

## Submission to the Committee on Economic, Social and Cultural Rights

### THE REPUBLIC OF THE PHILIPPINES

The Asian Network of People who Use Drugs (ANPUD)<sup>1</sup>, The International Network of People who Use Drugs (INPUD)<sup>2</sup>,

The International Centre on Human Rights and Drug Policy (HRDP)<sup>3</sup>

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#### I. General information: Economic, social, and cultural rights and drug policy

The Philippines is a party to the three main UN drug control conventions, which aim to control certain psychoactive substances by restricting their supply and demand to medical or scientific purposes. While there arguably exists a certain degree of flexibility in a State party's approach to implementing these obligations, the treaties require the adoption of restrictive measures towards controlled substances.<sup>4</sup> However, the Philippines must also fulfil its domestic constitutional obligations under the Constitution of the Republic of the Philippines<sup>5</sup>, as well as those under international human rights law, including the *International Covenant on Economic, Social and Cultural Rights*, which the Philippines has ratified. These human rights obligations bind the state in its response to drugs.

When poorly developed, drug policies can contribute to an environment where individuals are at increased risk of experiencing violations of their economic, social and cultural rights. The Comprehensive Dangerous Drugs Act of 2002 aims to prevent and suppress the misuse of narcotic drugs and psychotropic substances, including the penalisation of both personal possession and use of such substances.<sup>6</sup> The requirement to penalise the misuse of drugs has translated into a highly punitive policy approach in the country that includes compulsory drug treatment, heavy policing and mass-incarceration.<sup>7</sup> The punitive focus has displaced the needed investment in public health measures, with inadequate and, in many cases, unscientific treatment options and an entirely absent national harm reduction strategy and programme. The populist political environment that supports this ineffective and disproven means to address drugs in the country has exacerbated human rights abuses, including violations of economic, social and cultural rights on a scale that is both widespread and systemic.

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<sup>1</sup> <http://anpud.org/>

<sup>2</sup> <http://www.inpud.net/>

<sup>3</sup> <http://www.hr-dp.org/>

<sup>4</sup> United Nations, Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs; United Nations, Convention on Psychotropic Substances (1971); United Nations, Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

<sup>5</sup> The Constitution of the Republic of the Philippines, ratified 2 February 1987

<sup>6</sup> Official Gazette, Republic Act No 10640, The Comprehensive Dangerous Drugs Act of 2002

<http://www.gov.ph/2014/07/15/republic-act-no-10640/>

<sup>7</sup> Dolan, K. et al. 2014. *HIV, hepatitis B, hepatitis C and syphilis among inmates in Cebu City jails, Philippines: seroprevalence and risk behaviors.*

In 2016, the newly elected President, Rodrigo Duterte, vowed to crack down on people who use and sell drugs to address the country's 'drug problem'. The highly punitive rhetoric, which has included calls to 'shoot on sight' people who use and sell drugs, has been proceeded by prodigious levels of extrajudicial killings and violence towards those suspected of drug-related activity, by both armed vigilantes and police forces. As of the date of this submission, almost 1,900 people have been murdered as a result of this campaign<sup>8</sup>. The severity of this violent campaign uncomfortably parallels the 2003-2004 state-sanctioned war on drugs in Thailand where more than 2,000 individuals were murdered.<sup>9</sup> As in Thailand, those targeted in the Philippines are mainly poor individuals suspected of drug dealing or drug use, and to date, the killings are carried out with absolute impunity.<sup>10</sup>

The extrajudicial killing of people suspected of drug use has also led to thousands of individuals turning themselves in for drug "treatment" in fear for their lives.<sup>11</sup> This punitive tactic uses coercion and violence to compel people to seek health treatment. The increase numbers of people surrendering to "treatment" also places a strain on the existing, weak treatment infrastructure across the country. In the wake of this violent turn in the government's crusade against drugs, several bills have been hastily drafted and proposed by the Senate to increase Presidential authority in handling the country's drug issue and to ramp up enforcement and compulsory drug rehabilitation centres. These proposals, if passed, will further fuel the existing punitive policy environment and give legislative support to the President's violent, highly condemned, anti-drugs campaign.<sup>12</sup> However, there are early signs that an alternative bill—which would introduce harm reduction and human rights into a public health based approach to drug policy—could be introduced to counter these punitive proposals and redress the systemic abuses currently taking place. The political weight such a progressive proposal might carry remains to be seen.

In addition to the above and in light of the Committee's current review of the Philippine's implementation of the International Covenant on Economic, Social, and Cultural Rights, please find below a brief overview of our main concerns related to Filipino drug law and policy.

## II. Issues related to the general provisions of the Covenant (art. 1 – 5)

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<sup>8</sup> BBC News <http://www.bbc.com/news/world-asia-37162323>

<sup>9</sup> Report of the Special Rapporteur on Executions, Summary of cases transmitted to governments and replies received (24 march 2004) E/CN.4/2004/7/Add.1, paras 557-558

<sup>10</sup> Press Release by UN Special Rapporteurs on the right to health and summary, arbitrary or extra-judicial executions "UN Experts urge the Philippines to stop unlawful killings of people suspected of drug-related offenses" (August 2016)

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20388&LangID=E>

<sup>11</sup> CNN "Dead of Alive: Is the Philippines War on Drugs Out of Control", 4 August 2016, <http://edition.cnn.com/2016/08/03/asia/philippines-war-on-drugs/> (last accessed: Aug. 26, 2016)

<sup>12</sup> Press Release by UN Special Rapporteurs on the right to health and summary, arbitrary or extra-judicial executions "UN Experts urge the Philippines to stop unlawful killings of people suspected of drug-related offenses" (August 2016)

## **Equality & Non-discrimination**

In the Philippines, there is no national comprehensive anti-discrimination legislation to protect vulnerable groups (including people who use drugs) from any type of discrimination. This includes discrimination on the basis of health condition, understood by the Committee to include drug dependence.<sup>13</sup> The practice of discrimination against people who use drugs remains a significant and under-reported concern in the country. The recent spate of murders of people suspected of using drugs by police forces and armed vigilante groups chillingly brings this issue out of the shadows. The widespread murder of drug suspects arises from an uneasy history of extrajudicial killings in the Philippines, a tactic used to cleanse communities of 'undesirables', the majority of whom are poor, young adults without access to social protection or socio-economic opportunities, including drug suspects.<sup>14</sup> This history, in combination with the existing legal framework to address drug possession, trafficking, and consumption has served as a fertile breeding ground for the relentless killings across the country since June. Filipino drug laws and policies have been entirely law enforcement focused, entrenching punishment, intolerance, and violence towards drug suspects, including people who use drugs. Despite constitutional protection of the right to health, people seeking drug treatment in the country are not provided with affordable access to treatment as their condition is viewed as "voluntary" under the National Health Insurance Act of 1995.<sup>15</sup> In light of the above and considering the absence of comprehensive anti-discrimination laws, the government of the Philippines has failed to uphold their article 2 obligations under the Covenant. Importantly, the government of the Philippines has failed to ensure these vulnerable individuals have access to health and social services, and as we are witnessing today, failed to secure justice and their personal safety.

### **III. Issues related to specific provisions of the Covenant (art. 6 – 15)**

#### **The right to health (Article 12)**

According to the Dangerous Drugs Board, there are approximately 1.3 million people who use drugs in the Philippines, with methamphetamine, cannabis and inhalants being the top illicit drugs of concern.<sup>16</sup> As of the date of this submission, thousands of people have surrendered to "treatment" and are likely to increase in light of recent events. However, as of 2014, only around 4,392 or 0.004% of people who use drugs are documented as receiving treatment.<sup>17</sup>

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<sup>13</sup> General Comment 14, para. 36

<sup>14</sup> *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston : addendum : mission to Philippines*, 16 April 2008, A/HRC/8/3/Add.2

<sup>15</sup> National Health Insurance Act of 1995, section 11 <http://www.gov.ph/2013/06/19/republic-act-no-10606/>

<sup>16</sup> <http://www.ddb.gov.ph/newsroom/46-sidebar/58-facts-on-drugs>

<sup>17</sup> Dangerous Drug Board, Office of the President, 2014 statistics, <http://www.ddb.gov.ph/research-statistics/statistics/45-research-and-statistics/246-2014-statistics>

While the Dangerous Drugs Act includes provision for a minimum of one treatment facility in each of the country's 81 provinces, there are currently only 45 inpatient drug treatment centres across the country, including 19 that are run by the government. There are extremely limited outpatient and community-based drug dependence treatment services available or accessible, which further reflects the significant gap in the country's approach to evidence informed treatment. Harm reduction services are not available anywhere in the country. Nationwide, fewer than 300 medical professionals are currently certified to clinically assess people who surrender to authorities.

The Department of Health has set up a national task force to develop a comprehensive algorithm to assess and meet the needs of those who surrender, with significant budget allocations to support the expansion of drug dependence treatment nationwide. However, without stronger commitment to ensure progress away from the out-dated, substandard quality in-patient treatment centres, in favour of community based models, any such expansion could further come into conflict with the right to health. In parallel, proposals from the office of the President have been advanced to set up new drug treatment centres within military camps and jails.<sup>18</sup> Coercion and compulsory drug treatment have been widely condemned by the international community and are routinely highlighted as a violation of the right to health by the Committee.

More than 40% of people who are reported to be opioid dependent in the Philippines are also HIV positive, one of the highest rates in the region.<sup>19</sup> HCV rates among people who inject drugs in the Philippines have been estimated at 70%.<sup>20</sup> The Philippines has the fastest growing HIV infection rate amongst people who inject drugs in the region.<sup>21</sup> Yet, the Dangerous Drugs Act criminalises possession and distribution of safe injecting equipment. In 2010, the Global Fund recommended that the Philippines revise its criminal laws to enable a comprehensive HIV response for people who inject drugs, which includes decriminalising safe injecting equipment.<sup>22</sup> A small pilot programme was launched from 2013-2015, which, with a legal exemption from Section 12 of the Dangerous Drugs Act, enabled a needle and syringe exchange programme in Cebu City. The exchange programme was closed after only five months time, despite early indications of successful health outcomes.<sup>23</sup>

As made reference to earlier, in the Philippines, individuals have two options for treatment: unaffordable and poor quality voluntary treatment or compulsory drug detention. Access to the limited and poor quality treatment services for drug dependency is explicitly excluded

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<sup>18</sup> see DDB statements for August here: <http://www.ddb.gov.ph/>

<sup>19</sup> Global State of Harm Reduction 2015, p 33 <https://www.hri.global/files/2015/02/16/GSHR2014.pdf>

<sup>20</sup> Harm Reduction International. 2014. *Global State of Harm Reduction*.

<sup>21</sup> Stone K. The Global State of Harm Reduction 2014. London: Harm Reduction International; 2014

<sup>22</sup> Office of the Inspector General. 2010. Audit Report on Global Fund Grants to the Philippines. (see Recommendation #25, paragraph 267)

<sup>23</sup> Pascal Tanguay, Evaluation of Harm Reduction Service Delivery in Cebu City, Philippines (2013 –2015)

World Bank, 2016 <http://documents.worldbank.org/curated/en/413401468197106125/pdf/106126-WP-P132149-PUBLIC-ACS.pdf>

under the National Health Insurance Act of 1995, making services unaffordable to low income communities.<sup>24</sup> Separately, under the Dangerous Drugs Act, compulsory drug treatment is proscribed for certain offenses, including for minors. In the wake of the current state-sanctioned violence towards drug suspects, those surrendering for “treatment” are being channelled through the criminal justice system with the only treatment options available being compulsory, within closed settings (jails and potentially military camps), with no scientific evidence-base to support its effectiveness.

The right to health under the Covenant obligates State parties to ensure health services, goods, and facilities be made available in adequate numbers and provided without discrimination. The Committee has articulated health services to include community-based drug dependence treatment and harm reduction interventions such as opioid substitution therapy, needle and syringe programmes, and access to naloxone for the prevention of opiate overdose.<sup>25</sup> The right to health also requires these health services to be accessible geographically for all populations, particularly for vulnerable and marginalised groups.<sup>26</sup> Accessibility also means health services to address drug use must be affordable for the population, with particular attention to the most vulnerable groups. Importantly, these services must be delivered in a manner that is acceptable within the framework of medical ethics and designed to address the unique needs of each individual who uses drugs. This includes providing drug related health interventions in a voluntary manner, with the informed consent of the individual. The right to health also requires that health services to address drug use be of sufficient quality, based on *scientific evidence*, and delivered by community experts and health professionals with adequate training and skills to provide care to this vulnerable population compassionately, ethically, without judgement.

While the fulfilment of the right to health is subject to progressive realisation and resource constraints, some obligations must be implemented immediately including non-discrimination and other core obligations. The Philippines has a core obligation to adopt a national public health strategy, which addresses the health of the entire population, with particular attention to marginalised groups, including people who use drugs.<sup>27</sup>

The absence of harm reduction and community-based, voluntary drug treatment services indicates the Philippines is currently not in compliance with their obligations under the Covenant. The highly punitive means to address drug use, including through compulsory treatment or the current climate of violence and coercion indicates an urgent need to reform

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<sup>24</sup> National Health Insurance Act of 1995, section 11

<sup>25</sup> UN Committee on Economic, Social and Cultural Rights. 'Concluding Observations on Ukraine' (E/C.12/UKR/CO/6) 2014; UN Committee on Economic, Social and Cultural Rights, 'Concluding Observations on Uzbekistan' (E/C.12/UZB/CO/2) 2014; UN Committee on Economic, Social and Cultural Rights. 'Concluding Observations on Belarus' (E/C.12/BLR/CO/4-6) 2013; UN Committee on Economic, Social and Cultural Rights. 'Concluding Observations on Mauritius' (2010) E/C.12/MUS/CO/4; UN Committee on Economic, Social and Cultural Rights. 'Concluding Observations on the Russian Federation' (2011) E/C.12/RUS/CO/5

<sup>26</sup> CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant), 11 August 2000, UN Doc. E/C.12/2000/4, para. 12.

<sup>27</sup> CESCR, General Comment 14, para. 43(f).

and revise existing drug policy. Many of these measures are retrogressive and reform must ensure compliance with obligations under the Covenant.

***In light of the issues presented above, we wish to make the following recommendations:***

- Call for an immediate end to the extrajudicial killings of drug suspects and investigate violations effectively, promptly thoroughly and impartially and where appropriate, take action against those allegedly responsible in accordance with international law, empowering the national human rights commission to lead on local proceedings.
- Undertake a comprehensive review and reform of drug policy that is human rights based, informed by scientific evidence and explicitly incorporates a harm reduction approach with a view to harmonising efforts across the law enforcement and health ministries and an objective to strengthen the capacity of the national health care infrastructure
- Comprehensive drug law reform must include the decriminalisation of drug use and drug possession for personal use, as well as the decriminalisation for possession of safe injecting equipment
- Close all compulsory drug detention facilities and remove compulsory drug treatment from the criminal code
- Adopt comprehensive anti-discrimination legislation that firmly protects individuals vulnerable to discrimination based on health status, including people who use drugs
- Re-launch and scale up harm reduction pilot programmes including needle and syringe programmes
- Rapidly develop and expand community based drug dependence treatment options