



REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS

POSITION PAPER ON PROPOSED SENATE BILL NOS. 422,¹ 681,² 896,³ 2198⁴ AND 2309⁵ ON “AN ACT PROVIDING FREE LEGAL ASSISTANCE TO ANY OFFICER OR ENLISTED PERSONNEL OF THE ARMED FORCES OF THE PHILIPPINES (AFP), PHILIPPINE NATIONAL POLICE (PNP), BUREAU OF FIRE PROTECTION (BFP), BUREAU OF JAIL MANAGEMENT AND PENOLOGY (BJMP), AND THE PHILIPPINE COAST GUARD (PCG), FACING ANY CHARGE BEFORE THE PROSECUTOR’S OFFICE, COURT, OR ANY COMPETENT BODY, ARISING FROM INCIDENTS RELATED TO THE PERFORMANCE OF OFFICIAL DUTIES, AND APPROPRIATING FUNDS THEREFOR”

The Commission on Human Rights of the Philippines, as the national human rights institution of the country with Status “A” compliance with the Paris Principles issues this Position Paper on the bills proposing to provide free legal assistance to any officer or enlisted personnel of the Armed Forces of the Philippines (AFP), Philippine National Police (PNP), Bureau of Fire Protection (BFP), Bureau of Jail Management and Penology (BJMP), and the Philippine Coast Guard (PCG), facing any charge before the prosecutor’s office, court, or any competent body, arising from incidents related to the performance of official duties, and appropriating funds therefor. The Commission welcomes the opportunity to provide its comments on the proposed measure before the 19th Congress of the Senate of the Philippines noting the complexities that must be considered between the right to have competent and independent counsel,⁶ vis-a-vis the duty of the State to safeguard and protect its citizens from erring law enforcement officers (LEOs).⁷ While we recognize that extending free legal assistance to LEOs aside from the PNP as enumerated in the proposed measure does not automatically result in the dropping of their charges or the failure to uphold the rule of law and accountability, we are of the position that safeguards should be included in the provision of such services consistent with the Republic Act No. 8551 and other relevant laws from which the current proposal is based. This will add another layer of protection to ensure that the conflicting interests between the protection of LEOs against frivolous suits and the protection of the citizens from unconstitutional behavior among LEOs are balanced.

¹ Sponsored by Sen. Christopher Lawrence Go.

² Sponsored by Sen. Jinggoy Ejercito Estrada.

³ Sponsored by Sen. Ronald “Bato” Dela Rosa.

⁴ Sponsored by Sen. Imee Marcos.

⁵ Sponsored by Sen. Cynthia Villar.

⁶ PHIL. CONST. art. III, § 12 (1).

⁷ PHIL. CONST. art. XI, § 1.

CHR ng lahat: Naglilingkod maging sino ka man

I. Historical Background of the Right to be Assisted by Counsel

On the Right to be Assisted by Counsel – English and American historical context

The Commission acknowledges that our legal history has been significantly influenced by the Spanish and American colonial rule over the Philippines.⁸ For example, the drafting of the 1935 Constitution was initiated through the Tydings-McDuffie law authorizing the Philippine Legislature to call for a Constitutional Convention, requiring the new constitution to be “republican in form, contain a bill of rights and effective upon withdrawal of the American sovereignty.”⁹ As such, the 1935 Philippine Constitution’s Bill of Rights was based on those of the United States with the addition of some new provisions.¹⁰ Given the foregoing, we find merit in discussing the development of the right to be assisted by counsel in the English and American context.

According to Felix Rackow, the right of a person who is charged with a crime to the assistance of counsel can be traced back to early English and American history, which is discussed with two considerations: 1) whether or not there is a right to be assisted by friends (the counsel) in making their defense against a criminal charge, provided the services of counsel will be at their own expense; and 2) whether the State has a duty to provide the services of counsel if the defendant cannot afford one.¹¹ Rackow mentions that it is difficult to trace the origins of such a right in English and American history but he recognized that by the 1300s, there was already an established legal profession, or men who made money by representing people in courts and by giving advice in England.¹² The early English concept was different from the standards of modern jurisprudence given that, on one hand, the right to be assisted by counsel was only permitted in civil cases and on criminal cases on appeal, while it is required in misdemeanor cases.¹³ On the other hand, it was not required in original felony or treason cases.¹⁴ This is because at the time, it was believed that a person could defend themselves in court, where they thought that it does not require any skill to plead a plain and honest defense.¹⁵ Moreover, cases of treason and felony were considered to be political, and the provision of counsel by the State would work against the interests of the accused, as the counsel would serve the interests of the monarch.¹⁶ The criminal cases then were also considered to be simple as opposed to civil cases, which meant that the services of counsel would not be needed in the former.¹⁷

In 1695, the right to be assisted by counsel in cases of treason was introduced in English law through the Treason Act.¹⁸ According to Thomas Macaulay,¹⁹ during a debate at the House of Commons before the passage of this bill, the members of

⁸ Mark Stevens, *Origins of the 1986 Philippine Constitution*, at 10, available at <https://apps.dtic.mil/sti/tr/pdf/ADA276825.pdf> (last accessed 25 March 2024).

⁹ *Id.* at 14.

¹⁰ *Id.* at 16.

¹¹ Felix Rackow, *The Right to Counsel: English and American Precedents*, 11 (1) WILLIAM MARY Q. 3, 3 (1954).

¹² *Id.* at 3-4.

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 7.

¹⁷ *Id.*

¹⁸ *Id.* at 11.

¹⁹ *Id.* citing Thomas Macaulay, *The History of England*, (Leipzig, 1855), VIII, 106-107.

the House were moved by a statement made by Lord Anthony Ashley Cooper (Lord Ashley). He was being urged to continue after he faltered while making a speech arguing for the passage of the bill. In response, he said that if he himself could not continue with his argument because of nervousness and want of practice in addressing large crowds, how helpless can the poor man be who is being threatened with death if he fails to convince his hearers.²⁰ Although this concern was recognized and was addressed in cases of treason, the expansion of the coverage of the right to other cases was not immediate. There were some notable cases that showed the need for assistance of counsel aside from those who were charged with treason. For example, in 1760, a case was documented where the defendant had to cross examine the witnesses against him without counsel, including his own witnesses to prove his own insanity, which is a defense he set up himself.²¹ It took another seven decades, or until 1836, before the right to be assisted by counsel was expanded to all cases.²²

In American history, although America was initially a colony of England, they did not follow English common law completely.²³ The legal norms varied depending on the colony. Some recognized the right to be assisted by counsel in all cases such as in Pennsylvania, New Jersey and Maryland in 1776, and in Philadelphia and North Carolina in 1777 while others did not.²⁴ By 1789, the United States introduced the Bill of Rights in their Federal Constitution through the Sixth Amendment, which included the right to be assisted by counsel in all criminal cases.²⁵ They also provided that the defendant will be assigned a counsel in capital offenses.²⁶ In this instance, American law was advanced in recognizing the need to be provided with the assistance of counsel compared to English common law.²⁷ Given these developments, history made it clear that the presence of a person learned in the law is significant in defending the rights of a defendant.

The Philippine context

In the Philippines, the right to be assisted by counsel in criminal cases underwent several stages of development as well, mindful of the American influence on the Bill of Rights.²⁸ It can be found in Article II, Section 1, par. 17 of the 1935 Constitution,²⁹ wherein it uses the phrase, “the accused... shall enjoy the right to be heard by himself and counsel.” Although there is still no mention of the free provision of a lawyer by reason of poverty, paragraph 21 of the same Section states that “[f]ree access to the courts shall not be denied to any person by reason of poverty.”

²⁰ *Id.* Lord Ashley: "How can I, Sir... produce a stronger argument in favour of this bill than my own failure? My fortune, my character, my life, are not at stake. I am speaking to an audience whose kindness might well inspire me with courage. And yet, from mere nervousness, from mere want of practice in addressing large assemblies, I have lost my recollection: I am unable to go on with my argument. How helpless, then must be a poor man who, never having opened his lips in public, is called upon to reply, without a moment's preparation, to the ablest and most experienced advocates in the kingdom, and whose faculties are paralyzed by the thought that, if he fails to convince his hearers, he will in a few hours die on a gallows, and leave beggary and infamy to those who are dearest to him."

²¹ *Id.* at 11-12.

²² *Id.* at 12.

²³ *Id.*

²⁴ *Id.* at 16-18.

²⁵ *Id.* at 25.

²⁶ *Id.* at 27.

²⁷ *Id.*

²⁸ Stevens, *supra* note 8.

²⁹ 1935 PHIL. CONST., art. III, § 1 (17) (superseded in 1973).

In the 1973 Constitution, the Bill of Rights was transferred to Article IV, and the paragraphs in the former Constitution were converted into sections. Under Section 19 of the 1973 Constitution, the provision uses the same wording as the 1935 Constitution in referring to the right to be assisted by counsel.³⁰ However, the right was expanded to proceedings outside of court where the accused is still being investigated. It added that evidence obtained without the assistance of counsel is rendered inadmissible in court.³¹ This right was discussed in *Magtoto v. Manguera, et al.*,³² whether the new provision, which was not included in the 1935 Constitution would be applicable. Here, the Supreme Court (SC) held that since the right was granted for the first time upon the passage of the 1973 Constitution, the right had not yet been available at the time that the accused had confessed to their crimes without the assistance of counsel. As such, the confession they made before the passage of the 1973 Constitution was deemed admissible in evidence. They also indicated that the right to the assistance of counsel in the 1935 Constitution was only present from arraignment and to rendition of judgment.³³

In the 1987 Philippine Constitution, the right to assisted by counsel was further expanded and strengthened under Section 12, par. 1 of the Bill of Rights.³⁴ Here, the provision specified that one must have access to a competent and independent counsel, which was explained in *People v. Agustin*³⁵ where the SC emphasized “the need to provide the accused with a diligent and capable lawyer who will fully safeguard his constitutional rights while under the uniquely stressful conditions of a custodial investigation. Swept into a strange and unfamiliar environment and surrounded by intimidating police officers, the suspect really needs the guiding hand of an effective and vigilant counsel.” The SC further stated that if the accused cannot afford a counsel, they will be provided with one. This was explained in the same case citing *People v. Obrero*,³⁶ wherein they stated that:

Ideally, therefore, a lawyer engaged for an individual facing custodial investigation (if the latter could not afford one) should be engaged by the accused (himself), or by the latter's relative or person authorized by him to engage an attorney or by the court, upon proper petition of the accused or person authorized by the accused to file such petition. Lawyers engaged by the police, whatever testimonials are given as proof of their probity and supposed independence, are generally suspect, as in many areas, the relationship between lawyers and law enforcement authorities can be symbiotic.

We also note that American influence can also be traced in Philippine jurisprudence citing US cases and commentaries in interpreting the right. In

³⁰ 1973 PHIL. CONST., art. IV, § 19 (superseded in 1987).

³¹ 1973 PHIL. CONST., art. IV, § 20 (superseded in 1987).

³² *Magtoto v. Manguera, et al.*, G.R. Nos. L-37201-02 (1975), available at https://lawphil.net/judjuris/juri1975/mar1975/gr_37201_02_1975.html#rnt1 (last accessed 5 February 2024).

³³ *Id. citing* *People v. Paras*, 56 SCRA 248 (1974).

³⁴ 1987 PHIL. CONST., art. III, § 12 (1).

³⁵ *People v. Agustin*, G.R. No. 247718, (2021), available at https://lawphil.net/judjuris/juri2021/mar2021/gr_247718_2021.html (last accessed 5 February 2024).

³⁶ *People v. Obrero*, G.R. No. 122142, (2000), available at https://lawphil.net/judjuris/juri2000/may2000/gr_122142_2000.html#fnt17 (last accessed 1 February 2024).

People v. Serzo,³⁷ the SC cited Justice Black in expounding the right to be assisted by counsel stating that, “this is a ‘recognition . . . that an average (accused) does not have the professional skill to protect himself . . . before a tribunal with power to take his life or liberty, wherein the (prosecutor) is . . . an experienced and learned counsel.’” The SC also cited Powell v. Alabama in the same case expounding on the need for competent counsel, which reiterates the statements made by Lord Ashley mentioned earlier, stating that:

Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.³⁸

From the foregoing, it is uncontested that the right to be assisted by counsel is inherent to everyone, whatever their stature in life. This is moreso, if they are unable to procure the services of a lawyer. This ensures that the rights of the accused are protected as they go through the criminal justice system.

II. The History of Free Legal Assistance in the Philippines

The Commission recognizes that this is not the first instance that a measure to provide free legal assistance to citizens in general, or, specifically, to LEOs has been proposed nor instituted. Mindful of the right and the accused’s need for counsel, free legal assistance in the Philippines, also known as “legal aid,” began as a measure to provide access to justice to the poor and marginalized who could not afford legal representation.³⁹ During the early years of American occupation, free legal assistance was instituted through General Order 58,⁴⁰ where the Court would inform a person who is criminally charged about their right to be assisted by counsel and provide them with a lawyer if they could not afford to have one.⁴¹ The same was provided in Section 35 of Act No. 190⁴² where the Supreme Court and Courts of First Instance have the power to appoint a lawyer for destitute litigants in any pending action. In 1914, a Public Attorney Model was adopted in the program of the Bureau of Labour where its lawyers could represent laborers or

³⁷ People v. Serzo, G.R. No. 118435, available at https://lawphil.net/judjuris/juri1997/jun1997/gr_118435_1997.html#rnt24 (last accessed 25 March 2024) citing Johnson vs. Zerbst, 304 U.S. 458, 462-3 (1938) which was cited in Abriol vs. Homeres, 84 Phil. 534, 533 (1949).

³⁸ *Id* citing 287 U.S. 45, 69 (1932)..

³⁹ E.R. Pijuan, *Social Security and Free Legal Aid in the Philippines*, in BETWEEN KINSHIP AND THE STATE 479 (F. von Benda-Beckmann, et al. eds., 1988).

⁴⁰ General Order No. 58, Sec. 15, Criminal Procedure 1900, available at https://lawphil.net/executive/genor/genor_58_1900.html (last accessed 5 February 2024).

⁴¹ *Id*.

⁴² *Id*. citing An Act Providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands, Act No. 190, § 35 (1901) (repealed in 1940).

domestic workers.⁴³ This was expanded in 1934 through Act No. 4152, where the lawyers under the Bureau of Labor may represent indigent clients in criminal cases.⁴⁴ Free legal assistance programs were further extended when voluntary private legal aid associations were formed in 1946 such as the UP Women Lawyers Circle (WILOC), and the Catholic Women’s League (CWL) legal assistance office.⁴⁵

In 1972, during Martial Law under former Pres. F. Marcos, the Citizens Legal Assistance Office (CLAO),⁴⁶ currently known as the Public Attorney’s Office (PAO), was created under the Department of Justice (DOJ).⁴⁷ At the time, the CLAO strengthened the existing *Bureau of Agrarian Legal Assistance* under the Ministry of Agrarian Reform (MAR), which provided free legal services to the agricultural sector.⁴⁸ This was eventually developed to provide the legal services that the PAO delivers today. Notably, the Integrated Bar of the Philippines (IBP) was established in 1970, which eventually institutionalized a legal aid program that is still present until today.⁴⁹ Recently, on March 25, 2024, the IBP has inked an agreement with the police on the provision of free legal aid to police officers facing cases arising from the performance of their duties.⁵⁰ The right to be provided with counsel served as the basis for the creation of the aforementioned legal aid programs, and thereafter, was enshrined in the 1987 Philippine Constitution.⁵¹

Free Legal Assistance to LEOs

In the Philippines, free legal assistance was first extended to LEOs in 1972⁵² particularly to the members of the Integrated National Police (INP) who were facing charges before the courts arising from their official duties. Under P.D. No. 971, one of the purposes of the formation of the INP was “to attain a high level of efficiency and discipline in police administration under a unified command.”⁵³

⁴³ *Id.*

⁴⁴ *Id.* citing An Act Authorizing Labor Agents Who Are Duly Qualified Attorneys to Defend Indigent Accused Persons, Act No. 4152 (1934), available at <https://issuances-library.senate.gov.ph/legislative%20Bissuances/Act%20No.%204152#> (last accessed 5 February 2024).

⁴⁵ *Id.*

⁴⁶ Letter of Implementation No. 4, s. of 1972, Implementing the Abolition of The Office Of The Agrarian Counsel, The Transfer Of Applicable Appropriations, Records, Equipment Property And Necessary Personnel To The Bureau Of Agrarian Legal Assistance Under The Department Of Agrarian Reform, And The Creation Of The Citizens Legal Assistance Office Under The Department Of Justice, available at <https://www.officialgazette.gov.ph/1972/10/23/letter-of-implementation-no-4-s-1972/> (last accessed 1 February 2024).

⁴⁷ Pijuan, *supra* note 39 at 480. See also Dr. Persida V. Acosta-Rueda, The Public Attorney’s Office: Responding to the Call of Cross-Border Cooperation with Pro Bono Legal Services as its Tool, available at https://www.laf.org.tw/ifla2014/en/download/Panel_Discussion01_Philippines.pdf (last accessed 5 February 2024).

⁴⁸ *Id.*

⁴⁹ Integrated Bar of the Philippines, About Us – Brief History, available at <https://www.ibp.ph/about.html> (last accessed 5 February 2024).

⁵⁰ Allysa Nievera, QCPD, IBP ink agreement on free legal aid for cops, MANILABULLETIN, 22 March 2024, available at <https://mb.com.ph/2024/3/22/qcpd-inks-partnership-with-ibp-qc-to-provide-free-legal-assistance> (last accessed 25 March 2024). See also NAPOLCOM CARAGA Region, IBP Legal Aid, available at <https://caraga.napolcom.gov.ph/our-services/ibp-legal-aid/> (last accessed 25 March 2024).

⁵¹ 1987 PHIL. CONST., art. III, § 12 (1).

⁵² Pijuan, *supra* note 39, at 480. But see Providing Legal Assistance for Members of the Integrated National Police Who May Be Charged for Service-Connected Offenses and Improving the Disciplinary System in the Integrated National Police, Appropriating Funds Therefor And For Other Purposes, Presidential Decree No. 971, § 9 (1976), available at https://lawphil.net/statutes/presdecs/pd1976/pd_971_1976.html (last accessed 5 February 2024). Note, however, that Presidential Decree No. 971—the law that granted free legal assistance to law enforcement officers—was issued in 1976)

⁵³ *Id.* at WHEREAS clauses.

Moreover, it also stated that “the existing laws, decrees, rules and regulations need further strengthening to achieve the desired discipline and conduct in the service.”⁵⁴ The law, therefore, created a disciplining authority and disciplinary rules within the INP and legal assistance was merely one of the provisions granted in order to facilitate the accountability process among the police, ensuring that the rights of the accused police officers will be protected as well. The law also indicated that private lawyers may be employed when public lawyers are not readily available.⁵⁵

This provision was then replicated in Section 49 of Republic Act No. 6975,⁵⁶ the law that reorganized the INP into the PNP under the DILG, where the provision states that:

[T]he Secretary of the Department of Justice, the Chairman of the Commission or the Chief of the PNP may authorize lawyers of their respective agencies to provide legal assistance to any member of the PNP who is facing before the prosecutor's office, the court or any competent body, a charge or charges arising from any incident which is related to the performance of his official duty: Provided, that government lawyers so authorized shall have the power to administer oaths. The Secretary of Justice, the Chairman of the Commission, and the Chief of the PNP shall jointly promulgate rules and regulations to implement the provisions of this section.

Coincidentally, the law also strengthened the accountability mechanism by creating the People’s Law Enforcement Board (PLEB), where citizens may file administrative complaints against erring police officers.⁵⁷ The PLEB is composed of non-LEOs who are from the Sangguniang Panlungsod/Bayan, a barangay captain, and three other members who are chosen by the local peace and security council.⁵⁸ As regards criminal complaints, they remain to be under the sole jurisdiction of the courts.⁵⁹

This law was again amended in 1998 through Republic Act No. 8551, otherwise known as the “Philippine National Police Reform and Reorganization Act of 1998,”⁶⁰ which expanded the extent of the provision of legal assistance to police officers. This new law added that “in such cases, when necessary, as determined by the Commission, a private counsel may be provided at the expense of the Government.”⁶¹ Moreover, it also created another accountability mechanism

⁵⁴ *Id.*

⁵⁵ *Id.*, § 9.

⁵⁶ An Act Establishing the Philippine National Police Under A Reorganized Department of the Interior And Local Government, And For Other Purposes [Department of Interior and Local Government Act of 1990], Republic Act No. 6975, § 49 (1990).

⁵⁷ *Id.*, § 43.

⁵⁸ *Id.*

⁵⁹ *Id.*, § 46.

⁶⁰ An Act Providing For The Reform And Reorganization Of The Philippine National Police And For Other Purposes, Amending Certain Provisions Of Republic Act Numbered Sixty-Nine Hundred And Seventy-Five Entitled, "An Act Establishing The Philippine National Police Under A Re-Organized Department Of The Interior And Local Government, And For Other Purposes" [Philippine National Police Reform and Reorganization Act of 1998], Republic Act No. 8551, (1998).

⁶¹ *Id.*, § 56.

in the PNP through the Internal Affairs Service (IAS),⁶² which has the following functions:⁶³

- a) pro-actively conduct inspections and audits on PNP personnel and units;
- b) investigate complaints and gather evidence in support of an open investigation;
- c) conduct summary hearings on PNP members facing administrative charges;
- d) submit a periodic report on the assessment, analysis, and evaluation of the character and behavior of PNP personnel and units to the Chief PNP and the Commission;
- e) file appropriate criminal cases against PNP members before the court as evidence warrants and assist in the prosecution of the case;
- f) provide assistance to the Office of the Ombudsman in cases involving the personnel of the PNP.

It also has the “duty to conduct, *motu proprio*, automatic investigation of the following cases:”⁶⁴

- a) incidents where a police personnel discharges a firearm;
- b) incidents where death, serious physical injury, or any violation of human rights occurred in the conduct of a police operation;
- c) incidents where evidence was compromised, tampered with, obliterated, or lost while in the custody of police personnel;
- d) incidents where a suspect in the custody of the police was seriously injured; and
- e) incidents where the established rules of engagement have been violated.

The jurisdiction of the different accountability mechanisms against erring police officers were then distinguished under NAPOLCOM Memorandum Circular No. 2016-002.⁶⁵ Under Part III, Rule 21 of this memorandum circular, the administrative offenses were defined and enumerated under light offenses, less grave offenses, and grave offenses.⁶⁶ It established the rules of procedure and identified the disciplining authorities, which are the Ombudsman, the NAPOLCOM, and the PNP.⁶⁷ As for citizen’s complaints, citizens may file before the Chief of Police, the City/Municipal Mayor or the PLEB.⁶⁸

Therefore, it is clear that the entitlement to legal assistance of LEOs under the PNP is balanced by the accountability mechanisms established under the above-mentioned laws. The provision of legal assistance would be necessary given that the citizens would have access to defined mechanisms within laws that

⁶² *Id.*, §§ 39-51.

⁶³ *Id.*, § 39.

⁶⁴ *Id.*

⁶⁵ National Police Commission (NAPOLCOM), Revised Rules of Procedure Before the Administrative Disciplinary Authorities and the Internal Affairs Service of the Philippine National Police, Memorandum Circular No. 02, Series of 2016 [NAPOLCOM Memo. Circ. No. 02, s. 2016], (March 07, 2016).

⁶⁶ *Id.*, Part III, Rule 21.

⁶⁷ *Id.*, Rule 2, § 2.

⁶⁸ *Id.*, Rule 3, § 1.

enshrine their rights to file complaints against erring LEOs allowing the citizens to seek accountability.⁶⁹ At the same time, LEOs who are accused of misconduct would be able to avail of legal assistance to properly defend themselves before investigating and disciplining bodies, including the courts.

III. On Expanding the Provision of Free Legal Assistance to Officers or Enlisted Personnel of Other Law Enforcement Agencies

On the accountability mechanisms

In establishing the history of one's right to be assisted by counsel, we wish to emphasize that the entitlement of the LEO, particularly the PNP, is subject to the provision of accountability mechanisms as we indicated in the history of the provision of free legal assistance to the then INP. As such, we are concerned that the bills that propose to provide free legal assistance to the LEOs of other agencies such as the AFP, BFP, BJMP, and PCG, do not contain the same provisions that provide for exacting accountability. For example, under R.A. No. 8551's creation of the IAS, there is an automatic investigation of specific cases that have been enumerated earlier.⁷⁰ Also, there is the PLEB, which is composed of civilian authorities.⁷¹ We note that these are not available in the enabling laws of the other agencies.

We, therefore, suggest that consideration should be given to the original law from where the current proposal was lifted, particularly, R.A. No. 8551, which in turn, was replicated from P.D. No. 971 and R.A. No. 6975. We suggest for our esteemed legislators to consider expanding the jurisdiction of the PLEB to enable citizens to file administrative complaints against the officers of other law enforcement agencies, where civilians will handle the complaints. Also, there should be a counterpart institution of the PNP-IAS in the other agencies as well, which would have the function of conducting, *motu proprio*, automatic investigations on the cases that they handle. This is because the cases that are subject to automatic investigations is applicable to the other agencies as well. Although the former PNP Chief, Guillermo Eleazar has acknowledged⁷² that the IAS still needs to be improved, the fact that it will be established within the agencies can add to the available remedies that the citizens should be able to access in cases of misconduct among LEOs.

While we are of the position that the honorable legislators should consider including accountability mechanisms in providing free legal assistance to LEOs, we wish to take this opportunity to express that such mechanisms would best serve

⁶⁹ While the Commission recognizes that there are challenges in seeking accountability against erring LEOs as noted in our Report on Investigated Killings in Relation to the Anti-Illegal Drug Campaign (See Commission on Human Rights, Report on Investigated Killings in Relation to the Anti-Illegal Drug Campaign, at 27-35, available at <https://chr.gov.ph/wp-content/uploads/2022/05/CHR-National-Report-April-2022-Full-Final.pdf> (last accessed 5 February 2024), we maintain that human rights belong to all even to the accused LEOs and that providing them with legal assistance will best serve the interests of justice as they are also entitled to their day in court.

⁷⁰ See note 50.

⁷¹ See note 44.

⁷² Jose Rodel Clapano, *Eleazar: Law should give more teeth to PNP-IAS*, PHILSTAR, March 23, 2022, available at <https://www.philstar.com/headlines/2022/03/23/2169232/eleazar-law-should-give-more-teeth-pnp-ias> (last accessed 8 February 2024). See also Emmanuel Tupas, *Internal affairs wants to break away from PNP*, PHILSTAR, October 17, 2019, available at <https://www.philstar.com/headlines/2019/10/17/1960935/internal-affairs-wants-break-away-pnp> (last accessed 8 February 2024).

the interests of justice if they are granted independence from the law enforcement agencies they investigate and prosecute noting the recommendations of the civilian inspector general of IAS, Alfegar Triambulo.⁷³ He mentioned that the IAS would be given more authority to prosecute police scalawags if it was independent from the PNP. Moreover, it will not be subjected to the supervision and control of the Police Chief, which may possibly impede their functions.⁷⁴

The mechanism may also consider improving the functions or composition of the Office of the Ombudsman for the Military and other Law Enforcement Offices (OMB-MOLEO), which holds concurrent functions and jurisdiction over administrative cases as the PNP-IAS. There has been an extensive discussion in one study⁷⁵ about the challenges in the work of the OMB-MOLEO, particularly about the delay in adjudication, forum shopping, lack of manpower and resources, and lack of coordination among the relevant law enforcement agencies. These challenges may be taken into consideration in including an independent accountability mechanism within these law enforcement agencies.

On military and uniformed personnel

We acknowledge that Senate Bill No. 2309 proposed by Sen. Villar attempts to provide a definition of military and uniformed personnel (MUP) who may be covered under the measure where it “refers to officers, enlisted personnel, and uniformed personnel of the AFP, BFP, BJMP, PCG, and PNP.” We note, however, that the enumerated additional law enforcement agencies in the bills are not the only agencies that handle law enforcement. Under Republic Act No. 11131,⁷⁶ or the Philippine Criminology Profession Act of 2018, it recognizes many other law enforcement agencies such as the National Bureau of Investigation (NBI), the Philippine Drug Enforcement Agency (PDEA), the Provincial Jails, and the Bureau of Corrections (BuCor), among others. Moreover, the term MUP is also used in another proposed measure, particularly House Bill No. 8969, on the “Military and Uniformed Personnel Pension System Act.” Here, MUP is defined as:

“[A]ll employees of the government who wear uniforms, with ranks, may be armed or unarmed, primarily involved in national defense, enforcement of laws, and in the maintenance of peace, order, and security and who belong to any of the following services: Armed Forces of the Philippines, Philippine National Police, Philippine Coast Guard, Bureau of Fire Protection, Bureau of Jail Management and Penology, Bureau of Corrections, and commissioned officers of the hydrography branch of the National Mapping and Resource

⁷³ Emmanuel Tupas, *Reorganization eyed to strengthen IAS*, PHILSTAR, October 28, 2019, available at <https://www.philstar.com/headlines/2019/10/28/1963945/reorganization-eyed-strengthen-ias> (last accessed 14 February 2024).

⁷⁴ *Id.*

⁷⁵ Eric Anthony A. Dumpilo, *Crossing Boundaries: A Grounded Theory of the Concurrence of Jurisdiction Between the Office of the Ombudsman-MOLEO and Other Administrative Tribunals in the Adjudication of Administrative Cases*, at 57-81 (Sept. 2014) (Masters Thesis, Ritsumeikan Asia Pacific University), available at https://ritsumeiki.repo.nii.ac.jp/?action=repository_common_download&item_id=11883&item_no=1&attribute_id=20&file_no=1 (last accessed 14 February 2024).

⁷⁶ An Act Regulating The Practice Of Criminology Profession In The Philippines, And Appropriating Funds Therefor, Repealing For The Purpose Republic Act No. 6506, Otherwise Known As "An Act Creating The Board Of Examiners For Criminologists In The Philippines" [The Philippine Criminology Profession Act of 2018], Republic Act No. 11131, (2018).

Information Authority who were transferred from the Bureau of Coast and Geodetic Survey.”

As such, we wish to clarify why the proposed measure limited the agencies that have been included.

Furthermore, in discussing who may be entitled to free legal assistance among these agencies, we appreciate the value of PNP Memorandum Circular 2018-041.⁷⁷ This memorandum circular can serve as a guide for the herein proposed measure as it provides for the qualifications as to who may be entitled to the assistance, the process in determining what a service-related case is, and how it may be availed of. There is also some value in monitoring the status of the personnel charged with service-connected cases, which we will explain further below.

Recommendation to Keep and Use Records of the Cases Handled

We also wish to recommend that the proposed measure should contain a provision that would mandate these agencies to keep a record of the cases that have been handled, noting the types of complaints, as well as the violations that were alleged in these complaints. This will allow the State to monitor and analyze the cases and, in turn, create training programs to enhance the skills of the LEOs in implementing the law. This may also lead to preventing future potential litigation.

According to Joanna Schwartz, in her research⁷⁸ on the deterrent power of civil rights damages actions, courts assume that this power is so strong that it deters public officials from committing misconduct or from engaging in unconstitutional behavior. However, citing Peter Schuck⁷⁹ who argued that the costs of liability may outweigh the “countervailing pressures to tolerate low-level misconduct,” she found instances where police officers continued to engage in unconstitutional behavior despite this assumption. She found that information about the suits were not utilized by the police departments, or policy makers, to create programs to address the misconduct among the police—that is, they were not really analyzing the data from the civil damages suits that their police officers were facing.⁸⁰ She also noted some challenges in gathering information as well as utilizing them such as the lack of policies in collecting information about the suits and analyzing them, lack of technological knowhow, technological kinks, employee error and deliberate efforts to sabotage data collection.⁸¹ She, therefore, recommended that policy makers should “(1) increase the extent to which information from lawsuits is gathered and analyzed as a matter of official policy; and (2) minimize anticipated barriers to the effective implementation of these policies.”⁸²

⁷⁷ Philippine National Police, Guidelines and Procedures on the Availment of the Legal Defense Fund, PNP Memorandum Circular No. 41, Series of 2018, [Memo. Circ. No. 41, s. 2018], (2018), available at https://dprm.pnp.gov.ph/wp-content/uploads/2023/07/PNP-MC-2018-041-Guidelines-and-Procedures-on-the-availment-of-Legal-Defense-Fund-05132019_0001.pdf (last accessed 5 February 2024).

⁷⁸ Joanna Schwartz, *Myths and Mechanics of Deterrence: The Role of Lawsuits in Law Enforcement Decisionmaking*, 57 UCLA L. REV. 1023, 1025 (2010).

⁷⁹ *Id.* citing PETER SCHUCK, *SUING GOVERNMENT: CITIZEN REMEDIES FOR OFFICIAL WRONGS* (1983).

⁸⁰ *Id.* at 1028.

⁸¹ *Id.*

⁸² *Id.* at 1082.

Recommendation to Improve Legal Training of LEOs

In connection with the previous recommendation, we also cite Yuri Linetsky,⁸³ who found in his review of the Newark Police Department's Field Inquiry reports between 2009 to 2012, which examined police-citizen encounters that led to citizen complaints, that "the DOJ found that in "75% of these... Reports, the officers failed to articulate reasonable suspicion to justify the stop..."⁸⁴ He also cited cases in other states where the police made questionable arrests due to their lack of understanding of the laws.⁸⁵ They also did not know how to assess the legality of some questionable behavior, which were found not to be illegal in their state resulting in the dismissal of the charges they filed, and opening them up to a civil damages suit.⁸⁶ Although the Commission acknowledges that this study is based in the US where the curriculum for law enforcers are different, we note that the method used by the author in coming up with his recommendations may be applicable to the Philippine setting.

Given the foregoing considerations, we also recommend for the proposed measure to include a provision that institutionalizes a policy where data from the suits filed against LEOs are collected within the agencies' legal departments, or when applicable, within their IAS. These data will be analyzed to come up with training programs and policies that address behavior among the LEOs that give rise to complaints. The training programs may also be included in the curriculum which are taken up by aspiring students who seek a career in law enforcement, such as but not limited to those taking up criminology, as well as in continuing education programs among law enforcement that are utilized for purposes of promotion. The proposed measure may also consider including the role of collecting and analyzing these data among the functions of the Professional Regulatory Board of Criminologists under Section 10 of R.A. No. 11131,⁸⁷ and among the functions of the PNP-IAS under Section 39 of R.A. No. 8551,⁸⁸ as well as equivalent offices under the other law enforcement agencies. The measure may also consider giving access to the data to the academe, to the Commission on Human Rights and non-government organizations for research and training purposes.

IV. Conclusion

The Commission expresses some reservations to the provision of free legal assistance to other law enforcement agencies aside from the PNP given the nature of their work without the inclusion of robust and independent accountability mechanisms similar to those provided to the PNP as cited in the relevant laws discussed earlier. It is acknowledged that the measure aims to ensure that they are protected from frivolous suits acknowledging their historically rooted right to the assistance of counsel. However, we wish to express some reservations noting that the provision from which this is based—the laws that reorganized the PNP—established accountability mechanisms such as the PNP-IAS and the PLEB, which

⁸³ Yuri Linetsky, *What the Police Don't Know May Hurt Us: An Argument for Enhanced Legal Training of Police Officers*, 48 N. M. L. Rev. 1 (2018).

⁸⁴ *Id.* at 13.

⁸⁵ *Id.* at 5-12.

⁸⁶ *Id.* at 5-8; 11-12.

⁸⁷ The Philippine Criminology Profession Act of 2018, Republic Act No. 11131, § 10 (2018).

⁸⁸ The Philippine National Police Reform and Reorganization Act of 1998, Republic Act No. 8551, § 39 (1998).

are not present in the enabling laws of the other law enforcement agencies. Moreover, the Philippine Criminology Profession Act of 2018 also listed many other law enforcement agencies, which were not considered in this proposed measure.

We also wish to take this opportunity to strongly recommend to our esteemed legislators for their consideration to include a provision on collecting and analyzing data about the complaints faced by LEOs, which will be used in crafting policies and training programs. This will ensure that the curriculum of aspiring LEOs and the training programs for LEOs will be able to address the behaviors that result in complaints of misconduct and prevent future litigation. It will also show the necessity of such training programs.

While the Commission recognizes the difficulties in exacting accountability from LEOs, we maintain that the right to be assisted by counsel is a human right belonging to all. Likewise, the provision of free legal assistance will help in achieving the interests of justice, not just for those who are alleging misconduct on the part of LEOs but also for those qualified LEOs who are possibly facing frivolous suits. We note, further, that the currently existing policies that determine who are qualified to free legal assistance within the PNP may serve as a sufficient guide to determine who may be qualified to receive the same in the measure currently proposed.

ISSUED this 4th day of April 2024, Quezon City, Philippines.

RICHARD P. PALPAL-LATOC
Chairperson

BEDA A. EPRES
Commissioner

FAYDAH M. DUMARPA
Commissioner

Justice MONINA A. ZENAROSA (ret.)
Commissioner