

## Chapter Four Human Rights in the Philippines: Restoration, Recognition and Institutionalization

著者	Gutierrez Ibarra M. III
権利	Copyrights 日本貿易振興機構 (ジェトロ) アジア 経済研究所 / Institute of Developing Economies, Japan External Trade Organization (IDE-JETRO) <a href="http://www.ide.go.jp">http://www.ide.go.jp</a>
journal or publication title	Law and Newly Restored Democracies: The Philippines Experience in Restoring Political Participation and Accountability
volume	13
page range	79-94
year	2002
URL	<a href="http://hdl.handle.net/2344/00015093">http://hdl.handle.net/2344/00015093</a>

## CHAPTER FOUR

# HUMAN RIGHTS IN THE PHILIPPINES: RESTORATION, RECOGNITION AND INSTITUTIONALIZATION

*Ibarra M. Gutierrez III*<sup>1</sup>

### Introduction

The *widespread* recognition of human rights by the international community is perhaps one of the most significant historical developments of the last century. The adoption of the United Nations General Assembly of the Universal Declaration of Human Rights (UDHR) on 10 December 1948, followed by the introduction and subsequent ratification of the International Covenant on Civil and Political Rights (CCPR)<sup>2</sup> and the International Covenant on Economic, Social and Cultural Rights (CESCR)<sup>3</sup>, were major steps towards achieving a broad, world-wide consensus on the fundamental freedoms and rights intrinsic to every human person.

But even in the face of these developments in the international arena, legal recognition, support, and, perhaps most importantly, enforcement, of human rights within the jurisdiction of individual states remained largely inadequate, particularly when measured against the standards and objectives of the UDHR and the two covenants. Many years after the adoption of these instruments, allegations of human rights violations committed in various States continued to be reported.<sup>4</sup>

---

<sup>1</sup> Assistant Professor, University of the Philippines College of Law, and Director, UP Institute of Human Rights

<sup>2</sup> Entered into force on 23 March 1976

<sup>3</sup> Entered into force on 3 January 1976

<sup>4</sup> See Report of the World Conference on Human Rights, Vienna, 14-25 June 1993

In the Philippines, during the presidency of Ferdinand E. Marcos, State-sanctioned violation of human rights was one of the most prominent issues raised against the government. It is alleged that some 70,000 people were arbitrarily thrown into jail, tortured, vanished without a trace ("disappeared"), or killed ("salvaged") in the fourteen years since President Marcos imposed military rule in 1972.<sup>5</sup>

The horrifying extent of the human rights abuses perpetrated during the Marcos regime was perhaps most clearly established when, in 1992, 10,000 alleged victims of human rights violations won a class action suit in a Hawaii court against the estate of the former president.<sup>6</sup> Alleging that during the course of his dictatorship President Marcos had directed and controlled torture, summary execution and disappearance in order to maintain himself in power and gain great wealth, the plaintiffs in this suit were awarded nearly \$2 billion in damages. This judgement was subsequently affirmed on appeal by the US 9<sup>th</sup> Circuit Federal Court.<sup>7</sup>

Given the deplorable human rights record of the Philippine government during the Marcos years, it is perhaps not surprising that after the ouster of Marcos in February 1986, the issue of human rights was one of the principal issues the new administration attempted to address. In fact, many of the significant legal reforms relating to human rights, particularly those enshrined in the "post-Marcos" Constitution, which was ratified in February 1987, were adopted during the immediate aftermath of the popular revolt that toppled Marcos or what is now popularly known as the "People Power" Revolution.

This chapter will discuss the various legal and institutional reforms relating to human rights which arose in response to and as a consequence of the experience under the Marcos regime and the popular uprising that ended that era.

---

<sup>5</sup> TASK FORCE DETAINEES OF THE PHILIPPINES (TFDP), VIOLATIONS IN DETAIL (2001)

<sup>6</sup> The suit was brought under the provisions of the US Alien Tort Claims Act which gives US Federal Courts jurisdiction over "any civil action by an alien for a tort committed in violation of the law of nations or a treaty of the United States." The class action suit alleged that former President Marcos was responsible for acts of torture, an international crime.

## **I. Recognition and Reform**

One of the earliest acts of the post-Marcos administration of President Corazon C. Aquino was to ratify two key international covenants on human rights – the CCPR, which the Philippines signed on 23 October 1986, and the Convention Against Torture (CAT), which the Philippines signed on 18 June 1986.<sup>8</sup> Although both instruments had been passed years earlier, with the CCPR having taken effect fully a decade before, the Marcos government, perhaps understandably, had ratified neither.

This commitment to human rights, at least insofar as the ratification of international covenants was concerned, would continue throughout President Aquino’s term, and even to succeeding administrations.<sup>9</sup> In fact, the Philippines is currently a signatory of virtually all major human rights covenants, with the notable exception of the Second Optional Protocol of the CCPR which calls for abolition capital punishment.<sup>10</sup>

But despite the indisputable significance of the Philippines’ ratification of these international human rights instruments, the most important legal development concerning human rights in the post-Marcos era would have to relate to the provisions of the 1987 Constitution on human rights.

Drafted by a Constitutional Commission composed of persons directly appointed by President Aquino, the 1987 Constitution contains numerous “innovations” intended to uphold and safeguard the human rights of individual citizens. From an Article which set forth a “Bill of Rights,”<sup>11</sup> as was contained in the previous Constitution, the 1987

---

<sup>7</sup> Hilao v. Estate of Marcos, 103 F. 3d 767 (9<sup>th</sup> Circuit 1996)

<sup>8</sup> Record of Ratifications, UN Commission on Human Rights

<sup>9</sup> The Philippines ratified the First Optional Protocol to the CCPR on 22 August 1989, the Convention on the Rights of the Child (CRC) on 21 August 1990, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 21 March 2001.

<sup>10</sup> Record of Ratifications, UN Commission on Human Rights

<sup>11</sup> CONST., ARTICLE III

Constitution went further by adding a completely new Article on “Social Justice and Human Rights.”<sup>12</sup>

While the Bill of Rights established constitutional protection for the human rights traditionally designated as “civil and political” in nature, such as the freedom of speech and the rights of the accused, the Article on Social Justice and Human Rights imposed upon the State the obligation to uphold, protect and promote rights traditionally deemed to be “economic, social and cultural” in nature.<sup>13</sup> Hence the Article discussed State obligations with respect to the rights of labor<sup>14</sup>, farmers and agrarian workers<sup>15</sup>, the urban poor<sup>16</sup>, women<sup>17</sup>, and other sectors.

But perhaps more significantly, the same Article created a new body, an independent office to investigate human rights violations – the Commission on Human Rights (CHR).<sup>18</sup>

## **II. Institutionalized Protection**

The creation of the CHR under the 1987 Constitution, an independent office tasked “to investigate all forms of human rights violations involving civil and political rights” was a direct response to the prior experience of massive human rights violations during the Marcos era. As Commissioner Sarmiento stated in his sponsorship speech during the deliberations of the Constitutional Commission –

My fellow Commissioners, the creation of a Human Rights Commission is a timely innovation in our Constitution. It has come at a time when the recognition of the need to protect and promote human rights is at its height. Fifteen years of abuses of

---

<sup>12</sup> CONST., ARTICLE XIII

<sup>13</sup> Many authors assail the delineation as artificial and emphasize instead the *interdependence* of all human rights. *See* A. EIDE AND A. ROSAS, ECONOMIC, SOCIAL AND CULTURAL RIGHTS 15 (1995)

<sup>14</sup> CONST., ARTICLE XIII, SEC. 3

<sup>15</sup> CONST., ARTICLE XIII, SECS. 4-6

<sup>16</sup> CONST., ARTICLE XIII, SECS. 9-10

<sup>17</sup> CONST., ARTICLE XIII, SEC. 14

<sup>18</sup> CONST., ARTICLE XIII, SECS. 17-19

fundamental rights and freedoms have awakened us to the need for a comprehensive program for the promotion, protection and respect for human rights. Such a program can best be formulated and undertaken by a specialized agency which is independent from the three main branches of government and equipped with the necessary powers and functions to carry out its programs.<sup>19</sup>

This sentiment was echoed in the remarks of Commissioner Nolleto who declared that –

Madam President, for many years during the Marcos regime, human rights were abundantly violated. Even in the present regime, we still have these violations. Commissioners Rodrigo, Rama and I were victims of the violations of human rights when, without previous charges, we were sent to jail. The concern for the protection of human rights is worldwide as indicated by Commissioner Rama. The provisions on the constitutional authority known as the Human Rights Commission underscore the need to strengthen a mechanism that will truly protect human rights and vindicate victims of violations thereof.<sup>20</sup>

To curtail the possibility of further abuses by the government – similar to what happened during the Marcos regime – investigation of human rights violations was made the principal task of the CHR. It was, however, not limited to this role. Under Section 18 of Article XIII, the CHR was further mandated to “provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection,”<sup>21</sup> to “[r]ecommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights,”<sup>22</sup> and to “[m]onitor the Philippine Government’s compliance with international treaty obligations on human rights.”<sup>23</sup> All of these were intended to prevent the massive human rights violations in the past from recurring.

But beyond the issue of human rights protection, the CHR was also assigned to undertake efforts at human rights promotion through education and information

---

<sup>19</sup> See Record of the 1986 Constitutional Commission

<sup>20</sup> Ibid.

<sup>21</sup> CONST., ART. XIII, SEC. 17 PAR. 3

<sup>22</sup> CONST., ART. XIII, SEC. 17 PAR. 6

<sup>23</sup> CONST., ART. XIII, SEC. 17 PAR. 7

campaigns.<sup>24</sup> As Commissioner Garcia explained in his sponsorship speech of this Section

—

I think an outstanding feature of this probable Commission on Human Rights is the fact that it will help establish a program of education and information to propagate human rights. In other words, we envision the prevention of human rights violations in the future where we have a citizenry that is convinced that it must uphold its basic rights; that it must defend its basic rights because it knows what its rights are, in the first place. Also, for those who must uphold the law, they will be educated in a sense; for example, regarding the treatment of prisoners and detainees and the proper procedures according to the due process of law. So this responsibility that will be given to the Human Rights Commission will, in a way, resolve and prevent, rather than cure what is unjust after it has been committed. Secondly, I believe it is also a very important fact that because we have now won our basic rights as a people, we must also, in a sense, realize that there are many other peoples in other parts of the world who have not yet won their rights. One of the other areas of education is precisely to show the different forms and ways of how the human rights of other peoples are violated in other parts of the world. And we can also have a people who will be conscious of these violations and perhaps contribute to the protection of human rights wherever they are violated, because human rights have no color, no creed, no nationality and no boundaries.<sup>25</sup>

In the performance of its functions, the CHR was granted authority adopt its own rules of procedure and to cite persons in contempt for violations thereof.<sup>26</sup> It was likewise vested with visitorial powers over jails<sup>27</sup>, and given the capacity to request assistance in its functions from any department, bureau, agency or office in government.<sup>28</sup>

With the creation of the CHR, the Constitutional Commission hoped that it had an institution ready and able to face the challenge of promoting and protecting human rights in the post-Marcos era. More importantly, they had instituted a mechanism for fostering human rights consciousness both within government and in society. As Commissioner Ople stated while explaining his vote affirming the creation of the CHR –

---

<sup>24</sup> ART. XIII, SEC. 17 PAR. 5 provides that the CHR shall “Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights.”

<sup>25</sup> See Record of the 1986 Constitutional Commission

<sup>26</sup> CONST., ART. XIII, SEC. 17 PAR. 2

<sup>27</sup> CONST., ART. XIII, SEC. 17 PAR. 4

<sup>28</sup> CONST., ART. XIII, SEC. 17 PAR. 9

I think this is a historic milestone in the entire history of the struggle for civil liberties and human rights in our country. Some of us had initial reservations about setting up a constitutional body that would act with reasonable independence of the government itself in the pursuit of the crusade for human rights, but I think a consensus grew that nothing short of a constitutional sanction and mandate would be required in order to make human rights or the concern for human rights second nature to our countrymen.<sup>29</sup>

### **III. The Limits of Hope**

It would be difficult to dispute that the creation of the CHR – an independent body tasked to protect and promote human rights and sanctioned by the organic law itself – was, and is, a worthy achievement, a milestone in the development of human rights advocacy in the Philippines. Its very existence is testament to the gains of the democratic struggle in the Philippines, and a clear indicator of the progress Philippine legal institutions have achieved since the fall of the Marcos regime.

But despite this, it is similarly difficult to dispute that the CHR has, as of yet, failed to live up fully to the grand expectations and bright hopes that heralded its birth as an institution.

Part of this failure can perhaps be attributed to the diminution in the scope of the CHR's authority brought about by a series of Supreme Court decisions which dealt with the interpretation of the constitutional provisions creating the CHR.

The first of these judicial declarations was the case of *Cariño v. Commission on Human Rights*<sup>30</sup> This case involved a complaint filed by striking public school teachers before the CHR, wherein they alleged that they had been engaged in peaceful mass actions when they were suddenly and without notice or explanation replaced as teachers. The respondent in the CHR case, Education Secretary Isidro Cariño, sought to have the

---

<sup>29</sup> See Record of the 1986 Constitutional Commission

<sup>30</sup> G.R. No. 96681, 2 December 1991, 204 SCRA 483



complaint dismissed on the ground of lack of jurisdiction. The CHR declined to dismiss and the case was brought before the high court.

In its decision, the Court declared that –

The threshold question is whether or not the Commission on Human Rights has the power under the Constitution to do so; whether or not, like a court of justice, or even a quasi-judicial agency, it has jurisdiction or adjudicatory powers over, or the power to try and decide, or hear and determine, certain specific type of cases, like alleged human rights violations involving civil or political rights. The Court declares the Commission on Human Rights to have no such power; and that it was not meant by the fundamental law to be another court or quasi-judicial agency in this country, or duplicate much less take over the functions of the latter.<sup>31</sup>

The Court went on to rule that the CHR had only *investigative* powers. It could not *adjudicate* cases involving human rights violations. It then concluded by ordering the dismissal of the complaint against Secretary Cariño.

The 1992 decision in *Export Processing Zone Authority v. Commission on Human Rights*<sup>32</sup> continued the trend in limiting the authority of the CHR. In this case, the issue presented before the Court was whether the CHR had the power to issue injunctive writs and temporary restraining orders under the grant of authority in Article XIII, Section 17 of the Constitution. Ruling in the negative, the Supreme Court declared –

The constitutional provision directing the CHR to “provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection” may not be construed to confer jurisdiction in the Commission to issue a restraining order or writ of injunction for, if that were the intention, the Constitution would have expressly said so. “Jurisdiction is conferred only by the Constitution or by law” (Oroso, Jr. v. Court of Appeals, G.R. Nos. 76828-32, 28 January 1991; Bacalso v. Ramolete, G.R. No. L-22488, 26 October 1967, 21 SCRA 519). It is never derived by implication. (Garcia, et al v. De Jesus, et al., G.R. No. 88158; Tobon Uy v. Commission on Elections, et al., G.R. Nos. 97108-09, 4 March 1992)<sup>33</sup>

---

<sup>31</sup> Ibid. at 491

<sup>32</sup> G.R. No. 101476, 14 April 1992, 208 SCRA 125

<sup>33</sup> Ibid. at 131

With the rulings in these two cases, the CHR had been effectively denied both adjudicatory functions and the authority to issue restraining orders. It had been confined to resorting to the standard judicial process in order to carry out its mandate.

The third, and perhaps the crippling, judicial blow came in 1994 in the case of *Simon, Jr. v. Commission on Human Rights*.<sup>34</sup> This case arose after the local government of Quezon City served an eviction notice to a group of small-scale entrepreneurs from an area along North Edsa, Quezon City, to give way to the establishment of a “People’s Park.” In response to the eviction notice, the vendors’ association filed a complaint before the CHR alleging violation of their “business rights.” The CHR subsequently issued a “cease and desist” order against the local government. When the demolition of stalls nonetheless proceeded, the CHR cited the city government in contempt, thus prompting it to file a petition before the Supreme Court.

In its ruling, the high court reiterated its prior judgement in *Cariño*, which held the CHR to be without any adjudicatory function or authority. But it went further by declaring that insofar as the investigatory functions of the CHR were concerned, it could only exercise the same in cases involving violations of civil and political rights. According to the Court –

Recalling the deliberations of the Constitutional Commission, aforementioned, it is readily apparent that the delegates envisioned a Commission on Human Rights that would focus its attention to the more severe cases of human rights violations. Delegate Garcia, for instance, mentioned such areas as the “(1) protection of rights of political detainees, (2) treatment of prisoners and the prevention of tortures, (3) fair and public trials, (4) cases of disappearances, (5) salvagings and hamletting, and (6) other crimes committed against the religious.” While the enumeration has not likely been meant to have any preclusive effect, more than just expressing a statement of priority, it is, nonetheless, significant for the tone it has set. In any event, the delegates did not apparently take comfort in peremptorily making a conclusive delineation of the CHR’s scope of investigative jurisdiction. They have thus seen fit to resolve, instead, that “Congress may provide for other cases of

---

<sup>34</sup> G.R. No. 100150, 5 January 1994, 229 SCRA 117

violations of human rights that should fall within the authority of the Commission, taking into account its recommendation.”<sup>35</sup>

The Court continued by declaring that –

... looking at the standards hereinabove discoursed *vis-a-vis* the circumstances obtaining in this instance, we are not prepared to conclude that the order for the demolition of the stalls, *sari-sari* stores and *carinderia* of the private respondents can fall within the compartment of “human rights violations involving civil and political rights” intended by the Constitution.<sup>36</sup>

Thus with this case, even the investigative authority of the CHR was limited to only violations of civil and political rights.<sup>37</sup> While the Court did point out that Congress could expand the scope of the CHR’s investigative authority, at present it has not chosen to do so. In fact, outside of Article XIII, the only other government issuance that concerns itself with the authority of the CHR is Executive Order No. 163 issued by President Aquino<sup>38</sup> which merely implemented the same constitutional provision.

But despite the limitation on the CHR to confine itself only to “human rights violations involving civil and political rights”, nonetheless “economic, social and cultural” rights have still found a place in the post-Marcos constitutional order. As previously mentioned, the same Article on Social Justice and Human Rights which created the CHR, also provided recognition for economic, social and cultural rights.

#### **IV. Broader Guarantees**

In the Declaration of Principles and State Policies of the 1987 Constitution, State commitment to “[value] the dignity of every human person and [guarantee] full respect for human rights” is expressly and unequivocally declared.<sup>39</sup> This provision is concretized principally through the Bill of Rights<sup>40</sup> and the newly introduced Article XIII, which deals with Social Justice and Human Rights.

---

<sup>35</sup> Ibid. at 133. The provision quoted by the Court is Art. XIII, Sec. 19

<sup>36</sup> Ibid. at 134

<sup>37</sup> But *see* footnote 13

<sup>38</sup> Dated 5 May 1987

<sup>39</sup> CONST., ART. II, SEC. 11

<sup>40</sup> CONST., ART. III

This commitment to recognize and promote human rights can be further discerned in Sections 9 and 10 of Article II, which deal with the promotion of a “just and dynamic social order” and “social justice in all phases of national development.” In contrast to the two earlier constitutions of 1935 and 1973, the present Constitution does not simply impose upon the State the duty to address economic inequities but the full range of socio-economic, political, and cultural inequalities, “in all phases of national development.”<sup>41</sup> This broadening of emphasis also provides an explanation for the introduction of the entirely separate Article on Social Justice and Human Rights.

In fact, Article XIII begins with a declaration that “Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.”<sup>42</sup> This indicates the clear intent to give constitutional recognition to “economic, social and cultural” rights side by side with the recognition already firmly extended to “civil and political” rights in Article III.

Thus the “human rights” the State is mandated to guarantee under the 1987 Constitution appears to include all types of rights – whether civil, political, economic, social, or cultural.

## **V. Defending the Marginalized**

One major significance of Article XIII is its imposition of obligations to the State for the benefit of specific sectors, such as labor, farmers, and the urban poor. The Marcos era saw more than its fair share of abuses perpetrated against this marginalized, and hence vulnerable, social groups, and, perhaps more significantly, much of the social unrest during those years arose out of the economic difficulties experienced by these sectors. Hence these new guarantees.

---

<sup>41</sup> BERNAS, THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES 73 (1988)

Section 4, for instance, addresses the question of land ownership and distribution – a problem of long-standing that lay at the heart of nearly a century of peasant revolts. In an effort to remedy this dilemma, this provision mandates the implementation of an agrarian reform program to allow farmers to “own the land” they till or in the case of farmworkers “to receive a just share” in the fruits of the land.<sup>43</sup>

This provision, in turn, was implemented through the enactment of The Comprehensive Agrarian Reform Law (CARL)<sup>44</sup> Soon after the law’s passage, its validity was challenged before the Supreme Court in the case of *Association of Small Landowners v. Secretary of Agrarian Reform*.<sup>45</sup> The high court upheld the law, and had occasion to explain that the process of land reform mandated in the law was an exercise of both police power and eminent domain.

Agricultural lands, however, were not the only lands made subject to reform under the 1987 Constitution. Natural resources, including lands of the public domain, were made subject to the “principles of agrarian reform,”<sup>46</sup> as were urban lands.<sup>47</sup> This was a significant expansion of the concept of land reform as embodied in the previous, Marcos era constitution.<sup>48</sup>

Urban land reform, in particular, was a new constitutional concept. Although during the Marcos years, a decree “declaring” urban land reform had in fact been enacted,

---

<sup>42</sup> CONST., ART. XIII, SEC. 1

<sup>43</sup> ART. XIII, SEC. 4 The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share in the fruits thereof. To this end the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits the State shall respect the rights of small landowners. The State shall further provide incentives for voluntary land-sharing.

<sup>44</sup> Republic Act No. 6657

<sup>45</sup> G.R. Nos. 78742, 79310, 79744, 79777, 14 July 1989, 175 SCRA 343

<sup>46</sup> CONST., ART. XIII, SEC. 6

<sup>47</sup> CONST., ART. XIII, SEC. 9

the truth of the matter was it merely granted legitimate tenants who had resided 10 years or more in designated “urban land reform zones” a right of first refusal to purchase the lands they occupied.<sup>49</sup> In contrast, urban land reform as established in the 1987 Constitution had a broader concept. As explained by Commissioner Foz during the deliberations, its purpose was –

First, to liberate human communities from blight, congestions, and hazards and to promote their development and modernization; second, to bring about the optimum use of land as a national resource for the public welfare rather than as a community [sic] of trade subject to price speculation and indiscriminate use; third, to provide equitable access to and opportunity for the use and enjoyment of the fruits of the land; fourth, to acquire such lands as are necessary to prevent speculative buying of land for public welfare; and finally, to maintain and support a vigorous private enterprise system responsive to community requirements in the use and development of urban lands.<sup>50</sup>

Section 9, which dealt with urban land reform, was the first of two provisions that sought to safeguard the rights of the rapidly increasing urban poor population in the Philippines. The second, Section 10, dealt more specifically with the right of “urban and rural poor dwellers” to be evicted only in accordance with law and in a just and humane manner.<sup>51</sup> These provisions were enacted partly in response to the violent evictions and demolitions that took place during the Marcos regime. The intent, clearly, was to afford sufficient protection to the urban poor and, in doing so, prevent the massive violations of human rights that were committed under the past administration. In the eloquent words of Commissioner Brocka –

This particular section [Sec 10] is premised on the fact that squatters, whether they are illegal or not, whether they are professionals or not, are human beings. It is not

---

<sup>48</sup> BERNAS at 1066

<sup>49</sup> Presidential Decree No. 1517 enacted in 1978

<sup>50</sup> See Record of the 1986 Constitutional Commission

<sup>51</sup> ART. 9 The State shall, by law, and for the common good, undertake, in cooperation with the private sector, a continuing program of urban land reform and housing which will make available at affordable cost, decent housing and basic services to the underprivileged and homeless citizens in urban centers and resettlement areas. It shall also promote adequate employment opportunities to such citizens. In the implementation of such program the State shall respect the rights of small property owners.

ART. 10 Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner.

their fault that they are poor. Under the law, they should be protected. That particular protection is what we are asking under this section on social justice.<sup>52</sup>

Both these sections were implemented through the passage of the Urban Development and Housing Act (UDHA)<sup>53</sup> in 1992. The UDHA mandated local governments, in coordination with several national housing agencies, to pursue a comprehensive program for housing for “underprivileged and homeless citizens.” In addition, it prescribed strict requirements for evictions involving the same group.<sup>54</sup>

Like the CARL before it, the validity of the UDHA was challenged before the Supreme Court, this time in the case of *Macasiano v. National Housing Authority*<sup>55</sup>

---

<sup>52</sup> See Record of the 1986 Constitutional Commission

<sup>53</sup> Republic Act No. 7279

<sup>54</sup> Sec. 28 Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds.
- b) When government infrastructure projects with available funding are about to be implemented; or
- c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

- 1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- 2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- 3) Presence of local government officials or their representatives during eviction or demolition;
- 4) Proper identification of persons taking part in the demolition;
- 5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- 6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- 7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- 8) Adequate relocation, whether temporary or permanent; Provided, however, that in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgement by the court, after which period the said order shall be executed; Provided, further, that should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

<sup>55</sup> 224 SCRA 236 (1993)

However, the high court in this instance refused to rule squarely on the issue, and instead dismissed the case on the ground of lack of standing of the petitioner.

Borne from the bitter experience of the Marcos martial law years, numerous provisions aiming to safeguard and to promote human rights and fundamental freedoms, particularly of the most vulnerable sectors in society, have been made part of the 1987 Constitution. Addressing both civil and political as well as economic, social and cultural rights, these provisions represent a broader recognition, and extend a greater degree of protection than that found in the previous legal regime.

### **Conclusion**

The popular democratic uprising that finally put an end to the tyranny of the Marcos regime brought about many changes in the Philippine constitution and legal system. Perhaps not surprisingly, most of these changes were prompted by the oftentimes dire experiences under martial rule.

Human rights, which were unfortunately characterized more by their violation than either their protection or recognition during the Marcos Era, was one field in which many developments took place after the revolt.

From the creation of an independent Commission of Human Rights, to the formal, constitutional recognition of a wider range of human rights, the post-Marcos era has seen tremendous progress towards a fuller and firmer institutionalization of human rights in the Philippine legal system.