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# Who can end the Philippines' "War on Drugs"

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## Who can end the Philippines' "War on Drugs"

### I. Introduction

On October 12, 2016, Paquito Mejos, a 53-year old father of five who worked as an electrician turned himself in to local authorities after learning that he was on a "watch list" of potential drug suspects in Manila, Philippines. Paquito was no drug dealer, however, he admitted to the occasional use of shabu, a methamphetamine, and he believed that turning himself in would protect him against the weight of the harsh Filipino drug laws.<sup>1</sup>

Days later Paquito Mejos' honesty did not save him. Two days after coming clean to the police, Paquito was napping in his home when four masked gunmen stormed in. The gunmen ignored his family's pleas to leave him alone because he had already turned himself in and they charged towards his room where he was sleeping. As he slept in his room, the gunmen shot and killed Paquito. The official report from the Police investigators stated that Paquito was "a suspected drug pusher" who "pointed his gun [at the police] but the police officers were able to shoot him first." Beside Paquito's dead body the police "found" a loaded gun and a packet of shabu. This report came out despite Paquito's family stating that he never possessed a gun and did not have any shabu on him that day.<sup>2</sup>

Unfortunately, stories like that of Paquito Mejos are all too common in the inner city neighborhoods of Manila and other large cities in the Philippines. The extrajudicial killings carried out by the Filipino National Police, and other armed groups, in the name of the country's "war on drugs" occur quite frequently. Some reports have estimated that the total number of deaths stemming from extrajudicial killings through the "war on drugs" have

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<sup>1</sup> "License to Kill": Philippine Police Killings in Duterte's "War on Drugs", Human Rights Watch (Mar. 2, 2017), <https://www.hrw.org/report/2017/03/02/license-kill/philippine-police-killings-dutertes-war-drugs>

<sup>2</sup> *Id.*

reached into the 20,000s.<sup>3</sup> Part II of this paper will paint a bigger picture on the human rights violations that are occurring in the Philippines. This section will include all that the government of the Philippines have said and done in response to the violations occurring. Part III will delve into what the United Nations (UN) and the International Criminal Court (ICC) have publicly said about the issues in the Philippines. This section will address what the government has claimed in response to allegations, as well as how Filipino nationals see the situation. Finally, Part IV will analyze what the ICC reaction means going forward and whether or not they can do anything about the human rights violations occurring in the Philippines. It will also address the longstanding problem of the legitimacy of the ICC.

## II. Extrajudicial Killings in the Philippines

The major human rights violations occurring in the Philippines are the alleged extrajudicial killings of Filipino citizens in the name of a countrywide “war on drugs.” This section of the paper will create delve into the allegations being made in regards to the extrajudicial killings, as well as create a timeline of when they started and how bad it has become. This section will focus on the main alleged perpetrators of the extrajudicial killings and all that has been done to promote and allow the murders to occur.

### A. The Presidential Race of Rodrigo Duterte

When looking into the extrajudicial killings occurring in the Philippines, it all starts with one man, the nation’s president Rodrigo Duterte. On May 9, 2016, the former Davao City Mayor, Rodrigo Duterte won a landslide election to become the next president of the Philippines.<sup>4</sup> Duterte’s goals in regards to his running platform were clear: fix the country’s drug “problem”

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<sup>3</sup> Ted Regencia, *Senator: Rodrigo Duterte’s drug war has killed 20,000* (Feb. 21 2018), Al Jazeera, <https://www.aljazeera.com/news/2018/02/senator-rodrido-duterte-drug-war-killed-20000-180221134139202.html>

<sup>4</sup> Barry Desker, *President Duterte: A Different Philippine Leader*, RSIS Commentaries, No. 145, (June 14, 2016), <https://dr.ntu.edu.sg/bitstream/handle/10220/40765/CO16145.pdf?sequence=1>

no matter the cost.<sup>5</sup> His goal of crushing the drug problem included the backing of extrajudicial killings of drug dealers and users.<sup>6</sup> Duterte expressed that he is driven to ensure that the Philippines will not become a “narco-State.”<sup>7</sup>

To achieve this goal of ridding the country of its drug problem, Duterte chose a violent rhetoric. Throughout his campaign, Duterte vowed to kill anyone associated with drugs, going as far as to say that the “fish in the bay will get fat” because that is where they would be dumping the bodies.<sup>8</sup> Duterte vowed to kill at least 100,000 criminals in his first six months of office once he was elected.<sup>9</sup> Not only was his election platform run on the promise of killing criminals, Duterte even claimed to have personally killed criminals while still the mayor of Davao City.<sup>10</sup> Reports from his time as mayor have connected him to approximately 700 deaths.<sup>11</sup> More shocking is that when he was confronted about that report he responded by claiming, “No, it is not 700, but 1,700.”<sup>12</sup> Throughout his presidential campaign he was on the record about his support for extrajudicial killings of drug users and dealers.<sup>13</sup> He spoke about his belief in extrajudicial killings by stating, “When I become President, I will order the police to find those people [dealing or using drugs] and kill them. The funeral parlors will be packed.”<sup>14</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> National Report Submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Philippines (2017).

<sup>8</sup> *Supra* footnote 1.

<sup>9</sup> *Id.*

<sup>10</sup> *UN rights chief calls for murder investigation after Philippine President admits to killing three people*, UN News (Dec. 20, 2016), <https://news.un.org/en/story/2016/12/548212-un-rights-chief-calls-murder-investigation-after-philippine-president-admits>

<sup>11</sup> Floyd Whaley, *Rodrigo Duterte’s Talk of Killing Criminals Raises Fears in Philippines*, New York Times (May 17, 2016), <https://www.nytimes.com/2016/05/18/world/asia/rodrigo-duterte-philippines.html>

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

Following Duterte's election to the Presidency, many could have wondered if his harsh public speech in support of killing criminals would taper off. Perhaps, his outrageous speech was an attempt to appeal to scare tactics in a political forum to garner public support against drug dealers and users, similar to the tactics used by US President Donald Trump leading to his election. However, it proved not to be the case. Duterte did not use this hate filled, violent speech to garner votes to win an election; instead his speeches only became worse and more condemning.

Even after his landslide election his aggression towards his self proclaimed "war on drugs" did not end. He stated that a key element to his anti-drug campaign would focus on killing drug dealers and users when on June 4, 2016 he decried, "If you are still into drugs, I am going to kill you. Don't take this as a joke. I'm not trying to make you laugh. Sons of bitches, I'll really kill you."<sup>15</sup> He has gone further to claim that the death counts that have been racking up are "successes" of his "war on drugs", and has made warnings to anyone involved with drugs that his orders to the police are to "shoot to kill" and he followed that up by stating, "I don't care about human rights, you better believe me."<sup>16</sup>

Following his election, Duterte created a new government agency to further his "war on drugs." The new government agency aimed towards helping with the "war on drugs" is called the Inter-Agency Committee on Anti-Illegal Drugs (ICAD).<sup>17</sup> This agency is intended to assist in furthering the "war on drugs" by targeting both high-level suspected drug pushers as well as low-level street pushers.<sup>18</sup> Additionally, it was intended to legitimize the "war on drugs" and

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Wendy Zeldin, *The Philippines: New Agency Created to Support Drug Enforcement Agency*, Library of Congress, (Mar. 15, 2017), <https://files.zotero.net/20574521810/Zeldin%20-%202017%20-%20The%20Philippines%20New%20Agency%20Created%20to%20Support%20Dru.html>

<sup>18</sup> *Id.*

potentially to draw attention away from the extrajudicial killings occurring throughout the country. This has not been the case however. Instead the new agency has been ineffective. It has been reported that this organization has not targeted any major illegal drug suspects but instead has been used to instill fear and harass small-time drug users in impoverished communities.<sup>19</sup> This “legitimate” government agency has very little recorded success other than causing more problems for the impoverished communities that already have to deal with a high rate of extrajudicial killings.

Outside of this agency, Duterte’s words have only stoked the fire that continues to burn and lead to the extrajudicial killings of the impoverished communities. Duterte has been quoted as saying that his orders are to “shoot to kill.”<sup>20</sup> He has also stated, “...I will kill you. I will take the law into my own hands...forget about the laws of men, forget about the laws of international law whatever.”<sup>21</sup> This past July, in Duterte’s State of the Nation Address, he vowed that the “war on drugs” was far from over.<sup>22</sup> Duterte used this speech to proclaim that the deaths will not end.<sup>23</sup> Duterte also deflected criticism of his regime and his bloody reign by pointing the finger at human rights groups for defending drug users and pushers.<sup>24</sup> This tactic has been used by Duterte to silence and harass his critics who wish to point out the crimes of his regime. Even going so far as to jail outspoken politicians who attempt to draw attention to the killings.<sup>25</sup>

#### B. Claims of Extrajudicial Killings by Human Rights Organizations

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<sup>19</sup> *Id.*

<sup>20</sup> *Supra* footnote 1.

<sup>21</sup> *Id.*

<sup>22</sup> Carlos H. Conde, *Duterte Vows More Bloodshed in Philippine ‘Drug War’*, Human Rights Watch, (July 23, 2018), <https://www.hrw.org/news/2018/07/23/duterte-vows-more-bloodshed-philippine-drug-war>

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

President Duterte's rhetoric in his speeches and what he reports to the UN portray very conflicting stories. On one hand he publicly endorses and promotes the extrajudicial killings of drug users and abusers, yet he tells the UN that there are no statutes or laws put in place to commit extrajudicial killings. These conflicting reports, however, have not shielded Duterte and his government from investigations. Independent agencies, as well as the UN have taken notice and begun to look into the reports of extrajudicial killings in the Philippines.

Numerous complaints have been filed to the ICC in regards to the widespread human rights violations occurring in the Philippines. The Special Procedures group from the UN Human Rights Council has issued an urgent statement for action against the Philippines and their violations.<sup>26</sup> This urgent message addresses the crimes of extrajudicial killings of civilians, children, and threats against indigenous people and human rights defenders.<sup>27</sup> The UN Human Rights Council is not the only concerned party that has made their voice heard, however. A group of activists and families of eight victims of extrajudicial killings have filed a complaint with the ICC, accusing Duterte of crimes against humanity and asking the court to address the issue.<sup>28</sup>

Accompanying these official complaints are independent reports detailing the crimes being committed in the Philippines. Human Rights Watch has conservatively estimated that over 12,000 people have been killed during the "war on drugs."<sup>29</sup> However, other sources have cited

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<sup>26</sup> *Philippines needs urgent action to reverse spiraling rights violations, UN experts say*, United Nations Human Rights: Office of the High Commissioner (July 31, 2017),

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21926&LangID=E>

<sup>27</sup> *Id.*

<sup>28</sup> *Philippines' Duterte hit by new ICC complaint over deadly drug war*, Reuters, (Aug. 28, 2018),

<https://www.reuters.com/article/us-philippines-drugs/philippines-duterte-hit-by-new-icc-complaint-over-deadly-drug-war-idUSKCN1LD0CS>

<sup>29</sup> *Philippines: Duterte's 'Drug War' Claims 12,000+ Lives*, Human Rights Watch (Jan. 18, 2018)

<https://www.hrw.org/news/2018/01/18/philippines-dutertes-drug-war-claims-12000-lives>

the death count way higher and into the 20,000s.<sup>30</sup> Filipino Senator, Antonio Trillanes, made the claims of the higher death tolls before the Philippines Senate in opposition to the Duterte regime.<sup>31</sup>

While the death number may vary between sources, the crimes reported are all the same. The numerous reports all cite that the Philippine National Police (PNP) are the main perpetrators of the extrajudicial killings.<sup>32</sup> However, they are not the only perpetrators. Accompanying the PNP are reports of masked “death squads.”<sup>33</sup> These squads are not believed to be actual members of the PNP but rather vigilante groups with the mission to kill anyone involved with drugs.<sup>34</sup> Following the death of a South Korean businessman by anti-drug police, the PNP announced a temporary suspension of anti-drug operations.<sup>35</sup> Despite the reported suspension of operations, drug related killings did not cease.<sup>36</sup>

The mode of operation for these death squads also remained the same. An individual would be made aware that they were on a “suspected drug watch list” and in effort to avoid more trouble the individuals would turn themselves in to the PNP.<sup>37</sup> Days later, armed squads would burst into these citizens homes and they would end up shot and killed.<sup>38</sup> These armed squads would either identify themselves as police officers, or they would be the masked squads mentioned earlier. Within minutes, PNP investigation crews would arrive and rule that the

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<sup>30</sup> *Supra* footnote 3.

<sup>31</sup> *Id.*

<sup>32</sup> *Supra* footnote 1, 3, 28, 29

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Supra* footnote 1.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

individual was shot in self defense and they had pointed a gun at the police before being shot.<sup>39</sup> A gun and drugs would often be found beside the dead bodies, despite witness reports that they did not have either prior to being killed.<sup>40</sup> Thus creating an intricate system where the PNP has complete control to barge into any citizens home and shoot them where they lay, because they have the ability to fake a crime scene and write reports that absolve the PNP from all illegal actions.

False police reports are not the only method that Duterte has gone to cover up his country's extrajudicial killings. He has also resorted to enforced disappearances of those who oppose him.<sup>41</sup> The types of people who have disappeared include suspected drug traffickers, journalists, lawyers, judges and activists.<sup>42</sup> Duterte has even been able to arrest and detain Senator Leila de Lima, a chief critic of the president, on politically motivated drug charges.<sup>43</sup> These forced disappearances, along with the extrajudicial killings, both go unpunished and the perpetrators face no prosecution.<sup>44</sup> The fact that Duterte has seemingly limitless control to quiet or kill off those that oppose or speak out against him, signals that the end of the extrajudicial killings is nowhere in sight.

### III. The ICC Criminal Investigation

The claims of extrajudicial killings in the Philippines by the independent human rights sources have sparked a varied response by international organization, the Filipino government and the citizens of the Philippines. All three have spoken publicly about the claims as well as

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Amnesty International, *Philippines: Amnesty International Submission for the UN Universal Periodic Review, 27<sup>th</sup> Session of the UPR Working Group, (April/May 2017)* [https://www.upr-info.org/sites/default/files/document/philippines/session\\_27\\_-\\_may\\_2017/ai\\_upr27\\_phl\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/philippines/session_27_-_may_2017/ai_upr27_phl_e_main.pdf)

<sup>42</sup> *Id.*

<sup>43</sup> *Supra* footnote 29

<sup>44</sup> *Id.*

conducting investigations into the validity of the claims. This section will describe what the International Criminal Court (ICC) is, as well as what authority they possess. It will also go into the response to the claims against the Philippines by the United Nations, as well as the Filipino Government. And finally, it will go into how the public in the Philippines feels about the government's "war on drugs."

#### A. Contradictory Statements by Duterte and his Government

What is strange about Duterte and his government's attempt to distance their involvement with the extrajudicial killings extends beyond their fake police investigations and UN Reports. Duterte and members of his government repeatedly put out conflicting statements in regards to the extrajudicial killings. It appears that while on paper they attempt to deny any knowledge or any role in the deaths, in public statements, Duterte cheers on the killings and expresses his approval. A mandatory UN report conducted by the Philippines did, however, state that extrajudicial killings were taking place.<sup>45</sup>

Duterte's words have sparked widespread murders throughout his country committed in large part by his own national police force. Not only has this rhetoric allowed the PNP to commit acts of grave human rights violations, but they have also reportedly inspired vigilante groups taking it upon themselves to kill and target any potential drug users.<sup>46</sup> Unidentified, masked assailants have been accused, by the PNP, of killing drug dealers or pushers without PNP support.<sup>47</sup> The PNP has attempted to distinguish the deaths from these groups and those from "resisting arrest" by the PNP.<sup>48</sup> The PNP alleges that most of the killings have been

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<sup>45</sup> *Supra* footnote 7.

<sup>46</sup> *Supra* footnote 1.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

carried out by vigilante groups or rival drug gangs, thus attempting to deflect negative attention by their own actions.<sup>49</sup>

Despite PNP acknowledgments of the large number of killings, there have been no legal consequences. There have been no members of these “masked vigilante” groups that have been prosecuted or faced charges.<sup>50</sup> Additionally, no PNP officers have faced any impunity or accountability for the killings.<sup>51</sup> While the PNP claims that officers have been disciplined, not one has been convicted for any “drug war” abuses.<sup>52</sup>

Duterte must share responsibility with his government for the lack of accountability and repercussions stemming from the extrajudicial killings. Duterte has encouraged the police to carry out extrajudicial killings by promising protection against prosecution.<sup>53</sup> Duterte stated that “police officers could carry out the ‘war on drugs’ without worrying about being prosecuted: ‘The president can grant pardon, conditional or absolute; or grant amnesty with the concurrence of Congress. I’ll use it, believe me.’”<sup>54</sup> Duterte has admitted that his promise to protect the police is likely why the “war on drugs” has become so bloody.<sup>55</sup> However, despite these acknowledgments, he has not stopped promoting the “war on drugs” or condemned the killings. Instead he continues his violent rhetoric and encourages the assaults on human rights.

Most troubling about the extrajudicial killings is that Duterte is no longer afraid to admit that they are happening. Recently, Duterte admitted to ordering the extrajudicial killings.<sup>56</sup>

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<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Supra* footnote 22.

<sup>52</sup> *Id.*

<sup>53</sup> *Supra* Footnote 1.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Phelim Kline, *Philippines’ Duterte Confesses to ‘Drug War’ Slaughter*, Human Rights Watch, (Sep. 28, 2018), <https://www.hrw.org/news/2018/09/28/philippines-duterte-confesses-drug-war-slaughter>

Duterte admitted culpability by saying: “What is my sin? Did I steal even one peso? Did I prosecute somebody who I ordered jailed? My sin is extrajudicial killings.”<sup>57</sup> As far back as 2016, Duterte is on the record of taking responsibility for the policy of killing drug suspects, stating that he assumes “full responsibility” because “I was the one who ordered it.”<sup>58</sup> Despite these public admissions, there have been no consequences. Nobody has been prosecuted and Duterte remains in power.

Even more troubling than Duterte’s outright support of extrajudicial killings, and admissions of ordering them, have been the rest of the government’s response as well as the public response. Following Duterte’s admission to extrajudicial killings, his government completely backtracked those statements.<sup>59</sup> The Government stated that his admission was not literal and instead was playful.<sup>60</sup> Instead of taking these admissions as serious violations of human rights, they portrayed them as a joke. Certainly one that was not funny. Even the PNP Director-General Oscar Albayalde<sup>61</sup> reacted to the president’s admission. He claimed they were an expression of “frustration” and in no way an admission of guilt.

Philippines’ Foreign Minister, Perfecto Yasay has also denied any government involvement or empowerment of death squads and extrajudicial killings before the UN.<sup>62</sup> He vehemently denied the accusations to the UN General Assembly and stated that the government is not committing any human rights violations that they are being accused of and are abiding by

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Philippines’ anti-drug fight ‘grabs headlines for wrong reasons,’ Foreign Secretary tells UN*, UN News (Sep. 24, 2016) <https://news.un.org/en/story/2016/09/540882-philippines-anti-drug-fight-grabs-headlines-wrong-reasons-foreign-secretary>

all foreign and domestic laws.<sup>63</sup> Instead, he claimed that the “war on drugs” is being blown out of proportion and it has been grabbing headlines for the wrong reasons and the positives are not being reported on.<sup>64</sup> These denials are made more egregious by the fact that they came from the Prime Minister in front of the UN Assembly.

Duterte’s admission also contrasts previous statements where he vehemently denies any involvement with extrajudicial killings.<sup>65</sup> He also has previously denied any involvement, yet in the same statement endorses the killings as an effective way to combat crime.<sup>66</sup> Duterte has both denied and admitted guilt to partaking in extrajudicial killings. His government continues to deny involvement while he both admits and supports the human rights violations. These admissions as well as endless human right organization accounts of the violations occurring in the Philippines should be enough evidence to allow the ICC to prosecute Duterte.

#### B. Public Support for Duterte

Despite Duterte’s platform of promoting extrajudicial killings, as well as his support of them post-election, the public seems to continuously support their president. Duterte won his presidency by a wide margin despite his aggressive tactics.<sup>67</sup> Not only that, but the report claims that the citizens of the Philippines recorded a high approval rate in support of the “war on drugs,” despite all of the violence surrounding it.<sup>68</sup> Polls from the Philippines taken in July show extremely high approval and trust ratings of their President.<sup>69</sup> Another poll taken in September,

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<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Supra* footnote 11.

<sup>66</sup> *Supra* footnote 1.

<sup>67</sup> National Report Submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21

<sup>68</sup> *Id.*

<sup>69</sup> Katrina Domingo, *Duterte approval rating rises to record in second quarter: Pulse Asia*, ABSCBN News (July 13, 2018), <https://news.abs-cbn.com/news/07/13/18/duterte-approval-rating-rises-to-record-in-second-quarter-pulse-asia>

show drops in those ratings, however, he still has a 75% approval rating and a 72% trust rating, which are extraordinarily high.<sup>70</sup> In addition to his personal ratings, the “war on drugs” has received high ratings of approval from Filipino citizens. In fact a survey found that 78% of citizens were satisfied with the administrations “war on drugs.”<sup>71</sup> Despite Duterte promoting extrajudicial killings, and them occurring by the thousands, he somehow has maintained extremely high public support. This leaves very little doubt that the Filipino Government will do anything to oust and prosecute Duterte for his crimes against humanity. Thus, it is up to the ICC to conduct a criminal prosecution against Duterte.

### C. The UN and the ICC Response

The Rome Statute established the ICC on July 17, 1998 and its function is to begin criminal proceedings when a State is unable or unwilling to carry out an investigation or prosecution of actors that are violating international laws.<sup>72</sup> The Rome Statute grants the ICC jurisdiction over four main crimes: genocide, crimes against humanity, war crimes, and crimes of aggression.<sup>73</sup> Crimes against humanity involve a number of different offenses when they are part of a widespread or systematic attack against the civilian population either by the government or with the government’s knowledge.<sup>74</sup> Murder is considered one of the offenses that constitute a crime against humanity.<sup>75</sup> Extrajudicial killings fall under murder, as they are killings made by the government without any judicial process being afforded to the victim. Duterte has

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<sup>70</sup> Patricia Lourdes Viray, *Duterte’s approval, trust ratings fall – Pulse Asia*, Philstar Global, (Sep. 25, 2018), <https://www.philstar.com/headlines/2018/09/25/1854580/dutertes-approval-trust-ratings-fall-pulse-asia>

<sup>71</sup> Gilbert P. Felongco, *Duterte’s anti-drugs war gets pat on the back from Filipinos*, Gulf News Philippines, (Sep. 24, 2018), <https://gulfnews.com/news/asia/philippines/duterte-s-anti-drugs-war-gets-pat-on-the-back-from-filipinos-1.2282015>

<sup>72</sup> *Understanding the International Criminal Court*, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>

<sup>73</sup> *How the Court Works*, International Criminal Court, <https://www.icc-cpi.int/about/how-the-court-works>

<sup>74</sup> UN General Assembly, *Rome Statute of the International Criminal Court*, (July 17, 1998), <https://www.icc-cpi.int/resource-library/Documents/RS-Eng.pdf>

<sup>75</sup> *Id.*

committed thousands of crimes against humanity through his extrajudicial killings in the Philippines.

Currently, the ICC is conducting an ongoing investigation into the alleged crimes committed since the beginning of Duterte's term through his "war on drugs."<sup>76</sup> On February 8, 2018, Mrs. Fatou Bensouda, a Prosecutor of the ICC issued a statement declaring the preliminary investigation into Duterte and the Philippines.<sup>77</sup> This preliminary investigation is the first step in initiating criminal proceedings against Duterte, as the Prosecutor must first determine if there is enough evidence to bring a case.<sup>78</sup> If the Prosecutor does determine that there is sufficient evidence to bring forth a criminal case against Duterte, then they can proceed with the case and charge Duterte.<sup>79</sup> Based on the available reports it appears evident that a criminal case against Duterte should occur.

The UN took notice during Duterte's campaign and his rhetoric to kill drug users and drug pushers. Following Duterte's admission to personally killing criminals while running for presidency, members in the UN sought an investigation into Duterte's claims. A report done by the UN in 2016 reported that extrajudicial killings were taking place.<sup>80</sup> This report outlined the extrajudicial killings and the government's lack of effort to prevent and stop them.<sup>81</sup> These admissions and this report sparked the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, to call for a formal investigation into the possible murders committed by Duterte

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<sup>76</sup> Preliminary Examination: The Philippines, <https://www.icc-cpi.int/philippines>

<sup>77</sup> 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, (Feb. 8, 2018), <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat>

<sup>78</sup> *Id.*

<sup>79</sup> *Understanding the International Criminal Court*, <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>

<sup>80</sup> *Supra* footnote 67.

<sup>81</sup> *Id.*

himself.<sup>82</sup> In fact, all the way back in 2012, calls for investigations into Duterte were made in regards to his failure to take action against death squads that were patrolling Davao City and committing extrajudicial killings of suspected criminals.<sup>83</sup> Additionally, a 2008 report by Philip Alston, the UN special rapporteur on extrajudicial killings, interviewed Duterte in regards to reports of death squads and Duterte denied any connection between himself and the death squads, yet he never once condemned the actions.<sup>84</sup> For years prior to Duterte ascending to the Presidency, he has been connected to death squads committing extrajudicial killings. Prior to his presidency, he even admitted to committing murders on his own accord, yet on the other hand, denied any personal connection to the death squads. It raises suspicion that he attempts to associate himself with death squads when beneficial to him, and deny involvement when it could land him in trouble. All of this has lead to the ICC officially opening their preliminary investigation into Duterte and his alleged crimes.

#### D. Duterte's Motion to Withdraw from the ICC and its Repercussion

As noted before, the ICC currently is conducting a preliminary investigation into the allegations made against Duterte and his government. While the government has gone through extreme measures to both cover up and deny any involvement despite Duterte's admissions and public approval of the extrajudicial killings, it appears Duterte has taken one last drastic step to cover up his crimes. In March, the UN notified the ICC that Duterte had submitted a handwritten notification of withdrawal from the Rome Statute.<sup>85</sup> Despite this new effort by

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<sup>82</sup> *Supra* footnote 10.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *ICC Statement on The Philippines' notice of withdrawal: State Participation in Rome Statute system essential to international rule of law*, International Criminal Court, (Mar. 20, 2018), <https://www.icc-cpi.int/Pages/item.aspx?name=pr1371>

Duterte to cover up and avoid prosecution for his crimes against humanity, he is likely not to succeed and could still face punishment for his actions.

Only a month after the Office of the Prosecutor of the ICC announced their preliminary investigation into the Philippines and their extrajudicial killings, Duterte submitted his letter of withdrawal from the Rome Statutes.<sup>86</sup> Withdrawing from the Rome Statute is a sovereign decision and it becomes effective one year following the deposit of notice to the UN Secretary-General.<sup>87</sup>

Duterte's withdrawal from the Rome Statute is an interesting decision because it will have little effect on the current investigation into his crimes against humanity. Despite the submitted withdrawal, the ICC still has full authority to continue its investigation into the alleged crimes and can prosecute Duterte for any crimes that took place while they were part of the Rome Statute, as well as any crimes that stem from the initial investigation that occur after the Philippines have withdrawn.<sup>88</sup> Therefore, Duterte will hopefully still be held accountable for his crimes. His admissions of extrajudicial killings and continued provocative speech should only hasten the ongoing preliminary investigations of the ICC, thus leading to a prompt criminal case.

Duterte has based his reason for withdrawing by criticizing the ICC and its investigations into him.<sup>89</sup> He has attacked the integrity of the ICC and claimed that they are trying to harass the Philippines with their preliminary investigation.<sup>90</sup> He has also, once again, contradicted himself

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<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Philippines drugs war: Duterte to withdraw from ICC*, BBC News (Mar. 14, 2018), <https://www.bbc.com/news/world-asia-43397837>

<sup>90</sup> *Id.*

by claiming that the allegations made by the UN and the ICC are baseless and he is innocent.<sup>91</sup>

Ironically enough, Duterte claims that the preliminary investigation by the ICC is in “violation of due process,” the same argument that could be made about extrajudicial killings.<sup>92</sup> The notice of withdrawal and attacks directed towards the UN and ICC do not paint the picture of an innocent man. Instead they show a man who can sense that his numerous violations of human rights will no longer go unnoticed and he is facing a likely prosecution for his crimes against humanity.

Additionally, the withdrawal marks a complete reversal of rhetoric by Duterte.

Previously, Duterte had “dared the ICC to indict him,” even stating that he was willing “to rot in jail” and go on trial to defend what he claims is a legal “war on drugs.”<sup>93</sup> Duterte had at first welcomed the investigation by the ICC claiming that he had nothing to hide.<sup>94</sup> His quick turnaround, however, reveals the opposite. He has told security forces and the PNP not to cooperate with any international investigation.<sup>95</sup> This is potential evidence of a government wide attempt to cover up their involvement and to absolve themselves from criminal actions. It would now appear that the effort to withdraw from the ICC and to lambast the organization shows a leader who is panicking at the realization that his crimes are catching up to him.

The attempt to withdraw from the ICC and the Rome Statute is nothing more than a political ploy by Duterte to muddy the waters and delegitimize the preliminary investigation into his human right violations. Fortunately, he is unlikely to succeed. Despite his written withdrawal, the ICC is fully permitted to continue with their investigation. This investigation should not take long and should end in the prosecution of Duterte. The writing is on the wall for

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Karen Lema, *Duterte to withdraw Philippines from ICC after ‘outrageous attacks*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

the violent President of the Philippines and he knows it. His current tactics show fear and that he is aware that he must soon pay for his crimes.

#### IV. Who can stop Duterte and the extrajudicial killings?

The final section of this paper will try and address the most obvious issue regarding the Philippines and the extrajudicial killings. While the ICC has opened a preliminary investigation into the crimes occurring, what exactly does that mean? Can the ICC actually do anything to stop Duterte and his regime? This section will outline what the ICC can do if they choose to charge Duterte for his alleged crimes. It will also attempt to outline the legitimacy of the ICC and why the issues going on in the Philippines can have a profound impact on the power and public support of the ICC.

##### A. What can the ICC do to Duterte

If the ICC does determine that it wishes to charge Duterte with human rights violations and move forward with a criminal trial, many steps must be accomplished. This section will try and outline the steps that the ICC must take in order to even have a chance at prosecuting Duterte.

As with any criminal trial, there must be someone in the court to prosecute. That would mean that if the ICC does charge Duterte, in order to prosecute him, he actually would have to be present in the courtroom. Therefore, he would have to be arrested and turned over to the ICC. The actual location of the ICC is in The Hague, Netherlands.<sup>96</sup> Therefore, they must transport Duterte from the Philippines to the Netherlands. While this is simple in theory, it is much more difficult in reality. Unlike most criminal courts, the ICC has no police force or police presence.<sup>97</sup> Therefore, it has no way of tracking down and arresting individuals that they wish to prosecute.

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<sup>96</sup> *Supra* footnote 72

<sup>97</sup> *What does the International Criminal Court do?* (June 25 2015) BBCNEWS, <https://www.bbc.com/news/world-11809908>

Instead, the ICC must solely rely on each country's police forces to find and arrest anyone they wish to prosecute.<sup>98</sup>

The ICC gains its support and legitimacy from the countries that have signed and ratified the Rome Statute. Currently, 123 countries have adopted the Rome Statute and the ICC.<sup>99</sup> While this would seem to give the ICC some legitimacy in the world, several powerful and persuasive countries are not full signees to the Rome Statute. These important countries include the United States, Russia.<sup>100</sup> These are two countries hold immense international power. Despite the fact that there are a large number of other countries that have signed and ratified the Rome Statute, having these two countries not be full participants only weakens the legitimacy of the ICC.

What does this mean for the ICC in regards to the Philippines and President Duterte? While the Philippines have formally withdrawn from the Rome Statute, they are still susceptible to the human rights violations committed while signatories. However, it is unclear if that matters. The ICC has no police force. They cannot track down Duterte, arrest him, and bring him to a detention center in The Hague. Duterte is not in hiding, and he is not shying away from the open investigation by the ICC. In fact, he has threatened to arrest any lawyer from the ICC that comes to the Philippines to even investigate him and the extrajudicial killings.<sup>101</sup> Wildly enough, Duterte is even challenging the ICC and publicly stating that they have no authority and cannot investigate him or his country.<sup>102</sup> Seeing as the ICC has no police force to protect any lawyer attempting to investigate, or to go into the Philippines to arrest Duterte, they must rely on the

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<sup>98</sup> *Id.*

<sup>99</sup> The States Parties to the Rome Statute, [https://asp.icc-cpi.int/en\\_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx](https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx)

<sup>100</sup> *Id.*

<sup>101</sup> "I will arrest you": Duterte warns ICC lawyer to steer clear of Philippines (April 13, 2018), <https://www.reuters.com/article/us-philippines-duterte-icc/i-will-arrest-you-duterte-warns-icc-lawyer-to-steer-clear-of-philippines-idUSKBN1HK0DS>

<sup>102</sup> *Id.*

PNP to investigate and arrest him. However, it is unlikely that this will happen because the PNP is assisting in the extrajudicial killings. Why would the PNP assist the ICC in any way seeing as they are complicit in the crimes? Additionally, the “war on drugs” and Duterte have very high public support making it even more unlikely that they will act in any way against him.

The fact that there are a few powerful countries who are not signatories to the Rome Statute, as well as the ICC’s lack of a police force make it very unlikely that they will be able to arrest and prosecute Duterte if they choose to. There is very little chance that Duterte’s own PNP will turn against him and bring him to the ICC to face a criminal prosecution. Therefore, even if the ICC does decide it wishes to prosecute Duterte, its unlikely that they will ever have a chance.

While it is unlikely that the ICC would be able to arrest and prosecute Duterte if they find enough evidence to proceed with a prosecution against him, there is hope that the madness in the Philippines could end. Interestingly enough, it appears that the only people capable of stopping the extrajudicial killings are the people who started them. In November, three Philippine Police Officers were charged with the murder of an innocent man in relation to the “war on drugs.”<sup>103</sup> The three officers were sentenced up to 40 years in prison for their roles in the extrajudicial killing.<sup>104</sup> The victim was a 17-year-old boy who had been falsely identified as a drug dealer by an informant, and in fact had no relation to drug dealing or using.<sup>105</sup> The boy was found shot dead in a pigsty, about 100 yards away from where a camera caught the police officers pulling him down the street.<sup>106</sup> The police officers claimed that the boy had pulled a gun on them,

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<sup>103</sup> Jason Gutierrez, *3 Philippine Police Officers Are Convicted in a Drug War Killing* (Nov. 29, 2018), *The New York Times*, <https://www.nytimes.com/2018/11/29/world/asia/philippines-duterte-drug-killings-police.html>

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

however, forensic evidence revealed that the boy had been shot in the head while laying in a fetal position revealing that the police unjustly murdered him.<sup>107</sup>

The indictment of these three police officers is a step in the right direction for the Filipino Government. It shows that they might be willing to cease their extrajudicial killings and distance themselves from the illegal activities that their President rose to power on. However, it in no way shows that Duterte will end. This particular case was caught on camera and had eyewitnesses attest to the extrajudicial killing. This could potentially be nothing more than the government trying to show that they care about their crimes to quell a vocal international landscape decrying their unjust deeds. Furthermore, Duterte had previously stated that he would pardon any police officer that was charged with committing a crime in relation to the “war on drugs.”<sup>108</sup> Now, the international landscape must wait and see if he holds true to his declarations. If Duterte does in fact pardon the officers convicted of slaying an innocent man, it will show the ICC, and the world, that he truly does not care about the extrajudicial killings being carried out in his country. A pardon would also, once again, call into question the legitimacy of the ICC and whether they truly have any power to prosecute Duterte and other violators of human rights like him.

#### B. The Dangerous Game the ICC is Playing

As the ICC continues to seek legitimacy, it finds itself in the middle of a dangerous game with its investigation into the Philippines. While the ICC is attempting to fight the good fight for people who are suffering and cannot defend themselves, the world has not collectively given the

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<sup>107</sup> *Id.*

<sup>108</sup> *Supra* footnote 1.

organization the respect that it wants and deserves. Duterte is far from the only leader that has publicly bashed the ICC and attempted to state it has no power to prosecute individuals.

Since the announcement by the ICC that they were opening a preliminary investigation into the claims of extrajudicial killings in the Philippines, Duterte has been vocal about his dissatisfaction. Duterte has vowed to arrest any prosecutor working for the ICC if they attempt to enter the country to conduct an investigation.<sup>109</sup> In this same threat, Duterte proclaimed that the ICC has no legitimate power and could not conduct any real investigations.<sup>110</sup> The threat made against the ICC shows that despite the Philippines signing and adopting the Rome Statute, the country does not take seriously the power or authority of the ICC. This threat and public insult, is damaging to an organization that struggles to achieve the power and respect it deserves. Couple those statements with the fact that the Philippines has withdrawn from the Rome Statute right after the ICC declares it is conducting a preliminary investigation, both create a tough look for the ICC's legitimacy.<sup>111</sup> For an organization looking to gain international legitimacy, having one of its signing members bash its power and authority and then withdraw from its founding statute shed a light that potentially the entire world does not find it to have any power.

Recently, the European Union has had to publicly show support to the ICC after a United States National Security Advisor denounced the ICC and its authority.<sup>112</sup> The U.S. official spoke critically of the ICC after a judge from the ICC weighed whether or not to investigate allegations of war crimes by the U.S. during their war in Afghanistan.<sup>113</sup> This condemnation from the United States is important to the ICC because the United States holds a significant

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<sup>109</sup> *Supra* footnote 98.

<sup>110</sup> *Id.*

<sup>111</sup> *Supra* footnote 82.

<sup>112</sup> *EU Backs ICC After US Questions Court's Legitimacy* (Sept. 13 2018), U.S. News, <https://www.usnews.com/news/world/articles/2018-09-13/eu-backs-icc-after-us-questions-courts-legitimacy>

<sup>113</sup> *Id.*

amount of international power. While the U.S. has not adopted the Rome Statute as a ruling authority, publicly calling into question its legitimacy does not help the ICC gain international respect.

Further criticisms of the ICC do not necessarily call into question their power and authority but rather the fairness of the crimes that they investigate and prosecute. Instead of questioning the legitimacy of the court, many have claimed that there is a bias into the cases that the ICC seeks out.<sup>114</sup> Throughout the history of the ICC, a majority of the cases that they have brought against individuals have been brought against black Africans.<sup>115</sup> The majority of charges brought and indictments levied have been against Africans.<sup>116</sup> The overwhelming discrepancy has led the African Union to formally complain and levy accusations of bias and racism against the ICC.<sup>117</sup> Naturally, the ICC has denied any bias or racism in their execution of investigations and prosecutions.<sup>118</sup> They state that a majority of the investigations into individuals from Africa have come by the request of the African nations where those individuals reside.<sup>119</sup>

While the ICC does have a rational and reasonable excuse for the discrepancy in investigations where the majority are black Africans, the accusations are still harmful to their legitimacy. If the international landscape has any indication that the investigations conducted could be racially based and not based on need, more countries could believe in the illegitimacy of the Court. While these accusations likely are not true, they do not help the image of the ICC at all. Other countries could withhold issues if they believe that the ICC only targets a racial group

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<sup>114</sup> *Supra* footnote 94.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

or a particular set of countries. Additionally, the ICC could pass over issues in other African countries that need to be addressed out of fear that they accusations of bias and racism will only grow. These accusations do nothing but harm the ever-longing goal of the ICC to reach a legitimate international status and have the power and authority to achieve their goals.

All of these accusations and criticisms add to the significance of the ICC's involvement in the Philippines. They make the preliminary investigation all the more dangerous and could potentially mark the downfall of the ICC. Duterte is the first world leader that the ICC is attempting to investigate. The majority of the other individuals that have been investigated were not leaders on the level of Duterte. The success or failure of this investigation is very important in the ICC either becoming a legitimate international court or becoming an organization that receives little respect throughout the world.

Many things make this investigation important. While it is simply in the preliminary stages of the investigation, and no formal charges have been pressed, the beginning stages are still very important. There appears to be an overwhelming amount of evidence that Rodrigo Duterte has had some involvement in the extrajudicial killings. Whether that be that he ordered them to take place, used the government to cover up involvement, or just publicly endorsed them, supported them and looked the other way when they happened, there seems to be enough to open an official investigation into his ties. However, if after the preliminary investigation ends, if the ICC does not declare a formal investigation, the weakness and questionable legitimacy of the ICC could be shown. Given all the reports independent reports and the report from the UN, most of the world could see that there needs to be a closer look into Duterte. However, if the ICC refuses to push forward with a formal investigation, the world could see them as being scared to do so. Other than fear, what reason would the ICC have to overlook all of the evidence and not proceed? The

world would either see them as scared to take action, or believe that they do not actually possess the power to take action.

Unfortunately for the ICC, if they do decide to take further action, their legitimacy still could be called into question. If they formally announce that an official investigation will take place into Duterte and that they wish to prosecute him, even more damage could be done against their power and legitimacy. The ICC has no police force or power to arrest and detain individuals. If they decide that they believe that Duterte is guilty of crimes against humanity and must be punished for those crimes, how will they do so. The ICC relies on assistance from their member states to enforce their decisions and carry out arrests. This means that they would need the police forces in the Philippines to take action and arrest Duterte for them. However, Duterte is beloved by many in his country and the PNP is potentially just as guilty as him. Therefore, it is highly unlikely that they will arrest him for the ICC. Additionally, it is unlikely that any other member state would aid the ICC and arrest Duterte. Arresting and detaining the President of another country could technically be seen as an act of war, and it is unlikely that any country would be willing to go to war against the Philippines in order to assist the ICC. Therefore, even if the ICC does try and exercise its power and move forward to prosecute Duterte, it is unlikely they will be able to. If the ICC publicly calls for his prosecution but has no way of actually carrying out that prosecution, the entire world will see that the ICC lacks the power and authority to carry out any of its main purposes. A lot rides on the ICC's involvement in the Philippines, and if the ICC cannot wield any power or bring any arrests or prosecutions, or fails to move forward with an official investigation, it is foreseeable that the international landscape could turn against the ICC and officially delegitimize it.

## V. Conclusion

The International Criminal Court was sanctioned in order to investigate and prosecute crimes of high order. Crimes like the ones currently occurring everyday in the Philippines. President Rodrigo Duterte of the Philippines has engaged in a campaign to commit extrajudicial killings in the name of a “war on drugs.” Some accounts estimate that over 20,000 innocent Filipino citizens have been wrongfully murdered in this campaign. The UN and many independent human rights organizations have publicly condemned and spoken out against Duterte. These same organizations have called on the ICC to investigate and prosecute Duterte and any individual guilty of these crimes against humanity. While the ICC was created to deal with crimes like the extrajudicial killings in the Philippines, its legitimacy has come into question. Throughout its time as an international organization many countries have spoken against their power and authority. Now, in regards to their actions with the Philippines, the ICC’s legitimacy faces its biggest test. Any decision it makes could call into question the entire ICC and its international power and legitimacy. It is possible that the only party that could end the extrajudicial killings is the one responsible for them in the first place.