



Questionnaire on National Human Rights Institutions and Human Rights Defenders

Response from the Commission on Human Rights
of the Philippines¹

1.

a) *Please provide a brief overview of the legislative framework adopted to establish a National Human Rights Institution (hereafter ‘the Institution’) in your country. Please cite the names of any such laws or regulations in full.*

- The Commission on Human Rights of the Philippines (hereafter the “Commission”) was created under Article XIII, Sections 17-19 of the 1987 Philippine Constitution.
- Executive Order No. 163² was subsequently issued on May 5, 1987 to implement the provisions of the Constitution pertaining to the Commission.
- The Commission is advocating for the passage of a legislation entitled, “Commission on Human Rights Charter” (CHR Charter) to strengthen its organizational, functional and fiscal structures.
- Twenty five years after the Commission’s creation, there have been eight (8) laws³ passed that elaborated on and/or added

¹ Prepared by the Government Linkages Office of the Commission on Human Rights of the Philippines.

² Please note that Executive Order No. 163 “bore the force of law” as this was issued by then President C. Aquino on the basis of the Freedom Constitution of 1986 which expressly gave the President the power to exercise legislative powers. <http://www.gov.ph/section/executive-issuances/presidential-decrees-executive-issuances>

³ Republic Act No. 9851 – “An Act Defining and Penalizing Crimes Against International Humanitarian Law, Genocide and Other Crimes Against Humanity, Organizing Jurisdiction, Designating Special Courts, and for Related Purposes” (Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity) specifically Section 18;

Republic Act No. 9745 – “An Act Penalizing Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and Prescribing Penalties Therefor” (Anti-Torture Act of 2009) specifically Sections 7, 9, 11, 17, 21, 23 and 24

Republic Act No. 9710 – “An Act Providing for the Magna Carta of Women” (Magna Carta of Women) specifically Sections 39, 40, 41 and 44

functions to the Commission, including the recent Anti-Torture Law and the Magna Carta of Women.

b) *Please indicate how these laws and regulations comply with international human rights standards, and in particular, the Paris Principles.*

■ The Commission predates the Paris Principles. Hence, the formulation of the Paris Principles was influenced by existing NHRIs. The Commission has been re-accredited twice and has maintained “A” status accreditation to date.

c) *Please indicate the current accreditation status of the Institution with the International Coordinating Committee (ICC) and what measures, if any, have been taken to implement the recommendations highlighted at the most recent ICC Sub Committee on Accreditation meeting with a view to strengthening NHRIs compliance with the Paris Principles.*

■ The Commission was subject of the ICC accreditation process held last March 26 – 30, 2012.

■ In the accompanying report of the ICC SCA, there were recommendations on the following:

1. Mandates;
2. Composition, selection and appointment;
3. Security of tenure;
4. Funding; and
5. Practice.

A copy of the Report made by the ICC SCA is hereto attached as Annex “A.”

■ It is submitted, however, that the selection process for the members of the Commission en Banc is not defined Constitution and the Executive Order. This silence in the provision and past practice allow the President sole authority of selecting and appointing the members.

■ It is also submitted that this can be settled through the passage of the proposed CHR Charter as the procedure for selection and appointment has been clearly set out taking into consideration transparency and the Paris Principles.

Republic Act No. 9372 – “An Act to Secure the State and Protect Our People from Terrorism (Human Security Act of 2007) specifically Sections 19 and 55

Republic Act No. 9344 – “An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile and Justice Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes” (Juvenile Justice Law) specifically Sections 8 and 11

Republic Act No. 9262 – “An Act Defining Violence Against Women and their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor and for Other Purposes” (Anti-Violence Against Women and their Children Act of 2004) specifically Section 39

Implementing Rules and Regulations for Republic Act No. 7610 – “An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes” (Anti-Child Abuse Law) specifically Sections 1, 21, 22 and 24 on the implementation of Article X on ‘Children in Situations of Armed Conflict’

Republic Act No. 7438 – “An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof” (Custodial Rights of the Accused) specifically Section 2

2.

a) *Please provide details outlining the mandate adopted by the Institution in relation to the protection and promotion of human rights in accordance with the range of competencies and responsibilities specified in the Paris Principles.*

■ Under the 1987 Philippine Constitution, the Commission has the following mandates:

- (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 Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;
- (4) Exercise visitorial 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 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) Appoint its officers and employees in accordance with law; and
- (11) Perform such other duties and functions as may be provided by law.

■ The Commission has also adopted a Focal Person System whereby individual members of the Commission en Banc along with the Directorate and other Offices, serve as focal points for vulnerable groups, human rights mechanisms, externally-funded projects and internal administration.

b) *Please indicate whether the Institution is mandated to consider and/or adjudicate individual complaints of human rights violations.*

■ Yes. It is actually the first mandate under the Constitution and the same can be exercised upon complaint by any person and

even *motu proprio* by the Commission. The mandate to consider complaints is also found in other laws passed in the course of the Commission's 25 years of existence.

c) *If relevant, please indicate whether the mandate is limited to specific rights or whether complaints against the Government, the police and/or the military are permitted and how they are dealt with.*

- Under the Constitution, the Commission is only mandated to investigate violations of civil and political rights.
- However, the Commission also investigates violations of economic, social and cultural rights under the following justifications:
 - Republic Act No. 9710 (Magna Carta of Women) expressly provided for the Commission's investigation of violations of women's rights including economic, social and cultural rights.
 - With the passage of the Commission's Omnibus Rules of Procedures, investigation of ESC rights is necessarily included;
 - Investigation of ESC rights precedes the principles of indivisibility, interrelatedness and interdependence of human rights; and
 - The mandate of the Commission to monitor compliance by government of its international treaty obligations necessarily includes not only of the ICCPR but all core human rights treaties and other international instruments not limited civil and political rights.
- In addition, under the proposed CHR Charter, the Commission seeks the categorical inclusion of ESC rights as part of the mandate of the Commission considering the provision under Section 19, Article XIII of the Constitution which reads, "the Congress may provide for other cases of violations of human rights that should fall within the authority of the Commission, taking into consideration its recommendations."
- On the other hand, complaints against the Government, police and the military are allowed as is the usual case in the Commission except for the incumbent President of the country under the doctrine of "immunity from suit."
- Investigation in the Commission follows due process and requires the respondent (government, police or military) to respond and submit his/her answer to the allegations in the complaint. Otherwise, the Commission calls for a hearing and subjects both the complainant and/or witnesses and the respondent to inquiry by the hearing officer or the Commission en Banc in high-profile cases. This process is transparent and both the complainant and/or witnesses as well as the respondent are given the chance to substantiate their claim or give their defense.

✚ Should the Commission find violation of human rights, its resolution shall be forwarded/referred to the appropriate government agency for the filing of cases or other proper action, usually to the Department of Justice, Office of the Ombudsman, the Philippine National Police, Department of the Interior and Local Government and Armed Forces of the Philippines, among other appropriate agencies.

d) *In this regard, please indicate whether the Institution is empowered to carry out protection related functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities.*

✚ Yes. The Commission is empowered, and actually does the following protection related services:

- Investigation, motu proprio or on complaint;
- Legal aid services;
- Limited witness protection program;
- Visitorial services to jails, prisons and detention facilities;
- Financial assistance to victims of human rights violations; and
- Medico-legal and forensic services.

3.

a) *Please indicate what mechanisms, if any, are in place within the Institution to ensure that human rights defenders at risk are protected (e.g. through protection programmes, early warning systems or by submitting complaints to regional bodies on specific cases).*

✚ In addition to the above mentioned protection related services, the Commission does the following mechanisms for human rights defenders:

- Under the focal system of the Commission, there are assigned focal persons for rights defenders – a Commissioner and a Director;
- Under the Universal Periodic Review, the Commission has advocated for the invitation of Special Procedures Mechanism, including the Special representative of the Secretary General (SRSG) on human rights defenders;
- The Commission has recently issued an Advisory⁴ on the Invitation of Special Procedures Mechanism in the country and will be transmitted to the Office of the President, specifically the Office of the Executive Secretary, Deputy Executive Secretary and the Presidential Human Rights Committee as well as to the Department of Foreign Affairs specifically the Office of the United Nations and Other International Organizations and the Undersecretary for Policy Concerns;

⁴ CHR Advisory with number (IV) A201-003 issued on September 24, 2012

- The Commission also issues various advisories on the concerns of human rights defenders whether individually or collectively; and
- The Commission is in active touch with non-governmental organizations and civil society on issues of human rights defenders. We are also in the process of developing a policy that would consolidate policies and programs as well as clarify the Commission's relationship with HRDs on the basis constitutional and statutory mandates.

b) *Please indicate whether any obstacles or challenges exist with regard to the effective protection of human rights defenders through these mechanisms, and how the Institution addresses them.*

■ Challenges are:

- The unjustified labeling/profiling of human rights defenders as belonging to the extreme left. Hence, extra-judicial killings, enforced disappearances, torture and harassment continue to be committed against them;
 - The unreasonable failure of the State to respond to the request for invitation by the Special Representative (SRSG) sent as early as 2008;
 - Gaps on government policies on command responsibility; and
 - Slow process and non-cooperation of government agencies tasked to investigate and provide evidence to substantiate alleged human rights violations committed against HRDs which range from various forms of harassment, enforced disappearance, torture and extra-judicial killings.
- The Commission continues to investigate cases of human rights violations against human rights defenders.⁵ As earlier stated, it is ardent in its advocacy for the visit of the Special Representative in the country. On the issue of command responsibility, the Commission is advocating for government policies on the same considering that the doctrine is only found in the Anti-Torture Law, an Executive Order⁶ for the Philippine National Police and in various internal memorandum circulars in the Armed Forces of the Philippines.
- Finally, there is absence of a policy by the Commission on HRDs but as mentioned above, the same is already being addressed.

4.

⁵ The Commission has assisted human rights defender, Cocoy Tulawie, by intervening in his transfer from Davao prison to Sulu where many believe will pose grave and imminent threat to his life. See <http://newsinfo.inquirer.net/130475/sc-orders-stop-to-transfer-of-suspect-in-slay-try-on-sulo-gov>. The Commission is also poised to issue a communication to the Supreme Court expressing the concern over the security of Tulawie as the Supreme Court has allowed the second change of venue to Manila.

⁶ Executive Order No 226 signed in 1995 by then President Fidel V. Ramos

a) *Please describe the working relationship between the Institution and civil society, including human rights defenders, in accordance with the Paris Principles.*

■ The Commission is in constant, active, meaningful and substantive relationship and engagement with non-governmental agencies and civil society, including human rights defenders. In fact, many of its activities are conducted in partnership with these organizations. They have always been welcome to the Commission and they know this.

■ We see robust relationships in treaty body and UPR engagements as well as in education. We do recognize the call of civil society for greater collaboration in terms of investigation and visitation mandates. This is currently being deliberated by the Commission.

b) *Please indicate whether any challenges or obstacles exist that may prevent interaction and cooperation with civil society and/or human rights defenders and how the Institution seeks to address them.*

■ The Commission does not discriminate in its engagement with civil society. However, as the Chair of the Commission is a known member of a partylist organization, some civil society organizations by their own choice refuse to engage with the Commission. Nevertheless, the Commission continues to seek their engagement through invitations for our human rights activities.

■ Another obstacle is the lack of funds to really be inclusive in all activities of the Commission and most often than not, not all civil society organizations are being reached. To maximize participation then of these organizations, the Commission usually engages civil society 'coalitions' in order to reach a broader base of civil society.

5.

a) *Please indicate whether any member of the Institution's staff has ever been the victim of threats, or other kind of harassment, as a result of work carried out on behalf of the organization.*

■ Yes. This is a commonplace and is accepted by the Commission as a necessary part of its work. The most vulnerable are those who directly conduct investigation/fact-finding especially in the Commission's regional offices.

In one instance, the Commission's investigators from the regional office (CHR Region IX) were fired upon during the conduct of investigation.

b) *Please specify what mechanisms, if any, are in place to protect Institution members in investigating human rights violations. If applicable, please specify what mechanisms, at the institutional,*

national, regional and international level have been employed to protect Institution members.

■ Under the mandates in the Constitution, the Commission may request the assistance of any department, bureau, office or agency in the performance of its functions. Hence, in times of threats to individual members of the Commission, the assistance of government agencies for protection and other services may be sought.

c) *Please indicate whether the Institution has ever been subjected to an unannounced visit by representatives from the police or state authorities, or if it has otherwise been subjected or interference or threat that may jeopardize its independence as a national human rights institution under the Paris Principles.*

■ No. Fortunately, the Commission has not been subjected to unannounced visits by the police or other state authorities.

■ However, there are three external concerns prevailing which threaten the independence of the Constitution:

- First is the decision in the case of CHREA vs. CHR⁷ where the Commission was declared by the Supreme Court to only have 'limited fiscal autonomy' in violation of the provisions of the Constitution;
- Second is the reduction in the budget of the Commission based on the budget ceiling provided by the Department of Budget and Management and enacted by the Legislature thereby affecting adversely daily operations; and
- Third are the actions of the Department of Budget and Management (DBM) in controlling government expenditures and limiting release of funds despite the 'fiscal autonomy' provision supposed to be enjoyed by the Commission in the guise of 'limited fiscal autonomy' as enunciated in the case which was not clearly defined. The Commission strongly opposes this as the DBM unilaterally interprets this 'limited fiscal autonomy' and treats the Commission no different from the executive departments/agencies of government which do not possess any fiscal autonomy whatsoever.

6.

a) *Please indicate the main sources of funding for the Institution.*

■ The Commission's budgetary appropriations and release are guaranteed under the Constitution. However, as stated under point 5 (c), the Commission relies heavily, and primarily, on the annual appropriations as determined by the Legislature.

■ Under the Anti-torture Law, an additional fund allocation was granted the Commission.

■ External donors such as the United Nations Development Programme (UNDP), European Union (EU), The Asia

⁷ Commission on Human Rights Employees Association vs. Commission on Human Rights, G. R. No. 155336

Foundation (TAF), Australian Aide (AusAid), and Agencia Española de Cooperación Internacional para el Desarrollo (AECID), among others, continue to fuel the plans and programmes of the Commission. Without these external funding, the Commission will be immensely diminished in its functions.

b) *In this regard, please indicate whether any challenges exist, particularly in relation to the functional autonomy of the organization and how this impacts on the work of the Institution.*

■ Please refer to point 5 (c).

■ In addition, the lack of a CHR Charter impedes the delivery of services by the Commission. In the proposed Charter, the mandates of the Commission under the Constitution are elucidated which not bolsters the independence of the Commission but more importantly, it strengthens the functions of the Commission.

■ For example, under the proposed Charter, the preventive and legal measures that can be provided to the Commission are spelled out and the result of the investigation is accorded proper weight and value, among others. The proposed Charter also reinforces the organizational structure of the Commission especially its regional offices. This will hopefully lay to rest the (mis)conception about the Commission as a 'toothless tiger' and correct/address the impact of the Supreme Court decisions on the Commission's mandates, specifically, these include findings that the institution is a mere 'fact-finding' body and as such cannot issue temporary restraining orders.

■ These factors adversely impact the work of the Commission as both fiscal and functional operations are affected. At present, the resolutions of the Commission as a result of its investigation are sometimes not taken seriously by other government agencies.

■ With the proposed CHR Charter, these issues will hopefully be fully addressed.

7.

a) *Please describe the procedures in place relating to the selection and appointment of members of the governing body.*

■ As mentioned, both the Constitution and Executive Order 163 are silent as to the process of selection and appointment of the members of the Commission en Banc.

■ As the President is the appointing authority for the members of the Commission en Banc, he/she directly appoints them. Claims of nominations process and/or selection processes undertaken, if at all, are not transparent nor participatory.

■ The Commission, however, prior to the vacancy in 2008, issued a Resolution calling on the Office of the President to install a transparent and inclusive process for the selection and

appointment of the members of the Fourth Commission. This call has remained unheeded by the Executive. A copy of the Commission's Resolution with number CHR (III) No. A2007-163 is hereto attached as Annex "B."

b) *Please indicate what mechanisms are in place to ensure independent scrutiny of candidates and security of tenure for members of the governing body.*

■ Again, the proposed CHR Charter contains provisions to ensure the transparent and participative nominations and selections process for the members of the Commission en Banc.

■ As to the security of tenure, the Constitution itself states that members of the Commissions shall serve for a term of seven (7) years. While it is silent as to the manner of removal, the deliberations of the Constitutional Commission⁸ on the mandates of the Commission provide the basis for removal of the members of the Commission but definitely not through the causes and process of impeachment. Pertinent portions of the deliberations⁹ on the matter states thus,

“Mr. Maabong: The third point I would like to be clarified about is the officers or functionaries of the Commission on Human Rights starting with the acting chairman or members thereof, whatever may be the composition. I am referring to the top level officers. Are they impeachable?”

Mr. Monsod: We do not conceive the process of impeachment for them. We may leave it to Congress to provide the means for their removal. xxx

Mr. Maabong: In other words, the officers thereof will be contradistinguished with the officers of the Ombudsman because the Ombudsman officers are impeachable officers. Here we are contemplating a situation where they may be removed under the civil service law or by laws to be provided by Congress. xxx.

Mr. Monsod: Yes, by virtue of the amendment xxx wherein we are limiting the method of impeachment only to those specifically provided in the Constitution.”

■ Corollarily, the proposed CHR Charter contains specific provisions with respect to the removal of the members of the Commission en Banc.

⁸ The Constitutional Commission was tasked to formulate and deliberate on the provisions of the 1987 Philippine Constitution

⁹ Deliberations of the Constitutional Commission dated August 27, 1986, page 744