Open Sign on Letter to the International Criminal Court

Ms. Fatou Bensouda  
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Information & Evidence Unit  
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The Netherlands

Prosecutor Bensouda,

We are writing regarding the mass killings of people who use, or are involved with, drugs in the Philippines. Our request is that you initiate a preliminary examination of the situation in the Philippines for Crimes Against Humanity leading to an investigation as empowered to do so under Article 15 of the Rome Statute. To support our request, we detail known information satisfying the statutory criteria of Jurisdiction, Admissibility and the Interests of Justice, as well as exceeding the reasonable basis requirement. Furthermore, details are provided to meet the overarching goals of the International Criminal Court of ending impunity and bringing to justice those most responsible.

Overview

Following his inauguration President Rodrigo Duterte, began vigorously fulfilling his public campaign promise to kill 100,000 people (if they are involved with drugs/prohibition related crime) within his first six months of being in office. Since 30 June 2016, a reported 13,000 people have been killed extrajudicially under Duterte’s plan. This is almost four times the total number of killings during the 20-year reign of Philippine Dictator, Ferdinand Marcos. In addition, an estimated one million people have been forced to surrender under the threat of death. Many have been confined in inhumane conditions of overcrowded jails; others are subject to torture tactics such as blindfolding and being hosed with water in what is dubbed “drug rehab.”

President Duterte has offered rewards, bonuses, accolades and protection for those who kill people involved with drugs. This carefully crafted culture of impunity for mass extrajudicial killings was displayed during Rodrigo Duterte’s time as Mayor of Davao. During that time, the Davao Death Squad enjoyed public political approval and in some cases, the direct involvement of government officials and members of the police, as noted by Human Rights Watch. While the actions during his time as Mayor are not subject to the

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* “Duterte’s Threat to Democracy” The Japan Times August 28, 2016 http://www.japantimes.co.jp/opinion/2016/08/28/editorials/dutertes-threat-democracy/#.WAgh4zt7rdk  
jurisdiction of the ICC, as they occurred prior to the entry into force for the Philippines of the Rome Statute; none-the-less, they show a career-length intention to cause and increase the number of mass killings of civilians.

President Rodrigo Duterte has publicly compared himself to Adolf Hitler, saying he would like to slaughter 3 million drug users in the Philippines. Under his policy, which promoted rampant vigilantism, he referred to the many children and adults killed as “collateral damage. A list of statements by President Rodrigo Duterte and other key national Philippine leaders are included in a summary at the end of this letter. These statements prove the clear intention of causing mass killings, fostering rampant vigilantism, and protecting those who commit the killings, under a culture of impunity on a national scale. As noted by Jose Luis Martin Gascon, Chairman of the Philippines’ Commission on Human Rights, “The other problem, of course, is that when you do (a) naming and shaming in the current environment, you place these persons at potential risk of attacks from vigilantes.”

**Jurisdiction**

**Temporal/Entry into Force**

*Rome Statute Article 12 (1)* The International Criminal Court has jurisdiction only with respect to crimes committed after entry into force of the Rome Statute.

The Philippine Nation entered into force with the Rome Statutes on 1 November 2011, having deposited its instrument of ratification on 30 August 2011 (document attached); therefore, *rationae temporis* as required under Article 11 of the Rome Statutes is PROVEN.

**Material Jurisdiction**

*Rome Statute – Article 5 (b)* The jurisdiction of the International Criminal Court is limited to the most serious crimes of concern to the international community as a whole.

This claim, based on the included information, details the most serious crimes of concern to the International Community as a whole.

**Territorial or Personal**

*Rome Statute - Article 12 (a)-(b)* The court may exercise its jurisdiction if the State or territory of which the conduct in question occurred, or...the State of which the person accused of the crime is a national.

As the crimes are taking place in the Philippine Nation, a State Party to the Rome Statutes, those most responsible are Philippine Nationals and prominent members of the Philippine National Government, both territorial and personal jurisdiction are SATISFIED.

**Admissibility**

**Complementarity**

As previously stated by the ICC: *Inaction on the part of a State having jurisdiction (that is, the fact that a State is not investigating or prosecuting, or has not done so) renders a case admissible before the Court, subject to article 17 (1) (d) of the Statute*. This sentiment is further reinforced in the *Informal expert paper:*

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12 “Duterte says children killed in Philippines drug war are collateral damage” the Guardian – October 17, 2016


14 Appeals Chamber, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, ICC-01/04-01/07-1497, Page 3 Key Findings Paragraph 2 https://www.icc-cpi.int/pages/record.aspx?uri=746819
The principle of complementarity in practice. The domestic inactivity on these crimes against humanity is reinforced by national leaders’ statements, which underscore the culture of impunity. Government inquiries into murders taking place on the orders of President Duterte have been quickly shut down. The absence of any serious inquiry into these mass killings, which are against the Philippine Constitution, Philippine law against murder, and other court findings, as detailed by Amnesty International, is evidence of grave inaction by the state.

Furthermore, it should be noted that the intensity of the killings as referenced in the overview section, did not exist on the current scale until Rodrigo Duterte assumed the Office of the Presidency. There are several national leaders, which have made statements supporting the mass killings and the culture of impunity (listed in the appendix). It is clear that focusing the efforts of the OTP and the ICC on President Duterte and the National Leaders in the Appendix, will be directing its efforts in a complementary nature by targeting those who are most responsible for the most serious crimes.

Gravity
*Rome Statute – Article 5 The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole.*

The scale, nature, manner of commission and impact of the crimes against humanity are particularly grave due to the temporal nature of the crimes showing high intensity over a short time period with approximately 13,000 people killed since 30 June 2016. These crimes against humanity are amongst the most serious crimes of concern to the international community as a whole and therefore are of sufficient gravity.

In addition, aggravating factors under *Rome Statute 145 (2) (b)(ii)-(v)* include abuse of power or official capacity (prominent actors are of the highest levels of government), defenselessness of the victim (drug users are stigmatized), commission of the crime with particular cruelty or multiple victims (13,000 victims, many bound with masking tape, or shot to death) and lastly, motive involving discrimination on any of the grounds referred to in *Rome Statute Article 21 Paragraph 3* which includes “other status” fitting the drug user labeling by Duterte.

These crimes show the overwhelming public support (material and political) by the President, the Philippine National Police Chief Ronald Dela Rosa and Philippine Justice Secretary Vitaliano Aguirre II. Additionally, there have been threats by the President to shut down the Legislature and impose martial law, including the arrest and incarceration of his most vocal critic in the Philippine Senate, Senator Leila de Lima.

**Crimes Against Humanity**
*Rome Statute – Article 7 (1) (a) Requires certain elements including that the individuals killed (or caused death), the conduct was committed as part of a widespread or systematic attack directed against a civilian population and that the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread attack against a civilian population.*

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17 "If you are poor you are killed" Extrajudicial Killings in the Philippines “War on Drugs” Amnesty International 2017 [https://www.amnestyusa.org/sites/default/files/philippines_ejk_report_v19_final_0.pdf](https://www.amnestyusa.org/sites/default/files/philippines_ejk_report_v19_final_0.pdf)
The statements of President Duterte, time and again, reinforce his national plan and his intent to cause widespread deaths of people who use drugs. The International Criminal Court has found that in these cases the policy need not be explicitly defined but the public statements of President Duterte and other prominent national government leaders confirm this outright.

**Reasonable Basis**

*Rome Statute 53 (1) (a) – (c)* The information available to the prosecutor provides a reasonable basis that a crime is being committed; the case would be admissible under Article 17; taking into account the gravity of the crime and the interests of the victims, there are none the less substantial reasons to believe that an investigation would not serve the interests of justice.

The information provided to the prosecutor in this letter cites multiple credible news outlets, multiple credible global NGOs and of course, the most condemning information put forth are the words of those most responsible for the deaths, who shamelessly brag about their crimes against humanity and speak of continuing their plan of extrajudicial killings. The case meets the admissibility criteria as per Article 17 and lastly the countervailing element of the Interests of Justice are served.

With this information, we the undersigned states, organizations and advocates call upon you to immediately initiate a *propio motu* investigation to seek approval from the International Criminal Court for a full investigation, as any delay will on average, result in 30 deaths per day or nearly 1,000 more deaths per month in which justice is not served.

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**Signatories:**

**Organizations**
Action de Crétients Activistes des Droits de L'homme a Shabunda (ACADHOSHA)
Andean Information Network
Asociación Costarricense de Estudios e Intervención en Drogas (ACEID)
Asociación Feminista laCuerda - Guatemala
Bad Ass Teachers Association
Barreau Penal International Criminal Bar (BPI-ICB)
Brazilian Harm Reduction and Human Rights Network
Center for Drug Use and HIV/HCV Research
Chicago Recovery Alliance
Colectivo Ecológico Madreselva - Guatemala
Comisión Mexicana de Defensa
Corruption Brakes Crusade (COBRA)
El Centro de Orientación e Investigación Integral (COIN)
FAAAAT (Foundation for Alternative Approaches to Addiction, Think & do tank)
Families for Sensible Drug Policy
Forum Droghe
Harm Reduction Australia
**Health Poverty Action**
Human Rights Centre
Human Rights Information Center (Ukraine)
Humanas Colombia
Humanitarian Law Center Kosovo
ICEERS Foundation
International Centre for Science in Drug Policy (ICSDP)
Latinoamérica Reforma
MENANPUD (Middle East & North African Network for People who Use Drugs)
Multidisciplinary Association of Psychedelic Studies
Museo Memoria y Tolerancia
National Advocates for Pregnant Women
National Association of Social Workers (NASW)
New Zealand Drug Foundation
NGO Advocacy Advisory
Promoción de los Derechos Humanos A.C.
Society for the Protection of the Rights of the Child (SPARC)
StopTheDrugWar.org
Students for Sensible Drug Policy
Students for Sensible Drug Policy Australia
The African Federation Association-AFA WFM UGANDA
The Baltimore Harm Reduction Coalition
The Drug Salvation Foundation
The Netherlands Drug Policy Foundation
Union Internationale des Avocats (UIA – International Association of Lawyers)
United States Alliance of Drug Users
Urban Survivor’s Union
Virginians Against Drug Violence
Vision GRAM-International
Advocates

John Washburn,
American NGO Coalition for the International Criminal Court
(Information provided for identification only.)

Attorney Jude Sabio

Brett Wolfson-Stofko, PhD
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Behavioral Sciences Training Program

Caroline S. Conzelman, Ph.D.,
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Donna May
For/mumsDU-moms united and mandated to saving the lives of Drug Users

Dr. Alex Wodak AM
President, Australian Drug Law Reform Foundation

Mr. Robert Suarez

Charles M. Giattino
PhD Candidate, Neuroscience
Duke University
Key Statements of National Leaders:

**President Rodrigo Duterte**

“I will issue 1,000 pardons a day… Pardon given to Rodrigo Duterte for the crime of multiple murder, signed Rodrigo Duterte”


“Pardon given to Rodrigo Duterte for the crime of multiple murder, signed Rodrigo Duterte”


"Be careful with me because when I say I will do it for my country, I will do it even if I have to kill you or be killed in the process" (Threatening Legislators)

“Philippines’ Duterte rejects criticism over killings”


“Adolf Hitler had killed three million Jews. I would be happy to slaughter three million addicts”


“If you know of any addicts, go ahead and kill them yourselves so getting their parents to do it would be too painful”

“More than 700 people killed in the Philippines drugs crackdown” The Guardian 2 August 2016 [https://www.theguardian.com/world/2016/aug/02/more-than-700-killed-in-less-than-three-months-in-filipino-drugs-crackdown](https://www.theguardian.com/world/2016/aug/02/more-than-700-killed-in-less-than-three-months-in-filipino-drugs-crackdown)

"If you are involved in drugs, I will kill you. You son of a whore, I will really kill you."


**Philippine National Police Chief Ronald Dela Rosa**

“You know who are the drug lords here, go to their houses, our gasoline, set it on fire, show them you are angry at them”


**Justice Secretary Vitaliano Aguirre II**

“Criminals are not humanity. Crimes against illegal drugs, (maybe)”

De Lima: Killings may lead to charges of crimes against humanity - Inquirer.net, August 15, 2016 [http://newsinfo.inquirer.net/806279/de-lima-duterte-may-be-charged-with-crimes-against-humanity](http://newsinfo.inquirer.net/806279/de-lima-duterte-may-be-charged-with-crimes-against-humanity)

**Senior Officer, Philippines National Police**

“We are not that bad policemen or bad individuals. We are just a tool, we are just angels that God gave talent to, you know, to get those bad souls back to heaven and cleanse them.”

Reference: C.N.530.2011.TREATIES-3 (Depository Notification)

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT
ROME, 17 JULY 1998

PHILIPPINES: RATIFICATION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 30 August 2011.

The Statute will enter into force for the Philippines on 1 November 2011 in accordance with its article 126 (2) which reads as follows:

“For each State ratifying, accepting, approving or acceding to this Statute after the deposit of the 60th instrument of ratification, acceptance, approval or accession, the Statute shall enter into force on the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession.”

30 August 2011

Attention: Treaty Services of Ministries of Foreign Affairs and of international organizations concerned. Depository notifications are issued in electronic format only. Depository notifications are made available to the Permanent Missions to the United Nations in the United Nations Treaty Collection on the Internet at http://treaties.un.org, under “Depository Notifications (CNs)”. In addition, the Permanent Missions, as well as other interested individuals, can subscribe to receive depositary notifications by e-mail through the Treaty Section’s “Automated Subscription Services”, which is also available at http://treaties.un.org.