HUMAN RIGHTS ADVISORY ON THE WITHDRAWAL OF THE PHILIPPINES FROM THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

CHR (V) A2020-016

The Commission on Human Rights (hereinafter “the Commission”) issues this Advisory in light of the withdrawal of the Philippine government from the Rome Statute of the International Criminal Court (“ICC”). The withdrawal became effective on 17 March 2019.\(^1\) This Advisory intends to inform its readers about the ICC, its relevance to the Philippines, and of the consequences of the Philippine government’s withdrawal from it.

President Duterte’s “war on drugs” has led to more than 20,000 deaths\(^2\) from 1 July 2016 to date. According to the UN Report on the Human Rights Situation in the Philippines, about 8,663 of the deaths are a result of the conduct of anti-illegal drug operations, with estimates triple that amount.\(^3\) The alarming number of deaths prompted Atty. Jude Josue L. Sabio’s submission of a complaint-letter to the Office of the Prosecutor of the ICC in 24 April 2017. In his letter, Sabio claimed that the President, from his previous position as the mayor of Davao City until his present term as the Head of State of the Philippines, has been “committing extra-judicial executions or mass murders constituting crime against humanity.”\(^4\)

On February 8, 2018, the Office of the Prosecutor of the ICC issued a statement, saying that it has decided to open a preliminary examination into the

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situation in the Philippines. The preliminary examination will analyze crimes committed from 1 July 2016 in the context of the "war on drugs" campaign.5

Following the initiative of the Office of the Prosecutor of the ICC, Philippine Presidential Spokesperson Harry Roque announced during a press briefing that “The President welcomes this preliminary examination because he is sick and tired of being accused of the commission of crimes against humanity.”6

However, on 13 March 2018, President Duterte released a statement announcing the withdrawal of the Philippines as a State-Party from the Rome Statute of the ICC. He claimed that “the very considerations upon which the Philippines agreed to be a signatory to the Rome Statute have not been observed nor complied with.” He cited the following reasons for withdrawal: violation of his right to due process of law, lack of jurisdiction over his person, the supremacy of domestic laws, presidential immunity from suit, and lack of the requisite publication in the Philippines’ Official Gazette. 7 A written notification of withdrawal was deposited with the United Nations on 17 March 2018.8

In a statement issued on 20 March 2018, the ICC clarified that the withdrawal had “no impact on on-going proceedings or any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.”9 Moreover, the ICC reminded that “withdrawal from the court will not change the Philippines’ obligations to cooperate in a proceeding which had already begun.”10

As such, the Commission strongly advises the Philippine Government to cooperate with the Office of the Prosecutor of the ICC in the conduct of its preliminary examination covering crimes committed by Philippine nationals prior to the effectivity of the withdrawal, to participate in further processes of the ICC, and to respond to the calls of domestic and international human rights mechanisms11 to investigate, prosecute, and punish perpetrators who allegedly committed extrajudicial killings in relation to the anti-illegal drug campaign.

9 Id. 8; See also Article 127 of the Rome Statute here: https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf
11 Civil society organizations in the Philippines and abroad, the Human Rights Council and its mechanisms, and the Commission on Human Rights of the Philippines as the country’s independent National Human Rights Institution (NHRI)
I. The Philippines and the Rome Statute - A Historical Overview

The Philippines has historically been at the forefront of advancing the rule of law and international justice. Prior to the Philippines’ adoption of the Rome Statute, on 24 March 1998, former Philippine President Fidel V. Ramos signed Administrative Order No. 387, s. 1998, creating a Task Force on the proposed establishment of the International Criminal Court. President Ramos acknowledged the Philippines’ “support for the establishment of the ICC as a legal mechanism that will enhance international criminal justice enforcement.”


In October 2008, the late Senator Miriam Defensor Santiago filed a resolution urging former President Gloria Macapagal-Arroyo to transmit the Statute to the Senate for concurrence.

On 11 December 2009, Republic Act No. 9851, or the “Philippine Act on Crimes against International Humanitarian Law, Genocide, and Other Crimes against Humanity” was enacted. The law attempted to mirror the Rome Statute by penalizing crimes under International Humanitarian Law, genocide, and crimes against humanity, and by providing for reparations to victims. However, the definitions of the crimes enumerated under the said law varied from the definitions in the Rome Statute of the ICC.

In 2010, Senator Santiago again asked former President Benigno Aquino III to transmit the Statute to the Senate for concurrence. On 16 August 2011, she delivered a sponsorship speech as Chair of the Subcommittee on the Rome Statute of the International Criminal Court, stating:

“By concurring with the Rome Statute, the Philippines will help to strengthen institutions like the ICC to end impunity, and affirm the...”

position of the Philippines as a leading human rights advocate in Asia.”

She cited reasons for concurrence, including the Philippines’ “long-standing commitment to human rights and humanitarian law.” She further explained the advantages of ratification, such as putting “the Philippines in a better position to protect Filipinos overseas, when they might suffer crimes against humanity in pursuing work abroad.”

On 28 February 2011, the Statute was again signed by President Aquino and transmitted to the Senate for concurrence. The Philippines formally ratified the Rome Statute on 30 August 2011.

II. Mandate and Jurisdiction of the ICC

The ICC is an international tribunal or court that “investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community, namely: genocide, war crimes, crimes against humanity, and the crime of aggression.” Since beginning its work in 2002, the ICC has tried twenty-seven (27) cases and issued nine (9) convictions and four (4) acquittals.

The Office of the Prosecutor is an independent organ of the ICC that carries out investigations and prosecutions against individuals who are most responsible for genocide, crimes against humanity, war crimes, or aggression. Any individual, group, or State can send information to the Office of the Prosecutor regarding crimes falling under the jurisdiction of the ICC. Based on such information, the Office of the Prosecutor conducts a preliminary examination to decide whether there is a reasonable basis to initiate an investigation.

Notably, the Office of the Prosecutor of the ICC will initiate investigations only when the national authorities failed to investigate and prosecute the crimes. This is in line with the principle of complementarity, which entails that the ICC, as a court of last resort, can only decide cases when national or domestic courts are unable or unwilling to do so. The ICC may therefore, acquire jurisdiction over a case only if the State is unwilling or unable to genuinely carry out investigation or prosecution, if the proceedings are being undertaken by the State for the purpose

20 Id. 19.
24 Id.
26 Id.
of shielding perpetrators from criminal responsibility, if there has been an unjustified delay in the proceedings, or if the proceedings are not being conducted independently or impartially.28

III. Philippine Government’s capacity to address the alleged extrajudicial killings and to hold the perpetrators liable

The Commission recognizes the various measures by which the Philippine Government could hold perpetrators liable for the alleged extrajudicial killings and for violations of civil and political rights:


Based on the recommendations of Prof. Philip Alston, then UN Special Rapporteur on extrajudicial, summary, or arbitrary executions, 29 and the subsequent Universal Periodic Review, Administrative Order No. 35 was issued in 2012, creating an Inter-Agency Committee (“IAC”) on extra-legal killings, enforced disappearances, torture, and other grave violations of the right to life, liberty, and security of persons. A.O. No. 35 aimed to fast track the resolution of existing cases and encourage government coordination with the Commission on Human Rights and the Office of the Ombudsman in the investigation and prosecution of new cases involving grave human rights violations.30 A.O. No. 35 was meant to address the spate of extrajudicial killings, enforced disappearances, incidents of torture, and other human rights violations during the Aquino administration. Since its creation, the IAC has dealt with 248 cases of extralegal killings, 28 cases of enforced disappearances, 80 cases of torture, and 7 cases of other grave human rights violations.31

According to former Justice Secretary Vitaliano Aguirre II, Chairperson of the IAC during the Duterte Administration, the IAC could not act upon cases of extrajudicial killings committed in relation to the anti-illegal drug campaign.32 In a statement issued last 2017, the IAC emphasized that based on A.O. No. 35, its mandate was limited to killings related to political, environmental, agrarian, labor, or other similar causes, excluding drug-operation related cases.33 This assertion was also affirmed by former Philippine Presidential Spokesperson Harry Roque, who said that “A.O. No. 35 clearly provides that extrajudicial killings are killings of victims who were members of either political, environmental, agrarian, or labor organizations; advocates of such causes; media practitioners; or apparently mistaken or identified.” Roque also maintained that according to A.O. No. 35,

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28 Article 17(2) of the Rome Statute
30 See the full text of the Administrative Order here: https://www.officialgazette.gov.ph/2012/11/22/administrative-order-no-35-s-2012/
33 Id. 32
“perpetrators of extrajudicial killings, who might be state agents or non-state agents,” must have “a deliberate intent to kill victims because of actual or perceived membership, advocacy, or profession” and that “killings related to common criminals and the perpetration of their crimes shall be addressed by other appropriate mechanisms within the justice system.”

2. Senate Inquiry on Extrajudicial Killings

When the campaign against illegal drugs was launched at the beginning of the Duterte Administration, from July 1, 2016 to October 7, 2016 alone, the Philippine National Police (“PNP”) recorded 2,222 deaths under investigation and 1,523 people killed during police operations. From July 1, 2016 to October 10, 2017, the number of deaths under investigation increased to 10,354, while the number of suspects killed during police operations increased to 3,933.

Due to the alarming increase in the number of deaths resulting from the conduct of the anti-illegal drug campaign, a Senate inquiry on extrajudicial killings was launched on 22 August 2016. The first Senate inquiry was chaired by Senator Leila de Lima on 22-23 August 2016, and later by Senator Richard Gordon. Six hearings were conducted altogether, with the attendance of representatives from the Commission on Human Rights and witnesses. Thereafter, the Senate Justice and Human Rights Committee declared that it “would no longer hear the testimonies of the Commission on Human Rights and its witnesses.” A Senate Committee report was issued, concluding that there was “no proof that there is (a) state-sponsored policy to commit killings to eradicate illegal drugs in the country.”


On 11 October 2016, President Duterte signed Administrative Order No. 1 creating the Presidential Task Force on Violations of the Right to Life, Liberty, and Security of the Members of the Media. A.O. No. 1 recognizes the constant challenges faced by journalists and media workers in the Philippines who, in the exercise of their duties, become the subjects of attacks, intimidation, and threats.
perpetrated by State and non-State actors. The Presidential Task Force has reportedly investigated and acted on more than 30 cases of threats and harassment against journalists.\textsuperscript{40} The Task Force has also attempted to reinvestigate unsolved cases of media killings.

However, A.O. No. 1 specifically covers the deaths of journalists and media workers.

\textbf{4. Actions undertaken by the Commission on Human Rights}

Since the commencement of the Senate inquiry on 22 August 2016, the Commission’s docket has over 1,900 cases involving alleged extrajudicial killings.\textsuperscript{41} Over 90\% of these investigations were done \textit{motu proprio}.\textsuperscript{42} Nevertheless, the Commission has encountered difficulties in the conduct of its fact-finding investigations, especially in cases involving anti-illegal drug police operations. Despite the constitutional provision empowering the Commission to “request the assistance of any department, bureau, office, or agency in the performance of its functions,”\textsuperscript{43} in most instances, State authorities have failed to furnish the Commission with copies of police investigation reports and forensic and laboratory reports. Some of the Commission’s requests for the exhumation of the bodies of victims have also been denied. The Commission has also faced difficulties in the conduct of its jail visitation.\textsuperscript{44}

On 29 August 2017, officials of the Commission and the PNP met at Camp Crame, Quezon City, to discuss possible partnerships towards protecting human rights in the context of the anti-illegal drug campaign. The Commission asked the PNP to provide the case folders and checklist of all cases involving deaths resulting from anti-illegal drug operations. The Commission also stressed that in order to

\begin{itemize}
\item \textsuperscript{41} Data from the Central Investigation Office of the Commission on Human Rights.
\item \textsuperscript{42} \textit{Motu propio} investigations are initiatives of the Commission pursued even without formal complainants. Refer to one of the Commission’s statements, dated 20 August 2017, http://chr.gov.ph/chr-expresses-alarm-over-high-number-of-deaths-commences-motu-proprio-investigations/.
\item \textsuperscript{43} 1987 Philippine Constitution, Article XIII, Section 18 (9).
\item \textsuperscript{44} (1) Letter for PNP Chief Gen. dela Rosa requesting for a meeting with CHR received by the Office of the Chief PNP on 3 August 2016; (2) Letter for PNP Chief Gen. dela Rosa reiterating request of CHR for a meeting with PNP in letter dated 29 July 2016 which was received on 3 August 2016; (3) Memorandum to All POs, PPO, and SCD, DCPO from Regional Director (PNP Davao City) regarding Notices, Summons, Interview, and Request for Documents from Human Rights Activists/Bodies sent to Police Superintendent Alberto Lopez on 26 July 2017; (4) Letter for PNP Chief Gen. dela Rosa confirming the names of the Official and personnel of the CHR who will be participating in the first CHR-PNP dialogue at the Office of the Chief PNP sent on 25 August 2017 and received by the Office of the Chief PNP; (5) Letter for PNP Chief Gen. dela Rosa reiterating CHR’s request to be furnished with copies of the complete case records of all cases that are or have been investigated by the PNP involving deaths from police operations and other deaths under investigation in relation to the campaign against illegal drugs, sent on 29 August 2017 and received by the Office of the Chief PNP; (6) Letter for PNP Chief Gen. dela Rosa on the confirmation of the second meeting scheduled on 26 September 2017 at the CHR Central Office, sent on 22 September 2017 and received by the Office of the Chief PNP; (7) Letter for PNP Chief Gen. dela Rosa reiterating the CHR’s request to be furnished with copies of the case records of all cases investigated by the PNP in relation to the campaign against illegal drugs, sent on 5 October 2017 and received by the Office of the Chief PNP; (8) Letter for PNP Chief Gen. dela Rosa on the request for confirmation of schedule for the next CHR-PNP consultation and dialogue, sent on 5 October 2017 and received by the Office of the Chief PNP; (9) Letter for PNP Chief Gen. dela Rosa regarding the PNP Custodial Center’s denial of the request of foreign dignitaries who wished to visit Sen. De Lima, sent on 23 October 2017 and received by the Office of the Chief PNP; (10) Letter for PNP Chief Oscar Albayalde reiterating CHR’s request to be furnished with copies of the complete case records of all cases that are or have been investigated by the PNP involving deaths from police operations and other deaths under investigation in relation to the campaign against illegal drugs, sent on 22 May 2018 and received by the Office of the Chief PNP.
\end{itemize}
fulfill its mandate, it needed the full cooperation of the PNP and the DILG. Former PNP Chief Ronald Dela Rosa agreed and said that “the PNP recognizes the mandate of the CHR and understands that human rights are the obligation of state agents. The PNP also recognizes that the Commission’s role is important in ensuring checks and balances in the government.”

The PNP and DILG initially agreed on working with the Commission. However, on 08 September 2017, during a media interview, Interior Undersecretary Catalino Cuy announced that the PNP will no longer be sharing case folders with the Commission, per President Duterte’s instructions. In November 2017, the Commission received a letter from former PNP Chief Dela Rosa, stating that the PNP could only provide spot reports and not the entire case folders in order not to “prejudice, preempt, or jeopardize” the investigations being conducted by policemen.

5. Actions undertaken by the PNP

In numerous media interviews, former PNP Chief Dela Rosa denied the PNP’s commission of extrajudicial killings and claimed that the deaths were the result of shootouts between police officers and suspects. He claimed that those killed in anti-drug operations had put up violent resistance, posing imminent danger to the lives of the policemen and prompting the latter to shoot them.

Since the beginning of the anti-illegal drug campaign, the PNP has consistently claimed that “the presumption of regularity remains with law enforcers, unless proven otherwise in (a) court of law.” Nevertheless, according to a Supreme Court decision, while ordinarily, the presumption of regularity applies to police officers’ performance of their official duties, such presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. Where there is any hint of irregularity committed by the officers, there can be no presumption of regularity of performance in their favor.

Hence, police officers involved in the alleged shootouts are still obliged to prove that the force employed was justified in accordance with Rule 7 (Use of Force during Police Operations) of the PNP Operational Procedures Manual. The Internal Affairs Service ("IAS") of the PNP is also compelled to conduct *motu proprio* investigation of incidents where death occurred in the conduct of a police operation.

### 6. Cases filed before the courts

From 1 July 2016 to date, only 76 cases involving deaths in anti-illegal drug operations have been thoroughly investigated and prosecuted by the Department of Justice ("DOJ"). Of the 76 investigations, 38 were dismissed, 5 are pending before prosecutors, and 33 have been filed in court.

As of 2020, only one case has been resolved in court, and only three convictions were made. On 29 November 2018, three police officers were convicted by a Regional Trial Court for the killing of a minor, Kian Loyd Delos Santos, during an anti-illegal drug operation in Caloocan. Notably, while there have been thousands of deaths resulting from the conduct of similar police operations, no further convictions were made.

The failure of the PNP to cooperate with the Commission, and of other institutions to further investigate, prosecute, and resolve cases involving deaths resulting from anti-illegal drug operations may demonstrate unwillingness to address the alleged extrajudicial killings. Such unwillingness only reflects a possible disadvantage of the Philippine Government's withdrawal from the Rome Statute of the ICC, as the ICC provides another avenue for justice and serves as a shield against impunity.

### IV. Consequences of the Philippine Government’s withdrawal from the Rome Statute of the ICC

In the event of failure of our domestic measures to address the alleged extrajudicial killings, the withdrawal from the Rome Statute of the ICC leaves thousands of Filipino victims with no recourse for the redress of their grievances. Furthermore, the withdrawal affects the Philippines’ image in foreign relations. The consequences are as follows: first, public perception that the Philippine Government tolerates an utter and complete disregard for human rights, and second, that the Philippine Government refuses to comply with its international treaty obligations to promote human rights and good governance.

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55. Id. 54.
The Commission was not alone in its attempts to convince the Philippine Government to reconsider the withdrawal from the Rome Statute of the ICC. On 13 June 2018, the Philippine Coalition for the International Criminal Court ("PCICC") filed a petition with the Supreme Court to overturn the withdrawal, claiming that the "withdrawal from the Rome Statute was whimsical, unconstitutional, and would lower the citizens' protection from international crime." The PCICC also argued that "the Rome Statute is jus cogens in character, or what is known as a peremptory norm or a compelling law that cannot be violated."

A few months after the withdrawal had become final, on 17 July 2019, the PCICC issued a statement lamenting that "the pull-out from the ICC deprives Filipinos of a court of last resort for serious violations of international humanitarian laws." Nevertheless, the PCICC also affirmed its support for the ICC’s retention of its jurisdiction over the crimes allegedly committed prior to the effectivity of the withdrawal, believing that “the cases brought to the court when (the Philippines) was still a State Party to the ICC will proceed in its halls of justice in due course.”

V. Conclusion and Recommendations

The Commission previously commended the decision of the Philippine government to welcome the preliminary examination of the Office of the Prosecutor of the ICC, expecting that such commitment would translate to the government's full cooperation with the ICC. The Commission finds that the reversal of the government’s decision sends a strong message of reinforcing impunity and tolerating the perpetration of crimes that could amount to gross human rights violations.

While there are efforts on the part of government institutions to investigate, prosecute, and resolve cases, the same are insufficient to address the alarming number of deaths resulting from the conduct of anti-illegal drug operations. As one of the accountability mechanisms of the State, the Commission strongly advises the Philippine government to cooperate with the Office of the Prosecutor of the ICC in the conduct of its preliminary examination. The Commission also strongly recommended that the number of deaths resulting from the conduct of anti-illegal drug operations be investigated and prosecuted to the fullest extent of the law.


62 Id. 61.
advises the Philippine government to participate in further processes of the ICC. Should the Philippine Government participate, all doubts as to the integrity of and the intentions behind the “war on drugs” campaign may be cleared. Such participation will also be an opportunity for the Philippine government to show that there is no ground for which any individual may be held liable in accordance with the Rome Statute of the ICC.

The call is for the Philippine Government to cooperate in the preliminary examination of the Office of the Prosecutor of the ICC, to participate in further processes of the ICC, to investigate the deaths resulting from the anti-illegal drug campaign, to strengthen domestic measures to ensure that the perpetrators are brought to justice, and to ably demonstrate its good faith and genuine respect for human rights.

**ISSUED** this 18th day of June 2020, Quezon City, Philippines.

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