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HUMAN RIGHTS EDUCATION



LAUNCHING AND ORIENTATION ON THE USE
OF THE HUMAN RIGHTS TEACHING EXEMPLARS

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in putting them to life with the aim of promoting and safeguarding
the human rights of every person.

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Foreword

In this issue, President Joseph E. Estrada grapples with the antithesis between economic development and human rights. He offers insights on improving human rights cooperation in the dual context of interrelationships among members of the Asia-Pacific Forum of National Human Rights Institutions and relationship with governments and international institutions. He urges conference participants to devise a plan of action to address the manifold issues surrounding human rights, development and globalization.

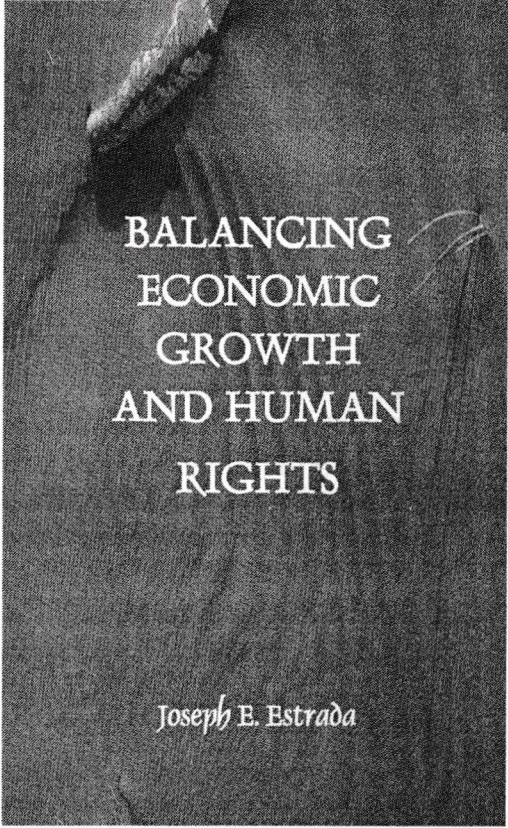
In three succeeding articles, Commission on Human Rights (CHR) Chair Aurora P. Navarrete-Reciña zeroes in on human rights education as a partnership, a civic education concern, and as a mobilization effort.

Article 1 dissects the structure of cooperation between and among the Commission and its multisectoral partners, describes general roles, identifies limitations and obstacles to its programs and services, lays down policy and operational options to address them, and bares challenges that must be confronted; Article 2 relates human rights education to civics, discusses two major Commission programs as vehicles for reaching out to target clientele, and introduces innovative approaches to human rights education as a civic activity; article 3 traces the indigenous development of human rights education at the CHR level---from programs and services provided under the CHR Plan of Action to multisectoral initiatives operating within the objectives and targets set by the Philippine Human Rights Education Decade Plan.

Commissioners Nasser A. Marohomsalic and Jorge R. Coquia, both regular contributors to this publication, discuss domestic human rights problems and challenges and academic freedom, respectively. Marohomsalic provides readers with a closer understanding of how extremist policies, organizational weaknesses, government indifference, and development aggression, among others undermine the promotion of human rights. Coquia waxes legalistic as he pursues a broader definition of academic freedom citing international and constitutional documents as well as jurisprudence.

Contents

Balancing Economic Growth and Human Rights <i>Joseph E. Estrada</i>	— — — — — 1
The Philippine Commission on Human Rights and Non-Governmental Organizations: Working in Partnership on Human Rights Education <i>Aurora P. Navarrete-Reciña</i>	— — — — — 8
Civic and Human Rights Education in the Philippines for the New Millenium <i>Aurora P. Navarrete-Reciña</i>	— — — — — 30
Human Rights Education Decade in the Philippines <i>Aurora P. Navarrete-Reciña</i>	— — — — — 42
The Philippine Experience in Human Rights Promotion and Protection: Some Problems and Challenges <i>Nasser A. Marohomsalic</i>	— — — — — 51
Broad Aspects of Academic Freedom <i>Jorge R. Coquia</i>	— — — — — 100



BALANCING ECONOMIC GROWTH AND HUMAN RIGHTS

Joseph E. Estrada

In the past, we have expressed concern on the practice of some developing countries to insure our economic, social and cultural rights, unless we can exercise our civil and political rights [sic]. True, a hungry man does not have freedom of choice. But equally true, when a well-fed man does not have freedom of choice, he cannot protect himself against going hungry.

I do not see how economic and social rights can be fully advanced unless the lower strata of society is

Speech of His Excellency President Joseph Ejercito Estrada at the Opening Ceremony of the 4th Asia Pacific Forum of the National Human Rights Institutions held at the Cultural Center of the Philippines, Manila on September 6, 1999.

finally freed from the chains of poverty. It is poverty that prevents people's participation in the affairs of the State and the meaningful exercise of their right to choose responsible leaders.

The issue of the state of economic and social rights in developing countries is part of the larger question of whether development and human rights are in conflict with each other. Take for granted human rights to promote economic growth. We have now gradually come to terms in acknowledging the importance of economic and social rights side by side with our common aspirations of protecting civil and political rights. However, there is still much to do, for I believe that we have not really resolved with full satisfaction the contradiction between economic development and human rights in general.

In my own view, both economic and social rights, on the one hand, and civil and political rights, on the other, are equally threatened in the hands of a stern and impersonal authority, in the words of the great Filipino human rights advocate Jose W. Diokno: "We cannot enjoy civil and political rights unless we enjoy economic, cultural and social rights, anymore than we can. There are those who think that economic development should prevail over human rights, while others believe in development with a human face. Both sides have their respective following - economists, businessmen and investors for the former; human rights advocates, social workers, civil society organizations, and the poor for the latter.

The first is grounded on the free play of market forces.

Its adherents argue that wealth must come first before everybody can have his equitable share. The second is based on the argument that development must bear a human dimension. Its proponents say that respect for human rights and the pursuit of economic growth must go hand in hand.

Both arguments put challenge on the government, which must assume the responsibility of producing wealth and equitably distributing it. It is placed in a particularly challenging but painful dilemma. It must consider the interest and demands of business if it wishes to achieve economic growth and, at the same time, protect the vulnerable and weaker sectors of society in the process of change.

It is a tough balancing act. Either way, the government invites social and political dissent. Growth is imperative to feed the hungry masses, but freewheeling growth, can also promote social unrest. But a government must govern and it must pursue this by broadening the avenues for consensus in the shaping of policies among the various sectors of society.

The government's task becomes more complicated in the face of globalization because it is locked in stiff competition with the other countries for scarce resources and opportunities. In many instances, governments are criticized for making decisions calculated to secure investors' confidence but appear disadvantageous to underprivileged sectors. Observers are alarmed that protective shields built around the weak and the impoverished by existing legislation

and regulations are constantly being eroded by global competition.

They often ask why some developing countries are long on traditional economic programs but short on programs to improve the quality of life for all. The 1998 human development report, for example, shows that "of the 4.4 billion people in developing countries, nearly three-fifths lack basic sanitation; almost a third has no access to clean water; a quarter does not have adequate housing; and a fifth has no access to modern health services."

Despite many international human rights laws and treaties, governments of developing countries are blamed by their constituents and critics for alleged half-hearted commitments to human rights. That is why, today, you are all gathered in this forum to ask why this is so, to share experiences and insights, and to exchange notes and offer solutions to this problem.

If I may suggest, the first step towards this end is to admit there is a wide gap that must be bridged between government and human rights advocates on the issue of development. At the same time, we must recognize that our objectives should meet. We should set aside differences arising from our respective biases for the time being and take the debate and proceedings here with an open mind.

The second step is to submit ourselves to a set of self-evident principles, such as the scarcity of economic resources and globalization.

Finally, we must sift through possibilities with an eye to separating what is immediately doable from what could take years to accomplish.

No right-thinking political leadership will deny the supreme position of human development and human rights in their scheme of things. This is a painful lesson straight out of our historical past.

As we all know, human rights is written in the charter of the United Nations. The United Nations itself is product of the apprehensions of the international community over experiencing again the ill -effects of globalization.

At the same time, we must also set our sights accross the horizon for more exciting possibilities. A dynamic and committed citizenry can, indeed, contribute to a developing country's economic strength. But an enlightened citizenry can also celebrate the majesty of political and human freedom. We have to convince everyone that ensuring the basic needs of the people is a fruitful investment, particularly among developing economies.

There is likewise wisdom in thinking that globalization, which can serve as a negative factor in human rights development, is an international phenomenon that demands the serious attention of all nations. No single country can be expected to stand by and watch others grow fast with the same economic opportunities it avoided in observance of human rights.

It is now up to this forum to devise a plan of action. The Asia Pacific forum represents a sizable population of 1.6 billion, including countries moving towards organizing their respective national human rights institutions.

The sheer diversity in economic, social and political circumstances of the countries represented here provides a wealth of experiences and data that are critical in shaping development policies. With a well-conceived program, this forum can become an influential resource for governmental and inter-governmental bodies.

At most, heads of governments would only be constrained in their pursuit of development by their own peoples needs, priorities and, aspirations, as well as the considerations of scarce resources and global competitiveness; admittedly, there will still be a few who would be driven to excesses, probably by their own misdirected enthusiasm.

On the other hand, human rights advocates cannot be faulted for their strong denunciations of the indifference of governments towards human rights concerns.

There are standing international agreements on human rights to which most governments are parties. It is only proper that they should be held accountable for their commitments.

Since all of us agree in our human rights aspirations, working together should not be difficult. As a good starting point, we address policies and programs that

consider the rights of vulnerable and underprivileged groups. This should give human rights proponents a louder voice in determining the allocation of scarce economic resources to government programs and provide them with a stronger hand in designing safety nets against the inter-governmental bodies.

This forum, therefore, should make its presence felt in appropriate regional and international fora. It should employ its vast reservoir of goodwill to interact with individual governments and maintain constant communications with United Nations agencies to foster coordination.

Above all, both governments and human rights advocates, particularly those representing the Aspac forum, should work as partners - not as clients and consultants - and should strive to discard the mutual suspicions that for years have driven a wedge between those before them. They should strive to discard the mutual suspicion that has separated them for years. Both must show the world that this partnership is an idea whose time has come.



THE PHILIPPINE
COMMISSION ON
HUMAN RIGHTS
AND NON-
GOVERNMENTAL
ORGANISATIONS:
WORKING IN
PARTNERSHIP
ON HUMAN
RIGHTS
EDUCATION*

Aurora P. Navarrete-Reciña

**NGOs: HUMAN RIGHTS EDUCATORS
IN THE PHILIPPINES BEFORE THE
CREATION OF THE COMMISSION
ON HUMAN RIGHTS**

The birth of the Philippine Commission on Human Rights on May 5, 1987 may be considered the offshoot of the relentless struggle for justice of the victims of human rights

*Paper presented at the "Regional Workshop of the Asia-Pacific Forum of National Human Rights Institutions and Non-Governmental Organizations: Working in Partnership" held in Kandy, Sri Lanka on 26-28 July 1999. The paper was prepared with the assistance of Ana Elzy E. Ofreneo, CHR's Director of the Human Rights Education and Research Office and Benedicto G. Antazo, CHR-HERO Chief of the Development and Production Division.

violations (HRVs) and non-governmental organizations (NGOs) during and after the rule of Marcos.

The martial rule and its secret marshals unleashed so much terror among the citizenry, but succeeded only in putting more fire to the cause-oriented and non-governmental organizations. In the early martial law (ML) period, NGOs and enlightened, politicised individuals clandestinely organized teach-ins and discussion groups on human rights in the urban areas as well as hinterlands. Because all communication media were controlled, they secretly produced and disseminated posters from recycled newspapers, leaflets, and flyers on human rights abuses and called for action from the citizens.

Outside the country, they conducted campaigns against repression and oppression obtaining from martial law. NGOs goaded victims to file, or by themselves filed complaints with the United Nations using all their documented cases of HRVs. Thus, with the help of NGOs, the UN was able to establish the gross and systematic violations of human rights by the Marcos government. Somehow, this caused the international community to put pressure on Marcos.

With their relentless and untiring advocacy on human rights from 1972-1982, NGOs and political opposition parties easily drew millions of Filipinos out to the streets from 1983 till the fall of Marcos in 1986. Filipinos, led by fearless NGOs, cause-oriented groups, political opposition party leaders and victims, flooded the urban streets crying for justice for all victims of HRVs, including the staunch political

opponent of Marcos, the slain Senator Benigno Aquino, Jr. They organized a series of simultaneous innovative meta-legal remedies for their grievances including telephone and letter brigades, yellow confettis, indignation rallies, and civil disobedience campaigns.

Intense local and international pressures forced Marcos to call for a snap presidential election in February 1986. The widow of Sen. Aquino was pitted against him. By all official election counts, Marcos was winning by landslide. However, some enlightened quarters from the military thought otherwise. They went on mutiny. But before the mutiny fully took off the ground, Marcos discovered it. As a strategy, the mutineers mobilized every recognized national leader from the church, opposition parties and NGOs to back them up. They also sought the support of the international community, especially the United States. Very quickly, almost imperceptibly, followers and supporters of said leaders swarmed over EDSA to provide human cover to the mutineers. It thus smoothly evolved to become the bloodless People Power Revolution for a period of four days (February 22-25, 1986). Marcos was put to exile and Cory Aquino was ensconced to the presidency over the revolutionary government.

THE PRESIDENTIAL COMMITTEE ON HUMAN RIGHTS: ALTER EGO OF NGOs

As one of her first official acts, Cory issued Executive Order No. 8 on March 8, 1986 creating the Presidential

Committee on Human Rights or PCHR. PCHR was a fact-finding and advisory body to the President on the promotion/protection of human rights. Cory appointed as PCHR members the victims of HRVs and leaders of NGOs, plus a military representative. Senator Jose W. Diokno, a political detainee and founder/chairman of the NGO called Free Legal Assistance Group, was chairman. Sister Mariani Dimaranan, chairperson/founder of the NGO called Task Force Detainees of the Philippines and officer of the Association of Major Religious Superiors, was a member. General Samuel Soriano, judge advocate general of the Armed Forces of the Philippines, was a member. Other members were leaders of militant activists and street parliamentarians, to wit: Justice JBL Reyes, law professor Haydee Yorac and Mrs. Nini Avanceña. The committee named lawyer Tony Quintos, an officer of the Civil Liberties Union, as its Executive Director. PCHR's officers and staff mostly came from the members' respective organizations; in other words, from NGOs.

Thus, we had a national human rights institution that, in a sense, was an alter ego of NGOs.

Through the recommendations of the PCHR, Cory issued two trailblazing documents on human rights education or HRE on July 4, 1986, i. e., Presidential Memorandum Order No. 20 and Executive Order No. 27. PMO 20 made HRE mandatory among the police and military, especially arresting and investigating officers. On the other hand, EO 27 made HRE mandatory in all levels of educational curriculum. It also ensures that human rights is a compulsory test component of all police and civil service eligibility

examinations. The twin orders required all concerned government agencies to closely coordinate with the PCHR.

CONSTITUTIONAL CREATION OF THE COMMISSION ON HUMAN RIGHTS: BRAINCHILD OF NGOS

In her effort to bring back full democracy, Cory created in mid-1986 a 50-person Constitutional Commission or ConCom. ConCom's task was to draft a new Philippine Constitution. The proponents and drafters of the human rights provisions in the Constitution consisted of leaders of NGOs, specifically, Atty. Rene Sarmiento, Prof. Ed Garcia and Atty. Vic Foz. In their original draft, they were proposing only two main powers and functions of the Commission on Human Rights or CHR, i.e. undertake public information and education programs and investigate cases of human rights violations committed by government agents. ConCom's final draft constitution gave more powers and functions to CHR. In a national referendum on February 2, 1987, 78% of the voting population ratified the new constitution together with all its human rights provisions.

The 1987 Philippine Constitution mandates, inter alia, that:

...one of the powers and functions of the CHR is to "establish a continuing program of research, education and information to enhance respect for the primacy of human rights" (Article XIII, Section 18, par. 5).

...all educational institutions shall "...foster respect for human rights,...teach the rights and duties of citizenship..." (Article XIV, Section 3, par. 2).

Three months after the new Philippine Constitution was overwhelmingly ratified by the Filipino people, Executive Order No. 163 issued on May 5, 1987 operationalized the creation of the present Commission on Human Rights. All the manpower and everything that PCHR had been doing were all absorbed and carried over to the new CHR. Because many of its officers and staff were drawn from their own ranks, the new CHR has been enjoying a good working relationship and rapport with NGOs.

FLOWERING OF HUMAN RIGHTS EDUCATION IN THE PHILIPPINES WITH CHR

To carry out its HRE mandate, and before enlisting NGOs' participation, CHR did several serious human rights situation analyses for national action planning purposes. For its initial year's budget allocation, CHR's dedicated HRE staff formulated a blueprint for HRE in the Philippines that required a P19-M funding. The programs and amount needed overwhelmed the Commission who thought CHR was not capable to implement them. Thus, the blueprint was disapproved.

However, the Commission later approved the programs and projects listed in the blueprint when submitted on a piecemeal manner.

Participation of NGOs in CHR's First Training of Police Trainers on Human Rights

The first trainers' training for the police in 1987 involved the Philippine Institute for Alternative Futures and the International Committee of the Red Cross. PIAF co-designed with CHR the 3-day human rights values module. ICRC co-designed with CHR the 1-day humanitarian law module. The first required some honoraria or payment while the latter shared all its resources. Since 1987, the International Committee of the Red Cross has been cooperating with the CHR in the organization and conduct of intensive human rights and humanitarian laws campaign among the military and police. For all the modules on *human rights in times of emergencies*, the ICRC provided expert resource persons and multi-mediated materials on international humanitarian law or IHL. For live-in trainings, it also contributed an amount to defray the cost of food and accommodation.

Minimum Requirements for Partnership

Although HRE had been an eminent feature of the pre-CHR era, admittedly it lacked one principal ingredient for sweeping impact – a national human rights institution. Human rights violation is an illness endemic to political authorities. And like a physiological malady, the cure is often generated within the system itself, as in the case of the human body, whose own antibodies defend it against disease.

In behavioral terms, change could only come from within a person – by analogy, from an institution.

This principle works perfectly well in the context of a national human rights institution as an instrument of state policy and provides the logic for endowing it with constitutional mandate and the legal authority to pursue it.

With this mandate, the Commission on Human Rights had the benefit of at once solving half of the problem in addressing human rights issues – the missing link: a government entity envisioned to unify all initiatives and set common standards for achieving success. One of the critical areas very well served by this integration is human rights education, a key mandate of the Commission on Human Rights.

As a major proponent of human rights education, the CHR is an imposing figure that can hardly be ignored in the forum of HRE issues. As a constitutional agency of the government, it is theoretically awashed with a respectable level of financial and human resources to undertake large-scale HRE programs with significant effect. More than this, its power to request assistance from other government offices enables it to move around across important sectors in the government such as the police and military, the local governments, the academic authorities and peripheral institutions to bring them into line with human rights education programs, activities and objectives.

The Commission likewise enjoys an independent status vested by no less than the Constitution itself. This position is affirmed by jurisprudence set by the Philippine Supreme Court in *Salonga vs. Bautista*. Thus, it is perceived as having the capacity for independent posturing over issues such as HRE

priorities, thrusts, programs, concepts and on matters of teaching designs and contents. More importantly, it is perceived as capable of bringing programs to conclusion with political resolve.

These strategic advantages of the Commission, however, are only worth establishing a beach head. They do not by themselves ensure healthy respect from its peers in the field. Ultimately, performance should be the yardstick of its true worth. CHR was well aware of this, so that it went about its task by frenetic drive towards broad-based programs with multisectoral and international participation both in development and implementation stages. Its determination progressed not only into successful partnerships in limited fields of engagement, but also in more comprehensive and broader joint undertakings on strategic levels.

To this date, the Commission has set up a good number of joint programs involving government, non-government and international/inter-governmental/governmental organizations.

The development and implementation of these programs have served the Commission's relationship with NGOs very well in terms of establishing links, providing fertile grounds for sustained coordination and cooperation, pushing the frontiers of their HRE technology and experience, moving ahead with mutual trust and concern for human rights. It is of particular note that in several instances where preparatory and initial coordination were conducted for groundworking of programs, NGOs responded quite positively, although with apparent guarded optimism.

In analysis, we attribute this predisposition to a commonality of objectives. The NGOs represent either particular sectors or special interests. As the Commission scans the environment for programs for priority targets such as vulnerable and disadvantaged sectors and law enforcement personnel, it strikes a confluence of interests. Although there are gaps to bridge, very often this leads to pragmatic realization of a shared responsibility and the need for complementary actions.

Structure for Cooperation

CHR's HRE programs currently involve active links with dozens of non-governmental organizations working with Central, Regional and sub-offices.

Generally, an NGO participation is covered by a memorandum of agreement or joint declaration of undertaking, particularly in CHR programs of major proportions. But there are cases where CHR-NGO collaboration takes place for more specific purposes ranging from development of particular information materials to holding of conferences, symposia, dialogues, etc. In some instances, the CHR joins activities upon invitation of NGOs or international organizations such as UNICEF and ICRC, and conducts its working relationships with NGO co-participants within the framework of such undertakings. In both, CHR and NGOs concluded their respective tasks without the benefit of formal agreement. In the earlier part of its existence, the Commission employed this mode of cooperation heavily as a confidence building measure and a way

of expanding its circle of potential partners with much success. Side by side with structured joint endeavors, this mode continues to be part of the Commission's menu of interactive arrangements, but usually in the context of existing program thrusts.

Areas of Cooperation

There are five major areas of cooperation between CHR and the NGOs in the field of human rights education: community-based action centers, academic curricula, national human rights enhancement proposals, national human rights education and protecting children in situations of armed conflict. The first four are already subject of CHR operating plans in varying stages of development, while the last is a long-standing activity under the aegis of the UNICEF.

Barangay Human Rights Action Center Program

Addressing the need for mass-based action system, the CHR launched in 1994 the Barangay Human Rights Action Center (BHRAC) Program, a nationwide mobilization program for human rights protection and advocacy at the village level. It was conceived as a means to put the CHR within reach of ordinary people, especially those in far-flung areas. CHR regional field and sub-offices are based mainly at regional centers and capitals of provinces. With the activation of the centers, complainants, particularly from remote areas, can save time, effort and money in filing their complaints.

BHRACs have four basic functions: complaints processing, information/education, coordination and referral of services and mobilization. A principal objective of this program consist in the establishment of BHRACs in every barangay (village) across the Philippines. As of December 1999, there were already 13,412 BHRACs operating, slightly 68% off target.

Human Rights Education and Training Program for the Academe

The Commission's program for the academe is based on Executive Order No. 27 otherwise known as "Education to Maximize Respect for Human Rights" which specifically mandates the integration of the study of human rights concepts in all academic curricula and to adapt its scope and treatment in the respective educational levels. Two separate agreements were forged by the Commission on Human Rights with the government's education ministries and some renowned NGOs – a Joint Declaration of Undertaking signed in 1992 and a Memorandum of Agreement signed in 1996.

Philippine Human Rights Plan

Responding to the United Nations' call for member nations to prepare national plans of action to enhance human rights, CHR urged and convinced former President Fidel V. Ramos to issue Memorandum Order No. 258 which created the Inter-Agency Task Force for Strategic Planning and Research for Human Rights Protection. It was mandated to formulate a

long-term human rights plan through a series of regional-multisectoral consultations and national public hearings.

The task force developed the Philippine Human Rights Plan which defines the legislative, administrative and program measures to protect and promote the rights of vulnerable sectors. The plan is heavy in education activities constituting its education component.

Philippine Human Rights Education Decade Plan

This program is both a response to the declaration of the United Nations Decade for Human Rights Education (1995-2004) and a spin off from the PHRP. It grew out of a series of consultation workshops across the entire country with both GO and NGO representatives attending. Participants took to the task of setting common vision and mission for human rights education in the Philippines, making an inventory of existing human rights education programs and projects, and finally crafting a ten-year plan of action for human rights education.

Children in Situations of Armed Conflict

The Commission, in its incipient years, committed itself to the active support of the UNICEF's protection for children in situations of armed conflict (CSAC) as core of its education program for the military-police sectors. Since then, it has carried out over 159 workshops, orientations, seminars and other

education activities laden with CSAC and child protection modules.

The general role of the CHR in promoting human rights advocacy and the configuration of its ties with NGOs, as well as with other government institutions and international human rights stakeholders is circumscribed in its vision statements.

"... we engage in sustained efforts to achieve credible action. . .

"... catalyzing closer partnerships and collaboration with national and international human rights organizations."

Reading between the lines, the first tells us what to do; the second, how to do it. CHR's mission statement [pls. refer to Annex C] renders the latter in more precise terms: "... establishing local-level support system and enlisting cooperation of other government agencies, non-government organizations and international organizations in the task of enhancing respect for the primacy of human rights. . ."

The first statement is implicit in specifying the actions the Commission should take in somewhat tactical manner – conceptualize, establish, sustain, improve and evaluate programs; the second instructs it to undertake these steps within the confines set in the visioning.

Consistent with this understanding of role it must assume, the Commission went on initiating agreements of partnership and collaboration left and

right. This deliberate and calculated move explains why it now stands party to some eight major HRE-related memoranda of agreement/declarations of joint undertakings.

CHR's perception of its role as catalyst of partnerships and collaboration shows itself clearly in the text of several agreements and guides its relationship with NGOs through various stages of program development – from conceptualization to evaluation.

As a rule it prefers low profile support responsibilities such as providing financial support, technical assistance, logistics, networking and secretariat services, but finds the need to occasionally deliver education and training services directly. This is often the case when the NGO concerned lacks the required capability and organization to support this type of activities.

NGOs are more predisposed to actual work in the field such as mobilization, implementation and monitoring of programs and performances, dissemination of information, coordination with local-level agencies, organization and conduct of direct training and information services, advising human rights action officers and coordinators, and documentation of NGO accomplishments.

As circumstances may require, CHR and NGOs opt to conjoin areas of responsibilities such as funds generation, providing resource persons and training staff, joint formulation and implementation of advocacy programs, materials development and production, module design, and networking. And

almost always both find the need for technical committees constituted jointly to implement and monitor programs to be very compelling.

Typical CHR contributions come in the form of extra hands solicited to widen the reach of its network, development and production of education and training materials, supplying resource persons and facilitators, providing secretariat and training staffs, accessing government offices and personnel for in-house training, administrative and logistical support, and defraying partly or wholly the cost of training venues and food accommodations.

On the other hand, NGOs are able to deliver in terms ordinarily associated with implementation such as integration of human rights in their education and training campaigns, development and production of their own education and training materials, monitoring of the performances of village-based human rights action officers and municipal/city/provincial human rights coordinators, and raising the level of human rights consciousness in their respective spheres of influence.

BENEFITS OF PARTNERSHIP

We regard as the crowning achievements of CHR-NGO collaboration the integration of human rights modules at all levels of formal education, the institutionalization of human rights education in the police and military educational institutions, and the teaching of human rights in the local government academe.

Academe

On March 31 - April 10, 1997, CHR and its partner agencies and organizations developed 101 Human Rights Teaching Exemplars (HR Modules) for elementary and secondary levels. They were pilot-tested in 54 schools nationwide from June to September 1997 and were targetted for full implementation in all schools by schoolyear 1998 - 1999.

In June-October 1997, integration of human rights concepts in foundation courses in the tertiary level were accomplished with the holding of a curriculum writing workshop.

Police and Military

From 1989 to the present, 1,479 regional trainors training courses have been held for military and police personnel. Developing a graduated curricula for military and law enforcement personnel and integration of human rights advocacy programs in career level courses of the police and military were the culmination of these efforts. In the absence of official agreement, NGOs affixed their imprints on these programs and activities as regular resource persons.

Local Government Units

Since 1995, the teaching of human rights for local government units has been included in the Integrated Capability-Building Program of the Local Government Academy, the LGUs' official training institution.

These significant inroads are appropriately regarded as milestones in CHR-NGO-GO linkages, if only because they strike at the very core of human rights education need in the society – the youth, military/law-enforcers, and local government functionaries. The youth, for to them belongs the future; the military and law enforcers, to set them apart from an ugly past; and the local government executives, to bring them to the fore of present struggle for human rights.

Problems and Difficulties

The rate and proportions at which problems and difficulties confront CHR--NGO human rights initiatives tempt us to look at our predicament as an obstacle course or a handicapping game. But the Commission has come this way properly psyched-up and well-prepared for constraints and even setbacks. After all, we never expected anything outlandish but the usual down-to-earth complications posed by lack of money, inadequate technology, indifference or hostility and the ever changing political landscape.

Budgetary Constraints

Historically, Congress never had one glorious moment of sympathy for human rights education programs where money is an issue. And our impression is that the only time they appreciate our presence is when sensational or sensitive human rights issues land in the front pages of broadsheets and tabloids, or when our purse is on the chopping block. Adding to this misery, budget authorities have been generous only to the extent of 5% recommended increase in our annual appropriations.

Technology

We have come to wrestle with human rights education with nary a model or a consultant to run to. In the first place, we were working under indigenous conditions and on a set of assumptions much different from those of other countries. Our combined perseverance though enabled us to put together our own ideas and insights against a backdrop of experiences to form a locally-induced technology that cannot be regarded lightly. But certainly this does not release us from the responsibility to acquire other men's/women's ideas to make our job easier and probably more far-reaching.

Attitude

Keeping up with attitudes – from indifference to hostility – has been a most exacting challenge for the CHR. Some hostile but influential elements in our society continue to stay at safe distances off each other; and the ability of those forced by coincidence of interest to work in unison is highly suspect. But nothing can be more disappointing than partners with fleeting enthusiasm. Both government agencies and NGOs have their own share of this creeping disease of attitude. In most cases, this problem is attributable to the sorry state of the program's financing.

Politics

The Commission is a child of democracy, and yet paradoxically its major human rights education programs could become and does become temporary orphans of democracy whenever there is a changing

of guards in both national and local governments. As soon as political leadership changes, vital human rights programs at national and grassroots level are left hanging for quite sometime. At worse, they could become captive to either indifference or prejudices of the new officials.

ADDRESSING PROBLEMS/DIFFICULTIES

Perennial budgetary constraint is perhaps the most pervasive of all difficulties, and its ripple effect on other problem issues such as technology and attitude is a source of major concern. The Human Rights Education and Research Office of the Commission has a fine track record in sourcing substantial donor funds and equipment, but these efforts are easily dwarfed by sheer size of program requirements. The Commission is constantly finding means to face these problems full-square. Among our options are:

Policy Level

The Commission is seriously assessing the opportunities inherent in institutionalizing funds-pledging session as a regular source of funding. This scheme had been tried out once for the Human Rights Education Decade Plan with moderate but encouraging measure of success. However, this does not detract us from working assiduously for its rightful attention from budget authorities and Congress. A viable alternative is to work in tandem with our NGO and GO partners towards stronger representations with Congress.

Operations Level

The Commission is now reviewing its three principal programs – Barangay Human Rights Action Center Program, Philippine Human Rights Plan, and Philippine Human Rights Education Decade Plan – for possible re-structuring to make them more effective at less cost.

LOOKING TOWARDS THE FUTURE

Insurgency

The Commission's interest is drawn to two fundamental developments locally and internationally. One is the resurgent insurgency which threatens to revert us all back to the intensified level of conflict of the past with serious repercussions for human rights. The military is back from the barracks and is once again the government's cutting edge in its anti-insurgency campaign, at least in large chunks of critical areas. This setting has particular importance for us not only as a post-testing facility to determine the effectiveness of our human rights education program for the military, but also to test the resilience of CHR-NGO relationship that is currently in place. Others may view this as unwanted prospect, but we in the Commission are as eager as we are edgy to come to terms with the moment of truth.

Globalization

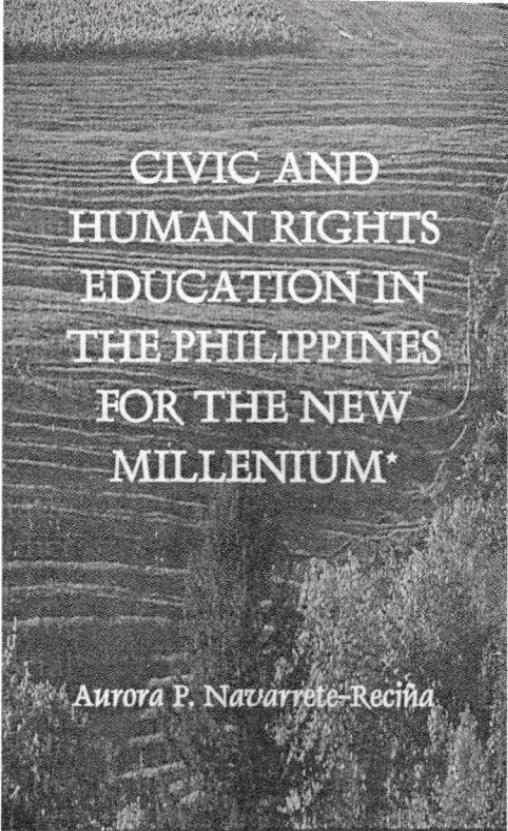
Globalization, whether we like it or not, is an irresistible force. Far from being insulated from

globalization, human rights, along with human rights education, were among those globalized earlier than economies. The Philippine Commission on Human Rights is itself a chief beneficiary of the globalization process. Throughout its existence, the Commission has become a marketplace of foreign thinking and systems blending fairly well with local ideas, insights and learnings culled from years of human rights experience. Our profound gratitude in most part to our NGO partners, for making this possible.

Earlier on, we relished being bruited about as laboratory for human rights education. Now, we are ecstatic over the prospect of becoming a yardstick by which other communities in the world will be evaluated. Given the humble state of our accomplishments in the field of human rights education, we cannot as yet have the temerity to even imagine this place. But at this point in time our non-government organization partners are one with us in hoping that someday our legacy will be forever etched in the four corners of the world, not for personal glory but as triumph for human rights.

If this is what it takes to keep our collective enthusiasm up high, let it be said then that we aspire to claim such place.





CIVIC AND
HUMAN RIGHTS
EDUCATION IN
THE PHILIPPINES
FOR THE NEW
MILLENNIUM*

Aurora P. Navarrete-Recina

At the outset let me tell you that, for me, Human Rights Education is broader than Civic Education. As there are very clear interconnections, there are also very clear distinctions between Civic Education and Human Rights Education. For example, in civic education, we teach the rights and duties of citizenship. We focus on teaching our young on the responsible exercise of their civil and political rights. On the other hand, in human rights education, we do not only teach all about our civil, political, economic, social, cultural and peoples rights. We em-

* Keynote Address during the conference organized by CIVITAS on Civic Education in the Philippines: Challenges and Opportunities in the Next Millenium held at the Waterfront Casino Hotel, Cebu City on October 5-6, 1999.

phasize on the indivisibility of all rights and on how to responsibly secure and enjoy them.

CIVIC EDUCATION

Before the advent of human rights education, civic education in the Philippines, emphasized, among others, the virtues of good citizenship such as discipline, love of country, sense of responsibility, respect for law and authorities and public service. For some reason, the desired consequences of this endeavour did not live up to full expectations. A large majority of Filipinos still do not show signs of behavior that can be regarded as resulting from the civic education program. Most are indifferent to public issues, corruption is endemic and widespread, rudeness reigns supreme along the highways and avenues, litters and trashes are dumped indiscriminately, voters are still a long way from exercising their rights intelligently, and good samaritans are an absolute rarity particularly in urban areas.

Perhaps the only saving grace for civic education in the country is the era between the death of Ninoy Aquino and the EDSA revolution. The sight of mammoth crowds in opposition rallies and around the besieged but defiant Ramos-Enrile military faction and in front of menacing tanks is truly a picture to behold. A short time later we were back to square one.

The factors operating against the formation of a civil society in the Philippines include poor sense of

nationhood, the social environment outside the school system, education technology, social frustration and despair, and lack of emphasis on human rights in civic education.

Unlike countries such as Japan, China, the United States, Thailand, South Korea, and many European nations, the Philippines is most unfortunate to have had a long tradition of subjugation by four foreign powers. This resulted in a kaleidoscope of culture, behavior and manner of thinking so rich and yet so confused. Pre-hispanic Philippines history takes account of a political and social system characterising a certain form of civil society. This was supplanted in succession by oppressive, exploitative and individualistic ways of living. In the end and through the modern years, we Filipinos had been and continue to be stripped of a strong identity as a nation. Thus everyone speaks and lives for himself. To each his own. Sadly, this mental state continue to afflict us, and is equally destructive of civic mindedness. When a person is frustrated, and despairs, indifference begins to nibble at her/his character. She/he then becomes insensitive to the state of affairs around her/him. In like fashion, our society has despaired for years and has consequently grown insensitive to public issues. Generally speaking, our sense of social responsibility is limited to our immediate families. This makes our people susceptible to exploitation and manipulation.

Human rights is another important element in civics. But it was left out in the design of modules for civic education. This omission bore disaster for all

Filipinos when Marcos ruled by martial law. As people were being arrested, tortured and killed some preferred to look the other way; as leaders and business cronies ransacked government coffers, some thought of doing their own in small way; as crime suspects and innocent civilians were being salvaged, others thought the end justified the means. At that time human rights awareness was the preserve of but a few.

HUMAN RIGHTS EDUCATION

As you probably know by now, human rights opens a new page in our country's educational system. Our Constitution, in Article XIV, section 3, paragraph 2, mandates that all educational institutions should "...foster respect for human rights, (and) ... teach the rights and duties of citizenship..." Executive Order No. 27, issued by then President Aquino, mandated the inclusion of human rights modules in all levels of curricula. The CHR set out to accomplish this task initially by organizing curriculum-writing workshops for teachers in coordination with the Department of Education, Culture and Sports (DECS). In May 1996, however, a memorandum of agreement was signed among the CHR, DECS, the Commission on Higher Education (CHED) and Amnesty International-Pilipinas providing for a series of regional and national consultations aimed at integrating human rights in education curricula. The process of integration was finalized with the development of human rights teaching exemplars for primary, secondary and tertiary levels.

Part of CHR's human rights education is essentially civic education. Unlike the latter however ours stretches beyond the classroom and cuts across all sectors and ages. The rationale is provided by the need to create an environment conducive to the preservation of his classroom learning and insights as much as by the necessity of immediately raising public awareness of human rights.

Currently, the basic mechanism for carrying out the Commission's education program are already in place.

Apart from institutionalizing coordination with agencies tasked with the government's education program, the CHR spearheaded the creation of three major programs as the core of its policy of saturation—the Barangay Human Rights Action Center, the Philippine Human Rights Education Decade Plan and the Philippine Human Rights Plan. Although much has been said about these programs in other fora both here and abroad and in a number of documentations, this is the first time I would be talking about them in the context of human rights as a civic education concern.

By coincidence, the Commission's Human Rights Education Decade (1995-2004) Program follows the concept of CIVITAS, a framework for civic education developed by the Center for Civic Education in Los Angeles, with contribution from more than forty scholars throughout the United States, and in cooperation with the American Council for the Advancement of Citizenship.

CIVITAS has three essential parts: Civic Knowledge, Civic Participation and Civic Virtue. As stated in its document, civic virtue is described in terms of dispositions and commitment; civic participation in terms of competent and responsible participation; and civic knowledge as the content of what citizens should know, the proper foundation of civic virtue and participation.

By analogy, our human rights education program is aimed at disseminating information on basic and sectoral rights, including avenues for redress, stimulating and sustaining participation to enhance participatory skills, and developing dispositions and commitment to human rights.

Knowledge is provided in accordance with a general plan of action contained in the Philippine Human Rights Education Decade Plan. It is imparted through education facilities within and outside the school system. The program caters to the needs of both students and out-of-school youth; it also seeks to cover other groups employing teach-ins, orientations, seminars, workshops, films/video presentations and other training modes. The Department of Education, Culture and Sports and the Commission on Higher Education together constitute the implementing arm for the program's formal and informal education for the youth sector. The CHR's Human Rights Education and Research Office and Regional and Sub-Offices bear the responsibility for serving the needs of other sectors, often through inter-agency arrangements. The community-based Barangay Human Rights Action Centers (BHRAC) have been designed to undertake

appropriate education activities at their level. In general, CHR's participation is directed at building a cadre of trainers, while BHRACs are particularly fitted to touch base with communities.

The program facilitates the development of participatory skills in human rights advocacy within the framework of both BHRAC and the Philippine Human Rights Plan (PHRP). PHRP is a specially fertile ground for enhancing skills in promoting and protecting specific rights of vulnerable groups. It calls for mobilizing citizens for the purposes of lobbying for the passage and implementation of legislative, administrative and program measures. It requires constant interfacing among agencies, organizations and individuals concerned. These interactions engender extended discussions and produce consensus on substantive issues thus allowing participants to improve their intellectual as well as participatory capabilities. As a prelude to the plan's actual implementation phase, a series of trainings were launched to build up a core of mobilization trainers. These trainers were to be fanned out into strategic areas in the countryside for action.

The Commission is presently considering convergence points between the PHRP and the BHRAC that will make the latter constitute an efficient vehicle for the former. With BHRAC, PHRP stands to have a regular venue for interactions, and therefore a means to hone up participatory skills.

Human rights dispositions, just like the civic virtues, take time to develop. They too come as product of a

combination of experiences and learnings at home and in schools, community and organizations. The Commission-initiated Human Rights Education Decade Plan, the Philippine Human Rights Plan and the Barangay Human Rights Action Center Program ensure that conditions for successful nurturing of human rights ideals and values are ever present.

The Commission on Human Rights continues to find better ways of delivering our services in the area of human rights education to build up knowledge, advocacy skills and commitment to human rights, at the forefront of this effort is the Human Rights Education and Research Office (HERO). Over the years, HERO has accumulated extremely helpful experiences and insights to support its project development initiatives. It has for instance ventured out into video production activities. At the outset, CHR relied on the expertise of professional production houses for its audio-visual presentations. Now we have approximated the necessary in-house capability for the purpose, including the acquisition of modern video production facilities. This audio-visual program serves as platform for the Commission's increasing utilization of the airwaves as a principal channel for communication with the general public, specially the masses. In a year or two, we expect our production staff to develop homegrown instructional and documentary videos. These materials will be shown on television either during the broadcast or as visual aids in training and education activities.

Actually, the Commission's audio-visual program could become part of a larger and more ambitious

undertaking – creative human rights education. Creative human rights education entails adapting the teaching of human rights ideals, values, principles and contents to the specific ideosyncracies of the target audience and readers. Still in conceptualization stage, the program rests on a rationale placing the ordinary people on top of the Commission's order of priorities. It is based on the recognition of an enlightened masses as a critical factor to the success of our human rights program.

Non-traditional or creative human rights education introduces the use of the usual medium for learning of ordinary folks such as the ubiquitous comics and showbiz magazines; action, comedy, cartoon and drama films; and television soap opera, showbiz and talk shows. By our informed assessment, the motivation to learn among ordinary people runs high with the aforementioned means of communication. We base this observation on the proliferation of drama series on television depicting legal cases and principles such as *Ipaglaban Mo*, *Maalaala Mo Kaya*, *Katapat*, *Isumbong Mo Kay Tulfo*, *Kasangga Mo Ang Langit*, and a host of similar programs. While currently access to legal information by the masses is limited to this program format, theoretically this could be extended to include others. The cartoon format for instance is a potential learning platform for children, or even adults who fancy characters and action strips such as *Voltes V*, *Daimos*, *the Beast Wars* and *the Transformers*.

The power of these media as instruments of learning cannot be overemphasized. It does not only provide knowledge; it could generate profuse human rights and civic values that can easily be imbibed by audience.

Although this innovation is fraught with excitement, it nonetheless poses a nightmarish organizational task. It demands a significant amount of resources in terms of money, talent, technology — things that could only be made readily available by dint of unselfish cooperation between and among the public and private sectors.

Creative human rights education, once made practicable, can be placed in the service of another possible CHR program — enhancing the people's effective and responsible exercise of the rights of suffrage. In an earlier analysis, I described social frustration and despair as a negative factor in our weak civic education system. The core of the problem to our mind is the low-level capacity of the masses for critical thinking. This in turn is exploited by incompetent political leaders in an effort to stay in power and continue their corrupt ways. The situation spawns a chain reaction of indifferent mood upon the rest of society. Together they degenerate into a floating mass of driftwoods.

It is my thinking that the only way to reverse the situation is to enlighten the masses on the proper exercise of their voting rights. They should be informed and made to realize the consequences of misusing their inherent sovereign power of choice upon their living conditions. At the same time, they should see the promise of social reformation clinging at their pens come electoral exercise. I believe this is possible, if, among others they see their reel or comic heroes personify appropriate values and ideals. Such is the power of creative human rights education.

In sum, civic education and human rights education must be refitted with the means necessary to make them face up to the challenges of the new millenium. Efforts must be made towards overhauling the teaching technology into a more dynamic type, even at the primary level. Our education policy-makers must begin to think quality rather than quantity in providing guidelines for developing teaching techniques and approaches.

Work should likewise begin on setting up interface mechanisms to allow citizens to practice critical thinking and improve their skills in participating in democratic governance exercises.

The reach of civic and human rights education should cut across all ages and be extended to communities, perhaps using mass media, among others.

Education and information specialists, particularly those in charge of module, instructional and information materials or presentations design should be reoriented towards creative approach in dealing with special audiences and readers.

For both civic education and human rights education to succeed, special programs to enhance the masses' right of suffrage should be developed taking into consideration their specific needs and idiosyncracies.

For its part, the Commission on Human Rights, by establishing its three major prgorams, has thus laid the cornerstones for a working and comprehensive program to meet the requirements of the new

millenium. Although somewhat modest and crude by most standards, it could well become a springboard for a more refined one. In this respect, we would need the cooperation of everyone including members of this representation.



HUMAN RIGHTS EDUCATION DECADE IN THE PHILIPPINES

Aurora P. Navarrete-Recina

Thirteen years ago, human rights education (HRE) was already a well-entrenched initiative amongst embattled non-government organizations which ran a cat-and-mouse game with Marcos' military. After Marcos, the NGOs continued to ply their route. Though they made a significant dent on the human rights environment, they were not broadly-oriented enough to piece together the many interactive parties and interests in the Philippines. For obvious reasons, their efforts could not reach key sectors in the government such as the police, military,

*A Statement in the 55th Session of the United Nations Commission on Human Rights.

other law enforcement agencies, the academe and the local government authorities. With the creation of the Commission on Human Rights (CHR) on May 5, 1987 by virtue of Executive Order No. 163 and in accordance with the constitution, human rights education had become a multi-sectoral and multi-dimensional system.

Virtually starting from scratch in developing a comprehensive approach to HRE, and with no model to begin with, the Commission launched a program for the police-military, considered a major determinant of the human rights situation. Subsequently, the Commission's then Education and Training Office proceeded to construct a more broad-based initiative by developing mother programs for key sectors, among them, the academe, special interest groups such as the overseas Filipino workers, professionals and even the insurgents. Although a little short of being wholistic, these programs were to become the principal guide in HRE activities until 1994.

In the third quarter of 1994, in compliance with UN General Assembly Resolution No. 49/184, the Commission on Human Rights finally defined its plan of action for the United Nations Decade for Human Rights Education (1995-2004). The plan was formulated with due consideration of the "Long-Term National Human Rights Promotion Programme Plan" adopted by the CHR Central and Regional Field Offices in April 1989, 7 years of experience in the field, and feedbacks on sectoral needs.

The CHR Plan of Action was aimed at:

- Achieving a 100% human rights literacy rate throughout the Philippines. Human rights literacy is defined as that level of knowledge where a person knows his basic civil, political, economic, social, cultural and environmental rights as well as the redress system;
- Instilling the values of human rights in the heart and mind of every Filipino citizen, particularly the youth;
- Educating the key sectors of the Philippine society on their sectoral rights; and
- Educating all law enforcers, prosecutors, judges, jail officers, the military and government authorities on the rights of those who may be affected by their official actions.

The Plan likewise sets out to enumerate its target audience as either belonging to the organized and the unorganized elements of the society. The organized elements include

- Those working for the government;
- Those in the academic community;
- Media gatekeepers and cultural workers;
- Private employees or workers;
- Special interest groups such as overseas contract workers, peasants, women and children;

- Members of private and voluntary organizations, and
- Insurgents.

The unorganized elements are those belonging to none of the aforecited groups.

The government sector is sub-categorized into pillars of justice—police and other law enforcers, military personnel, prosecutors and judges; local government officials and employees; and national government officials and employees.

Towards the attainment of the objectives of the CHR Plan of Action, the Commission adopted the following strategies: trainors training and re-echoing for the organized audience; organization of education and information networks; mass education system for unorganized audience; integration of human rights subjects in curricular and training programs of both public and private institutions; utilization of community-based human rights action centers for unorganized audience; public discussion of issues and promotional campaigns; and monitoring and evaluation of education and training programs.

In pursuit of this plan of action, the CHR developed programs specifically addressing each or all of the strategies adopted. These include service programs consisting of Human Rights Faculty/Trainer Development designed to build a core of trainors and staff support; Human Rights Education Integration which calls for the development of progressive and client-based human rights education curricula and the subsequent introduction in all levels of formal edu-

cation; Human Rights Echoing by trainers; Human Rights Outreach which calls for the development and utilization of mass education systems and reliance on grassroots organizations and mechanisms; Instructional and Information Materials Development; Human Rights Education Monitoring to ensure the implementation of all HRE programs and assess their impact; Human Rights Promotion which encourages multisectoral and multidisciplinary discussions of human rights issues and advocacy and launches commemorative and cultural events; and Values Education, a re-alignment of the youth's values with human rights objectives.

The framework for these programs are contained in 9 mother documents called the Human Rights Education and Training Programs (HRETP) with an array of 55 specific projects.

The taste of the pudding is in the eating, so it goes, and so be it. Despite earlier inroads, the Commission found itself confronted with the frightful task of putting flesh into a grand scheme. Sheer logic demands a wider but focused participation from as many eager hands as possible. And using both goodwill and constitutional authority to enjoin other government agencies/functionaries and non-government entities, the Commission secured cooperation from both the public and the private sectors.

Today, under the Commission's leadership, the Philippines has become a veritable experimental laboratory for three milestone interagency programs: the Philippine Human Rights Education Decade Plan

(PHRED), the Philippine Human Rights Plan (PHRP) and the Barangay Human Rights Action Center Program (BHRAC).

The Barangay Human Rights Action Center Program or BHRAC was conceived to put CHR within the reach of remote communities — field Offices are for good reasons concentrated in regional centers and capitals of provinces, unfortunately placing large populations at a disadvantage. Human rights education is at the core of the BHRAC's responsibilities besides being a necessary ingredient in molding the Barangay Human Rights Action Officer (BHRAO) into effective pointmen of the centers. In fact, ultimately the BHRAC is expected to carry the brunt of popularizing HRE within the framework of PHRED and PHRP.

While the training phase of the BHRAC proceeded practically without a hitch, the organizational stage proved to be tougher for a number of different reasons, among them budgetary. So far, only 30 percent of the country's barangays or villages have BHRACs. But the program's more than 13 cooperating government and non-government organizations continue to work out measures to fill the remaining 70%.

The Philippine Human Rights Plan or PHRP is a long-term national human rights plan formulated by an interagency task force composed of sectoral working groups organized by virtue of Presidential Memorandum Orders Nos.258 and 335. The PHRP is a shining example of the consultative process. Sectoral and regional consultations culminated in a national public hearing attended by government agencies, non-government and people's organizations and

community leaders to ensure participation of a wide-cross section of the populace in the planning process.

The plan seeks to protect 16 vulnerable groups such as children, women, elderly, indigenous peoples, persons with disabilities, farmers, workers, etc., by instituting legislative, administrative measures and programmes of action. The pre-mobilization phase as well as the specific action steps contained in the plan are education/information-heavy. To date, the Commission has completed 175 training, seminar and orientation projects planned for the program.

The Philippine Human Rights Education Decade Plan or PHRED is a giant step in the field of human rights education in the Philippines. It was initiated in cooperation with the country's education agencies and Amnesty International-Pilipinas. Jointly, they conducted nationwide consultation exercises in a series of regional, island and national undertakings dubbed "GO-NGO-Academe Consultation Workshop on Human Rights Education". This was in adherence to the United Nation's declaration of the UN Decade for Human Rights Education.

The PHRED sought to forge a common vision and mission on HRE in the Philippines, an inventory of HRE programs and projects and a ten-year plan of action for human rights education.

Eight sectoral working groups have been tasked to implement the Philippine Human Rights Education Decade Plan. But as in others, funding stood in the way. Hence, a Funder's Forum was conceptualized where heads or representatives of international

organizations based in the Philippines as well as heads of different leading business corporations in the country were asked for assistance/support. Among those responding favorably were the International Committee of the Red Cross, Development Cooperative of Australian Aid, United Nations Development Program, Philippine Business for Social Progress, Hans Siedel Foundation and San Miguel Corporation, the country's top corporation.

The Philippine government has given these major programs its preferred attention, particularly in the past administration. In fact Proclamation 1139 of then President Fidel V. Ramos declared the Philippine counterpart of the UN HRE decade declaration – the Philippine Human Rights Education Decade, 1998-2007, requiring all institutions to implement the PHRED Plan and celebrate the decade meaningfully. This was no mere symbolic gesture as the past government backed this up with more than US\$100,000. And other donors followed suit with figures to match. Unfortunately, the programs' funding requirements dwarfed the donations quite considerably and made sourcing a more pressing matter than the elements of the plans themselves.

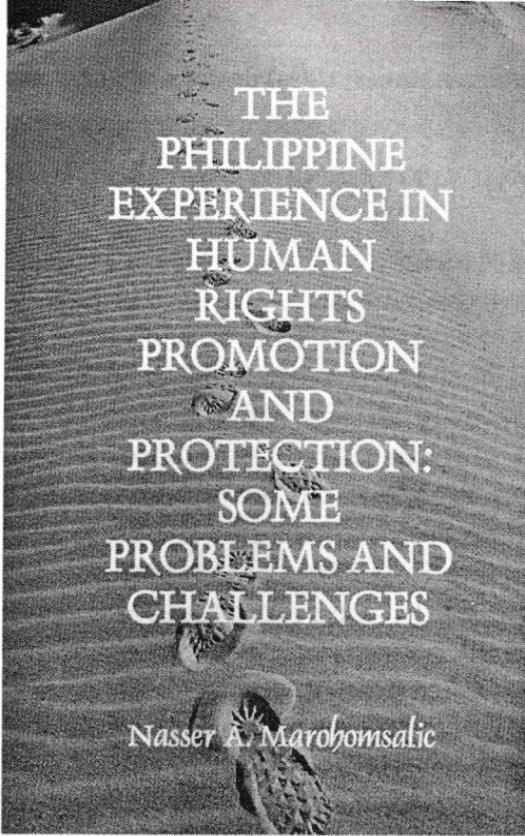
For all this serious barrier to successful conclusion, the programs are still noteworthy for a number of interesting developments. Generally, the programs' ascension realizes a basic strategy of the Commission to serve as catalyst for a diversified but united approach to the problem of human rights. And in particular, the interactive processes have significantly facilitated the fruition of specific projects which could hardly take off before. These would include, among

others, the integration of human rights concepts in the academic curricula of elementary and high school levels; development of 101 human rights teaching exemplars (HR Modules) for elementary and secondary levels; integration of human rights concepts in foundation courses in the college level, institutionalization of human rights education in the police and military educational institutions and inclusion of the teaching of human rights for the local government units (LGUs) in their integrated Capability-Building Program through the programs of the Local Government Academy. Very recently, by virtue of the memorandum order of President Joseph Ejercito Estrada, all government agencies have integrated human rights modules in their in-service education and training programs.

Human rights education activities even during the pre-CHR Plan of Action period had become well-grounded. Undoubtedly, however, the Commission's three major programs, which are rooted in its action plan, provided the spark which boosted cooperation and made of with some of its activities and projects in the shopping list. In over ten years time, the Commission has been able to reach out face-to-face to some 700,000 individuals. We expect this figure to increase dramatically as our audio-visual production program has finally risen above the past's extreme scarcity of locally contextualized video and film materials.

This may look insignificant in relation to the 70 million Filipinos. But given the odds heavily stacked against us, we view it with satisfaction as a very encouraging accomplishment, particularly if we pay attention to the fact that about twenty percent of the individuals covered are from the sectors most prone to committing human rights violations and that another 20% comes from the sector widely known as the future of our nation — the youth.





THE
PHILIPPINE
EXPERIENCE IN
HUMAN
RIGHTS
PROMOTION
AND
PROTECTION:
SOME
PROBLEMS AND
CHALLENGES

Nasser A. Marohomsalić

It is theorized that rights or freedoms inhere in man; they are born with him. Into this earth, man goes and, by its abundance and resources, lives. By the urgings of his biological nature, he exercises dominion over whatever is useful to him on earth and asserts his rights thereover as well as over his creation and fruits of his labor. By his creativity and ingenuity, he fashions raw materials into technologies and controls nature, to some degree. These activities are physical expressions of his latent attributes we call freedom which includes the right to life and property.

*Delivered at the Asia-Pacific Conference on Human Rights and the Media at the Imperial Queen's Park Hotel, Bangkok, Thailand, on November 24-26, 1999.

SCIENCE OF HUMAN RIGHTS

In the days of simple life, man was individualistic and he proclaimed and exercised his rights over others. Licentious exercise of liberties characterized the period and human rights became a rare and a prized commodity only the strong could keep. Going by Rousseau's formulation, people then banded themselves together under a social contract and established an organization like the State to safeguard their rights from usurpers and violators. And out of this development were born the second generation of rights we call economic, social and cultural rights which belong to groups and sectors of people. By this time, human rights evolved as a science.

In Britain, the Great Magna Carta of 1215 and Rights Charter of 1688 were enacted; in the United States, the Declaration of Independence; and in France, the French Declaration of Human Rights in 1789 and the 1848 Constitution of the French Revolution. After World War II, the victorious Allied Nations formed the United Nations and signed the 1948 Universal Declaration of Human Rights. Similar covenants were later adopted.

In different parliaments of the world, laws were passed granting reservations and privileges to their citizens and prescribing corollary obligations. States became concerned with equilibrating between individual rights and social or collective rights and between the rights of the governed and the government.

INDIGENOUS DOCUMENTS

In pre-colonial Philippines, principles of human rights are enshrined in the *luwaran* of Maguindanao, in the *salsila* (oral history) and in the literature of the Bangsa Moro. The Visayan tribes of Central Philippines used the Code of Maragtas to govern their human relations in olden times.

SPANISH CIVIL CODE

During the Spanish colonial period (1571-1898), Spain introduced to the country its civil code and special laws which formed a large part of our 1950 New Civil Code. In these Spanish laws are principles of human rights that regulate human and contractual relations. But political rights were denied to the Filipinos as a whole.

MALOLOS CONSTITUTION

A Filipino Revolutionary Government declared independence for the country on June 12, 1898. It organized a Constitutional Convention, which promulgated on January 22, 1899 a fundamental law for the country called the Malolos Constitution.

The Malolos Constitution contained 27 articles, two of which provided for economic and social rights to education, honor and reputation, another two articles set the limitations of the foreigners' right to work in the Philippine Islands, and the rest guaranteed civil rights. It defined the basic principle in popular de-

mocracy, that is, "Sovereignty resides exclusively in the people." It also recognized the freedom and equality of all religions, as well as the separation of church and state. (See Ana Elzy E. Ofreneo, *"Human Rights Education and Training for the Military and Police: A Management Research Report."* Vol. II (A Masteral Thesis for the Degree of Master of Development Management at the Asian Institute of Management, 1995)

AMERICAN CONSTITUTIONAL LAW

The American occupied the country in 1898 pursuant to a deed of cession from Spain and quelled the rebellion of the Filipinos. They perpetuated the Spanish laws on civil relations with little changes. They also introduced into our legal system American concepts on human rights as enunciated in its Jeffersonian Constitution. Specifically, the US Congress passed the Cooper Act known as the Philippine Bill of 1902 which provided for the extension of the American Bill of Rights to the Filipino people. (Ibid.)

BULWARK OF FREEDOM

By the Tydings-Mcduffy Law of the American Congress, a Commonwealth government was inaugurated for the country in 1935, which lasted until 1946 when the Philippine Independent Republic was declared. The country has had four constitutions, the 1935, 1973, 1986 and 1987 Constitution. All documents provided a Bill of Rights which are influenced, to a large extent, by American Constitutional Law.

With the American democratic traditions and libertarian principles in our legal system, the West came to regard the Philippines as a bulwark of democracy and freedom in Southeast Asia during the 1950's through the 1960's when the cloud of Communism hovered all over Asia. Indeed, in most parts, it was the threat of a takeover from home-grown Communist insurgents in the early '70's that led the government to declare martial law in the country on September 21, 1972 and suspend the exercise of basic human rights until its lifting in 1981.

FEBRUARY REVOLUTION

The restoration of normalcy did not bring forth full democratization in the political process. The monolithic Marcos' party, the *Kilusan ng Bagong Lipunan*, ruled. Parliamentary opposition to government was token. Despite profession by government for democracy and freedom, the human rights situation in the country was a sordid picture in the social landscape. The military had grown so entrenched and powerful beyond the check of the courts. Human rights violations committed by their personnel were passed off as incidents in the prosecution of the war against Maoist guerillas and Moro secessionists. Human rights advocacy was but a faint shout in the din of martial terror.

In the wake of a national civil disobedience campaign following the Presidential Snap Election of November 1985 which was rigged to favor the Marcos presidency, a military-instigated civilian uprising overthrew the dictatorship in February 1986 and installed in its stead

a Revolutionary Government which was replaced by a democratic one after the ratification of the Constitution in 1987.

COMMISSION ON HUMAN RIGHTS

Even during the 1986 Revolutionary Government, human rights as defined in the Bill of Rights of the 1973 Constitution were not suspended. Indeed, one of the priority concerns of this Revolutionary Government was the restoration of the primacy of human rights in our national culture. It immediately created the Presidential Committee on Human Rights to address the problem. A Constitutional Commission convened by the Revolutionary Government enshrined in the Constitution the establishment of an independent Commission on Human Rights with five members including its Chairman, majority of whom must be members of the Bar and to be appointed by the President for a term of seven years. (Article XIII, Section 17, 1987 Constitution)

TWIN MISSION

Generally, the Constitution mandates the Commission to carry out these twin objectives: The promotion and protection of the human rights of every Filipino citizen wherever he or she may be including foreigners in the country.

SCOPE OF POWER

To achieve its mandated mission, the Constitution has provided the Commission powers and functions,

namely: Investigate on its own or on complaint by any party, all forms of human rights violations involving civil and political rights; provide appropriate legal measures for the protection of human rights of all persons within the Philippines as well as Filipinos residing abroad; provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection; exercise visitorial powers over jails, prisons, or detention facilities; establish a research, education and information program to enhance respect for the primacy of human rights; 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; monitor the Philippine government's compliance with its International treaty obligations on human rights; 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; request the assistance of any department, bureau or agency in the performance of its functions; adopt its operational guidelines and rules of procedures, and cite for contempt for violations thereof in accordance with the Rules of Court; and appoint its officers and employees in accordance with law. (Article XIII, Section 18, 1987 Constitution).

In enshrining the Commission on Human Rights in the Constitution, one of its framers found relevance to express the sense that the Commission should give priority concerns on six (or seven) areas where problems were experienced during martial law. These are: 1) protection of rights of political detainees; 2)

treatment of prisoners and the prevention of torture; 3) fair and public trials; 4) cases of disappearances; 5) salvaging and hamletting; 6) crimes committed against the religious (Records of the 1986 Constitutional Commission, Vol. III, p. 731); and 7) arrests and custodial rights of arrested person. (Ibid., p. 732) (Primer on the Human Rights Issue in the Philippines, Vol. III, No. 4, April 1991, p. 3)

HUMAN RIGHTS VIOLATIONS

We beat the path of activism and made our imprint on our country's human rights landscape. From 1988 to 1998, the Commission received 15,556 complaints of human rights violations, ranging from murder, homicide or execution, to illegal or arbitrary arrest or detention, to torture or physical injuries, among other things.

In the "horror role" of human rights violators for this ten-year period, the police occupies the topmost spot, the military comes next, the paramilitary follows, the New People's Army and local officials and employees lag behind in the 4th and 5th places, respectively.

Majority of the victims of human rights violations belongs to the marginal groups or disadvantaged sectors of society. The civilian populace constitutes the most number of victims, followed by rural, urban and industrial workers, then the children and minors, women and studentry, then the military and the police, then the local officials and employees, then the detainees and prisoners, and then the urban poor and others.

It must be emphasized that the figures are based on incidences of human rights violations reported to or investigated by the Commission on Human Rights. The media provides a more tantalizing account of human rights violations which are more massive than reported to the Commission. For example, during counter-insurgency operations by the military and demolition of shanties of the urban poor in some slum areas in the metropolis in violation of human rights standards and basic norms of civilized society, the visual media would treat the public to warm bodies running from tens to hundreds of thousands adversely affected.

I admit there is much to be desired in our rendition of reports and statistical formulation of human rights violations where we only refer to signing complainants and named respondents in human rights violation cases in our assessment of the human rights situation obtaining in the country. Such an approach should be discarded as it distorts facts and treats a human rights case only from the standpoint of complaining witnesses who suffer more often than not from some constraints like fear of reprisals from their more powerful abusers. Even oral declarations of people who do not wish to testify in a formal investigation should be considered in our human rights report.

Nevertheless, of the 14, 993 cases investigated by the Commission only 6,356 were referred to the Department of Justice for prosecution or the Court for trial. About 1,152 of these cases were already decided ending in either conviction or acquittal or dismissal. In the public information, training and education activities of the Commission for the period of 1988-1998,

the Commission reached out to many sectors which comprised of about 603,903 individuals, of which the more sizeable number consists of the military and the police at 123, 131.

The Commission has extended financial assistance of 53.5 million pesos to victims of human rights violations from 1988 to 1998. Through the years, the amount of grant followed an increscent trend due to the grant of special assistance to *desparecidos*, political detainees, victims of unjust incarceration and arbitrary detention, and families evicted from their settlements owing to military operations and development aggression.

The Commission also supported and lobbied for the passage of a number of bills on human rights, one of which became a law, the Indigenous People's Rights Act of 1997. This law is a watershed in human rights legislation because it recognizes comprehensively the aspirations of the indigenous community to live by the ways of their own ancestors.

In the exercise of its visitorial powers, our forensic office does assessment of the health conditions of inmates and, on our petition, jail authorities allowed some who have serious illnesses for treatment outside the penitentiary clinic. A prisoner who languished in jail beyond his sentence was released by the Supreme Court on our intervention (In the matter of the petition for *habeas corpus* of Mauro Magtibay y Pentino, Chairman Sedfrey A. Ordoñez, Commissioner Narciso C. Monteiro, Mercedes V. Contreras, Nasser A. Marohomsalic, Vicente P. Sibulo, Director Emmanuel C. Neri and the Commission on Human Rights vs.

Director Vicente Vinarao, G.R. No. 121424, March 28, 1996 and *People vs. Mauro Magtibay*, G.R. No. 102992, March 28, 1996). Other inmates who were similarly situated were also released on the strength of this decisional law. Another intervention of the Commission resulted in the release of two prisoners who were tried by the military commissions during martial law and condemned to die by musketry but commuted by the Constitution to life sentence. For the failure of the government to file anew a case in civil courts against the prisoners for a considerable length of time after the high court debunked their convictions by the military courts on jurisdictional issue in an earlier case, the Supreme Court ordered their release. (In the matter of the petition for *habeas corpus* of Leonardo Paguinto and Jesus Cabangunay and the Commission on Human Rights vs. Director of Prisons, G.R. No. 115576, August 4, 1994)

COLLABORATIVE ADVOCACY

Generally, the lineal streak in the statistical chart of human rights violations of the Commission on Human Rights is a downward curve through the ten-year period. While the Commission draws some inspiration from this development, they feel more upbeat, however, in some strategies to farther the cause of human rights.

Media Publicity

The Philippine Commission on Human Rights arrogates unto itself the role of a mold of public consciousness and opinion, taking a proactive stance

on human rights' issues and concerns especially those promotive of the interest of the vulnerable and marginalized sectors of society, namely: the women, the children, the youth, the indigenous people, the Muslim Bangsa Moro, the elderly, persons with disabilities, the internally displaced persons, the migrant workers, the public and private labor. It is our belief that any human rights activities, which are not upraised to public knowledge, are a useless form of advocacy. Pursuant to this strategy, some of our field officers take slots in radio programs. We encouraged them to call for the media for some newsworthy announcements and activities. During red-lettered day for human rights, we use the occasion to publicize our activities. In the celebration of the international human rights day, we always see to it that the President grace the affair and, thereby, get optimum publicity for human rights. Even in our investigation work we conduct a high-profile hearing of controversial cases and invite media coverage. To create a friendlier relation with the media, we entered into a memorandum of understanding and cooperation with the Association of Broadcasters in the country.

Grassroots Participation

The Commission recognized the reality that any program of government for the people which does not involve them especially those who live in the countryside and who suffer one way or another some deprivations from the benefits of technology and institutionalized society, is infirmed and will not go a long way. So the Commission reached out to the grassroots and has gone to the smallest geopolitical

unit of our community since 1996 to train its leaders and activists in the art of human rights advocacy and investigation. In every barangay, we hope to establish a "barangay human rights action center" (BHRAC) with at least one barangay human rights action officer (BHRAO) to receive complaints or conciliate between conflicting parties and refer the same to the nearest and appropriate field office of the Commission on Human Rights. From 1997 to 1998, the Commission has established a total of 5,880 BHRACs throughout the country in coordination with the Department of Interior and Local Governments, Local Government Units, Non-Government Organizations and People's Organizations. The established BHRACs through its BHRAOs have already conducted a total of 723 trainings, orientations, lectures, meetings, symposia and the like covering human rights issues and concerns affecting the barangays. These BHRAOs have conducted about 357 human rights activities including referral of cases and extension of public assistance to human rights victims.

Networking with NGOs and POs

The non-government organizations (NGOs) and people's organizations (POs) are good sources of information on human rights abuses. With their investigative work on human rights violations, they contribute in no small measure to the establishment of a human rights culture in the country. The Soriptimist International has coordinated with the Commission on Human Rights on the conduct of training program for people in their area of operation. The organization has established a human rights action

desk office in their chapters throughout the country. Other professional organizations offered the clientele of the Commission on Human Rights free legal aid services like the Integrated Bar of the Philippines (IBP), the Movement of Attorneys for Brotherhood, Nationalism and Integrity (MABINI), the Free Legal Assistance Group (FLAG), the Protestant Lawyers League of the Philippines, and the Lawyers Against Monopoly and Poverty (LAMP).

Militant non-government organizations like the Karapatan, Ecumenical Movement for Justice and Peace, the Al Fatihah Foundation, the Moro Human Rights Information Center, the Muslim Association of Students in the Philippines, the Philippine Alliance of Human Rights Advocates, Tri-Peoples Organization Against Disasters and others have time and again sought the Commission for some human rights violations especially by the military.

In coordination with the Commission, the Judicial and Bar Academy of the Philippines has planned to include in its course offerings the teachings of human rights to judges, prosecutors and lawyers.

Partnership with GOs

In order to afford better coordination in addressing and monitoring human rights issues and concerns affecting training and education, investigation, prosecution and speedy disposition of human rights cases, conditions of prisoners and detainees, the Commission on Human Rights, the Department of Interior and Local Governments, the Department of

Justice and the Department of National Defense created the "Inter-Agency Chamber of Human Rights" on February 7, 1995.

In coordination with the Commission, the Department of Justice (DOJ) is continually and periodically undertaking seminars on human rights issues and concerns to its prosecutors and attached agencies. The DOJ has also committed to provide and assign its prosecutors to the Commission for the preliminary investigation of cases and its prosecution in court.

This partnership among these agencies extends to the assessment of the applications for release, parole, amnesty or pardon of alleged political prisoners who were convicted by courts of ordinary crimes.

Under our watch, the Commission assisted the Department of Education, Culture and Sports in developing modules on human rights for teaching in the elementary and secondary public schools. Some tertiary schools are already offering courses and baccalaureate degrees on human rights.

The Office of Muslim Affairs and the National Commission on Indigenous People have collaborated with the Commission on a number of undertakings designed to promote the aspirations of the cultural communities.

It is these line agencies of the Executive Department which shoulder mostly the financial requirements of these joint-undertakings.

PROBLEMS AND CHALLENGES

Lest we be misunderstood, the business of human rights promotion and protection is not only the concern of the Commission on Human Rights, but also all the other agencies of the government. It is in this spirit that the Commission networks with them.

Organizational Weaknesses

But there are other more compelling reasons. Organizational inadequacy of the Commission is one. It has only a ragtag army of more than 600 personnel and more than 200 of whom are doing administrative or support services functions in the national office and the rest are spread throughout its 13 regions, four sub-offices and some provincial desk offices. Every region has its 30-man personnel and they are expected to cater to the 75 million population of the country scattered in about 77 provinces, 83 cities, 1,525 municipalities, and 41,940 barangays.

Compared to the workforce of other government agencies, it is a miniscule agency. It has a budget of 175 million pesos. Other agencies of government concerned also with the establishment of a culture of peace and human rights have a much bigger annual budget such as the Office of the Ombudsman, the Commission on Election and the Civil Service Commission, among others.

The Commission has neither a prosecutorial power nor a quasi-judicial function. It is only a fact-finding body and it recommends course of actions (e.g.

prosecution and dismissal or suspension from service of human rights violators) to appropriate agencies of government. (Cariño vs. CHR, G.R. No. 96681, December 02, 1991; Export Processing Zone Authority vs. CHR, G.R. No. 101476, April 14, 1992; Fil-Estate Management vs. CHR, G.R. No. 101134, August 18, 1992; and Simon vs. CHR, G.R. No. 100150, January 05, 1994) Although decisional law has defined the doctrine that findings of administrative agencies carry persuasive weight, this judicial prescription is not a hard and fast rule and it does not operate to diminish the jurisdictional competence or the judicial or quasi-judicial power of other concerned agencies to appreciate or reject said administrative findings or fact-finding reports and recommendations of the Commission.

In early 1995, as a result of the Contemplacion case where a Filipina was executed in Singapore for the death of her ward and our investigation of the Sarah Tabar case where another Filipina care-giver in Dubai, United Arab Emirates, came home dead and inside whose abdomen was found a dead, full-term fetus inside a black plastic bag usually used for collecting garbage – these two incidents generated a public outcry against these two foreign countries – the need was bruited about for a human rights desk officer in every country where we have a sizeable community of workers. However, for lack of funds, the government has to rely on the Department of Foreign Affairs to designate one of their own to perform the job.

Indeed, these constraints of minimal logistical support and lesser organizational strength have cast a shadow

upon the credibility, if not the independence of the Commission, to effectively promote and protect human rights in the country.

Extremist Policies

And there are the extremist policies of government which stand in the way of human rights work. In the first place, these policies tend to subvert some aspects of civil society like the ordinance of civil liberty.

One is the total war policy inaugurated by the government against the Communist insurgents after the latter shunned the peace talks in protest over the ratification of the Visiting Forces Agreement with the United States by the Philippine Senate on May 26, 1999. Under such a policy, respect for the dignity of man is relegated to a secondary concern. Their obsession for victory is what preoccupies warring parties and, as war drags on, their humanity gradually recedes to the drain and the monster in them rises up to lead them to devilry. Indeed, after the talks bogged down, a flag officer was seized by elements of the New People's Army and after his release on April 16, 1998, the Army launched their operations against the insurgents responsible for the seizure of the Army General resulting in the rise of incidents of human rights violations against non-combatant civilians in the theatre of conflict to which situation was blamed on the military.

Indeed, in our experience, human rights violations always ensue during counter-insurgency operations by the military. And the blame for all such incidents,

almost, is laid on them. Killing of civilians, looting of houses, thievery of livestock, destruction of crops and farms, destruction and burning of houses and other personalities of the civilian population are often the forms of human rights violations charged to and committed by the military.

But some violations may involve disregard by the military of rules of engagements and norms of conduct required of them during and after pursuit operations or shooting war with insurgents. Some of these rules are administrative issuances of the hierarchy of the Military and Police, legislative policies, and normative principles in International Humanitarian Law, namely:

1. Prior to the conduct of the security operations, military commanders shall, subject to public safety and security, closely coordinate with local government officials and/or concerned civil government agencies to prepare for urgent delivery of services where civilians are temporarily evacuated for safety. In this regard, necessary assistance shall be extended in the evacuation, relief and rehabilitation of evacuees as well as in the administration of evacuation centers. (Joint Department of National Defense-Department of Interior and Local Governments Circular No. 2-1991)
2. Official orders to move large groups of civilians must be issued where serious combat action is expected to occur between the troops and hostile forces. (Military Directive from the Chief of Staff to the Commanders of Major Services and Area Commands, 15 July 1988)

3. Government forces shall facilitate and ensure the delivery by government workers of goods and basic services. (Section 5, Rules and Regulations on Children in Situations of Armed Conflict to Republic Act 7610 or the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act). They shall coordinate with the Peace and Order Council concerned and the social workers in ensuring, under normal conditions, the immediate and unhampered flow to and from areas of armed conflict, of health personnel and patients, medical supplies and equipment, foodstuff and other basic necessities, and relief goods. (Section 7, *ibid.*)
4. The government shall provide free transportation facilities to the evacuees during evacuation and evacuees shall be returned to their houses at government expense as soon as the reason for evacuation ceases. (Resolution No. 91-001 or Guidelines on Evacuation adopted on March 26, 1991 by the Presidential Human Rights Committee of which the Department of National Defense is a member)
5. Government forces shall exert maximum effort to avoid as far as is humanly possible without endangering the safety of the troops, innocent civilians getting killed in crossfire, particularly the aged and the women and the children. Commanders must engrain upon the minds of the troops and their patrol leaders the need to take extra precautions to ensure that in the course of military or law-enforcement operations, the danger of innocent civilians being killed in the heat of

battle is minimized. In situations where the escape of insurgent forces cannot be avoided because of the danger of inflicting casualties on innocent civilians, concern for the lives of innocent bystanders shall be paramount, provided the safety of the troops are not jeopardized in the process. (Letter-directive of the AFP Chief of Staff, dated September 06, 1989)

6. Arresting officers shall forthwith turnover suspects under their custody to the nearest police station. (Rule 113, Revised Rule on Criminal Procedure).
7. The Army shall carry out all possible measures that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. (Article 17, Part IV, Protocol II)

Most human rights violations by the police and other law enforcement agents relate to making an arrest without a warrant in contravention to the rules in warrantless arrest which require, among other things, that a peace officer or a private person may, without a warrant, arrest a person when in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; or, when an offense has just been committed and that he has personal knowledge of the facts indicating that the person to be arrested has committed it. (Section 5, Rule 113, Revised Rules on Criminal Procedure). The crime of arbitrary detention is also often the charge filed against them for failing to turnover wanted suspects to judicial authorities within the required reglementary period (Article 124, Revised Penal

Code). Violations of the custodial rights and ill-treatment of arrested suspects are also a prevalent complaint against the police.

In dealing with the insurgency problem, government has gone to the grassroots and created a militia called *barangay tanods* or *barangay watchmen* to counterfoil the organizing and propaganda activities of the civilian fronts of the insurgents. The military also utilized them in operations against the rebels. But this auxiliary unit of the Philippine Army is unpopular and not a few of its members have been denounced for its involvement in human rights violations. Not a few of them also act as "minutemen" and goons of some local politicians. In spite of our objection and the opposition of human rights groups against its existence, the government still pegs its counter-insurgency program to the intrepidity of the *barangay tanods* most of whom depend on the meager monthly allowance they receive from the coffers of the military for their family to get through.

In January 1996, our government toyed with the idea of legislating wiretapping of telephones and inquiry and sequestration of bank deposits of suspected terrorists and criminals to fight local insurgencies and criminality. It was another extreme measure to dilute the constitutional rights of privacy, personal safety and security provisions of our Bill of Rights. The Commission crossed sword with the government against the proposed terror law at the first opportunity and roused up public antipathy against it. Without ample judicial safeguards and standards pursuant to which law enforcement agents may be guided in their wiretapping, surveillance and intelligence activities

against suspected criminals and terrorists, the proposal, if enacted into law, would be a throwback to the Martial Law era. There will always be overzealous men in uniform who, in the performance of their office, would overstep the bounds of law and fair play. With such an extraordinary or Martial Law powers lodged in the law enforcement agencies, we will be sowing the climate of fear in our social environment. It is our position that, largely, the level of criminality and terrorism in our society depends on the enforcement of law and order by the police and enforcement agencies, and that extremism is a refuge or an instrument of the desperate and the government should not idealize the system but discard it from its catalogue of strategies to promote peace and development. It is an anathema to a caring society founded on freedom and respect for the dignity of man. In the ultimate analysis, peace and quiet obtain in a society whose people live in contentment and freedom.

The government abandoned the idea, but only after it stuck a stain on the libertarian tradition of our legal system. In December of 1995 and the following month of January 1996, the police rounded up a score or more number of Middle Eastern nationals and Pakistanis without a search warrant and a warrant of arrest. They accused them as terrorists and presented to the media to justify the passage of the proposed terror law. But some of these Arabs and Pakistanis are legitimate students in some schools in the country and are professionals including a doctor of medicine and an engineer. Others who were in the country to do business are nationals of Saudi Arabia. Many of them have been in the country for a good number of years and they

consider the Philippines as their adopted country having been married to Filipino women with whom they sired children. Among those arrested are Muslim missionaries and preachers of the Islamic faith mostly from Jordan.

In these police round ups of suspected terrorists an Iraqi national, Adel Anon Bani who is a meatshop owner and an electronics engineering graduate of a local university, was arrested and presented to the media as the twin brother of Ramzi Ahmen Yousef, a suspected mastermind in the bombing of the Trade Center in New York, simply because the former is a look-alike of the latter. But the two has no blood relation at all, for the suspect in the Trade Center case is a Pakistani.

The government was running berserk to project its concern and paint the problem of terrorism for the country as a serious one within the purview of the "present danger rule" that had to be responded to with an extraordinary police measure such as the adoption of an anti-terror law. Things were hyped-up in the media. On January 14, 1996, our Bureau of Immigration barred from the country an internationally renowned Muslim scholar and author of some 20 books on Islam from Canada, Prof. Abu Ameenah Bilal Philips who came to the country for a speaking engagement at the Sharif Kabungsuwan College at Cotabato City. The academician served as Professor in a University in Riyadh, Saudi Arabia and, at the time when he was denied entry, was the Director of Foreign Language Department of the Islamic Press of Sharjah, United Arab Emirates and the Islamic Information Center of the said Emirates. He fre-

quented Mindanao because he is married to a Muslim lady in the area with whom he has one son. He also helped in the formulation of the Islamic curriculum of the Sharif Kabungsuan College. Prof. Philips was our resource speaker in the First International Islamic Symposium for Peace and Solidarity sponsored by the Department of Foreign Affairs, the Islamic Call of the Philippines and the Philippine Muslim Bar Association, held in the country on August 7-9, 1989. President Corazon C. Aquino received him and other foreign delegates to the Conference at Malacañang during a luncheon she hosted for them. But at the international airport of the country, he was subjected to indignities and denied by Immigration authorities to call up local Muslim personalities he knows to vouch for him including a Muslim lady Senator. All night, he was kept at the transit area of the airport without any food served to him and under the watchful eyes of two guards. To quench his thirst and hunger, he drank water from the fountain facility in the airport. He was made to board the early morning flight of the United Arab Emirates Airlines for Hongkong the following day.

Earlier, two Malaysian nationals were also barred from entering the country and returned to their country of origin at the earliest opportunity simply because they indicated in their disembarkation form Mindanao as their destination. At the international airport, they were not allowed to speak by phone to their Embassy in Manila.

The proposed law was mainly designed to deal with the insurgency of the Bangsa Moro and check their proselytizing activities in non-Muslim areas of the

country including that of foreign Muslim preachers. This is borne by a testimony of a Cabinet Member of the government who wrote about it in the organ of the ruling Party in its issue of November 1995, a month before the massive round ups of foreign Muslim nationals were made. Thus:

THE EXTREMISM we face today is not of the secular type we experience in the '70's. Islamic revivalism – sparked by the Shiite success in Iran – envisions the return to the glory days of the Islamic Empire, under theocratic rule. Competition for Sunni extremists indicate that even Muslim-dominated kingdoms or governments are not spared by this problem as in the case of Pakistan, Afghanistan, Algeria, Egypt, Saudi Arabia, the Sudan, Tajikistan and even Malaysia.

The Philippines is an attractive target for Islamic evangelization and territorial annexation. Historical antecedents, the race for conversion, and the continuing need for battle fronts are their justification for global jihad, amidst peace efforts being pursued in the Middle East, the Balkans, Central Asia, and right here in our own country.

This explains, by and large, the dichotomous situation in Muslim Mindanao, and why Islamic extremism is dynamically replacing the secessionists of old.

Some traveled abroad for schooling and to gain combat experience, while mercenaries disguised as missionaries flowed in a steady stream to transfer technologies of war in the jungles of Basilan, Sulu, the Zamboanga Peninsula, and Central Mindanao.

In many parts of the country, mosques and Arabic schools (or Madaris) as far north as Pangasinan are sprouting up. Mass media has been penetrated to spread the word of the Koran.

Over the past three years, depredations by the MILF-ABU SAYAFF-NICC and the so-called "Lost Commands" of the MNLF have increased in number. As we waged the peace, they prepared for war, supported by underground movements operating in various parts of the globe, including the Philippines. The MILF is headed by Ustadz Hashim Salamat. The Abu Sayaff is led by Amir Abdurajak Janjalani, the NICC—a breakaway MNLF group—is commanded by the former MNLF Chief of Staff Melham Alam. (Rafael M. Alunan III, "Philippines, A Target of Islamic Evangelization." In the *Party Line*, official organ of the Lakas-NUCD-UMDP, Vol. 2, No. 9, November 1995, pp. 1 and 3. Mr. Alunan III was the Secretary of the Department of Interior and Local Governments when he wrote this article.)

Another extremist policy that stands in the way of human rights work is the total criminalization of rebellion. It may be a good measure to maintain national stability and security. But the law proscribes the employment of violence and armed means to promote even a legitimate aspiration. It thus begs the question: Where do you leave the neglected sectors of society who, lacking a better representation in the government, could not pull the fulcrum of power to their advantage even during elections and other popular democratic exercises? Our laws allow the appreciation of certain mitigating circumstances to

lower imposable penalty in favor of the accused. The President is vested with the power to grant pardon and amnesty to convicted prisoners and dissidents. But, as it is before, pardon and amnesty are seasonal measures resorted to by government only during special occasions such as Christmases, presidential birthdays, new year's, etc. These legal institutions temper the harshness of the law, but they do not show enough for respect for the primacy of human rights. Perhaps, the liberalization of amnesty as relief institution for political dissidents and members of the neglected sectors who go underground could be one measure. Whatever, the power should not be used as a political tool which comes in handy for some political agenda. But the political mood in government looks disinclined to such a liberal outlook. During the peace talks between the government and the Communist-led National Democratic Front for the past three years, the Presidential Committee on the Grant of Parole, Pardon and Amnesty was actively processing applications for amnesty from alleged political prisoners who were charged and convicted of ordinary crimes by the courts. But after the demise of the talks early this year, the Committee followed its wake. No meeting of the Committee was held again.

Political prisoners should not be regarded as criminals but "prisoners of conscience" who should be weaned over from the Jacobin path with a promise of a better future in a caring society, not wasted in the confines of their cells. In democratic constitutions the world over including that of the Philippines, the right to self-determination is a recognized human right. The United Nations' Universal Declarations of Human

Rights goes farther with its third preambular statements:

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

The Doctor of the Catholic Church, St. Thomas Aquinas, and the Prophet of Islam prescribed the instrument of rebellion as a weapon of last resort of the weak and the oppressed.

This is not to pontificate on great issues in philosophy which occupied great thinkers for centuries. I just wish to bring home the point that the Commission, particularly myself who belongs to the minority Bangsa Moro, feels in the neck the stricture of a wrong political policy of convenience that loops its noose around people for their political affiliation.

The law on death penalty in the Philippines is also one such policy which tinkers with the dignity of man. It was enacted by our government on October 13, 1993 on the premise that the penalty of death serves as a deterrent to would-be criminals not to commit heinous crimes. But the measure only achieved the opposite with not a few law enforcement agents taking the law into their hands and executing or "salvaging" suspects in heinous crimes and the ever increasing number of heinous criminals.

There are human rights friendly penal impositions lesser in harshness than the death penalty but which

also constitutes as a crime-deterrent. One is the condemnation of heinous criminals to a life sentence in jail without pardon or parole or commutation of sentence. But the government does not see the need to scrap the death penalty.

Rights vs. Popular Action

Upon the heels of a spate of crime, local government executives and the police would pursue a crime control policy against criminality that ran roughshod on constitutional guarantees on human rights and freedoms. With the drug menace considered as mostly its "progenitor" of sort, the Mayor of Manila embarked in June 1997 an anti-drug policy that disregarded elementary rules of due process, spray-painting houses occupied not only by suspected drug pushers but other individuals with the phrase, "A drug pusher lives here" and the like. Soon other cities and towns followed with a slight modification to Manila's brutish approach. But what followed was a spate of extra-judicial killings. The media treated the public to a daily dish of people, who were identified as drug pushers, found dead of fatal wounds in some city corners, vacant lots, creeks and rivers. Not a few cities earned the distinction from a city of crime to a city of dead bodies. Some Queen Cities of the Philippines like Manila, Cebu and Davao competed for notoriety. But like Pontius Pilate, some concerned local government executives washed their hands of any bloodstain by laying the blame on vigilantes.

This anti-drug campaign was popular with the masses. When the Commission took a stand against it, it was put on the spot. When, in the name of human

rights, I suggested that we pursue our advocacy against this popular action of government to its logical conclusion in the judicial arena, only one Commissioner sided with me. Commissioner Mercedes Contreras-Danenberg and I went ahead and sought the court to declare the unconstitutionality of the spray-painting program of the City Government of Manila and this case is now pending in the Court of Appeals. The Integrated Bar of the Philippines, the biggest association of lawyers in the country, also questioned the same measure, and so did a distinguished group of lawyers, the Mabini, which intervened in our petition. We have high hopes that we will win this case.

Since our watch and even before my appointment to the Commission in late 1994, the police has employed from now and then the strong arm of the law to lynch criminality that doesn't sit well with libertarians but popular to some degree to the people. The conduct of saturation drive in "squatter" areas, which are known lairs or havens of criminal elements in the city, is a fixture in the catalogue of police warfare against criminality. No less than the Supreme Court took notice of this high-handed tactic and went tenuously by its judicial review power and directed in the case of Guanzon vs. de Villa (G.R. No. 80503, 30 January 1990), the Commission on Human Rights, the Department of Justice and the Integrated Philippine National Police to draw up and enforce clear guidelines to govern police actions intended to abate riots and civil disturbances, flush out criminal elements and subdue terrorist activities. It was ironic that, inspite of a plethora of human rights provisions in the bill of rights in our Constitution, some clear

guidelines had to be fashioned out for our law enforcement agencies. Despite the forging of guidelines, however, we still find some sizeable elements of the police force going beyond the pale of the law in their pursuit of criminals to the discomfort and violation of the peace and quiet of the latter's neighbors.

Cases have been filed against the police for human rights violations committed during saturation drives, but the Commission would always find the blank wall in its investigation owing to, among other things, the involvement of a great number of police in the operation and the hostility of the entire hierarchy of the police unit involved which authorized in the first place the operation. Additionally, there is the problem of localizing responsibility on every individual police involved and the degree or the legal complexion of their participation in the raid. At most, only one or two leaders of the raiding teams could be identified among the operatives but, except for the charge of command responsibility, our investigators could hardly connect them to individual human rights violations. In one case, it was forced to accede to the overtures of a local chief executive and his city police force for peace with a covenant between them and the residents who were "disturbed" unnecessarily during a raid in September 1995 of a Muslim community in Manila, outlining the mode of cooperation between them during a raid.

Development Aggression

The Commission on Human Rights is full to the hilt of complaints associated with the demolition of

squatter shanties in dense and depressed areas in the city and the eviction of its residents. This government activity is pursued in the name of development and tourism. To give way to high-rise buildings or commercial structures and regarded as eyesores, slum areas are cleansed of its shanties. While the issue of the eviction of squatters mainly relates to the right to housing, a second or third generation right over which the Commission on Human Rights has no investigative jurisdiction, the Commission nonetheless takes jurisdiction in keeping with the mandate of the Lina Law (R.A. No. 7279, March 24, 1992) which requires the observance of procedural requirements in eviction cases and the provision of resettlement site and financial assistance by government. Also, the Commission sees to its responsibility to safeguard human rights during demolition and rein in uniformed personnel from unnecessarily inflicting injury to squatters who opposed the proceedings. One example where the Commission intervened involved a community of Muslim "squatters" in Manila.

In January 1996, the City Government of Manila tried by force the demolition of Moro shanties on the banks of an estero of the Pasig River in Quiapo and on the shoulder of a city road within the same district. The residents put up a violent and bloody opposition which was publicized in the media. Taking the side of the squatters, the Commission reminded the government about its non-compliance to the demands of the Lina Law. The Ramos presidency took our representation and advisory kindly and a number of high-rise condominium buildings were built for the Moro evictees at a nearby city.

I must however, confess that the action on the case of those Moro squatters in Manila was an exception rather than the rule. Overwhelmed with force, some squatter communities in the cities took the path of least resistance and went with some monetary enticements minus the resettlement site and shelter which are often located far from the economic arteries of the city where they earn their living.

This urban form of development aggression has its ilk in the rural setting. It comes by also as a monster of a strategy to an export-led development plan for economic growth, began and pursued with vigor since 1992 by our economic czars who are awash with every optimism to usher into the millenium our country as a new industrialized country.

In the agriculture sector, this strategy entails the conversion of agricultural lands into farm plantations for high-yielding crops which cater to foreign markets. Operated as a commercial enterprise and technology-intensive for its operation and the processing of its agricultural products, farmhands only form negligible components of its workforce which comprised of highly skilled personnel. So most of our simple rural folks among our sedentary agriculturists found themselves without a job or lot to till or became exploited small-time feeders and lot farmers. For its arable lands, many of these plantations are situated within the ancestral domain of the indigenous communities with dismally low literacy rate.

To support the energy and other infrastructural needs or requirements of an industrial driven and export-oriented agricultural economy, government embarked on establishing dams to generate hydroelectric power

in the midst of the communities of the indigenous people. Some of these "damming projects" in Luzon, especially in the Cordillera and Nueva Vizcaya, have been shelved after violent opposition of the affected indigenous people who fear for the loss of the balanced ecosystem of their community and the lack of a credible rehabilitation and compensation program for them in exchange for their displacement, among other things. But in Mindanao, some dams were allowed to operate after a long negotiation and bloody confrontation between oppositors and government forces.

In livelihood-generating projects of the government within the ancestral domain of the indigenous people, they were sidelined.

In a reforestation project in Davao which was awarded to and operated in 1997 by the local firm of Alcantara and Sons owned by non-members of the tribal communities, the Talainged and Ata-Manobo people in the area of concessions banded themselves against the project and not a few among the members of the tribes were killed or injured for their opposition. The Commission intervened and, after a series of consultations and dialogues, the conflict was resolved with the Alcantara and Sons taking in members of the indigenous communities to its workforce and the government committing to issue in favor of the tribes a certificate of ancestral domain title for their community.

In the mining industry, foreign capital dominates. Controlled by absentee-capitalists who care little, if ever they do, for our environment and the people

within the immediate concession area, the industry becomes in a sense a "fleecer" of the lifeblood of the country. Ironically, through Congress we enticed them with every incentive, providing them the freedom to move their profits and capital as they wish to and control over their mining operation to the limits of their equity or capital participation in the industry. Our Mining Law, which was enacted in March 1995, saw to that. It was only in 1996 when the spillage of mine tailings at Marcopper Mining in Marinduque hit the country and riveted public attention to destruction and poisoning of rivers and waterways and affliction of residents with skin diseases and organic disorders from mining wastes that the government began to give consideration to the need for a social welfare provision in the implementing rules and regulations of the Mining Act. A new section was added to the rules, recognizing and according greater respect and protection to the rights of the indigenous people, particularly by pairing a minimum royalty if mining is allowed in ancestral lands and domain. The rules also recognize the rights of local communities affected by mining by requiring a minimum allocation for community development and ensuring their participation in the monitoring of mining projects. (Horacio C. Ramos, *"Sustainable Mining: A Policy to Reinvigorate Mining."* A keynote address delivered at the 9th Annual Geological Convention at Sulo Hotel, Quezon City, Philippines, December 4-6, 1996).

But the situation on the ground is a sordid story. In Porac, Pampanga, the indigenous Aetas complained against paramilitary men of a copper mining firm who were harassing them to leave their community. At this very moment, a community of indigenous people,

the Subanons are holding their picket lines against the operation of a foreign mining firm, Toronto Ventures, in their ancestral homeland in Siocon, Zamboanga del Norte. They feel aggrieved that they were relegated to receive crumbs while the benefit of development mainly goes to foreign capital in the first place, among other complaints.

In the ancestral lands of the indigenous people logging operations by concessionaires from outside of their community are wreaking much destruction, as before, to their economic support system which is environment-based.

Government insensitivity to the protestation of the marginalized sectors of our population is the outgrowth of its adherence to crass capitalism which is bad for human rights. This western implantation is alien to the Filipino and to the Asians. But we are reinventing it to an unfeeling freak of an economic ism more than its western model. Almost every economic enterprise where government awards concessions is the preserve of the moneyed members of society.

In Malaysia, in order to democratize its economy, the government enters into partnership with the *bhumiputras* and provided them with interest-free loan to get them into business and commerce. Iran and some Middle East countries take care of its poor population from a "trust treasury" with money sourced from a poor tax on some wealth or from some philanthropists. In the Philippines, you draw a loan on a collateral or some other arrangements but always with interest which compounds every failure to pay

the loan at due date irrespective of whether you are poor or a big-time businessman, or whether you made any profit or not, or whether you are visited by man-made or natural disasters.

Unlike in the Philippines, the disabled sectors in Spain are given preferential treatment to operate the lucrative lotto outlets.

In Japan, penalties for violation of the law on public accessibility in favor of the elderly and the handicapped are held in trust for these marginal sectors of society. In the Philippines, there is no such policy.

It is said that society is measured by how its people regard their animals. This is not an accurate social index of a civilization. People may care for their dogs, carabaos or elephants for its utility, among other things. Rather, it is more congruous to say that a society enjoys a social climate of harmony where its people care for or grant more human rights or preferential treatment to the less privileged among their brethren.

Under our capitalist culture, I fear we have developed a class of home-grown businessmen and corporate managers who regard the obstinacy of the poor workingmen to the demands of profit and capital as stupidity, or the protestations of our marginalized indigenous people against aggression of capital as ignorance, not as a cry of pain which needs some pills for relief.

As you know, crass capitalism cultivates our individu-

alistic predilections, not our social bondings to humanity. Without a religious face, however governments dress up its development strategy for economic growth as a specie of the social market economy and the like with the people as the objects of development, the disguise of an overall will not change the reality about the capitalists who wear it. It is my thesis here that any activity especially the profit-generating ones, if it is to bear the common good, must be undertaken in the collective name of society or humanity and not merely as an individual pursuit for the good of its undertakers and filial relations. And it is only religion—whether it be Islam or Christianity or Buddhism or Hinduism—that carries the impelment for the individual to look beyond his person and uphold his greater identity as a social being subsumed in the mass of mankind or, if you wish—as in Hinduism—as an embodied soul from the Atman from where all individual souls arise. Where man comes in this social complexion and in the garb of religion, whatever his activity is, it may be assumed that he is a socially-oriented person and the object of his toils is the common good, foremost of all. In brief, it is not the glare of technocratic words that governments used to wrap its development package that makes society and man, but it is in the innate wellspring of his goodness and oneness with mankind that finds its womb in religion. Governments should therefore source from religion its wealth of moral teachings and craft an economic system and call it by its name in religion, so the people will identify themselves with and work by its tutelage like some votaries of a religious faith as they are, respecting the human rights of all and putting the interests of the marginalized a priority concern.

My fear that our socio-economic directions will bring human rights to the drain is not misplaced. As early as December 1996, I made representation with our government to include the Commission on Human Rights for membership in the Regional Development Councils, so we can factor into the economic plans of government some human rights concerns and monitor the implementation of its development projects in the name of human rights. But it was turned down. In the Commission, we feel diminished. As a Constitutional body tasked to promote human rights in the country, the Commission can well contribute some facets to development that consider human rights concerns and interests of the marginalized sectors of our society. In the implementation of development plans and policies, human rights violations almost always ensue such as the displacement of people, loss of or damage to their properties, ancestral land and cultural integrity, among other things.

Threats and Harassment

I wish to stress that government snobbery has not in any way discouraged the Commission from pursuing its investigation mandate against the uniformed members of the bureaucracy who violate human rights. The greater challenge posed to the Commission is our precarious security including that of our investigators and witnesses who received threats and "violent pressures" in connection with controversial cases. To help our witnesses withstand the heat, we enroll them in our witness protection program, shelter them in our office and provide some monthly allowances for some period of time before we get the

approval of the Department of Justice for their enlistment in its witness protection program which provides better security and financial assistance to its enrollees. For those who become veritable objects of threats, they enlist the services of security escorts, and secure guns and bulletproof vests.

These threats are real and they could only be the handiwork of violators especially among the local government executives and uniformed personnel who entertained some scare from our investigators. Although the Commission cannot impose administrative sanctions to human rights violators, it has the power to derail the promotion of uniformed personnel by not issuing them a clearance and, with its active participation in the investigation and prosecution of charges against human rights violators, most likely they will be disciplined by appropriate agencies of government.

Sadly, these threats interfered with our investigation and, in fact, frustrated our quest for the truth in some human rights violation cases.

One such case relates to the violent death of some members of a robbery and kidnapping syndicate, which shook to the hilt the entire police organization. All the investigation arms of the government conducted their own individual and separate probe. The facts are established that before the breaking of the morn on May 18, 1995, the police sprayed bullets on a van while it was cruising on a main thoroughfare in Quezon City, killing some eleven members of the *Kuratong Baleleng* gang. But controversy arose when the police claimed that what happened was a shootout,

while there were ample telltale signs that it was a case of a "rubout". So about ninety or more police officers and men including two generals were indicted for murder in connection with the incident. One of the prosecution witnesses, who is a woman, was under the custody of the Commission. One day, our security guards reported that suspicious-looking armed men were frequently seen within the vicinity of the Commission and that one of those implicated in the case was able to enter its Visitorial Office looking for the witness. To avoid complications, we transferred our witness to the custody of the National Bureau of Investigation. For a more synchronize investigation of the rubout case, the Commission transmitted its records to the Department of Justice and assisted the latter when sought to.

Another case refers to the October 14, 1997 killing of two Arabs inside the Siongco military camp in Barangay Awang, Datu Odin Sinsuat Municipality, Maguindanao Province, by soldiers. One of these Arabs was an Egyptian and the other was a Saudi national. The military command in Southern Philippines claimed that the two are terrorists hanging around the premises of the camp to assassinate the Commanding Officer of the 6th Infantry Division who lives in said camp. In spite of the advise of our Regional Director and his investigatorial staff in the region for me to forego my investigation sortie to the area "with a view to reviewing policies concerning the safety of (our) personnel and their capability to protect themselves," I proceeded with my investigation under the security blanket of police security escorts and media people from Manila. We have witnesses to pin down the military for the extrajudicial

execution of the two Arabs but they were not willing to come out into the open unless their security and personal safety are guaranteed during and after the investigation of the case. For their security after the investigation of the case, they demanded that they be given asylum abroad or deployed preferably to Malaysia or Saudi Arabia beyond the reach of vengeful elements in the military. Although their fears are legitimate, the Commission could not come up with some arrangement to answer for their requests for obvious reasons. So our investigation was shelved for lack of witness.

Already, a human rights lawyer was murdered on April 30, 1996 for handling a case of human rights violation against a local chief executive. This case involved the killing of a barangay militiaman on November 20, 1995 by a bodyguard and cousin of a town mayor. The town's police filed a case of ordinary homicide against the gunman. The lawyer and family of the victim sought for the intervention of the Commission, contending that the charge should be murder and it should include the mayor and others as principals by induction. The Commission investigated the case and, on our representation, the Department of Justice amended the charge from homicide to murder and included the Mayor and some other culprits in the charge sheet. No bail was recommended for their release. The case hugged the media headlines for months that no less than the Secretary of the Department of Interior and Local Governments led the arrest of the mayor to the blare of media publicity.

The military and the police had enjoyed 16 years of

Marcos rule as a privileged sector of society, feared for their monstrosity and position of untouchability. From the EDSA Revolution of 1986 that overthrew the Marcos dictatorship, 13 years had lapsed and perhaps it will take more than this period of time to wean them away from the decadent culture of martial law. Until then, we have to be true to our calling as human rights advocates, keep our security escorts and guns to ward off evil men from harming us, and hope that things will fall in its right places and confine the military and the police to their traditional role as protectors of the people and keeper of peace in the community.

Judicial Delay

Finally, I note with sadness that from the 6,356 cases we investigated for the last ten years which reached the prosecution and/or court trial stages, only more than one percent thereof were judicially disposed of. This does not speak well of our judicial system and concern for the primacy of human rights.

Under its investigative power, the Commission may inquire into the actuations of a judge in relation to his observance of the rights of the accused in a case before him. The law secures to every accused certain civil rights during the trial, namely: 1) To be presumed innocent until the contrary is proved beyond reasonable doubt; 2) to be informed of the nature and cause of the accusation against him; 3) to be present and defend in person and by counsel at every stage of the proceedings, from the arraignment to the promulgation of judgment; 4) to testify as a witness in his own behalf but subject to cross-examination on matters

he testified thereabout. His silence shall not be in any manner prejudice him; 5) to be exempt from being compelled to be a witness against himself; 6) to confront and cross-examine the witness against him at the trial; 7) to have compulsory process issued to serve the attendance of witnesses and production of other evidence in his behalf; 8) to have a speedy, impartial and public trial; and 9) to have the right of appeal in all cases allowed and in the manner prescribed by law. (Rule 115, Rules of Court; See Sections 14,16, 17, Article III, 1987 Philippine Constitution)

In one case, I tried to get the Commission to investigate a Judge of a Regional Trial Court on a complaint of a party who alleged that the said Judge sat on a case where he is a defendant for an unnecessarily length of time in violation of the latter's right to speedy trial. In our jurisdiction, a Trial Court Judge must conduct a hearing continuously and conclude the same within 90 days as far as practicable unless the parties agree on some other schedules. (See Rule 6, Rules of Court). After the case is submitted for decision, the judge is required to decide it within 90 days. (Article VIII, Section 15 (1), 1987 Philippine Constitution). But the Commission preferred to avoid taking even a peek to the judicial terrain where the Supreme Court roosts as *primus*, so to speak. The Constitution vests in the Supreme Court administrative supervision over all courts and the personnel thereof (Article VIII, Section 6, *ibid.*) and the power to discipline judges of lower courts. (Article VIII, Section II, *ibid.*) I made the point that our investigation is simply an administrative investigation, and in no way will it intrude into the domain of the Supreme

Court because such an investigation will be confined to gathering facts and, thereafter the Commission will make recommendations to the Supreme Court which it may adopt or reject or consider as basis for any action in relation to the Judge complained against. But the majority of the members of the Commission were a bit conservative on the issue and chose to look the other way.

BETTER POLICY

Nevertheless, over and above any form of advocacy towards the establishment of a human rights culture particularly among our uniformed men, the better strategy would be the adoption by the government of some ethical norms of conduct and behavior for them with avertive or preventive potency to rein in errant propensities that proceed with power. Better still, the government, especially its military and police components should heed the recommendations of the Commission on Human Rights. Otherwise, our progress in human rights promotion and protection will be, as it is, slow and our toils in the field of human rights will be, as it is, painful.

But the Philippine Military, especially, was mostly unavailing to the recommendations of the Commission. Let me refer to two cases to belabor the point.

In my investigation of the February 1999 shooting war between the government forces and the freedom fighters of the Moro Islamic Liberation Front, I found that some Moro civilian houses in the heart of a Moro

town in Mindanao, were burned by elements of the Philippine Army and that torn pages of the Qur'an were strewn all over and some of its pages were found inside a toilet bowl. Such a sacrilege could only be done by a mad man among the military who must have been under the influence of liquor or some depressants. It is public knowledge that soldiers in Mindanao who are "non-Muslims" drink intoxicants without due regard to the religious sensitivity of its Muslim population. To obviate the happening of a similar incident, I recommended to the military the adoption of a policy banning soldiers assigned in mainly Muslim areas in Mindanao from drinking any intoxicant and providing administrative sanctions for its violation. But the military or the government did not do anything and treats the advisory as a piece of trash, not even addressing the Commission any letter-reply inspite of a Correspondence Law penalizing concerned personnel in government who fail to reply to letters within 15 days from receipt thereof. To some degree, this reflects the state of our military culture and the place of human rights in the military psyche.

Much earlier, the military ignored the recommendation of the Commission for the military to relieve or subject to disciplinary measures the Commanding Officer of the 31st Infantry Battalion whose unit was responsible for most of the human rights violations in Maguindanao and to compensate the civilian population of three towns in the province whose houses and crops were either destroyed or burned by the military during a counter-insurgency operation against the Bangsa Moro Army in January and February of 1997.

One wonders why after our EDSA Revolution in February 1986 which overthrew the Marcos dictatorship, human rights concerns are still at rock bottom in the hierarchy of government programs. Realizing the need to strengthen our Commission, correct its structural weaknesses and make it a quasi-judicial agency and a truly independent one for the weak and the oppressed, we sought Congress to pass the pertinent enabling law and its certification as priority government bill as far back as 1996 but the bill has not moved beyond the first-reading stage. The presidency did not bother to give the certification to fast-track its passage.

In the meanwhile, we struggle to keep our bearing as an independent Constitutional body and get on with our partnership with government agencies which fund some of our human rights work and flagship projects, and still claim that we are human rights advocates in the best traditions because we shout for human rights.

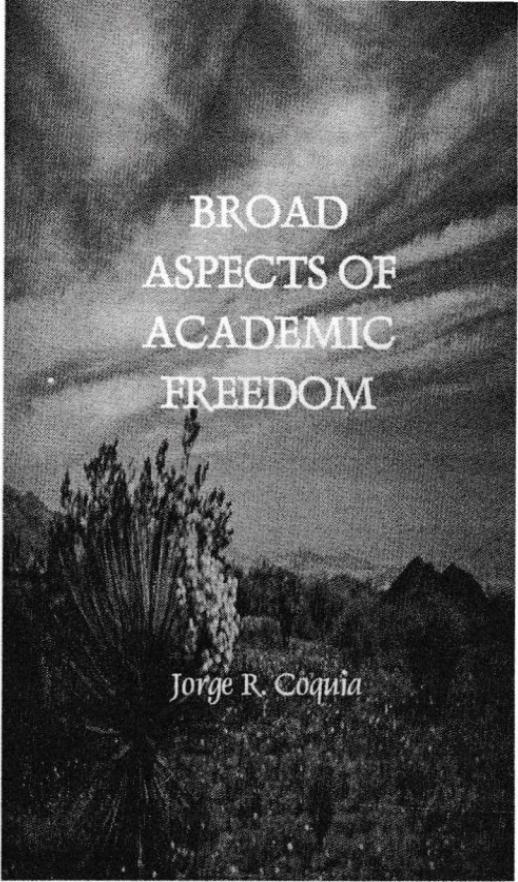
And in our shouts for human rights, we do not have any better friend than the crusading media practitioners who keep our company and raise our complaints to the bar of public opinion and prick the ears of the powers-that-be in the bigger government.

But what if these shouts only fall on stone-deaf ears? Do we elevate our case to the United Nations' Office of the High Commissioner on Human Rights?

While we have a free press and a political tradition of democracy, our experience in human rights work is not enviable. But this does not deter us from mounting our horses as soldiers of human rights and freedom.

Even against the windmills of power we raise our torch and stand our ground. Ultimately, the winners would come from those who try.





BROAD
ASPECTS OF
ACADEMIC
FREEDOM

Jorge R. Coquia

The main issue resolved by the Supreme Court in the case of **UNIVERSITY OF THE PHILIPPINES BOARD OF REGENTS, CHANCELLOR ROGER POSADAS, DR. EMERLINDA ROMAN, DEAN CONSUELO PAZ, DR. ISAGANI MEDINA, DR. MARIA SERENA DIOKNO, DR. OLIVIA CAOILI, DR. FRANCISCO NEMENZO II, DEAN PACIFICO AGABIN, CARMELITA GUNO, and MARICHU LAMBINO** versus **HON. COURT OF APPEALS and AROKIASWAMY WILLIAM MARGARET CELINE**, G.R. No. 134625 dated August 31, 1999 is on the academic freedom of schools and universities. May a writ of mandamus issued by the court be a valid remedy to compel an educational institution to grant

an academic degree to students. More specifically in this case, may a school or university be compelled to restore an academic degree already granted to her? The case involved a Ph. D. degree in Anthropology already granted to a student but was later withdrawn after a finding that some portions of the doctoral dissertation she submitted were lifted from a publication without a proper acknowledgment of the source.

ACADEMIC FREEDOM GENERALLY DEFINED

Generally, academic freedom is the liberty to pursue and teach relevant knowledge and to discuss it freely without restriction from school or public officials or from other sources of influence. Academic freedom according to Justice Felix Frankfurter includes the determination on (1) who may teach; (2) what may be taught; (3) how it shall be taught; and (4) who may be admitted to study (*Sweezy vs. New Hampshire*, 354 U.S. 234 (1957)).

BROADER ASPECTS OF ACADEMIC FREEDOM

The meaning of academic freedom has been very much broadened. Under the naturalism theory, an academic freedom for the teacher or students is the selection and pursuit of various experiences. It is also a right of a faculty member to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be vested on him in the event that

his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic, or academic establishments (*Pedden and Ryan, Catholic Philosophy of Education*, p. 590).

The Supreme Court in *Garcia vs. Faculty Admission Committee*, 68 SCRA 283 (1975) enumerated several ways by which academic freedom can be exercised, namely, it is a right claimed by the accredited educator, as teacher and as investigator, to interpret his findings and to communicate his conclusions without being subjected to any interference, molestation, or penalization because these conclusions are unacceptable to some constituted authority within or beyond the institutions.

It is a freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence. It is subject to no control or authority of the rational methods by which truths or conclusions are sought and established in these disciplines.

It is the right of a school or college, as an institution of higher learning, to decide for itself its aims and objectives and how best to attain them, free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint, and with a wide sphere of autonomy certainly extending to the choice of students.

It is the right of each university teacher, recognized and effectively guaranteed by society, to seek and express the truth as he personally sees it, both in his academic work and in his capacity as a private citizen.

INTERNAL CONDITIONS FOR ECONOMIC FREEDOM

The internal conditions for academic freedom in a university are that the academic staff should have *de facto* control of the following functions: (1) *the admission and examination of students*; (2) *the curricula for courses of study*; (3) *the appointment and tenure of office of academic staff*; and (4) *the allocation of income among the different categories of expenditure*.

The essential freedoms of a university are to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

The freedom of the teacher or research worker in higher institutions of learning is to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of the teacher, without interference from political and ecclesiastical authorities or administrative opinions of institutions in which he is employed, unless his methods are found by a qualified body of his own profession to be clearly incompetent or contrary to professional ethics (*Garcia vs. Faculty Admission Committee*, 68 SCRA 283 (1975)).

Constitutional Provisions on Academic Freedom

Art. XIV sec. 5 of the Phil. Constitution states:

"1. The State shall take into account regional and sectoral needs and conditions and shall encourage local planning in the development of educational policies and programs.

2. *Academic freedom shall be enjoyed in all institutions of higher learning.*
3. *Every citizen has a right to select a profession or course of study, subject to fair, reasonable, and equitable admission and academic requirements.*
4. *The State shall enhance the right of teachers to professional advancement. Non-teaching academic and non-academic personnel shall enjoy the protection of the State.*
5. *The State shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment."*

The 1935 Philippine Constitution referred on academic freedom only to universities established by the State, not in institutions of higher learning (Art. XIII, section 5, 1935). The 1973 Philippine Constitution states that "*all institutions of higher learning shall enjoy academic freedom, including private schools.*" The 1987 Philippine Constitution has spelled out a much broader aspect of academic freedom. The respect for freedom of belief and expression requires that all higher institutions *per se* can lay claim to academic freedom. Precisely because the use of public funds for state universities may be utilized as a means for legislators to interfere in academic matters, there was a need for an explicit affirmation of such a right. In *Laxamana vs. Borlaza*, 47 SCRA 29 (1972), an aspect of academic freedom was discussed in this wise: "The vital need in a constitutional democracy for freedom of expression is undeniable whether as a means of assuring individual

self-fulfillment, of attaining the truth, of securing participation by the people in social, including political, decision-making, and of maintaining the balance between stability and change. The trend as reflected in Philippine and American decisions is to recognize the broadest scope and assure it the widest latitude. Nowhere should there be a greater respect for its commands than in educational institutions. It would make a mockery of academic freedom if there is the gnawing fear on the part of those competent to contribute with their knowledge gained within years of study and research that what they say, or what they write, if displeasing to the powers that be, could be vested with retribution. Nor is it a fine example for students if such an atmosphere would inflect the campus. While there is no particular right of petitioner violated in the light of the facts as duly found, what did transpire bodes ill for the spirit of free inquiry which should permeate campus life." Justice Frankfurter in *Sweezy vs. New Hampshire*, 354 U.S. 234 [1957] said that professors in natural sciences is not remotely confined to findings made in the laboratory. Insights into the mysteries of nature are born of hypotheses and speculations. The more so is true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and society. The problem that are the respective preoccupations of anthropology, economics, law, psychology, sociology and related areas of scholarship are merely departmentalized, dealing, by way of manageable division of analysis, with interpenetrating aspects of holistic perplexities. For society's good — if understanding be an essential need of society — inquiries into these problems, speculations about them, stimulation in others of reflection upon them,

must be left as unfettered as possible. Political power must abstain from intrusion into this activity of freedom, pursued in the interest of wise government and the people's well-being, except for reasons that are exigent and obviously compelling. These pages need not be burdened with proof, based on the testimony of a number of impressive witnesses, of the dependence of a free society on free universities. This means the exclusion of governmental intervention in the intellectual life of a university. It matters little whether such evitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor. (E. Fernando, *The Constitution of the Philippines*, p. 490)

The freedom of the teacher or research worker in higher institutions of learning is to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed, unless his methods are found by qualified bodies of his own profession to be completely incompetent or contrary to professional ethics.

Religious Freedom versus Academic Freedom

True academic freedom as opposed to an unbridled license to expound and teach one's religious views without any limitations was illustrated in two anti-evolution cases in the United States.

Under a Tennessee statute (Sec. 2344, *Code of Tennessee* [1932]), Scopes, a teacher in the public schools of the

State of Tennessee, was indicted for denying the story of the divine creation of man, as based on the Bible. The teacher instead followed the Darwinian theory of evolution. Upholding the constitutionality of the statute, the court dwelt on the theistic and materialistic concepts of evolution. The Tennessee court sustained the legality of the statute and said: *"He (Scopes) was under a contract with the State to work in an institution of the State. He had no right or privilege to serve the State except upon such terms as the State prescribed. His liberty, privilege, his immunity to teach and proclaim the theory of evolution elsewhere than in the service of the State was no wise touched by this law."*

The main contention of the appellant was that the anti-evolution act passed by the Tennessee legislature contravened a State constitutional provision affirming that "it shall be the duty of the general assembly... to cherish literature and science."

Recognizing the moral duty of the State to safeguard and protect its citizen from unwarranted views, the court pointed out that the statute was not an exercise of police power, but an act of the State as "a corporation, a proprietor, an employer."

The more important issue was whether or not this Act violated the constitutional provision prohibiting the State from giving any preference to any religious establishment or mode of worship.

Resolving this issue, the Court said:

"We are not able to see how the prohibition of teaching the theory that man has descended from a lower order of animals gives preference to any religious establishment or mode of

worship... Belief or unbelief in the theory of evolution is no more a characteristic of any religious establishment or mode of worship than belief or unbelief in the wisdom of the prohibition laws." (154 Tennessee 105, [1927])

The U.S. Supreme Court in a similar case involving an Arkansas statute ruled that the "monkey law" is unconstitutional. The Arkansas statute prohibited the teaching of Charles Darwin's theory of evolution which asserts that men biologically originated from the species of monkeys. Mrs. Epperson, a biology teacher, taught said theory.

In holding that the statute is violative of the freedom of religion, the Court said that it is an attempt to blot out a particular theory, because of its supposed conflict with the biblical account of man's origin. (*Epperson vs. Arkansas*, 393 U.S. 97 [1968])

In order that persons may fulfill their proper function, let it be recognized that all the faithful, clerical and law, possess a lawful freedom of inquiry and of thought and the freedom to express their minds humbly and courageously about those matters in which they enjoy competence.

By virtue of the right and obligation of the State to guard against the introduction of erroneous views, and to see to it that instruction given in schools shall not undermine the common good, Congress created a Board of Textbooks which should have charge of the selection and approval of books to be used in the public and private schools. This board was given the power to prohibit the use of any textbooks which "it may find to be against the law, or offend the dignity

and honor of the Government and the people of the Philippines, or which it may find to be against the general policies of the Government, of which it may deem pedagogically unsuitable." (*Coquia, Church and State Law and Relations*, 1989 ed., p. 283)

Keyishian vs. Board of Regents, 385 U.S. 589 [1967] was another U.S. decision involving academic freedom. In 1962, faculty members were permitted to continue their employment but on the condition that, now as state employees, they certify, pursuant to state law, that they were not or ever had been Communists, or that they had not taught or advocated the overthrow of the government by force and violence. Harry Keyishian and other members of the faculty, facing dismissal for refusing to comply by signing the requisite certificates, brought suit against the governing board of the state educational system for declaratory and injunctive relief. A three-judge federal district court upheld the constitutionality of the requirement and plaintiffs appealed.

The Supreme Court finding overbreadth and vagueness in the statute, threw out a New York loyalty oath requiring a denial of Communist affiliation as a prerequisite to teaching at a state university. The Court relied on the fact that the statute could cover mere membership in a Communist organization, something less than the constitutionally required standard of membership *plus* a "specific intent to further the unlawful aims of an organization."

Human Rights Provisions on Academic Freedom:

Article 26 of the Universal Declaration of Human Rights reads:

1. *Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*
2. *Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for maintenance of peace.*

Article 13 of the International Covenant on Economic, Social and Cultural Rights reads:

1. *The State Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*
2. *The State Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*
 - (a) *Primary education shall be compulsory and available free to all;*

- (b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*
 - (c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*
 - (d) *Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*
 - (e) *The development of a system of schools at all levels shall be actively pursued, and adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*
3. *The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*
4. *No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given*

in such institutions shall conform to such minimum standards as may be laid down by the State.

RIGHT OF STUDENTS TO BE ADMITTED TO SCHOOL

The court said that what students possess is a privilege rather than a right. (*Garcia vs. The Faculty Admission Committee, Loyola School of Theology*; 68 SCRA 277 [1975]). The court also said in *Ateneo de Manila University vs. Capulong*, (222 SCRA 647 [1993]), reiterating *Garcia vs. The Faculty Admission Committee, Loyola School of Theology* (68 SCRA 277 [1975]) that admission to an institution of higher learning is discretionary upon a school, the same being a privilege on the part of the student rather than a right. While under Education Act of 1982, students have the right "to freely choose their field of study, subject to existing curricula and to continue their course therein up to graduation," such right is subject, as all rights are, to the established academic and disciplinary standards laid down by the academic institution. (See also *Tangonan vs. Paño*, 137 SCRA 245 [1985]; *Magtibay vs. Garcia*, 120 SCRA 370 [1983]).

The matter of admission of student is within the ambit of academic freedom and therefor beyond the province of the courts to decide. (*University of the Philippines, Board of Regents vs. Ligot-Telan*, 227 SCRA 342 [1993]).

LIMITATIONS ON ACADEMIC FREEDOM

In *Board of Medical Education vs. Judge Alfonso*, 176 SCRA 304, [1969], the Supreme Court sustained the decision of the Board of Medical Education in closing the Philippine Muslim-Christian College of Medicine for being "inadequate." The Court said that being a matter of law that the Secretary of Education, Culture and Sports exercises the power to enjoin compliance with the requirements laid down for medical schools and to mete out sanctions where he finds that violations thereof have been committed, it was a grave abuse of discretion for the respondent judge to issue the questioned injunction and thereby thwart official action, in the premises correctly taken, allowing the College to operate without the requisite government permit. A single ocular inspection, done after the College had been pre-warned thereof, did not, in the circumstances, warrant overturning the findings of more qualified inspectors about the true state of the College, its faculty, facilities, operations, etc. The members of the evaluating team came from the different sectors in the fields of education and medicine, and their judgment in this particular area is certainly better than that of the respondent Judge whose sole and only visit to the school could hardly have given him much more to go on than a brief look at the physical plant and facilities and into the conduct of the classes and other school activities (*Board of Medical Education vs. Alfonso*, 305 SCRA 176 [1989]).

In *Capitol Medical Center vs. Court of Appeals*, 178 SCRA 493 [1989], the closure of the nursing school was upheld, after due notice to the DECS, when its teachers and students declared a strike, refusing to hold classes

and take examinations. The school may not be forced to reopen at the instance of the striking students. The court held that the lower court gravely abused its discretion in compelling the CMCC to reopen and re-admit the striking students for enrollment in the second semester of their courses. Since their contracts with the school were terminated at the end of the first semester of 1987, and as the school has already ceased to operate, they have no "clear legal right" to re-enroll and the school has no legal obligation to reopen and re-admit them. No provision in the Education Act of 1982, nor in the Manual of Regulations for Private Schools can be, or has been, cited to support the novel view that a school is obligated to remain open until its students have completed their courses therein. Indeed, neither is there a law or rule that obligates a student who has enrolled in a school, to remain there until he finishes his course. On the contrary he may transfer at any time to any school that is willing to accept him (*Capitol Medical Center, Inc. vs. Court of Appeals*, 507 SCRA 178 [1989]). In *University of the Philippines vs. Judge Ayson*, 176 SCRA 571, the Court also sustained the closure of the U.P. Baguio High School, on the ground that U.P. was set up as a tertiary institution and that the High School was set up only as an incident to its tertiary functions. The court said that the University of the Philippines is an institution of higher learning enjoying academic freedom. It is apparent that secondary education is not the mandated function of the University of the Philippines; consequently, the latter can validly phase out and/or abolish the UPCBHS especially so when the requirements for its continuance have not been met, Rep. Act No. 6655 to the contrary notwithstanding. The findings of facts by the Board of Regents which

led to its decision to phase out the UPCBHS must be accorded respect, if not finality. Acts of an administrative agency within their areas of competence must not be casually overturned by the courts (*University of the Philippines vs. Ayson*, 572 SCRA 176 [1989]).

In *Non vs. Dames*, 185 SCRA 523 [1990], the Supreme Court reversed its ruling in *Alcuaz vs. PSBA*, 161 SCRA 7 [1988], declaring that the "termination of contract" theory in *Alcuaz* can no longer be used as a valid ground to deny readmission or re-enrollment to students who had led or participated in student mass actions against the school. The Court held that the students do not shed their constitutionally-protected rights of free expression at the school gates. Cited with approval were the rulings in *Malabanan vs. Ramento*, 129 SCRA 359 [1984], and with *Villar vs. Technological Institute of the Philippines*, 135 SCRA 706 [1985]; *Arreza vs. Gregorio Araneta University Foundation*, 137 SCRA 94 [1985]; and *Guzman vs. National University*, 142 SCRA 699 [1986].

The only valid grounds to deny readmission of students are academic deficiency and breach of the school's reasonable rules of conduct. Be that as it may, in imposing disciplinary sanctions on students, it was held in *Guzman vs. National University*, 142 SCRA 699 [1986] that the following minimum standards of procedural due process must be satisfied: (i) *the students must be informed in writing of the nature and cause of the accusation against them*; (ii) *they shall have the right to answer the charges against them, with the assistance of counsel, if desired*; (iii) *they shall be informed of the evidence against them*; (iv) *they shall have the right to adduce evidence in their own behalf*; and (v) *the evidence must be duly*

considered by the investigating committee or official designated by the school authorities to hear and decide the case. See also: *Ateneo University vs. Judge Capulong*, 222 SCRA 644. Not applicable aforesaid rulings as in *Garcia vs. The Faculty Admission Committee, Loyola School of Theology*, 68 SCRA 277 [1975] the issue was whether a female lay student had the right to compel a seminary for the priesthood to admit her for theological studies leading to a degree], and *Tangonan vs. Pano*, 135 SCRA 245 [1985] where the issue was whether a nursing student, who was admitted on probation and who failed in her nursing subjects, may compel her school to readmit her for enrollment.

In *Tan vs. Court of Appeals*, 199 SCRA 212, which involved a bitter conflict between the administrators of Grace Christian High School and the parents of some students on matters of school policy, the Supreme Court said that the "maintenance of a morally conducive and orderly educational environment will be seriously imperiled if, under the circumstances of the case, Grace Christian High School is forced to admit petitioners' children and to reintegrate them into the student body.

In *University of San Carlos vs. Court of Appeals*, 166 SCRA 570 [1988], the Court held that it is within the sound discretion of the university to determine whether a student may be conferred graduation honors, considering that the student had incurred a failing grade in an earlier course she took in school. School of learning are given ample discretion to formulate rules and guidelines in granting honors for purposes of graduation.

In *Lupangco vs. Court of Appeals*, 160 SCRA 848 [1988], Resolution No. 105 of the Professional Regulation Commission prohibiting examinees for the accountancy licensure examinations from attending "any review class, briefing, conference or the like" or to "receive any hand-out, review material or any tip" from any school, or any university or any review center infringes on the examinees' right to liberty guaranteed by the Constitution. It violated the academic freedom of the schools concerned.

In *Reyes vs. Court of Appeals*, 194 SCRA 402 [1991], the Supreme Court ruled that under the U.P. Charter, the power to fix admission requirements is vested in the University Council of the autonomous campus, which is composed of the President of the University of the Philippines and of all instructors holding the rank of professor, associate professor or assistant professor. Consequently, the University Council alone has the right to protest against any unauthorized exercise of its power. Petitioners cannot impugn the directives of the Board of Regents on the ground of academic freedom inasmuch as their rights as university teachers remain unaffected.

In *Cagayan Capitol College vs. NLRC*, 189 SCRA 658 [1990], it was held that while DECS regulations prescribe a maximum of three years probation period for teachers, the termination of the three-year period does not result in the automatic permanent status for the teacher. It must be conditioned on a showing that the teacher's services during the probationary period was satisfactory in accordance with the employer's standards. The prerogative of the school to provide standards for its teachers and to determine whether

or not these standards have been met is in accordance with academic freedom and constitutional autonomy which give educational institutions the right to choose who should teach.

In *Isabelo vs. Perpetual Help College of Rizal*, 227 SCRA 591 [1993], it was held that academic freedom was never meant to be unbridled license; it is a privilege which assumes the correlative duty to exercise its responsibility. Thus, where the student's expulsion was disproportionate to his having unit deficiencies in his CMT course, there is reason to believe the petitioner's claim that the school's action was strongly influenced by the student's participation in questioning PHCR's application for tuition fee increase.



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