

# THE IMPERATIVE OF A PUBLIC HEALTH APPROACH IN UPHOLDING DIGNITY AND HUMANITY AMIDST THE PHILIPPINES' "WAR ON DRUGS"\*

*Jose Luis Martin C. Gascon\*\**

Ladies and gentlemen, the organizers of this very important forum, our resource persons from other countries helping shed light on this important issue that we are grappling within this country, fellow human rights advocates, good afternoon.

Today, the Commission on Human Rights is celebrating its 30<sup>th</sup> founding anniversary, 30 years of advocacy to ensure the realization and protection of the fundamental human rights of the Filipino people. As the national human rights institution, we are entrusted with the duty of protecting and promoting the human rights and the human dignity of every Filipino and everyone in the Philippines. The Constitution mandates us to serve both rights-holders and duty-bearers, and we work for the empowerment of all Filipinos, most especially the vulnerable groups in our society.

Unfortunately, as we commemorate our 30<sup>th</sup> year, we are also facing what the Human Rights Watch organization describes as a human rights crisis. Not since its establishment in 1987 has the Commission on Human Rights faced a tremendous challenge to its mandate in terms of the pace and scale of the violations, particularly in relation to the government's so-called "War on Drugs."

When the current government of the Philippines assumed office last year, it identified as its number one priority the eradication of what it describes

---

\* Cite as Jose Luis Martin C. Gascon, *The Imperative of a Public Health Approach in Upholding Dignity and Humanity Amidst the Philippines' "War on Drugs,"* 90 PHIL. L. J. 734, (page cited) (2017).

This paper was delivered during a policy forum entitled *Drug Issues, Different Perspectives* at the University of the Philippines Diliman on May 5, 2017, the 30<sup>th</sup> founding anniversary of the Commission on Human Rights. It is also inspired by a speech delivered by the author during a side event at the 60<sup>th</sup> Session of the Commission on Narcotic Drugs in Vienna, Austria on Mar. 16, 2017.

\*\* Chair, Commission on Human Rights (2015-2022). Member, 1986 Philippine Constitutional Commission. Undersecretary, Political Affairs, Office of the President (2011-2014), Department of Education (2001-2005). J.L.M., University of Cambridge (1997). J.L.B. (1996), B.A. Philosophy (1992), University of the Philippines Diliman.

as a drug problem of “epidemic proportions,”<sup>1</sup> and thus declared a “War on Drugs” and criminality. The message consistently promoted by the government is that the sale and use of illegal drugs are the root of all societal ills and must be stopped with extreme prejudice. And extreme prejudice is exactly what we have observed over the last few months of the implementation and execution of the “War on Drugs.”

The statistics vary depending on who is speaking, and depending on when the data is presented. The Philippine National Police was keeping track of the total number of deaths and has been relaying this information to the media until recently. As of January 31, 2017, there was still some unanimity or consensus about the reported number of people killed since July 1, 2016. It was at that date, January 31, 2017, at 7,080—where 2,555 of these, roughly about one third, were suspected drug personalities that had been killed in police operations, while 3,603 were victims in cases of deaths under investigation that includes extrajudicial, vigilante-style, or unexplained killings, and 922 were victims in cases where investigations had been concluded.<sup>2</sup>

Since that day in January, however, there has been a change of gears whereby the state is no longer acknowledging these numbers. Instead, they are arguing for what they say are the “real numbers.” Last May 2, 2017, the State held a joint government forum where they issued new numbers<sup>3</sup> And what they have reported in that forum is that since the day President Duterte assumed office until March 31, 2017, there had been 9,432 homicide cases, but now they say not all of these are drug operation-related cases, that some of them are homicide, and that they still need to determine whether or not these are related to the “War on Drugs.”<sup>4</sup>

So, we expect that as the Philippine government proceeds to Geneva for its Universal Periodic Review this will be one of the tacks that it will take—to assert that these numbers as initially confirmed by the police and reported by media are not accurate. However, I do want to stress and I will refer to this in

---

<sup>1</sup> *Palace on protest: Free expression*, THE PHIL. STAR, Feb. 20, 2017, available at <http://www.philstar.com/headlines/2017/02/20/1674034/palace-protest-free-expression> (last accessed May 4, 2017).

<sup>2</sup> *IN NUMBERS: The Philippines' 'war on drugs'*, RAPPLER, Sept. 13, 2016, at <http://www.rappler.com/newsbreak/iq/145814-numbers-statistics-philippines-war-drugs> (last modified Apr 23, 2017).

<sup>3</sup> *#RealNumbers: The truth behind the headlines*, PHIL. NEWS AGENCY, May 2 2017, at <http://www.pna.gov.ph/articles/984423>.

<sup>4</sup> *Gov't forum clarifies numbers in Duterte's war on drugs*, CNN PHILIPPINES, May 3, 2017, at <http://cnnphilippines.com/news/2017/05/03/statistics-Duterte-war-on-drugs.html> (last accessed May 4, 2017).

later discussions today, that it is indisputable that there are a significant number of deaths as a result of what are ostensibly legitimate police operations—in other words, deaths resulting from direct police actions.

What is undisputed is that since the current administration assumed office, thousands of Filipinos have died violently—many of them at the hands of police officers. Of the deaths resulting from police operations, the defense routinely invoked by the officers involved is that the suspects resisted arrest or in the vernacular, as has now become popular, “*nanlaban*.” This defense, under criminal law, constitutes what is referred to as a justifying circumstance.<sup>5</sup> So therefore, it neither relates to whether a crime had been committed, nor to a determination of who had committed the crime. I refer to these because these are, of course, what the prosecutor must initially determine in concluding the existence of what is referred to as “probable cause.” Therefore, the self-defense argument constitutes an admission of the killings, and imposes on the police officers that had caused the killing the burden of proving the justifying circumstance in a court of law.

Commissioner Leah Armamento of the Commission of Human Rights, who served as a prosecutor with the Department of Justice for many years and was in fact Undersecretary of the Department before joining us at the Commission, shared that the previous longstanding practice of the Department, upon seeing a defense of *nanlaban* being invoked, was to find probable cause against the police officers invoking that defense and to bring the matter to the court so that in each particular case, the judges themselves will determine whether in fact, as the evidence and facts of each case are presented, it was properly invoked. It is worth noting, however, that not a single police officer has been held to account in a court of law for these deaths, and that the very first case to be filed in court in connection with these killings was a petition for a Writ of Amparo which was filed not by the prosecutors, but by private counsel.<sup>6</sup> Finally, the Commission recently learned that two weeks ago, a charge of murder was filed in one case, so it is now beginning in a court of law. That charge is with respect to the Bertes case in Pasay City where there were two persons killed inside a jail and the police, as they have been wont to do over the last few months, invoked the defense of *nanlaban*.<sup>7</sup>

---

<sup>5</sup> See REV. PEN. CODE, art. 11.

<sup>6</sup> See *SC issues writ of amparo on 'Tokhang'*, THE PHIL. STAR, Feb. 1, 2017, available at <http://www.philstar.com/headlines/2017/02/01/1667915/sc-issues-writ-amparo-tokhang> (last accessed May 4, 2017).

<sup>7</sup> See *'Execution' at Pasay police station*, PHIL. DAILY INQUIRER, Apr 27, 2017, available at <http://newsinfo.inquirer.net/892287/execution-at-pasay-police-station> (last accessed May 4, 2017).

A cause for the witness' pain is that the data gathered from the scene paints a very different picture from the dramatic shootouts that police officers have uniformly depicted in their narrative. Amnesty International ("AI") has, so far, investigated and documented 33 of these incidents in which the police claimed to have to defend themselves against gun-wielding suspects, but witness testimonies have yielded very different stories.<sup>8</sup> According to AI, per their field reports, "police officers routinely bust down doors in the middle of the night and kill unarmed individuals suspected of drug using or pushing."<sup>9</sup> This highlights therefore the need for a meaningful investigation of all these killings, for the police to cooperate with human rights organizations both national and international, and hopefully allow the Special Rapporteur to come on an official visit so that we might clear the air about these differences in numbers as well as the differences in the explanation of these killings.<sup>10</sup> And, ultimately, of course, the purpose of arriving at an established and accepted record and documentation of all these events—all these violations and atrocities—is to ascertain the truth and to hold the perpetrators into account.

As for the remainder of the killings that were not admitted by the police as their doing, whether or not these were perpetrated by agents of the Philippine government, they represent a glaring failure on its part to protect the lives of its citizens, and effectively a breach of the positive obligation to guarantee safety and security for all Filipinos. If these killings, as are suggested by some recent testimony by self-confessed former members of the Davao Death Squads,<sup>11</sup> are indeed the work of state agents through death squads or public officers in disguise, then these are indicative of something far more abhorrent to the rule of law and the respect of human rights.

The right to life is the most basic and sacrosanct of all human rights, and it is equally enjoyed by all, even those who are suspected of having committed a crime. Of virtually equal importance is of course the right to due process, or the right to keep one's life, liberty, or property unless and until

---

<sup>8</sup> *If you are poor you are killed: Extrajudicial Executions in the Philippines' "War on Drugs."* AMNESTY INTERNATIONAL, available at <https://www.amnesty.org/en/documents/asa35/5517/2017/en/> (last accessed May 4, 2017).

<sup>9</sup> *Id.* at 7.

<sup>10</sup> See UN states ask Philippines to grant access to Callamard, THE PHIL STAR, May 8, 2017, available at <http://www.philstar.com/headlines/2017/05/08/1697944/un-states-ask-philippines-grant-access-callamard> (last accessed May 8, 2017).

<sup>11</sup> *Ex-Davao policeman tags Duterte in death squad, murder*, RAPPLER, Feb. 20, 2017, available at <http://www.rappler.com/nation/161982-spo3-lascanas-duterte-davao-death-squad> (last accessed May 4, 2017).

adjudged by a competent and independent court to have committed an act that would warrant the deprivation of any of these.

The right against arbitrary killings is a non-derogable right. It is this right that is being summarily disregarded by the current practice we see as the body count piles up, and new atrocities emerge in the course of this “War on Drugs.” Last week, the Commission on Human Rights, acting on a tip from a witness who had personal experience, uncovered a secret detention place in which persons who have not even been charged with criminal offenses, are held for hours, days, or weeks, and we are concerned that this practice is not isolated.<sup>12</sup> Thus, the most basic human rights are often regularly sacrificed at the altar of the all-important “War on Drugs” launched by this administration.

What is sad is that as these violations occur, human rights as an idea—as a concept—is not very popular among the public. The current administration and its supporters, including those in social media, have regularly portrayed human rights as inimical to national progress, and have been labelling human rights activists as troublemakers motivated by politics and the desire to destabilize the government. There have been concerted efforts to drown out and discredit any line of reasoning that seeks to point out that a path pursued that leads to wanton killing will result to the undoing of our nation, our system of law, and our Constitution.

Even as we speak today, the killing continues unabated. Not only are those accused of drug-related crimes being killed, but there is also a growing number of people getting caught in the cross fire. Collateral damage as they say should be expected because it is a war, but many of the victims are children.

This government and its allies in the legislature are also pursuing other programs that I will describe as part of its peg for a culture of death. It is pushing hard for the reinstatement of the death penalty, which was prohibited back in 2006 by Republic Act No. 9346.<sup>13</sup> This move would not only contravene our obligations under international law, as the Philippines is a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights,<sup>14</sup> but essentially bring back a punitive measure that has

---

<sup>12</sup> See *CHR finds 12 people detained behind Tondo police station bookshelf*, CNN PHILIPPINES, Apr. 28, 2017, at <http://cnnphilippines.com/news/2017/04/28/Secret-jail-cell-detention-Manila-Police-District.html>.

<sup>13</sup> Rep. Act. 9346 (2006), § 1. An Act Prohibiting the Imposition of Death Penalty in the Philippines.

<sup>14</sup> 1989 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, Dec. 15, 1989, 1642 U.N.T.S. 414.

repeatedly been discredited as an effective deterrent to crime. We hope that the Senate might be a platform for this issue, and ultimately we hope that the Senate will reject the action of the House to reinstate the death penalty. They are also proposing a law to reduce the age of criminal liability to as low as nine, and we will watch and monitor closely these other two measures that I believe constitute one of the three pegs of the culture of death that is permeating our society.

Given this grim scenario, it becomes readily apparent that this so-called “War on Drugs” must end to give way to drug policies that are scientific, evidence-based, and human rights-centered. The Commission on Human Rights strongly believes that it is high time for policy reform in the country in relation to drugs. And we are one with many of you here in expressing an alternative view and solution to this issue. What is clear to me is that this over-reliance on an exclusive law-and-order or strongman approach is not sustainable. It is necessary for us to prod decision-makers to begin considering alternative approaches that take into account human rights considerations, and consciously develops solutions from a public health perspective.

We support the call to shift to a public health response to drug-related issues in the country. Various studies and international experience have demonstrated that wars on drugs undertaken in other contexts, which pushed for a punitive and prohibitionist approach to drug use, have failed. What works, as recommended by the World Health Organization and the United Nations Office on Drugs and Crime, is the provision of social and health services to people who use drugs and their communities.<sup>15</sup>

The public health response is actually consistent with the people’s right to health. The right to health means that people must be given access to services essential for the pursuit of the highest attainable level of health, which includes the provision of medical care, proper nutrition, housing, and other necessary social services. This right means not just the right to be healthy, but includes entitlements and freedoms, such as the right to be free from non-consensual medical treatment, among others. The right includes the prohibition against torture, inhuman and degrading treatment.

---

<sup>15</sup> *See, generally*, United Nations Office on Drugs and Crime, UNODC submission for the study on impact of the world drug problem on the enjoyment of human rights and recommendations on respect for and protection and promotion of human rights in the context of world drug problem, with particular consideration for the needs of affected persons in vulnerable situations, at 2, U.N. Doc. No. A/HR/30/65 (Sept. 4, 2015), *available at* [www.ohchr.org/E.N/HRBodies/HRC/RegularSessions/.../A\\_HRC\\_30\\_65\\_AEV.docx](http://www.ohchr.org/E.N/HRBodies/HRC/RegularSessions/.../A_HRC_30_65_AEV.docx).

In practice, however, a public health response is automatically often equated with institutionalization in rehabilitation centers. However, institutionalization is only relevant to a very small percentage of people who use drugs. Moreover, placement in treatment centers should be voluntary and not compulsory to put premium on the right of a patient to autonomy and bodily control. Evidence shows that compulsory detention actually does more harm than good as it alienates the person who uses drugs and prevents him or her from fully understanding the factors surrounding his or her drug use. In the absence of clear treatment standards in rehabilitation centers, the options for people who use drugs become very limited; in practice, it means, as we have seen in rehabilitation centers, dancing zumba or forced labor. When people who use drugs are subjected to inhumane conditions such as placement in overly congested prisons, or to cruel, inhuman and degrading treatment such as public shaming, the government violates the prohibition that bans this practice.

The Department of Health itself recognizes that drug use is a public health concern. From a human rights perspective, this should mean that people who use drugs must be given access to services for the prevention, treatment, and control of diseases. If we follow international standards, the proper policy reform includes the provision of effective harm reduction services.

Harm reduction embraces non-punitive responses to people who use drugs, and provides support to them. This is, ultimately, a human rights approach. How do we view users? Are they dregs of society? Are they criminals or potential criminals and therefore should be removed from society? Or do we view users as people who need to be attended to? That is why we are with many of you here who are advocating for harm reduction and a public health approach to this issue rather than an exclusively law and order approach.

We must begin a sober and informed debate across the public sphere about the future of this country’s drug policy to consider alternatives and solutions that have worked in other jurisdictions. Rather than forcing people who use drugs to abstain and punishing them when they can not—which only drives them further underground while increasing the risk of disease, risky behavior, and harmful drug use—harm reduction enables access to health and social services in a way that protects the community in a cost-effective manner and based on sound evidence. Further, harm reduction is based on the principle that people have the right to be safe and supported without discrimination based on their drug use status.

The World Health Organization recommends a wide range of services to this end, and I leave that to further discussions, but certainly we should look at what has been done elsewhere. For example, in the Netherlands, in Norway,

and in Portugal, they explored needle syringe exchange programs, screening and treatment for HIV/AIDS and blood-borne diseases, counselling services, and other community-based interventions.

Finally, harm reduction includes scientific education on drug use to prevent drug overdose or to address risks associated with drug use. It encompasses providing social skills to enable those at risk to respond to the underlying reasons for drug use. It also means linkages to livelihood and economic policies to empower people who use drugs and their communities. Harm reduction in essence translates to a wide array of responses based on what people who use drugs actually need, because they too are people, and they too have rights.

It is indeed high time that we change the conversation surrounding drug use, and listen to evidence and empirical data. More importantly, we should all shape our drug policy in a manner that is consistent with human rights. Human rights are universal, and rights-holders include those who use drugs. The “War on Drugs” is bound to fail, with huge and long-term irreversible effects. We have heard of how this approach currently being taken by the Duterte administration has failed in other contexts like Thailand or Colombia. The “War on Drugs” will fail and we will have to suffer the consequences of its effects. The public health approach, on the other hand, is evidence-based and human-rights centered, and has been, in many contexts, proven to be successful.

At this point, I would like to thank the organizers for giving me the space to participate in the discussion on an alternative to the “War on Drugs” under a harm reduction approach. We do live in difficult times. Yesterday, I said, darkness has fallen in Philippine history. But all of us here gathered, as well as many of our partners elsewhere, will face that darkness by continuing to do small, courageous acts that will bring light and inspire hope as we move forward.

This is not the first time that we have fought against human rights violations in our history and I am confident that as long as we build solidarity—because none of us can individually overcome the challenge—as long as we work together to bridge the gaps, to fill each others’ weaknesses with our strengths, and to build bridges that inspire hope for all people, ultimately we can weather the storm, and we shall overcome.

Good afternoon.

- o0o -