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

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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.

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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

1. See Gemmo Bautista Fernandez, *Rise of Illiberal Democracy, Weakening of the Rule of Law, & Implementation of Human Rights in the Philippines*, 36 AM. U. INT'L L. REV. 181, 182–83 (2021) (discussing the circumstances of Duterte's rise to power and the "free rein" he had as president).

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.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.³ Significantly, the Philippine judiciary has since convicted Ressa of cyber libel.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.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.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,⁷ providing examples of how press freedom of expression has been restricted in the Philippines,⁸ as well as background on two complaints submitted to

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).

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).

4. See *id.* (describing the Ressa case).

5. See *infra* Part II(B).

6. See Stevenson, *supra* note 3 (citing Duterte’s public comments that journalists are “spies” and “sons of bitches”); Phelim Kine, *The Philippines’ Duterte Incites Vigilante Violence*, HUM. RTS. WATCH (Apr. 19, 2017, 5:53 PM), <https://www.hrw.org/news/2017/04/19/philippines-duterte-incites-vigilante-violence> (discussing broadly how Duterte’s speeches have incited vigilante violence).

7. See *infra* Part II(A)(i)–(iii).

8. See *infra* Part II(B).

the Committee involving Article 19.⁹ 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.¹⁰ Next, Part IV provides four recommendations for how the Philippines may remedy its violations.¹¹ First, that any individual impacted by the Philippines' restrictions on press speech submit a complaint to the Committee.¹² Second, a state party to the International Court of Justice statute should file a complaint against the Philippines.¹³ 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.¹⁴ Lastly, a domestic court in the Philippines should indict government officials who contributed to the Philippines de facto policies of restricting press speech.¹⁵ 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").¹⁶ 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.¹⁷ 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.*

16. International Covenant on Civil and Political Rights art. 19, ¶¶ 1–3, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

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 subsections 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.

19. Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331, 339 [hereinafter VCLT] (“Every treaty in force is binding upon the parties to it. . .”).

20. *U.N. Treaty Body Database: Ratification Status for Philippines*, OHCHR, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=137&Lang=EN (last visited Nov. 1, 2022).

21. Commission on Human Rights of the Philippines, *Advisory on the Validity of the Philippines’ Ratification of the Second Optional Protocol*, CHR(V)A2020-017, 1 (July 9, 2020).

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, art. 19, ¶¶ 1–3.

23. VCLT, *supra* note 19, art. 26.

24. U.N. Office of the High Commissioner for Human Rights, Fact Sheet No. 15 (Rev.1): Civil and Political Rights: The Human Rights Committee, 14 (May 1, 2005) [hereinafter Fact Sheet No. 15], <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet15rev.1en.pdf>.

25. *Id.* at 11.

26. *See id.* at 25 (outlining the consideration of individual complaints under the ICCPR).

27. *See e.g.*, Human Rights Committee, Communication No. 1932/2010, *Fedotova v. Russian Federation*, U.N. Doc. CCPR/C/106/D/1932/2010 (Feb. 10, 2010) ¶¶ 11–13 (requiring the Russian Federation to inform the Committee within 180 days the steps it has taken to remedy its violation).

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).

32. Gen. Comment 34, *supra* note 31, ¶ 9.

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.nytimes.com/2022/06/01/asia/philippines-maria-ressa-convicted.html>.

Although these restrictions are quasi-supported in broadly drafted Philippine law,³⁷ they expose the state's failure to protect press speech.³⁸ 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.³⁹ 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.⁴⁰ Because of Ressa's disapproving narrative of President Duterte, she became a target of his verbal abuse.⁴¹ 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.⁴² As a result, Ressa and her colleague were fined \$8,000 each and sentenced to six years in prison.⁴³ Ressa appealed her conviction to the Court of Appeals where the panel of judges affirmed her conviction, contradicting how the law is codified.⁴⁴ Rather, the Court

.nytimes.com/2020/06/14/business/maria-ressa-verdict-philippines-rappler.html (Oct. 8, 2022) (describing journalist convictions as the "latest blow for press freedoms" in the Philippines).

37. See, e.g., Cybercrime Prevention Act of 2012, Rep. Act No. 10175, § 4(4) (July 25, 2011) (Phil.) [hereinafter Cybercrime Prevention Act] (referencing an example of restriction of free speech); see also *infra* Part III(B)(i).

38. See Gutierrez & Stevenson, *supra* note 36 (quoting Amal Clooney's reaction to the Court of Appeals upholding of Ressa's cyber libel conviction: "Today a court in the Philippines became complicit in a sinister action to silence a journalist for exposing corruption and abuse . . . [t]his conviction is an affront to the rule of law, a stark warning to the press and a blow to democracy in the Philippines.").

39. See *Maria Ressa: Facts*, NOBEL PRIZE, <https://www.nobelprize.org/prizes/peace/2021/ressa/facts/> (last visited Nov. 1, 2022) (describing the life and career of Maria Ressa).

40. See generally Maria A. Ressa, *Duterte, His 6 Contradictions and Planned Dictatorship*, RAPPLER (Oct. 26, 2015, 4:40 PM), <https://www.rappler.com/nation/elections/110679-duterte-contradictions-dictatorship/> (reporting on various contradictions employed by Duterte throughout his campaign for the presidency).

41. Stevenson, *supra* note 3.

42. See *Maria Ressa: Philippine Journalist Found Guilty of Cyber Libel*, BBC (June 15, 2020), <https://www.bbc.com/news/world-asia-53046052> (citing President Duterte's remarks that Rappler was publishing "fake news").

43. Gutierrez & Stevenson, *supra* note 36.

44. Revised Penal Code, Act No. 4661, art. 90, as amended (Phil.) [hereinafter Revised Penal Code]; see Lian Buan, *Law Experts: 12-Year Prescription Period for*

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).

45. Lian Buan, *When CA Upheld Ressa's Conviction, It Extended Cyber Libel Shelf Life to 15 Years*, RAPPLER (July 12, 2022, 4:43 PM), <https://www.rappler.com/nation/when-court-appeals-upheld-maria-ressa-conviction-made-cyber-libel-shelf-life-longer/>.

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

47. *See, e.g.,* Sui-Lee Wee, *Philippines Orders Rappler to Shut Down*, N.Y. TIMES (June 29, 2022), <https://www.nytimes.com/2022/06/29/world/asia/philippines-rappler-shutdown.html> (noting that as of June 2022, the Philippine government had filed seven criminal charges against Ressa).

48. *See* Jay Ereño & Eloisa Lopez, *Philippine Journalist Ressa Takes Stand to Rebut Government Tax Evasion Lawsuits*, REUTERS (Mar. 4, 2021, 3:21 AM), <https://www.reuters.com/business/finance/philippine-journalist-ressa-takes-stand-rebut-govt-tax-evasion-lawsuits-2021-03-04/> (discussing the charges levied against Ressa, notably the tax evasion accusations).

49. *Philippines News Site Chief Arrested Again Over Foreign Ownership Rules*, REUTERS (Mar. 28, 2019, 9:05 PM), <https://www.reuters.com/article/philippines-media/philippines-news-site-chief-arrested-again-over-foreign-ownership-rules-idUSL3N21G07T>.

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,⁵¹ with Ressa herself calling out the numerous claims against her as government harassment and intimidation.⁵²

The SEC's shutdown of Rappler is analogous to the 2020 shutdown of ABS-CBN, formally the Philippines' largest broadcast network.⁵³ 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.⁵⁴ 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.⁵⁵

In addition to convictions and network shutdowns, Duterte's rhetoric towards the press has inspired social media campaigns targeting and harassing journalists.⁵⁶ Furthermore, there have been reports of journalists being murdered, like Jesus Malabanan, who was shot and killed by unidentified assailants.⁵⁷ 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.

52. Neil Jerome Morales & Eloisa Lopez, *Philippine Journalist Maria Ressa Rejects 'Politically Motivated' Tax Evasion Charges*, REUTERS (July 21, 2020), <https://www.reuters.com/article/uk-philippines-media-idAFKCN24N07K>.

53. Compare Philip Wang & Helen Regan, *Philippines Orders News Site Rappler to Shut Down, Founder Maria Ressa Says*, CNN (June 29, 2022, 1:36 AM), <https://www.cnn.com/2022/06/28/media/rappler-shut-down-philippines-ressa-intl-hnk/index.html> (explaining the SEC's case against Rappler) with Jason Gutierrez, *Philippine Congress Officially Shuts Down Leading Broadcaster*, N.Y. TIMES, <https://www.nytimes.com/2020/07/10/world/asia/philippines-congress-media-duterte-abs-cbn.html> (Dec. 15, 2020) (discussing the government's decision to shut down ABS-CBN).

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, Prostitutes and How Journalists Are Harassed*, WASH. POST (June 13, 2022, 8:50 AM), <https://www.washingtonpost.com/world/2022/06/13/philippines-election-harassment-journalism-online/> (providing several examples of well-organized harassment campaigns under President Duterte's administration).

57. *Jesus Malabanan, Reporter Who Covered Duterte Drug War, Killed in the Philippines*, COMM. TO PROTECT JOURNALISTS (Dec. 9, 2021, 9:44 AM), <https://cpj.org/2021/12/jesus-malabanan-reporter-who-covered-duterte-drug-war-killed-in-the-philippines/> (illustrating the risk to journalists).

threats up until his murder for his articles about the drug war, where he sought to highlight⁵⁸ a rise in the number of murders from when Duterte assumed the presidency.⁵⁹ Furthermore, in June 2022, radio host, Federico Gempesaw, was shot and killed after receiving targeted threats in response to his open criticism of politicians.⁶⁰ Gempesaw's killers also remain at large, with his murder marking the twenty-fourth journalist killed since Duterte became president in 2016.⁶¹ Although it is unlikely that anyone from the government could be held accountable for these murders,⁶² 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.⁶³

C. ARTICLE 19 VIOLATIONS BY ICCPR STATE PARTIES

Violations of the ICCPR are reviewed based on a fact-heavy analysis of a particular issue.⁶⁴ 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?⁶⁵ The following subsections 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).

59. See e.g., Clare Baldwin & Andrew R.C. Marshall, *How a Secretive Police Squad Racked Up Kills in Duterte's Drug War*, REUTERS (Dec. 19, 2017, 1:00 PM), <https://www.reuters.com/investigates/special-report/philippines-drugs-squad/> (describing the actions of a small, lethal anti-drug police unit calling themselves "Davao Boys," in reference to Duterte's hometown of Davao).

60. See Lynde Salgados & Bobby Lagsa, *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 & Lagsa, *supra* note 60.

62. *Infra* Part IV.

63. *Duterte gov't allows 'drug war' deaths to go unsolved*, RAPPLER (Jan. 14, 2019, 1:40 PM), <https://www.rappler.com/newsbreak/in-depth/220595-duterte-government-drug-war-deaths-unsolved/>.

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.⁶⁶ Specifically, Fedotova stated that Russian police arrested her after she displayed two posters at a peaceful assembly near a school in Moscow.⁶⁷ Fedotova was ultimately convicted for violating a regional law that banned homosexual propaganda.⁶⁸ After losing on appeal, Fedotova submitted her complaint to the Committee, stating that she had exhausted all available domestic remedies.⁶⁹

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.⁷⁰ 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."⁷¹ 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 19.⁷² 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.⁷³ 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.⁷⁴

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 19.⁷⁵ In his complaint, de Morais stated that police arrested him at gunpoint in connection to several articles criticizing Angola's president.⁷⁶ 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."⁷⁷ 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.⁷⁸ 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.⁷⁹

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.⁸⁰ Accordingly, de Morais cited the requirement under Article 19 that "citizens be allowed to criticize or openly and publicly evaluate their [g]overnments."⁸¹ 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."⁸²

In reviewing the complaint, the Committee considered whether de

74. *Id.* ¶ 10.8.

75. See Human Rights Committee, Communication No. 1128/2002, *de Morais v. Angola*, U.N. Doc. CCPR/C/83/D/1128/2002 (Sept. 5, 2002) ¶ 3.8.

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 19.⁸³ 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.⁸⁴ Further, the Committee explained that restrictions "must be proportional to the value which the restriction serves to protect."⁸⁵ In considering the "paramount importance," that a free and uncensored press has to promoting democracy, the sanctions imposed on de Moraes could not be deemed proportionate to protecting the president's speech, as public figures are naturally subject of open opposition.⁸⁶ The Committee concluded that Angola violated its commitment under the ICCPR, and that de Moraes was entitled to remedy.⁸⁷

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.⁸⁸ 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.⁸⁹ 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.⁹⁰ Unnervingly, reports of journalists being murdered have also occupied the media in the Philippines.⁹¹ While criminal charges like those

83. *de Moraes*, *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.

91. *See, e.g.*, Jairo Bolledo, *Journalist Jess Malabanan Shot Dead in Samar*, RAPPLER (Dec. 8, 2021, 10:43 PM), <https://www.rappler.com/nation/journalist-jess-malabanan-shot-dead-samar/> (describing how Reuters journalist Jess Malabanan was shot and killed by unidentified assailants).

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.⁹² 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.⁹³ 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.⁹⁴

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.⁹⁵ By ratifying both treaties, a state affirmably recognizes the Committee's competence, and the Committee then has authority to adjudicate questions of ICCPR violations.⁹⁶ The following subsections 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.⁹⁷ Parties to the

92. Cabato, *supra* note 56; see also Phelim Kine, *The Philippines' Duterte Incites Vigilante Violence*, HUM. RTS. WATCH (Apr. 19, 2017, 5:53 PM), <https://www.hrw.org/news/2017/04/19/philippines-duterte-incites-vigilante-violence> (discussing Duterte's encouragement of vigilante killings).

93. See *infra* Part IV.

94. See *supra* Part II(C)(i)–(ii).

95. See Optional Protocol to the International Covenant on Civil and Political Rights art. 1, 16 Dec. 1966, 999 U.N.T.S. 171 [hereinafter *Optional Protocol*].

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 19.⁹⁸ This Optional Protocol is not compulsory; however, once a state becomes party to the Protocol, it will be subject to the Committee's jurisdiction.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.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.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.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.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.¹⁰⁴

Background], <https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols> (last visited Nov. 1, 2022).

98. ICCPR, *supra* note 16, art. 19, ¶¶ 1–2.

99. ICCPR *Background*, *supra* note 97.

100. Optional Protocol, *supra* note 95, art. 5, ¶ 2.

101. *Id.*

102. *U.N. Treaty Body Status*, *supra* note 20.

103. See ICCPR, *supra* note 16, art. 19 ¶¶ 1–3 (covering freedom of speech and the right to receive and impart information orally and in print); Optional Protocol, *supra* note 95, art. 5 ¶¶ 1–2 (empowering the Committee to receive complaints only after the complainant has exhausted all available domestic remedies).

104. *Infra* Part IV.

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 subsections 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

105. Gen. Comment 34, *supra* note 31, ¶ 9.

106. *Id.* ¶¶ 9, 13–17.

107. Cybercrime Prevention Act, *supra* note 37, § 4.

108. Foreign Investments Act of 1991, Rep. Act No. 7042, § 9(1) (June 13, 1991) (Phil.) [hereinafter Foreign Investments Act], <https://www.officialgazette.gov.ph/1991/06/13/republic-act-no-7042/>.

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).

113. Gen. Comment 34, *supra* note 31, ¶ 22.

114. *Id.*

115. *Fedotova*, *supra* note 27, ¶ 10.3.

116. *Id.* ¶ 10.4.

117. *Id.* ¶ 10.8.

118. Barnaby Lo, *Maria Ressa and Reynaldo Santos’ Convictions of Cyber Libel Upheld by Court of Appeals*, CBS NEWS (July 8, 2022, 11:12 AM), <https://www.cbsnews.com/news/maria-ressa-rey-santos-convictions-of-cyber-libel-upheld>.

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

Russian Federation,¹²¹ 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 Code¹²⁵ 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

Article 355 of the penal code, already punishes it."); *see also* Revised Penal Code, art. 90 (containing a prescription of one year for libel, in line with the 2014 Supreme Court decision).

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 2¹³⁰ 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.¹³¹ Because the Philippines' cyber libel law in effect restricts the ability to "receive and impart information of all kinds,"¹³² the Committee would have to analyze whether in doing so, this restriction was necessary via paragraph 3.¹³³ 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.¹³⁴ Certainly, cyber libel laws have a purpose, and can provide useful protection in instances of malicious defamation on social media or otherwise.¹³⁵ However, these laws become problematic where they may be used to silence reporters.¹³⁶ 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.¹³⁷

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, art. 19, ¶¶ 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.").

135. See David A. Anderson, *Is Libel Law Worth Reforming?*, 140 U. PA. L. REV. 487, 551 (1991) (noting that the purpose of libel is to chill speech).

136. See Lian Buan, *Aquino's Contested Cyber Libel Law Gets New Claws in Ruling vs Rappler*, RAPPLER (June 16, 2020 (5:00 PM)) [hereinafter Buan, *Aquino's Contested Law*], <https://www.rappler.com/nation/263975-aquino-contested-cyber-libel-law-gets-new-claws-ruling/> (relaying Ressa's fears about what the laws could mean for investigative reporting using confidential sources).

137. Revised Penal Code, art. 353.

question is true.¹³⁸ 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.¹³⁹ 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.¹⁴⁰ Duterte claims that both Rappler and ABS-CBN are entirely owned by non-Filipinos, which both companies deny.¹⁴¹ 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 19.¹⁴² 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.¹⁴³ 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 19.¹⁴⁴ 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,¹⁴⁵ 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 3.¹⁴⁶

Relatedly, the Philippines has established a de facto policy of suppressing journalists' speech.¹⁴⁷ 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.¹⁴⁸ 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.¹⁴⁹ 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.¹⁵⁰ 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.¹⁵¹

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.¹⁵² 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.¹⁵³ 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.¹⁵⁴ 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 3.¹⁵⁵

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 3.¹⁵⁶ As held in the case of *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.¹⁵⁷ The Committee further notes that this interpretation is derived from the ultimate purpose of the ICCPR, which is to promote political debate and speech.¹⁵⁸ Notably, the purpose of the Rappler article was to draw attention to potential corruption in the judiciary,¹⁵⁹ information that the

restrict the rights provided in Article 19 will be deemed antithetical to international law).

152. See e.g., *de Morais*, *supra* note 75, ¶ 3.8 (applying the "provided for by law criteria" in a case concerning Angola).

153. *Id.* ¶ 6.8.

154. ICCPR, *supra* note 16, art. 19, ¶¶ 1–3.

155. 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").

156. See *id.* (explaining that restricting speech, though collateral of local law, will not survive Committee scrutiny).

157. 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).

158. *Id.* ¶ 3.9.

159. See Gutierrez & Stevenson, *supra* note 4 (recalling that the article connected a businessman to a high-level judge).

public should have access to, and having a relationship with a judge could be considered availing one's self to public criticism.¹⁶⁰ However, the Philippines' cyber libel law as is leaves no room for journalists to investigate political issues and report them to the public.¹⁶¹ 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.¹⁶² 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.¹⁶³ 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).¹⁶⁴

Moreover, the Committee would next look to whether the Philippines' cyber libel law was justified under Article 19, paragraph 3, subsection (b).¹⁶⁵ Maria Ressa's conviction was neither necessary nor proportionate to protecting national security, public order, or public health.¹⁶⁶ Significantly, in *de Morais v. Angola*, the Committee observed that the necessity requirement of subsection (b) "implies an element of proportionality."¹⁶⁷ 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").

167. *de Morais*, *supra* note 75, ¶ 6.8.

the “paramount importance” of a free and uncensored press.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.¹⁶⁹ Based on the Committee’s analysis in *de Morais v. Angola*, the Philippines has violated Article 19 of the ICCPR in continuing to uphold Ressa’s cyber libel conviction.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).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 3.¹⁷² 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.¹⁷³ As the Committee states in *de Morais v. Angola*, the standard for determining the necessity for restricting free speech is proportionality: the restrictions must be proportionate to their aims.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.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

168. *Id.*

169. *See id.* (stressing the paramount importance of a free press).

170. *See* Buan, *When CA Upheld Ressa’s Conviction*, *supra* note 45 (noting Ressa’s upheld conviction violates ICCPR).

171. *See* discussion *supra* Part II(B).

172. *See* Foreign Investments Act, § 9(1); *see also de Morais*, *supra* note 75, ¶ 6.8 (noting that the restrictions under the Foreign Investments Act lack legitimate purpose).

173. *See de Morais*, *supra* note 75, ¶ 6.8 (outlining possible legitimate purposes).

174. *Id.*

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.¹⁷⁶

3. *Third Element: Applicability of Article 20*

Article 20 of the ICCPR provides an exception to the speech protected in Article 19.¹⁷⁷ 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 2.¹⁷⁸ 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.¹⁷⁹ Speech that does not propagandize war, or advocates for national, racial, or religious hatred, would thus not be restricted by Article 20.¹⁸⁰ 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.¹⁸¹ Although the Philippines could present that the speech restricted constituted "advocacy of national . . . hatred,"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

176. See Pia Ranada, *Duterte Claims Rappler 'Fully Owned by Americans,'* 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).

177. See ICCPR, *supra* note 16, art. 20, ¶¶ 1–2 (noting a free speech exception).

178. *Id.*

179. See Nazila Ghanea, *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).

180. ICCPR, *supra* note 16, art. 20, ¶¶ 1–2.

181. See discussion *supra* Part II(B).

182. ICCPR, *supra* note 16, art. 20, ¶¶ 1–2.

disproportionate restriction.¹⁸³ 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.¹⁸⁴ However, in *Fedotova v. Russian Federation*, the Committee observed that “domestic remedies need not be exhausted if they objectively have no prospect of success.”¹⁸⁵ 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.¹⁸⁶ 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.¹⁸⁷ 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.¹⁸⁸ 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.¹⁸⁹ 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*.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.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.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 19.¹⁹³ 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

190. See discussion *infra* Part II(C)(i)-(ii).

191. ICCPR, *supra* note 16, art. 5, ¶ 2.

192. *Id.* ¶ 3.

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.¹⁹⁴ 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.¹⁹⁵ 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 3.¹⁹⁶ Additionally, Ressa would be able to file a complaint with the Committee pertaining to Rappler's shut down,¹⁹⁷ and representatives from ABS-CBN would be able to do the same regarding its shut down.¹⁹⁸ 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.¹⁹⁹ 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,²⁰⁰ complainants should be aware of the probability that the Philippines would ignore the Committee's decisions and provided recourse for redress.²⁰¹

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 1972,²⁰² 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.*

202. See *States Entitled to Appear Before the Court*, INT'L CT. OF JUST., <https://icj-cij.org/en/states-entitled-to-appear> (last visited Nov. 1, 2022) (noting that the Philippines is party to the IJC).

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

203. See *How the Court Works*, INT’L CT. OF JUST., <https://www.icj-cij.org/en/how-the-court-works> (last visited Nov. 1, 2022) (explaining that countries can bring complaints against countries party to the IJC).

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

205. See *How the Court Works*, *supra* note 203; see also Sandy Ghandi, *Human Rights and the International Court of Justice: The Ahmadou Sadio Diallo Case*, 11 HUM. RTS. L. REV. 527, 532 (2011) (discussing how Guinea submitted an ICCPR violation claim to the ICJ).

206. Rome Statute of the International Criminal Court art. 1, July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002).

207. See Jason Gutierrez, *Philippines Officially Leaves the International Criminal Court*, N.Y. TIMES (Mar. 17, 2019), <https://www.nytimes.com/2019/03/17/world/asia/philippines-international-criminal-court.html> (noting when the Philippines left the ICC).

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).

209. Situation in the Philippines, ICC-01/21, Decision on the Prosecutor’s Request for Authorization of an Investigation Pursuant to Article 15(3), ¶ 2 (June 14, 2021).

210. Letter from J. Eduardo Malaya, Ambassador of the Philippines to the Netherlands, to Honorable Karim A. A. Khan QC, Prosecutor for the International Criminal Court, 1 (Nov. 10, 2021); Situation in the Philippines, ICC-01/21, Notification of the Republic of the Philippines’ Deferral Request Under Article 18(2), ¶ 3 (Nov. 18, 2021), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_10545.pdf.

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.²¹¹ 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.²¹²

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

211. See Carlos H. Conde, *New Philippines Police Chief Signals Change*, HUM. RTS. WATCH (May 25, 2021, 10:37 AM), <https://www.hrw.org/news/2021/05/25/new-philippines-police-chief-signals-change> (explaining a change in the PNP's openness regarding investigations into killings during the "drug wars").

212. Carlos H. Conde, *Ferdinand Marcos Jr.'s Contempt for the Philippine Press*, HUM. RTS. WATCH (May 12, 2022, 4:57 PM), <https://www.hrw.org/news/2022/05/12/ferdinand-marcos-jrs-contempt-philippine-press>.

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.