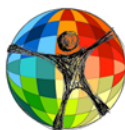


# Extrajudicial Killings and Human Rights Education in the Philippines



International Human Rights Internships Program - Working Paper Series



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The Centre for Human Rights and Legal Pluralism (CHRLP) Working Paper Series enables the dissemination of papers by students who have participated in the Centre's International Human Rights Internship Program (IHRIP). Through the program, students complete placements with NGOs, government institutions, and tribunals where they gain practical work experience in human rights investigation, monitoring, and reporting. Students then write a research paper, supported by a peer review process, while participating in a seminar that critically engages with human rights discourses. In accordance with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded. Therefore, papers in this series may be published in either language.

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## **Abstract**

Extrajudicial killings in the Philippines have been denounced by the international community as a clear derogation from the rule of law. However, that statement by itself does not tell us which aspects of the rule of law are being corroded by the commission of extrajudicial killings. My aims for the paper are to identify the aspects of the rule of law that are hindered by extrajudicial killings, and to elucidate a process for cultivating a rule of law society that addresses these hindrances. I argue that this crucially depends on two mandates that tie together: i) holding the government accountable to their obligations under the rule of law, and ii) addressing the current constraints on meaningful civic engagement and participation. The paper addresses the challenge head-on by developing a working concept of the rule of law that opens room for discussions on the role and power of citizens. Finding the means for addressing the difficulties with bringing citizens into meaningful contact with the state is a solution that gives greater meaning to the activity of citizens in a rule of law society. To that end, I will consider the Ateneo Human Rights Center's (AHRC) capacity to bring citizens into contact with the state in the interest of taking constructive action against extrajudicial killings. Central to the goal of promoting civic engagement and action on the issue of extrajudicial killings is AHRC's model of human rights education. AHRC's model challenges and reimagines the established hierarchies between lawyers and clients, through a process of collective learning based on shared experiences, as opposed to an assumption of shared knowledge. As has been done, and will be shown, this model reimagines conventional relationships and allows (marginalized) groups to access and engage with the state on their own terms, for their own causes.

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## Introduction

I felt nervous. I was invited by Attorney Kim Claudio, Program Officer at the Humanitarian Legal Assistance Foundation (HLAF), to survey his organization's work at a municipal jail in Mandaluyong City, Philippines. He looked at me intently, gauging my reactions from moment to moment, sometimes asking me, “how does it compare to Canada?”. At some points, I wasn’t sure where I was. The inmates jostled, joked, and even hugged the guards. None of them had been convicted, but they had been serving sentences as detainees for months, years and sometimes decades – long enough for society to brand them as criminals. One of the detainees I met with was a proud supporter of the newly elected Duterte administration. She was glad to see that Duterte was swiftly putting “criminals” to death, and “restoring safety” to the country’s capital. I was blindsided by her candid statement, but it was not the place to voice my disagreement. Her statement was made in the backdrop of Duterte’s promise to kill 100,000 criminals and fatten the fish in Manila bay.<sup>1</sup> Duterte’s promises prompted hundreds of thousands of Filipinos to turn themselves in, out of fear of being killed on plain suspicion; the public’s impression is that it is safer to be in jail than out on the streets.<sup>2</sup> However, Duterte’s drug war is marked by indiscriminate killings, targeting even those who turn themselves in, along with innocent members of their family.<sup>3</sup> On the President’s pitiless quest for swift “justice” by any means necessary, what would stop him from executing the inmates I spoke to awaiting trial?

The aim of my paper is twofold: i) to identify the problems with extrajudicial killings in relation to the basic demands that the rule of law imposes on the state, and ii) to go beyond a description or definition of the rule of law by drawing out from the concept a number of aims and values that could form a human rights education mandate. These two objectives will be important for combatting the issue of extrajudicial killings in the Philippines at a time when the

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<sup>1</sup> Floyd Whaley, “Rodrigo Duterte’s Talk of Killing Criminals Raises Fears in the Philippines”, *The New York Times* (17 May 2016), online: <<http://www.nytimes.com/2016/05/18/world/asia/rodrigo-duterte-philippines.html>>.

<sup>2</sup> Euan McKirdy, “Life Inside the Philippines’ Most Overcrowded Jail”, *CNN* (23 August 2016), online: <<http://www.cnn.com/2016/08/21/asia/philippines-overcrowded-jail-quezon-city>>.

<sup>3</sup> Richard Paddock, “In Philippine Drug War, Little Help for Those Who Surrender”, *The New York Times* (5 September 2016), online: <<http://www.nytimes.com/2016/09/06/world/asia/in-philippine-drug-war-little-help-for-those-who-surrender.html>>.

rule of law is regularly bypassed. I begin the first part of the paper by situating the reader in the aftermath of the 2016 Philippine Presidential Election. More pointedly, this part discusses the scope of the problem with extrajudicial killings, as well as the potential reasons why a great majority of Filipinos<sup>4</sup> wholeheartedly elected a president with a record of extrajudicial killings spanning nearly two decades. Discussing factors that contribute to Duterte's overwhelming support will inevitably lead to a discussion on the public perception of extrajudicial killings.

Extrajudicial killings in the Philippines have been denounced by the international community as a clear derogation from the rule of law.<sup>5</sup> However, it is not clear as to which aspects of the rule of law are being corroded by the commission of extrajudicial punishment. In the second part of the paper, I work from personal accounts and current events in the country to demonstrate that the rule law is an elusive aspiration if it is detailed in legal documents, and yet remains undeveloped by relevant institutions and citizens. Following Rachel Kleinfeld, I argue that engaging with the rule of law requires us to be clear on the state's obligations in practice. This gives the public a sense of what to expect from the state, and makes informed participation possible, even if this participation is, as Aruna Roy describes it, a "partial engagement" with the state.<sup>6</sup>

The third and final part of the paper considers the Ateneo Human Rights Center's (AHRC) capacity to bring citizens into a relationship of "partial engagement" with the state in the interest of taking constructive action against extrajudicial killings.<sup>7</sup> Central to the goal of promoting civic engagement and action on the issue of extrajudicial killings is AHRC's model of human rights education. AHRC's model challenges and reimagines the established hierarchies between lawyers and clients, through a process of collective learning based on shared experiences, as opposed to an assumption of shared knowledge. As has been done, and will be shown, this

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<sup>4</sup> "Official Count: Duterte is New President; Robredo is Vice President", *CNN Philippines* (30 May 2016), online: <<http://cnnphilippines.com/news/2016/05/27/official-count-duterte-president-robredo-vp.html>>.

<sup>5</sup> "Philippines drug crackdown prompts warning from ICC", *The Guardian* (14 October 2016), online: <<https://www.theguardian.com/world/2016/oct/14/philippines-drug-crackdown-warning-icc-rodrigo-duterte>>.

<sup>6</sup> Aruna Roy, "Dialogue on Social Activism: Aruna Roy and Vrinda Narain" (Annie MacDonald Langstaff Workshop, Faculty of Law, McGill University, 14 October 2016) [unpublished].

<sup>7</sup> *Ibid.*

model reimagines conventional relationships and allows (marginalized) groups to access and engage with the state on their own terms, for their own causes.

## Part 1: Setting Up the Drug War

On May 9, 2016, the Philippines elected an iron-willed president whose campaign promises ranged from asserting sovereignty from China, to eradicating crime via summary execution and public hanging<sup>8</sup>. Duterte's public appearances throughout his campaign varied from unpolished to childish, to outright vulgar<sup>9</sup>. Bringing up Duterte's public statements in conversation sometimes elicited comparisons to a stereotypically offensive, macho uncle. Duterte's public persona set him apart from his opponents in the political establishment and even earned him the endearing pet name "uncle Digong Duterte".<sup>10</sup> Richard Heydarian, political science professor at De La Salle University in Manila, claims that Filipinos were seeking a commander-disciplinarian reminiscent of Ferdinand Marcos: a bigger leader, smaller state, to supposedly bypass impenetrable bureaucracy and combat endemic corruption.<sup>11</sup> Most alarming (but perhaps alluring to some) was Duterte's post-election promise to the nation's criminals: "I do not want to commit a crime but if by chance, God will place me there, you all better watch out. I'll dump all of you into Manila Bay, and fatten all the fish there".<sup>12</sup> His speeches made after his Presidential inauguration on June 30th only intensified fears between neighbors, and often encouraged citizens to kill suspected drug users or pushers on the spot. In one profanity-filled speech to a crowd in the slums of Tondo, Mr. Duterte calmly explains "if you know of any

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<sup>8</sup> Sara Pacia, "Inquirer Report: 14 of 30 Duterte Promises Now 'In Progress'", *Inquirer.Net* (25 July 2016), online: <<http://newsinfo.inquirer.net/798716/inquirer-report-14-of-30-duterte-promises-now-in-progress>>.

<sup>9</sup> "Philippines President Rodrigo Duterte In Quotes", *BBC News* (30 September 2016), online: <<http://www.bbc.com/news/world-asia-36251094>>.

<sup>10</sup> Richard Heydarian, "Philippines Post-Election Analysis: How Duterte Shot the Top", *Asia Times* (13 May 2016), online: <<http://www.atimes.com/article/philippines-post-election-analysis-how-duterte-shot-to-the-top>>.

<sup>11</sup> *Ibid.*

<sup>12</sup> Philip Sherwell, "Who is 'The Punisher' Rodrigo Duterte - The Tough-Talking Mayor Poised to Become the Next Philippine President?", *The Telegraph* (9 May 2016), online: <<http://www.telegraph.co.uk/news/2016/05/08/philippines-poised-to-elect-tough-talking-punisher-rodrigo-duter>>.

addicts, go ahead and kill them yourself as getting their parents to do it would be too painful”<sup>13</sup>. In fact, the vast majority of summary executions have been performed by vigilantes, and on the streets of Manila lay corpses with placards that read “I am a pusher” in Tagalog.<sup>14</sup>

The international community quickly reacted to an administration fighting crime by publishing hit-lists and turning impoverished citizens into contract killers. On August 18, the UN Special Rapporteur on Extrajudicial Killings, Agnes Callamard, affirmed that Mr. Duterte had issued a general “license to kill”.<sup>15</sup> Duterte responded by threatening to withdraw from the United Nations.<sup>16</sup> As political tensions mounted and the death toll reached close to two thousand<sup>17</sup>, a Senate Committee was formed by Leila de Lima, a former Head of the Philippine Commission on Human Rights (CHR).<sup>18</sup> On September 15, Edgar Matobato, an alleged ex-hitman for Duterte, testified to de Lima’s Senate Committee<sup>19</sup>. Matobato claims he witnessed Duterte order, and even carry out, extrajudicial punishment.<sup>20</sup> While this was news to the world, this was not news to most Filipinos, who have heard Duterte publicly boast about his participation in a Death Squad: “They are saying I am the death squad? True, that is true”.<sup>21</sup>

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<sup>13</sup> Rishi Iyengar, “The Killing Time: Inside Philippine President Rodrigo Duterte’s War on Drugs”, *TIME* (25 August 2016), online: <<http://time.com/4462352/rodrigo-duterte-drug-war-drugs-philippines-killing>>.

<sup>14</sup> Nelson Groom, “Justice, Philippines style: Gruesome Photos Show a Dead Man's Head Bound with Duct Tape and a Sign Reading 'I'm a Pusher' Pinned to his Chest - After the President Urged People to 'go ahead and kill' Drug Addicts”, *Mail Online* (12 July 2016), online: <<http://www.dailymail.co.uk/news/article-3685448/Slain-drug-dealer-m-pusher-sign-Philippines.html>>.

<sup>15</sup> “UN Rights Experts Urge Philippines to End Wave of Extrajudicial Killings Amid Major Drug Crackdown”, *UN News Centre* (18 August 2016), online: <<http://www.un.org/apps/news/story.asp?NewsID=54707-WFEHNKIrkTd>>.

<sup>16</sup> “Philippines’ Rodrigo Duterte Threatens to Leave UN”, *BBC News* (21 August 2016), online: <<http://www.bbc.com/news/world-asia-37147630>>.

<sup>17</sup> Manuel Mogato, “2000 Killed in Philippines’ War on Drugs”, *The Wire* (31 August 2016), online: <<http://thewire.in/63034/2000-killed-in-philippines-war-on-drugs>>.

<sup>18</sup> Jonathan Kaiman, “This Senator is the Last Major Obstacle to the Philippines' War on Drugs. She may end up Behind Bars”, *Los Angeles Times* (21 September 2016), online: <<http://www.latimes.com/world/asia/la-fg-philippines-leila-de-lima-20160921-snap-story.html>>.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> Chieu Luu, “Philippines President 'Ordered Death Squad Hits While Mayor,' Alleged Hitman Claims”, *CNN* (16 September 2016), online: <<http://www.cnn.com/2016/09/15/asia/philippines-duterte-senate-hearing>>.

Shortly after these events were brought to light, de Lima was replaced by Richard Gordon as Chair of the Senate probe because her investigation had apparently compromised the country's reputation.<sup>22</sup> Pundits claim that de Lima, now entangled in an alleged drug smuggling and sex scandal, was the last major opposition to Duterte's government.<sup>23</sup> After a near six thousand reported dead at the hands of the drug war<sup>24</sup>, and close to 700,000 thousand drug users surrendering to authorities<sup>25</sup>, Duterte still boasts an eighty-six percent approval rating.<sup>26</sup> Miguel Syjuco, award winning Filipino novelist, explains that the killings have not yet shocked the conscience of most Filipinos because extrajudicial killings are construed as the only viable, expeditious solution to a much longer history of corruption and impunity across all areas of government.<sup>27</sup> The state uses fear to justify strong-arm policies that they claim will solve crime; policies that have historically only worked to sustain corruption, cronyism, and the associated impunity.<sup>28</sup> Parallels between Duterte's current tactics and Philippine dictator Ferdinand Marcos are not difficult to draw when the former threatens to reinstate Martial Law, shut down Congress, and assassinate journalists.<sup>29</sup> In recent years, Filipinos saw former President (now mayor of Manila) Joseph Estrada pardoned by his successor Gloria Arroyo after allegedly plundering more than 80 million dollars.<sup>30</sup> Duterte has already carved himself a space in the

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<sup>22</sup> Maila Ager, "Senators Explain Why They Ousted De Lima", *Inquirer.Net* (20 September 2016), online: <<http://newsinfo.inquirer.net/817045/de-lima-committee-used-for-personal-vendetta-gatchalian>>.

<sup>23</sup> Jonathan Kaiman, "This Senator is the Last Major Obstacle to the Philippines' War on Drugs. She may end up Behind Bars", *Los Angeles Times* (21 September 2016), online: <<http://www.latimes.com/world/asia/la-fg-philippines-leila-de-lima-20160921-snap-story.html>>.

<sup>24</sup> Sherwin Alfaro, "Philippines: More Than 5,900 Deaths in 'War on Drugs' Since July", CNN (12 December 2016), online: <<http://www.cnn.com/2016/12/12/asia/philippines-death-toll-drug-war>>.

<sup>25</sup> Vasudevan Sridharan, "Philippines: Duterte jokes he cannot kill all 700,000 Drug Pushers who Surrendered", *International Business Times* (19 September 2016), online: <<http://www.ibtimes.co.uk/700000-drug-pushers-surrender-philippines-duterte-says-i-cant-kill-them-all-because-report-1581998>>.

<sup>26</sup> Adrian Chen, "When A Populist Demagogue Takes Power", *The New Yorker* (21 November 2016), online: <<http://www.newyorker.com/magazine/2016/11/21/when-a-populist-demagogue-takes-power>>.

<sup>27</sup> Miguel Syjuco, "This Is Why Philippine President Rodrigo Duterte Will Get Away With Murder", *TIME* (16 August 2016), online: <<http://time.com/4453587/philippines-rodrigo-duterte-dictator-impunity-marcos>>.

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

Philippine's history of cronyism by acquitting Arroyo of plunder, and vowing to make an exception for himself and his auxiliaries for their involvement in the drug war<sup>31</sup>.

Senator de Lima and UN Rapporteur Agnes Callamard's claims that extrajudicial killings are a clear derogation of the rule of law are not controversial on any basic definition of the rule of law. My aims for the following parts of the paper are to identify which aspects of the rule of law are hindered by extrajudicial killings, and to elucidate a process for cultivating a rule of law society that addresses these hindrances. I argue that this crucially depends on two mandates that tie together: i) holding the government accountable to their obligations under the rule of law, and ii) addressing the current constraints on meaningful civic engagement and participation. There is no meaningful notion of civic participation, and no need for human rights education if the rule of law is purely rhetorical or symbolic tool for political maneuvering, rather than a society building principle that citizens can meaningfully engage with in practice. The next part of the paper will address this point head-on by developing a working concept of the rule of law that opens room for discussions on the role and power of citizens. Finding the means for addressing the difficulties with bringing citizens into meaningful contact with the state, either because of state coercion, poverty, or lack of information, are solutions that give greater meaning to the activity of citizens in a rule of law society.

## **Part 2: Conceptualizing Extrajudicial Killings As a Violation of the Rule of Law**

I spent the month leading up to my internship reading everything I could find on Philippine political history, the Constitution of 1987, the civil code, the nation's ratification of various United Nations treaties, and so on. Based on the assumptions I built up in my studies in constitutional law, I saw these legal documents and their underlying, unarticulated principles, as forming the basis of a rule of law society. In *Re: Quebec Secession*, the Supreme Court of Canada affirms the rule of law as an unarticulated but nevertheless enshrined principle in our Constitution, well reflected in our system of governance.<sup>32</sup> The legislature of the Philippines

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<sup>31</sup> *Ibid.*

<sup>32</sup> Reference Re Secession of Quebec [1998] 2 SCR 217.

seems to have done one better by making these principles front and center in the Preamble of the Constitution of the Philippines:

“We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution”.<sup>33</sup>

The story that can be pieced together from articles of the Constitution and other legal documents is not the full story of the rule of law in the Philippines. Corruption, cronyism and political silencing have become a familiar and normalized feature of the state’s operations; first-hand experience was a far better teacher. AHRC’s Internship Program Director and my mentor, Attorney Anne Maureen Manigbas (Anmau), helped to dispel this idea of the rule of law as an unchecked apologue of Western courts and legislatures, who assume that establishing a rule of law society in name is equivalent to forging a rule of law society in practice. On many car rides in Manila, in some of the worst traffic on the planet, Attorney Anmau spent hours describing to me a starkly different political society from the “regime of truth” that was spelled out in writing by the legislator.

Attorney Anmau astutely pointed out that a rule of law society is not simply forged in writing. So what, then, are the recognizable and least controversial features of a rule of law society? A minimalist conception of the rule of law holds that authority should be exercised according to constitutional principles, public norms, or the expressed limits of law.<sup>34</sup> The rule of law also applies to citizens, providing them with an accessible guide for action, and equal legal protection against the state or other citizens.<sup>35</sup> This requirement of accessibility is of particular importance for the purposes of the paper. The goal of this project is not simply to view the rule of law as an aspirational principle. Rather, it is important to understand the demands that the rule of law imposes on state institutions and citizens, so that citizens can

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<sup>33</sup> The Constitution of the Republic of the Philippines, 1987 (PH), Preamble.

<sup>34</sup> Jeremy Waldron, “The Rule of Law” (2016) Stanford Encyclopedia of Philosophy (<http://plato.stanford.edu/archives/fall2016/entries/rule-of-law>)

<sup>35</sup> Lon Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), at 39.

interpret what is expected of them, and are better positioned to make intelligible claims against the state.

In “Competing Definitions of the Rule of Law”, Rachel Kleinfeld points to the general tendency to reduce the rule of law to the creation and maintenance of institutions without attending to their historical contexts, their intended goals, or their effect on other institutions and actors.<sup>36</sup> The Philippines passes laws democratically and ratifies many international treaties, yet struggles with proper implementation and consistent enforcement. At the time of writing (December 2016), the Philippines is set to reinstate the death penalty, which would conflict with their international obligations that stem from the ratification of the International Covenant on Civil and Political Rights.<sup>37</sup> <sup>38</sup> Critical of this generally tendency towards the rule of law, Kleinfeld writes:

“[A] ... conversation has emerged in which the rule of law is defined not by the end purposes it is to serve in society but by what I will call its ‘institutional attributes’. Creating the proper institutional attributes — the “necessary” laws, a “well-functioning” judiciary, and a “good” law enforcement apparatus — has become, for many practitioners, the goal of rule-of-law reform efforts ... “[W]hether institutions are properly aligned or not cannot be measured by considering the state of the institution itself; the measurement only makes sense against the end(s) the institution is intended to serve”.<sup>39</sup>

Kleinfeld illustrates that there is a great emphasis on the form or features of law (“institutional attributes”) and perhaps a disregard for the impact that law has on society through proper promulgation. A country might democratically pass bills in the legislature or actively participate in the creation of international standards, but laws will fail to be understood by the public, or free of contradiction, for example, if poor implementation and inconsistent

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<sup>36</sup> Rachel Kleinfeld, “Competing Definitions of the Rule of Law” in *Promoting the Rule of Law Abroad: In Search of Knowledge*, by Peter Carothers. (2006), Washington, DC.: Carnegie Endowment for International Peace, at 34.

<sup>37</sup> “Philippines: Don’t Reinstate Death Penalty”, *Human Rights Watch* (3 December 2016), online: <<https://www.hrw.org/news/2016/12/03/philippines-dont-reinstate-death-penalty>>.

<sup>38</sup> ICCPR: The Second Optional Protocol to the ICCPR states that “no one within the jurisdiction of a State Party to the present Protocol shall be executed” and that “each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction.”

<sup>39</sup> Rachel Kleinfeld, “Competing Definitions of the Rule of Law” in *Promoting the Rule of Law Abroad: In Search of Knowledge*, by Peter Carothers. (2006), Washington, DC.: Carnegie Endowment for International Peace, at 34.

enforcement causes citizens to have major misunderstandings about their intended impact.<sup>40</sup> When Adrian Chen from the New Yorker asked Gwen Pimentel-Gana (Head of a task force to investigate extrajudicial killings) whether Duterte's speeches promote extrajudicial killings, she was unsure: "It's so difficult sometimes to try to interpret what he's saying, because one time he says 'I'm not for human rights.' The next time he says, 'All those who are abusing their authority will be punished.'".<sup>41</sup>

Given the public's confusion regarding Mr. Duterte's conflicting boilerplate political statements, how can we define the relationship between the Philippine government and the rule of law? Duterte's many clashing statements in formal addresses and off-hand media statements demonstrate the belief that the rule of law is nothing more than a political and rhetorical tool. As mayor of Davao city, Duterte was apparently faced with the decision to "'innovate' the rule of law or let his people suffer because 'shabu was flowing in and out'".<sup>42</sup> Duterte's use of the rule of law is more aptly described as rule *by* law.<sup>43</sup> As I have been suggesting, rule of law is meant to delimit the powers of state actors. Rule *by* law, on the other hand, is understood as using law, for example, as an instrument for enlarging a government's powers without allowing other institutions and actors the opportunity to carry out their role of monitoring and limiting the government's influence.<sup>44</sup> This last point is well demonstrated in Duterte's idea that *he alone* should have the power and discretion to "innovate" the rule of law. His statement gives audiences the impression that the rule of law can and should be appropriated to the state's purposes, when in reality, it is supposed to govern the state's activity. Rule *by* law is not necessarily a rejection of democratic ideals or the legal system *per se*, but demonstrated in the

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<sup>40</sup> Lon Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964), at 39.

<sup>41</sup> Adrian Chen, "When A Populist Demagogue Takes Power", *The New Yorker* (21 November 2016), online: <<http://www.newyorker.com/magazine/2016/11/21/when-a-populist-demagogue-takes-power>>.

<sup>42</sup> Yuji Gonzales, "Duterte: Sometimes the Rule of Law Can Be a Stupid Proposition", *Inquirer.Net* (14 November 2016), online: <<http://newsinfo.inquirer.net/844177/duterte-sometimes-rule-of-law-can-be-stupid-proposition>>.

<sup>43</sup> Jeremy Waldron, "The Rule of Law" (2016) *Stanford Encyclopedia of Philosophy* (<http://plato.stanford.edu/archives/fall2016/entries/rule-of-law/>)

<sup>44</sup> *Ibid.*

example above, it may lead to governments abdicating their roles, ultimately creating weaker relationships between state institutions and citizens.<sup>45</sup>

I raise these points to initiate a comparison between the basic preconditions for a rule of law society and the rule of law situation in the Philippines, primarily focusing on extrajudicial killings. After discussing the intended functions of rule of law institutions, it becomes clearer why extrajudicial killings in the Philippines are a violation of the rule of law. They are a violation because they are an exercise of power that oversteps the judiciary's constitutional role to afford due process, by instead favoring ruthless killings that are driven via suspicion and trials by publicity. As mentioned before, the public's (passive) support for extrajudicial killings can arise when an influential Duterte denigrates constitutional guarantees (right to a presumption of innocence; judicial independence) and human rights (civil and political liberties) for their supposed role in 'protecting criminals' and maintaining the status quo.<sup>46</sup> This passive support is well captured by another statement by Pimentel-Gana to the New Yorker's Adrian Chen:

“I will talk like a Filipino, O.K.?’... ‘An ordinary worker—he goes home every night and, for the first time, when he passes through the narrow streets of his home in a shanty or what, he does not see any more drunkards or people smoking on the streets or children running around and being just left there, abandoned. He sees clean streets, peaceful at night. What would you say?’”<sup>47</sup>

I have argued that the rule of law does not depend on how a particular government defines it. We have been extracting from the concept of the rule of law a set of aims and values that highlight the importance of civic participation. These aims and values establish that civic participation in the rule of law is possible and crucial against a repressive government that misappropriates or vehemently rejects the notion. In the final section of the paper, I will argue that human rights education in the Philippines, with a proposed method (popular education) and a defined but inclusive set of actors (alternative lawyers, citizens, NGOs, CSOs, etc.), is an effective mechanism for organizing against state. To be effective, human rights education will

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<sup>45</sup> *Ibid.*

<sup>46</sup> Ananya Roy, “Duterte Threatens to include Human Rights Activists in Kill List if Drug Menace Worsens”, *International Business Times* (29 November 2016), online: <<http://www.ibtimes.co.uk/duterte-threatens-include-human-rights-activists-kill-list-if-drug-menace-worsens-1593936>>

<sup>47</sup> Adrian Chen, “When A Populist Demagogue Takes Power”, *The New Yorker* (21 November 2016), online: <<http://www.newyorker.com/magazine/2016/11/21/when-a-populist-demagogue-takes-power>>.

have to focus on promoting collective actions that put citizens in contact with the state in strategic ways.

### **Part 3: Human Rights Education's Ability to Address Extrajudicial Killings (The Method)**

My first encounters with the Ateneo Human Rights Center's model of human rights education were through several nervous moments during the Orientation Retreat of the AHRC's flagship internship program. The stories, lectures, workshops, skits, mock trials, dances, and festivities were moments in my legal education that initiated in me what Professor Kenneth Winston calls a process of "learning and unlearning".<sup>48</sup> This process was a test of a person's ability to change their character, with a particular focus on moving beyond the conservatism and apprehensions of the legal stream. The tools of human rights education are largely experiential in nature, come through interactions with the marginalized, are learned through a trial-and-error method of tailoring your approach, and sometimes (often) come into conflict with conventional law school wisdom. For this reason, I will develop on the method of human rights education, namely popular education, with a focus on revisiting the stories and successes of stakeholders. The goal is to examine the avenues and the added value of collaboration between groups, before launching into a discussion on how human rights education can begin to address the issue of extrajudicial killings.

One of the explicit aims of the Orientation Retreat is to set aside the technicalities of law, and help students develop emotional responses and insights that are tailored to the circumstances of the communities they serve. Setting aside the technicalities of law is not meant to devalue legal expertise. Contrarily, the point is to combine a mastery of law with the emotional intelligence needed to present legal problems in ways that encourage engagement and interdisciplinarity. The workshops on statelessness, agrarian reform and the migrant worker sector were glimpses of alternative lawyering in practice: working *with* clients, and not *for* clients. A commitment to working *with* clients was shown to go as far as marching close to 2000

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<sup>48</sup> Kenneth Winston, "Moving Beyond the Rhetoric: Lessons and Experiences" (Workshop for the Institute for the Study of International Development delivered at McGill University, 23 November 2016), [unpublished].

kilometers with the farmers of Sumilao.<sup>49</sup> The lawyers involved in the farmer's case participated in the Sumilao "Walk for Land, Walk for Justice March" to the Office of the President in February 2007.<sup>50</sup> The march was the culmination of roughly ten years of extra legal activities, including hunger strikes during different administrations (Ramos, Estrada), a camp-out in front of the Supreme Court after unsuccessful legal action, and a tragic farmer suicide.<sup>51</sup> All of these moments constitute an effort to bring attention to the Department of Agrarian Reform's (DAR) utter failure to address landlessness through a legislative act<sup>52</sup> to abolish feudal land tenure. Negotiations between the church, farmers and the land possessors (San Miguel Corporation) were successful.<sup>53</sup> The farmers were able to rightfully claim the 144 hectares of land, and Congress approved a reform and five year extension of the CARP.<sup>54</sup>

The Sumilao Farmers' March is one example of how AHRC is challenging the conventional understanding of a lawyer's role, by re-imagining the definition of a "client", and changing views on what is deemed an appropriate or desirable level of collaboration between lawyer and client. This high degree of collaboration between lawyer and client is best captured by the words of Sir Marlon Manuel, National Coordinator of the Alternative Law Group, lawyer *with* the Sumilao farmers, and former AHRC intern:

"Alternative lawyers are swimmers against the tide. They test the water, they dip into the water, and they swim. And while swimming, they call others to join them, even those who cannot swim. They continue to swim, they continue to call others, and they feverently hope (dream) that, with enough swimmers in the water, they can turn the tide... "The objective... is not really to teach swimming, but to simply encourage dipping into the water".<sup>55</sup>

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<sup>49</sup> YouTube "*Abogado Ng Bayan / Lawyer for the People*" (07 September 2008), online: YouTube <<https://www.youtube.com/watch?v=xnzLzLjRHAc>>.

<sup>50</sup> "Twenty Years of Non-Violent Protest to Benefit from the Comprehensive Agrarian Reform", International Land Coalition 4 (<http://www.landcoalition.org/sites/default/files/documents/resources/c0050-pakisama-philippines-en-v20150429.pdf>).

<sup>51</sup> *Ibid* at 3-4.

<sup>52</sup> The 1988 Comprehensive Agrarian Reform Act (CARP).

<sup>53</sup> "Twenty Years of Non-Violent Protest to Benefit from the Comprehensive Agrarian Reform", International Land Coalition 5 (<http://www.landcoalition.org/sites/default/files/documents/resources/c0050-pakisama-philippines-en-v20150429.pdf>).

<sup>54</sup> *Ibid* at 5.

<sup>55</sup> *Training Manual for Paralegals* (Manila: Ateneo Human Rights Center, 2010) at 9.

At first glance, alternative lawyering might appear to be identical to the emerging Western concept of “client-centered” or “client-oriented” lawyering. In “Client-Centered Lawyering - What It Isn’t” Monroe Freedman distinguishes “client-oriented lawyering” from the errors of the the conventional Western approach: “The lawyer is to ‘assist[] clients to maximize their autonomy,’ and the lawyer acts ‘unprofessionally and immorally’ by ‘preempting [a client’s] moral decisions’.”<sup>56</sup>

The goal of “client-oriented” lawyering is to maximize the autonomy and participatory power of the client by recognizing that the decision is ultimately theirs. For example, at the start of a divorce settlement, a “client-oriented” lawyer might ask the parties whether there is a chance of reconciling the marriage, and handling their affairs internally, before the lawyer assumes a dominant role in the divorce proceedings. Bettinger-Lopez also writes on a “client-oriented” approach to lawyering with respect to its capacity to reimagine the legal field:

“[L]awyering success is not measured by whether a case is won. It is rather measured by such factors as whether the case widens the public imagination about right and wrong, mobilizes political action behind new social arrangements, or pressures those in power to make concessions.”<sup>57</sup>

Bettinger-Lopez’s passage greatly contributes to this discussion by acknowledging that “client-oriented” lawyering requires us to rethink the practices, aspirations, functions, and limits of the legal practice. It is an affront to a client’s dignity to assume the role of a paternalistic professional who deems it sees it her/his duty to lead a client by the hand to a court victory. Instead, a “client-oriented” lawyer, like the alternative lawyer, collaborates with clients to develop a more accessible and inclusive approach to the justice system.

Despite the striking similarities however, there is a crucial difference between the *client-oriented approach* and *alternative lawyering* that was demonstrated in the lawyers’ solidarity march with the Sumilao farmers. The “client-oriented approach” motivates self-assessment and considers how cases can alter the attitudes of the public. But more than this, alternative law aspires to be a positive force in creating a society where citizens can take steps towards

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<sup>56</sup> Monroe Freedman, “Client-Centered Lawyering-What it Isn’t” (2011) 40:2 Hofstra Law Review 353-4.

<sup>57</sup> Carol Bettinger-Lopez et al., “Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice” (2011) Faculty Scholarship 387.

empowerment without the need of a lawyer.<sup>58</sup> The Sumilao farmers marched when the legal process failed them, and their lawyers marched with them, even though their intervention as lawyers *qua* lawyer was no longer needed. Alternative lawyers are not just seeking remedies or precedents within the legal system because they are aware of the system's inability to maintain the dignity of the marginalized. Correspondingly, alternative lawyers aim to work out of court and on the ground through engagements between the marginalized and the state, because "[o]ne cannot appreciate what it is like unless you experience what the marginalized, underprivileged and vulnerable go through".<sup>59</sup> Simultaneously, the alternative lawyer masters the art of ambivalent advocacy that moves people outside a rigid legal realm to mitigate their presence as lawyers, while not inserting themselves when other voices can speak 'louder'.<sup>60</sup> This is a recognition of human rights as a sphere where many different skills, experiences, and knowledge bases are needed to make critical decisions moving forward.<sup>61</sup> This also ties in with Kenneth Winston's idea of cultivating the ability to provide "expertise without authority".<sup>62</sup> While marching with the the Sumilao Farmers, Attorney Marlon Manuel notes: "You cannot just be [on] the sidelines; you cannot just be watching. And you cannot be at the forefront; you cannot be doing all the work. It is always walking *with* the poor. It is always working *with* the poor".<sup>63</sup> To give voice to rural communities, for instance, it is important not to exercise the kind of authority that characterizes a conventional relationship between lawyer and client. Rather, facilitating empowerment and agency requires a different relation between expertise and power, one that is not often explored or engaged with in law school curriculums. In the next section, I critique the interrelation between power and expertise in the conventional practice of law through human rights education's method: popular education.

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<sup>58</sup> *Training Manual for Paralegals* (Manila: Ateneo Human Rights Center, 2010) at 9.

<sup>59</sup> "Alternative Lawyering is Empowering and Mainstream", (30 September 2011), online: <http://www.fnf.org.ph/news/alternative-lawyering-empowering-mainstream.htm>.

<sup>60</sup> Carol Bettinger-Lopez et al., "Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice" (2011) Faculty Scholarship at 379.

<sup>61</sup> *Ibid.*

<sup>62</sup> Kenneth Winston, "Moving Beyond the Rhetoric: Lessons and Experiences" (Workshop for the Institute for the Study of International Development delivered at McGill University, 23 November 2016), [unpublished].

<sup>63</sup> YouTube "*Abogado Ng Bayan / Lawyer for the People*" (07 September 2008), online: YouTube <<https://www.youtube.com/watch?v=xnzLzLjRHAc>> at 00h: 02m: 52s.

## *Popular Education, and its Connection to Alternative Lawyering*

The Orientation Seminar was also where we, as a group of law interns, started paying attention to the kinds of collaborative relationships that “popular education” can create between alternative lawyers, clients, communities, and society at large. In a workshop on popular education curriculums, Atty. Anmau fittingly started her presentation by explaining that like the law, popular education is a troublingly unclear concept to put into practice. Working through a Wikipedia definition of popular education<sup>64</sup> as a group, we found that the definition was too vague to be meaningful. Then looking at definitions of popular education from other NGOs in North America/Europe, we found that these definitions<sup>65</sup> were too specific to the Western context to be applicable to Filipino society. After conducting workshops involving mock clinical scenarios between lawyers, state actors, the heads of corporations, and marginalized groups, it became clearer that AHRC was seeking to establish a shifting definition of popular education that captures their aims, but leaves enough room to allow other groups and actors to expand the concept. We settled on the fact that popular education is a concept that seems like a ‘wrapper’ for a range of elements and practices; it is a locally defined concept that is developed and populated by the participants of an ongoing, shifting process.

According to the AHRC *Training Manual for Paralegals* the word “popular” in popular education signifies “a priority... to work among the poor who form the vast majority of people in most Third World countries”.<sup>66</sup> The word “education” in popular education means a “collective or group process of education where the teacher and students learn together beginning with the concrete experience of the participants, leading to reflection on that experience to effect positive change”.<sup>67</sup> It should be emphasized that this definition does not, and realistically could not, capture all the crucial elements and additional lessons that stem from carrying out popular education in practice. A central yet unarticulated component of AHRC’s work is a commitment to counteracting formalistic methods and harsh outcomes that are found in the hierarchical world of law: “to be effective... trainers must understand the plight and

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<sup>64</sup> For more information, please visit: <[https://en.wikipedia.org/wiki/Popular\\_education](https://en.wikipedia.org/wiki/Popular_education)>.

<sup>65</sup> For more information, please visit <<http://www.practicingfreedom.org/offerings/popular-education>>.

<sup>66</sup> *Training Manual for Paralegals* (Manila: Ateneo Human Rights Center, 2010) at 75.

<sup>67</sup> *Ibid* at 75.

problems of their target audience... and get an insight into their learning process”.<sup>68</sup> Due to insufficient exposure to development work in different sectors, lawyers and law students often lack the ability to relate and be relatable to their target audiences.<sup>69</sup> This is, in part, because they are not trained to impart skills and knowledge to non-lawyers, despite ironically being part of a professional class that regularly interacts with the public. Lawyers learn through largely through the tools of judicial reasoning: principles, categories, legal tests, etc. Conversely, farmers develop their expertise through concrete experience.<sup>70</sup> Popular education “serves as a bridge between...the world of law and the world of the disempowered who are alienated from it”.<sup>71</sup> Building close relationships with rural groups, for instance, will likely involve “unlearning” one’s professional and education background to be able to engage with others on their terms and “learn” through shared experiences.<sup>72</sup>

In the context of my internship, that process meant engaging with Jeepney drivers, adopting many of the local customs, being open to learning a new language, trying to avoid scrutinizing unfamiliar situations with rose-colored glasses, etc.<sup>73</sup> The values and skills gained from these experiences cannot be imparted conceptually; they require a high degree of practice and attention to situational, shifting details. This requires one to engage with a targeted audience, as opposed to merely engaging with their problem(s), or carrying out clinical exercises where one simply imagines another person’s response to a certain situation. Conversations are not always initiated by shaking hands, nor do they abruptly lead into the legal issue: “*So, tell me about your problem?*”. How you approach a client can depend on several factors, including their age (especially in the case of children), their body language, and the nature of the dispute. I have heard conversations begin with, “*Kumain ka na ba?*” (Have you eaten yet?), which is a common

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<sup>68</sup> *Ibid* at 74.

<sup>69</sup> *Ibid*.

<sup>70</sup> *Ibid*.

<sup>71</sup> *Ibid*.

<sup>72</sup> Kenneth Winston, “Moving Beyond the Rhetoric: Lessons and Experiences” (Workshop for the Institute for the Study of International Development delivered at McGill University, 23 November 2016), [unpublished].

<sup>73</sup> Shin, Imai, “A Counter-pedagogy for Social Justice: Core Skills for Community Lawyering” (2002) 9.1 Clinical Law Review 220.

(and friendly) way of saying “Hello” in the Philippines. A seemingly simple everyday activity like gathering around a table to eat is an excellent way to shed difference between strangers.

As I previously suggested, the process of popular education can go beyond the relationship between a lawyer and client. One organization I mentioned at the start of the paper, the *Humanitarian Legal Assistance Foundation* (HLAF), works in conjunction with local governments<sup>74</sup> for expedited due process through a jail decongestion project. HLAF frequently visits Quezon City Jail in Metro Manila, the most overcrowded prison in the country.<sup>75</sup> The jail was designed to house eight hundred inmates, but it currently holds four thousand and counting, with sixty percent of inmates in for drug-related offenses.<sup>76</sup> Photos shared on international media in early August (2016) show prisoners sleeping on every foot of spare surface, including stairwells, and sometimes resorting to sleeping on top of one of another.<sup>77</sup> One of HLAF’s initiatives aims to expedite the judicial procedure by teaching keen prisoners to be resident paralegals who help file petitions, gather evidence, and inquire about the case at different stages of the process. It is borne out of the unfortunate reality that there are simply not enough resources available to provide detainees with a robust defense in a reasonable amount of time. Detainees wait years, sometimes decades, for a verdict since trials are many months apart. HLAF lawyers create bonds of trust with the detainees, and in turn, many detainees work to make the legal realm less daunting and more accessible for those around them for whom justice is stalled. The HLAF jail decongestion program could not be carried out as effectively without the efforts of prisoners. Still, those acquitted often face the second hurdle of having to overcome the stigma or presumption of criminality. In response to this, HLAF is trying to extend their advocacy of preparing inmates for reintegration into society. HLAF’s work not only shows how the definition of a client is widened by a popular education mandate. It equally demonstrates how

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<sup>74</sup> “Pililia Mayor Expresses His Interest In Partnering With HLAF” (01 September 2016), online: <<http://home.hlaf.org.ph/index.php/cra/57-pililia-mayor-expresses-his-interest-in-partnering-with-hlaf>>.

<sup>75</sup> Euan McKirdy, “Life Inside the Philippines’ Most Overcrowded Jail”, *CNN* (23 August 2016), online: <<http://www.cnn.com/2016/08/21/asia/philippines-overcrowded-jail-quezon-city>>.

<sup>76</sup> *Ibid.*

<sup>77</sup> Andrew Katz, “This Photograph Makes Life Inside a Philippines Jail Look Like Dante’s ‘Inferno’”, *TIME* (3 August 2016), online: <<http://time.com/4438112/philippines-overcrowded-prison-manila-rodrigo-duterte>>.

an alternative lawyer's mandate is not limited to end of a trial, and is also concerned about what happens past that point.<sup>78</sup>

When the corrosion of rule of law institutions takes place, stakeholders need a method for finding solutions *with* people. Popular education as an arm of human rights education builds a collective knowledge base starting with the realities for actors on the ground.<sup>79</sup> As we have seen, this may involve advocacy sessions where people work (farms), or where they struggle (prisons). One thing is certain: if human rights education is to be a tool for activism, it cannot be conceived of as a mere tool for the classroom:

“Unlike the classroom teacher who works in the contained environment of a classroom and follows a formal curriculum of subjects arranged and taught according to a traditional structure, the trainer or facilitator undertakes to impart knowledge in a less formal atmosphere of adult learners who have different needs” .<sup>80</sup>

I argued that human rights education, through the method of popular education in particular, may act as tools for civic participation and engagement when legal avenues are blocked or exhausted. The question I end the paper with is the one I have setting us up to answer: How does civic participation and effective action against extrajudicial killings take root in human rights education? This could be more bluntly posed as: How does one engage with an oppressive state through the tools of human rights education without being captured?

## ***Human Rights Education As A Tool Against State Oppression and Extrajudicial Killings***

### **AHRC's Modus Operandi**

Ateneo Human Rights Center is comprised of only a handful of lawyers, yet they invite a large and diverse set of participants to take part in their mandates. These invitations are meant to widen the sphere of participation when there is a need for action on issues that go beyond just affecting the AHRC. This method of multiplying in numbers prompts the AHRC to revise

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<sup>78</sup> “HLAF Extends Their Advocacy of Preparing Inmates for Reintegration Phase” (08 November 2016), online: <<http://home.hlaf.org.ph/index.php/fred/71-hlaf-extends-their-advocacy-of-preparing-inmates-for-reintegration-phase>>

<sup>79</sup> *Training Manual for Paralegals* (Manila: Ateneo Human Rights Center, 2010) at 63.

<sup>80</sup> *Ibid* at 63.

their mandate when they are met with problems or solutions they have not yet considered. AHRC is the Secretariat for an ASEAN Human Rights Mechanism.<sup>81</sup> This puts the Center in close contact with many government and non-government organizations across Southeast Asia. As a result, AHRC has considerable clout, as well as the capacity to expand the points of contact with the Philippine state, and the international community. This might, in practice, grant participants a voice that extends beyond the country's borders, and provide a general safeguard under the banner of the AHRC. The Philippine Commission on Human Rights also grants AHRC the power to bring together the country's major NGOs as Secretariat of the Alternative Law Groups (ALG), for the goal of putting collective pressure on the government.<sup>82</sup> However, when it comes to pressure tactics, the goal is not to vehemently reject and alienate every government institution and actor. Putting pressure on the government is rather about finding the most strategic platform or department to raise concerns, depending on the nature of the concern and the groups that are personally affected. This process as a whole might involve a "partial engagement" (to borrow Aruna Roy's words) with the state: an arrangement that does not necessitate groups being in total agreement in order to carry out a mandate together on the basis of some common interests.<sup>83</sup>

In criticism of AHRC's vision for increased participation through human rights education, one might question whether this approach assumes way too much on the part of citizens to be interested in a heightened form of participation and mobilization. In response, I would point out that one purpose of AHRC's human rights education model is to extend the surface area of the state, and promote a higher level of engagement with the state with legal sophistication, so that people have a genuine opportunity to participate. The AHRC's role in human rights education is not to impose a mandate, but to create opportunities for citizens to come together to address a social need or a societal wrong. Corpses lying on the street in packing tape are becoming a common scene and the threat is serious enough that close to 700,000 Filipinos have

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<sup>81</sup> For more information, please visit: <<http://www.ateneo.edu/ateneo-human-rights-center>>

<sup>82</sup> For more information, please visit: <<http://alternativelawgroups.ph/>>/

<sup>83</sup> Aruna Roy, "Dialogue on Social Activism: Aruna Roy and Vrinda Narain" (Annie MacDonald Langstaff Workshop, Faculty of Law, McGill University, 14 October 2016) [unpublished].

surrendered in plain fear of being murdered in cold blood, along with their families.<sup>84</sup> Duterte calls on average citizens to kill anyone they know involved in drugs.<sup>85</sup> Given the pervasiveness of this issue and uncertainty of who will be affected, there are good reasons for people to stand up to this problem.

A considerable part of the paper has been dedicated to seeing how the methodology of human rights education is employed on the ground. This was important because the basic tenets of human rights education (inclusion through collaboration; reimagining relationships that are traditionally hierarchical; advocacy outside the courtroom etc.) are mere guidelines; it is still crucial to attend to the circumstantial factors that underpin the relationships of collaboration we hope to create. I will propose that in addition to an inclusive and imaginative method, human rights education also requires content. Thus, I end the paper by advancing potential topics grounded in information that is meant to contextualize abstract principles such as the rule of law or the separation and scope of constitutionally granted powers. My selection is informed by my experiences at the AHRC, but also in light of the serious issue of misinformation in the Philippines that is only exacerbated by those who are either paid to be in Duterte's "keyboard army"<sup>86</sup>, paid to invent "news" (de Lima elected as UN Secretary-General?<sup>87</sup>), or by those who demonstrate a general lack of journalistic integrity. In defending my selection of starter topics, I should point out that while human rights discussions aim to be inclusive, they do not aim to be neutral, or to give each party an equal say. In the words of Liam Kane:

"What distinguishes popular education from 'adult', 'non-formal', 'distance', or 'permanent education', for example, is that in the context of social injustice, education can never be politically neutral: if it does not side with the poorest and marginalised sectors- the 'oppressed' – in an attempt to transform society, then it necessarily sides

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<sup>84</sup> Vasudevan Sridharan, "Philippines: Duterte jokes he cannot kill all 700,000 Drug Pushers who Surrendered", *International Business Times* (19 September 2016), online: <<http://www.ibtimes.co.uk/700000-drug-pushers-surrender-philippines-duterte-says-i-cant-kill-them-all-because-report-1581998>>.

<sup>85</sup> "UN Rights Experts Urge Philippines to End Wave of Extrajudicial Killings Amid Major Drug Crackdown", *UN News Centre* (18 August 2016), online: <<http://www.un.org/apps/news/story.asp?NewsID=54707-WFEHNKIrkTd>>.

<sup>86</sup> Rizal Reyes, "Money and Credulity Drive Duterte's 'Keyboard Army'", *Business Mirror* (27 November 2016), online: <<http://www.businessmirror.com.ph/money-and-credulity-drive-dutertes-keyboard-army>>.

<sup>87</sup> For more information, please visit: <<http://theguardian.com/breaking-leila-de-lima-elected-as-the-new-un-secretary-general>>

with the 'oppressors' in maintaining the existing structures of oppression, even if by default".<sup>88</sup>

### *Human Rights Education Discussion Recommendations*

There is the often asked question that usually initiates conversation that falls into the depths of political rhetoric: Why should I care about extra-judicial killings if I am not engaged in criminal activity?, especially since Duterte has assured the public that "you won't be killed if you don't do anything wrong?". One consideration to bear in mind is there is no real way of telling whether Duterte's victims are guilty, since they have never faced a day in court, let alone faced charges. Duterte's 'shoot first, ask later' policies, which includes the establishment of a publicly accessed "hit-list", promotes a justice system that functions as trial by publicity, and is sustained by media sensationalism, misinformation about the role of government, and personal biases.<sup>89</sup> A report submitted by Father Amado Picardal shows that none of the 1424 suspects killed by Duterte's Davao Death Squads during his mayor reign from 1998 to 2015 were charged in court either.<sup>90</sup> Furthermore, the accusations did not operate on hard evidence, and police officers had often failed to seriously investigate summary executions.<sup>91</sup> Human Rights Watch reported (2009) that acting and retired Davao city police officers had a hand in targeted killings, providing photos and other useful information to death-squad gunmen.<sup>92</sup> Furthermore, suspected criminals are not the only target of extra-judicial killings. Duterte has been quick to discredit dissenting journalists, and he publicly supports the very same lethal tactics to suppress journalists that were employed during the reign of the Marcos dictatorship.<sup>93</sup>

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<sup>88</sup> Liam Kane, "Popular Education and Social Change in Latin America", (Nottingham, 2001) at 9.

<sup>89</sup> Tom Smith, "The Kill List: How the Philippines' Leader is Letting People Get Away With Murder", *The Guardian* (9 August 2016), online: <<https://www.theguardian.com/commentisfree/2016/aug/09/kill-list-philippines-duterte-mass-murder-china-united-states-rivalry-war-on-drugs>>.

<sup>90</sup> Rigoberto Tiglao, "Duterte Kills Only Bad Men", *The Manila Times* (01 May 2016), online: <<http://www.manilatimes.net/duterte-kills-only-bad-men/259609>>.

<sup>91</sup> "You Can Die Any Time: Death Squad Killing In Mindanao", Human Rights Watch (6 April 2009), online: <<https://www.hrw.org/report/2009/04/06/you-can-die-any-time/death-squad-killings-mindanao>>.

<sup>92</sup> *Ibid.*

<sup>93</sup> Robert Sawatzky, "Duterte Says Killing of Corrupt Philippines Journalists Justified", *CNN* (1 June 2016), online: <<http://edition.cnn.com/2016/05/31/asia/philippines-duterte-journalists>>.

## **The War on Drugs Affects Everyone, But Has A Disproportionate Effect on the Poor**

Duterte openly encourages the execution of suspected offenders, without taking into consideration their socio-economic circumstances, or the severity of their alleged crime.<sup>94</sup> Duterte's threats to kill target the public at large, but his drug wars policies in practice seem to have a disproportionate effect on the poor:

“In affluent neighborhoods of gated communities and estates, there is, indeed, sometimes a polite knock on the door, an officer handing a pamphlet detailing the repercussions of drug use to the housekeeper who answers. In poorer districts, the police grab teenage boys and men off the street, run background checks, make arrests and sometimes shoot to kill”.<sup>95</sup>

The link between poverty and criminality is well established; many countries depend on employment programs to rehabilitate citizens that would otherwise fall into a life of crime due to a lack of education and economic opportunities.<sup>96</sup> Duterte spent much of his electoral campaign differentiating himself from the political elite, and his subsequent victory was declared by commercial broadcast network ABS-CBN to be a “triumph of the people”.<sup>97</sup> At first blush, this might seem true given the media's reporting of his wish to sit and eat with the poor in the Presidential Palace, or his administration's ambitious goal to lift nine million Filipinos out of poverty.<sup>98</sup> <sup>99</sup> However, in the same breath, he insensitively and misguidedly proclaims that

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<sup>94</sup> Daniel Brehulak, “They Are Slaughtering Us Like Animals”, *The New York Times* (7 December 2016), online: <<http://www.nytimes.com/interactive/2016/12/07/world/asia/rodrigo-duterte-philippines-drugs-killings.html>>.

<sup>95</sup> *Ibid.*

<sup>96</sup> Lawrence Sherman et al. “Preventing Crime: What Works, What Doesn't, What's Promising” (1998) National Institute of Justice.

<sup>97</sup> “Duterte Victory is Triumph of the People”, *ABS-CBN News* (28 May 2016), online: <<http://news.abs-cbn.com/halalan2016/nation/05/27/16/duterte-victory-is-triumph-of-the-people>>.

<sup>98</sup> Ghio Ong, “Duterte to Open Palace Gates to Poor”, *PhilStar* (2 July 2016), online: <<http://www.philstar.com/headlines/2016/07/02/1598757/duterte-open-palace-gates-poor>>.

<sup>99</sup> Prinz Magtulis, “Duterte Aims to Pluck 9M Pinoys From Poverty”, *PhilStar* (21 June 2016), online: <<http://www.philstar.com/headlines/2016/06/21/1595083/duterte-aims-pluck-9-m-pinoys-poverty>>.

poverty is never an excuse for committing a crime, and is now set to go through with his election promise to “restore the death penalty by hanging, especially if you use drugs”.<sup>100</sup>

### **Whether Extrajudicial Killings Address the Root Cause of Criminality in The Philippines**

The installation of Death Squads in Davao during Duterte’s twenty year reign as mayor have not made it a crime free city, despite the insistence of Duterte and his supporters. While the locals of Davao feel that the streets of Davao are now far safer than they were before, the Philippine National Police still ranks Davao first among fifteen Philippine cities for murder and second for rape.<sup>101</sup> The current justice system’s failure to address and deter crime is not a problem with the rule of law *per se*, but rather with its full implementation and consistent enforcement. Furthermore, as we just established in the section above, addressing crime is not simply a question of effective deterrence. Addressing crime also requires a better understanding of the root causes in a society. The next topic will delve deeper into potential reasons for why many Filipinos are willing to live under a government that is unapologetically above the rule of law and has no interest in affording citizens’ certain fundamental human rights.

### **Human Rights, “Asian Values”, and the Legitimacy of Foreign Intervention**

Several Southeast Asian leaders (former leader of Singapore, Lee Kuan Yew, in particular) have claimed that Human Rights are Western-Centric, and do not apply to an Asia that is “regionally diverse”, and yet ironically unanimous in accepting that “individuals must put the state’s rights before their own”.<sup>102</sup> A close ally of Duterte’s, Greco Belgica, says “Duterte does not ... ‘give a shit’ about human rights, which he sees as a Western obsession that keeps the Philippines from taking the action necessary to clean up the country”.<sup>103</sup> There is an unchecked

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<sup>100</sup> “Poverty not an Excuse to Commit Crime - Duterte”, *GMA News* (18 May 2016), online: <<http://www.gmanetwork.com/news/story/566692/news/nation/poverty-not-an-excuse-to-commit-crime-duterte-shtash.hY5M7GCS.dpuf>>.

<sup>101</sup> Andrew Marshall, “Philippine Death Squads Very Much in Business as Duterte Set for Presidency”, *Reuters* (26 May 2016), online: <<http://www.reuters.com/article/us-philippines-duterte-killings-insight-idUSKCN0YG0EB>>

<sup>102</sup> Amartya Sen, “Human Rights and Asian Values” (1997) Morgenthau Memorial Lecture on Ethics and Foreign Policy (<http://www.carnegiecouncil.org/publications/archive/morgenthau/254.html>).

<sup>103</sup> Adrian Chen, “When A Populist Demagogue Takes Power”, *The New Yorker* (21 November 2016), online: <<http://www.newyorker.com/magazine/2016/11/21/when-a-populist-demagogue-takes-power>>.

assumption that the West is the point of origin for values like individual liberties and autonomy, and this story is perpetrated by countries' self-assigned mission to spread democracy across the world.<sup>104</sup> The American invasion of the Philippines has had a lasting effect on political and legal society, with a constitution and government that closely resembles the United States of America's. That said, Amartya Sen astutely points out that even if Western nations have been promoting human rights in Asia, that alone is no reason to deny Asians their social and political rights.<sup>105</sup> The Universal Declaration of Human Rights (UDHR) characterizes human rights as entities that depend on some shared aspect(s) that is foundational to our humanity.<sup>106</sup> As such, they are different from domestic laws and Constitutional rights, as they are guarantees that are supposed to transcend nationality, citizenship, and other state granted identities.<sup>107</sup> A state might dispute obligations towards individuals when it violates the life, liberty and security of a person (Article 3), but a state's operations do not alter the value of the right or the existence of the obligation.<sup>108</sup> Sen also argues that if rights outlined by the UDHR are deserving of universal recognition and protection, foreigners are not unjustified, *per se*, in intervening in situations where other individuals' rights are being violated.<sup>109</sup> Faced with condemnation from the international community for the mounting death toll of the drug war, Duterte hit back by reminding the European Union and the United States in particular of their own tarnished human rights records.<sup>110</sup> As mentioned by Sen, onus shifting and exchanges of political rhetoric between nations should not undermine the basic recognition and fulfilment of human rights obligations. That said, this basic recognition does not mean that everyone should intervene in

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<sup>104</sup> Sean M. Lynn-Jones, "Why the United States Should Spread Democracy" (1998) 98:07 Belfer Center for Science and International Affairs (QL).

<sup>105</sup> Amartya Sen, "Human Rights and Asian Values" (1997) Morgenthau Memorial Lecture on Ethics and Foreign Policy (<https://www.carnegiecouncil.org/publications/archive/morgenthau/254.html>).

<sup>106</sup> *Ibid.*

<sup>107</sup> *Ibid.*

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> Ted Regencia, "Philippines' Duterte unleashes more profanity at the EU", *AlJazeera* (21 September 2016), online: <<http://www.aljazeera.com/news/2016/09/philippines-duterte-unleashes-profanity-eu-160920193250592.html>>.

every instance, or that cultural barriers can be so easily dissolved, since foreign intervention can be intrusive and ineffective.<sup>111</sup>

## Conclusion

The goal of writing this paper is to employ AHRC's model of human rights education to inform direct action on the issue of extrajudicial killings. This model can serve as benchmark for collective action when the rule of law is severely hindered or bypassed by the state. As I have argued, a human rights education mandate cannot be crafted in the abstract; it is rather crucial to attend to the circumstantial factors that underpin the relationships of collaboration we hope to create. However, one recognized feature that is woven through the AHRC model is its priority in working *with* (and not *for*) the marginalized, by breaking down knowledge barriers and discussing problems in the context of shared experiences, skills and struggles. I also aimed to capture the ethos of this project in my writing style. To this end, I focused on contextualizing and enriching contested concepts such as the "rule of law", "extrajudicial killing" or "(popular) education" by placing them in the stories, dialogues, and narratives that brought them to life.

Accessibility is a critical theme in human rights education, and as I have demonstrated in the paper, a human rights education perspective will aim to emphasize aspects of the rule of law that promote civic participation. AHRC operates on a shifting definition and method of human rights education that can capture new problems and bringing together new voices. As I also showed, the AHRC promotes effective mean for countering the state. AHRC does this by putting groups in contact with the state through the most strategic platform for voicing their concerns. I end the paper by advancing potential topics grounded in information that is meant to contextualize abstract principles (the rule of law; the separation of powers). My selection is informed by my experiences at the AHRC, and my perspective on what I believe are relevant and pressing issues. My hope is that these recommendations prove to be constructive, or elicit constructive criticism; however, I am aware of the possibility that they might also provoke

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<sup>111</sup> Amartya Sen, "Human Rights and Asian Values" (1997) Morgenthau Memorial Lecture on Ethics and Foreign Policy (<https://www.carnegiecouncil.org/publications/archive/morgenthau/254.html>).

serious disagreement. Still, I cautiously advance them with Aristotle's notion of good judgment in mind: that acknowledging our own partiality is crucial for negotiating a concern for "one's own good" with our limited capacity for knowing "what is good for others".<sup>112</sup> As I have discussed through Amartya Sen, the universality of human rights provides foreigners a vantage point to be critical of restrictive regimes, and may lend legitimacy to a mandate to help those whose civil and political rights are being violated. However, for this mandate to have any correspondence with the ethos of human rights education, it must (at minimum) be conditional on, and circumscribed by, the welcome of affected groups. I sincerely thank AHRC and their coalition members for a warm welcome.

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<sup>112</sup> Jill Frank, "A Democracy of Distinction: Aristotle and the Work of Politics" (Chicago, 2005) at 94.

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