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FRONT COVER (photograph):

***A boy lights a candle at the memorial for the “disappeared” at Baclaran, Manila on All Souls
Day, November 1995***

PHILIPPINES

Not forgotten: The fate of the “disappeared”

1. INTRODUCTION

Not forgotten

Every year in November, when families all over the Philippines gather at cemeteries to remember their dead and to celebrate All Souls Day, the relatives of those who have “disappeared” since the early 1970s and who are presumed to lie in unknown graves come together at a monument in the grounds of Baclaran Redemptorist Church in the capital Manila.

The ‘Flame of Courage’ memorial at Baclaran is inscribed with the names of 1,600 “disappeared” people - those who went missing allegedly at the hands of state agents under the governments of former Presidents Ferdinand Marcos and Corazon Aquino, and under current President Fidel Ramos. Among their number is Father Rosaleo ‘Rudy’ Romano who, since his abduction by suspected government agents in July 1985, has emerged both as a symbol of all those who have “disappeared” without trace in the Philippines, and of the continuing suffering of their families.

The number of “disappearances” has declined markedly in recent years. At least 46 “disappearances” have been reported since President Ramos assumed office in 1992, compared with more than 759 reported during the Marcos Presidency (1965-86)¹ and over 830 reported during the Aquino Presidency (1986-92). Some people in the Philippines suggest that a line should now be drawn under the past. While acknowledging the widespread hope in the Philippines for justice, they argue that in the interests of national reconciliation and consistent with a Filipino cultural willingness to forgive and forget, past human rights violations in the context of armed conflict and insurgency should be set aside.

Amnesty International believes however that the “disappearance” of Father Rudy Romano and the suffering of the other victims and their families can never be consigned to the past while the fate of the victims remains unknown, while those responsible have not been held accountable, and while the families and others directly affected by “disappearances” mostly remain without redress. The organization also believes that the risk of ‘disappearances’ happening in the future is heightened while the truth about the past is not established and while justice is not served.

Truth, Justice and Redress

International human rights standards, including the United Nations (UN) Declaration on the Protection of

¹Former President Marcos declared martial law in 1972. Incidences of human rights violations rose sharply, and continued at high levels despite the official lifting of martial law in 1981.

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All Persons from Enforced Disappearance², have identified three major principles - **Truth, Justice and Redress** - as forming the key pillars of an effective remedy for “disappearances” and other grave human rights violations. These three principles acting together form an effective means to address human rights violations of the past and provide safeguards against their repetition in the future.

Truth: Amnesty International calls on the government of the Philippines, as an essential first step towards genuine reconciliation, to make decisive efforts to investigate, locate and account for all “disappearance” victims. Efforts to establish the truth behind past violations should include an officially-supported program of exhumations. The locating of the victims, which may then at last open the way for proper burials and mourning, will go some way to help relieve the pain of uncertainty suffered by the victims’ families.

Justice: Following this investigative process, the government has a duty to bring suspected perpetrators of human rights to justice. The International Covenant on Civil and Political Rights (ICCPR) and the UN Declaration on Disappearances make clear that a full and impartial investigatory process should be followed by prosecution and trial.

Since the fall of former President Ferdinand Marcos in 1986 the Philippines has indeed implemented wide-ranging legal and constitutional provisions designed to safeguard human rights. However the protracted failure to prosecute government personnel who are alleged to have committed serious human rights violations risks permitting impunity - literally the exemption from punishment - to become entrenched. A climate of impunity, in effect absolving government personnel of accountability for their participation in violations of human rights, poses the serious threat of undermining long-term public confidence in the rule of law and weakening the credibility of the judiciary.

Moreover, given the possibility of future changes in the political and security climate, impunity carries with it the implicit risk that the number of “disappearances” and other violations may once again start to increase. As witnessed elsewhere around the world impunity remains one of the main contributing factors to continuing cycles of human rights violations.

Redress: The principle of redress refers to measures taken to set right a situation in which a person has been harmed, and to repair the damage done. Compensation, Rehabilitation and Restitution form important elements of Redress, as do establishing the truth and preventing the repetition of the human rights violations concerned.

The government of the Philippines has to some extent shouldered its responsibilities regarding the compensatory aspects of redress for the families of the “disappeared”. In recent years an annual Budget allocation of five million pesos (\$193,000) has been assigned for welfare programmes and financial assistance for the families of victims. While Amnesty International welcomes these developments the organization remains concerned that the implementation of financial assistance has been subject to delays and the number of families who have benefited remains limited.

² See Appendix 2: The United Nations (UN) *Declaration on the Protection of All Persons from Enforced Disappearance*. See Article 13 regarding Investigation; see Article 4 (1), Article 5, Article 14 and Articles 16-18 regarding Prosecution; see Article 19 regarding Redress.

Facing the Past: a Future Challenge

On 10 December 1992, in a speech marking the 44th anniversary of International Human Rights Day, President Ramos appealed to law enforcers and human rights advocates to work together to protect human rights.

*"Let us end the agony of the families of those who disappeared by cooperating in the search for their missing kin. . ."*³

At the same time President Ramos announced the creation, through executive order, of a special committee, the 'Task Force on Disappearances' headed by the Commission on Human Rights (CHR), to give priority to the pursuit of investigations into the fate of the "disappeared". Representatives of government agencies, including the Department of Justice (DOJ), the Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP), as well as other non-governmental groups, participated in the committee. However, to date the work of the Task Force has made little visible progress.

Meanwhile calls to confront the issue of the "disappeared" have also been reflected by efforts within the Senate and the House of Representatives of the Philippine Congress. In the late 1980s former Senator Wigberto Tanada chaired the Senate Committee on Justice and Human Rights which investigated and produced authoritative reports on patterns of human rights violations in the Philippines, including "disappearances". In addition in 1996 Senator Sergio Osmeña and Representative Bonifacio Gillego filed resolutions before Congress calling on the Philippine Government to adopt and ratify the UN Declaration on the Protection of All Persons from Enforced Disappearance.

Nevertheless the fulfilment of these efforts remains threatened by the corrosive effect of impunity -- itself sustained by a failure to account for the "disappeared". Amnesty International believes, therefore, that truth, justice and redress for the "disappeared" and their relatives must remain at the heart of continued efforts by the Philippine Government to resolve the legacies of the Marcos years and the anti-insurgency campaigns against armed opposition groups. As the Philippines accelerates towards its goals of economic development based on restored domestic peace and stability as envisaged in the "Philippines 2000" program, Amnesty International believes the government has an historic opportunity to address the injustices of the past and lay the foundations for lasting national reconciliation.

It is clear that this opportunity presents significant challenges and will require sustained political will. Some in the Philippines are reluctant to 'reopen' the wounds of the past, while others believe that the truth can never be established while some of those responsible for past violations remain in positions of authority. However Amnesty International believes that neither the Philippine nor any other government can relinquish its responsibilities to search for the truth and bring to justice those against whom there is sufficient evidence. It is important that amnesties and pardons do not have the effect of preventing the emergence of truth and subsequent accountability before the law. But once the truth is established and the judicial process complete, it is of course open to any government or society to decide that post-conviction amnesties, indemnities or pardons for people suspected of human rights violations may contribute to

³This speech was quoted in an article entitled 'Ramos offers assistance to find missing persons' which appeared in the *Manila Chronicle* on 11.12.92.

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national reconciliation.

Amnesty International is convinced that is essential for the protection of the human rights of Filipinos in the future to ensure that the truth about past “disappearances” and other human rights violations is not hidden and forgotten, but is known to all. A clear message will can then be sent that such violations will not be tolerated in the Philippines.

2. THE “DISAPPEARED”

The Context: Armed Conflict and Insurgency

“Disappearances” in the Philippines have occurred within a context of over two decades of violent conflict between government forces and a number of armed opposition groups, including the New People's Army (NPA) - the armed wing of the Communist Party of the Philippines (CPP) - and the Muslim Moro National Liberation Front (MNLF).

1986 saw the collapse of the 20-year Presidency of Ferdinand Marcos, under which human rights violations and levels of insurgency spiralled, especially after the declaration of martial law in 1972. Marcos left the country following a military coup plot and a popular “People's Power” uprising headed by then opposition leader Corazon Aquino. However, although, during her subsequent Presidency, Aquino oversaw the implementation of wide-ranging constitutional and legislative human rights safeguards, the level of grave human rights violations throughout the country remained high. Her government, attempting to manage the political transition from a former martial law regime and facing direct challenges from repeated coup attempts by right-wing military rebels, deemed it necessary to maintain the support of loyal military leaders by not pursuing wholesale judicial moves against military personnel accused of human rights violations.

Following the breakdown in 1987 of peace talks between the government and the National Democratic Front (NDF), which represents the CPP-NPA, the Armed Forces of the Philippines promoted a “Total Approach” counter-insurgency campaign. This strategy included the increased use of official militia, semi-official paramilitary forces and unofficial ‘vigilante’ groups to ‘hold and consolidate’ NPA-influenced areas following military clearance operations. Implicit in the strategy was the aim of eroding the communist insurgency’s mass base by moving against members of legal non-governmental organizations suspected by the military of being front-groups for the CPP-NPA. Accordingly the practice of “red-labelling”, by which critics or opponents of the government were tagged as “subversives” or CPP-NPA sympathizers, became more pronounced. Once labelled, such people were at sharply increased risk of grave human rights violations. The militias and semi-official paramilitary forces, often badly-trained and ill-disciplined, were responsible for numerous extra-judicial killings, instances of torture and “disappearances”. In this context “disappearances” became an intrinsic part of the government’s anti-insurgency campaign, with an apparent official tolerance for a pattern of human rights violations aimed at eliminating support for the opposition while evading all accountability by leaving no trace of state involvement.

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Meanwhile the NPA, with an estimated national strength of some 22,000 armed guerrillas and a presence in over 55 of the country’s 73 provinces adopted a more hardline strategy combining coordinated rural insurgency with assassinations of military, police and local officials in urban areas. The NPA were also responsible for numerous abductions and summary executions of individuals suspected of being government “deep penetration agents”. Civilians suspected of being government sympathizers were also subjected to arbitrary killings in contravention of standards of conduct for government and insurgent forces as set out within Article 3, common to the four Geneva Conventions.

In 1992, the newly-elected government of President Fidel Ramos announced a policy of national reconciliation, and initiated a peace process with the National Democratic Front (NDF), representing the CPP-NPA. As negotiations with the NDF continued, albeit sporadically, the CPP-NPA was significantly weakened by leadership splits and a sharp decline in the number of active guerrillas. Meanwhile talks with other armed opposition groups, notably rightist military rebels and Muslim separatists made steady progress. Following a ‘cease-fire’ agreement the government in 1995 granted a full amnesty to the right-wing military rebel group *Rebolusyonaryong Alyansang Makabansa* (RAM, Revolutionary Nationalist Alliance), while in September 1996 a comprehensive peace agreement was signed with the Muslim Moro National Liberation Front (MNLF).

As the scale and intensity of armed conflict has diminished, the numbers of reported “disappearances”, although continuing, have declined significantly . Amnesty International has recorded at least 46 “disappearances” since President Ramos was elected in May 1992 (19 in 1992, 18 in 1993, seven in 1994 and two in 1995)⁴. While the organization welcomes this decline in numbers, it continues to be concerned at the government's failure to address instances of “disappearances “ which occurred in the past, to confront the issue of impunity or to fully address the conditions within which periodic “disappearances” take place today. The continuation of “disappearances” raises the question as to whether the government has been effective in eradicating any suggestion among members of the security forces that such violations represent a tolerable aspect of the anti-insurgency campaign.

What is a “Disappearance”?⁵

In the Philippines, as in other countries, a “disappearance” occurs when people are taken into custody by agents of the state, but their whereabouts and fate are concealed, and their custody is denied. It is clear that “disappearances” cause immense suffering for the victims and their relatives. The victims are cut off from the world and placed outside the protection of the law; the risks of torture are high; many victims are never seen again. Their relatives are kept in ignorance, unable to find out whether the victims are alive or dead. 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 the Philippines this fear is often justified; relatives, witnesses and lawyers involved in “disappearance” cases have frequently been subjected to threats or actual physical assault by members of the security forces.

4 Philippine non-governmental organizations, including Families of Victims of Involuntarily Disappearance (FIND), have recorded a higher figure of over 75 “disappearances” since May 1992. In some of these cases the victims have reappeared, or were found in detention.

5 See Amnesty International “*Disappearances and Political Killings - Human Rights Crisis of the 1990s- A Manual for Action* (AI Index: ACT 33/01/94). January 1994.
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Who are the Perpetrators?

There is clear and substantive evidence implicating government personnel and government-backed forces in past patterns of “disappearances”. These forces included the Armed Forces of the Philippines (AFP), the paramilitary Philippine Constabulary (PC)⁶ and its successor the Philippine National Police (PNP), militias such as the official paramilitary auxiliary Citizens' Armed Forces Geographical Units (CAFGUs), the Citizens Self-Defence Organizations (CVOs) and various semi-official “vigilante” groups operating with the support or acquiescence of police and military commanders.

The pattern of involvement by government agents was corroborated by the findings of the 1991 report from the United Nations Working Group on Enforced or Involuntary Disappearances⁷. The report concluded that,

“ . . . most cases of disappearance are to be ascribed to members of the military, the police and vigilante groups. government CAFGUs and, to a lesser extent, civilian volunteer groups should be added. ”

These findings have been supported by information collated by Amnesty International on the fate of “disappearance” victims who subsequently “reappeared”. In many such cases the security forces, on receipt of a missing person report, strongly denied in the first instance that the alleged victim was in detention. However subsequently the victims were released from police or military custody - having been held from periods which ranged from one week to more than two months.⁸

Government and military authorities have claimed that the NPA were responsible for “disappearances”, especially during a period of NPA internal purges in the late 1980s. Amnesty International acknowledges that a small number of those reported to have “disappeared” in previous years in the Philippines may have been abducted by opposition forces. The organization has condemned such abuses, while stressing that such actions do not in any sense alter the government’s responsibility with respect to investigating all cases of alleged “disappearance” and bringing those responsible to justice.

Despite the peace talks with armed opposition groups initiated by the newly-elected Ramos government in 1992 “disappearances” have continued, though at a steadily diminishing rate. In the majority of these cases of “disappearance” there is grave concern that the perpetrators have again been members of the security forces or government-backed militias.

Who are the “Disappeared”?

Over the past two decades the majority of the “disappeared” in the Philippines have been members of

⁶The Philippine Constabulary, previously under direct military control, ceased to exist in January 1991.

⁷Report of the UN Working Group on Enforced or Involuntary Disappearances (WGEID) 1991, (E/CN.4/1991/20/add.1). Page 32, paragraph 165.

⁸ See Amnesty International *Philippines: “Disappearances” in the Context of Counter-insurgency* (AI Index: ASA 35/05/91 May 1991) for examples of such “disappearance” cases.

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legally-constituted student, labour, religious, political or human rights organizations, which the security forces have often claimed were fronts for the CPP-NPA, or were actively sympathetic to the communist cause.

Among the groups most commonly targeted were politically-orientated leftist groups such as KADENA (Youth for Democracy and Nationalism), peasant/farmers organizations such as the National Federation of Sugar Workers (NFSW) or labour unions such as *Kilusang Mayo Uno* (KMU - May First Movement). Other victims include ordinary citizens, young and old, from all sectors of society who had been critical of government policy or the security forces, and had voiced these criticisms in a non-violent manner.

Case Studies

The five case studies outlined below represent only a small fragment of the stories of over 1,600 people who “disappeared” in the Philippines from the early 1970s until today.

They form an illustrative testament to the unresolved fate of the victims, and to the suffering of their families and communities whose lives and well-being were severely damaged. The cases are representative of hundreds of others, too numerous to catalogue, but each one equally important and devastating to those involved.

Father Rosaleo ‘Rudy’ Romano

Father Rudy Romano, a 44-year-old Redemptorist priest and political activist, was abducted in the middle of the afternoon of 11 July 1985 while riding his motorbike through Cebu City. Eyewitnesses reported that his route was blocked by a car with government markings, accompanied by heavily armed men on motorcycles. The men forced Father Romano into the car and drove off.

Father Romano was national vice-president of the Visayas section of the opposition coalition, BAYAN (*Bagong Alyansang Makabayan* - the New Nationalist Alliance). During the eight years prior to his “disappearance”, Father Romano had actively supported the trade union movement and was involved in marches and protest rallies. He was also an active member of Task Force Detainees of the Philippines (TFDP), a leading church-based human rights organization which monitors and investigates human rights violations and gives shelter to the victims of military harassment.

It is likely that his activities were regarded by the local military as a threat. In a statement published in the national press on the day Father Romano was abducted, BAYAN-Visayas had called for the dismissal of three leading military authorities in Cebu, including the Regional Military Commander, whom they alleged were responsible for human rights violations by the military in the area. Two days after Father Romano's abduction, the Regional Military Commander was dismissed.

Four days after his abduction a petition for *habeas corpus* was submitted to the Supreme Court. At a special Supreme Court hearing held in August 1985 to establish all possible facts about the “disappearance” a witness testified that he had seen an officer of the army's Military Intelligence Group (MIG) stop Father Romano and force him into the car. However the officer identified in court refused to take the witness stand that day and later filed an affidavit denying the accusations. In September 1985 former President Marcos was reported to have ordered the arrest of the MIG officer. However, in court

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martial proceedings held in August 1987 two of the men who had been identified by eyewitnesses were acquitted of charges of kidnapping and illegal detention on the basis of insufficient evidence.

Father Romano has not been heard of or seen since the day of his abduction.

Antonio Buenavista

On 7 January 1990, Antonio Buenavista, aged 42, was abducted from his home in *barangay* (local administrative unit) Santa Cruz, Hagonoy in Bulacan province by six armed men wearing masks and civilian clothes. The men were believed to be connected with the 171st Company of the Philippine Constabulary (PC).

Eyewitnesses reported that when Antonio Buenavista tried to resist he was shot in the arm then knocked unconscious and dragged into a waiting car. When his wife called for help one of the men fired shots at her and threatened to kill her if she tried to approach them.

Antonio Buenavista’s wife and son were able to run for safety and seek help from the *barangay* captain who helped them report the case to the Mayor and the police in the municipality of Hagonoy. Relatives inquired about Antonio Buenavista's whereabouts at the 171st Company of the PC and at other military and police units but the authorities denied having him in their custody. There are indications, however, 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, carrying firearms in the company of the 171st PC company in *barangay* Santa Cruz and later with military personnel.

Relatives have stated that Antonio Buenavista had been detained once before in April 1989 on suspicion of being a sympathizer of the CPP but had been released. It was also reported that he had refused to enlist as a militiaman of the local Citizens' Armed Force Geographical Unit (CAFGU) and it is believed that his “disappearance” may be related to allegations that he was a sympathizer of the CPP.

A petition for habeas corpus was filed on Antonio Buenavista’s behalf before the Regional Trial Court on 16 January 1990, but was dismissed. His family were not informed of the reasons for the dismissal.

On 20 June 1990, charges of kidnapping and illegally detaining Antonio Buenavista were filed with the Regional Trial Court of Bulacan against six men believed to be the perpetrators. Warrants for their arrest were issued on 25 June 1990. However, one of the accused was killed, allegedly by members of the NPA in December 1990. To Amnesty International’s knowledge the case remains unresolved and Antonio Buenavista’s whereabouts remain unknown.

Romeo Legaspi

Romeo Legaspi, a 58-year-old journalist and publisher, “disappeared” in Olongapo City, Zambales after being abducted on 11 January 1993 by four armed men believed to be linked to the Philippine National Police (PNP). Prior to his abduction, Romeo Legaspi had been harassed and threatened by police authorities whom he had criticized in the local newspaper, *Voice of Zambales*.

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In 1992, ten members of the PNP's Intelligence Special Operations Group, including the station commander, filed libel charges against Romeo Legaspi for an article which alleged that their unit had been involved in illegal activities, and which called for its dissolution. The charges were dismissed, but Romeo Legaspi continued to receive threats and warnings from the police involved. In letters to family and friends, and in his personal diary, he expressed fear that the police authorities might take action against him. In a letter to the Chief of the Olongapo Metropolitan District Command (Metrodiscom) he appealed for official protection.

Relatives and lawyers lodged a formal complaint about Romeo Legaspi's “disappearance” with the National Bureau of Investigation (NBI), and on 24 February 1993 filed a petition for a writ of *habeas corpus* before the Supreme Court. Family members subsequently received anonymous death threats believed to come from the police. Officers of the Criminal Investigation Service (CIS) also visited them at home, expressing concern that they had sought these remedies before coming to the CIS.

After receiving the *habeas corpus* petition the Supreme Court ordered the Regional Trial Court of Olongapo City to hold a preliminary fact-finding hearing on the case. During the hearing, which took place between 8 and 11 March 1993, police authorities denied arresting Romeo Legaspi and produced a written document to that effect as evidence. However, when the signatory of the document, a police lieutenant, was questioned, he reportedly said that he had signed the document on orders from the Station Commander, the prime suspect in the case. On 26 March 1993 the petition for *habeas corpus* was dismissed, but the court directed the CIS, NBI and the Metropolitan District Command of Olongapo City to “exert utmost efforts in locating Romeo Legaspi”.

On 8 August 1994 the Philippine Government informed the UN Working Group on Enforced or Involuntary Disappearances that the case of Romeo Legaspi had been "consigned to archives" by the Commission on Human Rights (CHR) on the grounds that the identity of the perpetrators could not be ascertained.

In May 1996 Amnesty International was informed by the CHR that a corpse burned beyond recognition had been found in a remote area of Zambales three days after Romeo Legaspi's disappearance. According to the CHR, a woman claiming to be Romeo Legaspi's wife had been unable to identify the body and it had later been buried in the local cemetery. The CHR also reported that arrangements had later been made for the exhumation of the charred remains of a body, believed to be that of Romeo Legaspi, in a remote area of Zambales. However, according to the CHR the exhumation had not been carried out due to the reluctance of witnesses to pinpoint the body's exact location. The CHR further reported that the case “remained in the archive”. To this day Romeo Legaspi's fate remains unclarified.

Ricky Bero and Julio Rafol

Ricky Bero and Julio Rafol “disappeared” after being arrested without warrant on 18 March 1993 by a combined team of Philippine National Police (PNP) and members of the Citizens' Armed Force Geographical Unit (CAFGU) in *barangay* Villa Pag-asa, Bansud, Oriental Mindoro. Ricky Bero is said to have been detained on suspicion of being a member of the NPA and was accompanied at his request by his friend Julio Rafol, a 57-year-old farmer, at whose home he had been staying.

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According to a report received by Amnesty International by the Southern Luzon Command of the Armed Forces of the Philippines (AFP), the PNP/CAFGU team were in the area at the time of the “disappearance” to investigate a recent murder of a CAFGU member which had allegedly been committed by members of the NPA. According to the AFP report Ricky Bero was detained for questioning because he was “suspicious-looking”. The report claims that the two men were taken to military headquarters at Bongabong where Ricky Bero was presented to the mother of the murder victim as a possible suspect. However, she admitted that she had never seen him before. The AFP report claims that the investigators then released Ricky Bero and Julio Rafol after “expressing apology” to them for the “inconvenience” of their arrest.

Despite repeated requests for information, however, relatives of Ricky Bero and Julio Rafol have been unable to establish their whereabouts. Following the “disappearances” one of Julio Rafol's daughters went to military camps in Bliss and Bongabong to make inquiries but the military denied that the men were being held there. However, a PNP officer reportedly told another relative of Julio Rafol that the two men had been brought to Bongabong. Relatives of Ricky Bero were reportedly told that Ricky Bero had been detained because his brother was a member of the NPA. With the help of local human rights organizations relatives sought the assistance of the local mayor and the provincial governor. The provincial governor wrote to the PNP command calling on them to investigate the “disappearances”. He also assigned a lawyer to the case who filed a writ of *habeas corpus* at the Regional Trial Court. However in July 1993 the case was dismissed due to lack of evidence.

In December 1995 Amnesty International was informed by the local office of the non-governmental organization Task Force Detainees of the Philippines (TFDP) that a suspected perpetrator had been brought to trial but that the case was subsequently dismissed. The Court of Appeals has since ordered the case to be reopened but according to Amnesty International's most recent information the new trial has still not taken place. Meanwhile the fate of Ricky Bero and Julio Rafol remains unknown.

Noel Campilan

Noel Campilan, a 27-year old former Christian lay minister “disappeared” on 28 April 1995 in Tagum, Davao del Norte province, on the southern island of Mindanao. He worked for the non-governmental Centre for Community Health Services (CCHS) and was responsible for distributing traditional medicines and providing training to local people.

On the day of his “disappearance” Noel Campilan attended a meeting of local non-governmental organizations. He was last seen in the evening driving away on a red motorcycle belonging to the CCHS after dropping off a colleague in Tagum. He never returned home and the motorcycle has not been seen since. He was reported missing two days later amid concern that he had been abducted for political reasons by individuals linked to the security forces. Colleagues reported that two days before his “disappearance” some unidentified men, dressed in plainclothes but believed to be linked to the security forces, had allegedly stated that they planned to “take” two CCHS employees whom they thought were linked to the NPA. Concern that military personnel may have been behind the “disappearance” was reinforced by subsequent reports that in October 1994 Noel Campilan had lent another CCHS motorbike to a friend. That bike was later reported to have been found in the Tuburan barracks of the 602nd Infantry Brigade, Armed Forces of the Philippines (AFP) after being confiscated for allegedly having been used by

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the NPA. At around the same time, Noel Campilan is reported to have told his family that he had been followed by men believed to be members of the AFP.

Investigations into Noel Campilan’s “disappearance” by local police and the regional office of the CHR have failed to prove whether or not military personnel were involved. Amnesty International has urged the authorities to revive investigations into his “disappearance” and has called on the authorities to provide information about the steps they have taken to determine Noel Campilan’s whereabouts. To date however no new information has been forthcoming. Meanwhile Noel Campilan’s fate remains unknown.

* * * * *

THE PHILIPPINE GOVERNMENT’S RESPONSIBILITIES AND OBLIGATIONS IN REGARD TO “DISAPPEARANCES”

The practice of “disappearance” violates or poses a grave threat to a number of specific fundamental rights which are guaranteed in the International Covenant on Civil and Political Rights (ICCPR), and recognised in the UN Declaration on the Protection of all Persons from Enforced Disappearance.

The Philippine Government is party to the ICCPR and therefore is bound to comply with the guarantees and obligations imposed in that treaty. Among these rights are the right to life, ICCPR Article 6. 1; the right to liberty and security of the person, ICCPR Article 9; the right to be free from torture or cruel, inhuman or degrading treatment, ICCPR Article 7; and the right to recognition as a person before the law, ICCPR Article 16. The above are the guarantees States are required to ensure to all people within their jurisdiction, and which are violated by “disappearances.”

The UN Declaration on the Protection of all Persons from Enforced Disappearance, adopted by the UN General Assembly without a vote in December 1992, was not opposed by the Philippines, or any other government , thus indicating that the government of the Philippines considers that the Declaration represents an authoritative statement of obligations and that it is bound by its principles.

The Declaration on Disappearances puts a responsibility on the State to adopt and enforce specific safeguards against “disappearances”⁹. It requires states to investigate “disappearances”, bring to justice those responsible and provide redress for the victims and their families. The Declaration emphasises the non-derogable right to be free from “disappearances”, stating in Article 7 that ‘ no circumstances whatsoever, whether a threat of war, a state of war, internal political instability, or other public emergency, may be invoked to justify enforced disappearance’

Moreover, the 1987 Constitution of the Philippines adopted the "generally accepted principles of international law as part of the law of the land . . . " (Section 2, Article II). Furthermore, the rights and freedoms enumerated in the ICCPR are also enshrined in the Article III (Bill of Rights) of the 1987 Constitution.¹⁰

⁹See Appendix 2. Articles 2, 3, 4 (1), 9, 10, 11, 13, 14, 16-18.

¹⁰See Appendix 1.

3. TRUTH: THE INADEQUACY OF INVESTIGATION

Governments should ensure that all complaints and reports of “disappearances” are investigated promptly, impartially and effectively by a body which is independent of those allegedly responsible¹¹

The obligation of any government to investigate human rights violations, with a view to identifying and bringing to justice those responsible, constitutes one of the three major pillars for the effective protection of human rights.

Since former President Marcos fell in 1986 the Philippine Government has taken substantial steps, in acknowledgment of its international and constitutional obligations, to provide measures for the investigation of human rights violations. However the legal and institutional remedies provided have proved to a large extent inadequate to the task. Investigations in the Philippines have all too often failed to prevent, terminate or punish acts of enforced “disappearance”. In addition, hundreds of families still do not know the truth behind the “disappearance” of their loved ones or where they may be buried.

Habeas Corpus

Habeas corpus, potentially one of the most powerful investigatory tool for establishing the fate or whereabouts of a “disappeared” person, is a judicial mechanism intended to protect the rights and security of the detainee. Under this mechanism those working on behalf of the “disappeared” can file a petition for a court to issue a writ (of *habeas corpus*). The writ constitutes a court order demanding that the detaining authorities immediately produce the detainee before the court. The court can then rule whether the detention is legal, and whether the security and rights of the detainee are being respected.

In the Philippines *habeas corpus*, as well as other judicial remedies, have proved ineffective in locating and bringing before a court those who have “disappeared”. Although *habeas corpus* is guaranteed in the Philippine Constitution,¹² Amnesty International is concerned that its use has proved ineffective as a consequence of three related factors: problems in judicial procedures, a lack of cooperation from police and military authorities and the fear of witnesses to testify.

In general courts have failed to take prompt action to determine the whereabouts and legal status of people whose custody has been unacknowledged by the authorities and who are the subject of *habeas corpus* petitions. There has been a tendency for courts to apply similar procedures and standards of evidence as those applied in ordinary criminal cases. Proceedings have therefore tended to be slow and subject to delays. Moreover the statements of law enforcement agencies have tended to be accepted uncritically while the testimony of witnesses has been dismissed as insufficient proof of culpability. Thus the onus is shifted back onto the petitioners to prove that the person is being held and detained illegally - a heavy burden given the pattern of intimidation of witnesses, and the lack of information given the inherently clandestine nature of “disappearances”. Such standards and procedures distort and undermine the objective of this important legal remedy; to be effective in guaranteeing the safety of a

¹¹See Amnesty International *14-Point Program for the Prevention of “Disappearances”* (AI Index Pol36/01/93 January 1993).

¹²See Appendix 1. Article III, Bill of Rights and in particular Section (2) and Section (15).
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“disappearance” victim, *habeas corpus* proceedings need to be prompt and summary in nature.

Amnesty International therefore recommends that the government and the judiciary undertake a review of the existing *habeas corpus* procedures, to institute measures that encourage witnesses to testify, and to maintain adequate and credible programs to protect witnesses from harassment and intimidation.

The Commission on Human Rights

In 1987 former President Aquino established the Commission on Human Rights (CHR), a constitutional body independent of other state legal institutions, to investigate complaints of human rights violations.

The CHR replaced the original Presidential Committee on Human Rights, and broadened its mandate to cover a range of civil, political, economic and social rights. The CHR’s role was purely investigative; after completing its inquiries it recommended the referral of cases of alleged human rights violations to the courts under the Department of Justice (DOJ) or Office of the Ombudsman. The CHR could not itself pursue prosecutions and bring suspected human rights violators to justice.

The CHR and its 13 regional offices continue to play an important role as a forum for reporting and recording patterns of violations nationwide, for promoting human rights education programmes for security force personnel and for investigations of a range of human rights cases.

However Amnesty International is concerned by reports from some individuals and non-governmental groups in the Philippines regarding the limits in the ability of the CHR to provide ‘immediate and effective protection’ to the complainants in “disappearance” cases and, in the longer term, to provide remedy for the victims and their families by bringing to account those responsible for grave human rights violations under Philippine law.

During the late 1980s and early 1990s, at a time when human rights violations in the context of counter-insurgency were at high levels, the CHR faced criticism from Philippine human rights groups regarding its effectiveness in gathering facts, and regarding its alleged over-reliance on complainants and witnesses to provide corroborating evidence in disputed cases - despite the potential dangers of intimidation and harassment of those involved by the security forces. In effect the CHR was seen as applying a quasi-judicial investigative process without, in general, offering the protection to witnesses or complainants that is within the powers of a court of law. In addition the credibility of the CHR’s central role in the defence of human rights was weakened by a perception among some Filipinos that the Commission had become too willing to accept the authorities’ version of events, that some investigations were pursued with inadequate vigour and that at times cases were set aside or ‘archived’ on weak pretexts.

Amnesty International believes that the CHR has yet to fully realize its institutional potential in regards to “disappearances” and the challenge of accounting for the past. The organization urges the CHR, in meeting the challenges of past and future human rights cases, to re-examine the principles underlying its investigatory practices so as to ensure that they are fully consistent with those detailed in the UN Principles for the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary

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Executions¹³.

The organization also believes that the work of the CHR in accounting fully for the “disappeared” would be significantly enhanced if its pending legislative request for prosecutory powers is granted by Congress and signed by the President. The organization welcomes the 1996 memorandum of agreement between the Department of Justice (DOJ) and the CHR allowing CHR lawyers for the first time to serve as collaborating counsel with DOJ lawyers in the prosecution of cases of human rights violations. However, Amnesty International remains unaware of any completed prosecutions of cases involving alleged perpetrators of “disappearances” and the organization believes an extension of such prosecutory collaboration, while maintaining the independence and impartiality of the CHR, remains imperative.

The Role of Forensic Anthropology

Amnesty International believes that forensic anthropology¹⁴ should play a major role in future efforts by the CHR and other government agencies to investigate and prosecute “disappearance” cases.

Relatives and friends of “disappearance” victims often spend years searching for their loved ones. In the Philippines the non-governmental organization Families of Victims of Involuntary Disappearance (FIND) has played a valuable role in gathering information about “disappearance” cases immediately after they occur, as well as offering long-term support to the victims’ families. FIND has attempted to lessen the suffering of the relatives by organising a number of forensic search missions for the burial places of victims who have remained “disappeared” for many years. The search missions have faced formidable difficulties, not least the fear of some witnesses to come forward, difficulties in pin-pointing the exact location of the burial place and suspected removal of bodies shortly before exhumation operations were due to begin.

Amnesty International believes FIND is setting a course which the CHR and other government agencies should support and follow with determination. The application of forensic anthropology¹⁵ as a technique of criminal investigation in a human rights context is one of the most important developments of the past decade in clarifying the fate of the “disappeared”. As time passes secret burials will come to light: bodies will be found, but there may be no record of their identity. By scientifically examining unidentified human remains and comparing them with information on prisoners who have “disappeared”, forensic anthropology can help to establish the identity of the dead and thence the fate of the “disappeared”. A 1993 UN report¹⁶ described three tasks performed by forensic scientists in investigating human remains in

¹³See UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (adopted in 1989 in resolution 44/162)

¹⁴Forensic anthropology is the study of medical-legal questions relating to a deceased person through the examination of his or her skeletal remains, aiming among other things at determining the person’s identity and manner and cause of death.

¹⁵A description of procedures for forensic anthropological investigation may be found in the Model Protocol for Disinterment and Analysis of Skeletal Remains in the UN *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (UN Doc No E/91/IV/1).

¹⁶UN Commission on Human Rights, *Report of the Secretary-General on human rights and forensic science...*(UN document No. E/CN.4/1993/20), paragraphs 8-11.

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unmarked graves and other places:

"First, they conduct interviews and review documents to ascertain the location of the burial sites and the victims whose remains were probably buried in those sites. Scientists interview the people who live in the locality, sometimes grave-diggers who have been hired to bury the bodies, or civilians who may have heard rumours that a certain area is used as a burial site or who can provide information on other details leading to the identification of the victims. They also review documents, sometimes official records, which indicate where the bodies of certain individuals may have been interred. . .

"Second, they conduct the exhumation in the appropriate scientific manner in order to be able to obtain the optimal amount of information. Because information from both the remains themselves and from the spatial features of the graves is useful, it is crucial that both be preserved and documented carefully. Hence, archaeological techniques much like those used in excavating prehistoric sites are used. The graves are marked so that the exact coordinates of where each item is uncovered can be identified. The soil and dirt are removed in such a manner as to ensure that no piece of evidence, however minute (e. g. , teeth, bullets, etc.), will be missed. More important, the remains are exhumed with the care and deliberation that will ensure the least amount of damage and alteration to the surface and placement of the remains. Failure to employ the proper method of exhumation can lead to the destruction of the evidence. . .

"Third, they examine the remains to determine the cause and manner of death, and attempt to establish the identity of the victim. Forensic experts analyse the skeletal remains to determine the physical characteristics of the victim, together with the cause, manner, time and place of death with a view to ascertaining the victim's identity. In doing so, they use techniques in pathology, odontology, radiology, etc. For instance, teeth and skeletal X-rays are taken to identify the victim. Also, anthropological studies may be undertaken to determine the skeleton's age at death, sex, race, stature and handedness. The results are then compared to the antemortem characteristics of the deceased. Forensic anthropologists can also distinguish various types of trauma to the bone which help determine the manner and cause of death. "

4. JUSTICE: THE PROBLEM OF IMPUNITY ¹⁷

Despite its obligations under international instruments, and the provisions of the national constitution, the government of the Philippines has not taken effective steps to hold to account those responsible for past "disappearances". The fact that state agents responsible for human rights violations have, with some rare exceptions, gone unpunished has also been noted by the UN Working Group on Enforced or Involuntary Disappearances (WGEID) in its work on the Philippines over the past 15 years. On receipt of reports from Philippine non-governmental organizations during 1994 the WGEID noted that,

". . . . hardly any prosecutions or convictions of the perpetrators of enforced or involuntary disappearances are said to have taken place in 1994 and only in a handful of cases of human rights

¹⁷ Literally, impunity means exemption from punishment. More broadly, the term conveys a sense of wrongdoers escaping justice or any serious form of accountability for their deeds.

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*violations are the courts said to have intervened. No judicial or legal reforms are said to be in sight"*¹⁸.

Public confidence in the integrity and effectiveness of the judicial system, corrupted under former President Marcos by patterns of political pressure, influence-peddling, extended delays and witness intimidation, failed to recover under Aquino and remains weak today. A bleak picture of the failure of the judiciary to deliver justice was highlighted by the fact that of the 1,509 cases of alleged human rights violations filed by the Commission on Human Rights (CHR) before the courts between 1987 and 1990 only eleven cases resulted in sanctions against the perpetrators.

*"Between 1987 and 1990, the Commission on Human Rights received 7,944 complaints of human rights violations, ranging from disappearance to "salvaging", or summary execution. The Commission established enough evidence for valid administrative or judicial cases in 1,509 of these. Of this number 603 involved murder, homicide and extrajudicial execution of victims; 119, arrests or detention; and 19, disappearances. As of December 1990 complaints had been filed in 994 cases: in 37 cases there were dismissals, seven acquittals, six convictions, one demotion, three suspensions, and one dismissal from military service"*¹⁹

Amnesty International remains seriously concerned over the insidious threat posed by this apparent failure of the criminal justice system in the Philippines and by the perceived consolidation of a climate of impunity. While the circumstances giving rise to large-scale "disappearances" as an intrinsic part of the government's anti-insurgency campaign have changed, impunity for past violations sends a message of state tolerance of these practices. If security personnel or officials in a position of authority believe that they are, in reality, immune from prosecution for past human rights violations they and their successors will be more liable to repeat such crimes in the belief that they are effectively beyond the reach of the law. Impunity undermines public confidence in the state's institutions charged with the protection of human rights and risks eroding respect for the rule of law.

The Philippines possesses the constitutional and legal provisions with which to counter impunity. A major step in this direction was taken in 1991 when the government repealed Presidential Decree 1850, which had granted military personnel immunity from prosecution in civil courts, regardless of the nature of the offence. However optimism created by this move has not borne fruit. While waning levels of insurgency have led to a decline in levels of violations within the context of counter-insurgency operations, security personnel believed responsible for past grave human rights violations have remained unpunished. Meanwhile the wider, long-lasting effects of impunity have been displayed in continuing periodic violations of human rights by the security forces within the context counter-insurgency, and also in recent incidents of police abducting and 'salvaging' (the Philippine term for extra-judicial executions) people suspected of common crimes.

The Ramos administration has publicly identified reform of the judiciary as a major plank in its campaign against rising levels of criminality and as part of its efforts to provide a stable framework for economic

¹⁸See Report of the UN Working Group on Enforced or Involuntary Disappearances 1995 (UN Doc No. E/C.4/1995/36). Page 65.

¹⁹See *Impunity and Human Rights in International Law and Practice*. Edited by Naomi Roht-Arriaza, Oxford University Press, 1995. Chapter 17 by Belinda Aquino. Page 239. Statistics compiled by Alberto Muyot of the University of the Philippines.

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growth. Amnesty International believes justice for the victims of “disappearance” should take a place at the centre of a wider campaign in the Philippines against impunity and in support of the rule of law. The organization believes firmly that,

*“Prosecution and punishment break the cycle of crime and impunity. It protects the public from the culprits repeating their crimes and it helps to deter others from committing similar crimes by raising the real threat that they too, may be caught and punished”.*²⁰

²⁰ See Amnesty International *“Disappearances” and Political Killings - Human Rights Crisis of the 1990s- A Manual for Action*. (AI Index: ACT 33/01/94, 1994). Page 157.
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5. REDRESS: THE NEED FOR COMPENSATION

*Victims of "disappearance" and their dependants should be entitled to obtain fair and adequate redress from the state, including financial compensation. Victims who reappear should be provided with appropriate medical care or rehabilitation*²¹.

Recognizing the principles enshrined in the Philippine Constitution²², and aware that the victims of "disappearances" and their dependents have suffered grievous wrongs at the hands of the state apparatus the Philippine Government has taken steps to provide some aspects of redress.

Amnesty International welcomes these steps, but is concerned that the scope of redress, and the disbursement of compensation in the form of financial assistance for families of “disappearance” victims has been limited and subject to delay. In addition the organization believes that while financial compensation is an important element of redress, it does not exempt the state of its duties in regards to other aspects of redress -- namely to establish the truth, to bring to justice those responsible for human rights violations and to implement measures to prevent “disappearances” from re-occurring in the future. Compensation, which responds to the needs and wishes of those directly affected and reflects the gravity of the damage caused is a major step towards providing redress, but it does not relieve the state of its obligation to acknowledge responsibility.

In December 1992 President Ramos announced that a budget allocation of four million pesos (about US\$153,000) would be channelled through the Commission on Human Rights (CHR) to facilitate FIND’s welfare programs and to give financial assistance to the families of “disappearance” victims registered by FIND and other groups. This allocation was approved by Congress in 1993 and was increased to five million pesos (US\$193,000) in subsequent annual budgets.

However the bureaucratic procedures and documentation required by the CHR for the approval of fund releases for the welfare programs of FIND, and for a financial assistance allocation of 10,000 pesos (US\$384) per family application has meant that the financial relief available to the families has in fact been restricted. In 1994 only 20 families were said to have benefited from this program, and unused funds were reported to have reverted from the CHR to the national treasury.

In related developments regarding the compensatory aspects of redress in 1994 after an eight-year court case in Honolulu (Hawaii), a US federal court awarded a total of US\$1.2 billion in punitive damages to the 10,000 claimants who had filed a class suit under the US Aliens Tort Act against the Marcos estate for past human rights violations.²³ During the court hearings the victims and their relatives had presented compelling evidence of summary executions, torture and “disappearances” which had been carried out on the orders of, or with the knowledge of Marcos and other senior state officials.

²¹See Amnesty International *14- Point Program for the Prevention of Disappearances and Extra-judicial Executions* (AI Index Pol 36/01/93, January 1993) Point 12.

²²See Appendix 1; Philippine Constitution, Article III, Bill of Rights, Section 12 (4).

²³Former President Ferdinand Marcos, ousted from power in 1986, died in exile in Hawaii in 1989. A large proportion of the Marcos estate is held by banks in Switzerland. The banks are unwilling to transfer these funds to the Hawaii court for dispersal until questions of ownership are clarified.
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The Philippine Government (which asserts that much of the money in the Marcos estate was plundered from the national treasury and is therefore state funds) and some representatives of the claimants (who assert that the plundered money rightly belongs to the Philippine people and should be distributed to human rights victims) subsequently attempted to reach agreement with the Marcos estate over a \$100 million compromise settlement. They also sought to agree over what proportion of any settlement should be transferred to the state, and what proportion should be distributed to human rights victims and their families. However negotiations have stalled due to serious disputes which include the concerns of Swiss banks and the concerns of some representatives of the victims who oppose any final settlement with the Marcos estate that is dependent on the government dropping civil and criminal suits filed against Marcos' heirs in the Philippines.

Amnesty International welcomes the budget allocation allocated by Congress and negotiations over a desired distribution of funds from the Marcos estate as a significant signal of intent as regards redress for the victims of “disappearance” and their families. However this intent is not yet near to full realization. Amnesty International notes that any award settled on the Marcos estate will only relate to victims of the Marcos period and not to those who also suffered under the succeeding Aquino and Ramos administrations. The organization is also concerned that hundreds of families who lost their loved ones (who were often the family's main breadwinner) have not been able to benefit from the healing influence of redress - whether redress through proper investigation and exposure of the truth, or through prosecution and public acknowledgment of responsibility, or through the material and symbolic value of financial compensation.

6. AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE PHILIPPINE GOVERNMENT

Amnesty International welcomes the Philippine Government's ratification of international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR).

Amnesty International warmly welcomes the filing of Congressional resolutions in August 1996 by Senator Sergio Osmeña and Representative Bonifacio H. Gillego calling on the Philippine Government to adopt and ratify the UN Declaration on the Protection of All Persons from Enforced Disappearances. Amnesty International also welcomes the filing of resolutions before Congress supporting the organization's call on all governments to implement Amnesty International's 14-Point Program for the Prevention of “Disappearances”. The organization urges the Congress to move swiftly to accept these resolutions and thereby to provide a strengthened legislative base on which to confront the truth about past “disappearances”.

Amnesty International recognizes the decline in the number of “disappearances” occurring in the Philippines, but remains concerned that, despite the existence of institutional and legal safeguards for the protection of human rights and the government's clearly stated commitment to human rights, “disappearances” and other serious violations of human rights still take place.

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The organization believes that the overall climate for the protection of human rights in the Philippines will be strengthened if the truth about the fate of the “disappeared” is established. In support of lasting national reconciliation the government should seek to achieve as full accounting of the fate of the victims and identity of alleged perpetrators as can be reliably established. The suffering of the families may thus at least be partially alleviated.

In line with its obligations under international law and to address the far-reaching problem of impunity the government must seek to investigate cases of alleged “disappearance” and prosecute those responsible. While Amnesty International does not take a position on post-conviction pardons or amnesties, and recognizes that in some cases reconciliation can simply be achieved through public exposure and condemnation, the organization asserts that the judicial process must be seen to be pursued with vigour, fairness and impartiality. Amnesties and pardons should only come, therefore, after some form of judicial process is complete.

While welcoming moves the Philippine Government has already taken to provide redress, including compensation, for the families of those who have “disappeared”, Amnesty International urges this process to be pushed forward and that a speedy and equitable system of compensation should be implemented without further delay. However the organization emphasises that redress encompasses not only compensation, but also establishing the truth about the past and bringing those responsible for human rights violations to justice.

In conclusion Amnesty International urges the government to fulfill its obligations to prevent “disappearances” in the future and to investigate all cases of “disappearance”, bring to justice those responsible and to provide redress to the victims and their families in line with international standards. The organization suggests the following specific recommendations which if implemented, would strengthen existing human rights guarantees and help to prevent “disappearances” in the future.

- **Establish without delay, an independent, thorough and impartial inquiry to investigate each case of alleged “disappearance”, irrespective of when they occurred;**
- **Bring promptly to justice members of government security forces and agents of the state where there is evidence of their responsibility for, or their participation or collusion in an act leading to “disappearances”;**
- **Accept the Commission on Human Rights’ appeal for wider prosecutory powers.**
- **Establish a practical and reliable witness protection program to ensure that complainants, witnesses and those conducting investigations into “disappearances” shall be protected from violence, threats of violence or any other form of intimidation;**
- **Ensure that arrest and detention is carried out only by officials who are authorized by law to do so and that prisoners are held only in publicly recognized places of detention. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally. Relatives and lawyers should be informed promptly of the fact of the arrest and each place that the person in custody is**

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being detained ;

▸ **Ensure that the victims of “disappearances” and their dependents receive fair and adequate redress from the state, including financial compensation.**

▸ **Ensure that procedures and mechanisms for the implementation of redress are agreed with the participation of organizations representing the victims and other sectors of civil society most affected by “disappearances”. Government bodies responsible for distributing compensatory awards should be issued with procedures and deadlines which are respected.**

▸ **Ensure that Constitutional provisions prohibiting the maintenance of private armies are upheld and enforced;**

▸ **Review existing judicial procedures with respect to petitions for *habeas corpus* with a view to ensuring the effectiveness of this as a remedy in cases of “disappearances.”**

¿DÓNDE ESTAN? WHERE ARE THEY?

**Tengo la lengua pegada al paladarMy tongue sticks to the roof of my mouth
de tanto repetirSo often have I repeated your name
tu nombre al viento. to the wind.**

**Mis manos envejecen tocandoMy hands grow old knocking on
portones insensiblesunfeeling doors
que me ofrecen silencios porWhich offer me silence in response. . .
respuesta. . .**

**. . . Como resaca,Like the ebbing tide,
mi esperanza terca te buscaMy unyielding hope searches for you
en cada rostro, en cada in every face, in every office.
dependencia.**

**No hay funcionario a quienThere is no public official who has not
no haya hecho testigo de mi penaI witnessed my pain.**

**Paseo por las plazas tu recuerdo,I walk about the town squares
camino junto a la sonrisa de tuwith the memory of you,
hijo. . . accompanied by the smile of your son. . .**

**Con mis ganas de verte heI have worn down the stones
gastado las piedras. with my longing to see you.**

¿Dónde estás, dónde están?Where are you? Where are they?

**From the poem *¿Dónde estás, Roger?* by Elvia Cristina Zelaya de González, mother of
Roger González Zelaya.**

**24-year-old Roger González Zelaya, a leader of the Honduran
Federation of Secondary School Students and a forestry corporation
employee, "disappeared" in Honduras in 1988.**

APPENDIX 1

The 1987 Constitution of the Philippines (extracts)

Article 111- 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 before 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.

APPENDIX 2

The United Nations Declaration on the Protection of All Persons from Enforced Disappearance

(adopted by the UN General Assembly without a vote on 18 December 1992 in resolution 47/133)

Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 2

1. No State shall practise, permit or tolerate enforced disappearances.

2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.

2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

Article 6

1. No order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.

2. Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced

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disappearance are prohibited.

3. Training of law enforcement officials shall emphasize the provisions in paragraphs 1 and 2 of the present article. .

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 8

1. No State shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held, and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.

3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

Article 12

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1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.
2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.
2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.
3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.
4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.
5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.
6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 14

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.

Article 15

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph 1 above, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

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Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1 above, shall be suspended from any official duties during the investigation referred to in article 13 above.
2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.
3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.
4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.
2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.
3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18

1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1 above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.
2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependants shall also be entitled to compensation.

Article 20

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.
2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.
3. The abduction of children of parents subjected to enforced disappearance or of children born during their

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mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.

4. For these purposes, States shall, where appropriate, conclude bilateral and multilateral agreements.

Article 21

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.