



PERMANENT MISSION OF THE REPUBLIC OF THE PHILIPPINES
TO THE UNITED NATIONS AND OTHER INTERNATIONAL
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The Permanent Mission of the Republic of the Philippines to the United Nations and Other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights (OHCHR) and has the honor to submit the Response of the Republic of the Philippines' delegation to the issues and queries raised on the Concluding Observations of the Committee on the Elimination of Discrimination against Women after the Constructive Dialogue on 5 July 2016 at the Palais des Nations.

The Permanent Mission of the Republic of the Philippines to the United Nations and other International Organizations requests that the attached document be published alongside the Committee's Concluding Observations.

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

Geneva, 25 August 2016

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STATE PARTY'S SUBSTANTIVE COMMENTS ON THE CEDAW CONCLUDING OBSERVATIONS IN THE PHILIPPINES' COMBINED 7th and 8th PERIODIC REPORTS

1. On *Legislative Framework, paragraph 11*, the Committee failed to appreciate the report of the State Party in its main report, in its response to the list of issues and questions (on the 7th and 8th Periodic Report) and during the Constructive Dialogue proper, regarding the status of the Convention in its domestic legal order. Thus, the State Party would like to reiterate that in the domestic sphere:
 - a. The Philippines follows the doctrine of incorporation per Article II, Section 2 of the 1987 Philippine Constitution currently in force which provides that the Philippines adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.
 - b. The doctrine of incorporation is applied whenever municipal tribunals (or local courts) are confronted with situations in which there appears to be a conflict between a rule of international law and the provisions of the constitution or statute of the local state. Efforts should first be exerted to harmonize them, so as to give effect to both since it is to be presumed that municipal law was enacted with proper regard for the generally accepted principles of international law in observance of the Incorporation Clause in the above-cited constitutional provision. However, the fact that international law has been made part of the law of the land does not pertain to or imply the primacy of international law over national or municipal law in the municipal sphere. The doctrine of incorporation, as applied in most countries, decrees that rules of international law are given equal standing with, but are not superior to, national legislative enactments.
 - c. In other words, in the legal hierarchy in the Philippines, the Constitution stands supreme. In its ruling in the case of *Chavez v. Judicial and Bar Council*¹ the Court declared that “The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer”. Thus, the Philippine Constitution prevails over international law in cases of irreconcilable conflict between them. It is worth noting, however, that there is no case yet filed before the Supreme Court where the CEDAW or the specific provisions thereof are assailed for being in conflict with the Constitution.
 - d. On the other hand, in case of conflict between other domestic/municipal laws and a treaty (e.g. CEDAW), the principle of *lex posteriori derogate prior* applies. This doctrine states that when the two instruments relate to the same subject, we

¹GR No. 202242, July 17, 2012,

try to give effect to both; but if there is irreconcilable inconsistency, the later in date will control, provided that the treaty stipulation is self-executing. Note however, that the CEDAW is not a self-executing treaty which means that there is a need to enact a local legislation in order to carry out or implement its provisions in the domestic sphere.

- e. Furthermore, jurisprudence dictates that in a situation where the conflict is irreconcilable and a choice has to be made between a rule of international law and municipal law, the municipal law should be upheld by the municipal courts² for the reason that such courts are organs of municipal law and are accordingly bound by it in all circumstances.³
 - f. Notwithstanding this, the State Party, being a signatory of the CEDAW, is mindful of the need to fulfil its obligations under the Convention; and to this end, it will continue with its efforts to raise the public's awareness on the Convention, and to push for the enactment of laws to further implement its provisions.
2. On *Legislative Framework, paragraph 12*, we wish to clarify that the laws enumerated therein are not to be revised in their "entirety", but only certain pertinent provisions. Moreover, the State Party hereby reiterates that no concrete timeline on the adoption of bills can be committed because the enactment of these bills into laws is dependent on the political milieu in both houses of the Philippine Congress. However, the Executive Department, through the Philippine Commission on Women, has always been lobbying for the said bills. In the 17th Congress, the Executive Department will intensify its coordination with the legislative bodies (House of Representatives and Senate) to expedite their adoption.
 3. On *Access to Justice, paragraphs 14(a) and 15*, the Committee failed to appreciate the report of the State Party both in the List of Issues and Questions and during the Constructive Dialogue regarding the cases of *Karen Vertido vs the Philippines* and *R vs the Philippines*. Thus, the State Party invites the Committee to revisit the State Response to the List of Issues and Questions as well as the Summary Records of the Constructive Dialogue.

For the Committee's information, and as already mentioned during the Constructive Dialogue, we are in the process of finalizing the State Response to the Views of the CEDAW Committee in the case of *R vs. The Philippines*, and we will submit the same in the soonest possible time.

² Secretary of Justice vs Lantion, G.R. No. 139465. January 18, 2000, citing *Ichong vs. Hernandez*, 101 Phil. 1155 [1957]; *Gonzales vs. Hechanova*, 9 SCRA 230 [1963]; *In re: Garcia*, 2 SCRA 984 [1961]

³ *Ibid.* citing *Salonga & Yap*, op. cit., p. 13).

4. On *Access to Justice, paragraph 14(c)*, it will be helpful if the Concluding Observations specified what judicial decisions are being referred to and in what way these decisions are “not fully compliant” with CEDAW.
5. On *National Human Rights Institution, paragraph 20*, the State Party would like to clarify to the Committee that the findings of the Commission on Human Rights (CHR) have always been recommendatory in nature because it is not within CHR’s function or mandate to act as a judicial or a quasi-judicial body. Thus, the recommendation of the Committee to make the resolutions of CHR legally binding will not hold water because the said institution is not created to function like a court. CHR itself recognizes this and does not push for their resolutions to become legally binding. After its investigations, CHR endorses its findings to the appropriate judicial authorities, e.g., the Department of Justice, for their appropriate action.
6. On *National Machinery for the Advancement of Women, paragraph 17*, the State Party has reported during the Constructive Dialogue that twenty-one (21) additional positions for the Philippine Commission on Women have been approved by the Philippine Department of Budget and Management.
7. On *Violence against Women, paragraph 25(b)*, the State Party wishes to inform the Committee that the Anti-VAWC law (RA 9262) is really intended to cover only domestic violence by intimate partners, but separate laws on other forms of VAW are in place, such as the Anti-Rape Law, Anti-Trafficking in Persons Act, and the Anti-Sexual-Harassment Law.
8. On the same topic, *paragraph 26(e)*, the Committee failed to appreciate the report of the State Party on the matter. Please note that as reported in the State Response to the List of Issues and Questions as well as during the Constructive Dialogue, the issues and concerns behind this particular recommendation is currently being addressed, especially by the State Party’s Department of Social Welfare and Development through various center-based and community based programs and services.
9. On *Trafficking and Exploitation of Prostitution, paragraph 27(a)*, the State Party respectfully disagrees with the findings of the Committee. The State Party wishes to clarify that the current legal framework on trafficking in persons actually covers all methods, including online match-making for as long as the elements of human trafficking are present. Thus, the State Party recommends deleting paragraph 27(a).
10. On *Trafficking and Exploitation of Prostitution, paragraph 28(b)*, contrary to the findings of the Committee, the State Party actually has the legal framework to address contemporary methods of trafficking which make use of information and communication technology, e.g., Anti Mail-Order Spouse Act (Republic Act 10906), Anti-Trafficking in

Persons Act (or Republic Act No. 9208, as amended by Republic Act No. 103640), Anti-Child Pornography Act (Republic Act No. 9775) and the Cybercrime Prevention Act of 2012 (Republic Act No. 10175).

11. On *Education, paragraph 33(a)*, the State Party wishes to clarify that the data we reported in our State Response to the List of Issues and Questions related to the Combined 7th and 8th Reports refer to the comparative percentage of enrolled boys and girls in kindergarten and primary education, not the enrolment rate of boys vis-à-vis enrolment rate of girls. Enrolment rates of females in pre-primary and primary education have always been higher than the enrolment rates of males. In fact, the same trend is shown in secondary and tertiary levels of education.

Please note that earnest efforts have been made and are still being made by the State Party through the Commission on Higher Education (CHED) and the Technical Education and Skills Development Authority (TESDA) to encourage females to enroll in traditionally male-dominated technical and professional courses. To implement the Magna Carta of Women, CHED has developed the guidelines, standards and monitoring mechanisms to ensure the elimination of all forms of gender-based discrimination in educational institutions.

12. On the same topic, *paragraph 34*, the Committee failed to appreciate the report of the State Party on its on-going programs to promote the enrolment of girls in pre-primary and primary education. Among the reported programs are the scholarship grants of the Department of Education and the Pantawid Pamilyang Pilipino Program (Conditional Cash Transfer) of the Department of Social Welfare and Development which has kept children in school and has significantly lessened the incidence of children working for a living, thereby increasing their opportunity to be in school.
13. On *Employment, paragraph 35(c)*, the State Party wishes to clarify that the wage structure in the government as specified in plantilla positions are standardized, regardless of gender. Moreover, the State Party adheres to the principle of “equal pay for work of equal value”.
14. On the same topic, *paragraph 35(d)*, the State Party believes that the Committee made an unfair and sweeping generalization. On this note, we would like to inquire and substantiate the Committee’s basis was for using the term “widespread” in describing the sexual harassment situation in the workplace, as well as the basis for concluding that there is a “prevalence of impunity” on this matter. The State Party finds the observation unfair and calls for its deletion.
15. Still on *Employment, paragraph 36(b)*, the Committee once again failed to appreciate the progress of the State Party in the promotion of women’s access to employment. The

Labor Representative reported during the Constructive Dialogue that women's employment rate was slightly higher than men's; women salaried workers made up almost 40 per cent of the salaried workers in the country; and the average basic wage of women was higher than that of men. The health of the economy was therefore partly attributable to women's contributions.

16. On *Health, paragraph 39*, the State Party disagrees with the Committee's findings that there is no access to modern contraceptives considering that the Department of Health reported during the Constructive Dialogue that it procures family planning commodities and delivers them directly to the service delivery points. Moreover, the Department of Health explained during the Constructive Dialogue that the overall budget of the said department actually increased for 2016 due to the inclusion of the Php500 million or US\$10.7million savings from the 2015 General Funds of the health department.
17. On *Health, paragraph 39(c)*, the State Party disagrees with the findings of the Committee that there are no mechanisms to monitor the implementation of the Responsible Parenthood and Reproductive Health (RPRH) Law. On the contrary, mechanisms to monitor the implementation of the RPRH Law are in place and among these are the National Implementation Team of the RPRH Law and the Regional Implementation Teams (RITs) and their local government counterparts. In fact, the Guidelines for monitoring the implementation of the RPRH Law have been developed and have already been issued and practiced among Local Government Units.
18. On *Health, paragraph 39(d)*, the State Party would like to reiterate to the Committee that Executive Order Nos. 003 and 030 of the City of Manila are already **effectively and officially revoked**. The Committee itself noted that Executive Order Nos. 003 and 030 of the City of Manila have both been impliedly repealed/ revoked by the adoption of the RPRH Law. Particularly, Section 29 of the said law states that existing laws, presidential decrees or issuances, executive orders, letters of instruction, admin orders, rules or regulations contrary to or inconsistent with it are considered repealed or amended. Clearly, Executive Order Nos. 003 and 030 of the City of Manila have effectively become ineffective. Thus, an "express declaration" that indeed said local issuances are "officially revoked" is no longer needed. There is no necessity in further declaring void and ineffective, what, of itself, is already ineffective. Furthermore, short of "explicitly" revoking said executive orders, the City of Manila has done all the necessary steps and efforts in support of the implementation of the RPRH Law.

Moreover, for the Committee to say that there is "persistent," in other words "continuing," lack of access to services and information about sexual and reproductive health rights for women and girls in Manila is unfair and inaccurate. The Department of Health clearly stated during the Constructive Dialogue that indeed, "all reproductive health services provided for under the Law were currently available in health centers in

Manila." As a matter of fact, the contraceptive prevalence rate in Manila has risen from 15 to 21%, which is higher than some of the cities in Metro Manila. The State Party requests the deletion of this observation.

19. On Health, paragraph 39 (e), the State Party wishes to reiterate its efforts in relation to the case of the City of Sorsogon:

- a. In February 2015, Mayor Sally Lee declared Sorsogon city as “prolife” and consequently stopped all family planning-service delivery in the said city. It also returned family planning supplies allotted by the Department of Health (DOH) for the city. It must be noted that city legislators under Mayor Lee’s influence threatened to enact an ordinance to codify the de-facto ban on these commodities and services, however, because of the efforts and the intervention of various concerned government agencies, especially the DOH, such plan was derailed at the 2nd hearing of the Council. Thus, up to this time the ban stands without a local ordinance.
- b. Despite the de facto ban, DOH has trained and mobilized deployed nurses, Provincial Health Office program coordinators, volunteer community health workers, civil society organization (CSOs) and other government agencies to fill the service delivery gap. The DOH still provides technical, logistic and financial assistance to the City of Sorsogon in support of the full implementation of the RPRH DOH also provides logistic and training support to CSOs operating in the City of Sorsogon. There is continuous dialogue between the local government unit health workers and the DOH through the assigned DOH officials.
- c. The DOH Legal office has also initiated the process of filing a legal case against Mayor Lee for violation of the RPRH Law.