

TABLE OF CONTENTS

1. Introduction.....	1
2. Background.....	2
2.1 The death penalty.....	2
2.2 The death penalty in the Philippines.....	2
3. The sentencing of child offenders.....	3
3.1 International provisions.....	3
3.2 Philippine domestic law.....	5
4. Cases: child offenders under sentence of death.....	6
4.1 Proving minority: a necessary prerequisite.....	8
4.1.1 Evidence ignored.....	8
4.1.2 Failure to raise the issue of minority during trial.....	10
4.1.3 Claims of minority at or before trial.....	11
4.2 Conditions of detention.....	13
4.3 Living under sentence of death.....	14
5. Conclusions.....	16
6. Recommendations.....	17

Philippines

Something hanging over me: child offenders under sentence of death

“There is no dispute that youthful offenders cannot be meted the death penalty”
-Republic of the Philippines Supreme Court, En Banc Resolution, O.C. NO. 01-20, 28 August 2002

1. Introduction

Philippine and international law are clear: child offenders cannot be sentenced to death or executed.¹ Child offenders are defined in domestic legislation, and in the Convention on the Rights of the Child to which the Philippines is party, as those who are under the age of 18 at the time the crime in question was committed.² Despite these provisions, child offenders have been sentenced to death and held on death row among adult offenders. At least seven child offenders, for whom names and dates of birth are known, remain under sentence of death in adult facilities.³ Amnesty International is gravely concerned this is not only a breach of domestic Philippine law but that it is also a flagrant violation of the Philippines' commitments under international law.

The Philippines has made a clear public commitment to uphold the rights of children by being one of the first countries in the region to ratify the Convention on the Rights of the Child.⁴ Ratification paved the way for domestic provisions protecting the rights of accused and detained children. The Philippines now has a range of national executive orders and laws which provide for the welfare and protection of children - especially those in 'conflict with the law' within the juvenile justice system.⁵ These legal safeguards are to be commended and provide an important structural framework. It is only the thorough and consistent implementation of such legal safeguards, however, that will make them meaningful instruments of human rights protection.

¹ Under Republic Act (RA) 7659, known as the death penalty law, the death penalty may not be imposed on those aged under 18 at the time the offence is committed. The International Covenant on Civil and Political Rights (ICCPR) states in article 6 (5) that “*Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.*” Article 37 of the Convention on the Rights of the Child states that “*States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.*” The Philippines is party to both the ICCPR and the Convention on the Rights of the Child.

² Article 1 “*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*”

³ Larina Perpinan, the lone female in the group is being held in the Correctional Institution for Women. The eight male youth offenders were ordered to be transferred from the physical premises of death row by the Supreme Court in July 2002. They are now held in a 'medium security' facility but continue to be treated as 'maximum security' prisoners as a result of the death sentences that have been passed.

⁴ The Convention on the Rights of the Child is the world's most ratified treaty, with 192 States Parties. The Philippines ratified this Convention on 20 September 1990.

⁵ Including the Child and Youth Welfare Code (PD 603); The Dangerous Drugs Act of 1972 as amended, and RA 7610 - The Special Protection of Children against Child Abuse, Exploitation and Discrimination Act 1992.

By law, it is impossible that seven youth offenders have been sentenced to death. Yet for Ramon Nicodemus, Saturani Panggayong, Roger Pagsibigan, Larina Perpinan, Elmer Butal, Christopher Padua, and Ronald Bragas this ‘legal impossibility’ is a very unfortunate reality. All were reportedly under the age of 18 at the time the crimes were committed and all are currently under sentence of death. Amnesty International has received information indicating that there may be more youth offenders under sentence of death.

Although Amnesty International welcomes the current moratorium on executions and recognizes that the sentences of the seven youth offenders named above are currently under review, the organization is nonetheless concerned that the imposition of the sentences, and the protracted delays in rectifying the sentencing constitute a serious breach of international human rights law.⁶

2. Background

2.1 The death penalty

The imposition of the death penalty constitutes cruel, inhuman or degrading treatment and is the ultimate human rights violation - a violation of the right to life. It has never been shown to deter crime more effectively than other punishments. It is irrevocable, yet the risk of error in applying it is inescapable. Studies have also shown that the death penalty is more likely to be imposed on those who are poorer, less educated and more vulnerable.

Amnesty International opposes the death penalty unreservedly, regardless of the facts of the crime or the characteristics of the condemned.⁷ Every death sentence is an affront to human dignity and every execution a symptom of, not a solution to, a culture of violence. Victims of crime and their families deserve respect, compassion and justice. Rather than offering a constructive contribution to these aims, however, the executing state imitates and takes to new heights of calculation what it seeks to condemn - the deliberate taking of human life - and creates another grieving family.

For these reasons, over half the countries in the world have now abolished the death penalty in law or in practice.

2.2 The death penalty in the Philippines

Abolished in 1987, the death penalty was reintroduced in late 1993 for a wide range of crimes, including rape, murder, kidnapping, drugs offences, treason, piracy and bribery. Executions resumed in 1999 after a period of 23 years. Seven people were executed by lethal injection between 1999 and 2000.⁸ President Joseph Estrada announced a suspension of executions to mark the Christian Jubilee Year in 2000. When President Arroyo came to power in January

⁶ In September 2002 President Macapagal Arroyo instituted a moratorium on executions while a bill on abolition was before Congress. The bill has not yet been voted upon.

⁷ For more information on the death penalty see : <http://web.amnesty.org/pages/deathpenalty-index-eng>

⁸ Leo EcheGARAY, Eduardo Agbayani, Dante Piandong, Jesus Morillos, Archie Bulan, Pablito Andan, and Alex Bartolome were executed. For further information on the resumption of executions see “*Philippines Resumes Executions*” in *Death penalty News*, Amnesty International, March 1999, AI Index: ACT 53/002/1999.

2001, she initially continued the de facto moratorium but lifted it midway through the year in response to pressure from anti-crime lobbyists and the business community. In late September 2002 President Arroyo suspended executions while a bill on abolition was before Congress. The bill is still pending. More than 1,000 people are estimated to be on death row.

In her July 2003 State of the Nation Address, President Arroyo commented that “[f]or the big fish in illegal drugs, it will be difficult to keep the moratorium on death penalty.”⁹ Subsequently, there were reports that an inspection of the lethal injection chamber had been ordered to “prepare it for the resumption of executions.”¹⁰ There have not, however, been any clear indications or official announcements that the moratorium has been formally lifted and Amnesty International is not aware of any new execution dates being set.

Amnesty International has grave concerns about serious failings in the Philippine criminal justice system and their implications on the imposition of the death penalty. The torture and ill-treatment of criminal suspects in order to coerce confessions is commonplace, increasing the risk of miscarriages of justice. Criminal suspects are often denied access to lawyers for prolonged periods and trials fall short of international standards for fairness.¹¹

3. The sentencing of child offenders

3.1 International provisions

“The overwhelming international consensus that the death penalty should not apply to juvenile offenders stems from the recognition that young persons, because of their immaturity, may not fully comprehend the consequences of their actions and should therefore benefit from less severe sanctions than adults. More importantly, it reflects the firm belief that young persons are more susceptible to change, and thus have a greater potential for rehabilitation than adults.”¹²

Mary Robinson, United Nations High Commissioner for Human Rights, August 2002

Children, by definition, are not fully developed emotionally, intellectually and physically. Anyone asked to list characteristics associated with childhood and adolescence would likely include at least one of the following: impulsiveness, lack of self-control, vulnerability to the domination of elders and underdeveloped sense of judgment and responsibility. They may have greater difficulty fully understanding the consequences of the actions and decisions they

⁹ Translated from: “*Para sa mga big fish sa iligal na droga, mahirap na ang magmoratorium sa death penalty*” as quoted on the Government of the Philippines webpage <http://www.gov.ph/>

¹⁰ As reported in ‘*Start saying your prayers*’ *Bureau of Corrections chief: We’re ready for executions*,’ by Alcuin Papa, Inquirer News Service, 30 July, 2003.

¹¹ For further information see: “*Philippines -Torture persists: appearance and reality within the criminal justice system*” Amnesty International, January 2003, AI Index: ASA 35/001/2003.

¹² Statement by Mary Robinson urging clemency for US child offenders T. J. Jones and Toronto Patterson, Office of the UN High Commissioner for Human Rights, press release, 1 August 2002.

take. They may be more easily influenced by friends and acquaintances in both positive and negative ways. These characteristics are not inherently negative, and depict a normal process of growing up and of self-discovery. However, these developmental differences between adults and children, including those in their teen years, mean that the adult criminal justice system and its system of sentencing are ill-suited, ineffective and inappropriate for youth offenders.

In the context of the criminal justice system it is recognised that in light of children's unique needs and vulnerabilities they require specific facilities, services, and provisions for sentencing. The sentencing of child offenders and their treatment in detention should "take into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."¹³ While there may still be a punitive element to sentencing of child offenders, the emphasis on rehabilitation and reintegration should be greater than with adult offenders and, for this reason the strictest of sentences should not be imposed.

There is also recognition of the fact that when a child commits a crime, society holds a greater degree of accountability than it may for an adult. Children are much more influenced by and dependent on their families, communities, schools and peers, and breakdowns in these support structures can greatly increase the likelihood that they come into conflict with the law. A report on the death penalty and children in the United States of America, commented:

*"The profile of the typical condemned teenager is not of a youngster from a stable, supportive background, but rather of a mentally impaired or emotionally disturbed adolescent emerging from a childhood of abuse, deprivation and poverty. A glimpse of the background of the child offenders executed in the USA suggests that society had failed many of them well before it decided to kill them."*¹⁴

It is for these reasons that there exists a strong international consensus against the sentencing to death and execution of youth offenders.¹⁵ This consensus has been codified in a number of human rights instruments. Article 37 of the Convention on the Rights of the Child

¹³ Article 40, Convention on the Rights of the Child.

¹⁴ "United States of America-Indecent and internationally illegal: the death penalty against child offenders" Amnesty International September 2002, AI Index: AMR 51/143/2002, p.3.

¹⁵ In October 2002 the Inter-American Commission on Human Rights held that "a norm of international customary law has emerged prohibiting the execution of offenders under the age of 18 years at the time of their crime" and that "this rule has been recognized as being of a sufficiently indelible nature to now constitute a norm of *jus cogens*". Amnesty International has long held that the use of the death penalty against child offenders is prohibited under customary international law and calls for the recognition of this prohibition, not only as a rule of customary international law, but as a peremptory norm of general international law (*jus cogens*). Since 1990 the following countries have reported executions of child offenders: Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo, and the United States of America. For further information see: "The exclusion of child offenders from the death penalty under general international law" Amnesty International, 18 July 2003, AI Index: ACT 50/004/2003.

states that “Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.” The International Covenant on Civil and Political Rights (ICCPR), one of the primary human rights treaties, has a similar provision stating that the “sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women” (article 6 (5)). The wording of article 6(5) makes it clear that it is not only execution or ‘carrying out’ of a death sentence on a child offender that is prohibited but also the imposition of the sentence itself regardless of whether the execution occurs.

3.2 Philippine domestic law

When the death penalty was reintroduced in 1993 its imposition on children was explicitly prohibited. Section 22 of Republic Act (RA) 7659, which amended the Revised Penal Code in order to provide for the death penalty, states:

“The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be reclusion perpetua.”

In 1999, two bills were introduced, one in the Congress and one in the Senate, which proposed to lower the minimum age for the death penalty to those who were either 16 or 17 years old at the time the crime was committed. The bills, which prompted public protests from human rights campaigners, children’s groups, and churches, did not pass and the minimum age for the imposition of the death penalty remained at 18.

In addition to Section 22 of RA 7659, the imposition of the death penalty on children is also prohibited by Article 68 of the Revised Penal Code which sets out sentencing procedures for youth offenders.¹⁶ Under Article 68, offenders between the ages of nine and fifteen (who demonstrate ‘discernment’) shall receive a sentence “two degrees lower” than an adult, and those under eighteen but above fifteen shall receive a sentence of “one degree lower.”¹⁷ By “degree” the law refers to different gradations of severity in the same type of crime. The crime of theft, for example, is divided into several categories based on the value of the goods stolen and consequently, the law provides for differing sentences based on the “degree” of the crime. A serious crime such as forcible abduction with rape with aggravating circumstances, for example, which would be punishable by life imprisonment or death for an

¹⁶ For further information on children in detention see: “PHILIPPINES-A different childhood: the apprehension and detention of child suspects and offenders” Amnesty International, 11 April 2003, AI Index: ASA 35/007/2003.

¹⁷ When a child commits an offence between the ages of nine and 15, his or her criminal liability depends on whether he or she acted with ‘discernment’ (understanding the difference between right and wrong). Under Philippine law children under the age of nine are exempted from criminal liability.

adult offender,¹⁸ would then be reduced by one degree to a sentence of ten to seventeen years¹⁹ if committed by a youth offender over the age of fifteen but under the age of eighteen.

One vital oversight in the Philippine juvenile justice system is the absence of any requirement to inquire into or establish whether or not a suspect is below the age of eighteen. Amnesty International is concerned that the lack of such a provision means that many children in conflict with the law may be treated and detained as adults until they are brought before a judicial authority. Amnesty International believes that this omission effectively constitutes a violation of article 10.3 of the United Nations (UN) Standard Minimum Rules for the Administration of Juvenile Justice which requires that “[c]ontacts between the law enforcement agencies and a juvenile offender ... be managed in such a way as to respect the legal status of the juvenile.” In addition, it appears to seriously undermine the effectiveness of domestic legal provisions and regulations aimed at providing human rights safeguards for child suspects.

4. Cases: child offenders under sentence of death

“Detaining an accused, who is a minor, in the Death Row which can break even a hardened criminal, while he awaits his fate, negates the very essence of the protection afforded by the State on the youth.”²⁰



As of September 2003, Christopher Padua, Ronald Bragas, Elmer Butal, Ramon Nicodemus, Saturani Panggayong and Roger Pagsibigan are held in Cell 215, Medium Security Compound, New Bilibid Prison. Larina Perpinan is held in the Women’s Correctional Institution. All remain under sentence of death. The six male youth offenders are separated from other inmates because of the severity of their sentences, and until recently were locked in their cells for more than 23 hours a day. Now in their twenties, the seven were convicted for crimes committed between 1995 and 1998 when each of them were reportedly under the age of 18. They have been detained since that time in adult facilities. Until August 2002 they were held on death row with convicted adults.

The corridor leading to the cell where those sentenced to death are held, Correctional Institution for Women © AI

¹⁸ As prescribed by law in Article 335, paragraph 3 of the Revised Penal Code.

¹⁹ ‘Reclusion Temporal’ as it is known in the Philippines is a minimum of ten years and one day to a maximum of seventeen years and one day. See *People vs. Butler*, No. 50276, January 27, 1983.

²⁰ Republic of the Philippines Supreme Court, Manila. O.C. No. 02-20. 30 July 2002, p.3.

On 30 July, 2002, the Supreme Court of the Philippines ordered that the above seven youth offenders be transferred from death row along with Alfredo Alvero, Alfredo Baroy and Anthony Manguera whose sentences have since been commuted. The decision, which for some of the detainees came as many as seven years after their arrest, was made on the basis of the submission of documentation proving they were juveniles at the time the crimes in question were committed.

In its decision the court stated:

“It has long been recognized that youthful offenders should be afforded special treatment in our judicial system considering their developmental age and desired reintegration into and assumption of a constructive role in society. Every effort should be exerted to promote the welfare and enhance the opportunities of a juvenile in conflict with the law to uphold his human dignity and worth and instil in him respect for the fundamental rights and freedom of others. Detaining an accused, who is a minor, in the Death Row which can break even a hardened criminal, while he awaits his fate, negates the very essence of the protection afforded by the State on the youth.”²¹

Since the Supreme Court’s decision, their cases were referred to the regional trial court in order for evidence of minority to be presented. Some of the youth offenders have now submitted their proof of minority to the regional trial court and have had it accepted; some have encountered complications and some have not yet had hearing dates assigned. Once proof of minority is accepted the case is then forwarded once again to the Supreme Court where the documentation is presented for the second time. At this stage, sentencing will be revised. Although more than one year has passed since documentation establishing minority was presented to the Supreme Court, all seven remain under sentence of death.

The crimes for which these individuals have been convicted are serious ones. The charges include rape, murder, attempted murder, aggravated robbery and kidnap for ransom. Amnesty International has the greatest sympathy for the victims of these crimes and for their families. Some of the youth offenders deny the charges against them and are appealing or intend to file appeals. Amnesty International does not take a position on whether they are innocent or guilty of the charges for which they have been convicted. The organization, however, believes that the manner in which these individuals were treated and the sentences that were imposed are inconsistent with Philippine and international law with respect to youth offenders. The delay in rectifying these breaches is an additional cause for concern that Amnesty International feels necessary to highlight in order to accelerate the pace with which this matter is resolved.

²¹Republic of the Philippines Supreme Court, 30 July 2002, O.C. No. 01-20, p.3.

4.1 Proving minority: a necessary prerequisite

The best juvenile justice system in the world is of little use to a youth offender if they are assumed to be and treated as an adult. Establishing the age of possible youth offenders may appear to be both an obvious and a straightforward point. In many ways it is. In the Philippines, the lack of a requirement to inquire into the age of a suspect at the time of arrest is a serious hindrance which could be easily rectified. An inquiry should be made as a matter of course in all cases where a suspect could reasonably be expected to be near or below the age of eighteen.

The matter is further complicated when it is taken into consideration that youth who come into conflict with the law tend to come from disadvantaged, marginalized and impoverished sectors of society. While not all youth in detention come from such sectors, it has been established that, for instance, street youth are consistently over-represented in the juvenile justice system.²²

For children who are born into the least advantaged sectors of society traditional indicators of age may be less easily accessed and less readily available. Not all births are registered, and for those that are there may be discrepancies in details such as the spelling of names, or the listed last names if both parents are not legally married. School records may start late, end early, be sporadic or non-existent.²³ Children may not understand the law and the advantage of proving their minority and may claim to be older than they are for a variety of reasons. Families break up and children become estranged from their parents.²⁴ Street children may not remember their birthdates, may not know their true ages and may have travelled great distances from where their records are kept.

Children from disadvantaged backgrounds who have committed crimes may also not be readily believed when they claim to be under the age of eighteen. Others may erroneously decide that the acts child offenders have committed disqualify them from the benefits of minority. Many of these factors came into play for the child offenders sentenced to death.

4.1.1 Evidence ignored

In the cases of Alfredo Baroy and Anthony Manguera valid evidence of minority was established at the time of trial and yet both youth offenders were sentenced to death.

²² An estimate put forth by Médecins Sans Frontières (Belgium), based on a series of interviews with approximately one thousand youth offenders in Metro Manila indicated that 70% of imprisoned minors are street children ('Justice for Children, Human Rights and Legal Reform: International Experts Meeting, 4 February, 2000). For further information see: "*PHILIPPINES-A different childhood: the apprehension and detention of child suspects and offenders*" Amnesty International, 11 April 2003, AI Index: ASA 35/007/2003, p.3.

²³ A nationwide study undertaken by an NGO in the Philippines found that a mere 2.2% of child offenders reported being enrolled in school. See *Youth in Detention: Issues and Challenges- A Background Survey*, PAYO, June 1996.

²⁴ A nationwide study undertaken by an NGO in the Philippines found that less than a quarter of the child offenders interviewed lived with both parents prior to arrest. *Youth in Detention: Issues and Challenges- A Background Survey*, PAYO, June 1996.

Alfredo Baroy was charged with committing three counts of rape on 2 March 1998. At that time he was 14 years, 1 month and 14 days old, having been born on 19 January 1984.

The issue of minority was raised during Alfredo Baroy's trial and, at the request of the trial court, government agencies submitted three documents to establish age: a birth certificate (considered to be conclusive proof of age under Philippine law) stating he was born in 1984, a Certificate of Late Registration of a Birth Certificate indicating he was born in 1981, and an elementary school permanent record stating he was born in 1980. The trial court, however, accepted the only piece of evidence indicating he had attained the age of majority (his elementary school records) and, in combination with its own observations of his appearance, determined that Alfredo Baroy had not been a minor when the crime was committed. A later Supreme Court judgment noted, however, that, in the "Decision of the Regional Trial Court of Paranaque, Cr. 259, sentencing accused Baroy to death, he was described as only 17 years old."²⁵

Alfredo Baroy was convicted and three death sentences were imposed on him by the Regional Trial Court, despite indications that he had been legally a child at the time the crimes were committed. On 9 May 2002 Alfredo Baroy's sentence was reduced to life imprisonment not on the basis of his minority but because of other technicalities of the case.²⁶ His sentence has reportedly since been further reduced on the basis of his minority.

"Manguera's minority at the time of the commission of the crime was never in dispute."²⁷

In the case of **Anthony Manguera** there was never any doubt that he had been only 15 years old at the time the crime was committed. He was found guilty of committing rape with homicide on 25 February 1996. His National Statistics Office-authenticated Certificate of Live Birth showed that he had been born on 12 March 1980. The Regional Trial Court, however, imposed the death penalty in full knowledge of his age, stating that:

"although at the time of the commission of the crime [he] was about fifteen (15) years old or was a youth offender, the last paragraph of Art. 192 of the Child and Youth Welfare Code on the suspension of sentence when the accused is a youthful offender, provides that the benefits of said provision shall not apply to a youthful offender who is convicted of an offence punishable by death or life imprisonment."²⁸

²⁵ Republic of the Philippines Supreme Court, 30 July 2002, O.C. No. 01-20, p.3.

²⁶ As stated in the Republic of the Philippines Supreme Court, En Banc Resolution, O.C. NO. 01-20.

"In *People v. Alfredo G. Baroy*, G. R. Nos. 137520-22, this Honourable Court had promulgated its decision on May 9, 2002 which reduced the death penalty to *reclusion perpetua* not because of Baroy's alleged minority but due to the lack of allegation and proof of the existence of an aggravating circumstance and the presence of the mitigating circumstance of drunkenness or intoxication when he committed the rape."

²⁷ Republic of the Philippines Supreme Court, En Banc Resolution, O.C. NO. 01-20.

²⁸ As cited in the Republic of the Philippines Supreme Court, En Banc Resolution, O.C. NO. 01-20.

Amnesty International has studied this provision and has concluded that it should only mean that Anthony Manguera was not entitled to be remanded to a Juvenile Rehabilitation Center until age 21 in lieu of serving a full custodial sentence.²⁹

The Office of the Solicitor General concluded in 2002 that “the trial judge erred in imposing the death penalty.”³⁰ He has since had his sentence commuted.

4.1.2 Failure to raise the issue of minority during trial

“It bears noting that in the cases mentioned in said Resolution, there exist no credible public documents and/or testimonial evidence during trial to prove the minority of the alleged youthful offenders. Thus, the trial courts concerned had no option but to impose the death penalty since the offenders were concluded to be of age in the absence of controverting evidence.”³¹

At the trials of Ronald Bragas, Ramon Nicodemus, Elmer Butal, Christopher Padua, Saturani Panggayong and Roger Pagsibigan the issue of minority was reportedly not raised by either the defence or prosecution.³² That is to say that no evidence was produced to either prove or disprove minority, nor was the question of minority addressed.

At the time of the Supreme Court Resolution, birth certificates authenticated by the National Statistics Office indicating minority at the time the crime was committed, were submitted for the first four. The National Statistics Office stated that it had no record of Saturani Panggayong or Roger Pagsibigan. Documentation from local Civil Registries has since been found indicating the minority of the latter two youth at the time the crimes were committed and was submitted by the time of the Supreme Court Resolution in July of 2002.

Amnesty International disputes the contention of the Supreme Court that the “courts concerned had no option but to impose the death penalty” since there was not only an “absence of controverting evidence” but also an absence of any evidence indicating majority. The organization argues that the issue of minority should have been immediately addressed upon arrest, but certainly prior to the passing of death sentences. Establishing minority or

²⁹ If the court finds it in the “best interest of the public as well as that of the offender,” the child offender will receive what is termed a “suspended sentence.” This usually means that he or she will be committed to a Youth Rehabilitation Centre or other appropriate institution until the age of twenty-one, or earlier, if deemed to have been rehabilitated (Section 16, Implementing Rules). Children who have already had sentences suspended or who have been convicted of an offence punishable by death or life imprisonment cannot be given a suspended sentence (Section 19, Implementing Rules). For further information see: *“PHILIPPINES- A different childhood: the apprehension and detention of child suspects and offenders”* Amnesty International, 11 April 2003, AI Index: ASA 35/007/2003, p. 17.

³⁰ Republic of the Philippines Supreme Court, En Banc Resolution, O.C. NO. 01-20.

³¹ Republic of the Philippines Supreme Court, En Banc Resolution, O.C. NO. 01-20, p.1-2.

³² With regards to Ramon Nicodemus’ trial information is incomplete, see Republic of the Philippines Supreme Court, En Banc Resolution, O.C. NO. 01-20, p. 4.

majority prior to the passing of sentences to ensure the courts do not contravene domestic and international standards is an absolute necessity.

When minority is established in line with domestically acceptable documentation, immediate action should take place in order to treat and detain the offenders in a manner consistent with domestic and international requirements for the treatment of juvenile offenders.

4.1.3 Claims of minority at or before trial

“When I was arrested, the police asked [my age]. I said I was 17 years old because that really was my age... When I was brought to the precinct, I was told I was a minor.”
Ramon Nicodemus

Several youth detainees report having raised the issue of minority on arrest or in detention but the authorities failing to follow up on the issue. Ramon Nicodemus and Christopher Padua report having been asked their age at the time of arrest. Both state that they replied that they were 17 and were told that they were minors. Ronald Bragas reports having his age inquired into while in detention.

“So when they asked me about my age, I said I was 17 years old. They asked my date of birth. I said 5 November 1977. They said that I was still a minor. In fact, I thought I was not going to be put in prison, but I was wrong.”

Christopher Padua

“I was first asked about my age when I was already at the provincial jail. It was the warden who first asked about it. I said that I was 17 years old. I said this because this really was my age. This was also the first time I said I was not yet 18. After I said this, they did nothing. So I just let it go. I did not know about my rights as a minor. Nobody told me about my rights as a minor. Nobody told me about rights. I also said I was 17 when I made a statement before the court.”

Ronald Bragas

In the cases of Alfredo Alvero and Larina Perpinan the issue of minority was raised either formally or informally during the initial trial. Alfredo Alvero claimed to be 17 years old when he committed the rape for which he was convicted, but also testified to be in possession of a Voter’s Registration Card which could only be obtained by an individual aged 18 or older.³³ No documentation was presented to substantiate either claim and he was subsequently sentenced to death. He later filed a motion for reconsideration and attached his birth certificate which indicated he had in fact been 17 at the time the crime was committed. Alfredo Alvero has since had his sentence commuted. Larina Perpinan also claimed minority during her trial (see following page) but was not believed.

³³ TSN, 3 March 1997, pp. 3-4, as cited in Republic of the Philippines Supreme Court, En Banc Resolution, O.C. NO. 01-20, 28 August 2002.

Larina Perpinan was sentenced to death in October 1998 by the Pasay City Regional Trial Court. She is reported to have been just 17 years old when she was arrested along with ten others. All were sentenced to death for the kidnap and ransom of an elderly woman who was later released unharmed. According to reports received by Amnesty International, Larina barely saw her lawyer before the trial.



Larina Perpinan (far right) with her baby. © AI.

She raised the issue of minority at trial but “the trial court rejected the claim of minority upon the observation that she lied not only about her real name and real address, but also about her true age.”³⁴ She is reported to have lied to the judge about her name, age (giving an earlier birthday) and address for fear of getting into trouble at home. When she finally obtained her birth certificate proving that she had been 17 at the time of the crime, the judge had already passed the death sentence and is reported to have refused to reverse the decision. Larina, who was pregnant at the time of her arrest, later gave birth to a baby boy in prison. She continues to be held under sentence of death at the Correctional Institution for Women.

The Supreme Court has stated that the lawyers representing the youth offenders should have formally raised the issue of minority during trial. However, a number of the youth offenders have indicated that they had very limited contact with their lawyers before their trial. Some of the youth offenders have stated that the first time they saw their lawyers was at their first hearing in court, raising strong doubts that a full defence could have been prepared. In light of this and the fact that youth offenders generally have a limited understanding of the law and the importance of establishing minority, it is imperative that establishing age be made a part of procedure prior to sentencing regardless of whether it forms part of a formal legal defence. Claims of minority must be thoroughly investigated and a conclusion must be reached on the suspect’s date of birth before any sentence is passed.

Amnesty International welcomes the Supreme Court of the Philippines’ ruling that regional trial courts must make a finding on the age of the complainant or accused prior to conviction.³⁵ The organization urges courts at all levels to make establishing age a matter of routine procedure that is required as a matter of course before a trial can be concluded.

³⁴ Republic of the Philippines Supreme Court, En Banc Resolution, O.C. NO. 01-20, p.1-2.

³⁵ *People v. Pruna*, 10 October 2002.

4.2 Conditions of detention

From the time of arrest the seven youth offenders were treated as adult detainees. They were held in police stations and, unfortunately, as with many child and adult detainees in the Philippines, some were subjected to torture and ill-treatment on arrest and in detention.³⁶

Some of the seven youth offenders under sentence of death report being physically ill-treated at the time of or immediately following arrest. Following arrest one youth offender reported that he was “physically beaten by the police because they were forcing me to admit to the shooting...” and that he was “treated like punching bags, hit with fists, kicked and beaten.” Another youth stated “I was beaten by those who arrested me.” A third youth offender stated that he was “pistol whipped” (beaten with a firearm). One youth offender described being “[forced to] drink a lot of water and [being] made [to] sleep handcuffed to a flagpole standing up.”

Once in detention several of the youth offenders reported actual or fear of ill-treatment from adult detainees with whom they were imprisoned. One individual stated: “I thought I myself was going to get killed because there were fights among all of the inmates and each had sharp weapons.” Another reported: “I was put in a cell together with the older inmates. When I was still new there, they touched me sexually and when I resisted, they punched me.”³⁷

After the intervention by a number of governmental and non-governmental agencies and the submission of documentation establishing minority to the Supreme Court in July 2002, the court ruled to transfer the youth offenders from death row on 30 July 2002. They were transferred on 18 August 2002. Unfortunately, however, the youth offenders felt that their conditions of detention actually worsened as a result of the transfer. While on death row they had had free movement around the death row building during the day. In the medium security wing one youth offender reported “we are always in our cell like birds in a cage.” Investigations by governmental and non-governmental bodies indicated that the youth offenders were locked in their shared cell for all but 15 to 30 minutes a day. They also did not have access to schooling or other social, educational or religious activities held in the prison.

“The DSWD (Department of Social Welfare and Development) talked with me and helped us get out of death row so that we could go to school. But when we got to Medium Security, we were not allowed to go to school. Nor were we allowed to move around. Sometimes, we were not even allowed to sun ourselves. Sometimes, we were allowed but only for 30 minutes. And only when we were sitting. We could not walk around because it was forbidden. Sometimes, we were not allowed to go to worship.”

³⁶ See “*PHILIPPINES-Torture persists: appearance and reality within the criminal justice system*” Amnesty International, January 2003, ASA 35/001/2003 for more information.

³⁷ For further information on the conditions of child offenders in detention see: “*PHILIPPINES- A different childhood: the apprehension and detention of child suspects and offenders*,” Amnesty International, 11 April 2003, AI Index: ASA 35/007/2003, p. 10-16.

Elmer Butal

The segregation of the youth offenders from other inmates in the medium security facility was a direct result of their sentences. Although they had been moved to a 'medium security' facility, the six male youth offenders were still deemed 'maximum security' inmates as a result of the imposition of the death sentence. The fact that they were locked in a cell for more than 23 hours a day impeded the plans some of them had to continue their schooling as such classes took place in other parts of the prison. Fortunately, this situation changed in August 2003 when those that wished to were finally permitted out of their cell during the day to attend school. Amnesty International welcomes this change and the positive impact that it will have on the lives of the youth offenders affected.

4.3 Living under sentence of death

*"It has been almost seven years that I have been in prison."
Saturani Panggayong*

The violation of the right to life is the unfortunate and final human rights violation that comes with the execution of a death sentence. It is, however, not the only human rights violation that comes with such a sentence. Those who spend years under sentence of death also suffer even if their sentences are never carried out. This mental anguish has been deemed by some courts and international mechanisms to constitute cruel, inhuman and degrading treatment.

The Committee against Torture has stated that the uncertainty of many people under sentence of death amounts to "cruel and inhuman treatment" breaching the provisions of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) to which the Philippines is party, and that the death penalty "should therefore be abolished as soon as possible."³⁸

The European Court of Human Rights has also held that the "death row phenomenon" which includes a "very long period of time spent on death row" under a stringent custodial regime "with the ever present and mounting anguish of awaiting execution of the death penalty" could constitute torture, inhuman or degrading treatment.³⁹

³⁸ A/56/44, para. 39 (g), referring to Armenia, stating that it was in breach of Article 16. Article 16 states: "1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment."

³⁹Soering v. UK., 7 July 1989, para. 104. The Court held that the extradition of the complainant to the USA to face a capital murder charge "would expose him to a real risk of treatment going beyond the threshold set by Article 3"

For child offenders, the sentence itself and the lengthy delays in rectifying it may have a significantly greater impact than they would have on adults. Children are less likely to understand the legal process. The years that pass also constitute a much larger proportion of children's lives and are an important period of social and intellectual development. A person who is arrested at the age of 14 and spends eight years under sentence of death loses most of their normal adolescence. Many of the child offenders in this group also have limited, if any, contact with their families who are living in other parts of the Philippines and therefore have difficulties in visiting the prison.

"But when we were in court, I learned that I was handed the death sentence and it was only my co-accused who would be released... Worse, the sentence was DEATH. I could not keep myself from crying, more so, when I saw my mother who almost died crying. My grandmother and aunt were there also. They could not believe what happened to me. I myself could not accept it. I was only 20 years old and for me, life had lost all meaning."

"There were only a few of us young ones in death row. There were older people. Sometimes, they would ask why we were there at all when we were not supposed to be there since we were still young. But I could not understand what they were saying because I knew nothing about what they had accused me of since I had almost no schooling. I only finished second grade because we were poor people."

Elmer Butal

"I was sentenced on 8 June 1998 when I was already 19 years of age. I was given the DEATH PENALTY and I was subsequently brought to Muntinlupa Death Row on 25 July 1998. I have been here on death row for the last six years."

"..I feel deep pain at my present situation and deep disappointment. I am losing hope for the future, having been here for as long as I have. The death sentence has affected me particularly deeply. I feel that everything has ended for me because in my situation as a death convict, I feel that whatever hopes I have for the future, will never be realized. And worst of all, I feel that I am too young to die-if it happens. As it is, I am mentally tortured just thinking about the death penalty. I cannot escape being afraid."

Ronald Bragas

"In prison, it is easy to assume that nobody cares. So, many things tend to upset you. Sometimes it is fear at your present situation or you may be afraid that your family will just forget about you completely, or you might be thrown into a place where nobody will care or understand your condition. Sometimes you reach a point where you lose all hope. It has been almost seven years that I have been in prison..."

of the European Convention on Human Rights. Article 3 states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

“I had thought that the death sentence meant that I was finished. I had thought that as soon as I got to Muntinlupa, I would be lethally injected.”

Saturani Panggayong

5. Conclusions

“I also hope that those judges, before they give out their decisions on any man, study very carefully what they decide. Especially with regard to minors like me. So that there will be no more who will suffer in the same way that I have suffered, because those people will be pitiful indeed.” Ronald Bragas

Amnesty International recognizes that many governmental and non-governmental agencies as well as individuals have worked very hard to improve the conditions of the youth offenders under sentence of death and have tried to rectify their situation. The organization also acknowledges that a process, initiated by the Supreme Court, of proving minority with a view to revising sentences is underway. The recommendations in this report should not be considered as an appeal by Amnesty International for intervention into a judicial process.

Nonetheless, the organization strongly maintains that Ramon Nicodemus, Saturani Panggayong, Roger Pagsibigan, Larina Perpnan, Elmer Butal, Christopher Padua, and Ronald Bragas should not be under sentence of death and that urgent action is required to rectify their situation and to put measures in place to ensure that no other child offenders can ever be sentenced to death in the Philippines. Concrete and transparent measures must be put in place in order to ensure that age is inquired into on arrest, and that in all cases age is established prior to sentencing. Should mistaken sentencing occur on the basis of confusion surrounding an individual’s minority, there should be an automatic and immediate process of commuting the sentence upon proof of minority and without prejudice to any future appeals. Amnesty International holds grave concerns about the continued sentences facing the seven youth offenders and additional concerns that there may be more youth offenders in a similar position who have not yet been identified.

6. Recommendations

The Government of the Philippines should undertake the following:

- Take immediate steps to remove the death sentences passed on Ramon Nicodemus, Saturani Panggayong, Roger Pagsibigan, Larina Perpinan, Elmer Butal, Christopher Padua, and Ronald Bragas.
- Immediately commute any death sentences passed on youth offenders upon proof of minority and change conditions of detention so as to be in line with international standards for the detention of juvenile offenders.
- As a matter of urgency, strictly enforce the law prohibiting the sentencing of child offenders to death. The age of any suspect accused of a crime for which Philippine law allows the death penalty must be established prior to sentencing in order to ensure that children are not sentenced to death.
- Ensure that law enforcement officials inquire immediately into, and document on arrest or first contact, the age of any suspect who appears to be younger than eighteen.
- Ensure that the documented age of a minor is brought to the attention of all judicial and custodial officials coming into contact with the child and is noted in the custodial investigation report.
- Immediately and impartially investigate any allegations of torture or ill-treatment of children on arrest or in detention. Those alleged to have committed torture or ill-treatment should be suspended from duty pending an investigation. Those found responsible must be brought to justice. Any information alleged to have been obtained through torture or ill-treatment must only be admissible in court as evidence against those accused of torture or ill-treatment.⁴⁰
- Ensure that child detainees are, in accordance with international standards, at all times detained separately from adult detainees and preferably in separate facilities.⁴¹
- Take active and effective measures to prevent violence between child detainees or between child and adult detainees by investigating any reports of violence, prosecuting those responsible and offering protective custody to those who may be vulnerable to abuse.

⁴⁰For a thorough set of recommendations on the prevention and prosecution of torture, see *“Philippines: Torture persists-appearance and reality within the criminal justice system”*, Amnesty International, January 2003, AI Index: ASA 35/001/2003 p. 44-51.

⁴¹ For a thorough set of recommendations on children in detention see: *“PHILIPPINES- A different childhood: the apprehension and detention of child suspects and offenders”* Amnesty International, 11 April 2003, AI Index: ASA 35/007/2003, p. 19-20.