

THE CARTER CENTER



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The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 100 elections in 38 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for democratic elections, based on state obligations under public international law.

Introduction

As part of its 2012 Universal Periodic Review, the Government of the Philippines accepted recommendations to, among other things:

- Further mainstream human rights in all policies, programmes and activities of the Government;
- Continue promoting the empowerment of women;
- Ensure free and effective birth registration for all children;
- Intensify efforts to protect the rights of vulnerable groups, including indigenous peoples; and
- Further its efforts to effectively eliminate extrajudicial killings.

This submission will touch on the degree of implementation of these recommendations by the government of the Philippines in the context of the 2016 election process. The Philippines has ratified a number of international treaties including the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); and the United Nations Convention Against Corruption (UNCAC). Many of the obligations therein are reflected in the legal framework of the Philippines.

The Carter Center in the Philippines: On March 21, 2016, The Carter Center deployed a limited international election observation mission for the May 9, 2016 presidential and general elections in the Philippines, with a focus on Mindanao. The mission consisted of a three-member expert team, based in Davao City, and two teams of two long-term observers, based in Cotabato City and Cagayan de Oro who collected data on human rights and elections during the period of their deployment. The Carter Center's assessments were based on the international obligations and standards for democratic elections which are binding upon the Philippines, and serve as the basis for the information offered here.

Findings and Recommendations for Consideration

1. *End extra-judicial killings immediately*

During the election campaign, presidential candidate Rodrigo Duterte – now President of the Philippines – made public statements advocating or supporting extrajudicial killings of alleged criminals, particularly those involved in the illegal drug trade. Mr. Duterte referenced Davao City, Mindanao, where he was mayor, as an example of the effectiveness of such policies in reducing crime. Over 1,000 killings of suspected drug dealers and petty criminals were reported in and around Davao City, during Mr. Duterte's time in office as mayor. Following his election, Mr. Duterte made further statements which condoned and encouraged extrajudicial killings of alleged criminals, including promising pardons for any law enforcement officials convicted of killing anyone resisting arrest.

In the days following his election, news media reported instances of vigilante-style murders of alleged drug dealers by unknown assailants. Following Mr. Duterte's accession to the presidency, such killings take place on an almost daily basis, with the total number at the time of writing well over one thousand. Some of these killings have taken place as law enforcement authorities serve warrants on suspects, with the official justification being that the individuals killed were resisting arrest. Other murders have been perpetrated by unknown assailants, with the victims often found in public places with signs identifying them as drug dealers. Investigation into such killings appears to be very limited at best.

Extrajudicial killings should cease immediately. An independent investigation should be initiated to determine responsibility for ordering or for failing to address what amounts to mass killings. All killings, including those by law enforcement, should be investigated by an independent authority.

2. Protect the right of political representation – especially the right to vote and freedoms of movement and assembly – by acting to suppress violence

The ICCPR, Article 25 (a), provides that every citizen has the right “to take part in the conduct of public affairs... through freely chosen representatives”, and, in Article 25 (b), “to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage.... guaranteeing the free expression of the will of the electors”. Violence, both election-related and otherwise, was widely prevalent during the election period and on election day itself. This had a chilling effect upon the conduct of many dimensions of the elections. Political campaign activities were not universally conducted, as many areas were inaccessible or unsafe due to violence, circumscribing the rights to move and to assemble freely, undermining the rights protected by Article 25.¹ As reported to Carter Center observers, voters were often afraid to participate in campaign activities due to the risk of violence, or were in some cases coerced into participation in rallies or campaign events. This is in clear violation of the obligation under Article 25 that voters should be free of all coercion, including threats of violence.²

Efforts should be strengthened to end ongoing long-term civil conflicts, complete the Bangsamoro peace process, and permit citizens to exercise their Article 25 rights.

3. Take measures to increase the participation of Indigenous Peoples in the electoral process

When the Indigenous Peoples Rights Act (IPRA) became law in 1997, it provided for mandatory representation for Indigenous Peoples in policy-making bodies and local legislative councils, thus recognising the right of Indigenous Peoples to participate in decision-making in matters affecting their rights. National Guidelines were enacted in 2009 to create mechanisms to give effect to this right, but implementation has varied across the country, and no national representative structures have yet been created. In addition to these structural deficits, there are many practical barriers which restrict Indigenous Peoples from registering to vote and voting. These include the remoteness of the locations where they live and the considerable distances they must travel to register or to vote; the high levels of illiteracy which render the voting process

¹General Comment 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (1996) paragraph 25

²GC 25, paragraph 19

highly inaccessible; and the lack of legal documentation to facilitate voter registration. The Commission on Elections (COMELEC) is to be commended for conducting a small pilot program of specially allocated polling stations for Indigenous Peoples in both provinces of the island of Mindoro.

The International Convention on the Elimination of All Forms of Racial Discrimination has been interpreted as requiring that states ensure that Indigenous Peoples have equal rights in respect of effective participation in public life.³ The UN Declaration on the Rights of Indigenous Peoples affirmed that Indigenous Peoples have the right to self-determination, including the right to economic, social and cultural development. On Mindanao, these rights are particularly challenged, as there is great pressure on Indigenous Peoples' territory from development and agricultural and extractive enterprises, as well as from over-lapping armed conflicts.

The Carter Center recommends that the Philippines give consideration to accession to ILO Convention No. 169 concerning Indigenous and Tribal Peoples. In addition, the Center recommends that Indigenous People be recognised as free and equal to all other peoples and individuals, and must be able to fully exercise their political rights in an effective manner. Measures should be taken nation-wide to ensure that all births, including those of Indigenous Peoples, are registered, that Indigenous Peoples are registered to vote, and that voting is accessible for them. Mandatory representation as provided for by law should be uniformly implemented throughout the country, and national representative structures should be introduced. Indigenous Peoples should also be accorded a meaningful voice within peace negotiations.

4. Consider adjusting the electoral system to reduce instances of uncontested elections and guarantee free expression of the will of voters and free choice of representatives

There was a high instance of unopposed elections, as 545 out of 3,668 of elections for a single position (excluding the presidency and vice-presidency), had only one candidate. This represents an increasing trend as, for example, the proportion of unopposed congressional contests has grown from 7 percent in 2010, to 11 percent in 2013, to 15 percent in 2016. It appears that agreements are being made amongst powerful families to avoid contests between them. There are also districts in which strong support for one candidate deters potential challengers from participation, as to do so may be regarded as a waste of resources. The result is that voters do not get the opportunity to make a choice, and where incumbents are unchallenged, electoral accountability disappears. This deprives citizens of truly genuine elections. Article 25 has been interpreted as implying that elected representatives should be rendered accountable through the electoral process for their exercise of that power.⁴ The phenomenon of uncontested elections undermines the link between the voters and their representatives, depriving voters of any means of holding the office-holders to account for their actions. Article 25 also protects the right to stand for election, a right which many are deterred from exercising.

5. End the practice of vote-buying

Vote-buying is contrary to Article 25 of the ICCPR, amounting to an unlawful interference with the voting process.⁵ However, the illegal practice of vote-buying appears to be widespread in elections in the Philippines. Even within its limited scale of operations, the mission received a

³ICERD General Recommendation XXIII (1997)

⁴Ibid GC25, paragraph 7

⁵GC 25, paragraph 20

number of claims that vote-buying was taking place in Mindanao. Carter Center observers reported on two *barangays* in Cagayan de Oro where they observed residents being called into the *barangay* hall by supporters of a candidate for mayor, signing in on arrival, and leaving with what appeared to be envelopes. Observers also overheard a discussion of the rate paid in other *barangays*. In a city in Davao del Norte, information received by observers suggested that some 15 million pesos were distributed in the two days prior to the election, in an attempt to elicit support for a particular mayoral candidate. They also received information indicating that some voters were economically coerced to vote in favour of particular candidates, due to fears of job losses in *barangays* located on privately owned plantation land should the plantation owners' favoured candidates not win. In one instance, a successful candidate for mayor garnered 93 percent of the votes cast across fourteen such polling stations.

COMELEC has taken steps to reduce vote-buying. Following the Supreme Court decision mandating the production of receipts by vote-counting machines, COMELEC undertook training of polling staff to ensure that the receipts were retained at polling stations. The use of camera phones in polling stations was also banned. These measures both appear to have been successful. In addition, most interlocutors believed that the automated election system seller had made vote-buying more difficult, while automated counting also protects the integrity of the election.

Nonetheless, questions on the enforcement of the criminal law on electoral offenses are raised by the practice of vote-buying. It is imperative that illegal practices are eliminated in order to protect the right of voters to participate in genuine elections. It is recommended that greater resources should be allocated to deterrence during future elections. Additionally, voter education measures should be increased to ensure that voters are assured of the anonymity of their vote.

6. Amend legislation on campaign finance to introduce realistic spending limits

While legislative measures have been enacted to restrain electoral spending by political parties and candidates, further reform of the law is required. Spending limits currently in place are unrealistically low in the context of the contemporary Philippines, so most candidates are obliged to under-declare their expenditure in order not to appear to break the law. Campaign expenditure limits should be appropriate to the current economic reality of the Philippines. In addition, campaign spending should be more rigorously controlled in the interests of fairness⁶ and to ensure that the free choice of the voter is not undermined⁷ by disproportionate expenditure on behalf of any candidate or party. Reform would promote more accurate declarations and greater transparency in spending by candidates.

7. Introduce time limits for electoral dispute resolution

Electoral disputes are largely adjudicated by the court system. There is no legal deadline for the determination of such disputes, and delay is endemic to the judicial system. The Universal

⁶United Nations Convention against Corruption (UNCAC): Article 7.3: Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.

⁷GC 25 paragraph 19 reasonable limitations on campaign expenditure may be justified where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.

Declaration of Human Rights establishes that everyone is entitled to an effective remedy,⁸ and this is reiterated in Article 2 of the ICCPR. This right has been interpreted as including timeliness of the remedy. Many complaints initiated during the 2010 election period continued beyond the term in office which was in contention, rendering the cases moot and amounting to a denial of access to justice. Very few disputes were adjudicated during the observation of the EOM, indicating the perceived lack of utility of the present system. The law should be changed to introduce time limits, while judicial procedure could be altered to accord priority to electoral disputes over other business.

8. Respect the civil and political rights of persons in detention

General Comment 25 has interpreted the ICCPR as entitling persons in detention to vote.⁹ Detainees were allowed to vote in national elections in May 2016 but are deprived of their right to vote in local elections. This practice should be changed in order to fully protect the voting rights of those in detention.

As noted above, delay is endemic to the justice system. There is a significant backlog of cases to be addressed. Republic Act 8493, the Speedy Trial Act, was introduced in 1998 in order to address this problem. Despite this legislation, trials often take a long time. In one prison visited by The Carter Center, some detainees had been incarcerated for as long as 15 years without trial, while there were others who had been in detention for periods of 12 and 14 years. Bail is difficult to achieve. Delay is generally much more egregious in the case of the poor and the marginalized, including indigenous people, who have less access to the resources and means to pay lawyers and officials to expedite their cases. There is a public defender system in operation, but this tends to be staffed by recent graduates and to be insufficient to meet the needs before it. Financial resources and personal connections are crucial in a system which seems to be in routine violation of the right to have access to justice, and to a speedy trial.

There is also a significant problem of over-crowding in prisons, creating conditions which are detrimental to the physical and mental health of prisoners. Information published by the Bureau of Jail Management and Penology indicates that the most congested prisons hold more than 1,000 per cent their designated prisoner capacity, while the average congestion rate nationally was 398 per cent. Incarceration in such circumstances may subject prisoners to treatment which violates the obligations of the State under the Convention against Torture.¹⁰ A criminal lawyer informed The Carter Center of cases of suicide of prisoners in Davao City due to intolerable conditions. The judicial system should be reformed to expedite criminal trials. This should include disposition of cases within reasonable periods of time as well as provision of effective legal representation for all accused persons. Prison conditions should also be improved.

⁸UDHR Article 8 Everyone has the right to an effective remedy... for acts violating the fundamental rights granted him by the constitution or by law.

⁹GC 25 paragraph 14 Persons who are deprived of liberty but who have not been convicted should not be excluded from exercising the right to vote.

¹⁰As well as obligations under the UDHR, the 1949 Geneva Convention for the protection of war victims; the ICCPR; General Assembly Resolution 3452/30 of 9 Dec. 1975 on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment