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Death in the time of Covid-19: Efforts to restore the death penalty in the Philippines

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1. Introduction

In characterizing the global pandemic of 2020, the immortal words of Charles Dickens have never seemed to be more apt, “It was the age of wisdom, it was the age of foolishness, it was the epoch of disbelief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair…” (Dickens, 1859). These eloquent passages ring particularly true in the Philippines to describe the government’s continuing efforts in the middle of a national health crisis to restore the death penalty as part of the drive to solve the illegal drug problem. The “war on drugs” was one of Philippine President Rodrigo R. Duterte’s central campaign platforms where he committed to stop the drug trade within six months (Corrales, 2017). When he took office on 1 July 2016, he emboldened the police to kill drug suspects with impunity (Reyes, 2016). As of 31 December 2020, the “war on drugs” had officially claimed 6011 lives during anti-drug operations (Marquez, 2021). However, the United Nations Commission on Human Rights and its Philippine equivalent estimate that the figure is significantly higher (Human Rights Watch, 2021, p. 386).

During his State of the Nation Address delivered on 27 July 2020, President Duterte renewed his call to bring back the death penalty by lethal injection for crimes specified in the Comprehensive Dangerous Drugs Act of 2002. The President asserted that “this law will not only help deter criminality but also save our children from the dangers posed by illegal and dangerous drugs” (Rappler, 2020).

In response to the President’s appeal, the House of Representatives consolidated 11 pending bills into House Bill No. 7814 (Barbers & Garbin, 2020). This bill was passed on 02 March 2021, amending provisions of the Dangerous Drugs Act of 2002 and reimposing the penalty of life imprisonment to death for specific-drug related offenses (PTV News, 2021). Congress took a step further by making the prosecution of drug cases easier in court. HB7814 contained provisions that persons are presumed guilty of committing certain drug-related offenses unless otherwise proven, thereby overturning the long-standing presumption of innocence. The bill has been sent to the Senate for its concurrence and could only be several steps away before being signed into law by President Rodrigo R. Duterte. This paper discusses the ramifications of the new bill and the questioned timeliness of its passage when the country continues to have a large and overcrowded prison population and a significant number of deaths due to SARS-CoV-2 in Southeast Asia. The government’s lapses in following the 2021 national vaccination plan became apparent in the 31 March 2021 assessment made by the congressional health panel on the government’s response to the pandemic. From the authors’ perspective, the urgency of using the country’s limited resources to help medical frontliners and local government units prevent further infections and save lives should have outweighed the efforts exerted to pass a law that legalized the death penalty for the third time in the Philippines.
2. Violations covered by HB7814

The consolidated bill identified the drug offenses that could result in a death sentence (death-eligible crimes) and those where the court is required to impose the maximum punishment of death (death-mandatory crimes). These offenses are listed in Table 1.

3. Impact of the imminent passage of HB7814 into law

Drug trafficking, drug abuse, and other drug-related offenses pose a threat to the Philippines (Simbulan, Estacio et al., 2019) and the global community. The United Nations Office on Drugs and Crime (UNODC) estimated that in 2019 at least 269 million people worldwide, or at least 5.4% of the global population aged 15–64, had used drugs at least once in the previous year (United Nations Office on Drugs and Crime, 2020). Psychiatric studies have shown that drug addiction is a brain disease accompanied by a psychiatric disorder or other co-morbidities (Lesher, 1997). In other countries, the temporary removal of drug users from the community while treating their addiction is a more effective intervention (Kerr, Small et al., 2005). There is evidence to support the cost-effectiveness of drug treatment compared to the use of law enforcement-based resources to address a country’s drug problem (Caulkins & Chandler, 2006). Hence, the Philippines need to explore and fund diverse drug-rehabilitation approaches that are focused on addressing health issues rather than expanding law enforcement.

Interestingly, the Mega Drug Abuse Treatment and Rehabilitation Center in Nueva Ecija, some 100 km north of Manila, is not fully utilized. The facility built for 10,000 addicts had reported only 2,085 severe drug addicts who completed its program in three and a half years (Allard & Lema, 2020). In 2019, technical experts updated the drug policies that should guide local government units to establish treatment and rehabilitation programs for drug users (United Nations Office on Drugs and Crime, 2019). Because the policies are guidelines and not directives from the executive branch of government, funding to support local programs is not automatically appropriated in the national budget. Also, programs appear to be implemented mainly by religious and socio-civic organizations rather than the government’s health network. The additional economic requirements for successful treatment, e.g., absence of an income during the rehabilitation period when the drug user is the wage earner, must also be addressed. One approach to incentivize drug users to complete an entire rehabilitation program is by providing alternative forms of employment for the remaining family members during the treatment period.

The authors find the underutilization of Philippine drug treatment facilities alarming, given the severely overcrowded jails and prisons. We strongly urge Congress to thoroughly review the country’s approach to the drug problem, to approve a larger proportion of the national budget for health that would specifically focus on drug rehabilitation, and to support sociological research that assesses the effectiveness of local programs given the specific challenges drug users face in the Philippines. The drug problem should be seen from a public health perspective and not viewed solely as a law enforcement problem to address a policy of criminalization and punishment (Simbulan, Estacio et al., 2019).

Serious doubts have been raised about the timeliness and appropriateness of the passage of HB7814 in the middle of a global pandemic where the SARS-CoV-2 virus had already infected over 953,106 Filipinos, with 127,006 active cases, and caused the death of 16,141 others, as of 20 April 2021 (DOH, 2021).

Aside from the human toll, the pandemic has devastated the Philippine economy, which posted a negative growth rate of −9.5% for its Gross Domestic Product in 2020 (Mapa, 2021). Around 10.9 million Filipinos lost their jobs and had lower incomes due to the COVID-19 pandemic (Lazo & Rodriguez, 2020). The Philippine government debt also ballooned to P9.8 trillion at the end of December 2020, pushing the debt-to-GDP ratio to the highest level over a decade as the government borrowed more to fund the pandemic response (Lafora, 2021). Moreover, it seems like poor Filipinos are being targeted by the ‘War on Drugs’ because they are the ones who use shabu or crystal meth that can shrink the brain (Espenido, 2018; Philippine Daily Inquirer, 2021). In our opinion, these urgent and pressing problems certainly deserve more of the ‘legislators’ time and attention than measures intended to cause more deaths and suffering.

4. Jails and prisons in the Philippines

The current global pandemic highlighted the severe state of Philippine jails and prisons that are more crowded than other prison systems globally (Aben, 2020). As of February 2021, the seven Philippine correctional institutions’ average prison population occupation rate was

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Table 1

| Drug Crimes covered by HB7814 (Barbers & Garbin, 2020). | |
|---------------------------------------------------------|-----------------------------------------------|
| Death eligible offenses | Death mandatory offenses |
| Any person who, unless authorized by law, shall import or bring into or export from the Philippines any dangerous drug, regardless of the quantity and purity involved, including any and all species of opium poppy or any part thereof or substances derived from even for floral, decorative and culinary purposes; | Any person who, unless authorized, shall import or bring into or export from the Philippines any dangerous drug and/or controlled precursor and essential chemical through the use of a diplomatic passport, diplomatic facili-
ties, or any other means involving the use of official status to facilitate the unlawful entry of the same; |
| Any person who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy, regardless of the quantity and purity involved, or shall act as a broker in any of such transactions; | Any person who organizes, manages, or acts as a ‘financier’ of the importation into or exportation from the Philippines of dangerous drugs; |
| Any person who, unless authorized by law, shall engage in the manufacture of any dangerous drug; | Any person who organizes, manages, or acts as a ‘financier’ of maintaining a den, dive, or resort where any dangerous drug is used or sold in any form as defined under this Act; |
| Any person who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the purity thereof: a. 10 g or more of opium; b. 10 g or more of morphine; c. 10 g or more of heroin; d. 10 g or more of cocaine or cocaine hydrochloride; e. 50 g or more of methamphetamine hydrochloride or ‘shabu’; f. 10 g or more of marijuana resin or marijuana resin oil; g. 500 g or more of marijuana; h. 10 g or more of other dangerous drugs; and | Any person who organizes, manages, or acts as a ‘financier’ of the manufacturing of any dangerous drug; |
| Any person found possessing any dangerous drug during a party, or at a social gathering or meeting, or in the proximate company of at least two (2) persons, regardless of the quantity and purity of such dangerous drugs. | Any person who is found guilty of “planting” any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity. |

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* HB7814 defined “dangerous drugs” to mean those drugs listed in the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 Single Convention on Psychotropic Substances. The bill also includes the option of future addition and removal of drugs to the list.
442%, with the women’s correctional facility in Mindanao having the highest rate of 551% (Bureau of Corrections, 2021). The occupancy level of Philippine prisons was 463.6% which was the second-highest level below the Republic of Congo (World Prison Brief, 2020).

As a consequence of the “war on drugs” and the numerous unsolved cases of extrajudicial killings (Go & De Ungria, 2019), prisoners on the so-called government’s narcotics list have been told to stay in jail to remain alive (Gomez, 2018). During the Duterte administration, the narcotics list was used to target drug suspects in police operations and drive-by shootings. The government has channelled ‘intelligence’ money so that the list could be updated and used as an integral instrument in the war on drugs (Talabong, 2020). Many suspects from the most impoverished communities who have been caught because of the narcotics list cannot pose bail. During the period before the pandemic, police arrested nearly 100 drug suspects daily (Morales, 2017). Most remain imprisoned throughout their trial, thus significantly adding to already overcrowded prison populations (Jha, 2020). The situation became even worse during the pandemic when the police detained quarantine and curfew violators and placed them in jail (Human Rights Watch, 2020; See, 2021).

These overcrowded jails and prisons with minimal provisions for health and sanitation (Conde, 2016; Morales, 2017), do not allow for sufficient isolation of infected prisoners, quarantine of new inmates who could be infected or are SARS-CoV-2 carriers, and separation of elderly prisoners or those with pre-existing health conditions from the rest of the population (Kahambing, 2021). Such a paradigm has been observed in other parts of the world, with jails being described as “under severe threat” of heightening the virus’ transmission (Montoya-Barthelemy, Lee et al., 2020). In the Philippines, more than 700 inmates were reported to have tested positive for coronavirus as of June 2020 (See, 2020). This figure is expected to be much higher, albeit the latest numbers of infected cases in jails and prisons are not readily available (International Committee of the Red Cross, 2020). Due to budget restrictions in Philippine prisons (Narag & Jones, 2016), the supply of masks, nutritional food, soap, and even water does not meet the Department of Health’s prescribed health requirements for a pandemic.

To address problems resulting in overcrowded jails, the Philippine Supreme Court ordered the fast-tracking of cases via online trials, which led to the release of about 10,000 inmates (Aben, 2020).

Additionally, during the extended periods of enhanced and modified community quarantine, family visits were not permitted or were highly restricted in many jails and prisons (Pulta, 2020; See, 2021). Given that the SARS-CoV-2 pandemic has been ongoing for more than a year, with many areas in the Philippines undergoing another major lockdown from 29 March until 30 April 2021 due to the resurgence of cases (Atienza, 2021), there is an urgent need to consider the mental health of inmates and their families under these conditions. The pandemic situation that has seriously affected the already vulnerable mental state of prisoners, many of whom have had prior incidents with the law and are detained in severely overcrowded jails and prisons with insufficient number of correctional officers (Narag, 2020) is a public health and safety crisis. Prisoners are reportedly dying and driven to suicide due to the slow pace of the justice system (Macarag, 2021). It is our view that Congress and the current administration should focus on long-term institutional solutions to these problems, such as decriminalizing the use of certain drugs and treating the drug problem as a health issue, rather than the passage of a death penalty law.

5. Is the death penalty the solution to the Philippines’ war on drugs?

As acknowledged by President Duterte himself during his penultimate State of the Nation Address (Rappler, 2020), the objective of the reimposition of the death penalty is primarily to serve as a deterrent to criminality (particularly drug-related offenses). However, this premise is essentially flawed since there are no conclusive studies that the death penalty deters the commission of crimes. The theory of criminal
deterrence involves a three-pronged approach in which certainty, celerity, and severity of punishment work together to increase the cost of action so that a rational person will determine that the cost outweighs the benefit (Durlauf & Nagin, 2011). This study suggested that the deterrent effect of certainty is far more potent than severity. Radelet and Lacock found that the consensus among the world’s top criminologists is that the death penalty does not add any significant deterrent effect above that of long-term imprisonment (Radelet & Lacock, 2009). The certainty of apprehension and not the severity of the ensuing legal consequence was the more effective deterrent (Nagin, 2013). It was shown using vector autoregression models that neither death sentences nor executions deter homicide or robbery-homicide in Japan (Muramatsu, Johnson et al., 2017). Thus, the general assertion that the death penalty deters the commission of crimes is merely speculative at best (Alhambra & Ramos, 2017; De Ungria & Jose, 2020).

In our opinion, one major factor that supported the repeal of the death penalty in 2006 through Republic Act No. 9346 was the Philippine Supreme Court’s finding in People v. Mateo that trial courts wrongly imposed the death penalty in 71.77% of the cases brought up to it on automatic review (People of the Philippines vs. Mateo, 2004).

Leechaianan and Longmire studied how governments in the United States of America, Singapore, Malaysia, Indonesia, and Thailand used capital punishment to stop drug trafficking. They concluded that the death penalty was not a proportionate punishment for drug-related offenses based on three considerations (Leechaianan & Longmire, 2013). First, there was some dispute about whether drug trafficking can be considered a serious crime that would justify the death penalty based on international law. Second, since crimes warranting the death penalty are different for each country, implementing the death penalty would likely be an arbitrary exercise prohibited under international human rights law. Third, applying a mandatory death sentence based on the amount of drug involved increases the possibility of wrongful convictions (Leechaianan & Longmire, 2013).

6. Overturning the presumption of innocence

The Philippine Constitution provides that in “all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved and that neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it” (Republic of the Philippines, 1987). HB7814 appears to have disregarded these fundamental constitutional principles and rights.

First, in providing certain presumptions in the prosecution of drug cases, HB7814 reveals its prosecutorial bias since the burden is shifted to the accused to prove their innocence rather than on the prosecution to prove their guilt. For example, under HB7814, any person who is found or is present within the immediate vicinity of the area where dangerous drugs are being sold is presumed to be involved in the sale of dangerous drugs unless proven otherwise. Thus, hypothetically, if a drug buy-bust operation occurs inside a fast-food establishment, all the patrons who were simply inside the store could legally be arrested by the police based solely on this presumption and without a warrant. Worse, these persons would then have the burden of proving that they had nothing to do with the sale of dangerous drugs. Given the difficulty of establishing a negative averment and the high cost of hiring private counsels, the authors believe that inevitably the presumptions in this bill, if indiscriminately and arbitrarily applied, could lead to increased arrests for those who do not have the resources to defend themselves. Increasing the number of arrests would further burden the already overcrowded jails. Moreover, until reforms are put into place to minimize the flaws in the criminal justice system, there is a high probability that an innocent person could be sentenced to death for drug-related offenses under HB7814 based on mere presumptions.

In past cases, one of the most common claims raised by drug suspects when they are arrested is that the drug evidence had been planted on them by the authorities (Human Rights Watch, 2017). In response and to
deter abuse, lawmakers made the planting of evidence in drug cases a mandatory death sentence offense in HB7814. It even included a presumption that the person charged and prosecuted for “planting” evidence is presumed to have planted the evidence if the rules of procedure or engagement had not been complied with. However, another ‘pre

sumption that official duty had been regularly performed’ could cancel out this ‘presumption of guilt’ when a suspect accuses a police officer of planting evidence. In any event, it is the authors’ opinion that two wrongs do not make things right. While it is improper for a person to be charged with selling drugs based on a mere presumption, it is equally erroneous for a police officer to be presumed to have “planted” evidence simply because the rules of procedure were not followed to the letter.

Second, HB7814 does not identify the compelling reasons why specific drug-related offenses deserve the mandatory death penalty than other similar crimes and why these mandatory death penalty offenses are even considered particularly heinous in and by themselves. In its decision in People v. Echegaray, the Philippine Supreme Court provided the severity of offenses that fall into heinous crimes (People of the Philippines vs Echegaray, 1997) as “… the crimes punishable by death … are heinous for being grievous, odious and hateful offenses and which, because of their inherent or manifest wickedness, viciousness, atrocity, and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just civilized and ordered society”.

But what makes the “planting” of evidence manifestly “wicked, vicious, atrocious, or perverse” to warrant the mandatory death penalty compared to a person who sells or manufactures dangerous drugs where a death penalty is merely an option? The situation is especially troubling when one considers that while a person arrested with at least 500 grams of marijuana could be sentenced to death in the Philippines, there are countries where the use of marijuana is legal and regulated such as Uruguay and Canada, and where its use has been decriminalized such as Jamaica, South Africa, Georgia and the Netherlands (http://affiliates.com/Affiliates.com, 2021).

Finally, if HB7814 eventually becomes law, it is the authors’ opinion that the Philippines would be violating its international treaty obligations as a state party to the 2nd Optional Protocol to the International Covenant on Civil and Political Rights (United Nations Office of the Commissioner on Human Rights, 1989). By ratifying the International Covenant on Civil and Political Rights (ICCPR) in 1986 (United Nations, 1989), and the 2nd Optional Protocol to the ICCPR without reservations in 2007, the Philippines, as a sovereign nation, voluntarily bound itself not to reimpose the death penalty (Desert, 2008). The Philippines cannot legally withdraw from either the Protocol or the ICCPR (Desert, 2008).

To the best of the authors’ knowledge, neither instrument has provisions on withdrawal or denunciation, with both tools being deliberately written to exclude these provisions. There could be adverse political and economic consequences for the Philippines if it violates its commitment to the 2nd Optional Protocol. It would be similar to reneging on a contract – other parties to the agreement and observers of the Philippines’ behavior could lose trust and faith in the Philippines and its willingness to keep its commitments.

7. Conclusion

At the time of writing, the Philippines looks set to introduce a law that reimplaces the death penalty and shifts the burden of proof to the accused to prove innocence. The use and trafficking of drugs that are deemed dangerous (not necessarily correlating with the current medical consensus) are seen as legitimate reasons for the death penalty. Congress failed to consider that most people who are using and abusing drugs suffer from mental disorders and co-morbidities, making the drug problem a public health issue. Simultaneously, the Philippines would be violating its international treaty commitments by implementing the death penalty law. In the authors’ view, at this critical time when the criminal justice system faces numerous challenges resulting from the impact of the pandemic in overcrowded jails and prisons with minimal resources, an entire country’s population burdened by limited movement due to quarantines targeted to prevent the spread of the disease, and an unstable economy that would take time to recover, the Philippine government must first focus on formulating and implementing multi-sectoral strategies, mainly focusing on the health sector, to stop the disease and foster a culture that values life, instead of promoting a culture of death.

Credit role

Jose M. Jose: Conceptualization; Formal analysis; Writing: the original draft.

Maria Corazon A. De Ungria: Conceptualization; Formal analysis; Writing: review and editing.

Declaration of competing interest

We wish to confirm that there are no known conflicts of interest associated with this publication and there has been no significant financial support for this work that could have influenced its outcome.

Acknowledgement:

The authors thank Ms. Maria Socorro I. Diokno and members of the Coalition Against the Death Penalty (CADP) for interesting discussions on the death penalty. The authors also acknowledge the valuable recommendations made by the reviewer of this manuscript.

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