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The logo for the International Institute of Social Studies, featuring the word "Erasmus" in a stylized, cursive script.

**RECOGNIZING THE RIGHTS OF CHILDREN ORPHANED BY THE WAR
ON DRUGS IN MANILA: A CHILD RIGHTS-BASED APPROACH TO TRANSI-
TIONAL JUSTICE**

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This research is dedicated to the children who were left behind.

List of Acronyms

BJMP	Bureau of Jail Management and Penology
CHR	Commission on Human Rights
CLRDC	Children’s Legal Rights and Development Center
CRBA	Child Rights-Based Approach
CRC	United Nations Convention on the Rights of the Child
CRP	Child Rights Programming
DOH	Department of Health
DSWD	Department of Social Welfare and Development
EJK	Extra-judicial Killing(s)
ICC	International Criminal Court
NCR	National Capital Region
NHRI	National Human Rights Institution
OHCHR	Office of the United Nations High Commissioner for Human Rights
PDEA	Philippine Drug Enforcement Agency
PNP	Philippine National Police

Abstract

This study investigates the allegations made by human rights groups that, under Duterte's War on Drugs children's rights were violated because they were deprived of their caregivers. This research confirms those allegations. The War on Drugs left these children with unresolved trauma, further plunging them into poverty and, in some cases, discriminated within their own communities. These effects are exacerbated by the fact that, due to the government's refusal to recognize its duties towards these children, there has been little to no intervention relating to these children's specific needs. Based on an examination of literature on the meaning and implications of a Child Rights-Based Approach and of Transitional Justice, and on the findings generated by my field-research consisting of interviews with experts in transitional justice, legal experts, and grassroots NGOs in the Philippines, I explore the potential and possible content of a child-rights-based transitional justice mechanism that would provide (full or partial) redress to the above-mentioned orphaned children.

Keywords

Human Rights; Child Rights-Based Approach; Transitional Justice; Convention on the Rights of the Child; Philippines; Duterte; orphans.

Chapter 1

The War on Drugs under the Duterte Administration

1.1 The origin of Duterte's 2016 War on Drugs

In 2016, when Rodrigo Duterte was sworn in as President of the Philippines, he made it clear that he was going to deliver on the promise he made during his campaign to eradicate the enduring drug problem in the Philippines which he declared as the bane of Philippine society. To prove his point, he provided a gruesome analogy of his goal of eradicating drug personalities by likening his War on Drugs to what Adolf Hitler and his Nazi Germany did to millions of Jews during the second world war (Al Jazeera, 2016). On 1 July 2016, then Chief of the Philippine National Police (PNP) Ronald Dela Rosa signed Command Memorandum Circular (CMC) No. 16-2016, entitled "PNP Anti-Illegal Drugs Campaign Plan-Project: 'Double Barrel'" which made the War on Drugs policy enter into force for the PNP (Gavilan, 2017).

Fearing for their lives after Duterte's promise of a bloodbath, thousands of alleged drug dealers and users surrendered to the authorities to be rehabilitated (Dancel, 2016). Drug users were placed on a "drug watch list" in their *barangay*¹ which was turned over to the local Police. True to his word, on the very day of the inauguration of the President, 39 people were already documented as killed for alleged drug involvement (Padilla, 2018, para. 1). A few months into Duterte's term, the news slowly began to be engulfed with incidents of vigilante killings and police drug operations resulting in the death of people associated with drugs for allegedly fighting back or what was coined in Filipino as *nanlaban*. News of individuals found wrapped in packaging tape and left with a sign stating "I am a drug user, do not follow my footsteps" provided a grim picture of how Duterte planned to stick to his promise (Berehulak, 2016).

Rumors spread about the Police force being given a quota for the number of arrests and killings to be made. Reportedly, those who met or went beyond the quota were rewarded, while those who failed to meet the quota were deemed to be cowards or weak (Mogato and Baldwin, 2017). While it is noted that this quota included apprehension for other crimes such as illegal gambling, rape and theft, human rights groups allege that the pressure to meet the quota within the Police force was motivated mostly by the anti-drugs campaign (*ibid*). While the Police deny the existence of such quota, the number of arrests for drugs charges and the number of people on the drug watch list who were killed could well support the claims of human rights groups that the quota exists (Quintos, 2017).

In 2021, the Bureau of Jail Management and Penology (BJMP) reported in the Freedom of Information platform that the congestion rate² in the National Capital Region increased from the already alarming 354% in December 2015 to 518% in December 2016 (BJMP, 2021: n.p.). On the other hand, to this day, the number of drugs-related deaths remains to be contested by the security sector and human rights institutions. According to the government

¹ A smaller subdivision of a municipality in Manila, the Philippines.

² Congestion rate is computed as the total number of inmates minus the ideal capacity of the facility, divided by the ideal capacity of the facility x 100.

records, in the period from 1 July 2016 to 30 April 2021, the number of people killed tallied at 6117 (Philippine Drug Enforcement Agency, 2021: n.p.). The late Chito Gascon, Chairperson of the Commission on Human Rights, the National Human Rights Institution, and a big critic of the War on Drugs, instead claimed that, as of December 2018, the number of people killed could already reach around 27,000 (Maru, 2018: n.p.) with most of the victims being men with dependents from lower income households (David and Mendoza, 2018: Par. 6).

1.1.1 Unforeseen Consequences of the War on Drugs: Children Bereaved of their Caregivers and the Need for Redress

Even children were not spared from the campaign. When there was a public outcry as the news broke about how children were also killed in anti-drug operations, the President referred to them as “collateral damage” in the line of service (Gavilan, 2020: n.p.). The documentation of the Children’s Legal Rights and Development Center (CLRDC) revealed that 122 children were killed under the drugs campaign since the beginning of Duterte’s presidency in June 2016 up to December 2019 (OMCT³ and CLRDC, 2020: 9). To this day, there is still no definite number of the total number of children that were orphaned due to the War on Drugs. This is in part because of the disputed numbers of those actually killed. In 2018 already, researchers estimated that there could be around 32,395 children orphaned (David and Mendoza, 2018: Par. 6). This figure was based on the formula given by the Department of Social Welfare and Development’s Assistant Secretary for Protective Services, Hope Hervilla, in 2016 that multiplied the number of those killed in the War on Drugs by three (See, 2016).

Reports have shown that some children witnessed first-hand how their parent was killed. Obviously, this could adversely affect their physical and mental development (*ibid*; Malig and Taguines, 2017). Human Rights Watch alleges that, besides the direct trauma related to being “orphaned”, the children also had to endure the social stigma that came with having a family member killed during the “tokhang” or drugs operations (Human Rights Watch, 2020). On various accounts, this situation reveals serious shortcomings in the realization of the rights that these children are supposed to enjoy according to the UN Convention on the Rights of the Child (CRC), to which the Philippines is a state party.

Despite allegations by human rights groups of violations of the rights of children whose caregivers were killed due to the War on Drugs, and the urgency of their conditions, there has been no form of redress for these orphaned children. Hence, this research aims to establish that a Transitional Justice mechanism that is in line with a Child Rights-Based Approach would be appropriate and could help recognize and redress the violation of the rights of these children under the Convention on the Rights of the Child.

While the public outcry for the victims of the extra-judicial killings in the War on Drugs continues, the lasting trauma on the children left behind by these victims remains largely overlooked, both by the public and the government. In May 2020, Human Rights Watch

³ OMCT – *L’Organisation Mondiale Contre la Torture* (World Organization Against Torture)

pioneered the campaign for the recognition of children orphaned⁴ by the War on Drugs in their report entitled “Our Happy Family is Gone”. The report contains interviews with children who shared their experience after the loss of their parent(s) or guardian(s) due to Duterte’s drugs campaign. It also called for action by the Philippine government and affiliated agencies to recognize the unique needs and rights of the children involved, especially because of the obligations and responsibilities that the state of the Philippines has according to the Convention on the Rights of the Child (Human Rights Watch, 2020).

In the same year, Ofreneo and others published their research on how they used a feminist methodology and memory work in helping children orphaned by the War on Drugs to process their experience. In this work, Ofreneo and others stated that the government had yet to enact a policy that would address the needs of these children (Ofreneo et. al, 2020). Despite the reports produced, no action was taken by the relevant institutions. The killings have persisted, though they are not as publicized anymore as they were after five years of the campaign. Since the current administration did not take any steps to recognize the violation of the rights of these orphaned children, a future Transitional Justice arrangement with a forward-orientation would be highly appropriate and could help provide these children with a form of redress.

As a state party to the CRC, the state of the Philippines is mandated to enact laws and policies to implement the rights of children included in the Convention (United Nations, 1989). In the case of Duterte’s anti-drugs campaign, it appears that its implications for children were not (fully) considered. In an interview with a local news outlet in 2018, the Philippine Drug Enforcement Agency (PDEA) admitted that they did not have information on the number of children bereaved because of the War on Drugs (Tantiangco, 2018). This implies that the institution made no effort to monitor the situation of these children or to recognize them. Moreover, when the Minister of the Department of Health (DOH), Pauly Jean Ubial, was asked whether the DOH was providing psychosocial support to the families who experienced drug-related death, she responded as follows: “Why is it a public health issue? [Is it] contagious? Lifestyle-related? In the first place, is it a disease?” (Tapao, 2017 as cited in Human Rights Watch, 2020: 42). This also suggests that the necessary support that many of these children might urgently need in view of the loss of their caregiver was (and still is) not being provided. Thus, building the case on how the War on Drugs violated the rights of these children would establish a strong foundation for holding the government accountable for these violations and demanding redress.

At present there seems to be little to no space for substantial action on these rights violations given the disinterest of the relevant government agencies such as the DOH in providing support to these children and the fact that justice has been elusive for families who were brave enough to file cases. Only the case of Kian delos Santos, a 17-year-old boy whose killing by police officers was caught on camera, led to a conviction of perpetrators (Johnson, 2018). Obviously, all the space there is at present should be used for supporting the children involved. To the extent that such space would only occur in the future, it is relevant to think about the prospect of introducing some form of a transitional justice mechanism or tool that would provide redress to the children involved. However, a first scan of the literature revealed that scholarship on transitional justice and children remains mainly limited to children

⁴ For the purposes of this study, the term “orphan” will be used to refer to children who lost at least one or both parents or guardian(s) due to killing in the War on Drugs.

who were engaged in armed combat. This was for example highlighted by Billingsley (2018) who, in addition, stated explicitly that transitional justice mechanisms have yet to recognize children whose parents/guardians were killed by state-sanctioned violence. My position is that there is no principled reason for limiting transitional justice arrangements to situations relating to child combatants. Instead, it may also be an appropriate response to gross human rights violations like Duterte's 'War on Drugs' in the Philippines. Past experiences of the country with transitional justice arrangements inform this position.

Hence, based on the above-mentioned concerns about the situation of children orphaned by the War on Drugs, and stimulated by my understanding of children's rights, this study aims to establish which rights under the Convention on the Rights of the Child were violated and are at risk of being violated. Based on this, an examination of literature on the meaning and implications of a Child Rights' Based Approach, and through interviews with grassroots NGOs in the Philippines and with experts on transitional justice and children's rights in the Philippines, I propose a child-rights based transitional justice mechanism that would provide redress to the above-mentioned orphaned children.

1.2 Research Objectives

This study has the following objectives:

1. To identify how the children bereaved of their caregivers by the War on Drugs were affected by the War on Drugs and establish which rights under the Convention on the Rights of the Child were violated;
2. To examine how the system, and especially the relevant laws, policies and actors involved in child protection in the Philippines, has responded to the current situation of children orphaned as a result of the War on Drugs;
4. To explore the appropriateness of developing core elements of a future transitional justice framework that is rooted in a child-rights based approach and in the past experiences of transitional justice mechanisms.

1.3 Research Questions

Based on the above-stated objectives, this research intends to answer the following questions:

Main Questions:

How can the violations of the rights under the Convention on the Rights of the Child of children orphaned due to the War on Drugs in the Philippines be remedied?

Sub-questions:

- a. Which child rights were violated in relation to children orphaned due to the War on Drugs in the Philippines and what are the consequences thereof, both for the children concerned and for the state of the Philippines, from a child rights-based perspective?
- b. What is the primary-secondary victim dichotomy in transitional justice and why is it important to recognize the orphaned children as "primary" victims in redress mechanisms?
- c. How can a child rights-based approach ensure that the rights of the orphaned children would be recognized and redressed by a (future) Transitional Justice mechanism?

1.4 Scope and Limitations

My research focused on children bereaved of their parents/caretakers due to the War on Drugs in Metro Manila, the Philippines. Manila is considered to be the initial hotspot of the extra-judicial killings involved and the location where the highest number of killings was documented. This is substantiated by the documentation of ‘The Drug Archive’, a project initiated by Ateneo de Manila University and joined by De La Salle University, University of the Philippines-Diliman and Columbia University, which compiled cases from 10 May 2016 until 29 September 2017. The Drug Archive claims that during that period, 40 percent of the killings occurred in Metro Manila and the remainder were dispersed in the rest of the country (The Drug Archive, 2018: figure 2). These claims coincide with the figures released by the project *Dahas* of the University of the Philippines-Diliman and Ghent University which compiled cases of drug-related killings that were documented by a local newspaper, the Philippine Daily Inquirer between March 2011, which was under President Benigno Aquino III, up until January 2020 under Duterte’s Administration. *Dahas* provides a heatmap for the killings with a comparative number of drug-related killings under the two administrations. Between July 2016 and January 2020, allegedly 1013 deaths were documented by the Philippine Daily Inquirer alone. This was the highest number in the country (Dahas, 2020: n.p.).

The focus of my study is on children who had at least lost one parent/caregiver or both to the War on Drugs under the Duterte Regime. Recognizing the complexity surrounding doing interviews with children whose parent(s) were killed due to the War on Drugs and given the risk of putting the lives of the children in danger, I opted to rely on secondary data from the research conducted by Ofreneo and others (2020), Human Rights Watch (2020), and the report of the Commission on Human Rights on their consultation with widows and orphans of the War on Drugs conducted in 2018, to provide the in-depth perspective of the orphaned children. I complement this with the statements provided by key informants who are working with these orphaned children.

Lastly, in consideration of my safety as a researcher and in view of the current political climate, I opted not to conduct interviews with representatives of the security sector and the Office of the President.

Chapter 2

Child Rights-Based Approach and Transitional Justice

This section will discuss a child rights-based approach as both a theoretical framework and a methodology to analyse state policies, in this case, the War on Drugs implemented by the Duterte government in the Philippines. First, I will discuss the UN Convention on the Rights of the Child (CRC). Given the fact that, except the United States of America, all other states in the world have ratified this Convention and thus it represents binding international obligations for them, most child rights-based approaches draw upon the Convention for orientation on substance and process. Thereafter, I will discuss the concrete implications of this for analysing the rights climate experienced by the children orphaned by the War on Drugs.

2.1 Child Rights-Based Approach

For children to realize their rights, the State must put in place mechanisms enabling relevant actors to pursue these rights. Such mechanisms include legislation, policies and resources (financial but e.g. also data). In the perspective of the CRC, ideally such mechanisms should come about through a Child Rights-Based Approach (CRBA), pursuing the substance of the Convention, including its general principles. As will be explained further below, the latter means that the central aim should always be the survival and development of the child (CRC art. 6), non-discrimination (CRC art. 2) needs to be observed, the best interests of the child need to be a primary consideration (CRC art. 3), and child participation is key (CRC art. 12).

CRBA is a specification of more generic rights-based approaches to development. Rights-based approaches to development were conceived when stakeholders in the development sector saw the need to go beyond the traditional international assistance models of donor countries and aid recipients and instead, introducing a model that is rooted in the fact that each and every individual is a holder of rights (Save the Children, 2007). Rights-based approaches anchor themselves in the concept of duty-bearers and rights-holders and seek to ensure that even the most vulnerable are entitled to, and in actual practice can, claim their rights (Save the Children, 2005). Rights-based approaches tend to be more in-depth in their analysis of problems in comparison to most other models of development because they look for structural solutions, based on analyses of which specific rights are violated, how and why, and what is required and can be done to remedy this.

A Child Rights-Based Approach is both a useful framework and a method for examining how policies, programs or practices are in line with children's rights, often as articulated in the CRC. Nonetheless, relevant other (including regional, national or local) articulations of children's rights may also be incorporated, next to or replacing the CRC. Save the Children, an international non-governmental organization that is widely known for advancing the rights of children all over the world has published various useful guides on how to design and apply a child rights-based approach to a particular problem, question or activity (e.g. Save the Children, 2005; Save the Children, 2007).

Save the Children explained that a CRBA might entail the particular exercise of “Child Rights Programming” (CRP) which incorporates “good development approaches” and tools such as situation analysis, consultation with community stakeholders, and capacity building (*ibid.*: 40). In a broader sense, integrating a rights-based lens such as by having the CRC as the guiding framework for an intervention and applying the notion of rights-holders and duty-bearers, is relevant in this study as well (*ibid.*: 41).

As discussed in Chapter 1, the War on Drugs under the Duterte regime is immensely criticized, not only for the alleged thousands of people killed and unlawfully arrested under the campaign but also for the alleged violations committed against Filipino children, especially those who were left orphaned. However, in most cases, these violations have been simply referred to generically without explicitly stating exactly which violations were committed and which law or convention seeks to protect the child rights involved.

Hence, by way of applying a Child Rights-Based Approach, I examine the War on Drugs and the situation of the children orphaned because of this War through the relevant provisions of the Convention on the Rights of the Child. These provisions are presented in general terms in the next section and then applied in Chapter 3. I explore which rights were violated or may have been/are at risk of being violated, and the relationship between the Philippine government as the duty-bearer and the orphaned children as the rights-holder.

2.1.1 United Nations Convention on the Rights of the Child

In assessing State policies or designing programs using a Child Rights-Based Approach, the CRC provides a comprehensive guideline on what must be accomplished to realize children’s rights, including “child-friendly” policies and practices. The CRC also provides guidance on State parties’ responsibilities, especially when it comes to reporting of their compliance. Moreover, Arts (2006) explained that the CRC encompasses other concepts of international law that can be used in realizing children’s rights such as civil, political, economic, social and cultural rights and in “establishing international criminal responsibility for violation of children’s rights” (Arts, 2006: 10). The CRC has 54 articles. Article 1 defines who are covered by the treaty by clarifying that a “child” is “any human being that is below the age of 18 years, unless the relevant national laws recognize an earlier age of majority” (United Nations, 1989: Art. 1).

Since the adoption of the CRC by the UN General Assembly on 20 November 1989, the CRC has been a cornerstone for laws and policies all over the world for matters concerning children. Boasting an almost universal ratification of 196 state parties as of 2021 (as stated earlier, all except for the United States) (United Nations Treaty Collection, 2021), and despite the extensive set of state obligations that it entails, the CRC established its legitimacy and the primacy of children’s rights among the States parties (Arts, 2014). The Philippines ratified the treaty in 1990 (OHCHR, n.d.) which indicates its willingness to abide by the obligations of the CRC. The magnitude of these obligations is emphasized by Article 4 of the Convention stating that “state parties are expected to fulfil the obligations stipulated under the Convention which include making the necessary legislative, administrative and other measures necessary for the realization of these rights” (United Nations, 1989: Art. 4).

The monitoring of the implementation by the States parties to the Convention was thoroughly discussed by Doek (2011) who explained the significance of the creation of the Committee on the Rights of the Child (United Nations, 1989: Art. 43). Aside from the Committee's main role of monitoring implementation and the adherence of the States parties to the Convention, Article 45 provides that the Committee may also make recommendations to the UN and draft general recommendations (Doek, 2011). Under the third Optional Protocol, the Committee may also entertain complaints submitted by or on behalf of children.

2.1.2 Four General Principles of CRC

As briefly referred to earlier, Child Rights-Based Approaches are guided by the four general principles of CRC which stand as over-arching themes that guide the implementation of the other articles in all situations that concern children (Save the Children, 2005). These four guiding principles are: non-discrimination (article 2); the best interests of the child (article 3); survival and development (article 6); and the right to participation (mainly article 12).

Article 2 of the Convention states that, without discrimination, all children within the jurisdiction of a State party are entitled to the rights stipulated in the Convention and that States are obliged to protect children from any form of discrimination that may arise (United Nations, 1989). Discrimination may stem from either the child's or the parents' or the legal guardian's "race, colour, religion, sex, language, political or other opinion, national, ethnic or social origin, property, disability, birth or other status" (United Nations, 1989: Art. 2). Children bereaved of their parents due to the War on Drugs are thus entitled to the same rights as all other Filipino children. Even if their parents are guilty of using illegal drugs, based on the non-discrimination principle, children cannot be excluded from government support that is appropriate for them and available for other children.

Article 3 states that the State must take into consideration the best interests of the child in all its policies or measures that would affect children. Save the Children (2005) explained that, according to Article 3, the concept of best interests of children should be the "primary consideration" when the State designs laws, policies or allocates resources that would affect children (Save the Children, 2005). The Convention itself does not provide a definition of the principle as the drafters recognized that the definition of best interests may differ depending on the context (Arts, 2014). This creates a dilemma, as explained by the Child Rights International Network (CRIN), wherein the lack of definition and giving the power to define best interests to the States themselves made the concept vulnerable to misinterpretations and in certain situations left the judiciary with little guidance in its interpretation (CRIN, 2018). So, while in a different way than the non-discrimination principle, Article 3 too highlights the responsibilities of the Philippine State to consider every Filipino child in the policies that it will enact. This research uses Article 3 as a ground to examine whether orphaned children too were victim of the War on Drugs and thus must be taken into consideration once any form of mechanism for redress would be established.

Furthermore, the Convention details the right of the child to life, survival, and development. It is noteworthy that the Convention explicitly states that the State "must ensure to the maximum extent possible" the survival and development of the child (United Nations, 1989: Art. 6). Herein, survival and development not only mean the child's right to live but also pertains to the physical, emotional, social and spiritual development of the child (Save the Children, 2007). As the children orphaned by the War on Drugs are dispossessed of their caregivers,

these children are at a loss for who can provide for their physical, emotional, and social needs. Through CRC article 6, in conjunction with the other relevant provisions of the Convention such as the rights to an adequate standard of living (Article 27), to education (Article 28) and to rehabilitation (Article 39) (United Nations, 1989), the Philippine government is mandated to provide an intervention for the special needs of these children. Moreover, these same Articles are also a basis for seeking accountability from the Philippine government for failure to provide for these children.

Lastly, Article 12 stipulates the right of children to be heard or to participate freely in matters that concern them. When drafting laws and policies that would affect children, children must be allowed to participate, out of their own volition, and their opinions must be taken into consideration. This particular article recognizes the agency of children who are in themselves capable social actors (Save the Children, 2005). Based on this Article, the children orphaned by the War on Drugs must be heard by the Government in order for them to express their opinions, especially as to how the anti-drug campaign affected them. Furthermore, the children must be consulted about the design of a redress mechanism or any other responsive action taken.

2.1.3 Rights-holder and Duty-bearer Relationship

A Child Rights-Based Approach is a mechanism that is used by state actors and non-state actors alike. However, the State has the primary responsibility to ensure that there are safeguards in place such as laws, policies, mechanisms and resources that would guarantee the children these rights (Sahovic, 2011). Thus, in this research, I evaluate the compliance of the State of the Philippines as a party to the CRC and therefore bearing the obligations stipulated in this Convention. In this kind of relationship, the State of the Philippines is referred to as the “duty-bearer” and the bereaved children as “rights-holder.”

Duty-bearers, as the name implies, bear duties or responsibilities under treaties and conventions such as the CRC. States are considered the “main” or “primary” duty-bearers while parents and other actors within the state that care for children are regarded as “secondary” duty-bearers. As the main duty-bearer, the Philippine State is expected to respect, protect, and fulfil the rights of children to the best of its capacity. Moreover, the State is expected to support the secondary duty-bearers in fulfilling their obligations towards the right-holders (Save the Children, 2007). It is noteworthy that an important aspect of the duty-bearer and rights-holder relationship is the concept of accountability. If the main duty-bearer (the Philippine State) fails to accomplish these obligations, it is expected that they will be held to account (Save the Children, 2005).

On the other hand, the bereaved children, as rights-holders, must be given the capacity to claim their rights from the duty-bearer and can hold the duty-bearer to account in case of non-fulfilment or violation of their rights (Save the Children, 2007).

2.1.4 Specific CRC Provisions relevant to the Situation of Children Orphaned due to the War on Drugs in the Philippines

Given my child rights-based approach, I will assess the War on Drugs under the Duterte regime in Chapter 3 specifically on how it has affected, violated or put at risk of violating the provisions of the Convention on the Rights of the Child. Table 1.1. presents a compilation of the relevant CRC provisions in relation to the situation created for children orphaned by the War on Drugs. This is used to examine, in Chapter 3 as well, how the State of the Philippines has fulfilled its role as a duty-bearer in relation to the rights-holders which are in any case the orphans of the War on Drugs and possibly also their caretakers (if any). In Chapter 4, I explore how the content of the CRC could be used in a child rights-based transitional justice arrangement.

Table 1 Main CRC provisions (United Nations, 1989) violated or at risk of being violated as a consequence of the War on Drugs

Article no.	Provision
2	<p style="text-align: center;">Non-discrimination</p> <p>(2) State parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the children’s parents, legal guardians, or family members.</p>
3	<p style="text-align: center;">Best Interests of the child</p> <p>(1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interest of the child shall be a primary consideration.</p>
5	<p style="text-align: center;">Parental Guidance and the Child’s Evolving Capacities</p> <p>States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.</p>
6	<p style="text-align: center;">Survival and Development</p> <p>(2) State parties shall ensure to the maximum extent possible the survival and development of the child.</p>
9	<p style="text-align: center;">Separation from Parents</p> <p>(1) State parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable laws and procedures, that such separation is necessary for the best interest of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect by the parents or one where the parents are living separately and a decision must be made as to the child’s place of residence.</p>
12	<p style="text-align: center;">Right to be Heard</p> <p>(1) State parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the</p>

	child, the views of the child being given due weight in accordance with the age and maturity of the child.
18	<p style="text-align: center;">Parental Responsibilities</p> <p>(2) For the purpose of guaranteeing and promoting the rights set forth in the present Convention, State parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities, and services for the care of children.</p>
19	<p style="text-align: center;">Protection from All Forms of Violence</p> <p>(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.</p>
20	<p style="text-align: center;">Protection of child without a family</p> <p>(1) A child temporarily or permanently deprived of his or her family environment, in whose own best interest cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state.</p> <p>(2) State parties shall in accordance with their national laws ensure alternative care for such a child.</p>
27	<p style="text-align: center;">Standard of Living</p> <p>(1) States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.</p> <p>(3) States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.</p>
39	<p style="text-align: center;">Rehabilitative Care</p> <p>State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect, and dignity of the child.</p>

2.2 Transitional Justice

This section will discuss the concept of Transitional Justice as a mechanism to address large-scale and systemic human rights violations and how it can be used to help children orphaned by the War on Drugs. First, I discuss the definition and main components of transitional justice with a focus on the Right to Truth. This is followed by a discussion of how transitional justice mechanisms have integrated children into the process. Lastly, I underline the importance of including the children orphaned from the War on Drugs in the transitional justice mechanism especially in relation to the right to truth.

Another less seen, yet massive and lasting impact of the War on Drugs is its effects on the different State institutions such as the Judiciary and the security sector. FFFF⁵, who currently is involved in the judiciary and has handled numerous drug cases, states that the Judiciary has greatly suffered due to the War on Drugs. During our interview, they expressed that the courts and consequently, jails and prisons, are overwhelmed which severely affects the administration of cases (Interview with FFFF, 2021).

As mentioned in chapter 1, the alleged “quota” system imposed upon the police was one of the main drivers for the surge of numbers in drug-related arrests and killings. FFFF claims this is an “insult to the Rule of Law” that has brought long-term damage to the justice system (*ibid*). She narrated some of the cases she presided over were like “fake trials”—where police officers filed fabricated drug-related cases with proforma affidavits—that she stated were a complete waste of the judiciary’s resources (*ibid*).

HHHH, a renowned human rights and International Humanitarian Law and Transitional Justice expert, provided a similar insight stating that the War on Drugs has impacted the Philippines on three levels: the institutions, the society, and the individuals. On the institutional level, the Rule of Law suffered from the War on Drugs which has “weakened the checks and balances of the institutions in what is supposed to be a Republic”. On the societal level, there has been a form of self-censorship due to the fear of reprisal and the threat of being red-tagged. Lastly, on the individual level, there is the impact felt by the victims (both direct and the families they left behind) themselves (Interview with HHHH, 2021).

Hence, in addressing the aftermath of the War on Drugs, the mechanism for redress must grapple with all the three levels discussed by HHHH. But as the current apparatus of the State itself, expected to conduct check and balances, cannot be relied upon to render impartial judgement, stakeholders rely on transitional justice as a nation-building mechanism with its orientation towards the future (Ramirez-Barat, 2014). HHHH added that “Transitional Justice can help especially when ordinary courts cannot succeed because of the complication or even the political sensitivities” (Interview with HHHH, 2021). This may allude to the scepticism towards the Courts’ impartiality due to the alleged political leanings of the Supreme Court in the Philippines (Interview with GGGG, 2021; Ibarra, 2020). The transitory nature of this mechanism towards peace and rule of law earned it its name “Transitional Justice” (International Center for Transitional Justice, 2009).

The United Nations (2010) defined Transitional Justice as “a set of both judicial and non-judicial procedures that States utilize to acknowledge extensive human rights violations in order to prevent the same from happening again with particular attention to the elements of accountability, justice and reconciliation through truth-seeking, reparations and reforms” (United Nations, 2010: 2). Pablo de Grieff (2014), who is currently serving as the UN Special Rapporteur on the promotion of truth, justice, reparation, and guarantees of non-occurrence, points out that transitional justice mechanisms are perfect for countries wherein the State, the primary duty-bearer to protect and promote the human rights of its citizens, have not only been ineffective in carrying out its duties but is also the one who committed the violations itself (de Grieff, P. in Ramirez-Barat, 2014), such as the case of the Philippines.

⁵ The names of the interviewees were anonymized for security reasons. The full codes and description of the interviewees can be found in Appendix 2.

Transitional justice is a multifaceted approach that allows countries to process the three levels of impacts discussed earlier to promote healing for victims of violations on the individual level, to memorialize the experience in order to prevent it from happening again on the societal level and to reconstruct State institutions in order to regain public trust on the institutional level. Ramirez-Barat (2014) described the nature of transitional justice to break free from the past and to reinstitute norms such as rule of law and democracy (Ramirez-Barat, 2014). This nature sets it apart from other justice mechanisms that tend to be legalistic and focus on exacting criminal responsibility. Transitional justice recognizes that to effectively move forward as a nation, there must be a holistic approach that goes beyond prosecution (Di Sarsina, 2019: 5).

2.2.1 Four Components of Transitional Justice: the Joinet-Principles

The United Nations stated that transitional justice may take the form of judicial and/or non-judicial processes and has four core components: “prosecution initiatives, facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations” (United Nations, 2010: 2). These four components trace their roots from the Joinet Principles, named after the UN Special Rapporteur on Amnesty Louis Joinet who provided recommendations to the UN Human Rights Commission in 1997 through his report entitled “Question of the impunity of perpetrators of human rights violations (civil and political)” (SwissPeace, 2012).

Joinet’s 1997 report detailed the 42 principles that he proposed to the UN Commission on Human Rights which he stated were necessary to combat the impunity of perpetrators of human rights violations. Therein, he emphasized four main concepts, namely: the right to know, the right to justice, the right to reparation and guarantees of non-occurrence (Joinet, 1997). These became the cornerstone principles of transitional justice.

The Right to Know (hereinafter referred to as the Right to Truth as it is commonly referred to nowadays) draws upon the right of every individual to be informed about what happened in the past and what led to the commission of violations of rights to prevent that from happening again and to prevent historical revisionism (ibid: 17). The Right to Truth also draws upon the principle of the victim’s right to know which dictates that families of victims of human rights violations have the right to know the circumstances surrounding the violation and the fate of the victim, for instance in cases of enforced disappearances. Under the Convention on Enforced Disappearances, those who are left behind by the result of enforced disappearance have the right to know the details regarding the disappearance, the progress and result of the investigation and what had happened to their loved one(s) (UN General Assembly, 2006b). In order to achieve the Right to Truth, Joinet recommended the creation of Truth Commissions which he referred to as extrajudicial Commissions of Inquiry mandated to establish the facts and archiving of data (ibid: 18).

The Right to Justice pertains to the right to access to justice for victims. This mandates that the State investigates the violation(s) committed, prosecutes those involved and punishes those who are found guilty (ibid: 7). The Joinet report also stated that “the jurisdiction must be within the national courts but international courts may have concurrent jurisdiction should a national court be not found impartial or incompetent in doing its mandate” (ibid, 23).

The Right to Reparation ascertains that victims have the right to seek redress from the perpetrator for the violations committed against them. Reparations may be given in the form of restitution, compensation, and/or rehabilitation and, in the case of families of victims of enforced disappearances, being informed of what happened to the victim (ibid: 27).

Lastly, Joinet stated that there must be a guarantee of non-recurrence. This principle states that State institutions, most especially those implicated with violating human rights, must undergo institutional reformation and e.g. remove guilty officials.

For Transitional Justice mechanisms to be successful, the four principles must be implemented. This was also asserted by the International Center for Transitional Justice (2009) stating that, after two decades of implementation of numerous forms of Transitional Justice mechanisms from all over the globe, it has been established that the different principles work effectively when coupled with the others (International Center for Transitional Justice, 2009).

2.2.2 Scholarship on Transitional Justice and Children

While Transitional Justice proves to be a feasible approach to address the three levels of impact of the War on Drugs, the question remains as to how the orphaned children can be given redress by Transitional Justice. Looking at the past scholarship on Transitional Justice, one main criticism is that transitional justice mechanisms have generally lumped together women and children in the same category as helpless victims, considering the vulnerabilities they share, but largely failed to consider the fact that women and children have different sets of vulnerabilities and, depending on their identities, different kinds of children experience conflicts or human rights violations differently (Roche-Mair. 2017: 159).

Scholars then asked why there are only limited studies on the rights of children and their participation in transitional justice mechanisms when, because of their intersecting identities, children are even more vulnerable and thus more affected in comparison to their adult counterparts, and even though the CRC provides that children have the right to participate in matters that affect them (Smith in Parmar, et. al, 2010: 43). This is especially the case for these orphaned children whom EEEE, humanitarian worker and currently providing assistance to orphaned children, states “were already in a vulnerable situation and were further pushed into more vulnerabilities” (Interview with EEEE, 2021). Parmar asserts this by stating that the transitional justice mechanisms would be ineffective without the participation of children and would violate the CRC (Parmar, et. al, 2010).

It is almost ironic to not include children in transitional justice mechanisms, not only because it is an inherent violation of their right to participation, but especially since it would be children that would inherit the outcome of transitional justice mechanisms. According to Smith (2010), in many countries that require transitional justice after experiencing conflict or gross human rights violations, children⁶ comprise the majority of the population, and their exclusion would then exclude the majority of the population (Smith in Parmar, et. al, 2010: 33). Children have been exposed to the grueling realities of armed conflict and loss of loved ones due to state-sponsored violence — as victims and as citizens. Siegrist too (2010) asserted that participation of children in the transitional justice system must be ensured (Siegrist in Parmar,

⁶ Meaning persons below 18 years old.

et al., 2010). HHHH, currently involved in the judiciary, warned about the effects of un-addressed generational trauma that is experienced by these orphaned children and that they could pass on to their children in the future (Interview with HHHH, 2021).

However, despite the recent progress of the inclusion of children in transitional justice mechanisms as witnesses and victims (*ibid*), not all children are included yet. Billingsley asserted that scholarship in transitional justice focuses mainly on children being active actors, usually in conflict situations, such as child soldiers. Rarely are works written about children who experienced gross human rights violations as children (Billingsley, 2017: 65). According to Roche-Mair (2017) there is still work to be done for transitional justice actors, especially since there is still a lack of general understanding of children's rights and child rights-based approaches which resulted in the inconsistent application of children's rights in past experiences of transitional justice mechanisms (Roche-Mair, 2017: 158).

Children who were orphaned due to the War on Drugs face a great dilemma: not only did they lose their parents or guardians, but they also face the stigma of being labelled as children of drug users. That label makes it difficult for them to access social support from government agencies and even from those within their communities as providing the families left behind with support would be seen as supporting alleged drug personalities (Human Rights Watch, 2020).

Furthermore, and as mentioned earlier, there has been little attempt to conduct investigations on the drug-related killings. According to Human Rights Watch, out of all the thousands recorded deaths of the Philippine Drug Enforcement Agency, it was only the death of the 17 year-old Kian Delos Santos in August 2017 that led to a trial and conviction and this might have only happened because of the widescale protest against the killing of the minor and because there was video evidence (*ibid*: 1).

Hence, considering the lack of political will to provide support and justice to these children from the current administration, transitional justice with its forward-orientation would be a viable option. However, based on the literature on children's participation in transitional justice mechanisms, the inclusion of children in the process will need to be based on the prioritization of goals of stakeholders (Roche-Mair, 2017: 151) and their understanding of child rights and a child rights-based approach (*ibid*: 158). Thus, I conducted interviews with actors who were/are involved in transitional justice mechanisms in the Philippines, Child Rights Experts, and NGOs involved with child protection in Metro Manila. Based on these interviews, I explore the appropriateness of transitional justice for these children and the potential core elements of such arrangements in Chapter 4.

2.3 Methodology

To answer the research questions at hand, I utilized both primary data collection (through key-informant interviews with experts on the field of children's rights, transitional justice, the Philippine judiciary, and development workers directly involved with orphaned children) and secondary data gathered from the research conducted by Ofreneo et al (2020), Human Rights Watch (2020), and the report of the consultation with the widows and orphans of the War on Drugs conducted by the Commission on Human Rights Philippines by Parreño and Ang-Reyes (2019). I also used a Child Rights-Based Approach as a methodology for designing my interview questions guided by the Child's Rights Situation Analysis questionnaire of

Save the Children (2007) and in evaluating the literature that I used for my secondary data by evaluating how the methodologies used complied with child-friendly practices. The combination of this method and these techniques enabled me to answer my research questions.

2.3.1 Primary Data

For this research I conducted 9 (nine) interviews with key informants who are working in the field of child’s rights, transitional justice and the judiciary in the Philippines, or did so in the past. In light of my focus on children’s rights, orphaned children and support provided to them, and transitional justice, I identified key informants who are active in these realms. In selecting my specific respondents, I used several criteria for determining which experts would be relevant and qualified key informants for this research:

Table 2: Criteria for selecting Key Informants

SECTOR CLASSIFICATION	CRITERIA
Transitional Justice	<ol style="list-style-type: none"> 1. Must be familiar with the concept of transitional justice its application and the national and international laws relevant to it; 2. Must have worked in one of the transitional justice mechanism(s) that was applied in the Philippines in the past; and/or 3. Must have conducted extensive research on the past transitional justice mechanism(s) applied in the Philippines.
Child’s Rights NGO	<ol style="list-style-type: none"> 1. Must have worked with, or is still working with, children (e.g providing legal, social, psychosocial or financial support) who were orphaned due to the War on Drugs; and 2. Must have experience in Metro Manila.
National Human Rights Institute (NHRI)	<ol style="list-style-type: none"> 1. Must have working knowledge of the NHRI’s constitutional mandate to monitor the compliance of the Philippines with its international obligations; 2. Must be familiar with child’s rights-based approaches; 3. Must be familiar with the NHRI’s programs involving children; and 4. Must be familiar with laws relevant to children.

I started conducting interviews with five experts whom I selected based on the criteria that I established. For security purposes, their names are not disclosed. They are assigned code-names instead. I present an overview of the interviewees and some background information on them in Annex 2. I began my interviews with AAAA and BBBB, experts on Transitional Justice who both worked as officials in one of the past transitional justice mechanisms employed in the Philippines. Then I interviewed, respectively: CCCC, a former head of the division of a government office that specializes in children’s rights and monitoring the compliance of the Philippines with the CRC; EEEE, an experienced humanitarian and volunteer

of a church-based organization (Child's Rights NGO); and FFFF, a lawyer with extensive experience in litigation who wrote a dissertation on Transitional Justice (Transitional Justice sector). I was able to directly contact the experts due to my prior work in the human rights sector and the network that I built throughout my studies in ISS.

Afterwards, I conducted snowball sampling through the help of BBBB who helped me get in touch with the other experts in the field of children's rights and transitional justice. BBBB provided a list of experts in transitional justice, international law, and children's rights organizations that could help me in my research. She encouraged me to conduct an interview with: HHHH who was involved in the Transitional Justice process for the Bangsamoro and a renowned expert in International Humanitarian Law (Transitional Justice sector); GGGG, a transitional justice scholar who published numerous works on how transitional justice has been employed in the Philippines (Transitional Justice sector); and DDDD who heads an organization that provides legal assistance to children (Children's Rights NGO). Moreover, I conducted further cold calls to other children's rights organizations and through several referrals I was recommended to get in touch with IIII who is the head of a children and youth oriented organization (Children's Rights NGO).

I then drafted letters requesting an interview with them. The letter detailed that I am a master's student in the International Institute of Social Studies doing research on children who have been orphaned due to the War on Drugs in the Philippines. I also stated reasons as to why I think their organization would be a perfect fit for this interview, namely that, based on my research they are doing the following: providing psychosocial/financial and social support to the children, providing legal assistance and/or advocating for children's rights as enumerated in the CRC. For individual experts, I explained that through their expertise in the field of human rights/transitional justice and (international) law, their insights on my topic would be invaluable. The letter also stated that there would be no compensation for the interview and that confidentiality and security would be observed.

In drafting the questions for the interview, I also intentionally used a Child Rights-Based Approach by basing the questions on the key questions enumerated by Save the Children (2007) in their material on conducting a Child Rights Situation Analysis (CRSA). These encompass the following: the rights climate for the children orphaned by the War on Drugs in the Philippines; the role of duty-bearers; and the capacity of relevant stakeholders (Save the Children, 2007: 22). By way of an interview guide, I formulated 14 general questions divided over the three themes/sectors which can be found in Annex 1. These questions were all asked to the respondents. The questions for the interview were designed to provide a glimpse of the (level of) knowledge of the respondents on three aspects: the situation of the orphans due to the War on Drugs, child rights-based approaches, and transitional justice. Several respondents who agreed to having the interview requested to receive the questions beforehand which I arranged.

The interviews were conducted over zoom at the most convenient time for the respondents. Before the start of the interview, I provided the respondents with a brief background of my research and asked permission to record the interview for documentation purposes. I explained that the recording will only be used for this specific MA research project and will be properly deleted after the assessment of this paper. The interviews were conducted in a mixture of English and Filipino, whichever language the respondent felt comfortable in for answering the questions.

2.3.2. Secondary Data

As stated in Chapter 1, I provided the perspective of the orphaned children in this research through the reports of Ofreneo et al. (2020) and Human Rights Watch (2020). Through the course of my research, I was also able to gain access to the report of Parreño and Ang-Reyes (2018) on the consultation on the War on Drugs conducted by the Commission on Human Rights-Philippines with women and children. In examining these sources, I used the lens of a Child Rights-Based Approach to evaluate the methodologies used by the respective researchers to ensure that it was the voices of the children that were highlighted in the study and whether the ethics of care was implemented during interviews and consultations in adherence to the do-no-harm principle of research.

The study conducted by Ofreneo et al. (2020), while not explicitly stating that it used child-friendly methodologies, alluded to that by indicating that the study adhered to the standards of the Philippine Social Science Council Review Board. These standards include the “do no harm approach, social justice, cultural and gender sensitivity and the protection of vulnerable population” (Ofreneo et al., 2020: 5). The latter clearly encompasses these children. Those involved with the research underwent ethics training prior the session. During the sessions themselves, the researchers were transparent about the research process to the children involved and their guardians. The team also stated that mental health professionals were on standby during the sessions should any of the children display signs of distress and or re-traumatization (ibid: 6). It is noteworthy that the study further alludes to a child rights-based approach as one of the consequences of the research process was for the children to regain their agency which their circumstances had stripped off them (ibid: 13). The study allowed the children to regain their silenced voices (alluding to the right to be heard) by making the children write down their experience (ibid: 6), guiding them as they processed their emotions, struggles and memories and helping them regain their agency (ibid: 13).

The report of Parreño and Ang-Reyes was more straightforward in its use of child-friendly approaches. The study viewed the child participants as their own agents. While the consent of their guardians was asked for the children’s participation in the study, that participation was also decided by the children themselves (Parreño and Ang-Reyes, 2018: 19). The report explicitly stated that the interviews conducted took into consideration child-specific needs with a view towards preventing re-traumatization. The design of the interview itself was made such that the details of the killings of their parents would not be talked about, especially if it the discussion was not introduced by the child or the child was not comfortable of talking about it (ibid: 16). Again, a child-friendly approach was highlighted especially in the objectives of the consultation which was to celebrate Children’s Month through recognizing the rights of children under the CRC and to provide a safe platform for self-expression for these children (ibid: 62).

Lastly, the report of Human Rights Watch, while very vocal about the human rights violations committed against these children by the State, alluded that their methodologies were child-friendly. It stated that the interviews with the children were conducted in a safe location that was away from their homes to ensure the children’s security. The names of the respondents for the interview were changed to protect their identity (Human Rights Watch, 2020: 4). However, other than conducting their research together with child rights organizations to make it child friendly, there were no measures that implied that the interview took into consideration the psychological distress from having to narrate the children’s experience.

2.3.3. Reflexivity of Researcher

Having worked in the field of human rights before working on my Master's degree, it was difficult for me to detach myself from this topic, especially when I did my interviews. Doing this research for me is not just intended to create new knowledge but is also a call for action for the dire situation of these children. As a responsible researcher, I must always know the fine line between navigating an interview and unconsciously trying to influence those I have the interview with. I would always need to remind myself that as I face my respondents for interview, I am there in my capacity as a researcher and not as a human rights stakeholder. I always needed to be conscious of how I directed the interview—keeping in mind that the knowledge or information is coming from those whom I am interviewing and not myself. It is difficult for me to separate myself from my advocacies that I would always need to remind myself as well that the interview is for research purposes and not for me to advocate for the orphaned children. It is also difficult to write about a paper on the War on Drugs that may appear critical, especially with the risks of being red-tagged⁷ in the Philippines, as experienced by other Filipino human rights activists. But as my respondents were staunch and well-established human rights defenders, they did not hesitate in taking part of this research and providing their insights. Nonetheless, the names of the key informants have been anonymized to ensure their security.

⁷ A sympathizer of the Communist Party of the Philippines.

Chapter 3 War on Drugs under the lens of the CRC

This chapter discusses how the War on Drugs affected, violated or is at the risk of violating the provisions of the Convention on the Rights of the Child specified in Chapter 2. First, I provide an overview of the ramifications of the War on Drugs that were experienced by the children. This is followed by an examination of how the government of the Philippines, as the main duty-bearer, carried out the responsibilities it has under the CRC. Lastly, I provide an analysis of the consequences of the accomplishment, or lack thereof, of the government's duties to the orphaned children based on the child rights-based examination of government policy.

3.1 Situation of the orphaned children

Based on my understanding and analysis of the primary and secondary data, I categorized how the War on Drugs affected the orphaned children into three main areas: their psychological well-being, their current and future economic prospects, and their relationships in their community.

3.1.1 Psychological Well-being

This study draws upon insights concerning the dangers of unaddressed trauma of children, especially among those who have undergone disturbing situations due to state-sponsored violence. Medical experts have established that parentally bereaved children are more likely to experience difficulties in their mental and emotional development while some would even develop Post Traumatic Stress Disorder (PTSD) (Bergman, Axberg and Hanson, 2017; and Berg et al., 2019). Orphanhood is even recognized by the Committee on the Rights of the Child in one of their General Comments as something that can “jeopardize the development of children” (Committee on the Rights of the Child, 2005: General Comment no. 7). IIII, who is the head of an NGO that spearheads other NGOs in the advancement of the rights of Filipino children, shared that the children bereaved of their parents by the War on Drugs who are in their program have exhibited symptoms of PTSD and depression (Interview with IIII, 2021). This psychological distress was ascertained by the scholarship of Ofreneo et al. (2020) and Human Rights Watch (2020) in their respective studies and encounters with children who were bereaved of their parents due to the War on Drugs. DDDD shared that some children who sought for legal assistance from their organization wanted to take revenge on those who killed their parents and some even wanted to commit suicide (Interview with DDDD, 2021).

In the Memory Work conducted by trained social workers and psychologists together with children from the areas considered as killing hotspots in Metro Manila, the children were asked to recount their experience of losing their parent(s). The children compared their ordeal as comparable to that of being in a “nightmare” and shed tears from anguish and grief as they narrated it (Ofreneo et al, 2020: 9).

The occurrence of trauma was echoed by the personal accounts of the children left behind by Extra-Judicial Killing victims that was compiled by Human Rights Watch in 2020. Many

of these children stated feelings of helplessness and torment as some of them personally witnessed how their fathers were killed (Human Rights Watch, 2020: 20). In one of the interviews conducted with the widow of an EJK victim, a researcher from Human Rights Watch personally witnessed the violent tendency exhibited by the orphaned child (whom they referred to as Kyle⁸) towards his mother. The woman explained that this behaviour manifested after the gruesome death of the child's father (Human Rights Watch, 2020: 18).

3.1.2 Current and Future Economic Prospects

Both primary and secondary data suggest that the War on Drugs became a war against the poor as poor Filipinos have been disproportionately affected by the policy. In my interview with EEEE, a humanitarian worker working with the orphans of the War on Drugs, she aptly described the victims of this policy as “already facing so much vulnerability due to their economic conditions and the drug war has even deepened the vulnerabilities especially since it is the breadwinners who are often killed” (interview with EEEE, 2021). This point of view is shared by DDDD who stated that the War on Drugs is a curse upon the poor Filipinos who ironically, initially supported the campaign (Interview with DDDD, 2021). IIII even goes further and stated that “the War on drugs created a generation of orphans who were already poor and even became poorer” (Interview with IIII, 2021).

The study by Parreño and Ang-Reyes with women and children left behind by those who were killed by the War on Drugs revealed that, due to the death of the primary breadwinners of their families, it is often the widows who have to make the family survive financially (Parreño and Ang-Reyes, 2019: 34). One child recounted that their mother was so barely able to provide food for them and to send them to school, that they resorted to eating rice with PhP1,00 unhealthy chips as a means to get by (Ofreneo et al., 2020: 11). Some children were not able to eat anything at all in some days because their mother was not able to work since she also had to take care of her children (Human Rights Watch, 2020: 27).

Such responsibility takes its toll on the women (whose job opportunities are severely limited to informal sectors such as doing household cleaning or laundry). Not only do they have to financially provide for their children but they are also expected to perform domestic duties and nurture their children. This pressure caused a rift between some mothers and her children which manifested in some of the women and children interviewed by Human Rights Watch. Zeny, the mother of Kyle, stated that the death of her late partner led her to needing to work which left her with little time to spend with Kyle who was already having difficulties processing the loss of his father. The behaviour of Kyle worsened when Zeny entered a new relationship (Human Rights Watch, 2020: 33).

In another case study of Human Rights Watch, some of the older children had to take on the role of breadwinners to provide for their younger brothers and sisters. Robert narrated how their mother left him and his younger siblings after the slaying of their father. Robert and his two siblings, John and Karla are living in the streets of Mandaluyong City since, with Robert trying to do odd jobs in order to provide for his siblings (ibid: 35).

⁸ Kyle is one of the pseudonyms given by Human Rights Watch for the children they interviewed to protect their identities (and women too).

Many of the children orphaned by the War on Drugs also reportedly stopped going to school as it was not financially viable for them to do so anymore as expenses surrounding school - such as uniforms, food and transportation allowance and school projects - compounds the toll on their already meager family budgets (Interview with CCCC, 2021; Human Rights Watch, 2020: 27). This is why organizations such as those led by EEEE prioritize providing “Educational Assistance” as most of the orphans whom they support have stopped going to school (Interview with EEEE, 2021).

In instances wherein the mother cannot provide for her children, it has been revealed that there is a tendency for children to be sent to their relatives who are capable of financially supporting them (Interview with DDDD, 2021; Ofreneo et. al., 2020: 11; Human Rights Watch, 2020: 24) without any indication that the children have a choice in the matter. The displacement forced some of these children to be separated from their siblings and to live in communities completely different from what they were used to.

3.1.3. Relationship with their community

Despite the grave emotional turmoil these children already experienced due to the loss of their loved one, some of them were even subjected to ridicule or bullying in their schools and ostracization in their own community. According to IIII, some children who are under the involved NGO’s program have shared that there was no sympathy from members of their community for what had happened to them. The children already lost their parents but instead of supported were stigmatized because their parent(s) were killed from anti-drug operations (Interview with IIII, 2021).

The arbitrary targeting of individuals and the lack of due process in the execution of the national police of the War on Drugs created a sense of distrust in some communities and led to community members distancing themselves from families who had a member killed due to alleged drug involvement. Some neighbors would even gossip about the family’s alleged drug involvement (Human Rights Watch, 2020: 23). CCCC stated that some children she interviewed shared that they were teased and labeled as children of drug users or “*natokhang*” (Interview with CCCC, 2021). Understandably, fearing for their own lives, neighbors and in some cases blood relatives of these families do not provide support to the victims because they are afraid of being involved and targeted by the killings as well (Parreño and Ang-Ramos, 2019: 57). Moreover, since there are also cases in which individuals were killed by unidentified gunmen, the families also have a sense of fear that the perpetrator might still be lingering around in their community (ibid.). This persisting threat even caused some families to move to their provinces outside Metro Manila (Human Rights Watch, 2020: 23).

Aside from financial difficulties, many orphans dropped out of school because they were subjected to bullying and ridicule for having a family member killed due to alleged drug involvement. The President’s tirade of demonizing drug users, which was discussed in Chapter 1, created a communal disgust towards this specific group that manifested even in schools. One child even had their own friend tell them that “it was a good thing that their brother

⁹ Colloquial term used to describe those who were killed from “Oplan Tokhang” which was part of the of PNP Command Memorandum Circular No. 16-2016, the circular that put the anti-drugs campaign of the Philippine National Police into force (Gonzales and Cabigao, Jr., n.d.)

died” which aggravated the suffering of the already distraught child (Human Rights Watch, 2020: 22).

The killing of their loved one by police officers or the seeming lack of effort by the police to investigate vigilante killings also created a sense of distrust towards police officers among the orphans. IIII expressed that the children under their programs have grown reservations towards the police by asking questions such as “police are duty-bound to protect children but why did they kill my parents?” (Interview with IIII, 2021). In the consultation with children reported by Parreño and Ang-Reyes (2019), as they were talking about children’s rights, one of the children asked “what if the perpetrator [of the human rights violation] is one of them?” while pointing at the illustration of men in uniform (Parreño and Ang-Reyes, 2019: 65). This resonates with the findings of Ofreneo et al. (2020) wherein, due to the fact that the children’s traumatic experience was correlated to police officers, the children developed fear towards the police (Ofreneo et al., 2020: 10).

3.2 Scrutinizing the War on Drugs through the lens of the CRC

This section will discuss how the War on Drugs affected, violated or has been at risk of violating selected provisions of the CRC. I also use the duty-bearer and rights-holder relationship of the Philippine government and the orphaned children in this analysis.

Article 2 (2) – Non-discrimination

As discussed in Chapter 2 in relation to the general principles of the CRC, the government is duty-bound to ensure that all Filipino children are able to enjoy the rights stipulated in the Convention, regardless of their parents’ circumstances. Thus, the alleged drug involvement of the parents of these children cannot be used as a ground to disregard the needs of these children. The implementation of the War on Drugs itself has become discriminatory as it has disproportionately affected children from poor families with the key informants stating that the anti-drug campaign itself is “anti-poor” (Interview with DDDD; 2021; Interview with HHHH, 2021; and Interview with IIII, 2021).

Article 3 (1) – Best Interests of the Child

It is apparent that, during the planning and the execution of the War on Drugs, the Best Interests of the Child were not taken into consideration by the actors that designed it. This is manifested by first and foremost, the pronouncement of the President that the children who were killed due to drug operations are “collateral damage” (Gavilan, 2020: n.p.). Government agencies that are involved in the anti-drug operations have been revealed not to consider the repercussion of the execution of alleged drug users, for example when the Philippine Drug Enforcement Agency executive disclosed that they do not monitor the numbers of children orphaned due to the War on Drugs (Tantiangco, 2018). Despite the clamour of human rights groups of the urgent situation of these orphaned children, no government initiative has emerged. This is evidenced by the lack of cabinet meetings wherein the welfare of children under the War on Drugs has been discussed (Human Rights Watch, 2020: 11). IIII stated that there are no specific programs for the orphaned children as that might constitute admission on the part of the government that child rights violations were committed in the name of the War on Drugs (Interview with IIII, 2021).

Article 5 – Parental Guidance and the Child’s Evolving Capacities

Article 5 of the CRC provides that parents play an important role in helping children realize their rights and thus, States must support parents in accomplishing their role. The killing of the parents of these children coupled with the inaction of the government in providing intervention for these children and the unwillingness to investigate their deaths (Interview with HHHH, 2021) violates this provision.

Article 6 (2) – Survival and Development

Based on the gathered data on the situation of children orphaned by the War on Drugs, it is evident that the rights of these children to Survival and Development have been violated. The lack of government intervention for these children, especially those who struggle to have access to food and those that need immediate psychosocial support, shows that there is no regard for their survival and development. This can be attributed as well to the fact that the drug problem in the Philippines is not seen as a health issue but rather as a security issue (Interview with BBBB, 2021). In 2017, when the Department of Health was asked for psychosocial support for the families affected by the War on Drugs, then Secretary Ubial responded “Why is it a public health issue? [is it] contagious? lifestyle-related? in the first place, is it a disease?” (Tapao, 2017 as cited in Human Rights Watch, 2020: 42). Such trivialization of the dire situation of these families and children makes it evident that there is no intention on the part of the government to put interventions in place.

Article 9 (1)(4) – Separation from Parents

While CRC Article 9 was not explicitly referred to by humanitarian worker EEEE, she did mention that the rights of children to be with their family have been violated (Interview with EEEE, 2021). These children have the right not to be separated from their parents unless it is in their best interests which must be proven through a judicial process (United Nations, 1989: Art. 9). However, in this case, the children had one of their parents forcibly taken away from them by state agents and the lack of due process not only violates article 9(4) but the right to life of the parents themselves. Drug use cannot be used as a ground for abuse and neglect, or to justify the separation as no form of judicial process took place. The parents should not have been killed in the first place.

Article 12 (1) – Right to be Heard

The orphaned children never got a chance to be heard by the current government and based on the examples mentioned earlier, their plight even has been dismissed. The only government office that had a consultation with these children is the Commission on Human Rights. However, CHR has been attacked by allies of the President in response to its insistence on investigating the human rights violations committed in the name of the policy (Cayabyab, 2017). In the instances wherein children do try to speak about seeking justice for their killed parent(s) together with their surviving family, they are often faced with threats of retribution (Interview with IIII, 2021). So, these children are not only not being heard but even silenced.

Article 18 (2) – Parental Responsibilities

The government is mandated to provide assistance to surviving parents and/or legal guardians in order for them to perform their responsibilities towards the children. However, based on the cases reported by Human Rights Watch and a consultation with women conducted by the CHR, there is no form of support from the government for the wives left behind so that they could work while also taking care of the children. Thus, they are left to seek help from religious organizations (Human Rights Watch, 2020; Parreño and Ang-Reyes, 2018).

Article 19 (1) – Protection from Violence

As discussed above, children who witnessed the death of their parents were rendered victims of “Mental Violence”. UNICEF (2007) stated that, even being witness to violence, especially of their own kin, affects the development of children (UNICEF, 2017: p. 244). This is evidenced by the trauma and depression experienced by these children. The members of the security sector, namely PDEA and the Philippine National Police, failed to take due regard of children during their operations which resulted in these children being exposed to violence and, in some instances, even being killed themselves (OMCT and CLRDC, 2020: 3).

Article 20 (1) and (2) – Protection of a child without a family

Article 20 states that children like Robert, who was left to wander around the streets of Manila due to the death of his father and neglect of his mother, are entitled to special protection and assistance from the State since the loss of parental care leaves them vulnerable to exploitation and abuse and may also impede their physical and mental development (UNICEF, 2007: 280). Key informants stated that no government intervention has been set in place for these orphaned children. A few small NGOs and church-based organization such as EEEE’s do provide some support. However, these organizations have limited funds and are not able to provide for all the children orphaned by the War on Drugs (Interview with EEEE, 2021).

Article 27 (1) and (3) – Standard of Living

This provision is also affected by the inaction of the government to address the immediate needs of these children, especially in terms of nutrition and social conditions. The lack of support from the state for these children has rendered children no choice but to work in, more often than not, informal jobs such as garbage collection. This often takes a great toll on their developing bodies.

Article 39 – Rehabilitative Care

As these orphaned children are victims of violence as discussed in Article 19, the State is obliged to provide rehabilitative care which not only pertain to physical and mental rehabilitation but may also come in the form of legal assistance. In addition, the rehabilitative care must be timely, child-sensitive and accessible (UN General Assembly, 2006a: para. 102).

3.3 Analysis

It is apparent that the violation of the above stated provisions of the CRC cascades from the act of omission of the Philippine government and its refusal to recognize that the War on Drugs created a generation of orphans whose rights have been and persist to be violated. This lack of recognition suggests that the remedy for the violation of the rights of these children can only take place after a regime change as confirmed by most of the key informants.

Based on my analysis of my interviews, it is apparent that outside of the groups that have direct contact with the orphaned children, the knowledge about the situation of these children is extremely limited. This was confirmed by most of the key informants. They stated that they only know about the situation of the children from the news and through the heads of the NGOs whom they know personally.

Knowledge of the CRC and CRBA was also extremely limited. FFFF shared that she is familiar with CRBA only within the context of juvenile justice because of her experience in litigation and the judiciary (Interview with FFFF, 2021). HHHH is familiar with CRBA because of the practices in humanitarian settings (Interview with HHHH, 2021). The lawyers that I interviewed were familiar with the CRC but would not consider themselves as experts on the Convention. Only CCCC and IIII were familiar with both the CRC and CRBA as it was CCCC's field of expertise and IIII's organization works within the framework of the CRC. Nonetheless, despite the informants' alleged unfamiliarity with the CRC and CRBA, when they were asked about which rights of the children were violated, they were quick to respond with rights that were also provisions under the Convention.

The almost exclusive knowledge about the situation of the orphaned children, the CRC and CRBA within its immediate actors highlights that there is still work to be done in advancing the rights of these children and CRBA in the Philippines.

In Chapter 4, I discuss how Transitional Justice can be used for redress for these children and how it can be inclusive of children through an integrated Child Rights-Based Approach.

Chapter 4 – Child Friendly Transitional Justice

4.1 Making Transitional Justice work for orphaned children

Given the discussion of transitional justice in Chapter 2 and the rights of the orphaned children that were violated or at risk of being violated discussed in Chapter 3, this chapter explores how transitional justice could benefit these children and how they could participate meaningfully in the process. First, I discuss what a transitional justice approach or intervention that utilizes a child rights-based approach looks like. Second, I will go through the Joint Principles to explain further how a child-rights based approach was adopted by past transitional justice regimes and how it can be applied in the context of the War on Drugs in the Philippines. Lastly, I synthesize this through the three levels of redress that must be accomplished introduced by HHHH.

In the UN approach to transitional justice, it is recognized that children are among the most vulnerable in situations of armed conflict and state-sponsored violence. Hence, transitional justice mechanisms established to address human rights violations must provide redress by investigating and prosecuting international crimes against children, offering effective remedies to children, and strengthening government institutions to protect and promote children's rights (United Nations, 2010: 5). This was also emphasized by HHHH who stated that “first and foremost, there must be recognition that children are also victims of the violations and once acknowledgement is done, then the application of a specific human rights-based approach can be implemented” (Interview with HHHH, 2021). Hence, in establishing a transitional justice mechanism for the victims of the War on Drugs in the Philippines, investigation of the violations committed against children, including those who were orphaned by the War on Drugs, must be provided for.

During the interview with the key stakeholders in the fields of children's rights and transitional justice, when they were asked how justice can be given to these (orphaned) children, the primary answer provided was that perpetrators should be held accountable. This will be further discussed in the section on the right to justice.

However, some experts provided noteworthy answers that go beyond the traditional linkage of justice to litigation. DDDD, who is part of an NGO that provides legal assistance to children, explained that “Justice is a broad word, and the definition of justice depends on how they (the victims) define it. Some victims may find that their experience and the violations committed against them should be raised at the local and/or international human rights community and/or international court. This would already be justice for them. For some others, justice is the ability to see the perpetrators and the ones who commanded the violation to be put in prison” (Interview with DDDD, 2021).

CCCC, a child rights expert, went further by stating that “Children should be consulted on what justice means for them” (Interview with CCCC, 2021). She narrated that, during a consultation with the women and children left behind by the War on Drugs, very few actually wanted to pursue cases especially since they were afraid of reprisal. While children would state that they would want to exact revenge, having the perpetrators in jail is not necessarily

what these children had in mind. Some of the children would just want to be able to go back home in their communities or to go back to their “normal” lives. After the consultation, CCCC admitted that one of their findings was that, from a transitional justice perspective, it is important to ask the victims what justice means for them. Thus, in creating programs that would involve children, the principles of the right to participation and the best interests of the child must be part of the guidelines. It is only then that practitioners would know what the children want, what the children need and what would work for the children (*ibid*). This is in line with Ladisch and Ramirez who argued that active involvement of children in TJ measures instils upon children that what was done to them was a violation of their right rather than a punishment by state agents and that the TJ mechanism is how it is being addressed (Ladisch and Ramirez-Barat in Ramirez-Barat, 2014: 178).

4.1.1 The Right to Truth

The right to truth provides that every individual has the right to know what happened in the past, through mechanisms such as Truth Commissions, in order to prevent historical revisionism (Joinet, 1997). In order to give the children orphaned by the War on Drugs justice, FFFF asserted that, first, “there must be a correct accounting of history”. She also emphasized that the narrative must be established, “especially of those who tend to be left behind and are rarely heard such as children” (Interview with FFFF, 2021). She added that the lessons from the Marcos era must be taken into consideration. Since there was no official narrative by a Truth Commission at the time, this led to disputes over the account of that part of Philippine history (*ibid.*) and to historical revisionism (Tagala, 2021). This was echoed by transitional justice expert GGGG, who stated that there must be a thorough and complete documentation of narratives and contexts and that there must be a storytelling process (Interview with GGGG, 2021).

Truth Commissions, as suggested by FFFF, can help establish the facts and violations committed under the War on Drugs. The International Center for Transitional Justice defines Truth Commissions as non-judicial bodies that are created to establish the truth surrounding human rights violations that were committed either in times of conflict or during authoritarian regimes. They conduct fact-finding missions through interviews with victims of violations and the findings from these missions may be used in criminal justice procedures or in the provision of reparations (ICTJ, 2021). In comparison to legal proceedings which can be rigid in determining who can participate and how they can participate, truth commissions are able to involve a wider set of stakeholders (Siegrist, 2006: 55).

According to Aptel and Ladisch (2011), to make Truth Commissions child-friendly, they must look through the lens of child rights with a view to understanding how the rights of the children were affected. Based on these findings, their specific needs should be determined (Aptel and Ladisch, 2011: 3). CCCC asserted that this must be done by meaningful participation of children and allowing these orphaned children to determine what justice would mean to them (Interview with CCCC, 2021).

A Truth Commission must also recognize that the orphaned children are victims in their own right (Interview with HHHH, 2021) and must involve service providers that are trained in Child Rights-Based Approaches (Interview with CCCC, 2021). The experience of Sierra Leone provides a good standard on how children can exercise their Right to Truth. Siegrist stated that the Truth and Reconciliation Commission (TRC) of Sierra Leone, which was established to address the aftermath of their decade-long civil war, was the first Truth

Commission to recognize children as victims and witnesses, and to recognize and designate a role for them in the reconciliation process (Siegrist, 2006: 58). To ensure that the mechanism was in line with a Child Rights-Based Approach, the TRC of Sierra Leone established a Framework for Cooperation. It was supported by local and international NGOs and government organizations specializing in child protection, and by UN agencies. It set in place special procedures that catered to the specific needs of these children such as special hearings, psychosocial support, and so on (*ibid.*: 60).

Currently, there are already organizations involved with documentation of matters relating to Extra-judicial killings. IIII shared that their group endeavours to document the violations as the current justice system is not favourable towards victims (Interview with IIII, 2021). Such perspective was shared by EEEE (Interview with EEEE, 2021). DDDD explained that their organization documents these cases should the families left behind want to file cases in the future (Interview with DDDD, 2021). Should a Truth Commission for victims of the War on Drugs be established, the aforementioned organizations, who are already trained in a child rights-based approach, would provide valuable support in helping the orphaned children realize their right to truth.

4.1.2. Right to Justice

The Right to Justice provides that victims have the right to access justice and to hold perpetrators accountable (Joinet, 1997). During my interview, all the key informants responded that for these orphaned children to achieve justice, the perpetrators must be held to account for the crimes they committed. DDDD stated that justice is achieved when the perpetrators are held accountable and put behind bars (Interview with DDDD, 2021). IIII shared the sentiment and stated that the executive and those who were involved with the killings must be held to account (Interview with IIII, 2021). EEEE provided a wider scope stating that there must be an investigation of these cases and that would lead to culpability (Interview with EEEE, 2021).

HHHH placed emphasis on holding perpetrators to account as it is important for these children to see that the lives of their killed parents are seen as sacred and not just playthings (Interview with HHHH, 2021). This resonates with Aptel and Ladisch who emphasized that children are in their formative years and seeing such conduct from the security sector, which is mandated to protect the rights of citizens, could askew their perception of socially acceptable behavior (Aptel and Ladisch, 2011: 6).

While the respondents all agreed that there must be accountability for the human rights violations committed under the War on Drugs, they also stated that this would not happen under the current regime. The words “change of administration” came up many times indicating the scepticism or the loss of faith in the current justice system.

As to the modality of how justice can be achieved, when interviewed, both HHHH and FFFF asserted that, in order for a remedy to be effective, it should be provided at the national level (Interview with HHHH). In addition, FFFF (Interview) suggested strategic litigation through a class suit as another option for achieving justice (Interview). On the other hand, BBBB was more optimistic towards international remedies such as the case currently filed in the International Criminal Court (ICC) (ICC, 2021). She mentioned how the ICC, in addition to its

experience in prosecuting cases of large-scale human rights violations, has experience in accommodating children in its courtroom and/or procedures (Interview with BBBB).

4.1.3. The Right to a Remedy

According to Parmar (2010), the right to a remedy is a cornerstone in international law for mechanisms such as reparations that could provide economic justice for children (Parmar, 2010: 386). The same is also enshrined in the Convention on the Rights of the Child which states that children who were subjected to abuse, neglect and violence are entitled to rehabilitation and support from the relevant State Party (United Nations, 1989: Article 39). Aptel and Ladisch (2011) pointed out that the CRC provides a comprehensive guide on the range of violations that could occur in armed conflict or through political violence and thus would warrant reparations (Aptel and Ladisch, 2011: 27).

Provision of reparation, and specifically financial compensation, to the orphaned children was seen by CCCC, FFFF and EEEE (Interviews) as one of the more practical forms of remedy for these children, especially because many of them were bereaved of their caregivers and were plunged further into poverty. However, it must be emphasized that providing a remedy goes beyond financial compensation. Remedies also include compensation in the form of education and related social benefits, rehabilitation (Parmar, 2010: 389), and “symbolic” reparations in the form of memorials, monuments, and public apology (Siegrist, et al, 2010: 51). Regardless of form, reparations, especially those intended for children, must be able to provide a long-term and holistic impact on these children (Aptel and Ladisch, 2011: 30).

However, literature on children and reparations shows that most reparation programs have side-lined recognizing children as rights-holders in their own right and instead focused on the violations committed against their parents (*ibid.*: 26). There are Truth Commissions and reparation programs that labelled children as “secondary” victims as their suffering stemmed from the violation(s) committed against their parents (Mazurana and Carlson, 2009: 181). This is especially apparent as reparation schemes tend to have a hierarchy of violations committed, with some violations seen as graver than other and thus more “worthy” of compensation (Rubio-Marin, Sandoval and Diaz, 2009: 215). The case of the reparation program employed in Nepal provides a clear concrete example wherein children were only able to benefit from the reparation scheme in relation to the violations committed against their parents, and not for violations that were committed against them as these were not recognized (Aptel and Ladisch, 2011: 28).

Based on the results of my data-gathering, I establish that the knowledge about the situation of the orphaned children of the War on Drugs is limited, if not exclusive, to the NGOs that provide support to these children. With such insufficient awareness of the situation of these children, they are at risk of being side-lined from being recognized as primary victims who suffered violations while they squarely are rights-holders under the CRC. HHHH then recommended advocacy work for these children (Interview with HHHH).

4.1.4. A Guarantee of Non-Recurrence

The Guarantee of Non-Recurrence provides that those institutions involved in the human rights violations must undergo reforms (Joinet, 1997). As discussed in Chapter 2, aside from the human rights violations committed in the name of the War on Drugs, one of the impacts of the War on Drugs is its detrimental effect on institutions. AAAA (2021) pointed out that

the War on Drugs highlighted the ineffectiveness of human rights education. Though human rights were taught especially to people employed in the security sector, they were not institutionalized. Police officers even saw human rights as an obstacle in doing their job (Interview with AAAA, 2021).

It must be made clear, however, that the public sector was already facing problems even before the current administration. This was confirmed by FFFF, who has extensive experience in litigation and in the judiciary. FFFF stated that the already existing problem was exacerbated by the culture of impunity which flourished during the War on Drugs (Interview with FFFF, 2021). HHHH agreed with this and stated that the War on Drugs has had a chilling effect on society and jeopardized the rule of law (Interview with HHHH, 2021). EEEE went even further in saying that the War on Drugs caused the lack of moral compass amongst the agencies involved in it (Interview with EEEE, 2021). GGGG stated that War on Drugs has promoted a culture of killing amongst the involved institutions (Interview with GGGG, 2021). The fact that all the interviewees stated that justice cannot be attained now highlights the loss of faith in the public sector performing its respective mandates.

FFFF then asked, “From a transitional justice perspective, how do we repair these institutions?” (Interview with FFFF. To ensure that the violations committed during the War on Drugs would not happen again, institutional reform must be set in place especially the institutions that were involved in the anti-drug campaign, namely, the police and the judiciary. Roht-Arriaza (2016) stated that Guarantees of Non-Recurrence or GNR comes in three main modalities: “disarmament, demobilization, and reintegration (DDR) which is commonly utilized in countries that experienced civil war; vetting; and/or institutional reform of the public sector” (Roht-Arriaza, 2016: 5). Institutional reform would mean reviewing the structure of these Offices to ensure that they will respect human rights and the rule of law in the future and are performing their mandate (Aptel and Ladisch, 2011: 32).

In ensuring that institutional reform is in line with a child rights-based approach, it is imperative that the public sector be trained in the Convention on the Rights of the Child and other relevant human rights laws involving children (Siegrist, et al., 2010: 59). In addition to the judiciary and the security sector, it may be an imperative to also reorient other government offices such as the Department of Health and Department of Social Welfare and Development on the rights of children and the importance of a proactive approach from their end in providing support to the orphaned children of the War on Drugs.

4.2 Analysis

In Chapter 2, I cited HHHH wherein she stated that, to repair the damages done by the War on Drugs, redress must be accomplished at three levels: namely on the institutional level, societal level and on the personal level (Interview with HHHH, 2021). Using the above application of the Joint Principles, which utilizes a Child Rights-Based Approach on the War on Drugs in the Philippines, it can be deduced that redress on the institutional level would be addressed by the Guarantee of Non-recurrence wherein the institutions involved - such as the police and the judiciary - would undergo the necessary reform that was already apparent before the War on Drugs and was worsened by the campaign. Moreover, there must also be substantial changes to the human rights education conducted by the NHRI and NGOs as highlighted by AAAA.

On the societal level, the Right to Truth, Right to Justice, and Right to Reparation could provide the necessary countermeasure to the so-called “chilling effect” established by the anti-drug campaign. First and foremost, it is very important that, should a Truth Commission be established, it must recognize that the violations that were experienced by the orphaned children are not merely secondary to the death of their caregiver. It must be highlighted that children themselves are rights-holders and that their rights under the CRC were violated. This could be a landmark case in the Philippines that would further institutionalize a child rights-based approach into policies. Second, prosecution of the perpetrators of human rights violations could demonstrate to the general public that the justice system is working for the people again. Lastly, the right to reparation, especially if it came in the form of financial compensation as suggested by CCCC, EEEE and FFFF (interviews) for the violations under the CRC committed against these children, could help them break-through the cycle of poverty they are currently in. Other forms of reparations such as Memorials established in cooperation with Truth Commissions would help create a good accounting of history and a preventive measure against historical revisionism.

On the personal level, the Right to Justice is very important as HHHH stated: to hold the perpetrators accountable for the killings, especially in a national court, would show the children that the right to life is respected again and the lives of their parents mattered (Interview with HHHH, 2021). On the other hand, at the personal level of these children, social benefits such as scholarships and psychosocial support would be beneficial for them from a long-term perspective.

The success of a transitional justice arrangement, especially one that would recognize the violation of the rights of the children orphaned by the War on Drugs, would highly depend on intensive advocacy campaigns from child rights groups in the Philippines. One of the main findings of my data-gathering is that the knowledge about the conditions of these children is exclusive to child’s rights NGOs and a few church-based organizations. While the transitional justice actors recognize the violation of the rights of these children, there is also limited knowledge of child rights-based approaches. This is likely to hinder the recognition of the violation of the rights of the orphaned children. On the other hand, child rights organizations that were interviewed already had an inclination of transitional justice even though they were not necessarily familiar with the concept. Their fervent effort to document the situation of these children with the purpose of filing cases once there will be a regime-change is already telling of their take on the right to justice. Hence, close cooperation between transitional justice actors and children-oriented NGOs must be ensured should a transitional justice mechanism be set in place.

Chapter 5 Conclusion

This study attempted to shed light on an issue that has been side-lined and which persists to be neglected as the War on Drugs has been normalized—children who were left behind by those who were killed on the War on Drugs—and provided suggestions as to how these children can achieve justice for the violations committed against them.

In Chapter 1, I provided a brief history of how the War on Drugs under the Duterte Administration came about. Thereat, I discussed how this War came into force as a policy—driven by Duterte’s othering of drug users as the bane of society. Through the encouragement of Duterte and his promise of blanket amnesty for erring police officers who would commit human rights violations in the line of duty, the numbers of people killed under the anti-drug campaign soared, numbers that included 122 children killed (OMCT and CLRDC, 2020: 9). While the clamour for those who were killed echoed amongst human rights groups, there were barely any calls for justice for those who were orphaned and who suffered not only from the death of their parent(s) but also from the consequences thereof. Considering that justice remains elusive under the current regime and calls for justice are even met with reprisal, I suggested that, in the future, Transitional Justice that utilizes a Child Rights-Based Approach could help provide redress for these children.

Chapter 2 introduced the two frameworks that I used in this study, namely, Child Rights Based Approach (CRBA) and Transitional Justice. For CRBA, I discussed how CRBA can be used as a framework and as a methodology for ensuring that laws and policies are in-line with children’s rights stipulated under the Convention of the Rights of the Child (CRC). I then provided a list of provisions of the CRC which were violated or at the risk of being violated by the War on Drugs. For Transitional Justice, I explained the core principles which are the right to truth, right to justice, right to remedy and the guarantee of non-recurrence. I then discussed how the past practices of transitional justice incorporated children. Lastly, I discussed the methodology that I used for this research including information on how I conducted my primary data gathering and how I evaluated the secondary data that I used.

Chapter 3 discussed how the War on Drugs not only left behind a generation of orphans but also violated the rights of these children under the Convention on the Rights of the Child. I went through selected provisions of the CRC and revealed that the policy has disproportionately affected children from poor families, left them bereaved of their caregiver, traumatized, facing discrimination, and plunged them deeper into poverty. Without any government intervention in place for the specific needs of these children, they are left at the mercy of NGOs to provide for their needs such as food, scholarships, and psychosocial support. The acts of omission committed by the State of the Philippines in the form of its passivity in investigating the cases of extra-judicial killings committed in the name of War on Drugs and its disregard for these children violated numerous provisions of the CRC.

Chapter 4 explored how CRBA can be incorporated into transitional justice mechanisms, guided by the responses of my key informants. It highlighted that it is important that the children themselves be recognized as victims in their own right as this would affirm that they are rights-holders themselves and not just secondary victims to their parents who were killed by the campaign. It was also emphasized how it is important to work with children through every step of the process and to work with stakeholders that are familiar with CRBA in order

to ensure that the children are able to have meaningful participation. Lastly, the data-gathering revealed that the knowledge of transitional justice, of the situation of children and of CRBA is limited to the actors that work within their respective sphere. Hence, it was suggested that intensive advocacy must be done for the orphaned children in order for their rights to be recognized should there be a transitional justice mechanism set in place in the future.

The very limiting conditions set by the global pandemic and the political climate has made it difficult to conduct a consultation with the children orphaned from the War on Drugs. Hence, for those who would wish to undertake a similar research, I highly recommend that this consultation must be done, in line with a Child Rights-Based Approach, as it is their voices that must be heard in order to find out what justice means to them.

Annexes

Annex 1 Questions Asked During the Interview

1. How would you describe the War on Drugs?
2. How did you perceive the War on Drugs when it first came into force? How would you describe its progression?
3. What would you say are the major effects of the War on Drugs?
4. What are the less seen effects of the War on Drugs?
5. Are you familiar with the situation of children whose caregivers have been killed due to the War on drugs?
6. Are you familiar with any government intervention with regards to situation of children whose caregivers were killed due to the war on drugs?
7. Are you familiar with non-government organizations that are providing aid/support to these children?
8. Do you believe that the rights of these children are being violated? If yes, which rights? Why so?
10. How can justice be given to these children?
11. Are you familiar with Child Rights Based Approach?
12. How can Child Rights Based Approach be used to support the bereaved children?
13. Is there a possibility for a Child-Friendly Transitional Justice?
14. How can transitional justice be inclusive towards children?

Annex 2 List of codes for respondents

Code name for respondent	Sector Classification	Brief Description
1. AAAA	Transitional Justice	-Lawyer -extensive experience in working in human rights and transitional justice
2. BBBB	Transitional Justice	-Medical Doctor -extensive experience in working in human rights and transitional justice
3. CCCC	National Human Rights Institute	-Lawyer -expert in CRC and Child Rights-Based Approach
4. DDDD	Non-Government Organization	-Executive Director of Human Rights NGO providing legal assistance to vulnerable groups
5. EEEE	Non-Government Organization	-Peace and Development worker -spearheads the operations of a church-based organization working with orphaned children
6. FFFF	Transitional Justice	-Judge -extensive background on alternative lawyering -conducted her own research on Transitional Justice
7. GGGG	Transitional Justice	-expert on transitional justice who has published works on transitional justice in the Philippines
8. HHHH	Transitional Justice	-Lawyer -Renowned expert on human rights, International Humanitarian Law and Transitional Justice -Has worked with the United Nations
9. IIII	Non-Government Organization	-Development worker -Head of child's rights organization

Annex 3 Summary of responses per classification

Questions	Responses from Transitional Justice	Responses from Child's Rights NGOs	Responses from NHRI
<p>1. How would you describe the War on Drugs?</p>	<ul style="list-style-type: none"> -War against the poor. -not a war—there is asymmetrical power between government and those who were apprehended. -wrong solution to a real problem which is a health issue. -not new – already happened in Davao. -against the rule of law -approach to the drug problem exacerbates the situation. -was the rallying point of Duterte candidacy. -anti-thesis to human rights-based approach --state-sponsored 	<ul style="list-style-type: none"> -anti-poor -government legitimizes killings and human rights violations -not a war – war has combatants. -one-way execution by the government. -should have been multifaceted. -no cohesive intervention. 	<ul style="list-style-type: none"> -Does not tackle the source
<p>2. How did you perceive the War on Drugs when it first came into force? How would you describe its progression?</p>	<ul style="list-style-type: none"> -It was not new in 2016 – already happened in Davao -Pronouncements of the President resulted in lessening/increase of arrest or killings. 	<ul style="list-style-type: none"> -initially supported by the masses due to the frustration from the past regimes. -No due process -No investigation of EJKs 	

	-even with the pandemic, arrests continues.	-Patterns arose from the killings -Many children were affected – orphaned. -Prior to war on drugs, those involved in drugs already had vulnerabilities – War on Drugs made vulnerabilities worse.	
3. What would you say are the major effects of the War on Drugs?	-courts are overwhelmed which affects the administration of cases. -prison systems are congested. -insult to the rule of law.	-more than 35,000 lost their parents -many children had to stop going to school -orphaned children were distributed amongst relatives -wants revenge -wants to commit suicide -no support from government to address trauma. -injustice for the family -loss of moral compass of government agencies involved.	-Public Perception on the Police Worsened -estimated 12,000 orphaned
4. What are the less seen effects of the War on Drugs?	-resentment from those who were left behind. -psychological effects -security forces thinks it's okay to use excessive	-latent manifestation of trauma -families became poorer and ostracized	-high number of children left behind -orphans discriminated within their communities -children had to start working

	<p>violence. Impunity.</p> <p>-families who were left behind.</p> <p>-the effects of drugs on the persons themselves—they are not seen as victim themselves, rather demonized.</p> <p>-long-lasting effect on government institutions involved that go beyond the current regime—young police officers corrupted.</p>		<p>-non-recognition of families left behind by government which keeps them from accessing social support.</p> <p>-no programs for children who surrendered to the authorities for being involved with drugs—they are mixed with adult-surrenderers.</p>
5. Are you familiar with the situation of children whose caregivers have been killed due to the War on drugs?	Yes.	Yes.	Yes.
6. Are you familiar with any government intervention with regards to situation of children whose caregivers were killed due to the war on drugs?	No. only from CHR.	No. -no comprehensive program for orphans	<p>Programs of CHR</p> <p>-investigation of cases (investigation of death of parents)</p> <p>-data-gathering</p> <p>-consultation with women and children left behind by the war on drugs.</p>

<p>7. Are you familiar with non-government organizations that are providing aid/support to these children?</p>	<p>Yes. Faith-based organizations and legal groups.</p>	<p>Yes.</p> <ul style="list-style-type: none"> -documentation of killings -legal intervention (file and collect documents) -case build up. -financial support in the form of transportation allowance -awareness raising of their rights and legal remedies. -provision of food and support in their education. 	<p>Yes. Especially faith-based organizations.</p> <ul style="list-style-type: none"> -they provide shelter, livelihood, psychosocial support. Legal NGOs help families left behind file cases.
<p>8. Do you believe that the rights of these children are being violated? If yes, which rights? Why so?</p>	<p>Yes.</p> <ul style="list-style-type: none"> -children should be protected from violence. -significant number of children arrested. -Right to life -Right to a decent life – worsening economic conditions. -Right to survival and development -Right to adequate food -Right to parental care -economic rights 	<p>Yes.</p> <ul style="list-style-type: none"> -civil and political rights -CRC -right of children to have a family 	<p>Yes.</p> <ul style="list-style-type: none"> -Right to life for the children killed. -Right to be protected from discrimination -economic rights -right to participation -right to be heard
<p>9. How can justice be given to these children?</p>	<p>-courts but under this administration it is difficult since all of the</p>	<p>-to hold perpetrators accountable (file cases against perpetrators).</p>	<p>-Based on the consultation with children, justice can mean different</p>

	<p>branches of the government are controlled by the President.</p> <p>-community reparation</p> <p>-First, there must be a good accounting of history (for their stories need to be told/preserved in the future.</p> <p>-there should be a venue for truth-telling.</p>	<p>-apology from the government</p> <p>-compensation of the children</p>	<p>things. For some children, justice can mean going back to their normal lives.</p> <p>-Financial compensation – more realistic given economic situation of many affected families.</p>
10. Are you familiar with Child Rights Based Approach?	Mix of yes and no. Knowledge of CRBA limited to court proceedings.	No.	Yes.
11. How can Child Rights Based Approach be used to support the bereaved children?	<p>-Best interest of the child.</p> <p>-look past hierarchy of vulnerabilities (women first, children last)</p>	-Conscious participation of children	<p>-Best interest of the child</p> <p>-Right to Participation</p>
12. Is there a possibility for a Child-Friendly Transitional Justice?	Yes.	Yes.	Yes.

<p>13. How can transitional justice be inclusive towards children?</p>	<ul style="list-style-type: none"> -Children should be listened to. -Children should be supported during the process. -thorough and complete processing of narratives and context-story telling procedures. -transitional justice usually does not focus on children. -TJs are usually general and does not include children. -legal groups should help children file cases. 	<ul style="list-style-type: none"> -There has to be admission/apology -investigation -penalize culprits -compensation 	<ul style="list-style-type: none"> -We need to listen to children (right to participation) or else we do not know what the children want. -we need to ensure that children are involved in every process. -right to participation in truth-seeking -involve service providers that are trained in child rights-based approach.
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