

STATEMENT

UPR Pres-session on the Philippines

Geneva, August 30, 2022

In Defense of Human Rights and Dignity Movement



Introduction:

iDEFEND was convened by the Philippine Alliance of Human Rights Advocates (PAHRA) in July 2016 as a movement composed of around 70 NGOs and peoples organization around the country. PAHRA have engaged with the UPR mechanism since its first cycle in 2008 and for the 4th cycle iDEFEND is now as partner together with other networks that prepared the submission. The data and insights gathered for the report were collected through community-based consultations, workshops, and report submissions from various civil society organizations. Published cases in news reports and studies including relevant government data are cited to provide depth. In numerous consultation with NGO members of our alliance, grassroots organizations, victims and other networks.

Major topics to be considered are Extra Judicial Killings/Impunity and Detention/Fair Trial

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I. Major Topic/Major Issue: EXTRA JUDICIAL KILLINGS/IMPUNITY

A. Follow up to the first review

Not less that 45 States from all continents have expressed deep concern on the EJKs in the Philippines. All recommendations that pertains to prevention, rehabilitation, alternative approaches to War on Drugs (WoD) were SUPPORTED by the Philippine government. However, all recommendations pertaining to justice and accountability — to put a stop on the killings, on immediate and thorough investigation, prosecution and compensation and even rehabilitation were only NOTED.

Until this time, the actual number of extra judicial killings that took place in the Philippines under the War on Drugs have not been officially determined not even by our government. The last publicly available official statistics from the Philippine Drug Enforcement Agency in Sept 2021, there were 6,201 killings from police operations since July 2016¹ with an increase of 600 more killings from what was reported to the OHCHR in May 2020 of 5,601² However, the Armed Conflict Location & Event Data Project (ACLED) in its crisis mapping reported 7,742 victims of EJKs, 1,541 more than our government agency in same period³. While the PNP reported 12,416 killings by motorcycle gun-men. Considering these data even with all its discrepancies, it is not far from the prevailing estimate of around 30,000 victims including the 150 children who were killed from the campaign against illegal drugs by the past Administration.

¹ https://pdea.gov.ph/images/REALNUMBERSPH/2021/Nov2021/RealNumbers_Update_as_of_30Sep2021.pdf

² <https://www.ohchr.org/sites/default/files/Documents/Countries/PH/Philippines-HRC44-AEV.pdf>.

³ <https://acleddata.com/2021/11/18/the-drug-war-rages-on-in-the-philippines-new-acleddata-on-the-civilian-toll-state-responsibility-and-shifting-geographies-of-violence/> (accessed 08/15/22)

For the recommendations on Alternative approach to WoD/Holistic approach. Unfortunately, the most critical framework for a change in approach if the proposed Bill on Public health approach to illegal drugs has not yet been enacted but the reimposition of Death Penalty against drug crimes has always been the priority Bills filed in Congress. Those who were incarcerated / survivors have not received assistance to improve economic condition. Mega rehabilitation center constructed from aids that came from friendly countries have very minimal clients. Its mostly the Church, private and NGOs are doing rehabilitation work.

No visits from concerned Special Rapporteurs were allowed visits despite repeated requests. With victims and CSOs submitting cases to the ICC, the Philippines to escape responsibility withdrew from the Rome Statute/ICC. It is unfortunate that the new Administration already stated that it will not rejoin the Court. OHCHR Report (June 2020) resulted HRC Resolution on Technical Cooperation but with slow process, weak program, unresolved CSO participation in most of its Technical Working Groups.

On the recommendation that urge Government to avoid incitement or State Sponsored Killings : the past Government did not rescind Memoranda on the WoD and continue with the bloody approach while the current Government's pronouncement is not yet clear on its stand on its campaign against WoD until a clear Framework/Approach is in place

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B. New developments since the first review/prevailing challenges:

Although there is significant decline and lethality of the killings within the WoD campaign since the international community took cognizance of the perils on human rights in the country, killings under the War on Drug continue. It is also notable that almost daily EJKs are happening all over the country around 2-3 per day with various motives as monitored by Human Rights Watch. Some may be related to drug issues but not included in news reports.

The major challenge pertains to investigation and prosecution, a cornerstone of impunity. Only one case had conviction, that of 17 year old Kian Delos Santos - the first and still the only successful prosecution on EJK only because of the strong video evidence. In November 2018, - 3 Police personnel were convicted but still on appeal.

There are very few filed cases by the victims themselves or with assistance of legal groups for fear of reprisals from the police, documentations are difficult to obtained from the Police to file cases. Others who have filed cases were threatened . Recent report from the communities are that some Police personnel are asking families of victims to sign waivers that they will not file cases against the Government. It should also be noted that impunity can also result if those who are expected to defend and assist us to file cases are themselves threatened and killed. 110 lawyers were killed from 1972 to the present with 61 of those killings have taken place since 2016.⁴

⁴ <https://www.rappler.com/nation/lawyers-killed-duterte-marcos-aquino-administrations-data-studies/>

While the Supreme Court acted on the petition of two (2) legal groups, PNP documents related to the killings furnished to the petitioners were inadequate/not substantial . Many documents have exact report of incidences except for the names and identifying data of the victims. The CHR also conducted its own investigations of more than 1139 victims⁵ but the PNP were adamant in their non-cooperation.

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The government actions on cases were primarily prompted by report of the OHCHR and the succeeding HRC Resolution in 2020 for a technical cooperation. The Government with the Philippine UN Team created the UN Joint Program for 3 years (July 2021-June 2024). It's first year of implementation will be reported by the OHCHR on October 5 during the 51st HRC Session.⁶ In addition, the announcement of the ICC to pursue prosecution of submissions filed by victims/CSOs to the international court also prompted efforts. The Department of Justice (DOJ) created a Task Force to Investigate cases starting with 302 cases only. But only those of 52 reviewed incidences with 58 persons killed were released to the public. The result of the review on more number of incidences were only submitted to Pres. Duterte.

From the 302 , 52 cases came from the Phil. Nat'l Police while 250 from the National Prosecution Office. Findings include observation of lapses in police operating procedures and police personnel were given light punishment to such as 30 days of suspension. The Department of Justice concluded that criminal charges ought to be levied against 154 police. The DOJ ordered the NBI for thorough investigation and to this time, only 7 cases for are for build up while 6 have already been dismissed due to lack of witnesses.

The ICC was dissatisfied with the actions of the government and essentially stated that there I no genuine investigation and prosecution being pursued. The efforts are mere desk review, very small percentage of total incidences and noted only observations and remarks on how the victims died and lapses in procedure. According to the ICC, the referred cases fail to consider responsibility of perpetrators who are of higher rank—those who had a hand in planning, coordinating and enforcing the operations.⁷

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Former President Duterte recently accepted full responsibility of all the killings and challenge victims and CSOs to prosecute him using our domestic mechanisms⁸.

The problem of impunity in the Philippines continue not only on EJK.

2012 _ RA 10353 Anti-Enforced Disappearance

⁵ <https://chr.gov.ph/statement-of-chr-executive-director-atty-jacqueline-de-guia-on-the-release-of-the-chrs-comprehensive-report-on-alleged-drug-related-extra-judicial-killings/>

⁶ CSOs with iDEFEND will issue a separate submission assessing the implementation of the UNJP

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https://www.philstar.com/headlines/2022/06/25/2190863/icc-prosecution-high-profile-doj-led-review-war-drugs-killings-desk-review?utm_campaign=News%20and%20updates%20on%20human%20rights%20in%20the%20Philippines&utm_medium=email&utm_source=Revue%20newsletter

⁸ <https://www.reuters.com/world/asia-pacific/philippines-duterte-says-he-takes-full-responsibility-drugs-war-2021-10-21/>

The Families of Victims of Involuntary Disappearances (FIND) recorded 130 cases of enforced disappearance during Duterte's administration. Forty-one (41) cases were documented, 21 victims are missing to date, 7 surfaced alive while 13 were found dead.⁹ Despite repeated recommendations in repeated UPR cycles on the Philippines, the International Convention Against Enforced Disappearance has not been ratified. Finally, the government has always complemented itself on Administrative Order no.35 a directive formulated in 2012 to investigate cases of EJK, Torture, Enforced Disappearance and IHL. From the 385 cases in 7 years covering 4 Administrations with only 13 convictions, which was not specified in the report. specified in the report). 385 cases breakdown include 270 Extra-Legal Killings 80 Torture , 28 Enforced Disappearance at 28 and 7 IHL violations .

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RECOMMENDATIONS:

1. End impunity for extrajudicial killings, enforced disappearances and torture, in particular those perpetrated by security forces, by undertaking thorough investigations and vigorous prosecutions of perpetrators.
2. Embark on a substantial reform of the judicial system to ensure that perpetrators of severe human rights violations are brought to justice and to expedite judicial proceedings of such cases.
3. Provide immediate justice and compensation to victims of WoD, to prioritize families of children victims
4. Amend the Dangerous Drug Acts and enact a public health approach to the issue of illegal drugs.
5. Enact a law defining and criminalizing extrajudicial killings.
6. Cooperate fully with the Prosecutor and the ICC in all their proceedings
7. Rejoin the International Criminal Court
8. Honor its commitment to the Second Optional Protocol to the ICCPR, and refrain from legislative measures seeking the re-imposition of death penalty on drug offenses or any offense.
9. Ratify the International Convention for the Protection of All Persons from Enforced Disappearances.
10. Conduct Oversight on the implementation of Anti-Torture Act, Anti-Enforced Disappearance Act
11. Fully cooperate and issue a standing invitation to all Special Rapporteurs with thematic mandates and working groups of the UN Human Rights Council, in particular the SRs on the situation of human rights defenders, on extrajudicial executions, the Working Group on enforced or involuntary disappearances and an investigative mission of inquiry to the country.

⁹ p. 25, *Joint Civil Society Stakeholders Report , Philippine Alliance of Human Rights Advocates (PAHRA), In Defense of Human Rights and Dignity Movement (iDEFEND) and Center for Popular Empowerment (CPE)*

12. Manifest sincerity and operationalize with concrete targets, time bound the implementation of the UN Joint Program

II. Major Topic/Major Issue: Arbitrary Detention/Fair Trial

A. Follow up up to the first review

At the height of the campaign on War on Drugs - overcrowding in jails/detention facilities reached more than 600% . From the Dept. of Interior and Local Government statement last June 2022, there was some improvement , Jails/holding facilities congestion dropped to 387% congestion from 612% in 2017¹⁰. Even at this rate, sanitation, sleeping space are problems including food supply. The inadequate food was aggravated by COVID when supplies from families to PLDs were restricted.

The DOJ on the other hand stated that - Correction facilities have 300% congestion by same period . More than 3000 or 0.8 % are women, 64% of conviction of women were drug related.

DOJ said that conviction rate of drug cases stands at a measly 21 percent out of the total 291,393 cases filed since 2016¹¹. To further decongest Correction Facilities, the Good Conduct Time Allowance Law (GCTA) under Republic Act No. 10592 (RA 10592). The law allows for deduction of sentences of PDLs, It essentially awards good behavior and recognizes rehabilitation. But it became raked with scandal because the mechanism was corrupted that even resulted to the killing of 1 personnel of the Bureau of Corrections and removal from post of the agency's Director.¹²

The Juvenile Justice Act provides for separate detention facilities, called Bahay Pagasa (House of Hope) for child offenders in all local government units however, out of the 1,400 plus municipalities there were only 75 in operation according to the Juvenile Justice Welfare Council. Only 14 out of 75 are accredited by the Dept. of Social and Welfare Department¹³ which means that most of the facilities at these time are not closely monitored. However, even with the accredited centers, most have inadequate food, beddings, sanitation facilities and programs for the children. Minors, including children less than 15 years old, are locked away and put in inhumane detention regardless of their case status and background. The Children Legal Research and Development Center documented 143 cases of torture and ill treatment of minors/children in 4 cities in the National Capital Region September from 2017 to December 2021.¹⁴

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¹⁰ <https://www.gmanetwork.com/news/topstories/nation/838915/bjmp-jail-congestion-rate-dropped-significantly-now-at-300-abalos/story/>

¹¹ https://www.gmanetwork.com/news/topstories/nation/838907/77-of-drug-cases-filed-from-2016-2022-pending-dilg-s-abalos/storyutm_campaign=News%20and%20updates%20on%20human%20rights%20in%20the%20Philippines&utm_medium=email&utm_source=Revue%20newsletter

¹² <https://www.philstar.com/headlines/2020/10/01/2046441/whatever-happened-to-gcta-controversy>

¹³ <https://www.rappler.com/newsbreak/in-depth/260988-children-deal-with-abuse-fears-coronavirus-bahay-pag-asa/>

¹⁴ *STAKEHOLDER'S REPORT TO THE 4th CYCLE OF THE 41st SESSION OF THE UNIVERSAL PERIODIC REVIEW OF THE PHILIPPINES*, United Against Torure Coalition, World Organization Against Torture (OMCT) and theInternational Rehabilitation Council for Torture Victims (IRCT)

B. New developments since the first review

Perhaps the World Justice Project in its report in 2021¹⁵ paints a clear picture with overall rate of the Philippines at 0.48 with 1 being the highest. The ranking went down 3 points from 2020 and on Criminal Justice factor, its score is 0.31, number 120 of 130 countries assessed by the project.

The minimum standards for the treatment of prisoners and prompt resolution of cases are very inadequately met with 77% are still pending for investigation. Out of 291,393 cases, some 22,000 ended with conviction, 5,753 were dismissed, and 223,579¹⁶ suspects, accused are still waiting for their time in court. Numerous torture incidences documented by CSOs and reports of deaths especially during the Covid pandemic. Overcrowding represents a larger and deeper problem in the Philippine administration of justice. Among the key issues are the delayed issuance of commitment orders; slow disposition of cases or protracted trials; small lock-up cells; inability to post bail by the detainees; and steady influx of arrested suspects.¹⁷

In 2009 the Anti-Torture Law (RA Republic Act No. 9745) was enacted but only 1 case with conviction of 2 police personnel primarily because the CSOs closely monitored the case and assisted the victim. Majority of the EJK victims bore signs of torture especially during the early period of the implementation of the WoD. The Medical Action Group (MAG) reported 542 cases of torture between 2018 and 2020¹⁸, these include those who were mere offenders of COVID restrictions. The National Preventive Mechanism have not been enacted for almost a decade after the Philippines's ratification of OPCAT in 2012.

On the independence of the judiciary and the capacity of the judicial system. The attack against the Former Chief Justice Sereno initiated by the head of the Executive branch was serious and removed her from her post while another Justice was continuously threatened to have the same fate. It is also worrisome that 14 out of 15 current Justices were appointed by the Past Administration. One of the most notable actions of the Supreme Court was the a directive for Continuing Trial in 2017, however with many vacancies among judges and prosecutors and backlogs in cases, the effect of the order is still not felt.

The Commission on Human Rights of the Philippines and Commissioners were vilified and red tagged by the government by being independent and true to their mandates. The appointment of new set of Commissioners should be among human rights advocates to maintain the integrity and credibility of the institution.

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¹⁵ <https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf>

¹⁶ https://www.gmanetwork.com/news/topstories/nation/838907/77-of-drug-cases-filed-from-2016-2022-pending-dilig-s-abalos/storyutm_campaign=News%20and%20updates%20on%20human%20rights%20in%20the%20Philippines&utm_medium=email&utm_source=Revue%20newsletter

¹⁷ /18 TAKEHOLDER'S REPORT TO THE 4th CYCLE OF THE 41st SESSION OF THE UNIVERSAL PERIODIC REVIEW OF THE PHILIPPINES, United Against Torure Coalition, World Organization Against Torture (OMCT) and the International Rehabilitation Council for Torture Victims (IRCT)

Recommendations

1. Enforce fully all Government guidelines that will ensure minimum standards for treatment including fair trials are provided to all PDLs.
2. Empower paralegals working in jails and corrections facilities to assist in fulfilling the Supreme Court guidelines and release the sickly and the elderly detainees on humanitarian grounds.
3. Establish by law an independent National Preventive Mechanism and respect and enforce the mandate of the Commission on Human Rights to visit places of detention as provided for by the Anti Torture Act and the Anti Enforced Disappearance Act
4. Raise the budget of the BJMP and Bureau of Corrections to augment the number of trained human rights officers and health personnel in jails, and improve the health care programs and services for PDLs, including programs for mental health.
5. Convene an Inter-Agency Committee for Prison reform where the Commission on Human Rights and civil society organizations can engage with state agencies towards an integrated and multi-disciplinary prison reform strategy.
6. Fully enforce the Juvenile Justice and Welfare Act and the Anti-Torture Act of 2009 to protect children detained from any act of torture, cruel, inhuman or degrading treatment or punishment.
7. Respect the independence of the Judiciary and the Commission on Human Rights

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