

**INTERNATIONAL CRIMINAL COURT OFFICE OF THE PROSECUTOR'S
REPORT ON PRELIMINARY EXAMINATION ACTIVITIES – PHILIPPINES
(EXTRAJUDICIAL KILLINGS)***

Procedural History

The situation in the Republic of the Philippines (“the Philippines”) has been under preliminary examination since 8 February 2018. During the reporting period, the Office continued to receive communications pursuant to article 15 in relation to this situation.

On 13 October 2016, the Prosecutor issued a statement on the situation in the Philippines, expressing concern about the reports of alleged extrajudicial killings of purported drug dealers and users in the Philippines. The Prosecutor also recalled that those who incite or engage in crimes within the jurisdiction of the Court are potentially liable to prosecution before the Court, and indicated that the Office would closely follow relevant developments in the Philippines. 233. On 8 February 2018, following a review of a number of communications and reports documenting alleged crimes, the Prosecutor opened a preliminary examination of the situation in the Philippines since at least 1 July 2016.

Preliminary Jurisdictional Issues

The Philippines deposited its instrument of ratification to the Statute on 30 August 2011. The ICC therefore has jurisdiction over Rome Statute crimes committed on the territory of the Philippines or by its nationals since 1 November 2011.

On 17 March 2018, the Government of the Philippines deposited a written notification of withdrawal from the Statute with the UN Secretary-General. In accordance with article 127, the withdrawal took effect on 17 March 2019. The Court retains jurisdiction over alleged crimes that have occurred on the territory of the Philippines during the period when it was a State Party to the Statute, namely from 1 November 2011 up to and including 16 March 2019. Furthermore, the

* December 5, 2019, Pages 60-65, Paragraphs 231-254.

exercise of the Court's jurisdiction (i.e. the investigation and prosecution of crimes committed up to and including 16 March 2019) is not subject to any time limit.

Contextual Background

From 1988-1998, 2001-2010 and 2013-2016, Mr Rodrigo Duterte served as Mayor of Davao City, one of the largest and most urban cities in the Philippines. Throughout his tenure as mayor, a central focus of his efforts was purportedly fighting crime and drug use. On different occasions, then-Mayor Duterte reportedly publicly supported and encouraged the killing of petty criminals and drug dealers in Davao City. During the mentioned period, it is reported that police officers in Davao City as well as the so-called Davao Death Squad carried out at least 1,000 killings in incidents that share a number of common features.

In 2016, Mr. Duterte ran as a candidate for President of the Philippines. As part of his campaign platform, he promised to launch a war on crime and drugs, inter alia, through replicating the strategies he implemented in Davao City during his time as mayor. On 9 May 2016, Mr. Duterte was elected President of the Philippines, and was sworn in on 30 June 2016. On 1 July 2016, the Philippine National Police ("PNP") launched a nationwide anti-drug campaign in line with President Duterte's pronouncement to eradicate illegal drugs during the first six months of his term. In the context of that campaign, PNP forces have reportedly conducted tens of thousands of operations to date which have reportedly resulted in the killing of thousands of alleged drug users and/or small-scale dealers. It is also reported that, since 1 July 2016, unidentified assailants have carried out thousands of attacks similarly targeting such individuals.

Since July 2016, President Duterte has repeatedly and publicly confirmed his commitment to the continuation of this anti-drug campaign. Other senior government and PNP officials have also reportedly made regular public statements in support of the operations and activities carried out pursuant to or in connection with the adopted anti-crime/drug policies.

The UN Secretary-General, UN bodies and experts, various States, international NGOs and national civil society representatives have expressed serious concern about the alleged extrajudicial killings and criticised statements by President Duterte which have been viewed as endorsing the killings and fostering an environment of impunity and violence. On 11 July 2019, the UN Human Rights Council adopted resolution 41/2, inter alia, (i) urging the Government of the

Philippines to take all necessary measures to prevent extrajudicial killings, to carry out impartial investigations and to hold perpetrators accountable, and (ii) requesting the High Commissioner to prepare a comprehensive written report on the situation of human rights in the Philippines, to be presented at the forty-fourth session of the Human Rights Council. President Duterte has reportedly stated that he will not be intimidated by international reactions, including a possible future ICC trial, and that his campaign against drugs will continue to be unrelenting and brutal.

Subject-Matter Jurisdiction

In conducting its subject-matter assessment in relation to the situation in the Philippines, the Office has examined several forms of alleged conduct and considered the possible legal qualifications open to it under the Rome Statute. The Office has focused in particular on whether the alleged conduct amounts to crimes against humanity. The descriptions below are without prejudice to the identification by the Office of any further alleged crimes.

The preliminary examination has focused on crimes allegedly committed in the Philippines between 1 July 2016 and 16 March 2019 in the context of the so-called “war on drugs” (“WoD”) campaign launched nationwide by the government to fight the sale and use of illegal drugs. In particular, it focuses on allegations that President Duterte and senior members of law enforcement agencies and other government bodies actively promoted and encouraged the killing of suspected or purported drug users and/or dealers, and in such context, members of law enforcement, including particularly the PNP, and unidentified assailants have carried out thousands of killings throughout the Philippines.

Based on the information available, since the launch of the anti-drug campaign on 1 July 2016, thousands of individuals have been killed purportedly for reasons related to their alleged involvement in the use or selling of drugs, or otherwise due to mistaken identity or inadvertently when perpetrators opened fire on their apparent intended targets. Reportedly, over 5,300 of these killings were committed in acknowledged anti-drug operations conducted by members of Philippine law enforcement or in related contexts (such as while in custody or detention). Philippine officials have consistently contended that such deaths occurred as a result of officers acting legitimately in self-defence in the context of violent, armed confrontations with suspects. However, such narrative has been

challenged by others, who have contended that the use of lethal force was unnecessary and disproportionate under the circumstances, as to render the resulting killings essentially arbitrary or extrajudicial executions.

Thousands of killings were also reportedly carried out by unidentified assailants (sometimes referred to as 'vigilantes' or 'unknown gunmen'). According to the information available, authorities have often suggested that such killings are not related to the WoD, contending that they occurred in the context of love triangles or, alternatively, feuds or rivalries between drug gangs and criminal organisations. Nevertheless, other information available suggests that many of the reported killings by unidentified assailants took place in the context of, or in connection to, the government's anti-drug campaign. In this regard, it has also been alleged that some of these vigilante-style executions committed by private citizens or groups were planned, directed and/or coordinated by members of the PNP, and/or were actually committed by members of law enforcement who concealed their identity and took measures to make the killings appear to have instead been perpetrated by vigilantes.

In addition to killings, it has been alleged that some individuals have been subjected to serious ill-treatment and abuses prior to being killed by state actors and other unidentified assailants, such as after being arrested or abducted and while being held in custody prior their deaths. It has also been alleged that in several incidents, relatives (such as spouses, parents or children) of the victims witnessed the killings, thereby sustaining serious mental suffering. Further, it has been reported that in at least a few incidents, members of law enforcement raped women who were apparently targeted because of their personal relationships to individuals alleged to have been involved in drug activities.

Overall, reportedly, most of the victims of the alleged crimes in question were persons suspected or known, by authorities, to purportedly be involved in drug activities, that is, individuals allegedly involved in the production, use, or sale (either directly or in support of such activities) of illegal drugs, or in some cases, individuals otherwise considered to be associated with such persons. The majority of the victims have notably been from more impoverished areas and neighbourhoods, especially those within urban areas, such as in locations within the Metro Manila, Central Luzon, Central Visayas, and Calabarzon regions, among others. In addition, it has been reported that some public officials, including civil servants, politicians, mayors, deputy mayors and barangay-level officials, and current and former members of law enforcement were allegedly killed because of

their purported links to the illegal drug trade. According to the information available, many of the persons targeted overall by the alleged acts had been included on drug watch lists compiled by national and/or local authorities, and some of those targeted also included persons who had previously ‘surrendered’ to the police in connection to Oplan Tokhang. In a number of cases, notably, the alleged acts were committed against children or otherwise affected them. For example, reportedly, a significant number of minors (ranging in age from a few months old to 17 years old) were victims of apparent WoD-related killings, and in this respect, were killed in a number of circumstances, including as direct targets, as a result of mistaken of identity or as collateral victims.

Admissibility Assessment

Following a thorough legal assessment of the information available, the Office has sought to finalise its analysis on the admissibility of potential cases arising from the situation. As set out in article 17(1) of the Statute, admissibility requires an assessment of complementarity and gravity.

Open source information indicates that a limited number of investigations and prosecutions have been initiated (and, in some cases, completed) at the national level in respect of direct perpetrators of certain criminal conduct that allegedly took place in the context of, or connection to, the WoD campaign. For example, Philippine government officials and bodies have provided sporadic public updates on the number of investigations conducted by various authorities into killings that occurred during law enforcement operations. The information available also indicates that criminal charges have been laid in the Philippines against a number of individuals – typically low-level, physical perpetrators – with respect to some drug-related killings. Based on the information available, one WoD-related case has proceeded to judgment in the Philippines, that of three police officers who were convicted by the Caloocan City Regional Trial Court in November 2018 for the murder of 17-year-old Kian Delos Santos.

While in principle, only national investigations that are designed to result in criminal prosecutions can trigger the application of article 17(a)-(c) of the Statute, out of an abundance of caution the Office is also examining national developments which appear to fall outside the technical scope of the term ‘national criminal investigations’, including Senate Committee hearings into extrajudicial killings.

OTP Activities

During the reporting period, the Office sought to finalise its subject-matter analysis of such alleged conduct as well as attendant admissibility assessments concerning complementarity and gravity. It gathered, received, and analysed information from a wide range of sources. The Office reviewed hundreds of media and academic articles, reports, databases, legal submissions, primary documents, press releases and public statements by intergovernmental, governmental and non-governmental organisations, and other relevant sources, including such that was received through article 15 communications submitted directly to the Office. Consistent with standard practice, the Office has subjected such information to rigorous source evaluation, including an independent and thorough assessment of the reliability of sources and credibility of information received. In connection with this process, the Office has continued to take steps to verify the seriousness of information received and corroborate a number of relevant factual issues.

In the context of its assessment of subject-matter jurisdiction, the Office further examined particular features of the WoD campaign and implementation, independently documented and analysed relevant individual alleged incidents, and conducted an analysis of relevant patterns and trends. With respect to the legal assessment, the Office has analysed the information available to determine whether the alleged conduct of State actors and/or other individuals (such as vigilantes) amounts to the crimes against humanity of murder, torture, other inhumane acts or rape. Such analysis was conducted with a view to identifying potential cases likely to arise from any potential investigation into the situation and the persons or groups of persons who may bear the greatest responsibility for the identified alleged crimes.

In addition, the Office has gathered information relevant to the determinations on admissibility. For example, the Office has collected and assessed open source information on any relevant national proceedings being conducted by Philippine authorities. The Office has also monitored proceedings that appear to remain ongoing and taken steps to obtain further information pertinent to the complementarity assessment.

Throughout the reporting period, the Office continued to engage and consult with relevant stakeholders in order to address a range of matters relevant to the preliminary examination and to seek further information to inform its assessment of the situation. For example, the Office held a number of meetings

and was in contact with such stakeholders, including various civil society organisations.

The Office has also been following with concern reports of threats and other measures apparently taken against human rights defenders, including those who have criticised the WoD campaign. The Office will continue to closely monitor such reports, as well as other relevant developments in the Philippines.

Conclusion and Next Steps

During the reporting period, the Office significantly advanced its assessment of whether there is a reasonable basis to proceed under article 15(3) of the Statute. During 2020, the Office will aim to finalise the preliminary examination in order to enable the Prosecutor to reach a decision on whether to seek authorisation to open an investigation into the situation in the Philippines.