

The 'war on drugs' and crimes against humanity: Developing the case for international criminal justice in the Philippines

Project Partners: The International Centre on Human Rights and Drug Policy & Harm Reduction International

Project overview:

In May 2016, Rodrigo Duterte, was democratically elected into the office of President of the Philippines. Duterte, a lawyer and long-serving mayor of Davao City in the Southern Philippines, ran and won his election on a campaign that promised a toughened approach to tackling the country's drug problem. The rhetoric of his campaign promised a relentless war on drug users, dealers, and kingpins, drawing from his brutal campaign of extrajudicial violence while mayor of Davao City. Upon election, Duterte has escalated his calls for an end to the illicit drug trade, publicly espousing a shoot to kill policy of drug suspects and offering blanket immunity to law enforcement for their efforts. These calls were followed by a wave of killings—to date, more than 3,000—of people suspected of drug use or sales. Both State police forces and armed vigilantes have carried out the killings. Despite international condemnation of these killings from the United Nations Secretary General, the High Commissioner of Human Rights and two independent United Nations experts—the Special Rapporteurs on health and on summary, arbitrary or extrajudicial executions, the campaign of violence continues to escalate. In Manila, concerned Senators held hearings to address the campaign of violence. As a result, the leading Senator in these efforts has been a subject of ridicule and highly aggressive scare mongering by the press, politicians, and from the President himself.

In the wake of these events, a coalition of human rights organisations and frontline civil society groups have been working hard to organise a response across the country, from capital to the villages of Mindano. Frontline services and documentation of human rights violations have been challenging given the security situation on the ground, particularly for local staff. Local NGOs are overwhelmed with requests for assistance—many are not equipped with the resources to document wholesale, drug-related killings, the security situation notwithstanding. At the international level, various avenues have been identified to advocate for justice and an end to the killings. Human rights groups have targeted their efforts to bring an end to the killings as quickly as possible, including calls to donor countries to suspend public security assistance to the Philippines. However, there is emerging interest in exploring longer-term pathways to justice not currently possible in the Philippines. This includes undertaking a situational and legal analysis to establish if Duterte and other senior officials have indeed committed an international crime.

The International Centre on Human Rights and Drug Policy (HRDP), Harm Reduction International, and other collaborators are ready to begin a preliminary

examination to determine if an NGO complaint to the Office of the Prosecutor of the International Criminal Court is theoretically, a legally sound option.

This project will produce a report that places the current 'war on drugs' in the Philippines within the framework of the Rome Statute. The project output will serve as an important scoping document for the HRDP and partners as the human rights community considers ways forward in pursuing international justice. Should evidence become available in the course of this project that decisively indicates an NGO complaint is indeed the way forward, the Clinic team will also be indispensable in efforts to prepare the necessary documentation. In any event, the project output document can and will be used to inform advocacy by civil society to help stop the tragic killings underway in the Philippines.

Project Output: 20 page scoping document

The project output should be structured to include the following:

- Policy review of the Philippines national drug strategy—focusing on their Dangerous Drugs Act and subsequent calls from the President's Dangerous Drugs Board, the President and various officials within the public security branch (to the extent the information is available)
- Legal analysis of the situation in the Philippines, especially the actions of authorities in light of the Rome Statute. This should include:
 - Clarifying the definition of crimes against humanity by using the jurisprudence of the Court.
 - Elaborate the legal test regularly applied in determining a crime against humanity and assessing individual criminal responsibility
 - Overlay this analysis, as known and necessary, with the specific context of the Philippines—highlighting where certain legal thresholds have potentially (or flagrantly) been crossed

Project timeline & activities:

This project is centered around key research and learning goals and one briefing paper deliverable.

Project Phase 1 (October-December 2015): Building effective research plans

Clinic participants will:

- Acquire basic legal and human rights research skills
- Undertake research of drug control law and policy and apply (both international and domestic) and frame within the perspective of international criminal law
- Undertake a thorough review and analysis of ICC jurisprudence in relation to article 7, crimes against humanity
- Acquire skills to design and implement a research project timeline and strategy

- Complete a research project work plan
- Understand the existing situation in the Philippines, including the drug policy environment
- Participate in a project partner discussion with partner NGOs
- Participate in an interactive discussion with an ICC expert to sharpen strength of approach to research
- Produce a draft project outline by December 2016

Project Phase 2 (January-June 2015): Researching and drafting a research-based advocacy briefing paper

- Attend a two-day intensive course on human rights and drug policy hosted by the HRDP
- Complete comprehensive research for briefing paper
- Develop writing skills through regular supervisory and peer review exercises
- Collaborate regularly with team on research and writing tasks through team meetings and/or collaborative writing engagements
- Submit regular writing drafts of research and a full provisional draft to project partners for review
- Complete a final, high quality academic briefing paper

Partner Roles:

HRDP: Co-Director will manage and oversee the day-to-day progress of the Clinic team, including through bi-weekly Clinic team meetings

Harm Reduction International: Provide commentary on initial outline & provisional written draft prior to final submission; provide an introductory lecture of HRI's role in the subject area and the general problem

Clinic team: 4 students, working from October to end of June will produce the necessary draft outline, written draft, and final project output