



International
Commission
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Rodrigo R. Duterte

President-Elect of the Republic of the Philippines

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Dear President-elect Duterte,

We are writing to you today to express our concern regarding your recent statements in support of reinstating the death penalty.

The International Commission of Jurists (ICJ) is a global organization of judges and lawyers. For the past 60 years, it has devoted itself to promoting the understanding and observance of the rule of law and the legal protection of human rights throughout the world.

The ICJ considers the imposition of the death penalty to be a violation of the right to life and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Reinstating the death penalty would contravene international commitments that the Philippines has voluntarily entered into. It would also place the Philippines at odds with the repeated calls by the UN General Assembly for all states "to establish a moratorium on executions with a view to abolishing the death penalty" and for those States which have abolished the death penalty, "not to reintroduce it".¹

Scientific research has failed to establish any significant impact of the death penalty on the incidence of crime. On the other hand, research indicates that improving crime detection and investigation, increasing the effectiveness and efficiency of the justice system, and addressing underlying causes, is far more likely to reduce serious crime.

Obligations of the Philippines under international law

The Philippines is currently an example of global best practice on the abolition of the death penalty. It abolished the death penalty in 2006 and is the only ASEAN Member State that has ratified the 2nd Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).

Under Article 1 of the 2nd Optional Protocol to the ICCPR, the Philippines is obliged not to execute any person within its jurisdiction.

¹ E.g. UN General Assembly Resolution 69/186 (18 December 2014), articles 5(f) and 6.

The 2nd Optional Protocol to the ICCPR contains no provision on renunciation, and States may not unilaterally withdraw from their obligations under the Protocol.² The resumption of executions in the Philippines would therefore constitute a violation of international law and represent an alarming disregard for the international human rights system.

No evidence that death penalty deters crime

Your statements suggest that the intention to reinstate the death penalty is largely driven by the desire to reduce the occurrence of crime in the Philippines. We emphasize, however, that empirical evidence does not prove that the death penalty deters crime.

For instance, there is no proof that the death penalty deters crime at a greater rate than alternative forms of punishment,³ and the overwhelming majority of criminologists believe that the death penalty does not provide an effective deterrent.⁴

Research also indicates that increasing the chances of actually being caught and punished can be effective in deterring criminal conduct.⁵ Individuals are less likely to commit crimes when there is a high probability of actually being subjected to criminal sanctions.⁶ Thus, heightened enforcement efforts that are highly visible send a clearer message to potential criminals.⁷ Indeed, multiple studies demonstrate that an increased likelihood of punishment is directly associated with a decrease in crime.⁸

Based on the scientific research, then, reinstating the death penalty in the Philippines is unproven and unlikely to have any real impact on the incidence of serious crime in the country. On the other hand, investing in improved detection and investigation techniques and capacity, and improving the effectiveness and efficiency of the justice system, is more likely to achieve real results in reducing crime.

We strongly urge that, in lieu of reinstating the death penalty, the Government of the Philippines should focus more on effective, evidence-based approaches to crime prevention. Policies and legislation that address the underlying social and economic causes of criminal activity are also vital to ensuring stability and the rule of law.

We note that there have already been initiatives in the past that, if given strong support and adequate resources, may be effective in deterring crime. For instance, the Philippine National Police has, in the past, established constructive law

² United Nations High Commissioner for Human Rights, Human Rights, Civil and Political Rights: The Human Rights Committee, Fact Sheet No. 15 (Rev. 1), 10 (May 2005), <http://www.ohchr.org/Documents/Publications/FactSheet15rev.1en.pdf>.

³ See NATIONAL RESEARCH COUNCIL, DETERRENCE AND THE DEATH PENALTY 2-3 (D. S. Nagin & J. V. Pepper eds., 2012), <https://www.law.upenn.edu/live/files/1529-nagin-full-reportpdf>.

⁴ Michael L. Radelet & Traci L. Lacoock, *Do Executions Lower Homicide Rates: The Views of Leading Criminologists*, 99 J. OF L. AND CRIMINOLOGY 489, 501(2009), <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7323&context=jclc>.

⁵ VALERIE WRIGHT, THE SENTENCING PROJECT, DETERRENCE IN CRIMINAL JUSTICE: EVALUATING CERTAINTY VS. SEVERITY OF PUNISHMENT 1 (2010), <http://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>.

⁶ *Id.* at 4.

⁷ *Id.* at 3-5.

⁸ *Id.* at 4.

enforcement policies through initiatives such as the Community-Oriented Policing System, which emphasized comprehensive policing, data-driven solutions and community engagement.⁹

Reinstating capital punishment in the Philippines would constitute a huge setback not only for the promotion and protection of human rights in the country, but also for the Philippines internationally.

As mentioned above, the Philippines has in recent years shown how strong leadership and political will can be instrumental in abolishing the death penalty. The Philippines can today rightfully claim and be presented internationally and regionally as an example of global best practice in the abolition of the death penalty.

Needlessly reversing course and losing this leading role is unlikely to have any significant impact on reducing crime in the Philippines, but it will adversely affect the Philippines' standing in the world.

We therefore hope that, under your presidency, the same strength of leadership can be applied in maintaining the current prohibition of the death penalty, and instead preventing crime in a manner that conforms to international human rights law and standards.

Very truly yours,



Sam Zarifi

Regional Director for Asia & the Pacific
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*For questions and clarifications, please contact **Ms. Emerlynne Gil**, Senior International Legal Adviser for Southeast Asia, tel. no. +662 619 8477 or emerlynne.gil@icj.org*

⁹ Miguel Coronel, *The Philippine Strategy and Best Practice for Crime Prevention: Community-Oriented Policing System*, in STRATEGIES AND BEST PRACTICES IN CRIME PREVENTION IN PARTICULAR RELATION TO URBAN AREAS AND YOUTH AT RISK: PROCEEDINGS OF THE WORKSHOP HELD AT THE 11TH UN CONGRESS ON CRIME PREVENTION AND CRIMINAL JUSTICE 80-85 (Margaret Shaw & Kathryn Travers eds., 2005), http://www.crime-prevention-intl.org/fileadmin/user_upload/Publications/Strategies_and_Best_Practices_in_Crime_Prevention_urban_Areas_and_Youth_at_Risk_ANG.pdf.