

Benjamin G. Maynigo, guest columnist

The most-significant event in the Philippines during 2009 was the Maguindanao massacre.

The *Philippine Daily Inquirer* described it as “a crime so horrific, so unspeakable that it led people to ask whether it was committed by animals or monsters.” Columnist Rodel Rodis calls it: “...the barbaric slaughter of 61 innocent people, including 30 working journalists.”

Reviewing my notes in International Criminal Law and going over the relevant jurisprudence, this systematic attack against a civilian population which included children, women and journalists, is considered as “crime against humanity”.

The reaction of former *Filipinas Magazine* Publisher Mona Lisa Yuchengco struck me: “Why aren't more people up in arms (no pun intended) over this massacre demanding for justice? Will this, like all other atrocities, be buried in our national consciousness? No wonder we're always in the dumps! Sorry, but I am very pessimistic about the government doing the right thing right

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now.”

Charges for “crimes against humanity” mean that the case would fall under “universal jurisdiction”. The trial would be heard outside of the Philippines free from judicial corruption, intimidation, and political intervention. The nationality of the victims is irrelevant. Any assertion that the alleged acts are legal under domestic law would not be defense against it.

The Statute of Limitations does not apply to crimes against humanity. So, Gloria Macapagal-Arroyo (GMA), et al can be charged anytime in the future. In certain cases, even “ex post facto law” was considered not in violation of the rule of law.

Why should GMA be included in the charge?

Conrado de Quiros said it best: “She not only stole lives—though that is staggering enough in itself, ushering as it did the culture of impunity, which is really a pale phrase to describe the murder of crows or the slaughter of the innocents or the gunning down of suspects and burying them in shallow graves—she stole everything else. She stole this country’s hope, she stole this country’s spirit, she stole this country’s life.”

The degree of responsibility is commensurate to the degree of powers and resources that one has to meet that responsibility. GMA had all the powers to prevent or stop the Ampatuans from committing this “orchestrated attack on the very dignity of man” as described in Article 6 (a) of the Nuremberg Charter.

On the issue of GMA’s responsibility, Jose Ma. Montelibano said: “the barbarism happened because the barbarians were encouraged by their unholy alliance with Gloria that anything goes for as long they do their part in keeping Gloria in power. The arms that have been discovered so far around the barbarians’ complex also came from the AFP and DND as well as from other sources. The unholy alliance gave not only a signal of encouragement but arms to affirm support beyond the law.”

Solita Collas-Monsod contributed: “SHE CODDLED THEM. That is the only way one can describe the relationship of President Macapagal-Arroyo and the Ampatuans of Maguindanao. And that coddling has resulted in the Maguindanao massacre.”

Doctrine of Command Responsibility

Following the doctrine enunciated in the Yamashita case and in other International-law cases, Command Responsibility as a legal basis for criminal liability has been accepted. Command

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responsibility is an omission mode of individual criminal liability: the superior is responsible for crimes committed by his subordinates and for failing to prevent or punish. In the Yamashita case, Yamashita was charged solely on the basis of responsibility for an “omission”.

Ironically, it involves Japanese troops engaged in atrocities against thousands of Filipino civilians.

He was charged, found guilty and executed.”

In the other cases, actual knowledge by the superior or commander of the criminal acts is not necessary. A lesser level of knowledge is sufficient.

These doctrines of Command Responsibility and Universal Jurisdiction are incorporated in the Statutes of ICTY, the ICTR, the ICC, and the Belgian Anti-Atrocities Law. Atrocities similar to the Maguindanao massacre have been investigated in
Belgium

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Spain
,
Rwanda
and
Yugoslavia
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The laws of
Australia
,
Germany
,
New Zealand
and
South Africa
have been amended to allow such investigations as well.

Austria
,
Denmark
,
Germany
, the
Netherlands

and

Switzerland

brought alleged perpetrators to trial on the basis of universal jurisdiction.

Spain's indictment of former Chilean President Augusto Pinochet is an example. He was charged for crimes committed mostly in Chile and against Chileans. Cases have been filed in Belgium against Mauritanian President Maaouya ould Sid'Ahmed Taya, then-Iraqi President Saddam Hussein, Rwandan President Paul Kagame, former Chadian President Hissene Habre and many others.

Like many Filipinos, I have not given up on the Philippines. We always find a way to face challenges. Cory's People Power made history.

We indicted, detained and convicted a President (Estrada).

We tried and punished the likes of Gov. Rafael Lacson in the Moises Padilla case, Bingbong Crisologo in the Ora Bantay burning case, and Congressman Romeo Jalosjos in a rape case. These occurred despite what had been described as a "culture of impunity." # # #

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