
ADVANCE UNEDITED VERSION

Human Rights Committee

Concluding observations on the fourth periodic report of the Philippines, adopted by the Committee at its 106th session, 15 October to 2 November

1. The Committee considered the fourth periodic report submitted by the Philippines (CCPR/C/PHL/4) at its 2924th and 2925th meetings (CCPR/C/SR.2924 and CCPR/C/SR.2925, held on 15th and 16th October 2012. At its 2944th meeting (CCPR/C/SR.2944), held on 30 October 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of the Philippines and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high level delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/PHL/Q/4/Add.1) to the list of issues (CCPR/C/PHL/Q/4) which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing. The Committee, however, regrets that the written replies were submitted late, only a few days before the consideration of the State party report.

B. Positive aspects

3. The Committee welcomes the following legislative and other steps taken by the State party:

(i) The signing of a framework agreement for peace between the government and the Moro Islamic Liberation Front (MILF) on 15 October 2012;

(ii) The enactment of Republic Act 9346 abolishing the death penalty in June 2006;

(iii) The enactment of the Magna Carta of Overseas Migrant Workers (Republic Act 10022) in March 2010;

(iv) The enactment of an Act providing for the Magna Carta of Women (Republic Act 9710) in August 2009;

(v) The enactment of the Juvenile Justice and Welfare Act (Republic Act 9344) in April 2006;

(vi) The enactment of the Anti-Forced Disappearance Act on 16 October 2012; and

(vii) The introduction of a Rule on the *Writ of Amparo* for cases of Extrajudicial Execution and Enforced Disappearances which took effect in October 2007.

4. The Committee welcomes the ratification by the State party of the following international instruments:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty on 20 November 2007;

(b) The Convention on the Rights of Persons with Disabilities on 15 April 2008;

(c) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 17 April 2012; and,

(d) ILO Convention No. 189 on Decent Work for Domestic Workers on 5 September 2012.

C. Principal matters of concern and recommendations

5. While taking note of article II, section 2 of the 1987 Constitution and the State party's response in its replies that international instruments ratified by the State party become an integral part of domestic law, the Committee is concerned at the lack of clarity on the status of the Covenant in domestic law. It is particularly concerned that, although courts have on several occasions referred to the provisions of the Covenant in their decisions, the representatives of the State party have argued before the Supreme Court that the Covenant cannot be considered part of the law of the land without the need of a law enacted by the legislature (art. 2).

The State party should take all necessary measures to ensure legal clarity on the status of the Covenant in domestic law. The State party should also continue to take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are taken into account by national courts.

6. The Committee recalls its previous concluding observations (CCPR/CO/79/PHL, para. 6) and reiterates its concern at the absence of a specific procedure or mechanism to examine and give effect to its Views under the Optional Protocol to the Covenant, and at the fact that recommendations in the Views have not been implemented (art. 2).

The State party should take concrete steps to implement the Views of the Committee finding a violation of the Covenant. It should also establish, with the aim of implementing the Views of the Committee, a mechanism with a mandate to (a) study the Committee's findings in its Views; (b) propose measures to be taken by the State party to give effect to the Views; and (c) provide victims with an effective remedy for any violation of their rights.

7. While noting the expansion of the Commission on Human Rights' (CHRP) responsibilities under various pieces of legislation, the Committee is concerned that this expansion has not been matched with an increase in resources and that the CHRP lacks full fiscal autonomy (art. 2).

The State party should provide adequate financial and human resources to the CHRP that are commensurate with the additional responsibilities that have been conferred on it. The State party should ensure that the CHRP enjoys full fiscal autonomy as provided by the Administrative Code of 1987, Book VI on National Government budgeting.

8. While the Committee appreciates the State party's need to adopt measures to combat acts of terrorism, it is concerned at the scope of certain offences under the provisions of the Human Security Act of 2007. The Committee is also concerned at the lack of data on the implementation of this legislation and how it affects the enjoyment of rights under the Covenant (art. 2).

The State party should review the Human Security Act of 2007 to ensure that it not only defines terrorist crimes in terms of their purpose but also defines the nature of those acts with sufficient precision to enable individuals to regulate their conduct accordingly. The Committee urges the State party to compile data on the implementation of anti-terrorism legislation and how it affects the enjoyment of rights under the Covenant, and include it in the next periodic report.

9. While welcoming the State party's efforts to narrow the gender gap in public and private sectors, the Committee is concerned at reports that women constitute a large proportion of those employed in the informal sector (arts. 2, 3 and 26).

The State party should continue to strengthen its efforts to increase the participation of women in the public and private sectors, including where necessary, through appropriate temporary special measures.

10. While welcoming the decision of the Supreme Court in the *Ang Ladlad* case and the statement of the delegation that it will take up a leadership role to promote LGBT rights, the Committee is concerned that LGBT persons are subjected to arrest and prosecution by means of the "grave scandal" provision provided under article 200 of the Revised Penal Code. The Committee is also concerned that the comprehensive anti-discrimination bill that prohibits discrimination on grounds of sexual orientation and gender identity has not been passed into law. Furthermore, the Committee is concerned at the prevalence of stereotypes and prejudices against LGBT persons in the military, police and the society at large (arts. 2 and 26).

The State party should ensure that LGBT persons are neither arrested nor prosecuted on the basis of their sexual orientation or gender identity including for violating the "grave scandal" provision under the Revised Penal Code. The State party should adopt a comprehensive anti-discrimination law that prohibits discrimination on the basis of sexual orientation and gender identity and take steps, including awareness raising campaigns, to put an end to the social stigmatization of and violence against homosexuals.

11. The Committee is concerned that the Muslim Personal laws codified by Presidential decree No. 1083 discriminate on the basis of religion regarding the minimum age for marriage for girls and also permits polygamy amongst Muslims, which undermine the principle of non-discrimination as provided under the Covenant (arts. 2, 23, 24 and 26).

The State party should revise the Code of Muslim Personal laws to prohibit polygamous marriages and repeal the provisions that discriminate on the basis of religion regarding the minimum age for marriage for girls.

12. The Committee is concerned at the lack of legislation providing for the dissolution of marriages, which might have the effect of compelling victims of sexual and gender based violence to remain in violent relationships (arts. 2, 3, 7 and 23).

The State party should adopt legislation that governs the dissolution of marriages and ensure that it protects the rights of children, and the rights of spouses to custody of children, and equality in the devolution of matrimonial property.

13. The Committee regrets the absolute ban on abortions, which compels pregnant women to seek clandestine and harmful abortion services, and accounts for a significant

number of maternal deaths. The Committee also regrets the issuance of Executive Order 0030 in Manila City which prohibits the disbursement of funds for the purchase of materials and medicines for artificial birth control (arts. 2, 3, 6 and 17).

The State party should review its legislation with a view to making provision for exceptions to the prohibition of abortion, such as protection of life or health of the mother, and pregnancy resulting from rape or incest, in order to prevent women from having to seek clandestine harmful abortions. The State party should also ensure that reproductive health services are accessible for all women and adolescents. In this regard, the State party should lift Executive Order 0030 for Manila city in so far as it prohibits the disbursement of funds for the purchase of materials and medicines for artificial birth control. Furthermore, the State party should increase education and awareness-raising programmes, both formal (at schools and colleges) and informal (in the mass media), on the significance of using contraceptives and the right to reproductive health.

14. The Committee is concerned at the continued perpetration of extrajudicial killings and enforced disappearances in the State party. It is particularly concerned at the proliferation of private armies and vigilante groups that are partly responsible for these crimes as well as at the large number of illegal firearms. The Committee is also concerned at the arming and use of “force multipliers” for counter-insurgency and other purposes pursuant to Presidential Executive Order No. 546 (arts. 6, 7 and 9).

The State party should take necessary measures to prevent extrajudicial killings and enforced disappearances and ensure that alleged perpetrators of these crimes are effectively investigated, prosecuted and, if convicted, punished with appropriate sanctions, and that the victims’ families are adequately compensated. The State party should establish a mechanism to disband and disarm all private armies, vigilante groups and “force multipliers”, and also increase efforts to reduce the number of illegal firearms. The Committee urges the State party to revoke Executive Order No. 546, and to take advantage of the framework agreement for peace signed with the Moro Islamic Liberation Front to address the issues of extrajudicial killings and enforced disappearances. The State party should provide information in its next periodic report on the specific measures taken to implement these recommendations.

15. The Committee is concerned at reports that human rights defenders and political dissidents are often subjected to surveillance by law enforcement personnel (art. 17).

The State party should take appropriate measures to protect the rights of human rights defenders and political dissidents and ensure that any surveillance programmes for purposes of State security are compatible with article 17 of the Covenant.

16. The Committee is concerned at problems in the implementation of the Witness Protection Program such as the failure to ensure full protection of witnesses. It particularly regrets the killing of some of the witnesses in the *Ampatuan* case, which involves the prosecution of individuals accused of killing 58 people in *Maguindanao* on 23 November 2009 (arts. 6 and 14).

The State party should take concrete measures to increase the effectiveness of the witness protection program to ensure the full protection of witnesses. The State party should ensure that authorities fully investigate cases of killings and suspected intimidation of witnesses to put an end to the climate of fear that plagues investigation and prosecution in the State party.

17. The Committee is concerned at continued allegations of torture and the lack of data on the incidence of torture, particularly on the number of investigations, prosecutions, convictions and sanctions imposed on perpetrators of torture in the State party (art. 7).

The State party should take appropriate measures to improve the conduct of investigations of alleged torture and ill-treatment by law enforcement personnel. The State party should ensure that allegations of torture and ill-treatment are effectively investigated in accordance with the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (General Assembly Resolution 55/89); and that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; and that the victims are adequately compensated. The State party should establish a system to collect data on the number of investigations, prosecutions, convictions, sanctions and compensation granted to victims of torture or members of their families, and report comprehensively about these figures in its next report.

18. The Committee is concerned at reports of continued cases of trafficking in persons, which mainly affect women and children (arts. 3, 8 and 24).

The State party should take all necessary measures to ensure that victims of trafficking in persons are provided with medical, psychological, social and legal assistance. Protection should be provided to all witnesses and victims of trafficking so that they may have a place of refuge and an opportunity to give evidence against those held responsible. The State party should also continue to reinforce international cooperation as well as existing measures to combat trafficking in persons and the demand for trafficking. It should also devote sufficient resources to investigations of cases of trafficking in persons by identifying those responsible, prosecuting them and imposing penalties that are commensurate with the seriousness of the acts committed.

19. While welcoming efforts by the State party to improve conditions of detention and imprisonment such as early release, the Committee regrets the high levels of overcrowding and the poor conditions of incarceration prevailing in detention centres and prisons which often operate beyond their capacities (arts. 2 and 10).

The State party should increase its efforts to improve the conditions of detained persons and prisoners. It should address the issues of sanitation and overcrowding as a matter of priority, including through resort to the wider application of alternative forms of punishment.

20. The Committee is concerned at the existence of a huge backlog of cases in the judiciary, which is partly attributable to the lack of judicial officers for appointment by the President to judicial positions and the capacity of the Judicial and Bar Council to expedite the processing of nominees (art. 14).

The State party should strengthen the capacity of the Judicial and Bar Council, which is responsible for the nomination of candidates, to ensure that vacancies in the judiciary are filled as a matter of urgency. Furthermore, the State party should continue to strengthen the judiciary so that it clears the backlog of existing cases and reduces delays in the disposition of cases.

21. While taking note that the Supreme Court has adopted a policy that libel convictions should be penalised through the imposition of a fine only and that Senate Bill 2344 seeks to decriminalise libel, the Committee regrets that the Cybercrime Prevention Act of 2012, which has been suspended by the Supreme Court, criminalises libel over the internet (arts. 2 and 19).

The Committee recalls its General Comment No. 34 on freedoms of opinion and expression and urges the State party to consider the decriminalization of defamation. The Committee reiterates its position therein that the application of criminal law in defamation cases should only be countenanced in the most serious of cases and that imprisonment is never an appropriate penalty.

22. The Committee regrets that foreign workers in the State party are prohibited from forming or joining trade unions unless the State party has a reciprocal agreement on this matter with the foreigners' countries of origin (art. 22).

The State party should revise its Labour Code to guarantee the right of foreign workers to form and join trade unions in the State party.

23. The Committee is concerned about the high incidence of child labour which continues to increase, and about the fact that children continue to be employed in hazardous conditions including involvement in the worst forms of child labour such as the sex trade, drug trafficking, pornography, the performance of auxiliary tasks for combatants and other illicit activities (art. 24).

The State party should intensify its efforts to implement existing policies and laws that are designed to eradicate child labour, including through public information and education campaigns on the protection of children's rights, and strengthening the capacity and reach of labour inspectors. It should also ensure that exploitative acts of child labour are prosecuted and punished, and should keep reliable statistics in order to combat it effectively.

24. The State party should widely disseminate the Covenant, the two Optional Protocols to the Covenant, the text of the fourth periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party. The Committee also requests the State party, when preparing its fifth periodic report, to broadly consult with civil society and non-governmental organizations.

25. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 7, 16 and 20 above.

26. The Committee requests the State party, in its next periodic report, due to be submitted on 31 October 2016, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.
