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24 April 2017

HON. FATOU BENSOUDA

Prosecutor

OFFICE OF THE PROSECUTOR
INTERNATIONAL CRIMINAL COURT
The Hague, Netherlands

Dear Prosecutor Bensouda:

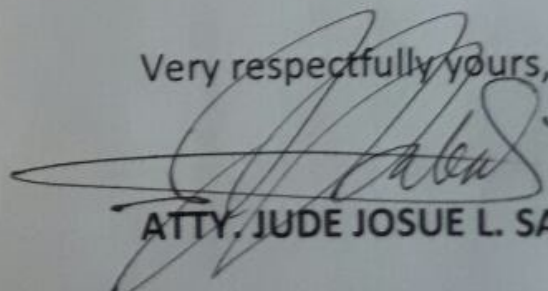
I am JUDE JOSUE L. SABIO, a practising lawyer and member of the Integrated Bar of the Philippines in good standing for more than 20 years in the Philippines.

I would like to personally submit to you, for appropriate action, the accompanying communication entitled "THE SITUATION OF MASS MURDER IN THE PHILIPPINES, RODRIGO DUTERTE: THE MASS MURDERER".

Your favourable action on this matter would not only serve the noble ends of international criminal justice but would also be the beginning of the end of this dark, obscene, murderous and evil era in the Philippines.

Thank you.

Very respectfully yours,


ATTY. JUDE JOSUE L. SABIO

THE SITUATION OF MASS MURDER IN THE PHILIPPINES RODRIGO DUTERTE: THE MASS MURDERER

By: JUDE JOSUE L. SABIO
Attorney & Counsellor-at-Law
INTEGRATED BAR OF THE PHILIPPINES

FACTUAL ANTECEDENTS ABOUT THE SITUATION OF THE CONTINUING MASS MURDER IN THE PHILIPPINES

In 1988, President Rodrigo Duterte first became the Mayor of Davao City and began his strategy or system of eliminating or killing persons suspected of crimes, including drug addicts and pushers, through what would popularly be known later as his Davao Death Squad.¹ Way back 2009, during President Duterte's term as Mayor of Davao City, the Human Rights Watch already came up with a report entitled "*You Can Die Anytime: Death Squad Killings in Mindanao*"² pertaining to its findings on the existence and operation of Davao Death Squad in Davao City. Also at that time, the Philippine Commission on Human Rights ("CHR"), then chaired by now detained Senator Leila de Lima, also conducted an investigation.³ Later in 2012, the CHR, after Senator de Lima's chairmanship, came out with a Resolution finding that there was a pattern of killings in Davao City,⁴ but sadly without mentioning the existence of the affidavits of four potential witnesses⁵ or the fact of the skeletal remains⁶ retrieved in the implementation of the Search Warrant⁷ that became the subject of the Avasola case.⁸

¹ Page 2, Signed Affidavit of SPO3 Arturo Lascañas dated 19 February 2017, as submitted to the Senate Committee on Public Order and Dangerous Drugs (Annex A)

² See: You can die anytime: Death Squad Killings in Mindanao. 06 April 2009.
<https://www.hrw.org/report/2009/04/06/you-can-die-any-time/death-squad-killings-mindanao>
<https://www.hrw.org/report/2009/04/06/you-can-die-any-time/death-squad-killings-mindanao>

³ Commission on Human Rights (CHR) Orders (Annex B)

⁴ CHR Resolution dated 28 June 2012 (Annex C)

⁵ Sworn Statement of Crispin Salazar, Ernesto Avasola, Jose Basilio and Ramon Evangelista submitted to CHR (Annex D)

⁶ M. Mangahas. 6 March 2017. De Lima's failure, Aguirre's conflict: Fits, starts, new hope for DDS probe? Philstar News. Retrieved from <http://www.philstar.com/headlines/2017/03/06/1678516/de-limas-failure-aguirres-conflict-fits-starts-new-hope-dds-probe> (for the photos, see Annex E)

⁷ Search Warrant No. 09-14407

⁸ Sworn Statement of Crispin Salazar, Ernesto Avasola, Jose Basilio and Ramon Evangelista submitted to CHR (Annex D)

The CHR, being a mere fact-finding agency under the 1987 Philippine Constitution with no authority to determine criminal liability or responsibility, referred its findings to the Office of the Ombudsman for appropriate investigation to determine accountability of then Mayor Duterte.⁹ The Ombudsman found no evidence to prove the existence of the Davao Death Squad,¹⁰ relying on the report of the head of the CHR in Davao City, who happened to be the fraternity brother of then Mayor Duterte, to the effect that the Davao Death Squad was just part of “media hype” and gossip. That marked the official end of the investigation on the Davao Death Squad of then Mayor Duterte.

Since then, the Davao Death Squad remained an urban legend, until in August 2016 when reports of mounting incidents of extra-judicial executions in the war on drugs began to surface after 30 June 2016, the date of the official assumption to Office of Duterte as President of the Philippines, prompted the Committee on Justice and Human Rights of the Senate of the Philippines, then headed by Senator Leila de Lima as Committee Chairman, to launch an investigation into the recent spate of extra-judicial executions in President Duterte’s war on drugs. The Senate inquiry was actually conducted by the Senate Committee on Justice and Human Rights joint with the Committee on Public Order and Dangerous Drugs.

It was conducted based upon a Resolution¹¹ filed in the Senate plenary by Senator de Lima. Based on the said Resolution, the scope of the subject matter of the inquiry was limited to the spate of extra-judicial executions occurring in President Duterte’s war on drugs.

But later, in this same Senate Committee inquiry, a sudden turn of events happened, as Edgar Matobato was presented, in a somewhat unannounced manner, as a resource person first on 15 September 2016 and later on 22 September 2016. Senator Antonio Trillanes IV and Senator de Lima took up the cudgels for Edgar Matobato. His testimony appeared to veer away from the limited, official scope of the Committee inquiry, for his direct firsthand account, broadcast live on national telecast and also aired on Youtube, centered on the Davao Death Squad and the thousands of murders committed under the Davao Death Squad of then Mayor Duterte.

Early on, during the first presentation of Edgar Matobato on 15 September 2016, the Senators in the majority bloc allied with President Duterte took turns in obstructing the truth by unfairly questioning the credibility of Matobato. After the first presentation of Matobato on 15 September 2016, the majority Senators allied with President Duterte, led by Senator Alan Peter S. Cayetano, succeeded in the Senate

⁹ CHR Resolution dated 28 June 2012 (Annex C)

¹⁰ J. Gavilan, 22 March 2017. Fact Check: Did CHR really clear Duterte over Davao Death Squad? Rappler News. Retrieved from: <http://www.rappler.com/newsbreak/fact-check/162153-chr-resolution-rodriigo-duterte-davao-death-squad><http://www.rappler.com/newsbreak/fact-check/162153-chr-resolution-rodriigo-duterte-davao-death-squad>

¹¹ Proposed Senate Resolution No. 9 by Senator Leila M. De Lima. Retrieved from: <https://www.senate.gov.ph/lisdata/2366320064!.pdf>

plenary to railroad the investigation by declaring vacant the entire membership of the Committee on Justice and Human Rights.¹² Senator Cayetano was the vice presidential running mate of President Rodrigo Duterte during the 2016 national elections who lost his bid to become Vice President, and is now the key operative of President Duterte in the Senate of the Philippines. This paved the way for the replacement of Senator de Lima as Chairman of the Committee with Senator Richard Gordon, who is part of the majority bloc in the Senate and allied with the President Duterte. Citing Senator De Lima's alleged bias against President Duterte and due to Senator Cayetano's allegation against her, through a privilege speech, that she is destroying the country by pursuing the Committee's probe on the extra-judicial killings in the country linked to the President's war on drugs¹³, the majority Senators succeeded in unceremoniously easing out Senator de Lima from the chairmanship, which move early on betrayed the intention of the majority bloc to obstruct the then on-going investigation.

When Matobato was presented the second time around on 22 September 2016, Senator de Lima was no longer the Chairman of the Committee on Justice and Human Rights. Senator Gordon assumed the chairmanship and presided over the hearing on said date. In his media interviews, Senator Gordon was heard saying that Edgar Matobato was "damaged goods" and not credible.¹⁴ On 03 October 2016, the police officers mentioned by Matobato as part of the Davao Death Squad appeared and testified by denying all that Matobato testified upon.

In one hearing, a heated discussion ensued between Senator de Lima and Senator Gordon. It stemmed from Senator Gordon's accusation that Senator de Lima was not candid when she failed to divulge the fact that Matobato was previously charged with the kidnapping of a certain Arab national mentioned by him. But Senator Trillanes pointed to a portion of the transcript showing that Matobato in fact made mention of the previous criminal charge against him. For this reason, Senator de Lima demanded an apology from Senator Gordon who adamantly refused, prompting an infuriated Senator de Lima to walk out of the hearing.¹⁵

To the whole nation, it was a foregone conclusion that the Joint Committees headed by allies of Pres. Duterte would look with disfavor at the testimony of Edgar Matobato.

During the entire proceedings, the Joint Committees did not bother anymore to hear the representatives from the CHR and the witnesses brought by them, and

¹² C. Elemia. 19 September 2016. Rappler News. Retrieved from <http://www.rappler.com/nation/146689-senate-ousts-leila-de-lima-justice-committee>

¹³ C. Elemia. 2 September 2016. Rappler News. Retrieved from <http://www.rappler.com/nation/146725-de-lima-ouster-biased-anti-duterte>

¹⁴ C. Avendaño. 05 October 2016. Probers set aside story of hitman. Philippine Daily Inquirer. Retrieved from <http://newsinfo.inquirer.net/821860/probers-set-aside-story-of-hit-man>

¹⁵ Transcript of the 3 October 2016 Hearing of the Senate Committee on Justice and Human Rights (Annex F)

prematurely closed its inquiry, without calling out the witnesses of the CHR and other resource persons.

Apart from the fact that the Joint Committees were dominated by the allies of the President, Senator Gordon has already made a premature personal conclusion about the supposed lack of credibility of Matobato. As expected, the joint Committees came out with a Committee Report concluding that there was no evidence of the existence of the Davao Death Squad and finding that Matobato is not credible.

While the investigation was going on in the Senate, President Duterte, along with his Secretary of Justice Vitaliano Aguirre and Speaker of the House of Representatives Pantaleon Alvarez, made public accusations on Senator de Lima's alleged involvement in the proliferation of illegal drugs at the National Bilibid Penitentiary at the time when she was still Secretary of Justice. President Duterte was quoted as saying that Senator de Lima would lose against him and would be "finished".¹⁶ True enough, an investigation was launched in the Committee on Justice at the House of Representatives of which the super majority was controlled by allies of Pres. Duterte.

Justice Secretary Aguirre acted as lawyer for the government by presenting convicted drug lords currently serving long-term prison terms in the National Bilibid Penitentiary to testify against Senator de Lima who snubbed the proceedings characterizing it as political harassment. A publicized campaign was launched to destroy the character, reputation and womanhood of Senator Leila de Lima by presenting in the House investigation a supposed sex video with her former driver and lover¹⁷, but under intense public pressure, the move was aborted. Later, Senator de Lima was charged with drug offenses with the Department of Justice, which later after preliminary investigation found probable cause against Senator de Lima and filed drug cases with the court which swiftly issued a Warrant of Arrest. Senator Leila de Lima voluntarily surrendered at the premises of the Senate of the Philippines and was later detained at the Custodial Center of the Philippine National Police in Camp Crame, Quezon City, Metro Manila.¹⁸

Prior to her becoming a Secretary of Justice in the last Aquino administration and prior to her being voted as Senator in the May 2016 elections, Senator de Lima was the Chairman of the CHR, and as such, she was at the forefront in the conduct in 2009 of an investigation about the Davao Death Squad. When President Benigno Aquino became President, he appointed her as his Secretary of Justice. To political observers especially her staunch supporters, she was the target of the President

¹⁶ A.J. Hegina. 26 May 2016. Duterte warns De Lima: Don't fight me; you'll lose. Philippine Daily Inquirer. Retrieved from <http://newsinfo.inquirer.net/787572/duterte-hits-de-lima-again-dont-fight-me-youll-lose>

¹⁷ M. J. Cayabyab. 28 September 2016. Alvarez: Nothing wrong if De Lima sex video is shown in House probe. Inquirer.Net. Retrieved from: <http://newsinfo.inquirer.net/819828/alvarez-nothing-wrong-if-de-lima-sex-video-shown-in-probe>

¹⁸ 24 February 2017. Timeline: De Lima – from drug probe to arrest. Rappler News. Retrieved from: <http://www.rappler.com/newsbreak/iq/162416-leila-de-lima-arrest-timeline-drug-probe>

Duterte, because she earned the unmitigated personal ire of the President on account of her previous investigation of his Davao Death Squad in 2009 and her vociferous criticism and dissent to the extra-judicial executions in the war on drugs. She has been hailed as the first political prisoner of the President Duterte, for being a victim of political persecution and harassment aimed directly at silencing her by incarceration and to stifle legitimate political dissent.

Along with Senator de Lima, Senator Trillanes has been very vocal and unrelenting in his criticism and opposition to the President Duterte. A former mutineer in the Oakwood incident against then President Gloria Macapagal-Arroyo and imprisoned for seven years for it, he ran and won as Senator while being in prison and was later granted amnesty by former President Benigno Aquino.

During the presidential and vice presidential elections in May 2016, he ran for Vice President as an independent candidate. In the campaign trail, he was quoted as saying that it would be a “disaster” if Mayor Duterte were elected as President.¹⁹ In the days leading to the date of voting in May 2016, Senator Trillanes exposed in media his reliable information through bank documents pertaining to the hidden wealth in the amount of Two Billion Pesos of then Mayor and presidential candidate Duterte.²⁰ During the Senate committee investigation into the extra-judicial executions in the war on drugs, Senator Trillanes took up the cudgels for Edgar Matobato and provided him with much-needed security after the Senate, through Senate President Aquilino Pimentel, refused to grant protective custody to him.²¹

In his media pronouncements, Senator Trillanes has been quoted as saying that President Duterte is a “mass murderer”.²² To date, Senator Trillanes has been in the forefront in the political landscape in his direct opposition to and is a stringent voice of protest and opposition against President Duterte.

In a press conference in the Senate premises on 20 February 2017, Senator Trillanes IV appeared with former Special Police Officer 3 (SPO3) Arthur Lascañas of the Davao City Police, flanked by his lawyers, when he made his public confession broadcast on live national telecast, in which he confirmed the truthfulness of the earlier testimony of Matobato²³ along with the fact that he was a long-time leader of

¹⁹ R. Adel. 07 January 2016. Trillanes describes Duterte presidency a ‘disaster’, worse than Binay’s. The Philippine Star. Retrieved from <http://www.philstar.com/headlines/2016/01/07/1540181/trillanes-describes-duterte-presidency-disaster-worse-binays>

²⁰ B. Cupin. 16 February 2017. Trillanes on Duterte bank accounts: “Prove me wrong”. Rappler News. Retrieved from: <http://www.rappler.com/nation/161633-trillanes-revives-duterte-bank-accounts><http://www.rappler.com/nation/161633-trillanes-revives-duterte-bank-accounts>

²¹ B. Cupin. 14 October 2016. Matobato posts bail, returns to Trillanes’ Custody. Rappler News. Retrieved from: <http://www.rappler.com/nation/149189-edgar-matobato-bail-trillanes-custody><http://www.rappler.com/nation/149189-edgar-matobato-bail-trillanes-custody>

²² C. Elemia. 26 September 2016. Trillanes on Davao killings: Duterte a ‘mass murderer’. Rappler News. Retrieved from: <http://www.rappler.com/nation/147380-trillanes-davao-death-squad-duterte-mass-murderer><http://www.rappler.com/nation/147380-trillanes-davao-death-squad-duterte-mass-murderer>

²³ P.L. Viray. 20 February 2017. Davao Death Squad ‘leader’ resurfaces, retracts denials. Philstar News. Retrieved from <http://www.philstar.com/headlines/2017/02/20/1674098/davao-death-squad-leader-resurfaces-retracts-denials>

the dreaded Davao Death Squad, who has been involved in the killing of around 300 persons, upon the order and behest of former Mayor, now Pres. Rodrigo Duterte.

Afterwards, Senator Trillanes made a manifestation in the Senate to refer the public confession of Arthur Lascañas to the Committee on Public Order and Dangerous Drugs, headed by Senator Panfilo Lacson.²⁴ In an acrimonious and bitterly divisive political atmosphere in the Senate, his Resolution was supported by Senators who are members of the Liberal Party and then still allied with the majority bloc in the Senate.²⁵ On account of their open support for the motion, the four Liberal Party Senators were booted out of their respective chairmanships in the different Senate Committees, and were expelled from the majority bloc in the Senate, again upon the initiative of Sen. Cayetano. Fortunately for Senator Trillanes and the country, though, the support of the Liberal Party Senators paved the way for the investigation being sought by him to be referred to the Committee on Public Order and Dangerous Drugs chaired by Senator Panfilo Lacson, instead of to the Committee on Justice and Human Rights chaired by Senator Gordon who kept on insisting that his committee should be the one to conduct the investigation.

On 6 March 2017, the Committee on Public Order and Dangerous Drugs conducted the inquiry in which former SPO3 Lascañas was presented wherein he essentially re-affirmed the statements he made in his enclosed Sworn Affidavit.²⁶ At this time, Senator de Lima was still in detention. The Committee inquiry was aired live on national telecast and on Youtube. After the testimony of Lascañas was finished, the Committee simply adjourned. In his statements issued to the media, Senator Panfilo Lacson, Chair of the Committee revealed that the Committee, which is controlled by allies Pres. Duterte, had no more intention to further conduct an investigation.²⁷ Sadly again, that was the end of the attempt at the Philippine Senate to investigate the thousands of extra-judicial killings (EKJs) taking place in the entire country.

SUBMISSION ON THE POTENTIAL CRIMINAL LIABILITY OF MAYOR AND PRESIDENT RODRIGO DUTERTE OVER THE CONTINUING MASS MURDER

²⁴ L. Buan. 04 March 2017. The Senate scramble that led to the Lascañas probe. Rappler News. Retrieved from: <http://www.rappler.com/newsbreak/inside-track/163199-senate-scramble-lascanas-probe>

²⁵ C. Elemia. 28 February 2017. Senate ousts Drilon, LP senators from key posts. Rappler News. Retrieved from: <http://www.rappler.com/nation/162710-senate-revamp-ouster-liberal-party-senators>

²⁶ Signed Affidavit of SPO3 Arturo Lascañas dated 19 February 2017, as submitted to the Senate Committee on Public Order and Dangerous Drugs (Annex A)

²⁷ C. Elemia. 06 March 2017. Senate ends Lascañas probe after 1 hearing. Rappler News. Retrieved from: <http://www.rappler.com/nation/163403-senate-ends-arthur-lascanas-hearing>

Against this backdrop, this communication will present to the Office of the Prosecutor of the International Criminal Court the situation of continuing MASS MURDER in the Philippines where President Duterte has been “repeatedly, unchangingly and continuously” committing extra-judicial executions or mass murders constituting crime against humanity through murder ever since 1988 or the time that he was the Mayor of Davao City under his Davao Death Squad and up to the time when, after becoming the President of the Philippines, he has been waging since 30 June 2016 at the national level a virulent and bloody “war on drugs”.

All in all, the “repeated, unchanging and continuous” mass murder being conducted by the President Duterte has already resulted into the deaths of not less than 1,400 individuals in Davao City²⁸ under his Davao Death Squad and not less than 7,000 individuals in his war on drugs at the national level.²⁹ In the ultimate analysis, this communication will present a situation for the determination and finding by the International Criminal Court of individual criminal liability or responsibility on the part of Mayor and President Duterte over the continuing commission of mass murder ever since he was the Mayor of Davao City up to the time that he became the President of the Philippines in his war on drugs at the national level.

For this purpose, in consonance with the legal parameters laid down by the Rome Statute of the International Criminal Court, this communication will submit to the Office of the Prosecutor the legal and factual basis as to why there is sufficient reason for said Office to look into and analyze the terrifying and gruesome situation of continuing mass murder in the Philippines “repeatedly, unchangingly and continuously” being undertaken by President Duterte. More specifically, this communication will demonstrate that the situation of mass murder being undertaken by President Duterte should compel the Office of the Prosecutor, in the interest of international criminal justice and of the thousands of victims, to undertake the following, namely; (1) to CONDUCT a preliminary examination based on this communication and other relevant information from other reliable sources including international human rights groups like the Human Rights Watch and Amnesty International, and (2) later to OPEN a formal investigation with the conformity of the Pre-Trial Chamber, if warranted by the situation based on the standards provided for under the Rome Statute of the International Criminal Court.

This communication will further demonstrate why there is sufficient factual and legal basis for the Office of the Prosecutor to take the following course of action, namely; (1) to CONFIRM with the Pre-Trial Chamber the proper criminal charges for crimes against humanity against President Duterte and his senior administration officials; (2) to APPLY with the Pre-Trial Chamber for the issuance of a Warrant of

²⁸ A. Picardal. ND. The Victims of the Davao Death Squad: Consolidated Report 1998-2015. CBCP News. Retrieved from:

<http://www.cbcnews.com/cbcnews/?p=76531><http://www.cbcnews.com/cbcnews/?p=76531>

²⁹ P. Kine. 24 January 2017. Deadly Milestone In Philippines’ Abusive Drug War. Human Rights Watch. Retrieved from: <https://www.hrw.org/news/2017/01/24/deadly-milestone-philippines-abusive-drug-war><https://www.hrw.org/news/2017/01/24/deadly-milestone-philippines-abusive-drug-war>

Arrest against the President Duterte and his concerned senior administration officials for his arrest, surrender and detention pending trial at the Detention Facility at the Hague of the International Criminal Court, in order to prevent them from continuing with the commission of mass murder and to prevent them from killing potential victims and witnesses, and (3) to PURSUE with the Pre-Trial Chamber the commitment of President Duterte and his concerned senior administration officials to the Trial Chamber for appropriate trial, and for a conviction and sentence to a prison term or life imprisonment.

CONTINUING COMMISSION OF EXTRA-JUDICIAL EXECUTIONS IN DAVAO CITY AND IN THE WAR ON DRUGS AT THE NATIONAL LEVEL

Since President Duterte assumed office on 30 June 2016 as President of the Philippines, more than 7,000 drug-related killings by police and unknown armed persons occurred in his war on drugs at the national level. This is based on official statistics from the Philippine National Police for the period from 1 July 2016 up to and until 21 January 2017. This figure is widely reported in local and foreign media, and also in social media. This is also contained in the report of Amnesty International entitled *“If You are Poor, You Are Killed: Extra-Judicial Summary Executions in the Philippines”*³⁰ and in the report of Human Rights Watch entitled *“License to Kill: Philippine Police Killings in Duterte’s War on Drugs”*.³¹ In its recent Resolution, the European Parliament cited this grim statistics in condemning the extra-judicial executions in the Philippines in President Duterte’s war on drugs.³²

In order to better understand and have a firm grasp of the extra-judicial executions or mass murder in the war on drugs happening after President Duterte became the President on 30 June 2016, it is imperative to look back at the extra-judicial executions or mass murder carried out under the Davao Death Squad in Davao City when President Duterte was still the City Mayor of Davao City.

Based on the testimony of Matobato and Lascañas, it is now established by direct firsthand account that President Duterte is the mastermind and leader of the Davao Death Squad when he was still the Mayor of Davao City. If it is the best indication, President Duterte happens to be that same leader and mastermind of the Davao Death Squad who is now the President of the Philippines waging, encouraging and promoting the so-called war on drugs at the national level.

³⁰ See https://www.amnestyusa.org/sites/default/files/philippines_ejk_report_v19_final_0.pdf See https://www.amnestyusa.org/sites/default/files/philippines_ejk_report_v19_final_0.pdf

³¹ See <https://www.hrw.org/report/2017/03/01/license-kill/philippine-police-killings-dutertes-war-drugs> See <https://www.hrw.org/report/2017/03/01/license-kill/philippine-police-killings-dutertes-war-drugs>

³² C. Diola. 17 March 2017. EU Legislators’ call: Int’l probe into Philippines’ drug war. Philstar News. Retrieved from <http://www.philstar.com/headlines/2017/03/17/1682041/eu-legislators-call-intl-probe-philippines-drug-war> <http://www.philstar.com/headlines/2017/03/17/1682041/eu-legislators-call-intl-probe-philippines-drug-war>

It is legally instructive to bear in mind that before he was installed as President, Rodrigo Duterte was the immediate incumbent Mayor of Davao City operating, managing and directing, as its leader and mastermind, the Davao Death Squad, which has undertaken, under his leadership and orders, the extra-judicial executions of more than a thousand suspected criminals with impunity since 1988 or for more than two decades even up to the present in Davao City. As will be shown later, President Duterte intended to continue and did actually continue his system or strategy under his Davao Death Squad in Davao City when he became the President of the Philippines on 30 June 2016 and waged a war on drugs on the national level.

In other words, the situation in the Philippines reveals a terrifying, gruesome and disastrous continuing commission of extra-judicial executions or mass murder from the time President Duterte was the Mayor of Davao City through his Davao Death Squad up to the time that he became the President after 30 June 2016 in his war on drugs at the national level.

Thus, this communication will painstakingly and lengthily demonstrate the fact of the existence, extent, system and methodology under the Davao Death Squad of eliminating by extra-judicial killing or summary execution or murder persons merely suspected of crime and the direct participation and involvement of President Duterte as the then Mayor of Davao City in the extra-judicial or summary executions in Davao City of suspected criminals like snatchers, robbers, drug addicts/pushers and others numbering not less than 1,400 killed. For this purpose, this communication will rely mainly on the testimonies of Matobato and Lascañas who both exposed in the Senate of the Philippines the direct participation and involvement of President Duterte in the extra-judicial or summary executions in Davao City through what is now known and proven as his Davao Death Squad.

This communication will rely on the public speeches and media pronouncements of President Duterte prior to his candidacy for President and during the formal campaign for President in the national elections last May 2016. These statements will be relied upon to prove a mental state of President Duterte indicating his clear and manifest intention to CONTINUE his system or strategy of killing suspected criminals, in this case, drug addicts and dealers in his war on drugs at the national level, which he found to be the “best practice” in eradicating or controlling crime in Davao City.

Also, this communication will rely on the public speeches, statements and media pronouncements of President Duterte when he became President clearly demonstrating his confirmation, awareness and knowledge of the continuation of his system or strategy of killing drug pushers/addicts in his brutal war on drugs and, of the fact of the continuing mass murder itself, as evidenced by his rhetoric of encouragement and incitement to police and vigilante killings.

This communication will also demonstrate why there is legal compliance with the requirements of jurisdiction and admissibility which should first be passed upon

by the Office of the Prosecutor in a preliminary examination. This communication will further demonstrate why there is sufficient basis for the Office of the Prosecutor to open a formal investigation, with the permission of the Pre-Trial Chamber, over the extra-judicial or summary executions being “repeatedly, unchangingly and continuously” committed by and under President Duterte from the time that he was the Mayor of Davao City and up to the time that he became the President in his war on drugs at the national level in a widespread or systematic attack directed against a civilian population.

Finally, this communication will demonstrate why the extra-judicial executions “repeatedly, unchangingly and continuously” committed ever since in Davao City under the Davao Death Squad and later in the war on drugs at the national level fall within the elements of crime against humanity being charged against President Duterte and his senior administration officials pursuant to the Elements of Crime set out by the Assembly of States Parties. More particularly, this communication will demonstrate that President Duterte, in continuing after becoming President the “best practice”, strategy or system implemented in Davao City through the Davao Death Squad, “repeatedly, unchangingly and continuously” committed MASS MURDER through the extra-judicial or summary executions as part of a WIDESPREAD or SYSTEMATIC ATTACK against a civilian population in his war on drugs in the national level after he became the death squad President, which he began when he was still the Mayor of Davao City.

For this purpose, this communication will rely on the public statements of President Duterte after he became the President which clearly prove his mental state in that he knows or is aware of the extra-judicial executions “repeatedly, unchangingly and continuously” happening in his war on drugs at the national level, judging from his rhetoric of incitement or encouragement intended consciously as a means of promoting or encouraging the organizational policy to attack a civilian population, specifically and disproportionately the poor and impoverished communities.

In proving multiple murders as part of a SYSTEMATIC or WIDESPREAD attack carried out in Davao City under the Davao Death Squad, this communication will rely mainly on the direct firsthand testimonies of Matobato and Lascañas, in conjunction with other reliable sources of information. In proving multiple murders as part of the SYSTEMATIC or WIDESPREAD attack being committed in the war on drugs at the national level, this communication will rely heavily on the field research conducted by way of personal interviews made by the Amnesty International as reported in its recent report entitled “*If You Are Poor, You Are Killed: Summary Executions in the Philippines*”³³ and made also by the Human Rights Watch as reported in its recent report entitled “*License to Kill: Philippine Police Killings Duterte’s War on Drugs*”.³⁴ Amnesty International made the documentation of 33 drug-related incidents involving 59 deaths. Human Rights Watch made a documentation of 24 incidents involving 33 deaths. Also, victims of the continuing extra-judicial executions both in Davao City

³³ See https://www.amnestyusa.org/sites/default/files/philippines_ejk_report_v19_final_0.pdf

³⁴ See <https://www.hrw.org/report/2017/03/01/license-kill/philippine-police-killings-dutertes-war-drugs>

and in the war on drugs at the national level will be later presented, if warranted before the International Criminal Court.

***CONTINUING COMMISSION OF CRIMES
AGAINST HUMANITY BY, OR ON
ORDERS OR INCITMENT OF MAYOR
AND PRESIDENT RODRIGO DUTERTE***

It is humbly submitted that President Duterte already committed crimes against humanity through the extra-judicial or summary executions constituting more than a thousand murders at the hands of the Davao Death Squad under his order, leadership and command in Davao City when he was still the Mayor of said city for two decades. His strategy, system or policy of crime control then in Davao City was to “erase”, eliminate or kill suspected criminals such as snatchers, robbers, and drug pushers/addicts through his now infamous Davao Death Squad. Even while President Duterte is already President of the Philippines, his system or strategy of erasing, eliminating and killing persons suspected of crimes is still, in fact, being undertaken in Davao City up to the present.

In a public speech, President Duterte boasted as Mayor then that his “best practice” in eradicating or controlling crime in Davao is to kill suspected criminals, asserting it to be his secret in making his claim that Davao City the ninth safest city in the world. Based on his public pronouncements when he was still vying for President, Mayor Duterte manifested a clear intention to CONTINUE with his “best practice”, strategy or system in Davao City when he made the eradication of the drug menace as a centerpiece of his campaign platform for the presidency. In fact, his campaign promise underlined by his serious threats in public TO KILL drug addicts and pushers made him so popular that he won by 16 million votes, all the more compelling and pressuring him to continue his “best practice”, strategy or system in the Davao Death Squad in order to fulfill his campaign promise.³⁵

It is, thus, humbly submitted that when Mayor Duterte was elected and assumed office as President of the Philippines, he intended to continue and in fact did continue, by way of a model or template, the “best practice”, strategy or system implemented by him in Davao City through the Davao Death Squad when he was still the Mayor and, in furtherance of such intent to continue, he expanded its coverage, as President, to the national level in order to implement his campaign promise to eradicate the drug problem in six months.³⁶

³⁵ 25 May 2015. Duterte admits links to Davao Death Squad. ABS-CBN News. Retrieved from <http://news.abs-cbn.com/halalan2016/nation/regions/05/25/15/duterte-admits-links-davao-death-squad-says-hell-kill-100000-criminals><http://news.abs-cbn.com/halalan2016/nation/regions/05/25/15/duterte-admits-links-davao-death-squad-says-hell-kill-100000-criminals>

³⁶ R. Ramirez. 17 January 2016. Philstar News. Retrieved from <http://www.philstar.com/headlines/2016/01/17/1543436/duterte-kill-me-if-i-dont-resolve-crimes-6-months><http://www.philstar.com/headlines/2016/01/17/1543436/duterte-kill-me-if-i-dont-resolve-crimes-6-months>

Fortunately, after so long a time, we now have direct proof beyond reasonable doubt of the fact of this “best practice”, strategy or system in the Davao Death Squad in “erasing” or killing suspected criminals as a means of crime control implemented by President Duterte when he was still a Mayor of Davao City. Vital to this direct substantial proof beyond reasonable doubt is Matobato who is the first direct first-hand witness on the national scene, particularly in the Senate of the Philippines, to testify against President Duterte as the leader, financier and mastermind of the mass murder undertaken by him under the Davao Death Squad.

But prior to Matobato, sometime in 2009, there was Ernesto Avasola who testified, without media fanfare, in a court in Manila in support of the application of the Philippine National Police for a search warrant to search for skeletal remains in the Laud property in relation to the Davao Death Squad.³⁷

Then, much recently, retired cop Lascañas corroborated, by way of his public confession and also his Senate testimony, the earlier testimony of Edgar Matobato, by confirming the existence of the Davao Death Squad, detailing its structure, organization, system and pointing to the direct involvement and participation of Mayor Rodrigo Duterte in the mass murder committed in Davao City under his Davao Death Squad.

In light of this recent development, it is humbly submitted that since President Duterte merely CONTINUED his “best practice”, strategy or system of killing suspected criminals, this time in his so-called war on drugs at the national level, the testimonies of Edgar Matobato and Arthur Lascañas, in conjunction with that of Ernesto Avasola, prove the same “repeated, unchanging and continuing” “best practice”, strategy or system, which was implemented both (1) first, in the Davao Death Squad in Davao City when Rodrigo Duterte was still the Mayor of Davao City, and (2) second, by way of continuation of that “best practice”, in the continued extra-judicial executions in the war of drugs happening on a national scale after he became the President on 30 June 2016.

Stated differently, since the “best practice”, strategy or system that was implemented in Davao City by Mayor Rodrigo Duterte for two decades even up to now is being continued by President Duterte as also the very same “best practice”, strategy or system implemented in the extra-judicial executions conducted in his war on drugs after he became the President, the testimonies of Edqar Matobato and Arthur Lascañas constitute a common evidence for the very same “best practice”, strategy or system, as utilized and implemented BOTH (1) earlier in the Davao Death Squad in Davao City when President Duterte was still the Mayor and, (2) by way of continuation, in the continued extra-judicial executions at the national level in the war on drugs when he became the President.

³⁷ SC on Davao Death Squad case: PNP can search quarry for bodies. 24 September 2016. Rappler News. Retrieved from <http://www.rappler.com/newsbreak/in-depth/147153-supreme-court-ruling-laud-quarry-davao-death-squad><http://www.rappler.com/newsbreak/in-depth/147153-supreme-court-ruling-laud-quarry-davao-death-squad>

President Duterte's continuation at the national level of the "best practice", strategy or system of crime control implemented by him previously through the Davao Death Squad in Davao City when he was still the Mayor, which is to "erase", eliminate or kill suspected criminals, is further proven by the same basic elements or hallmarks extant in the extra-judicial executions of drug pushers and users in his so-called war on drugs at the national level. A central and defining element of the "best practice", strategy or system is, of course, no other than President Duterte himself, what with his criminal character and mindset.

Like any person in the ordinary course of human conduct, President Duterte would not discard and would in fact utilize what to him is of proven value in terms of actual experience, even to the extent of improving on it. Since the founder, architect and leader of the Davao Death Squad is the very same person in no other than Rodrigo Duterte, before as the Mayor of Davao City and now as the President of the Philippines, it is no wonder then that the extra-judicial executions that happened in Davao City through the Davao Death Squad bearing the serial hallmarks are being continued with the same hallmarks in the extra-judicial executions in the war on drugs after he became the President.

The basic material hallmarks or elements in the extra-judicial executions in the Davao Death Squad in Davao City and in the continued extra-judicial executions after President Duterte became the President are too numerous and too obvious to escape scant attention.

First, there is the element of police participation and command.

Second, there is the element of a hitman or an unknown armed assailant.

Third, there is a reward system for every killing.

Fourth, there is a reward in cash.³⁸

Fifth, there is a *kill watch list*.

Sixth, there is collaboration between barangay and police officials.³⁹

Seventh, there is the cardboard sign and the face/body wrapped in packing tape.⁴⁰

³⁸ M. Mogato & C. Baldwin. 18 April 2017. Special Report: Police describe kill rewards, staged crime scenes in Duterte's drug war. Reuters. Retrieved from: <http://www.reuters.com/article/us-philippines-duterte-police-specialrep-idUSKBN17K1F4>

³⁹ Marshall, A. & Chalmers, J. (7 October 2016). Special Report: In Duterte's war on drugs, local residents help draw up hit lists. Retrieved from <http://www.reuters.com/article/us-philippines-duterte-hitlists-idUSKCN127049>

⁴⁰ B. Cupin. 09 March 2017. Lascañas warns PNP: One day, you'll feel the pain I feel. Rappler News. Retrieved from: <http://www.rappler.com/newsbreak/investigative/163653-lascanas-pnp-war-on-drugs>

Eighth, there is the use of “riding in tandem” motorcycle-riding assailants.

Ninth, there is the use of hooded or masked assailants.

Tenth, there is the planting of a gun and drugs.⁴¹

Furthermore, the public pronouncements of President Duterte after he became the President express a loud and clear intention to promote, encourage, or incite the police and civilians to mass murder or violence,⁴² thereby betraying the self-same mental state indicating an awareness, knowledge or intent to further continue at the national level, in an unrelenting fashion and with the same impunity, what he considers to be the “best practice”, strategy or system of killing suspected criminals through the Davao Death Squad when he was still the Mayor of Davao City.

Very fortunately, we now know about the fact of the nature, system and extent of the extra-judicial or summary executions that were carried out under the Davao Death Squad when President Duterte was still the Mayor of Davao City, because we already have firsthand witnesses in the persons of Matobato and Lascañas who have personal knowledge, as direct participants, of such extra-judicial or summary executions. Having known of the “best practice”, strategy or system implemented by President Duterte through the Davao Death Squad when he was still the Mayor, we also now know for a fact about the nature, system and extent of the extra-judicial or summary executions happening after President Duterte became the President, because he just intended to continue and, in fact, did continue such “best practice”, strategy or system on a national scale in his war on drugs.

Needless to state, it could even be said that without proof beyond reasonable doubt of the fact about the extrajudicial or summary executions of the Davao Death Squad based on the testimonies of Matobato and Lascañas, it would be extremely difficult, if not next to impossible, to prove the “best practice”, system or strategy for crime control in the extra-judicial or summary executions which President Duterte, as then Mayor, implemented in Davao City under his Davao Death Squad and which he later merely continued in the war on drugs when he became the President. But now with their firsthand testimonies, which are of public knowledge and available and accessible in the public domain, we now know for a fact about the nature, extent, system and method in the extra-judicial or summary executions in the war on drugs, because we already know about the “best practice”, strategy, or system in the Davao Death Squad in Davao City which was just continued and is being continued by President Duterte in his war on drugs after he became the President.

⁴¹ M. Mogato & C. Baldwin. 18 April 2017. Special Report: Police describe kill rewards, staged crime scenes in Duterte’s drug war. Reuters. Retrieved from: <http://www.reuters.com/article/us-philippines-duterte-police-specialrep-idUSKBN17K1F4><http://www.reuters.com/article/us-philippines-duterte-police-specialrep-idUSKBN17K1F4>

⁴² L. Tan. 3 March 2017. Duterte encourages vigilante killings, tolerates police modus – Human Rights Watch. CNN Philippines. Retrieved from: <http://cnnphilippines.com/news/2017/03/02/Duterte-PNP-war-on-drugs-Human-Rights-Watch.html><http://cnnphilippines.com/news/2017/03/02/Duterte-PNP-war-on-drugs-Human-Rights-Watch.html>

In sum, the following propositions are humbly submitted before the Office of the Prosecutor of the International Criminal Court, namely: (1) as a Mayor of Davao City, Rodrigo Duterte already committed CRIMES AGAINST HUMANITY through the mass murder or extra-judicial executions under his Davao Death Squad of suspected criminals carried out as a “best practice”, strategy or system for crime control, and (2) as the President on and after 30 June 2016, he merely intended to continue and did continue the commission of CRIMES AGAINST HUMANITY also carried out under the same “best practice”, strategy or system of extra-judicial or summary executions in Davao City, this time in his war on drugs at the national level. In other words, President Duterte, as a Mayor and later as a President, has been “repeatedly, unchangingly and continuously” committing crimes against humanity through mass murder since the time that he was the Mayor of Davao City up to the time when he immediately became the President of the Philippines in his war on drugs at the national level.

COMPLIANCE WITH JURISDICTIONAL REQUIREMENT

Subject Matter Jurisdiction

In this communication, what is being sought to be brought to the subject matter jurisdiction of the International Criminal Court are the crimes against humanity through extra-judicial or summary executions constituting mass murder “repeatedly, unchangingly and continuously” being committed and undertaken by President Duterte when he was still the Mayor of Davao City through his Davao Death Squad and later when he became the President of the Philippines on and after 30 June 2016. This “repeated, unchanging and continuous” commission of mass murder carried out as part of a systematic or widespread attack against a civilian population falls within the definition of a crime against humanity through murder pursuant to the Elements of Crime set out by the Assembly of States Parties, and as provided for under Article 5, Rome Statute of the International Criminal Court. Clearly, this continuing commission of mass murder constituting a crime against humanity falls within the subject matter jurisdiction of the International Criminal Court.

Temporal Jurisdiction

While it is asserted that President Duterte already committed crimes against humanity when he was a Mayor of Davao City, only those acts of mass murder carried out or undertaken after August 2011, which is the time that the Philippines became a state party to the Rome Statute of the International Criminal Court, are being submitted to the temporal jurisdiction of the International Criminal Court. In this regard, it must be borne in mind that President Duterte was the Mayor of Davao City starting in 1988 and for most of two decades immediately prior to his election as President, including the material period after August 2011. The “repeated, unchanging and continuous” commission of mass murder constituting crime against

humanity through murder committed after August 2011, when he was still a Mayor and later when he was already the President, is within the temporal jurisdiction of the International Criminal Court.

Territorial or Personal Jurisdiction

The mass murder constituting crime against humanity “repeatedly, unchangingly and continuously” undertaken or committed directly by, or with the order, incitement or contribution with the aim of furthering a common criminal purpose of, President Duterte when was still the Mayor of Davao City and up to the time that he became the President on 30 June 2016 have been occurring inside Davao City, Metro Manila, other urban centers and other places on a nationwide scale, which are all within the territory of the Philippines and are therefore within the territorial jurisdiction of the International Criminal Court. Also, the individual primarily to be charged who is President Duterte, a national and resident of the Philippines which is a state party to the Rome Statute, clearly falls within the personal jurisdiction of the International Criminal Court. Furthermore, all the other individuals being charged together with President Duterte are nationals and residents of the Philippines and also fall within the personal jurisdiction of the International Criminal Court.

COMPLIANCE WITH ADMISSIBILITY REQUIREMENTS

Complementarity

It is humbly submitted that there is substantial, if not full compliance, with the principle of complementarity under Article 17 of the Rome Statute. The Philippine State through the Duterte administration has the duty under international conventions, most particularly the International Convention on Civil and Political Rights, to provide effective remedy against extra-judicial, arbitrary and summary executions, to investigate promptly, efficiently and effectively such executions and bring to justice those responsible therefor. Under the Rome Statute of the International Criminal Court, the Philippine State, represented by the Duterte government, has an obligation to end impunity in relation to the most serious crimes of concern to the international community as a whole, and in case there is no national investigation to end impunity or in case of an unwillingness or inability to do so, the Philippine State has allowed the International Criminal Court to intervene by exercising complementary jurisdiction over such crimes.

As a president, President Duterte made the eradication of the perceived drug menace in six months as the centerpiece of his presidential campaign. Immediately after taking his oath as President, he launched a virulent and brutal national campaign against illegal drugs, more popularly called “war on drugs” that has resulted in a national bloodbath in a scale never seen before in recent history. In his first seven months in the office or from June 2016 to January 2017, 7,000 drug-related killings have been recorded as having been committed by police and unknown armed

persons. The body count has continued to mount and increase into his ninth month in office, reaching up to more than 8,000 to date. In the meantime, criticisms and voices of protest, both locally and internationally, have stepped up. But President Duterte has been continuously and without let-up lashing out at his critics with profanity-laced utterances.⁴³

Never at any instance has it been recorded that President Duterte ever condemned the 7,000 to 8,000 drug related killings, citing it instead as proof of the success of his war on drugs.⁴⁴ Neither has he taken direct action by issuing any proclamation or executive order for his administrative agencies in his executive department to bring to criminal justice persons responsible – and that includes himself - for crimes against humanity which are precisely the subject matter being brought before the International Criminal Court through this communication.⁴⁵ Instead of condemning the thousands of extra-judicial executions and bringing to criminal justice the perpetrators thereof including himself, he even incited the police and civilians to mass violence and recently vowed to continue his war on drugs or the mass murder up to the end of his six-year presidential term.⁴⁶

Consequently, at the national level, national investigation agencies in the Duterte government like the Department of Justice, particularly its National Bureau of Investigation, and the Philippine National Police, have not launched nor conducted any national investigation into the kind of situation that is being brought before the International Criminal Court through this communication. *More particularly, these investigatory agencies supposed to be mandated to conduct investigations into reported incidents of crime have not opened, much less conducted, any probe or investigation dealing specifically with the potential criminal responsibility or liability of President Duterte and his senior officials of his administration, in the historical context of the Davao Death Squad, over the continuing commission of mass murder or extra-judicial executions before in Davao City under this Davao Death Squad and later in his war on drugs at the national level carried out as part of a systematic or widespread attack directed against a civilian population.*

In the clear absence of such specific national inquiry or investigation by the Duterte government in the Philippines involving specifically the criminal responsibility or liability of President Duterte as Mayor and later as President and of his senior administration officials - *which is precisely the subject matter of the situation being brought before the International Criminal Court through this communication* - there is, on that factual basis alone, sufficient and full compliance with the principle of complementarity under Article 17 of the Rome Statute. Thus, the matter of the specific criminal responsibility or liability of President Duterte, as a Mayor and

⁴³ 20 March 2017. Duterte lashes out anew at EU, top critics. UNTV News and Rescue. Retrieved from <https://www.untvweb.com/news/duterte-lashes-anew-eu-top-critics/>

⁴⁴ A. Romero & R. Pareño. 12 September 2016. Drug war a success – Palace. The Philippine Star. Retrieved from <http://www.philstar.com/headlines/2016/09/12/1622959/drug-war-success-palace>

⁴⁵ K. Phillips. 18 October 2016. Duterte has a name for innocent people killed in the Philippines' drug war: Collateral damage. The Washington Post. Retrieved from:

⁴⁶ A. Romero. 31 January 2017. Duterte extends drug war until 2022. The Philippine Star. Retrieved from: <http://www.philstar.com/headlines/2017/01/31/1667619/duterte-extends-drug-war-until-2022>

President, and of his senior government officials under the specific situation, principally in the context of the Davao Death Squad, which is the subject matter of this communication, is legally ADMISSIBLE insofar as the principle of complementarity is concerned.

Furthermore, the undeniable fact of the matter is that the Duterte government, through its executive branch headed by President Duterte himself, is also simply UNWILLING or UNABLE to open and pursue the kind of investigation into the specific situation that is being brought before the International Criminal Court. *In this communication, the situation that is specifically being brought before the International Criminal Court is the specific criminal liability or responsibility of President Duterte, as a Mayor & President, and of his senior officials in government for crime against humanity over the continuing commission of mass murders or extra-judicial or summary executions ever since he was the Mayor of Davao City and up to the time that he became the President of the Philippines.*

The hard political reality in the Philippines is that President Duterte will never open, much less pursue, an investigation in his executive department into his very own criminal liability as a death squad Mayor and President as well as that of his senior officials in his government, specifically in relation to crimes against humanity in the actual historical context of his Davao Death Squad in Davao City when he was still the Mayor. Just like what happened in Davao City when he was the Mayor, he will never order the investigative agencies under him like the Department of Justice, the National Bureau of Investigation and the Philippine National Police to conduct such kind of investigation. Based on his repeated public pronouncements, President Duterte has even incited, promoted and encouraged policemen to kill drug personalities and assured them of protection if brought to prosecution or of pardon and reinstatement to the police service, with rank promotion, if convicted.⁴⁷ Despite strong criticisms from the international community, from the Catholic Bishops Conference of the Philippines, heads of States, the United Nations personnel, the reports of the Amnesty International and Human Rights Watch, still President Duterte has not bothered at all to conduct or to order the conduct of an investigation, specifically in the context of his Davao Death Squad relating to his specific criminal liability and responsibility over the continuing commission of extra-judicial executions in his war on drugs at the national level.

Even if there were investigations into the extra-judicial executions in the war on drugs, such investigations would be futile, because President Duterte has promised to support any policeman charged in court for following presidential orders to carry out the war on drugs. A case in point is that of PNP Supt. Marvin Marcos, and his men, who have been found guilty by both the National Bureau of Investigation (NBI) and the Senate Committee on Justice and Human Rights. Against the Rules of Court, police procedures and even logic, Marcos served a warrant of arrest to Albura Mayor Espinosa, before dawn, and inside the jail cell where Espinosa was being detained after

⁴⁷ 01 April 2017. Duterte vows anew to pardon, promote cops who killed Espinosa. ABS-CBN News. Retrieved from: <http://news.abs-cbn.com/news/03/31/17/duterte-vows-anew-to-pardon-promote-cops-who-killed-espinosa>

surrendering to the police. Espinosa was shot dead in what Marcos claimed was a firefight, but what investigators said was cold-blooded murder. When asked to comment about the Senate findings that Marcos was guilty of murder, President Duterte promised to support Marcos because, he said, the police were his men and so he had to support them.⁴⁸ In later speeches, President Duterte also promised to pardon them, should they be convicted in a local court, and to promote them after.⁴⁹ In this situation, how can the Executive branch of the Duterte government, which is tasked with both the investigation and the prosecution of the killings, investigate itself? How can the executive branch carry out a genuine investigation when President Duterte himself continues to publicly support the police version, in the face of contrary evidence and findings?

In the Rome Statute, one of the conditions used to determine inability to investigate a particular case is the total or substantial collapse or unavailability of a country's national judicial system. The Philippine judicial system, which is independent from the executive, is functioning. But the judgment of its courts is dependent on the investigations carried out by the Executive, and its courts cannot conduct a genuine trial without an impartial investigation by the police. Further, the decisions of the courts are subject to presidential pardon: the courts may convict but the president may pardon, as the President Duterte has promised, again and again, to those who carry out his orders to kill. Justice will still not be served, if the President will pardon those whom the courts convict of these crimes. Any investigation and trial, therefore, must involve President Duterte and his criminal liability and responsibility as the mastermind and leader of the Davao Death Squad in Davao City and in the continuing mass murder in the war on drugs at the national level.

The composition of the current Duterte administration makes it doubly impossible for an investigation by the Duterte government into the criminal liability of President Duterte as a President over the continuing extra-judicial executions in the war on drugs in the factual context of the Davao Death Squad when he was still the Mayor of Davao City. Atty. Vitaliano Aguirre who is the Secretary of Justice is a law school classmate and fraternity brother of President Duterte. He also served at one time as the lawyer for Senior Police Officer 4 Bienvenido Laud in the Avasola case.⁵⁰ Atty. Salvador Medialdea who is Executive Secretary or the so-called "Little President" is close to the President, due to their long-standing friendship dating back to their fathers and served also as counsel in the Avasola case for PSO4 Bienvenido Laud, a known leading member of the Davao Death Squad. Atty. Dante Gierran, who is the Director of the National Bureau of Investigation, was part of the group that fed a live individual tagged as a kidnapper to a crocodile in Digos City, a city in southern Mindanao.⁵¹ Atty. Salvador Panelo, the Presidential Legal Counsel, had also served as

⁴⁸ Ibid.

⁴⁹ Transcript of President Duterte's public speeches. (Annex G)

⁵⁰ SC on Davao Death Squad case: PNP can search quarry for bodies. 24 September 2016. Rappler News. Retrieved from: <http://www.rappler.com/newsbreak/in-depth/147153-supreme-court-ruling-laud-quarry-davao-death-squad>

⁵¹ Transcript of the 15 September 2016 Hearing of the Senate Committee on Justice and Human Rights (Annex H)

lawyer for President Duterte and was counsel for the Ampatuans in the so-called Maguindanao Massacre.⁵² Atty. Jose Calilda, who is Solicitor General, also served as a chief assistant in Davao City when Duterte was still Mayor. Last but not the least is Philippine National Police Chief Ronaldo de la Rosa who heads the Philippine National Police and was once the Chief of the City Police of Davao City when Duterte was still Mayor. He was one of those tagged by Edgar Matobato and Arthur Lascañas in certain criminal incidents involving the Davao Death Squad.⁵³

All these President's men who are holding senior key positions in the Duterte government and who have the legal mandate to conduct investigations cannot and will not anymore be expected to conduct such kind of investigation. The reason is so simple to see. As alter egos and trusted men of President Duterte, they are not in a position to contradict the actuations and pronouncements of President Duterte. As a matter of fact, except for Atty. Medialdea and Atty. Gierran who have kept mum, all the rest have announced in public their full support for the President Duterte's war on drugs and defended the extra-judicial or summary executions as part of legitimate police drug operations. As a result, there has been no investigation into the kind of situation that is being brought before the International Criminal Court through this communication.

Undeniably, if there is to be any investigation undertaken or to be undertaken into the specific situation sought through this communication to be brought to the International Criminal Court or in connection with any matter relevant to such specific situation, there can be no meaningful and genuine investigation at all. This is simply because the Duterte government is unwilling or unable to do so on account of the fact that President Duterte is himself criminally involved and liable in the context of the Davao Death Squad ever since he was the Mayor of Davao City. If it is any indication, during the time that he was the Mayor of Davao City, President Duterte never even lifted a finger to investigate the thousand killings undertaken under the Davao Death Squad. This is precisely because on hindsight he is personally involved. The same is perfectly true this time that he is now the President of the Philippines who, as such, will not open, much less allow, a national investigation into his own personal criminal liability or responsibility for the mass murder.

Also taking the cue from President Duterte himself who as an afterthought instructed police to kill suspected drug addicts and dealers who are said to be resisting, the police are falsifying police spot reports and planting evidence to make it appear that drug personalities fought back and had to be killed as a matter of self-defense.⁵⁴ The police will always rely on the falsified reports of their colleagues by according to such report the presumption of regularity in the performance of official duty, as

⁵² Gavilan. 19 May 2016. Duterte's spokesman Salvador Panelo and his high-profile cases. Rappler News. Retrieved from: <http://www.rappler.com/newsbreak/in-depth/133490-rodrigo-duterte-presidential-spokesperson-salvador-panelo>

⁵³ Transcript of the 15 September 2016 Hearing of the Committee on Justice and Human Rights (Annex H) Transcript of the 06 March 2017 Hearing of the Committee on Public Order and Dangerous Drugs (Annex I)

⁵⁴ C. Mendez. 20 December 2016. "Suspect unarmed? Give him a gun". The Philippine Star. Retrieved from: <http://www.philstar.com/headlines/2016/12/20/1655205/suspect-unarmed-give-him-gun>

previously asserted in public by no less than Justice Secretary Vitaliano Aguirre.⁵⁵ Also, the police will stand by their falsified official version that the drug personality fought back and opened fire justifying self-defense on the part of the police operative, even if witnesses' account clearly contradicts the police version. President Duterte has pronounced that he will stand by the police no matter what. Relatives and families of victims are afraid to come out due to police reprisal. The fear of reprisal coupled with the pressure the police will bear on the potential victims or their families makes any investigation virtually impossible.

What comes close perhaps to a national investigation, albeit done in the legislative branch, is the Senate inquiry conducted first by the Senate Committee on Justice and Human Rights joint with the Committee on Public Order and Dangerous Drugs and later by the Committee on Public on Public Order and Dangerous Drugs. But it has to be noted that the Senate investigation is only in aid of legislation; it is not geared towards the finding or determination of the criminal liability or responsibility of President Duterte which is what is specifically being brought before the International Criminal Court through this communication. In other words, in technical legal terms, the Senate exercised its legislative power over a subject matter in aid of legislation which is not the same as the situation being brought before the International Criminal Court through this communication, which is the criminal liability or responsibility of President Duterte over the continuing mass murder committed ever since by him through his Davao Death Squad in Davao City and later in his war on drugs at the national level after he became the President.

In fact, the first Senate inquiry conducted by the Committee on Justice and Human Rights joint with the Committee on Public Order and Dangerous Drugs originally began with the aim only of looking into and investigating the spate of the extra-judicial executions in the war on drugs after 30 June 2016; or to be sure, it was not intended to investigate, look into or determine the criminal liability or responsibility of President Duterte. It was only later with the testimony of Edgar Matobato that the inquiry began to veer towards the Davao Death Squad and the personal involvement of President Duterte in the Davao Death Squad and its willful killings in Davao City when he was still the Mayor. In fact, to serve as factual basis for the presentation of Edgar Matobato, Senator Antonio Trillanes IV had to, as he did, belatedly file a Resolution, consistent with the Senate rules, to include in the inquiry the matter involving the Davao Death Squad.⁵⁶ This was followed later by the testimony of Arthur Lascañas in the Committee on Public Order and Dangerous Drugs, who confirmed the earlier testimony of Edgar Matobato by confirming the existence of the Davao Death Squad, its willful killings in Davao City and the personal involvement of President Duterte as the Mayor then.

In light of the first testimony of Edgar Matobato, the Senate inquiry turned out to be veering towards the Davao Death Squad and President Duterte's personal

⁵⁵ 27 January 2017. Palace says Duterte presumes regularity of police operations. ABS-CBN News. Retrieved from: <http://news.abs-cbn.com/news/01/27/17/palace-says-duterte-presumes-regularity-of-police-operations>

⁵⁶ See Proposed Senate Resolution No. 151. Retrieved from <http://senate.gov.ph/lisdata/2483521385!.pdf>

involvement as then Mayor. And yet at this time, it already became clear that the majority Senators allied with President Duterte had no intention to investigate his personal involvement in the Davao Death Squad and his potential criminal liability in relation to the extra-judicial executions under his Davao Death Squad as well as in his war on drugs. Instead of further making an investigation, they prematurely cut short the Committee inquiry and prematurely judged Edgar Matobato to be not credible. The subsequent testimony of Arthur Lascañas forced the Senate to make a further inquiry. But again, after his testimony, the Committee simply adjourned without any intention anymore to conduct any further probe.

In all these inquiries, it became clear that the involvement and participation of President Duterte as the Mayor of Davao City in his Davao Death Squad became later to be the center of the controversy in relation to his war on drugs. But in its first Committee Report, Senator Richard Gordon as Chairman of the Committee on Justice and Human Rights, who is instrumental in the report, never recommended or pushed for the investigation by the Duterte administration into the direct participation of President Duterte in the Davao Death Squad and his potential criminal liability therefor. Instead, out of bias and his political alliance with President Duterte, he prematurely concluded that the Davao Death Squad does not exist.⁵⁷ The participation and potential criminal liability of President Duterte in the Davao Death Squad became much clearer in the testimony of Arthur Lascañas.

Still, the Senate Committee on Public Order and Dangerous Drugs did not push or recommend for a national investigation by the Duterte administration into the personal involvement of President Duterte in the Davao Death Squad and his potential criminal liability therefor as well as his potential criminal liability for the extra-judicial executions in his war on drugs at the national level in the historical context of the Davao Death Squad.

From all these developments, it becomes resoundingly clear that the Senators politically allied with President Duterte are unwilling or unable to investigate further his direct personal involvement in his Davao Death Squad and its willful killings in Davao City, the extra-judicial executions in the war on drugs in the actual context of the Davao Death Squad and his potential criminal liability therefor. The Senate, as an institution, has so far shown its intention to refrain from the conduct, or is not expected to conduct, such kind of investigation into the potential criminal liability or responsibility of the President Duterte, because it is currently dominated by a majority bloc politically allied with President Duterte and is being headed by Senate President Aquilino Pimentel who is a high official of the Partido Demokratiko Pilipino (PDP)-Laban, Duterte's political party, which is dominated by Duterte allies.

Neither has the Senate recommended nor can it be expected to recommend that the investigative agencies of the Duterte government, especially in the executive department, should conduct such kind of investigation into the personal involvement of President Duterte in the Davao Death Squad, his potential criminal liability therefor

⁵⁷ See Senate Committee Report No. 18. Retrieved from <http://senate.gov.ph/lisdata/2518121701!.pdf>

as well as his potential criminal liability for the extra-judicial executions carried out in his war on drugs in the historical and actual context of the Davao Death Squad.

From all indications in the Senate of the Philippines, it can be observed that the Senate is unwilling or unable to further conduct, or push or recommend for the conduct of, a national investigation by the Duterte administration specifically into the following, namely; (1) the personal involvement of President Duterte in the Davao Death Squad, and (2) his potential criminal liability or responsibility for his direct involvement and participation in the mass murder undertaken by him under his Davao Death Squad, and (3) his potential criminal liability or responsibility for the extra-judicial executions in the war on drugs conducted at the National level. In turn, this unwillingness or inability of the Senate *can be interpreted to mean as a direct intention to obstruct justice with the aim of shielding the President Duterte from being exposed to criminal liability.*

In the alternative, such unwillingness or inability can also be interpreted to mean that, in the political situation prevailing where the super majority Senators are still allied with President Duterte, they wittingly or unwittingly did not intend or do not intend at all to directly confront the criminal liability or responsibility of President Duterte, *but intend instead, through their unwillingness or inability, to enable the International Criminal Court to exercise immediately its complementary jurisdiction.*

As a further alternative, the fact that the investigation in the Senate has been intentionally rendered to be “inactive” by its mere adjournment justifies the International Criminal Court to acquire complementary jurisdiction at this time.

Hence, in line with the ruling of the International Criminal Court in the case involving Germain Katanga which reached the Trial Chamber, this unwillingness or inability of the Philippine Senate - interpreted as being aimed to obstruct justice, or interpreted as being intended to enable the ICC to acquire jurisdiction, or interpreted further as rendering the case “inactive” – legally justifies, at this time, the complementary resort to the International Criminal Court as a court of last resort.

Furthermore, should any government instrumentality investigate the possible liability of President Duterte for the extra-judicial killings linked to the national war on drugs, the Philippines would be unable to prosecute him for these crimes. In 2009, the Philippines passed Republic Act 9851⁵⁸ or the Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity. This law defines and penalizes various forms of crimes against humanity, including the acts of willful killing, extermination, and other inhumane acts. Though any investigative body might find probable cause for the crimes committed by President Duterte under this law, it cannot prosecute him due to the established *constitutional immunity from suit* of the Philippine President during his tenure, as prescribed under Section 9 (a) of the said law.

⁵⁸ The Official Gazette. 2009. RA 9851. Retrieved from <http://www.gov.ph/2009/12/11/republic-act-no-9851/>

It has also to be stressed that the Rome Statute speaks of a state's UNWILLINGNESS to investigate or INABILITY to prosecute. The use of the disjunctive word "or" means that it is sufficient to show either UNWILLINGNESS to investigate or INABILITY to prosecute. Accordingly, if as in this case it is established that the Duterte government is UNWILLING to investigate, and UNABLE to prosecute the President, there is all the more sufficient and substantial compliance with the principle of complementarity.

On the one hand, under the rule of complementarity, it is the State itself that has the obligation to end impunity, because it is the party to the Rome Statute. Simply put, the Rome Statute obliges the State party to be willing or able to provide effective and genuine remedy to put an end to impunity. It does not oblige the State to exhaust remedies. Thus, the State's mere unwillingness or inability justifies an immediate resort to the International Criminal Court under the Rome Statute.

On the other hand, under the domestic procedural rule of "exhaustion of remedies", litigants who are individuals are obliged to resort to administrative remedies before resorting to the judicial remedies in the courts. This principle applies only to individuals in the domestic front. It does not apply to the International Criminal Court, because they are not parties to the Rome Statute.

In fine, for as long as there is no national investigation or inquiry opened or carried out by the Duterte administration into the situation involving specifically the criminal liability or responsibility of President Duterte and his senior administration officials over the continuing commission of crimes against humanity in the context of the Davao Death Squad, OR in the alternative, it being abundantly clear that the Duterte administration is unwilling or unable to open or conduct such kind of an investigation, the complementary jurisdiction of the International Criminal Court as a court of last resort in relation to such crimes can, at this time, already be resorted to.

Further, it is humbly submitted that the unwillingness or inability on the part of the Duterte government to end impunity through effective and genuine national investigation in the domestic front - as a conscious effort at obstructing criminal justice at the national level or as means to enable the situation to be immediately referred to the International Criminal Court - makes it legally justifiable for the International Criminal Court to acquire, at this time, complementary jurisdiction over the specific situation under consideration in this communication; that is, *the specific criminal liability or responsibility of President Duterte over the continuing commission of extra-judicial or summary executions constituting crimes against humanity ever since he was the Mayor of Davao City up to the time that he became the President in the war on drugs at the national level.* This is in consonance with Article 17 of the Rome Statute and in consonance further with the ruling of the International Criminal Court in the situation involving Germain Katanga which reached the Trial Chamber.

GRAVITY

The “repeated, unchanging and continuous” commission of crimes against humanity arising from the mass murders since the time that Rodrigo Duterte was still the Mayor of Davao City up to the present after he became the President, with continuing and unrelenting impunity, is very grave by any standard of international or domestic law. These mass murders undertaken as part of a widespread or systematic attack against a civilian population of the Philippines, disproportionately an attack against the poor or impoverished civilian population, constitute a flagrant, wanton and willful violation of the non-derogable right to life enshrined in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and other international human rights laws.

The grim statistics of more than 7,000 drug-related killings cannot be anything but grave, especially if viewed in the context of just seven months since Rodrigo Duterte became the President, compared to only about 3,000 committed during the 20-year Marcos regime.⁵⁹ These more than 7,000 drug-related killings translate to roughly 1,000 killings per month. The impunity is grave, as shown by the “repeated, unchanging and continuing” extra-judicial or summary executions, with unrelenting impunity, ever since the time that President Duterte was still Mayor of Davao City claiming 1,400 deaths, more or less, under his Davao Death Squad and later on in the national level in the war on drugs after 30 June 2016 waged by the very same person, no less than President Duterte, who formed, created, managed, headed and masterminded the Davao Death Squad in Davao City when he was still a Mayor.

In fact, the impunity will continue, judging from the recent pronouncement of President Duterte that he will continue his war on drugs, meaning the extra-judicial executions, up to the end of his six-year presidential term. In the event President Duterte will be able to end his six-year term, the body count would reach an estimate of 72,000 for six years, based on the 1,000 killings per month, or could reach even a much higher number resulting in a national bloodbath of disastrous proportions. To end this impunity, the International Criminal Court is being resorted to as a court of last resort, given the gravity of the current human rights disaster in the Philippines.

Crimes against humanity are crimes of universal jurisdiction, but where a State like the Philippines fails to assume such universal jurisdiction for crimes against humanity continuously being committed in its very own territory, then the International Criminal Court will have to intervene into a situation that is grave by any human standard.

INTEREST OF JUSTICE

On 30 January 2017, the Catholic Bishops Conference of the Catholic Church in the Philippines issued a pastoral letter denouncing Duterte’s war on drugs as a “*reign*

⁵⁹ K. Francisco. 22 September 2016. Martial Law, the dark chapter in Philippine history. Rappler News. Retrieved from: <http://www.rappler.com/newsbreak/iq/146939-martial-law-explainer-victims-stories>

of terror”.⁶⁰ The Pastoral Letter was signed by Archbishop Socrates B. Villegas, DD, Archbishop of Lingayen-Dagupan and President of the Catholic Bishops Conference of the Philippines (CBCP). The Pastoral Letter⁶¹ was repeatedly read in Catholic churches during mass all over the country. The Catholic laity came out in condemnation of the war on drugs, by conducting a massive prayer rally where Manila Archbishop Luis Antonio Cardinal Tagle and Archbishop Socrates Villegas spoke in an unprecedented display of protest⁶².

The Pastoral Letter of the CBCP is quoted in full below, thus:

Beloved People of God

We, your bishops, are deeply concerned due to many deaths and killings in the campaign against prohibited drugs. This traffic in illegal drugs needs to be stopped and overcome. But the solution does not lie in the killing of suspected drug users and pushers. We are concerned not only for those who have been killed. The situation of the families of those killed is also cause for concern. Their lives have only become worse. An Additional cause of concern is the reign of terror in many places of the poor. Many are killed not because of drugs. Those who kill them are not brought to account. An even greater cause of concern is the indifference of many to this kind of wrong. It is considered as normal, and, even worse, something that (according to them) needs to be done.

We are one with many of our countrymen who want change. But change must be guided by truth and justice.

We stand for some basic teachings. These teachings are rooted in our being human, our being Filipino, and our being Christian.

1. The life of every person comes from God. It is he who gives it, and it is he alone who can take it back. Not even the government has a right to kill life because it is only God’s steward and not the owner of life.
2. The opportunity to change is never lost in every person. This is because God is merciful, as our Holy Father Pope Francis repeatedly teaches. We just finished celebrating the Jubilee Year of Mercy, and the World Apostolic Congress on Mercy. These events deepened our awareness that the Lord Jesus Christ offered his own life for sinners, to redeem them and give them a new future.
3. To destroy one’s own life and the life of another, is a grave sin and does evil to society. The use of drugs is a sign that a person no longer values his own life,

⁶⁰ See FULL TEXT: CBCP pastoral letter on drug-related deaths. Retrieved from: <http://www.rappler.com/nation/160524-full-text-cbcp-letter-reign-of-terror-war-on-drugs>

⁶¹ Philstar (2017, February) Full Text: CBCP’s pastoral statement vs illegal drugs, killings. From <http://www.philstar.com/headlines/2017/02/05/1669324/full-text-cbcps-pastoral-statement-vs-illegal-drugs-killings>

⁶² The Manila Times (2017, February 19) ‘Strength, not violence’: Prayer rally protests killings. From <http://www.manilatimes.net/strength-not-violence-prayer-rally-protests-killings/313027/>

and endangers the lives of others. We must all work together to solve the drug problem and work for the rehabilitation of drug addicts.

4. Every person has a right to be presumed innocent until proven guilty. Society has ways and processes to catch, prove guilty and punish perpetrators of crimes. This process must be followed, especially by agents of the law.

5. Any action that harms another (seriously) is a grave sin. To push drugs is a grave sin as is killing (except in self-defense). We cannot correct a wrong by doing another wrong. A good purpose is not a justification for using evil means. It is good to remove the drug problem, but to kill in order to achieve this is also wrong.

6. The deep root of the drug problem and criminality is the poverty of the majority, the destruction of the family and corruption in society. The step we have to take is to overcome poverty, especially through the giving of permanent work and sufficient wages to workers. Let us strengthen and carry forward the unity and love of the family members. Let us not allow any law that destroys the unity of families. We must also give priority to reforming rogue policemen and corrupt judges. The excessively slow adjudication of court cases is one big reason for the spread of criminality. Often it is the poor who suffer from this system. We also call upon elected politicians to serve the common good of the people and not their own interests.

7. To consent and to keep silent in front of evil is to be an accomplice to it. If we neglect the drug addicts and pushers we have become part of the drug problem. If we consent or allow the killing of suspected drug addicts, we shall also be responsible for their deaths.

We in the Church will continue to speak against evil even as we acknowledge and repent of our own shortcomings. We will do this even if it will bring persecution upon us because we are all brothers and sisters responsible for each other. We will help drug addicts so that they may be healed and start a new life. We will stand in solidarity and care for those left behind by those who have been killed and for the victims of drug addicts. Let us renew our efforts to strengthen families.

Those of us who are leaders in the Church should strive to push forward or continue programs that will uplift the poor, like livelihood, education and health programs. Above all we will live up to — we all will live up to — becoming a Church of the Poor.

Let us not allow fear to reign and keep us silent. Let us put into practice not only our native inner strength but the strength that comes from our Christian faith. Our Lord Jesus promised us: “You will have affliction in this world, but take courage, I have overcome the world” (Jn. 16:33).

“What will separate us from the love of Christ? Will anguish, or distress, or persecution, or famine, or nakedness, or peril, or the sword? No, in all these things we conquer overwhelmingly through him who loved us.” (Rom. 8:35,37) Yes, indeed, “For the Spirit that is in you is more powerful than the spirit in those who belong in the world.” (1 Jn. 4:4)

As we commemorate the 100th year of the apparition of Our Lady of Fatima, let us respond to her call for prayer and repentance for the peace of our communities and of our country shrouded in the darkness of vice and death.

Mary, Mother of Perpetual Help, Pray for us.

On the other hand, on 15 March 2017, the European Parliament passed and approved a Resolution⁶³ which, among others, condemned the incarceration of Senator Leila de Lima, who was hailed as a political prisoner, as part of the move of the President Duterte to silence the opposition to the extra-judicial executions in his brutal war on drugs, and which also condemned the more than 7,000 extra-judicial executions in President Duterte's war on drugs. The pertinent portion of the European Parliament Resolution in relation to the 7,000 drug related killings is quoted, thus:

The European Parliament,

– having regard to its previous resolutions on the situation in the Philippines, in particular that of 15 September 2016,

– having regard to the statements by the EU Delegation and the spokesperson of the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR),

X X X

– having regard to the statement of 28 February 2017 by the International Commission of Jurists,

– having regard to the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part,

– having regard to the EU Guidelines on Human Rights,

– having regard to the Universal Declaration of Human Rights of 1948,

– having regard to the International Covenant on Civil and Political Rights (ICCPR),

X X X

F. whereas on 2 March 2017, Human Rights Watch released its report 'License to Kill: Philippine Police Killings in Duterte's 'War on Drugs', which documented extrajudicial killings related to the anti-drug campaign;

⁶³ European Parliament Resolution of 16 March 2017 on the Philippines – the case of Senator Leila M. De Lima (2017, March) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0088+0+DOC+PDF+V0//EN>

G. whereas over 7 000 drug-related killings by the police and vigilantes have been reported since President Duterte took office on 30 June 2016; whereas President Duterte has vowed to continue his anti-drug campaign until the end of the presidential term in 2022;

X X X

3. Strongly condemns the high number of extrajudicial killings by the armed forces and vigilante groups related to the anti-drug campaign; expresses its condolences to the families of the victims; expresses grave concern over credible reports to the effect that the Philippine police force is falsifying evidence to justify extrajudicial killings, and that overwhelmingly the urban poor are those being targeted; calls on the authorities of the Philippines to immediately carry out impartial and meaningful investigations into these extrajudicial killings and to prosecute and bring all perpetrators to justice; calls on the EU to support such investigations; calls on the authorities of the Philippines to adopt all necessary measures to prevent further killings;

4. Expresses grave concern with regard to the rhetoric of President Duterte in response to the killing of officers on 8 March 2017 and strongly urges the Philippine authorities and military to strictly adhere to international humanitarian law which places specific strictures on all parties to an armed conflict to spare civilians and non-combatants;

Heads of States, key personnel of the United Nations, including Secretary-General Ban Ki Moon⁶⁴ and Special Rapporteur on Summary Execution Agnes Callamard⁶⁵ joined in the voice of concern and alarm. Human rights groups, both national and domestic, voiced their serious alarm and condemnation, with the end in view of stopping the impunity⁶⁶.

Families and relatives of the thousands of victims and the victims themselves deserve international criminal justice, whereas in this case the State itself is flagrantly remiss in its obligation to investigate and bring to justice the death President Duterte and his senior officials in his government.

Two very credible international human rights groups, namely, the Amnesty International and Human Rights Watch, have conducted their respective field interview coming up with credible findings and determination. Amnesty International released its report entitled "*If You are Poor, You Are Killed: Extra-Judicial Summary Executions in the Philippines*"⁶⁷, while Human Rights Watch released its report entitled

⁶⁴ UN News Centre (2016, June 8) Ban, disturbed by remarks made by President-elect of the Philippines on extrajudicial killings. Retrieved from:

<http://www.un.org/apps/news/story.asp?NewsID=54190#.WPdHI4VOLIU>

⁶⁵ Reuters. Marshall, Andrew R.C. (2017, February 9) Increasing opposition in Philippines to war on drugs: U.N. official. <http://www.reuters.com/article/us-philippines-drugs-un-idUSKBN15O109>

⁶⁶ CNN Philippines. Santos, Elmor P. (2017, March 17) Int'l groups continue to protest Duterte's drug war <http://cnnphilippines.com/news/2017/03/17/drug-war-international-groups-protest.html>

⁶⁷ Amnesty International Report. (2017, January 31) Philippines: "If you are poor, you are killed": Extrajudicial Killings in the Philippines' "War on Drugs". <https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

*“License to Kill: Philippine Police Killings in Duterte’s War on Drugs”*⁶⁸. Other credible national human rights groups like the IDEFEND⁶⁹ and Coalition Against Summary Executions have also been documenting extra-judicial executions particularly in relation to victims and their families. This is also true for the Commission on Human Rights of the Philippines.

It is beyond cavil that where one life is extra-judicially “erased” or terminated, there is a corresponding demand for criminal justice. This is more so where thousands have been extra-judicially or summarily executed ever since the President Duterte was the Mayor of Davao City in a course of conduct involving thousands of murder carried out as part of a widespread or systematic attack against a civilian population under the “best practice”, strategy or system of eradicating or killing suspected criminals first implemented under his Davao Death Squad in Davao City and merely continued in the war on drugs after President Duterte was sworn into office.

By any domestic or international standard, the highest and most compelling interest of justice, under the circumstances of the situation of mass murder, surely demands the International Criminal Court to investigate and try the situation of mass murder in the Philippines and bring to international criminal justice President Duterte as a Mayor and President and his senior administration officials.

THE DAVAO DEATH SQUAD OF MAYOR AND PRESIDENT RODRIGO DUTERTE

A long-time staunch crusader against extra-judicial executions conducted by the Davao Death Squad in Davao City and currently in the war on drugs at the national level, Fr. Amado Picardal, a priest in the Philippines, made a personal report in relation to the detailed list compiled by the Coalition against Summary Execution of the number of victims of the mass murder perpetrated by the Davao Death Squad from 1991 up to 2015, which list was relayed to him sometime in April 2016 or before the May national elections. Fr. Picardal’s well-renowned report is entitled *“The Victims of the Davao Death Squad: Consolidated Report 1998-2015”*⁷⁰ which he posted on 26 April 2016 on and can be accessed through his website blog⁷¹ which is quoted in full, as follows:

I recently received a consolidated report of the killings perpetrated by the Davao Death Squad (DDS) since 1998 up to the end of 2015. The source will not be mentioned for obvious reasons. Suffice it to say that since the killings started, they

⁶⁸ Human Rights Watch Report. (2017, March 1) “License to Kill” Philippine Police Killings in Duterte’s “War on Drugs”. <https://www.hrw.org/report/2017/03/01/license-kill/philippine-police-killings-dutertes-war-drugs>

⁶⁹ Inquirer. Yee, Jovic. (2016, August 31) ‘Don’t make war on drugs war on human rights’. <http://newsinfo.inquirer.net/805816/dont-make-war-on-drugs-war-on-human-rights>

⁷⁰ See: <http://amadopicardal.blogspot.com/2016/04/the-victims-of-davao-death-squad.html>

⁷¹ See: <http://amadopicardal.blogspot.com/2016/04/the-victims-of-davao-death-squad.html>

have been monitoring these cases. I know them very well and I have been collaborating with them as we denounced these killings and worked with the Commission on Human Rights and the Human Rights Watch. They are hesitant to make the report public out of apprehension that it will be used for political purposes. I believe that to hide this would be a disservice to the nation since I believe that the body count could multiply many times over throughout the whole country in the next six years. The original report that I have is in Excel format, and very detailed (year by year, according to age, sex, areas, weapons used, etc). What I present is a summary and my own analysis. I know that when I do this, I am risking my life. But the truth must come out before it is too late.

The total number of persons killed by the DDS from 1998-2015 is 1,424. Let me repeat in words – ONE THOUSAND FOUR HUNDRED TWENTY-FOUR victims. This can be considered as MASS MURDER perpetrated by the same group, inspired and supported by the same persons. The data does not include those killed in other cities where the DDS have expanded franchise-style.

Out of 1,424, there were 1,367 male and 57 female. This means that those murdered by the DDS were not only men, there were also fifty-seven women.

Looking at this according to age there were 132 children killed (17 and below) -- 126 boys and 6 girls. The youngest was a 12 years boy and a 15 year girl. There was a 9 year old boy who was killed by a stray bullet – he was not an intended target.

There was a total of 476 young adults (18-25) murdered – 466 male, 19 female. The number of older adults (26 years and above) killed were 612 (466 male, 28 female). There were victims whose age were not given – 201 (191 male, 10 female).

Thus, almost 50 percent of the victims were young people (children and young adults). Most the victims were killed in urban poor areas (e.g. Buhangin, Agdao, Bangkerohan, Boulevard, Matina, Toril). Most of those killed were involved in illegal drugs – as users and pushers. There were also those involved in petty crimes – theft, cell-phone snatching, gang members. There were 14 cases of mistaken identity – they were not the intended targets but the DDS hit men mistakenly hit the wrong target. There were some who had gone away after being warned that they were on the hit list and after some years, after reforming their lives, came back thinking that they were safe. Their names were still on the list so they were still killed.

Thus, one can say that majority of the victims of the DDS were young and poor – juvenile delinquents considered as the weeds of society. There were no reports of drug lords or big time criminals among those killed by the DDS. There were two journalists who were believed to have been murdered by the DDS – Jun Pala and Ferdie “Batman” Lintuan. Jun Pala was a radio commentator who constantly spoke out against the DDS and Mayor Duterte. There were two previous attempts on his life and he accused Duterte of being behind these attacks. He was finally killed by motorcycle riding men on the third try. Ferdie “Batman” Lintuan also spoke out against the DDS and also the alleged anomalies in the construction of the People’s

Park which he linked with Mayor Duterte. He was also killed by motorcycle riding men.

The victims of the DDS were unarmed. They did not fight back. Many were just sitting down on street-corners outside sari-sari stores, talking with friends and then suddenly shot in cold blood. There were some who were just released from prison and while waiting for public transportation on the side of the road were suddenly shot by motorcycling men. How the DDS knew the exact time and place they were to be released is amazing. Another victim was killed inside his home in front of his mother and three children who were begging the DDS not to kill him. One of the most well-known case is Clarita Alia – a vegetable vendor in Bangkerohan – whose teen-age sons (who were below 17 years old) were murdered by the DDS. I was asked by Clarita to bless the body of her boy, Fernando before he was buried.

I have personally witnessed the aftermath of two DDS killings. The first was in our parish church in Bajada. While officiating a Wedding Mass I heard shots outside in the carpark. I immediately rushed outside after the Mass to find out what happened. I saw the body of a teen-age boy lying in our church ground surrounded by people. He had just been shot by DDS hit-men while sitting in the car park with his friends. The killers escaped on a motor-cycle. There was a police car nearby but the police just fired warning shots into the air and did not go after the killers. The boy who was killed lived in a nearby slums area. He had been suspected as one of those who broke the window of a car park in our church and stole some items two weeks earlier.

The second time I witnessed the aftermath of a DDS killing was while mountain-biking in Lomondao, a distant barangay in Davao. As I neared the place I met three motorcycle riding men speeding back to the city. When I arrived in the place I saw people who gathered around the body of a young boy. When I asked what happened, someone told me it was the DDS. The boy was cell-phone snatcher and drug user. He added, the boy deserved to die.

The killings have not stopped. The DDS continue their murderous spree even to this day. For the last five years (2011-2015), there were 385 victims of extrajudicial killings in Davao - 39 of them below seventeen years old and 118 young adults (18-25). In 2011 there 111 reported DDS killings, in 2012 there were 61, in 2013 there were 101, in 2014 there were 52 and there were 60 in 2015. The DDS usually take a break during the campaign period. They will continue their operations after the elections.

So far, no one has been held accountable for these killings. There has been no official investigation by the police or the city government. The police do not acknowledge the existence of the DDS. The Commission on Human Rights (CHR) came to Davao for a public hearing and also met secretly with witnesses – family of the victims and former members of DDS. Although the CHR recommended prosecution, this could not prosper because nobody was willing to testify in court out of fear. The DDS are still around and anybody who testifies will surely be targeted for assassination. I have met some of these witnesses and understand their fear. They claimed that some of those listed as victims were their former companions who knew too much and were suspected of betraying the DDS. So while former DDS members talked about how they were recruited, trained and

how they operate, and who their handlers were and their link with some police and local government officials, all these information could not stand in court because they were not willing to testify in spite of the sworn statements made before the CHR. Much of the information can also be found in the report of the Human Rights Watch in 2009 *You Can Die Anytime: Death Squad Killings in Mindanao*. One of the findings of the Human Rights Watch report reveals the link between the DDS and the police:

“According to these “insiders,” most members of the DDS are either former communist New People’s Army insurgents who surrendered to the government or young men who themselves were death squad targets and joined the group to avoid being killed. Most can make far more money with the DDS than in other available occupations. Their handlers, called amo (boss), are usually police officers or ex-police officers. They provide them with training, weapons and ammunition, motorcycles, and information on the targets. Death squad members often use .45-caliber handguns, a weapon commonly used by the police but normally prohibitively expensive for gang members and common criminals.

The insiders told Human Rights Watch that the amo obtain information about targets from police or barangay (village or city district) officials, who compile lists of targets. The amo provides members of a death squad team with as little as the name of the target, and sometimes an address and a photograph. Police stations are then notified to ensure that police officers are slow to respond, enabling the death squad members to escape the crime scene, even when they commit killings near a police station.” (Underline and Emphasis supplied)

The Human Rights Watch Report also revealed the modus operandi:

“Our research found that the killings follow a pattern. The assailants usually arrive in twos or threes on a motorcycle without a license plate. They wear baseball caps and buttoned shirts or jackets, apparently to conceal their weapons underneath. They shoot or, increasingly, stab their victim without warning, often in broad daylight and in presence of multiple eyewitnesses, for whom they show little regard. And as quickly as they arrive, they ride off—but almost always before the police appear.” (Underline and Emphasis supplied)

“They deserved to die.” This is what Mayor Duterte said while denying involvement in these extrajudicial killings. At one time, he read a list in his TV program. A few weeks later many of those in the list were killed by the DDS.

“They deserve to die.” This is also the attitude of many residents of the city towards the victims of the DDS. This shows who are behind them and why there has been little outcry regarding these mass murders.

It appears that the DDS killings are the center-piece of Mayor Duterte’s campaign against criminality in Davao City. To fight against criminality, you simply kill the criminals through extra-judicial executions carried out by the DDS. No need to arrest them, put them on trial and imprison them if proven guilty. No need for due process of the law. Criminals do not have rights – that is a western concept.

For criminals, there can only be one punishment – death. It doesn't matter if you are a petty criminal – even if you are only a drug addict or pusher or cell-phone snatcher, you deserve to die. The killings are meant to be a deterrent to crime - to instill fear on everyone so that they will stop committing crime. According to Human Rights Watch Report:

“The continued death squad operation reflects an official mindset in which the ends are seen as justifying the means. The motive appears to be simple expedience: courts are viewed as slow or inept. The murder of criminal suspects is seen as easier and faster than proper law enforcement. Official tolerance and support of targeted killing of suspected criminals promotes rather than curbs the culture of violence that has long plagued Davao City and other places where such killings occur.”

It has been very difficult to speak out against these extrajudicial killings because majority of the people in Davao support these. The archdiocese of Davao under the leadership of Archbishop Fernando Capalla came out with a pastoral letter: “Thou Shalt Not Kill” and held several prayer vigils. We were a minority - a small voice whose cry in the wilderness was drowned out by the applause of the majority. The blood of 1,424 victims of the DDS was the price that was paid so that there could be peace and order – so that all can walk at night without fear. This was the peace of the cemetery, an order maintained by death squads – by criminals.

And the mass murder continues and there will be more blood spilled – not just in Davao but the entire Philippines. Mayor Duterte promised that if elected “the 1,000 will become 100,000.” He declared that “it will be bloody.” He said there will be” no need for more jails -- just funeral parlors.” He promised to “eliminate criminality in the entire country within 3-6 months.” How will he do it? The answer is what happened in Davao – through the DDS under the direction of many police officers who deny their existence, with the financial support coming from businessmen and also drawn from the government coffers.

“I’m willing to go to hell, as long as the people I serve live in paradise.” Is this an admission on the part of Mayor Duterte that what he has done is a grave sin against God that could someday earn him divine punishment?

Is Davao a paradise after 18 years of DDS extrajudicial killings? Has criminality been eradicated? According to the data from PNP covering 2010-2015, out of 15 chartered cities Davao was fourth in terms of Total Index of Crimes: 37,797 incidents. In terms of murder, Davao was no. 1 (1,032 incidents) and in terms of rape Davao was no. 2 (843 incidents). This report gives the impression that in Davao you can be murdered and raped any time. Murder is not really that bad if the DDS and the Mayor can do it. Rape is not really that bad if the Mayor can callously joke about it, wishing he was the first in line when he heard that a hostage – an Australian Lay Missionary - was raped.

Meanwhile, the families of victims cry out for justice as the DDS continue their killing spree. The national government has failed to address this mass murder that could soon multiply many times over, God forbid.

If the DDS is not stopped and those behind it is not held accountable, there will be a national bloodbath. Those who support it and allow it to multiply will have

blood in their hands – they will be accomplices to mass murder. The one who orders this is a mass murderer – the biggest Criminal of them all.

If it is alright to kill suspected criminals – who can stop any one from taking the law into their own hands? Anyone can become judge and executioner – not only the police and public officials. Anyone can form their own vigilante groups. There won't be any need for prisons or lawyers or judges. There won't be any peace, no order as long and human rights and the rule of law are disregarded. Meanwhile, the big criminals, the big thieves and murderers will continue to rule the land. If it is o.k. to kill criminals, who can prevent anyone from killing the biggest Criminal of them all?

It could be chaotic. We could be entering another dark period of our history - like the dictatorial period in the past or worst.

EDGAR MATOBATO: THE TRUTH ABOUT THE DAVAO DEATH SQUAD OF MAYOR AND PRESIDENT DUTERTE

As stated in the report of Fr. Picardal, the Human Rights Watch already had come up with a report in 2009 about its findings on the Davao Death Squad⁷². The Commission on Human Rights also conducted an investigation in 2009 and came up with a Resolution in 2012 finding that there was a pattern of killings in Davao City⁷³. It, being a mere fact-finding agency, with no authority to determine criminal liability, the Commission on Human Rights referred its findings to relevant government agencies for appropriate investigation, including the Office of the Ombudsman. But unfortunately, the Ombudsman found no evidence to prove the existence of the Davao Death Squad. That was the end of the investigation on the Davao Death Squad.

But all these drastically and rapidly changed when Edgar Matobato surfaced from hiding. Edgar Matobato first broke into national consciousness and prominence when he testified on 15 and 22 September 2016 in the inquiry then being conducted by the Senate Committee on Justice and Human Rights joint with the Committee on Public Order and Dangerous Drugs on extra-judicial killings related to the brutal war on drugs in the country undertaken by President Duterte after 30 June 2016. Senator Antonio Trillanes IV and Senator Leila De Lima, who was the Chairman of the Senate Committee on Justice and Human Rights, took up the cudgels for Edgar Matobato. The 2009 report of the Human Rights Watch and the report of Fr. Amado Picardal were confirmed by the testimony of Edgar Matobato who gave a human flesh to what at

⁷² Human Rights Watch. (2009, April 6) You can die anytime; Death squad killings in Mindanao. <https://www.hrw.org/report/2009/04/06/you-can-die-any-time/death-squad-killings-mindanao>

⁷³ Commission on Human Rights resolution on extrajudicial killings attributed or attributable to the so-called Davao Death Squad dated 28 June 2012 (Annex C)

that point was referred to as just “media hype” or gossip. The Ombudsman’s negative finding was debunked by the explosive and sensational testimony of Edgar Matobato.

In his testimony in the Senate of the Philippines, Edgar Matobato identified President Rodrigo R. Duterte as the mastermind behind the killings of the so-called "Davao Death Squad", a core and select group of policemen in Davao City Police and hired assassins tasked by Duterte to kill suspected criminals in Davao like suspected snatchers, robbers, drug addicts, pushers and the like as a strategy of crime control. According to Matobato, the name "Davao Death Squad" was later popularized by the late journalist Jun Porras Pala who, per Matobato's account, was murdered allegedly on orders of President Rodrigo R. Duterte.

Matobato stated that President Rodrigo R. Duterte was the man who, in 1998 as new Mayor of Davao City, recruited, gathered and personally met a group of seven persons including Matobato, and subsequently baptized them in said meeting as the "Lambada boys," and issued in said meeting a carte blanche instruction to them that their only job was to kill criminals like drug addicts, pushers, snatchers, thieves, rugby boys, and gang members, to name a few⁷⁴.

True enough, in the afternoon of that day in 1988, Matobato went into a “showdown”, which means his first hit as a "Lambada boy". He recalls very distinctly the person alyas “Lim” as his first hit ever. He personally gunned down "Lim" as he was watching a billiard game near the Lucky 13 in Davao City. The following day and thereafter, Matobato would, on orders, kill one or more targets almost on a daily basis. Thus, began his killing career that would span about 24 years from 1988 up to and until 2013 when he on his own left the death squad.

Matobato said that he himself killed about 50 persons⁷⁵. But that is just his estimate, which is based on the assumption that he killed only one person in one year, meaning that he killed 24 persons for 24 years. If it is assumed that he killed 2 persons in a year, easily that could yield a figure of 48 hits rounded off to 50 for 24 years. But according to him, he was ordered to kill even 3 or more persons in a day. The killing was regular and almost on a daily basis for him. So his hits could be very much more than 50.

Matobato testified that as time went by, the original “Lambada boys” were joined by more hitmen, including rebel returnees, increasing the number of assassins to 300, more or less. The group expanded in membership and reach, but their main job never changed. It is to kill criminals, as originally expressed by Mayor Rodrigo R. Duterte in 1988. Matobato directly participated in the killings for 24 years. He and his fellow hitmen killed nameless, unknown folks in the thousands like chickens in Davao, reaching in his conservative estimate to 1,000. Most of the dead bodies of the

⁷⁴ 15 September 2016 Senate hearing of the Committee on Justice and Human Rights (Annex H)

⁷⁵ 15 September 2016 Senate hearing of the Committee on Justice and Human Rights (Annex H)

victims were either buried in the Laud property owned by SPO4 Bienvenido Laud or thrown into the sea off Samal Island⁷⁶.

According to Matobato, hitmen are stationed for every police station throughout Davao City. Once a target is determined based on information from the barangay chairman, the police puts into action one hitman or more assigned to the nearest police station. Upon clearance from Duterte, the order to kill is coursed through SPO4 Arthur Lascañas or SPO4 Sanson "Sonny" Buenaventura; for a particular "project", the police spotter fingers the target who is then killed by the hitman.

Per Matobato, the squad resorted to either of two methods of execution. Under the commonly used method, the victim is abducted and taken inside a van in which the victim is garroted to death and is later thrown along the "byahe" or trip. The other method is carried out by gunning down the victim in the open street. For the two types of execution, the policemen stationed in the block disappears to clear the way for the hit. Every "project" was always carried out by the hitman and his police companions.

Apart from the nameless, simple folks killed like chickens in Davao, Matobato, recalled certain incidents due to their memorable circumstances. Just to name a few, notable of these incidents are (1) the abduction and murder of Sali Makdum, who was said to be a suspected terrorist; (2) the murder of Jun Barsabal who was to be taken alive per express order of then Mayor Rodrigo R. Duterte; (2) the ambush murder of journalist Jun Porrás Pala who was a former close buddy of then Mayor Rodrigo R. Duterte and knew about the criminal activities of the group styled and popularized by him as the "Davao Death Squad," but who later had a falling out with and earned the personal ire of the Mayor for his hard-hitting radio commentaries; (3) the murder of the dance instructor boyfriend of the sister of President Rodrigo R. Duterte; (4) the abduction and murder of a kidnapper whose body was fed to a crocodile in Digos City by a group including the former NBI agent and now NBI Director Dante Gierran; and (5) the murder of two persons with whom Pres. Duterte's son, now Davao Vice Mayor, Paolo Duterte just had a verbal altercation⁷⁷.

At first, Matobato, who is barely literate, having only finished Grade 1 when he was already 11 years old, thought that killing criminals was right and legal because it was ordered by Mayor Duterte and carried out by policemen. But as time went by, he was ordered to kill victims who did not appear to him as criminals, like the three young girls merely suspected to be drug personalities.⁷⁸ Also, other victims were killed on orders of Vice Mayor Paolo Duterte simply because of his personal spat with the victim, like the victim at Deca Homes Subdivision, in Davao City, where both he and policeman Reynante Medina went inside the house and gunned down the intended

⁷⁶ Ibid.

⁷⁷ 15 September 2016 Senate hearing of the Committee on Justice and Human Rights (Annex H)

⁷⁸ Bartolome, J. 2016. Matobato: Rape of drug suspects pushed me to leave Davao Death Squad. Retrieved from <http://www.gmanetwork.com/news/news/nation/583107/matobato-rape-of-drug-suspects-pushed-me-to-leave-davao-death-squad/story>

victim, but unfortunately two women who intervened were killed and considered as “collateral damage”⁷⁹.

Over time, the killing of innocent victims changed the outlook of Matobato, as he started to feel conscience-stricken. Then, he began to observe that his fellow hitmen were, one by one, being killed under mysterious circumstances, raising Matobato's strong suspicion that his police cohorts had a hand in their mysterious deaths. Feeling that he would be the next target, Matobato, in September 2013, expressed his intention to his principal handler, then SPO3 Arthur Lascañas for a graceful exit, citing his old age as primary reason. Getting no express response from Lascañas, Matobato subsequently stopped his involvement in the killings⁸⁰.

ERNESTO AVASOLA: THE FIRST MATOBATO

As a firsthand witness, Matobato by his own account is prima facie credible and reliable, especially when his testimony is viewed in light of the earlier testimony of a certain Ernesto Avasola, who seven years ago or in the year 2009, testified in the Regional Trial Court in Manila. In his court testimony which, significantly, is corroborative of Matobato's subsequent Senate testimony, Avasola stated that he helped bury the murder of six persons in December 2005 and participated in burying their dead bodies in the Laud “compound” owned by SPO4 Bienvenido Laud⁸¹.

In 2009, Ernesto Avasola gave his testimony in a judicial proceeding before the court, unlike Matobato who gave his testimony before the Senate which is a political body. While Avasola testified without media fanfare in a court proceeding, Matobato testified on the national stage before the Senate in a much-publicized political setting. Avasola testified in support of an application for a search warrant filed by the Philippine National Police (PNP), while Matobato testified in “aid of legislation”.

On the basis of Avasola’s testimony, the PNP then sought for a search warrant in order to search the Laud “compound” for human skeletal remains. He was personally examined then by Executive Judge Peralta of the Manila court. On the basis of Avasola’s personal testimony given in open court, Judge Peralta issued the search warrant. But later, on motion of Bienvenido Laud’s lawyers, one of whom is Justice Secretary Aguirre, now Duterte’s Justice Secretary, Judge Peralta set aside the search warrant⁸².

⁷⁹ 15 September 2016 Senate hearing of the Committee on Justice and Human Rights (Annex H)

⁸⁰ 15 September 2016 Senate hearing of the Committee on Justice and Human Rights (Annex H)

⁸¹ Rappler. Mangahas, Malou (2016, September 24) SC on Davao Death Squad case: PNP can search quarry for bodies. <http://www.rappler.com/newsbreak/in-depth/147153-supreme-court-ruling-laud-quarry-davao-death-squad>

⁸² Rappler. Mangahas, Malou (2016, September 24) SC on Davao Death Squad case: PNP can search quarry for bodies. <http://www.rappler.com/newsbreak/in-depth/147153-supreme-court-ruling-laud-quarry-davao-death-squad>

This prompted the PNP to question the setting aside of the search warrant before the Court of Appeals, which fortunately affirmed the search warrant, thus, prompting SPO4 Bienvenido Laud to further challenge the search warrant before the Supreme Court. Finally, on 19 November 2014, the Supreme Court affirmed the validity of the search warrant.

In this case, *“Retired SPO4 Beinvenido Laud vs. People of the Philippines”*, G.R. No. 199032⁸³, November 19, 2014, the Supreme Court of the Philippines mentioned the “Davao Death Squad”. In stating the facts of the case, the Supreme Court said that the PNP was applying for “a warrant to search three (3) caves located inside the Laud Compound in Purok 3, Barangay Ma-a, Davao City, *where the alleged remains of the victims summarily executed by the so-called “Davao Death Squad” may be found.*” The Supreme Court further said that *“(I)n support of the application, a certain Ernesto Avasola (Avasola) was presented to the RTC and there testified that he personally witnessed the killing of six (6) persons in December 2005, and was, in fact, part of the group that buried the victims.”*

In this case, the Supreme Court quoted with approval the first-hand account of Avasola who stated that he personally witnessed the commission of the murders and was, in fact, part of the group that buried the victims. Here is the quote from the Supreme Court decision:

“Q9-Who are these six (6) male victims who were killed and buried in the caves in December 2005 at around 9:00 p.m.?”

A9-I heard Tatay Laud calling the names of the two victims when they were still alive as Pedro and Mario. I don’t know the names of the other four victims.

Q10-What happened after Pedro, Mario and the other four victims were killed?

A10-Tatay Laud ordered me and the six (6) killers to bring and bury equally the bodies in the three caves. We buried Pedro and Mario altogether in the first cave, located more or less 13 meters from the makeshift house of Tatay Laud, the other two victims in the second cave and the remaining two in the third cave.

Q11-How did you get there at Laud Compound in the evening of December 2005?

A11-I was ordered by Tatay Laud to go [to] the place. I ran errands [for] him.⁴⁶

Avasola’s statements in his deposition were confirmed during the hearing on July 10, 2009, where Judge Peralta conducted the following examination:

Court: x x x Anong panandaan mo? Nandoon ka ba noong naghukay, nakatago o kasama ka?

⁸³ Supreme Court Manila Decision. (2014, November 19) Retired SPO4 Beinvenido Laud vs. People of the Philippines. http://www.lawphil.net/judjuris/juri2014/nov2014/gr_199032_2014.html

Mr. Avasola: Kasama po ako sa pagbuhat ng mga tao, sir.

Court: Mga ilang katao?

Mr. Avasola: Anim (6) po.

Court: May mass grave ba na nahukay?

Mr. Avasola: May tatlong kweba po na maliliit yung isa malaki. x x x.”

The search warrant that was upheld by the Supreme Court states: *“You are hereby commanded to make an immediate search at any time [of] the day of the premises above describe[d] particularly the three (3) caves (as sketched) inside the said Laud Compound, Purok 3, Brgy. Ma-a, Davao City and forthwith seize and take possession of the remains of six (6) victims who were killed and buried in the just said premises.”*

In its decision, the Supreme Court noted that as a matter of fact, the search warrant *“was enforced by elements of the PNP-Criminal Investigation and Detection Group, in coordination with the members of the Scene of the Crime Operatives on July 15, 2009. The search of the Laud Compound caves yielded positive results for the presence of human remains”*.

In the Senate inquiry, Matobato did not mention the name of Ernesto Avasola. In fact, the name of Ernesto Avasola has not cropped up in the inquiry. Senator De Lima, quoting Matobato, identified only 19 policemen and four civilians as Senior Superintendents Rey Capote, Tony Rivera, Dionisio Abude and Isidero “Dick” Floribel/Florobel; Chief Inspectors Jacy “Jay” Francia, Fulgencio Pavo and Ronald Lao; Senior Police Officers 4 Arthur Lascañas and Sanson “Sonny” Buenaventura; Senior Police Officers 3 Jim Tan, Jun Laresma, Donito “Pogi” Ubales; Senior Police Officers 2 Enrique “Jun” delos Reyes Ayao and Rizalino “Bobong” Aquino; Senior Police Officers 1 Reynante Medina, Bienvenido Furog, Vivencio “Jun” Jumawan, Jun Bisnar, Gaston Aquino, Bienvenido Laud, Alvin Laud, Roly Engalia and Arnold Ochoa.

But the statements of Matobato and Avasola point to the same Laud property. Matobato calls it “Laud quarry” while it is described as “Laud compound” in the case of Avasola.

Matobato also stated that he and his group lay in wait on a “hilly” part to ambush CHR Chairman de Lima then when she went to the compound in search of buried bodies in the course of her investigation into the Davao Death Squad. Senator de Lima confirmed the area to be “hilly”. She escaped death because she did not proceed to the “hilly” part. Avasola pointed to and described three caves inside the compound.

On the main, their testimonies, however, corroborate on two other material points, that is, the dead bodies of the victims of the Davao Death Squad were buried in this Laud property and that this property is owned by SPO4 Bienvenido Laud. The first-hand account of Avasola was believed by the Supreme Court when it upheld the search warrant. Like Avasola, Matobato also gave a first-hand account. By parity of reasoning, he should also be believed.

It is significant to point out that the lawyers of SPO4 Bienvenido Laud were Atty. Salvador Medialdea and Atty. Vitaliano Aguirre. Atty. Salvador Medialdea was appointed by President Duterte as Executive President, more popularly called the "Little President" in the Philippines, and occupies such high and mighty position up to now. Atty. Vitaliano Aguirre was appointed by President Duterte as Secretary of the Department of Justice, and is occupying such position up to now.

After the Supreme Court decision came out in November 2014, there has been no follow-up national investigation carried out by the Philippine National Police or the Department of Justice, through its National Bureau of Investigation, in relation to the Laud property vis-à-vis the implementation of the search warrant. President Duterte has not ordered and is not expected to order such kind of national investigation.

Incidentally, it has to be stated that recently the Commission on Human Rights revealed that the human skeletal remains recovered by virtue of the search warrant are still in its custody, and were not just acted upon considering that there was still then a legal controversy in relation to the search warrant.

Finally, it has to be stated that the Avasola case does not pertain to the criminal liability or responsibility of President Duterte as then Mayor. It only pertained to the validity of the Search Warrant applied and implemented then by the Philippine National Police. It is being cited here to demonstrate that as early as 2009 there was already a legal controversy that landed in the lower court and reached all the way to the Supreme Court of the Philippines involving the "Davao Death Squad", its killings and the burial at the Laud property, which is consistent with the subsequent testimonies of Edgar Matobato and Arthur Lascañas.

EDGAR MATOBATO'S SAGA FOR TRUTH AND JUSTICE

After Matobato's voluntary exit from the "Davao Death Squad", a large contingent of Davao police came to his residence in Davao City in the fateful night of 19 June 2014. Matobato was told that they were on errand from Mayor Rodrigo R. Duterte to fetch him for a "*project*". But Matobato was suspicious that the group came not for a "project, but for the purpose of liquidating him, as borne out by the fact that only a handful of his comrades would usually fetch him for a "project".

Unlike before, this time there were too many of them, including the presence of the SWAT. Besides, he had already stopped his participation in the group. Fearing for his life, he refused to go with them, prompting the group to leave.

But, within minutes after the group had left, another group, this time headed by the station commander, returned to the residence of Matobato. One of the policemen in the group was Matobato's close buddy whose presence made him feel that he would be spared of death, thus convincing him to go with the group. Minutes after the group had left with Matobato, the station commander came back to his house, asking Matobato's wife where his gun was. Matobato's wife informed the station commander that Matobato's gun was in their house. At the request of the station commander, Matobato's wife, in all good faith, handed to him Matobato's 45 caliber pistol.

Along the way or "byahe" (trip in the vernacular), the band stopped for three times. Matobato knew from past experience that a stop along the "byahe" or trip meant that an abducted victim would be thrown out as a dead body from the vehicle onto the wayside. Matobato thought that he was already dead. But luckily, the station commander rejected the idea of killing Matobato, because he feared being implicated. Matobato's wife had earlier made a scene as witnessed by the neighbors and the uncle of Matobato, Eduardo Matobato who is also a Davao cop, had already known of the situation.

Instead, Matobato was brought to the Davao City Police and locked up inside a police detention cell. Not too long, his former comrades told him to falsely confess that he killed Richard King, a businessman, on orders of P/SSupt. Felonia as the mastermind. To force him to admit, Matobato was subjected to torture. But Matobato adamantly refused to admit to a crime that he did not commit, despite the torture inflicted on him. As an alternative, his former police comrades locked him up with him three assassins known to him, who just like him, were being forced to admit the murder of Richard King.

In order to spare his dear life, Matobato pleaded to his fellow assassins to just confess to the Richard King murder, to which his three fellow assassins agreed. Thus, Matobato's former colleagues were satisfied and, in order to justify Matobato's detention, they accused him with a light trumped-up crime of allegedly carrying a licensed gun outside of his residence without a permit to carry. They used as evidence the very same gun taken by the station commander from Matobato's wife at their residence, contrary to the perjured statement of Matobato's former comrade, police Reynante Medina that Matobato was apprehended for carrying a gun outside of his residence without a permit to carry.

On 30 June 2014, after surviving the torture on him, Matobato was able to post bail of P2,000.00 with the Municipal Trial Court in Cities, Branch 3, Davao City. Following his release from custody on bail, he hurriedly and stealthily left Davao by boat to Cebu, out of the all-consuming, overriding fear that sooner than later he would be a target of assassination in Davao at the hands of his former colleagues.

For more than two years since June 19, 2014 when Matobato's former cohorts in the so-called "Davao Death Squad" took him away from his residence on the pretext of a "project", but instead placed him under detention on a trumped-up charge of illegal possession of firearm, torturing him while in police custody, Matobato, together with his common law wife, Joselita Abarquez, as his constant companion, has been in constant hiding for fear of his dear life.

It was that torture during his police detention, as he testified in the Senate inquiry, that put an indelible mark in the mind of Matobato constantly reminding him that he would soon be the target of liquidation by his former colleagues. He was just lucky that his uncle, Eduardo Matobato, who is also a Davao cop, interceded on his behalf by telling his torturers "*if you kill Edgar, you will not be able to retire*", which saved his dear life. It was this torture that emboldened him to spill the beans on his former cohorts.

Since 30 June 2014, Matobato went into hiding. He briefly stayed in Cebu, then resided for some time in the province of Samar. At one time, he went to Manila in an attempt to surrender and confess through TV and radio broadcaster Ted Failon of ABS-CBN. He met his staff who unfortunately told him that they would still validate the matter by calling his Davao contacts. Failed in his attempt, he went back to Samar since he has no place to go to. He later on went to the Commission on Human Rights in Tacloban to surrender and seek help. Since the said office had no facility to provide him security, he was referred to seek help to the Department of Justice in Manila. On 1 September 2014, he arrived at the DOJ.⁸⁴

In the night of that same day, Matobato was immediately placed in a safehouse under a temporary shelter of the Witness Protection Program ("WPP") of the DOJ. He was subjected to investigation by the National Bureau of Investigation (NBI) until on 4 September 2014 he subscribed to a Judicial Affidavit before an NBI agent. After the usual process, he was later formally admitted to the WPP.

Interestingly, while Matobato was under the WPP, a certain Atty. Gregorio Andolana, who had some other legal matter to attend to at the WPP, met Matobato. Atty. Andolana offered his legal services for Matobato and prepared a Judicial Affidavit, specifically in relation to the torture, which was subscribed by Matobato on 12 January 2016. But later, Atty. Andolana told Matobato that President Duterte had requested his name and that of his son, Vice Mayor Paolo Duterte, to be deleted from his Judicial Affidavit, saying that "*bahala na ang mga pulis sa buhay nila*" (it's up to the police about their life). Atty. Andolana quoted President Duterte as saying "*ako na bahala sa kanya*" (I'll take care of him), referring to Matobato.

But Matobato adamantly refused the indecent proposal which wiped out his trust and confidence in Atty. Andolana. Later, he tore up his sim card so that Atty. Andolana could not contact him anymore, resulting in a total failure of communication

⁸⁴Sunstar. (2016, October 12) Matobato's bail reduced to P30,000. <http://www.sunstar.com.ph/davao/local-news/2016/10/12/matobatos-bail-reduced-p30000-503122>

between him and Matobato, and later forcing Atty. Andolana to formally withdraw his appearance as counsel for Matobato on the day before the scheduled arraignment on 4 October 2016, and leaving Matobato with no lawyer during the arraignment in the firearm case in Davao City. As a result, the court handling the trumped-up firearm case immediately ordered the issuance of a bench warrant of arrest on 4 October 2016 and issued the arrest warrant on 5 October 2016⁸⁵.

Matobato was continuously under the WPP until in May 2016 when it became clear that President Duterte was on the verge of Presidential victory, making Matobato realize that he would no longer be safe in the Witness Protection Program (WPP), since the said agency is under the Department of Justice (DOJ), which would soon be headed by Duterte's political appointee. Upon the advice also of concerned officials of the WPP, he decided to voluntarily leave the WPP. After his exit from the WPP, several religious personalities provided him sanctuary. Ironically, the starting point for the relay was in Cagayan de Oro City where the author of this communication comes from.

A person from Balay Mindanao in Cagayan de Oro City contacted the highest prelate in the city about Matobato's urgent need for sanctuary, and in turn the prelate contacted a priest in Manila. Thus, began the arduous religious journey for personal redemption of Matobato, in a bid to expose truth and justice, which led him ultimately, in a chain of events involving several priests, to Fr. Albert Alejo, S.J., at a much later critical juncture when the Senate inquiry was already on-going. It was Fr. Alejo who later brought Matobato into contact with Senator de Lima who, in collaboration later with Senator Trillanes, presented Matobato in the Senate inquiry on 15 September 2016.

Despite the collective judgment of the priests that Matobato is telling the truth, which at that time was not publicly known, Senate President Aquilino "Koko" Pimentel III, on 15 September 2016 when Matobato first testified, refused Senate protective custody to Matobato. This refusal came amid the heels of Senator Pimentel's knowledge that early on, Matobato had been placed under the WPP for much-needed protection. This constrained Senator Trillanes, in his capacity as a Senator, to provide security to Matobato.

DEFENSE FOR EDGAR MATOBATO AND THE TRUTH HE REPRESENTS

On 5 October 2016, the author of this communication (referred herein as counsel) came to Manila on a one-way ticket from Cagayan de Oro City where he is temporarily based. His trip was arranged by Fr. Albert Alejo who had previously read counsel's article entitled "Matobato Testimony Now"⁸⁶ published in the Philippine

⁸⁵ Warrant of Arrest of Edgar Matobato dated 4 October 2016, issued by Municipal Court in Cities, 11th Judicial Region. (Annex J)

⁸⁶ See: <http://opinion.inquirer.net/97744/matobatos-testimony-now>

Daily Inquirer on 29 September 2016. Having watched Matobato's testimony on Youtube, and while recuperating from his angioplasty for his coronary arteries last 6 June 2016, counsel believed the credibility and trustworthiness of Matobato. Largely on medical leave, counsel found himself writing several articles, almost on a daily basis, which were published in the Mindanao Goldstar Daily, a local newspaper in Cagayan de Oro City, and one article entitled "MATOBATO TESTIMONY NOW" saw print in center of the editorial page of the Philippine Daily Inquirer. All those articles defended the credibility and truthfulness of Matobato. After Fr. Alejo contacted him on Facebook, and upon arrival in Manila on 5 October 2016, counsel immediately prepared an Urgent Motion To set Aside the Order for issuance of arrest warrant and/or recall of arrest warrant, if already issued, which was personally brought by a messenger from Manila to Davao City in the evening of that day and filed in court the following day October 5, 2016.

Considering that the bench warrant of arrest issued on 5 October 2016 was, as reported in media, for police implementation, Senator Trillanes had no choice but to surrender Matobato to PNP Chief de la Rosa on 7 October 2016 in deference to said warrant. But knowing the ordeal that Matobato had gone through, not to mention the ominous presence of the dreaded death squad, Senator Trillanes, who was quoted in media as saying that President Rodrigo R. Duterte is a "mass murderer"⁸⁷, made sure that PNP Chief de la Rosa personally guaranteed the safety of Matobato.

Considered a "high-risk" detainee, Matobato was detained in the Custodial Center of the PNP in Camp Crame. Matobato was highly secured in a quarter where he was placed by his lonesome self, even if the quarter is capable of accommodating about 8 detainees. His isolation from other inmates ensured that he would be insulated from any possible harm perpetrated by other detainees on possible orders of his former colleagues.

But the scenario of bringing Matobato to Davao City to personally post bail presented a security nightmare for Senator Trillanes. Reports in media came out with an official statement from the Davao police office that it had prepared a detention cell for Matobato, saying the police would be forced to "neutralize" him should he attempt to fight back.

In Matobato's case, the fact that President Rodrigo R. Duterte is the prime target of his expose makes the scenario even more terrifying. This is not to mention the fact that Matobato's former comrades are policemen based in Davao City who are capable of mounting an attack on him in a covert manner. Not only that, Vice Mayor Paolo Duterte who is based in Davao was identified by Matobato as the mastermind behind the murder of Richard King and two other killings in Davao, and also as the mastermind behind the smuggling of rice and oil in Davao City⁸⁸.

⁸⁷ Rappler. Elemia, Camille. (2016, September 26) Trillanes on Davao killings: Duterte a 'mass murderer'. <http://www.rappler.com/nation/147380-trillanes-davao-death-squad-duterte-mass-murderer>

⁸⁸ 15 September 2016 Senate hearing of the Committee on Justice and Human Rights

On account of the grave security concern for the life of Matobato, the author as counsel for Matobato attempted to post bail for him with the Executive Judge of the Regional Trial Court on Quezon City in the afternoon of 7 October 2016 when he was surrendered by Senator Trillanes to PNP Chief de la Rosa⁸⁹. But the documentary requirements for bail, especially the barangay certification of residence as well as clearance, made it impossible to post bail then.

Naturally apprehensive about his personal safety, the herein author had no choice but to marshal enough courage to proceed to Davao City on 9 October 2016, secure in the thought that his obscurity made it impossible for him to be an immediate target for liquidation. Counsel followed up on his previous Urgent Motion anchored on the justifiable excuse that Matobato had technically no lawyer during the arraignment and his schedule to testify in the Senate inquiry was in conflict with his scheduled arraignment⁹⁰.

But counsel's motion was derailed when the prosecution, all of a sudden after two years when Matobato had already posted bail twice, once in Davao and second in Manila, sought an increase of the bail from 2,000 to 60,000, claiming error in its earlier bail recommendation. After granting an increase, the court reduced it to 30,000, due to the prosecution's lack of objection on account of the previous error, upon counsel's urgent motion which was urgently heard on 12 October 2016. By then, counsel had no choice but to post bail for Matobato.

But just in order to prevent Matobato from being brought to Davao City to post bail, counsel while in Davao thought of securing a barangay certification from Matobato's barangay in Davao City, which was needed for the posting of bail in the Regional Trial Court in Quezon City; but this proved to be impossible because the barangay chairman is a die-hard Duterte supporter. Counsel alternatively thought of securing instead a barangay certification from the barangay in Samar where Matobato and his wife resided for 2 months before going to the DOJ.

Upon counsel's suggestion, Matobato's wife, on sudden notice, personally went to Samar in the early morning of 12 October 2016, secured the barangay papers from Samar, and went back to Manila in the evening. Having also secured certified true copies of court documents from this court in Davao City, counsel worked on Matobato's bail on October 13-14, 2016 at the Quezon City Regional Trial Court, after coming back to Manila from Davao. Counsel was finally able to post bail for Matobato at past noon of 14 October 2014 in the amount of P30,000 with the executive judge of the RTC-Quezon City. After processing at the Custodial Center, Matobato and counsel signed the release paper at exactly 3 p.m. of 14 October 2016. Matobato was

⁸⁹ Inquirer. Aning, Jerome (2016, October 7). Matobato surrenders to PNP, to be taken to Davao <http://newsinfo.inquirer.net/822786/matobato-surrenders-to-pnp-to-be-taken-to-davao>

⁹⁰ GMA News. (2016, October 10). Matobato lawyer files motion to lift arrest warrant vs. confessed hitman. <http://www.gmanetwork.com/news/news/nation/584450/matobato-lawyer-files-motion-to-lift-arrest-warrant-vs-confessed-hitman/story>

actually released at past 3 pm that day and fetched by the security personnel of Senator Trillanes⁹¹.

Indeed, Matobato undoubtedly has emerged as a vital witness against President Rodrigo R. Duterte and the extra-judicial executions committed by him through his Davao Death Squad as a method of crime control in Davao City. It was precisely for this reason that Matobato was immediately placed under the temporary shelter of the WPP on 1 September 2014. He was investigated by the NBI and thereafter formally admitted to the WPP. Put otherwise, it was the official decision of the WPP that Matobato needed protection from the government, which, in the ultimate analysis, represents an official government finding about the paramount need for protection for the life and safety of Matobato as a witness, given the gravity of his accusations against President Rodrigo R. Duterte and his cohorts⁹².

But unfortunately for Matobato, the winds of politics shifted in favor of President Rodrigo R. Duterte, forcing Matobato to leave the WPP. With his instinct to sense danger honed from his 24 years as a hitman, Matobato, perhaps just like any ordinary person in his right mind, did not anymore feel safe in the WPP, obviously because the person he is testifying against is President Duterte who exercises control and supervision over the Department of Justice and the WPP. As a consequence, it is safe to say without fear of contradiction, that Matobato, after his WPP exit, has always been in a constant, ever-present serious danger on his life, which was precisely what the WPP wanted to protect in the first place.

It is safe to say, too, that judging from Atty. Andolana's previous indecent proposal on behalf of President Rodrigo R. Duterte, it would not be too far-fetched to imagine that President Rodrigo R. Duterte would have found ways and means to silence Matobato forever while he was in the WPP. He could now use his immense presidential power and resources at his disposal to prevail upon Matobato not to expose what he knows, or at the very least just delete his name and that of his son Vice Mayor Paolo Duterte from the adverse statement; and if Matobato would still refuse an offer that he could not refuse, President Rodrigo R. Duterte would, in all likelihood, can have Matobato killed, using the police and NBI in a familiar scenario where Matobato would be portrayed, in a police frame-up, as having attempted to grab the sidearm of a policeman, which is a usual police trick.

Precisely, in leaving the WPP due to the ever-present danger on his life, Matobato avoided being silenced forever, because he was and remains as determined as ever before to tell the truth against President Rodrigo R. Duterte and his band of criminal cohorts. Matobato's determination was seen by the several priests who provided him sanctuary and who, in providing sanctuary, assessed that his life should be accorded the highest form of protection so that he could still be alive to testify, in the interest of truth and justice, for benefit of the thousand or more souls who were

⁹¹ Rappler. Cupin, Bea. (2016, October 14). Matobato posts bail, returns to Trillanes' custody. <http://www.rappler.com/nation/149189-edgar-matobato-bail-trillanes-custody>

⁹² 15 September 2016 Senate hearing of the Committee on Justice and Human Rights

victims of the systematic and widespread murder committed by President Rodrigo R. Duterte and his Davao Death Squad.

In the same vein, for his testimony in the Senate in the interest of truth, Matobato should also have deserved protection from the Senate. In the Senate inquiry, his testimony is vital to prove that what had begun with the "Lambada boys" in 1988 when then Mayor Rodrigo R. Duterte first expressed his policy of killing criminals as a method of crime control in Davao City is being continued and replicated right now by President Rodrigo R. Duterte for the whole country, given that he considers it the "best practice" as once boasted by him to President Gloria Macapagal-Arroyo.

Put otherwise, Matobato's testimony is crucial in proving a pattern of systematic and widespread commission of murder in the form of extra-judicial killings being presently perpetrated, using as template or model what President Rodrigo R. Duterte considers as a tried-and-tested, "best practices" of killing suspected criminals in Davao City, which is a crime against humanity cognizable by the International Criminal Court. But unfortunately also, politics now is obviously not favorable to Matobato, given that Senator Koko Pimentel is the head of the political party of President Rodrigo R. Duterte and, thus, could not be expected to go against the President.

Now, after the Senate has unfairly and unreasonably cut short the testimony of Matobato and prematurely judged his testimony in an unfavorable light, the preservation of his life has assumed a new dimension, as the shift has turned to a potential criminal case for crime against humanity with the International Criminal Court, in which he certainly will be a vital witness. It is looming as a legal option of last resort in the international arena, given that President Rodrigo R. Duterte is immune from suit as President in the domestic front, and considering further that the continuing spate of extra-judicial killings are human rights abuses over which the international community has continuously expressed alarm and grave concern.

Presently, Edgar Matobato is at large due to a recent pending warrant of arrest issued by a court in Panabo City, Davao Del Norte in relation to the kidnapping of a certain Sali Makdum (not the correct spelling), an Arab national, in which he stated in his Senate testimony his participation⁹³. Ironically, Senator Richard Gordon, Chairman of the Committee on Justice and Human Rights of the Senate of the Philippines, described Edgar Matobato as "damaged goods" in discrediting his credibility. And yet, after Edgar Matobato's testimony in the Senate, the Duterte administration utilized his own Senate testimony in order to resurrect or recycle the case against Edgar Matobato that had been dismissed many years ago. Edgar Matobato, though, is requesting for immunity from prosecution as a state witness from the Office of the Ombudsman in relation to the Complaint-Affidavit filed by him on December 9, 2016. Counsel is currently exhausting legal remedies before the court, principally the move

⁹³ Inquirer. Nawal, Allan. (2017, March 28). Arrest warrant out for Matobato over Makdum kidnap slay. <http://newsinfo.inquirer.net/884431/arrest-warrant-out-for-matobato-over-makdum-kidnap-slay>

to challenge the authority of the prosecutor to conduct the preliminary investigation, as it should be properly with the Ombudsman considering that public officers were involved in the crime.

Apart from being a direct participant in the extra-judicial executions committed under the Davao Death Squad, Edgar Matobato is also a victim himself of the torture inflicted on him when he was taken last 19 June 2014 by his former colleagues in the Davao Death Squad and placed in police detention for a week. In fact, the torture wound inflicted on him is non-healing up to the present, due to the rapture of a blood vessel when the barrel of an M-16 was stabbed into his buttocks while he was laid face on the floor. Small amounts of blood continuously flow out of the ruptured vessel and form a blood clot inside, causing pain, swelling and intermittent fever. Per a surgeon, it will require surgery costing as much as P100,000.00. Presently, surgery has not been undertaken due to budgetary constraints.

As a victim and a witness, Edgar Matobato has already testified in the Senate of the Philippines and his testimony has been aired on Youtube which is publicly available on the net. His testimony has also been recorded in the transcripts of stenographic notes of the Senate Committee on Justice and Human Rights. National and international media have made interviews of him, both print and broadcast, which have been widely circulated and disseminated through media outlets both in the Philippines and abroad. On the whole, his testimony is already in the public domain and can easily be accessed through the net, national and international media and public documents.

ARTHUR LASCAÑAS: THE SECOND MATOBATO

On 20 February 2017, a retired Davao policeman, former Senior Police Officer 3 Arthur Lascañas came out through nationally televised broadcast with his public confession in the Philippines. In a press conference conducted in the Senate of the Philippines, flanked by his lawyers and Senator Antonio Trillanes IV, Arthur Lascañas confirmed the existence of the Davao Death Squad and the truthfulness of the testimony of Edgar Matobato.

By way of confession, Lascañas confirmed his participation in the killings of the Davao Death Squad on orders of then Mayor Duterte, stating that the squad was paid an amount for every target being “erased”, which is the term known by then Mayor Rodrigo Duterte in referring to his order to kill a person⁹⁴. Later or on 06 March 2017, Lascañas testified in the inquiry conducted by the Senate Committee on Public Order

⁹⁴ Rappler. (2017, February 20) Ex-Davao policeman tags Duterte in death squad, murder. <http://www.rappler.com/nation/161982-spo3-lascanas-duterte-davao-death-squad>

and Dangerous Drugs upon the earlier motion and initiative of Senator Trillanes who is the foremost staunch critic of President Duterte, calling him at one time as a “mass murderer”⁹⁵.

Arthur Lascañas testified in the Senate that in the middle of 2015, he underwent a kidney transplant and thought that he was on the verge of death, prompting him to confess all his sins to a priest. At that time, he dreamed of a demon haunting him, which gripped his conscience. He underwent a spiritual renewal. He made a journal of his criminal activities under the Davao Death Squad. Fortunately, he survived his kidney transplant.⁹⁶ When he came to the Senate inquiry on 03 October 2016, in relation to the earlier testimony of Edgar Matobato, he was not prepared to tell the truth, because he feared for the security of his loved ones who were then still in Davao.⁹⁷ Besides, he was also told by his police colleagues in the Davao Death Squad to deny the earlier testimony of Edgar Matobato.⁹⁸ After his retirement from the police force in December 2016, he had an encounter with a religious nun who later referred him to a high Catholic prelate to whom he made his confession.⁹⁹

At a much later time, he was referred to Senator Antonio Trillanes IV¹⁰⁰ with whom he had coursed through his public confession on a nationally televised press conference in the Senate of the Philippines.¹⁰¹ On 6 March 2017, he formally testified in the Senate Committee on Public Order and Dangerous Drugs.

Against the backdrop of his spiritual renewal and being bothered by his conscience, Lascañas recanted his previous statement under oath last 03 October 2016, detailing the structure of the Davao Death Squad and his knowledge on the direct involvement of President Duterte, then Mayor, in the extra-judicial executions carried out by the Davao Death Squad.

According to him, all targets to be “*erased*”, an operational term which according to Lascañas means killing a target, had the sanction and clearance from then Mayor Duterte, which was coursed through SPO4 Sonny Buenaventura.¹⁰² Edgar Matobato earlier described Sonny Buenaventura as the “Little Mayor” of Davao whose

⁹⁵ Rappler. Elemia, Camille. (2016, September 26). Trillanes on Davao killings: Duterte a 'mass murderer'. <http://www.rappler.com/nation/147380-trillanes-davao-death-squad-duterte-mass-murderer>

⁹⁶ 6 March 2017 Senate hearing of the Committee on Public Order and Dangerous Drugs

⁹⁷ Page 1. Arturo Lascañas Affidavit, dated 19 February 2017, as submitted to the Senate Committee on Public Order and Dangerous Drugs (Annex A)

⁹⁸ Page 10. Transcript of 06 March 2017 Hearing of the Senate Committee on Public Order and Dangerous Drugs (Annex I)

⁹⁹ Page 11. Transcript of 06 March 2017 Hearing of the Senate Committee on Public Order and Dangerous Drugs (Annex I)

¹⁰⁰ Page 228. Transcript of 06 March 2017 Hearing of the Senate Committee on Public Order and Dangerous Drugs (Annex I)

¹⁰¹ Lim, A. (2017, February 20). Alleged Davao Death Squad leader surfaces in Senate. Retrieved from <http://thestandard.com.ph/news/-main-stories/229824/alleged-davao-death-squad-leader-surfaces-in-senate.html>

¹⁰² Page 53 to 55. Transcript of 06 March 2017 Hearing of the Senate Committee on Public Order and Dangerous Drugs (Annex I)

immense power emanated from being the long-time bodyguard of then Mayor Duterte when the latter was still a prosecutor in Davao City.¹⁰³ As a matter of practice, Sonny Buenaventura would relay the order to SPO3 Arthur Lascañas and to other members of the Davao Death Squad. For every target, a reward was paid. It ranges from 15,000.00 to 120,000.00 in Philippine pesos, depending on the value of the target to be “erased”. Said monetary reward was also being coursed through SPO4 Sonny Buenaventura, or sometimes directly came from then Mayor Duterte.

According to Arthur Lascañas, the name ‘Davao Death Squad’ emerged from an operation involving a suspected drug dealer. In the conduct of said operation, it appeared that the target was not present, but his household help was there so he was killed instead. When the group was about to leave, a note was supposed to be placed in the scene to make it appear that the rebel group, New People’s Army, was behind the operations. However, an opposition was raised, arguing that the New People’s Army might be angry about it. Therefore, it was agreed that the note shall bear the name, Davao Death Squad, with an accompanying warning to the public to refrain from drugs. Since then, the name Davao Death Squad became part of media discussions and public.¹⁰⁴

According to Arthur Lascañas, initially, the Davao Death Squad was only one core group composed of Davao policemen and their hitmen or “players”, a term specifically used by Lascañas referring to an assassin of the Davao Death Squad. However, sometime in 2001 or 2002, a faction occurred arising from squabbles about the reward money. The Davao Death Squad was split into two but the same mechanism was in place. The clearance from Mayor Rodrigo Duterte was coursed through SPO4 Sonny Buenaventura who, in turn, passed the order to the two groups.

Over time, the Davao Death Squad expanded to different police stations in Davao City. Each police station had its own death squad, while the two original groups were maintained. Rebel returnees also became members of the squads. As a result, the willful killings in Davao City increased on a daily basis.

Publicly known to be tough on crime, then Mayor Duterte embarked on a covert organization policy or strategy for crime control under this Davao Death Squad which is primarily tasked to erase, kill or eliminate suspected criminals. Based on the testimony of Edgar Matobato, the sole instruction of then Mayor Duterte to the *Lambada Boys* was for them to kill criminals like snatchers, robbers, addicts, etc.¹⁰⁵ This is also confirmed by Arthur Lascañas who said that their primary targets were suspected criminals.¹⁰⁶

¹⁰³ Page 31. Transcript of 15 September 2016 Hearing of the Senate Committee on Justice and Human Rights (Annex H)

¹⁰⁴ Page 2. Arturo Lascañas Affidavit, dated 19 February 2017, as submitted to the Senate Committee on Public Order and Dangerous Drugs (Annex A)

¹⁰⁵ Page 15. Transcript of the 15 September 2016 Hearing of the Senate Committee on Justice and Human Rights (Annex H)

¹⁰⁶ Page 2. Arturo Lascañas Affidavit, dated 19 February 2017, as submitted to the Senate Committee on Public Order and Dangerous Drugs (Annex A)

According to Matobato, nameless folks in Davao City were killed like chickens whose dead bodies were thrown into the sea of Samal Island or buried in the Laud Quarry,¹⁰⁷ which was also corroborated by Lascañas.¹⁰⁸

But as time went by, the Davao Death Squad also engaged in “contract killings” under the orders of then Mayor Duterte. One instance of said contract killings is the murder of Jun Pala, a local journalist and politician, who earned the personal enmity of Mayor Rodrigo Duterte for his hard-hitting commentaries against the criminal activities of the dreaded Davao Death Squad. As confirmed by both Matobato and Lascañas, Jun Pala was murdered on orders of then Mayor Duterte for a contract price of 3,000,000 in Philippine peso.¹⁰⁹

During his public confession, Lascañas narrated how he had given his imprimatur to the killing of his two brothers on account of his blind loyalty and obedience to then Mayor Duterte, who had a very tough campaign against illegal drugs.¹¹⁰ According to Lascañas, his brothers Cecilio and Fernando, were into drugs as users and dealers, respectively. Knowing then Mayor Duterte’s strategy of killing suspected drugs personalities and to show his loyalty and obedience, Lascañas gave his consent to have his two brothers arrested, which subsequently resulted into his brothers being killed by his fellow policemen. This shows how the anti-drug campaign of then Mayor Duterte caused even the killing of the brothers of his key lieutenant in the war on drugs.¹¹¹

The testimony of Arthur Lascañas in the Senate Committee on Public Order and Dangerous Drugs is recorded in a transcript of the proceedings and captured on video which can be found on YouTube.¹¹² He also executed an Affidavit that was utilized in his public confession in a press conference.¹¹³ He has been interviewed by Philippine and international media. Recently, Arthur Lascañas has left of the Philippines and has gone to Singapore per media accounts.

¹⁰⁷ Transcript of the 15 September 2016 Hearing of the Senate Committee on Justice and Human Rights (Annex H)

¹⁰⁸ Deogracias, C. (26 February 2017). Lascañas: ‘Superman’ ordered death of political enemies, innocents. Retrieved from <http://www.philstar.com/headlines/2017/02/26/1675944/Lascañas-superman-ordered-death-political-enemies-innocents><http://www.philstar.com/headlines/2017/02/26/1675944/Lascañas-superman-ordered-death-political-enemies-innocents>

¹⁰⁹ Page 8 to 11. Arturo Lascañas Affidavit, dated 19 February 2017, as submitted to the Senate Committee on Public Order and Dangerous Drugs (Annex A)

¹¹⁰ Page 63. Transcript of 06 March 2017 Hearing of the Senate Committee on Public Order and Dangerous Drugs (Annex I)

¹¹¹ Gonzales, Y.V. (20 February 2017). Confessed DDS leader admits hand in killing of own brothers. Retrieved from <http://newsinfo.inquirer.net/873241/confessed-dds-leader-admits-hand-in-killing-of-brothers-due-to-loyalty#ixzz4eg5es5v9>

¹¹² Youtube. Senate Hearing on March 6, 2017. Retrieved from <https://www.youtube.com/watch?v=yUECdXnYIU>

¹¹³ Arturo Lascañas Affidavit, dated 19 February 2017, as submitted to the Senate Committee on Public Order and Dangerous Drugs (Annex A)

As reported in media, he left because he had information that criminal cases are being filed against him in relation to his public confession.¹¹⁴ In public, as reported by national broadsheets in the Philippines, he expressed his willingness and readiness to testify in the International Criminal Court, should it be deemed to be warranted by the Office of the Prosecutor in an investigation or by the Trial Chamber in the event of a trial.¹¹⁵

THE JUN PALA MURDER: A CASE IN POINT ON THE CRIMINAL MENTAL STATE OF PRESIDENT RODRIGO DUTERTE

The murder of Jun Pala is a criminal case in point because it reveals the mindset of President Duterte who bragged in his public pronouncement after becoming President that he knew the perpetrator of the murder,¹¹⁶ and it later turned out that he was the one who killed Jun Pala, as first testified upon by Edgar Matobato and later confirmed by Arthur Lascañas.

According to Matobato's account, a thousand simple folks were killed in Davao City by the Davao Death Squad, more fittingly on orders of then Mayor Duterte or "Digong" aka Charlie Mike.¹¹⁷ To Matobato, the thousand victims killed like chickens were just unknown, nameless targets for liquidation for being pushers, addicts and petty criminals. The murder of Jun Pala was one of several killings distinctly recalled by Matobato, which was corroborated later on by Lascañas in his public confession and statement in the Senate investigation, in which he said he had direct participation in the planning and execution of the killing

Many years ago, Jun Pala was walking towards his home when he was ambushed and murdered in cold blood. But Jun Pala was not a drug pusher, addict or petty criminal. He did not fit in with the profile of the human targets for DDS liquidation. Far from it, Jun Pala was a journalist, broadcaster and local politician. He was no ordinary man, because he had the extraordinary guts to condemn the criminal activities of the Davao Death Squad. In his regular radio broadcast, his stinging

¹¹⁴ Dizon, N. (9 April 2017). Davao Death Squad witness Arturo Lascañas leaves PH for safety. Retrieved from <http://newsinfo.inquirer.net/887799/davao-death-squad-witness-arturo-Lascañas-leaves-ph-for-safety#ixzz4egddCSqq><http://newsinfo.inquirer.net/887799/davao-death-squad-witness-arturo-Lascañas-leaves-ph-for-safety#ixzz4egddCSqq>

¹¹⁵ Dizon, N. (11 April 2017). Lascañas to testify on drug killings. Retrieved from <http://newsinfo.inquirer.net/888217/Lascañas-to-testify-on-drug-killings>

¹¹⁶ Dumlao, A. (16 September 2016). Duterte urged: Tell the truth about murdered journalist Jun Pala. Retrieved from <http://www.philstar.com/headlines/2016/09/16/1624400/duterte-urged-tell-truth-about-murdered-journalist-jun-pala><http://www.philstar.com/headlines/2016/09/16/1624400/duterte-urged-tell-truth-about-murdered-journalist-jun-pala>

¹¹⁷ Page 54. Transcript of 15 September 2016 Hearing of the Senate Committee on Justice and Human Rights (Annex H)

commentaries painfully stepped on the soft toes of then Mayor Duterte or Digong aka Charlie Mike.¹¹⁸

In his recent media appearance after being elected as President, an exasperated President Duterte was quick to lay the blame on the long-dead Jun Pala for his own violent murder. Apparently blackening the memory of the dead, Duterte dubbed Jun Pala as an unethical and corrupt media man who had his death coming for him. What is even very remarkable is that Duterte claimed that he knew who murdered Jun Pala. Meantime, Matobato pointed to President Duterte as the mastermind of the Jun Pala murder. From accounts, Jun Pala earned the enmity of Duterte for his hard-hitting commentaries against President Duterte and his Davao Death Squad. In time, the National Union of Journalists of the Philippines or NUJP came out publicly through media to challenge President Duterte to shed light on the true and real circumstances behind the murder of Jun Pala.¹¹⁹

Interestingly, the claim of Matobato that President Duterte ordered the murder of Jun Pala appeared to coincide with the President's admission that he knew who the killer is. If Matobato's statement were to be believed, then it perfectly jibed with what President Duterte has admitted. This is precisely because as the alleged mastermind, President Duterte should know the culprit who is no other than himself. Indeed, having been implicated positively by Matobato, it was then incumbent upon President Duterte to respond to the challenge of NUJP, which is that he shed light on the real and true circumstances behind the murder of Jun Pala. In the interest of truth, and if only to shield himself from reasonable suspicion of guilt, President Duterte should have disclosed the real identity of the culprit, consistent with his admission that he knows the culprit.

His disclosure was even necessitated by the demands of justice. As then Mayor and now as President, Rodrigo Duterte had the sworn duty to bring the culprit to justice, no matter what he thinks about Jun Pala. If indeed he knew the man who murdered Jun Pala, then he should have revealed his identity in order to bring him to the bar of justice. If he did not reveal the culprit, President Duterte stood to be accused of protecting the culprit, which makes him an accessory to the crime of murder. But President Duterte never lifted a finger to investigate the murder of Jun Pala and bring to justice the culprit, even if he said that he knew who the perpetrator was. It turned out later, with the corroborative testimony of Arthur Lacanas, that then Mayor Duterte was the one who murdered Jun Pala, true to his pronouncement that he knew who the perpetrator is.

The Jun Pala murder is being referred as a clear example of the mental state of President Duterte in the sense that what he manifests in public is not for media hype but actually reflects his personal knowledge of the crime. In other words, he knew the truth about the Jun Pala murder, and manifested his personal knowledge when he

¹¹⁸ Sabio, J. (2016 October 3). The Jun Pala Murder. Retrieved from <http://mindanaogoldstardaily.com/the-jun-pala-murder/>
<http://mindanaogoldstardaily.com/the-jun-pala-murder/>

¹¹⁹ Sabillo, K. A. (15 September 2016). NUJP to Duterte: Who really killed Jun Pala? Retrieved from <http://newsinfo.inquirer.net/815760/nujp-to-duterte-who-really-killed-jun-pala>

stated that he knew who the culprit was, which later turned out to be no other than himself.

“I WILL KILL YOU”: THE MENTAL STATE OF THE MAYOR AND PRESIDENT RODRIGO DUTERTE

Just like in the Jun Pala murder incident, then Mayor Rodrigo Duterte manifested in public that it is true that he is the Davao Death Squad;¹²⁰ and when asked if it is true that he killed 700 people in Davao City, he clarified it by saying that they miscalculated it and that it was 1,700.¹²¹ When he was still the Mayor, President Duterte admitted personal responsibility for the policy of killing drug suspects. In February 2009, Mayor Rodrigo Duterte stated: *“If you are doing an illegal activity in my city, if you are a criminal or part of a syndicate that preys on the innocent people of the city, for as long as I am the mayor, you are a legitimate target of assassination.”*¹²² These public admissions of President Duterte, as then Mayor, would later be confirmed to be true based on the Senate testimony of Edgar Matobato and on the subsequent public confession and Senate testimony of Arthur Lascañas.

As in the Jun Pala murder, these public pronouncements of President Duterte, made by him while he was a Mayor, clearly indicate his state of mind which is that he knew about the thousand murders committed under his Davao Death Squad and his role and participation in such murders. To illustrate, first, President Duterte said that he is the Davao Death Squad.¹²³ His mental state through his personal knowledge of the Davao Death Squad is established as a fact later by the testimonies of Edgar Matobato and Arthur Lascañas. Second, President Duterte said that he killed 1,700, not 700, in Davao City, and that if you are a criminal you are a legitimate target of assassination.¹²⁴ His mental state through his personal knowledge about the killings of his Davao Death Squad is established later as a fact by the testimonies of Edgar Matobato and Arthur Lascañas

¹²⁰ Hegina, A. (2015 May 25). Duterte confirms ‘ties’ with Davao Death Squad. Retrieved from <http://newsinfo.inquirer.net/693373/duterte-confirms-ties-with-davao-death-squad>

¹²¹ Esmaguél, P. (8 December 2015). Duterte: I killed 700? No, make that 1,700. Retrieved from <http://www.rappler.com/nation/politics/elections/2016/115315-duterte-killings-amnesty-international>

¹²² Marshall, A. & Mogato, M. (26 May 2016). Philippine death squads very much in business as Duterte set for presidency. Retrieved from <http://www.reuters.com/article/us-philippines-duterte-killings-insight-idUSKCN0YG0EB>

¹²³ Hegina, A. (2015 May 25). Duterte confirms ‘ties’ with Davao Death Squad. Retrieved from <http://newsinfo.inquirer.net/693373/duterte-confirms-ties-with-davao-death-squad>

¹²⁴ Esmaguél, P. (8 December 2015). Duterte: I killed 700? No, make that 1,700. Retrieved from <http://www.rappler.com/nation/politics/elections/2016/115315-duterte-killings-amnesty-international>

In an article entitled "*Duterte on Criminals: 'Kill all of them'*" published in the Inquirer Mindanao on 25 May 2015, then Mayor Rodrigo Duterte said: "*You rape a child in my city?*", "*I will kill you, I have no problem with that.*" This statement was made before more than 200 delegates at the first national convention of the Workplace Advocates on Safety in the Philippines. He further said: "*You commit robbery and rape your victim? I will kill you*"; "*We're the ninth safest city.*"; "*How do you think I did it? How did I reach that title among the world's safest cities?*"; "*Kill them all (criminals),*" he arrogantly said. In said article, President Duterte also said: "*But the best practices in the city, ma'am, are the killings (of criminals).*" President Duterte, as Mayor then, lectured then President Arroyo of his "best practice" of killing suspected criminals.¹²⁵

It should be noted that President Duterte, as then Mayor, did not threaten to bring suspected criminals to justice by using the full force of the law to arrest, investigate, prosecute and imprison them. He did not couch his serious threat in a language that reflects an abiding respect for the sanctity of human life, due process and rule of law. He did not threaten that way. What he uttered in public is a serious threat TO KILL, nothing more, nothing less. He did not even threaten to just cause bodily harm. He did not also say that the police should kill criminals in self-defense. His public threat to suspected criminals is so simple, that is, "I WILL KILL YOU". As borne out by records, President Duterte, as then Mayor, as presidential candidate and even as President, would keep on repeating this serious threat TO KILL which is punishable as a crime under the Revised Penal Code of the Philippines.

These serious threats to KILL were uttered in public speeches and media statements by President Duterte when he was still a Mayor, and before Edgar Matobato and Arthur Lascañas surfaced in the Senate to testify on the Davao Death Squad. When these threats were made, there was yet no direct first-hand evidence of the Davao Death Squad. One would then have the impression that President Duterte, as then Mayor, was just engaging in exaggerations or hyperbole to bring his strong message across and drive home his image as the "Punisher"¹²⁶ who is being tough on crime, or he was just engaging in political propaganda. But the subsequent testimonies of Edgar Matobato and Arthur Lascañas revealed the real, factual context from and under which President Duterte, as then Mayor, uttered his repeated serious threats TO KILL in public. Now that we already know about the fact and actual reality of the Davao Death Squad, we can now say with confidence that President Duterte, as then Mayor, was just speaking from his own actual experience, meaning that he uttered those repeated serious threats TO KILL based on his actual experience in the more than a thousand killings carried out by his Davao Death Squad in Davao City.

In the real and actual context of the Davao Death Squad, it is now justified to state, with the benefit of hindsight, that the repeated serious threats TO KILL uttered in public by President Duterte, as then Mayor, merely constitute verbal manifestations

¹²⁵ Lacorte, G. (15 May 2015). Duterte on criminals: 'Kill all of them'. Retrieved from <http://newsinfo.inquirer.net/691527/dutertes-secret-in-keeping-davao-city-phs-safest-kill-criminals>

¹²⁶ BBC. (4 October 2016). Profile: Duterte the controversial 'strongman' of the Philippines. Retrieved from <http://www.bbc.com/news/world-36659258>

of his mental state, i.e., his awareness and personal knowledge, about his “best practice” of eliminating suspected criminals as a method of crime control. For, if his “best practice” was to use the full force of the law in bringing offenders to justice through investigation, arrest, prosecution and conviction, he would have said so. But he did not. Instead, he repeatedly uttered serious threats TO KILL, simply because he was just giving full and unfettered expression of his mental state, meaning his awareness or knowledge about his “best practice” which is precisely TO KILL suspected criminals.

Furthermore, the mental state of President Duterte being revealed by his public statements is that he personally knows his serious threat TO KILL to be gruesomely real, which we now know as a fact because based on the testimony of Edgar Matobato and Arthur Lascañas, his serious threat TO KILL was actually carried out before in the more than a thousand killings under his Davao Death Squad. In other words, he personally knows his serious threat TO KILL to be real, because based on such testimonies, he has already done it before in the thousands of extra-judicial executions carried out under his Davao Death Squad and because he is more than capable to carry out his serious threat TO KILL through his same Davao Death Squad.

Based on his public statement, President Duterte also described his killing of criminals in Davao City as a “best practice” in the eradication of crime or as a method of crime control.¹²⁷ In uttering publicly serious threats TO KILL suspected criminals, President Duterte, as then Mayor, merely gave verbal expression of his mental state in that he is aware and knowledgeable that such killings were carried out as his “best practice” in eradicating crime or as a method of crime control. In fact, President Duterte, as Mayor then, considered it as a “best practice”, a secret for making Davao City supposedly the 9th safest city of the world, thus, making him so proud that he even publicly endorsed it to then President Gloria Macapagal-Arroyo.¹²⁸

Even before becoming an official candidate for President, Rodrigo Duterte already revealed his mental state when he publicly said: *“If by chance that God will place me there, watch out because the 1,000 [people allegedly executed while Duterte was mayor of Davao City] will become 100,000. You will see the fish in Manila Bay getting fat. That is where I will dump you.”*¹²⁹

In fact, President Duterte embarked on a nationwide campaign based on a centerpiece platform to embark on a nationwide killing campaign against drug dealers and drug users. During a campaign rally on 15 March 2016, he announced: *“When I*

¹²⁷ Politiko. Duterte shares grisly secret to keeping Davao City as PH’s safest. Retrieved from <http://politics.com.ph/duterte-shares-grisly-secret-to-keeping-davao-city-as-phs-safest/>

¹²⁸ Politiko. Duterte shares grisly secret to keeping Davao City as PH’s safest. Retrieved from <http://politics.com.ph/duterte-shares-grisly-secret-to-keeping-davao-city-as-phs-safest/>

¹²⁹ Human Rights Watch. (March 2017). License to Kill. Retrieved from https://www.hrw.org/sites/default/files/report_pdf/philippines0317_web_1.pdf https://www.hrw.org/sites/default/files/report_pdf/philippines0317_web_1.pdf

become president, I will order the police to find those people [dealing or using drugs] and kill them. The funeral parlors will be packed.”¹³⁰

After being elected as President, Rodrigo Duterte continued to state, in unmistakable terms, that his war on drugs would be focused on killing drug dealers and users. Speaking in Davao City on June 4, he stated: *“If you are still into drugs, I am going to kill you. Don’t take this as a joke. I’m not trying to make you laugh. Sons of bitches, I’ll really kill you.”¹³¹*

After assuming office on 30 June 2016, President Duterte continued his avowed intention to kill drug dealers and users. On August 6, he warned drug dealers: *“My order is shoot to kill you. I don’t care about human rights, you better believe me.”* He praised the soaring body count of victims of police killings as proof of the *“success”* of his *“war on drugs.”¹³²*

In the macabre context of the testimonies of Edgar Matobato and Arthur Lascañas, the clear and unmistakable mental state of President Duterte is proven by the foregoing statements made by him when he was still a Mayor, followed later when he was still vying for President and followed much later when he was already the President of the Philippines. These repeated and persistent serious threats TO KILL are just continuing expressions of his mental state, that is, his avowed intention of eliminating, killing or “erasing” suspected criminals in order to eliminate criminality or as a method of crime control, which to him is the “best practice”, strategy or system based on his actual experience in Davao City through his Davao Death Squad.

His series of serious threats TO KILL reflecting his avowed intention to kill suspected criminals, which are of public knowledge, reveals his mental state, that is, of his awareness or personal knowledge of his involvement in the extra-judicial executions in Davao City and later in the continued extra-judicial executions in the war on drugs.

Indeed, his mental state reveals his material awareness or personal knowledge of the following, namely: (1) he knows of the Davao Death Squad and the murders committed under it through his orders, (2) he knows that the killings under the Davao Death Squad were made by him in order to kill suspected criminals, (3) he knows that the killings under the Davao Death Squad are the “best practice” for crime control, (4) he knows that his threats to kill drug dealers and addicts once he becomes President are real and will be carried out just like before in the thousands of persons killed in Davao City under the Davao Death Squad, and (5) he knows that his “best practice”

¹³⁰ Agence France-Presse . (16 March 2016). Kill the criminals! Duterte’s vote-winning vow. Retrieved from <http://newsinfo.inquirer.net/774225/kill-the-criminals-dutertes-vote-winning-vow>
<http://newsinfo.inquirer.net/774225/kill-the-criminals-dutertes-vote-winning-vow>

¹³¹ Human Rights Watch. (March 2017). License to Kill. Retrieved from https://www.hrw.org/sites/default/files/report_pdf/philippines0317_web_1.pdf

¹³² Human Rights Watch. (March 2017). License to Kill. Retrieved from https://www.hrw.org/sites/default/files/report_pdf/philippines0317_web_1.pdf

while Mayor will be carried out now that he is already President, and (6) he knows that the extra-judicial executions in his war on drugs are part of such “best practice”.

At this juncture, it is very significant to note that in the Jun Pala murder, the mental state of President Duterte, as revealed in his public statement, that he knew the identity of the perpetrator turned out to be a mere expression of the fact that he was himself the perpetrator, as was later established as a fact by the witness testimony of Edgar Matobato and Arthur Lascañas. President Duterte’s mental state as revealed in his statement that he is the Davao Death Squad and that he killed a thousand in Davao City also later turned out to be just an expression of the fact about the Davao Death Squad and the more than a thousand extra-judicial executions undertaken under it, as later established to be a fact by the testimony of the two whistleblowers.

Just like in the Jun Pala murder incident where President Duterte’s claim of knowing the perpetrator later turned out to be an expression of the fact of his being himself the perpetrator, President Duterte uttered serious threats TO KILL suspected criminals in Davao City which turned out merely to be an expression of the fact of the more than a thousand extra-judicial executions under the Davao Death Squad coming behind those threats. These serious threats TO KILL reveal his mental state of being personally knowledgeable about the fact of killings coming behind those threats, considering that the killings had been actually and in fact carried out by him through the Davao Death Squad in pursuance of his “best practice”. Later, he continued his serious threats TO KILL drug dealers and addicts as presidential candidate and later as President of the Philippines, revealing the same mental state betraying his awareness or personal knowledge of the fact of the thousands of killings coming also behind the threat.

More particularly, he knew or was aware that killings were done before pursuant to such “best practice” in Davao City and therefore can also be carried out at the national level with him as President. Verily, all these repeated serious threats TO KILL reveal a mental state of a criminal intent of a continuing commission of extra-judicial executions from the time he was the Mayor of Davao City and up to the time when he became the President.

In this regard, it should be noted that President Duterte was the Mayor of Davao City for two decades, immediately before he ran and won as President of the Philippines. Based on the testimony of Edgar Matobato and Arthur Lascañas, he is the mastermind and leader of his Davao Death Squad. Having found the killings undertaken by the Davao Death Squad to be the “best practice” in crime control in Davao City, President Duterte like any other person, in the normal human conduct, would logically and naturally continue such “best practice” in his war on drugs when he became the President. Since he boasted to then President Gloria Macapagal-Arroyo that killing suspected criminals is his “best practice”, President Duterte, as Mayor then, expressed his mental state or the criminal intent that he wanted his “best practice” to be adopted in the national level. When he became the President, it would

therefore be logical for him to continue such “best practice” in line with his previous recommendation when applied to himself.

It would have been different if President Duterte, as then Mayor, did not have a Davao Death Squad or did not implement the “best practice” of killing suspected criminals and later became the President of the Philippines. In that hypothetical situation, the “best practice” would have to be recommended to him, and in turn, he would have to study and examine the “best practice” and later make a decision to adopt and implement it in his war on drugs, just like then President Gloria Arroyo to whom then Mayor Rodrigo Duterte recommended his “best practice” of killing suspected criminals.¹³³ In this hypothetical situation, it would be extremely necessary to prove that President Duterte, in fact and in actuality, adopted and implemented the “best practice” in his war on drugs as recommended to him.

But the actual situation of President Duterte is far different from that hypothetical situation. In his case, the existence and the mass murders undertaken under his Davao Death Squad are proven as a fact by proof beyond reasonable doubt through the testimony of Edgar Matobato and Arthur Lascañas. In point of fact, President Duterte actually established, operated and managed his Davao Death Squad in Davao City when he was the Mayor. The “best practice” being referred to by President Duterte, or the strategy or system of killing suspected criminals in Davao City, is already proven as a fact by their testimonies. As announced by Senator Antonio Trillanes on media, six or seven more witnesses, some of whom are policemen like Arthur Lascañas, and some lower than or of the same level as Edgar Matobato, will even be coming out to further corroborate the testimonies of Edgar Matobato and Arthur Lascañas, all the more bolstering such proof.¹³⁴

As shown earlier, President Duterte merely intended to continue and did continue in his war on drugs at the national level what he found to be the “best practice”, strategy or system in Davao City through the Davao Death Squad of killing suspected criminals. That being a mere continuation, there is no need to prove the fact that he actually adopted such “best practice”, strategy or system in his war on drugs.¹³⁵ What needs to be proven only is the fact that he intended to continue and did continue his “best practice” through his Davao Death Squad in Davao City, when he waged a war on drugs at the national level after he became the President. As already shown, this proof can be found in his public statements revealing his mental state of actually intending such continuation. This continuation is supported by the further fact that President Duterte was Mayor for two decades operating the Davao

¹³³ Lacorte, G. (15 May 2015). Duterte on criminals: ‘Kill all of them’. Retrieved from <http://newsinfo.inquirer.net/691527/dutertes-secret-in-keeping-davao-city-phs-safest-kill-criminals>

¹³⁴ Billiones, T. (15 March 2017). 7 more witnesses to prove Duterte's death squad ties, says Trillanes. Retrieved from <http://news.abs-cbn.com/news/03/15/17/7-more-witnesses-to-prove-dutertes-death-squad-ties-says-trillanes>
<http://news.abs-cbn.com/news/03/15/17/7-more-witnesses-to-prove-dutertes-death-squad-ties-says-trillanes>

¹³⁵ Lacorte, G. (15 May 2015). Duterte on criminals: ‘Kill all of them’. Retrieved from <http://newsinfo.inquirer.net/691527/dutertes-secret-in-keeping-davao-city-phs-safest-kill-criminals>
<http://newsinfo.inquirer.net/691527/dutertes-secret-in-keeping-davao-city-phs-safest-kill-criminals>

Death Squad and immediately became the President and thus would naturally just continue his “best practice”. President Duterte merely transitioned in terms of position from Mayor to President, but his “best practice”, system or strategy of eliminating or killing suspected criminals remained the same and is being continued at the national level in his war on drugs.

The fact that President Duterte just continued his “best practice” of killing suspected criminals that he found to be effective in making Davao City the ninth safest city in the world, based on his claim, is bolstered even more by his public pronouncements after he became the President. He did not change in his repeated serious threats TO KILL when he became the President. On repeated occasions, he uttered those same serious threats, and even promoted, condoned and incited the police and civilians to kill suspected drug addicts/pushers. His serious threats to kill when he became President are exactly of the same nature, tenor and meaning as those uttered by him when he was still Mayor of Davao City, clearly manifesting the same intent of continuing in the utilization of the same “best practice”. Having already known about the fact of the Davao Death Squad, we do now know also as a fact that President Duterte means only the same simple thing in his war on drugs at the national level, that is, TO LITERALLY KILL suspected 100,000 drug pushers or even 3 million drug addicts under the same “best practice”, strategy or system utilized by him through his Davao Death Squad in Davao City.¹³⁶

ELEMENTS OF CRIMES AGAINST HUMANITY IN RELATION TO EXTRA-JUDICIAL EXECUTIONS OR MASS MURDER

ELEMENTS OF CRIME AGAINST HUMANITY THROUGH MURDER

The “Elements of Crime” as set out by the Assembly of States Parties¹³⁷ provides for the elements of crime against humanity through murder, thus:

Article 7 - Crimes against humanity

Introduction

1. Since Article 7 pertains to International Criminal law, its provisions, consistent with Article 22, must be strictly construed, taking into account that crimes against humanity as defined in Article 7 are among the most serious crimes of concern to the international community as a whole,

¹³⁶ Human Rights Watch. (March 2017). License to Kill. Retrieved from https://www.hrw.org/sites/default/files/report_pdf/philippines0317_web_1.pdf

¹³⁷ International Criminal Court. Elements of Crime. Retrieved from <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>

warrant and entail individual criminal responsibility, and require conduct which is impermissible under generally applicable international law, as recognized by the principal legal systems of the world.

2. The last two elements for each crime against humanity describe the context in which the conduct must take place. These elements clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack.

3. “Attack directed against a civilian population” in these context elements is understood to mean a course of conduct involving the multiple commission of acts referred to in Article 7, Paragraph 1, of the Statute against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack. The acts need not constitute a military attack. It is understood that “policy to commit such attack” requires that the State or organization actively promote or encourage such an attack against a civilian population.

Article 7 (1) (a) - Crime against humanity of murder

“Elements

1. The perpetrator killed one or more persons.
2. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
3. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.”

FIRST ELEMENT: COMMISSION OF MASS MURDER

Based on the Senate testimonies of Edgar Matobato and Arthur Lascañas, in conjunction with the earlier testimony in court of Ernesto Avasola,¹³⁸ it is humbly submitted that these testimonies constitute proof beyond reasonable doubt that President Duterte, as Mayor of Davao City then, is the mastermind and leader of his Davao Death Squad and, thus, should be held accountable for the mass murder of more than a thousand nameless people in Davao City as well as the murders of specific persons identified by said witnesses committed under the Davao Death Squad. In particular, President Duterte should be made criminally liable for crimes against humanity committed by him “repeatedly, unchangingly and continuously” as Mayor of Davao City after August 2011 under the Rome Statute of the International Criminal

¹³⁸ Sword Statement of Crispin Salazar, Ernesto Avasola, Jose Basilion and Ramon Evangelista submitted to the Commission on Human Rights (Annex D)

Court. As already established earlier, the continuation by President Duterte of his war on drugs at the national front, after he became the President, specifically the “best practice”, strategy or system of killing suspected criminals through the Davao Death Squad in Davao City, makes him further criminally liable, under the Rome Statute of the International Criminal Court¹³⁹ for the extra-judicial executions constituting crimes against humanity, particularly against suspected drug dealers and addicts in the war on drugs.

As earlier mentioned, the recent reports of the Human Rights Watch¹⁴⁰ and the Amnesty International¹⁴¹ are compelling to show that the incidents of deaths investigated by them are part of a continuing widespread and systematic attack against a civilian population, mostly the poor and impoverished. The Human Rights Watch concluded that there is no distinction between police drug operations resulting into deaths and vigilante killings, as these were perpetrated by the police themselves through hired assassins or disguised themselves as vigilantes, and in order to cover these deaths, the police planted evidence by leaving a gun or drugs at the scene of the crime.¹⁴² This is precisely the very same modus operandi that Edgar Matobato and Arthur Lascañas testified upon in relation to their direct involvement in the Davao Death Squad.

FINDINGS OF THE HUMAN RIGHTS WATCH

The Human Rights Watch found that in many of the 24 cases they looked into, the claims of the police differed from those of the witnesses. While the official police report would say that the victim fought back, witnesses would say that the police barged into their house and either took the victim, who was later found dead, or isolated the victim, who was later found dead, reportedly in a shootout.¹⁴³

A case in point is that of Efren Morillo, who filed for and was granted, a Writ of Amparo.¹⁴⁴ Morillo is the lone survivor of a summary execution carried out by four Quezon City policemen during an anti-drug operation in August 2016. Four of his companions were shot, execution-style, and died on the spot, but Morillo miraculously survived.

¹³⁹ International Criminal Court. Rome Statute. Retrieved from https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdfhttps://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁴⁰ Human Rights Watch. (March 2017). License to Kill. Retrieved from https://www.hrw.org/sites/default/files/report_pdf/philippines0317_web_1.pdfhttps://www.hrw.org/sites/default/files/report_pdf/philippines0317_web_1.pdf

¹⁴¹ Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/><https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁴² Page 40. Human Rights Watch. (March 2017). License to Kill. Retrieved from https://www.hrw.org/sites/default/files/report_pdf/philippines0317_web_1.pdfhttps://www.hrw.org/sites/default/files/report_pdf/philippines0317_web_1.pdf

¹⁴³ Ibid.

¹⁴⁴ Murillo petition/press release for Writ of Amparo (Annex K)

In January 2017, he filed for and was granted a Writ of Amparo, seeking protection from the government and from police harassment and intimidation, as well as the suspension of Tokhang operations under the jurisdiction of Quezon City Police District 6 for the duration of the trial. Last March, he had to file an omnibus motion for reinvestigation at a metropolitan trial court: he has been accused of direct assault, by the same policemen Morillo has accused of frustrated murder.¹⁴⁵

Furthermore, the many cases of summary executions, both by the police and unknown vigilantes, mirror the summary executions in Davao City, when President Duterte was the Mayor.

FINDINGS OF AMNESTY INTERNATIONAL

President Duterte entered into office in June 2016 vowing to wipe out crime within six months and announcing a policy that would target those using and selling drugs.¹⁴⁶ The use of methamphetamines, known as “shabu” in the Philippines, is high for the region, but the overall prevalence of drug use is relatively low. In September 2016, the Philippine Dangerous Drugs Board estimated that 1.8 million people in the country had used drugs at some point during the 13-month period its survey examined, which is roughly 2.3 percent of the population between the ages of 10 and 69.¹⁴⁷

As of 21 January 2017, less than seven months into his presidency, there had been 7,025 estimated drug-related killings. Although the National Capital Region has seen a particularly high number of cases, killings have taken place throughout the country’s three geographical divisions: Luzon, Visayas, and Mindanao. The victims have largely been male, unemployed, and underprivileged. According to the Dangerous Drugs Board, people who use drugs in the Philippines tend to be part of families with an average monthly income of 10,172 pesos (US \$205), which is below the national poverty threshold, defined as the amount a family would need to afford basic necessities.¹⁴⁸

On 01 July 2016, one day after President Duterte assumed office, the new Chief of the Philippine National Police, Ronald Dela Rosa, signed Command Memorandum Circular (CMC) No. 16-2016. This circular laid out the new administration’s anti-drugs plan, known as Operation Double Barrel. Its stated purpose is to set forth police

¹⁴⁵ Cabrera, R. (11 March 2017). Tokhang survivor wants assault raps reviewed. Retrieved from <http://www.philstar.com/metro/2017/03/11/1679874/tokhang-survivor-wants-assault-raps-reviewed><http://www.philstar.com/metro/2017/03/11/1679874/tokhang-survivor-wants-assault-raps-reviewed>

¹⁴⁶ Revalas, M. (22 February 2016). Duterte vows to rid country of illegal drugs, corruption in 3-6 months. Retrieved from <http://www.gmanetwork.com/news/news/nation/556226/duterte-vows-to-rid-country-of-illegal-drugs-corruption-in-3-6-months/story><http://www.gmanetwork.com/news/news/nation/556226/duterte-vows-to-rid-country-of-illegal-drugs-corruption-in-3-6-months/story>

¹⁴⁷ Page 10. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/><https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁴⁸ Ibid.

guidelines “in support to the Barangay Drug Clearing Strategy of the government and the **neutralization** of illegal drug personalities nationwide.”¹⁴⁹

The name “Double Barrel” comes from a purported two-prong strategy: one, known as Project HVT, which focuses on drug syndicates and traffickers; and the other, known as Project or Oplan Tokhang, which focuses on low-level sellers and people who use drugs. “Oplan” stands for “operation plan,” and “Tokhang” fuses two words that translate as “knock and plead”—as the strategy involves door-to-door visitations by the police to request that people involved in drugs “voluntarily” surrender to the authorities and cease their drug activities.¹⁵⁰

At the heart of Oplan Tokhang is a collaboration between the police and barangay officials to compile and maintain a list, commonly known as a “drug list” or “drug watch list,” of all suspected drug users and pushers in a given area. This practice predated the Duterte administration. A 2015 circular from the Department of Interior called on Barangay Anti-Drug Abuse Councils (BADAC) to “continuously gather ... data ... in the barangay including listing of suspected drug users and pushers” and to submit that list to municipal and police authorities. News reports indicate the creation of “watch lists” may date to at least 2005.¹⁵¹

Between 01 July 2016 and 21 January 2017, at least 2,500 people were killed during police anti-drug operations, according to figures from a news website citing the Philippine National Police. Police killings tend to fall within three categories: during acknowledged police raids on homes or alleged “drug dens”; during operations that police claim are “buy busts,” but witnesses and family members describe as raids; and after police have detained an alleged drug offender.¹⁵²

Family members and witnesses repeatedly contested the police description of how people were killed. Police descriptions bore striking similarities from incident to incident; official police reports in several cases documented claim the suspect’s gun “malfunctioned” when he tried to fire at police, after which they shot and killed him. In many instances, the police try to cover up unlawful killings or ensure convictions for those arrested during drug-related operations by planting “evidence” at crime scenes and falsifying incident reports—both practices the police officer said were common.¹⁵³ While police reports uniformly indicate the suspect resisted arrest and tried to shoot at the police, witnesses and other people with direct knowledge instead describe police officers killing unarmed men. Officers involved routinely flouted police rules and regulations. In the vast majority of alleged “buy-bust” cases there appears to have been no undercover purchase at all. Instead, witnesses to these killings said the police

¹⁴⁹ Page 19. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/><https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Page 20 to 21. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁵³ Page 21. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/><https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

carried out a raid on a residence without a search or arrest warrant and without informing the person of his or her rights.¹⁵⁴

Between 01 July and 9 January 2017, unknown armed persons have killed 4,146 people—an average of roughly 20 a day—in cases associated with the anti-illegal drug campaign.¹⁵⁵ In many cases documented the police inflicted further economic harm by stealing valuables from victims' homes during operations. In at least some areas of Metro Manila, police investigators appear to be running a racket with funeral homes, forcing families to spend money they can ill afford to in order to claim the body.¹⁵⁶

The President has repeatedly said that policemen will not be investigated and has encouraged civilians to personally act against those involved in drugs. As the UN Special Rapporteur on extrajudicial, summary or arbitrary killings has pointed out, such conduct is prohibited by international law and *"is effectively a license to kill."*¹⁵⁷

The report was also able to obtain the following admissions from police officers themselves:

- "There are different types of benefits [for these operations]. We always get paid by the encounter. That's the word we use, 'encounter.' The amount ranges from 8,000 pesos (US \$161) to 15,000 pesos (US \$302). ... The ones we really go after are pushers. There are categories [of pushers]—different levels based on their notoriety. Higher levels are paid more. ... That amount is per head. So if the operation is against four people, that's 32,000 pesos (US \$644)."¹⁵⁸
- "The PNP incentive isn't announced. ... We're paid in cash, secretly, by headquarters. The payment is [split by] the unit. ... There's no incentive for arresting. We're not paid anything."¹⁵⁹
- "Usually, in our list, we classify who is a user and who is a pusher. The target is

¹⁵⁴ Page 22. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁵⁵ Page 33. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁵⁶ Page 40. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁵⁷ Page 48. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁵⁸ Page 29. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁵⁹ Page 29. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

really the pusher. But sometimes we make mistakes [and kill a user]. The mentality can be to neutralize the drug presence entirely.”¹⁶⁰

Amnesty International found that in President Duterte’s war on drugs, fundamental rights were violated. Among these are: the absolute prohibition on torture and other cruel, inhuman or degrading treatment or punishment; the right to liberty and security of person; the right to non-discrimination; the right to recognition and equality before the law; and the best interests of the child principle.¹⁶¹

Very legally significant is the fact that, in the report of the Amnesty International, a high-ranking police officer, who was interviewed on condition of anonymity, revealed that he has been actively taking part in police drug operations and in the killing of drug personalities. According to this police officer, their task is really to kill the target, not to arrest, and there is a reward to be paid for a killed target, and no reward for an arrest; the reward money is paid at headquarters;¹⁶² they planted evidence like a gun and a packet of shabu apart from placing a cardboard sign at the scene.¹⁶³ His statement was confirmed by an unidentified hitman also interviewed by a delegate of Amnesty International. This is also precisely the very same modus operandi testified upon by Edgar Matobato and Arthur Lascañas.

Both reports of Amnesty International and Human Rights Watch cited the grim statistics of not less than 7,000 drug related killings, which was also cited in the recent Resolution of the European Parliament. Indeed, as of February, thousands of Filipinos have been killed in President Duterte’s war on illegal drugs. Exactly how many is hard to tell, as the figures given by the police differ from time to time.¹⁶⁴

On 01 December 2016, the police said 2,004 drug personalities had been killed, from 1 July 2016 (when President Duterte assumed office) to 01 December 2016. There were 2,777 Deaths Under Investigation (DUIs) from 1 July to 30 November 2016. By 18 December, there were 2,124 “drug personalities” killed and 2,928 DUIs (from July 1 to December 18).

By March 2017, even the terms have changed: there are no more DUIs; the police instead uses MCUI (Murder Cases Under Investigation). As of 14 March 2017,

¹⁶⁰ Page 30. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁶¹ Page 15. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁶² Page 29. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁶³ Page 32. Amnesty International (2017). If you are poor, you are killed. Retrieved from <https://www.amnesty.org/en/documents/asa35/5517/2017/en/https://www.amnesty.org/en/documents/asa35/5517/2017/en/>

¹⁶⁴ Mangahas, et al. (19 September 2016). War on drugs: No EO signed by DU30, a chaos of numbers. Retrieved from <http://pcij.org/stories/war-on-drugs-no-eo-signed-by-du30-a-chaos-of-numbers/http://pcij.org/stories/war-on-drugs-no-eo-signed-by-du30-a-chaos-of-numbers/>

the police had listed 5,844 murder cases listed, involving 6, 137 victims, covering the period of 1 July 2016 to 12 March 2017. Of these, 4,435 are Murder Cases Under Investigation (MCUIs).¹⁶⁵ Of the total murder cases, 1,389 are believed to be drug-related, according to the police. The rest —4,455— are said to be non-drug related cases. Yet the same report submitted by the police to the House of Representatives, and submitted under oath, says that of the 4,435 MCUIs, 1,284 are drug-related cases.

Curiously, although the police says 830 cases have already been filed in court, they have data on the backgrounds of only 626 victims, 485 of whom are either in the government’s drug watchlist as either a drug pusher or a user, or have recently been identified as a drug pusher or user.

In the same legislative hearing during which the report was submitted, no less than PNP Chief dela Rosa referred to the murder cases as EJKs.¹⁶⁶ *“The total number of murder cases, (what your Honor is asking as EJK or DUI) is 5, 844,”* dela Rosa said, without qualifying the numbers. These numbers do not include the 2,602 killed in police operations from July 2016 to 30 January 2017¹⁶⁷. These were drug users and pushers, according to the police report, though the police said they are still conducting investigations to find out which of those who died have pending warrants of arrest or were even convicted criminals.¹⁶⁸ Two human rights organizations, Amnesty International (AI) and Human Rights Watch (HRW), conducted their own, independent investigations and found that many of those killed in police operations were summarily executed.

The statements of President Duterte, while still the Mayor and as President, constitute an incitement, encouragement or furtherance to commit the crimes against humanity in his war on drugs at the national level. Further, his failure to investigate the Davao Death Squad before and the continuing extra-judicial executions in his war on drugs at the national level in the historical context of the Davao Death Squad, which he promotes and incites by his inflammatory rhetoric, or by his failure to put an end to impunity, made with a conscious effort to promote or encourage the attack against a civilian population, despite his knowledge of the attack, makes him criminally liable for the mass murder under the principle of command responsibility.

SECOND ELEMENT: SYSTEMATIC OR WIDESPREAD ATTACK ON A CIVILIAN POPULATION, MOSTLY THE POOR

One of the elements of a crime against humanity is that the attack directed against a civilian population should be a course of conduct involving the multiple commission of an act constituting a crime against humanity, in this case murder. In

¹⁶⁵ Murder cases quick look, dated 14 March 2017, as submitted to the House of Representatives Committee on Public Order and Safety (Annex L)

¹⁶⁶ Transcript of Philippine National Police Chief Director General Ronald dela Rosa’s answers to Representative Gary Alejano’s question on EJKs, during the House Committee Hearing dated 14 March 2017 (Annex M)

¹⁶⁷ Philippine National Police PowerPoint presentation, dated 14 March 2017, as submitted to the House Committee on Public Order and Safety (Annex N)

¹⁶⁸ Transcript of Police Director Camilo Cascolan’s answer to Representative Gary Alejano’s question on EJKs, during the House Committee Hearing dated 14 March 2017 (Annex O)

order for the attack against a civilian population to be “*systematic or widespread*”, the “*repeated, unchanging and continuous*” nature of the violence committed should be taken into account. The scale of the deaths is also to be taken into account.

As established by the testimonies in the Senate of Edgar Matobato and Arthur Lascañas, President Duterte, as then Mayor of Davao City, committed more than a thousand murders of nameless folks in Davao City suspected as criminals, whose bodies were either buried at the Laud property owned by Bienvenido Laud, who is also himself a high-ranking member of the Davao Death Squad, or thrown into the sea of Samal Island near Davao City.¹⁶⁹ These more than a thousand murders were carried out as part of the “best practice”, strategy or system of eliminating or “erasing” suspected criminals as a method of crime control, constituting a widespread or systematic attack directed against a civilian population. These murders committed by the Davao Death Squad fall under the definition of crime against humanity through murder as provided for under Article 7 of the Rome Statute.¹⁷⁰

Furthermore, these killings constituting crimes against humanity in Davao City carried out by the Davao Death Squad when President Duterte was a Mayor for two decades prove the fact of the direct consequence of the criminal conduct of President Duterte as the Mayor, and further prove the corresponding fact of the “repeated, unchanging and continuing” pattern of willful killings in the war on drugs under the same continued “best practice”, strategy or system in Davao City that he continued in the war on drugs at the national level. Put otherwise, the extra-judicial executions that were carried out by President Duterte while being the Mayor of Davao City were just “repeatedly, unchangingly and continuously” committed by him as the President at the national level in his war on drugs.

As testified upon by Edgar Matobato and Arthur Lascañas, President Duterte, as then Mayor, was responsible for the more than 1,000 deaths in Davao City through his Davao Death Squad which targeted a civilian population, in a systematic or widespread manner, more particularly the petty criminals like snatchers, robbers, drug addicts and dealers. It was a strategy or system, or as described by then Mayor Duterte a “*best practice*” put in place and implemented by him to eradicate or control crime in Davao City, which he boasted to be his secret in making Davao City the ninth safest city in the world, based on his claim.¹⁷¹ The testimonies of these two whistleblowers conclusively prove beyond reasonable doubt that there was a system, methodology, strategy or “*best practice*” used by then Mayor Rodrigo in his systematic or widespread attack against persons suspected of crime, who are mostly are part of a civilian population.

¹⁶⁹ Page 89. Transcript of the 15 September 2016 Hearing of the Senate Committee on Justice and Human Rights (Annex H)

¹⁷⁰ International Criminal Court. Rome Statute. Retrieved from https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁷¹ Nawal, A. (9 May 2015). Davao City ranks as 9th safest in the world. Retrieved from <http://newsinfo.inquirer.net/690252/davao-city-ranks-as-9th-safest-in-the-world>

By virtue of the clear intent of President Duterte to continue his “best practice”, strategy or system this time in his war on drugs on the national level, it necessarily follows that the “best practice”, strategy or system being implemented in Davao City is the very same “best practice”, strategy or system that has since been “repeatedly, unchangingly and continuously” implemented by way of continuation, in the war of drugs of President Duterte at the national level. Corollary, on account of the continuation of the “best practice”, strategy or system at the national level, the extra-judicial executions happening since President Duterte assumed office on 30 June 2016 are simply part of the continuing mass murder implemented pursuant to the “best practice”, strategy and system to eliminate or “erase” criminals, particularly drug dealers and addicts, which began in Davao City through his Davao Death Squad.

Thus, viewed from the same “best practice”, strategy or system, the “repeated, unchanging and continuing” extra-judicial executions carried out in Davao City by the Davao Death Squad resulted in more than a thousand deaths, and by way of continuation of such “best practice”, strategy or system, the “repeated, unchanging and continuing” extra-judicial executions at the national level in the war on drugs already resulted in more than 7,000 deaths as of January 2017. To date, the extra-judicial executions are still mounting, reaching up to more than 8,000 already.¹⁷² Clearly, this extrajudicial executions from Davao City all the way to the national level in the war on drugs indicate a systematic or widespread attack on the civilian population, not only in Davao City but also at the national level in the war on drugs.

As already stated, based on official statistics from the Philippine National Police and as cited in the recent reports of the Human Rights Watch and the Amnesty International, the official body count is more than 7,000 drug-related killings in President Duterte’s war on drugs for the period from July 2016 up to 21 January 2017. The scale of the extra-judicial executions is widespread or systematic, especially if we look at the “repeated, unchanging and continuing” extra-judicial executions of those persons already killed in Davao City under the “best practice” implemented by President Duterte as a Mayor through his Davao Death Squad, which, based on reliable estimate, reached not less than 1,400 deaths. Verily, the extra-judicial executions in the current war on drugs at the national level and also in Davao City, have been carried out “repeatedly, unchangingly and continuously” with the same unrelenting impunity and in a massive scale. Based on this massive scale of killings, the extra-judicial executions or murders are unmistakably and undeniably widespread or systematic.

THIRD ELEMENT: KNOWLEDGE OF THE ATTACK

It is now as clear as the sun rising in the east that President Duterte has known this “repeated, unchanging and continuing” widespread or systematic attack because, as established by the testimony of Edgar Matobato and Arthur Lascañas, he is the mastermind and leader of the Davao Death Squad, and he is personally involved in the more than a thousand deaths in Davao City committed through his Davao Death Squad. It will be legally impossible for President Duterte to deny his knowledge of and

¹⁷² Human Rights Watch. (March 2017). License to Kill. Retrieved from https://www.hrw.org/sites/default/files/report_pdf/philippines0317_web_1.pdf

participation in the Davao Death Squad in the face of these two witnesses and other witnesses who have personal knowledge about group and its willful killings.

Since the “best practice”, strategy or system is merely being continued in the national scene in the war on drugs, President Duterte also knows about the extra-judicial executions happening since he assumed office. As further proof of the knowledge of President Duterte, Arthur Lascañas has further revealed that two active police officers were transferred by President Duterte from Davao City to Metro Manila to oversee, manage and operate the war on drugs as a continuation of his “best practice”, strategy or system of killing suspected drug personalities to eradicate the drug menace. These two active police officers are Superintendent Edilberto Leonardo¹⁷³ and Superintendent Royina Garma who are actually handling and overseeing the different DDS-style police operations in the war on drugs.

Confronted with criticisms from human rights critics in the country and abroad, President Rodrigo hurled invectives and insults. Former President Barack Obama, UN Secretary-General Ban Ki Moon and the European Union, to name a few, became the object of his insulting tirade. He even lashed out at the International Criminal Court, calling it “useless”.¹⁷⁴ In reacting to calls for a probe on the killings, President Duterte backed up the police, saying that he would even pardon them, reinstate them in the police service with rank promotion, if convicted. In the controversial murder of Leyte Mayor Rolando Espinosa Sr. inside prison, Duterte supported the police found to be involved in the murder, even if evidence pointed to his premeditated murder, as later found by a Senate inquiry.¹⁷⁵ All these unusual and bitter reactions of President Duterte prove his complicity or acquiescence to the extra-judicial executions in his war on drugs.

CRIMINAL LIABILITY OR RESPONSIBILITY OF THE PRESIDENT AND HIS KEY SENIOR OFFICIALS

Under Article 25 on Individual criminal responsibility of the Rome Statute of the International Criminal Court,¹⁷⁶ it is provided, thus:

¹⁷³ Politiko. (n.d.) Duterte finally admits Davao CIDG Chief, Edilberto Leonardo, asked him to save Marvin Marcos. Retrieved from <http://politics.com.ph/duterte-finally-admits-davao-cidg-chief-edilberto-leonardo-asked-save-marvin-marcos/http://politics.com.ph/duterte-finally-admits-davao-cidg-chief-edilberto-leonardo-asked-save-marvin-marcos/>

¹⁷⁴ Morales, N. & Van den Berg, S. (11 November 2016). Philippines' Duterte says may follow Russia's withdrawal from 'useless' ICC. Retrieved from <http://www.reuters.com/article/us-philippines-duterte-icc-idUSKBN13COGShttp://www.reuters.com/article/us-philippines-duterte-icc-idUSKBN13COGS>

¹⁷⁵ Morallo, A. (29 March 2017). Duterte vows to pardon police convicted for 'following orders'. Retrieved from <http://www.philstar.com/headlines/2017/03/29/1685761/duterte-vows-pardon-police-convicted-following-ordershttp://www.philstar.com/headlines/2017/03/29/1685761/duterte-vows-pardon-police-convicted-following-orders>

¹⁷⁶ International Criminal Court. Rome Statute. Retrieved from https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
 - a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
 - b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
 - c) crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
 - d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
 1. Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
 2. Be made in the knowledge of the intention of the group to commit the crime;

As the Mayor of Davao, Rodrigo Duterte is sought to be investigated, tried and convicted before the International Criminal Court for the extra-judicial executions of more than 1,400 persons carried out by him through his Davao Death Squad in Davao City after August 2011, when the Philippines became a party state to the Rome Statute.¹⁷⁷ Based on the testimony of Edgar Matobato and Arthur Lascañas, President Duterte as then Mayor has direct knowledge of and participation in the willful killings carried out by his Davao Death Squad with his order, permission and sanction. In fact, he has publicly admitted that he is the Davao Death Squad and that he killed not just 700, but 1700 persons.¹⁷⁸

Furthermore, he has also admitted that he killed three to four persons while he was the Mayor, and in one instance, he did it to show to the police that if he could do it then they should also be able to it themselves.¹⁷⁹ He even boasted publicly that he

¹⁷⁷ Marshall, A. & Mogato, M. (26 May 2016). Philippine death squads very much in business as Duterte set for presidency. Retrieved from <http://www.reuters.com/article/us-philippines-duterte-killings-insight-idUSKCN0YG0EB><http://www.reuters.com/article/us-philippines-duterte-killings-insight-idUSKCN0YG0EB>

¹⁷⁸ Hegina, A. (2015 May 25). Duterte confirms 'ties' with Davao Death Squad. Retrieved from <http://newsinfo.inquirer.net/693373/duterte-confirms-ties-with-davao-death-squad><http://newsinfo.inquirer.net/693373/duterte-confirms-ties-with-davao-death-squad>

¹⁷⁹ Corrales, N. (9 December 2015). Duterte openly admits killing 3 criminals in Davao City. Retrieved from <http://newsinfo.inquirer.net/746140/duterte-openly-admits-killing-3-criminals-in-davao->

usually went out at night in Davao City to look for a confrontation with a suspected criminal so that he would be able to kill.

As the President of the Philippines after 30 June 2016, Rodrigo Duterte is sought to be investigated, tried and convicted before the International Criminal Court for the extra-judicial executions of more than 7,000 drug personalities in his war on drugs at the national level. Since he is also aware and knows about the extra-judicial executions in his war on drugs, he is sought directly to be criminally liable.

In the alternative, since he knows or has reason to know of the continuing commission of the extra-judicial executions or mass murders ever since he was the Mayor of Davao City, his failure to stop such criminal conduct in his war on drugs now that he is already the President, just like his evident failure in Davao City, makes him criminally liable under the principle of command responsibility. More particularly, he is liable under Article 28 (b)¹⁸⁰, for his failure to stop the Philippine National Police and the Department of Local and Interior Government (DILG), from committing the crimes of murder, persecution, mental torture and imprisonment.

Furthermore, his serious threats to kill and his public incitement of the police and the public to mass murder and violence with the aim of furthering the commission of the extra-judicial executions, with his knowledge and as part of a conscious aim to encourage the attack on a civilian population, make him directly criminally liable or responsible for crimes against humanity through murder. Under the Rome Statute, the President Duterte is liable under Article 25.3 (b), (c), and (d)¹⁸¹, for his public statements labelling drug users as criminals without the benefit of due process; for then calling on the police to kill these criminals; and for promising to pardon policemen who carry out his sweeping orders to kill drug users and dealers, regardless of the findings of other investigative government agencies, and even in case of conviction by local courts.¹⁸²

Vitaliano Aguirre, a lawyer, is now the Secretary of the Department of Justice, which principally administers the criminal justice system in the Philippines. Under the Department of Justice is the National Bureau of Investigation which is mandated to investigate criminal incidents. As a fraternity brother and law school classmate of President Duterte, Secretary Aguirre was quoted as saying that drug addicts have no human rights because they are not humans.¹⁸³ He said this in support of the war on drugs. This statement makes him criminally liable because he is contributing to the commission of the crime in any other way with the conscious aim of furthering the

city#ixzz4eknf58Kq <http://newsinfo.inquirer.net/746140/duterte-openly-admits-killing-3-criminals-in-davao-city#ixzz4eknf58Kq>

¹⁸⁰ International Criminal Court. Rome Statute. Retrieved from https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁸¹ Ibid.

¹⁸² Transcript of President Duterte's public speeches (Annex G)

¹⁸³ Agence France-Presse. (1 February 2017). Criminals are not human – Aguirre. Retrieved from <http://newsinfo.inquirer.net/867331/criminals-are-not-human-aguirre#ixzz4caS6Srxm>

criminal purpose or activity of the death squads. He has knowledge of the intention of the death squads to commit extra-judicial executions because he was once the lawyer of Bienvenido Laud in the search warrant controversy involving the Laud quarry where the dead bodies of the victims of the Davao Death Squad were buried.

Aguirre is liable under Article 25. 3 (d),¹⁸⁴ for his public statement that drug users are not humans, knowing that the widespread and systematic killings of those labelled as drug users and dealers are already taking place; knowing that the labelling is being done without the benefit of due process; and knowing that many of those labelled are eventually killed, either in police operations or by unknown vigilantes.

Police Director General Ronald dela Rosa, more popularly known as Bato dela Rosa, is the Chief of the Philippine National Police, which is under President Duterte. A trusted close subordinate, de la Rosa was previously the Chief of Police of Davao City when Rodrigo Duterte was still the Davao City Mayor. De la Rosa was tagged by Edgar Matobato and Arthur Lascañas for his participation in certain criminal incidents committed by the Davao Death Squad when President Duterte was still a Mayor. This goes to show that dela Rosa is knowledgeable about the Davao Death Squad and its criminal activities in Davao City. Yet, he has failed to stop its criminal activities, neither has he conducted any investigation on it.

At certain occasions, as testified by Arthur Lascañas, dela Rosa has knowledge of the modus operandi of the Davao Death Squad and participated to cover up their criminal activities. In the war on drugs at the national level, dela Rosa knows about the activities of the death squads targeting suspected drug personalities. He knows these unlawful killings in his capacity as the PNP Chief, in which capacity he has reason to know Supt. Edilberto Leonardo and Supt. Royina Garma, the two active police officers tasked by President Duterte to manage, oversee and supervise the death squad operations in his war on drugs at the national level.

PNP Chief dela Rosa is liable under Article 25.3 (b), (c), and (d),¹⁸⁵ for his public statements supporting Oplan Tokhang, as well as for his orders given to specific policemen, not only to carry out Oplan Tokhang, but orders that also facilitated the commission of some of the murders of those in the drug watch list.

Speaker Pantaleon Alvarez of the House of Representatives was quoted in media as saying in the Filipino, echoing the self-same mental state of President Duterte, namely; (1) “Pag may nakita ka na crime, nahuli mo in the act of committing a crime, anong gagawin mo? Patayin mo na lang yan” (“If you see a crime, you catch the person in the act of committing a crime, what will you do? Kill him.”); (2) “Kill na lang yan on sight when you commit a crime. Huwag na pahulihin yan,” (*Just kill the person on sight. Don’t apprehend him anymore*); (3) “May sira na ulo niyan. If you don’t agree with me, sabihin natin—yan ba kayang gawin ng taong matino? Grabe, walang awa tapos maawa tayo sa kaniya?” (“That person has a mental problem. If you

¹⁸⁴ International Criminal Court. Rome Statute. Retrieved from https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁸⁵ Ibid.

don't agree with me, let's just say-is that what a right-minded person is capable of doing? He has no mercy, yet we show mercy to him"); and (4) "Try to feel yung magulang ng mga biktima. It's easy for us to say due process, huwag mo patayin, it's easy for us to say dahil hindi sa atin nangyari," ("Try to feel the parents of the victim. It's easy for us to say due process, don't kill him, it's easy for us to say that because it did not not happen to us.").¹⁸⁶ These statements clearly incite violence and mass murder, or further in a certain way, fulfill the criminal purpose of President Duterte, which make Speaker Alvarez also criminally liable for crime against humanity through murder.

Former Interior and Local Government Secretary Ismael Sueno is liable also under Article 28 (b)¹⁸⁷ for allowing the police and barangay officials — both of whom are under his administrative control — to carry out Oplan Tokhang, which led to the discrimination and vilification of those identified as drug users and dealers, and their eventual murder, persecution, mental torture, and incarceration. All of which are committed as part of Oplan Tokhang.

Police Superintendent Edilberto Leonardo, now assigned to the Manila Police District (MPD), formerly assigned to the Criminal Investigation and Detection Unit (CIDU) of Police Regional Operations (PRO XI), is liable under Article 25.3 (b), (c), and (d)¹⁸⁸, for helping design and operate the reward system for the war on drugs at the national level.¹⁸⁹

Senior Police Officer 4 Sanson "Sonny" Buenaventura is liable under Article 25.3 (b), (c), and (d)¹⁹⁰ for his role in facilitating the transfer of reward money to those who kill, as part of the implementation of the war on drugs, as well as his direct involvement in the Davao Death Squad in Davao City.

Police Supt. Royina Garma is liable under Article 25. 3 (b), (c), and (d)¹⁹¹ for her violations in the implementation of Oplan Tokhang under her direction as head of the Criminal Investigation and Detection Group in Region 7 (CIDG 7), as well as under Article 28 (b)¹⁹², for failing to stop the killings in her area of responsibility.

National Bureau of Investigation (NBI) Director Dante Gierran is liable under Article 25. 3 (d)¹⁹³ for failing to investigate the widespread and systematic killings

¹⁸⁶ Cayabyab, M. (1 February 2017). Alvarez: Shoot criminals on sight. Retrieved from <http://newsinfo.inquirer.net/867231/alvarez-shoot-criminals-on-sight#ixzz4cW8r59Gm>

¹⁸⁷ International Criminal Court. Rome Statute. Retrieved from https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁸⁸ Ibid.

¹⁸⁹ Confidential report detailing the formation of the Presidential Death Squad (Annex P)

¹⁹⁰ International Criminal Court. Rome Statute. Retrieved from https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁹¹ International Criminal Court. Rome Statute. Retrieved from https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁹² Ibid.

¹⁹³ Ibid.

happening under the Duterte administration, thus, facilitating the continued commission of the crime.

Solicitor General Jose Calida is liable under Article 25.3 (d)¹⁹⁴ for promising to defend policemen accused of summary killings if the killings were committed as part of the war on drugs, knowing fully well that the duty of the Office of the Solicitor General (OSG) to defend public officials begins at the appellate level, and not at the local courts.¹⁹⁵ Such enthusiastic promise to defend possible wrongdoing echoes and backs up President Duterte's statements promising exoneration for those who follow the latter's orders to kill, thus, facilitating the commission of more murders.

Senator Richard Gordon, as Chairman of the Committee on Justice and Human Rights and sponsor of Senate Committee Report No. 18¹⁹⁶ is also liable under Article 25 (d)¹⁹⁷ for holding that there are extrajudicial killings committed by the Philippine National Police (PNP) operating under Duterte administration's campaign against drugs but ultimately concluding that these killings are not state-sponsored, thus, ending the Senate investigations on these killings. His public pronouncements and his actuations as Chair of the Committee on Justice led to the white wash and abrupt termination of the Senate investigation on extra-judicial killings.

Senator Alan Peter S. Cayetano, a close ally of President Duterte in the Senate of the Philippines, is liable under Article 25.3 (c) (d)¹⁹⁸ for aiding and abetting the killings brought by the war on the drugs through his speeches and public pronouncements. Despite the increasing number of deaths due to the war on drugs, Senator Cayetano has been denying the existence of extra-judicial killings and encouraging Pres. Duterte's "war on drugs." According to him, because of the deaths of suspected criminals and drug users and pushers, the Filipino citizens feel safer now. Publicly defending and endorsing the deaths of suspected criminals and drug offenders, in various speeches, he noted that extra-judicial killings should be connected to ideology: "*If the killing is not connected to an ideology, if the victim is not a labor leader, not a priest or nun, nor an activist, it's not an extrajudicial killing. It means if a pusher is killed, or if pushers killed each other, it's not an extra-judicial killing.*"¹⁹⁹ That being Duterte's staunch ally and point man in the Senate, he schemed for the removal of Sen. De Lima as Chairman of the Senate Committee on Justice and

¹⁹⁴ Ibid.

¹⁹⁵ Javier, K. (2 March 2017). Philippines urged to condemn, investigate extrajudicial killings. Retrieved from <http://www.philstar.com/headlines/2017/03/02/1677244/philippines-urged-condemn-investigate-extrajudicial-killings><http://www.philstar.com/headlines/2017/03/02/1677244/philippines-urged-condemn-investigate-extrajudicial-killings>

¹⁹⁶ Senate of the Philippines. (7 December 2016). Committee Report No. 18. Retrieved from <http://senate.gov.ph/lisdata/2518121701!.pdf><http://senate.gov.ph/lisdata/2518121701!.pdf>

¹⁹⁷ International Criminal Court. Rome Statute. Retrieved from https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdfhttps://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

¹⁹⁸ Ibid.

¹⁹⁹ Privilege Speech of Senator Alan Peter Cayetano, delivered last 31 August 2017 during the Senate Session (Annex Q)

Human Rights and replaced with another ally, Senator Richard Gordon, who subsequently whitewashed and thereafter abruptly terminated the investigation.

LEGAL COURSE OF ACTION BEING SOUGHT FOR

Under the foregoing premises and considerations, and in the interest of international criminal justice and in the interest of the rights of the thousands of human rights victims and their families, it is humbly requested that the Prosecutor of the International Criminal Court conduct an analysis of the situation of mass murder in the Philippines, as well as the criminal liability or responsibility of then Mayor & now President Duterte and his senior government officials, through the method of a preliminary examination to determine compliance with jurisdiction and admissibility requirements.

Also, it is being requested that the Prosecutor later open a formal investigation with the conformity of the Pre-Trial Chamber. It is further humbly requested that, after investigation, the Prosecutor confirm criminal charges with the Pre-Trial Chamber, and apply with the Pre-Trial Chamber for the issuance of a Warrant of Arrest against President Duterte and his senior administration officials, so that they can be arrested, surrendered and detained pending trial at the Detention Facility of the International Criminal Court at the Hague, in order that they will be prevented from further committing mass murder and from killing potential victims and witnesses.

Finally, it is respectfully being requested that the Pre-Trial Chamber commit President Rodrigo Duterte and his senior government officials to the Trial Chamber for trial and that the Trial Chamber in turn, after trial, convict them and sentence them to corresponding prison sentence or life imprisonment.