



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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Excellencies,

I am writing to express my serious concern regarding information I have received on the impending passage of bills aimed at reintroducing the death penalty in the Philippines in both Houses of Congress.

I recall that in June 2006, the Philippines passed Republic Act 9346 which abolished the use of capital punishment. Subsequently, in 2007 the Philippines ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) which aims at the abolition of the death penalty. When a State ratifies the Second Option Protocol to ICCPR, 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 it or withdraw from it. The Human Rights Committee is the body of independent experts elected by States Parties that monitors the implementation of the Covenant and its protocols. In its General Comment 26 (attached), 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 which a denunciation clause was also deliberately omitted, thereby guaranteeing the permanent non-reintroduction of the death penalty by States that ratified the Protocol.

The 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.

Furthermore, Article 6 of the ICCPR, to which the Philippines has been a State party since 1986, provides that "in those States which have not abolished the death penalty, the sentence of death can only be applied for the most serious crimes". On various occasions, the Human Rights Committee has determined that drug-related offences did not meet the threshold of "most serious crimes". For example, during consideration of the periodic report of Thailand, the Human Rights Committee noted with concern that [in Thailand] the death penalty is not restricted to the "most serious

His Excellency Mr. Pantaleon Alvarez
Speaker of the House of Representatives of the Philippines

His Excellency Mr. Aquilino Pimentel III
President of the Senate of the Philippines

crimes” within the meaning of article 6, paragraph 2, and is applicable to drug trafficking. The Committee recommended that Thailand review the imposition of the death penalty for offences related to drug trafficking (CCPR/CO/84/THA, para. 14). In its Concluding Observations on the periodic report of Indonesia, the Committee regretted that death sentences were imposed by Indonesian courts for drug crimes which do not meet the threshold of the “most serious crimes” set under the ICCPR. The Committee urged Indonesia to review its legislation to ensure that crimes involving narcotics are not amenable to the death penalty (CCPR/C/IDN/CO/1, para. 10).

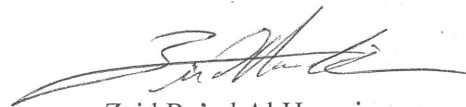
The International Narcotics Control Board (INCB), which is responsible for monitoring State compliance with the international drug control treaties, also considers that the use of the death penalty for drug crimes is incompatible under international law. In the attached Note Verbale addressed to all Member States in 2014, the INCB encouraged all States that still imposed the death penalty for drug-related offences to abolish it. Furthermore, in its 2015 annual report, the INCB stated that drug control action must be consistent with international human rights standards. The United Nations Office on Drugs and Crimes also opposes the death penalty in all circumstances.

While fully recognizing the importance of addressing the serious challenges posed by drug-related offences, decades of research have proven that there was no reliable evidence that the death penalty is an effective deterrent to crime. What we do know is that executions have led to the wrongful killing of many innocent people across the world. The use of the death penalty leaves no room for human error, with the gravest of consequences. Moreover, statistics worldwide have repeatedly demonstrated that the use of the death penalty consistently and disproportionately discriminates against the poor and most marginalized individuals and subsequently results in social injustice.

The most effective manner of addressing drug-related offences is through strengthening the rule of law, ensuring an effective justice system and reducing drug use by adopting a strong public health approach to prevention, harm reduction and other forms of health care and treatment in accordance with international standards.

Considering the above, I note that the Philippines would violate its obligations under international human rights law if it reintroduced the death penalty. I appeal to you and all members of Congress to uphold the international human rights obligations of the Philippines and maintain the abolition of the death penalty.

Please accept, Excellencies, the assurances of my highest consideration.



Zeid Ra'ad Al Hussein
High Commissioner for Human Rights



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

GENERAL COMMENTS ADOPTED BY THE HUMAN RIGHTS COMMITTEE
UNDER ARTICLE 40, PARAGRAPH 4, OF THE INTERNATIONAL
COVENANT ON CIVIL AND POLITICAL RIGHTS

Addendum

General Comment No. 26 (61)*

General comment on issues relating to the continuity of obligations
to the International Covenant on Civil and Political Rights

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 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.

2. That the parties to the Covenant did not admit the possibility of denunciation and that it was not a mere oversight on their part to omit reference to denunciation is demonstrated by the fact that article 41 (2) of the Covenant does permit a State party to withdraw its acceptance of the competence of the Committee to examine inter-State communications by filing an appropriate notice to that effect while there is no such provision for

* Adopted at the 1631st meeting (sixty-first session), held on 29 October 1997.

denunciation of or withdrawal from the Covenant itself. Moreover, the Optional Protocol to the Covenant, negotiated and adopted contemporaneously with it, permits States parties to denounce it. Additionally, by way of comparison, the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted one year prior to the Covenant, expressly permits denunciation. It can therefore be concluded 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 deliberately omitted.

3. Furthermore, it is clear that the Covenant is not the type of treaty which, by its nature, implies a right of denunciation. Together with the simultaneously prepared and adopted International Covenant on Economic, Social and Cultural Rights, the Covenant codifies in treaty form the universal human rights enshrined in the Universal Declaration of Human Rights, the three instruments together often being referred to as the "International Bill of Human Rights". As such, the Covenant does not have a temporary character typical of treaties where a right of denunciation is deemed to be admitted, notwithstanding the absence of a specific provision to that effect.

4. The rights enshrined in the Covenant belong to the people living in the territory of the State party. The Human Rights Committee has consistently taken the view, as evidenced by its long-standing practice, that once the people are accorded the protection of the rights under the Covenant, such protection devolves with territory and continues to belong to them, notwithstanding change in government of the State party, including dismemberment in more than one State or State succession or any subsequent action of the State party designed to divest them of the rights guaranteed by the Covenant.

5. The Committee is therefore firmly of the view that international law does not permit a State which has ratified or acceded or succeeded to the Covenant to denounce it or withdraw from it.

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Decision: 109/13
File: 114(3)-161/1

Subject: Position of the International Narcotics Control Board (INCB) on the imposition of the death penalty for drug-related offences

At its 109th session held in February 2014, the International Narcotics Control Board (INCB) discussed the issue of the imposition of the death penalty for drug-related offences and decided to communicate to all Member States its position on the matter as follows.

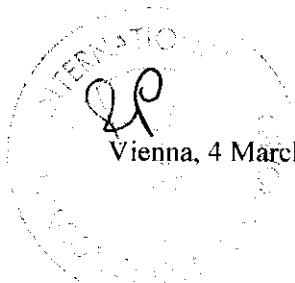
The Board reiterates its position highlighted in the INCB Annual Report for 2003 which stated, inter alia, that *“Capital punishment is neither encouraged nor prohibited by the international drug control conventions, which do not refer to it under provisions relating to penalties. Under the United Nations standards and norms in criminal justice, States are encouraged to avoid using the death penalty.”*

The Board further notes that under the international drug control conventions, the determination of specific sanctions applicable to drug-related offences remains the prerogative of the State Parties.

During its deliberations, the Board considered relevant international instruments containing standards and norms related to the matter. Those include the 1949 Geneva Conventions and their Additional Protocols, the International Covenant on Civil and Political Rights and its Second Optional Protocol of 1989, aiming at the abolition of the death penalty (General Assembly Resolution 44/128), the Safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50), which endeavours to limit the scope of application of the death penalty to only the most serious crimes and provides for a number of safeguards, and others.

The Board also considered more recent relevant documents, such as the General Assembly resolution 62/149 adopted in 2007, the 2009 Report of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the 2010 Report of the Special Rapporteur on the right of everyone to the enjoyments of the highest attainable standard of physical and mental health, as well as the positions of relevant UN bodies and organizations, such as the UN Human Rights Committee and the United Nations Office on Drugs and Crime (UNODC).

Having considered all relevant information pertaining to the issue of capital punishment, the Board encourages those State Parties that still provide for the death penalty for drug-related offences in their national legislation and continue to impose it, to consider the abolition of the death penalty for drug-related offences.


Vienna, 4 March 2014