

Human Rights Norm Diffusion in Southeast Asia: Roles of Civil Society Organizations (CSOs) in Ending Extrajudicial Killings in the Philippines

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Abstract

Civil Society Organizations (CSOs) have played an increasingly vocal role in their struggle to advance both human rights protection and promotion in Southeast Asian countries. Most notably, CSOs have become a more important actor in dealing with human rights issues in particular by virtue of their role in drawing attention to human rights violations. In the case of massive human rights violations happening in Southeast Asia, CSOs pursue various strategies to address and try to end such abuses. Spreading information of human rights violations occurring in each member state to regional peers, and then finding new allies such as international organizations to put pressure back to human rights-violating states, in what is characterized as a dynamic of the boomerang model, one of the prominent strategies CSOs use to relieve human rights violations. Another strategy recently observed involves CSOs reaching out to powerful judicial institutions whose decisions can be legally binding on a violating state. This paper applies the boomerang model theory to the efforts of CSOs, specifically with respect to their work in helping to end the extrajudicial killing of drug dealers in the Philippines during President Duterte's tenure, to display how the dynamics of the boomerang model works and what this strategy has achieved in terms of ending the extrajudicial killings. Beyond the boomerang model, this paper further demonstrates the strategy of CSOs in reaching out directly to powerful judicial institutions, in this case the International Criminal Court (ICC). The paper discusses why CSOs pursued this strategy of reaching out to the ICC, bypassing the region's human rights institution—the ASEAN Intergovernmental Commission on Human Rights (AICHR).

Keywords: *Civil Society Organizations (CSOs), Extrajudicial Killing in the Philippines, The International Criminal Court (ICC)*

I. INTRODUCTION

In Southeast Asia, civil society organizations (CSOs) across the region have for over a decade, been challenging the regional organization, the Association of Southeast Asian Nations (ASEAN), to address issues and concerns impacting citizens.¹ In December 1997,

¹ Anders Uhlin, *Civil Society and Regional Governance: The Asian Development Bank and the Association of Southeast Asian Nations* (London: Lexington Books, 2017) at 40–43. See also, Eduardo

ASEAN officially widened its policy-making to include CSOs.² Additionally, the Bali Concord II 2003 and the Vientiane Action Program 2004 restated commitments regarding civil society engagement with ASEAN.³ The idea of collaborating with CSOs became a consistent part of the ASEAN rhetoric and was reaffirmed in article 1(13) of the ASEAN Charter 2007.⁴ At present, there are many CSOs working on different interests and issues in this region. The exact number of CSOs seems difficult to pinpoint as some of them exist only in name while in reality they may not be reachable, and some have merged with other CSOs.⁵

According to the 2016 USAID CSO Sustainability Index for Asia, the Philippines has 279,499 registered CSOs—the highest number in the region. Indonesia, Thailand, and Cambodia have about 250,000; 14,000; and 5,000 respectively.⁶ Despite this high number, it is surprising that only 52 CSOs have been accredited by ASEAN. The accreditation is officially regulated by the Guidelines on Accreditation of Civil Society Organizations. The first Guidelines were adopted at the 5th Meeting of the 19th ASEAN Standing Committee (ASC), Manila, 16-18 June 1986, and the current version was adopted by the 19/2012 the Committee of Permanent Representatives (CPR) Meeting on 5th November 2012 and noted by the 11th the ASEAN Coordinating Council (ACC) Meeting on 17th November 2012.⁷

With respect to CSOs in the human rights field, a number of CSOs have emerged to be a facilitator on matters of human rights when the Working Group for an ASEAN Human Rights Mechanism (Working Group) was created in 1995, because the Working Group consisted of parliamentary human rights committees, the academic community, and CSOs.⁸ Official statements of the Working Group show that several CSOs such as MARUAH Singapore, the Philippine Alliance of Human Rights Advocates (PAHRA), the Asia Foundation, and Friedrich Naumann Stiftung have often participated in

C Tadem, “New Perspectives on Civil Society Engagement with ASEAN”, (2017), online: *Heinrich Böll Found* <<https://www.boell.de/en/2017/08/02/new-perspectives-civil-society-engagement-asean>>.

² The ASEAN Secretariat, “ASEAN Vision 2020”, online: *ASEAN ONE Vis ONE IDENTITY ONE COMMUNITY* <http://asean.org/?static_post=asean-vision-2020>.

³ The ASEAN Secretariat, “Declaration of ASEAN Concorde II 2003”, (2003), online: *ASEAN ONE Vis ONE IDENTITY ONE COMMUNITY* <<http://asean.org/search/Bali+Concord/>>; The ASEAN Secretariat, “Vientiane Action Programme 2004”, (2004), online: *ASEAN ONE Vis ONE IDENTITY ONE COMMUNITY* <<http://asean.org/storage/images/archive/VAP-10th%20ASEAN%20Summit.pdf>>.

⁴ The ASEAN Secretariat, “ASEAN Charter 2007”, (2007), online: <<http://asean.org/asean/asean-charter/>>.

⁵ The Friedrich-Ebert-Stiftung (FES), *An ASEAN Community for All: Exploring the Scope for Civil Society Engagement* (An ASEAN Community for All: Exploring the Scope for Civil Society Engagement, 2011) at 12.

⁶ USAID, *The 2016 CSO Sustainability Index for Asia*.

⁷ The ASEAN Secretariat, “Register of Accredited Civil Society Organizations (CSOs): Listed as Entities Associated with ASEAN, in Annex 2 of the ASEAN Charter”, (2015), online: <<http://www.asean.org/wp-content/uploads/2012/05/Accredited-Civil-Society-Organisations-as-of-25-May-2016.pdf>>.

⁸ The Working Group for an ASEAN Human Rights Mechanism (the Working Group) (2007), “The initiative for an intergovernmental human rights commission for Southeast Asia”, available at <http://www.aseanhrmech.org/aboutus.html>, (Accessed May 24, 2018).

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Workshops and Roundtable Discussions of the Working Group.⁹ The primary purpose of the Working Group was to establish an intergovernmental human rights commission for this region which finally came to be called the ASEAN Intergovernmental Commission on Human Rights (AICHR).¹⁰ It can thus be said that CSOs have been involved in the regionalization process of human rights by being part of the creation of ASEAN's regional human rights institution—the AICHR.

The CSO-ASEAN interconnection had changed however, over the few years after the AICHR was established—civil society had been limited in involvement with the AICHR.¹¹ For instance, in the process of drafting the ASEAN Human Rights Declaration (AHRD), CSOs had been invited only twice to the formal consultation on the AHRD.¹² Moreover, the AICHR did not release the working draft of the declaration, and ASEAN foreign ministers released only 'key elements' of the draft whereas the full draft was kept confidential, thereby precluding any direct input from CSOs via formal engagement, despite the drafting process being the most important step forward in human rights at the time.¹³ Nevertheless, things are looking brighter, CSOs have become increasingly recognized. The AICHR seems to have sought for more meaningful and constructive engagement and interaction with CSOs through the adoption of Guidelines on the AICHR's Relations with Civil Society Organisations in 2015.¹⁴ The guidelines are aimed to further strengthen ASEAN cooperation in the promotion and protection of human rights and fundamental freedoms.

In reality, especially in human rights violations occurring in Southeast Asia, there has been an ongoing tension between civil society and national governments and/or the AICHR.¹⁵ When CSOs play a role in upholding people's rights, but in so doing, challenge

⁹ The Working Group for an ASEAN Human Rights Mechanism (the Working Group) (2001-2009), "The 1st-8th Workshop for an ASEAN Human Rights Mechanism and the 1st-5th Roundtable Discussion on Human Rights in ASEAN", available at <http://www.aseanhrmech.org/conferences/index.html>. (Accessed May 24, 2018).

¹⁰ Helen E. S. Nesadurai, Transnational Civil Society, the Market and Governance Reform in Southeast Asia in Alice D. Ba and Mark Beeson (eds), *Contemporary Southeast Asia: The Politics of Change, Contestation, and Adaptation* (3rd edition, Palgrave 2018), p. 204-206. See also, Hao Duy Phan, *A Selective Approach to Establishing a Human Rights Mechanism in Southeast Asia: The Case for a Southeast Asian Court of Human Rights* (Brill Nijhoff Publishers 2012), p.101.

¹¹ James Gomez and Robin Ramcharan (2012), "The Protection of Human Rights in Southeast Asia: Improving the Effectiveness of Civil Society", *Asia-Pacific Journal on Human Rights and the Law*, Vol. 12, Issue 2, p. 27-43.

¹² The AICHR (2017), *The ASEAN Intergovernmental Commission on Human Rights (AICHR) Annual Report 2017*, p. 12.

¹³ James Gomez and Robin Ramcharan (2012) in supra note 11, p. 28. See also Mathew Davies (2017), Important but De-centred: ASEAN's Role in the Southeast Asian Human Rights Space, *TRaNS: Trans-Regional and -National Studies of Southeast Asia*, volume 5, special issue 1(ASEAN Communities), p. 106.

¹⁴ The AICHR (2015), "Meaningful and constructive engagement and interaction between AICHR and CSOs", available at <http://aichr.org/news/meaningful-and-constructive-engagement-and-interaction-between-aichr-and-csos/>, (Accessed May 24, 2018).

¹⁵ Shveta Dhaliwal, *Human Rights Mechanism in Southeast Asia* (Oxon, Routledge 2017).

the government, CSOs have been often ignored and deemed immaterial by the AICHR, and seem oppressed by some governments.¹⁶

A recent example can be found in the Philippines where president Rodrigo Duterte commissioned a campaign against drugs which has resulted in 6,000 people—alleged drug peddlers and users—being killed (as of 15 February 2017) in what is infamously known as Duterte’s war on drugs.¹⁷ CSOs have acted in various ways, such as mobilization and other actions, in response to these extrajudicial killings. Surprisingly, the president responded aggressively by remarking “I will kill human rights advocates if the campaign against drugs is stopped because of them”.¹⁸

With an interest in the manner and consequences of CSO mobilization in the field of human rights, this paper examines CSOs’ works with respect to their help in mitigating human rights abuses involved in the war on drugs in the Philippines under president Duterte’s regime. The paper starts off by providing a theoretical context on the definition and role of CSOs along with their place in the dynamics of human rights norm diffusion, pursuant to Keck and Sikkink’s boomerang model.¹⁹ The application of this theoretical context to CSOs’ role in the Philippines’ war on drug can be found in the analysis, which will be divided into three parts.

The first part provides a brief background into the war on drugs in the Philippines under president Duterte’s tenure. The second part is an application of Keck and Sikkink’s theoretical framework of the boomerang model with the Philippines’ case. We further evaluate what the impact has been on the Philippines, the norm-violating state after CSOs carried out their role as agents of human rights norm diffusion. In the third part, we further examine a coalition of CSOs and their strategy in reaching out to a powerful international institution; the ICC, to bring human rights violations in the extrajudicial killing case into the international legal process. We argue why the ICC is a feasible arena for CSOs to pursue their claims, and submit that CSOs’ recourse to the ICC is necessitated by ASEAN’s lack of a powerful regional human rights institution to deal with human rights violations. The result of CSOs’ strategies will be the lesson for ASEAN to accelerate its consideration in establishing this kind of human rights mechanism soon because it would be effective to stop human rights violation in the region.

II. SOCIAL AND SCIENTIFIC CONTRIBUTION

¹⁶ Gomez, James, and Robin Ramcharan (2014), Evaluating Competing “Democratic” Discourses: The Impact on Human Rights Protection in Southeast Asia, in: *Journal of Current Southeast Asian Affairs*, 33:3, p. 49–77.

¹⁷ Jodesz Gavilan (2016), “Duterte’s War on Drugs: The First 6 Months”, available at <https://www.rappler.com/newsbreak/rich-media/rodrigo-duterte-war-on-drugs-2016>. (Accessed May 24, 2018).

¹⁸ CIVICUS (2016), “Drug war unsettles civil society in Philippines”, available at <https://www.civicus.org/index.php/media-resources/news/interviews/2676-drugs-war-unsettles-civil-society-in-philippines>, (Accessed May 24, 2018).

¹⁹ Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders* (Cornell University Press 1998).

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In other regions in the world, such as in the Americas, CSOs have joined efforts to propel human rights promotion and protection. Their engagement with institutions is clearly welcomed, both in national and regional platforms.²⁰ In ASEAN, however, the need for CSO engagement has not been awarded priority. The significance of this research therefore lies in the fact that it underscores CSO co-operation as a promising agent of developing human rights protection in Southeast Asia. This paper also adds to the discussion on human rights norm diffusion. It should be noted that the human rights norm in focus here is the norm on human rights protection and ending human rights violations diffused by CSOs. As we examine CSOs engagement in the region, specifically how CSOs diffuse human rights information in response to human rights violations from the domestic to the regional level to demand for human rights protection, the research contributes in building up ASEAN's awareness on the role of CSO working not only at the domestic level but also at the regional level. Finally, with respect to the international level, the study on CSOs' international strategies will be beneficial towards ascertaining how their future work could contribute to the improvement of the ASEAN human rights protection system.

III. RESEARCH METHODOLOGY

The methodology this paper adopts follows a qualitative approach. First, relying on both primary and secondary sources of data, the paper identifies and analyzes the recent performances of CSOs in Southeast Asia. Discussions, events, and released statements organized by CSOs, and having a personal interview with director and president of CSOs in the region will be analyzed to determine their impact on the Philippines, and ascertain whether or not they are effective to help diminish human rights violations with respect to the extrajudicial killing case under President Duterte's regime. Some of the information presented in the analysis part were obtained by virtue of attendance in an official AICHR meeting, in which an author was able to pose questions to CSOs and the AICHR representatives.²¹ Moreover, personally interviewing the AICHR representatives is another fruitful method employed by this research. Secondly, the paper draws on legal provision of the Rome Statute on the International Criminal Court (Rome Statute) in making an analysis on why CSOs adopt an international strategy in reaching out to the International Criminal Court.

IV. THE THEORITICAL CONTEXT

1. Roles of CSOs on Human Rights Issues

²⁰ Stefanie Khoury and David Whyte, *Corporate Human Rights Violations: Global Prospects for Legal Action* (Routledge 2017). See also, Heidi Nichols Haddad (2012), 'Judicial Institution Builders: NGOs and International Human Rights Courts', 11 *Journal of Human Rights*, p. 140.

²¹ The AICHR High Level Dialogue on Managing Freedom of Expression in the Information Age. Held in Medan, Indonesia, 11 – 12 April 2018.

First of all, it should be clarified that the term civil society organization (CSO) refers to a broad range of non-state, non-profit entities such as non-governmental organizations (NGOs), charities, trusts, foundations, and advocacy groups.²² CSOs have increasingly been playing a vital role in numerous fields for a few decades, and especially in human rights issue.²³ Marc Nerfin describes CSOs as the third system functioning benignly, helping the people to assert their own power and making efforts to listen to those who are never or rarely heard, rather than seeking governmental power.²⁴ Richard Falk describes CSOs as being actors which many states fear as CSOs's power can typically at least slow the exercise of the formal political power of the state.²⁵ Civil society is generally seen as being characterized by non-violence and, in fact, as being determinedly opposed to the use of violence.²⁶ Also, CSOs are seen as linking social cleavages and as being instituted by horizontal networks where all members have an equal chance to participate in decision-making.²⁷ In terms of judicial decision making, Dinah Shelton has noted the increasingly important roles of NGOs in international courts, describing that NGOs provide legal and political analysis and practical information that states may be unable to marshal, thereby facilitating the decision-making process.²⁸

The political struggle for human rights is universal and potentially engages all human beings, a key agent who plays an influential role in the process is civil society organizations.²⁹ Concern for human rights would not have achieved international expression without the backdrop of social and political understandings promoted by CSOs.³⁰ Loveday Hodson states that global human rights culture is created, maintained, and developed by a myriad of actors, including individuals and CSOs.³¹ Upendra Baxi support that human rights are assembled by several actors acting simultaneously within the given legal and political structures, and challenging and changing them in the process.³²

Kelly Gerard further notes that CSOs not only participate in spaces that have been established or recognized by intergovernmental organizations, but they can also create

²² Thomas Richard Davies, *NGOs: A New History of Transnational Civil Society* (Oxford University Press 2014). See also, Bridget M. Hutter and Joan O'Mahony (2004) 'The Role of Civil Society Organizations in Regulating Business', Economic and Social Research Council Centre for Analysis of Risk and Regulation Discussion Paper No. 26, p.1.

²³ Markus Thiel, *European Civil Society and Human Rights Advocacy* (University of Pennsylvania Press 2017). See also, Hilary Charlesworth and Emma Larking, *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press 2014).

²⁴ Marc Nerfin (1987), "Neither Prince or Marchant: Citizen. An Introduction to the Third System", *A Journal of International Development Cooperation, Dag Hammarskjöld Foundation*, Vol. 1, p. 170-195.

²⁵ Richard Falk, *Revitalizing International Law* (Iowa State Publisher 1989), p. 208-213.

²⁶ Michel Edwards, *Civil Society*, (Cambridge: Polity Press 2014), p. 7.

²⁷ Ibid.

²⁸ Dinah Shelton (1994), "The Participation of Nongovernmental Organizations in International Judicial Proceedings", *The American Journal of International Law*, Vol. 88, No. 4, p. 611-642.

²⁹ Ibid.

³⁰ Dianne Otto (1996), "Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society", *Human Rights Quarterly*, Vol. 18, No. 1, p. 107-141.

³¹ Loveday Hodson, *NGOs and the Struggle for Human Rights in Europe*, (Hart Publishing Ltd 2011), p. 25.

³² Upendra Baxi, *The Future of Human Rights* (Oxford University Press 2008), p.32-58.

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more spaces to pursue human rights and political activity, bypassing regional and state actors.³³ CSOs can also create three types of activities, namely: parallel activities such as forums and workshops; protests; and the production and dissemination of critical knowledge which sometimes directly influence official processes of states and intergovernmental organizations.³⁴ High-profile organizations such as Amnesty International and Human Rights Watch have raised the profile of international non-state actors greatly.³⁵ Neil Stammers has also commented on the capacity of national and regional CSOs and transnational networks pressuring and communicating the human rights concerns around the world.³⁶

Mary Kaldor notes that the important concept of civil society is to add human rights discourse and pressure political actors to take responsibility to respect human rights through activities of networks.³⁷ Steve Charnovitz goes as far as to credit CSOs with helping to humanize modern international law.³⁸ In practice, CSOs have used numerous means to promote and ensure respect for human rights in international platforms. As Theo van Boven notes, non-state actors such as NGOs possess important technical skills which make them suitable for being full participants and sometimes as principal actors during initial human rights standard-setting processes—such as the drafting of the UN human rights conventions and the Convention on the Rights of the Child.³⁹ Non-state actors are now considered full participants in the international stage. Peter Willetts embraces this view, referring enthusiastically to NGOs and CSOs as partners in the international law-making process.⁴⁰

Other regional institutions such as the Inter-American Court of Human Rights and the African Court on Human and Peoples' Rights broadly support CSOs' participations. For example, Dinah Shelton reports that the Inter-American Court appears never to have rejected an amicus filing, which has naturally served as encouragement for numerous human rights groups to submit briefs to it.⁴¹ She also applauds this high level of non-state actor participation because, thereby, the public interest is broadly served and the work of the Inter-American Commission is supplemented to ensure a full and fair hearing for all issues which accompany the cases before the court.⁴² The Inter-American Commission on Human Rights has relaxed rules of standing which provide that NGOs and/or CSOs

³³ Kelly Gerard (2015), "Explaining ASEAN's Engagement of Civil Society in Policymaking: Smoke and Mirrors", *Globalizations*, Vol.12, No.3, p.365-382.

³⁴ Kelly Gerard (2014), "ASEAN and civil society activities in 'created spaces': the limits of liberty", *The Pacific Review*, Vol.27, No.2, p.265-287.

³⁵ Loveday Hodson in supra note 31, p. 26.

³⁶ Neil Stammers, *Human Rights and Social Movements* (Pluto Press 2009), p.248.

³⁷ Mary Kaldor, *Global Civil Society: An Answer to War* (Polity Press 2003), p.86.

³⁸ Steve Charnovitz (2006), "Nongovernmental Organizations and International Law", *American Journal of International Law*, Vol. 100, p. 361.

³⁹ Theo van Boven (1990) "The Role of Non-Governmental Organizations in International Human Rights Standard-Setting: A Prerequisite of Democracy", *California Western International Law Journal*, Vol. 20, No. 2, Article 5, p. 218.

⁴⁰ Peter Willetts (2000), "From 'Consultative arrangements' to 'Partnership': The Changing Status of NGOs in Diplomacy at the UN", *Global Governance*, Vol. 6, p. 191.

⁴¹ Dinah Shelton in supra note 28, p. 638.

⁴² Ibid, p. 640.

may submit a petition to it in relation to human rights violations on behalf of others.⁴³ Mendez and Vivanco further claim that sometimes CSOs act as representatives of the victims and legal advisers to the Inter-American Commission on Human Rights, in practically all the cases pending before the Court.⁴⁴

As for the African Court on Human and Peoples' Rights, the court is empowered to receive cases referred by individuals and by NGOs with observer status before the Court, provided that the state concerned has made a declaration accepting this procedure.⁴⁵ Odinkalu and Christensen state that NGOs have been at the heart of the African Charter system, and perusal of a collection of the Commission's decisions reveals that the vast majority of communications under that treaty originate from non-state actors.⁴⁶ Abdelsalam Mohamed supports the important contribution of CSOs, seeing these actors as "a welcome innovation". He emphasizes the imperative nature of CSOs to African human rights litigation by pointing that if the Court "does not open up to...CSO participation, it might be guilty of clinging to an outmoded view of human rights adjudication".⁴⁷

2. CSO's Strategies on Diffusing Human Rights Information

Margaret Keck and Kathryn Sikkink assert the importance of transnational advocacy networks for the diffusion of international norms in human rights issues.⁴⁸ In their view, advocacy networks are significant transnationally and domestically for building new links among actors in civil societies, states, and international organizations, they multiply the channels of access to the international system.⁴⁹ CSOs play a central role as major actors in advocacy networks, usually initiating actions and pressuring more powerful actors to take position, and also introduce new ideas, provide information, and lobby for policy changes over human rights issues.⁵⁰ Martha Finnemore remarks that transnational advocacy networks are proliferating, and their goal is to change the behavior of states and of international organizations by bringing new ideas, norms, and discourses into policy debates, and serve as sources of information and testimony.⁵¹

CSOs have a variety of strategies which they may pursue depending on their evaluation of their policy. They may, for example, pursue public visibility, form domestic

⁴³ Loveday Hodson in *supra* note 31, p. 31. *See also*, Article 44, American Convention on Human Rights 1969.

⁴⁴ Juan E Mendez and Jose Miguel Vivanco (1990), "Disappearances and Inter-American Court: Reflections on a Litigation Experience", *Hamline Law Review*, Vol. 13, p. 507.

⁴⁵ Loveday Hodson in *supra* note 31, p.32.

⁴⁶ Chidi Anselm Odinkalu and Camilla Christensen (1998), "The African Commission on Human and Peoples' Rights: the Development of its Non-State Communication Procedures", *Human Rights Quarterly*, Vol. 20, p. 235. *See also*, Article 55, African Charter on Human and Peoples' Rights 1981.

⁴⁷ Abdelsalam A. Mohamed (1999), "Individual and Ngo participation in Human Rights Litigation before the African Court on Human and Peoples' Rights: Lessons from the European and Inter-American Courts of Human Rights", *Journal of African Law*, Vol. 43, Issue.2, p. 201-213.

⁴⁸ Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders* (Cornell University Press 1998), p. 1.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.*, p. 9.

⁵¹ Martha Finnemore, *National Interests in International Society*, (Cornell University Press 1996), p. 2.

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coalitions, engage in governmental lobbying or confrontation, or attempt transnational networking to reach out regionally or internationally.⁵² Nationally, a CSO may choose to reach out directly to the public, to raise its concerns with the general public to either elicit an immediate response, such as support in a referendum, upcoming election or parliamentary bill, or to attempt longer term processes of awareness raising, education, and norm diffusion.⁵³ A CSO may choose to reach out to other sympathetic CSO organizations, or to build alliances with other economic and political groups like labor unions, business organizations, or political parties.⁵⁴ A human rights CSO may also choose to reach out to national human rights institutions (NHRIs) which exist in many countries, in an attempt to find institutional allies to pursue its agenda.⁵⁵ The transnational networking of human rights CSOs may be with international groups like Amnesty International and Human Rights Watch, or peer groups in other countries working on similar issues. CSOs may participate in international human rights mechanisms like the Universal Periodic Review Process,⁵⁶ and are increasingly doing so, also in the Southeast Asian region.⁵⁷

Thomas Risse and Kathryn Sikkink further describe how international human rights norms are socialized—internalized and domestically implemented—to impact political transformation processes. They argue that “networks like CSOs among regional and domestic who manage to link up with international regimes” are crucial to international human rights norm diffusion as they fulfill three objectives which create the conditions necessary for domestic change regarding human rights such as a violation case.⁵⁸ These three objectives are said to be 1) putting norm-violating states on the international agenda in terms of moral-consciousness raising; 2) mobilizing domestic opposition groups against norm-violating states in two aspects: empowering and legitimizing the claims of the group, and partially protecting the groups’ physical integrity from state repression; and 3) challenging norm-violating states by “creating a transnational structure” pressuring states simultaneously from above and from below.⁵⁹

Keck and Sikkink underscore a strategy of CSOs in the socialization of norms, describing that CSOs appear most likely to create channels between domestic groups and

⁵² Ibid.

⁵³ Ronald Holzacker (2006), “Opportunity Structures and Strategies of Civil Society Organizations in Multi-Level Governance: The Development of Anti-Discrimination Law in Italy”, presentation at the European Consortium for Political Research Standing Group on EU Politics, Istanbul, Turkey, 21-23 September, available at <http://www.jhubc.it/ecpr-istanbul/virtualpaperroom/059.pdf>. (Accessed May 24, 2018).

⁵⁴ Ibid.

⁵⁵ Catherine Renshaw and Kieren Fitzpatrick (2012), “National human rights institutions in the Asia Pacific region : change agents under conditions of uncertainty” in Ryan Goodman and Thomas I Pogram (eds), *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions*, Cambridge University Press, p. 150-180.

⁵⁶ Edward McMahon and Marta Ascherio (2012), “A Step Ahead in Promoting Human Rights? The Universal Periodic Review of the UN Human Rights Council”, *Global Governance: A Review of Multilateralism and International Organizations*, Vol. 18, No. 2, p. 231-248.

⁵⁷ Catherine Renshaw and Kieren Fitzpatrick in supra note 55.

⁵⁸ Thomas Risse, Stephen C Ropp, and Kathryn Sikkink, *the Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999), p. 5.

⁵⁹ Ibid, p. 5.

their governments where such channels have been blocked or are ineffective for resolving a conflict and human rights violations.⁶⁰ They further suggested the “boomerang model” to illustrate the pattern and components of diffusion of human rights norms by positing that in the event a government violates or refuses to recognize rights, individuals and domestic groups, often having no recourse within domestic or judicial arenas yet aware that their claims may still resonate elsewhere, seek international connections to gain allies.⁶¹ Such international contacts can “amplify” the demand of domestic groups, pry open space for new issues, and then echo this demand back into the domestic arenas where their claims had once been neglected—an event which had triggered the seek for external pressure in the first place⁶².

This boomerang-like pattern of influence, characteristic of civil society organizations where the target of their activity is to change a state’s behavior, can commonly be found in human rights and social rights campaigns. When channels between the state and its domestic actors are blocked, the boomerang pattern may occur by the act of CSOs.⁶³ If CSOs are also blocked domestically, they will seek access to the international arena, leverage, information, and resources for conducting campaigns and raising awareness.⁶⁴ For example, the violating state blocks requests by and redress to CSOs within it; those CSOs will activate network to prompt their allies or a third-party organization to pressure the violating state.⁶⁵ Here it can be seen that the transnational aspect is particularly important in cases where domestic ties have been severed by the norm-violating government. It is crucial for activists to come together and blur the lines between domestic and foreign organizations, upgrading their efforts transnationally beyond borders.⁶⁶

Acharya added that local CSOs may act as agents of human rights norm diffusion in the following main ways: localizing foreign ideas and approaches to develop human rights, filling gaps by operating in areas where foreign CSOs fear to be treaded or banned from operating, and devising and implementing projects that are locally relevant and useful.⁶⁷ All of these methods aim at inducing governments to accept a norm that they do not favour for the purposes of satisfying the demand of the civil society and the people represented by it.⁶⁸

Nevertheless, some scholars have pointed out that the crucial component in the socialization of norms consists less in the agents carrying it out but it is rather in the rapid manner by which information is exchanged back and forth between highly institutionalized components of networks that is key to their success in advancing human rights protection. This human rights norm diffusion pattern observed has been aptly named the “ricochet” and entails the rapid exchange of ideas and legal and political

⁶⁰ Margaret E. Keck and Kathryn Sikkink in *supra* note 48, p. 12.

⁶¹ *Ibid*, p. 13.

⁶² *Ibid*, p. 16-17.

⁶³ *Ibid*, p. 12.

⁶⁴ *Ibid*.

⁶⁵ *Ibid*, p.13.

⁶⁶ *Ibid*, p. 32.

⁶⁷ Amitav Acharya (2004), “How Ideas Spread: Whose Norms Matter? Norm Localization and Institutional Change in Asian Regionalism”, *International Organization*, Vol. 58, No.2, p. 239-275.

⁶⁸ *Ibid*.

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arguments between various actors and institutions occurring transnationally.⁶⁹ These actors include local CSOs, human rights NGOs, intergovernmental institutions, as well as foreign governments.⁷⁰

Here the paper focuses not so much on the domestic, international, or global strategies, but instead on regional strategies, supporting that regional strategies may be especially fruitful for human rights groups to pursue. Beth Simmons in her landmark book “Mobilizing for Human Rights: International Law in Domestic Politics” deals with the politics of treaty commitment and the politics of compliance over human rights issues.⁷¹ She posits that the true power of multilateral agreements emerges as ‘more countries – especially regional peers – ratify human rights accords’ and it becomes ‘more difficult to justify non-adherence’.⁷² Her empirical research also demonstrates how CSOs working transnationally within a region can help spread the word of human rights violations and non-adherence by states.⁷³

V. ANALYSIS ON CROS’ ROLES AND STRATEGIES IN THE EXTRAJUDICIAL KILLING OF SUSPECTED DRUG DEALERS AND USERS IN THE PHILIPPINES UNDER PRESIDENT RIDRIGO DUTERTE’S POLICY

Since theoretically we hold CSOs’ role and strategy to be key in diffusing human rights information, in this analysis part we first briefly provide a background on the extrajudicial killing campaign under President Duterte’s policy in the Philippines. Next, we analyze CSOs strategy of diffusing information on the violation by way of application of the boomerang model to the facts of the extrajudicial killing case and subsequently determine the impact that this strategy of the CSOs have had against the Philippines, the violating state. Finally, we discuss another CSO strategy which involves reaching out to an international judicial organization—the ICC. We analyze the legal principles of the ICC that support this international strategy of the CSOs and then demonstrate, in fact, how this strategy was pursued.

1. Background on the War on Drugs in the Philippines

Upon his taking of office on June 30, 2016, the Philippines’ President, Rodrigo Duterte, has pursued a “war on drugs” campaign. The campaign has led to the deaths of over 12,000 Filipinos to date, including many of those who were innocent, either as

⁶⁹ Ronald Holzhaecker (2013), “State-Sponsored Homophobia and the Denial of the Right of Assembly in Central and Eastern Europe: The “Boomerang” and the “Ricochet” between European Organizations and Civil Society to Uphold Human Rights”, *Law and Policy*, Vol. 35, Issue 1-2, p. 1-28.

⁷⁰ *Ibid.*

⁷¹ Beth A Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

⁷² *Ibid.*, p.13.

⁷³ *Ibid.*

collateral damage or as cases of mistaken identity.⁷⁴ Among the innocent killed, there was a worst case to guarantee that this campaign against illegal drugs is very reprehensible. Jefferson Bunuan, a 20-year-old who has been a sponsored child of the Kaibigan sa Ermita Outreach Foundation Inc. (KEOFI) for 11 years, himself a criminology student who dreamt of becoming a police officer, and was a volunteer of the Philippine National Police (PNP)'s "Lambat Sibab" crime prevention program lost his life as a result of the shootings in this campaign.⁷⁵ This case explicitly demonstrates that the policy of Duterte constitutes an arbitrary attack on their civilians without any regard as to the universal standards of human rights.

Worldwide news coverage has documented Philippines and its increasing number of extrajudicial and vigilante killings of drug dealers. There is global condemnation of the anti-drug campaign as a downright violation of human rights while Duterte himself continues to encourage vigilante actions by taking up arms to execute drug dealers or users.⁷⁶ The president also denigrates the Commission on Human Rights and other nations and institutions which have called for investigations of blatant human rights violations in the anti-drug campaign.⁷⁷ Amidst this, a massive CSO response also took place. Several human rights groups and peace groups, condemning the campaign and denouncing the actions of the present administration, have led their own mobilization against these extrajudicial killings.

2. CSOs' Strategy in Diffusing Information on Violations and its Outcomes

As evident from the background of the war against drugs at hand, the norm-violating behavior of the state is definitely demonstrated by summary executions involved in the campaign of the Duterte government, which is clearly out of due process of law. It is also a violation of the fundamental freedoms and human rights of all as enshrined in the Philippines Constitution, the Universal Declaration on Human Rights, and all other international laws and legal instruments to which the Philippines Government is signatory to.⁷⁸ This violation of human rights thus activates the boomerang model, which is used to characterize the pattern of practice taken against a norm-violating state. Its dynamics and outcomes will be demonstrated below.

a. How Did CSOs Work Within the Boomerang Dynamic on The Philippines Case?

A clear example of the boomerang model, as carried out by CSOs as the main agent, can be found in the mobilization by the Caucus of Development NGO Networks (CODE-NGO) and other national CSOs, as illustrated in Figure 1 below.

⁷⁴ Human Rights Watch (2017), "Philippines' 'War on Drugs'", available at <https://www.hrw.org/tag/philippines-war-drugs>. (Accessed May 24, 2018).

⁷⁵ ABS-CBN News (2016), "Foundation scholar a victim of Duterte's war on drugs?", available at <http://news.abs-cbn.com/focus/07/20/16/foundation-scholar-a-victim-of-dutertes-war-on-drugs>. (Accessed May 24, 2018).

⁷⁶ CIVICUS in supra note 18.

⁷⁷ Ibid.

⁷⁸ CODE-NGO (2016), "Stop Extra Judicial Killings! Uphold Human Rights!", available at <http://code-ngo.org/2016/10/stop-extra-judicial-killings-uphold-human-rights>. (Accessed May 24, 2018).

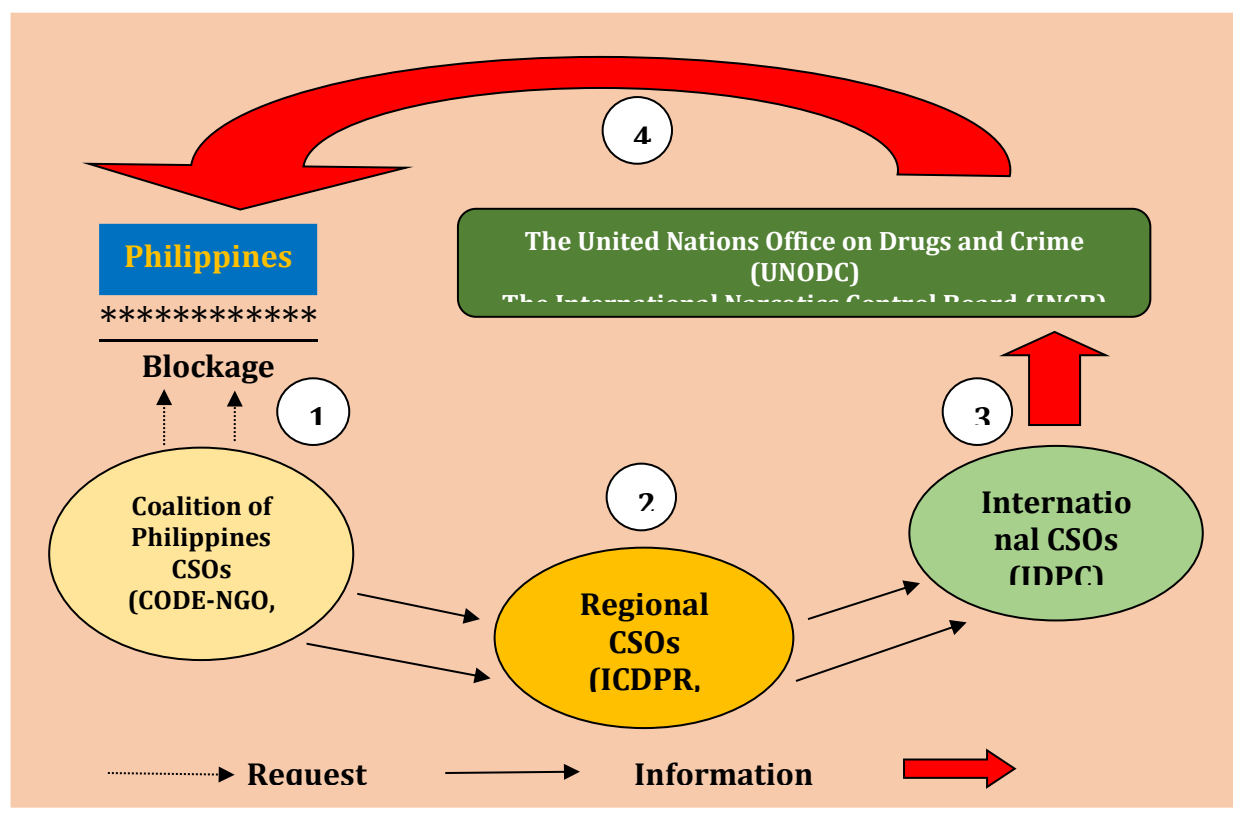


Figure 1: the Boomerang Model applied to the Extrajudicial Killings in the Philippines.

Step 1 (National strategy): State blocks requests to national CSOs who then spread information to regional CSOs;

Step 2 (Regional strategy): Regional CSOs find international allies

Step 3 (International strategy): International CSOs pressure international organizations.

Step 4 (Boomerang Pressure): International organizations put pressure back to the state.

STEP 1: National CSOs request the Philippine government to stop violations but the request was blocked. CODE-NGO started off by cooperating with the Philippine Alliance of Human Rights Advocates (PAHRA) and Campaign for Human Rights in the Philippines (CHRP) to call on the Philippine National Police (PNP) and the Department of Justice (DOJ) to uphold human rights and due process in the government's campaign against illegal drugs and to urgently conduct full investigations into the deaths of "suspected drug personalities" during police operations and those done by vigilantes.⁷⁹ The coalition of CODE-NGO, PAHRA, and CHRP further called on the House of Representatives and the Senate to focus their effort in aiding legislation on bringing justice to the victims of extra judicial killings, and on studying the root causes of the country's drug problem to be able to provide appropriate responses to curtail the supply and demand for illegal drugs, including opportunities for rehabilitation, education and livelihood to renewed victims of drug use and trade.⁸⁰

⁷⁹ Ibid.

⁸⁰ Ibid.

Roselle Rasay, deputy director of CODE-NGO, speaking on behalf of this CSO network, reports that CSOs have issued statements in social media denouncing the extrajudicial killings being waged by the government.⁸¹ She states that CODE-NGO passed a resolution calling on government branches —the legislative, the executive and the judiciary— to uphold human rights in this anti-drug campaign.⁸²

But the mobilization of CODE-NGO, PAHRA, and CHRP have been blocked by President Duterte. The president remarked that police were to shoot people involved in human rights groups who are “obstructing justice”.⁸³ He remarked that he will kill all human rights organizations as he claims they contribute to the problem of illegal drugs.⁸⁴ The president also gave a warning to human rights organizations that they will face criminal investigations for acting against his anti-drug campaign.⁸⁵ Furthermore, Duterte told Philippines police to continue pursuing their duty with respect to the war on drugs policy by remarking that murder and homicide are unlawful, but police had to uphold the rule of law while carrying out their duties.⁸⁶ Finally, he insisted that he will pursue the drug war to the end of his term in 2022.⁸⁷

STEP 2: Finding regional CSOs, and spreading information to international CSOs.

When the national CSOs’ request was blocked, they proceeded to find allies outside the country, and information was spread to CSOs across the region. These regional CSOs include the Indonesian Coalition for Drug Policy Reform (ICDPR), the Asian Harm Reduction Network (AHRN) in Myanmar, the Asian Network of People Who Use Drugs (ANPUD) in Thailand, and Human Rights Watch.⁸⁸ The national and regional CSOs then cooperatively spread information to international CSOs.

STEP 3: Collaboration with international CSOs to pressure international organizations. The collaboration of national, regional, and international CSOs is for the purposes of pressuring international organizations. Therefore, finally, 375 CSOs worldwide, led by the International Drug Policy Consortium (IDPC), called on the United Nations Office on Drugs and Crime (UNODC) and the International Narcotics Control

⁸¹ CIVICUS in supra note 18.

⁸² Ibid.

⁸³ Human Rights Watch (2017), Philippines: Duterte Threatens Human Rights Community: Call for Police to Shoot Activists ‘Reprehensible’, available at <https://www.hrw.org/news/2017/08/17/philippines-duterte-threatens-human-rights-community>. (Accessed May 24, 2018).

⁸⁴ Oliver Holmes, Human rights group slams Philippines president Duterte's threat to kill them, (The Guardian, 17 August 2017) Available at: <https://www.theguardian.com/world/2017/aug/17/human-rights-watch-philippines-president-duterte-threat> (Accessed May 24, 2018).

⁸⁵ Human Rights Watch in supra note 83.

⁸⁶ The guardian (2017), Philippines' Duterte orders police to kill 'idiots' who resist arrest, available at <https://www.theguardian.com/world/2017/aug/28/philippines-duterte-orders-police-to-kill-idiots-who-resist-arrest>. (Accessed May 24, 2018).

⁸⁷ Philip C. Tubeza and Tonette Orejas (2017), Duterte: War on drugs to continue until 2022, *Inquirer*, available at: <http://newsinfo.inquirer.net/950878/rodrigo-duterte-war-on-drugs-drug-killings-extrajudicial-killings> (Accessed May 24, 2018).

⁸⁸ International Drug Policy Consortium (2016), ‘Over 300 NGOs call on the United Nations to take immediate action on the hundreds of extrajudicial killings of suspected drug offenders in the Philippines’, available at <https://idpc.net/media/press-releases/2016/08/over-300-ngos-call-on-the-united-nations-to-take-immediate-action-on-the-hundreds-of-extrajudicial-killings-of-suspected-drug-offenders-in-the-philippines> (Accessed May 24, 2018)

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Board (INCB) and sent an open letter⁸⁹ to the UNODC Executive Director, Mr. Yury Fedotov, and the INCB President, Mr. Werner Sipp, asking them to take immediate action aimed at putting a stop to the extrajudicial killings.⁹⁰

Ann Fordham, Executive Director of the IDPC added that the Duterte policy on drug cannot be justified as a “drug control measure” as he always argue it to be and that it is unacceptable for suspects to be killed across the Philippines, day after day, in silence.⁹¹ She also summaries that the open letter asks the UNODC and the INCB to ask the following of President Duterte as follows: (1) Immediately end the incitements to kill people suspected of using or dealing drugs; (2) Act to fulfil international human rights obligations, such as the rights to life, health, due process and a fair trial, as set out in the human rights treaties ratified by the Philippines; (3) Promote evidence-based, voluntary treatment and harm reduction services for people who use drugs instead of compulsory rehabilitation in military camps, and (4) Not to reinstate the death penalty for drug offences.⁹²

STEP 4: International organizations put pressure back to the norm-violating state (the Philippines). In the final stage of the boomerang dynamic, international organizations, namely the United Nations Office on Drugs and Crime (UNODC) and the International Narcotics Control Board (INCB), took action by putting pressure back to the Philippines. The UNODC expresses its great concern. A UNODC Executive Director Statement was released. It condemns the apparent endorsement of extrajudicial killings, and points out the illegality of such act.⁹³ It concludes by encouraging the Philippines to “bring suspected drug dealers and users to justice with the appropriate legal safeguards in line with international standards and norms, and promote prevention, treatment, rehabilitation and reintegration approaches based in evidence, science, public health and human rights.”⁹⁴

From applying the theory with the Filipino case, we see advocacy networks serving the three purposes Risse and Sikkink identify as essential in bringing about domestic change in human rights. First, the advocacy networks’ campaign against the extra-judicial killings constitutes moral-consciousness raising. In this regard, they have succeeded in putting the norm-violating regime of President Duterte on the international agenda. Second, by appealing to the national legislative and administrative institutions in the Philippines, they have also served to empower and legitimize the claims of the domestic opposition groups. Third, in garnering support from other CSOs and institutions, the advocacy networks against the war on drugs have established a transnational structure to pressure the norm-violating state. For the third purpose it is noted that Keck and Sikkink’s boomerang model is seen being applied in practice where domestic CSOs, upon failure

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

⁹³ United Nations Office on Drugs and Crime (2016), the UNODC Executive Director Statement on the situation in the Philippines, available at <https://www.unodc.org/unodc/en/press/releases/2016/August/statement-by-the-unodc-executive-director-on-the-situation-in-the-philippines.html>. (Accessed May 24, 2018).

⁹⁴ Ibid.

to appeal directly to the norm-violating state, are seen to have sought for international allies to exert pressure back against the state.

b. Impact to The Philippines as The Human Rights-Violating State after Information of The Violation has Globally Spread

The external pressure from the international level led by CSOs notably impacted the Philippines in two areas; economic, and diplomatic relationships.

In August 2016, the United States was the first global power to withhold poverty aid to the Philippines after declaring concern over Duterte's war on drugs on.⁹⁵ In September 2016, the relationship between Duterte and the Obama administration was increasingly strained as Obama scrapped a meeting with the controversial Philippine President Duterte.⁹⁶ Later, on December 14, 2016, the US Embassy in Manila declared that a US government foreign aid agency, the Millennium Challenge Corporation (MCC), would deny new funding to the Philippine government due to major concerns around rule of law and civil liberties in this country.⁹⁷ The MCC justified that decision on the basis of aiding recipients includes also a demonstrated commitment to the rule of law, due process and respect for human rights.⁹⁸ The result was that a large-scale infrastructure project development funding, worth up to US\$434 million, to the Philippines was denied by MCC. Grants were awarded to Sri Lanka, Tunisia and Burkina Faso instead.⁹⁹

From the European side, before president Duterte took his official position on 30 June 2016, the EU and the Philippines had a longstanding relationship which has broadened and deepened remarkably. In July 2012, the EU-Philippines partnership cooperation agreement was signed.¹⁰⁰ The agreement provided the legal framework for further engagement and cooperation between the EU and the Philippines on areas such as political dialogue, trade, energy, transport, human rights, education, science and technology, justice, asylum, and migration. Since 25 December 2014, under the EU's Generalized Scheme of Preferences plus (GSP+), the Philippines has enjoyed boosted

⁹⁵ Christopher Woody (2016), "The Philippines' bloody crackdown on drugs is now harming the country's economy", Business Insider Nederland, available at <https://www.businessinsider.nl/rodrigo-duterte-philippines-violence-scaring-investors-hurting-economy-2016-9/?international=true&r=US>. (Accessed May 24, 2018).

⁹⁶ Megha Rajagopalan (2016), "How US Dollars Are Helping The Philippines' Bloody Drug War", Buzz Feed News, available at https://www.buzzfeed.com/meghara/us-aid-dollars-philippines?utm_term=.wmJbQB884#.euM4WXyyY. (Accessed May 24, 2018).

⁹⁷ Christopher Woody in supra note 95.

⁹⁸ Ibid.

⁹⁹ Ed Adamczyk (2016), "U.S. denies aid package to Philippines over human rights concerns", UPI, available at https://www.upi.com/Top_News/US/2016/12/15/US-denies-aid-package-to-Philippines-over-human-rights-concerns/3681481820651/. (Accessed May 24, 2018).

¹⁰⁰ European Union External Action, "The EU-Philippines partnership cooperation agreement", available at https://eeas.europa.eu/sites/eeas/files/eu_philippines_pca_20120712.pdf. (Accessed May 24, 2108).

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trade preferences with the EU which led to the Free Trade Agreement between both sides.¹⁰¹

After Filipino president Duterte started the harsh anti-drug campaign, the relationship between the EU and the Philippines deteriorated. Members of the European Union parliament, which include highly developed countries like Germany, France, Italy, Belgium, Luxembourg, Czech Republic, Sweden, Portugal and Finland, called on the Philippine government to put an end to the wave of extrajudicial killings and executions of individuals suspected of involvement in the illegal drug trade.¹⁰² The European Parliament adopted resolution of 15 September 2016 on the Philippines (2016/2880(RSP)) to condemn extrajudicial killings in the Philippines.¹⁰³ The resolution aims to commit the Philippine president to uphold the rule of law and human rights, as well as international human rights treaties.

In March 2017, Duterte faced additional pressure when Cecilia Malström, the visiting European Union Trade Commissioner, cautioned the Philippine government that human rights-abusing policies of the drug war pose a threat to exports to the EU.¹⁰⁴ She indicated that unless the government took action to address the EU's concerns, the Philippines risks losing tariff-free exports of up to 6,000 products under the EU's human rights benchmarks linked to the Generalized Scheme of Preferences (GSP+) trade program.¹⁰⁵ Surprisingly, since the EU sent a much-needed message to the Philippine government to forego this policy, the Philippines government did not accept such criticism and reacted to the EU as if they are an interferer of internal affairs. Duterte remarked in the 31st Association of Southeast Asian Nations (ASEAN) Summit "Forget it. We will survive, even if we have to eat dried fish and rice, we will survive," when asked if he talked to European Council President Donald Tusk about possible donations from the EU.¹⁰⁶

Franz Jessen, the EU Ambassador to the Philippines stated that aid cuts from the 28-member bloc would mean the Philippines loses about €250 million or \$278.73 million worth of grants.¹⁰⁷ Other losses of the amounts the country is set to receive total €325

¹⁰¹ European Union External Action (2016), "Philippines and the EU", available at https://eeas.europa.eu/headquarters/headquarters-homepage/1694/philippines-and-eu_hr. (Accessed May 24, 2018).

¹⁰² Estrella Torre (2016), "EU urges PH to stop extrajudicial killings of drug suspects", Inquirer.Net, available at <http://globalnation.inquirer.net/145037/eu-weighs-in-on-human-rights-issue-in-antidrug-war>. (Accessed May 24, 2018).

¹⁰³ The European Parliament (2016), "The European Parliament resolution of 15 September 2016 on the Philippines (2016/2880(RSP))", available at <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0349&language=EN>. (Accessed May 24, 2018).

¹⁰⁴ Phelim Kine (2017), "Philippine President Rodrigo Duterte's 'War on Drugs'", Harvard International Review, available at <https://www.hrw.org/news/2017/09/07/philippine-president-rodrigo-dutertes-war-drugs>. (Accessed May 24, 2018).

¹⁰⁵ Ibid.

¹⁰⁶ Eimor P. Santos (2017), "Duterte rejects EU aid yet again: Forget it, we will survive", CNN Philippines, available at <http://cnnphilippines.com/news/2017/11/15/asean-duterte-rejects-eu-aid-again.html>. (Accessed May 24, 2018).

¹⁰⁷ Bernie Cahiles-Magkilat (2018), "PH rejected EU aid worth \$55 M in 2017; Duterte invited to ASEM", MANILABULLETIN, available at <https://business.mb.com.ph/2018/01/25/ph-rejected-eu-aid-worth-55-m-in-2017-duterte-invited-to-asem/>. (Accessed May 24, 2018).

million (around P18.05 billion) in aid from 2014 to 2020 under the EU's Multi-Annual Indicative Program for the Philippines which was meant to be used for sustainable energy and job creation, legal and judicial reform, as well as feasibility studies and outreach programs.¹⁰⁸ The aid cuts entail a huge financial loss to the Philippines as the country has always been awarded such funding. The missing amounts are bound to affect economic improvements, and goals which include poverty reduction and sustainable development in the Philippines. Duterte's brutal war on drugs could also hit foreign investments as companies and investors involved are concerned about labour stability issues. The number of killings during the heightened anti-drug campaign harms the country's image as a stable, feasible country to do business. And it is not hard to imagine investors' concern that local people might be involved in drugs or be caught in the cross fires, affecting the personnel and industrial chain.

CSOs were a major part of bringing about external international pressure to the Philippine government. Such pressure seems to slow the president's killings policy. In October 2017, Duterte ordered police to end all operations in his deadly war on drugs after a 15-month campaign.¹⁰⁹ In a televised speech he said that the campaign war on drug will shift to "a big fish network", moving away from street level killing to suppress the suppliers instead.¹¹⁰ However, there are a number of human rights groups arguing that the killings only declined but did not stop, and the president only has a tactic to induce reliability. Evidence shows that between December 5, 2017 and February 1, 2018, there were still 46 suspected drug personalities killed by police officers.¹¹¹

Therefore, it can be remarked that the impact from external pressure, although substantial, is not enough to stop the abusive campaign. Rather, it has slowed down the campaign and had tangent economic and diplomatic effects. Also, we found that national and regional human rights institutions could not provide any aid or power to stop these abuses. At the domestic level, the Commission on Human Rights of the Philippines (Komisyon sa Karapatang Pantao) has clashed with President Rodrigo Duterte over his bloody war on drugs, but, the result of this was detrimental to the Commission. Philippine lawmakers voted to cut the Commission's annual budget for 2018, dealing a blow to the body investigating Duterte's war on drugs.¹¹² This means that the national human rights mechanism does not even have the power to deal with human right violations caused by the leader and/or government.

At the regional level the situation is as desperate. There has been no voice from the ASEAN Intergovernmental Commission on Human Rights (AICHR) on this point. The

¹⁰⁸ Eimor P. Santos in *supra* note 106.

¹⁰⁹ Human Rights Watch (2018), "Philippines Events of 2017", available at <https://www.hrw.org/world-report/2018/country-chapters/philippines>. (Accessed May 24, 2018).

¹¹⁰ Thomas Maresca (2017), "Philippine President Rodrigo Duterte pulls out of brutal drugs war", USA TODAY, available at <https://www.usatoday.com/story/news/world/2017/10/13/philippine-president-rodrigo-duterte-pulls-out-brutal-drugs-war/760799001/>. (Accessed May 24, 2018).

¹¹¹ Phelim Kine (2018), "World must pressure Philippines on drug war accountability" Asia Times, available at <http://www.atimes.com/world-must-pressure-philippines-drug-war-accountability/>. (Accessed May 24, 2018).

¹¹² DW (2017), 'Philippines Commission on Human Rights budget cut to \$20 amid deadly war on drugs', available at: <http://www.dw.com/en/philippines-commission-on-human-rights-budget-cut-to-20-amid-deadly-war-on-drugs/a-40476874> (Accessed May 24, 2018).

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AICHR has remained silent, never commenting on or acknowledging the situation. Upon review of the AICHR's website and annual report one can observe an absence of an official statement concerning the situation of human rights abuses in the carrying out of Duterte's war on drug policy. Nevertheless, CSOs are still working to find a resolution to the abuses against suspected drugs personalities in the Philippines. There is another prominent strategy of CSOs in dealing with this matter, illustrated in the next part.

3. CSOs' Strategy in Reaching Out to An International Judicial Institution

As explained before, CSOs have tried in many ways to end human right abuses. In case of the CSOs' outreach to the UNOCD and the INCB, which illustrates the role of CSOs as part of the boomerang dynamic, the pressure of these international organizations did not really generate sufficient impact to cause president Duterte to completely stop his anti-drug campaign. CSOs have to still search for an international judicial institution to deal with the killings. As observed, CSOs could not count on the AICHR, the only regional human rights institution which was supposed to deal with protecting against human rights abuses to step in and do all it can to end the drug war violence. Thus, the following sections is to illustrate why the AICHR is bypassed, why the ICC is a viable option, and finally how have CSOs been reaching out to the ICC in the Philippines case, and the response from the ICC.

a. Why the Regional Human Rights Institution—the AICHR is Being Bypassed by CSOs in Dealing with Human Rights Violations Occurring in Southeast Asia

Practically, national human rights protection systems are set to be the arena to address all human rights issues in the domestic level. Should national remedies be exhausted, there normally exists a higher platform to resort to. As can be seen from the European, Inter-American, and African models, their respective regional human rights mechanism effectively plays a vital role as the overarching human rights institution in each region. In contrast, in Southeast Asia there is an absence of such powerful mechanisms that exist in other regions. With respect to this case, no recourse has been sought to the only existing regional human rights institution—the AICHR, whose mandate does not include proactively protecting human rights violations.

Two main factors can be attributed to this bypassing by CSOs. First, the AICHR has no judicial competency to investigate the violations, prosecute, or adjudicate the matter. It does not even have the legal competency to receive any complaints, unlike the Inter-American Commission on Human Rights, for example, who are mandated to receive and make a decision on human rights complaints from any person, group of persons, or nongovernmental entity submitted to them.¹¹³ It can be clearly seen that the AICHR's Terms of Reference (TOR), the instrument which provides the mandates and purposes of the AICHR, does not mention any mandate which allows the AICHR to act on and respond to cases of human rights violations.

¹¹³ Article 44, American Convention on Human Rights.

Several CSOs assert that upon the occurrence of a human rights violation, they would firstly think of the AICHR, but would finally they change their minds and bypass the role of the AICHR in helping such violations because they believe that there will not be an effective response from the AICHR. For example, Cristina Palabay, Secretary General of Philippine-based human rights organization KARAPATAN explained why CSOs do not realize the AICHR's role by stating that

“It is foolhardy to expect concrete actions and strong recommendations from the ASEAN regarding the human rights situation in the Philippines, when, for a long time, its human rights body has been rendered pointless and toothless in the protection and promotion of international human rights principles in the region, especially at a time of worsening attacks against people's rights in South East Asia.”¹¹⁴

Additionally, personal interviews with CSOs that have been accredited by the AICHR, namely SUARAM (Malaysia), and Pusat KOMAS (Malaysia), reveal that they share a similar opinion and agree that the reason that CSOs do not report human rights abuses in the Philippines to the AICHR is because CSOs are certain that it will be ignored because the AICHR itself is also aware of their limited capacity in dealing with CSOs' claims, as a result of a mandate which does not equip it with the authority to officially receive claims and investigate cases, as remarked by Adli Zakuan Zairakithnaini (Programme Director of Pusat KOMAS).¹¹⁵ Dobby Chew, project coordinator of SUARAM, added that from communication with anonymous CSO networks in the Philippines, he found that CSOs did not fully bypass the AICHR, but they firstly contacted the Philippines' AICHR representative to observe the possibility and opinion of the representative in dealing with the case, but the representative's response is not heartening, the representative can do nothing because the mandates have blocked the AICHR's power, the AICHR cannot expand their role on this point because they need a consensus from all AICHR representatives, nothing more can be done, all AICHR representatives know that they have to work under the mandates provided, and importantly it will be violating the policy of non-interference which is highly prioritized in ASEAN.

However, he also noted that each country's representative has their own personal view and stance, and that each representative's viewpoint affect how they, and ultimately the AICHR, work. Edmund Bon and Rafendi Djamin, the current Malaysian and former Indonesian representative respectively, themselves having been former heads of CSOs, for example, prioritize engagement with CSOs and thus advocates for AICHR in doing so. They have been sharing information with CSOs. Chew believes that with more AICHR representatives of a similar character, AICHR will be well on their way to a mandate expansion that renders them competent to act upon complaints of human rights violations.¹¹⁶

¹¹⁴ KARAPATAN (2017), ASEAN rights body not addressing killings and attacks vs rights defenders in PH. Available at <http://www.karapatan.org/ASEAN+rights+body+not+addressing+killings+and+attacks+vs+rights+defenders+in+PH>. (Accessed May 24, 2018)

¹¹⁵ Zairakithnaini Adli Zakuan, (2018, April 11). Personal interview.

¹¹⁶ Chew Dobby, (2018, April 2). Personal interview.

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The second factor that contributes to the CSOs bypassing the AICHR pertains to the AICHR's dependence upon ASEAN member states. As it can be clearly seen that the AICHR's operation is subject to its Terms of Reference (TOR) determined by the ASEAN's Foreign Ministers.¹¹⁷ Importantly, under article 5.2 of the TOR, Each ASEAN Member State shall appoint a Representative to the AICHR who shall be accountable to the appointing Government.¹¹⁸ Article 5.6 provides that the government of an ASEAN member state may decide to replace its representative,¹¹⁹ and the AICHR's budget is derived from contributions from ASEAN Member States.¹²⁰ The AICHR representatives also rely on a consensus before making all agreements pursuant to article 6.1 of the TOR, and respect the principle of non-interference embodied in article 2 (b). These reasons are additional important matters contributing to why the AICHR is bypassed.

Remarking on this point from the AICHR representatives, Dr. Diana Wisnu, Indonesian representative to the AICHR, points out that because the TOR provides mandates that limit the representatives. She remarked that the TOR and the ASEAN Charter are the main conditions that constrain the representatives, and that they have to work under the mandates which was created by all ASEAN member states. The non-interference policy also blocks them from expanding their roles in intervening member states regarding the human rights violations that has happened, that is why representatives cannot take action on such violations. She remarks that she is aware that when the human rights violations occur, CSOs do not report it to the AICHR because they know that the AICHR does not have a mandate, it needs a consensus before action.¹²¹ Moreover, even if a consensus is reached, without a legal mandate it would be difficult to exercise power.

Edmund Bon, Malaysian AICHR representative put forward an interesting opinion. He remarked on the difference between human rights situations in the Philippines and in Myanmar, with respect to the Rohingya crisis. The AICHR did not receive any official requests from CSOs, human rights groups or activists with respect to the extrajudicial killing cases in the Philippines. CSOs, human rights groups and activists know that the situation is a furtherance of an explicit state policy. But, it has received several requests from CSOs pressuring it to address human rights situations in the Rohingya crisis in Myanmar. However, the AICHR finally was only able to make a statement to the Myanmar government but there is no legally binding force, again, because of the mandates.¹²²

Bon additionally remarked that if the AICHR needs more power, and do not want to be bypassed, the TOR should be firstly amended to free the AICHR from the non-interference principle, and be independent from ASEAN member states. This seems difficult but can be possible in the future if the AICHR can have strong supporters in

¹¹⁷ Article 14(2), ASEAN Charter.

¹¹⁸ Article 5.2, ASEAN Intergovernmental Commission on Human Rights (Terms of Reference).

¹¹⁹ *Ibid*, article 5.6.

¹²⁰ *Ibid*, article 8.3. See also Catherine Drummond (2011), 'The ASEAN Intergovernmental Commission on Human Rights (AICHR) and the Responsibility to Protect (R2P): Opportunities and Constraints', Working Paper on ASEAN and R2P No.2.

¹²¹ Wisnu Diana, (2018, April 12). Personal Interview.

¹²² Bon Edmund, (2018, April 12). Personal Interview.

terms of funding, such as by well-funded NGOs and CSOs, external entrepreneurs and international organizations.¹²³

In sum, it can be asserted that these shortcomings greatly contribute to the reason why the AICHR is bypassed when the human rights violations occur in the region, thereby necessitating CSOs' outreach to a more legally competent institution, in the human rights abuses on extrajudicial killing cases, the International Criminal Court, the topic of which will be discussed in the next section.

b. The International Criminal Court (ICC) as a viable option: A legal analysis

The International Criminal Court (ICC) is a judicially viable option for various reasons. First and foremost, the ICC is a permanent international judicial organization responsible for bringing justice in relation to heinous crimes.¹²⁴ It is correct that CSOs have chosen the ICC to deal with the murderous war on drugs in the Philippines because firstly even though the ICC is not a human rights court in the strict sense, but it has great significance for the global protection of the most fundamental human rights and values as it can be argued that the heinous crimes under ICC jurisdiction also constitute a gross violation of human rights. This point is obviously explained by the aim of the ICC's adoption which is to protect civilians from atrocities such as those in the Nazi regime, Yugoslavia, and Rwanda. In addition, the preamble of the Rome Statute is similar to that of the Universal Declaration on Human Rights,¹²⁵ reflecting their shared aims. It is thus easy to see the relevance of the ICC in the protection of fundamental human values.

Secondly, in addition to the nature of the ICC being a permanent judicial institution whose adjudication has human rights implications, the crimes under ICC jurisdiction may very well apply over the Philippine war on drugs. As is widely known, the ICC was set up to end impunity for the most serious crimes of international concern, namely genocide, crimes against humanity, war crimes and the crime of aggression as provided in article 5 of the Rome Statute.¹²⁶ As mentioned, all crime themselves constitute a massive violation against human rights. In the specific case of Duterte's war on drugs, crimes against humanity would most likely be applicable. Legally speaking, the definition of a crime against humanity article 7 of the Rome Statute entails, in essence, an act of state or organizational policy committed as part of a widespread or systematic attack directed against any civilian population.¹²⁷ Such acts may include murder, imprisonment, or other severe deprivation of physical liberty in violation of fundamental rules of international law, and torture.¹²⁸ Additionally, the acts do not necessarily have to occur within the context of an armed conflict, this means the acts of government against their civilians in peacetime may fall under the definition. As we know, the extrajudicial killing under

¹²³ Ibid.

¹²⁴ Article 1, Rome Statute.

¹²⁵ Hans-Peter Kaul (2011), "Human Rights and the International Criminal Court", available at https://www.icc-cpi.int/NR/rdonlyres/2C496E38-8E14-4ECD-9CC9-5E0D2A0B3FA2/282947/FINAL_Speech_Panel1_HumanRightsandtheInternational.pdf. (Accessed May 24, 2018).

¹²⁶ Article 5, Rome Statute.

¹²⁷ Article 7, Rome Statute.

¹²⁸ Ibid.

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Duterte's war-on-drugs policy involves the large-scale, police executed, killing, torturing, and detaining of suspected drug dealers and users, making it amount to a crime against humanity, thereby falling under the jurisdiction of the ICC.

Thirdly, the ICC is an ideal arena for CSOs to pursue their claims because the case of extrajudicial killings at hand can actually be submitted and considered by the ICC by virtue of the Philippines' status as a member state, having ratified the Rome Statute. Since the ICC was formally established on the 1st of July, 2002, the Statute had to be ratified by at least 60 States before entering into force.¹²⁹ On 30 August 2011, at the United Nations Office of Legal Affairs in New York, the government of the Republic of the Philippines deposited its instrument of ratification to the Rome Statute of the International Criminal Court (ICC),¹³⁰ making it 117th country to have joined the Rome Statute system.¹³¹ After becoming a state party, states submit themselves to the jurisdiction of the Court. Thus, the Court may exercise its jurisdiction in situations where the alleged perpetrator is a national of a State Party or where the crime was committed in the territory of a State Party.¹³² Unquestionably, the Philippines has to be subject to the Rome Statute and the procedure of the ICC as a member state party, pursuant to articles 11 and 12 paragraph 1 of the Rome Statute; "If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State..."¹³³ This third reason seems to most strongly support the assertion as to why CSOs have chosen this institution to bring justice to the victims of this case, because they would think that at least the ICC is the only powerful judicial institution whose jurisdiction the Philippines is subject to, and which may help to break the cycle of violence of Duterte's policy.

Having said that, attention should be brought to the fact that the Philippines has recently expressed its intention to withdraw its state membership from the Rome Statute. On 17 March 2018, the Republic of the Philippines deposited a written notification of withdrawal from the Rome Statute to the United Nations Secretary General.¹³⁴ Pursuant to paragraph 1 of article 127, the withdrawal will take effect one year after the date of receipt of the notification.¹³⁵

In light of the Philippines' withdrawal from the Rome Statute, a question comes to mind as to what effect such withdrawal has on the ICC's jurisdiction over the Philippines. Article 127 paragraph 2 stipulates that "A State shall not be discharged, by reason of its

¹²⁹ Coalition for the International Criminal Court, "Ratification of the Rome Statute", available at <http://iccnow.org/?mod=romeratification>. (Accessed May 24, 2018).

¹³⁰ ICC Press Release (2011), "The Philippines becomes the 117th State to join the Rome Statute system", available at https://asp.icc-cpi.int/en_menus/asp/press%20releases/press%20releases%202011/Pages/pr717.aspx. (Accessed May 24, 2018).

¹³¹ Ibid.

¹³² The International Criminal Court, "Understanding the International Criminal Court", available at <https://www.icc-cpi.int/iccdocs/pids/publications/uicceng.pdf>. (Accessed May 24, 2018).

¹³³ Article 11 paragraph 2, Rome Statute.

¹³⁴ International Criminal Court, 'Press Release of March 2018: ICC Statement on The Philippines' notice of withdrawal: State participation in Rome Statute system essential to international rule of law', available at <https://www.icc-cpi.int/Pages/item.aspx?name=pr1371> (Accessed May 24, 2018).

¹³⁵ Article 127 paragraph 1, Rome Statute.

withdrawal, from the obligations arising from this Statute while it was a Party to the Statute.”¹³⁶ In particular, a State’s withdrawal does not in any way prejudice “the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.”¹³⁷ Therefore, acts committed while the Philippines was a member of the Rome Statute can still be considered by the ICC, despite the Philippines’ withdrawal becoming effective later.

The fourth reason that the ICC is the targeted institution is because it accepts claims from individuals or CSOs. Although the Rome Statute and the ICC Rules of Procedure and Evidence do not provide a specific category on who can exactly submit information on alleged crimes to the Office of the Prosecutor (OTP) of the ICC. Article 13(a) of the Rome Statute provides that crimes can be brought to the Court by referral of a case to the Prosecutor.¹³⁸ Accordingly, article 14 paragraphs 1 and 2 further explains that a State Party can make a referral which specifies the relevant circumstances and is accompanied by supporting documents, then the Prosecutor will consider investigating the situation for the purpose of determining whether one or more specific persons should be charged.¹³⁹ These two articles only explicitly specify that a State Party can refer a case to the Prosecutor. There is no article which clearly states that individuals or groups can refer a case to the Court.

There is, however, article 15 paragraph 1 which states that the Prosecutor can initiate an investigation *proprio motu* on the basis of information on crimes within the jurisdiction of the Court, and mentions non-governmental organizations by stating that the Prosecutor may seek additional information from non-governmental organizations and other reliable sources that he or she deems appropriate.¹⁴⁰ This seems to suggest that NGOs and/or CSOs can inform the Office of the Prosecutor about crimes committed and the historical and political context of human rights abuses.¹⁴¹ This information could also help the Prosecutor have a better understanding of a situation and decide whether or not to open an investigation.¹⁴² This mechanism opens a possibility for CSOs to be capable of providing valuable assistance to the ICC’s Prosecutor. Human rights crimes that may fall under the jurisdiction of the ICC can regularly be reported to the Prosecutor by CSOs. In addition, they can provide evidence to the Office of the Prosecutor by accompanying victims and witnesses because CSOs are often close to such people.¹⁴³

Evidences here guarantee there is a significant role for CSOs to occupy within the international criminal justice system of the ICC, particularly by submitting, reporting and

¹³⁶ Article 127 paragraph 2, Rome Statute.

¹³⁷ Ibid.

¹³⁸ Article 13, Rome Statute.

¹³⁹ Article 14 paragraphs 1 and 2, Rome Statute.

¹⁴⁰ Article 15 paragraph 1, Rome Statute.

¹⁴¹ Human Rights Watch (2004), “The International Criminal Court: How Nongovernmental Organizations Can Contribute To the Prosecution of War Criminals”, available at <https://www.hrw.org/legacy/backgrounder/africa/icc0904/icc0904.pdf>. (Accessed May 24, 2018).

¹⁴² Ibid.

¹⁴³ Human Rights First (2004), “The Role of Human Rights NGOs in Relation to ICC Investigations”, available at https://www.humanrightsfirst.org/wp-content/uploads/pdf/NGO_Role_Discussion_Paper.pdf. (Accessed May 24, 2018).

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providing information on cases to the ICC.¹⁴⁴ Past events have also shown how CSOs have made use of this informant role to help cases of human rights abuse be under the attention of the Prosecutor. In Ituri, the Democratic Republic of the Congo (DRC), the rebel Lord's Resistance Army (LRA) committed grave crimes against Ugandan civilians in northern Uganda from 2002 to 2005. Human Rights Watch published a 66-page report on the situation in Congo. The report was addressed also to the Prosecutor and urged the Prosecutor to open investigations into the crimes committed.¹⁴⁵ The Prosecutor later identified the situation in Ituri as "the most urgent situation to be followed"¹⁴⁶ and an investigation was subsequently opened with respect to the crimes allegedly committed there.¹⁴⁷ Another case that comes to mind is the case of the Honduran military coup in 2009, in which hundreds of people, including journalists, trade unionists, land activists, and human rights lawyers, have been killed or disappeared.¹⁴⁸ CSOs, namely, the Center for Constitutional Rights (CCR) and the International Federation for Human Rights (FIDH), made a submission, and collected evidences showing there has been no accountability so far for the crimes to the International Criminal Court.¹⁴⁹ In light of this Article 15 communication, the Prosecutor subsequently opened a preliminary examination into the situation.¹⁵⁰

c. Bringing The Murderous War on Drugs to The ICC: An Illustration

In the preceding part we examined why the ICC is an attractive choice for Philippine CSOs to reach out to. For this part, we delve further into an illustration of the manner by which CSOs are bringing the case of the murderous war on drugs in the Philippines to the ICC.

On 24 April 2017, Jude Josue Sabio, lawyer of self-confessed hitman Edgar Matobato, submitted a 77-page communication to Chief Prosecutor Fatou Bensouda of the

¹⁴⁴ International Criminal Court, 'Civil Society and the ICC'. Available at: <https://www.icc-cpi.int/get-involved/Pages/ngos.aspx> (Accessed May 24, 2018).

¹⁴⁵ Human Rights Watch (2003), 'Ituri: "Covered in Blood" Ethnically Targeted Violence in Northeastern DR Congo', 15(11A) Democratic Republic of Congo Report, available at <https://www.hrw.org/report/2003/07/07/covered-blood/ethnically-targeted-violence-northern-drc>. (Accessed May 24, 2018).

¹⁴⁶ Pascal Kalume Kambale, 'A story of missed opportunities: the role of the International Criminal Court in the Democratic Republic of Congo' in Christian De Vos, Sara Kendall, and Carsten Stahn (eds) *Contested Justice: The Politics and Practice of International Criminal Court Interventions* (Cambridge University Press 2015), p.193.

¹⁴⁷ International Criminal Court, 'The Office of the Prosecutor of the International Criminal Court opens its first investigation' (2004) Press Release 23 June 2004, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=the+office+of+the+prosecutor+of+the+international+criminal+court+opens+its+first+investigation> (Accessed May 24, 2018).

¹⁴⁸ The International Criminal Court, 'Situation in Honduras: Article 5 Report', available at https://www.icc-cpi.int/iccdocs/otp/SAS-HON-Article_5_Report-Oct2015-ENG.PDF. (Accessed May 24, 2018).

¹⁴⁹ Centre for Constitutional Rights (2012), "NGOs Submit Evidence to ICC on Crimes Against Humanity and Impunity in Honduras, Call on Court to Take Up Case", available at <https://ccrjustice.org/home/press-center/press-releases/ngos-submit-evidence-icc-crimes-against-humanity-and-impunity>. (Accessed May 24, 2018).

¹⁵⁰ International Criminal Court, 'OTP Weekly Briefing Issue 64, 16-22 November 2010', available at: https://www.icc-cpi.int/iccdocs/otp/OTP_Weekly_Briefing_64-ENG.pdf (Accessed May 24, 2018).

International Criminal Court (ICC).¹⁵¹ His aim is to charge Philippine President Rodrigo Duterte and 11 of his senior officials of having committed mass murders or extra-judicial executions which constitute crime against humanity.¹⁵² He remarked: “*My purpose is not to destroy him (the President), embarrass him, or shame him. My purpose is to fight for justice*”.¹⁵³

Various CSOs rallied their efforts in support of ICC preliminary examination into Duterte’s war on drug campaign. Perhaps the most notable of these efforts comes from Loretta Ann P. Rosales. On 26 April 2017, Rosales, a founding member of the ASEAN Parliamentarians for Human Rights (APHR) and former Chairperson of the Southeast Asia National Human Rights Institutions Forum, issued a statement on the complaint against Duterte. In addition to asserting that the move is an important step towards strengthening the rule of law, interestingly, she gave historical insight into the Philippines’ relationship with the ICC, pointing out how “The Philippines ratified this treaty [The Rome Statute] in 2011 through the skillful advocacy of civil society organizations.”¹⁵⁴ This remark can be taken to emphasize the symbiotic relationship between the Court and the country in the pursuit of justice and the fight against impunity. She observed that this filing will require significant investment of the ICC’s time and resources in order to gather the sufficient evidence necessary to bring the charges forward, hold a trial, convict and punish the concerned persons.¹⁵⁵

Another notable effort came in the form of a coalition of CSOs. In December 2017, 93 CSOs including APCASO (Thailand), Filipino American Human Rights Alliance (FAHRA), Philippine Alliance of Human Rights Advocates, Philippine Human Rights Information Center, Asia Catalyst and Asian Network of People Who Use Drugs (ANPUD), and worldwide allies signed an open letter addressed to ICC Prosecutor Fatou Bensouda. After providing a background into the situation, four issues are mentioned in the letter; why the ICC has jurisdiction, why the case is admissible, how the extrajudicial killings amount to a crime against humanity, and why the information provided in the letter by the CSOs constitute a reasonable basis that a crime is being committed. The letter’s main purpose was to urge the Prosecutor to open an investigation into alleged crimes against humanity against Duterte.¹⁵⁶

¹⁵¹ Emil Marañon III (2017), “The bigger hurdles to having ICC prosecute Duterte”, Rappler.com, available at <https://www.rappler.com/newsbreak/iq/167957-hurdles-icc-prosecute-duterte>. (Accessed May 24, 2018).

¹⁵² Ibid.

¹⁵³ DJ Yap (2018), “Lawyer who filed case vs Duterte in ICC fears for life”, *Inquirer.Net*, available at <http://newsinfo.inquirer.net/967986/lawyer-who-filed-case-vs-duterte-in-icc-fears-for-life>. (Accessed May 24, 2018).

¹⁵⁴ Akbayan (2017), “Statement on the Complaint against President Rodrigo R. Duterte and Others at the International Criminal Court (ICC)” available at <https://akbayan.org.ph/news/12-press-releases/707-statement-on-the-complaint-against-president-rodrigo-r-duterte-and-others-at-the-international-criminal-court-icc>. (Accessed May 24, 2018).

¹⁵⁵ Ibid.

¹⁵⁶ See the letter at <http://www.helpnohandcuffs.org/stop-the-killings-in-the-philippines.html>.

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Moreover, Amnesty International called for the International Criminal Court (ICC) to begin a preliminary examination into the crimes against humanity.¹⁵⁷ James Gomez, Amnesty International's Regional Director for Southeast Asia and the Pacific added that

“It is time for international justice mechanisms to step in and end the carnage on Philippine streets by bringing the perpetrators to justice. The country's judiciary and police have proven themselves both unwilling and unable to hold the killers in the ‘war on drugs’ to account”.¹⁵⁸

All the above forms the communications and reports from which the Prosecutor takes account of in determining whether to initiate examinations. On Thursday, February 8, 2018, ICC Prosecutor Fatou Bensouda issued a statement on opening preliminary examinations into the situation in the Philippines. She states that “following a careful, independent and impartial review of a number of communications and reports documenting alleged crimes potentially falling within the jurisdiction of the International Criminal Court [...] I have decided to open a preliminary examination into” the situation in the Philippines.¹⁵⁹

Not only have CSOs played an important role in a preliminary examination being opened by the ICC against the Philippines, Prosecutor Bensouda seems to hint at their continued role throughout the examinations. In the same statement, she remarked that “In the independent and impartial exercise of its mandate, my Office will also give consideration to all submissions and views conveyed to it during the course of each preliminary examination, strictly guided by the requirements of the Rome Statute.”¹⁶⁰

VI. CONCLUSION

Civil society organizations (CSOs) are increasingly being recognized as indispensable for the effective functioning of human rights protection around the world. In Southeast Asia, CSOs are a key actor in helping to promote and protect human rights in the region. In the recent situation of the murderous war on drugs in the Philippines which allegedly involve the extrajudicial killing of drug dealers and users and which took place since President Rodrigo Duterte's taking of office in 2016, CSOs' have demonstrated their competency in helping to end the human rights violations involved. In application with the boomerang model, we can observe that when CSOs become aware of situations of human rights abuse, they begin to collaborate with their domestic peers to put pressure on the government. They request the government and governmental departments to take serious responsibility in the cases which are attributable to their conduct and which

¹⁵⁷ Amnesty International (2017), “Philippines: ICC must examine ‘war on drugs’ crimes as child killings go unpunished”, available at <https://www.amnesty.org/en/latest/news/2017/12/philippines-icc-must-examine-war-on-drugs-crimes/>. (Accessed May 24, 2018).

¹⁵⁸ Ibid.

¹⁵⁹ International Criminal Court, ‘Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela’, available at: <https://www.icc-cpi.int/Pages/item.aspx?name=180208-otp-stat> (Accessed May 24, 2018).

¹⁶⁰ Ibid.

impacts the rights of the people. This is the primary step of CSOs in urging the violating state to be accountable for the abuse of power of those in authority and to ensure justice for all civilians.

However, when the requests of national CSOs were ignored by the government, this prompts the adoption of a subsequent regional and international strategy—proceeding to reach out to regional CSOs to work together and reach out to international CSOs. Finally, international CSOs pressure international organizations who then put pressure back against the norm-violating state. Thus, it can be summarized that CSOs acted as agents of the boomerang dynamic to diffuse information of the human rights violations involved in the anti-drug campaign. It is evident that their strategy effects the norm violating state—the Philippines—in terms of economic loss and diplomatic relations.

Yet, this strategy has not really caused president Duterte to completely stop his extrajudicial killing policy. However, as a key actor in helping end human rights abuses, CSOs still endeavored to interact with international institutions so as to bring justice to victims of Duterte's war on drugs. They rallied efforts to reach out to a powerful judicial institution, the International Criminal Court (ICC), by submitting reports on the extrajudicial killings to the court, giving insight into the context and extent of the violations, finally leading to a preliminary examination being opened by the ICC's prosecutor into the situation. All strategies of CSOs demonstrate that their performances pertain to human rights norm diffusion in terms of diffusion of information and directly effectuating a direct legal response that would end human rights violations.

Thus, it can be guaranteed that CSOs are an important actor in helping to end human rights violations. All impacts from CSOs working against the extrajudicial killing case in the Philippines show that the effectiveness of ending human rights violation can come from the CSO sector. Indeed, CSOs' strategies also might ignite ASEAN to rethink creating an effective regional human rights institution soon, so that ASEAN can have an effective regional human rights institution like other regions to deal with human rights violations, especially those that might occur in the future, as the region's existing human rights institution – the AICHR, does not have a mandate to receive a claim, to investigate allegations of human rights abuses, or to prosecute human rights violators, which has necessitated CSOs, as actors to help end violations, to reach out to an international institution like the ICC.

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