

Jes
8/22/8

Republika ng Pilipinas

Komisyon ng Karapatang Pantao ng Pilipinas*(Commission on Human Rights of the Philippines)***POSITION PAPER ON****HOUSE BILL NO. 566**

(An Act Qualifying Salvaging or Extrajudicial Killing by Any Public Officer, Person in Authority or Agent of a Person in Authority as a Heinous Crime, Imposing the Death Penalty Therefor and for Other Purposes)

The right to life is non-derogable that no Government could strip it from any human being by legislative enactment. To do so, is to unilaterally abrogate the State's bounden duty to uphold a life of dignity for all.

The Commission on Human Rights, an independent national human rights institution created pursuant to the fundamental law of the Philippines,¹ is vested with the powers and functions to, among others, monitor the Philippine Government's compliance with international treaty obligations on human rights.² As a national human rights institution its role encompasses, among others, that of a *Monitor or Watchdog* of Government's actions or inactions in relation to the State obligations to respect, protect and fulfill rights; *Advocate* of human rights principles, norms, and standards, to include the principle of non-derogability of the right to life; and *Adviser* to the Government on human rights concerns and issues, domestically and globally.

In view of the introduction of House Bill No. 566 by Representative Edno Josen III, which raised serious human rights concerns affecting the right to life, the Commission is submitting the foregoing position on the proposed legislative enactment:

First, the proposed legislation – House Bill No. 566 – verily, seeks to resurrect the death penalty in Philippine jurisdiction, as evidenced from the Bill's heading which reads, thus: "An Act Qualifying Salvaging or Extrajudicial Killing by Any Public Officer, Person in Authority or Agent of a Person in Authority as a Heinous Crime, Imposing the Death Penalty Therefor and for Other Purposes"; and as provided for in Sections 3 and 5 thereof, which read:

¹ Section 17, Article XIII, 1987 Constitution.

² Section 18(7), *Ibid.*

Karapatang Pantao: Likas Sa Atin, Tungkulin Natin

Commonwealth Avenue, U.P. Complex, Diliman, 1101, Quezon City, Philippines

Tel. Nos. 927-0172 • 928-2018

“SECTION 3. Objectives. - This act endeavors to qualify the extrajudicial killing by any public officer, person in authority or agent of a person in authority as a heinous crime, and to impose the death penalty upon such crime.”

“SECTION 5. Punishable Act/Penalty.- The death penalty shall be imposed upon any public officer, person in authority or agent of a person in authority for any salvaging or extrajudicial killing as defined herein.”

Apparently, the factors behind the main intendment to revive the death penalty via the proposed legislation, House Bill No. 566, are: (1) the spate of killings and appalling criminal acts resulting in the deaths of several persons in recent years, wherein most of the alleged perpetrators are agents of the State; and (2) to exact accountability from those mandated by the fundamental law of the land to protect the people. In particular, the Armed Forces of the Philippines is the protector of the people;³ the Philippine National Police is principally tasked to ensure and maintain a peaceful and orderly environment⁴ and, in general, the Philippine Government and all civil servants, have the primary duty to serve and protect the people.⁵ Thus, the sponsor of the Bill poses the question: *Who guards the guardians?*⁶

True, the fundamental powers of the State, or the legitimate authority vested to any of its agencies, instrumentalities, or individual officer or personnel, cannot be exercised otherwise or in any manner as to infringe or injure the basic right to life, to dignity and to self-development of every individual in Philippine territory, as well as of Filipinos in foreign lands. In the same vein, no law should be passed to, once again, give license to the State to take away life.

Second, House Bill No. 566 failed to take into account the Philippine's obligations embodied in the international instruments on human rights to which the Philippines is a State Party, as well as the pertinent provisions of the Philippine Constitution, and legislative enactment upholding the right to life of every human being, regardless of frontiers, political ideology or aspiration, religion, creed, sex, age, nationality, race or ethnic origin, or social status. For this reason, the Commission on Human Rights strongly reiterates and re-affirms its commitment to the right to life, and calls on the Legislative Branch of Government to revisit and take serious consideration of the State obligation to respect and protect the dignity and sacredness of life of every human being.

The **Universal Declaration of Human Rights (UDHR)**, which has developed into a customary law, reflects the consensus of the community of nations that it is abolitionist in outlook. The **UDHR** categorically states that:

³ Section 3, Article II, 1987 Constitution.

⁴ Section 21, Article X, 1987 Constitution.

⁵ Section 4, Article II, 1987 Constitution; Sec. 2 & 24, RA 6975

⁶ Explanatory Note, HB 566.

*"Everyone has the right to life, liberty and security of person."*⁷

xxx

*"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*⁸

On February 28, 1986, the Philippines ratified the **International Covenant on Civil and Political Rights (ICCPR)** which affirms and guarantees that:

*"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."*⁹

*"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. xxx."*¹⁰

General Comment No. 6 in relation to the right to life guaranteed under Article 6 of the International Covenant on Civil and Political Rights, issued on 30 April 1982 states, among others, that:

"1. The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). However, the Committee has noted that quite often the information given concerning article 6 is limited only to one or other aspect of this right. It is a right which should not be interpreted narrowly."

"3. The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6(1) is of paramount importance. The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities."

The Philippines recently acceded to the **Second Optional Protocol to the International Covenant on Civil and Political Rights**. As such, the Philippines has not only affirmed but has bound itself to perpetually abolish

⁷ Article 3, UDHR.

⁸ Article 5, UDHR.

⁹ Article 6(1), ICCPR.

¹⁰ Article 7, ICCPR.

the death penalty and uphold the right to life. The Second Optional Protocol to the ICCPR states that:

"1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

"2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction."

Pursuant to the international law principle of *pacta sunt servanda*, States are required to observe treaties it has entered into in good faith. In line with this, the Supreme Court ruled that "treaties do indeed limit or restrict sovereignty of a State. By their voluntary acts, States may surrender some aspects of their power in exchange for greater benefits granted by or derived from a convention or pact. Under the rule of *pacta sunt servanda*, a State is bound to make such modifications in its laws as may be necessary to ensure the fulfillment of the obligations undertaken under the treaty."¹¹

The fundamental mantle of protection of the right to life of every inhabitant of the country is guaranteed under the **1987 Constitution of the Philippines**, thus:

Article II, Section 11 provides that:

"The State values the dignity of every human person and guarantees full respect for human rights."

Article III, Section 11 provides that:

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

Article III, Section 19 guarantees that:

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

Likewise, **Republic Act No. 9346** prohibits the imposition of the death penalty in the country. This only demonstrate the Philippines' progressive compliance with international obligations on human rights.

As can be deduced from the aforecited provisions of the international human rights instruments, the fundamental law of the land and relevant

¹¹ Tanada vs. Angara, 272 SCRA 18.

legislation, the life of a person is sacred; the right to life of a person is absolute, be he/she a criminal or not. As such, the deprivation of life is at all times culpable, regardless of who the perpetrator is – a private individual or a State authority or an agent of a person in authority. Moreover, the death penalty constitutes the ultimate form of torture.

Resurrecting the death penalty in Philippine setting will inevitably defy the principle of inviolability of life and dignity of the human being. It will constitute deliberate killing, licensed by the State, of those covered by the proposed legislation on anti-salvaging. The spate of extrajudicial killings and appalling criminal acts resulting in the deaths of several persons in the country cannot serve to justify any move from Congress to consider the revival of the death penalty. Besides, there is no study with conclusive findings, showing that death penalty serves as a deterrence of crimes. Moreover, there is a grave danger that such permanent and irreparable penalty would likely result in the execution of innocent people due to the country's imperfect justice system which is vulnerable to errors – errors, such as the imposition and execution of death penalty, which could never be rectified.

Third, on Section 3 of House Bill 566.—It is suggested that the proposed law should identify the elements of the act/s of salvaging or extrajudicial killing sought to be defined and penalized as a crime, in order to distinguish it from the common crime of homicide or murder under the Revised Penal Code. If the primary intent is to penalize extrajudicial killings as a political killings, then the factors in the determination of political killings as set forth in Administrative Order No. 35-2007 issued by the Supreme Court should be considered.

Fourth, on Section 4 which speaks of definition of the terms “salvaging” and “extrajudicial killings”.—Specifically, Section 4(a) defines “Salvaging” as (T)he killing of any person by any public officer, person in authority or agent of a person in authority. Section 4(b) defines “Extrajudicial killing” as (A)ny killing other than that imposed by the state pursuant to the provisions of the Constitution on heinous crimes; ‘extrajudicial killing’ means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized people.”

Correlating Section 3 with Section 4, it would seem that Section 3 proviso jibes with the definition of “salvaging” as laid down in Section 4(a), but not with the definition of “extrajudicial killing” under Section 4(b).

Fifth, Section 5 imposes the death penalty upon any public officer, person in authority or agent of a person in authority for any salvaging or extrajudicial killing as defined in the proposed legislation. Again, it should be noted that the definition of Section 4(b) on extrajudicial killing does not clearly specify the perpetrator of the extrajudicial killing.

m
cp
fnd

In sum, the Commission on Human Rights strongly reiterates and reaffirms its unwavering pro life stand and **will continue to vehemently oppose any attempt to reimpose the death penalty in Philippine jurisdiction**, founded on the principle of non-derogability of the right to life; the death penalty runs counter to the principle on justice that punishment should educate and rehabilitate the offender; it does not produce retributive justice; it is likened to the rule of revenge, and violence begets violence; and the Philippines cannot go back nor renege on its self-imposed and voluntary obligations. Hence, the death penalty should never again find its way in the statute books of the country.

IN VIEW OF THE FOREGOING PREMISES, the Commission on Human Rights hereby submits to the **Honorable Committee on Human Rights**, House of Representatives, Congress of the Philippines the following recommendations:


1) House Bill No. 566 must not resurrect the death penalty in our country. Instead, should consider *reclusion perpetua* with the accessory penalties of perpetual disqualification to hold public office, cancellation of professional license or eligibility, forfeiture of retirement and other benefits due said public officer or employee, as the supreme penalty therefor.

2) International human rights standards, as well as moral justification and humane consideration must be given due weight.

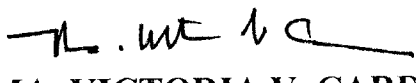
3) Take into consideration the Supreme Court guidelines on the matter of extrajudicial killings or summary executions.¹²

4) The proposed legislation should consider salvaging or extrajudicial killings committed by person or persons in authority or by agents of person in authority, as political killings and should lay down the essential elements therefor.

ISSUED on this 11th day of August 2008, in Quezon City, Philippines.


LEILA M. DE LIMA
Chairperson *fl*


CECILIA RACHEL V. QUISUMBING
Commissioner *fa*


MA. VICTORIA V. CARDONA
Commissioner *fee*

¹² SC Adm Matter No. 35-2007.