

Towards Our Obscurity: An Essay on Decentering the Role of Alternative Lawyers in the Quest for Justice in the Context of the Philippine Drug War Cases of *Morillo v. PNP* and *Daño v. PNP*

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I. INTRODUCTION: SITUATING THE ALTERNATIVE LAWYER

In recent memory, one of the more predominant fears that has flustered lawyers is the fear of becoming obsolete.¹ The rise of artificial intelligence

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(AI), the San Francisco-based ChatGPT chatbot,² their capabilities, and the proximity of singularity³ have begun to pose the possibility of superfluity⁴ of lawyers and have created much discourse within the legal and academic circles on the treatment of such.⁵

This Article does not touch upon artificial intelligence and AI's interplay with the legal profession. However, it attempts to investigate and confront this fear and possibility of obsolescence vis-à-vis alternative lawyering, and the work for freedom and social justice. This is done through reference with the

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1. See John Philip Siao, *Will Artificial Intelligence Put Lawyers Out of Business?*, PHIL. DAILY INQ., Jan. 10, 2023, available at <https://business.inquirer.net/381587/will-artificial-intelligence-put-lawyers-out-of-business> (last accessed Apr. 30, 2023) [<https://perma.cc/6C3L-D9T6>]. See also Lea Bishop, *A Computer Wrote this Paper: What ChatGPT Means for Education, Research, and Writing*, available at <https://ssrn.com/abstract=4338981> (last accessed Apr. 30, 2023) [<https://perma.cc/V6TJ-TJCN>].
2. See OpenAI, *ChatGPT Bot (Artificial Intelligence Bot)*, available at <https://openai.com/blog/chatgpt> (last accessed Apr. 30, 2023) [<https://perma.cc/6RTQ-FAH9>]. See also Jonathan Vanian, *Why Tech Insiders Are So Excited About ChatGPT, a Chatbot that Answers Questions and Writes Essays*, CNBC, available at <https://www.cnbc.com/2022/12/13/chatgpt-is-a-new-ai-chatbot-that-can-answer-questions-and-write-essays.html> (last accessed Apr. 30, 2023) [<https://perma.cc/QDY6-T6LV>].
3. RAY KURZWEIL, *THE SINGULARITY IS NEAR* 393-405 (2014).
4. See Jenna Greene, *Will ChatGPT Make Lawyers Obsolete? (Hint: Be Afraid)*, REUTERS, available at <https://www.reuters.com/legal/transactional/will-chatgpt-make-lawyers-obsolete-hint-be-afraid-2022-12-09> (last accessed Apr. 30, 2023) [<https://perma.cc/2EC3-SZAN>].
5. See John Molo, *Will ChatGPT (Finally) 'Kill' All the Lawyers?*, RAPPLER, Feb. 17, 2023, available at <https://www.rappler.com/voices/thought-leaders/analysis-chatgpt-artificial-intelligence-and-lawyers> (last accessed Apr. 30, 2023) [<https://perma.cc/L5GP-NZSL>] & Roe Sarel, *Restraining ChatGPT*, 75 UC L.J. 115, Feb. 11, 2023, at 128-49.

specific context and stories from the Philippine Drug War (Drug War) and its continuing manifestations and effects in our sociopolitical and legal structures.

In 2020, Conrado Soriano,⁶ a food delivery service rider, who in the thick of the COVID-19 pandemic and while on-duty, was arrested and framed for a drug buy-bust operation. While Conrado was detained and waiting for preliminary investigation proceedings, his partner reached out to their community leaders and the community's church ministry for assistance in affidavit-making and gathering of evidence. When Conrado's partner approached the community's lawyers, the evidence was almost complete and ready for preliminary investigation proceedings. Upon submission during the preliminary investigation, the evidence proved to be sufficient for the dismissal of the charges against Conrado.

Conrado is among the many who suffered from the aftermath of the Drug War. The Drug War is a legal legacy by former President Rodrigo Duterte⁷ and *Oplan Tokhang* is its flagship project.⁸ Under the Drug War, the State admitted to 6,248 deaths resulting from anti-illegal drug operations as of April 2022,⁹ while non-government organizations and media estimate

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6. "Conrado Soriano" is an alias. The real name is not mentioned for confidentiality reasons and for the person's protection. This and the succeeding anecdotes are based on the account of Soriano as told to the Authors.
 7. Howard Johnson & Virma Simonette, *The Bloody Legacy of Rodrigo Duterte*, BBC NEWS, June 30, 2022, available at <https://www.bbc.com/news/world-asia-61891472> (last accessed Apr. 30, 2023) [<https://perma.cc/ZLQ7-9379>].
 8. See Phelim Kine, *World Must Pressure Philippines on Drug War Accountability*, HUM. RTS. WATCH, Feb. 8, 2018, available at <https://www.hrw.org/news/2018/02/08/world-must-pressure-philippines-drug-war-accountability> (last accessed Apr. 30, 2023) [<https://perma.cc/YE7R-23B3>].
 9. Zacarian Sarao, *Total Drug War Deaths at 6248 as of April 30 – PDEA*, PHIL. DAILY INQ., May 29, 2022, available at <https://newsinfo.inquirer.net/1604009/total-drug-war-deaths-at-6248-as-of-april-30-pdea> (last accessed Apr. 30, 2023) [<https://perma.cc/8CBC-C23Y>]. See Philippine Drug Enforcement Agency, Facebook Page, *Real Numbers PH*, FACEBOOK, April 2022, available at <https://www.facebook.com/realnumbersph/posts/pfbid028GR6Evq7PZL1Ea>

the total deaths to be at 30,000.¹⁰ The State boasts of 345,216 arrests under the Drug War.¹¹ The State's numbers are updated as of May 2022.¹²

Oplan Tokhang has been implemented through a verbal and written policy, the Command Memorandum Circular No. 16-2016.¹³ *Oplan Tokhang* is a portmanteau for *katok* and *hangyo*, which are Tagalog and Bisayan for the words “knock” and “plead.”¹⁴ On paper, the policy supposedly upholds the law and related policy. However, as a matter of practice, *Oplan Tokhang* and the Drug War have perpetrated grave and established injustices, eroded the rule of law, cultivated the culture of fear and death, and chipped at the very pillars of our institutions.¹⁵

The need for communities to access justice has become ever pressing and imminent — whether families were left behind by their slain partners and children, or who were illegally or arbitrary detained and charged.¹⁶

cBiGBwQp1TbHd1GLxqcH6f9Uu3WFEYdqXcYGtbmxoQ2zWrGu1l?_rdc=1&_rdr (last accessed Apr. 30, 2023) [<https://perma.cc/JWQ5-B4NQ>].

10. Situation In the Republic of the Philippines, Case No. ICC-01/21, Public Redacted Version of “Request for Authorisation of an Investigation Pursuant to Article 15 (3)”, 24 May 2021, ICC-01/21-7-SECRET-Exp.
11. Philippine Drug Enforcement Agency, *supra* note 9.
12. *Id.*
13. National Police Commission, PNP Anti-Illegal Drugs Campaign Plan — Project: “Double Barrel”, Command Memorandum Circular No. 16, Series of 2016 [CMC 16-2016, s. 2016], at 3-6 (July 1, 2016).
14. Amnesty International, If You Are Poor, You Are Killed (Report), at 19, available at <https://www.amnesty.org.uk/files/2017-04/ASA3555172017english.pdf> (last accessed Apr. 30, 2023) [<https://perma.cc/9H34-Q7ZY>].
15. David T. Johnson & Jon Fernquest, *Governing Through Killing: The War on Drugs in the Philippines*, 5 ASIAN J. L. SOC'Y, 359-90 (2018). See also Kathleen Barera, *The Philippines' War on Drugs (Read: The Poor): The Erosion of the Rule of Law and the Violation of Children's Human Rights*, 8 IHRIP WORKING PAPER SERIES 6, 22-9 (2020).
16. United Nations, Access to Justice as an Established Principle of the Rule of Law (Article), available at <https://www.un.org/ruleoflaw/thematic-areas/access-to->

Romeo Capulong, known scholar, alternative lawyer, and leader of public interest law centers, had once relayed to Gill H. Boehringer in the seminal work “A Perspective on Human Rights Lawyering in the Philippines: A Conversation with Attorney Romeo” that progressive lawyering keeps in mind the “concrete conditions at a specific time” in the Philippines.¹⁷ In the Philippines, the term “alternative lawyering” is neither defined nor characterized. Our laws are silent on alternative lawyering or an “alternative law.” For it is absurd for the law to set out an *alternate* to it, an antithesis. However, its roots may be traced EDSA and post-EDSA, as evinced by work done by progressive legal groups like the Alternative Law Groups (ALG).¹⁸ The founding groups of the ALG agreed that they were

all formed for the ‘empowerment of basic sectors and other disadvantaged sectors such as the women, prisoners, laborers, fisherfolk, peasants, indigenous people, children, political detainees, and victims of human rights violations.’ They also defined the concept of alternative lawyering by stating that it ‘means the attainment of justice and development through the creative use of law[,]’ and taking a critical standpoint on the existing legal system.¹⁹

In another seminal article on formation of legal education, Dean Sedfrey M. Candelaria elaborates —

[It is] not limited only to concerns of public interest and rendering of free legal assistance. Alternative lawyering is first and foremost lawyering for social justice. Its work does not simply involve handling disputes between parties or representing them in litigations. *The primary goal of alternative lawyers is to ‘contribute to the correction or elimination of deeply rooted unjust social structures and relations.’*

justice-and-rule-of-law-institutions/access-to-justice (last accessed Apr. 30, 2023) [<https://perma.cc/LFP9-FH3W>].

17. Gill H. Boehringer, *A Perspective on Human Rights Lawyering in the Philippines: A Conversation with Attorney Romeo Capulong*, 2 PHIL. L. & SOC’Y REV. 45 (2013).

18. Alternative Law Groups Secretariat, *Alternative Law Groups: Empowering Communities Towards Greater Access to Justice in the Philippines*, 11 HUM. RTS. ASIA-PAC. 47, 48–54 (2022).

19. *Id.* at 48.

Secondly, alternative lawyering is lawyering for social change. It uses law as an instrument or tool to effect social change both in the micro and macro level of the country.

Third, alternative lawyering is for social development. Its objective is to ‘work for a holistic, sustainable development of persons and communities, in a society that is more just, more peaceful, and more humane.’²⁰

In this context therefore, at the height of the Drug War, this Article locates where *the alternative lawyer* is, based on the causes they forward, and the roles lawyers take in these causes, and the communities and groups they work with towards addressing justice issues. In so locating *the alternative lawyer*, this Article will examine the context of the Drug War; the roles that lawyers and communities take in different strands or pillars of alternative lawyering, such as public interest litigation, advocacy support, and legal literacy or education and community empowerment; the challenges and victories in forwarding a multi-faceted and multi-disciplinary approach in lawyering; defining who *the alternative lawyer* is, their role, their outlines and silhouettes in the justice picture, as we work closer towards a *just and humane society*.

This Article looks at experiences from within the non-governmental organizations (NGO) and civil society (CSO) circles, specifically those with relevant work on the Drug War, and takes on a micro, anecdotal, and qualitative approach. The Authors also discuss illustrative cases on the Drug War specific to the case work of Center for International Law (CenterLaw). CenterLaw is a public interest legal non-governmental organization formed in 2003 to

work for the recognition and application of international law norms — specifically those relating to human rights, humanitarian law, freedom of expression, and freedom of the press — as automatic and self-executory in Philippine legal order. ... CenterLaw has initiated ... judicial cases that incorporate international law as causes of action, as well as harvest jurisprudence that recognize international law as source of rights and recourse for relief.²¹

20. Sedfrey M. Candelaria & Maria Cristina T. Mundin, *A Review of Legal Education in the Philippines*, 55 ATENEO L.J. 567, 592 (2010) (emphasis supplied).

21. CenterLaw-Philippines, Profile, LINKEDIN, 2021, available at <https://www.linkedin.com/company/center-for-international-law->

This Article attempts to address the gap in literature on the subject matter, especially written by those coming from the NGO and CSO lawyers, and to answer ultimately — *In our work for justice, will lawyers (and lawyering) be eventually dispensable?*

II. THE DRUG WAR: PUBLIC INTEREST LITIGATION

The first ever case filed against *Oplan Tokhang* was a case filed by Efren Morillo, with his family and other family members of his slain companions in an *Oplan Tokhang* operation.²² On 21 August 2016, Efren, with Anthony Comendo, Jessie Cule, Marcelo Daa, Jr., and Rhaffy Gabo were playing pool beside Daa Jr.'s hut at the foot of a hill in Payatas, Quezon City. At around 3:00 p.m., police officers in civilian clothes stormed the area, and ordered Efren and his companions to surrender and show the *shabu* they were allegedly hiding.²³

The police officers handcuffed Efren with his companions, the hands of some were tied with electric wire.²⁴ Efren and Marcelo were brought to a

philippines-centerlaw/about (last accessed Apr. 30, 2023) [https://perma.cc/57G9-DYGGQ].

22. Lian Buan, *1st Petition v. Oplan TokHang Filed at SC*, RAPPLER, Jan. 26, 2017, available at <https://www.rappler.com/nation/159549-first-petition-oplan-tokhang-filed-supreme-court> (last accessed Apr. 30, 2023) [https://perma.cc/3E84-KSUW].
23. See Philippine Star, *Tokhang Survivor Who Played Dead Cleared in Direct Assault Case*, PHIL. STAR, March 17, 2023, available at <https://www.philstar.com/headlines/2023/03/17/2252424/tokhang-survivor-who-played-dead-cleared-direct-assault-case> (last accessed Apr. 30, 2023) [https://perma.cc/UM7W-JVRD].
24. Statement of Efren C. Morillo Survivor of Extralegal Killings and Lead Petitioner Before the Philippine Supreme Court in the First Legal Challenge Against Operation Plan Tokhang, Philippine President Rodrigo Duterte's "War on Drugs" (Submitted to the Tom Lantos Human Rights Commission, U.S. Congress), ¶ 6, May 5, 2017, available at <https://www.philstar.com/headlines/2017/07/21/1720063/tokhang-survivor-submits-testimony-us-congress> (last accessed Apr. 30, 2023) [https://perma.cc/MG5C-ZH2K].

makeshift room nearby where Marcelo was shot twice, Efren once.²⁵ He heard the cries of Anthony, Jessie, and Rhaffy outside, and the successive gunshots after.²⁶ He prayed, played dead, and waited for their police-assailant to leave.²⁷ Once Efren sensed that his assailant was gone, he crawled out of the small opening of the room and onto the edge of the ravine.²⁸ Pressing one hand over his chest, he slid down the ravine and landed on the bank of a stream at the bottom.²⁹ Efren crossed the stream, trekked up a hill on the other side, and hiked until he reached the road.³⁰

There, providentially, he encountered an acquaintance who was the barker of a jeepney.³¹ He was given medical first aid in a hospital near Rizal, but was transferred to East Avenue Medical Center when police officers found out that he had escaped their ordeal.³² He was only given proper medical treatment around nine hours later.³³ When his assailants found out that he made it out alive, they filed a direct assault case against him.³⁴ This case is pending as of date. The police officers were discovered to be Allan Formilleza, James Aggarao, Melchor Navisaga, and Emil Garcia.³⁵ After the incident, the police returned to Payatas, surveilling and threatening the families of Efren, Anthony, Jessie, Rhaffy, and Marcelo.³⁶

25. *Id.*

26. *Id.* ¶ 14.

27. *Id.* ¶ 15.

28. *Id.* ¶ 17.

29. *Id.*

30. Statement of Efren C. Morillo, *supra* note 24, ¶ 17.

31. *Id.* ¶ 19.

32. *Id.* ¶ 23.

33. *Id.*

34. *Id.* ¶ 26.

35. Philippine Star, *supra* note 23.

36. Patricia Lourdes Viray, *Tokhang Survivor Submits Testimony Before US Congress*, PHIL. STAR, July 21, 2017, available at <https://www.philstar.com/headlines/2017/07/21/1720063/tokhang-survivor->

On 26 January 2017, Efren, together with his and his companions' families, filed the very first petition for the issuance of the Writ of Amparo seeking protection against the police officers.³⁷ On 31 January 2017, the Supreme Court granted a temporary protection order in favor of Efren et al. and directed the Court of Appeals to receive evidence on the petition. On 10 February 2017, the Court of Appeals issued the privilege of the writ, granting the following reliefs —

ACCORDINGLY, there being no dispute that the allegations in the petition are supported by substantial evidence, the PRIVILEGE OF THE WRIT is GRANTED with the following dispositions:

- (1) The *Temporary Protection Order* is converted to a permanent one. The Prohibition from entering within a radius of one (1) kilometer from the residences and work addresses of the petitioners shall cover respondents P/SI Emil S. Garcia, PO₃ Allan Formilleza, PO₁ James Aggarao[,] [] PO₁ Melchor Navisaga[,] and any of their agents;
- (2) Respondent P/SI SI Emil S. Garcia, PO₃ Allan Formilleza, PO₁ James Aggarao[,] and PO₁ Melchor Navisaga shall be reassigned to police offices outside Quezon City and Montalban, Rizal;
- (3) The implementation of OPLAN TOKHANG shall remain suspended with respect to the petitioners;
- (4) The petitioners shall be furnished[,] by the Directorate for Investigation and Detective Management (DIDM)[,] with a copy of the results of the investigation of the incident which resulted to the death of Messrs. Marcelo Daa, R[h]affy Gabo, Anthony Comendo, and Jessie Cule[,] and frustrated killing of Efren Morillo on 21 August 2016 at Group 9, Barangay Bagong Silangan, Quezon City, pursuant to a memorandum issued by PDG Ronald Dela Rosa on 01 February 2017;
- (5) Petitioner Efren Morillo shall continue to be under the protection of the Commission on Human Rights;

submits-testimony-us-congress (last accessed Apr. 30, 2023)
[<https://perma.cc/MG5C-ZH2K>].

37. Buan, *supra* note 22.

- (6) PDG Ronald Dela Rosa and Police Chief Superintendent Guillermo Lorenzo T. Eleazar shall directly ensure that the prohibitions and protective measures hereinabove provided are fully complied with.³⁸

The next Writ of Amparo case against *Oplan Tokhang* was filed by 38 petitioners from San Andres, Bukid, led by Sr. Juanita “Nenet” Daño, RGS (Sr. Nenet) and represented by lawyers from CenterLaw.³⁹ This case was consolidated with a case filed by Ms. Aileen Almora, on behalf of her brother, and as represented by Free Legal Assistance Group (FLAG). Compared to the Writ of Amparo filed by San Andres, the FLAG Petition also sought the Supreme Court to declare *Oplan Tokhang* as unconstitutional. The San Andres petition narrates of the systemic violence through the killings in San Andres Bukid. It tells that the police killings “are not random and unplanned but part of a systematic design and strategy.”⁴⁰

The consolidated petitions are still pending before the Philippine Supreme Court.⁴¹ After the oral arguments before the Court on 5 December 2017, the Court issued a Resolution directing the Philippine National Police to turn over the relevant police documents to the petitioners.⁴² These police

38. Efren Morillo, et al. vs. PNP, et al., CA-GR-SP No. 00063, Feb. 10, 2017, at 4, available at <https://services.ca.judiciary.gov.ph/faces/pages/ResultInformation.xhtml> (last accessed Apr. 30, 2023).

39. The Drug Archive, The Court Cases, available at <https://drugarchive.ph/page/38-the-court-cases> (last accessed Apr. 30, 2023) [<https://perma.cc/VQZ7-3ZCT>].

40. Philippine Star, ‘Systematic Violence’ in Killings in San Andres Bukid, Manila Highlighted in Latest Amparo Petition, PHIL. STAR, Oct. 19, 2017, available at <https://www.philstar.com/headlines/2017/10/19/1750384/systemic-violence-killings-san-andres-bukid-manila-highlighted-latest-amparo-petition> (last accessed Apr. 30, 2023) [<https://perma.cc/6USX-57XH>].

41. See generally Rappler Investigative Team, Duterte’s ‘Rubbish’ Files Stall SC Drug War, RAPPLER, Feb. 21, 2021, available at <https://www.rappler.com/newsbreak/investigative/duterte-government-rubbish-files-stall-supreme-court-drug-war-case-part-one> (last accessed Apr. 30, 2023) [<https://perma.cc/V8QP-B9GR>].

42. Almora, Daño v. Philippine National Police, G.R. Nos. 234359 & 234484 (2018) (unreported).

documents covered all police drug operations conducted from 1 July 2016 to 30 November 2017. In two other Resolutions, the Supreme Court denied the PNP's motion for reconsideration.

The Court had the opportunity to rule on certain key issues vis-à-vis provisional reliefs in *Amparo* cases. In its 2018 Resolution, the Court emphatically held that

[i]n short, there can be no dispute that the Court *en banc* has jurisdiction to hear cases involving not only the constitutionality, but also the 'application or operation,' of CMC 16-12016 (sic) and DILG Memorandum Circular (MC) 2017-112

...

The resolution of the present petitions by this Court, if made with the benefit of a facial perusal of the pre-and post-operations police reports relating to the 20,322 officially confirmed deaths (citation omitted) in the anti-drug war from 1 July 2016, to 27 November 2017, will allow this Court to perform its constitutional duty to 'promulgate rules concerning the protection and enforcement of constitutional rights.' The unusually high number of deaths in the anti-drug war requires a deeper understanding of the 'application or operation' of PNP CMC 16-12016 and DILG Memorandum Circular (MC) 2017-112 in order to devise a more effective protection, and a more enhanced enforcement, of fundamental constitutional rights.

Apart from these rights, this Court is also mandated to protect and enforce the *people's right to information*. Article III, Section 7 states that '[t]he right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions ... shall be afforded the citizen' *The undeniable fact that thousands of ordinary citizens have been killed, and continue to be killed, during police drug operations certainly is a matter of grave public concern.*

...

Contrary to the claim of the Solicitor General, the requested information and documents do not obviously involve [S]tate secrets affecting national security. The information and documents relate to routine police operations involving violations of laws against the sale or use of illegal drugs. There is no showing that the country's territorial integrity, national sovereignty, independence, or foreign relations will be compromised or prejudiced by the release of these information and documents to this Court

or even to the public. These information and documents do not involve rebellion, invasion, terrorism, espionage, infringement of our sovereignty or sovereign rights by foreign powers, or any military, diplomatic or state secret involving national security. *It is simply ridiculous to claim that these information and documents on police operations against drug pushers and users involve national security matters so sensitive that even this Court cannot peruse these information and documents in deciding constitutional issues affecting the fundamental right to life and liberty of thousands of ordinary citizens.*⁴³

To build the case, CenterLaw, led by Atty. Cristina I. Antonio, spent over seven months “of immersion in the rough and gritty community to convince the families to step forward and file their cases, and seven months of dirty groundwork.”⁴⁴ As elaborated by Atty. Antonio in her interview —

*[i]kaw ang makikipamuhay sa kanila, maghuhugas ka ng pinggan kasama nila. Kakain ka kasama nila. Talagang handholding, pakikinig sa kuwento ng mga namatayan. It's also catharsis for them, pero doon sa point na ano ang gagawin, willing po ba kayong mag-file ng case, talagang ang answer ay ayaw. Takot.*⁴⁵

With this case, the lawyers forged and nurtured a partnership with the Religious of Good Shepherd, through Sr. Nenet.⁴⁶ Sr. Nenet leads the

43. *Id.* at 49–50 (emphases supplied).

44. Lian Buan, *Lawyers Do Dirty Groundwork to Fight Duterte's Drug War*, RAPPLER, Nov. 2, 2017, available at <https://www.rappler.com/newsbreak/in-depth/187076-lawyers-fighting-duterte-drug-war> (last accessed Apr. 30, 2023) [<https://perma.cc/47Q5-6BYJ>].

45. *Id.*

You immerse in their daily lives. You wash the dishes with them. You eat with them. It was really hand-holding, we listened to the stories of those who lost their loved ones. It's also catharsis for them, but when you come to the point of asking if they are willing to file a case, the immediate answer is no. They're scared. *Id.*

This is an English translation of the quote.

46. Amanda Lee Centeno, *Journey Towards Justice: A Framework on Engaging Human Rights Victim-Survivors*, CFHR, available at https://www.researchgate.net/profile/Amanda_Centeno3/publication/365249822_journey_towards_justice_a_Framework_on_Engaging_Human_Rights_Victim-Survivors/links/636c616454eb5f547cbba276/journey-towards-justice-A-

community's pastoral ministry which includes value-formation and providing psychosocial and spiritual support. At the height of the Drug War, San Andres was a veritable "killing field."⁴⁷ Sr. Nenet would visit wakes of suspected drug users, pushers, or sellers in San Andres, talk and comfort widows and mothers, and document the killings.⁴⁸

III. THE META-LEGAL APPROACH TO EXTRALEGAL KILLINGS: ADVOCACY AND COMMUNITY EMPOWERMENT

Outside the court proceedings and pleadings, community members return to their homes, workplaces, with the day-to-day fear — will the State retaliate? Will there be more arrests? Will the State continue to kill? What if there is reprisal? True enough, the killings did not stop. Communities continued to experience harassment and witness illegal and arbitrary arrests.⁴⁹

While the CenterLaw represents residents of San Andres Bukid for a Writ of Amparo petition before the Supreme Court, CenterLaw also organizes paralegal trainings for and with the residents. After the filing of the petition in 2017, CenterLaw returned to the community to strengthen the community's armory to fight against abuse by the State.⁵⁰ In the trainings, CenterLaw taught residents on gathering and preserving evidence, preparing

Framework-on-Engaging-Human-Rights-Victim-Survivors.pdf (last accessed Apr. 30, 2023) [<https://perma.cc/Y2UB-W8S7>].

47. Petition for the Grant of the Privilege of the Writ of Amparo for Individual Persons and for All Residents of 28 Barangays in San Andres Bukid, Manila, at 17 (on file with Supreme Court), *in* Sr. Ma. Juanita R. Dano, Rgs, Rsw, et al. v. The Philippine National Police Represented by Pdg, Ronald Dela Rosa, et al., G.R. No. 234359 (2018) (unreported).

48. Joel Ruiz Butuyan, *A Courageous Filipino in the Drug War*, PHIL. DAILY INQ., July 16, 2018, available at <https://opinion.inquirer.net/114635/courageous-filipino-drug-war#ixzz7xH41Oz9k> (last accessed Apr. 30, 2023) [<https://perma.cc/LEZ9-TF5K>].

49. Philippine Star, *supra* note 40.

50. Aie Balagtas See, *Fighting Drug War Abuse? Know Your Rights*, PHIL. DAILY INQ., Nov. 6, 2017, available at <https://newsinfo.inquirer.net/943214/fighting-drug-war-abuse-know-your-rights> (last accessed Apr. 30, 2023) [<https://perma.cc/UAD4-TSG4>].

their own sworn statements or *sinumpaang salaysay*, and on evaluating on the available remedies to them vis-à-vis their experience.⁵¹ CenterLaw also detailed what the mandates of certain constitutional bodies are — such as the Ombudsman and the Commission on Human Rights. The limitations of the authority granted upon the Philippine National Police were also discussed.⁵² These trainings were continuous, renewed, and replicated through community leaders.

These trainings are similar to trainings organized by other groups, such as Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS),⁵³ and are done adjunct to related programs done by groups, such as the Paghilom group,⁵⁴ or ministry work by some religious sects such as the Religious Good Shepherd.⁵⁵ These related programs include provision of psychological assistance, educational assistance, building of community solidarity and support, as well as financial services.⁵⁶ These are also accompanied by parallel campaign efforts by other civil society actors such as the iDefend Movement, the Philippine Alliance of Human Rights

51. *Id.*

52. *Id.*

53. IDEALS Inc., *Unsilencing the Voices of EJK Surviving Families*, available at https://issuu.com/idealsorgph/docs/unsilencing_the_voices_of_ejk_surviving_families/s/13644874 (last accessed Apr. 30, 2023) [<https://perma.cc/3WGC-73B6>].

54. See Teresita S. Castillo, *Program Paghilom Report: 2019*, at 3, available at https://ajkalingafoundation.org/wp-content/uploads/2020/03/2019-Program-PAGHILOM-Report_FINAL.pdf (last accessed Apr. 30, 2023) [<https://perma.cc/3UGR-9CBZ>].

55. Sandra Aguinaldo, *Video Documentary, Ika-Limang Utos*, DAILYMOTION, Feb. 17, 2018, available at <https://www.dailymotion.com/video/x6exukh> (last accessed Apr. 30, 2023) [<https://perma.cc/HU4R-A443>] & Commission on Human Rights, *Video, #HumanRightsVoice Sr. Ma. Juanita “Nenet Daño”*, YOUTUBE, Jan. 22, 2021, available at <https://www.youtube.com/watch?v=6nKSio96Trw> (last accessed Apr. 30, 2023) [<https://perma.cc/9G5C-YGBV>].

56. IDEALS Inc., *supra* note 51.

Advocates, Karapatan, Rise Up,⁵⁷ and the broader Philippine Coalition for the International Criminal Court and its members.⁵⁸

At the height of the pandemic, over 100,000 individuals had been arrested due to violation of quarantine.⁵⁹ Others arrested were still due to the persistent drug war mandate,⁶⁰ and killings still persisted.⁶¹ Among those arrested during the pandemic in the partner community of CenterLaw San Andres Bukid is Conrado Soriano, his story is part of this Article's introduction.

Conrado is a food delivery service rider on duty to deliver an order around the City of Manila. In broad daylight, he was chased and stopped by a police officer trying to arrest him and insist that he was one Conrado Soriano III. Despite showing his identification card and explaining to the police officer that he was someone else, the police took him into custody,

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57. See Ray Paolo J. Santiago, Marianne Carmel B. Agunoy, Maria Paula S. Villarin, & Maria Araceli B. Mancia, *The Effect of the Philippine 'War on Drugs' on Civic Space*, available at https://civic-futures.org/wp-content/uploads/2023/05/4189_FICS_Reports_WoD_AW_Web.pdf (last accessed March 11, 2025).
58. See Coalition for the International Criminal Court, *Philippine Coalition for the ICC*, available at <https://www.coalitionfortheicc.org/pcicc> (last accessed March 11, 2025).
59. Rambo Talabong, *Over 100,000 Quarantine Violators Arrested in PH Since March*, *RAPPLER*, Sept. 8, 2020, available at <https://www.rappler.com/nation/arrested-quarantine-violators-philippines-2020> (last accessed Apr. 30, 2023) [<https://perma.cc/TXY2-6H3P>]. See Human Rights Watch, *Philippines: Curfew Violators Abused*, available at <https://www.hrw.org/news/2020/03/26/philippines-curfew-violators-abused> (last accessed Apr. 30, 2023) [<https://perma.cc/4K57-X8HA>].
60. PDEA, Facebook Page, *Real Numbers PH*, FACEBOOK, Apr. 2022 available at <https://www.facebook.com/profile/100067598889220/search/?q=april%202022> (last accessed Apr. 30, 2023) [<https://perma.cc/XR36-QRU4>].
61. Human Rights Watch, *Philippines: 'Drug War' Killings Rise During Pandemic*, available at <https://www.hrw.org/news/2021/01/13/philippines-drug-war-killings-rise-during-pandemic> (last accessed Apr. 30, 2023) [<https://perma.cc/SDG3-BM6J>].

without explaining his rights, went on a detour to a ‘back office’ near the police precinct where Conrado was beaten, photographed with drugs and drug paraphernalia, and made to sign a waiver of liability under Article 125 of the Revised Penal Code.⁶² His family was only able to seek the help of CenterLaw lawyers a few days after his arrest. He had spent at least four days at the police station before he was visited. The police holding cell was about five by five meters, where about fifteen individuals were being detained while waiting for charges to be filed against them either before the prosecutor or the court.

According to the police and their *pro forma* documents, Conrado was arrested at dawn in a buy-bust operation. Conrado denies this and recounted what actually happened. There were attempts to seek his release from the police, who refused, and then from the prosecutor’s office. To this, the docketing section of the prosecutor’s office simply explained that normally, it takes a month to resolve drug cases before they are either dismissed or an information is filed in court.

62. An Act Revising the Penal Code and Other Penal Laws [REV. PENAL CODE], Act No. 3815, art. 125 (1930).

Art. 125 — Delay in the delivery of detained persons to the proper judicial authorities. The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any persons to the proper judicial authorities within the period of six hours, for crimes or offenses punishable by correctional penalties, or their equivalent; and eighteen hours, for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

Id.

See also An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining, and Investigating Officers, and Providing Penalties for Violations Thereof, Republic Act No. 7438, § 2 (e) (1992).

(e) Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise the waiver shall be null and void and of no effect.

Id.

Meanwhile, CenterLaw lawyers met with Conrado's partner and family to gather evidence for his preliminary investigation. Conrado's family and CenterLaw's community partner leaders (and those who had participated in previous paralegal trainings) had already assisted in preparing Conrado's sworn statement and reached out to the nearest barangay for obtaining a copy of a crucial piece of CCTV footage, showing Conrado at the time of his actual arrest. The lawyers assisted Conrado during the preliminary investigation stage, detailing his arrest, and the actual surrounding circumstances, supported by sworn statements by Conrado and another witness, and the CCTV footage negating and belying the claims by the police officers in their near-perfect *pro forma* and template documents. The preliminary investigation was concluded, and the prosecutor-in-charge dismissed all charges against Conrado because of the CCTV footage and his detailed sworn statement.

Another of those arrested was a 17-year-old teen named Danilo Barrameda,⁶³ who was also framed in a drug buy-bust operation. Danilo was arrested and detained in a cement office in a new police precinct building in Manila. He was thin, sickly, diagnosed with tuberculosis, and was not given or made to wear a mask in early 2021 — when COVID-19 vaccines were not yet available.

When police officers were asked for the reason why Danilo was not yet transferred to a DSWD facility, they responded that his papers were not yet prepared. Lawyers had to wait for half a day at the precinct just for the police officers to prepare Danilo's documents. When brought to a local DSWD office for the conduct of his discernment proceedings,⁶⁴ Danilo was denied because the birth certificate he had access to was a photocopy. The local DSWD office insisted that it was office policy that an original was presented, despite the insistence of the presumption of age in the case of Danilo.⁶⁵

63. This name is an alias to protect the identity of the individual for safety reasons.

64. An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes [Juvenile Justice and Welfare Act of 2006], Republic Act No. 9344, § 6 (2) (2005) & *See also id.* § 22.

65. *Id.*

Danilo had to return the next day, with an original of his birth certificate, secured from his estranged mother living outside Metro Manila. However, upon Danilo's return, it was a Chinese New Year holiday and the local DSWD office was closed, and nobody would process him for discernment.

The following day, Danilo was finally processed for discernment. He was also brought to the prosecutor's office for inquest proceedings where the prosecutor-in-charge simply stamped and received the documents provided by the police. When this author inquired into the propriety of the inquest proceedings, the prosecutor yelled and exhorted, "*yung mga files na yan, tatanggapin ko lang 'yan kasi ayokong patayin ako ng mga pulis!*"⁶⁶

The last step before turning over Danilo to the DSWD facility is having him undergo medical examination to make sure that the police had proof that they did not torture, maltreat, or subject Danilo to inhumane treatment.⁶⁷ At least four hospitals rejected Danilo because he was a minor, and every other hospital was a COVID-19 facility. After a doctor agreed to conduct his examination, Danilo was finally turned to a Youth Reception Center after four days of an ordeal.

As the 2022 elections were approaching, CenterLaw lawyers implemented a project with the San Andres community called "*Kwentong San Andres*," a multi-stage public awareness campaign.⁶⁸ It was hoped that through this project, the drug war and drug war accountability would be a continuing conversation in the 2022 elections and in the new administration. Through the Project, the community wrote letters to the Presidential Candidates for the 2022 elections,⁶⁹ voiced out the need for presidentiables

66. "Those files, I will simply receive and accept those, because I don't want the police to kill me!" This is an English translation of the quote.

67. Juvenile Justice and Welfare Act of 2006, § 22 (j).

68. CenterLaw, *Kwentong San Andres* (Public Awareness Campaign), available at <https://kwentong-san-andres-microsite.webflow.io> (last accessed Apr. 30, 2023) [<https://perma.cc/6USX-57XH>].

69. CenterLaw Philippines, Post, *Sa Ating Susunod na Pangulo*, FACEBOOK, May 2, 2022, available at <https://www.facebook.com/centerlaw.philippines/posts/pfbido2zJ3a553hD66hpLvJUVQajqicGRkngzohJFvTeCU9zEXUpZXCw2PRGNK7BE7mecMl> (last accessed Apr. 30, 2023) [<https://perma.cc/979R-EQQM>].

and the would-be President to talk about the Drug War and drug war accountability, on all levels of governance, reiterated the communities' stories of their loved ones slain during the dark period in the country's history, and contributed to building and drafting the essential segments of a possible reparations law for families of drug war victims. The community was also briefed on different forms of justice, the current International Criminal Court proceedings, their importance and relevance to domestic cases, and how victims can participate therein.

From the project, the Authors also gathered the following:

First, that the filing of the Writ of Amparo case helped stop the killings at the time; *second*, that both high-ranking officials and low-ranking police officers directly responsible for drug war killings must be held accountable through imprisonment and payment of damages or reparations; *third*, local government, civil society, families, the church, and the national government are all duty-bearers in terms of seeking justice and accountability against drug war perpetrators, and that all must be involved and proactive in their respective roles; *fourth*, the community viewed that other human rights issues must also be highlighted and addressed, such as education rights, violence against women and children, child labor, housing rights, abuse by police officers, right to health, red-tagging, senior citizens' rights, and other civil and political rights.

In this project, lawyers took on their advocate and organizer hats by leading and facilitating the relevant sessions and workshops, such as letter-writing workshops, brainstorming, and advocacy sessions. At this juncture, the alternative lawyering model is no longer restricted to just one strand, i.e. "public interest litigation," "human rights," "impact," or "strategic litigation." Alternative lawyering also includes advocacy support, paralegal training, and community empowerment. Addressing the needs of communities and working towards established constitutional or non-constitutional ideals are no longer limited to court proceedings and possible legal remedies. While court proceedings do influence the behavior of party-respondents, court proceedings and granted reliefs are arguably reactive and curative. On the other hand, community empowerment and capacity building engagements take on a more proactive and preventive role.⁷⁰

70. Alternative Law Groups, ALG Champions Developmental Legal Aid at National Legal Aid Summit, *available at*

Thus far, the Author posits that alternative lawyering does not only ask about the court-official case, but it also asks how it can deliver justice by empowering communities othered and made vulnerable by existing systems. As will be further discussed in the next chapter, the alternative lawyering 'model' composed of its different parts or strands, i.e., strategic litigation, advocacy support, and community empowerment, is not without its disadvantages and challenges. These will be discussed side-by-side with alternative lawyering's successes.

IV. CHALLENGES AND SUCCESSES

Alternative lawyering still requires working within the system that it so tries to fight and/or dismantle. It still entails “lawyering,” in the traditional sense. It demands navigating the well-entrenched systems and traditional enforcers of justice. In these systems, the police, courts, lawyers, and judges are indispensable. They are gatekeepers, messiahs, protectors. The system requires strict compliance with formalities of administration and limited access to a few. This also entails navigating interactions and play of power. Main contributors to gatekeeping also include barriers to the system, such as bureaucracy or red tape.

This is seen and best illustrated in the case of Danilo where different bodies or institutions contribute to the perpetuation of injustice because of the barriers posed by their policies. These were seen as follows: the local DSWD requirement of presenting the original of a birth certificate despite the presumption of minority;⁷¹ the local hospitals declining screening and examining Danilo because they are COVID-19 wards; the practice of one-month detention periods for those detained under drug-related arrests pending inquest or preliminary investigation proceedings, despite Article 125 of the Revised Penal Code, among others.⁷² Another glaring barrier to justice in Danilo’s case was the prosecutor-in-charge himself who failed to properly conduct inquest proceedings and did not interrogate the validity of Danilo’s arrest.

Reliefs are limited to what has been granted and legislated. And those who transgress and intend to pursue interests opposed to human rights protection find loopholes to serve those interests, no matter what cost.

71. An Act Establishing a Comprehensive Juvenile Justice and Welfare System, Creating the Juvenile Justice and Welfare Council Under the Department of Justice, Appropriating Funds Therefor and for Other Purposes [Juvenile Justice and Welfare Act of 2006], Republic Act No. 9344, § 7 (2008).

72. REV. PENAL CODE, art. 125 (1930).

Article 125. Delay in the Delivery of Detained Persons to the Proper Judicial Authorities. — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of one hour.

Id.

Delivery of justice is also limited by time. As the adage goes, *justice delayed is justice denied*.

Strategies may sometimes divert from being strictly legal. Therefore, legal knowledge and strategies, shaped by precedent and tradition, are not enough. Because of the limited nature of legal reliefs, out-of-the-box solutions are sought — oftentimes informed by community decisions, but sometimes critiqued as diametrically opposed to legal ethics and strictures of the profession.

On the other hand, there are possibilities for victories in seemingly lofty attempts within the alternative lawyering route. The public interest litigation cases of *Morillo v. PNP* and *Daño v. PNP* have shown that legal remedies can impact not only litigating parties. It can also impact other affected parties who may not otherwise have the means to take things to court. In the *Morillo* case, the Court of Appeals granted a permanent protection order for Mr. Morillo, his family, and the family members of his slain companions, equivalent to a one kilometer radius of protection.⁷³ To put things in perspective, a one kilometer radius of protection around the residences and workplaces of the petitioners translated to a radius of protection for others who are also in certain areas of Payatas, Quezon City. In the *Daño* case, the Court unequivocally held that the State cannot invoke privilege vis-à-vis matters of the drug war documents when the Court held that petitioners may access not only documents relevant to their cases, but those that involve all drug-related deaths in the Philippines for a specific time period.⁷⁴ These cases were also brought together with several families or barangays, in an attempt to invoke a novel concept of community *Amparo*, to obtain the reliefs under the *Writ of Amparo* with a multiplier effect.⁷⁵

73. *Morillo*, CA-GR-SP No. 00063, at 4.

74. See generally *Almora, Daño*, G.R. Nos. 234359 & 234484.

75. Oscar Franklin Tan, *CenterLaw: Philippine National Police's Worst Nightmare*, PHIL. DAILY INQ., Nov. 29, 2017, available at <https://opinion.inquirer.net/109089/centerlaw-philippine-national-polices-worst-nightmare> (last accessed Apr. 30, 2023) [<https://perma.cc/V3AN-6KYG>] & Shveta Shah, *Cristina Antonio and Nicolene Arcaina*, BERTHA FOUNDATION, Jan. 15, 2017, <https://berthafoundation.org/story/bertha-justice-alumnx-cristina-antonio-and-nicolene-arcaina> (last accessed Apr. 30, 2023) [<https://perma.cc/EM9S-5MF2>].

Further, these victories include slowly and gradually closing gaps within the system when access to justice remains elusive. In the illustrations and case studies elaborated in the previous chapters, a gap closed by the existing community-lawyer relations, is one that affects evidence gathering and preservation. In the illustrative case of *Conrado*, the community and his partner's knowledge on how to properly prepare a sworn affidavit and secure CCTV footage eliminated the additional, superfluous step of being assisted by a lawyer. Despite non-assistance by a lawyer in the preparation and collection of the necessary evidence, the case was eventually dismissed and Conrado freed.

V. CONCLUSION

This Article affirms that in the context of the Philippine Drug War, the alternative lawyer has utilized creative means to seek and attain justice on behalf of families who lost their loved ones. These means include public interest or impact litigation, which impact not only the litigants, but other persons who are similarly situated as the litigants; and advocacy support, and legal literacy or education, which address out-of-court reprisals, empower communities to take on proactive roles in investigation, documentation, and evidence gathering and preservation, and respond to time and context-sensitive concerns and developments, such as the pandemic and the 2022 elections.

At the beginning of this Article, the question was posed — *In our work for justice, will lawyers (and lawyering) be eventually dispensable?* At this point, this Article dares to conclude that lawyers (and lawyering) should eventually be dispensable. In the foregoing discussions, much impact — may this be in the form of winning a case or getting a just outcome like freedom from detention or transfer to a non-carceral facility — can be attributed to the instances where the traditional lawyer *hat* took a backseat — case build-up by community immersion, prioritizing community protection instead of resorting to other more penalty-facing or offensive legal remedies, teaching communities how to draft sworn statements, or organizing workshops on storytelling.

Impact was amplified when the legal knowledge and tools provided by alternative lawyers were provided with other forms of support for the communities — such as spiritual, financial, and psychosocial support. Legal knowledge and justice processes are no longer (and should no longer be) monopolized by a few. Communities and clients may continue to need legal services but may no longer need lawyers.

The attainment of justice, in its fullest sense, is yet to be realized. But the alternative lawyer understands that their work is not to be the end-all and be-all answer to questions of justice. The alternative lawyer understands that in the quest for justice, they must interrogate the law and the pillars of the system. They must identify the components and functions where the lawyer is traditionally necessary but must urgently be transferred to an empowered community. The alternative lawyer must then endeavor to widen the scope of the community's power within the legal system. Thus, in seeking the "correction or elimination" of barriers to justice, lawyers must be open to the possibility of removing themselves out of the equation when they, together with traditional lawyering, have become barriers themselves.