

A critique on the “war on drugs” policy in the Philippines

Leonardo R. Estacio Jr.*^{1,2}, Laurie S. Ramiro², Hilton Y. Lam^{1,3}, Ma. Esmeralda C. Silva^{1,4}, and Carmencita D. Padilla^{1,5}

¹Health Policy Hub, University of the Philippines Manila, Manila 1101, Philippines

²Department of Behavioral Sciences, College of Arts and Sciences, University of the Philippines Manila, Manila 1101, Philippines

³Institute of Health Policy and Development Studies, National Institutes of Health, University of the Philippines Manila, Manila 1101, Philippines

⁴Department of Health Policy and Administration, College of Public Health, University of the Philippines Manila, Manila 1101, Philippines

⁵Office of the Chancellor, University of the Philippines Manila, Manila 1101, Philippines

ABSTRACT

The “war on drugs” policy of the Philippine government caught worldwide attention with the assumption to office of President Duterte in 2016. This was brought about by the unprecedented and controversial campaign dubbed as Operation Double Barrel (Operation Tokhang and Operation High Value Target) that led millions of illegal drug users to surrender and that also resulted to alleged extra-judicial killings of mostly users and street-level pushers. Taking cue from the controversial drug campaign, a roundtable discussion with 54 experts from the academe, national and local government, non-government organizations, institutes of health, and medical societies, was organized by a policy and research group in the University of the Philippines Manila to review and critic the implementation of the existing drug law of the Philippines in the light of the current drug situation and to collectively draw out policy statements as an output. The policy statement is presented in this article.

KEYWORDS

drug policy of the Philippines, war on drugs policy, policy critique

INTRODUCTION

There are two laws that deal with the drug problem in the Philippines. The first law enacted was Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1972. Back then, it was reported that there were about 200,000 drug users, mostly of marijuana, among 57.9M population (DDB 2013). This law existed for three decades and was implemented by five previous presidents of the Philippines, by the administrations of President Ferdinand E. Marcos, President Corazon C. Aquino, President Fidel V. Ramos, and then briefly, by the administrations of President Joseph Ejercito Estrada and President Gloria Macapagal-Arroyo.

During the first term of President Macapagal-Arroyo as interim president, a new drug law was enacted that superseded RA 6425. This new law, Republic Act 9165, the Comprehensive Dangerous Drugs Act of 2002, although with several similar provisions as the old law, was touted to be more stringent than the previous law. For example, although both laws exact punishment from life imprisonment to death for, among others, manufacturers, producers, traders, and possessors of drugs, RA

*Corresponding author

Email Address: lrestacio@up.edu.ph

Date received: March 15, 2021

Date revised: July 06, 2022

Date accepted: September 30, 2022

9165 included a more extensive list of illegal drugs. While the old law (RA 6425) created only one agency, the Dangerous Drugs Board (DDB), as policymaking and implementing agency. The new law (RA 9165) also created two agencies, one in charge of policymaking, the Dangerous Drugs Board (DDB), and one in charge of law enforcement, the Philippine Drug Enforcement Agency (PDEA). Further, the old law did not differentiate drug possession from drug use and both carried the same penalty for those apprehended (i.e., life imprisonment to death). This meant that the user and the pusher can both be meted out the death penalty as maximum punishment. The new law, on the other hand, differentiates between drug possession and drug use. The penalty for drug possession carries with it a penalty corresponding to the quantity of illegal drugs possessed. For example, in the new law (RA 9165, article 2, sec 11), possession of a mere 10 grams or more of opium, heroine, morphine, cocaine, or 50 grams or more of methamphetamine hydrochloride or “shabu” carries with it a penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (P500,000.00) to ten million pesos (P10,000,000). Drug use, on the other hand, carries with it a penalty of minimum of 6 months rehabilitation in a government center for the first offense and a penalty of imprisonment ranging from 6 years and 1 day to 12 years and a fine ranging from P50,000 to P200,000 for second offense (RA 9165, article 2, sec 15).

RA 9165 was implemented in 2002 with a death penalty provision during the administration of President Macapagal-Arroyo. However, in 2006, with the enactment of RA 9346, the anti-death penalty law, the maximum penalty of death in RA 9165 was abolished. Thus, during the term of President Benigno C. Aquino III and the administration of President Rodrigo R. Duterte, RA 9165 is being implemented sans the maximum penalty of death for violators of the law such as the manufacturers, traders, importers, producers, and possessors of illegal drugs, among others. There was a strong clamor from Congress through House Bill No. 8909 and from President Duterte during his 4th SONA (State of the Nation Address) on July 22, 2019 to reinstate the death penalty for heinous crimes related to dangerous drugs and plunder (CNN 2019).

Different administrations had different approaches in implementing the Philippine drug laws (Estacio 2003). For example, during the term of President Marcos, death penalty was strictly enforced with one drug dealer by the name of Lim Seng sentenced to die by musketry. During President Corazon Aquino’s term (1986 – 1992), the death penalty provision of RA 6425 was abolished and the Secretary of Health served as the chair of the Dangerous Drugs Board (DDB), the policymaking and implementing arm of the law. When President Fidel Ramos came to power in 1992 -1998, the death penalty was re-imposed and the Secretary of Justice served as chair of DDB. During the short-lived presidency of President Joseph Ejercito Estrada (1998-2000), the Philippine National Police (PNP) was designated as the primary law enforcement agency on drug matters. Subsequently, during their incumbencies, President Gloria Macapagal-Arroyo (2000-2010) and President Benigno Aquino III (2010-2016), both utilized the DDB as policymaking body and the Philippine Drug Enforcement Agency (PDEA) as implementing agency in keeping with the provisions of RA 9165.

When President Rodrigo Duterte assumed office in July 2016, the Philippine National Police (PNP) was briefly designated as the primary law enforcement agency instead of the PDEA to implement his “war on drugs” campaign. Thereafter, the newly installed Philippine National Police (PNP) Chief, General Ronald De la Rosa issued a memorandum circular (PNP’s Command Memorandum Circular No. 16-2016) that created “Oplan Double Barrel”, the “war on drugs” campaign plan of

President Duterte. Oplan Double Barrel had a two-pronged approach. One approach, dubbed as Oplan High Value Target (HVT) focused on dealing with drug traders, manufacturers, high-end pushers, and the like including celebrities and affluent people using drugs. The other approach, called Oplan Tokhang aimed at dealing with small-time pushers and ordinary drug users with the strategy of knocking at their homes and pleading them to voluntarily surrender to the hands of the law for their own good.

The “war on drugs” policy of the Philippine government caught worldwide attention upon the assumption of office of President Duterte in 2016. This was brought about by the unprecedented and controversial campaign dubbed as Operation Tokhang that led millions of illegal drug users to surrender and that also resulted to alleged extra-judicial killings of mostly users and street-level pushers. For example, as reported in the media, from July 1, 2016 to January 7, 2017, the controversial Tokhang and HVT campaign of the Philippine National Police (PNP) has conducted 40,982 anti-drug operations, with 2,206 drug personalities killed during police operations and 44,070 arrested (Palatino 2017). From its accomplishment report for the 1st semester of 2017, the PNP data showed that from the start of the campaign on March 1, 2017 to June 30, 2017 (a period of 4 months), a total of 1,309,776 illegal drug personalities surrendered to police nationwide; 86,030 were arrested; and 3,264 died in police operations (PNP 2017).

A roundtable discussion was organized by a policy and research group in the University of the Philippines Manila on April 19, 2017; this aimed to review and critique the implementation of the existing drug law of the Philippines in the light of the current drug situation and to collectively draw out policy statements as an output.

METHODS

Since its implementation in 2002, there has been no policy assessment done on RA 9165. Recognizing this need, the Health Policy Hub of the University of the Philippines Manila in partnership with a team of researchers studying drug use and behavioral health among young populations in Metro Manila through a research grant from the Emerging Interdisciplinary Research (EIDR) program of the Office of the Vice President on Academic Affairs of the University of the Philippines organized a roundtable discussion (RTD) entitled “*Zumba, Simba, o Tumba Lang Ba?*”: A Roundtable Discussion on RA 9165 (the Comprehensive Dangerous Drugs Act of 2002) at the Philippine General Hospital Social Hall on April 19, 2017. This RTD gathered 54 experts from the academe, national government agencies, local government units, non-government organizations, institutes of health, medical societies, and associations of health professionals to provide their professional and expert insights in tackling the issues and challenges vis-à-vis RA 9165. The RTD was conducted to review and refurbish the act in order to efficiently and effectively serve its purpose of providing evidence-informed basis and guidelines in combatting the drug problem in the country.

The RTD’s objectives were three-pronged: to present the historical context of the drug laws in the Philippines; to assess the current administration’s response to the drug problems in the Philippines from various perspectives vis-à-vis the current drug law (RA 9165); and to derive agreements or alternative actions in the areas of policy, research, and other related programs, and propose a more pragmatic and just policy that will serve as a guide to the current war on drugs operations.

The RTD included presentation from 5 speakers and was moderated by Dr. Hilton Lam, chair of the UP Manila Health Policy Hub and director, Institute of Health Policy Development Studies of the National Institutes of Health Philippines. The presentations of the speakers focused on various perspectives to the current administration's response to the dangerous drugs problem vis-à-vis R.A. 9165. The first speaker was Prof. Leonardo R. Estacio Jr., professor of anthropology and dean of the College of Arts and Sciences of UP Manila and program leader of the drug use and behavioral health study group, who talked on "Global policy approaches to the dangerous drugs problem and the Philippine approach through the years". The second speaker was Secretary Benjamin Reyes, then chairman of the Dangerous Drugs Board who spoke on "The drug situation in the Philippines". The third speaker was Prof. Laurie Ramiro, professor of behavioral sciences of UP Manila, whose presentation revolved on "Biopsychosocial perspective on drug abuse". The fourth speaker was Dr. Gideon Lasco, a medical anthropologist and professor of the Department of Anthropology of UP Diliman, who shared his insights on "The anthropological perspective on the Philippines' war on drugs". The final speaker was Derrick Arnold Carreon, director of the public information office of the Philippine Drug Enforcement Agency (PDEA) who presented on "Enforcement efforts regarding the drug problem in the Philippines". Prior to their presentations, a briefing paper on RA 6425 and RA 9165 were distributed to the participants for their reference.

Based on their presentations, a moderated discussion on the drug law (RA 9165) followed with the active participation of the rest of the 54 participants. Among the 54 participants who attended the RTD, majority were from the academe (n= 21). This was followed by participants that came from national government agencies (n=11) and national institutes of health/hospitals/drug treatment centers (n=11). The rest came from non-government organizations (n=6), local government units (n=4), and from the Philippine Congress (n=1). The group from the academe was composed of experts in toxicology, psychiatry, psychology, health economics, public health policy, medical anthropology, behavioral health, drug treatment and rehabilitation, and drug abuse research, among others. Experts from the national government agencies were representatives from the Department of Health, Commission on Human Rights, Dangerous Drugs Board, Philippine Drug Enforcement Agency, and Philippine National Police, among others. Most of the participants from the institutes of health and hospitals and treatment centers who were in attendance were experts on clinical epidemiology, health policy, aging, toxicology, psychiatric treatment, behavioral therapy, and pharmaceutical sciences, among others. NGO participants were from human rights and harm reduction groups. Those from the local government units were mostly from the drug abuse councils with one elected barangay chairman in attendance. The lone participant from the Philippine Congress was a lawyer.

From the moderated discussion, a transcribed and summarized version of the policy statement was drawn and sent to the participants for their review and comments. From the review and comments, a technical working group of 8 experts was convened from the participants to further review the comments made and to prepare the final version of the policy statement (presented below). Stakeholder analysis⁶, a process of engaging knowledgeable actors from various sectors was used in the systematic gathering and analysis of the data.

RESULTS AND DISCUSSION

The round table discussion and technical working group produced the following critiques and position statements that focused on the following selected salient provisions of RA 9165:

1. The definition of "use", "pusher", and "possession"
2. The death penalty provision
3. Drug testing provision
4. Participation of the family, community, and education sector provision
5. Treatment and rehabilitation provision
6. Participation of local government units
7. Research provision
8. The "war on drugs" policy approach

1. On the definition of "use", "pusher", and "possession"

Critique on "use"

As stated in RA 9165, "use" refers to "*any act of injecting, intravenously or intramuscularly, of consuming, either by chewing, smoking, sniffing, eating, swallowing, drinking or otherwise introducing into the physiological system of the body, any of the dangerous drugs*" (article 1, sec 3kk). The participating experts agreed that this definition seems vague and limiting. For instance, the law failed to consider the following various reasons and processes that facilitated the act of use: medical use, recreational use, instrumental use and the nature of use, non-problematic use, and problematic use. Since the definition is premised on the phrase "any act of" – everybody is implicated as offenders including persons in need of "dangerous drugs" for medication, even if these were legally prescribed by physicians.

Likewise, the psychology and logics of use were not also clearly stated in the law as persons who use illegal drugs vary in terms of what drives them to use these drugs initially, continuously, and habitually. As argued, problematic use of drugs does not happen at the initial stages since drug use is seen at this stage as a solution to a problem rather than the problem. Drug use becomes problematic only when users resort to irrational and habitual use. Among participating physicians, concerns were raised on patients who have to use drugs classified as dangerous for medicinal purposes such as morphine tablets and marijuana for cancer patients (medical use). These drugs provide relief from pain and help individuals function despite their illness.

All participating experts agreed that the "war on drugs" is closely attached to "war on poverty". Most drug users come from urban poor groups, and are either unemployed or underemployed and most of them engage in high-risk jobs and manual labor. Social and behavioral science experts in the discussion articulated that most drug users resort to drug use to enhance their performance of manual work (instrumental use) or to cope from the pangs of poverty (recreational use). Thus, a deeper understanding of the context, logic, and onset of use should be considered in refining and redefining the concept of "use" in the drug law.

Critique on "pusher"

A "pusher" is defined in the drug law (RA 9165) as "*...Any person who sells, trades, administers, dispenses, delivers, or gives away to another, on any terms whatsoever, or distributes, dispatches in transit or transports dangerous drugs or who acts as a broker in any of such transactions, in violation of this Act.*" (article 1, sec 33ff). In this seemingly encompassing definition, physicians and pharmacists in the round table discussion sarcastically argued that they may be found guilty of being a "pusher" if they dispense or prescribe dangerous drugs for

emergency and medication purposes. Likewise, children, who are unknowingly and innocently used to deliver or give away dangerous drugs to another person, may be equally guilty of being a “pusher” and may be indicted and penalized as such. Among participating behavioral and social scientists, arguments were raised on the difficulty of distinguishing user and pusher in practice. Some users sell or give away drugs to friends and thus, they may end up as user-pushers, which does not fall into a categorical definition in the law.

Critique on “possession”

Finally, article 2 section 11, refers to “possession” as a basis for the penalty or fine imposed on any person who unlawfully possesses any dangerous drug in the quantities declared as unlawful, regardless of the degree of purity thereof. The punishment (e.g., life imprisonment to death and fine, 6 months rehabilitation and fine, 6 months and 1 day to 12 years imprisonment and fine, etc) depends on the quantity and type of drugs possessed. For example, for those found possessing 10 grams or more of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil and 50 grams of methamphetamine hydrochloride or “shabu”, or 500 grams or more of marijuana, a maximum penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (P500,000.00) to ten million pesos (P10,000,000.00) shall be imposed.

On the other hand, persons caught possessing lesser quantities of the aforementioned drugs will have lesser penalties and fines. For example, if the quantity of methamphetamine hydrochloride or “shabu” is ten (10) grams or more but less than fifty (50) grams, a penalty of life imprisonment and a fine ranging from four hundred thousand pesos (P400,000.00) to five hundred thousand pesos (P500,000.00) is meted out. On the other hand, if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs, imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from four hundred thousand pesos (P400,000.00) to five hundred thousand pesos (P500,000.00) is rendered. Finally, if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu”, or other dangerous drugs, imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from three hundred thousand pesos (P300,000.00) to four hundred thousand pesos (P400,000.00), is imposed.

In the promulgation of the aforementioned penalties and fines, article 2 section 23 of RA 9165 strictly prohibits plea bargaining. However, the Supreme Court of the Philippines on September 8, 2017 rendered this unconstitutional and a decision was penned to allow plea bargaining as a constitutional right⁷. The SC argued that Section 23 of RA 9165 was contrary to Article 8, Section 5 of the 1987 Constitution which gives the high court the authority to allow plea bargaining.

As defined in RA 9165, drug use refers only to “act of” and does not include “self-admission” or “biological testing” of use. In this regard, by strict application of the definition, people who are made to voluntarily surrender or submit themselves as users without being observed in the “act of use” may not be classified as user. It can be legally argued and interpreted that drug users should be caught in the “act of injecting or consuming” for them to be classified as “user”. This is a human rights issue in the implementation of the Operation Tokhang campaign of the Duterte administration particularly by “voluntary surrenderers” that allegedly claim that they were wrongfully listed in the drug

watch list of the law enforcement agency and that they were allegedly “forced” to surrender for fear of being jailed or killed. As a corrective and remedial measure, the law enforcement participants shared that the Dangerous Drugs Board (DDB) issued two successive administrative policies, the DDB Regulation #3, series of 2016 entitled Guidelines on Handling Voluntary Surrender of Drug Personalities and the DDB Regulation #4, series of 2016, Oplan Sagip – Guidelines on Voluntary Surrender of Drug Users and Dependents and Monitoring Mechanism of Barangay Anti-Drug Abuse Campaign. Nevertheless, these issuances by the DDB proves the point that “use” as defined in the drug law is vague and limiting. An expanded definition of “use” should be recrafted as amendment to the law.

Likewise, defining “possession” of illegal drugs using quantity and type of drugs as main criterion can be quite complicated in its application. It was argued during the discussion that it is difficult to determine in a dragnet operation if a person caught in possession of, for example, a sachet of “shabu” is a user or a pusher. Either that person is in possession of a sachet for personal use or in possession of a sachet of shabu to sell or push. But since, that person is not caught in the “act of” but in “possession of”, he is by technicality of the law already a suspected “pusher”. Moreover, as observed in normal law enforcement operation, a law enforcer does not usually bring a weighing scale to measure the weight or the quantity of the dangerous drug that was allegedly in the possession of the suspected “pusher”. It is up for the court hearing the drug case to determine the nature of drug offense and the penalty and fine that should be meted out based on the evidence (whether in higher or lesser quantities) that are presented. The unintended consequence of these provisions on illegal possession of drugs is the influx of plea-bargainers that now proliferate and populate the cases filed in the drug courts, a consequence of the ruling of the Supreme Court that allows drug offenders to plea bargain. Apparently, since the implementation of RA 9165 in 2002, most of those incarcerated for drug violations comprised thousands of plea bargainers (e.g.: users who peddle drug to sustain their drug use commonly referred to as user-pushers and/or small time pushers allegedly caught in possession of lesser quantities of dangerous drugs). These drug offenders contribute immensely to the problem of prison overcrowding and clogging of court cases as reported by Philippine media.

With the implementation of the Oplan Double Barrel (Oplan Tokhang and Oplan High Value Target) by the Duterte administration that brought about controversies on the application on the definition and provision on “use”, “pusher” and “possession”, there is a strong need to revisit and revise the policy definition of these terms in RA 9165.

Position statement

Definitions used in RA 9165 on “use”, “pusher” and “possession” should be further clarified and contextualized using evidence-informed data that is grounded in reality and experience. Definitions should be revisited and, if need be, revised and made more explicit and substantive for better application and impact.

2. On the death penalty provision

Critique

Although abolished since 2006 upon the enactment of RA 9346 (the anti-death penalty law), the death penalty provision as a maximum penalty for drug importers, traders, manufacturers, sellers, and those in possession of dangerous drugs in RA 9165 (article 2, sections 4, 5, 6, 8, 11, 16, 19) was not deleted in published copies of the law. In this regard, the participating experts agreed that the state agency that produces and

disseminates published copies of RA 9165 for public awareness and education should act on this so as not to confuse the public.

Position statement

The Dangerous Drugs Board (DDB), as a policymaking body on drug matters should take cognizant of this small but legally relevant matter and should ensure that proper reproduction and dissemination of printed and online copies of RA 9165 should consider the deletion of the death penalty provision of the law.

3. Drug testing provision

Critique

Health and medical professionals in the roundtable discussion and technical working group argued strongly that drug testing (article 3, section 38) cannot and should not be the sole measure in determining substance use. There are various measurements and tests that can define and provide a better picture of the state of substance use of a person such as drug dependency screenings. In practice, methods of the conduct of drug testing is also quite challenging and problematic. Like all biological testing measures, drug testing may be prone to false negative and false positive results. Thus, it is not a foolproof biological measurement. Moreover, since detection of dangerous drug in the bodily system has an elapsed time, some enterprising drug users escape being detected by clearing themselves of the drugs before subjecting themselves to drug testing. The practice of cheating oneself from positive drug use is reportedly done particularly among those applying for or renewing their driver's license. In short, drug testing may be prone to error and mischief. Thus, if applied, random testing of drug users and the like should be imposed as the rule rather than pre-scheduled drug testing. With the enactment of RA 10173, the Data Privacy Act of 2012, there are now data privacy issues related to providing information on drug testing and screening results.

Position statement

Apart from drug testing, other options (e.g. biological and non-biological measurements) in checking, screening, and determining risks and dependency of persons who use dangerous drugs should be explored and adopted in the amendment of the law. This is to ensure a more comprehensive drug dependency examination and assessment among drug dependents.

4. Participation of the family, community, and education sector

Critique

Participants agreed that the involvement of family, community, and the education sector is the most effective way of dealing with the problem (article 4, sections 41-46). There are provisions in the law that enjoin the active involvement of these social institutions but applications of these in reality were found wanting if not problematic. Since 2002, when the drug law was enacted, there is lack of standard curriculum on drug prevention education in schools and standardized drug awareness program for families and communities.

A participant raised the concern of the starting point where drug education could be integrated in the educational system. Possible objectives of drug education in the curriculum could be values formation dealing with initial use, and skills training against initial use. It was pointed out that another source of prevention is the family. However, it is important to know what kind and on what level should families educate their children about drug use.

Position Statement

Clearer policy mechanisms and processes in building a more drug-resilient individual, family, and community sector should be formed. It was agreed by participants that one of the best ways through which prevention can be done is by strengthening values formation in the family and integrating this in the drug education curriculum and other awareness raising programs. Likewise, the school committees on drug prevention education and the anti-drug abuse councils in communities (barangays), cities, and municipalities should be made more functional with adequate and sustained technical and financial support from the national government.

5. Treatment and rehabilitation provision

Critique

The participating experts agreed that the treatment and rehabilitation provisions of the law (article 8, sections 54-76) have clear policy mechanisms and processes for center- or facility-based treatment and rehabilitation but have gaps in implementation in the following areas: below target in terms of ensuring that all provinces should have at least 1 TRC; lacks provision in the law for community-based treatment as effected by the Operation Tokhang campaign of the Duterte administration; lacks provision for treatment of clients with comorbidities (e.g., with psychological disorders); lacks clear provisions on aftercare treatment interventions; treatment approach is homogenous and adapts western approaches; and lacks clear policies for de-listing or exemption from criminal liabilities among "voluntary surrenderers" of the Operation Tokhang campaign.

Section 75 of the law mandates that all provinces should establish at least 1 treatment and rehabilitation center (TRC) in the respective areas, through priority funding by the national government, but since 2002 when the new drug law was enacted, only 11 provinces in 11 regions have existing TRCs. When the Operation Tokhang campaign of the Duterte administration went full blast in 2016, the hundreds of thousands of drug users who voluntarily surrendered were not immediately attended to because there were no existing community-based programs for their treatment and rehabilitation. Based on DDB and DOH statistics, in 2013 and up to 2016, there were only about 44 TRCs that could ably cater to a combined capacity of 5000 to 6000 clients per treatment cycle of 6 to 12 months.

Treatment intervention as stipulated in the law caters mainly to clients who voluntarily submitted (sec 54) and with court orders to facility-based treatment where treatment of clients was observed to be homogenous and adaptive of western approaches such as the Therapeutic Community approach. In this regard, those who voluntarily surrendered under the Operation Tokhang campaign were not included. Although, enabling policies such as Oplan Sagip (DDB Regulation # 4, series of 2016) and DOH Administrative Order No. 2017-0018 (Guidelines for Community-Based Treatment and Support Services for Persons Who Use Drugs in Primary Health Care Settings) have been created as response mechanisms, fine-tuning the implementation mechanisms towards a culturally-appropriate and cost-effective approaches are deemed necessary.

One significant statement that came from an elected barangay (village) official who participated in the roundtable discussion pointed out the dwindling participation of the "voluntary surrenderers" of the Operation Tokhang campaign to the community-based intervention program because of the lack of policy on de-listing of voluntary surrenderers after having gone through the program. The said barangay official noted that majority of the surrenderers either stopped attending the

program or some others went back to their drug use and street-level drug pushing activities. While section 55 of the law provides exemption from criminal liability under the voluntary submission program for drug users, this provision of the law does not apply to the voluntary surrenderers of the Tokhang campaign because they did not go through the usual policy mechanisms and processes for those that went through the voluntary submission program as stipulated in the drug law. Again, a special enabling policy should be created for them for the same purpose.

Position statement

The participants asserted that drug users and drug dependents including the voluntary surrenderers of the Operation Tokhang campaign could not be treated in a homogenous manner; thus, support for improvement and development of treatment policies and programs (treatment and rehabilitation and aftercare) in all treatment settings (facility-based, outpatient, community-based, special populations) using inclusive, culturally-appropriate, rights-respecting, cost-effective, and holistic approaches as informed by biopsychosocial perspectives should be established. There should be improvement of the policy on criminal exemptions (sec 55) that would enable de-listing, destigmatization, and exemption from criminal offense of drug users who went through proper treatment and rehabilitation and aftercare programs, as mandated by law.

6. Participation of local government units

Critique

A medical anthropologist in the group argued that left with no alternative and legitimate sources of income, people living in impoverished areas resort to selling drugs or using drugs to enhance performance in manual work, e.g., pier and sex work. Studies shared by resource persons reinforced the thinking that poverty, dysfunctional family, improper socialization, and adverse childhood experiences, among others, are the main drivers that compel young and old people in communities to engage in selling and using dangerous drugs. The law (article 7, section 51) mandates the LGUs to appropriate a substantial portion of their respective annual budgets to assist in or enhance the enforcement of RA 9165 giving priority to preventive or educational programs and the rehabilitation or treatment of drug dependents.

In this respect, the local government units (LGUs) play the most significant, crucial, and strategic role in solving the drug problem in the Philippines. Anecdotal reports and assessments show that majority of the anti-drug abuse councils at the municipal and barangay levels, the main arm of the government in responding to the drug problems in towns and communities, are not functional or not well-equipped in performing their tasks. They lack competent and well-trained people, adequate budget, appropriate technologies, upgraded facilities and equipment – elements that are crucial in the war on drugs campaign.

Position statement

Responsive engagement of LGUs at the community level is the key in solving the drug problem at its very core. A shift to innovative community-based approach in prevention, treatment, and control should be revisited by the national government. Making all the anti-drug abuse councils functional by capacitating and providing them all the necessary support (fiscal, facilities, equipment, technical advisers) towards the implementation of community-based drug control interventions in the long run is the best investment plan; it is easier to implement, manage, monitor and evaluate, and sustain.

7. Research provision

Critique

Participants emphasized the importance of understanding the climate and perception of the general public regarding the drug problem when creating policies. Questions were also raised on creating clear measures on how to gauge the success of actions and regulations or the measurement of the performance and effectiveness of the law itself. More importantly, all participants agreed with the expressed concern over the statistics coming from various sources regarding dangerous drugs. Thus, the lack of scientifically administered and validated data and statistics would prevent policymakers in formulating grounded and evidence-based drug policy and programs.

Article 9, sec 81c of RA 9165 mandates the DDB to take charge in the support and conduct of research activities related to the drug problem such as policy studies, program monitoring and evaluation, and scientific studies (clinical, social, biological, economic, etc.) on dangerous drugs and drug prevention and control measures. There are limited studies done on these aspects. As observed, limited funds are the main reasons for this very low research outputs. This prevented DDB from upgrading its research unit in terms of recruitment of competent personnel, procurement of reliable equipment and adequate supplies, upgrading research facilities, and adequate budget to fund and/or administer drug abuse research.

Position statement

The research provision should be amended with a separate agency in charge of drug-related research to be established with separate funding allocation. In other countries such as the United States, the National Institute of Drug Abuse (NIDA) functions mainly to provide funding and institutional support for drug abuse research. Otherwise, current research agencies of the government such as the DOST-PCHRD and UP-NIH should be provided by law a regular and adequate research fund to assist DDB and PDEA and other concerned government agencies in satisfying their research needs toward a more evidence-based policy and programs development.

8. Policy approach

Critique

In the almost five decades of application of the so-called “war on drugs” or prohibitionist drug policy in the Philippines, it can be summed up and argued that this policy approach did more harm than good to the country. This can be attributed both to the punitive rather than restorative nature of the law and to institutional failure.

Vague and contradictory provisions in the drug law lead more to condemnation than redemption:

1. Sec 15 on use of dangerous drugs limits treatment and rehabilitation and exemption to criminal offense only to first offenders and incarcerates second-time offenders;
2. Ethnographic data shows that there are user-pushers in the Philippines and most of these are the plea bargainers that clog the prisons;
3. Possession incarcerates everybody including children used in drug trafficking and physicians who prescribe dangerous drugs for medicinal purposes

Institutional failure is reflected in the following:

1. Statement of President Duterte that we already are a narco-state (presence of narco-politicians, narco-judges, narco-police officers)⁹; proliferation of dangerous drugs; acknowledged presence of

international and local drug syndicates by PDEA; lax enforcement of law

2. Non-functionality of a number of local anti-drug councils
3. Lack of treatment and rehabilitation and aftercare facilities and programs for recovering drug users
4. Alarming population of millions of drug users (Tokhang campaign)
5. Human rights violations (drug watch list; discrimination against drug users; extrajudicial killings (EJK); improper law enforcement)
6. Condemnation, instead of compassion, by the church, state, government officials, and citizenry of drug users

The participants agreed that although not explicitly stated in the drug law, the policy approach of the law is informed by “war on drugs” or prohibitionist policy. As observed, the application of this drug policy approach varies with every elected president. Although observed to be heavy with prohibitionist policy approach informed by retributive justice, the law seemingly contains to a certain degree a public health/harm reduction approach informed by restorative justice. For example, in article 2, section 15, the provision on use of dangerous drugs states that a person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, is given a mandatory penalty of a minimum of six (6) months rehabilitation in a government center for the first offense. On the other hand, if apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from fifty thousand pesos (P50,000.00) to two hundred thousand pesos (P200,000.00). After undergoing an 18-month aftercare following residential treatment, the first offenders are given reprieve and may be declared free from their criminal offense once cleared by the courts (article 8, sec. 54).

A closer scrutiny of these provisions shows that at the end of the day, most drug users may still end up in jail rather than be freed from criminal liability. Anecdotal reports and ethnographic data by participating experts (psychiatrists and behavioral scientists) attested that majority of the drug users relapse after their residential treatment because of lack of personnel and budget allocated for aftercare programs and services. As such, they become recidivists and thus, if apprehended for a second time may face the possibility of incarceration. With the lack of treatment and rehabilitation and aftercare facilities including personnel and budget, the return on investment on residential treatment can be argued as a losing venture.

Likewise, the declaration by the Supreme Court of the unconstitutionality of plea bargaining in article 2, section 23 reflects the ambivalence of the law in terms of respecting basic human rights. In practice, the participating expert from the Human Rights Commission of the country argued that drug users are also victims. Several methods used in the war on drugs dehumanize the users. The rights of individuals must be ensured before instituting policies or programs. For instance, methods such as drug-free sticker campaign are unconstitutional. Methods and rules employed during drug testing and issuing of warrant should be monitored to assure human rights are not violated.

Position statement

A policy shift towards a more rights-based, public, and behavioral health approach that is informed by social and restorative justice should be explored and studied as part of the proposed amendment of the law.

SUMMARY AND CONCLUSION

In sum, the participants recognized the importance RA 9165 as a relevant policy in solving the drug problem of the country. The law in general has its strengths and weaknesses and the participants were cognizant of these. As a policy action vis-à-vis the expert comments and insights of those who participated in the RTD, the following are recommended:

1. Provide a clearer definition of “use” and “possession”.
2. Delete the death penalty provision in the law
3. Aside from drug testing and screening procedures, provide other biological and non-biological tests for drugs of abuse vis-à-vis the involvement of family, community, and the education sectors
4. Strengthen the role of local government units in solving the drug problem by shifting prevention, treatment, and drug control activities at the barangay level and by providing more logistical and technical support to the LGUs and anti-drug abuse councils
5. The national government to allocate more budget to national and local agencies engaged in dealing directly with drug matters such as the DDB, PDEA, and LGUs
6. Strengthen the research component of the law by creating a separate drug research institute or by ensuring a sustainable research budget and funds on drug abuse research to research institutions run by the government
7. Strengthen the treatment policy and programs of the law such as abolishing the punitive provision and providing improved policy mechanisms on the treatment and rehabilitation of drug users
8. Revisit the “war on drugs” policy approach and rethink the shift to a more holistic approach (rights-based, public health and behavioral health, restorative justice) to the drug problem

The participating experts agreed in consensus that the almost 2-decade old drug law (RA 9165) needs to be updated and with some of its salient provisions amended and re-tooled in consonance with the changing social and geopolitical environments. As suggested, a more balanced implementation of the supply and demand reduction provisions should be instituted in both theory and practice. More importantly, a critical assessment of the prohibitionist policy (war on drugs) approach should also be undertaken in consideration of other responsive approaches (e.g. public and behavioral health) using social justice principles and evidence-based and evidence-informed science.

ACKNOWLEDGMENTS

The authors would like to express gratitude to all the participants in the round-table discussion and the research staff for the logistical support. This work was supported by the Office of the Vice President for Academic Affairs, University of the Philippines System through the Emerging Interdisciplinary Research Program [grant number C2-R-07-612-98] and the Office of the Chancellor, Health Policy Hub, University of the Philippines Manila.

CONFLICT OF INTEREST

All authors have no conflict of interest.

CONTRIBUTIONS OF INDIVIDUAL AUTHORS

LR Estacio, Jr. is the principal author and contributed to the conceptualization of the study, conducted the data acquisition and analysis, and the drafting and revising of the manuscript. HY Lam, **LS Ramiro**, MEC Silva, and CD Padilla contributed in the conceptualization of the study and design, data analysis and interpretation, as well as review of manuscript. All authors contributed to the final approval of the manuscript to be published, and agree to be accountable for all aspects of the work. The analyses and views expressed in this submitted article are the authors' own. All authors declare that the manuscript's data, figures, graphs, calculations, etc. are authentic.

REFERENCES

- Dangerous Drugs Board. Dangerous Drugs Board (DDB) History. 2013. Retrieved on 01 May 2020 from <https://www.ddb.gov.ph/about-ddb/history/44-gallery>.
- CNN Philippines Staff. Duterte asks Congress to reinstate death penalty for drugs, plunder. CNN Philippines. 22 Jul 2019. Retrieved on 01 May 2020 from <https://cnnphilippines.com/news/2019/7/22/Death-Penalty-SONA-2019-Rodrigo-Duterte.html>.
- Estacio LR. 2003. Bawal na Gamot: Exploring contradictions and connections in an urban barangay. Doctoral Dissertation. University of the Philippines Diliman. 2003.
- Palatino M. Duterte's 'War on Drugs' in the Philippines: By the Numbers. The Diplomat.com. 9 January 2017. Retrieved on 10 January 2020 from <https://thediplomat.com/2017/01/dutertes-war-on-drugs-in-the-philippines-by-the-numbers/>.
- Philippine National Police (PNP). Philippine National Police Report, 1st Quarter 2017. Retrieve on 08 May 2020 from https://www.pnp.gov.ph/images/transparency_seal/2017/Soi2017.pdf.
- Babou S. What Is Stakeholder Analysis? The Project Management Hut. 2008. Retrieved on 09 May 2020 from <https://pmhut.com/what-is-stakeholder-analysis-part-3>.
- Buan L. Supreme Court allows plea bargaining in drug cases. Rappler.com. 08 Sept 2017. Retrieved on 04 January 2020 from <https://www.rappler.com/nation/supreme-court-allows-plea-bargaining-drug-cases>
- Buan L. From 12 years to 6 months: Small time drug cases get plea bargains". Rappler.com. 05 May 2018. Retrieved on 04 January 2020 from <https://www.rappler.com/nation/supreme-court-framework-plea-bargain-drug-cases>.
- Gita RA. Duterte: Philippines is a narco-state. Sunstar.com. 17 Aug 2017. Retrieved on 05 May 2020 from <https://www.sunstar.com.ph/article/159065/Business/Duterte-Philippines-is-a-narco-state>.