

13 March 2019

**THE HONOURABLE FATOU BENSOUDA**

*Chief Prosecutor*

International Criminal Court

Information and Evidence Unit

Office of the Prosecutor

Post Office Box 19519

2500 CM, The Hague

The Netherlands

Dear Prosecutor Bensouda,

We write on behalf of ourselves as Filipinos and the hundreds of thousands of Filipino fishermen persecuted and injured by officials of the People's Republic of China ("China") in submitting this Communication to your office pursuant to Article 15 of the Rome Statute.

The signatories to this Communication are (1) Mr. Albert del Rosario, who was Philippine Secretary of Foreign Affairs from 2011 until 2016 and under whose term the Philippines filed and won a case against China pursuant to Annex VII of the United Nations Convention on the Law of the Sea; and (2) Ms. Conchita Carpio Morales, who was Ombudsman of the Philippines from 2011 until 2018, whose office bears the constitutional mandate of prosecuting corrupt officials in the Philippine government.

The enclosed Communication outlines how President Xi Jinping and other officials of China, in implementing China's systematic plan to control the South China Sea, have committed crimes within the jurisdiction of the International Criminal Court ("ICC" or the "Court"). The situation presented is both unique and relevant in that it presents one of the most massive, near permanent and devastating destruction of the environment in humanity's history, which has not only adversely affected and injured myriad groups of vulnerable fishermen, but present and future generations of people across nations. This has seriously undermined the food and energy security of the coastal States in the South China Sea, including the Philippines.

We believe that the grave consequences of these actions justify the Honourable Court's involvement as it affirms one of the principles of the Rome Statute that "the most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured..."<sup>1</sup> Though widely publicised, these

<sup>1</sup> Rome Statute, Preamble, para. 4.

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atrocious actions of Chinese officials in the South China Sea and within Philippine territory remain unpunished, and it is only the ICC that can exact accountability on behalf of Filipinos and the international community, respecting the rule of law.

This Communication shows how the crimes committed by these Chinese officials fall within the Court's jurisdiction and, presents evidence to support such claim. Given that your office undertakes a rigorous process in deciding whether to launch a preliminary examination, we trust that your function will be facilitated by the fact that much of the evidence presented by this Communication are widespread, highly publicised and have already been judicially vetted by the Tribunal in *The South China Sea Arbitration*.<sup>2</sup>

We urge you to initiate a preliminary examination on this matter, if only so the Court can apprise itself of Chinese crimes committed not only against the Filipino people, but also against people of other nations, which crimes are already known to the international community. While we are aware that the Philippines' withdrawal from the Rome Statute will take effect on 17 March 2019 pursuant to Article 127(1), we have seen it fit to submit this Communication before that date.

We understand the Court retains its jurisdiction over crimes committed during the period the Philippines was a State party to the Rome Statute (1 November 2011 - 17 March 2019). The Court can exercise its jurisdiction over these crimes, even after the effectivity of the Philippines' withdrawal, and we respectfully reserve our right to supplement this Communication with additional evidence that may come to light or arise in the future.

Respectfully submitted,



ALBERT DEL ROSARIO



CONCHITA CARPIO MORALES

Assisted by:



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<sup>2</sup> *The South China Sea Arbitration (The Republic of the Philippines v. The People's Republic of China)*, PCA Case No. 2013-19 (Award, 12 July 2016), available on the website of the Permanent Court of Arbitration at <https://pca-cpa.org/en/cases/7/>