

**PRESIDENTIAL COMMUNICATIONS OPERATIONS OFFICE
NEWS AND INFORMATION BUREAU**

**INTERVIEW WITH PRESIDENTIAL SPOKESPERSON HARRY ROQUE
BY MIKE NAVALLO – RUNDOWN/ANC
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NAVALLO: Good morning, Secretary Roque. Thank you for joining us.

SEC. ROQUE: Good morning, Mike, and congratulations on your new show.

NAVALLO: Thank you, Secretary Roque. Let's go straight to Malacañang's reason for not recognizing the ICC's jurisdiction, when you cited the Philippines withdrawal from the Rome Statute effective 2019. But wouldn't the ICC still have jurisdiction over events that took place prior to the withdrawal?

SEC. ROQUE: Well, I never said that it would not have jurisdiction *ratione temporis* for a limited period of time. And that is from the time that we became a member to the ICC, from the time that we actually withdrew.

What I said that there is no jurisdiction over the subject matter of crimes against humanity because clearly a crime against humanity requires a widespread or systematic attack against civilian population with the knowledge that it was being directed against civilian population.

And the reality is, the alleged killings arising in the drug wars were not killings intended to target civilians as such, there were collateral damage so to speak arising from a valid police operation. It is a valid sovereign function of course to deal with the growing threat of drugs in any society as in fact the United Nation has included this in its agenda.

So in so far as it forms part of a police action and a valid sovereign function, it cannot be any targeted attack on civilians, so that is why I said there is no jurisdiction over subject matter 'no.

And of course, there's the issue of admissibility because the Philippines at the time when we became a member, never intended the ICC to be of such [unclear] its domestic institutions 'no. And that is why it is only when local institutions, legal institutions are unable or unwilling that the ICC should take [unclear] and as you know we have a [unclear] have been convicted for some of drugs dealing, the most popular of which is Kean, the teenager who was killed by a policeman; and recently there has been a killer of a mother and a son also convicted. And this shows that our domestic legal system is functioning, and that is why the ICC should not exercise jurisdiction because of the principle of complementarity.

The third principle that I said, it is not in aid of substantial justice. Also overturned by the appeals chamber, there is an earlier [unclear] chamber saying that we are a state that is unwilling to cooperate, said it would be a waste of the court's time and resources to pursue 'no an investigation, because clearly you cannot file a case on a basis of evidence that was cited in the decision on preliminary examination 'no. I counted, and about 85% of the sources cited by the

prosecutor in his preliminary examination report came from media. And, Mike, as a lawyer, you know that media sources are considered hearsay 'no. You need to present people with actual personal knowledge of events to prove particularly criminal liability which is proof beyond reasonable doubt.

NAVALLO: Secretary Roque, that I understand, that most of the information came from the media. But I think the rules of ICC and their preliminary examination, aren't they entitled to actually look at media reports and that it's only under preliminary investigation when the testimonies of the actual victims actually get to be heard by the ICC?

SEC. ROQUE: That is correct, that is why I said that we are confident it will not prosper beyond this stage because in the first place, you need cooperation of a state if you are going to resort to a case build up. But right now, all they have is hearsay information. And if they want to file the information on the basis of hearsay information, let them go ahead. The [unclear] structure is made in such a way that they intended actually, they enticed the United States to become a member of the court and the United States, you know, is a country that elects their prosecutors in order that they would have accountability 'no. And that is why they included in the procedures of the court, procedures which are germane or unique to the ICC, and that is pre-trial authorization before a prosecutor can pursue a formal investigation and before charges could be filed which is known as confirmation of charges. And they cannot go beyond what was already stated by the prosecutor in the absence of actual evidence that would stand in a court of law. But judging from the sources that I said, it's all hearsay.

NAVALLO: Well, Secretary Roque, you cited, you mentioned, cited a case where the court has actually ruled against the cops. But [unclear] pointing out, that's just one, there are actually a few cases out of thousands of cases, they call it a drop in the bucket. Would you consider this willingness and ability to prosecute and investigate these cases?

SEC. ROQUE: It takes time when you accord individuals due process. How long did the Prosecutor take just to commence with its preliminary examination? Almost five years. So, are they complaining about delay in the Philippines when the President has only been in office for five years? So, I don't think people should make an issue out of delay. But the reality is, I was with the PNP Chief Eleazar yesterday, in addition to the initial 61 cases that they have forwarded to the DOJ where themselves found, let's just say, aberration in the manner individuals were killed, they are willing to, in fact, turnover all the 6,000 files 'no which involved deaths as a result of the drug war to the DOJ for investigation.

Now, if that is not a willingness on the part of the Philippines to investigate, I don't know what is. Yes, there is a delay, but there is so much delay in the ICC. They are probably going to have more delays in the ICC compared to the domestic institutions.

NAVALLO: Secretary Roque, Prosecutor Bensouda did acknowledge that. She did cite the DOJ's investigation. But she also said that no case has been filed with respect to the result of that investigation.

SEC. ROQUE: Because she considered the reporting of anti-government media as gospel truth. You and I know that that conclusion is not true, that there are some convictions already. So that what happens when you rely completely on one-side, then hearsay information?

NAVALLO: But some groups, Secretary Roque, are saying they have the evidence; they have affidavits, NUPL saying that they already submitted affidavits, in fact, of witnesses to the ICC Prosecutor.

SEC. ROQUE: Well, in the same way that they can submit those affidavits to the ICC, did you submit it to the local fiscals? Because the fiscals are now investigating it. Then the issue is, our domestic institutions, are domestic fiscals, our Filipinos fiscals are unable or unwilling to investigate? And the answer is 'no' because the Department of Justice is in the process of investigating these cases right now. In fact, it's not just the DOJ, it's an interagency committee under EO 35.

NAVALLO: Secretary Roque, I want to touch on the 'nanlaban' narrative. Because Prosecutor Bensouda did say the justifications of the policemen in the killings were not actually credible. She cited facts. She cited the multiple wounds inflicted on the victims as inconsistent with self-defense narrative. This is a rejection of the 'nanlaban' narrative, but are you still willing to say that in the Philippines, those who died under the drug war were actually because they fought back?

SEC. ROQUE: I'm not willing to say anything because it's a case-to-case basis. Each death must be investigated. And that is why I find the report of Bensouda fantastic. Without resorting to forensic examination, without resorting to primary document, relying only on media reports, she came up with a fantastic conclusion that almost all of these killings were in fact instances were, you know, nanlaban was non-debatable. To me, that's really more of fiction or, perhaps, conclusions, as I said earlier, based on hearsay information.

But as a lawyer of 30 years criminal law experience, I would take it as case-to-case basis because I know what the elements of crimes are as far as murder is concerned and you have to prove each and every element.

NAVALLO: All right. Now, Secretary Roque, you said any ICC probe will not prosper because President Duterte will never cooperate. But you have former UN Special Rapporteur and now Amnesty International Secretary General Agnès Callamard is saying that she is now worried because the ICC has plenty of experience not being allowed entry into a country. Your thoughts on this?

SEC. ROQUE: Well, good luck! Because on the basis of the preliminary examination report, they need primary evidence 'no and, on court, whether be it international, domestic, will require a primary document and primary evidence; not the kind of evidence relied upon by Bensouda, unfortunately.

NAVALLO: Secretary Roque, is Malacañang not concerned about the reputational risk of openly defying a treaty it entered into? Well, incidentally, you [unclear] for this, but is Malacañang considering that, the optics of the whole statement of defying cooperation with the ICC?

SEC. ROQUE: We're more concerned about asserting sovereignty and jurisdiction because the Philippines is an independent state and that did not give its consent to be a part of the ICC in a manner that would waive its sovereignty and jurisdiction. That is what is important and that is the basis of our consent when we became a member of the ICC. And we are just asserting that on this instance, they have no jurisdiction because we never surrendered the obligation to investigate and punish these individuals for these killings.

NAVALLO: Lastly, Secretary Roque, what are the plans of the President? Is he going to be represented should a case or investigation move forward at the ICC Prosecutor?

SEC. ROQUE: The President has not been bothered by this case. They can do whatever they want. The President is firm that he has to do what has to be done as a duly elected President. And he has given the public an opportunity to file their complaints. There are ongoing investigations to the DOJ now. If there is anyone who feels that they are victims, even the President has repeatedly said that he will not countenance police action that violates the law, but will support them when on the right.

So I think that's the proper perspective of the President. Let them do what they want if they could, but meanwhile, he will assert Philippine sovereignty and independence from foreign interference.

NAVALLO: On that note, Secretary Roque, why not just allow the ICC to investigate, the ICC prosecutor to investigate if there is nothing really to hide from the international community?

SEC. ROQUE: It's as simple as there is such a thing as sovereignty. Sovereignty is exclusive; it is exercised to the exclusion of others, and that was our basis of our consent when we became a member of the ICC. Sovereignty and jurisdiction is only exercised by domestic states and in an exclusive manner. That simply is the nature of an independent sovereign state.

NAVALLO: All right. Thank you for your time. Thank you for your insights, Presidential Spokesperson Secretary Harry Roque.

SEC. ROQUE: Thank you very much and good morning.

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