

## What is the reach of an ICC warrant?

### What are the implications of former Philippines President Rodrigo Duterte's arrest on the direction of the ICC?

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#### The story so far:

Former Philippines President Rodrigo Duterte was flown to the Netherlands on March 12 to face charges of crimes against humanity before the International Criminal Court (ICC) for his role in the deadly "war on drugs" during his tenure.

#### What was Duterte's 'war on drugs'?

In a statement, the court said its Pre-Trial chamber had reviewed evidence from the Office of the Prosecutor and found reasonable grounds to believe he is "individually responsible as an indirect co-perpetrator for the crime against humanity of murder, allegedly committed in the Philippines between November 1, 2011, and March 16, 2019." The ICC's investigation into extrajudicial drug-related killings under Mr. Duterte covers his tenure as Davao City mayor, starting in 2011, through his presidency, which ended in 2022. By the end of his term, human rights groups and the ICC prosecutor estimated that police and unidentified assailants had killed approximately 30,000 people.

#### Where do domestic politics stand?

Despite its expansive mandate, the court lacks enforcement authority and relies on national governments to execute its warrants, rendering it vulnerable to domestic political considerations.

Mr. Duterte withdrew the Philippines from the ICC's jurisdiction in 2019, yet prosecutors argued they retained authority to investigate alleged crimes against humanity committed before the withdrawal. A formal investigation was launched in 2021. Initially, President Ferdinand Marcos Jr. refused to cooperate, but his position shifted following the collapse of the Duterte-Marcos alliance.

Mr. Marcos has maintained that the Philippine government was merely upholding its obligations to Interpol by facilitating the execution of the ICC warrant. Since taking office, he has made no effort to rejoin the court.

## Does the ICC have jurisdiction?

Mr. Duterte and his allies have long contested the ICC's jurisdiction, citing the Philippines' 2019 withdrawal from the Rome Statute. In January 2023, the ICC authorised its prosecutor to resume an investigation into the killings, reversing a 2021 suspension granted at the Philippines' request. The Philippines government had argued that its institutions were capable of prosecuting the alleged crimes, invoking the principle of complementarity, which limits ICC intervention to cases where national courts are "unable or unwilling" to act. The Pre-Trial Chamber rejected this claim, ruling that the Philippines had not demonstrated sufficient efforts to warrant a deferral.

Under the Rome Statute, all 125 signatory states are required to arrest and surrender individuals facing ICC warrants if they enter their territory. However, compliance remains inconsistent. Non-compliance leads to a referral to the Assembly of States Parties, the court's governing body, and ultimately to the United Nations Security Council (UNSC). When the UNSC invokes the court's jurisdiction, all relevant UN member-states are obligated to cooperate, regardless of their status under the Rome Statute.

## What are the implications for the court?

Mr. Duterte's indictment is a rare triumph for the ICC, unlike its largely symbolic arrest warrants for Russia's Vladimir Putin and Israel's Benjamin Netanyahu, which remain unenforced.

However, the arrest is not without risks for the court. The ICC is an embattled institution these days, with the Trump administration threatening to arrest its top officials over investigations of Israel, a close U.S. ally.

China has also warned against politicising ICC cases. Though not a signatory to the Rome Statute, it is embroiled in a territorial dispute with the Philippines over the South China Sea. Beijing's statement was a thinly veiled critique of how a case meant to ensure accountability for grave international crimes has instead become a battleground for domestic political rivalry.

## What lies ahead for Duterte?

During the proceedings before the Pre-Trial Chamber, Mr. Duterte's lawyer argued that his arrest and extradition from Manila to the Netherlands constituted "pure and simple kidnapping." The next step is a hearing to confirm the charges the prosecutor intends to pursue, during which Mr. Duterte may also apply for interim release. Only after this hearing will the court decide whether to proceed with a trial. A trial, if approved, is unlikely to begin anytime soon.