

Jurisdiction of International Criminal Court in the Arrest of Rodrigo Duterte in the Connection with War on Drugs Policy in Philippines

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Abstract

The ICC's jurisdiction in the prosecution of Rodrigo Duterte in connection with the War on Drugs policy is still debated in terms of its legitimacy, primarily due to the Philippines' withdrawal from the Rome Statute. This research employs a normative juridical method, drawing on the Rome Statute, case studies, and analyses of official ICC documents. This research aims to analyze the ICC's jurisdiction to enforce international crimes and its implementation in the case of Rodrigo Duterte. The research results show that the ICC's jurisdiction over the Philippines remains valid under Article 127(2) of the Rome Statute. The arrest of Rodrigo Duterte was carried out on legal grounds under Article 25(3), supported by the Philippine government's implicit consent as evidenced by its conduct. This implicit consent arises due to the government's conflict of interest and political constraints that prevented it from undertaking an impartial and independent prosecution of Duterte domestically. Although the War on Drugs policy was claimed to be grounded in national sovereignty, its implementation involved crimes against humanity in the form of widespread and systematic murder, which falls within the ICC's jurisdiction under Article 7(1)(a) of the Rome Statute. This research contributes to the field of global governance and international global justice by reaffirming the continued applicability of the ICC's jurisdiction to ensure accountability for state leaders who commit international crimes, regardless of a state's withdrawal from the Rome Statute.

Keywords: International Criminal Court (ICC); Rodrigo Duterte; War On Drugs; Crimes against Humanity; Rome Statute 1998

Introduction

The exercise of international criminal jurisdiction towards the situations in the Philippines in connection with Duterte's War on Drugs policy creates the controversy of its legitimacy, as the Philippines has withdrawn from the Rome Statute. A withdrawal has no impact on ongoing proceedings or any matter which was already under consideration by the Court before the date on which the withdrawal became effective.¹ The case of the arrest of former

¹International Criminal Court, "ICC Statement on The Philippines' Notice of Withdrawal: State Participation in Rome Statute System Essential to International Rule of Law," *International*

President Rodrigo Duterte arising from the War on Drugs is an essential development in the Office's pursuit of accountability in the Situation in the Republic of the Philippines for alleged crimes committed in the context of the so-called "war on drugs" campaign.² In fact, the arrest of Duterte was carried out with the involvement of Philippine authorities based on an arrest warrant issued by the ICC and sent to INTERPOL to arrest Duterte in Manila. Rodrigo Duterte's arrest took place at Ninoy Aquino International Airport (NAIA) when former president Rodrigo Duterte arrived from Hong Kong.³

The Philippines became a member of the Rome Statute on November 1, 2011, but withdrew after the ICC conducted a preliminary examination on March 17, 2018. The Philippines' withdrawal from the Rome Statute was recognized a year later and officially took effect on March 17, 2019, in accordance with Article 127, paragraphs 1 and 2, of the Rome Statute.⁴ The arrest of Duterte has been carried by ICC since based on the official Warrant of Arrest for Rodrigo Roa Duterte issued by the International Criminal Court (ICC) on March 7 March 7, 2025, that there are reasonable grounds to believe that he is criminally responsible as an indirect co-perpetrator of crimes against humanity in the form of murder, as stipulated in Article 7 paragraph (1) letter (a) and Article 25 paragraph (3) letter (a) of the Rome Statute.⁵ Although the Philippines withdrew from the Rome Statute, the Court retains jurisdiction over crimes of Duterte's War on Drugs that occurred while it was a State Party.⁶ The tension in the Situation in the Philippines that led to the arrest of Duterte has raised crucial objectives and globally relevant issues regarding jurisdictional continuity, complementarity, state cooperation aligned with conflict of interest, and the boundaries of national sovereignty in the prosecution of international crimes. The issue of the Philippines' Situation related to the trial of Duterte and his War on Drugs policy has received only cursory attention, but the lack of clarity around the Court's post-withdrawal.⁷

Criminal Court, March 20 2018, accessed, November 20, 2025, <https://www.iccpi.int/news/icc-statement-philippines-notice-withdrawal-state-participation-rome-statute-system-essential?>

² International Criminal Court, "Statement of the ICC Office of the Prosecutor on the Arrest of Former Philippine President Rodrigo Roa Duterte," *International Criminal Court*, March 12, 2025, accessed November 20, 2025, <https://www.icc-cpi.int/news/statement-icc-office-prosecutor-arrest-former-philippine-president-rodrigo-roa-duterte>.

³ Philippine Information Agency, "Press Statement: DOJ Assures Public of Due Process in Duterte Arrest," *Philippine Information Agency*, 2025, accessed November 20, 2025, <https://pia.gov.ph/press-statement/>.

⁴ Aisyah Muthmainnah, "Extrajudicial Killing Dalam Kebijakan War on Drugs Di Republic of Philippines: Melanggar Statuta Roma?" *Uti Possidetis: Journal of International Law* 4, no. 1 (2023): 161, <https://doi.org/10.22437/up.v4i1.20028>.

⁵ International Criminal Court, "Warrant of Arrest for Mr Rodrigo Roa Duterte, ICC-01/21-83 07 March 2025 Pre-Trial Chamber Decision.," *International Criminal Court*, 2025, accessed November 20, 2025, <https://www.icc-cpi.int/court-record/icc-01/21-83>.

⁶ International Criminal Court, "Situation in the Republic of the Philippines ICC-01/21," *International Criminal Court*, 2025, accessed November 20, 2025, <https://www.icc-cpi.int/philippines?>

⁷ Javier Sebastian Eskauriatza, "An Evaluation of the 'Legacy Jurisdiction' of the International Criminal Court: The Philippines Investigation," *Asian Journal of International Law*, (2025): 1-28, <https://doi.org/10.1017/S2044251325100696>.

Over the past years, some institutions have extensively analyzed the ICC's preliminary examination of the Philippines (2016–2019), the legal implications of the country's withdrawal, and the widespread and systematic killings linked to Duterte's anti-drug campaign. Previous studies have focused mainly on doctrinal interpretations of Article 127(2) of the Rome Statute, assessments of complementarity under Articles 17 and 53, and the ICC's authority to open an investigation despite political resistance. This raises an important question about the Court's jurisdiction in the context of former States parties. It also highlights the balance of power between the Prosecutor and the Pre-Trial Chamber when the Prosecutor requests formal authorization for a proprio motu investigation.⁸

The previous research entitled "International Jurisdiction of the Criminal Court in the Settlement of Crimes Against Humanity (A Study of the Case of the Philippine President's War on Drugs Policy), which only focused on the ICC's jurisdiction in cases of crimes against humanity in the War on Drugs, but this research has a novelty in its focus, as it not only discusses the ICC's jurisdiction over the War on Drugs policy but also discusses the ICC's jurisdiction over the arrest of individuals from non-state parties. Despite the controversy surrounding the ICC's jurisdiction in the arrest of Rodrigo Duterte, there are sufficient statements to support the ICC's exercise of jurisdiction. Based on the ICC's official statement on the Prosecution's Urgent Application, the Philippine government has publicly announced for the first time in 2024 that it will comply with the ICC arrest warrant. Based on this description, there is an urgency to examine the legitimacy of the ICC's jurisdiction over Rodrigo Duterte as a form of implementing the principle of global justice.⁹

In the earlier works, including studies on the War on Drugs as crimes against humanity, have emphasized the inadequacy of domestic investigations, the high threshold of unwillingness or inability, ICC considers that the Philippine authorities' investigation, which resulted in only eight indictments against low-ranking police officers for five extrajudicial killings, is insufficient and does not demonstrate that Philippine national law is making a genuine effort to conduct investigations and prosecutions at a higher level.¹⁰ The failure of the initial inquiry (prior knowledge) conducted under the Philippines' national law in this case led to demands for a further investigation, which the International Criminal Court (ICC) announced on September 15, 2021, that it would investigate the War on Drugs.¹¹ Following a careful analysis of the materials provided by the Philippines, the Pre-Trial Chamber was not satisfied that the Philippines is undertaking relevant investigations warranting a deferral of the Court's

⁸ Ibid., 3

⁹ International Criminal Court, "Prosecution's Urgent Application under Article 58 for a Warrant of Arrest against Rodrigo Roa Duterte, 10 February 2025, ICC/01/21-80-US-Exp.," *International Criminal Court*, 2025, accessed November 21, 2025, <https://www.icc-cpi.int/court-record/icc-01/21-80-red>.

¹⁰ Parliamentarians for Global Action., "Justice in Action: Former Philippines President Duterte Arrested Following ICC Arrest Warrant.," *Parliamentarians for Global Action*, 2025, accessed November 20, 2025, <https://www.pgaction.org/news/philippines-duterte-arrested-icc.html>.

¹¹ Raphael Lorenzo A. Pangalangan, "Command Responsibility in the Times of Tokhang: Defining Military-Likeness under Article 28(a) of the Rome Statute," *Asian Journal of International Law* 12, no. 2 (2022): 271, <https://doi.org/10.1017/S2044251321000618>.

investigations under the complementarity principle. Based on the unwillingness of the national law of the Philippines to enforce accountability for crimes against humanity in the War on Drugs, it requires a clear legal basis for ICC intervention in cases involving mass atrocities. In the case of ICC's jurisdiction exercise towards the arrest of Duterte in the Philippines, it consists of the debate about the justification of national Policy in terms of the War on Drugs and the legitimacy of jurisdiction towards the state that has withdrawn.¹² This research addresses two principal issues: the legitimacy of the ICC's continuing jurisdiction over the international crimes in the Philippines during the War on Drugs period, and the implementation of the ICC's jurisdiction as reflected in the arrest of Rodrigo Duterte in 2025.

The ICC's jurisdiction in this research focuses on the specific context of the arrest and surrender of an individual from a State that is not a party to the Rome Statute, and which has received far less attention in previous research. The implementation of ICC jurisdiction in the case of Rodrigo Duterte marks the convergence of the principles of international accountability and the dynamics of national sovereignty. The Rodrigo Duterte case, which involves the War on Drugs policy and allegations of crimes against humanity, highlights international law, particularly the jurisdiction of the ICC, which is confronted with the reality of domestic law that resists international intervention.¹³ The ICC's grounding in fact includes the consent of states, meaning, in particular, that the ICC may lawfully exercise jurisdiction over nationals of non-party states when they commit crimes on the territories of consenting states.¹⁴ Existing studies rarely evaluate the legal consequences of state cooperation *post-withdrawal*, nor do they explore the significance of implicit consent by conduct demonstrated by the Philippine government due to political dynamics and conflict of interest, which in response, President Ferdinand Marcos Jr said his government would not block the ICC if Duterte wished to be investigated, adding the government would be obliged to comply with any international arrest warrant related to the drugs war.¹⁵ This gap leaves the interaction between political realities, specifically the controversy over national Policy and the ICC's jurisdictional legitimacy, to be examined, mainly when cooperation occurs for prosecution in a non-State Party context.

To address the gap in political realities between the controversy over national Policy and the ICC's jurisdictional legitimacy, this research offers a focused legal analysis of the implementation of ICC jurisdiction in the arrest of Rodrigo Duterte, emphasizing jurisdictional continuity, complementarity, and state cooperation in a withdrawal scenario.

¹² International Criminal Court, "Situation in the Republic of the Philippines: ICC Appeals Chamber Confirms the Authorisation to Resume Investigations Image," *International Criminal Court*, 2025, accessed November 21, 2025, <https://www.icc-cpi.int/news/situation-republic-philippines-icc-appeals-chamber-confirms-authorisation-resume?>.

¹³ Muniratri Rachmita and Diandra Ratuolinka, "Menguji Batas Kewenangan Icc: Studi Kritis Atas Respons Duterte Terhadap Investigasi Dugaan Kejahatan Kemanusiaan Di Filipina," *Jurnal Riset Multidisiplin Edukasi* 2, no. 6 (2025): 320, <https://doi.org/10.71282/jurmie.v2i6.449>.

¹⁴ Robert Cryer, "International Criminal Law vs State Sovereignty," *The European Journal of International Law* 16, no. 5 (2006): 985, <https://doi.org/10.1093/ejil/chi156>.

¹⁵ Karen Lema, "Philippines Signals Softer Stance on ICC Drug War Probe, Open to Cooperate," *Reuters*, 2025, accessed November 21, 2025, <https://www.reuters.com/world/asia-pacific/philippines-signals-softer-stance-icc-drug-war-probe-open-cooperate-2025-01-23/?>.

This assessment of the alleged investigation done by Philippine authorities led the ICC Prosecutor to highlight that those implicated in killings, including the attack on a civilian population, took place pursuant to or in furtherance of a State policy, which the investigation naturally covers the policy makers.¹⁶ By the implementation of the War on Drugs, which has aligned crimes against humanity, the ICC Chamber issued the warrant of arrest against Duterte as "Secret" on March 7 March 7, 2025. It was reclassified as "Public" on March 11 March 11, 2025. On March 12 March 12, 2025, Duterte surrendered to the International Criminal Court after being arrested by the authorities of the Republic of the Philippines in accordance with the warrant of arrest. Therefore, this research will introduce a conceptual lens that connects the Philippines' implicit consent by conduct in the arrest of Duterte, evidenced through prior notification of Prosecution Urgent Application, coordination with INTERPOL, and the eventual facilitation of Duterte's arrest with the ICC's legal mandate to pursue accountability for crimes committed before withdrawal became effective.¹⁷

The conceptual approach of this research provides a scientifically grounded contribution to understanding how political constraints, institutional conflict of interest, and international pressure may shape a State's engagement with ICC processes for global justice. The ICC exercised its jurisdiction by arresting Rodrigo Duterte on March 11 March 11, 2025, for crimes against humanity committed between 2016 and 2017. However, the Philippines' status under the Rome Statute has become that of a non-State Party, which withdrew from the ICC on March 17 March 17, 2019. The issue of legal legitimacy of the ICC's jurisdiction in the arrest of Rodrigo Duterte in connection with the War on Drugs policy, when a State transitions into non-Party status, has the urgency to be analyzed further since it still lacks attention from previous research.¹⁸

This research aims to assess the legal legitimacy of the ICC's jurisdiction in Duterte's arrest in connection with the War on Drugs and to clarify how international criminal law operates, focusing on the Court's continuing jurisdiction over alleged crimes committed during Duterte's War on Drugs. This research seeks to contribute beyond global justice by evolving the ICC's role amid shifting political contexts.¹⁹

Method

This research uses a normative legal approach, examining only secondary data and not the law's implementation. In normative legal research, a normative juridical design focuses on

¹⁶ Jr and Leandro Anton Castro Michael T. Tiu, "The Philippine Case in the ICC: Disentangling Kneejerk Challenges," *lawcenter.law.upd.edu.ph*, 2017, accessed November 21, 2025, <https://lawcenter.law.upd.edu.ph/ICL/the-philippine-case-in-the-icc-disentangling-kneejerk-challenges/>?

¹⁷ International Criminal Court, "Situation in the Republic of the Philippines ICC-01/21," *International Criminal Court*, 2025, accessed November 21, 2025, <https://www.icc-cpi.int/philippines?>

¹⁸ Sarah Nabila Papatungan, "Extrajudicial Killing by the Rodrigo Duterte Regime in the Philippines from an International Law Perspective" *Estudiante Law Journal* 6, no. 3 (2024): 788.

¹⁹ Rian Rusmana Putra Ilhamda Fattah Kaloko, Harmelia, "Legal Certainty of Jurisdiction and Authority of the International Criminal Court (ICC) Regarding the Detention of Rodrigo Duterte in the 'War on Drugs' Case," *Jurnal Mercatoria* 18, no. 1 (2025): 84.

solving the core legal problem by analyzing relevant legal norms, statutory provisions, and authoritative case law.²⁰ The means of understanding the issues in this research uses two approaches: the statute approach and the case approach. The statute approach involves examining all rules and regulations governing ICC jurisdiction in the enforcement of international criminal law. Furthermore, the case approach is a method for studying norms in legal practice by examining cases that have become court decisions with permanent legal force, which must be related to the research issue, such as cases of international criminal offenses handled by the ICC.²¹

The approach used in this research is a qualitative descriptive approach, which involves describing and analyzing data descriptively and based on perspective to describe the object of study based on a legal point of view only as a norm²² where it is aligned with the statute approach in this research that examines key provisions of the Rome Statute particularly Articles 7, 17, 25(3), 53, and 127(2) to interpret the ICC's jurisdictional framework and its continuity after the Philippines' withdrawal. In contrast, the case approach in this research involves a systematic review of Pre-Trial Chamber decisions, the 2025 Arrest Warrant against Rodrigo Duterte, and Prosecution Urgent Applications to understand how the Court assessed jurisdiction, cooperation, and State conduct. Complementing these, methodologically, the conceptual approach involves a doctrinal legal analysis of the Rome Statute and related jurisprudence, alongside a political analysis of state behavior and international responses in terms of complementarity, jurisdictional continuity, implicit consent by conduct, and the relationship between state sovereignty and global justice, thereby enabling deeper theoretical clarification of the issues.²³ This research in terms of legal materials relies on legal basis from the Rome Statute, ICC decisions, ICC Regulations, and relevant UN documents, supported by secondary sources including peer-reviewed journals, academic books, and scholarly commentaries, as well as tertiary materials that provide explanations of primary and secondary legal materials, as references in the analysis of relevant data in the field of normative legal research.²⁴ Data collection in this research is conducted by identifying key legal issues, compiling authoritative ICC case documents, and reviewing relevant academic literature, and then organizing following the analytical structure section to maintain clarity and coherence with systematic analysis of the ICC jurisdiction practices in Duterte's Case.

Result and Discussion

3.1 The Enforcement of ICC's Jurisdiction over International Crimes in the Philippines

²⁰ Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2024), 52.

²¹ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University Press, 2020), 57.

²² Depri Liber Sonata, "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas dari Metode" *Fakultas Hukum, and Universitas Lampung* 8, no. 1 (2014): 25.

²³ Arushi Bajpai, "The International Criminal Court And State Sovereignty : Navigating The Tensions Of Global Justice" *American Journal of Physiatric Rehabilitation* 28, no. 2 (2025): 83.

²⁴ Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: Citra Aditya Bakti, 2024), 125.

The issue of the enforcement of ICC's jurisdiction over International Crimes related to War on Drugs in the Philippines, in fact, brings the controversy on its legitimacy; however, through this research, it meets the findings which demonstrate that the ICC possesses continuing jurisdiction over alleged crimes committed in the Philippines during the implementation of the War on Drugs. The ICC, in exercising its authority over the Philippines as a non-member state that has withdrawn from the Rome Statute, focuses on cases that occurred before the Philippines' effective withdrawal. The legal basis for the ICC to consider the War on Drugs case that happened before the Philippines' withdrawal is Article 127(2) of the Rome Statute, which states: "*A State shall not be discharged, by reason of its withdrawal, from the obligations arising from this Statute while it was a Party to the Statute, including any financial obligations that may have accrued.*"²⁵. Based on the provisions of Article 127(2) of the Rome Statute, when an international crime has been committed while a state is still a member state and the crime occurred before the withdrawal took effect, the withdrawal of a state shall not affect that state's obligation to cooperate with the ICC in investigations and legal proceedings that had already commenced before the date of withdrawal. The analysis confirms that Article 127(2) of the Rome Statute operates as a mechanism ensuring the continuity of jurisdiction for crimes committed before the withdrawal of a State becomes effective. Accordingly, the Philippines' withdrawal from the Rome Statute in 2019 does not eliminate the Court's jurisdiction over acts committed while the country was still a State Party.²⁶

The ICC's jurisdiction over International Crimes in the Philippines was discussed by the PTC ruling, which stated that although the Philippines' withdrawal from the Statute took effect on March 17, 2019, the Court still has jurisdiction in relation to alleged crimes committed in the territory of the Philippines while it was still a State Party, from November 1, 2011, up to and including March 16, 2019. The PTC cited Article 70 of the Vienna Convention on the Law of Treaties, which provides that withdrawal from a treaty does not affect any rights, obligations, or legal situations created by its implementation before its termination.²⁷

The Philippines' status as a non-member state following its withdrawal is effective and constitutes a sovereign decision subject to the provisions of Article 127 of the Rome Statute. Despite its withdrawal, a preliminary examination of the situation in the Philippines was announced on February 8, 2018, stating that since July 2016, thousands of people had been killed in extrajudicial killings during police anti-drug operations.²⁸ During the Philippines' membership in the ICC, cases of international crimes had occurred before the Philippines withdrew. Although the Philippines officially withdrew from the Rome Statute in 2019, Article

²⁵ Article 127 (2) of Rome Statute 1998

²⁶ Rian Rusmana Putra Ilhamda Fattah Kaloko, Harmelia, "Legal Certainty of Jurisdiction and Authority of the International Criminal Court (ICC) Regarding the Detention of Rodrigo Duterte in the 'War on Drugs' Case," *Jurnal Mercatoria* 18, no. 1 (2025): 87.

²⁷ UP Law Center, "The Philippine Case in the ICC: Disentangling Kneejerk Challenges," *Up Law Centre*, 2021, accessed November 23, 2025, <https://lawcenter.law.upd.edu.ph/ICL/the-philippine-case-in-the-icc-disentangling-kneejerk-challenges/> . .

²⁸ International Criminal Court, "ICC Statement on the Philippines Notice of Withdrawal: State Participation in Rome Statute System Essential to International Rule of Law," *International Criminal Court*, 2018, accessed November 23, 2025, <https://www.icc-cpi.int/news/icc-statement-philippines-notice-withdrawal-state-participation-rome-statute-system-essential>.

127(2) states that such withdrawal does not deprive the ICC of its jurisdiction when the country is still a Member State where the Rome Statute allows the ICC to continue its investigations.²⁹

The analysis of ICC's jurisdiction over international crimes in the Philippines shows that the implementation of ICC jurisdiction in Duterte's arrest involves proprio motu investigations. ICC Pre-Trial Chamber has ruled that it retains jurisdiction over alleged crimes that occurred while the Philippines was a member state from November 2011 to March 2019.³⁰ The legal basis of ICC's continuity jurisdiction in connection with Duterte's War on Drugs case in the Philippines has been stated in the arrest warrant for Duterte in relation to international crimes committed in the Philippines, where ICC has communicated clearly that the Duterte case relating to the War on Drugs policy will result in temporal jurisdiction as provided for in Article 127.³¹ Therefore, the analysis of jurisdiction confirms that the ICC is legally empowered to address serious international crimes committed in the Philippines despite the context of political resistance and withdrawal from the Rome Statute.

3.2. Implementation of ICC Jurisdiction in the Arrest of Duterte and the War on Drugs Policy

Besides the enforcement of ICC's jurisdiction over international crimes in the Philippines, the implementation of ICC jurisdiction in Duterte's case in terms of the arrest and War on Drugs policy also becomes the primary focus in this research. This research concerns how the ICC's jurisdiction was implemented in practice, specifically through the execution of the 2025 Arrest Warrant against Rodrigo Duterte. The findings highlight that the transition of the warrant to a publicly executed enforcement action demonstrates the ICC's operational capacity, even in situations involving a non-State Party, in which the ICC's capacity to arrest Duterte is constrained by the rule of the Philippine government. The ICC stated in the arrest warrant against Rodrigo Duterte that there were legal grounds for the arrest based on the provisions outlined in the Rome Statute that in the case of Duterte in relation to the War on Drugs policy, he is as an individual was charged with alleged criminal responsibility in accordance with Article 25 (3)(a) of the Rome Statute and for crimes against humanity for murder pursuant to Article 7 (1)(a) of the Rome Statute.³²

The legal basis for the arrest of Rodrigo Duterte, as stipulated in Article 7 (1) (a) and Article 25 (3) (a) of the Rome Statute, was determined by the ICC based on the fact that more than 6,000 killings had occurred during police operations related to the War on Drugs policy.

²⁹ Rian Rusmana Putra Ilhamda Fattah Kaloko, Harmelia, "Legal Certainty of Jurisdiction and Authority of the International Criminal Court (ICC) Regarding the Detention of Rodrigo Duterte in the 'War on Drugs' Case," *Jurnal Mercatoria* 18, no. 1 (2025): 83.

³⁰ Up Law School, "Frequently Aske Questions on the Arrest, Surrender, and Proceedings Involving Former President Duterte at the International Criminal Court.," *Law Upd Edu*, 2025, accessed November 23, 2025, <https://law.upd.edu.ph/wp-content/uploads/2025/04>.

³¹ Just Security, "The Elephant in the Courtroom: ICC Temporal Jurisdiction Over the Situation in the Philippines.," *Just Security*, 2023, accessed November 23, 2025, <https://www.justsecurity.org/88924/the-elfphant-in-the-courtroom-icc-temporal-jurisdiction-over-the-situation-in-the-philippines/?>.

³² Global Affairs and Strategic Studies, "Caught in the Crossfire: Duterte's ICC Case in the Context of an International Legitimacy Crisis and a Domestic Clan War.," *Unav Edu*, 2025, accessed November 23, 2025, <https://www.unav.edu/web/global-affairs/caught-in-the-crossfire-duterte-icc-case?>

Furthermore, ACLED data analysis found that the number of civilian casualties in the War on Drugs policy carried out by the state under the Duterte administration was much higher than the official figures, with at least 7,742 Filipino civilians killed in War on Drugs policy operations since 2016.³³ Government data shows that at least 6,252 people were killed in anti-drug operations from July 1, 2016, to May 31, 2022. Rappler then obtained government data showing that police had killed at least 7,884 drug suspects since Duterte took office. During the six years following his election, an estimated 30,000 people have been killed in a campaign of extrajudicial killings. The massive number of murder victims and the absence of national legal action led human rights groups to decide to rely on the ICC to help bring justice to the victims by arresting Rodrigo Duterte. The arrest of Rodrigo Duterte, in fact, has been successfully effected by the ICC through the implicit statement in the Prosecution Urgent Application letter.³⁴ In fact, the existence of a legal basis for the arrest under Article 7(1) (a) and 25(3) of the Rome Statute, and the implicit consent from the Prosecution Urgent Application arising from a conflict of interest within recent Philippine governance, can justify and strengthen the ICC's jurisdictional legitimacy for the arrest of Duterte.

The finding in this research is also focused on the implementation of ICC's jurisdiction in terms of the War on Drugs policy, on how the War on Drugs can be confirmed as an international crime under ICC's jurisdiction. The implementation of ICC's jurisdiction is still questioned on its legitimacy to be implicated in the War on Drugs. The War on Drugs, in its implementation, involves extrajudicial killings in accordance with official government policy, but in relation to threats to the lives and freedom of drug users.³⁵ The ICC prosecutor found objective grounds for crimes against humanity in the form of murder in the context of government policy related to the War on Drugs. This is what underpins the implementation of ICC jurisdiction to the War on Drugs policy.³⁶

In terms of the War on Drugs policy, there already existed prior knowledge by the Philippines, which indicates that Duterte has on several occasions and in specific ways, condemned civilian casualties in his war on drugs. Still, no concrete action has been taken to address the ongoing killings, creating a climate of impunity in which PNP officers under him believe that their illegal actions are acceptable and will not be punished. Duterte has failed to take the necessary steps as President of the Philippines, which shows the passivity of Philippine national law; therefore, ICC, in relation to the War on Drugs, decided to take over the investigations.³⁷ The investigation by the ICC into the War on Drugs policy was carried out on the basis of the procedural requirements under Article 15 of the Statute. The ICC stated

³³ ACLED, "The Drug War Rages on in the Philippines," *Acled Data*, 2021, accessed November 23, 2025, <https://acleddata.com/report/drug-war-rages-philippines?>

³⁴ Rappler, "Six Years of Blood and Violence: People We Lost under Duterte," *Rappler*, 2022, accessed November 23, 2025, <https://www.rappler.com/newsbreak/iq/duterte-administration-blood-violence-drug-war-lawyers-activists-mayors-vice-mayors-killed/?>

³⁵ Gideon Lasco and Lee Edson Yarcia, "The Politics of Drug Rehabilitation in the Philippines," *Health and Human Rights Journal* 24, no. 1 (2022): 148.

³⁶ *Ibid.*, 148.

³⁷ Raphael Lorenzo A. Pangalangan, "Command Responsibility in the Times of Tokhang: Defining Military-Likeness under Article 28(a) of the Rome Statute," *Asian Journal of International Law* 12, no. 2 (2022): 285, <https://doi.org/10.1017/S2044251321000618>.

reasonable and objective grounds related to the fulfillment of the elements of crimes against humanity in the form of murder had been fulfilled in the War on Drugs policy. The ICC Pre-Trial Chamber also stated that the evidence gathered on behalf of 204 victims showed the failure of the Philippine authorities to take meaningful steps to investigate or prosecute the killings related to the War on Drugs.³⁸ The War on Drugs policy, although legally valid as a national policy through Circular Memorandum Order (CMO) No. 16-2016, but it has been criticized in its implementation, as during Duterte's administration, the number of victims has reached 30,000 through Operation Tokhang in the War on Drugs. The War on Drugs policy has fulfilled the elements of crimes against humanity as stipulated in Article 7 (1) (a) of the Rome Statute.³⁹ The fulfillment of crimes against humanity and the failure of the national law of the Philippines, therefore, gives justification for further investigation and the implementation of ICC's jurisdiction in the War on Drugs policy.

Conclusion

The Regarding the facts about the implementation of ICC's jurisdiction on both sides of international crimes in the War on Drugs and the arrest situation of Duterte, this research concludes that ICC's jurisdiction remains valid over the Situation in the Philippines concerning the War on Drugs, even after the Philippines' withdrawal from the Rome Statute. In accordance with Article 127(2) of the Rome Statute, acts committed while the Philippines was still a State Party remain subject to the Court's jurisdiction. The implementation of ICC jurisdiction in the case of Rodrigo Duterte, particularly through the 2025 Arrest Warrant, is grounded in explicit legal provisions under Article 25(3) of the Rome Statute. The arrest is further supported by the Philippine government's implicit consent, as evidenced by its conduct. This implicit consent strengthens the legal and practical basis for the ICC's intervention. In the context of the investigation into the War on Drugs, the ICC announced on September 15, 2021, that it would investigate the Situation in the Philippines through a submitted request under Article 15(3) to Pre-Trial Chamber I for authorization to investigate the Situation in the Philippines. ICC confirms the failure of prior knowledge under Philippine national law, which demands a further investigation. The government affirmed this request by the ICC through implicit consent in the letter of the Prosecution Urgent Application, which addressed a conflict of interest within the Philippine government, the existence of this Situation affirmed the continuing validity of the ICC's jurisdiction.

Implementation of ICC's jurisdiction in terms of the War on Drugs, although the War on Drugs policy was framed as a matter of national sovereignty, its execution involved widespread and systematic killings, fulfilling the elements of crimes against humanity under Article 7(1)(a) of the Rome Statute. The existence of crimes against humanity and the failure of domestic authorities to adequately address the further violations justified the ICC's

³⁸ Ariza Alarcon et al., "Behind the Bars: Public Opinion Towards the International Criminal Court's Investigation on President Duterte's War on Drugs," *SSRN Electronic Journal*, no. 9 (2023): 8, <https://doi.org/10.2139/ssrn.4504244>.

³⁹ Raphael Lorenzo A. Pangalangan, "Command Responsibility in the Times of Tokhang: Defining Military-Likeness under Article 28(a) of the Rome Statute," *Asian Journal of International Law* 12, no. 2 (2022): 271, <https://doi.org/10.1017/S2044251321000618>.

enforcement jurisdiction on War on Drugs. Based on these findings, this research contributes to the broader field of global governance and international criminal justice by reaffirming that ICC jurisdiction remains applicable to ensure accountability for grave international crimes, regardless of a State's later withdrawal from the Rome Statute. The findings illustrate the ICC's enduring role in addressing impunity, particularly in situations where domestic mechanisms are unwilling or unable to prosecute state leaders. For future research, work may further examine how implicit consent functions in practice and the broader implications of ICC intervention for state cooperation and the enforcement of international justice.

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