



# General Assembly

Distr.: General  
30 September 2021

English only

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## Human Rights Council

### Forty-eighth session

13 September–1 October 2021

Agenda item 10

### Technical assistance and capacity-building

## **Written statement\* submitted by Asian Forum for Human Rights and Development, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2021]

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\* Issued as received, in the language(s) of submission only.



## **Civil Society Assessment of the United Nations Joint Program on Human Rights in the Philippines**

### **I. Introduction**

A year after the adoption of a resolution for technical cooperation on the Philippines, systemic human rights violations continue to be perpetrated and investigations and prosecutions remain lacking.

According to official figures, the government's 'war on drugs' was responsible for over 7000 killings<sup>1</sup> by November 2020. President Duterte vowed a relentless war until the end of his term and all indicators suggest that despite this resolution, the violent campaign continues.

A culture of impunity persists. The Anti-Terrorism Law's passage reinforced the government's campaign against dissent, escalated 'red-tagging', threats of violence and extrajudicial killings of political opponents, human rights defenders and community leaders. The president has labelled indigenous communities as rebels. In June, three indigenous farmers were killed by soldiers who accused them of being part of the New People's Army.<sup>2</sup>

Victims' families face challenges in accessing justice, including threats of reprisals, lack of protective mechanisms, and the intimidation and surveillance of their communities.

Since 2016, civil society and human rights groups have sought an independent international investigation into the widespread and systematic human rights violations and abuses, arising from the President's bloody 'war on drugs'. This would have complemented developments at the International Criminal Court (ICC)<sup>3</sup> in a timely manner.

### **II. Civil Society Assessment of the UN Joint Program on Human Rights (Joint Program)**

#### **A. The one-year process**

The process towards a final agreement between the UN and the government took a considerable amount of time mainly due to disagreements over human rights protection and counter terrorism measures. Baseline data and target indicators for identified critical human rights issues have yet to be completed.

Concerned civil society appreciate that they will be represented in the Steering Committee and the six technical working groups of the program. However, the government has shown no willingness to ensure genuine engagement with civil society or the Commission on Human Rights to complete the frameworks and mechanisms. The UN team, meanwhile, had been consulting with CSOs and other stakeholders despite the government's lack of participation.

Civil society appreciate the UN country team's completion of the Socioeconomic and Peacebuilding Framework (SEPF) as part of the Joint Program and urge its prompt implementation.

#### **B. Joint Program Framework and the absence of clear targets and indicators**

By the end of the Program's implementation in 2024, the following outcomes are envisaged:

1. Duty-bearers have their capacities to respect, protect, and fulfill human rights strengthened; increasingly apply a human rights-based approach; and there is a substantial reduction in violations as a result of increased awareness and compliance with the state's international human rights obligations.

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<sup>1</sup> <https://www.philstar.com/headlines/2020/11/04/2054558/philippine-police-figures-show-grim-number-drug-war-deaths-nearing-8000>.

<sup>2</sup> <https://newsinfo.inquirer.net/1448037/chr-governor-probe-lumad-killings-by-soldiers-in-surigao-del-sur>.

<sup>3</sup> <https://thediplomat.com/2021/08/duterte-vs-the-international-criminal-court/>.

- In the goal of stopping the perpetration of extrajudicial killings, aiming for a 30% reduction of human rights violations amidst a lack of concrete baseline figure from the police, its insistence on the “presumption of regularity”<sup>4</sup> and its propensity to tamper with evidence<sup>5</sup> - the target outcome faces serious challenges. Duty bearers must firstly recognize the immense gravity of crimes being committed.
  - All cases must be investigated and referred for disciplinary action including those perpetrated in relation to the ‘war on drugs’ such as extrajudicial killings, unlawful detention, involuntary disappearances, torture and sexual assault. Prompting action only in relation to counter terrorism legislation confuses the targets and commits to a double standard in the application of the law. The first and largest number of victims are those from the drug war.
  - The last official visit of a special procedure mandate holder to the Philippines was in 2015. The Joint Program recommends “at least one” for the duration of the program. This raises questions about the acknowledgement of the gravity of the violations related to the ‘war on drugs’ and war on dissent. In any case, this should be led by Special Procedure mandates on human rights defenders, on counter terrorism and on the right to health.
2. Domestic accountability mechanisms to address human rights violations and abuses are strengthened, leading to increased accountability for human rights violations and abuses, and justice and redress for victims.
- Baseline and targets still to be determined for Indicator 2A (deaths of civilians in police operations, investigations, administrative cases filed)
  - No explicit period identified within the 3-year period for the establishment of the National Preventive Mechanism (Indicator 3.2.A) and the adoption of Human Rights Defenders Bill into law (Indicator 3.3.B)
  - While the baseline data and targets remain to be determined, police cooperation with any investigation relies solely on the orders of the President. Out of 7,884 cases being internally investigated by the police, the Secretary of the Department of Justice said he was granted access to only sixty-one (61), “outside the drug war review”.<sup>6</sup>
  - Duterte’s statement that the Philippines will not give full access to its records on its ‘war in drugs’ and the anti-insurgency drive places serious obstacles in the efforts of the Justice Department, which had already reported to the Human Rights Council scores of police errors and operational breaches in anti-drug operations.<sup>7</sup>
3. Rights holders, including victims of human rights violations and abuses and their families, are better able to claim their rights.
- There is no mention of direct, immediate protection, compensation and support to victims and families, including for the more than 120 children killed.

### C. Risks and Prospects of the Joint Program

Weaknesses in the Joint Program include the lack of participation of the legislative and judicial branches; lack of review of critical draft legislation such as the National Preventive Mechanism and Protection of Human Rights Defenders; the lack of oversight on Executive and Administrative issuances and memoranda that diminish civic spaces; and the non-review of legislation such as the Anti-Terrorism Act of 2020, Anti-Enforced Disappearance Act of 2012, and the Comprehensive Dangerous Drugs Act of 2002. The Joint Program lacks recommendations towards a rights-based and public health focused drug policy.

The European-Philippines Justice Project has worked to enhance capacities and strengthen mechanisms in the justice system, the security sector and civil society. Since the 2007 visit

<sup>4</sup> <https://www.rappler.com/nation/pnp-statement-supreme-court-ejk-regularity-presumption>.

<sup>5</sup> <https://www.justice.gov/eoir/page/file/1180791/download>.

<sup>6</sup> <https://www.rappler.com/nation/doj-report-pnp-investigation-against-police-since-2016>.

<sup>7</sup> <https://philippinehumanrights.org/news/11-statements/56-guevarra-report-to-the-un-deflects-culpability-accountability-from-duterte-shields-him-from-justice>.

of the Special Rapporteur on extrajudicial, summary or arbitrary executions the process has resulted in an Administrative Order 35 (2012) which created and mandated the work of an Inter-Agency Committee on Extra-legal killings, Enforced Disappearances, Torture and other Grave Violations of the Right to Life, Liberty and Security of Persons. These include the establishment of a National Monitoring Mechanism, investigations, forensic trainings and trainings on rights-based policing. These mechanisms could have aided efforts towards justice and accountability today. However, these developments were discarded with the launching of the government's 'war on drugs' in 2016.

The President has systematically undermined the country's democratic institutions, human rights legislation and checks and balances.

The Joint Program lacks direct and concrete responses to the needs of justice and accountability, as necessitated in the 2020 report of the OHCHR.

The few outcomes expected from the Joint Program may only perpetuate impunity for these crimes and compromise the credibility of global human rights system.

The government's adamant refusal to cooperate with the ICC's potential investigation; its continued denial of widespread violations arising from anti-drug and anti-terrorism measures; palliative efforts at prosecuting extrajudicial killings and other serious violations against marginalized communities, indicate that the government is unwilling to resolve the human rights crises. Police and local authorities have been emboldened to commit violations because of persistent impunity.

Any impact of the Joint Program may only be felt with the response of the next administration, with elections in less than 10 months. The President's allies, however, appear to have started planning to succeed him, raising fears that this government will continue its repression and evade accountability. Possible success of this plan in which Duterte's trusted assistant runs for president and with Duterte as vice-president will frustrate the essence of the Joint Program and allow him to escape accountability including at the ICC. This poses the greatest threat to the success of the Joint Program.

During the adoption of the resolution 45/33 of the Council in September 2020, international and local civil society called on the Council to be ready for additional measures towards more effective responses to the human rights crises. The time to consider these measures has come.

## **Recommendations**

We urge the Council to fulfill its mandate to prevent further killings and repression. We urge the Council to:

1. Establish an international independent investigation, and ensure accountability for all violations and abuses committed in context of the 'War on Drugs',
2. Call for an end to the killings and systematic attacks on civic space including attacks against defenders, media, journalists, and civil society,
3. Provide immediate justice and restitution to victims and families, including children killed in the 'war on drugs'
4. Include concrete and clear targets on accountability and command responsibility in the Joint Program.
5. Ensure commitment of the whole of government to the full implementation of the Joint Program in accordance with international standards.

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In Defense of Human Rights and Dignity Movement (iDEFEND), Philippines, NGO(s) without consultative status, also share the views expressed in this statement.