators to justice. The report also provides details of the fate of 25 victims of "disappearance", including three who died or were killed in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

"Disappearances" and other serious human rights violations including extrajudicial execution, torture and political imprisonment have occurred in the context of armed conflict between government forces and a number of armed opposition groups, principally the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by the security forces as fronts for the NPA and CPP, or individuals suspected of NPA or CPP membership.

Amnesty International believes that, notwithstanding the government's stated commitment to the protection of human rights and the existence of legal and institutional guarantees for this purpose, there are aspects of government and military policy which have helped to create a climate within which "disappearances" and other human rights violations are more likely to occur. Paramount among these are two features of the counterinsurgency campaign: (i) the creation of and reliance on an ever-widening network of official and semi-official paramilitary forces in conducting the counterinsurgency campaign; and (ii) the practice of public labelling or targeting of alleged critics

and opponents of the government as "enemies" or NPA/CPP sympathizers. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

Existing legal and institutional mechanisms for the protection of human rights have in practice proved ineffective in resolving past cases of "disappearance" and in preventing the continuation of the practice. Judicial remedies, such as habeas corpus have systematically failed to locate those who have "disappeared" in military custody. The national Commission on Human Rights, hampered by deficiencies in its procedures and methods of work, has not been effective in locating the "disappeared" or in ensuring that the suspected perpetrators are brought to justice.

An additional factor contributing to the phenomenon of "disappearance" in the Philippines has been the failure to bring to justice members of government or government-backed forces responsible for such acts. Where members of government and government-backed forces are allowed to commit serious human rights violations with apparent impunity, the practice is bound to continue. The problem of impunity has emerged partly as a result of the considerable influence wielded by the security forces in the formation of national policy in the Philippines and the substantial autonomy with which they are permitted to operate in the context of the counterinsurgency campaign. Presidential Decree 1850 has effectively protected members of the security forces from prosecution in civil courts for "disappearances" and other human rights related offenses.

Despite repeated studies by national and international human rights organizations -- including the 1990 report of the Philippine Senate Committee on Justice and Human Rights -- which have identified such deficiencies and offered various practical recommendations, the government has failed to implement significant changes. Through its acquiescence in and reliance on legal and institutional procedures which have been shown to be ineffective at locating the "disappeared", bringing the alleged perpetrators to justice and preventing further "disappearances", the government has failed to meet its obligations under domestic and international law and has, in Amnesty International's view, contributed to the problem of "disappearance".

This summarises a 37-page document, Philippines: "Disappearances" in the Context of Counterinsurgency (AI Index: ASA 35/05/91), issued by Amnesty International in February 1991. Anyone wanting further details or to take action on this issue should consult the full document.

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EXTERNAL (for general distribution)AI Index:ASA 35/05/91
Distr:SC/CO/GR

Amnesty International
International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

FEBRUARY 1991

PHILIPPINES "DISAPPEARANCES" IN THE CONTEXT OF COUNTER-INSURGENCY

1. INTRODUCTION

More than 50 people, most of them alleged critics or opponents of the government, were reported to have "disappeared" in the Philippines during 1990. At least five of the "disappeared" are believed to have died or to have been killed while in custody and some appeared to have been tortured. At least 15 whose detention had originally been denied by security forces in 1990 subsequently reappeared after a period in police or military custody. The majority were still missing at the end of the year and there was concern for their safety.

This report describes a pattern of enforced "disappearances" in the Philippines during 1990 and provides details of the fate of some of those who reportedly "disappeared". It outlines the political, military and legal context within which "disappearances" have occurred, highlighting certain aspects of government policy and military strategy which, in Amnesty International's view, have contributed to the phenomenon of "disappearance". It examines the effectiveness of existing domestic remedies for relocating the "disappeared" and for bringing the perpetrators to justice. The report also provides details of 25 victims of "disappearance", including three who died or were killed while in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

"Disappearances" have occurred against the background of armed conflict between government forces and the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). They have been most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including parts of Central Luzon, Negros, Samar and Mindanao. The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by the security forces as fronts for the NPA and CPP or individuals suspected of NPA or CPP membership.

Amnesty International believes that, notwithstanding the government's stated commitment to the protection of human rights, there are aspects of government and military policy -- in particular aspects of the counterinsurgency campaign -- which have helped to create a climate within which human rights violations, and particularly "disappearances", are more likely to occur. It also believes that there are serious deficiencies in existing judicial and quasi-judicial procedures or remedies aimed at locating the "disappeared" and bringing the alleged perpetrators to justice. By its acquiescence in and reliance upon these mechanisms the government has failed to fulfil its responsibilities under domestic and international law and has, in Amnesty International's view, contributed to the problem of

"disappearances".

2. THE "DISAPPEARANCE" PHENOMENON

2.1 What is a "Disappearance"?

A person has "disappeared" when s/he has been deprived of liberty against his or her will by any government official or by organized groups or private individuals believed to act on behalf of, or with the permission, support or acquiescence of the government.³⁴

The fate of the "disappeared" is by definition unknown because the arresting authorities refuse to acknowledge that the arrested person is in their custody and may in fact attempt to conceal his or her whereabouts. A detainee who has "disappeared" is effectively denied protection under the law; the right to be promptly informed of the reasons for their arrest. Moreover, when people are held in unacknowledged, secret detention, the risk of their being ill-treated, tortured or killed is increased.

Such risks are especially great when detention occurs in the context of a national emergency or during a counter-insurgency campaign. Under these circumstances, normal legal procedures are likely to be weakened or ignored by the authorities. The protection of human rights may, in practice, be undermined by, or subordinated to, the exigencies of national security. Those responsible for such violations may come to feel free to commit human rights violations with impunity.

The phenomenon of "disappearance" also causes grave suffering to the families of the victims. Denied knowledge of the fate of their relatives, they may spend months or years in a fruitless search for them. Their anxiety, and that of eyewitnesses or others involved in the search, is often heightened by a fear of coming forward to testify or give evidence to the authorities. In many cases, the fear is justified; relatives, witness and lawyers are frequently subjected to threats or actual physical assault by members of the security forces.

2.2 State Responsibilities With Respect to "Disappearances"

Each case of "disappearance" violates or poses a grave threat to a number of specific fundamental rights articulated in the International Covenant on Civil and Political Rights (ICCPR). These include the right to life (Article 6.1), the right to be free from torture or cruel, inhuman or degrading treatment (Article 7), and the right to recognition as a person before the law (Article 16); all of these rights are non-derogable even in times of national emergency. Other rights infringed may include the rights to liberty and security of person, to be free from arbitrary arrest and detention (Article 9.1), and the right of a detained person to challenge the legality of their detention before the courts (Article 9.4).³⁵

Countries like the Philippines which have acceded to the ICCPR have a special obligation under international law to ensure that these rights and freedoms are effectively protected.³⁶ According to Article 2 (3) a) and b) of the ICCPR, it is the responsibility of the state to ensure that judicial or quasi-judicial remedies are available to the victims of human rights violations and that those remedies are effective.

The ICCPR also has force in Philippines national law. Under its 1987 Constitution, the country adopted "...the generally accepted principles of international law as part of the law of the land..."

³⁴ This is the definition adopted by the United Nation's Working Group on Enforced or Involuntary Disappearances.

³⁵ See Appendix I for passages from the ICCPR relevant to the obligations of States Parties in relation to "disappearances".

³⁶ The ICCPR entered into force in the Philippines in January 1987. The President signed the Optional Protocol to the ICCPR in July 1987.

(Section 2 Article II, 1987 Constitution). In response to a question from the Human Rights Committee³⁷ in April 1989 concerning this section of the Constitution, the Philippine Government representative stated clearly that "the provisions of the Covenant [i.e. the ICCPR] can be invoked before and directly enforced by Philippine courts and appropriate bodies." Finally, it may be noted that the rights and freedoms enumerated in the ICCPR are also enshrined in the Philippine Bill of Rights, Article III of the Constitution.³⁸

Other international human rights instruments, such as the United Nations Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment, also establish standards against which to assess the behaviour of states with regard to various human rights violations as well as guidelines for the improvement of their legislation and practice.³⁹ If these principles were effectively implemented, many human rights violations including "disappearances" would be less likely to occur. They recommend, inter alia: that all reports of alleged "disappearance" be investigated in good faith by a judicial or other body and that the results of such investigations be made public; and that the legal and other remedies available for the relocation of persons who have "disappeared" and the prosecution of the suspected perpetrators be ensured to be effective.

37 The Human Rights Committee is an international body of 18 experts established under the ICCPR to monitor implementation of that treaty. In this report it will be referred to as the Human Rights Committee (ICCPR) to distinguish it from the national Presidential Human Rights Committee.

38 See Appendix III for excerpts the 1987 Philippine Constitution.

39 See Appendix II for passages from the United Nations Body of Principles for the Protection of all Persons Under Any Form of Detention or Imprisonment which are relevant to the phenomenon of "disappearances".

2.3 State Responsibilities in the Context of Armed Opposition

Government and military authorities sometimes claim that opposition forces are responsible for "disappearances". In the Philippines the government has alleged that some of those who "disappeared" in late 1988 and early 1989 were abducted or killed in an internal purge of the banned Communist Party of the Philippines (CPP) and its armed wing the New People's Army (NPA). Citing captured CPP documents and the testimony of certain "rebel-returnees", the military has said that Pearl Abaya, Lili Mercado and Efren Bonagua, three of the more than 50 people who reportedly "disappeared" in 1988, had been abducted by the NPA.

Amnesty International acknowledges that a small number of those reported to have "disappeared" in previous years in the Philippines, including some of those mentioned above, may have been abducted by opposition forces. It stresses, however, that this does not in any sense alter the government's responsibility with respect to investigating all cases of alleged enforced "disappearance" and bringing those responsible to justice. The government's responsibility is a matter both of immediate practical concern -- relocating the "disappeared person, identifying the perpetrators and stopping the pattern of "disappearance" -- and of principle arising out of international law.

In practice it is only through the prompt and impartial investigation of all reported "disappearances" that there can be any hope of locating the victim, bringing the perpetrators to justice and perhaps preventing future "disappearances". If a government fails to investigate reported "disappearances" on the grounds that they might have been committed by opposition forces or because the identities of the perpetrators are not immediately known, it demonstrates a lack of interest in all of these objectives. By doing so it effectively condones the practice of "disappearance", which may lead to its perpetuation.

Armed opposition can present governments and security forces with particular difficulties which raise issues of principle with respect to international law. Governments bear the responsibility of protecting their citizens from violent crime and for bringing those responsible to justice. In doing so, however, they must ensure that fundamental human rights are respected. As noted above, under international human rights law, certain fundamental rights must be upheld by governments at all times and in all circumstances. However widespread and violent the armed opposition groups, these can never provide a justification for governments to retreat from or ignore their obligations to respect such fundamental human rights. Indeed, in Amnesty International's view, it is precisely in such contexts of armed opposition that fundamental human rights need to be protected with extra vigilance.

States bear a unique and solemn responsibility to uphold the law and to ensure that the rights and freedoms of their citizens are protected. Acts of violence or other abuses committed by criminal elements or armed opposition groups are crimes which are punishable through, and in accordance with, the normal judicial system of the state. The nature of the problem is fundamentally different where the state or one of its branches or agents is complicit in or responsible for the commission of crimes violating the rights and freedoms of its own citizens. For if those responsible for upholding the law and protecting citizens show contempt both for judicial processes and for the rights and freedoms of citizens, there can be no guarantee of effective remedy through the existing mechanisms of the state. When the state or one of its agents violates or poses a grave threat to the rights and freedoms of citizens, then, it is appropriate to speak of a human rights violation.

2.4 Establishing Responsibility for "Disappearances"

Establishing responsibility for "disappearances" is difficult because, as a rule, the perpetrators attempt to conceal their own identities and the whereabouts of the victim. In the Philippines, military and paramilitary operatives often carry out "disappearances" late at night or in isolated locations which limit the chance that they will be identified. They may dress in plainclothes and drive unmarked vehicles thereby making more difficult any positive identification by witnesses. The

victims are sometimes taken to unofficial detention centres -- "safehouses" -- where their detention need not be formally registered. In other cases they are detained in military camps where access by families, lawyers, human rights activists or even government authorities may be effectively limited even if by law it should be permitted.

In spite of such difficulties there are at least four ways in which a plausible case for culpability may be established. First, and most simply, the perpetrators may be identified by clearly visible military insignia either on their uniforms or the vehicles they are driving. Second, the "disappeared" may be released or escape after a period in police or military custody. Third, the victim may be found dead in police or military custody. Finally, even where the perpetrators are not self-evidently members of a military or paramilitary unit, eyewitnesses may be able to identify one or more of them by name or to identify some piece of their property, such as a vehicle, a weapon or an article of clothing.

3. "DISAPPEARANCES" AND THE PHILIPPINE GOVERNMENT

3.1 Government Human Rights Initiatives

Since coming to power in 1986 the government of President Corazon Aquino has taken a number of measures aimed at promoting and protecting human rights. The government has acceded to the most important international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A variety of repressive Presidential Decrees promulgated during the regime of Ferdinand Marcos have been repealed, and the new Constitution ratified in 1987 provides substantial guarantees of fundamental civil and political rights. Human rights education has been included as a regular part of police and military training. In addition to an official Commission on Human Rights (CHR), established in 1987, a new Presidential Committee on Human Rights was established in late 1988 to "monitor the human rights situation in the country and to advise [the President] on the proper measures to be taken".

The government has also taken measures to address the specific problem of "disappearances". In 1988 the government announced the creation of a special task force to investigate some 400 outstanding cases of "disappearances", the majority of which had been reported during the Marcos years. At the same time the President announced the decision to designate city and provincial state prosecutors as "human rights coordinators" whose tasks would include helping relatives search for their missing kin in military and police camps and prisons. The government has cooperated with the United Nations Working Group on Enforced or Involuntary Disappearances by providing information on a substantial number of individual cases. On the invitation of the government a Working Group delegation visited the Philippines in August-September 1990. In January 1991, the Secretary of Justice Franklin Drilon reportedly ordered government prosecutors to coordinate with officials in camps and jails to locate persons reported to have "disappeared".

Government authorities have responded to some, though by no means all, of Amnesty International's inquiries regarding the fate or whereabouts of the victims of "disappearance". Amnesty International welcomes the government's cooperation in this respect. However, it regrets that, in general, the information provided is either of a non-substantive nature -- simply acknowledging the organization's concern -- or is based wholly on the findings of the Commission on Human Rights.

Amnesty International welcomes the steps taken by the Philippine Government to promote and protect human rights. However, it notes that despite the existence of institutional and legal safeguards and the government's often stated commitment to protect and promote human rights, serious human rights violations, including "disappearances" have continued in recent years.⁴⁰ The United Nations

⁴⁰ Other serious human rights violations in the Philippines, such as

Working Group on Enforced or Involuntary Disappearances has recorded 169 cases of "disappearance" from early 1986 to the end of 1990 and it believes that the true dimensions of the situation may be "much graver".

3.2 "Disappearances" in the Philippines -- The Pattern of Responsibility

In an overwhelming majority of the cases in 1990 in which there is clear and substantive evidence, the perpetrators of "disappearances" in the Philippines have been members of government or government-backed security forces. These forces include the Philippine Army (PA), the paramilitary Philippine Constabulary (PC), the official paramilitary auxiliary CAFGU (Citizens' Armed Forces Geographical Unit) and various semi-official "vigilante" groups operating with the support or acquiescence of police and military commanders.⁴¹

At least five of those who "disappeared" in 1990 are believed to have died or to have been killed while in the custody of government or government-backed forces, and at least 15 whose detention was initially denied subsequently reappeared after a period in police or military custody. In the case of those who remained missing at the end of the year there is also substantial evidence that the perpetrators were members of government or government-backed forces. Details of the fate of 25 of those who "disappeared" in 1990 are provided in Section 5 of this report.

Further evidence of the responsibility of government and government-backed forces is found in information compiled by Amnesty International on the fate of people reported to have "disappeared" in previous years. At least five people who reportedly "disappeared" in 1988 and 1989, and whose detention was originally denied by security forces, subsequently reappeared in or were released from police or military custody; they had been detained for periods ranging from one week to more than two months (see Appendix IV).

This pattern of government responsibility is corroborated by the findings of the United Nations Working Group on Enforced or Involuntary Disappearances. In its report dated January 1991, the Working Group noted that of the total of 595 cases of "disappearance" it had submitted to the Philippine government, only 80 had been clarified by government responses by late 1990. In the great majority of these cases (56) it was confirmed that the victims had once been or still remained in detention. Fifteen were reported to be dead, six were said to be at liberty, two had been located and identified and one was said to be living abroad.⁴² The Working Group concluded that "...most cases of "disappearance" are to be ascribed to members of the military, the police and vigilante groups. Under the present government CAFGUs and, to a lesser extent, civilian volunteer groups should be added."

In short, there can be little doubt that the practice of "disappearance" continues in the Philippines and that government and government-backed forces are principally responsible. Regrettably, the existing institutional and legal human rights safeguards and the government's stated commitment to

extrajudicial execution, torture and ill-treatment, and political imprisonment have been documented in recent Amnesty International reports including: Philippines: Unlawful Killings by Military and Paramilitary Forces (ASA 35/02/88); Philippines: Incommunicado Detention, Ill-treatment and Torture During 1988 (ASA 35/40/88); Philippines: A Summary of Amnesty International's Concerns (ASA 35/02/90).

⁴¹ The Philippines Constabulary officially ceased to exist in January 1991. In accordance with Republic Act 6975, the police services are to be reconstituted into a single force known as the Philippines National Police (PNP), under the authority of a reorganized Ministry of the Interior and Local Government. However, the PNP will continue to play an important role in counterinsurgency operations for some time.

⁴² Another 18 cases were clarified by non-governmental sources. Of these it was confirmed that 12 had once been or still remained in detention, three were at liberty and three were reported to be dead.

the protection of human rights, have not proved sufficient to prevent "disappearances" and other serious human rights violations. The next part of this report examines some of the reasons why.

4. POLITICAL, MILITARY AND LEGAL CONTEXT OF "DISAPPEARANCES"

"Disappearances" and other serious human rights violations including extrajudicial execution, torture and political imprisonment have occurred in the context of armed conflict between government forces and a number of armed opposition groups, principally the NPA. Amnesty International believes that certain aspects of government policy and military strategy have helped to create a context within which "disappearances" and other human rights violations are more likely to occur. It also believes that there are serious deficiencies in existing judicial and quasi-judicial procedures or remedies aimed at locating the "disappeared" and bringing the alleged perpetrators to justice and that by its acquiescence in and reliance upon these mechanisms the government has contributed indirectly to the problem of "disappearances".

Paramount among the elements of military and government policy which appear to contribute to the problem are two particular features of the counterinsurgency campaign: (i) the creation of and reliance on an ever-widening network of official and semi-official paramilitary forces in conducting the counter-insurgency campaign; (ii) the practice of public labelling or targeting of alleged critics and opponents of the government as "enemies" or NPA/ CPP sympathizers. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

The attitude of some government and military authorities toward reports of "disappearances" has frequently appeared dismissive or formalistic. Comments on the issue of "disappearance" addressed to international human rights bodies and to the media have given rise to questions about the sincerity of the government's efforts to resolve the problem and may have undermined the effectiveness of some of the other measures it has taken toward that end.

An additional factor contributing to the phenomenon of "disappearance" in the Philippines has been the failure to bring to justice members of government or government-backed forces responsible for such acts. Where members of government and government-backed forces are allowed to commit serious human rights violations with apparent impunity, the practice is bound to continue. The problem of impunity has emerged partly as a result of the preponderant influence wielded by the security forces in the formation of national policy in the Philippines and the substantial autonomy with which they are permitted to operate in the context of the counterinsurgency campaign. More concretely, Presidential Decree 1850 has effectively protected members of the security forces from prosecution in civil courts for human rights related offenses.

The problem of "disappearance" has been compounded by the ineffectiveness of existing legal and other remedies for the victims of "disappearance". Both the legal remedy of habeas corpus and the quasi-judicial remedy of filing a complaint with the CHR have been ineffective in relocating the "disappeared" and in preventing further "disappearances". Despite repeated studies by national and international human rights organizations -- including the 1990 report of the Philippine Senate Committee on Justice and Human Rights -- which have identified such deficiencies and offered various practical recommendations, the government has failed to implement significant changes.

In short, through its military and other policies the government has helped to create a climate conducive to the practice of "disappearance". Through its acquiescence in judicial and quasi-judicial procedures and institutions which have been shown to be ineffective in preventing "disappearances", locating those who have "disappeared" and bringing the alleged perpetrators to justice, the government has failed to meet its obligations under international law and has contributed to the problem of "disappearance".

4.1 Counter-insurgency and "Disappearance"

The military element of the government's counter-insurgency strategy has involved the use of regular Philippines Army (PA) forces, the paramilitary Philippines Constabulary (PC), auxiliary paramilitary units known as Citizens' Armed Forces Geographical Units (CAFGU) and semi-official armed groups or "vigilantes" that, while not provided for in law, often function in close cooperation with, or under the direct supervision of, official security forces.⁴³ Each of these has been responsible for serious human rights violations including "disappearances".

The counter-insurgency strategy relies heavily on the use of a network of roughly 90,000 official and semi-official paramilitary forces which are in general poorly trained, poorly disciplined and possess only a rudimentary understanding of basic human rights and principles of law. Even if it were not the explicit intention of the government, the existence of such a large and undisciplined armed force operating in the climate of a civil war would inevitably increase the risk of serious human rights violations by those forces. The chance of abuse is greater still where, as is frequently the case in the Philippines, police and military authorities appear to encourage such forces to act outside the law in the name of national security. The authority which is given to such forces to carry out arrests increases the particular risk of "disappearances".

In addition to its primary goal of combatting armed opposition groups, the government's counter-insurgency campaign also involves efforts to weaken the organizational base of its legitimate civilian opponents. Dozens of lawful non-governmental organizations -- including human rights groups, church organizations, youth and student groups, farmers' organizations, labour unions and research institutes, among others -- have been publicly labelled by police and military authorities as "fronts" for the NPA and the CPP. These allegations have not been legally tested and they are denied by the organizations in question. In Amnesty International's view political labelling of this kind has invariably served to encourage government and government-backed forces to take precipitate actions, which have often involved serious human rights violations, against alleged or suspected government opponents by portraying them as legitimate "targets" in the government's full-scale war against armed rebels.

Recent Supreme Court rulings have expanded the power of security forces to carry out the arrest of suspected political opponents without a warrant issued by a competent judicial authority. The Supreme Court decision of 9 July 1990 (Umil v. Ramos, GR No.81567), for example, rules that any person may be arrested without a court order if s/he is suspected of involvement in the crimes of rebellion or subversion. The ruling is based on an argument that the crimes of rebellion and subversion are "continuing offenses", that those suspected of these crimes are therefore always in flagrante delicto and are consequently subject to arrest without warrant at any time. In view of the practice of "red-labelling" which has become common in the context of the counterinsurgency campaign, this decision would appear to increase the likelihood of the arbitrary arrest of legitimate civilian critics or opponents of the government and therefore to increase the risk of "disappearance".

4.2 Government and Military Attitudes to Reports of "Disappearance"

The nature of the public response by some government and military authorities to reports of "disappearance" has given rise to questions about the government's sincerity in addressing the problem of "disappearances" and may thereby have undermined the effectiveness of other measures it has taken. The government's position with respect to "disappearances" has often been characterized by denials and legalistic formulations which obscure the reality of the problem and diverge from the

⁴³ Private armies are banned under Article XVI, Section 24 of the 1987 Constitution (see Appendix III).

evidence in important respects. Amnesty International believes that this posture on the part of the government has further undermined the effectiveness of the measures it has taken to prevent the practice of "disappearance" and to protect victims.

Both government and military authorities have attempted to discredit or dismiss reports of "disappearances". Senior military officers have claimed that the reports are part of a propaganda campaign by the political left to discredit the military. In November 1988, Brigadier-General Alexander Aguirre, then PC Capital Region Commander, reportedly said: "It could be that they voluntarily disappeared, or that people went underground. It appears also there is a pattern of [a] smear campaign, of making conclusions that the disappearances were caused by the military".

In its April 1989 report to the Human Rights Committee (ICCPR), the Philippine Government said that while the military were responsible for some "disappearances" others who "disappeared" may have done so "voluntarily": "...some people simply flee to the mountains and join the rebel groups or disappear in the Philippines only to be found in some other countries busy raising funds to overthrow the present government." The government report provided no examples.

In a communication to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1990, the Philippine Government said:

Unacknowledged detention under the present Government is well nigh impossible. The rules on the warrant of arrest are so restrictive that almost always arrests are made with warrants, except in cases where warrantless arrests are allowed by law. Upon detention after the arrest, the detainees must be booked; that is his/her detention is recorded. Denial by the detaining authorities of the detention of a person can be questioned by a petition for writ of habeas corpus.

This is an accurate account of what ought to happen according to Philippine law.⁴⁴ However, it ignores the regrettable reality that, in the Philippines, unacknowledged detention frequently does occur, that detentions are not always recorded and that, in practice, habeas corpus petitions are seldom effective in cases where the authorities deny holding the victim.

In the same communication the government noted that the Philippine Constitution (Section 12(2), Article III) provides that "...secret detention places, solitary, incommunicado or other similar forms of detention are prohibited". Similarly, in its April 1989 report to the Human Rights Committee (ICCPR), the government denied categorically the existence of "safehouses", citing the following as evidence:

The Commission [CHR] and its regional offices conducted an investigation and found none. Not satisfied with the investigation the Commission wrote a letter to the Secretary of National Defence and the Chief of Staff of the Armed Forces of the Philippines and received an assuring letter that gave me (sic) no safehouses.

Here again, Constitutional provisions and government assurances diverge from the reality. The evidence in this report shows that secret detention places are used by government and government-backed forces and that incommunicado detention continues to be practised.

In early 1991 a Philippine Government representative was reported to have recommended that the more than 500 victims of "disappearance" whose cases had not been clarified should simply be "presumed dead". According to reports the Chairman of the CHR supported this suggestion, saying that it would "clear our dockets of [former President] Marcos' human rights cases". Such an approach reflects an apparent lack of appreciation of the government's responsibilities with respect to

44 It should be noted that recent Supreme Court decisions, mentioned in Section 4.1 above, have made the rules on warrants of arrest considerably less restrictive.

"disappearances". As the Working Group on Enforced and Involuntary Disappearances noted in its report of January 1991: "...the phenomenon [of "disappearance"] does not end as soon as the graph has reached the zero level. It persists until the last of the outstanding cases has been clarified."

4.3 The Problem of Impunity

With rare exception, human rights violations such as those described in this report have gone unremedied and unpunished in the Philippines. In Amnesty International's view, this has created the impression that the security forces, or at least a large part of them, are effectively beyond the reach of the law. Through its failure to bring to justice those responsible for "disappearances", the central government appears to condone the practice.

Despite the existence of penal sanctions for such crimes, Amnesty International does not know of a single police or military officer who has been convicted of an act leading to a "disappearance" since the current government came to power in 1986. In 1990 the government released a list of 43 members of the security forces who had purportedly been sentenced to prison terms for human rights related offenses. The information provided by the government was insufficient to determine whether the acts punished -- in most cases murder or homicide -- were in fact human rights violations as opposed to ordinary crimes. The list did show very clearly, however, that none of those named had been found guilty of crimes associated with "disappearance" -- kidnapping, arbitrary or illegal arrest.

Information supplied by the Philippine Ministry of National Defense to the U.N. Working Group on Enforced or Involuntary Disappearances conflicted with the government's own claim that 43 members of the security forces had been sentenced for human rights related offenses. The Ministry of Defense statistics on the status of human rights complaints which had been referred to the armed forces suggests, in fact, that as of 17 January 1990, no member of the armed forces had been convicted and sentenced to a prison term for a human rights related offence. According to the U.N. Working Group's summary of the Ministry of Defense information: "...of the 68 cases closed or terminated up to 17 January 1990, 15 were declared without merit, 10 with insufficient evidence; 10 were closed for lack of interest to prosecute; 4 were amicably settled; 6 were withdrawn due to death of respondent; 2 became moot and academic; in 3 cases the complainant executed an affidavit of desistance; in 8 cases persons were discharged from the service; in 3 cases the persons were demoted; in one case the person was reprimanded administratively and in 7 cases the persons were acquitted."

In its ten year review (dated January 1990) of the factors contributing to the phenomenon of "disappearances" worldwide, the U.N. Working Group on Enforced or Involuntary Disappearances drew particular attention to the problem of impunity:

Perhaps the single most important factor contributing to the phenomenon of disappearances may be that of impunity. The Working Group's experience over the past ten years has confirmed the age-old adage that impunity breeds contempt for the law. Perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held to account before the law.

According to the U.N. Working Group the problem of impunity, or the general failure of government to bring the perpetrators of human rights violations to justice, is common where: 1) members of the security forces are tried in military rather than civil courts; and 2) where there has been a significant breakdown in the administration of civilian justice. In Amnesty International's view both of these conditions currently obtain in the Philippines. They are discussed in greater detail below.

4.3.1 Presidential Decree 1850

In the Philippines effective criminal investigation and prosecution of alleged human rights violations has been impeded by Presidential Decree 1850 (PD 1850). Promulgated by former President Marcos in 1982, the decree grants members of the security forces immunity from prosecution in civil courts, regardless of the nature of the offence committed. Effectively, this means that civil courts have no jurisdiction over cases involving human rights violations by members of the security forces.

In considering the factors contributing to the problem of impunity the Working Group on Enforced or Involuntary Disappearances, in its report of January 1991, made special the following reference to military courts:

...military courts contribute significantly to impunity. A recurrent theme in times of internal crisis or under the doctrine of national security is that military personnel attested to have engaged in gross misconduct against civilians hardly ever see their cases investigated in any rigorous manner. In the few cases which are brought to trial, they are almost invariably acquitted or given sentences that, by any standard, are grossly disproportionate to the crime committed. Subsequent promotions are even commonplace. The Working Group continues to be concerned about the widespread tendency to grant jurisdiction over human rights abuses to military courts.

Amnesty International regards PD 1850 as one of the most significant legal obstacles to the effective prosecution of members of the security forces for alleged human rights violations, not least because it contributes to the problem of impunity. It believes that the government's failure to repeal or significantly amend the decree contradicts the government's claim that it will not tolerate human rights violations by members of the security forces. It further believes that this failure contributes to a political climate in which widespread human rights violations are more likely to occur.

Parliamentarians and human rights lawyers in the Philippines have called repeatedly for the repeal or amendment of PD 1850. Yet to date, the Philippine Government has refused to do so. According to the government's own account, government inaction has been the result of pressure from the military authorities. Testifying before the Human Rights Committee (ICCPR) in April 1989, the Assistant Secretary for Human Rights and Humanitarian Affairs of the Department of Foreign Affairs explained the government's failure to repeal the decree in 1986 as follows:

Political considerations at that time prevailed, that is the strong objection of the Chief of Staff and the Secretary of National Defense who convinced the President that time was not ripe for its outright repeal.

In December 1989, immediately after the passage of an Emergency Powers Act promulgated following an attempted military coup, President Aquino vetoed Congressional legislation which would have repealed PD 1850. Although the main purpose of the bill was to return to civil courts jurisdiction over human rights violations constituting criminal offenses committed by soldiers and police, the issue of human rights was not mentioned in the President's explanation of her reasons for the veto. Instead, President Aquino cited the continued state of emergency to justify her decision, writing that: "The enrolled bill, which was approved by the House of Representatives on October 12, 1989 and by the Senate on October 18, 1989, did not take into account the recent violent December military-civilian rebellion."

The President also cited the advice of the Secretary of Defense and the Armed Forces Chief of Staff. She wrote: "I find good cause for the Secretary of National Defense and the Chief of Staff of the Armed Forces of the Philippines in recommending the veto of the enrolled bill". The Chief of Staff had argued that the proposed bill would have divested military courts of jurisdiction to try the military personnel involved in the attempted coup of December 1989. A number of Senators, however, argued

that the bill would not have had this effect, because it provided for acts of mutiny and sedition to remain under the jurisdiction of military courts.

An additional Marcos-era decree, PD 1822, empowers the President to waive PD 1850 in selected instances where she deems that it is appropriate for a military defendant to be tried in a civil court. President Aquino has exercised this power in a few notable cases -- including the "disappearance" of two former prisoners of conscience, Maximiano Mesina and Felix Dimitui, detailed in this report -- but on balance has appeared to bow to strong pressure from the military establishment not to waive, repeal or significantly amend PD 1850. Commenting on her veto of PD 1850, Senator Wigberto Tanada, the Chairman of the Senate Committee on Justice and Human Rights, said that it would "give credence to the growing concern that the President is already dominated by militarists and the military around her."

4.4 Ineffective Legal and Institutional Remedies

The January 1991 report of the Working Group cited "institutional paralysis" of the administration of civilian justice as an important factor contributing to the problem of impunity and therefore also to the phenomenon of "disappearance". In the Philippines, such paralysis has contributed both to the difficulty of relocating those reported to have "disappeared" and to the failure to bring suspected perpetrators to justice.

There are, in principle, ample legal and institutional remedies available in the Philippines providing for both the relocation of the "disappeared" and the criminal prosecution of the alleged perpetrators. These include: filing a petition for a writ of habeas corpus; filing a complaint with the Commission on Human Rights; and bringing criminal charges for kidnapping or arbitrary arrest against the alleged perpetrator(s). Unfortunately these remedies have proven to be largely ineffective in resolving both dimensions of the "disappearance" syndrome. In its January 1991 report on the Philippines, the Working Group noted that "...most of the remedies available to the families of disappeared persons were rendered ineffective by existing obstacles."

Where judicial or quasi-judicial remedies for locating or protecting the victims of "disappearance" are ineffective, international instruments and guidelines stipulate that it is the responsibility of the state to ensure that they are made to function properly.

Article 2(3) a) and b) of the ICCPR outlines the basic obligations of States Parties with regard to remedies for those whose rights or freedoms have been violated by agents of the state. As a party to the ICCPR the Philippine Government has undertaken to "...ensure that any person whose rights or freedoms...are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity".

The United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment is a standard against which to assess the treatment of detainees and provides states with guidelines for improving legislation and practice in this respect. Principles 11 and 32 are particularly relevant to the question of "disappearances" (see Appendix II). Principle 11 stipulates that "a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority". Principle 32(2) outlines the minimum standards for such legal remedies. It states that the proceedings shall be "...simple and expeditious and at no cost to the detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority."

4.4.1 Habeas Corpus

In the Philippines the pursuit of legal remedy in the case of "disappearance" is both cumbersome

and ineffective. Habeas corpus petitions have rarely been effective as a method of locating persons last seen in police or military custody. This ineffectiveness has been the consequence of at least three related factors: problems in existing judicial procedures, a lack of cooperation from police and military authorities and the fear of witnesses to testify.

In general the courts have failed to take prompt action to determine the whereabouts and legal status of unacknowledged detainees who are the subject of habeas corpus petitions or to rule firmly against military respondents in such cases. The reason lies, in part, in the fact that the courts have applied procedures in habeas corpus cases similar to those applied in ordinary criminal proceedings. This has frequently resulted in delays of several months in the hearing and resolution of cases; in at least recent one case a habeas corpus proceeding lasted for more than a year without effective resolution (see below).

The courts have also tended to apply standards of evidence similar to those in ordinary criminal proceedings. For example, there has been a tendency for the judiciary to act upon a presumption that the statements of law enforcement agencies must be accepted unhesitatingly, while at the same time dismissing the testimony of witnesses as insufficient proof of culpability. In effect the burden of proof has been placed upon the complainant. The courts have often failed to challenge the statements of law enforcement and military officials that are at odds with the body of independent testimonial and material evidence. Several Filipino jurists have attributed this court practice to a principle described as the "presumption of regularity" in official procedures and institutions.

A presumption of regularity of operation in a situation in which extralegal and covert acts have become a regular methodology for the security forces serves as a significant constraint on the use of those legal remedies which exist in the statute books to protect victims of "disappearance". It has meant, for instance, that where a petitioner cannot definitively prove that the victim is in the custody of a named respondent or where the respondent has simply denied having custody of the victim, the court has generally dismissed the case. This has been the norm even where eyewitnesses have provided testimony concerning the identity of the alleged perpetrators or their institutional affiliation.

The unwillingness of witnesses to testify in habeas corpus proceedings is frequently cited as an impediment to the successful resolution of "disappearance" cases. Amnesty International believes that witnesses to "disappearances" and other human rights violations in the Philippines have a well-founded fear of reprisals which in most cases keeps them from coming forward to testify. The procedural norms with regard to witnesses to detentions resulting in "disappearances" are such as to ensure their optimum exposure to observation and intimidation. Even when a purported eyewitness signs a sworn affidavit concerning the incident, the witness must take the initiative to appear before a court to repeat the statement. The initiative to invoke legal remedies and criminal investigation procedures normally falls to the family or colleagues of the victim. Even when sworn affidavits have been filed with the court to the effect that an unlawful arrest -- in effect a kidnapping -- has been carried out, with implicit or explicit threat to the life of the victim, the matter is not accorded any special priority by the courts.

Many of these problems have been evident in the case of Maria Nonna Santa Clara and Angelina Llenaresas who "disappeared" on 26 April 1989 and remained missing at the end of 1990. They were last seen in the custody of members of the military and the CAGU and were thought to be detained at Camp Bagong Ibalon in Legaspi City, but military authorities denied having them in custody. A petition for a writ of habeas corpus was filed on their behalf in May 1989 before a Regional Trial Court. Relatives of Maria Nonna Santa Clara, three lawyers working on the case and witnesses testifying at the habeas corpus proceedings, reportedly received death threats which they believed came from members of the military. The court submitted its findings, apparently in favour of the petitioners, in a report to the Supreme Court in July 1989. After a delay of more than six months, the Supreme Court finally resolved on 10 January 1990 to refer the matter back to the Commission on Human Rights (CHR) for further investigation, rather than issuing its own decision for or against the petition. (See ASA 35/23/89, ASA 35/24/89, ASA 35/37/89, ASA 35/11/90, ASA 35/02/90)

In Amnesty International's view, the application of such standards and procedures in habeas corpus hearings distorts and undermines the objective of this important legal remedy. Habeas corpus is a judicial mechanism intended to guarantee the liberty and security of a person in detention; it does not involve a decision on the substance of a criminal case. To be effective the process must be prompt and summary in nature. If the procedure results in long delays or if it requires standards of evidence which it is not in the power of the petitioner to supply, then the very nature of the habeas corpus petition has been distorted.

Commenting on obstacles to the effectiveness of habeas corpus, the Working Group on Enforced or Involuntary Disappearances wrote in its 1991 report:

As its success ultimately depends on willingness by the executive to provide information on a disappeared person, habeas corpus is rendered useless if co-operation stops at the barracks' gate. In addition, there are many examples of practical and legal obstacles to its effective use which Governments have seen no reason to remove or which they have purposely put into place. The Working Group feels deeply frustrated that, in this manner, habeas corpus remains virtually inoperative in situations of widespread disappearance. Affected Governments should engage in a systematic revision of habeas corpus procedures, repairing their deficiencies.

Amnesty International believes that, in view of the current ineffectiveness of the remedy in the Philippines, it is incumbent upon the government and the judiciary to undertake a thorough review of existing habeas corpus procedures.

4.4.2 The Commission on Human Rights (CHR)

The Commission on Human Rights (CHR) was established by Executive Order 163 in May 1987 as an independent office to investigate complaints of human rights violations. The CHR replaced the original Presidential Committee on Human Rights, established in March 1986, which effectively disbanded in January 1987 following an incident at Mendiola Bridge in which several demonstrators were shot dead by government forces. From the outset the CHR adopted a much broader definition of human rights than that envisioned by the Presidential Committee on Human Rights. In particular, it assumed responsibility for investigating complaints of "human rights violations" committed both by government and non-government forces.

The authority of the CHR with respect to legal remedy for victims of human rights abuse goes no farther than to make recommendations that a case be referred to the public prosecutors and the courts, to recommend to the President that PD 1850 be waived in specific cases, and to provide modest financial assistance to victims.

In Amnesty International's view the CHR has not been proven to be effective in: 1) providing immediate and effective protection to the complainants in human rights related cases; and 2) providing remedy, in the long term, by bringing to account those responsible for gross human rights abuse constituting criminal offenses under Philippine law. Its effectiveness has been impeded by certain limitations in its own methods of work and by a lack of full cooperation from the security forces.

CHR procedures for investigating alleged human rights violations ought to facilitate the prosecution of public authorities who carry out criminal abuses of human rights. Instead they represent an additional and often impenetrable obstacle to the already complex mechanism of criminal justice. The procedures establish a series of requirements which complainant and witnesses alike must fulfil, often at considerable personal risk, without offering any prospect of the form of remedy available in civil or criminal proceedings. The CHR has introduced quasi-judicial procedures without, in general, offering either the protection to complainants and witnesses that is within the powers of a

court of law, or the authority to see that justice is done. For example, it requires complainants and witnesses to provide public testimony, their names and addresses, and to appear repeatedly before hearings, often at considerable risk and personal expense. As such hearings do not either constitute a part of the criminal justice system or have legal validity in subsequent proceedings before the courts, a judicial remedy requires an entirely distinct procedure through which complainants and witnesses must again put their lives on the line.

The CHR's procedures mimic the judicial procedure through which two individuals of equal standing come before the law to seek arbitration or damages. Rather than to serve as Ombudsman or in another form as intermediary between the citizen and the institutions and agents of the state -- a friend in court for the individual wronged by the state -- the CHR procedure has introduced a false legal symmetry between the citizen and the state. It offers little to those who are powerless in their confrontations with the state and its agents beyond a forum in which to be heard (a provision that should not in itself be belittled). In doing so the CHR places the complainant in the position of a party to a private civil complaint who by reason of the complaint, finds himself on trial. Where the adversary is an individual exercising the power of the state, and it was in that capacity that the alleged abuse took place, there is little in this procedure to comfort the complainant.

Partly as a consequence of these procedures, witnesses and complainants, as well as their relatives and legal counsel, are routinely subjected to harassment, death threats and acts of violence by the named respondents or their agents. Although CHR officials recognize the seriousness of the problem and have reportedly set up a witness protection program, there is to date little evidence that it is operating effectively. Witnesses are therefore disinclined to take the risk of testifying before the CHR and as a consequence a large number of complaints are dismissed or "archived".

Another factor limiting the effectiveness of the CHR in providing remedy in cases of "disappearance" is the public perception that it lacks independence from the government and from the security forces. The CHR has often appeared to adopt uncritically the position of the government and the military with regard to "disappearances". Its chairman, for example, reportedly attributed the rise in reports of "disappearances" from late 1987 to the alleged internal purge of the CPP/NPA, known as "Operation Missing Link", despite substantial evidence of police and military responsibility. In September 1989, she is reported to have said that "Operation Missing Link":

...could be the explanation because the military says they don't pick up these people. As a military strategy, I cannot see the use of the disappearance of these people. It would be to the disadvantage of the military... Who could benefit from a constant exposure of these alleged disappearances? It is propaganda that the leftists can really use against the military.

Statements of this sort have done little to dispel the notion, as expressed by a member of the Philippine Congress, that the CHR acts as a "mouthpiece of the military". Such a perception undoubtedly undermines the CHR's effectiveness as a remedy for the victims of "disappearance" and other human rights violations.

Victims and witnesses of human rights violations as well as their legal representatives have also questioned the thoroughness of CHR investigations. Amnesty International's own observations in the field tend to support the conclusion that CHR investigations, with some commendable exceptions, are all too often a bureaucratic formality. In many cases, CHR officials fail to carry out on-sight investigations at all, relying instead on the reports of other organizations or on information provided by government or military authorities. Investigations are frequently stopped and cases "archived" at the smallest indication of resistance from the authorities or where a key witness has failed to come forward to testify. Yet it is precisely in these circumstances that the CHR ought to exert its authority, for example, to overcome official non-cooperation or to ensure that witnesses feel free to testify without fear of reprisal.

On the positive side, the CHR's 12 regional offices do provide some measure of protection to

victims and to their representatives. Particularly in remote areas, where local non-governmental human rights organizations are themselves under threat, the CHR may provide the only mechanism through which complaints are put on the public record and through which a procedure of inquiry, however cumbersome, is set in motion. The extent to which the CHR provides a function of protection depends greatly, however, on the personal qualities and commitment of its regional personnel.

5. CASE STUDIES OF "DISAPPEARANCE" -- 1990

This section details the fate of 25 people who are reported to have "disappeared" during 1990. Their stories illustrate and provide substantive evidence of the general pattern of "disappearance" described earlier in this report. Included here are the cases of three people who died or were killed in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

These case studies reveal some of the common features of "disappearances" in the Philippines. Many of these "disappearances" were carried out late at night or in isolated locations, thereby limiting the chance of identification. The perpetrators generally dressed in plainclothes and drove unmarked vehicles, making positive identification by witnesses more difficult. Some of the victims were taken to unofficial detention centres -- "safehouses" -- where their detention was not formally registered. In other cases they were detained in military camps where access by families, lawyers, human rights activists or even government authorities was denied even if by law it should have been permitted.

In virtually every case documented here there is clear evidence that government or government-backed forces were responsible for the victim's "disappearance". In most cases the relatives or colleagues of the victim spent anxious weeks or months in search of their loved ones. Many made use of the available procedures and remedies -- including petitions for writs of habeas corpus and filing complaints with the CHR -- but with rare exception their efforts were to no avail. In several cases, these efforts resulted in the relatives, witnesses and others involved in the search for the "disappeared", themselves becoming targets of death threats and intimidation by members of the security forces.

"Disappearances" occurred virtually throughout the country but they were most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including parts of Negros, Mindanao, Samar and Central Luzon. The majority of the "disappeared" were members of lawful non-governmental organizations -- including human rights groups, church organizations, youth and student groups, farmers' organizations, trade unions and research institutes -- alleged by the authorities to be "fronts" for the outlawed CPP and NPA, or individuals suspected of having links to the NPA or CPP. Among them were people whose work on behalf of the victims of the war, or of the socially and economically disadvantaged, took them into areas of suspected rebel activity.

5.1 Those Who Reappeared in Custody

The government has noted, correctly, that some people reported as "disappeared" have later reappeared. Amnesty International always welcomes such news. However, contrary to the government's contention that such reappearances cast doubt on the accuracy of the original reports, most such cases actually confirm that the victims were held for some period in unacknowledged military or police custody.

Amnesty International has documented at least 15 cases during 1990 in which the "disappeared" have subsequently reappeared after a period in police or military custody. A number of those who reappeared were formally released from custody, some escaped and still others remained in police or military custody after their illegal detention was acknowledged. Amnesty International also knows of

at least six similar cases from 1989 which are noted in Appendix IV.

Soledad MABILANGAN and Alita BONA

Soledad Mabilangan and Alita Bona, both aged about 22, were detained on 10 March 1990 by members of the security forces in sitio Tubigan, barangay Paranas, Wright, Samar province. Alita was three months pregnant. Military authorities repeatedly denied their detention for over six weeks, but in late April the women were found to be in military custody at the headquarters of the 802nd IB. To Amnesty International's knowledge they remained in custody, without charge, at the end of the year.

Soledad Mabilangan and Alita Bona were reportedly arrested between 1pm and 2pm on 10 March 1990 in sitio Tubigan by armed men believed to be CAFGU members or soldiers attached to the Charlie Company of the army's 52nd Infantry Battalion (IB) based in barangay Casandig. The women had walked from barangay Capul to Tubigan to buy rice at the weekly market there. An eyewitness saw two women in the custody of soldiers in sitio Tubigan at about 2pm the same day. Other witnesses said they had seen two women walking under military escort on the road to the 802nd Infantry Battalion headquarters. These witnesses refused to provide sworn testimony, apparently from fear of military reprisals.

Leanita Mabilangan, Soledad's mother, learned of her daughter's detention four days later through a community leader in Tubigan. She enquired after the whereabouts of her daughter and Alita Bona at Camp Lukban (the headquarters of the army's 8th Infantry Division), at a detachment of the army's 34th IB and at the Charlie Company of the 52nd IB. Authorities in each place denied having the women in custody.

On 27 March Leanita Mabilangan filed a complaint with the CHR and on 6 April CHR officials officially requested information on the whereabouts of the two women from the commander of the 8th Infantry Division. Military authorities acknowledged receipt of the communication but provided no substantive response to the request for information. Two weeks later officials from the CHR received unofficial information - a rumour - that the women were detained at the 802nd IB headquarters, in barangay Bagaca, Samar, and went immediately to search for her there. The acting commander of the camp refused to comment on the whereabouts of the two women and told the CHR officials to return on 23 or 24 April. A special investigator from the CHR who visited the camp on 24 April was threatened at gunpoint by a soldier and denied access.

On 26 April 1990 two CHR officials, an Amnesty International delegation and relatives of Soledad Mabilangan visited the camp and found the two women in custody. Military officials at the camp claimed that Soledad Mabilangan and Alita Bona were held "voluntarily", although they alleged that they and their families were well-known members of the NPA. The camp commander said that the women had not been charged and that they would be released if their husbands -- alleged to be NPA members -- "turned themselves in". The authorities also admitted that no attempt had been made to inform the women's families of their arrest, even when they knew that Soledad Mabilangan's relatives had inquired about their whereabouts at several military installations. According to reports, the women were taken from their cell and hidden when visitors came to the camp.

In a private talk, Soledad Mabilangan and Alita Bona explained that they had not been physically ill-treated in the camp. But they had been encouraged to collaborate with the army's counter-insurgency effort and threatened with prosecution for association with the guerrilla movement if they did not cooperate. They said they had been interrogated about their relatives' alleged connection with the NPA and made to sign affidavits under duress. In one of these they agreed to act as CAFGU informants upon their release. One of the women expressed their special fear that if their husbands were seized or killed while they were in secret detention, they would themselves have almost certainly been killed.

Helen TREMBEVILLA

Helen Trembevilla "disappeared" on 24 July 1990. Military authorities in the area initially denied holding her, but in September they informed Amnesty International that she had been in military custody during July and August; she was released on 17 August. Helen Trembevilla is a member of Fathers and Relatives against Tyranny and Repression, an organization set up to support the relatives of victims of human rights abuses and the girlfriend of a former political detainee who was released in 1989 following the dismissal of charges against him.

Helen Trembevilla was detained shortly after being discharged from the Corazon Locsin Montelibano Memorial Hospital in Bacolod on 24 July 1990. She had been treated there for injuries suffered when soldiers from the 66th IB opened fire at her house on 7 July 1990, believing that members of the NPA were inside the house. As she left the hospital with her parents, eyewitnesses said that men in civilian clothes believed to be members of the 66th IB approached and asked Helen to go with them for questioning. The men told her parents to go ahead and meet them in Kabankalan. However, Helen Trembevilla did not appear at the arranged meeting place and has not been seen since.

Helen Trembevilla's relatives and staff from the Bacolod office of a national human rights organization inquired after her whereabouts at the Negros Island Command, the military base which covers the whole of Negros island, as well as at the 301st Brigade based in Hinigaran, and the 66th IB in Kabankalan. Her custody was denied at all these establishments.

In September 1990 military authorities in Negros Occidental province informed Amnesty International that Helen Trembevilla had in fact been held in military custody at Kabankalan, Negros Occidental. She was released from detention on 17 August and, to Amnesty International's knowledge, no charges were filed against her. (See ASA 35/22/90 and ASA 35/03/91)

Rosario LODRONIO

Rosario Lodronio, aged 30, was reportedly abducted on 18 December 1990. She was arrested by three armed men in military uniforms from her uncle's house in barangay San Benito, Victoria, Laguna province. Military authorities denied that Rosario was being held in custody, but on 22 December she was released from the 202 Infantry Brigade of the Philippines Army at Lumban in Laguna province.

The reasons for Rosario Lodronio's arrest are unclear, but the authorities are believed to have suspected here of being the wife of a commander of the Southern Tagalog district of the NPA. (See ASA 35/30/90 and ASA 35/31/90)

5.2 Those Who Died or Were Killed in Custody

Felipe "Wilson" LEONIDAS

Felipe "Wilson" Leonidas, aged 27, was reportedly detained in Manila by armed men believed to be members of the armed forces. His detention was initially denied by military authorities, but he was subsequently found hanged in his cell in a military camp. He was an active member of the KPML (Kongreso ng Pagkakaisa ng Maralita sa Lunsod), an organization working on behalf of the poor in urban areas.

Felipe "Wilson" Leonidas, aged 27, was detained in Santa Cruz, Manila on 22 February 1990 at a restaurant where he had gone with two friends after participating in an anti-U.S. bases rally organized by the National Movement for Civil Liberties. According to eyewitness reports, approximately six armed men in plainclothes came into the restaurant and pointed a gun at Wilson Leonidas after a young man with them said, "Yes, it's him". He was dragged outside to a waiting vehicle which then drove off to an unknown destination. Another armed man was left behind preventing others from following. Wilson Leonidas was heard shouting for help as he was taken away. His relatives searched for him at local police stations, hospitals and military detention centres, but his custody was denied by the authorities.

On 27 or 28 February, "Wilson" arrived at the home of relatives escorted by members of the Military Intelligence Group (MIG) from Camp Bago Bantay in Pag Asa, Quezon City, Manila. He reportedly told his relatives that he had signed a "surrender paper" and had decided to cooperate with the military. On 1 March the military informed Wilson's sister that "Wilson" had hanged himself in his cell.

Felipe "Wilson" Leonidas had been held in detention by the MIG, thus confirming previous reports that the armed men in plain clothes who abducted him on 22 February were members of the military forces.

Relatives filed an official complaint with the Commission on Human Rights on 6 April 1990. In a case report dated September 1990, the CHR said that an autopsy showed that the cause of death was "asphyxia by hanging" but there was no conclusive evidence that the victim had committed suicide. The report also indicated either that military authorities at Camp Bago Bantay had been uncooperative or that the CHR had not performed its duty with sufficient energy. The report reads: "CHR investigators exerted efforts to confer with [the commanding officer] regarding the circumstances of the death of Felipe. Unfortunately, he was not available at that time." According to the report, there were plans to subpoena military authorities but to Amnesty International's knowledge this had not occurred by the end of the year. (See ASA 35/06/90)

Efren CONCEPCION, Nicolas LOPEZ, Reynaldo SANTOS and Roberto LOPEZ

Efren Concepcion, Nicolas Lopez and Reynaldo Santos "disappeared" after they were detained by members of a joint military and paramilitary force on 11 February 1990 in barangay San Sebastian, Hagonoy municipality, Bulacan province. Roberto Lopez, a construction worker and the son of Nicolas Lopez, "disappeared" in a separate incident on 15 February 1990 after he was detained by armed men in barangay San Agustine, Hagonoy municipality, Bulacan province.

Efren Concepcion was reportedly beheaded by his captors on or before 13 February 1990. Nicolas and Roberto Lopez said they were spared execution because they pretended to be willing to join the CAFGU. Both later escaped from the "safehouse" where they were detained after witnessing the beheading of Efren Concepcion. The whereabouts of Reynaldo Santos were not known at the end of the year.

Efren Concepcion, Nicolas Lopez and Reynaldo Santos were reportedly detained by members of a special unit called the "Special Task Force Anti-Illegal Fish Pond", organized by the PC Provincial Commander. The unit is said to be made up of CAFGU members, "rebel-returnees" (former NPA guerrillas who have come over to the government side) and elements of the Integrated National Police (INP). Members of this unit were reportedly responsible for the arrest and ill-treatment of others in Hagonoy municipality suspected of being NPA members or sympathizers. All three men were members of BANGKALIS, a fisherman's organization in Bulacan. Efren Concepcion was provincial Vice-Chairman of BANGKALIS and General Secretary of KAMPI, the west-Bulacan district chapter of ALLMA, a human rights organization in Bulacan province.

Efren Concepcion was reportedly taken from his house by soldiers at about 3 am in the morning and beaten. Neighbours and relatives reportedly heard him crying out in pain before he was taken away. Nicolas Lopez and Reynaldo Santos, who had been staying at the house of Efren Concepcion, were taken away separately. Relatives and human rights advocates inquired after them at the Provincial PC Command in Malolos, but the authorities there denied having them in custody. It is believed that they were detained in a "safehouse" owned by a CAFGU member in barangay Santa Cruz, which also served as a local CAFGU headquarters.

Roberto Lopez was reportedly detained by two armed men, believed to be police officers, on 15 February in Mababang Lupa, barangay San Augustine, Hagonoy, Bulacan province. Witnesses said the armed men, at least one of whom they identified by name as a police officer, smashed his head against a cement wall and threatened him with a hand gun before tying him up "like a pig". He was then forced into a waiting Ford Fierra jeep which bore INP insignia and taken to the municipal jail. Shortly afterwards he was removed to a house used by the Special Task Force as an unofficial detention centre. Witnesses believed that the two armed men belonged to the Special Task Force thought to be responsible for the 11 February "disappearances" mentioned above. Roberto Lopez' wife and mother inquired after him at the local police headquarters and at the PC Provincial Command in Malolos, but the authorities denied having him in custody. He later escaped from custody. (See ASA 35/07/90 and ASA 35/10/90)

Nestor LOBERIO and Diomedes "Desi" ABAWAG

Nestor Loberio, aged 25, the project director of SAFDI (Samar Assistance for Farmers Development Inc.), a lawful non-governmental organization involved in livelihood projects for poor farmers in Samar, has not been seen since he and Diomedes Abawag, a SAFDI staffworker, were detained by armed men believed to be members of a military intelligence "death squad" on 29 January 1990 in Catbalogan, Samar province.

Diomedes Abawag is thought to have been tortured and beheaded by his captors. His head, reportedly bearing signs of torture, including a deep slash in the lower lip, facial bruises and a hole in the right temple, was found in the sea by fishermen near barangay Butaena, Zumarraga, Samar province, on 1 February 1990. The fishermen reported the discovery to the police in Catbalogan.

The men who detained Nestor Loberio and Diomedes Abawag are believed to be members of a "death squad" called "Banagan", allegedly set up by the Military Intelligence Group of Region 8 (MIG 8) based at Camp Lukban, Catbalogan. The majority of "Banagan" members are thought to be former "vigilantes" from the San Miguel area, Leyte province.

Diomedes Abawag and Nestor Loberio were reportedly detained at about 6 pm in San Francisco Street, Catbalogan, Samar. In a sworn statement, an eyewitness said that the two men were "dragged forcefully" into a maroon-coloured jeep with no number plates, which was waiting in front of an automotive shop. The jeep then drove off in the direction of Ubanon district, Catbalogan province.

On 4 February, two headless bodies, possibly those of the two men above, were found; one in barangay Iquid, Catbalogan, and another in San George Poblacion, Samar. However, Amnesty International could not confirm that these were the bodies of Nestor Loberio and Diomedes Abawag. (See ASA 35/08/90 and correction)

5.3 Those Who Are Still Missing

Maximiano "Jun" MESINA and Felix DIMITUI

Maximiano "Jun" Mesina and Felix Dimitui, two former prisoners of conscience, have not been seen since they were arrested by armed men believed to be members of the 181st PC Company on 2 January 1990. Their detention has been denied by the Provincial PC Command and their whereabouts remain unknown. A petition for habeas corpus filed by relatives on their behalf on 5 January 1990 was denied on 26 January.

Maximiano Mesina, Press Relations officer of the Alyansa ng Magbubukid sa Gitnang Luzon (AMGL), Alliance of Farmers in Central Luzon, and Felix Dimitui, AMGL staff member, were arrested between 11.30 and 12.00 in the morning of 2 January 1990 in Tarlac, Tarlac province. Witnesses said that the two men were walking near a bus terminal when they were detained by armed men in civilian clothes led by a PC sergeant whom witnesses identified as a member of the 181st PC company, based in Camp Makabulos.

On the same day, a group comprising local leaders of AMGL, workers from the local branch of the human rights organization Task Force Detainees (TFD), as well as relatives of Maximiano Mesina and Felix Dimitui, went to the PC provincial headquarters at Camp Makabulos to inquire after their whereabouts. Their detention was denied. On the following day, 3 January, the group met the PC Assistant Provincial Commander at Camp Makabulos and were told that the two had not been arrested and that the PC sergeant who had been identified was away from the camp and could not be reached. Efforts by the Provincial Governor to locate the PC sergeant were also said to have proved unsuccessful.

On 26 January a petition for habeas corpus was filed in the Tarlac Regional Trial Court, Branch 65. The petition was denied for two reasons. First, the court rejected the sworn statement of an eyewitness who refused to testify in person for fear of reprisals. Second, according to the judge, a criminal procedure was more appropriate for the case. The judge argued:

If the persons alluded to in this petition has (sic) been the victims of illegal arrest or detention, they can have recourse to criminal action...The only issue that can be ventilated in a habeas corpus proceedings (sic) is whether or not a person, detained, arrested or restrained of his liberty is entitled to release. (G.R. No. 91456, F.D. et. al. v. Fidel V. Ramos et. al. Decision of January 26, 1990).

Charges of kidnapping were subsequently filed against the alleged perpetrators and in March 1990 relatives appealed to the President to waive PD 1850. According to reports this appeal was successful and the case will be heard before a civil court. (See ASA 35/01/90)

Maximiano Mesina and Felix Dimitui were among 18 people arrested in March 1989 at the AMGL offices in San Fernando, Pampanga province, and adopted by Amnesty International as prisoners of conscience (see ASA 35/25/89, The Arrest and Imprisonment of 18 Activists in Pampanga Province). They were charged with subversion and the illegal possession of weapons and held in custody until September 1989, when the court ruled that there was insufficient evidence against them. Amnesty International is particularly concerned at their arrest and "disappearance" so soon after their release from six months' imprisonment on charges which were found to be groundless.

Antonio BUENAVISTA

Antonio Buenavista, 42, has not been seen since 7 January 1990 when he was taken from his home in barangay Santa Cruz, Hagonoy, Bulacan province, by five armed men in civilian clothes believed to be connected with the 171st Company of the PC.

According to eyewitnesses, Antonio Buenavista was dragged from his home at about 7pm on 7 January. His abductors wore masks and were armed with four automatic weapons (three M-16s, one M-14 and one .45 revolver). When he tried to resist by holding onto a piece of furniture in the house, one of the men shot him in the arm with an M-14 rifle forcing him to release his grip. Outside the

house, he was struck on the back of the head with a rifle butt and knocked unconscious before being put into a waiting white car. When his wife, Esther Buenavista, began to call for help, one of the armed men reportedly shouted "Shut up you bitch. Come any closer and we'll kill you!" One of the men shot at her but reportedly missed because his gun was pushed by her son Jesus Buenavista. Following the shooting, the two ran for safety and sought help from the barangay captain who helped them report the case to the Mayor and the police in the municipality of Hagonoy.

Relatives inquired after Antonio Buenavista's whereabouts at the 171st Company of the PC in Malolos, and at other military and police detachments, but authorities denied having him in their custody.

There were indications of a link between the perpetrators and military and paramilitary authorities in the area. Two days after the incident, the suspected perpetrators were reportedly seen, bearing arms, at a detachment of the 171st PC Company in barangay Santa Cruz. After the incident they were reportedly seen in the barangay, still armed, and fraternizing with military personnel. On the night of the incident, the white car driven by the perpetrators was reportedly seen in front of the Hagonoy Municipal Hall. Residents of nearby Barrio Mercado reported that the same car was seen leaving the neighbourhood at dawn on the morning of the next day, 8 January. Barrio Mercado is the site of a CAFGU detachment under the command of the 171st PC Company.

A petition for habeas corpus was filed on behalf of Antonio Buenavista before the Regional Trial Court (RTC) on 16 January 1990, but it was dismissed. The reasons for the dismissal are not known. According to witnesses, the respondents in the case were present at the hearings bearing arms and two-way radios. Charges of kidnapping and illegal possession of firearms were also filed against the alleged perpetrators, and on 23 April the RTC issued warrants for their arrest. However, according to residents of barangay Santa Cruz, the suspects continued to roam freely in the community, still fully armed, after the warrants had been issued. (See ASA 35/14/90)

Amelia TENA

Amelia Tena, 22, is a member of the Kabataan para sa Demokrasya at Nasyonalismo (KADENA), the Youth for Democracy and Nationalism. She was last seen on 26 May 1990, in Victoria, Laguna province in the custody of armed men believed to be members of the Intelligence Service of the Armed Forces of the Philippines (ISAFP) and a local CAFGU member.

According to reports, the public passenger jeep in which Amelia Tena was travelling collided with a Ford Sierra at between 10am and 11am on 26 May in barangay Masapang, Victoria, Laguna. An eyewitness said that several armed men forced Amelia Tena to leave the jeep and get into the Ford Sierra, which then drove off. After the arrest a witness was reportedly able to identify two of the men by name; however, the witness subsequently went into hiding for fear of reprisals by the security forces. Since the abduction, military authorities in the Laguna region have consistently denied that she is being held in custody.

On 7 June 1990, a relative reported having received two letters. The first, apparently from an ISAFP officer, invited her to meet him at a designated time and place. The relative did not go to the meeting for fear of herself becoming a victim of abduction, particularly as the letter instructed her to attend alone. The second letter was apparently from Amelia Tena herself. It instructed the relative to attend a court hearing of the case of eight political prisoners who, the letter said, would have news of Amelia Tena's whereabouts and the conditions of her detention. The relative attended the hearing but the defendants said they knew nothing of the "disappeared" person.

In January 1991 an eyewitness reportedly testified before the CHR that she had seen Amelia Tena in the custody of soldiers at Los Banos in June 1990. The witness said that Amelia Tena and other detainees had been obliged to address a military seminar at about that time. She also testified that Amelia Tena had been transferred from one "safehouse" to another since her arrest in May 1990.

Allan GITANES

Allan Gitanes, a farmer aged 20, was last seen on 30 April 1990 in the custody of soldiers belonging to the 28th Infantry Battalion (IB) of the Philippines Army.

His "disappearance" followed the evacuation in late April of more than 300 families from rural areas near the town of San Augustine in Surigao del Sur province, where government forces were conducting military operations against the NPA. Several government soldiers were reportedly killed and more than ten taken prisoner during an armed encounter between government troops and NPA guerrillas on 18 April 1990; the situation of the captured soldiers is not known.

According to relatives, Allan Gitanes returned to the family farm in Janipaan, San Augustine, on 30 April in order to collect some food and to check possessions which had been left behind during the evacuation. He failed to return to the evacuation centre that evening. An eyewitness reported on 3 May that he had seen Allan Gitanes, with his hands tied, being taken into the municipal hall in San Augustine at about 8pm on 30 April. The eyewitness said that he was escorted by soldiers of the 28th IB.

Relatives inquired after his whereabouts at the headquarters of the 28th IB, but the authorities there denied having him in custody. They also inquired at the headquarters of the 401st IB where an officer denied any knowledge of Allan Gitanes but promised to assist the family in locating him.

Bonifacio SABANAL, Rufino SABANAL, Mamerto LUPICIO

Bonifacio Sabanal (19), Rufino Sabanal (40) and Mamerto Lupicio (25), all members of the Federation of Internal Refugees in Negros, "disappeared" shortly after their arrest on 6 July by military officers from the Alpha Company, 61st IB and CAFGU members under its command. The military authorities reportedly accused the men, two of whom were recent evacuees, of being couriers for the NPA, an allegation denied by their relatives.

According to eyewitnesses, the three were detained in barangay San Antonio, Himamaylan at about 3.30pm on 6 July, while on their way to help a relative harvest his crops. On 9 July, relatives went to the detachment of the 61st IB in barangay Carabalan, Himamaylan, to inquire after their whereabouts. They were told that the three had been released on the evening of 7 July, and that two local Council members had witnessed the signing of the release papers. According to one report, however, the three men were seen on 8 July at the 61st IB headquarters. The three were said to be "kneeling and pleading" before CAFGU members and to bear signs of having been ill-treated.

Relatives filed a petition for a writ of habeas corpus before the Regional Trial Court of Negros Occidental, at Himamaylan on 10 July 1990. According to reports, the petition was dismissed because the military respondent claimed the three had been released. (See ASA 35/24/90)

In August and September Sister Aquila Sy, a well-known human rights and community activist who had helped relatives search for the three men, received death threats believed to emanate from organizations backed by military and local government authorities. Hundreds of leaflets were reportedly distributed in parts of Negros Occidental inciting acts of violence against Sister Aquila Sy and other religious workers and accusing them of sympathizing with the NPA. (See ASA 35/23/90)

Edmundo CARIAS

Edmundo Carias, 22, "disappeared" after being taken from his house in Davao City on 8 August 1990 at approximately 1am by members of the military Intelligence Security Operations Group (ISSOG).

According to Edmundo Carias' 60-year-old mother, Vicenta, they were both awakened after midnight on 8 August by the barking of dogs and the sound of thudding on the doors of their home. Three armed men burst into their bedroom and ordered Edmundo Carias to hold his hands up. The men, who are alleged to have said they were "the authorities", handcuffed him and dragged him out of the house. When his mother tried to accompany him she was pushed away. She said that other military units were involved in the arrest but she could not identify them.

Some hours later, Vicenta went to look for her son at the ISSOG office but was told he was not there. On 10 August she was informed by the ISSOG's commanding officer that Edmundo was alive but under investigation. Some soldiers at the office reportedly warned a woman who had accompanied Vicenta Carias that she would "also" be considered an NPA member if she continued to accompany Vicenta Carias. There was no formal acknowledgment of Edmundo Carias' arrest.

On 14 August, Vicenta Carias filed a writ of habeas corpus before the 11th Regional Trial Court (Branch 15). The petition was heard on 17 August. The respondents denied having arrested or detained Edmundo Carias and his current whereabouts are unknown. (See ASA 35/25/90)

Jimmy BADAYOS

Jimmy Badayos, aged 34, has not been seen since he was taken into custody by military intelligence officers in Cebu City on 3 October 1990. He was held incommunicado for five days before the military authorities claimed that he had escaped from detention.

According to eye-witnesses, Jimmy Badayos was arrested at his home in sitio Kabulakan, Go Chan Subdivision, Banawa, Cebu City, by members of the Intelligence Division (M2) of the Cebu Metropolitan District Command (Metrodiscom) at about 4am on 3 October. He was interrogated briefly, then taken to the Metrodiscom Headquarters at Camp Sotero Cabahug, accompanied by his wife and two children. He is reported to have been taken first to the office of the Chief of the Intelligence Division, and later to a small room in a logistics building, believed to be used for interrogation.

On 8 October a petition was filed for a writ of habeas corpus before Branch XVI of the Regional Trial Court in Cebu, but the military respondents did not appear in court. When the hearing resumed on the following day, the authorities said that Jimmy Badayos had escaped from an interrogation room at Metrodiscom Headquarters at about 1.40am on 4 October. The court apparently accepted this explanation and rejected the petition for habeas corpus.

Jimmy Badayos is believed to have been accused of being a member of the NPA. During his detention in Camp Sotero Cabahug, the camp was reportedly under heavy guard (red alert) due to an uprising by renegade soldiers in the nearby island of Mindanao. There was no report prior to the court hearing that civilian prisoners had escaped from the closed camp and no evidence was presented to the court to substantiate the claim that Jimmy Badayos had escaped. (see ASA 35/26/90)

Pedro BULALACAO

Pedro Bulalacao, 38, leader of an urban poor organization Katipunan ng Samahang Makabayan (KASAMA), has not been seen since he was detained on 17 June 1990 by two men believed to be members of the police.

According to an eyewitness, Pedro Bulalacao was detained by two men in civilian clothing as he crossed Roxas Boulevard in Pasay City, Metro Manila, at about 5.15pm on 17 June. The men reportedly took him to a group of waiting vehicles, where he was held and punched. The eyewitness said a man who alighted from a light blue Toyota with registration plate number NAW-541 placed handcuffs and a blindfold on Pedro Bulalacao before putting him into a white car.

The white car then drove off, followed by the Toyota, a passenger jeep and a red car. Relatives and colleagues from KASAMA reportedly inquired after his whereabouts at a number of security forces establishments, including the headquarters of the Pasay City police, the Western Police District Headquarters, and Camp Crame, a military camp in the area. Custody of Pedro Bulalacao was denied by all these authorities.

Neighbours reported that police officers from Pasay City had been to Pedro Bulalacao's home at about 3pm the same day, but had not found him because he was at a park in Libertad where he often spent Sunday afternoons teaching karate. (See ASA 35/18/90)

Josefa PADCAYAN, Marcelo BAWAGAN and Arnel HIDALGO

Josefa Padcayan, aged 36, Marcelo Bawagan and Arnel Hidalgo have been held in secret, incommunicado detention since 16 November 1989. The three were last seen in the custody of members of the 17th Infantry Battalion of the Philippine Army (IB PA), in Zinundungan Valley, Cagayan province. While military officials acknowledged in November 1989 that the three had been detained, all access to the prisoners has been denied, and the three remain unaccounted for, more than one year after they were arrested.

During November 1989 the Zindungan area had been the site of intensive military operations against the NPA. Josefa Padcayan, a community health worker and a former government nurse, was

on her way to deliver relief goods to affected villages in the Zindungan valley when she and her two companions were reportedly arrested without warrant by military officers.

Relatives of Josefa Padcayan, together with local priests and human rights workers, tried to locate the three at the local military barracks. They were told by officials that they had been taken from Piat to Santo Nino and then to Alcala, Cagayan Province. The commanding officer of the 17th IB PA acknowledged in the presence of the victims' lawyer, a local priest and two workers from the Cagayan office of a national human rights organization that the three had been arrested. However, access to the three was not granted.

Since the arrests, a petition was filed for a writ of habeas corpus and, after several postponements, the case was heard twice -- in February and March 1990. On both occasions the result was inconclusive as certain participants failed to appear in court. A third hearing in June 1990 was also inconclusive. The court has persistently failed to exercise its right to visit the detention facilities at the 17th IB army base to establish the circumstances of the three prisoners or to rule on the legality of the incommunicado detention. (See ASA 35/21/90)

6. CONCLUSIONS AND RECOMMENDATIONS

"Disappearances" have occurred against the background of armed conflict between government forces and the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). They have been most common in Manila and in rural areas believed to be strongholds or base areas of the NPA and CPP, including large parts of Central Luzon, Negros, Samar and Mindanao. The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by members of the security forces as fronts for the NPA and CPP.

Despite the existence of elaborate legal and institutional safeguards for the protection of human rights in the Philippines, Amnesty International believes that certain aspects of government policy and military strategy -- in particular aspects of the counterinsurgency campaign -- have helped to create a context within which "disappearances" and other human rights violations are more likely to occur. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

Senior government and military authorities have been reluctant to acknowledge responsibility for "disappearances" claiming instead that they are the work of the NPA and CPP or that the "disappeared" have simply gone into hiding. Amnesty International acknowledges that a small number of people reported to have "disappeared" in previous years may have been detained by opposition forces. It stresses, however, that this does not in any sense alter the government's responsibility with respect to investigating all cases of alleged enforced "disappearance" and bringing those responsible to justice. The government's responsibility is a matter both of immediate practical concern -- relocating the "disappeared" person, identifying the perpetrators and stopping the pattern of "disappearance" -- and of principle arising out of international law.

The available remedies for locating the "disappeared" and bringing the suspected perpetrators to justice have so far proven to be ineffective. Petitions for writs of habeas corpus filed with the courts have seldom led to the reappearance or release of the "disappeared". The government-backed Commission on Human Rights (CHR), hampered by limitations in its terms of reference and methods of work and by a lack of full cooperation from military authorities, has had limited success in locating the "disappeared". Presidential Decree 1850 constitutes an important legal obstacle to the effective prosecution of members of the security forces suspected of responsibility for "disappearances" and other human rights violations. Through its acquiescence in and reliance on judicial and quasi-judicial procedures and institutions which have been shown to be ineffective in preventing "disappearances", locating those who have "disappeared" and bringing the alleged perpetrators to justice, the government has failed to meet its obligations under international law and has, in Amnesty International's view, contributed to the problem of "disappearance".

Amnesty International recognizes that some people reported as "disappeared" may reappear in a matter of weeks or months, but it stresses that their reappearance after a period in unacknowledged military custody does not in any sense diminish the seriousness of the violation. Nor does it necessarily call into question the validity of the original report; to be "disappeared" means simply to be held in unacknowledged, incommunicado detention by government or government-backed forces. The reappearance, alive, of all of the "disappeared" held in secret government custody is Amnesty International's objective.

6.1 Recommendations to the Philippine Government

Amnesty International has welcomed the Philippine Government's ratification of major

international human rights treaties, such as the International Covenant on Civil and Political Rights and other steps it has taken to address the problem of "disappearances". It emphasizes, however, that the terms of these treaties are binding on the government to provide effective human rights protection, not only in principle but in practice. Despite the existence of institutional and legal safeguards for the protection of human rights in the Philippines and the government's often stated commitment to the protection of human rights, "disappearances" and other serious violations continue to occur.

Amnesty International offers the following specific recommendations which, if implemented, it believes would strengthen existing human rights guarantees, and would in particular help to prevent future "disappearances".

To contribute to the creation of a political climate in which "disappearances" are less likely to occur, Amnesty International urges the government:

1. to initiate prompt and impartial investigations to clarify the whereabouts or fate of all those reported to have "disappeared" regardless of when or where the "disappearance" occurred;
2. to ensure strict control, including a clear chain of command, over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as over all officials authorized to use force and firearms;
3. to ensure that Constitutional provisions prohibiting the maintenance of private armies are upheld and enforced;
4. to undertake a thorough review of the use of official and semi-official paramilitary forces in the conduct of the counter-insurgency campaign;
5. to prohibit explicitly the public political labelling of alleged government opponents by government authorities and by members of government or government-backed security forces.

To ensure that arrest and detention procedures provide guarantees against the occurrence of "disappearances", Amnesty International calls on the government:

6. to guarantee that judicial and quasi-judicial bodies shall be granted access to all places of detention where a detainee is suspected of being held;
7. to enforce the legal/constitutional prohibition of incommunicado detention or the use of unofficial places of detention;
8. to establish and maintain centralized public registers of all persons detained in all parts of the country, to be updated on a daily basis and made available to family members, magistrates, attorneys and other authorities.
9. to establish similar registers at each place of detention throughout the national territory;

To ensure that members of government or government-backed security forces are not free to commit violations of human rights with impunity, Amnesty International calls on the government:

10. to bring promptly to justice members of government and government-backed security forces where there is evidence of their responsibility for or their participation in an act leading to

"disappearances";

11. to repeal Presidential Decree 1850, or until such time as it is repealed, to ensure that the jurisdiction of military courts is waived in all cases involving "disappearances" and other grave human rights violations.

**To ensure the effectiveness of judicial and quasi-judicial remedies in cases of Amnesty
International calls on the government:**

12. to review existing judicial procedures with respect to petitions for habeas corpus with a view to ensuring its optimal effectiveness as a remedy in cases of "disappearance";

13. to establish a practical and affordable witness protection program to ensure that complainants, witnesses and those conducting investigations into human rights related cases shall be protected from violence, threats of violence or any other form of intimidation;

14. to enact legislation to ensure that those implicated in "disappearances" or other human rights violations shall be removed from positions of power or control, whether direct or indirect, over complainants, witnesses and their families, and investigators;

15. to undertake a thorough review of the Commission on Human Rights, its terms of reference, procedures and methods of work.

APPENDIX 1

Excerpts from the International Covenant on Civil and Political Rights (ICCPR)

Article 2

(3) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy.

Article 6

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7 states in part:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9

(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

APPENDIX II

Excerpts from the United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment

Principle 11

- 1.** A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
- 2.** A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
- 3.** A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

Principle 32

- 1.** A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
- 2.** The proceedings referred to in paragraph 1 shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority.

Principle 34

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such an inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

APPENDIX III Excerpts from the 1987 Constitution of the Philippines

Article III - The Bill of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Section 12.

(1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Section 15. The privilege of the writ of habeas corpus shall not be suspended except in cases of invasion or rebellion when the public safety requires it.

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Section 18.

(1) No person shall be detained solely by reason of his political beliefs and aspirations.

Section 19.

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Article XVIII -- Transitory Provisions

Section 24.

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 into the regular force.

APPENDIX IV

Reappearances After a Period in Police or Military Custody: Examples from 1988 and 1989

Flaviano RUDAS

Flaviano Rudas reportedly "disappeared" in Concepcion, Mindanao province, in June 1988. The Mayor of Dipolog, Mindanao, claimed in October 1989 that Flaviano Rudas "was never apprehended nor detained for any crime". However, in December 1989 Rudas' parents executed an affidavit stating that he had been "invited by the military for investigation" on 25 June, but that he had subsequently been released and was alive and working in Manila. Amnesty International welcomed information from government and other sources that Flaviano Rudas had reappeared, but noted that this information confirmed that he had been in military custody, despite denials of this at the time of his "disappearance". (See ASA 35/21/88)

Elmer REYES

Elmer Reyes "disappeared" after being detained by unidentified armed men in Manila on 7 September 1988. His family failed to locate him at several local police stations and military detachments. On 15 September 1988, a Philippines Air Force Intelligence unit acknowledged having Reyes in custody and released him four days later. (See ASA 35/29/88 and ASA 35/31/88)

Apolinar PABRICIO

Apolinar Pabricio was reportedly detained in Laguna on 8 February 1989 by personnel of the 16th Infantry Battalion (IB), but military authorities denied having him in custody. In March 1989, he was seen inside the 16th IB camp, and there were reports that he had been ill-treated. Military authorities claimed that he had surrendered voluntarily, then released him from custody at the end of March 1989. (See ASA 35/02/89, ASA 35/05/89 and ASA 35/19/89)

Belen TABAMO

Belen Tabamo "disappeared" after her arrest in Laguna on 10 February 1989 by members of the 16th IB. One month later she was located at the 16th IB detachment in Magdalena where she had reportedly been subjected to death threats and other forms of ill-treatment. She was acquitted of charges of frustrated murder and illegal possession of firearms and reportedly released on 12 September 1989.

In February 1990, the government reported: "Investigators from the Commission on Human Rights (CHR) who visited Ms. Tabamo found no evidence of alleged physical torture inflicted on her". However, the government statement was conspicuously silent on the subject of her "disappearance" while held in unacknowledged detention for one month by military forces. It also failed to consider the evidence that Belen Tabamo had suffered serious mental anguish as a consequence of the death threats to which she was reportedly subjected while in detention. (See ASA 35/01/89, ASA 35/04/89, ASA 35/07/89 and ASA 35/18/89)

Carlos VINA

Carlos Viña "disappeared" after he was detained by armed men who entered his house in Tudela, Misamis Occidental, on 13 April 1989. His family failed to locate him at several military detachments. On 22 June 1989, he was released from military custody. Military authorities claimed that Carlos Viña had been "rescued" from attack by a military operation on 8 June, but he denied this in an interview with a human rights organisation. (See ASA 35/14/89 and ASA 35/20/89)

AMNESTY INTERNATIONAL

PHILIPPINES "DISAPPEARANCES" IN THE CONTEXT OF COUNTERINSURGENCY

FEBRUARY 1991 SUMMARY INDEX: ASA 35/05/91
DISTR: SC/CO/GR

More than 50 people, most of them alleged critics or opponents of the government, were reported to have "disappeared" in the Philippines during 1990. At least five of the "disappeared" are believed to have died or to have been killed while in custody and some appeared to have been tortured. At least 15 whose detention had been denied by security forces in 1990 subsequently reappeared after a period in police or military custody. The majority were still missing at the end of the year and there was concern for their safety.

In an overwhelming majority of the cases in which there is clear and substantive evidence, the perpetrators have been members of government or government-backed security forces. These forces include the Philippine Army (PA), the paramilitary Philippine Constabulary (PC), the official paramilitary auxiliary CAFGU (Citizens' Armed Forces Geographical Unit) and various semi-official "vigilante" groups operating with the support or acquiescence of military commanders.

This report describes a pattern of enforced "disappearances" in the Philippines during 1990 and provides details of the fate some of those who reportedly "disappeared". It outlines the political, military and legal context within which "disappearances" have occurred and examines the effectiveness of existing domestic remedies for relocating the "disappeared" and for bringing the perpetrators to justice. The report also provides details of the fate of 25 victims of "disappearance", including three who died or were killed in custody, six who reappeared after a period in police or military detention and 16 whose whereabouts remained unknown at the end of 1990.

"Disappearances" and other serious human rights violations including extrajudicial execution, torture and political imprisonment have occurred in the context of armed conflict between government forces and a number of armed opposition groups, principally the New People's Army (NPA), the armed wing of the outlawed Communist Party of the Philippines (CPP). The majority of the "disappeared" have been members of lawful non-governmental organizations publicly labelled by the security forces as fronts for the NPA and CPP, or individuals suspected of NPA or CPP membership.

Amnesty International believes that, notwithstanding the government's stated commitment to the protection of human rights and the existence of legal and institutional guarantees for this purpose, there are aspects of government and military policy which have helped to create a climate within which "disappearances" and other human rights violations are more likely to occur. Paramount among these are two features of the counterinsurgency campaign: (i) the creation of and reliance on an ever-widening network of official and semi-official paramilitary forces in conducting the counterinsurgency campaign; and (ii) the practice of public labelling or targeting of alleged critics

and opponents of the government as "enemies" or NPA/ CPP sympathizers. Recent Supreme Court decisions which have led effectively to the expansion of the power of security forces to arrest and detain suspected "rebels" and "subversives", appear consistent with government and military counterinsurgency strategy and have compounded the effects of these practices and policies.

Existing legal and institutional mechanisms for the protection of human rights have in practice proved ineffective in resolving past cases of "disappearance" and in preventing the continuation of the practice. Judicial remedies, such as habeas corpus have systematically failed to locate those who have "disappeared" in military custody. The national Commission on Human Rights, hampered by deficiencies in its procedures and methods of work, has not been effective in locating the "disappeared" or in ensuring that the suspected perpetrators are brought to justice.

An additional factor contributing to the phenomenon of "disappearance" in the Philippines has been the failure to bring to justice members of government or government-backed forces responsible for such acts. Where members of government and government-backed forces are allowed to commit serious human rights violations with apparent impunity, the practice is bound to continue. The problem of impunity has emerged partly as a result of the considerable influence wielded by the security forces in the formation of national policy in the Philippines and the substantial autonomy with which they are permitted to operate in the context of the counterinsurgency campaign. Presidential Decree 1850 has effectively protected members of the security forces from prosecution in civil courts for "disappearances" and other human rights related offenses.

Despite repeated studies by national and international human rights organizations -- including the 1990 report of the Philippine Senate Committee on Justice and Human Rights -- which have identified such deficiencies and offered various practical recommendations, the government has failed to implement significant changes. Through its acquiescence in and reliance on legal and institutional procedures which have been shown to be ineffective at locating the "disappeared", bringing the alleged perpetrators to justice and preventing further "disappearances", the government has failed to meet its obligations under domestic and international law and has, in Amnesty International's view, contributed to the problem of "disappearance".

This summarises a 37-page document, Philippines: "Disappearances" in the Context of Counterinsurgency (AI Index: ASA 35/05/91), issued by Amnesty International in February 1991. Anyone wanting further details or to take action on this issue should consult the full document.

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