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PHILIPPINES

The death penalty: Some questions and answers

and

Appeal cases

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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM



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HUMAN RIGHTS AND THE DEATH PENALTY: SOME QUESTIONS AND ANSWERS

Why do human rights groups like Amnesty International oppose the death penalty?

Amnesty International and other human rights groups oppose and campaign against the death penalty in all cases throughout the world, and without reservation, on the grounds that it is a violation of the right to life, and constitutes the ultimate cruel, inhuman and degrading punishment.

No matter what reason a government gives for killing prisoners, and what method of execution is used, the death penalty cannot be divorced from the issue of human rights. Article 3 of the Universal Declaration of Human Rights proclaims “Everyone has the right to life”. Article 5 categorically states that “No one shall be subjected to cruel, inhuman or degrading treatment or punishment”.

Amnesty International believes not only that the death penalty violates these rights, but also that these rights are inalienable. They may not be taken away even if a person has committed the most atrocious crimes. Human rights apply to the worst of us as well as the best of us, which is why they protect us all.

Moreover, executions are brutalizing; they dehumanize everyone involved in the process, cheapen human life and inflict mental suffering on relatives of the victims.

THE DEATH PENALTY AND DETERRENCE

Doesn't the death penalty deter other criminals from committing crimes?

“We are determined that the death penalty will never come back in this country. It is not because the death sentence has been scrapped that crime has reached such unacceptable levels. Even if the death sentence is brought back, crime itself will remain where it is”.

Nelson Mandela, President of South Africa

Countless men and women throughout the world have been executed on the assumption that their deaths will deter others from crime, especially murder. Yet study after study in diverse countries have failed to find convincing evidence that the death penalty has the unique capacity to deter other people from committing particular crimes.

It is wrong to assume that all those who commit such a serious crime as murder do so after rationally calculating the consequences. Murders are often committed in moments of passion, when extreme emotions overcome reason. They are also committed under the influence of alcohol or drugs, or in moments of panic when the perpetrator is caught in the act of stealing. Some murderers are highly unstable and mentally ill. In none of these cases can fear of the death penalty be expected to act as a deterrent.

In addition people who plan serious crimes in a calculated manner may decide to proceed, despite the risk, in the belief that they will not be caught. Criminologists have long argued that the way to deter such people is not to increase the severity of the punishment, but to increase the likelihood of sure detection and conviction.

Isn't the death penalty a means to suppress drug trafficking and abuse - in the Philippines and elsewhere?

A number of countries around the world, responding to the menace of drug-trafficking and abuse, have adopted laws making drugs-related offences punishable by death. However, despite thousands of executions there is no clear evidence that the death penalty has had any identifiable effect in alleviating trafficking and abuse.

In many cases the availability of drugs and levels of addiction have continued to rise despite the threat of executions. In addition those executed for drug offences tend to be at the lower levels of the narcotics trade and comprise mostly small-time addicts and individual couriers, who are often ill-educated, young or economically vulnerable, while those who organize and profit from the crime frequently escape capture and prosecution.

In 1986 a Philippine Constitutional Commissioner, Teodulo Natividad, who was the author of the 1972 Dangerous Drugs Act, argued for abolition of the death penalty and recalled the execution by firing squad of convicted heroin manufacturer Lim Seng in 1976,

"I had hoped that by his death there would be less narcotic addiction in our country.

There is more.... Therefore the life of that man, snuffed out to discourage drug addiction, was lost in vain".

CONFRONTING CRIMINALITY

Isn't it right to execute criminals in order to permanently incapacitate them, and so make sure they can never repeat the crime?

There is no way to be sure that the prisoner would have repeated the crime if allowed to live, nor is there any need to take the prisoner's life for the purpose of incapacitation: dangerous offenders can be kept safely from the public without resorting to execution, as shown by the experience of many abolitionist countries.

The death penalty takes the lives of offenders who might have been rehabilitated if given the chance. In addition, violent crime is often linked to other social problems such as poverty, unemployment, alcoholism and the disintegration of the family. These problems are not solved by the 'permanent incapacitation' of executions.

"I have appealed to His Majesty on humanitarian grounds for clemency to allow these young people...a new lease on their lives, during which they could be reformed and taught the importance of discipline, good behaviour and sanctity of human life."

President Ramos stating at a press conference in July 1997 that he had appealed to the Sultan of Brunei on behalf of two Filipinos sentenced to death for armed robbery.

JUSTICE, RETRIBUTION AND VENGEANCE

Doesn't justice for the victims of the most heinous of crimes demand retribution?

The argument that certain people deserve to be killed for the evil they have done, and that some crimes are so offensive that killing the offender is the only just response, is an emotionally powerful one.

However basing the death penalty on retribution makes impossible demands on the criminal justice system. Risks of error and unfairness exist in all such systems. No justice system is, or conceivably could be, capable of deciding fairly, consistently and infallibly who should live and who should die.

The death penalty is, in practice, an arbitrary punishment. Judicial systems are influenced by many factors and, in reality, not all suspected criminals are equal under the law. The imposition of the death penalty on different suspects has repeatedly been proved to be inconsistent, and to work in a discriminatory way against poor and minority groups.

Moreover the death penalty is irrevocable and always carries the risk that the innocent may be put to death. The irrevocable punishment of death not only removes the victim's right to seek legal redress for wrongful conviction, but also the state's capacity to correct its errors.

What is wrong with vengeance?

In its simplest form the argument for retribution is also often no more than a desire for vengeance masked as a principle for justice. The desire for vengeance can be understood and acknowledged but the exercise of vengeance must be resisted. The history of the endeavour to establish the rule of law is a history of a progressive restriction, in public policy and legal codes, of personal vengeance.

"I regard the death penalty as a savage and immoral institution that undermines the moral and legal foundation of a society. I reject the notion that the death penalty has any essential deterrent effect on potential offenders. I am convinced that the contrary is true - that savagery begets only savagery"

Andrei Sakharov (awarded the Nobel Peace Prize for his human rights work in the former Soviet Union)

KEYWORDS: DEATH PENALTY1 / AI APPEALS1 / LEGISLATION / TRIALS / CONFESSIONS / INCOMMUNICADO DETENTION / PHOTOGRAPHS /

APPEAL CASES

LEO ECHEGARAY, aged about 35, worked as a house painter before his arrest. He has four young children. His family now make a living as sidewalk vendors. His death sentence was the first to be confirmed by the Supreme Court.

Leo Echegaray was sentenced to death in September 1994 by the Quezon City Regional Trial Court after being convicted of raping his 10-year-old step-daughter. In an interview with an Amnesty International representative Leo Echegaray described how he had been sentenced after a trial he described as "more than speedy". The trial took place over a course of five hearings, each lasting approximately one hour. He was represented by a series of different lawyers who had been assigned from the Public Attorney's Office, most of whom he barely recalled meeting. He felt that there was much public pressure, especially in the media, for a conviction. He claimed that the outcome of the trial was influenced by local government officials who had connections with the judge.

In June 1996 the Supreme Court confirmed his death sentence. This was the first confirmation of a pending death sentence to take place in the Philippines. Two months later the Free Legal Assistance Group (FLAG) - a leading association of human rights lawyers - filed a supplementary appeal against the sentence. FLAG argued that Leo Echegaray's alleged crime had not been proved beyond reasonable doubt and that his trial was unfair. The date the crime was alleged to have been committed was never clarified by the prosecution which, the lawyers argued, prevented him from preparing his defence properly. They argued that he was also denied the right to effective legal assistance due to the incompetence of his assigned lawyer. FLAG further argued that the judge was strongly biased in favour of the death penalty. The judge concerned gained notoriety for founding an organization known as the "Guillotine Club", a club of judges who have passed death sentences and who are perceived by the public to be strong advocates of the death penalty. FLAG also argued that the death penalty law is unconstitutional as it constitutes a cruel and unusual punishment and is an excessive and disproportionate punishment for rape and other crimes which do not lead to the death of the victim.

In February 1997 the Supreme Court rejected FLAG's arguments and confirmed Leo Echegaray's sentence "with finality", thereby closing all further legal avenues for appeal. The Supreme Court subsequently ruled that, in accordance with the provisions of the Death Penalty Act, Leo Echegaray could be executed after 27 February 1998, and that the execution should take place before 28 August 1998. Leo Echegaray's only hope now lies with an appeal for clemency to President Ramos. Fears that the execution may go ahead earlier in this period have been heightened by announcements by President Ramos' supporters that Ramos wants the first execution to be carried out before his term of office ends in June 1998.

WHAT YOU CAN DO:

Urge the authorities to commute the death sentence passed on Leo Echegaray.

Please send appeals to:

President Fidel V. Ramos
Malacañang Palace
Manila
Philippines

Artemio C. Aspiras
Executive Director
Board of Pardons and Parole
NIA Road cor. East Avenue
Diliman, Quezon City
Philippines

Please copy your appeals to:

Aurora Navarrete-Reciña
Chairperson, Commission on Human Rights
IBP Building, Doña Julia Vargas Avenue
Pasig, Metro Manila
Philippines

**and to diplomatic representatives of the Philippines
in your country**

DANTE PIANDIONG, a 26-year-old dried fish vendor, was sentenced to death with JESUS MORALLOS, 28, and ARCHIE BULAN, aged 19. Jesus and Archie were both unemployed before their arrest. All three claim they are innocent and that they were tortured by the police. In an interview with an Amnesty International representative Dante Piandiong said: "All of us will die, but not at this age. It's not yet time to leave this world".

Dante Piandiong was convicted with Jesus Morallos and Archie Bulan of robbery with homicide. In February 1994 the three men were alleged to have boarded a passenger *jeepney*, robbed the passengers and shot a policeman who was on board. The policeman later died in hospital.

Dante Piandiong, Jesus Morallos and Archie Bulan were sentenced to death in November 1994 by the Kalookan City Regional Trial Court. In February 1997 the Supreme Court confirmed their death sentences, ruling that the three men had been properly identified in a police line-up and dismissing their defence of alibi.

In an interview conducted by a representative of Amnesty International, Dante Piandiong claimed he was innocent. He described how he was arrested without warrant on 27 February 1994 and tortured in police custody in an attempt to force him to confess. He refused to do so. During interrogation he claims he was given electric shocks to his genitals. He stated he was also handcuffed and forced to lie flat on a bench. His face was then covered by a face towel and water was poured into his mouth. He was also beaten all over his body. When he asked to see a lawyer the men just continued to beat him. When he was brought before an inquest on 1 March 1994 he was still without a lawyer. His parents were only able to find a lawyer to represent him at the end of March 1994. He told Amnesty International that he had not received any medical treatment for his injuries and that he still feels pain in cold weather.

During their trial Dante Piandiong, Jesus Morallos and Archie Bulan testified that they had been tortured and ill-treated in police custody. However the trial judge only mentioned the ill-treatment in passing when he convicted the three men and sentenced them to death. When the Supreme Court reviewed their case and confirmed their sentences it made no reference at all to the ill-treatment. FLAG lawyers have filed an appeal on behalf of the three men which is still pending. In their appeal they argue that

the case was not proved beyond reasonable doubt, given that the robbery took place late at night when it was so dark that eyewitnesses were only able to catch a brief glimpse of the robbers. FLAG also argues that there were serious irregularities in the way the police conducted the identity parade. FLAG also stated that the descriptions of the robbers given by eyewitnesses and produced as evidence in court were completely different to the actual appearance of Dante, Jesus and Archie.

In March 1997 Jesus Morillos was interviewed by a journalist from the Philippine Daily Inquirer. He told the journalist: *"Many prisoners here wept when they learned about the Supreme Court's decision. They knew that our case was relatively strong, and they were expecting a commutation of our sentence, if not a total reversal"*. Archie Bulan also told the journalist, *"We were picked up by the police inside the church. They told us they were just going to verify something. But when we arrived at the police station, they were already forcing us to sign a confession"*¹.

WHAT YOU CAN DO:

_ Urge the authorities to commute the death sentences passed on Dante Piandiong, Jesus Morillos and Archie Bulan;

_ Express concern at reports that Dante Piandiong, Jesus Morillos and Archie Bulan were tortured during interrogation, a factor which may have prejudiced the fairness of their trial. Call for a prompt and impartial investigation into the allegations of torture, as required under the UN Convention Against Torture.

Please send appeals to:

President Fidel V. Ramos
Malacañang Palace
Manila
Philippines

Artemio C. Aspiras
Executive Director
Board of Pardons and Parole
NIA Road cor. East Avenue
Diliman, Quezon City
Philippines

Secretary Teofisto Guingona
Secretary of Justice
Department of Justice
Padre Faura, Ermita, Manila
Philippines

¹Reported in the Philippine Daily Inquirer, 10 March 1997

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Chairperson, Commission on Human Rights
IBP Building, Doña Julia Vargas Avenue
Pasig, Metro Manila
Philippines

and to diplomatic representatives of the Philippines in your country

PABLITO ANDAN, a 22-year-old tricycle driver, married with three young children. After his arrest he stated he was held incommunicado overnight, during which he claimed he was tortured. He appears to have been convicted and sentenced to death on the basis of circumstantial evidence and a confession, later retracted in court, which was made in questionable circumstances without the presence of a lawyer.

Pablito Andan was convicted and sentenced to death for rape and murder by the Bulacan Trial Court in August 1994.

In an interview with a representative of Amnesty International Pablito Andan described how two men knocked on his door at around midnight one night in February 1994. He claimed he recognized them as bodyguards of the local mayor. The men pushed him into a car, covered his face with a cloth and drove him to a hotel in the vicinity where he was taken to a room with about six men. He claimed he was blindfolded and ordered to confess to the crime of rape and homicide. The men beat him when he refused to confess and forced his head down a toilet bowl. They also poured water into his nostrils. Pablito Andan said he felt himself being injected in the neck and buttocks, following which he felt dizzy and confused. At around dawn he was taken to a detention cell at the municipal hall.

In March 1997 Pablito Andan's death sentence was confirmed by the Supreme Court. According to the Supreme Court ruling on the case, Pablito Andan made a confession to the local mayor, in the presence of police officers and journalists. At no time during these proceedings was a lawyer present. However, when his case went to trial he retracted his confession and claimed he had been tortured during interrogation. The Supreme Court ruled that the police had *"failed to inform [the] appellant of his constitutional rights when he was investigated and interrogated"* and declared his confession to the police inadmissible as evidence. The court also recorded Pablito Andan's allegations of torture. The confession made subsequently in front of the mayor and members of the police and local media, despite the lack of a lawyer, was however admitted by the court which ruled that it had been made *"spontaneously, freely and voluntarily"*. The court also ruled that *"[the] appellant's extrajudicial confessions together with the other circumstantial evidence justify the conviction of the appellant"*.

Pablito Andan was interviewed by a journalist from the Philippine Daily Inquirer in March 1997. He told the journalist: *"There is no one here [on death row] among us who belongs to a wealthy family. We could not afford a good lawyer - that's why we ended up here"*².

WHAT YOU CAN DO:

Urge the authorities to commute the death sentence passed on Pablito Andan.

Express concern at reports that Pablito Andan was tortured during interrogation, a factor which may have prejudiced the fairness of his trial. Call for a prompt and impartial investigation into the allegations of torture, as required under the UN Convention Against Torture.

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²Reported in the Philippine Daily Inquirer, 10 March 1997

JEMREICH MATIGNAS, aged 23, married with young children. He was sentenced to death after being held all night in incommunicado detention, where he claims he was tortured.

Jemreich Matignas was sentenced to death in November 1996 for rape and murder. His case has not yet been reviewed by the Supreme Court.

He claims he was tortured by members of the National Bureau of Investigation (NBI) in an attempt to force him to admit to participating in the crime. Three other men were also charged as suspects. Amnesty International does not know whether they have been convicted.

In an interview with an Amnesty International representative, Jemreich Matignas claimed he was tortured all night after his arrest. He said he was arrested by a group of armed men in plainclothes who refused to identify themselves, then forced him into the back of a van where he was handcuffed and punched on the back of the head. He was taken to the NBI headquarters in Manila. By then it was about 8pm. He was taken to a room where he was blindfolded, told to remove his clothes and ordered to jog on the spot and do squatting exercises. He was told to confess and beaten along his spine with the butt of a gun. When he refused he was left to sit naked next to a fan in a cold air-conditioned room. Later he was taken to another room where he was told he had been identified by a witness to a rape and murder. The men then continued to beat him all over his body and put a rope round his neck, pulling it so tight that he could hardly breathe. The beatings continued when Jemreich Matignas insisted he had nothing to do with the crime.

Jemreich Matignas' mother told Amnesty International in a separate interview that she went to the NBI headquarters after being told by local people of her son's arrest. However, NBI officials claimed they knew nothing of his whereabouts. Scared and confused, she spent the whole night waiting at the headquarters for news of her son. Finally the next morning she was able to see him briefly. She was alarmed by visible injuries to his body: his ears, eyes and nose were bleeding and swollen. When she demanded to know who had hurt him, officials forced her out of the room.

Jemreich Matignas suffers from intermittent hearing difficulties as a consequence of the beatings he received and has not been able to obtain an independent medical examination of the injury to his ear. He claims that his initial request for medical treatment was only granted several days after the torture and the examination was conducted by an NBI doctor who did not record any injuries.

WHAT YOU CAN DO:

Express the hope that Jemreich Matignas' death sentence will be commuted when his case is reviewed by the Supreme Court;

Express concern at reports that Jemreich Matignas was tortured during interrogation, a factor which may have prejudiced the fairness of his trial. Call for a prompt and impartial investigation, as required under the UN Convention Against Torture.

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EDGAR MALIGAYA, a 30-year-old musician and father of a young child, was sentenced to death for murder. He claims he is innocent and that he was tortured to force him to confess to a crime he did not commit.

Edgar Maligaya was sentenced to death in August 1996 for his alleged involvement in the murder of a Chinese-Filipino businessman. His sentence has yet to be reviewed by the Supreme Court.

Edgar Maligaya was on parole after serving a sentence for a previous offence when he was arrested in January 1996 by plainclothes police. The arrest took place at Manila City Jail where Edgar Maligaya used to return regularly to play as a volunteer guitarist in the prison chapel. In an interview with a representative of Amnesty International, Edgar Maligaya alleged that he was blindfolded, punched and pushed into a car where his head was held down between the front seats. The car was driven to a hotel and he was taken into an air-conditioned, carpeted room where he was interrogated - still blindfolded - about his alleged involvement in the fatal shooting of a Chinese-Filipino businessman in 1995.

According to his account, during the interrogation, which was staggered over a whole night, Edgar Maligaya stated he was punched hard when he failed to answer a question 'correctly'. He was then pushed to the floor with his shirt pulled off, his trousers round his knees and his hands cuffed behind his back and beaten on the stomach with a wooden baton wrapped in newspaper. A plastic bag was placed over his head and held tight at the back of the neck until he began to choke; this process was repeated over five times. On being threatened with electric shocks Edgar Maligaya agreed to confess. A typewriter was brought to the room and a confession typed up. In fear, he signed the papers without reading them through. The following morning he was examined by a doctor at police headquarters. However, he claims that the doctor took no notice of his injuries and merely went through a list, ticking off each answer.

Several days later a volunteer from the Episcopal Commission for Prisoners' Welfare visited Edgar Maligaya in detention and was reportedly concerned to see marks of torture on his body.

Amnesty International also interviewed Expedito Bolima, a friend of Edgar Maligaya, who is also suspected of involvement in the crime. Expedito Bolima claims he was taken by police the same night to an unidentified hotel room where he was also

interrogated and allegedly subjected to various forms of torture, including beatings, electric shocks and having his face held under the dirty water of a toilet bowl. Expedito Bolima finally agreed to confess and his trial is continuing. Both Edgar Maligaya and Expedito Bolima claim that they were pressured into incriminating other alleged members of the group suspected of killing the businessman.

WHAT YOU CAN DO:

Express the hope that Edgar Maligaya's death sentence will be commuted when his case is reviewed by the Supreme Court;

Express concern at reports that Edgar Maligaya was tortured during interrogation, a factor which may have prejudiced the fairness of his trial. Call for a prompt and impartial investigation into the allegations of torture, as required under the UN Convention Against Torture.

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