

Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions

REFERENCE:
UA PHL 4/2016

21 December 2016

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolution 26/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning a **new bill on the re-imposition of the death penalty in the Philippine legal system**.

According to the information received:

On 29 November 2016, the Judicial Reforms Subcommittee of the Philippines House of Representatives approved Congress House Bill No. 1 (Death Penalty Law), which would reinstate capital punishment. The Death penalty Law was adopted after public hearings on the measures attended by representatives of various government agencies, stakeholders, and civil society organizations. On 7 December 2016, the Committee on Justice of the House of Representatives approved the bill by 12-6 votes, with one abstention. The Congress may fast track the approval of the Death Penalty Law before the end of 2016. As early as 13 December 2016, the House of Representatives may start considering this draft bill.

The proposed text known as the "Death Penalty Law" would replace Republic Act N°9346 entitled "An act prohibiting the imposition of the death penalty in the Philippines" and would amend Republic Act N° 3815 known as the "Revised Penal Code", and other special penal laws.

The new law would punish by death several crimes which do not meet the threshold of what are considered as the most violent crimes in international human rights law, including arson, *carnapping* (stealing of vehicles), and drug-related crimes.

Under the new law, importation, manufacture, possession, cultivation, unlawful prescription, misapplication or failure to account on, and planting of evidence of dangerous drugs are punished by death as per the revision of sections 4, 5, 6, 8, 11, 16, 19, 27, 29 of Republic Act N° 9165 known as Comprehensive dangerous

Drugs Act of 2002. The new law would also punish by death may *carnapping* (stealing a motor vehicle) when the owner of the vehicle has been raped or killed (Cf Section 14 of Republic Act N°6539 known as Anti-Carnapping Act of 1972; destructive arson (art. 320 of the Penal Code); and plunder (Section 2 of Republic Act N° 7080).

Article 81 of the Revised Penal Code, would also be amended so that people sentenced to death may be executed by hanging, fire squad or lethal injection. This article also provide that the “death sentence shall be carried out not earlier than one (1) year nor later than eighteen (18) months after the judgment has become final and executory (...)”.

The Philippines abolished the death penalty in 1987 and reinstated it in 1993. In 2006, the Philippines abolished the death penalty for a second time.

I am greatly concerned with the proposal from your Excellency’s Government to reinstate the death penalty in the Philippines. This decision, if confirmed, would depart from the world trend on the abolition of the death penalty. It also appears that the death penalty may be imposed for offenses which do not meet the threshold of the “most serious crimes” thus in contravention with international standards.

I would like to respectfully draw your Excellency’s Government’s attention that, as a State party to the Second Optional Protocol to the ICCPR, ratified on 22 August 1989, the Philippines has committed itself to its obligation to work towards the abolition of the death penalty. The Human Rights Committee, in its General Comment 26, stated that a denunciation clause was deliberately omitted in the drafting of the Second Optional Protocol to the ICCPR. Therefore, as signatory of this protocol, your Excellency’s Government cannot legally reintroduce the death penalty in its legislation.

May I recall that the death penalty has long been regarded as an extreme exception to the fundamental right to life. Article 6(2) of the ICCPR, provides that in countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes. This provision has consistently been interpreted by the Human Rights Committee, the highest international expert body in this field, to mean that the death sentence may only be imposed in respect of offences that result in the loss of life. The Human Rights Committee (CCPR/C/79/Add.25) noted in its concluding observations on the periodic report of Iran under the Covenant that the imposition of the death penalty for crimes that do not result in the loss of life is incompatible with the Covenant. In addition, article 5 of the United Nations Safeguards Protecting the Rights of those Facing the Death Penalty provides that “Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after a legal process which gives all possible safeguards to ensure a fair trial,

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org, or can be provided upon request.

While awaiting a reply, I respectfully urge the Government of the Philippines to halt the process of reintroducing the death penalty in its legislation in order to comply with its international obligations under the Second Optional Protocol and the ICCPR.

This communication and Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions