

TESTIMONY OF MARJORIE COHN
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Thank you to the organizers for providing me the opportunity to testify at this important tribunal. I will discuss the right to self-determination, terrorism vs. national liberation movements, and international humanitarian law, in the context of the struggle of the Filipino people against repression by the governments of the Philippines and the United States.

Right to self-determination

Several treaties, including the UN Charter; International Covenant on Civil and Political Rights (ICCPR); and International Covenant on Economic, Social and Cultural Rights, enshrine the right of peoples to self-determination. This right is considered *jus cogens*, a peremptory norm and the highest form of international law, from which no derogation is permitted.

In its advisory opinion on Israel’s separation wall, the ICJ ruled that “the principle of self-determination of peoples has been enshrined in the United Nations Charter and reaffirmed by the General Assembly. . . pursuant to which ‘Every State has the duty to refrain from any forcible action which deprives peoples . . . of their right to self-determination.’”

The right to self-determination includes but isn’t limited to the right of peoples to control their own land and natural resources; the right to be free from demographic manipulations by any third party; and the right to determine their own political status, economic development, their own futures.

Continuing the U.S. policy of “Pivot to Asia” as a counterweight to China, US President Barack Obama enlisted the Aquino government to negotiate the Enhanced Defense Cooperation Agreement. Although it purported to maintain Philippine sovereignty over the US military bases on Mindanao Island and civilian airstrips on Luzon, it granted significant powers to the United States. The US seeks to return to its 2 former military bases in Subic and Clark, which it left in 1992. These bases were critical to the US imperial war in Vietnam. This violates the well-established right to of peoples to self-determination.

Under international law, the Filipino people have a legal right to resist the repression of the Philippine government, including by the use of armed struggle. A 1982 resolution of the UN General Assembly “reaffirmed the legitimacy of the struggle of peoples for independence, territorial integrity, national unity and liberation from colonial and foreign domination and foreign occupation by all available means, including armed struggle.”

After 9/11, US President George W. Bush called the Philippines a second front of the “war on terror” The Philippine government used this “war on terror” as an excuse to escalate its generations-long war against Muslim separatists in the southern Philippines, and other individuals and organizations who opposed the policies of the Philippine government.

People and groups have been labeled “terrorists” by the Philippine government, the US government, and other countries at the behest of the US government. The Philippine government engages in ‘Red tagging’ (political targeting). Targets are frequently activists, organizers, people’s lawyers, consultants, peace advocates, humanitarian aid workers, and journalists.

Terrorism vs. National Liberation Movements

It is the Philippine government that is engaging in terrorism, backed by the United States. M. Kalliopi K. Koufa, former U.N. Special Rapporteur on human rights and terrorism, explained that “regime” or “government” terror is conducted by organs of the state against its own population for the purpose of preserving a regime or suppressing challenges to its authority.

Regime or government terrorism is characterized by kidnapping and assassination of political opponents of the government, by the police, secret service, army or security forces; imprisonment without trial; persecution and torture; massacres of racial or religious minorities or certain social classes; internment in concentration camps; and government by fear. Regime or governmental state terrorism is legitimized by the law the state has itself established.

Koufa distinguished between “terrorism” and “wars of national liberation in the context of the right of self-determination,” which are memorialized in the 1999 Convention of the Organization of the Islamic Conference on Combating International Terrorism.

That convention says: “Peoples’ struggles, including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination in accordance with the principles of international law shall not be considered a terrorist crime.” The 1998 Arab Convention on the Suppression of Terrorism likewise excepts struggles for self-determination from the definition of terrorist crime.

The National Democratic Front of the Philippines (NDFP) is waging a war of national liberation through its armed component, the New People’s Army, in the exercise of the Filipino people’s inherent right of self-determination. The Philippine government, fully supported and enabled by the US government, has engaged in violent repression of the Filipino people through counterinsurgency and “counterterrorism” campaigns, and widespread violations of international human rights and humanitarian law.

The NDFP's armed struggle against the Philippine government is a war of national liberation for self-determination under Additional Protocol I to the Geneva Conventions, which says that "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination" are protected the Geneva Conventions.

"State-sponsored" or "state-supported" terrorism includes overt or covert assistance or support by a state to terrorist agents, in order to subvert or destabilize another state or its government, according to Koufa. "State sponsored terrorism occurs when a government plans, aids, directs and controls terrorist operations in another country. It is sometimes called 'surrogate warfare.'" The US is engaging in this form of terrorism in the Philippines.

Much of the military equipment and training of the Philippine government comes from the US and is used to commit widespread international human rights and humanitarian law violations. The US provides the Philippine government with more than \$1.14 billion worth of equipment and training, making it the largest recipient of US aid in the Indo-Pacific region.

International Humanitarian Law

International Humanitarian Law (IHL) requires countries to make a *distinction* between combatants, armies, tanks and other military equipment, on the one hand, and civilians and civilian objects, such as schools, hospitals, and civilian residences, on the other. Civilians and civilian objects are not to be targeted. Weapons that do not discriminate between civilians and combatants are generally prohibited and notice of planned attacks must be given to civilian populations to allow them to leave the area before an attack. IHL also requires *proportionality* in the use of military strikes, allowing only that amount of force necessary to achieve the military objective.

The Philippines' US-inspired counter-insurgency program does not distinguish between civilians and combatants, which is considered a war crime under the Geneva Conventions.

The counter-insurgency program has led to massive repression, including the war crimes of extrajudicial killings, collective punishment, forcible displacement of the civilian population, abductions and forced disappearances, torture and cruel treatment, the use of violence to spread terror, arbitrary detention, and the use of indiscriminate weapons.

Unarmed drones are being used to surveil areas prior to armed attacks or indiscriminate bombardment of communities with helicopters and howitzers. This drone surveillance instills terror in people who see and hear the buzzing of the drones above their homes.

Civilians, including children; members of the New People's Army who have been rendered *hors de combat*; and civilian objects have been targeted. Bodies have been

desecrated, which violates the Fourth Geneva Convention as well as Additional Protocol I to the Geneva Conventions. The Philippines is a party to the Geneva Conventions and Protocol I. The regime has also impeded humanitarian aid and relief supplies intended for civilians and civilian communities.

Hundreds of activists who belonged to progressive organizations have been murdered by the Philippine military and paramilitary death squads.

These actions violate Common Article 3 of Geneva and constitute war crimes under the Rome Statute of the International Criminal Court (ICC), which forbid violence to life and person, in particular murder, cruel treatment and torture, and outrages upon personal dignity, particularly humiliating & degrading treatment.

In 2019, the Philippines withdrew its ratification of the Rome Statute. The US has refused to sign and ratify the Rome Statute. But Philippine and US officials can be prosecuted for war crimes and aiding and abetting war crimes, respectively, by national courts under the well-established doctrine of *universal jurisdiction*, which allows countries to prosecute foreign nationals for the most heinous of crimes, even when there is no direct connection with the prosecuting country.

The ICCPR forbids torture and other cruel, inhuman or degrading treatment or punishment. It guarantees liberty and security of person and forbids arbitrary detention, a common practice of the Philippine military and paramilitary.

Torture and cruel, inhuman or degrading treatment is prohibited by the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The Philippine military and paramilitary forces attempt to rationalize their harsh treatment as necessary to maintain national security against organizations that seek to challenge, and even overthrow the government. However, CAT says, “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification for torture.” Both the Philippines and the US are parties to the CAT.

The Philippine government thus has a duty to prosecute or extradite those who commit, or are complicit in the commission of torture. The Geneva Conventions also mandate that the Philippine government prosecute or extradite those who commit, or are complicit in the commission of, torture.

In December 2005, the UN General Assembly passed a resolution titled: *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*. This resolution reaffirms the rights in the instruments mentioned above. Principle VII explains: Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm suffered; and (c)

Access to relevant information concerning violations and reparations mechanisms. Yet victims in the Philippines have been denied remedies for their suffering.

The Geneva Conventions list as a war crime the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable. The Philippine government and its paramilitary forces have carried out numerous extrajudicial killings.

“The ‘protect life’ principle demands that lethal force may not be used intentionally merely to protect law and order or to serve other similar interests,” such as “to arrest a suspected criminal, or to safeguard other interests such as property,” former UN Special Rapporteur on extrajudicial, summary or arbitrary executions Christof Heyns wrote in his 2014 report to the UN Human Rights Council. “The primary aim must be to save life. In practice, this means that only the protection of life can meet the proportionality requirement where lethal force is used intentionally, and the protection of life can be the only legitimate objective for the use of such force.” The Philippine government consistently violates this principle as well.

In conclusion, the Philippine government routinely violates the Filipino people’s right to self-determination. The national liberation movement in the Philippines is not terrorism. The Filipino people have the right to resist repression by the regime by all available means, including armed struggle. The Philippine government consistently violates International Human Rights and Humanitarian Law. Officials of the Philippine government and the US government (who enable the commission of these crimes) should be held accountable in national courts under the principle of universal jurisdiction.

I want to emphasize that peoples’ tribunals, while essentially political in nature, can serve as alternative fora, and provide a peoples’ record for future litigation, both nationally and internationally. For example, after the 2009 Peoples’ Tribunal of Conscience in Support of the Vietnamese Victims of Agent Orange, a French-Vietnamese woman filed a lawsuit in 2014 against the chemical companies who manufactured and sold dioxin used in Agent Orange that the US military sprayed on Vietnam during the American War there.

As someone who testifies as a legal expert, I support people's tribunals such as the one proceeding right now in Brussels and I look forward to the Verdict and Decision that could be useful to help remedy violations of IHL, hold the perpetrators accountable, and provide justice, and ultimately respect, for the rights of the victims in particular and the struggling Filipino people as a whole.

Marjorie Cohn is emerita professor of law at Thomas Jefferson School of Law in San Diego, California; dean of the People’s Academy of International Law; and past president of the U.S. National Lawyers Guild. She is a member of the bureau of the International Association of Democratic Lawyers and is the U.S. representative to the advisory council of the Association of American Jurists. Professor Cohn is a legal scholar and political analyst who writes books and articles, and lectures throughout the world about international human rights and humanitarian law. She has testified before

the U.S. Congress about the Bush administration torture policy and debated the legality of the war in Afghanistan at the prestigious Oxford Union. Her books include The United States and Torture: Interrogation, Incarceration, and Abuse, and Drones and Targeted Killing: Legal, Moral and Geopolitical Issues.