

# Granting Prosecutorial Powers to the Commission on Human Rights: An Evolving Necessity

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## I. INTRODUCTION

For as long as we are with men, let us cherish humanity.

- André Gide

Almost 21 years ago, the backlash against the totalitarian excesses of the Marcos regime spawned the People Power Revolution of 1986, which deposed the dictator through sheer force of popular opinion, along with military capitulation to civilian will. Among those borne upon this momentous wave of change in our history were human rights proponents who were oppressed and silenced under the dictatorship, and who found themselves at the very forefront of the new government led by Corazon C. Aquino, whose policies sought to reverse the appalling human rights situation in the country which had gone from bad to non-existent in the dying days of the Marcos administration. Thus was born the Presidential Commission on Human Rights (PCHR) and, soon after, the present Commission on Human Rights (CHR).

The CHR was envisioned by the newly ratified 1987 Constitution to be, first and foremost, an independent body capable of ensuring that human rights as an inherent part of the right to life guaranteed by the Bill of Rights is protected, pursuant to treaty obligations, in a manner befitting the memory of those who had fallen in their quest to restore democracy to the country. Suffice it to say that in its 20 years of existence, the CHR as an institution has either been a fulfillment of the intentions of the Constitutional framers, or an abject failure in the eyes of those whom it has sought to protect by the very same Constitutional mandate.

The latter opinion has never been more apparent in the past six years since 11 September 2001, when the eyes of billions were opened to a new form of global terrorism reaching into the very heart of the world's last remaining superpower. The local repercussions of this era-altering event were swift and immediate. After President Gloria Macapagal-Arroyo pledged her support to the uncompromising stand of the United States (U.S.) against terrorism, renewed offensives were waged against both the Muslim and Communist rebels, both of whom were groups labeled as terrorist organizations by the U.S. Department of State. Similarly, the government began to crack down on labor organizations and grassroots socialist groups suspected of furthering the separatist cause and preaching government destabilization after numerous scandals involving the President herself were exposed.

The most telling statistic of the escalation in both the armed and ideological conflict, however, was the rising tide of politically-related killings. Since 2001, arbitrary killings and disappearances, mostly of civil society leaders, human rights advocates and oppositionists to the current administration have risen steadily. Such was the public brutality and wanton

manner of execution of these numerous killings that observers, both local and international, suspected that the government, through its various agencies and instrumentalities, had a role to play in what seemed to be a phenomenon of systematic murder and terror.

As a result of this phenomenon of extrajudicial killings and disappearances, United Nations (UN) Special Rapporteur for Human Rights Philip Alston had to visit the Philippines to observe and propose recommendations to stem the tide of killings. While concluding that the government did not seem to have a systematic policy directing such extrajudicial executions and disappearances to take place, Alston nevertheless recognized the complicity of some government instrumentalities and agents in abusing their wide array of powers and functions in the implementation of some government policy. As such, Alston recommended, *inter alia*:

1. Convictions in a significant number of extrajudicial executions must be achieved. Appropriate institutional arrangements exist but they must be more transparent if they are to be effective.
2. The criminal justice system should refocus on investigating and prosecuting those committing extrajudicial executions and other serious crimes.
3. The Supreme Court should use its constitutional powers over the practice of law to impress upon prosecutors that they have a duty to the public to uphold and protect human rights by acting to ensure the effective investigation of cases and protection of witnesses and that they should provide reasoned decisions for probable cause determinations.
4. The Commission on Human Rights (CHR) should guard its independence and increase its effectiveness.
5. The Ombudsman's office should begin to fulfill effectively its independent constitutional role in responding to extrajudicial killings plausibly attributed to public officials.<sup>1</sup>

This Note aims to analyze and examine the relevance of the functions of the CHR in light of the current state of human rights in the country, review its compliance with the guidelines set by the United Nations for National Human Rights Institutions (UNHRI) and the obligations existing under specified treaty obligations and with the available conceptual models, recommend the enactment of specific legislation in order to expand the powers of the CHR to comply with international standards.

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1. The Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions, *Report of the Special Rapporteur on his Mission to the Philippines*, delivered to the Human Rights Council, A/HRC/8/3/Add.2 (Apr. 16, 2008) [hereinafter Alston Report].

II. A TOOTHLESS WATCHDOG?  
THE COMMISSION ON HUMAN RIGHTS 1987-2007

*A. Martial Law and the EDSA Revolution*

On 21 August 1977, six years after the declaration of Martial Law,<sup>2</sup> and before Senator Benigno “Ninoy” Aquino was assassinated upon his return from exile, President Ferdinand E. Marcos spoke before delegates of the 8th World Law Conference held in Manila of the challenge of liberty and its special meaning to Filipino society, *viz*:

From the dark shadows of colonial rule through the labyrinth of decolonization and finally to our present program of national transformation, the history of the Filipino nation has been a consistent movement toward [sic] expanding the limits of freedom.

I have come today to pledge anew that our new society which I have instituted is dedicated to the attainment of the true dignity and freedom of our people under a rule of law.<sup>3</sup>

Delivered with the President’s usual charismatic force, these words would have been enough to convince any international observer that Marcos’ New Society was a success. However, like all dictatorships fashioned out and kept in power by police presence and military vigilance, the Marcos regime suffered from an essential rot in its foundations.

Just two years prior to President Marcos’ keynote speech on the challenge of liberty in Philippine society and his accompanying pledge, a Report of an Amnesty International Mission found that despite a “laudable framework ... for the protection of human rights”<sup>4</sup> as contained in the then Bill of Rights,<sup>5</sup> the mission collected:

overwhelming evidence that these promises and guarantees, at least up to the time of the mission, were meaningless nullities for persons detained under suspicion of political offences ... the evidence establishes a consistent pattern of gross violations of internationally recognized human rights

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In reality, at least up to the time of the [Amnesty International] mission, the only rule of law in [t]he Philippines under martial law has been the

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2. Office of the President, Proclaiming a State of Martial Law in the Philippines, Proclamation No. 1081 (Sep. 21, 1972).
  3. President Ferdinand E. Marcos, Keynote Address at the 8th World Law Conference: The Challenge of Liberty, Philippine International Convention Center, Manila (Aug. 21, 1977).
  4. Amnesty International [AI], *Report of an Amnesty International Mission to The Republic of the Philippines 22 November – 5 December 1975*, 55, 2d. ed. (1976).
  5. 1973 PHIL. CONST. art. IV (superseded 1987).

unchecked power of the executive branch and the military. In reality, the only part of the [C]onstitution in effect has been the so-called “transitory provisions.” These give the President virtually unlimited power to rule by decree and, in effect, make a nullity of “the basic liberties guaranteed to all persons within the country.”<sup>6</sup>

The state of human rights in the country under Martial Law, as found by succeeding Amnesty International Missions, did not improve over the years following the 1975 Report and President Marcos’ 1977 pledge. In fact, in late 1981, even after Martial Law had been lifted by the decree of President Marcos,<sup>7</sup> Amnesty International still found evidence to conclude that:

[T]he security forces of the Philippines have systematically engaged in practices which violate fundamental human rights, including *the right to life, the right to security of person and the right against arbitrary arrest and detention*. Amnesty International has noted in this report the repeatedly stated commitment of the Government of the Philippines to uphold and protect human rights in accordance with the well-developed legal tradition of the country.<sup>8</sup>

Just five years later, in February 1986, buoyed by the simmering public outrage over the assassination of Senator Aquino, and the widespread fraud in the 1985 Presidential Elections that led to a “landslide” victory of the incumbent over the challenger, who was the widow of the slain Senator and sole candidate of the United Opposition, two members of President Marcos’ Cabinet withdrew their support for the beleaguered strongman and led a popular uprising now known as the 1986 People Power Revolution. These massive, peaceful protests, coupled with a withdrawal of support from the U.S. Government meant President Marcos’ twenty-year rule was over.

As the country sought to cleanse itself of the blood spilled during the dictatorship, the new revolutionary government under President Corazon C. Aquino sought to institute drastic changes in the manner by which human rights violations, largely unchecked and mostly government-inflicted during the Marcos era, were treated, investigated and prosecuted in this new period of change and reaction.

#### *B. The Emergency Presidency*

Reeling from almost two decades of brutal suppression and inaction, the development of a comprehensive human rights policy and its effective implementation was an important priority of the Aquino administration. The promotion and protection of human rights for the new government was

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6. AI, *supra* note 4 at 55.

7. Office of the President, Proclamation No. 2045 (Jan. 17, 1981).

8. AI, *Report of an Amnesty International Mission to The Republic of the Philippines 11-28 November 1981*, 10 (1982) (emphasis supplied).

understandably a reactionary, yet important, step in addressing the societal need for radical change in the perception of the government as protector of its citizen's most basic rights. At the same time, the international community, by then painfully aware of the excesses of the Marcos dictatorship, needed to be convinced that the Philippines was compliant with the minimum standards of international human rights law.

From the very start of her ascent into power, President Aquino sought to make the advancement of human rights at the very forefront of her campaign for change. On 27 February 1986, just two days after the People Power Revolution, she announced that all political prisoners would be released and decreed the restoration of the writ of *habeas corpus*.<sup>9</sup> The Philippines also ratified the Convention Against Torture<sup>10</sup> and the International Covenant on Civil and Political Rights<sup>11</sup> on 18 June and 23 October 1986, respectively. Within a year, the 1987 Philippine Constitution was ratified as well, with a revised Bill of Rights<sup>12</sup> which expressly prohibited torture and the imposition of the death penalty as its cornerstone.<sup>13</sup> Similarly, Presidential Decrees Nos. 1877<sup>14</sup> and 1877-A,<sup>15</sup> issued by the former dictator authorizing the detention of persons accused of national security offenses without recourse to the courts, were repealed in the first months of the Aquino government.

More than this, however, President Aquino needed a permanent institution to safeguard human rights in the Philippines against abuses and excesses of power of the government and its instrumentalities. Prior to the institution and ratification of the 1987 Constitution, the revolutionary government functioned under the auspices of the 1986 Provisional "Freedom" Constitution, which granted President Aquino extended powers to administer the country by decree, at least "until a legislature is elected and

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9. ALBERTO T. MUYOT, HUMAN RIGHTS IN THE PHILIPPINES 1986-1991 3 (1992).
  10. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. A/RES/57/199 (Dec. 18, 2002).
  11. International Covenant on Civil and Political Rights, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/63/16 (1966), 999 U.N.T.S. 171 (Mar. 23, 1976) [hereinafter ICCPR].
  12. PHIL. CONST. art. III.
  13. MUYOT, *supra* note 9.
  14. Office of the President, Providing for the Issuance of a Preventive Detention Action and for other Purposes, Presidential Decree No. 1877 (July 21, 1983).
  15. Office of the President, Amending Presidential Decree No. 1877, Presidential Decree No. 1877-A (July 23, 1983).

convened under a New Constitution.”<sup>16</sup> Among the “priority measures” entrusted to the President’s powers to resolve were to (1) completely reorganize the government and eradicate unjust and oppressive structures, and all iniquitous vestiges of the previous regime, and (2) make effective the guarantees of civil, political, human, social, economic, and cultural rights and freedoms of the Filipino people, and provide remedies against violations thereof.<sup>17</sup>

*C. Executive Order No. 8: The Presidential Committee on Human Rights as Interim Investigative Body*

On 18 March 1986, the Presidential Committee on Human Rights<sup>18</sup> (PCHR) was created as guarantee of the new government’s commitment to “uphold and respect the people’s civil liberties and human rights.”<sup>19</sup> Attached to the Office of the President for general direction and supervision,<sup>20</sup> the PCHR was headed by a noted human rights lawyer and advocate, Jose W. Diokno, as Chairman and a retired Supreme Court Justice, Jose B.L. Reyes, as Vice-Chairman.<sup>21</sup> Primarily envisioned as an interim investigative body prior to the creation of a more permanent National Human Rights Institution (NHRI), it was nevertheless empowered to investigate complaints, report its findings to the President, propose procedures and safeguards to ensure protection of human rights and all other functions as may be necessary for the purpose of its creation.<sup>22</sup>

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16. 1986 FREEDOM CONSTITUTION, art. II, § 1 (superseded 1987) (The “New Constitution” referred to in this phrase, which would become the 1987 Constitution, would not be complete and ratified for another year.).

17. 1986 FREEDOM CONSTITUTION, art. II, § 1 (a), (b).

18. Office of the President, Creating the Presidential Committee on Human Rights, Executive Order No. 8, (Mar. 18, 1986).

19. *Id.* Whereas clause.

20. *Id.* § 1.

21. *Id.* § 2.

22. *Id.* § 4. In full, the PCHR’s powers and functions were comprehensive for its interim purpose, *viz.*:

Sec. 4. Functions of the Committee. The Committee shall have the following functions:

- (a) Investigate complaints it may receive, cases known to it or to its members, and such cases as the President may, from time to time, assign to it, of unexplained or forced disappearances, extra-judicial killings (salvaging), massacres, torture, hamletting, food blockages and other violations of human rights, past or present, committed by officers or agents of the national government or persons acting in their place or stead or under their orders, express or implied;

However, given its relatively short life-span, the PCHR was not an independent governmental body, neither could it be envisioned as the permanent national human rights institution that was to stand as the bulwark of the most basic of human rights in the Philippines. Since by its very nature, the PCHR was purely advisory and consultative,<sup>23</sup> it could not exercise the wide breadth of powers needed to effectively bring human rights violators to justice, especially those directly responsible for the atrocities committed during the Marcos regime.

Nevertheless, for the short span of one year and two months in which it existed, the PCHR received a total of 872 reports of human rights abuses, 522 of which occurred prior to the transition of power due to the People Power Revolution, and 267 thereafter. Of these human rights abuses investigated by the PCHR, killings registered the highest number of incidence (341 cases), followed by torture (98 cases), and disappearances (95 cases). Furthermore, the groups and persons identified to be the perpetrators comprised mostly of government agents from the Armed Forces of the Philippines (AFP), the Integrated National Police (INP), the Philippine Constabulary (PC), and the National Intelligence Coordinating Agency

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- (b) Report its findings to the President and make them public, suggesting such action or actions by the new government to compensate the victims and punish culprits as it may deem appropriate;
  - (c) Propose procedures and safeguards to ensure that, under the new government, human rights are not violated by officers or agents of the government or by persons acting in their names and stead or under their orders, express or implied; and
  - (d) Performs such other functions as may be necessary for the protection of human rights and the advancement of social justice in the country.

*Id.*

23. EO No. 8, § 3. The nature of the Committee was described thus:

*The primary task of the Committee is to assist the President in the discharge of her duty to respect and foster human rights. It is purely advisory and consultative so that the Committee and all persons or personnel appointed, designated or contracted by it shall not be subject to civil service law, rules and regulations. Moreover, membership in the Committee shall not be construed as in conflict with any other public or private position or profession that the members may hold or practice. Members may designate alternates if they cannot attend a particular meeting or meetings of the Committee.*

*Id.* (emphasis supplied).



(NICA), aside from the Civilian Home Defense Force (CHDF) and other para-military forces.<sup>24</sup>

It is, therefore, apparent that from the very beginning of the existence of a truly Philippine NHRI, its great challenge has been to temper the awesome power of a government traditionally eager to exercise power and rein in dissent and revolution throughout its territory. A permanent and effective NHRI was essential to the success of the new Aquino Government, and more importantly, to that of the new 1987 Constitution which had mandated its immediate existence as a centerpiece of a new administration determined to eradicate all fears of a resurrection of the prior one.

#### *D. The Commission on Human Rights: The Early Days*

The realization that led to birth of the present Commission on Human Rights (CHR) was a belated one. Commissioner Abraham Sarmiento put it poignantly<sup>25</sup> in his sponsorship speech on the human rights provision of the 1987 Constitution when he said that:

Fifteen years of abuses of fundamental rights and freedoms have awakened us to the need for a comprehensive program for the promotion, protection and respect for human rights. Such a program can best be formulated and undertaken by a specialized agency which is independent from the three main branches of government and equipped with the necessary powers and functions to carry out its programs.<sup>26</sup>

Fortunately, the program envisioned by Commissioner Sarmiento was one that had already undergone a year's amount of fine-tuning and had, in effect, collected precious information on how an NHRI would operate in the uniquely Philippine setting. As a result, the constitutional provision creating the CHR granted it almost the same investigatory powers, albeit phrased in slightly more general terms<sup>27</sup> from the original scope of

24. Ma. Rebecca T. Carrasco, *An Analysis of the Investigatory Powers of the Commission on Human Rights (1992)* (unpublished J.D. thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University) (citing Annual Report for 1986 Presidential Committee on Human Rights).

25. Commissioner Sarmiento's son, Abraham Sarmiento, Jr., died in 1977 from complications arising from his imprisonment under the Marcos regime as a radical editor-in-chief of the *Philippine Collegian*.

26. 3 RECORD OF THE CONSTITUTIONAL COMMISSION 716 [hereinafter RECORD].

27. PHIL. CONST. art. XIII, § 18. The provision states:

Section 18. The Commission on Human Rights shall have the following powers and functions:

investigatory powers to the PCHR, which had striven to enumerate the specific offenses that were subject to its special inquiry.<sup>28</sup>

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- (1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
- (2) Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;
- (3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection;
- (4) Exercise visitatorial powers over jails, prisons, or detention facilities;
- (5) Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
- (6) Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
- (7) Monitor the Philippine Government's compliance with international treaty obligations on human rights;
- (8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority;
- (9) Request the assistance of any department, bureau, office, or agency in the performance of its functions;
- (10) Appoint its officers and employees in accordance with law; and
- (11) Perform such other duties and functions as may be provided by law.

*Id.*

28. E.O. No. 8, § 4 (a). The provision states:

Sec. 4. Functions of the Committee. The Committee shall have the following functions:

Investigate complaints it may receive, cases known to it or to its members, and such cases as the President may, from time to time, assign to it, of unexplained or forced disappearances, extra-judicial killings (salvaging), massacres, torture, hamletting, food blockages and other violations of human rights, past or present, committed by officers or agents of the national government or persons acting in their place or stead or under their orders, express or implied.

In addition to this, the constitutional provision now included “private parties” as a source of human rights violations, provides appropriate legal measures for the protection of human rights including provisions for legal aid services, and provides for an establishment of a continuing program of education.<sup>29</sup> As it stands, the organic law breathing life into CHR grants the power to investigate “all forms of human rights violations involving *civil and political rights*.”<sup>30</sup> This specific wording of the law, including the essential aforementioned qualifier, as will be hereinafter shown, was the subject of considerable debate among the commissioners regarding the legal implications of the same.

*E. Powers Granted by the Constitution and the Scope of its Mandate*

In providing an insight into the committee deliberations as to their aspirations for what would become the present CHR, Commissioner Sarmiento provided two sources of human rights abuses sought to be curtailed by the creation of such an institution: “private practices inimical to human rights or resulting from government policies, rules and regulations or the implementation thereof.”<sup>31</sup> In order to shift unwarranted focus away from governmental actions however, “[e]very effort was made to ensure that the phraseology of the provision did not suggest that only military violations were within the scope of the Commission’s authority.”<sup>32</sup>

Furthermore, the CHR’s powers were defined as being principally investigative and recommendatory in nature, the latter of which may include, among others, the filing of appropriate criminal actions to parties guilty of human rights violations.<sup>33</sup> Commissioner Sarmiento was quick however, to point out that “the appropriate government agencies, like the City Fiscal’s Office and the prosecutory arm of the government, will undertake [the] prosecution.”<sup>34</sup> Indeed, as pointed out by fellow Constitutional Commissioner Fr. Joaquin G. Bernas, S.J., as its principal function is only investigatory, it will have to rely on the Justice Department which has full control over prosecutions.<sup>35</sup>

As to its nature, Commissioner Sarmiento clarified that the CHR was not meant to be merely a purely administrative body, but because of the

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*Id.*

29. RECORD, *supra* note 26, at 715.

30. PHIL. CONST. art. XIII, § 18 (1) (emphasis supplied).

31. RECORD, *supra* note 26, at 711.

32. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 1225 (2005) (citing RECORD 754-761).

33. RECORD, *supra* note 26, at 712.

34. *Id.*

35. BERNAS, *supra* note 32.

functions enumerated in the constitutional provision, it is more in the nature of a quasi-judicial body.<sup>36</sup> Furthermore, replying to a question propounded by an inquisitive Commissioner Jose N. Nollado regarding the coverage of the extent of the CHR's powers to provide appropriate legal measures for the protection of human rights of all persons within the Philippines,<sup>37</sup> Commissioner Sarmiento clarified that the aforementioned power, which would include provisions for legal aid services for indigent persons, will only cover cases being handled by the CHR itself in its specific constitutional capacity, other cases pending before other tribunals involving human rights violations being merely opportunities for the Commission to provide supplementary assistance.<sup>38</sup>

The foregoing discussion on the exact breadth and width of the CHR's powers and functions with regard to their special constitutional directive highlights the early struggle to comprehend what may have been for the Constitutional Commissioners an essential incongruity between the CHR's functional limits and its important mandate: the need to effectively and permanently protect human rights in the Philippines pursuant to the Constitution without overstepping the bounds of its granted powers as a statutory creation.

Commissioner Teodulo C. Natividad put it succinctly by stating that he is "interested in seeing that it is not merely a paper tiger but something that has got teeth to bite by enjoining people not to continue in the commission of violation of human rights and by directing protection to the people."<sup>39</sup>

Then, as it is now, the recognition of the need to protect and sustain the respect for human rights within the Philippine setting is of such importance that mere platitudes and empty measures are not sufficient to assure the citizenry that a repeat of overwhelming governmental abuse will be forestalled effectively. However, the Constitutional Commission also recognized that for the future CHR to effectively implement its Constitutional mandate, a more precise delineation of what human rights violations may fall under its limited authority was necessary.

#### *F. The Intent of the Constitutional Commission*

A major issue for the Constitutional Commission was a more precise understanding of the specific human rights violations that the CHR may take cognizance of given the proper circumstances. In this regard, the statements of Commissioners Sarmiento and Garcia during the deliberations are beneficial:

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36. RECORD, *supra* note 26, at 712.

37. PHIL. CONST. art. XIII, § 18, ¶ 3.

38. RECORD, *supra* note 26, at 713.

39. RECORD, *supra* note 26, at 717.

MR. SARMIENTO: What we had in mind when we formulated Section 2 (1)<sup>40</sup> are violations of civil and political rights.

...

MR. GARCIA: Actually, these civil and political rights have been made clear in the language of human rights advocates, as well as in the Universal Declaration of Human Rights, which addresses a number of articles on the right to life, the right against torture, the right to fair and public hearing and so on. These are very specific rights that are considered enshrined in many international documents and legal instruments as constituting civil and political rights, and these are precisely what we want to defend here.<sup>41</sup>

### G. *Jurisprudential Limitations*

Once the theoretical boundaries of the CHR's powers had been sufficiently established by the Constitution, what therefore remained to be seen was a practical application of the powers granted to such a unique legal creation within the conventional framework of Philippine law enforcement. Within six years from the ratification of the Charter, the Supreme Court quickly decided three important cases that refined and reasserted the scope and limitations of the Commission.

#### 1. *Cariño v. Commission on Human Rights*<sup>42</sup>

In a case of first impressions, the Court was called upon to resolve the issue of whether the newly constituted Commission on Human Rights had the power to hear and resolve a complaint involving civil and political rights.

The case involved a mass concerted action initiated by several public school teachers to compel the government to grant certain demands which were being ignored by the Department of Education, Culture and Sports (DECS).<sup>43</sup> Faced with a possibility of a widespread cancellation of classes due to the concerted action, Secretary Cariño of DECS served the striking teachers a return-to-work order to be complied with within 24 hours under the penalty of dismissal from service.<sup>44</sup> The teachers failed to comply with the aforementioned order and DECS subsequently charged them and decreed their dismissal from service.<sup>45</sup>

The affected teachers therefore submitted their complaint to the CHR which steadfastly decided to hear and decide the case despite a concurrent

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40. Now PHIL. CONST. art. XIII, § 18.

41. RECORD, *supra* note 26, at 722.

42. *Cariño v. Commission on Human Rights*, 204 SCRA 483 (1991).

43. *Id.*

44. *Id.* at 486.

45. *Id.* at 487.

resolution from the Court that appeal of the dismissal order was properly lodged with the Civil Service Commission (CSC).<sup>46</sup>

In strong words, the Supreme Court censured the CHR, declaring them to have “no such power; and that it was not meant by the fundamental law to be another court or quasi-judicial agency in this country, or duplicate, much less take over the functions of the latter.”<sup>47</sup> In granting the CSC the jurisdiction to resolve the appeal of the dismissed teachers, the Court reasserted the primary function of the CHR as being merely fact-finding, such that “it may investigate, i.e. receive evidence and make findings of fact as regards claimed human rights violations involving civil and political rights.”<sup>48</sup>

Thus, in one fell swoop, the Court divested the fledgling Commission of any pretensions as to the availability of a broad exercise of quasi-judicial powers.<sup>49</sup> Notable in this case is the desistance of the Court from explicitly declaring whether the rights sought by the teachers with regard to their reinstatement constituted “civil and political rights” as exhaustively defined by the Constitutional Commission, a question that will later find relevance in the third case involving the CHR.<sup>50</sup>

## 2. *Export Processing Zone Authority v. Commission on Human Rights*<sup>51</sup>

Not soon after *Cariño*, the Court then had occasion to reaffirm their ruling on the Commission’s lack of authority to exercise not only adjudicatory powers, but also their incapacity to grant extrajudicial and judicial remedies.

The case revolved around the legality of an Order issued by the CHR through Chairperson Mary Concepcion Bautista ordering the Export Processing Zone Authority (EPZA), the 125th PNP Company and Governor Juanito Remulla and his subordinates to desist from further acts of demolition, terrorism, and harassment directed against the private respondents, who were contesting the development of a parcel of land in Cavite allegedly owned by them.<sup>52</sup> EPZA later filed a special civil action for certiorari and prohibition against the CHR, alleging that the latter acted in

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46. *Id.* at 490.

47. *Id.* at 492.

48. *Cariño*, 204 SCRA at 492.

49. *Id.*

50. *Id.* at 499 (Paras J., concurring).

51. *Export Processing Zone Authority v. Commission on Human Rights*, 208 SCRA 125 (1994).

52. *Id.* at 127.

excess of its jurisdiction and with grave abuse of discretion in issuing the restraining order and injunctive writ.<sup>53</sup>

CHR countered by saying that its principal function is not limited to mere investigation, such that Article XIII, Section 18 (c) of the Constitution expressly granted them the “power to provide appropriate legal measures for the protection of human rights,” including “providing for preventive measures and legal aid services to the underprivileged.”<sup>54</sup> The Supreme Court brushed aside this contention by declaring that:

The constitutional provision directing the CHR to “provide for preventive measures and legal aid services to the underprivileged whose human rights may have been violated or need protection” may not be construed to confer jurisdiction on the Commission to issue a restraining order or writ of injunction for, if that were the intention, the Constitution would have expressly said so.

...

Evidently, the “preventive measures and legal aid services” mentioned in the Constitution refer to extrajudicial and judicial remedies (including a preliminary writ of injunction) which the CHR may seek from the proper courts on behalf of the victims of human rights violations. Not being a court of justice, the CHR itself has no jurisdiction to issue the writ.<sup>55</sup>

Here, the Court, therefore, further limited and defined the scope of powers that can be exercised by the CHR to exclude the traditional judicial powers to issue writs of injunction and restraint.<sup>56</sup> It is quite significant that the Court chose to interpret the enabling law strictly to disallow such measures by the CHR despite its vital human rights mandate.

In choosing to construe Article XIII, Section 18, Paragraph 3 as limited in capacity and not all-encompassing, the Supreme Court made the last, critical jurisprudential limitation on the implied powers<sup>57</sup> of the Commission, as distinguished from its established investigatory and recommendatory powers. The net effect of the two rulings reduced the CHR to a mere watchdog agency, closely akin to the “paper tiger” sought to be avoided by Commissioner Natividad, devoid of the power to “enjoin” and provide “direct protection” to the victims of human rights violations.<sup>58</sup>

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53. *Id.* at 129.

54. *Id.*

55. *Id.* at 131.

56. *Id.* at 132.

57. “Implied” only as a means of ascertaining the bounds and limits of PHIL. CONST. art. XIII § 18 ¶ 3.

58. RECORD, *supra* note 26.

3. *Simon v. Commission on Human Rights*<sup>59</sup>

This final case involving the Commission's scope of powers arose primarily upon the question of whether the CHR could take cognizance of and afford relief to a group of vendors whose stalls along Epifanio de los Santos Avenue (EDSA) were being demolished to make way for the development of a park.<sup>60</sup> Convinced of the merit of the complaint, the CHR ordered the disbursement of financial assistance to the displaced vendors and directed petitioners, including Quezon City Mayor Brigido Simon, Jr., to desist from further demolition under the penalty of a citation for contempt and arrest.<sup>61</sup> A motion to dismiss and a supplemental motion to dismiss were filed by the petitioners who argued that "the rights violated in this case (were) not civil and political rights, (but) their privilege to engage in business."<sup>62</sup>

In a last-ditch effort to regain some semblance of effective power after the rulings in *Cariño* and *EPZA*, the CHR opined that "it was not only the intention of the Constitutional Commission to create only a paper tiger limited only to investigating civil and political rights, but to provide appropriate legal measures for the protection of human rights of all persons within the Philippines."<sup>63</sup>

Furthermore, the CHR argued that "[t]he right to earn a living is a right essential to one's right to development, to life and to dignity"<sup>64</sup> thereby placing the same under the general Constitutional penumbra of civil and political rights.

The Supreme Court, in a lengthy discussion tracing the definition of human rights in general up to the specific civil and political rights mentioned in Article XIII, Section 18 (a), declared it readily apparent that the Commissioners envisioned a CHR that would focus its attention to the more severe cases of human rights violations.<sup>65</sup> This would be subject to Congress providing for "other cases of violations of human rights that should

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59. *Simon v. Commission on Human Rights*, 229 SCRA 117 (1994).

60. *Id.* at 121.

61. *Id.*

62. *Id.* at 122.

63. *Id.* at 123.

64. *Id.*

65. See generally *Simon*, 229 SCRA at 131 (citing RECORD 738-39). Commissioner Garcia mentioned the following specific civil and political rights: "protection of rights of political detainees, treatment of prisoners and the prevention of tortures, fair and public trials, cases of disappearances, salvaging and hamletting, and other crimes committed against the religious." *Id.*



fall within the authority of the Commission, taking into account its recommendations.”<sup>66</sup>

Thus, the Court ruled that the rights sought to be redressed by the private respondents from the CHR were not only outside the scope of “civil and political rights” as hereinabove elucidated, but were in fact non-existent. In addition, the Court limited the Commission’s power to cite in contempt<sup>67</sup> only those violations of its adopted operational guidelines and rules of procedure essential to carry out its investigatory powers.<sup>68</sup> Once again, it struck down the Commission’s issued “Order to Desist” as mere semantic interplay for a restraining order, an action which was already judicially proscribed in the *EPZA* case.

#### 4. The Jurisprudential Re-shaping of the Commission on Human Rights

The net effect of the *Cariño*, *EPZA*, and *Simon* was an unintended departure from the aspirations of the Constitutional Commission to bring into being a truly effective national human rights institution that was “equipped with the necessary powers and functions to carry out its programs.”<sup>69</sup>

A common thread running through the three seminal cases was the consistent dissent of Justice Padilla from the systematic pruning of the Commission’s powers from *Cariño* onwards.

*EPZA* found occasion for Justice Padilla to register his dissent once again, founded on the same legal reasons as earlier stated in *Cariño*, with an additional opinion that, in the circumstances prevailing in *EPZA*,<sup>70</sup> CHR had the “unquestioned authority” to issue cease and desist orders in order to “maintain the *status quo* pending its investigation of cases involving alleged human rights violations.”<sup>71</sup> Absent this power, he contends that the CHR would, in effect, be “an ineffective instrument for the protection of human rights.”<sup>72</sup>

Finally in *Simon*, aware that the Court had yet again, under the guise of adhering to the doctrine of strict interpretation of law, restricted the Commission’s powers to a mere shadow of its potential, Justice Padilla decried the manner by which the constitutional mandate to protect and promote human rights had been unreasonably impeded:

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66. PHIL. CONST. art. XIII, § 19.

67. PHIL. CONST. art. XIII, § 18, ¶ 2.

68. *Simon*, 229 SCRA at 134.

69. RECORD, *supra* note 26, at 711.

70. *EPZA*, 208 SCRA 125.

71. *Id.* at 132 (Padilla, J. dissenting).

72. *Id.*

Human rights demand more than lip service and extend beyond impressive displays of placards at street corners. Positive action and results are what count. Certainly, the cause of human rights is not enhanced when the very constitutional agency tasked to protect and vindicate human rights is transformed by us, from the start, into a tiger without dentures but with maimed legs to boot. I submit the CHR should be given a wide latitude to look into and investigate situations which may (or may not ultimately) involve human rights violations.<sup>73</sup>

Justice Padilla's disagreement with the majority opinion in the three cases stemmed from what he perceived to be an undue curtailment of the Commission's *preventive* powers, i.e. those logically, reasonably and effectively necessary to preclude a violation of human rights, such as the power to issue writs of injunction and restraint.<sup>74</sup> However, it can also be argued, as will be discussed in Part IV of this Note, that in addition to a denial of such preventive measures by judicial fiat, the CHR also lacks the reasonable prosecutorial mechanism to complete the cycle of protection meant to be afforded to the human rights under the scope of its authority.

#### H. CHR Guidelines

Aside from the Constitutional, statutory, and jurisprudential attempts to define and limit the scope of its powers, the fledgling Commission had, as early as within a year from their organization, already sought to provide by way of promulgating internal rules of procedure,<sup>75</sup> to distinguish between human rights violations that fell within its Constitutional ambit and those that did not. To this end, the CHR tried to differentiate what it described as "human rights *per se*"<sup>76</sup> and "other human rights violations,"<sup>77</sup> the essential distinction being that while the former must be investigated by the Commission without delay, the latter, though falling within the scope of "civil and political rights," may be brought before other government agencies or proper courts, not being subsumed under the exclusive primary jurisdiction of the CHR as defined.<sup>78</sup>

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73. *Simon*, 229 SCRA at 137 (Padilla, J. dissenting).

74. *EPZA*, 208 SCRA at 132 (citing PHIL. CONST. art. XIII, § 18, ¶ 3).

75. Commission on Human Rights, Resolution No. 88-045 (July 26, 1988).

76. *Id.* (Defined as "those easily discernible as palpable transgressions of human rights." Included are the constitutional guarantees under the Bill of Rights, and crimes against the fundamental laws of the State, crimes against persons, crimes against personal liberty, security and chastity, also otherwise defined as felonies under the Revised Penal Code.).

77. *Id.* (Defined as "those ordinary and non-violent rights violations." Those not otherwise enumerated under the definition of "human rights *per se*.").

78. Keith Richard Manuel Pioquinto, *Strengthening the Functional and Structural Organization of the Commission on Human Rights* (2002) (unpublished J.D.).

This attempt to create a hierarchy of enumerated human rights offenses was superseded eight years later when the Commission issued a new Resolution providing for and delineating the human rights violations that fall under its authority to investigate, comprising of, but not limited to:

1. Rights of prisoners/detainees against physical, psychological and degrading punishment resulting in the commission of crimes against persons as provided in Title Eight of Republic Act No. 3815, as amended, and the related special laws;
2. Constitutional guarantees provided against the use of torture, force, violence, threats and intimidation, and other means that vitiate the free will of any person or force him to do anything or sign any document against his will;
3. Right to a fair and public trial as recognized under the Constitution, applicable laws and jurisprudence;
4. Right to life without due process of law, where its commission is tantamount to summary execution and/or extrajudicial execution (salvaging);
5. Liberty of abode and of changing the same within the same limits prescribed by law, except upon lawful order of the court, where the acts committed constitute hamletting, forced eviction/illegal demolition, or development aggression;
6. Right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures as defined in Articles 124, 127, 128, 129 of Title II and in Articles 269, 280, 282, 286, 287, of Title IX of Republic Act No. 3815, as amended, and the related special laws, where said acts are committed in the course of, or by reason thereof, or when involuntary or enforced disappearances as defined under applicable laws or international treaty obligations on human rights resulted or was the reason for violations;
7. Rights or persons arrested, detained, or under custodial investigation as well as the duties of the arresting, detaining and investigating officers defined under Republic Act No. 7438;
8. Right of the people to peaceably assemble and petition the government for redress of grievances which are defined in Article 131 under Title II of Republic Act No. 3815, as amended and the related special laws;
9. Right of the people to be free from involuntary servitude in relation to Section 18 (2) of Articles 272, 273, 274, of Title IX,

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Thesis, Ateneo de Manila University) (on file with the Professional Schools Library, Ateneo de Manila University) *citing* Merideth D. Delos Santos, *Of Boys in Freezers and Colored Hair: Defining the Jurisdiction of the Commission on Human Rights*, THE HUMAN RIGHTS AGENDA, November 1996, at 7.

Article 341 of Title XI of Republic Act No. 3815, as amended and the related special laws; and

10. Free exercise and enjoyment of religious profession and worship, without discrimination of religion in relation to offenses defined in Articles 132 and 133 of Title II of Republic Act No. 3815, as amended and the related special laws, including offenses against the religious, such as the desecration of places of worship, graves, interruption of religious worships and other acts notoriously offensive to the feeling of the faithful.<sup>79</sup>

A cursory examination of this 1996 Resolution finds that the CHR only sought to expand upon and specify the exact same enumeration as held by the Supreme Court in *Simon*, as suggested by the Constitutional Commission.<sup>80</sup> In addition to this, the CHR categorically pronounced “that priority or preferential attention must be given to human rights violation cases where the probable respondent is a government official, personnel or employee.”<sup>81</sup>

This effort by the CHR to clearly define its powers in light of the jurisprudential, constitutional and statutory limitations is evidently an exercise of interpretative legislation<sup>82</sup> allowed of a government agency to properly elucidate upon and define the ambiguities in the laws creating and defining its authority. The effort undertaken by the Commission indeed lends itself to a noble task, especially in light of the difficulties encountered by the courts and perhaps even law enforcement agencies in distinguishing between what should properly be within the CHR’s jurisdictional umbrella. However, it is submitted that the work is still largely incomplete, the Commission having been primarily satisfied with equating the enumeration

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79. MUYOT, *supra* note 9 at 30-33 (citing Samuel M. Soriano, *Prosecution and Mediation of Human Rights Cases*, 3 THE JUDGE’S JOURNAL 32-4 (no date given)). *See also*, Commission on Human Rights, Resolution No. A96-005 (Jan. 25, 1996).

80. *Simon*, 229 SCRA at 131. (citing RECORD 738-39. Commissioner Garcia mentioned the following specific civil and political rights: “protection of rights of political detainees, treatment of prisoners and the prevention of tortures, fair and public trials, cases of disappearances, salvaging and hamletting, and other crimes committed against the religious.” *Id.*).

81. Pioquinto, *supra* note 78 at 34 (citing Commission on Human Rights, Resolution No. A96-005 (Jan. 25, 1996)).

82. *See* Commissioner of Internal Revenue v. Court of Appeals, 261 SCRA 237, 256 (1996). (In Justice Bellosillo’s dissenting opinion, interpretative legislation was defined as one which is “promulgated by the administrative agency to interpret, clarify or explain statutory regulations under which the administrative body operates. The purpose or objective of an interpretative rule is merely to construe the statute being administered. It purports to do no more than interpret the statute.”).

made by the Court in *Simon* and Commissioner Ed Garcia in the deliberations with parallel offenses in the Revised Penal Code (RPC) and other related special penal laws.

It is indeed an agreeable endeavor to stick to the established definitions in law, such as the crimes in the RPC and their respective elements, which have been reinforced by judicial decisions over the years. However, it is essential to the fulfillment of the mandate of the CHR that the matter of specifically delineating and defining the human rights element by statutory or judicial action be accomplished, so as to operationally distinguish the commission of a crime in which the same is present from another crime of the same nature, containing the same structural components but bereft of that essential element involving a violation of civil and political rights by the government, an instrumentality or agent thereof.

### *I. The Human Security Act of 2007*

The CHR's powers and functions went through a jurisprudential and administrative re-shaping in the early years of its existence. However, despite the decidedly stable and established boundaries, the Human Security Act of 2007<sup>83</sup> disturbed, rather radically, the understanding of the CHR's place within the framework of Philippine law enforcement.

The Human Security Act was implemented in the wake of terrorist acts and the proliferation of terrorist individuals and groups in the country with proven links to international terrorist organizations such as Al-Qaeda. This seminal piece of legislation was the product of the government's recognition and support for the "war on terror" initiated by the United States<sup>84</sup> and its own realization that combating this new form of armed offensives by radical and ideologically-motivated groups needed a grassroots approach for its prevention and punishment.<sup>85</sup>

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83. An Act to Secure the State and our People from Terrorism [Human Security Act of 2007], Republic Act No. 9372 (2007).

84. Wikipedia, War on Terrorism, *available at* [http://en.wikipedia.org/wiki/War\\_on\\_terror](http://en.wikipedia.org/wiki/War_on_terror) (last accessed Oct. 2, 2009). (The entry describes the conflict as "the common term for the various military, political and legal actions initiated by the United States government, stated to be a response to the September 11, 2001 attacks. The official objectives are to counter terrorist threats, prevent terrorist acts and curb the influence of terrorist organizations such as al-Qaeda.").

85. Human Security Act of 2007, § 2. The second paragraph thereof states:

The State recognizes that the fight against terrorism requires a comprehensive approach, comprising political, economic, diplomatic, military and legal means duly taking into account the root causes of terrorism without acknowledging these as justifications for terrorist and/or criminal activities. Such measures shall include conflict management and post-conflict peace-building, addressing the roots of

Nevertheless, as a last word in the declared policy of the law, Congress reassured the public that despite a noticeably broad grant of additional police powers and a presumptive leeway to curtail certain constitutional rights to the government, specifically to its law enforcement agencies, the most basic human rights as guaranteed in the Constitution shall nevertheless be given utmost respect as a necessary counterbalance.<sup>86</sup>

Furthermore, an Anti-Terrorism Council was also created<sup>87</sup> to assume responsibility for the purpose of directing the widespread and effective implementation of the Human Security Act. Pursuant to this significant mandate, the legislature vested the Anti-Terrorism Council with a wide array of powers<sup>88</sup> that ranged from mere coordination and formulation<sup>89</sup> of policies to the speedy investigation and prosecution of suspected terrorists. This also included the ability to freeze property and assets of such a suspected terrorist, pursuant to law.<sup>90</sup> Therefore, despite a proscription in the law against an interpretation that would empower the Council to exercise judicial or quasi-judicial power,<sup>91</sup> the scope of its authority and the avenues by which it may exercise confiscatory and prosecutorial powers are heretofore unparalleled.<sup>92</sup>

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conflict by building state capacity and promoting equitable economic development.

*Id.*

86. *Id.* The last paragraph states:

Nothing in this Act shall be interpreted as a curtailment, restriction or diminution of constitutionally recognized powers of the executive branch of the government. *It is to be understood, however that the exercise of the constitutionally recognized powers of the executive branch of the government shall not prejudice respect for human rights which shall be absolute and protected at all times.*

*Id.* (emphasis supplied).

87. *Id.* § 53.

88. *Id.* § 54.

89. *Id.* § 54 (1) & (2).

90. *Id.* § 54 (5). (This power, however, is qualified by the phrase “pursuant to Republic Act No. 9160, otherwise known as the Anti-Money Laundering Act of 2001 as amended.” Paragraph 6 even permits the Anti-Terrorism Council to “[g]rant monetary rewards and other incentives to informers who give vital information leading to the apprehension ... of persons ... liable for the crime of terrorism or conspiracy to commit terrorism.”).

91. Human Security Act of 2007, § 53.

92. Jose Manuel Diokno, FAQs on the Human Security Act, *available at* [http://opinion.inquirer.net/inquireropinion/talkofthetown/view\\_article.php?article\\_id=76703](http://opinion.inquirer.net/inquireropinion/talkofthetown/view_article.php?article_id=76703) (last accessed Oct. 2, 2009). Atty. Diokno, Chairperson of the

It was, therefore, useful for the framers of the Human Security Act to finally find a practical use for the mandate and functions of the Commission of Human Rights. Given its constitutional independence from the normal machinery of the government, the executive branch in particular, the CHR was the ideal counterbalance to the expanded abilities of the Anti-Terrorism Council. To this end, the Human Security Act contains an expanded role for the CHR in the context of the implementation of the law as a whole, and to impliedly serve as a check and balance against possible abuses of power by the Anti-Terrorism Council as the primary executing agency. The framers of the law defined the Commission's role to:

give highest priority to the investigation and prosecution of violations of civil and political rights of persons in relation to the implementation of this Act; and for this purpose, the Commission shall have the concurrent jurisdiction to prosecute public officials, law enforcers, and other persons who may have violated the civil and political rights of persons suspected of, or detained for the crime of terrorism or conspiracy to commit terrorism.<sup>93</sup>

An ordinary reading of the grant of powers given to the CHR by the Human Security Act would lead one to believe that by the plain and unadorned meaning of the words used therein, the Commission was granted an additional, albeit concurrent, power unfounded neither in the Constitutional provision mandating its creation, nor in subsequent statutory or administrative laws in the twenty years of its existence from 1987 to 2007.

Although the Constitution does not foreclose a future expansion of the powers of the Commission on Human Rights,<sup>94</sup> an immediate endowment

Free Legal Assistance Group (FLAG), encapsulates his critique of the Human Security Act in this manner:

With no objective standards to guide our law enforcers, the HSA in effect bestows on our law enforcers the unfettered discretion to decide if a person is engaged in terrorism or conspiracy to commit terrorism. And that is very dangerous indeed.

In the words of Martin Scheinin, the United Nations' Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, "there are some positive aspects of the definition of terrorist acts in the Human Security Act but the end result is an overly broad definition which is seen to be at variance with the principle of legality and thus incompatible with Article 15 of the International Covenant on Civil and Political Rights."

*Id.*

93. Human Security Act of 2007, § 55 (emphasis supplied).

94. PHIL. CONST. art. XIII, § 19. The provision states that "[t]he Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendations."  
*Id.*

of a whole new range of powers to an institution that has already been given its clear and immutable place in the legal framework of protection of human rights<sup>95</sup> would amount to nothing but an overextension of its capacity as a mere monitoring and investigative agency. Furthermore, to situate the grant of additional prosecutorial powers to the CHR in relation only to the implementation of the Human Security Act speaks of a gratuitous circumvention by the framers of the law of established judicial, constitutional and administrative precedents insofar as the nature of the Commission on Human Rights is concerned. Certainly, as aforementioned, the Constitutional Commission did not expressly intend to either grant or limit the powers and functions of the CHR within a narrow scope of applicability. The intent to grant the Commission only investigatory and recommendatory powers envisioned itself within a context that called for a general application.

In effect therefore, Section 55 of the Human Security Act allows the CHR the “jurisdiction to prosecute”<sup>96</sup> certain public officials within the restrictive confines of the implementation of the specific law granting the same, that is, only with regard to the suspected acts of terrorism as defined therein.<sup>97</sup>

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95. See, Part II, Section D of this Note.

96. Human Security Act of 2007, § 55.

97. *Id.* § 3. The law defines “terrorism” as those acts punishable under any of the following provisions of the Revised Penal Code:

1. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
2. Article 134 (Rebellion or Insurrection);
3. Article 134-a (Coup d’Etat), including acts committed by private persons;
4. Article 248 (Murder);
5. Article 267 (Kidnapping and Serious Illegal Detention);
6. Article 324 (Crimes Involving Destruction);  
or under;
7. Presidential Decree No. 1613 (The Law on Arson);
8. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
9. Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968);
10. Republic Act No. 6235 (Anti-Hijacking Law);
11. Presidential Decree No. 532 (Anti-piracy and Anti-highway Robbery Law of 1974); and,



Thus, despite the noble intentions of the framers of the law, and even if perhaps it is in recognition of the growing clamor for a more effective role to be played by the CHR especially due to the rise of extrajudicial killings in the Philippines, the grant of additional prosecutorial powers to the CHR in the context of the Human Security Act is nevertheless unfairly constrained.<sup>98</sup>

A greater expansion of powers, including the grant of prosecutorial powers, for the CHR is both legally available and socially timely given the present context of the Philippine human rights situation. However, it must also be stressed that the manner by which Congress and the framers of the Human Security Act sought to promulgate the same expansion only as a preventive counterpoint to the additional powers concurrently granted to the Anti-Terrorism Council does not do justice to the broad and encompassing constitutional mandate originally given to the CHR. It was not the intent of the Constitutional Commission for the CHR to be granted powers beyond its original mandate, to serve merely as a check and balance on the proceedings of a statutorily created body in a limited capacity.

### III. NATIONAL HUMAN RIGHTS INSTITUTIONS IN INTERNATIONAL LAW: THE EVOLVING PERSPECTIVE

#### A. *The Universal Declaration of Human Rights*

The existence of demandable human rights principles in international law essentially began with the drafting of the Universal Declaration of Human Rights (UDHR).<sup>99</sup> This landmark avowal of certain inalienable human rights founded on the belief that “[a]ll human beings are born free and equal in dignity and rights”<sup>100</sup> and that “[e]veryone is entitled to the rights and freedoms set forth in [the declaration] without distinction of any kind”<sup>101</sup>

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12. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives)

committed thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand.

*Id.*

98. *See generally*, Commission on Human Rights, Resolution No. A96-005 (Jan. 25, 1996). *See also*, Chapter II, Part E of this Note for the listing of the human rights violations declared by the Commission on Human Rights as falling under its authority.

99. Universal Declaration of Human Rights [UDHR], G.A. Res. 217 III (a), U.N. GAOR, 3d Sess., Supp. No. 127, at 71, U.N. Doc. A/810 (1948).

100. UDHR, art. 1.

101. UDHR, art. 2.

was not only the beginning of a new age of legal enlightenment for the State parties adhering to its timeless tenets, but it was also the end of a long and painful realization of the importance of individual rights within human societies in general. Thus, the UDHR was born of the conscientious desires of a generation who had to bear witness to a World War that laid bare the horrendous consequences of an utter disregard for the rights of a human person.

Within its 30 Articles, the basic foundations for the recognition of human rights were laid down not only as an abstract ideal akin to philosophical concepts, but as truly concrete rights enjoying the fullest protection of human institutions. However, as is the case with most Declarations, no matter how enduring their contents may later prove to be, the UDHR only stands as a mere statement of communal belief: a political and social statement.<sup>102</sup> Nonetheless, “through public debate in the United Nations, and publicity through the world, it has worked as a formation of an international conscience; and it is the mine from which ... regional conventions and national constitutions, protecting human rights have been and are being quarried.”<sup>103</sup> Consequently, as a result of the initial steps taken by the UDHR for the protection of human rights in general, most of the guarantees it contained found their way into either municipal law<sup>104</sup> or treaty form.

#### *B. The International Covenant on Civil and Political Rights*

A direct descendant of the assurances secured by the UDHR, the International Covenant on Civil and Political Rights (ICCPR)<sup>105</sup> is the “most comprehensive and well-established UN treaty on civil and political rights”<sup>106</sup> and has subsequently been examined and applied in a large amount of jurisprudence on the matter of human rights and international law.

Most of the rights contained within the UDHR find their counterparts, albeit in treaty form, as provided for by the ICCPR. The document itself

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102. J.E.S. Fawcett, *The protection of human rights on a universal basis: recent experience and proposals*, in HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW 290 (A.H. Robertson ed., 1968). The author spoke of “the optimists in 1948 [who], amid the disappointment that the Declaration fell short of a binding covenant, can hardly have foreseen the political impact that it was to have.”

*Id.*

103. *Id.*

104. As it is in the case of our own Bill of Rights.

105. ICCPR, *supra* note 11.

106. THE INTERNATIONAL CONVENTION ON CIVIL AND POLITICAL RIGHTS 8 (Sarah Joseph, et al., eds., 2d ed. 2004) [hereinafter THE ICCPR (Joseph et al., eds.)].

“contains the ‘classical’ human rights, that is civil and political rights, which are immediately binding upon State Parties under article 2(1)”<sup>107</sup> and which are justiciable at international level under the Optional Protocol to the ICCPR.<sup>108</sup>

An important feature of the ICCPR is the aforementioned obligation that rests upon State Parties as contained in Article 2(1) that directs State Parties to immediately implement the substantive ICCPR guarantees at the municipal level.<sup>109</sup> Thus, under the ICCPR directive, “[a] State is either fulfilling its obligations or not; article 2(1) seems to allow no exceptions.”<sup>110</sup> To supplement the aforementioned article, the ICCPR also requires State Parties to “adopt such laws and/or other measures as may be necessary to give effect to the rights recognized in the present Covenant”<sup>111</sup> if not already provided for by their own laws.

Article 2(3) in turn is an undertaking made by the State Parties to ensure that any person whose rights or freedoms as recognized by the ICCPR are given effective remedies for a violation of the same on the domestic level, notwithstanding that the violation was committed by persons acting in an official capacity.<sup>112</sup>

A Draft General Comment on this specific responsibility by State Parties observes that “[t]he Committee attaches considerable importance to State Parties’ establishing appropriate judicial and administrative mechanisms for addressing claims of rights violations under domestic law.”<sup>113</sup> The compulsion attached to the initial undertaking in Article 2(3)(a) is such that the Committee deems it a necessary implication that “unless Covenant rights are already protected by their domestic laws or practices, States Parties are required on ratification to make such changes to domestic laws and practices

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107. *Id.* at 6. Article 2 (1) referred to in the excerpt provides that:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

*Id.*

108. ICCPR, *supra* note 11.

109. ICCPR, art. 2 (1).

110. THE ICCPR (Joseph et al., eds.), *supra* note 106, at 9.

111. ICCPR, art. 2 (2).

112. ICCPR, art. 2 (3) (a).

113. THE ICCPR (Joseph et al. eds.), *supra* note 106, at 11 (citing General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant, at ¶ 15, CCPR/C/21/Rev.1 /Add.13 (May 26, 2004)).

as are necessary to ensure their conformity with the Covenant.”<sup>114</sup> Furthermore, the Covenant specifically mentioned of incorporation<sup>115</sup> as a mode of ensuring compliance with the stringent requirements of the Covenant’s implementation, thus:

[w]here there are inconsistencies between domestic law and the Covenant, article 2 requires that the domestic law or practice be changed to meet the standards imposed by the Covenant’s substantive guarantees. Article 2 allows a State Party to pursue this in accordance with its own domestic constitutional structure and accordingly does not require that the Covenant be directly applicable in the courts, by incorporation of the Covenant into national law. The Committee takes the view, however, that Covenant guarantees may receive enhanced protection in those States where the Covenant is automatically or through specific incorporation part of the domestic legal order.<sup>116</sup>

The provisions of the ICCPR show that far from what were mere political statements and aspirations as originally existing upon the drafting of the UDHR, the protection of human rights as a universal ideal has evolved from abstract platitudes on the international level to concrete obligations with the force and effect of law between adhering States.<sup>117</sup> Worthier still is the aim of the ICCPR in continuing this evolutionary process to take effect within the specific and unique context of the State Parties themselves.<sup>118</sup> As such, “*international enforcement measures*, such as the supervisory mechanisms of the [Human Rights Council], *are designed to [only] be a secondary source of ICCPR rights protection.*”<sup>119</sup>

The burden to comply with the provisions of the ICCPR fall into the hands of the governments themselves who are tasked with the duty to translate international treaty obligations to protect and preserve human rights into workable and operational plans of action tailor-fitted to the demands and challenges that are unique to each State Party. The reason for this is rational and affirmative of the distinctive feature of the obligations derived from such sources of international law: “[t]he primacy conferred on national enforcement manifests a concession to State sovereignty, as well as a

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114. ICCPR Human Rights Committee, General Comment No. 31 [80] Nature of the General Legal Obligation Imposed on States Parties to the Covenant, at ¶ 13, CCPR/C/21/Rev.1/Add.13 (May 26, 2004) [hereinafter ICCPR General Comment].

115. PHIL. CONST. art. II, § 2.

116. ICCPR General Comment, *supra* note 114.

117. *See generally* ICCPR, *supra* note 11.

118. THE ICCPR (Joseph et al., eds.), *supra* note 106, at 13. “Though the ICCPR imposes duties upon States in the international plane of law, it is envisaged that the implementation of rights therein is primarily a domestic matter.”

119. *Id.* (emphasis supplied).

recognition of the superior efficiency, expediency and effectiveness of municipal enforcement systems.”<sup>120</sup> This concession to State sovereignty notwithstanding, the ICCPR is still empowered to declare that a breach of the obligatory provisions of Article 2(3) has been committed by failure of administrative mechanisms to investigate allegations of violations “promptly, thoroughly and effectively through independent and impartial bodies.”<sup>121</sup> Furthermore, it also recognized that:

As with failure to investigate, failure to bring to justice perpetrators of such violations, could in and of itself, give rise to a separate breach of the Covenant. *These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing (article 6) and enforced disappearance (articles 7 and 9 and, frequently, 6).*<sup>122</sup>

It is in this regard that the ICCPR makes its first mention of the role of national human rights institutions “endowed with the *appropriate powers*”<sup>123</sup> as agencies that may contribute towards the end of effectively implementing the aims of the ICCPR and ensuring that the obligations demanded therein are met successfully.

### *C. Subsequent International Guidelines for NHRIs: The Paris Principles*

Cognizant of the emerging role of National Human Rights Institutions (NHRIs) as implementing and protection agencies of the aims of the UDHR and the ICCPR on the basic intra-state level, the UN quickly moved to solidify the nascent concept of these institutions through the passing of Resolutions and Guidelines which defined and demarcated their functions within the greater sphere of human rights enforcement in the wake of the important international documents that prescribed them.

On the occasion of the thirtieth anniversary of the UDHR, the General Assembly, having received a report from an exploratory Seminar on National and Local Institutions for the Promotion and Protection of Human Rights,<sup>124</sup> invited its Member States, through a Resolution,<sup>125</sup> to comment on the guidelines for the structure and the functioning of national institutions, together with relevant information relating to their own experiences in the functioning of the same, for the purpose of preparing guidelines for these NHRIs.

<sup>120</sup>. *Id.*

<sup>121</sup>. ICCPR General Comment, ¶ 15, *supra* note 114.

<sup>122</sup>. *Id.* ¶ 18 (emphasis supplied).

<sup>123</sup>. *Id.* ¶ 15 (emphasis supplied).

<sup>124</sup>. Held on September 18-29, 1978 in Geneva, Switzerland.

<sup>125</sup>. G.A. Res. 33/46, ¶ 3, U.N. Doc. A/Res/33/46 (Dec. 14, 1978).

It would take a full fifteen years<sup>126</sup> before the UN General Assembly would finally deign to put forth a Resolution<sup>127</sup> containing principles relating to the status of NHRIs. This set of guidelines, referred to as the Paris Principles, provides a foundation from which NHRIs may draw standards as a method of comparison, refinement, and self-examination. It has been also suggested that the standards provided therein serve as bases used by “human rights victims, advocates, legal practitioners and even the CHR itself to demand for a broader and more effective range of powers.”<sup>128</sup>

The Principles call for NHRIs to be given a broad a mandate as possible clearly set forth in the Constitution or enabling laws of the State. Furthermore, the NHRIs are also obligated to “submit opinions, recommendations, proposals or reports on any matters concerning the promotion and protection of human rights”<sup>129</sup> regarding:

[a]ny legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures.<sup>130</sup>

In this manner, the UN reaffirmed its “concession to State sovereignty and the “recognition of the superiority ... of municipal enforcement systems”<sup>131</sup> by making it likewise *de rigueur* for NHRIs to continually reassess their effectiveness pursuant not only to their Constitutional or statutory mandate, but also on a larger scale, to the obligations claimed by both the UDHR, and more specifically the ICCPR. Moreover, the Principles also proposed additional standards concerning the status of NHRIs who operate with what was described as “quasi-judicial competence.”<sup>132</sup> Based on the

126. During the intervening years however, United Nations Resolutions still continued to affirm the importance of NHRIs. See *generally*, G.A. Res. 41/129, ¶ 3, U.N. Doc. A/Res/41/46 (Dec. 4, 1986); See also, G.A. Res. 46/124, ¶ 2, U.N. Doc. A/Res/46/124 (Dec. 17, 1991).

127. G.A. Res. 48/134, ¶ 11, A/Res/48/134 (Dec. 20, 1993) [hereinafter The Paris Principles].

128. Pioquinto, *supra* note 78, at 16.

129. The Paris Principles, *supra* note 127, Annex.

130. *Id.*

131. See THE ICCPR (Joseph et al., eds.), *supra* note 106, at 13.

132. The Paris Principles, *supra* note 127, Annex. These NHRIs are described as national institutions authorized to hear and consider complaints and petitions concerning individual situations.

definition of these specially-constituted NHRIs, under which the Philippine CHR can be classified as being part of, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.<sup>133</sup>

As can be seen from the enumeration, the present functions and powers of the CHR comprise only a limited portion<sup>134</sup> of the principles as suggested by the UN. It is likewise settled that the CHR does not exercise any quasi-judicial power or competence to hear and resolve facts and complaints falling under its jurisdiction, thereby depriving it of the jurisdiction to arbitrate between aggrieved parties in conciliatory proceedings before it, as suggested by the first principle.

At the very least, the CHR exercises a modicum of functions set for NHRIs by the Paris Principles and the appurtenant international documents governing the protection of human rights. By all respects, its performance as an NHRI using the standards suggested by international law is adequate, such that the means and methods it has been granted by municipal law can and will be shown to be at par with most other countries with NHRIs. Up until recently, the Office of the United Nations High Commissioner for Human Rights has even expressed its satisfaction with the “growing number of States that have provided their national institutions with more autonomy and independence, including through giving them an investigative role or enhancing such a role,”<sup>135</sup> implying the fact that in most countries with newly-formed NHRIs, investigatory and recommendatory powers, wielded in such a manner as our own CHR has been doing for the past twenty-one

133. *Id.*

134. The third and fourth principles in particular, correspond directly to the powers and functions granted to the Commission on Human Rights by PHIL. CONST. art. XIII, § 18, ¶ 1 and 6.

135. OHCHR Res. 2002/83, National institutions for the promotion and protection of human rights, at ¶ 6 (Apr. 26, 2002).

years, are but novel entitlements to organizations ordinarily concerned with mere human rights education and promotion initiatives.

The Philippine situation is unique in that the state of human rights protection in the country is sorely inadequate, a fact that necessitates an additional grant of powers to the CHR as the denominated “[a]dministrative mechanism ... particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively.”<sup>136</sup>

Furthermore, a grant of additional prosecutorial powers to the CHR may avoid liability on the basis of a “failure to bring to justice perpetrators of such [human rights] violations ... obligations [which] arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment, summary and arbitrary killing[s] ... and enforced disappearance[s],”<sup>137</sup> a glaring inability to comply with one of the most basic treaty obligations under international law.

#### IV. ANALYZING THE GRANT OF PROSECUTORIAL POWERS TO THE CHR: WORKING MODELS FOR IMPLEMENTATION

##### *A. An Impetus for Change: The Insufficiency of the Present Powers of the CHR*

Speaking before the UNHRC in Geneva, Switzerland last 3 June 2008, then Commissioner Cecilia R.V. Quisumbing had the unenviable task of responding to the Report of the Special Rapporteur on Extrajudicial, Summary, and Arbitrary Executions<sup>138</sup> on the continued phenomenon of extrajudicial killings in the country. Agreeing with the findings of the Special Rapporteur and the independent Melo Commission that there is no State policy involved directing a systematic liquidation of journalists and dissident elements, Commissioner Quisumbing nonetheless acknowledged that there must be an increase of efforts from the government in order to stem the tide of human rights violations currently being committed.<sup>139</sup>

Commissioner Quisumbing thereafter found it worthy to note that out of the hundreds of cases of extrajudicial killings and disappearances as have been monitored by different watchdog groups and the Special Rapporteur himself,<sup>140</sup> only six people have been convicted, one has been acquitted, five

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136. ICCPR General Comment, *supra* note 114, at ¶ 15.

137. *Id.* at ¶ 18.

138. Alston Report, *supra* note 1.

139. Statement on behalf of the Commission on Human Rights Philippines, Cecilia R.V. Quisumbing, Response delivered before the United Nations Human Rights Council, Geneva, June 3, 2008 [hereinafter Statement of the CHRP].

140. Alston Report, *supra* note 1, ¶ 1. The author notes that the figures range from 100-800.



cases have been dismissed, and eleven have reached the stage of presentation of evidence by the defense.<sup>141</sup> In ending, Commissioner Quisumbing revealed that despite a probability a conflict of interest, the CHR was still concerned about a possible grant of prosecutorial powers.<sup>142</sup>

In reality, the honorable Commissioner's pause for reflection on the continuing relevance of the CHR's limited mandate given the twin exigencies of a rise in extrajudicial killings and a seemingly ruthless resolve by the government to maintain national security at all costs was not her first,<sup>143</sup> nor was it a recent sentiment among the Commissioners in the CHR. The other CHR Commissioners found the restrictive abilities of the CHR as wanting in face of the myriad of human rights violations and offenses that have been prevailing in the country since the inception of the institution. A study of the CHR's first five years of existence found a Commissioner of the CHR exclaiming that:

It has been the experience of the Commission that monitoring a human rights case in court is not sufficient .... Unless the Commission is given prosecutory [sic] power, its intervention and assistance may not necessarily be futile but may be weak to truly enforce adherence to human rights safeguards and legal measures.<sup>144</sup>

Then, as it is now, the clamor for additional prosecutorial powers to be granted the CHR is unmistakable due to the prevalence of human rights violations, coupled with a perceived inefficiency of the government's prosecutorial arm to effectively bring perpetrators to justice. Indeed, as the CHR itself has recognized, “[v]ictims go to the Commission on Human Rights because they see it as an agency of last resort ... The fact that victims go to the Commission is a symptom of impunity, usually feeling that the cases are neglected, whitewashed or ignored.”<sup>145</sup>

In such cases of a perceived whitewash by the very same prosecutorial arm of the government, the business of bringing the offenders to justice

141. Statement of the CHR, *supra* note 139.

142. *Id.*

143. Purificacion C. Valera-Quisumbing, *A Welcome Interface: International Law vis-à-vis Human Rights and Humanitarian Law*, 48 *ATENEO L.J.* iii, iv Foreword (2004). Then Chairperson of the CHR, Commissioner Quisumbing gave the opinion that “[i]n view of the continuing situation of armed conflict ... a more integrated and comprehensive application and enforcement appears to be imperative.” *Id.*

144. MUYOT, *supra* note 9, at 43 (citing Abelardo Aportadera, Jr., *Problems and Issues in Human Rights Cases*, 3 *THE JUDGE'S JOURNAL* 23 (no date given)).

145. Commission on Human Rights, *The Spate of Killings of Filipino Journalists and the Gravamen of Impunity with the Law*, Human Rights Advisory A2005-07 (July 15, 2005).

cannot be properly trusted, given that the “right to prosecute vests the prosecutor with a wide range of discretion — the discretion of whether, what and whom to charge, the exercise of which depends on a smorgasbord of factors which are best appreciated by prosecutors.”<sup>146</sup> It is this discretionary power to prosecute or not to prosecute people who may be peers or colleagues working in the very same branch of the government in the case of probable government-sourced human rights violations that is open to abuse, especially given the contradictory nature of the government prosecuting itself, despite the assurances of an independent office such as the Ombudsman, who is still, by its very nature,<sup>147</sup> an appointive position under the Executive branch.

If such is the case, then there exists a factual and logical basis to grant the CHR additional prosecutorial powers in addition to its present powers and functions when a mode for expansion of the CHR’s powers is granted by law, as it is by constitutional foresight.<sup>148</sup> Furthermore, by initially limiting the CHR’s powers to its present form of investigation and recommendation, it is the proponent’s submission that the Constitutional Commission only intended to do so in order to allow the fledgling institution the freedom to assess and reassess its effectivity in the early stages of its operation moving forward until it is apparent that changes have to be made to address arising needs in human rights protection.<sup>149</sup>

### *B. Local and Foreign Models for Implementation*

#### *1. New Zealand Human Rights Commission and the Office of Human Rights Proceedings*

An exercise of prosecutorial powers by a denominated national human rights institution is not without precedent in foreign jurisdictions.<sup>150</sup> New Zealand’s Human Rights Commission (New Zealand HRC)<sup>151</sup> is a statutorily-created NHRI brought into being by the Human Rights Commission Act of 1977. Some of its activities as the sole NHRI of a culturally diverse country such as New Zealand are to: (a) educate about

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146. *Webb v. de Leon*, 247 SCRA 652, 685-86 (1995).

147. An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes [THE OMBUDSMAN ACT OF 1989], Republic Act No. 6770, § 4 (1989).

148. PHIL. CONST. art. XIII, § 19.

149. *See* RECORD, *supra* note 26, at 763.

150. *See* Pioquinto Thesis, *supra* note 78, at 8 (citing Mercedes V. Contreras-Danenberg, *National Human Rights Institutions: International Standards* (June 28, 2001)).

151. *See generally* New Zealand Human Rights Commission, available at <http://www.hrc.co.nz> (last accessed Sep. 7, 2009).

human rights, (b) produce and distribute human rights information and resources, (c) inquire into and report on human rights matters, and (d) resolve disputes relating to discrimination.

Under the New Zealand HRC exists the Office of Human Rights Proceedings, established by the Human Rights Amendment Act of 2001, which grants the aforementioned office the task of legally representing people who have complained of breaches of New Zealand's Human Rights Act, a piece of legislation mainly concerned with curtailing forms of discrimination, an act proscribed by the ICCPR as violative of civil and political rights.<sup>152</sup> The only procedural requirement for acceptance for representation by the Office of Human Rights Proceedings is a prerequisite application for dispute resolution through mediation, a function handled by the New Zealand HRC in general.<sup>153</sup> As an additional consideration, the Director of the Office of Human Rights Proceedings is also required by the Human Rights Act to consider certain qualifications related to the nature of the applying litigant and the case in general, such as:

1. Whether the complaint raises a significant question of law;
2. Whether resolution of the complaint would affect a large number of people (for example, because the proceedings would be brought by or affect a large group of persons);
3. The level of harm involved in the matters that are the subject of the complaint;
4. Whether the proceedings are likely to be successful;
5. Whether the remedies available through any proceedings are likely to suit the particular case;
6. Whether there is likely to be any conflict of interest in the provision of representation by the Director;
7. Whether the provision of representation is an effective use of resources;
8. Whether or not it would be in the public interest for the Director to provide representation; and
9. The Director may also (but is not required to) consider any other matters he/she considers relevant.<sup>154</sup>

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152. ICCPR, art. 24 (1).

153. Information Sheet for Complainants, Office of Human Rights Proceedings, available at <http://www.hrc.co.nz/home/hrc/abouthumanrights/aboutthehumanrightscommission/officeofhumanrightsproceedings/officeofhumanrightsproceedings.php> (last accessed Oct. 2, 2009).

154. *Id.*

It is to be stressed that an assessment of the Director using the abovementioned issues as basis is not a strict consideration, since in the end, each application will be assessed on its merits. Finally, if the application is accepted, the potential litigant will not have to pay any fees related to the cause of action.

## 2. Senate Bill No. 1437:<sup>155</sup> A Local Initiative

Arguments can be made to the effect that it is but a sign of the growing realization of the inadequacy of the CHR's powers over the 21 years of its existence in relation to its diminishing effectiveness and relevance to the Philippine human rights situation that a rising number of legislative proposals have been submitted with the view to either expand or supplement the current powers exercised by the CHR.<sup>156</sup> However, for purposes of relevance, Senate Bill No. 1437 shall be examined in relation to a possible expansion of the CHR's powers.

Entitled "An Act Expanding the Jurisdiction of and Granting Prosecutorial Powers to the Commission on Human Rights And For Other Purposes," the Bill proposed by Senator Francis G. Escudero is the latest in a long line of legislative attempts to arm the CHR with additional powers in view of what is perceived to be an increasing irrelevance of its functions, more specifically in view of its mandate to provide appropriate legal measures for the protection of human rights of all persons within the Philippines.

However, as was the problem with past bills which aimed to grant additional powers to the CHR, this Senate Bill stumbles at the most important block: defining "human rights," "civil and political rights" and "social and economic rights" in order to properly situate the additional grant of powers proposed.<sup>157</sup>

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155. S.B. No. 1437, 14th Cong., 1st Sess. (Aug. 15, 2007) [hereinafter Senate Bill No. 1437].

156. See Pioquinto, *supra* note 78 at 41-42. (The author enumerates eight House Bills filed from the 2d Congress until the 11th Congress all of which were primarily ordained for the purpose of adding onto the initial Constitutional grant.)

157. Senate Bill No. 1437, §§ 2-3. The draft of the law provides:

SEC. 2. Definition of Human Rights. - Human rights for purposes of this Act shall mean rights found in Article II of the Constitution and those duly affirmed and recognized by the Republic of the Philippines in the following legal on the Protection of the Rights of All instruments: International Convention Migrant Workers and Members of Their Families (1995); Convention on the Rights of the Child (1990); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987); International Covenant on Civil and Political Rights (1986); Convention on the

### 3. Proposed Delineation of Terms: A Historical and Legal Synthesis

The essential struggle in coming to a precise definition of human rights and the derogated definitions of civil, political, economic and social rights is that the attempt to define these rights proceeded from the broad strokes contained in the instruments that defined them towards a haphazard attempt to confine their meaning without necessarily referring back to the original intent. Along the way, the intrinsic meaning is lost in the haste to define specifics. On the other hand, to insist on broad, abstract definitions would render enforcement and identification of potential human rights violations nearly impossible, given the intermingling of terms with established municipal laws such as criminal laws.

Thus, cognizant of the struggle by the Constitutional Commission in coming to an agreement on the definition of these rights at the outset, but convinced that a worthy and definite delineation of these rights is needed to finally allow for a properly situated grant of prosecutorial powers to the CHR in view of the need to satisfy the requirements of international law<sup>158</sup> and the intent of the framers of the Constitution,<sup>159</sup> the proponent therefore submits that the following definitions be used in a proposed law granting prosecutorial powers to the CHR:

(a) “*Human Rights*”

Human rights, as defined primarily in the UDHR, refer to those rights attached to and inalienable from the person by reason of the inherent dignity

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Elimination of All Forms of Economic, of Discrimination against Women (1981); International Covenant on Social and Cultural Rights (1974); and International Convention on the Elimination of All Forms of Racial Discrimination (1967). It shall also refer to the rights duly affirmed and recognized in the Comprehensive Agreement on the Respect for Human Rights and International Humanitarian Law (CARHRIM,) and the rights recognized in the Universal Declaration of Human Rights (1948).

SEC. 3. Scope of Human Rights Violations. - Human rights violations shall mean and include civil, political economic, social and cultural rights found and enunciated in the legal instruments and constitutional provisions enumerated in Section 2 of this Act and all such other similar instruments and laws.

*Id.*

158. See generally Chapter III of this Note on the existing treaty and customary international law obligations that necessitate an additional grant of powers to the CHR.

159. See generally Chapter II of this Note on the departure from the intent of the Constitutional Commission by means of judicial re-shaping.

of his humanity, and by their very nature protected at all times as to their entitlement to life, liberty and security of person.<sup>160</sup>

(b) *“Civil and Political Rights”*

Civil and political rights are those rights which ensure freedom from the arbitrary interference<sup>161</sup> of the State. Specific, but not limited, instances of these rights as appearing both in the ICCPR and the CHR Guidelines<sup>162</sup> shall be provided as instances of “Human Rights Violations.” Suffice it to say that these rights can be described as “negative” rights, i.e., rights which would exist even without State interference in their existence or enjoyment.<sup>163</sup> It is for this reason that they are precisely the most susceptible to abuse by State parties, if only for purposes distinguishing these rights from economic, social and cultural rights.

(c) *“Economic, Social and Cultural Rights”*

The author believes that these rights, contrary to the assertions of Senate Bill No. 1437, cannot be demandable yet on the municipal level with respect to complaints that may be entertained by the CHR, as they properly pertain to rights which are “positive” in nature, requiring specific State action providing such rights.<sup>164</sup> Such rights manifest themselves in the likes of a health care system, or a mandatory education program until a certain academic grade, etc. As such, rights such as the abovementioned are conditioned upon a State’s available resources, and are therefore believed by experts to be not yet justiciable as a source of demandable rights, as compared to civil and political rights which inhere immediately by mere reason of our humanity and are protected immediately without derogation.<sup>165</sup> This is the same reason that the Constitutional Commission also declined to include them in the Constitution.<sup>166</sup> Helpfully, a reference

160. *See also* UDHR, arts. 1, 2, 3.

161. THE ICCPR (Joseph et al. eds.), *supra* note 106, at 33 (citing D. MCGOLDRICK, THE HUMAN RIGHTS COMMITTEE ¶ 1.16 (1994)). To be read as State action without due process of law or interfering with “Human Rights” as defined above.

162. *See* Chapter II (D) of this Note.

163. THE ICCPR (Joseph et al. eds.), *supra* note 106, at 33.

164. *Id.*

165. *Id.* *See also*, UDHR, Preamble and arts. 1, 2, 3.

166. RECORD, *supra* note 26, at 738-39. The following exchange illustrates the point:

MR. GARCIA. Yes, and as I have mentioned, the International Covenant of Civil and Political Rights distinguished this right against torture.

was also made in the deliberations as to why the pressing need to give primary importance to civil and political rights above economic, social and cultural rights are essential to the CHR's mandate, thus:

MR. RAMA. In connection with the discussion on the scope of human rights, I would like to state that in the past regime, everytime we invoke the violation of human rights, the Marcos regime came out with the defense that, as a matter of fact, they had defended the rights of people to decent living, food, decent housing and a life consistent with human dignity.

So, I think we should really limit the definition of human rights to political rights. Is that the sense of the committee, so as not to confuse the issue?

MR. SARMIENTO. Yes, Madam President.

MR. GARCIA. I would like to continue and respond also to repeated points raised by the previous speaker.

There are actually six areas where this Commission on Human Rights could act effectively: 1) protection of rights of political detainees; 2) treatment of prisoners and the prevention of tortures; 3) fair and public trials; 4) cases of disappearances; 5) salvagings and hamletting; and 6) other crimes committed against the religious.<sup>167</sup>

(d) *“Human Rights Violations”*

In essence, the definition of “Human Rights Violations” will be the lynchpin of the scope of jurisdiction or exercise of prosecutorial powers by the CHR. The terms used, as can be seen, are those as contained both in the ICCPR and the CHR Guidelines<sup>168</sup> as they correspond to basically the same set of rights defined as human rights *per se* which can be further specified in the proposed law as:

Those palpably violent and self-evident transgressions of human rights as defined, comprising of, but not limited to the constitutional guarantees under the Bill of Rights, and Crimes against the Fundamental Laws of the State, Crimes against Persons, Crimes against Personal Liberty, Security and Chastity, also otherwise defined as felonies under the Revised Penal

MR. BENGZON. So as to distinguish this from the other rights that we have?

MR. GARCIA. Yes, because the other rights will encompass social and economic rights, and there are other violations of rights of citizens which can be addressed to the proper courts and authorities.

*Id.*

167. *Id.* (It is notable that these six areas of concern discussed by the Constitutional Commission are shared and given special emphasis by the ICCPR and the CHR Guidelines as well, albeit in slightly reworded forms.)

168. Commission on Human Rights, Resolution No. 88-045 (July 26, 1988).

Code<sup>169</sup> by the government, an instrumentality or agent thereof in such a manner as to arbitrarily interfere with civil and political rights.<sup>170</sup>

An additional definition may be added if only to highlight the essential feature of a violation of “human rights” as defined in the proposed law:

Furthermore, at all times priority or preferential attention must be given to human rights violation cases where the probable respondent is a government official, personnel or employee.<sup>171</sup>

(e) *The Office of the Special Prosecutor for Human Rights*

Borrowing from the idea of Senate Bill No. 1437 and the foreign model existing as the Office of Human Rights Proceedings, a post to be known as the Special Prosecutor for Human Rights must be created to replace the moribund CHR Legal and Investigation Office.<sup>172</sup>

Like the Office of Human Rights Proceedings which operates under the scope and mandate of the New Zealand HRC but which exists separately and independently of the functions of such Commission which is primarily that of monitoring, the Special Prosecutor for Human Rights is to be the litigation arm of the CHR, but subordinate to and dependent on the investigative finding of probable cause<sup>173</sup> by the CHR.

169. *Id.* (“Human rights *per se*” are defined therein, and also in Chapter II (E) of this Note.)

170. *Id.*

171. *Id.*

172. Commission on Human Rights Website, *available at* <http://www.chr.gov.ph> (last accessed Oct. 2, 2009). The Legal and Investigation Office’s Programs and Services are described thus:

The Legal and Investigation Office provides legal aid and counseling services; conducts monitoring of cases/complaints with concerned agencies; conducts rights based public inquiry on issues and concerns of marginalized and disadvantage sectors; and conducts studies to establish certain human rights conditions/situations affecting human development for the adoption of policies, programs and measures for the promotion of human rights.

The Legal and Investigation Office also provides appropriate human rights investigative interventions; medico-legal services; conducts alternative dispute resolution of cases thru mediation; quick reaction activities; fact finding missions; rights based situation tracking and rights based investigative monitoring.

*Id.*

173. Proposed to be defined as a finding of fact resulting from a investigation which finds that more likely, than not, the government, an instrumentality or agent



In this manner, the appropriate model would be the hierarchical structure similar to that existing and established between the Ombudsman and the Special Prosecutor by Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989.<sup>174</sup> Furthermore, to differentiate the scope of the jurisdiction of the CHR and the Special Prosecutor for Human Rights from that of the Ombudsman and the Special Prosecutor, Section 15 of The Ombudsman Act<sup>175</sup> must be amended to the effect that the same law shall now be subject to the subsequent legislation containing a more specific and delineated grant of prosecutorial powers over “human rights violations,”<sup>176</sup> as defined by the same law to the CHR and to the Special Prosecutor for Human Rights in this manner:

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thereof acted illegally in such a manner as to arbitrarily interfere with civil and political rights.

174. THE OMBUDSMAN ACT OF 1989, § 11 (3) and (4) provide:

- (3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.
- (4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:
  - (a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;
  - (b) To enter into plea bargaining agreements; and
  - (c) To perform such other duties assigned to it by the Ombudsman.

The Special Prosecutor shall have the rank and salary of a Deputy Ombudsman.

*Id.*

175. THE OMBUDSMAN ACT OF 1989, § 15 (1) which provides:

(15) Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases.

*Id.*

176. See Subsection (D) of this Part.

Section XX. Powers, Functions and Duties. — The Commission on Human Rights shall have the following powers, functions and duties:

*Section 15 (1) of Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989 notwithstanding, the Commission on Human Rights may investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be a “human rights violation” as defined in Section (X) of this Act. (emphasis supplied).<sup>177</sup>*

## V. CONCLUSION

In full, the Author humbly proposes the enactment of a law granting prosecutorial powers to the CHR as obligated by our treaty obligations under the ICCPR,<sup>178</sup> to not only investigate promptly and expeditiously allegations of human rights violations, but also to bring these violators to justice. Furthermore, such a change can be argued as being pursuant to the intent of the Constitutional Commission to have a specialized, independent body equipped with the necessary powers to protect and promote human rights whose range of functions was neither meant to be static, unresponsive or idle. While it is true that the prosecutorial function properly “appertains to the executive department of government whose principal power and responsibility is to see that our laws are faithfully executed,”<sup>179</sup> it can likewise be inferred that inherent power cannot be exercised without abuse in situations where the State or government is itself a party, or as a result of its own systemic policies.

As a denominated NHRI, the CHR is also necessitated by the Paris Principles governing the status of institutions such as itself to make sure that its operational relevance and effectivity conform to the most fundamental principles of human rights such as those contained in the UDHR and ICCPR, bearing in mind the transcendent obligations required of both as sources of perhaps the most basic, yet the most ignored of all the natural human obligations. It would be an incomplete journey for the NHRI that merely hopes, by way of educational programs and preventive services to truly “protect” human rights in every sense of the word.

Finally, it is a fervent hope of the proponent that a serious change be undertaken in the manner by which the inalienable and inherent rights of individuals are taken for granted by human institutions that have forgotten their incontrovertible roots at the heart of one’s right to simply live. However, it is believed that the most sublime of the inherent rights of a human is not merely to live, but to live in peace with others. Through this

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<sup>177</sup>. See Chapter VI, Section 5 of this Note.

<sup>178</sup>. ICCPR, art. 2 (1-3).

<sup>179</sup>. *Webb*, 247 SCRA at 685-86.

enlightened understanding of human rights as not just a set of guidelines that restricts or allows action towards a human being, we begin to recognize that the primary duty of a human being towards another is promulgated by a view of all humanity as being in solidarity with our Creator:

To those therefore who give him their faith, he inspires the greatest respect for human rights, especially in what concerns the humble and the deprived, and he teaches the most effective way of giving men their whole dignity: to allow oneself to be taken by the spirit of God in the way of fraternal solidarity.<sup>180</sup>

## VI. PROPOSED LAW

The proponent submits this proposed law granting prosecutorial powers to the Commission on Human Rights, and at the same time creating the Office of the Special Prosecutor for Human Rights as the implementing agent of the newly devolved powers. To this end, the proponent borrowed the structure and organization of Senate Bill 1437 sponsored by Senator Francis Escudero as the latest incarnation of legislative intent to supplement the powers of the CHR. Likewise, the definitions contained in the law were culled from their original import in the international documents, as discussed in the previous chapter.

### AN ACT EXPANDING THE JURISDICTION OF AND GRANTING PROSECUTORIAL POWERS TO THE COMMISSION ON HUMAN RIGHTS AND CREATING THE OFFICE OF THE SPECIAL PROSECUTOR FOR HUMAN RIGHTS AND FOR OTHER PURPOSES

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

SEC. 1. Declaration of State Policy. – State policy mandates that the human dignity of every person and the full recognition, respect, protection and fulfillment of human rights as the means for ensuring the security of its people be valued and guaranteed. Hence, the State has to formulate and adopt new measures on human rights to further secure its people from pervasive threats meant to attack not only civil and political rights.

SEC. 2. Definition of Human Rights. – Human rights refer to those rights attached to and inalienable from the person by reason of the inherent dignity of his humanity, and by their very nature protected at all times as to their entitlement to life, liberty and security of person.

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180. Albert Vanhoye, SJ, *Christ the Re-creator of Man and the Restorer of His Rights according to the Letter to the Hebrews in HUMAN RIGHTS: A CHRISTIAN APPROACH* (1988).

SEC. 3. Scope of Human Rights Violations – Human Rights Violations shall refer to those palpably violent and self-evident transgressions of human rights as defined, comprising of, but not limited to an illegal act or omission violative of:

1. Constitutional guarantees under the Bill of Rights;
2. Crimes against the Fundamental Laws of the State;
3. Crimes against Persons; and
4. Crimes against Personal Liberty, Security and Chastity, also otherwise defined as felonies under the Revised Penal Code of the Philippines.

Wherein the probable respondent is the government, an instrumentality or agent thereof acting in such a manner as to arbitrarily interfere with civil and political rights.

SEC. 4. Expanded Jurisdiction of the Commission on Human Right (CHR). – The jurisdiction of the Commission on Human Rights (CHR) shall include civil and political rights comprising of, but not limited to those enumerated in Section 3 of this Act.

SEC. 5. Powers, Functions and Duties. — In addition to those powers, functions and duties contained in Article XIII, Section 18 of the Constitution and Executive Order No. 163 (1987), the Commission on Human Rights shall have the following powers, functions and duties:

1. Section 15 (1) of Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989 notwithstanding, the Commission on Human Rights may investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be a “human rights violation” as defined in Section 3 of this Act;
2. Conduct preliminary investigation to determine the existence of probable cause in an alleged violation of human rights as defined herein. Probable cause in the investigation of alleged human rights violations shall be defined as “a finding of fact resulting from an investigation which finds that more likely, than not, the government, an instrumentality or agent thereof acted illegally in such a manner as to arbitrarily interfere with civil and political rights.”; and
3. If found to be with probable cause as defined herein, to certify such a human rights violation to the Office of the

Special Prosecutor for Human Rights for filing with the proper court of jurisdiction.

SEC. 6. Office of the Special Prosecutor for Human Rights – There shall be an Office of a Special Prosecutor for Human Rights which shall exercise the following powers as the prosecuting arm of the CHR:

1. Prosecute, once certified by the CHR as to the existence of probable cause as herein defined, human rights violation cases in court;
2. Provide legal services to victims of human rights violations; and
3. Perform such other functions and duties as may be assigned to it by the CHR.

The Office of the Special Prosecutor or Human Rights shall be headed by a Chief Prosecutor for Human Rights with the rank and emoluments similar to that of the Chief State Prosecutor in the Department of Justice (DOJ) who shall be appointed by the Commissioners of the CHR, upon nomination by the majority of the Judicial and Bar Council, who shall also be a member of the Philippine Bar, and should have been engaged in the practice of human rights or humanitarian law for at least five (5) years at the time of his/her appointment.

SEC. 8. Appropriations. – The required appropriations for this Act shall be included in the General Appropriations Act for the year immediately succeeding the approval of this Act and every year thereafter.

SEC. 9. Implementing Rules and Regulations. – The CHR shall have the power to issue the necessary rules and regulations for the effective implementation of this Act as well as the creation of an organizational structure in the Office of the Human Rights Prosecutor.

Pursuant to Article XIII Section 18 (2) of the Constitution, the CHR shall likewise promulgate the operational guidelines and rules of procedure for the implementation of its expanded jurisdiction relating to civil and political rights and its prosecutorial powers to be patterned after the National Prosecution Service of the DOJ as provided for in this Act. The CHR shall coordinate with the DOJ in the matter of its prosecutorial powers.

SEC. 10. Congressional Oversight. – Congress shall create a special congressional oversight on human rights to ensure and oversee the implementation of this Act.

SEC. 11. Repealing Clause. – All other laws, decrees, executive orders, proclamations, and administrative regulations inconsistent with or contrary to the provisions of this Act are hereby amended, modified or repealed accordingly.

SEC. 12. Separability Clause. - In the event that any provision of this Act is declared void or unconstitutional such declaration shall not affect the validity of the unaffected provisions of this Act.

SEC. 13. Effectivity Clause. - This Act shall take effect fifteen (15) days its complete publication in at least two (2) newspapers of general after circulation.