

**PHILIPPINE HUMAN RIGHTS IN THE TIME OF PANDEMIC:
ANALYZING THE CHALLENGES TO THE EFFECTIVENESS OF
THE COMMISSION ON HUMAN RIGHTS AS AN NHRI
IN THE MIDST OF COVID-19***

*Mario C. Cerilles, Jr.***

ABSTRACT

Created before the United Nations adopted the Paris Principles, and after a dictatorship engulfed the Philippines, the Commission on Human Rights (CHR) seemed poised to lead NHRI across the globe. The CHR, with its constitutional mandate, was seen as the long-term solution to the country's human rights woes. However, the current pandemic has revealed cracks within the CHR's system. This study will demonstrate that, despite its perceived strengths, the CHR suffers from institutional weaknesses that limit its effectiveness during the pandemic. An analysis of the international framework on NHRIs, the legal structure of the CHR, and the effects of the state of emergency on Philippine bureaucracy will reveal that structural deficiencies, such as lack of independence, an incomplete mandate, and inadequate investigatory powers, make the Philippine NHRI vulnerable at a time when it is needed most by Filipinos.

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** Founder, Cerilles Fernan Patent and Trademark Legal Consultancy; Co-professor, Constitutional Law 1, University of Makati School of Law (2018); M.Sc. in Human Rights (Merit, Chevening Scholar), London School of Economics and Political Science (2019); LL.M with Certificates of Specialization in Public Law and Regulation and in Law and Technology (Best Oralist, Asia Pacific Scholar), University of California, Berkeley (2017); J.D., University of the Philippines (2014); B.A. Psychology, *cum laude*, University of the Philippines (2010).

I. SETTING THE FIELD

On March 21, 2020, thirteen days after the national government declared a state of public health emergency due to the COVID-19 pandemic,¹ Department of Interior and Local Government (DILG) Undersecretary Martin Diño stated in a public interview that human rights will cease to exist in a state of emergency.² And indeed, human rights took the backseat as the Philippine government tried to contain the spread of COVID-19. From the illegal execution of warrantless arrests to the censorship of free speech,³ an array of human rights violations followed.⁴ The ongoing health concerns also facilitated the passage of legislations that potentially carry devastating effects on human rights, such as the Bayanihan to Heal as One Act and the Anti-Terrorism Act.⁵

The occurrence of abuses during the pandemic is not unique to the Philippines. Around the world, human rights violations have become more apparent.⁶ In fact, early on in the pandemic, the U.N. High Commissioner for Human Rights encouraged governments to take additional actions to reduce

¹ Proc. No. 922 (2020), declaring a State of Public Health Emergency throughout the Philippines.

² Nicole-Anne Lagrimas, *CHR, NUPL contradict DILG's Diño, say human rights remain even during emergencies*, GMA NEWS ONLINE, Mar. 23, 2020, at <https://www.gmanetwork.com/news/news/nation/730889/nupl-contradict-dilg-s-dino-say-human-rights-remain-even-during-emergencies/story>

³ Carlos Conde, *Philippine Activists Charged with Sedition, 'Fake News': Government Misusing Covid-19 Law Against its Critics*, HUMAN RIGHTS WATCH, Apr. 22, 2020, at <https://www.hrw.org/news/2020/04/22/philippine-activists-charged-sedition-fake-news>; Catalina Ricci Madarang, *Is DENR's memo vs employees' online dissent against free speech?*, INTERAKSYON, Apr. 7, 2020, at <https://www.interaksyon.com/trends-spotlights/2020/04/07/165912/is-densrs-memo-vs-employees-online-dissent-against-free-speech>

⁴ Gabriel Pabico Lalu, *Gov't more into rights violations than solving COVID-19 crisis, group says*, INQUIRER.NET, Apr. 22, 2020, available at <https://newsinfo.inquirer.net/1263190/govt-more-interested-in-human-rights-violations-than-solving-covid-19-problems-group-says>

⁵ Lian Buan, *NBI summons 'more than a dozen' for coronavirus posts*, RAPPLER, Apr. 3, 2020, at <https://www.rappler.com/nation/256746-nbi-summons-more-than-dozen-people-social-media-coronavirus-posts>; Commission on Human Rights (CHR), *Statement of CHR spokesperson, Atty Jacqueline Ann de Guia, on the passage of the Anti-Terrorism Law*, CHR WEBSITE, July 4, 2020, at <http://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-passage-of-the-anti-terrorism-law>

⁶ Kelly Shea Delvac, *Human Rights Abuses in the Enforcement of Coronavirus Security Measures*, NATIONAL LAW REVIEW, Mar. 25, 2020, ¶¶ 8-12, at <https://www.natlawreview.com/article/human-rights-abuses-enforcement-coronavirus-security-measures>

the negative impact of health measures on people's daily lives.⁷ Her sentiment was echoed by Special Rapporteurs who warned that States should not use their emergency powers as an excuse to suppress human rights.⁸

What makes the Philippines' situation exceptionally worrisome is that, prior to the onset of the pandemic, the status of human rights in the country was already on a decline. The government's reputation for upholding human rights has suffered from allegations of systemic killings in its so-called war against drugs.⁹ There is no greater witness to this decline than the Commission on Human Rights (CHR), the country's National Human Rights Institution ("NHRI"),¹⁰ which criticisms against the government almost led to its abolition.¹¹

The pandemic sets the stage for a more active role by the CHR, and it prompts an inquiry on whether the CHR is sufficiently equipped to respond effectively to human rights violations during the state of health emergency. This Essay elicits an answer in the negative. An analysis of the CHR's performance in light of prevailing international standards for NHRIs reveals weaknesses in the CHR's structure. As will be demonstrated in this paper, these weaknesses could be aggravated by the restrictions brought about by the pandemic.

⁷ Office of the High Commissioner for Human Rights (OHCHR), *Coronavirus: Human rights need to be front and centre in response, says Bachelet*, UNITED NATIONS HUMAN RIGHTS, Mar. 6, 2020, ¶ 1, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25668&LangID=E>

⁸ Special Rapporteurs and Independent Experts, *COVID-19: States should not abuse emergency measures to suppress human rights – UN experts*, UNITED NATIONS HUMAN RIGHTS, Mar. 16, 2020, ¶ 1, at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25722&LangID=E>

⁹ Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Philippines, at ¶¶ 81-86, U.N. Doc. A/HRC/44/22 (2020).

¹⁰ CHR, *About the Commission*, CHR WEBSITE (2018), ¶ 1, at <http://chr.gov.ph/about-us>

¹¹ ABS-CBN News, *Lawmaker wants CHR officers to be impeachable*, ABS-CBN NEWS, Sept. 19, 2017, at <https://news.abs-cbn.com/news/09/19/17/lawmaker-wants-chr-officers-to-be-impeachable>

II. NHRI FRAMEWORK

A. History

For its own purposes, the United Nations (“U.N.”) defines an NHRI as “a body which is established by a Government under the constitution, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights.”¹² Originally, NHRIs were organized bodies that were formed to investigate government maladministration.¹³ Over time, they earned human rights functions;¹⁴ and by 1978, the U.N. General Assembly was examining their potential in protecting and promoting human rights.¹⁵ In 1994,¹⁶ the General Assembly officially adopted the Principles Relating to National Institutions, also known as the Paris Principles,¹⁷ a set of guidelines that describe the structure and functions of NHRIs.¹⁸

B. The Paris Principles

The Paris Principles outlines a set of criteria that help ensure that NHRIs would effectively carry out their duties.¹⁹ Among others, it requires NHRIs to demonstrate a broad mandate, maintain a strong basis on universal human rights norms and standards, ensure independence and autonomy from government, display pluralism in membership, and exhibit adequate resources and powers of investigation.²⁰

¹² United Nations Centre for Human Rights, National Human Rights Institutions: A Handbook on the Establishment and Strengthening of National Institutions for the Promotion and Protection of Human Rights, at 6, U.N. Doc. HR/P/PT/4 (1995).

¹³ Francisco Ramirez & Wade Cole, *Conditional Decoupling: Assessing the Impact of National Human Rights Institutions*, 78(4) AM. SOCIOLOGICAL REV. 702 (2013).

¹⁴ *Id.*

¹⁵ United Nations General Assembly, National institutions for the promotion and protection of human rights, U.N. Doc A/RES/33/46 (1978).

¹⁶ United Nations General Assembly, National institutions for the promotion and protection of human rights, U.N. Doc A/RES/48/134 (1993).

¹⁷ United Nations General Assembly, National institutions for the promotion and protection of human rights, Annex: Principles Relating to the Status of National Institutions, [hereinafter “Paris Principles”], U.N. Doc A/RES/48/134 (1993).

¹⁸ Anne Gallagher, *Making human rights treaty obligations a reality: working with new actors and partners*, in THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING 201, 201-228 (Philip Alston & James Crawford eds., 2000).

¹⁹ BRIAN BURDEKIN, NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE ASIA-PACIFIC REGION 7 (2007).

²⁰ European Network of National Human Rights Institutions, NHRI Accreditation at a Glance, at 4 (Jan. 2020), available at <http://ennhri.org/wp-content/uploads/2020/02/Accreditation-at-a-glance-Jan-2020.pdf>

The Global Alliance for National Human Rights Institutions (“GANHRI”), an international association of NHRIs, uses these standards to measure the performance of NHRIs.²¹ Its Sub-Committee on Accreditation looks into the practices of NHRIs seeking admission into the organization, and then assigns accreditation according to the latter’s compliance with the Paris Principles.²² An NHRI which earns an “A-status” accreditation receives an outstanding human rights reputation within the international community and enjoys several benefits, such as speaking privileges before the Human Rights Council and other U.N. treaty bodies.²³ The Philippine CHR holds an “A-status” accreditation from the GANHRI.²⁴

The Paris Principles is utilized by many States to measure the performance of NHRIs.²⁵ However, it is not free from criticism. It has been accused of setting unclear criteria to assess the performance of NHRIs.²⁶ It has also been criticized for providing little guidance to NHRIs.²⁷ For instance, the Paris Principles is silent on the status of NHRIs during states of emergency.²⁸ Still, it remains as the normative standard for NHRIs.²⁹

²¹ Global Alliance for National Human Rights Institutions (“GANHRI”), *A brief history of GANHRI*, GANHRI WEBSITE, ¶ 1, at <https://nhri.ohchr.org/EN/AboutUs/Pages/History.aspx> (last visited June 2020).

²² GANHRI, *A Practical Guide to the Work of the Sub-committee on Accreditation (SCA)*, at 30 (Nov. 2018), available at [https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/GANHRI%20Manual_online\(1\).pdf](https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/GANHRI%20Manual_online(1).pdf)

²³ European Network of National Human Rights Institutions (“ENNHRI”), *UN Paris Principles & Accreditation*, ENNHRI WEBSITE, at <http://ennhri.org/about-nhris/un-paris-principles-and-accreditation>

²⁴ GANHRI Sub-Committee on Accreditation, *Report and Recommendations of the Session of the Sub-Committee on Accreditation*, at 28 (Mar. 2017), available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Final%20Report%20-%20March%202017-%20English.pdf>

²⁵ BRIAN BURDEKIN, NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE ASIA-PACIFIC REGION 6-7 (2007).

²⁶ Sarah Spencer & Colin Harvey, *Context, institution or accountability? Exploring the factors that shape the performance of national human rights and equality bodies*, 42(1) POL’Y & POL. 91, 89-107 (2014).

²⁷ International Council on Human Rights Policy, *Assessing the Effectiveness of National Human Rights Institutions*, at 11 (2005).

²⁸ GANHRI, GENERAL OBSERVATIONS OF THE SUB-COMMITTEE ON ACCREDITATION 41, ¶ 1 (2018), at https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf

²⁹ BRIAN BURDEKIN, NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE ASIA-PACIFIC REGION xi (2007).

C. NHRIs and the State of Emergency

NHRIs are expected to perform their duties in all circumstances and without exception.³⁰ While the Paris Principles is silent on this matter, the GANHRI, in its General Observations, settled that an NHRI must conduct itself with “a heightened level of vigilance and independence, and in strict accordance with its mandate,” during a state of emergency.³¹ NHRIs are expected to take all possible steps necessary to maximize the protection of human rights for the duration of an emergency.³²

In the same manner, an NHRI must continue to perform its mandate, even when there are threats to the State’s national security.³³ The scope of this mandate may be restricted for national security reasons, but such restriction must be imposed in a manner respecting due process.³⁴ These restrictions may not be applied unreasonably or arbitrarily.³⁵

It bears noting that States are expected to grant full respect to human rights during the ongoing pandemic.³⁶ While it is true that they are allowed to undertake extraordinary measures to protect the well-being and health of their populations, these measures must conform to the limitations set by international human rights law.³⁷

To illustrate, the International Covenant on Civil and Political Rights (“ICCPR”) prohibits state derogation from certain obligations such as the duty to protect the right to life.³⁸ Even when derogation is allowed for other rights,³⁹ strict conditions are imposed.⁴⁰ In fact, the U.N. warned that

³⁰ Asia Pacific Forum, COVID-19 and NHRIs in the Asia Pacific, at ¶ 4, at https://www.asiapacificforum.net/media/resource_file/COVID-19_NHRIs_Asia_Pacific.pdf

³¹ GANHRI, *supra* note 28.

³² *Id.*

³³ *Id.* at 43, ¶ 1.

³⁴ *Id.*

³⁵ *Id.*

³⁶ United Nations General Assembly, Global solidarity to fight the coronavirus disease 2019 (COVID-19), U.N. Doc A/RES/74/270 (2020).

³⁷ Office of the High Commissioner for Human Rights, Emergency Measures and COVID-19 Guidance, at ¶¶ 1-2 (Apr. 27, 2020), at https://www.ohchr.org/Documents/Events/EmergencyMeasures_COVID19.pdf

³⁸ International Covenant on Civil and Political Rights [hereinafter “ICCPR”], art. 4, § 2, Mar. 23, 1976, 999 U.N.T.S. 171.

³⁹ Art. 4, § 1.

⁴⁰ Office of the High Commissioner for Human Rights, CCPR General Comment no. 29: Article 4: Derogations during a State of Emergency, U.N. Doc CCPR/C/21/Rev.1/Add.11 (Aug. 31, 2001).

derogating measures can only deviate from their obligations to the extent strictly required by the exigencies of the COVID-19 pandemic.⁴¹

III. PHILIPPINE CONTEXT

A. History of the CHR

The creation of the Philippine CHR was inspired by a combination of domestic experience and international influence.⁴² Its history can be traced to the aftermath of the dictatorship,⁴³ when newly-installed President Corazon Aquino signed an Executive Order creating a Presidential Committee on Human Rights to investigate the human rights abuses of the Marcos administration.⁴⁴ When the 1987 Philippine Constitution was ratified, the CHR replaced the Committee.⁴⁵

The establishment of the CHR preceded the U.N.'s adoption of the Paris Principles,⁴⁶ making it the oldest constitutionally-mandated NHRI in the world.⁴⁷ Its framework was shaped by international standards imposed in the guidelines set by the 1977 Geneva Principles and by the U.N. General Assembly Resolution 41/129 of 1986. The CHR was also designed to respond to the demands of international human rights instruments, such as the Universal Declaration of Human Rights ("UDHR"), the ICCPR, and the Declaration of Torture of 1985.⁴⁸

⁴¹ Human Rights Committee, Statement on derogations from the Covenant in connection with the COVID-19 pandemic, U.N. Doc CCPR/C/128/2 (Apr. 24, 2020).

⁴² Sonia Cardenas, *National Human Rights Commissions in Asia*, 4(30) HUM. RTS. REV. 34-35 (2002).

⁴³ Official Gazette, *The Fall of the Dictatorship*, OFFICIAL GAZETTE WEBSITE, at <https://www.officialgazette.gov.ph/featured/the-fall-of-the-dictatorship> (last visited June 2020).

⁴⁴ Exec. Order No. 8 (1986). This creates the Presidential Committee on Human Rights. See also Priscilla Hayner, *Fifteen Truth Commissions – 1974 To 1994: A Comparative Study*, in TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES 235, 225-261 (Neil Krtiz ed., 2005).

⁴⁵ CONST. art. XIII, § 17; Exec. Order No. 163 (1987). This creates the Commission on Human Rights.

⁴⁶ Katerina Linos and Tomas Pegram, *What Works in Human Rights Institutions*, 112(3) AM. J. INT'L L. 1, 37 (2017).

⁴⁷ Sonia Cardenas, *National Human Rights Commissions in Asia*, 4(30) HUM. RTS. REV. 35 (2002).

⁴⁸ III RECORD CONST. COMM'N 734 (Aug. 26, 1986).

The CHR is tasked to prevent a recurrence of the atrocities of Martial Law and safeguard the people from abuses of government.⁴⁹ Its ultimate goal is to protect and promote the rights and dignity of every human being.⁵⁰ This is consistent with the State's own policy of valuing the dignity of every human person and guaranteeing full respect for human rights.⁵¹

B. State of Public Health Emergency

In the Philippines, the State has the constitutional duty to protect and promote the right to health, and instill health consciousness among the people.⁵² However, this duty is not without limits. The Court has ruled that governmental action in times of emergency should not be so arbitrary as to unduly restrain people's liberty.⁵³

It may be recalled that, in order to respond to the pandemic, Congress passed Republic Act No. 11469.⁵⁴ This legislation declared a national emergency, outlined a national policy, and gave the President limited powers.⁵⁵ It was enacted pursuant to Article VI, Section 23(2) of the Constitution, which states that "Congress may authorize the President to exercise powers that are necessary and proper to carry out a declared national policy in times of national emergency for a limited period, and subject to limitations prescribed by it."⁵⁶ It must be emphasized that these powers are counterbalanced by the limits set by the legislative act.⁵⁷ In fact, Congress may withdraw this grant sooner by resolution when it believes that doing so is appropriate.⁵⁸

Moreover, the State must continue to abide by its international obligations as outlined in instruments such as the UDHR, the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), and the ICCPR.⁵⁹ This commitment to uphold human rights without pause is

⁴⁹ III RECORD CONST. COMM'N 711 (Aug. 26, 1986).

⁵⁰ CHR, *supra* note 10, ¶ 4.

⁵¹ CONST. art. II, § 11.

⁵² Art. II, § 15.

⁵³ *David v. Macapagal-Arroyo*, 522 Phil. 705 (2006).

⁵⁴ Rep. Act No. 11469 (2020).

⁵⁵ Rep. Act No. 11469 (2020).

⁵⁶ CONST. art. VII, § 23(2).

⁵⁷ *Tuluyan v. Medialdea*, 690 Phil. 72 (2012).

⁵⁸ *Id.*

⁵⁹ Proc. No. 225 (1950), designating December 10, 1950 as Human Rights Day; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; UNITED NATIONS TREATY COLLECTION, 4. INTERNATIONAL COVENANT ON CIVIL AND

reflected in the country's own human rights statutes. For instance, the law against torture explicitly states that a public emergency can never be invoked as a justification for torture and other cruel, inhumane, and degrading treatment or punishment.⁶⁰ Similarly, the Magna Carta of Women pronounces that the State shall observe international standards of protection for the civilian population in times of emergency.⁶¹

Lastly, as discussed, the CHR is bound to continue its operations as the country's NHRI even during a state of emergency.⁶² The CHR has itself declared that human rights are not suspended during a health crisis.⁶³

IV. CHR AND COVID-19

A. Performance

Recognizing the State's duty to respect human rights, the DILG directed local government units to respect human rights in their implementation and maintenance of the enhanced community quarantine.⁶⁴ Still, the government has been accused of committing human rights violations during the pandemic;⁶⁵ and as a result, CHR has maintained active operations.

Among others, the CHR has put out press statements to respond to alleged human rights violations by the government.⁶⁶ It has released a series of policy advisories suggesting how the government could solve the country's pressing human rights concerns, including the right to health, children's rights,

POLITICAL RIGHTS, available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-4.en.pdf> (last accessed June 2020).

⁶⁰ Rep. Act No. 9745 (2009), § 23.

⁶¹ Rep. Act No. 9710 (2008), § 9(b).

⁶² GANHRI, *supra* note 28.

⁶³ CHR, *Statement of CHR spokesperson, Atty. Jacqueline Ann de Guia, on the value of human rights during the state of national emergency*, CHR WEBSITE, Mar. 22, 2020, at <http://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-value-of-human-rights-during-the-state-of-national-emergency>

⁶⁴ DILG Mem. Circ. 2020-062 (2020), § 5.2.10(b).

⁶⁵ Gabriel Pabico Lalu, *Gov't more into rights violations than solving COVID-19 crisis, group says*, INQUIRER.NET, Apr. 22, 2020, available at <https://newsinfo.inquirer.net/1263190/govt-more-interested-in-human-rights-violations-than-solving-covid-19-problems-group-says#ixzz6O7KWvGdN>

⁶⁶ CHR, *Statement of CHR spokesperson, Atty. Jacqueline Ann de Guia, on the proposed anti-terrorism bill*, CHR WEBSITE, June 2, 2020, at <https://chr.gov.ph/tl/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-proposed-anti-terrorism-bill>; CHR, *supra* note 63, ¶ 1.

and indigenous peoples' rights.⁶⁷ It has directly coordinated with government agencies when it sent letters to the Bureau of Jail Management and Penology to express concerns regarding COVID-19 outbreaks in detention centers.⁶⁸ It has also probed alleged human rights violations.⁶⁹ On top of these, the CHR launched an "E-Lawyering Program" to make legal assistance immediately available to human rights victims, particularly to migrants who were left stranded in other countries.⁷⁰

B. Limitations

While its efforts are laudable, the CHR is bound to encounter challenges due to the pandemic. The resulting constraints on finances, the restrictions on the freedom of movement, and the limitations in the flow of information all have the potential of exploiting the structural limitations of the CHR.⁷¹

⁶⁷ CHR, Advisory Series on Human Rights in the Time of COVID-19 in the Philippines, CHR (V) A2020-002 (Mar. 27, 2020), available at http://chr.gov.ph/wp-content/uploads/2020/04/CHR-Advisory_Human-Rights-in-the-Time-of-COVID-19-in-the-Philippines-CHR-V-A2020-002.pdf; CHR, Advisory on Handling of Children in Street Situation (CISS) in times of National Health Emergency, CHR (V) A2020-003 (Apr. 1, 2020), available at http://chr.gov.ph/wp-content/uploads/2020/04/CHR-Advisory_Handling-of-Children-in-Street-Situation-CISS-in-Times-of-National-Health-Emergency-CHR-V-A2020-003.pdf; CHR, Human Rights Advisory on Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) amid the COVID-19 pandemic (Apr. 21, 2020), available at <http://chr.gov.ph/wp-content/uploads/2020/04/Human-Rights-Advisory-on-Indigenous-Cultural-Communities-Indigenous-Peoples-ICCs-Ips-Amidst-the-COVID-19-Pandemic-CHR-V-A2020-006.pdf>

⁶⁸ CHR, *Statement of CHR spokesperson, Atty. Jacqueline Ann de Guia, improving the plight of persons deprived of liberty through the Interim National Preventive Mechanism*, CHR WEBSITE, May 14, 2020, ¶ 8, at <http://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-improving-the-plight-of-persons-deprived-of-liberty-through-the-interim-national-preventive-mechanism>

⁶⁹ CHR, *Statement of CHR spokesperson, Atty. Jacqueline Ann de Guia, on the incident involving a cop shooting an alleged lockdown violator in Barangay Pasing Putik, Quezon City*, CHR WEBSITE, Apr. 23, 2020, ¶ 5, at <http://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-incident-involving-a-cop-shooting-an-alleged-lockdown-violator-in-barangay-pasing-putik-quezon-city>

⁷⁰ CHR, *Statement of CHR Focal Commissioner on Migrant Rights, Gwendolyn L.L. Pimentel-Gana, on the situation of migrants, Overseas Filipino Workers, and members of their families amid the COVID-19 crisis*, CHR WEBSITE, Apr. 24, 2020, ¶ 8, at <http://chr.gov.ph/statement-of-chr-focal-commissioner-on-migrant-rights-gwendolyn-l-l-pimentel-gana-on-the-situation-of-migrants-overseas-filipino-workers-and-members-of-their-families-amid-the-covid-19-crisis>

⁷¹ Asia Pacific Forum, *supra* note 30, ¶ 1.

1. *Lack of Independence*

i. Financial Autonomy

The financial setbacks suffered by governments are bound to have negative effects on the budgets received by NHRIs all over the world.⁷² The CHR is no exception. This is highly probable considering that the Philippine economy has accumulated losses over the past few months as COVID-19 dragged down external trade, tourism, and remittances.⁷³ As a matter of fact, the situation could be worse for the CHR considering that its budget goes through the Office of the President. The CHR's vocal stance against alleged state-sponsored extrajudicial killings has resulted in an adverse relationship with the President.⁷⁴

The CHR is entitled to an approved annual appropriation that is automatically and regularly released.⁷⁵ This was meant to give the CHR an added layer of independence.⁷⁶ As with the automatic and regular release of funds granted to the Constitutional Commissions, this safeguard prevents the Executive from unnecessarily withholding the CHR's approved budget.⁷⁷ However, this grant is smaller in scope than fiscal autonomy,⁷⁸ which in turn has been interpreted to mean freedom from outside control⁷⁹ reserved exclusively for the Constitutional Commissions, the Office of the Ombudsman, and the Judiciary.⁸⁰ Fiscal autonomy gives an agency the "full flexibility to allocate and utilize its resources."⁸¹ In contrast, the CHR's budget is included in the national budget,⁸² which is prepared by the Department of

⁷² *Id.* ¶ 12.

⁷³ Ben de Vera, *ADB revises forecast for PH economy: 3.8 percent drop in GDP*, PHIL. DAILY INQUIRER.NET, June 18, 2020, available at <https://business.inquirer.net/300249/adb-revises-forecast-for-ph-economy-3-8-percent-drop-in-gdp#ixzz6PufK4Rzg>

⁷⁴ Dharel Placido, *Duterte says plan to abolish CHR just a joke*, ABS-CBN NEWS, Aug. 2, 2017, available at <https://news.abs-cbn.com/news/08/02/17/duterte-says-plan-to-abolish-chr-just-a-joke>

⁷⁵ CONST. art. XIII, § 17 (4).

⁷⁶ IV RECORD CONST. COMM'N 11 (Aug. 28, 1986).

⁷⁷ I RECORD CONST. COMM'N 561 (July 15, 1986).

⁷⁸ *Commission on Human Rights Employees' Ass'n v. Comm'n on Human Rights*, 528 Phil. 658 (2006).

⁷⁹ *Bengzon v. Drilon* [hereinafter "Bengzon"], 284 Phil. 245 (1992).

⁸⁰ *Commission on Human Rights Employees' Ass'n v. Comm'n on Human Rights*, 486 Phil. 509 (2004); *Bengzon*, 284 Phil. 245.

⁸¹ *Bengzon*, 284 Phil. 245.

⁸² RG Cruz, *How CHR practically lost its budget*, ABS-CBN NEWS, Sept. 13, 2017, at <https://news.abs-cbn.com/focus/09/13/17/how-chr-practically-lost-its-budget>

Budget and Management and submitted to the House of Representatives.⁸³ In turn, the House of Representatives and the Senate conduct budget deliberations and then submit a common version of the bill to the President for approval.⁸⁴

At the height of the CHR's conflict with the President, the administration's allies in Congress threatened to shut down the institution by lowering its budget to PHP 1,000.00.⁸⁵ While this plan to defund the CHR fell through,⁸⁶ it exposed a major flaw in the CHR's structure: its lack of fiscal autonomy. This incident showed how easily susceptible the CHR is to external influence and fiscal control.⁸⁷

The Paris Principles states that an NHRI needs to have an infrastructure with adequate funding in order to be free from influence and financial control.⁸⁸ Furthermore, the GANHRI emphasizes that, while the State may regulate funding for an NHRI, this may not operate to compromise the latter's ability to perform its role independently.⁸⁹ In the same manner, while government representatives are welcome to advise an NHRI on matters of policy, they should not form part of its decision-making process.⁹⁰

There have been efforts to give the CHR financial independence. For instance, the Consultative Committee, a body formed by the President to recommend amendments to the 1987 Constitution,⁹¹ adopted recommendations to grant fiscal autonomy to the CHR.⁹² In addition, Senator

⁸³ DBM, Primer on Government Budgeting (June 7, 2017), *available at* <https://www.dbm.gov.ph/wp-content/uploads/2012/03/PGB-B2.pdf>

⁸⁴ DB, *President Duterte signs P4.1 trillion 2020 national budget*, DBM WEBSITE, Jan. 6, 2020, *at* <https://www.dbm.gov.ph/index.php/secretary-s-corner/press-releases/list-of-press-releases/1589-president-duterte-signs-p4-1-trillion-2020-national-budget>

⁸⁵ Bea Cupin, *CHR thanks House for 'open minds, hearts' after budget restored*, RAPPLER, Sept. 20, 2017, *at* <https://www.rappler.com/nation/182837-gascon-reaction-chr-budget-2018-restoration-house>

⁸⁶ *Id.*

⁸⁷ Nir Lama, *Philippines: Standing ground in the face of government attacks*, in 2018 ANNI REPORT 70, 78 (Heather Collister & Sutawan Chaprasert eds., 2018).

⁸⁸ Paris Principles, Composition and Guarantees of Independence and Pluralism, item 2.

⁸⁹ GANHRI, *supra* note 28, at 44, § 2.7, ¶ 1.

⁹⁰ *Id.* at 24, § 1.9, ¶ 3.

⁹¹ Exec. Order. 10 (2016), This creates a Consultative Committee to Review the 1987 Constitution.

⁹² CONSULTATIVE COMMITTEE TO REVIEW THE 1987 CONSTITUTION, POWER TO THE PEOPLE BAYANIHAN FEDERALISM, POWER TO THE REGIONS (2018), *available at* <https://www.philstar.com/headlines/2018/07/09/1832024/full-text-consultative-committees-draft-federal-constitution>

Leila de Lima, a former Chairperson of the CHR, filed Senate Bill No. 183 (“S.B. 183”) which seeks to grant the same privilege to the CHR.⁹³

ii. Functional Autonomy

The economic impact of the pandemic is estimated to last for years.⁹⁴ It is therefore important to ensure the continuity of the CHR’s projects in the years to come. However, ensuring continuity comes as a challenge considering that the leaders of the CHR have been the target of threats over the past few years.

At the height of the conflict between the CHR and the President, CHR Chairperson Jose Luis Martin Gascon was subjected to verbal tirades by the President.⁹⁵ This culminated in demands for Gascon’s resignation and threats of his impeachment.⁹⁶ Although these efforts never materialized,⁹⁷ they revealed problems with the interpretation of the CHR’s functional autonomy.⁹⁸ Concerns have been raised about the lack of explicit assurances in the law that the CHR’s officers will be shielded from legal liability for actions that they undertake in good faith.⁹⁹

The CHR is composed of a Chairperson and four members.¹⁰⁰ Executive Order No. 163 specifies that these officers will be appointed by the

⁹³ S. No. 183, 18th Cong., 1st Sess., § 5 (2009). Commission on Human Rights Act of 2019.

⁹⁴ Jill Ward, *Economic Effects of Pandemics Last Decades, Research Shows*, BLOOMBERG, Mar. 27, 2020, at <https://www.bloomberg.com/news/articles/2020-03-27/economic-effects-of-pandemics-last-decades-research-shows>

⁹⁵ Reuters, ‘Gay or paedophile?’ Philippines Duterte attacks rights chief over drug war criticism, THE GUARDIAN, Sept. 17, 2017, available at <https://www.theguardian.com/world/2017/sep/17/gay-or-paedophile-philippines-duterte-attacks-rights-chief-over-drug-war-criticism>

⁹⁶ Jodesz Gavilan, *Want bigger budget, Alvarez says Gascon should resign*, RAPPLER, Sept. 13, 2017, at <https://www.rappler.com/newsbreak/inside-track/181966-chr-bigger-2018-budget-chito-gascon-resign-pantaleon-alvarez>; Interaksyon, *Speaker’s Threat: ‘We will wait for impeachment’ – CHR’s Gascon*, INTERAKSYON, Aug. 19, 2017, at <https://www.interaksyon.com/breaking-news/2017/08/19/91849/speakers-threat-we-will-wait-for-impeachment-chrs-gascon>; Audrey Morallo, *CHR chair, commissioners ‘serve at president’s pleasure’, Palace claims*, PHIL. STAR, July 27, 2017, available at <https://www.philstar.com/headlines/2017/07/27/1722064/chr-chair-commissioners-serve-presidents-pleasure-palace-claims>

⁹⁷ Jaymee Gamil, *CHR chief won’t quit*, INQUIRER.NET, July 29, 2017, available at <https://newsinfo.inquirer.net/918541/chr-chief-wont-quit>

⁹⁸ GANHRI, *supra* note 28, at 37, § 2.3, ¶ 1.

⁹⁹ GANHRI Sub-Committee on Accreditation, *supra* note 24, at 33.

¹⁰⁰ CONST. art. XIII, § 17(2); Exec. Order No. 163 (1987), § 2. This creates the Commission on Human Rights.

President for a term of seven years without reappointment.¹⁰¹ Notably, the law is silent on the aspect of removal. However, as government officials, the Chairperson and the Commissioners are governed by the Code of Conduct and Ethical Standards for Public Officials and Employees.¹⁰² They may be disciplined, suspended, or removed from office for cause by the Office of the Ombudsman.¹⁰³ Noteworthy in this respect is the case of *Quisumbing v. Rosales*, which involved the issuance of a Show Cause Order by the CHR against one of its Commissioners for the alleged violation of Civil Service Laws and of Republic Act No. 6713.¹⁰⁴ The CHR endorsed its Order to the Office of the Ombudsman and to the Office of the President for further action.¹⁰⁵ The petitioner then protested that the CHR had no jurisdiction to make such an endorsement.¹⁰⁶ While the Court did not directly rule on the Ombudsman's jurisdiction, it considered the petition moot for having been referred to the Office of the Ombudsman for appropriate prosecutorial action.¹⁰⁷

The GANHRI pronounces that NHRI officers must be protected from liability for actions that they commit in good faith.¹⁰⁸ In addition, it recommends an independent and objective dismissal process for members of NHRIs.¹⁰⁹ The discussion above demonstrates that the CHR effectively enjoys a semblance of functional immunity.¹¹⁰ Nonetheless, removing the silence of the law on functional autonomy may eliminate doubts about the protection granted to the CHR's officers. S.B. 183 reflects this proposal by explicitly enumerating grounds for the removal of the CHR Chairperson and Commissioners.¹¹¹ The proposed legislation also explicitly defines the roles of the Office of the Ombudsman and the Sandiganbayan in the filing of cases against the CHR's officers.¹¹²

¹⁰¹ Exec. Order No. 163 (1987), § 2.

¹⁰² GANHRI Sub-Committee on Accreditation, *supra* note 24, at 32.

¹⁰³ CONST. art. XI, § 12; Rep. Act No. 6770 (1989), §§ 15(1) & 21; Senate of the Philippines, *De Lima to Alvarez: It's impossible to impeach CHR Chair*, Senate of the Philippines 18th Congress, SENATE OF THE PHILIPPINES WEBSITE, Aug. 10, 2017, at https://www.senate.gov.ph/press_release/2017/0810_delima4.asp

¹⁰⁴ *Quisumbing v. Rosales*, 755 Phil. 892 (2015).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Global Alliance of National Human Rights Institutions, General Observations of the Sub-committee on Accreditation, § 2.3 at ¶ 1 Feb. 21, 2018, *available at*

¹⁰⁹ GANHRI, *supra* note 28, at 33, § 2.1, ¶ 1.

¹¹⁰ Lama, *supra* note 87, at 76.

¹¹¹ S. No. 183, § 8.

¹¹² § 8.

Notably, even if the CHR's officers are not abruptly removed during the pandemic, their terms are set to expire in less than two years.¹¹³ With all of its officers awaiting appointment by the next President, the CHR runs the risk of having its entire direction changed and its independence compromised.¹¹⁴ It bears noting that the current Chairman himself has been criticized for being a member of the opposition prior to his appointment to the CHR.¹¹⁵

The GANHRI states that NHRI must follow a merit-based process of selection that ensures the independence of its senior leadership.¹¹⁶ One way to operationalize this is by adding layers to the appointment system, similar to those added in the system of selection of the Ombudsman and his Deputies.¹¹⁷ The constitutional deliberations on the CHR show that the drafters considered imposing an appointment process that goes through the Judicial and Bar Council (JBC).¹¹⁸ The JBC was designed to eliminate the problem of influence-peddling in appointments.¹¹⁹ However, this proposal did not push through. Another solution raised is the imposition of staggered terms for the CHR Chairperson and the Commissioners.¹²⁰ As in the case of the members of the Commission on Elections, this would prevent the President from appointing the CHR's senior leaders all at once.¹²¹ This could

¹¹³ Joel Locsin, *PNoy fills up last CHR commissioner vacancy; Palace announces more appointments*, GMA NEWS ONLINE, July 5, 2015, at <https://www.gmanetwork.com/news/news/nation/516106/pnoy-fills-up-last-chr-commissioner-vacancy-palace-announces-more-appointments/story>. See also Asia Pacific Forum of National Human Rights Institutions, *Lawyer Jose Luis Martin Gascon has been appointed as the new Chairperson of the Commission on Human Rights, replacing Loretta Ann Rosales*, ASIA PACIFIC FORUM, Aug. 5, 2015, at <https://www.asiapacificforum.net/news/philippines-new-members-appointed-commission-human-rights>

¹¹⁴ Lama, *supra* note 87, at 76-77.

¹¹⁵ Emma Palmer, *The effectiveness of National Human Rights Institutions' relationships with civil society: the Commission on Human Rights in the Philippines*, AUSTRL. J. HUMAN RTS. 1 (2019), citing Karapatan, 2016 KARAPATAN YEAR-END REPORT 2 (2016), available at <https://www.karapatan.org/files/2016%20Karapatan%20YEReport.pdf>

¹¹⁶ GANHRI, *supra* note 28, at 22, § 1.8, ¶ 1.

¹¹⁷ CONST. art. XI, § 9.

¹¹⁸ III RECORD CONST. COMM'N 743 (Aug. 27, 1986).

¹¹⁹ Chavez v. Jud. & Bar Council, 691 Phil. 173 (2012).

¹²⁰ CHR, *Position paper on strengthening the Commission on Human Rights as a National Human Rights Institution under the Constitution*, CHR WEBSITE, Apr. 2, 2018, ¶ 26, at <http://chr.gov.ph/strengthening-the-commission-on-human-rights-as-a-national-human-rights-institution-under-the-constitution>

¹²¹ Funa v. Comm'n on Audit, 686 Phil. 571 (2012); Republic v. Imperial, 96 Phil. 770 (1955).

help ensure continuity in the CHR's programs.¹²² Both the proposed draft of the Consultative Committee and S.B. 183 reflect this proposal.¹²³

2. *Incomplete Mandate*

i. Economic, Social, and Cultural (“ESC”) Rights

The pandemic has brought uncertainty to the populace, with the SWS reporting the worst trend of decline in the quality of life of Filipinos.¹²⁴ This perception of decline is exacerbated by delays and lapses in the implementation of the Social Amelioration Program, a government program that is meant to assist families during the quarantine.¹²⁵ In connection with this, the CHR has reported receiving numerous complaints on the distribution of amelioration.¹²⁶

Indeed, investigations by the CHR could help resolve allegations of ESC rights violations by the government. Nevertheless, the CHR is not armed with an explicit mandate to investigate violations of ESC rights.¹²⁷ The Constitutional Commission purposely limited the CHR's investigative power to violations of “civil and political rights.”¹²⁸ This was affirmed in *Simon v. CHR*, where the Court declared that the CHR should focus on severe cases of human rights violations.¹²⁹ In its decision, the Court prevented the execution of a Demolition Order by the CHR, since the Order was not meant to curb violations of civil and political rights.¹³⁰

¹²² CHR, *supra* note 120, ¶ 26.

¹²³ Consultative Committee to Review the 1987 Constitution, *supra* note 92; S. No. 183, § 7.

¹²⁴ Cathrine Gonzales, *SWS survey: 83% of Filipinos report decline in quality of life*, INQUIRER.NET, June 18, 2020, available at <https://newsinfo.inquirer.net/1293557/sws-survey83-of-filipinos-report-decline-in-quality-of-life>

¹²⁵ Franco Luna, *House hearing on SAP lapses highlights challenges in aid distribution*, PHIL. STAR, June 22, 2020, available at <https://www.philstar.com/headlines/2020/06/22/2022729/house-hearing-sap-lapses-highlights-challenges-aid-distribution>

¹²⁶ Adrian Ayalin, *CHR logs almost 500 complaints vs. quarantine rules, crisis response implementation*, ABS-CBN NEWS, May 21, 2020, at <https://news.abs-cbn.com/news/05/21/20/chr-logs-almost-500-complaints-vs-quarantine-rules-crisis-response-implementation>

¹²⁷ GANHRI Sub-Committee on Accreditation, *supra* note 24, at 29; Lama, *supra* note 87, at 70.

¹²⁸ CONST. art. XI, § 18 (1); III RECORD CONST. COMM'N 739 (Aug. 27, 1986).

¹²⁹ *Id.*

¹³⁰ *Simon v. Comm'n on Human Rights*, 299 Phil. 124 (1994).

The Paris Principles requires that an NHRI be vested with competence to protect and promote human rights.¹³¹ It further requires that an NHRI be given a broad mandate along with a specific enumeration of powers.¹³² The General Observations also explains that an NHRI's mandate should be interpreted broadly, liberally, and purposively in light of a State's commitment to domestic, regional, and international instruments.¹³³ In line with this, it may be recalled that the Philippines is a state party to ICESCR.¹³⁴

There have been efforts to remedy the CHR's inconsistency with the requirements of the Paris Principles. For instance, the CHR has equipped itself with the power to investigate violations of ESC rights in its internal guidelines and procedures.¹³⁵ The Consultative Committee seeks a longer-term solution by adopting a proposal to explicitly include ESC rights in the CHR's investigatory function.¹³⁶ S.B. 183 also seeks to broaden the CHR's mandate by giving it the power to investigate all forms of human rights violations without distinction.¹³⁷

ii. Legislation

Aside from the lack of power to investigate violations of ESC rights, there are other aspects of the CHR's mandate which need improvement. For instance, the CHR has been criticized for lacking a broad function to advise Congress on legislation.¹³⁸ The CHR's active involvement in congressional hearings is relevant, especially considering the passage of controversial legislations during the pandemic.¹³⁹

¹³¹ Paris Principles, Competence and Responsibilities, item 1.

¹³² Item 2.

¹³³ GANHRI, *supra* note 28, at 7, § 1.2, ¶ 3.

¹³⁴ Office of the High Commissioner for Human Rights, *Ratification of 18 International Human Rights Treaties*, UNITED NATIONS HUMAN RIGHTS WEBSITE, at <https://indicators.ohchr.org> (last accessed June 2020).

¹³⁵ CHR, *supra* note 120, ¶ 21; GANHRI Sub-Committee on Accreditation, *supra* note 24, at 29; Lama, *supra* note 87, 70; CHR, Guidelines and Procedures in the Investigation and Monitoring of Human Rights Violations and Abuses, and the Provision of CHR Assistance [hereinafter "CHR Guidelines"], Rule 11, § 15 (Apr. 2012).

¹³⁶ CHR, *supra* note 120, ¶ 23. Consultative Committee to Review the 1987 Constitution, *supra* note 92.

¹³⁷ S. No. 183, § 12(a).

¹³⁸ Linos & Pegram, *supra* note 46, at 37.

¹³⁹ CHR, *Statement of CHR spokesperson, Atty. Jacqueline Ann de Guia, on the proposal to declare a national emergency and grant special powers to the President to combat COVID-19*, CHR WEBSITE, June 4, 2020, at <http://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-proposals-to-declare-a-national-emergency-and-grant-special-powers-to-the-president-to-combat-covid-19>; CHR, *Statement of CHR spokesperson, Atty. Jacqueline Ann de*

The CHR may in fact propose effective measures to Congress.¹⁴⁰ However, this recommendatory power is limited to measures concerning the promotion of human rights and the compensation for human rights victims.¹⁴¹ Notably, the CHR expressed reservations against the Anti-Terrorism Bill during the congressional deliberations, to no avail.¹⁴² Giving the CHR an explicit mandate to recommend measures—not only promoting human rights, but protecting it, as well as providing remedies to human rights victims¹⁴³—could add weight to the CHR’s input during legislative deliberations. Both the draft Constitution of the Consultative Committee and S.B. 183 contain provisions to this effect.¹⁴⁴

iii. Reports on Treaty Obligations

Due to the increase in the number of violations during the pandemic, international human rights courts are expected to make governments accountable in the aftermath of the pandemic.¹⁴⁵ Therefore, it is important for the CHR to not only monitor the government’s compliance with treaty obligations, but also send corresponding reports to treaty bodies.

Indeed, the CHR has been communicating with the international community during the pandemic.¹⁴⁶ However, the law is silent on the CHR’s duty to report the State’s compliance with treaty obligations.¹⁴⁷ The Paris Principles requires NHRIs to contribute to state reports to U.N. bodies.¹⁴⁸ S.B. 183 adopted a proposal to assign the CHR with the duty to prepare periodic reports on the country’s compliance with its treaty obligations.¹⁴⁹

Guia, on the proposed anti-terrorism bill, CHR WEBSITE, June 2, 2020, at <https://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-proposed-anti-terrorism-bill>

¹⁴⁰ CONST. art. XIII, § 18(6); Exec. Order No. 163 (1987), § 3.

¹⁴¹ CONST. art. XIII, § 18(6); Exec. Order No. 163 (1987), § 3.

¹⁴² CHR, *Statement of the Commission on Human Rights on the proposed Anti-Terrorism Act of 2020*, CHR WEBSITE, June 5, 2020, at <http://chr.gov.ph/statement-of-the-commission-on-human-rights-on-the-proposed-anti-terrorism-act-of-2020>; CHR, *supra* note 5.

¹⁴³ CHR, *supra* note 120, ¶ 35(g).

¹⁴⁴ Consultative Committee to Review the 1987 Constitution, *supra* note 92; S. No. 183, § 12(f).

¹⁴⁵ Audrey Lebreton, *COVID-19 pandemic and derogation to human rights*, J.L. & BIOSCIENCES (2020), at <https://academic.oup.com/jlb/article/7/1/1/saa015/5828398>

¹⁴⁶ Office of the High Commissioner for Human Rights, *NHRI responses to the COVID-19 pandemic*, UNITED NATIONS HUMAN RIGHTS WEBSITE, at <https://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIS-and-Covid-19.aspx> (last visited June 2020).

¹⁴⁷ CONST. art. XIII, § 18; Exec. Order No. 163 (1987), § 3.

¹⁴⁸ Paris Principles, Competence and Responsibilities, item 3(d).

¹⁴⁹ CHR, *supra* note 120, ¶ 35 (h); S. No. 183, § 12(g).

iv. Annual Reports

The law is also silent on the CHR's duty to produce annual reports.¹⁵⁰ Critics see this limitation as a vital constraint in the CHR's capacity to promote human rights.¹⁵¹ Although the CHR has been publishing its advisories and statements during the pandemic,¹⁵² it was criticized in the past for failing to make all of its annual reports available for public viewing.¹⁵³ These reportorial duties are particularly important since NHRIs have been called upon to be more vigilant of State responses to the pandemic.¹⁵⁴

The Paris Principles requires NHRIs to prepare reports on human rights situations and publicize efforts to combat all forms of discrimination with the use of all press organs.¹⁵⁵ The GANHRI also highlights the importance of timely publishing annual, special, and thematic reports to raise public awareness about human rights.¹⁵⁶ S.B. 183 reflects these requirements by assigning specific monitoring powers to the CHR.¹⁵⁷

3. Inadequate Investigatory Power

At one point, the Philippines reportedly had the longest lockdown in the world.¹⁵⁸ This kind of restriction in the freedom of movement is bound to have negative effects on the CHR's investigatory functions.

¹⁵⁰ CONST. art. XIII, § 18; Exec. Order No. 163 (1987), § 3.

¹⁵¹ Linos & Pegram, *supra* note 46, at 37.

¹⁵² See CHR, *supra* note 67; CHR, *Statement of CHR spokesperson, Atty. Jacqueline Ann de Guia, on the case and desist order issued by the National Telecommunications Commission to ABS-CBN*, CHR WEBSITE, May 5, 2020, at <http://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-cease-and-desist-order-issued-by-the-national-telecommunications-commission-to-abs-cbn>; CHR, *Statement of CHR spokesperson, Atty. Jacqueline Ann de Guia, on the order to "shoot" alleged agitators and violators of enhanced quarantine*, CHR WEBSITE, Apr. 2, 2020, at <http://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-order-to-shoot-alleged-agitators-and-violators-of-enhanced-quarantine>; CHR, *Pahayag ni CHR spokesperson, Atty. Jacqueline Ann de Guia, sa mga paglabag ng curfew at quarantine sa Pandacaqui, Mexico, Pampanga*, CHR WEBSITE, Apr. 8, 2020, at <http://chr.gov.ph/pahayag-ni-chr-spokesperson-atty-jacqueline-ann-de-guia-sa-mga-paglabag-ng-curfew-at-quarantine-sa-pandacaqui-mexico-pampanga>

¹⁵³ Lama, *supra* note 87, at 76.

¹⁵⁴ Office of the High Commissioner for Human Rights, *Aide memoire: NHRIs, Human Rights and COVID-19*, at ¶ 2, (Apr. 21, 2020), *available at* <https://www.ohchr.org/Documents/Press/HCCOVID19lettertoNHRIs.pdf>

¹⁵⁵ Paris Principles, *Competence and Responsibilities*, items 3(a)(ii), 3(d), 3(g).

¹⁵⁶ GANHRI, *supra* note 28, at 30, § 1.11, ¶ 1.

¹⁵⁷ Senate Bill 183, §§ 33 & 38 (2019).

¹⁵⁸ Jason Castaneda, *Why Duterte won't lift world's longest lockdown*, ASIA TIMES, May 15, 2020, at <https://asiatimes.com/2020/05/why-duterte-wont-lift-worlds-longest-lockdown>

The CHR has the mandate to investigate civil and political rights.¹⁵⁹ However, it has faced criticism for its alleged failure to investigate the majority of human rights abuses.¹⁶⁰ One factor for this could be the CHR's inadequate resources. The CHR has a limited number of staff members which renders it unable to investigate all violations.¹⁶¹ With respect to the ongoing pandemic, the restrictions on the freedom of movement make it difficult for NHRIs like the CHR to conduct its investigations.¹⁶² In addition to this, the imposition of strict quarantine measures limits NHRIs' access to information and resources.¹⁶³

The current situation forces the CHR to rely on other agencies for its investigations. The CHR has the license to request assistance from other agencies in the performance of its duties.¹⁶⁴ To illustrate, the CHR relies on the Philippine National Police (PNP) for fact-finding and case-building in cases of extrajudicial killings.¹⁶⁵ Extrajudicial killings have inspired widespread criticism since the current administration took office.¹⁶⁶ Unfortunately, these alleged executions continue amidst the pandemic;¹⁶⁷ and as such, the CHR continues to conduct investigations.¹⁶⁸ However, the CHR is bound to face the same issues it encountered before the health crisis. To begin with, the

¹⁵⁹ CONST. art. XI, § 18(1); Exec. Order No. 163 (1987), § 3.

¹⁶⁰ Human Rights Watch, *Bad Blood: Militia Abuses in Mindanao, the Philippines*, HUMAN RIGHTS WATCH WEBSITE, Apr. 1, 1992, at <https://www.hrw.org/report/1992/04/01/bad-blood-militia-abuses-mindanao>

¹⁶¹ Dona Pazzibugan, *Choosing its battles, CHR is silently probing extra-judicial killings*, INQUIRER.NET, Dec. 19, 2016, available at <https://newsinfo.inquirer.net/852061/choosing-its-battles-chr-is-silently-probing-extra-judicial-killings#ixzz5wL9xIHrj>

¹⁶² Asia Pacific Forum, *supra* note 30, ¶ 1.

¹⁶³ *Id.* ¶ 11.

¹⁶⁴ CONST. art. XI, § 18(1); Exec. Order No. 163 (1987), § 3.

¹⁶⁵ Cathrine Gonzales, *PNP: We're not obligated to share drug operations data with CHR*, INQUIRER.NET, Jan. 21, 2019, available at <https://newsinfo.inquirer.net/1075480/pnp-were-not-obligated-to-share-drug-operations-data-with-chr#ixzz5vvh61Ew1>

¹⁶⁶ Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Philippines, at ¶ 85, U.N. Doc. A/HRC/44/22 (June 4, 2020).

¹⁶⁷ Rambo Talabong, *QC cop faces criminal probe for killing 'mentally challenged' lockdown violator*, RAPPLER, Apr. 24, 2020, at <https://www.rappler.com/nation/258708-quezon-city-cop-faces-criminal-probe-killing-mentally-challenged-coronavirus-lockdown-violator>; Ted Alcuitas, *Philippines: Killings Continue amid COVID-19 Pandemic*, PHILIPPINE CANADIAN NEWS, Mar. 22, 2020, at <https://philippinecanadiannews.com/canada/philippines-killings-continue-amid-covid-19-pandemic>

¹⁶⁸ CHR, *Statement of CHR spokesperson, Atty. Jacqueline Ann de Guia, on the incident involving a cop shooting an alleged lockdown violator in Barangay Pasong Putik, Quezon City*, CHR WEBSITE, Apr. 23, 2020, at ¶ 5, at <http://chr.gov.ph/statement-of-chr-spokesperson-atty-jacqueline-ann-de-guia-on-the-incident-involving-a-cop-shooting-an-alleged-lockdown-violator-in-barangay-pasong-putik-quezon-city>

PNP has been recalcitrant in releasing its records on these cases.¹⁶⁹ More importantly, the President himself has discouraged the agency from cooperating with the CHR.¹⁷⁰

The Paris Principles states that an NHRI must have a framework that allows it to obtain information and documents for assessing situations within its competence.¹⁷¹ The GANHRI goes further by stating that NHRIs must have the unimpeded ability to inspect and examine documents even without prior written notice.¹⁷² A remedy that the CHR has threatened to use is its power to issue subpoenas to obtain police records.¹⁷³ Under its guidelines, the CHR has the power to issue subpoenas to aid it in its investigations.¹⁷⁴ Failure to obey these subpoenas could merit indirect contempt.¹⁷⁵ However, this power has not been sufficiently utilized by the CHR. For example, it took the issuance of an Order by the Court for the PNP to release data on the cases of extrajudicial killings.¹⁷⁶ To remedy this problem, the CHR has asked for a constitutional grant of contempt powers for the violation of its lawful orders,¹⁷⁷ as well as the power to issue directives to government agencies.¹⁷⁸ S.B. 183 contains provisions consistent with these and seeks to grant the CHR not only the power to cite for contempt for disobedience, but also the power to issue subpoenas.¹⁷⁹

Restrictive quarantine measures during the pandemic also make it difficult for NHRIs to communicate with other government agencies.¹⁸⁰ This is bound to affect the CHR, since aside from relying on the PNP for investigations, it relies on the Department of Justice (DOJ) for the filing of cases.¹⁸¹ Notably, the CHR does not have the power to prosecute cases. The

¹⁶⁹ Gonzales, *supra* note 165.

¹⁷⁰ Alexis Romero, *Duterte: Troops, cops need clearance to appear before CHR*, PHIL. STAR, July 25, 2017, available at <https://www.philstar.com/headlines/2017/07/25/1721376/duterte-troops-cops-need-clearance-appear-chr#ZDrdI5EbkOdCrzER.99>

¹⁷¹ Paris Principles, Methods of Operation, item (b).

¹⁷² GANHRI, *supra* note 28, at 49, § 2.9, ¶ 6.

¹⁷³ Philstar, *CHR may subpoena police files on drug killings*, PHIL. STAR, Sept. 9, 2017, available at <https://www.philstar.com/headlines/2017/09/09/1737576/chr-may-subpoena-police-files-drugkillings#jff8hCchIpIcGX7bJ.99>

¹⁷⁴ CHR Guidelines, Rule 4, §§ 11-12.

¹⁷⁵ Rule 7, § 9; Rule 15, § 2(d).

¹⁷⁶ *Almora v. Dela Rosa*, G.R. No. 234539, Apr. 17, 2019.

¹⁷⁷ CHR, *supra* note 120, items 11-12.

¹⁷⁸ *Id.*

¹⁷⁹ CHR Guidelines, §§ 12(b) & 14(c)(e)(k).

¹⁸⁰ Asia Pacific Forum, *supra* note 30, ¶ 8.

¹⁸¹ Virgil Lopez, *Aguirre blasts CHR chair for comparing number of drug killings to Martial Law deaths*, GMA NEWS ONLINE, Dec. 6, 2016, at <https://www.gmanetwork.com/news/>

Court has ruled that the CHR's power is limited to conducting investigations.¹⁸² Unlike quasi-judicial bodies, it cannot try and resolve the merits of a case, and at most, it can only endorse action to the appropriate agency.¹⁸³ Interestingly, the Paris Principles does not require NHRIs to have quasi-judicial functions.¹⁸⁴ Even the current CHR Chairperson has not recommended giving the CHR prosecutorial powers, stating that this would be equivalent to giving the CHR executive functions which may affect its role as a watchdog that should be focused on monitoring State violations.¹⁸⁵ At most, he has floated the possibility of assigning a special prosecutor for human rights violations, similar to the special prosecutors assigned to the Office of the Ombudsman.¹⁸⁶ A more plausible solution, therefore, is for the CHR to strengthen its cooperation with other government bodies. The Paris Principles directs NHRIs to maintain consultation with other government institutions for the protection and promotion of human rights.¹⁸⁷ Intriguingly, the DOJ is bound by a Memorandum of Agreement which it signed with the CHR, whereby it committed itself to cooperate with the CHR in expediting the filing of human rights cases.¹⁸⁸ However, just like the PNP, the DOJ has been critical of the CHR.¹⁸⁹

Another major challenge in the CHR's investigations is the lack of witnesses. Witnesses have failed to show up in CHR investigations because they lacked protection and monetary support.¹⁹⁰ With the spread of COVID-19 and with its financial repercussions, witnesses are bound to become even more vulnerable. The GANHRI demands that witnesses be protected from retaliation for providing evidence in relation to complaints.¹⁹¹ Consistent with this, the CHR does have the power to provide immunity from prosecution in aid of its investigations.¹⁹² In fact, it has its own witness protection

news/nation/591457/aguirre-blasts-chr-chair-for-comparing-number-of-drug-killings-to-martial-law-deaths/story

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Paris Principles, Competence and Responsibilities.

¹⁸⁵ ALG, *Gascon: CHR to lose ability as watchdog if given power to prosecute*, GMA NEWS ONLINE, Sept. 30, 2017, <https://www.gmanetwork.com/news/news/nation/627816/gascon-chr-to-lose-ability-as-watchdog-if-given-power-to-prosecute/story>

¹⁸⁶ *Id.*

¹⁸⁷ Paris Principles, Methods of Operation, items (f)-(g).

¹⁸⁸ Mem. of Agreement between the Commission of Human Rights and the Department of Justice, at § 9 (Apr. 16, 2012).

¹⁸⁹ Lopez, *supra* note 181.

¹⁹⁰ U.S. DEPARTMENT OF STATE, PHILIPPINES 2018 HUMAN RIGHTS REPORT 11 (2018), available at <https://www.justice.gov/eoir/page/file/1145101/download>

¹⁹¹ GANHRI, *supra* note 28, at 49, § 2.9, ¶ 2.

¹⁹² CONST. art. XI, § 18(1); Exec. Order No. 163 (1987), § 3.

program.¹⁹³ Furthermore, its Memorandum of Agreement with the DOJ supposedly facilitates its access to the DOJ's witness protection program.¹⁹⁴ Nonetheless, both systems have been criticized for the inadequate funding that they receive from the government.¹⁹⁵ Victim complainants may also be protected through the CHR's power to grant preventive measures and legal aid services.¹⁹⁶ However, the Court decided that the CHR has no jurisdiction to directly issue an injunction or a restraining order.¹⁹⁷ Instead, the CHR has to seek judicial or extrajudicial remedies from the proper courts on behalf of the victims.¹⁹⁸ S.B. 183 tries to remedy this by expanding the extent of legal and preventive measures available to the CHR.¹⁹⁹ It also seeks the creation of a broadly defined Auxiliary Witness Protection Service that will ensure adequate assistance to witnesses and their families.²⁰⁰

V. CONCLUSION

The pandemic shines light anew on the CHR, an institution that has been under extraordinary scrutiny since 2016. However, the challenges that the CHR is facing do not uncover novel issues within the institution. Instead, it exacerbates issues that have been present since the CHR's creation. The recurrence of these problems reveals that it is high time to rethink how the CHR operates. For example, the pandemic presents an opportunity to lobby more forcefully for the passage of a CHR Charter that will fix the cracks in the CHR framework—one that will address the issues of its lack of independence, incomplete mandate, and inadequate investigatory powers. More importantly, the pandemic should also shed light on the root causes of CHR's problems.

First, the Paris Principles has to be revisited. That the CHR was given an A-accreditation by the GANHRI is a glaring testament of how the Paris Principles is far from perfect as a set of standards. While the CHR has done a

¹⁹³ CHR Guidelines, Rule 19, § 1x.

¹⁹⁴ Mem. of Agreement between the Commission of Human Rights and the Department of Justice, at § 10, Apr. 16, 2012.

¹⁹⁵ U.S. Department of State, *supra* note 190, at 11; U.S. Department of State, *Philippines: 2009 Country Reports on Human Rights Practices*, U.S. DEPARTMENT OF STATE WEBSITE, Mar. 11, 2010, at <https://2009-2017.state.gov/j/drl/rls/hrrpt/2009/eap/136006.htm>

¹⁹⁶ CONST. art. XI, § 18(1); Exec. Order No. 163 (1987), § 3.

¹⁹⁷ *Export Processing Zone Authority v. Comm'n on Human Rights*, 284 Phil. 236 (1992).

¹⁹⁸ *Id.*

¹⁹⁹ S. No. 183, § 15.

²⁰⁰ § 28.

tremendous job despite the challenges thrown its way, the discussions in this paper showed that it is far from infallible. Indeed, the Paris Principles serves as a useful blueprint for States to follow in setting-up their NHRIs. However, in an attempt to give a one-size-fits-all standard to NHRIs all over the world, it ends up accommodating too many characteristics to the point of failing to provide concrete guidelines for NHRIs to follow. Another factor that hurts the Paris Principles is the fact that there is a unique human rights terrain for every country. This was shown in the CHR's example where a tug-of-war with the President made operations extremely difficult.

Second, the CHR's woes that come because of its antagonistic relationship with the President reflect underlying issues on how the balance of power tilts within the Philippine government. It reveals a democratic system that is too protective of the Executive branch. It is ironic that an NHRI that was borne out of a country's desire to protect itself from the whims of a dictator is once again falling prey to a leader who exhibits the same authoritarian tendencies and propensity to violate human rights. It is also ironic that the Philippine CHR, once hailed for its novelty and progressiveness, is now criticized for its impracticality and obstinateness.

Lastly, as there is no deadline for this pandemic, it is vital for the CHR to withstand the storm that it brings. While there appears to be no sense of urgency from Congress to enact a CHR Charter, the CHR has to take matters into its own hands by capitalizing on the tools available to it. The most promising of these is the cultivation of its relationship with civil society. By maximizing online platforms, exuding transparency, and fostering international cooperation, the CHR can boost awareness on human rights at a time when it is needed the most. We Filipinos have demonstrated many times before that, if we unite against oppression, our potential is limitless. This time is no different.