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The Philippine Human Rights Landscape: Challenges and Prospects Post-Duterte

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BACKGROUND

Upon his assumption to office in 2016, Philippine President Rodrigo declared a 'war on drugs,' a highly aggressive anti-narcotics campaign that aimed to eradicate drug use across the Philippines. It was called 'Oplan Tokhang,' a portmanteau of the Cebuano words for 'knock' and 'plead.' The Philippine National Police (PNP) launched operations targeted at suspected drug users and dealers. The PNP conducted door-to-door visits on the homes of these suspected drug users and dealers and urge them to surrender to the government and reform.

Official reports and independent investigations indicate that the campaign has resulted in widespread extrajudicial killings. Government figures suggest over 6,000 deaths in police operations by 2020, while human rights organizations estimate the toll to be significantly higher, potentially reaching tens of thousands. These deaths have predominantly affected impoverished communities, raising concerns about the social and economic disparities exacerbated by the campaign.

Critics of the war on drugs argue that it has led to severe human rights violations, including summary executions, arbitrary arrests, and a lack of due process. These concerns have drawn the attention of international bodies such as the United Nations Human Rights Council (UNHRC) and the International Criminal Court (ICC).

EXECUTIVE SUMMARY

This policy brief explores the challenge to human rights under the Duterte administration, with a focus on engagement with international institutions, specifically the United Nations Human Rights Council (UNHRC) and the International Criminal Court (ICC). It offers evidence-based recommendations for policymakers, academics, and the public on navigating these challenges to restore and strengthen the human rights regime. The research reveals a weakened commitment to human rights principles under Duterte's administration but also highlights opportunities, such as the Philippines' ongoing engagement with international human rights mechanisms. These provide prospects for the strengthening of the human rights regime.

In 2018, the ICC launched a preliminary examination into allegations of crimes against humanity committed in the context of the drug war. This move prompted the Duterte administration to withdraw the Philippines from the ICC, effective in March 2019, citing alleged biases and a perceived infringement on national sovereignty. In the UNHRC, Iceland introduced a resolution in 2019 that likewise called for an investigation into the war on drugs.

Other reported human rights violations during the Duterte Administration involved an attack on the freedom of the press and the ‘red-tagging’ of activists. In May 2020, the Philippine government ordered the shutdown of ABS-CBN, the country’s largest television network, after its congressional franchise expired. Maria Ressa, CEO of the news website Rappler, faced multiple legal charges, including cyber libel. Ressa and Rappler have been vocal critics of the war on drugs.

During the Duterte administration, ‘red-tagging’ or the practice of labeling individuals or groups as communists or terrorists became a prominent issue, particularly through the actions of the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC). Numerous activists, human rights defenders, and members of civil society organizations were red-tagged by the NTF-ELCAC and other government officials. This included public accusations of being linked to the Communist Party of the Philippines (CPP) and its armed wing, the New People's Army (NPA). Such accusations often led to threats, harassment, and, in some cases, extrajudicial killings.

DOMESTIC HUMAN RIGHTS POLICIES

Legislative Framework

The Philippines has a robust legislative framework aimed at protecting human rights, including laws against torture, human trafficking, and child labor. Article III of the 1987 Philippine Constitution contains the Bill of Rights, which guarantees fundamental rights and freedoms to all citizens, including due process of laws, equal protection of laws and freedom of speech.

Republic Act No. 9851 or the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity was enacted in 2009. The law aligns Philippine national laws with international legal standards and obligations under international humanitarian law and international criminal law. The act defines and criminalizes war crimes, genocide, and other crimes against humanity.

It provides for the prosecution and punishment of individuals responsible for such acts. The law also includes provisions for the protection of victims and witnesses, ensuring their rights and safety throughout the judicial process.

Human Rights Institutions

Article XIII, Section 17 of the 1987 Philippine Constitution created the Commission on Human Rights (CHR), an independent body mandated to investigate human rights violations and promote human rights education. The CHR plays a crucial role in monitoring the government’s compliance with its human rights obligations.

KEY HUMAN RIGHTS COMMITMENTS

UNHRC and the Universal Periodic Review (UPR)

The Philippines was instrumental in the negotiations leading to the creation of the UNHRC. The country supported General Assembly resolution 60/251, which established the council as a subsidiary body to address the inefficiencies of the previous Commission on Human Rights.

The Philippines has actively participated in the UPR process, which reviews the human rights records of all UN member states. This mechanism has provided the country with a platform to showcase its human rights initiatives and receive constructive feedback from the international community.

Human Rights Treaties

The Philippines is a party to several key international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These commitments require the country to align its domestic laws and practices with international standards.

CHALLENGES AND CRITICISMS

Withdrawal from the Rome Statute and ICC

The Philippines' withdrawal from the Rome Statute and the ICC in 2019 stemmed from President Duterte's objection to the court's investigation into his administration's controversial war on drugs, which faced allegations of extrajudicial killings and human rights abuses. Duterte argued that the ICC had no jurisdiction over the Philippines since its judicial system was functioning and capable of addressing such issues. The withdrawal was questioned by members of civil society and by lawyers. In 2021, the Supreme Court, in *Pangilinan v. Cayetano* dismissed the petitions on the basis that they were moot as the withdrawal had already been implemented. The Court also declared that the withdrawal from the Rome Statute did not deprive Filipino citizens of an effective remedy for the human rights violations and killings.

Domestic Push to Disengage from Human Rights Mechanisms

The Duterte administration initially moved to not participate in and eventually delayed in joining the UPR process in the UNHRC. When it did eventually participate in the UPR process, its participation lacked the robustness of previous years. Some sectors were excluded from the consultation process, such as the CHR.

The Duterte administration also did not grant Special Rapporteur Agnes Callamard access to the Philippines to conduct an official investigation into the alleged extrajudicial killings associated with Duterte's war on drugs. The government set conditions for her visit, such as requiring her to participate in a public debate with Duterte, which were deemed unacceptable by Callamard and the UN. Furthermore, Duterte, along with other officials, made statements that could be perceived as threats or intimidation against her. For instance, Duterte once remarked that he would "slap" Callamard if she investigated him.

Attacks on the CHR

During the Duterte administration, the CHR of the Philippines faced numerous attacks and challenges. In 2017, the House of Representatives, dominated by Duterte allies, initially approved a budget of only PHP 1,000 (approximately USD 20) for the CHR for 2018. This move was widely seen as an attempt to undermine the CHR's ability to operate effectively. Although the budget was eventually restored following public outcry and pressure, the incident highlighted the administration's antagonism towards the CHR. The CHR was also excluded from the UPR consultation process, a departure from previous years where it would fully participate.

President Duterte and his allies frequently publicly criticized the CHR and its officials, particularly CHR Chairperson Chito Gascon. Duterte accused the CHR of bias and of protecting criminals rather than victims, undermining its legitimacy and credibility in the eyes of the public. Duterte and his supporters often questioned the CHR's authority and jurisdiction, attempting to diminish its role as a watchdog for human rights. This included rhetoric suggesting that the CHR was irrelevant or overstepping its boundaries.

OPPORTUNITIES

Ongoing Engagement with the UNHRC

Notwithstanding the initial refusal of the administration to participate in the UPR, the foreign service or diplomatic corps in Geneva pushed for the country's participation in the UPR. The Philippines also continued to engage with the UNHRC and voted in other human rights resolutions. The Iceland Resolution, or the resolution introduced by Iceland in the UNHRC in July 2019, formally known as Resolution 41/2, which called an investigation into extrajudicial killings of the Drug War was opposed by the Philippine government but the foreign service was able to propose a positive response through a joint resolution with Iceland which created the UN Joint Programme.

UNHRC Resolution 45/33 called for ‘Technical cooperation and capacity-building for the promotion and protection of human rights in the Philippines.’ The three-year programme called for capacity-building and technical cooperation in six key areas, namely, strengthening domestic investigation and accountability mechanisms; improved data gathering on alleged police violations; civic space and engagement with civil society and the CHR; strengthening the national mechanism for reporting and follow-up; and human rights-based approaches to drug control and counter-terrorism.

Marcos Administration Signaling a Return to the International Legal Order

Marcos, Jr. has expressed a commitment to working with the United Nations and its various bodies. He has attended and actively participated in UN General Assembly sessions, indicating a willingness to engage with international norms and standards. The administration has shown a more open attitude towards cooperating with international human rights bodies.

RECOMMENDATIONS

Compliance with the Joint Programme. Compliance with the Joint Programme is crucial for the Philippines as it signifies a commitment to uphold international human rights standards, particularly in addressing issues related to extrajudicial killings and other abuses stemming from its anti-drug campaign. Adhering to the Joint Programme can enhance the country's global standing post-Duterte and restore diplomatic relations in the field of human rights. To ensure compliance, the Philippines should establish transparent mechanisms for monitoring and reporting human rights violations, cooperate fully with international human rights bodies, and implement comprehensive reforms within its law enforcement and judicial systems.

Additionally, engaging civil society organizations and promoting a culture of accountability and human rights education are essential steps to demonstrate genuine commitment to the Joint Programme's objectives and to safeguard the rights and dignity of its citizens.

Strengthen Accountability Mechanisms including the CHR. To ensure compliance, the Philippines should establish transparent mechanisms for monitoring and reporting human rights violations, cooperate fully with international human rights bodies, and implement comprehensive reforms within its law enforcement and judicial systems. Additionally, engaging civil society organizations and promoting a culture of accountability and human rights education are essential steps to demonstrate genuine commitment to the Joint Programme's objectives and to safeguard the rights and dignity of its citizens.

Maintain the Professionalism of the Bureaucracy. The resilience of the foreign service under the Department of Foreign Affairs and its ability to manage foreign relations regardless of the inclinations of the Duterte administration became apparent in the continued engagement with the UNHRC. This reflects the importance of a professional bureaucracy that can carry out its mandate despite political challenges. Stakeholders should consider continuous training and development programs for public servants to enhance their skills and competencies. Additionally, implementing merit-based recruitment and promotion systems can ensure that positions are filled by qualified individuals, fostering a culture of excellence and integrity within the civil service.

Prevent Red-Tagging and NTF-ELCAC Purpose.

Establish clear guidelines and accountability mechanisms to prevent arbitrary red-tagging. The mandate of NTF-ELCAC should be reevaluated to focus on socio-economic development and community engagement rather than militaristic approaches. The NTF-ELCAC's objectives should be realigned to addressing the root causes of insurgency through socio-economic development, dialogue, and community engagement rather than militaristic approaches. Furthermore, the government should ensure that NTF-ELCAC's activities are conducted in a manner that respects the rule of law and upholds the rights and freedoms guaranteed by law.

Re-engage with Civil Society. To re-engage with civil society and enhance the human rights regime, the current administration should prioritize creating an open and inclusive dialogue with non-governmental organizations, advocacy groups, and community leaders. Establishing regular consultations and collaborative platforms can ensure that civil society voices are heard and integrated into policy-making processes. Implementing robust legal protections for activists and human rights defenders is crucial to safeguard their work and encourage a vibrant civic space. By fostering a collaborative relationship with civil society, the administration can build a more resilient and inclusive human rights framework that benefits all citizens.

ICC Considerations. It is possible for the current administration to re-join the ICC through signing the Rome Statute again and ratification by the Senate. Rejoining the ICC would demonstrate a commitment to international justice, accountability, and human rights, aligning the Philippines with global efforts to combat impunity for the most serious crimes. Furthermore, rejoining the ICC would provide an additional avenue for justice and reparations for victims, demonstrating the country's commitment to addressing their needs and concerns. It is still uncertain, however, whether the Marcos, Jr. administration will re-join the ICC. In any event, and given the Supreme Court's decision in *Pangilinan v. Cayetano*, it is crucial to ensure that national judicial and investigative mechanisms are strengthened to ensure that crimes such as genocide, war crimes,

and crimes against humanity are effectively prosecuted domestically. This would demonstrate that the Philippines can uphold international standards within its own legal system, such as the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity. Within this framework, it is imperative that the rights of victims of serious crimes, such as extrajudicial killings are upheld and protected.

CONCLUSION

The Philippines has demonstrated a commitment to human rights through its participation in international mechanisms such as the UPR and its continued engagement with the UNHRC. However, significant challenges remain, particularly in areas such as extrajudicial killings, press freedom, and the rights of marginalized communities. By advancing the initiatives established under the Joint Programme, strengthening accountability mechanisms including the CHR, preventing red-tagging and revisiting the mandate of the NTF-ELCAC, and re-engaging with civil society, the Philippines can enhance its human rights record and fulfill its international obligations. It is important to maintain and promote the professionalism of the bureaucracy to ensure that future challenges to the liberal order by populist tendencies will be tempered. It is in this area that Australia, as a key partner in the Asia-Pacific region, can play a crucial role in providing support. Australia has a longstanding commitment to promoting international human rights and adherence to the international legal order, and its relationship with the Philippines provides an opportunity to foster deeper cooperation. Australia can express support to the Philippines should it decide to rejoin the ICC. Furthermore, partnerships and development aid can be aligned towards promoting human rights awareness, improving accountability mechanisms and maintaining professionalism in the bureaucracy. Rejoining the ICC would demonstrate the Philippines' commitment to human rights but regardless of any decision to re-join the ICC, national judicial and investigative mechanisms should be strengthened, and to provide victims of extrajudicial killings access to legal remedies under domestic law.