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# PHILIPPINES: THE DEATH PENALTY Criminality, Justice and Human Rights

## 1. INTRODUCTION

In 1987 the Philippines set an historic precedent by becoming the first Asian country in modern times to abolish the death penalty for all crimes. The move formed part of a determined effort to restore respect for human rights following the ouster of President Ferdinand Marcos. The new government of President Corazon Aquino also promulgated a Constitution with a Bill of Rights, established an independent Commission on Human Rights and acceded to the major international human rights treaties.

Today, more than 400 people convicted of capital offences are held on Death Row and a newly constructed 'Lethal Injection Chamber' stands ready adjacent to the National Penitentiary at Muntinlupa. With an average of up to twelve people being sentenced to death every month the Philippines, in less than four years, has gone from an abolitionist position to having one of the highest sentencing rates in the world. The Supreme Court has begun its review of these sentences and the first execution, by law possible after 27 February 1998, could well presage a flood.

At one time the Philippines, standing against a regional tide towards the increased use of the death penalty and seeking clemency for its own nationals facing execution overseas, stood as a positive role model in Southeast Asia. Today it risks losing that status, undermining its ability to protect Filipinos on death row abroad who may have been unfairly convicted.

The decision of the Philippine Congress in late 1993 to re-introduce capital punishment for 'heinous' crimes was founded on a sense of public fear and frustration at spiralling rates of violent crime. With public faith in the effectiveness of the criminal justice system at a low ebb the reintroduction of the death penalty was portrayed as a symbol of the authorities' determination to dispense justice effectively, to respond to the suffering of crime victims, and to 'get tough on criminals'.

Attitudes to capital punishment and to the part played by the abolition of the death penalty in the struggle to build an over-arching structure of human rights protection after the repression of the Marcos years, have undergone a marked shift. The relevant principles of the Universal Declaration of Human Rights (UDHR) that guided the framers of the 1987 Constitution - specifically the clauses stating that one of the most fundamental of human rights is the '*right to life*', and that the process culminating in an execution of a detainee constitutes the most extreme form of '*cruel, inhuman and degrading treatment or punishment*' - appear to have been set aside. Nevertheless

persistent voices in the Philippines continue to express deep disquiet over how the death penalty is being applied, and to oppose the move towards executions.

Claims that executions have a significant impact on reducing crime levels and enhancing the security of law-abiding citizens have been proved false in other countries and are set to be proved false in the Philippines. There is no evidence that the death penalty acts as a greater deterrent to criminals than other forms of punishment. The killing by the Philippine state of prisoners convicted of capital crimes will not provide a solution to the challenge of criminality - which will continue to be fuelled by a complex of factors including poverty, social inequality, unemployment and the weakening of formal and informal methods of social control.

The death penalty also carries a manifest risk of miscarriages of justice. No criminal justice system in the world is immune from errors and that of the Philippines is no exception. A single error that culminates, irrevocably, in the execution of an innocent person would represent a shocking failure of justice - in effect, a judicial murder.

The risk of judicial error is sharply increased if torture or ill-treatment of criminal suspects is used to extract confessions. Such grave violations of human rights are prohibited by the Philippine Constitution and by the key international human rights treaties to which the Philippines is a party. In April 1997 an Amnesty International delegation visited the Philippines and gathered testimonies of some of those prisoners awaiting execution. The interviews conducted revealed allegations of illegal methods used by law enforcement officers to extract confessions - including ill-treatment and torture. The allegations of the death row prisoners were consistent with patterns and types of torture and ill-treatment by police reported by other criminal suspects and prisoners.

Amnesty International is concerned that illegal methods often used in the past to secure convictions of political suspects continue to be used against criminal suspects today. As well as torture and ill-treatment warrantless arrests, the planting of evidence, and the intimidation of witnesses and alleged accomplices appear to remain part of police investigative practice - and has sharply increased the risk that the innocent may indeed be executed.

The current rapid rate of death sentences in the Philippines is taking place within a context of deep-rooted public doubts over the equity, impartiality and effectiveness of the overall judicial system. These doubts are fuelled by the perception that those with influence or wealth are at times able to enjoy impunity - literally exemption from punishment. The knowledge that the overwhelming majority of those responsible for grave human rights violations in the context of past conflicts with armed opposition groups, including the communist New People's Army (NPA), have never been prosecuted has weakened confidence in equality before the law.

Similarly the fact that the overwhelming majority of those on death row come from disadvantaged sectors of society and - because of economic deprivation, lack of educational attainments or low social status - are among those least able to secure effective legal counsel, suggests that in practice not all Filipinos are equal before the law, and that the death penalty is being applied disproportionately against members of more disadvantaged sectors of society.

Amnesty International welcomed the abolition of the death penalty in the Philippines in 1987 and strongly opposed its reimposition in 1993. The organisation is now seriously concerned that death sentences are being imposed in an arbitrary, inconsistent manner which falls disproportionately on poorer, disadvantaged sectors of society. The organisation fears that there is a grave risk of judicial errors in the light of reports that illegal methods - including torture - are being used by law enforcement officers against criminal suspects. Given the threat of irrevocable executions Amnesty International is also concerned that safeguards to ensure fair trials, including the right of the accused to competent legal counsel at all stages of proceedings, are not being consistently upheld.

This report documents these concerns and describes the events that led to the reimposition of the death penalty and the current rapid rate of sentencing. One chapter with brief 'snapshot' descriptions of some of those on death row - and a later attachment (ASA 35/10/97) containing six more detailed Appeals Cases - seek to provide representative illustrations of the lives and circumstances of the more than 400 prisoners now awaiting execution. The attachment also contains some Questions and Answers regarding Amnesty International's unconditional opposition to the death penalty worldwide.

## **2. CHANGING TIMES: PAST USE OF THE DEATH PENALTY IN THE PHILIPPINES**

As the 21st century approaches it is a matter of deep regret that in the Philippines neither the optimism engendered by the revival of human rights protection after the 1986 'People's Power' movement, nor the impact of the clear international trend towards abolition worldwide, has proved capable of reversing the recent advocacy in favour of the death penalty by leading members of the political and military establishment - purportedly as a means to address popular fears at an apparent break-down in law and order.

Yet Philippine history this century shows how the prevailing political climate has substantially changed how the death penalty has been applied. The challenge facing Philippine law-makers today is clear: they have a responsibility to lead public opinion away from the false and simplified belief that the death penalty is an effective deterrent to crime, or that retribution and vengeance justifies the state killing prisoners.

Moreover the legitimate demand of the public for protection against the impact of rising crime should be properly answered. Real protection against criminality lies not with the death penalty but with reform of the police investigative agencies and the judiciary. As articulated by the Philippine Commission on Human Rights (CHR), criminality should be confronted through '*effective law enforcement, quick and impartial delivery of justice and a responsive penal system*'.

### ***Spanish and American Rule***

In 1898 three hundred years of Spanish colonial rule neared its end when the Philippine nationalist leader General Emilio Aguinaldo declared independence. However the coincident Spanish-American war led to the dispatch of a US fleet to Manila and to subsequent Spanish agreement to cede the Philippines to the US. After a short period of bitter guerrilla resistance to US troops by Philippine nationalist forces the US administered the country until introducing internal self-government in 1934. Full independence was achieved in 1946.

The Spanish *Codigo Penal* of 1848, introduced in the Philippines in 1884, remained the main body of criminal law during much of the American period. The first major revision came in 1932 when the Revised Penal Code came into force. It included seven capital offences: treason, piracy, parricide, murder, kidnapping, rape and robbery with homicide. Espionage was later added as a capital offence after the outbreak of the Second World War.

### ***Post World War II***

The emergence of a peasant rebellion which had started as a resistance movement to the wartime Japanese occupation forces (the People's Anti-Japanese Army, more commonly known as "Hukbalahap" or "Huks") was regarded by the post-war authorities as being communist-inspired. The first Anti-Subversion Law, aimed against the Communist Party of the Philippines (PKP) came into force. Though it carried the death penalty for leaders of the PKP, no executions were carried out under this law. However between 1946 and the election of President Ferdinand Marcos in 1965 thirty-five people were executed - mainly those convicted of particularly savage crimes marked, in the words of Supreme Court judges who reviewed the cases, by "senseless depravity" or "extreme criminal perversity".





### ***The Marcos Years (1965- 1986)***

Under President Marcos the official justification for the death penalty increasingly became that of deterrence - and its application became deeply influenced by a context of worsening political tensions. By 1969 public opposition to the Marcos government had mounted and contributed to the formation of the Communist Party of the Philippines (CPP) and its armed wing the New People's Army (NPA) by a Maoist-orientated faction of the old PKP.

Responding to the growing political and social tensions, from 1971- 1972 Congress created new capital offences involving specific crimes involving hijacking, dangerous drugs or carnapping. Subsequently Marcos justified the imposition of Martial Law (1972-1981) as both a response to the communist insurgency, and to the increase in '*lawlessness and criminality like kidnapping, smuggling, extortion, blackmail, armed robbery ....and tax evasion by syndicated criminals*'

Repeatedly citing the need for deterrence a series of Presidential Decrees made many of these crimes capital offences - including crimes involving subversion, possession of firearms, arson, embezzlement and illegal fishing. In a number of the Decrees the imposition of the death penalty was made mandatory for specific offences.

Eventually a total of 24 offences were punishable by death with most being tried under military tribunals - which were defined as part of the Executive rather than of the Judiciary. Basic legal safeguards were not upheld in the tribunals - a fact highlighted by the sentencing in 1977 of Marcos' main political rival, Senator Benigno 'Ninoy' Aquino, "*to die by firing squad*" after being charged with murder, subversion and illegal possession of firearms. In the face of strong domestic and international pressure Marcos ordered the re-opening of the case and in 1978 allowed Aquino to leave for the US for medical treatment. Senator Aquino was subsequently assassinated by military agents at Manila airport on his return to the Philippines in 1983.

The extension of the number of crimes covered by the death penalty, and the high number of death sentences subsequently handed down, mainly by the military tribunals, was accompanied by the active propagation of the view that this policy represented a sign of 'decisive government' in confronting insurgency, lawlessness and criminality. This formed a politically useful adjunct to the Marcos' justification for the seizure of emergency powers.

A similar message had been conveyed by the last three executions to take place before martial law was imposed. The sentencing and execution in 1972 of Jaime Jose, Besilio Pineda and Edgardo Aquino for the gang rape of film star Maggie de la Riva were unprecedented in the history of the Philippine criminal justice system. Despite the



prohibition against public executions the electrocutions were carried out in full view of television cameras.

Despite the changing climate and high sentencing rates the number of executions actually carried out did not undergo a dramatic increase. Of the 52 prisoners executed between 1946 and 1976, 19 took place during the pre-martial law administration of President Marcos (1965-1972), with the year 1967 accounting for 12.

During the martial law period itself 12 other executions took place before a general- and unwritten - policy of not carrying out death sentences took effect in late 1976. Of these twelve, 11 were convicted by civilian courts and one by a military tribunal. The case judged by tribunal involved convicted heroin manufacturer Lim Seng who was sentenced to life imprisonment. However President Marcos decided to use the case as a deterrent against would-be drug smugglers - and increased the sentence to death when it came before him for review. Lim Seng was executed by firing squad. The last judicial execution to take place in the Philippines, that of Marcelo San Jose, was carried out by electrocution in October 1976.

During this period a number of attempts were taken to move towards abolition but none reached legislative enactment. In 1969 the *Laurel Report on Penal Reform* by Senate Justice Committee chairman Senator Salvador Laurel strongly supported abolition, and in 1970 Laurel introduced a Senate bill for this purpose. The bill failed to prosper, as did two bills placed before the National Assembly in 1979. One of these, Parliamentary Bill 543 introduced by Assembly member Salacnib Bateria, summed up the concerns surrounding the application of the death penalty in the Philippines:

*‘The Philippine Penal system’s method of retributive justice is vengeful and barbaric...Capital punishment is a form of cruelty and inhumanity unworthy of a society that claims to be humane. Since the death penalty is irrevocable and judicial error is always possible, the penalty appears as an unpardonable crime committed by society on its citizens. It is no more than a lazy answer which hinders the search for effective means of curbing crime and for a rational system of prevention’.*

### ***President Corazon Aquino (1986-1992) - Abolishing the Death Penalty***

Death sentences continued to be handed down by the courts until late 1986. In 1987, when the death penalty was finally abolished, over 500 prisoners, many of whom had been sentenced by military tribunals in the martial law period, were still under sentence of death. Following the promulgation of the 1987 Constitution President Aquino announced that all existing death sentences would be commuted. The announcement

backed up the Constitutional provision that ‘any death penalty already imposed be reduced to “reclusion perpetua” (life imprisonment)’.

**1987 Constitution - Bill of Rights, Section 19**

*‘Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted.. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it’.*

The decision to abolish the death penalty was influenced by four main arguments expressed in the debates of the Constitutional Commission: firstly, that capital punishment, even if not carried out, was inhuman because it traumatizes not only the prisoner but also his family; secondly, that there was no solid evidence to show that the death penalty had acted as an effective deterrent against the commission of serious crimes; thirdly, that life was a divine gift and as such should not be put in the hands of a human judge; and fourthly that modern penal systems favoured reformatory rather than vindictive punishment.

During the Commission’s debates the Roman Catholic Church played an influential role, arguing for respect for life and calling for effective reformatory measures to be introduced into the penal code. One of the Commissioners, Bishop Teodoro Bacani, drew attention to the risk of judicial errors, and the prolonged suffering the death penalty imposed on the prisoner and his family. Recalling a former parishioner who had been erroneously sentenced to death for rape before being acquitted by the Supreme Court the Bishop said,

*“...just the thought that he was going to be electrocuted, that he was among the dumb, so to speak, was such a terrible torment, not only for him but to his family. It was probably like dying two times, and when you consider his family, the death that they die, dying many times for something which proved in the end to be wrong.”*

***Moves to Reimposition***

Within less than a year, members of the armed forces, citing ‘*compelling reasons involving heinous crimes*’, began lobbying for the death penalty to be restored by Congress. General Fidel Ramos, then Chief of the Armed Forces of the Philippines (AFP) and later elected President of the Philippines in 1992, was prominent among those calling for the reintroduction of the death penalty for rebellion, murder and drug-trafficking.

The military took a lead in submitting recommendations to the President and the Congress for the provision of the death penalty primarily as a means to combat the

intensifying CPP-NPA offensives, which included urban assassination campaigns. General Ramos told Congress that a key reason behind low morale affecting the armed forces - which he believed was helping fuel repeated coup attempts by right-wing military rebels - was a lack of legislative support for the AFP's anti-insurgency campaign. To counter this Ramos called for the restoration of the death penalty for serious crimes and the introduction of a national identification system.

A bill was put before Congress in mid-1987 to reinstate the death penalty for 15 'heinous crimes' including murder, rebellion and the import or sale of prohibited drugs. The military pressure was acknowledged, with the bill's preamble reading:

*'In the light of rising and mounting tide of criminality and lawlessness [...] particularly the pestering insurgency and the alarming incidents of violent crimes, and considering further the observations and recommendations coming from the military and police as well as from the courts of justice it is hereby declared that for compelling reasons of public order and national security the death penalty shall be imposed for certain heinous crimes'.<sup>1</sup>*

The bill cited recent right-wing coup attempts as an example of '*the alarming deterioration of the peace and order condition throughout the country*' and argued for the death penalty both as an '*effective deterrent against heinous crimes*' and '*as a matter of simple retributive justice*'.

While supporters in Congress promoted the bill as a counter-insurgency measure it was quickly acknowledged that the death penalty would not in fact deter politically-motivated crimes. Sedition was therefore left off the list of 'heinous' crimes, and 'rebellion' dropped in a later amendment. Instead supporters argued that 'retributive justice' was more important than deterrence, and the terrorist "should not be given the chance to escape and to kill again".

Amnesty International and Philippine anti-death penalty groups testified against the bill but in 1988 the House of Representatives voted for restoration by 130 votes to 25, and in 1989 three similar bills were put before the Senate. One of these bills, certified by President Aquino as urgent on the prompting of Defence Minister Fidel Ramos in the aftermath of one of the most serious right-wing military coup attempts, once again called for the death penalty for rebellion, as well as for sedition, subversion and insurrection. In 1990 the Senate suspended the vote for a year, and in 1991, amidst vigorous public

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<sup>1</sup>House Bill 295.

debate and intense lobbying by anti-death penalty groups, did not agree to move to a decision. Senators opposed to capital punishment, notably Senator Rene Saguisag, argued forcibly that Philippine history had shown that the application of the death penalty been tilted against the poor and disadvantaged and in favour of the rich and influential.

However in the preceding five years public opinion, articulated by leading political figures, had been flowing in the direction of support for the death penalty as a form of 'retributive justice'. The belief that some crimes were so horrendous that they '*cried out to heaven for vengeance*', and that the death penalty was the only punishment commensurate with such offences, gained ground. A significant incident occurred in 1990 when President Aquino visited the parents of two young girls who had been raped, murdered and mutilated in Pangasinan. Newspapers headlined reports that the President had subsequently '*vowed to work hard for the reimposition of the death penalty for heinous crimes*'.

A series of horrific, widely publicised crimes including rape, murder and kidnapping-for-ransom reinforced public fears that lawlessness and criminality had reached unprecedented levels. Aside from the bloody coverage of the Manila daily tabloid press, a number of high-profile murder cases, some perpetrated by corrupt police or town mayors and at times involving children of middle-class families, were very widely reported and increased the sense of public outrage. The view that the death penalty was necessary to fight such criminality, rather than being promoted as a tool in the anti-insurgency campaign, gained ascendancy.

#### ***President Fidel Ramos 1992 -***

Following his election as President in 1992 Fidel Ramos declared in his first State of the Nation address that the restoration of the death penalty would be regarded by his government as a legislative priority. Citing his government's aim of rebuilding foreign investor confidence and the need to address public demands for a restoration of law and order Ramos urged Congress to take speedy action.

As the congressional debate resumed Ramos agreed not to include 'political' offences such as rebellion in the measures because of the adverse impact this would have on 'national reconciliation' in the context of an official peace process - including offers of amnesty - with the major armed opposition groups. However, the list of crimes to be considered 'heinous' was expanded to reflect the administration's emphasis on economic issues. Ramos proposed that, in addition to crimes such as drug-trafficking, murder, kidnapping and other crimes involving the use of unlicensed firearms, 'economic' offences including smuggling, illegal export of foreign currency and bribery should be included.

Despite opponents arguing that the bill's proponents had failed to prove 'compelling reasons' for the restoration of the death penalty as required by the Constitution, that inadequate crime statistics had led to a failure to clarify before Congress the real nature and trend of criminality, and that there were persistent reports that corrupt police regularly planted evidence in criminal investigations, both House and Senate eventually voted in favour of the death penalty. A joint measure, Republic Act 7659, restoring the death penalty was agreed by Congress and signed by President Ramos in December 1993 - taking effect on 1 January 1994.

**Republic Act 7659:  
An Act to Restore the Death Penalty on Certain Heinous Crimes**

Under the Act the death penalty may be imposed for 13 "heinous crimes": treason, piracy, bribery, parricide, murder, infanticide, kidnapping and serious illegal detention, robbery with violence, arson, rape, plunder (of at least Peso 50m (\$2m)), certain drugs offences<sup>2</sup>, theft of a vehicle with rape or murder.

For most crimes the imposition of the death penalty is **optional** with the court given the choice of penalties ranging from designated 'short' and 'medium' periods of imprisonment, *reclusion perpetua* (life imprisonment)<sup>3</sup> to death.

Under certain aggravating circumstances - including when an offender takes advantage of his/her public position to extort bribes or violate the Dangerous Drugs Act, or when murder is committed in the course of rape or kidnapping for ransom - a **mandatory** death penalty is stipulated.

The death penalty cannot be imposed on those aged under 18 or over 70 at the time of the crime.

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<sup>2</sup> The Act provides for the death penalty as an optional punishment for the unauthorized importation, sale, administration, transportation, manufacture possession or use of drugs where the quantity of drugs involved is 40 grams or more of opium, morphine, heroin or cocaine; 50 grams or more of marijuana resin; 750 grams or more of marijuana; and 200 grams or more of 'shabu' (methamphetamine hydrochloride). Death can also be imposed on those who cultivate marijuana or opium poppy. The death penalty is mandatory regardless of the quantity of the drugs if the victim of the offence is a minor, or if the offender is a government official or member of the armed forces or police.

<sup>3</sup> *Reclusion perpetua* is defined as imprisonment from twenty years and one day to forty years.

Death sentences are automatically reviewed by the Supreme Court sitting *en banc*. Supreme Court confirmation of an execution requires a majority, not a unanimous, vote. Executions are to be carried out no earlier than one year and no later than 18 months following confirmation of the sentence. Prisoners facing execution may also submit a petition for clemency to the President.

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*Republic Act 8177, approved in 1996, stipulated that the method of execution should be by lethal injection.*

### 3. WHO ARE THE PRISONERS ON DEATH ROW?

Since January 1994 more than 400 people have been sentenced to death in the Philippines. By September 1997 six prisoners had had their sentences confirmed by the Supreme Court - and the countdown in the statutory 12 to 18 month waiting period between confirmation and execution had begun. The Supreme Court has ruled that the execution of Leo Echegaray (see Appeal Case), the first prisoner to have his death sentence confirmed, can take place at any time after 27 February 1998 and before 28 August 1998.

The cases outlined briefly below, together with the Appeal Cases listed in the Attachment, seek to illustrate more clearly the lives and circumstances of a small number of the people who lie behind the statistics.

**Fernando Galera**, a 26-year-old fish vendor, who was sentenced to death for rape and robbery in April 1994. He was the first person to be sentenced to death since restoration of the death penalty. He is reported to have been too poor to afford to pay for a competent lawyer.<sup>4</sup> He also claimed he did not have enough time to prepare for his defence before his trial. His request for a re-trial, to allow new witnesses to come forward, was refused in May 1994.

**Adoracion Sevilla**, a 52-year-old woman, who was sentenced to death with her male business partner, Joel Gaspar, in February 1996 for possession of four kilos of marijuana leaves. The trial judge is reported to have said that the court had no other alternative than to impose the death penalty to serve as a deterrent to others.<sup>5</sup> Adoracion

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<sup>4</sup>Philippine Political Update, May 1994

<sup>5</sup>Philippine Daily Inquirer, 19/2/97

Sevilla is suffering from cervical cancer. She is one of seven women who have been sentenced to death for drugs offences or murder. All are believed to have committed their alleged crimes with male accomplices who were also sentenced to death. Female death row prisoners are held at the Correctional Institute for Women in Manila.

**Richard Ong**, aged 33, who was sentenced to death in August 1996 for his alleged role in a highly publicized murder case. In an interview with Amnesty International, Richard Ong claimed he was blindfolded, tortured with electric shocks and threatened with death by agents of the Presidential Anti-Crime Commission in order to force him to confess. He claims he is innocent.

**Abe Valdez y dela Cruz**, a 25-year-old farmer who was sentenced to death in February 1997 under the Dangerous Drugs Act for planting seven marijuana plants. He claimed that he was unaware he was breaking the law and that the plants were intended to be used for herbal medicines. According to a press report, he did not understand the verdict, which was announced in English, until it was translated for him by journalists.<sup>6</sup> He is also reported to have said that the police threatened him into confessing that he owned the marijuana plants.

**Arnel Alicando**, an illiterate butcher who was sentenced to death for rape and murder in July 1994. The Supreme Court later sent his case back for re-trial after finding that the court proceedings had not been translated from English, which he did not understand, into Waray, his native language. In June 1996 the Iloilo Regional Trial Court

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<sup>6</sup>The Weekly Vizcaya Advocate, 25/2/97.

sentenced him to death a second time, reportedly on the basis of testimony by one lone witness.<sup>7</sup>

**Hideshi Suzuki**, a 38-year-old Japanese man is one of six foreign nationals on death row. He was sentenced to death for trafficking in marijuana in December 1994. He has claimed that the drugs were planted on him by police officers. Narcotics officers reportedly questioned him in English, a language he could barely understand<sup>8</sup>. Other foreign nationals under sentence of death include four Taiwanese men convicted of drugs

## 4. AMNESTY INTERNATIONAL'S CONCERNS

offences and a Libyan national convicted of kidnapping and rape.

### 4.1 THE LESSONS OF THE PAST

On the eve of the possible renewal of executions in the Philippines after 20 years it is clear that the concerns surrounding the application of the death penalty in the past remains pressing today. These concerns include:

- The risks of judicial error - especially in the light of continued reports of illegal methods including the planting of evidence, and the use of ill-treatment and torture to secure confessions from criminal suspects.
- Evidence that the death penalty continues to be applied in an arbitrary, inconsistent way which falls disproportionately on poorer, disadvantaged sectors of society.
- The safeguards necessary to ensure fair trial, which are especially important when the punishment is irrevocable - and which include the right of the accused to have access to competent legal counsel at every stage of proceedings - are not being rigorously and consistently upheld.

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<sup>7</sup>The Philippines Daily Inquirer, 4/6/97.

<sup>8</sup>Japan Times, 8/2/95.



In a 1989 report<sup>9</sup> Amnesty International highlighted seven cases from the pre-abolition period where mistakes by lower courts - eventually exposed by Supreme Court reviews - led to the death penalty being imposed. The cases underscored the inevitable risks of human error in the judicial process and how, in practice, the death penalty was imposed in an arbitrary, selective way. The cases also drew attention to the human suffering of the falsely convicted - most of whom had to endure imprisonment under sentence of death for over ten years before being acquitted by the Supreme Court.

Moreover fears remain that innocent people may have been executed. In one case, involving a farmer named Eusebio Molijan, sentenced to death for multiple murder during an attempted robbery in 1950 and executed by electrocution in 1958, there remains concern that he may have been falsely convicted. Eusebio Molijan was convicted on the strength of a written confession which he retracted during his trial, saying he had been punched in the stomach and beaten with a piece of wood by police to force him to confess. He also claimed he had been forced against his will to participate in the robbery and that another man had planned and carried out the murders. The Supreme Court acknowledged that there was insufficient evidence to prove that Molijan was the instigator of the crime, but his death sentence was confirmed.

The risks of executing the innocent were highlighted by the case of two men convicted of piracy by military tribunals who were due to be executed in 1976. Late on the night before the execution one of the prisoners, an elderly man named Felipe Santos, told the prison chaplain that he was innocent. The chaplain went to the adjoining cell and asked Santos' co-accused about Santos' involvement. The co-accused admitted that he had involved Santos only so as to have a 'companion in my misery'. After hurried attempts to contact the authorities, the execution, due to take place at 3.00 pm, was called off by President Marcos at 2.55 pm.

## **4.2 UPHOLDING INTERNATIONAL STANDARDS**

By September 1997, less than four years after capital punishment was restored in the Philippines, over 400 people had been sentenced to death. The lower courts are handing down death sentences with increasing frequency. There are reports that many lower court judges, responding to popular calls for a strong response to crime, are tending to exercise their discretionary powers in imposing death sentences, rather than giving life sentences. Some observers also claim that once the crime is labelled 'heinous' in court, and the weight of proof appears to be moving against the defendant, a momentum can be unleashed which works against the need to uphold the most stringent procedures to

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<sup>9</sup>See Philippines: Case Studies in the use of the Death Penalty: ASA 35/08/89.

minimise the risks of a false conviction. Amnesty International has documented cases in which trial irregularities have taken place. Such tendencies are exacerbated by the fact that many defendants, from poor or disadvantaged backgrounds, cannot afford counsel with a proven record of competence.

Yet in capital cases, where there is a possibility of an irrevocable execution, it is critical that the defendant is afforded a fair trial. Human rights standards adopted by the UN have repeatedly insisted that those charged with capital crimes must be extended all possible safeguards to ensure a fair trial. The UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty<sup>10</sup> make clear that these safeguards should '*at least be equal to those contained in Article 14 of the International Covenant on Civil and Political Rights (ICCPR)*'<sup>11</sup>.

The UN Safeguards, which apply to all UN member states, also provide that capital punishment may only be carried out pursuant to final judgement by a competent court in which defendants are entitled to adequate legal assistance at all stages of the proceedings, and have the right to appeal to a higher court and the right to seek pardon or commutation of sentence. In all cases, the death sentence may only be imposed when the guilt of the person charged is based on clear and convincing evidence leaving no room for an alternative explanation of the facts.

The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has reiterated that

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<sup>10</sup> Adopted by the UN Economic and Social Council (ECOSOC) in 1984 (Resolution 1984/50) and endorsed by the General Assembly in the same year.

<sup>11</sup> Standards for fair trial set forth in ICCPR Article 14 include: the right of anyone facing a criminal charge to a fair and public hearing by a competent, independent and impartial tribunal; the right to be presumed innocent until proved guilty; the right to be informed promptly of the nature and cause of the crimes with which the defendant is charged; the right to have adequate time and facilities for the preparation of a defence; the right to communicate with counsel of the defendant's choosing; the right to free legal assistance for defendants unable to pay for it; the right to examine witnesses for the prosecution and to present witnesses for the defence; the right to free assistance of an interpreter if the defendant cannot understand or speak the language used in court

*"proceedings leading to the imposition of capital punishment must conform to the highest standards of independence, competence, objectivity and impartiality of judges and juries, in accordance with the pertinent international legal instruments. All defendants facing the imposition of capital punishment must benefit from the services of a competent defence counsel at every stage of the proceedings. Defendants must be presumed innocent until their guilt has been proved beyond a reasonable doubt, in strict application of the highest standards for the gathering and assessment of evidence. In addition, all mitigating factors must be taken into account."*<sup>12</sup>

In the Philippines the automatic review of all death penalty cases by the Supreme Court forms an essential, though not infallible, safeguard in accordance with the principles of the UN Resolution. However there are continuing and serious concerns related to the guarantees of a fair trial for death penalty by the courts at the regional and local level. There is mounting concern that lower court judges, to some extent affected by a political and popular climate calling for rapid sentencing, are not ensuring that death penalty cases adhere to the legal safeguards defined in Article 14 of the ICCPR.

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<sup>12</sup> *Extrajudicial, summary or arbitrary executions: Report by the Special Rapporteur..*, UN document No. E/CN.4/1997/60, 24 December 1996, paragraph 81.

### 4.3 REFORMING THE CRIMINAL JUSTICE SYSTEM

Public confidence in the integrity and effectiveness of the criminal justice system - undermined under President Marcos by patterns of political pressure, corruption, extended delays and witness intimidation - failed to recover under President Aquino and remains weak today. President Ramos has identified reform of the judicial system as a government priority. In October 1996, addressing the Integrated Bar of the Philippines and other lawyers' groups, Ramos linked weaknesses in the judicial system to the deterioration in law and order and stated:

*"...the wheels of justice grind much too slowly. Many investigators and prosecutors are incompetent. The rich and powerful, as well as government officials, set a bad example by flouting the law".*

The government has focused on the criminal investigation agencies, especially the PNP, and made repeated efforts to improve the credibility and effectiveness of the police service by removing officers alleged to be corrupt or to have violated human rights. Nevertheless corruption within the PNP has been highlighted by a number of cases of PNP personnel being involved in kidnap-for-ransom and bank robbery gangs, or being linked to protection rackets for such gangs. In one high-profile case, regarded by many as representing the tip of the iceberg, Vice President Joseph Estrada, head of the Presidential Anti-Crime Commission (PACC), at a televised news conference in 1992, arrested the former head of Manila's anti-kidnapping task force Chief Inspector Jose Pring and Chief Inspector Timoteo Zarcal of the Criminal Investigation Service Command for involvement in kidnap-for-ransom gangs. Zarcal was dismissed and Pring relieved from the police force after an internal investigation: a judge later dismissed criminal charges against them because of the improper manner of their arrest. The PACC itself came under sharp public criticism after reports emerged that its members were involved in the 'salvaging' (the local term for extrajudicial execution) and torture of criminal suspects - particularly those suspected of involvement in kidnap gangs.

There are serious concerns that some of the illegal methods used in the past by the security forces against political suspects to secure confessions - including intimidation, ill-treatment and torture - continue to be used today by the Philippine National Police (PNP) and other criminal investigation agencies against criminal suspects. Some Filipino observers in Metro Manila have suggested that ill-treatment or torture of criminal suspects is in danger of becoming police 'standard operating procedure'. Those particularly vulnerable include people suspected of involvement in high-profile 'heinous' capital crimes, such as kidnapping for ransom or rape with murder, where the police are under official or public pressure to 'solve the case quickly'.

Within this context Amnesty International and other Philippine human rights groups were dismayed that President Ramos, as he announced in late 1995 the creation of a special inter-agency task force - comprising elements from the PNP, AFP and National Bureau of Investigation (NBI) - to weed out police or military officers found to be corrupt or to have violated human rights, at the same time called for the Supreme Court to speed up the confirmation of death sentences. The President was supported by Senator Ernesto Herrera, author of the bill restoring the death penalty, who stated the upsurge in heinous crimes could partly be blamed on the slow enforcement of the death penalty, and called for Congress to reduce the mandatory waiting period between final Supreme Court confirmation and execution to six months.

Amnesty International acknowledges that the authorities are facing the challenge of serious, frequently violent crime. However there is no indication that the death penalty will act as an effective deterrent and have a marked effect on future crime rates. After the death penalty came into effect in January 1994 crime levels did not decline significantly. Rather, the commission of rape is reported to have risen by 40 per cent in 1994 and by 44 per cent in 1995, while kidnappings and bank robberies continued at a high level. In 1994 the nationwide crime rate was reported to have declined by only 1 per cent, while the average monthly crime rate in Metro Manila rose by over 6.5 per cent in 1994 from the previous year.<sup>13</sup>

Public anxiety over violent crime, and concerning police-officers' involvement in human rights violations, is being addressed not by effective institutional reforms - including the provision of improved police training, remuneration and crime-detection equipment - but by an official policy advocating the execution of prisoners convicted of capital offences. Though the flaws in the criminal justice system are clearly visible the death penalty is presented by the authorities, and accepted by much of the public, as an answer to the rising crime rate. As Senator Ernesto Herrera, the author of the bill restoring the death penalty, commented in 1997 on announcing a report that up to 400 people have now been sentenced to death:

*“ It seems that judges are resorting to the death penalty with ruthless efficiency. I believe it is their way of declaring war against rising criminality’.*<sup>14</sup>

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<sup>13</sup> Statistics quoted in the Free Legal Assistance Group (FLAG) 'Position Paper on the Proposal of Death by Lethal Injection', October 1995.

<sup>14</sup> Agence France Press (AFP) report cited in the South China Morning Post 2 June 1997.

#### **4.4 TORTURE AND ILL-TREATMENT: THE USE OF PHYSICAL AND MENTAL DURESS TO EXTRACT CONFESSIONS**

The Philippine Constitution<sup>15</sup> states that “*No torture, force, violence, threat or intimidation, or any other means that vitiate the free will*” shall be used against any person under investigation for the commission of an offence. Any evidence or admission obtained by these means is inadmissible as evidence.

Yet one of the most pressing of concerns relating to the inherent risk of judicial errors in death penalty cases in the Philippines involves allegations that unlawful methods are at times being used to extract confessions. There are persistent reports that the PNP and other investigative agencies periodically flout established legal procedures during criminal investigations. The police practice of arresting criminal suspects without warrants is widespread. Criminal suspects are frequently ‘invited’ for questioning and then held in legal ‘administrative detention’ before the laying of formal charges, by law required within 12-36 hours of the arrest depending on the seriousness of the charge. It is during this period that suspects are most vulnerable to ill-treatment and torture as police interrogate them to secure a confession, or coerce suspects to identify and incriminate their suspected ‘accomplices’.

Judges play a critical role in exposing and acting against such violations. When police attempt to short-circuit and accelerate the judicial system by extracting forced confessions, and are then exposed, judges reject such denials of due process and send the affected cases back for reinvestigation. The dispensation of justice, already too slow in the public’s eye, is slowed still further.

Interviews conducted by Amnesty International representatives in April 1997 with criminal suspects - involving both capital and non-capital offences - point to a continuing pattern of ill-treatment and torture by law officers during the interrogation period, notably in the Metro-Manila area. These cases reveal common characteristics: criminal suspects are often picked up by unidentified men in plain-clothes without warrants. Suspects are often quickly handcuffed, punched and kicked and forced into waiting cars. They are mostly blindfolded with masking tape or cloths, before being taken to police headquarters, local police precincts, or, in some instances, to secret places of detention.

During interrogation, which may be staggered over a period of days, suspects report being punched with fists (at times with bullets held between the interrogator’s

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<sup>15</sup> Article 3, Section 12

fingers) and being beaten with rifle-butts or batons wrapped in newspaper. Pistol barrels are placed against the head or in the mouth and the suspect threatened with death. Bullets are put between the fingers and then the hand squeezed. Plastic bags are put over the head and held tightly at the back to suffocate the detainee. This can be repeated six times or more. Suspects also have their heads forced down toilet bowls or into water containers. Pieces of cloth are placed over the head and water dripped on to create a gradual suffocation. Alternatively water is poured directly into the nostrils or mouth. At times interrogators simultaneously stand, or place weight on the stomach, to intensify the suspect's experience of suffocation.

Electric shocks are also used, with water being poured over the body and then bare electric wires touched against the genitals, lips, ears, arms or legs. At times the suspects are forced to put their feet in pails of water, and the electric current passed through the water.

Edgar Maligaya, a 28-year old former parolee now on Death Row, was picked up in January 1996 by plainclothes police at Manila City Jail where he used to return regularly as a volunteer guitarist in the prison chapel. Edgar Maligaya alleges that he was blindfolded, punched and pushed into a car where his head was held down between the front seats. The car was driven to a location he suspected was a hotel and he was taken into an air-conditioned, carpeted room where he was interrogated about his alleged involvement in the fatal shooting of a Filipino-Chinese businessman in 1995.

During the interrogation, which was staggered over a period of a night, Edgar Maligaya claims he was punched hard when he failed to answer a question 'correctly'. He was then pushed to the floor with his shirt pulled off, his trousers round his knees and his hands cuffed behind his back and beaten on the stomach with a wooden baton wrapped in paper. A plastic bag was placed over his head and held tight at the back of the neck until he began to gag: the process was repeated more than five times. On being threatened with electric shocks Edgar Maligaya agreed to confess. A typewriter was brought to the room and a confession typed up. Maligaya signed the papers without reading them. Maligaya's case came to trial and he was sentenced to death in August 1996. The Supreme Court has yet to review the verdict. A friend of Maligaya, Expedito Bolima, also suspected of involvement in the crime, claims to have been arrested by police the same night and taken to an unidentified hotel room where he was interrogated and allegedly subjected to various forms of torture, including beatings, electric shocks and having his face held under the water in a toilet bowl. Expedito Bolima finally agreed to confess and his trial is continuing. Both Maligaya and Bolima claim that they were pressured to incriminate other alleged members of the group suspected of killing the businessman.

Dante Piandiong, whose death sentence has been confirmed by the Supreme Court, has also made allegations of torture. Dante Piandiong, a 26 year old old fish-vendor was sentenced with two alleged accomplices, Jesus Morillos and Archie Bulan, for staging a robbery of a passenger jeepney in which a policeman was shot dead. Dante Piandiong claims that he was innocent and that he was tortured during interrogation to secure a confession - which he refused to give. The torture allegedly included being badly beaten, being suffocated by having water dripped onto a cloth placed over his face and through electrocution by wires being placed on his genitals.

The Philippines, as party to the UN Convention Against Torture (CAT)<sup>16</sup>, has a duty to ensure that any individual who alleges he has been subjected to torture has the right to complain to, and to have his case promptly and impartially examined by its competent authorities.

The allegations recorded by Amnesty International not only raise the most serious concerns over whether those facing the death penalty can be ensured a fair trial, but also lend credence to a widely reported public belief that PNP and other law enforcement agencies continue to commit grave human rights violations in the course of investigations against criminal suspects, and that many of these alleged violations are not properly investigated. In 1995 and 1996 the Commission on Human Rights (CHR) named PNP members as topping the list of those responsible for alleged human rights violations reported to it.

#### **4.5 FAIR TRIAL: JUSTICE DENIED?**

*'The administration of justice in this country needs a stronger foundation not in terms of restoration of the death penalty, but in the strict implementation of penal laws and the equitable administration of justice, in accordance with international human rights laws'.<sup>17</sup>*

The Philippine Constitution provides that those accused of crimes shall be informed of charges against them, have the right to counsel, and be provided with a speedy and public trial. Defendants are presumed innocent and have the right to confront witnesses against them, to present evidence and to appeal their convictions. There is no jury system under Philippine law and all cases are heard by judges.

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<sup>16</sup>The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, approved by the UN General Assembly in 1984. Article 13

<sup>17</sup> Philippine Commission on Human Rights - Resolution on the Death Penalty (No. A91-033) 1991.



There is apprehension that, in practice, the implementation of these constitutional provisions has been weakened and that the Philippines Government's obligation - as a party to the International Covenant of Civil and Political Rights (ICCPR) - to adhere, at a minimum, to the provisions of ICCPR Article 14 in death penalty cases is not being consistently upheld. The application of the death penalty in the Philippines suggests that, in practice, everyone is not afforded equal protection under the law as guaranteed by the Constitution<sup>18</sup>.

In addition to concerns over the corrosion of the integrity of the criminal investigation process - heightened by examples of police offices violating human rights or being corrupt or inefficient - there is also concern over some of the procedures and practices of the courts, primarily at the local or regional trial court level.

While many recognise the Philippine judiciary's long-established traditions of defence of the rule of law it is evident that the institution as a whole has come under increased criticism in recent years. Public confidence has been shaken by open charges of corruption and failures to uphold strict impartiality - which have been levelled at judges up to the Supreme Court itself, specifically in relation to commercial cases. In 1994 Vice President Estrada famously declared a campaign against allegedly corrupt judges whom he labelled "*hoodlums in robes*".

Moreover there is a widely-held perception that the judicial system, notoriously slow and inefficient, works in favour of the wealthy and influential and against the poor and disadvantaged. Although a number of important convictions in recent years - notably the conviction in 1995 of the Mayor of Calauan, Antonio Sanchez, for the rape and murder of a university student and the killing of her boyfriend - raised hopes that those with traditional influence over police, public officials or judges, who could enjoy impunity would be brought to account, there is still a widely held perception that court procedures and rulings can be arbitrary and that the poor and ill-educated are vulnerable to the vagaries of a system they cannot afford, and do not understand.

The length of trials and the subsequent costs of retaining private counsel for extended periods weighs heavily against the poor. Numerous technical delays and frequent failures of judges and prosecutors to appear cause trials to be frequently prolonged.

The provision of counsel from the Public Attorney's Office (PAO) for those unable to afford private lawyers has also been criticised - especially in death penalty cases. Some PAO lawyers, often underpaid and under-resourced, have been accused of not having

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<sup>18</sup> Section 1, Article 111

the necessary competence and experience for the vigorous and searching defence especially important in a capital case.

Defendants are at risk of being inadequately represented by lawyers untrained in capital punishment law, or because poorly paid attorneys often fail to investigate their client's background or raise relevant mitigating circumstances at the sentencing hearing. A number of death penalty people convicted of heinous crimes also complain that their assigned PAO lawyers appeared to regard them with a negative bias for being part of a perceived social or criminal underclass, had limited interest in their cases, and did not exert consistent and regular efforts on their behalf.

A statistical survey<sup>19</sup> of death row prisoners issued in May 1997 by the Coalition Against the Death Penalty in the Philippines (CADP) - an alliance of abolitionist NGOs - confirmed that the death penalty is being applied disproportionately against the poor, disadvantaged and ill-educated. There is a grim realisation that the patterns of the past appear about to be repeated - a study of the pre-abolition period showed that of the 82 prisoners executed between 1926 and 1976, 92 per cent came

#### **Coalition Against the Death Penalty survey**

from the lower socio-economic sector.

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<sup>19</sup> CADP: 'Some Statistics on Death Row since the Return of the Death Penalty' (Jan 1994 - 1 May 1997)

**‘Some Statistics on Death Row’, May 1997**

By May 1997 a total of 323 male death penalty prisoners were recorded as having been transferred to death row at the National Penitentiary at Muntinlupa, with three women death penalty prisoners held at the Women’s Correctional Institute at Mandaluyong.

**Education** - Of 325 prisoners surveyed 47 per cent had been educated to Elementary or primary level, 36 per cent to High School level and only 13 per cent to College level.

**Income and Occupation** - Of 265 prisoners surveyed 69 per cent earned less than 5,000 pesos a month. Three percent of the prisoners earned less than the official designated poverty line of 740 pesos a month. Over 67 per cent of 320 prisoners surveyed worked in the Agricultural, Construction or Transportation sectors.

**Types of Offences** - Of 325 prisoners surveyed over 50 per cent offences related to Rape and its related crimes, 21 per cent related to Murder, 13 per cent to Homicide and its related crimes and 4 per cent to drugs-related offences.

**Legal Representation** - Of 279 death row prisoners surveyed 38 per cent had no legal representation for the review of their sentence by the Supreme Court, 28 per cent retained private lawyers, 20 per cent were represented by Free Legal Assistance Group (FLAG) human rights lawyers and 12 per cent by lawyers from the Public Attorney’s Office (PAO).

There is also disquiet over allegations that some judges in the lower courts, who may be strongly supportive of the death penalty, are failing to combat a climate of opinion both inside and outside the court room suggesting that a person under strong suspicion of committing an unsolved heinous crime deserves to be found guilty and sentenced to death in a rapid and decisive manner- undermining the presumption of innocence. In an attempt to meet public demands for a more rapid delivery of justice, a number of regional trial courts have been designated ‘special courts’ and assigned to try cases involving heinous crimes within an allotted time limit. Amid public outrage at the kidnapping and murder of 18-year-old student Manuel Luis Ongpin in March 1996 a judge of one such ‘special court’, which had been allotted two months for the trial and one month for a decision, conducted hearings at an accelerated pace. Three men - Richard Ong, Raymundo Baricaua and Asenio Corpuz - were sentenced to death after five weeks of hearings. The judge later criticised the PNP and National Bureau of Investigation (NBI) for serious failings - both in terms of methodology and use of equipment - in their handling of the investigation.

The particular need in capital cases for ‘reasonable doubts’ to be entertained in a rigorously dispassionate and impartial manner appears at risk of being prejudiced by a pervasive desire for the death penalty as ‘deterrence’ to other criminals. References to

‘hanging judges’ and members of the bench belonging to groups such as the ‘Guillotine Club’ - a group of judges in favour of the death penalty - reinforce such disquiet. In addition, reports from the provinces suggest that local lawyers are increasingly reluctant to defend those on capital charges, with one court judge commenting that lawyers avoid defending such cases “*because the chances of winning are slim*”.<sup>20</sup>

There are accounts that many of those who protest their innocence but have had the death sentence imposed against them had a very limited understanding of the direction and course of their trials, and were astounded and deeply shocked at the eventual verdict and sentence - not only because the balance of evidence had unexpectedly been found to weigh against them, but also because the judge announced death as the punishment prescribed by law. There are also reports of court proceedings being conducted mostly in English, as is normal, with inadequate provisions for translation into the various regional languages or dialects used as the first or only means of spoken communication by the overwhelming majority of death penalty defendants. In one case Arnel Alicando, an illiterate butcher, was sentenced to death for rape and murder in July 1994 despite not understanding the court proceedings which were not translated from English to Waray, his native language. The Supreme Court later sent his case to a lower court for retrial, where he was sentenced to death again.

#### **4.6 REVIEW BY THE SUPREME COURT**

Because of concerns over irregularities during police criminal investigations and over the fairness of trials by the lower courts, the safeguard role of the Supreme Court in automatically reviewing all death penalty convictions is of critical importance. This is borne out by a Free Legal Assistance Group (FLAG) study of pre-abolition death penalty cases from 1976-86 which found that of 463 cases where the death penalty was imposed by the lower courts, the Supreme Court confirmed only 86 cases.

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<sup>20</sup> Manila Times 8 May 1997 ‘Few lawyers for many death row candidates’.

Unlike other judicial systems such as that of the United States, where there are a number of appeal avenues - including courts at the local, state and federal levels - in the Philippines all death penalty cases have only one level of judicial appeal and go directly to the Supreme Court<sup>21</sup>. Of the 23 capital cases whose reviews had been ruled on by the Supreme Court by September 1997 six sentences were confirmed, four prisoners were acquitted, six had the trial court decisions set aside and their cases remanded for re-trial, and seven had their death sentences commuted to imprisonment.

The burdens borne by the Supreme Court, including both capital and non-capital cases, are already onerous. There is concern that with over 350 death penalty cases waiting for review the Supreme Court may at times be unable to devote the same level of rigorous attention to each and every case. The risk that an unsafe conviction may not be detected - and that an innocent person may be executed - is constantly present.

By law the full Supreme Court of 15 justices *en banc*<sup>22</sup> must rule on death penalty cases. A majority, rather than a unanimous decision, is required to confirm a death sentence. As each justice faces a formidably heavy case load of both non-capital and capital cases, the Justice selected to be the *ponente*, or writer, of the case assessment for presentation to the full Court for decision potentially has very great influence.

Case load pressures mean that each individual justice is unlikely to have the time to study all the motions and pleadings of every case, but will need to rely to a large extent on the guidance and synthesis outlined in the opinion of the *ponente*. While capital cases may prove an exception to this procedural practice - with every justice seeking to apply an exceptional degree of attention to each case because of the irrevocable nature of the death penalty - there remains concern that if a single *ponente* fails to detect a potential flaw in the case, it may well never be revealed and explored by

## 5. KILLING BY LETHAL INJECTION

the wider court.

The last execution to take place in the Philippines was by electrocution in 1976. The country's only electric chair was subsequently destroyed by fire, and in February 1996 Congress approved a bill to allow those on death row to be executed by lethal

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<sup>21</sup> Following the final confirmation of a death sentence by the Supreme Court the prisoner's only remaining recourse is to petition the President for Executive Clemency.

<sup>22</sup> *En banc* - the sitting together of all the judges, or a quorum thereof, as distinguished from their separate sittings or sittings in panels.

injection. Those supporting the bill argued that execution by injection was the most 'humane' method of killing, and that it was cheaper than alternative proposals to build a gas chamber or electric chair. The lethal injection chamber was costed at \$38,000, with each injection estimated at less than \$50 per person.

A Lethal Injection Chamber has now been completed at the National Penitentiary at Muntinlupa. Reportedly using equipment from the United States, the unit is believed to consist of two 60-ft metal 'cargo' containers joined together and adapted to contain five small rooms.

It is reported that the execution room will be equipped with a bed and an injection machine, and that the prisoner will be strapped down by technical staff wearing surgical gowns and masks. A needle will be inserted into the prisoner's vein and a succession of three drugs injected from the machine. Unconsciousness is claimed to occur within 10 seconds with death following within minutes.

The first drug, an anaesthetizing barbiturate (sodium thiopental) is intended to make the prisoner unconscious; the second, a chemical paralytic agent (pancuronium bromide), to paralyse the diaphragm and thus arrest the motion of the lungs, and the third, potassium chloride, to cause cardiac arrest.

The proponents of this form of execution suggest that it is 'humane'. However if a prisoner struggles during the execution the poison may enter an artery or muscle tissue and cause pain. If the components of the lethal solution are not balanced or they combine prematurely, the mixture may thicken, clog the intravenous line and slow the process of death. If the anaesthetizing barbiturate does not take effect quickly, the prisoner may be conscious of suffocation as his or her lungs become paralysed.

Edward Brunner MD, Professor of Anaesthesia at Northwestern University Medical School (USA), has argued that the different physiological constitution of individual prisoners requires the administration of different amounts of anaesthetizing barbiturate for the drug to always have its intended effect. Moreover if the three drugs were administered out of sequence there was a high risk that the prisoner would suffer extreme pain during a lethal injection even without the outward appearance of pain<sup>23</sup>.

In the case of Ricky Rector, executed by lethal injection in January 1992 in Arkansas (USA), witnesses to the execution reported hearing moans or outbursts coming from the execution chamber as technicians searched for almost an hour to find suitable veins in which to inject the lethal chemicals. Ricky Rector was apparently aware of the problem and helped the execution team in their task. In an article in a local newspaper<sup>24</sup> an official with the Arkansas Department of Correction said:

*"We weren't just sticking him every minute. We were looking for a new vein. We kept thinking the next one would be it...We thought we had it, but we didn't, that is unusual, but it happens. He had spindly veins that collapsed easily. We searched. We were lucky to find a vein at all".*

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<sup>23</sup> 'Under such circumstances, the prisoner will suffer an extremely painful sensation of crushing and suffocation, as the pancuronium bromide takes effect and stops his ability to breathe. The pancuronium bromide will paralyze the prisoner, rendering him unable to move or communicate in any way, while he is experiencing excruciating pain. As the third chemical, potassium chloride is administered, the prisoner will experience an excruciating burning sensation in his vein. This burning sensation - equivalent to the sensation of a hot poker being inserted into the arm - will then travel with the chemical up the prisoner's arm and spread across his chest until it reaches his heart, where it will cause the heart to stop'. Brunner Affidavit, cited in Iowa Law Review - 1997, Page 62.

<sup>24</sup>Arkansas Democrat Gazette- January 26 1992.



James Autry was executed in Texas (USA) in 1984 and *Newsweek* magazine reported that he “took at least ten minutes to die and throughout much of that time was conscious, moving about and complaining of pain”. A prison doctor who was present at the execution was later reported to have said that the catheter needle may have become clogged, slowing down the execution.

## 6. SAYING NO TO THE DEATH PENALTY

Individuals from all sections of Philippine society have sought to uphold and strengthen respect for the individual human dignity of all Filipinos by opposing the reimposition and application of the death penalty. They have included members of Church, human rights and women’s groups, politicians, academics, lawyers and journalists from the leading Philippine newspapers.

The Roman Catholic Church (82 per cent of those on death row are Catholic) and other religious groups have played a consistently important role in seeking to question prevailing political and popular opinion suggesting that the answer to criminality, especially appalling heinous offences, lay in executing prisoners. In July 1997 the Catholic Bishops Conference of the Philippines (CBCP) responded to a government announcement that the first executions would take place in early 1998 by stating that the official push for executions was

*“...an implicit admission of the government’s failure and utter helplessness in enforcing the law, improving the judicial system and setting up a truly reformative prison program”*

The Bishops also made clear their conviction that

*“The government has once again chosen to turn a blind eye to those who will ultimately be executed -- the powerless and helpless majority”.*

The CBCP’s position on the death penalty is based on the thinking articulated by the Holy See, most recently in the 1995 Papal Encyclical, *Evangelium Vitae* or Gospel of Life. In this statement Pope John Paul II brought the Church the closest it has come to calling for a ban on capital punishment by stating that, in modern societies, cases of justifiable capital punishment are ‘*practically non-existent*’. He noted that

*‘... there is a growing tendency, both in the Church and in civil society, to demand that it [the death penalty] be applied in a very limited manner or even*

*that it be abolished completely. The problem must be viewed in the context of a system of penal justice ever more in line with human dignity and thus, in the end, with God's plan for man and society'.*

In the same statement the Pope also referred positively to the abolition of the death penalty when, speaking of '*signs of hope*', he cited '*growing opposition to the death penalty, even when such a penalty is seen as a kind of 'legitimate defence' on the part of society*'. The Pope went on to state that

*'Modern society in fact has the means of effectively suppressing crime by rendering criminals harmless without definitively denying them the chance to reform'.*

In the Philippines, the Commission on Human Rights (CHR) has made clear its firm opposition to the application of the death penalty. In Resolutions issued in 1991 and 1996 the Commission rejected the argument of deterrence and retribution put forward by death penalty advocates, warned of the risk of irrevocable judicial error, and stressed that the answer to rising criminality lay in effective law enforcement, an equitable administration of justice and a responsive penal system.

In 1996 the CHR reiterated that it was mandated by the Constitution to monitor the government's compliance with international human rights treaties, including the ICCPR, and that it would work to ensure that, in accordance with such treaties, the legal procedures and safeguards guaranteeing the rights of those facing the death penalty were upheld. It resolved that legal services would be extended to those facing the death penalty - especially the economically disadvantaged - through its Legal Assistance and Visitorial Services. In March 1997 the Commission moved further and resolved to call on President Ramos to exercise his powers of Executive Clemency on those whose sentences had been confirmed by the Supreme Court, to lobby Congress to repeal the Death Penalty Act (RA 7659) and to recommend that the Senate ratify the Second Optional Protocol of the ICCPR, which states in its preamble that "*abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights*".

The Free Legal Assistance Group (FLAG), an association of human rights lawyers, has taken a lead in the task of providing experienced, competent legal counsel for as many death penalty prisoners as possible in filing submissions on behalf of prisoners whose cases are being reviewed by Supreme Court and in pursuing constitutional challenges to the use of the death penalty. In the case of Leo Echegaray, who in June 1996 became the first prisoner to have his death sentence confirmed by the Supreme Court, FLAG lawyers filed a Motion for Reconsideration. Following the Supreme Court's reconfirmation of the sentence 'with finality' in February 1997, FLAG

filed a Second Motion for Reconsideration, but the Court refused to hear it. These efforts, within the context of a rapidly accelerating rate of death penalty convictions, have placed great strain on FLAG's resources. The CADP Survey of May 1997 revealed that FLAG were able to provide counsel at the stage of Supreme Court review for only 20 per cent of the 279 prisoners surveyed, and that at this stage 43 per cent of prisoners on death row had no legal counsel at all.

The Coalition Against the Death Penalty (CADP, known also as the Association For the Abolition of the Death Penalty, AADP) represents a broad array of groups and individuals working against capital punishment. Groups in the Coalition include the CBCP-Episcopal Commission on Prisoners Welfare (ECOPRIW), Caritas Manila, the Philippine Jesuit Prison Service (PJPS), the Manila City Jail prisoner welfare group *Bisig ni Kristo*, the Philippine Alliance of Human Rights Advocates (PAHRA), Pro-Life Philippines, Amnesty International-Philippines and others.

The Coalition exerted great efforts during the Congressional debates on the death penalty Bills in 1992-3 and subsequently challenged the constitutionality of the death penalty Act before the Supreme Court in 1994. The Court rejected their appeal on the grounds that the petitioners lacked legal standing as they were not directly affected by the Act.

Since then the Coalition has sought to increase public awareness of the death penalty, to provide support for death row prisoners and their families, to stop the move towards executions and to lobby for the death penalty's total abolition. The Coalition also set up small local community groups, including both concerned individuals and prisoners' relatives, to offer practical, pastoral and paralegal support for death row prisoners and their families.

Women's groups have also played a significant role in opposing the death penalty. Nearly 50 per cent of death penalty convictions have been for rape and related 'complex' of crimes as defined by the Death Penalty Act.<sup>25</sup> The high and increasing incidence of rape is a major source of concern in the Philippines and yet women's

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<sup>25</sup>Republic Act 7659 states that the crime of rape should be punished by *reclusion perpetua*, with the option of the death penalty when the rape is committed with a deadly weapon, or by two or more people, or when an attempted rape leads to homicide. The death penalty is mandatory when rape leads to homicide, when the victim becomes insane, when the victim is under 18 and the offender is a family member, when the victim is under police or military custody, when the rape is committed in view of close family members, when the victim is a religious or a child below seven, when the offender knows he is afflicted with AIDS, when the rape is committed by members of the AFP, PNP or other law enforcement agencies, or when the victim suffers permanent physical mutilation.

groups did not call for the death penalty, or for the inclusion as rape as a capital crime. They do not agree with the view put forward by proponents of capital punishment that executions are a legitimate or effective response to patterns of rape and other serious crimes affecting women in the Philippines.

## **7. AGAINST THE TIDE- THE PHILIPPINES AND THE INTERNATIONAL COMMUNITY**

In 1987 the Philippines became the first Asian country in modern times to abolish the death penalty for all crimes. Since then many Philippine and foreign observers have been particularly disappointed that the international leadership displayed by the Philippines in support of the protection of human rights has not been sustained in relation to the death penalty.

Instead the Philippines now stands against a clearly emerging worldwide trend towards the abolition of the death penalty and has put aside its potential for regional leadership on the issue of the death penalty - of particular importance at a time of extended use of capital punishment in Southeast Asia.

Many Filipinos were proud that the Philippines was one of the principal backers and co-sponsors of the Second Optional Protocol of the ICCPR, adopted by the UN General Assembly in 1989. The Protocol, a binding international agreement, aims for the total abolition of the death penalty (outside of wartime). It proved paradoxical that at the very time the Philippines displayed leadership in furthering the move towards abolition worldwide, at home the government and legislature moved in the opposite direction. By mid-1997, 30 states had ratified the Optional Protocol, with four others signing (indicating their intention to ratify at a later date). The Philippines has not signed or ratified the Protocol.

It is evident that an increasing number of countries from widely different regions and cultural traditions worldwide continue to move towards abolition. By 1997, 98 countries and territories had abolished the death penalty in law or practice - including 57 countries which have abolished the death penalty for all crimes, 15 which have abolished capital punishment for all but exceptional crimes (such as wartime crimes), and 26 which can be considered abolitionist de facto in that no executions have been carried out for ten years or more.

Once abolished the death penalty is seldom reintroduced: since 1985 only 4 abolitionist countries have reintroduced the death penalty - the Philippines, Gambia, Papua New Guinea and Nepal.

In March 1997 a further significant step in the direction of worldwide abolition took place when the UN Commission on Human Rights adopted a resolution<sup>26</sup> encouraging states to suspend executions and called on countries which retain capital punishment “ *to consider suspending executions, with a view to completely abolishing the death penalty*”. The resolution, which was co-sponsored by Italy and 45 other countries, was adopted with a vote of 27 in favour and 11 against, with 14 countries - including the Philippines - abstaining.

At the regional level, where a number of South-East Asian governments have promoted so-called ‘Asian values’ and stressed community rights and economic priorities over individual human rights, the Philippines has in significant regards provided a positive model for human rights protection. However, the Philippine’s stance towards the death penalty serves to weaken its role and credibility in this respect, and to reduce its ability to offer support to and protection for its own citizens facing execution in neighbouring countries.

The welfare of Filipino migrant workers, estimated to number over four million, is of great concern to many in the Philippines who are conscious of persistent reports of exploitation, ill-treatment and executions of those convicted of crimes in their host country. Some of those executed are alleged to have been falsely convicted. In 1995 domestic Philippine migrant organizations reported at least 108 Filipinos facing the death penalty worldwide. The perception that Filipino workers abroad are often vulnerable to ill-treatment and unfair conviction and do not enjoy the effective protection and support of their government was a major factor behind an outburst of public anger and frustration unleashed by the death of Flor Contemplacion, a Filipino maid executed in Singapore in 1995 after conviction for murder.

Flor Contemplacion’s case, and also that of Sarah Balabagan - a 15 year-old Filipino Muslim girl sentenced to death in the United Arab Emirates in 1995 for killing her employer after an alleged rape - sparked outrage in the Philippines. Flor Contemplacion’s execution led to serious diplomatic strains between Singapore and the Philippines and, eventually, to the resignation of the Philippine Foreign Secretary.

Yet many of the concerns fuelling public anxiety and sympathy for the fate of migrant workers facing death sentences abroad are the same as those concerns

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<sup>26</sup>. Resolution 1997/12

surrounding the application of the death penalty in the Philippines itself. These include fears that it is the more vulnerable and marginalised individuals in society - those with few resources for their defence or a lack of education or knowledge about the legal system - who are most likely to be unfairly convicted and sentenced to death.

President Ramos appealed for clemency and a commutation of sentence for Flor Contemplacion, Sarah Balabagan and other migrant workers sentenced to death overseas. In a clemency appeal to the Sultan of Brunei in July 1997 on behalf of two Filipinos sentenced to death for armed robbery and illegal possession of firearms, President Ramos reportedly reflected on the hope for rehabilitation and reform of criminals, and on the sanctity of life.

*“I have appealed to his Majesty on humanitarian grounds for clemency to allow these young people... a new lease on their lives, during which they could be reformed and taught the importance of discipline, good behaviour and the sanctity of human life.”<sup>27</sup>*

The effectiveness of such appeals will be weakened in the future if the Philippines begins to execute its own citizens. Amnesty International hopes that the sentiments which motivated such appeals - including concerns over fair trials and a desire for humane treatment - will also prompt the President to extend the option of clemency and commutation to those facing execution in the Philippines.

## 8. CONCLUSION

The death penalty is no solution to the severe challenge posed by criminality in the Philippines. It is the certainty of arrest, conviction and long periods of imprisonment, not the threat of execution alone, which will act as deterrent against crime. The frustration and fear felt by many Filipinos because of high rates of crime deserves a genuine answer - not a short-term palliative offered through the death penalty as a means of retribution.

A sustained program of reform of the Philippine National Police, criminal investigation agencies and elements of the judiciary is necessary. At present law enforcers are too often perceived as corrupted or responsible for human rights violations

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<sup>27</sup> Agence France Presse (AFP) report 16 July 1997

while justice is not seen to be distributed fairly - the wealthy and influential are, in practice, not equal before the law.

The death penalty is being applied at an accelerating rate in the Philippines. As in the past it appears to be imposed inconsistently and in a disproportionate way against the poor, ill-educated and disadvantaged. The risk of judicial errors is mounting and Amnesty International is gravely concerned over the use of illegal methods, including torture, by criminal investigative officers seeking to extract confessions. Moreover, there is apprehension over inadequate safeguards, especially in the lower courts, to ensure the defendants have access to competent counsel, and that the rigorous standards of fair trial essential in capital cases are upheld.

Strapping a prisoner to a bed and injecting him or her with a cocktail of lethal drugs is brutalizing and degrading. It violates the principles of the Universal Declaration of Human Rights (UDHR), and undermines the aspiration for a renewed respect for human rights that lay at the heart of the popular movement that restored constitutional democracy in the Philippines in the 1980s.


## **9. RECOMMENDATIONS**

Amnesty International therefore urges the President of the Philippines to exercise clemency in the case of those death row prisoners whose sentences have been confirmed and to commute their sentences.

The organization, in line with the March 1997 Resolution of the UN Human Rights Committee, calls on the Government of the Philippines to suspend executions, with a view to completely abolishing the death penalty.

Amnesty International believes that such a suspension would provide a timely opportunity for the government to confront the institutional weaknesses - notably within the police and judiciary - that help contribute to high crime rates. The death penalty is no solution to criminality - rather determined institutional reform, at a time of increased economic prosperity, will best serve to confront crime while upholding justice and human rights in the Philippines.

Amnesty International is urging that:

- No executions should go ahead, and clemency should be extended to those whose sentences have already been confirmed by the Supreme Court.
  - Pending commutation of all death sentences, the government should ensure those facing the death penalty receive fair trials in accordance with international standards, including the right to legal representation of their choice at all stages of proceedings.
  - The Government of the Philippines should order an independent inquiry into the reports of illegalities at the pre-trial stage, including reports of ill-treatment and torture to coerce confessions.
  - The Government of the Philippines should sign and move to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at abolition of the Death Penalty.
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- In preparation for the permanent suspension and eventual abolition of the death penalty the Government of the Philippines should lead the death penalty debate by giving the public information about the risk of judicial error and the disproportionate application of the death penalty against disadvantaged groups. The government should launch and explain a program of police and judicial reform designed to provide an effective check to criminality.