

Confirmation of Charges Hearing

(Open Session)

ICC-01/21-01/25

1 International Criminal Court  
2 Pre-Trial Chamber I  
3 Situation: Republic of the Philippines  
4 In the case of The Prosecutor v. Rodrigo Roa Duterte - ICC-01/21-01/25  
5 Presiding Judge Iulia Antoanella Motoc, Judge Reine Adélaïde Sophie  
6 Alapini-Gansou and Judge María del Socorro Flores Liera  
7 Confirmation of Charges Hearing - Courtroom 1  
8 Monday, 23 February 2026  
9 (The hearing starts in open session at 10.01 a.m.)  
10 THE COURT USHER: [10:01:18] All rise.  
11 The International Criminal Court is now in session.  
12 Please be seated.  
13 PRESIDING JUDGE MOTOC: [10:01:49](Interpretation) Good morning to all.  
14 I would like to welcome all those inside and outside of this courtroom.  
15 Madam Courtroom Officer, could you please call the case.  
16 THE COURT OFFICER: [10:02:26] Good morning, Madam President, your Honours.  
17 Situation in the Republic of the Philippines, in the case of The Prosecutor versus  
18 Rodrigo Roa Duterte, case reference ICC-01/21-01/25.  
19 And for the record, we are in open session.  
20 PRESIDING JUDGE MOTOC: [10:02:45](Interpretation) Thank you very much.  
21 I am now going to ask the parties and participants to introduce themselves, starting  
22 by Mr Deputy Prosecutor. Could I please ask you to introduce yourself and to  
23 confirm to me whether the list of your team members that I received before the  
24 hearing is correct.  
25 MR NIANG: [10:03:10](Interpretation) Thank you, Madam President, your Honours.

1 The Office of the Prosecutor is represented today by myself, Mame Niang, Deputy  
2 Prosecutor. By my side I have James Miriti, case manager; I have Mr Julian Nicholls,  
3 senior trial lawyer; and behind us we have Mr Edward Jeremy, trial lawyer; Madam  
4 Robynne Croft, trial lawyer; Madam Maria Berdennikova, trial lawyer; and lastly,  
5 Hannah Allen, associate trial lawyer. These are the individuals comprising our team  
6 today and I thank you.

7 PRESIDING JUDGE MOTOC: [10:03:54](Interpretation) Thank you very much,  
8 Mr Deputy Prosecutor.

9 Now before moving on to the Defence, I note that Mr Duterte is not present in the  
10 courtroom today. Indeed, on 20 February 2026, the Chamber granted Mr Duterte's  
11 request to waive his right to be present at the Confirmation of Charges hearing  
12 pursuant to Article 61(2)(a) of the Rome Statute and Rule 124 of the Rules of  
13 Procedure and Evidence. In this decision number 387 the Chamber concluded that  
14 the conditions contained in the provisions were fulfilled, namely that Mr Duterte has  
15 the right and knows he has the right to be present at the Confirmation of Charges  
16 hearing and knows the consequences of waiving this right. However, Mr Duterte's  
17 counsel is present today to represent him.

18 Counsel, could you please introduce yourself and confirm to me that the list of your  
19 team members that I received before the hearing is indeed correct.

20 MR KAUFMAN: [10:05:25] Good morning, Madam President, good morning, your  
21 Honours. Indeed the list before you is correct. May I introduce my team? To my  
22 left I have Dr Dov Jacobs; to my right I have Ms Havneet Sethi; sitting next to her is  
23 Maître Alexandre Desevedavy; behind him, Attorney Davide Rancati; sitting next to  
24 him, Maître Sandrine De Sena; and our two further lawyers, we have  
25 Nicholas Rossouw and also Kailin Chen.

1 And if your Honour will permit me, there are also Filipino attorneys who are  
2 attending and supporting us today and I will briefly mention their names: Maître  
3 Salvador Medialdea, who your Honours are familiar with from the initial appearance;  
4 Attorney Martin Delgra; Attorney Silvestre Bello; Attorney Alfredo Lim; Attorney  
5 Caesar Dulay, and of course, Attorney Salvador Panelo. Thank you very much.

6 PRESIDING JUDGE MOTOC: [10:06:28](Interpretation) Thank you very much,  
7 counsel.

8 I would like to now call upon the Legal Representatives of Victims to present -- to  
9 introduce themselves and confirm to me that the list of your team members I received  
10 before is correct.

11 MS MASSIDDA: [10:06:45] Thank you, Madam President, your Honours. Good  
12 morning. Victims participating in this proceeding are represented today by  
13 Mr Joel Butuyan, Mr Gilbert Andres, myself Paolina Massidda. And I confirm the  
14 list of our jurists who assist us today as provided to the court officer. Thank you  
15 very much.

16 PRESIDING JUDGE MOTOC: [10:07:04](Interpretation) Thank you very much,  
17 Maître Massidda. Thank you.

18 On my right I have Judge Reine Adelaide -- and I have Judge Adelaide Sophie  
19 Alapini-Gansou and to my right I have María del Socorro Flores Liera. And I am  
20 Iulia Antoanella Motoc and I am the Presiding Judge in Pre-Trial Chamber I of the  
21 Court.

22 This hearing concerns the Confirmation of Charges by the Prosecution against  
23 Mr Duterte. At this stage of pretrial proceedings, the OTP alleges that Mr Duterte is  
24 responsible for the crimes that the court officer shall read out shortly.

25 The Chamber shall not take any decision with regard to the guilt or innocence of

1 Mr Duterte during this hearing. Indeed, the role of the Chamber is to determine  
2 whether there is sufficient evidence to establish substantial grounds to believe that  
3 Mr Duterte committed the crimes with which he is charged. If all or part of the  
4 charges are confirmed, the Chamber will refer the case to trial where the Trial  
5 Chamber will decide upon the innocence or guilt of Mr Duterte.

6 The general principles to be applied at the hearing are as follows: The suspect, in  
7 accordance with Article 66 of the Rome Statute, the suspect is considered to be  
8 innocent until his guilt has been proven by the Court.

9 The burden of proof is upon the OTP, which must produce sufficient evidence to  
10 prove the charges against Mr Duterte at the required standard of proof at Article 61(7)  
11 of the Rome Statute.

12 Finally, the Defence enjoys -- or the suspect enjoys all the rights listed at Articles 61(6)  
13 and 67 of the Rome Statute.

14 The hearing shall take place according to the schedule contained in the order dated  
15 26 January 2026, document number 359. The parties and participants must respect  
16 the allocated speaking times indicated in this order.

17 I would like to remind the parties and participants that oral remarks must be concise  
18 and that repetition of previously presented arguments should be avoided. In  
19 addition, in order to facilitate the work of the interpreters and ensure the proper  
20 transcription of discussion, please make sure that your microphone is on every time  
21 you address the Court, and please speak slowly and mark pauses between each  
22 sentence.

23 Generally speaking, the hearing will be held in open session and parties and  
24 participants will refrain from mentioning the names of victims and witnesses, they  
25 will only refer to them by their pseudonym or their code.

1 In order to avoid the disclosure of any confidential information, notably with regard  
2 to witnesses and victims, the parties and participants will clearly indicate whether  
3 their submissions can be presented in public or whether they deem it necessary to  
4 move into private session, notably when referring to items of evidence. The parties  
5 and participants will clearly indicate when it is no longer necessary to remain in  
6 private session.

7 With these rules in place, we can now move to the reading of the charges in its  
8 shortened form indicating the charges against Mr Duterte. The full version is  
9 available publicly on the internet site of the Court.

10 The Defence has not raised any objections in this regard.

11 I would like to remind the public that the charges that shall be read out in a few  
12 seconds comprise allegations raised by the Office of the Prosecutor that the Chamber  
13 shall decide that -- shall analyse in order to decide whether the evidence presented by  
14 the Office of the Prosecutor is sufficient in order for these charges to be confirmed.

15 Madam Courtroom Officer, would you please read the charges.

16 THE COURT OFFICER: [10:13:24] The Prosecution charges Mr Rodrigo Roa Duterte  
17 with two counts of murder and one count of murder and attempted murder as crimes  
18 against humanity, committed between 2013 and around June 2016, and between  
19 around July 2016 and September 2018, in the Republic of the Philippines, as follows:

20 Count 1: murder of 19 victims alleged to be criminals, including three children, who  
21 were killed in or around Davao City in the Philippines, between 2013 and around  
22 June 2016, by members of the Davao Death Squad, while Mr Duterte was the mayor  
23 of Davao City, pursuant to Article 7(1)(a) of the Rome Statute.

24 Count 2: murder of 14 victims labelled as "High-Value Targets" for their alleged  
25 criminality, who were killed in locations across the Philippines, between around

1 July 2016 and July 2017, by a network of perpetrators comprising State actors and  
2 others, referred to as the National Network, while Mr Duterte was the president of  
3 the Philippines, pursuant to Article 7(1)(a) of the Rome Statute; and  
4 Count 3: murder and attempted murder of 45 victims, comprising 43 murders and  
5 two attempted murders, of persons alleged to be criminals, including three children,  
6 who were targeted in *barangay* clearance operations in locations across the Philippines,  
7 between around July 2016 and September 2018, by members of the National Network,  
8 while Mr Duterte was the president of the Philippines, pursuant to Articles 7(1)(a)  
9 and 25(3)(f) (in respect of the attempted murder) of the Rome Statute.

10 The Prosecution alleges that Mr Duterte is individually criminally responsible for all  
11 three of the above counts, as follows:

12 First, as an indirect co-perpetrator, pursuant to Article 25(3)(a) of the Rome Statute.

13 At least between 1 November 2011 and 16 March 2019, Mr Duterte and his  
14 co-perpetrators shared a common plan to "neutralise" alleged criminals in the  
15 Philippines, including individuals perceived or alleged to be associated with drug use,  
16 sale or production, through violent crimes, including murder. Mr Duterte and his  
17 co-perpetrators implemented this common plan through the hierarchically organised  
18 structures of the Davao City police and the Davao Death Squad, and then the  
19 National Network. Within the framework of the common plan, Mr Duterte made  
20 essential contributions to the crimes in count 1 and 3 by:

- 21 a. Designing and disseminating the police to "neutralise" alleged criminals (both in  
22 his role as Mayor of Davao City, and also during his Presidential campaign and as  
23 President), including by endorsing the anti-illegal drugs campaign "Double Barrel";
- 24 b. Establishing and overseeing the DDS;
- 25 c. Instructing and authorising violent acts including murder to be committed

- 1 against alleged criminals, including alleged drug dealers and users;
- 2 d. Providing personnel and other necessary logistical resources such as weapons
- 3 including those to be used in the execution of the crimes;
- 4 e. Appointing key personnel to positions which were crucial to the execution of the
- 5 crimes;
- 6 f. Offering financial incentives and promotions to police officers and hitmen to kill
- 7 alleged criminals;
- 8 g. Creating and maintaining a system in which perpetrators knew they would be
- 9 protected, including through promises of immunity and shielding perpetrators from
- 10 investigations and prosecution;
- 11 h. Making public statements authorising, condoning and encouraging killings of
- 12 alleged criminals, both as Mayor of Davao City and as President of the Philippines;
- 13 i. Authorising State actors to take part in the anti-drugs campaign and temporarily
- 14 revoking such authorisation, including to placate public outcry;
- 15 j. Publicly naming individuals and holding up charts from lists of alleged criminals,
- 16 including so-called "high-value targets", some of whom were subsequently killed.
- 17 Second, in the alternative, Mr Duterte is charged with ordering and/or inducing the
- 18 charged crimes, pursuant to Article 25(3)(b) of the Rome Statute, and/or aiding and
- 19 abetting these crimes, pursuant to Article 25(3)(c) of the Rome Statute.

20 PRESIDING JUDGE MOTOC: [10:19:31](Interpretation) Thank you, Madam  
21 Courtroom Officer.

22 With regard to objections and observations under Rule 122(3) of the Rules of  
23 Procedure and Evidence, the Chamber notes that the Defence submitted a number of  
24 written observations, and the last of which was on 16 February 2026, to which the  
25 OTP and the Legal Representative of Victims responded respectively on 17 and

1 18 February 2026.

2 On 20 February 2026, the Chamber dismissed in its public decision the Defence's  
3 objections.

4 In specifying that the Defence and the Office of the Prosecutor are not permitted to  
5 reiterate the same arguments already presented in the filings mentioned, that they  
6 filed to date in this case, I will now ask if the parties wish to make any oral  
7 submissions on this point before moving to the opening statements.

8 Mr Deputy Prosecutor.

9 MR NIANG: [10:20:56](Interpretation) We do not have any submissions to make in  
10 this regard.

11 PRESIDING JUDGE MOTOC: [10:21:04](Interpretation) Thank you very much,  
12 Mr Deputy Prosecutor.

13 Counsel?

14 MR KAUFMAN: [10:21:08] Madam President, we have no observations.

15 PRESIDING JUDGE MOTOC: [10:21:13](Overlapping speakers)  
16 (Interpretation) So we can now move on to stage 2, namely the opening statements.  
17 And I hand over to the Office of the Prosecutor, Mr Deputy Prosecutor, please.

18 MR NIANG: [10:21:37] Madam President, honourable members of the Bench, all  
19 those following these proceedings inside the courtroom and outside, and especially  
20 those in the Philippines, today marks an important day for international justice for the  
21 people of the Philippines, for the victims, and for this Court.

22 The commencement of the confirmation hearing against Mr Rodrigo Roa Duterte is a  
23 reminder of the Court's unwavering commitment to its mission to investigate and  
24 prosecute individuals for the most serious crimes of concern to the international  
25 community and to bring justice to the thousands of victims of the mass crimes and

1 atrocities perpetrated in the Philippines. It is also a reminder that those in power are  
2 not above the law.

3 Your Honours, over the course of the next 20 minutes or so, I will provide an  
4 overview of the evidence in this case that demonstrates that Mr Duterte is responsible  
5 for the charged crimes. And my team will then develop aspects of this evidence in  
6 more details.

7 This case before you today, it is before you today because there are substantial  
8 grounds to believe that Mr Duterte is criminally responsible for those three counts of  
9 murder just spelled out, and attempted murder, as crimes against humanity. These  
10 charged crimes were committed during the time within the Court's jurisdiction,  
11 which is between 1 November 2011 and 16 March 2019. At first, they were  
12 committed in and around Davao City where Mr Duterte was the mayor, and then  
13 expanded across the rest of the Philippines when he became president.

14 Mr Duterte is charged with 49 incidents of murder and attempted murder of 78  
15 victims, including children. These murders and attempted murders were part of a  
16 widespread and systematic attack that overall resulted in the killing of thousands of  
17 civilians across the country during the relevant time frame. Thus, the charged  
18 incidents are merely a fraction of the overall criminality that resulted from  
19 Mr Duterte's so-called War on Drugs.

20 What is Mr Duterte's core contribution?

21 Your Honours, Mr Duterte played a pivotal role in the commission of the charged  
22 crimes. His contributions were essential, as he was at the very heart of the common  
23 plan, to use his words, to neutralise alleged criminals in the Philippines, including  
24 through murders. The victims included individuals associated with or perceived to  
25 be associated with drugs.

1 One of the first things Mr Duterte did when he became the mayor of Davao back in  
2 1988 was to create the infamous Davao Death Squad, otherwise known as DDS.  
3 As you will have seen from the Prosecution's Pre-Conformation Brief, Mr Duterte  
4 personally instructed death squad members that their mission was to kill criminals  
5 and suspected criminals, including drug users and dealers, also referred to as drug  
6 pushers. The death squad carried out this mission well into the charged period  
7 through 2011 to 2016, perpetrating the crimes charged in count 1.  
8 Your Honours, Mr Duterte's criminal plan and his intent were no secret. He not only  
9 shared them with his co-perpetrators and members of the death squad but also made  
10 them abundantly clear to the general public in the numerous public statements that  
11 he made, time and again.  
12 During his presidential campaign, Mr Duterte explicitly vowed to implement the  
13 common plan to neutralise alleged criminals nationwide if elected. This was his  
14 programme to be elected. He publicly announced his intention to eradicate  
15 corruption, criminality and drugs in three to six months. And this is what he said, I  
16 quote: "If I become the president, I will order the military and the police to hunt  
17 down the drug lords, the big ones, and kill them". That's what he said. And this  
18 can be found at tab 12 of the Prosecution list of material.  
19 Similarly, when speaking about druggies, I quote, in a televised interview in 2015, this  
20 is again what he said: "If I become president, you will all get wiped out. I will  
21 order your execution within 24 hours". That's what he said. I quote directly from  
22 his words. And this quote can be found at tab 19.2 of the Prosecution list of  
23 materials, ERN PHL-OTP-00001684, page 003, and line -- these are the lines 82 and 83.  
24 And elected he was.  
25 Becoming president on 30 June 2016, this provided him with the opportunity to

1 follow through with his promise and to expand extrajudicial killings of alleged  
2 criminals beyond Davao and across the rest of the Philippines. He did this through  
3 the implementation of the national anti-illegal drugs campaign, better known as  
4 Duterte's War on Drugs, and its project, Double Barrel. These were carried out by  
5 the National Network consisting of law-enforcement personnel working together  
6 with non-police assets and hitmen.

7 Mr Duterte authorised murders and personally selected some of the targets. During  
8 the mayoral period when he was mayor, his clearance was required for the DDS to  
9 carry out the killings. Essentially, members of the DDS needed Mr Duterte's green  
10 light to murder.

11 During the presidential period, Mr Duterte continued to personally identify some of  
12 the targets, including by publicly naming those he claimed were involved in illegal  
13 drug trade or in other forms of criminality. He also identified targets by holding up  
14 a list containing their names. And "If you are on the list you will be killed". And  
15 this was the word of one Prosecution witness. And this evidence can be found at  
16 tab 54 of the Prosecution list of materials, ERN PHL-OTP-00015486, page 0009 and the  
17 lines -- the relevant lines are 260 to 261.

18 Mr Duterte provided moral and financial support to the direct perpetrators as well.  
19 In a 12 December 2016 speech, Mr Duterte admitted that he used to ride around  
20 Davao on a motorcycle looking for trouble so he could kill. And he said, and these  
21 again are his own words I am quoting here, "in Davao I used to do it personally, just  
22 to show the guys that, 'If I can do it, why can't you?'" And these are his own words.  
23 And this quote can be found at tab 16.1 of the Prosecution list of material, ERN  
24 PHL-OTP-00015547 at 0002, lines 7 and 8.

25 And the evidence shows that Mr Duterte's Davao City mayor's office provided some

1 members of the DDS with a regular salary. Financial rewards were also given to  
2 direct perpetrators in the form of cash per head for killings. And at a press  
3 conference in 2013, Mr Duterte stated that shoot-to-kill orders and rewards are, and I  
4 quote him, "legitimate tools of government to fight lawlessness". This is his own  
5 words. And "If he is surrendered to me or his carcass, dead, then I double the prize".  
6 And again, yeah, and that was what he boasted. This quote can be found at tab 17.2  
7 of the Prosecution list of materials, PHL-OTP-00094932 at 0002 and the relevant lines  
8 are lines 7 to 11.

9 Deaths of drug personalities killed in anti-drug operations were endorsed by  
10 Mr Duterte's administration and listed as official accomplishments in public  
11 reporting.

12 Your Honours, as you will have seen from our Pre-Conformation Brief, Mr Duterte  
13 also provided the direct perpetrators with weapons, ammunitions and logistical  
14 support to facilitate the commission of the charged crimes. And he also had control,  
15 wide control over those crimes. And let me now turn specifically to that control.  
16 As mayor of Davao, and later as president of the Philippines, Mr Duterte wielded  
17 ultimate influence and authority over the physical perpetrators of the crimes.

18 As mayor, Mr Duterte was chief executive of the Davao City government with  
19 responsibility for exercising general supervision and control over all its activities.

20 He had formal operational supervision and control over national police units in  
21 Davao. As creator and head of the DDS, he also had *de facto* control over the death  
22 squad's members.

23 When Mr Duterte became president on 30 June 2016, he sat at the very apex of the  
24 political power structure in the Philippines. He became the head of state, head of  
25 government, and commander-in-chief of all armed forces of the Philippines. He also

1 became the leader of the country's police forces. This level of authority allowed him  
2 to wield *de jure* and *de facto* control over those implementing the common plan  
3 nationwide.

4 Mr Duterte's control over the crimes is also apparent from his ability to interrupt the  
5 commission when he so chose. And as outlined in our Pre-Conformation Brief, he  
6 successfully suspended police anti-illegal drug operations on two occasions,  
7 following public outcries in response to particularly notorious killings. On both  
8 occasions the number of reported killings dropped significantly during the  
9 suspension, showcasing his control. So when he asked people to act, they act.  
10 When he asked them to refrain, they do so. So they obliged.

11 So Mr Duterte was well aware of the authority he had over the perpetrators. In a  
12 speech given to the National Bureau of Investigation in November 2016, he expressly  
13 acknowledged his position of power, and this is what he said, "to the military, I'm  
14 commander-in-chief. On the civilian side, I am the chief executive of the  
15 government", and when talking about the police, this is what he said, "they are my  
16 subordinates and I am ultimately responsible for their deeds". And these are  
17 quotations. And they can be found at tab 131.2 of our Prosecution list of materials at  
18 ERN PHL-OTP-00095679, page 0004, and the relevant lines are from 131 to 134.

19 And the direct perpetrators complied with Duterte's orders and respected his  
20 authority. Mr Duterte was respected by the physical perpetrators, he was feared and  
21 his orders and instructions were obeyed. One insider witness explicitly says that the  
22 police killed, and I quote, "because of the directive of the president". This is what the  
23 witness said, an insider. And this quote can be found at tab 120 of the Prosecution  
24 list of material, ERN PHL-OTP-00088631-R01 at page 66, and the relevant lines are  
25 from 2304 to 2306. And this statement is corroborated by other statements we have

1 also provided.

2 And some direct perpetrators complied because of their blind loyalty to Mr Duterte,  
3 some did it out of fear and others were encouraged to comply by promises of money  
4 and rewards. For some, killing reached the level of a perverse form of competition,  
5 with efforts to attain killings quotas, which, in turn, would lead to promotions and  
6 rewards. Others felt there was no other choice but to comply, with one insider  
7 explaining that it was simply, simply not possible to not obey Mr Duterte's  
8 commands. And this is also from an insider witness. And this evidence can be  
9 found at tab 51 of the Prosecution list of materials, ERN PHL-OTP-00015403 at  
10 page 0008 to 0009, and the relevant lines here is from 240 to 245.

11 Direct perpetrators were further emboldened to commit crimes by Mr Duterte's  
12 repeated promise of immunity. In various public statements, Mr Duterte vowed to  
13 protect police involved in killings. And this is what he said again, "[f]or as long as  
14 there is the power to pardon in the Constitution, that's my weapon against crime. If  
15 you massacre one hundred, and there are one hundred of you, then you will all be  
16 pardoned. Restored to full political and civil rights, plus a promotion to boot. It's  
17 like that -- especially the high profile". And this quote can be found at tab 130.2 of  
18 the Prosecution list of materials at ERN PHL-OTP-00000336 at page 0010.

19 Such statements reassured the physical perpetrators. One insider described that he  
20 felt confident to continue killing people because he knew that he wouldn't be arrested  
21 for that. And this evidence can be found at tab 38 of the Prosecution list of material,  
22 ERN PHL-OTP-0001-2779 at page 0005, and the relevant lines are from 130 to 131.

23 Your Honours, let me now say a few words about the contextual elements. The 78  
24 murders and attempted murders that Mr Duterte is charged with in this case were not  
25 random, these were not random crimes, nor were they spontaneous or happened in

1 isolation. Rather, the evidence demonstrates that they were part of a widespread  
2 and systematic attack directed against the civilian population of the Philippines. The  
3 murders and attempted murders were carried out across the Philippines and over a  
4 substantial period of time. Overall, Duterte's so-called War on Drugs resulted in the  
5 killings of thousands of civilians from 1 November 2011 to 16 March 2019. And  
6 many of these victims were --

7 THE COURT OFFICER: [10:46:25] Excuse me, counsel, you have five minutes left.

8 MR NIANG: [10:46:29] Okay. Yes, that was actually -- were children.

9 The victims of extrajudicial killings charged in this case were brutally murdered,  
10 some after having been abducted and mistreated. Unlike Mr Duterte, who is  
11 represented by his counsel here today, they were deprived of any form of due  
12 process.

13 The loss of every single one of these victims had the most profound impact on their  
14 families, their friends and, ultimately, their communities.

15 Their suffering was met not merely with Mr Duterte's indifference, but with his  
16 mocking. In a 25 July 2016 speech he expressly made fun of the iconic photograph  
17 portraying the partner of an extrajudicial killing victim cradling his body, which now  
18 visible on our screen. While the specific incident portrayed in this photograph is not  
19 charged in this case, Mr Duterte's comment on it is demonstrative of his attitude  
20 towards the victims.

21 In reference to this photo, Mr Duterte, this is what he said: "Those of you who are  
22 still sober, those who haven't tried illegal drugs, if you don't want to die, or get hurt,  
23 don't rely on the priests, including human rights advocates. They won't be able to  
24 prevent deaths. So, don't do it. And then there you are, sprawled on the ground,  
25 and you're portrayed in a broadsheet like Mother Mary cradling the dead cadaver of

1 Jesus Christ. That's how they are, creating dramas here".  
2 This is what he said. And this quote can be found at tab 128 of the Prosecution list of  
3 material at ERN PHL-OTP-00000335, page 0008.  
4 And of course the question of whether Mr Duterte had knowledge and intent of  
5 course goes without saying.  
6 Your Honours, Mr Duterte intended and knew that the charged crimes were  
7 occurring, or that they would occur in the ordinary course of events that he had set in  
8 place and put in motion.  
9 His intent and knowledge are shown by the multiple statements he made throughout  
10 his mayoral and presidential tenures, promising to reduce crimes by killing alleged  
11 criminals, promoting the common plan, and urging police and even members of the  
12 public to kill alleged criminals. As detailed in the Prosecution's Pre-Conformation  
13 Brief, and as your Honours will hear in the course of my team's presentations,  
14 Mr Duterte also made statements directly acknowledging allegations of extrajudicial  
15 killings by his subordinates and issued written orders showing he knew about the  
16 crimes they committed.  
17 Your Honours, the Prosecution relies on significant and varied sources of evidence to  
18 demonstrate that substantial grounds exist to believe that Mr Duterte is criminally  
19 responsible for the crimes.  
20 This evidence includes multiple witness statements, including insider witnesses, it  
21 includes many speeches of Mr Duterte himself, as well as the statements of his  
22 co-perpetrators. It also includes orders and other documents signed by himself.  
23 The Prosecution further relies on official government documents, including material  
24 from the Philippine National Police, it relies on drug watch lists, on audio and video  
25 material, as well as on forensic and financial evidence.

1 Your Honours, during the Prosecution's subsequent presentations my colleagues will  
2 elaborate on some of this core evidence in more detail.

3 Mr Nicholls will give a presentation on Mr Duterte's background, followed by an  
4 overview of the evidence demonstrating his responsibility for the crimes charged in  
5 count 1.

6 This will be followed by the presentation of Mr Jeremy, behind me, who will speak  
7 about the evidence demonstrating Mr Duterte's responsibility, as president, for the  
8 crimes charged in counts 2 and 3.

9 And Ms Croft, on my left, will then elaborate on the contextual elements of crimes  
10 against humanity and the modes of liability through which Mr Duterte is responsible  
11 for the crimes alleged in this case.

12 And to conclude, Madam President, your Honours, while this Court cannot reunite  
13 victims with their loved ones, it can help reveal the truth about what happened to  
14 them and bring a sense of justice to the victims.

15 The charges before you today are serious and the evidence submitted requires their  
16 confirmation. And Mr Duterte must be held to account and this case should be  
17 confirmed for trial. I thank you very much.

18 PRESIDING JUDGE MOTOC: [10:53:11](Interpretation) Thank you very much,  
19 Mr Deputy Prosecutor.

20 Now we are slightly in advance on our schedule. I will now hand over to the Legal  
21 Representative of Victims for her opening statements until 11. And then after that,  
22 you shall continue. Please proceed, Ma'am.

23 MR BUTUYAN: [10:53:54] Madam President, your Honours, by way of an opening  
24 statement, we convey the views and concerns of the 497 victims authorised to  
25 participate in these proceedings.

1 At the outset, your Honours, we communicate the very deep disappointment of the  
2 victims at the decision allowing Rodrigo Duterte not to be present in this stage of  
3 Confirmation of Charges. The sight of Mr Duterte being read, and being confronted  
4 with the grave and horrible charges against him, would have constituted a vital  
5 component of justice for the victims.

6 This case symbolically represents the last boat that the victims can board to go on a  
7 journey in search of justice for their loved ones who were brutally killed upon the  
8 orders of Mr Duterte. If this Chamber prevents the boat from sailing, by not  
9 confirming the charges, the victims will forever be moored in an island where the  
10 nights are filled with the screams and cries of their massacred loved ones. There is  
11 absolutely no other recourse for the victims.

12 No less than former Philippine Justice Secretary Crispin Remulla admitted just a few  
13 months ago, that the door to domestic justice is permanently closed for victims of the  
14 Duterte extrajudicial hearings. Remulla declared, and we quote:

15 "It's difficult to prove the case here, and build up the case because those who need to  
16 speak are involved in the crime... There's nothing, not even a police report. You  
17 don't have a scene of the crime, you don't have ballistics, you don't have DNA."

18 Remulla further declared, and I quote: "Everything that could be erased was erased so  
19 that the cases would not push through... that is why this has reached the ICC."

20 Under the Philippine justice system, your Honours, no criminal case can reach the  
21 courts unless they are initiated and filed by the department of justice or the office of  
22 the ombudsman. From justice secretary, Remulla has been appointed as  
23 ombudsman, so the two gatekeepers of justice are successively occupied by a ranking  
24 official who has declared that there is absolutely no hope for domestic justice for the  
25 victims.

1 If the charges are not confirmed in this case, one of the gravest concerns of the victims  
2 is that Mr Duterte will return to the Philippines as a conquering hero. He will  
3 resume preaching his gospel of impunity. In fact, if Mr Duterte could threaten to  
4 slap the judges of this Court - which he did while he was president - this Chamber  
5 should imagine the kind of terror-filled threats and the violent actions that can easily  
6 be used against the victims if the suspect walks free from this Court.

7 If the charges are not confirmed, it is a very serious concern of the victims that  
8 Mr Duterte will be portrayed in history by his multitude of followers as the leader  
9 who vanquished the ICC and who cleansed his country of 30,000 rapists, murderers  
10 and dangerous criminals, which were the scornful words he sweepingly used against  
11 all those who were killed in his murderous spree.

12 Your Honours, Mr Duterte has been in detention here in The Hague for almost a year  
13 now. But there has been no peace and rest for the victims. From the time their  
14 loved ones were killed and continuously up to this time, they lived in constant fear  
15 for their lives.

16 The arrest and detention of Mr Duterte has not stopped impunity in the Philippines.  
17 The virus of impunity that he spread all over the country has become a cancer that  
18 has metastasised, infecting millions of Filipinos. Mr Duterte has created clones of  
19 himself. He converted millions of peace-loving citizens into blood-thirsty disciples,  
20 who have become converts to the belief that violence and killings are valid solutions  
21 to societal problems.

22 The killings masterminded by Mr Duterte continue to have consequences for the  
23 victims even to this day because of his clones. These mini Dutertes harass, threaten,  
24 or commit outright violence against the victims and their families.

25 As shown by the number of victims participating in these proceedings so far, many

1 still fear to come out and tell their stories of how their lives became a living hell as a  
2 result of Mr Duterte's crimes and because they are constantly terrified of being  
3 targeted with violence by Duterte fanatics.

4 Many victims have been hesitant to participate in this ICC case because they live in  
5 communities that thrive with Duterte clones. They see the halls of power of their  
6 country teeming with Duterte disciples. They see and hear senators,  
7 congresspersons, mayors, governors, and powerful public figures, who are mini  
8 Dutertes.

9 The daughter of Mr Duterte is the vice-president, and she has just recently declared  
10 that she is running for president in 2028. One Duterte son is a congressman, another  
11 is the Davao City mayor, and his grandchildren occupy positions of power.

12 The plague of impunity has spread, not only among Filipinos in the Philippines, but  
13 even among expatriate Filipinos in faraway lands like here in The Hague. When we  
14 reported to the victims that we, their External Legal Representatives, feel like  
15 fugitives --

16 THE COURT OFFICER: [11:00:49] Apologies Counsel, it's 11 o'clock.

17 (Counsel confers)

18 MR BUTUYAN: [11:01:01] When we reported to the victims that we, their External  
19 Legal Representatives, feel like fugitives who avoid our own countrymen here in The  
20 Hague --

21 PRESIDING JUDGE MOTOC: [11:01:13](Interpretation) Thank you very much,  
22 counsel. We will now take a half-hour break, as provided for in the schedule, and  
23 you shall resume your remarks at 11:30. These are the rules that are set in the  
24 schedule which was set in paragraph 18 of the decision.

25 THE COURT USHER: [11:01:41] All rise.

1 (Recess taken at 11.01 a.m.)

2 (Upon resuming in open session at 11.34 a.m.)

3 THE COURT USHER: [11:34:13] All rise.

4 Please be seated.

5 PRESIDING JUDGE MOTOC: [11:34:40](Interpretation) Hello again. Counsel, you  
6 can continue, because we were interrupted by the pause. Over to you, legal  
7 representative of victims, please.

8 MR BUTUYAN: [11:34:57] Thank you, your Honours. I was in the process of  
9 explaining the spread of impunity in the Philippines and I will resume, your Honour.  
10 The plague of impunity has spread not only among Filipinos in the Philippines, but  
11 even among expatriate Filipinos in faraway lands like here in The Hague. When we  
12 reported to the victims that we, their external legal representatives, feel like fugitives  
13 who avoid our own countrymen here in The Hague, because, chances are, they are  
14 Duterte clones, they express their utmost concern that if we, their lawyers, feel  
15 threatened by mini Dutertes in a foreign county, we should imagine the far more  
16 intense fear they live with every day in their communities teeming with mini  
17 Dutertes.

18 The victims also wish to convey that if the judges of this honourable Chamber can be  
19 subjected to online harassment by Duterte clones, we should imagine the level of  
20 vulnerability the victims are exposed to in their poor villages.

21 Your Honours, there is only one solution to stop the impunity propagated by  
22 Mr Duterte from continuing to bring harm and suffering to the victims, and that is for  
23 this honourable Chamber to confirm the charges so that witnesses can testify and  
24 evidence can be presented on the horrible crimes committed by Mr Duterte. The  
25 testimonies and evidence presented will inoculate these mini Dutertes from the virus

1 of impunity that has infected them. When they will see and hear the utter cruelty,  
2 the sheer brutality - in other words, the brazen inhumanity of the crimes committed  
3 by Mr Duterte - and the humanity of those whose lives were violently taken, it will  
4 rekindle the embers of humanity that still remain in their hearts.

5 Many of these mini Dutertes or Duterte clones are actually victims of massive doses  
6 of fake news widely circulated online. They need to be vaccinated with the truth,  
7 and the truth vaccine can only come from the testimonies of victims and evidence  
8 presented in a trial before this Court. Truth is the antidote to the virus of impunity,  
9 your Honours.

10 The victims dread a future where charges are not confirmed in this case. It will  
11 mean that the virus of impunity will continue to spread and infect many more.  
12 Victims fear that Duterte clones will become an even bigger group that can elect  
13 another apostle of impunity as the Philippines' next leader. If that happens, an even  
14 more serious condition of impunity can take place in the Philippines, possibly worse  
15 than the orgy of violence that happened from 2011 to 2019, and this time there will be  
16 no ICC to run to for assistance and help.

17 The victims humbly beseech this honourable Chamber to reaffirm the two crucial  
18 objectives of the ICC identified in the preamble of the Rome Statute: First, to  
19 prosecute and punish the most serious crimes that deeply shock the conscience of  
20 humanity; and, second, to put an end to impunity and to contribute to the prevention  
21 of crimes of unimaginable atrocities.

22 If this Chamber confirms the charges, this Court will achieve its first objective of  
23 prosecuting and, if convicted, punishing Mr Duterte for the unspeakable crimes he's  
24 charged with. But achieving the first objective will not automatically make this  
25 Court attain its second objective. Merely putting forward the evidence gathered and

1 the theory of liability of the Prosecution will not necessarily result to ending impunity  
2 and contributing to the prevention of further unimaginable crimes, which is the  
3 Court's second objective. This Court should allow victims to testify, and the record  
4 of the proceedings must reflect the harrowing experiences of those impacted by the  
5 crimes. They are the humanity referred to by Article 7's framework of crimes against  
6 humanity.

7 It is the view of the victims that this Court must allow them to narrate the gravity, the  
8 cruelty and the brutality - in other words, the utter inhumanity of the crimes  
9 masterminded by Mr Duterte - so that the people who adore and idolise him, the  
10 people who have become disciples of impunity, will see for themselves the  
11 inhumanity of the suspect. For this to happen, the charges should all be confirmed.  
12 ity, the cruelty and the brutality - in other words, the utter inhumanity of the crimes  
13 masterminded by Mr Duterte - so that the people who adore and idolise him, the  
14 people who have become disciples of impunity, will see for themselves the  
15 inhumanity of the suspect. For this to happen, the charges should all be confirmed.

16 The virus of impunity that has spread all over the Philippines is very grave and  
17 serious, your Honours. Imagine a leader like Mr Duterte who proudly and publicly  
18 proclaimed his aspirations of following the footsteps of Adolf Hitler when he said,  
19 quote: "Hitler massacred 3 million Jews [sic]. Now there (are) 3 million drug addicts.  
20 I'd be happy to slaughter them."

21 And yet he is worshipped by a huge number of Filipinos. In so many countries, you  
22 will need to hide your adoration of Hitler. Mr Duterte flaunted it and his fanatics  
23 are unaffected by it.

24 Mr Duterte has pronounced so many other horrible declarations meant to promote  
25 and encourage impunity, as it will be detailed tomorrow by my colleagues, and yet he

1 is idolised by a multitude of Filipinos.

2 The Defence will claim that he was merely bombastic and acerbic when he made  
3 these statements. But if he were merely being pompous and flippant, the people  
4 who were killed should be alive, and laughing today at his supposed pranks and  
5 stunts.

6 Mr Duterte did not only order the mass killing of people suspected of being drug  
7 personalities, your Honours, he smeared them with accusations of being rapists,  
8 murderers and dangerous criminals. Mr Duterte imposed an inflexible  
9 condemnation that if you are a drug personality, you are automatically a dangerous  
10 criminal who has engaged in unimaginable atrocities. The families of those killed  
11 did not only suffer the loss of a loved one; their families were even disgraced with  
12 being associated with a rapist, murder or dangerous criminal.

13 Even after their loved ones were murdered, many families were subjected to  
14 deplorable injustices. Instead of gunshot wounds as cause of death in their death  
15 certificate, families were shocked to see pneumonia, heart attack, stroke, sepsis, and  
16 other false causes of death that were instead written down. Other families were  
17 charged substantial amounts, sums the impoverished families could not afford, just to  
18 retrieve the bodies of their loved ones from the funeral parlours who were suspected  
19 by the families of being in cahoots with the police officers. Some family members  
20 were even arrested and imprisoned by police officers on false charges, and for the  
21 purpose of preventing them from complaining.

22 In one particular incident, your Honours, a young man and his common-law wife  
23 were sleeping in their shanty when men in civilian clothes knocked down the door to  
24 their house. The men dragged the wife out of the room. The husband was already  
25 surrendering, and he even started to strip naked to show he had no drugs or firearm

1 on his body. He said, in the Filipino language, "*Sir, malinis po ako, maghuhubad ako,*  
2 *Sir*" -- translation in English, "Sir, I am clean. I will strip naked, sir". Still, without  
3 mercy, the men shot and killed him.

4 After the killing -- after killing the husband, they arrested the wife and accused her  
5 with falsified and non-bailable charges. When the deceased's mother and cousin  
6 went to the police station to find out what happened to the young man, because they  
7 were not in the scene of the crime when it happened, the two were also summarily  
8 arrested and charged with fabricated crimes.

9 If the honourable Chamber confirms the charges in this case, the witnesses and  
10 evidence will show that those who were smeared by Mr Duterte before they were  
11 killed, they were inside their houses, sleeping peacefully with their families, eating  
12 meals with their loved ones, playing with their children, or hugging their wives.  
13 Others were merely walking along the street, having snacks at a roadside eatery or  
14 plying the roads earning a poor man's living. They were all doing ordinary, peaceful  
15 and plain human activities. Confirming the charges will restore the dignity of those  
16 who were killed and the honour of their families.

17 The prejudice suffered by the families of those killed did not begin and end with the  
18 killings of their loved ones. Each killing set off a chain reaction that is continuously  
19 churning out a daily crucible of harm, damage and loss. By masterminding the mass  
20 murder of mere suspects, Mr Duterte has brought irreparable and endless harm to the  
21 families.

22 An overwhelming majority of those killed were the sole breadwinners of poor  
23 families. These families were dependent on each day's wage for their daily  
24 sustenance. They were hand-to-mouth families. With the death of their  
25 breadwinners, the widowed spouses, a majority of whom are women, have had to

1 take on the roles of two parents. On top of taking care of their children and  
2 maintaining the household, the widowed spouses now have the additional burden of  
3 being breadwinners for their families. Families have been driven to even far more  
4 serious destitution, your Honours.

5 The damage to the children is immeasurable. Their development and upbringing  
6 have been permanently compromised. They have been walking through life with  
7 one missing parental limb. Losing a parent under very dire economic conditions  
8 and under the most violent circumstances results in wounds that will never heal and  
9 that will absolutely render them handicapped for life.

10 And then there's the indescribable anguish of parents who lost a child. No parent is  
11 supposed to outlive a child. Parents suffer a lifetime of grief when a child dies ahead  
12 of them, and the lifetime grief is unimaginably worse when a child dies under the  
13 most inhuman circumstances.

14 The crimes masterminded by Mr Duterte did not only affect individuals, but whole  
15 communities. Across the Philippines, numerous urban communities of the most  
16 impoverished villages were scarred by the violence and abuses wrought by a lawless  
17 anti-drug campaign that further worsened the misery and trauma of residents in  
18 marginalised communities.

19 In one illustrative instance, your Honours, after the father of a family was killed  
20 inside his house by police officers, the entire neighbourhood was so traumatised that  
21 for almost three months, and during the coldest months in the Philippines, they  
22 abandoned their houses at night and, instead, slept in the open public market. They  
23 did not feel secure inside their houses because there would be no witnesses if the  
24 police would just barge in and shoot at them. In the public market, the presence of  
25 many witnesses, they thought, will deter the police from shooting and killing them.

1 It is also the victims' view, your Honours, that the charges should be confirmed  
2 because the resulting presentation of witnesses and evidence during the trial will  
3 force police and other law enforcement officers to confront the brazen depravity of  
4 the killing of civilians that they either personally committed or allowed to be  
5 committed during the Duterte reign of terror.

6 In one operation, the police summarily killed three men - two brothers and one  
7 friend - in the very early morning. The police declared that the three were *nanlaban*.  
8 They fought back, but the neighbours saw otherwise. The whole neighbourhood  
9 was so horrified at the macabre treatment of one of the fatalities. The bullet-ridden  
10 body of one of the three men was brought out from the second-floor window and  
11 dropped to the ground because the police could not bring the body out through the  
12 doorway. When the body hit the ground, the body -- the neighbours recoiled at  
13 hearing the body emit a cry, "Aray" -- translation in English, "Ouch!" The man was  
14 still alive when his body was thrown to the ground and the police just left him to  
15 bleed to death.

16 The trial will hold a mirror to the police force and compel them to see how they were  
17 turned into executioners and assassins, and their organisation transformed into a  
18 gigantic criminal organisation, or turned into a killing machine, by Mr Duterte.

19 The Philippine National Police and the drug enforcement agencies have not made any  
20 initiative to purify the corrupted minds of their officers and personnel, to our  
21 knowledge. The trial in this case will be a tremendous teaching opportunity that can  
22 work to rectify the warped and depraved minds of Philippine security officers.

23 The charges need to be confirmed, your Honours, for the sake of the entire county,  
24 which has been desensitised or made numb by the massive incidents of impunity and  
25 the glorification of impunity promoted by Mr Duterte. The whole Philippines needs

1 to know the real story during those bloody years. There has been no opportunity for  
2 the entire country to really find out the whole truth of what happened. It has been  
3 hush-hush, tidbits of sporadic news, and always drowned out by trolls who mass  
4 produce and broadcast false, fake and fabricated news.

5 The victims also attach a very important historical significance to this case. If the  
6 Chamber confirms the charges, the trial proceedings will produce a historical record  
7 of the most bloody period of post-war Philippine history -- a duty that the Philippine  
8 justice system has refused to perform. The historical account on the mass murder of  
9 so many Filipinos during the Duterte regime needs to be accessible to our future  
10 generations, just like the Nuremberg trials and the Tokyo trials, so that they will learn  
11 from it and not repeat the same mistake of selecting and glorifying leaders who  
12 preach and practice impunity.

13 The Prosecution has presented 78 instances of murder and attempted murder,  
14 clarifying that these incidents are only representatives of the extent of the crimes  
15 committed against "thousands of civilians", your Honours.

16 The victims beseech the honourable Chamber to remember that Mr Duterte's bloody  
17 rule both in Davao City and nationwide resulted in as many as 30,000 victims of  
18 killings, more than 300,000 victims of arbitrary imprisonment, and unaccounted  
19 numbers of victims of torture, sexual assault and other forms of crimes against  
20 humanity. For many families in the Philippines, the charges brought for  
21 confirmation in these proceedings represent only a fraction of the reality the victims  
22 have endured. The victims beseech the honourable Chamber to remember the  
23 hundreds of thousands of victims -- that hundreds of thousands of victims are  
24 banking on vicarious justice from this case.

25 Finally, your Honours --

1 THE COURT OFFICER: [11:53:22] Excuse me, counsel, you have five minutes left.

2 MR BUTUYAN: [11:53:26] Thank you.

3 Finally, your Honours, the victims wish to humbly underline that what is ultimately  
4 at stake in these proceedings is the supreme of all forms of human rights -- the right  
5 to life. The right to life is the very foundation of every civilised society. The  
6 ancestors of every nation fought against invaders, colonisers, despotic monarchs and  
7 fascist leaders in order to secure the right to life of their families, their communities  
8 and the future generations. The heroes of every county sacrificed their lives to  
9 defend the right to life of their people. We as citizens of modern societies are  
10 inheritors and beneficiaries of the sacrifices of our ancestors who bequeathed to us the  
11 right to life. We owe it to them to defend this supreme legacy for our generation and  
12 for the generations to come.

13 For the past few years, your Honours, we have seen an increasing number of nation  
14 leaders who time-travelled from the dark ages and now swagger in modern times as  
15 if they own people's lives. These brutal and cruel leaders must be held to account for  
16 their brazen disregard of humankind's right to life.

17 Our ancestors fought in the battlefield to secure our right to life. In these modern  
18 times, the battleground for the fight to protect our right to life is within the four walls  
19 of this honourable Court.

20 May the god of life, the god of humanity, guide the honourable members of this  
21 Chamber.

22 Thank you, your Honours.

23 PRESIDING JUDGE MOTOC: [11:55:16](Interpretation) Thank you very much,  
24 Counsel Butuyan.

25 Now over to the Defence. Mr Kaufman, please.

1 MR KAUFMAN: [11:55:26] Thank you, Madam President. Thank you your  
2 Honours.

3 And I thank Mr Butuyan for his intervention, but I feel that I ought to remind him  
4 that this is a court of law which decides matters on the basis of evidence, not on the  
5 basis of political demagoguery, and not on the basis of a desire to effect regime  
6 change despite the democratic will, and certainly not on the basis of statements made  
7 by Ombudsman Jesus Crispin Remulla who professed that domestic justice will be  
8 denied, according to Mr Butuyan, because of the lack of forensic reports and police  
9 reports.

10 Now, I don't know which case Mr Butuyan's metaphorical ship sailed into, but he  
11 clearly hasn't read the evidence. Whilst he was speaking, we examined evidence,  
12 and out of that evidence we found 35 reports substantiating 49 of the incidents which  
13 are mentioned in a document containing the charges.

14 Your Honours, Rodrigo Duterte was and will always remain a unique phenomenon.  
15 His style of statesmanship was novel and unpalatable to many. His expletives and  
16 hyperbole grated, while his honesty and wild popularity irritated. He spoke openly,  
17 from the heart, sincerely and truthfully. And what a contrast between him and his  
18 successor in the Malacañang. For President Rody, his word was his word and the  
19 people knew it. For President Bongbong his word is for the wind and the people  
20 will not forget it.

21 Let me remind everyone of the letter which President Ferdinand Marcos Jr  
22 signed - it's on the screen - and in which he gave a cast-iron undertaking that his  
23 government, and I quote, "will not assist the ICC, in any way, shape or form."  
24 Well, as we know, he failed to keep that promise. Rodrigo Duterte was  
25 unconstitutionally hijacked and unceremoniously hauled off to The Hague. And

1 when called upon to defend his master's actions and the said letter at a Senate  
2 committee hearing, the then secretary for justice - once again Mr Jesus Crispin  
3 Remulla - persisted with the same dishonest theme. And I quote his words: "we did  
4 not assist the ICC, we continue with the very tenor of the letter that we did not assist  
5 the ICC and we did not have any contact with them". So he said.  
6 But with a document emanating from the Prosecution team opposite, and disclosed to  
7 us a mere week ago, not as information material to the preparation of our defence but  
8 as exonerating evidence, we can now substantiate what we have suspected for a long  
9 time. The document comprises a transcript of a telephone call covertly recorded  
10 between four parties who cannot be mentioned in public, and one of these parties was  
11 boasting, boasting about how he was acting as the silent partner of President BBM  
12 managing a scheme to funnel witnesses to this Court while all the time ensuring that  
13 he could guarantee President BBM's "plausible deniability".  
14 So it is indeed the Defence case that President Ferdinand Marcos Jr set out to  
15 neutralise Rodrigo Duterte and his legacy. Yes, Mr Deputy Prosecutor, I use that  
16 legendary word "neutralise" so central and so essential to your case theory because  
17 you know just as well as me that I'm using the term metaphorically.  
18 And now I turn to the substance of the charges. But before I do, a word or two about  
19 the geopolitical context. The scourge of illegal narcotics is not unique to the  
20 Philippines. As we all know, it afflicts Latin America, where I can name three  
21 countries where the death rate at the hands of vigilantes and law enforcement agents  
22 per capita population is higher than it ever was under Duterte. And as you should  
23 know, and you will hear from the Prosecution at any rate, the Philippines, as a county,  
24 is uniquely positioned to act as a transit hub for the trafficking of narcotics emanating  
25 from the cartels in China, and with or without Duterte - so we argue - the death rate

1 would have kept on rising. Indeed, as we will prove with statistics and reports, the  
2 death rate flowing from narcotics-related crime actually increased after Rodrigo  
3 Duterte left power. And where, I ask you, has the International Criminal Court been  
4 since?

5 Now, a colleague of the victims' representatives sitting opposite, a certain self-styled  
6 legal assistant to ICC counsel, rose up and famously stated in one of her many  
7 voluble interviews to the media that Rodrigo Duterte conducted not a war on drugs,  
8 but a war on the poor. A war on the poor, I ask you? If anything, the totally lawful  
9 Duterte campaign against illegal drugs and their suppliers took place when his  
10 administration was actively promoting some of the most important redistributive  
11 policies in years, all with the aim of alleviating poverty -- legislative reform in 2017 to  
12 reduce personal income taxes for workers, social protection expansion - known as the  
13 4Ps - designed to provide regular cash transfers to needy and multi-child families,  
14 universal health care and, need I say more, the Magna Carta of the poor, setting out  
15 the right to adequate food, decent shelter, education and the highest standard of  
16 health. The fact that the majority of those who died as a result of drug-related crime  
17 were living in the most deprived areas is something which is endemic to every  
18 afflicted society.

19 But can anyone seriously accuse this man, Rodrigo Duterte, who has lived such an  
20 openly frugal existence of taking up arms against the needy? This is the man who at  
21 the age of five arrived in Davao to live in a modest shack where rain leaked through  
22 the roof, forcing him to crawl under the kitchen table to take shelter. This is not the  
23 man born with a silver spoon in his mouth and groomed for the presidency from  
24 childhood. This is the man who was born to a lawyer and a governor who taught  
25 him discipline, values, and respect for the people by being one of the people. This is

1 the man who as president himself shunned the luxuries and the privileges of high  
2 office. Unlike others before him, and even those after him, he slept not in the palatial  
3 grandeur of the Malacañang, but in spartan quarters of his bodyguards' hut. His  
4 diet consisted not of prime cuts of imported Australian beef, but of dried fish and  
5 boiled rice. A man of simple indulgences, his pleasures were to be found not on the  
6 cocktail party circuit of Forbes Park, but on coastal roads where he roamed and  
7 cruised on his motorcycle, not looking for people to kill, Mr Prosecutor, but almost  
8 killing himself because of his love for speed.

9 This is the man who paid and paved his way through law school, passing his Bar  
10 exam in 1972 more or less on the same day as Marcos Senior's tanks were grinding  
11 and rolling their way through the streets after the declaration of martial law. And it  
12 was on that significant day that Rodrigo Duterte was exposed to the tyranny of  
13 oppression and the abuse of power by the elite. And he took a decision. On that  
14 day he chose to devote himself to a life of selfless public service. As a professor at  
15 the local police academy and as a public prosecutor in Davao, Rodrigo Duterte  
16 developed a lifelong passion, some would say an enduring obsession, for law and  
17 order, something for which he unapologetically enforced throughout his time as  
18 Mayor of Davao City. Not, as the Prosecution say, through sowing murder and  
19 mayhem, but through winning the love, respect, and admiration of his fellow citizens,  
20 the very same citizens who continued to re-elect him time after time, term after term,  
21 on no less than seven occasions over more than two decades. And throughout his 20  
22 or so years' tenure as the Mayor of Davao, Rodrigo Duterte and his family  
23 transformed that city from an outpost of communist insurgency and criminal violence  
24 into what is now one of the safest cities not just in the Philippines, but in the entire  
25 world. This was indeed the so-called "Davao model" which the Prosecution wants to

1 persuade you was code for unbridled criminal violence. And this was the type of  
2 leader that the Filipino nation wanted in 2016. So Rodrigo Duterte was elected into  
3 power not in spite of but specifically because of his firm and uncompromising  
4 commitment to upholding law and order.

5 And after his election as president, Rodrigo Duterte remained a man of the people  
6 without seeking to patronise the people. Gung-ho in his ways and with a belligerent  
7 tone he spoke the tough tongue of the street, not the dissembling discourse of  
8 international diplomacy. He said what the people wanted to hear. But he said it in a  
9 way that offended sensibilities of world leaders unaccustomed to hearing it - one in  
10 particular - and that was what set him on the slippery slope to a prison cell in The  
11 Hague.

12 And let me tell you how it works. It starts with the media controlled by the  
13 powerful and the politically influential. With a sensational headline and a twisted  
14 editorial slant, the moguls sell their papers while promoting the partisan agenda of  
15 their backers in power. They highlight the salacious content while ignoring the true  
16 context because that is what captivates the reader. And so it was with  
17 Rodrigo Duterte whose speeches were fertile fodder for his enemies and detractors.  
18 A man whose hyperbole, bluster and rhetoric, once published, became a natural  
19 target for privately funded NGOs and human rights activists, a loose collective more  
20 commonly known as civil society.

21 These people descended upon the Philippines to advance an agenda even more  
22 lacking in objectivity than that of the media. And heavily funded by tycoons with  
23 even grander designs, they print their glossy reports replete with iconic photographic  
24 images of grieving families and dead bodies in rain-swept night-time crime scenes, all  
25 dramatically illuminated with the fluorescent glow of neon, images carefully crafted

1 to shock the conscience and to sway the emotions and, I may say, to be used by the  
2 Prosecutor when they don't even relate to the charges. And they gave their slick  
3 reports bold titles lifted straight out of a James Bond movie, such as "Licence to Kill",  
4 "One shot to the head", "You can die any time", or simply, "They just kill". The  
5 photographers are feted and their shots exhibited as art all over the world, and the  
6 brave journalists who act as their sources win awards and Nobel Prizes. And slowly  
7 but surely their narrative becomes the sacred, unchallengeable and unshakeable truth.  
8 And so the pressure builds up, and the academics who haunt the corridors of the  
9 progressive left law faculties far away in the United States tweet their research and  
10 publish their articles pontificating about crimes against humanity, systematic attacks  
11 against a civilian population, and they point their finger at one man, one man alone,  
12 and bandy about slogans such as accountability and the prevention of impunity.  
13 They give their gratuitous advice on what should be done, sometimes academics who  
14 formerly worked alongside the Prosecutor of the International Criminal Court.  
15 Communications and complaints are filed and the rest, as they say, is history.  
16 In any event, we are not gathered here today to judge a man on the basis of his course  
17 attitude or his vulgar language. This Court has convened a confirmation hearing to  
18 verify whether substantial grounds exist to believe that Rodrigo Duterte, the people's  
19 president, together with various so-called co-perpetrators, over the years of his  
20 governance, devised a criminal policy of wholesale and wanton murder. And since  
21 we are in a court of law, it is worth stressing - although I should not have to - that  
22 cases are decided on the basis of evidence, not supposition, not rumour, not spicy  
23 gossip, and certainly not on the basis of political rhetoric and bluster. Because at the  
24 end of the day, were it not for those belligerent and controversial speeches, there  
25 would have been no impetus to bring the people's president to The Hague. And

1 when the Prosecution's evidence is examined, I would ask you to keep an open mind  
2 and to question not just whether that evidence has been selectively presented, but  
3 whether there exists evidence which the Prosecution has failed to produce. And  
4 I say this with justifiable cause, particularly with respect to the Duterte rhetoric. As  
5 we will prove during the substantive part of our submissions, the notorious speeches  
6 on which the Prosecution relies have been cherry-picked to suit its narrative while  
7 ignoring the many other speeches when the former president tempered his bombastic  
8 language by clear reference to the principle of lawful self-defence.

9 We, the Defence, have read as many of these speeches as we can find. In fact, in our  
10 poky little office on the top floor of the furthest building away in this complex, we  
11 have a counter which ticks and ticks. And whenever we come across a speech which  
12 contradicts the Prosecution's murder theory by reference to self-defence, we give a  
13 cheer, and the counter goes up once more and we celebrate one more nail in the coffin  
14 of the Prosecution's case theory.

15 As the statistics stand, as of today, in contrast to the 20 speeches on which the  
16 Prosecution relies to prove incitement to kill, we have found 35 more which say the  
17 complete opposite. Let me give you two examples from the very speeches that the  
18 Deputy Prosecutor himself cited today.

19 Let's refer first of all to the famous Pietà speech which the Deputy Prosecutor referred  
20 to. So this is what the Deputy Prosecutor said:

21 "Those of you who are still sober, those who haven't tried illegal drugs, if you don't  
22 want to die, or get hurt, don't rely on the priests, including human rights advocates.  
23 They won't be able to prevent deaths." And so it goes on.

24 But if we look further on in the very same speech, something which maybe the  
25 Deputy Prosecutor didn't do, this is what he had to say:

1 "To our police officers and other officials, do your job and you will have the  
2 unwavering support of the Office of the President. I will be with you all the way.  
3 Abuse your authority, and there will be hell to pay, for you will have become worse  
4 than criminality itself."

5 Well, there you are. You have it straight in your face - PEXO - exonerating evidence  
6 within what is claimed to be the Prosecution incriminating evidence. I won't take up  
7 my time by showing you the second speech, but there is one. If I have time at the  
8 end, I will show it to you.

9 So, if you add to that another 10 speeches out of the 20 speeches on which the  
10 Prosecution rely in its document containing the charges -- after all we are in a court of  
11 law and we rely on evidence. And what is the evidence that is produced of these  
12 speeches - 20 of them - 10 of them, I submit, and we will show this in the substantive  
13 part of our submissions, contain exonerating evidence which support the Defence  
14 case theory. In other words, if you add the 10, which we've identified in the  
15 Prosecution's 20, to our total of 35, we come to 45 speeches, versus 10, which we say  
16 support the use of force only in self-defence. That is 350 per cent more speeches in  
17 favour of our defence and 350 per cent more reasons not to confirm the charges.  
18 And you can bet your bottom dollar that at the end of today's proceedings either the  
19 victims' self-styled legal assistant to ICC counsel or a Prosecution intern will be  
20 tasked with scouring the web looking for the means to prove Kaufman wrong. And  
21 I will declare it, and I'll declare it loudly and clearly as if the Prosecution didn't know  
22 it already, it is not enough to state that since the former president made those  
23 extremely inflammatory statements and deaths occurred that he must, as a matter of  
24 course, be criminally responsible for those fatalities.

25 At this stage of the proceedings, the Prosecution needs to show substantial grounds to

1 believe that the former president actually desired and foresaw that people would be  
2 killed as a result of his incendiary language. For the Prosecution to assert that  
3 Rodrigo Duterte hoped for deaths to occur or was recklessly indifferent as to whether  
4 deaths would occur, which he was not, that's insufficient.

5 So once more for the record: Rodrigo Duterte's language was aimed not at suspected  
6 drug pushers, as the Prosecution would have it, but directly at those poisoning  
7 society with their substances and not, I stress, with lethal intent. His rhetoric was  
8 calculated to arouse fear and obedience, to instill fear in their hearts and to inculcate a  
9 respect for the law in their minds. Nothing more, nothing less. That was his intent,  
10 and it was not criminal, and, as many of these drug pushers demanded, to enter  
11 prison. I remember seeing the images on the television -- lining up to surrender and  
12 to enter prison.

13 Now, I challenge my colleagues opposite to prove otherwise, because, as we all know,  
14 in a criminal process the burden of proof is on the Prosecution. They brought this  
15 case and they need to prove it. Rodrigo Duterte need not convince the world of  
16 anything, and that is to his fortunate advantage given his current medical condition.  
17 He stands behind his legacy resolutely and he maintains his innocence absolutely.

18 Now, I turn to the general fairness and objectivity of the investigation, which as we all  
19 know is meant to be an impartial evidence-gathering exercise. As an ex-Prosecutor  
20 myself, I'm used to investigating agencies, pursuing all reasonable lines of inquiry,  
21 assimilating all testimonies, and digesting all documentation and forensic evidence,  
22 recommending who to target for Prosecution. But not so with this Prosecution.

23 When we, the Defence, study the course of the investigation in this case, one thing is  
24 plain as a pikestaff -- the Chief Prosecutor of this Court, Mr Karim Khan, not only  
25 failed miserably to carry out his duties under the Rome Statute, requiring him to

1 examine exonerating circumstances as well as incriminating, but he single-handedly  
2 contaminated it, so we allege, by pursuing a one-track crusade with a view to a  
3 predetermined objective.

4 Let me explain. Although the ICC officially authorised an investigation into the  
5 so-called Philippines situation in late 2021, it was deferred, a few months later, back  
6 to the Philippines for the official investigation to resume only in late 2023. But the  
7 real meat of the investigation into count 1, relating to the activities of that fictitious  
8 construct, the Davao Death Squad, had effectively started way before then with the  
9 sole objective of nailing Rodrigo Duterte. Indeed, all the way back in 2018, during its  
10 so-called preliminary examination, the Prosecution had an individual, who will be  
11 referred to as P-1, handed to them on a silver platter. This P-1 had been interviewed  
12 at an earlier date by none other than Chief Prosecutor Karim Khan in his former  
13 capacity as a private lawyer, and the self-professed legal representative of more than  
14 100 victims of a so-called policy of extrajudicial killing. On 29 June 2018, Mr Khan  
15 signed off on a letter, a communication, to the then Prosecutor, Fatou Bensouda,  
16 demanding that she open an investigation as a matter of urgency, because, as he  
17 argued, of the brazen nature of the incitement by senior state officials, including  
18 President Rodrigo Duterte. Well, poor old Ms Bensouda couldn't really force the  
19 judges of the Court to open up a full-blown investigation as quickly as Karim Khan  
20 wanted it. {ICR: (Redacted)  
21 (Redacted)} to interview P-1 in the context of a unique ad hoc procedure, having  
22 claimed generically that it would not be possible to take P-1's testimony at a later day  
23 due to the fear of threats and the security situation in the Philippines. It will not  
24 surprise anyone to know that there was not even the slightest attempt to pursue  
25 alternative lines of inquiry with P-1, who attended his interview at the ICC, not with

1 Karim Khan but with a lawyer who shared the same set of chambers as him.  
2 The ICC investigators fixated on one thing and one thing alone -- validating and  
3 confirming the existence of the so-called Davao Death Squad and Rodrigo Duterte's  
4 role as the mobster-in-chief.  
5 The same blueprint was followed again, and yet again, with two more individuals  
6 who will be referred to as P-2 {ICR: (Redacted)  
7 (Redacted)} would prevent them from testifying at a later date, something which,  
8 nevertheless, they managed to do.  
9 So, by the time that a lawful - and I stress "lawful" - ICC investigation had resumed in  
10 2023, three self-confessed murderers had been interviewed, and the investigation of  
11 count 1 was, as I mentioned, more or less done and dusted.  
12 The fixation of the Prosecution's investigators on Rodrigo Duterte to the exclusion of  
13 considering any other persons responsible for the deaths in Davao City was blatant  
14 and deliberate. Moreover, these unique interviews were performed at a time when  
15 the Statute, the Rome Statute, required a complete cessation of ICC investigative  
16 activities in favour of the investigative activities of the Republic of the Philippines.  
17 A further example of the biased way in which this preliminary investigation was  
18 conducted can be provided. For example, a lawyer was appointed to be present  
19 during the pre-investigation interview of P-26 supposedly to protect the general  
20 defence rights, and who, totally ignorant of the general geopolitical context and the  
21 Philippines in particular, sat in like a potted plant without asking a single question.  
22 And to prepare her for this judicially authorised interview, Karim Khan wrote to the  
23 judge and told him that the lawyer had been provided with information to assist her  
24 preparation. And what was this information with which Karim Khan had helpfully  
25 provided her? A book on which the Prosecution relies as evidence -- a trashy,

1 scurrilous item of pulp fiction entitled "Duterte Harry". Your Honours, the picture  
2 on the front cover of that book says it all. It really does scream objectivity, doesn't it?  
3 I say that sarcastically of course.  
4 Fortunately for us - the Defence - the Appeals Chamber has now disqualified Chief  
5 Prosecutor Karim Khan from this case, a welcome development, as a matter of ethical  
6 propriety, but, in our opinion, too late in the day to salvage the integrity of the  
7 investigation that he had supervised an investigation in the course of which he  
8 concealed his former role as the victims' counsel who had deemed our client a  
9 suspected murderer as far back as 2018 and right up to the very day before this  
10 Pre-Trial Chamber issued its arrest warrant.  
11 Your Honours, over the next few days we hope to convince you of the wholly  
12 insufficient nature of the evidence against Rodrigo Duterte. We will show you that  
13 the paltry number of speeches on which the Prosecution rely do not manifest criminal  
14 intent. We will also convince you that as hard as they tried, the Prosecution's  
15 investigators couldn't get even one of its criminal cooperating witnesses, whose  
16 reliability is next to zero, to admit that they heard the former President,  
17 Rodrigo Duterte, give an order to kill at any time relevant to the charges or with  
18 respect to any of the incidents. And we hope that when you conclude your  
19 deliberations, your Honours, that you'll dismiss these grievously misplaced and  
20 politically motivated charges.  
21 We will ask you to send Rodrigo Duterte back to his family and we will ask you to  
22 give back to the Filipino people their Tatay Digong.  
23 Thank you, your Honours.  
24 PRESIDING JUDGE MOTOC: [12:23:42](Interpretation) Thank you very much,  
25 Mr Kaufman.

1 We shall now suspend. This is the end of initial statements and this is the end of this  
2 morning's hearings.

3 We will take a 90-minute break and resume at 2:00 in the afternoon. Thank you very  
4 much.

5 THE COURT USHER: [12:24:06] All rise.

6 (Recess taken at 12.24 p.m.)

7 (Upon resuming in open session at 2.03 p.m.)

8 THE COURT USHER: [14:03:06] All rise.

9 Please be seated.

10 PRESIDING JUDGE MOTOC: [14:03:32](Interpretation) Once again, good day  
11 everyone. We will now move on to submissions on the merits. Mr Prosecutor,  
12 please proceed, you have one hour today.

13 MR NICHOLLS: [14:03:48] Thank you very much, Madam President, your Honours.  
14 My name is Julian Nicholls. And good afternoon to you and to the -- my colleagues  
15 on the other side and to everybody in the courtroom.

16 Your Honours, we are here today because the evidence shows, despite what we heard  
17 for the last 30 minutes before the break, that Mr Duterte murdered thousands of his  
18 own people -- Filipino men, women and children. He was at the centre of a common  
19 plan, which included the murder of alleged criminals throughout the Philippines.

20 The plan was first implemented in Mr Duterte's hometown of Davao. While mayor,  
21 he promised to clean up the city by killing alleged criminals. He kept that promise  
22 and he murdered hundreds through so-called liquidation squads, death squads.

23 These liquidation squads became notoriously known colloquially as the Davao Death  
24 Squad, or DDS.

25 After years, two decades of murdering alleged criminals as mayor of Davao, it

1 became clear to him that this political strategy could be leveraged for higher office  
2 and for more power, the presidency, and that is exactly what he did.  
3 During his campaign to be president, Mr Duterte expressly promised many times that  
4 he would kill criminals if elected. He claimed that Davao was "exhibit A" in why he  
5 should be elected and he promised -- he pledged that if he won, he would expand the  
6 killings nationwide.  
7 He won and that is what he did. And as you will hear tomorrow from Mr Jeremy  
8 and Ms Croft, the murders skyrocketed in the months immediately after Mr Duterte  
9 became president in June 2016. And that was no coincidence, that was him fulfilling  
10 his campaign pledge.  
11 As president, he murdered thousands using the same -- many of the same  
12 co-perpetrators and methods from his time as mayor of Davao. So he moved the  
13 method and some of the co-perpetrators to Manila in order to expand it -- the crimes.  
14 The victims in this case ranged from powerful individuals to predominantly the  
15 poorest citizens of the Philippines. Now, why were the poor selected and victimised?  
16 Well, it was often because they were the most vulnerable and they didn't have the  
17 families and the power to make police reports and they were the most afraid.  
18 Mr Duterte boasted about the killings that resulted in thousands of deaths at his order  
19 and not once at any time has he shown any remorse.  
20 He promised also, you will hear, to take responsibility, personal responsibility for the  
21 killings if need be. Well, that time has come. We are confident that if your  
22 Honours confirm the charges in this case, that we will prevail and Mr Duterte will be  
23 convicted at trial.  
24 I will talk a little bit about what my friend -- one of the things he said during his  
25 30 minutes. In our presentation today, you will hear Mr Duterte in his own words

1 calling for killings, bragging about killings and, as I said, vowing to take  
2 responsibility for those killings, if necessary.

3 And the Defence -- I have in my outline "may" claim, but they already have -- the  
4 Defence claim that this is hyperbole, bluster, exaggeration, part of his blunt or direct  
5 strongman political speech which had brought him political success in Davao and  
6 then nationwide. And the Defence will also point your Honours to many instances  
7 where Mr Duterte and his allies tried to build a veneer, a kind of fig leaf of plausible  
8 deniability by sprinkling in references to the effect that the police should only shoot to  
9 kill in self-defence. Those references to self-defence appear throughout Mr Duterte's  
10 speeches, they are all over the place, we don't run away from that, we don't shy away  
11 from that. That's part of our theory. So the Defence will say -- and again they  
12 already have -- that we have cherry-picked the statements we show you, but we have  
13 not. We acknowledge these many references to self-defence in Mr Duterte's  
14 speeches. But the evidence, the evidence which is in our pre-confirmation brief and  
15 some of which we will lead today, overwhelmingly shows that those references to  
16 self-defence and following the law and to due process are nothing but nonsense.

17 Keep in mind, as mayor, he created a death squad. A leader who creates, leads,  
18 arms and funds a death squad is not interested in due process or following the law.

19 Those empty utterances were simply Mr Duterte -- who has chosen not to be here  
20 today -- those were simply him acting as the former prosecutor, trying to build in  
21 some semblance of a defence, preparing for the day, should it ever come, as it now  
22 has, that he would be held to account.

23 It was to give his lawyers something to say, "But look at it over here, where I said  
24 'don't shoot except in self-defence'". The reality is that Mr Duterte's message was  
25 clear and it was understood by the perpetrators and it was followed. That message

1 was: Commit murder at my direction and I will protect you, I will pay you, I will  
2 promote you.

3 And that's what happened.

4 And I'll say this as well, your Honours: For purposes of this confirmation hearing,  
5 disregard every speech ever made by Mr Duterte, throw them all out. There is still  
6 ample evidence of substantial grounds based on the other evidence which we have  
7 put on our list of evidence.

8 And the evidence as a whole, when you weigh it together, will show that what my  
9 friend said is not correct, that Mr Duterte intended for his subordinates to follow the  
10 law and that he was interested in -- and that his speeches were simply bluster.

11 I'll talk briefly now about the charges in the case. As the Deputy Prosecutor stated,  
12 we have 49 incidents, totaling 76 murder victims and two victims of attempted  
13 murder. And of course, those are expanded upon in our pretrial brief or PCB.

14 Now, as my friends said in the LRV, while there are countless victims who have  
15 experienced harm as a result of Mr Duterte's crimes, we have focused the charges in  
16 this case to these 49 incidents and these number of victims in order to ensure that this  
17 trial can be expeditious and that it can be efficient, and that it won't go on for years  
18 and years. So these charged murders are emblematic, they are representative of  
19 Mr Duterte's larger killing campaign.

20 I was going to talk about the legal standard for today, but your Honours explained it  
21 extremely clearly in the beginning of the introduction, so I won't go into it other than  
22 to say, of course, the standard we have to meet is substantial grounds, which I'm  
23 confident we will.

24 The only thing I would add is that this stage of the proceedings, in addition to not  
25 being a mini trial or a trial before a trial, it's also not the time for the Chamber to

1 in-depth determine the credibility of witnesses. That can only properly be addressed  
2 at trial by the Trial Chamber when the witnesses are called to testify before the judges  
3 and their evidence is properly tested.

4 And there I would point your Honours to the Said confirmation decision, 9  
5 December 2021 at paragraph 39.

6 I will move on now -- we can go to the next slide, James -- to talk a little bit about  
7 Mr Duterte's background. He was born on 28 March 1945, and he prides himself, or  
8 portrays himself at least, as someone who understands the problems of the poor.  
9 But as my friend stated, he actually comes from a very privileged family. His father  
10 was a lawyer, a politician, even a provincial governor, and, as a young man,  
11 Mr Duterte became a lawyer. He went to law school, practiced as a prosecutor in  
12 Davao City for almost a decade, from 1977 to 1986. You find that in our  
13 pre-confirmation brief at paragraph 2. And while he was prosecutor, he taught  
14 criminal law and procedure to police officers in Davao City. And despite this  
15 privileged background, despite his deep familiarity with the law, and criminal law,  
16 Mr Duterte embraced criminality from the beginning of his career. It's just one  
17 example. As a prosecutor, the evidence shows, he taught police officers to plant  
18 evidence.

19 We can go to the next slide, please, James.

20 I won't read the whole slide out, your Honours. This is tab 57,  
21 PHL-OTP-00015506-R01. But this witness, with their direct knowledge stated, quote,  
22 "[H]e's like planting of evidence. It is necessary" - and the "he" is Duterte - "he called  
23 it 'necessary evil'. [...] So, they said that there are times in police work that you have  
24 to do the necessary evil for the sake of the common good [...]." End quote.

25 And I think you will see, your Honours, that that's a theme that runs through

1 Mr Duterte's career. He is willing to do whatever he considers the necessary evil,  
2 either for the common good or for his political advancement or both.

3 And Mr Duterte confirmed years later in 2024, when being questioned under oath  
4 during the hearing in the Philippines House of Representatives, that planting  
5 evidence was his strategy as mayor. Now at first he denied it in this hearing, but  
6 then he admitted to planting evidence in this exchange.

7 If we can go to the next slide. This is tab 46.1, your Honours.

8 Chairperson: "Ah" -- quote, "Ah, so, you really did plant evidence?"

9 Mr Duterte's answer: "Well, that was part of the strategy as a mayor and as the leader  
10 of the law enforcement agency in the city." End quote.

11 His privilege, his legal background makes this betrayal of the law and embrace of  
12 murder even more inexcusable. He knew, as a lawyer, as a former prosecutor, that  
13 his so-called crackdown on crime was a criminal attack on civilians of the Philippines  
14 and overwhelmingly, the evidence shows, on poor civilians. The poorest of the poor  
15 were his victims. He knew his conduct at its core was criminal.

16 And not only did Mr Duterte clearly intend his criminality, he openly bragged about  
17 it right up until his arrest, and we'll get to that later, but right up until his arrest he  
18 bragged about it. He thrives on a "tough guy" persona or image that he's tried to  
19 create for himself. My friend talked about him riding motorcycles. Well, one  
20 example I'll show you is from 2007 now.

21 If we can play that, James. And I should say this is tab 18.

22 (Viewing of the video excerpt)

23 MR NICHOLLS: [14:19:25] So riding a Harley-Davidson, shooting a semi-automatic  
24 pistol, this is the image he's trying to create from the beginning. He likes to pose  
25 with weapons.

1 If we can go to the next one, James.

2 This is tab 80. And here in this photo, which was published in a newspaper, you can  
3 see Mr Duterte holding an assault rifle. And I'll just note that we also see in this  
4 photo, to the immediate left of the photo, Ronald Bato dela Rosa - Bato is the  
5 nickname - and to Mr Duterte's immediate right, Isidro Lapeña. And we'll hear  
6 more about them later.

7 Even days before he was arrested, three days before he was transferred to The Hague,  
8 his tough guy persona was on display again during a speech in Hong Kong. He  
9 brushed off the possibility of an ICC arrest warrant and he referred to the ICC, quote,  
10 as "motherfuckers who have been after him for a long time". End quote. This is  
11 him on March 9, 2025.

12 If you could play that, James. This is tab 136.

13 (Viewing of the video excerpt)

14 MR NICHOLLS: [14:21:14] That's him three days before coming to The Hague.

15 Of course, after arriving in The Hague, his lawyers very soon began arguing that  
16 Mr Duterte was not fit enough for these proceedings, wasn't physically or mentally fit  
17 enough to be put on trial or for his charges to be confirmed. But fortunately a panel  
18 of three medical experts that your Honours appointed found unanimously that he is.  
19 The point is that despite what the Defence may say, here or to the press, Mr Duterte is  
20 perfectly fine. He's able to attend the proceedings today. There is nothing stopping  
21 him except that he doesn't want to be here. He chose not to face the Court, not to  
22 face the victims. There is no reason for him not to be here other than his request and  
23 choice.

24 I'll move on now briefly to his time as mayor in Davao, your Honours.

25 If we can quickly bring up the map, James.

1 There we see Davao in the south. And we can zoom in, I don't think there is any  
2 dispute where Davao is.

3 He was first elected mayor of Davao City in 1988 and served as mayor for more than  
4 20 years, between '88, 2016.

5 And as the Deputy Prosecutor has noted, jurisdiction for this case is 1 November 2011  
6 to 16 March 2019, we're -- we're limited to that jurisdiction so that is the period we  
7 will concentrate on today. Although, of course, before and after may be relevant.

8 As mayor of Davao, Mr Duterte promised a crackdown on crime. To quote  
9 "crackdown", end quote, on crime and drugs, Mr Duterte created liquidation squads,  
10 death squads, made up both of Davao City police officers as well as non-police  
11 officers who were essentially hired hitmen, hired killers. And this system of his  
12 became known as the Davao model. The Davao model was murder, not being tough  
13 on crime legally, as my friend said.

14 And you have to think it's a little strange cracking down on crime by committing the  
15 crime of murder.

16 Of course, Mr Duterte did not commit these crimes alone. We discuss the  
17 co-perpetrators, including during the mayoral period, in our Pre-Confirmation Brief,  
18 your Honours. And you will find that at paragraphs 8 to 23. I'll talk about just  
19 a few of them now, just to introduce them.

20 First - if we go to the slide, thank you - Ronald Bato dela Rosa, who was the chief of  
21 the Davao City Police Office, or DCPO, from 2012 to 2013.

22 Next, Vicente Danao, another police chief in Davao during the period.

23 Next, Christopher Bong Go, who was Mr Duterte's aide, special assistant, an  
24 important adviser, from 1998 to 2016 for the Davao period and then continued later in  
25 the presidency.

1 Mr Dante Gierran, regional director of the National Bureau of Investigation.  
2 And finally, Vitaliano Aguirre, who is a lawyer for Mr Duterte and for some of the  
3 DSS members during the -- during the mayoral period.  
4 And Ms Croft will discuss these co-perpetrators and their roles in more depth in her  
5 presentation, which will be tomorrow.  
6 Let me talk now a little bit about the structure of the Davao Death Squad, or DDS.  
7 And as we say in our brief, it's a pyramidal structure.  
8 If we go, James, to the next one.  
9 Again, this colloquially became known as the Davao Death Squad and it had  
10 a hierarchical pyramid-like structure.  
11 At the very top, as mayor, Rodrigo Duterte. And as mayor, he had, of course, *de jure*  
12 control over the Davao police. And the evidence shows - para 34 we talk about this  
13 in our brief - he also had *de facto* control.  
14 Under him were co-perpetrators, some of whom I have mentioned. The  
15 co-perpetrators had different roles, but one of them was to relay orders and  
16 instructions down from Mr Duterte to the DDS handlers and also to relay reports  
17 back up to Mr Duterte. So a typical chain of command, the instructions go down, the  
18 reports go up. And the handlers were responsible for the different death squads or  
19 DDS members.  
20 And at the very bottom, the lowest rung, the DDS members who were -- who actually  
21 perpetrated the killings, who carried out physically the murders and they were made  
22 up of both police officers, who were generally lower-level police officers, as well as  
23 non-police persons who were hired.  
24 These members at the bottom were often recruited because they had a debt or owed  
25 something to Mr Duterte or the police and they could therefore be controlled. And

1 those members at the very bottom were at risk themselves because if they did not  
2 follow orders, or if they tried to leave the DDS, they could be tortured, or killed or  
3 both, and there is evidence of that in this case.

4 I will talk now just for a few moments about the founding of the DDS, Duterte's death  
5 squad, the genesis of the death squads.

6 One witness described his initiation into the DDS. He described it happening in  
7 1988 at a dinner meeting in a hotel in Davao City. And this was a -- this was a huge  
8 deal for this witness. I mean, it was almost unimaginable being invited to a dinner  
9 in a hotel in the centre of Davao where he was going to meet the mayor. Mr Duterte  
10 was present and he openly told the new members of the death squad he was forming  
11 that their job was to kill criminals.

12 If we can go to the next slide, James.

13 This is tab 50, your Honours.

14 This is what the witness recalls of the meeting. Quote, "He," Duterte, "told us that  
15 your job here in the city would be to kill the drug pushers, the snatchers and the  
16 hold-uppers. That's what our job is going to be". End quote.

17 And in private, with his paid killers, Mr Duterte didn't say anything about  
18 self-defence.

19 He then provided these death squad members with guns and ammunition. And  
20 again in a festive way, he -- a basket was passed around filled with handguns and the  
21 new members could pull one out, like getting a prize so they would each have  
22 a weapon for their new job.

23 It was a celebratory event for Mr Duterte. The witness explained Mr Duterte was  
24 happy at this dinner meeting. He was laughing and he even sprayed a bottle of  
25 champagne to celebrate. That's at para 5 of our PCB.

1 One witness recalls - we can go to the next slide, James, thank you - recalled of this  
2 event, quote, "He," Duterte again, "said it was like a baptismal, like a launching. He  
3 was very happy at that moment". End quote. That's tab 51.

4 Mr Duterte was very happy at the birth of the DDS.

5 It's important to note, your Honours, Mr Duterte has freely admitted his role in the  
6 Davao Death Squad. He doesn't deny it. Well, now he does. He did not before he  
7 came here.

8 During an interview with a local news station in 2015 he admitted that he is  
9 the Davao Death Squad.

10 And if we could play that now, please, James. It's tab --

11 (Viewing of the video excerpt)

12 MR NICHOLLS: [14:31:41] "They say I am the death squad? True. That's true."

13 And, your Honours, in some ways, this case is not exactly complicated.

14 That's not the only time Mr Duterte admitted his role with the death squad. He  
15 repeated under oath that he had a death squad at the Blue Ribbon Committee in the  
16 Philippines Senate in 2024, about 10 years after the clip we just saw.

17 However, in this exchange, he denied that the death squad included police officers, in  
18 some type of apparent effort to protect them.

19 This is tab 41.1, if you could bring it up, please.

20 Mr Duterte under oath, quote:

21 "I can make the confession now if you want. I really took care of it. But please,  
22 don't involve the police. They're the ones who suffer, sir. I have a death squad,  
23 a death squad, but not the police. These were gangsters."

24 He says it again, in the same hearing he confirms this admission.

25 Go to the next one, please, tab 41.1.

1 The senator asks, quote:

2 "So, what the former president dropped earlier that they have a death squad was  
3 a bombshell; whatever name it goes by, whether police or non-police. Because, it  
4 looks like what we are investigating now is the instrument used for the war on drugs,  
5 which led to numerous extrajudicial killings. For the record, Mr Chair." End quote.

6 Mr Duterte's response, quote: "You are correct, Ma'am. You are absolutely right."

7 End quote.

8 It's not on a slide, but he also stated bluntly, same ERN -- same tab, excuse me, 41.1,  
9 same hearing, quote: "My death squad, ma'am, is, of course, it is organised. That's  
10 all I can say." End quote.

11 So that is four times, three of them under oath, that he admitted having a death squad  
12 in Davao, including saying he is the death squad. That's not hyperbole, that's not  
13 bluster, that's him telling the truth and he feels safe and that he can bank on his  
14 continued impunity.

15 I'll talk just for a few moments now, your Honours, about how the Davao Death  
16 Squad operated under its architect, Mr Duterte.

17 Victims were usually targeted in one of two ways.

18 Sometimes an informant would provide information on a target and the handler  
19 would then get clearance from Mr Duterte - through one of the co-perpetrators in the  
20 pyramid we saw earlier - to kill the target.

21 Sometimes Mr Duterte himself would give the target's name, would say who to kill,  
22 which would be communicated by one of the co-perpetrators to a handler and then  
23 down to the DDS member tasked with actually carrying out the killing.

24 But whichever way it took place, Mr Duterte's clearance, his approval was required,  
25 his permission was required for DDS members to conduct these murders.

1 And several witnesses confirm that, and I'll go through them in a minute, but first,  
2 your Honours, just to react something my -- my friend said in the previous session.  
3 This was at I think 12:22 onwards in the transcript, he stated to the effect the  
4 Prosecution couldn't even get one witness to admit they heard Rodrigo Duterte give  
5 an order to kill - here's where it get a little bit cute - at any time relevant to the charges  
6 or with respect to any of the incidents.  
7 So my friend didn't say the Prosecution doesn't have any witness who heard  
8 Mr Duterte give an order to kill, he's saying during this time period.  
9 I point your Honours and my friend to PHL-OTP-00015517, at page 0002, lines 18 to  
10 21, where a witness is asked:  
11 "Now, did you ever hear Sara" - this is Sara Duterte - "give any instructions for  
12 killings to take place?  
13 [Witness]: Personally, no.  
14 Interviewer: OK.  
15 [Witness]: But the father, of course, many times ..."  
16 Now, this was before 2011. I would suggest that doesn't make much difference.  
17 Going back to the confirmations of his clearance, if we could go to the next slide.  
18 Yes.  
19 This is tab 35, your Honours. The witness stated, quote:  
20 "[O]nly one person was making the decisions. [...] You had to ask Duterte because if  
21 we didn't make that request, if we didn't ask for [...] authorisation, we would be  
22 chased or we would be pursued." End quote.  
23 Another witness stated - if we go to the next one, please, tab 58 - quote: "We cannot  
24 conduct a clearing ... or killing operations without his clearance." Speaking of  
25 Mr Duterte. We called it "clearance". End quote.

1 Finally on the next slide - perhaps the simplest - the witness recalled,  
2 quote -- a different witness recalled, quote: "You cannot just kill anyone in Davao City  
3 without Duterte's approval, otherwise you will be charged." End quote.  
4 It's tab 117.  
5 In exchange for carrying out the murders as directed, the DDS members  
6 would -- would be paid reward money.  
7 One witness stated - if we go to the next one, please, James - he recalled -- this is tab  
8 56, quote: "[E]very kill, the first reward money, to my recall, it was 10,000 per kill."  
9 End quote.  
10 And in addition to paying rewards for specific murders to the person who carried out  
11 the murder, Mr Duterte also paid some of the DDS hitmen who were not police  
12 officers salaries by making them false employees of city hall, that he ran as mayor.  
13 These were so-called "ghost employees". They -- they got ID. They received  
14 salaries from the city of Davao, they were put on the books. But it was all a ruse,  
15 because their only job was to kill. So it was Mr Duterte using the city government  
16 and the apparatus to fund his death squad.  
17 He also, I'll just note quickly, provided death squad members with firearms, as we  
18 talked about -- as I talked about earlier, at the beginning of the DDS, but also with  
19 vehicles and ammunition so they could carry out their crimes.  
20 We'll go to count 1 now and I'll talk just a little bit about count 1, and Mr Jeremy will  
21 talk about counts 2 and 3 tomorrow.  
22 Count 1 is in relation to murders in and around Davao City during the mayoral  
23 period by the DDS. It encompasses nine incidents of murder by Mr Duterte's death  
24 squad, of 19 victims in total. Three of those 19 victims were children.  
25 I'll go to just one quick example, incident 3 in our Pre-Confirmation Brief, Murders in

1 Agdao Market. I'm just going to go through one of them.  
2 Your Honours, this is at paragraphs 91 to 92 of our Pre-Confirmation Brief and  
3 page 36 of the notebook we passed around this morning.  
4 Incident 3 is about the murders, or what happened at incident 3 is the murder of three  
5 people in that market on or about 4 December 2013.  
6 Before carrying out the murders, three DDS members, who we'll see, received  
7 instructions from their handler that there was a job to be done. And the victims in  
8 this crime were three alleged thieves, so we have three hitmen and three victims.  
9 The informant -- an informant helped the DDS hitmen to locate the targets, the  
10 victims, who were at a shop in Agdao Market that day, and when the hitmen reached  
11 the shop, each one shot and killed one of the targets and murdered them in broad  
12 daylight.  
13 After the killing, the hitmen reported back to their handler up the pyramid chain that  
14 the job was done. And their handler in this case then informed Sonny Buenaventura,  
15 who at that time was one of Mr Duterte's most trusted men.  
16 The reward for this incident, for these three murders, was 90,000 pesos total. That's  
17 at our brief at para 91.  
18 What's interesting about this incident is that a few weeks later, after the  
19 murder -- murders, a video of Mr Duterte watching the crime on CCTV was posted to  
20 YouTube. And I'll show that video, your Honours, in a minute. But in the video  
21 you'll see Mr Duterte standing in the CCTV room looking at a bank of television  
22 screens. The video then zooms in on the CCTV footage of the crime, and you see  
23 three DDS members walking up the street in the market, you see them turn to the  
24 right, pull out their guns, their pistols, shoot the three victims, who are off the screen.  
25 And then they walk and jog away, and they don't look very worried. And the video

1 then zooms out and you see different people running to see what has happened

2 because they've heard the shots.

3 Okay. Can we play that, please.

4 (Viewing of the video excerpt)

5 MR NICHOLLS: [14:45:06] And you have to wonder, if what my friend said is true,

6 that Mr Duterte is an honest mayor trying to solve crime, you have to wonder

7 Mr Duterte portrayed himself as tough on crime, law and order enforcer.

8 This triple murder was filmed, Mayor Duterte watched it himself. You can see the

9 perpetrators shooting, committing the crime.

10 Yet Mr Duterte, the former prosecutor, Mr "Tough on Crime", could not get this triple

11 murder committed in a market in broad daylight with multiple eyewitnesses solved?

12 Of course not. Because it was his murder.

13 And that brings me to the next point, which is clear, DDS members did not fear

14 punishment because they were committed at Mr Duterte's orders or direction. He

15 authorised this incident 3 killing and the others in Davao City. That's at our

16 PCB -- our brief, excuse me, 71 to 72. And that's why, of course, the death squad

17 members were not being arrested -- worried about being arrested for the murders

18 they carried out.

19 If we go to the next slide, James, one of them says very simply, quote, when asked if

20 he is worried about being prosecuted for the killings he committed, his answer was,

21 quote:

22 "No. As long as it has been cleared, I wouldn't worry."

23 End quote. Tab 40 -- excuse me, tab 30.

24 And it's highly understandable that the DDS members were not worried about being

25 prosecuted for the murders they committed because Mayor Duterte took pride in

1 these killings. He was interviewed as mayor in late 2015 and a reporter put  
2 a question to him -- asked him about a human rights group report which suggested  
3 that he had killed 700 people in Davao. I'll play the video and we'll see his response.  
4 You will also see -- just before we play that -- Mr Christopher Bong Go is in this video  
5 to Mr Duterte's right. Look at the question and look at Mr Duterte's answer.

6 (Viewing of the video excerpt)

7 MR NICHOLLS: [14:48:05] No denial. Instead, he takes credit for a thousand more  
8 killings. That is in bluster, that's not hyperbole. That's the truth.

9 I will move on now, your Honours, I'm coming to the end, and talk a little bit about  
10 his road to the presidency. He saw that the political success of his Davao model -- as  
11 my friend said, he kept getting re-elected, it was working. He saw that the political  
12 success of the Davao model of killing alleged criminals could be leveraged for more  
13 power, higher office. As I said in the beginning, that is exactly what he did.  
14 During his presidential campaign he campaigned on a promise, a pledge to  
15 implement the common plan to kill alleged criminals nationwide, if elected.  
16 I am going to play a video now, your Honours, that are just some of the speeches he  
17 made. It's a compilation of four, this is tab 12, of four videos. It's about  
18 four minutes, but it gives an idea. These are not all the statements, but it gives an  
19 idea of the man who ran for president in 2016.

20 And if we can play that, James.

21 (Viewing of the video excerpt)

22 MR NICHOLLS: [14:53:38] "If I become the president, I will order the military and  
23 the police" --

24 (Viewing of the video excerpt)

25 MR NICHOLLS: [14:53:43] Whoops, sorry.

1 "If I become the president, I will order the military and the police, to hunt down the  
2 drug lords, the big ones and kill them."

3 "Tell me what is my credentials to the presidency. Then I'll say Davao is exhibit A ...  
4 Either I get what I want or you perish. Let's be straightforward. What does that  
5 mean? That means killings."

6 "You should get out. If not, I will really kill you. So I killed them. Let's not play  
7 hide and seek anymore. Let's just be frank ... I will tell the police and the military, go  
8 out and kill them. Period."

9 "I will really kill you ... I do not want to kill people. So, do not elect me as president."  
10 That is the man before you for this hearing, even if he's not in court today. He  
11 repeatedly promised to kill people, his own people, if elected president. He said it,  
12 he did it, that's who he is. He won the election, became president on 30 June 2016,  
13 and did exactly as he said he would. He murdered thousands of people by taking  
14 the Davao model nationwide.

15 I'm finished, your Honour, and perhaps I would suggest that the next presentation  
16 start tomorrow, if you don't mind, because we only have five minutes.

17 PRESIDING JUDGE MOTOC: [14:55:36](Interpretation) Thank you, Mr Prosecutor,  
18 for your presentation and your suggestion.

19 We have now come to the end of this first day of hearings.

20 I would like to thank all the parties and participants as well our interpreters, the  
21 Registry and the technical staff, as well as all those who contributed towards the  
22 success of this hearing.

23 The hearing is adjourned and we will resume tomorrow according to our schedule.

24 See you tomorrow.

25 (The hearing ends in open session at 2.56 p.m.)