

## Submission to the United Nations Human Rights Committee ahead of the fifth periodic review of the Philippines (adoption of List of Issues)

13 January 2020

Reporting organisations:



**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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The **International Network of People who Use Drugs (INPUD)** is a global peer-based organisation that seeks to promote the health and defend the rights of people who use drugs. INPUD will expose and challenge stigma, discrimination, and the criminalisation of people who use drugs and its impact on the drug-using community's health and rights. INPUD will achieve this through processes of empowerment and advocacy at the international level, while supporting empowerment and advocacy at community, national and regional levels.

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**NoBox Transitions Foundation** (NoBox Philippines) is a non-profit organization which advocates for harm reduction in the Philippines. The organization envisions a society which upholds the value and dignity of each person regardless of involvement with drugs by espousing harm reduction as a way of life. The organization aims to be the leading civil society organization advocating for effective drug-related policies and responses in the Philippines in collaboration with various public and private sectors. NoBox Philippines leads honest conversations, conducts research, advocates for just laws and policies, provides harm reduction services, and mobilizes communities towards a more supportive and humane society for people involved with drugs.

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The **World Coalition Against the Death Penalty** is an alliance of more than 150 NGOs, bar associations, local authorities and unions. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. The World Coalition is striving to achieve these aims by supporting its member organisations and by coordinating the international advocacy towards worldwide abolition of the death penalty.

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## Summary

Harm Reduction International (HRI), the International Drug Policy Consortium (IDPC), the International Network of People who Use Drugs (INPUD), NoBox Philippines, and the World Coalition Against the Death Penalty welcome the opportunity to submit information to the Human Rights Committee ahead of the adoption of the List of Issues for the review of the Philippines.

This submission will assess the impact of the Philippines' drug policy on the enjoyment of civil and political rights, with a focus on developments since the intensification of the anti-drug campaign in July 2016; and provide suggestions for issues to be raised with the government of the Philippines. In particular, this submission will provide information on:

1. Arbitrary deprivation of life in the context of anti-drug operations (Article 6);
2. Failure to protect the life of people who use drugs (Articles 6 and 26);
3. Attempts at reinstating the death penalty, specifically for drug offences (Article 6);
4. Torture and ill-treatment in detention (Articles 7 and 10);
5. Compulsory drug detention and treatment (Articles 7 and 9);
6. Proportionality of the criminal justice response to drugs and prohibition of arbitrary arrest and detention (Articles 9 and 14);
7. Arbitrary interference with the right to privacy (Article 17); and
8. Shrinking civil society space: targeting of human rights defenders and drug user activists (Articles 19 and 21).

## 1. Arbitrary deprivation of life in the context of anti-drug operations (Article 6)

This Committee has identified the right to life as the “supreme right”<sup>1</sup> and a non-derogable one, even in a situation of “public emergencies which threatens the life of the nation”.<sup>2</sup>

One of the most fundamental dimensions of this right, which forms part of customary law, is the prohibition of arbitrary deprivation of life, from which descend both negative and positive obligations,<sup>3</sup> including to:

- Protect the life of all persons under the jurisdiction of the state;
- Take all necessary measures at the legislative, policy, and practical level to prevent arbitrary deprivations of life by the part of both public and private actors – including monitoring of all suspected killings and training of law enforcement officers;
- Conduct effective investigations into all suspected arbitrary killings, hold perpetrators accountable, and remedy violations. Notably, the duty to investigate arises anytime the state “knows or should have known of any potential unlawful death”,<sup>4</sup> regardless of the lodging of a formal complaint.

Although an analysis of such obligations exceeds the scope of this report, we wish to emphasise that the determination of what constitute “arbitrariness” is to be based not only on domestic but also on international law; and that particular emphasis is to be given to the elements of reasonableness, necessity, and proportionality.<sup>5</sup>

### 1.1. A pattern of extrajudicial killings in the context of the anti-drug campaign in the Philippines

Starting on 30 June 2016 - the day Rodrigo Duterte was sworn in as president of the Philippines - and every day since for several months, violent anti-drug operations were reported around the country culminating in the killing of “drug suspects”. This followed a spike in drug-related police killings since Duterte’s electoral victory in May 2016, with data from the Philippines National Police indicating that police killed at least 192 people during ‘anti-drug operations’ between 10 May and 10 July 2016 alone.<sup>6</sup>

Initially justified as killings in self-defense,<sup>7</sup> a clear pattern soon emerged which is ongoing as of January 2020: police officers employing excessive force or unidentified “vigilantes” (in many cases suspected to be disguised officers or killers paid by the police) kill people reportedly using or suspected to be using or dealing drugs.<sup>8</sup> The killings disproportionately take place in impoverished areas of the country, and are almost invariably met with impunity. Accordingly, these deaths are denounced as extrajudicial killings.

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<sup>1</sup> Human Rights Committee, “General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life” (United Nations, October 30, 2018), UN Doc. CCPR/C/GC/36. Para 1

<sup>2</sup> Human Rights Committee, “General Comment No. 36 (2018), Para. 1

<sup>3</sup> See Human Rights Committee, “General Comment No. 36 (2018), Paras 12-17; also, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, “UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials” (1990)

<sup>4</sup> Among others, see Office of the High Commissioner for Human Rights, “The Minnesota Protocol on the Investigation of Potential Unlawful Death” (2016). Available at: <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

<sup>5</sup> Human Rights Committee, “General Comment No. 36 (2018), para. 12

<sup>6</sup> Human Rights Watch, “Philippines: Condemn surge in killings of criminal suspects”, 2 August 2016, <https://www.hrw.org/news/2016/08/02/philippines-condemn-surge-killings-criminal-suspects>

<sup>7</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>8</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\\_](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>.

Because of systemic lack of transparency, inconsistencies in the figures provided by the government,<sup>9</sup> and a climate of terror which obstructs research, it is impossible to determine exactly how many people have been killed, and the state responsibility for each of the killings. On this point, we note with concern that the fifth periodic report submitted by the Philippines to this Committee in October 2019 – covering the period up to December 2017 – does not provide any information on this issue. This failure of the state to credibly reconstruct the scale of the phenomenon is in itself a violation of obligations under the right to life.

There have been attempts to identify the victims and determine how many people have been arbitrarily killed since July 2016. As of 30 June 2019, the government acknowledged 5,526 killings during anti-drug operations (just a few days earlier, the same source had reported 6,600 killings).<sup>10</sup> In 2018 the government stopped providing figures on homicide cases under investigation.<sup>11</sup> Journalists, non-governmental organisations and academic bodies report that, as of March 2019, up to 30,000 people have been killed: of these deaths, “11,098 were ‘under investigation’ because the remaining 19,047 were tagged as ‘cleared’, with at least one suspect identified”.<sup>12</sup> Regrettably, authorities do not provide details on the identity/affiliation of the suspects nor on whether effective and impartial investigations are ongoing to bring perpetrators to justice. Non-governmental sources have confirmed 5,021 victims between July 2016 and September 2017 alone,<sup>13</sup> and projected that as many as 29,000 people could have been killed in the context of the “war on drugs”.<sup>14</sup>

The scale of the phenomenon, the similarities in the incidents,<sup>15</sup> and an abundance of testimonies and independent investigations conducted by non-governmental organisations and the Commission on Human Rights of the Philippines indicate that these killings are not unintended consequences or isolated incidents in the course of police operations. Rather, they are an integral element of a systematic effort organised and pursued by the state, with the highest levels of government and law enforcement condoning, tolerating, supporting and incentivising the killings, when not directing and ordering them.<sup>16</sup>

This claim is further substantiated by:

a) Countless declarations by President Duterte inciting law enforcement and the general public to commit the killings and guaranteeing impunity;<sup>17</sup> as an example, on the day of his inauguration as

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9 For a timeline of the changes in data reporting and inconsistencies, and mischaracterisation, see (among others): “In Numbers: The Philippines’ ‘War on Drugs,’” *Rappler*, September 13, 2016, <https://www.rappler.com/newsbreak/iq/145814-numbers-statistics-philippines-war-drugs>; “Building a Dataset of Publicly Available Information on Killings Associated with the Antidrug Campaign,” *Drug Archive*, <https://drugarchive.ph/post/14-antidrug-dataset-public-info-killings>; Sheila Coronel and et al., “The Uncounted Dead of Duterte’s Drug War,” *The Atlantic* August 19, 2019, <https://www.theatlantic.com/international/archive/2019/08/philippines-dead-rodrigo-duterte-drug-war/595978/>.

10 <https://www.facebook.com/realmnumbersph/photos/a.1363934583788076/1363935180454683/?type=3&theater>

11 Last official figure 23,518, of which only 2668 were admittedly drug-related: Rambo Talabong, “At Least 33 Killed Daily in the Philippines since Duterte Assumed Office,” *Rappler*, December 17, 2018, <https://www.rappler.com/newsbreak/in-depth/204949-pnp-number-deaths-daily-duterte-administration>.

12 “In Numbers: The Philippines’ ‘War on Drugs.’”

13 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>.

14 Among others: Maria Carmen Fernandez, Abbey Pangilinan, and Nastassja Quijano, “Examining the Effects of Drug-Related Killings on Philippine Conditional Cash Transfer Beneficiaries in Metro Manila, 2016-2017,” October 2019, [https://www.researchgate.net/publication/336317469\\_Examining\\_the\\_effects\\_of\\_drug-related\\_killings\\_on\\_Philippine\\_Conditional\\_Cash\\_Transfer\\_beneficiaries\\_in\\_Metro\\_Manila\\_2016-2017](https://www.researchgate.net/publication/336317469_Examining_the_effects_of_drug-related_killings_on_Philippine_Conditional_Cash_Transfer_beneficiaries_in_Metro_Manila_2016-2017); “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs’” (London: Amnesty International, 2019).

15 “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’”, 15

16 Evidence of this is provided in numerous sources, the review of which exceeds the space of this report. Among others, see: “‘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>.

17 Among many others: Mogato and Baldwin, “Special Report: Police Describe Kill Rewards, Staged Crime Scenes in Duterte’s Drug War.”; Baldwin, Marshall, and Sagolj, “Police Rack up an Almost Perfectly Deadly Record in Philippine Drug War.”

president Duterte plead: ‘If you know of any addicts, go ahead and kill them yourself as getting their parents to do it would be too painful’.<sup>18</sup>

b) The promise of cash incentives to police officers for killing people suspected of drug offences, allegedly up to \$100,000 for killing;<sup>19</sup> and

c) A proven correlation between the presence in positions of leadership of certain high-level officials and the rise in extrajudicial executions in specific areas of the country.<sup>20</sup>

### *1.2. Failure and unwillingness to investigate, prosecute, and hold perpetrators accountable*

Despite the exceptionally high number of victims and the credible, systematic, and substantiated evidence of state responsibility, only a handful of investigations have been initiated, of which only one resulting in a conviction (of low-level officers).<sup>21</sup> This points to a failure, and ultimately unwillingness, of the state to investigate, prosecute, and hold perpetrators accountable.

Seeking justice is extremely challenging, especially by the part of traumatised relatives who live in fear and have little or no economic means. In addition to this, private initiatives appear to be hampered by public authorities. Among others:

- Families are often denied access to police records, and in some cases deaths are not even recorded;<sup>22</sup>
- Relatives are often not formally informed of the deaths in a prompt manner;<sup>23</sup>
- Autopsies are carried out by the police forensic unit or accredited funeral homes with no oversight, and families are often denied the autopsy reports;<sup>24</sup>
- There is credible and systematic evidence of tampering with evidence by law enforcement officials.<sup>25</sup>

In light of the widespread and systematic nature of this campaign against an identifiable group of civilians, and the direct involvement of state forces in the implementation of government policies, non-governmental organisations have concluded that this campaign of arbitrary killings may amount to crimes against humanity;<sup>26</sup> this possibility is currently subject to a preliminary investigation by the International Criminal Court, whose finalisation is expected in 2020.<sup>27</sup>

### *1.3. Victims’ profile and secondary victims*

A review of the identity of the victims and the circumstances of their killings provides further evidence of arbitrariness and discrimination: victims are overwhelmingly from poor and marginalised

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<sup>18</sup> <https://www.theguardian.com/world/2016/jul/01/philippines-president-rodrigo-duterte-urges-people-to-kill-drug-addicts>

<sup>19</sup> Vanda Felbab-Brown, “The Human Rights Consequences of the War on Drugs in the Philippines,” *Brookings* (blog), August 8, 2017, <https://www.brookings.edu/testimonies/the-human-rights-consequences-of-the-war-on-drugs-in-the-philippines/>.

<sup>20</sup> “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’”

<sup>21</sup> Lian Buan, “Court Verdict: Cops Lied, Kian Delos Santos Helplessly Killed,” *Rappler*, November 29, 2018, <https://www.rappler.com/nation/217812-calooan-court-verdict-cops-lied-kian-delos-santos-helplessly-killed>.

<sup>22</sup> Coronel and et al., “The Uncounted Dead of Duterte’s Drug War.”; “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’”

<sup>23</sup> “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’”

<sup>24</sup> Ibid., 16; Mogato and Baldwin, “Special Report: Police Describe Kill Rewards, Staged Crime Scenes in Duterte’s Drug War.”

<sup>25</sup> Among others, Peter Bouckaert and Stephanie Hancock, “The Killing Squads: Inside the Philippines’ ‘War on Drugs,’” *Human Rights Watch* (blog), February 3, 2017, <https://www.hrw.org/news/2017/03/02/killing-squads-inside-philippines-war-drugs>.

<sup>26</sup> Ibid.; “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’”; International Criminal Court [ICC], “Report on Preliminary Examination Activities - 2018,” December 5, 2018, <https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf>.

<sup>27</sup> International Criminal Court, “Report on Preliminary Examination Activities - 2019.” <https://www.icc-cpi.int/itemsDocuments/191205-rep-otp-PE.pdf>



backgrounds and communities, in many cases working low-paid jobs (sometimes in the informal sector) or unemployed;<sup>28</sup> insomuch that the anti-drug campaign has been described as a “war on the poor”.

The majority of those killed are men, and their families’ breadwinners, thus their homicide also has a profound impact on the socio-economic situation of their families, and the local community more generally (killings have been described as an “economic shock”).<sup>29</sup> Further, the killings generate fear, shame, and stigmatisation of the relatives, contributing to isolation that in turn exacerbates poverty and vulnerability.<sup>30</sup>

The impact on women as secondary victims is also dire. In 2017, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions denounced, with specific reference to the Philippines:

“As the majority of the victims are men, their female partners, by virtue too of their gender-based roles, are left to confront the associated stigma, fear, insecurity and economic deprivation, in addition to the burdens of identifying and burying their dead loved ones and seeking justice”.<sup>31</sup>

Researchers identified a pattern whereby the female partners of the victims often move out of the house and remarry “as a means of survival”, leaving grandmothers in charge of their children.<sup>32</sup>

With regards to minors, researchers estimate that between 18,000 to 32,000 children may have been orphaned due to the anti-drug campaign.<sup>33</sup> Children are thus left to endure the trauma of losing one or both parents and the disintegration of their family, while being impacted by the deterioration of already fragile socio-economic conditions. In some cases, this has irreversible impacts on their education, health, and development.<sup>34</sup>

#### *1.4. Suggestions for List of Issues*

In light of the above, we respectfully call upon this Committee to submit the following questions to the authorities of the Philippines:

- Provide clarification on the number of recorded killings in the course of anti-drug operations, also addressing inconsistencies in publicly available official figures;
- Provide updated, disaggregated, and detailed information on:
  - a) All suspected killings in the course of anti-drug operations;
  - b) All legislative, policy, practical and other measures adopted by the state to prevent such killings; and
  - c) All measures adopted by the state to investigate killings committed by law enforcement, hold perpetrators accountable, and provide redress to the victims’ families; including the number of investigations undertaken, the number of individuals prosecuted, and the outcome of these proceedings.

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<sup>28</sup> Drug Archive, “The Drug Killings: Who, What, Where, When, How?”; Fernandez, Pangilinan, and Quijano, “Examining the Effects of Drug-Related Killings on Philippine Conditional Cash Transfer Beneficiaries in Metro Manila, 2016-2017.”, 16

<sup>29</sup> Fernandez, Pangilinan, and Quijano, “Examining the Effects of Drug-Related Killings on Philippine Conditional Cash Transfer Beneficiaries in Metro Manila, 2016-2017.”

<sup>30</sup> Ibid.

<sup>31</sup> Human Rights Council, “Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions on a gender-sensitive approach to arbitrary killings”. UN Doc. A/HRC/35/23 (6 June 2017), para. 49

<sup>32</sup> Fernandez, Pangilinan, and Quijano, “Examining the Effects of Drug-Related Killings on Philippine Conditional Cash Transfer Beneficiaries in Metro Manila, 2016-2017.”

<sup>33</sup> Ibid., 15

<sup>34</sup> Ibid.

## 2. Failure to protect the life of people who use drugs (Articles 6 and 26)

General Comment no. 36 of this Committee stresses that the “duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity”; including the prevalence of life-threatening diseases such as AIDS and tuberculosis.<sup>35</sup>

This builds upon previous jurisprudence, including the 2005 Concluding Observations on Kenya, in which this Committee pointed out that under Article 6 ICCPR states are obliged to ensure equal access to adequate HIV treatment.<sup>36</sup> In the subsequent 2012 periodic review on Kenya, this Committee further clarified that ensuring equal access entails state action to tackle criminalisation and societal stigmatisation of traditionally marginalised groups.<sup>37</sup>

The Philippines is one of the countries with the highest HIV prevalence among people who inject drugs in Asia (29%).<sup>38</sup> While HIV transmission is decreasing globally, the Philippines is witnessing a stark increase in new HIV infections.<sup>39</sup>

In 2016, UNAIDS reported 24 new cases a day (in 2018 this figure had risen to 31)<sup>40</sup> and the domestic department of health recorded “841 newly diagnosed HIV cases in the Philippines in June - the biggest monthly total since records began in 1984.”<sup>41</sup> Most new cases are attributed to sexual contact, however sharing of contaminated injecting equipment is driving the trend in areas of the country where injecting drug use is more common.<sup>42</sup> For example, in Cebu City an estimated 50% of people who inject drugs live with HIV.<sup>43</sup>

Against this backdrop, harm reduction services are not only an essential component of the right to health of people who use drugs (as acknowledged by multiple UN bodies),<sup>44</sup> but also essential to confront a public health emergency and protect the lives of people who use drugs in the country (notably, needle and syringe programmes and opioid substitution therapy are among the key interventions listed in the World Health Organization’s comprehensive package for the prevention, treatment and care of HIV among injecting drug users).<sup>45</sup>

35 Human Rights Committee, “General Comment No. 36 (2018), Para. 26

36 Human Rights Committee, ‘Concluding Observations on the Second Periodic Report Submitted by Kenya’, 29 April 2005, 15, <https://undocs.org/CCPR/CO/83/KEN>.

37 Human Rights Committee, ‘Concluding Observations on the Third Periodic Report Submitted by Kenya’, 31 August 2012, 9, [https://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-KEN-CO-3\\_en.pdf](https://www2.ohchr.org/english/bodies/hrc/docs/co/CCPR-C-KEN-CO-3_en.pdf).

38 “Communities at the Centre: The Response to HIV in Asia and the Pacific” (UNAIDS, 2019); [https://www.unaids.org/sites/default/files/media\\_asset/2019-global-AIDS-update\\_asia-pacific\\_en.pdf](https://www.unaids.org/sites/default/files/media_asset/2019-global-AIDS-update_asia-pacific_en.pdf), 61

39 “Country: Philippines,” UNAIDS, accessed January 8, 2020, <https://www.unaids.org/en/regionscountries/countries/philippines>.

40 “HIV/AIDS & ART Registry of the Philippines” (Department of Health of the Philippines, Epidemiology Bureau, August 2018).

41 “Is the Philippines’ ‘War on Drugs’ Fuelling an HIV/AIDS Epidemic?,” *Hindustan Times*, <https://www.hindustantimes.com/world-news/is-the-philippines-war-on-drugs-fuelling-an-hiv-epidemic/story-IGm6KP91eZaNS9t2xjgEGN.html>.

42 JC Dombrowski, J Dorabjee, and SA Strathdee, “Editorial: Atrocity in the Philippines: How Rodrigo Duterte’s War on Drug Users May Exacerbate the Burgeoning HIV Epidemic,” *Journal of Acquired Immune Deficiency Syndrome* 76, no. 1 (September 1, 2017), <https://europepmc.org/article/PMC/5645061#R2>.

43 Louie Mar A Gangcuangco, “HIV Crisis in the Philippines: Urgent Actions Needed,” *The Lancet Public Health* 4, no. 2 (February 1, 2019), [https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667\(18\)30265-2/fulltext](https://www.thelancet.com/journals/lanpub/article/PIIS2468-2667(18)30265-2/fulltext).

44 Among others, see: Paul Hunt, ‘Human rights, health, and harm reduction’, 8; Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover (2010) A/65/255, para. 55; CESCR, Concluding Observations on the combined initial and second periodic reports of Thailand, UN Doc. E/C.12/THA/CO/1-2; CEDAW, Concluding Observations on the combined fourth and fifth periodic reports of Georgia (2014), UN Doc. CEDAW/C/GEO/CO/4-5, para. 31(e); Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, Mission to Poland (2010) A/HRC/14/20/Add.3, para. 86; CESCR, 2016, Concluding Observations on the sixth periodic report of Sweden. UN Doc. E/C.12/SWE/CO/6.

For more information, see: International Centre on Human Rights and Drug Policy/UNDP, International Guidelines on Human Rights and Drug Policy

45 WHO & UNODC (2009). Technical Guide for countries to set targets for universal access to HIV prevention, treatment and care for injecting drug users



Harm reduction services are neither supported nor funded by the government,<sup>46</sup> and the very possession of drug paraphernalia is criminalised.<sup>47</sup> Opioid Substitution Therapy (OST) is not available in the country, as medicines which could be used for substitution — methadone and buprenorphine — are classified as dangerous drugs. Given the classification, naloxone [*an opioid reversal medication*] is also not available in community settings in the country.<sup>48</sup> As a result, providing harm reduction services is essentially a criminal activity in the Philippines.

The only documented instance of Needle and Syringe Programme in the Philippines was through the Big Cities Project implemented since 2014 in Cebu, where needle distribution was included among the many services provided at the Cebu City Social Hygiene Clinic. The project was able to operate as an academic research initiative authorised by the Dangerous Drugs Board.<sup>49</sup> While in operation, it achieved significant results, including:

- An increase in the uptake of health services to prevent transmission of blood borne viruses (such as needle and syringe distribution, counselling, testing, education);
- Consent by 99.7% of 1,042 clients to undergo HIV testing (which is impressive considering that only 10% of all people who inject drugs in the Philippines have done so).<sup>50</sup>

Despite its effectiveness, this programme has been suspended as an effect of the anti-drug campaign. In addition, the violent and discriminatory targeting of people who use drugs – as well as activists and human rights defenders – and the increasing stigma associated with drug use have resulted in:

- a) People who use drugs avoiding accessing healthcare services and seeking support or evidence-based treatment when needed;
- b) Further marginalising people who use drugs, thus pushing them towards higher-risk drug use-behaviours;
- c) Preventing outreach, education, and awareness-raising related to drug-related harms in the community;
- d) Reluctance from HIV services in the country to provide services to people who use drugs, because of stigma and a fear that providing services to people who use drugs may put other clients at risk.<sup>51</sup>

## 2.1. Suggestions for List of Issues

In light of the above, we respectfully call upon this Committee to submit the following questions to the authorities of the Philippines:

- Which measures has the government undertaken, or plans to undertake, to confront the ongoing HIV epidemic, in particular in light of the inter-linkages between the repressive anti-drug campaign and the increase in HIV infections?
- Which measures has the government undertaken, or plans to undertake, to avoid discrimination of people who use drugs in accessing lifesaving health services and programmes?

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46 NOBOX TRANSITIONS FOUNDATION, Inc (2018) Investment Into Harm Reduction In The Philippines. Report submitted to Harm Reduction International within Harm Reduction Advocacy in Asia Global Fund Regional Project (unpublished)

47 “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: Comprehensive Dangerous Drugs Act (2002)*]

48 NOBOX TRANSITIONS FOUNDATION, Inc (2018) Investment Into Harm Reduction In The Philippines.

49 Katie Stone and Sam Shirley-Beavan, “The Global State of Harm Reduction” (Harm Reduction International [HRI], December 2018), <https://www.hri.global/files/2018/12/11/global-state-harm-reduction-2018.pdf>.

50 HRI/NoBox, 12. See also the following impact evaluation: Pascal Tanguay, “Evaluation of Harm Reduction Service Delivery in Cebu City, Philippines (2013 –2015)” (World Bank, 07 April 2016), <http://documents.worldbank.org/curated/en/413401468197106125/pdf/106126-WP-P132149-PUBLIC-ACS.pdf>.

51 NOBOX TRANSITIONS FOUNDATION, Inc (2018) Investment Into Harm Reduction In The Philippines.

### 3. Attempts to reinstate the death penalty (Article 6)

Republic Act 9346 of 2006 prohibits the imposition of the death penalty. In November 2007, the Philippines acceded the second Optional Protocol to ICCPR.

Shortly after elections (and several times since), President Duterte expressed his intention to reintroduce the death penalty, as a way to combat drug crimes.<sup>52</sup> As of December 2019, at least 24 bills had been introduced in the Senate alone, of which at least 15 seeking to impose the death penalty for drug offences specifically.

The ICCPR is “abolitionist in spirit”<sup>53</sup> and limits imposition of the death penalty on two levels:

- a) Only to the “most serious crimes”, authoritatively defined as crimes involving intentional killing; accordingly, drug offences have been widely acknowledged as not meeting such definition;<sup>54</sup>
- b) Only to retentionist countries; accordingly, any expansion or resumption of capital punishment in abolitionist states is in direct violation of Article 6 ICCPR.

The prohibition to reinstate the death penalty is even stronger for state parties to the Second Optional Protocol, such as the Philippines. The Protocol does not contain any termination provision and cannot be denounced – making abolition of death penalty “legally irrevocable.”<sup>55</sup> Re-introducing the death penalty in a state party to the Protocol would be unprecedented, and as such represent a critical test for the international community, and the system of international human rights law. A failure to adequately respond to this grave breach of the Protocol may fatally impinge upon the strength, authority, and legitimacy of this mechanism.

#### 3.1. Suggestions for List of Issues

In light of the above, we respectfully call upon this Committee to submit the following questions to the authorities of the Philippines:

- How many draft bills are pending at the Lower House and the Senate seeking reinstatement of the death penalty, at the time of the government’s reply to the List of Issues?
- How is the government ensuring compliance with the Philippines’ obligations under the Second Optional Protocol of the ICCPR?

### 4. Torture and ill-treatment in detention (Articles 7 and 10)

#### 4.1 Prison overcrowding in connection with the anti-drug campaign, and conditions of detention

In June 2016, the UN 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

<sup>52</sup> Among many others, see: “Philippines: Duterte Vows to Bring Back Death Penalty,” *BBC News*, May 16, 2016, <https://www.bbc.com/news/world-asia-36297583>; “Duterte Calls for Return of Death Penalty,” *The Straits Times*, July 23, 2019, <https://www.straitstimes.com/asia/se-asia/duterte-calls-for-return-of-death-penalty>.

<sup>53</sup> Human Rights Committee, “General Comment No. 36 (2018).”

<sup>54</sup> Human Rights Committee, “General Comment No. 36 (2018), para 35; UNODC, “Statement by the UNODC Executive Director on the Recent Executions in Indonesia,” June 29, 2016, <https://www.unodc.org/unodc/en/press/releases/2016/July/statement-by-the-unodc-executive-director-on-the-recent-executions-in-indonesia.html>.

<sup>55</sup> Human Rights Committee, “General Comment No. 36 (2018), para. 34.

and artificial lighting and poor ventilation, which cause inter-prisoner violence and the spread of infectious diseases such as tuberculosis”.<sup>56</sup>

Rather than taking direct and substantial steps to address this issue, by launching this “war on drugs” the government aggravated it. Between the end of 2015 and April 2019, the jail population detained for drug offenses has doubled - from 48,532 (roughly 50.49% of 96,120 people detained) to 95,401 (71.01% out of 134,352 total prisoners). The same trend can be observed with regard to people convicted for drug offenses: this prison population also rose from 6,955 (16.89% of 41,189 people convicted) at the end of 2015, to 14,099 (29.36% of 48,019 people convicted) in October 2019.<sup>57</sup>

With an occupancy rate of over 400%, the Philippines has been ranked the country with the highest prison overcrowding globally.<sup>58</sup> Detainees are forced to live in inhuman conditions, with little to no space, no privacy,<sup>59</sup> poor lighting and ventilation, no access to adequate food, water and sanitation, and no adequate healthcare.<sup>60</sup> A January 2019 report described the situation:

“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>61</sup>

Another report denounced people suspected (and not yet 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>62</sup>

Prison overcrowding increases insecurity, as well as exposure to violence, both from other prisoners and (the few) prison staff. Abuses and ill-treatment are thus inevitable, in some cases with extreme consequences:<sup>63</sup> 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-governmental organisations.<sup>64</sup>

#### 4.2. Failure to take necessary measures to protect the lives of people incarcerated

General Comment no. 36 authoritatively states that “states have a heightened duty of care to take any necessary measures to protect the lives of individuals deprived of their liberty by the State, since by arresting, detaining, imprisoning or otherwise depriving individuals of their liberty, States parties assume the responsibility to care for their life and bodily integrity”; and clarifies that “the duty to protect the life of all detained individuals includes providing them with the necessary medical care and

56 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

57 Official data available at <http://www.bjmp.gov.ph/datstat.html>. Copies of the datasets are also available with the submitting organisations.

58 “World Prison Brief: Highest to Lowest - Occupancy Level (Based on Official Capacity),” accessed January 8, 2020, [https://www.prisonstudies.org/highest-to-lowest/occupancy-level?field\\_region\\_taxonomy\\_tid=All](https://www.prisonstudies.org/highest-to-lowest/occupancy-level?field_region_taxonomy_tid=All).

59 “Philippines: Living Conditions,” *Prison Insider* (blog), accessed January 8, 2020, <https://www.prison-insider.com/countryprofile/prisonsinphilippines-2019?s=conditions-materielles#conditions-materielles>.

60 Among others, see: Mary Catherine A. Alvarez, “Women, Incarceration and Drug Policies in the Philippines: Promoting Human and Effective Responses,” 2018, [http://files.idpc.net/library/Philippines\\_Policy\\_Guide\\_Women.pdf](http://files.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>.

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

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

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

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

appropriately regular monitoring of their health”.<sup>65</sup> The Philippines is failing in its obligation to uphold this right.

The main cause of death in detention disease: systemic unsanitary conditions and dire lack of adequate health services create the ideal environment for the otherwise easily preventable spread of infectious diseases.

Public officials admitted that over 5,000 prisoners die at the New Bilibid Prison in Metro Manila each year (20% of all prisoners) because of violence and disease, ultimately due to overcrowding which accelerates the spread of infectious diseases such as tuberculosis.<sup>66</sup>

The situation is equally dire with regards to HIV – which incidence among prisoners has been increasing, and hepatitis C virus (HCV).<sup>67</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>68</sup> She acknowledged that the worsening of prison overcrowding caused by the anti-drug campaign was expected to make the situation worse, and established a direct link between HIV and deaths in detention. Regrettably, nothing has been done by the government to redress this situation. On the contrary, the government is exacerbating the very conditions that facilitate the spread of the virus, thus failing to protect the right to health but also the right to life of prisoners.<sup>69</sup> Indeed, the repressive drug policy pursued by the government has a direct negative impact on the spread of disease and on the ability of both public and non-governmental bodies to confront this epidemic:

- Disproportionately targeting, arresting, and detaining people who use drugs (who are at higher risk of contracting and living with HIV and HCV)<sup>70</sup> causes an increase in the number of people living with HIV and/or HCV who are incarcerated;
- Because of the repressive approach of the government, an ever-increasing number of prisoners are locked in settings where they face a higher risk of contracting infectious diseases, meaning overcrowded prisons with exposure to unique risky behaviours (such as sharing of drug injecting equipment, consensual and non-consensual sexual activity, sharing or re-using of tattooing instruments);<sup>71</sup>
- The government is refusing to implement key public health interventions which are recognised as essential for HIV prevention, treatment and care in prison, such as HIV testing and treatment, condom programmes, and harm reduction services.<sup>72</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>65</sup> Human Rights Committee, “General Comment No. 36 (2018), para 25

<sup>66</sup> Among others, see: Jessie Yeung, “More than 5,000 Inmates Die at This Prison Every Year,” *CNN*, October 18, 2019, <https://edition.cnn.com/2019/10/04/asia/philippines-inmate-deaths-intl-hnk-scli/index.html>; Fullerton, “We Don’t Need the Death Penalty’: 20% of Inmates Die Each Year in Philippines Jail.”

<sup>67</sup> For more details on this, see Lee Edson Yarcia, “Kalusugan Sa Kulungan: Examining the Policy for People Living with HIV/AIDS and Hepatitis C in Philippine Prisons” (International Drug Policy Consortium, April 2018), [http://files.idpc.net/library/HIV\\_HCV\\_in\\_prisons\\_policy\\_brief.pdf](http://files.idpc.net/library/HIV_HCV_in_prisons_policy_brief.pdf).

<sup>68</sup> Joseph Tristan Roxas, “1 to 3 Inmates in a Jail Cell Affected by HIV-AIDS —PAO Chief,” *GMA News Online* (blog), August 24, 2016, <https://www.gmanetwork.com/news/news/nation/578774/1-to-3-inmates-in-a-jail-cell-affected-by-hiv-aids-pao-chief/story/>.

<sup>69</sup> Also see Human Rights Committee, “General Comment No. 36 (2018), para 26

<sup>70</sup> “Communities at the Centre: The Response to HIV in Asia and the Pacific,” 27

<sup>71</sup> Alvarez, “Women, Incarceration and Drug Policies in the Philippines: Promoting Human and Effective Responses.”; Siu, “Worlds Apart: Inside Two of the Philippines’ Most Notorious Jails.”

<sup>72</sup> For more details see United Nations Office on Drugs and Crime, “Policy Brief: HIV Prevention, Treatment and Care in Prisons and Other Closed Settings: A Comprehensive Package of Interventions,” June 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).



#### 4.3. *Suggestions for List of Issues*

In light of the above, we respectfully call upon this Committee to submit the following questions to the authorities of the Philippines:

- Provide updated, reliable, and disaggregated information of all instances of deaths in detention, their causes, and all measures taken by the government to prevent future deaths;
- Elaborate on conditions of detention in Philippines' prisons and jails, and the measures the government has adopted, or is planning to adopt, to confront the health crisis unfolding in detention;
- How is the government planning to confront prison overcrowding, in particular considering its correlation with the intensification of the anti-drug campaign?
- What measures has the government undertaken to investigate and redress denounced instances of torture and ill-treatment in detention, and to prevent further violations?

#### 5. **Compulsory drug detention and treatment (Articles 7 and 9)**

Compulsory drug detention and treatment have been unanimously recognised by human rights bodies as contravening the prohibition against inhuman and degrading treatment and the prohibition of arbitrary detention, in addition to the right to health.<sup>73</sup> This Committee repeatedly expressed concern at the situation of those confined in such centres and the kind of treatment imposed.<sup>74</sup>

Under the Philippines' drug law, people who are caught using drugs for the first time are "imposed a penalty of a minimum six (6) months rehabilitation" in a government-operated center.<sup>75</sup> The same applies to those who "surrender" in the context of Oplan Tokhang – an operation whereby police officers encourage/promote the 'voluntary' surrender to the authorities of people suspected of using drugs (more details in paragraph 7.1). In addition, people who underwent treatment report being abducted ("by a team in a white van") or drugged and forcibly taken to a rehabilitation facility, later waking up restrained to a bed or detained in a small cell.<sup>76</sup>

In the Philippines, mandatory rehabilitation is undergone either in residential treatment centres or in the community. Both systems are gravely problematic both per se – as violating the principle of voluntariness that underpins the right to health – and because the system revolves around non evidence-based treatment in many cases amounting to ill-treatment, in inadequate conditions of detention.

Residential treatment centers in the Philippines suffer from poor treatment standards, with accreditation primarily predicated on the physical space rather than on quality of treatment. Local civil society has denounced – based on victims' accounts - ill-treatment in the form of detention in isolation (as a form of punishment), forced labor, and physical and psychological violence in the name of "treatment." Conditions of detention are also unsatisfactory in some centers, and are worsening as a result of overcrowding; this is in turn caused by the intensification of the anti-drug campaign from July 2016

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<sup>73</sup> Among others, see: Human Rights Council, Report of the United Nations High Commissioner for Human Rights: Study on the impact of the world drug problem on the enjoyment of human rights (4 September 2015), para. 46-49. UN Doc. A/HRC/30/65; ILO, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN WOMEN, WFP, WHO, and UNAIDS, Joint Statement: Compulsory drug detention and rehabilitation centres (March 2012)

<sup>74</sup> Among others, see Human Rights Committee, "Concluding Observations on the third periodic report of Viet Nam". UN Doc. CCPR/C/VNM/CO3 (29 August 2019), para. 31; Human Rights Committee, "Concluding Observations on the initial report of the Lao People's Democratic Republic". UN Doc. CCPR/C/LAO/CO/1 (23 November 2018), para. 23

<sup>75</sup> Comprehensive Dangerous Drugs Act Of 2002, Section 15

<sup>76</sup> Evidence supporting this and the other issues reported in this paragraph is with the submitting organisations and available upon request.



onwards and related policies, 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.

Community-based programs often 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 during the course of the programme, sometimes even during “counseling” sessions. People detained in jails and sent to community-based programmes go through the modules while handcuffed.

In both instances, although treatment may be phrased as ‘voluntary’, it remains compulsory in spirit and law: the only alternative provided is between treatment on one side, and incarceration or being the subject of law enforcement on the other side – which cannot be considered a free choice. The treatment period is pre-determined and there is no option to leave, as this would expose to incarceration again. Those who “escape” treatment can be further charged under the CDDA.

Human rights law mandates the Philippines to move away from this system. Nevertheless, the government has taken steps to scale this up, confirming that compulsory drug detention and treatment are seen as linchpins of domestic drug policy.<sup>77</sup> In November 2016, the first “mega-centre” was opened, with a capacity of up to 10,000 people. The center has since hosted few hundred individuals, and is now judged as a failure.<sup>78</sup>

The Dangerous Drugs Board 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>79</sup> It is particularly concerning that these centres (as the “mega-centre” and other drug treatment facilities) are to be located in police or military camps/bases.<sup>80</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>81</sup>

### *5.1. Suggestions for List of Issues*

In light of the above, we respectfully call upon this Committee to submit the following questions to the authorities of the Philippines:

- Elaborate on the compatibility of mandatory drug rehabilitation with the absolute prohibition of ill-treatment and the prohibition of arbitrary detention;
- Provide updated, reliable, and disaggregated information on how many people have undergone mandatory drug rehabilitation in the reporting period, on the kind of treatment imposed in the rehabilitation centres, and on the presence of medical personnel.

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

<https://www.sunstar.com.ph/article/112694/Duterte-inaugurates-mega-drug-rehab-center-in-Nueva-Ecija->

78 Jee Y. Geronimo, “No More ‘mega’ Drug Rehab Centers after Nueva Ecija Facility?,” *Rappler*, April 8, 2017, <https://www.rappler.com/newsbreak/in-depth/165791-mega-drug-rehabilitation-centers> <https://www.rappler.com/newsbreak/in-depth/165791-mega-drug-rehabilitation-centers>

79 Dangerous Drugs Board, Board Regulation no. 2 (Series of 2018), Section 1

80 *Ibid.*, Section 10

81 “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’”, 40

## 6. Proportionality of criminal justice responses and prohibition of arbitrary arrest and detention (Articles 9 and 14)

### 6.1. Criminal justice approach to drugs

Proportionality of punishment and sentencing is a key tenet of any fair justice system. From this principle and the prohibition of arbitrary detention descend that any deprivation of liberty must be lawful, imposed as a measure of last resort, and reasonable. This Committee has reiterated that “arbitrariness is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality”.<sup>82</sup>

This principle was reaffirmed, with specific reference to drug offences, in the 2016 UNGASS Outcome Document, with a commitment to “Promote proportionate national sentencing policies, practices and guidelines for drug-related offences whereby the severity of penalties is proportionate to the gravity of offences and whereby both mitigating and aggravating factors are taken into account.”<sup>83</sup>

The prohibition of arbitrariness furthermore stipulates that the underlying rationale for detention cannot be discrimination,<sup>84</sup> and UN mechanisms have affirmed that drug consumption or dependence are never sufficient justification for detention.<sup>85</sup>

Regrettably, the punishment envisaged for drug offences by the legislation of the Philippines presents clear elements of arbitrariness. The main law on drugs, the Comprehensive Dangerous Drugs Act (2002) (*hereinafter: CDDA*), adopts a criminalising approach, prescribing a limited range of punishments which are grossly disproportionate to the offences and overly severe; in particular:

- Twelve to 20 years’ imprisonment, life imprisonment, death<sup>86</sup> and a fine – regardless of quantity and purity of the substance – for: importation,<sup>87</sup> trafficking,<sup>88</sup> manufacture and cultivation,<sup>89</sup> possession,<sup>90</sup> and unlawful prescription of dangerous drugs and/or controlled precursors and essential chemicals;<sup>91</sup> maintenance of an establishment where any dangerous drug is used or sold;<sup>92</sup> unlawful prescription of dangerous drugs;<sup>93</sup> and, attempt or conspiracy to commit the above-listed acts.<sup>94</sup>
- Twelve to 20 years’ imprisonment for: being employed in a den, dive or resort where any dangerous drug is used or sold;<sup>95</sup> illegal chemical diversion of controlled precursors and essential chemicals;<sup>96</sup> manufacture or delivery of equipment or paraphernalia aimed at manufacturing or trafficking drugs.<sup>97</sup>

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<sup>82</sup> Among others, Human Rights Committee, “General Comment no. 35 – Article 9 (Liberty and Security of the Person)”. UN Doc. CCPR/C/GC/35 (16 December 2014), para. 12

<sup>83</sup> “Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem. Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem” (New York: United Nations Office on Drugs and Crime, 2016), para. 41

<sup>84</sup> See for example *Fongum Gorji-Dinka v. Cameroon*, Communication No. 1134/2002, U.N. Doc. CCPR/C/83/D/1134/2002 (2005), para. 5.1

<sup>85</sup> Among others, see Report of the Working Group on Arbitrary Detention A/HRC/30/36 (10 July 2015), para. 60

<sup>86</sup> As elaborated upon in paragraph 3 of this report, the imposition of the death penalty has been prohibited by Republic Act 9346 of 2006.

<sup>87</sup> Comprehensive Dangerous Drugs Act (2002), Section 4

<sup>88</sup> *Ibid.*, Section 5

<sup>89</sup> *Ibid.*, Sections 6 and 16

<sup>90</sup> *Ibid.*, Section 11

<sup>91</sup> *Ibid.*, Section 19

<sup>92</sup> *Ibid.*, Section 6

<sup>93</sup> *Ibid.*, Section 19

<sup>94</sup> *Ibid.*, Section 26

<sup>95</sup> *Ibid.*, Section 7

<sup>96</sup> *Ibid.*, Section 9

<sup>97</sup> *Ibid.*, Section 10

- Six months to four years' imprisonment and a fine for manufacturing or delivering equipment/paraphernalia aimed at using drugs.<sup>98</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>99</sup>

While no mitigating circumstances are envisaged, numerous circumstances are identified in which judges are mandated to impose the maximum penalty.<sup>100</sup>

The end-result is a system of disproportionately harsh penalties, with non-violent drug offences often punished more harshly than violent crimes such as murder.<sup>101</sup> In addition, the mandatory character of many penalties severely 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. The latter is particularly problematic in the context of drug control, as one key element to be considered should be the compatibility of the response with promoting individual and public health.

On this point, we wish to highlight the tension between criminalisation of drug use and possession for personal use and a wide range of human rights standards, including:<sup>102</sup> the prohibition of discrimination, the right to privacy, and the rights to health, housing, and education.<sup>103</sup> In addition, criminalisation of such activities fuels “incarceration rates, contributing to overcrowded prisons and overtaxed criminal justice systems, placing individuals at increased risk of arbitrary detention and inhuman or degrading treatment while incarcerated.”<sup>104</sup> Accordingly, a number of UN bodies – including OHCHR, UNODC, UNAIDS, WHO, UNDP, the Working Group on Arbitrary Detention,<sup>105</sup> the Committee on Economic Social and Cultural Rights, and the System Chief Executives Board for Coordination (in the UN System Common Position on international drug control policy)<sup>106</sup> – have called for the decriminalisation of drug use and possession for personal use.<sup>107</sup>

## 6.2. Mandatory pre-trial detention

Pursuant to Article 9 and Article 14 ICCPR, pre-trial detention should be used as a measure of last resort when strictly necessary, and it should never be mandatory, but rather follow an individualised assessment.<sup>108</sup> This Committee concluded that pre-trial detention should not be mandatory for any particular crime nor should it be ordered for a period based on the potential sentence.<sup>109</sup>

In contrast, pre-trial detention is mandatory for drug offences in the Philippines. A 2018 study found that around 100,000 prisoners – 38% of total prison population – were awaiting trial for non-bailable

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<sup>98</sup> Ibid., Section 12

<sup>99</sup> Ibid., Section 15

<sup>100</sup> For examples, see *ibid.*, Sections. 4 (third paragraph), 6 (third paragraph), 10 (second paragraph),

<sup>101</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,” 9

<sup>102</sup> For a full list of UN bodies who called for decriminalisation of drug use and possession for personal use see: International Drug Policy Consortium [IDPC], “Taking Stock: A Decade of Drug Policy,” October 21, 2018, [http://files.idpc.net/library/Shadow%20Report\\_FINAL\\_ENGLISH.pdf](http://files.idpc.net/library/Shadow%20Report_FINAL_ENGLISH.pdf), 49, endnotes 309 - 316

<sup>103</sup> Among others, see Human Rights Council, “Report of the Office of the United Nations High Commissioner for Human Rights: Implementation of the Joint Commitment to Effectively Addressing and Countering the World Drug Problem with Regard to Human Rights,” September 14, 2019, UN Doc. A/HRC/39/39.; <https://www.undp.org/content/dam/undp/library/HIV-AIDS/Discussion-Paper--Addressing-the-Development-Dimensions-of-Drug-Policy.pdf>

<sup>104</sup> [https://www.ohchr.org/Documents/Issues/Health/UNGASS-joint\\_OL\\_HR\\_mechanisms\\_April2016.pdf](https://www.ohchr.org/Documents/Issues/Health/UNGASS-joint_OL_HR_mechanisms_April2016.pdf)

<sup>105</sup> States should stop arbitrary detentions for drug offences, say UN rights experts’ (Statement by the UN Working Group on Arbitrary Detention, 20 March 2019), . <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24369&LangID=E>.

<sup>106</sup> United Nations Chief Executives Board for Co-ordination. (2018). *Summary of deliberations: Second regular session*, UN doc. CEB/2018/2, p.14;

<sup>107</sup> For a full list of UN bodies endorsing decriminalisation, see International Drug Policy Consortium (2018) *Taking Stock: A Decade of Drug Policy*, p.48.

<sup>108</sup> ICCPR Article 9 and 14; CCPR/G/GC/35; CCPR/C/99/D/150/2006, par.10(4)

<sup>109</sup> Human Rights Committee, “General Comment no. 35 – Article 9 (Liberty and Security of the Person)”. UN Doc. CCPR/C/GC/35 (16 December 2014), par. 36-38, <https://www.ohchr.org/EN/HRBodies/CCPR/Pages/GC35-Article9LibertyandSecurityofperson.aspx>

drug offences (for which they must be presumed innocent).<sup>110</sup> These figures are particularly problematic in a context where 75% of prisoners are in pre-trial detention, and considering that the population of pre-trial detainees doubled between 2014 and 2018.<sup>111</sup>

Pre-trial detention is also exceptionally long in the Philippines, with an average of over 528 days.<sup>112</sup>

### 6.3. Human rights violations against women during arrest and detention

In 2016, over 90% of women in prison in the Philippines were incarcerated for drug-related offences.<sup>113</sup>

Women who use, or are suspected to be using, drugs experience gender-specific violations in the arrest and detention phases, pointing to systemic patterns of extortion, violence, and denial of fair trial rights. A 2018 civil society report documented, among others, cases of planting of evidence, extortion, and forced confessions.<sup>114</sup>

With regards to conditions of detention, women detained in BJMP facilities reported living in a limited space and having to sleep on the floor, in some cases on cardboards;<sup>115</sup> while rampant overcrowding increased their exposure to violence, both from other prisoners and from jail personnel.<sup>116</sup>

Finally, women incarcerated for drug offences endure intersecting discrimination at multiple levels: before imprisonment, because of the stigma associated with drugs; from service-providing organisations within prisons, thus limiting their access to essential services; from the courts at the time of trial; and upon release, from families and communities, because of the double stigma of being associated with drugs and having been detained.<sup>117</sup>

## 7. Arbitrary interference with the right to privacy (Article 17)

### 7.1. Mandatory reporting and registration, and monitoring of people who use drugs

Article 17(1) ICCPR recognises that everyone (including people who use drugs) has a right to privacy. Any interference with the right to privacy must be provided for by law and be necessary and proportionate to a legitimate aim.

Reporting of people suspected to be using drugs predates the review period. For example, the CDDA prescribes that teachers or school employees report to the authorities any person found in violation of the Act in a school or its immediate vicinity. Similar requirements are in place for law enforcement personnel and civil servants.<sup>118</sup>

However, since 2016 this practice has become systematic and generalised. Central to the anti-drug campaign is *Oplan Tokhang*, an operation whereby police officers knock on the doors of people suspected of engaging with drugs and encourage/promote their ‘voluntary’ surrender to the authorities.

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<sup>110</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>111</sup> Sheith Khidhir, “Packed Prisons in the Philippines,” December 26, 2019, <https://theaseanpost.com/article/packed-prisons-philippines>.

<sup>112</sup> Raymond Narag, “Philippines’ Dark Secret: Lengthy Pretrial Detention,” *Rappler*, October 19, 2018, <https://www.rappler.com/thought-leaders/214533-analysis-lengthy-pretrial-detention-philippines-little-dark-secret>.

<sup>113</sup> Katie Stone and Sam Shirley-Beavan, “The Global State of Harm Reduction.”

<sup>114</sup> Alvarez, “Women, Incarceration and Drug Policies in the Philippines: Promoting Human and Effective Responses.”, 12

<sup>115</sup> Ibid., 13

<sup>116</sup> Ibid., 22

<sup>117</sup> Ibid., 16

<sup>118</sup> Comprehensive Dangerous Drugs Act (2002), Section 36

The operation is carried out on the basis of “drug-watch lists” compiled by barangay<sup>119</sup> officials and then communicated to law enforcement, listing suspected people who use drugs and drug offenders.

In 2017 the National Police also installed public drop boxes to allow for anonymous reporting of people suspected to be using or dealing drugs. This system was harshly criticised for its disproportionate interference with the right to privacy and for its potential to fuel arbitrary arrests, unlawful monitoring, and even arbitrary killings,<sup>120</sup> and a plan to expand it nationwide was eventually abandoned by the Department of Interior and Local Government (DILG).<sup>121</sup> Nevertheless, boxes continue to be installed by the part of some local authorities.<sup>122</sup>

These practices are in clear violation of the right to privacy requirements established within the ICCPR. The lists in particular have been criticised for being arbitrary in multiple ways:

- There are no clear criteria for including names on the lists, with registration often following unsubstantiated reports by police officers, members of the community, or informants;<sup>123</sup>
- The lists are not accessible by the public, and those who are on the lists do not have access to any written documentation of their listing;
- There is no judicial oversight on the compilation and management of the lists, and no avenue to challenge one’s inclusion. As a consequence, people who have been registered have no control over what information is included and how it is used;
- It is unclear whether and how information can be removed from the lists. Some local authorities report being able to remove people from local lists after they ‘graduate’ from drug treatment programmes, however such reports are highly inconsistent, and do not clarify whether information can be removed only at the local level, or also from central databases. This means that “in essence, there is no way to get delisted, in effect putting in place a system of perpetual surveillance”.<sup>124</sup>

This constant monitoring is compounded by the presence in community areas of individuals deployed by the local government as “undercover”, to spy and report on those who are or have been on the lists (thus having gone through the required programmes). This has been acknowledged by both communities and local government units.

Most of those contacted by the police ‘surrender’. The forms that have to be compiled by ‘surrendered’ are highly invasive of one’s privacy, forcing those surrendering to: submit fingerprints and be photographed; commit to urine tests and to undergo non-specified medical examinations; authorise authorities to take “any information in relation with my involvement in the proliferation of drugs [...] as well as other information known to me about my cohorts”; admit to violating the law where surrendering does not absolve from criminal liability; and, waiving all criminal, civil, or administrative claims against the state agencies involved (for more details see copies of the forms in Annexes 1, 2, and 3). This in itself constitutes an arbitrary interference with the right to privacy.

In addition, most surrendered are mandated to undergo non evidence-based treatment in government centres (more details in paragraph 5). Notably, although framed as voluntary, the decision to surrender is often based on intimidation and fear, and thus cannot be deemed to be free. Indeed, there is a well-substantiated link between appearing in the lists and suffering human rights violations: evidence shows

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<sup>119</sup> A barangay is the smallest administrative division/unit in the Philippines

<sup>120</sup> Among others, see Jodesz Gavilan, “CHR: Use of Drop Boxes in Drug War Increases Risk of Mistaken Arrest,” *Rappler*, August 13, 2017, <https://www.rappler.com/nation/178592-chr-drop-boxes-drug-war-risk-mistaken-arrest>.

<sup>121</sup> Tricia Terada, “DILG Scraps Drug, Crime Drop Box Project,” *CNN Philippines*, October 12, 2017, <https://cnnphilippines.com/news/2017/10/12/DILG-scraps-drug-crime-drop-box-project.html>.

<sup>122</sup> Rambo Talabong, “Quezon City Installs Crime Drop Boxes despite DILG Scrapping the Project,” *Rappler*, January 3, 2018, <https://www.rappler.com/nation/192829-quezon-city-installs-crime-drop-boxes>.

<sup>123</sup> “‘If You Are Poor, You Are Killed’: Extrajudicial Executions in the Philippines’ ‘War On Drugs.’”, 20; “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’”, 27

<sup>124</sup> “‘They Just Kill’: Ongoing Extrajudicial Executions and Other Violations in the Philippines’ ‘War On Drugs.’”



that those included in the lists are constantly monitored and disproportionately targeted by the police, often becoming victims of abuse, arbitrary arrest and detention, and even homicide.<sup>125</sup>

According to informal reports from July 2019, over 1.5 million people surrendered to the authorities (in addition to over 240,000 arrests), while no information is available on the number of people included in the lists.<sup>126</sup>

The very existence of the lists and the consequences of being registered create an environment of suspicion and mistrusts, increase stigma and discrimination against people who use drugs, and ultimately expose them to violence and even loss of life. In addition, this policy promotes unsafe and risky drug use behaviours, and deters individuals from seeking evidence-based treatment when needed. A further consequence is the systemic underreporting and underestimation of phenomena such as drug use, drug dependence, and transmission of communicable diseases, which in turn impinges on the ability of the state to design and implement adequate and effective responses.<sup>127</sup>

### 7.2. Mandatory drug testing

Drug testing, especially when mandatory, constitutes an arbitrary interference with the right to privacy - in addition to being an unreliable indicator of drug use, and inadequate to identify drug dependence.<sup>128</sup> Drug testing can also push people who use drugs towards consuming potentially more dangerous but less detectable substances, and prevent people who use drugs from seeking support or treatment when needed. Finally, drug testing leads to further stigma and discrimination, and can negatively impact on one's private and family life. For example, the CDDA requires drug testing to be a public officer/form part of law enforcement.

Another problematic aspect is the drug testing of children. In 2017, pursuant with the CDDA,<sup>129</sup> the Department of Education released guidelines for the conduct of random drug testing in public and private secondary schools.<sup>130</sup> Despite touted as primarily voluntary, and despite language in the law supporting the interpretation that refusal to undergo the drug test should not be seen as presumptive evidence that a student is using, such refusal can still be grounds for "appropriate action" or "intervention" as the school sees fit. Human Rights Watch notably 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>131</sup>

### 7.3. Suggestions for List of Issues

In light of the above, we respectfully call upon this Committee to submit the following questions to the authorities of the Philippines:

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

126 "#RealNumbersPH: PNP Revises Drug War Figures, Cites Vetting for Discrepancies," *ABS-CBN News*, July 18, 2019, <https://news.abs-cbn.com/news/07/18/19/realnumbersph-pnp-revises-drug-war-figures-cites-vetting-for-discrepancies>.<https://news.abs-cbn.com/news/07/18/19/realnumbersph-pnp-revises-drug-war-figures-cites-vetting-for-discrepancies>

127 Hoang et al., 'Factors Associated with Concurrent Heroin Use among Patients on Methadone Maintenance Treatment in Vietnam', 113

128 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/1DBGu24ggfDEzv57QEeSf1YZ8ZYvnwuC/view>.

129 Comprehensive Dangerous Drugs Act, Section 36

130 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)

131 <https://www.hrw.org/news/2018/06/22/philippine-school-kids-may-face-mandatory-drug-tests>

- Elaborate on the compatibility of the reporting and registration system (the “drug-watch lists”) with the fundamental right to privacy, also with explicit reference to the “necessity, reasonableness, and proportionality” test;
- Report on the criteria followed for inclusion and removal of names from the “drug-watch lists”;
- Elaborate on judicial oversight on the compilation and management of the “drug-watch lists”, and on mechanisms available for challenging one’s inclusion in such lists;
- Elaborate on the consequences of one’s name figuring on the “drug-watch lists”;
- Elaborate on the necessity, reasonableness and proportionality of mandatory drug testing, and on their compliance with the right to privacy.

## **8. Shrinking civil society space: targeting of human rights defenders and drug user activists (Articles 19 and 21)**

Civil society organizations working on the human rights implications of the war on drugs and related issues have suffered added scrutiny because of their work.

Among many other examples, the Securities and Exchange Commission (SEC) of the Philippines has released guidelines that would mandate non-profit organisations in the Philippines to comply with invasive registration requirements. SEC Memorandum Circular No. 15 (s. 2018) - which was published in November 2018 with the supposed aim of “protect[ing] non-profit organisations from money laundering and terrorist financing abuse” - requires the disclosure of the full list of donors, funds, and current and intended beneficiaries of the organisation. This could pose problems for organisations working with populations at risk. Organisations who fail to comply or are deemed to be at “high-risk” based on an undisclosed points system can be subjected to “enhanced monitoring and supervision measures” further legitimising violations to the freedom of association.<sup>132</sup>

Activists also reported ongoing demonisation and stigmatisation, surveillance, harassment from the police, and constant fear of arbitrary arrest or even killing because of their work.<sup>133</sup> A detailed reconstruction of the hostile environment in which local human rights defenders are operating is provided in a report published by non-governmental organisations in February 2019.<sup>134</sup>

The Commission on Human Rights of the Philippines (CHR) is also under significant pressure because of its efforts to investigate and denounce violations committed in the context of the “War on Drugs”. Members of the government routinely attack the legitimacy and credibility of the CHR, and have repeatedly tried to limit its effectiveness.<sup>135</sup>

Finally, we wish to express our concern at the prolonged arbitrary detention of Senator Leila de Lima, who is incarcerated since February 2017 on the basis of fabricated and politically motivated drug charges. Senator de Lima – one of the most vocal critics of Duterte’s anti-drug campaign – handed herself to the police after the issuing of a warrant for her arrest, and is in pre-trial detention since.<sup>136</sup>

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132 Philippines Security and Exchange Commission, *SEC Memorandum Circular No. 15* (Series of 2018). <http://www.sec.gov.ph/wp-content/uploads/2018/11/2018MCNo15.pdf>

133 Tessie Castillo, “The Startling Optimism of Harm Reductionists in the Philippines,” *Filtermag*, December 31, 2019. <https://filtermag.org/harm-reduction-philippines/>

134 “Philippines: ‘I’ll Kill You Along With Drug Addicts’. President Duterte’s War On Human Rights Defenders In The Philippines” (FIDH, OMCT and OBS, February 2019), <https://www.omct.org/human-rights-defenders/reports-and-publications/philippines/2019/02/d25257/>.

135 Ibid.

136 Ibid.

*Suggestions for List of Issues*

In light of the above, we respectfully call upon this Committee to submit the following questions to the authorities of the Philippines:

- How is the government responding to credible and well-substantiated reports of abuses and harassment against civil society working on drug-related issues?
- What measures has the government undertaken, or is planning to undertake, to ensure a safe and enabling environment for the Commission on Human Rights as well as individuals and organisations working on drug policy in the country, including as a way of fostering evidence-based conversations on the issue?