

BAYAN presentation to the International Peoples Tribunal

May 17-18, 2024

<Slide 1> On behalf of BAYAN, I would like to thank the International People's Tribunal for this opportunity to speak about the many violations of International Humanitarian Law (IHL) that have taken place and continue to take place in the Philippines today.

<Slide 2> My presentation aims to put in proper perspective the current counter-insurgency program of the Philippine government that is inspired, financed, trained, and supplied with weapons by the United States government. It is the framework used to suppress the Filipino people from fully exercising their civil, political, socio-economic and cultural rights. Counter-insurgency operations supposedly target the armed revolutionary movement led by the Communist Party of the Philippines (CPP), the New People's Army (NPA), and the National Democratic Front of the Philippines (NDFP) but have been expanded to include unarmed civilians, particularly activists, human rights defenders, members of the press, government critics, the political opposition, members of progressive parties and people's organizations, and communities suspected of harboring rebels.

Worse, following the "whole of nation" approach prescribed in US military doctrines, the entire civilian bureaucracy, from the national down to the local government units, has been transformed into a mechanism for counter-insurgency. Such has been the failed approach of the reactionary Duterte and Marcos regimes in addressing the roots of the armed conflict in the Philippines.

Historical context

<Slide 3> The US has a long history of involvement in Philippine counter-insurgency campaigns starting with the American occupation at the turn of the 20th century. When the US colonized the Philippines, it developed counter-insurgency tactics that it would later use in its wars of aggression around the world. Scorched earth tactics were used in Samar Island, turning it into a "howling wilderness" where entire villages were burned and civilians, including children over the age of 10 "capable of bearing arms," were massacred. In Mindanao Island, the pacification and cooptation of Moro leaders were done in tandem with the massacre of entire Moro villages. The water cure torture method used in Guantanamo was first used in the Philippines during this time.

<Slide 4> When the Philippines was granted nominal independence by the US government in 1946, after 48 years of colonization, it was preconditioned on the continued stay of these US military bases and facilities through the 1946 RP-US Military Bases Agreement. This was followed in 1947 by the RP-US Military Assistance Agreement that entrenched US military advisers in the country through the Joint US Military Advisory Group (JUSMAG), ensuring the Armed Forces of the Philippines' (AFP) continued adherence to US military doctrine and dependence on US weapons, military equipment and supplies. The 1951 Mutual Defense Treaty tied Philippine security and

defense interests with that of the US, leading to the formation of the Mutual Defense Board (MDB) in 1958 and the Security Engagement Board (SEB) in 2006 to address terrorism and other non-traditional security concerns.

<Slide 5> Since then, the US has supported every puppet regime that came to power, providing them with military arms and equipment, training and advice, sometimes even directly involving US troops in combat operations. This partially explains the continued presence of US military troops, bases and facilities in the country. In turn, these US-backed regimes sought to suppress the Filipino people's continuing struggle for genuine democracy and national and social liberation.

<Slide 6> In 1991 the Philippine Senate decided to abrogate the Military Bases Agreement, leading to the dismantling of the US' largest military bases outside the US mainland - Subic Naval Base in Zambales and Clark Airfield in Pampanga. However, succeeding agreements, particularly the 1998 RP-US Visiting Forces Agreement (VFA), the 2002 and 2017 Mutual Logistics and Supply Agreement (MLSA), and the 2014 Enhanced Defense Cooperation Agreement (EDCA), have allowed US troops, military equipment, vessels and facilities to be deployed in all parts of the country, virtually making the Philippine islands one big US military facility.

<Slide 7> In the early 2000s, the "war on terror" was used as a pretext to establish permanent US military presence in Mindanao and direct involvement by US troops in counter-insurgency and "counter-terror" operations.

<Slide 8> Since 2001, annual military exercises and drills are held all over the country, in known rebel strongholds or strategic areas for the US' Pacific strategy. By the early 2010s, the US pivot to Asia amid the rise of China was used as pretext for the return of US bases through the EDCA.

Thus, whether it was the CIA-backed Magsaysay regime in the 1950s, the US-backed Marcos dictatorship in the 1970s, the US-funded low-intensity conflict during the Aquino and Ramos regimes of the 80s, or the Arroyo regime's US-inspired "war on terror," of the 2000s, the US hand has been present through every iteration of the Philippine counter-insurgency drive and its resulting human rights and IHL violations.

Worsening IHL violations under the US-backed Duterte and Marcos regimes

<Slide 9> The Duterte regime became notorious for its gross and systematic violation of human rights and IHL in relation to its anti-illegal drug and anti-insurgency/counter terrorism campaign. Duterte's brutal "war on drugs" killed thousands of suspected illegal drug users and small-time peddlers, for which he is currently being investigated by the International Criminal Court (ICC) for committing crimes against humanity.¹

¹ <https://www.icc-cpi.int/news/situation-philippines-icc-pre-trial-chamber-i-authorises-opening-investigation>

<Slide 10> Eventually, Duterte trained his sights on the revolutionary movement, using very same tactics of his drug war. In December 5, 2017, after causing the collapse of the peace talks with the NDFP, Pres. Duterte issued Proclamation No. 374² declaring the CPP-NPA as a terrorist organization under Terrorism Financing Prevention and Suppression Act of 2012 (Republic Act No. 10168). Duterte based his proclamation on the US government's designation of the CPP-NPA as a foreign terrorist organization issued August 9, 2002.

In November 2018, Duterte issued Memorandum Order No. 32³ deploying additional military and police forces in the provinces of Samar, Negros Oriental, Negros Occidental, and the Bicol Region "to suppress lawless violence and acts of terror." These areas are known strongholds of the NPA. The following month, on December 4, 2018, Duterte issued Executive Order No. 70⁴ institutionalizing the "whole of nation approach" in counter-insurgency, patterned after the US Counter Insurgency Guide (COIN)⁵, and creating the National Task Force to End Local Communist Armed Conflict (NTF-ELCAC) to oversee its implementation.

<Slide 11> Through these policies, Duterte, with the connivance of the US government, unleashed the very same drug war tactics that led to massive and systematic extrajudicial killings and other violations of human rights and IHL on members, sympathizers, and anyone remotely linked or suspected to have links to the revolutionary movement. What resulted was a horrific increase in incidents of red tagging, terrorist labeling, public vilification, illegal and arbitrary arrests and detention, filing of trumped up charges, enforced disappearances, indiscriminate firing, shelling and bombings, forced displacement, extrajudicial killings and executions.

<Slide 12> Meanwhile, the US government, while overtly being critical of Duterte's drug war and closeness to China, was fully supportive of his counter-insurgency campaign. Under Duterte, the Philippines was the largest recipient of US military assistance in the Indo-Pacific, receiving more than PhP48.6 billion in security assistance from 2015 to 2021.⁶ The US gave \$600 million in military aid to the Duterte regime despite Duterte's constant rants and posturing against the US.⁷ In 2017, at the height of the drug-war related and counter-insurgency related killings, the US

² <https://www.officialgazette.gov.ph/2017/12/05/proclamation-no-374-s-2017/>

³ <https://www.officialgazette.gov.ph/downloads/2018/11nov/20181122-MO-32-RRD.pdf>

⁴ <https://www.officialgazette.gov.ph/downloads/2018/12dec/20181204-EO-70-RRD.pdf>

⁵ <https://2009-2017.state.gov/documents/organization/119629.pdf>

⁶ <https://www.pacom.mil/Media/News/News-Article-View/Article/2667071/us-military-delivers-php183-million-in-new-weapons-and-equipment-to-afp/#:~:text=The Philippines is the largest,security assistance to the Philippines.>

⁷ <https://www.gmanetwork.com/news/topstories/nation/817997/philippines-got-600-m-military-aid-from-us-during-duterte-admin-ambassador/story/>

authorized \$1.4B in defense articles and service exports.⁸ In 2019, it authorized the export of \$56M in firearms, guns, and ammunition.⁹ Joint military operations, exercises, trainings and exchanges continued, facilitated through the MDB-SEB.

<Slide 13> Despite widespread calls for the repeal of Memorandum Order No. 32, Executive Order No. 70, and the resumption of the stalled peace negotiations with the NDFP, Duterte's successor, Pres. Ferdinand Marcos Jr., adopted Duterte's counter-insurgency program lock, stock and barrel. So far, Marcos has ignored the calls of two UN Special Rapporteurs to abolish the NTF-ELCAC.^{10 11}

<Slide 14> The current National Security Policy 2023-2028 (NSP)¹² of the Marcos regime is the latest iteration of the "whole of nation" and "whole of government" approach adopted from the US COIN guide. It reaffirms the mobilization of the entire government machinery for counter-insurgency operations. It upholds the role of the discredited NTF-ELCAC and hails its "achievements" despite its notorious human rights record.

<Slide 15> Marcos' security policy also doubles down on targeting unarmed activists by saying that "the Government shall strengthen its action **against the legal fronts of the CPP-NPA-NDF** to stop recruitment, cut financial sources, and debunk their propaganda."

The NSP pays lip-service to any meaningful peace negotiations that address the root causes of the armed conflict. <Slide 16> So-called "localized peace talks" are used as political cover to force civilians to surrender and be presented to the public as "rebels". This phenomena of forced surrenders of unarmed civilians after being coerced and threatened by the military is well documented.

The terrorist-labeling of revolutionary groups as well as unarmed civilians has contributed to widespread violations of human rights and IHL. <Slide 17> The prevailing mindset within the armed forces is that the "terrorists" should not be accorded any rights, thus the brutal murders, massacres, forced displacement, abductions and public vilification of all those labeled as such. Many known revolutionaries have been executed after being served spurious arrest and search

⁸ <https://securityassistance.org/publications/arms-sales-and-security-aid-in-the-time-of-duterte/>

⁹ Ibid.

¹⁰ <https://www.philstar.com/headlines/2024/02/02/2330414/un-rapporteur-calls-abolition-ntf-elcac>

¹¹ <https://www.philstar.com/headlines/2023/11/16/2311811/un-special-rapporteur-proposes-abolition-ntf-elcac>

¹² <https://officialgazette.gov.ph/downloads/2023/08aug/20230810-EO-37-FRM.pdf>

warrants. Often the executions are presented as "armed encounters" even if the targets were sick or unable to fight back and no encounter ever took place.

<Slide 18> Worse, entire communities suspected of harboring "terrorists" are also subjected to gross violations of IHL. There are numerous reports of indiscriminate shelling and bombing of farmers villages in the Cordillera and Cagayan Valley regions, Samar and Negros islands, and various parts of Mindanao.

The testimonies to be presented in the course of this hearing will bear this all out.

<Slide 19> There appears to be a prevailing thinking within the AFP and the Philippine government, in the aftermath of the US war on terror and the US concept of "unlawful enemy combatants," that revolutionaries designated as "terrorists" are not entitled to any rights and protection under the Geneva convention. This thinking has been hinted at by the Philippine government in no less than its report to the UN Human Rights Council during the Universal Period Review in 2022 where it cited an alleged debate among civil society groups, on whether human rights protection can only be accorded to "those who do not advocate or resort to violent extremism to reform society."¹³

The implication of this line of thinking is that those who have been designated by the Philippine government as "terrorists" and branded as "violent extremists," in procedures that lack transparency and due process, are no longer entitled to protection under IHL.

<Slide 20> What distinguishes Marcos from Duterte is his unabashed allegiance to the US. He has abandoned his predecessor's dalliance with China and has pivoted back to the country's former colonizer. **<Slide 21>** In February 2023, after less than a year in office, Marcos granted the US four additional sites for its military facilities under the EDCA, bringing the total to nine. Three of the additional sites are in the northern Luzon, close to the Taiwan Strait, a known flashpoint for the China-US conflict in the region. This was followed in April 11-28, 2023, by the largest Balikatan joint military exercises in history between the two countries, with 17,600 members of the US and Philippine armed forces participating.¹⁴

<Slide 22> A month later, on May 2, 2023, the Philippines and US defense secretaries signed a new Bilateral Defense Guidelines (BDG)¹⁵ to "modernize" the alliance under

¹³ <https://documents.un.org/doc/undoc/gen/g22/577/37/pdf/g2257737.pdf?token=AcX0rfVg3vH8Mt4qT3&fe=true>

¹⁴ <https://ph.usembassy.gov/philippine-u-s-troops-to-hold-largest-ever-balikatan-exercise-from-april-11-to-28/>

¹⁵ <https://media.defense.gov/2023/May/03/2003214357/-1/-1/0/THE-UNITED-STATES-AND-THE-REPUBLIC-OF-THE-PHILIPPINES-BILATERAL-DEFENSE-GUIDELINES.PDF>

the Biden administration's Indo Pacific strategy.¹⁶ The BDG redefined the scope of the 1951 MDT to include armed attacks in the South China Sea, in preparation for the escalating conflict with China. The guidelines also covered security threats from space and cyberspace as well as any form of asymmetric, hybrid, and irregular warfare and gray-zone tactics.

<Slide 23> Aside from pushing the Philippines closer to a shooting war with China, these developments also ensure even more funding and support for the Marcos government's counter-insurgency operations. In April 2024, the US Congress passed a bill providing additional USD500 million in foreign military financing to the Philippines.¹⁷

In furtherance of the status quo

<Slide 24> The end goal of the counter-insurgency operations is to pacify and suppress all forms of resistance - from the armed national liberation struggle to the legal democratic mass movement - so that the reactionary government can impose a whole array of anti-people policies and programs - from foreign mining operations, land-grabbing for agribusiness operations, infrastructure such as dams, depressed wages and oppressive working conditions.

Many of the massacres, extrajudicial killings and forced displacements and forced surrenders have targeted communities and individuals at the forefront of people's resistance to feudal and semi-feudal exploitation in the countryside. Any form of organizing on issues is linked by the State to the armed struggle, and thus becomes a military target.

The issue of human rights and IHL violations cannot be divorced from the overall socio-economic and political situation in the Philippines. The counter-insurgency and "counter-terror" drive serve to preserve an oppressive status quo that the Filipino people have every right to oppose and dismantle.

I should emphasize that the Philippines is a state party to the Geneva conventions and various conventions and protocols involving International Humanitarian Law. The Executive Department has even declared August 12 of every year as International Humanitarian Law Day.¹⁸ Likewise, the NDFP has, on its own accord as a party to the Philippine armed conflict, has declared its adherence to the Geneva Conventions of 1949 and Protocol I of 1977.¹⁹ Both parties are signatory to the Joint Agreement on

¹⁶ <https://www.whitehouse.gov/wp-content/uploads/2022/02/U.S.-Indo-Pacific-Strategy.pdf>

¹⁷ <https://www.pna.gov.ph/articles/1223266>

¹⁸ <https://www.officialgazette.gov.ph/1999/07/31/executive-order-no-134-s-1999/>

¹⁹ http://theirwords.org/media/transfer/doc/1_ph_ndfp_2005_20-11d48a9675a2eaeaba19db0162c8ab09.pdf

Human Rights and International Humanitarian Law (CARHIHL)²⁰ that affirms their commitment to jointly and separately uphold HR and IHL in the course of the armed conflict.

We urge the tribunal to carefully examine the cases that will be presented which highlight the gravity of the IHL violations in the Philippines and relate these to the prevailing social conditions and why resistance exists in the first place.

Thank you.#

²⁰ [https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_980316_Comprehensive Agreement on Respect for Human Rights.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/PH_980316_Comprehensive_Agreement_on_Respect_for_Human_Rights.pdf)