VISION: A just and humane Philippine society of persons equal in opportunity, living a life of dignity, and forever vigilant against abuses and oppression.

MISSION: As conscience of government and the people, we seek truth in human rights issues. As beacon of truth, we make people aware of their rights, and guide government and society towards actions that respect the rights of all, particularly those who cannot defend themselves—the disadvantaged, marginalized, and vulnerable.

CHR: Dignity of all
Potential Actions to Prevent a Resurgence of the Death Penalty

COMMISSION ON HUMAN RIGHTS OF THE PHILIPPINES

28 February 2019
7th World Congress Against the Death Penalty
Outline of Presentation

• Situationer: Death Penalty in the Philippines
• Anti-death penalty initiatives with APF and other partners
• Highlights of “In Defense of the Right to Life”
• Universities Against the Death Penalty Campaign
• Synopsis of the National Survey
• Conclusion
Death Penalty in the Philippines

• **1987**: The Philippines, through the 1987 Philippine Constitution, was the first country in Asia to abolish death penalty.

• **1993**: RA 7659 reintroduced death penalty because of the rising criminality

• **1999**: Seven executions were made. In the same year, criminality increased by 15.3%.

• **2003**: De facto moratorium on executions was lifted, but at the same time reprieves were issued.
• **24 June 2006**: Death penalty abolished [Republic Act (R.A.) No. 9346, otherwise known as “An Act Prohibiting the Imposition of the Death Penalty in the Philippines”]

• **20 November 2007**: Second Optional Protocol to the International Covenant on Civil and Political Rights (which aims to abolish the death penalty) **ratified**
• 07 March 2017: The House of Representatives (lower house) passed on 3rd reading House Bill No. 4727 reinstating death penalty.
  • Yes – 216
  • No – 54
  • Abstain – 1
Offenses in HB 4727

- Penalty of *reclusion perpetua* to death and fine ranging from Php 500,000 to Php 1 million
  - Importation of dangerous drugs and/or controlled pre-cursors and essential chemicals
  - Sale, trading, administration, dispensation, delivery, distribution, transportation of dangerous drugs and/or controlled pre-cursors and essential chemicals
  - Maintenance of a den, dive, or resort where dangerous drug is used or sold in any form
  - Manufacture of dangerous drugs and/or controlled pre-cursors and essential chemicals
• The Senate (upper house of Congress) did not pass a counterpart bill during the first regular session of the 17th Congress. Thus, the death penalty law was not passed.

• 24 July 2017: President Duterte still pushed for the re-imposition of the death penalty in his 2nd State of the Nation Address (SONA).

• July 2017: Death penalty was dropped by the leaders of the Senate and House of Representatives from the list of priority bills for the second regular session of the 17th Congress (July 2017 – June 2018).
• 04 February 2019: The House of Representatives (lower house) passed on 3rd reading House Bill No. 8909 reinstating capital punishment on persons found in possession of dangerous drugs during parties, social gatherings, and meetings.
  • Yes – 172
  • No – 0
  • Abstain – 0

• 06 February 2019: The House of Representatives (lower house) withdrew HB 8909 and recommitted to the Committee on Dangerous Drugs “for amendments”
Anti-death penalty projects and initiatives

• Community based dialogues (CBD) of the CHRP. Collaboration and network activities with the Coalition Against the Death Penalty (CADP)

• Legal research. Joint CHRP-Australian National University (ANU) paper with Dr. Christopher Ward: In Defense of the Right to Life: International Law and Death Penalty in the Philippines (March 2017) ; Collaboration with REPRIEVE Australia and Monash University on Migrant Workers and Human Rights, MJ Veloso case

• Legislative advocacy was supported by findings of the CBDs, legal research and advisories of the CHRP with the Right to Life Network
Anti-death penalty projects and initiatives

- **National survey** funded by APF, ANU and UN Development Programme (UNDP)

- **Universities Against the Death Penalty** campaign and relevant *social media* and *knowledge management*

- **Roundtable discussion with NHRIs** allows for space to share country experiences and challenges in organizing advocacy activities
Findings: *In Defense of the Right to Life*

- The study advances a **legal position** that challenges the re-imposition of the death penalty.

- The position is **based on obligations under domestic and international laws**, and empirical approaches and data which respond to the argument that the Philippines stands to breach international law as a result of Article III, Section 19 of the Constitution.
“Section 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. **Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes**, the Congress hereafter provides for it. **Any death penalty already imposed shall be reduced to reclusion perpetua.**

Article III, Section 19(1), 1987 Philippine Constitution (emphasis supplied)"
ICCPR: The Philippines ratified the International Covenant on Civil and Political Rights (23 October 1986), article 6 of which enshrines the right to life.

OPTIONAL PROTOCOL 2: The Philippines signed the 2nd Optional Protocol to the Covenant which prohibits “absolutely and permanently” the imposition of death as penalty.
Second Optional Protocol to the ICCPR

Ratified by 84 States and two others signed it

Provides for the **COMPLETE, AND PERMANENT, ABOLITION** of the death penalty for all crimes within the jurisdiction of the State Party (article 1)

Act of abolition required is **absolute** – **obligation** is incapable of being retracted or altered at any time in future
Second Optional Protocol to the ICCPR

States shall undertake a positive obligation to abolish death penalty [article 1(2)]

Second Optional Protocol is completely inconsistent with taking any step towards the reintroduction of death penalty
Second Optional Protocol to the ICCPR

As a State party to the Second Optional Protocol, the Philippines:

a. Must **not** take any steps to reintroduce the death penalty within the Philippines or in relation to people within its jurisdiction; and
b. Must **not** execute any person within its jurisdiction

No reservation or declaration by the Philippines to be exempt

UN Human Rights Committee may receive complaints in relation to this
The Second Optional Protocol in the Context of the Philippine Constitution

Constitution purports to permit reimposition of death penalty Philippines for “compelling reasons” involving “heinous crimes”

However, the existence of that constitutional provision does not affect the absolute nature of the obligations of the Philippines in international law.

Fundamental principle of international law that States may not rely upon a provision of domestic law to avoid their international legal obligations (article 27 of the Vienna Convention on the Law of Treaties; PCIJ in Treatment of Polish Nationals)
The Second Optional Protocol in the Context of the Philippine Constitution

International legal obligations of the Philippines are completely unaffected and there is an absolute prohibition against the Philippines taking such a step.

"If the Philippines reintroduces the death penalty for any crime, it would breach its absolute obligations under the Second Optional Protocol. It would immediately be committing an “internationally wrongful act” within the meaning of Article 2 of the State Responsibility Articles."
The Second Optional Protocol in the Context of
the Philippine Constitution

The **circumstances in which the Philippines ratified** the Second Optional Protocol are also **incapable of affecting the absolute nature of the prohibition** binding upon the Philippines as a matter of international law (**article 26 of the Vienna Convention on the Law of Treaties**)

**Signed by the Philippines' Secretary of Foreign Affairs** on behalf of the Philippine government: As a matter of international law, he is **entirely capable of binding the State**, and the international community of states was, and is, justified in treating the act of ratification as effective
An international agreement, which is in the nature of an executive agreement, does not require Senate concurrence. Such becomes valid and binding in the Philippines through executive or presidential ratification. (Intellectual Property Association of the Phils. v. Ochoa, G.R. No. 204605, 19 July 2016; Bayan Muna v. Romulo, G.R. No. 159618, 1 Feb. 2011)

A Protocol, which carries the same object and purpose of a treaty, may be treated in domestic law as a valid executive agreement. An identical approach is taken in the United States. [US v. Belmont, 201 Us 324 (1937)]
A change in government **does not** permit withdrawal from the Second Optional Protocol.

The Second Optional Protocol **does not** carry the necessary implication of a right of withdrawal. In fact, to the contrary, every aspect of the Second Optional Protocol **makes it clear** that no withdrawal from the Protocol, once ratified, is permissible.
International Covenant on Civil and Political Rights

Even if not a party to the Second Optional Protocol, bound by clear and unambiguous international laws which severely restrict the threat or use of the death penalty (treaty and customary)

“Article 6 of the ICCPR

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.”
The reference within Article 6 to “the most serious crimes” is fundamental. It has been widely considered by domestic courts and international bodies.

“Most serious crimes” must be read restrictively to mean that the death penalty should be a quite exceptional measure.

Drug-related offenses are not within its meaning (UN Human Rights Committee, Concluding Observations for Kuwait, 18 Nov. 2011; also for Sri Lanka).

Property offenses, crimes against the persons falling short of murder, financial crimes, pornography and narcotics offences do not constitute “a most serious crime”
The term must be read “restrictively and appertain to crimes of extreme gravity, such as... premeditated murder or genocidal killings” and drug offenses are excluded as they...

“do not manifest the extraordinary high levels of violence, utter disregard for human life, blatant anti-social attitude and irreversible consequences that could conceivably justify the imposition of the death penalty as a form of legal retribution.” (UN Human Rights Committee, General Comment 36, 2 Sept. 2015)

Numerous decisions of domestic courts support this view.
To avoid doubt, **international law** clearly and unambiguously prohibits the imposition of the death penalty for:

- all narcotics crimes (including crimes of importation, supply, possession, distribution, manufacture, use, or maintaining “dens”);
- kidnapping;
- crimes aggravated by being under the influence of a narcotic drug;
- all property crimes including the crime of “plunder” as that crime is understood in the Philippines, aggravated robbery and carjacking;
- all crimes of rape and sexual assault;
- child sexual offenses; and
- political crimes (ex. treason)
The Philippines will violate applicable international law if it re-imposes the death penalty.

Article III, Section 19 of the Constitution notwithstanding, it is doubtful whether the Philippines may be allowed to re-impose the death penalty, in view of the absolute nature of the obligations of the Philippines in international law.

The Philippines may not withdraw from the Second Optional Protocol as this treaty unambiguously prohibits, permanently, the imposition of the death penalty in the Philippines for all crimes.
Universities Against the Death Penalty

- **Universities Against the Death Penalty** aims to be a global network of universities that use their voice and their symbolic power in the work against capital punishment.

- **Launched in 2013 and spearheaded by the University of Oslo**, Universities against the Death Penalty emphasizes the conscientious application of member universities’ moral and intellectual weight and voice. It is a statement of support for the abolition of the death penalty worldwide.

- **39 Universities** have joined the campaign so far.
Universities Against the Death Penalty Campaign in the Philippines

• Collaboration of CHRP, University of the Philippines - Diliman Extension Program in Pampanga (UP-DEPP) and the Association of Schools of Public Administration in the Philippines, Incorporated (ASPAP) with assistance from the Asia Pacific Forum (APF): University-based Dialogues on the Death Penalty

• In the same vein as efforts of the University of Oslo, the UP-DEPP, in coordination with ASPAP and its member universities, will be the hub of the Universities against the Death Penalty campaign in the Philippines and will be the purveyor of this particular movement in the country.
Universities Against the Death Penalty Campaign in the Philippines

Venues for the Universities Against the Death Penalty campaign in 2018

• Luzon: University of Sto. Tomas, Manila, National Capital Region, 9 May 2018
• Visayas: Leyte Normal University, Visayas Region, 19 July 2018
• Mindanao: Ateneo de Davao University, Mindanao on 2 July 2018
• Culmination for 2018: Holy Angel University, Central Luzon, 3 August 2018
Universities Against the Death Penalty Campaign in the Philippines

Results of the pre- and post-test surveys

Q1: The death penalty will deter crime.

<table>
<thead>
<tr>
<th></th>
<th>Pretest Q1 Frequency</th>
<th>Post-test Q1 Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strongly Agree</td>
<td>10</td>
<td>2</td>
</tr>
<tr>
<td>Agree</td>
<td>33</td>
<td>18</td>
</tr>
<tr>
<td>Don't Know</td>
<td>13</td>
<td>6</td>
</tr>
<tr>
<td>Disagree</td>
<td>40</td>
<td>59</td>
</tr>
<tr>
<td>Strongly Disagree</td>
<td>13</td>
<td>24</td>
</tr>
</tbody>
</table>
Universities Against the Death Penalty Campaign in the Philippines

Results of the pre- and post-test surveys

Q2: The death penalty will dispense justice.

Q2: DP will dispense justice

- **Pretest Q2 Frequency**:
  - Strongly Agree: 2
  - Agree: 30
  - Don't Know: 21
  - Disagree: 43
  - Strongly Disagree: 13

- **Post-test Q2 Frequency**:
  - Strongly Agree: 3
  - Agree: 19
  - Don't Know: 12
  - Disagree: 49
  - Strongly Disagree: 26

CHR: Dignity of all
National Survey (embargoed)

- Face-to-face interview of 2,000 respondents aged 15 and above nationwide
- Multi-stage probability sampling, no exclusions prior to sampling
- Administered through pen and paper interviews

<table>
<thead>
<tr>
<th></th>
<th>Fieldwork Dates</th>
<th>Sample Sizes</th>
<th>Margins of Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Philippines</td>
<td>Mar 22 - 26</td>
<td>2,000</td>
<td>± 2.19 %</td>
</tr>
<tr>
<td>National Capital Region</td>
<td>Mar 22 - 26</td>
<td>400</td>
<td>± 4.90 %</td>
</tr>
<tr>
<td>Balance Luzon</td>
<td>Mar 22 - 26</td>
<td>800</td>
<td>± 3.46 %</td>
</tr>
<tr>
<td>North Luzon</td>
<td>Mar 22 - 26</td>
<td>400</td>
<td>± 4.90 %</td>
</tr>
<tr>
<td>South Luzon</td>
<td>Mar 22 - 26</td>
<td>400</td>
<td>± 4.90 %</td>
</tr>
<tr>
<td>Visayas</td>
<td>Mar 22 - 26</td>
<td>400</td>
<td>± 4.90 %</td>
</tr>
<tr>
<td>Mindanao</td>
<td>Mar 22 - 26</td>
<td>400</td>
<td>± 4.90 %</td>
</tr>
</tbody>
</table>
“PEOPLE CONVICTED OF MURDER SHOULD BE SUBJECT TO THE DEATH PENALTY,”
PHILIPPINES, 1991-1993

Q. Here are some measures to deal with crime. Some people are in favor of them while other people are against them. Do you agree or disagree that...(measure). Like before, please indicate your answer by placing these cards on the appropriate space on this rating board. Q123. People convicted of murder should be subject to death penalty

*Net agreement: Computed as % Strongly/Somewhat agree minus % Somewhat/Strongly disagree, correctly rounded.
Note: % Can’t choose responses are not shown.

Q. MAYROON DITONG ILANG PARAAN KUNG PAANO ANG PAGTRATO SA KRIMEN. MAYROONG MGA PABOR DITO, AT MAYROON DIN ANG SALUNGAT. KAYO BA NYANG SANGAYON O HINDI SANGAYON NA (MEASURE)? KATULAD KANINA, PAKISABI LANG PO ANG INYONG SAGOT SA PAMAMAGITAN NG MGA KARD NA ITO SA NAAANGKOP NA LUGAR SA RATING BOARD NA ITO. (LUBOS NA SUMASANG-AYON, SUMASANGAYON, MAAARING SUMASANG-AYON/MAAARING HINDI, HINDI SUMASANG-AYON O LUBOS NA HINDI SUMASANG-AYON. Q123. Dapat hatulan ng kamatayan ang mga napatunayang pumaslang

*Net agreement: Computed as % Strongly/Somewhat agree minus % Somewhat/Strongly disagree, correctly rounded.
Note: % Can’t choose responses are not shown.

Q. MAYROON DITONG ILANG PARAAN KUNG PAANO ANG PAGTRATO SA KRIMEN. MAYROONG MGA PABOR DITO, AT MAYROON DIN ANG SALUNGAT. KAYO BA NYANG SANGAYON O HINDI SANGAYON NA (MEASURE)? KATULAD KANINA, PAKISABI LANG PO ANG INYONG SAGOT SA PAMAMAGITAN NG MGA KARD NA ITO SA NAAANGKOP NA LUGAR SA RATING BOARD NA ITO. (LUBOS NA SUMASANG-AYON, SUMASANGAYON, MAAARING SUMASANG-AYON/MAAARING HINDI, HINDI SUMASANG-AYON O LUBOS NA HINDI SUMASANG-AYON. Q123. Dapat hatulan ng kamatayan ang mga napatunayang pumaslang

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“THE DEATH PENALTY SHOULD BE RE-INSTATED FOR PEOPLE WHO WERE PROVEN BY THE COURTS TO HAVE REALLY COMMITTED HEINOUS CRIMES,” PHILIPPINES, MAR 2018

Q95. Gaano po kayo sumasang-ayon o hindi sumasang-ayon na: DAPAT IBALIK ANG PARUSANG KAMATAYAN O DEATH PENALTY PARA SA TAONG NAPATUNAYAN NG MGA KORTE NA TOTOONG GUMAWA NG MGA KRIMEN NA KARUMAL-DUMAL.

*Net agreement : Computed as % Strongly/Somewhat agree minus % Somewhat/Strongly disagree, correctly rounded.
**WHAT OUGHT TO BE THE PUNISHMENT FOR PEOPLE FOUND TO HAVE COMMITTED THIS SPECIFIC CRIME? PHILIPPINES, MAR 2018**

<table>
<thead>
<tr>
<th>Crime</th>
<th>20 years</th>
<th>40 years</th>
<th>Life imprisonment</th>
<th>Death penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working in drug dens</td>
<td>9</td>
<td>15</td>
<td>54</td>
<td>22</td>
</tr>
<tr>
<td>Sale of illegal drugs</td>
<td>8</td>
<td>13</td>
<td>55</td>
<td>24</td>
</tr>
<tr>
<td>Maintenance of drug dens</td>
<td>7</td>
<td>13</td>
<td>53</td>
<td>25</td>
</tr>
<tr>
<td>Murder under the influence of drugs</td>
<td>10</td>
<td>8</td>
<td>51</td>
<td>30</td>
</tr>
<tr>
<td>Importation of illegal drugs</td>
<td>6</td>
<td>9</td>
<td>53</td>
<td>31</td>
</tr>
<tr>
<td>Manufacture of illegal drugs</td>
<td>6</td>
<td>9</td>
<td>51</td>
<td>33</td>
</tr>
<tr>
<td>Rape under the influence of drugs</td>
<td>3</td>
<td>6</td>
<td>44</td>
<td>47</td>
</tr>
</tbody>
</table>

Q53-59. In your opinion, what ought to be the punishment to be imposed on people who were found to have committed these crimes? (20 years, 40 years, life imprisonment, death penalty)

Q53-59. Sa inyong palagay, ano ang nararapat na parusa na ipataw sa mga tao na napatunayang gumawa ng mga krimen na ito? Ito po ba ay 20 TAON, 40 TAON, HABAMBUHAY NA PAGKAKABILANGGO, O PARUSANG KAMATAYAN O DEATH PENALTY?
Q32. From 1993 to 2004, all cases decided by the lower courts of death penalty were automatically reviewed by the Supreme Court. According to the Supreme Court itself, of the total 907 cases it automatically reviewed, 651 cases did not proceed to death penalty. Did you previously know, or do you know only now that, this means that the lower courts mistakenly imposed the death penalty to 3 out of 4 persons found guilty of committing a crime?
“HOW MUCH IS YOUR TRUST THAT THE FOLLOWING OFFICIALS/PERSONALITIES HAVE TRUE RESPECT FOR THE HUMAN RIGHTS OF FILIPINOS?” PHILIPPINES, MAR 2018

Qs6-17. Now, let us talk about how much do you trust or not trust that each of the following officials/personalities have true respect for human rights? Would you say that you have Very much trust, Somewhat much trust, Undecided if much or little trust, Somewhat little trust, or Very little trust that [MENTION OFFICIAL/PERSONALITY] has true respect for human rights of Filipinos?

*Net trust: Computed as % Very/Somewhat much trust minus % Somewhat/Very little trust, correctly rounded. Note: % Can’t choose, Don’t know, and Refused responses are not shown.

Qs6-17. Ngayon naman po ay pag-usapan natin kung gaano kayo nagtitiwala o hindi nagtitiwala na ang mga sumusunod na mga opisyal/personalidad ay may tunay na paggalang sa karapatan pantao ng mga Pilipino? Kayo po ba ay NAPAKALAKI ANG TIWALA, MEDYO MALAKI ANG TIWALA, HINDI TIYAK KUNG MALAKI O MALIIT ANG TIWALA, MEDYO MALIIT ANG TIWALA, o NAPAKALIIT ANG TIWALA na ang mga [mention official/personality] ay may tunay paggalang sa karapatan pantao ng mga Pilipino?
COMMISSION ON HUMAN RIGHTS

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