

Report for the UNIVERSAL PERIODIC REVIEW

From the COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES

A. METHODOLOGY

The preparation of the country report is being coordinated by the Presidential Human Rights Committee (PHRC)¹. Lead government agencies in charge of the seven core human rights treaties² ratified by the Philippine government were tasked to spearhead the preparation of the report on their respective treaty concerns and to undertake a process of consultation with other stakeholders. For some treaty reports that have either been recently submitted or have just been reviewed by the treaty monitoring bodies, a thorough consultation process has been implemented and a wealth of information is now available that only needs updating. The PHRC's timetable for the Universal Periodic Review preparation includes the following activities: briefing and orientations on the UPR for government agencies; organization of working groups; national consultative summit workshop for national human rights report/baseline study; and review of draft report by the government, civil society organizations and other stakeholders.

B. BACKGROUND OF THE COUNTRY: Normative and Institutional Framework for the Promotion and Protection of Human Rights

The 1987 Philippine Constitution is the primary foundation of the human rights framework in the country. It is therein provided as one of the declared State Policies that, *"the State values the dignity of every human person and guarantees full respect for human rights."* (Section 10, Article II)

The Constitution is a significant innovation of the 1973 Constitution providing for a comprehensive Declaration of Principles and State Policies and touching on the important elements of the society such as social justice, family, women, youth, labor, private sector, non-governmental, community-based and sectoral organizations, right to health, right to a balanced ecology, rural development and agrarian reform, indigenous cultural communities and of course, human rights, among others.

The bill of rights, the articles on citizenship, the right to suffrage, accountability of public officers, national economy and patrimony, social justice and human rights and the family are decisive elements of the Constitution.

The establishment and separation of powers of the three major branches of government – the Legislature, Executive and the Judiciary are discussed in detail. The provisions for the independent constitutional commissions such as the Commission on Audit, the Commission on Elections and the Civil Service Commission further elaborated on the Philippines democratic stand. It also provided for the creation of the Office of the Ombudsman.

The new Constitution likewise created an independent Commission on Human Rights of the Philippines (CHRP), pursuant to Article XIII, Sections 17-19. Accordingly, Executive Order No. 163, issued on the same year, paved the way for the organization and full operationalization of the CHRP in the fifteen (15) regions of the country.

¹ The Presidential Human Rights Committee is an inter-agency executive body organized to serve as the primary advisor to the President in effectively addressing human rights issues/concerns in the country.

² The seven core international treaties on human rights are: International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (CAT); Convention on the Rights of the Child (CRC); and, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW).

Further, Section 1, Article XIII of the Constitution provides that, “*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 inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.*”

Chief legislations of the country include the Revised Penal Code, the Civil Code of the Philippines with the Family Code, the Labor Code, the Commercial Laws of the Philippines, the Laws on Taxation and the Rules of Court.

The Philippine Congress has notably enacted various human rights and human rights-relevant laws: the Human Security Act (Anti-Terrorism Law), Abolition of the Death Penalty Act, Speedy Trial Act, Certain Rights of Persons Arrested, Detained and Under Custodial Investigation, Juvenile Justice and Welfare Act, Elimination of the Worst Form of Child Labor, Anti-Violence Against Women and their Children, Anti-Sexual Harassment Law, Migrant Workers Act, Anti-Trafficking of Persons Act, Indigenous Peoples Rights Act, Public Assembly Act, Anti-Wiretapping Law, Urban Development and Housing Act, among others. On the other hand, the Judiciary has always been notably independent and active in upholding the cause of human rights.

In the area of treaty ratifications, the Philippines holds one of the best records. A founding member of the United Nations, the Philippines has ratified all seven core international human rights treaties and most of the optional protocols. It has likewise signed other significant international human rights instruments such as the ILO Conventions.

The renewed commitment of the Government to the cause of human rights can also be seen through the President’s recent issuance of Administrative Order No. 163 on December 2006. Said presidential issuance provided for the strengthening of the Presidential Human Rights Committee (PHRC) tasked with the formulation of the National Human Rights Action Plan and the identification of relevant government agencies responsible for the preparation of the periodic reports on treaty compliance for submission to the UN treaty bodies.

We have also recently seen the establishment and operationalization of Human Rights Offices in both the Armed Forces of the Philippines and the Philippine National Police. Women and Children’s Complaints Desks in all police stations and sub-stations nationwide are currently being placed and institutionalized manned by women police officers. Family courts are now well-established within the judicial system. The revitalization of the Barangay (smallest political unit/village) Human Rights Action Centers in the country is also seen as a welcome initiative in order to bring down the promotion and protection of human rights to the grassroots level. Finally, interagency councils on various human rights concerns have been set in place such as the Inter-agency Council Against Trafficking (IACAT), Inter-agency Council on Violence Against Women and Children (IAC-VAWC), Inter-agency Council on Children Involved in Armed Conflict (IAC-CIAC) and the Juvenile Justice and Welfare Council (JJWC).

C. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND: Implementation of the International Human Rights Obligations

Indeed, the human rights record of the Philippine Legislature can be seen as quite remarkable. Laws for almost all vulnerable sectors of society have been put in place. Said achievement is well recognized. However, not all of the core treaties the Philippines has ratified have been translated into national laws in compliance with its treaty obligation. A good example is the Convention Against Torture and Other Cruel, Inhuman and Degrading Punishment or Treatment. The Philippines has ratified the same on June 1987, yet the domestic legislation implementing it has not yet been passed. The history of the Legislature showed that since the 8th Congress, or since 1987, bills on torture has already been filed but to date no law on the same has ever been enacted.

Further, laws on pressing human rights issues such as on extra-judicial killings, enforced disappearances, internal displacement, compensation to victims of human

rights violations and a way to address development aggression which poses a threat to the rights of the indigenous peoples has yet to pass the laborious process of the legislative mill.

Amendments to existing laws are also wanting in order to address the needs of the changing times. Batas Pambansa 880 or the Public Assembly Act has been in existence since the 1970s. Current developments have rendered most of its provisions futile in addressing the issue of the right of the people to peaceably assemble and petition the government for redress of grievances. Also, while laws on women's rights are quite comprehensive, there is still a need to amend and enact laws dealing with the requirements of women to reproductive health, right to health care, more protection against trafficking and violence against them. The same need goes for children's rights, the rights of persons arrested, the rights of migrant workers and other sectoral concerns.

In the same light and as earlier noted, the treaty ratification record of the Philippines is quite praiseworthy. However, certain important international instruments have yet to merit ratification by the Government; these include the Convention Against Enforced Disappearances, Convention on the Rights of the Persons with Disabilities, the Rome Statute and the Optional Protocols to the International Covenant on Civil and Political Rights and to the Convention Against Torture and Other Cruel, Inhuman and Degrading Punishment or Treatment.

For its part, the Commission on Human Rights has been active in its mandates as given by the Constitution. Linkages with other human rights institutions have also been at the forefront. In fact, the four ASEAN national human rights institutions – Indonesia, Malaysia, Thailand and Philippines has recently signed a Declaration of Cooperation. Inter border and common concerns provide the framework of the cooperation, namely: (1) suppression of terrorism while respecting human rights; (2) human rights aspects of trafficking in persons; (3) protection of the human rights of migrants and migrant workers; (4) implementation of economic, social and cultural rights and the right to development; and (5) enhancement of human rights education. They also pledged to "advise their respective governments to take the necessary steps to establish an appropriate ASEAN human rights mechanism and/or any organ in the ASEAN Charter."

D. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES and CONSTRAINTS

Last year, the Philippines hugged the international limelight due to the perception of a culture of impunity as a result of the number of extrajudicial killings that plagued the nation. Said spate of killings merited the visit of United Nations Special Rapporteur on Extrajudicial Killings, Mr. Philip Alston, to the country on February 2007. After his ten-day fact finding mission in the country, Mr. Alston provided several recommendations to the government, including that on strengthening the CHRP.

Likewise, the European Union, which has committed to provide technical assistance to the Philippine Government, sent a Needs Assessment Mission to the country last July. The said mission evaluated technical assistance needs to the Philippine Government in areas like the establishment of special courts and the training of prosecutors strengthening the witness protection program, technical and forensic capacity-building for case investigations, and human rights awareness programs within the Armed Forces of the Philippines and the Philippine National Police.

In the domestic sphere, the Melo Commission was created for the purpose. One of the recommendations given was the designation of special courts for the purpose of trying these cases of extrajudicial and summary killings. Immediately thereafter, the Supreme Court issued an Administrative Order designating 99 special courts geographically distributed in all areas of the country. In partnership with the education arm of the Supreme Court – the Philippine Judicial Academy (PHILJA), the Commission conducted an extensive two-day "Seminar-Workshop for Judges on Extrajudicial Killings and Enforced Disappearances" for the first batch of Regional Trial Court judges manning the 99 designated special courts. This seminar-workshop was designed to address the

concerns of the special courts judges both on the substantive and procedural aspects of identifying, trying and deciding cases of extrajudicial killings.

A milestone in this field happened in July 2007 when the Commission co-sponsored with the Supreme Court the two-day “National Consultative Summit on Extrajudicial Killings and Enforced Disappearances – Searching for Solutions.” The summit aimed to arrive at holistic solutions and provide inputs to the Supreme Court in its objective of enhancing existing rules, or promulgating new ones, in the protection and enforcement of constitutional rights, including the protection of witnesses. Moreover, it aimed to examine the concept of extrajudicial killings and enforced disappearances pursuant to the standards provided for by local and international laws, including United Nations instruments. It also aimed to revisit the rules on evidence and to explore more remedies for the aggrieved parties aside from the existing *writ of habeas corpus*. Finally, one of the recommendations that resulted was the giving of quasi-judicial powers to the Commission as part of the solutions.

One major breakthrough of this summit is the resurgence of the special remedy called the *writ of amparo* providing for a special remedy to cases of extrajudicial killings and enforced disappearances.

The creation of an independent Commission on Human Rights of the Philippines (CHRP) is a notable achievement for the country. Established in 1987, the CHRP was fully compliant with the Paris Principles which was issued only in 1991. Mandated to monitor Philippine Government’s compliance with international obligations, investigate violations of civil and political rights, provide legal services even to Filipinos residing abroad, conduct jail visitations, conduct continuous training and research, recommend to Congress effective measures to promote human rights and provide for compensation for victims of human rights violations, the Commission works as an independent body free from any governmental interference.

However, two recent developments in the Philippine milieu has posed some threats to the independence of the Commission. First is the enactment of the controversial and much publicized Human Security Act of 2007 (Republic Act No. 9372) or the Anti-Terrorism Law passed at the end of the 13th Congress in April, 2007 granting the Commission prosecutorial powers and more responsibilities, albeit without its knowing. The implications of the Human Security Act on human rights pose a huge challenge to the Commission. The grant of prosecutorial powers is a new mandate not having been provided for under the Constitution. The capacity of the Commission to take on the role is still to be seen. And the fear that this might sacrifice the independence of the Commission is yet to be proven. The Commission is the independent monitor of all actions of the government – the judiciary, the legislature and the executive. Prosecution is a task of the executive. Assuming that role puts the Commission in a dilemma of taking on an executive task, and at the same time, monitoring itself. On the other hand, a quasi-judicial function is believed to enhance more the independence of the Commission and at the same time give it more teeth. Nevertheless, until and unless the Human Security Act has been declared unconstitutional, the Commission is up to the challenge given it.

Another threat to the independence of the Commission as a national human rights institution happened on the pronouncement of the Supreme Court in the case of CHREA or the Commission on Human Rights Employees Association vs. the Commission on Human Rights promulgated in February of this year. In this case, the Supreme Court gave its final ruling that the Commission enjoys only “**limited fiscal autonomy**” and has effectively reduced all its Regional Directors to Division Chiefs. This “limited fiscal autonomy” strikes at the core of an important element of independence accorded to national human rights institutions based on the Paris Principles. The Paris Principles states that:

“The National Institutions shall have an infrastructure which is suited to the smooth conduct of its activities, in particular, adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.”

This judicial decision has been a major stumbling block in the operations of the Commission in the current year.

Too much politicking and divisiveness in the 13th Congress (2004-2007) gave it a crucial setback for having recorded the lowest number of laws passed. The Commission could only site four major breakthroughs in legislation touching on the issue of human rights. First is RA 9344 or the Juvenile Justice Law. Second is RA 9346 or the Abolition of the Death Penalty Law, third is RA 9372 or the Human Security Act and fourth is the Hospital Detention Law on the right to health care. If the Congress continues with its ways of political legislation, true reforms in laws will never be achieved.

More importantly, the Philippines has not been up to date in complying with its treaty reporting obligations. In this respect, the Philippines has been recorded as one that has been very late in submitting these State reports to the treaty body mechanisms. It is only in the Convention on the Elimination of All Forms of Discrimination Against Women that the Philippines is up to date in its reporting obligation. Next year, the country is up for review on the International Convention on Economic, Social and Cultural Rights having submitted last year a State report which has been due since 1995. In the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Philippines has submitted only the initial report which was last April 1989. It has been 18 years and the Philippines has not submitted any report since.

E. KEY NATIONAL PRIORITIES, INITIATIVES and COMMITMENTS OF THE STATE

As earlier stated, the strengthening of the Presidential Human Rights Committee provided a new dimension to the government's efforts to uphold human rights in the country. The formulation of a national human rights action plan is a necessity and the delegation of the treaty reporting obligation to concerned agencies promises a good compliance record on this State obligation. Currently, the Department of Interior and Local Government is spearheading the preparation of the State report on UNCAT.

The Commission on Human Rights is at its feet on monitoring State compliance with its treaty reporting obligations, State compliance with international human rights obligations and State compliance with the treaty body recommendations. It is likewise pushing for the ratification of international human rights instruments on enforced disappearance, persons with disabilities, OP-ICCPR, OPCAT and the Rome Statute.

The Government is intent on bringing economic development to the country. Fraught with poverty, graft and corruption and lack of basic services, the citizens could only hope and wait for these commitments to be realized.

The revolutionary action of the judiciary in the cause of human rights, specifically on the issue of extrajudicial killings are major initiatives, achievements and inspirations to the seeming culture of the country.

F. EXPECTATION IN TERMS OF CAPACITY BUILDING

Capacity building activities and programs are strategic and vital to the following important partners and stakeholders in the field of human rights:

1. Capacity building for the government on the State's compliance with international treaty obligations and the implementation of human rights treaty bodies' recommendations
2. Capacity building on treaty reporting for government agencies
3. Capacity building for the Commission on Human Rights on monitoring government's compliance with international human rights standards
4. Capacity building and human rights training for judges, prosecutors, lawyers, law enforcement agencies and others who are directly involved in the investigation, prosecution, trial and resolution of human rights cases

5. Capacity building for the member-agencies of the Presidential Human Rights Committee towards the formulation of a comprehensive National Human Rights Action Plan and its effective implementation
 6. Capacity building for Barangay Human Rights Action Officers
 7. Capacity building to members of both houses of Congress and technical staffs, specifically the using the human rights based approach to legislation
 8. Capacity building for all relevant stakeholders who may be involved in the Universal Periodic Review process in order to ensure a more effective and meaningful assessment of the country
- G. FOLLOW-UP (not yet applicable)