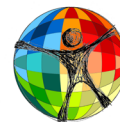


The Philippines' War on Drugs (*Read: The Poor*): The Erosion of the Rule of Law and the Violation of Children's Human Rights

Kathleen Barera

McGill Centre for
Human Rights
and Legal Pluralism



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ABSTRACT

This paper demonstrates that the Philippines' violent drug war under President Rodrigo Duterte is in contravention of the rule of law and in violation of children's human rights and dignity. The first section situates the war on drugs. It illustrates in a humanizing way its devastating impacts on the poor and children with a main focus on extrajudicial killings (EJKs) of alleged drug offenders and users. It also analyzes the widespread and sustained support for Duterte's drug war and examines lessons drawn from past drug war failures, particularly in Colombia and Thailand, which would better tackle the drug problem. The second section underscores the irreconcilable tensions between the government's primary strategy to eradicate drugs and crime through EJKs and its claim to be a rule of law state with an anti-drug campaign centered on law and order. The third section analyzes the violations of children's human rights and dignity under the UN Convention on the Rights of the Child (UNCRC) and the International Covenant on Civil and Political Rights (ICCPR), both of which have been ratified by the Philippines. The analysis is undertaken within the UNCRC framework's four core principles: (1) non-discrimination; (2) best interests of the child; (3) life, survival, and development; and (4) children's participation. The final section explores three interrelated ways by which the human rights crisis can be addressed. It first looks at empowering children through human rights education and its narrative method so as to enable them to partake in decision-making processes and promote and protect their rights. Next, it brings attention to local initiatives set up to provide child survivors with vital support services. Lastly, it underscores the imperative step of pursuing international justice and accountability for human rights violations through the International Criminal Court (ICC) and the United Nations (UN).

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Introduction

The Philippines' war on drugs under President Rodrigo Duterte "is illegal, immoral and anti-poor"¹ and incredibly harmful to children² – individuals under the age of eighteen.³ I argue that Duterte's drug war in its various manifestations contravenes the rule of law and violates children's human rights and dignity. The State's claim to be a rule of law state conflicts with its main strategy of extrajudicial killings (EJKs) – the "unlawful and deliberate killings carried out by government order or with its complicity or acquiescence".⁴

¹ Paul Jeffrey, "Philippine bishop: Duterte's drug war is 'illegal, immoral and anti-poor'", (19 February 2019), *National Catholic Reporter*, online: <<https://www.ncronline.org/news/world/philippine-bishop-dutertes-drug-war-illegal-immoral-and-anti-poor>> [Jeffrey].

² Carlos Conde, "Collateral Damage: The Children of Duterte's 'War on Drugs'", (7 October 2019), *Human Rights Watch*, online: <<https://www.hrw.org/video-photos/interactive/2019/06/27/collateral-damage-children-dutertes-war-drugs>> [Conde, "Collateral Damage"]; Joe Henley, "Duterte's war on drugs creating generation of orphans", (16 November 2016), *South China Morning Post*, online: <<https://www.scmp.com/magazines/post-magazine/long-reads/article/2046511/dutertes-war-drugs-leaving-children-orphaned>> [Henley]; Amnesty International, "If you are poor you are killed: Extrajudicial executions in the Philippines' 'war on drugs'", (2017) *Amnesty International*, online: <https://www.amnestyusa.org/files/philippines_ejk_report_v19_final_0.pdf> at 44 [Amnesty International, "If you are poor you are killed"]; Emily Rauhala, "Rodrigo Duterte's next target: 9-year-old children", (26 February 2017), *The Washington Post*, online: <https://www.washingtonpost.com/world/asia_pacific/rodrigo-dutertes-next-target-9-year-old-children/2017/02/25/c02f6e6c-f863-11e6-aa1e-5f735ee31334_story.html> [Rauhala]; Raquel Carvalho, "As Duterte's drugs war rages on, nation's children pay the price", (13 October 2019), *South China Morning Post*, online: <<https://www.scmp.com/week-asia/politics/article/3032581/dutertes-drugs-war-rages-philippines-nations-children-are-paying>> [Carvalho].

³ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577 (entered into force 2 September 1990, ratified by the Philippines 21 August 1990) at Art 1 [UNCRC];

Steven Roche, "Child Protection and Maltreatment in the Philippines: A Systematic Review of the Literature", (17 January 2017), *Wiley Online Library*, online: <<https://onlinelibrary.wiley.com/doi/full/10.1002/app5.167>>.

⁴ Amnesty International, "If you are poor you are killed", *supra* note 2 at 6, 14.

First, I situate the Philippines' war on drugs and illustrate its devastating impacts on the poor and children with a particular focus on EJKs of suspected drug dealers and users. I give a human face to the deplorable impacts on children as "they're not just numbers [...] [or] statistics".⁵ I also analyze Duterte's widespread support and draw on lessons from past drug war failures. Second, I underscore the irreconcilable tensions between the Duterte administration's focus on law and order to eliminate drugs and crime through EJKs while simultaneously purporting to be a rule of law state. Third, I analyze the violations of children's human rights and dignity under the UN Convention on the Rights of the Child (UNCRC)⁶ and the International Covenant on Civil and Political Rights (ICCPR)⁷ within the UNCRC framework's four core principles: (1) non-discrimination; (2) best interests of the child; (3) life, survival, and development; and (4) children's participation. Lastly, I explore three interconnected ways to address the human rights crisis, namely children's empowerment through the narrative method of human rights education as exemplified by the Ateneo Human Rights Center (AHRC),⁸ local initiatives to help child survivors, and the pursuit of international justice.

Situating the War on Drugs

"I want our place free from drugs, but I am afraid to be involved in [...] Duterte's [drug] war. Perhaps there are other non-violent solutions to address the drug problem."

– Child, 13 years old⁹

⁵ Nicola Smith, "The families ripped apart by the Philippines' brutal, bloody war on drugs", (18 August 2019), *The Telegraph*, online: <<https://www.telegraph.co.uk/global-health/terror-and-security/saw-grandfather-lying-pool-blood-unseen-impact-philippines-brutal/>> [Smith].

⁶ UNCRC, *supra* note 3.

⁷ *International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976, ratified by the Philippines 23 October 1986) [ICCPR].

⁸ Ateneo Law School, "ChildTALK: teaching children's rights", (14 January 2017), *Ateneo de Manila University*, online: <<https://www.ateneo.edu/aps/law/news/features/childtalk-teaching-childrens-rights>> [Ateneo Law School].

⁹ Save the Children Philippines, "Save the Children condemns the death of any child in relation to the war against illegal drugs", *Save the Children*, online: <<https://www.savethechildren.org.ph/our-work/our-stories/story/save-the-children-condemns-the-death-of-any-child-in-relation-to-the-war-against-illegal-drugs/>>.

Extrajudicial Killings, War on the Poor, and Child Victims

Duterte ran a presidential campaign focused on illegal drugs, specifically meth (*shabu*), by convincing the populace that drugs had infiltrated the government and were the root of the country's problems.¹⁰ In June 2016, the newly elected President Duterte launched a violent drug war, which has so far claimed nearly 27,000 lives according to activists and around 6,600 lives according to the government.¹¹ Duterte is adamant that drug dealers "are less than human" and deserve to die, and has delivered on his threats.¹² As former mayor of Davao City for 22 years up until now, he has vowed to eliminate crime and drugs by targeting drug dealers and users through large-scale EJKs.¹³ He was allegedly connected to the Davao Death Squad, a vigilante group which killed over 1,400 mostly suspected criminals and drug users, three of whom he personally killed.¹⁴ In 2002, he

¹⁰ Adrian Chen, "When a Populist Demagogue Takes Power," *The New Yorker* (21 November 2016) [Chen].

¹¹ Matthew Tostevin & Neil Jerome Morales, "War on numbers: Philippines targets drug killing data", (18 July 2019), *Reuters*, online: <<https://www.reuters.com/article/us-philippines-drugs/war-on-numbers-philippines-targets-drug-killing-data-idUSKCN1UD1CJ>> [Tostevin & Morales]; Human Rights Watch, "Philippines: 'Drug War' Devastates Children's Lives", (27 June 2019), *Human Rights Watch*, online: <<https://www.hrw.org/news/2019/06/27/philippines-drug-war-devastates-childrens-lives>> [Human Rights Watch, "Philippines; 'Drug War'"]; Amnesty International, "'They just kill'. Ongoing extrajudicial executions and other violations in the Philippines' 'war on drugs'", (2019) *Amnesty International*, online: <<https://www.amnesty.org/en/documents/asa35/0578/2019/en/>> at 5, 8, 10 [Amnesty International, "'They just kill'"]; Smith, *supra* note 5.

¹² Amnesty International, "If you are poor you are killed", *supra* note 2 at 6, 17, 55, 61; Thomas Pepinsky, "Southeast Asia: Voting Against Disorder," *Journal of Democracy* 28, 2 (April 2017) at 120-1, 129 [Pepinsky].

¹³ Human Rights Watch, "Philippines' 'War on Drugs'", *Human Rights Watch*, online: <<https://www.hrw.org/tag/philippines-war-drugs>> [Human Rights Watch, "Philippines' 'War on Drugs'"]; Phelim Kine, "Duterte Harry Has Been Dirty For a Long Time", (30 October 2016), *Human Rights Watch*, online: <<https://www.hrw.org/news/2016/05/17/duterte-harry-has-been-dirty-long-time>> [Kine, "Duterte Harry"]; Amnesty International, "If you are poor you are killed", *supra* note 2 at 6, 11, 17; Chen, *supra* note 10; Sheila S. Coronel, "The Vigilante President: How Duterte's Brutal Populism Conquered the Philippines," *Foreign Affairs* 98, 5 (September/October 2019) at 39 [Coronel].

¹⁴ Amnesty International, "If you are poor you are killed", *supra* note 2 at 11-2; Chen, *supra* note 10; Coronel, *supra* note 13 at 39-40; Kine, "Duterte Harry", *supra* note 13; David Johnson & Jon Fernquest, "Governing through Killing: The War on Drugs in the Philippines", *Asian Journal of Law and Society*, 5(2) (2018) at 369 [Johnson & Fernquest].

condoned killing teenaged criminal gang members: "If they offer resistance, I will not hesitate to kill them. I don't care about minors".¹⁵ Between 1998 and 2009, teenage street kids engaged in small-time drug dealing and petty theft represented the majority of individuals killed.¹⁶ He has promised to kill 100,000 criminals, and threatened: "If I make it to the presidential palace, I will do just what I did as mayor. You drug pushers, holdup men, and do-nothings, you better get out because I'll kill you."¹⁷ In his inaugural speech, he urged: "If you know of any addicts, go ahead and kill them yourself."¹⁸ His violent rhetoric has resumed in office: "Hitler massacred three million Jews. [...] There's three million drug addicts. [...] I'd be happy to slaughter them".¹⁹

President Duterte's regular incitement to kill drug offenders and criminals and the sharp increase in EJKs, including by the police and non-state assailants whom evade investigation and prosecution, has reached an unprecedented level and may amount to crimes against humanity.²⁰ The rising death toll is therefore coupled with complete impunity for police officers incentivized to kill through financial rewards and pressured to produce results in the drug war, as well as for vigilantes.²¹ Local human rights activists, lawyers, the Catholic Church, and the international community condemn the drug war.²² An

¹⁵ Weiss, Brennan. "Children and Duterte's drug war: Lessons from the past", (17 February 2017), *Al Jazeera*, online: <<https://www.aljazeera.com/indepth/features/2017/02/children-duterte-drug-war-lessons-170216121942335.html>>.

¹⁶ Chen, *supra* note 10.

¹⁷ Human Rights Watch, "Philippines' 'War on Drugs'", *supra* note 13; Amnesty International, "If you are poor you are killed", *supra* note 2 at 17.

¹⁸ Amnesty International, "If you are poor you are killed", *supra* note 2 at 37;

¹⁹ *Ibid*; Johnson & Fernquest, *supra* note 14 at 359, 365.

²⁰ Amnesty International, "If you are poor you are killed", *supra* note 2 at 6-7, 12, 14-5, 33, 62; Amnesty International, "UN investigation urgently needed into the Philippines' 'war on drugs'", (8 July 2019) *Amnesty International*, online: <<https://www.amnesty.org/en/latest/news/2019/07/philippines-un-investigation-urgently-needed-duterte-war-drugs/>> [Amnesty International, "UN Investigation"].

²¹ Amnesty International, "If you are poor you are killed", *supra* note 2 at 12, 21, 29-30, 35; Hannah Ellis-Petersen, "Rodrigo Duterte's drug war is 'large-scale murdering enterprise' says Amnesty", (8 July 2019), *The Guardian*, online: <<https://www.theguardian.com/world/2019/jul/08/rodrigo-dutertes-drug-war-is-large-scale-murdering-enterprise-says-amnesty>> [Ellis-Peterson].

²² Amnesty International, "If you are poor you are killed", *supra* note 2 at 6, 12; Chen, *supra* note 10; Coronel, *supra* note 13 at 38; Clare Baldwin & Andrew RC Marshall, "More blood but no victory as Philippine drug war marks its first year", (25 June 2017), *Reuters*, online: <<https://www.reuters.com/article/us-philippines-duterte-drugs/more->

investigation by the UN Human Rights Council (HRC) and a preliminary examination by the International Criminal Court (ICC) have begun.²³

Central to the Duterte administration's anti-drug operations are 'drug watch lists' – illegitimate 'kill' lists – prepared by local government officials, under pressure, for the police "outside of any legal process" to monitor suspected drug offenders and others involved in the drug trade.²⁴ The majority listed are poor and marginalized.²⁵ Listed are not merely individuals reasonably suspected of being drug offenders, but also past drug users, drug "protectors", and children.²⁶ Vigilantes' victims are also from these lists.²⁷ These lists are "the basis" of the campaign's "flagship activity" Operation Knock and Plead, whereby police officers carry out door-to-door visits to request the voluntary surrender of drug offenders.²⁸ Over one million drug offenders have 'voluntarily' surrendered.²⁹ 26,907 children surrendered by

[blood-but-no-victory-as-philippine-drug-war-marks-its-first-year-idUSKBN19G05D](#)> [Baldwin & Marshall]; Jeffrey, *supra* note 1.

²³ International Criminal Court, "Preliminary examination: The Philippines" *International Criminal Court*, online: <<https://www.icc-cpi.int/philippines>> [International Criminal Court]; Leah Sapin, "Philippines: ICC Requests Documentary Film as it Investigates Duterte's 'War on Drugs'", (30 September 2019), *Human Rights Watch*, online: <<https://www.hrw.org/news/2019/09/30/filming-philippines-war-drugs>> [Sapin]; "UN Human Rights Council votes to probe Philippines drug war deaths", (11 July 2019), *CBCnews*, online: <<https://www.cbc.ca/news/world/united-nations-investigation-philippines-drug-deaths-1.5209238>> ["UN Human Rights Council votes"].

²⁴ Amnesty International, "If you are poor you are killed", *supra* note 2 at 7, 19-20; Amnesty International, "UN Investigation", *supra* note 20; Amnesty International, "'They just kill'", *supra* note 11 at 6, 26-7, 29-30.

²⁵ Amnesty International, "'They just kill'", *supra* note 11 at 27-8.

²⁶ *Ibid* at 27-8; Amnesty International, "If you are poor you are killed", *supra* note 2 at 7, 20; Amnesty International, "UN Investigation", *supra* note 20; Jhesset O. Enano, "Group finds 74 minors in drug war body count", (6 April 2018), *Inquirer News*, online: <<https://newsinfo.inquirer.net/980513/group-finds-74-minors-in-drug-war-body-count>> [Enano].

²⁷ Amnesty International, "If you are poor you are killed", *supra* note 2 at 35; Clarissa C David & Ronald U Mendoza, "Children and the anti-illegal drugs campaign: When the cure is worse than the disease", (13 September 2018), *ABS*, online: <<https://news.abs-cbn.com/focus/09/13/18/children-and-the-anti-illegal-drugs-campaign-when-the-cure-is-worse-than-the-disease>> [David & Mendoza]; Amnesty International, "'They just kill'", *supra* note 11 at 22, 26.

²⁸ Amnesty International, "'They just kill'", *supra* note 11 at 22, 26.

²⁹ Aaron Recuenco, "PNP ordered to monitor 1.2 M surrenderers in war on drugs", (5 August 2018), *Manila Bulletin News*, online: <<https://news.mb.com.ph/2018/08/05/pnp-ordered-to-monitor-1-2-m>>

January 2017 – 94% of whom were boys and 3,279 aged 14 or younger.³⁰ They must admit their drug involvement, provide information and fingerprints, accept surveillance and random drug testing, submit to scarcely available treatment and rehabilitation programs, and promise to stop using or selling drugs; failure to reform results in their arrests or deaths.³¹ Given the lists' permanence, even reformed drug offenders are killed.³²

The drug war is tantamount to a war on the poor; it is “a large-scale murdering enterprise for which the poor continue to pay the highest price”.³³ The drug under attack, *shabu*, is abused by pedicab drivers and day laborers living in slums in order for them to subdue their hunger and work longer hours.³⁴ Police on formal operations and unknown vigilantes – sometimes police in disguise or paid killers hired by the police – regularly target alleged drug offenders from the poorest neighborhoods.³⁵ The urban poor, specifically “low-level users and dealers”, disproportionately represent the majority of EJK victims, whereas wealthy individuals and major drug lords and traffickers are spared and afforded their right to due process in court.³⁶ In fact,

[surrenderers-in-war-on-drugs/](#) [Recuenco]; Amnesty International, “If you are poor you are killed”, *supra* note 2 at 56.

³⁰ David & Mendoza, *supra* note 27.

³¹ Amnesty International, “If you are poor you are killed”, *supra* note 2 at 19-20, 58; Recuenco, *supra* note 29; Amnesty International, “They just kill”, *supra* note 11 at 6, 26-7, 38.

³² Amnesty International, “They just kill”, *supra* note 11 at 30.

³³ *Ibid* at 20, 41; Ellis-Petersen, *supra* note 21; Amnesty International, “UN investigation”, *supra* note 20; Rauhala, *supra* note 2; Amnesty International, “If you are poor you are killed”, *supra* note 2 at 40.

³⁴ Chen, *supra* note 10; Johnson & Fernquest, *supra* note 14 at 372.

³⁵ Amnesty International, “If you are poor you are killed”, *supra* note 2 at 6-7, 17, 33, 37, 40-2; Human Rights Watch, “World Report 2019: Philippines Events of 2018”, *Human Rights Watch*, online: <<https://www.hrw.org/world-report/2019/country-chapters/philippines#c007ac>> [Human Rights Watch, “World Report 2019”]; “UN Human Rights Council votes”, *supra* note 23; Amnesty International, “They just kill”, *supra* note 11 at 10, 22.

³⁶ Amnesty International, “If you are poor you are killed”, *supra* note 2 at 6-7, 11, 18, 40-2, 62; Rauhala, *supra* note 2; Ellis-Petersen, *supra* note 21; Henley, *supra* note 2; Human Rights Watch, “Philippines’ ‘War on Drugs’”, *supra* note 13; Human Rights Watch, “Philippines: ‘Drug War’”, *supra* note 11; Agence France-Presse, “‘We do not discriminate’: rich, poor are all targets in drug war, Philippines police chief says”, (20 July 2018), *South China Morning Post*, online: <<https://www.scmp.com/news/asia/southeast-asia/article/2015190/we-do-not-discriminate-rich-poor-are-all-targets-drug-war>> [France-Presse]; Chen, *supra* note 10; Baldwin & Marshall, *supra* note 22; Amnesty International, “They just kill”, *supra* note 11 at 16; Jeffrey, *supra* note 1.

60 percent of Filipinos agree that “only poor drug pushers [are] killed”.³⁷ The victims are often male, unemployed or underemployed, underprivileged, and from informal settlements or squatter communities.³⁸ They tend to be family breadwinners in the gray economy, such as pedicab drivers or food vendors.³⁹ Their drug trade involvement is attributed to poverty and lack of job prospects.⁴⁰ The killings render already disadvantaged families worse off financially, sometimes compounded by police theft of valuables during crime scene investigations and rackets with funeral homes.⁴¹

Thousands of children from the poorest urban areas have been severely impacted as direct and indirect victims of EJKs and live in constant fear.⁴² The drug war is “morphing into a campaign against disadvantaged kids”.⁴³ The government has attacked the rights of children in conflict with the law as it attempts to lower the age of criminal responsibility from fifteen to nine and now twelve years old.⁴⁴ As “an effort to broaden the campaign [...] [by] ‘criminalizing’ minors and ‘legitimizing’ state-led violence against [them]”, poor children will bear the brunt.⁴⁵ This would not prevent desperate children from committing drug-related crimes for syndicates, and early imprisonment would create a culture of criminality.⁴⁶ There are “socio-economic and family-based risks”

³⁷ Manuel Mogato, “Most Filipinos believe drug war kills poor people only, survey shows”, (2 October 2017), *Reuters*, online: <<https://www.reuters.com/article/us-philippines-drugs/most-filipinos-believe-drug-war-kills-poor-people-only-survey-shows-idUSKCN1C71HH>> [Mogato, “Most Filipinos believe drug war kills poor people only”].

³⁸ *Ibid*; Amnesty International, “If you are poor you are killed”, *supra* note 2 at 7, 11.

³⁹ Rauhala, *supra* note 2; Amnesty International, “If you are poor you are killed”, *supra* note 2 at 40; Henley, *supra* note 2; Conde, “Collateral Damage”, *supra* note 2; Amnesty International, “‘They just kill’”, *supra* note 11 at 20.

⁴⁰ Amnesty International, “If you are poor you are killed”, *supra* note 2 at 40-2; Johnson & Fernquest, *supra* note 14 at 372.

⁴¹ Henley, *supra* note 2; Amnesty International, “‘They just kill’”, *supra* note 11 at 11, 20; Amnesty International, “If you are poor you are killed”, *supra* note 2 at 7, 19, 40-4.

⁴² Conde, “Collateral Damage”, *supra* note 2; Henley, *supra* note 2; Amnesty International, “If you are poor you are killed”, *supra* note 2 at 44; Rauhala, *supra* note 2; Carvalho, *supra* note 2.

⁴³ Rauhala, *supra* note 2.

⁴⁴ Amnesty International, “If you are poor you are killed”, *supra* note 2 at 44.

⁴⁵ Rauhala, *supra* note 2.

⁴⁶ *Ibid*.

that push poor, urban children into drug trade and trafficking.⁴⁷ Per the narconomics theory, hardened drug lords in Latin America and the US usually recruit individuals in prisons; thus, placing children alongside them would destabilize their chances to “[be] saved from a life of crime and drugs”.⁴⁸ In June 2018, the Philippine Drug Enforcement Agency (PDEA) announced its plans to “impose annual unannounced drug screening tests” on schoolchildren as of the fourth grade.⁴⁹

As of July 2018, 110 Filipino children were killed.⁵⁰ Some were caught in the crossfire. Others were killed even though the intended targets were other suspected drug offenders. Some were killed in police operations and others in vigilante-style killings.⁵¹ In July 2016, Richter Baykin, a high school student aged 16, was killed in a police buy-bust operation.⁵² In August 2016, Danica May Garcia, aged 5, was killed in her own home by unknown assailants who came for her grandfather.⁵³ Another child, aged 4, was caught in the crossfire during a buy-bust operation between the police and her father.⁵⁴ In December 2016, San Nino Batucan, aged 8, was hit by a stray bullet in a vigilante-style killing aided by police, another three children were inside a house when shot dead by unknown assailants, and Emmanuel Lorica, a high school

⁴⁷ Reuben James Barrete, “Duterte's war on drugs is leaving children to pay the price, but not asking why they turned to crime”, (16 April 2017), *South China Morning Post*, online: <<https://www.scmp.com/comment/insight-opinion/article/2087714/dutertes-war-drugs-leaving-children-pay-price-not-asking-why>> [Barrete].

⁴⁸ David & Mendoza, *supra* note 27.

⁴⁹ Human Rights Watch, “World Report 2019”, *supra* note 35; Barrete, *supra* note 47.

⁵⁰ Bureau of International Labor Affairs, “Findings on the Worst Forms of Child Labor - Philippines”, *US Department of Labor*, online: <<https://www.dol.gov/agencies/ilab/resources/reports/child-labor/philippines>> [Bureau of International Labor Affairs].

⁵¹ *Ibid*; Rauhala, *supra* note 2; Human Rights Watch, “Philippines: ‘Drug War’”, *supra* note 11; Conde, “Collateral Damage”, *supra* note 2; Enano, *supra* note 26; Karen McVeigh, “Police have killed dozens of children in Philippines war on drugs, Amnesty says”, (4 December 2017), *The Guardian*, online: <<https://www.theguardian.com/global-development/2017/dec/04/police-have-killed-dozens-of-children-in-philippines-war-on-drugs-amnesty-says>> [McVeigh]; Amnesty International, “If you are poor you are killed”, *supra* note 2 at 44.

⁵² David & Mendoza, *supra* note 27.

⁵³ Rauhala, *supra* note 2.

⁵⁴ *Ibid*.

student aged 17, was fatally shot by gunmen.⁵⁵ In May 2017, Normin Tantong's two children, aged 5 and an infant, were killed by gunshots during a police operation, while Michael Miras, aged 14, was killed by gunshots by unknown assailants.⁵⁶ In August 2017, Kian Loyd delos Santos, aged 17, a supporter of the drug war, and aspiring to become a police officer, was dragged and killed by police in an alleyway and found dead in a fetal position.⁵⁷ In September 2017, the body of Reynaldo de Guzman, aged 14, was found in a creek with "his head wrapped in plastic" and "30 stab wounds", while Jayross Brondial, aged 13, was killed by repeated gunshots by a vigilante on a motorcycle.⁵⁸ In July 2018, Skyler Abatayo, aged 4, was inside his room studying when he was killed by a police officer's stray bullet.⁵⁹ In June 2019, Myca Ulpina, aged 3, was fatally shot during a drug raid, to which Senator Bato, a former police chief, repugnantly responded: "shit happens".⁶⁰ Duterte has similarly claimed that children killed are "collateral damage", and that "police can kill hundreds [...] without criminal liability".⁶¹

⁵⁵ Amnesty International, "If you are poor you are killed", *supra* note 2 at 38, 44, 46; Enano, *supra* note 26.

⁵⁶ David & Mendoza, *supra* note 27.

⁵⁷ Enano, *supra* note 26; Carlos Conde, "Three-Year-Old Girl Latest Philippines 'Drug War' Victim", (1 July 2019), *Human Rights Watch*, online: <<https://www.hrw.org/news/2019/07/01/three-year-old-girl-latest-philippines-drug-war-victim>> [Conde, "Three-Year-Old Girl"]; Lindsay Murdoch, "This 17 year old boy killed in Duterte's drug war galvanises the Philippines", (21 August 2017), *The Sydney Morning Herald*, online: <<https://www.smh.com.au/world/this-17-year-old-boy-killed-in-dutertes-drug-war-galvanises-the-philippines-20170821-gy0j41.html>>; Amnesty International, "Philippines: ICC must examine 'war on drugs' crimes as child killings go unpunished", (4 December 2017) *Amnesty International*, online: <<https://www.amnesty.org/en/latest/news/2017/12/philippines-icc-must-examine-war-on-drugs-crimes/>> [Amnesty International, "Philippines: ICC must examine 'war on drugs'"]; Johnson & Fernquest, *supra* note 14 at 379.

⁵⁸ Enano, *supra* note 26; David & Mendoza, *supra* note 27.

⁵⁹ Conde, "Three-Year-Old Girl", *supra* note 57; Johanna Marie O Bajenting, "Boy caught in the drug war's crossfire killed", (11 July 2018), *Sunstar*, online: <<https://www.sunstar.com.ph/article/1752176>>.

⁶⁰ Tostevin & Morales, *supra* note 11; Leila B Salaverria and Maricar Cinco, "Shit happens, Bato says after a child got killed in drug bust", (5 July 2019), *Inquirer News*, online: <<https://newsinfo.inquirer.net/1138105/shit-happens-bato-says-after-a-child-got-killed-in-drug-bust>>.

⁶¹ Oliver Holmes, "Duterte says children killed in Philippines drug war are 'collateral damage'", (17 October 2016), *The Guardian*, online: <<https://www.theguardian.com/world/2016/oct/17/duterte-says-children-killed-in-philippines-drug-war-are-collateral-damage>> [Holmes].

Children have been subjected to a range of other violations as well, relating to forcible searches, detention, arrest, and abuse.⁶² In a July 2016 raid, police forcibly searched a girl of three years old by removing her underwear to search for hidden drugs.⁶³ In Manila, police were found to arrest marginalized children, including orphans and those living in the streets, in order to meet their "'numbers' for their anti-drug operations".⁶⁴ Children arrested are abused physically and emotionally, deprived of liberty, and held in poorly locally run juvenile detention centers with "deplorable and sub-human conditions"; some are placed in literal cages and others in prison cells.⁶⁵ The cells are tiny, dirty, overcrowded, and unhygienic.⁶⁶ They are malnourished and deprived of medical, educational, recreational, and other services, and most lack beds, proper toilets, or a place to bathe themselves.⁶⁷ Many children are also placed in adult detention centers.⁶⁸ For instance, young people who look like drug users, because they are thin or have tattoos, are brought to adult detention centers.⁶⁹ Between July 2016 and November 2018, 1,861 minors were arrested for drug offences.⁷⁰ Police officers have beaten, tortured, sexually abused, and framed children for drug crimes by forcing them to be pictured with planted drugs.⁷¹

⁶² Amnesty International, "If you are poor you are killed", *supra* note 2 at 44; Conde, "Collateral Damage", *supra* note 2.

⁶³ Amnesty International, "If you are poor you are killed", *supra* note 2 at 44.

⁶⁴ Rauhala, *supra* note 2.

⁶⁵ Conde, "Collateral Damage", *supra* note 2; Cullen, Fr. Shay, SSC, "Children abused in detention", (24 June 2018), *The Manila Times*, online: <<http://www.manilatimes.net/children-abused-in-detention/411729/>> [Cullen, "Children abused in detention"]; Bureau of International Labor Affairs, *supra* note 50; Cullen, Fr. Shay, SSC, "What Philippine officials found in child detention centers", (16 January 2016), *The Manila Times*, online: <<https://www.manilatimes.net/2016/01/16/opinion/columnists/what-philippine-officials-found-in-child-detention-centers/239813/239813/>> [Cullen, "What Philippine officials found in child detention centers"]; Jeffrey, *supra* note 1.

⁶⁶ Bureau of International Labor Affairs, *supra* note 50; Cullen, "Children abused in detention", *supra* note 65; Cullen, "What Philippine officials found in child detention centers", *supra* note 65.

⁶⁷ Cullen, "Children abused in detention", *supra* note 65; Cullen, "What Philippine officials found in child detention centers", *supra* note 65.

⁶⁸ Amnesty International, "If you are poor you are killed", *supra* note 2 at 44.

⁶⁹ Rauhala, *supra* note 2.

⁷⁰ Bureau of International Labor Affairs, *supra* note 50.

⁷¹ *Ibid*; Conde, "Collateral Damage", *supra* note 2; McVeigh, *supra* note 51.

In Human Rights Watch's (HRW) web feature "Collateral Damage: The Children of Duterte's 'War on Drugs'", the stories underscore the plight of children who have suffered emotionally, psychologically, and economically as a result of ongoing drug war violence.⁷² Thousands of children have become severely traumatized by their parents' or other relatives' deaths, by witnessing killings firsthand, and through the fear they feel for their lives.⁷³ Some refuse to partake in investigations by the Commission on Human Rights (CHR), as they are afraid of reprisals by the police.⁷⁴ Others, especially witnesses to such deaths, have gone into hiding.⁷⁵ The trauma experienced by children has manifested into withdrawal, anger, aggressiveness, and violence.⁷⁶ Breadwinners' deaths have further exacerbated the poverty experienced by poor children; poor families are unable to afford food, clothing, shelter, and health expenses with their reduced incomes.⁷⁷ Either due to a lack of financial means, trauma, or stigma, some children drop out of school and instead work menial jobs, such as selling peanuts.⁷⁸ This renders them more vulnerable to becoming victims of exploitation and child labor.⁷⁹ The deaths "perpetuate the cycle of poverty that sucks children and youths into the drug trade".⁸⁰ A generation of orphans has also been bred; with "parents imprisoned, dead or lost to addiction", some children live on the streets and are "left to fend for themselves".⁸¹ In 2018, it was conservatively estimated

⁷² Human Rights Watch, "Philippines: 'Drug War'", *supra* note 11; Conde, "Collateral Damage", *supra* note 2.

⁷³ Amnesty International, "If you are poor you are killed", *supra* note 2 at 44-5; Conde, "Collateral Damage", *supra* note 2; Henley, *supra* note 2; Smith, *supra* note 5.

⁷⁴ Amnesty International, "If you are poor you are killed", *supra* note 2 at 45.

⁷⁵ Conde, "Collateral Damage", *supra* note 2; Henley, *supra* note 2; Rauhala, *supra* note 2; Smith, *supra* note 5.

⁷⁶ Conde, "Collateral Damage", *supra* note 2; Henley, *supra* note 2; Priyanka Boghani, "What Happens to The Families Left Behind in Duterte's Deadly Campaign Against Drugs", (8 October 2019), PBS, online: <<https://www.pbs.org/wgbh/frontline/article/what-happens-to-the-families-left-behind-in-dutertes-deadly-campaign-against-drugs/>> [Boghani].

⁷⁷ Amnesty International, "If you are poor you are killed", *supra* note 2 at 44; Conde, "Collateral Damage", *supra* note 2; Henley, *supra* note 2; Carvalho, *supra* note 2; Rauhala, *supra* note 2; Boghani, *supra* note 76.

⁷⁸ Conde, "Collateral Damage", *supra* note 2; Henley, *supra* note 2; Carvalho, *supra* note 2; Boghani, *supra* note 76; Smith, *supra* note 5.

⁷⁹ Carvalho, *supra* note 2.

⁸⁰ Rauhala, *supra* note 2.

⁸¹ Henley, *supra* note 2; Conde, "Collateral Damage", *supra* note 2; Barrete, *supra* note 47; Smith, *supra* note 5.

that between 18,398 and 32,395 children were orphaned as a result of EJKs.⁸²

The Phenomenon of Support and Lessons from Past Drug War Failures

Public support for tough drug policies is a widespread phenomenon; indeed, "fears and ideas that underlie moral panics relating to drugs" often "result in instinctive support for crackdowns".⁸³ The "'other[-ing]'" of drug offenders as evil is also common.⁸⁴ Duterte's story-telling and the way he dressed in jeans and plaid shirts "resonated among a broad public"; he appeared authentic and authoritative.⁸⁵ More importantly, Duterte, known as "the Punisher", campaigned against disorder; his hardline approach to social and political problems appealed particularly to the middle-class, overseas workers, and elites who were "tired of the political establishment" and wanted crime, poverty, and corruption tackled.⁸⁶ His promises "to use violence and strong-arm tactics" to that end won the nation over in a landslide, and his delivery on those promises have contributed to his continued support.⁸⁷ Duterte and his deadly war on drugs has an approval rating varying between 78% and 82% this year, mostly among the working and new middle classes, even young people.⁸⁸ His

⁸² David & Mendoza, *supra* note 27; Smith, *supra* note 5.

⁸³ Damon Barrett, *Children of the Drug War: Perspectives on the Impact of Drug Policies on Young People*, ed (New York: International Debate Education Association, 2011) at 4-5 [Barrett, *Children of the Drug War*].

⁸⁴ *Ibid* at 5.

⁸⁵ Coronel, *supra* note 13 at 36.

⁸⁶ Amnesty International, "If you are poor you are killed", *supra* note 2 at 11, 62; Pepinsky, *supra* note 12 at 120-23, 127; Mark R. Thompson, "Bloodied Democracy: Duterte and the Death of Liberal Reformism in the Philippines" (2016), *Journal of Current Southeast Asian Affairs*, 35, 3 at 41 [Thompson]; Chen, *supra* note 10; Coronel, *supra* note 13 at 40, 42; Kine, "Duterte Harry", *supra* note 13; Regine Cabato, "Thousands dead. Police accused of criminal acts. Yet Duterte's drug war is wildly popular", (23 October 2019), *The Washington Post*, online:

<https://www.washingtonpost.com/world/asia_pacific/thousands-dead-police-accused-of-criminal-acts-yet-dutertes-drug-war-is-wildly-popular/2019/10/23/4fdb542a-f494-11e9-b2d2-1f37c9d82dbb_story.html>

[Cabato]; Johnson & Fernquest, *supra* note 14 at 367-8.

⁸⁷ Pepinsky, *supra* note 12 at 120-3, 127; Chen, *supra* note 10; Cabato, *supra* note 86; Johnson & Fernquest, *supra* note 14 at 367-8.

⁸⁸ "Philippines drugs war: UN votes to investigate killings", (11 July 2019), *BBC News*, online:

<<https://www.bbc.com/news/world-asia-48955153>> ["Philippines drugs war"]; *The Washington Post*, "Duterte's drug war is horrifically violent. So why do many young, liberal Filipinos support it?", (19 April 2017), *South China*

verbal attacks on elites, drug offenders, and criminals are in tune with “popular frustrations” with the broken criminal justice system and the “feckless ruling class”.⁸⁹ Much of the continued support ultimately stems from a rejection of and frustrations with past politics and social order, as Duterte is considered to be “outside the traditional [...] circles that ran the country for decades”.⁹⁰

Duterte’s form of “penal populism” to govern through killing is an ineffective way to tackle crime, but it remains popular, especially as it was regarded as a successful policy in Davao.⁹¹ Some supporters blame drug gangs for the killings, while others insist that the mainstream media and political opposition are “exaggerating the violence”.⁹² Still others believe that criminals were adequately warned about the consequences of their drug involvement; a sailor said that, “‘if they want to avoid violence, they can just turn themselves in’”.⁹³ Another person reported “‘feel[ing] safer’” despite fearing police officers.⁹⁴ In fact, many Filipinos I met from different socioeconomic backgrounds, ranging from tour guides to Grab drivers and a university professor, either supported or were ‘neutral’ towards Duterte’s drug war. Supporters expressed that Duterte was the best president since he delivered on his promise to combat and reduce crime, while neutralists believed that it was biased to focus only on EJKs and not his accomplishments. At AHRC’s basic orientation seminar on human rights, I learned from human rights lawyers and activists that the news headlines of murdered drug offenders often translate into a shared understanding by increasingly desensitized Filipinos that this means less ‘criminals’ or ‘bad’ people on the streets. EJKs are normalized and overlooked so long as Duterte fulfils his supporters’ economic and political interests.⁹⁵

Morning Post, online: <<https://www.scmp.com/news/asia/southeast-asia/article/2088621/dutertes-drug-war-horribly-violent-so-why-do-many-young>> [The Washington Post, “Duterte’s drug war”]; Coronel, *supra* note 13 at 38; Mogato, “Most Filipinos believe drug war kills poor people only”, *supra* note 37; Chen, *supra* note 10; Cabato, *supra* note 86.

⁸⁹ Coronel, *supra* note 13 at 38; Johnson & Fernquest, *supra* note 14 at 368.

⁹⁰ Johnson & Fernquest, *supra* note 14 at 368; The Washington Post, “Duterte’s drug war”, *supra* note 88; Pepinsky, *supra* note 12 at 120, 126; Chen, *supra* note 10.

⁹¹ Johnson & Fernquest, *supra* note 14 at 361, 370.

⁹² The Washington Post, “Duterte’s drug war”, *supra* note 88.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Chen, *supra* note 10; Cabato, *supra* note 86.

While Duterte promised to eradicate drug abuse and lawlessness in the country, the street price of *shabu* has dropped instead of risen, crime has not been reduced, and the Philippines is the fourth most dangerous country in the world for civilian-targeted violence "building towards a legacy of political violence".⁹⁶ Illegal drug use is lower than in other countries, but Duterte's narrative that drugs are "the scourge of society" successfully "struck a chord" with his supporters and "fuel[s] the public's anxieties about safety".⁹⁷ According to international analysts, "when faith in public institutions is lacking", as in the Philippines, extrajudicial violence may be seen as the solution.⁹⁸ Carlos Conde, a HRW researcher in the Philippines, underscores this phenomenon:

"[The Philippines] ha[s] all the ingredients usually required to garner support for populism or extreme measures. There are decades of political dysfunction going back to the Ferdinand Marcos dictatorship. We have corruption at every level, [...] disenchantment with our institutions, poverty is widespread, and crime is rampant. It's almost a textbook case."

Corruption, "lack of police professionalism," impunity, and "links between drug lords and political elites" have led political leaders to allot "extra-legal powers" to security forces.⁹⁹ Where the drug war strategy has been reliant on death squads or EJKs, as in Latin America, it has been ineffective in the long-term.¹⁰⁰ The US-led War on Drugs in Latin America, which adopted prohibitionist measures, failed.¹⁰¹ The attitude towards drug offenders "resulted in an over-reliance on penalties and repression", contributing to fundamental human rights violations.¹⁰² The region is now "one of the most violent" in the

⁹⁶ Baldwin & Marshall, *supra* note 22; Rod Austin, "'War on drugs' makes Philippines fourth most dangerous country - report", (9 July 2019), *The Guardian*, online: <<https://www.theguardian.com/global-development/2019/jul/09/war-on-drugs-makes-philippines-fourth-most-dangerous-country-report>>.

⁹⁷ Baldwin & Marshall, *supra* note 22; The Washington Post, "Duterte's drug war", *supra* note 88; Coronel, *supra* note 13 at 41; Cabato, *supra* note 86.

⁹⁸ The Washington Post, "Duterte's drug war", *supra* note 88.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ Adrian Barbu and Adina-Elena Cincu, "War on Drugs in Latin America - A Failed War? Colombia - The Learned Lesson", *The Public Administration and Social Policies Review* 1(12) (June 2014) at 107-8, 110-1, 113-4, 117 [Barbu & Cincu].

¹⁰² *Ibid* at 115.

world, as measured by the extent of homicides, EJKs, arbitrary detentions, and denial of basic health services.¹⁰³ The “militarization” of anti-drug policies led to enhanced intensity of drug-related violence affecting the most vulnerable, “abusive police and military practices”, non-violent offenders’ imprisonment, overburdened criminal justice systems, increased corruption and drug use, and a rising demand for treatment programs.¹⁰⁴

Colombia’s experience provides an important lesson.¹⁰⁵ In his op-ed, “President Duterte is Repeating My Mistakes”, César Gaviria, Colombia’s president from 1990 to 1994, underscores the failures of the drug war under his presidency by describing it as a war on people and highlights the need for a new approach which upholds citizens’ basic human rights and public health.¹⁰⁶ Drug production, trafficking, and consumption were far from eradicated, and drugs and crime were pushed into neighbouring countries.¹⁰⁷ A heavy-handed approach against drugs and criminals, by which armed forces and law enforcement agencies target non-violent drug offenders, ultimately does “more harm than good” and “strengthen[s] organized crime”.¹⁰⁸ Colombia became a bit safer “at a tremendous price” with over ten thousand people, including petty criminals and addicts, killed, and the government corrupted by drug cartels.¹⁰⁹ The focus must be beyond crime, tough penalties, extrajudicial violence, and vigilantism toward the improvement of public health and safety, human rights, anti-corruption measures, economic development, and decriminalization and regulation of certain drugs.¹¹⁰ A successful president must “[invest] in solutions that meet [...] basic rights and minimize unnecessary pain and suffering”.¹¹¹ A hardline approach, though “always popular”, is “unwinnable” and the “human rights costs [are] enormous”.¹¹² Hunter-Bowman

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid* at 111-2, 115.

¹⁰⁵ *Ibid* at 107-8, 113-4, 117.

¹⁰⁶ César Gaviria, “President Duterte Is Repeating My Mistakes”, (7 February 2017), *The New York Times*, online: <<https://www.nytimes.com/2017/02/07/opinion/president-duterte-is-repeating-my-mistakes.html>> [Gaviria].

¹⁰⁷ *Ibid*; Barbu & Cincu, *supra* note 101 at 111-12.

¹⁰⁸ Gaviria, *supra* note 106.

¹⁰⁹ *Ibid*; Barbu & Cincu, *supra* note 101 at 111-12.

¹¹⁰ Gaviria, *supra* note 106; Cincu, *supra* note 101 at 116.

¹¹¹ Gaviria, *supra* note 106.

¹¹² *Ibid*; Barbu & Cincu, *supra* note 101 at 114.

in *Children of the Drug War* recounts stories by three Colombian children who, representative of millions, suffered grave costs resulting from the drug trade, punitive drug war, state-sanctioned paramilitary activities, and EJKs of poor family members.¹¹³ Only when the drug problem was framed as a social one were there positive impacts.¹¹⁴ Gaviria puts the problem in perspective for Duterte: "severe penalties and extrajudicial violence" makes it difficult for drug addicts to find treatment, forcing them to "resort to dangerous habits and the criminal economy."¹¹⁵

Amnesty International has equally advanced the failure of "heavy-handed tactics" and "the demonization of alleged drug offenders".¹¹⁶ Duterte should learn from the Southeast Asian experience, especially Thailand, on "the unforeseen political consequences of condoning violence in the name of" crime control.¹¹⁷ Prime minister Shinawatra declared his widely supported three-month drug war in 2003 against "enemies of the state" – that is, low-level drug dealers – resulting in 2,500 deaths, a victory as measured by the death toll. Even though the government protected profitable drug routes,¹¹⁸ 1,400 people killed were "collateral damage" with no drug involvement.¹¹⁹ His drug war has led to the erosion of democratic rule, undermining state accountability, and was the "ammunition" in the 2006 military coup that toppled him.¹²⁰ Duterte must form a more comprehensive anti-drug policy that is less violent, involves local participation and input, and looks at the problem "in all its dimensions", including as "a health issue that requires targeted, non-criminal, interventions starting with the individual" and as "a systemic problem that requires sociopolitical measures that address poverty, corruption and social exclusion".¹²¹

¹¹³ Barrett, *Children of the Drug War*, *supra* note 83 at 17-27.

¹¹⁴ Gaviria, *supra* note 106.

¹¹⁵ *Ibid.*

¹¹⁶ Amnesty International, "If you are poor you are killed", *supra* note 2 at 62; Pepinsky, *supra* note 12 at 123-6, 128.

¹¹⁷ Janjira Sombatpoonsiri and Aries Arugay, "Duterte's war on drugs: bitter lessons from Thailand's failed campaign", (12 December 2019), *The Conversation*, online:

<<http://theconversation.com/dutertes-war-on-drugs-bitter-lessons-from-thailands-failed-campaign-66096>> [Sombatpoonsiri & Arugay].

¹¹⁸ *Ibid*; Barret, *Children of the Drug War*, *supra* note 83 at 4-5.

¹¹⁹ Sombatpoonsiri & Arugay, *supra* note 117.

¹²⁰ *Ibid*; Pepinsky, *supra* note 12 at 128.

¹²¹ *Ibid.*

Extensive international evidence illustrates the long-term harm that children and their mothers endure due to their exposure to drug war violence, including in Colombia, Mexico, Afghanistan, Ecuador, and Indonesia.¹²² These include harms related to physical health and safety, as well as psychological health.¹²³ The devastating drug war impacts on children and their families proves that the political rhetoric that drug wars are meant to protect children and young generations “from the ‘scourge’ of drugs” is misleading.¹²⁴ In fact, “counting the costs” of the drug wars on children “challenges current approaches and contributes to the debate around what goals drug policies should be striving toward”.¹²⁵ Indeed, punitive drug wars are increasingly replaced by harm reduction strategies.¹²⁶ Some scholars and advocates argue that a legally regulated model of drug production and trade may more adequately protect children from drugs, especially vulnerable children who are users or involved in production and trade.¹²⁷ The involvement of children and their families in drug production and trade “is a mix of coercive forces, often driven or even necessitated by poverty and social neglect”, yet “these drivers are [...] ignored and even exacerbated by current drug policies that focus on eradication and interdiction”.¹²⁸

The War on Drugs: The Rule of Law or Rule by Law?

“This president behaves as if he is above the law – that he is the law. He has ignored the rule of law and human rights.”

– Amado Picardal, Filipino priest¹²⁹

The Rule of Law

There is international consensus that the rule of law, which is embedded in international instruments including the Universal Declaration of Human Rights (UDHR), is of fundamental

¹²² David & Mendoza, *supra* note 27.

¹²³ *Ibid.*

¹²⁴ Barrett, *Children of the Drug War*, *supra* note 83 at 1-4.

¹²⁵ *Ibid* at 3.

¹²⁶ David & Mendoza, *supra* note 27.

¹²⁷ *Ibid.*

¹²⁸ Barrett, *Children of the Drug War*, *supra* note 83 at 2.

¹²⁹ Baldwin & Marshall, *supra* note 22.

importance.¹³⁰ The protections afforded to individuals within a state differ depending on whether a legal system ascribes to the 'thin' or "more minimalist" or the 'thick' or "more maximalist" rule of law.¹³¹ The former rests on "detailed laws duly enacted and scrupulously observed."¹³² Professor Joseph Raz argues that non-democratic legal systems that deny human rights may conform to the rule of law requirements "better than [...] the legal systems of the more enlightened Western democracies" even though "[i]t will be an immeasurably worse legal system".¹³³

Bingham refutes Professor Raz's argument that a state that represses or persecutes any of its citizens can be considered a rule of law state, and underscores that international instruments "link the protection of human rights with the rule of law."¹³⁴ The rule of law requires adequate protection of fundamental human rights and state compliance with international law obligations, which reflects the 'thick' rule of law.¹³⁵ The UN's comprehensive definition "connects procedural protections common to legal systems with a substantive theory of human rights through law"¹³⁶:

"[T]he rule of law is a principle of governance in which all persons, institutions and entities, [...] including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards."¹³⁷

¹³⁰ Tom Bingham, *The Rule of Law* (London: Penguin Books, 2010) at 13-4 [Bingham].

¹³¹ Jørgen Møller & Svend-Erik Skaaning, *The Rule of Law: Definitions, Measures, Patterns and Causes*, ed (Basingstoke: Palgrave Macmillan, 2014) at 8 [Møller & Skaaning];

¹³² Bingham, *supra* note 130 at 70.

¹³³ *Ibid* at 69; Joseph Raz, "The Rule of Law and its Virtue", in *The Authority of Law: Essays on Law and Morality*, (Oxford: Oxford University Press, 1979) at 211, 221.

¹³⁴ Bingham, *supra* note 130 at 69-70, 120.

¹³⁵ *Ibid* at 69-70, 113; Møller & Skaaning, *supra* note 131 at 22-3.

¹³⁶ Ian Hurd, "The Empire of International Legalism" (2018) *Ethics and International Affairs* 32 (3) at 267.

¹³⁷ United Nations, "What is the Rule of Law", *United Nations*, online: <<https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>> [United Nations, "What is the Rule of Law"].

Therefore, the 'thick' rule of law, substantive in nature, affords adequate protections of fundamental human rights and freedoms, whereas the 'thin' rule of law is only formal in nature.¹³⁸

The Erosion of the Rule of Law in Quest for "Law and Order"

Just as he did in his mayoral campaign in Davao, Duterte campaigned on a law and order platform for his presidency, and he has maintained this image throughout his presidency.¹³⁹ According to a Filipino politician, the drug war is a 'rule of law' campaign "'aimed at taking out power from drug lords and narco-politicians and putting it back to law enforcement and the courts'", and that it is illegal drugs, not the drug war, which has eroded the rule of law in the Philippines.¹⁴⁰ However, Duterte's drug war is more akin to "penal populism" in his "pursuit of punishment policies based on their anticipated popularity rather than their effectiveness", mainly EJKs, which undermines the rule of law and the judiciary's independence, 'thereby strengthening the executive's hand'.¹⁴¹ Though the purported purpose of the anti-drug campaign is geared toward ensuring a law and order society absent of crime, the means used violate the rule of law.

The Philippines' system of government guarantees human rights.¹⁴² The rights enshrined in the Constitution of the Republic of the Philippines include an emphasis on social justice, human rights, and accountability.¹⁴³ The preamble explicitly underscores that the country is a democratic rule of law State based on "a regime of truth, justice, freedom, love, equality, and peace".¹⁴⁴

In December 2018, in celebration of the 70th anniversary of the UDHR, Duterte's administration, which has killed thousands of alleged, mostly poor drug offenders without due process and

¹³⁸ Bingham, *supra* note 130 at 69-70; Møller & Skaaning, *supra* note 131 at 16, 22, 52.

¹³⁹ Chen, *supra* note 10; Baldwin & Marshall, *supra* note 22; Pepinsky, *supra* note 12 at 120, 129.

¹⁴⁰ "Cayetano calls Duterte drug war 'rule of law campaign'", (24 September 2017), *Rappler*, online: <<https://www.rappler.com/nation/183156-dfa-cayetano-duterte-drug-war-rule-law-campaign>>.

¹⁴¹ Johnson & Fernquest, *supra* note 14 at 373-5.

¹⁴² Audrey Osler and Juanjuan Zhu, "Narratives in Teaching and Research for Justice and Human Rights" (2011) 6:3 *Education, Citizenship and Social Justice*, 226 [Osler & Zhu].

¹⁴³ *The Constitution of the Republic of the Philippines*, 1987 [Constitution].

¹⁴⁴ *Ibid.*

trial,¹⁴⁵ tweeted that the government is upholding human rights and the rule of law:

"Every administration has its own [...] approach [...] to make human rights real for our people. [...] [T]his administration remains unrelenting in its crusade against criminality, corruption, [...] and the proliferation of illegal drugs that destroy families and the future of the young. In all these, the rule of law is upheld as the guilty are brought before the bar of justice."¹⁴⁶

Furthermore, President Duterte is adamant that incitement to kill and extrajudicial violence as part of the drug war is "an effective governance strategy"¹⁴⁷ and legitimate under Philippine law:

"You destroy [our young children], I'll kill you. And it's a legitimate thing. [...] There is nothing wrong in trying to preserve the interest of the next generation. In my country there is no law that says I cannot threaten criminals. [...] If it involves human rights, I don't give a shit."¹⁴⁸

The constitutional enshrinement of the rule of law drastically contrasts with Duterte's regime in practice as illustrated by the above claims about the intersection of drug war legitimacy, the rule of law, and human rights. Indeed, the strategy of EJKs violates the Philippines' Constitution, penal code, and international obligations.¹⁴⁹ Specifically, EJKs violate the right to life, which is non-derogable, and the "deliberate" and "systematic" nature of the killings "as part of a government-orchestrated attack" against poor drug offenders may amount to crimes against humanity.¹⁵⁰

The World Justice Project (WJP) measures the rule of law in countries worldwide.¹⁵¹ In the WJP's 2016-2017 Rule of Law

¹⁴⁵ CNN Philippines Staff, "Gov't: Unrelenting drug war protects innocent Filipinos", (11 December 2018), CNN, online: <<https://cnnphilippines.com/news/2018/12/10/Duterte-drug-war-human-rights.html>> [CNN Philippines Staff].

¹⁴⁶ *Ibid.*

¹⁴⁷ Kine, "Duterte Harry", *supra* note 13.

¹⁴⁸ Holmes, *supra* note 61.

¹⁴⁹ Amnesty International, "'They just kill'", *supra* note 11 at 25.

¹⁵⁰ *Ibid* at 6, 25.

¹⁵¹ World Justice Project, "Factors of the Rule of Law", *World Justice Project*, online:

Index, the Philippines had a global ranking of 70 out of 113 countries evaluated, down by 9 places from the previous year.¹⁵² In the WJP's 2017-2018 Rule of Law Index, it "ha[d] experienced the biggest drop [...] globally" by 18 places, scoring a ranking of 88 out of 113 countries.¹⁵³ While the 2018-2019 Rule of Law Index indicates that the Philippines has risen in its global ranking by three places, it still ranks low at 90 out of 126 countries.¹⁵⁴ In the Philippines' 2016-2017 Rule of Law Index, it scored lowest on civil justice, closely followed by criminal justice, fundamental rights, and order and security.¹⁵⁵ Since then, the Philippines has consistently scored lowest on order and security, closely followed by criminal justice and fundamental rights.¹⁵⁶ Since the rule of law under Duterte's presidency suffers most drastically in relation to order and security, criminal justice, and fundamental rights, it is useful to analyze each of them.

'Fundamental Rights' under the WJP relates to the protection of fundamental human rights as established under the UDHR and is "most closely related to rule of law concerns", particularly, among others, equal treatment and non-discrimination; the right to life and security of the person; and "due process of law and rights of the accused".¹⁵⁷ This factor

<<https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/factors-rule-law>> [World Justice Project, "Factors of the Rule of Law"].

¹⁵² World Justice Project, "WJP Rule of Law Index 2016-2017", *World Justice Project*, online:

<https://worldjusticeproject.org/sites/default/files/documents/RoLI_Final-Digital_0.pdf> at 5, 125 [World Justice Project, "WJP Rule of Law Index 2016-2017"].

¹⁵³ "Philippines suffers world's biggest drop in rule of law under Duterte" (1 February 2018), *Asian Correspondent*, online: <<https://asiancorrespondent.com/2018/02/philippines-suffers-worlds-biggest-drop-rule-law-duterte/>> ["Philippines suffers world's biggest drop"]; World Justice Project, "WJP Rule of Law Index 2017-2018", *World Justice Project*, online:

<https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf> at 125 [World Justice Project, "WJP Rule of Law Index 2017-2018"].

¹⁵⁴ World Justice Project, "WJP Rule of Law Index 2018-2019", *World Justice Project*, online: <<http://data.worldjusticeproject.org/#/groups/PHL>> [World Justice Project, "WJP Rule of Law Index 2018-2019"].

¹⁵⁵ World Justice Project, "WJP Rule of Law Index 2016-2017", *supra* note 152.

¹⁵⁶ World Justice Project, "WJP Rule of Law Index 2017-2018", *supra* note 153; World Justice Project, "WJP Rule of Law Index 2018-2019", *supra* note 154; "Philippines suffers world's biggest drop", *supra* note 153.

¹⁵⁷ World Justice Project, "Factors of the Rule of Law", *supra* note 151.

underscores that a system of positive law that does not respect the most fundamental human rights under international law is best characterized as a 'rule by law' system as opposed to a 'rule of law' system.¹⁵⁸ The rule of law operates on a spectrum. 'Rule by law' is "the thinnest formal version of the rule of law", which entails that the state conducts its affairs through laws¹⁵⁹ and "accept[s] [...] the formal discipline of legality".¹⁶⁰ In the extreme version, the sovereign's utterances constitute law, and so the rule of law is rendered meaningless and becomes the rule by government.¹⁶¹ Therefore, whereas the 'rule of law' "lift[s] law above politics", meaning that it is supreme over "every powerful person and agency in the land", 'rule by law' is "the instrumental use of law as a tool of political power", in that the law, instead of controlling the state, is used by the state "to control its citizens".¹⁶²

As for 'Order and Security', the WJP evaluates the extent to which the society in question guarantees the security of persons and property.¹⁶³ Security – a "defining [aspect]" of a rule of law society and "a fundamental function of the state" – is required in order to fulfil the rights and freedoms central to the rule of law.¹⁶⁴ The three dimensions "that cover various threats" to order and security are (1) conventional crime; (2) political violence; and (3) "violence as a socially acceptable means to redress personal grievances", or in other words, vigilante justice, which is of grave concern under Duterte's bloody drug war.¹⁶⁵ Closely connected to the latter point, the UN stresses that an emerging and critical rule of law issue is governments' incitement to violence.¹⁶⁶

Finally, the 'Criminal Justice' factor is concerned with the criminal justice system's effectiveness, which, as the conventional mechanism to seek justice, "is a key aspect of the rule of law".¹⁶⁷ Effective criminal justice systems require (1) an effective criminal

¹⁵⁸ *Ibid.*

¹⁵⁹ Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge University Press, 2004) at 92 [Tamanaha].

¹⁶⁰ Jeremy Waldron, "The Rule of Law", (22 June 2016), *Stanford Encyclopedia of Philosophy*, online: <https://plato.stanford.edu/archives/fall2016/entries/rule-of-law/#RuleLawRuleLaw> [Waldron].

¹⁶¹ Tamanaha, *supra* note 159 at 92-3.

¹⁶² Waldron, *supra* note 160.

¹⁶³ World Justice Project, "Factors of the Rule of Law", *supra* note 151.

¹⁶⁴ *Ibid.*

¹⁶⁵ *Ibid.*

¹⁶⁶ United Nations, "What is the Rule of Law", *supra* note 137.

¹⁶⁷ World Justice Project, "Factors of the Rule of Law", *supra* note 151.

investigation system; (2) timely and effective criminal adjudication; (3) a correctional system that effectively reduces criminal conduct; (4) impartiality and non-discrimination; (5) absence of corruption; (6) absence of “improper government influence”; and (7) “due process of law and rights of the accused” and the protection of victims’ rights.¹⁶⁸ A proper assessment of the entire criminal justice system necessitates consideration of police officers, lawyers, prosecutors, judges, and prison officers.¹⁶⁹

These three factors are closely entwined, and the violation of each as a result of Duterte’s deadly drug war renders the Philippines far from being a rule of law state. The Philippines does not guarantee order and security; extrajudicial violence is unprecedented and incitement to violence is part and parcel of the Duterte administration’s drug war. The main strategy of extrajudicial violence violates the most fundamental human rights of poor people in particular, that is, the right to life and security of the person and the accused’s rights to due process of the law. Moreover, the resort to extrajudicial violence underscores the failure of the criminal justice system. The criminal justice system is “ineffective, inefficient, [...] corrupt [, and] toothless”.¹⁷⁰ The courts are “incapable of asserting their independence and doing their work [credibly]”.¹⁷¹ Per Mexico’s Center for Studies on Impunity and Justice, the Philippines has the highest Global Impunity Index worldwide.¹⁷² Indeed, there is total impunity for police: police cover up their cold-blooded murders with the scripted tale of ‘self-defence’ time and time again, even when children are the victims. Police will say that “suspects were armed and fought back”, which “prompt[ed] the use of lethal force” on their part.¹⁷³ Yet, most victims have been too poor to even own a gun, let alone buy food.¹⁷⁴

Apart from the “few high-profile cases”, drug war killings, which number in the tens of thousands, remain uninvestigated and

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ Johnson & Fernquest, *supra* note 14 at 373.

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

¹⁷³ CNN Philippines Staff, *supra* note 145; France-Presse, *supra* note 36; Amnesty International, “UN investigation”, *supra* note 20; Amnesty International, “They just kill”, *supra* note 11 at 6.

¹⁷⁴ Amnesty International, “They just kill”, *supra* note 11 at 13; Smith, *supra* note 5.

unprosecuted.¹⁷⁵ In three years, there has been only one conviction in November 2018, in which three police officers were found guilty of murdering 17-year-old Kian delos Santos in August 2017, primarily because it was caught on video.¹⁷⁶ This case is exceptional, indeed “a rare triumph of accountability”, in which justice was done due to “overwhelming public pressure”.¹⁷⁷ Yet, the Duterte administration unconvincingly insists that, based on this one EJK conviction throughout the entire drug war, the Philippines has an independent and fully functioning judicial system ready and willing to investigate and prosecute.¹⁷⁸

The War on Drugs: Violation of Children's Human Dignity and Rights

“We need to let our feelings enliven our beliefs in the dignity of the human person and turn them into action to free children and give them a life of dignity.”

– Father Shay Cullen¹⁷⁹

Human Dignity

Children must be endowed with the protections of their human dignity, as human rights in practice “is about realizing the dignity that is inherent in [...] [humans]”.¹⁸⁰ The UNCRC aims to ensure that children “grow and develop with dignity”.¹⁸¹ Human dignity “underpins and informs the human rights enterprise” and

¹⁷⁵ Human Rights Watch, “World Report 2019”, *supra* note 35.

¹⁷⁶ CNN Philippines Staff, *supra* note 145; Cabato, *supra* note 86; Conde, “Three-Year-Old Girl”, *supra* note 57; Amnesty International, “They just kill”, *supra* note 11 at 6, 32.

¹⁷⁷ Human Rights Watch, “World Report 2019”, *supra* note 35; Amnesty International, “They just kill”, *supra* note 11 at 32.

¹⁷⁸ CNN Philippines Staff, *supra* note 145; Amnesty International, “They just kill”, *supra* note 11 at 32.

¹⁷⁹ Cullen, “What Philippine officials found in child detention centers”, *supra* note 65.

¹⁸⁰ Jack Donnelly, “The Universal Declaration Model” from *Universal Human Rights in Theory and Practice* 3d ed (Ithaca: Cornell University Press, 2013) at 39 [Donnelly].

¹⁸¹ Carmela Martinez, “Filipina teenager to present new version of child rights at UN convention”, (15 September 2019) *Manila Bulletin News*, online: <<https://news.mb.com.ph/2019/09/15/filipina-teenager-to-present-new-version-of-child-rights-at-un-convention/?fbclid=IwAR3KByECqfCm4-1xoPr4mLdyhWkZoyKni3krb2uD0O13dNkTBFZtKFcOVEY>> [Martinez].

discourse.¹⁸² This concept is “becoming commonplace”, particularly in legal international human rights and national constitutional texts, as well as in judicial decisions.¹⁸³ Indeed, it is “the foundational concept” of international human rights law.¹⁸⁴ International human rights instruments assert that dignity is central to human rights generally and specifically with regard to certain rights, even though such instruments never explicitly define what the concept means “and how it gives rise to or grounds human rights”.¹⁸⁵ The UNCRC references the concept in the Preamble, as well as in specific articles, including on children’s right to education, torture and deprivation of liberty, recovery from trauma and reintegration, and juvenile justice.¹⁸⁶ Similarly, the Preamble to the ICCPR states that human rights “derive from the inherent dignity of the human person”, and there is specific reference to it in articles relating to deprivation of liberty through imprisonment or detention.¹⁸⁷ Per the Philippine Constitution, “[t]he State values the dignity of every human person and guarantees full respect for human rights”.¹⁸⁸

According to Christopher McCrudden, the concept of human dignity has a “basic minimum [core]” made up of three elements, although it has various conceptions.¹⁸⁹ First, there is the “‘ontological’ claim” that “every human being possesses an intrinsic worth” simply by being human.¹⁹⁰ Second, there is the “‘relational’ claim” that such intrinsic worth deserves recognition and respect, and that “some forms of treatment [...] are inconsistent with, or required by, respect for this intrinsic worth”.¹⁹¹ Finally, there is the “limited-state claim” that recognizing the individual’s intrinsic worth “requires that the state [...] be seen to exist for the sake of the individual”.¹⁹² Jamie Alison Lee and Jack Donnelly also contend that human dignity, which makes an individual inherently deserving of respect by others and

¹⁸² Christopher McCrudden, “Human Dignity and Judicial Interpretation of Human Rights”, *European Journal of International Law*, Volume 19, Issue 4, 1 September 2008 at 656 [McCrudden].

¹⁸³ *Ibid* at 656, 664, 668, 672-3, 680.

¹⁸⁴ Donnelly, *supra* note 180 at 28.

¹⁸⁵ *Ibid* at 28-9; McCrudden, *supra* note 182 at 669-70.

¹⁸⁶ McCrudden, *supra* note 182 at 669-70; UNCRC, *supra* note 3, arts 28, 37, 39, 40.

¹⁸⁷ McCrudden, *supra* note 182 at 656, 669; ICCPR, *supra* note 7, preamble.

¹⁸⁸ Constitution, *supra* note 143, art 2(11).

¹⁸⁹ McCrudden, *supra* note 182 at 679, 697.

¹⁹⁰ *Ibid* at 679.

¹⁹¹ *Ibid*.

¹⁹² *Ibid*.

the state, rests on the simple fact of being human.¹⁹³ The minimum core of dignity is adopted by courts in different jurisdictions.¹⁹⁴

While human dignity is “the basis for human rights to exist”, its conception differs depending on the ascription to the ‘thin’ or ‘thick’ approach.¹⁹⁵ The ‘thin’ view is that dignity is “simply another way of expressing the idea of a catalogue of human rights”, while the ‘thick’ view is that dignity “express[es] a value unique to itself, on which human rights are built”.¹⁹⁶ Therefore, the former view “is coterminous with human rights” and does not specify “what rights there are or how they should be interpreted”, whereas in the latter view, dignity “help[s] in the identification of a catalogue of [non-exhaustive] specific rights” and is “an interpretive principle” in which rights are “seen as best interpreted through the lens of dignity”.¹⁹⁷ Whether dignity in the latter view is seen as a right, principle, obligation, or justification depends on the jurisdiction and is thus context-specific, but particular values are always related to “the core idea of dignity”.¹⁹⁸ Similarly, Donnelly asserts that “human rights are one particular mechanism for realizing a certain class of conceptions of human dignity”.¹⁹⁹ For instance, some jurisdictions associate dignity with protection of individuals “from severe physical...torment inflicted by authorities”, thus prohibiting torture and other inhuman or degrading treatment, while others associate it with protection from discrimination or have used it “to expand the conception of the right to life to meet basic needs”.²⁰⁰

Central to the Philippines’ drug war violations is the denial of children’s intrinsic human dignity. While Duterte purports that the anti-drug war is about protecting children and the next generation from the “scourge” of illegal drugs, the campaign has “place[d] children at immense risk” and directly in harm’s way, thus completely failing in its purported objective.²⁰¹ In denying children their fundamental human rights and dignity, the ‘thick’ rule of law is also undermined. Duterte’s drug war has had

¹⁹³ Donnelly, *supra* note 180 at 29; Jamie Alison Lee, “Poverty, Dignity, and Public Housing”, *Columbia Human Rights Law Review* 47:2 (2015) at 108.

¹⁹⁴ McCrudden, *supra* note 182 at 697, 723.

¹⁹⁵ *Ibid* at 680.

¹⁹⁶ *Ibid* at 680-1.

¹⁹⁷ *Ibid*.

¹⁹⁸ *Ibid* at 681, 685, 697-8, 720.

¹⁹⁹ Donnelly, *supra* note 180 at 29.

²⁰⁰ McCrudden, *supra* note 182 at 685-6, 689, 692-3.

²⁰¹ David & Mendoza, *supra* note 27.

devastating impacts on children, especially poor children, in violation of the Philippines' obligations under the UNCRC and the ICCPR, both of which it has ratified.²⁰²

Non-Discrimination

The principle of non-discrimination is enshrined in the non-exhaustive list contained in Article 2 of the UNCRC. State parties are required to respect and ensure the rights of all children within their jurisdiction without any discrimination regardless of the child's or their parent's or legal guardian's "race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".²⁰³ They also have the positive duty to undertake "all appropriate measures to ensure" the child's protection "against all forms of discrimination or punishment" based on the "status, activities, expressed opinions, or beliefs" of their parents, legal guardians, or family.²⁰⁴ Article 2 of the ICCPR provides for non-discrimination on the same grounds and ensures that there are "effective [enforceable] remed[ies]" for violations "determined by competent judicial, administrative or legislative authorities".²⁰⁵

The Committee on the Rights of the Child (Committee) recognizes that "adolescence [...] can be a source of discrimination", in that they "may be treated as dangerous or hostile, incarcerated, exploited or exposed to violence" due to their status, making it imperative that states treat them equally with respect and protection.²⁰⁶ Young children are also at heightened risk of discrimination due to being "relatively powerless and depend[ent] on others for the realization of their rights".²⁰⁷ The most vulnerable children and adolescents who are at risk of discrimination, including those living in poverty and in street situations, orphans, and those who have parents with substance addictions, require particular attention by states to promote their

²⁰² UNCRC, *supra* note 3; ICCPR, *supra* note 7.

²⁰³ UNCRC, *supra* note 3, art 2(1).

²⁰⁴ *Ibid*, art 2(2).

²⁰⁵ ICCPR, *supra* note 7, art 2(1), (3).

²⁰⁶ Committee on the Rights of the Child, General Comment No. 20 (2016) on the Implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016 at para 21 [CRC/C/GC/20].

²⁰⁷ Committee on the Rights of the Child, General Comment No. 7 (2005) Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006 at para 11 [CRC/C/GC/7/Rev.1].

well-being.²⁰⁸ Poor and marginalized children, as listed, are targeted by the Philippines' drug war, directly and indirectly through EJKs of parents suspected of being drug offenders. The Department of Social Welfare and Development (DSWD) also lacks programs specifically designed "to increase protections for or assistance to children engaged in drug trafficking to address their heightened vulnerability".²⁰⁹

Best Interests of the Child

The principle of the best interests of children, individually and collectively, is enshrined in Article 3 of the UNCRC.²¹⁰ Every action which concerns children, be it by public or private social welfare institutions, courts, administrative authorities or legislative bodies, requires that the child's best interests is a primary consideration.²¹¹ Children must be provided the protection and care that is necessary for their well-being "taking into account the rights and duties of [their] parents, legal guardians, or other individuals legally responsible for [them]" through "all appropriate legislative and administrative measures".²¹² The principle also extends to Articles 9, 20, 37, and 40.²¹³

Per Article 9, children are not to be separated from their parents against their will unless it is in their best interests due to abuse, neglect, or otherwise, and they are entitled to know their parents' whereabouts if the latter have been detained, imprisoned, killed, or otherwise at the hands of the state.²¹⁴ Thus, states should ensure that the number of young children abandoned or orphaned is reduced.²¹⁵ Per Article 20, children "temporarily or permanently deprived" of a family are "entitled to special [state] protection and assistance".²¹⁶ Article 37 is similar to Article 7 of the ICCPR in that children must be protected from torture or other cruel, inhuman or degrading treatment or punishment.²¹⁷ Both Article 37 and Article 9 of the ICCPR underscore that children must

²⁰⁸ *Ibid* at paras 24, 26, 36; CRC/C/GC/20, *supra* note 206 at paras 67, 70.

²⁰⁹ Bureau of International Labor Affairs, *supra* note 50.

²¹⁰ CRC/C/GC/7/Rev.1, *supra* note 207 at para 13; CRC/C/GC/20, *supra* note 206 at para 22.

²¹¹ UNCRC, *supra* note 3, art 3(1).

²¹² *Ibid*, art 3(2).

²¹³ CRC/C/GC/7/Rev.1, *supra* note 207 at para 13; UNCRC, *supra* note 3, arts 9, 20, 37, 40.

²¹⁴ *Ibid.*, arts 9.1, 9.4.

²¹⁵ CRC/C/GC/7/Rev.1, *supra* note 207 at para 18.

²¹⁶ UNCRC, *supra* note 3, art 20.1.

²¹⁷ *Ibid*, art 37; ICCPR, *supra* note 7, art 7.

be protected from the unlawful or arbitrary deprivation of their liberty via arrest, detention, or imprisonment.²¹⁸ Article 37 also necessitates that such deprivation is the “last resort” and for the shortest duration of time.²¹⁹ Article 37 and Articles 9 and 10 of the ICCPR require that minors are separated from adults and treated appropriately in consideration of their age and needs, and that they be promptly granted access to legal and other necessary assistance and brought before a court to determine the legality of their deprivation.²²⁰ Furthermore, Articles 37 and 40 of the UNCRC and Article 10 of the ICCPR require that children be treated in a way consistent with their inherent dignity and worth.²²¹ This includes, similar to Articles 9 and 14 of the ICCPR, that they be presumed innocent until proven guilty under the law; provided necessary legal or other assistance; brought before a “competent, independent and impartial” authority or court without delay; are not compelled through physical or other force to provide a self-incriminating testimony or a confession; and have their privacy fully respected in proceedings.²²² A minimum age of criminal responsibility is also necessary, which should be at least 14 years old.²²³ Finally, there must be available alternatives “appropriate to their well-being” and “proportionate” to their circumstances and offence, such as counselling, probation, and education and vocational training programmes.²²⁴

The Philippines’ drug war is contrary to the best interests of the child. The government has not adequately protected children engaged in drug trafficking – those who help distribute, procure, and sell drugs – from inappropriate incarceration, penalties, or harm.²²⁵ Victimized children have their rights violated, demonstrated by their arrests, detention, and imprisonment; separation from their parents; sexual and physical abuse; inhuman living conditions in detention; and by the fact that they are often treated similar to and even placed with adult

²¹⁸ ICCPR, *supra* note 7, art 9; UNCRC, *supra* note 3, art 37.

²¹⁹ UNCRC, *supra* note 3, art 37.

²²⁰ *Ibid*; ICCPR, *supra* note 7, arts 10.1-3.

²²¹ UNCRC, *supra* note 3, arts 37, 40; ICCPR, *supra* note 7, art 10.

²²² UNCRC, *supra* note 3, arts 37, 40; ICCPR, *supra* note 7, arts 9, 10, 14; Committee on the Rights of the Child, General Comment No. 24 (2019) on children’s rights in the child justice system, CRC/C/GC/24, 18 September 2019 at paras 58-9 [CRC/C/GC/24].

²²³ UNCRC, *supra* note 3, art 40(3); CRC/C/GC/24, *supra* note 222 at paras 21-2.

²²⁴ UNCRC, *supra* note 3, art 40(4).

²²⁵ Bureau of International Labor Affairs, *supra* note 50.

offenders.²²⁶ The latter is the reality even though the PDEA and the DSWD have reportedly taken steps to monitor children involved in drug trafficking by bringing them to juvenile detention centers promptly within 8 hours of their court proceedings²²⁷ in accordance with the "PNP Manual in Handling Cases of Children at Risk and Children in Conflict with the Law".²²⁸ Moreover, over 28,000 children have been processed, detained, and listed in the drug enforcement operations.²²⁹ Most children who have been deprived of their liberty are not criminally liable under the law and remain wholly deprived of their rights.²³⁰ As previously mentioned, the government's attempt to lower the age of criminal responsibility of children in conflict with the law to 9 or 12 years old is in violation of international standards. Moreover, the attempt to enforce mandatory drug testing on schoolchildren would likely violate their "bodily integrity" and "constitute arbitrary interference with their privacy and dignity".²³¹

Life, Survival, and Development

The right to life, survival, and development is enshrined in Article 6 of the UNCRC. Children "[have] the inherent right to life", and states must "ensure to the maximum extent possible the [child's] survival and development".²³² Similarly, the ICCPR provides in Article 6 that "every human being has the inherent right to life [...] protected by law", such that "no one shall be arbitrarily deprived of [their] life".²³³ The right to survival and development must be implemented holistically, by enforcing all UNCRC provisions, including an adequate standard of living, a healthy and safe environment, and access to education, as well as by respecting parents' responsibilities and providing assistance and quality services.²³⁴ Children's rights to development are at a heightened risk when they are "orphaned, abandoned or deprived of family care" or "suffer long-term disruptions to

²²⁶ David & Mendoza, *supra* note 27.

²²⁷ Bureau of International Labor Affairs, *supra* note 50.

²²⁸ David & Mendoza, *supra* note 27.

²²⁹ *Ibid.*

²³⁰ Cullen, "Children abused in detention", *supra* note 65.

²³¹ Human Rights Watch, "World Report 2019", *supra* note 35.

²³² *Ibid.*, art 6.

²³³ ICCPR, *supra* note 7, art 6; Amnesty International, "'They just kill'", *supra* note 11 at 25.

²³⁴ CRC/C/GC/7/Rev.1, *supra* note 207 at para 10.

relationships or separations”, such as their parents’ imprisonment.²³⁵

The EJKs of children violate their inherent right to life under both instruments. Additionally, thousands of children have been left behind as orphans or street children and forced to work and leave school due to EJKs of their family members. The Philippines must “reinforce protection of the right to life, survival and development of children”, including “all necessary measures to prevent [EJKs] of children and to thoroughly investigate all alleged cases [...] and bring the perpetrators to justice”.²³⁶ The Philippines asserts that it “ensure[s] full accountability of all officers”, referencing the one conviction for Kian delos Santos’ death.²³⁷ Furthermore, mandatory drug testing poses a danger to children who would fail the drug tests given that police are summarily killing drug users, including children, and may deter them from attending school altogether.²³⁸ With respect to children’s development, the government has some programmes to help families with relatives implicated in illegal drugs, including the “Yakap ng Bayan” programme offering financial assistance for education, health, and burial expenses, while others provide skills training and livelihood support.²³⁹ However, most survivors are rightfully afraid of the authorities and opt to receive psychological and financial support from churches and civil society groups.²⁴⁰

Children’s Participation

The principle on children’s participation is enshrined in Article 12 of the UNCRC. Children with the capacity to form their own views have the right to express them freely in all matters concerning them, whereby they are “given due weight in accordance with [their] age and maturity”.²⁴¹ In particular, children must “be provided the opportunity to be heard” in judicial and administrative proceedings that affect them “either

²³⁵ *Ibid* at para 36.

²³⁶ Committee on the Rights of the Child, “Combined fifth and sixth periodic reports of States parties: Philippines”, CRC/C/PHL/5-6/6713, 1 March 2019 at para 56.

²³⁷ *Ibid* at paras 57-8.

²³⁸ Human Rights Watch, “World Report 2019”, *supra* note 35.

²³⁹ Smith, *supra* note 5.

²⁴⁰ *Ibid*.

²⁴¹ UNCRC, *supra* note 3, art 12.

directly, or through a representative or an appropriate body".²⁴² Children, including adolescents, are thus recognized as active participants and actors with agency and dignity.²⁴³ They should be involved in the development, implementation, and monitoring of legislation, policies, and services and programmes which affect them in the household, schools, community, locally, nationally, and internationally.²⁴⁴ Political and civic engagement opportunities for adolescents is important so that they "can negotiate and advocate for the realization of their rights, and hold States accountable".²⁴⁵ The DSWD consults with parents and community leaders in order to "determine how best to assist children suspected of being involved in the drug trade".²⁴⁶ However, there does not appear to be any participation nor input from children and adolescents regarding the anti-drug policy that so directly affects them.

Ways Forward: Addressing the Human Rights Crisis

"We are always making it to a point to make a movement to let not just the children but [those] around [them] to know and to recognize their rights and the [UNCRC] is not just about [children's] rights but the responsibilities of [those] around [them]."

– Zcyrel Barola, 17 years old²⁴⁷

Children's Empowerment through Human Rights Education

Osler and Zhu employ Sen's innovative theory of justice, which draws on the capabilities approach, to illustrate the powerful potential of individual and collective narratives as educational tools for human rights to enable a deep understanding of and inspire social action for human rights and justice.²⁴⁸ Sen's theory "emphasizes realizable processes and public reasoning or dialogue [...], the choices made and freedoms claimed by individuals [...] and individuals' own assessments of

²⁴² *Ibid.*

²⁴³ CRC/C/GC/7/Rev.1, *supra* note 207 at para 14; CRC/C/GC/20, *supra* note 206 at paras 2, 4, 24.

²⁴⁴ CRC/C/GC/20, *supra* note 206 at para 23.

²⁴⁵ *Ibid* at para 24.

²⁴⁶ Bureau of International Labor Affairs, *supra* note 50.

²⁴⁷ Martinez, *supra* note 181.

²⁴⁸ Osler & Zhu, *supra* note 142 at 223-5, 233.

how they experience justice” and injustice.²⁴⁹ Human rights are “powerful ethical claims [...] about what *should* be” and are legal entitlements universally recognized and applied through international human rights instruments, including the UNCRC. They are effectively utilized by individuals from different cultural contexts around the world in their struggles to realize justice.²⁵⁰

The realization of human rights largely depends on individuals’ knowledge of their rights.²⁵¹ Indeed, essential to the universal human rights project since the UDHR is the right to human rights education, which has also been included in the UNCRC.²⁵² As such, everyone should be afforded the opportunity to study and examine international human rights instruments.²⁵³ Narratives powerfully “link legal and ethical frameworks with learners’ own struggles”.²⁵⁴ Through human rights educators’ utilization of the narrative method, learners, including children, can become empowered “not only to articulate their own rights but also [to] advocate for the rights of others”.²⁵⁵ It “foster[s] a sense of [...] common humanity” among learners to realize their rights and responsibilities to others from the local to the global levels.²⁵⁶

Human rights education is a vital aspect of AHRC’s advocacy work. Children must become empowered so that they can effectively take part in the decision-making processes of matters that directly affect them, which can be engendered through their participation in human rights education.²⁵⁷ The AHRC is importantly focused on children’s participation and consequently on their empowerment in their barangays, that is, local-level governments.²⁵⁸ Indeed, the right of individuals to participate in government decision-making processes directly affecting them and their futures are “essential [...] in realizing justice” and “fundamental [...] within the human rights project”.²⁵⁹

²⁴⁹ *Ibid* at 225, 233.

²⁵⁰ *Ibid* at 223-7.

²⁵¹ *Ibid* at 227.

²⁵² *Ibid*.

²⁵³ *Ibid*.

²⁵⁴ *Ibid*.

²⁵⁵ *Ibid* at 224, 231-2.

²⁵⁶ *Ibid* at 224, 227.

²⁵⁷ Ateneo Law School, *supra* note 8.

²⁵⁸ *Ibid*.

²⁵⁹ Osler & Zhu, *supra* note 142 at 226.

Since 2010, the AHRC has engaged in the promotion and protection of children's rights through their ChildTALK program – Child Rights Teaching and Learning for and by Kids, in partnership with organizations, such as UNICEF, and barangays.²⁶⁰ Children and youth who have graduated from this program used the slogan “nothing about us without us” to describe the importance of children's participation at AHRC's two-day certificate course on children's rights.

ChildTALK is aimed at training marginalized children aged between twelve and seventeen years old “to be aware of their rights” so that they can “freely participate in [their] promotion and protection” and “[...] so that they may be empowered not just to claim their own rights but also to empower other children in their communities to do the same” through organizing and being “the voice of children” in their barangay.²⁶¹ The mixed learning style employed, including lectures, workshops, and strategizing for new child participants, is conducive for them to learn and engage with their rights on wide-ranging topics such as drug addiction.²⁶² Thus far, 80 children have graduated from the program, one of whom – Zcyrel Barola, a Filipina 17-year old youth leader advocating for children since the age of 13 – has developed a “child-friendly version of the UNCRC” and will present it, along with other child advisors, at the UNCRC's 30th anniversary.²⁶³ Ultimately, children must understand their rights and be empowered to advocate for themselves and other children, as Barola is doing.²⁶⁴ It is clear that ChildTALK has allowed children to “[gain] the confidence to speak about their rights and share their knowledge” with other children.²⁶⁵

Domestic Initiatives and Mobilization

Children have not been provided with assistance in the form of financial and counseling services by government agencies in order to help them and their families cope.²⁶⁶ They must be provided with child psychologists or counselors.²⁶⁷ Church groups and NGOs have provided some financial and psychological

²⁶⁰ Ateneo Law School, *supra* note 8.

²⁶¹ *Ibid.*

²⁶² *Ibid.*

²⁶³ *Ibid.*; Martinez, *supra* note 181.

²⁶⁴ *Ibid.*

²⁶⁵ Ateneo Law School, *supra* note 8.

²⁶⁶ Enano, *supra* note 26; Conde, “Collateral Damage”, *supra* note 2.

²⁶⁷ David & Mendoza, *supra* note 27.

support for impacted children and families.²⁶⁸ According to one church organizer, many survivors primarily sought a place “where [they] can share [their] stories” as they have no support from their communities as a result of the normalization of drug killings and fear of association.²⁶⁹ The Church’s Project Support for Orphans and Widows helps children and families left behind heal from trauma and provides education aid for children and job training for adults.²⁷⁰ Another church institution has provided around 265 “EJK orphans” with education.²⁷¹ Other parishes, in recognition that the drug issue is a health problem, offer rehabilitation services.²⁷² Though local initiatives are imperative, the DSWD needs to provide these services on a larger scale to help children overcome emotional stress, trauma, anxiety, and depression.²⁷³

Priests and NGO workers supporting child and family survivors are putting their lives at immense risk.²⁷⁴ For instance, Bishop Pablo David has been receiving death threats.²⁷⁵ He was accused of obstruction of justice for offering sanctuary to witnesses of Kian delos Santos’ murder.²⁷⁶ Therefore, these initiatives, though incredibly impactful on those they are able to reach, are not sustainable on their own, especially given the magnitude of the human rights crisis.

Justice, Accountability, and Remedies for Human Rights Violations

There is a “total climate of impunity” within the Philippines, inconducive to justice being done.²⁷⁷ It has thwarted any possibility of accountability, as the state fails to launch investigations into EJKs and undermines attempts by institutions, including the Senate, House of Representatives, Supreme Court, and the CHR, to respond to impunity.²⁷⁸ For instance, Duterte has

²⁶⁸ Boghani, *supra* note 76; Conde, “Collateral Damage”, *supra* note 2; Smith, *supra* note 5.

²⁶⁹ Boghani, *supra* note 76.

²⁷⁰ *Ibid*; Conde, “Collateral Damage”, *supra* note 2.

²⁷¹ Smith, *supra* note 5.

²⁷² *Ibid*.

²⁷³ Conde, “Collateral Damage”, *supra* note 2; Smith, *supra* note 5.

²⁷⁴ Smith, *supra* note 5.

²⁷⁵ *Ibid*.

²⁷⁶ *Ibid*.

²⁷⁷ Amnesty International, “UN investigation”, *supra* note 20.

²⁷⁸ Amnesty International, “‘They just kill’”, *supra* note 11 at 36; Reuters, “‘Gay or paedophile?’ Philippines Duterte attacks rights chief over drug war criticism”, (17 September 2017), *The Guardian*, online:

threatened to abolish the CHR, and the Duterte-backed lower house of Congress has cut down its budget drastically in response.²⁷⁹ The CHR thus “lacks the manpower and resources to fully investigate” EJKs.²⁸⁰ Rights groups are adamant that the focus must be on accountability for every drug-related death.²⁸¹ Duterte’s administration must, in addition to changing its anti-drug policies and ending the drug war violence which disproportionately affects the poor, “provide the necessary services to mitigate the damage” that police and police-backed vigilantes’ abuses have caused children who have lost their parents and other family members or witnessed EJKs.²⁸² All perpetrators must be held to account and “a human rights-compliant drug policy” must be put in place.²⁸³

International justice mechanisms must “step in and end the carnage [...] by bringing the perpetrators to justice”.²⁸⁴ Families of victims, human rights defenders, and experts find the prospect of any meaningful domestic accountability for EJKs and other human rights violations hopeless.²⁸⁵ They are “putting their hopes” in the international community, specifically the ICC and the UN, and collecting evidence for the future, one in which these international justice mechanisms are involved.²⁸⁶ Indeed, “relatives are ready to tell their stories and provide information about how their loved ones” were killed, underscoring the impact of narratives.²⁸⁷

As of February 2018, the ICC has been conducting a preliminary examination into the alleged crimes committed during the Philippines’ war on drugs since July 2016, specifically into the EJKs of alleged drug offenders by police anti-drug operations with

<<https://www.theguardian.com/world/2017/sep/17/gay-or-paedophile-philippines-duterte-attacks-rights-chief-over-drug-war-criticism>> [Reuters].

²⁷⁹ *Ibid.*

²⁸⁰ Reuters, *supra* note 278.

²⁸¹ Tostevin & Morales, *supra* note 11.

²⁸² Human Rights Watch, “Philippines: ‘Drug War’”, *supra* note 11; Amnesty International, “‘They just kill’”, *supra* note 11 at 6.

²⁸³ Amnesty International, “‘They just kill’”, *supra* note 11 at 6.

²⁸⁴ Amnesty International, “Philippines: ICC must examine ‘war on drugs’”, *supra* note 57.

²⁸⁵ Amnesty International, “‘They just kill’”, *supra* note 11 at 6, 36.

²⁸⁶ *Ibid* at 6, 36.

²⁸⁷ Smith, *supra* note 5.

special attention to crimes committed against children.²⁸⁸ The ICC, as a court of last resort, exercises jurisdiction if a given state is “unable or unwilling to investigate crimes”.²⁸⁹ The Philippines’ judiciary and police force are unwilling and unable to hold perpetrators to account.²⁹⁰ Despite the Philippines’ withdrawal from the Rome Statute in March 2018, effective as of March 2019, the ICC still has “jurisdiction over crimes committed” when “[it] was [a] party”.²⁹¹ Two petitions alleging crimes against humanity and Duterte’s personal liability for EJKs have been filed by a Filipino lawyer and two opposition lawmakers as well as by activists and victims’ families.²⁹² In July 2019, the UNHRC voted to undertake an independent investigation into Duterte’s drug war crimes, in particular EJKs by police and vigilantes, but also arbitrary arrests and enforced disappearances, for which the High Commissioner will be producing a comprehensive written report.²⁹³ The Resolution asks that the national authorities prevent extrajudicial violence and cooperate with the UN’s investigation.²⁹⁴

Conclusion

“[T]his is my hope: That there will be justice for these children and the loved ones they lost; that [...] those responsible will be held to account in a court of law. [...] [T]he journey from

²⁸⁸ International Criminal Court, *supra* note 23; “UN Human Rights Council votes”, *supra* note 23; Human Rights Watch, “World Report 2019”, *supra* note 35.

²⁸⁹ Manuel Mogato and Martin Petty, “Philippines’ Duterte hit by new ICC complaint over deadly drug war”, (28 August 2018), *Reuters*, online: <<https://www.reuters.com/article/us-philippines-drugs/philippines-duterte-hit-by-new-icc-complaint-over-deadly-drugs-war-idUSKCN1LD0CS>> [Mogato & Petty].

²⁹⁰ “UN Human Rights Council votes”, *supra* note 23.

²⁹¹ International Criminal Court, *supra* note 23; Human Rights Watch, “World Report 2019”, *supra* note 35.

²⁹² International Criminal Court, *supra* note 23; Mogato & Petty, *supra* note 289.

²⁹³ “UN Human Rights Council votes”, *supra* note 23; “Philippines drugs war”, *supra* note 88; Hannah Ellis-Petersen, “UN launches ‘comprehensive’ review of Philippine drug war”, (12 July 2019), *The Guardian*, online: <<https://www.theguardian.com/world/2019/jul/12/un-launches-comprehensive-review-of-philippine-drug-war>>.

²⁹⁴ “UN Human Rights Council votes”, *supra* note 23; “Philippines drugs war”, *supra* note 88.

here to there starts by telling their stories, then telling them again, never letting the past fade away."

- Conde²⁹⁵

The "resurgence of populism" and "retreat from international legal obligations are trends which", if unchecked, "pose an existential threat to the rule of law".²⁹⁶ Indeed, there has been an erosion of the rule of law, through the violation of fundamental human rights internationally enshrined, under populist leader Duterte's deadly drug war. The drug war targets the urban poor and children, the most marginalized and "voiceless" sectors of society, whom lack access to many government services, politics, and justice.²⁹⁷ Not only must children be empowered to organize against drug-related policies affecting them, but the root causes of their poverty must be tackled and their dignity upheld.²⁹⁸ Children can learn about and advocate for their rights through the power of narratives, which can also be a powerful means for survivors to help bring perpetrators to justice.

²⁹⁵ Conde, "Collateral Damage", *supra* note 2.

²⁹⁶ "Philippines suffers world's biggest drop", *supra* note 153.

²⁹⁷ Boghani, *supra* note 76; Austin, *supra* note 96.

²⁹⁸ Cullen, "What Philippine officials found in child detention centers", *supra* note 65.

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