

H U M A N
R I G H T S
W A T C H

Submission to the Universal Periodic Review of the Philippines
Human Rights Watch

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Introduction

Serious human rights violations continue in the Philippines. On September 15, 2021, the International Criminal Court (ICC) agreed to open a formal investigation into extrajudicial killings and other abuses that may amount to crimes against humanity committed during President Rodrigo Duterte's "war on drugs" from 2017 to 2019, and extrajudicial executions committed in Davao City in the southern Philippines from 2011 to 2017, when Duterte was mayor. Various human rights groups allege that between 12,000 and 30,000 people have been killed in the "drug war."

In July 2020, the Philippine government and the United Nations launched a joint "human rights program" to address human rights violations and accountability failings in the country, reflecting domestic and international concerns about "drug war" killings. Rights groups, including Human Rights Watch, consider the program inadequate, and continue to call for an independent international investigation.

Extrajudicial Killings

In the last UPR review in 2017, the Philippine government merely "noted" recommendations by various UN member states to end impunity for extrajudicial killings and to hold perpetrators accountable (recommendations 133.137 through 133.155).¹ The government also denied that the deaths that occurred in the "war on drugs" were extrajudicial killings. These deaths, it said, were the result of "legitimate law enforcement operations or deaths that require further investigation following the established rules of engagement by the country's law enforcers."²

As of January 31, 2022, the government said 6,229 individuals have been killed by the authorities in police anti-drug operations.³ This number does not include the deaths of thousands of others attributed to unidentified assailants, many of whom are believed to be state agents. Very few of these killings have been seriously investigated.

In September 2021, a pre-trial chamber of the ICC granted the prosecutor's request to open a formal investigation into alleged crimes against humanity in the Philippines from the time the country ratified the ICC's Rome Statute on November 1, 2011, until its withdrawal from the treaty on March 16, 2019. In its decision to approve the investigation, the pre-trial chamber stated the government's anti-drug campaign "cannot be seen as a legitimate law enforcement operation, and the killings neither as legitimate nor as mere excesses in an otherwise legitimate operation." The chamber also said there has been "a widespread and systematic attack against the civilian population" as part of a state policy.

The review followed the admission by the Department of Justice before the UN Human Rights Council in February 2021 that officers failed to follow official protocols during these operations.⁴ In many cases, police made no effort to examine allegedly recovered weapons, verify ownership, or conduct ballistic examinations.

¹ "Philippines: Report of the Working Group on the Universal Periodic Review," Human Rights Council, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/194/21/PDF/G1719421.pdf?OpenElement> (accessed March 9, 2022)

² "Philippines response to UN Human Rights Council recommendations in the 3rd cycle of the Universal Periodic Review of the Philippines, 8 May 2017," Human Rights Council, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/273/53/PDF/G1727353.pdf?OpenElement> (accessed March 9, 2022)

³ "#RealNumbersPH Year 5," Philippine Drug Enforcement Agency, https://pdea.gov.ph/index.php?option=com_content&view=article&layout=edit&id=279 (accessed March 22, 2022).

⁴ "Philippines Admits Police Role in 'Drug War' Killings," Human Rights Watch, <https://www.hrw.org/news/2021/02/25/philippines-admits-police-role-drug-war-killings> (accessed March 30, 2022)

The Justice Department investigation has faced criticism for repeated delays, lack of transparency, and refusal to involve the national Commission on Human Rights in its review. In a transparent effort to head off ICC involvement, the department released in October 2021 a preliminary report affirming that police were culpable in at least 52 cases and promised to investigate further. In January 2022, the Justice Department announced that police officers implicated in four of these cases have been indicted. The names of the individuals and numbers of indictments have not been released.

On November 18, 2021, the ICC prosecutor, Karim Khan, notified the court that the Philippine government requested a deferral of the ICC's investigation, claiming that it had begun its own investigations into cases of extrajudicial killings attributed to the police during "drug war" operations. As part of the deferral request, the Philippines government cited the Department of Justice's review of 52 cases in which they found administrative liability on the part of its law enforcement agents, and the Justice Department's recommendation for further investigation for possible criminal charges.

Under the complementarity proviso of the Rome Statute, the tribunal can only investigate allegations if a country does not conduct genuine proceedings relevant to crimes that could otherwise be prosecuted before the court. On November 23, the Office of the Prosecutor asked the Duterte administration for information substantiating its investigations. The government has yet to publicly respond to the request and has reiterated its argument that the ICC does not have jurisdiction over the Philippines.

Human Rights Watch submitted a letter to the Department of Justice seeking details about the government's claim that it was investigating police involvement in the killings. Philippine rights groups have found the number of pending investigations grossly inadequate to address the scale of the killings, for which official figures are far below estimates from nongovernmental organizations.

Apart from killings related to the "war on drugs," the targeting of political activists, civil society actors, and journalists has likewise continued since the 2017 review.

The murder of journalists has continued unabated since the 2017 UPR review. According to the National Union of Journalists of the Philippines, 22 journalists have been killed since 2017, typically by unidentified gunmen.⁵ In December 2021, journalist Jesus Malabanan was shot dead in his home in Calbayog City. In October 2021, Orlando Dinoy of Newline Philippines and Energy Radio RM was killed in his home in Digos City. In July 2021, Reynante Cortes, a radio broadcaster known for his on-air commentary on local politics and corruption, was fatally shot as he was leaving his radio station in Cebu City. In November 2020, newspaper columnist and radio commentator Virgilio Maganes was killed by gunmen in Villasis town, Pangasinan province.

In the second UPR cycle, the government said it supported measures to end extrajudicial killings (recommendation 131.32) and made note of similar recommendations (133.137 through 133.155) in the 2017 cycle. The extrajudicial and summary killings of suspected criminals, many of them children, continued, however, with practically zero accountability for those responsible. A report by Human Rights Watch in 2014 detailed the involvement of the police and local government officials in the systematic targeting of individuals in the city of Tagum in Mindanao by using hired

⁵ "Filipino journalist who helped probe Duterte's drug war shot dead," Al Jazeera, <https://www.aljazeera.com/news/2021/12/9/filipino-journalist-who-investigated-duterte-drug-war-killed> (accessed March 28, 2022).

assassins who took orders and payment from municipal officials.⁶ These killings were patterned after similar killings perpetrated by the so-called Davao Death Squad in Davao City, where Duterte was mayor for decades.⁷ Not a single person has been brought to justice for these killings.

In the 2017 UPR cycle, the Philippine government supported recommendations by various states (recommendations 133.34 through 133.42) for it to develop, enforce, and publicize its National Human Rights Action Plan. The plan was touted as a key framework to address human rights issues in the country. However, details of the 2018-2022 action plan are practically unknown outside of the Duterte government. Philippine human rights groups told Human Rights Watch in March 2022 that they have never been consulted by the government about the action plan or know the status of the document. The Commission on Human Rights apparently does not have a copy of the plan.

Despite recommendations (133.13 through 133.17, 133.119) for the Philippines to allow a visit by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the government has refused the request. The Duterte administration in 2017 and 2018 attacked the then-Special Rapporteur, Agnes Callamard, publicly demonizing her through official statements that often came from the president himself.

Recommendations to the Philippine government

- *Stop unlawful anti-drug raids and killings of suspected drug users and drug dealers;*
- *Investigate and appropriately prosecute police officers and state agents implicated in these killings;*
- *Create an official multisectoral body – composed of government and civil society members – to monitor government investigations and prosecutions, and ensure the transparency of the review process initiated by the Department of Justice;*
- *Direct the Department of Justice to work with the Commission on Human Rights in reviewing “drug war” cases;*
- *Reconsider the decision to withdraw from the Rome Statute of the ICC and recognize the ICC’s jurisdiction to investigate crimes prior to the date of the Philippines’ withdrawal from the Rome Statute;*
- *Respond to the ICC’s request for more information regarding domestic investigations pursuant to the Philippines’ deferral request under the Rome Statute or withdraw the deferral request;*
- *Enforce and publicize the National Human Rights Action Plan and ensure the participation by civil society and human rights groups in its formulation and enforcement;*
- *Extend an invitation to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions to visit the Philippines.*

Attacks Against Rights Defenders, Civil Society

In the 2017 UPR cycle, several states urged the Philippine government (recommendations 133.170, 133.173 through 133.182) to ensure a safe environment for civil society and human rights defenders. In response, the government merely “noted” these recommendations.

The country’s 52-year-long communist insurgency has continued since the last cycle. During counter-insurgency operations against the New People’s Army, government security forces

⁶ "One Shot to the Head: Death Squad Killings in Tagum City, Philippines," Human Rights Watch, <https://www.hrw.org/report/2014/05/20/one-shot-head/death-squad-killings-tagum-city-philippines> (accessed March 28, 2022).

⁷ "You Can Die Any Time: Death Squad Killings in Mindanao," Human Rights Watch, https://www.hrw.org/sites/default/files/reports/philippines0409webwcover_0.pdf (accessed March 28, 2022).

frequently targeted leftist activists, including peasant leaders, environmentalists, human rights lawyers, and Indigenous group heads, among others. Government and military officials often “red-tag” such individuals through announcements and social media, putting them at grave risk of attack. The National Task Force on Ending Local Communist Armed Conflict is the main government agency engaged in “red-tagging.” It is composed of officials from several government agencies, including the military and the police.

The police and the military continue to target individuals for arbitrary arrests on suspicion that they are members of the communist movement. A recent and widely denounced arbitrary arrest was that of Dr. Natividad Castro, a human rights defender who in 2017 spoke at the UN Human Rights Council about the abuses committed against Indigenous peoples in the Philippines.

Senator Leila de Lima, a chief critic of President Duterte’s “war drugs,” has been in police custody since her arrest in February 2017. The authorities arrested her after she sought to investigate extrajudicial executions committed in the context of the anti-drug campaign.

In January 2022, the House of Representatives overwhelmingly passed the Human Rights Defenders Protection Act, which is intended to protect rights defenders by “defining the rights and fundamental freedoms of human rights defenders, declaring state responsibilities, and instituting effective mechanisms for the protection and promotion of these rights and freedoms.”⁸ The Senate has yet to pass its own version of the bill.

Recommendations for the Philippine government

- *End the practice of red-tagging;*
- *Abolish the National Task Force on Ending Local Communist Armed Conflict, which is responsible for the red-tagging;*
- *Release all detained activists who have been arrested for exercising their fundamental human rights;*
- *Ensure all military and counterinsurgency operations are conducted in accordance with international human rights and humanitarian law, and investigate and appropriately prosecute officials, regardless of rank or position, responsible for violations;*
- *Drop the fabricated charges against Senator Leila de Lima, Dr. Natividad Castro, and others who are being arbitrarily detained because of their political views;*
- *Enact the Human Rights Defenders Protection law.*

Freedom of the Press

In the 2012 UPR cycle, the Philippine government “noted” a recommendation by states to “effectively investigate and prosecute attacks against journalists.” It also “noted” similar recommendations (133.170 through 133.182) in the 2017 cycle.

Media freedom and freedom of expression received a big boost in October 2021 when Maria Ressa, the co-founder and executive editor of the news website Rappler, was awarded the Nobel Peace Prize, along with Russian editor Dmitry Muratov. Ressa and Rappler have been the target of reprisals, mainly through libel and tax evasion cases, from the Duterte government and its

⁸ "House Bill 10576: Defining the rights and fundamental freedoms of human rights defenders, declaring state responsibilities, and instituting effective mechanisms for the protection and promotion of these rights and freedoms." House of Representatives, https://hrep-website.s3.amazonaws.com/legisdocs/third_18/HBT10576.pdf (accessed March 30, 2022).

supporters for the website's reporting on "drug war" killings and for helping to expose what Ressa called Duterte's "weaponization of the Internet" to target critics of the government and dissidents.

In April 2021, journalists from the Northern Dispatch, a weekly newspaper, were harassed by municipal police in Kalinga province for covering an event organized by leftist groups. Journalists of the same newspaper were later "red-tagged" by authorities. In September 2021, leftist media organizations Bulatlat and AlterMidya alleged that the Philippine military was launching "denial of service" attacks on their websites. Frenchie Mae Cumpio, a journalist in the central Philippines, has been in police detention since February 3, 2020, on allegations that she supported communist rebels.

Recommendations to the Philippine government

- Investigate and appropriately prosecute all those responsible for the killing of journalists;
- *Stop the red-tagging and harassment of journalists and media organizations;*
- *Drop the politically motivated charges against Maria Ressa and her colleagues at Rappler;*
- *Release from detention journalist Frenchie Me Cumpio.*

Counterterrorism

In the 2017 UPR cycle, the Philippine government supported recommendation 133.75, which urged the government to "continue efforts to combat terrorism, the drug trade and drug use, within the framework of the Constitution, the law and international human rights standards." However, since its passage in July 2020, the Anti-Terrorism Act has been denounced because it "dilutes human rights safeguards" and creates a "chilling effect on human rights and humanitarian work."⁹ Since its passage, the law has been challenged in the courts but has nevertheless been used by the government against activists, Indigenous peoples, unionists, and alleged communist insurgents.

Recommendations to the Philippine government

- *Substantially amend the Anti-Terrorism Law to ensure compliance with international standards, in particular the overbroad definition of terrorism and vague language that could be misused by authorities. In the meantime, institute safeguards to prevent it from being abused by state security forces against activists and ordinary people.*

Children's Rights

Children have been severely impacted in the government's "war on drugs," with many of them being killed and others suffering the psychological, economic, and social costs of the brutal campaign.¹⁰

Children's rights in the Philippines enjoyed a boost in March 2022 when President Duterte signed a law raising the age of sexual consent from 12 to 16, with an important exemption to avoid criminalizing consensual sexual activity among children close in age. Earlier, in December 2021, a bill that had been pending in Congress that seeks to ban child marriage automatically became law after Duterte did not sign it. The law sets tough penalties for arranging a child marriage and

⁹ "Situation of Human Rights in the Philippines," Office of the High Commissioner for Human Rights, <https://www.ohchr.org/sites/default/files/Documents/Countries/PH/Philippines-HRC44-AEV.pdf> (accessed March 28, 2022).

¹⁰ "'Our Happy Family Is Gone': Impact of the 'War on Drugs' on Children in the Philippines, Human Rights Watch, <https://www.hrw.org/report/2020/05/27/our-happy-family-gone/impact-war-drugs-children-philippines> (accessed March 28, 2022).

mandates that the government establish programs to prevent child marriage.¹¹

In a major step backwards, the government is supporting a bill that seeks to lower the age of criminal responsibility from the current 15 to 12. In the 2017 UPR cycle, several states urged the Philippine government not to make this change (recommendations 133.162 through 133.169), which President Duterte had made part of his campaign against crime. The government “noted” this recommendation, as it also did in the 2012 UPR cycle.

Recommendations to the Philippine government

- *Drop plans to lower the age of criminal responsibility;*
- *Provide psychosocial support for children affected by the “war on drugs”;*
- *Establish comprehensive programs to prevent child marriage as mandated by the Prohibition of Child Marriage Law;*
- *Endorse the Safe Schools Declaration.*

Women’s Rights

Abortion, including in cases of rape, incest or when the health and life of the pregnant woman is at risk, remains illegal in the Philippines. States urged the government to reverse this policy in the UPR 2012 and 2017 cycles (recommendations 133.232).¹²

Recommendation to the Philippine government

- *Repeal all legislation criminalizing or restricting access to abortion.*

LGBT Rights

In the UPR 2017 cycle, the Philippine government was urged to enact legislation to counter discrimination against LGBT people (recommendation 133.126) and responded by expressing support for it. However, the anti-discrimination bill introduced in 2000, now called the SOGIE Equality Bill, remains pending in Congress as it faces opposition from conservative legislators.

Recommendation to the Philippine government

- *Enact legislation that prohibits discrimination based on sexual orientation and gender identity.*

¹¹ "PCW lauds passage of bill criminalizing child marriage at Senate," Philippine Commission on Women, <https://pcw.gov.ph/pcw-lauds-passage-of-bill-criminalizing-child-marriage-at-senate/#:~:text=In%20the%20Philippines%2C%20the%20legal,reaching%20the%20age%20of%20fifteen> (accessed March 29, 2022).

¹² "Facts on Abortion in the Philippines: Criminalization and a General Ban on Abortion," Center for Reproductive Rights, https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/pub_fac_philippines_1%2010.pdf (accessed March 29, 2022).