

# THE ICC AND THE PROBE INTO THE DUTERTE'S WAR ON DRUGS: QUOTES FROM DR. EMMA PALMER

In the [previous newsletter](#), Vikas Nagal, research assistant at CSEAS, had written about the International Criminal Court (ICC) Chief Prosecutor Fatou Bensouda and that she has to decide whether to open an investigation into the alleged crime against humanity committed by the Duterte administration in the Philippines. It can potentially lead to the trial and conviction of President Rodrigo Duterte and other senior officials. To understand more on the issue, Harsh Mahaseth, research analyst at CSEAS, had a brief conversation with Dr. Emma Palmer, Lecturer at the Griffith Law School, who has published two books - 'Adapting International Criminal Justice in Southeast Asia: Beyond the International Criminal Court', and with Sarah Williams and Hannah Woolaver, 'The Amicus Curiae in International Criminal Justice'.



Picture Courtesy: Dr. Emma Palmer

Since 2018, the ICC has received multiple complaints by Philippine-based human rights activists and legislators about the Filipino president's human rights record, including tens of thousands of alleged extrajudicial killings of suspected drug users, dealers and criminals in the past four years. How has all of this information played a role in the current investigation?

As you note, there have been reports of multiple complaints being submitted to the ICC prosecutor, and you can see from the prosecutor's [statements](#) and reports on preliminary examinations that these have been considered - both in her decision to open a "preliminary examination" of the situation, and in the prosecutor's ongoing work as part of that process. The prosecutor is also able to seek additional information from other reliable sources, to analyze how serious the information about potential crimes might be [Art 15(2) RS].

It is clear that the prosecutor has been seeking information - both about the crimes, which the prosecutor says could be considered crimes against humanity, and about investigations and various proceedings taking place nationally involving Philippine authorities.

So, all of that information you mention, but also additional information, will be playing a role in the decision as to whether to open a formal investigation.

A December 2019 to February 2020 survey conducted by the State's Dangerous Drugs Board reportedly found that the number of illegal drug users had fallen to 1.67 million from an initial estimate of between 4 to 8 million at the start of Duterte's term in mid-2016. The survey also showed that around half of Filipinos "strongly agree" with the government's anti-drug campaign, according to the board's chairman Catalino Cuy. Separate opinion surveys also show that as many as 9 out of ten Filipinos oppose extrajudicial killings and want drug suspects kept alive. What do you think of this public perception, and is there any way the ICC has been trying to enlighten them regarding their position?

I am not from the Philippines but agree with your assessment that there is research demonstrating that the anti-drug policy is popular, though there are those who oppose the way it has been implemented, specifically extrajudicial killings. I don't work at the ICC, but as has been widely reported, the prosecutor's recent report concluded that the prosecutor is satisfied that there is a reasonable basis to believe that crimes against humanity including murder, torture and other inhumane acts were committed, and she has made other public statements about the situation in the past.

It also seems that the prosecutor has been attempting to engage with a range of so-called "stakeholders" in the Philippines on various matters about the case. It does not seem that the court has undertaken any overly public widespread public relations exercise at this stage. That is normal and arguably appropriate since they are still deciding whether or not to request the opening of a formal investigation. Of course, that means that there has been a lot of space for authorities to portray the ICC in a negative light, though again that is to be expected.

What has been ASEAN response to the ICC's actions?

This is an interesting question. As an institution, ASEAN has traditionally been fairly quiet about the ICC, though early on there were indications that it supported its work in combatting impunity. I don't think there has been, and actually would not expect, any public overt response from ASEAN on this topic and certainly not to support the work of the ICC in relation to the Philippines.

Why is there a low reception of the ICC in Southeast Asia? Is there a certain ambivalence of these countries toward the ICC or international criminal justice?

This is a big question and there are multiple reasons. My research (see my book) suggests that there is not necessarily ambivalence toward ending or even prosecuting atrocities - most agree that serious crimes committed around the world require some kind of response. However, there are questions about whether ICC or international prosecutions are the best avenue in all cases, even though the ICC also does have a lot of support from some human rights groups. The reasons are different in different places and keep changing, but include some concern about the ICC's impact upon sovereignty and interference in domestic affairs (possibly related to the post-colonial context found in Southeast Asia), different governmental priorities, influential militaries, and preferences in some quarters for other forms of transitional justice.

### Other important issues:

**The next steps:** The prosecutor is now in the final stages of deciding whether or not to request the ICC's Pre-Trial Chamber (judges) to authorize it to commence a formal investigation. That investigation would go beyond the current examination. The most recent report concludes that the prosecutor believes there is a reasonable basis to believe that crimes within the jurisdiction of the court have been committed. However, it is not absolutely clear that they have concluded that any cases would be "admissible" at the ICC - because the Philippines is or has been unwilling or unable genuinely to carry out investigations or prosecutions, and the crimes are of sufficient "gravity." Still, on my reading of the report, the office is not convinced that there are sufficient genuine national criminal investigations in the Philippines to block further ICC attention.

**Jurisdiction:** The Philippines of course withdrew from the Rome Statute in March 2018, effective one year later in March 2019, and argues that the ICC does not have jurisdiction in this case. The prosecutor clearly takes the opposing view [drawn from article 127 of the Rome Statute and an earlier Pre-Trial Chamber decision about Burundi's withdrawal] that the ICC still has jurisdiction for crimes committed up until 17 March 2019. This is something a Pre-Trial Chamber would need to consider when deciding whether or not to authorize any investigation, even if the prosecutor does decide to request one and there are some different legal views about this.



Picture Courtesy: Yahoo News