

Resisting Attacks on Rights and International Law Using International Remedies and Through International Work

(Case Study: The Duterte ICC proceedings)

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INTRODUCTION

- **use international law** to stop the commission of atrocity crimes, ensure accountability for perpetrators and redress for victims
- **why it is necessary today to fight back** against imperialist attacks on international law
- the case of Duterte in the ICC and **why it is important to bring him to justice** for his victims

SCOPE

- I. DOMESTIC CONTEXT AND REMEDIES
- II. UNIVERSAL JURISDICTION
- III. INTERNATIONAL CRIMINAL COURT
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- Case Study: The Case of ex-Philippine President Duterte
- (IV. UN HUMAN RIGHTS BODIES)
- V. PEOPLES' TRIBUNALS AND FACT-FINDING MISSIONS
- V. LEGAL SOLIDARITY WORK

I. DOMESTIC COTEXT AND REMEDIES

- **Legal Milieu**
- **Limitations of Domestic Remedies**
- **Weaponization or Instrumentalization of the Law against Critics**

Legal Milieu

- **Impunity** arising from lack, inadequate, absent or skewed investigation and prosecution
- Legal **presumptions**/fiction in favor of State actors
- Formal **legalization** of process leading to violations

- Circumvention of legal procedure
- Repressive laws and jurisprudence
- Corruption, influence, ties that bind

- High level **condonation** and inducement of acts and actors of violations
- **Multiple standards** of justice
- **Reinvention/Bending** of the law

Limitations of Domestic Remedies

- Executive/State **immunity** from suit
- Remedies are **diluted**, circumvented and not immediate, decisive, and effective
- Legal **fiction**

- **Slow**, cumbersome, tedious, protracted and complicated legal procedure usually inaccessible to or biased against the poor
- Subjective and **extraneous** factors in decision-making (pressure, promotion, partisanship)

Limitations of International Remedies Platforms

- Lack of familiarity, expertise or experience
- Political factors and intervention
- Usually no legal coercive powers
- International relations and interests
- Costly

II. UNIVERSAL JURISDICTION

- > bring perpetrators to justice before national jurisdictions either on the basis of the competence of national courts for **bi-nationals** or on the basis of the well-established principle of **universal jurisdiction**.
- > prosecution of individuals for heinous international crimes (genocide, war crimes, torture and crimes against humanity in a national court of one State even if such acts are committed in another State (especially if there is a personal or property **nexus** of the perpetrator)
- >debate about **sovereignty and territoriality**

III. INTERNATIONAL CRIMINAL COURT

A. Jurisdiction



- The International Criminal Court (ICC) is an intergovernmental organization and international tribunal that sits in The Hague, Netherlands.

The ICC has jurisdiction to prosecute individuals for the international crimes of:

- 1) genocide,
- 2) crimes against humanity,
- 3) war crimes, and
- 4) crimes of aggression.

Case Study: The Case of ex-Philippine President Duterte

- **December 2016** - ICC prosecutor statement about the situation in the Philippines
- - Deeply concerned about killings ; Will monitor closely and record any instance of incitement or resort to violence; Consider opening a preliminary examination
- **February 2018** - ICC prosecutor declared opening of a preliminary investigation
- **2018** Preliminary examination by the Office of the Prosecutor

- **March 2018** Notification of withdrawal by Duterte administration
- **March 2019** Effectivity of withdrawal
- **2021** Investigation authorized by the Pre-Trial Chamber
- **2025** Issuance of a warrant of arrest
- **March 2025** Arrest

B. Communications against Duterte for Crimes against Humanity

- Complaint and Communication filed in August 2018 with the Office of the Prosecutor
- This is the first case directly filed by the families of victims themselves against the sitting Head of State for the mass murder of, and, other inhumane acts intentionally causing great suffering, or serious injury to body or mental or physical health under his anti-drug policy and anti-criminality campaign committed against thousands of Filipinos.

- President Duterte is criminally responsible and liable being the **most senior leader** and most responsible for these crimes.
- He is also criminally responsible, under the principle of **command responsibility**, being the commander and superior authority over the police and other state security forces who committed the killings and other atrocities.

Why the ICC?

- **Firstly**, the extra-judicial killings, mass arrests, and other inhumane acts are so grievous and so heinous that is of sufficient gravity to justify further action of the Court.
- **Secondly**, President Duterte was not investigated or prosecuted and he has not been previously investigated or prosecuted in the Philippines for the extra-judicial killings that he ordered and allowed to persist during the period of his presidency, nor has he been previously tried for conduct which is subject of the communication.

- **Thirdly**, the Philippine justice system is unable to prosecute President Duterte because presidents are expressly immune from suit under the Philippine justice system.

The Duterte case underscores the enduring pressure from international and grassroots movements but also tests the ICC's credibility in delivering justice amid competing state interests.

Charges raised by the Prosecution

- • Duterte committed crimes against humanity in the acts of murder and attempted murder in the Philippines between **November 1, 2011 and March 16, 2019**
- • Duterte and other co-perpetrators implemented a plan to attack and kill civilians in a **widespread and systematic** manner (the ICC refers to this as a “**common plan**”)
- • Charges cover non-exhaustive and emblematic list of 49 incidents and 78 victims
- **Culled, adopted or based on the Powerpoint of Atty. Kristina Conti, NUPL-NCR Secretary General and ICC Registered Assistant to Counsel*


Issue of Jurisdiction

- Article 127 ICC Rules- Withdrawal
- “A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, x x x
- Its withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings in relation to which the withdrawing State had a duty to cooperate and which were commenced prior to the date on which the withdrawal became effective nor shall it prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective”

Issue of Jurisdiction

Does the interpretation of the term “**any matter which was already under consideration by the Court**” preclude taking cognizance of an investigation begun after a country has withdrawn from the ICC? **NO**

- o **Any matter** – includes preliminary examination
- o **Under consideration** – as long as being considered in a generic sense
- o **By the Court** – includes the Office of the Prosecutor

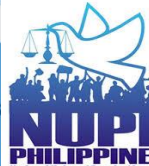


The Philippines' withdrawal from the Rome Statute became effective yesterday.

Pursuant to article 127.2 of the Statute, and based on prior ICC judicial ruling in the situation in Burundi, the Court retains its jurisdiction over crimes committed during the time in which the State was party to the Statute and may exercise this jurisdiction even after the withdrawal becomes effective.

My Office's independent and impartial preliminary examination into the situation in the Philippines continues.

#ICC Prosecutor #FatouBensouda



Fitness to stand trial (Article 64 (2)) STATUS

- Pre-Trial Chamber adopted Reports of medical experts who **unanimously** agreed that Duterte is fit to stand trial.
- Defense attempting to relitigate **interim release** in first review of detention conditions and citing medical reports as “changed circumstances”
- **Culled, adopted or based on the Powerpoint of Atty. Kristina Conti, NUPL-NCR Secretary General and ICC Registered Assistant to Counsel*

D. STATUS

- Status as of March 2026
 - **confirmation of charges** hearing finished February 2026 (after being postponed due to issues of fitness to stand trial etc.)
 - **interim release request denied** by Appeals Chamber
 - **jurisdiction affirmed** by the Pre-Trial Chamber; on appeal

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WHAT'S NEXT?

- Decision on confirmation of charges may come **two months** after
- ● Pre-Trial Chamber decides whether or not to confirm all or any of the charges brought by the prosecutor
- ○ **CONFIRM** → commit the suspect to trial before a Trial Chamber;
- ○ **DECLINE** → stop the proceedings against suspect
- ○ **ADJOURN** the hearing and request the Prosecutor to provide further evidence → OTP to conduct further investigations or to amend any charge
- **Culled, adopted or based on the Powerpoint of Atty. Kristina Conti, NUPL-NCR Secretary General and ICC Registered Assistant to Counsel*

D. Limitations and Criticisms

➤ procedural delays, jurisdictional challenges, and susceptibility to geopolitical influences.

“rightly criticized for its bias against investigating crimes committed by powerful states in the Northern Hemisphere and an excessive focus on the African continent. But the ICC has taken some courageous steps by opening an investigation into the crimes committed since 2014 by Israel in Palestine, and more recently by issuing arrest warrants against Israeli leaders. (IADL Kathmandu)

IV. UN HUMAN RIGHTS BODIES

- A. UN HUMAN RIGHTS COUNCIL
 - B. UNIVERSAL PERIODIC REVIEW
 - C. TREATY BODIES
 - D. SPECIAL PROCEDURES
-
- (UN Security Council and General Assembly; e.g. “Uniting for Peace” resolution)

> valuable yet constrained roles due to lack of enforcement powers, state non-cooperation, and diplomatic interference

A. UN HUMAN RIGHTS COUNCIL

- Role, process, value, limitations
- Composition, mandate, procedures

B. UNIVERSAL PERIODIC REVIEW

- Role, process, value, limitations
- Under this mechanism, the human rights situation of all UN Member States is reviewed every 5 years.

- 42 States are reviewed each year during three Working Group sessions dedicated to 14 States each. These three sessions are usually held in January/February, May/June and October/November.
- The result of each review is reflected in the Final Report of the Working Group, which lists the **recommendations** the State under review (SuR) will have to implement before the next review.

C. TREATY BODIES

- Role, process, value, limitations
- The UN Human Rights Treaty Bodies are **committees of experts** created to monitor governments' implementation of specific human rights conventions.
- Currently, eight of the 10 UN treaty bodies may also receive and decide **individual complaints (also called “communications”)** regarding violations allegedly committed by those States that have authorized the committee to receive complaints against them.

- The committee issues a **decision** regarding each individual complaint, and while these decisions are **not generally considered binding** on States, they do represent a reasoned interpretation of the relevant treaty to which the States parties have agreed to be legally bound.
- Some treaty bodies have the competence to consider requests for **urgent action or early-warning procedures**, which are aimed at preventing or halting serious violations of the relevant convention.
- Some bodies may initiate **confidential inquiries** when they receive information regarding grave or systematic violations, *so long as the State concerned agrees*.

The United Nations Treaty Bodies

- Human Rights Committee
- Committee on Economic, Social and Cultural Rights (CESCR)
- Committee on the Elimination of Racial Discrimination (CERD)
- Committee on the Elimination of Discrimination against Women (CEDAW Committee)
- Committee Against Torture (CAT)
- Subcommittee on Prevention of Torture (SPT)
- Committee on the Rights of the Child (CRC)
- Committee on Migrant Workers (CMW)
- Committee on the Rights of Persons with Disabilities (CRPD)
- Committee on Enforced Disappearances (CED)

D. SPECIAL PROCEDURES

- The Special Procedures are **independent human rights experts** with mandates to report and advise on human rights from a **thematic or country-specific** perspective.
- (Presently, there are 44 thematic and 12 country mandates.
- Special Rapporteurs, Independent Experts or Working Groups

- They undertake country visits; act on individual cases and concerns of a broader, structural nature by sending communications to States and others in which they bring alleged violations or abuses to their attention
- They conduct thematic studies and convene expert consultations, contribute to the development of international human rights standards, engage in advocacy, raise public awareness, and provide advice for technical cooperation.

V. PEOPLES' TRIBUNALS AND FACT-FINDING MISSIONS

- Role, process, value, limitations
- it is in general another form of the **exercise of the right of the people** to seek truth, accountability and justice
- a **parallel politico-legal platform** initiated by the people as a credible alternative - or as complement or supplement - to existing legal/judicial and political measures and actions undertaken or yet to be undertaken to hold perpetrators of violations of war crimes or violations of international humanitarian law, crimes against humanity, aggression and genocide as well as the basic right of peoples to develop
- a fora from **the perspective of the people** and not limited by skewed, tedious, protracted, belated, complicated and even inadequate traditional rules of procedure and evidence

- it shall serve “as a **free and secure platform** for victims and advocates and their organizations to present their narrative and experience anchored on evidence and legal arguments related to the alleged crimes committed”
- “it shall **further document** and call out the horrendous violations
- “it shall further preserve evidence to be utilized or as reference at the proper time or for **future legal action** (e.g. special UN tribunals, universal jurisdiction)
- “it shall **memorialize** the struggle of freedom-loving peoples of the world for historical record and as moral inspiration for political action “

- ◦ it shall **contribute to the cumulation** and snowballing resistance, campaigns and protests worldwide ◦
- “Parallel to the pursuit of legal remedies as well as advocating and engaging high-level inter-governmental bodies xxx , and serve as a **moral, political and diplomatic platform** for victims, survivors, advocates, social and national liberation movements to exact accountability
- “part and parcel integral to amplifying the people's collective **right to self-determination** and the struggle for national liberation to the world.” (IPT Ecocide 2025)

Examples

- (Bertrand Russel, Agent Orange etc)
- PPT vs Duterte, Bush and IMF-WB in Brussels (2018)
- IPT on US Imperialism: Sanctions, Blockade and Economic Coercive Measures (2023)
- PPT vs. Duterte, Marcos Jr. and Obama in Washington (2024)
- IPT Tribunal on Ecocide in Palestine vs. US and Israel(2025)



>grassroots justice initiatives offering alternative spaces for truth-telling and mobilization, albeit with similarly limited legal force.



VI. LEGAL SOLIDARITY WORK

- International **alliances**: (IADL, COLAP, UIA, NLG, L4L, IBA)
- **Conferences**: (ICHRP, COLAP V)
- **Statements**
- **Trial Observations**
- **Amicus Curiae and Legal Opinions**
- **Others (e.g. Friends of the Hague Group)**



VI. CONCLUSION

- **maximize** legal platforms and mechanisms despite limitations and character
- **generate** broad international pressure and support
- **undertake** organized campaigns
- **memorialization** of incidents, historical chronicles

- **Maximize international law** and existing redress mechanisms – *despite awareness of their nature, limitations and gaps* -- to help stop the commission of atrocity crimes, ensure accountability for perpetrators and justice for victims
- It is imperative today to **fight back against imperialist attacks** on rights and international law (cf. Palestine, Venezuela, Iran, Cuba etc.)
- It is important to **hold accountable** the likes of Duterte for attacks on rights and international law

“2. Oppose the onslaught on International Law and defend all achievements of peoples’ struggles against fascism and colonialism enshrined in international law.” (IADL Kathmandu Declaration July 2025)

- “x xx x Vigorously defend the progressive achievements of international law against all attempts to replace it with the law of the most powerful.”
- “x x x Enshrine further achievements of the peoples' struggles in international law. “
- “x x x New positive developments in international law are **only possible if they result from the struggles of the peoples**. They must be able to rely on the foundations of international law developed as a result of the past peoples’ struggles. That is why progressive and democratic forces around the world must mobilise against the onslaught on international law that we are witnessing at this moment.”

“The system and forces that have bred injustice, reinvented the law and reinterpreted legal principles to suit political ends through legal weaponization are powerful, unscrupulous and have all the resources at their disposal.

They seem to be omnipotent and act with brazen impunity.

But over time, together with the people, we will outdo, outwit and outlive them, nay the struggle for real freedom and justice will outlast them. “ #

END

- Thank you.
- Muchas Gracias.
- Merci beau coup.
- Salamat!