

# **LAWS, LABELS AND LIBERATION:**

## **The Case of Jose Maria Sison**

### **By Public Interest Law Center (PILC)**

*Universite de Quebec a Montreal*  
*May 29, 2004*

While in the airport in Oslo on Valentine's Day waiting to board the plane en route to Amsterdam, Jose Maria Sison reminded his companions that if the US government desired it badly enough, the plane he was boarding could be ordered diverted to a US military base in Germany. In the hands of the US military, Prof. Sison may expect to be dealt with in the same manner as the US government has dealt with suspected members of the Al Qaeda and, God forbid, Iraqi prisoners in the Abu Ghraib prison. Prof. Sison's apprehension was of course valid. After the terrorist tag was placed on him by both the US and the EU, his mere presence in Europe exposes him to grave danger.

An alternative title of this paper would be "The Curse on Jose Maria Sison" because this paper relates a horror story that is Prof. Sison's human rights situation and legal battles in Europe. It focuses attention on the main source of Prof. Sison's woes in his asylum case, the erosion of his right to asylum, the deprivation of his right to work, and other rights accorded to him as a refugee under international law, as well as the circumvention of his democratic and human rights that attends his being placed on several "terrorist" blacklists without due process of law. The curse on Prof Sison consists in his being identified as a sworn enemy, a "global terrorist", by the United States government, and the United States government's single-mindedness to completely isolate him in the Western world and to punish him without due process of law.

This paper would like to speak about the "terrorist listing" of Jose Maria Sison in relation to a long-running, and he would say "epic" story of his personal persecution in a foreign country by no less than three governments: the government of his home country (Philippines), the government of his host country (Netherlands), and the government for whom these two governments are subservient (United States).

#### **Part One: Pre-history of Sison's "Terrorist Listing"**

Even before his "terrorist listing", it is not an exaggeration to associate Prof. Sison's name with persecution itself. Captured in 1977, he was kept, mostly in solitary confinement, tortured and tried in military tribunals, as the most prized political detainee of the Marcos government. He was released from detention in 1986 following the toppling of the Marcos dictatorship only to find himself again being hounded with false charges by the Aquino government. These false charges have eventually been proven false.

The misinformed might think that he was lucky to have been within the protective borders of a liberal European state of the Netherlands when the Aquino government decided to cancel his passport in 1988 and launch all-out war against Philippine communists. But actually, the persecution he was fleeing from in the Philippines did not stop when he was already in the Netherlands. And this time, Prof. Sison had to contend with persecution by the Dutch government.

**Dutch Government Places Sison in Legal Limbo and Makes Malicious Accusations against Sison in his Asylum Case**

In October 1988, Prof. Sison applied to be admitted to the Netherlands as a political refugee and for a permit to stay therein. In 1990, his request was denied by the Dutch Justice Ministry forcing Prof. Sison to go to court. In 1992, the court nullified the Justice Ministry's decision. Nevertheless, the Justice Ministry refused to grant Prof. Sison's requests and invoked its so-called "freedom of policy" in asylum cases. Repeatedly, the Justice Ministry claimed that Prof. Sison was excluded from the protection of the 1951 Refugee Convention by Article 1 F

thereof, initially allegedly under paragraph (c), and then later, allegedly under paragraphs (a) and (b). In other words, the Dutch government claimed that Prof. Sison has either:

(a) committed a crime against peace, or a crime against humanity as described in the international agreements defining these crimes;

(b) committed serious nonpolitical crimes; or

(c) is guilty of having committed crimes which are contrary to the objectives and principles of the United Nations.

Note that these claims have been made not only in the pleadings submitted by the Dutch government to the court but also in its press releases circulated in the media.

Intent to debunk these malicious claims, Prof. Sison went to the then highest Dutch court that has jurisdiction over asylum cases, the Raad van State in 1993. In the decision of February 21, 1995, the Raad van State held that there are "no sufficient evidence" showing that Prof. Sison was involved even by way of "giving direction" to the perpetrators of the criminal activities alleged by the Dutch government. The court said there was no "serious reasons" to suppose that Prof. Sison "carried out" the crimes alleged.

The court held:

"Those pieces, however, do not offer sufficient evidence for the fundamental judgment that the appellant to that extent has given direction and carries responsibilities for such activities that it can be held that there are serious reasons to suppose that appellant in the sense of the abovementioned article parts have carried out those mentioned crimes."[\[1\]](#)

In contrast to the unfounded claims of the Dutch Justice Ministry, Sison was able to establish in court a "well-founded fear of persecution on account of his political beliefs", and accordingly his status as a political refugee was recognized by that court. In support of this decision, the court referred to the written and testimonial evidence offered by the UN High Commissioner for Refugees and the Amnesty International which expressed the view that "in case [Prof. Sison] would be forced to return to the Philippines, [he] would definitely risk becoming a victim of torture, extrajudicial execution or disappearance". The Raad van State thus decided that he may not be returned to the Philippines or to a country where he will be exposed to the danger of being returned to the Philippines.

Despite the judicial repudiation of the convoluted and malicious accusations against Prof. Sison and despite the judicial recognition of his status as a political refugee by the Dutch court, still the Dutch executive authorities refuse to grant Prof. Sison his requests to be admitted into the Netherlands and for a permit to stay therein. The situation of Prof. Sison is therefore a peculiar one, a cruelly peculiar one. He has in actuality been living on Dutch soil for 16 years now but in legal fiction he has not yet been admitted to the Netherlands. In other words, he is in some sort of a "limbo". He is publicly referred to as a "tolerated alien" by the Dutch government, though it is more accurate to say that he is a victim of intolerable treatment by an alien host who is even willing to disrespect the decisions of its own court just to make Prof. Sison unwelcome.

In continuation of this persecutory stance of the Dutch government on Prof. Sison, notwithstanding the February 21, 1995 Raad van State decision, the Dutch Justice Ministry issued in June 4, 1996 an expulsion order requiring Prof. Sison to leave the Netherlands within four weeks' time. This resulted in yet another legal case between Prof. Sison and the State Secretary of Justice that ordered his expulsion in the then newly-formed Law Unity Chamber of the Aliens Court (called the REK).

## **Politicisation of the Sison Asylum Case and Erosion of Sison's Right to Asylum**

We mentioned that the Dutch government has also claimed it had the "freedom of policy" in asylum cases which meant that it had the discretion to exclude Prof. Sison from Dutch territory notwithstanding his well-grounded fear of persecution. As will be seen below, this claimed discretion has transformed Prof. Sison's asylum case from a purely legal case to a highly politicized controversy pitting the human rights of Prof. Sison with the diplomatic interests of the Dutch government in maintaining good relations with the United States.

The Raad van State had the opportunity to address this so-called "freedom of policy" argument in its 1995 decision. The Dutch government invokes a vague provision in the Dutch statute books which provides an exception ("weighty considerations derived from the general interest") to the state's duty to grant admission to a political refugee. The Dutch government claims that such "weighty considerations derived from the general interest" are obtaining in the case of Prof. Sison because allowing Prof. Sison to be admitted and to stay in the Netherlands "shall damage a serious interest of the Dutch state, to wit the integrity and credibility of the Netherlands as a sovereign state, in particular in relation to its responsibilities to other states". In short, the Dutch government wishes to justify refusal to admit Prof. Sison to the Netherlands on the basis of its diplomatic interests, with the Philippine government and, more importantly, with the United States government.

The Raad van State in no uncertain terms rejected this argument of the Dutch government. The court said that the international obligation of the Netherlands under Article 3 of the European Convention on Human Rights and Fundamental Freedoms (freedom from torture and other inhuman or humiliating punishment) was absolute and that once a person is able to establish a well-founded fear of such treatment, no balancing of interests can be had between that of the individual and the Dutch government's alleged "general interest" of a diplomatic nature.[\[2\]](#)

It has been noted that the reasoning of the decision of the Raad van State on this score has found affirmation in at least one case subsequently decided by the European Court of Human Rights (ECHR), namely, the Chalal case (RV 1996 20). This has been first pointed out in a lecture at the Institute for Immigration Law at the State University in Leiden in February 1997 by Mr. P. van Dijk, judge of the ECHR, and a member of the Judicial Department of the Raad van State that wrote the 1995 decision. Judge van Dijk has said that he viewed the confirmation of the wisdom of the Sison decision in the Chalal case with satisfaction, convinced that the "weighing of interests" approach would result to a "serious hollowing out (or disembowelment)" of the prohibition in Article 3 of the ECHR. [\[3\]](#)

Unfortunately, in the subsequent case of Sison against the State Secretary of Justice before the then newly-formed REK, the REK this time upheld the interpretation of Article 15 of the Aliens Law that the Dutch government argued for in the Raad van State and which the Raad van State already rejected. Thus, a balancing of interests was had between Prof. Sison's individual rights and that of the Dutch government's diplomatic interests. Prof. Sison's human rights were trounced in favor of the Dutch government's concern for maintaining its good standing in the eyes of the United States.

The REK held that the Dutch government would not be in violation of Prof. Sison's right if he is not admitted to the Netherlands or permitted to stay therein so long as he is not actually expelled. This judicial hairsplitting has actual practical effects, chief among them being that Prof. Sison, not being a legal resident, has been denied the right to seek employment in the Netherlands. His claim to social benefits such as social security, accommodation and study financing has also been made "extraordinarily difficult"[\[4\]](#) as a result of his non-admission.

Prof. Pieter Boeles of the University of Leiden, the Dutch scholar who annotated the decisions in Prof. Sison's asylum case, citing with approval textbook writers and Dutch immigration law experts Spikerboer and Vermeulen, said the interpretation of Art 15 (2) of the Aliens Law of the Netherlands that the Dutch government

argued for and which the REK upheld was inconsistent with the intention of the legislator that crafted the law. He also said that the so-called "weighty considerations deriving from the general interest" argued by the Netherlands and which the REK also upheld as weightier than Sison's human rights are "cryptic and therefore hardly convincing".

Boeles concluded thus: "The turn that the REK now has given in the [Sison asylum] case is difficult to reconcile with the Raad van State decision."[\[5\]](#)

Another commentator Jack Rodgers suggests that the surprising retrogression which resulted from the REK's harking back to the "weighing of interests" approach was the logical result of the ever greater politicization of the asylum procedure in the Netherlands. This trend is manifested in the creation of the REK itself. Rodgers says:

"As regards the REK, it is now the highest Dutch instance of decision over asylum cases, while reported to be only a division of a district court which 'is dependent on the Dutch justice ministry for advice, personnel and funding'."

Rodgers concludes with the following insight:

"Further, there are those who see in this case the question in its pure form of subordination of law to the perceived political interests of a state. Indeed, the Dutch Justice Ministry plainly stated its concern that a friendly government would be 'displeased and offended' should asylum be granted to Sison. Concurrently, in Sweden, US rights activist Ritt Goldstein – whose work had led to him being targeted for extended brutalization by US police – has been denied political asylum solely on the basis of his being an American. Concern over offending Washington appears as the political common denominator in these cases."[\[6\]](#)

## **Part Two: Circumstances of the Terrorist Listing of Sison**

Having outlined the somewhat long prehistory of Prof. Sison's persecution in Europe on account of the Netherlands government's desire not to offend Washington by according him his human rights as a proven political refugee, I now turn to the circumstances of the "terrorist" listing of Prof. Sison.

### **Sison in Washington's Official Reports Before 9/11**

Before the September 11, 2001 attacks, Prof. Sison's name already figures in Washington's official reports concerning "global terrorism", the US' post-Cold War pre-occupation. He is first cited in a 1990 report as a "supporter of the [Philippine] communists" referring to the New People's Army which it maliciously brands as a terrorist organization even then.

The New People's Army (NPA) has been maliciously regarded by the US as a terrorist organization in its official "Patterns of Global Terrorism" published by the US Department of State, and has been publishing reports of its alleged activities alongside other groups it considers "terrorists".[\[7\]](#)

In "Patterns of Global Terrorism: 1990", the US State Department acknowledged its interest in Prof. Sison's asylum case by noting that:

"The Aquino administration continues to press its international campaign against supporters of the Communists. The Philippines successfully lobbied the Dutch Government to reject CPP founder Jose Maria Sison's application for political asylum. xxx"

In the report for 1991, the US State Department expressed concern over Sison's continued presence in the Netherlands. The report said: "We believe that he is involved in raising money for his movement, mostly from sympathetic European leftist groups." The bases for such suspicion were not specified.

The description of the New People's Army (NPA) in the Annex to the "Patterns of Global Terrorism: 1992" alleges vaguely that it derives external aid from "overseas fundraisers in Western Europe and elsewhere" and, even more vaguely, that it is "linked to Libya; diverts some funding from humanitarian aid". This description was reiterated in 1993 and 1994. However, in the annual reports from 1995 to 2001, the State Department reported that external funding from the NPA was "unknown".

### **The AEDPA of 1996**

In 1996, in the wake of the Oklahoma City bombing of 1995, the United States enacted a radically new law, the Anti-Terrorism and Effective Death Penalty Act (AEDPA) [8], by which the blacklisting of "foreign terrorist organizations" begun [9]. The AEDPA empowered the US Secretary of State to designate any entity in a list of foreign terrorist organizations (FTOs) defined, as

- (1) any foreign organization
- (2) that engages in any terrorist activity
- (3) where such activity threatens the security of U.S. nationals or the national security of the United States. "National security" is defined as "the national defense, foreign relations, or economic interests of the United States." (AEDPA, Section 302(a))

Once an organization is designated as an FTO, the following legal consequences arise:

- (1) the funds and assets of these organizations shall be seized;
- (2) the provision of "material support or resources" by any person to that organization becomes a criminal offense; [10] and
- (3) the designated organization may not contest the "terrorist" label in any forum in the US unless it obtains a delisting by filing an appeal with the US Court of Appeals for the District of Columbia within 30 days from publication of its designation in the Federal Register.

It is worth noting that despite its being reported in the "Patterns of Global Terrorism" since 1990, the New People's Army was not immediately designated as a "foreign terrorist organization" under the AEDPA. Since 1996, the NPA instead is listed under the rubric "Other Terrorist Organizations" as distinguished from "Designated Foreign Terrorist Organizations (FTOs)". It took another five years after the NPA was finally designated.

### **De Venecia's Warning and the "Final Peace Agreement"**

The warning of the "FTO" designation came from Jose de Venecia, Speaker of the House of Representatives on November 22, 2001. While in Mexico, Speaker de Venecia made an overseas call to Jose Maria Sison in Utrecht to tell him that there was an impending US government decision to designate the CPP-NPA-NDF as a foreign terrorist organization. De Venecia was then with President Gloria Macapagal-Arroyo in Mexico for the conference of the Christian Democratic International (CDI) where they met with top officials of the US Department of Defense and Department of State. Two days before that or on November 20, 2001, President Arroyo was on an official visit to the United States where she met and held a joint press conference with US President George W. Bush. De Venecia said that the Philippine government could try to dissuade the Americans

from proceeding to list the CPP-NPA-NDFP provided the NDFP agrees to a "Final Peace Agreement" with the GRP within three months.

De Venecia's call, and his offer of a peace agreement, was certainly unexpected.

At the time of de Venecia's phone call on November 22, 2001, the September 11, 2001 attacks and the heightened militarism and war hysteria on the part of the US and its allied governments that it begot have already clouded the formal peace negotiations between the GRP and the NDFP. Formal peace negotiations have in fact been put on recess immediately after 9/11.

A brief review of the peace negotiations under the Arroyo government is worth considering. Following a successful Solidarity Conference held in Manila on April 17, 2001 which was attended by Arroyo herself and members of the GRP and NDFP panels, the Arroyo government held formal talks with the NDFP in Oslo, Norway on April 27-30, 2001 and then on June 10-13, 2001. The GRP panel, however, decided to leave the negotiating table on June 13, 2001 following the reported killing of Representative Rodolfo Aguinaldo by the NPA.

Initially the GRP panel intended only a brief symbolic protest over the Aguinaldo killing by walking out of the negotiating table on June 13, 2001, but this protest became a prolonged change of tack for the Arroyo government. This change of approach towards negotiations with the NDFP may be attributed largely to then Defense Secretary Angelo Reyes. The Arroyo Cabinet approved the resumption of formal talks on September 21, 2001 in Oslo and conveyed the said action to the NDFP panel as well as the Norwegian government which accordingly made arrangements for travel and accommodation of delegates. Incidentally, Reyes was not around when this decision was made. This was because he went to the US immediately after the September 11, 2001 attacks for reasons that are still not clear. On his return to the Philippines, he opposed the Cabinet decision to proceed with formal talks with the NDFP on September 21, 2001. Persuaded, Arroyo called off the scheduled resumption of formal talks for September 21, 2001, and announced that henceforth communication with the NDFP shall be in the nature of informal "back-channel" talks only.

As a result of this new policy, government negotiators and consultants conducted only informal talks with their NDFP counterparts from November 15-19, 2001 in Utrecht.

Significantly, the idea of a "Final Peace Agreement" was not even broached by government negotiators to their NDFP counterparts when they met in Utrecht from November 15-19, 2001. In the said back-channel meetings, the government offered the implementation of certain socio-economic and development projects and a ceasefire in lieu of the adoption of a Comprehensive Agreement on Social and Economic Reforms (CASER) earlier agreed upon. The government's offer of socio-economic and development projects plus a ceasefire seemed to have been satisfactory to the Moro Islamic Liberation Front (MILF) which was also holding its own peace negotiations with the GRP. It was not, however, favorably received by the NDFP which insisted in the adoption of a CASER in accordance with previous agreements with the GRP, viz., the Joint Agreement<sup>[11]</sup> signed in Brussels in 1995 that provided for a four-stage peace process culminating in cessation of hostilities and disposition of forces.

In the said 1995 Brussels agreement, the parties intended, among others, that the four substantive agenda, viz., (1) respect for human rights and international humanitarian law, (2) social and economic reforms, (3) constitutional and political reforms, and (4) cessation of hostilities and disposition of forces, be dealt with sequentially. Through the period of the administration of President Fidel Ramos, the parties have worked on and agreed upon a Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law (CARHRIHL). The CARHRIHL was signed by President Joseph Estrada before his government eventually decided on an all-out war policy against the CPP-NPA and the MILF, and suspended all peace negotiations. Incidentally, Secretary Reyes was then Estrada's AFP chief of staff who presided over the implementation of the total-war policy.

The NDFP hoped to obtain implementation of the provisions of the CARHRIHL and make progress during the term of Arroyo towards the adoption of a CASER, which was the second substantive agenda.

Speaker de Venecia's "Final Peace Agreement", which dispenses with the CASER as well as a comprehensive agreement on political and constitutional reforms, did not readily fit into the framework of this 1995 Brussels agreement and appeared curious at best.

However, Prof. Sison did not immediately dismiss de Venecia's ultimatum for the NDFP to enter into a "Final Peace Agreement" with the GRP within three months and asked him instead to come to Utrecht to discuss the matter personally. De Venecia agreed. From Mexico, he returned to the Philippines before proceeding to the Dutch city on November 30, 2001. Secretary Eduardo Ermita, the Presidential Adviser on the Peace Process, Secretary Silvestre Bello III, the head of the GRP panel, and Secretary Silvestre Afable of the Presidential Management Staff, joined the de Venecia mission. They carried with them a two-page draft of a "Final Peace Agreement".

As it turns out, the so-called "Final Peace Agreement" had nothing to offer in terms of addressing the root causes of the armed conflict. It contained virtually nothing on social and economic issues, like agrarian reform and national industrialization, nor on political and constitutional reforms. Instead, it called upon the NPA to lay down their arms. It was in essence a surrender agreement.

### **Threats of Direct US Military Engagement with the NPA**

At the same time that Philippine government officials were pressuring the NDFP negotiators, through Prof. Sison, with the threat of an "FTO" designation by the US to accede to a surrender agreement, threats of direct military engagement with the NPA by US troops in Philippine territory were also made.

On January, 2001, US Senator Stephen Brownback called the Philippines "the second front on the war on terror". That about sums up why the US military launched "Operation Enduring Freedom-Philippines" also known as Balikatan 02-1 in 2001 which made the Philippines then the site of the largest US overseas troop deployment outside Afghanistan.

While US troops were then directly targeting the bandit Abu Sayyaf group in Basilan ostensibly to rescue American citizens being held hostage by the bandits, Secretary Reyes did not make secret of the intention to make the NPA the "next target" of US troops in the Philippines after the Abu Sayyaf. Secretary Reyes made such a statement in January 2002. True enough, after Balikatan 02-1, US troop deployment under the succeeding Balikatan 02-2 the following year were made in Central Luzon, away from the lairs of the Abu Sayyaf and into territories effectively controlled by the NPA.

To top it all, US State Secretary Collin Powell himself visited Manila in August 2002. Many analysts believe this visit was intended to seal the agreement between Manila and Washington called the Mutual Logistics Support Agreement (MLSA), the final complement to the Visiting Forces Agreement (VFA) that reintroduces in Philippine law the notorious extraterritorial privileges and virtual basing rights of US forces and facilities in the Philippines.

### **U.S. Terrorist Listing of the CPP-NPA and Sison**

On August 9, 2002 shortly after Collin Powell's arrival in Washington, he made the announcement that the US State Department has designated the Communist Party of the Philippines/New People's Army (CPP/NPA) as an FTO. Three days thereafter or on August 12, 2002, Jose Maria Sison was tagged a "Specially Designated Global Terrorist" (SDGT).

The blacklist containing individuals considered Specially Designated Global Terrorists (SDGTs) is being maintained by the US Treasury Department's Office of Foreign Assets Control (OFAC) which implements provisions of various laws including the AEDPA that concerns financial institutions.

Section 302 of the AEDPA requires financial institutions to block all funds in which FTOs or their agents have an interest (Section 302, AEDPA). Executive Order No. 13224 blocks property and prohibit transactions with individuals or entities "who commit, threaten to commit, or support terrorism".<sup>[12]</sup> Implicit, therefore, in the designation of Sison in this list is a conclusion by the designating authority that he is an "agent" of an FTO or one who commits, threatens to commit or supports terrorism.

Under the said executive order, the designating authority is the US Secretary of State and, in certain cases, the US Secretary of the Treasury. In Section 1(d) of E.O. 13224, provision is made for the designation of an individual as a terrorist by the US Secretary of State in consultation with friendly foreign governments.

Prof. Sison appears in the OFAC list together with a host of some 300 individuals and entities. Included in the OFAC list are various sorts of organizations. Not only political organizations and armed groups are listed, but also banks and financial intermediaries, aid and charitable organizations, telephone companies, internet and computer companies, construction firms, and curiously enough, a bakery (viz., the al-Hamati Sweets Bakeries of Yemen).

### **Lack of Real Possibility for Judicial Review under US Law**

As I mentioned earlier, the AEDPA provides that the designated organization may not contest the "terrorist" label in any forum in the US unless it obtains a delisting by filing an appeal with the US Court of Appeals for the District of Columbia within 30 days from publication of its designation in the Federal Register.

In actual fact, appeals for delisting of designated FTOs have been brought by some such designated groups before the US Court of Appeals for the District of Columbia on the ground, among others, that due process has not been observed when the Secretary of State made the designation. The leading cases on the matter, *People's Mojahedin Organization of Iran vs. Albright* and *Liberation Tigers of Tamil Eelam vs. Department of State* jointly decided on June 25, 1999 show that the US court does not provide any meaningful judicial review of the blacklisting process if only to vindicate the interests of fair play and due process.

In the said cases, the US Court of Appeals held that, in the first place:

"A foreign entity without property or presence in this country (US) has no constitutional rights, under the due process clause or otherwise."

Secondly, the court emphasized:

"Of the three findings mandated [by law for a designation to be made], the third – '(c) the terrorist activity of the organization threatens the national security of the US' – is non-justiciable. [I]t is beyond the judicial function for a court to review foreign policy decisions of the Executive Branch."

On the basis relied upon by the Secretary of State in designating the said organization, the court remarked:

"[T]he records consists entirely of hearsay, none of it was ever subjected to adversary testing, and there was no opportunity for counter-evidence by the organizations affected. [However,] [a]s we see it, our only function is to decide if the Secretary, on the face of things, has enough information before her... Her conclusion might be mistaken, but that depends on the quality of the information in the reports she received—something we have no way of judging."

Prof. Sison's situation is even more difficult than that of the designated FTOs mentioned. A designated FTO's fictive right to seek judicial review of their designation is at least provided for in the AEDPA. An individual or entity designated in the OFAC list for supposedly being linked to an FTO do not seem to have such a recourse at all.

This is especially unfair to Prof. Sison. The CPP and the NPA, both underground revolutionary organizations, are not known to maintain any fund or property in the United States, for which reason they have not bothered to file a case and subject themselves to the jurisdiction of a US court. Prof. Sison, in contrast, is a litigant in a well-known civil case in the United States Court System, the Human Rights Litigation against the Estate of Marcos in which Prof. Sison, after a lengthy procedure, obtained a favorable judgment against the estate of former dictator Ferdinand Marcos alongside some 10,000 other victims of the martial law regime. That money judgment which is intended as compensation for the violation of his human rights during the martial law regime is now threatened with seizure by the US government by virtue of his designation as a "terrorist". And he is deprived of judicial remedies under the US blacklisting laws to protect his right thereto.

### **Part Three: Consequences of the Terrorist Listing of Sison**

The full and actual consequences for his human rights of the unchallengeable designation of Prof. Sison as a "terrorist" under US law, however, cannot be appreciated without inquiring into the subsequent events.

#### **Dutch Listing of NPA and Sison**

The US designation not surprisingly started a chain of similar actions against Prof. Sison by Western governments allied with the US in its so-called "war on terror". The Netherlands government listed the NPA and Prof. Sison in its "terrorist" blacklist on August 13, 2002, just a day after Prof. Sison's US designation. The government of the United Kingdom listed him in August 15, 2002; the Canadian government followed suit in August 29, 2002; and then also Australia.

It is noteworthy that the very text of the Dutch Sanctions Regulation which places Prof. Sison on the Dutch blacklist refers to President Bush's Executive Order No. 13224 regarding the US listing of Prof. Sison. Not only is Bush's Executive Order No. 13224 used to justify the Dutch listing of Prof. Sison, the Dutch government also considered Bush's order as the Netherlands mandate to get Prof. Sison and CPP-NPA on the European Union "terrorist" blacklist.

The Dutch government would later say that the restrictive measures imposed on Prof. Sison within the territory of the Netherlands proceed from its international obligations to the European Union and, even more incredibly, to the United Nations. But it could not be denied that the Dutch listing of Prof. Sison was prior to the EU listing, and that the Netherlands did not wait for the EU listing before subjecting Prof. Sison to sanctions.

In listing the CPP-NPA and Prof. Sison, the Netherlands was not merely following its international legal obligations but taking its own initiative in support of the Bush government's agenda against Prof. Sison. It is simply incredible for the Netherlands government to invoke its so-called obligation to the United Nations under UN Security Council Resolution No. 1373. Res. 1373 which provides for UN member states' general obligations against terrorism in the wake of the 9/11 attacks does not establish a list of "terrorists", and does not oblige states to place anyone in particular under sanctions similar to the "targeted" sanctions imposed on Osama bin Laden, the Al-Qaeda and persons and entities linked to them by virtue of UN Security Council Resolution 1267.<sup>[13]</sup> On the contrary, what Res. 1373 as well as 1267 do require states to do is "bring proceedings" against suspected "terrorists" within their jurisdiction<sup>[14]</sup> and punish them presumably only after according them due process of law. The requirement that the persons and entities against whom states should "bring proceedings" must be within their jurisdiction confirms the imperative both to respect the principle of sovereignty and the due process rights of the accused.

The Dutch Sanction Regulation Against Terrorism 2002 III imposed the following sanctions on Prof. Sison under Article 2 thereof:

- "1. All means which belong to [Prof. Sison] will be frozen;
- "2. It is forbidden to provide financial services for or on behalf of [Prof. Sison];
- "3. It is forbidden to place direct and indirect means at the disposal of [Prof. Sison]."

By "means" is meant all "assets of any nature" including "bank credits, travel cheques, postal orders, shares, bonds, bills of exchange, credit papers and other stocks" and by "financial services" is meant "insurance services and insurance-related services, and all bank services and other financial services".

Only one exception is provided under Section 3 of the Sanctions Regulation, to wit:

"In agreement with the Minister of Foreign Affairs, the Minister of Finance can on request grant exemption of the bans mentioned in Article 2."

As explained in the explanatory note that accompanies the Sanction Regulation, Article 3 "leaves open the option to provide exemption for exceptional cases (for example for humanitarian reasons)".

Following the issuance of the Dutch Sanctions Regulation, the Utrecht Municipality issued a letter dated September 10, 2002 notifying Prof. Sison of the termination of all benefits that he has been receiving therefrom starting August 15, 2002 in compliance with the Sanctions Regulation. In the same letter the Utrecht Municipality informed Prof. Sison that it should make a request to the Dutch Minister of Finance for a lifting of the prohibitions under the Sanctions Regulation to allow the Utrecht Municipality to provide Prof. Sison anew with the benefits on humanitarian grounds. Prof. Sison made such a request, and on October 4, 2002, the Dutch Ministry of Finance allowed the Utrecht Municipality to give Prof. Sison anew his benefits under the Regulations for Asylum Seekers (ROA-benefits) on humanitarian grounds. However, by the end of October 2002, following Prof. Sison's designation in the "terrorist" blacklist of the European Union, Prof. Sison's benefits were again withheld by the Utrecht Municipality.

### **Ople's Mission to Europe**

The "terrorist" listing of Prof. Sison by the Council of the European Union was accomplished through the combined efforts of the Dutch government and the Philippine government who both admitted to lobbying the various European foreign ministers for this purpose. The then Secretary of Foreign Affairs Blas Ople in a press statement said he led a special diplomatic mission sent by President Arroyo and which included peace negotiators of the Philippine government from October 14 to 21, 2002 to six European countries, viz., Germany, Sweden, Norway, Denmark, Belgium and Spain. He held bilateral dialogues with the foreign and justice ministries of the said EU member countries. When the EU Council Decision listing Prof. Sison as a "terrorist" was published on October 30, 2002, Secretary Ople quickly ascribed credit for the "diplomatic victory" for the Philippine government on his own mission.

It is also notable that Ople's press statement linked his mission with the "Final Peace Agreement" when it said "the purpose of this diplomatic initiative was to bring pressure on the Communists to agree to go back to the negotiating table and discuss a comprehensive peace settlement that could lead to the end of the decades-old armed struggle to overthrow the Philippine state by force of arms. xxx We want them to lay down their arms and transform themselves into a peaceful political party capable of competing in the constitutional arena, in peaceful and democratic elections."

Thus, it could not be denied that Prof. Sison's tagging served principally a political purpose, in fact, a specific ill-intentioned purpose, viz., to bring enormous pressure to bear on the NDFP to capitulate to the Philippine government in the peace negotiations.

## **EU Listing**

What has this "diplomatic victory" for the Philippine government brought upon Prof. Sison?

Under the EU Council Common Position of 27 December 2001, the legal consequences of being blacklisted by the EU are as follows:

"Article 2. The European Community, xxx, shall order the freezing of the funds and other financial assets or economic resources of persons, groups and entities listed xxx."

"Article 3. The European Community, xxx, shall ensure that funds, financial assets or economic resources or financial or other related services will not be made available, directly or indirectly, for the benefit of persons, groups and entities listed xxx."

Pursuant to these provisions, the Dutch government froze the bank account of Prof. Sison which is jointly held with his wife consisting of the amounts received as social benefits totaling only 1,145.46 euros or approximately P50,000.00 and stopped paying his welfare benefits as a refugee. The Dutch government also stopped payments for his health insurance and third party liability insurance as well as payments for his house rent resulting in his receiving repeated notices to vacate his residence.

On May 23, 2003, the Dutch Central Organ for the Reception of Asylum Seekers (COA) informed Sison (1) that the Municipality of Utrecht has decided to "pass on the care and reception of" and "its mandate over" Sison to COA, (2) that COA decided that the "reception" of Sison "is ended", (3) that COA decided to terminate his "reception benefits" immediately, and (4) that he must vacate his house within three days or else ejection proceedings will be taken against him.

As we relate above, Sison was able to obtain a restoration of his benefits during the brief period from October 4 to October 30, 2002 on humanitarian grounds which was explicitly recognized in the Dutch Sanctions Regulation. With his terrorist listing by the Council of the EU, Prof. Sison's benefits were terminated once again and this time the Dutch authorities refuse to apply the humanitarian exception to Prof. Sison. It did not matter that Prof. Sison invoked the authority of the United Nations Security Council, who in its Resolution 1452 relating to the so-called UN Consolidated List involving persons and entities linked to Osama bin Laden and the Al-Qaeda have recognized that social benefits intended for the subsistence of a person are not included in the assets to be frozen as a result so-called "targeted" sanctions. It would indeed seem that persons like Osama bin Laden have more rights than Prof. Sison.

While the EU Council Common Position and the EU Council Decisions that placed Prof. Sison on the EU "terrorist" blacklist speak of "combating the financing of terrorism", what was frozen was not money intended for terrorism but money received for a person's basic subsistence. Social benefits, health insurance and third party liability insurance payments and payments for house rents intended for a person deprived of the right to seek employment cannot just be cut off without violating a person's right to life.

The terrorist listing of Sison thus represents an escalation of the assaults by the US, Philippine and Dutch governments on the human rights of Sison. With his terrorist listing, not only is his right to asylum under attack, his very right to life, a right that is non-derogable and may not be suspended by states under any circumstance, is now being targeted.

Prof. Sison is being deprived of means to live, a virtual death sentence handed down without nary a notice or trial to ascertain his defenses.

### **Sison's Cases before the European Court of First Instance**

Prof. Sison is of course fighting back. He thinks he has to exhaust all the judicial remedies theoretically available to him under all the labeling laws used against him because, with very little means to defend himself in public arenas where has been demonified, he is forced to take the judicial avenues to vindicate his name and his liberties.

Invoking his right to be informed of the charges against him and to confront his accusers, he has challenged the European Council before the Court of First Instance of the European Court of Justice based in Luxembourg to divulge the evidence, if any, which were used as bases for his inclusion in the EU "terrorist" list. The Council has claimed that these pieces of evidence were confidential and secret, and that the records relied upon by the Council have been returned to the states that supplied them, and then refused even to divulge the identity of the states that have provided the Council such records.

Prof. Sison has also instituted action against the Council of the European Union in the same court to have himself delisted. Prof. Sison's arguments involving the failure of the designating authority to accord due process to him before punitive measures are imposed upon him echo the arguments raised by the petitioners in the US Court of Appeals in the People's Mojahedin and Tamil Tigers cases, and a number of cases in the European Court of Justice brought by certain individuals aggrieved by the imposition of "targeted sanctions" under UN Security Council Res. 1333.

In Prof. Sison's case for delisting, the Council of the European Union urges that a distinction be made between the effects of blacklisting and those of a criminal conviction, between sanctions or "restrictive measures" attendant to blacklisting and punishment or "punitive measures" imposed after a criminal proceeding. If this distinction is granted--the Council argues--then the due process rights applicable to persons accused of a crime need not be observed when designating persons in the blacklist. In other words, it is urged that Prof. Sison cannot invoke the due process rights of the accused because he is not accused of terrorism or of any crime for that matter, he is "simply" blacklisted.

Ironically, if the Council's arguments are accepted, then the situation of a person who is supposedly "merely listed" and not yet accused would in fact be worse than a person accused of the crime of terrorism. At least, the accused still has the right to an impartial tribunal or court. The blacklisted person is judged by executive ministers, not judges, who decide on the basis not of evidence and law but of political (foreign policy) considerations. At least the accused still has the right to examine the evidence and cross-examine the witnesses used against him, and to confront his accusers. The blacklisted person is designated on the basis of secret files, if any, and his accusers' identities are undisclosed. At least the accused has the right to present evidence in his defense. The blacklisted person such as Prof. Sison, subjected to a virtual death sentence, is judged before he is heard.

Surely, Atty. Matthieu Beys has a lot more to say about the cases of Prof. Sison before the European court because we have only merely scratched on the surface thereof.

What is clear is that the European court now, because of the cases filed by Prof. Sison therein, has a choice between replicating or repudiating in Europe the "American solution" adopted in the People's Mojahedin and Tamil Tigers cases where the designating authority was fully shielded from the scrutiny of a meaningful judicial review. The European court can chose to prolong the abuses against Prof. Sison's rights committed in the name of the fight against terrorist financing or vindicate the due process rights, the right to life and other human rights interests of Prof. Sison and other persons and entities wrongfully designated as "terrorists".

## Conclusion

Jose Maria Sison is not accused of the crime of "terrorism" in the Netherlands, in the United States, or in any part of the world. In fact, at the time of his listing, he is not accused of any crime or offense, not even a traffic violation, in any court of any of the countries that listed him as a "terrorist" including the Philippines.

Malicious allegations of criminal and terrorist activities have been hurled at him to justify denial of his right to asylum. None of these allegations have withstood judicial scrutiny in any Dutch court. In the more than one and a half decades that he has resided in the Netherlands, and although the Dutch government would claim in his asylum case that he has contacts with terrorists or that he directs terrorist acts from Dutch soil, the same government could not even initiate a criminal investigation against him.

And yet he is being punished, subjected to cruel restrictive measures as a publicly identified "international terrorist" not only in the territory of his host country but in virtually every liberal democratic country in the West.

This is made possible despite the lack of evidence against him through sheer legal black magic, that is, through such labeling laws (or more appropriately, "cursing" laws) as the United States' AEDPA, the EU Council Common Position No. 2001/931/CFSP, and Canada's Bill C-36 or the Anti Terrorism Law (Part II.1). These laws allow executive officials to publicly identify organizations and/or persons like Prof. Sison in an official blacklist of so-called "terrorists" or "international terrorists" without need of strictly adhering to judicial standards intended to protect such persons' or organizations' due process and other human rights. Through these labeling laws, the accused is first punished before he is heard, if he is heard at all.

Persons such as Prof. Sison, an unwanted political refugee, a "tolerated alien" whose mere presence in the Netherlands the latter considers offensive to the United States, are specially prone to the abuse of this labeling power. The perceived diplomatic interests of the Dutch government, the political tactic of the Philippine government in its negotiations with the NDFP, and the whims of the United States government converge to damn Prof. Sison. He is accused and punished by the very governments who have considered him an enemy from the start.

The challenge to human rights defenders is to prevent the human rights of persons like Prof Sison from being the casualty of these governments' pursuit of their narrow political and diplomatic objectives.#

---

*\* PILC is counsel for Jose Maria Sison in the Philippines, correspondent counsel for his cases in the European Court of First Instance, and legal consultant of the National Democratic Front of Philippines (NDFP) Negotiating Panel in peace negotiations with the Government of the Republic of the Philippines. This paper was originally intended to be delivered jointly by Judge ROMEO T. CAPULONG and Atty. JAYSON S. LAMCHEK.*

---

[1] Judgment of the Raad van State, February 21, 1995

[2] The Judgment of the Raad van State of February 21, 1995 reads as follows:

"Following article 15, first paragraph of the Aliens Law, foreigners who come from a land where they have valid reasons to fear persecution because of their religious or political belief or their nationality or because they belong to a certain race or to a certain social group can be admitted as a refugee.

"It is stated in the second paragraph of this article that admission cannot be refused except on serious reasons in connection with the general interest, in case the foreigner because of the refusal is immediately forced to go to a land as meant in the first paragraph." xxx

"xxx the defendant further is of the standpoint that even in case it would be supposed that the treaty is applicable to the appellant and the appellant becomes considered as a refugee, then still on the basis of article 15, second part of

the Aliens Law the appellant can be refused admission here as a refugee. Upon this the defendant in the contested decision subsidiarily supposed that the activities that by and on the authority of the appellant have and have been launched shall damage a serious interest of the Dutch state, to wit the integrity and credibility of Nederland as sovereign state, in particular in relation to its responsibilities to other states." xxx

"The Afdeling comes to the conclusion that the real danger of which the appellant fears, regarding inhuman or humiliating treatment or punishment [does away with] a "fair balance" as stated by the European Court for Human Rights in its judgment of 7 July 1989, RV 1989, 94 in the Soering case. Once there exists, according to the conclusion reached, real danger of inhuman or humiliating treatment or punishment, there is no space for a further balancing of interest between the interest of the appellant and the interest of the Dutch state stated by the defendant by non-admission, taking note of the absolute character of the prohibition in article 3 of the EVRM, which is stressed in the same decision in the Soering case.

"From here follows that the contested decision on this point cannot also be maintained." (Boldface and Italics supplied.)

[3] According to P. Boeles, Annotation in *Jurisprudentie Vreemdelingenrecht*, 12 Nov. 1997, pp. 46-47; and Jack Rodgers, "A Question of Law or Politics: The Sison Family Asylum Case," *Fortress Europe Circular Letter (FECL)* No. 56, December 1998

[4] B.P. Vermuellen, Annotation in *Rechtspraak Vreemdelingenrecht* 1997, pp. 29-34.

[5] P. Boeles, Annotation in *Jurisprudentie Vreemdelingenrecht*, 12 Nov. 1997, pp. 46-47.

[6] Jack Rodgers, "A Question of Law or Politics: The Sison Family Asylum Case," *Fortress Europe Circular Letter (FECL)* No. 56, December 1998.

[7] The term "global" in "global terrorism" is misleading when used in connection with the NPA because, in the US reports themselves, the NPA is described as exclusively operating within Philippine territory. The question thus arises as to the legal competence of the United States to legislate over entities exclusively operating within Philippine territory, particularly, to characterize such entities activities' as terrorism. In the peace negotiations with the Government of the Republic of the Philippine (GRP), the NDFP has raised the position that the US and other foreign governments usurp the sovereignty of the Filipino people by legislating over acts of the CPP-NPA in the Philippines in connection with the armed conflict therein. This position is recognized somewhat in the joint declarations of the NDFP and the GRP of February 14, 2004 (Oslo Joint Statement) and April 3, 2004 (Second Oslo Joint Statement).

[8] Pub L. No. 104-132 (1996). Ironically, despite the fact that the bombing was committed by American citizens, the AEDPA is largely directed at the problems of "alien terrorists" and "foreign terrorist organizations."

[9] There is an earlier US blacklist specific to "terrorists who disrupt the Middle East peace process". There is also a blacklist of foreign governments "supporting terrorism" and other specific lists. (See the website of OFAC.)

[10] The maximum penalty is ten years imprisonment. (AEDPA, Section 303(a)) "Material support or resources" is defined as "currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials." (AEDPA, Section 303(a)).

[11] Joint Agreement on the Formation, Sequence and Operationalization of the Reciprocal Working Committees (RWCs) also known as the RWC Agreement.

[12] Sec. 3 provides: "Sec. 3. For the purpose of this order: xxx (d) the term 'terrorism' means an activity that –  
(i) involves a violent act or an act dangerous to human life, property, or infrastructure; and  
(ii) appears to be intended –  
(A) to intimidate or coerce a civilian population  
(B) to influence the policy of a government by intimidation or coercion; or  
(C) to affect the conduct of a government by mass destruction, assassination, kidnapping, or hostage-taking."

[13] Contrast UN SC Res. 1373 with UN SC Res. 1267 (which does impose so-called "targeted" sanctions against a list of individuals linked to bin Laden and the al Qaeda). The following long digression is helpful:

### The United Nations list

There is still no universally agreed upon, or at least, UN-endorsed, definition of the "international crime" of "terrorism". UN member-states still debate, for example, on whether to include or exclude "national liberation movements" within the scope of the term "terrorism". Moreover, the reality of "state terrorism" also underscores the obvious double standard inherent in any definition that automatically excludes states from its coverage. Notwithstanding the lack of a conventional definition, certain states proceed to identify certain individuals and groups as exemplifying "terrorism", cloaking the political motivation for their actions with the dubious authority of so-called international experts and the alleged imprimatur of the United Nations.

Contrary to popular beliefs, the United Nations does not maintain a general list of terrorists in the same manner as the United States government. What has been referred to as the UN "consolidated list" is a list of individuals and entities who belong to or are associated with the Taliban government and the al-Qaeda organization of Osama bin Laden. The list is drawn up by a committee set up under Security Council Resolution No. 1267 adopted prior to the September 11, 2001 attacks which imposes economic sanctions on the Taliban government of Afghanistan for failing to surrender Osama bin Laden who was then facing indictments in the United States. The sanctions committee set up under Resolution No. 1267 was mandated by the Security Council under Resolution 1333 to identify individuals and entities who belong to or are associated with the Taliban government and the al-Qaeda so that "targeted sanctions" (as opposed to "blunt sanctions" applied to the Taliban government itself and are admittedly harming the civilian population more than the government) may be applied against these individuals and entities directly.

The sanctions committee is a body composed of 15 members who represent the 15 members of the Security Council. The body decides by consensus and refers disagreement to the Security Council that ultimately controls its decision.

Prof. Sison does not appear in this UN consolidated list. An individual or entity is placed in the UN list only by virtue of an alleged link with bin Laden or Al Qaeda. This limitation, however, has not prevented states from instituting counter-terrorist measures directed at suppressing dissident organizations and individuals on the basis of the most tenuous alleged links to bin Laden and Al-Qaeda.

By virtue of Res. 1267, 1333 and subsequent resolutions related thereto, member states of the UN are required to freeze funds and other financial resources and assets of the individuals and entities listed by the sanctions committee formed under Res. 1267. Member states are obliged to ensure that no such frozen funds or assets are made available to or for the benefit of such listed persons as well as any entities owned or controlled, directly or indirectly by such listed persons. Lastly, member states are called upon "to bring proceedings against persons and entities within their jurisdiction that violate the measures imposed xxx and to impose appropriate penalties."

[14] Again notice that the NPA, an entity that exists and operates exclusively within Philippine territory, is outside the jurisdiction of the Netherlands. Even under US common law and jurisprudence (*Pennoyer vs. Neff*, 95 US 714 (1878)), jurisdiction is an aspect of sovereignty and refers to judicial, legislative and administrative competence. Exercise of jurisdiction over an organization like the NPA which exists and operates exclusively within Philippine territory by the US, EU, UK, the Netherlands, Canada and Australia is indeed problematic in itself, leaving aside the question regarding the right to national liberation.