

## REPORTS

### ICC-PTC DECISION ON FORMAL INVESTIGATION INTO THE PHILIPPINE SITUATION AND SUSPENSION OF INVESTIGATION IN LIGHT OF PHILIPPINE REQUEST

On 24 May 2021, the Prosecutor filed a ‘Request for authorization of an investigation pursuant to Article 15(3)’, in relation to the alleged killings committed on the territory of the Philippines in the context of the war on drugs campaign.

On 15 September 2021, the Pre-Trial Chamber I of the International Criminal Court (“ICC”) composed of Judge Péter Kovács, Presiding Judge, Judge Reine Adélaïde Sophie Alapini-Gansou and Judge María del Socorro Flores Liera, after reviewing the Prosecutor’s submissions and the supporting material, formally authorized the commencement of an investigation into the Situation in the Philippines, in relation to crimes within the jurisdiction of the Court allegedly committed on the territory of the Philippines between 1 November 2011 and 16 March 2019 in the context of the so-called ‘war on drugs’ campaign. The Chamber found a reasonable basis to proceed with an investigation, “in the sense that the crime against humanity of murder appears to have been committed, and that potential case(s) arising from such investigation appear to fall within the Court’s jurisdiction.”<sup>1</sup>

The Chamber determined that, for the purpose of an authorization to investigate, the specific legal element of the crime against humanity of murder under Article 7(1)(a) of the Statute has been sufficiently established with respect to the killings in the ‘war on drugs’ campaign from 1 July 2016 to 16 March 2019 as well as the killings in the Davao area between 1 November 2011 and 30 June 2016.<sup>2</sup> On this matter, the Chamber noted analogous cases of buy-bust operations, Tokhang operations and One Time, Big Time operations in which the killings occurred.<sup>3</sup>

The Chamber also found sufficient the Prosecutor’s submission that similar killings were perpetrated outside of official law enforcement operations in

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<sup>1</sup> Situation in the Republic of the Philippines, ICC-01/21, Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute, ¶ 113 (Sept. 15, 2021).

<sup>2</sup> *Id.* at ¶ 70.

<sup>3</sup> *Id.* at ¶ 40-48.

connection with the war on drugs campaign.<sup>4</sup> In its submissions, the Prosecutor identified three categories of perpetrators: law enforcement officers concealing their identity, private actors coordinating with and paid by the police, and other private individuals or groups instigated to act by the government's war on drugs campaign.<sup>5</sup> The Prosecutor noted that the killings fit into either of three different scenarios: (1) riding in tandem shootings; (2) "targeting victims at their homes"; or (3) "killings in unknown circumstances with bodies disposed of in public locations, tied up, and frequently displaying a cardboard sign purporting that the person was a drug user or dealer."<sup>6</sup>

As regards the Davao killings, the Chamber determined that the supporting material sufficiently indicated that local police officers and vigilantes, particularly, the so-called Davao death squad, perpetrated numerous killings of alleged small-scale drug dealers and suspects in minor crimes such as petty theft and drug use. It noted that the supporting material indicated that from 2011-2015 there were around 385 victims of extrajudicial killings in Davao.<sup>7</sup>

It was also of the Chamber's conclusion that the contextual elements of crimes against humanity under Article 7 of the Statute have been met.<sup>8</sup> In this regard, the Chamber found a clear pattern of killings from 2016-2019, amounting to an 'attack' within the meaning of Article 7(2)(a) of the Statute.<sup>9</sup> Further, based on the supporting material, the attack took place pursuant to or in furtherance of a State policy.<sup>10</sup> The Chamber cites several considerations in support thereof. First, the killing of alleged drug dealers and users was encouraged by former President Rodrigo Duterte during his campaign for Presidency and incumbency.<sup>11</sup> Second, the Chamber observed that there is an evident connection between the killings and the government's anti-drug campaign, particularly, noting Project: Double Barrel composed of Project Tokhang, which focused on house-to-house police visits carried out to urge drug suspects to stop their illegal drug activities'; and Project HVT (high-value target), consisting of 'buy-bust' operations, searches and

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<sup>4</sup> *Id.* at ¶ 61.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at ¶ 64.

<sup>7</sup> *Id.* at ¶ 69.

<sup>8</sup> *Id.* at ¶ 108.

<sup>9</sup> *Id.* at ¶ 86.

<sup>10</sup> *Id.* at ¶ 93.

<sup>11</sup> *Id.* at ¶ 94.

arrests, raids and checkpoints.<sup>12</sup> The Chamber also noted that rewards in the form of cash payments, promotions, or awards were given to perpetrators of the killings.<sup>13</sup> Finally, the Chamber observed a deficiency in the investigation and prosecution by the Philippine authorities on the killings. It noticed that only a few of the cases have proceeded to trial, and that only Kian Delos Santos's murder has proceeded to judgment.<sup>14</sup>

The Chamber also found merit in investigating the killings in the Davao area in 2011-2016 observing resemblances between the killings therein and the nationwide “war on drugs campaign.”<sup>15</sup> The Chamber alluded to Rodrigo Duterte's public statement supporting and encouraging the killing of petty criminals and drug dealers in Davao.<sup>16</sup> In addition, it found indications that there was systematic involvement of security forces in the killing, particularly, the Chamber mentioned the participation of the so-called ‘Davao death squad’.<sup>17</sup>

However, on 10 November 2021, the Philippine government submitted a request to defer to the Philippines' investigation of nationals or others within its jurisdiction with respect to the alleged crimes against humanity of murder in the context of “war on drugs” campaign and in the Davao area.<sup>18</sup> The Prosecution decided to temporarily suspend its investigative activities but will “continue its analysis of information already in its possession, as well as of any new information it may receive from third parties, and actively assess the need for applications to the Pre-Trial Chamber for authority to conduct necessary investigative steps for

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<sup>12</sup> *Id.* at ¶ 96.

<sup>13</sup> *Id.* at ¶ 100.

<sup>14</sup> *Id.* at ¶ 101.

<sup>15</sup> *Id.* at ¶ 107.

<sup>16</sup> *Id.* at ¶ 105.

<sup>17</sup> *Id.*

<sup>18</sup> Situation in the Republic of the Philippines, ICC-01/21, Notification of the Republic of the Philippines' deferral request under article 18(2), ¶ 1 (Nov. 18, 2021).

<sup>19</sup> *Id.* at ¶ 3.