

Report on the incitement to genocide of drug users in the Philippines by the 45th US president.

01. Contextual background

As of December 5, 2018, [52 communications regarding the Philippines had been received](#) by the Office of the Prosecutor of the International Criminal Court (ICC). These included a request for a preliminary examination by Filipino attorney Jude Josue L. Sabio in his April 24, 2017 letter entitled "[The situation of mass murder in the Philippines, Rodrigo Duterte: the mass murderer.](#)" and one by a [Global Coalition of NGOs and lawyers](#) in a December 14, 2017 [Open Sign on Letter to the International Criminal Court](#). "The silence of the ICC and the UN is inviting a new era where violence and murders are normal, human rights violations are universal", said [Anand Chabungbam](#), Regional Coordinator of the Asian Network of People who Use Drugs (ANPUD) who presented the letter. "We, on behalf of our community [people who use drugs] implore the ICC to act on its mandate and help us save thousands of lives".

Both communications give a stark description of the government sponsored mass killings of users of consciousness altering substances in the first year after the inauguration of Rodrigo Duterte as president. Now, two years later, the situation has only changed for the worst and last September 23, 2019, some of the finest people in the Philippine legal profession came together to reconvene the group Concerned Lawyers for Civil Liberties (CLCL) to protest president Duterte's policies, which grossly violate constitutional rights and international law. "Not since the dark years of the (2006) Martial Law had civil liberties and fundamental rights been threatened and blatantly violated with such brazen impunity in their country", the CLCL said¹. Its lawyers, who persevered in 2006 and achieved victory against then-president Gloria Macapagal Arroyo, indicated at this relaunch that they will confront Duterte with a similar zeal to defend all those being red-tagged for dissenting from his policies: the victims of martial law and of the territorial dispute with China over the West Philippine Sea, the indigenous peoples, the peasants and the farmers, the press people and the human rights defenders and, last but not least, the victims of Duterte's bloody War on Drugs, "Oplan Tokhang"². This campaign of state-promoted extra-judicial killings of suspected drug users, which includes open calls for murder and promises of pardons and immunity for the killers, has made thousands of victims and continues unabated up to this day.

02. An evaluation of the campaign

The Oplan Tokhang campaign is the government organized execution of brutal force without any time limit and with impunity. It targets the poor and minority drug users and dealers and these victims' social assistance environment like the press, the Church and human rights defenders. It uses the additional slaughtering power that this popular war provides to attack other allegedly undermining forces, like indigenous people and eco-activists, with renewed vitality as well. The campaign is enveloped in complete opacity, except for the governments' contradicting stories and statistics. It has been described and [documented in the world media](#) and has generated debate, condemnation and approval and provoked limited imitation in the region. The campaign managers, senior police officers, regularly appear to be involved in the drugs trade and are fired from the job. Together with other candidates for regularly vacated government jobs, caught and fired for corruption elsewhere, they form a permanent carousel of corrupt veteran newcomers. The overall impression is one of the competing factions of the Duterte clan running the business, the prohibition machinery, the terror killing machine and the market called Philippines. Duterte on top is directing the groups dynamics with slogans for policy formulations which he hopes will allow him to stay abreast of the executive line where the compromising orders are given. The DPI is of the feeling that the harsh persecution of socially neglected people is the quid pro quo from society to a criminal and corrupt elite to run all the acts of the national drugs show.

03. The qualification of 'genocide'

The DPI views the Duterte drug war as a genocide: an act or acts intended to destroy a group, in whole or in part, by killing members of the group, by causing serious bodily or mental harm to members of the group and/or by deliberately inflicting on the group conditions of life calculated to bring about its physical destruction. These three acts, out of the five that have been defined as constituting elements of the crime of genocide by the UN Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG), provide each in itself a criminal offense which signatory nations "undertake to prevent and punish."

We wish to clarify two aspects that might otherwise give an excuse to exclude the Oplan Tokhang campaign from genocide. First, there is the required notion of 'group' vs. a simple collection of individuals. Drug users and dealers as such do indeed not feel of themselves as a group defined by a common feature which sets them apart from the rest of society. They do have a certain consumption preference not shared by all other members of their society, but so do all these other members of society. A specific consumption preference consequently does not invite, let alone force, people to unite as a group in order to defend a common interest other than their consumption of preference. When however, society discriminates the consumption of particular products, the consumers concerned may be obliged to collectively react in order to defend their common interest not only as consumers but equally as citizens and humans, depending on the sanctions reserved for them by society. In other words, if the group of drug users and dealers exists it is not by natural selection and not by the conscious and free choice made by its members but only in reaction to the discriminating decisions made by the perpetrator. As the UN prohibition machinery has set the collection of individual drug users and drug dealers as 'group' apart of the rest of society we trust that this qualification will still stand whenever others, including the perpetrator, might wish to dispute it

Secondly, there is the required 'type' of group. Experts have come to view the CPPCG definition of genocide as too restricted as it includes national, ethnical, racial or religious groups only and unjustly excludes other social and political groups as targets of genocide. Unjustly, because according to the UN Security Council the convention was adopted for humanitarian and civilizing purposes, to provide governments and civil society with a tool to hold the world to account when groups need to be protected. We therefore infer that it cannot be the intention of the Council to exclude groups that do not belong to the original 4 CPPCG-types of group from the application of the convention and that the notion of group should include 'any group so defined by the perpetrator' as proposed in the literature. We accept the definition of Chalk and Jonassohn of genocide as a form of one-sided mass killing in which a state or other authority intends to destroy a group, as that group and membership in it are defined by the perpetrator. As president Duterte has decided on the extermination of the group of drug users and drug dealers in his country, he falls within a UN-conceived concept of drug users and dealers as a 'group', which group, in our view, is included in the extended definition of 'groups' protected against genocide by international law.

04. Three acts of incitement

The first incitement was committed on Friday, December 2, 2016 when the Philippine president called Trump to congratulate him on his election victory and Trump wished him "success" in his controversial crackdown, in which 4,800 people had been killed since July. President Duterte reported the call the next day, Saturday December 3, and told Mr. Trump was "quite sensitive" to "our worry about drugs." and had said that the Philippines was conducting it "the right way." Trump said he understands the Philippines' anti-drug campaign as a sovereign nation and that the country is "doing it the right way." "He (Trump) understood the way we are handling it and said that there's nothing wrong in protecting a country" said Duterte.

The second incitement was committed on Saturday 20170429 when president Trump called his Filipino counterpart, Rodrigo Duterte, to congratulate him for doing “an unbelievable job on the drug problem” in the Philippines, where the government had sanctioned the extrajudicial killing of suspects. “What a great job you are doing, and I just wanted to call and tell you that.”

A transcript of the conversation was circulated on Tuesday May 23 by the Americas division of the Philippine Department of Foreign Affairs under a “confidential” cover sheet and published online by [The Intercept](#). In Washington it was confirmed that the transcript was an accurate representation of the call between the two leaders.

The third incitement was committed on Monday November 13, 2017, when the US President had a bilateral meeting with Philippine President Rodrigo Duterte on the sidelines of the 31st Association of Southeast Asian Nations (ASEAN) Summit in Manila. Reporters saw the beginning of the leaders' bilateral meeting during which Trump praised Duterte's hospitality, the organization of the summit he was hosting and even Manila's weather. Trump said nothing about human rights and both leaders ignored shouted questions about the violent drug crackdown. Afterwards, White House press secretary Sarah Huckabee Sanders said that the 40-minute meeting focused on ISIS, illegal drugs, and trade. Human rights, she added, briefly came up in the context of the Philippines' fight against illegal drugs. That appeared to conflict with the Philippines' version of the meeting. Harry Roque, the spokesman for Duterte, said "there was no mention of [human rights](#). There was no mention of extralegal killings." Duterte had said the week before the meeting that he would tell Trump to “lay off” if he talked about human rights. Harry Roque said that human rights were not discussed, although Duterte had explained his anti-drugs campaign to Trump, who nodded and “seemed to be in agreement”.

However, on Monday April 23, 2018, spokesperson Roque told a different story after the US State Department said in its [2017 country report on human rights practices in the Philippines](#) that drug war killings and police impunity remain as top concerns in the Philippines: “Extrajudicial killings have been the chief human rights concern in the country for many years and, after a sharp rise with the onset of the anti-drug campaign in 2016, they continued in 2017,”

Roque, in his Palace press briefing that Monday morning, said that he found it hard to reconcile the report of the US State Department and the statement of Trump during the 31st ASEAN Summit in Manila in November last year. “I personally heard the discussion between President Trump and President Duterte when they were here in the Philippines during the ASEAN Summit and I think I heard words coming from [President Trump praising President Duterte including the war on drugs](#). If I am not mistaken, President Trump said he (Duterte) knows what he’s doing in the Philippines,” Roque said.

“So I do not know how to reconcile the State Department report with the actual statement of the President. But for now, we’re going with the statement of President Trump that we all heard from the mouth of President Trump,” he added. “Given what we heard from President Trump, let’s just say it exists but we prefer to hold on to the words of President Trump. He is, after all, the President.”

05. From incitement to cooperation?

Since the Trump visit to ASEAN in November 2017, the relations between the Philippines and the US seem to have improved considerably, even to the point that it is questioned, by sources that have to be protected given the sensitivity of the matter, if there does not exist an undisclosed cooperation plan between the two countries. Three indicators for the depth of mutual respect and appreciation described below also suggest such a possibility. The DPI search did not cover this aspect of the Trump administration involvement in the campaign, however.

a. 20171112 Sunday, [The Manila quid pro quo](#), a serenade for a genocide

It has to be assumed that the Trump approval with Oplan Tokhang had already been obtained before the ASEAN meeting, as it was consummated at the gala dinner on the eve of Sunday November 12, where contrary to traditional seating protocol, Duterte and Trump were seated next to each other and Duterte sang a hit Filipino love song for his friend. “On the orders of the U.S. commander-in-chief” Duterte jokingly explained, publicly suggesting that this flattery was not a

coincidence but rather on request. And indeed, had it been known at that moment that Trump would effectively oppose Duterte's murder campaign, he would most probably have been treated like his predecessor, "[the son of a whore](#)". The Duterte serenade to his accomplice thus proved to be a lugubrious genocide anthem.

b. 20180408 Sunday, Duterte advise to Trump

[Duterte to Trump: Throw drug dealers into Atlantic Ocean](#)

Duterte, in a speech at a dinner concert in Pasay City said that the decision still lies with the 45th President of the United States on how he will solve the surprisingly large-scale problem of the world superpower.

"Pasok kaagad si Trump (Trump immediately said), 'I will follow Duterte if I can only kill.' Do not, do not. You just kill. Presidente ka (You are the President)," Duterte said.

"Bahala ka na diyan kung anong gawain mo. Kalaki 'yang Atlantic Ocean na 'yan, eh 'di doon mo itapon 'yan (It's up to you what you will do about the problem. The Atlantic Ocean is vast, you can throw them there)," he added. Duterte said Trump should learn to do what he thinks will be better for his country. "Mahirap sa kanya (It's difficult for him) because they cannot kill. Ako (Me), I will kill you to preserve my nation," Duterte said.

c. 20180920 Thursday, Duterte welcomes Bolton's attack on the ICC

Manila Bulletin : US swipe at ICC, 'refreshing' to PH – Duterte

"The latest blistering criticism of US National Security Adviser John Bolton against the International Criminal Court (ICC) was "refreshing to us," President Duterte declared Thursday amid his renewed warning to the body "not to f*ck" with the country.

"It's good that there is international pressure on the ICC because Bolton's binull-shit them. He's really a very far right in America, Trump's boy. He has criticized the ICC but now," Duterte said during his visit to a military camp in Capas, Tarlac.

Bolton recently threatened the ICC officials with sanctions if they continue an investigation into the alleged war crimes by American troops in Afghanistan. He said the US would not cooperate with the ICC, adding the ICC was "already dead to us."

06. The qualification of incitement to genocide

Duterte has reacted with fury to a resolution by the U.N. Human Rights Council to investigate the killings and responded to a preliminary examination by the ICC by pulling the Philippines out of the organization.