

## Submission to the United Nations Human Rights Committee ahead of the fifth periodic review of the Philippines

15 September 2022

### Reporting organisations:



**HARM REDUCTION  
INTERNATIONAL**

**Harm Reduction International (HRI)** is a leading NGO dedicated to reducing the negative health, social and legal impacts of drug use and drug policy. HRI promotes the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies. HRI is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

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The **International Drug Policy Consortium (IDPC Consortium)** is a global network of non-government organisations that aims to promote objective and open debate on the effectiveness, direction and content of drug policies at national and international level and supports evidence-based policies that are effective in reducing drug-related harm. It produces briefing papers, disseminates the reports of its member organisations, and offers expert advice to policy makers and officials around the world.

The IDPC Consortium is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

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## Background and introduction

1. The latter half of the 10 years since the last periodic review of the Philippines at the Committee in 2012 has been characterised by a violent, repressive “war on drugs”, followed by a similarly abusive “war on Covid”, deterioration of the rule of law, progressive militarisation, and harassment and targeting of human rights defenders, journalists, and activists. As background, we refer to the 2020 Report of the UN High Commissioner for Human Rights on the Situation of human rights in the Philippines (*hereinafter: 2020 OHCHR report*).<sup>1</sup>
2. There are an estimated 25,000 people who inject drugs in the Philippines, with an estimated HIV prevalence at 29%, and Hepatitis C prevalence at 35.2%.<sup>2</sup> According to the latest government data, in 2016 an estimated 1.64% of the population aged 10-69 had used cannabis in the prior year, and 1.10% had used methamphetamine.<sup>3</sup> The Philippines is among the countries with rising epidemics among key populations: it is one of the top 20 high tuberculosis burden countries identified by WHO,<sup>4</sup> and has the fastest growing HIV epidemic in the Asia-Pacific region - and potentially in the world. UNAIDS has recorded a 237% increase in new HIV infections between 2010 and 2020, with a 351% increase in AIDS-related deaths in the same period. At this pace, the number of people living with HIV is estimated to triple by 2030.<sup>5</sup> As evidenced in this submission, the government’s punitive approach to drugs, and its failure to provide life-saving health services, plays a central role in perpetuating and worsening these epidemics.

## Right to life (arts. 6 and 24 CCPR)

### Extrajudicial killings connected to the anti-drugs campaign

#### Paragraph 10 List of Issues

##### Government reply

3. In its reply to the List of Issues, the government has alleged that ‘To this date, there has been no evidence beyond newspaper clippings/ articles to allow the [Philippines] Courts to conclude, as alleged, that there is an alleged “extremely high number of cases of extrajudicial killings committed during the anti-drug operations as well as the reported acquiescence of the State party to such acts”’. In making this statement, the government refers to a June 2019 decision by the Supreme Court of the Philippines.

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<sup>1</sup> A/HRC/44/22.

<sup>2</sup> The Global State of Harm Reduction 2020 (London: Harm Reduction International, 2020), 64. <https://www.hri.global/global-state-of-harm-reduction-2020>.

<sup>3</sup> <https://dataunodc.un.org/dp-drug-use-prevalence>.

<sup>4</sup> WHO global lists of high burden countries for tuberculosis (TB), TB/HIV and multidrug/rifampicin-resistant TB (MDR/RR-TB), 2021–2025 (Geneva:WHO, 2021). [https://cdn.who.int/media/docs/default-source/hq-tuberculosis/who\\_globalhbclisttb\\_2021-2025\\_backgrounddocument.pdf?sfvrsn=f6b854c2\\_9](https://cdn.who.int/media/docs/default-source/hq-tuberculosis/who_globalhbclisttb_2021-2025_backgrounddocument.pdf?sfvrsn=f6b854c2_9).

<sup>5</sup> A Briefer on the Philippines HIV Estimates 2020 (Manila: Philippines Department of Health, 2020)

[https://doh.gov.ph/sites/default/files/publications/A%20Briefer%20on%20the%20PH%20Estimates%202020\\_08232021.pdf](https://doh.gov.ph/sites/default/files/publications/A%20Briefer%20on%20the%20PH%20Estimates%202020_08232021.pdf).

## Commentary

4. The position of the government ignores the findings of the 2020 OHCHR report, the enquiry initiated by the International Criminal Court, and the sustained reporting by human rights organisations.
5. Starting in June 2016 – when Rodrigo Duterte was sworn in as president - and for years thereafter, violent anti-drug operations have been reported around the country culminating in the killing of “drug suspects.” Initially justified as killings in self-defense, a clear pattern soon emerged which is still ongoing, although with some fluctuations:<sup>6</sup> police officers or unidentified “vigilantes” (in many cases suspected to be disguised officers or killers paid by police) employ excessive force and kill people reportedly using or suspected of using or dealing drugs.<sup>7</sup> The killings disproportionately occur in impoverished areas and are almost invariably met with impunity. Accordingly, they are denounced as extrajudicial killings.
6. Because of systemic lack of transparency, inconsistencies in official figures, and a climate of terror, it is impossible to determine exactly how many people have been killed, and the state responsibility for each killing. Nevertheless, the 2020 OHCHR report concluded that “the most conservative figure, based on government data, suggests that since July 2016, 8,663 people have been killed – with other estimates of up to triple that number.”<sup>8</sup> Journalists, NGOs, and academics report that, by March 2019, up to 30,000 people had been killed.<sup>9</sup>
7. The scale of the phenomenon, the similarities in the incidents,<sup>10</sup> and an abundance of testimonies and independent investigations indicate these killings are not unintended consequences or isolated incidents in the course of police operations; they are an integral element of a systematic effort organised and pursued by the state in the context of its war on drugs, with the highest levels of government and law enforcement condoning, tolerating, supporting and incentivising the killings, when not ordering them.<sup>11</sup>
8. Extrajudicial killings in the context of the anti-drug campaign continued after the 2020 OHCHR report, and are still going on under the Marcos administration. During the first six months of 2021, ABS-CBN's

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<sup>6</sup> Clare Baldwin, Andrew R.C. Marshall, and Damir Sagolj, “Police Rack up an Almost Perfectly Deadly Record in Philippine Drug War,” *Reuters*, 5 December, 2016, <https://www.reuters.com/investigates/special-report/philippines-duterte-police/>; “Looking Back: Day One, Year One of the Antidrug Campaign,” *The Drug Archive* (blog), accessed 08 January, 2020, <https://drugarchive.ph/post/174-day-one-year-one-of-the-antidrug-campaign>.

<sup>7</sup> Manuel Mogato and Clare Baldwin, “Special Report: Police Describe Kill Rewards, Staged Crime Scenes in Duterte’s Drug War,” *Reuters*, April 18, 2017, <https://www.reuters.com/article/us-philippines-duterte-police-specialrep-idUSKBN17K1F4>; “If You Are Poor, You Are Killed’: Extrajudicial Executions in the Philippines’ ‘War On Drugs’” (Amnesty International, January 2017), <https://www.amnesty.org/download/Documents/ASA3555172017ENGLISH.PDF>.

<sup>8</sup> A/HRC/44/22, para. 22.

<sup>9</sup> Drug Archive, “The Drug Killings: Who, What, Where, When, How?,” accessed January 8th, 2020, <https://drugarchive.ph/post/26-the-drug-killings-who-what-where-when-how-master>.

<sup>10</sup> A/HRC/44/22. Also “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’”, 15.

<sup>11</sup> Evidence of this is provided in numerous sources, the review of which exceeds the space of this report. Among others, see:

A/HRC/44/22; <https://www.icc-cpi.int/philippines>.

“‘If You Are Poor, You Are Killed’: Extrajudicial Executions in the Philippines’ ‘War On Drugs.’”; “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’”; “License to Kill: Philippines Police Killings in Duterte’s ‘War on Drugs’” (Human Rights Watch, 2017), <https://www.refworld.org/docid/58b941f24.html>; David T Johnson and Jon Fernquest, “Governing through Killing: The War on Drugs in the Philippines,” *Asian Journal of Law and Society* 5, no. 2 (November 2018), <https://www.cambridge.org/core/journals/asian-journal-of-law-and-society/article/governing-through-killing-the-war-on-drugs-in-the-philippines/878BFFB53E2705BEFD2373CDAC3E84F4/core-reader>; “Philippine Drug War Casualties: Dataset by Stabile Center for Investigative Journalism,” n.d., <https://data.world/stabile-center/ph-drug-war>.

Investigative and Research Group<sup>12</sup> documented 175 deaths connected to drug control, including people killed in drug law enforcement operations, people killed by unidentified assailants, and bodies found in public spaces. This represented a 78.5% increase in comparison to the prior six months. The Dahas project<sup>13</sup> documented 186 killings during the first quarter of 2021 alone - a 44% increase in comparison to the last quarter of 2020. Killings continued being reported throughout 2022, and regardless of the change in government. The Dahas Project reported 226 people killed from 1 January 2022 to 7 September 2022<sup>14</sup>, 75 of which were killed during the presidency of Ferdinand Marcos Jr.

9. In September 2021, the Pre-Trial Chamber of the International Criminal Court (ICC) authorised the ICC Prosecutor to commence an investigation of crimes within the jurisdiction of the Court allegedly committed on the territory of the Philippines between 1 November 2011 and 16 March 2019 in the context of the so-called 'war on drugs' campaign, finding that 'it appears, on the basis of the supporting material, that the killings (...) show a certain pattern and may constitute crimes against humanity within the jurisdiction of the Court'<sup>15</sup>. As recently as September 8 2022, the new Marcos administration has requested that the ICC puts an end to the investigation<sup>16</sup>.
10. The 2020 OHCHR Report found a situation of 'near-impunity' for drug-related extrajudicial killings. In response to the report, the Philippines government announced<sup>17</sup> the creation of an 'Inter-Agency Review Panel' tasked to investigate 5,655 deaths connected to police operations. However, by June 2022 the ICC Prosecutor concluded that this review did not appear to possess powers or authority independent of the government's own Department of Justice, or to have any specific investigative function, indicating that a 'desk review by itself does not constitute investigative activity'<sup>18</sup>.
11. In the reply to the List of Issues, the government noted that 'the Head of State acknowledges that such [anti-drug operations] should be carried out within the bounds and due process of law'. However, the 2020 OHCHR report found that former President Duterte had frequently incited killing people involved with drugs.<sup>19</sup> As late as July 2021, President Duterte declared "I never denied – and the ICC can record it – those who destroy my country, I will kill you"<sup>20</sup>; in August 2021, Duterte's Interior Secretary announced that "the campaign against illegal drugs will continue until they [drug dealers] are all gone."<sup>21</sup> The new Interior Secretary appointed by President Marcos, who came into power in June 2022, has declared that "The war against drugs will be as intensive as before."<sup>22</sup>

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<sup>12</sup> <https://news.abs-cbn.com/specials/map-charts-the-death-toll-of-the-war-on-drugs>.

<sup>13</sup> The timeline of drug-related killings compiled by Dahas can be found here: <https://dahas.upd.edu.ph/database/timeline-of-drug-related-deaths/>.

<sup>14</sup> <https://twitter.com/DahasPH/status/1568222690430910464/photo/2>

<sup>15</sup> [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021\\_08044.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_08044.PDF), para. 107.

<sup>16</sup> <https://www.rappler.com/nation/philippine-government-asks-international-criminal-court-pre-trial-chamber-deny-request-resume-probe-drug-war/>

<sup>17</sup> [https://www.doj.gov.ph/speech\\_full.html?speechid=169](https://www.doj.gov.ph/speech_full.html?speechid=169)

<sup>18</sup> [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022\\_05101.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_05101.PDF)

<sup>19</sup> A/HRC/44/22, para. 80

<sup>20</sup> Sofia Tomacruz (26 July 2021), Duterte taunts ICC in SONA 2021: I never denied 'I will kill' in war vs drugs, *Rappler*, <https://www.rappler.com/nation/duterte-taunts-international-criminal-court-sona-2021>.

<sup>21</sup> Zacarian Sarao (3 August 2021), Drug war to continue through NCR Plus lockdown period, *Inquirer.net*, <https://newsinfo.inquirer.net/1468077/war-on-drugs-campaign-to-continue-despite-lockdown-in-ncr-plus-dilg>.

<sup>22</sup> Dwight de Leon (4 July 2022), Drug war under Marcos: What it will look like, in Benhur Abalos' words, *Rappler*, <https://www.rappler.com/nation/what-drug-war-under-marcos-jr-will-look-like-according-benhur-abalos-dilg/>.

## Efforts to reinstate the death penalty

### Paragraph 11 List of Issues

#### Government position

12. In the response to the List of Issues, the government describes ongoing efforts to reinstate the death penalty as ‘inclusive of legislative efforts to conduct stakeholder human rights dialogues with constituents within Parliament and/ or civic space regarding the death penalty’, noting that these are not prohibited under the second optional protocol to ICCPR. However, the legislative efforts cannot be accurately described as dialogues with stakeholders and constituents.

#### Commentary

13. House Bill 7814, adopted in March 2021 by the House of Representatives envisaged the reinstatement of the death penalty in the Philippines, including for drug offences. Upon the passage of the bill in the lower House, the Commission on Human Rights noted that this would violate the Philippines’ international obligations under the 2nd Optional Protocol to ICCPR<sup>23</sup>. The Bill was initially scheduled for discussion at the Senate, however, but it was postponed ahead of the Presidential elections in May 2022. While the withdrawal of Senate Bill no. 27 from consideration<sup>24</sup> may signal that support for this move is dwindling in Parliament, President Marcos Jr. has in the past expressed his support for the death penalty for drug trafficking.<sup>25</sup>

## Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and treatment of persons deprived of their liberty (Arts.6, 7, 9 and 10)

### Efforts to reduce prison overcrowding

#### Paragraph 14 List of Issues

#### Government reply

14. In the List of Issues, the Committee requested that Philippines authorities provide information about efforts to reduce overcrowding and poor conditions within the prison system, with particular regards to the impact of drug laws in increasing pressure on the prisons system. The government responded by describing some initiatives to increase the size and capacity of prison and jail facilities, and by pointing to schemes that could facilitate the reduction in the number of people deprived of liberty, such as the Expanded Good Conduct Time Allowance Act and its implementing rules and regulations, or the fact that ‘eligible or qualified person deprived of liberty may avail of early modes of paralegal release such as bail, release on recognizance, and provisional/ permanent dismissal, among others, thereby

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<sup>23</sup> <http://chr.gov.ph/statement-of-commissioner-karen-gomez-dumpit-on-the-passage-of-house-bill-no-7814-providing-for-the-presumption-of-guilt-and-reintroduction-of-the-death-penalty-as-amendments-to-th/>

<sup>24</sup> Melvin Gascon (10 November 2021), ‘Lacson withdraws bill reimposing death penalty’ *Inquirer.net*, <https://newsinfo.inquirer.net/1512757/lacson-withdraws-bill-reimposing-death-penalty>.

<sup>25</sup> Jovic Yee (17 February 2016), ‘Bongbong Marcos backs death penalty for drug trafficking’ *Inquirer.net*, <https://newsinfo.inquirer.net/765499/bongbong-marcos-backs-death-penalty-for-drug-trafficking>.

shortening their length of stay in jail'. No reference to the impact of drug laws on prison congestion was made.

### Commentary

15. The Comprehensive Dangerous Drugs Act 2002 (CDDA) prescribes a range of punishments for drug-related activities which are grossly disproportionate to the offences and overly severe. Depending on the amount of substances, drug possession is punished with incarceration between 12 years' and life, and a fine.<sup>26</sup> Drug use is punished with six months' mandatory rehabilitation as a first offence, and six to 12 years' imprisonment and a fine as a repeat offence.<sup>27</sup> The end-result is a system of disproportionately harsh penalties, with non-violent drug offences often punished more harshly than violent crimes.<sup>28</sup> Further, the mandatory character of many penalties impairs judicial discretion in: tailoring sentences to the specificity of the crime and the offender; assessing reasonableness and proportionality of punishment; and, evaluating the very necessity of depriving the defendant of liberty in favour of alternative measures. As a result, hundreds of thousands of people are arrested and incarcerated every year for often minor drug offences, leading to one of the most overcrowded prison systems in the world.
16. As of July 2022, the average occupancy level of Filipino jails was 390%, with a maximum level of 2,699%, or about 28 individuals occupying 4.7 square meters<sup>29</sup>. The government's punitive approach to drugs has exacerbated the congestion of jails and prisons, precipitating an ongoing crisis. Between 2016 and 2018, people deprived of liberty increased from 96,000 to 160,000 (+64%), resulting in the country having (one of) the world's most overcrowded prison system(s).<sup>30</sup>
17. As of 30 June 2022, jails managed by Bureau of Jail Management and Penology (BJMP) (where people in pretrial detention, facing trial, or sentenced to max. three years are detained), hosted 131,193 prisoners, of which 90% in pretrial detention or awaiting judgment; 68.6% of people detained in BJMP facilities were incarcerated for drug offences alone.<sup>31</sup>
18. Authorities continue to arrest a high number of people on drug charges, including for drug use and possession for personal use. While the OHCHR 2020 report noted that 223,780 'drug personalities' - an ill-defined and deeply stigmatising term - had been arrested between July 2016 and December 2020,<sup>32</sup> the government estimates that by 31 May 2022 that number had risen to 345,216 - a 54% increase.

Against this background, efforts to establish alternatives to incarceration (see note on the plea bargaining system in para. 21), cannot succeed in reducing prison overcrowding. Meanwhile, decriminalisation of drug use, possession for personal use, and other drug-related activities would be much more effective

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<sup>26</sup> "An Act Instituting The Comprehensive Dangerous Drugs Act Of 2002, Repealing Republic Act No. 6425, Otherwise Known As The Dangerous Drugs Act Of 1972, As Amended, Providing Funds Therefor, And For Other Purposes," Pub. L. No. Republic Act 9165 (2002), [https://www.lawphil.net/statutes/repacts/ra2002/ra\\_9165\\_2002.html](https://www.lawphil.net/statutes/repacts/ra2002/ra_9165_2002.html), Section 12 [*hereinafter: CDDA*], Section 11.

<sup>27</sup> Section 15.

<sup>28</sup> For context, the minimum penalty for homicide is twelve years. Alvarez, Women, Incarceration and Drug Policies in the Philippines: Promoting Human and Effective Responses, (IDPC: London, 2018), 9.

<sup>29</sup> [https://www.bjmp.gov.ph/images/data\\_and\\_stats/07-31-22/BJMP\\_Jail\\_facility\\_congestion\\_rate.png](https://www.bjmp.gov.ph/images/data_and_stats/07-31-22/BJMP_Jail_facility_congestion_rate.png)

<sup>30</sup> The Global State of Harm Reduction 2020 (London: Harm Reduction International, 2020), 64.

<sup>31</sup> <https://www.bjmp.gov.ph/index.php/data-and-statistics>.

<sup>32</sup> A/HRC/44/22, para. 32.

in tackling prison overcrowding and improving conditions of detention, and would be in line with (among others) recommendations to the Philippines by the Committee on Economic, Social and Cultural Rights.<sup>33</sup>

19. With regards to new schemes for accessing alternatives to incarceration, in 2018, a reform of the Republic Act 9165, Sec. 23 was adopted, allowing for plea bargaining for drug-related cases. Under this new procedure, a person sentenced for 12 to 20 years in prison for drug possession can see their sentence reduced to 4 years and 6 months' imprisonment or community-based rehabilitation. While the plea-bargaining scheme was expected to help decongest jails and court dockets in the country from drug cases, the intensification of the anti-drugs campaign has meant that prisons have remained overcrowded.

## Poor conditions in detention

### Paragraph 14 List of Issues

#### Government reply

20. In the reply to the list of issues, the government explains that 'the BJMP adheres to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Through its Directorate for Health Service, the Jail Bureau has been preserving the right to health of the PDL and has been advocating that they should equally and equitably receive whatever health services provided in the community', noting also that the 'Jail Bureau adopts the National TB Program as well as the HIV/AIDS program of the Department of Health (DOH) formed as part of its health programs for PDLs'. A series of statistics on medical personnel and health outcomes are provided, concluding that 'medical care services are provided efficiently and effectively to the PDL'.

#### Commentary

21. Prison overcrowding, coupled with the lack of essential health services, has a grave impact on the health of people in prison: in 2018, public officials admitted that over 5,000 prisoners die at the New Bilibid Prison in Metro Manila each year (20% of prisoners) because of violence and disease, ultimately due to overcrowding which accelerates the spread of infectious diseases.<sup>34</sup> In 2016, the Chief of the Public Attorney Office admitted that up to "one to three inmates in every jail cell are affected by HIV-AIDS."<sup>35</sup> Despite that, the government is refusing to implement key public health interventions recognised as essential for HIV prevention, treatment and care in prison, such as HIV testing and treatment, condom programmes, harm reduction services.<sup>36</sup> The latter are particularly critical, considering the high percentage of prisoners incarcerated for drug offences and clear evidence of drug use in prison.

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<sup>33</sup> E/C.12/PHIL/CO/5-6, para. 54.

<sup>34</sup> Among others, see: Jessie Yeung (18 October 2019), "More than 5,000 Inmates Die at This Prison Every Year," *CNN*, <https://edition.cnn.com/2019/10/04/asia/philippines-inmate-deaths-intl-hnk-scli/index.html>.; Jamie Fullerton (4 October 2019), 'We Don't Need the Death Penalty': 20% of Inmates Die Each Year in Philippines Jail. *The Guardian*, <https://www.theguardian.com/world/2019/oct/04/we-dont-need-the-death-penalty-20-of-inmates-die-each-year-in-philippines-jail>.

<sup>35</sup> Joseph Tristan Roxas (24 August 2016), "1 to 3 Inmates in a Jail Cell Affected by HIV-AIDS —PAO Chief," *GMA News Online*, <https://www.gmanetwork.com/news/news/nation/578774/1-to-3-inmates-in-a-jail-cell-affected-by-hiv-aids-pao-chief/story/>.

<sup>36</sup> For more details see: UNODC, "Policy Brief: HIV Prevention, Treatment and Care in Prisons and Other Closed Settings: A Comprehensive Package of Interventions" (Vienna: UNODC, 2013), [https://www.unodc.org/documents/hiv-aids/HIV\\_comprehensive\\_package\\_prison\\_2013\\_eBook.pdf](https://www.unodc.org/documents/hiv-aids/HIV_comprehensive_package_prison_2013_eBook.pdf).

22. Through the anti-drug campaign, the government is exacerbating the very conditions that facilitate the spread of communicable diseases, including HIV and since 2020 COVID-19, thus failing to protect the right to health but also the right to life of people in prison.<sup>37</sup> Notably, disproportionately targeting, arresting, and detaining people who use drugs (who are at higher risk of contracting and living with HIV and Hepatitis C)<sup>38</sup> causes an increase in the number of people living with HIV and/or Hepatitis C who are incarcerated; in turn, an ever-increasing number of prisoners are locked in settings where they face a higher risk of contracting infectious diseases.
23. Due to prison overcrowding, detainees live in inhumane conditions, with little to no space, no privacy, poor lighting and ventilation, no access to adequate food, water and sanitation, and no adequate healthcare.<sup>39</sup> In June 2016, the Committee Against Torture expressed concern at the “appalling conditions of detention” prevailing in the Philippines which could amount to ill-treatment or torture, including: “Dilapidated and small cells, in some of which detainees are forced to sleep while sitting or standing, unsanitary conditions, inadequate amounts of food, poor nutrition, insufficient natural and artificial lighting and poor ventilation, which cause inter-prisoner violence and the spread of infectious diseases such as tuberculosis”.<sup>40</sup> Similarly, a January 2019 report describes:
- “On one recent night at the jail, in Dorm 5, the air was thick and putrid with the sweat of 518 men crowded into a space meant for 170. The inmates were cupped into each other, limbs draped over a neighbor’s waist or knee, feet tucked against someone else’s head, too tightly packed to toss and turn in the sweltering heat”.<sup>41</sup>
24. The situation is particularly dire for women in detention, around 50% of whom are incarcerated for drug offences:<sup>42</sup> a 2018 report by NoBox and IDPC documented inhuman and unsanitary conditions of detention in BJMP facilities, as well as violence at the hands of both other prisoners and jail personnel.<sup>43</sup>
25. Finally, prison overcrowding increases insecurity and exposure to violence, both from other prisoners and prison staff. Abuses are inescapable, in some cases with extreme consequences: two deaths were reported in October 2019 alone as a result of riots at the Manila City Jail, and more are routinely denounced by non-government organisations.<sup>44</sup> Another report denounced people suspected (not yet

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<sup>37</sup> Also see Human Rights Committee, General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, UN Doc. CCPR/C/GC/36 (30 October 2018), para. 26.

<sup>38</sup> UNAIDS, *Communities at the Centre: The Response to HIV in Asia and the Pacific* (Geneva: UNAIDS, 2019), 27.

<sup>39</sup> Among others, see: Mary Catherine A. Alvarez, “Women, Incarceration and Drug Policies in the Philippines: Promoting Human and Effective Responses,” 2018, [http://fileserv.idpc.net/library/Philippines\\_Policy\\_Guide\\_Women.pdf](http://fileserv.idpc.net/library/Philippines_Policy_Guide_Women.pdf); Phila Siu, “Worlds Apart: Inside Two of the Philippines’ Most Notorious Jails,” *South China Morning Post*, November 23, 2016, <https://www.scmp.com/week-asia/society/article/2039072/worlds-apart-inside-two-philippines-most-notorious-jails>; “Cruel, Inhumane and Degrading’: Mass Strip Search at Philippine Prison Causes Uproar,” *South China Morning Post*, March 2, 2017, <https://www.scmp.com/news/asia/southeast-asia/article/2075501/cruel-inhumane-and-degrading-mass-strip-search-philippine>; Jamie Fullerton, “We Don’t Need the Death Penalty’: 20% of Inmates Die Each Year in Philippines Jail,” *The Guardian*, October 4, 2019, <https://www.theguardian.com/world/2019/oct/04/we-dont-need-the-death-penalty-20-of-inmates-die-each-year-in-philippines-jail>.

<sup>40</sup> Committee Against Torture, “Concluding Observations on the third periodic report of the Philippines”. UN Doc. CAT/C/PHL/CO/3 (2 June 2016), Para 27/28.

<sup>41</sup> Aurora Almendral (7 January 2019), “Where 518 Inmates Sleep in Space for 170, and Gangs Hold It Together,” *The New York Times*, <https://www.nytimes.com/2019/01/07/world/asia/philippines-manila-jail-overcrowding.html>.

<sup>42</sup> A/HRC/47/40.

<sup>43</sup> Alvarez, “Women, Incarceration and Drug Policies in the Philippines: Promoting Human and Effective Responses.”, p.12.

<sup>44</sup> Al Jazeera (30 September 2019), Gang Riot in Overcrowded Prison in the Philippines Turns Deadly, *Al Jazeera*, <https://www.aljazeera.com/news/2019/09/gang-riot-overcrowded-prison-philippines-turns-deadly-190930045152121.html>;



charged) of drug offences being held in a secret cell with barely any space to move, and being tortured by the police for bribes.<sup>45</sup>

### Covid-19 in places of detention

26. Early on in the COVID-19 outbreak, prisons were identified as high-risk environments for the spread of COVID-19, and calls multiplied for the protection of people in detention, the decongestion of detention settings (particularly overcrowded ones) and the vaccination of prisoners and prison staff as a matter of priority. Among others, the Special Rapporteur on the right to health in April 2020 recommended that States “consider the early release of prisoners with health vulnerabilities (including those with HIV, hepatitis C, TB or drug dependence), prisoners with dependents, and those charged for minor and non-violent drug and other offences, while adequately planning to care for the health of those released.”<sup>46</sup>
27. Filipino authorities took some steps to reduce the prison population in response to COVID-19, as a result of which over 80,000 people were released in the first months of the pandemic.<sup>47</sup> However, measures were vastly insufficient to address the scale of the risk, and arrests continued - including for newly-introduced COVID-19-related offences - impeding a substantial reduction in prison population.<sup>48</sup> Further, some of the policies introduced excluded, in a discriminatory manner, people detained for certain drug offences from eligibility for early release.
28. As a result, COVID-19 quickly spread among prisoners and prison staff, with over 700 cases confirmed in Filipino jails by June 2020,<sup>49</sup> and dozens of suspicious deaths<sup>50</sup> (no official figures could be found of deaths among people detained and prison staff). Despite that, people deprived of liberty were not prioritised for COVID-19 vaccination, with only 10% of people in prison vaccinated as of October 2021.<sup>51</sup>

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Michael Mudoon (23 October 2019), 5,200 Deaths This Year in Overcrowded Philippines National Penitentiary, *Addiction Center*, <https://www.addictioncenter.com/news/2019/10/deaths-philippines-national-penitentiary/>.

<sup>45</sup> South China Morning Post (28 April 2017), ‘Here We Are, Here We Are’: Dozens of Detainees Found Stuffed inside Secret Philippine Jail Linked to Drug War,” *SCMP*, <https://www.scmp.com/news/asia/southeast-asia/article/2091461/here-we-are-here-we-are-dozens-detainees-found-stuffed>.

<sup>46</sup> Statement by the UN expert on the right to health\* on the protection of people who use drugs during the COVID-19 pandemic (16 April 2020), OHCHR, <https://www.ohchr.org/en/statements/2020/04/statement-un-expert-right-health-protection-people-who-use-drugs-during-covid-19>.

<sup>47</sup> Xinhua Net (23 October 2016), Over 81,000 detainees freed in the Philippines to decongest jails amid COVID-19, *XinhuaNet*, [http://www.xinhuanet.com/english/2020-10/23/c\\_139462218.htm](http://www.xinhuanet.com/english/2020-10/23/c_139462218.htm).

<sup>48</sup> Among others: James Pasley (31 July 2020), Philippines’ police have arrested 76,000 people for breaching lockdown as Duterte wages war on Covid-19 just like his war on drugs, *Business Insider*, <https://www.businessinsider.com/philippines-police-arrested-people-for-breaching-lockdown-2020-7?r=US&IR=T>; Harm Reduction International, COVID-19, Prisons and Drug Policy: Global Scan March-June 2020, <https://www.hri.global/covid-19-prison-diversion-measures>.

<sup>49</sup> Rappler (22 June 2020), Hidden victims of the pandemic: The old man, the jail aide, and the convict, *Rappler*, <https://www.rappler.com/newsbreak/in-depth/264492-hidden-victims-coronavirus-pandemic-philippines-prisoners-jail-aide-convict/>.

<sup>50</sup> Lian Buan (22 May 2020), In Bilibid, dozens die of unclear causes without being tested for coronavirus, *Rappler*, <https://www.rappler.com/newsbreak/investigative/261509-bilibid-dozens-die-unclear-causes-not-tested-coronavirus/>; Peoples Dispatch (12 May 2021), In Philippines, death of COVID-19 infected political detainee reveals plight of prisoners, *Peoples Dispatch*, <https://peoplesdispatch.org/2021/05/12/in-philippines-death-of-covid-19-infected-political-detainee-reveals-plight-of-prisoners/>.

<sup>51</sup> COVID-19 vaccination for prison populations and staff: Report on global scan (London: Harm Reduction International and Penal Reform International, 2021), [https://www.hri.global/files/2021/12/13/HRI\\_PRI\\_Covid\\_vaccine\\_report\\_FINAL\\_0612.pdf](https://www.hri.global/files/2021/12/13/HRI_PRI_Covid_vaccine_report_FINAL_0612.pdf), p.21.

## Deprivation of liberty (arts. 9, 10 and 14).

### Mandatory drug treatment and deprivation of liberty

#### Paragraph 15 List of Issues

##### Government reply

29. In response to paragraph 15, the government of the Philippines has noted that ‘the current anti-illegal drug campaign is complemented by wellness and recovery efforts through the holistic-approach of a Community-Based Rehabilitation Program (CBRP)’, which includes a principle of ‘informed and voluntary participation and treatment’. No explanation or reference to mandatory drug treatment and detention is made.

##### Commentary

30. Under the CDDA, people caught using drugs for the first time are sentenced to minimum six months rehabilitation in a government-operated center. The same applies to those who ‘surrender’ in the context of *Oplan Tokhang*, an operation whereby police officers knock on the doors of people suspected of engaging with drugs and ‘encourage’ their ‘voluntary’ surrender to the authorities (for more information on *Oplan Tokhang*, see para. 40 and following). Credible accounts narrate how under *Oplan Tokhang* the barangay captain would tell surrenderees that the only other options are incarceration or risk of physical harm (alluding to extrajudicial killings), thus confinement or enrolment in a treatment program would be ‘safer’. Some people who underwent treatment report being abducted (“by a team in a white van”) or drugged and forcibly taken to a rehabilitation facility, waking up restrained to a bed or detained in small cells.<sup>52</sup>
31. In the last year, *Oplan Tokhang* has taken another form, that of a ‘one-stop-shop’ where individuals suspected/associated with drugs and who have been placed on the lists are ‘invited’ to the barangay, where they are subjected to a series of ‘interventions’ - e.g. profiling, screening, DDE, drug test. This is done in an open space (with no privacy), with PNP and PDEA personnel around. This ‘one-stop-shop’ has also been included in the Anti-Drug Abuse Council Bill that has been filed, and which includes surveillance drug testing, monitoring, and information gathering. Individuals on the list are also then mandated to attend the programs (community-based or rehab). There is no option to withdraw. For those who don't attend or cease to attend, the submitting organisations have received reports where the person is "re-invited" to attend, while some have been arrested. There have also been reports of people undergoing these interventions being obliged to wear an ID identifying them as such while outside home.
32. Mandatory rehabilitation is undergone either in residential treatment centres or in the community. Both systems are gravely problematic: they violate the principle of voluntariness that underpins the right to health, and revolve around non evidence-based treatment in many cases amounting to ill-treatment. Residential centers suffer from poor treatment standards, with accreditation primarily determined by physical space rather than treatment quality. Based on victims’ accounts, local civil society denounced ill-treatment in the form of detention in isolation, forced labor, physical and psychological violence in the name of treatment. Conditions of detention are substandard, and are worsening as a result of overcrowding; this is in turn caused by the intensification of the anti-drug campaign and related policies,

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<sup>52</sup> Evidence supporting this and the other issues reported in this paragraph is with the submitting organisations and available upon request.

such as a new plea-bargaining framework introduced in 2018. Finally, there reportedly is no public oversight on these centers, and no recourse for people who suffer abuses under this system, as violence is framed as ‘penalty’ for disobedience while in treatment.

33. Community-based programs suffer from a similar lack of oversight and standards. Some are made to go through treatment programmes while under police supervision and forced to take drug tests, sometimes even during ‘counseling sessions’. People sent to community-based programmes while in jail go through the modules in handcuffs. The treatment period is pre-determined and there is no option to leave, as this would expose the person once again to incarceration. Those who ‘escape’ treatment can be further charged under the CDDA.
34. Human rights law mandates the Philippines to move away from this system. Nevertheless, the government has taken steps to scale this up.<sup>53</sup> Between 2012 and 2022 the number of compulsory drug detention centres increased from 37 to 63<sup>54</sup> (although the DDB Director identified a total of 73 facilities, between inpatient and outpatient)<sup>55</sup> and the number of people detained in them has risen in the same period from 2,744 to 5,447. The DDB reports 2708 admissions in 2021. DDB Regulation no. 2 of 2018 also envisages the construction of drug reformation centres providing “reformatory rehabilitation” to surrenderees involved in drug-related activities, but who do not use drugs. Those who enter the centres are not free to leave and undergo an arbitrarily-defined list of activities with the aim of “rectifying or modifying negative attitude and behavior.”<sup>56</sup> As of 2021, 107 of these centres have already been established, referred to as “Balay Silangan Reformation Centres”.<sup>57</sup> It is particularly concerning that these centres (as other drug treatment facilities) are to be located in police or military camps/bases,<sup>58</sup> and that PNP already runs “treatment programmes” called “PNP Wellness and Recovery Programs”<sup>59</sup> and, more recently, as part of “Project Adore.”<sup>60</sup> As highlighted by Amnesty International, “the implications of placing a rehabilitation centre inside a law enforcement facility are that treatment is then seen as a form of punishment, thus deterring people who may require medical care to seek it and reinforcing a stereotype that people who use drugs are criminals.”<sup>61</sup>

## Mandatory pre-trial detention

### Paragraph 16 List of Issues.

#### Government reply

35. In the response to the List of Issues, the government has explained that the BJMP ‘facilitates the availment of the persons deprived of liberty (PDL) of the early modes of release, such as bail, release on recognizance, and provisional/permanent dismissal’, and that no person is held in pretrial detention for

<sup>53</sup> SunStar PH (29 November 2016), “Duterte Inaugurates Mega Drug Rehab Center in Nueva Ecija,” *SunStar Philippines*, <https://www.sunstar.com.ph/article/112694/Duterte-inaugurates-mega-drug-rehab-center-in-Nueva-Ecija->

<sup>54</sup> <https://www.ddb.gov.ph/research-statistics/statistics/45-research-and-statistics/586-2021-statistics>.

<sup>55</sup> <https://www.youtube.com/watch?v=2Q216CkEuWY> 1:10:33.

<sup>56</sup> Dangerous Drugs Board, Board Regulation no. 2 (Series of 2018), Section 1.

<sup>57</sup> <https://www.google.com/url?q=https://drive.google.com/file/d/1oFA2C-fzflWTII3R8P4YIFfHvS009HD/view&sa=D&source=docs&ust=1659946552643191&usg=AOvVaw0tNCT3dl4I04jEMApGOrGi>

<sup>58</sup> Dangerous Drugs Board, Board Regulation no. 2 (Series of 2018), Section 10.

<sup>59</sup> <https://www.facebook.com/PNPRecoveryAndWellnessProgram/>.

<sup>60</sup> Francis Earl Cueto (15 March 2022), PNP rolls out drug rehab program, *The Manila Times*,

<https://www.manilatimes.net/2022/03/15/news/national/pnp-rolls-out-drug-rehab-campaign/1836330>.

<sup>61</sup> They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’, 40.

a period longer than what is allowed under the law, which is ‘a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced’.

### Commentary

36. According to the World Prison Brief, in 2021 there were over 107,000 people held in pretrial detention in the Philippines, up from just over 97,000 in 2015, and almost twice as much as in 2010, when the number of people in pretrial detention was estimated at just over 56,000<sup>62</sup>. Because the overall prison population has increased substantially between 2010 and 2021, the percentage of people in pretrial detention over the total number of those held incarceration has been relatively stable, from 59% in 2010 to 69.1% in 2015 to 64.3% in 2021<sup>63</sup>.
37. Pre-trial detention is mandatory for drug offences in the Philippines, in violation of international standards.<sup>64</sup> A 2018 study found that around 100,000 prisoners – 38% of the total prison population – were awaiting trial for non-bailable drug offences (for which they must be presumed innocent).<sup>65</sup> These figures are particularly problematic in a context where almost 65% of all prisoners are in pre-trial detention, and considering that this population doubled between 2010 and 2021.<sup>66</sup> Pre-trial detention is also exceptionally long in the Philippines, and in 2018 it was estimated to have an average length of over 528 days.<sup>67</sup>
38. With regards to early modes of release, the existing schemes to facilitate access to alternatives to incarceration such as plea bargaining have been ineffective at reducing prison overcrowding, given the increase in the number of people brought into the system by the anti-drugs campaign. Furthermore, the extremely long penalties imposed under the law for any drug-related activity (see para. 30) means that people can be and in fact are held in pretrial detention for extremely long periods of time.

## **Right to privacy (arts. 17 and 24)**

### **Surveillance and *Oplan Tokhang***

#### **Paragraph 20 List of Issues**

#### Government reply

39. In the response to the List of Issues, the government notes that ‘Accomplishments of the anti-illegal drug campaign may be attributable to the community-driven initiatives which encourages the involvement multi-sectoral and mass-based approach of the MASA MASID or Mamayanan Ayaw sa Anomalya, Mamayanan Ayaw sa Illegal na Droga (Citizens Against Anomalies, Citizens Against Illegal Drugs)’, and that ‘Information such as names, address, contact numbers, religious affiliation and gender shall be obtained for purposes of monitoring compliance to the prescribed program, this activity may be covered

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<sup>62</sup> [https://www.prisonstudies.org/country/philippines#further\\_info\\_field\\_pre\\_trial\\_detainees](https://www.prisonstudies.org/country/philippines#further_info_field_pre_trial_detainees)

<sup>63</sup> Ibid.

<sup>64</sup> Among others, see CCPR/C/GC/35; A/HRC/47/40.

<sup>65</sup> Narag, Exploring the consequences of prolonged pretrial incarceration: evidence from a local jurisdiction in the Philippines (*International Journal of Comparative and Applied Criminal Justice*, 2018),5

<sup>66</sup> [https://www.prisonstudies.org/country/philippines#further\\_info\\_field\\_pre\\_trial\\_detainees](https://www.prisonstudies.org/country/philippines#further_info_field_pre_trial_detainees)

<sup>67</sup> <https://www.rappler.com/thought-leaders/214533-analysis-lengthy-pretrial-detention-philippines-little-dark-secret>

by video recording in conformity with those availing of the program'. No reference to *Oplan Tokhang* is made in the government reply.

### Commentary

40. *Oplan Tokhang* is an operation whereby police officers knock on the doors of people suspected of engaging with drugs and 'encourage' their 'voluntary' surrender to the authorities. The operation is carried out on the basis of "drug-watch lists" compiled by barangay<sup>68</sup> officials and communicated to law enforcement, listing people suspected of using or engaging with drugs. The lists are problematic on many levels: there are no clear criteria for including names on the lists, with registration often following unsubstantiated reports;<sup>69</sup> the lists are not accessible by the public; those who are on the lists do not have access to any written documentation; there is no judicial oversight, and no avenue to challenge one's inclusion. Registered people have no control over what information is included and how it is used; it is unclear whether and how information can be removed. Some authorities report being able to remove people from local lists after they 'graduate' from drug treatment programmes, however such reports are inconsistent, and do not clarify whether information can be also removed from central databases – creating a "system of perpetual surveillance".<sup>70</sup>
41. Among others, most of those contacted by the police to 'surrender', have to commit to urine testing and non-specified medical examinations, and are mandated to undergo non evidence-based treatment in government-run centres (more details below). According to informal reports from July 2019, over 1.5 million people surrendered to the authorities; no information is available on the number of people included in the lists, but as of July 2022 names continue to be added. Although framed as voluntary, the decision to surrender is often based on intimidation and fear, thus cannot be considered free. Indeed, there is a well-substantiated link between appearing in the lists and suffering human rights violations including violence, arbitrary arrest and detention, and even homicide.<sup>71</sup> These connections were also evidenced in the 2020 OHCHR report.<sup>72</sup>
42. Drug testing is also prescribed in the context of *Oplan Tokhang*: under DDB Board Reg 4, s.2021 (Barangay Drug Clearing Program) individuals included in the 'watchlists' are under continuous monitoring and subject to "undergo surveillance drug tests." This includes those who have undergone and completed the imposed intervention programs. According to reports to local civil society, community members are regularly 'visited' by law enforcement and asked to submit a urine specimen, or are 'invited' to the barangay, then made to submit a specimen. Drug testing is an unreliable indicator of drug use, inadequate to identify drug dependence;<sup>73</sup> especially when mandatory, it can push people who use drugs towards consuming potentially more dangerous but less detectable substances, and prevent them from seeking support or treatment when needed; as also acknowledged by this Committee.<sup>74</sup> Finally, drug testing

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<sup>68</sup> A barangay is the smallest administrative division/unit in the Philippines.

<sup>69</sup> 'If You Are Poor, You Are Killed': Extrajudicial Executions in the Philippines' 'War On Drugs (London: Amnesty International, 2017), 20; 'They Just Kill': Ongoing Extrajudicial Executions and Other Violations in the Philippines' 'War On Drugs.' (London: Amnesty International, 2019), 27.

<sup>70</sup> "'They Just Kill': Ongoing Extrajudicial Executions and Other Violations in the Philippines' 'War On Drugs.'"

<sup>71</sup> Among others, see "'They Just Kill': Ongoing Extrajudicial Executions and Other Violations in the Philippines' 'War On Drugs.'", 26

<sup>72</sup> Para. 23, among others.

<sup>73</sup> As opposed to non-problematic drug use. See "Urine Testing" (ANPUD, Robert Carr Fund, International HIV/AIDS Alliance, PITCH, 2018), <https://drive.google.com/file/d/1DBGu24ggfDEzv57QEqsF1YZ8ZYvnwuC/view>.

<sup>74</sup> E/C.12/AUS/CO/5, para. 43.

worsens stigma and discrimination, and can negatively impact on one's private and family life, as well as health.

43. Concerningly, new bills recently tabled at the Philippines' senate seek to institutionalise the surveillance system used through *Oplan Tokhang* and the 'one-stop-shops' described in paragraph 31. In particular, this concern has been raised about Senate Bill 203 and Senate Bill 470, both of them filed in July 2022.

#### **Drug testing in education settings**

44. In the reply to the list of issues, the government also notes that there is '*no information on plans to reintroduce drug testing for teachers and students*'. However, pursuant to CDDA,<sup>75</sup> the Department of Education released guidelines for conducting random drug testing in public and private secondary schools.<sup>76</sup> Although presented as voluntary, refusal to undergo the test can be grounds for "appropriate action" or "intervention" by the school. Human Rights Watch concluded that "taking a child's bodily fluids, whether blood or urine, without their consent may violate the right to bodily integrity and constitute arbitrary interference with their privacy and dignity," and "could also constitute degrading treatment, and may deter children from attending school or college [...] depriving them of their right to an education".<sup>77</sup> OHCHR has reached similar conclusions.<sup>78</sup> A large random study provided evidence that it can be detrimental to effective prevention methods based on building trust between students and teachers,<sup>79</sup> and the UNODC has noted that there is no evidence that drug testing is an effective prevention strategy.<sup>80</sup>

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<sup>75</sup> Section 36.

<sup>76</sup> Republic of the Philippines Department of Education, Order 40 of 2017: Guidelines for the Conduct of Random Drug Testing in Public and Private Secondary Schools (8 August 2017) [https://www.deped.gov.ph/wp-content/uploads/2017/08/DO\\_s2017\\_040.pdf](https://www.deped.gov.ph/wp-content/uploads/2017/08/DO_s2017_040.pdf).

<sup>77</sup> Phelim Kine (22 June 2018), 'Philippine School Kids may Face Mandatory Drug Tests, *Human Rights Watch*, <https://www.hrw.org/news/2018/06/22/philippine-school-kids-may-face-mandatory-drug-tests>.

<sup>78</sup> A/HRC/39/39, para. 8.

<sup>79</sup> Damon Barrett, *The impact of drug policies on children and young people* (New York: Open Society Foundations, 2015), p. 9, <https://www.opensocietyfoundations.org/publications/impact-drug-policies-children-and-young-people>.

<sup>80</sup> UNODC and WHO, *International standards on Drug Use Prevention* (Vienna: UNODC, 2015), p. 21, [https://www.unodc.org/documents/prevention/UNODC\\_2013\\_2015\\_international\\_standards\\_on\\_drug\\_use\\_prevention\\_E.pdf](https://www.unodc.org/documents/prevention/UNODC_2013_2015_international_standards_on_drug_use_prevention_E.pdf).

## Rights violations associated to COVID-19 response

45. The Duterte government adopted a highly militarised and punitive approach to COVID-19 control, which closely resembled its drug control strategy.<sup>81</sup> President Duterte publicly incited law enforcement to “shoot them dead” referring to individuals who are found in violation of COVID-19 protocols,<sup>82</sup> and at least four deaths were reported as result of ill-treatment or abuse of force in lockdown enforcement.<sup>83</sup>
46. Research by Harm Reduction International and IDUCare,<sup>84</sup> based on interviews with a sample of people who use drugs in the Philippines, found an increase in criminalisation and targeting of people who use or are suspected of using drugs during the pandemic, exposing them and their communities to a heightened risk of discrimination, harassment, violence, as well as COVID-19 transmission. Specifically on policing and detention:
- The majority of respondents reported an increase in surveillance and abuse by authorities, and 90% reported being stopped by law enforcement during the pandemic;
  - Nineteen respondents believed they were stopped arbitrarily at a checkpoint. For 11 respondents, encounters with law enforcement led to detention (one of them was detained for five hours in a car); one documented being detained for 12 hours and then mandated to undertake community service despite not having violated any protocol; one was frisked; and one reported the police officer pointing a gun towards him during the stop;
  - Fourteen participants denounced having experienced some form of abuse by law enforcement, ranging from verbal abuse to physical violence and ill-treatment, including unlawful searches, pointing of guns towards the person, and invasions of privacy;
  - The majority (71%) said they did not feel like they could safely report experiences of abuse or discrimination and seek justice. Similarly, five out of six respondents who reported experiencing gender-based violence during the pandemic indicated that they did not raise the issue with authorities, either for lack of trust, or because they did not know who to report the issue to;
  - Ten participants experienced quarantine detention of between five hours and a month; four of them reported facilities being crammed, hot, and lacking adequate ventilation.

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<sup>81</sup> For more details, see: Harm Reduction International and Asia Centre (2021), ‘Waging War against COVID-19: The Securitisation of Health Responses in Five Asian Countries’:

[https://www.hri.global/files/2021/06/17/HRI\\_Briefing\\_Emergency\\_Powers\\_Law\\_Enforcement.pdf](https://www.hri.global/files/2021/06/17/HRI_Briefing_Emergency_Powers_Law_Enforcement.pdf).

<sup>82</sup> Christina Capatides (2 April 2020), “Shoot them dead”: Philippines President Rodrigo Duterte orders police and military to kill citizens who defy coronavirus lockdown, CBS News, <https://www.cbsnews.com/news/rodrigo-duterte-philippines-president-coronavirus-lockdown-shoot-people-dead/>.

<sup>83</sup> BBC News (5 April 2021), Covid rule-breaker ‘dies after exercise punishment’; Rappler (6 April 2020); Police shoot dead farmer who attacks them at Agusan del Norte checkpoint; CNN Philippines (22 April 2020), Retired soldier shot dead by police at checkpoint in Quezon City; <https://www.rappler.com/nation/barangay-tanod-kills-curfew-violator-mental-illness-tondo-manila/>.

<sup>84</sup> Harm Reduction International (2021), ‘Caught in the Crossfire: Health and human rights impacts of COVID-19 measures on people who use drugs in Indonesia and the Philippines (London: Harm Reduction International, <https://www.hri.global/contents/2167>).

## The UN Joint Programme on human rights in the Philippines and its relevance for review of the Philippines

47. In response to the widespread violations documented in the OHCHR 2020 report, in September 2020 the UN Human Rights Council directed<sup>85</sup> OHCHR to establish a cross-UN joint programme of cooperation and capacity-building on human rights in the Philippines, much to the criticism of civil society organisations that had called for an international and independent probe.<sup>86</sup> A programme agreement between several UN entities led by OHCHR and the Philippines government was signed in July 2021,<sup>87</sup> and activities are meant to be delivered during the following three years, until July 2024.
48. The Programme is structured around six key areas of work, one of which concerns a “human rights-based approach to drug control.” This area has two overarching goals: to align criminal justice responses with human rights; and, to strengthen demand reduction programmes, including prevention and treatment.
49. Civil society has expressed concern about the limited involvement of civil society and community organisations with a specialised knowledge of health and human rights-based approaches to drugs in the design of the programme, and the definition of its indicators of success.<sup>88</sup> Furthermore, the involvement of such organisations in the implementation of the activities is still unclear. As of August 2022, the Technical Working Group on drugs has not been formally established, and an informal group seldom meets. People who use drugs are not explicitly recognised among the stakeholders of the programme, and the agreement does not include mechanisms to involve them in a meaningful and safe manner.
50. While the programme agreement aims to increase voluntary access to prevention and treatment, it fails to mention the need to reform laws and policies that criminalise and stigmatise people who use drugs, and that operate as barriers to their access to harm reduction and other support services, including the criminalisation of drug use and possession for personal use, disproportionate punishment for drug offences, mandatory pretrial detention for drug offences, and mandatory reporting of people who use drugs. There are also concerns about how successes in the area of prevention and treatment may be measured and reported (e.g. whether the introduction of ‘Recovery Clinics’ may be mentioned as one).
51. The indicators for success provided in the programme are inadequate to measure tangible progress. These indicators include a yearly 10% reduction<sup>89</sup> in the number of deaths resulting from drug related operation (a shockingly timid figure that also excludes killings by vigilantes and other non-police actors), as well as a yearly 1% reduction in the percentage of people in pretrial detention over the total prison population<sup>90</sup> and a yearly 3% reduction in the overcrowding rate in pretrial detention facilities.<sup>91</sup>
52. In light of this, the review of the Philippines by this Committee is an important opportunity to provide more transparency to the operations of the Joint Programme, and to ensure that it meaningfully engages

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<sup>85</sup> Text available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/264/91/PDF/G2026491.pdf?OpenElement>.

<sup>86</sup> Among others, see: Joint Statement: UN Fails to Respond to Human Rights Violations in the Philippines (HRI, IDPC, INPUD, NoBox Philippines), <https://www.hri.global/contents/2060>.

<sup>87</sup> The programme document can be found here: <https://drive.google.com/file/d/1DC4CMzmytG8bGQ3k3jX79iK2PWCwJtd3/view>.

<sup>88</sup> Harm Reduction International and International Drug Policy Consortium (7 October 2021), Oral Statement on the human rights situation in the Philippines - Human Rights Council 48<sup>th</sup>, <https://idpc.net/alerts/2021/10/statement-on-the-human-rights-situation-in-the-philippines-human-rights-council-48th-session>.

<sup>89</sup> <https://drive.google.com/file/d/1DC4CMzmytG8bGQ3k3jX79iK2PWCwJtd3/view>, p. 29, Indicator 1A.

<sup>90</sup> Ibid. p. 32, Indicator 1.3.E.

<sup>91</sup> Ibid. p. 32, Indicator 1.3.F.



all relevant stakeholders, and addresses the serious implications of the current drug policies for the economic, social and cultural rights of people who use or are engaged with drugs.

## Recommendations

53. In light of the above, we suggest that the Committee provides the following recommendations to the government of the Philippines:

### Right to life (arts. 6 and 24 CCPR)

- Urgently put an end to extrajudicial killings and other violence targeting suspected people using drugs and people involved in drug offenses<sup>92</sup>, both by law enforcement agents as well as by non-state actors such as vigilantes and paramilitary forces, and abandon all forms of rhetoric incentivising violence against people involved with drugs.
- Conduct prompt, impartial, thorough, and transparent investigations into all killings, and alleged violations of international human rights law and international humanitarian law, with a view to prosecution and to the provision of remedies for victims and their families<sup>93</sup>, including by cooperating with the investigation of the International Criminal Court.
- Abandon initiatives to reinstate the death penalty.

### Prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and treatment of persons deprived of their liberty (Arts.6, 7, 9 and 10)

- Undertake a comprehensive review of legislation and policies relating to narcotics in line with a human rights-based approach and the International Guidelines on Human Rights and Drug Policy<sup>94</sup>, including by removing mandatory penalties for drug offenses; decriminalising drug possession for personal use; and ensuring the availability and access to alternatives to incarceration for drug offences before and after sentencing.
- Urgently adopt measures to adopt prison overcrowding, including by removing mandatory pretrial detention for drug offences.
- Ensure access to harm reduction and evidence-based drug treatment in prisons and other places of detention.

### Deprivation of liberty (arts. 9, 10 and 14).

- Urgently close all compulsory drug detention centres and ensure that drug use and dependence is treated as a health issue and that treatment and testing is voluntary, based on informed consent and left exclusively to health professionals<sup>95</sup>.

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<sup>92</sup> Already recommended by OHCHR in A/HRC/42/22, para. 87(ii).

<sup>93</sup> Already recommended by OHCHR in A/HRC/51/58, para. 65(b)

<sup>94</sup> Already recommended by OHCHR in A/HRC/51/58, para. 65(f)

<sup>95</sup> Already recommended by OHCHR in A/HRC/51/58, para. 65(f)

Right to privacy (arts. 17 and 24)

- Put an immediate end to *Oplan Tokhang* and cease the practice of drug watch lists or other arbitrary listing of and interventions on individuals involved with drugs, as well as other invasive surveillance practices including drug testing in educational settings.
- Promote measures aimed at reducing stigma and the elimination of discrimination and vilification of persons who use drugs<sup>96</sup>.

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<sup>96</sup> Already recommended by OHCHR in A/HRC/51/58, para. 65(f)