

## *Open Sign on Letter to the International Criminal Court*

Ms. Fatou Bensouda  
Office of the Prosecutor  
Information & Evidence Unit  
Post Office Box 19519  
2500 CM The Hague  
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,<sup>1</sup> as well as exceeding the reasonable basis<sup>2</sup> 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<sup>3</sup> promise to kill 100,000 people (if they are involved with drugs/prohibition related crime) within his first six months of being in office<sup>4</sup>. Since 30 June 2016, a reported 13,000<sup>5</sup> people have been killed extra judicially under Duterte's plan. This is almost four times the total number of killings during the 20-year reign of Philippine Dictator, Ferdinand Marcos<sup>6</sup>. In addition, an estimated one million people have been forced to surrender<sup>7</sup> 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<sup>8</sup>."

President Duterte has offered rewards, bonuses, accolades and protection<sup>9</sup> <sup>10</sup> 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<sup>11</sup>. While the actions during his time as Mayor are not subject to the

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<sup>1</sup> ICC Public Policy Paper on Preliminary Investigations, Paragraph 2 November 2013 [http://www.legal-tools.org/uploads/tx\\_ltpdb/OTP\\_-\\_Policy\\_Paper\\_Preliminary\\_Examinations\\_2013-2.pdf](http://www.legal-tools.org/uploads/tx_ltpdb/OTP_-_Policy_Paper_Preliminary_Examinations_2013-2.pdf)

<sup>2</sup> ICC Public Policy Paper on Preliminary Investigations, Paragraph 5 November 2013 [http://www.legal-tools.org/uploads/tx\\_ltpdb/OTP\\_-\\_Policy\\_Paper\\_Preliminary\\_Examinations\\_2013-2.pdf](http://www.legal-tools.org/uploads/tx_ltpdb/OTP_-_Policy_Paper_Preliminary_Examinations_2013-2.pdf)

<sup>3</sup> "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>

<sup>4</sup> "Who is 'The Punisher' Rodrigo Duterte - the tough-talking mayor poised to become the next Philippine president?" The Telegraph, 9 May 2016 <http://www.telegraph.co.uk/news/2016/05/08/philippines-poised-to-elect-tough-talking-punisher-rodrigo-duter/>

<sup>5</sup> "Timeline to hell: Duterte's murderous 'one-time big-time' push" The Manila Times, 22 August 2017 <http://www.manilatimes.net/timeline-hell-dutertes-murderous-one-time-big-time-push/346017/>

<sup>6</sup> "3,257: Fact checking the Marcos killings, 1975-1985" The Manila Times, Reyes 12 April 2016 <http://www.manilatimes.net/3257-fact-checking-the-marcos-killings-1975-1985/255735/>

<sup>7</sup> "Philippine drug war nets 1 million people" Cruz, News.Com.Au 27 December 2016 <http://www.news.com.au/world/breaking-news/philippines-raids-seize-nearly-ton-of-meth/news-story/ca57d6bc14d13691d365d30aa8cafcea>

<sup>8</sup> "Blindfolded and hosed with water" The Guardian, Castro 28 October 2016 <https://www.theguardian.com/global-development-professionals-network/gallery/2016/oct/28/blindfolded-hosed-with-water-drug-rehab-philippines-in-pictures>

<sup>9</sup> "Rodrigo Duterte: Shoot a drug dealer, get a medal" Al Jazeera 5 June 2016 <http://www.aljazeera.com/news/2016/06/rodrigo-duterte-shoot-drug-dealer-medal-160605140900213.html>

<sup>10</sup> "Philippines' Rodrigo Duterte: Public 'can kill' criminals" CNN 6 June 2016 <http://www.cnn.com/2016/06/06/asia/duterte-drug-dealers-lethal-force-vigilantism/>

<sup>11</sup> "You Can Die Anytime: Death Squad Killings in Mindanao" Human Rights Watch 6 April 2009 <https://www.hrw.org/report/2009/04/06/you-can-die-any-time/death-squad-killings-mindanao>

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<sup>12</sup>.” 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<sup>13</sup>.”

## **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*<sup>14</sup>. This sentiment is further reinforced in the *Informal expert paper*:

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

<https://www.theguardian.com/world/2016/oct/17/duterte-says-children-killed-in-philippines-drug-war-are-collateral-damage>

<sup>13</sup> “The Killing Time: Inside Philippine President Rodrigo Duterte’s War on Drugs” Time 25 August 2016 <http://time.com/4462352/rodrigo-duterte-drug-war-drugs-philippines-killing/>

<sup>14</sup> 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*<sup>15</sup>. 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.<sup>16</sup> 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<sup>17</sup>, 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<sup>18</sup>.

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<sup>19</sup>, 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<sup>20</sup>, 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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<sup>15</sup> "Informal expert paper: The principle of complementarity in practice" International Criminal Court – Office of the Prosecutor, 2003 Section III 3 (c), paragraph 34 <https://www.icc-cpi.int/NR/rdonlyres/20BB4494-70F9-4698-8E30-907F631453ED/281984/complementarity.pdf>

<sup>16</sup> "Citing lack of proof, Philippine senators end Duterte 'death squad' inquiry" Reuters - 6 March 2017 <http://www.reuters.com/article/us-philippines-drugs-senate-idUSKBN16D0DX>

<sup>17</sup> "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)

<sup>18</sup> Situation in the Republic of Kenya – International Criminal Court, Paragraph 56, – 31 March 2010

<sup>19</sup> Duterte wages brutal war on drugs" – Reuters 30 December 2016 <http://www.reuters.com/news/picture/duterte-wages-brutal-war-on-drugs?articleId=USRTX2U0GF>

<sup>20</sup> "This Is Why Philippine President Rodrigo Duterte Will Get Away With Murder" – Time 16 August 2016 <http://time.com/4453587/philippines-rodrigo-duterte-dictator-impunity-marcos/>

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<sup>21</sup> 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 *proprio 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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<sup>21</sup> Situation in the Republic of Kenya – International Criminal Court, Paragraph 84, – 31 March 2010

## **Signatories:**

### Organizations

A New PATH (Parents for Addiction Treatment and Healing)  
Action De Chrétiens Activistes Des Droits De L'homme A Shabunda (ACADHOSHA)  
akzept e.V., Bundesverband für akzeptierende Drogenarbeit und humane Drogenpolitik (Germany)  
Andean Information Network  
APCASO (Thailand)  
Asia Catalyst  
Asian Network of People Who Use Drugs (ANPUD)  
Asociación Costarricense de Estudios e Intervención en Drogas (ACEID)  
Asociación Feminista laCuerda – Guatemala  
Assonabis  
Australian Injecting & Illicit Drug Users League (AIVL)  
Bad Ass Teachers Association  
Barreau Penal International Criminal Bar (BPI-ICB)  
BOOM!Health (New York)  
Brazilian Harm Reduction and Human Rights Network  
Center for Drug Use and HIV/HCV Research  
Centro Brasileiro de Política de Drogas - Psicotropicus  
Broken No More  
Canadian Students for Sensible Drug Policy  
Chicago Recovery Alliance  
Clergy for a New Drug Policy  
Colectivo Ecológico Madreselva - Guatemala  
Comisión Mexicana de Defensa  
Corruption Brakes Crusade (COBRA)  
Death Penalty Focus  
Denver Relief Consulting (Business)  
Drug Policy Alliance  
EADUMC (Ethio Africa Diaspora Union Millennium Council)  
El Centro de Orientación e Investigación Integral (COIN)  
Empire State NORML (the New York State Chapter of the National Organization for the Reform of Marijuana Laws)  
FAAAT (Foundation for Alternative Approaches to Addiction, Think & do tank)  
Families for Sensible Drug Policy  
Filipino American Human Rights Alliance (FAHRA)  
Forum Droghe  
Harm Reduction Australia  
Help Not Handcuffs, Inc.  
Health Poverty Action  
Human Rights Centre  
Human Rights Information Center (Ukraine)  
Humanas Colombia  
Humanitarian Law Center Kosovo  
Humboldt State University, Institute for Harm Reduction  
ICEERS Foundation  
Institute for Policy Studies Drug Policy Project  
International Centre for Science in Drug Policy (ICSDP)

International Drug Policy Consortium (IDPC)  
International Network of People who use Drugs (INPUD)  
Latinoamérica Reforma  
Law Enforcement Action Partnership  
Marijuana Policy Project  
MENANPUD (Middle East & North African Network for People who Use Drugs)  
Moms Stop the Harm  
Moms United to End the War on Drugs  
Multidisciplinary Association of Psychedelic Studies  
mumsDU - moms united and mandated to saving the lives of Drug Users (Canada)  
Museo Memoria y Tolerancia  
NAMA North Carolina  
National Advocates for Pregnant Women  
National Association of Social Workers (NASW)  
New Zealand Drug Foundation  
Newsweed.fr  
NGO Advocacy Advisory  
November Coalition  
NSW Users and AIDS Association (NUAA)  
Philippine Alliance of Human Rights Advocates  
Philippine Human Rights Information Center  
Promoción de los Derechos Humanos A.C.  
Quad Cities Harm Reduction (Iowa)  
Release (UK)  
Seattle HEMPFEST®  
Society for the Protection of the Rights of the Child (SPARC)  
St. Ann's Corner of Harm Reduction (Bronx, New York)  
StopTheDrugWar.org  
Students for Sensible Drug Policy  
Students for Sensible Drug Policy Australia  
SURUWAT (Nepal)  
The African Federation Association-AFA WFM UGANDA  
The Baltimore Harm Reduction Coalition  
The Beckley Foundation  
The Center for Harm Reduction Therapy (San Francisco)  
The Community Health Outreach Work to Prevent AIDS Project (Honolulu)  
The Drug Salvation Foundation  
The Netherlands Drug Policy Foundation  
Trinity United Church of Christ, Chicago  
Union Internationale des Avocats (UIA – International Association of Lawyers)  
United States Alliance of Drug Users  
Urban Survivor's Union  
Urban Survivors Union (Piedmont, Washington and Seattle chapters)  
Vicente Sederberg LLC (Business)  
Virginians Against Drug Violence  
Vision GRAM-International  
Zimbabwe Civil Liberties and Drug Network

## Advocates

Arild Knutsen, head of The Association for Humane Drug Policy, Norway

Attorney Jude Sabio

Brett Wolfson-Stofko, PhD  
Post-Doctoral Fellow  
Behavioral Sciences Training Program

Caroline S. Conzelman, Ph.D.,  
Senior Instructor, University of Colorado - Boulder  
Board of Directors, Andean Information Network, Bolivia

Charles M. Giattino  
PhD Candidate, Neuroscience  
Duke University

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

Eric Lachica, Filipino American Advocate

James E. Gierach, former Assistant State's Attorney of Cook County, Homicide Unit

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

Kayvan Khalatbari, Founding Partner, Denver Relief Consulting

Norm Stamper, Seattle Chief of Police (Ret.)

Paul Benhaim, Hemp Foods Australia

Mr. Robert Suarez

## 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"***

Fox News 28 April 2016 <http://www.foxnews.com/world/2016/04/28/philippines-presidential-candidate-ill-pardon-myself-for-mass-murder.html>

***"Pardon given to Rodrigo Duterte for the crime of multiple murder, signed Rodrigo Duterte"***

Philippine Presidential Front-Runner Duterte Says He Will Pardon Himself for Mass Murder - Time, April 28, 2016 <http://time.com/4310651/duterte-philippines-murder-pardon-himself/>

***"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"

<http://www.reuters.com/article/us-philippines-duterte-drugs-idUSKCN10U16T>

***"Adolf Hitler had killed three million Jews. I would be happy to slaughter three million addicts"***

US lawmakers warn extrajudicial killings in Filipino President Duterte's drug war could affect aid South China Morning Post

<http://www.scmp.com/news/asia/diplomacy/article/2024292/us-lawmakers-warn-extrajudicial-killings-filipino-president>

***"If you know of any addicts, go ahead and kill them yourselves s 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>

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

"Rodrigo Duterte: Shoot a drug dealer, get a medal" Al Jazeera 5 June 2016 <http://www.aljazeera.com/news/2016/06/rodrigo-duterte-shoot-drug-dealer-medal-160605140900213.html>

### 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"***

"Duterte's enforcer says 'we are at war,' has no regrets about killings" - The Daily Mail, October 4, 2016

[http://www.dailymail.co.uk/wires/reuters/article-3820966/Dutertes-enforcer-says-war--no-regrets-killings.html?ITO=1490&ns\\_mchannel=rss&ns\\_campaign=1490](http://www.dailymail.co.uk/wires/reuters/article-3820966/Dutertes-enforcer-says-war--no-regrets-killings.html?ITO=1490&ns_mchannel=rss&ns_campaign=1490)

### 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>

### 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 these bad souls back to heaven and cleanse them."***

"Philippines Secret Death Squads: Officer Claims Police Teams Behind Wave of Killings" The Guardian 3 October 2016

<https://www.theguardian.com/world/2016/oct/04/philippines-secret-death-squads-police-officer-teams-behind-killings>

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Reference: C.N.530.2011.TREATIES-3 (Depositary 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. Depositary notifications are issued in electronic format only. Depositary 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 "Depositary 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>.