

WHEN SOMETHING RIGHT BECOMES WRONG
HUMAN RIGHTS IN THE PHILIPPINES:
A REALITY OR A RHETORICAL GUARANTEE

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“Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

–Preamble,
Universal Declaration of Human Rights

I. INTRODUCTION

Human life is not mere physical existence. It is existence with dignity and freedom. In as much as an individual is entitled to assert and preserve his rights, he is likewise expected to respect and recognize the fundamental rights of others. The Golden Rule of Confucianism teaches us not to do unto others what we don't want them to do unto us. Stated positively, Christianity leads us to do to others just what we want them to do for us. In both instances, the message is clear. Respect for the rights of others is incumbent upon us in order to maintain equalities in human life and peaceful co-existence.

The existence of man carries with it basic and essential entitlements and liberties from the mere fact of his humanity. These entitlements

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ments and liberties are rights which are inherent in the nature of every individual person and without which man cannot live as a human being. These are part of man's natural birth right, innate and inalienable. It helps in the development of human qualities, intelligence, talent and conscience and satisfies spiritual and other needs.

Human rights are possessed and enjoyed by each and every individual, without prejudice to race, social status, wealth, religion, gender, age or nationality. They are neither granted by the State nor created by statutes. The State, through laws, only recognizes and protects these rights.

The Philippine Constitution clearly reflects the State's recognition, protection and promotion of human rights. It is the primary source of human rights laws in the Philippines, supported by various legislation geared toward its recognition, preservation and advancement. This Constitution is often referred to as the "human rights constitution", primarily because it is a result of a post-Marcos era, where there are numerous allegations of human rights violations. In this Constitution, many safeguards were provided for, and institutional mechanisms were likewise set-up with the aim that the dark shadows of that era will never haunt us again. However, are these provisions enough to make us feel secured that human rights are indeed protected and enforced?

In addition, we all know that rhetorical enlisting of various rights and obligations are not enough. What we need is evidence that indeed, these rights and principles are carried out and implemented in our society. The manifestation we want to see is not just with respect to the outcome of cases filed for the redress of grievances, but the observance of such conduct as will prevent any violation of these much cherished rights. While compensation or justice for a wrong done will somehow lessen the grief, it is undeniably more important if the transgression was not done in the first place.

Rights become meaningless and senseless if the State does not provide for appropriate institutional mechanisms for their enforcement. Without such mechanisms, the rights though recognized, will only be mere recitals of what could have been real entitlements and

liberties. As quoted by J.R. Coquia in his book on human rights,¹ “Human rights without effective implementation are shadows without substance”. (Humphrey, International Committee on Human Rights, International Law Association, Buenos Aires, 1968)

In implementing the laws on human rights, it is inevitable that due process and effective administration of justice will come into play. As the title of this piece suggests, something which is right can become wrong and even the noblest intention will be defeated if done in an inappropriate manner. Therefore, the recognition of human rights entails not just the protection against individual violations, but more importantly, the observance by the government of due process in curtailing certain freedoms and rights of individuals. The realization of human rights protection in our country is best exemplified in how the government carries out its function without sacrificing the individual rights of its citizens.

The State has a three-fold obligation. The obligation to respect, to protect and to fulfill. Obligation to respect “requires the State to abstain from doing anything that encroaches or infringes on the individual’s freedom and rights.”² The obligation to protect “compels the State to take steps to prohibit others from violating recognized rights and freedoms.”³ Lastly, the obligation to fulfill “requires the State to take appropriate legislative, administrative, budgetary, judicial and other measures towards the full realization of human rights.”⁴

At this point, it is worth pondering how well has the Philippines fared in protecting human rights and in implementing the human rights laws embodied no less than in our fundamental law. Nearly reaching two decades of existence, it is high time to review some of the provisions in the Constitution and determine whether they had become real entitlements or just an empty promise.

¹ J.R. Coquia, *Human Rights: An Introductory Course* 275 (2000) (hereinafter COQUIA)

² Rights-Based Approach to Development and Governance: A Primer 4 (2004) (hereinafter PRIMER).

³ *Id.* at 4.

⁴ *Id.* at 4.

In the recent years, the government was charged of various alleged human rights violations. From violent dispersal of political rallyists, to summary execution of human rights advocates, to unnecessary declaration of State of Rebellion, to unlawful searches, police checkpoints and arrests, to violations of the International Humanitarian law and many others. One cannot help but think, is human rights really a reality in the Philippines or is it just a mere rhetorical guarantee?⁵

II. ALL ABOUT HUMAN RIGHTS

A. What are Human Rights?

The United Nations define human rights as those rights, which are inherent in our nature, and without which, we cannot live as human beings.⁶ The Philippine Commission on Human Rights on the other hand, defines human rights as the supreme, inherent and inalienable rights to life, dignity and self-development. It is the essence of these rights that makes man human.

Human rights may also be defined “as those inherent, inalienable rights to man as a human being and those which he may legally inherit or acquire by title as necessary to his life, liberty, dignity and self development, including those that may accrue to him in the course of his existence, resulting either from the dynamic, ever-changing complexities of modern living, or those bestowed upon him that make him a more revered human being of even greater stature than before.”⁷

“Human rights are as old as society itself. Originally known as “Rights of Man,” they are asserted by the citizens against tyrannical

⁵ A background on the nature and sources of human rights laws in the Philippines and the remedies for their enforcement are incumbent to facilitate the discussion on the changes and improvement of the human rights situation in the country, post-Marcos era.

⁶ *Komisyon ng Karapatang Pantao, Human Rights: A Handbook 1* (2001) (hereinafter *HANDBOOK*).

⁷ F.A. Taro, *Human Rights Philippine Perspective 3* (1991).

governments. They arose from the struggle of man against injustices of despotic rulers. From the tyrannical rulers of the ancient Greece to the royal autocracy of kings and princes of the Middle Ages men began to resist injustices they have long suffered.”⁸

Human rights are said to be inherent, fundamental, inalienable, imprescriptible, indivisible, universal and interdependent.

Inherent in the sense that they are not granted by any person, by the State or by any authority. They need not be provided for but may exist independently. They are fundamental because “without them the life and dignity of man will be meaningless.”⁹ They are inalienable because they cannot be taken away from a person.

Human rights are imprescriptible because they are not lost even through passage of time and will always remain with the person. They are indivisible since “they cannot be denied even when other rights have already been enjoyed.”¹⁰

They are universal since they are possessed by every human being without any distinction. Lastly, they are interdependent “because the fulfillment or exercise of one cannot be had without the realization of the other. The respect of human rights necessarily includes the realization of man’s dignity.”¹¹

Rights can be classified according to source, recipient, aspects of life, struggle and derogability.

According to source, rights can be natural, constitutional, statutory or legal. According to recipient, rights are classified into individual and collective rights. With regard to aspects of life, rights may either be civil, political, economic, social or cultural. If classified according to struggle,

⁸ COQUIA, at 19.

⁹ *Id.* at 5.

¹⁰ *Id.* at 5.

¹¹ *Id.* at 6.

we have the first, second and third generation rights. Lastly, rights can be absolute or can-be limited if classified according to derogability.

Among these classifications, we will discuss more in detail the classification according to aspects of life since this can be related directly to the rights enlisted under the Bill of Rights.¹²

J.R. Coquia discussed this classification in the following terms:¹³

“Civil rights are those rights which the law will enforce at the instance of private individuals for the purpose of securing to them the enjoyment of their means of happiness. They include the rights against involuntary servitude and imprisonment for non-payments of debt or a poll tax; the constitutional rights of the accused; the social and economic rights; liberty of abode and of changing the same. Freedom of speech, of expression, or of the press, the right to assemble and petition, and the right to form associations are likewise civil rights. However, they partake of the nature of political rights when they are utilized as a means to participate in the government.

Political rights are those rights which enable us to participate in running the affairs of the government either directly or indirectly. Examples are the right to vote, right to information on matters of public concern, and the right to initiative and referendum.

Economic and social rights are those which the law confers upon the people to enable them to achieve social and economic development, thereby ensuring them their well-being, happiness and financial security. Examples are the right to property, education, and promotion of social justice.

Cultural rights are those rights that ensure the well-being of the individual and foster the preservation, enrichment, and dynamic evolution of national culture based on the principle of unity in diversity in a climate of free artistic and intellectual expression.”

¹² CONST. art.III.

¹³ COQUIA, at 8-9.

B. What are the Sources of Human Rights Laws in the Philippines?

1. The Fundamental Law

Human rights are guaranteed in our Constitution and laws and likewise embodied in different instruments recognized universally.

The knowledge and awareness of Filipinos about human rights and the constitutional guarantees have traveled a long way already. From the American and English Bill of Rights, to the Malolos Constitution which was opined to belong “to the same intellectual and democratic tradition as does our present Constitution,¹⁴ to the American Bill of Rights, Philippine Bill of 1902, Philippine Autonomy Act of 1916 or Jones Law, Philippine Independence Act of 1934 or Tydings-McDuffee Law, to the 1935 and 1973 Constitutions up to the present 1987 Constitution.

At present, no less than our fundamental law provides for the principle and state policies which promote human rights, and a separate chapter on the Bill of Rights for the enforcement of specific limitation to the otherwise unlimited governmental power.

Article II of the 1987 Constitution, entitled Declaration of Principles and State Policies, particularly, Sections 1, 2, 3, 4, 5, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22 and 23 provides for the promotion and protection of human rights in the different sectors of the society.

Article III entitled Bill of Rights, consisting of 22 sections provides for the specific cases wherein the civil and political rights are guaranteed and protected.¹⁵ It enumerates the limitations on the power of the State,

¹⁴ M.F.M. Katigbak, *Historical Transcendence: THE SIGNIFICANCE OF THE BILL OF RIGHTS OF THE MALOLOS CONSTITUTION 210 Philippine Peace and Human Rights Review* (1999).

¹⁵ CONST. Art. III – Bill of Rights:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for

“a recognition of the fact that civil and political rights require merely an abstention on the part of the State.”¹⁶

any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise, as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Section 8. The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

Section 9. Private property shall not be taken for public use without just compensation.

Section 10. No law impairing the obligation of contracts shall be passed.

Section 11. Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

Furthermore, Article XIII on Social Justice and Human Rights, particularly Sections 1, 17, 18 and 19, provides for the protection of the right of the people to human dignity and the creation of a Commission on Human Rights, providing thereto its powers and functions.

(2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.

(3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

(4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

Section 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: *Provided*, that he has been duly notified and his failure to appear is unjustifiable.

Section 15. The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion or rebellion, when the public safety requires it.

Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

Section 17. No person shall be compelled to be a witness against himself.

Section 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.

(2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

Section 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to *reclusion perpetua*.

2. The United Nations

However, it is not only these Constitutional provisions which strengthens our country's recognition of human rights. As a member of the United Nations and due to our adherence to the Doctrine of Incorporation,¹⁷ we consider as part of our laws the generally accepted principles of international law. Among these principles are those set out to promote universal respect and protection for human rights. Therefore, "developments in the international sphere with regard to human rights are accepted as law in the Philippines as well."¹⁸

The United Nations Charter provides for some limitations to the sovereignty of the Philippines. Although the traditional concept of sovereignty is that it is absolute, "it is subject to limitations voluntarily agreed to by the Philippines as a member of the community of nations."¹⁹ The Charter embodies some of the generally accepted principles of international law on human rights, particularly, articles 55, 56 and 62, to wit:

Article 55. With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of

(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

Section 20. No person shall be imprisoned for debt or non-payment of a poll tax.

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Section 22. No *ex post facto* law or bill of attainder shall be enacted.

¹⁶ A.Muyot, *An Overview of Philippine Law and Jurisprudence on Human Rights* 401 (1999) (hereinafter MUYOT).

¹⁷ CONST. art. II, §2: xxx adopts the generally accepted principles of international law as part of the law of the land xxx.

¹⁸ MUYOT, at 11.

¹⁹ *Id.* at 12.

equal rights and self-determination of peoples, the United Nations shall promote;

- (a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- (c) universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56. All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

Article 62. The Economic and Social Council (shall) make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. The International Covenants

Aside from the U.N. Charter, the Philippines is a signatory to various international treaties and agreements, including the so-called International Bill of Human Rights which consists of the human rights provision of the U.N. Charter, the Universal Declaration of Human Rights,²⁰ International Covenant on Civil and Political Rights (ICCPR),²¹ International Covenant on Social, Economic and Cultural Rights (ICESCR)²² and the Optional Protocol to the Covenant on Civil and Political Rights.

The two international covenants were adopted in 1966 and they “provide wider, and in more detail, the rights set forth in the Universal Declaration of Human Rights. As treaties, the states that ratify them are legally obliged to respect their provisions. In addition, the two Covenants

²⁰ Adopted on December 10, 1948.

²¹ Signed by the Philippines on December 19, 1966, ratified on February 28, 1986, enforced on January 23, 1987.

²² Signed by the Philippines on December 19, 1966, ratified on May 17, 1974, enforced on January 3, 1976.

set up mechanisms through which the United Nations can oversee the implementation by the State Parties.”²³

C. What are the Remedies for the Enforcement of Human Rights Laws and Treaties?

Remedies refer to the “procedure through which the rights provided by law may be enforced.”²⁴ There are different remedies existing under international law²⁵ for violation of treaty obligations. However, since the parties to a treaty are the States themselves, the proper subject of the various grievance mechanisms under these treaties are those which are acts of a State or of its officials in furtherance of the authority given by the State.

Human Rights enforcement in the international sphere can be done in various ways. It may either be through example wherein “each country is aware that its own human rights record will serve as an example for other countries.”²⁶ It may also be through diplomacy wherein human rights concerns are made by and between each country’s representatives.

Asylum of political refugees may be resorted to, particularly by those countries which have “immigration laws which allow persons fleeing their

²³ MUYOT, at 51-52.

²⁴ MUYOT, at 375.

²⁵ Remedies that may be resorted to, as culled from the text of the cited book of A. Muyot, include but is not limited to the following: *reporting requirement*, wherein the State parties may be required to submit reports on the measures they have adopted in furtherance of the provisions of the Convention concerned; *communication*, wherein various bodies are empowered to receive communications for cases of breach of treaty obligations; *UN Commission on Human Rights*, which together with its sub-committees have established procedures on how to deal with human rights violations; *1503 Procedure*, which allows information from non-governmental sources to be dealt with in a more restrictive manner, and this has reference mainly to large-scale violations showing a consistent pattern of gross and reliably attested violation, *Thematic mechanisms*, which requires the study of the phenomenon in question, analysis of the patterns of behavior, factors conducive to violations and the relevance of national legal and administrative provisions and structures to the prevention of violations.

²⁶ HANDBOOK, at 9.

homeland because of their political beliefs to immigrate.”²⁷ World opinion may be used against a country violating human rights by exerting political pressure through public statements. Economic tools may also be resorted to. A country may either assist for the development and economic relief of poorer countries or it may provide for economic sanctions and reduce its economic assistance to countries with poor human rights record.

Finally, the United Nations and other regional organizations may also utilize political and economic pressure to countries that commit human rights violations either through persuasion or direct sanctions.

In the domestic level, remedies for violations of human rights can be availed of whether done by the State, its agents or by private individuals. “However, one shortcoming of Philippine law is that there are no remedies that are specific to human rights violations.²⁸ Other than the administrative, civil and criminal offenses that may be committed in relation to human rights violations, there are no specific human rights violation or offenses that are separately punishable.

Our local laws provide for different types of redress for violations of human rights. Administrative remedies are available against erring officials. Civil remedies are resorted to compensate for the injury, loss or damage caused to the offended party. For punishment of a crime, this can effectively be attained through criminal prosecution.

Administrative remedies may either be:

1. Investigation of human rights violations, performed by the Commission on Human Rights; or
2. Administrative sanctions to be imposed on public officers who violate human rights. In this case, “the pertinent bureau or office generally prescribes administrative liability in question, in line with sections 30 and 36 of Chapter 6, Book IV, of the Revised Administrative Code of 1987. The head of the bureau or office has the authority to discipline his

²⁷ *Id.* at 9.

²⁸ *MUYOT*, at 375.

employees, and to issue such guidelines as may prescribe administrative liability.”²⁹

Civil Remedies may be enforced through the filing of the appropriate case in the trial courts. Damages, in different forms may be awarded to the offended party. Actual damages may be given to compensate for the pecuniary loss suffered. Moral and exemplary damages are usually awarded to human rights victims since human rights victims usually suffer mental anguish, fright, anxiety, besmirched reputation, wounded feelings, social humiliation, or moral shock which are the usual bases for the former. As to the latter, it is usually awarded by way of example or correction for the public good.

There are many provision in the Civil Code that may be used as basis of the action. Among which are the provisions on human relations particularly Articles 19, 20, and 21³⁰ and the provision for the protection of Constitutional rights found in Article 32.³¹

²⁹ *Id.* at 395.

³⁰ Article 19 – Every person must, in the exercise of his rights and in the performance of his duties, give everyone his due, and observe honesty and good faith.

Article 20 – Every person who contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Article 21 – Any person who willfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

³¹ Article 32 – Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

1. Freedom of religion;
2. Freedom of speech;
3. Freedom to write for the press or to maintain a periodical publication;
4. Freedom from arbitrary or illegal detention;
5. Freedom of suffrage;
6. The right against deprivation of property without due process of law;
7. The right to a just compensation when private property is taken for public use;
8. The right to the equal protection of the laws;

As to criminal remedies, violations of human rights can also be crimes punishable under the Revised Penal Code (RPC). Some of the crimes which are related to human rights violations are crimes violating the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures,³²

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9. The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;
 10. The liberty of abode and changing the same;
 11. The privacy of communication and correspondence;
 12. The right to become a member of associations or societies for purposes not contrary to law;
 13. The right to take part in a peaceable assembly to petition the Government for redress of grievances;
 14. The right to be free from involuntary servitude in any form;
 15. The right of the accused against excessive bail;
 16. The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;
 17. Freedom from being compelled to be a witness against one's self, or from being forced to confess guilt, or from being inducted by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;
 18. Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and
 19. Freedom of access to the courts.

In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes violation of the Penal Code or other penal statute.

³² Article 124 – Arbitrary Detention Any public officer or employee who, without legal grounds, detains a person

Article 125 – Delay in the delivery of detained persons to the proper judicial authorities

Article 126 – Delaying Release

crimes violating the right to freedom of assembly,³³ crimes involving the right to freedom of religion,³⁴ crimes violating the right to freedom from involuntary servitude,³⁵ crimes violating the right to life,³⁶ crimes violating the prohibition on torture,³⁷ and crimes violating the right to liberty of abode.³⁸

Article 128 – Violation of domicile

Article 129 – Search warrants maliciously obtained, and abuse in the service of those legally obtained

Article 130 – Searching domicile without witnesses

Article 267 – Kidnapping and serious illegal detention.

Article 268 – Slight illegal detention

Article 269 – Unlawful arrest of delivering him to the proper authorities.

Article 280 – Qualified trespass to dwelling.

³³ Article 131 – Prohibition, interruption, and dissolution of peaceful meetings.

Article 153 – Tumults and other disturbances of public orders.

³⁴ Article 132 - Interruption of religious worship.

Article 133 – Offending the religious feelings.

³⁵ Article 272 – Slavery.

Article 273 - Exploitation of child labor.

Article 274 - Services rendered under compulsion in payment of debts

³⁶ Article 246 – Parricide

Article 247 – Death or physical injuries inflicted under exceptional circumstances

Article 248 – Murder

Article 249 – Homicide

Article 256 – Intentional abortion.

Article 257 – Unintentional abortion.

Article 258 – Abortion practiced by the woman herself or by her parents.

Article 259 – Abortion practiced by a physician or midwife and dispensing of abortives.

Article 262 – Mutilation.

Article 263 – Serious physical injuries.

Article 264 – Administering injurious substances or beverages

Article 265 – Less serious physical injuries

Article 266 – Slight physical injuries and maltreatment

³⁷ Article 235 – Maltreatment of prisoners under his charge, by the imposition of punishment not authorized by the regulations, or by inflicting such punishment in a cruel and humiliating manner.

III. RACE AGAINST HISTORY: THE SAFEGUARDS OF THE 1987 CONSTITUTION

The successful overthrow of the Marcos Regime in 1986, led to the birth of the 1987 Constitution. The Philippines being a fore-runner in the world's race to democratic leadership in the 1980's, the Constitution that was ratified by the Filipino people on February 2, 1987 ensured that safeguards and precautions are well enshrined in its provisions, racing against its history of dictatorship and martial rule.

Since the much feared and condemned era demonstrated violence, terror and massive human rights violations ranging from disappearances, summary executions, torture and undue imprisonment, the Constitutional Commission of 1986 deemed it proper to incorporate such provisions as will recognize and protect the civil and political liberties often times violated during the previous regime. In addition, the 1987 Constitution also provided for principle and state policies and a separate chapter on Social Justice and Human Rights, which were not only confined to the traditional political and civil liberties, but extends to the recognition of the more contemporary rights such as economic, cultural and social rights.

However, it is worth noting that as can be gleaned from the deliberations of the Constitutional Commission,³⁹ there is a great difference in the treatment of these two sets of rights. While the political and civil guarantees are self-executory, the economic, social and cultural rights are not. They are mere goals for future legislation. This disparity notwithstanding, let us now first focus on the significant changes introduced by the 1987 Constitution.

³⁸ Article 127 – Expulsion.

Article 286 – Grave coercions.

³⁹ I *Record* 706, as cited in A.T. Muyot, *The Unfulfilled Promise: GAPS IN THE HUMAN RIGHTS PROVISIONS OF THE 1987 CONSTITUTION* 10 *Philippine Peace and Human Rights Review* (1999) (hereinafter UNFULFILLED PROMISE).

A. A New Realm to a Tradition: Provisions on Political and Civil Liberties

As an aftermath of the numerous political detentions, torture and summary executions, the Bill of Rights,⁴⁰ now contain provisions which were not enshrined in the 1935 and 1973 Constitutions, specifically ensuring that these violations will not be tolerated again by the government. Thus, the traditional civil and political rights were given a new twist and greater teeth to widen their coverage and ensure that violations are dealt with accordingly.

The current Bill of Rights, while retaining most of the provisions found in the Bill of Rights under the 1935 and 1973 Constitutions, added and/or re-incorporated provisions strengthening the peoples' rights, and provided for some revisions on provisions which, in the past, were used to circumvent the prohibition against the violation of the basic entitlements of the Filipinos.

Among the significant changes and additions were:

1. Section 2 – It adds the qualification that warrants should only be issued based on probable cause and must be personally determined by a judge. The proviso that it may also be issued by such other responsible officer as may be authorized by law was removed.
2. Section 4 – Freedom of expression was expressly recognized, alongside with the Freedom of speech and of the press.
3. Section 6 – It now includes the liberty to change abode within the limits prescribed by law.
4. Section 7 – Access to government research data used as basis for policy development was also afforded the citizen.
5. Section 8 – It now specifies that the right to form union, associations and societies extends both to those employed in the public and private sectors.
6. Section 12 – The counsel guarantee was particularized as to mean competent and independent counsel, and preferably the own choice of the person under investigation. The second and fourth paragraphs

⁴⁰ CONST., art.III.

of this section are significant additions as a result of the massive abuses in the past era. The second paragraph pertains to the prohibition against torture, secret detention places, solitary, *incommunicado*, or other similar forms of detention. The fourth paragraph provides that penal and civil sanction for violation of section 12 shall be provided for by law, as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

7. Section 13 – The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended.
8. Section 15 – Insurrection is no longer a ground to suspend the privilege of the writ of *habeas corpus* and the phrase “imminent danger thereof”, referring to the grounds to suspend the privilege, is no longer applicable.
9. Section 18 – Another significant addition is the prohibition on detaining persons solely by reason of their political beliefs and aspirations.
10. Section 19 – The prohibited punishment was further clarified to include degrading or inhuman punishment. The second paragraph was added to proscribe the employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions.

B. Other Significant Changes Pertinent to Human Rights

Other than the changes and additions in the provisions under the Bill of Rights, there were other provisions in the other sections of the Constitution, which do not only deal with civil and political rights, but likewise extend to the economic, social and cultural rights.

Article II of the Constitution which provides for the declaration of principles and state policies now specifically states that the Philippines is a democratic State.⁴¹ It further provided that the “main-

⁴¹ §1.

tenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essentially for the enjoyment by all the people of the blessings of democracy.⁴²

Section 7 of the said Article emphasizes the State's right of self-determination, and the following section provides for our adherence to the internationally accepted nuclear-free policy. Section 9 encourages the promotion of a "just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."

Significantly, Section 11 provides that the "State values the dignity of every human person and guarantees full respect for human rights." A provision which is not really a recognition, but more of an emphasis, to the State's responsibility of protecting human rights.

The right to life is strengthened by providing that the State shall "equally protect the life of the mother and the life of the unborn from conception."⁴³ The rights of the vulnerable sectors, such as women⁴⁴ and indigenous cultural communities,⁴⁵ were specifically recognized, together with the encouragement for the participation of non-governmental, community-based, or sectoral organizations in the promotion of the welfare of the nation.⁴⁶

The right to health,⁴⁷ and the right to a balanced and healthful ecology in accord with the rhythm and harmony of nature were likewise given value. In fact, the Supreme Court held in the case of *Oposa*

⁴² §5.

⁴³ §12.

⁴⁴ §14.

⁴⁵ §22.

⁴⁶ §23.

⁴⁷ §15.

v. Factoran,⁴⁸ that these rights are self-executing and legally enforceable, notwithstanding the fact that they are found in Article II, thus:

“While the right to a balanced and healthful ecology is to be found under the Declaration of Principles and State Policies and not under the Bill of Rights, it does not follow that it is less important than any of the civil and political rights enumerated in the latter. Such a right belongs to a different category of rights altogether for it concerns nothing less than self-preservation and self-perpetuation—aptly and fittingly stressed by the petitioner the advancement of which may even be said to predate all governments and constitutions. As a matter of fact, these basic rights need not even be written in the Constitution for they are assumed to exist from the inception of humankind. If they are now explicitly mentioned in the fundamental charter, it is because of the well-founded fear of its framers that unless the rights to a balanced and healthful ecology and to health are mandated as state policies by the Constitution itself, thereby highlighting their continuing importance and imposing upon the state a solemn obligation to preserve the first and protect and advance the second, the day would not be too far when all else would be lost not only for the present generation, but also for those to come—generations which stand to inherit nothing but parched earth incapable of sustaining life.”

Furthermore, in relation to Sections 13 and 15 of Article III, more safeguards were provided for in Article VII, Section 18 with regard to the so-called “military powers” of the President. The suspension of the privilege of the writ of habeas corpus, as well as on the calling-out power of the President, and his power to proclaim Martial Law, were bombarded with requisites before they can be exercised. As earlier mentioned, insurrection is no longer a ground to be able to invoke these powers, and there should be lawless violence, invasion or rebellion, and not merely an “imminent danger thereof” as provided for in the previous constitution. The suspension of the privilege and the proclamation of martial law if necessary should not exceed sixty (60) days, further requiring the President

⁴⁸ 224 SCRA 792; GRN 1033, July 30, 1993.

within forty-eight (48) hours to submit a report to Congress. It also gives Congress the power to revoke such suspension or proclamation, as the case may be, which the President may not set aside. The said section even requires Congress, if not in session, to convene within twenty-four (24) hours following such suspension or proclamation, without need of call.

More importantly, the aforementioned section now categorically grants to the Supreme Court the power to review the sufficiency of the factual bases of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof. This is very significant due to the unfortunate situation in the past wherein such power of review was qualified and limited. In the case of *Lansang v. Garcia*,⁴⁹ the High Court held that:

“x x x that judicial inquiry into the basis of the questioned proclamation can go no further than to satisfy the Court not that the President’s decision is correct and that public safety was endangered by the rebellion and justified the suspension of the writ, but that in suspending the writ, the President did not act arbitrarily.”

No cogent reason has been submitted to warrant the rejection of such test. Indeed, the co-equality of coordinate branches of the Government under our constitutional system, seems to demand that the test of the validity of acts of Congress and of those of the Executive be, *mutatis mutandis*, fundamentally the same. Hence, counsel for petitioner Rogelio Arienda admits that the proper standard is not correctness, but arbitrariness.”

In the case of *Morales v. Enrile*,⁵⁰ it was held that:

“20. In *Lansang vs. Garcia*, 42 SCRA 448, 473, We said: “In our resolution of October 5, 1972, We stated that ‘a majority of the court had ‘tentatively arrived at a consensus that it may inquire in order to satisfy itself of the existence of the factual bases for the issuance of Presidential Proclamations Nos. 889 and 889-A ... and thus determine the constitutional sufficiency

⁴⁹ 42 SCRA 448; GRN No. L-34265 December 11, 1971.

⁵⁰ 121 SCRA 538; GRN 61016 April 26, 1983.

of such bases in the light of the requirements of Article III, Sec. 1, par. 14, and Article Via, Sec. 10, par. 2 of the Philippine Constitution ...' Upon further deliberation, the members of the Court are now unanimous in the convictions that it has the authority to inquire into the existence of said factual bases in order to determine the constitutional sufficiency thereof."

21. We reiterate this doctrine.

22. Furthermore, We hold that under the judicial power of review and by constitutional mandate, in all petitions for habeas corpus the court must inquire into every phase and aspect of petitioner's detention – from the moment petitioner was taken into custody up to the moment the court passes upon the merits of the petition. Only after such a scrutiny can the court satisfy itself that the due process clause of our Constitution has in fact been satisfied."

The 1987 Constitution expresses in unequivocal terms that this power of review properly rests upon the judiciary. Moreover, it also provides for the expanded jurisdiction of court, by defining judicial power not just as the "duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable,"⁵¹ but also the power to "determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."⁵²

Another safeguard provided for in Section 18 of Article VII is the definite rule that "a state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are available to function, nor automatically suspend the privilege of the writ." This is a constitutional embodiment of the laudable doctrine laid down in the case of *Olaguer v. Military Commission No. 34*,⁵³ a case which re-examines and

⁵¹ CONST. art.VIII, §1.

⁵² CONST. art.VIII, §1.

⁵³ 150 SCRA 144; GRN L-54558 May 22, 1987.

reverses the dangerous jurisprudence in the case of *Aquino, Jr. v. Military Commission No. 2*.⁵⁴ which states that:

“Due process of law demands that in all criminal prosecutions (where the accused stands to lose either his life or his liberty), the accused shall be entitled to, among others, a trial. The trial contemplated by the due process clause of the Constitution, in relation to the Charter as a whole, is a trial by judicial process, not by executive or military process. Military commissions or tribunals, by whatever name they are called, are not courts within the Philippine judicial system. As explained by Justice Teehankee in his separate dissenting opinion “x x x Civilians like (the) petitioner placed on trial for civil offenses under general law are entitled to trial by judicial process, not by executive or military process.

“Judicial power is vested by the Constitution exclusively in the Supreme Court and in such inferior courts as are duly established by law. Judicial power exists only in the courts, which have ‘exclusive power to hear and determine those matters which affect the life or liberty or property of a citizen.

“Since we are not enemy-occupied territory nor are we under a military government and even on the premise that martial law continues in force, the military tribunals cannot try and exercise jurisdiction over civilians for civil offenses committed by them which are properly cognizable by the civil courts that have remained open and have been regularly functioning. x x x (*citations omitted*)

It is worth emphasizing that the present constitution has dedicated an entire chapter covering social justice and human rights,⁵⁵ and Section 1 thereof provides that “Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.” Aside from this, it has provided several sub-chapters

⁵⁴ 63 SCRA 546 (1975).

⁵⁵ CONST. art.XIII.

dealing with the economic, cultural and social rights, particularly those pertaining to labor,⁵⁶ agrarian and natural resources reform,⁵⁷ urban land reform and housing,⁵⁸ health,⁵⁹ women⁶⁰ and role and rights of people's organizations.⁶¹

IV. THE COMMISSION ON HUMAN RIGHTS

A. How was it Created?

Aside from the numerous constitutional provision recognizing and protecting human rights, an institutional mechanism was provided for in the Constitution through the creation of the Commission on Human Rights. Section 17 (1) of Article II of the Constitution provides for the creation of an independent office called the Commission on Human Rights (CHR). Thereafter, Executive Order No. 163 was promulgated, declaring the effectivity of the creation of the CHR as provided for in the Constitution, and further providing for guidelines for its operation and other purposes.

B. What are its powers and functions?

The Commission has various powers and functions as enumerated in Section 18⁶² of the Constitution, among which is the power to "investigate, on its own or on complaint by any party, all forms of

⁵⁶ CONST. art.XIII, §3.

⁵⁷ CONST. art.XIII, §4-8.

⁵⁸ CONST. art.XIII, §9-10.

⁵⁹ CONST. art.XIII, §11-13.

⁶⁰ CONST. art.XIII, §14.

⁶¹ CONST. art.XIII, §15-16.

⁶² CONST. art.XIII, § 18. The Commission on Human Rights shall have the following powers and functions:

- (1) Investigate, on its own or on complaint by any party, all forms of human rights violation 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

human rights violations involving civil and political rights.⁶³ Its principal function is investigatory. “In fact, in terms of law enforcement, this pretty much is the limit of its function. Beyond investigation, it will have to rely on the Justice Department which has full control over prosecutions. Thus, under Section 18(9) it can only request assistance from executive offices.⁶⁴

As elucidated by the Supreme Court in the case of *Cariño v. CHR*.⁶⁵

The Court declares the Commission on Human Rights 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.

The most that may be conceded to the Commission in the way of adjudicative power is that it may investigate, i.e., receive

for preventive measures and legal aid services to the underprivileged 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 primary of human rights;

(6) Recommend to the 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) Appoints its officers and employees in accordance with law; and

(11) Perform such other duties and functions as may be provided by law.

⁶³ CONST. art. XIII, §18 ¶1

⁶⁴ J.G.Bernas, *The 1987 Constitution of the Philippines: A Commentary* 1093 (1996) (hereinafter BERNAS).

⁶⁵ 204 SCRA 483; G.R. 96681, December 2, 1991.

evidence and make findings of fact as regards claimed human rights violations involving civil and political rights. But fact finding is not adjudication, and cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or official. The function of receiving evidence and ascertaining therefrom the facts of a controversy is not a judicial function, properly speaking. To be considered such, the faculty of receiving evidence and making factual conclusions in a controversy must be accompanied by the authority of applying the law to those factual conclusions to the end that the controversy may be decided or determined authoritatively, finally and definitively, subject to such appeals or modes of review as may be provided by Law. This function, to repeat, the Commission does not have. xxx

xxx The Constitution clearly and categorically grants to the Commission the power to investigate all forms of human rights violations involving civil and political rights. It can exercise that power on its own initiative or on complaint of any person. It may exercise that power pursuant to such rules of procedure as it may adopt and, in cases of violations of said rules, cite for contempt in accordance with the Rules of Court. In the course of any investigation conducted by it or under its authority, it may 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. It may also request the assistance of any department, bureau, office, or agency in the performance of its functions, in the conduct of its investigation or in extending such remedy as may be required by its findings.

But it cannot try and decide cases (or hear and determine causes) as courts of justice, or even quasi-judicial bodies do. To investigate is not to adjudicate or adjudge. Whether in the popular or the technical sense, these terms have well understood and quite distinct meanings. (*citations omitted*)

The case of *Simon Jr. v. Human Rights Commission*⁶⁶ reiterated the ruling in the *Cariño* case that the power of the CHR is merely

⁶⁶ 229 SCRA 117; G.R. No. 100150, January 6, 1994.

investigatory. Moreover, it determined the extent of the CHR's investigative power, thus:

“Recalling the deliberations of the Constitutional Commission, aforequoted, it is readily apparent that the delegates envisioned a Commission on Humans Rights that would focus its attention to the more severe cases of human rights violations. Delegate Garcia, for instance, mentioned such areas as the “(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.” While the enumeration has not likely been meant to have any preclusive effect, more than just expressing a statement of priority, it is, nonetheless, significant for the tone it has set. In any event, the delegates did not apparently take comfort in peremptorily making a conclusive delineation of the CHR's scope of investigatorial jurisdiction. They have thus seen it fit to resolve, instead, that “Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into account its recommendation.”

In the particular case at hand, and there is no cavil that what are sought to be demolished are the stalls, sari-sari store and carinderia, as well as temporary shanties, erected by private respondents on a land which is planned to be developed into a “People's Park.” More than that, the land adjoins the North EDSA of Quezon City which, this Court can take judicial notice of, is a busy national highway. The consequent danger to life and limb is not thus to be likewise simply ignored. It is indeed paradoxical that a right which is claimed to have been violated is one that cannot, in the first place, even be invoked, if it is not, in fact, extant. Be that as it may, looking at the standards hereinabove discoursed vis-a-vis the circumstances obtaining in this instance, we are not prepared to conclude that the order for the demolition of the stalls, sari-sari stores and carinderia of the private respondents can fall within the compartment of “human rights violations involving civil and political rights” intended by the Constitution.”

The case of *Export Processing Zone Authority v. Commission on Human Rights*,⁶⁷ again clarified whether the CHR has the power to issue writs of injunctions or restraining orders, to wit:

“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, for a writ of preliminary injunction may only be issued “by the judge of any court in which the action is pending [within his district], or by a Justice of the Court of Appeals, or of the Supreme Court. It may also be granted by the judge of a Court of First Instance [now Regional Trial court] in any action pending in an inferior court within his district.” (Sec. 2, Rule 58, Rules of Court). A writ of preliminary injunction is an ancillary remedy. It is available only in a pending principal action, for the preservation or protection of the rights and interests of a party thereto, and for no other purpose.”

Hence, the investigative power of the CHR has been subject to criticisms by various sectors due to two (2) reasons. First, it merely confers to the Commission investigatory powers and not the teeth to adjudicate thereby making it a mere paper tiger. Secondly, it is limited to political and civil rights and excludes the vast area of economic, social and cultural rights. Despite the trend in international law wherein the concept of human rights has broadened, covering practically all aspects of human activities, it is “quite unfortunate, however, the 1986 Philippine Constitution has mentioned only civil and political rights.”⁶⁸

For human rights author J.R. Coquia, the limited application to political and civil rights of the investigatory power of the CHR narrows the concept of human rights in the Philippines. Although it covers violations whether committed by public officers or by civilians or rebels, the CHR can only protect civil and political rights and not

⁶⁷ 208 SCRA 125; G.R. 101476, April 14, 1992.

⁶⁸ COQUIA, at 36.

the contemporary social, cultural and economic rights. However, Father Joaquin Bernas, SJ justifies this provision by stating that the “reason for these modest objectives was the desire of the 1986 Constitutional Commission not to overburden the Commission during its initial years. The limitation does not exclude the possibility of expanding the Commission’s scope later – as in fact Section 19 specifically allows.⁶⁹

The Commission on its part has issued a resolution⁷⁰ differentiating investigation for purposes of prosecution and investigative monitoring. The first covers political and civil rights while the second covers incidents and/or conditions in the country which are violative of concerns in both areas of civil and political rights and economic, social and cultural rights.

C. Recent CHR Advisories

The Commission on Human Rights, through its advisories, clarifies the obligations of the State emanating from its municipal laws and being a State party to pertinent human rights treaties it has committed to, and to ensure that the government is willing to uphold these rights and liberties.

For the previous year, it has released an advisory with regard to the spate of killings of Filipino Journalists and the gravamen of impunity with the law,⁷¹ and an advisory on the killing of members of Bayan Muna, Anakpawis, Gabriella and other allied organizations,⁷² both calling for the protection of the most basic right of all, the Right to Life as safeguarded in the Bill of Rights,⁷³ Universal Declaration of Human Rights,⁷⁴ and the International Convention

⁶⁹ BERNAS, at 1094,

⁷⁰ CHR Resolution No. A95-069.

⁷¹ CHR-A2005-007.

⁷² CHR-A2005-005.

⁷³ CONST., art.III, §1.

⁷⁴ Article 3.

on Civil and Political Rights.⁷⁵ Aside from the fundamental right to life, the CHR also denounces the fact that most of the alleged perpetrators are “perceived to belong to the military and/or paramilitary arms of the government”.⁷⁶

Also in 2005, the CHR released an advisory calling for a humanitarian cease-fire in the calamity areas of Northern Quezon and Aurora,⁷⁷ invoking the “right of the people to equal access to public service,”⁷⁸ and the “right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond its control.”⁷⁹

The CHR likewise denounced the “wet-rag” policy of the Metro Manila Development Authority,⁸⁰ invoking that it affects the dignity of a human person, and the exposure to humiliation is a degrading punishment proscribed under the Constitution.

Lastly, the CHR also issued its advisory on the exercise of its visitorial powers,⁸¹ as a reminder to law enforcement officials and jail authorities in relation to the Joint Declaration of Undertaking on the CHR Guidelines on Visitation and the Conduct of Investigation, Arrest, Detention and Related Operations,⁸² and the 1991 Memorandum of Agreement on the Procedures in the Release from Custody of Detainees or Accused Persons.⁸³

⁷⁵ ICCPR, art.6 , ¶1.

⁷⁶ CHR-A-2005-005, 2.

⁷⁷ CHR-A2005-002.

⁷⁸ UDHR, art.21.

⁷⁹ *Id.*, art.25.

⁸⁰ CHR-A2005-003.

⁸¹ CHR-A2005-001.

⁸² Entered into on May 6, 1988.

⁸³ The undertaking and Memorandum of Agreement were entered into by the CHR together with the DILG, DOJ, DND, AFP and PNP.

V. MAINTAINING THE BALANCE: JURISPRUDENCE ON THE PROTECTION AND ENFORCEMENT OF HUMAN RIGHTS

In maintaining a careful balance between the rights of all parties, the Supreme Court has previously decided cases upholding the rights of the people, and in the process invalidating the acts of the government for being unjust and arbitrary, oftentimes resulting not just to a violation of specific rights but, likewise to a denial of due process. At the other end of the scale, the Supreme Court also validated numerous measures adopted by the government which promotes the general welfare although the very same act limits individual liberties.

In terms of the enforcement of actions and claims, the High Court has repeatedly ruled on the importance of procedural due process. To this end, cases defining the limits and procedures before different court, tribunal or agencies were laid down. There are separate requirements of due process in courts,⁸⁴ administrative tribunals,⁸⁵ and academic institutions.⁸⁶ The court also upheld the proprietary right of workers through procedural due process in the case of *Agabon v. NLRC*.⁸⁷

As to specific rights which are considered in our jurisdiction as human rights, most of the jurisprudence centers on the rights enumerated in the Bill of Rights. Partly because these are the readily legally enforceable rights, and partly because these are the rights of the people which are most endangered to be violated by the authorities, anytime, anywhere. These include arrest, detention, searches and self-incrimination, which in the end, violate the supreme right to life, liberty and property.

The Court was swift in upholding the rights of the people against unjustified issuance of warrants in the cases of *Prudente v. Dayrit*,⁸⁸ and

⁸⁴ *Banco Español Filipino v. Palanca*, 37 Phil 921 (1917).

⁸⁵ *Ang Tibay v. CIR*, 69 PHIL 635; GRN 46496, February 27, 1940.

⁸⁶ *Non v. Dames*, 485 SCRA 523; G.R. No. 89317, May 20, 1990.

⁸⁷ 442 SCRA 573; G.R. No. 158693, November 17, 2004.

⁸⁸ 180 SCRA 69; G.R. No. 82870, December 14, 1989, 180 SCRA 69.

Salazar v. Achacoso.⁸⁹ Likewise, in the case of *Tambasen v. People*,⁹⁰ the Court invalidated the issuance of the warrants since it violates the proscription against issuance of warrants for more than one specific offense. The plainview doctrine was not applied in the case of *People v. Salanguit*,⁹¹ and the Court held that the “extension of the original justification is legitimate only where it is immediately apparent to the police that they have evidence before them; the “plain view” doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.”

In addition, the stop-and-frisk doctrine was not admitted in the case of *Malacat v. CA*,⁹² and the Court ruled that “While probable cause is not required in conducting a “stop and frisk”, it nevertheless holds that mere suspicion or a hunch will not validate a “stop and frisk”. A genuine reason must exist, in light of the police officer’s experience and surrounding conditions to warrant the belief that the person detained has weapons concealed in his person.

In the case of *People v. Capitin*,⁹³ the accused was acquitted since it was found out that her supposed confession was written in a dialect she hardly understands. Another dubious confession was struck down in the case of *People v. Poyos*.⁹⁴ The counsel guarantee was upheld and further clarified in the cases of *People v. Compi*⁹⁵ and *People v. Lucero*⁹⁶ wherein it was stressed that the counsel guarantee contemplates timely, effective and competent assistance.

As regards the rights during custodial investigation and the right against self-incrimination, these rights were defined and limited in the

⁸⁹ 183 SCRA 145 (1990).

⁹⁰ 246 SCRA 184 (1995).

⁹¹ 356 SCRA 683 (2002).

⁹² 283 SCRA 159 (1998).

⁹³ 165 SCRA 47 (1988).

⁹⁴ 143 SCRA 542 (1986).

⁹⁵ 244 SCRA 135 (1995).

⁹⁶ 244 SCRA 425 (1995).

case of *People v. Ayson*,⁹⁷ and was fortunately defined and clarified in the case of *People v. Maqueda*,⁹⁸ in order to avoid the pitfall of sweepingly holding that the Miranda Rights are no longer applicable once a case is filed in court or when the accused is on trial or under preliminary investigation. To do so would undermine the rights of the accused.

In the 1996 case of *Subayco v. Sandiganbayan*, concerning the notorious Escalante massacre, only 3 of the 45 persons charged with murder and frustrated murder were finally convicted. It is important to note that these 45 persons were mostly connected with police authorities, a fact that further aggravate the gross violation committed.

The court upheld the action of the government authorities in the case of *People v. Malmstedt*,⁹⁹ and said that there was probable cause to justify the warrantless arrest of the accused based on the information received by the NARCOM agents and the alleged refusal of the accused to heed the orders of the agents when asked to present his passport. In *People v. Aminnudin*,¹⁰⁰ the alleged *in flagrante* arrest was invalidated since it was proven that there was sufficient time to secure a warrant of arrest.

On the other hand, the Court also rendered some highly controversial rulings, like the cases of *Umil v. Ramos*¹⁰¹ which justifies *in flagrante* arrest even after a considerable lapse of time, on the basis that the crimes committed were continuing offenses and the case of *Valmonte v. De Villa*,¹⁰² which upholds the validity of checkpoints. Justices Isagani A. Cruz and Abraham F. Sarmiento dissented in these cases. Justice Cruz opined that “sweeping statements in the majority opinion were as dangerous as the checkpoints it would sustain and

⁹⁷ 175 SCRA 216 (1989).

⁹⁸ 242 SCRA 565 (1995).

⁹⁹ 163 SCRA 402 (1991).

¹⁰⁰ GRN L-74869 July 6, 1988.

¹⁰¹ 202 SCRA 251 (1990).

¹⁰² 185 SCRA 665 (1990).

fraught with serious threats to individual liberty.”¹⁰³ Another controversial case was *Guazon v. De Villa*,¹⁰⁴ involving the legality of the areal target zoning or saturation drives in the metropolis in 1987. The high court only remanded the case to the lower courts and referred the matter to the CHR and other concerned agencies for the adoption of guidelines to prevent the commission of the acts complained of. However, the high tribunal did not invalidate the acts complained of, which to some, indeed constitute massive violations of human rights.

VI. ANALYSIS AND RECOMMENDATION

A. On the Powers and Functions of the CHR

Undeniably, the CHR has done a lot in helping the sad predicament of human rights victims. True to its mandate of serving the people and consistent with its “policy of prompt dispatch of Commission business, without distinction, regardless of the complainant’s station in life, sex, color or religious beliefs”,¹⁰⁵ the Commission is noted to be one of the very few government agency where red tape is an alien practice. In fact, during the time I was gathering materials for this piece and during the several visits I made to the CHR, it is worth noting that indeed, the employees and officials of CHR renders service not just efficiently but with remarkable ease and accessibility.

Moreover, the CHR has already coordinated and entered into various agreements with other agencies, groups or organizations, whether local or foreign, that will further enhance and strengthen their efficiency, especially with regard to their investigatory function. The CHR was also successful in making the Philippine Human Rights Plan and the identification of vulnerable sectors in our society.

¹⁰³ 1997 JORGE C. BOCOBO LECTURE SERIES, delivered by J. Cruz 14 (hereinafter Cruz)

¹⁰⁴ 181 SCRA 623 (1990).

¹⁰⁵ TARO, at 42.

However, many are still of the opinion that even if the CHR carries out its function well, if its powers are limited, it will still be incapable of curbing human rights violations.

Various propositions were made to grant the CHR the power to prosecute and adjudicate or to even convert it to a quasi-judicial body since as opined by some sectors, investigatory powers, the subsequent reporting to appropriate authorities, recommending measure for improvement and educating the people are not sufficient for the CHR to be able to carry out its mandate. Mere investigatory power does not give the much needed teeth that will forestall human rights violation nor afford redress to already committed wrongs. However, despite the noble intention, this change is not easy to enforce since the grant of such powers will change the nature of the CHR as provided for in the Constitution since it may undermine its status as an independent constitutional body. It may also result to a clash between the CHR's powers and that of the prosecutory powers of the prosecutors and Ombudsman and the judicial power of courts.

Hence, the logical solution, as many human rights advocates have pointed out, is the amendment of the Constitution, changing the nature of the CHR, with due regard to other agencies that may be affected by any change effected. This is currently feasible, considering the fact that the government is seriously considering a constitutional amendment or revision.

B. On the Supreme Court Decisions

The Supreme Court is the final arbiter of all controversies and such great power requires not only for the punishment of criminals but likewise, for government efforts to be upheld if the circumstances require it. A careful balancing of interest is warranted, if peace and order and protection of human rights are sought to be achieved. Human rights do not only pertain to the alleged victims. The accused has human rights, as well as the police officers and authorities who are putting their lives in danger in order to protect the society. It is protection and enforcement of human rights for all. Without any distinction.

The presence of some “notorious” cases endangers the peoples’ much cherished rights and could very well set dangerous precedents. As pointed out by Justice Cruz in one of his lectures,¹⁰⁶

“when it comes to particular individuals subjected to government abuse, the tribunal seems to be strict enough with the law officers and in fact eager enough to defend the accused, especially if they are charged with non-political offenses. I would gladly give it high points for such concern. Regrettably, however, I cannot be as enthusiastic when it comes to its attitude toward the policies and practices of the law enforcement authorities against criminals as a whole, notably against suspected dissidents, police characters, and tattooed individuals. Constitutional shortcuts against the public are not uncommon, as demonstrated in the Guazon and Valmonte cases, and I can only wonder how the high court will react to the rub-outs, hamletings, and salvage operations of the armed forces and the police. The Supreme Court appears to be more tolerant of official arbitrariness in general and willing enough to look the other way as human rights are ignored and violated for the sake of peace and order.”¹⁰⁷

Justice Cruz also urges the Court that it should not be “reluctant to break tradition and would rather rely upon the established doctrines.”¹⁰⁸ He also remarked that “consistency is not always a virtue. Inconsistency is a rule of life.”¹⁰⁹

Of course, this does not mean that the judiciary is not doing anything to protect human rights, because in fact, it has done a lot. Gone are the days when people will just disappear and no court of justice can easily give them justice since the transgression was made by the government authorities themselves. However, again, much more can be done. Now is the time to enforce human rights without any fear cast by those in power. In the event that situation arises calling

¹⁰⁶ CRUZ, at 24.

¹⁰⁷ *Id.* at 24.

¹⁰⁸ *Id.* at 27.

¹⁰⁹ *Id.* at 28.

for judicial intervention on matters affecting the same controversial issues, perhaps the Court can apply the rules more strictly.

Although we don't encourage our citizens to violate our laws and escape culpability through procedural lapses in law enforcement, it is still very important that our law enforcers do not resort to short cuts which violate the persons rights – including criminals. In as much as the efforts of the authorities to enforce our laws is very commendable and the rights of the enforcers should be respected as well, the rights of every person must be respected and given importance. “While respect for the law is the bedrock of every well-organized society... the highest function of authority is to exalt liberty.”¹¹⁰

C. On the State Actors such as the Police, Military and Local Officials

The 60% share of State Actors as violators for the year 2004¹¹¹ is very alarming. Especially if we consider the statistics for the previous years which yield almost the same high percentage.¹¹² These violations range from cruel treatment and torture inside prison cells,¹¹³ salvaging and disappearances of civilians,¹¹⁴ killing of journalists, lawyers and activists,¹¹⁵ and violent dispersal of rallyists.¹¹⁶

In line with this, it is highly urged by the CHR that the concerned government agencies must implement strict guidelines to

¹¹⁰ *Id.* at 25.

¹¹¹ Police (33%), military (13%), local officials (14%), culled from *CHRP Accomplishment Report 8* (2004)

¹¹² *M.D. delos Santos, Human Rights Violations: The Continuing Challenge 3-4 Philippine Peace and Human Rights Review* (1997).

¹¹³ CHRP News Bulletin, Vol.2 No.2, 1 (2004).

¹¹⁴ *Id.* at 6.

¹¹⁵ CHRP News Bulletin, Vol.3 No.2, 4 (2005).

¹¹⁶ CHRP News Bulletin, Vol.3 No.1, 6-7 (2005).

prevent any violations in the future, and to investigate and punish those already found guilty of these transgressions. The Legislature proposed various bills seeking the improvement of how these State actors value human rights. Some of the bills submitted in the House of Representatives were those calling for the mandatory and continuing human rights education for all barangay tanods,¹¹⁷ the creation of a board of claims under the department of justice for victims of unjust imprisonment or detention and victims of violent crimes,¹¹⁸ the defining and penalizing of the crime of enforced or involuntary disappearance,¹¹⁹ and the requirement as condition precedent of a human rights clearance in every appointment and promotion of all officers and employees in the government.¹²⁰

In the Senate, a bill was submitted calling for the creation of a Commission on Missing Persons,¹²¹ and for the complete training course on human rights as part of recruitment and admission procedures and the continuous training of law enforcers.¹²²

On top of this is the agreement entered into by the CHR with the police, military and other agencies calling for the required human rights education to all enforcers to ensure that in the course of protecting the general welfare, individual rights and liberties are not unduly curtailed.

D. On the Enactment of a Human Rights Code

It has been repeatedly suggested in the past that human rights violations must be incorporated in one code since at present human rights violations are not treated as such but rather as crimes or offenses punishable under the Penal Code, the Civil Code, the

¹¹⁷ HB 01444.

¹¹⁸ HB 01332.

¹¹⁹ HB 01556.

¹²⁰ HB 03363.

¹²¹ SB 852.

¹²² SB 353.

Administrative Code and some Special Laws. There is a need for a separate “Code on Human Rights Violation, that will delineate the distinction between the commission of a criminal act punishable by law from the violation of human rights. This is important since it will aid the authorities concerned to adopt proper measures for the prevention of human rights violation.”¹²³

It is further recommended that aside from the substantive law that may be codified as regards human rights, specific rules and procedure be likewise provided for to facilitate its implementation. Other countries and states have already enacted a Human Rights Code, among them are the Ontario Human Rights Code,¹²⁴ the British Columbia Human Rights Code,¹²⁵ Saskatchewan Human Rights Code,¹²⁶ Human Rights Code of the City of Alexandria,¹²⁷ and Iowa City Human Rights Code.¹²⁸

E. On the Creation of a Human Rights Tribunal or Court

Corollary to the suggestion of enacting a Code, is the creation of a separate court or tribunal for the enforcement of human rights. It is suggested that such human rights courts shall have “exclusive jurisdiction to investigate, try and decide cases of violation of human rights. These courts must necessarily be adjunct to the CHR.”¹²⁹

¹²³ TARO, at 25.

¹²⁴ <http://www.ohrc.on.ca/english/code/index.shtml> (last accessed 29 January 2006).

¹²⁵ http://www.qp.gov.bc.ca/statreg/stat/H/96210_01.htm (last accessed 29 January 2006).

¹²⁶ <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S24-1.pdf> (last accessed 29 January 2006).

¹²⁷ <http://alexandriava.gov/human/6hrs55.html> (last accessed 29 January 2006).

¹²⁸ <http://www.icgov.org/humanrights/> (last accessed 29 January 2006).

¹²⁹ TARO, at 25.

A house bill¹³⁰ was previously passed in relation to this suggestion, but since its creation will entail a tedious legal and political process, it remains to be a proposal to this date.

Other countries and State have already created a court or tribunal for this above-mentioned purposes. Some of them are “New Zealand which has Human Rights Review Tribunal,¹³¹ Human Rights Tribunal of Ontario and the Saskatchewan Human Rights Tribunal.

F. On the Enforcement of Economic, Social and Cultural Rights

As earlier pointed out, many of the provisions concerning economic, social and cultural rights are not self-executing and are mere aspirations for the guidance of future legislation. Therefore, absent any law implementing the same, they are as good as rhetorical guarantees. This is such a melancholy situation since at present times, these rights have already emerged and proven to be of vital significance to the society. For this reason, many sectors have been urging Congress to specifically address this vacuum. To some extent, this problem may also be remedied if a constitutional amendment or revision will be effected.

The High Court in the case of *Simon, Jr. v. CHR*,¹³² held that it is “readily apparent that the delegates envisioned a Commission on Humans Rights that would focus its attention to the more severe cases of human rights violations,” and thereafter providing for a list of priority which though not directly precluding, indirectly limits the enforceable rights to civil and political rights alone.

¹³⁰ HB 31334. entitled *Philippines Human Rights Courts Act of 1990*.

¹³¹ COQUIA, at 301.

¹³² G.R. No. 100150, January 6, 1994.

It is worth stressing that it is important that economic, social and cultural rights be given given equal attention and consideration like that given to civil and political rights because the latter group “cannot be fully enjoyed unless the guarantees provided in the Covenant on Economic, Social and Cultural Rights are realized.”¹³³

Furthermore, it is submitted that these unconventional rights may be enforced, despite the absence of any municipal law since the ICESCR, as a ratified covenant by the Philippines, forms part of our laws, and is therefore legally demandable and enforceable.

VII. CONCLUSION

There has been a great improvement in the recognition and protection of human rights in the present times as compared to the Marcos era. In fact, in 1997 the Philippines even received a “commendation from the United Nations Commission on Human Rights for its achievement in the program of education of the people on human rights.”¹³⁴ The violations committed, though of still a significant number, is far lesser than the statistics during the Martial Law era. However, “there is still much to be done to achieve an ideal institution for the protection of the human rights of the people.”¹³⁵ Our recognition, protection and enforcement of human rights is definitely not a mere rhetorical guarantee, but, there are much that can still be done to make it a living reality.

The above discussion of the changes effected after the fall of the Marcoses, specifically on the safeguards provided for in the 1987 Constitution and its implementation as can be gleaned in jurisprudence and other data is instructive on how far has the Philippines gone in terms of this oft-recognized but also oft-abused rights. While

¹³³ COQUIA, at 103.

¹³⁴ *Id.* at 39.

¹³⁵ COQUIA, at 39, citing A. Muyot, *Human Rights in the Philippines* (1986-1992).

concededly, much has improved and changed for the benefit of the Filipino people, still a great amount of change is desired. With the advent of a constitutional amendment or revision, high hopes are directed toward the possible remedial measures that may be effected to plug the holes in the 1987 Constitution. Great and noble as it may be, the passage of almost 20 years since its enactment rendered some of the provisions of our fundamental law less effective, if not completely obsolete. It is high time for us to keep pace to the great complexities and changes of our surroundings.

Lastly, it is worth emphasizing that human rights is for all. Everyone deserve to live in a society where his rights are respected and protected, whoever he may be. A victim has rights that deserves justice and vindication. An accused has rights which should be recognized in compliance with the basic requirements of due process and presumption of innocence. A law enforcer also have rights which must be safeguarded, otherwise, no one will enforce the law for the simple reason that it is not only not rewarding to do so, but worse, it is highly prejudicial and threatening. In as much as we pity the plight of hapless civilians, the police and military are likewise exposed to human rights violations, like the rampant ambush killings in rural areas.¹³⁶

One may argue that since the government is the more powerful among all the sectors involved, things should then be strictly construed against its actions. But this argument should not be taken indiscriminately, for the people behind the strong arms of the government are also individuals who have rights that must likewise be protected and rights which are also threatened to be violated every time they enforce the law. Rampant violations by state actors do not justify their summary executions for not all of them belong to the same beastly category, and more importantly, we must never forget that ours is a rule of law and not of men.

¹³⁶ CHRP News Bulletin, Vol. 2, No. 2, 8 (2004)

Human rights is for all, should be possessed by all and should be recognized by all. Intricate explanation is not necessary for us to know this fact. Even commoners like us know that we should care to value these rights and may we never lose sight of this reality. ***Juris praecepta sunt hec, honeste vivere, alterum non laedere, suum cuique tribuere.***¹³⁷

¹³⁷ The precepts of the law are these, live honestly, not to injure another and to give each one his due.