



Republika ng Pilipinas

Komisyon ng Karapatang Pantao ng Pilipinas

(Commission on Human Rights of the Philippines)

HUMAN RIGHTS ADVISORY

CHR-A2013-007

**ON THE PHILIPPINE GOVERNMENT'S RESERVATION ON
THE RESOLUTION SUBMITTED TO THE HUMAN RIGHTS
COUNCIL REGARDING THE RIGHT TO SUFFRAGE OF
PERSONS WITH PSYCHOSOCIAL AND INTELLECTUAL
DISABILITY**

Introduction:

This advisory is issued pursuant to the Commission on Human Rights' constitutional mandate which is to monitor the Philippine Government's compliance with international treaty obligations on human rights.¹

The right to political participation lies at the heart of democracy. It means taking part in decision making on public issues. It means true citizenship and equality. The history of this human right reveals a development from exclusion and denial to gradual recognition of universality and indivisibility.² It is remarkable that it took history until the 21st century to finally extend this right to disabled person.

Persons with disabilities (PWDs) include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

However, the Department of Foreign Affairs (DFA) Philippine Mission representative in Geneva took exception to a United Nations resolution to protect persons with disabilities (PWDs) from discrimination by citing an outdated and repealed general comment interpreting another convention saying that the Human Rights Committee admits as an exception "established mental incapacity" to

¹ Art. XIII, Sec. 18, par. 7, 1987 Philippine Constitution

² Theresia Degener of the Committee on the Rights of Persons with Disabilities.

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the exercise of the right of suffrage under Art. 25 of the International Convention on Civil and Political Rights (ICCPR).³ ***The Commission on Human Rights expresses its opposition to said “reservation” as it is discriminatory on the basis of disability.*** This is a fundamental breach of the concept of universal suffrage and completely at odds with the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The said general comment will not and must not override an express obligation under the treaty to which the Philippine Government is a party signatory.

Legal Basis: Both international and domestic laws

The legal landscape has changed dramatically since the adoption of the Human Rights Committee’s general comment on ICCPR in 1996. Today, it may be argued that the majority of voting restrictions “are no longer compatible with the prohibition of discrimination in articles 2, par. 1 and 25 or with the present-day understanding of democracy. This holds true, in particular, with regard to limitations of the right to vote and stand for election on the basis of psychosocial and intellectual disabilities.”⁴

Article 12(2) of the CRPD clarified that disabled persons have the right to recognition as persons before the law, who should be able to enjoy legal capacity on an equal basis with others in ALL aspects of life⁵. This provision does not provide for any exception to the principle, and only requires that states have an obligation to assist persons with disabilities to be able to exercise their legal capacity.⁶

Article 29 of the CRPD requires State parties to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others. This provision does not foresee any reasonable restriction, nor does it allow any exception.⁷

The CRPD does not make any distinctions for particular types of disability and must therefore be applied without discrimination. The ordinary meaning of Article 12(2) leaves no doubt that all persons with disabilities—regardless of their disability—are entitled to participate equally in the political process.

³ Par. 4 of the HR Committee General Comment on Art. 25 of ICCPR, 1996

⁴ December 2011 publication of the Office of the High Commissioner on Human Rights on Universal Suffrage

⁵ Art. 12 (2), Convention on the Rights of Persons with Disabilities

⁶ Human Rights Council, Nineteenth session, Annual report of the UN High Commissioner for Human Rights and reports of the Office of the High Commissioners and the Secretary-General Promotion and Protection of all human rights, civil, political, economic, social and cultural rights, including the right to development . Thematic study by the Office of the UN High Commissioner for Human Rights on participation in political and public life by persons with disabilities.

⁷ Ibid.

Each individual, having duties to other individuals and to have community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Bill of Human Rights.⁸

The right to participate in political processes is a well-established principle of human rights law and is expressed in Article 21⁹ of the Universal Declaration of Human Rights (UDHR).

The 1987 Philippine Constitution explicitly states that “No literacy, property, or other substantive requirement shall be imposed on the exercise to suffrage.”¹⁰ Reading and writing are not the only vehicles for acquiring information, and that so precious a right as suffrage should not be held back from those who are so unfortunate as to be unable to read and write.¹¹ The reason for the abolition of the literacy requirement is in keeping with the trend for the broadening of the electoral base and in keeping further with the committee’s desire to discontinue the alienation and exclusion of millions of citizens from the political system and from participation in the political life in the country, the requirement for voting has been eliminated.¹²

Conclusion and Recommendation:

People with disabilities have the right to vote and stand for election to public office on an equal basis with others. While States may limit that right to those who have a minimum age, restrictions must be justifiable and reasonable. Disability should never apply as a restrictive condition.

The right to cast a vote freely implies by definition that there is no requirement that citizens must exercise this right in a certain way. There are no, and cannot be, any clear and objective criteria for casting a vote based on reason or knowledge. Therefore, we should not hold persons with disabilities to an artificial standard that does not apply to anybody else.

⁸ Preamble, par. w, Convention on the Rights of Persons with Disabilities

⁹ (1) Everyone has the right to freedom of peaceful assembly and association. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

¹⁰ Sec. 1, Art. V, 1987 Philippine Constitution

¹¹ II Records at 9-10, 14, 19-21.

¹² Explanatory Note of Resolution No. 03, Committee on Suffrage and Electoral Reforms

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A psycho-social disability or intellectual disability, may affect the way people think, feel, or process information. Regardless of its characteristics, disability neither subtracts from nor adds to a person's humanity, value or rights. It is simply a feature of a person. Removing the right to vote of a person with disability serves no policy goal.

In summary, States have the obligation to *respect, protect, and fulfill* the rights of people with disabilities to participate in political and public life and decision-making more generally where their interests are affected.

Under the CRPD, reservations incompatible with the object and purpose of the Convention shall not be permitted.¹³ Reservations may be withdrawn at any time¹⁴, hence, the **Commission on Human Rights, on the occasion of the International Day of Disabilities, celebrated this month of December, makes formal this issuance to urge the Philippine Government to WITHDRAW its "reservation" to the UN resolution on the right to suffrage of persons with psychosocial and intellectual disability.**

By signing the Convention in 2008, the Philippine Government has made a commitment to follow the principles in the Convention. When it ratified the Convention, it becomes a State Party to that Convention, which means that it has a legal obligation to uphold the rights the convention defines.

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¹³ Art. 46(1), Convention on the Rights of Persons with Disabilities

¹⁴ Art. 46(2), Convention on the Rights of Persons with Disabilities