



International
Commission
of Jurists

10/1 Soi Aree 2
Phaholyothin Road
Samsennai, Phayathai
Bangkok 10400
Thailand

t +66 2 61 98 477/478
f +66 2 61 98 479
www.icj.org

Representative Guillermo A. Romarate Jr.

Chairman
Committee on Human Rights
House of Representatives
Batasan Pambansa Complex
Quezon City

Attention: **Ms. Fely D. Parcon**, Committee Secretary

3 March 2015

Dear Representative Romarate Jr.,

I am writing to you on behalf of the International Commission of Jurists (ICJ). The ICJ is composed of 60 eminent judges and lawyers from all legal traditions and regions of the world. It was established in 1952 and is active today on five continents. The ICJ works to advance understanding of and respect for the rule of law and the legal protection of human rights throughout the world.

We are writing to you in response to the position paper dated 11 February 2015 submitted by the Philippines' Department of Justice (DOJ) on House Bill No. 2401, entitled: "AN ACT ESTABLISHING A NATIONAL PREVENTIVE MECHANISM AGAINST TORTURE IN THE PHILIPPINES" (*hereinafter* H.B. No. 2401).

The position paper of the DOJ maintains that (a) the powers and functions envisioned for the National Preventive Mechanism (NPM) under H.B. No. 2401 are either the same or already subsumed in one or more of the powers of the Commission on Human Rights of the Philippines (CHRP); and (b), if passed, H.B. No. 2401 will be unconstitutional since it has the effect of depriving a constitutionally-created office of its powers.

At the outset, we would like to note that we welcome H.B. 2401. The operative elements of H.B. 2401 provide for essential measures towards the Philippines' compliance of its obligations under Article 17 of the Optional Protocol to the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (OPCAT), which states that the Philippines must maintain, designate, or establish an NPM one year after its accession, at the latest.

The Philippines acceded to the OPCAT on April 2012. Upon its accession, the Philippines made a declaration postponing the discharge of its obligations under Part III of the OPCAT. We note, however, that this postponement is only up to three years, extendible for another two years. Thus, we must emphasize that H.B. No. 2401 should be a matter of priority for the Congress of the Philippines. A law creating the NPM should be adopted without further delay for the Philippines to comply with its obligations under the OPCAT.

Indeed, the NPM, as described in H.B. No. 2401, and the CHRP may appear to share certain similar powers and functions. The establishment of an NPM that is separate from the CHRP, however, does not mean that this will diminish the powers given to the latter under the 1987 Constitution.

The CHRP has a generalized mandate appropriate to a national human rights institution under the Paris Principles and other international standards. NPMs, under the OPCAT, however, have very specialized functions and mandate, which require different competencies and powers.

The powers of the NPM under H.B. No. 2401 complement the powers of the CHRP. This is in line with the guidelines on NPMs adopted by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), the international body mandated under the OPCAT to advise and assist States Parties in the establishment of NPMs. Under these guidelines, the SPT states that the NPM "should complement rather than replace existing systems of oversight." The establishment of an NPM "should not preclude the creation or operation of other such complementary systems."¹

The DOJ, in its position paper, proposes that instead of creating an NPM separate from the CHRP, H.B. No. 2401 should be revised to expand the powers and functions of the CHRP to include those required under the OPCAT. On this point, we note that the SPT has always advocated a clean separation of powers, even where the NPM may fall within the same administrative structure or authority as the generalized NHRI. Under the guidelines, the SPT explains that in States where the institution designated as the NPM performs other functions in addition to those under the OPCAT, "its NPM functions should be located within a separate unit or department, with its own staff and budget."² The reason for this is that on matters of torture, the preventive approach does not sit well next to a monitoring or quasi-adjudicatory role by the same institution. For instance, the same institution that denounces publicly a torture case in a detention center may not at a later time easily discuss with the prison director how to improve the sanitation system in the very same center.

In its report on the visit to the NPM of Moldova, the SPT noted the absence of a separate structure and a distinct budget line for the functions of the NPM within the Centre for

¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Guidelines on national preventive mechanisms, UN Doc. CAT/OP/12/5 (2010), para. 5.

² Ibid, para. 32.

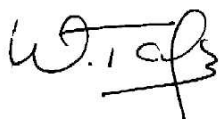
Human Rights, Moldova's national human rights institution designated as the NPM in combination with the Consultative Council. The SPT said that these types of structural problems "undermine the functional independence of the NPM." This, therefore, would place the State Party in conflict with Articles 18.1 and 18.3 of the OPCAT, on the functional independence and making available necessary resources for the functioning of the NPM.³

By keeping a clear separation between the two bodies, the integrity and effectiveness of both the NPM and the CHRP is enhanced. Each is insulated from any possible conflict with the other. The CHRP can focus on its general mandate, and the NPM on its highly specialized one.

We note that H.B. No. 2401 has already achieved this clear separation and it would be a regression to propose that the NPM be merged with the CHRP.

Thank you for your kind consideration.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'W. Tayler', with a stylized flourish at the end.

Wilder Tayler
Secretary General

For questions and clarifications, please contact Ms. Emerlynne Gil, International Legal Adviser for Southeast Asia, tel. no. +662 619 8477 (ext. 206) or emerlynne.gil@icj.org.

³ Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Moldova, UN Doc. CAT/OP/MDA/R.1 (2013), para. 13.