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H.E. Rodrigo R. Duterte

President of the Republic of the Philippines

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Your Excellency,

The International Commission of Jurists (ICJ) is a global organization composed of around 60 eminent judges and lawyers from all regions of the world. It was established in 1952 and is active on five continents. The ICJ is strongly committed to promoting the legal protection of human rights and upholding the rule of law.

In your inaugural speech as you assumed your post as the 16th President of the Republic of the Philippines, you pledged that your “adherence to due process and the rule of law is uncompromising”. With that pledge in mind, we write to urge you to uphold the obligations of the Philippines under international human rights law to protect and promote the right to life, among other rights. To that end, we would request that your Government take immediate and effective measures to counter the recent wave of unlawful killings as well as to address unresolved cases of extrajudicial killings and enforced disappearances in the country. We would also call on your Government to ensure that the death penalty does not return to the Philippines.

Extrajudicial Killings and Enforced Disappearances

The phenomenon of extrajudicial executions and enforced disappearances over the years in the Philippines is well-documented. There are credible reports of at least 26 extrajudicial executions between 2010 and 2014,¹ and according to the UN Working Group on Enforced or Involuntary Disappearances, at least 625 cases of enforced disappearance remain unresolved in the Philippines.²

We welcome the news that your office is now in the process of drafting an Administrative Order to investigate extrajudicial killings of journalists in the Philippines.

We are concerned, however, of the reports we have been receiving that there has been a marked increase in the number of deaths of alleged drug dealers from the day you assumed office. Between the day of your inauguration and 11 July 2016, 136

¹ Human Rights Watch, World Report 2015: Philippines. <https://www.hrw.org/world-report/2015/country-chapters/philippines>

² Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/30/38, (2015), p. 12.

suspected criminals have been killed.³ We are also concerned by your recent statements that appear to be encouraging extrajudicial killings of those engaged in the sale and distribution of illegal drugs in the Philippines.

According to reports, 84 persons were killed during police operations, many in an allegedly unlawful manner. International law strictly prohibits the use of lethal force unless strictly unavoidable in order to protect life.⁴ The use of any firearm is prohibited except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. Where there are allegations of a violation of the right to life, there must be an independent and impartial investigation and those responsible must be brought to justice. We would recall that these principles are binding on the Philippines as a State party to the International Covenant on Civil and Political Rights (ICCPR), among other instruments.

We therefore urge you to immediately conduct prompt and impartial investigations on the police operations that resulted in these deaths. We also urge you to unequivocally denounce extrajudicial killings, whether of alleged criminals or of any person in the Philippines. This would send a clear message to all that indeed you are committed to the statement you made at your inauguration to adhere to due process and the rule of law.

On the issue of enforced disappearances,⁵ we welcome the Philippines' adoption of the Anti-Enforced or Involuntary Disappearance Act. We also note however that, as far as we know, this law has not yet been invoked and that no case has been filed under this law. This despite the fact that the Court of Appeals, in March 2013, has already held that the Armed Forces of the Philippines and the Philippine National Police are "accountable" for the "disappearance" of Mr. Jonas Burgos, who was abducted on 28 April 2007.⁶

We urge the Government of the Philippines to prioritize the prosecution of alleged perpetrators of enforced disappearances under the Anti-Enforced or Involuntary Disappearance Act. We believe that this law should be used to investigate and prosecute perpetrators of enforced disappearances that happened even prior to the law's passage in 2012. As set out in the legislation, "As long as the perpetrators continue to conceal the fate and whereabouts of the disappeared person and such

³ "The Kill List," *The Inquirer*, 7 July 2016 (updated 11 July 2016). <http://newsinfo.inquirer.net/794598/kill-list-drugs-duterte>

⁴ See Article 6 of the International Covenant on Civil and Political Rights; Principle 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁵ An enforced disappearance is defined by Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance as "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law."

⁶ *Edita Burgos v. Gen. Hermogenes Esperon, et al.*, Court of Appeals of the Philippines, 18 March 2013.

circumstances have not been determined with certainty”, the crime of enforced or involuntary disappearance is still being committed.⁷

During the most recent Universal Periodic Review of its human rights record before the United Nations in 2012, the Philippines committed to “eliminate completely extrajudicial executions...[and] end impunity for extrajudicial killings, enforced disappearances and torture, including those perpetrated by security forces, by undertaking thorough investigations and vigorous prosecutions of perpetrators.”⁸

We expect the Government of the Philippines to implement this commitment and take an important step toward eliminating impunity in the country. In order to address impunity, all States, including the Philippines must “undertake prompt, thorough, independent and impartial investigations of violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, particularly in the area of criminal justice, by ensuring that those responsible for serious crimes under international law are prosecuted, tried and duly punished.”⁹

We also urge your Government to take immediate steps to advance the Philippines’ ratification of the International Convention for the Protection of All Persons from Enforced Disappearances. The ratification of this instrument would bring the Philippines in line with well-established international principles and practice on accountability, solidify the legal standards surrounding enforced disappearances, and signal that the Philippines is committed to facing the challenges presented by cases involving enforced disappearances.

The Death Penalty

The Philippines has been a regional leader on the abolition of the death penalty, and as we have emphasized in a previous communication dated 31 May 2016,¹⁰ it is imperative that the Philippines maintain this progress.

As a party to the 2nd Optional Protocol to the ICCPR, the Philippines has a legal obligation to ensure that no person within its jurisdiction will face execution. To renege on this commitment would constitute a violation of international law and would stand in opposition to the international trend toward the abolition of the death penalty. The UN General Assembly, by increasingly overwhelming margins, has adopted resolutions calling on all retentionist States to impose an immediate moratorium on executions with a view toward abolition. The ICJ considers the imposition of the death penalty to be a violation of the right to life and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or

⁷ See Section 21 of Republic Act 1053 or the Anti-Enforced or Involuntary Disappearance Act of the Philippines.

⁸ Report of the Working Group on the Universal Periodic Review: Philippines, UN Doc. A/HRC/21/12, (2012), para. 129.15.

⁹ Principle 19 of the Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, Addendum, Updated Set of principles for the protection and promotion of human rights through action to combat impunity, UN Doc. E/CN.4/2005/102/Add. 1, (2005).

¹⁰ International Commission of Jurists, Letter to Rodrigo R. Duterte, 31 May 2016.

<http://icj2.wpengine.com/wp-content/uploads/2016/05/Philippines-Letter-to-President-Duterte-Advocacy-Open-letters-2016-ENG.pdf>

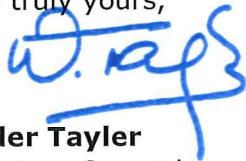
punishment, and we implore you to reconsider your statements expressing support for the reinstatement of the death penalty.

We understand that your administration's thrust is to eliminate criminality in the country, but there is no evidence that the death penalty deters crime at a greater rate than alternative forms of punishment.

The ICJ looks forward to engaging with your administration to further human rights and the rule of law in the Philippines.

We would be very pleased to explore with your Government the ways in which we might contribute our expertise in the pursuit of the aforementioned goals.

Very truly yours,



Wilder Tayler
Secretary General

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