



Original: English

**No. ICC-01/21 OA
Date: 21 March 2023**

THE APPEALS CHAMBER

Before: Judge Marc Perrin de Brichambaut, Presiding
Judge Piotr Hofmański
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

Public document

Decision on requests for victims' involvement and access to filings

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

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor
Ms Helen Brady

State Representatives

The Republic of the Philippines

The Office of Public Counsel for Victims

Ms Paolina Massidda

REGISTRY

Registrar

Mr Peter Lewis

Victims Participation and Reparations Section

Mr Philipp Ambach

The Appeals Chamber of the International Criminal Court,

In the appeal of the Republic of the Philippines against Pre-Trial Chamber I's "Authorisation pursuant to article 18(2) of the Statute to resume the investigation" of 26 January 2023 (ICC-01/21-56-Red),

Having before it the Registry transmission of an "Application to present victims' views and concerns in the appeal of the Republic of the Philippines against the Pre-Trial Chamber I's 'Authorisation pursuant to article 18(2) of the Statute to resume the investigation'" (ICC-01/21-62-AnxIII),

Having before it the Office of Public Counsel for Victims' "Request to appear before the Appeals Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court" (ICC-01/21-63), and

Having before it the Republic of the Philippines' "Response to requests to participate before the Appeals Chamber" (ICC-01/21-64),

Renders the following

DECISION

1. The Victims Participation and Reparations Section is instructed to collect and transmit to the Appeals Chamber representations from any interested victims and victim groups and prepare and submit a report thereon by 22 May 2023, in the manner set out at paragraphs 18 and 19 of this decision. The Appeals Chamber rejects the remainder of the Application referenced above.
2. The Office of Public Counsel for Victims may submit written observations, not exceeding 40 pages, on the Republic of the Philippines' appeal brief in relation to the general interests of victims by 18 April 2023.
3. Regarding the Republic of the Philippines' request to, *inter alia*, be notified of all documents in these proceedings, the Appeals Chamber directs the Registry to notify the Republic of the Philippines regarding all public and

confidential filings in the present appellate proceedings, with the exception of any filings that are classified as confidential *ex parte*, excluding the Republic of the Philippines. The remainder of the request is rejected.

REASONS

I. PROCEDURAL HISTORY

A. Proceedings before Pre-Trial Chamber I

1. On 15 September 2021, Pre-Trial Chamber I (hereinafter: “Pre-Trial Chamber”) authorized the commencement of an investigation into the situation in the Republic of the Philippines (hereinafter: “Philippines Situation”) in relation to crimes allegedly committed between 1 November 2011 and 16 March 2019 in the context of the “war on drugs” campaign.¹

2. On 18 November 2021, the Prosecutor notified the Pre-Trial Chamber that on 10 November 2021, he had received a deferral request from the Republic of the Philippines (hereinafter: the “Philippines”), pursuant to article 18(2) of the Statute (hereinafter: “Deferral Request”), and that he had temporarily suspended his investigative activities while he assessed the scope and effect of the request.²

3. On 24 June 2022, the Prosecutor requested that the Pre-Trial Chamber authorize the resumption of the investigation into the Philippines Situation, pursuant to article 18(2) of the Statute.³

4. On 14 July 2022, the Pre-Trial Chamber issued a decision in which it, *inter alia*, invited victims to submit views on the Prosecutor’s request for authorization to resume his investigation into the Philippines Situation and instructed the Victims Participation and Reparations Section (hereinafter: the “VPRS”) to provide a short report summarising such views.⁴

¹ [Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15\(3\) of the Statute](#), ICC-01/21-12.

² [Notification of the Republic of the Philippines’ deferral request under article 18\(2\)](#), ICC-01/21-14, with Annex A.

³ [Prosecution’s request to resume the investigation into the situation in the Philippines pursuant to article 18\(2\)](#), ICC-01/21-46.

⁴ [Order inviting observations and victims’ views and concerns](#), ICC-01/21-47.

5. On 22 September 2022, the Registry transmitted to the Pre-Trial Chamber representations received from victims⁵ and submitted two reports thereon.⁶

6. On 26 January 2023, the Pre-Trial Chamber issued its decision authorizing the Prosecutor to resume the investigation into the Philippines Situation, pursuant to article 18(2) of the Statute (hereinafter: “Article 18(2) Decision”).⁷

B. Proceedings before the Appeals Chamber

7. On 6 February 2023, the Philippines filed its notice of appeal against the Article 18(2) Decision in which it also requested suspensive effect of that decision.⁸

8. On 17 February 2023, the Appeals Chamber granted a request of the Philippines,⁹ and extended the time limit for the Philippines to file its appeal brief to 13 March 2023.¹⁰

9. On 24 February 2023, the Registry transmitted to the Appeals Chamber a request from a group of victims to present views and concerns in relation to the Philippines’ appeal brief and its request for suspensive effect (hereinafter: “Victims’ Request”).¹¹

10. On the same day, the OPCV submitted a request to appear before the Appeals Chamber to represent the general interests of victims in relation to the appeal of the Philippines (hereinafter: “OPCV Request”).¹²

⁵ [Registry Transmission of Victims’ Representations](#), ICC-01/21-53, with 8 confidential *ex parte* annexes.

⁶ [Registry Report on Article 18\(2\) Victim Representations](#), ICC-01/21-55, with confidential and public redacted annex 1, confidential, *ex parte* annex II, and confidential annex III.

⁷ [Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation](#), ICC-01/21-56-Red. A confidential version was notified on the same day, ICC-01/21-56-Conf.

⁸ [Philippine Government’s Notice of Appeal against the Pre-Trial Chamber I’s “Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation” \(ICC-01/21-56\) with Application for Suspensive Effect](#), dated 3 February 2023 and registered on 6 February 2023, ICC-01/21-57.

⁹ [Philippine Government’s Application for Extension of Time to File the Appeal Brief](#), 15 February 2023, ICC-01/21-59, with 6 confidential annexes.

¹⁰ [Decision on the Republic of the Philippines’ application for extension of time to file the appeal brief](#), ICC-01/21-61.

¹¹ [Registry Transmission of an “Application to present victims’ views and concerns in the appeal of the Republic of the Philippines against the Pre-Trial Chamber I’s ‘Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation’”](#), ICC-01/21-62-Red (confidential *ex parte* version registered on the same day), with 3 annexes, including public redacted Annex III, [ICC-01/21-62-AnxIII](#).

¹² [Request to appear before the Appeals Chamber pursuant to regulation 81\(4\)\(b\) of the Regulations of the Court](#), ICC-01/21-63.

11. On 2 March 2023, the Philippines submitted its response to the Victims' Request and the OPCV Request, requesting that both requests be dismissed (hereinafter: "Philippines' Response").¹³ The Philippines also requests that it be notified of all documents registered in these proceedings (hereinafter: "Philippines' Request").¹⁴

12. On 13 March 2023, the Philippines filed its appeal brief (hereinafter: "Appeal Brief").¹⁵

II. DETERMINATION

A. Victims' Request

I. Submissions

13. The Victims' Request is submitted on behalf of 90 applicants (hereinafter: "Applicants") to present views and concerns in the present appeal proceedings.¹⁶ The Applicants seek to present their views and concerns by submitting a response to the Appeal Brief and to the application for suspensive effect.¹⁷

14. The Applicants submit that they fall within the temporal, territorial and material scope of the Philippines Situation as they "suffered harm as a result of the extra-judicial killings of their family members by police and non-state actors".¹⁸ The Applicants indicate that they previously submitted victim representation forms to the VPRS during the victim representations process under article 15(3) of the Statute, and shared their views and concerns with the VPRS during the consultation on the Deferral Request.¹⁹

15. The Applicants indicate that the question of whether investigations will take place or be deferred has an immediate and direct effect on their personal interests, as "they have not been able to obtain justice and remedies for the crimes committed against their family members".²⁰ In the view of the Applicants, investigations by the Prosecutor could shed light on alleged crimes and identify potential perpetrators, "both of which

¹³ [Response to requests to participate before the Appeals Chamber](#), ICC-01/21-64.

¹⁴ [Response to requests to participate before the Appeals Chamber](#), ICC-01/21-64, para. 14.

¹⁵ [Philippine Government's Appeal Brief against "Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation"](#), ICC-01/21-65, with [Annex A](#).

¹⁶ [Victims' Request](#), para. 1.

¹⁷ [Victims' Request](#), para. 16.

¹⁸ [Victims' Request](#), para. 10.

¹⁹ [Victims' Request](#), para. 12.

²⁰ [Victims' Request](#), para. 14.

are elements of the right of victims to an effective remedy”.²¹ In addition, the Applicants state that “investigations are the premise for any future prosecution and possible reparation[s]”, which are necessary in order “for victims to see justice done and obtain remedies for the harm suffered”.²²

16. In its response, the Philippines states that the Victims’ Request is redacted, which does not allow it to discern the identity of the legal representative, whether they have the authority to represent all Applicants, and if so, whether the 90 applicants have been subject to a preliminary assessment by the VPRS and submitted their views and concerns to the Pre-Trial Chamber.²³ The Philippines argues that in the absence of this information, there is no basis for granting leave to present views and concerns.²⁴

2. *Merits*

17. The Appeals Chamber considers it appropriate for victims to be involved in these appeal proceedings.

18. In this respect, the Appeals Chamber concurs with the Pre-Trial Chamber that the procedure set out pursuant to article 15(3) of the Statute, under which victims may make “representations” to the Pre-Trial Chamber, provides an appropriate method for the involvement of victims in the context of article 18(2) proceedings.²⁵ Given the particular circumstances in the Philippines Situation, the Appeals Chamber considers that this method is also suitable for the present appeal proceedings, and accordingly adopts this process *mutatis mutandis*. The Appeals Chamber therefore grants the Victims’ Request in part by allowing victims to make representations. However, rather than submitting a response within the meaning of regulation 24(2) of the Regulations of the Court (hereinafter: “Regulations”), victims are directed to submit representations to the Appeals Chamber, with the assistance of their legal representatives if they so wish, and in accordance with the procedure set out below.

²¹ [Victims’ Request](#), para. 15.

²² [Victims’ Request](#), para. 15.

²³ [Philippines’ Response](#), para. 12.

²⁴ [Philippines’ Response](#), para. 12.

²⁵ [Order inviting observations and victims’ views and concerns](#), 14 July 2022, ICC-01/21-47, para. 14. See also Pre-Trial Chamber II, *Situation in the Islamic Republic of Afghanistan*, [Decision on submissions received and order to the Registry regarding the filing of documents in the proceedings pursuant to articles 18\(2\) and 68\(3\) of the Statute](#), 8 November 2021, ICC-02/17-171, para. 14.

19. Accordingly, the VPRS is instructed to collect and transmit to the Appeals Chamber representations from any interested victims and victim groups, with the assistance of their legal representatives if they so wish, on the issue of whether, in their view, the Article 18(2) Decision allowing for the resumption of the investigation by the ICC Prosecutor should be confirmed, amended or reversed on appeal. The VPRS shall prepare and transmit a report on these representations to the Appeals Chamber by 22 May 2023.

20. The Appeals Chamber rejects the remainder of the Victims' Request.

B. OPCV Request

1. Submissions

21. Pursuant to regulation 81(4) of the Regulations, the OPCV requests to appear before the Appeals Chamber to represent the general interests of victims in relation to the appeal of the Philippines against the Article 18(2) Decision "by filing written observations not exceeding 35 pages - following the submission of the appeal brief".²⁶ The OPCV submits that a reversal of the Article 18(2) Decision on appeal could result in halting the Prosecutor's investigation, which would in turn jeopardise the rights of victims to truth, justice, and reparations.²⁷

22. In the view of the OPCV, as victims have presented their observations regarding the resumption of the investigation, they should also be permitted to present their views and concerns on the appeal that has arisen directly from these proceedings.²⁸ In support of its request, the OPCV notes that in recent appeals relating to article 18 of the Statute, victims have been invited to submit observations.²⁹ The OPCV submits that allowing it to appear before the Appeals Chamber will ensure that the rights and interests of victims are protected and duly taken into account.³⁰

23. In the Philippines' Response, the Philippines submits that there is "no compelling reason nor procedural basis to grant [the] OPCV leave to participate", noting that the OPCV has not previously participated in either the article 15 or article 18 context in the

²⁶ [OPCV Request](#), paras 1, 11, 21.

²⁷ [OPCV Request](#), paras 2, 15-20.

²⁸ [OPCV Request](#), paras 3, 14.

²⁹ [OPCV Request](#), paras 3, 14.

³⁰ [OPCV Request](#), para. 4.

Philippines Situation.³¹ According to the Philippines, the examples provided by the OPCV of its previous participation in proceedings are procedurally and factually distinct from the present case, and the OPCV has not provided any example whereby the Appeals Chamber has granted leave to the OPCV to participate absent prior participation in the broader proceedings.³² Furthermore, the Philippines states that the OPCV does not indicate that it has been in contact with any victims, and there is no reason provided as to why those victims who have presented their views directly or through legal representatives should now be represented by the OPCV.³³ While the OPCV participated in broader proceedings in relation to Afghanistan, the Philippines indicates that the situations are distinguishable in that the former involved the Prosecutor having been denied an opportunity to investigate, whereas the present case involves the state's ability to exercise its jurisdiction to carry out investigations.³⁴

2. *Merits*

24. The Appeals Chamber recalls that regulation 81(4)(e) of the Regulations provides that the OPCV may represent victims throughout the proceedings, on the instruction or with the leave of the Chamber. It also notes that victims presented their “views and concerns on the Prosecutor’s [request to resume the investigation]”³⁵ in the proceedings leading to the Article 18(2) Decision. In the present case, the Appeals Chamber considers it appropriate for the OPCV to submit written observations regarding the *general interests* of victims, following the submission of the Appeal Brief. Therefore, the OPCV is invited to file written submissions not exceeding 40 pages by 18 April 2023.

C. Philippines’ Request

1. *Submissions*

25. In relation to the Victims’ Request, the Philippines states that without access to the substantive content upon which the Applicants seek to provide information, it is precluded from “scrutinizing the submissions” of other participants and thus “cannot

³¹ [Philippines’ Response](#), paras 4-5, 10.

³² [Philippines’ Response](#), paras 4-5, 8.

³³ [Philippines’ Response](#), para. 5.

³⁴ [Philippines’ Response](#), para. 6.

³⁵ [Order inviting observations and victims’ views and concerns](#), 14 July 2022, ICC-01/21-47, para. 15.

effectively exercise its rights in accordance with article[s] 18(4) and 82(1)(a)” of the Statute.³⁶ The Philippines also argues that it has not been notified of any filings, including public ones, submitted by the Registry concerning victim representation. It therefore requests that “all documents registered in these proceedings are notified to the Philippine Government”.³⁷

2. *Merits*

26. The Appeals Chamber is not persuaded that all filings concerning victims should be notified to the Philippines. It recalls that, pursuant to article 68(1) of the Statute, “[t]he Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses”. It also recalls that, pursuant to regulation 42(1) of the Regulations, “[p]rotective measures once ordered in any proceedings in respect of a victim [...] shall continue to have full force and effect in relation to any other proceedings before the Court”. Therefore, to the extent that the Philippines seeks to gain access to identifying information about victims, the Appeals Chamber notes that it would not be appropriate to grant the request in this regard.

27. Furthermore, the Appeals Chamber is not persuaded that there is any need for the Philippines to “scrutiniz[e] the submissions” of victims in the manner indicated in the request at this stage of the proceedings. In particular, the procedure adopted in these proceedings for verification of victims’ representations does not involve the Philippines. Consequently, the Philippines need not be informed as to whether the victims concerned were “subject to a preliminary assessment by VPRS”, nor whether they previously submitted their views and concerns to the Pre-Trial Chamber.³⁸ The Appeals Chamber notes in this context that the Philippines does not identify any procedural right that could be affected by its inability to access such information.

28. Regarding the notification of other documents, the Appeals Chamber notes that at least one of the public filings in the present proceedings indeed was not notified to the Philippines.³⁹ As the appellant in these proceedings, the Philippines must be notified

³⁶ [Philippines’ Response](#), para. 13.

³⁷ [Philippines’ Response](#), para. 14.

³⁸ See [Philippines’ Response](#), para. 12.

³⁹ [Victims’ Request](#), p. 2.

of such filings. Consequently, the Appeals Chamber directs the Registry to notify the Philippines of all public and confidential filings in the present appellate proceedings, with the exception of any filings that are classified as confidential, *ex parte*, excluding the Philippines.

29. As a result, the Appeals Chamber grants the Philippines' Request in part and rejects the remainder of that request, as set out above.

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



Judge Marc Perrin de Brichambaut

Presiding

Dated this 21st of March 2023

At The Hague, The Netherlands