The Commission on Human Rights of the Philippines (herewith the “Commission”) issues this advisory to remind the Philippines that it is a State Party to the International Covenant on Civil and Political Rights (ICCPR) and its Second Optional Protocol. The Philippines ratified ICCPR and the Second Optional Protocol that expressly include provisions defending the right to life and precluding imposition or reinstatement of death penalty; the Philippines therefore can neither denounce nor withdraw from these treaties, as a matter of the State’s acceptance to be bound by international law and its international legal and human rights obligations.

The Philippines will commit an international wrongful act if it perseveres in denouncing, or persists its plans to withdraw from the ICCPR and the Second Optional Protocol, in connection with its attempts to pursue the restoration of capital punishment in the country. If an international wrongful act is committed by the Philippines, the whole State community may suffer from its consequences. The responsibility to promote, protect and fulfill human rights, and the promotion of an impartial, incorruptible, restorative justice system should be the agenda of the State.

This advisory complements the previous advisories issued by the Commission advocating against the death penalty1 and the recent policy paper conducted by the Commission and an international human rights law expert, challenging proposed legislations to reimpose capital punishment based on empirical approaches and data responding to the argument that the Philippines stands to breach international law. 2

Background

The Philippines ratified the International Covenant on Civil and Political Rights (ICCPR, 1966)3 on 23 October 1986, reinforcing its commitment to promote and protect civil and political rights, including the right to life enshrined in Article 6 of the Covenant.

On 2 February 1987, the Constitution of the Republic of the Philippines was ratified by a nationwide plebiscite. The 1987 Constitution emphasizes the following principles, to wit: The Philippines adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations; 4 values the dignity of every person and guarantees full respect for human rights; 5 protection of life, liberty and

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4 Article 2, Section 2, 1987 Constitution of the Republic of the Philippines.
5 Article 2, Section 11, 1987 Constitution of the Republic of the Philippines.
property and promotion of the general welfare are essential for the enjoyment by all the people of the blessings of democracy; no person shall be deprived of life, liberty or property without due process of law; excessive fines shall not be imposed nor cruel, degrading, inhuman punishment inflicted. 

Through the 1987 Constitution, the Philippines became the first country in Asia that abolished the death penalty. Article 3, Section 19(1) states:

Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua.

Capital punishment reduced to reclusion perpetua, as stated in the 1987 Constitution, signified that the Constitution abolished the death penalty.

In 1993, however, capital punishment was reintroduced under Republic Act 7659 to address perceived rising criminality. Seven executions were committed in 1999, signaling the enforcement of the law and an attempt to abate criminality. In the same year, criminality increased by 15.3%. Appeals from groups against the death penalty, which cited its non-deterrent effect in the commission of crimes compelled the Philippine government to issue a moratorium. In 2003, de facto moratorium on executions were lifted, but reprieves were since then issued on scheduled executions because of evidences that exonerated persons on death row. On 24 June 2006, R.A. 9346, “An Act prohibiting the imposition of the Death Penalty in the Philippines” was enacted and signaled abolishing death penalty in the country, for the second time.

On 20 November 2007, the Philippines ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (ICCPR 2nd OP, 1989). The Second Optional Protocol of the ICCPR declares in Article 1, that:

1. No one within the jurisdiction of a State Party to the present Protocol shall be executed.

2. Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.

Article 6 of the Second Optional Protocol further states that “the present Protocol shall not be subject to any derogation,” absolutely expressing that there is no mechanism provided for the State Party to withdraw from the Covenant, thus guaranteeing against reinstatement of the death penalty.

The current administration of the Philippines clearly aspires to restore the death penalty despite the aforementioned binding legal commitments. “In his inaugural speech, President Rodrigo Duterte, espousing for real change in government, announced his political policies in eliminating corruption, criminality and the rampant trade of illegal drugs. This commitment to eradicate the ills of society was reiterated in his first State of the Nation Address and the reimposition of the death penalty has been declared to be one of the means to eliminate [criminality].”

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7 Article 3, Section 1, 1987 Constitution of the Republic of the Philippines.
9 An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, as Amended, Other Special Penal Laws, and for Other Purposes.
On 7 March 2017, the House of Representatives by viva voce vote passed House Bill 4727, with 217 in favor, 54 against and 1 abstention. In the Senate, “Senate Bill Nos. 4, 42, 185, 186, 187, 889, 985, and 1294 are under the consideration of the Committee on Justice and Human Rights. Further consideration of the Senate Bills are suspended as of writing pending consideration by officials of the effect of relevant international agreements ratified by the Philippines and other international obligations.”

Withdrawal from ICCPR and the Second Optional Protocol

The Vienna Convention on the Law of Treaties (VCLT, 1969) lays down the general rule for the creation, operation and termination of or withdrawal from a treaty. Article 56 of VCLT specifically expounds that a treaty without exit provisions is not subject to termination, denunciation or withdrawal unless: “(a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or (b) a right of denunciation or withdrawal may be implied by the nature of the treaty.” The same article requires twelve months’ notice to States Parties to the Convention before a withdrawal or denunciation takes effect.

States have attempted in the past to withdraw from treaties with no exit provisions. The case of the Democratic Peoples’ Republic of Korea (North Korea) is a classic example of the impossibility of withdrawal or termination from ICCPR. The United Nations Treaty Collection chapter on the status of ratification of the ICCPR noted:

On 25 August 1997, the Secretary-General received from the Government of the Democratic People’s Republic of Korea a notification of withdrawal from the Covenant, dated 23 August 1997.

As the Covenant does not contain a withdrawal provision, the Secretariat of the United Nations forwarded on 23 September 1997 an aide-mémoire to the Government of the Democratic People’s Republic of Korea explaining the legal position arising from the above notification.

As elaborated in this aide-mémoire, the Secretary-General is of the opinion that a withdrawal from the Covenant would not appear possible unless all States Parties to the Covenant agree with such a withdrawal.

The above notification of withdrawal and the aide-mémoire were duly circulated to all States Parties under cover of C.N.467.1997.TREATIES-10 of 12 November 1997. (emphasis supplied).

The case of North Korea prompted the Human Rights Committee to issue General Comment No. 26 on the continuity of obligations of States on the ICCPR. The Committee stated in paragraph 1,

The International Covenant on Civil and Political Rights does not contain any provision regarding its termination and does not provide for denunciation or withdrawal. Consequently, the

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16 VCLT, Article 56 (1).
17 VCLT, Article 56 (2).
possibility of termination, denunciation or withdrawal must be considered in the light of applicable rules of customary international law which are reflected in the Vienna Convention on the Law of Treaties. On this basis, the Covenant is not subject to denunciation or withdrawal unless it is established that the parties intended to admit the possibility of denunciation or withdrawal or a right to do so is implied from the nature of the treaty. (emphasis supplied).

Like North Korea, the Philippines is bound by the Covenant when it ratified the treaty on 23 October 1986. It did not make any reservations against any provisions of the Covenant, including the no exit clause and even recognized the competence of the Human Rights Committee,

The Philippine Government, in accordance with article 41 of the said Covenant, recognizes the competence of the Human Rights Committee set up in the aforesaid Covenant, to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant.20

In the same vein, the Philippines did not make any reservations when it ratified the Second Optional Protocol on 27 November 2007, and has since then supported and co-sponsored UN General Assembly resolutions on moratorium on the use of the death penalty.21

An Optional Protocol is described as a human rights treaty in its own right, are open to signature, accession or ratification by States who are party to the main treaty, and that it either provides for procedures with regard to the main treaty or address a substantive area related to the treaty.22

The study, “In Defense of the Right to Life: International Law and Death Penalty in the Philippines,” by the Commission and Dr. Christopher Ward, SC, provides a straightforward explanation that,

The Second Optional Protocol does not carry the necessary implication of such a right of withdrawal. In fact, to the contrary, every aspect of the Second Optional Protocol, its object and purpose, and the travaux préparatoires make it clear that no withdrawal from the Protocol, once ratified, is permissible.”

Even if that conclusion was (hypothetically) wrong, a minimum period of notice of twelve months is required to effect a withdrawal from the Second Optional Protocol, following Article 56 of the VCLT. It would be expected that all other States party to the Second Optional Protocol would protest such a course in the most vigorous terms. (emphasis supplied).

If the Philippines insists in withdrawing from the Second Optional Protocol, the VCLT will be effectuated and the State will confer on each member of the international community rights erga omnes that is towards all other States. It will face a similar situation as that of North Korea, in which States did not consent to the latter’s withdrawal.23 Even if the Philippines can theoretically withdraw despite the absence of

23 “In the Secretary-General’s view, unilateral exit from the ICCPR was precluded by Article 54 of the VCLT, which he interpreted as permitting North Korea to withdraw only with the consent of all of the other treaty parties.35 The UN Treaty Section referred to this interpretation in a notification sent to these States in response to North Korea’s action, and [a]t least one State, Denmark, sent a Notification to the Secretary-General agreeing with his understanding of
an exit, it still is accountable to the ICCPR, given that the death penalty is a form of torture.\textsuperscript{24} Simply put, the Philippines will violate international law and its own domestic law if it wishes to denounce or attempt to withdraw from ICCPR and the Second Optional Protocol to reinstate death penalty.

The ramification of reintroducing capital punishment in the country, and the relevant scheme of the State to reintroduce it despite its international commitments will hurt the whole State community. The Commission and Dr. Ward argue that the reintroduction of capital punishment will considerably impact the standing of the Philippines in the international community, its work within the United Nations (UN), and its economic relations with trade partners,

The reintroduction of the death penalty in any form in the Philippines will expose the Philippines to international ridicule and criticism as it breaches numerous rules of international law, including rules that it expressly and freely accepted in the free exercise of its sovereignty. Breach of international law by the Philippines in this context will undermine treaty commitments entered into by the Philippines. It will no longer be a respected member of the community of States.\textsuperscript{25}

The world is moving towards the abolition of the death penalty, while the Philippines is going against international human rights standards. The Commission calls on the State to reexamine its obligations. Instead of wishing to restore the death penalty that will consequently violate both national and international laws, which it has been expressively supporting and in compliance with for decades, the Philippines should ensure that those who commit crimes are caught and held accountable. It has been demonstrated time and again, that a fair, professional and competent judicial system provides better overall results than one endemic with corruption, incompetence or lack of resources. Further, we have nothing to fear from a judicial system that follows the rule of law and respects the rights of all – victims, defendants and witnesses.

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\textsuperscript{24} UN General Assembly, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment Note by the Secretary-General, 9 August 2012, A/67/279, http://www.refworld.org/docid/509a69752.html (accessed 23 April 2017).

\textsuperscript{25} Commission on Human Rights of the Philippines and Ward, page 2.