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**International  
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Court**

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Date: **15 September 2021**

**PRE-TRIAL CHAMBER I**

**Before:**                    **Judge Péter Kovács, Presiding Judge**  
                                  **Judge Reine Adélaïde Sophie Alapini-Gansou**  
                                  **Judge María del Socorro Flores Liera**

**SITUATION IN THE REPUBLIC OF THE PHILIPPINES**

**Public**

**Decision on the Prosecutor's request for authorisation of an investigation  
pursuant to Article 15(3) of the Statute**

**Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*, to:****The Office of the Prosecutor**Karim A. A. Khan  
James Stewart**Counsel for the Defence****Legal Representatives of Victims****Legal Representatives of Applicants****Unrepresented Victims****Unrepresented Applicants for  
Participation/Reparation****The Office of Public Counsel for Victims****The Office of Public Counsel for the Defence****States Representative****Amicus Curiae****REGISTRY****Registrar**

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## Table of contents

I. Procedural history .....	4
II. Procedure under Article 15 of the Statute.....	5
III. Victims' representations pursuant to Article 15(3) of the Statute .....	7
IV. Determination by the Chamber.....	9
A. Jurisdiction <i>ratione materiae</i> : crimes against humanity .....	10
1. Underlying acts - Murder pursuant to Article 7(1)(a) of the Statute .....	11
(i) Applicable law .....	11
(ii) Prosecutor's submissions .....	11
(iii) Determination by the Chamber .....	13
Introduction.....	13
Killings during 'buy-bust' operations.....	14
Killings allegedly occurred during Tokhang operations.....	15
Killings during so-called 'One Time, Big Time' operations .....	16
Killings during other official operations.....	17
The claim of self-defence.....	19
Killings committed outside of official law enforcement operations.....	21
Aggregate number and geographic distribution of killings .....	23
Killings in the Davao area in 2011-2016 .....	23
Conclusion .....	24
2. Contextual elements of crimes against humanity .....	25
(i) Applicable law .....	25
(ii) Prosecutor's submissions .....	27
(iii) Determination by the Chamber .....	28
Attack against a civilian population.....	28
State policy to commit the attack.....	32
Widespread and systematic nature of the attack .....	35
Nexus requirement.....	36
Killings in the Davao area in 2011-2016 .....	36
Conclusion .....	37
B. Jurisdiction <i>ratione temporis</i> .....	37
C. Jurisdiction <i>ratione loci</i> .....	38
V. Conclusion .....	38

**PRE-TRIAL CHAMBER I** (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this decision on the Prosecutor’s request for authorisation of an investigation pursuant to article 15(3) of the Rome Statute (the ‘Statute’).

### I. Procedural history

1. On 16 March 2021, the Presidency of the Court recomposed the Chamber and assigned the following situations to it: Democratic Republic of the Congo; Libya; Republic of Mali; Gabonese Republic; Registered Vessels of Comoros, Greece and Cambodia; Palestine; People’s Republic of Bangladesh and the Republic of the Union of Myanmar; Plurinational State of Bolivia; Georgia; Bolivarian Republic of Venezuela I and Bolivarian Republic of Venezuela II.<sup>1</sup>

2. On 19 April 2021, the Presidency also assigned, with immediate effect, the situation in the Republic of the Philippines (the ‘Philippines’) to the Chamber.<sup>2</sup>

3. On 29 April 2021, the Chamber rejected the Prosecutor’s ‘Request for extension of page limit for article 15(3) Request’.<sup>3</sup>

4. On 11 May 2021, the Chamber rejected the Prosecutor’s ‘Second request for extension of page limit for article 15(3) Request’.<sup>4</sup>

5. On 24 May 2021, the Prosecutor filed, as ‘Secret, Ex parte, only available to the Prosecution’, the ‘Request for authorisation of an investigation pursuant to article 15(3)’ (the ‘Article 15(3) Request’),<sup>5</sup> requesting authorisation to commence an investigation into the Situation in the Philippines, in relation to ‘crimes within the jurisdiction of the Court allegedly committed on the territory of the Philippines between 1 November 2011 and 16 March 2019 in the context of the [war on drugs] campaign, as well as any other crimes which are sufficiently linked to these events’.<sup>6</sup>

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<sup>1</sup> See e.g. Presidency, Decision assigning judges to divisions and recomposing Chambers, 16 March 2021, ICC-01/04-763, pages 6-7, 9.

<sup>2</sup> Decision on the assignment of the situation in the Republic of the Philippines, ICC-01/21-1.

<sup>3</sup> Decision on the Prosecutor’s Request for extension of page limit for article 15(3) Request, ICC-01/21-4; Request for extension of page limit for article 15(3) Request, 20 April 2021, ICC-01/21-2.

<sup>4</sup> Decision on the Prosecutor’s Second request for extension of page limit for article 15(3) Request, ICC-01/21-6; Request for extension of page limit for article 15(3) Request, 4 May 2021, ICC-01/21-5-SECRET-Exp (a public redacted version was also filed, see ICC-01/21-5-Red).

<sup>5</sup> ICC-01/21-7-SECRET-Exp, with secret *ex parte* Annexes 1, 2, 3, 4 and 5.

<sup>6</sup> Article 15(3) Request, para. 131.

6. On 14 June 2021, the Prosecutor filed a public redacted version of the Article 15(3) Request.<sup>7</sup> Thus, the Prosecutor provided notice to victims under Article 15(3) of the Statute and Rule 50(1) of the Rules of Procedure and Evidence (the 'Rules').

7. On 17 June 2021, the Chamber, following a request for extension of time submitted by the Registry,<sup>8</sup> extended the time limit for victims to make representations to the Chamber under Article 15(3) of the Statute and Rule 50(3) of the Rules to 13 August 2021.<sup>9</sup>

8. On 27 August 2021, the Registry transmitted to the Chamber 204 victims' representations received within the applicable time limit and assessed as falling inside the temporal, territorial and material scope of the situation.<sup>10</sup> On the same day, the Registry also filed in the record of the case its report on victims' representations, its assessment of the representations transmitted and an explanation of the criteria applied when conducting the assessment of each representation.<sup>11</sup>

## II. Procedure under Article 15 of the Statute

9. The procedure for initiating an investigation upon the Prosecutor's own initiative is regulated by Article 15 of the Statute. This provision subjects the Prosecutor's power to open an investigation *proprio motu* to the judicial scrutiny of the Pre-Trial Chamber. Article 15(3) provides that, '[i]f the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected'.

10. Article 15(4) of the Statute clearly states the limited mandate of the Chamber at this stage of the proceedings:

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<sup>7</sup> ICC-01/21-7-Red. Annexes 1, 4 and 5 were reclassified by the Chamber as 'public' on the same day following a request to this effect submitted by the Prosecutor by email.

<sup>8</sup> ICC-01/21-8-Conf. A public redacted version is also available, *see* ICC-01/21-8-Red.

<sup>9</sup> Decision on the 'Registry Request for Extension of Notice Period and Submissions on the Article 15(3) Process', ICC-01/21-9.

<sup>10</sup> ICC-01/21-10 and 204 annexes containing the actual representations, classified as 'confidential *ex parte*, only available to the Registry'.

<sup>11</sup> ICC-01/21-11 and confidential Annex I - Registry Report on Victims' Representations (public redacted version also available; *see* ICC-01/21-11-AnxI-Red), confidential *ex parte*, only available to the Registry, Annex II (containing the Registry's assessment of the representations transmitted), and confidential Annex III (containing an explanation of the criteria applied when conducting the assessment of each representation).

[i]f the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case.

11. Within that limited mandate, the Chamber's judicial control ensures that the exercise of proprio motu powers by the Prosecutor are in line with the provisions of Article 15 of the Statute, curbing any possible abuse of power, and confirms the existence of a reasonable basis to proceed with an investigation.<sup>12</sup>

12. The Chamber recalls that 'reasonable basis to proceed' is the lowest evidentiary standard provided for in the Statute. Accordingly, when reviewed against this standard, the relevant material is required neither to point towards one conclusion nor to be conclusive. Rather, a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court has been or is being committed must be established. In this regard, the Chamber considers that it does not follow that an investigation should not be opened where facts or accounts are difficult to establish, unclear, or conflicting. Such circumstances in fact call for an investigation to be opened, provided that the relevant requirements have been met.<sup>13</sup>

13. The Chamber further recalls that, for a crime to fall within the jurisdiction of the Court, all jurisdictional prerequisites must be satisfied. Thus, the crime must: (i) fall within the category of crimes set out in Article 5 and defined in Articles 6 to 8 of the Statute (jurisdiction *ratione materiae*);<sup>14</sup> (ii) fulfil the temporal conditions specified in Article 11 of the Statute

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<sup>12</sup> Pre-Trial Chamber III, *Situation in the Republic of Burundi*, Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi", ICC-01/17-X-9-US-Exp, 25 October 2017, 9 November 2017, [ICC-01/17-9-Red](#), para. 28 ('Burundi Article 15 Decision'); Appeals Chamber, *Situation in the Islamic Republic of Afghanistan*, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, 5 March 2020, [ICC-02/17-138](#), para. 61 ('Afghanistan Appeal Judgment').

<sup>13</sup> [Burundi Article 15 Decision](#), para. 30, referring to Pre-Trial Chamber I, *Situation on the Registered Vessels of the Union of the Comoros, the Hellenic Republic and the Kingdom of Cambodia*, Decision on the request of the Union of the Comoros to review the Prosecutor's decision not to initiate an investigation, 16 July 2015, [ICC-01/13-34](#), para. 13.

<sup>14</sup> See section IV.A, below.

(jurisdiction *ratione temporis*);<sup>15</sup> and (iii) meet one of the two requirements contained in Article 12(2) of the Statute (jurisdiction *ratione loci* or *ratione personae*).<sup>16</sup>

14. Ruling on the scope of the Pre-Trial Chamber's inquiry under Article 15(4) of the Statute, the Appeals Chamber recently held:

Article 15(4) of the Statute requires a pre-trial chamber to determine whether there is a reasonable factual basis for the Prosecutor to proceed with an investigation, in the sense of whether crimes have been committed, and that potential case(s) arising from such investigation appear to fall within the Court's jurisdiction. The pre-trial chamber is not called under article 15(4) of the Statute to review the Prosecutor's analysis of the factors under article 53(1)(a) to (c) of the Statute.<sup>17</sup>

15. Importantly, the Chamber recalls that the Appeals Chamber has held explicitly that a decision under Article 15(4) does not involve determinations on admissibility and interests of justice.<sup>18</sup>

16. Nevertheless, in determining whether to make a request under Article 15(3), the Prosecutor remains obliged under Rule 48 of the Rules to consider all the conditions under Article 53(1)(a) to (c).<sup>19</sup> The Chamber notes in this regard that, as declared in the Article 15(3) Request, the Prosecutor has done so, and has concluded that potential cases which would likely arise from an investigation into the situation would be both admissible and sufficiently grave to justify further action by the Court as well as identified no substantial reason to believe that an investigation would not be in the interests of justice.<sup>20</sup>

### III. Victims' representations pursuant to Article 15(3) of the Statute

17. Pursuant to Article 15(3) of the Statute and Rule 50(3) of the Rules, victims may make representations in writing to the Pre-Trial Chamber. Following the Article 15(3) Request, 204 victims' representations falling within the parameters of the situation, as assessed by the Registry, were made. Of these, four were assessed by the Registry as individual, and 200 as

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<sup>15</sup> See section IV.B, below.

<sup>16</sup> See section IV.C, below.

<sup>17</sup> [Afghanistan Appeal Judgment](#), para. 1.

<sup>18</sup> [Afghanistan Appeal Judgment](#), paras 34-35, 37, 46.

<sup>19</sup> [Afghanistan Appeal Judgment](#), paras 35, 37, 48.

<sup>20</sup> Article 15(3) Request, para. 130.

collective.<sup>21</sup> Altogether, the Registry assessed that representations were made on behalf of victims including 1,530 individual victims and 1,050 families.<sup>22</sup>

18. The Chamber has considered the representations made, and was also assisted by the report of the Registry in identifying patterns and general themes of the representations.<sup>23</sup>

19. The Chamber notes that, as analysed by the Registry, 94 % of victims who have made representations expressed themselves in favour of the investigation, citing as the main motivating factors genuine investigation by an impartial international court, identifying and bringing the perpetrators to justice, ending impunity, preventing future crimes, knowing the truth about what happened to victims and clearing their names of false accusations, and allowing for victims' voices to be heard.<sup>24</sup>

20. A large majority of the representations made to the Chamber contained reports of killings in the context of the so-called 'war on drugs'.<sup>25</sup> However, a significant number also reported facts potentially qualifying, in the Registry's submission, as other inhumane acts/torture, imprisonment or other severe deprivation of liberty, enforced disappearance, attempted murder and sexual violence.<sup>26</sup> Some representations specifically made the point that the investigation should not only cover murder as a crime against humanity, but should extend to other crimes.<sup>27</sup> It is also noted that some representations called for expeditious proceedings before the Court.<sup>28</sup>

21. The Chamber, upon examination of the victims' representations made to it and the Registry report, observes that the victims' representations correspond to a great extent with the submissions of the Prosecutor and the supporting material. As such they are referred to at relevant points in the analysis below.

22. The Chamber wishes to express its appreciation of the fact that many individuals have come forward with representations to the Chamber on behalf of themselves or on behalf of other victims in the situation. The Chamber also acknowledges the fact that the time limit for

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<sup>21</sup> Registry Report on Victims' Representations, para. 17.

<sup>22</sup> Registry Report on Victims' Representations, para. 24.

<sup>23</sup> Registry Report on Victims' Representations.

<sup>24</sup> Registry Report on Victims' Representations, para. 5.

<sup>25</sup> Registry Report on Victims' Representations, para. 8.

<sup>26</sup> Registry Report on Victims' Representations, paras 8-10.

<sup>27</sup> See Registry Report on Victims' Representations, para. 12.

<sup>28</sup> Registry Report on Victims' Representations, page 18.

representations was perceived by some victims as too short.<sup>29</sup> However, in light of the procedural regime of Article 15 of the Statute and in light of the principal objective to have the authorised investigation commence as soon as practicable, the Chamber decided to proceed to the issuance of the present decision within the 120-day time limit as envisaged in the Chambers Practice Manual.<sup>30</sup>

#### IV. Determination by the Chamber

23. The Prosecutor submits that there is a reasonable basis to believe that the crime against humanity of murder was committed from at least 1 July 2016 to 16 March 2019 in the context of the Philippine government's so-called 'war on drugs' campaign.<sup>31</sup> The Chamber notes that the Prosecutor refers to the 'war on drugs' campaign as a core notion of the situation, encompassing official and unofficial operations. The term does not seem to be official, although it appears frequently in the supporting material. As such, it is also used by the Chamber in the present decision,<sup>32</sup> but without prejudice to the legality or not of the different activities it encompasses.

24. The Prosecutor avers that information obtained by the Prosecution suggests that state actors, primarily members of the Philippine security forces, killed thousands of suspected drug users and other civilians during official law enforcement operations.<sup>33</sup> According to the Prosecutor, markedly similar crimes were committed outside official police operations, reportedly by so-called 'vigilantes', although information suggests that some vigilantes were in fact police officers, while others were private citizens recruited, coordinated, and paid by police to kill civilians.<sup>34</sup> The Prosecutor estimates the total number of civilians killed in connection with the so-called 'war on drugs' campaign between July 2016 and March 2019 appears to be between 12,000 and 30,000.<sup>35</sup>

25. In addition, the Prosecutor submits that '[t]he same types of actors also allegedly committed strikingly similar crimes in the city and region of Davao ("Davao"), starting in 1988

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<sup>29</sup> Registry Report on Victims' Representations, page 32.

<sup>30</sup> Chambers Practice Manual, 4<sup>th</sup> edition, 29 November 2019, para. 2. *See also* Decision on the 'Registry Request for Extension of Notice Period and Submissions on the Article 15(3) Process', ICC-01/21-9.

<sup>31</sup> Article 15(3) Request, para. 2.

<sup>32</sup> *See* para. 92, below.

<sup>33</sup> Article 15(3) Request, para. 2.

<sup>34</sup> Article 15(3) Request, para. 2.

<sup>35</sup> Article 15(3) Request, para. 2.

and continuing through 2016'.<sup>36</sup> Bearing in mind the temporal jurisdiction of the Court,<sup>37</sup> the Prosecutor requests that 'the 2011-2016 events in Davao be included within the requested investigation'.<sup>38</sup>

26. The Article 15(3) Request is based on 391 discrete items of supporting material made available to the Chamber through Ecourt. This material includes official sources, such as Philippine National Police reports, including operational reports in specific relevant cases, internal instructions and operating procedures, public documents emanating from the Philippine Drug Enforcement Agency and the Presidential Office, as well as documents emanating from the Senate of the Philippines. Documents from the United Nations have also been submitted by the Prosecutor, including some specifically addressing the so-called 'war on drugs campaign'. Further, the Prosecutor has submitted investigative reports and other publications of national and international non-governmental organisations. Finally, a number of press reports and articles have been submitted by the Prosecutor as part of the supporting material.

27. The Chamber has reviewed the Prosecutor's submissions in the Article 15(3) Request and the supporting material in line with the requirements of the process under Article 15 of the Statute, as set out above. In the following sections, the Chamber lays out its determination in relation to the question whether there is a reasonable basis for the Prosecutor to proceed with an investigation, in the sense of whether crimes have been committed, and that potential case(s) arising from such investigation appear to fall within the Court's jurisdiction.

#### **A. Jurisdiction *ratione materiae*: crimes against humanity**

28. The crime alleged by the Prosecutor in the Article 15(3) Request is the crime against humanity of murder, under Article 7(1)(a) of the Statute.

29. Under Article 7(1) of the Statute, a crime against humanity involves any of the specified acts that are listed ('underlying acts')<sup>39</sup> when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack ('contextual elements').<sup>40</sup>

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<sup>36</sup> Article 15(3) Request, para. 4.

<sup>37</sup> Article 15(3) Request, para. 80.

<sup>38</sup> Article 15(3) Request, para. 4.

<sup>39</sup> See below, IV.A.1.

<sup>40</sup> See below, IV.A.2.

30. The Chamber addresses in turn the Prosecutor's submissions and the supporting material in relation to: (i) the underlying acts – murder pursuant to Article 7(1)(a) of the Statute; and (ii) the contextual elements of crimes against humanity.

*1. Underlying acts - Murder pursuant to Article 7(1)(a) of the Statute*

*(i) Applicable law*

31. In order to establish that the crime of murder has been committed, the Chamber must be satisfied that a 'perpetrator killed one or more persons'.<sup>41</sup>

*(ii) Prosecutor's submissions*

32. As summarised above, the Prosecutor alleges that information reviewed by the Prosecution provides a reasonable basis to believe that, between at least 1 July 2016 and 16 March 2019, members of Philippine security forces and other, often associated, perpetrators deliberately killed thousands of civilians suspected to be involved in drug activities.<sup>42</sup> According to the Prosecutor, the relevant killings can be grouped into two broad categories: (i) those perpetrated during official law enforcement anti-drug operations or in closely related contexts; and (ii) those perpetrated outside of official operations.<sup>43</sup>

33. With reference to supporting material consisting principally of NGO and media reports, communications from organisations received under Article 15(1) and (2) of the Statute, and official documents, the Prosecutor elaborates each of the two categories. The Prosecutor further categorises the killings perpetrated during official law enforcement anti-drug operations, distinguishing among killings during purported 'buy-bust' operations, killings during purported 'Tokhang' operations (police visits to drug suspects at their homes in order to urge them to abandon their involvement with drugs and to surrender to the police), killings in the context of 'One Time, Big Time' operations, killings in other official operations, such as at checkpoints, during patrols or during search or arrest operations, and killings of persons

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<sup>41</sup> Elements of Crimes, Article 7(1)(a).

<sup>42</sup> Article 15(3) Request, paras 2, 19.

<sup>43</sup> Article 15(3) Request, para. 20.

acknowledged to be in police custody or detention.<sup>44</sup> Individual instances of killings are discussed as examples in the Article 15(3) Request.<sup>45</sup>

34. The Prosecutor further states that Philippine authorities have not denied that people were killed during police anti-drug operations, but ‘have instead consistently contended that these deaths resulted from officers acting in self-defence during armed confrontations with drug suspects who “fought back” (a scenario known locally as “*nanlaban*”).’<sup>46</sup> The Prosecutor argues that the question of whether a particular perpetrator acted in self-defence is best addressed at the investigation and trial stages, and not at this stage, where ‘the purpose of the Prosecution’s assessment [...] is to determine whether there is a reasonable basis to believe that crimes within the Court’s jurisdiction have been committed (*i.e.*, establishing subject-matter jurisdiction).’<sup>47</sup> In any case, the Prosecutor submits that ‘the Philippine authorities’ official narrative that killings were only committed in self-defence is consistently undermined by other information’.<sup>48</sup> The Prosecutor’s conclusion on this point is that ‘contrary to official claims, many [“war on drugs”] killings by law enforcement were not justified’, but the Prosecutor nevertheless acknowledges that ‘a limited number of killings during police operations may have been lawful acts of self-defence under article 31(1)(c) of the Statute’.<sup>49</sup>

35. As concerns killings outside of official law enforcement operations, the Prosecutor alleges that there is information of a link to the so-called ‘war on drugs’ campaign, as ‘the perpetrators of such killings appear to include law enforcement officers who sought to conceal their true identity, private actors who coordinated with and were paid by the police, and in some cases other private individuals or groups instigated to act by the government’s [‘war on drugs’] campaign and statements by President Rodrigo Duterte calling for drug suspects to be killed’.<sup>50</sup> In addition, the Prosecutor states that the victim profile, motives and *modus operandi* indicate that there is a link to the so-called ‘war on drugs’ campaign.<sup>51</sup>

36. Separately, the Prosecutor submits that ‘[e]xtrajudicial killings which closely resemble the alleged [‘war on drugs’] killings in 2016-2019 were reportedly carried out in the Davao

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<sup>44</sup> Article 15(3) Request, paras 24-47.

<sup>45</sup> Article 15(3) Request, paras 25-26, 33-34, 36-37, 40-41, 46-47.

<sup>46</sup> Article 15(3) Request, para. 48.

<sup>47</sup> Article 15(3) Request, para. 49.

<sup>48</sup> Article 15(3) Request, para. 53; *see also* paras 54-63.

<sup>49</sup> Article 15(3) Request, para. 64.

<sup>50</sup> Article 15(3) Request, para. 65; *see also* paras 67-71.

<sup>51</sup> Article 15(3) Request, paras 72-76.

area (“Davao”) also before 1 July 2016’.<sup>52</sup> In the submission of the Prosecutor, these killings were perpetrated by groups of local police officers and vigilantes, including the so-called ‘Davao Death Squad’, and that the majority of victims were young men suspected of involvement in small-scale drug dealing or minor crimes such as petty theft and drug use, while gang members and street children were also killed.<sup>53</sup> The Prosecutor emphasises that persons involved in these killings in some cases appear to be the very same people that were later involved in the so-called ‘war on drugs’ campaign.<sup>54</sup> The Prosecutor therefore requests the Chamber to authorise the investigation into the situation from 1 November 2011, the date of the entry into force of the Statute for the Philippines, onward.<sup>55</sup>

37. Finally, the Prosecutor ‘notes that several of the incidents [...] appear to have included severe beatings or other mistreatment of victims prior to the killings, as well as instances in which victims’ family members were forced to witness the killings’, and that these facts ‘may constitute additional Crimes Against Humanity of Torture or Other Inhumane Acts under articles 7(1)(f) and (k) of the Statute’.<sup>56</sup>

*(iii) Determination by the Chamber*

*Introduction*

38. In the following paragraphs, the Chamber provides its analysis of the Prosecutor’s submissions and the supporting material, always bearing in mind the nature of the procedure for authorisation of investigation under Article 15 of the Statute.<sup>57</sup> In doing so, following the structure of the Article 15(3) Request, the Chamber will analyse in turn the killings perpetrated by the Philippine security forces in law enforcement operations and related contexts, and the killings committed outside such operations but with a demonstrable link to the so-called ‘war on drugs’ campaign.

39. The supporting material provided by the Prosecutor sustains at this stage of the proceedings the submission that persons were killed by Philippine security forces or by other

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<sup>52</sup> Article 15(3) Request, para. 123.

<sup>53</sup> Article 15(3) Request, paras 124-125.

<sup>54</sup> Article 15(3) Request, para. 126.

<sup>55</sup> Article 15(3) Request, para. 123.

<sup>56</sup> Article 15(3) Request, para. 129.

<sup>57</sup> See section II above.

persons in execution of the so-called 'war on drugs' campaign after 1 July 2016.<sup>58</sup> Killings as part of the so-called 'war on drugs' were also referred to in the vast majority of the victims' representations received.<sup>59</sup> The Chamber notes that there appears to be no controversy at all as regards this issue. Indeed, the Philippine Drug Enforcement Agency publicly communicated 5,281 as the number of 'drug personalities who died in anti-drug operations' between 1 July 2016 and 28 February 2019.<sup>60</sup> What is in dispute however are the circumstances in which these killings took place – according to the available information, the Philippine authorities systematically claimed that the use of lethal force was lawful in the individual cases. This issue, including its relevance for the present determination, is addressed below.<sup>61</sup>

*Killings during 'buy-bust' operations*

40. The Prosecutor discusses in the Article 15(3) Request a number of specific scenarios in which killings occurred. The first of these are killings during 'buy-bust' operations, defined and regulated in the police manual on anti-illegal drugs operations.<sup>62</sup> Essentially, 'buy-bust' operations involve a 'poseur buyer' engaging in a transaction with a drug suspect, for the purpose of effecting an arrest.<sup>63</sup>

41. One example within the scope of the prospective investigation are the killings of Noberto Maderal and another individual in Navotas City on 19 October 2016, for which there is information, in the form of an eye-witness accounts given to a journalist, that three plainclothes men barged into the victim's home and dragged Noberto Maderal into the living room.<sup>64</sup> Noberto Maderal pled for his life, but was nevertheless shot.<sup>65</sup> His body was found with a gun in his hand, even though he did not own one according to his relatives, and within five minutes, uniformed police arrived to seal off the scene.<sup>66</sup> At this point, another person, who had been hiding in a back room, was also shot.<sup>67</sup> According to the available information, however, the

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<sup>58</sup> The relevant aspects of the so-called 'war on drugs' campaign, which indeed links the numerous killings, are discussed in the following section as they are foremost relevant to the contextual elements of crimes against humanity. *See* section IV.A.2. below

<sup>59</sup> *See* Registry Report on Victims' Representations, para. 8.

<sup>60</sup> PHL-OTP-0003-2538, at 2538.

<sup>61</sup> *See* paragraphs 54-59 below.

<sup>62</sup> PHL-OTP-0004-3198, at 3241-3249.

<sup>63</sup> PHL-OTP-0004-3198, at 3241-3249.

<sup>64</sup> PHL-OTP-0003-0003, at 0006.

<sup>65</sup> PHL-OTP-0003-0003, at 0006.

<sup>66</sup> PHL-OTP-0003-0003, at 0006.

<sup>67</sup> PHL-OTP-0003-0003, at 0006.

account presented by the police differs – it was claimed that Noberto Maderal and the other person were killed after they drew their guns and tried to open fire at plainclothes officers posing as drug buyers.<sup>68</sup>

42. Another example is the killing of Constantino de Juan on 6 December 2016 in Payatas Village (Quezon City).<sup>69</sup> According to an eyewitness account, the victim was shot inside his home in front of his daughter while begging for his life, yet the police is reported to have claimed that he was shot during a buy-bust operation, when he pulled out a handgun and opened fire.<sup>70</sup> There is information that Constantino de Juan had been included on a police drug watch list.<sup>71</sup>

43. Similarly, there is information that Neptali Celestino, a pedicab driver in Manila, was killed by police on 12 September 2016.<sup>72</sup> While the police stated that he shot at plainclothes officers during a sting operation and that the police returned fire, the victim's family claimed that police burst into their ramshackle home, cornered the unarmed victims and shot him in front of his teenage sons.<sup>73</sup> It appears that Neptali Celestino's name had been included on a police watch list of drug suspects.<sup>74</sup> The police have claimed that they found a revolver and three sachets of *shabu* on Neptali Celestino, a claim disputed by his wife.<sup>75</sup>

*Killings allegedly occurred during Tokhang operations*

44. A factual scenario similar to killings during 'buy-bust' operations is represented by the killings reported by the police to have occurred during Tokhang operations.<sup>76</sup>

45. The Prosecutor puts forward as emblematic in this context the case of Efren Morillo.<sup>77</sup> According to the available information, on 21 August 2016 in Payatas (Quezon City), Efren Morillo, a 28-year-old fruit and vegetable vendor, was detained at a house by plainclothes police officers, along with four friends, during an alleged Tokhang operation.<sup>78</sup> The policemen

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<sup>68</sup> PHL-OTP-0003-0003, at 0003.

<sup>69</sup> PHL-OTP-0003-2090, at 2090.

<sup>70</sup> PHL-OTP-0003-2090, at 2090.

<sup>71</sup> PHL-OTP-0003-2090, at 2090.

<sup>72</sup> PHL-OTP-0003-0283, at 0283.

<sup>73</sup> PHL-OTP-0003-0283, at 0283.

<sup>74</sup> PHL-OTP-0003-0283, at 0284.

<sup>75</sup> PHL-OTP-0003-0283, at 0289.

<sup>76</sup> See paragraph 97 below.

<sup>77</sup> Article 15(3) Request, para. 33.

<sup>78</sup> PHL-OTP-0003-0582, at 0609; PHL-OTP-0003-0521, at 0521; PHL-OTP-0003-2277, at 2277; PHL-OTP-0003-2276, at 2276. See also the other supporting material cited at footnote 84 of the Article 15(3) Request.

pointed their guns at them, tied them up and later shot each of them, killing four.<sup>79</sup> Efren Morillo was wounded but survived playing dead, and later gave an account of the incident.<sup>80</sup> He in particular stated that he and his friends were frisked, handcuffed, and unarmed.<sup>81</sup> The police, however, asserted that Efren Morillo and the others pulled their guns and shot at the police, to which the officers responded by shooting the suspects.<sup>82</sup> According to the available information, Efren Morillo was subsequently charged with assaulting a police officer.<sup>83</sup>

46. Another case indicated in the supporting material is that of 30-year-old Rex Appari, who appears to have been shot and killed during a Tokhang operation on 13 September 2016.<sup>84</sup> It is reported that several witnesses stated that plainclothes police entered the victim's home, dragged him out, and shot him.<sup>85</sup> Rex Appari was crying and begging the men not to kill him.<sup>86</sup> Again, the police account of the incident was that patrolling officers identified themselves as police to Rex Appari, who suddenly drew out his gun and shot at the officers, to which the police responded.<sup>87</sup>

#### *Killings during so-called 'One Time, Big Time' operations*

47. As a third typical factual scenario in which killings by Philippine security forces took place, the Prosecutor makes reference to so-called 'One Time, Big Time' operations, which are defined as simultaneous operations in multiple locations.<sup>88</sup> The Prosecutor gives the example of the killing of 17-year-old Kian Delos Santos on 16 August 2017.<sup>89</sup> It has been reported that witness testimony and CCTV footage appear to indicate that the victim was dragged unarmed into an alley by police officers and overheard begging for his life; his body was later found in

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<sup>79</sup> PHL-OTP-0003-0582, at 0609; PHL-OTP-0003-0521, at 0521. *See also* the other supporting material cited at footnote 85 of the Article 15(3) Request.

<sup>80</sup> PHL-OTP-0003-0582, at 0609; PHL-OTP-0003-0521, at 0521. *See also* the other supporting material cited at footnote 86 of the Article 15(3) Request.

<sup>81</sup> PHL-OTP-0003-0521, at 0521. It is noted that according to an Amnesty International report based on an interview with Efren Morillo, 'drug paraphernalia' was found by the officers on his friends. *See* PHL-OTP-0003-0582, at 0609.

<sup>82</sup> PHL-OTP-0003-0521, at 0521; PHL-OTP-0003-2276, at 2276. *See also* Amnesty International Report, PHL-OTP-0003-0582, at 0609. *See also* the other supporting material cited at footnote 89 of the Article 15(3) Request.

<sup>83</sup> PHL-OTP-0003-0521, at 0521.

<sup>84</sup> PHL-OTP-0003-2049, at 2060-2062.

<sup>85</sup> PHL-OTP-0003-2049, at 2060-2062. *See also* the other supporting material cited at footnote 91 of the Article 15(3) Request.

<sup>86</sup> PHL-OTP-0003-2049, at 2060-2062.

<sup>87</sup> *See* the supporting material cited at footnote 90 of the Article 15(3) Request.

<sup>88</sup> Article 15(3) Request, para. 35. For a definition of the so-called 'One Time, Big Time' operations, see PHL-OTP-0003-1718, at 1718-1719.

<sup>89</sup> Article 15(3) Request, para. 36.

the same alley.<sup>90</sup> An autopsy showed that he died of three gunshot wounds to the head and back, the first and second of which were fired when he was on the ground, facedown.<sup>91</sup> Also in this case, however, the police claimed that Kian Delos Santos opened fire on police.<sup>92</sup>

48. The Prosecutor submits that in some cases victims were taken into custody as part of 'One Time, Big Time' operations and later found dead, and that despite obvious discrepancies in the time line, police claimed that such victims were killed in shootouts after resisting arrest.<sup>93</sup> According to the available information, such are the cases of Christian De Leon and Joeward Valiente, who were arrested on 17 August 2017 in Manila and later found dead with torture marks and multiple gunshot wounds on their bodies.<sup>94</sup>

#### *Killings during other official operations*

49. The Prosecutor submits,<sup>95</sup> and the supporting material indicates, that killings also occurred in other official operations. One example referred to in the supporting material is the killing of Mario Rupillo on 10 October 2016 by an anti-criminality patrol.<sup>96</sup> Whereas the police claimed that Mario Rupillo, a 28-year-old tricycle driver, was shot and killed after he failed to stop his motorcycle and fired shots at the police, the available information indicates that he was seen brought handcuffed into a police station.<sup>97</sup> Later the same day, his body appeared in a hospital morgue with seven gunshot wounds and signs of beating.<sup>98</sup> The victim's brother also denied that the gun recorded as recovered from his body, as well as other items including three plastic sachets of *shabu*, belonged to him.<sup>99</sup> Another example is the killing of 18-year-old Joshua Cumilang, who, it appears, was approached by two armed men in civilian clothing, accused of using marijuana, taken to a small alley and shot.<sup>100</sup> The police report of the incident

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<sup>90</sup> PHL-OTP-0003-2273, at 2273; PHL-OTP-0003-2280, at 2280; PHL-OTP-0003-2279, at 2279; PHL-OTP-0003-0547, at 0547; PHL-OTP-0003-2275, at 2275; PHL-OTP-0003-2274, at 2274; PHL-OTP-0003-0520, at 0520; PHL-OTP-0003-1218, at 1235-1236.

<sup>91</sup> PHL-OTP-0003-2275, at 2275.

<sup>92</sup> PHL-OTP-0003-2283, at 2283; PHL-OTP-0003-3109, at 3113-3119, 3141-3142.

<sup>93</sup> Article 15(3) Request, paras 37-38.

<sup>94</sup> See the supporting material cited at footnote 97 of the Article 15(3) Request. See also PHL-OTP-0003-2284, at 2284.

<sup>95</sup> Article 15(3) Request, para. 39.

<sup>96</sup> PHL-OTP-0003-2049, at 2066-2069.

<sup>97</sup> PHL-OTP-0003-2049, at 2066-2069.

<sup>98</sup> PHL-OTP-0003-2049, at 2066-2069.

<sup>99</sup> PHL-OTP-0003-2049, at 2066-2069.

<sup>100</sup> PHL-OTP-0003-2049, at 2054-2056.

stated that he was shot in self-defence during an anti-criminality patrol after he fired twice at officers.<sup>101</sup>

50. The supporting material also contains information that a number of persons were killed during raids conducted by Philippine security forces in the homes of the victims.<sup>102</sup> While, again, the police claimed that officers acted in self-defence, witnesses frequently stated they saw evidence being planted in the aftermath or that the victim was not in possession of drugs or weapons.<sup>103</sup> There is similar information available about killings during search or arrest operations.<sup>104</sup>

51. A slightly different factual pattern is discernible in the killings of persons acknowledged by the police to be in police custody or detention. The Prosecutor submits that in such cases, the authorities typically claimed that the victim engaged in violence – such as waving a weapon or attempting to take an officer's weapon – causing officers to shoot and kill them.<sup>105</sup>

52. An example is the killing of father and son Renato and Jaypee Bertes, who were apparently shot on 7 July 2016 while held at the Pasay City police station after being arrested for drug offences.<sup>106</sup> The police claimed that the victims attempted to grab officers' guns, however, an inquiry by the Philippine Commission for Human Rights found elements incompatible with this scenario, in particular that the victims had been incapacitated by the beatings before they were shot and that Jaypee Bertes had a broken arm.<sup>107</sup>

53. Another example is the killing of Rolando (or Ronaldo) Espinosa Sr, former Mayor of Leyte. He was killed on 5 November 2016 apparently in a 'shootout' in his cell at the Leyte Sub-Provincial Jail in Baybay City, but a subsequent internal investigation concluded that members of the PNP planned the killing and executed it under the pretence of implementing a search warrant.<sup>108</sup>

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<sup>101</sup> PHL-OTP-0003-2049, at 2054-2056.

<sup>102</sup> PHL-OTP-0003-0582, at 0603-0604; PHL-OTP-0003-0662, at 0716-0717, 0736-0737, 0740-0741; PHL-OTP-0003-1218, at 1238, 1252-1253, 1261.

<sup>103</sup> PHL-OTP-0003-0582, at 0603-0604.

<sup>104</sup> See the supporting material cited at footnote 108 of the Article 15(3) Request.

<sup>105</sup> Article 15(3) Request, para. 45.

<sup>106</sup> PHL-OTP-0003-0582, at 0608; PHL-OTP-0003-2297, at 2297; PHL-OTP-0003-0529, at 0529.

<sup>107</sup> PHL-OTP-0003-0582, at 0608; PHL-OTP-0003-2297, at 2297; PHL-OTP-0003-2298, at 2298; PHL-OTP-0003-0529, at 0529; PHL-OTP-0003-2300, at 2300. See also the other supporting material cited at footnote 118 of the Article 15(3) Request.

<sup>108</sup> PHL-OTP-0003-0582, at 0608; PHL-OTP-0003-1703, at 1703; PHL-OTP-0003-2294, at 2294; PHL-OTP-0001-4071, at 4071; PHL-OTP-0003-2294, at 2294.

*The claim of self-defence*

54. It is clear from the above overview of the available information that there systematically exist contradicting accounts of the killings, centering on the question of whether there existed in each case circumstances justifying the use of lethal force by the Philippine security forces. In particular, the Philippine security forces have acknowledged that persons were killed during anti-drug operations,<sup>109</sup> but have consistently claimed that the deaths resulted from officers acting in self-defence.<sup>110</sup> The Prosecutor submits that '[t]he question of whether a particular perpetrator acted in self-defence is best addressed at the investigation and trial stages, as opposed to the preliminary investigation stage'.<sup>111</sup>

55. The Chamber agrees that the question of whether a particular perpetrator acted in self-defence must be addressed as part of the investigation, and, as the case may be, determined in further judicial proceedings. This is because competing versions of the relevant events can be reconstructed from the supporting material, one typically on the basis of official reports of the Philippine security forces, and the other on the basis of eyewitness accounts or autopsy reports. However, as said, it is not the purpose of the Chamber's analysis under Article 15 of the Statute to make authoritative determinations of facts or establish which of the competing versions of event is true. To do so would be premature, as it is precisely the purpose of investigation to examine such questions. The presence of competing versions of the relevant facts is not as such a factor speaking against the authorisation of the investigation, as it does not logically preclude the existence of a reasonable basis to proceed with an investigation. Rather, as noted above, such circumstances in fact call for an investigation to be opened, provided that the relevant requirements have been met.

56. Thus, it is the role of the Chamber to take into account all of the material presented by the Prosecutor in support of the request for authorisation of the investigation, and decide on that basis whether the conditions for the authorisation of investigation are met. In the present instance, the Chamber notes that there is also information available on the record that *prima facie* disproves in many cases any scenario of self-defence on the part of the Philippine security force members. At the same time, as also submitted by the Prosecutor,<sup>112</sup> the Chamber

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<sup>109</sup> PHL-OTP-0003-2513, at 2513.

<sup>110</sup> PHL-OTP-0003-0003, at 0003; PHL-OTP-0003-0309, at 0309; PHL-OTP-0003-0409, at 0409-0410; PHL-OTP-0003-0307, at 0307.

<sup>111</sup> Article 15(3) Request, para. 49.

<sup>112</sup> Article 15(3) Request, para. 52.

considers, on the basis of the available information, that there could be incidents in which the use of lethal force was justified and lawful.

57. The Chamber notes that the official claim of self-defence is in many cases contradicted by witnesses, who stated that victims were unarmed, surrendering to the police or pleading for their lives.<sup>113</sup> In some instances, surveillance footage or other video also contradicted official accounts.<sup>114</sup> Some victims were last seen alive in police custody, yet the official report indicated that killings occurred during a buy-bust or similar operation.<sup>115</sup> It has also been reported that many victims had wounds *prima facie* inconsistent with mere defensive action by the police, such as a large number of gunshot wounds, gunshot wounds to the back or the back of the head, wounds suggestive of execution (under the chin, to the temple or in the back, from downward trajectories, or at very close range).<sup>116</sup> The supporting material also contains records of police insiders stating that killings were planned in advance and that the self-defence scenario was simply staged.<sup>117</sup>

58. There is further information that, in various cases, police planted evidence at crime scenes, produced false or misleading reports or took other measures to support claims of self-defence.<sup>118</sup> Significantly, there is insider information to this effect.<sup>119</sup> The Chamber also notes that the Office of the High Commissioner for Human Rights found, based on an examination of police reports, that police repeatedly recovered guns bearing the same serial numbers from different victims in different locations, suggesting a pattern of planting evidence.<sup>120</sup> Still other information suggests that in some instances police have made it difficult for family members

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<sup>113</sup> PHL-OTP-0003-0582, at 0603-0608, 0611-0614; PHL-OTP-0003-2271, at 2271; PHL-OTP-0003-0517, at 0517; PHL-OTP-0003-0662, at 0707-0747; PHL-OTP-0003-0524, at 0524; PHL-OTP-0003-0518, at 0518.

<sup>114</sup> PHL-OTP-0003-0514, at 0514; PHL-OTP-0003-0517; PHL-OTP-0003-0548, at 0548.

<sup>115</sup> PHL-OTP-0003-0662, at 0710-0712, 0716; PHL-OTP-0003-0524, at 0524; PHL-OTP-0003-0518, at 0518; PHL-OTP-0003-0582, at 0582. *See also* the other supporting material cited at footnote 138 of the Article 15(3) Request.

<sup>116</sup> PHL-OTP-0003-0582, at 0599, 0603, 0606, 0608; PHL-OTP-0003-2271, at 2271; PHL-OTP-0003-2270, at 2270; PHL-OTP-0003-0530, at 0530; PHL-OTP-0003-0662, at 0709, 0713, 0720; PHL-OTP-0003-1218, at 1250, 1252. *See also* the other supporting material cited at footnote 140 of the Article 15(3) Request.

<sup>117</sup> PHL-OTP-0003-0523, at 0523; PHL-OTP-0003-0092, at 0097. *See also* the supporting material cited at footnote 144 of the Article 15(3) Request.

<sup>118</sup> PHL-OTP-0003-0092, at 0097; PHL-OTP-0003-0582, at 0602, 0611-0614; PHL-OTP-0003-2270, at 2270; PHL-OTP-0003-1056, at 1056; PHL-OTP-0003-1053, at 1053. *See also* the other supporting material cited at footnote 152 of the Article 15(3) Request.

<sup>119</sup> PHL-OTP-0003-0582, at 0602, 0611-0614.

<sup>120</sup> PHL-OTP-0003-2968, at 2973.

to get access to autopsy results or forensic reports, or to challenge police accounts, due to an environment of intimidation and fear of reprisals by police.<sup>121</sup>

59. The Chamber also notes as relevant in the matter that while the Philippine security forces claimed that killings were justified as self-defence in each particular case, higher level statements, including by President Rodrigo Duterte, appear to have encouraged and justified extrajudicial killings of drug dealers and users.<sup>122</sup>

60. Taking into account all of the above, the Chamber considers it established, to the requisite standard, that members of the Philippine security forces killed persons as part of the so-called 'war on drugs' campaign.

*Killings committed outside of official law enforcement operations*

61. The Chamber turns now to the Prosecutor's submission that 'thousands of similar killings committed outside of official law enforcement operations between 1 July 2016 and 16 March 2019 were directly connected to the [war on drugs] campaign, despite being attributed by the police to "unidentified" perpetrators'.<sup>123</sup> The Prosecutor identified three categories of perpetrators: law enforcement officers concealing their identity, private actors coordinating with and paid by the police, and other private individuals or groups instigated to act by the government's 'war on drugs' campaign.<sup>124</sup>

62. In the assessment of the Chamber, the assertions of the Prosecutor find sufficient support in the available material at this stage. First of all, there is information that members of law enforcement in plain clothes perpetrated killings, after which measures were taken to make the killings appear as if they had been perpetrated by private actors.<sup>125</sup> Insider accounts given to journalists or non-governmental organisations support this claim.<sup>126</sup>

63. In other cases, there is indication that private perpetrators were hired and operated under the supervision of police elements, or that they otherwise relied on a connection to the police

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<sup>121</sup> PHL-OTP-0003-0003, at 0004; PHL-OTP-0003-1004; PHL-OTP-0003-0582, at 0588, 0629-0631, 0633; PHL-OTP-0003-1218, at 1229. *See also* the other supporting material cited at footnote 160 of the Article 15(3) Request.

<sup>122</sup> See paragraph 94 below.

<sup>123</sup> Article 15(3) Request, para. 65.

<sup>124</sup> Article 15(3) Request, para. 65.

<sup>125</sup> PHL-OTP-0003-0582, at 0587, 0614-0620, 0627-0628; PHL-OTP-0003-1004, at 1025; PHL-OTP-0003-0662, at 0709; PHL-OTP-0003-0398, at 0398. *See also* the other supporting material cited at footnote 176 of the Article 15(3) Request.

<sup>126</sup> PHL-OTP-0003-0582, at 0618; PHL-OTP-0003-0506, at 0506.

in order to perpetrate the killings.<sup>127</sup> Still other perpetrators apparently declared themselves to be 'soldiers in President Rodrigo Duterte's war against drugs'.<sup>128</sup>

64. According to the Prosecutor's submissions, supported by relevant material, such vigilante-style killings typically fit one of three different scenarios: 'riding in tandem' on a motorcycle or in a van, shooting the victims at close range, and swiftly leaving the area;<sup>129</sup> targeting victims at their homes;<sup>130</sup> or killings in unknown circumstances, but with bodies disposed of in public locations, tied up and frequently displaying a cardboard sign purporting that the person was a drug user or dealer.<sup>131</sup> It is observed at this juncture that there may be overlap between the categories of private individuals who perpetrated killings as just identified.<sup>132</sup>

65. The Prosecutor submits,<sup>133</sup> and the supporting material establishes sufficiently at the present stage, that the targeted victims were civilians suspected of being connected to illegal drug activities, such as persons on drug watch lists, persons who had been publicly identified as drug personalities, and those who had previously surrendered to authorities as part of Operation Tokhang.<sup>134</sup>

66. In conclusion on this point, the Chamber considers that it is sufficiently established, at the present preliminary stage of the proceedings, that private individuals killed persons as part of the so-called 'war on drugs' campaign.

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<sup>127</sup> PHL-OTP-0003-0582, at 0618-0619; PHL-OTP-0003-0504, at 0504; PHL-OTP-0001-2496, at 2496; PHL-OTP-0003-0503, at 0503; PHL-OTP-0003-0515, at 0515; PHL-OTP-0003-1418, at 1418.

<sup>128</sup> PHL-OTP-0003-1411 at 1417.

<sup>129</sup> PHL-OTP-0003-0582, at 0615-0620; PHL-OTP-0003-1004, at 1025; PHL-OTP-0003-0662, at 0708; PHL-OTP-0003-3037, at 3037; PHL-OTP-0003-1421, at 1421; PHL-OTP-0003-2248, at 2248; PHL-OTP-0003-1218, at 1239, 1256, 1258. *See also* the other supporting material cited at footnote 185 of the Article 15(3) Request.

<sup>130</sup> PHL-OTP-0003-0582, at 0615; PHL-OTP-0003-1004, at 1025; PHL-OTP-0003-0662, at 0744-0745; PHL-OTP-0002-0605, at 0605; PHL-OTP-0003-3037 at 3037.

<sup>131</sup> PHL-OTP-0003-0582, at 0615-0616; PHL-OTP-0003-0662, at 0709, 0724-0725; PHL-OTP-0003-2996, at 2996; PHL-OTP-0003-3037 at 3037; PHL-OTP-0003-0514, at 0514; PHL-OTP-0003-2091, at 2102; PHL-OTP-0003-0212, at 0216; PHL-OTP-0003-0398, at 0406; PHL-OTP-0003-2303, at 2303; PHL-OTP-0003-2302, at 2302; PHL-OTP-0003-1218, at 1255.

<sup>132</sup> PHL-OTP-0003-1418, at 1418; PHL-OTP-0003-1419, at 1419; PHL-OTP-0003-1421, at 1421; PHL-OTP-0003-1423 at 1423; PHL-OTP-0003-1420 at 1420.

<sup>133</sup> Article 15(3) Request, para. 72.

<sup>134</sup> PHL-OTP-0003-1004, at 1016, 1025; PHL-OTP-0003-0582, at 0615-0617, PHL-OTP-0003-0662, at 0744-0745; PHL-OTP-0003-0283, at 0283; PHL-OTP-0003-1550, at 1550; PHL-OTP-0003-2291, at 2291; PHL-OTP-0003-3037, at 3037; PHL-OTP-0003-2249, at 2249; PHL-OTP-0003-2248, at 2248; PHL-OTP-0003-0550, at 0550; PHL-OTP-0003-1218, at 1256. *See also* the other supporting material cited at footnote 181 of the Article 15(3) Request.

*Aggregate number and geographic distribution of killings*

67. Concerning the aggregate number and geographic distribution of the killings, the Chamber notes the following available information, emphasising again that this is a very preliminary stage of proceedings, that the material available is limited quality and that only a more detailed investigation will shed light on the number of persons killed within the so called war on drugs campaign and the specific circumstances: (i) the estimates of the number of killed persons range from 12,000 to 30,000;<sup>135</sup> (ii) the Philippine authorities themselves reported that at least 5,281 persons were killed during police-anti drug operations alone between July 2016 and March 2019;<sup>136</sup> (iii) killings linked to the so-called 'war on drugs' campaign were committed throughout the territory of the Philippines, and were concentrated in highly urbanised areas, in particular in the National Capital Region;<sup>137</sup> (iv) killings took part throughout the time period under examination and, while the number of killings was reduced on two occasions as a result of the suspension of activities forming part of the so-called 'war on drugs' campaign by the Philippine authorities, never ceased completely.<sup>138</sup>

*Killings in the Davao area in 2011-2016*

68. The Chamber addresses in this context also the submissions of the Prosecutor in relation to the alleged killings in the Davao area before 1 July 2016. Even though these submissions are presented in the Article 15(3) Request as a separate final section apparently related mostly to the scope of the authorisation, the Chamber considers that, since the Prosecutor alleges that crimes within the jurisdiction of the Court were committed there, the allegation and the underlying supporting material should be analysed by the Chamber in the same way as the submissions and supporting material pertaining to the so-called 'war on drugs' campaign from 1 July 2016 onwards. The Chamber stresses also the relevance of pursuing this analysis, given the contextual elements of the alleged crimes as further indicated below.<sup>139</sup>

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<sup>135</sup> See Article 15(3) Request, para. 19. See 0003-0796, at 0796; PHL-OTP-0003-0799, at 0799; PHL-OTP-0003-3344, at 3347; PHL-OTP-0003-0565, at 0566-0568; PHL-OTP-0003-1494, at 1494-1495; PHL-OTP-0003-1004, at 1013; PHL-OTP-0002-0601, at 0601.

<sup>136</sup> PHL-OTP-0003-2538, at 2538.

<sup>137</sup> PHL-OTP-0003-2996, at 2997; PHL-OTP-0003-0810, at 0814; PHL-OTP-0003-1283, at 1283; PHL-OTP-0003-1218, at 1228.

<sup>138</sup> PHL-OTP-0003-0810, at 0815. See also the other supporting material cited at footnote 215 of the Article 15(3) Request.

<sup>139</sup> See paras 105-106.

69. The Chamber accepts that the supporting material sufficiently indicates, at the present stage, that groups of local police officers and vigilantes perpetrated numerous killings of predominantly young men suspected of involvement in small-scale drug dealing or minor crimes such as petty theft and drug use.<sup>140</sup> The Chamber notes in particular the information to the effect that a so-called 'Davao death squad' operated, and that local law enforcement units were heavily involved in its operation.<sup>141</sup> There is information that in 2011-2015 there were around 385 victims of extrajudicial killings in Davao.<sup>142</sup>

#### *Conclusion*

70. In sum, the Chamber concludes that it has been sufficiently established, for the purpose of an authorisation to investigate, that the specific legal element of the crime against humanity of murder under Article 7(1)(a) of the Statute has been met with respect to the killings committed throughout the Philippines between 1 July 2016 and 16 March 2019 in the context of the so-called 'war on drugs' campaign, as well as with respect to the killings in the Davao area between 1 November 2011 and 30 June 2016.

71. Regarding the Prosecutor submissions that 'several of the incidents [...] appear to have included severe beatings or other mistreatment of victims prior to the killings, as well as instances in which victims' family members were forced to witness the killings', and that these facts 'may constitute additional Crimes Against Humanity of Torture or Other Inhumane Acts under articles 7(1)(f) and (k) of the Statute'<sup>143</sup>, the Chamber notes that, unlike for the crime against humanity of murder, the Prosecutor does not affirmatively allege that these crimes are established to the standard requisite at this stage. As such, the issue is one of scope of the authorised investigation, and will thus be addressed below.<sup>144</sup>

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<sup>140</sup> PHL-OTP-0003-0886, at 0893, 0904, 0916-0918, 0908-0909; PHL-OTP-0003-0199, at 0200; PHL-OTP-0003-0301, at 0304.

<sup>141</sup> PHL-OTP-0003-0886, at 0939-0943. *See also* the other supporting material cited at footnotes 335-337 of the Article 15(3) Request.

<sup>142</sup> PHL-OTP-0003-1060, at 1060.

<sup>143</sup> Article 15(3) Request, para. 129.

<sup>144</sup> *See* section V.

## 2. Contextual elements of crimes against humanity

### (i) Applicable law

72. The contextual elements of crimes against humanity derive from a combination of the ‘chapeau’ of Article 7(1) of the Statute and the definition of ‘attack’ provided by Article 7(2) of the Statute.

73. An ‘attack’ within the meaning of Article 7(1) of the Statute means a ‘course of conduct involving the multiple commission of acts referred to in [Article 7(1)]’.<sup>145</sup> The requirement that the acts form part of a ‘course of conduct’ indicates that Article 7 is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts.<sup>146</sup> The ‘multiple commission of acts’ sets a quantitative threshold involving a certain number of acts falling within the course of conduct.<sup>147</sup>

74. The course of conduct must be ‘directed against any civilian population’, namely a collective, as opposed to individual civilians. The civilian population must be the primary target of the attack and not an incidental victim of it.<sup>148</sup> The presence within a civilian population of individuals who do not fall under the definition of ‘civilians’ does not deprive the population of its civilian character.<sup>149</sup> Further, and although the attack must be directed against a civilian population, there is no requirement that the individual victims of crimes be civilians; they need only be ‘persons’ under the Elements of Crimes.<sup>150</sup> The Chamber notes that there also must be a sufficient nexus to an attack against a ‘civilian’ population.<sup>151</sup>

75. The ‘course of conduct involving the multiple commission of acts’ must take place ‘pursuant to or in furtherance of a State or organizational policy to commit such attack’ within the meaning of Article 7(2)(a) of the Statute. The Elements of Crimes specify that the “‘policy to commit such attack’” requires that the [...] organization actively promote[s] or encourage[s]

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<sup>145</sup> Article 7(2)(a) of the Statute.

<sup>146</sup> Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Trial Judgment, 4 February 2021, [ICC-02/04-01/15-1762-Red](#), para. 2674, referring to Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#), para. 662 (‘Ntaganda Trial Judgment’).

<sup>147</sup> [Ongwen Trial Judgment](#), para. 2674.

<sup>148</sup> [Ongwen Trial Judgment](#), para. 2675.

<sup>149</sup> [Ongwen Trial Judgment](#), para. 2675.

<sup>150</sup> [Ongwen Trial Judgment](#), para. 2675, referring to [Ntaganda Trial Judgment](#), para. 669.

<sup>151</sup> [Ongwen Trial Judgment](#), para. 2679.

such an attack against a civilian population'.<sup>152</sup> For the purposes of this decision, only the 'State policy' prong is relevant.

76. While the term 'State' is self-explanatory, for a 'State policy' to commit an attack, the policy does not necessarily need to have been conceived 'at the highest level of the State machinery'. Hence, a policy adopted by regional or even local organs of the State could satisfy the requirement of a State policy.<sup>153</sup>

77. As the terms 'pursuant to or in furtherance of' imply, the policy requirement ensures that the multiple acts forming the course of conduct are linked and that acts which are unrelated or perpetrated by individuals acting randomly on their own are excluded.<sup>154</sup>

78. A policy may consist of a pre-established design or plan, but it may also crystallise and develop only as actions are undertaken by the perpetrators.<sup>155</sup> The 'policy' may be inferred from a variety of factors, such as: (i) a recurrent pattern of violence; (ii) the existence of preparations or collective mobilisation orchestrated and coordinated by the organisation; (iii) the use of public or private resources to further the policy; (iv) the involvement of organisational forces in the commission of crimes; (v) statements, instructions or documentation attributable to the organisation condoning or encouraging the commission of crimes; and (vi) an underlying motivation.<sup>156</sup> The systematic manner in which attacks are carried out 'strongly suggests the existence of an organisational policy'.<sup>157</sup>

79. The alternative qualifiers of 'widespread' or 'systematic' serve to characterise the 'attack' itself. The term 'widespread' connotes the large-scale nature of the attack and the number of targeted persons.<sup>158</sup> The assessment of whether the attack is widespread is neither exclusively quantitative nor geographical, but must be carried out on the basis of all the relevant facts of the case.<sup>159</sup>

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<sup>152</sup> Elements of Crimes, Introduction to Article 7, para. 3. *See also* footnote 6 of the same paragraph.

<sup>153</sup> [Côte d'Ivoire Article 15 Decision](#), para. 45.

<sup>154</sup> [Ongwen Trial Judgment](#), para. 2678.

<sup>155</sup> [Ongwen Trial Judgment](#), para. 2679.

<sup>156</sup> [Ongwen Trial Judgment](#), para. 2679.

<sup>157</sup> [Côte d'Ivoire Article 15 Decision](#), para. 100.

<sup>158</sup> [Ongwen Trial Judgment](#), para. 2681.

<sup>159</sup> [Ongwen Trial Judgment](#), para. 2681.

80. The term 'systematic' reflects the organised nature of the violent acts, referring often to the existence of 'patterns of crimes' and the improbability of their random or accidental occurrence.<sup>160</sup>

81. Crimes against humanity must have been committed 'as part of' a widespread or systematic attack directed against a civilian population.<sup>161</sup> When assessing such a nexus, due regard must be given to the characteristics, aims, nature and consequences of the acts concerned.<sup>162</sup>

(ii) *Prosecutor's submissions*

82. The Prosecutor submits that the available information provides a reasonable basis to believe that, since at least 1 July 2016, members of Philippine law enforcement and others carried out multiple acts under Article 7(1) of the Statute that collectively amount to an 'attack' against the civilian population within the meaning of Article 7(2)(a).<sup>163</sup> According to the Prosecutor, the targeted civilian population was 'primarily Filipino civilians suspected by authorities to be involved in drug-related activities, such as the production, use, or sale of illegal drugs'.<sup>164</sup> The Prosecutor points out that many victims had been included on drug watch lists, and some had previously surrendered to the police in connection with Operation Tokhang.<sup>165</sup>

83. The Prosecutor further submits that the killings were carried out 'pursuant to a State policy to kill suspected drug users and sellers and to instigate members of the public to carry out such killings'.<sup>166</sup> In support of this conclusion, the Prosecutor argues that the killings were committed in connection with a formal anti-drug campaign,<sup>167</sup> that the 'plethora of public statements made by Duterte and other Philippine government officials encouraging, supporting, and, in certain instances, urging the public to kill suspected drug users and dealers also indicate a State policy to attack civilians',<sup>168</sup> that state officials offered and granted financial incentives and applied pressure on the physical perpetrators to commit killings,<sup>169</sup> and

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<sup>160</sup> [Ongwen Trial Judgment](#), para. 2682.

<sup>161</sup> See the chapeau of Article 7(1) of the Statute ('as part of').

<sup>162</sup> [Ongwen Trial Judgment](#), para. 2688.

<sup>163</sup> Article 15(3) Request, para. 89.

<sup>164</sup> Article 15(3) Request, para. 92.

<sup>165</sup> Article 15(3) Request, para. 92.

<sup>166</sup> Article 15(3) Request, para. 94.

<sup>167</sup> Article 15(3) Request, paras 95-100.

<sup>168</sup> Article 15(3) Request, paras 101-108.

<sup>169</sup> Article 15(3) Request, paras 109-113.

that there has been a failure to take steps to investigate or prosecute the killings, including promises of immunity.<sup>170</sup>

84. The Prosecutor argues that the attack against the civilian population was widespread as it ‘was carried out on a large scale and frequent basis, targeting and victimising a significant number of civilians in regions throughout the Philippines over a protracted period of time’, and systematic as ‘can be inferred from the evidence of a State policy [...], and it is further manifested by the apparent advance preparations made for the attack, the highly organised and coordinated nature of the attack, the deliberate and near-exclusive victimisation of the targeted population, and the clear and consistent pattern of violence directed at the targeted population’.<sup>171</sup>

85. Finally, the Prosecutor submits that the available information provides a reasonable basis to believe that there is a nexus between the identified individual killings and the attack, on the basis of factors including: (i) the geographic and temporal overlap between the attack and the identified crimes; (ii) the fact that in many instances the perpetrators of the identified crimes – members of the Philippine law enforcement and affiliated perpetrators – also appear to be responsible for the attack; and (iii) the fact that the same category of persons (those suspected of involvement in illegal drug activities or otherwise connected to individuals involved in such activities) were both the object of the attack and the victims of the identified crimes.<sup>172</sup>

*(iii) Determination by the Chamber*

*Attack against a civilian population*

86. According to the information available, a clear pattern of killings can be discerned covering the main period under examination, *i.e.* 1 July 2016 – 16 March 2019, and extending to the territory of the Philippines at large. This is a conclusion that can be drawn from the analysis of the Prosecutor’s submissions and the supporting material in the preceding section.<sup>173</sup> In the view of the Chamber, a course of conduct, or an ‘overall flow of events’, is clearly discernible. Accordingly, the killings amount to an ‘attack’ within the meaning of Article 7(2)(a) of the Statute. In this context is noted that although the intensity of this course

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<sup>170</sup> Article 15(3) Request, paras 114-119.

<sup>171</sup> Article 15(3) Request, paras 120-121 (footnotes omitted).

<sup>172</sup> Article 15(3) Request, para 122.

<sup>173</sup> *See* section IV.A.1(iii).

of conduct reduced on two occasions for relatively short periods of time following government decisions to suspend aspects of the so-called 'war on drugs' campaign, the killings did not stop completely and in any case the disruptions were only temporary.<sup>174</sup>

87. It further appears, based on the available material as analysed in the preceding section,<sup>175</sup> that the killings were directed against persons allegedly associated with the use and trafficking of illegal drugs. Thus, the attack targeted a civilian population within the meaning of Article 7(1) of the Statute.

88. In this context, the Chamber considers it necessary to express some considerations regarding the international legal framework for drug trafficking and the duties of States in this regard. The Chamber notes that illicit traffic in drugs is an international criminal activity whose suppression is a collective responsibility of States and that an international system of coordination and cooperation has been established to ensure that objective. The system is composed by the following main instruments, to which the Philippines is a State Party: 1961 Single Convention on Narcotic Drugs, 1961, as amended by the Protocol amending the Single Convention on Narcotic Drugs, 1961,<sup>176</sup> the 1971 Convention on psychotropic substances,<sup>177</sup> and the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.<sup>178</sup> All instruments mentioned establish, among others, the duty of States to make drug trafficking a criminal offence under domestic law and to prosecute their perpetrators with appropriate penalties in accordance with the law.

89. At the same time, States are bound by human rights law and shall ensure all persons within their jurisdiction the enjoyment of the rights contained in the applicable legal instruments. The Chamber notes that the Philippines is a State Party, among others, to the International Covenant on Civil and Political Rights,<sup>179</sup> which ensures the right to life and provide for judicial guarantees to any person accused of criminal offences. This means that activities of States are subject to limitations determined by the applicable international law and those limitations are key to distinguish legal activities from others. The Chamber recognizes the right and duty of all countries to combat drug trafficking, but also stresses that such combat

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<sup>174</sup> PHL-OTP-0003-0810, at 0815. *See also* the other supporting material cited at footnote 215 of the Article 15(3) Request.

<sup>175</sup> *See* section IV.A.1(iii), above.

<sup>176</sup> United Nations Treaty Series, vol. 976, p. 105.

<sup>177</sup> United Nations Treaty Series, vol. 1019, p. 175.

<sup>178</sup> United Nations Treaty Series, vol. 1582, p. 95.

<sup>179</sup> United Nations Treaty Series, vol. 999, p. 171.

must be made in accordance with human rights obligations and that the breach of such obligations may render their actions contrary to international law. In this sense, legitimate operations against illicit drugs, respecting internationally protected human rights, could not as such qualify as an attack against the civilian population.

90. Moreover, the Chamber notes that the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, when emphasising the fight against drug related offences, put the emphasis on imprisonment, either completed or substituted with lighter penalties and social rehabilitation,<sup>180</sup> and underlined the responsibility of the ordinary courts in this matter.<sup>181</sup> The Chamber also reminds that since 2007 Philippines has been party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (New York, 15 December 1989).<sup>182</sup>

91. However, the facts as apparent from the available material at the present stage of the proceedings do not allow for the killings committed between 1 July 2016 and 16 March 2019 in the Philippines as part of the so-called 'war on drugs' campaign to be in any way considered

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<sup>180</sup> See Article 3(4): '(a) Each Party shall make the commission of the offences established in accordance with paragraph 1 of this article liable to sanctions which take into account the grave nature of these offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation. (b) The Parties may provide, in addition to conviction or punishment, for an offence established in accordance with paragraph 1 of this article, that the offender shall undergo measures such as treatment, education, aftercare, rehabilitation or social reintegration. (c) Notwithstanding the preceding sub paragraphs, in appropriate cases of a minor nature, the Parties may provide, as alternatives to conviction or punishment, measures such as education, rehabilitation or social réintégration, as well as, when the offender is a drug abuser, treatment and aftercare. (d) The Parties may provide, either as an alternative to conviction or punishment, or in addition to conviction or punishment of an offence established in accordance with paragraph 2 of this article, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.'

<sup>181</sup> See Article 3(5): 'The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph 1 of this article particularly serious, such as: (a) The involvement in the offence of an organized criminal group to which the offender belongs; (b) The involvement of the offender in other international organized criminal activities; (c) The involvement of the offender in other illegal activities facilitated by commission of the offence; (d) The use of violence or arms by the offender; (e) The fact that the offender holds a public office and that the offence is connected with the office in question; (f) The victimization or use of minors; (g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities; (h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party.'; Article 3(6): 'The Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.'; Article 3(7): 'The Parties shall ensure that their courts or other competent authorities bear in mind the serious nature of the offences enumerated in paragraph 1 of this article and the circumstances enumerated in paragraph 5 of this article when considering the eventuality of early release or parole of persons convicted of such offences.'

<sup>182</sup> United Nations Treaty Series, vol. 1642, p. 414.

a legitimate anti-drug law enforcement operation on the part of the Philippine authorities. In particular, according to the available information, the so-called 'war on drugs' campaign did not incorporate any formal and reviewable decision-making system in individual cases, and did not afford the interested and affected persons a serious opportunity to participate in the process, or to contest the claims against them. International standards and Philippine National Police's own operational procedures as concerns the use of lethal force in law enforcement operations appear to have been ignored.<sup>183</sup> According to the available information, President Rodrigo Duterte has publicly encouraged extrajudicial killings in a way that is incompatible with a genuine law enforcement operation.<sup>184</sup> As discussed in more detail below, persons were targeted based on their inclusion of lists of persons alleged to be involved with illegal drugs, but those lists were arbitrarily drawn up.<sup>185</sup> Further, it appears that non-state actors, or vigilantes, were significantly involved in the so-called 'war on drugs' campaign, with the support of the Philippine security forces.<sup>186</sup> Thus, the Chamber emphasises that, based on the facts as they emerge at present and subject to proper investigation and further analysis, the so-called 'war on drugs' campaign cannot be seen as a legitimate law enforcement operation, and the killings discussed above neither as legitimate nor as mere excesses in an otherwise legitimate operation. Rather, the available material indicates that an attack against the civilian population within the meaning of Article 7(2)(1) of the Statute occurred.

92. Moreover, several sources available in the supporting material provide information establishing that the so-called 'war on drugs' campaign affected certain segments of the population disproportionately. In this regard, the Chamber observes that the victims were likely male, between 20 and 40 years old, and, if they lived in a city, resided in shantytowns or in any of the many pockets of poverty across the metropolis.<sup>187</sup> Moreover, the victims were likely jobless or working in the informal economy, possibly as construction workers, tricycle drivers, 'scavengers', or neighbourhood watchmen.<sup>188</sup> Other supporting material points towards the conclusion that there is a pattern of harm predominately affecting poor, low-skilled residents

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<sup>183</sup> See Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the 1990 UN Congress on the Prevention of Crime and the Treatment of Offenders, PHL-OTP-0001-4114, at 4115-4116, and Philippine National Police documents PHL-OTP-0001-4124, at 4153-4154; PHL-OTP-0003-2660, at 2687, 2690.

<sup>184</sup> See paragraph 94 below.

<sup>185</sup> See paragraph 99 below.

<sup>186</sup> See paragraph 63 above.

<sup>187</sup> PHL-OTP-0003-2090, at 2090.

<sup>188</sup> PHL-OTP-0003-2090, at 2090.

of impoverished urban areas.<sup>189</sup> Several victims' representations also made the point that the so-called 'war on drugs' targeted poor people.<sup>190</sup> The Chamber however also notes that there is information that, in some instances, those killed as part of the so-called 'war on drugs' campaign were public officials, such as civil servants, politicians, mayors, deputy mayors and *barangay*-level officials, as well as members of Philippine security forces and police assets or informants.<sup>191</sup>

*State policy to commit the attack*

93. The Chamber observes that it is also apparent, on the basis of the supporting material, that the attack took place pursuant to or in furtherance of a State policy. The Chamber reaches this conclusion based on the following considerations.

94. First, the killing of alleged drug dealers and users, or even more broadly 'criminals' has been frequently encouraged by Rodrigo Duterte, both during his campaign for Presidency and after he became President of the Philippines.<sup>192</sup> While still Mayor of Davao, he is reported to have declared in 2009: 'If you are doing an illegal activity in my city, if you are a criminal or part of a syndicate that preys on the innocent people of the city, for as long as I am the mayor, you are a legitimate target of assassination'.<sup>193</sup> He is also reported to have boasted of the level of safety in his city and stated that his approach to achieving that was: 'Kill 'em all'.<sup>194</sup> During his presidential campaign, Rodrigo Duterte used his reputation as being tough on drugs and crime as Mayor of Davao and publicly stated in December 2015 that he killed 'around 1,700' people.<sup>195</sup> During a presidential debate in February 2016, he reportedly said: 'If I become president, it would be bloody because we'll order the killing of all criminals'.<sup>196</sup> In May 2016 he was reported as promising to kill 100,000 criminals in his first six months in office.<sup>197</sup> In a

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<sup>189</sup> PHL-OTP-0003-0582, at 0587, 0621; PHL-OTP-0003-0662, at 0686; PHL-OTP-0003-1623, at 1628; PHL-OTP-0003-1634, at 1634-1639; PHL-OTP-0003-0232, at 0232-0239; PHL-OTP-0003-2996, at 2996. *See also* the other supporting material cited at footnote 47 of the Article 15(3) Request.

<sup>190</sup> Registry Report on Victims' Representations, pages 20-21

<sup>191</sup> PHL-OTP-0003-3503, at 3503-3505; PHL-OTP-0003-1697, at 1698; PHL-OTP-0003-1700, at 1700-1701; PHL-OTP-0003-0508, at 0508; PHL-OTP-0003-1661, at 1661-1664; PHL-OTP-0003-3826, at 3826; PHL-OTP-0003-2252, at 2252; PHL-OTP-0003-1793, at 1795; PHL-OTP-0003-2659, at 2659; PHL-OTP-0003-1284, at 1284; PHL-OTP-0002-0592, at 0592. *See also* the other supporting material cited at footnotes 50-52 of the Article 15(3) Request.

<sup>192</sup> *See* Article 15(3) Request, paras 101-108.

<sup>193</sup> PHL-OTP-0003-0014, at 0016.

<sup>194</sup> PHL-OTP-0003-1287, at 1287.

<sup>195</sup> PHL-OTP-0003-1297, at 1299; PHL-OTP-0003-0041, at 0041.

<sup>196</sup> PHL-OTP-0003-1303, at 1303.

<sup>197</sup> PHL-OTP-0003-0041, at 0041; PHL-OTP-0003-1290, at 1291; PHL-OTP-0004-0278, at 0427-0428.

speech in June 2016, he said the following: 'If you're still into drugs, I will kill you, don't take this as a joke. I'm not trying to make you laugh, son of a bitch, I will really kill you.'<sup>198</sup> According to reports available in the supporting material, President Rodrigo Duterte, immediately after being sworn in, publicly vowed that he would wipe out drug traffickers and urged the population to kill addicts.<sup>199</sup> Further, according to media reports, on 29 September 2016, President Rodrigo Duterte stated: 'There are 3 million drug addicts (in the Philippines). I'd be happy to slaughter them', and likened himself to Adolf Hitler.<sup>200</sup>

95. The Chamber also notes that there is information that others, and in particular Philippine National Police Chief Ronald Dela Rosa, made similar statements, declaring that killing those involved in drugs was the intention in the so-called 'war on drugs' campaign.<sup>201</sup>

96. Second, as stated also by the Prosecutor, there is a clear link between the killings and the government's formal anti-drug campaign.<sup>202</sup> The Prosecutor has submitted in support of the Article 15(3) Request a copy of the Philippine National Police Command Memorandum Circular No. 16-2016 ('CMC No. 16-2016').<sup>203</sup> In the view of the Chamber, it is significant that the document, issued on 1 July 2016, *i.e.* the first day of Rodrigo Duterte's presidency, includes as the first among the 'references' in its introduction the 'Pronouncement of PRESIDENT RODRIGO R DUTERTE to get rid of illegal drugs during the first six months of his term'.<sup>204</sup> The document declares that the PNP 'intends to equally address illegal drug problems in the barangays and at the same time pursue the neutralization of illegal drug personalities as well as the backbone of illegal drugs network operating in the country'.<sup>205</sup> The Prosecutor submits that the reference to 'neutralising' is used in its euphemistic meaning of 'killing'.<sup>206</sup> The supporting material also includes records of police insiders stating that in

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<sup>198</sup> PHL-OTP-0003-0022, at 0025.

<sup>199</sup> PHL-OTP-0003-0101, at 0101; PHL-OTP-0003-0657, at 0657-0658; PHL-OTP-0003-0047, at 0048; PHL-OTP-0003-0254, at 0254.

<sup>200</sup> PHL-OTP-0003-0127, at 0128; PHL-OTP-0003-0152, at 0153-0154.

<sup>201</sup> PHL-OTP-0003-1350, at 1351; PHL-OTP-0003-1377, at 1377.

<sup>202</sup> See Article 15(3) Request, paras 95-100.

<sup>203</sup> PHL-OTP-0003-2490 at 2490-2512.

<sup>204</sup> PHL-OTP-0003-2490, at 2490.

<sup>205</sup> PHL-OTP-0003-2490, at 2492.

<sup>206</sup> Article 15(3) Request, para. 96.

killing persons during purported anti-drug operations, they followed instructions of the government.<sup>207</sup>

97. The Chamber further notes that the Prosecutor has provided a relatively detailed explanation of the so-called 'war on drugs' campaign launched on 1 July 2016.<sup>208</sup> In brief, a so-called 'Project: "Double Barrel"' was launched, consisting of two basic components: 'Project Tokhang', which focused on house-to-house visits carried out to 'persuade suspected illegal drug personalities to stop their illegal drug activities';<sup>209</sup> and 'Project HVT' (high-value target), consisting of operations such as 'buy-bust' operations, searches and arrests, raids and checkpoints.<sup>210</sup> It is noted that whereas the so-called 'war on drugs' campaign was modified several times, and the competences of various State organs changed, this did not affect the essential tenets of the campaign.<sup>211</sup>

98. In this context, it is significant that a marked increase in killings of persons allegedly involved with drugs was reported following the assumption of the presidency by Rodrigo Duterte and issuance of CMC No. 16-2016.<sup>212</sup> Further, the reduction of the number of killings<sup>213</sup> following the two instances of the suspension of the so-called 'war on drugs' campaign in January-March 2017<sup>214</sup> and again in October-December 2017<sup>215</sup> lend support to the proposition that the killings occurred in execution of, or because of, the official policy.

99. Third, the Chamber notes the consistent reference in the supporting material to lists of persons alleged to be involved with illegal drugs.<sup>216</sup> There is no information available as regards any formal status or procedural requirements applicable to such lists, and indeed Amnesty International has stated, based on its own investigation, that '[b]oth the concept of

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<sup>207</sup> PHL-OTP-0003-0047, at 0048. *See also* the supporting material cited at footnote 253 of the Article 15(3) Request.

<sup>208</sup> Article 15(3) Request, paras 13-15.

<sup>209</sup> PHL-OTP-0003-2490, at 2492.

<sup>210</sup> PHL-OTP-0003-2490, at 2495; PHL-OTP-0003-3418, at 3450.

<sup>211</sup> *See e.g.* PHL-OTP-0003-1860, at 1860-1862; PHL-OTP-0003-0264, at 0264-0265; PHL-OTP-0003-2554, at 2554; PHL-OTP-0003-1673, at 1673.

<sup>212</sup> PHL-OTP-0003-0810, at 0815. *See also* the other supporting material cited at footnote 213 of the Article 15(3) Request.

<sup>213</sup> PHL-OTP-0003-0810, at 0815. *See also* the other supporting material cited at footnote 215 of the Article 15(3) Request.

<sup>214</sup> *See* PHL-OTP-0003-1853, at 1853; PHL-OTP-0003-1950, at 1951.

<sup>215</sup> *See* PHL-OTP-0003-3720, at 3720; PHL-OTP-0003-0269, at 0269-0270.

<sup>216</sup> PHL-OTP-0003-0582, at 0588, 0606, 0616; PHL-OTP-0003-0810, at 0811; PHL-OTP-0003-2996, at 2996; PHL-OTP-0003-0092, at 0097-0098; PHL-OTP-0003-0283, at 0284, 0287-0289, 0291. *See also* Article 15(3) Request, para. 92.

the “watch list” and the way they are put together are deeply problematic’, that ‘[i]nclusion is at times based on hearsay and community rumour or rivalry, with little to no verification’, and that ‘[l]ists are not comprised solely of persons reasonably suspected of crimes – for instance, past drug use, no matter how distant, is often sufficient’.<sup>217</sup> As a very specific example of the apparent unreliability and arbitrariness of the use of such drug lists, the Chamber notes the specific case of the killing of Neptali Celestino, referred to above.<sup>218</sup> Supporting material indicates that relatives told a reporter of a long-running feud with another family, whom they blamed for telling the police that Neptali Celestino was a drug dealer.<sup>219</sup>

100. Fourth, the Chamber notes that the supporting material provides information to the effect that physical perpetrators were given cash payments, promotions or awards for killings in the so-called ‘war on drugs’ campaign.<sup>220</sup>

101. Fifth, the supporting material indicates that the Philippine authorities have failed to take meaningful steps to investigate or prosecute the killings. It appears that only few cases have proceeded to trial, and that only the case of the murder of Kian Delos Santos has proceeded to judgment.<sup>221</sup> In fact, the Presidential Communications Operations Office listed the deaths of ‘drug personalities’ in anti-drug operations among the key accomplishments in ‘The Duterte Administration Year-End Report’ for the year 2017.<sup>222</sup> Moreover, according to available information, President Duterte promised immunity or pardon to law enforcement personnel accused of wrongdoing.<sup>223</sup>

*Widespread and systematic nature of the attack*

102. The Chamber further considers that the supporting material establishes, to the required standard, that the attack against the civilian population was widespread and systematic. Its widespread character is indicated by the estimates of the aggregate number of victims, as well as by its territorial extent, comprising the entire territory of the Philippines.<sup>224</sup> This conclusion

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<sup>217</sup> PHL-OTP-0003-0582, at 0588.

<sup>218</sup> See paragraph 43 above.

<sup>219</sup> PHL-OTP-0003-0283, at 0289.

<sup>220</sup> PHL-OTP-0003-0092, at 0098; PHL-OTP-0003-0090, at 0091; PHL-OTP-0003-1429, at 1429; PHL-OTP-0003-0183, at 0183; PHL-OTP-0003-3199 at 3206 (original version) and PHL-OTP-0003-3835, at 3843 (translation); PHL-OTP-0003-1345, at 1347; PHL-OTP-0003-1831, at 1832; PHL-OTP-0003-0092, at 0094.

<sup>221</sup> PHL-OTP-0003-1004, at 1035-1036; PHL-OTP-0003-1218, at 1229; PHL-OTP-0003-0803, at 0804; PHL-OTP-0003-0878, at 0878.

<sup>222</sup> PHL-OTP-0003-3355, at 3379.

<sup>223</sup> PHL-OTP-0003-3283, at 3288; PHL-OTP-0003-1345, at 1347-1348; PHL-OTP-0003-1383, at 1384; PHL-OTP-0003-3261, at 3276 (original version); PHL-OTP-0003-3898, at 3913 (translation).

<sup>224</sup> See paragraph 67 above.

holds even if only the official figures are considered as to the number of persons killed in the context of the so-called 'war on drugs' campaign in 2016-2019. The systematic character of the attack against the civilian population, on the other hand, is discernible at this stage on the basis of the same considerations as expressed just above with respect to the policy requirement.

*Nexus requirement*

103. On the basis of its analysis thus far, the Chamber also considers that the nexus of the individual killings with the attack against the civilian population is sufficiently laid out throughout the analysis above.

*Killings in the Davao area in 2011-2016*

104. The Chamber turns now again to the Prosecutor's submissions as concerns the alleged killings in the Davao area in 2011-2016. The Prosecutor focuses on making the argument that these events 'closely resemble' the killings as part of the so-called 'war on drugs' campaign in 2016-2019, and that they should for that reason be included in the authorised investigation.<sup>225</sup>

105. In the assessment of the Chamber, there exists information sufficiently linking the killings in the Davao area in 2011-2016 to the relevant facts of the so-called 'war on drugs' campaign as discussed above. In particular, there are records of public statements by Rodrigo Duterte supporting and encouraging the killing of petty criminals and drug dealers in Davao.<sup>226</sup> These public statements are similar to those made before and during the so-called 'war on drugs' campaign, and indeed appear to form a coherent progression.<sup>227</sup> Rodrigo Duterte served as Mayor of Davao during 1988-1998, 2001-2010 and 2013-2016.<sup>228</sup> In addition, as discussed above, there is indication of the systematic involvement of security forces in the killing, including of the so-called 'Davao death squad'.<sup>229</sup>

106. According to available information, some of the persons involved appear to be the same. In fact, there is information that some police officers were transferred from Davao to Manila

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<sup>225</sup> Article 15(3) Request, para. 123.

<sup>226</sup> PHL-OTP-0003-0014, at 0016; PHL-OTP-0003-1287, at 1287-1288; PHL-OTP-0003-1290, at 1291; PHL-OTP-0003-0022, at 0022-0025; PHL-OTP-0003-0378, at 0378-0381.

<sup>227</sup> See also paragraph 94 above.

<sup>228</sup> PHL-OTP-0003-0361, at 0363; PHL-OTP-0003-0384, at 0385; PHL-OTP-0003-0886, at 0904-0906.

<sup>229</sup> See paragraph 69 above.

upon Rodrigo Duterte's assumption of the Presidency.<sup>230</sup> Similarities in the *modus operandi* are also discernible.<sup>231</sup>

107. For this reason, the Chamber considers, at the present stage, and to the required standard, that there are similarities between the killings in the Davao area in 2011-2016 and the so-called 'war on drugs' campaign which merit further investigation. The Chamber does not deem it necessary at this stage to delve in any further detail into the question of how precisely the contextual elements of crimes against humanity may be met in respect of the killings in the Davao area in 2011-2016. They may be seen as having a nexus to the widespread and systematic attack against the civilian population as defined above; they may be seen as part of a separate attack against the civilian population; or there may be a need to redefine the parameters of the attack against the civilian population as defined in the Article 15(3) Request. This is essentially an exercise to be undertaken during and following the investigation. What is important for the present decision is that, whichever the case may be, that it appears, on the basis of the supporting material, that the killings in the Davao area between 1 November 2011 and 30 June 2016 show a certain pattern and may constitute crimes against humanity within the jurisdiction of the Court.

#### *Conclusion*

108. In conclusion, the Chamber finds that it has been sufficiently established for the purpose of an authorisation to investigate that the contextual elements of crimes against humanity under Article 7 of the Statute have been met with respect to the killings in the Philippines between 1 November 2011 and 16 March 2019 in the context of the so-called 'war on drugs' campaign.

### **B. Jurisdiction *ratione temporis***

109. The Prosecutor submits that the alleged crimes between 1 November 2011 and 16 March 2019 fall within the Court's jurisdiction *ratione temporis*.

110. The Chamber notes that the Philippines deposited its instrument of ratification of the Rome Statute on 30 August 2011, and the Statute entered into force for the Philippines on 1 November 2011, in accordance with Article 126(1) of the Statute. On 17 March 2018, the Government of the Philippines deposited a written notification of withdrawal from the Statute

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<sup>230</sup> PHL-OTP-0003-0309, at 0311. *See also* PHL-OTP-0003-2623, at 2623; PHL-OTP-0003-2326, at 2326; PHL-OTP-0003-0549, at 0549.

<sup>231</sup> *See* PHL-OTP-0003-2338, at 2338.

with the UN Secretary-General, and in accordance with Article 127 of the Statute, the withdrawal took effect on 17 March 2019. While the relevant crimes appear to have continued after this date, the Chamber notes that alleged crimes identified in the Article 15(3) Request are limited to those during the period when the Philippines was a State Party to the Statute and was bound by its provisions.

111. While the Philippines' withdrawal from the Statute took effect on 17 March 2019, the Court retains jurisdiction with respect to alleged crimes that occurred on the territory of the Philippines while it was a State Party, from 1 November 2011 up to and including 16 March 2019. This is in line with the law of treaties, which provides that withdrawal from a treaty does not affect any right, obligation or legal situation created through the execution of the treaty prior to its termination.<sup>232</sup> Moreover, in the *Burundi* situation, Pre-Trial Chamber III held that a State Party's withdrawal from the Rome Statute does not affect the Court's exercise of jurisdiction over crimes committed prior to the effective date of the withdrawal.<sup>233</sup> This conclusion was recently confirmed by Pre-Trial Chamber II in the *Abd-Al-Rahman* case.<sup>234</sup> The Court's exercise of such jurisdiction is not subject to any time limit, particularly since the preliminary examination here commenced prior to the Philippines' withdrawal.<sup>235</sup>

### **C. Jurisdiction *ratione loci***

112. The Prosecutor submits that the alleged crimes underlying the Article 15(3) Request were committed throughout the territory of the Philippines.<sup>236</sup> Accordingly, the Court's jurisdiction *ratione loci* is established under Article 12(2)(a) of the Statute.

## **V. Conclusion**

113. On the basis of the above, the Chamber concludes that there is a reasonable basis for the Prosecutor to proceed with an investigation, in the sense that the crime against humanity of murder appears to have been committed, and that potential case(s) arising from such investigation appear to fall within the Court's jurisdiction. The Chamber therefore turns to the

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<sup>232</sup> See Vienna Convention on the Law of Treaties, United Nations Treaty Series, vol. 1155, p. 331, Article 70.

<sup>233</sup> [Burundi Article 15 Decision](#), para. 24.

<sup>234</sup> Pre-Trial Chamber II, *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman*, Decision on the Defence 'Exception d'incompétence' (ICC-02/05-01/20-302), 17 May 2021, [ICC-02/05-01/20-391](#), para. 33.

<sup>235</sup> See Rome Statute, article 127(2); [Burundi Article 15 Decision](#), paras. 23-26.

<sup>236</sup> Article 15(3) Request, para. 78.

question of the scope of the authorised investigation. The Prosecutor requests authorisation to investigate ‘crimes within the jurisdiction of the Court allegedly committed on the territory of the Philippines between 1 November 2011 and 16 March 2019 in the context of the [war on drugs] campaign, as well as any other crimes which are sufficiently linked to these events’.<sup>237</sup>

114. The question of the scope of the authorised investigation arises also in relation to the Prosecutor’s submission that several of the incidents in his request ‘appear to have included severe beatings or other mistreatment of victims prior to the killings, as well as instances in which victims’ family members were forced to witness the killings’.<sup>238</sup> The Prosecutor avers that such conduct may constitute the additional crimes against humanity of torture or other inhuman acts under Articles 7(1)(f) and (k) of the Statute.<sup>239</sup> Explaining that ‘in light of the applicable page limit, the Prosecution has focused the current Request on the more prominent crime of Murder’, the Prosecutor requests that any authorised investigation also include these and other crimes which are sufficiently linked to the so-called ‘war on drugs’ campaign.<sup>240</sup>

115. At this juncture, the Chamber also notes that the representations made to it by victims also make reference to crimes other than murder. A legal analysis undertaken by the Registry has categorised the assertions and identified other inhumane acts/torture, imprisonment or other severe deprivation of liberty and enforced disappearance as the most commonly reported crimes other than murder.<sup>241</sup> Moreover, the Chamber notes with particular attention that three representations reported sexual violence.<sup>242</sup>

116. In prior decisions, Pre-Trial Chambers have consistently authorised the commencement of the investigation in relation to *any crime* within the jurisdiction of the Court committed within the parameters of the authorised investigation circumscribed in time, place and, in some cases, also by reference to factual parameters.<sup>243</sup>

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<sup>237</sup> Article 15(3) Request, para. 131.

<sup>238</sup> Article 15(3) Request, para. 129.

<sup>239</sup> Article 15(3) Request, para. 129.

<sup>240</sup> Article 15(3) Request, para. 129. The Chamber understands the reference to ‘any other crimes which are sufficiently linked to these events’ in paragraph 131 of the Article 15(3) Request to be a reference to the same.

<sup>241</sup> Registry Report on Victims’ Representations, para. 8.

<sup>242</sup> Registry Report on Victims’ Representations, para. 8.

<sup>243</sup> See, e.g., Pre-Trial Chamber I, *Situation in Georgia*, Decision on the Prosecutor’s request for authorization of an investigation, 27 January 2016, [ICC-01/15-12](#), paras. 63-64 (‘Georgia Article 15 Decision’); Pre-Trial Chamber III, *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, 14 November 2019, [ICC-01/19-27](#), paras.

117. In addition, the Appeals Chamber has recently held that ‘in order to obtain a full picture of the relevant facts, their potential legal characterisation as specific crimes under the jurisdiction of the Court, and the responsibility of the various actors that may be involved, the Prosecutor must carry out an investigation into the situation as a whole’.<sup>244</sup> The Appeals Chamber stated that ‘restricting the authorised investigation to the factual information obtained during the preliminary examination would erroneously inhibit the Prosecutor’s truth-seeking function’ and that ‘[s]uch a restriction is unnecessary to fulfil the purpose of article 15(4) of the Statute in ensuring that the Prosecutor does not embark on a frivolous or politically motivated investigation in that she remains restricted in her investigation to the contours of the investigation authorised by the pre-trial chamber’.<sup>245</sup> The Appeals Chamber then held, in the specific context of the situation before it, that ‘the requirements of article 15(4) of the Statute would be met by granting the authorisation in the terms requested by the Prosecutor, which sufficiently delineates the parameters of the situation’.<sup>246</sup>

118. In line with the above,<sup>247</sup> the Chamber considers it appropriate to authorise the investigation to extend to any crime within the jurisdiction of the Court, limited by the temporal, territorial and factual parameters of the situation as defined in the Article 15(3) Request. In the assessment of the Chamber, the parameters of the situation are sufficiently defined to satisfy the requirements of Article 15(4) of the Statute.

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126-130; Pre-Trial Chamber II, *Situation in the Republic of Kenya*, Corrigendum of the Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 1 April 2010, [ICC-01/09-19-Corr](#), paras 201-211. *See also* [Côte d’Ivoire Article 15 Decision](#), paras 176-180. *See, however, also* Pre-Trial Chamber II, *Situation in the Islamic Republic of Afghanistan*, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, 12 April 2019, [ICC-02/17-33](#); [Afghanistan Appeal Judgment](#). The Chamber notes that, in partly different composition, it previously also held that events outside of the identified territory and time period could fall into the parameters of the situation if ‘they are sufficiently linked thereto and, obviously, fall within the Court’s jurisdiction’. *See* [Georgia Article 15 Decision](#), para. 64.

<sup>244</sup> [Afghanistan Appeal Judgment](#), para. 60.

<sup>245</sup> [Afghanistan Appeal Judgment](#), para. 61.

<sup>246</sup> [Afghanistan Appeal Judgment](#), para. 62.

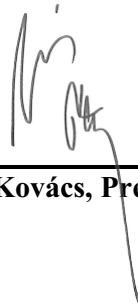
<sup>247</sup> *See* paras 88-89.

**FOR THESE REASONS, THE CHAMBER HEREBY**

**AUTHORISES** the commencement of the investigation into the Situation in the Philippines, in relation to crimes within the jurisdiction of the Court allegedly committed on the territory of the Philippines between 1 November 2011 and 16 March 2019 in the context of the so-called 'war on drugs' campaign; and

**INSTRUCTS** the Registrar to provide notice of the present decision to the victims who have made representations.

Done in both English and French, the English version being authoritative.



**Judge Péter Kovács, Presiding Judge**



**Judge Reine Adélaïde Sophie  
Alapini-Gansou**



**Judge María del Socorro  
Flores Liera**

Dated this 15 September 2021  
At The Hague, The Netherlands