

Annex A

Public



EMBASSY OF THE REPUBLIC OF THE PHILIPPINES
AMBASSADE VAN DE REPUBLIEK DER FILIPIJNEN
 The Hague, The Netherlands

LTR-JEM-128-2021

10 November 2021

Honorable Karim A. A. Khan QC

Prosecutor
 The Office of the Prosecutor
 International Criminal Court
 Oude Waalsdorperweg 10, 2597 AK,
 The Hague, The Netherlands

Re: OTP/PHL/PHL-1/Notif/JCCD-abrnpt

Dear Mr. Prosecutor:

I write on behalf of the Government of the Republic of the Philippines ("Philippine Government") in response to your letter dated 6 October 2021, which was sent in accordance with Article 18(1) of the Rome Statute ("Statute").

The Philippine Government hereby informs the International Criminal Court ("the Court") that it is investigating or has investigated its nationals or others within its jurisdiction with respect to the alleged crimes against humanity of murder under Article 7(1)(a) of the Statute "committed throughout the Philippines between 1 July 2016 and 16 March 2019 in the context of the so-called 'war on drugs' campaign, as well as in the Davao area between 1 November 2011 and 30 June 2016." On this basis, pursuant to Article 18(2) of the Statute, the Philippine Government hereby requests that the Prosecutor defer to the Philippine Government's investigations and proceedings. In accordance with the principle of complementarity under which the Court operates, the Philippine Government has the first responsibility and right to prosecute international crimes. The Court may only exercise jurisdiction where national legal systems fail to do so, which is certainly not the case in the Philippines. As will be demonstrated below, the domestic institutions in the Philippines are fully functional and more than adequate to address the issues and concerns raised in the Notification.

Under the domestic laws of the Philippines, a person accused of killing someone in an anti-narcotic operation may be charged with homicide, murder, parricide, or reckless imprudence resulting in homicide – all of which require a preliminary

investigation. The purpose of the preliminary investigation is to determine whether a crime has been committed, and there is probable cause to believe that the accused is guilty thereof. It is meant, *inter alia*, to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from the trouble, expenses, and anxiety of a public trial. The procedure for the conduct of preliminary investigation is detailed in Section 3, Rule 112 of the Philippine Rules on Criminal Procedure.

The determination of probable cause is exclusively within the competence of the Executive Department, through the Secretary of Justice. The preliminary investigation is terminated upon the filing of the information in the proper court, which then sets in motion the criminal action against the accused. Once the information is filed, the court acquires jurisdiction over the case, and the determination of the accused's guilt or innocence rests within its sound discretion.

The filing of a criminal charge does not foreclose the applicability of any civil or administrative liability. It is for this reason that the Internal Affairs Service ("IAS") of the Philippine National Police ("PNP") was established. The powers and functions of the IAS include the conduct of automatic investigations of PNP members in the following instances: (1) where a police personnel discharges a firearm; (2) where death, serious physical injury, or any violation of human rights occurred in the conduct of a police operation; (3) where evidence was compromised, tampered with, obliterated, or lost while in the custody of police personnel; (4) where a suspect in the custody of the police was seriously injured; and (5) where the established rules of engagement have been violated.

As in criminal proceedings, the existence of probable cause to warrant the filing of a formal administrative charge against a PNP member must be determined by a pre-charge investigator. After a finding of probable cause, the investigating officer shall formally charge, under oath, the PNP member complained of. Summary proceedings shall then be conducted to enable the relevant Disciplining Authority to decide the appropriate disciplinary action to be undertaken against, or administrative sanction to be imposed on, the PNP member.

The IAS may also file appropriate criminal cases against PNP members before the court, as the evidence warrants, and assist in the prosecution of the case.

Committed to the rule of law and with the highest regard to due process, the Philippine Government has undertaken, and continues to undertake, thorough investigations of all reported deaths during anti-narcotic operations in the country, in accordance with the relevant procedures as discussed. The Philippine Department of Justice (“DOJ”) has recently released a Press Statement dated 19 October 2021 on the latest developments of its review panel. As stated, the DOJ has referred to the Philippine National Bureau of Investigation (“NBI”) its review of fifty-two (52) cases where the PNP-IAS found administrative liability on the part of its law enforcement agents. These cases are to undergo further investigation and case build-up for the possible filing of criminal charges against erring PNP members.

The DOJ’s work comes as the initial fulfillment of the commitment of the Philippine Government, through its Secretary of Justice, to undertake a judicious review of anti-narcotic operations where deaths occurred, which the Justice Secretary stated during the 44th Session of the United Nations Human Rights Council on 30 June 2020. The fifty-two (52) cases signal the start of the DOJ’s review of over 6,000 administrative cases in the dockets of the PNP-IAS, and arrangements are being undertaken with the PNP for access to the case records. On 02 November 2021, the DOJ facilitated the signing of the Memorandum of Agreement between the PNP and the NBI for their closer cooperation and information-sharing in the investigation, case build-up, and filing of criminal charges *vis-à-vis* deaths that occurred in anti-narcotic operations.

In addition to the 52 cases in the dockets of the PNP-IAS reviewed by the DOJ that concern death that occurred in anti-narcotic operations, the DOJ is also looking into more than 300 cases in the dockets of the National Prosecution Service that involve concluded and ongoing preliminary investigations into deaths of a similar nature. This will proceed in conjunction with the review of more than 6,000 cases in the dockets of the PNP-IAS, with a focus on select urban areas where operations *vis-à-vis* the ‘war on drugs’ are concentrated.

At the same time, the DOJ is studying the possibility of further tapping the expertise of the Administrative Order No. 35 (s.2012) Program, a valued internal accountability mechanism forged during the past presidential administration, which is currently investigating nearly 300 alleged extralegal killings that span from the last decade. In addition, this will help in the DOJ’s review of other areas of concern where cases involve allegations of grave violations of human rights, such as a

possible review of nearly 180 cases involving the deaths of journalists in the Philippines that are being monitored by the Presidential Task Force on Media Security.

The DOJ is also looking into its own dockets and records, specifically those of the National Prosecution Service, for cross-referencing and monitoring of ongoing preliminary investigations and criminal indictments that involve anti-narcotic operations where deaths occurred. This ongoing process is a priority of the DOJ and of the Philippine Government, and a recognition of the need to address allegations of impunity in the field against erring law enforcement officers and personnel.

Beyond the conduct of investigations, the Philippine Government is likewise keen on ensuring the successful prosecution of cases that have been filed or may be filed in court against erring PNP members and others within its jurisdiction. The investigations and case build-up being undertaken by the Executive Department are therefore crucial to this end. The Philippine Judiciary, a separate and independent branch of government, acting through the courts, will decide to convict or acquit the accused depending on the evidence presented to it. Thus, if the prosecution fails to discharge its burden of proving guilt beyond reasonable doubt, the Philippine courts, pursuant to their constitutional mandate, will not hesitate to acquit the accused.

Aside from the afore-mentioned criminal, civil and administrative remedies, persons who feel aggrieved by the anti-narcotic operations may file a petition for a writ of *amparo* and/or a petition for the writ of *habeas data*. These writs are equitable and extraordinary remedies primarily meant to address concerns, such as, but not limited to, extrajudicial killings and enforced disappearances.

The petition for a writ of *amparo* is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. On the other hand, the writ of *habeas data* is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting, or storing of data or information regarding the person, family, home, and correspondence of the aggrieved party.

The aggrieved party or any person qualified to act in his/her behalf may file these petitions with the local courts. By their very nature, these petitions for *amparo* and *habeas data* are subject only to a summary hearing. Thus, aggrieved parties may expect to get relief expeditiously as they only need to establish their claim/s by substantial evidence. In addition, the filing of these petitions does not preclude the filing of separate criminal, civil, or administrative sanctions against the erring officers.

Parenthetically, in a petition for a writ of *amparo*, the court may grant interim reliefs such as Temporary Protection Order, Inspection Order, Production Order or Witness Protection Order. It may also refer the witnesses to other government agencies, or to accredited persons or private institutions capable of keeping and securing their safety.

Clearly, these petitions are prerogatives given to aggrieved parties and remain available at their disposal. Needless to state, the judicial system of the Philippines is alive and functioning.

Finally, to further support and strengthen its legal framework, the Philippine Government signed on 22 July 2021 with the United Nations (UN) the three-year national-level UN Joint Programme (UNJP) on Human Rights. This is recognized by the UN as “the first-ever UN joint programme on human rights in the Philippines, where we put together the capacities and resources of the UN in support of a wide range of national institutions.” The UNJP was developed to implement UN Human Rights Council (HRC) Resolution 45/3 entitled “*Technical cooperation and capacity-building for the promotion and protection of human rights in the Philippines*” adopted on 7 October 2020. Six specific areas for capacity-building and technical cooperation are covered, namely:

- Strengthening domestic investigation and accountability mechanisms
- Data gathering on alleged police violations
- Civic space and engagement with civil society and the Commission on Human Rights
- National mechanism for reporting and follow-up
- Counter-terrorism legislation
- Human rights-based approaches to drug control

The UNJP was the product of a series of intensive consultations among Philippine Government agencies, civil society, and participating UN organizations,

including the UN Office of the High Commissioner on Human Rights, the UN Office on Drugs and Crime, the UN Office on Counter-Terrorism, and the UN Educational, Scientific and Cultural Organization. It manifests the sincere efforts of the Philippine Government to fully integrate and strengthen, in a non-political setting, the human rights dimension in its law enforcement and investigative operations.

The Embassy of the Republic of the Philippines in The Hague avails itself of this opportunity to renew to the Court the assurances of its highest consideration.

Very truly yours,



J. EDUARDO MALAYA

Ambassador of the Republic of the
Philippines to The Netherlands