

REPORTS

INTERNATIONAL CRIMINAL COURT OFFICE OF THE PROSECUTOR'S REPORT ON PRELIMINARY EXAMINATION ACTIVITIES – PHILIPPINES (EXTRAJUDICIAL KILLINGS)¹

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 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.

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,

¹ December 14, 2020. Pages 45-49, Paragraphs 176-197.

namely from 1 November 2011 up to and including 16 March 2019. Furthermore, the 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.

Subject-Matter Jurisdiction

The subject-matter assessment has examined the nationwide anti-drug campaign by the Philippine National Police ("PNP"), following President Duterte's pronouncement to eradicate illegal drugs during the first six months of his term. In the context of the 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.

In conducting its subject-matter assessment, 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 unlawful 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 with, the government’s anti-drug campaign. In this regard, it has also been alleged that some of these vigilante-style executions purportedly 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, most of the victims of the alleged crimes in question were persons reportedly suspected by authorities to 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 with 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.

The Office is satisfied that information available provides a reasonable basis to believe that the crimes against humanity of murder (article 7(1)(a)), torture (article 7(1)(f)) and the infliction of serious physical injury and mental harm as other inhumane Acts (article 7(1)(k)) were committed on the territory of the Philippines between at least 1 July 2016 and 16 March 2019, in connection to the WoD campaign launched throughout the country.

Admissibility Assessment

During the reporting period, the Office continued to collect, receive and review information from a variety of sources on investigations and prosecutions at the national level. The Office has also mapped out the various investigative and prosecutorial authorities conducting investigations and proceedings relevant to the potential cases that would likely be the focus of any investigation.

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 limited 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.

In June 2020, Justice Secretary Menardo Guevarra announced the creation of an inter-agency panel to reinvestigate deaths in police WoD operations. The Office has been and will continue to closely monitor developments relating to this body.

While in principle, only national investigations that are designed to result in criminal prosecutions can trigger the application of article 17(1)(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, administrative cases against policemen allegedly involved in WoD-related killings, writ of amparo cases and cases brought in front of the Office of the Ombudsman.

During the reporting period, the Office has analysed qualitative and quantitative open source information as well as information received from a variety of stakeholders relevant to the Office’s gravity assessment.

OTP Activities

During the reporting period, the Office finalised its subject-matter analysis and collected and assessed open source information on any relevant national proceedings being conducted by Philippine authorities. The Office has also collected and analysed information relevant to gravity. 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.

The Office has also been following with concern reports of threats, killings and other measures apparently taken against human rights defenders, journalists and others, 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

The Office's goal, announced last year,⁴⁹ to bring the preliminary examination to a conclusion during the reporting period was impacted by the COVID-19 pandemic and capacity constraints. Nonetheless, the Office anticipates reaching a decision on whether to seek authorisation to open an investigation into the situation in the Philippines in the first half of 2021.