



PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES
TO THE UNITED NATIONS AND OTHER INTERNATIONAL
ORGANIZATIONS, GENEVA

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The Permanent Mission of the Republic of the Philippines to the United Nations Office and Other International Organizations in Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights Special Procedures Division and has the honor to transmit Philippines' reply to the latter's letter on the right to education, extrajudicial, summary or arbitrary executions and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health in relation to the Commission on Higher Education's (CHED's) Memorandum Order No. 64.

The Permanent Mission of the Republic of the Philippines to the United Nations Office and Other International Organizations in Geneva avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights Special Procedures Division the assurances of its highest consideration.

Geneva, 06 August 2018



SPECIAL PROCEDURES DIVISION

c/o Office of the United Nations Office of the High Commissioner for
Human Rights-United Nations Office in Geneva (OHCHR-UNOG)
8-14 Avenue de la Paix, 1211 Geneva 10, Switzerland

Philippine Response to the UN Special Procedures on Commission on Higher Education Memorandum Order No. 64

The Government of the Philippines acknowledges receipt of a joint letter from the UN Special Procedures, which was a reply to the Philippine response to the Special Procedures' concerns relative to CHED Memorandum Order No. 64.

The Philippine Government wishes to emphasize that CHED Memorandum Order No. 64 is consistent with the policy of the State to safeguard the integrity of its territory and the well-being of its citizenry, particularly from the harmful effects of dangerous drugs on the people's physical and mental health. In particular, its adoption is needed to help ensure a drug-free environment for students.

CHED Memorandum Order No. 64 was issued by the Commission *en banc* pursuant to its regulatory powers over Higher Educational Institutions (HEIs) under Section 8 of Republic Act (RA) 7722, in compliance with Section 36 (c) of RA 9165 or the Comprehensive Dangerous Drugs Act of 2002. The drug testing of students in higher educational institutions under CHED Memorandum Order No. 64 merely reiterates the random drug testing policy of the government as provided for in the aforementioned provision of RA 9165. The provision, which requires mandatory testing, has been upheld by the Supreme Court of the Philippines.¹

On the concern that CMO No. 64 infringes on certain articles of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Philippines underscores that CHED Memorandum Order No. 64 does not infringe on and does not intend to breach Articles 12 and 13 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Article 12 of the ICESCR deals with the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health" while Article 13 covers "the right of everyone to education." The mandatory random drug testing to be conducted by HEIs was resorted to as an effective security mechanism that would protect the physical and intellectual well-being of the students from the harmful effects of dangerous drugs, and not an impairment of their enjoyment of the highest attainable standard of physical and mental health.

The measure will also safeguard the full development of the personality and sense of dignity of the students considering their vital role in nation-building, as the confidentiality and integrity of these tests are to be ensured along with non-discriminatory measures.

In the event of a conflict between the ICESCR and Republic Act 9165, which serves as the basis of CHED Memorandum Order No. 64, RA 9165 prevails as it is the later law (220) and as the ICESCR has the same standing as a municipal statutory law, which the Philippines ratified in 1974. This position is supported by Supreme Court ruling on *Secretary of Justice v Lantion*.²

On the statement that "imposing mandatory drug tests and allowing drug-related operations to take place within educational campuses may also have the effect of putting students at risk of police brutality and extrajudicial killings, in context of the

¹ Social Justice vs. Dangerous Drugs Board, et al. G.R. No. 157870, along with its companion cases.

² 379 Phil. 165

ongoing war on drugs in the country," the Philippine Government wishes to draw the attention of the Special Procedures to Section 19 of the CHED Memorandum Order No. 64. The Special Procedures' apprehension finds no basis as the outcomes of the mandatory random drug testing pursuant to the aforementioned section of the Memorandum Order enjoy confidentiality and is within the protecting disposition of competent officials.

Section 19 states that "Any faculty, administrator, or employee of the HEI who violates the rules of confidentiality of the results of the drug tests shall, in addition to the sanctions as may be provided by the school policy, be liable under Section 72 of Republic Act 9165 and other appropriate laws."

Section 2.4 (a) of CHED Memorandum Order No. 64 further states that "Local Government Units (LGUs), the Philippine National Police (PNP), or any other law enforcement agency may carry out any drug-related operation within the school premises but only prior to written approval and coordination with the HEI." Since approval by the HEIs is necessary, allowance of such activities are discretionary upon the HEIs and they can exercise its sound judgement to protect their students.

Furthermore, the mandatory random drug testing referred to under CHED Memorandum Order No. 64 is different from those carried out among suspected drug pushers and users since this is a suspicion-less activity. Thus, the activity is purely for health-related concerns.

On the last paragraph of page 2 of OL PHL 11/2017 dated 29 August 2017 which states that CHED Memorandum Order No. 64 "strongly encourages all HEIs to require drug testing as part of the requirements of admission into university," the Philippine Government emphasizes that academic freedom gives HEIs the right to determine for themselves (1) who may teach; (2) what may be taught; (3) how it shall be taught; and (4) who may be admitted to study.³ Thus, HEIs are given the latitude to determine their admission requirements.

This implies that drug-testing, especially under the premise of healthcare, may be implemented as a part of an HEI's school policy for admission, as well as continued admittance in the same.

In taking judicial notice of the proliferation of prohibited drugs in the country that threatens the well-being of people⁴, particularly the youth and school children, the Philippines also wishes to reiterate the Supreme Court's pronouncement in the case of *Social Justice Society v. Dangerous Drugs Board*⁵ that, "until a more effective method is conceptualized and put in motion, a random drug testing of students in secondary and tertiary schools is not only acceptable but may even be necessary if the safety and interest of the student population, doubtless a legitimate concern of the government, are to be promoted and protected."

³ *Ateneo de Manila vs Judge Capulong*, citing *Sweezy vs. New Hampshire*. G.R. No. 99327

⁴ 121 SCRA 92, 95-96, *Tolentino v. Alconcel*, 18 March 1983.

⁵ *Social Justice vs. Dangerous Drugs Board, et al.* G.R. No. 157870, along with its companion cases.