



REPUBLIC OF THE PHILIPPINES
COMMISSION ON HUMAN RIGHTS

RESOLUTION
CHR (VI) No. POL2023-018

The Commission **RESOLVES** to **APPROVE** the following policy briefs, submitted by the International Obligations Monitoring Division, Human Rights Policy Advisory Office:

1. Catholic Opposition to the Death Penalty;
2. The Philippines' Obligations under International Law;
3. Wide-Ranging Harms of the 'War on Drugs' in the Philippines;
4. History of the Death Penalty in the Philippines;
5. Death Penalty and its (Assumed) Deterrent Effects; and
6. Preventing Reintroduction: The Anti-Death Penalty Network.

SO RESOLVED.

Done this 8th day of November 2023, Quezon City, Philippines.


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Chairperson


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Catholic Opposition to the Death Penalty¹

In May 2018, **Pope Francis** approved² an amendment to the **Catechism of the Catholic Church** concerning the death penalty:

Recourse to the death penalty on the part of legitimate authority, following a fair trial, was long considered an appropriate response to the gravity of certain crimes and an acceptable, albeit extreme, means of safeguarding the common good.

Today, however, there is an increasing awareness that the dignity of the person is not lost even after the commission of very serious crimes. In addition, a new understanding has emerged of the significance of penal sanctions imposed by the state. Lastly, more effective systems of detention have been developed, which ensure the due protection of citizens but, at the same time, do not definitively deprive the guilty of the possibility of redemption.

Consequently, the Church teaches, in the light of the Gospel, that ‘the death penalty is inadmissible because it is an attack on the inviolability and dignity of the person’, and she works with determination for its abolition worldwide.

In recent years, Catholic leaders have been among the most vocal opponents of the reintroduction of the death penalty in the Philippines.³ For instance, responding to Rodrigo Duterte’s and his administration’s efforts to reinstate the death penalty, the **Ecumenical Bishops’ Forum** lamented⁴ that ‘a vision of a country where peace and justice reigns, sovereignty is cherished and human rights are upheld... has been sliding into oblivion.’ The pastors called on the masses to ‘not cower against evil, but instead stand up against it’:

The regression of our country’s democracy, the emboldenment of a tyrannical regime and the oppression of the people are fuelling a national catastrophe... We must speak out for positive change and genuine reforms to regain our country’s democracy, restore our people’s freedom and rebuild our nation.

Similarly, the **Sanggunian Laiko ng Pilipinas** issued a statement⁵ stating that it ‘laments and decries the actions of our elected lawmakers in calling back from its grave the death penalty proposals’:

We urge you to remove the blinders that prevent you from seeing that death penalty is an offense ‘against the inviolability of life and the dignity of the human person.’ Its reimposition will single out for punishment the most vulnerable sectors of society who have no means to defend themselves. Moreover, as a country, our failure to honor our commitment, with the International Community, not to bring back [the] death penalty, will not only put us in a bad light but lose their respect as well.

¹ This brief was written by Eleos Justice (Faculty of Law, Monash University, Australia) with support from Dr Imelda Deinla (School of Law, University of New England). Capital Punishment Justice Project, in collaboration with the Commission on Human Rights of the Philippines (CHR), sub-granted Eleos Justice to coordinate this under ‘Securing the abolition of the death penalty in Africa and in countries at risk’ (European Union Grant Contract EIDHR 2019/410-631).

² New revision of number 2267 of the Catechism of the Catholic Church on the death penalty – Rescriptum “ex Audentia SS.mi”, 02.08.2018, available at <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2018/08/02/180802a.html> (last accessed Oct. 25, 2023).

³ Filipino Christian leaders have not been unanimous in their opposition of the death penalty. While some have endorsed reintroduction and, in doing so, have claimed that the Bible supports this, it has been suggested that such statements ‘disregard the reality of religious diversity in Philippine society’.

⁴ Union of Catholic Asian News, Protests greet Philippine president’s annual address, available at <https://www.ucanews.com/news/protests-greet-philippine-presidents-annual-address/85703> (last accessed Oct. 25, 2023).

⁵ CBCP News, Restorative, rehabilitative and with access to effective legal representation, available at <https://cbcpnews.net/cbcpnews/restorative-rehabilitative-and-with-access-to-effective-legal-representation/> (last accessed Oct. 25, 2023).

The **Episcopal Commission on Prison Pastoral Care of the Catholic Bishop's Conference of the Philippines** (CBCP-ECPPC) issued a statement⁶ in August 2020 expressing 'strong opposition' to the reintroduction of the death penalty in the Philippines. Citing Pope Francis, the Episcopal Commission argued that the death penalty violates the inherent dignity of the person, and 'does not render justice to the victims, but rather fosters vengeance':

In every human person is that incomparably precious breath of life from God himself... It is this Divine gift of life, sublime and unsurpassable, that the death penalty takes away. It is the breath of life, the gift of the Creator, that every judicial execution snatches and cuts shorts.

In June 2021, the Commission on Prison Pastoral Care reiterated⁷ its call:

Every person is precious as he is created in the image and likeness of God. Therefore, we firmly and unequivocally oppose the attempts of the current Congress to restore the death penalty in our judicial system. We believe that the penalty of death violates the intrinsic dignity of the person. No person is out of the possibility of redemption.

Such sentiments have been echoed by leading Church figures. In June 2020, **Father Silvino Borres** (President of the Coalition Against Death Penalty) expressed his opposition as follows:

Whenever you call for the death of another person even just in thoughts, we are already sinning against the Lord who calls everyone to life... [The] death penalty has no association whatsoever with God. In fact, it is everything that is against God, who is the God of life and love.

Bishop Joel Baylon (Chairman, Commission on Prison Pastoral Care) concurred, stating⁸ that the death penalty 'has no place in a Christian and civilized society like ours':

While we believe that offenders must be made accountable for their acts or omissions committed against their victims and the community, they should be given proper treatment to enable them to rehabilitate and change for the better... We believe that our justice system should move beyond punishment towards a justice that promotes healing and rehabilitation... We therefore call on our legislators and policy makers to pass measures that will respect life and the dignity of the human person.

Bishop Joel Baylon repeated⁹ these calls in 2022:

[W]e strongly and unequivocally oppose moves in the present Congress to restore the death penalty in our justice system... Let us affirm our option for life.

While pathways to, and motivations behind, death penalty abolition vary between countries, the Philippines' anti-death penalty campaign was led by networks of civil society organizations¹⁰ and by

⁶ CBCP News, Stand for Life, available at <https://cbcpnews.net/cbcpnews/stand-for-life/>, (last accessed Oct. 25, 2023).

⁷ Information service of the Pontifical Mission Societies, ASIA/PHILIPPINES - No to the reinstatement of the death penalty: the Church supports human dignity and the option for life, available at http://www.fides.org/en/news/70382-ASIA_PHILIPPINES_No_to_the_reinstatement_of_the_death_penalty_the_Church_supports_human_dignity_and_the_option_for_life (last accessed Oct. 25, 2023).

⁸ CBCP News, Death penalty 'is everything against God' — priest, available at <https://cbcpnews.net/cbcpnews/death-penalty-is-everything-against-god-priest/#:~:text=John%20the%20Baptist,and%20love%2C> (last accessed Oct. 25, 2023).

⁹ Politiko, CBCP Opposes Death Penalty: 'Let Us Affirm Our Option For Life', available at <https://politics.com.ph/2022/10/07/cbcp-opposes-death-penalty-let-us-affirm-our-option-for-life/> (last accessed Oct. 25, 2023).

Catholic leaders. With almost 80 per cent of the Philippines' population identifying as Roman Catholic, according to the 2020 census¹¹, firm and united Catholic opposition to the death penalty was and continues to be a powerful and enduring factor behind the Philippines remaining an abolitionist country.

¹⁰ See our accompanying brief titled 'Preventing reintroduction: the anti-death penalty network' on the role of civil society organisations' role in preventing the reintroduction of the death penalty.

¹¹ Philippine Statistics Authority, Religious Affiliation in the Philippines (2020 Census of Population and Housing), available at <https://psa.gov.ph/content/religious-affiliation-philippines-2020-census-population-and-housing> (last accessed Oct. 25, 2023).

The Philippines' obligations under international law¹

Rodrigo Duterte's administration attempted to reinstate the death penalty.² While the Bills to reintroduce the death penalty failed to pass the Senate, the reintroduction of the death penalty remains a possibility, with at least five pending House of Representatives Bills³ seeking to reintroduce the death penalty for 'heinous crimes' including drug-related offences (as of September 2023).⁴ This brief examines the Philippines' obligations under international law concerning the reintroduction of the death penalty and its consequences.

Ratification of international treaties

The Philippines ratified⁵ the International Covenant on Civil and Political Rights⁶ (ICCPR) in 1986. The following year, the country became the first in Asia to abolish⁷ the death penalty for all crimes. In 1993, the Philippines reintroduced the death penalty and resumed executions in 1999. A moratorium was announced in 2000 and continued until the death penalty was again abolished in 2006. That same year, the country signed the Second Optional Protocol to the ICCPR⁸ and in 2007 ratified it into domestic law. The Philippines did not make any reservations to the ICCPR or the Second Optional Protocol, meaning it is bound⁹ by both instruments in their entirety.

Reintroduction of the death penalty under international law

The ICCPR allows States to retain the death penalty for the 'most serious crimes', interpreted¹⁰ as 'intentional killing'. However, this exception applies only to those countries 'which have not abolished the death penalty'¹¹. Therefore, States that have already abolished the death penalty—including the Philippines—must not reintroduce it even for the 'most serious crimes'. The Second Optional Protocol prohibits all executions and obliges States Parties to take 'all necessary measures' to abolish the death penalty. These obligations are absolute—no derogation is permitted—and are therefore 'completely inconsistent with a State party taking any steps toward reintroduction of the death penalty'¹².

¹ This brief was written by Eleos Justice (Faculty of Law, Monash University, Australia) with support from Dr Imelda Deinla (School of Law, University of New England). Capital Punishment Justice Project, in collaboration with the Commission on Human Rights of the Philippines (CHR), sub-granted Eleos Justice to coordinate this under 'Securing the abolition of the death penalty in Africa and in countries at risk' (European Union Grant Contract EIDHR 2019/410-631).

² BBC News, Philippines: Duterte vows to bring back death penalty, available at <https://www.bbc.com/news/world-asia-36297583> (last accessed Oct. 25, 2023).

³ House of Representatives, House Bills and Resolutions-19th Congress, available at <https://www.congress.gov.ph/legisdocs/?v=bills> (last accessed Oct. 25, 2023).

⁴ House of Representative Bills: HB0009, HB00501, HB01543, HB02459 and HB04121.

⁵ Ratification Status by Philippines, available at https://tinternet.ohchr.org/_layouts/15/TreatyBodyExternal/treaty.aspx (last accessed Oct. 25, 2023).

⁶ Ibid.

⁷ Amnesty International, Philippines: Abolition of the death penalty, available at <https://www.amnesty.org/fr/wp-content/uploads/2021/08/asa350042006en.pdf> (last accessed Oct. 25, 2023).

⁸ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/second-optional-protocol-international-covenant-civil-and> (last accessed Oct. 25, 2023).

⁹ Commission on Human Rights, Human Rights Advisory on the Denunciation of and Withdrawal from International Treaties to Reimpose the Death Penalty, available at <https://chr.gov.ph/wp-content/uploads/2019/10/CHRP-Advisory-on-reimposing-the-Death-Penalty.pdf>, (last accessed Oct. 25, 2023).

¹⁰ Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, available at https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/CCPR_C_GC_36.pdf (last accessed Oct. 25, 2023).

¹¹ Supra at 8.

¹² In Defense of the Right to Life: International Law and Death Penalty in the Philippines, A study by the Commission on Human Rights of the Philippines* and Dr. Christopher Ward, SC** Australian Bar Adjunct Professor, Australian National University, available at https://www.righttolifeonline.org/uploads/cms_uploads/in-defense-of-the-right-to-life-il-and-death-penalty-in-the-philippines.pdf (last accessed Oct. 25, 2023).

Withdrawal from the ICCPR and the Second Optional Protocol

The Philippines cannot seek to avoid its obligations by withdrawing from the ICCPR and the Second Optional Protocol. Neither instrument contains any provision permitting withdrawal or denunciation: the Vienna Convention on the Law of 'Treaties'¹³ provides that withdrawal and denunciation from either instrument is impossible. The UN Human Rights Committee corroborates¹⁴ this, observing that for States that are party to the ICCPR and/or the Second Optional Protocol, the abolition of the death penalty is 'legally irrevocable'¹⁵. One may point to Article III, Section 19(1) of the Philippines' Constitution¹⁶, which appears to permit the reimposition of the death penalty for 'compelling reasons involving heinous crimes'. However, the Philippines cannot rely on domestic law to justify a breach of its international obligations¹⁷ because the Vienna Convention expressly forbids this.

Consequences of reintroduction under international law

As outlined above, if the Philippines were to reintroduce the death penalty for any crime, it would be in clear breach¹⁸ of its obligations under the Second Optional Protocol, and arguably the ICCPR. This could result in the UN Human Rights Committee finding the Philippines to be in violation of its obligations, through the individual complaints procedure under the First Optional Protocol to the ICCPR. Indeed, the Committee in 2002 found¹⁹ that the Philippines' application of the death penalty, following its reintroduction in 1993, violated the ICCPR. Moreover, reintroduction would constitute an 'internationally wrongful act',²⁰ and could result in legal proceedings being brought against the Philippines before an international tribunal, such as the International Court of Justice (ICJ). For instance, if the Philippines is alleged to be in violation of its commitments under either the ICCPR or the Second Optional Protocol, the ICJ may order the country to cease²¹ and reverse the violation and give assurances²² that it will not violate those commitments again.

Consequences of reintroduction beyond international law

A return of the death penalty could have significant implications for the Philippines beyond legal ramifications. Reintroduction would put the country at odds with the global trend towards abolition.²³ Doubts will be cast upon the country's respect for international law, resulting in the Philippines losing legitimacy in the eyes of the international community. Reintroduction would also put a strain on the country's relationships with States that have abolished the death penalty, given some of the abolitionist States make death penalty abolition a 'foremost priority' within its 'external human rights policy'.²⁴ For example, countries such as Australia, the UK, and Norway, as well as the EU, all have policies that stretch beyond their legal obligations by pledging to take an active role in

¹³ Vienna Convention on the Law of 'Treaties', 1969, available https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (last accessed Oct. 25, 2023).

¹⁴ Office of the High Commissioner for Human Rights, CCPR General Comment No. 26: Continuity of Obligations, available at <https://www.refworld.org/docid/453883fde.html> (last accessed Oct. 25, 2023).

¹⁵ Supra at 10.

¹⁶ Phil. Const., art. III.

¹⁷ Supra at 12.

¹⁸ Ibid.

¹⁹ Jaime Carpo et al. v. Philippines, Communication No. 1077/2002, U.N. Doc. CCPR/C/77/D/1077/2002 (2002), Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, available at <http://hrlibrary.umn.edu/undocs/1077-2002.html> (last accessed Oct. 25, 2023).

²⁰ Supra at 18

²¹ Jeroen Bouman, UN News, "International Court of Justice orders Pakistan to review death penalty for Indian accused of spying", 17 July 2019, available at <https://docs.google.com/document/d/1ouRmddRTDg1AonoyWKh8XZrvXu8gkm1X/edit>, last accessed: 25 October 2023

²² International Court of Justice, "LaGrand (Germany v. United States of America)", available at <https://www.icj-cij.org/case/104>, last accessed: 25 October 2023

²³ Amnesty International, "We know that, Together, We, can end the Death Penalty Everywhere", available at <https://www.amnesty.org/en/what-we-do/death-penalty/>, last accessed: 25 October 2023

²⁴ European Parliament, "The death penalty and the EU's fight against it", available at [https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/635516/EPRS_ATA\(2019\)635516_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/635516/EPRS_ATA(2019)635516_EN.pdf), last accessed: 25 October 2023

nudging retentionist countries to move away from the death penalty.²⁵ Beyond reputational and diplomatic harm, reintroduction could have economic consequences: for example, trade privileges afforded to the Philippines under the European Parliament's *Generalized Scheme of Preferences*²⁶ may be suspended,²⁷ which would result in the Philippines not being able to enjoy zero duties on its exports to the European Union of products falling under more than 6,000 tariff lines.

²⁵ Mai Sato, International Journal for Crime, Justice and Social Democracy, "Politics of International Advocacy Against the Death Penalty: Governments as Anti-Death Penalty Crusaders", 10 September 2022, available at <https://www.crimejusticejournal.com/article/view/2471>, last accessed: 25 October 2023

²⁶ GOVPH, "EU Grants GSP+ Status to the Philippines", available at <https://tariffcommission.gov.ph/eu-grants-gsp-status-to-the-ph>, last accessed: 25 October 2023

²⁷ HKTDC Research, "PHILIPPINES: GSP+ Status under Threat from New EU Resolution", 3 March 2022, available at <https://research.hktdc.com/en/article/OTk4MDMwODQx>, last accessed: 25 October 2023

Wide-ranging Harms of the ‘War on Drugs’ in the Philippines¹

Former President Rodrigo Duterte’s campaign to eradicate illicit drugs has had wide-ranging impacts on the Filipino people, communities, and institutions that may take many years to reverse.²

Extrajudicial killings

Duterte’s tenure as mayor of Davao City was marked by widespread extrajudicial violence as an illicit drug-control measure. This became the cornerstone of Duterte’s 2016 presidential election campaign: ‘If I make it to the presidential palace I will do just what I did as mayor. You drug pushers, holdup men, and do-nothings, you better get out because I’ll kill you.’ Indeed, the ‘war on drugs’³ became the centerpiece of Duterte’s presidency, throughout which he continued deadly rhetoric. In 2020, he ordered that ‘if it’s drugs, you shoot to kill’. Such pronouncements incited widespread violence against persons suspected of involvement in drug use or dealing—presumably including cases of mistaken identity. Such violence was perpetrated by police and civilians alike, resulting in the killing of an estimated 12,000 to 30,000 individuals from 2016 to 2019.⁴ The International Criminal Court (ICC) is investigating⁵ into whether killings committed between 1 November 2011 and 16 March 2019 amounted to crimes against humanity.⁶

Mass incarceration, diseases, and deaths

The crackdown on illicit drugs also resulted in the incarceration of many, the majority of whom were users and low-level dealers. In the first two years of the ‘war on drugs’, the prison population increased by 67% (one facility in Manila grew by 3,600%), putting increased burden on already overcrowded prison facilities. Cells designed for 10 people were being shared by 50-100 inmates, overstretched food budgets led to malnutrition, and increased overcrowding hastened the transmission of diseases such as tuberculosis. At least 5,200 inmates died per year⁷ at the New Bilibid Prison under the Duterte administration.

Breakdown of the Rule of Law

A key component of the ‘war on drugs’ was to rid all drug-affected *barangays* [‘districts’] of drugs by conducting house-to-house visits of people included on a ‘drug watch list’ compiled by officials. These ‘house visits’ raised due process concerns. Although Philippine legislation prohibits search or arrest without warrants, the operations allowed warrantless searches based solely on a person’s inclusion in the list. There was no legal recourse for challenging inclusion in the watch list, and refusing a visit could result in being charged or killed. Abuses during visits, including pressuring people to make confessions without counsel, or killing a person brought into custody, were rarely investigated.

Duterte repeatedly declared that he would not allow police officers involved in the killings to go to prison and that he would promote them, contributing to a culture of impunity. Families of victims,

¹ This brief was written by Eleos Justice. Capital Punishment Justice Project, in collaboration with the Commission on Human Rights of the Philippines (CHR), sub-granted Eleos Justice on ‘Securing the abolition of the death penalty in Africa and in countries at risk’ (European Union Grant Contract EIDHR 2019/410-631).

² This brief summarises key findings from: Ryan Beckmand (2022) ‘Rodrigo Duterte’s War on Drugs: Assessment of Consequential Harm Beyond the Death Toll’ LLM thesis submitted to Monash University (unpublished).

³ A revival of Nixon’s ‘war on drugs’ rhetoric, this punitive campaign was characterised by a lack of regard for human rights and the rule of law.

⁴ Many of the killings were committed by state actors during official police operations, although similar crimes were reportedly committed by so-called ‘vigilantes’ suspected to be working with police officers.

⁵ International Criminal Court, ICC Pre-Trial Chamber I authorises Prosecutor to resume investigation in the Philippines, available at <https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-authorises-prosecutor-resume-investigation-philippines>, (last accessed Oct. 25, 2023).

⁶ In September 2021, the International Criminal Court (ICC) authorised an investigation into whether killings committed between 1 November 2011 and 16 March 2019 amounted to crimes against humanity. In November that same year, the Philippines challenged the authority of the ICC to investigate the matter, on the ground that the country had withdrawn from its jurisdiction in March 2019. In January 2023, the ICC declared that it retains jurisdiction over crimes allegedly committed before the withdrawal took effect, and resumed its investigation accordingly.

⁷ Jessie Yeung, CNN, More than 5,000 inmates die at this prison every year, available at <https://edition.cnn.com/2019/10/04/asia/philippines-inmate-deaths-intl-hnk-scli/index.html> (last accessed Oct. 25, 2023).

lawyers, and journalists faced obstacles in documenting and pursuing cases including harassment and threats, lack of protection of witnesses, and unwillingness by law enforcement agencies to investigate.

Weakening of state institutions

Police officers reportedly received financial and professional incentives to kill, with quotas for arrests and kills to measure the performance of police officers.⁸ The branches of the government that could have served as a check against abuses were also weakened. Duterte gained a 'supermajority' in both the House of Representatives and Senate. This allowed Duterte to advance his legislative agenda, as demonstrated by the swift passage of the death penalty bill in the House of Representatives. He targeted critics of the war on drugs such as Senator Leila De Lima, who was removed from her post by his Senate allies and detained on allegations of corruption.

Discrediting independent institutions

Duterte demonized human rights groups that condemned the war on drugs, calling on the police to shoot human rights workers for 'obstructing justice' and prohibiting police and military from cooperating with United Nations investigators. The House of Representatives attempted to dissolve the Commission on Human Rights of the Philippines by allocating to it a budget of only PhP 1,000.00, but the move was met with public backlash. The government revoked the license of the prominent news website Rappler, and its founder, Maria Ressa, faced numerous court cases and was arrested and detained multiple times. Journalists reporting on the war on drugs were subjected to death threats—at least 23 journalists were killed under Duterte's administration.

Fracturing of community solidarity and the 'Bayanihan' Spirit

A hallmark of Filipino culture is the community spirit known as Bayanihan, a tradition built on mutual assistance where the entire community unites to help those in need. The climate of fear brought about by the war on drugs resulted in the fracturing of this community spirit. The drug watch lists, reportedly based mostly on rumors and suspicion, saw neighbors turning against each other. Whereas communities used to come together to assist families who lost their loved ones, only a few courageous individuals attended wakes and funerals of extra-judicial killing (EJK) victims while many resented or feared being associated with them. Diverging views on the righteousness of the 'war on drugs' created rifts between families and communities, with some 'unfriending' each other on social media as the exchanges became toxic. Massive disinformation was disseminated through Facebook—which is used by about 97% of Filipinos – and fueled these rifts.

Lingering trauma and financial hardships of victims' families

Families of EJK victims reportedly experienced lingering psychological trauma not only because of the deaths but also because of the difficulties they experienced afterwards. Claiming the body of people killed by the police involved negotiating prices, creating delays that increased expenses for formaldehyde used to slow decomposition. Most could not afford proper funerals; funeral homes either refused to hold wakes for EJK victims or demanded steep prices; and some social services withheld assistance for families of those killed in relation to the war on drugs.⁹ Almost all EJK victims were male breadwinners of families, plunging them further into poverty. Many children were especially impacted, experiencing severe trauma from losing a parent or witnessing a killing, and facing deeper poverty.

Revival of calls for capital punishment: legitimizing State-killing and disrespect for international law

As part of his 'war on drugs' campaign, Duterte called for the reintroduction of capital punishment for drug offenses,¹⁰ which would have provided another pathway for the State to kill alleged drug offenders. None of the Bills were successfully passed into law. In addition, the attempts to

⁸ Ryan Beckmand (2022) 'Rodrigo Duterte's War on Drugs: Assessment of Consequential Harm Beyond the Death Toll' LLM thesis submitted to Monash University (unpublished).

⁹ Ibid.

¹⁰ The death penalty had previously been abolished in 2006. Refer to the accompanying brief titled '*History of the death penalty in the Philippines.*'

reinroduce the death penalty demonstrated troubling disrespect to the government's domestic and international legal obligations to remain a death penalty abolitionist.¹¹

Creation of a lucrative black market

The United Nations Office on Drugs and Crime—the very agency responsible for enforcing the global prohibition of illicit drugs—in 2015 acknowledged that international drug policy based on criminal punishment has created a ‘lucrative and violent black market’¹². Crackdowns on drug markets inevitably drive out risk-averse dealers, and draw in replacements with larger ones tolerant of risk and greater appetites for violence.¹³ And those crackdowns that are successful in reducing the availability of illicit drugs may simply drive up prices¹⁴ given the inelasticity of demand for illicit drugs, especially when they are addictive. It is widely accepted among drug policy experts that the global war on illicit drugs has failed¹⁵, with devastating consequences for individuals and societies around the world. Such practice measures the ‘success’ of enforcement, such as the number of arrests, the amounts seized, or the harshness of punishments; these measures ‘may tell us how tough we are being, but they do not tell us how successful we are in improving the “health and welfare of mankind”’¹⁶.

¹¹ For more on the Philippines’ relevant obligations under international human rights law, refer to the accompanying brief titled *The Philippine’s obligations under international law.*

¹² UNDP, Perspective on the Development Dimensions of Drug Control Policy, available at https://www.unodc.org/documents/ungass2016/Contributions/UN/UNDP/UNDP_paper_for_CND_March_2015.pdf (last accessed Oct. 25, 2023).

¹³ Cambridge University Press, Drug War Heresies: Learning from other vices, times and places, available at <https://www.cambridge.org/core/books/drug-war-heresies/B61DD8A502D0B7C80F181AB2EE8C77AE> (last accessed Oct. 25, 2023).

¹⁴ Ibid.

¹⁵ Global Commission on Drug Policy, War on Drugs, available at https://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Commission_Report_English.pdf (last accessed Oct. 25, 2023).

¹⁶ Ibid.

History of the death penalty in the Philippines¹

The Philippines has had a tumultuous relationship with the death penalty. First introduced by the Spaniards and developed by the Americans, the death penalty persisted into the country's independence, wielded as a weapon used to repress dissent. Death sentences were meted out and executions were performed against the violent and volatile backdrop of martial law. The death penalty was abolished in 1987, but this period of democratization and strengthening of human rights was short-lived: capital punishment made a return less than a decade later. Though the death penalty was abolished again in 2006, there was a real risk of revival from 2016 under former President Rodrigo Duterte's administration.

A colonial legacy (1565-1965)

The death penalty is a remnant of the Philippines' colonial history.² Since establishing their first permanent settlement in Cebu in 1565, the Spanish administration gradually extended its reach throughout the Philippines. The Spanish arrival introduced the death penalty to the Philippines, which was subsequently entered³ into Philippine law in the 1880s by virtue of the Spanish *Código Penal*.

The Philippine Revolution in 1896 saw the imposition of martial law. In 1897, Andrés Bonifacio, one of the founders of the Katipunan movement seeking independence during the Philippine Revolution, was executed.⁴ However, the end of the Revolution did not see an end to the death penalty as a tool for crushing political dissent.

In 1898, Spain was defeated in the Spanish-American war and the Philippines was ceded to the United States. The *Código Penal*, including its capital offense provisions, was adopted and implemented by the US administration. Alongside this, additional capital laws were introduced⁵ and executions carried out; many of these concerned political crimes and were motivated by a desire to suppress Filipino nationalism.

In 1930, the *Código Penal* was replaced with the *Revised Penal Code*; it retained⁶ the death penalty for an array of capital offences. The Philippines became a self-governing commonwealth in 1935; no executions⁷ were carried out during the presidency of Manuel Quezon (1935-1944).

After a short-lived Japanese occupation during World War II, the Philippines attained independence in 1946. The *Revised Penal Code*, including its capital offense provisions, was retained in the independent Philippines. Between 1946 and 1965, at least 35 people were executed.⁸

¹ This brief was written by Eleos Justice (Faculty of Law, Monash University, Australia) with support from Dr Imelda Deinla (School of Law, University of New England). Capital Punishment Justice Project, in collaboration with the Commission on Human Rights of the Philippines (CHR), sub-granted Eleos Justice to coordinate this under 'Securing the abolition of the death penalty in Africa and in countries at risk' (European Union Grant Contract EIDHR 2019/410-631).

² The editors of Encyclopaedia Britannica, Britannica, "The Spanish Period", last updated 14 October 2023, available at <https://www.britannica.com/place/Philippines/Sports-and-recreation>, (last accessed: 25 October 2023).

³ Rubén F. Balane, "The Spanish roots of Philippine Law", 2018, available at <https://revista-estudios.revistas.deusto.es/article/view/11451/1775>, (last accessed: 25 October 2023).

⁴ Robert D. Ramsey III, "Savage Wars of Peace: Case Studies of Pacification in the Philippines, 1900-1902", available at <https://apps.dtic.mil/sti/pdfs/ADA474912.pdf>, (last accessed: 25 October 2023).

⁵ Michael Cullinane, "Bringing in the Brigands The Politics of Pacification in the Colonial Philippines, 1902-1907", Published By: Ateneo de Manila University, 2009, available at https://www.jstor.org/stable/42633988?saml_data=eyJzYW1sVG9rZW4iOiI5MDVmY2UxYi00ZiFkLTQ2NTt0OGYzMjIiMzIyM2I5MmUzNzciLCJpbmN0aXR1dGlvbkklcyI6WyI5MDk1NWQ2YS1kMiQ2LTQyODMtYWNINS03ZTVhMGI3ODkwZTgiXX0&seq=2, (last accessed: 25 October 2023).

⁶ ACT No. 3815 - The Revised Penal Code (December 8, 1930), available at https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/PHL_revised_penal_code.pdf, (last accessed: 25 October 2023).

⁷ Joel F. Ariate Jr., Vera Files, "Of Presidents and the Penalty of Death", 13 August 2019, available at <https://verafiles.org/articles/presidents-and-penalty-death-2>, (last accessed: 25 October 2023).

⁸ Refworld, "The Death Penalty: Criminality, Justice and Human Rights", Published by Ateneo De Manila University, available at <https://www.refworld.org/docid/3ae6a99f4.html>, (last accessed: 25 October 2023).

The Marcos Years (1965-1986)

1965 signaled the beginning of the authoritarian presidency of Ferdinand Marcos. Under Marcos, at least 31 executions were carried out.⁹ Marcos' official justification for the death penalty was its deterrent value,¹⁰ but the context within which it was used indicates other motivations. As Amnesty International observes,¹¹ the application of the death penalty 'became deeply influenced by a context of worsening political tensions', perhaps most apparent in the sentencing to death of Marcos' political rival, Benigno Ninoy Aquino, in 1977. During Marcos' rule, the number of capital offenses was expanded and countless death sentences were imposed, predominantly by military tribunals. The government promoted¹² the idea that this policy 'represented a sign of decisive government in confronting insurgency, lawlessness and criminality'.

The Marcos presidency was characterized by bloodshed and a massive erosion of human rights. The use of the death penalty was but one tool of political control. The introduction of martial law in 1972 led to an unprecedented rise in rights abuses:¹³ thousands of extrajudicial killings¹⁴ and enforced disappearances were recorded,¹⁵ and patterns of arbitrary detention and torture were prevalent. While martial law was technically lifted in 1981, Marcos remained in power until 1986.

A move toward human rights (1986-1992)

In October 1986, under the leadership of Corazon Aquino, the Philippines demonstrated to the international community a promising commitment to human rights by ratifying the International Covenant on Civil and Political Rights (ICCPR). The following year, the Philippines became¹⁶ the first country in Asia to abolish the death penalty for all crimes through its new Constitution.¹⁷ The Constitution required¹⁸ that all outstanding death sentences be commuted to life imprisonment, but left the door ajar for Congress to reintroduce the death penalty 'for compelling reasons involving heinous crimes'.¹⁹ 1987 also saw the birth of the Philippines' Commission on Human Rights.

The democratization process under Aquino was tumultuous, with dissenting voices demanding the return of the death penalty. Over the following years, the military led several attempts to reintroduce capital punishment. While several bills were tabled before the legislature, they all failed—including one that called for the death penalty for political crimes, endorsed²⁰ by President Aquino in response to an attempted military coup.

⁹ Id.

¹⁰ See our accompanying brief titled 'The Death Penalty and its (Assumed) Deterrent Effect'.

¹¹ Supra Note 9

¹² Id.

¹³ Amnesty International, "Five things to know about Martial Law in the Philippines", 25 April 2022, available at <https://www.amnesty.org/en/latest/news/2022/04/five-things-to-know-about-martial-law-in-the-philippines/>, (last accessed: 25 October 2023).

¹⁴ Rachel A.G. Reyes, The Manila Times, "3,257: Fact checking the Marcos killings, 1975-1985", 12 April 2016, available at <https://www.manilatimes.net/2016/04/12/featured-columns/columnists/3257-fact-checking-the-marcos-killings-1975-1985/255735>, (last accessed: 25 October 2023).

¹⁵ Report of an Amnesty International Mission to the Republic of the Philippines (11-28 November 1981), available at <https://www.amnesty.org.ph/wp-content/uploads/2014/11/asa350251982en.pdf>, (last accessed: 25 October 2023).

¹⁶ Amnesty International, "Philippines: Abolition of the death penalty (Public Statement)", 7 June 2006, available at <https://docs.google.com/document/d/1MxPchNb8EYSNu0u4XgJgJcY0tRaERZPI/edit>, (last accessed: 25 October 2023).

¹⁷ GOVPH, "The Constitution of the Republic of the Philippines", available at <https://www.officialgazette.gov.ph/constitutions/1987-constitution/>, (last accessed: 25 October 2023).

¹⁸ Id.congress

¹⁹ Whether this provision actually permits the reintroduction of the death penalty is questionable. See our accompanying brief titled 'The Philippine's obligations under international law' on the legality of reintroduction of the death penalty in the Philippines.

²⁰ Supra Note 9

Reintroduction and second abolition (1992-2015)

Following his election as President in 1992, Fidel Ramos in 1993 approved Republic Act 7659,²¹ which reintroduced the death penalty for a total of 46 crimes. Such swift reintroduction of the death penalty was a product of various factors:²² a majority of the lawmakers elected were from Ramos' political party, successful lobbying by the conservative middle class, and 'overzealous coverage of the media' swaying public opinion. While no executions were carried out under the Ramos administration, the Joseph Estrada administration recommenced executions in 1999. A total of seven people were executed before a temporary moratorium was imposed²³ following appeals²⁴ from human rights groups and the Catholic Church.

In 2003, President Gloria Macapagal-Arroyo lifted the de facto moratorium in response to a reported rise in drug trafficking and kidnapping. Although executions were set to resume following the lifting of the moratorium, the administration subsequently issued reprieves on scheduled executions and commuted²⁵ the sentences of 1,230 death row convicts.

In 2006, the death penalty was again abolished.²⁶ President Arroyo signed into law Republic Act 9346,²⁷ which abolished the death penalty and commuted existing death sentences. The following year, the Philippines ratified the Second Optional Protocol to the ICCPR, an action that absolutely and permanently prohibits the Philippines from reimposing the death penalty under international law.

Return of the death penalty? (2016-2023)

In 2016, Rodrigo Duterte was elected President of the Philippines, heralding a return to military-style rule. Like that of Marcos, the Duterte presidency was characterized by violence.²⁸ During his first formal press conference after winning the election, he vowed²⁹ to reintroduce the death penalty. Duterte's attempts to reintroduce the death penalty were underpinned by an unrelenting anti-drug policy and accompanied by widespread extrajudicial violence intended to combat illicit drugs.

In 2017, the House of Representatives passed House Bill No. 4727³⁰ proposing the reimposition of the death penalty for drug-related offenses. Although House Bill No. 4727 was stalled in the Senate, in 2019, 19 bills seeking to reimpose the death penalty were filed³¹ and tabled in the House of

²¹ The LAWPHil Project, Republic Act No. 7659 - An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for That Purpose the Revised Penal Laws, As Amended, Other Special Penal Laws, And for Other Purposes, (last accessed: 25 October 2023).

²² Tagayuna, Arlie, ScholarSpace, "Capital Punishment in the Philippines", 2004, available at <https://scholarspace.manoa.hawaii.edu/items/570176f7-7cf5-4c95-8c09-8b5031ed567b>, (last accessed: 25 October 2023).

²³ David T. Johnson, Franklin E. Zimring, Oxford Academic, "A Lesson Learned? The Philippines", May 2009, available at <https://academic.oup.com/book/3847/chapter-abstract/145347242?redirectedFrom=fulltext&login=false>, (last accessed: 25 October 2023).

²⁴ CHRP and Social Weather Stations (SWS) Survey, "In Defense of the Right to Life: Analysing Factors Affecting Filipino Opinion About the Death Penalty", 2018 and 2020 research, available at https://www.righttolife.ph/online/uploads/cms_uploads/analysing-the-right-to-life-brochure.pdf, (last accessed: 25 October 2023).

²⁵ Balay Rehabilitation Center, "Fact Sheet: Note on the death penalty and the Philippines", available at <https://balayph.net/news-events/features-and-articles/128-fact-sheet-note-on-the-death-penalty-and-the-philippines-2#:~:text=The%201987%20Philippines'%20Constitution%20was,Congress%20hereafter%20provides%20for%20it,> (last accessed: 25 October 2023).

²⁶ Supra Note 16

²⁷ The LAWPHil Project, Republic Act. 9346 – An Act Prohibiting the Imposition of Death Penalty in the Philippines, 24 June 2006, (last accessed: 25 October 2023).

²⁸ See our accompanying brief titled 'Wide-ranging Harms of the 'War on Drugs' in the Philippines'.

²⁹ Avantika Chilkoti, Financial Times, "Rodrigo Duterte vows to restore death penalty in the Philippines", 16 May 2016, available at <https://www.ft.com/content/7cc28c6c-1b56-11e6-8fa5-44094f6d9c46>, (last accessed: 25 October 2023).

³⁰ House Bill No. 4727 - An Act Imposing the Death Penalty on Certain Heinous Crimes, Repealing for the Purpose Republic Act No. 9346, Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines", And Further Amending Act No. 3815, As Amended, Otherwise Known As "The Revised Penal Code", And Republic Act No. 9165, Otherwise Known As The "Comprehensive Dangerous Drugs Act Of 2002", (last accessed: 25 October 2023).

³¹ Supra Note 24

Representatives. In March 2021, the House of Representatives adopted House Bill No.7814,³² the second bill proposing the reimposition of capital punishment for drug offenses to have reached the Senate in five years.³³ Duterte's tenure ended in June 2022, but as of September 2023, five Bills were pending in the House of Representatives, and four Bills in the Senate.³⁴

The death penalty has had a long and complicated history in the Philippines. A return of the death penalty would be a regressive step for the country, indicative of a government's inability to leave behind vestiges of its authoritarian past. Even if the death penalty were introduced through a democratic process with the approval of both Houses, reintroduction would signal the Philippines' alignment with the dwindling number of retentionist States that continue to view the death penalty as an exception to the right to life.

³² Website of the Senate of the Philippines, House Bill No. 7814 - Strengthening Drug Prevention and Control, (last accessed: 25 October 2023).

³³ See our accompanying briefs on anti-death penalty advocacy by non-State actors: 'Catholic Opposition to the Death Penalty' and 'Preventing reintroduction: anti-death penalty network'.

³⁴ House of Representatives Bills: HB00090, HB00501, HB01543, HB02459 and HB04121. Senate Bills: SB198, SB2042, SB2214 and SB2217.

The Death Penalty and its (Assumed) Deterrent Effects¹

What are the deterrent effects?

This brief summarises the key research evidence about the deterrent effects of the death penalty. There are three main types of argument put forward in support of the death penalty. There are *retributivist* arguments that propose that some offenses are so grave that the offender deserves to be executed. Debate on this is about ethical rather than evidential issues², and the brief does not consider the retributivist case for the death penalty. The second type of argument in support is about *incapacitation*—that executing offenders puts an unequivocal end to their offending. Again, this brief does not consider the merits of these arguments, except to acknowledge that execution has self-evident incapacitation effects, and to point out that imprisonment offers an alternative—if less conclusive—means of incapacitation.

The third type of argument concerns the *deterrent effects* of capital punishment. Deterrence provides one of the commonly used rationales for its retention. Indeed, in his annual address to the nation in 2020, then-President Rodrigo Duterte claimed that reinstating the death penalty would ‘deter criminality’³. As we shall argue, however, there is no robust research evidence for or against the deterrent effects of the death penalty.

The rationale of deterrence relates to changing the *motivation* of offenders. It is premised on the idea that in our decision-making, we weigh up the costs and benefits of courses of action—and that penalties imposed by the courts can affect these calculations. Theories of punishment usually distinguish between *general deterrence*, relating to the effects of deterrent threat on the general population, and *specific deterrence*, the deterrent effect on an individual offender of imposing a particular penalty. For obvious reasons, it makes no sense to examine the specific deterrent effects of the death penalty. This brief is concerned with the effect of the death penalty in demotivating would-be offenders from committing capital offenses.

Common myths about statistics on the deterrent effects of capital punishment

One may cite increase or decrease in crime rates as (dis)proof of the deterrent effect of the death penalty, comparing two time points, or two regions, with and without the death penalty. Those who argue against the reintroduction of the death penalty in the Philippines may be tempted to quote the following statistics to argue that the death penalty does not work as a deterrent:

- During 1950-1976⁴, 64 executions were carried out in the Philippines. During the same period, the country had one of the highest homicide rates in the world.
- During 1998-1999,⁵ the Philippines had one of the largest death row populations in Asia, following the reintroduction of the death penalty in 1993. During this period, 7 individuals were executed; crime rates increased by 15 percentage points.

¹ This brief was written by Eleos Justice (Faculty of Law, Monash University, Australia) with support from Dr Imelda Deinla (School of Law, University of New England). Capital Punishment Justice Project, in collaboration with the Commission on Human Rights of the Philippines (CHR), sub-granted Eleos Justice to coordinate this under ‘Securing the abolition of the death penalty in Africa and in countries at risk’ (European Union Grant Contract EIDHR 2019/410-631).

² However, there are factual issues at the margin about the mental capacity of some offenders.

³ Preeti Jha, BBC News, Philippines death penalty: A fight to stop the return of capital punishment, available at <https://www.bbc.com/news/world-asia-53762570> (last accessed Oct. 25, 2023).

⁴ David T. Johnson, Franklin E. Zimring, Oxford Academic, The Next Frontier: National Development, Political Change, and the Death Penalty in Asia, available at <https://academic.oup.com/book/3847> (last accessed Oct. 25, 2023).

⁵ Directorate-General for External Policies of the Union Directorate-Policy Department, Briefing Paper: The Philippine Experience in ‘Abolishing’ the Death Penalty, available at <http://eu-information-service.rs-consulting.com/Policy%20Department%20for%20External%20Relations/Policy%20Areas/Human%20Rights/Death%20Penalty/The%20Philippine%20experience%20in%20%91abolishing%92%20the%20death%20penalty.%202007.%20by%20P.C.%20Valera%20Quisumbing.pdf>, (last accessed Oct. 25, 2023).

However, these statistics do not prove the lack of deterrent effect of capital punishment. At best, they suggest that the two variables—the number of executions and crime rates—may be *correlated*, though they do not prove *causation*. Other factors, unrelated to the existence or the lack of the death penalty, could have caused the fluctuation in crime rates, not the number of executions. In addition, these figures do not demonstrate the relative impact of capital punishment, compared to other punishments,⁶ such as prison sentences. This leaves open the possibility that other punishments may serve the same purpose *if* we assume that there is an association between the death penalty and crime rate—a point to which we now turn.

No conclusive evidence: capital punishment as an effective deterrent⁷

The United States National Academies of Sciences commissioned a study⁸ reviewing all available US studies undertaken since 1978 on the deterrent effect of the death penalty. The study⁹ concludes that no conclusive evidence exists to prove the deterrent effects of the death penalty:

The committee concludes that research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates. Therefore, the committee recommends that these studies not be used to inform deliberations requiring judgments about the effect of the death penalty on homicide. Consequently, claims that research demonstrates that capital punishment decreases or increases the homicide rate by a specified amount or has no effect on the homicide rate should not influence policy judgments about capital punishment.

The study focuses on US studies on the effect of the death penalty on homicides. We do not know the impact of the death penalty on the Philippines for a range of offenses due to the lack of data, especially given the country has not had the death penalty since 2006. However, the National Academies of Sciences' review makes it clear that it is impossible to prove the extent to which the death penalty is an effective deterrent relative to other punishments—a point that is relevant to any jurisdiction, including the Philippines. This is because all deterrence studies are observational¹⁰; it would be impossible to carry out an experiment to test the crime rate of a country with and without the death penalty, with all other conditions being equal. Existing observational research on deterrence can be broadly divided into two types of studies: panel data studies and time-series studies. However, neither type of studies took account of the impact of noncapital sanctions in their analyses.¹¹

Deterrence-based model of crime control: assumptions required

While the research to date has failed to provide conclusive empirical evidence on the deterrent effect of the death penalty, conceptualizing crime control based on deterrence is no easy task.

First, would-be offenders are unlikely to be able to differentiate drug offenses that carry the death penalty and those that do not. Nor are they likely to know the factual and legal requirements necessary to prove these offenses.

Second, a would-be offender must have some sense of the certainty of punishment, and this cannot be negligible. Estimating the odds of execution is extremely complicated. The offender must be able to predict:¹² 1) the likelihood of being caught by the police, 2) the likelihood of being charged, convicted, and sentenced to death, 3) the likelihood of the death sentence being confirmed on

⁶ National Academies, Deterrence and the Death Penalty, <https://nap.nationalacademies.org/catalog/13363/deterrence-and-the-death-penalty> (last accessed Oct. 25, 2023).

⁷ Internationally, there is a large body of research on deterrence, and this brief aims simply to summarise the key findings.

⁸ *Supra* at 6.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Daniel S. Nagin, Deterrence in the Twent yFirst Century, available at <https://prohic.nl/wp-content/uploads/2020/11/2020-06-02-DeterrenceMetaNagin.2013.pdf> (last accessed Oct. 25, 2023).

appeal, 4) followed by the likelihood of execution. In addition, we do not know if the retention of the death penalty itself, death sentences, or executions deter offenders.¹³ The case of the Philippines adds another dimension: we do not know if toying with the idea of reintroducing the death penalty can also deter offenders.

Third, in addition to knowledge of the law and accurate calculation of the odds of being executed, the would-be-offender needs to act rationally, balancing the costs and benefits of offending.¹⁴ However, offender rationality will not apply in situations¹⁵ where the offender acts in a moment of anger, fear, or under the influence of drugs or alcohol, when rational thinking has been suspended. Similarly, some offenders may commit a capital offense under coercion. For others, they may choose to risk being executed, whether or not they assess the risks to be low.

Conclusion

The lack of evidence outlined above does not prove or disprove the deterrent effect of capital punishment. Indeed, countries retain, abolish, or reintroduce the death penalty for a variety of reasons. However, based on available research to date, the scholarly evidence on the deterrent effect of the death penalty is 'too weak'¹⁶ to shape death penalty policy in the Philippines or elsewhere.

¹³ Supra at 11.

¹⁴ Kirk R. Williams, Jack P. Gibbs and Maynard L. Erickson, Journal Article, Public Knowledge of Statutory Penalties: The Extent and Basis of Accurate Perception, available at <https://www.jstor.org/stable/1388805> (last accessed Oct. 25, 2023).

¹⁵ American Civil Liberties Union, The Case Against the Death Penalty, available at <https://www.aclu.org/documents/case-against-death-penalty> (last accessed Oct. 25, 2023).

¹⁶ Supra at 13.

Preventing reintroduction: the anti-death penalty network¹

Despite the Philippines being an abolitionist country for the second time since 2006,² Rodrigo Duterte's renewed call for the reintroduction of the death penalty resulted in the House of Representatives overwhelmingly passing a Bill³ to bring it back in March 2017. Duterte's administration had a 'supermajority'⁴ in the House of Representatives and the Senate; the Speaker of the House reportedly 'openly threatened to strip members of Congress of key positions if they dared to vote against the bill, or even abstain from voting.'⁵ As of late 2023, the Philippines continues to be an abolitionist State because this Bill and others never passed the Senate. At first blush, the story about preventing the reintroduction of the death penalty is one of political leadership by Senators⁶. In this brief, we argue that behind the courageous stance of the Senators was a network of individuals and groups united against the death penalty.⁷

Actors in the anti-death penalty network

The Commission on Human Rights of the Philippines (CHR) was one of the vocal voices against reintroduction, but Duterte's administration continued to undermine its work by declaring⁸ that CHR would be 'better abolished', and framing its opposition to his violent drug policy as 'protecting the drug lords'. While CHR was not intimidated by this and remained active in the fight against reimposition, support from the anti-death penalty network was key.

Among the various individuals and civil society groups that campaigned against the death penalty, two umbrella organizations stand out. The Coalition Against Death Penalty⁹ (CADP), established in 1993, is made up of Catholic and civil society groups.¹⁰ A large part of CADP's work is being an active member of the FLAG Anti-Death Penalty Task Force¹¹ (the Task Force), which is another umbrella organization created in 1993 by the Free Legal Assistance Group¹² (FLAG), a nationwide group of human rights lawyers.¹³ The Task Force's membership includes CADP, CHR, lawyers,

¹ This brief was written by Eleos Justice (Faculty of Law, Monash University, Australia) with support from Dr Imelda Deinla (School of Law, University of New England). Capital Punishment Justice Project, in collaboration with the Commission on Human Rights of the Philippines (CHR), sub-granted Eleos Justice to coordinate this under 'Securing the abolition of the death penalty in Africa and in countries at risk' (European Union Grant Contract EIDHR 2019/410-631).

² See our accompanying brief titled 'History of the Death Penalty in the Philippines'.

³ Press and Public Affairs Bureau, House overwhelmingly passes death penalty bill, available at <https://www.congress.gov.ph/press/details.php?pressid=9979&key=death%20penalty#:~:text=08%20March%202017%2009%3A12,for%20drug%20related%20heinous%20crimes> (last accessed Oct. 25, 2023).

⁴ Of the 297 members of the House of Representatives, 8 remained as genuine members of the opposition; of the 24 Senators, 3 remained in the opposition, available at <https://www.jstor.org/stable/45014308> (last accessed Oct. 25, 2023).

⁵ Noel Celis, Philippines: The Death Penalty is an inhumane, unlawful and ineffective response to drugs, available at <https://www.amnesty.org.au/philippines-death-penalty-inhumane-unlawful/> (last accessed Oct. 25, 2023).

⁶ Parliamentarians for Global Action, PGA welcomes the strong opposition of the Senate of the Philippines to the Reintroduction of the Death Penalty, available at <https://www.pgaction.org/news/philippines-opposition-to-reintroduction-death-penalty.html> (last accessed Oct. 25, 2023).

⁷ This brief is informed by 21 interviews carried out with individuals involved in anti-death penalty advocacy in the Philippines. We carried out 9 interviews during June-August 2019 during Duterte's administration, and 12 during January-February 2023 post-Duterte administration. For interviewees who did not wish to be identified by their names, we provided a description of their organisational affiliation only. We received ethics approval from the ANU Human Research Ethics Committee (Protocol number: 2019/160) and the Monash Human Research Ethics Committee (Project ID: 34755) to carry out these interviews.

⁸ Tom Smith, Duterte's latest target: The Commission on Human Rights. The Philippine President threatened to abolish Southeast Asia's oldest National Human Rights Institution, available at <https://thediplomat.com/2017/08/dutertes-latest-target-the-commission-on-human-rights/> (last accessed Oct. 25, 2023).

⁹ Connect with Coalition Against Death Penalty on Facebook, available at <https://www.facebook.com/CADP.ph/> (last accessed Oct. 25, 2023).

¹⁰ After achieving abolition in 2006, CADP continued with its work on prison reform.

¹¹ Supra at 9.

¹² Connect with Free Legal Assistance Group (FLAG) on Facebook, available at <https://www.facebook.com/FLAGMetroManila/> (last accessed Oct. 25, 2023).

¹³ CADP and Task Force successfully campaigned for death penalty abolition in 2006.

universities, and families of prisoners. Religious groups, particularly the Catholic Bishops Conference of the Philippines and the Philippine Jesuit Prison Service, are key members of the Task Force.¹⁴ In 2016, NoBox¹⁵, an organization working on drug policy reform and harm reduction, joined the Task Force. Having NoBox as a member helped challenge the narrative around the proposed reintroduction that the use of the death penalty is a solution to illicit drug use and trafficking.

Network within the anti-death penalty movement

One interviewee described the abolitionist movement as ‘coalitions within coalitions, networks coming together.’¹⁶ Members of the network came from different areas of expertise and had different access to information, connections, and resources. Forming into a network enabled these small organizations to amplify their voices, benefit from each other’s expertise, and enhance the legitimacy of the movement. The Task Force brought together various stakeholders and provided a platform for a unified campaign.¹⁷ The individual members contributed to the Task Force’s initiatives by preparing statements and organizing workshops, and their discussions ‘fed into each other’s experiences and knowledge’.¹⁸ Lawyers from FLAG contributed their experience about the cases they have handled, which comprised ‘valuable information that gives us confidence and credibility in pushing for our advocacy’.¹⁹ CADP, which is comprised largely of Catholic leaders with access to prisons and detention centres, lobbied in Congress, assisted prisoners in drafting letters, and trained families of prisoners on lobbying.²⁰ One CHR staff member stated that ‘some of the things that we [CHR] can’t do, they [the other members] do well, given our limitations’.²¹ Another interviewee noted:

Many of the members are from the Church and from prison reform NGOs ... They’ve encountered persons who use drugs... And then FLAG –[its] members are lawyers, so we get the legal expertise... And then we have [other] civil society organizations as well ...we complement each other’s work. And then of course, CHR—...[CHR] bridge[s] government and civil society as a National Human Rights Institution.²²

Campaigning through the anti-death penalty network

Task Force vigilantly monitored bills that were being filed, targeted legislators who were undecided, and responded to queries from Senators who were planning on opposing the Bill.²³ Members of the anti-death penalty network also spoke to members of the Justice Committee, the Charter Change Committee, and the Dangerous Drugs Committee, aiming to convince them to vote against the death penalty provisions.²⁴ The anti-death penalty network made themselves visible: they attended congressional hearings to send the message: ‘*na may nagbabantay*’ [there are people who are vigilantly watching].²⁵ When the Bill was discussed in the House of Representatives, members from the anti-death penalty network almost filled the whole second floor of the House.²⁶ The campaign was also visible in government agencies. Task Force had established links with the prison service because prison officers contacted FLAG lawyers to assist death row prisoners before abolition in 2006.²⁷

¹⁴ See our accompanying brief titled ‘Catholic Opposition to the Death Penalty’.

¹⁵ NoBox Philippines, available at <https://www.nobox.ph/> (last accessed Oct. 25, 2023).

¹⁶ Interview with CHR (1).

¹⁷ Interview with FLAG.

¹⁸ Interview with NoBox.

¹⁹ Interview with CHR (2).

²⁰ Interview with CADP.

²¹ Interview with CHR (2).

²² Anonymous interviewee.

²³ Interview with International Commission of Jurists, and FLAG (1).

²⁴ Interview with former Member of the House of Representatives.

²⁵ Interview with Philippine Alliance of Human Rights Advocates.

²⁶ Interview with Philippine Alliance of Human Rights Advocates.

²⁷ Interview with FLAG (2).

NoBox also brought in existing ties with the Department of Health and the Bureau of Jail Management and Penology.²⁸

A bottom-up campaign against the death penalty

Duterte's administration aimed to discredit the country's National Human Rights Institution, eroded the freedom of the press, and instilled fear in legislators.²⁹ An interviewee noted that 'because the death penalty had the backing of the highest office in the [country], individuals and civil society organizations had to come together and had to be more purposive in their fight against the death penalty'.³⁰ The well-known Filipino metaphor of *walis tingting* [a broomstick made of coconut fronds tied together] describes the anti-death penalty network very well. The broomstick has long been perceived as a symbol of strength in unity in the Philippines: one or two branches may easily break, but tied together, they are robust; similarly, one or two branches cannot clean as effectively as when bundled together.

We do not know if Senators would have voted against the Bills had there been no grassroots campaign. What is clear, however, is that the fight against the death penalty was not fought just by the courageous political elites. Being unable to rely on institutions that are ordinarily tasked with upholding human rights and democracy, individuals and small organizations formed a network to successfully oppose the reimposition of the death penalty.

²⁸ Interview with NoBox.

²⁹ See our accompanying brief titled 'Wide-ranging Harms of the 'War on Drugs' in the Philippines'.

³⁰ Interview with CHR (1).