

# PHILIPPINES: DEATH PENALTY BRIEFING

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## Execution dates set for two prisoners convicted of rape

At least two prisoners, convicted of raping their daughters, are scheduled to be executed in September and October 2002. If these executions take place, they will be the first in the Philippines for more than two years and will mark the end of a *de facto* moratorium.

- **Filemon Serrano** is due to be executed on 20 September 2002. He is reported to have been sentenced to death by the Pasig Regional Trial Court in February 1997 for the rape of his 13-year-old daughter. His death sentence was confirmed by the Supreme Court in February 2001.
- **Alfredo Nardo** is due to be executed on 16 October 2002. He was sentenced to death for raping his daughter and his death sentence was confirmed by the Supreme Court in March 2001.

President Arroyo has the right to grant clemency. In the case of Alfredo Nardo, the Secretary of Justice is reported to have said there was only a slim chance she would stop the execution from going ahead.

## Background information: The *de facto* moratorium on executions

A *de facto* moratorium has been in place since the former President, Joseph Estrada, announced a suspension of executions in March 2000 to mark the Christian Jubilee year. In December 2000 he said he would commute all confirmed death sentences and stated his support for the repeal of the death penalty law. After coming to power in early 2001, the new President, Gloria Macapagal-Arroyo, stated she was not in favour of executions and commuted at least 18 death sentences. Her stance was welcomed by Amnesty International, domestic human rights groups and the Catholic Church, who have been at the forefront of the abolitionist movement in the Philippines. However, in October 2001, she announced a change of heart, saying that the government needed to strike fear into the hearts of criminals and that those convicted of kidnapping for ransom should be put to death. Her about-turn appears to have been prompted by pressure from anti-crime lobbyists, victims of kidnappings and members of the business community concerned that the high level of kidnappings in the country was having an adverse effect on business and economic investments. President Arroyo also announced that she wanted to reverse the former President's decisions to commute death sentences, however the Department of Justice ruled that such a reversal would not be legal. President Arroyo also announced recently that she was in favour of the death penalty being imposed on those convicted of smuggling or economic sabotage. However, she is not known to have made public her position on the death penalty for those convicted of incestuous rape (see further details below).

## Crimes for which the death penalty may be imposed

The Philippines moved against worldwide trends by reintroducing the death penalty in late 1993. It had previously been abolished in 1987. Under Republic Act (RA) 7659, known as the death penalty law, the death sentence may be imposed for a total of 46 different offences, 23 of which incur a mandatory death sentence. Offences incurring a mandatory death sentence include aggravated rape<sup>1</sup>, bribery committed by a public officer, kidnapping for ransom, arson resulting

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<sup>1</sup> Rape with homicide; rape of a minor by a parent, guardian or relative; rape in the custody of law enforcement officers; rape

in death and certain drug offences. The death penalty may also be imposed for murder, robbery, treason, piracy and economic plunder.

Under RA 7659, the death penalty may not be imposed on those aged under 18 at the time of commission of the offence. Persons aged over 70 years, pregnant women and women who have given birth within the previous year may not be executed.

### **Executions carried out between 1999 and 2000**

Executions resumed in 1999 after a period of 23 years. Seven men were executed by lethal injection before former President Estrada's announcement of a suspension of executions in March 2000. Three were convicted of raping their daughters, one of rape with homicide and three of robbery with homicide.

### **Prisoners currently under sentence of death**

According to figures supplied by the Free Legal Assistance Group (FLAG), a leading organization of human rights lawyers, by June 2002 there were 1,007 prisoners, including 28 women, on death row at the New Bilibid Prisons, Muntinlupa and the Correctional Institution for Women, in the capital, Manila. The actual number of prisoners currently under sentence of death is believed to be higher as prisoners sentenced to death in other parts of the country await transferral to death row from provincial prisons.

Studies conducted in the Philippines of the death row population show that most of the prisoners are poorly educated, from the poorest sectors of society and unable to afford the best lawyers for their defence. According to figures published by FLAG in 2000, over 60% of prisoners on death row earned less than the government-mandated minimum wage prior to conviction<sup>2</sup>.

Every death sentence is automatically reviewed by the Supreme Court. By June 2002, 86 prisoners had had their death sentences confirmed. According to FLAG, 20 of them may be executed before the end of 2002. Most were convicted of rape, but they include two men who were sentenced to death for robbery with homicide and two sentenced for kidnapping for ransom. According to the death penalty law, prisoners may be executed within one year and 18 months of confirmation of their death sentence by the Supreme Court.

Amnesty International is concerned that a number of young people, aged under 18 at the time of commission of their alleged offence, have been sentenced to death in contravention of Philippine law. On 30 July 2002 the Supreme Court ruled that 12 minors under sentence of death should be moved from death row to a medium security compound of the national penitentiary.

FLAG reports that five persons aged 70 or over are currently on death row. According to the death penalty law, they may not be executed.

### **Concerns about the imposition of the death penalty for rape**

Studies prepared by the Philippine Jesuit Prison Service (PJPS) show that nearly half of those on death row were sentenced to death for crimes involving rape, including rape of a minor, incestuous rape and other aggravated forms of the crime.

Amnesty International has the greatest sympathy for victims of rape and other violent crimes. The organization acknowledges that the government of the Philippines has a duty to

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committed in full view of the spouse, parent, children or other relatives; rape of a member of a religious order; rape of a child below the age of seven; if the offender is aware he is HIV positive or suffering from other sexually transmitted diseases and infects the victim; rape committed by a member of the armed forces or police taking advantage of his position to facilitate the offence; if the victim suffers permanent physical injury during the attack; if the offender knew the victim was pregnant; if the offender was aware the victim was suffering from a mental disorder or physical disability.

<sup>2</sup> Report on Capital Punishment in the Philippines 1999-2000, FLAG

protect women and girls from rape and to bring the perpetrators to justice. However, the organization shares the view of many women=s groups in the Philippines that imposition of the death penalty will not solve the problem of high rates of rape and incest. The death penalty has a brutalizing effect and reinforces a culture of violence. Women=s activists have stressed the need for the Philippine authorities to tackle the root causes of incest and other forms of violence against women and girls. Executing those convicted of incestuous rape hinders the recovery process of rape survivors, adding to their trauma and to the suffering of other family members.

In June 1999, former President Estrada made a last-minute call to the prison authorities to halt the execution of Eduardo Agbayani, who had been convicted of raping one of his daughters. The President had previously refused to grant clemency but changed his mind when all six of Eduardo Agbayani=s daughters appealed to him to stop the execution from going ahead. Unfortunately the lethal injection had already been administered by the time the President=s call was received and it was too late to save the man=s life.

Reviewing a death sentence passed for rape, the Supreme Court is reported to have observed in 1999 that “Despite the growing numbers of individuals in Death Row for incestuous rape of minors, the number of these corrupt perverts hardly seems to have diminished”.<sup>3</sup>

### **Torture and unfair trials: the risk of executing the innocent**

Amnesty International has long-standing concerns about serious flaws in the Philippine criminal justice system which can lead to miscarriages of justice, heightening the risk that innocent people may be executed. Torture or ill-treatment of criminal suspects by the police to coerce confessions or to implicate others in crimes is commonplace. Despite a range of legal safeguards designed to protect detainees= rights, Amnesty International has found that criminal suspects, including those accused of capital crimes, are frequently arrested unlawfully without warrant and denied access to lawyers for prolonged periods. Many criminal suspects interviewed by Amnesty International have described how they were abducted, blindfolded, held incommunicado at unknown locations and subjected to various forms of torture to force them to confess. Torture methods include beatings, death threats, the use of electric shocks and suffocation with plastic bags. Detainees have also had pepper rubbed in their eyes and been forced to drink urine.

The police also use practices which undermine the right to a fair trial, such as parading detained suspects before the media and naming them as the perpetrators. Journalists are allowed to question them about their alleged crime, a practice which may intimidate them into making a false confession.

Victims of torture or ill-treatment are usually deterred from lodging complaints against the police, through intimidation, fear of reprisals and lack of funds. Effective official investigations into torture rarely take place and police officers accused of human rights violations are shielded by a climate of impunity. In 1999 the executions were carried out of four prisoners who had made credible complaints of torture following their arrests. No investigations were believed to have been carried out into their claims of torture before their executions, in clear breach of the Philippines= obligations under the UN Convention against Torture.

### **Moves towards abolition of the death penalty**

There have been significant recent moves in the Philippine Congress towards abolition of the death penalty. In May 2002 the House Committees on Revision of Laws and Civil, Political and Human Rights approved bills providing for abolition. The Senate is currently considering a similar bill and 16 Senators have expressed their support for abolition.

### **Amnesty International=s recommendations**

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<sup>3</sup> People v. Jovito Losano, SC GR No. 127122, 20 July 1999. Quoted in FLAG=s Report on Capital Punishment in the Philippines 1999-2000.

Amnesty International opposes the death penalty in all cases as a violation of the right to life and the right not to be subjected to cruel, inhuman or degrading treatment, as proclaimed in the Universal Declaration of Human Rights. The death penalty is an inherently unjust and arbitrary punishment, however heinous the crime for which it is inflicted. Studies have shown that it is more likely to be imposed on those who are poorer, less educated and more vulnerable than average. The death penalty is irrevocable, yet the risk of error in applying it is inescapable. There is no convincing evidence in the Philippines or elsewhere that the death penalty deters crime more effectively than other punishments.

**Amnesty International urges President Arroyo to consider that:**

- The death penalty is a violation of one of the most fundamental human rights the right to life;
- The death penalty has never been shown to have a unique deterrent effect and is brutalizing to all involved;
- The death penalty for incestuous rape hinders the recovery process of rape survivors, adding to their trauma and to the suffering of other family members;
- Serious failings in the criminal justice system, including the use of torture by the police, lack of access to lawyers and unfair trials, increase the risk of executing the innocent;
- A resumption in executions would go against worldwide trends towards abolition of the death penalty. 111 countries more than half in the world have now abolished the death penalty in law or practice.

**Amnesty International urges President Arroyo to:**

- Grant clemency to Filemon Serrano and Alfredo Nardo;
- Grant clemency to all other prisoners currently awaiting execution;
- Declare an official moratorium on executions pending current deliberations in Congress regarding abolition of the death penalty;
- Support all current moves within Congress towards full abolition of the death penalty.

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