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**THE PRE-TRIAL CHAMBER I**

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

**SITUATION IN THE REPUBLIC OF THE PHILIPPINES**

**PUBLIC**

**with Annexes A to T confidential *EX PARTE*,  
only available to the Office of the Prosecutor**

**Philippine Government's Observation on the Office of the Prosecutor's Request**

Source: **Republic of the Philippines**

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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## LIST OF ABBREVIATIONS

**AIDG** – Anti-illegal Drugs Group

**ADS** – African Drug Syndicates

**AKG** – Anti-Kidnapping Group

**A.O.** – Administrative Order

**ASEAN** – Association of Southeast Asian Nations

**BADAC** – Barangay Anti-Drug Abuse Council

**CAIDSOTG** – City Anti-Illegal Drugs Special Operation Task Group

**CHR** – Commission on Human Rights

**DAIDSOTG** – District Anti-Illegal Drugs Special Operation Task Group

**DATRC** – Drug Abuse Treatment and Rehabilitation Centers

**DDB** – Dangerous Drugs Board

**DIDM** – Directorate for Investigation and Detective Management

**DILG** – Department of Interior and Local Government

**DOH** – Department of Health

**DOJ** – Department of Justice

**DSWD** – Department of Social Welfare and Development

**ED** – Enforced Disappearance

**EJK** – Extrajudicial Killings

**ELK** – Extra-legal Killings

**FIO** – Field Investigation Office

**HVT** – High Value Target

**IAS** - Internal Affairs Service

**ICAD** - Inter-Agency Committee on Anti-Illegal Drugs

**ICC** – International Criminal Court

**IMEG** – Integrity Monitoring and Enforcement Group

**ISIS** - Islamic State of Iraq and Syria

**LGU** – Local Government Unit

**MASA MASID** - Mamayang Ayaw Sa Anomalya, Mamamayang Ayaw sa Iligal na Droga

**MPD** – Manila Police District

**NADPA** – National Anti-Drug Plan of Action

**NBI** – National Bureau of Investigation

**NBOO** - National Barangay Operations Office

**NPS** – National Prosecution Service

**OMB** – Office of the Ombudsman

**OTP** – Office of the Prosecutor

**PADS** – Philippine Anti-Illegal Drugs Strategy

**PAIDSOTG** - Provincial Anti-Illegal Drugs Special Operation Task Group

**PDEA** – Philippine Drug Enforcement Agency

**PNP** – Philippine National Police

**R.A.** – Republic Act

**RAIDSOTG** - Regional Anti-Illegal Drugs Special Operation Task Group

**RPWUD** - Recovering Persons Who Use Drugs

**SAIDSOTG** - Station Anti-Illegal Drugs Special Operation Task Group

**UN** – United Nations

**WPP** – Witness Protection Program

**YBP** – Yakap Bayan Program

## I. INTRODUCTION

1. Comity impels the Government of the Republic of the Philippines (“Philippine Government”) to make this submission in response to the Order dated 14 July 2022 of the PRE-TRIAL CHAMBER I (the “Chamber”) of the International Criminal Court (the “Court”), inviting the Philippine Government to provide observations on the Office of the Prosecutor’s (“OTP”) request to resume the investigation into the situation in the Philippines (the “Request”).<sup>1</sup>

2. Under Article 53(1) of the Rome Statute<sup>2</sup> (“Statute”), the OTP shall consider the following in initiating an investigation: “(a) [t]he information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed; (b) [t]he case is or would be admissible under article 17; *and* (c) [t]aking into account the gravity of the crime and interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.”

3. The use of the word “shall” in Article 53(1) connotes a mandatory character. Likewise, in the enumeration of factors therein, the use of the word “and” is telling. Under the rules of syntax, the conjunctive word “and” denotes a “joinder or union” of words, phrases, or clauses; it is different from the disjunctive word “or” that signals disassociation or independence.

4. Thus, all factors in Article 53(1) are cumulative and must be satisfied individually.<sup>3</sup> Such interpretation is consistent with customary international law, as reflected in Article 31 of the Vienna Convention on the Law of Treaties which mandates that the Statute “shall be interpreted in good faith in accordance with the ordinary meaning to be given to [its] terms ... in their context and in the light of its object and purpose.”

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<sup>1</sup> Pre-Trial Chamber I, “Order inviting observations and victims’ views and concerns,” 14 July 2022, ICC-01/21-47 14-07-2022.

<sup>2</sup> ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, 2187 U.N.T.S. 90, entered into force July 1, 2002 (hereinafter “Rome Statute”).

<sup>3</sup> See Mark Klamburg (ed), *Commentary on the Law of the International Criminal Court* (2017), <https://www.legal-tools.org/doc/aa0e2b/pdf/>, p. 387 (last accessed 2 September 2022).

5. Accordingly, the language used in the *chapeau* of Article 53(1) and in Article 15(3)-15(4) is identical, and these provisions “prescribe the same standard to be considered both by the Prosecutor and the Pre-Trial Chamber.”<sup>4</sup> Thus, in deciding whether to authorize an investigation upon the request of the Prosecutor in the context of Article 15, much less its resumption, the Chamber is mandated to examine each of the factors in Article 53(1).

6. With all due respect, the Philippine Government submits that the OTP failed to meet the standards set forth in Article 53(1) because: the OTP **misinterpreted** available information; the situation is **inadmissible** under Article 17; and the situation is **not of sufficient gravity** to justify further action by the Court. Further, as this submission will demonstrate, the Court has no jurisdiction over the situation in the Philippines.

#### I.A. THE COURT HAS NO JURISDICTION OVER THE SITUATION IN THE PHILIPPINES.

7. The United Nations Charter aims *to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.*<sup>5</sup> In pursuit of this purpose, however, it shall be guided by the principles of sovereign equality of all its Members and *non-intervention* by the Organization in matters which are essentially within the domestic jurisdiction of any state.<sup>6</sup>

8. All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature. In particular, it includes the following elements: (a) States are juridically equal; (b) Each State enjoys the rights inherent in full sovereignty; (c) Each State has the duty to respect the personality of other States; (d) The territorial integrity and political independence of the State are inviolable; (e) Each State has the right freely to choose and develop its political, social, economic and cultural systems; and (f) Each State has the duty to

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<sup>4</sup> Pre-Trial Chamber II, “Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya ” 31 March 2010, ICC-01/09, para. 21 (hereinafter, “Kenya Article 15 Decision dated 31 March 2010”).

<sup>5</sup> United Nations Charter, Art. I, para. 3.

<sup>6</sup> *Id.*, Art. II, para. 1 and 7.



comply fully and in good faith with its international obligations and to live in peace with other States.<sup>7</sup>

9. Moreover, the principle of *non-intervention* entails that: (1) No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law; (2) No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime or another State, or interfere in civil strife in another State; (3) The use of force to deprive peoples of their national identity constitutes a violation of their inalienable rights and of the principle of non-intervention; and (4) Every State has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.<sup>8</sup>

10. Jurisdiction concerns the power of the state under international law to regulate or otherwise impact upon people, property and circumstances and reflects the basic principles of state sovereignty, equality of states and non-interference in domestic affairs. Jurisdiction is a vital and central feature of state sovereignty, for it is an exercise of authority that may alter or create or terminate legal relationships and obligations. It may be achieved through legislative, executive, or judicial action. In each case, the recognized authorities of the state, as determined by the legal system of that state, perform certain functions permitted them, which affect the life around them in various ways.<sup>9</sup>

11. On the other hand, Article 5 of the Rome Statute states that the jurisdiction of the Court shall be limited to the most serious of crimes of concern to the international community as a whole and that the Court has jurisdiction, in accordance with said Statute, with

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<sup>7</sup> Resolution No. 2625 (XXV). Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (Adopted on 24 October 1970).

<sup>8</sup> *Id.*

<sup>9</sup> Malcolm N. Shaw, *Internal Law*, (6th Ed.), <https://www.cambridge.org/core/books/abs/international-law/jurisdiction/8A83701B2E643EBD997E604E6DBFFEEE> (last accessed 5 September 2022).

respect to the following crimes: (a) the crime of genocide; (b) crimes against humanity; (c) war crimes; and (d) the crime of aggression.

12. Article 7 defines “crime against humanity” as any of the following acts when committed as part of a widespread and systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

13. “Attack directed against any civilian population,” as used in Article 7(1), means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.<sup>10</sup>

14. Applying the above-cited articles, the Court has no jurisdiction over the situation in the Philippines.

15. To constitute a crime against humanity, the acts of an accused must be part of a widespread or systematic attack directed against any civilian population.<sup>11</sup> “Systematic” refers to the following four elements: (1) the existence of a political objective, that is, to destroy, persecute or weaken a community; (2) the perpetration of a criminal act on a very large scale against a group of civilians or the repeated and continuous commission of inhumane acts linked to one another; (3) the preparation and use of significant public or private resources, whether

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<sup>10</sup> Rome Statute, Article 7(2)(a).

<sup>11</sup> Prosecutor v. Nikola Sainovic, Appeals Judgement, 23 January 2014, Case No. IT-05-87-A, para. 549.

military or other; (4) the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan. Moreover, a crime may be widespread or committed on a large scale by the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude."<sup>12</sup>

16. In addition, Article 7(2)(a) of the Statute determines that crimes against humanity must be committed in furtherance of a State or organizational policy to commit an attack.<sup>13</sup>

17. This, however, is not the situation in the Philippines.

18. As will be thoroughly discussed hereunder, the alleged killings in the Philippines from 1 November 2011 to 16 March 2019 were not pursuant to a state or organizational policy of sanctioning crimes penalized under Article 5 of the Statute. The Project: Double Barrel under PNP Command Memorandum Circular No. 16-2016,<sup>14</sup> which outlines the balanced efforts of the Philippine government to eliminate the problem of illegal drugs nationwide, is an intensified and comprehensive campaign against the worsening drug situation in the country.

19. In the Decision on the Prosecutor's request for authorisation of an investigation, the Chamber recognized that legitimate operations against illicit drugs, respecting internationally protected human rights, could not qualify as an attack against the civilian population. However, the Chamber went on to state that the "war on drugs" campaign cannot be seen as a legitimate law enforcement operation, and the killings are neither legitimate nor mere excesses in an otherwise legitimate operation.<sup>15</sup>

20. With all due respect to the Chamber, these findings fail to recognize that the Philippine Government fully respects internationally protected human rights in the conduct of its legitimate operations, so much so that the law enforcement authorities religiously observed

<sup>12</sup> Prosecutor v. Kordić and Cerkez, Trial Judgement, 26 February 2001, IT-95-14/2-T, paras. 178-179.

<sup>13</sup> <https://www.un.org/en/genocideprevention/crimes-against-humanity.shtml> (last accessed 1 September 2022).

<sup>14</sup> Office of the Chief PNP Command Memorandum Circular No. 16-2016 dated 1 July 2016, pp. 1-2 is attached as Annex "O."

<sup>15</sup> Pre-Trial Chamber I, Situation in the Republic of the Philippines, "Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute," 15 September 2021, ICC-01/21, paras. 89 and 91 (hereinafter, "Decision on Prosecutor's request dated 15 September 2021").

existing protocols on anti-illegal drug operations, save for those isolated instances of criminal activity, which are now the subject of prosecution before the domestic courts. The official data in the attached annexes show that the Philippine Government has taken meaningful steps to investigate or prosecute these killings.<sup>16</sup>

21. Contrary to the allegations of the OTP that the “war on drugs” campaign only affected certain segments of the population, the Chamber noted that among those who were subjected to these operations were public officials, such as civil servants, politicians, mayors, deputy mayors, and barangay-level officials, and members of Philippine security forces, police assets, or informants.<sup>17</sup>

22. Thus, it is a falsity that the “war on drugs” campaign affected only the poor and low-skilled residents of impoverished urban areas pursuant to an alleged state policy targeting a sector of a civilian population.<sup>18</sup>

23. Evidently, these crimes subject of the OTP’s request to resume investigation before the Chamber were not perpetrated pursuant to a state policy, nor did these crimes attain the status of “most serious of crimes of concern to the international community” as these alleged crimes were not committed as part of a widespread and systematic attack against a civilian population. Considering the foregoing, the Court has no jurisdiction over the situation in the Philippines as the alleged crimes committed in its territory do not constitute “crimes against humanity.”

#### **I.B. THE OTP, IN APPLYING THE LEGAL CRITERIA TO DETERMINE WHETHER AN INVESTIGATION MUST BE OPENED, MISINTERPRETED AVAILABLE INFORMATION.**

24. *The OTP did not evaluate all information available impartially and objectively.* The OTP predominantly relied on media reports (local and international) and failed to explain its lack of consideration for governmental resources. The duty to evaluate information impartially rests on the clear reading of Article 54(1) of the Statute, which provides

<sup>16</sup> See Annexes “B” to “I-1,” “K” to “N,” and “T.”

<sup>17</sup> Decision on Prosecutor’s request dated 15 September 2021, para. 92.

<sup>18</sup> *Id.*

that the Prosecutor *shall “[i]n order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute,” and “investigate incriminating and exonerating circumstances equally.”*

25. Therefore, it behooves the OTP to cast a discerning eye with the end view of administering justice, even if it means deferring an investigation in favor of ongoing national proceedings. Had the OTP considered the reports from the Philippine Government, as submitted previously, and scrutinized their reliability, it could have fairly concluded that there is **no** reasonable basis to resume the investigation in light of the ongoing national proceedings in the Philippines.

26. *The OTP failed to weigh material information before him.* As shown in the Philippine Government’s deferral request, several cases are already pending before different prosecution offices of the Department of Justice (“DOJ”), specifically in Angeles City (58 cases), San Jose Del Monte City (81 cases), and the Province of Bulacan (111 cases).<sup>19</sup> There are 52 “*nanlaban*” (resisting arrest) cases referred to the National Bureau of Investigation (“NBI”) for case-build up. Progress in these cases will likewise be demonstrated in the instant submission.

27. The OTP likewise failed to account for the undeniable fact that prosecutions of international crimes or similarly complex trials typically last for several years. The geographic and technological limitations confronting the Philippine Government in culling more evidence should not be taken against it. Standard of proof and timescales must be appreciated in evaluating the information before the OTP. Instead of making a selective reading of the information available, the OTP should evaluate and avoid discriminating against information that may result in exoneration or findings of genuineness of national proceedings.

28. The OTP also failed to substantiate the filing of a public redacted version of its request to authorize investigation into the situation in the Philippines. Under regulation 23 *bis* of the Regulations of the Court, any document filed by a participant and marked as “confidential” shall “*state the factual and legal basis for the chosen classification.*” Thus, it is

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<sup>19</sup> Prosecution’s request to resume the investigation into the situation in the Philippines pursuant to Article 18(2) dated 24 June 2022, ICC-01/21-46 24-06-2022, p. 9 (hereinafter “Prosecution’s request to resume investigation”).

insufficient for the OTP to merely file a public redacted version sans any justification of the confidential nature of the redacted portion of the document. The OTP's non-compliance with this requirement seriously vitiated the request to authorize investigation to begin with.

29. Moreover, the Chamber is not precluded from maintaining the *status quo* (i.e., defer the investigation in favor of the State) or denying the OTP's Request in light of changes in circumstances. Article 15(5) provides that "the refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by Prosecutor based on new facts or new evidence regarding the same situation." As will be illustrated below, the progress in the investigative works on incidents identified by the Philippine Government explicitly shows its ability to investigate and prosecute the alleged crimes.

30. From the foregoing, the OTP's non-compliance with Article 53(1) alone is sufficient basis to turn down its Request.

#### **I.C. THE SITUATION IN THE PHILIPPINES WOULD BE INADMISSIBLE UNDER ARTICLE 17.**

31. The Philippine Government has sufficiently established ongoing national proceedings with respect to alleged crimes "committed throughout the Philippines between 1 July 2016 and 16 March 2019 in the context of the so-called 'war on drugs' campaign, as well as in the Davao area between 1 November 2011 and 30 June 2016", warranting the continuous deferral to the State's investigation. An order from the Chamber disallowing the OTP's Request crystallizes the principle of complementarity, which rightfully gives preference to domestic proceedings as they progress to different stages of criminal justice.

32. Article 17 of the Statute "gives effect to the complementarity principle,"<sup>20</sup> under which the States "have the primary responsibility to investigate and prosecute crimes falling within the jurisdiction of the Court, and the Court may only exercise its jurisdiction where the relevant national jurisdiction is either not doing so or is unwilling or unable to do so

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<sup>20</sup> Appeals Chamber, *The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey, and Joshua Arap Sang*, "Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute,'" 30 August 2011, ICC-01/09-01/11-307 30-08-2011, para. 37 (hereinafter "*Prosecutor v. Ruto and Sang*, Appeals Chamber Judgment dated 30 August 2011").

genuinely.”<sup>21</sup> It sets out how to resolve a conflict of jurisdiction between the Court on the one hand, and a national proceeding on the other.

33. Article 17 applies not only to the determination of the admissibility of a concrete case (Article 19 of the Statute), but also to the determination of the admissibility of a situation in the context of a request to authorize investigation under Article 15(3).<sup>22</sup> Simply put, in initiating an investigation *proprio motu*, the OTP must satisfy the factors listed in Article 17, viz:

#### Article 17

##### Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
  - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless it is unwilling or unable genuinely to carry out the investigation or prosecution;
  - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
  - (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
  - (d) The case is not of sufficient gravity to justify further action by the Court.
2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

<sup>21</sup> Appeals Chamber, *The Prosecutor v. Saif Al-Islam Gaddafi*, “Judgment on the appeal of Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled ‘Decision on the “Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute’ of 5 April 2019,” 9 March 2020, ICC-01/11-01/11, para. 58.

<sup>22</sup> *Prosecutor v. Ruto and Sang*, Appeals Chamber Judgment dated 30 August 2011, para. 38.

- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
- (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
- (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

34. Under Article 17, the admissibility test has two main components: *first*, the complementarity test to determine whether the case “is being”<sup>23</sup> or “has been”<sup>24</sup> “genuinely”<sup>25</sup> “investigated or prosecuted by a State which has jurisdiction over it”<sup>26</sup>; and *second*, the gravity threshold to determine whether the case is “of sufficient gravity to justify further action by the Court.”<sup>27</sup>

35. The complementarity test is a two-pronged inquiry.<sup>28</sup> *First*, to ascertain whether there is a domestic proceeding in relation to the case before the Court. This is expressly stated

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<sup>23</sup> Rome Statute, Article 17(1)(a).

<sup>24</sup> *Id.*, Article 17(1)(b).

<sup>25</sup> *Id.*, Article 17(1)(a) and Article 17(1)(b).

<sup>26</sup> *Id.*, Article 17(1)(a) and Article 17(1)(b).

<sup>27</sup> *Id.*, Article 17(1)(c).

<sup>28</sup> Pre-Trial Chamber I, *The Prosecutor v. Saifal-Islam Gaddafi and Abdullah Al-Senussi*, “Decision on the Admissibility of the case against Abdullah Al-Senussi,” 11 October 2013, ICC-01/11-01/11, para. 26 citing Appeals Chamber, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, “Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility



in Articles 17(1)(a) (“*being investigated or prosecuted*”), 17(1)(b) (“*has been investigated*”) and 17(1)(c) (“*tried*”).<sup>29</sup> A precondition for the applicability of Article 17(1) is ongoing investigations or prosecutions at the national level.<sup>30</sup> As such, State inaction makes the case admissible before the Court. *Second*, where such domestic proceedings exist, to determine whether the proceedings are genuine, because the State is either unwilling or unable to carry out genuine proceedings.<sup>31</sup>

36. In considering whether a case is inadmissible under Article 17(1)(a) and (b) of the Statute, the initial questions to ask are (1) whether there are ongoing investigations or prosecutions, or (2) whether there have been investigations in the past, and the State having jurisdiction has decided not to prosecute the person concerned.<sup>32</sup> It is only when the answer to these questions is in the affirmative that one has to look to the second half of sub-paragraphs (a) and (b) to examine the question of unwillingness and inability.<sup>33</sup>

37. The Philippine Government submits that the OTP failed to meet the requisites in Article 17 in relation to Article 53(1)(b) as there is an apparent conflict of jurisdiction between the Court and the Philippine Government because:

37.1. *There are ongoing investigations or prosecutions of the same situation in the Philippines [Article 17(1)(a)].*

37.1.1. The phrase “the case is being investigated” appearing in Article 17(1)(a) must be understood as requiring the “taking of steps” directed at ascertaining whether the person is responsible for the alleged conduct. The investigative steps undertaken by the domestic authorities may include

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of the Case,” 25 September 2009, ICC-01/04-01/07-1497, paras. 1 and 75-79 (hereinafter “Prosecutor v. Katanga, Appeals Chamber Judgment dated 25 September 2009”).

<sup>29</sup> ICC-OTP, *Policy Paper on Preliminary Examinations* (November 2013), p. 12, para. 47. [https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy\\_Paper\\_Preliminary\\_Examinations\\_2013-ENG.pdf](https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf) (last accessed 1 September 2022).

<sup>30</sup> Office of the Public Counsel for Victims, *Observations on behalf of victims on the Government of Kenya's Application Under Article 19 of the Rome Statute* No. ICC-01/09-02-11, 28 April 2011, pp. 5-6, para. 9. [https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2011\\_05474.PDF](https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2011_05474.PDF) (last accessed 1 September 2022).

<sup>31</sup> ICC-OTP, *Informal Expert Paper: the Principle of Complementarity in Practice*, ICC-01/04-01/07-1008-AnxA (2003) pp. 6-7, pars. 18-20. [https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2009\\_02250.PDF](https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2009_02250.PDF) (last accessed 1 September 2022).

<sup>32</sup> Prosecutor v. Katanga, Appeals Chamber Judgment dated 25 September 2009, para. 78.

<sup>33</sup> *Id.*

interviewing witness or suspects, collecting documentary evidence, or carrying out forensic analyses.<sup>34</sup>

37.1.2. As this submission will demonstrate, the Philippine legal system and relevant institutions are functioning. There are ongoing investigations on the crimes that may have been committed in the course of the war on drugs campaign. National inquiries, investigations, and proceedings are being conducted by law enforcements agencies, and heard by duly authorized prosecutorial and judicial bodies. Upon endorsement by the DOJ, the NBI conducts investigations. A number of these investigations have resulted in the filing of criminal complaints before different offices of the prosecutors in the Philippines. Some of these cases are pending before the Philippine courts. Accordingly, the Philippine Government exercises primary jurisdiction over criminal acts that constitute crimes under Article 5 alleged to have resulted from the Philippine Government's intensified campaign against illegal drugs.

37.1.3. There are no *indicia* that any of these inquiries, investigations, and proceedings are conducted merely to shield any person concerned from criminal responsibility for any crime. All these proceedings are being conducted within a reasonable timescale consistent with a genuine intent to bring the persons concerned to justice, while taking into account their right to due process and other Philippine Constitutional rights. They are likewise being conducted independently and impartially by agencies of the Philippine Government within their respective mandates.

37.1.4. Thus, under Article 17(1)(a) of the Statute, the instant case is inadmissible.

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<sup>34</sup> Appeals Chamber, Prosecutor v. Simone Gbagbo, "Judgment on the appeal of Côte d'Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled 'Decision on Côte d'Ivoire's challenge to the admissibility of the case against Simone Gbagbo,'" 27 May 2015, ICC-02-11-01/12 OA, para. 28, *citing* Appeals Chamber, Prosecutor v. William Samoei Ruto, et al., "Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled 'Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute,'" 30 August 2011, ICC-01/09-01/11 OA, para. 41.

37.2. *There are genuine investigations and prosecutions for the alleged crimes nationwide.*

37.2.1. The term “genuinely” must also be correlated to the terms “unwilling” and “unable” to describe the ongoing investigations and/or prosecutions.<sup>35</sup>

37.2.2. Unwillingness is evaluated on the basis of whether (a) “the proceedings were or are being undertaken for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court,”<sup>36</sup> (b) “there has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice,”<sup>37</sup> and (c) “the proceedings were or are not conducted independently or impartially and in a manner consistent with an intent to bring the person concerned to justice.”<sup>38</sup> On the other hand, inability is assessed based on whether “due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.”<sup>39</sup>

37.2.3. The Statute was established to ensure that States take genuine mechanisms to hold the perpetrators of the most serious crimes of concern to the international community accountable, and the Court may only intervene in case the State proceedings fail, either because a State is unwilling or unable to investigate and prosecute. Accordingly, “[w]hen there is genuine State action, the Court cannot and will not intervene.”<sup>40</sup>

<sup>35</sup> Kevin Jon Heller, *The Shadow Side of Complementarity: The Effect of Article 17 of the Rome Statute on National Due Process*, Criminal Law Forum, Vol. 17, 2006, <https://deliverypdf.ssrn.com/delivery.php?ID=338006067086067001008002097073100010056016063065052016092089096076070019014026003097026052001024039049007024026123008069102109015036012072011003079021109013119032008056003017093108080004013102084090088026080090121119018110087076000070072087013088&EXT=pdf&INDEX=TRUE>, pp. 255-280 (last accessed 2 September 2022).

<sup>36</sup> Rome Statute, Article 17(2)(a).

<sup>37</sup> *Id.*, Article 17(2)(b).

<sup>38</sup> *Id.*, Article 17(2)(c).

<sup>39</sup> *Id.*, Article 17(3).

<sup>40</sup> Statement made by Luis Moreno-Campo, Chief Prosecutor, International Criminal Court. Statement Made at the Ceremony for the Solemn Undertaking of the Chief Prosecutor of the International Criminal Court (16 June 2003) [https://www.icc-cpi.int/sites/default/files/NR/rdonlvres/D7572226-264A-4B6B-85E3-2673648B4896/143585/030616\\_moreno\\_ocampo\\_english.pdf](https://www.icc-cpi.int/sites/default/files/NR/rdonlvres/D7572226-264A-4B6B-85E3-2673648B4896/143585/030616_moreno_ocampo_english.pdf) (last accessed 1 September 2022).

37.2.4. In the absence of a definition of the term “genuinely” in the Statute, the following explanation provides a useful guidance:

The term “genuinely” is common in everyday usage but a novelty as an international standard to criminal proceedings. It derives from “genuine”, which means “having the character or origin represented”; “real, true”; “not counterfeit, unfeigned”; “properly so called”; or “sincere”. It may also be defined as “truly what [it] purport[s] to be”. Looking at these definitions, two distinct aspects can be discerned: one objective and one subjective. Objectively, the proceedings must be what they are claimed to be. Subjectively, they must be sincere. [...] It focuses more on the objective, on how the state ought to proceed, as a matter of duty, and not so much on the subjective sincerity. Contextually, however, when linked to “unwillingness” and “inability”, it is clear that both the subjective and the objective aspects are covered here as well.

The fact that the term “genuinely” is both objective and subjective means that a national proceeding undergoes a double test. A national proceeding which possesses the objective characteristics of such proceedings will still not pre-empt ICC interference if it was carried out with wrong intentions and this has materialised in the result. Conversely, a proceeding carried out with the best intentions will still fail if the proceeding does not meet the objective standard attached to such proceedings.<sup>41</sup>

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<sup>41</sup> Jo Stigen, *The Relationship between the International Criminal Court and National Jurisdictions: The Principle of Complementarity* (The Raoul Wallenberg Institute Human Rights Library, Vol. 34), <https://books.google.com.ph/books?id=72uwCQAAQBAJ&printsec=frontcover#v=onepage&q&f=false>, pp. 215-216.

- 37.2.5. Moreover, the absence of any indicators vitiating the genuineness of the investigations proves that the Philippine Government is willing and able to prosecute.<sup>42</sup>
- 37.2.6. Viewed in the light of the above guideposts and as will be exhaustively discussed below, the Philippine Government submits that “genuine” steps have been taken and are underway to investigate and prosecute the alleged crimes. Furthermore, none of the indicators vitiating the genuineness of the investigation and prosecution, as discussed above, are present in the case.
- 37.2.7. Although it cannot be denied that there is debate within the Philippines on whether the accountability proceedings in relation to the purported EJKs are sufficient (as long as political differences abound, there will always be complaints and rancor), this submission nevertheless demonstrates the credibility and genuineness of the Philippine Government’s process to address the matter. The results of the investigations and prosecutions may be unfavorable to some, but what is paramount is that the Philippine Government has set in motion genuine proceedings in response to the allegations.
- 37.2.8. On this score, it is worth emphasizing that “[t]he admissibility of a case does not depend upon the findings’ material correctness; correcting mistakes of law and fact made in otherwise genuine proceedings is a task for national appeal and review courts. A lenient penalty or an acquittal which seems to be at odds with the facts may be indicative of the proceeding’s non-genuineness, but it will not in and of itself make a case admissible before the ICC.”<sup>43</sup>

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<sup>42</sup> ICC-OTP, Policy Paper on Preliminary Examinations, <https://www.icc-cpi.int/sites/default/files/itemsDocuments/OTP%20Preliminary%20Examinations/OTP%20-%20Policy%20Paper%20Preliminary%20Examinations%20%202013.pdf> (last accessed 1 September 2022).

<sup>43</sup> Jo Stigen, *The Relationship between the International Criminal Court and National Jurisdictions: The Principle of Complementarity* (The Raoul Wallenberg Institute Human Rights Library, Vol. 34), <https://books.google.com.ph/books?id=72uwCQAAQBAJ&printsec=frontcover#v=onepage&q&f=false>, pp. 215-216; emphasis supplied.

37.2.9. As admitted by the OTP, “concrete investigative steps have been substantiated” in the cases of *Kian delos Santos*, *Kent Lee Caballes*, *Rolando Antiga* and *Marvin Supetran*.<sup>44</sup> Other cases referenced by the Philippine Government in its submission which are “under investigation,” or “for case build-up,” should be considered by the Chamber as a genuine determination of criminal investigation per se. As will be discussed below, under Philippine criminal procedure, preliminary investigations by public prosecutors constitute the first step in determining criminal liability. Such investigation forms an integral part of the Philippines’ due process framework and cannot be easily set aside in the guise of speedy disposition of cases.

#### **I.D. THE SITUATION IS NOT OF SUFFICIENT GRAVITY TO JUSTIFY FURTHER ACTION BY THE COURT.**

38. Article 17(1)(d) in relation to Article 53(b) provides that the Court shall determine that a case is inadmissible where the case is not of sufficient gravity to justify further action by the Court. As aptly summarized in a commentary on the Statute’s drafting history, “*the Statute has always had threaded through it the idea of gravity-that the Court should hear only the most serious cases of truly international concern.*”<sup>45</sup>

39. The Pre-Trial Chamber in the *Situation in the Republic of Kenya* emphasized that the reference to the insufficiency of gravity in Article 17 “is actually an additional safeguard, which prevents the Court from investigating, prosecuting and trying peripheral cases.”<sup>46</sup> Conversely, a case is sufficiently grave to warrant the Court’s intervention when two (2) features concur: *first*, the conduct which is the subject of a case must be either systematic, consisting of a pattern of incidents, or large-scale, which excludes isolated instances of criminal

<sup>44</sup> Prosecution’s request to resume investigation, para. 116.

<sup>45</sup> War Crimes Research Office, International Criminal Court, The Gravity Threshold of the International Criminal Court (March 2008) citing Leila Sadat & S. Richard Carden, The New International Criminal Court: An Uneasy Revolution, 88 Geo. L.J. 381, 419 (March 2000), p. 17, <https://www.wcl.american.edu/impact/initiatives-programs/warcrimes/our-projects/icc-legal-analysis-and-education-project/reports/report-3-the-gravity-threshold-of-the-international-criminal-court/> (last accessed 2 September 2022) (noting that the statute’s attention to gravity “is logical given that the philosophical underpinning of the ICC-as represented in paragraphs 3 and 4 of the preamble, and in articles 1 and 5-is deterrence through the threat of prosecution and punishment of grave crimes that threaten the peace, security, and well-being of the world”).

<sup>46</sup> Kenya Article 15 Decision dated 31 March 2010, para. 56.

activity; *second*, the assessment of gravity must give due consideration to the social alarm such conduct may have caused in the international community.<sup>47</sup>

40. The OTP failed to meet the above exacting requisites.

41. As previously discussed, the crimes subject of the OTP's Request are not part of a systematic attack directed against any civilian population. To reiterate, the implementation of PNP Command Memorandum Circular No. 16-2016 was a legitimate effort on the part of the Philippine Government to combat the worsening drug situation in the country.

42. Anent the second feature regarding the presence of a social alarm, the Appeals Chamber has in the past specifically cautioned that the concept of "social alarm" depends upon subjective and contingent reactions to crimes rather than upon their objective gravity.<sup>48</sup> Thus, social alarm is viewed as an improper criterion to assess the gravity of a case because it is not a reliable guide to the subjective reaction of the international community to a particular event.

43. It must be noted that the instant case was instigated by the political opposition to the previous administration, including two former Philippine Senators, Antonio Trillanes IV ("Trillanes") and Leila de Lima ("de Lima"). One of the complainants, the late lawyer Jude Josue Sabio ("Sabio"), withdrew his complaint before this Court and requested that "the legal matter pending with your office in relation to the war on drugs in the Philippines should be set aside and thrashed for being just a part of the political propaganda of Senator Trillanes, Senator de Lima, and their LP-led opposition" of which he does not wish to be a part.<sup>49</sup>

44. Consequently, the subjective reaction of the international community towards the "war on drugs" campaign of the Philippine Government is not justified considering the objective gravity of the crimes allegedly committed by the law enforcement authorities, which do not fall under the most serious cases of truly international concern.

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<sup>47</sup> Pre-Trial Chamber I, *Prosecutor v. Lubanga Dyilo*, "Decision Concerning Pre-Trial Chamber I's Decision of 10 February 2006 and the Incorporation of Documents into the Record of the Case against Mr. Thomas Lubanga Dyilo," 24 February 2006, ICC-01/04-01/06, para. 46.

<sup>48</sup> Appeals Chamber, *Situation in the Democratic Republic of the Congo*, "Judgment on the Prosecutor's Appeal against the Decision of the Pre-Trial Chamber I entitled 'Decision on the Prosecutor's Application for Warrants of Arrest, Article 58,'" 13 July 2006, ICC-01/04-169, para. 72.

<sup>49</sup> Philippine News Agency, *Sabio withdraws communication vs. PH drug war filed before ICC*, 14 January 2020, <https://www.pna.gov.ph/articles/1090844> (last accessed 5 September 2022).

45. Thus, the crimes subject of the OTP's Request before the Chamber are not of sufficient gravity to justify the Court's further action. These crimes were committed not pursuant to a state policy, nor did these crimes attain the status of serious crimes for not being a widespread and systematic attack against a civilian population. Once again, on this point alone, the Request must fail.

46. With the foregoing background, the Philippine Government submits that in determining whether to authorize the resumption of the investigation into the Philippine situation, the Chamber must operate within the parameters of an entire "situation" and not a specific "case." The Chamber should not require the Philippine Government to provide **exacting evidence**. Instead, the appreciation of information proffered by the State must be viewed in light of that State's criminal judicial system.

47. In consideration of the duty of every State to exercise jurisdiction over international crimes,<sup>50</sup> and the responsibility of the Court to operate within the framework of complementarity, the Philippine Government submits that the existence of genuine national investigations, as will be shown below, should lead the Chamber to conclude that there is no necessity to resume investigation into the situation in the Philippines.

48. **National proceedings shall take precedence.** Bearing in mind the location of the majority of the purported offenders, witnesses, victims, and evidence, the proper and the most practicable course is to allow the Philippine Government, especially with the incumbency of the new administration led by President Ferdinand Marcos Jr., the opportunity to conduct its own state-level investigation first.

## **II. THE REPUBLIC OF THE PHILIPPINES HAS A FUNCTIONING CRIMINAL JUSTICE SYSTEM THAT IS CLEARLY ABLE AND WILLING TO GENUINELY INVESTIGATE AND PROSECUTE CRIMES COMMITTED IN THE WAR ON DRUGS.**

49. Philippine penal laws classify crimes as being committed against: (1) national security, (2) fundamental laws of the state, (3) public order, (4) popular representation, (5)

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<sup>50</sup> See Preamble to the Rome Statute, para. 6.



public interest, (6) public morals, (7) committed by public officers, (8) persons (9) security, (10) property, (11) chastity, (12) civil status of persons, and (13) honor. Apart from the foregoing, several special penal laws, such as the *Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity*,<sup>51</sup> and *Comprehensive Dangerous Drugs Act of 2002*,<sup>52</sup> among others, form part of Philippine criminal laws.

50. Under the Philippine legal system, an accusation is not an indictment and certainly not a conviction. If a person is accused of a crime, the State must show probable cause to justify an indictment. Once the State meets that burden, it must prove guilt beyond reasonable doubt during an evidentiary hearing to justify a conviction. Only then can the accused be meted out the proper punishment. As in any republican system, there are no shortcuts. No matter how or against whom an offense is committed, the mere commission of a crime does not automatically trigger the application of the rules on criminal procedure.<sup>53</sup>

51. Criminal actions begin with filing a complaint with the proper officer to conduct the required preliminary investigation<sup>54</sup> or by filing the complaint or information directly with the appropriate first-level court or office of the prosecutor.<sup>55</sup>

52. Under Section 1, Rule 112 of the Revised Rules of Criminal Procedure, a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and one (1) day without regard to the fine. For offenses where the penalty prescribed is lower, a complaint or information may be filed directly with the relevant court or office.<sup>56</sup> The same procedure is observed for offenses that require a preliminary investigation but where the offender was lawfully arrested without a warrant.<sup>57</sup>

53. A preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed

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<sup>51</sup> Republic Act No. 9851.

<sup>52</sup> Republic Act No. 9165.

<sup>53</sup> Willard Riano, *Criminal Procedure (The Bar Lecture Series)*, p. 5 attached as Annex "A."

<sup>54</sup> Section 1, Rule 110, Revised Rules of Criminal Procedure.

<sup>55</sup> *Id.*, Section 1(b), Rule 110.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*, Section 6, Rule 112.

and the respondent is probably guilty thereof, and should be held for trial.<sup>58</sup> At the preliminary investigation stage, an inquiry is made concerning the commission of a crime and the connection of the accused with it so that he or she may be informed of the nature and character of the crime charged against him or her, and if there is probable cause to believe that he or she is guilty thereof.<sup>59</sup> Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he or she was prosecuted.<sup>60</sup>

54. When a person is lawfully arrested without a warrant, involving an offense that requires a preliminary investigation, the complaint or information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted in accordance with existing rules.<sup>61</sup> Nevertheless, the person arrested may opt to go through a preliminary investigation.<sup>62</sup> Pending the preliminary investigation, the person arrested may apply for bail.<sup>63</sup>

55. If, after the preliminary investigation, the prosecutor finds probable cause to charge the defendant, the defendant may file a motion for reinvestigation. If such motion is denied, the denial may be reviewed by the DOJ.<sup>64</sup>

56. After a preliminary investigation is conducted and, pursuant thereto, an information is filed in court, the judiciary conducts a preliminary examination to determine whether to issue a warrant of arrest against the accused. The judicial determination of probable cause is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must be satisfied that based on the evidence submitted, there is a necessity to place the accused under custody to not frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue a warrant.<sup>65</sup>

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<sup>58</sup> *Id.*, Section 1, Rule 112.

<sup>59</sup> *See* Callo-Calidad v. Esteban, G.R. No. 191567, 30 March 2013.

<sup>60</sup> Unilever Philippines, Inc. v. Tan, G.R. No. 179367, 29 January 2014.

<sup>61</sup> Section 7, Rule 112, Revised Rules of Criminal Procedure.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*; Serapio v. Sandiganbayan, G.R. No. 148468, 28 January 2003.

<sup>64</sup> *See* Aguinaldo v. Ventus, G.R. No. 176033, 11 March 2015.

<sup>65</sup> Tagastason v. People, G.R. No. 222870, 8 July 2019.

57. After an information is filed but before arraignment, the accused may move to quash the warrant or information.<sup>66</sup> Should the quashal be denied, arraignment<sup>67</sup> will follow. Thereafter, a pre-trial<sup>68</sup> will be conducted to simplify the matters to be tried. During the trial and after the prosecution has rested its case, the accused may file a demurrer to evidence.<sup>69</sup>

58. If, after trial, the accused is found guilty, they may file a motion for reconsideration or for a new trial.<sup>70</sup> If unsuccessful, the accused may assail their conviction before the appellate court.<sup>71</sup>

59. The following cases illustrate how a criminal case proceeds under the Philippine laws and rules on procedure.

#### The Maguindanao Massacre Case

60. In the case of the massacre of 57 innocent civilians in Sitio Masalay, Municipality of Ampatuan, Maguindanao Province, popularly known in the Philippines as the Maguindanao massacre, inquest proceedings were conducted against the primary suspect, Datu Andal Ampatuan, Jr. only three days after the massacre took place on 23 November 2009. On 1 December 2009, or barely a month from the massacre, 25 Informations for murder were already filed before the Regional Trial Court in Cotabato City.<sup>72</sup> However, due to the complexity of the case—with 57 victims and 197 accused—it was only on 19 December 2019, or ten years from the filing of the Informations, that the trial court promulgated its decision on the case.<sup>73</sup>

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<sup>66</sup> Section 1, Rule 117, Revised Rules of Criminal Procedure.

<sup>67</sup> *Id.*, Rule 116.

<sup>68</sup> *Id.*, Rule 118.

<sup>69</sup> *Id.*, Section 23, Rule 119.

<sup>70</sup> *Id.*, Rule 121.

<sup>71</sup> *Id.*, Rule 122.

<sup>72</sup> *Ampatuan v. De Lima*, G.R. No. 197291, 3 April 2013.

<sup>73</sup> Planners of Maguindanao massacre found guilty of murder in Philippines ‘trial of the decade’, <https://edition.cnn.com/2019/12/18/asia/philippines-maguindanao-massacre-verdict-intl-hnk/index.html> (last accessed 27 August 2022).

### The Kian Loyd Delos Santos Case

61. Kian Loyd Delos Santos (“Kian”), 17 years old, was allegedly killed by police officers during a “One Time, Big Time Operation” on 16 August 2017. “One Time, Big Time Operations” were part of the Operation Lambat-Sibat where “all-out police operations [were] conducted simultaneously against illegal drug personalities, most wanted persons, loose firearms, and all other forms of crimes.”<sup>74</sup> Operation Lambat-Sibat was a deliberate and sustained police operation supported by scientific crime reporting with a wide dragnet and intel-targeted operations to catch small-time criminals and repeat offenders.<sup>75</sup>

62. The police officers claimed that Kian took off when he saw them approaching and fired at them.<sup>76</sup> However, a closed-circuit television (CCTV) footage of the incident showed the police officers dragging him into an alley where he was later found dead.<sup>77</sup>

63. Thus, the case was investigated, and thereafter, on **29 January 2018**, Informations for Murder, Violation of Section 38 of Republic Act (“R.A.”) No. 10591 (Planting of Firearms), and Violation of Section 29 of R.A. No. 9165 (Planting of Prohibited Drugs) were filed against accused police officers PO3 Arnel Oares, PO1 Jeremias Pereda, and PO1 Jerwin Cruz, along with a certain Renato Loveras a.k.a. Nonong. The accused were convicted of murder in a Decision promulgated on 29 November 2018.<sup>78</sup> The case is currently on appeal with the Court of Appeals.

### The Jee Ick Joo Cases

64. In the case of Jee Ick Joo (“Jee”), Jee was abducted along with his family’s househelp, Marisa Morquicho (“Morquicho”), from his home in Angeles City on **18 October**

<sup>74</sup> SurStar, 73 caught in police operations in Cebu, <https://www.sunstar.com.ph/ampArticle/125354>, (last accessed 5 September 2022).

<sup>75</sup> Philippine Development Plan 2017-2022, p. 270, <https://pdp.neda.gov.ph/wp-content/uploads/2017/01/Chapter-18.pdf> (last accessed 5 September 2022).

<sup>76</sup> GMA News Online, Grade 11 student killed during anti-drug op in Caloocan, <https://www.gmanetwork.com/news/topstories/metro/622230/grade-11-student-killed-during-anti-drug-op-in-calooacan/story> (last accessed 27 August 2022).

<sup>77</sup> *Id.*

<sup>78</sup> Inquirer.net, FULL TEXT: Court’s decision on cops who killed Kian delos Santos, <https://newsinfo.inquirer.net/1058325/full-text-courts-decision-on-cops-who-killed-kian-delos-santos>, (last accessed 8 September 2022.)

2016 in an alleged anti-drug operation by the now defunct Philippine National Police - Anti-Illegal Drugs Group (“PNP-AIDG”) and the NBI. Morquicho was released, but Jee was allegedly killed at the PNP headquarters in Camp Crame, and his cremated remains were reportedly flushed in a toilet.<sup>79</sup>

65. In November 2016, The PNP Anti-Kidnapping Group (AKG) filed a complaint for Kidnapping for Ransom and Serious Illegal Detention against the police officers involved. During the pendency of the case, the accused, as well as the prosecution, availed of various remedies such as motions to investigate, to defer arraignment, and to discharge an accused turned state witness, among others. These matters were already resolved by the trial court and the Court of Appeals, and are now pending before the Supreme Court. In the meantime, the trial of the main case continues before the Regional Trial Court, Branch 56, Angeles City.<sup>80</sup>

#### Enforced Disappearance of Karen Empeño and Sherlyn Cadapan

66. In the case of the enforced disappearance of Sherlyn Cadapan and Karen Empeño, the abduction was committed on 26 June 2006. However, it was only on 9 December 2011, or more than five years after the women’s disappearance, that warrants of arrest were issued relative to their abduction.<sup>81</sup> Their abductors, who were members of the military, were convicted by the trial court only on 17 September 2018, seven years from the issuance of the warrants of arrest.<sup>82</sup>

67. The difference among the cases is the availability of information, documents, and/or witnesses on which the prosecution may build its case.

68. In the Maguindanao massacre, several eyewitnesses came forward to testify.<sup>83</sup> In Kian’s case, the CCTV footage of the incident belied the policemen’s version of the events.

<sup>79</sup> Business World, Jee Ick-Joo murder witness ordered freed, <https://www.bworldonline.com/editors-picks/2019/02/12/214060/jee-ick-joo-murder-witness-ordered-freed/> (last accessed 27 August 2022).

<sup>80</sup> *Jee Ick Joo* case records attached as Annex “B.”

<sup>81</sup> G.R. No. 223272, 26 February 2018.

<sup>82</sup> Inquirer.net, The disappearance of Karen Empeño and Sherlyn Cadapan, <https://newsinfo.inquirer.net/1033577/the-disappearance-of-karen-empeno-and-sherlyn-cadapan> (last accessed 27 August 2022).

<sup>83</sup> Philippines: Protect Witnesses to Maguindanao Massacre, <https://www.hrw.org/news/2010/03/08/philippines-protect-witnesses-maguindanao-massacre> (last accessed 27 August 2022).

In Jee's case, one of the perpetrators became a state witness.<sup>84</sup> On the other hand, the enforced disappearance case took much longer to prosecute because of the lack of readily available evidence to support its prosecution.

69. Simply put, initiating a criminal legal process takes time because it cannot be based on conjectures or unverified accounts. Moreover, courts must rule on all motions filed and carefully examine all the evidence presented by both the prosecution and the defense. To allow the prosecution to build its case and the accused to prove his or her defenses, courts generally give a lot of leeway to both parties with respect to the amount of evidence presented and the duration of time needed to accomplish this. Thus, save for exceptional circumstances, such as inordinate delay or when the court determines that additional evidence to be presented is merely corroborative, courts will allow both the prosecution and the defense to have as many trial dates as they may need to complete the presentation of evidence. As the Philippine Supreme Court held in *People v. Sergio, et al.*:<sup>85</sup> “[t]he benchmark of the right to due process in criminal justice is to ensure that all the parties have their day in court. It is in accord with the duty of the government to follow a fair process of decision-making when it acts to deprive a person of his liberty. But just as an accused is accorded this constitutional protection, so is the State entitled to due process in criminal prosecutions. It must likewise be given an equal chance to present its evidence in support of a charge.” In this regard, the Chamber should encourage national prosecutions under the principle of complementarity, where the Court is complementary to the national criminal jurisdiction of the Philippine Government.<sup>86</sup>

70. Considering that the Philippine Government's legal system operates to punish the offender, maintain order as well as protect the rights of the defendant, the OTP's request to resume investigation constitutes an act of interference with the Philippine Government's domestic functions and affairs.

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<sup>84</sup> Business World, Jee Ick-Joo murder witness ordered freed, <https://www.bworldonline.com/editors-picks/2019/02/12/214060/jee-ick-joo-murder-witness-ordered-freed/> (last accessed 27 August 2022).

<sup>85</sup> G.R. No. 240053, 9 October 2019.

<sup>86</sup> Rome Statute, Article 17.

### **III. THE OFFICE OF THE PROSECUTOR DOES NOT HAVE VALID GROUNDS TO RESUME ITS INVESTIGATION INTO THE PHILIPPINE SITUATION.**

71. In its Request, the OTP claims that “the investigation carried out by the GovPH (as defined by the national proceedings to which they refer) does not sufficiently mirror the investigation to be conducted by the [OTP]. Notably, the GovPh makes no reference at all to any investigation into crimes committed before July 2016, nor to any investigation into crimes other than murder—and, even then, only murders allegedly carried out in police operation, as opposed to murders allegedly carried out in other relevant circumstances. The GovPh does not appear to be investigating any other type of crime alleged in this situation, such as torture and unlawful imprisonment. The GovPh does not appear to be investigating whether any of the alleged crimes were committed pursuant to a policy or occurred systematically, or whether any person in the higher echelons of the police or government may be criminally responsible.”<sup>87</sup>

72. Specifically, the Philippine Government refutes the OTP’s findings regarding (a) the alleged administrative or non-criminal proceedings it is conducting; (b) the war on drugs-related killings in the Davao Region in 2011-2016; (c) the alleged lack of national proceedings concerning Article 5 crimes other than murder; (d) the lack of investigation on persons in the higher echelons of the police or government; and (e) the lack of investigation on whether any of the alleged crimes were committed pursuant to a policy or occurred systematically.

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<sup>87</sup> Prosecution’s request to resume investigation, para 3.

### **III.A. THE COMPLEMENTARITY PRINCIPLE PRECLUDES THE OTP FROM RESUMING ITS INVESTIGATION INTO THE PHILIPPINE SITUATION.**

**III.A.1. The Department of Justice conducts the first step in the determination of criminal liability. Its reviews form integral part of the Philippine criminal procedure and are not mere “desk review.”**

73. The OTP claimed that the DOJ “Panel merely conducted a ‘desk review’ ... followed by a request or recommendation that an actual investigation be commenced by the [National Bureau of Investigation].”<sup>88</sup>

74. The OTP misunderstands the DOJ’s functions.

75. The DOJ serves as the Philippine Government’s prosecution arm and administers the government’s criminal justice system by investigating crimes and prosecuting offenders, among others. The NBI, an attached agency of the DOJ, investigates crimes, while the National Prosecution Service (“NPS”), a DOJ office, prosecutes offenders.<sup>89</sup>

76. The panel that reviewed the cases involving deaths during anti-illegal drugs operations was created by the DOJ with the intent of prosecuting the perpetrators, if found warranted. DOJ panel reviews may result in the filing of cases, such as in the case of the Dengvaxia controversy<sup>90</sup> and the Philippine Amusement and Gaming Corporation Entertainment City Project.<sup>91</sup>

77. The DOJ’s drug war review, therefore, cannot be regarded as a mere casual affair or a “desk review.” The result of the panel review is supposed to ferret out which cases warrant a preliminary investigation that may lead to the filing of a complaint or information, and which ones do not.

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<sup>88</sup> *Id.*, pp. 31-34.

<sup>89</sup> <https://www.doj.gov.ph/vision-mission-and-mandate.html> (last accessed 23 August 2022).

<sup>90</sup> DOJ, DOJ finds probable cause for criminal negligence in Dengvaxia probe, [https://doj.gov.ph/news\\_article.html?newsid=621](https://doj.gov.ph/news_article.html?newsid=621) (last accessed 27 August 2022).

<sup>91</sup> DOJ, DOJ-NBI Fact-Finding Panel finds Anti-Dummy Law violations in connection with PAGCOR Entertainment City Project, [https://doj.gov.ph/news\\_article.html?newsid=206](https://doj.gov.ph/news_article.html?newsid=206) (last accessed 27 August 2022).



78. In fact, of the 52 “*nanlaban*” (resisting arrest) cases which the DOJ referred to the NBI for case build-up, 19 have already been resolved. The lack of evidence, witness, or documents establishing any form of irregularity on the part of the police operatives, was enough reason for the termination and dismissal of some of the cases.<sup>92</sup> In the other cases, the NBI found enough evidence to recommend an indictment:

- a. Two police officers were charged with Murder, Robbery, Violation of R.A. No. 9165, and Violation of R.A. No. 10591 for the death of Carl Angelo M. Arnaiz. The case is currently pending before the Regional Trial Court of Caloocan City, Branch 122.<sup>93</sup>
- b. After preliminary investigation, the DOJ recommended the filing of an Information for Homicide against police officers involved in the death of Crispin Vedaño.<sup>94</sup> The case is currently pending before the Regional Trial Court of Pinamalayan, Oriental Mindoro.<sup>95</sup>
- c. A criminal case against Police Corporal Joy H. Acuram for the death of Jose Nelson G. Garbo, Jr. during the implementation of a search warrant is due for filing in September 2022.<sup>96</sup>
- d. Regarding the deaths of Anwar Sawadjaan, Noel Rey Bacalso, and Angelo Hofer, the Office of the Provincial Prosecutor of Dipolog City, Zamboanga

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<sup>92</sup> NBI Quezon City Memorandum dated 18 August 2022 with attached matrix entitled *Task Force 52 Nanlaban Cases* is attached as Annex “C;” NBI Dagupan District Office (DADO) Memorandum dated 23 February 2022 is attached as Annex “C-1;” NBI Naga District Office (NADO) Memorandum dated 16 August 2022 with attached Final Report is attached as Annex “C-2;” NBI Bangsamoro Autonomous Region in Muslim Mindanao (BARMM) Memorandum with Reference No. BARMM-M-2022-040 with attached Memo Report is attached as Annex “C-3;” NBI Rizal District Office (RIZDO) Memorandum dated 7 March 2022 is attached as Annex “C-4.”

<sup>93</sup> NBI Memorandum dated 8 June 2022 is attached as Annex “D;” Inventory of Cases Involving Alleged Killings as a Result of Government’s Campaign against Illegal Drugs (July 2016 to 11 August 2022) is attached as Annex “D-1.”

<sup>94</sup> DOJ Resolution dated 31 May 2022 is attached as Annex “E.”

<sup>95</sup> NBI Memorandum dated 8 June 2022 attached as Annex “D;” Inventory of Cases Involving Alleged Killings as a Result of Government’s Campaign against Illegal Drugs (July 2016 to 11 August 2022) attached as Annex “D-1.”

<sup>96</sup> NBI Quezon City Memorandum dated 18 August 2022 with attached matrix entitled *Task Force 52 Nanlaban Cases* attached as Annex “C.”

del Norte recommended the filing of Information for Murder against the police officers involved. The case is now before the DOJ on a Petition for Review.<sup>97</sup>

- e. After reinvestigation, Jainuddin Alanjina Itin and Aikma Aminul Bulang were found to be alive. They were presented before the City Prosecutor of Zamboanga for inquest proceedings and are currently detained in Zamboanga City Jail. Thus, no death resulted in the anti-drug operation conducted by the police operatives of Police Station 11 of Zamboanga City.<sup>98</sup>
- f. Regarding the case involving Leo Morata, the NBI-Davao City recommended the conduct of a new trial based on newly discovered evidence.<sup>99</sup>
- g. For the deaths of Richard Santillan and Gessamyn Casing, the police officers involved are currently standing trial for Murder before the Regional Trial Court, Cainta, Rizal, Branch 99.<sup>100</sup>
- h. In its Resolution dated 9 February 2022, the DOJ recommended the filing of Informations for Murder and Planting of Evidence under Section 38 of R.A. No. 10591 against the police officers involved in the death of Diego Alberto Bello Lafuente, a Spanish national. The case for Perjury against the officers was dismissed for lack of probable cause.<sup>101</sup>
- i. Cases for Murder, Planting of Evidence, and Perjury were likewise recommended for filing against three police officers involved in the death of Elpidio Sevilla Francisco.<sup>102</sup>

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<sup>97</sup> NBI Memorandum dated 8 June 2022 attached as Annex "D."

<sup>98</sup> NBI Zamboanga City Memorandum dated 17 August 2022 is attached as Annex "F."

<sup>99</sup> NBI Davao City Memorandum dated 23 February 2022 and its attachments are attached as Annex "G."

<sup>100</sup> NBI Memorandum dated 8 June 2022 attached as Annex "D."

<sup>101</sup> DOJ Resolution dated 9 February 2022 is attached as Annex "H."

<sup>102</sup> NBI Quezon City Memorandum dated 18 August 2022 with attached matrix entitled *Task Force 52 Nanlaban Cases* attached as Annex "C."

### III.A.2. The Administrative Order No. 35 Committee complements the DOJ's investigations.

79. Aside from the different panels which the DOJ creates to investigate various issues, the DOJ also heads the Administrative Order (“A.O.”) No. 35 Committee (the “Committee”).

80. Recognizing the difficulty of investigating and, thereafter, prosecuting political violence in the form of extra-legal killings (ELK), enforced disappearances (ED), torture, and other grave violations of the right to life, liberty, and security of persons, the executive branch issued A.O. No. 35 creating the Committee.

81. The Committee is mandated to make an inventory of all cases covered by A.O. No. 35 and categorize the same into: (a) unsolved cases; (b) cases under investigation; (c) cases under preliminary investigation; and (d) cases under trial.<sup>103</sup>

82. After the inventory, the Committee shall prioritize the unsolved cases for action, and assign special investigation teams to conduct further investigation on these cases for the possible identification of the perpetrators.<sup>104</sup>

83. The Committee forms a special team of investigators and prosecutors exclusively for new cases, for immediate investigation and prosecution of the perpetrators. Said special team shall also closely coordinate with the Commission on Human Rights (“CHR”) and the Office of the Ombudsman (“OMB”) regarding cases referred to or filed before the latter.<sup>105</sup>

84. The attached *Data on Killings*<sup>106</sup> and *Data on Willful Killings CY 2010-2021*<sup>107</sup> enumerate the cases being investigated by the Committee.

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<sup>103</sup> Section 2(a), A.O. 35.

<sup>104</sup> *Id.*, Section 2(b).

<sup>105</sup> *Id.*, Section 2(d).

<sup>106</sup> Attached as Annex “I.”

<sup>107</sup> Attached as Annex “I-1.”

### III.A.3. Administrative investigations conducted by the PNP-IAS can ripen to criminal investigations.

85. The PNP has an internal disciplinary mechanism for PNP personnel involved in illegal activities. Based on PNP Memorandum Circular No. 20-2020<sup>108</sup> pertaining to the said mechanism, verified complaints relative to the illegal activities of PNP personnel gathered by the Internal Affairs Service (“IAS”) desks shall be referred to the proper disciplinary authorities and investigating units for purposes of filing appropriate **criminal investigations** and filing of charges. PNP Memorandum Circular No. 20-2020 provides the procedure for the filing of administrative, criminal cases, and/or conduct of validation of derogatory information.

86. In fact, it is through the auspices of the PNP-IAS that the 52 “*Nanlaban Cases*” (resisting arrest) are being vigorously investigated by the NBI. The following discussion illustrates the relevant procedures that PNP-IAS cases undergo.

#### Administrative cases

87. For administrative cases, once information is validated and/or verified, the complaint shall be endorsed either to the IAS or the Directorate for Investigation and Detective Management (“DIDM”) for pre-charge investigation. Pre-charge investigation or evaluation is a process to determine the existence of probable cause based on the allegations in the complaint and supporting evidence. After finding probable cause to file an administrative case, the investigating office shall formally charge, under oath, the PNP personnel complained of. Then, a summary proceeding shall commence. After the proceeding, a proper disciplinary action shall be imposed upon the PNP personnel. The respondent PNP personnel may be found culpable of an offense separate and distinct from that for which he was charged, provided that the acts constituting such offense were alleged in the complaint and the respondent was given the opportunity to answer.<sup>109</sup>

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<sup>108</sup> PNP Memorandum Circular No. 20-2020 dated 8 October 2020 re: PNP Internal Disciplinary Mechanism, <https://law.upd.edu.ph/wp-content/uploads/2021/04/PNP-Memorandum-Circular-No-20-2020.pdf> (last accessed 15 August 2022).

<sup>109</sup> NAPOLCOM Memorandum Circular No. 2016-002, <https://napolcom.gov.ph/pdf/MC%202016-002.pdf> (last accessed 15 August 2022).

88. *The IAS shall assist in the filing of appropriate criminal complaints before the courts as evidence warrants and the prosecution thereof. Specifically, the IAS' Prosecution shall coordinate and assist in the prosecution of criminal complaints initiated by the IAS against PNP members before the Ombudsman, Sandiganbayan or other courts of law.*<sup>110</sup>

#### Validation of Derogatory Information

89. Reports of derogatory information may also trigger an investigation of PNP personnel. Derogatory information refers to a variety of facts and/or items regarding a police officer's involvement in an illicit activity, commission of a crime, or behavioral and social profiling, provided by or sourced from other organizations.

90. PNP personnel with validated confirmed reports shall be subjected to case build-up. All reports confirming the involvement of PNP personnel in illegal activities shall be subjected to case build-up by concerned intelligence units or the Integrity Monitoring and Enforcement Group ("IMEG")<sup>111</sup> for the development of the intelligence packet including information for use in the legal offensive. *The concerned operating units and the IMEG shall conduct appropriate police actions and/or legal offensive to ensure the appropriate administrative and/or criminal case against the concerned PNP personnel.*<sup>112</sup>

#### PNP-NBI Joint Investigation Team

91. In accordance with the recommendation of the DOJ for the PNP and the NBI to conduct further investigation and case build-up against law enforcement agents involved in anti-illegal drug operations, a memorandum of agreement to form the PNP-NBI Joint Investigation Team was entered into.

<sup>110</sup> <https://www.ias.org.ph/index.php/about-us/offices-divisions-and-their-functions/prosecution-division> (last accessed 15 August 2022).

<sup>111</sup> IMEG's functions include the following: receive complaints and information against erring personnel and conduct relevant information gathering activities, detect and conduct intelligence build-up on the involvement of PNP personnel in illegal activities, acts of graft and corruption and other crimes for the conduct of prompt counter measures; and initiate law enforcement operations against rogue PNP personnel.

<sup>112</sup> PNP Memorandum Circular dated 8 October 2020 re: PNP Internal Disciplinary Mechanism, <https://law.upd.edu.ph/wp-content/uploads/2021/04/PNP-Memorandum-Circular-No-20-2020.pdf> (last accessed 15 August 2022).

92. The PNP and the NBI committed to support each other's work in evaluating the Philippine Government's anti-illegal drug operations and undertaking investigation, case build-up, and the possible filing of criminal complaints against concerned police officers. The PNP and the NBI undertook to prepare a "full and detailed report of all relevant findings and recommendations for submission to, and consideration of, the representative agency heads, and where necessary, file the appropriate criminal complaints against those found to have committed violations of applicable laws in the conduct of anti-illegal drug operations."<sup>113</sup>

93. *The Joint Investigation Team may recommend the filing of criminal cases separate from the administrative cases that would be pursued by the IAS.*<sup>114</sup>

### Criminal Cases

94. The institution of administrative cases does not preclude the filing of criminal cases under Rule 110 of the Revised Rules of Criminal Procedure.<sup>115</sup>

95. As discussed in III.A.1., paragraph 78, the same cases investigated by the PNP-IAS were also the subject of criminal investigations and prosecutions.

### **III.A.4. Writ of Amparo proceedings may lead to criminal proceedings.**

96. In *Christina Macandog Gonzales v. President Duterte, et al.*, G.R. No. 247211,<sup>116</sup> the Philippine Supreme Court affirmed the decision of the Court of Appeals recognizing the death of petitioner Gonzales' husband, Joselito P. Gonzales, as an extralegal killing. The Court of Appeals recommended the filing of appropriate civil, criminal, and administrative cases against respondents Aristone L. Dogwe, Mark Riel Canilon, and John Does consisting of members of the Antipolo City Police Station Anti-Illegal Drugs Special Operation Task Force and the Provincial Special Operating Unit Team who were part of the buy-bust team.

<sup>113</sup> PNP-NBI MOA re: Anti-Illegal Drug Operations dated 3 November 2021 is attached as Annex "J."

<sup>114</sup> <https://pnp.gov.ph/pnp-nbi-sign-agreement-on-investigation-case-build-up-in-anti-illegal-drug-related-police-operations/> (last accessed 15 August 2022).

<sup>115</sup> PNP Memorandum Circular No. 20-2020 dated 8 October 2020 re: PNP Internal Disciplinary Mechanism, <https://law.upd.edu.ph/wp-content/uploads/2021/04/PNP-Memorandum-Circular-No-20-2020.pdf> (last accessed 15 August 2022).

<sup>116</sup> <https://sc.judiciary.gov.ph/29098/> (last accessed 15 August 2022).

97. Thus, in *amparo* proceedings, the court may also recommend the filing of appropriate civil, administrative, or criminal cases against the erring police officers.

98. The foregoing demonstrates that there is no inability or unwillingness on the part of the Philippine Government to investigate alleged crimes resulting from the Philippine Government's anti-illegal drug campaign.

### **III.B. THE PHILIPPINE GOVERNMENT HAS INVESTIGATED THE ALLEGED KILLINGS IN THE DAVAO REGION.**

99. Based on the latest data provided by the Davao City Police Office, there were a total of 176 murder incidents in Davao from 2011 to 2016.<sup>117</sup> Of the 176 incidents, 168 were subject of cases filed before the courts. Of those filed, 51 cases have been solved, while 8 are currently under investigation.<sup>118</sup>

100. While the Philippines did not submit information and/or documents pertaining to its investigation into alleged killings committed in Davao from 2011 to 2016, publicly-available information shows that such investigation was conducted.

101. In 2009, when former Senator De Lima served as the CHR Chairperson,<sup>119</sup> she launched an investigation into the alleged vigilante killings in Davao City under then Mayor Rodrigo Roa Duterte. On 30 March 2009, the CHR summoned 39 respondents, including Duterte. When questioned, Duterte acknowledged that there were "unexplained, unresolved" killings in the city. He, however, denied the existence of the Davao Death Squad and offered to resign if there was any evidence proving otherwise.<sup>120</sup>

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<sup>117</sup> Davao City Police Office Murder Cases between 2011 – 30 June 2016 is attached as Annex "K."

<sup>118</sup> *Id.*

<sup>119</sup> She held the office from May 2008 to June 2010. She was appointed as Secretary of Justice on 30 June 2010.

<sup>120</sup> Rappler, The day Duterte faced the Commission on Human Rights, <https://www.rappler.com/newsbreak/in-depth/165574-rodrigo-duterte-chr-davao-city-2009-public-hearings-davao-death-squad/> (last accessed 15 August 2022); Rappler, Timeline: Probing into the Davao Death Squad; <https://www.rappler.com/newsbreak/iq/171312-timeline-davao-death-squad-probe-hearing-investigations-rodrigo-duterte> (last accessed 15 August 2022).

102. In March 2012, the OMB found 21 PNP officials (ranking from police chief inspector to police senior superintendent) guilty of simple neglect of duty for failing to resolve the rising extrajudicial killings in Davao City. The police officers were meted the penalty of a fine equal to a month's salary.<sup>121</sup> According to the OMB, the "respondents were remiss in their duty to significantly reduce the number of killings."<sup>122</sup>

103. In a Resolution dated 28 June 2012,<sup>123</sup> entitled "*Extra-Judicial Killings Attributed or Attributable to the so-called Davao Death Squad*," the CHR<sup>124</sup> concluded "that in the period of 2005 to 2009, there was a systematic practice of extrajudicial killings, which can be attributed or attributable to a vigilante group or groups dubbed in the media as a Davao Death Squad."<sup>125</sup> According to the CHR, "[t]he continuing pattern of killings and failure to conduct a meaningful investigation of such incidents can be construed as tolerance on the part of the authorities of the crimes heretofore described, thereby contributing to the climate of impunity."<sup>126</sup>

104. On 5 May 2014, in response to the CHR's recommendation to investigate Duterte for possible administrative and criminal charges in relation to the killings in Davao City, the OMB's Field Investigation Office ("FIO") submitted a *Fact Finding Report*. In the Report, no less than CHR Regional Director Atty. Alberto Sipaco testified under oath that "the regional office of the CHR in this region does not have any specific or complete proof as to the existence of the so-called Davao Death Squad."<sup>127</sup>

<sup>121</sup> <https://www.ombudsman.gov.ph/docs/annualreport/Annual%20Report%202012.pdf> (last accessed on 13 August 2022).

<sup>122</sup> Inquirer.net, 21 PNP officers fined for 2005-2008 spate of killings in Davao City, <https://newsinfo.inquirer.net/169081/21-pnp-officers-fined-for-2005-2008-spate-of-killings-in-davao-city> (last accessed August 15, 2022); Rappler, Ombudsman suspends cops for 'Davao Death Squad' killings, <https://www.rappler.com/nation/3152-ombudsman-suspends-cops-for-davao-death-squad-killings/> (last accessed on 15 August 2022).

<sup>123</sup> <https://www.scribd.com/document/340908715/CHR-Davao-Death-Squad-Resolution>; <http://i2.cdn.turner.com/cnn/2016/images/09/16/davao.death.squad.investigation.pdf> (last accessed on 13 August 2022) (hereinafter CHR Resolution dated 28 June 2012).

<sup>124</sup> Then headed by Chairperson Rosetta Rosales.

<sup>125</sup> CHR Resolution dated 28 June 2012, p. 16.

<sup>126</sup> Philippine Center for Investigative Journalism, Rights body mounts testy probe of 103 drug killings and counting, <https://www.mindanews.com/top-stories/2016/07/rights-body-mounts-testy-probe-of-103-drug-killings-and-counting/> (last accessed on 15 August 2022).

<sup>127</sup> *Id.*



105. The FIO validated the findings of CHR Regional Director Atty. Sipaco and found that no evidence was gathered to prove that the killings were attributable to the Davao Death Squad.<sup>128</sup>

106. In May 2016, the DOJ announced that its investigation into the Davao Death Squad was shelved, considering that the sole witness had left the Government's witness protection program ("WPP").<sup>129</sup>

107. On 13 July 2016, then Senator de Lima filed *Senate Resolution No. 9*<sup>130</sup> "directing the Senate Committee on Justice and Human Rights to investigate, in aid of legislation, the recent rampant extra-judicial killings and summary executions of suspected criminals."

108. On 02 August 2016, privilege speeches about the extra-judicial killings were delivered by Senator de Lima,<sup>131</sup> Senator Alan Peter S. Cayetano,<sup>132</sup> and Senator Risa Hontiveros.<sup>133</sup> The speeches and the interpellations thereon were then referred primarily to the Committee on Justice and Human Rights and secondarily to the Committee on Public Order and Dangerous Drugs.

109. Hearings were thereafter conducted. Three (3) hearings—on 22 August,<sup>134</sup> 23 August,<sup>135</sup> and 15 September 2016<sup>136</sup>—were presided by Senator de Lima as Committee Chair on Justice and Human Rights.

110. On 15 September 2016, Senator de Lima announced a surprise witness, Edgar Matobato, the same complainant in the ICC case, to testify on the existence of the Davao Death

<sup>128</sup> [https://legacy.senate.gov.ph/lis/committee\\_rpt.aspx?congress=17&q=97](https://legacy.senate.gov.ph/lis/committee_rpt.aspx?congress=17&q=97) (last accessed 13 August 2022).

<sup>129</sup> Philippine Center for Investigative Journalism, Rights body mounts testy probe of 103 drug killings and counting, <https://www.mindanews.com/top-stories/2016/07/rights-body-mounts-testy-probe-of-103-drug-killings-and-counting/> (last accessed on 15 August 2022).

<sup>130</sup> <https://legacy.senate.gov.ph/lisdata/23663200641.pdf> (last accessed on 14 August 2022).

<sup>131</sup> *Senate Journal*, Session No. 4, Tuesday, 2 August 2016, pp. 107-113. <https://legacy.senate.gov.ph/lisdata/24249204251.pdf> (last accessed on 14 August 2022).

<sup>132</sup> *Id.*, pp. 113-116.

<sup>133</sup> *Id.*, pp. 121-122.

<sup>134</sup> <https://www.youtube.com/watch?v=3iW3tBtMD8> (last accessed on 13 August 2022).

<sup>135</sup> <https://www.youtube.com/watch?v=eRx4O2ovY8> (last accessed on 13 August 2022).

<sup>136</sup> <https://www.youtube.com/watch?v=wZ2pc9WPxzc> (last accessed 13 August 2022).

Squad. Matobato allegedly reported directly to then President Duterte. Matobato's testimony, however, was declared beyond the scope of the inquiry under *Senate Resolution No. 9*. This was because the existence of the Davao Death Squad was not among the issues falling under *Senate Resolution No. 9*, the subject of which was the then rampant killings. As a countermeasure, Senator Trillanes introduced *Senate Resolution No. 151*<sup>137</sup> on 19 September 2016 "urging the Senate Committee on Justice and Human Rights to conduct an inquiry, in aid of legislation, on the alleged extrajudicial or summary killings purportedly committed by the Davao Death Squad."

111. On 19 September 2016, Senator Richard J. Gordon replaced Senator de Lima as head of the Committee. The Senators (by a vote of 16 in favor, 4 against and 2 abstentions) declared the chairmanship and membership of the Committee on Justice and Human Rights vacant for loss of trust and confidence in Senator de Lima as she was perceived to be partial in the conduct of the investigation. The change in the Committee chairmanship was a move to maintain objectivity in the proceedings.<sup>138</sup>

112. Senator Gordon afterwards presided over three (3) hearings on 22 September,<sup>139</sup> 3 October,<sup>140</sup> and 13 October 2016.<sup>141</sup>

113. After six (6) hearings, the Committee on Justice and Human Rights and the Committee on Public Order and Dangerous Drugs submitted *Joint Committee Report No. 18*<sup>142</sup> dated 5 December 2016. Among the findings contained in the *Joint Committee Report No. 18* were: (a) there was no proof that there is a state-sponsored policy to commit killings to eradicate illegal drugs in the Philippines. However, the Committee took note of the thousands of killings with impunity taking place every year in the last two decades at least;<sup>143</sup> (b) there was no sufficient evidence to prove that a Davao Death Squad exists.<sup>144</sup> The Joint Committee

<sup>137</sup> [https://legacy.senate.gov.ph/lis/bill\\_res.aspx?congress=17&q=SRN-151](https://legacy.senate.gov.ph/lis/bill_res.aspx?congress=17&q=SRN-151) (last accessed 13 August 2022).

<sup>138</sup> *Senate Journal*, Session No. 22, Monday, 19 September 2016, pp. 447-451. <https://legacy.senate.gov.ph/lisdata/24932214401.pdf>

<sup>139</sup> <https://www.youtube.com/watch?v=0jKtsRhR1Cg> (last accessed on 13 August 2022).

<sup>140</sup> <https://www.youtube.com/watch?v=geBWC9MQYPM> (last accessed on 13 August 2022).

<sup>141</sup> <https://www.youtube.com/watch?v=dNshnDDIfss> (last accessed on 13 August 2022).

<sup>142</sup> <https://legacy.senate.gov.ph/lisdata/25181217011.pdf> (last accessed on 14 August 2022).

<sup>143</sup> *Joint Committee Report No. 18*, pp. 40-43.

<sup>144</sup> *Id.*, pp. 43-49.

Report underscored that Mr. Matobato's testimonies were full of inconsistencies and contradictions."<sup>145</sup>

114. Later, in a press conference on 20 February 2017 organized by the Free Legal Assistance Group, retired SPO3 Arturo Lascañas ("Lascañas"), who had previously testified in the Senate inquiry and negated Matobato's claim regarding the existence of the Davao Death Squad, recanted his previous testimony. Lascañas asserted that the Davao Death Squad was real and that Duterte authorized the extrajudicial killings.

115. On the same day, Senator Trillanes delivered a privilege speech in connection with the statements made by Lascañas.<sup>146</sup> The privilege speech was then referred to the Committee on Public Order and Dangerous Drugs.

116. On 6 March 2017,<sup>147</sup> the Committee on Public Order and Dangerous Drugs conducted a hearing on the public confession of Lascañas about the Davao Death Squad.

117. On 17 May 2017, or two months after *Joint Committee Report No. 18* was released, the Committee on Public Order and Dangerous Drugs issued *Committee Report No. 97*,<sup>148</sup> declaring that Lascañas could not be considered a credible witness to prove allegations about the Davao Death Squad in the absence of any other independent piece of evidence.

118. The Committee on Public Order and Dangerous Drugs, in *Committee Report No. 97*, also recommended increasing the penalty for the crime of perjury and giving false testimony. Consequently, on 24 May 2017,<sup>149</sup> Senator Lacson delivered a speech sponsoring *Committee Report No. 97*.

119. On 29 October 2021, former President Duterte signed into law R.A. No. 115941,<sup>150</sup> which amended Articles 183 and 184 of the Revised Penal Code. The amendments

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<sup>145</sup> *Id.*

<sup>146</sup> *Senate Journal*, Session No. 64, Monday, 20 February 2017, p. 21. <https://legacy.senate.gov.ph/lisdata/25402219271.pdf> (last accessed on 14 August 2022).

<sup>147</sup> <https://www.youtube.com/watch?v=36rSMlouiDk> (last accessed on 13 August 2022).

<sup>148</sup> <https://legacy.senate.gov.ph/lisdata/26045223921.pdf> (last accessed on 14 August 2022).

<sup>149</sup> *Senate Journal*, Session No. 86, Wednesday 24 May 2017, p. 1605. <https://legacy.senate.gov.ph/lisdata/26202225321.pdf> (last accessed on 13 August 2022).

<sup>150</sup> <https://www.officialgazette.gov.ph/downloads/2021/10oct/20211029-RA-11594-RRD.pdf> (last accessed 15 August 2022).

imposed longer terms of imprisonment for those found guilty of committing perjury or offering false testimony in evidence.

### **III.C. THE PHILIPPINE GOVERNMENT IS INVESTIGATING CRIMES, OTHER THAN MURDER, THAT APPEAR TO HAVE BEEN COMMITTED IN CONNECTION WITH THE ANTI-DRUG OPERATIONS AND HAS PROSECUTED ERRING POLICE OFFICERS INVOLVED THEREIN.**

120. Aside from the deaths which allegedly occurred during the conduct of anti-illegal drugs operations, the Philippine Government has also investigated, and in appropriate cases, prosecuted other crimes committed during said operations. Moreover, the Philippine Government has prosecuted erring police officers whenever evidence on record warrant the same.

121. One such incident involved PO1 Eduardo Valencia (“PO1 Valencia”) of the Manila Police District (“MPD”). PO1 Valencia was accused of raping a 15-year-old daughter in exchange for the freedom of her parents who were detained on illegal drug charges. Acting on the complaint which the 15-year-old filed, police officers arrested PO1 Valencia.<sup>151</sup>

122. Another incident involved the former Chief of the PNP Custodial Service Unit, Police Lt. Col. Jigger Noceda, who was dismissed by the PNP after he was found guilty of two counts of grave misconduct, acts of lasciviousness, and sexual assault committed against former Ozamiz City Vice Mayor Nova Parojinog. Parojinog was then detained at the PNP Custodial Center on illegal possession of firearms and drug-related charges following the raid by the local police of her residence in July 2017.<sup>152</sup>

123. The Philippine Government also investigated the anomalous secret jails that the CHR uncovered in 2017.<sup>153</sup> However, after investigation, the Office of the Ombudsman dismissed the charges against Metro Manila police officers who were purportedly involved

<sup>151</sup> PhilStar Global, Cop nabbed for rape of girl, 15, <https://www.philstar.com/nation/2018/10/29/1864004/cop-nabbed-rape-girl-15> (last accessed 15 August 2022).

<sup>152</sup> Inquirer.net, Ex-chief of PNP Custodial Center dismissed due to Parojinog sexual assault case, <https://newsinfo.inquirer.net/1498178/pnps-ex-custodial-center-head-dismissed-from-service-after-parojinogs-sexual-assault-complaints> (last accessed 15 August 2022).

<sup>153</sup> Inquirer.net, Drug suspects found in secret police cell, <https://newsinfo.inquirer.net/892537/drug-suspects-found-in-secret-police-cell> (last accessed 15 August 2022).

in the supposed secret facility for drug suspects.<sup>154</sup> The Ombudsman ruled that the “CHR failed to establish probable cause against respondents for the crimes of Arbitrary Detention and Delay in the Delivery of Detained Persons to the Proper Judicial Authority. It failed to show by clear and strong evidence that the detained persons were being held beyond the period allowed by law without a complaint being filed against them.”<sup>155</sup>

124. The police officers involved in the alleged arrest of Jomer Dela Cruz during a buy-bust operation were charged with unlawful arrest, false testimony, and violation of Section 29 of R.A. No. 9165 after preliminary investigations found probable cause therefor.<sup>156</sup>

125. Previous submissions also established the Philippine Government’s efforts in prosecuting erring police officers. The *Partial listing of cases in the dockets of the NPS relating to investigations into deaths during anti-narcotic operations*<sup>157</sup> clearly showed that investigations were conducted against police officers with respect to their conduct of anti-illegal drug operations. Of the 13 incidents in said list, one (1) incident has already been decided where the accused police officers were convicted by the trial court; at least five (5) criminal cases have been filed in court and are undergoing trial; one (1) incident has been endorsed to the Ombudsman for the Military and Other Law Enforcement Officers; two (2) cases have been dismissed; and in four (4) cases, charges have been filed against the accused police officers.<sup>158</sup>

126. As discussed in III.A.1., paragraph 78, additional cases were filed against police officers who were involved in the deaths which occurred during anti-illegal drugs operations or the so-called “*nanlaban*” (resisting arrest) cases.<sup>159</sup> Finally, the additional 250 incidents

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<sup>154</sup> Inquirer.net, Charges vs cops involved in 2017 secret jail dropped due to lack of evidence, <https://newsinfo.inquirer.net/1424437/charges-vs-cops-involved-in-2017-secret-jail-dropped-due-to-lack-of-evidence#ixzz7bqyXuBY9> (last accessed 15 August 2022).

<sup>155</sup> *Id.*

<sup>156</sup> Review Resolution dated 13 May 2022 is attached as Annex “L.”

<sup>157</sup> See Prosecution’s request to resume investigation citing 9 PHL-OTP-0008-0046 (Annex “A” to the Philippine Government’s Letter dated 22 December 2021).

<sup>158</sup> Joint Resolution dated 27 November 2020 recommending the filing of Informations for six counts of Arbitrary Detention and six counts of Murder against the police officers involved in the killings of Edmar S. Aspirin, Richard C. Salgado, Erwin N. Mergal, Jim Joshua Cordero, Chamberlain S. Domingo, and Chadwin Santos is attached as Annex “M.”

<sup>159</sup> See Prosecution’s request to resume investigation citing PHL-OTP-0008-0050 (Annex “B” to the Philippine Government’s Letter dated 22 December 2021).

referred by the DOJ to the NBI<sup>160</sup> are still undergoing the required review process to ensure that any incident recommended for prosecution will stand trial.

127. The lowly officers identified as the actual perpetrators and who were investigated and prosecuted for the alleged killings during anti-illegal drugs operations are vital leads that may link higher-ranking officials as part of the chain of command in the commission of the crimes. Until such link is discovered, the prosecution will have no firm basis to investigate or prosecute high-ranking officials who may have been covertly complicit in any deaths or other crimes committed in the Philippine territory within the period covered by the investigation.

#### IV. THE EXTENT OF THE DRUG PROBLEM IN THE PHILIPPINES

128. The use of illegal drugs is said to have a long history in the Philippines. Prior to the 19th century, it was not socially disapproved. When the United States acquired the Philippines in 1898, the colonial government was confronted by the opium problem in the new colony.<sup>161</sup>

129. At present, the problem of substance use and abuse remains one of the significant social problems in the Philippines.

130. In October 2020,<sup>162</sup> the Dangerous Drugs Board (“DDB”) published its report entitled 2019 National Household Survey on the Patterns and Trends of Drugs Abuse.<sup>163</sup>

<sup>160</sup> See Prosecution’s request to resume investigation citing PHL-OTP-0008-1334, PHL-OTP-0008-1338, PHL-OTP-0008-1341, PHL-OTP-0008-1348, PHL-OTP-0008-1392, PHL-OTP-0008-1416, PHL-OTP-0008-1451, PHL-OTP-0008-1476, PHL-OTP-0008-1505, PHL-OTP-0008-1532, and PHL-OTP-0008-1580 (Annexes “D” to “N” to the Philippine Government’s Letter dated 31 March 2022).

<sup>161</sup> Armando De Jesus, et al., *Drug and Substance Use Among Filipino Street Children in an Urban Settling: A Qualitative Study*, 2009, [https://www.ddb.gov.ph/images/other\\_researches/07-DRUG AND SUBSTANCE USE AMONG FILIPINO STREET CHILDREN IN AN URBAN SETTling NG.pdf](https://www.ddb.gov.ph/images/other_researches/07-DRUG%20AND%20SUBSTANCE%20USE%20AMONG%20FILIPINO%20STREET%20CHILDREN%20IN%20AN%20URBAN%20SETTLING.pdf) (last accessed 16 August 2022).

<sup>162</sup> Dangerous Drugs Board, 2019 Drug Survey shows drug use prevalence rate falls to 2.05%, 14 October 2020, <https://www.ddb.gov.ph/newsroom/511-2019-drug-survey-shows-drug-use-prevalence-rate-falls-to-2-05> (last accessed 16 August 2022).

<sup>163</sup> Dangerous Drugs Board, 2019 National Household Survey on the Patterns and Trend of Drug Abuse, 2020, full report [https://www.ddb.gov.ph/images/downloads/2019 Drug Survey Report.pdf](https://www.ddb.gov.ph/images/downloads/2019%20Drug%20Survey%20Report.pdf) (last accessed 16 August 2022).

131. According to the 2019 survey, around 1.67 million Filipinos aged 10 to 69 are drug users. This is a decline from the 4 million Filipino drug users in 2016, as estimated based on anti-drug operations and intelligence data.

132. Said survey also reveals that about 4.73 million Filipino aged 10 to 69 had tried illegal drugs at least once in their lifetime.

133. For context, the Philippines had a population of 100,981,437 in 2015, according to the 2015 Census of Population and Housing.<sup>164</sup> It increased to 109,035,343 in 2020, according to the 2020 Census of Population and Housing.<sup>165</sup>

134. One disturbing aspect of the problem is that drug abusers are getting younger. The statistical figures over the last decade have revealed a trend towards a decreasing age.<sup>166</sup>

135. The reported usage of “shabu” or methamphetamine hydrochloride continues to grow as the Philippines’ most widely trafficked illegal drug. Shabu addiction remains the most significant drug problem in the Philippines. Marijuana is the second most abused drug. Cocaine is rare in the Philippines due to high prices and limited demand. Club drugs, such as ecstasy, have become more prevalent. Widespread poverty, corruption, and extremely porous borders create a lucrative environment for drug trafficking, with a relatively low risk of successful interdiction or prosecution.<sup>167</sup>

136. From 1 July 2016 to 16 March 2019, a total of 4.20 tons of methamphetamine hydrochloride or shabu, 372.16 kilos of cocaine, 31,665 pieces of ecstasy, and 1.40 tons of dried marijuana leaves and bricks were seized by Philippine authorities.<sup>168</sup>

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<sup>164</sup> Philippine Statistics Authority, 2020 Census of Population and Housing (2020 CPH) Population Counts Declared Official by the President, 7 July 2021, <https://psa.gov.ph/content/2020-census-population-and-housing-2020-cph-population-counts-declared-official-president> (last accessed 16 August 2022).

<sup>165</sup> *Id.*

<sup>166</sup> Armando De Jesus, et al., Drug and Substance Use Among Filipino Street Children in an Urban Settling: A Qualitative Study, 2009, [https://www.ddb.gov.ph/images/other\\_researches/07-DRUG\\_AND\\_SUBSTANCE\\_USE\\_AMONG\\_FILIPINO\\_STREET\\_CHILDREN\\_IN\\_AN\\_URBAN\\_SETTLING.pdf](https://www.ddb.gov.ph/images/other_researches/07-DRUG_AND_SUBSTANCE_USE_AMONG_FILIPINO_STREET_CHILDREN_IN_AN_URBAN_SETTLING.pdf) (last accessed 16 August 2022).

<sup>167</sup> *International Narcotics Control Strategy Report, Volume I*, 2017, <https://www.state.gov/wp-content/uploads/2019/04/2017-INCSR-Vol.-I.pdf> (last accessed 16 August 2022).

<sup>168</sup> PDEA Letter dated 18 August 2022 is attached as Annex “N.”

137. The situation is alarming even at the community level.

138. A 2017 Philippine Drug Enforcement Agency (“PDEA”) report<sup>169</sup> found that out of 42,036 barangays in the country, 49.65% or 20,872 barangays were considered drug-affected. The consolidated data were gathered from operational reports of PDEA Operating Units and other law enforcement agencies.

139. A barangay is said to be drug-affected when there is a reported presence of drug user, pusher, manufacturer, marijuana cultivator or other drug personality, drug den, marijuana plantation, clandestine drug laboratory, and facilities related to production of illegal drugs.<sup>170</sup>

140. There are three classifications in determining barangay drug-affectation: slightly affected, moderately affected, and seriously affected.<sup>171</sup>

141. Barangays are considered slightly affected if there is a reported presence of drug user/s; moderately affected if there is a reported presence of drug pusher/s and/or user/s; and seriously affected if there is a reported presence of any of the following: clandestine drug laboratory, warehouse, marijuana plantation and drug den/tiangge, drug trafficking or smuggling activities, and drug personalities (i.e. users, pushers, financiers, protectors, cultivators, manufacturers and others).<sup>172</sup>

142. Out of the 20,872 barangays, 66.7 percent or 13,920 are classified as slightly affected, 32.3 percent or 6,744 barangays are moderately affected, while the remaining one percent or 208 barangays are seriously affected.<sup>173</sup>

143. In 2017, it was also discovered that more and more unscrupulous government workers were involved in the country’s illegal drug trade. There had been a rising number of arrested state workers. Out of the arrested drug personalities in 2017, 301 were government

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<sup>169</sup> Philippine Drug Enforcement Agency, *49.65% of Barangays Nationwide Drug-Affected: PDEA*, 22 July 2017, <https://pdea.gov.ph/2-uncategorised/399-49-65-of-barangays-nationwide-drug-affected-pdea> (last accessed 16 August 2021).

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*



workers composed of 129 elected officials, 27 uniformed personnel, and 145 government employees.<sup>174</sup>

144. Still in the same year, the Marawi City siege, which lasted from May to October, demonstrated how drug money could finance terrorism. Mindanao affiliates of the Islamic State of Iraq and Syria (“ISIS”) had been linked with narco-politicians. During the siege, the Philippine military accidentally found methamphetamine hydrochloride worth between \$2 million and \$5 million while clearing rebel positions in besieged Marawi City.<sup>175</sup>

145. In 2018, it was reported that PDEA arrested 1,612 high-value target (HVT) drug personalities nationwide during high-impact operations. A person is considered a high-value targeted drug personality if he is involved in illegal drug activities and falls under the following list and classification: priority targets; priority drug groups; government officials, either elected, government employees, or law enforcers; foreign nationals; members of African Drug Syndicates (“ADS”); target-listed personalities; wanted listed personalities; celebrities and other well-known personalities; and members of armed groups.<sup>176</sup> The said 1,612 high-value target drug personalities included 53 foreign nationals, 57 elected officials, 15 uniformed personnel, 43 government employees, 200 drug group leaders/members, 14 armed drug group members, 182 drug den maintainers, 10 wanted persons, 146 target-listed, other high value targets numbering to 407, and 485 drug personalities arrested during the said operations. Meanwhile, 115 government workers were arrested in violation of the anti-drug law, including a local board member, police officers, and lawyers.<sup>177</sup>

146. In October of the same year, five PDEA agents were killed and two others were hurt in Kapai Town, Lanao Del Sur after conducting a drug symposium for the PNP.<sup>178</sup> The alleged mastermind of said crime was one William Comayog Gandawali. He was the

<sup>174</sup> Christopher Lloyd Caliwan, Over 35K anti-drug ops, 75K suspects nabbed in 2017: PDEA, Philippine News Agency, 16 January 2018, <https://www.pna.gov.ph/articles/1021772> (last accessed 19 August 2022).

<sup>175</sup> Simon Lewis, Philippines military says seizes drugs worth millions of dollars in besieged city, Reuters, 19 June 2017, <https://www.reuters.com/article/philippines-militants-idINKBN19A0NC> (last accessed 19 August 2022).

<sup>176</sup> Christopher Lloyd Caliwan, Over 35K anti-drug ops, 75K suspects nabbed in 2017: PDEA, Philippine News Agency, 16 January 2018, <https://www.pna.gov.ph/articles/1021772> (last accessed 19 August 2022).

<sup>177</sup> Christopher Lloyd Caliwan, 1,612 high-value drug personalities nabbed in 2018: PDEA, Philippine News Agency, 15 January 2019, <https://www.pna.gov.ph/articles/1058917> (last accessed 19 August 2022).

<sup>178</sup> Alex Evangelista, 5 PDEA agents killed in Lanao del Sur Ambush, Rappler, 5 October 2018, <https://www.rappler.com/nation/213602-pdea-agents-killed-lanao-del-sur-ambush-october-5-2018/> (last accessed 19 August 2022).

incumbent barangay chairman of Inudaran in Kolambugan town in Lanao del Norte and was wanted for high-profile crimes, including large-scale distribution of shabu in several barangays in the adjoining Lanao del Norte and Lanao del Sur provinces.<sup>179</sup>

147. In February 2019, the implementation of a search warrant in the province of Cavite led to the confiscation of P244.8 million worth of suspected shabu.<sup>180</sup> During the first quarter of the same year, authorities seized PHP5.27 billion worth of shabu, posting the highest volume of illegal drugs seized in the country's drug law enforcement history as of 2019.<sup>181</sup> On 15 March 2022, P11 billion worth of shabu were confiscated from 10 suspects intercepted in Infanta, Quezon. This incident is considered the biggest drug haul in Philippine history.<sup>182</sup>

148. Given the gravity of the drug problem in the country and its pernicious effects on the population, the Philippines, along with the rest of the world, initiated programs to reduce drug trafficking and drug use, among others.

**V. THE WAR ON DRUGS IS AN INTENSIFIED AND COMPREHENSIVE CAMPAIGN AGAINST ILLEGAL DRUGS AND IS NOT A STATE OR ORGANIZATIONAL POLICY OF SANCTIONING CRIMES PENALIZED UNDER ARTICLE 5 OF THE STATUTE.**

149. In 2009, the United Nations (UN) Commission on Narcotic Drugs, the policymaking body of the UN with prime responsibility for drug-related matters, adopted the Political Declaration and Plan on Action on International Cooperation toward an Integrated and Balanced Strategy to Counter the World Drug Problem.<sup>183</sup> Under the declaration, the UN

<sup>179</sup> John Unson, Alleged mastermind in ambush-slay of 5 PDEA agents killed, NDBC News, 15 April 2022, <https://ndbcnews.com.ph/news/alleged-mastermind-ambush-slay-5-pdea-agents-killed> (last accessed 19 August 2022).

<sup>180</sup> Cavite Search Yields P244.8 Million Worth of Shabu, Philippine Drug Enforcement Agency, 15 February 2019, <https://pdea.gov.ph/images/PressRelease/2019PR/PR-057-Cavite-search-yields-P244.8M-worth-of-shabu.pdf> (last accessed 19 August 2022).

<sup>181</sup> Christopher Lloyd Caliwan, PDEA seizes highest volume of illegal drugs in Q1 of 2019, Philippine News Agency, 7 April 2019, <https://www.pna.gov.ph/index.php/articles/1066689> (last accessed 19 August 2022).

<sup>182</sup> 10 suspects in P11-B shabu haul detained at NBI center in Manila, <https://mb.com.ph/2022/03/16/10-suspects-in-p11-b-shabu-haul-detained-at-nbi-center-in-manila/> (last accessed 5 September 2022).

<sup>183</sup> [https://www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_52/Political-Declaration2009\\_V0984963\\_E.pdf](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_52/Political-Declaration2009_V0984963_E.pdf), (last accessed on 16 August 2022).

Member States recognize that the drug problem remains a common and shared responsibility that requires effective and increased international cooperation.<sup>184</sup>

150. The Association of Southeast Asian Nations (“ASEAN”), of which the Philippines is a member, also envisioned a “Drug-Free ASEAN 2015.” In its Work Plan on Combating Illicit Drug Production, Trafficking and Use, ASEAN nations adopted actions to be taken to achieve a significant and sustainable reduction in the trafficking of drugs, drug-related crime, and prevalence of illicit drug use.<sup>185</sup>

#### National Anti-Drug Plan of Action

151. Guided by the foregoing principles and strategies, then President Benigno Simeon Aquino III developed the National Anti-Drug Plan of Action 2015-2020 (“NADPA”).<sup>186</sup> NADPA outlined the efforts of the Philippine Government to strengthen its campaign against illicit drugs and contribute to international efforts to counter the world drug problem.<sup>187</sup>

152. However, despite the implementation of NADPA, the PDEA reported that, as of February 2016, 26.91% or 11,321 out of the country’s 42,065 barangays were still drug-affected. This statistical data indicated the worsening drug problem in the Philippines that has victimized Philippine society’s underprivileged and impoverished sectors.<sup>188</sup>

#### Project: Double Barrel

153. To update and develop the NADPA, the DDB, under the administration of then President Rodrigo Roa Duterte, formulated the Philippine Anti-Illegal Drugs Strategy (“PADS”), which outlined the balanced efforts of the government to intensify its campaign against illegal drugs.<sup>189</sup> One of the efforts of the government was the Project: Double Barrel.

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<sup>184</sup> *Id.*, para. 12.

<sup>185</sup> National Anti-Drug Plan of Action 2015-2020, Background, p. 3, [https://www.ddb.gov.ph/images/NADPA\\_2015-2020\\_final\\_draft.pdf](https://www.ddb.gov.ph/images/NADPA_2015-2020_final_draft.pdf) (last accessed 15 August 2022).

<sup>186</sup> National Anti-Drug Plan of Action 2015-2020, Message from the President, [https://www.ddb.gov.ph/images/NADPA\\_2015-2020\\_final\\_draft.pdf](https://www.ddb.gov.ph/images/NADPA_2015-2020_final_draft.pdf) (last accessed 15 August 2022).

<sup>187</sup> *Id.*, p. 3.

<sup>188</sup> Office of the Chief PNP Command Memorandum Circular No. 16-2016 dated 1 July 2016, p. 2.; attached as Annex “O.”

<sup>189</sup> Executive Order No. 66, “Institutionalizing the Philippine Anti-Illegal Drug Strategy,” 29 October 2016.

154. The Project: Double Barrel was a campaign plan implemented by the PNP-AIDG, commencing on 1 July 2016, in support of the Barangay Drug Clearing Strategy of the government and the pronouncement of then Philippine President Duterte to get rid of illegal drugs nationwide.<sup>190</sup>

155. One of the reasons identified for the worsening drug problem was that traffickers exploit the archipelagic setup of the Philippines to transport illegal drugs. The international and local airports and seaports, mail and parcel services, and the vast expanse of coastline were being utilized as entry and exit points.<sup>191</sup>

156. The PNP identified three transnational drug organizations that were operating in the Philippines, namely: (1) the Chinese or Filipino-Chinese Drug Group; (2) the ADS; and (3) Mexican-Sinaloa Drug Cartel.<sup>192</sup>

157. The necessity to put an end to these drug syndicates was emphasized by the Philippine Supreme Court in *People v. Lung Wai Tang*,<sup>193</sup> where it ruled that “the country's wage of war against transnational organized drug syndicates operating in the country must not be thwarted.”<sup>194</sup> The High Court further added that these drug syndicates “are destroying the very mind and soul of the Filipino nation.”<sup>195</sup>

158. Given the foregoing, the PNP, in implementing the Project: Double Barrel, intended to address illegal drug problems in the barangays and simultaneously pursue the arrest and conviction of illegal drug personalities comprising the backbone of the illegal drugs network operating in the country. To achieve this, Project: Double Barrel was conducted in two ways: “Project Tokhang” and “Project HVT.”<sup>196</sup>

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<sup>190</sup> Office of the Chief PNP Command Memorandum Circular No. 16-2016 dated 1 July 2016, pp. 1-2 is attached as Annex “O.”

<sup>191</sup> *Id.*, p. 2.

<sup>192</sup> *Id.*

<sup>193</sup> G.R. No. 238517, 27 November 2019.

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> Office of the Chief PNP Command Memorandum Circular No. 16-2016 dated 1 July 2016, p. 2 attached as Annex “O”

### Project Tokhang

159. Project Tokhang was a means of accelerating the drive against illegal drugs in affected barangays, involving the conduct of house-to-house visitations to persuade suspected criminal drug personalities to stop their illicit drug activities. This was conducted in coordination with the Local Government Units (“LGUs”), particularly the provincial, city, municipal, and barangay Anti-Drug Abuse Councils, non-government organizations, stakeholders, and other law enforcement agencies.<sup>197</sup>

160. As there was no relevant provision in R.A. No. 9165, as amended, on handling voluntary surrender of drug personalities, the DDB issued Board Regulation No. 3, Series of 2016 or the *Guidelines on Handling Voluntary Surrender of Drug Personalities*. Any violation of this Regulation was to be penalized with sanctions embodied in Section 32, Article II of R.A. No. 9165, without prejudice to any appropriate administrative sanctions provided under the Act.<sup>198</sup>

### Project HVT

161. Project HVT, on the other hand, was a massive and reinvigorated conduct of anti-illegal drug operations targeting illegal drug personalities and drug syndicates. This approach was employed at the national, regional, district, provincial, and city levels to avoid overlapping operational functions.<sup>199</sup>

162. The AIDG focused on international, national, and regional traffickers. The Regional Anti-Illegal Drugs Special Operation Task Group (“RAIDSOTG”) concentrated on district and provincial level traffickers. The Provincial Anti-Illegal Drugs Special Operation Task Group (“PAIDSOTG”), District Anti-Illegal Drugs Special Operation Task Group (“DAIDSOTG”), and City Anti-Illegal Drugs Special Operation Task Group (“CAIDSOTG”) conducted their operations across the city and municipal levels. The Station Anti-Illegal Drugs

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<sup>197</sup> *Id.*

<sup>198</sup> See Section 7 of DDB Board Regulation No. 3, Series of 2016 is attached as Annex “P.”

<sup>199</sup> Office of the Chief PNP Command Memorandum Circular No. 16-2016 dated 1 July 2016, p. 6.

Special Operation Task Group (“SAIDSOTG”) operated at the barangay level to eradicate street distribution.<sup>200</sup>

Local Government Participation through  
Local Anti-Drug Abuse Councils

163. In its pursuit of an intensified and unrelenting campaign against illegal drugs, the Philippine Government likewise secured the assistance of the LGUs in drug clearing operations.

164. On 14 February 2017, the DDB issued *Board Regulation No. 3, Series of 2017*.<sup>201</sup> Under the said Regulation, all barangays in every LGU were tasked to establish their respective Barangay Anti-Drug Abuse Council (“BADAC”) within their territorial jurisdiction, which shall assist the law enforcement agencies in the eradication and clearing operations of illegal drugs.<sup>202</sup> It also provided for the classification of barangays: (1) drug unaffected; (2) drug affected; and (3) drug-free.<sup>203</sup> The implementation of the barangay drug-clearing operations was placed under the general supervision of the Director General of the PDEA with the assistance of the Department of Interior and Local Government (“DILG”).<sup>204</sup>

165. Subsequently, on 21 May 2018, the DILG and the DDB issued Joint Memorandum Circular No. 2018-01, which provided for the Implementing Guidelines on the Functionality and Effectiveness of Local Anti-Drug Abuse Councils.<sup>205</sup> As of 30 March 2022, per the DILG’s National Barangay Operations Office (“NBOO”), there are 41,906 BADACs nationwide.<sup>206</sup> Furthermore, as of July 2022, based on PDEA’s latest report, 25,802 barangays out of the 42,046 were declared drug-free.<sup>207</sup>

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<sup>200</sup> *Id.*, at pp. 6, 7.

<sup>201</sup> [https://www.ddb.gov.ph/images/Board\\_Regulation/2017/2017-Board\\_Regulation\\_No.\\_3\\_-\\_STRENGTHENING\\_THE\\_IMPLEMENTATION\\_OF\\_BARANGAY\\_DRUG\\_CLEARING\\_PROGRAM.pdf](https://www.ddb.gov.ph/images/Board_Regulation/2017/2017-Board_Regulation_No._3_-_STRENGTHENING_THE_IMPLEMENTATION_OF_BARANGAY_DRUG_CLEARING_PROGRAM.pdf), (last accessed 15 August 2022).

<sup>202</sup> See Section 1 of Dangerous Drugs Board Regulation No. 3, Series of 2017 attached as Annex “Q.”

<sup>203</sup> *Id.*, Section 7.

<sup>204</sup> *Id.*, Section 14.

<sup>205</sup> [https://www.dilg.gov.ph/PDF\\_File/issuances/joint\\_circulars/dilg-joincircular-2018521\\_5e9324a6b7.pdf](https://www.dilg.gov.ph/PDF_File/issuances/joint_circulars/dilg-joincircular-2018521_5e9324a6b7.pdf), (last accessed 15 August 2022).

<sup>206</sup> <https://pia.gov.ph/news/2022/03/30/dilg-to-assess-badacs-nationwide-starting-april-1>, (last accessed 15 August 2022).

<sup>207</sup> DILG Letter dated 25 August 2022 is attached as Annex “R.”

Rehabilitation and Reintegration through  
Drug Abuse Treatment and Rehabilitation  
Centers

166. The Republic, under the Duterte Administration, has given equal importance to rehabilitation and reintegration.

167. R.A. No. 9165 mandates that the Philippine Government, through its appropriate agencies, establish at least one drug rehabilitation center in each province, depending on the availability of funds.<sup>208</sup> However, in October 2017, only 16 Department of Health (“DOH”) accredited government drug rehabilitation centers were operating in the country. The increasing number of patients was straining the capacity of such facilities and their personnel beyond their limits.<sup>209</sup>

168. Thus, on 11 October 2017, then President Duterte issued *Executive Order No. 04*, which led to the creation of an Inter-Agency Task Force for the Establishment and Support of Drug Abuse Treatment and Rehabilitation Centers (“DATRCs”) throughout the Philippines, including in military reservations.<sup>210</sup> As of 9 February 2022, there were already 30 public and 43 private DATRCs.<sup>211</sup>

169. In consonance with the *ASEAN Work Plan on Securing Communities Against Illegal Drugs 2016-2025*, the Department of Social Welfare and Development (“DSWD”) issued *Memorandum Circular No. 33, Series of 2020*, which provided the Guidelines for the Implementation of the Yakap Bayan Program (“YBP”). The YBP is a holistic intervention to assist Recovering Persons Who Use Drugs (“RPWUDs”) in their recovery journey and to facilitate their social reintegration.<sup>212</sup>

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<sup>208</sup> See Section 75 of Republic Act No. 9165.

<sup>209</sup> See 7<sup>th</sup> Whereas Clause of Executive Order No. 04.

<sup>210</sup> *Id.*, Sections 1 and 3.

<sup>211</sup> <https://hfsrb.doh.gov.ph/wp-content/uploads/2022/02/DATRC-as-of-Feb9-2022.pdf>, (last accessed 15 August 2022).

<sup>212</sup> [https://www.dswd.gov.ph/issuances/MCs/MC\\_2020-033.pdf](https://www.dswd.gov.ph/issuances/MCs/MC_2020-033.pdf), (last accessed 15 August 2022).

Advocacy and Volunteerism through  
MASA MASID

170. On 2 September 2016, the DILG issued Memorandum Circular No. 2016-116 for the implementation of the MASA MASID Program or *Mamayang Ayaw Sa Anomalya, Mamamayang Ayaw sa Iligal na Droga* [Citizens against Anomaly, Citizens against Illegal Drugs]. The MASA MASID is a community-based initiative to engage volunteers in the fight against criminality, corruption, and illegal drugs. On 29 August 2017, the DILG issued Memorandum Circular 2017-112, providing the Revised Guidelines on the Implementation of MASA MASID, which now includes violent extremism and other threats to peace and security among the concerns the MASA MASID shall protect the communities from.<sup>213</sup>

Protocol when Handling Children Allegedly  
Involved in Dangerous Drugs

171. Project Tokhang yielded a significant number of surrenderers who admitted to being users and/or pushers of illegal drugs in their communities. Among these surrenderers, from July 2016 to October 2018, around 27,000 were below 18 years old. Thus, the DDB issued *Board Regulation No. 6, Series of 2019*, providing a protocol when handling children allegedly involved in dangerous drugs.<sup>214</sup> In the said Protocol, a separate procedure was laid down depending on whether or not the child was determined to be in conflict with the law.<sup>215</sup> To ensure compliance with the Protocol, any person found violating the same shall be criminally liable under Section 32 of R.A. No. 9165, without prejudice to corresponding administrative sanctions.<sup>216</sup>

Compliance with the Constitution and the  
law

172. On 6 March 2017, then President Duterte issued Executive Order No. 15 providing for the creation of an Inter-Agency Committee on Anti-Illegal Drugs (“ICAD”) and

<sup>213</sup> [https://dilg.gov.ph/PDF\\_File/issuances/memo\\_circulars/dilg-memocircular-2017829\\_c78b9c48df.pdf](https://dilg.gov.ph/PDF_File/issuances/memo_circulars/dilg-memocircular-2017829_c78b9c48df.pdf) (last accessed 16 August 2022).

<sup>214</sup> Dangerous Drugs Board Regulation No. 6, series of 2019 attached as Annex “S.”

<sup>215</sup> See Sections 6 and 7 of Dangerous Drugs Board Regulation No. 6, series of 2019 attached as Annex “S.”

<sup>216</sup> *Id.*, Section 12.



the Anti-Illegal Drug Task Force to suppress the drug problem in the country. The ICAD is organized into several clusters, including the Justice Cluster.<sup>217</sup>

173. The Justice Cluster is composed of member agencies of ICAD and headed by the DOJ. This cluster is primarily responsible for the expeditious prosecution of all drug cases, the provision of legal assistance to law enforcers, and ensuring the availability of public attorneys for the protection of individuals' rights, such as in instances of voluntary surrenders and warrantless arrests during anti-illegal drug operations, and providing assistance in the filing of petitions for confinement of drug dependents.<sup>218</sup>

174. In fine, the so-called War on Drugs waged by the Philippine Government is an intensified and comprehensive campaign against illegal drugs. It is **not a State or organizational policy of sanctioning any crimes penalized under Article 5 of the Rome Statute.**

## VI. THE ENTIRE NATIONAL GOVERNMENT IS ADDRESSING THE DRUG PROBLEM IN THE PHILIPPINES.

### The CHR Report

175. The CHR recently published its *Report on Investigated Killings in Relation to the Anti-Illegal Drug Campaign* dated April 2022 ("CHR Report"). Based on the CHR Report, the Philippine Government failed in its obligation to respect and protect the human rights of its citizens, especially the victims of drug-related killings, and has encouraged a culture of impunity that protects perpetrators.<sup>219</sup>

176. The CHR Report also included recommendations for various Philippine Government institutions to follow to ensure compliance with the "State's obligation to respect, protect and fulfill the human rights of all individuals within its territory and subject to its jurisdiction."<sup>220</sup>

<sup>217</sup> [https://pdea.gov.ph/images/Laws/EO\\_No.15series2017.pdf](https://pdea.gov.ph/images/Laws/EO_No.15series2017.pdf); (last accessed 16 August 2022).

<sup>218</sup> <https://icad-advocacy.dilg.gov.ph/site/justice>, (last accessed 16 August 2022).

<sup>219</sup> Report on Investigated Killings in Relation to the Anti-Illegal Drug Campaign, <https://chr.gov.ph/wp-content/uploads/2022/05/CHR-National-Report-April-2022-Full-Final.pdf> (last accessed 1 September 2022),

<sup>220</sup> *Id.*, p. 38.

177. The CHR is an independent office created under the 1987 Philippine Constitution and constituted through Executive Order No. 163. It is mandated to “investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights.”<sup>221</sup>

178. The CHR Report proves that independent institutions such as the CHR are functioning well and can perform their functions without fear of reprisal or muzzling from Philippine authorities.

#### Supreme Court Matrix on Drug-Related Cases

179. On the other hand, the judiciary continues to ensure that due process is accorded to all persons accused of illegal drug-related charges.

180. In 2018, the Supreme Court of the Philippines laid down a stricter application of the Chain of Custody Rule to “weed out early on from the courts’ already congested docket any orchestrated or poorly built-up drug-related cases.”<sup>222</sup>

181. *People v. Lim*<sup>223</sup> enforces the following as mandatory policy:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

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<sup>221</sup> 1987 Constitution, Article XIII, Section 18(1).

<sup>222</sup> *People v. Lim*, G.R. No. 231989, 4 September 2018.

<sup>223</sup> *Id.*

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, 40 Rule 112, Rules of Court.<sup>224</sup>

182. Based on the Philippine Supreme Court's *Comparative Analysis of Supreme Court Caseload Statistics for APPEALED DRUGS CASES* ("Comparative Analysis"),<sup>225</sup> there had been a steady increase of acquittals beginning in 2018 after the Supreme Court En banc promulgated its Decision in *People v. Lim*.<sup>226</sup>

183. In 2010, the rate of acquittal in illegal drugs cases was 37.5% or 24 out of 64 cases. The lowest acquittal rate was recorded in 2015—15 out of 89 cases or 16.9%. Acquittals started to rise again in 2016—31% and steadily increased thereafter with 2021 recording the highest acquittal rate of 82.3%.<sup>227</sup>

184. The Philippine Supreme Court's Comparative Analysis shows a significant increase in the number of acquittals due to a large part to the police officers' failure to comply with the Chain of Custody Rule since 2018.<sup>228</sup>

## VII. CONCLUSION AND RELIEF SOUGHT

185. This Court, as the court of last resort, is the tribune of the "victims of unimaginable atrocities."<sup>229</sup> It likewise stands as the citadel where national sovereignty and territorial integrity are bastioned. In recognizing "the duty of every state to exercise its criminal

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<sup>224</sup> *Id.*

<sup>225</sup> Attached as Annex "T."

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> Rome Statute, Preamble, par. 2.

jurisdiction over those responsible for international crime,”<sup>230</sup> the Court’s respect for the sovereignty of States is clear and unmistakable.

186. The Philippine Government submits that there is no sufficient basis for the OTP to resume its investigation into the Situation in the Philippines pursuant to Article 18(2) of the Statute.

187. The Philippine Government has demonstrated that the Court has no jurisdiction over the Philippine situation, considering that the crimes allegedly committed within the Philippine territory were not part of a “widespread and systematic attack directed against any civilian population, with knowledge of the attack.”<sup>231</sup> Consequently, the crimes the OTP intends to investigate are ordinary crimes, not crimes against humanity. Thus, they are beyond the ambit of the Court.

188. The Philippine Government has likewise established that the national proceedings referenced above sufficiently mirror the Court’s investigation with respect to (a) the alleged crimes against humanity of murder under Article 7(1)(a) of the Statute committed in the territory of the Philippines between 1 July 2016 and 16 March 2019, as well as in the Davao area between 1 November 2011 and 30 June 2016, in light of the Philippine Government’s intensified campaign against drugs; (b) Article 5 crimes allegedly committed within the parameters of the situation other than murder—such as torture, imprisonment, enforced disappearance, or sexual and gender-based crimes such as rape and other forms of sexual violence; (c) alleged murders by the so-called “vigilantes.”

189. The Philippines has a well-functioning republican and democratic government. It has demonstrated its willingness and capability to **investigate or prosecute crimes and has taken concrete actions and steps to conduct the investigation, prosecution, and conviction** of the identified perpetrators. Consequently, the Philippine situation is inadmissible pursuant to Article 17 of the Statute.

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<sup>230</sup> *Id.*, Preamble, par. 6.

<sup>231</sup> *Id.*, Article 7(1).

190. Under the principle of complementarity, the jurisdiction of the Court is complementary to the national criminal jurisdiction of the Philippine Government, which has the primary competence and authority to investigate and prosecute the crimes committed within its own territory.

191. Further, the Philippine Government urges the Court to find that an investigation into the Philippine situation would not serve the better interests of justice.

192. The proceedings initiated before this Court by widely known critics of the Duterte Administration were made to further their political agenda. The Court should heed as a warning the late Atty. Sabio's reason for withdrawing his complaint before the Court— his refusal to be used as a pawn of the former Senators' political game<sup>232</sup>—for at stake is the credibility of both the Court and the State.

193. Lastly, the Philippine Government asks the Court to consider that the Philippine Government is currently in a transition phase, having elected a new President, Ferdinand Marcos, Jr., who assumed office at noon on 30 June 2022. The country likewise has newly elected senators, congress members, and local government officials. There has also been a change in leadership in government agencies following appointments made by the new President. The new administration should be given a chance to act on, intensify, or direct pending investigations and inquiries relating to the Government's war on drugs.

194. Nevertheless, The Office of the Solicitor General, as counsel for the Philippine Government, is in continuous communication with all relevant government agencies with respect to updates on the cases so far submitted to the OTP and other cases that may hereafter be investigated or prosecuted in relation to alleged crimes against humanity committed throughout the Philippines within the relevant period. The Philippine Government is willing to share with the OTP and this Court any new information it may receive after this submission.

195. **WHEREFORE**, the Philippine Government respectfully prays that OTP's request to resume investigation regarding the *Situation in the Philippines* be **DENIED**.

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<sup>232</sup> De Lima also reveals she also filed an ICC complaint vs. Duterte, <https://www.cnnphilippines.com/news/2020/1/18/leila-de-lima-rodrigo-duterte-international-criminal-court.html> (last accessed 31 August 2022).



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Dated this 08 September 2022  
At the Hague, The Netherlands