



Human Rights Now

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Statement about Unjust Charges of Terrorism against UN Experts and Human Rights Defenders and the Withdrawal of the Philippines from the ICC

Human Rights Now (HRN), a Tokyo-based international human rights NGO is deeply concerned about the deteriorating human rights situation in the Philippines, since President Rodrigo Duterte took office in June 2016. HRN protests the petition issued by the Philippine government which designates several United Nations experts and human rights defenders as “terrorists”. HRN also expresses deep concern about Philippines President Rodrigo Duterte’s withdrawal from the International Criminal Court (ICC).

I. Allegations of terrorism against UN experts and human rights defenders

On 23 February 2018, the Philippine State Prosecutor filed a petition under Section 17 of the Human Security Act of 2007 (Republic Act 9372) seeking to qualify over 600 individuals as “terrorist[s] and outlawed organizations and/or group of persons” under Philippine domestic law. This list includes, along with several human rights defenders:

- Victoria Tauli-Corpuz, UN Special Rapporteur on the rights of indigenous peoples;
- Joan Carling, co-convener of the Indigenous Peoples Major Group for Sustainable Development;
- Jose Molintas, former member of the OHCHR Expert Mechanism on the Rights of Indigenous Peoples;
- Beverly Longid, Global Coordinator of the International Indigenous Peoples Movement for Self-Determination and Liberation;
- Elisa Tita Lubi, former interim Regional Coordinator of the Asia Pacific Forum on Women, Law and Development;¹

Several UN bodies, joined by many civil society organizations, denounced this petition, including the UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein and the UN Special Rapporteur on the situation of human rights defenders Michel Forst.²

¹ Republic of the Philippines Regional Trial Court National Capital Judicial Region, “Petition to Declare the CPP & NPA as Terrorists Organizations”, 23 March 2018, p. 4.

² UN News, “UN rights chief denounces ‘unacceptable’ charges of terrorism by Philippine’s Duterte against UN expert”, 9 March 2018. See <https://news.un.org/en/story/2018/03/1004622>
OHCHR, “Accusations against UN expert a retaliation by Philippines, say fellow rapporteurs”, 8 March 2018. See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22783&LangID=E>

This issue was also denounced by the UN Permanent Forum on Indigenous Issues, the UN Environment Programme and the UN Collaborative Programme on Reducing Emissions from Deforestation and forest Degradation:

These developments occur in an environment in the Philippines which has grown increasingly hostile to UN human rights mechanisms and civil society organizations. In November 2017, President Duterte threatened to “slap” the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, if she would visit the Philippines.³ In August 2017, the President reportedly told police officers “[i]f they are obstructing justice, you shoot them” about activists protesting his “war on drugs”.⁴

II. President Duterte’s notice of withdrawal from the ICC

In a written statement distributed to the media on 14 March 2018, President Duterte declared:

I therefore declare and forthwith give notice, as president of the republic of the Philippines, that the Philippines is withdrawing its ratification of the Rome statute, effective immediately.⁵

The government of the Philippines immediately followed-up on this declaration and submitted a formal notification of withdrawal from the ICC’s Rome Statute to the United Nations Secretary-General on 17 March 2018.⁶

This notice comes a month after the Prosecutor of the ICC, Fatou Bensouda announced she would open preliminary investigations into the Government of the Philippine’s “war on drugs”, which has led to the death of thousands since it began in July 2016.⁷ According to the government’s own statements, anti-drug operations have led to over 4,000 deaths.⁸ However, according to various

United Nations Permanent Forum on Indigenous Issues, “United Nations Permanent Forum on Indigenous Issues stands by indigenous human rights defenders in the Philippines”, 13 March 2018. *See* <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/03/2018.03.13-UNPFII-statement-Philippines-HRDs.pdf>

UN Environment, “Statement in response to allegations of terrorism against UN Special Rapporteurs”, 15 March 2018. *See* <https://www.unenvironment.org/news-and-stories/statement/statement-response-allegations-terrorism-against-un-special-rapporteurs>

UN-REDD, “Special Statement - UN-REDD Programme”, 15 March 2018. *See* <https://www.unredd.net/announcements-and-news/2805-special-statement-un-redd-programme.html>

³ OHCHR, “Press briefing note on Attacks/threats by States against UN human rights experts”, 21 November 2017. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22421&LangID=E>

⁴ The Guardian, “Human rights group slams Philippines president Duterte’s threat to kill them”, 17 August 2017. <https://www.theguardian.com/world/2017/aug/17/human-rights-watch-philippines-president-duterte-threat>

⁵ Republic of the Philippines News Agency, “Duterte: PH to withdraw from ICC”, 14 March 2018. *See*: <http://www.pna.gov.ph/articles/1028667>

The Guardian, “Rodrigo Duterte to pull Philippines out of international criminal court”, 14 March 2018. *See*: <https://www.theguardian.com/world/2018/mar/14/rodrigo-duterte-to-pull-philippines-out-of-international-criminal-court-icc>

⁶ ICC, “ICC Statement on The Philippines’ notice of withdrawal: State participation in Rome Statute system essential to international rule of law”, 20 March 2018. *See*: <https://www.icc-cpi.int/Pages/item.aspx?name=pr1371>

⁷ ICC, “Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela”, 8 February 2018. *See*: <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat>

⁸ Presidential Communications Operations Office (Philippines), “Real Numbers Press Briefing with PCOO Assistant Secretary Ana Marie Banaag, Philippine Drug Enforcement Agency (PDEA) Spokesperson Derrick Carreon, PNP Spokesperson Police Chief Supt. John Bulalacao, and PNP Directorate for Operations Acting Executive Officer PSSUPT. Rene Pamuspusan”, 14 February 2018. *See*: https://pcoo.gov.ph/press_briefing/real-numbers-press-briefing-pcoo-assistant-secretary-ana-marie-banaag-philippine-drug-enforcement-agency-pdea-spokesperson-derrick-carreon-pnp-spokesperson-police-chief-supt-john-bulalacao/

international and local rights groups, unofficial estimate puts the death toll as high as 12,000, including killings by unidentified gunmen and police officers.⁹

President Duterte originally welcomed the inquiry, saying “I will gladly do it for my country.”¹⁰ However, he quickly reverted his position and denounced the Court. The withdrawal has been widely criticized, both from within the Philippines and abroad.

III. Inconsistencies with domestic and international standards

The fact that the petition was filed under the Human Security Act of 2007, suggests that the Philippine government’s intention is to prosecute the individuals on the list.¹¹ The Act establishes a penalty of 40 years of imprisonment for the crime of “conspiracy to commit terrorism”. Therefore, the petition is inconsistent with article VI of the Convention on the Privileges and Immunities of the UN. This Convention grants immunity from legal process to experts performing missions for the UN.¹²

Furthermore, a great number of human rights defenders appearing in the petition are advocating in the field of indigenous peoples’ rights in the Philippines. Indigenous rights are a contested issue in the Philippines and the persecution of indigenous rights activists suggests they are listed in the petition because they have defended indigenous rights and have criticized the government policy against indigenous rights, which is inconsistent with Article 19th of the ICCPR, the UN Declaration on Human Rights Defenders.¹³

President Duterte’s decision to withdraw the Philippines from the ICC statute was taken without concurrence of the Senate which, according to Senate Resolution No. 289’s interpretation of article VII, Section 21 of the 1987 Constitution, is unconstitutional.¹⁴ What is more, the President’s public announcement stated that the withdrawal from the ICC was “effective immediately”, which contravenes article 127 of the Statute of the ICC which provides that “[t]he withdrawal shall take effect one year after the date of receipt of the notification.”¹⁵

IV. Recommendations

HRN expresses deep concern regarding the recent actions of the government of the Philippines against international human rights norms and mechanisms. President Duterte’s continuous neglect

⁹ The New-York Times, “Philippines Plans to Withdraw From International Criminal Court”, 14 March 2018. *See*: <https://www.nytimes.com/2018/03/14/world/asia/rodrigo-duterte-philippines-icc.html>

¹⁰ *Id.*

¹¹ Republic Act 9372 (Philippines), 6 March 2007, Section 4.

¹² Convention on the Privileges and Immunities of the UN, 13 February 1946, section 22(b). *See*: <http://www.un.org/fr/ethics/pdf/convention.pdf>

¹³ UN General Assembly, “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, Resolution 2200 A (XXI), A/RES/21/2200, annex. *See*: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>

ICCPR, 16 December 1966, Article 19. *See*: <http://www.ohchr.org/Documents/ProfessionalInterest/ccpr.pdf>

¹⁴ Senate of the Philippines, “Resolution expressing the sense of the Senate that termination of, or withdrawal from, treaties and international agreements concurred in by the Senate shall be valid and effective only upon concurrence by the Senate”, Senate Resolution No. 289, February 2017. *See*: http://www.senate.gov.ph/press_release/2017/0213_drilon1.asp

¹⁵ Rome Statute of the International Criminal Court, 17 July 1998, article 127. *See*: https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

of the rules of the international community must be addressed and ended in order to avoid further deterioration of the human rights and humanitarian situation in the country.

HRN makes the following recommendations to relevant stakeholders.

- HRN urgently calls upon the government of the Philippines to:
 - Withdraw the 23 February 2018 petition filed by Philippine State Prosecutor;
 - Collaborate fully with UN experts and international mechanisms, including the UN Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Agnes Callamard, and the Prosecutor of the ICC, Fatou Bensouda.
 - Immediately cease acts of harassment of human rights defenders, journalists and members of the judiciary, extrajudicial killings, and restore justice, rule of law and human rights
- Additionally, HRN calls on the members of the international community to
 - Take all effective measures to prevent the Philippine government from further acts of prosecution, intimidation and harassment against UN experts and human rights defenders
 - Address the issue in international forums, including the UN Human Rights Council.