



**Economic and Social
Council**

Distr.
GENERAL

E/C.12/PHL/CO/4
24 November 2008

Original: ENGLISH

COMMITTEE ON ECONOMIC, SOCIAL
AND CULTURAL RIGHTS
Forty-first session
Geneva, 3-21 November 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT**

PHILIPPINES

**CONCLUDING OBSERVATIONS OF THE COMMITTEE ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

1. The Committee on Economic, Social and Cultural Rights considered the combined second to fourth periodic reports of the Philippines on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/PHL/4) at its 39th, 40th and 41st meetings, held on 11 and 12 November 2008 (E/C.12/2008/SR.39-41), and adopted, at its 56th meeting held on 21 November 2008, the following concluding observations.

A. INTRODUCTION

2. The Committee welcomes the submission of the combined second to fourth periodic reports of the Philippines, which was generally prepared in conformity with the Committee's guidelines, but regrets

the 11-year delay in its submission. The Committee also welcomes the written replies to its list of issues (E/C.12/PHL/Q/4/Add.1), and the open and constructive dialogue with the delegation of the State party, which included representatives of various government departments with expertise on the subjects covered by the Covenant.

3. The Committee notes with appreciation the participation of the Commission on Human Rights of the Philippines (CHRP) in the dialogue with the State party, and welcomes the oral presentation made by its chairperson during the consideration of the report.

B. POSITIVE ASPECTS

4. The Committee notes with satisfaction that the State party has ratified, or acceded to, all United Nations core human rights treaties.

5. The Committee notes with satisfaction the adoption of several measures to prohibit all forms of discrimination against women and promote equality between men and women, including

- (a) the Philippine Plan for Gender-Responsive Development, 1995-2025;
- (b) the Anti-Sexual Harassment Act of 1995 (Republic Act No. 7877);
- (c) the Anti-Trafficking in Persons Act of 2003 (Republic Act No. 9208); and
- (d) the Anti-Violence against Women and Their Children Act of 2004 (Republic Act No. 9262).

6. The Committee also notes with satisfaction the various legislative, administrative and policy measures adopted by the State party to recognise, protect and promote the individual and collective rights of the indigenous peoples living in the territory of the State party, including

- (a) the Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371);
- (b) the Free and Prior Informed Consent Guidelines, adopted by the National Commission on Indigenous Peoples in 2002, which emphasise the right of indigenous peoples

- to participate in decisions affecting them; and
- (c) Executive Order 270-A, which aims at safeguarding the ecological integrity of indigenous lands and resources from the negative impact of mining operations.

7. The Committee welcomes the efforts undertaken by the State party to protect and promote the rights of overseas Filipino workers (OFWs), inter alia through the adoption of the Migrant Workers and Overseas Filipinos Act of 1995 (Republic Act 8042), the conclusion of bilateral agreements with countries of destination and the promotion of voluntary social security schemes for OFWs.

8. The Committee notes with satisfaction the adoption of the Anti-Squatting Repeal Act of 1997 (Republic Act No. 8368), which decriminalises squatting as recommended by the Committee in its previous concluding observations (E/C.12/1995/7, para. 31).

9. The Committee notes with satisfaction the legislative framework and institutional mechanisms established by the State party for the protection of the environment and the improvement of environmental and industrial hygiene.

10. The Committee welcomes the recent ratification by the State party of the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. It also notes with satisfaction the ratification of ILO Conventions No. 182 on Worst Forms of Child Labour and No. 29 on Forced Labour.

C. FACTORS AND DIFFICULTIES IMPEDING THE IMPLEMENTATION OF THE COVENANT

11. The Committee notes the absence of any significant factors or difficulties preventing the effective implementation of the Covenant in the State party.

D. PRINCIPAL SUBJECTS OF CONCERNS AND RECOMMENDATIONS

12. The Committee remains concerned that Covenant provisions are seldom invoked before or directly enforced by national courts, tribunals or administrative authorities, in spite of the fact that, pursuant to article II, section 2, of the 1987 Constitution, the Covenant is regarded by the State party “as part of the law of the land”.

The Committee draws the attention of the State party to its General Comment no. 9 (1998) on the domestic application of the Covenant, and recommends that the State party take all appropriate measures to ensure the direct applicability of the Covenant provisions in its domestic legal order, including the organisation of training programmes for judges, lawyers and public officials. The Committee also request the State party to include detailed information on decisions of national courts, tribunals or administrative authorities giving effect to Covenant rights in its next periodic report.

13. The Committee is concerned that the protection and promotion of economic, social and cultural rights is not included in the mandate of the Commission on Human Rights of the Philippines (CHRP). It also notes with concern the lack of adequate financial resources available to the CHRP for the implementation of its investigative and monitoring functions.

The Committee recommends that the State party increase its efforts to strengthen the effectiveness of the Commission on Human Rights of the Philippines (CHRP), inter alia by including the protection and promotion of economic, social and cultural rights in its mandate and by allocating adequate financial resources for the implementation of the Commission’s investigative and monitoring functions. In this regard, the Committee calls on the State party to move

expeditiously towards the adoption of the CHRP Charter.

14. The Committee notes with concern that, despite the efforts undertaken by the State party to curb corruption, including the establishment of a number of anticorruption bodies such as the anti-corruption court, this phenomenon continues to be widespread.

The Committee recommends that the State party intensify its efforts to prosecute cases of corruption and review its sentencing policy for corruption-related offences. It also recommends that the State party train the police and other law enforcement officers, prosecutors and judges on the strict application of anti-corruption laws, conduct awareness-raising campaigns, and ensure the transparency of the conduct of public authorities, in law and in practice. The Committee request the State party to provide in its next periodic report detailed information about progress made, and obstacles encountered, in combating corruption and impunity.

15. The Committee remains concerned about reports that forced disappearances and extra-judicial killings of trade union activists, indigenous leaders, peasant activists advocating for the implementation of the agrarian reform and human rights defenders engaged in defending the economic, social and cultural rights of their communities continue to occur, despite the measures adopted by the State party – including the creation of the Task Force Against Political Violence – to tackle these phenomena. The Committee is particularly concerned about the limited progress made by the State party in investigating cases of forced disappearances and extra-judicial killings and in prosecuting the perpetrators of these crimes.

The Committee urges the State party to take all necessary measures for the protection of trade union activists, indigenous leaders, peasant activists and human rights defenders engaged in defending the economic, social and cultural rights of

their communities against any intimidation, threat and violence, whether perpetrated by State security forces and agents or non-State actors. It also calls on the State party to ensure that all alleged cases of forced disappearances and extra-judicial killings are promptly and thoroughly investigated, and that alleged perpetrators are prosecuted and appropriately punished, if found guilty. The Committee requests the State party to provide, in its next periodic report, detailed information on the progress made in preventing and punishing forced disappearances and extra-judicial killings.

16. The Committee notes with concern the adverse effects that economic activities connected with the exploitation of natural resources, especially mining operations, carried out in indigenous territories continue to have on the right of indigenous peoples to their ancestral domains, lands and natural resources, as recognised in the 1997 Indigenous Peoples Rights Act (IPRA). The Committee is concerned by the conflict of laws between the 1995 Mining Act and IPRA, and notes in particular that section 56 of the IPRA, which provides for the protection of property rights already existing within the ancestral domains, de facto risks to undermine the protection of the rights recognised to indigenous peoples under the Act. (articles 1, 11, 12 and 15)

The Committee urges the State party to fully implement the 1997 Indigenous Peoples Rights Act (IPRA), in particular by ensuring the effective enjoyment by indigenous peoples of their rights to ancestral domains, lands and natural resources, and avoiding that economic activities, especially mining, carried out on indigenous territories adversely affect the protection of the rights recognised to indigenous peoples under the Act.

17. The Committee notes with concern that, in spite of a high GDP growth rate, the national spending on social services such as housing, health and education remains low, and has in fact decreased

over the years. (article 2, paragraph 1)

The Committee draws the attention of the State party to its statement on “An evaluation of the obligation to take steps to the ‘maximum of its available resources’ under an Optional Protocol to the Covenant” (E/C.12/2007/1), and recommends that the State party increase its national spending on social services such as housing, health and education so as to achieve, in accordance with article 2, paragraph 1, the progressive realisation of the economic, social and cultural rights provided for in the Covenant.

18. The Committee notes with concern that the State party has not made sufficient progress in reviewing and repealing discriminatory provisions against women still existing in national legislation. The Committee regrets that the Marital Infidelity Bill, which seeks to remove the discriminatory provisions in the Revised Criminal Code pertaining to “concubinage” and “adultery”, has not yet been adopted. The Committee also regrets that the interpretation of the provisions of the Code of Muslim Personal Laws of the Philippines (Presidential Decree No. 1083) permits polygamy and the marriage of girls under the age of 18, and that forced marriages are still tolerated in certain parts of the State party. (articles 2, paragraph 2, 3 and 10, paragraph 1)

The Committee urges the State party to undertake, as a matter of priority, a comprehensive review of its legislation with a view to ensuring de jure and de facto equality between men and women in all fields of life, as provided for in article 2, paragraph 2, and article 3 of the Covenant. In particular, it urges the State party to adopt the Marital Infidelity Bill, and to review the interpretation of the Code of Muslim Personal Laws of the Philippines. The Committee draws the attention of the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, and requests the State party to

provide, in its next periodic report, detailed information on the progress made in the field of gender equality.

19. The Committee is concerned about the persistent high unemployment and underemployment rates in the State party. The Committee notes in particular that the lack of employment opportunities has led much of the population of working age to emigrate. (article 6)

The Committee urges the State party to increase its efforts to reduce unemployment and underemployment through specifically targeted measures, including programmes aimed at creating employment opportunities at the local level for young, unskilled and inexperienced workers living in urban areas and persons living in rural areas.

20. The Committee, while welcoming the efforts undertaken by the State party to address the concerns of persons working in the informal economy and to facilitate their enrolment in the social security system and PhilHealth, continues to be concerned about the large number of persons working in the informal economy, an estimated 44.6 per cent of the total number of workers who continue to be excluded from the coverage of existing labour and social security legislation. (articles 6, 7, 8 and 9)

The Committee recommends that the State party intensify its efforts to regularise the situation of persons working in the informal economy, by ensuring adequate protection provided by the existing labour and welfare legislation.

21. The Committee notes with concern that, despite efforts undertaken by the State party, overseas Filipino workers (OFWs) continue to face discriminatory treatment and abuses in many countries of destination. It notes in particular that women migrant workers, especially those employed as domestic workers, nurses and care-givers, often become victims of psychological abuse, physical and sexual violence and slavery-like working conditions.

The Committee is also concerned that OFWs, in particular those with an irregular status, encounter obstacles in obtaining legal protection and redress in cases of discriminatory treatment and abuse at the workplace. (articles 6, 7 and 10)

The Committee recommends that the State party implement effective policies to protect the rights of overseas Filipino workers (OFWs), inter alia by

- (a) improving existing services, such as counselling and medical assistance, provided by the Office for the Legal Assistance for Migrant Workers Affairs and diplomatic missions in countries of destination;**
- (b) concluding and invoking bilateral agreements with those countries of destination where discriminatory treatment and abuse are more frequent; and**
- (c) providing legal and consular assistance to its nationals seeking justice in case of discriminatory treatment and abuse at the workplace, including rape and sexual violence against women migrant workers, and ensuring that reports are investigated by competent authorities of the countries of destination.**

22. The Committee is concerned that the low levels of minimum wages, particularly in the agricultural sector, are insufficient to provide an adequate standard of living for workers and their families. The Committee is also concerned that the minimum wage legislation does not apply in some important sectors, including government employment and export-oriented and labour-intensive manufacturing, and that its enforcement is made difficult especially by the shortage of labour inspectors. (articles 7 and 11)

The Committee recommends that the State party take all appropriate measures to ensure that the minimum wages fixed by the Regional Tripartite Wages and Productivity Boards provide workers with an adequate standard of living for themselves and their families, in accordance with article 7 (a) (ii) of the

Covenant. The Committee also recommends that the State party extend the applicability of the minimum wage legislation to those sectors where it does not apply, and intensify its efforts to enforce legal minimum wages through increased labour inspections and fines or other appropriate sanctions for employers who fail to comply with the minimum wage legislation.

23. The Committee notes with concern that inspections of workplaces for promoting compliance with the occupational health and safety legislation are infrequent and ineffective. It also notes that the self-assessment mechanism introduced by the 2004 Labour Standards Enforcement Framework (Department Order No. 57-04) for establishments with more than 200 workers risks undermining the effective realisation of the right to safe and healthy working conditions provided in article 7 (b) of the Covenant. (article 7 (b))

The Committee recommends that the State party provide sufficient human and financial resources to the Department of Labour and Employment (DOLE) to enable regular and independent inspections aimed at ensuring compliance with the occupational health and safety legislation. It also recommends that the State party monitor closely the implementation of the 2004 Labour Standards Enforcement Framework so as to ensure that the application of the self-assessment mechanism does not undermine the effective realisation of the right to safe and healthy working conditions in establishments with more than 200 workers.

24. The Committee notes with concern the absence of legislation on divorce. (article 10)

The Committee recommends that the State party adopt legislation recognising the right of men and women to divorce, to obtain the legal severance of marital ties and to remarry after divorce.

25. The Committee, while welcoming the fact that the Act Redefining Rape as a Crime against Person of 1997 (Republic Act No. 8353) redefines and expands the crime of rape and recognises marital rape, is concerned that the subsequent forgiveness of the wife, as the injured party, extinguishes the criminal liability of the husband. (article 10)

The Committee recommends that the State party strengthen the protection afforded by the Act Redefining Rape as a Crime against Person to women victims of marital rape by repealing the possibility that the criminal liability of the husband be extinguished by the subsequent forgiveness of the wife.

26. The Committee notes with concern that, notwithstanding the various legislative, administrative and policy measures adopted by the State party to combat trafficking, a high number of women and children continue to be trafficked from, through and within the country for purposes of sexual exploitation and forced labour. The Committee is particularly concerned about the low number of prosecutions and convictions of traffickers. (article 10)

The Committee recommends that the State party intensify its efforts to combat trafficking in human beings, especially women and children, for purposes of sexual exploitation and forced labour, inter alia by supporting programmes and information campaigns to prevent trafficking, providing mandatory training for law enforcement officials, prosecutors and judges on the anti-trafficking legislation and increasing the provision of medical, psychological and legal support to victims.

27. The Committee remains concerned that despite the State party's efforts to combat child labour, a large number of children between the age of 5 and 14 work in the informal economy. The Committee is particularly concerned that many of these children work in hazardous or dangerous conditions and are exposed to various forms of sexual and economic exploitation, including the worst forms

of child labour. (article 10)

The Committee urges the State party to intensify its efforts to combat child labour and protect children from all forms of sexual and economic exploitation, including the worst forms of child labour, inter alia through

- (a) strengthening its national legislation prohibiting child labour in accordance with international standards;
- (b) increasing the number of labour inspections in order to ensure the respect of its national legislation prohibiting child labour;
- (c) ensuring the imposition of fines and criminal sanctions to persons making use of illegal child labour;
- (d) organising mandatory training for law enforcement officials, prosecutors and judges; and
- (e) adopting all appropriate measures to facilitate recovery and access to educational opportunities for former child workers.

The Committee recommends that the State party undertake a national survey on the nature and extent of child labour, and include information on progress made in combating child labour in its next periodic report.

28. The Committee is deeply concerned that, in spite of the high rate of economic growth achieved in recent years, the percentage of persons living below the official poverty line has actually increased to an estimated 36 per cent of the population in 2007. The Committee also notes with concern the wide regional disparities between the National Capital Region and the poorest regions of the country, in particular the Autonomous Region of Muslim Mindanao, and the significant inequalities in income distribution, especially between urban areas and poor rural areas. (article 11)

The Committee recommends that the State party allocate sufficient funds for the implementation of its poverty eradication strategy, and ensure the full

integration of economic, social and cultural rights in the strategy, as recommended by the Committee in its Statement on “Poverty and the International Covenant on Economic, Social and Cultural Rights” (E/C.12/2001/10). The Committee requests the State party to include in its next periodic report detailed information on the results of the measures adopted under the strategy, including updated statistical data, on an annual basis, on the percentage of the population living in poverty, disaggregated by gender, age, number of children per household, number of single-parent households, rural/urban population, and ethnic group.

29. The Committee notes with concern that an estimated 16.5 million, roughly 30 per cent, of the urban population continue to live in informal settlements and slums, sometimes built on riverbanks, railroad tracks and other high-risk areas, with no or limited basic infrastructures and services, without legal security of tenure and under constant threat of eviction. The Committee also notes with concern that the percentage of the national budget allocated to the realisation of housing programmes aimed at providing security of tenure and affordable housing, such as the Presidential Land Proclamation, is not sufficient to increase the supply of social housing units for members of the most disadvantaged and marginalised groups. (article 11)

The Committee requests the State party to allocate sufficient funds for the realisation of programmes aimed at providing security of tenure and affordable housing, particularly to members of the most disadvantaged and marginalised groups, in line with its General Comment No. 4 (1991) on the right to adequate housing.

30. The Committee regrets that most of its previous recommendations relating to the prevention of illegal forced evictions (E/C.12/1995/7, paras. 31 and 32) have not been acted upon by the State party, and remains deeply concerned about the largescale

forced eviction of urban families carried out for the purpose of urban renewal and beautification, which has reportedly affected over 1.2 million people in the period between 1995 and 2008. It is also concerned about the lack of effective consultation of, and legal redress for, persons affected by forced evictions, and the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties. (article 11)

In line with the recommendations contained in paragraphs 31 and 32 of its previous concluding observations, the Committee urges the State party, as a matter of priority, to

- (a) ensure the effective implementation of the Urban Development and Housing Act (UDHA) of 1992 (Republic Act No. 7279) and other laws and regulations prohibiting illegal forced evictions and demolitions;**
- (b) reinforce the mandate of the Presidential Commission for the Urban Poor “as the sole clearing house for the conduct of demolition and eviction”, in accordance with Executive Order No. 152 of 2002;**
- (c) undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development and urban renewal projects;**
- (d) ensure that persons forcibly evicted from their properties be provided with adequate compensation and/or offered relocation, in accordance with section 28 of the UDHA and the guidelines adopted by the Committee in its General Comment No. 7 (1997) on forced evictions; and**
- (e) guarantee that relocation sites are provided with basic services (including drinking water, electricity, washing and sanitation facilities) and adequate facilities (including schools, health care centres and transportation) at the time the resettlement takes place.**

31. The Committee notes with concern that, under the State party's legal system, abortion is illegal in all circumstances, even when the woman's life or health is in danger or pregnancy is the result of rape or incest, and that complications from unsafe, clandestine abortions are among the principal causes of maternal deaths. The Committee is also concerned about the inadequate reproductive health services and information, the low rates of contraceptive use and the difficulties in obtaining access to artificial methods of contraception, which contribute to the high rates of teenage pregnancies and maternal deaths existing in the State party. (article 12)

The Committee draws the attention of the State party to its General Comment No. 14 (2000) on the right to the highest attainable standard of health, and urges the State party to adopt all appropriate measures to protect the sexual and reproductive rights of women and girls, inter alia through measures to reduce maternal and infant mortality and to facilitate access to sexual and reproductive health services, including access to family planning, and information. In particular, the Committee encourages the State party to address, as a matter of priority, the problem of maternal deaths as a result of clandestine abortions, and consider reviewing its legislation criminalising abortion in all circumstances.

32. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society and to inform the Committee on all steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging non-governmental organisations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

33. The Committee encourages the State party to consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

34. The Committee also encourages the State party to consider ratifying ILO Conventions No. 81 (1947) concerning Labour Inspection in Industry and Commerce, and No. 102 (1952) concerning Minimum Standards of Social Security.

35. The Committee invites the State party to submit a common core document in accordance with the 2006 harmonised guidelines on reporting to the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.5).

36. The Committee requests the State party to submit its combined fifth and sixth periodic reports by 30 June 2013.

