2023

Democracy Dies in Broad Daylight: How the Philippines' Halted Media Speech Despite Its Commitment to the ICCPR

Alexis Mozeleski

Follow this and additional works at: https://digitalcommons.wcl.american.edu/auilr

Part of the Comparative and Foreign Law Commons, Environmental Law Commons, International Humanitarian Law Commons, and the International Law Commons

Recommended Citation
Available at: https://digitalcommons.wcl.american.edu/auilr/vol38/iss2/8

This Comment or Note is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.
DEMOCRACY DIES IN BROAD DAYLIGHT: HOW THE PHILIPPINES HALTED MEDIA SPEECH DESPITE ITS COMMITMENT TO THE ICCPR

ALEXIS MOZELESKI*

A primary initiative of the Philippines’ Rodrigo Duterte’s presidency was the national campaign against drug users and criminals. During the turbulent period that was Duterte’s presidency, journalists who published dissenting views on the drug war frequently became targets of Duterte’s administration, which came in the form of frivolous charges, arrests, banning media outlets, or in some instances, murder. This Comment argues that the Philippines violated international law protections of freedom of expression as codified in Article 19 of the International Covenant on Civil and Political Rights. As a party to this treaty, the Philippines, under Duterte’s administration, unjustifiably restricted speech in an attempt to restrict oppositional opinions and the public’s access to information. Further, this Comment recommends four possible paths to remedy, most notably that journalists impacted by the Philippines’ restrictions on speech should submit complaints to the Human Rights Committee.

* J.D. Candidate, 2024, American University Washington College of Law; B.A., International Relations & Religious Studies, Connecticut College. The author would like to thank her editors, Michelina Partipilo and Cortney Muller for their guidance and hard work, as well as Brendan Glynn for his consistent support.
I. INTRODUCTION ........................................................................... 578
II. BACKGROUND ............................................................................. 580
   A. FREE SPEECH UNDER INTERNATIONAL LAW: THE
      INTERNATIONAL COVENANT ON CIVIL AND POLITICAL
      FREEDOMS ............................................................................. 581
      1. Article 19 of the ICCPR .................................................. 581
      2. The Human Rights Committee ......................................... 582
      3. General Comment No. 34 ............................................... 583
   B. HOW THE PHILIPPINES HAS RESTRICTED PRESS
      SPEECH ................................................................................. 583
   C. ARTICLE 19 VIOLATIONS BY ICCPR STATE PARTIES .......... 587
      1. The Case of Fedotova v. Russian Federation ................. 588
      2. The Case of de Morais v. Angola .................................... 589
III. ANALYSIS ..................................................................................... 590
   A. ADJUDICATING ICCPR ARTICLE 19 VIOLATIONS: WHY
      THE HUMAN RIGHTS COMMITTEE HAS JURISDICTION
      OVER THE PHILIPPINES ....................................................... 591
      1. The ICCPR’s First Optional Protocol ................................ 591
   B. ANALYZING WHY THE HUMAN RIGHTS COMMITTEE
      WOULD FIND THE PHILIPPINES IN VIOLATION OF ICCPR
      ARTICLE 19 ........................................................................... 593
      1. First Element: Provided by Law .................................... 593
      2. Second Element: Necessity ............................................. 599
      3. Third Element: Applicability of Article 20 ..................... 602
      4. Fourth Element: Exhaustion of Remedies ...................... 603
IV. RECOMMENDATIONS .................................................................... 604
V. CONCLUSION .................................................................................. 607

I. INTRODUCTION

On June 30, 2016, Rodrigo Duterte became president of the Philippines, and for the next six years would follow through on his promise to bring draconian policies to the presidency.1 Notably, Duterte has sought to eliminate drug users from the Philippines

through what the media coined the “war on drugs”; thousands of Philippine citizens would be killed as a result of Duterte’s policies surrounding illegal drugs.\textsuperscript{2} In what was likely an effort to maintain his popularity, Duterte initiated a contentious relationship with local media outlets and journalists, like Rappler and Maria Ressa, who published dissenting opinions of his policies.\textsuperscript{3} Significantly, the Philippine judiciary has since convicted Ressa of cyber libel.\textsuperscript{4} It has also restricted popular broadcast networks, Rappler and ABS-CBN, through a confining foreign ownership law, thereby relying on a system of threats and fearmongering to restrict oppositional narratives in the press.\textsuperscript{5} Some sources have also reported instances of journalists being murdered in the Philippines, though it is unclear whether these extrajudicial killings were carried out by the police at Duterte’s request, or whether vigilantes were merely inspired by the president’s public disdain for journalists.\textsuperscript{6} Accordingly, this Comment will argue that the Philippines has violated Article 19 of the International Covenant on Civil and Political Rights (“ICCPR”) by restricting press speech without a legally permissible justification.

Part II of this Comment begins by outlining the ICCPR as the basis for international law on freedom of expression,\textsuperscript{7} providing examples of how press freedom of expression has been restricted in the Philippines,\textsuperscript{8} as well as background on two complaints submitted to

\textsuperscript{2} See Mark R. Thompson, Bloodied Democracy: Duterte and the Death of Liberal Reformism, 35 J. CURRENT SE. ASIAN AFFS. 39, 55 (2016) (describing the illiberal effects of Duterte’s anti-drug campaign); Gill Boehringer, Duterte’s Drug War: Violating Rights for a Quick Fix, 42 ALT. L.J. 233, 235 (2017) (explaining that up to 9,000 Filipinos were murdered in the first ten months of Duterte’s presidency).

\textsuperscript{3} See, e.g., Alexandra Stevenson, Philippine Journalist, a Thorn to Duterte, Turns Herself in to Face Charges, N.Y. TIMES (Dec. 3, 2018), https://www.nytimes.com/2018/12/03/business/media/rappler-maria-ressa-arrest.html (discussing how Rappler has been the main target of Duterte’s verbal abuse).

\textsuperscript{4} See id. (describing the Ressa case).

\textsuperscript{5} See infra Part II(B).


\textsuperscript{7} See infra Part II(A)(i)–(iii).

\textsuperscript{8} See infra Part II(B).
the Committee involving Article 19. Furthermore, Part III discusses how the Philippines has restricted the free speech of its press, analyzing why the Philippines’ restrictions on press speech amount to Article 19 violations. Next, Part IV provides four recommendations for how the Philippines may remedy its violations. First, that any individual impacted by the Philippines’ restrictions on press speech submit a complaint to the Committee. Second, a state party to the International Court of Justice statute should file a complaint against the Philippines. Third, the International Criminal Court should investigate Duterte and members of his administration for crimes against humanity, which would include alleged extrajudicial killings of journalists, committed during the time that the Philippines remained party to the Rome Statute. Lastly, a domestic court in the Philippines should indict government officials who contributed to the Philippines de facto policies of restricting press speech. Accomplishing any one of these recommendations would indicate that the international community will not tolerate government restrictions on press speech.

II. BACKGROUND

International standards for freedom of expression are outlined throughout the International Covenant on Civil and Political Rights (“ICCPR”). The ICCPR’s primary adjudicatory body, the Human Rights Committee (“the Committee”), has interpreted what constitutes an Article 19 violation in its review of various complaints brought against state parties. For orientation purposes, it is useful to first discuss the text of the ICCPR as well as the Committee’s jurisdiction and adjudicatory procedure.

9. See infra Part II(C)(i)–(ii).
10. See infra Part III(A)–(B).
11. See infra Part IV.
12. Id.
13. Id.
14. Id.
15. Id.
17. See infra Part II(C)(i)–(ii).
A. Free Speech Under International Law: The International Covenant on Civil and Political Freedoms

The ICCPR is a multilateral treaty that compels member-states to observe certain fundamental civil and political freedoms.\(^{18}\) In accordance with Article 26 of the Vienna Convention on the Law of Treaties, the ICCPR is legally binding on the states that have ratified it, and state parties may be subject to Committee review should they violate an article of the ICCPR.\(^{19}\) As of August 2022, 173 countries had ratified the ICCPR;\(^{20}\) the Philippines signed the ICCPR on December 19, 1966, and ratified the agreement thereafter on October 23, 1986.\(^{21}\) Accordingly, the following subsubsections discuss Article 19 and provide examples of cases where the Committee adjudicated state parties in violation of Article 19.

1. Article 19 of the ICCPR

Article 19 of the ICCPR articulates the standards of freedom of expressions that states assent to upon signing the treaty. Article 19 specifically states:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law

---

18. ICCPR, supra note 16.
and are necessary:

a. For respect of the rights or reputations of others;

b. For the protection of national security or of public order (ordre public), or of public health or morals. 22

Since, as mentioned above, the Philippines is legally bound by the ICCPR, it has a duty to uphold the affirmative rights provided for in Article 19 and guarantee these rights its citizens. 23

2. The Human Rights Committee

The Human Rights Committee (“Committee”) is a body of experts that supervises state parties’ adherence to the ICCPR articles. 24 Individuals under the jurisdiction of an ICCPR state party are permitted to submit written complaints to the Committee alleging ICCPR violations. 25 In assessing the allegations of a given complaint, the Committee publishes its views in a responsive report, detailing the evidence against the state party, the state party’s response, and the Committee’s findings. 26 If found in violation of an ICCPR article, the Committee asks the state party to provide information on the measures taken to remedy the issues found. 27 Where a state fails to remedy its violations, the Committee’s designated Rapporteur will contact that state party’s representatives. 28 The Committee reports state parties that are unresponsive to its communication efforts to the United Nations General Assembly. 29 The Committee, however, is limited in its

---

22. ICCPR, supra note 16, ¶¶ 1–3.
23. VCLT, supra note 19, art. 26.
25. Id. at 11.
26. See id. at 25 (outlining the consideration of individual complaints under the ICCPR).
28. Fact Sheet No. 15, supra note 24, at 20.
29. See id.
capacity to remedy violations; in order for the Committee’s supervising role to be activated, state parties must have declared recognition of the Committee’s competence by also ratifying either of the Optional Protocols to the ICCPR.30

3. General Comment No. 34

In 2011, the Committee published an updated General Comment on Article 19, which provides a thorough interpretation of the rather cursory article.31 With regard to freedom of opinion, the Committee states that the right to hold opinions is without exception or restriction, and that all opinions, including those political in nature, are protected.32 In discussing freedom of expression, the Committee emphasizes the guaranteed right to seek, receive, and impart information of all kinds.33 Significantly, this updated General Comment also discusses freedom of expression with regard to the media, describing the press as “one of the cornerstones of a democratic society.”34 The Committee adds that states should take the necessary steps to ensure access to media and information therein, and should ensure journalists’ “editorial freedom.”35

B. HOW THE PHILIPPINES HAS RESTRICTED PRESS SPEECH

Throughout the Duterte administration’s anti-drug campaign, the government has sought to restrict Philippine journalists in their ability to freely dissent on presidential and government policies.36

30. See infra Part III(B)(i); see also Sandy Ghandhi, Human Rights and the International Court of Justice: The Ahmadou Sadio Diallo Case, 11 HUM. RTS. L. REV. 527, 532 (2011) (explaining that the Committee’s supervisory role under an inter-state proceeding is only activated if both States Parties recognize its competence).

31. See supra Part II(A)(i); see generally Human Rights Committee, General Comment 34: Article 19: Freedoms of opinion and expression, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) ¶¶ 1–3 [hereinafter Gen. Comment 34] (discussing freedoms of opinion and expression and related topics, the application of article 19, and limited restrictions).


33. Id. ¶ 10.

34. Id. ¶ 13.

35. Id. ¶¶ 15–16.

36. See, e.g., Jason Gutierrez & Alexandra Stevenson, Maria Ressa, Crusading Journalist, Is Convicted in Philippines Libel Case, N.Y. TIMES, https://www
Although these restrictions are quasi-supported in broadly drafted Philippine law, they expose the state’s failure to protect press speech. Accordingly, this subsection will provide several examples of the challenges faced by members of the journalism community in the Philippines.

Maria Ressa is a prominent Philippine journalist best known for her reporting on the drug war. As the co-founder of the online news outlet, Rappler, Ressa has defended freedom of expression and sought to expose abuse of power in the Philippine government. Because of Ressa’s disapproving narrative of President Duterte, she became a target of his verbal abuse. In 2020, Ressa and another Rappler reporter were convicted of cyber libel in connection with a 2012 article alleging ties between a Philippine businessman and a Supreme Court judge. As a result, Ressa and her colleague were fined $8,000 each and sentenced to six years in prison. Ressa appealed her conviction to the Court of Appeals where the panel of judges affirmed her conviction, contradicting how the law is codified. Rather, the Court
of Appeals held that a cyber libel complaint could be filed as late as fifteen years after an article is published.⁴⁵ Now, Ressa awaits her appeal to the Supreme Court, where her legal team will argue that the Philippines had a constitutional commitment to protect free speech and that the statute of limitations for bringing this claim expired.⁴⁶

Beyond Ressa’s ongoing cyber libel litigation, she has also faced several other charges in connection with her articles.⁴⁷ In 2018, Ressa and Rappler were both charged with tax fraud, where the government argued that Rappler falsified its tax returns, for which Ressa was liable as a co-founder of the company.⁴⁸ Further, in 2019, Ressa was detained on charges related to foreign ownership of Rappler,⁴⁹ prompting the Philippine Securities and Exchange Commission (“SEC”) to revoke Rappler’s operating license.⁵⁰ In accordance with the June 2022 ruling, Cyber Libel Unconstitutional, RAPPLER (June 16, 2020, 6:07 PM), https://www.rappler.com/nation/263987-law-experts-12-year-prescription-period-cyber-libel-unconstitutional/ (discussing the disparity between legal groups and experts, who agreed that cyber libel prescribes only a one year sentence, and the court in Manila, who argued it prescribed twelve years).


⁴⁶. See id.; see also Revised Penal Code, art. 90 (noting a one-year prescription period for the crime of libel).


⁵⁰. See Shutdown Order Against Rappler Must Be Revoked Immediately, COMM. TO PROTECT JOURNALISTS (June 29, 2022, 1:09 PM), https://cpj.org/2022/06/shutdown-order-against-rappler-must-be-revoked-immediately (arguing that the revocation of Rappler’s license to operate is the first of its kind); see also Erin McKirdy, Philippines Revokes License of Rappler, News Site Critical of Duterte Administration, CNN (Jan. 16, 2018, 12:06 AM), https://www.cnn.com/2018
Ressa and Rappler vehemently denied the SEC’s accusations, with Ressa herself calling out the numerous claims against her as government harassment and intimidation.

The SEC’s shutdown of Rappler is analogous to the 2020 shutdown of ABS-CBN, formally the Philippines’ largest broadcast network. A committee of the House of Representatives voted to deny ABS-CBN renewal, citing that the network had violated the same foreign ownership laws raised against Rappler. Although a spokesperson for Duterte emphasized the president’s neutral position on the issue, Duterte has expressed disdain for the network and most of the deciding committee members are allies of the president.

In addition to convictions and network shutdowns, Duterte’s rhetoric towards the press has inspired social media campaigns targeting and harassing journalists. Furthermore, there have been reports of journalists being murdered, like Jesus Malabanan, who was shot and killed by unidentified assailants. Malabanan received

/01/15/asia/philippines-rappler-sec-license-revoked (discussing the SEC’s 2018 attempt to shut down Rappler).

51. Gutierrez & Stevenson, supra note 36.
54. See Gutierrez, supra note 53 (noting the government accused ABS-CBN of hiding behind a “corporate veil” allowing foreign investors to own part of the firm).
55. Id.
56. See e.g., Regine Cabato, Philippines Dispatch: Pigs, Presstitutes and How Journalists Are Harassed, WASH. POST (June 13, 2022, 8:50 AM), https://www.washingtonpost.com/world/2022/06/13/phillipines-election-harassment-journalism-online/ (providing several examples of well-organized harassment campaigns under President Duterte’s administration).
threats up until his murder for his articles about the drug war, where he sought to highlight a rise in the number of murders from when Duterte assumed the presidency. Furthermore, in June 2022, radio host, Federico Gempesaw, was shot and killed after receiving targeted threats in response to his open criticism of politicians. Gempesaw’s killers also remain at large, with his murder marking the twenty-fourth journalist killed since Duterte became president in 2016. Although it is unlikely that anyone from the government could be held accountable for these murders, it is noteworthy that a majority of the drug war-related murders have gone unsolved, with the police seemingly unfazed by the threat of more death in the media community.

C. Article 19 Violations by ICCPR State Parties

Violations of the ICCPR are reviewed based on a fact-heavy analysis of a particular issue. In other words, the Committee’s conclusion in a particular case is dependent on the facts at hand: how did the state party restrict the complainant’s rights, and what domestic laws was it relying on? The following subsubsections provide background on two cases of Article 19 violations that came before the Committee.

---

58. See id. (citing Malabanan’s colleague, who said Malabanan had been threatened because of his work but did not explain the nature of the threats).
60. See Lynde Salgados & Bobby Lagisa, Cagayan de Oro Journalists Worry as City Sees Frist Killing of Media Worker, RAPPLER (June 30, 2022, 3:17 PM), https://www.rappler.com/nation/cagayan-de-oro-journalists-worry-after-killing-local-media-worker/ (explaining that Gempesaw was the twenty-fourth media worker killed since Duterte rose to power).
61. Salgados & Lagisa, supra note 60.
62. Infra Part IV.
64. See e.g., Fedotova, supra note 27, ¶¶ 2.1–2.7.
65. Id. ¶¶ 10.2–10.5.
1. The Case of Fedotova v. Russian Federation

In 2009, Irina Fedotova submitted a complaint to the Committee, claiming that the Russian Federation had violated her rights under Article 19 of the ICCPR. Specifically, Fedotova stated that Russian police arrested her after she displayed two posters at a peaceful assembly near a school in Moscow. Fedotova was ultimately convicted for violating a regional law that banned homosexual propaganda. After losing on appeal, Fedotova submitted her complaint to the Committee, stating that she had exhausted all available domestic remedies.

In its response, the Committee discussed its views regarding Fedotova’s claim, citing her assertions that the Russian Federation “interfered with her right to freedom of expression guaranteed under article 19 of the [ICCPR],” where she argued that she was “banned from disseminating ideas” under the regional law, and convicted for doing so. The Committee continued that under ICCPR Article 19, paragraph 3, restrictions on speech may only be justified if (1) “provided by law” and (2) “necessary.” Because both Fedotova and the Russian Federation agreed that the regional law at issue constituted a restriction on speech, the Committee primarily focused on whether the restriction was justified per Article 19. In interpreting the two elements of Article 19, paragraph 3, the Committee explained that any restrictions on the rights enumerated in Article 19 that are “provided by law” must serve: (1) the protection of national security, (2) of public order, or (3) of public health or morals. The Committee noted that although this particular restriction technically derived from a regional law, it did not serve any of the three functions provided in subsection (b) of Article 19, and thus was not a justifiable restriction.

66. Id. ¶ 1.1.
67. Id. ¶ 2.2. (noting that one poster read, “homosexuality is normal,” and the other read, “I am proud of my homosexuality”).
68. Id. ¶ 2.3.
69. See id. ¶ 2.7 (affirming that the complainant had exhausted her available domestic remedies); but see id. ¶ 9.5 (noting that “domestic remedies need not be exhausted if they objectively have no prospect of success”).
70. Id. ¶ 3.1.
71. Id. ¶ 3.2; ICCPR, supra note 16, art. 19, ¶ 3.
72. Fedotova, supra note 27, ¶ 10.3.
73. Id.
of speech.  

2. The Case of de Morais v. Angola

In 1999, journalist Rafael Marques de Morais filed a complaint with the Committee alleging that Angola had violated its commitment under ICCPR Article 19. In his complaint, de Morais stated that police arrested him at gunpoint in connection to several articles criticizing Angola’s president. Specifically, de Morais had published his articles in the Agora, an independent Angolan newspaper, writing that the president was responsible “for the destruction of the country” and was “accountable for the promotion of incompetence, embezzlement[,] and corruption [of] political and social values.”

After de Morais was arrested and interrogated by the police for several hours, he was detained for over one month without ever being told of the charges against him. A court ultimately convicted de Morais of “abuse of the press by defamation,” finding that his articles amounted to “offensive words and expressions” against the president, which violated Angolan law.

Relying on the language in Article 19, de Morais submitted a complaint to the Committee stating that the Angolan government violated his right to freedom of expression. Accordingly, de Morais cited the requirement under Article 19 that “citizens be allowed to criticize or openly and publicly evaluate their [g]overnments.” Further, de Morais asserted that his detention and eventual conviction had no legitimate aim under paragraphs 3(a) and (b) of Article 19, in that the action against him was neither necessary nor proportionate to achieving a “legitimate purpose.”

In reviewing the complaint, the Committee considered whether de

74. Id. ¶ 10.8.
76. Id. ¶¶ 2.1–2.3.
77. Id. ¶ 2.1.
78. Id. ¶ 2.6.
79. Id.
80. Id. ¶ 3.8.
81. Id.
82. Id. ¶ 3.9; see also ICCPR, supra note 16, art. 19, ¶ 3.
Morais’ arrest, detention, and conviction constituted an unlawful restraint on his free speech as provided by Article 19. In concluding that Angola had violated Article 19, the Committee noted that even if technically based in Angolan law, “it cannot be said that these restrictions were necessary to achieve” a legitimate aim. Further, the Committee explained that restrictions “must be proportional to the value which the restriction serves to protect.” In considering the “paramount importance,” that a free and uncensored press has to promoting democracy, the sanctions imposed on de Morais could not be deemed proportionate to protecting the president’s speech, as public figures are naturally subject of open opposition. The Committee concluded that Angola violated its commitment under the ICCPR, and that de Morais was entitled to remedy.

III. ANALYSIS

As a state party to the ICCPR, the Philippines is obligated to ensure that all people have the right to freedom of expression, including the press. As the background provided in Part II(B) shows, journalists in the Philippines have experienced restrictions on their ability to speak freely in dissent of their government for fear of retaliation. Moreover, journalists like Maria Ressa have faced criminal charges in connection with her articles, and other journalists have also experienced online harassment by Duterte’s supporters. Unnervingly, reports of journalists being murdered have also occupied the media in the Philippines. While criminal charges like those

83. de Morais, supra note 75, ¶ 6.7.
84. Id. ¶ 6.8.
85. Id.
86. Id.
87. See id. ¶ 8 (finding the complainant’s arbitrary arrest and detention were violations of his Article 19 rights).
88. See Gen. Comment 34, supra note 31, ¶ 7.
89. See supra Part II(B).
90. Cabato, supra note 56.
against Ressa come directly from the government, harassment and murder of journalists is more likely the result of vigilantes inspired by anti-journalist rhetoric and unlikely to inspire charges of Article 19 violations. However, criminal charges brought against journalists in connection with dissenting political speech, like those discussed in Part II(B), would warrant an investigation into whether Article 19 violations have occurred. Thus, the issue to consider is whether the Philippine government, by arresting journalists and shutting down broadcast networks, has failed to uphold this ICCPR obligation. In following the analysis of the cases discussed in Part II(C), the following subsections discuss how the Philippines has violated international law that protects freedom of expression.

A. ADJUDICATING ICCPR ARTICLE 19 VIOLATIONS: WHY THE HUMAN RIGHTS COMMITTEE HAS JURISDICTION OVER THE PHILIPPINES

The Committee is only permitted to receive complaints detailing ICCPR violations by states that are parties to both the ICCPR and its First Optional Protocol. By ratifying both treaties, a state affirmably recognizes the Committee’s competence, and the Committee then has authority to adjudicate questions of ICCPR violations. The following subsubsections analyze why the Committee has jurisdiction to receive complaints about the Philippines, and make observations as to whether a violation has occurred.

1. The ICCPR’s First Optional Protocol

The first Optional Protocol to the ICCPR enables the Committee to receive complaints regarding human rights violations. Parties to the

---

93. See infra Part IV.
94. See supra Part II(C)(i)–(ii).
96. See Gen. Comment 31, supra note 96, ¶ 17.
97. Background to the International Covenant on Civil and Political Rights and Optional Protocols: Human Rights Committee, OHCHR [hereinafter ICCPR]
ICCPR and Optional Protocol may be brought before the Committee for allegations that citizens’ freedom of expression rights have been violated, as provided in Article 19.\footnote{98} This Optional Protocol is not compulsory; however, once a state becomes party to the Protocol, it will be subject to the Committee’s jurisdiction.\footnote{99} Moreover, Article 5 of this Protocol outlines when the Committee is restricted in its capacity to consider a communication, regardless of whether a state has recognized the Committee’s competence.\footnote{100} Specifically, the Committee may not review a complaint where the specified claim has already been investigated by another international adjudicatory body, or where the complaining individual has failed to exhaust all available domestic remedies.\footnote{101} Because the Philippines is party to both the ICCPR and its First Optional Protocol, the Committee has jurisdiction to determine that a violation has occurred and prescribe measures that the Philippines must take to remedy the violation.\footnote{102} Thus, individuals who have had their speech restricted by the Philippine government and have exhausted their domestic remedies would be permitted to submit a complaint to the Committee detailing their allegations.\footnote{103} Significantly, Part IV of this Comment recommends that Maria Ressa, as a journalist whose rights under Article 19 have been violated by the Philippine government, submit a complaint to the Committee detailing the criminal charges brought against her and why they are unjustified.\footnote{104}
B. Analyzing Why the Human Rights Committee Would Find the Philippines in Violation of ICCPR Article 19

The Committee defines freedom of expression as “the right to hold opinions without interference . . . a right to which the Covenant permits no exception or restriction.”\(^{105}\) The Committee specifies that this protection includes moral and political opinions, and that state parties are obligated to guarantee a free, uncensored, and unhindered press.\(^{106}\) In recent years, the Philippines has restricted press freedom of expression based on two domestic laws: (1) Cybercrime Prevention Act of 2012,\(^{107}\) and (2) Foreign Investment Act of 1991.\(^{108}\) In connection with these restrictions, the following subsubsections apply the four elements employed by the Committee in analyzing whether a state has violated Article 19: (1) whether the restriction on speech is provided by domestic law; (2) whether the restriction was necessary for respecting the rights of others or for the protection of national security; (3) whether the speech in question is prohibited under Article 20; and (4) whether the complainant has exhausted their domestic remedies.\(^{109}\) Based on the Committee’s use of these elements in communications regarding past cases,\(^{110}\) as applied to the criminal charges against Maria Ressa and shutdowns of Rappler and ABS-CBN, the Philippines has illegally restricted the media’s speech.\(^{111}\)

1. First Element: Provided by Law

In relying on the Committee’s analyses from the cases discussed in Part II, the restrictions imposed on journalists and networks are not justified based on Philippine law. In its reviews of complaints alleging violations of ICCPR Article 19, the Committee looks at whether a restriction is “provided by law” as the first step to determining the

---

106. Id. ¶¶ 9, 13–17.
109. See generally Gen. Comment 34, supra note 31, ¶¶ 11, 23 (discussing in depth the interpretation of Article 19); see also Fedotova, supra note 27, ¶¶ 2.7, 9.5 (explaining the meaning of “exhaustion of domestic remedies”).
110. Supra Part II(C)(i)–(ii).
111. Infra Part III(B)(i)–(II).
merits of a given complaint. 112 According to General Comment No. 34, a restriction is only valid when provided by a law of parliament or of a court. 113 The Committee continues that because “any restriction on freedom of expression constitutes a serious curtailment of human rights, it is not compatible with the Covenant.” 114 This is true in Fedotova v. Russian Federation, where the state party represented that the restriction in question was legal under a regional administrative law. 115 The Committee dispensed with the parties’ arguments, drawing from General Comment No. 34 that any laws restricting rights enumerated in Article 19 must themselves “be compatible with the provisions, aims[,] and objectives of the Covenant.” 116 Because the cited laws deliberately sought to restrict certain speech, imposing liability for propaganda of homosexuality, the Committee rejected the state party’s argument with regard to the first element required to overcome restrictions on speech under Article 19. 117

Significantly, in July 2022, the Philippines’ Court of Appeals upheld Maria Ressa’s cyber libel conviction. 118 The ruling was made in agreement with the government’s argument that because cyber libel has an afflictive penalty, it must carry a fifteen year statute of limitations. 119 This Court of Appeals decision, however, contradicted a 2014 Supreme Court decision affirming cyber libel as a constitutional extension of libel, and thus a one year prescription period. 120 Similar to what the Committee observed in Fedotova v.

112. See Fedotova, supra note 27, ¶ 3.1 (noting that a restriction could only be justified under Article 19 if it was provided by law and necessary for a legitimate aim).
114. Id.
115. Fedotova, supra note 27, ¶ 10.3.
116. Id. ¶ 10.4.
117. Id. ¶ 10.8.
119. See Buan, When CA Upheld Ressa’s Conviction, supra note 45 (citing the Court of Appeals decision that crimes with afflictive penalties prescribe in 15 years); but see Revised Penal Code, art. 90 (“The crime of libel or other similar offenses shall prescribe in one year.”).
120. See Buan, Law Experts, supra note 44 (recalling that the Supreme Court stated that “Cyberlibel is actually not a new crime since Article 353, in relation to
the appellate court’s ruling against Ressa is contradictory to protections provided by Article 19 and the Philippines’ own constitution.\(^ {122}\) Significantly, Section 4 of Article III of the Philippine Constitution states: “No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”\(^ {123}\) Despite this language and the Philippines’ commitment to the ICCPR, the government and court system relies on the Cybercrime Prevention Act to restrict Ressa’s speech,\(^ {124}\) which contradicts both the Revised Penal Code\(^ {125}\) and the Philippines’ constitutional requirement to pass no law abridging the freedom of speech.\(^ {126}\) Beyond her domestic rights, using the Cybercrime Act to restrict free speech directly infringes on Ressa’s Article 19 rights.\(^ {127}\) The Philippines violated its commitment to the ICCPR through the court’s upholding of Ressa’s conviction by affirming that punishing Ressa for publishing of her opinion shall be legally permissible.\(^ {128}\) Ressa will now be able to appeal the ruling to the Supreme Court of the Philippines, after which she will have exhausted her domestic remedies.\(^ {129}\)

Moreover, in Fedotova, the Committee noted that any law that

---

121. See discussion supra Part II(C)(i).

122. See Const. (1987), art. III, § 4 (Phil.) [hereinafter Const. of the Philippines] (“No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.”).

123. Id.

124. See Buan, When CA Upheld Ressa’s Conviction, supra note 45 (explaining how the DOJ prosecutors found that cyber libel did not have an explicit prescription period but should have a penalty one degree higher).

125. See Revised Penal Code, art. 90 (establishing a one year prescription period for libel).

126. See Const. of the Philippines, art. III, § 4 (stating that no law should abridge freedom of speech).

127. See ICCPR, supra note 16, art. 19, ¶ 1–2 (establishing freedom of opinion and freedom of expression).

128. See id. (“Everyone shall have the right to hold opinions without interference”).

129. See discussion infra Part III(B)(iv).
restricts the rights enumerated in Article 19, paragraph 2 must comply with the requirements set forth in Article 19, paragraph 3: (a) for the respect of the rights or reputations of others, or (b) for the protection of national security or public order. Because the Philippines’ cyber libel law in effect restricts the ability to “receive and impart information of all kinds,” the Committee would have to analyze whether in doing so, this restriction was necessary via paragraph 3. Though technically provided by Philippine law, the definition of libel from Article 353 of the Revised Penal Code seems to invite cyber libel charges for all reporters. Certainly, cyber libel laws have a purpose, and can provide useful protection in instances of malicious defamation on social media or otherwise. However, these laws become problematic where they may be used to silence reporters. Article 353 of the Revised Penal Code states:

A libel is public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

This language is followed by that of Article 354, which asserts that any instance of libel is presumed malicious, even if the statement in

---

130. See ICCPR, supra note 16, ¶¶ 1–2 (explaining that the freedom of expression includes “the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”).
131. Id. ¶ 3
132. Id.
133. See discussion infra Part III(B)(ii).
134. Revised Penal Code, art. 353 (“[L]ibel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.”).
137. Revised Penal Code, art. 353.
question is true. In following the plain meaning of Article 353 and 354 together, it seems that any speech that may have a dishonorable impact on the subject of that speech would be punishable. Therefore, although the charges against Ressa are derived from domestic law, the Committee would likely conclude that the language of Articles 353 and 354 together are incompatible with Philippines’ commitment to upholding free speech under both its own constitution and the ICCPR. As a result, the cyber libel law should not survive the Committee’s scrutiny for determining whether restrictions of free speech are provided by local law.

Furthermore, the government’s denial of renewal for both Rappler and ABS-CBN operating licenses would also warrant analysis by the Committee. According to the government the Foreign Investment Act of 1991 allows the government to place restrictions of businesses where foreign ownership occupies majority of the company’s assets. Duterte claims that both Rappler and ABS-CBN are entirely owned by non-Filipinos, which both companies deny. Similar to the cyber libel laws, where restrictions on speech are technically provided by Philippine law, obstructing the speech of these networks using the Foreign Ownership Act is drawn from domestic law, yet is contrary to the protections provided in Article 19. In applying the same analysis as above, shutting down Rappler and ABS-CBN, respectively, has no necessity for either respecting the rights or reputations of others, or protecting national security or public order. Therefore, like in the cases of Fedotova and de Morais, the Committee would similarly

138. Id.
139. See Wee, supra note 47 (announcing that the Philippine government ordered Rappler to be shut down for violation of foreign ownership rules); Gutierrez, Philippine Congress, supra note 53 (noting that the crackdown was on media outlets critical of President Rodrigo Duterte’s leadership).
140. Foreign Investments Act, § 9(1).
141. See Wee, supra note 47 (reporting that Duterte accused Rappler of being fully owned by Americans); Gutierrez, Philippine Congress, supra note 53 (elaborating that the government accused ABS-CBN of operating behind a corporate veil allowing foreign investors to own part of the firm).
142. See Gen. Comment 34, supra note 31, ¶ 8 (requiring parties to ensure the rights contained in Article 19 through their domestic laws).
143. See generally Wee, supra note 47; Gutierrez, Philippine Congress, supra note 53 (both implying that the networks’ contentious relationships with Duterte inspired the charges against them).
conclude that the Philippines has committed an unjustifiable restriction on speech that goes against its duties to uphold freedom of expression under Article 19. Because these charges appear to be part of a broader effort to prevent certain journalists from publishing negative stories about the president and Philippine government, these specific restrictions would not survive the first element of the Committee’s analysis, since restricting free speech must be provided by law within the meaning of Article 19, paragraph 3.

 Relatedly, the Philippines has established a de facto policy of suppressing journalists’ speech. Moreover, the legislature and local government have seemingly made little effort to investigate the murders of journalists like Jesus Malabanan and Federico Gempesaw, or to protect others’ freedom of expression. Although several news outlets have inferred that certain charges against journalists are directly connected to their respective dissents on Duterte’s policies as president, Duterte’s cabinet has strategically distanced him from any accountability. While charges such as cyber libel and illegal foreign ownership of a company are technically based in domestic law, it is more likely that these charges are part of a broader effort to silence and intimidate the press. In other words, but for Rappler and ABS-CBN’s unfavorable rhetoric towards Duterte and the war on drugs, the government would never have pursued charges against them. Because restricting speech in this manner is not provided by law within the meaning of Article 19, paragraph 3, the Committee would similarly conclude that the Philippines has no basis or justification to prevent journalists from writing or networks from operating.

---

144. See discussion supra Part II(C)(i)–(ii).
145. See Stevenson, supra note 3 (calling the accusation of Ressa a part of a broader attack on the news media in the Philippines by the government).
146. See infra Part III(B)(ii).
147. See Stevenson, supra note 3 (explaining that Duterte’s presidency has taken an authoritarian direction).
148. See, e.g., Fernandez, supra note 1, at 204 (arguing that human rights in the Philippines suffers from non-use of the codified human rights laws and procedures).
149. See Gutierrez, Philippine Congress, supra note 53 (noting that the president’s spokesman was seeking to distance the president from the decision to crack down on the media).
150. See Fernandez, supra note 1, at 185 (recalling the poor human rights record of Duterte’s regime).
151. Accord Fedotova, supra note 27, ¶ 10.4 (explaining that domestic laws that
2. Second Element: Necessity

With regard to the second element of the Committee’s analysis, whether a restriction on free speech is necessary is determined in conjunction with whether it was provided by law.\footnote{See e.g., de Morais, supra note 75, ¶ 3.8 (applying the “provided for by law criteria” in a case concerning Angola).} If the restrictions are based in law, even if the law is overly ambiguous or discriminatory, the Committee will consider whether the law is necessary.\footnote{Id. ¶ 6.8.} Where a state party restricts speech within the permits of its own laws, that law will be scrutinized based on whether it is (1) necessary to respect the rights and reputations of others, and (2) necessary for the protection of national security, public order, or public health.\footnote{ICCPR, supra note 16, art. 19, ¶¶ 1–3.} The Committee thus analyzes the validity of a state party’s restrictions on speech based on whether the domestic law in question pursues a legitimate aim within the meaning Article 19, paragraph 3.\footnote{See de Morais, supra note 75, ¶ 6.8 (explaining that the president is “a public figure who, as such, is subject to criticism and opposition”).}

Looking first at Maria Ressa’s cyber libel conviction, the Committee would find no basis for upholding these charges within the meaning of Article 19, paragraph 3.\footnote{See id. (explaining that restricting speech, though collateral of local law, will not survive Committee scrutiny).} As held in the case of \textit{de Morais v. Angola}, the need to respect the rights and reputations of others that is determined in Article 19, paragraph 3, subsection (a) does not protect political figures from political criticism.\footnote{See id. (holding that the restrictions were disproportionate to a desire to protect public order or reputation of someone who had availed themselves to criticism).} The Committee further notes that this interpretation is derived from the ultimate purpose of the ICCPR, which is to promote political debate and speech.\footnote{Id. ¶ 3.9.} Notably, the purpose of the Rappler article was to draw attention to potential corruption in the judiciary,\footnote{See Gutierrez & Stevenson, supra note 4 (recalling that the article connected a businessman to a high-level judge).} information that the
public should have access to, and having a relationship with a judge could be considered availing one’s self to public criticism. However, the Philippines’ cyber libel law as is leaves no room for journalists to investigate political issues and report them to the public. Together with the Committee’s conclusion in de Morais, General Comment No. 34 is clear that journalist speech is a pillar of democracy, and if local laws prevent journalists from speaking out politically, then democracy is compromised. While libel laws in general may withstand scrutiny under paragraph 3, the Committee is clear that criminal penalties are disproportionate means of protecting the reputations of others. Therefore, because of the political implications of this specific Rappler article, Ressa’s conviction under the cyber libel provision is likely not legitimate within the meaning of paragraph 3, subsection (a).

Moreover, the Committee would next look to whether the Philippines’ cyber libel law was justified under Article 19, paragraph 3, subsection (b). Maria Ressa’s conviction was neither necessary nor proportionate to protecting national security, public order, or public health. Significantly, in de Morais v. Angola, the Committee observed that the necessity requirement of subsection (b) “implies an element of proportionality.” For the Committee in that case, the severity of the sanctions imposed on the complainant were disproportionate to the need to protect public order when considering

160. *See de Morais, supra* note 75, ¶ 6.8 (noting that public figures are subject to criticism and opposition).
161. Revised Penal Code, art. 353-54; *see also* Buan, *Law Experts, supra* note 44 (emphasizing the chilling effect such laws may have on citizens).
162. *See Gen. Comment 34, supra* note 31, ¶ 13 (stressing the necessity of unfettered journalism to democracy).
163. *See de Morais, supra* note 75, ¶ 6.8 (discussing libel law and criminal penalty).
164. *See ICCPR, supra* note 16, art. 19, ¶ 3; *see also* Gutierrez & Stevenson, *supra* note 36 (explaining why Ressa’s conviction is likely not legitimate).
165. *See ICCPR, supra* note 16, art. 19 ¶ 3; *see also de Morais, supra* note 75, ¶ 6.8 (discussing whether libel law is justifiable).
166. ICCPR, *supra* note 16, art. 19 ¶ 3 (restricting Article 19 substantive rights only in instances “as are provided by law and are necessary . . . for the protection of national security or of public order, or of public health or morals”).
the “paramount importance” of a free and uncensored press.\textsuperscript{168} With regard to Ressa’s conviction, although the reputation of the businessman at the center of the Rappler article was likely harmed, imposing a six to twelve year sentence on Ressa for her politically adjacent article would undermine the paramount importance of an unfettered press and the usefulness of the article to the public.\textsuperscript{169} Based on the Committee’s analysis in \textit{de Morais v. Angola}, the Philippines has violated Article 19 of the ICCPR in continuing to uphold Ressa’s cyber libel conviction.\textsuperscript{170}

Similarly, the foreign ownership charges against Rappler and ABS-CBN also constitute an unjustified restriction of speech under Article 19, paragraph 3, subsections (a) and (b).\textsuperscript{171} Though the Philippines’ Foreign Investment Act provides that a company must remain at least sixty percent Philippine owned, denying both Rappler and ABS-CBN renewal their respective operating licenses does not serve a legitimate purpose within the meaning of paragraph 3.\textsuperscript{172} Restricting these networks from operating is not necessary to maintain respect of the rights or reputations of citizens, nor does it promote the protection of national security or public order.\textsuperscript{173} As the Committee states in \textit{de Morais v. Angola}, the standard for determining the necessity for restricting free speech is proportionality: the restrictions must be proportionate to their aims.\textsuperscript{174} However, preventing Rappler and ABS-CBN from publishing is disproportionate to the Philippines’ aim to maintain businesses within Philippine ownership, meaning that any benefits of restricting Rappler and ABS-CBN’s speech does not out way the benefits of these networks from continuing to publish.\textsuperscript{175} In other words, there is a greater advantage to promoting free speech in this context than restricting it for the stated purpose of foreign

\textsuperscript{168} Id.
\textsuperscript{169} See \textit{id} (stressing the paramount importance of a free press).
\textsuperscript{170} See \textit{Buan, When CA Upheld Ressa’s Conviction}, supra note 45 (noting Ressa’s upheld conviction violates ICCPR).
\textsuperscript{171} See discussion supra Part II(B).
\textsuperscript{172} See Foreign Investments Act, § 9(1); see also \textit{de Morais}, supra note 75, ¶ 6.8 (noting that the restrictions under the Foreign Investments Act lack legitimate purpose).
\textsuperscript{173} See \textit{de Morais}, supra note 75, ¶ 6.8 (outlining possible legitimate purposes).
\textsuperscript{174} Id.
\textsuperscript{175} Id.
ownership violations, and thus the restrictions are disproportionate. Therefore, shutting these networks down without due process violates international law as provided in Article 19 of the ICCPR and the Philippines’ commitment as a state party to this treaty.\textsuperscript{176}

3. Third Element: Applicability of Article 20

Article 20 of the ICCPR provides an exception to the speech protected in Article 19.\textsuperscript{177} Thus, in its observations as to whether a state party has violated Article 19, the Committee may consider whether the restricted speech violates Article 20, paragraphs 1 or 2.\textsuperscript{178} The Committee’s concern in its analysis is whether the state party is restricting speech in line with its requirement for state parties to have laws against the incitement of discrimination, hostility, and violence.\textsuperscript{179} Speech that does not propagandize war, or advocates for national, racial, or religious hatred, would thus not be restricted by Article 20.\textsuperscript{180} Thus, because neither the cyber libel charges against Ressa nor the foreign investment charges against Rappler and ABS-CBN were brought on claims of incitement of discrimination, hostility, and violence, Article 20 would not apply.\textsuperscript{181} Although the Philippines could present that the speech restricted constituted “advocacy of national . . . hatred,”\textsuperscript{182} for their negative rhetoric towards the president and his government, the Committee would likely disagree. Rather, the Committee would rely on its observations in General Comment No. 34 that the press must be afforded greater liberties in connection with its role in promoting democracy, which requires that journalists be able to criticize the government without

\textsuperscript{176} See Pia Ranada, \textit{Duterte Claims Rappler ‘Fully Owned by Americans,’} \textsc{Rappler} (July 24, 2017, 6:19 PM), https://www.rappler.com/nation/176565-sona-2017-duterte-rappler-ownership/ (noting that “Rappler is 100-percent owned by Filipinos,” yet the government shut the network down nonetheless).

\textsuperscript{177} See ICCPR, \textit{supra} note 16, art. 20, ¶¶ 1–2 (noting a free speech exception).

\textsuperscript{178} Id.

\textsuperscript{179} See Nazila Ghanea, \textit{Expression and Hate Speech in the ICCPR: Compatible or Clashing}, 5 RELIGION & HUM. RTS. 171, 174 (2010) (discussing the analysis of hate speech in the context of freedom of expression and required laws against hate speech).

\textsuperscript{180} ICCPR, \textit{supra} note 16, art. 20, ¶¶ 1–2.

\textsuperscript{181} See discussion \textit{supra} Part II(B).

\textsuperscript{182} ICCPR, \textit{supra} note 16, art. 20, ¶¶ 1–2.
disproportionate restriction. As a result, the Committee would proceed in finding that the Philippines has violated Article 19 and disproportionately restricted speech under domestic and international law.

4. Fourth Element: Exhaustion of Remedies

As discussed in Part II, the Human Rights Committee may not have jurisdiction to review a claim where the complainant has failed to exhaust all available domestic remedies. However, in Fedotova v. Russian Federation, the Committee observed that “domestic remedies need not be exhausted if they objectively have no prospect of success.” In the cyber libel case against Maria Ressa, she is currently exercising her last available domestic remedy by appealing the Court of Appeals decision in her case to the Supreme Court. The issue before the Supreme Court will be whether the appellate court’s affirmation of a fifteen year statute of limitations on cyber libel violates the constitution. Should the Supreme Court rule against Ressa, she would have sufficiently exhausted her domestic remedies and would be permitted to file a complaint with the Human Rights Committee. Moreover, representatives from Rappler and ABS-CBN may be permitted to bring complaints challenging the Philippine SEC’s authority to prevent them from reporting even without exhausting all available domestic remedies if established that they effectively have no prospect at succeeding in their efforts domestically. This is likely to be a successful remedy because shutting down broadcast networks for violations of domestic foreign ownership laws does not constitute a valid restriction of free speech.

183. See Gen. Comment 34, supra note 31, ¶¶ 13–17 (observing that the press must be able to comment on public issues without censorship or restraint).
184. Supra Part II(C)(ii).
185. Fedotova, supra note 27, ¶ 9.5.
186. See Buan, When CA Upheld Ressa’s Conviction, supra note 45 (noting the lengthy process Ressa continues to undergo via appeal).
187. See id. (explaining that domestic remedies will be exhausted if her appeal is not upheld).
188. See id. (noting the length of time it takes to exhaust domestic remedies); Optional Protocol, supra note 95, art. 5, ¶ 2.
189. See Fedotova, supra note 27, ¶ 9.5 (explaining that if domestic remedies have no prospect of success, they need not all be exhausted).
under Article 19 based on how the Committee held in *Fedotova* and *de Morais*.\textsuperscript{190}

By bringing criminal charges against Maria Ressa and continuing to uphold her conviction, and by preventing Rappler and ABS-CBN from operating, the Philippines has restricted journalist speech in violation of Article 19. As discussed above, these acts violate Article 19 because the Philippines has infringed on the enumerated rights of Article 19, paragraph 2, which provides that everyone have the right to free expression through any medium.\textsuperscript{191} Further, the Philippines has restricted the rights provided in paragraph 2 outside the scope of paragraph 3, which only permits restrictions on speech where such restrictions are provided by law and are necessary either for the rights and reputations of others, or for the protection of national security or public order.\textsuperscript{192} Because the Philippines has violated its commitment as a party to the ICCPR by failing to uphold and protect the rights in Article 19, the Committee would be able to adjudicate the Philippines’ offense where an individual filed a complainant alleging a relevant injury.

### IV. RECOMMENDATIONS

Significantly, the Philippines’ ratification of both the ICCPR and its First Optional Protocol give the Human Rights Committee the ability to receive and adjudicate allegations that the Philippines has violated Article 19.\textsuperscript{193} This section suggests four possible recommendations to remedy the Philippines’ Article 19 violation: (1) that Maria Ressa submit a complaint to the Human Rights Committee; (2) that another ICCPR state party bring the Philippines to the International Court of Justice (“ICJ”); (3) that the International Criminal Court (“ICC”) investigate Duterte for his international law violations during the time of which the Philippines remained party to the Rome Statute; and (4) that a domestic court investigate individuals who have contributed to suppressing press speech.

As an individual who has experienced repeated restrictions by the

---

\textsuperscript{190} See discussion infra Part II(C)(i)-(ii).

\textsuperscript{191} ICCPR, *supra* note 16, art. 5, ¶ 2.

\textsuperscript{192} Id., ¶ 3.

\textsuperscript{193} Optional Protocol, *supra* note 95, art. 5, ¶ 1.
Philippine government, Maria Ressa would be able to submit a complaint to the Committee detailing her allegations. Should Ressa receive a negative outcome in her appeal of her cyber libel conviction at the Supreme Court, the Committee could be an alternate method to achieving relief. Ressa would be required to present a complaint detailing an argument that is analogous to the observations provided with regard to the elements of an Article 19 violation: (1) whether the restrictions on her speech were provided by law, and (2) whether the restrictions were necessary within the meaning of Article 19, paragraph 3. Additionally, Ressa would be able to file a complaint with the Committee pertaining to Rappler’s shut down, and representatives from ABS-CBN would be able to do the same regarding its shut down. Due to the stark similarities between the cases the involving the Philippines and those already adjudicated by the Committee, complainants citing restrictions of free speech are likely to succeed. Therefore, victims of the Philippines’ de facto policies restricting the free speech of reporters and broadcast networks should go to the Committee for redress. Unfortunately, even if these cases were brought before the committee, the chance of any actual change being effected is slim. While taking these cases to the Committee remains a desirable option, it is worth noting that, because the Committee lacks strong enforcement mechanisms, complainants should be aware of the probability that the Philippines would ignore the Committee’s decisions and provided recourse for redress.

Moreover, the ICJ may also provide successful outcomes for journalists. Because the Philippines became party to the Statute of the International Court of Justice in 1972, other ICJ parties may bring

194. See, e.g., discussion supra Part II(B).
195. Optional Protocol, supra note 95, art. 5, ¶ 1.
196. See discussion supra Part III(B)(i)-(ii).
197. See discussion supra Part III(B)(i).
198. See generally ICCPR Background, supra note 97, (noting that under the Committee’s documents, ABS-CBN has grounds to bring a complaint).
199. See discussion supra Part III(B)(ii).
200. Supra Part II(A)(ii).
201. Id.
claims against the Philippines relating to violations of international law.203 Because the Vienna Convention on the Law of Treaties holds that all treaties are binding on its parties,204 other ICJ state parties may file complaints with the ICJ alleging that the Philippines has violated its duties under the ICCPR.205

Further, the ICC should also investigate certain individuals in the Philippines for their role in the anti-drug campaign. Importantly, the Rome Statute gives the ICC “jurisdiction over persons for the most serious crimes of international concern.”206 Although the Philippines is no longer a party to the Rome Statute,207 the ICC maintains jurisdiction over the Philippines for the years which it remained a party.208 Although the ICC initiated an investigation into the Philippines,209 it suspended its inquiry after receiving a request from the Philippine government.210 Although the ICC would not initiate an investigation into Duterte’s ICCPR and free speech violations, as it is

---


204. VCLT, supra note 19, art. 6.


208. See Philippines: ICC Should Continue ‘Drug War’ Investigation, HUM. RTS. WATCH (Dec. 14, 2021, 2:56 PM), https://www.hrw.org/news/2021/12/14/philippines-icc-should-continue-drug-war-investigation (noting that the ICC can do so for crimes committed during years in which it was a party).


not a crime under the Rome Statute to restrict a journalist’s speech, resuming the drug war investigation would include alleged killings of journalists. If other members of the government are identified as having participated in the illegal activities in accordance with the anti-drug campaign, the ICC should similarly indict those individuals.

Lastly, however most unlikely, the Philippines domestic court system should bring charges against individuals who have contributed to suppressing press speech. Because restricting free speech violates the Philippine Constitution, the government could have a basis to indict individuals, likely within the government or administration, who have had a role in sustaining charges against journalists. Accordingly, the government should do more to investigate the murders of Philippine journalists over the course of Duterte’s presidency. If the Philippines is to ever indict Duterte for his role in the anti-drug campaign, it would provide an opportunity to determine his role in restricting journalists’ speech in connection with their reporting on the drug war. However, the ability to indict public officials domestically would depend on the presence of an immunity clause under Philippine law. Moreover, achieving justice in a domestic court is unlikely as newly elected president, Marcos Jr., has a similar agenda to Duterte and similar contempt for the press.

V. CONCLUSION

The Philippines has violated its commitment to upholding international law on freedom of speech, provided in Article 19 of the ICCPR. Because the Philippines has ratified both the ICCPR and its First Optional Protocol, the Human Rights Committee would have jurisdiction to receive complaints from individuals asserting that the Philippines had violated their Article 19 rights. By charging Ressa and shutting down Rappler and ABS-CBN, the Philippines has created an unjustified restriction on freedom of speech because these acts are

---


neither provided by law nor necessary within the Commitment’s interpretation of Article 19. Investigations into the Philippines’ treatment of journalists must be carried out, as failing to do only enables other states to mistreat its journalists and violate international law without consequences.