

INTERNATIONAL OBLIGATIONS UNDER THE ICCPR AND ITS SECOND OPTIONAL PROTOCOL RELATED TO THE DEATH PENALTY, PHILIPPINES

February 2017

III. KEY ISSUES ON INTERNATIONAL LEGAL OBLIGATIONS

1. Arguments against reintroduction

a. ICCPR Article 6, paragraph 2 and draft General Comment 36 on Article 6, Right to Life, CCPR/C/GC/R.36/Rev.2

According to Article 6, paragraph 2, countries that have already abolished the death penalty cannot reintroduce and impose this punishment, even for most serious crimes. This is re-iterated in draft General Comment 36 on Article 6 of the ICCPR. Accordingly, any reintroduction of the death penalty in the Philippines may constitute a violation of its obligation under article 6, paragraph 2.

- ICCPR Article 6, paragraph 2:

“In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes...”

- The Philippines has abolished the death penalty through Republic Act (RA) 9346¹ which repeals the death penalty in Section 1 of the law:

“The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed, Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.”

- ICCPR draft General Comment 36, paragraph 36:

“States parties that have abolished the death penalty, through amending their domestic laws, acceding to the Second Optional Protocol to the Covenant or adopting another international instrument obligating them to abolish the death penalty, are barred from reintroducing it.”

b. Second Optional Protocol – no withdrawal or denunciation clause

- In 2007, the Philippines ratified the Second Optional Protocol to the ICCPR which aims at the abolition of the death penalty. When a State ratifies the Second Option Protocol, it guarantees that no one can be executed within its jurisdiction. International law does not permit a State that has ratified or acceded to the Second Optional Protocol to denounce or withdraw from it.
- In its General Comment 26, the Human Rights Committee stated that the drafters of the Covenant deliberately intended to exclude the possibility of denunciation. The same conclusion applies to the Second Optional Protocol in the drafting of which a denunciation clause was also deliberately omitted. Thus it guarantees the permanent non-reintroduction of the death penalty in States that ratified the Protocol.

¹ <http://www.gov.ph/2006/06/24/republic-act-no-9346/>

- The Human Rights Committee's position is in line with Article 56 of the Vienna Convention on the law of treaties, which expounds the general rule that a treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal.

2. Issues related to the provision in the Philippine Constitutional that allows imposition of the death penalty in certain conditions.

Some stakeholders argue that pursuant to Article III, Section 19 of the Philippine Constitution, the death penalty can be imposed: *“Neither shall the death penalty may be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it.”*

In this regard, the international experts noted that there is no inconsistency between the Second Optional Protocol and the Philippine Constitution. As a general rule, the Philippine Constitution prohibits the death penalty except for compelling reasons involving heinous crimes. But in no way does it mandate that the death penalty be put into effect.

3. Issues related to the domestic process in the ratification of the Second Optional Protocol and possible withdrawal

On the matter under debate in the Senate on a possible procedural lapse in the internal law required to ratify international treaties (as stipulated in Article 21 of the Philippine Constitution), it is important to note that not only has ten years elapsed since the treaty was ratified without any notification to the SG’s office of this concern, but there have been multiple occasions over the past decade where the Philippines has publicly re-affirmed its commitment to the obligations undertaken in the ratification of the Second Optional Protocol. These include:

2008 UPR Report

- In its first report (A/HRC/WG.6/1/PHL/1) to the UPR in 2008, the Philippines stated the following:
“104. In consonance with promotion of the right to life, the Philippine Government has condemned all forms of killings. In testimony of its firm commitment to the value and sanctity of human life and in the belief that the defense of life is strengthened by eliminating the exercise of judicial authorization to take life, the Philippines abolished the Death Penalty (and) ratified the 2nd Optional Protocol of the International Covenant on Civil and Political rights (ICCPR). To sustain this commitment, the Philippines co-sponsored and co-authored the Resolution calling for a Moratorium on Executions, which was adopted by the UN General Assembly on 18 December 2007.”
- In Footnote 28 of Report A/HRC/WG.6/1/PHL/1 states: *“Pursuant to R.A. 9346 (otherwise known as, “An Act Prohibiting the Imposition of Death Penalty in the Philippines”), the death penalty law in the country was abolished.”*

2011 State Report to the ICCPR Human Rights Committee

- In its fourth periodic report to the Human Rights Committee (CCPR/C/PHL/4), submitted under article 40 of the International Covenant on Civil and Political Rights, the Philippines stated following:
 - *“153. On 7 June 2006, President Gloria Macapagal Arroyo signed Republic Act No. 9346 entitled, “An Act Prohibiting the Imposition of the Death Penalty.”*
 - *154. On 22 September 2006, the Philippines signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death Penalty (“Second Optional Protocol”).*

[Instrument of signature was deposited on 20 September 2006] The President signed the instrument of ratification of the Second Optional Protocol, which was deposited with the United Nations in line with the provisions of the Protocol. [Instrument of ratification was deposited on 20 November 2007].

- *155. With the signing of the Second Optional Protocol, the Philippine Government reemphasized its unrelenting commitment to strengthen the protection of human rights by co-sponsoring and co-authoring the United Nations resolution on the Global Moratorium on Executions and/or Abolition of the Death Penalty during the 62nd and 63rd General Assembly.”*

GA Resolutions for which the Philippines voted in favor on the moratorium on the use of the death penalty

- A/RES/62/149, Adopted 18 December 2007, paragraph number 3, page 2
http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/62/149
- A/RES/65/206, Adopted 21 December 2010, paragraph number 4, page 2
http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/206
- A/RES/69/186, Adopted on 18 December 2014, paragraph 6, page 2/3
http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/69/186