

A lethal mix? Death penalty and a 'flawed, corrupt' justice system

In *People v Mateo* in 2004, the Supreme Court says 71.77% of death penalty verdicts handed by lower courts were wrong. The SC reduced the sentences to life imprisonment and, even, acquittal.

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LETHAL. Critics say a 'flawed and corrupt' justice system should be fixed first before even considering the revival of the death penalty.

MANILA, Philippines – With intensified calls to revive the death penalty, is the Philippines, particularly its criminal justice system, ready for it and its consequences?

No less than President Rodrigo Duterte is pushing for the reimposition of the death penalty, a law that was repealed by his newfound ally former president and now Pampanga Representative Gloria Arroyo in 2006. (READ: [Duterte: Bring back death penalty so I can hang criminals](#))

Critics say certainty of punishment – not death penalty – is effective in preventing crimes, urging the government to focus first on reforming the justice system. But Duterte defended his stand, saying the punishment of death is more of retribution than deterrent.

"The other school of thought is, *'yang death penalty, hindi 'yan pantakot. Hindi 'yan to deter (the death penalty is not to instill fear, not to deter)*. Whether you like to commit a crime or not, that's not my business. Death penalty to me is the retribution," [said the President](#) also known as "The Punisher."

Duterte, a believer in karma and eye-for-an-eye justice, said the death penalty is a way to exact payment from a perpetrator of a heinous crime.

"Magbayad ka sa ginawa mo sa buhay na ito (You pay for what you did in this life)," he said.

It is, however, not as easy and simple as it seems, with the [kind of judicial system](#) the country has. Before a court metes out a verdict of death, the case has to undergo several stages of the Philippine criminal justice system, which critics say, is widely known to be flawed and corrupt. (READ: [Block return of death penalty in PH – Human Rights Watch](#))

Corruption, incompetence

As with many government agencies, the justice system is primarily plagued with issues of corruption – from paid law enforcers to paid prosecutors and justices, among others. This, in turn, only further spawns injustice, opponents of the bill said.

Albay Representative Edcel Lagman, one of the staunch critics of the revival of the policy, said the death penalty could not be mixed with the present “defective” justice system.

“Isasalang mo death penalty sa (You will allow death penalty in a) flawed and defective justice system, many incompetent and corrupt prosecutors and judges, so talagang mahirap ang mangyayari nito (this will be really difficult). It will exacerbate injustice, spawn too much injustice because of flawed judicial and prosecutorial systems,” Lagman said in an interview on Friday, December 2.

Another problem is the supposed incompetence of court officers. Jose Manuel Diokno, dean of the De La Salle University Law School, said crime and corruption are rampant because the system is not delivering the justice that the people “need, deserve, and are clamoring for.”

The prosecution rate is only 20%. This means only 1 out of 5 cases prosecuted by the National Prosecution Service under the Department of Justice is elevated to the Office of the Ombudsman.

Not all those who are convicted serve their punishments, Diokno said: “*Magugulat kayo, only less than 10% serve their time (penalty).*” (You'll be surprised, only less than 10% serve their time.)

“The reason they are so rampant and that they are operating with impunity is because of shoddy police work, ineffective police investigation, and weak prosecution,” he added.

Human Rights Commissioner Karen Dumpit said training of police investigators should be intensified “so they can handle data in ways that will materially enhance evidence presented in prosecution.”

Dumpit said this has been a problem. What happens in many instances is that the police fail to gather evidence that could strengthen a case. If evidence is weak, the prosecutor would not have a strong case and might end up losing the legal battle against the violator. In short, there is no certainty of punishment.

Dumpit added prosecutors should be trained against any form of prosecutorial misconduct. Violators, she said, should be caught and held accountable.

Easier said than done, though, as this problem has long been inculcated in the justice system: “Political will is needed,” she said.

“The court is not infallible, not in any country. How can we advocate permanent taking of life when there are mistakes like these that cannot be rectified?” Dumpit said.

Another problem hounding the judiciary is the lack of budget and manpower, leading to the backlog of cases. There are even courts without judges – a problem that gives birth to further delays in justice.

Diokno said courts, “if lucky”, take at least 6 to 10 years to decide on criminal cases, while some take as long as 29 years. High-profile cases are no exception to this, such as the Maguindanao massacre, which has been ongoing for 7 years now. How much more for ordinary criminal cases?

“Why is there such a terrible state? Because courts are plagued with vacancies. 20% of trial courts have no judges. 1 out of 5 salas has no one to decide. Even our prosecution service has a higher vacancy rate of 25%,” Diokno said.

Justice Secretary Vitaliano Aguirre on July 1 – his first day in office – said the DOJ is planning to hire at least 500 prosecutors nationwide, saying only 42% vacancies in the National Prosecution Service (NPS) have so far been filled up.

Lower courts issued wrong verdicts

While it is the lower courts' role to issue verdicts, the Supreme Court automatically reviews cases wherein death, *reclusion perpetua* or imprisonment from 20 years and 1 day to 40 years, or life imprisonment, is imposed.

A new precedent, however, was set in 2004 when the SC allowed an intermediate appeal to the Court of Appeals to ensure the correctness of death penalty decisions.

This is because majority of the death verdicts by regional trial courts were either revoked or modified by the SC upon review. The High Court itself said this in its decision in [People v Mateo](#) in 2004.

In the said case, the SC said that for 11 years from 1993 to June 2004, 907 out of 1,493 cases were submitted to them for review. Of this number, the death penalty was affirmed in only 230 cases or 25.36%.

More than half (53.25%) or 483 death penalty cases were reduced to *reclusion perpetua* while 65 were acquitted. All in all, the SC revealed the judicial error of 71.77%. In short, it saved 651 out of 907 appellants from death.

Acknowledging this problem, the SC said all possible venues should be allowed to truly determine the guilt or innocence of an accused, especially if a person's life or liberty is at stake. But the SC, just like the lower courts, also faces the problem of being overloaded with cases.

"If only to ensure utmost circumspection before the penalty of death, *reclusion perpetua* or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court," the SC said in *People v Mateo*.

"Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone," the SC added.

It remains unclear, however, how this 2004 decision would shape the present debates on the controversial measure. But the anti-death penalty groups are sure to bank on it, like Diokno.

"It's a shocking reason. The court revealed for the first time that the staggering 71.77% of decisions handed down by Regional Trial Courts were wrong, which meant 7 in 10 on death row were wrongfully convicted," Diokno said.

The SC, however, has also proven that it is not infallible. In the case of Leo Echegaray, the first convict to undergo lethal injection, then chief justice Artemio Panganiban said in a speech on May 30, 2006 that the High Court [made a mistake](#) when it affirmed the death sentence against him.

Panganiban argued that the sentence should have been downgraded to life imprisonment, noting that it was not proven in court that Echegaray was the biological father of the victim.

Another case was that of Marlon Parazo in 1999, a deaf, blind, mute, and retarded man accused of rape and attempted homicide. According to a [PCIJ report](#), Parazo was meted the death sentence in 1995, and the lower court that tried his case did not ensure that he clearly understood the proceedings. His disabilities were also never mentioned in court, not even by his court-appointed lawyer.

His death sentence was affirmed by the SC in 1997. Taking over the case, the Free Legal Assistance Group or FLAG won and the SC reversed itself in 1999.

Death penalty anti-poor?

With the President himself vowed to reimpose the death penalty for his war against crime, some opponents of the measure warned that it would end up discriminating against the poor.

Lagman, in his [counter speech](#) to the 1st State of the Nation Address of Duterte, said only rich people could afford getting top lawyers to defend themselves.

“The death penalty is anti-poor because indigent and marginalized litigants could not afford the high cost of top caliber and influential lawyers to secure their acquittal,” Lagman said.

Recalling the early 2000s, during the campaign for the abolition of the death penalty, Lagman said 73.1% of death row inmates then belonged to the lowest and lower income classes, while only 0.8% came from the upper socio-economic class.

“*Anti-poor talaga ito, halos mga nasa death row ay mga mahihirap at yung may kaya sa buhay nakakakuha ng mahusay na abogado, may impluwensya sa husgado.* (This is really anti-poor. Almost all on death row are poor and those are rich can afford to get the best lawyers, and have influence on the courts). If indicted, they can seek and work for acquittal. If convicted, they can work for pardon. *Kaya tinatamaan nito mga mahihirap* (That's why those who are hit are the poor),” he said.

Diokno shared the same sentiment. Citing previous data from his organization FLAG, he said 73% of capital offenders then earned below P10,000 monthly, 81% had low-income jobs in the manufacturing, sales, and transport sectors, 74% were arrested without warrants and were not assisted by legal counsels during investigations.

“In my own personal view, death penalty is a myopic view, narrow-minded thinking. The President refuses to see two things: both extrajudicial killings and judicial killings are anti-poor,” Diokno said.

With all these issues and problems, critics said the country’s judicial system should be reformed first before even considering the reimposition of the death penalty.

Senator Leila de Lima, fiercest critic of Duterte and also a former secretary of justice, said certainty of punishment – not death – would deter crimes. This could only be achieved, she said, through reforms in the system.

“And there can only be certainty of punishment if we have a duly functioning and effective justice system, especially the 5 pillars of the criminal justice system — investigators, prosecutors, courts or judges, the correctional, and then the community,” said De Lima, who filed an [alternative bill](#) to the death penalty.

While the House of Representatives, filled with newfound allies of the President, is keen on approving the measure before the year ends, the same could not be easily said of the Senate, as the committee on justice and human rights has yet to start hearings on the issue. (READ: ['Have a deadly Christmas'? House subpanel OKs death penalty bill](#))

In the meantime, both pro- and anti-death penalty groups are making their case before the public, whose collective voice could ultimately shape politicians’ stand on the measure. – [Rappler.com](#)

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