The war on drugs, forensic science and the death penalty in the Philippines

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ABSTRACT

The effectiveness of the death penalty to deter heinous crimes remains a contentious issue even though it has been abolished in many countries. Three years into President Rodrigo Duterte’s administration, the push to re-impose the death penalty is being taken seriously. There is urgency in providing options to the drug problem other than killing drug suspects in the streets or sentencing them to death. The drug problem is a complex issue and exposes the human vulnerability of its users for criminal exploitation. We propose here that addressing these vulnerabilities in a balanced and comprehensive manner through health-focused, rights-based criminal justice responses, conducting forensic science-based drug investigations and determining the social causes of drug abuse is an alternative solution that demands cooperation across different sectors of society as well as underscores the fundamental value of human life.

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The effectiveness of the death penalty to deter heinous crimes remains a contentious issue even though it has been abolished in countries such as Australia, New Zealand, Canada, European Union member nations and some Asian countries such as Cambodia, and Nepal [1]. Many argue that the irrevocability of the death penalty, in the face of potential erroneous convictions, can never justify its imposition [2,3].

Three years into President Rodrigo Duterte’s administration, the push to re-impose the death penalty for the third time is being taken seriously by the Philippine House of Congress and the Senate. With the majority of legislators supportive of President Duterte’s war on drugs amidst the absence of the universal principles of the rule of law [4], there is increasing realization of the impending possibility that a death penalty law will be passed soon. In 2019 alone, 19 bills had been filed in the 18th Philippine Congress seeking to re-impose the death penalty for certain serious offenses. 15 of these seek to impose the death penalty for drug trafficking and other drug related offenses.

The Philippines is not new to the death penalty. The death penalty in the Philippines can be traced as far back in history as the time of Spanish colonization wherein the Spanish Penal Code of 1848 prescribed the death penalty for individuals challenging its rule. This continued through to the Marcos regime that ended during the EDSA revolution of February 1986. During the Corazon Aquino government the ratification of the 1987 Constitution paved the way for the abolition of the death penalty making the Philippines to be the first Asian country to do so [1]. All death sentences at the time were reduced to reclusion perpetua. However, five years later, the Philippine Congress under the administration of then President Fidel Ramos re-imposed the death penalty law through Republic Act No. 7659 in order to address the rising criminality and incidence of heinous crimes. The country held the record for the highest number of mandatory death offenses (30 offenses) and death eligible offenses (22 offenses) after it was re-imposed in 1994. Notably in its history, majority of death penalty convictions in the Philippines were decided based on testimonial evidence. On June 24, 2006, President Gloria Macapagal Arroyo suspended capital punishment when Republic Act No. 9346 was signed into law. In the same year, the Philippines became a signatory to the Second Optional Protocol to the International Covenant on Civil and Political Rights which strongly advocates for the abolition of the death penalty globally.

Those who oppose the death penalty argue against its re-imposition on several grounds: 1) the death penalty is anti-poor; 2) the death penalty does not deter the commission of crimes; 3) the death penalty is disproportionate to the crime, even as
classifying drug trafficking and other drug related offenses as most serious crimes is questionable; 4) the high judicial error rate on capital cases found upon review by the Philippine Supreme Court; and 5) the failure of government agencies to prosecute drug suspects which highlights the weaknesses in drug investigations. We propose here that the increased use of forensic sciences and the formation of institutional cooperation amongst law enforcement, health agencies and universities to improve drug investigations would significantly aid in the prosecution and conviction of the real perpetrators of drug offenses (supply) as well as address the reasons why persons choose to use drugs in the first place (demand).

Strengthened international cooperation across law enforcement agencies with support from institutions such as the United Nations Office on Drugs and Crime is also needed to address the movement of drugs within and across national borders [3]. The production, trafficking, sale and use of drugs is a more complex problem [5] that cannot be solved within the six-month moratorium originally set by the Duterte administration in 2016 which many believe to have been the justification for the “extraordinary procedures” used for the country’s war on drugs. There are numerous allegations from local as well as international bodies of state-mandated killings or the so-called “extrajudicial killings” performed by “of-duty” police officers, with many undocumented cases that do not make it to any police blotter [6,7]. While more recent official number of deaths was estimated to be ~6,600, some human rights groups claim the number of deaths to be more than 30,000, most of whom belong to the urban poor [8]. We believe that bringing back the death penalty only opens doors to abuses, government misconduct and unfair trial for many of the more vulnerable members of the community.

With over 240,000 drug arrestees and 1,283,409 surrenderees packed in overcrowded jails [9], the re-imposition of the death penalty will only further the blood bath already happening in the streets, by bringing this war to the courtroom and legalizing the actions of agents who are convinced that death is the ultimate solution to the war on drugs.

1. The imposition of the death penalty is anti-poor

The death penalty is grossly disadvantageous and is disproportionately meted against the poor [2,10]. Records show that most of the persons who were sentenced to death belong to the lower classes of society [2]. In 2004 during the time that the death penalty was in place in the Philippines, a survey conducted by the Free Legal Assistance Group on 890 out of 1120 death inmates showed that 73.1% death convicts belong to the lower classes, 8.2% belonged to the middle class, while only 0.8% belonged to the upper class. Majority were unschooled and unlettered, having finished only elementary education, mostly in public schools. Most inmates were not assisted by counsel during investigations because they could not afford to hire a lawyer. During trial most opted to seek legal assistance from the Public Attorney’s Office. Notably, 27.5% did not have a single consultation with their lawyer during the entire time of their trial which took an average of 4–7 years, and 24.9% only had from 2-5 consultations [11]. The heavy workload of state prosecutors, defense counsels and judges affect trial preparations, including mandatory death and death-eligible cases at that time. If the death penalty law is passed, the extent of defense provided for the poor who could not hire private lawyers is expected to lead to a very high number of death convictions. The lack of access to a fair trial has been repeatedly raised against the implementation of the death penalty in many jurisdictions [12].

2. The imposition of the death penalty does not deter the commission of crimes

The proponents of the death penalty in the House of Representatives and the Senate try to justify its re-imposition by claiming that it is an effective deterrent to crimes. However, contrary to the view of its proponents, there are no conclusive studies to show that the death penalty actually deters crimes [13,14]. In fact, crime volume decreased in the years after the abolition of the death penalty based on the statistics provided by the Philippine National Police for 2009–2014 [15]. In the US, Johnson [16] highlighted the importance of the certainty of being caught and punished, rather than the severity of punishment, in deterring the commission of crimes.

3. The imposition of the death penalty is disproportionate to the crime

The United Nations first recognized capital punishment as a global concern in December 1966 when the UN General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR) and expressly announced the goal of abolishing the death penalty in all countries. Even though capital punishment is not prohibited, it is to be limited only to the most serious crimes.

The lack of a clear definition provided by the ICCPR of what constitutes the “most serious crimes” has led to the arbitrary exercise of the death penalty because what one country may consider a most serious crime may not be considered as such in another country [13]. In a study comparing the use of capital punishment for drug trafficking in different countries, Leechaiyana and Longmire [12] concluded that giving the death penalty to those convicted of drug-related crime is disproportionate to the gravity of the offense. The study cites an implicit consensus across many United Nation agencies that interprets the most serious crime to be those that are life threatening or intentional crimes with fatal outcomes. Hence the argument questioning the seriousness of drug offenses when different jurisdictions vary in the imposition of the death penalty was put forward. For example, the death penalty is meted out to persons with 15 g of diamorphine (equivalent to 750 g of normal heroine) in Singapore whereas possession of only 15 g of normal heroine is sufficient to get the same penalty in Malaysia. The gravity of a crime that qualifies it to be a serious crime must be universally recognized across all jurisdictions regardless of political, cultural and religious backgrounds.

4. The high judicial error rate found upon review by the Philippine Supreme Court

A major concern in the Philippines is that the trier of fact in the lower courts is a single individual. Substantial errors committed by trial courts on questions of facts may not be corrected by appellate courts thus, convictions made by trial court judges are difficult to reverse. Under the Philippine procedural law, the Supreme Court will not rule on questions of fact but usually passes solely upon questions of law. During the re-imposition of the death penalty from 1994 to 2004, death conviction cases were sent to the Supreme Court for automatic review. In the same period, even with Philippine procedural laws that limit the review process, over 71% of death penalty convictions were modified (64.6%) or revoked (7.1%) by the Supreme Court. Errors were detected without the presentation of additional evidence since the Philippine criminal justice system was not structured to accept post-conviction evidence at that time. The Supreme Court then required that all death penalty cases must first be reviewed by the Court of Appeals before these cases are sent to the Supreme Court for final judgement [17].
Moreover, there had been several reports of potential wrongful convictions including two who were executed via lethal injection [18] and those which were affirmed by the Philippine Supreme Court and sentenced to death or imprisoned for life [19].

5. The failure of prosecution agencies to provide admissible evidence in drug cases

Lapses in drug investigations highlight the weaknesses in the current system that would inevitably open the doors to abuses [12] and wrongful convictions. Drug testing kits that are available in the Philippines can only identify 4–5 illegal substances, with very little research infrastructure to detect novel drugs. Only four laboratories had been accredited to conduct drug confirmatory tests [20] for a country which the Duterte administration claims has a very serious drug problem [7]. In fact, the Supreme Court penned its observation that the high rate (56%) of dismissals and acquittals in drug cases were due to lapses in police procedures. The proper procedures for collection, handling, testing and archiving of drugs from police operations were not observed by investigators that lead to the acquittal of the accused/s. Additional review of drug cases from 2006-2011 led to 85% reversals and acquittals due to the failure of the prosecution to establish the compliance of the arresting officers. The Supreme Court further questioned the use of procedures that were susceptible to police abuse such as the use of informants of questionable background, the ease of planting evidence, and the reported use of drug busts as a tool for extortion [18]. In 2018, 13,000 suspects were convicted out of 41,583 cases that were filed. This means that only 3 out of 10 drug suspects were convicted with the remaining seven suspects either acquitted or still undergoing trial [21]. The challenge in stopping the trend wherein the Supreme Court reverses the decision in drug cases, including those recently convicted by the trial courts, continues to the present.

6. Forensic science in drug investigations

There is urgency in providing options to the drug problem other than killing drug suspects in the streets or sentencing them to death. Forensic science presents itself as a good ally that could lead to the identification of the real perpetrator and accelerate the trial process. In the end, the certainty of being caught and punished, rather than the severity of punishment, is more effective in deterring the commission of crimes, including drug crimes. Some recommendations to improve drug investigations that makes use of forensic science include: 1) review of procedures followed by law enforcement agencies in the collection, handling, testing and archiving of illegal substances; 2) delineation of the overlapping functions of the Philippine National Police and the Philippine Drug Enforcement Agency in order to define procedural responsibilities and accountabilities; 3) hiring of more forensic chemists to accelerate the prompt identification of illegal substances; 4) implementation of the Code of Professional Practice for Drug Analysts formulated by the Scientific Working Group for the Analysis of Seized Drugs (SWGDRUG); 5) forensic training of relevant personnel in clandestine drug investigations; 6) establishment of more drug testing laboratories; 7) international accreditation of selected drug laboratories that would help formulate the framework for local accreditation; and 8) institutional partnerships with university research laboratories and health agencies that would aid in the identification of new drugs and new patterns of behavior amongst drug users.

7. Conclusion

The current administration’s focus on violence and death to “win” the war on drugs is not the only solution. In fact, this option is a clear violation of international human rights law. The drug problem is a complex issue and exposes the human vulnerability of its users for criminal exploitation. We propose here that addressing these vulnerabilities in a balanced and comprehensive manner through health-focused, rights-based criminal justice responses, conducting forensic science-based drug investigations and determining the social causes of drug abuse is an alternative solution that demands cooperation across different sectors of society as well as underscores the fundamental value of human life.

Declaration of competing interest

The authors declare no conflict of interest.

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