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

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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

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”. 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) and the International Covenant on Civil and Political Rights (ICCPR) 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), 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 old

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].
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. 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. Duterte is adamant that drug dealers “are less than human” and deserve to die, and has delivered on his threats. 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. 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. In 2002, he

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10 Adrian Chen, “When a Populist Demagogue Takes Power,” The New Yorker (21 November 2016) [Chen].
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].
condoned killing teenaged criminal gang members: “If they offer resistance, I will not hesitate to kill them. I don’t care about minors.”.\textsuperscript{15}  Between 1998 and 2009, teenage street kids engaged in small-time drug dealing and petty theft represented the majority of individuals killed.\textsuperscript{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.”\textsuperscript{17} In his inaugural speech, he urged: “If you know of any addicts, go ahead and kill them yourself.”\textsuperscript{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”\textsuperscript{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.\textsuperscript{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.\textsuperscript{21} Local human rights activists, lawyers, the Catholic Church, and the international community condemn the drug war.\textsuperscript{22} An

\textsuperscript{16} Chen, supra note 10.
\textsuperscript{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.
\textsuperscript{18} Amnesty International, “If you are poor you are killed”, supra note 2 at 37; ibid; Johnson & Fernquest, supra note 14 at 359, 365.
\textsuperscript{19} Ibid; Johnson & Fernquest, supra note 14 at 359, 365.
\textsuperscript{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-Petersen].
\textsuperscript{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.\textsuperscript{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.\textsuperscript{24} The majority listed are poor and marginalized.\textsuperscript{25} Listed are not merely individuals reasonably suspected of being drug offenders, but also past drug users, drug “protectors”, and children.\textsuperscript{26} Vigilantes’ victims are also from these lists.\textsuperscript{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.\textsuperscript{28} Over one million drug offenders have ‘voluntarily’ surrendered.\textsuperscript{29} 26,907 children surrendered by

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\item blood-but-no-victory-as-philippine-drug-war-marks-its-first-year-idUSKBN19G05D [Baldwin & Marshall]; Jeffrey, supra note 1.
\item 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.
\item Amnesty International, “‘They just kill’”, supra note 11 at 27-8.
\item 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].
\item 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.
\item Amnesty International, “‘They just kill’”, supra note 11 at 22, 26.
\item 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. 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. Given the lists’ permanence, even reformed drug offenders are killed.

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”. 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. 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. 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. In fact,

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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.


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.


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 racketeering 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”

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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.\textsuperscript{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”.\textsuperscript{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.\textsuperscript{49}

As of July 2018, 110 Filipino children were killed.\textsuperscript{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.\textsuperscript{51} In July 2016, Richter Baykin, a high school student aged 16, was killed in a police buy-bust operation.\textsuperscript{52} In August 2016, Danica May Garcia, aged 5, was killed in her own home by unknown assailants who came for her grandfather.\textsuperscript{53} Another child, aged 4, was caught in the crossfire during a buy-bust operation between the police and her father.\textsuperscript{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

\textsuperscript{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].

\textsuperscript{48} David & Mendoza, supra note 27.

\textsuperscript{49} Human Rights Watch, “World Report 2019”, supra note 35; Barrete, supra note 47.

\textsuperscript{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].

\textsuperscript{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.

\textsuperscript{52} David & Mendoza, supra note 27.

\textsuperscript{53} Rauhala, supra note 2.

\textsuperscript{54} Ibid.
student aged 17, was fatally shot by gunmen.\footnote{Amnesty International, “If you are poor you are killed”, supra note 2 at 38, 44, 46; Enano, supra note 26.} 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.\footnote{David & Mendoza, supra note 27.} 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.\footnote{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.} In July 2018, Skyler Abatayo, aged 4, was inside his room studying when he was killed by a police officer’s stray bullet.\footnote{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>}. 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”.\footnote{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>}. Duterte has similarly claimed that children killed are “collateral damage”, and that “police can kill hundreds […] without criminal liability”.\footnote{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. In a July 2016 raid, police forcibly searched a girl of three years old by removing her underwear to search for hidden drugs. 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. 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. The cells are tiny, dirty, overcrowded, and unhygienic. They are malnourished and deprived of medical, educational, recreational, and other services, and most lack beds, proper toilets, or a place to bathe themselves. Many children are also placed in adult detention centers. For instance, young people who look like drug users, because they are thin or have tattoos, are brought to adult detention centers. Between July 2016 and November 2018, 1,861 minors were arrested for drug offences. Police officers have beaten, tortured, sexually abused, and framed children for drug crimes by forcing them to be pictured with planted drugs.

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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.
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. 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. Some refuse to partake in investigations by the Commission on Human Rights (CHR), as they are afraid of reprisals by the police. Others, especially witnesses to such deaths, have gone into hiding. The trauma experienced by children has manifested into withdrawal, anger, aggressiveness, and violence. 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. 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. This renders them more vulnerable to becoming victims of exploitation and child labor. The deaths “perpetuate the cycle of poverty that sucks children and youths into the drug trade”. 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”. In 2018, it was conservatively estimated

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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.\footnote{82}{David & Mendoza, supra note 27; Smith, supra note 5.}

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.”\footnote{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 [Barret, Children of the Drug War].} The “‘other[ing]’” of drug offenders as evil is also common.\footnote{84}{Ibid at 5.} Duterte’s story-telling and the way he dressed in jeans and plaid shirts “resonated among a broad public”; he appeared authentic and authoritative.\footnote{85}{Coronel, supra note 13 at 36.} 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.\footnote{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-b2d2-1f37c9d828b7_story.html> [Cabato]; Johnson & Fernquest, supra note 14 at 367-8.} 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.\footnote{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.} 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.\footnote{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 “reckless 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

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.
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, […] disenchantedment 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

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.
99 Ibid.
100 Ibid.
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.
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

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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.
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 priest\(^{129}\)

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.
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. The former rests on “detailed laws duly enacted and scrupulously observed.” 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.”

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.” 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. The UN’s comprehensive definition “connects procedural protections common to legal systems with a substantive theory of human rights through law”:

“[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.”

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.
134 Bingham, supra note 130 at 69-70, 120.
135 Ibid at 69-70, 113; Møller & Skaaning, supra note 131 at 22-3.
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.\footnote{Bingham, supra note 130 at 69-70; Møller & Skaaning, supra note 131 at 16, 22, 52.}

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.\footnote{Chen, supra note 10; Baldwin & Marshall, supra note 22; Pepinsky, supra note 12 at 120, 129.} 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”\footnote{“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>.}, and that it is illegal drugs, not the drug war, which has eroded the rule of law in the Philippines.\footnote{Johnson & Fernquest, supra note 14 at 373-5.} 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”.\footnote{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].} 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.\footnote{The Constitution of the Republic of the Philippines, 1987 [Constitution].} The rights enshrined in the Constitution of the Republic of the Philippines include an emphasis on social justice, human rights, and accountability.\footnote{The Constitution of the Republic of the Philippines, 1987 [Constitution].} 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”.\footnote{Ibid.}

In December 2018, in celebration of the 70\textsuperscript{th} anniversary of the UDHR, Duterte’s administration, which has killed thousands of alleged, mostly poor drug offenders without due process and
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. […] This 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.”

Furthermore, President Duterte is adamant that incitement to kill and extrajudicial violence as part of the drug war is “an effective governance strategy” 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.”

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. 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.

The World Justice Project (WJP) measures the rule of law in countries worldwide. In the WJP’s 2016-2017 Rule of Law
Index, the Philippines had a global ranking of 70 out of 113 countries evaluated, down by 9 places from the previous year.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{155} Since then, the Philippines has consistently scored lowest on order and security, closely followed by criminal justice and fundamental rights.\textsuperscript{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”.\textsuperscript{157} This factor

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\textsuperscript{155} World Justice Project, “WJP Rule of Law Index 2016-2017”, supra note 152.


\textsuperscript{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. 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 laws and “accept[s] [...] the formal discipline of legality”. 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. 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”.

As for ‘Order and Security’, the WJP evaluates the extent to which the society in question guarantees the security of persons and property. Security – a “defining [aspect]” of a rule of law society and “a fundamental function of the state” – is required in order to fulfill the rights and freedoms central to the rule of law. 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. Closely connected to the latter point, the UN stresses that an emerging and critical rule of law issue is governments’ incitement to violence.

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”. Effective criminal justice systems require (1) an effective criminal

158 Ibid.
161 Tamanaha, supra note 159 at 92-3.
162 Waldron, supra note 160.
164 Ibid.
165 Ibid.
166 United Nations, “What is the Rule of Law”, supra note 137.
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.

\(^{172}\) 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.  
\(^{173}\) Amnesty International, “‘They just kill’”, supra note 11 at 13; Smith, supra note 5.
unprosecuted.\footnote{175}{Human Rights Watch, “World Report 2019”, supra note 35.} 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.\footnote{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.} This case is exceptional, indeed “a rare triumph of accountability”, in which justice was done due to “overwhelming public pressure”.\footnote{177}{Human Rights Watch, “World Report 2019”, supra note 35; Amnesty International, “They just kill”, supra note 11 at 32.} 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.\footnote{178}{CNN Philippines Staff, supra note 145; Amnesty International, “They just kill”, supra note 11 at 32.}

### 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 Cullen\footnote{179}{Cullen, “What Philippine officials found in child detention centers”, supra note 65.}

### Human Dignity

This concept is “becoming commonplace”, particularly in legal international human rights and national constitutional texts, as well as in judicial decisions. Indeed, it is “the foundational concept” of international human rights law. 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”. 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. 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. Per the Philippine Constitution, “[t]he State values the dignity of every human person and guarantees full respect for human rights”.

According to Christopher McCrudden, the concept of human dignity has a “basic minimum [core]” made up of three elements, although it has various conceptions. First, there is the “ontological’ claim” that “every human being possesses an intrinsic worth” simply by being human. 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”. 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”. Jamie Alison Lee and Jack Donnelly also contend that human dignity, which makes an individual inherently deserving of respect by others and

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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. The minimum core of dignity is adopted by courts in different jurisdictions.

While human dignity is “the basis for human rights to exist”, its conception differs depending on the ascription to the ‘thin’ or ‘thick’ approach. 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”. 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”. 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”. Similarly, Donnelly asserts that “human rights are one particular mechanism for realizing a certain class of conceptions of human dignity”.

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.”

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. In denying children their fundamental human rights and dignity, the ‘thick’ rule of law is also undermined. Duterte’s drug war has had

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194 McCrudden, supra note 182 at 697, 723.
195 Ibid at 680.
196 Ibid at 680-1.
197 Ibid.
198 Ibid.
199 Ibid at 681, 685, 697-8, 720.
200 Donnelly, supra note 180 at 29.
201 McCrudden, supra note 182 at 685-6, 689, 692-3.
202 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] reme[di]es” 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).
well-being. 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”.

Best Interests of the Child

The principle of the best interests of children, individually and collectively, is enshrined in Article 3 of the UNCRC. 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. 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”.

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. Thus, states should ensure that the number of young children abandoned or orphaned is reduced.

Per Article 20, children “temporarily or permanently deprived” of a family are “entitled to special [state] protection and assistance.” 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. Both Article 37 and Article 9 of the ICCPR underscore that children must

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208 Ibid at paras 24, 26, 36; CRC/C/GC/20, supra note 206 at paras 67, 70.
209 Ibid, art 3(2).
210 CRC/C/GC/7/Rev.1, supra note 207 at para 13; UNCRC, supra note 3, arts 9, 20, 37, 40.
211 Ibid., arts 9.1, 9.4.
212 CRC/C/GC/7/Rev.1, supra note 207 at para 18.
213 UNCRC, supra note 3, art 20.1.
214 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.\footnote{ICCPR, supra note 7, art 9; UNCRC, supra note 3, art 37.} Article 37 also necessitates that such deprivation is the “last resort” and for the shortest duration of time.\footnote{UNCRC, supra note 3, art 37.} 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.\footnote{Ibid; ICCPR, supra note 7, arts 10.1-3.} 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.\footnote{UNCRC, supra note 3, arts 37, 40; ICCPR, supra note 7, art 10.} 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.\footnote{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].} A minimum age of criminal responsibility is also necessary, which should be at least 14 years old.\footnote{UNCRC, supra note 3, art 40(3); CRC/C/GC/24, supra note 222 at paras 21-2.} 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.\footnote{UNCRC, supra note 3, art 40(4).}

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.\footnote{Bureau of International Labor Affairs, supra note 50.} 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...
offenders. 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 proceedings in accordance with the “PNP Manual in Handling Cases of Children at Risk and Children in Conflict with the Law”. Moreover, over 28,000 children have been processed, detained, and listed in the drug enforcement operations. Most children who have been deprived of their liberty are not criminally liable under the law and remain wholly deprived of their rights. 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”.

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”. 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”. 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. 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

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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.
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

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235 Ibid at para 36.
237 Ibid at paras 57-8.
239 Smith, supra note 5.
240 Ibid.
241 UNCRC, supra note 3, art 12.
directly, or through a representative or an appropriate body”. They are thus recognized as active participants and actors with agency and dignity. 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. 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”. 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”. 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 old

**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. Sen’s theory “emphasizes realizable processes and public reasoning or dialogue […], the choices made and freedoms claimed by individuals […] and individuals’ own assessments of

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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.


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.  

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.

The realization of human rights largely depends on individuals’ knowledge of their rights. 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. As such, everyone should be afforded the opportunity to study and examine international human rights instruments. Narratives powerfully “link legal and ethical frameworks with learners’ own struggles”. 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”. 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.

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. The AHRC is importantly focused on children’s participation and consequently on their empowerment in their barangays, that is, local-level governments. 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”.

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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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{262} Thus far, 80 children have graduated from the program, one of whom – Zyrel 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.\textsuperscript{263} Ultimately, children must understand their rights and be empowered to advocate for themselves and other children, as Barola is doing.\textsuperscript{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.\textsuperscript{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.\textsuperscript{266} They must be provided with child psychologists or counselors.\textsuperscript{267} Church groups and NGOs have provided some financial and psychological

\textsuperscript{260} Ateneo Law School, supra note 8.
\textsuperscript{261} Ibid.
\textsuperscript{262} Ibid.
\textsuperscript{263} Ibid; Martinez, supra note 181.
\textsuperscript{264} Ibid.
\textsuperscript{265} Ateneo Law School, supra note 8.
\textsuperscript{266} Enano, supra note 26; Conde, “Collateral Damage”, supra note 2.
\textsuperscript{267} David & Mendoza, supra note 27.
support for impacted children and families. 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. 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. Another church institution has provided around 265 “EJK orphans” with education. Other parishes, in recognition that the drug issue is a health problem, offer rehabilitation services. 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.

Priests and NGO workers supporting child and family survivors are putting their lives at immense risk. For instance, Bishop Pablo David has been receiving death threats. He was accused of obstruction of justice for offering sanctuary to witnesses of Kian delos Santos’ murder. 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. 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. For instance, Duterte has

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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.
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

\(<\text{https://www.theguardian.com/world/2017/sep/17/gay-or-paedophile-philippines-duterte-attacks-rights-chief-over-drug-war-criticism}>>\ [Reuters].\(^{279}\)
\(^{280}\) Reuters, supra note 278.
\(^{281}\) Tostevin & Morales, supra note 11.
\(^{284}\) 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.\footnote{International Criminal Court, supra note 23; “UN Human Rights Council votes”, supra note 23; Human Rights Watch, “World Report 2019”, supra note 35.} The ICC, as a court of last resort, exercises jurisdiction if a given state is “unable or unwilling to investigate crimes”.\footnote{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].} The Philippines’ judiciary and police force are unwilling and unable to hold perpetrators to account.\footnote{“UN Human Rights Council votes”, supra note 23.} 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”.\footnote{International Criminal Court, supra note 23; Human Rights Watch, “World Report 2019”, supra note 35.} 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.\footnote{International Criminal Court, supra note 23; Mogato & Petty, supra note 289.} 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.\footnote{“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>.} The Resolution asks that the national authorities prevent extrajudicial violence and cooperate with the UN’s investigation.\footnote{“UN Human Rights Council votes”, supra note 23; “Philippines drugs war”, supra note 88.}

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

– Conde

The “resurgence of populism” and “retreat from international legal obligations are trends which”, if unchecked, “pose an existential threat to the rule of law”. 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. 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. 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.

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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