

## PHILIPPINES

### CCPR A/44/40 (1989)

312. The Committee considered the initial report of the Philippines (CCPR/C/50/Add.1/Rev.1 and Corr. 1) at its 884<sup>th</sup> to 886<sup>th</sup> meetings, held on 31 March and 3 April 1989 (CCPR/C/SR.884-886).

313. The report was introduced by the representative of the State party, who noted that within the short span of three years since the overthrow of the martial law regime of President Marcos the political structure for a democratic system had again been put into place in the Philippines. A new Constitution had been drafted and ratified by the people, congressional and local elections had been held and the judicial system, which had completely deteriorated during the martial law period, had been reorganized. The Constitution declared the primacy of human rights as a policy of the State, contained an expanded Bill of Rights, and enjoined the Congress to give highest priority to the enactment of measures that protected the right of all people to human dignity. The Constitution also provided for the creation of a Philippine Commission on Human Rights.

314. Despite the present Government's firm commitment to the observance of and respect for human rights, certain factors, including communist insurgency, activities of separatist groups and repeated coup attempts staged by dissident members of the military, threatened the recently restored democracy in the country and affected the full enjoyment of human rights. Fortunately, all these attempts to destabilize the Government had been repulsed. Despite the magnitude of the problems it was facing, the Government of the Philippines was determined to work for a better future for its people.

315. Members of the Committee expressed satisfaction that the Government of the Philippines had ratified the Covenant immediately upon the restoration of democracy and welcomed its efforts to restore the full enjoyment of human rights in the country. They also expressed appreciation for the quality of the report, which, in the view of members, was in conformity with the Committee's guidelines and provided a faithful reflection of the situation in the Philippines.

316. With reference to article 2 of the Covenant, members wished to know whether the compatibility of constitutional or legislative provisions with the provisions of the Covenant could be tested in the courts and, if so, which of the norms would have precedence in case of conflict and on what legal basis; whether the provisions of the Covenant had been directly invoked and, if so, under what procedures and with what results; whether the regional structure in the Philippines made it difficult to implement the Covenant uniformly; what the reasons were for the 11-month gap between the ratification of the Covenant and its entry into force; and what the current status was of pending legislation that would hold members of the armed forces and the national police criminally liable for abuses against citizens. In the latter connection, several members wondered why Presidential Decree No. 1850, which provided for trial exclusively by court-martial of crimes and offences committed by members of the armed forces and the police, had not yet been amended or repealed along with other decrees that had been issued by former President Marcos and wished to know the details of cases in which the President had waived that

requirement for court-martial.

317. In connection with the newly established Commission on Human Rights, members wished to know, in the light of the fact that the Commission did not currently have the power to bring cases before the courts nor to subpoena documents, what the actual effects of its recommendations were; what the relationship was between the Commission's jurisdiction and that of the military and, in particular, how the Commission would handle complaints involving alleged human rights violations by members of the military and the police; in how many cases the Commission had been able to take effective measures in favour of victims of human rights violations and whether it received the necessary support from the Government; how many members of the military or police forces had been charged with crimes as a result of the Commission's investigations; what measures for the promotion of human rights had been recommended by the Commission to the Congress and what action the latter had taken thereon; and whether, in investigating alleged violations of human rights, there was any overlapping in the competence among the Commission, the Human Rights Committee and the judicial authorities.

318. Concerning article 3 of the Covenant, clarification was requested of the steps taken by the Government to ensure women's rights, in the light of information given in the report showing the existence of difficulties in this regard.

319. Regarding article 4 of the Covenant, members requested clarification of constitutional and legal provisions relating to the suspension during a public emergency of rights covered under the Covenant asking, in particular, which specific rights, other than the right of habeas corpus, could be so suspended. They also wished to know what the procedures were under which the constitutionality of a proclamation of martial law could be challenged before the Supreme Court; what the latter's role was in ensuring compliance with article 2, paragraph 1, of the Covenant; and whether the right of habeas corpus or any other rights had been suspended since the entry into force of the Covenant.

320. With reference to article 6 of the Covenant, many members of the Committee expressed concern about the reported death or disappearance of persons resulting from illegal activities carried out by the armed forces, the police or vigilante groups. In that connection, members wished to know, in particular, what the relationship was between the Civilian Home Defense Forces, the Citizen Armed Forces and the so-called vigilante groups; how many cases of extrajudicial killings and abductions had been reported and what the current trends were in respect of such abuses; how many human rights activists had been among the victims; how many vigilante groups were still active in the Philippines; how many arrests and prosecutions had been undertaken for such violations and with what results; what the findings were of the Investigative Commission established to inquire into the Mendiola massacre and whether that Commission's recommendations had been followed up; whether it was a fact that a member of the Government had created an association that included several vigilante groups and, if so, whether such action was compatible with article 28 of the Constitution and article 6 of the Covenant; what authority could order the dissolution of such groups; and whether the Government was, in fact, reconsidering the usefulness of such groups with a view to their abolition.

321. Members also wished to know what the infant mortality rate was in the Philippines; what measures

had been adopted by the Government with respect to public health and economic, social and agrarian reform; whether the death penalty for such crimes as subversion, insurrection or rebellion could be introduced by a simple legislative enactment despite the virtual abolition of that penalty by the Constitution; and whether the simple ban (destierro) imposed as punishment upon parents who killed their minor daughters or partners caught in sexual misconduct was not overly lenient and lacking in conformity with the provisions of article 6, paragraph 1, of the Covenant.

322. In connection with articles 7 and 10 of the Covenant, members wished to know what machinery had been established for the prevention of torture and the investigation of complaints; whether additional steps were being contemplated by the Government to make its efforts against torture or other inhuman or degrading treatment more effective; and whether recently reported cases of torture occurring during police and military interrogations had been appropriately investigated, the guilty punished and the victims compensated.

323. As regards article 9 of the Covenant, members wished to receive information concerning the practice of arbitrary detention in unauthorized places, particularly military establishments and so-called □ safe houses; □ the results of any investigations into such abuses; the measures being taken to ensure the implementation of the guidelines relating to access to detainees; the protection from intimidation of witnesses; and the relationship between the Free Legal Assistance Group and the armed forces.

324. Concerning article 11 of the Covenant, members of the Committee requested clarification of the statement, in paragraph 102 of the report, that □ a person may be imprisoned as a penalty for a crime arising from a contractual debt. □

325. With reference to article 12 of the Covenant, members of the Committee wished to know what measures had been taken to control the problem of forced evacuations in the course of military operations and how such evacuees were assisted; what procedures were used in relation to the transfer of certain tribes to reservations; whether members of those tribes participated in the relevant decisions; and whether the resurgence of armed conflict had led to the adoption of any limitations, on grounds of national security, on the right to freedom of movement.

326. Regarding article 13 of the Covenant, members of the Committee requested clarification of the government machinery established for the expulsion or deportation of aliens, such as the procedures relating to the treatment of □ boat people, □ and of the circumstances under which summary deportation could occur.

327. With reference to article 14 of the Covenant, members wished to know what the current structure of the judiciary was and whether its membership was the same as under the Marcos régime; how the independence and status of magistrates was assured; what the prospects were for the complete restoration of the competence of the civil courts.

328. As regards article 15 of the Covenant, clarification was requested of the scope of the ex post facto clause in Philippine law and of the compatibility of article 22 of the Revised Penal Code with article 15,

paragraph 1, of the Covenant.

329. With reference to articles 18 and 19 of the Covenant, members of the Committee wished to receive additional information on the permissible forms of prior restraint on the freedom of speech and freedom of the press in the Philippines. In connection with the "spiritual guidelines" sessions provided to soldiers as part of their training, during which they were given "an understanding of the universal concept of God as the source of ultimate goodness and the true meaning of life," it was asked whether such training was compatible with article 18, paragraph 1, of the Covenant.

330. Referring to numerous disturbing reports of harassment, persecution and even killing of trade unionists, journalists and human rights activists who were seeking to work together, members of the Committee wished to know why those particular groups were having difficulties, what steps the Government had taken to deal with that situation; and how the laws protecting freedom of association could be made more effective. They also wished to know which bodies were competent to rule on the status of associations and whether such bodies had discretionary power or were subject to legislative guidelines.

331. With regard to article 23 of the Covenant, members asked whether divorce was authorized under Philippine law and requested clarification of the rules applicable to the dissolution of marriage.

332. With reference to article 24 of the Covenant, members of the Committee wished to know what age limit had been set for joining the anti-insurgency forces; what age group the measures being taken to prevent children from participating in armed conflict were intended to protect; what the draft age was for young men; whether women were also subject to the draft; and whether any provision had been made for conscientious objectors. Members also wished to know what the implications of child prostitution were in respect of article 107 of the Child and Youth Welfare Code; whether article 110 of that Code, referring to the employment of children as domestics, was compatible with article 24 of the Covenant; what the minimum age was for the employment of children; and whether Philippine legislation discriminated between legitimate children and children born out of wedlock, particularly in matters of inheritance.

333. Regarding article 25 of the Covenant, members wished to know whether any practical measures had been taken to implement article 2 (26) of the Constitution, which prohibits political dynasties.

334. In connection with article 26 of the Covenant, members asked whether there was any discriminating among citizens in the Philippines with respect to economic, social or cultural rights such as social security entitlements.

335. With reference to article 27 of the Covenant, members of the committee wished to receive additional information concerning the situation of ethnic, religious and linguistic minorities and about pending legislation designed for their protection and wished to know what opportunities the members of tribal groups in the Philippines had to preserve their culture, to profess and practice their religion, to use their language and to maintain their ancestral lands.

336. In her reply to questions raised by members of the Committee concerning article 2 of the Covenant, the representative of the State party explained hypothetically - in the absence of any litigation involving the Covenant - that on the basis of article VIII, section 4, paragraph 2, and section 5, paragraph 2 (a), of the constitution, it could be assumed that the Supreme Court would give the Constitution priority over a treaty. It was also clear, however, pursuant to the principle pacta sunt servanda to which the Philippines adhered, that the Covenant formed part of the law of the nation and could be invoked before the various courts or administrative authorities. This had not yet occurred, as domestic laws covered all the rights in it and the Covenant had itself only been in force in the Philippines for less than two years. The 11-month delay between the Covenant's ratification and entry into force was caused by certain serious problems encountered by the Government, which had made it impossible to deposit the instrument of ratification with the Secretary-General of the United Nations until eight months after the passage of relevant legislation. The ratification of the Optional Protocol by the Senate was expected soon.

337. Responding to the questions concerning the Commission on Human Rights, the representative explained that the Commission was an independent constitutional body with fiscal autonomy and with powers to investigate all violations of civil and political rights as well as power to issue subpoenas. And finding by the Commission on the basis of its own investigations and hearing of a prima facie human rights violation was referred for action to the city or provincial prosecutor in criminal cases or to the civil courts. Pursuant to an agreement reached in 1988 between the Commission and the Department of Justice, the prosecutors employed by the latter were prepared to bring legal actions on the basis of investigations carried out by the Commission. Where government rather than court action was needed, the case was referred by the Commission to the relevant authorities. On some occasions, the Commission had been able to extend protection to witnesses, such as those testifying to the Lupao and Kalayaan massacres, and to relocate certain other witnesses before either the army could detain them or rebel elements attack them. The Commission on Human Rights also monitored the Government's compliance with its human rights obligations and had appointed rapporteurs, patterned on United Nations practices, to deal with such areas of concern as torture, indigenous groups and the rights of the child.

338. The Commission's activities in promoting human rights included the translation into the national language of important human rights documents; distributing the text of section 12 of the Bill of Rights, relating to the rights of the accused, to every police station and barangay assembly house in the country; holding human rights seminars for prosecutors, judges, military commanders and officials, members of the police force and non-governmental organizations; assisting the Department of Education and Culture in preparing a human rights curriculum for primary and secondary schools; and preparing a weekly series of nation-wide radio programmes on human rights. The Commission had also set aside a certain amount of its annual budget to assist the victims or relatives of human rights violations.

339. Concerning the Commission's relations with the military courts, the representative noted that, to date, the Commission had filed 73 cases with the Judge Advocate General's Office and was following each case to verify the actions taken. Thus far, six officers and soldiers had been found guilty of human rights violations and had been either discharged from the service or reprimanded. Those

discharged had not been exonerated and still had to face the complaint that had been filed against them.

340. While the Commission on Human Rights had recommended that President Aquino should repeal Presidential Decree No. 1850, as well as other decrees that were contrary to the Constitution, she had been dissuaded from taking such action by the Secretary of National Defense and the Chief of Staff of the Armed Forces on the ground that the time was not yet ripe for the outright repeal of such decrees. In fact, in the period between July 1986 and August 1987 there had been five attempted coups d'état, which had seriously threatened the Government's stability. The Human Rights Committee was established in December 1988 and was responsible for assessing and monitoring the human rights situation, advising the President on proper measures for the further promotion of human rights and helping relatives to locate persons believed to be illegally detained or who had disappeared. The Commission and the Committee complemented and co-operated with one another.

341. Responding to the questions raised by members concerning article 4 of the Covenant, the representative of the State party said that under the Constitution no rights, other than the privilege of the writ of habeas corpus, could be derogated from in cases of public emergency, and that derogation could only be for a maximum period of 60 days unless that period was extended by Congress for reasons of public safety. Thus, the Constitution provided even greater protection of human rights in situations of public emergency than the Covenant. The Supreme Court had ample powers to uphold the rights embodied in article 4 of the Covenant since it could both rule on the constitutionality and validity of the acts of government officials and review the sufficiency of the factual basis for proclaiming martial law or the suspension of habeas corpus.

342. With reference to questions raised by members of the Committee concerning article 6 of the Covenant, the representative of the State party said that the Government of the Philippines was committed to resolving the outstanding cases of disappeared persons and was in close contact with the Working Group on Enforced Involuntary Disappearances, which it was planning to invite to visit the country. On 14 February 1989, the Commission on Human Rights had established a task force to look into the 414 outstanding allegations of disappearances in the country, most of which had arisen under the Marcos regime. It was a fact that at times the military were the authors of disappearances, such as in the case of a general who had been charged with the disappearance of four farmers in Agusan, but at other times rebel groups were responsible or persons reported missing had merely fled to the mountains to join rebel groups or had left the country. The protection of human rights activists, journalists and trade unionists had been given attention by the Commission on Human Rights, which had held a meeting with such groups. The Commission had been informed of the death of a number of journalists and radio announcers, most of whom were presumed to have been assassinated by New People's Army (NPA) units or killed covering battles between the armed forces and the rebels. It would be unfair to conclude from such incidents that there were widespread human rights violations involving journalists and activists.

343. The Mendiola Commission, which had been established by the President to investigate the confrontation that occurred in January 1987 between government riot control units and a group of peasants in the Kapisanang Magbubukid Ng Pilipinas (Association of Farmers of the Philippines), had

recommended, inter alia, that all members of the police forces and the military and all demonstrators who had fired shots causing death or injury should be prosecuted; that the leader of the demonstrators should be prosecuted for holding an unauthorized political meeting and for investigating acts of sedition; and that administrative sanctions should be applied against certain members of the security forces failing to disperse the demonstrators with minimal use of force.

344. The origin of the Civilian Home Defense Forces, which consisted of private armies and other armed groups popularly known as "vigilantes", could be traced back to the Marcos era. At first, they were no more than neighborhood patrols but eventually they had been transformed into actual armed groups that often fought the NPA rebels. The operations of such groups, although initially effective, later gave rise to multiple abuses and the Commission on Human Rights had recommended that they be dismantled. Article XVIII, section 24, of the Constitution also provided that such groups be abolished and dismantled. The Civilian Volunteer Organizations and the Citizen Armed Force Geographical Unit were very different organizations and met the criterion established in articles XVI, section 4, of the Constitution specifying that the Armed Forces of the Philippines should be composed of a "citizen armed force". The Commission on Human Rights had been monitoring the recruitment of members of the Civilian Volunteer Organizations as well as the activities of the Citizen Armed Force Geographical Unit to ensure that the previous experiences with the Civilian Home Defense were not repeated. One hundred and seventy-three members of the Geographical Unit had been dropped from the rolls recently after being found guilty of various offences and five cases of alleged human rights violations by members of the Unit were currently under investigation.

345. Although the Constitution allowed for the reimposition of the death penalty for "heinous" crimes, the bills that had been introduced in Congress to that end had all met with strong resistance. The preface to the 1988 edition of the Revised Penal Code of the Philippines and Related Laws noted that "the 1987 Court abolished the death penalty" and references to that penalty would be removed when the Code was revised. Despite the poverty of a large portion of the population, resulting from historic, social and structural factors, and its heavy burden of foreign debt, the Government of the Philippines was determined to work for a better future for its people and was waging a gigantic battle against poverty. The Constitution provided that highest budgetary priority must be accorded by the State to education and the Congress had passed legislation making education free up to the secondary level. The Constitution also enjoined the Congress to give highest priority to the enactment of measures that protected the right of all people to human dignity, reduced social, economic and political inequalities, and removed cultural inequities by equitably diffusing wealth and political power.

346. With reference to questions raised by members of the Committee concerning article 7 of the Covenant, the representative of the State party noted that the Bill of Rights prohibited the use of force, violence, threat or intimidation against detainees and outlawed solitary confinement, incommunicado or other similar forms of detention, as well as secret detention places. The Constitution also provided for compensation to victims of torture or similar practices and to their families. The Philippines had also ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and had already submitted its initial report to the Committee against Torture. Although sporadic violations of human rights did take place, torture was not a widespread practice or policy, even

among the military. The top leadership of the military and police establishments had declared on 6 May 1988, in a Joint Declaration of Undertaking, that they would observe and strictly implement the Bill of Rights and the guidelines of the Commission on Human Rights. The Commission and its regional offices regularly visited places of detention in order to prevent the practice of torture and to recommend medical measures for those prisoners whose health had been impaired by prolonged detention. Currently, the Commission had 190 cases of alleged torture under investigation, some of which had arisen under the Marcos regime.

347. Responding to questions raised by members of the Committee concerning article 9 of the Covenant, the representative stated that the Commission on Human Rights as well as a number of senators had conducted an investigation and determined that the military did not maintain any "safe houses". This fact was also confirmed to the Commission in writing by the Secretary of National Defense and the Chief of Staff of the Armed Forces. The principles of the Miranda doctrine, relating to legal assistance in cases of detention, were incorporated in the new Constitution under section 12 of article III. As noted in paragraph 336, the protection of witnesses was one of the important functions of the Commission on Human Rights, which was seeking to deal with the continuing problem of the intimidation of witnesses.

348. In replying to a question relating to liability to imprisonment for debt, the representative explained that the statement in the report concerning such liability was in error. A person was subject to imprisonment only where the sums of money involved in the crime had been obtained under circumstances defined in article 315 of the Revised Penal Code, such as by swindling or by passing bad cheques.

349. With reference to questions raised by members of the Committee concerning article 12 of the Covenant, the representative of the State party said that forced evacuations occurred routinely during military operations and incursions by rebel forces. One report described 24 cases of forced evacuation, which had affected 100 families. Other cases of evacuation were being monitored by the Commission on Human Rights and efforts were being made to obtain assistance for the affected persons from the Department of Health, the Department of Social Services and Development, and the local Red Cross.

350. With regard to questions raised in connection with article 13 of the Covenant, the representative noted that persons subjected to deportation orders could have recourse both to administrative and legal proceedings. Although the President could act summarily, through the Commission of Immigration in certain cases, expulsions were normally effected through legal orders. In all circumstances, the aliens concerned had the right at least to a summary hearing. The Philippines had a very good system for the protection of refugees and there had been no instance in which "boat people" requesting political asylum had been deported.

351. Turning to questions raised by members of the Committee concerning article 14 of the Covenant, the representative of the State party said that subsequent to the reorganization of the Supreme Court in 1986, only 6 of the Court's previous membership of 15 had been reappointed. President Aquino had appointed to the Supreme Court persons of known probity, integrity and independence in the hope that



the people's confidence in the judiciary would be restored. Article VIII of the Constitution contained numerous guarantees of the independence of the judiciary, including security of tenure of Supreme Court and lower court judges until the age of 70; their irremovability except by Congress through the impeachment process; and the establishment by law of judicial salary levels, which were not subject to reduction. The original and appellate jurisdiction of the Supreme Court was established by the Constitution and could not be diminished by Congress or by the President. Victims of human rights violations could appeal to the courts, which, under the law, were obliged to render their decisions within a given period of time. Judicial reforms were also being introduced currently with a view to improving the administration of justice.

352. Regarding the scope of the ex post facto clause in the Constitution, the representative explained that that clause was fully compatible with article 15, paragraph 1, of the Covenant since it applied the benefit of any law imposing lighter penalties for a crime to persons who had previously received harsher sentences.

353. Turning to questions posed by members of the Committee concerning articles 18 and 19 of the Covenant, the representative of the State party said that, under the Constitution, freedom of religion was guaranteed and the principle of separation of Church and State was adhered to. The teaching of religious precepts to members of the armed forces and the police was not regarded as posing any problems since the preamble of the Constitution itself referred to "imploring the aid of Almighty God" and since 90 per cent of the country's population was Christian. Freedom of speech and of the press was guaranteed under the Constitution. "Immoral doctrines" that did not enjoy such protection were ideas contrary to universally accepted standards of morality such as the advocacy of assassination or wanton killings.

354. As regards questions raised under article 22 of the Covenant, the representative said that the issuance of guidelines relating to freedom of association fell within the competence of the government department within whose province a particular association fell. Thus, trade union matters, for example, came within the purview of the Ministry of Labour.

355. Turning to questions raised by members of the Committee concerning article 23 of the Covenant, the representative of the State party said that the fundamental equality between men and women was explicitly stipulated, for the first time, in the 1987 Constitution and a number of inequitable provisions of earlier laws were eliminated. Although the new Family Code did not provide for divorce, there were now expanded grounds for legal separation, defined as "separation of bed and board but no dissolution of marriage", and the Code eliminated inequality between men and women, with regard to the grounds for legal separation. Annulment was also allowed under certain circumstances and women who had obtained a foreign divorce now also enjoyed protection. The current challenge was to translate the various legal provisions into reality. While there had been great improvement as regards the proportion of women in high positions in the Philippines, notably within the judiciary, the overall progress that had been made in establishing equality between men and women was far from satisfactory.

356. With reference to questions raised by members of the Committee concerning article 24 of the

Covenant, the representative of the State party said that the Government was taking steps to ensure that the civilian population, in particular children, were not involved directly or indirectly in armed conflicts. Such measures included the transfer of families to safe areas. Since there was no conscription in the Philippines, it followed that women were not liable for military service. Under the Constitution, conscription could be introduced in the future by law □ to render personal, military or civilian service□. This provided a possibility for alternative service for conscientious objectors.

357. The Labour Code established various parameters relating to employment, including the minimum age for children□s employment, working hours and security, but there was a gap between reality and that law. In urban areas, owing to the economic situation resulting from poverty, children were often found begging, guarding parked cars and selling flowers, cigarettes and other articles. The only choice provided by that stark social reality was between ignoring the enforcement of the Labour Code or preventing children from earning a living. The sexual exploitation of children was also a painful reality that resulted directly from poverty. The Government was currently advocating the establishment of an inter-agency task force, under the direction of the Council for the Welfare of Children, to monitor and assess regularly the child abuse situation; to facilitate the task of social workers in preventing child trafficking; to propose stronger penalties for child violators; to ensure strict enforcement of the laws on street children; and to develop programmes to strengthen and enrich the values of family life and economic and social productivity. The Congress was also considering various bills to protect children against exploitation.

358. The new Family Code discriminated in favor of legitimate children only in respect of inheritance, providing that illegitimate children recognized by their father were entitled to inherit one half of the amount received by legitimate children.

359. With reference to questions raised by members of the Committee concerning article 27 of the Covenant, the representative of the State party noted that a registry of ethnic, religious and linguistic minorities in the Philippines included more than 100 groups, which were referred to in the Constitution as □ethnic and cultural minorities□. All of the protections guaranteed by the Constitution were applicable to such groups and special offices and agencies had been established to implement their rights. In recognition of the rights of cultural minorities and indigenous populations, two autonomous regions had been established in the Cordilleras and in Muslim Mindanao with powers to legislate on matters concerning sources of revenue, ancestral domain and natural resources, personal and family relations, urban and rural planning, economic and social development, tourism development, educational policies and the preservation of cultural heritage.

360. In conclusion, the representative of the State party noted that, considering the deeply rooted nature of the problems confronting the Philippines, the three-year period of transition that had passed was clearly too short for eliminating all the sources of human rights violations. Her country had nevertheless come before the Committee and had given it a full account of the measures it had taken and hoped to take in the future to that end. There could be no question but that her country□s current political leadership was in full accord with the provisions of the Covenant and that the Philippines would continue to advance on the human rights front in the years ahead. The good advice and

recommendations of the members of the committee would be transmitted for consideration to the Government of the Philippines.

361. Members of the Committee thanked the Philippine delegation for providing useful and detailed answers to the questions that had been revised, and especially for its frank and honest attitude in recognizing the human rights problems that existed in the country. The Government had clearly made commendable efforts during the current difficult stage of transition from dictatorship to a democracy to safeguard human rights. At the same time, members pointed to a number of areas of continuing concern, including the virtual omnipotence of the Philippine security forces and the inadequate jurisdiction of the ordinary courts, in particular owing to the non-repeal of Presidential Decree No. 1850, with respect to human rights violations by members of those forces; the continuing existence and activities of paramilitary groups; the rising number of torture victims; the threats to lawyers and other human rights advocates; discrimination against illegitimate children; and the situation of ethnic and linguistic groups whose land had been taken over by agricultural enterprises.

362. In concluding the consideration of the initial report of the Philippines, the Chairman thanked the Philippine delegation for participating in an extremely constructive dialogue and for its major contribution in that regard.

## **CCPR CCPR/CO/79/PHL (2003)**

1. The Human Rights Committee considered the consolidated second and third periodic reports of the Philippines (CCPR/C/PHL/2002/2) at its 2138th, 2139th and 2140th meetings, held on 20 and 21 October 2003 (see CCPR/C/SR.2138, 2139 and 2140). It adopted the following concluding observations at its 2153rd and 2154th meetings (CCPR/C/SR. 2153 and CCPR/C/SR. 2154), held on 30 October 2003.

### **A. Introduction**

2. The Committee notes the submission of the consolidated second and third periodic reports of the Philippines, which contain detailed information on domestic legislation in the area of civil and political rights, and the opportunity to resume the dialogue with the State party after an interval of more than 14 years. The Committee considers that the failure to submit a report for such a long period constitutes a failure to observe its obligation under article 40 of the Covenant.

3. The Committee welcomes the information provided in the report. While appreciating the delegation's comments on a series of questions posed orally by members of the Committee, it regrets that an extensive number of questions remained wholly or partly unanswered at the conclusion of the discussion. Some additional written material received on 24 October 2003 was taken into account by the Committee.

### **B. Positive aspects**

4. The Committee appreciates the progress made by the State party to reform its domestic legal order to comply with its commitments under the Covenant. It welcomes, among other actions, the ratification of the Optional Protocol to the Covenant in August 1989. The Committee considers that the process of reform should be accelerated and strengthened.

5. The Committee notes with satisfaction that the State party has facilitated international assistance in relation to education and training on the protection of human rights.

### **C. Principal subjects of concern and recommendations**

6. The Committee notes the absence of information regarding the status in domestic law of the Covenant and on whether any Covenant provisions have been invoked in court proceedings to date.

The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant and that domestic law is harmonised with the obligations subscribed to under the Covenant.

7. The Committee regrets the lack of information on the procedure for the implementation of the

Committee's Views under the Optional Protocol. In particular, it is concerned by the grave breaches by the State party of its obligations constituted by its lack of compliance with the Committees' requests for interim measures of protection in cases submitted under the Optional Protocol (Piandiong, Morillos and Bulan v. Philippines).

The State party should establish procedures to implement Views of the Committee and to ensure compliance with requests for interim measures of protection.

8. The Committee is concerned about the lack of appropriate measures to investigate crimes allegedly committed by state security forces and agents, in particular those committed against human rights defenders, journalists and leaders of indigenous peoples, and the lack of measures taken to prosecute and punish the perpetrators. Furthermore, the Committee is concerned at reports of intimidation and threats of retaliation impeding the right to an effective remedy for persons whose rights and freedoms have been violated.

a) The State party should adopt legislative and other measures to prevent such violations, in keeping with articles 2, 6 and 9 of the Covenant, and ensure effective enforcement of the legislation.

b) The State party should provide information on the outcome of the proceedings related to the cases of Eden Marcellana and Eddie Gumanoy and the execution of 11 persons on Commonwealth Avenue, Manila, in 1995.

9. The Committee has noted pending legislation related to terrorism which is currently awaiting adoption by the Congress of the Philippines. While the Committee is mindful of the security requirements associated with efforts to combat terrorism, it is concerned by the exceedingly broad scope of the proposed legislation, as acknowledged by the delegation. The draft legislation includes a broad and vague definition of acts of terrorism which could have a negative impact on the rights guaranteed by the Covenant.

The State party should ensure that legislation adopted and measures taken to combat terrorism are consistent with the provisions of the Covenant.

10. The Committee notes the current partial moratorium on execution of death sentences (while drug-related crimes are excluded from this moratorium), but it remains concerned by the adoption of legislation providing for the death penalty after art.3 section 19(1) of the Constitution had prohibited the imposition of the death penalty. In any event, the Committee has noted that the death penalty is mandatory for a number of crimes and extends to an excessive number of offences which do not fit the definition of the "most serious" crimes within the meaning of article 6(2) of the Covenant. The Committee notes that the death penalty is prohibited for persons under 18 years of age, but is concerned that minors have been sentenced to death, seven of whom are currently detained on death row.

The Committee urges the State party to take measures to repeal all laws which have made it

possible to impose the death penalty and to accede to the Second Optional Protocol to the Covenant. It should also ensure compliance with article 6(5) of the Covenant prohibiting the imposition of the death sentence for crimes committed by persons below eighteen years of age.

11. The Committee expresses concern regarding reported cases of extrajudicial killings, arbitrary detention, harassment, intimidation and abuse, including of detainees, many of whom are women and children, that have neither been investigated nor prosecuted. Such a situation is conducive to perpetration of further violations of human rights and to a culture of impunity.

The State party should adopt and enforce legislative and other measures to prevent such violations in keeping with articles 6 and 9 of the Covenant and to improve the implementation of relevant laws. The State party should conduct prompt and impartial investigations, and prosecute and punish the perpetrators.

12. The Committee is concerned about the reports of persistent and widespread use of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and the lack of legislation specifically prohibiting torture in accordance with articles 7 and 10 of the Covenant. The Committee notes that evidence is not admissible if it is shown to have been obtained by improper means, but remains concerned that the victim bears the burden of proof in this event.

The State party should institute an effective system of monitoring treatment of all detainees, to ensure that their rights under articles 7 and 10 of the Covenant are fully protected. The State party should ensure that all allegations of torture are effectively and promptly investigated by an independent authority, that those found responsible are prosecuted, and that victims are given adequate compensation. Free access to legal counsel and a doctor should be guaranteed in practice, immediately after arrest and during all stages of detention. All allegations that statements of detainees have been obtained through coercion must lead to an investigation and such statements must never be used as evidence, except as evidence of torture, and the burden of proof, in such cases, should not be borne by the alleged victim.

13. The Committee notes with concern numerous instances of trafficking (art. 8) of women and children in the Philippines, both within the country and across its borders. While noting the importance of existing legislation (R.A. 9208) in this domain, it is concerned that insufficient measures have been taken actively to prevent trafficking and to provide assistance and support to the victims.

The State party should take appropriate measures to combat trafficking in all its forms, by ensuring effective enforcement of the relevant legislation and imposing sanctions on those found responsible. The Committee encourages the State party to ensure gender-specific training to sensitize the officials involved with problems faced by victims of trafficking, in accordance with articles 3, 8 and 26 of the Covenant.

14. The Committee is concerned that the law allowing for warrantless arrest is open to abuse, in that arrests in practice do not always respect the statutory conditions that the person arrested is actually

committing a crime or that the arresting officer has "personal" knowledge of facts indicating that the person arrested committed the crime. The Committee is also concerned that a vaguely worded anti-vagrancy law is used in order to arrest persons without warrant, especially female prostitutes and street children.

The State party should ensure that its laws and practices with regard to arrest are brought into full conformity with article 9 of the Covenant.

15. The Committee is concerned at continuing reports of displacement of persons and evacuation of populations, including indigenous population groups, in areas of counter-insurgency operations.

The State party should take urgent measures to ensure the protection of civilians in areas affected by military operations, in accordance with its human rights obligations.

16. The Committee welcomes the adoption of the Indigenous Peoples Rights Act (IPRA) in 1997 and the subsequent establishment of the National Commission on Indigenous Peoples (NCIP), but remains concerned about the lack of effective implementation of the legislation. The Committee welcomes the positive measures noted by the delegation, but considers their scope to be limited. It is further concerned at the human rights implications for indigenous groups of economic activities, such as mining operations.

The State party should ensure effective enforcement of the above legislation and ensure that indigenous peoples' land and resource rights enjoy adequate protection in relation to mining and other competing usage, and that the capacity of the NCIP is strengthened. Positive measure should be expanded to include land rights issues.

17. The Committee is concerned that the measures of protection of children are inadequate and the situation of large numbers of children, particularly the most vulnerable, is deplorable. While recognizing that certain legislation has been adopted in this respect, many problems remain in practice, such as:

- a) the absence of adequate legislation governing juvenile justice and the deplorable situation of children in detention, including those held without evidence for prolonged periods of time;
- b) persistent reports of ill-treatment and abuse, including sexual abuse, in situations of detention and children being detained together with adults where conditions of detention may amount to cruel, inhuman and degrading treatment (article 7);
- c) street children vulnerable to extrajudicial executions and various forms of abuse and exploitation;
- d) children as young as 13 allegedly being used by armed groups without adequate measures of protection by the State (art. 24);
- e) economic exploitation of children, in particular in the informal sector.

The State party should:

- a) expedite the adoption of legislation governing juvenile justice which complies with international standards of juvenile justice in accordance with article 10(3) of the Covenant. The Committee recommends that training for professionals in the area of administration of juvenile justice be enhanced and that human and financial resources for effective implementation of the new legislation be secured;
- b) devise programmes for street children which offer support and assistance. Support to relevant non-governmental organisations is encouraged in this respect.
- c) take all appropriate measures to ensure protection of children who have been involved in armed conflict and provide them with adequate assistance and counseling for their rehabilitation and reintegration into society (art. 24);
- d) In relation to child labour, the State party should pay particular attention to the situation concerning the monitoring and effective implementation of labour standards for street children and children working in the informal sector, as well as those working in the Free Trade Zone.

18. While the Committee takes note of the constitutional provisions guaranteeing equal treatment of all persons before the law, the lack of legislation explicitly prohibiting racial discrimination is a matter of concern (Articles 3 & 26).

The Committee urges the State party to take the necessary steps to adopt legislation explicitly prohibiting discrimination, in accordance with articles 3 and 26 of the Covenant. The Committee notes that legislation related to sexual orientation is currently being discussed in Congress and urges the State party, in this context, to pursue its efforts to counter all forms of discrimination. The State party is further invited to strengthen human rights education to forestall manifestations of intolerance and de-facto discrimination.

D. Dissemination of information about the Covenant (article 2)

19. Attention of the State party is drawn to the new guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The fourth periodic report should be prepared in accordance with those guidelines and submitted by 1st November 2006. It should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that the text of the State party's consolidated second and third periodic report and the present concluding observations be published and widely disseminated throughout the country.

20. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 10, 11 and 14. The Committee requests the State party to provide information



in its next report on the other recommendations made and on the implementation of the Covenant as a whole.