

**National Human Rights Institutions and the
Responsibility to Protect:
Reflections from the Philippine Experience**

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Good afternoon to everyone. It is truly a pleasure to take part in this conference commemorating the 10th anniversary of the World Summit on the Responsibility to Protect. I hope that my reflections on the role that the Commission on Human Rights has been playing since 1987 with respect to preventing the four kinds of International Humanitarian Law (IHL) violations covered by the responsibility to protect, would inform subsequent discussions in this forum and elsewhere.

When the term responsibility to protect is mentioned the first thing that comes to mind for most people is international intervention, whether by a multilateral armed force sanctioned by the United Nations Security Council or – for better or worse – an international coalition of the willing as we most recently saw in Afghanistan, Iraq and some African states. Pillars I and II in respect to core issues of prevention or risk management are given lesser attention. The issue of whether, and how, the international community could support local mechanisms before and during extreme socio-political conditions is an issue only now emerging out of the din.

The fact remains, however, that all the countries that have experienced genocide and other mass atrocities in the past 40 years had no strong domestic protection mechanisms in place, let alone robust national human rights institutions. This leads us to seriously consider the empirical basis of the assertion that NHRIs could contribute significantly to the prevention of

genocide and other mass atrocities. From a Pillar II perspective, my answer is yes, because national institutions in fact contribute a lot to building inclusive and resilient societies.

Throughout our history as a nation, there have been several bouts of violence grave enough for many observers to doubt the survival of Philippine democracy. We are home to Asia's longest running communist insurgency. Then there is the longstanding internal armed conflict in Mindanao, which has cost 60,000 deaths, 2 million IDPs, 535 mosques and 200 schools destroyed and 35 towns and cities hit by serious violence. The economic costs are equally staggering: more than 80 billion pesos or USD 2 billion. President Macapagal-Arroyo's de facto Martial Law regime saw the killing, disappearance, and torture of thousands of human rights activists. And just a few weeks ago, the carnage in Mamasapano, Maguindanao happened in the midst of parliamentary deliberations on the new Bangsamoro autonomy law. This incident seriously undermines President Aquino's push for a final political settlement not just with the MILF but with other armed groups as well. At no point in recent history has the dividend for peace dropped so low in the eyes of the public as in the aftermath of the Mamasapano incident.

Yet Philippine democracy thrives. Coup rumors and vain attempts at popular uprising capitalizing on widespread anger over the grievous death of 44 police commandos have all but fizzled out. Now public discourse is shifting focus from retribution and war, to justice anchored on truth, accountability and peace. It is as Martin Luther King had described it many years ago: the arc of the moral universe is long but it bends towards justice.

I dare not say that the Commission on Human Rights, as the National Human Rights Institution, is responsible for this alone. From a constitutional perspective, democratic guardianship is assumed neither by the Judiciary nor by independent

constitutional bodies like the Commission on Human Rights but by all sectors. A healthy democracy is everyone's business.

So where does the work of Commission on Human Rights add significant value to the process of firming up our democratic fundamentals, and by implication, inclusiveness and resilience? It is with respect to three notions of governance: realizing human rights for all, ensuring access to justice and eradicating poverty. Take note that these are also the roots of vulnerability. The role of an NHRI is to help the forces of society to effectively translate international human rights standards to domestic laws, policies and programs.

Within the bureaucratic structure of government NHRIs stand out. Whereas the rationale for independent state institutions taking charge of such sensitive areas as elections, audit, the civil service and anti-corruption has gained widespread acceptance, NHRIs continue to struggle with conceptual issues of identity and acceptance. The Asia Pacific Forum of National Human Rights Institutions, for example, counts only 15 full and 7 associate members. That leaves 47 other Asia Pacific countries without NHRIs compliant with the Paris Principles. Interestingly, this correlates with statistics on Rome Statute ratifications in the Asia Pacific: a measly 17 out of 69 as of 2013. I hope that Cambodia as a beacon of support in Southeast Asia for individual criminal responsibility would soon have its own Paris Principles-compliant NHRI.

In a situation where other government agencies as well as the Commission's own staff members alike struggle with the dialectical relationship of human rights and governance, I have deliberately positioned the Commission to respond to two strategic issues: peace building and security sector reform.

As its own contribution to the Bangsamoro peace process, the Commission in 2012 decided to create a regional office for the Autonomous Region in Muslim Mindanao, then facilitated its

conversion into an autonomous Regional Human Rights Commission. In so doing the Commission placed human rights protection and promotion at the center of the governance question in the future Bangsamoro region. Similarly, the Commission's stake in security sector reform radically increased as a result of the so-called *La Breza* process of consolidating the various human rights focal points in the AFP, PNP and other security sector/law enforcement agencies. As a result, human rights violations involving the members of the security sector are now considered by both sides of a common understanding: human rights compliance increases operational effectiveness and efficiency, and enhances the rule of law.

Since the first UPR review in 2008 the Commission has been pushing society towards a better appreciation of community-based human rights mechanisms. For example, the Commission is working on developing a community-based human rights impact assessment (HRIA) tool in response to the challenge of bringing the UN Guiding Principles on Business and Human Rights as close as possible to localities affected by mining and other extractive industries. Remarkably the very first criminal prosecution under the domestic codification of IHL concerns the SMI/Xstrata project in Tampakan, an extractive industry hotspot in Mindanao.

In a similar vein, the Human Rights Victims Reparation and Recognition Act of 2013 puts forward three principles: *First*, responsibility may be personal, but accountability can ultimately be attributed to the State in light of the immense historical and inter-generational impact of gross human rights violations; *Second*, the State must never again be given over to internal security or public order considerations that illegally derogate from the International Convention on Civil and Political Rights and other human rights instruments; and *Third*, public officials must be conscious of their human rights duties in the same manner that ordinary people must be empowered to exercise their basic rights.

All of these principles en flesh the preventive role of the Commission under R2P. Under my watch, the Commission has been applying them under the slogan “end impunity and build a culture of human rights”. While the traditional approach had been to overly rely on domestic penal and civil laws, two developments have now challenged this approach. On one hand, there is the resumption of peace negotiations with both the MILF and the Communist Party/New People’s Army/National Democratic Front, which has resulted in the assimilation of human rights and humanitarian legal standards in bilateral protocols. On the other hand, the ratification of the Rome Statute in 2011, as well as increased international scrutiny of the State’s human rights compliance through the Universal Periodic Review and special procedures, have broadened the normative framework applicable to local cases.

Ours is a stronger NHRI because we are capable of rooting out the issues that nurture social unrest. Opening more pathways to justice also deepens the social impact of human rights. Our work empowers people in the community to stand up and claim dignity for themselves through concerted civic action. In so doing we extend the bridge ever downward to the village level, in much the same way that Eleanor Roosevelt described human rights’ true home: in the world of the individual person, so close and so small that they cannot be seen on any maps of the world. We have to bring the rights/responsibility discourse to such places, if we are to realize equal justice, equal opportunity and equal dignity.

In the Martial Law cases, the Commission made it a point to correlate the reparations process with the memorialization process by accepting not just compensation claims but oral histories as well. In the Mamasapano case that I have mentioned earlier, the approach is the same. Track 1 involves conducting an investigation from a legal standpoint, while Track 2 entails activating peace and human rights at the community level

through a mix of cultural, psychosocial and community development interventions. In the end, what emerges is a more grounded understanding of structural violence, where one sees not just rebels nor killers but individuals evolved from birth as children of war.

Especially in developing countries characterized by a weak rule of law, strong NHRIs could effectively prevent mass atrocities by helping rights holders and duty bearers alike to come to terms with their humanity. Whenever I visit police officers or soldiers wounded in battle, my objective is to make them feel that their rights as human beings are being looked after. And when I talk to people in communities displaced by battle, my message is the same: they too matter. By and large, this is what inclusion means in the context of conflict.

In closing, I would say that clearly the roadmap to prevention of genocide, war crimes, ethnic cleansing and crimes against humanity includes activities already ascribed to national human rights institutions. What needs to be done is to build the capacity of these institutions in order to inhibit inflammatory factors, specifically by building a professional and accountable security sector, supporting effective transitional justice and political mechanisms as well as local capacities to resolve conflict.

Thank you, and I look forward to an interesting and lively discussion this afternoon.