

Controversy of Usurpation of Jurisdiction: ICC and Philippines

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Abstract

Extra Judicial Killings in the Philippines had caught the attention of various international judicial bodies specially the ICC. The Philippines which a sovereign state was once a signatory of the Rome Statute thus allowing the ICC to have jurisdiction over the country. The ICC conducted a preliminary investigation within the Philippine archipelago for the possible violations of crime against humanity but the Philippines objected to this investigation on grounds that this act of the ICC is an act of usurpation of jurisdiction for the Philippines claimed that they had already withdrawn from the Rome Statute. This paper aims to determine if the act done by the ICC was a true act of usurpation of jurisdiction. This study is a qualitative descriptive analysis and will utilized secondary data as data sources. Upon the analysis of the data gathered, the researcher found out that there is no act of usurpation of jurisdiction done by the ICC. The Philippines may have withdrawn from the Rome Statute, but the investigation conducted by the ICC will only include the extra judicial killings that had occurred from the time that the Philippines was still a signatory of the Rome Statute up to the date prior to their withdrawal.

Abstract

Pembunuhan di Luar Hukum di Filipina telah menarik perhatian berbagai badan peradilan internasional khususnya ICC. Filipina yang merupakan negara berdaulat pernah menjadi penanda tangan Statuta Roma sehingga memungkinkan ICC memiliki yurisdiksi atas negara tersebut. ICC melakukan penyelidikan awal di kepulauan Filipina untuk kemungkinan pelanggaran kejahatan terhadap kemanusiaan tetapi Filipina menolak penyelidikan ini dengan alasan bahwa tindakan ICC ini merupakan tindakan perampasan yurisdiksi karena Filipina mengklaim bahwa mereka telah menarik diri dari Statuta Roma. Tulisan ini bertujuan untuk menentukan apakah tindakan yang dilakukan oleh ICC adalah tindakan perampasan yurisdiksi yang sebenarnya. Penelitian ini merupakan analisis deskriptif kualitatif dan akan menggunakan data sekunder sebagai sumber data. Setelah menganalisis data yang dikumpulkan, peneliti menemukan bahwa tidak ada tindakan perampasan yurisdiksi yang dilakukan oleh ICC. Filipina mungkin telah menarik diri dari Statuta Roma, tetapi penyelidikan yang dilakukan oleh ICC hanya akan mencakup pembunuhan di luar hukum yang telah terjadi sejak Filipina masih menjadi penanda tangan Statuta Roma hingga tanggal sebelum penarikan mereka.

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INTRODUCTION

The number of Extra Judicial Killings in the Philippines had a drastic increase from 2016 up to the present. According to Rahim, Md. Abdur. (2020), Extra Judicial Killings is a killing a any person by a governmental authority without undergoing proper judicial process of proceeding. The arising number of Extra Judicial Killings have been positively linked with the War On Drugs by the Former President during that year President Rodrigo Duterte. Thousands of lives were taken by unknown gunmen from the year 2016 up to the present. According to Clarke-Billings, Lucy (2024), there is still a mystery as to the reason of the killings but there is one common ground for the victims of extra judicial killings and that is all of the victims are on the Drug's Watchlist, thus resulted to

many speculations regarding that the one that initiated the extra judicial killings are the government itself and is primarily supported by the former President.

As for the statistics, according to Johnson, D. T., & Fernquest, J. (2018), the Philippine National Police acknowledged that there are approximately 4,000 suspected drug users and/or sellers had been a victim of extra judicial killings from the span of 2016 up to 2018 alone, thus this series of events in the Philippines has caught the attentions of Human Rights Activists as well as the International Criminal Court (ICC). Moreover, According to Simangan, D. (2018), since the election of former President Rodrigo Duterte in June 2016, more than 7,000 deaths have linked to his War On Drugs campaign and was regarded as extra judicial killings. As the statistics have shown the gravity and the scope of the Extra Judicial Killings situation in the Philippines, thus this situation within the archipelago has gained the attention of international entities specially the International Criminal Court.

The Philippines and The International Criminal Court

As for the Context of this study,¹ Philippines, island country of Southeast Asia in the western Pacific Ocean. It is an archipelago consisting of more than 7,000 islands and islets. ² International Criminal Court is a permanent international judicial body established by the Rome Statute of International Criminal Court in 1998. Its main role is to investigate, prosecute and try individuals who are accused of genocide and crime against humanity and to impose prison punishment sentences upon individuals that are found guilty of such crimes. International Criminal Court is a permanent international judicial body established by the Rome Statute of International Criminal Court in 1998. Its main role is to investigate, prosecute and try individuals who are accused of genocide and crime against humanity and to impose prison punishment sentences upon individuals that are found guilty of such crimes. ³ The Republic of the Philippines ratified the Rome Statute on 30 August 2011 and the Statute entered into force from 1 November 2011. This action leads to allowing the International Criminal Court to have jurisdiction within the Philippine Archipelago for crimes such as genocide and crimes against humanity.

The arising rate of extra judicial killings in the Philippines have caught the attention of the International Criminal Court (ICC). The ICC now having jurisdiction within the Philippine archipelago due to the ratification of the Rome Statute with the country decided to investigate the extra judicial killings with the country as it is a possible crime against humanity which the organization has jurisdiction thereof. On 17th March 2018, The Philippines filed a written withdrawal form to the ICC in which took effect a year later on 17th March 2019. ⁴ The ICC will conduct a preliminary examination of the extra judicial killings within The Philippines for possible violations on Crime against Humanity. This investigation of the ICC was opposed by the Philippine Government at that time for the reason that this investigation is a form of usurpation of jurisdiction as ⁵ the Philippines had submitted a written notification of withdrawal from the Rome Statute on 17 March 2018 and took effect 1 year later upon submission. Thus, this study aims to determine if there is usurpation of jurisdiction on the part of the International Criminal Court.

FRAMEWORK OF THOUGHT

Monism and Dualism

Monism and Dualism are two schools of thought that pertains to the relationship of the domestic law and international law. According to Chiam, M. (2018), Monism refers to the school of thought that posits International Law and Domestic Law are part of a single universal legal system. Monism believes that International law is superior to domestic law and when there is a conflict between the former and the latter the former shall prevails while Dualism refers to the school of thought that posits International Law and Domestic law are two separate legal systems and are equal in hierarchy. Dualism believes that before an international law be applicable domestically, it must be ratified and be incorporated with the domestic law of a state or country. For the context of this study, The Philippines have ratified the Rome Statute on 30th August of the year 2011 thus allowing the International Criminal Court to have jurisdiction within the country.

State Sovereignty

According to Iglesias Velasco, A.J., (2021), state sovereignty refers to the legal authority and responsibility of an independent state or nation to rule or govern and regulate within its defined territory free from interference foreign interference. As for the context of this study, Philippines is a sovereign state which means that the Philippines has the authority and responsibility to govern within its defined territory free from interference of an foreign entity. The Philippines invoked their state sovereignty against the ICC in dealing with the Extra Judicial Killings situation within the archipelago.

METHODS

This research was conducted qualitatively with descriptive-analytical method, which is carried out by collecting qualitative data that mainly comes from literature sources. Literature sources to then associated with the subject matter to provide answers to this research. The literature sources used including books, journals, and online news. The selection of the research method the subject of the problem. Since the problem is conceptual assessment of the usurpation of jurisdiction by ICC in the case of extra judicial killings in the Philippines, the descriptive-analytical descriptive-analytical method leads to qualitative research to answer the issue.dan pembahasan terhadap permasalahan.

RESULT AND DISCUSSIONS

History of Extra Judicial Killings

The Philippines was once a peaceful country but as of now it has been covered by the horrors of the Extra Judicial Killings. The Extra Judicial Killings in the country has started since the election of the former president of the country, Former President Rodrigo Duterte. According to Tusalem, R.F. (2019), Since the election of Philippine President Rodrigo Duterte in 2016, extra-judicial killings (EJKs, hereafter) have become commonplace as a result of his administration's declaration of war on drugs. The main platform of former President Rodrigo Duterte was to eliminate all the drug syndicates and drugs within the archipelago thus He initiated his War on Drugs campaign which resulted to the numerous killings of allegedly drug addicts and drug sellers by unknown gunmen and even during the Buy-Bust operation by the Philippine National Police. In addition to that, According to Johnson, D. T. and Fernquest, J. (2019) The Former President Rodrigo Duterte encouraged the public to engage in his War on Drugs and even encourage them to kill any drug dealers they by saying "Please feel free to call us, the police, or do it yourself if you have the gun — you have my support. Shoot [the drug dealer] and I'll give you a medal (President elect Rodrigo Duterte, 6 June 2016)". This War on Drugs by the former President has led to the brutal killings of allegedly drug addicts and dealers.

The Jurisdiction of the International Criminal Court in the Philippines

The Philippines is a sovereign country which means that the Philippine government alone has jurisdiction to govern within its defined territory and is free from interference of foreign states or entities. International Criminal Court (ICC) is a permanent international judicial body established by the Rome Statute of International Criminal Court in 1998. Its main role is to investigate, prosecute and try individuals who are accused of genocide and crime against humanity and to impose prison punishment sentences upon individuals that are found guilty of such crimes. In the First place, the International Criminal Law has no jurisdiction within the sovereign state of the Philippines but that was changed by ratification of the Rome Statute within the Philippines thus allowing the International Criminal Court to have jurisdiction within the archipelago specially in relation to crimes against humanity and genocide. On 17th March 2018, The Philippines filed a written withdrawal form to the ICC in which took effect a year later on 17th March 2019 in which now means that the ICC has no jurisdiction within the country.

Investigation of the ICC to the EJK in the Philippines. Is there a usurpation of Jurisdiction?

As to what the statistics have shown, the Extra Judicial Killings within the Philippines have been brutal thus it caught the attention of the International Criminal Court to investigate for possible violations of crime against humanity. The ICC started the preliminary investigation of the extra judicial killings in the Philippines on 15th September 2018 for possible violations of crime against humanity. The Philippines filed a motion to stop the investigation on the grounds that this action of

the ICC is an act of usurpation of jurisdiction for the Philippines had already filed a motion to withdraw from the Rome Statute. The investigation was put on hold because of the motion by the Philippines. On 15th September 2021, the Pre-Trial Chamber I of the International Criminal Court approved a formal investigation of the War on Drugs or the Extra Judicial Killings situation in the Philippines.

As to the motion of the Philippines to stop the investigation on grounds that the investigation is an usurpation of jurisdiction, because the Philippines had already withdrawn from the Rome Statute, the ICC stated that the investigation will cover all the extra judicial killings that have occurred from 11th November 2011 up to 16th March 2019. The ICC Pre-trial chamber I allowed the resumption of the investigation on grounds that the investigation will cover all the extra judicial killings that have occurred from the time that the Philippines signed the Rome Statute up until the time before they withdraw from the Rome Statute. This signifies that the investigation done by the International Criminal Court did not violate the state sovereignty of the Philippines for the investigation will just cover the extra judicial killings from the time that the Philippines was still one of the signatories of the Rome Statute. As to the question if there is a usurpation of jurisdiction done, there have been no usurpation of jurisdiction done by the ICC towards the Philippines.

CONCLUSION

The controversy of the extra judicial killings in the Philippines has gained the attention of the International Criminal Court which led to the act of the ICC to conduct an investigation within the archipelago for possible violations of crimes against humanity. International Criminal Court an international judicial body that investigates and prosecutes crimes against humanity, genocide, and war crimes. The Philippines is a sovereign state in its own right which means that the state only has the jurisdiction to govern within its defined territory. The Philippines ratified the Rome Statute which allows the ICC to have jurisdiction within the state. The investigation conducted by the ICC in the Philippines was put on hold on grounds that this action by the ICC is an act of usurpation of jurisdiction. The Philippines claimed that they have written a formal letter in which they withdraw from Rome Statute thus making the ICC no longer have jurisdiction within the country. The Pre Trial Chamber I of ICC claimed that the investigation that will be conducted will only cover from the dates prior to the withdrawal of the Philippines to the Rome statute thus making it reasonable and clearly there is no act of usurpation of jurisdiction.

REFERENCES

- Rahim, Md. Abdur. (2020). Extra Judicial Killing. 10.1234/nulj.v9i1.223.
- Lucy Clarke-Billings, (2024), <https://www.bbc.com/news/articles/cqeeq8r18go>
- JOHNSON, D. T., & FERNQUEST, J. (2018). Governing through Killing: The War on Drugs in the Philippines. *Asian Journal of Law and Society*, 5(2), 359–390. doi:10.1017/als.2018.12
- Simangan, D. (2018). Is the Philippine “war on drugs” an act of genocide?. *Journal of Genocide Research*, 20(1), 68-89.
- Britannica, T. Editors of Encyclopaedia (2024, June 20). International Criminal Court. Encyclopaedia Britannica. <https://www.britannica.com/topic/International-Criminal-Court>
- DE GUZMAN, CHAD, (2023) Where the ICC Probe Into Former Philippine President Rodrigo Duterte’s Drug War Stands, What to Know About the ICC Probe Into the Philippines’ Drug War | TIME
- ICC Statement on The Philippines’ notice of withdrawal: State participation in Rome Statute system essential to international rule of law, International Criminal Court (2018), ICC Statement on The Philippines’ notice of withdrawal: State participation in Rome Statute system essential to international rule of law | International Criminal Court (icc-cpi.int)
- Cullinane, M. , Borlaza, . Gregorio C. and Hernandez, . Carolina G. (2024, June 23). Philippines. Encyclopaedia Britannica. <https://www.britannica.com/place/Philippines>
- The ICC Investigation and Accountability in the Philippines, Georgetown Journal of International Affairs (2022), <https://gja.georgetown.edu/2022/01/28/the-icc-investigation-and-accountability-in-the-philippines/>

- Situation in the Republic of the Philippines: ICC Appeals Chamber confirms the authorisation to resume investigations, International Criminal Court (2023), Situation in the Republic of the Philippines: ICC Appeals Chamber confirms the authorisation to resume investigations | International Criminal Court (icc-cpi.int)
- Chiam, M., Monism and Dualism in International Law (2018), Monism and Dualism in International Law - International Law - Oxford Bibliographies
- Iglesias Velasco, A.J. (2021). Concept of State as a Sovereign Entity. In: Cremades, J., Hermida, C. (eds) Encyclopedia of Contemporary Constitutionalism. Springer, Cham. https://doi.org/10.1007/978-3-319-31739-7_86-1
- Tusalem, R.F. Examining the Determinants of Extra-Judicial Killings in the Philippines at the Subnational Level: the Role of Penal Populism and Vertical Accountability. Hum Rights Rev 20, 67–101 (2019).
- Cassie Maas, ICC approves formal investigation into Philippines 'war on drugs', (2021), ICC approves formal investigation into Philippines 'war on drugs' - JURIST - News