

**IN RE: IN THE MATTER OF THE
COMPLAINT FOR HUMAN RIGHTS
VIOLATIONS FILED BY THE
NATIONAL PRESS CLUB AGAINST
DILG SECRETARY RONALDO P. PUNO,
PNP DIRECTOR AVELINO I. RAZON,
JR., POLICE DIRECTOR GEARY L.
BARIAS, NCRPO, ET AL.**

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**RESOLUTION
CHR (IV) NO. A 2008-021**

“The first essential in military operations is that no information of value shall be given to the enemy. The first essential in newspaper work and broadcasting is wide-open publicity. It is your job and mine to try to reconcile those sometimes diverse considerations.”

General Dwight D. Eisenhower

Before the Commission is the clash of Press Freedom, on one hand, and the duty of the law enforcement officials to apprehend law breakers, protect the citizens and maintain peace and order, on the other. The instant case particularly deals with the incident that transpired during the Manila Peninsula Siege last November 29, 2007.

The Parties

Complainant is MR. ROY MABASA, President of the National Press Club, filing on behalf of the 50 or so print and broadcast reporters and cameramen/photographers who were handcuffed, tied, loaded into a bus, and detained for no stated legal grounds at the National Capital Region Police Office in Camp Bagong Diwa, Taguig City¹ on the evening of November 29, 2007.

¹ Letter-complaint of Roy Mabasa to the Commission dated December 3, 2007, page 1

Respondents² are SECRETARY RONALDO P. PUNO of the Department of the Interior and Local Government “DILG”; GENERAL AVELINO I. RAZON, JR., Chief of the Philippine National Police “PNP”; POLICE DIRECTOR GEARY L. BARIAS of the National Capital Region Police Office “NCRPO”; the PNP Special Action Force Director “PNP-SAF”, other PNPO Officers and the members of its force involved in the arrest of journalists during the Manila Peninsula Siege.

The Facts

The facts of the case are undisputed.

On November 29, 2007, at around 9:00 o’clock in the morning, Senator Antonio Trillanes and twenty four (24) Magdalo Soldiers were at Branch 148 of the Regional Trial Court (“RTC”) of Makati City before Presiding Judge Oscar Pimentel for a hearing of their case for rebellion concerning the Oakwood Mutiny. General Danilo Lim, lone witness for the defense, was on the witness stand. After a five minute break called by Gen. Lim and LTSG Layug, they walked out of the courtroom.³

Sen. Trillanes and his group followed LTSG Layug and Gen. Lim out of the courtroom and proceeded towards the direction of the Manila Peninsula Hotel. They were later joined by some key opposition figures led by former Vice President Teofisto Guingona, Jr., several supporters, sympathizers and some members of the civil society armed with short firearms. Media practitioners who were earlier covering the hearing at the Makati RTC also joined the march.⁴

On their way to the Manila Peninsula Hotel, Sen. Trillanes and his group asked the people to join them and withdraw their support for the administration of President Gloria Macapagal Arroyo. Before noon, they went inside the Manila Peninsula Hotel and stayed at the function room located at the second floor where they were joined by more supporters, sympathizers and media practitioners.⁵

The PNP and other government forces arrived at the scene and immediately set up police line and barricades around the vicinity of the hotel. Respondent P/DIR Geary Barias arrived and assumed as ground commander with respondent Gen. Razon as the Over-all Commander.⁶

² *Id.*

³ Transcript of Stenographic Notes, December 7, 2007, page 50

⁴ *Id.*

⁵ *Id.*

⁶ Memorandum from NCRPO Regional Director Geary L. Barias dated December 5, 2007 “SPECIAL JOINT REPORT RE: MANILA PENINSULA SIEGE,” par. q

Judge Oscar Pimentel issued a bench warrant of arrest against Sen. Trillanes and his group for direct contempt of court.⁷

Around 1:30 o' clock in the afternoon, Gen. Razon announced the 3:00 o' clock pm deadline for the group of Senator Trillanes to surrender and that they will be serving the warrant of arrest issued by the Honorable Court. They also informed the media practitioners as well as the civilians inside the hotel to immediately vacate the premises by that time because the PNP would launch an assault if the group of Sen. Trillanes will not surrender by the deadline⁸.

Negotiations initiated by the police forces for the peaceful surrender of Sen. Trillanes and his group proved futile.

At 2:30 in the afternoon, P/DIR Barias went inside the Manila Peninsula Hotel and tried to persuade everybody in the hotel to leave before the 3:00 o' clock deadline. In addition, DILG Assistant Secretary Brian Yamsuan called the respective news desks and editors of the media inside the hotel and asked them to advise their reporters to leave before the planned assault against Sen. Trillanes and his group. A final warning was aired. Others complied and were immediately secured. But several others, including media practitioners, chose to be left behind.

At 3:15 in the afternoon, all civilians inside the Manila Peninsula Hotel were again asked to leave in 15 minutes. Several left. But still, supporters and sympathizers of the Magdalo Group remained together with some media practitioners.⁹

Around 4:40 in the afternoon, a Joint Assault Operation was launched by the PNP-SAF, PMRF, RSAU and SPD. An armoured personnel vehicle was used at the main lobby of the hotel to gain entrance while tear gas was employed inside the hotel.

The media and the other civilians left inside the hotel were asked by the Magdalo Group to stay inside the Rizal Room in order to protect themselves. All secured cover and tried to elude the effects of the teargas by covering their eyes and faces with wet napkins and clothes.

A few minutes later, the Magdalo Group announced its surrender. Sen. Trillanes and his group were immediately restrained together with all others who were inside the room with him – co-accused, supporters, sympathizers and the media. They were told to raise their hands and stay put for they will

⁷ *Id.*, par. m

⁸ Affidavit of Edd Reyes dated Dec. 6, 2007, par. 16, attached to Complainant's Position Paper dated Jan. 28, 2008a

⁹ *Supra* note 6, par. bb.

be brought to Camp Bagong Diwa for “processing.” The media protested but the PNP-SAF insisted that these were standard operating procedures in crime investigation.

Then the PNP-SAF inquired as to who are members of the military in civilian clothes. About two to three persons stood and they were taken into custody by the PNP.

Plastic handcuffs were used for some civilians who chose to remain. However, those who refused to be tied were not tied by the PNP-SAF. All were told to board a bus and taken thereby to Camp Bagong Diwa around 7:00 in the evening. They were subjected to fingerprinting procedure and/or drug testing, and were made to sign in the police blotters. After verification and proper identification, members of the media were released around 10:00 in the evening in time for the 12:00 midnight curfew announced by P/DIR Barias.

The Complaint

On December 3, 2007, Mr. Roy Mabasa, in his capacity as President of the National Press Club, wrote a letter-complaint addressed to the Commission through then Commissioner Wilhelm D. Soriano. Said letter-complaint cited the following violations:

1. Arbitrary arrest and detention of members of the media who covered the Manila Peninsula Siege;
2. Abusive and inhumane manner in which the arrests were carried out;
3. Violation of Republic Act 7438 concerning Miranda Rights;
4. Violation of press freedom under Article 32 of the Civil Code and Section 4 of Article III, or the Bill of Rights, of the Philippine Constitution;
5. Illegal confiscation of videotapes and cameras/photographs in violations of the right against unreasonable searches and seizures; and
6. Grave misconduct and grave abuse of authority and discretion on the part of the arresting authorities.¹⁰

¹⁰ Letter-complaint of Mr. Roy Mabasa, pages 1-3

The Proceedings Before The Commission

On December 4, 2007, the Commission, through its then Commission Secretary Atty. Homero Matthew P. Rusiana, wrote letters to the respondents namely, Sec. Puno, Gen. Razon and P/Dir Barias, requesting their presence as resource persons on the public hearing on the letter-complaint to be conducted on December 7, 2007, 9:00 in the morning at the CHR Conference Room.

On December 7, 2007, The Commission En Banc, then headed by Chairperson Purificacion C. Valera- Quisumbing, presided over the public hearing.

In attendance were complainant Mr. Roy Mabasa and respondents and/or their representatives, to wit: Atty. Marius Corpus, Undersecretary of Public Safety, DILG; respondent P/DIR Geary L. Barias; P/CSUPT Mario R. Sandiego, PNP Director, Legal Service; P/SSUPT Benjardi H. Mantele, PNP Director, Investigation and Detection Management; P/SSUPT Joel Coronel, PNP Chief, Criminal, Investigation and Detection Group; and P/SSUPT Lina Sarmiento, Chief, PNP Human Rights Affairs Office.

During the said public inquiry, Mr. Roy Mabasa submitted his complaint-affidavit as well as two Affidavits of his colleagues, Mr. Paul Atienza (of Business Mirror) and Mr. Edd Reyes (of People's Taliba), dated December 7, 2007. Both Mr. Atienza and Mr. Reyes, who were inside the Manila Peninsula during the siege, were not in attendance during the public hearing.

Mr. Mabasa read in full his affidavit and admitted that he was at home on November 29, 2007. Nevertheless, he answered questions posed by the Commission. Also, he submitted as part of evidence a computer print out of two articles by Ellen Tordesillas and Azhel Hachero which were published in Malaya and posted in the website www.ellentordesillas.com.¹¹

On the part of the respondents, P/SSUPT Joel Coronel made a power point presentation on the incident and answered questions propounded by the Commission. He admitted being present at the Manila Peninsula during the siege under the command of P/DIR Geary Barias.

On January 16, 2008, the Commission, again through its Commission Secretary Atty. Rusiana, wrote letters to the parties to the case, namely: Mr. Mabasa, Sec. Puno, Gen. Razon, P/DIR Barias and P/CSUPT Leocadio SV. Santiago, Jr., Director of the PNP Special Action Force (PNP-SAF), requesting them to submit documents pertinent to the case.

¹¹ Complaint-Affidavit of Roy Mabasa dated Dec. 7, 2008, p. 2, par. 12.

In a letter dated January 24, 2008, P/DIR Barias requested the Commission for a copy of the complaint filed. In response, Commission Secretary Atty. Rusiana sent P/DIR Barias a letter, on February 6, 2008, together with a copy of the complaint-affidavit dated December 7, 2008 as well as the letter-complaint dated December 3, 2007.

In the same way, in a letter dated February 5, 2008, Atty. Jesus B. Doque IV, Chief, Trial and Investigation Division, Legal Service of the DILG, requested the Commission for a copy of the complaint. The Commission Secretary furnished the same on February 15, 2008.

P/CSUPT Mario R. Sandiego of the PNP made its submission, through a letter dated January 23, 2008, to the Commission of documents pertinent to the complaint. Likewise, Police Senior Inspector Lejoe C. Campos of the PNP-SAF submitted to the Commission, through a letter dated February 4, 2008, pieces of evidence in relation to the case. Both submissions contained identical documentary evidence, to wit:

1. Memorandum from NCRPO Regional Director Geary L. Barias dated December 5, 2007 with the subject "SPECIAL JOINT REPORT RE: MANILA PENINSULA SIEGE" consisting of nine (9) pages;
2. Computer print out of the power point presentation with legal bases entitled "POLICE ACTIONS IN RELATION TO THE MEDIA COVERAGE OF THE MANILA PENINSULA SEIGE" consisting of twelve (12) pages;
3. Computer print out of the power point presentation entitled "BRIEFING ON THE MANILA PENINSULA HOTEL INCIDENT" consisting of nine (9) pages; and
4. Print out of the "MANIFESTO CALLING FOR THE IMMEDIATE RESIGNATION OF GLORIA MACAPAGAL-ARROYO AND NOLI DE CASTRO AND THE HOLDING OF SPECIAL (SNAP) ELECTIONS WITHIN 60 DAYS" containing some of the names of the media personalities present during the Manila Pen Siege.

Complainant Mr. Mabasa submitted his Position Paper dated January 28, 2008 consisting of fifty (50) pages.

No other submissions having been received by the Commission, the complaint is now ripe for decision.

The Issues

- I. WHETHER OR NOT THERE WAS A VIOLATION OF THE RIGHT TO LIBERTY AND FREEDOM FROM ARBITRARY ARREST AND DETENTION OF THE MEDIA PRACTITIONERS PRESENT DURING THE MANILA PENINSULA SIEGE AND LATER BROUGHT TO CAMP BAGONG DIWA.
- II. WHETHER OR NOT THERE WAS A VIOLATION OF THE FREEDOM OF THE PRESS.

The Parties' Arguments

On the above issues, the **complainant** asserts the following arguments:

First, there were no clear and valid reasons for the arrest. If the purpose is merely for identification, there is no need to take the journalists away to Camp Bagong Diwa for processing as the same could have been done on site at the Manila Peninsula Hotel.¹²

While the Police later claimed “obstruction to justice” as the crime committed by the media, however, the same was not relayed to them at the time of the arrest. Further, the fact that the media are in the place of action does not necessarily imply “obstruction” as it is part of their duty as journalists.¹³ The arrest will also not fall under any of the cases allowed by law for warrantless arrests.¹⁴

Anent the second issue, complainant is of the position that “the arrest of the journalists covering the event had the effect of preventing them from exercising their freedom to report the news, and therefore, constituted prior restraint and violation of press freedom.”¹⁵

“And because of the lack of any basis or reason for the arbitrary arrests, it can only be construed that the real objective was to send a strong message to journalists, to create a chilling effect on them against the exercise of freedom of expression.”¹⁶

The **respondents** posit a common position on the above issues.

¹² Letter-complaint dated Dec. 3, 2007, p. 1. *See also* Complainant's Position Paper dated Jan. 28, 2008, p. 37.

¹³ *Id.*

¹⁴ *Id.*, p. 2.

¹⁵ *Id.*

¹⁶ *Id.*

On the first issue, they maintain that the arrests made on the media are justified even without corresponding warrants issued by the Court under Rule 113¹⁷ of the Revised Rules on Criminal Procedure considering that the media are committing violations of Article 151 of the Revised Penal Code¹⁸ and PD 1829.¹⁹ A similar provision is also contained in the PNP Operational Procedures.²⁰

They also assert that the Miranda Doctrine was not yet applicable to the media when they were arrested considering that they were not yet, at the time, under custodial investigation,²¹ citing the case of Dela Torre vs. Court of Appeals.²²

Further, PNP Memorandum Circular No. 2006-09-01 laid down the system of processing and debriefing, documentation of the ‘perpetrators’ as well as the venue for the conduct of these processes²³ which should be far from the scene of the crime due to the volatility of the situation.

On the second issue, respondents maintain that they did not curtail the right of the media to disseminate information and that the freedom of expression/press is not absolute and may be subject to valid governmental interference citing the case of Schenck vs. United States providing for the clear and present danger rule.

The case of Branzburg vs. United States²⁴ was also cited which states that, “journalists have no constitutional right of access to the scenes of the crime or disaster when the general public is excluded.”

THE COMMISSION’S RULING

Initial Statements

The Commission would like to take this opportunity to lay down, once again, the parameters upon which it conducts its investigations.

Foremost, the Commission, under the 1987 Philippine Constitution, is given the mandate “to investigate, on its own or on complaint by any party, all forms of human rights violation involving civil and political rights.”²⁵

¹⁷ See particularly Sec. 5 on Warrantless Arrests

¹⁸ Resistance and Disobedience to a Person in Authority or the Agent of Such Person

¹⁹ Obstruction of Justice

²⁰ Rule 11, Sec. 6, quoted in the computer print out of the power point presentation with legal bases entitled “POLICE ACTIONS IN RELATION TO THE MEDIA COVERAGE OF THE MANILA PENINSULA SEIGE,” p. 8.

²¹ *Id.*, p. 9

²² GR No. 102786, Aug. 14, 1998

²³ *Supra* note 20, pp. 8-9

²⁴ 408 U.S. 665

²⁵ Art. XIII, Sec. 18, par. 1.

Also, under the Constitution, the Commission is mandated to “monitor the Philippine government’s compliance with international treaty obligations on human rights.”²⁶ Hence, in the conduct of its investigations, international instruments on human rights as well as the Constitution are used as primary standards.

Secondly, the Commission is a fact-finding body with neither quasi-judicial nor prosecutorial powers, as underlined in the case of Carino vs. CHR.²⁷ It cannot adjudicate on violations or infractions committed under the Revised Penal Code or other domestic laws. To do so would arrogate functions not mandated by the Constitution and would encroach upon functions of other agencies which the Commission has no right and authority to do.

Finally, not being a court, the Commission is not bound by the technical rules of procedure under our Rules of Court. Its objective is to investigate human rights violations and ensure that any such violations are properly recognized and addressed.

The main function of the Commission’s investigations is to determine whether human rights violations have been committed. Findings of violations will then be referred to appropriate offices for their appropriate actions. This is in observance of the rule of law and respect for our justice system. In addition, the Commission is also empowered to make recommendations to relevant agencies for the purpose of ensuring government compliance with international treaty obligations on human rights.

Now we shall go to the core issues at hand.

FINDINGS ON THE CORE ISSUES

Re: Violation of the right to liberty and freedom from arbitrary arrest and detention.

The taking of the media practitioners constitutes arbitrary arrest/detention in violation of human rights standards.

The facts are clear that the media practitioners were detained under the definition of law. “A person is detained when he is placed in confinement or there is a restraint on his person.” (U.S. vs. Cabanag, 8 Phil. 64 [1907]) “Even if the persons detained could move freely in and out of their prison cell... if they were under the surveillance of the guards and they could not

²⁶ *Id.*, par. 7.

²⁷ GR No. 96681, Dec. 2, 1991.

escape for fear of being apprehended again, there would still be arbitrary detention (People vs. Camerino, CA-G.R. No. 14207-R, Dec. 14, 1956 cited in L.B Reyes, Revised Penal Code, 12th edition 1981, Book II, p. 40)

It is also conceded that no arrest warrant had been issued against the media persons involved.

The 1987 Philippine Constitution states that:

“No person shall be deprived of life, liberty and property without due process of law xxx.”²⁸

Provisions of the Universal Declaration on Human Rights “UDHR”²⁹ are clear:

“Everyone has the right to life, liberty and security of person.”³⁰

“No one shall be subjected to arbitrary arrest, detention or exile.”³¹

The International Covenant on Civil and Political Rights “(ICCPR)”³² is more explicit:

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.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall promptly be informed of any charges against him.

xxx.”³³

These human rights standards are protected in domestic law, specifically Art. 124 of the Revised Penal Code, and Republic Act No. 7438 “*An Act Defining the Rights Of Person Arrested, Detained Or Under Custodial Investigation and Duties of Public Officers*”.

²⁸ Art. III, Sec. 1.

²⁹ signed by the Philippines on Dec. 10, 1949

³⁰ UDHR, Art. 3

³¹ *Id.*, Art. 9

³² signed by the Philippines on Dec. 19, 1966 and ratified on Feb. 28, 1986.

³³ ICCPR, Art. 9, pars. 1 and 2.

We find the arrest/detention of the media practitioners arbitrary for several reasons.

First, there are conflicting accounts of whether the restraint, the bringing of the media to Camp Bagong Diwa and the detention are due to observance of the procedure for processing of hostage/victims, perpetrators, witnesses and key participants of the incident³⁴ or due to the fact that they are being arrested for the actual commission of specific offenses.³⁵

These conflicting claims of the PNP show uncertainty in their actions as to the legal basis for such acts and offers nothing but arbitrariness, whim and doubt on the part of the arresting officers.

Hence, if the police officers were not sure as to *why* they were conducting the arrests, they should not have done so. The media, and the public in general, must be spared from such unlawful and capricious interference upon their right to liberty and security of person.

Second, the Commission notes the admission of some of the respondents themselves that they applied the principle of warrantless arrest when they restrained the media during the siege. They alleged that the media were at that moment committing the crimes of Resistance and Disobedience to a Person in Authority or the Agent of Such Person and Obstruction to Justice, thus justifying warrantless arrest.

Although the law on obstruction of justice penalizes “(d)elaying the prosecution of criminal cases by obstructing the service of process or court orders”³⁶, there is no evidence to show that members of the media obstructed respondents’ attempt to serve Judge Pimentel’s bench warrant on Trillanes and his group. Rather, it was the members of Trillanes’ group, particularly a certain Lt. Armand Pontejos, who refused to accept the warrant and who would not allow it to be served.³⁷ Thus, obstruction of justice cannot be made the basis for a warrantless arrest.

With respect to the alleged resistance and disobedience to a person in authority, the Commission is not prepared to make any pronouncement thereon. It suffices to remind media that a police officer is an agent of a person in authority,³⁸ and that, as such, he may legitimately order people away from a crime.

Granting *arguendo* that the arrest was a valid instance of a warrantless arrest, **respondents failed to inform the media of the nature and cause of**

³⁴ PNP Memorandum Circular 2006-09-01

³⁵ Rule 113, Sec.5, par a.

³⁶ Pres. Dec. No. 1829, Sec. 1(e)

³⁷ Computer printout of <http://www.ellentordesillas.com/?p=1915>, Annex “A” of Complainant’s Position Paper dates Jan. 28, 2008

³⁸ LUIS B. REYES, THE REVISED PENAL CODE, BOOK TWO, 139 (1998 ed.), citing U.S. v. Cox, 3 Phil. 140; U.S. v. Tabiana, 37 Phil. 515.

accusation against them, of their right to remain silent and their right to counsel. This is in violation of the ICCPR as mentioned above and the provisions of the Constitution, specifically paragraph 1, Section 12, Article III,³⁹ to wit:

“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.”

Respondents themselves admit that “members of the media were brought and restrained due to an intelligence information that ‘Magdalo’ members will disguise as media practitioners in order to elude arrest”.⁴⁰ Thus, upon being “brought and restrained,” the complainants had the right to be apprised of the reason of their arrest.

Members of the media who went to Camp Bagong Diwa were kept in ignorance as to whether they were brought there as witnesses or as suspects. They were not accompanied by any lawyer of their own choice nor supplied with one. This is a grave abuse of their right to security of their persons.

Third, worthy to note is the fact that **no charges** were ever filed against these media practitioners before any court in the country for the crimes or infractions allegedly committed by them.

Article 124 of the Revised Penal Code prohibits the detention of a person without legal grounds, Article 125 prohibits the delay in delivery of detained persons to the proper judicial authorities and states “In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel”.

The PNP failed to follow the procedure set out in Rule 112, Sec 7 of the 1985 Rules on Criminal Procedure, i.e. to “file an affidavit which will form the basis for a complaint or information against the person.”

Fourth, even if the complainants were brought to Camp Bagong Diwa for the purpose of being “processed” as part of standard police procedure, the failure of the PNP to clearly inform the complainants of the said purpose, the procedure itself and the manner of bringing them to the camp are not in keeping with human rights standards of security of persons, right to information, and right to decent and humane treatment.

³⁹ Bill of Rights

⁴⁰ Memorandum on “Special Joint Report Re: Manila Peninsula Siege” dated 5 Dec. 2007, par. gg.

The Commission believes that all resistance and skirmishes could have been avoided if there was proper communication and coordination between the police and the media.

Fifth, not having shown legality and appropriateness in the conduct of their arrest/taking into custody, their being brought and made to stay at Camp Bagong Diwa is also unjustified.

Sixth, the means of restraint is not justified.

Members of the media were restrained by using plastic handcuffs, which are instruments of restraint which is not justified under the circumstances. Under the ACPO⁴¹ Guidance on the Use of Handcuffs:

“Any intentional application of force to the person of another is an assault. The use of handcuffs amounts to such an assault and is unlawful unless it can be justified. Justification is achieved through establishing not only a legal right to use handcuffs, but also good objective grounds for doing so in order to show that what the officer or member of police staff did was a reasonable, necessary and proportionate use of force.”

There is no proof that the media displayed violence nor that they tried to escape the police which could have justified their restraint. They are professionals merely doing their jobs. They were without weapons and the restraint applied to them does not pass the tests of reasonableness, necessity, and proportionality.

The fact that some of the complainants were handcuffed while others were not demonstrates that the PNP personnel themselves did not find a grave and imminent threat of violence or escape by the media practitioners.

Even in the United Nations Standard Minimum Rules for the Treatment of Prisoners,⁴² we note that the use of restraint is taken with much caution. With more reason than that instruments of restraint should not have been applied to the media who were not even ‘prisoners.’

As to their being “paraded,” as alleged by the complainants the Commission will not dwell on the matter, being mainly subjective and, given the willing posing of some media practitioners before the television and print

⁴¹ Association of Chief Police Officer

⁴² Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its Resolutions 663 C of 31 July and 2076 of 13 May 1977

cameras of their cuffed hands, not entirely or generally forced to all complainants.

Re: Violation of the freedom of the press.

The facts do not support a clear finding of repression or denial of freedom of the press. However, the Commission warns that acts to detain members of the media without clear legal basis dangerously stand astride the borderline between valid police power and media repression in violation of fundamental freedoms.

Article 19 of the ICCPR provides that:

- “ 2. Everyone shall have the right to freedom of expression; this right shall include the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- “3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - a. For respect of the rights or reputation of others;
 - b. For the protection of national security or of public order, or of public health or morals.”

Freedom of expression under our Constitution is a cognate of rights which include the freedoms of speech, of the press and the right of the people to peaceably assemble and petition the government for redress of grievances.⁴³ Corollary to these is the right to information and the right to gather information.

The act of the police operatives in arresting and detaining the media, does not seem to have been meant in any way to curtail the freedom of the press. Cameras were allowed to run even during the handcuffing of the media practitioners and their loading onto the PNP bus, reports of both the siege and the subsequent incident of media detentions were neither censored nor blocked on broadcast or print media.

⁴³ CONST., Art. III, Sec. 4

However, these actions unnecessarily sent the signal to the media and the public in general that they can be forcibly deprived of their liberty even before there is clear legal basis for such.

The role of the media in a free society cannot be overemphasized. The justifications for this high regard are specifically identified in *Chavez vs. Gonzales*,⁴⁴ to wit: (1) Freedom of expression promotes the free flow of ideas essential to political democracy and democratic institutions, and limits the ability of the State to subvert other rights and freedoms; (2) it promotes a marketplace of ideas, which includes, but is not limited to, the search for truth; (3) it is intrinsically valuable as part of the self-actualization of speakers and listeners; and (4) it is justified by the dangers for good government of allowing its suppression.”⁴⁵

These are the same justifications why censorship is anathema to freedom of expression. Censorship is that officious functionary of the repressive government who tells the citizen that he may speak only if allowed to do so, and no more and no less than what he is permitted to say on pain of punishment should he be so rash as to disobey. Censorship may come in the form of prior restraint or subsequent punishment. “Prior restraint means official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. [...] Subsequent punishment is the imposition of liability to the individual exercising his freedom. It may be in any form, such as penal, civil or administrative penalty.”⁴⁶

We maintain that the acts of the police and military to physically limit the freedom of movement and right to security of persons against arbitrary detention of some members of the media constitute acts that only just fall short of actual infringement on, press freedom. They have the effect of implicit threats to members of media of possible subsequent punishment if their reports displease the authorities.

Such acts indicate an attitude of indifference, if not antipathy, to press freedom by some members of the security forces; an attitude that there is no need to apply legal protections to members of media in times of crisis because the assumption is that they are in the wrong or on the side of the rebels.

Such an attitude and approach to public order and public safety should not be tolerated by the PNP, the AFP and other bodies of government because it would lead to future cases of actual infringement of press freedom.

Re: Proper Conduct for Law Enforcement Officials

⁴⁴ GR No. 168338, Feb. 15, 2008 (Sandoval-Gutierrez, J., *concurring*)

⁴⁵ *Id.*, quoting Justice McLachlin of the Canadian Supreme Court in *Her Majesty The Queen v. Keegstra*

⁴⁶ *Id.*, citations omitted.

Finally, the Commission would like to quote relevant provisions of “The Code of Conduct for Law Enforcement Officials”⁴⁷ which are valuable in the case at bar. Said Code provides, *inter alia*:

“Article 1.

“Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

“Article 2.

“In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

“Article 3.

“Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”

While we believe that the media men and women had their own faults in the conduct of their coverage at the Manila Peninsula Siege, this is not an excuse for the respondents to take for granted the calls of human rights which must be observed at all times and in all places.

“Excessive fear often causes overreaction on the part of government, resulting in the excessive curtailment of freedom of speech and of the press.”⁴⁸

Balance is primordial.

The Commission firmly believes that law enforcement officers and the media can peacefully co-exist in our society. There need not be a battle of ire nor a challenge for supremacy. Each has an important role to play. There can be a basis for cooperation, respect for each other’s institution and recognition of the role each plays in society. Proper cooperation and coordination will maximize media and police/military relation, hence, the improvement of the protection and promotion of human rights.

**Re: Proper Conduct for
Media Practitioners**

⁴⁷ adopted by the United Nations General Assembly resolution 34/169 of Dec. 17, 1979

⁴⁸ Addressed by Chief Justice Reynato S. Puno, Induction of Officers of the Capampangan sa Media, Inc., Quezon City, Mar. 27, 2007, Quoting Dean Geoffrey Stone, University of Chicago Law School

The responsibilities of the PNP and the AFP to respect and safeguard the fundamental freedoms of the press do not leave the members of media completely free of their own responsibilities.

Like any other right, the press freedom may be subjected to reasonable regulation – not to stifle it, but in fact to safeguard it and at the same time to ensure that it does not collide with or overrun the rights of others.

As aptly recognized under the UDHR:

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”⁴⁹

The United Nations Commission on Civil and Political Rights clarified in General Comment No. 10 “Freedom of Expression (article 19)” that “the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason certain restrictions on the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.”

We remind the media that the right of the public to know is accompanied by the right of the public to a peaceful environment and society.

The ends of “informing the public” do not justify irresponsible or unethical means such as libel, stealing of documents, or undermining lawful operations by peace and order authorities.

Let us remember that for every freedom, there is a corresponding responsibility. Respect for the police and the military and their role as protectors of the people and the state is essential in any peace-loving country.

The fact that there were already police line-ups and barricades set around the perimeter of the Manila Peninsula Hotel should have cautioned the media of the seriousness of the situation and made them leave and do their coverage at a safer place.

The fact that the police, and no less than the ground commander, has asked them, several times, to leave the premises before the PNP would begin

⁴⁹ Art. 29, par. 2.

an assault on the group of Senator Trillanes⁵⁰ should have made them respect the police operation and the possible danger to themselves and to others.

The fact that there were two to three “civilians” who stood up when asked who are military men in civilian clothes⁵¹ is an indication that the media can also be used and taken advantage of by groups with illegal motives.

The fact that the media who refused to be tied with plastic handcuffs were not so tied⁵² also showed liberality on the part of the police officers. The fact that the arrest, detention and processing were carried out against all who remained at the hotel after the assault⁵³ showed that they were not singled out and discriminated upon as media practitioners but were in fact subjected to the same treatment as all others.

And the fact that they can be taken as hostages and that their lives and limbs could be at risk, further hamper and interfere with the crisis situation, should have made the media coordinate more with the police and military operatives.

Understanding and working under reasonable ground rules works for all – the police/military, the media and the resolution of the crisis situation itself. While some of the media practitioners may choose not to cooperate, they do so at their own peril and at the risk of lawful detention.

RECOMMENDATIONS

From the foregoing, the Commission hereby finds that there have been violations of the human rights of liberty, security of person and freedom from arbitrary arrest of the complainants in the Manila Peninsula Siege. Further, the named respondents, being the top officials of their respective offices, are in the best position to ensure that such violations are addressed and prevented from recurring in the future.

In view of the foregoing findings, the Commission makes the following recommendations:

1. For the instant case to be referred to the DILG and the PNP for internal inquiry and filing of possible administrative/disciplinary cases and measures applied to proper personnel and to the Department of Justice for further

⁵⁰ *Supra* notes 8 and 9

⁵¹ Computer printout of <http://www.ellentordesillas.com/?p=1915>, Annex “A” of Complainant’s Position Paper dated Jan. 28, 2008. *See also* Complainant’s Position Paper, p. 22.

⁵² Complainant’s Position Paper dated Jan. 28, 2008, p.15, quoting par. 12 of the affidavit of Ruperto Ambill III

⁵³ *Id.*, quoting par. 13.

investigation and filing of proper cases as to violations of the Revised Penal Code and special laws on the rights of persons detained;

2. For the Philippine National Police and other government forces to review its Rules of Engagement or their respective Standard Operating Procedures especially those which lay down rules, guidelines and standards during crisis situations and police/military operations with specific guidelines on civilian and media engagement. And that this be done in consultation and meaningful dialogue with relevant stakeholders in order to ensure proper and meaningful coordination and communication between the media and police/military operatives while doing media coverage;
3. For the widest dissemination of the Rules of Engagement or Standard Operating Procedures of the Philippine National Police and other government forces with regard to civilian and media engagement during crisis situations and police/military operations;
4. For the military and police to designate media relations officers who shall be the focal person and directly in-charge of coordination with media during operations. In this case, there can be better harmonization and interaction during critical situations, thus avoid misunderstanding and clash of interests;
5. For the military and the police to refrain from uttering threats of arrests and future harm against media practitioners that undermine press freedom;
6. For the media, in the pursuit of their functions, to take into consideration and respect police/military operations and in no way interfere in them;
7. For the legislature to pass a law on command responsibility in order to ensure accountability during police/military operations; and

8. For the legislature to look into the possibility of passing a law regulating the rules of engagement of the police and military with the media and the civilians during crisis situations and police/military operations and in the process, ensuring the widest possible consultation with all possible stakeholders.

Issued this 26th day of August 2008 at Quezon City, Philippines.

LEILA M. DE LIMA
Chairperson

CECILIA RACHEL V. QUISUMBING
Commissioner

MA. VICTORIA V. CARDONA
Commissioner

NORBERTO DELA CRUZ
Commissioner

ATTESTED BY:

MARIA ASUNCION I. MARIANO-MARAVILLA
Commission Secretary