

R E S O L U T I O N
ON THE
RE-EXAMINATION OF THE DEATH PENALTY LAW
(R.A. NO. 7659)

INTRODUCTION

The prevailing consensus among the members of the Philippine Commission that drafted the 1987 Constitution was against the imposition of death penalty. As a compromise with those who argued for death penalty, a provision left to Congress to enact legislation to reimpose death penalty "unless for compelling reasons involving heinous crimes."

Thus, Art. III, Section 19 of the Philippine Constitution reads:

"Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua."

Sometime in 1993, in view of the rise in the incidence of crimes, several sectors clamored for the enactment of a law to restore death penalty. The Armed Forces of the Philippines was of the view that the supervision of death penalty was an obstacle to peace and order and a hindrance to the goals of national security. Several sectors argued that the imposition of death penalty will serve as a deterrent to the commission of heinous crimes.

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Those who argued against death penalty claim that the death penalty is a violation of the right to life as recognized by the Universal Declaration of Human Rights (UDHR), and constitutes the ultimate form of torture. The Amnesty International (AI), for instance, maintains that capital punishment does not produce retributive justice and is contrary to the International Covenant on Civil and Political Rights (ICCPR) which the Philippines ratified on October 23, 1986.

The Commission on Human Rights in its CHR Resolution No. A91-033 cautioned against the restoration of death penalty and recommended for reforms for a more effective enforcement of penal laws.

RESTORATION OF DEATH PENALTY

After long protracted debates in Congress, Republic Act No. 7659 entitled "An Act To Impose The Death Penalty On Certain Heinous Crimes Amending For That Purpose The RPC, As Amended, other Special Penal Laws And For Other Purposes", was finally approved on October 13, 1993. Recently, however, several sectors of society especially the human rights groups demanded a review of the enactment of Philippine Congress imposing death penalty.

Does the death penalty actually serve as deterrent to violent crimes as professed by the authors of the law? Is the death penalty law consistent with the international instruments signed by the Philippines? The moral justification and humane consideration of death penalty have also been raised.

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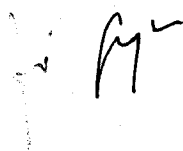
As an independent body created by the Philippine Constitution to protect and promote human rights in the Philippines, the Commission on Human Rights has made the following policy study on the justification and the efficacy of capital punishment. This is pursuant to the vital state policy as stated in Article II, Section 11 of the Philippine Constitution that "The State values the dignity of every human person and guarantees full respect for human rights".

Since the imposition of the death penalty in the country, about 350 persons as of this date have been sentenced to death by trial courts. Data gathered from the Free Legal Assistance Group (FLAG) show that at the end of 1994, there were 24 death penalty convicts; at the end of 1995, the number of convicts rose to 90, an average of 7 convicts per month (twice the monthly average of capital sentences imposed in 1994). From January to June 1996, the number of death penalty convicts reach 72, an average of 12 convicts per month, almost twice the monthly average of capital sentences imposed the prior year.

Ecumenical studies of religious sectors revealed that the death penalty does not serve as an effective deterrent to violent crimes. In a paper submitted to the CHR dated September 6, 1991, the NCCP concluded:

"There are several studies which prove that the death penalty does not serve as an effective deterrent to violent crimes. The UN conducted recently a survey of research findings on the relation between the death penalty and homicide rates. The report has concluded that "this research has failed to provide scientific proof the executions have a greater deterrent effect than life imprisonment. The evidence as a whole still gives no positive support to the deterrent hypothesis.

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Dr. Roger Hood from Oxford University found that the number of homicides in several countries including Canada, Australia and Jamaica has stayed the same or even fallen after the abolition.

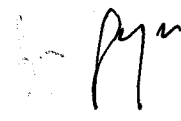
In France, the number of blood crimes has decreased since the abolition of death penalty.

The use of death penalty as a political deterrent to terrorism and political violence is considered a special case by most governments. Amnesty International is not aware of any evidence that the use of death penalty has deterred would-be terrorists. Psychiatrists who have conducted studies on the question of hijacking recommend strongly that the death penalty not be executed in such cases precisely because it makes the crime appear more spectacular and draws greater attention to the perpetrators.

The Lutheran Church in America renders invalid the deterrence theory in capital punishment when they said: "Insights from both criminal psychology and the social cause of crime indicate the impossibility of demonstrating a deterrent values in capital punishment.

The Fellowship of Reconciliation in their appeal to end all executions is seeking restoration and not retribution. They said that "The United States Supreme court has (Gregg vs. Georgia) noted that there is no conclusive evidence that the death penalty

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acts as a deterrent. The Fellowship believes that "capital crimes are often impulsive and unplanned, and neither the presence of the death penalty nor the frequency of executions have been shown to have any significant effect on homicide rates."

HUMAN RIGHTS GROUP'S POSITION ON DEATH PENALTY

The Philippine Alliance of Human Rights Advocates (PAHRA) claims that the application of death penalty is a violation of the right to life and the right not to be subjected to torture or degrading treatment or punishment as articulated in the UDHR, the ICCPR and International Convention Against Torture And Other Forms of Cruel, Inhuman Or Degrading Treatment Or Punishment Of 1984.

PAHRA averred that there can never be a justification for torture or cruel, inhuman or degrading treatment or punishment. Like torture, an execution constitutes extreme physical and mental assault on a person already rendered helpless by government authorities.

The FLAG, on the other hand, maintains that the death penalty is the highest form of torture. Hence, it deserves no place in our penal system.

Studies of FLAG revealed that the death penalty has not deterred the commission of heinous crimes. In a position paper submitted to the CHR, the FLAG said: "x x x the commission of heinous crimes rose sharply despite the reimposition of death penalty. The commission of rape increased by 40% in 1994 and 44% in 1995.

Violent raids of banks and other business establishments rose sharply in the first quarter

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of 1995. Kidnapping and serious illegal detention continue to occur, with many cases unreported, as victims have lost faith in the authorities. In 1994, the country's nationwide crime volume declined by only 1% from the previous year but the total crime volume in Metro Manila reached 27,008 or an average month crime rate of 24.93% about 6.79% higher than the 1993 monthly rate of 18.14%."

Study conducted by the Amnesty International revealed that when death was the penalty for various crimes during Martial Law, violent crimes increased with alarming regularity. Survey show that the threat of death did not in any way deter crime as shown in the crime volume and crime rates between 1979 and 1985.

As events have shown, there is again a clamor to examine the efficacy and justification for the imposition of death penalty. The Commission on Human Rights have recently received request from human rights groups from abroad appealing for the repeal of Republic Act No. 7659. The latest communication came from Organization Mondiale Contra La Torture (World Organization Against Torture) (OMCT,) coursed through the Philippine Mission to the UN in Geneva expressing its grave concern for the first death sentence affirmed by the Supreme Court on Leo P. Echegaray. On March 3, 1997, the Supreme Court of the Philippines affirmed the second death sentence of a rapist (People vs. Pablito Andan). Unless the President exercises his executive clemency, Leo Echegaray will be executed by lethal injection sometime in august 1997 pursuant to Republic Act No. 8177.

The OMCT noted that the Philippines is a State party to *both Convention Against Torture and Other Cruel, Inhuman or , Degrading Treatments or Punishments* and the

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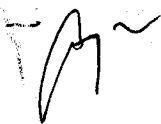
International Covenant on Civil and Political Rights which prohibit the infliction of any kind of physical or mental pain as a form of punishment.

Incidentally, the Supreme Court held another hearing in the motion for reconsideration filed by defense counsel in the Echegaray case (G. R. No. 117472, *People of the Philippines vs. Leo Echegaray y Pilo*). For the first time, the constitutional validity of death penalty was cruel unusual punishment was raised. In the course of the argument, the issues on the moral justification and efficacy of capital punishment were again extensively discussed.

CONSTITUTIONAL VALIDITY AND MORAL JUSTIFICATION OF DEATH PENALTY

The majority of the Court rejected the proposition, that the said law (Republic act No. 7659) was cruel, unusual and excessive punishment but three justices of the Court disagreed. They said that Republic Act No. 7659 was enacted without complying with the twin requirements of compelling reasons involving heinous crimes. The Constitution did not contemplate a simple reimposition of death penalty to offenses therefore already provided in the Revised Penal Code. The term "compelling reasons" used in the Constitution should show that there must be a marked change in the milieu from that which prevailed at the time of the adoption of the Constitution. On the other hand that which exists at the time of the enactment of the death penalty statute that would make it distinctively inexorable to mandate a death penalty.

Given the circumstances and the law before the Court, imposition of death penalty has not been satisfied. Another dissenting opinion states that the framers of the

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Constitution really intended to abolish death penalty although it left to congress the enactment of a law reimposing death penalty which already existed in the Revised Penal Code. But Republic Act No. 7659 did not actually change the nature or the elements of the crimes stated in the RPC or the existing statutes. It merely made the penalty more severe. Congress merely selected some existing crimes for which it prescribed death penalty. It did not give a standard or a characterization by which Courts may be able to appreciate the heinousness of a crime. By merely reimposing capital punishment on the very same crimes which were already penalized with death prior to the effectivity of the 1987 Constitution, Congress has not fulfilled its specific and positive constitutional duty to determine "compelling reasons" involving heinous crimes.

POSSIBILITY OF ERROR/RISK OF MISTAKEN EXECUTIONS

Death Penalty prior to the 1987 Constitution.

The records show that out of those sentenced to die, several were acquitted by the Supreme Court.

To cite some instances:

1. June 1986, the Supreme Court overturned the death sentences for Alberto Opida and Virgilio Marcelo finding that the trial judge had been prejudiced against the defendants.
2. In 1979, Manuel Navoa was convicted of arson with multiple homicide and sentenced to death. On August 1986, he was acquitted by the SC on the ground that his confession was extracted under duress.

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3. A certain Flores Doyos was also sentenced to die but was later on acquitted when the SC found that his confession was involuntary.
4. In June 1987, the SC acquitted Zosimo Crisologo, a deaf-mute who was convicted of the crime of Robbery with homicide. Sometime in 1977 he was acquitted on the ground of lack of evidence.
5. In 1970, Senen Sola was convicted of the crime of frustrated robbery with homicide and sentenced to die. In July 1987, the SC reversed the conviction on the ground of insufficient evidence.

Furthermore, out of 463 cases where the death penalty was imposed by the trial courts, only 86 were affirmed by the SC. In 297 cases, the death penalty was reduced for various reasons. In 53 cases the penalty was reduced based on mitigating circumstances; in 48 cases it was reduced because the defendants were convicted of the wrong crime; in 154 cases it was reduced due to lack of votes and in 42 cases the convicts were acquitted.

After the effectivity of Republic Act No. 7659, the Supreme Court after reviewing the cases imposing death penalty for the accused found the following:

1. *People v. Alberca* - The SC affirmed the guilt of the accused, but, for lack of necessary votes to impose the sentence of death, the Court reduced the accused's sentence to reclusion perpetua.

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2. *People v. Godoy* - The SC found the accused innocent of the crime of rape.

3. *People v. Alicando* - The SC annulled and set aside the trial court's decision and remanded the case to the trial court for further proceeding due to substantive and procedural error.

4. *People v. Diaz* - The SC held that the trial court erred in convicting Diaz without requiring the prosecution to first prove his guilt and the precise degree of his culpability as required under the rules of Criminal Procedure. The Court reiterated the mandatory procedure to be followed by trial courts after an accused pleads guilty to a capital offense.

5. *People v. Estomaca* - The SC set aside the trial court's decision and remanded the cases to the trial court for further and appropriate proceedings.

6. *People v. Saliling* - The SC affirmed the trial court's decision but modified the penalty by reducing the sentence to reclusion perpetua.

7. *People v. Laurente* - The SC modified the trial court's decision as to the nature of the offense committed and reduced the sentence imposed on Laurente.

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9. *People v. Esparas* - (Automatic Review of the Death Sentence on an Accused who, after Arraignment, Escaped and was tried in Absentia.) The Court held that its power to review a decision imposing the death penalty cannot be waived either by the accused or by the courts.

There is a great possibility that substantial errors committed by trial courts on questions of facts may not be corrected by appellate courts. Under the Philippine procedural law, the Supreme Court usually passes upon questions of law only. It will not ordinarily rule on questions of facts. Thus, convictions are difficult to reverse, as appellate courts will often not consider new evidence - and the findings of facts of trial courts are usually conclusive. Our criminal justice remains susceptible to human error. The judges and eventually the appellate court justices, like anyone else, are prone to commit mistakes as to the guilt of the accused. A mistake that results in the execution of the convicted person can never be undone.

DISCRIMINATION AGAINST THE POOR

Records show that most of the persons under the death sentence belong to the lower classes of society. Usually financially unable to his paid counsel, the court appoints *counsel de officio* for them. More often poor persons may not receive fair trials due to incompetent, inexperienced or ineffective counsel. Thus, while the law is not discriminatory, the practical effect of the death penalty is discrimination against the poor.

The best example to show the sad plight of the underprivileged is the Echegaray case where the crucial issue of constitutionality was woefully omitted in trial court and in

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the Supreme Court. Until the Free Legal Assistance Group with its expertise on the matter, conducted extensive preparation and research and presentation to the defense of the accused. To the poor and uneducated, the law is so complex written in incomprehensible language. Indeed, there is an unequal balance of justice.


The Supreme Court held an open forum wherein various human rights groups were invited to express their views. The prevailing view of those who appeared contended that the law (Republic Act No. 7659) actually was not a deterrent of the commission of heinous crimes. On the other hand, more heinous crimes, as previously stated in this policy study have increased. It should be noted that in the two cases where the Supreme Court affirmed the death sentences, the Supreme Court has not been unanimous.

CONCLUSION AND RECOMMENDATIONS

Does the death penalty deter the commission of heinous crimes?

There is no study in the world to show that the threat of death is effective deterrence even to the most heinous crimes.

What really deters the commission of the crime is the ability of criminal law enforcement to make citizens law abiding by effecting arrest and intensifying its crime prevention activities:

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(1) Increase police visibility by augmenting foot and mobile patrols and construction of detachment in crime prone areas.

(2) Improvement of crime solution efficiency by improving the skills of investigators and providing the police with better equipage.

Since social conditions and personal maladjustments are assumed to be the "seed bed" of crimes, the threat of death could not deter criminality or if there is any, the deterrent effect will be negligible. Instead, the government should address the problem of poverty and inequality by improving the quality of family life and through amelioration of economic and social conditions in the community.

There is no doubt that these are the very reasons why Filipinos are driven into criminality.

Based on this premise, the Commission is not fully convinced that the death penalty is the answer to rising criminality. The proper response to criminality lies in effective law enforcement, the quick and impartial delivery of justice, and a responsive penal system.

In the world today, the ineluctable trend is towards the abolition of the death penalty. More than half of the countries in the world have abolished the death penalty as shown in the attached list of abolitionist and retentionist countries. Such a trend is evident from the provisions of Art. 6 of the ICCPR which states: "Nothing in this article

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shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present covenant." and the UDHR of 1948.

COMPLIANCE WITH INTERNATIONAL INSTRUMENTS

The Philippines as a signatory to the International Covenant on Civil and Political Rights and the Convention Against Torture or Inhuman or Degrading Treatments or Punishment. The Philippines is under obligation to respect these human rights instruments. It is the function of the Commission on Human Rights to monitor compliance of the government with international treaty obligations on human rights (Art. XIII, section 7 of the Philippine Constitution).

It is enigmatic that the country reverted to the previous stand of imposing death penalty when other countries are rethinking the death penalty like Japan; which impose capital punishment ever since its new constitution was promulgated in 1946 for opposition to death penalty has gained support because of the reversal of several murder convictions and growing international sentiments against executions.

Among the reasons are:

1. A United Nations second protocol to the Convention on Civil and Political Rights aimed at ending the death penalty came into effect in July 1991. Although the Philippines has signed said protocol, it has not ratified it. We are recommending the ratification to the Philippine Senate.

J. Velasco
Mr. Velasco
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2. That death penalty or capital punishment does not deter crime based on the fact that most felons claim they never thought they would be caught and executed for their offense.
3. The most convincing objection is that if the individual is later found to have been innocent, the error cannot be undone.

**THE HOLY FATHER'S WARNING OF
THE TENDENCY OF A CULTURE OF DEATH**

More recently, Pope John Paul II in his Encyclical *Evangelium Vitae* (Gospel of Life) gave warning on the growing tendency of the culture of death in the world. Court decisions and national legislation among others now legalize abortions, and euthanasia (mercy killing) and most of all the legislation imposing death penalty. There is a growing tendency, both in the Church and in civil society, to demand that it be applied in a very limited way 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. The primary purpose of the punishment which society inflicts is "to redress the disorder caused by the offense. Public authority must redress the violation of personal and social rights by imposing the offender an adequate punishment for the crime, as a condition for the offender to regain the exercise of his or her freedom. In this way authority also fulfills the purpose of defending public order and ensuring people's safety, while at the same time offering the offender an incentive and help to change his or his behavior and be rehabilitated.

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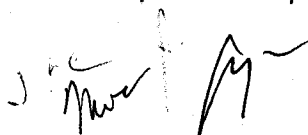
According to the Pope in said Encyclical, "It is clear that, for these purposes to be achieved, *the nature and extent of the punishment* must be carefully evaluated and decided upon, and ought not to go to the extreme of executing the offender except in cases of absolute necessity; In other words, when it would not be possible otherwise to defend society. Today, however, as a result of steady improvements in the organization of the penalty system, such cases are very rare, if not practically non-existent".

We still maintain our position in CHR Resolution No. A91-033 that death penalty is inhuman and does not really deter crime, and sometimes it results in an innocent person being hanged. It is against the principle on justice that holds that punishment should educate and rehabilitate the offender. Death penalty, which is revenge, is the opposite. While the rest of the world finds it an aberration to retain capital punishment in its penal books, the Philippines views capital punishment an impedance to criminality.

The abolition of the Death Penalty is thus necessary for the achievement of International Standards.

By abolishing the Death Penalty, we would be providing the convicted but innocent a chance for reprieve.

WHEREFORE , the Commission on Human Rights RESOLVES AS IT IS HEREBY RESOLVED, to submit this Resolution to the Philippine Congress and to His Excellency President Fidel V. Ramos to exercise his power of Executive Clemency in the case of Leo P. Echegaray and Pablito Andan. in the meantime the Congress will deliberate on the repeal of Republic Act No. 7659. It is also recommended that the Philippine Senate

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ratify the Second Protocol to the Covenant on Civil and Political Rights abolishing death penalty.

Done on this 6th day of March 1997 in the City of Pasig.


AURORA P. NAVARRETE-RECINA
Chairperson

In a Separate Opinion
NASSER A. MAROHOMSAIC
Commissioner


MERCEDES V. CONTRERAS
Commissioner


VICENTE P. SIBULO
Commissioner


JORGE R. COQUIA
Commissioner