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## Extrajudicial Killings over the Drug War in the Philippines under the ICC Jurisdiction

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### **Abstract**

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*Extrajudicial killings in the Philippines have escalated, resulting in severe human rights violations exacerbated by the enforcement of drug war policies, which have led to numerous deaths without due legal process. These killings constitute serious crimes falling within the jurisdiction of the International Criminal Court (ICC). This paper examines how the ICC can serve as an international mechanism for addressing extrajudicial executions in the Philippines' drug war. Employing normative legal research methodology, the study utilizes legal sources focused on normative law as primary data. The ICC, functioning as a permanent court, is mandated to prosecute individuals responsible for international crimes under the Rome Statute. The findings confirm that extrajudicial killings in the Philippines qualify as international crimes, thus within the ICC's purview. Consequently, the ICC's involvement should not be construed as a challenge to national sovereignty but rather as a catalyst for strengthening global criminal justice frameworks. By holding perpetrators accountable, the ICC can stimulate the development of national criminal justice systems worldwide and encourage the enactment of domestic laws addressing egregious human rights violations and breaches of international humanitarian law. This role underscores the ICC's mission to promote universal ideals and ensure justice for victims of grave international offenses.*

**Keywords:** *Extrajudicial Killings, International Criminal Court (ICC), the Philippines.*

## A. INTRODUCTION

In 2016, Rodrigo Duterte became the President of the Philippines until 2022. During the campaign period, Rodrigo Duterte Stated that the illegal distribution and use of narcotics in the Philippines must be eliminated. In his inaugural address, Duterte vowed to rid the Philippines of criminals in the first six months of his term. In the first 100 days of the Duterte presidency, deaths related to illegal drugs reportedly reached 3,600 (Balisacan, 2018). In addition, in his oath to become President, he would take a tough stance on crime and pledged he would kill 100,000 criminals, mostly drug suspects, during his first 6 months (Chapman & Babor, 2017).

The Philippines is a country with a fairly high circulation of narcotics and illegal drugs in the Southeast Asian region. The Philippines is a strategic country as a transit center for the illegal drug trade, which can transport small quantities of illegal drugs to other countries. Dangerous Drugs Board statistics which function to prevent and control the development and circulation of drugs in the Philippines, show that as many as 1.8 million people are drug users out of 100.98 million Filipinos (Johnson & Fernquest, 2018).

*Shabu* became the narcotic with the most use and was followed by marijuana. The Philippines has been named by the United Nations as the country with the highest use of methamphetamine or *shabu* in Southeast Asia (Kesuma, 2018). A report from the United States Department of State regarding the level of illegal drug use in the world stated that 2.1% of the Filipino population aged 16 to 64 years uses narcotics. The promise by Duterte regarding the eradication of drugs has been Duterte's priority to this day.

The rampant drug trafficking in the Philippines makes the Philippines one of the many countries in the world that are participating in the fight against drugs. This

is reflected in the issuance of the 1972 Philippine Law on the Regulation of Dangerous Drugs or in the Philippines known as the Republic Act (RA) No. 6425, or often known as the Dangerous Drugs Act of 1972. The regulation was later amended by the issuance of Republic Act (RA) No. 9165 or known as the Comprehensive Dangerous Drugs Act of 2002, which was effectively implemented in 2003 (Kine, 2017). However, the re-enactment of Article 9145 of the Republic Act made the rules more stringent, with sentences ranging from life imprisonment to the death penalty and a fine of 50,000 pesos to 10,000,000 pesos. Regulations and types of drugs are specifically prohibited, such as Opium, Heroin, Morphine, Cannabis, and so on, along with their derivatives and new types of drugs (Yogaswara, 2020).

However, the implementation of this rule does not always run according to the existing rules. The war against drugs in the Philippines is an anti-drug policy and action as an effort to eradicate drugs by the Philippine government under the Duterte administration. In this regard, Duterte also urged his people to kill criminals and drug addicts. Drug eradication is carried out jointly by the police. Duterte gave orders to arrest addicts and drug dealers if possible. However, if they fight with violence that can threaten the life of the police or security officers who arrest them, the police or security officers are allowed to kill (Siwi, 2019).

Duterte has decided on efficient procedures and techniques to destroy illicit drug trafficking that has led to the war on drugs since the Philippines was declared a drug emergency State on July 1, 2016. Duterte's drug-war policy involves killing drug criminals, and the Philippine National Police's double barrelling campaign aims to combat illicit substances. The Philippine administration underlined that the killings were the proper, tough, exact, and quantifiable actions in the fight against

drug trafficking in the country, despite the fact that adopting oppressive policies and practices, as well as killing the life of others, is illegal.

The war on drugs has caused 4,948 deaths. Data from the Philippine National Police (PNP) shows that 22,983 people have been victims of homicide since the implementation of the war on drugs (Watch, 2018). This number does not include thousands of other people killed by gunmen. Another report was also disclosed by the Philippine Senate through Senate Bill No. 1197 concerning An Act Defining Extrajudicial Killing, Providing for Its Penalty and Other Purposes or better known as the Anti-Extrajudicial Killing Act of 2016. The Explanatory Note section of the Senate Bill No. 1197 States that around 2,294 victims have been executed outside the law (Innocenti, Widodo, & Puspoayu, 2021). At the end of 2019, an independent non-governmental organization and the Philippine National Human Rights Commission submitted a report that put the estimated number of victims of Operation Drug Warfare at 27,000.

Human rights violations have occurred in the Philippines as a result of policies connected to the drug war, both nationally and overseas. President Duterte has violated both nationally and internationally human rights laws, including the Philippine Constitution and the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. So, in carrying out this policy, President Duterte ignores his commitment to the protection and promotion of human rights by not using a legal basis against the thousands of killed drug suspects and offenders. Thus, Human rights in the Philippines are violated when a drug war is waged.

The Philippines is a country that upholds human rights both as to rights that cannot be contested in its existence in national, regional and international contexts (Santiago, Cordon, & Cana, 2017). However, the extrajudicial killings carried out by the Philippine government have violated the rules contained in Article 3 of the Universal Declaration of Human Rights, which reads “Everyone has the right to life, liberty and security of person”, and Article 11 paragraph 1, which reads “Everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to the law in a public trial at which he has had all the guarantees necessary for his defense.”

The Philippines has also ratified the International Covenant on Civil and Political Rights so that the State is responsible for the implementation of the fulfillment of the civil and political rights of its people by maintaining, respecting, protecting and fulfilling human rights such as the right to life which is an absolute right which is contained in Article 6 paragraph (1) which states that every human being has the right to the inherent right to life (Rosviyana & Sukranatha, 2019). This right must be protected by law, and no one can be deprived of his right to life arbitrarily.

In addition to violating the right to life, the act of extrajudicial killing has also violated Article 9 paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR), in which the State deprives of arbitrary freedom of drug users and dealers (Iryana & Leksono, 2018). The Philippine State apparatus has arbitrarily killed an alleged drug user and dealer without going through a legal process in accordance with the basic law enforcement in the Philippines. The victims who are suspected drug dealers are arrested and detained arbitrarily and tried without any

Court process so that the victims are found guilty and shot to death without any judicial process and decisions that have permanent legal force. This has attracted the attention of many parties, especially human rights activists and then reported it to the International Criminal Court (ICC).

The drug-related killings in the Philippines are obvious violations of international and national human rights law. Extrajudicial killings that include procedural features were planned and regulated by authorities, allowing them to be classified as crimes against humanity. If extrajudicial killings that result in crimes against humanity continue to rise in the Philippines, the ICC has the right and ability to pursue these cases under its current jurisdiction. International Criminal Court (ICC) is the first permanent and independent court capable of investigating and prosecuting anyone who commits the gravest violations of international humanitarian law such as war crimes, crimes against humanity, murder and acts of aggression (Tatodi, 2019).

The International Criminal Court (ICC) serves as an International Order that aims to realize the goals of the international community that are fundamental, primary, and universal, consisting of maintaining the security of its members from arbitrary violence by limiting violence, guaranteeing respect for human rights. In this way, the International Criminal Court (ICC) was created as a means of upholding the rules that have been made to bind countries in the world in dealing with one another so as to create international law enforcement and respect for human rights. as well as preventing the practice of impunity for human rights violations by the State.

Chloryne Dewi did a similar study, which she shared about ICC and ASEAN: *Weakening or Strengthening National Criminal Justice System?* and concluded that

the case of extrajudicial killings in the Philippines is one of the many serious crimes cases in Southeast Asian countries (Dewi, 2019). This is because some states do not have adequate national laws regarding the protection of human rights that are able to accommodate the most serious crimes of international criminal law, including its enforcement. There are still many Southeast Asian countries that lack the will to enforce justice based on the undeniable argument of state sovereignty. The main issue from the research is about the jurisdiction of ICC as an international order to settle the extrajudicial killings in the Philippines' war on drugs policy.

Research is particularly an activity that seeks the truth of science, with doubts or a desire to understand more about a subject leading to research (Aidi, 2021). Research is an essential and effective instrument for propelling mankind forward (Pandey & Pandey, 2021). There would have been virtually little advancement without methodical research. In the legal issues, legal studies cannot be isolated from procedures linked to legal writing in legal concerns, and legal research is required to complete legal writing. The normative research approach was chosen since the goal of the study is to learn about legal principles, norms, ideas, and doctrines from legal professionals (Nurhayati, Ifrani, & Said, 2021).

This research is classified as a normative legal study because this study is written using qualitative analysis based on existing data and described with words or statements rather than statistics. Normative legal research is defined as a legal study that considers law as a system builder (Firdausi, 2021). The authors combined data gathering methods with a literature review in their research and conducted logical and methodical analyses by looking for relevant information in books, journals, and articles on the internet, then reading and evaluating the key points (Taekema, 2018).

By using the materials and data collected through the research mentioned above, the author will examine descriptively, namely comparing theory and practice related to the problem to draw conclusions that depart from the specific to the general, using the materials and data collected through the research mentioned above.

## **B. RESULT AND DISCUSSION**

### **The Jurisdiction of ICC as An International Order to Settle the Extrajudicial Killings in the Philippines's War on Drugs Policy**

The way rules, institutions, legislation, and norms develop and perpetuate patterns of relating and acting is referred to as international order (Barnett, 2021). As a result, international order emerges when a collection of countries work together to achieve a similar objective by collecting their own set of norms that bind them in dealing with one another, forming an international community. As a result, the International Criminal Court (ICC)'s creation is an order in the international society. The ICC's goals as an international order are to realize the fundamental, primary, and universal goals of the international community, which include protecting its members from arbitrary violence by limiting violence, ensuring respect human rights and law enforcement, compliance with agreements based on the principle of reciprocity, and ensuring respect for property rights based on the principle of recognition of State sovereignty (Rezaa, 2002).

The International Criminal Court, sometimes known as the ICC, is an International Permanent Court set by the United Nations to prosecute and punish offenders of international crimes or crimes under the Rome Statute of the International Criminal Court, adopted in 1998 (Palmer, 2019). The International Criminal Court's mandate is defined in Article 5 of the Rome Statute of 1998, and it



is to examine and punish persons both in their capacities as State leaders and as people with personal interests for severe crimes against the international community, such as genocide, war crimes, crimes against humanity, and aggression (Christmas & Roisah, 2021). The ICC's jurisdiction was extended to nations that have accepted the 1998 Rome Statute on July 1, 2002. For the sake of peace and security, as many as 60 countries have ratified the 1998 Rome Statute agreed to pursue those convicted of certain legal offenses.

The International Criminal Court was established with the following goals in mind (Rahim, 2017):

1. Act as a deterrence to those who want to commit these awful crimes in violation of international law;
2. Insist that those guilty for these crimes be brought to justice by genuinely accountable national prosecutors;
3. Assure that victims and their families have the opportunities to receive justice and the truth, as well as to begin the process of reconciliation;
4. Taking significant measures to address the issue of people being released from prison or other forms of punishment.

As a court that adjudicates conflicts between countries or prosecutes and convicts according to its jurisdiction, the ICC uses three parameters. These are some of the parameters (Harumi, n.d.):

1. Jurisdiction of the International Criminal Court (ICC) over the subject matter (*ratione materiae*)

The issue pertains to a number of extremely heinous crimes, including genocide, crimes against humanity, war crimes, and aggression.

This complies with the ICC's power, which is outlined in Article 5 of the Rome Statute of 1998 (Damayanti, 2020). The ICC has jurisdiction over legal subjects that can be determined.

2. ICC jurisdiction relates to the time (temporal jurisdiction or *ratione temporis*)

The ICC adheres to the legality principle, which prohibits the adoption of retroactive/retroactive regulations (*nullum crimen nulla poena sine lege*).

3. ICC jurisdiction over personal/individual (personal jurisdiction or *ratione personae*)

The International Criminal Court (ICC) has jurisdiction over residents of member nations who are charged with a crime (the State of which the person is accused of the crime).

4. The ICC's jurisdiction over a country's territory (territorial Jurisdiction or *rationae loci*)

The authority of an institution to exercise jurisdiction if it is still within the agency's jurisdiction is known as territorial jurisdiction. The territory in question pertains to nations that have ratified the 1998 Rome Statute as well as those that have not ratified the 1998 Rome Statute (Utama, Mangku, & Yuliantini, 2021). As a result, the ICC can hear cases brought by member nations whose territory is where international crimes are committed.

Therefore, even if a State is not a signatory to the Rome Statute, the ICC can have jurisdiction over perpetrators of crimes committed on its territory provided the

government presents the case to the ICC. The ICC has jurisdiction over cases brought by the Security Council in addition to member nations because the ICC's role is limited to serving as a supplement to each country's own national judiciary. This is in line with the Act's Preamble paragraph 10, which emphasizes that the ICC's establishment under this statute will be supplementary to national criminal jurisdiction. As a consequence, national institutions retain primary authority in settling existing disputes. When it comes to international crimes committed on the territory of the country in question, national law gets priority. When national courts are reluctant or unable to carry out their tasks, the ICC can adjudicate crimes against humanity, war crimes, crimes of aggression, and genocide.

In order to assess whether a country is unwilling or incapable to carry out its case, the ICC must consider the following concept of due process recognized by international law (Sumilat, 2021):

1. The lawsuit is being pursued with the goal of safeguarding those who should be held accountable for crimes that come under the ICC's jurisdiction;
2. The judicial process is conducted in such a way, and under particular circumstances, that it is not conducted freely or impartially in order to achieve the goal of bringing the accused person to justice;
3. The court process is being held up unnecessarily, which is counter to the goal of providing justice to the accused.

The ICC must take into account the factors that occurred, such as an overall failure or in certain substances, the lack of a national justice system, the State's inability to arrest the accused, obtain important evidence and testimony, or other

inabilities to carry out the judicial process on their own in order to determine a country's inability.

The Philippines was once a member State of the International Criminal Court (ICC), and as such, the ICC continues to have jurisdiction over genocide, crimes against humanity, and war crimes, including extrajudicial killings perpetrated on Philippine territory or by Filipino residents. The Philippines, on the other hand, chose to leave the ICC on March 17, 2018, claiming that the organization was interfering with their domestic affairs. The Philippines declared in its withdrawal notice that it opposes individuals who appear to be trying to politicize the ICC and using human rights as a weapon against the country's sovereign jurisdiction. The Philippines regards its drug-war policy as its jurisdiction over national issues and the Philippine government's attempts to safeguard its population.

With the resignation from the ICC, the Philippines intends to eliminate the ICC's authority for extrajudicial executions perpetrated by the country. By excluding the Philippines from the ICC, the Philippines and Duterte do not automatically escape ICC scrutiny. The official release has a one-year waiting period, but the legal procedure continues until the waiting time is finished. The International Criminal Court (ICC) will continue to investigate and trial cases of extrajudicial killings in the Philippines. As a result, on March 17, 2019, the Philippines was declared out and no longer a member of the ICC.

The ICC has jurisdiction over citizens from non-State parties in accordance with the 1998 Rome Statute under the following conditions:

1. In the case brought before the ICC by the UN Security Council;

2. In the situation of nationals of non-State parties who commit a crime on the territory of a Rome Statute member country or a State that has recognized ICC jurisdiction over the offense;
3. Non-State parties have consented to exercise jurisdiction over certain offenses in the case of non-State parties.

The Philippines' withdrawal does not necessarily make it easier to avoid the ICC's jurisdiction. This is in accordance with Article 70 paragraph (1) letter b of the 1969 Vienna Convention, which provides that a State party's termination of an international agreement has no effect on the rights, duties, or legal status that existed before the termination. Under Article 127 paragraph (2) of the Rome Statute, the ICC has additionally controlled the withdrawal provisions (Schabas, 2010). Some of these requirements include continuing to cooperate with the ICC on investigations and processes that existed before the effective withdrawal, as well as not being averse to the ICC's rulings. Furthermore, the ICC retains its powers under articles 7 and 12 of the Rome Statute, which deals with crimes against humanity and State parties' obligations to recognize the ICC's authority.

Furthermore, the International Criminal Court's authority over UN forces from non-State parties does not contradict international law because governments that have ratified the 1998 Rome Statute have territorial jurisdiction over all crimes committed inside their borders. This applies to criminals from any country, both State and non-State signatories to the Rome Statute. If a crime is classified as an international crime, all nations have jurisdiction over the offender, regardless of the perpetrator's nationality or the location where the crime was committed, according to universal principles in international law (Sefriani, 2007).

The ICC's jurisdiction to try perpetrators who fall under its jurisdiction, namely crimes leading to extremely serious crimes, allows a delegation from a State party whose territory has been the scene of an international crime and that State is unable or unwilling to prosecute itself to bring the perpetrator before the ICC. Indirectly, the Philippines is unable to address domestic difficulties and commit crimes that affect its inhabitants. Based on its jurisdiction, the ICC can play its role as a trigger for the development of criminal law enforcement at the national level and can take measured actions to end impunity and bring justice to the victims. Based on the principle of complementarity, the ICC is proposed to strengthen the country's national criminal justice system. by ensuring the enactment of national laws concerning gross violations of human rights and international humanitarian law so that states must guarantee the independence of mechanisms to investigate and prosecute gross violations of human rights and international humanitarian law. Therefore, the ICC should not be considered a threat to the national sovereignty of a country.

### **C. CONCLUSION**

Since the increase in cases of extrajudicial killings in the Philippines, the President of the Philippines, Rodrigo Duterte, decided to leave the ICC. With the release of the Philippines from the ICC, it does not mean that it can escape the ICC's authority for serious crimes that have occurred. According to universal principles in international law, in regard to international crimes, all countries, including International Courts, have jurisdiction over the perpetrators regardless of the perpetrator's nationality or the location of the crime, which is not contradictory. Thus, the ICC still has the authority to try the Philippines which is within its jurisdiction,

namely crimes leading to extremely serious crimes such as extrajudicial killings. Because extrajudicial killings in the Philippines are on the rise and have a negative influence on egregious human rights violations, the Philippine government should quickly put an end to extrajudicial killings or reform drug eradication methods and legislation. If the Philippine government is unable or unwilling to handle the matter, the United Nations Security Council has the authority to take it over and refer it to the International Criminal Court.

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