

# Kill Them All: The Government's War on Drugs

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“We will not stop until the last drug lord ... and the last pusher have surrendered or are put either behind bars or below the ground, if they so wish.”

— President Rodrigo Roa Duterte, Republic of the Philippines

## **I. Introduction: The Start of the War**

For decades that have passed, the Filipino people have been battling the war against the use and trade of prohibited, illegal drugs. It is that one fight that never runs out of fuel – with every generation being the platform of newer and far-developed line of dangerous narcotics. Seemingly, it can actually never be won or that probably most have given up on their hopes to deal away with the enigma. It then became part of some of the traditional households; driven with several other factors that induce one to play his part in the influx of drug use and in participating in the ever-growing enterprise of drug trade. One factor would be the severance of familial ties, a broken family or the set-up of estranged spouses affecting the emotional stability of their children. The resort to such use can also be attributed to unemployment, self-assessment of one's inclusion in the poverty sector, and a long line of list goes on. One can never really be sure. Regardless, has it been sufficient to lead our lives into its silent emotional, physical and mental demise?

### ***Drug Trade and Use in the Philippine Setting***

As concluded by the US State Department's 2016 International Narcotics Control Strategy Report, it was shown that shabu (street name for methamphetamine or meth) addiction is the most significant drug problem in the Philippines. It was further reported that the said narcotic is the most widely trafficked illegal drug in the country, with the businesses involved in it continually growing. A UN World Drug Report also declared the Philippines to have topped the list of countries in East Asia with the highest rate of shabu use – with even the Catholic Bishop's Conference of the Philippines (CBCP) expressing their concern about the proliferation of the drug problem and the alleged involvement of several high-ranking government officials.<sup>1</sup> And worse, this is just one of the many classifications of drugs that plague our very society. The increase in number of people trading and using cannot be denied. Its scope and reach cannot be quantified for even the supposed-to-be isolated prison facilities were infiltrated. The Philippines, as alleged, may be one infested with this kind of abhorrence.

### ***Drug Use in Numbers: Statistics of the Problem***

A 2008 survey was conducted by the Dangerous Drugs Board (DDB) which provided an estimated figure of 1.7 million drug users nationwide (1.9% of the 2008 population). Years thereafter, in 2012, the DDB in cooperation with the Philippine Normal University (PNU) initiated a new study which then gave them a lower figure estimated at 1.3 million (1.3% of the 2012 population) contrary to President Duterte's declaration in his first State of the Nation Address that there were around three (3) million drug addicts for the past two or three years.

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<sup>1</sup> Babe Romualdez, How Serious is our Drug Problem? (PhilStar Global), August 28, 2016, available at <http://www.philstar.com/opinion/2016/08/28/1617987/how-serious-our-drug-problem>

Nonetheless, the figures provided above shows an alarming rate of people engaging in the said unlawful activity.<sup>2</sup> A more recent statistic was provided by Dangerous Drugs Board on the drug use situation in the country giving us an approximately 1.8 million drug users out of the total populace of 100.98 million. It was in accord with the 2015 Nationwide Survey on the Nature and Extent of Drug Abuse in the Philippines presented by the same Board on September 19 of 2016.<sup>3</sup>

Furthermore, the seriousness of the problem was illustrated by information published by the Philippine Drug Enforcement Agency (PDEA), the primary agency that enforces laws against illegal drugs, indicating that around 8,629, or 20.51% of the country's 42,065 barangays are considered as drug-affected. With the National Capital Region (NCR) as the most affected, having a 92.10% of its barangays affected, followed by Region 4A at 33.78%, this fight is definitely far from over. Former PDEA Director General and Undersecretary Arturo G. Caccac Jr. explains how a barangay is considered drug-affected; it is when a drug user, pusher, manufacturer, cultivator, or other people involved in illicit drugs is present in such barangay or residing therein.<sup>4</sup> The figures shown is to give us a picture of the situation of the country prior to President Duterte's takeover.

### ***An Overview of What Has Been Done; What Should Be Done?***

The numbers clearly pose the issue at hand and the question raised is on how this can be resolved. Aptly, the drug menace can be identified not just as a social crisis but also one that may create a major political impact. The clamor to address the issue calls for actions both from the citizenry and that of the 3 great branches of the government - with the Executive department leading this fight. The decades of observation, formulation and policy-making with regard to the resolution of this matter should now be put into enforcement - one with force and utmost discipline. With knowledge of the current scenario of the Philippines and being aware of the inimical effects of illicit businesses, the President-elect Rodrigo Roa Duterte found it nothing but proper to make the matter on drugs on top of his agenda during his just started term. It is his desire to pull out all evils brought by this illegal business consuming the Filipino people from its very roots: Druglords, Narco Kingpins, Dealers, Traders, Pushers, and seek rehabilitation for small-time users. The President even called for these personas to surrender otherwise, the hunt shall begin; purging each and every person that would be caught engaging in these activities. Probably, at first, it was all but a show of power - an unsubstantial threat to assert his Presidency. We were wrong. It was a promise he ought to keep. News of death, killings, arrests, and voluntary submission to the police force [all related to drug use and trade] came one after another; a dark political lapse which we thought would eventually subside. It did not. The splurges of words coming from His Excellency were slowly being substantiated with actions. The cussing became a staple for the Filipinos' evening news broadcast - a surge of emotions overflowing from the President's passion to put an end to the rule of drugs over his people. Today and for the years yet to come, we can safely assume that this war is not yet to come to a wrap. Would it be bloody as claimed? It has already been and all we can do now is hope it gets better with time and within the bounds of our laws. It is definitely a dark time. But

<sup>2</sup> Students from University of the Philippines, EXPLAINER: How Serious is the PH Drug Problem? Here's the Data, August 27, 2016 (updated on September 19, 2016), available at <http://www.rappler.com/newsbreak/iq/144331-data-drug-problem-philippines>

<sup>3</sup> Jodesz Gavilan, DDB: Philippines has 1.8 Million Current Drug Users, September 19, 2016 (Updated on October 11, 2016), available at <http://www.rappler.com/nation/146654-drug-use-survey-results-dangerous-drugs-board-philippines-2015>

<sup>4</sup> Manny B. Villar, The Drug Problem and the Economy, June 15, 2015, available at <http://www.businessmirror.com.ph/the-drug-problem-and-the-economy/>

to whose time should be clouded with fear? The citizens whose right to due process have been allegedly violated or should the drug praisers be the one to start fearing for their lives and not let the opportunity for change slip away.

### ***The Real Question***

As emphasized by President Rodrigo Duterte in one of his speeches, he said “Kill them all (criminals).”<sup>5</sup> But the question that needs to be asked is how far will it go and within what limits would it be carried out with? In this article, the basic legal precepts related to the subject-matter at hand would be discussed. An overview of the “could-be” perpetrators of injustice, the reasons behind, and the President’s agenda would also be expounded along with the “possible” setbacks and aftermath of this fight against illegal and dangerous drugs.

## **II. The President’s War on Drug: Implications**

Not too long after President Duterte started his term, the government has ramped up its crackdown against illegal drugs. This started from news of the government’s efforts to produce a list of suspected people engaged in the illicit business of drug use and peddling, familiarly now as the “narco list,” to what turned out as primetime news of an already increasing number of death that could rival a battle field.

This part tackles notable implications of the administration’s war against drug, specifically, the freedom of speech granted to every critic and supporter; the pending Senate Bill 1134 of Sen. Richard Gordon; the “narco-list” of the police force; and the scrutiny of the international community on the Philippines’ iron-fisted policy against drugs.

### ***The Right to Speak***

Filipinos did not take the sudden reportage of bloodshed sitting down; or if they do, they take it to their social media accounts. Interestingly, the media platform as a go-to vent of expression is not alien to Filipinos as the Philippines has been dubbed the best in the world as regards social media networking.<sup>6</sup> Whether Facebook or Twitter, the tug-of-war of opinions thrive between those in favor and against the anti-drug campaign of the President; and, on one hand, those who panned the government as they created a link between the President’s policy in ridding the country of illegal drugs and the killings that happened almost every night and, on the other hand, those who supported the government in its crackdown against drug users and pushers even if it meant loss of lives.

So impassioned the Filipinos’ preoccupation on the President’s campaign against drugs and the soaring number of deaths that it had bitter effects on some social media users, who reported to have fallen out with friends, peers or even families because of varying opinions because of a verbal jousting online.

However, of all the social media movement that followed the heels of the President’s policy, most notable is the online petition to suspend the website of blogger Mocha Uson, a staunch political supporter of the Duterte administration.<sup>7</sup>

<sup>5</sup> Germalina Lacorte, Duterte on criminals: “Kill all of them” (Inquirer Mindanao), May 15, 2015, available at <http://newsinfo.inquirer.net/691527/dutertes-secret-in-keeping-davao-city-phs-safest-kill-criminals>

<sup>6</sup> Hugh Morris, Revealed: What each of the world’s countries are #1 for (The Telegraph), December 9, 2016 available at <http://www.telegraph.co.uk/travel/maps-and-graphics/mapped-what-the-worlds-nations-are-best-at/>

<sup>7</sup> Paul Quilet, Suspend Mocha Uson Blog (change.org), November 17, 2016 available at <https://www.change.org/p/suspend-mocha-uson-blog-now>

Isolating the petition to shut down the blog of Uson—and on a legal standpoint—this writer believes that the desire to silence Uson and to stop her from using her blog as a vehicle for her opinion infringes freedom of expression and speech. No matter how reprehensible it seems to naysayers that Uson is peddling fake news and twisting facts to rally for the sake of the President, so much so that she, through her blog, elicited alleged “unwarranted hate from the public [and widened] the rift between those who support the current administration and those who are critical of it,” the petition drips with want to curtail Uson’s constitutional liberty.

It is laid down in the landmark case of *Reyes v. Bagatsing*<sup>8</sup> that:

[F]ree speech, like free press, may be identified with the liberty to discuss publicly and truthfully any matter of public concern without censorship or punishment. There is to be then no previous restraint on the communication of views or subsequent liability . . . unless there be a clear and present danger of a substantive evil that the State has a right to prevent.

For free speech to be suppressed, the evil sought to be prevented must be imminent, and the suppression is based on a reasonable ground that the State will be hurt. Such is the test of clear and present danger rule, which the Supreme Court time and again uses in free speech cases. The rule provides that the mere supposition or fear of serious injury cannot justify the suppression of expression of views.<sup>9</sup> At best, there is no imminent danger on the State as regards the content of Uson’s blog. The blog may be riddled with perversion of facts but such cannot pass the clear and present danger rule for it does not encroach in the affairs of the government nor does it subliminally carry a seditious or rebellious undertone. It is true that Uson’s use of facts is irresponsible, but that does not fit the test laid down by the Court. If any freedoms or sensibilities are hurt in the process of her distortion of truth, the proper remedy is to initiate an action against any of her specific deed, not against her general act of posting a blog, an act protected by the Constitution.

Besides, the renowned American case of *Chaplinsky v. New Hampshire*<sup>10</sup> provides that there are only “certain well defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.” These unprotected forms of speech are: the lewd and obscene, the profane, the libelous, and the insulting or “fighting” words. It may be argued that for Uson to twist truth to spin an agenda is libelous. However, unless no court determination has been made of as to what is libelous or damaging in her blog, at best, the startlet-turned-blogger still enjoys her freedom to speak and to express her views and to use the internet as a vehicle of her thoughts.

If any, this is an opportunity for Filipinos to be discerning, to be vigilant of truth, and to be highly critical as heavy media consumers. Uson’s critics have already called out that her content is damaging. From there, a vigorous media education should follow; not the taking down of her blog. Assuming *arguendo* that her blog would be taken down, (and considering the accessibility of technology), with what ease can she create another one under a new guise.

The pivotal point is not to silence the writer, but to be wary of the content because there will always be spin doctors, blatant or surreptitious, in their distortion of facts; but the

<sup>8</sup> G.R. No. 65366, November 9, 1983, 125 SCRA 553

<sup>9</sup> *Primicias v. Fugoso*, G.R. No. L-1800, 80 Phil. 71

<sup>10</sup> March 9, 1942, 315 U.S. 568

wise and learned media consumer will know when facts are gilded with lies, and with only through critical eyes will a media consumer veer away from calumny.

### ***Senate Bill 1134 and the Writ of Salus Populi***

In November 2016, Chief Presidential Legal Counsel Salvador Panelo mentioned in an interview that the President has considered the suspension of the privilege of the writ of habeas corpus. Legal luminaries wondered on the statement because the 1987 Constitution only provides for two instances when the writ of habeas corpus may be suspended: invasion or rebellion, qualified by the phrase “when the public safety requires it.”<sup>11</sup> The disbelief stemmed from the fact that no apparent invasion or rebellion is forthcoming for the President to suspend an important writ. Panelo clarified: “Some are arguing that there is no invasion and neither is there rebellion but [the President] is saying that drug money is being used to fund the rebellion in Mindanao therefore there is a rebellion.”<sup>12</sup>

To cure the confusion, Senator Richard “Dick” Gordon filed Senate Bill 1134,<sup>13</sup> allowing the President to declare a national emergency against illegal drugs and terrorism. Section 2 of the bill on the Declaration of National Emergency provides that “[g]iven past and recent events involving illegal drugs and terrorism besieging the nation, a national emergency only against illegal drugs and terrorism is hereby declared to address such emergency.”

In relation to the aforementioned provision, Section 3 on Declaration of National Policy authorizes “the President, in accordance with the Constitution, to exercise necessary and proper powers for a limited period only and subject to restrictions prescribed by this Act to effectively address the declared national emergency against illegal drugs and terrorism in this Act.” Furthermore, an invention of the bill provides the issuance of a new writ, called the writ of *salus populi est suprema lex*. The writ of *salus populi* as provided in Section 11, allows for “any person possessing intelligence information vital to the protection of life and limb may be ordered by the judge” through the writ to submit to investigation “for as long as reasonably required in the interest of national security or public safety.”

Although nowhere in the proposed measure provides for the suspension of the writ of habeas corpus, the legal challenge is, how will the courts harmonize the writ of *salus populi* against the writ of habeas corpus? A closer look at these two writs shows that they may challenge each other. The writ of *salus populi* allows for a submission of any person to be investigated by proper authorities, hence, custodial submission is necessary. Meanwhile, the writ of habeas corpus essentially asks for the production of authorities to release the body of a person wrongfully detained. Whether detainment in prison or not is specifically laid out in SB 1134 but what is clear is that a person can be investigated “for as long as reasonably required.” Verily, while the writ of *salus populi* is a judicial process as it can be issued only by a court upon probable cause, the length of detainment, for lack of better term, could not be ascertained in the bill and demands proper construction.

Admit this situation: Petitioner A files a writ of habeas corpus asking the Regional Trial Court for the body of B, her son, who is detained under investigation, on the theory that

<sup>11</sup> 1987 Constitution. Article III, Section 15.

<sup>12</sup> Arlanne Merez, Duterte’s narco list has more than 5,000 gov’t officials (ABS-CBN News) November 27, 2016 available at <http://news.abs-cbn.com/news/11/27/16/dutertes-narco-list-has-more-than-5000-govt-officials>

<sup>13</sup> Senate Bill 1134, September 13, 2016 available at <http://www.senate.gov.ph/lisdata/24800213621.pdf>

B was illegally detained without lawful charge. The police counter-argue that since B, who was detained by a previous writ of *salus populi*, has knowledge of illegal drugs and that authorities find probable cause to detain B for being a threat to public safety, still “reasonably” need B to be further detained.

How will the court/s construe the clash of these two writs? The Rules of Court provides instances when the writ of habeas corpus may be validly rejected, but operating in today’s context of war against illegal drugs—and now that it is proposed that the President can declare national emergency against illegal drugs, on top of invasion, insurrection or rebellion—the writ of *salus populi* if passed into law needs clear rules, which the judiciary must look into in order for court processes will not clash and ideally administer justice. Most importantly, the judiciary must remain as a watchdog as to how much time for the police to investigate is “reasonable” because “reasonable” is a relative concept. Should a person be served with a writ of *salus populi* and unfortunately corrupt police officers takes him in custody, the writ as a legitimate vehicle of due process to interrogate suspected drug patrons may be abused by corrupt law enforcers or, worse, legitimize disappearances.

### *The “Narco List”*

At this juncture the “narco list” is already a household word due in part for its notoriety. The “narco list” is the proverbial and ever-expanding document that the administration has build up which contains names of people, from common folks to judges, local executives, and even celebrities who use prohibited drugs. The chief of the National Capital Region Police Office, who acquires a copy of the list, has told the media that the “list is constantly being validated by the police,”<sup>14</sup> that such list cannot be evidence but only a reference for building a case against those included in it.

Critics have claimed the list’s inaccuracy and tendency to be a “hit list” for it links the administration’s war on drugs and the killings past. The list has been feared for it could be a mighty reference for gunmen to detect which among the names in the narco list could be gunned down. The case of Emmanuel Lorica was said to be of a mistaken identity when gunmen shot him in his sleep. According to the Pasig City police, the 10th grader “was included in the barangay watch list as user/pusher.” The barangay chairman refuted this as Lorica’s name was not on the local drug watch list, but the boy was said to be included in a separate investigation for being “runner” for a drug dealer.<sup>15</sup>

Whether or not the “narco list” is used to perpetrate the killings in line with the administration’s war on drugs is still a mere speculation at this point. Reports have only been linking the infamous list with the killings but no authority has ever made a pronouncement that the list is indeed in the hands of gunned people, trying to strikethrough those names in the narcotics list out of existence. No individual has yet to challenge the list before any court, which, with all its sound and judicious determination, can make a valid conclusion between the “narco list” and the names of the people who died in the past months

If any, the police should be made to toughen its mandate to serve and protect the names included, and therefore suspected, in the list. The Filipinos, empowered by the Rules

<sup>14</sup> Ruth Cabal, NCRPO: 57 celebrities on narco list are drug users, not pushers (CNN Philippines) November 1, 2016 available at <http://cnnphilippines.com/news/2016/11/01/Narco-list-celebrities-PNP-Duterte.html>

<sup>15</sup> Jodee Agoncillo, Witnesses in Pasig teen’s slay heard gunman say: ‘It’s not him’ (Philippine Daily Inquirer) December 21, 2016 available at <http://newsinfo.inquirer.net/855216/witnesses-in-pasig-teens-slay-heard-gunman-say-its-not-him>

of Court, can perform a warrantless arrest provided under the Rules of Criminal Procedure.<sup>16</sup> Whether it be barangay officials or private citizens who personally witnessed the gunning, anyone is sanctioned by Rules to perform arrest without warrant. The Rules even specifically mention that it is an exception to inform the intention and cause of arrest if the criminal is in flagrante delicto, has escaped or resisted, or when the giving of the information on the arrest will jeopardize the act of arresting.

### *Clash of the Jus Cogens*

The Philippines does not operate in a vacuum. The international community has always been a part of the country's audience, lauding us for our feats, helping us in times of frailties and berating us for our failures.

The international outcry as the number of death rumbled on. While other countries lauded the President's tough position against drugs, other foreign spectators who picked up the news on the link of war on drugs and the killings frowned upon the number of deaths. The influential European Union criticized President Duterte<sup>17</sup> for the "bloody campaign" that has become the war on drugs. What started as pale murmurs have become a global demand, far-reaching that it placed the Philippines in international spotlight. The protest of the international community traces itself from the soaring number of deaths since Duterte held the highest helm of the government.

Leaders across the globe and international organizations may have taken aback by the staunch, nay colorful, language of the President, but what is clear is that they protest the deaths that suddenly became apparent as the President also underscores this campaign ever so boldly. While it is part of jus cogens for international organizations and other States to not toe the internal affairs of a particular State, the international community reacts if deaths, on the basis of international human rights, have become a cycle, not simply an isolated case. This the late Sen. Miriam Defensor-Santiago comments in her book,<sup>18</sup> *International Law*, on the respect for human rights as part of jus cogens.

Defensor-Santiago writes that respect human rights conflicts with two other parts of jus cogens: sovereign equality of states and non-interference in the domestic affairs of other states. The first principle maintains that the Philippines, as a state, has political independence and can exercise with full sovereignty.<sup>19</sup> Meanwhile, the second principle points to the prohibition of foreign States to meddle with the affairs of the domestic State, directly or indirectly, whether it be by use of force or economic pressure.<sup>20</sup>

What is considered as a "repeated cycle" of violation of human rights does not come with a clear-cut rule or standards; it is beyond mere statistics. It hangs on the sensibilities of the international audience. Unfortunately for foreign spectators who are sour to the happenings in the country, the President knows more its backyard than international leaders. For all the things they say, President Duterte has policies that it can exercise with full strength of authority.

<sup>16</sup> 2000 Revised Rules on Criminal Procedure, Rule 113, Section 5 in relation to Section 9

<sup>17</sup> Brendan James, Duterte drops f-bomb on EU over criticism of Philippines drug war (Vice News) September 22, 2016 available at <https://news.vice.com/article/rodrigo-duterte-drops-f-bomb-on-eu-over-criticism-of-philippines-drug-war>

<sup>18</sup> Miriam Defensor-Santiago, *International Law* 23 (2nd ed. 2015).

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

Hence, it is a clash of the jus cogens: on one hand, the international community is asserting its right to pressure the Philippines to protect the human rights of Filipinos as score of news reaching the globe claim violations of due process and the lack of law in Duterte's war on drugs; on the other hand, the President pushes back with the country's right to internal affairs and know more its deep-seated problem with drugs and addiction for the President has the proper context of the perennial problem and possible solution. No doubt, the Philippines is locking horns with the globe.

Defensor-Santiago balances these conflicting views with precision: “[i]nternational action on these issues of human rights and racial oppression prevails over domestic jurisdiction” because the sovereignty of a domestic state must take a backseat over international jurisdiction when protection of human rights and fundamental freedoms are concerned. However, the international community cannot use means “aiming at violent overthrow of the government of a state, and the use of force to deprive peoples of their identity” because still domestic sovereignty is protected by the principle of non-intervention.<sup>21</sup>

### **III. The Constitution and other Legal Issues**

#### ***The Supremacy of the 1987 Constitution***

“The Constitution is supreme,” everyone, this writer included, wholeheartedly agreed. This is the reason why many laws emanating either from legislative or executive were made ineffective if not in consonance with the Constitution. But did you know that nowhere in the 21,000-word charter will you find a clause that proclaims the Constitution as the supreme law of the land? Or even just “the law of the land.” Look for the clause in the text and you will look in vain. In contrast, the American Constitution contains an explicit supremacy clause, article VI, clause 2, which reads, “This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.”<sup>22</sup> A question now arises as to the legal basis of the Supreme Court in insisting that the Constitution is the SUPREME LAW of our land. Many commentaries and law practitioners are one in saying that our Constitution itself, although does not mention of Supremacy Clause, grants the power of Judicial Review to the Supreme Court. As explained by the Supreme Court, the powers of government are generally divided into three branches: the Legislative, the Executive and the Judiciary. Each branch is supreme within its own sphere being independent from one another and it is this supremacy which enables the courts to determine whether a law is constitutional or unconstitutional.<sup>23</sup> The Judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.<sup>24</sup>

#### ***Power of Judicial Review***

The judicial power of the Supreme Court is very broad. Yes the Supreme Court has no power to enact and execute laws, but it can prevent the two other branches of the

<sup>21</sup> Ibid.

<sup>22</sup> U.S. CONST., Art. VI, Clause 1.

<sup>23</sup> Separate Opinion, *Joker P. Arroyo v. HRET and Augusto I. Syjuco, Jr.*, 316 Phil. 464 (1995).

<sup>24</sup> *Tañada v. Angara*, 338 Phil. 546, 575 (1997).

Government from doing so if it would violate the Constitution. And how does the Supreme Court do this? The Supreme Court has the power to declare that a law is unconstitutional just by citing the legal provisions affected and explaining how it contravened the Constitution. It can also issue injunctions and decide on petition for declaratory relief against executive orders. Another interesting power of the Supreme Court is written in Article 8 of the Civil Code which provides that “judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.” One could easily imagine how the Supreme Court can actually intervene in every movements of the government just by observing what the powers are granted upon it by the Constitution and the said provision in the Civil Code. Our constitution provides, particularly the Bill of Rights written in Article III, the inviolable rights of individual. It protects not merely the Filipino Citizens but also the foreign visitors of our country. But against whom these rights can be raised as a defense? It is no other than the Government. Yes, the state likewise anticipated from the very beginning that the Government with whom it delegated powers to exercise sovereignty might abuse its authority.

### ***Enforcement of President’s Mandate***

In his drugs against war, the President mentioned that no one should be happy about the killings of drug personalities. According to him, it is not even something to cheer about. Although he has gotten a very good and satisfying survey results, 4 out of 5 are still afraid about the existence of extra judicial killing. But the number of killings does not bother our President because he truly trusts his policemen. His eyes are focused on establishing a safe and better society, and this is what clearly is happening now. Something that we should celebrate. In identifying the government officials supporting the trade of illegal drugs, the President said that we are already in the 50% or half of our battle.<sup>25</sup> But the most frustrating part in the war against drugs is the lack of support from some of our government officials and religious organizations. They see all the number of deaths as products of extra judicial killing. What is worse is they do influence the minds of our people that what is happening nowadays is something we should condemn. That these happening changes in our Government are all evil, when it is really not. For the past decades, the rising number of crimes can be imputed to illegal drugs. Because most, if not all, persons convicted of committing murder, homicide, rape, theft, robbery and all other crimes are drug users. When you use illegal drugs, one could safely presume that you are no longer thinking as human. A human who has the right to due process, a human who is contemplated in our Constitution and a human who is entitled to be given a chance to mend their lives. The critics of this administration have always been there shouting for the rights and protection of these accused, but rarely we can hear them from news about the irreversible lives of these drug user’s victims. Are these victims not entitled to justice? How could we just forgive someone who sexually abused and killed a child? A father, working hard for his family, who died because of robbery. The Constitution surely was not entirely designed to protect these accused, it is surely designed also to give justice to the victims. Justice that is enough to ease the pain of his/her relatives, Justice that would be willing to impose death penalty if truly inescapable.

### ***Trusted by the Filipinos***

The current administration under Pres. Rodrigo Duterte is being accused of many violations of the fundamental rights expressly granted to its people. With the rising number of killings in our country, different opinions arise especially in social media. Some would agree with the unique style of the President while some do not. Some have mentioned about

<sup>25</sup> Marlon Ramos, Palace Claims victory in war on drugs, INQUIRER, December 28, 2016

extrajudicial killing in violation of due process and some still trust the duly elected President. Accordingly, eight in 10 (86 percent) of Filipinos trust President Rodrigo Duterte, according to a survey by Pulse Asia Research. This is true across geographic areas and socioeconomic classes in Metro Manila, Luzon, Visayas, and Mindanao. The study, conducted in September, covers Duterte's first three months in office and is the first performance-rated poll by Pulse Asia. The survey is based on a sample of 1,200 adults with a  $\pm 3$  percent error margin at the 95 percent confidence level. Subnational estimates for each of the geographic areas covering Metro Manila, Luzon, Visayas and Mindanao have a  $\pm 6$  percent error margin, also at 95 percent confidence level.<sup>26</sup> The result is quite really disappointing for those who are against the administration and using this alleged extrajudicial killings as a means to remove him from office. In considering the impeachment of Former President Joseph Estrada, we can conclude that support of the people's majority is needed when an official is wanted to be thrown out of the highest office of the land. Luckily, this could not be seen in the surveys conducted. Another Interesting fact here is that Philippines is known to be a Christian country, hence we are expected to condemn killings of people. However, such proposition is very inconsistent when President Rodrigo Duterte even retained an "excellent" trust rating in another latest Social Weather Stations survey, with respondents in Mindanao giving him a high +85 rating. The survey, the results of which were first published in *BusinessWorld*, was conducted from December 3 to 6 and involved 1,500 adult respondents across the Philippines, found that 81 percent of Filipinos have "much trust" in Duterte.<sup>27</sup>

### *Was there a violation or not?*

The number of differences in opinion is expected in a normal society. It is actually a good sign that individuals are now thinking base on their own perspective without the influence of other people around. As the number of deaths increases, we keep on thinking whether a violation of their rights truly exist or not. Police records show 5,882 people were killed across the country since Philippine President Rodrigo Duterte took office on June 30. Of that number 2,041 drug suspects were killed during police operations from July 1 to December 6, while another 3,841 were killed by unknown gunmen from July 1 to November 30, according to a local website. Among the latest fatalities was a seven-year-old child on the island of Cebu, who was hit by a stray bullet on December 033, 2016 while unknown gunmen were chasing a teenage boy accused of selling drugs.<sup>28</sup> With this number, it is not even a choice to think on ourselves whether the administration is still on its right track or not. For while we are all united in aiming to solve the rising criminality in our country, especially in illegal drugs, we should never commend any act in violation of fundamental rights of those people who died in the guise of protecting the entire country. We urgently need someone who could give us an answer with corresponding legal power to enforce its judgment.

Our Constitution, particularly the bill of rights provides the basic inviolable rights of individuals. In raising a question whether there is extra judicial killing happening in our country, we must primarily consider Article III, Section 1 of the 1987 Constitution which provides that "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." The written provision in Section 1 Article III of the 1987 Constitution would be more understandable by enumerating the following requisites:

<sup>26</sup> CNN Philippine Staff, Pulse Asia: Duterte has 86% performance-trust ratings, CNN PHILIPPINES, October 13, 2016

<sup>27</sup> Philstar Staff, Duterte retains 'excellent' trust rating in SWS Q4 survey, PHILSTAR, December 22, 2016

<sup>28</sup> Ted Regencia & Mohsin Ali, Philippines: Death Toll in Duterte's war on drugs, AL JAZEERA, December 15, 2016

1. The accused must be heard by a court of competent jurisdiction
2. He must have been proceeded against under orderly processes of law
3. He may be punished only after inquiry and investigation
4. There must be notice to the accused
5. The accused must be given an opportunity to be heard
6. Judgment must be rendered within the authority of constitutional law<sup>29</sup>

*The Requirements of Due Process (UNITED STATES)*—although due process tolerates variances in procedure “appropriate to the nature of the case,”<sup>30</sup> it is nonetheless possible to identify its core goals and requirements. First, “procedural due process rules are meant to protect persons not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty, or property.”<sup>31</sup> Thus, the required elements of due process are those that “minimize substantively unfair or mistaken deprivations” by enabling persons to contest the basis upon which a State proposes to deprive them of protected interests.<sup>32</sup> The core of these requirements is *notice and a hearing before an impartial tribunal*. Due process may also require an opportunity for confrontation and cross-examination, and for discovery; that a decision be made based on the record, and that a party be allowed to be represented by counsel.

In reading the requirements, hearing and opportunity to be heard before an impartial tribunal are always necessary to satisfy the requirements of due process in criminal cases. Without them, one could easily conclude that there is indeed a violation of due process. The hearing requirement in satisfying the elements of due process is consistent with the right to be presumed innocent until proven guilty. Furthermore, an accused has the right to be presumed innocent unless proven guilty beyond reasonable doubt. No less than the fundamental law guarantees such human right. Section 14(2), Article III of the Constitution mandates that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. Reinforcing this right, Section 2, Rule 134 of the Rules of Court specifically provides that in a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. The presumption of innocence serves to emphasize that the prosecution has the obligation to prove not only each element of the offense beyond reasonable doubt but also the identity of the accused as the perpetrator. The accused, on the other hand, bears no burden of proof. The prosecution evidence must stand or fall on its own weight and cannot draw strength from the weakness of the defense.<sup>33</sup> In defending their operations, the policemen have always been vocal in saying that most of them died in a legitimate anti-drug operations and the other cases by unknown gunmen. These are actually a good set of defenses because without solid pieces of evidence, the court cannot do anything but to sustain their acts. Well settled is the rule that public officials are all presumed to be performing their duty in a regular manner. Suffice it to say that without defeating the presumption of regularity, there can be no extrajudicial killing. Like all other rights, the writer believes that right to due process may

<sup>29</sup> Retrieved from <http://www.batasnatin.com/law-library/remedial-law/criminal-procedure/564-due-process.html>

<sup>30</sup> *Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313 (1950)

<sup>31</sup> *Carey v. Piphus*, 435 U.S. 247, 259 (1978). “[P]rocedural due process rules are shaped by the risk of error inherent in the truth-finding process as applied to the generality of cases.” *Mathews v. Eldridge*, 424 U.S. 319, 344 (1976).

<sup>32</sup> *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

<sup>33</sup> *Lumanog vs. People of the Philippines*, G.R. No. 182555

be waived. Because exchanging of gunshots and resistance to a valid arrest would be very inconsistent to the exercise of its right to due process. Policemen could not be expected to ignore the presence of their gun whenever an accused resists which places their lives into peril. They are not duty bound to give these accused an equal fight, but rather, they must defeat them in order to preserve the peace and order of the society.

### ***Implied Ratification by the Filipino People***

Even granting for the sake of argument that there was violation of due process written in our constitution, this writer believes that the Filipino people from whom this supreme law of the land derived its authority have the power to amend it impliedly and expressly if we will just disregard the technicality of procedures in amending the constitution. But how did the people ratified it impliedly? The message of our President even before the holding of election is very clear and not ambiguous. He ordered those criminals to stop doing crimes especially the use of drugs, otherwise he will kill them. He keeps on saying the word 'kill' during his campaign and yet he won the election by a landslide. Thus this writer believes that the people of our nation from whom the constitution and state derived its powers surely ratified this harsh method of our president, we need sometimes to be harsh to protect our welfare. Otherwise our country especially the future generation would surely be in a place where drugs can be brought anywhere and anytime. This should never happen.

### ***Is International Standard disregarded?***

The eagerness to eliminate drugs in our country has been considered as the main reason why President Duterte proposed to the Legislative the restoration of Death Penalty. Albeit the same is condemned by other foreign countries, it seems that our President would be willing to withdraw from any treaty to which our country is a signatory. This is something new to the eyes of many Filipino, because we used to have the same kind of presidents in the past who would always be willing to set aside its self-decision just to comply with international treaties. The war against drugs is something not favored by other foreign countries, particularly the west countries. It maybe because of some false reporting given by the media. They think that all people who died from the start of current administration are victims of extrajudicial killing. That is why they really want to investigate the issue. In challenging our President to allow them to investigate the crimes in our country is just like a scenario where a compadre wants to interfere on how a father disciplines his children. Something we should not tolerate, otherwise it is as if we are submitting our own country to the sovereignty of others. Just by reading the comments in social media, especially in different news page, we could easily notice that people nowadays are no longer blind. We are no longer that generation who could easily be manipulated by the elite people who always wanted to be in control of our government.

Now the question here is, could our government be prevented from passing new laws and amending an existing one just because there is an existing international treaty prohibiting the same? The Supreme Court ruling in the negative has already explained it in many cases. One of these is the case of *Ichong vs. Hernandez* where the Supreme Court ruled:

Another subordinate argument against the validity of the law is the supposed violation thereby of the Charter of the United Nations and of the Declaration of the Human Rights adopted by the United Nations General Assembly. We find no merit in the Nations Charter imposes no strict or legal obligations regarding the rights and freedom of their subjects (Hans Kelsen, *The Law of the United Nations*, 1951 ed. pp. 29-32), and the Declaration of Human

Rights contains nothing more than a mere recommendation or a common standard of achievement for all peoples and all nations (Id. p. 39.) That such is the import of the United Nations Charter and of the Declaration of Human Rights can be inferred the fact that members of the United Nations Organizations, such as Norway and Denmark, prohibit foreigners from engaging in retail trade, and in most nations of the world laws against foreigners engaged in domestic trade are adopted.

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But even supposing that the law infringes upon the said treaty, the treaty is always subject to qualification or amendment by a subsequent law (U. S. vs. Thompson, 258, Fed. 257, 260), and the same may never curtail or restrict the scope of the police power of the State (plaston vs. Pennsylvania, 58 L. ed. 539.)<sup>34</sup>

The ruling in this case is in line with the constitutional provisions particularly Section 7 of Article II which provides that “The State shall pursue an independent foreign policy. In its relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination.”<sup>35</sup> That is why our Lawyer President, being aware of its powers and the self determination of our state emanating from the Constitution itself, cannot be prevented by another sovereignty. It will not limit his powers especially our legislative from passing laws and amending an already existing one just because our previous set of government officials signed a treaty prohibiting the imposition of death penalty. At most our country might be removed from its membership therein.

#### IV. Conclusion

##### *Changes Needed*

**I. Slow Justice System:** a death sentence requires final affirmation by the Supreme Court before it can be carried out. President Duterte’s super majority in Congress can railroad the restoration of capital punishment all they want. But given the sorry state of the Philippine judicial system, with the expected slew of appeals and restraining orders for every case calling for capital punishment, we could all be dead including the President himself before any convict is executed by the state. In fact, extremely slow Philippine justice is one of the main factors behind the strong public support for the extreme opposite – the law enforcement shortcuts offered by President Duterte Oplan Tokhang and Double Barrel. The unequivocal message is that there’s no problem big enough that you can’t shoot it to death. Tokhang and Double Barrel produce instant, irreversible results – unlike the wheels of Philippine justice, which turn so slowly it’s an injustice.

**II. Justice For the Poor:** you can tell from the failure to send to prison any of the obscenely wealthy, notorious or both that if you’re going to steal in this country, you have to steal big so that if ever you are caught and prosecuted, you can afford the best justice money can buy. Even drug traffickers can buy their way to a court acquittal, or to illegal deportation by the Bureau of Immigration. High-value suspects have even walked away from detention at the PNP headquarters at Camp Crame. Because of such incidents, Pinoys are willing to give President Duterte a free hand in exterminating drug suspects. Even if, as he himself admitted, what he has against those in his so-called narco list is just “probable cause” instead of proof beyond reasonable doubt, which is the requirement for conviction and sentencing.

<sup>34</sup> Ichong vs. Hernandez, G.R. No. L-7995, May 31, 1957

<sup>35</sup> Constitution, Art. II, Sec., 7

**III. Abuse of Authority:** people have also been frustrated for a long time over the abuses of public officials, and are happy to see a president including in his drug hit list local political warlords, ranking police officers and barangay officials. Filipinos who see no hope in the criminal justice system see the drug war in a positive light. President Duterte realizes this and seems to take pride in what he's doing. In remembering his campaign, he continues to take potshots at his closest rival in the presidential race, asking if the rival could have waged this kind of war on drugs and criminality.

**IV. Executive is the One in Charge of other pillars of Justice:** among these problems is the weak criminal justice system. The judiciary is an independent and co-equal branch, and the Supreme Court must improve the administration of justice if its members want to help put an end to the ongoing killing spree. But the executive is in charge of other pillars of justice: the prosecution service, the police, jails and penal facilities. The prosecution service also needs to speed up its work and improve its credibility. And the PNP must do more than shoot to kill. The number of cases indicating abuse of police power in the guise of the drug war keeps rising. The inability or unwillingness of the PNP to investigate the continuing killings, especially questionable deaths traced to the police, is breeding impunity and creating an atmosphere of fear even among law-abiding citizens – as indicated in the latest Social Weather Stations survey.

**V. Jails Prosper Drugs:** our jails are porous and the national penitentiary has been turned into the command center for large-scale drug trafficking. The President can also wield some influence over the courts through his power to appoint and promote members of the judiciary. Duterte must pick individuals with known integrity and competence especially for the Supreme Court and must avoid compromising the independence of his appointees.

### **In Closure**

Without a working judicial system, we cannot blame the majority of Filipino people in supporting the actions of the executive department even at the risk of violating the constitutional rights of the accused. It's sad but true that the pandemic state of drugs in our country could no longer wait the envisioned judicial system in our country where there is no unreasonable delay, discrimination against the poor and abuse of authority. Filipinos are already tired hearing flowery words and promises from other public officials just for the advancement of their private interest. It's now the proper time that someone should stand up among the many, who would be willing to impose substantial changes, someone who could dictate orders on his own and someone who would be willing to restore the severest penalty which is death just for the safety of his people. We have seen even during the election period the eagerness of the people to suppress the criminality and drugs in our country. And in the eyes of many, it was only President Rodrigo Duterte who met the qualifications and competence to fulfill this duty. That is how they trust our President. The frustrations by our nation against drugs and crimes are all felt by our President, he has always been vocal of his duty to give his countrymen a safe and peaceful society. As to the means on how he will do it legally, no one really care's, except maybe the criminals and their supporters.

Therefore, even assuming for the sake of argument that the current administration is performing acts beyond its powers, the burden of judicial reforms still lies heaviest on the nation's highest court. Tokhang and Double Barrel and public support for the Pinoy version of capital punishment are extreme manifestations of public frustration over slow justice. The drug menace has been around since before we were born. It has survived martial law and it can

survive Tokhang. President Duterte can exterminate as many expendables as he wants. But without the corresponding reforms in the criminal justice system, any positive impact of his mass killings on the campaign against drug trafficking and other crimes will be unsustainable. The Supreme Court must show the public that the judicial system works, that the rule of law can prevail and there is no need for shortcuts to justice.<sup>36</sup>

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<sup>36</sup> Ana Marie Pamintuan, *Extreme Frustration*, PHILSTAR, December 21, 2016