

ASIA PACIFIC CENTRE - RESPONSIBILITY TO PROTECT

# ATROCITY CRIMES RISK ASSESSMENT SERIES

## THE PHILIPPINES

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# INTRODUCTION

The Philippines faces a number of risk factors for atrocities that stem primarily from the country's unresolved armed conflicts and the inability of the state to promote good governance, ensure the rule of law, and hold civilian and security officials accountable for violations of international norms on human rights and humanitarian protection. Non-state actors such as combatants from communist and Moro rebel groups, ISIS-affiliated militants, and political clans who rule with impunity and use political violence in Mindanao have also committed atrocities against civilians. More than three decades since the restoration of the democratic order in the Philippines, oversight bodies have been ineffective in ensuring that security forces and law enforcement personnel comply with rule law in the performance of their duties.

In order to mitigate the continuing risks for atrocities from armed conflicts, the Philippine government should give priority to addressing the root causes of armed rebellion and political violence in poor areas of the country, most especially in Mindanao. Specifically, it should seriously commit to providing better access to basic services and justice, as well as in improving the capability of local government units to effectively implement poverty alleviation programs. As well, the government should strictly enforce existing laws against proliferation of small arms and illicit gun trade, drug trafficking, and other forms of shadow economies that contribute to the perpetuation of warlord politics and political violence.

Using the UN Framework of Analysis for Atrocity Crimes: A Tool for Prevention, this report identifies the common risk factors that are relevant to the Philippines, as well as some triggering factors that increase the risks for atrocities. After discussing the common risk factors, a set of recommendations are presented focusing on what policies and actions may be taken by stakeholders in the Philippines and the international community to mitigate these risks.

## Map of The Philippines



Map acknowledgement OCHA Regional Office for Asia Pacific 2007 V2-070620



## List of Abbreviations

ASEAN	Association of Southeast Asian Nations
ARMM	Muslim Mindanao
ADB	Asian Development Bank
BIFF	Bangsamoro Islamic Freedom Fighters
BBL	Bangsamoro Basic Law
BOL	Bangsamoro Organic Law
BARMM	Bangsamoro Autonomous Region of Muslim Mindanao
BMR	Bangsa Moro Republik
CAB	Comprehensive Agreement on the Bangsamoro
CCP	Communist Party of the Philippines
CHR	Commission on Human Rights
COMELEC	Commission on Elections
CA	Congressional Commission of Appointments
EJK	Extrajudicial Killings
ICC	International Criminal Court
ICC	International Criminal Court
IEDs	Improvised Explosive Device
KFR	Kidnap for ransom
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
MOA-AD	Memorandum of Agreement-Ancestral Domain
NPA	New People's Army
NGO	Non-Governmental Organisation
PAO	Public Attorney's Office
NBI	National Bureau of Investigation
NGO	Non-Governmental Organisation
OIC	Organisation of Islamic Cooperation
PDEA	Philippine Drug Enforcement Agency
PNP	Philippine National Police
HDI	Philippines' Human Development Index
SAF	Special Action Forces
UN	United Nations

# FRAMEWORK OF ANALYSIS

The Framework of Analysis is comprised of 14 Risk Factors of atrocity crimes<sup>1</sup>. Each Risk Factor has an accompanying set of more specific Indicators. The Framework is intended to be used "to guide the collection and assessment of information" regarding the potential for atrocity crimes.

The Risk Factors are delineated into two different groups: **Common Risk Factors**, which are the conditions that increase the probability of atrocity crimes occurring; and, **Specific Risk Factors**, which are divided into the risks associated with genocide, crimes against humanity, and war crimes (ethnic cleansing is incorporated into the other atrocity crimes). The more Risk Factors and Indicators that are present, the greater the risk that atrocity crimes may be committed. However, not all Risk Factors must be present to represent a significant risk. The Risk Factors and Indicators are not ranked by importance and should be considered in a broader context, taking account for a society's politics, history, and culture.

COMMON RISK FACTORS		
Risk Factor	1	Situations of armed conflict or other forms of instability
Risk Factor	2	Record of serious violations of international human rights and humanitarian
Risk Factor	3	Weakness of State structures
Risk Factor	4	Motives or incentives
Risk Factor	5	Capacity to commit atrocity crimes
Risk Factor	6	Absence of mitigating factors
Risk Factor	7	Enabling circumstances or preparatory action
Risk Factor	8	Triggering factors
SPECIFIC RISK FACTORS		
<b>Genocide</b>		
Risk Factor	9	Inter group tensions or patterns of discrimination against protected groups
Risk Factor	10	Signs of an intent to destroy in whole or in part a protected group
<b>Crimes Against Humanity</b>		
Risk Factor	11	Signs of a widespread or systematic attack against any civilian population
Risk Factor	12	Signs of a plan or policy to attack any civilian population
<b>War Crimes</b>		
Risk Factor	13	Serious threats to those protected under international humanitarian law
Risk Factor	14	Serious threats to humanitarian or peacekeeping operations

Each of these Risk Factors are accompanied by 6-18 more specific Indicators, which can be used to more precisely identify and analyse the risks of atrocity crimes. These Indicators and further information on the full UN Framework of Analysis for Atrocity Crimes can be found by clicking here or by visiting the UN website at [www.un.org](http://www.un.org).

# COMMON RISK FACTORS

## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

**The first risk factor identifies “situations that place a State under stress and generate an environment conducive to atrocity crimes”, such as armed conflict, humanitarian crisis, economic and/or social instabilities. Despite the national ceasefire agreement and current peace process there are contained clashes between government forces and various armed groups in several parts of the country. In addition to this, there is further evidence of social and economic instabilities, a humanitarian crisis and a volatile political situation.**

Since its independence in 1946, political stability in the Philippines has been threatened by internal armed conflicts. Specifically, the communist insurgency and Muslim separatist rebellion continue to engender violence resulting in serious violations of human rights, humanitarian crises, as well as deaths and destruction of livelihood and properties. Armed conflicts in the Philippines thrive especially in the poorest provinces of the Philippines (many of which are in Mindanao) where there is almost negligible government presence and access to basic services like education, health, and justice are severely lacking. Civilians, in particular indigenous peoples in resource-rich conflict areas in Mindanao, are often caught in the crossfire between communist rebels and government military forces.

### **Communist Insurgency**

The communist insurgency in the country is the longest in the region, with several attempts by all government administrations to end it through political negotiations with the Communist Party of the Philippines (CPP) failing so far. The CPP-led communist rebellion in the Philippines grew significantly during the martial law administration of President Ferdinand Marcos (1972-1986), as the government pursued a military approach in ending the insurgency. Systematic and widespread human rights violations were committed by security forces even as the administration curtailed press freedom and judicial independence were simply lacking. Marcos ruled by executive decree and even though he restored an interim unitary parliament in 1978, the latter acted more as a rubber stamp legislative body as an overwhelming majority of its members were from his political party.

Following the civilian-backed military revolt (led by then Armed Forces of the Philippines (AFP) Deputy Chief of Staff Fidel Ramos and Defense Minister Juan Ponce Enrile) that ousted President Marcos in 1986, the threat posed by armed communist rebellion decreased significantly as the number of combatants from the New People's Army (NPA) dwindled (from about 15,000 guerrillas in the 1980s to less than 5,000 as of 2017).<sup>2</sup> Under the democratic order of President Corazon Aquino (1986-1992), a new constitution was adopted in 1987, which guaranteed fundamental human rights. Political prisoners, including leaders of the CPP, were released even as press freedom and judicial independence were restored. It was, however, an unstable democratic order as Aquino faced a total of eight failed coup attempts from the restive elements of the Reform AFP Movement (RAM) that ousted Marcos. Specifically, the group resented the release of top CPP leaders, including its head, Jose Maria Sison (who is still currently in exile in The Netherlands), as well as Aquino's soft policy towards the communist rebels.

Succeeding administrations of Fidel V. Ramos (1992-1998), Joseph Estrada (1998-2001), Gloria Macapagal-Arroyo (2001-2010), Benigno S. Aquino III (2010-2016), and currently under President Duterte attempted to revive peace talks with the CPP-NPA in an effort to end the communist insurgency. Thus far, however, these have all failed to resolve the armed conflict with the communist movement as its leaders insisted on certain terms and conditions such as general amnesty for all

## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

combatants, supporters, and sympathisers, which were unacceptable to the government. As well, it was apparent that the Utrecht-based leaders negotiating with the government have been out of touch with its forces on the ground who--while peace talks were ongoing--continued to stage attacks against AFP troops and bases, harass business establishments like telecommunications and mining companies, as well as engage in extortion activities in areas they control like imposing revolutionary taxes on local businesses and candidates during elections. President Duterte, for example, cancelled peace talks with the communist party in the first quarter of 2017 following several attacks against military forces by NPA rebels, which included the brutal killing of three off-duty soldiers whose bodies were riddled with 76 bullets apparently shot in close range.<sup>3</sup> In June 2018, Duterte also called off backchannel talks with Utrecht-based leaders of the CPP and instead pushed for local peace talks with the rebels.<sup>4</sup>

### **Muslim Rebellion**

The Muslim separatist rebellion in Mindanao has persisted since the 1970s despite the peace agreements signed between the government and the Moro National Liberation Front (MNLF) in 1996 and more recently with the Moro Islamic Liberation Front (MILF) in 2014. It is estimated that some 120,000 people have been killed in the Muslim armed conflict in the Philippines. While President Duterte already signed the Bangsamoro Organic Law (BOL) in July 2018, the transition process in implementing the provisions of the law that expands the coverage of the current Autonomous Region of Muslim Mindanao (ARMM) remains precarious. While there is wide support for the BOL among the larger Muslim community in Mindanao, some factions within the MILF could distance themselves from the peace agreement later on if the national government fails to fully implement the law and meet their expectations. No less than MILF peace negotiator and implementing panel head Mohagher Iqbal said that the BOL is only 85 percent compliant with the comprehensive peace agreement signed in 2014 between the government and the MILF as it did not include provisions on exclusive and concurrent powers that the transition commission submitted to the executive branch<sup>5</sup>. Another leader of the MILF asserted that what was enacted by the Philippine Congress was not what the group wanted but it was “forced to accept it as a ‘win-win’ solution.”<sup>6</sup>

While the BOL still needs to be ratified by residents of areas covered by the law in early 2019 to come into effect, its constitutionality may still be questioned by some local government leaders and stakeholders in Mindanao who will be affected by the new law. If the Supreme Court of the Philippines declares it unconstitutional, just like what happened with the Memorandum of Agreement-Ancestral Domain (MOA-AD) signed by the government and the MILF in 2008, it is likely that MILF rebel forces will resort again to violence to denounce such ruling. Thus, the potential for the resumption of hostilities by disaffected factions of the MILF still remains a distinct possibility, which could then increase the risk of violence and atrocities against civilians. It may be recalled that in 2008, after the Supreme Court declared the MOA-AD unconstitutional, some factions of the MILF attacked civilians by burning houses, occupying farmlands, bombings, and resorting to kidnapping. Some 150,000 civilians were displaced in affected provinces particularly in Lanao del Sur and North Cotabato.<sup>7</sup> In response to the MILF’s threats then, some local government officials led civilians in arming themselves and formed their own militias.<sup>8</sup>

It is significant to note as well that the MNLF and the MILF still have to work out their differences with regard to the BOL’s implementation as the former strongly opposed the passage of a separate Bangsamoro autonomous law. Specifically, MNLF founder Nur Misuari did not want areas covered by ARMM to be under the expanded Bangsamoro Autonomous Region of Muslim Mindanao (BARMM) that will be run by the MILF during the transition period. In fact, in 2013, Misuari petitioned the United Nations to recognise his declaration of a Bangsa Moro Republik (BMR) under the



## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

UN General Assembly's resolution 1514 of 1960. Misuari expressed strong opposition to peace talks between the government and the MILF at the time that would sideline the MNLF's 1996 peace agreement with the Ramos administration and undermine its position as the sole representative of the Bangsamoro in the Organisation of Islamic Cooperation (OIC).<sup>9</sup> The declaration of secession by Misuari was followed by a month-long siege of Zamboanga City in September 2013 after some rogue elements of the MNLF held hostage civilians as they attempted to hoist a flag of the BMR in the city hall. The crisis in Zamboanga resulted in over 100,000 displaced civilians apart from a total of 200 casualties involving MNLF rebels, government forces, and civilians. Indeed, the rift between the MNLF and the MILF was one of the contentious issues that made the drafting of the Bangsamoro Basic Law (BBL) since 2014 quite difficult. However, following the passage of the bicameral version of the BBL in Congress that ultimately resulted in the enactment of the BOL, Misuari announced that he is "freezing" the MNLF's bid in the UN to secede from the Philippines.<sup>10</sup> President Duterte himself pleaded to Misuari to give peace a chance following the signing of the BOL.<sup>11</sup>

On top of this, the issue of protecting the rights and interests of Christians and the lumads (indigenous non-Muslim and non-Christian communities) within the territories covered by the BOL need to be addressed as well. Demobilisation, disarmament, and integration of MILF forces into the AFP and/or PNP, as well as transitional justice, are delicate issues that could complicate the process of implementing the BOL. Specifically, the disarmament of MILF guerrillas could pose a big challenge to realising the purposes of the new Bangsamoro law as the government has to provide economic opportunities for the rebel forces. After the signing of the BOL, six of the largest MILF military camps are being converted to productive civilian communities even as the group will immediately decommission 30 percent of its estimated 30,000 armed fighters.<sup>12</sup>

Under the new Bangsamoro law, the expanded BARMM will have: 1) its own parliament, 2) 5 per cent grant of national internal revenue, 3) will be able to keep 75 per cent of its revenue collection in the area, and 4) the right to impose sharia law on Muslim residents. The central government will keep its powers in maintaining security and policing in the BARMM. It is estimated that an additional P160 billion (or over US\$300 million) in the national budget would have to be allocated in the 2019 fiscal year as part of implementing the BOL.<sup>13</sup>

### **Terrorist Extremism**

The rise of extremism in Mindanao is partly a consequence of the long-drawn process of peace negotiations between the government and the MILF, which for many young rebels indicated the former's lack of sincerity in implementing various peace agreements, including the Comprehensive Agreement on the Bangsamoro (CAB) signed in 2014. Public anger towards the MILF following the gruesome murder of 44 Special Action Forces (SAF) who were conducting counter-terrorism operations in 2015 by some MILF rebels in Maguindanao not only undermined the passage of the BBL before the end of Aquino's term in 2016 but also increased further the frustration and alienation of young Muslim rebels. This led to some of them joining ISIS-affiliated groups like the Maute group and Bangsamoro Islamic Freedom Fighters (BIFF), which altogether have abandoned peace negotiations with the government and are now fighting for separation from the Philippines. Following the signing of the BOL in July and the upcoming ratification of the law in early 2019 by residents in the BARMM, extremists could also undermine the implementation of the organic law by intimidating or threatening civilians to force them not to participate in the ratification and local elections in 2022.

The five-month siege of Marawi in May to October 2017 by the Maute group, with the support of other local ISIS-affiliated groups and foreign fighters, demonstrated the formidable power of extremist terrorists in Mindanao to wreck havoc in urban centres, threaten the lives of civilians, and

## RISK FACTOR 1: SITUATIONS OF ARMED CONFLICT OR OTHER FORMS OF INSTABILITY

even undermine the ongoing peace process with the MILF. The Marawi crisis left more than 1,100 people dead that includes 919 militants and 165 soldiers and policemen. Security forces rescued some 1,780 civilians held hostage by the militants, including a Catholic priest.<sup>14</sup> Over 77,000 families or more than 350,000 individuals were internally displaced by the conflict, some of whom have started to go back to their villages following the end of military operations against the militants.<sup>15</sup> It is estimated that the damage from the urban warfare in Marawi is about USD 1-2 billion,<sup>16</sup> with the Philippine government allocating about PHP5 billion (USD 97 million) for reconstruction and P10 billion (USD 194 million) rehabilitation of the city.

The cost of rehabilitation of Marawi, which was earlier placed at over US\$1 billion, could probably increase further once a more comprehensive implementation plan is approved.<sup>18</sup> The urban rehabilitation of the city will be long and contentious even as displaced residents attempt to go back to rebuild their lives. Apart from clearing the area of unexploded ordnance and IEDs, properties destroyed and land claims complicate the rebuilding of Marawi. Most properties did not have formal titles even as a Marcos-era presidential decree declared a large part of Marawi as a military reservation.<sup>19</sup> A plan by the national government to construct a four-lane highway in the city and implement urban development projects could result in further displacement of former residents, thereby increasing discontent among the population and serve as fertile ground for recruitment by ISIS-affiliated local extremists.<sup>20</sup>

Thus far, the implementation of the government's comprehensive rehabilitation and recovery program of Marawi has been delayed following the disqualification of a Chinese-led development consortium in late June. However, the task force overseeing the program remained optimistic that the rehabilitation of Marawi is still on track to be completed in December 2021.<sup>21</sup> Even so, Maranao residents in Marawi continue to strongly oppose the government's China-funded commercial centres and military bases in the city. Some 140,000 Marawi residents continue to be displaced as the government has cordoned off the former war zone due to unexploded bombs and IEDs.<sup>22</sup> A recent survey of Marawi residents, including those living in IDP camps, showed that only 30 to 50 percent believe that President Duterte is concerned about Muslims, which is significantly lower than the 83 percent average in the provinces of predominantly Muslim provinces of Lanao del Sur and Maguindanao. Those living in camps feel neglected (30 percent), while overall Marawi residents feel that their present quality of life is worse now (56 to 80 percent).<sup>23</sup>

Meanwhile, the threat of another terrorist attack in Mindanao remains high. In the first quarter of 2018, the AFP conducted ground and air attacks against ISIS-affiliated BIFF in Mindanao, which resulted in more than 50 militants and 1 soldier killed, and some 2,500 civilians fleeing their villages.<sup>24</sup> Increased clashes between the military and militants indicate that local ISIS-affiliates in Mindanao have regrouped following the end of the siege of Marawi in October last year and are expected to recruit more followers especially amongst residents of Marawi and nearby provinces.<sup>25</sup> Civilians in Mindanao are also at risk in areas affected by ongoing counter-terrorist operations by the military against the BIFF, which in early July foiled an attempt by the latter to occupy a town hall in Maguindanao.<sup>26</sup> Earlier in June, some 20,000 civilians were forced to flee their villages in Maguindanao and North Cotabato as the AFP troops conducted air strikes and ground operations against the BIFF forces in effort to destroy the militants' explosives factory in southern Liguasan.<sup>27</sup>

## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

**The second risk factor concerns any “past or current serious violations of international human rights and humanitarian law, particularly if assuming an early pattern of conduct, and including those amounting to atrocity crimes, that have not been prevented, punished or adequately addressed and, as a result, create a risk of further violations.” Atrocity crimes are more likely to occur in an environment where severe violations of international human rights and humanitarian law take place and in societies where past atrocity crimes have not been adequately dealt with through accountability and comprehensive processes of reconciliation and reform.**

Despite its restored democratic order following the ouster of President Marcos in 1986, serious human rights violations continue in the Philippines, which are mainly committed by state forces and law enforcement agents. Whereas human rights violations under Marcos’ martial law regime resulted in over 3,000 people killed or disappeared, in addition to some 35,000 who were tortured and over 70,000 arrested by the military over a ten year period (1975-1985)<sup>28</sup>, arrests and extra-judicial killings also continued under President Corazon Aquino and succeeding administrations.<sup>29</sup> The Philippine government recently completed its compensation of human rights victims of abuses under Marcos’ martial rule, with only 31,000 recognised claims out of 75,000 filed claims. Although serious violations of human rights under President Benigno Aquino III (2010-2016) declined, his administration failed to deliver on its promise in improving human rights in the country.<sup>30</sup> Specifically, there had been “little accountability for the killings of indigenous leaders, activists, and journalists, and other serious abuses during his administration.”<sup>31</sup> Under Aquino’s watch, the PNP also continued to use torture even though the Philippines was a signatory to a number of international treaties against it.<sup>32</sup>

### **Anti-Drug War Under Duterte**

President Duterte’s bloody anti-drug war has been condemned by several human rights advocates at home and abroad for violating international human rights norms. Since his assumption into office on 1 July 2016 to the present, the number of people killed has increased significantly from over 2,000 to more than 4,000. While there are debates on the actual number of killings allegedly committed by police forces, the death rate has significantly decreased since the beginning of 2018 after the civilian-led Philippine Drug Enforcement Agency (PDEA) took over the anti-drug war operations from the Philippine National Police (PNP). Drug-related killings have remained significantly low since the first quarter of 2018 compared to the first 18 months of the Duterte administration following the takeover of the Philippine Drug Enforcement Agency (PDEA) of the anti-drug operations from the Philippine National Police (PNP) in October last year. This may be due to the adoption of new PNP rules of engagement in January this year, which saw the number of deaths (292 total) decrease thus far to 1 per 100 drug operations (or 1.66% out of 17,566 total operations from 19 January to 15 May) compared to 3,987 deaths or 5 per 100 operations (or 4.86% out of a total of 81,919 total operations from July 2016 to 18 January 2018).<sup>33</sup> With the new rules also came supplemental guidelines issued by the new PNP leadership that underscored the importance of adhering to the rule of law and respect for human rights, as well as ensuring that local anti-drug units involve only vetted cops who passed stringent screening and strict background check.<sup>34</sup>

Notwithstanding this positive developments, however, the PNP reported that the total number of deaths in Duterte’s anti-drug war from 1 July 2016 to 30 June 2018 has now reached 4,354.<sup>35</sup> This figure is of course disputed by human rights defenders and civil society groups who place the figure at close to 20,000. But an independent analysis of drug war-related killings as reported by media sources in the Philippines apparently confirms the significant abatement in deaths following the suspension of PNP-led operations in 2017 after the murder of a Korean businessman by some

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policemen and the transfer of the operations from the PNP to the PDEA in October 2017.<sup>36</sup> The discrepancies between the official figures provided by the PNP and other sources may be attributed to the number of deaths still under investigation, which as of April 2018 was at about 16,000. Of this figure, the PNP claimed that it has resolved 8,700 cases and asserted that not all of them were related to anti-drug operations.<sup>37</sup> As well, the PNP claimed that the crime rate in the Philippines went down over the last two years (1 July 2016 to 30 June 2018) under Duterte by 21.48 percent (or a total of 1,040,987 reported crimes) compared to the same period between 2014 and 2016 (with a total of 1,325,789 reported crimes). It attributed this decline to the government's "effective anti-drug war" policy. Although crimes against persons such as homicide, physical injuries, and rape also went down, the PNP acknowledged that the murder rate increased by 1.19 percent over the last two years (or 19,210 total), with Metro Manila registering an increase of 112 percent (or a total of 3,444 compared to 1,621 between 2014 and 2016).<sup>38</sup>

The change in the PNP's strategy may have been prompted by the announcement by the International Criminal Court (ICC) prosecutor's office in February 2018 that it has started preliminary examination of complaints filed against the Philippine government over alleged drug war-related EJKs. A month later, however, the Duterte administration announced that the Philippines is withdrawing as state party to the Rome Treaty due to what it considered as "outrageous attacks" by UN officials and violations of due process by the ICC.<sup>39</sup> Despite this decision and assertions by President Duterte that the ICC has no jurisdiction over him, the effectivity of the Philippines' withdrawal will not commence until a year later and the investigation over the alleged EJKs will continue. (Despite the government's decision to withdraw from the Rome Treaty, the Philippines has its own domestic law against genocide and crimes against humanity, which was enacted in 2009.) Even so, some human rights groups and legislators in the Philippines denounced Duterte's decision to withdraw from the ICC as an indication that his government was afraid to face criminal investigation by the international court and be held accountable for human rights abuses committed by police forces in connection with his anti-drug war. A minority group of senators have petitioned the Supreme Court to declare Duterte's decision to withdraw from the ICC as unconstitutional as they asserted that it needs the concurrence of the Senate under the 1987 Constitution. The Philippine Coalition for the ICC also questioned the government's decision to withdraw from the Rome Treaty without the concurrence of the Senate.

Meanwhile, human rights advocates continue to call on the Philippine government to address the big disparity in the number of drug-related deaths as reported by the PNP, on the one hand, and those reported by media, human rights groups, and church organisations in the country. They continue to denounce the alleged EJKs in the country in connection with the anti-drug war. Even some allies of President Duterte in the Senate expressed dismay over the downgrading of criminal charges from murder to homicide against police officers who killed a suspected drug lord who was already in jail. Impunity and corruption within the PNP have also undermined the integrity of anti-drug operations. For instance, an investigative report conducted by Reuters said that some policemen use hospitals to send corpses of drug suspects who were killed in order to destroy evidence in crime scenes.<sup>40</sup>

For its part, the Philippine Supreme Court in April 2018 unanimously passed a resolution against the Duterte administration's motion for reconsideration of the court's decision to take judicial notice of the alleged EJKs in connection with its anti-drug war. Specifically, the high court compelled the government to provide a full documentation of its drug-related police operations, which led to a high number of killings. The court's resolution noted that "[t]he government's inclusion of these deaths among its other accomplishments may lead to the inference that these are state-sponsored



## RISK FACTOR 2: RECORD OF SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

killings."<sup>41</sup> In February 2017, the Supreme Court also issued two separate writs of amparo or temporary protection orders against anti-narcotics police officials to protect surviving family members of suspected drug dealers or users who were killed in police operations. The protection orders bar policemen from entering the residence and work places of petitioners within a one-kilometre radius.<sup>42</sup> The second temporary protection order issued by the highest court included the secretary of local government, the chief of the PNP, as well as other police officials. Although President Duterte was included in the second petition, the Supreme Court excluded him in the order. The grant of temporary protection applies only to certain local communities where petitioners live or work and does not cover the entire national police anti-drug operations. It is likely that the Supreme Court will grant similar petitions for protection against policemen. This court's protection orders augurs well in mitigating the risk of atrocities related to the government's anti-drug war, especially in the context of protecting vulnerable populations in poor areas where most of the EJKs or vigilante killings have taken place. Human rights defenders, such as the Centre for International Law, provided legal assistance to petitioners from poor communities for protection.<sup>43</sup>

President Duterte, in his state of the nation address at the opening of Congress in July 2018, reiterated his government's resolve to continue with the campaign. In his speech, he stated that the illegal drugs war "will be as relentless and chilling," even as he criticised human rights advocates for failing to condemn "drug-lordism, drug dealing, and drug pushing." He also stated that while critics of his administration were concerned about human rights, he was concerned about human lives, particularly the lives of "the youth who are being wasted and families being destroyed" all because of illegal drugs.<sup>45</sup> Public opinion remains favourable towards President Duterte, with 69 percent of Filipinos saying that the drug war and fighting criminality (50 percent) are his top achievements.<sup>46</sup> His trust and approval ratings remain very high as well—at 88 percent and 87 percent, respectively—across geographic areas and income classes.<sup>47</sup> For his part, Foreign Affairs Secretary Cayetano during the universal periodic review of the Philippines in the UN Human Rights Council in May 2017 pointed out that the Philippine government will welcome any special rapporteur on EJKs to investigate the drug-related killings in the country provided that he or she is not biased or unfair as the current rapporteur Agnes Callamard.<sup>48</sup>

### **Killing of Environment Activists and Journalists**

Meanwhile, the number of environment protection activists killed in the Philippines in 2017 increased by 71 percent to 48 compared to 28 in 2016, according to a Global Witness annual report released recently. It was the highest recorded number of environment related killings in Asia in a single year and the Philippines ranked second after Mexico (which had a total of 57 killings).<sup>49</sup> The report said that 20 of the killings (or 41.6 percent) were linked to protests against agribusiness, with soldiers suspected of having been involved in 56 percent of the murders, and 67 percent of these happened in resource-rich conflict areas of Mindanao. Accordingly, indigenous peoples in these areas were the primary victims of attacks against environmental activists and human rights defenders, allegedly perpetrated by military forces who are also conducting counter-insurgency operations against communist rebels in Mindanao.<sup>50</sup>

Journalists in the Philippines continue to be targets of assassinations or EJKs. Four media practitioners were killed between 2 May and 23 July 2018, bringing the total of journalists murdered in the country since 1992 to 79.<sup>51</sup> In 2017, the Philippines ranked sixth among countries in Asia with four journalists who were killed out of a total of 26 in the region.<sup>52</sup> In 2009, 37 journalists were among 57 people killed after the Ampatuan clan staged an ambush against a rival clan in an election-related violence in Maguindanao.

## RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

**Risk Factor 3 involves circumstances that negatively affect the capacity of a State to prevent or halt atrocity crimes. The analysis of Risk Factor 3 demonstrates the presence of eight indicators, revealing that the government to a large extent lack the capacity necessary to stop and prevent human rights and humanitarian law violations, which, as a consequence, increase the probability of atrocity crimes. The risk of atrocities in the Philippines can be attributed to certain weaknesses in state structures. This includes high levels of corruption and poor governance (especially in remote and poor areas of the country); national institutions that lack sufficient resources and capability to perform their mandates; and insufficient resources to implement measures to protect populations.**

### **Corruption and poor governance**

The Philippines ranked 111 out of 180 countries in the 2017 Corruption Perception Index. It scored 34 out of 100 points, which is above its average of 29.22 points over the period 1995-2017.<sup>53</sup> It ranked 101st (out of 176 countries) and 95th (out of 168 countries) in 2016 and 2015, respectively.<sup>54</sup> The high level of corruption has negatively impacted the business environment in the Philippines. Specifically, extensive bribery practices in government institutions coupled with vague and complex laws have made many investors vulnerable to manipulation and extortion by public officials.<sup>55</sup>

The judiciary, customs, and police are among the major state institutions that are highly vulnerable to corruption and bribery due to low salaries, understaffing, and lack of resources to effectively carry out their mandates according to the rule of law and based on fairness and transparency.<sup>56</sup> Nepotism, favouritism, and impunity are said to be prevalent in the government bureaucracy, as well as in judiciary and law enforcement agencies.<sup>57</sup> In fact, President Duterte on many occasions have accused some magistrates, police and military personnel, and a number of local government officials of being involved in graft and corrupt practices, including smuggling and illegal drug trade. Indeed, because of the problem of extensive corruption in the country, its economic competitiveness has also suffered significantly, with its global ranking declining in recent years. Specifically, the country's competitiveness rank averaged 66.67 from 2007 to 2018, reaching an all time high of 87 in 2010 and an all time low of 46 in 2016.<sup>58</sup>

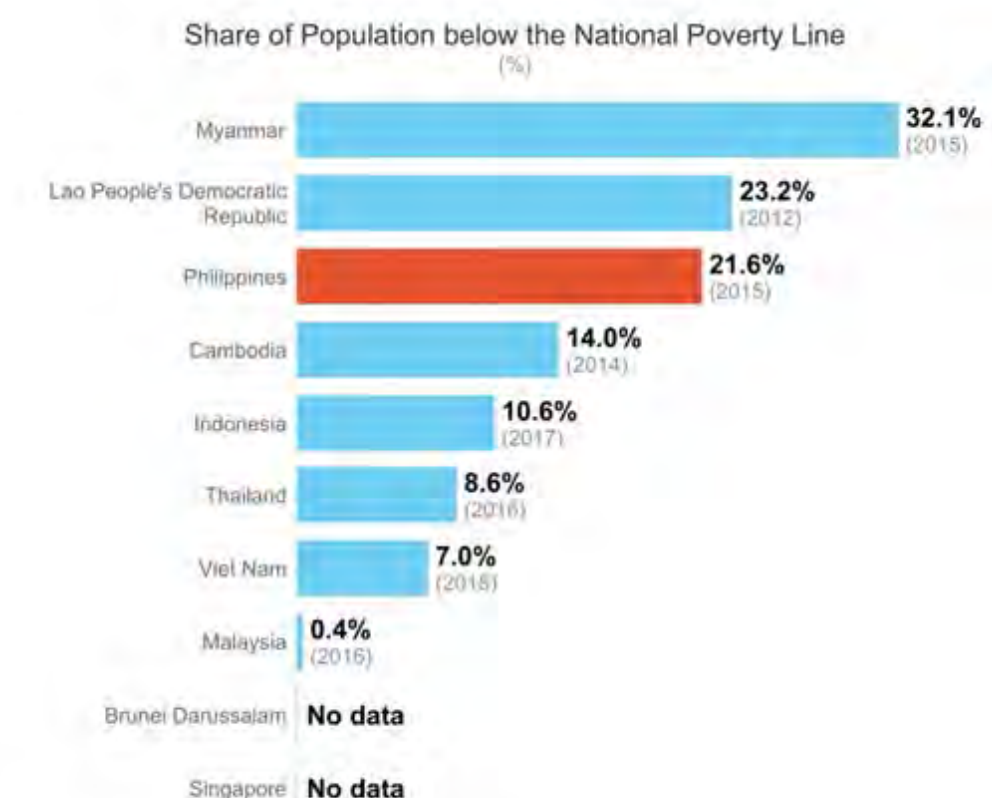
Corruption and poor governance in the Philippines have also had some negative impact on human development, particularly in the government's efforts in alleviating poverty and narrowing the inequality gap. For example, a number of high-ranking officials, legislators, and local government officials have been charged before the anti-graft court for violation of anti-corruption laws, including plunder and/or misuse of public funds. In 2017 alone, there was an 88 percent increase in the number of cases filed (14,442 total) against public officials before the anti-graft court, 23 percent (or 3,268) of which involved high ranking officials (see Figure 1 below).<sup>59</sup> In 2012, the Aquino administration filed plunder charges against some senators who were allegedly involved in diverting public funds for development projects through the use of bogus NGOs. No less than Aquino himself was charged in June 2018 with usurpation of legislative powers by the Ombudsman for using Pesos 72 billion (or US\$1.32 billion) "savings" in the national budget through an irregular "Disbursement Acceleration Program" scheme, which has been declared unconstitutional by the Supreme Court.<sup>60</sup> Since 2014, the top government agencies with the highest number of cases in the anti-graft court involved local government units, legislators, the PNP and the AFP, and former and current officials in various executive departments. Table 1 below shows the combined number of cases filed in the Ombudsman's Office against top ten government institutions or agencies based on statistics provided online.

## RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

Table 1: Top Government Institutions with Most Number of Cases Filed at the Office of the Ombudsman (2014-2017)<sup>62</sup>

Government Institutions/Agencies	2014	2015	2016	2017
Local Government Units	2053	2697	2799	1457
Executive Department Agencies	500 <sup>64</sup>	564 <sup>65</sup>	446 <sup>66</sup>	184 <sup>67</sup>
House of Representatives				141
Security Sector (Armed Forces of the Philippines and Philippine National Police)	1457 <sup>68</sup>	2753 <sup>69</sup>	1223 <sup>70</sup>	
Other state agencies	484 <sup>71</sup>	87 <sup>72</sup>	109 <sup>73</sup>	298 <sup>74</sup>

Despite achieving high growth rates in the last decade, the Philippines' poverty incidence and inequality have not improved significantly compared to other medium-income member states of ASEAN. More than 20 percent of the population in the Philippines live below the national poverty line, which is much higher than those in Cambodia, Indonesia, Thailand, Malaysia, and Vietnam. Figure 1 below shows that the Philippines' poverty incidence is only slightly better than Laos.



Source: Asian Development Bank. *Basic Statistics 2018*

According to a report by the Asian Development Bank in 2009, some of the major factors that contribute to the persistence of poverty in the Philippines include: 1) “low to moderate economic growth for the past 40 years”; 2) “weakness in employment generation and the quality of jobs generated”; 3) “failure to fully develop the agriculture sector”; 4) “high inflation during crisis periods”; 5) “high levels of population growth”; 6) “high and persistent levels of inequality (incomes and assets), which dampen the positive impacts of economic expansion”; and 7) “recurrent shocks

### RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

and exposure to risks such as economic crisis, conflicts, natural disasters, and ‘environmental poverty.’”<sup>75</sup> The same report pointed out that economic growth over several decades did not translate into poverty reduction even as poverty levels have varied significantly across the Philippines. As well, poverty incidence in the Philippines is essentially a rural phenomenon (although urban poverty was also on the rise), with strong links to educational attainment. Most of the poor in the country have large families made up of six or more members. As well, the report pointed to the weakness of local government capacity in implementing poverty reduction programs even as these programs were deficient in achieving targets.<sup>76</sup>

Although the Philippines’ Human Development Index (HDI) score has steadily improved among middle-income countries—from 0.586 in 1990 to 0.682 in 2015, or an improvement of 16 percent—its absolute HDI score declines by over 18 percent (down to 0.556) when inequality index is factored in. Specifically, inequality in life expectancy at birth (16.2 percent), education (11.6 percent), and income (26.8 percent) in the Philippines brings the inequality HDI (IHDI) coefficient to 18.2 percent.<sup>77</sup> As well, a significant section of the population are experiencing multidimensional poverty (i.e., education, health, and living standards): 6.3 percent (or 6.17 million people) are multidimensionally poor and additional 8.4 percent (or 8.213 million people) live near multidimensional poverty. On average, the intensity of poverty experienced by this section of the population is 51.6 percent.<sup>78</sup>

In 2012, extreme poverty in the Philippines is estimated at 19.2 percent of the population (or 18.4 million people). It is most severe in 10 provinces, primarily in Mindanao, where there is high level of conflict or vulnerable to conflict.<sup>79</sup> It is also in these provinces where the rule of political clans or dynasties is pervasive and has exacerbated low levels of human development, bad governance, violence, and poor business climate.<sup>80</sup> Apart from direct link to poverty, political dynasties undermine checks and balances in government institutions and the political system.<sup>81</sup> Accordingly, between 2007 and 2016, the dynastic share or the number of powerful clans per position in the Philippines “rose from 75% to 78% among district representatives; from 70% to 81% among governors; from 58% to 70% among mayors.”<sup>82</sup> Violent competition among political clans were also recorded in some of these poor provinces,<sup>83</sup> including in Maguindanao where the worst election-related violence took place in November 2009. An elaborate discussion is provided below.

#### **Institutional challenges to implementing protection mandates**

##### **Commission on Human Rights (CHR)**

At the forefront of human rights protection in the Philippines is the national Commission on Human Rights (CHR), which is an independent constitutional body mandated to promote and protect human rights through education, training, assistance, and investigation. According to its 2016 annual report, the CHR received a total of 6,448 requests for protection services between January to December 2015, which includes investigation of complaints, provision for legal aid and counselling, financial assistance, and referral to other agencies.<sup>84</sup> The Commission also reported that it resolved 1,058 cases and provided assistance to more than 17,900 victims of human rights violations and their families.<sup>85</sup> Most complaints of human rights violations during this period involved civil rights (1,087 complaints), social (187), economic (28), political (2), and cultural (2).<sup>86</sup> The top victims of human rights violations in the country in 2015 were: internally displaced persons (683), children (358), Muslims (302), and women (185).<sup>87</sup> With regard to respondents, civilians occupied the top spot (1,177) followed by police (439) and military (88) personnel, communist insurgents (64), members of the PNP/AFP (52), the MILF/MNLF (17), other armed groups (15), and paramilitary (2).<sup>88</sup> Of the 53 cases of extra-judicial killings (EJKs) in 2015, there were a total of 69 victims reported.<sup>89</sup>



### RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

In 2017, the CHR investigated 139 new complaints of alleged EJKs or politically motivated killings involving 174 victims as of August of the same year.<sup>90</sup> Because of the rising death resulting from the government's anti-drug campaign, the Commission was compelled to separate politically motivated killings from drug-related cases in its reporting. Between January to June of 2017, the CHR investigated 44 cases of drug-related EJKs involving 56 victims. It suspected that the PNP or the PDEA were involved in 112 of these new complaints, while the AFP or paramilitary personnel were involved in one case. The rest of the cases were attributed to insurgents or terrorist elements.<sup>91</sup>

As the criticisms mounted against the government's bloody anti-drug war campaign by human rights advocates at home and abroad, the CHR came under fire from President Duterte and his supporters in the lower chamber of Congress. Specifically, Duterte challenged the CHR's authority to investigate allegations of police abuse without his approval,<sup>92</sup> while the former Speaker of the House of Representatives threatened to reduce the budget of the CHR to US\$20 in the 2018 budget.<sup>93</sup> Duterte and his supporters in the Congress were particularly critical of the chair of the Commission for his political partisanship given that he is a member of the former ruling Liberal Party and was a campaign manager of former President Benigno Aquino III. The CHR's budget was however restored to its original proposed budget P649.8 million for 2018 following strong support of the Senate and pressure from civil society groups and human rights advocates in the Philippines. During its third cycle of Universal Periodic Review (UPR) in the UN Human Rights Council in May 2017, the Philippine government underscored in its report that Congress "recognised the need for the CHR to increase its resources and expand its activities relating to investigation of human rights cases, provision for assistance to human rights victims, and other operations programs."<sup>94</sup> From a 2016 budget of P439 million, the CHR's budget was increased to P749.9 million in 2017, or 165 percent.<sup>95</sup> Accordingly, a bill has been filed to strengthen the CHR's functional and structural organisation, which would equip it with "prosecutorial and quasi-judicial power to make it more effective" in carrying out its mandate.<sup>96</sup>

The CHR also performs oversight functions in relation to promoting security sector reform and governance. Specifically, it provides human rights training courses for members of the AFP across all service branches, including international human rights law and international humanitarian law. Successful completion of these required courses are prerequisites for induction, promotion, reassignment, and qualification for foreign schooling opportunities. The Commission also certifies AFP officials who are being considered for promotion to the rank of general that they have no record of human rights violation, which is a constitutional requirement to be confirmed by the Congressional Commission of Appointments (CA). While the CA may postpone the promotion of AFP officials, violations of human rights do not preclude promotion. In fact, some military officials have been promoted despite their involvement in disappearances or killings of human rights activists, as well as those who have committed human rights violations. For example, Maj. Gen. Jovito Palparan, who was arrested in 2014 after three years in hiding, was promoted to general despite his alleged human rights violations.<sup>97</sup> Indeed, this puts into question the effectiveness of the CHR in performing its oversight function in ensuring accountability and rule of law in the security sector.<sup>98</sup>

#### **The Security Sector: PNP and AFP**

Within the security sector, mechanisms are also in place supposedly to ensure accountability and rule of law within the police and military organisation. Specifically, in the PNP, its Internal Affairs Service and investigative task force are expected to conduct investigations on complaints. The AFP has its Human Rights Office which monitors and review alleged human rights abuses committed by members of the military. In the first eight months of 2017 investigated four reported incidents that included two murders and a forced disappearance, which remained pending.<sup>99</sup>

### RISK FACTOR 3: WEAKNESS OF STATE STRUCTURES

Corruption within the 176,000-member PNP is said to be endemic given its institutional weaknesses as well as the strong influence of local government officials for in the promotion and provision of resources for police officers. Its Internal Affairs Service, which is supposed to ensure that policemen operate within the law, has remained largely ineffective according to the US State Department Human Rights Report of 2017.<sup>100</sup> In the first half of 2017, the PNP reported a total of 2,112 administrative cases involving 3,704 officers (both uniformed and non-uniformed personnel, of which 778 were resolved with various penalties. It also recorded 203 criminal cases between January and July 2017 against 212 police personnel, of which 67 resulted in filing of court cases and 126 were referred to state prosecutors.<sup>101</sup>

The PNP's Task Force Usig is an internal mechanism within the police force tasked to investigate and monitor killings of media practitioners, labor activists, and foreigners. Between January and August 2017, it reported no new cases of EJKs. It also changed the language used with regard to deaths outside of official police operations (previously referred to as "deaths under investigation" which appeared to have been connected to the anti-drug campaign) and instead adopted to the term "homicide cases."<sup>102</sup> Although the PNP's Internal Affairs Service claimed that it was prevented from carrying out investigations into deaths resulting from police operations due to manpower and resource constraints, it also asserted that 100 percent of the incidents of killings involving policemen were from legitimate police action.<sup>103</sup>

In the same report, the US State Department said that the Public Attorney's Office (PAO) and the National Bureau of Investigation (NBI) have not filed any criminal complaints against police officers for unlawful killings in connection with the anti-drug war despite criticisms from human rights groups at home and abroad.<sup>104</sup> It also pointed out that the state's institutional mechanisms have been largely ineffective in investigating and punishing abuse and corruption committed by security forces.<sup>105</sup> While President Duterte acknowledged and condemned corruption in government and in the security sector, "oversight mechanisms were poorly resourced" even as there was "little effort to target corrupt security officials."<sup>106</sup> It also noted that while the Ombudsman received 133 complaints concerning 229 cases of alleged human rights abuses by the military and law enforcement personnel, all cases remained open pending further investigation, with "no convictions recorded against high ranking police or military officials."<sup>107</sup>

Other challenges to protecting human rights in the Philippines include: 1) slow progress in implementing reforms aimed at improving investigation and prosecutions of alleged human rights violations by elements in the security sector; 2) inadequate witness protection programs under the management of the Department of Justice due to inadequate funding and procedural delays, thereby undermining their effectiveness; and 3) overburdening the CHR's smaller witness protection program by witnesses to EJKs related to the government's anti-drug war.<sup>108</sup>

## RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

**Risk Factor 5 identifies a State's capacity to commit atrocity crimes, examining "conditions that indicate the ability of relevant actors to commit atrocity crimes". As the authors of the framework points out, atrocity crimes are not easy to commit, requiring the necessary, substantial resources and support. It is nonetheless important to stress that having the capacity does not imply they will commit atrocity crimes, "it is also necessary that they have the intention to make use of that capacity against a protected group, populations or individual".**

### Political Violence

The risk of atrocities in the Philippines also stems from the proliferation of illegal arms and light weapons which are often used by private armies of politicians in the country. One media report estimated for example that in Maguindanao, there are between 30,000 to 40,000 loose firearms and only a third of these are weapons used by Moro rebels and the rest are in the hands of various warlords in Maguindanao.<sup>109</sup> Election-related violence for example are perpetrated by some political clans and their supporters, especially in hotspots where political dynasties have ruled for a long time and are unwilling to give up power in a free and fair elections. In the last general elections in 2016, the PNP reported that there were at least 76 private armed groups in the Philippines that were being monitored by security forces for possible election-related violence. This was lower than the 81 and 107 private armies that were being monitored in the 2013 and 2010 elections, respectively.<sup>110</sup> One in 10 private armed groups in the Philippines or 80 percent are reportedly operating in two volatile areas in the country: in the ARMM and Central Mindanao.<sup>111</sup> In the May 2016 elections, the PNP reported that 10 people were killed across the Philippines as gunmen attacked polling stations, stole vote-counting machines, and ambushed vehicles.<sup>112</sup>

In 2009, the worst election-related violence took place in Maguindanao with the massacre of 57 people including 37 journalists when members of the ruling Ampatuan clan and its private army staged an ambush against its rival Mangundadatu clan and its supporters. There were close to 200 suspects involved in the crime and more than 150 people were criminally charged for the massacre. Some 347 militiamen were disarmed by the military following the declaration of a state of emergency in Maguindanao by the government.<sup>113</sup> (Thereafter, then President Gloria Macapagal-Arroyo signed the country's first domestic law against genocide and crimes against humanity in the aftermath of the massacre.) A special court was set up in Quezon City for the trial of multiple murder cases against the Ampatuan clan members. More than eight years since the incident, the court has yet to convict any of the Ampatuan prime suspects. In its first ruling on the case in 2017, three suspects were acquitted by the court for lack of evidence.<sup>114</sup> A number of witnesses against the Ampatuans have been killed or have disappeared, with some surviving family members of the victims also fearing for their lives.<sup>115</sup> More recently, the Court of Appeals denied the motion for reconsideration by the Department of Justice to allow three suspects to turn state witness, which upheld the decision of the presiding judge over the case.<sup>116</sup> It is likely that criminal case against the Ampatuans and other suspects will drag on given that some of the critical witnesses have been eliminated or have disappeared.

The atrocities committed by the Ampatuans in Maguindanao have serious implications for security sector governance in the Philippines, particularly in conflict areas of Mindanao. For example, it has been argued that political clans have used the armed rebellion against the state as a primary excuse for maintaining their own private armies or the use of auxiliary forces by local government officials. In 2006, for example, President Arroyo issued Executive Order 546 that allowed local officials and the PNP to deputise village watchers or auxiliary police as "force multipliers" in counter-insurgency war, which effectively enhanced the use of force by local authorities.<sup>117</sup> In fact, Arroyo's executive order benefitted immensely the Ampatuan clan due to her administration's "well known deliberate cultivation and patronage" of the political warlord dynasty in order for the national government to have

## RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

“political control of the Maguindanao province,” which is also the main provincial and ethnic base of the MILF.<sup>118</sup> With its immense political control of Maguindanao, the Ampatuans became an indispensable ally of the ruling administration especially during elections, even as the police and military forces deployed in the ARMM were beholden to the clan.<sup>119</sup> A cache of high powered weapons and ammunitions were discovered in the property of Governor Ampatuan a week after the massacre, which were likely purchased with government funds and may have been with the knowledge of the national government. While the Arroyo administration together with the PNP and the military may have thought that the Ampatuan clan was a useful “card” in the peace negotiations vis-à-vis the MILF and thus tolerated its impunity, they also underestimated its political will and capacity to commit atrocity crimes against its rivals that ultimately resulted in the death of 57 civilians.

Overall, the massacre in Maguindanao demonstrates that security sector governance in the Philippines suffer from certain deficits, specifically the absence of accountability and rule of law at the local level. Indeed, as some Filipino security experts on Mindanao have pointed out, the grant of autonomy to the ARMM without the corresponding improvement in the lives of people only increased clan wars as strongmen and warlords gained more coercive powers.<sup>120</sup> They also abused their authority through extensive use of military and auxiliary forces, acted with impunity, and committed human rights abuses, which altogether contribute to election-related violence. Thus, sowing fear among their constituents in the absence of accountability engenders the “rule of ‘un-law’.”<sup>121</sup> Indeed, the massacre of civilians in Maguindanao by a warlord clan is another manifestation of the failure of various civilian oversight bodies in the Philippines to perform their functions, particularly in holding accountable members of the security sector.<sup>122</sup>

It is against the foregoing backdrop that the risk of atrocities remains high in the Philippines. Specifically, in the run-up to the 2019 mid-term elections for local and national government posts, the level of political violence in the Philippines may be expected to increase towards the end of this year. Between 19 February and 11 July 2018, six local government officials have already been killed in different parts of the country, four of whom were gunned down in July alone.<sup>123</sup> One of these officials is a defense lawyer of a suspected drug lord and another one is included in the government’s narco list of politicians allegedly involved in drug trade. Thus far, there have been 6 vice mayors and 10 mayors who were assassinated since Duterte started his term in July 2016. In the village-level election held in May 2018, 33 people were killed and 19 others wounded. While this year’s number of casualties is significantly lower compared to the last village elections in 2013 (with 109 people killed and 59 injured), the risk of election-related violence is likely to increase in the coming months.<sup>125</sup> Elected village heads play a crucial role in local and national elections in 2019 as they act as grassroots organisers for political parties.

Accordingly, the risk of election related violence in Mindanao is likely to increase prior to the 2019 national and local elections. In the last village-level elections in May, the Commission on Elections (COMELEC) designated 295 villages as areas of concern in northern Mindanao where intense political rivalries and private armies exist.<sup>126</sup> In eastern Mindanao, some 8,500 military forces were deployed to ensure peaceful and orderly conduct of elections.<sup>127</sup>

### **Rido or Clan Conflicts**

The risk of atrocities in the Philippines also stems from clan feuding or conflict, also known as rido, among some kinship groups and communities in Mindanao. Rido refers to “a state of recurring hostilities between families and kinship groups characterised by a series of retaliatory acts of violence carried out to avenge a perceived affront or injustice.”<sup>128</sup> Studies on rido have documented a total of 1,250 cases of clan conflict that occurred in Mindanao between the 1930s and 2005 in which over



## RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

5,500 people have been killed and displaced thousands. Of these documented cases, over 60 percent have not been unresolved, while the top four provinces in Mindanao—Lanao del Sur, Maguindanao, Lanao del Norte, and Sulu—recorded the highest number of incidents of rido.<sup>129</sup> Between the 1980s and 2004, steady rise in rido conflicts in 11 provinces in Mindanao were recorded, with over 50 percent of incidents or 637 cases happening between 2000-2004.<sup>130</sup>

Rido conflicts can exacerbate other existing conflicts in Mindanao, such as separatist and extremist or terrorist armed violence. Accordingly, some of the armed confrontations between insurgent groups and the military, for example, were triggered by local clan conflicts. At times, the interconnectedness of clan feuds and large-scale conflicts sparked hostilities between paramilitary forces and the MILF, such as the Sharif Aguak incident in 2006, for example.<sup>131</sup> To some extent, these overlapping conflicts have frustrated the peace process between the government and the MILF especially if they cause some misunderstanding among combatants. Apart from causing much suffering for affected civilians, armed confrontations triggered by rido have led to destruction of properties, displaced communities, and had negative impact on local economies.<sup>132</sup>

Among the triggers of rido are: petty offences (e.g., theft), crimes such as homicide, land disputes, and political rivalries<sup>133</sup> (e.g., Maguindanao massacre in 2009). These triggers may be aggravated by formation of alliances between clans and armed groups, or interaction between state-level conflicts (e.g., Moro rebel forces and the government) and other armed conflicts (e.g., banditry). Contributing factors to rido violence include the proliferation of illegal arms and weapons, inadequate presence of law enforcers and peace mediators, as well as inefficient justice system.<sup>134</sup> In some cases, violent conflicts among families belonging to different communities (e.g., Menuvu and Maguindanaon) have been affected by war in Mindanao since the 1970s that it also disrupted harmony between these communities. This is also exacerbated by incursions by illegal loggers, political and business interests, and paramilitary forces that displace and marginalise them thereby deepening the lack of trust among these communities.<sup>135</sup> Table 2 below shows the number of incidents of rido in 2012, with a breakdown of the common causes of clan conflicts.

Table 2: Causes of Rido (Clan Conflicts) in 2012

Common causes	Frequency	Percent (%)
Land dispute	373	25.37
Election-related	266	18.10
Crime against women/gender-related offenses	181	12.31
Drug related	30	2.40
Accidents	24	1.63
Cattle rustling	22	1.50
Marriage/elopement	20	1.36
Grudge	19	1.29
Accusation	18	1.22
Grave threat	18	1.22
Competition over resources	14	0.95
Debt	12	0.82
Business	11	0.75
Misconduct	10	0.68
Gambling	9	0.61
Family feud	8	0.54
Kidnap for ransom	8	0.54
Ambush	5	0.34
Carnapping	2	0.14
Extortion	2	0.14

Source: Preventing Rido: A Practical Guide for the Police and Other Community Peacekeepers, 2013, pp. 8-9)

## RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

### Warlordism and Shadow Economy

The risk of atrocities remains very high in the southern part of the Philippines mainly because of the relationship between warlord politics and the proliferation of informal or shadow economies, which underpins violent conflict in Mindanao. In a comprehensive edited volume titled *Out of the Shadows: Violent Conflict and the Real Economy of Mindanao* published in 2013, contributing authors identified several shadow economies that continue to exacerbate violence in many conflict areas in the south. This includes illicit weapons trade, drug trafficking, kidnap for ransom, informal land markets, illegal cross-border trade, and informal credit systems. Specifically, the origins of Mindanao's shadow economy goes back to "the political settlement between US colonisers and the Moro aristocracy that involved an end to armed resistance in exchange for continuation of Mindanao's unregulated cross-border trade."<sup>136</sup>

Among other things, the informal economy: 1) is "intertwined with the dynamics of clans and kinship networks that revolved around local strongmen"; 2) revenues from the shadow economy "enabled powerful clans and local rulers to exercise power and consolidate their position in Moro society and sustain the economic foundations of their political authority"; and 3) the shadow economies offered strongmen a "higher level of autonomy in an increasingly cramped political landscape."<sup>137</sup> Accordingly, in the context of Mindanao, the weakness of the state is exploited by local warlords to "establish private control over economic resources and wealth accumulation mechanisms" through "trade, clandestine transactions, natural resource exploitation."<sup>138</sup> Compared to patronage politics, warlord politics uses violence "to neutralise rivals and to control accumulation" and, in alternative effort to build political authority, "relies on patronage, violence, and shadow economy."<sup>139</sup>

Some of the major findings of the volume's case studies on illicit gun trade, drugs, and kidnap for ransom were as follows:

1. Illicit gun trade proliferates in the Philippines largely because of institutional flaws and regulatory weaknesses of the state, which include: a) amnesty programs and inadequate monitoring of private security agencies; and b) absence of laws that provide adequate oversight and controls over importation and distribution of weapons. From a political economy perspective, the failure to curb illicit gun trade is due to economic benefits derived by state actors from a shadow economy that underpins the policy of sub-contracting the means of coercion to local elites in conflict-affected areas such as in Muslim Mindanao, as exemplified by the 2009 massacre led by the Ampatuan clan in Maguindanao.<sup>140</sup>
2. The entrenchment of the drug economy in Muslim Mindanao has been facilitated by several factors such as the weak institutional capacity of the local government, corruption, and the lack of resources to address the drug problem. Arguably, the presence of armed groups in Mindanao not only contribute to instability in the region but also contribute indirectly to sustaining an enabling environment for drug-related activities. While there is no clear evidence that illicit drug trade functions as a war economy, it nevertheless serves two auxiliary functions: first, it provides impoverished individuals a secure income; and second, it propels the criminalised agenda of political entrepreneurs in some areas of ARMM, specifically through targeted corruption.<sup>141</sup>
3. Kidnap for ransom (KFR) incidents thrive in central and western Mindanao due to the embedded nature of KFR groups and their activities within the local communities, their interdependence with other powerful state and non-state actors and criminal groups, and the favourable economic returns of such criminal activities that are shared with local communities. KFR incidents tend to increase at various conjunctures when political contestation, clan violence, and armed

## RISK FACTOR 5: CAPACITY TO COMMIT ATROCITY CRIMES

conflicts erupt. More specifically, these groups stage kidnappings before or after elections; soon after local or national regime change; during military offensives and counter-offensives when rebel and government forces get tied down in a protracted battle; and when armed groups are idle and without any mission to undertake, such during peace negotiations when ceasefires are being observed. Given the absence of the state in large parts of Mindanao, KFR groups thrive because they provide public services such as justice and security, which earn for them some degree of de facto legitimacy. As well, given the proliferation of firearms and the persistence of armed groups in these remote areas, these criminal entrepreneurs are able to attract idle, poor, and unemployed young men with lucrative targets.<sup>142</sup>

Overall, based on these case studies, the editors concluded that resilience of shadow economies in Mindanao is due to the failure of the central government to put them under effective state regulation and control. There are a number of political and economic explanations, such as: 1) the informal economy provides critical employment and livelihood opportunities for marginalised and people in poor communities; 2) the central government has for decades been unable to consolidate its sub-national state building in Mindanao; 3) shadow economies strengthens the power and authority of warlords, political clans, and local elites, as well as legitimises rule in the areas they control; and 4) the mutual benefits that national, regional, and local elites derive from the underlying arrangements, particularly in the strategic role played by warlords and clans in sustaining the state's administrative reach and politico-military control of Mindanao.

# CONCLUSION AND RECOMMENDATIONS

Based on the foregoing discussion of the common risk factors relevant to the Philippines, the persistence of armed conflicts particularly in Mindanao remains a major risk for atrocities in the country. Although the Duterte administration recently signed the Bangsamoro Organic Law, the transition phase will be a critical step to implementing the law following its ratification by residents in the expanded BARMM. There is still a distinct possibility that extremist militants and some disaffected elements from the MNLF would attempt to undermine the implementation of the BOL. The government and the MILF must therefore stay committed to the peace agreement and deny any opportunity for spoilers to succeed.

In order to mitigate the continuing risks for atrocities from armed conflicts, the Philippine government should give priority to addressing the root causes of armed rebellion and political violence in poor areas of the country, most especially in Mindanao. Specifically, it should seriously commit to providing better access to basic services and justice, as well as in improving the capability of local government units to effectively implement poverty alleviation programs. As well, the government should strictly enforce existing laws against proliferation of small arms and illicit gun trade, drug trafficking, and other forms of shadow economies that contribute to the perpetuation of warlord politics and political violence.

Finally, the government should take more seriously its commitment to preventing atrocities by strengthening the rule of law and accountability mechanisms by increasing financial and human resources in oversight bodies such as the Commission on Human Rights and the Office of the Ombudsman. This will ensure that these independent constitutional bodies would be able to effectively carry out their mandate and functions, particularly in combatting impunity, graft and corruption, and abuse of power by government officials and security sector personnel. Within the security sector, the capacity and effectiveness of the PNP and the AFP to conduct credible and impartial investigations on human rights violations by its members should be improved through allocation of more resources, training, and improved vetting of recruits.

RECOMMENDATIONS FOR THE GOVERNMENT OF THE PHILIPPINES	
1	The government should take seriously its primary responsibility to protect vulnerable populations in the Philippines by strengthening rule of law and accountability, addressing the root causes of conflicts, and responding more effectively to needs of marginalised people in conflict-affected communities, especially in the poor provinces of Mindanao.
2	Oversight bodies such as the Commission on Human Rights and the Office of the Ombudsman should continue to carry out their respective mandates in accordance with existing laws, specifically in effectively combatting corruption, impunity, and violations of human rights.
3	The Philippine Congress should ensure the protection and adequate allocation in the annual budgets of the Commission on Human Rights and the Office of the Ombudsman in order for these oversight bodies to effectively perform their functions in promoting and protecting human rights and promoting security sector governance.
4	Congress should also pass appropriate laws that would enhance further the institutional capability of oversight bodies in promoting the rule of law and accountability. Legislators should also do their part in conducting investigations in aid of legislation particularly in protecting victims of human rights violations committed by agents of the state.
5	The executive branch should continue its efforts in improving its vetting procedures in the hiring and recruitment of law enforcement agents in the PNP and the security forces in the AFP. It should also show its commitment and resolve in getting rid of corrupt and undesirable members of the PNP and the AFP by filing appropriate cases against them.
6	The government should also strengthen its witness protection program across relevant agencies and oversight institutions to ensure efficient delivery of justice for victims of human rights violations.
7	The national government should give priority to addressing the root causes of violence and conflict particularly in Mindanao by providing sufficient resources for delivery of basic services and justice, increased opportunities for productive livelihood, and security in poor provinces.
8	The national government should provide assistance to local government units in building their institutional capacities to implement poverty alleviation programs, promote human rights protection, and develop community-based peace building.
9	The national government, in partnership with local government units and civil society groups, should respond more effectively to the concerns and grievances of affected communities in Mindanao especially those who have been displaced and continue to be marginalised due to ongoing conflicts.
10	The government should demonstrate its commitment to upholding universal norms on human rights protection, international humanitarian law, and responsibility to protect by cooperating and responding accordingly to the concerns of the international community about the state of human rights in the Philippines in the context of ongoing war on drugs, environmental protection, identity-based conflicts, and the rise of violent extremism. It should also reconsider its decision to withdraw its membership in the International Criminal Court.
FOR REGIONAL ACTORS	
1	ASEAN and its dialogue partners should continue to provide assistance to the Philippines in addressing the root causes of conflicts in Mindanao, responding to humanitarian crisis, and containing the threat of violent extremism.
2	Australia, New Zealand, Japan, and South Korea should also provide capacity-building assistance and training for Philippine parliamentarians, national and local government officials and staff, civil society groups, and youth in human rights protection, atrocities prevention, conflict prevention and peacebuilding, and combatting violent extremism.
3	ASEAN and its dialogue partners should continue providing assistance to the police and military institutions in the Philippines in capacity building for promoting rule of law and accountability, human rights protection, international humanitarian law, and in combatting the threats posed by foreign extremists in the region.
RECOMMENDATIONS FOR THE INTERNATIONAL COMMUNITY	
1	The international community should continue to help the Philippine government in addressing the root causes of conflict in Mindanao and provide the assistance to ensure the efficient and effective implementation of the Bangsamoro Organic Law.
2	The UN and its associated organs should continue to engage the Philippine government through existing mechanisms such as the universal periodic review in the Human Rights Council in promoting human rights protection in the country. The UN should also provide capacity building assistance and training to the security sector and oversight bodies in the Philippines promoting the rule of law and accountability, combatting corruption, and providing assistance to victims of human rights violations.



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