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Philippines: Legislators should permanently end consideration of new death penalty proposals

Bangkok, Thailand -- The International Commission of Jurists (ICJ) today welcomed the indefinite suspension of the hearings on the death penalty bills by the Philippine Senate's Committee on Justice and Human Rights. The Committee's Chairman, Senator Richard Gordon, indicated the suspension was needed until the Department of Justice is able to submit its opinion on the Philippines' obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). That instrument requires the Philippines to maintain its abolition.

On 7 February 2017, the Senate Committee on Justice and Human Rights held its first hearing on the proposed measure reintroducing the death penalty for illegal drugs and other crimes. A similar bill to restore the death penalty is also currently being debated in plenary at the House of Representatives.

At the Senate hearing, senators opposing the proposed measure recalled that the Philippines is a State Party to the Second Optional Protocol, and thus, it is obliged not to execute any person within its jurisdiction. Senator Richard Gordon, who chairs the Committee, thereafter, called for the indefinite suspension of the hearings on this matter until there could be clarity on the ramifications on the Philippines if it breaches its obligations under the Second Optional Protocol.

"Abolitionist States may not return to the use of the death penalty generally under the ICCPR, and States that become party to the Second Optional Protocol assume very specific obligations to that effect," said Emerlynne Gil, ICJ's Senior International Legal Adviser for Southeast Asia. "There really is no inconsistency between the Second Optional Protocol and the Philippine Constitution."

"As a general rule, the Philippine Constitution prohibits the death penalty except for compelling reasons involving heinous crimes," Gil said. "But in no way does it mandate that the death penalty be put into effect."

By ratifying the Second Optional Protocol, the Philippines has voluntarily chosen to be bound by an international obligation not to impose the death penalty—which it might otherwise have had the option to do under the Constitution. As the ICJ explains in its memorandum on this issue, this is the very essence of treaty making.

"To announce long after ratification that a treaty is inconsistent with the Constitution and so not to be treated as binding, would call into question virtually every treaty to which Philippines is a party. This would contradict the most basic foundations of the international legal system and would lead other countries to view the Philippines as virtually incapable of making a reliable international legal agreement," Gil emphasized.

The ICJ emphasized that if the Philippines brings back the death penalty into its domestic laws, it would also be in violation of its obligations under the ICCPR, which effectively prohibits States from bringing back the death penalty once it has been abolished in domestic laws.

The Philippines cannot withdraw from Second Optional Protocol, which has no denunciation or withdrawal clause. The UN Human Rights Committee has explained that a denunciation clause was deliberately omitted because once the people are accorded the protection of the rights under the Second Optional Protocol, they shall not be deprived of such protection.

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