



大会

Distr.  
GENERAL

A/HRC/11/NI/4  
29 May 2009

CHINESE  
Original: ENGLISH

人权理事会  
第十一届会议  
议程项目 3

增进和保护所有人权、公民、政治、经济、  
社会和文化权利，包括发展权

菲律宾人权委员会 \* 提交的资料

秘书处的说明

人权理事会秘书处按照理事会第 5/1 号决议附件所载议事规则第 7 条(b)项的规定，谨转交附在后面的菲律宾人权委员会来文\*\*。议事规则第 7 条(b)项规定，国家人权机构的参与须遵循人权委员会议定的安排和惯例，包括 2005 年 4 月 20 日第 2005/74 号决议。

\* 国家促进和保护人权机构国际协调委员会赋予”A”类认可地位的国家人权机构。

\*\* 作为附件，仅以原文印发。

## **Annex**

### **Comments of the Commission on Human Rights of the Philippines on the Follow Up Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions**

The Commission on Human Rights of the Philippines (CHRP) is pleased to provide the Human Rights Council of its submission to complement the follow up report of Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Mr. Philip Alston.

The Commission continues to independently monitor all branches of government as to their compliance with international human rights obligations and calls for timely and proper action of all actors as proper to their respective mandates. The CHRP notes that all 3 branches of government have initiated policies and programs in the period from February 2007 to the present. Some have made some impact, others are stall, ignored or lacking in substance. The bottomline is that much more remains to be done by the Executive, Legislative and Judicial branches of government.

We take off on the observation reporting on CHRP's serious steps to begin investigation of unlawful killings.

#### ***The Davao Death Squad and other suspected EJK Cases***

The Commission has initiated a series of investigations on the Davao Death Squad. Going against the grain of public opinion particularly in Davao City, the Commission is still in the inquiry process regarding the pattern of killings in Davao. Witnesses and informants have been coming to the fore and provided the Commission with their statements. However, these witnesses continue to express their reservations in coming out in the open primarily because of the lack of confidence in the justice system and the lack of assurance that they will not be harmed in the process.

Public hearings have also been held on the shoot-outs involving police personnel in pursuit of suspected criminals, wherein police operations do not seem to follow rules of engagement. These are the so-called Parañaque and EDSA Shoot-outs, and the earlier RCBC killings.

Despite assurances from the Armed Forces of the Philippines' Chief of Staff and the Director-General of the Philippine National Police, there has been mixed cooperation from the various units of the uniformed services displaying a low regard for the legal processes, which could be another symptom of the culture of impunity within such services.

CHRP, in its monitoring mandate, is preparing an in-depth report on the various measures taken by government and civil society to address EJKs. Initial observations include:

- There remains a lack of movement in courts on individual cases of EJK (prosecuted as murders). This is a responsibility of the Judiciary, administered by the Supreme Court. In fact, it being one of the core competencies of the judiciary to hear and decide on criminal cases, the timely, fair, and independent trial and issuance of decisions on these cases could fairly be seen as the most significant role of the judiciary, even more than the initiatives on the writs of *amparo* and of *habeas data*.

- Judges cite clogged calendars, despite a Supreme Court Administrative Order for 60 days continuous trial. Many prosecutors actually prefer these delays because they feel they lack sufficient evidence for convictions. However, these delays, if not accompanied by continued search for evidence by investigators are mere travesties of justice depriving the accused and the victims' families of judicial hearing.
- Administrative Order No. 181, which instructs closer coordination of law enforcement and prosecution to respond to human rights cases including EJKs and Enforced Disappearances, has not been implemented and this means an initiative from the top leadership is being ignored by the lead agency tasked to undertake the implementation and monitoring of the International Covenant on Civil and Political Rights.
- The Office of the Ombudsman has not prosecuted or independently investigated any new cases of EJK since the Special Rapporteur's visit to the Philippines in 2007.
- Insurgency groups continue to commit their own human rights violations, including kidnappings and killings of civilians and non-combatants, such as teachers and humanitarian workers. The peace process between the government of the Philippines and muslim and communist insurgency groups are at a point where little progress is expected in the short term.

Also, CHRP noticed a rise in a new form of offensive against so-called enemies of the state, in the form of **legal harassment**, i.e. arrests and detentions without warrant and without filing of charges, filing of cases that eventually do not prosper for lack of substance. Militant groups attribute this strategy to the Inter-Agency Legal Action Group (IALAG) which, to date, has not been abolished. CHRP has issued an advisory regarding this trend and furnished copies to all relevant government agencies.

To ensure complementarity of investigation of cases and development of indicators including harnessing statistics on EJKs and other arbitrary deprivations of life, the CHRP has launched a new database system that is designed to issue reports on a quarterly basis, working towards issuance of monthly updates. This database, unfortunately, is not capable of adapting automatically the data in the previous database and therefore cumulative data including years prior to 2009 will not be possible until a special backwards encoding project is conducted. CHRP also needs technical personnel for this database.

### ***On the Inadequacy of the Witness Protection Program of Government***

While the Commission has undertaken witness protection on a case by case basis, the effort is confronted with serious lack of resources and its sustainability. A sustainable budget allocation for such a program has not been provided under the General Appropriations Act.

CHRP has been calling for a credible government witness protection program.

### ***On the Writs of Amparo and Habeas Data***

While the Supreme Court has promulgated the writs of *Amparo* and *Habeas Data*, current application has been wanting of implementation in respect of the witness protection and

remedies to ensure that government can be constrained to present accountability and address allegations of government-sponsored and/or tolerated killings.

Some members of the bench still do not fully comprehend or correctly implement the Writs of *Amparo* and of *Habeas Data*. This impacts the strength of the protective orders they could/would issue, e.g., by insisting on using the rules for the Witness Protection and Benefits Program law, rather than the provision under the Writ, the judge will not extend to the witness the urgent temporary protection.

The CHRP is engaged in a partnership with the Philippine Judicial Academy, applying some of the 25 million pesos from the Office of the President, training judges around the country on these two legal remedies to address and prevent extrajudicial killings and enforced disappearances.

A recent issuance of an NGO, Free Legal Assistance Group (FLAG), reported on its preliminary review of the effectiveness of the writ of amparo cases one year after its promulgation. Per such report, the writ remains unutilized or, perhaps, even, mis-utilized.<sup>1</sup>

The case of the Manalo Brothers<sup>2</sup>, is a window to a systematic practice of torture, enforced disappearance and extrajudicial killings in the Philippines. As the brothers stated, they have witnessed other disappeared persons who were also tortured while in detention, particularly the two University of the Philippines students, Karen Empeño and Sherlyn Cadapan. These persons were also said to have been killed and burned on site.

On 26 December 2007, the Court of Appeals, and sustained by the Supreme Court, granted the petition of the Manalo brothers for the Writ of *Amparo*. The Court required the Secretary of National Defense and the Chief of Staff of the Armed Forces of the Philippines to confirm in writing the current assignment of one of the respondents, as well to produce 'all medical reports, records, charts, report of treatment given to and medicines prescribed' to the Manalos. Lastly, the Military were ordered to produce the list of medical personnel, military and civilian who attended to the Manalo brothers from 14 February 2006 until August 2007.

The Commission, to date, has not received any information on the compliance of government in respect of the Supreme Court's production order.

Meanwhile, on 13 to 15 October 2008, the Commission, joined by Karapatan, conducted an inspection of the area alleged by the Manalo Brothers as a Philippine Army camp where they were held in captivity. Burned fragments of human bones, believed to be that of another disappeared, Manuel Merino, were excavated. The Commission is still evaluating the results of such inspection *vis-à-vis* the testimonies of the Manalo Brothers.

### ***On Ensuring Command Responsibility for Abuses***

The Commission has participated in deliberations of legislative proposals to address Command Responsibility. These are found in the bills on Anti-Extrajudicial Killings, Anti-Torture, Anti-

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<sup>1</sup> Free Legal Assistance Group, 'Implementation of the UN Special Rapporteur's Recommendations to Address ExtraJudicial Executions in the Philippines', 30 January 2009.

<sup>2</sup> Court of Appeals GR AMPARO No. 00001, 26 December 2007 and affirmed by the Supreme Court in GR. NO. 180906, 7 October 2008.

Enforced Disappearance and the Command Responsibility Act. All are still pending in Congress in various stages and not a single bill has reached the bicameral level. These measures contain proposed provisions on command responsibility, orders of battles and other related issues.

#### HR Legislative Agenda

<i>Proposed Legislative Measures</i>	<i>Proposed Provisions on Command Responsibility, Orders of Battle and other related issues</i>	<i>Status in the Legislature</i>
Anti-Extrajudicial Killings Act	Initially proposed sanctions of the death penalty, but has since been removed owing to objections by the CHRP and Human Rights groups	1st Reading in both Houses, Technical Working Group Level
Anti-Torture Act		Passed 3rd Reading in the House of Representatives (as of 6 March 2009), 2nd Reading in the Senate ( concluded the period of interpellation as of 20 May 2009)
Command Responsibility Act	Enumerating the responsibilities of a Military Commander or Superior and defining the circumstances that warrant the presumption of knowledge by a Military Commander or Superior	Filed in the House of Representatives and is being incorporated in the abovementioned bills.

The Commission, in the exercise of its mandate to 'monitor government compliance with International Human Rights Treaties' and 'recommend to Congress effective measures to promote human rights', has issued a Human Rights Legislative Agenda<sup>3</sup> [Annex A: Human Rights Legislative Agenda]

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<sup>3</sup> The HR Legislative Agenda utilizes core human rights treaties as basis for the harmonization of domestic laws with human rights standards and principles. The Human Rights Legislative Agenda has been offered to both the Legislature and the Executive to ensure the full protection of human rights through the enactment of laws, primarily looking to the passage of measures safeguarding the rights and ensuring effective remedies on the violations of the right to life, liberty and security of persons.

The Human Rights Legislative Agenda includes strengthening of the government's witness protection program. However, we share the observation of the FLAG such that 'not a single bill amends the penalty for interfering with witnesses' and current proposals deal with anti-corruption witnesses which will have little or no impact in squarely addressing witnesses in cases of extrajudicial, summary or arbitrary executions.

In various issuances, including its recent engagement with the Committee Against Torture, the Commission has urged Government to adopt the Human Rights Legislative Agenda, particularly measures relating to the promotion and protection of the right to life, liberty and security of persons and called on the President to certify the measures as urgent and wield its persuasive powers in both houses of the Legislature to pass the proposals.

With national elections looming in mid-2010, there is an imminent danger that these key bills, which have undergone much of the arduous legislative process, may die on the vine and have to be re-introduced in June 2010.

In addition, the Committee Against Torture has underscored, as proposed by the Commission, the unhampered and unrestrained access to all detention facilities to include those under the jurisdiction of the military<sup>4</sup>. This is because there had been instances where the Commission had been denied entry into detention facilities mostly under the jurisdiction of the military, citing reasons of national security and lack of clearance from the military hierarchy.

With government having demonstrated its ability to quickly pass human rights related bills, especially that abolishing the death penalty, the CHRP urges both Houses of Congress and also the Executive branch to add the Human Rights Legislative Agenda to the LEDAC's (Legislative and Executive Development Advisory Council) priority list and swiftly pass bills that are consonant with human rights standards and principles, and sign them into law.

### ***The CHRP Charter***

There are other concerns confronted by the Commission. These include addressing the recommendations of Mr. Alston. [Annex B: CHRP Comments on Alston Recommendations]. CHRP stresses that a sustainable response to the concerns of independence and effectiveness of Commission as an independent National Human Rights Institution in the Philippines will be squarely addressed with the passage of the CHRP Charter.

The Commission is thankful for the 25 million peso grant from the Office of the President, aimed to initially cover investigation and trainings on extrajudicial killings, enforced disappearances and other human rights violations which were initiated as a result of the Alston visit. The Commission, however, views this as a short term, unsustainable measure. The Commission's national budget share is a mere .02% of the total government allocation. There is a need to increase the operational budget of the Commission and include this increase in the annual appropriations therefore.

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<sup>4</sup> CAT/C/PHL/CO/2 14 May 2009 Advanced Unedited Version

The Commission has campaigned for the passage of the CHRP Charter that will primarily provide for the needed strengthened investigative powers of the Commission and fortify its organizational structure.

The Legislature is positively responding to the Commission's strengthening with technical working group meetings in progress in the Senate and the House of Representatives' Committee on Appropriations recently approving an additional initial funding of 300 million pesos or 6.25 million US dollars either for this year (in addition to its existing budget of 253 million pesos or 5.27 million dollars) or next year, for its implementation. [[Annex C: Draft CHRP Charter](#)]

With Congress initially expressing its intent to provide the Commission with prosecutorial powers, the Commission respectfully declined and presented an alternative of elaborating on the quasi-judicial powers of the CHRP in aid of its investigative powers as bestowed upon by the drafters of the 1987 Constitution. With strengthened investigative powers, among other mandates elaborated in legislative proposals, the 'teeth' being sought for the Commission will be provided. Legislators have crafted what has been called 'stand-by' prosecutorial powers for the Commission in the event of inaction or refusal by agencies of the state, particularly, the Department of Justice and the Office of the Ombudsman, to prosecute human rights violations the Commission has endorsed.

To this, we fervently seek the Human Rights Council's unequivocal inclusion of the passage of the CHRP Charter as an urgent measure by Government, to address the unfettered violations of human rights in the country.

## Appendix A

### Human Rights Legislative Agenda for the Fourteenth Congress by the Commission Human Rights of the Philippines

In a country where the rule of law is the framework, the importance of the existing laws in the Philippine legal system assumes a very vital role. More importantly, the kind and quality of laws passed by the legislature are of paramount importance.

The Commission on Human Rights, in its mandate to ‘*monitor Philippine Government compliance with international treaty obligations*’ and ‘*recommend to Congress effective measures to promote human rights*. . .’<sup>5</sup> presents its review of the past Congress and recommends a legislative agenda anchored on the obligations of the Philippines as a State Party to the seven core human rights treaties.

It is a general rule of International Law that a State Party to a treaty has the legal obligation to take legislative, administrative and other measures as may be necessary to enable it to comply with its treaty obligations.

The introduction of this legislative review and agenda aims to assist the Legislature in implementing the Philippine’s legal obligations to harmonize and translate within the domestic sphere its commitments to human rights standards and principles.

#### A Review of the 13th Congress

##### Laws passed

To date, the 13th Congress gave the Philippines around 86 laws, and counting, in their three-year period of legislation. This is an all-time low considering that its predecessor, the 12th Congress, boasts of 172 laws passed while the 11th Congress have 415 laws in their portfolio.

Rights-wise, of the laws enacted during the previous Congress eleven (11) directly respond to human rights and/or which are human rights relevant.

Notable human rights laws passed include RA 9344 or the “Juvenile Justice Law,” RA 9346 or the “Abolition of the Death Penalty Law” and RA 9372 or the much controversial “Human Security Act.”

Other rights relevant include the Rent Control Law (right to housing), the Handline Fishing Law (right to work), the Biofuel Law (right to environment), the Automated Election Law (right to suffrage), the Law amending the Urban Development Housing Authority (right to housing), the Law Redefining the Term ‘Veteran’ (right of elderly persons) and the recently passed Hospital Detention Law (right to health care). Finally, a Law on a Standby Fund for The Clean Up of the Guimaras Oil Spill, for the Relief Operations for the Victims of the Eruption of Mayon Volcano, and for the Emergency Repatriation Fund to be Used for the Repatriation, Evacuation and Relief of Overseas Filipino Workers and Other Filipino Nationals were likewise passed.

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<sup>5</sup> Article XIII, Section 18, 1987 Philippine Constitution



The rest of the laws passed cannot be said to directly reflect human rights principles and standards: of laws passed, most provide for charters of cities referring to a change from municipality to component city; second on the list are laws on legislative franchises; the third refer to laws on the conversion of municipal roads to national roads; fourth on laws on the creation of additional courts and laws on the amendment of the National Internal Revenue Code; fifth were on laws on the apportionment of legislative districts and laws on the conversion of schools; then on laws granting Philippine citizenship, laws creating local holidays and laws on budget; finally, one (1) law apiece for the following subjects – on the reorganization of the Public Attorney's Office, special purpose vehicle law, amending the Bases Conversion Development Act, rationalizing the composition of the National Labor Relations Commission, fixing the regular election for ARMM, resetting the barangay and sangguniang kabaatan elections, tax amnesty, creating additional ranks in the Armed Forces of the Philippines and on accretion of land in favor of a certain municipality.

We would also like to give emphasis on the failure of the 13th Congress to timely enact the General Appropriations Act for the yearly budget of the government. Such failure results in the re-enactment of previous budgets detrimental to the regular operations of the different government agencies which have to cope with meager resources vis-à-vis growing responsibilities and tasks.

### **Bills Proposed**

A look at the proposed bills pending with the different committees of both houses of Congress would show a great deal of significant laws on human rights which have not passed successfully through the legislative mill.

In the House Committees on Human Rights and Justice alone, such include bills on anti-torture, internal displacement, right to privacy, freedom of expression, peaceful assembly and petition for redress of grievances, CHRP strengthening, creation of human rights resource centers nationwide, compensation to Marcos victims and to non-combatants, rights of the accused under custodial investigation, rights of the accused from public display, the Philippine statute on crimes against international humanitarian law, enhancing the administration of the juvenile justice system, defining the crime of pedophilia, provision of separate cells for female prisoners and providing for a national ID system, among others. There was even a bill on the prohibition on human cloning.

Interestingly, seven (7) bills on human rights education include that of human rights awareness program to the media, mandatory human rights education in all public and private schools and mandatory and continuing human rights education to barangay tanods, to officers, members and trainees of the AFP, PNP, NBI and other law enforcement agencies, to officials and employees of the executive, legislative and judicial branches of government including GOCCs and LGUs.

In other Committees we see bills such as, *inter alia*, women and gender education in the workplace, expanding the prohibited acts of discrimination against women on account of sex, special protection and provisions for female employees and mothers, non-discrimination against the third sex, batas kasambahay, oil and marine pollution and other environment related bills, against child abuse and child exploitation, on persons with disabilities.

On the other hand, these legislative proposals need not lose their relevance for they may be enriched and re-proposed in the present Congress especially those aimed at improving the human condition which is the heart of the human rights legislative agenda.

### **Proposed Human Rights Legislative Agenda**

Thus, under the mandate of the Constitution given to the Commission on Human Rights “to recommend to Congress effective measures to promote human rights,” we are submitting the proposed Human Rights Legislative Portfolio for the 14th Congress, to wit:

*On Strengthening National Human Rights Institutions under the Paris Principles:*

1. CHRP Charter
2. Development and Human Rights

*On the International Convention on Civil and Political Rights (ICCPR):*

1. on Anti-enforced Disappearance
2. on Internal Displacement
3. on Extra-judicial killings
4. Compensation to Human Rights Victims
5. on the Rights of the Accused particularly on the Prohibition of the Presentation/Public Display of Persons Accused
6. Amending BP 880 or the Law on Public Assembly
7. on the Enforcement/Operationalization of Command Responsibility
8. on a Unified Penitentiary System Under One Agency
9. Right to Suffrage of Detained Persons

*On the International Covenant on Economic, Social and Cultural Rights (ICESCR):*

1. Cheaper Medicines Bill<sup>6</sup>
2. on Human Rights Education
3. on Environmental Protection
4. On a Framework Law on the Right to Food

*On the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (CAT):*

1. Anti-torture and Other Cruel, Inhuman or Degrading Punishment or Treatment

*On the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):*

1. Non-discrimination Laws on Women
  - ⇒ Inclusion of a Definition of Discrimination in Line with Article 1 of the Convention on the Elimination of Discrimination Against Women, Encompassing Both Direct and Indirect Discrimination, in National Legislation
  - ⇒ Repeal of the Marital Infidelity Provisions in the Revised Penal Code
  - ⇒ Amendment of Articles 96 and 124 of the Family Code
  - ⇒ Repeal of Article 351 of the Revised Penal Code on Premature Marriages
  - ⇒ On Night Work Prohibition under Article 130 of the Labor Law

<sup>6</sup> We take note of the passage of the instant bill on April 29, 2008 as Republic Act No. 9502 or the “Universally Accessible Cheaper and Quality Medicines Act of 2008”

2. Enactment of a Comprehensive Legal Framework Pertaining to Gender Equality: The Magna Carta of Women
3. Decriminalization of Prostitution
4. Improvement of the Reproductive Health Rights for Women
5. Legislation which Allows Divorce, Allows Women to Remarry After Divorce and Grants Women and Men the Same Rights on Marriage
6. Amendment of the Provisions of the Muslim Personal Laws which Permit Marriage of Girls Under the Age of 18, Polygamy and Arranged Marriages (also under CERD)

On the Convention on the Rights of the Child (CRC):

1. Enhancing the Administration of the Juvenile Justice System
2. Anti-Child-Pornography Law
3. Anti-Corporal Punishment Law
4. On a Law Increasing the Age of Sexual Consent

On the Convention on the Elimination of All Forms of Racial Discrimination (CERD):

1. on Anti-discrimination Based on Racial Consideration
2. Affirmative Action Proposals for Inclusion of Minority Groups

On the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW):

1. Amendment of the Magna Carta for Migrant Workers

On the Convention on the Rights of Persons with Disabilities (CPWD):

1. Access to Justice of Persons with Disabilities

Other Relevant Human Rights Issues:

1. Strengthening the Human Rights Clearance System to Include All Employees of All Branches of government
2. Strengthening the Witness Protection, Security and Benefit Program
3. Strengthening the Barangay Human Rights Action Centers Nationwide
4. International Humanitarian Bill (including universal jurisdiction)

Recommendations for Signing/Ratification of the following International Human Rights Instruments:

1. Second Optional Protocol to the ICCPR (OP2-ICCPR)<sup>7</sup>
2. Optional Protocol for the Convention Against Torture (OPCAT)
3. International Convention on Enforced Disappearances
4. International Criminal Court or the Rome Statute
5. Convention on the Protection of the Rights of Persons with Disabilities<sup>8</sup>
6. Optional Protocol to the Convention on the Protection of the Rights of Persons with Disabilities

## **A Look Forward at the 14th Congress**

With the fresh mandate that constitutes the Fourteenth Congress of the Philippines it is with great expectation that the present crop of legislators will be more receptive to the protection

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<sup>7</sup> We note the recent accession of the Philippines to OP2-ICCPR on November 20, 2007

<sup>8</sup> We note the signing of the CPWD on September 25, 2007 and its ratification on April 15, 2008

and promotion of human rights. It is believed that the culture of impunity in the country can greatly be reduced if laws are in place for the protection of the people. In particular, the consciousness of the role of legislature vis-à-vis the State obligations to harmonize and translate the provisions of the seven core human rights treaties giving due recognition to the Constitutional mandate:

“The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequities and remove cultural inequalities by equitably diffusing wealth and political power for the common good.”<sup>9</sup>

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<sup>9</sup> Article XIII, Section 1, Ibid.

## **Appendix B**

### **Comments on the recommendations in the Alston report pertaining to the CHRP**

**Recommendation:** The CHRP has done excellent report work in the Sulu archipelago, and it should improve its capacity to deploy personnel for monitoring and protection as soon as military operations commence. (par. 35, A/HRC/8/3/Add.2)

**Comment:**

- a) The CHRP has institutionalized an integrated Capability Building Programme for its personnel complement. Hence, in 2007 there were six (6) series of capability building/trainings implemented, aimed at enhancing the knowledge and skills of CHRP Investigators, Lawyers, Security Officers and other staff in the handling and investigations of human rights cases, particularly extrajudicial killings and enforced disappearance.
- b) In relation to the issue on enforced disappearance in the country, the CHRP held a 3-day National Forum on the Convention for the Protection of All Persons from Enforced Disappearance in 2007, in Manila. This was participated by CHR key officers, investigators and lawyers, and other stakeholders from both government and non-government organizations. This national forum was preceded by a one-day forum held in Davao City, Tacloban City and Legaspi City.
- c) Taking into account the difficulties/hindrances encountered in the investigations of the investigations of extrajudicial killings and enforced disappearances, the CHRP also developed 3-day Training Course on “The Intelligence Process in the Realm of Human Rights Investigations”, which was implemented in three batches in March and April 2008.
- d) There were also orientations/seminars on the new rules on the Writ of Amparo and the Writ of Habeas Data new legal remedies adopted by the Supreme Court, which can be availed of in extrajudicial killings and disappearance cases.
- e) CHRP also developed a Primer on The Right of All Persons to Protection from Enforced Disappearance. It is now for distribution.
- f) CHRP Regional Offices have been given additional financial resources out of the 25 million peso special fund granted by the Office of the President, for the speedy/exhausted investigation/reinvestigation of cases involving extrajudicial killings and enforced disappearances. CHRP Regional Offices have already identified the list of such cases and have deployed Investigators/Lawyers to pursue further investigations.
- g) CHRP Regional Offices have Investigating/Monitoring Teams, ready to be deployed anytime for the purpose of monitoring situations in areas where military operations are to take place/taking place/have taken place. The duty of the teams include linkages and coordination with stakeholders concerned.

**Recommendation:** The resources must be devoted to ensure the effectiveness of the investigations. (par. 62, A/HRC/8/3/Add.2)

**Comment:**

It is a matter of policy and practice that the CHRP shall give highest priority in the use of its resources in the delivery of human rights protection services, particularly investigation and investigative monitoring.

**Recommendation:** Prosecutorial powers of the CHR. The proposal's risks outweigh its benefits. First, there are already other organs responsible for prosecuting cases xxx. To give the CHRP prosecutorial powers would not only be redundant but would compromise a responsibility held by the CHRP: to monitor all of these other organs for human rights compliance. Second, while a grant teeth, it would also increase the security risks faced by its investigators and witnesses. (par. 62, A/HRC/8/3/Add.2)

**Comment:**

The Third Commission did not favor the grant of prosecutorial power to the Commission on Human Rights. So does the Fourth Commission. Primarily, because the prosecution of criminal cases (to include those resulting from acts of human rights violations), under the law, is under the direct control of the Prosecution. Should the CHRP be vested with prosecutorial power, it will compromise its independence as a national human rights investigation as the Department of Justice, which is under the Executive Branch, will now exercise control in the prosecution of cases by the CHRP. This will also affect the CHRP's independence and effectiveness in monitoring Government's compliance with international human rights treaty obligations.

This is subject, however, to the authority vested the CHRP under the new law – the Human Security Act, wherein the CHRP has the power to investigate as well as prosecute cases involving civil and political rights violations in relation to the implementation of said law.

**Recommendation:** Improved monitoring mechanisms are necessary.

**Comment:**

CHRP developed the Martus Executive Information System, with Modules on Investigation, Jail Visitations and Human Rights Education. This is aimed to improved current monitoring mechanisms. Thus, the development of the standard monitoring system, standard classification of human rights cases pursuant to human rights treaties to which the Philippines is a State Party. Further, this will ensure easy public access to information on human rights cases handled by the CHRP.

CHRP officers/personnel underwent training on the application/use of the Martus Executive Information System. On 26 January 2009, the Martus system was officially launched. One challenge is that it will take time to encode data from past cases in the new system, to enable the CHR to generate cumulative reports.

## **Appendix C**

Republic of the Philippines

HOUSE OF REPRESENTATIVES

Quezon City, Metro Manila

FOURTEENTH CONGRESS

Second Regular Session

House Bill No. \_\_\_\_\_

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**Introduced by Representatives Tañada III, Hontiveros, Lagman, Sandoval, Escudero, Mangudadatu, Joson, Romulo, Golez, Ilagan, Tupas, Jr., De Guzman, Zialcita, Abaya, Roxas, Climaco, Barzaga, Briones and Garay**

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### **AN ACT**

### **STRENGTHENING THE COMMISSION ON HUMAN RIGHTS, AND FOR OTHER PURPOSES**

*Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

*Section 1. Title.* - This Act shall be known as the "Commission on Human Rights Act of 2009".

*Sec. 2. State Policy on Human Rights.* - The State values the dignity of every human person and guarantees full respect for human rights. It shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity.

*Sec. 3. Definition of Terms.* - For purposes of this Act, human rights shall include those found in Article III of the Constitution and those affirmed and recognized by the State in the following international covenants: the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights (1976); and the International Covenant on Economic, Social and Cultural Rights (1976), and all other international instruments on human rights to which the Philippines is a signatory.

## **I. THE COMMISSION ON HUMAN RIGHTS**

### **A. The Chairperson and Members**

*Sec. 4. The Commission, Composition and Qualifications.* - The Commission on Human Rights, also known as the Commission from hereon, is a collegial body and shall be composed of

a Chairperson and four (4) Members who shall possess the following qualifications:

- a) Must be natural-born citizens of the Philippines;
- b) Must be at least thirty five (35) years of age at the time of their appointment, with proven integrity and competence;
- c) Majority of whom, including the Chairperson, must be members of the Philippine Bar who have been engaged in the practice of law for at least five (5) years;
- d) Must have an understanding of human rights protection, promotion and advocacy;
- e) Must not have been candidates, including party-list nominees, for any elective position in any national or local elections, excluding barangay elections, immediately preceding their appointment.

*Sec. 5. Appointment and Term of Office.* – The Chairperson and Members shall be appointed by the President for a term of seven (7) years without reappointment. Of those first appointed under this Act, the Chairperson shall hold office for seven (7) years, two (2) Members for five (5) years and the other two (2) Members for three (3) years, all without reappointment. In no case shall any member be appointed, re-appointed or designated in a temporary or acting capacity.

The term of the Chairperson and Members of the Commission shall start on the day immediately after the end of the previous term, regardless of the date of appointment. Appointment to any vacancy occurring during the term shall be only for the remaining portion of said term.

*Sec. 6. Prohibition and Disqualification.* - The Chairperson and Members of the Commission shall not, during their tenure, hold any other office or employment. Neither shall they engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of their office, nor shall they be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege, granted by the Government and its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations or their subsidiaries. They shall directly avoid conflict of interest in the conduct of their office. They shall not be allowed to appear or practice before the Commission for one (1) year following their cessation from office.

No spouse or relative by consanguinity or affinity within the fourth civil degree and no law, business or professional partner or associate of the Chairperson or Members may appear as counsel or agent, appearing for or on behalf of the Chairperson or Members for pecuniary interest, on any matter pending before the Commission or transact business directly or indirectly therewith.

The disqualification shall apply during the tenure of the official concerned and one (1) year thereafter.

*Sec. 7. Disclosure of Relationship.* – It shall be the duty of the Chairperson and Members to make under oath to the best of their knowledge a public disclosure of the identities of, and their relationship with the persons referred to in the preceding section. The disclosure, which shall be



in writing, shall be filed in the Office of the Ombudsman after the appointee assumes office and every year thereafter. The disclosures made pursuant to this Section shall form part of the public records and shall be made available and accessible to the public.

*Sec. 8. Salary, Retirement and Other Privileges of the Chairperson and Members.* - The Chairperson and Members of the Commission shall receive the same salary and privileges as the Chairperson and Members of the Constitutional Commissions, and which shall not be decreased during their term of office. Likewise, they shall receive the same retirement benefits to those of the Constitutional Commissions as provided by law.

## **B. Nomination of Chairperson and Members**

*Sec. 9. Nominations Committee.* - The President shall choose and appoint the Chairperson and Members of the Commission from a list of three (3) nominees per position selected by a Nominations Committee to be composed of the following members:

- a) The Chairperson of the Commission on Human Rights;
- b) The Chairperson of the Senate Committee on Justice and Human Rights;
- c) The Chairperson of the House of Representatives' Committee on Human Rights;
- d) Three (3) representatives from human rights non-government organizations (NGOs) and lawyers' groups, the academe, indigenous peoples, and women's groups involved in human rights work and advocacy, duly accredited by the Commission.

*Sec. 10. Selection of Nominees.* - The members of Nominations Committee shall have equal voting rights. They shall meet not later than three (3) months before the end of a current term or within a week after the occurrence of a vacancy during a term. They shall submit to the President their list of nominees one (1) month before the end of said term or a month after said vacancy. The President shall make the appointment within one (1) month from the submission of the list of nominees by the Nominations Committee. The Nominations Committee shall adopt its own rules of procedure.

The Commission shall provide secretariat support to the Nominations Committee. It shall make all proceedings of the Nominations Committee open and accessible to the public. Vacancies as well as the list of nominees shall be published in a newspaper of general circulation.

*Sec. 11. Pluralist Representation.* - In the selection of nominees for Chairperson and Members of the Commission, the Nominations Committee shall take into consideration pluralist representation of civil society involved in the promotion and protection of human rights.

*Sec. 12. Non-Government and Peoples' Organizations.* - The accredited human rights non-government and peoples' organizations shall choose their three (3) representatives to the Nominations Committee from among themselves in a meeting attended by a representative of the Commission. In the absence of a selection procedure agreed upon by said organizations, the Commission shall promulgate rules of procedure on the selection of the three (3) representatives

by the accredited organizations: *Provided*, That selection rules agreed upon by the organizations among themselves shall supersede any rule promulgated by the Commission.

Accreditation by the Commission shall be based on guidelines to be prescribed in its implementing rules and regulations.

### **C. Nature of the Commission**

*Sec. 13. The Commission as an Independent Office.* – The Commission on Human Rights is an independent constitutional office. It shall not be subject to instructions or orders from the President, Congress or the Judiciary, except in cases provided in the Constitution with regard to the appointment of its Chairperson and Members, legislation affecting the exercise of its powers and functions, and judicial review of the legality of its acts, orders, resolutions or decisions.

*Sec. 14. The Commission as the National Human Rights Institution of the Philippines.* – The Commission is the national human rights institution of the Philippines in accordance with the Principles Relating to the Status of National Institutions (“The Paris Principles”) and other United Nations' Resolutions pertaining to the effective functioning of national human rights institutions.

*Sec. 15. Fiscal Autonomy.* – The Commission shall enjoy full fiscal autonomy. The approved annual appropriations of the Commission shall be automatically and regularly released.

## **II. POWERS AND FUNCTIONS**

### **A. General Powers and Functions**

*Sec. 16. General Powers and Functions of the Commission.* - The Commission on Human Rights shall have the following general powers and functions:

- a) Investigate, on its own or on complaint by any party, all forms of human rights violations;
- b) Adopt its operational guidelines and rules of procedure and cite for direct and indirect contempt those in violation thereof or of its lawful orders in accordance with the Rules of Court;
- c) Provide appropriate legal and preventive measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad;
- d) Provide legal aid services to the underprivileged whose human rights have been violated or need protection;
- e) Exercise unhampered and unrestrained visitorial powers over jails, prisons, or detention facilities;

- f) Establish a continuing program of research, education and information to enhance respect for the primacy of human rights;
- g) Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
- h) Monitor the Philippine government's compliance with international treaty obligations on human rights;
- i) Grant immunity from prosecution to any person whose testimony or possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
- j) Request the assistance of any department, bureau, office or agency in the performance of its functions;
- k) Deputize government prosecutors or private lawyers, who shall be under the direct control and supervision of the Commission, for the prosecution of human rights cases under Section 26 hereof;
- l) Accredite national non-government and peoples' organizations involved in human rights promotion, protection and advocacy, including for purposes of visiting persons arrested, detained or under custodial investigation;
- m) Ensure that the status, rights and interests of children are upheld in accordance with the Constitution, laws and international instruments on human rights;
- n) Appoint its officers and employees in accordance with law; and
- o) Perform such other duties and functions as may be provided by law.

## **B. Investigation**

Sec. 17. *Investigative Powers and Functions.* – The Commission shall exercise primary and original jurisdiction to investigate, on complaint or *motu proprio*, cases of human rights violations to include civil, political, economic, social and cultural rights. In the exercise of its investigative function, the Commission shall have the following powers:

- a) Act promptly on complaints filed in any form or manner by any person, whether directly affected or not, and on a finding of human rights violation, recommend the filing of appropriate administrative, civil and/or criminal action. Any investigation being conducted by any other body shall not be a bar to the investigation of the Commission;
- b) Compel the attendance of witnesses and the production of evidence, to place the witnesses under oath or affirmation, issue *subpoenas* and take testimony in any investigation or inquiry;

- c) Issue orders and directives constituting preventive and legal measures, provided for under sections 19 and 20, respectively;
- d) Provide protection and financial assistance to witnesses to ensure their attendance in investigations and production of evidence;
- e) Delegate to its deputies, investigators or representatives, such authority or duty as shall ensure the effective exercise or performance of its investigative function;
- f) Require the assistance of any officer or employee of any department, bureau or office, subdivision, agency or instrumentality of the Government, including government-owned or controlled corporations and local governments;
- g) Deputize lawyers or legal aid groups, medical organizations, as well as government agencies and offices, to provide assistance in the exercise of its investigative functions;
- h) Make the results and findings of its investigations available and accessible to the public; and
- i) Cite and punish for direct or indirect contempt any person for violations of the Commission's lawful orders. The Rules of Court shall apply suppletorily to the Rules of the Commission.

*Sec. 18 . Imprescriptibility of Human Rights Violations.* - The investigation of human rights violations shall not be subject to any statute of limitations or prescriptive period.

*Sec. 19. Scope of Preventive Measures.* – The preventive measures under Article XIII, Sec. 18 (3) of the Constitution that may be issued by the Commission in the investigation of cases involving all forms of human rights violations shall include the following:

- a) Injunction orders directing any member of the government's military or police forces, as well as public officials or employees, or any person acting under their control and supervision, to desist from hiding, transferring or torturing a detainee and to allow access to said detainee by the Commission, his/her counsel, physician, and relatives;
- b) Orders directing the government official or employee, or any person in control of the premises of any government agency or office, specifically police and military detention facilities, secret detention places, stations, installations, camps, bases, and training schools, as well as private land and property, to permit the inspection of said premises;
- c) Orders to transfer persons deprived of their liberty and in danger of reprisal due to the filing of a complaint in connection with his/her detention, in order to secure safety of his/her person;

- d) Restraining orders restricting respondent, his/her unit or command from entering the immediate vicinity of the affected area or residence and from searching the victim or his belongings;
- e) General writs of injunction ordering the respondent to refrain from committing any and all acts that would tend to cause irreparable harm and have the immediate effect of rendering the investigation of the Commission moot and academic.

*Sec. 20. Scope of Legal Measures.* – The legal measures under Article XIII, Sec. 18 (3) of the Constitution that may be provided by the Commission shall include the following:

- a) Mandatory protection orders directing government security forces, other appropriate government agencies or private institutions to provide specific protection to victims of human rights violations;
- b) Orders to deputize government offices and private institutions for the purpose of providing protection; and
- c) Orders to deputize government and private lawyers as counsels *de officio* to ensure that the human rights of the victim are not further violated.

*Sec. 21. Grant of Immunity.* – The Commission may grant immunity from prosecution to any person whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding under such terms and conditions as it may determine taking into account the pertinent provisions of the rules of court and its own rules. The immunity granted shall be revoked on account of evidence presented to be true but which is, in fact, false and spurious, and without which the Commission would not have granted immunity.

*Sec. 22. Preventive Suspension.* – With the exception of Members of Congress, those of the Judiciary, and impeachable officials, the Commission may preventively suspend any officer or employee, after summary hearing/s, pending an investigation, if in its judgment: (a) the evidence of guilt is strong; (b) the charges would warrant removal from the service; and (c) the respondent's continued stay in office may prejudice the case filed against him/her.

In the case of suspended elective official/s, upon expiration of his preventive suspension, he shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him which shall be terminated within one hundred twenty (120) days from the time he was formally notified of the case against him.

The preventive suspension shall be immediately executory, unless restrained by the Court of Appeals or the Supreme Court and shall continue until the case is terminated by the Commission: *Provided*, That said suspension shall not be more than three (3) months without pay, except when the delay in the disposition of the case by the Commission is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

Any abuse of the exercise of the power of preventive suspension shall be penalized as abuse of authority.

The respondent official preventively suspended from office shall receive no salary or compensation during such suspension; but upon subsequent exoneration and reinstatement, he shall be paid full salary or compensation including such emoluments accruing during such suspension.

The respondent shall be accorded full opportunity to appear and defend himself in person or by counsel, to confront and cross-examine the witnesses against him, and to require the attendance of witnesses and the production of documentary evidence in his favour through the compulsory process of subpoena or subpoena duces tecum.

*Sec. 23. Referral to Disciplining Authority.* – The Commission may direct the disciplining authority to take appropriate action against a public officer or employee found guilty of committing violations of human rights and recommend his removal, suspension, demotion, censure, imposition of fine, or prosecution and to ensure compliance by requiring the officer concerned to report on his action within thirty (30) days from receipt of the recommendation of the Commission. Failure to act or comply with said recommendation shall be actionable by mandamus.

For this purpose, every case on which the Commission has rendered a resolution or recommendation adverse to a public official shall be transmitted to the head of the department, agency or instrumentality, or of the province, city or municipality concerned for immediate action, as may be necessary.

*Sec. 24. Motu Proprio Dismissal.* – The Commission may dismiss, motu proprio, a complaint for the investigation of human rights violations on any of the following grounds:

- a) The complaint pertains to a matter outside the jurisdiction of the Commission;
- b) The complaint is trivial, frivolous, vexatious or made in bad faith; or
- c) Other valid grounds as may be provided by the Commission.

*Sec. 25. Investigation by Regional Offices.* – The regional office shall investigate complaints falling within its territorial jurisdiction unless the Commission en banc, in its discretion, takes direct cognizance of the same. Upon recommendation of the regional office in investigations pending before it, the Commission en banc may issue legal and preventive measures and preventive suspension orders which are immediately executory. Within ten (10) days after concluding the investigation, the regional office shall render the appropriate order, directive or resolution subject to appeal to the Commission en banc pursuant to its rules.

### **C. Prosecution**

*Sec. 26. Concurrent Prosecutorial Powers and Functions.* – The Commission shall exercise concurrent prosecutorial powers and functions as herein provided.

In the event of the failure of the prosecution agency of the government to initiate a preliminary investigation within ninety (90) working days from its receipt of the case recommended for prosecution by the Commission, the latter shall conduct the preliminary

investigation and upon a finding of probable cause, refer the same to the appropriate prosecution agency for the filing of the information and prosecution of the case.

In case of failure of the prosecution agency to file the information within thirty (30) calendar days upon receipt of the resolution of the Commission finding probable cause, the latter shall exercise concurrent prosecutorial powers by filing the information in court on its own and prosecuting the case. For this purpose, the Commission shall have the power to deputize government prosecutors or private lawyers who shall be under its direct control and supervision.

This section shall apply in cases where the offender is a public officer as defined under Article 203 of Republic Act No. 3815, otherwise known as the Revised Penal Code as amended, and acting in his capacity as such, or any person acting on behalf or under the immediate control of the State and its agents, and where the human rights violation constitutes a criminal offense under the Revised Penal Code and special laws, as follows:

- a) Use of physical, psychological and degrading punishment, torture, force, violence, threats, and intimidation;
- b) Extra-judicial killings, summary executions, and “massacres” or mass killings;
- c) Violations of right to be secure from unreasonable searches and seizures, including involuntary or enforced disappearances;
- d) Violations of the rights of persons arrested, detained, or under custodial investigation, including deprivation of the rights of political detainees;
- e) Violations of the right to a speedy, impartial and public trial or disposition of cases;
- f) Hamletting, forced evacuation or eviction, illegal demolition, development aggression and other violations of the right to travel and to freely choose one’s abode and change the same;
- g) Violations of the right to peaceably assemble, free association, and to petition the government for redress of grievances;
- h) Violations of the right to worship and the free exercise of a religion;
- i) Violations of the right to privacy;
- j) Violations of civil and political rights of persons suspected of, accused of, or detained for the crime of terrorism or conspiracy to commit terrorism;
- k) Political, religious, racial, ethnic, social or sexual persecution, oppression, or harassment committed with acts constituting offenses punished under the Revised Penal Code and special laws; and

- l) In general, any crime penalized under the Revised Penal Code or special laws when committed within the context of or resulting to human rights violations.

*Sec. 27. When Committed by Non-State Actors.* - The preceding section shall also apply when the violation is committed by non-state actors. Non-state actors are persons, other than public officers, belonging to and acting on behalf or under the immediate control of a juridical or non-juridical person, whether legitimate or illegitimate, including but not limited to the following:

- a) Armed groups, warlords and private armies;
- b) Criminal organizations and groups; and
- c) Multi-national, foreign and domestic corporations, and other business entities.

*Sec. 28. When Committed Against Vulnerable Persons.* – The concurrent prosecutorial powers of the Commission shall likewise apply in the investigation and prosecution of the following offenses as penalized under the Revised Penal Code and special laws when committed by any person against any member or group of vulnerable persons, as defined herein:

- a) Involuntary servitude constituting Crimes Against Personal Liberty and Security;
- b) Crimes penalized under Republic Act No. 7610, or the “Special Protection of Children Against Abuse, Exploitation and Discrimination Act;”
- c) Crimes penalized under Republic Act No. 9262, or the “Anti-Violence Against Women and Their Children Act of 2004;” and
- d) Crimes penalized under Republic Act No. 8371 or the “Indigenous Peoples Rights Act of 1997.”

Vulnerable persons shall include those identified as such in international human rights treaties, specifically children, women, elderly, persons with disabilities, migrant workers, indigenous peoples, and ethnic and religious minorities.

#### **D. Monitoring**

*Sec. 29. Monitoring Powers and Functions.* - In the exercise of its mandate to monitor the Government’s compliance with its international human rights treaty obligations, the Commission shall have the following powers and functions:

- a) Request any department, bureau or office, subdivision, agency or instrumentality of the Government to submit timely international human rights treaty compliance reports and to furnish the Commission copies thereof within thirty (30) days from submission to the United Nations and other international bodies;



- b) Conduct inquiries on the manner of implementation by the Philippine Government of specific human rights treaty obligations;
- c) Summon any public official to explain on the measures undertaken by his or her agency in order to comply with the State's international treaty obligations on human rights;
- d) Enter and inspect the premises of any government agency or office, specifically police and military stations, installations, camps, bases, and training schools without need of prior permission;
- e) Access any book, record, file, document or paper located in the above-mentioned offices and facilities;
- f) Study and recommend to the government international human rights treaties or instruments for its signature, ratification or accession;
- g) Make timely and regular submission of independent reports to international human rights treaty bodies and other international human rights mechanisms;
- h) Advise and assist the government on clearly-identified gaps in human rights treaty compliance;
- i) Capacitate stakeholders to enable participation in monitoring human rights treaty compliance by the government;
- j) Delegate to its deputies, investigators or representatives, such authority or duty which shall ensure the effective exercise or performance of its monitoring functions; and
- k) Recommend and institutionalize best practices and incentives for human rights advocates and institutions.

*Sec. 30. Other Monitoring Functions.* – The Commission shall likewise monitor observance by non-state actors of human rights obligations arising from agreements entered into with the government, as well as unilateral declarations and similar undertakings.

*Sec. 31. Annual Report.* - The Commission shall prepare and make public an annual report on the findings of its monitoring activities with regard to the state of the Government's compliance with its international human rights treaty obligations. The report shall include, but not be limited, to the following:

- a) Identification of systematic patterns of human rights violations using documented cases;
- b) Analysis of the factors which contribute to the commission of human rights violations;

- c) Assessment of the legal mechanisms of existing institutions in providing adequate human rights protection;
- d) Recommendations for legal, legislative, and institutional reforms for the greater promotion and protection of human rights; and
- e) Statistics and data indicating the nature of complaints received, the investigations conducted and findings made, and the actions taken by the government agencies concerned on the Commission's recommendations.

### **E. Education and Advocacy**

*Sec. 32. Education and Advocacy in Government.* – The Commission shall undertake a program of human rights promotion and advocacy through education and training to enhance respect for the primacy of human rights in coordination with the different agencies of the government. It shall likewise administer a mandatory and continuing human rights education program for the military, police and other law enforcement agencies, as well as public school teachers, and shall, for this purpose, draw up the components of the program, accredit course and training providers, and issue certificates of completion to those who have successfully completed the program.

*Sec. 33. Education and Advocacy in Civil Society.* – The Commission shall also undertake a human rights education, advocacy, and information campaign programs among sectors of civil society, particularly the vulnerable, marginalized and underprivileged groups. In conducting this program, the Commission shall actively cooperate and coordinate with human rights non-government organizations, lawyers' groups, the academe and people's organizations of the concerned sectors of civil society.

*Sec. 34. Research.* – The Commission shall undertake a continuing research and study on select human rights issues for purposes of recommending policy reforms, as well as administrative and legislative measures that will also address economic, social and cultural rights.

*Sec. 35. Coverage of Programs.* – The Commission shall prescribe the scope and coverage of education, advocacy, information and training programs on human rights, and which will be provided for in the implementing rules and regulations of this Act.

### **F. Other Powers and Functions**

*Sec. 36. Witness Protection Program.* – In the conduct of its investigations, the Commission shall implement and manage a witness protection program, including the provision of security, shelter, relocation and livelihood assistance to witnesses and their families.

*Sec. 37. Financial Assistance Program.* – The Commission shall strengthen its financial assistance program to victims of human rights violations and their families.

The initial funding for the Witness Protection and the Financial Assistance Programs shall be allocated for such purposes and shall be included thereafter in the annual regular appropriations for the Commission, and the same shall be automatically and regularly released.

The Commission shall adopt operational guidelines in the implementation and management of these programs which shall be included in its implementing rules and regulations .

*Sec. 38. Legal Assistance Program.* – The Commission shall implement a legal assistance program to benefit victims of human rights violations consisting of the provision of legal services in coordination with human rights organizations and lawyers' groups, the Integrated Bar of the Philippines and Philippine law schools with legal aid programs.

Upon its discretion, the Commission may also provide allowances and incentives to private lawyers or lawyers' groups who would render their professional services on behalf of the Commission in any court proceeding involving the litigation of human rights cases.

*Sec. 39. Protection of Filipinos Abroad.* – The Commission shall undertake measures for the protection and promotion of human rights of Filipinos living abroad. It may assign organic personnel to act as Human Rights Attaches in Philippine Embassies or consulates or deputize Philippine Embassy or Consulate officers, resident private individuals of known probity and active involvement in human rights work, or foreign-based human rights and migrant workers' non-government organizations in countries where the incidence of human rights violations of Filipinos is widespread and commonplace, including traditional host countries of Overseas Filipino Workers.

The assigned personnel acting as Human Rights Attache or deputized individuals of the Commission shall monitor the status of human rights of Filipinos living abroad and establish networks among Filipinos for purposes of monitoring and reporting cases of human rights violations, as well as for providing counselling and financial assistance to victims. They shall immediately notify the concerned Embassy officials of incidents of human right violations of Filipinos and provide immediate assistance to victims.

*Sec. 40. Creation of Ad hoc Truth Commissions.* - The Commission may recommend the creation of an *ad hoc* Truth Commissions on matters of transcendental importance, such as widespread and systematic human rights violations occurring over prolonged periods of time, or under extraordinarily-repressive conditions, or attended by a culture of impunity that is instigated, inspired or orchestrated by public officials, in conspiracy with government security forces or State-sponsored armed groups.

*Sec. 41. Issuance of Certifications.* – The Commission shall issue certifications to members of the military, police and other law enforcement agencies prior to their promotion or assumption to office. The Commission shall clearly indicate in its certification if the applicant has a pending case with them and shall state the nature and status of the case/s filed.

The Commission shall also make its own recommendations to the Commission on Appointments prior to the confirmation of other officials other than those mentioned in the preceding paragraph, who are being considered for promotion or appointment.

This provision shall also apply to other government officers with salary grade 27 or its equivalent and higher.

It may also issue certifications for purposes of trainings, local or foreign study grants and education purposes, upon proper request made by the applicant.

Sec. 42. *Appeals; Prohibition against Injunction.* - Orders, decisions or findings of the Commission, including determination of probable cause, shall be appealed to the Court of Appeals on both questions of fact and law, or on certiorari to the Supreme Court on pure questions of law. No writ of injunction against the Commission in the performance of its functions shall be issued other than those emanating from the Court of Appeals or the Supreme Court.

Sec. 43. *Protection from Harassment Suits; Dismissal.* – The Chairperson, Members, officers and employees of the Commission shall be free from any administrative, civil or criminal liability in the regular performance of their functions. Personal legal actions brought against them shall be dismissed where it appears that the same was filed for acts committed in the regular performance of said functions.

### **III. ORGANIZATION AND STRUCTURE**

Sec. 44. *Commission as a Collegial Body* – The Commission composed of the Chairperson and four (4) Members, as a collegial body, is responsible for the promulgation of policies, decisions, orders and resolutions necessary for the efficient administration of the Commission and for proper execution of its constitutional mandate.

In the exercise of its powers and functions, the Commission shall sit and render its decision en banc. Every such decision, order or resolution of the Commission must bear the concurrence and signature of at least three (3) Members thereof.

The Commission shall meet regularly once a week, or as the Commission may direct, or upon call by the Chairperson. A majority of the Members, at least three (3) Members, constitutes a quorum needed in any en banc meeting of the Commission.

Sec. 45. *The Chairperson as Executive Officer; Powers and Duties.* The Chairperson shall be the Chief Executive Officer of the Commission, and shall:

- a) Execute and carry out the policies, decisions, orders and resolutions approved by the Commission;
- b) Direct and supervise the operations and internal administration of the Commission;
- c) Sign appointments of subordinate officials and employees made by the Commission and enforce decisions on administrative discipline involving them;
- d) Make temporary assignments, rotate and transfer personnel in accordance with the provisions of the Civil Service Law and the policies involving them;

- e) Submit an annual budget to the Commission for its approval and submission to the Department of Budget and Management and to the Congress of the Philippines;
- f) Delegate his/her authority, in whole or in part, to other officials of the Commission in accordance with Executive Order No. 292, otherwise known as the Administrative Code of 1987, and rules and regulations of the Commission; and
- g) Perform such other functions as may be authorized by the Commission.

Sec. 46. *Structural Organization.* - The Commission shall have the following line offices and operating units:

- a) Office of the Chairperson;
- b) Office of the Commissioners;
- c) Office of the Assistant Commissioner for Internal Administration;
- d) Office of the Assistant Commissioner for Human Rights Protection;
- e) Office of the Assistant Commissioner for Human Rights Promotion and Advocacy;
- f) Office of the Assistant Commissioner for Regional Operations;
- g) Office of the Executive Director;
- h) Office of the Commission Secretary;
- i) Information System Management Office;
- j) Planning And Management Office;
- k) Financial Management Office;
- l) General Administrative Office;
- m) Legal Office;
- n) Investigation Office;
- o) Assistance and Visitorial Office;
- p) Forensic Office;
- q) Security and Protection Office;
- r) Human Rights Instruments Compliance And Monitoring Office;

- s) Education, Advocacy And Research Office;
- t) Public Information Office;
- u) Sectoral Rights Offices;
- v) Regional and/or Provincial Offices;
- w) Barangay Human Rights Action Centers and/or Human Rights Resource Centers.

With the exceptions of Chairperson, Commissioners, Assistant Commissioners, and Executive Director, all the above offices will be headed by an officer with a rank, salary and privileges equivalent to a Director IV. The Sectoral Rights Offices, Barangay Human Rights Action Centers and Human Rights Resource Centers shall be headed by officials with the rank of Director III. Other than the Barangay Human Rights Action Centers and Human Rights Resource Centers, each office may have such divisions as are necessary to carry out their respective functions.

As an independent constitutional office, the Commission may effect changes in the organization as the need arises.

The Public Information Office, which will be under the direct supervision of the Chairperson of the Commission, shall assume the role of a media relations unit that will disseminate all information to the general public including the issuances of the Commission, enable public access to general information pertaining to the Commission, and encourage active participation of all forms of media, for the promotion of human rights.

All officers and employees of the Commission, unless otherwise provided herein, shall receive emoluments and privileges that shall not be less than those given to comparable positions in any office in the government.

*Sec.47. Assistant Commissioners.* - There shall be four (4) Assistant Commissioners as Head of the different clusters:(1)Assistant Commissioner for Internal Administration, which shall be comprised of Planning and Management Office, Financial Management Office, General Administration Office, and Information System Management Office;(2)Assistant Commissioner for Human Rights Protection, which shall be composed of the Legal Office, Investigation Office, Forensic Office, Assistance and Visitorial Office, and Security and Protection Office;(3)Assistant Commissioner for Human Rights Promotion and Advocacy, which shall be comprised of Human Rights Instruments Compliance and Monitoring Office, and the Education, Advocacy and Research Office; and (4)Assistant Commissioner for Regional Operations, which shall be comprised of the Regional and Provincial Offices.

The Assistant Commissioners shall act as facilitators in conveying the directives and policies of the Commission to their respective cluster offices, as monitors of their respective cluster offices' actions as well as their implementation and as advocates for their cluster offices who will identify, raise and settle issues or concerns which require appropriate action.

The Assistant Commissioners shall identify, analyze and evaluate approaches, strengths and weaknesses of programs' reports and performance evaluations and in the case of regional and provincial operations, the implementation and pursuit of mandates nationwide.

The Assistant Commissioners shall be appointed to the Commission, with preferential status given to the officers and employees within the Commission who have been working therein for at least seven (7) years prior to the time of their appointment.

The Assistant Commissioners must be of proven integrity and competence and must have been involved in human rights promotion and protection activities for at least seven (7) years. In addition, the Assistant Commissioner for Human Rights Protection, must also be a member of the Philippine Bar, and the Assistant Commissioner for Internal Administration must be a Certified Public Accountant. All of the Assistant Commissioners shall have the rank, emoluments and benefits of an Assistant Secretary.

*Sec. 48. The Executive Director.* - The Executive Director shall be responsible for managing the day-to-day affairs, activities and operations of the Commission, in accordance with the policies, standards, rules and regulations adopted and promulgated by the Commission. In particular, the Executive Director shall:

- a) Provide direct supervision, control, coordination and monitoring of all activities, functions and operations of the national, regional and provincial units of the Commission;
- b) Upon consultation with the Assistant Commissioner/s concerned, recommend and /or implement administrative and management policies, rules and standard operating procedures to be established by the Commission;
- c) Recommend and initiate programs, projects and policies which promote productivity, efficiency and effectiveness in the Commission, with prior consultation with the Commission and Assistant Commissioner/s concerned;
- d) Coordinate with the Assistant Commissioner/s concerned as well as the different CHR organization units in the information and reporting requirement of the Commission;
- e) Resolve operational issues in accordance with the levels of authority prescribed by the Commission;
- f) Undertake appraisal on issues/problems and policy recommendations requiring decision/action by the Commission;
- g) Conduct necessary representation with different branches and agencies of the government on vital issues/concerns involving the organization, operations and programs of the Commission and
- h) Perform such other functions as may be assigned by the Commission *En Banc*.

The Executive Director shall be appointed by the Commission and shall be a member of the Philippine Bar with proven integrity and competence, and must have been involved in human rights promotion and protection activities for seven (7) years. He/she shall have the rank, salary and privileges of an Assistant Secretary.

*Sec. 49. The Commission Secretary.* - The Commission Secretary, who shall head the Commission Secretariat, shall provide executive services to the Commission on its regular, special and executive meetings, assistance on policy review and coordination, review and appraisal of the programs and other project undertakings of the Commission, including technical support on the formulation of guidelines, directives, mandates and executive summaries and reports. In addition, the Committee Secretary shall:

- a) Prepare the agenda of meetings of the Commission En Banc and ensure complete recording of proceedings;
- b) Develop, recommend to the Commission En Banc, and implement an approved disclosure policy for the Commission on Human Rights of the Philippines;
- c) Formulate, propose and implement a central records management system for the Commission En Banc, and act as the custodian of all records on human rights cases filed with the Commission, including records on resolutions, rules, policies, regulations and other decisions, proceedings of its meetings, and other pertinent records;
- d) Design, propose and implement a central records management system and provide records management orientation and assistance to the various offices of the Commission;
- e) Prepare and issue directives to concerned offices, by authority of the Commission En Banc;
- f) Represent the Commission En Banc in different technical working committees of the Commission, as may be directed by it;
- g) Respond to queries from the different central and regional offices on matters pertaining to policies, rules and decisions, as authorized by the Commission En Banc; and
- h) Perform such other related functions as may be assigned by the Commission En Banc.

The Commission Secretary, who must be at least a degree holder of Bachelor of Laws (LL.B.) or Juris Doctor (JD), shall have the rank, salary and privileges of a Director IV.

*Sec. 50. Duties and Functions of the Offices of the Commission.* - The different offices of the Commission provided in Section 46 of this Act shall operate in accordance with their respective duties and functions assigned them by the Commission subject to requirements of



efficiency, economy and effectiveness, and pertinent budget and civil service laws, rules and regulations.

*Sec. 51. Officers of the Commission.* – All officers appointed by the Commission who possess the rank or position that is above Division Chief level and officially performs managerial and executive functions, must be Career Executive Service (CES) eligible under the Career Executive Service Board or has equivalent eligibility as the Commission may establish.

The Commission may propose additional qualification standards to be submitted for approval to the Department of Budget and Management and for information of the Civil Service Commission.

*Sec. 52. Regional Offices.* - The Commission shall have seventeen (17) regional offices, and as may be further established by law, with two regional offices for Region IV, including the National Capital Region (NCR), the Caraga Administrative Region (CARAGA), Cordillera Administrative Region (CAR) and the Autonomous Region of Muslim Mindanao (ARMM).

Each Regional Office shall be headed by a Regional Human Rights Director with a rank and salary of Director IV, who must be a member of the Philippine Bar, assisted by an Assistant Regional Human Rights Director, and such other subordinate officers or employees as the Commission may appoint. The Assistant Regional Human Rights Director shall carry the rank and receive the same salary and privileges of a Director III.

The Commission may delegate its powers and functions or order the implementation or enforcement of its orders, rulings or decisions through the heads of its regional offices in accordance with its rules and regulations to be promulgated by the Commission.

*Sec 53. Provincial Offices.* – The Commission may establish such Provincial Offices as may be necessary in the provinces falling under the administrative jurisdiction of the Regional Office. The Provincial Office shall be headed by a Provincial Human Rights Officer and staffed by such other officers or employees as the Commission may appoint. The Provincial Human Rights Officer shall carry the rank and receive the same salary and privileges of a Division Chief.

*Sec. 54. Sectoral Rights Offices.* - The Commission shall establish Offices and Centers to undertake promotion and protection of the rights of vulnerable sectors, to include but not be limited to women and children, as the Commission may deem appropriate.

With the exception of the Barangay Human Rights Action Center and the Human Rights Resource Centers, the Child Rights Center, Women's Human Rights Center, and other sectoral rights offices shall be under the direct supervision and control of the Commission en banc.

*Sec.55. Barangay Human Rights Action Center; Human Rights Resource Center.* - There may be established Barangay Human Rights Action Centers, herein referred to as BHRAC, in selected barangays nationwide as maybe determined by the Commission, upon the recommendation of any regional or provincial office, and only where the demand for greater promotion and protection of human rights exist. The BHRAC shall serve as a conduit for human rights education, training and advocacy, and complaint/s referral.

There may also be created Human Rights Resource Centers (HRRC) nationwide, which shall be attached to any regional or provincial office as may be determined by the Commission, and only upon the recommendation of any regional or provincial office.

The HRRC shall serve as a repository of human rights resources and materials, and shall maintain a pool of competent resource persons for human rights education.

The Commission shall prepare the guidelines necessary to carry out the provisions in Sections 55 and 56 herein provided.

*Sec. 56. Joint Congressional Oversight Committee.* - A Joint Congressional Oversight Committee is hereby created, composed of the Chairman of the Senate Committee on Justice and Human Rights and three (3) other Senators designated by the Senate President, and the Chairman of the House Committee on Human Rights, and three (3) other Members of the House of Representatives designated by the Speaker of the House of Representatives: *Provided*, That, of the three (3) members to be designated by each House of Congress, two (2) should come from the majority and the remaining Member from the minority.

The Joint Congressional Oversight Committee shall have the power to monitor and evaluate the implementation of this Act.

*Sec. 57. Operational Guidelines.* - The Commission shall formulate its operational guidelines which shall include, but not be limited to, the functions and duties of the Assistant Commissioners, the Executive Director, the Commission Secretary and the heads of the line offices, the implementation and management of its Witness Protection, Financial Assistance and Legal Aid Programs, and such other matters as may be necessary for the implementation of this Act.

*Sec. 58. Franking Privilege.* - All official mail matters and telegrams of the Commission addressed for delivery within the Philippines shall be received, transmitted and delivered free of charge; *Provided*, That such mail matters when addressed to private persons or non-government offices shall not exceed One Hundred and Twenty (120) grams. All mail matters and telegrams sent through government telegraph facilities containing complaints to the Commission on Human Rights shall be transmitted free of charge: *Provided*, That the telegram shall contain not more than One Hundred and Fifty (150) words.

*Sec. 59. Financial Report.* - The Commission shall make available to the public its annual financial statements, including but not limited to, expenditures and sources of funds.

*Sec. 60. Appropriations.* - The sum of Three Hundred Million Pesos (P300,000,000) is hereby appropriated to the Commission on Human Rights for the immediate implementation of this Act, in addition to its appropriations in the current General Appropriations Act. Thereafter, such sums as may be necessary for the full operationalization of this Act shall be included in the annual General Appropriations Act.

*Sec. 61. Transitory Provision.* - Nothing in this Act shall prejudice the positions, emoluments, security of tenure, and privileges of the incumbent Chairperson and Commissioners, officers and employees of the Commission upon its effectivity. However, officials and employees of the

Commission, may avail of an early retirement program as may be provided for by the Commission upon the effectivity of this Act.

*Sec. 62. Implementing Rules and Regulations.* – The Commission shall, within sixty (60) days from the approval of this Act, formulate the implementing rules and regulations in the exercise of its general, investigative, prosecutorial, monitoring, education and advocacy powers and functions in consultation with other concerned agencies of the Government.

*Sec. 63. Separability Clause.* - If any provision of this Act shall be held unconstitutional, other provisions not affected thereby shall remain valid and binding.

*Sec. 64. Repealing Clause.* - All laws, republic acts, presidential decrees, letters of instructions, executive orders, rules and regulations insofar as they are inconsistent with this Act are hereby repealed or amended, as the case may be.

*Sec. 65. Effectivity Clause.* - This Act shall take effect fifteen (15) days upon its publication in at least two (2) newspapers of general circulation.

**APPROVED,**

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