



Original: English

No.: ICC-01/21
Date: 16 February 2023**THE APPEALS CHAMBER**

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

SITUATION IN THE REPUBLIC OF THE PHILIPPINES**Public**

Prosecution response to the Philippine Government's Application for Suspensive Effect of the Pre-Trial Chamber I's "Authorisation pursuant to article 18(2) of the Statute to resume the investigation" (ICC-01/21-57)

Source: Office of the Prosecutor

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

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The Republic of the Philippines

Amicus Curiae**REGISTRY**

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Submissions

1. The Prosecution respectfully requests the Appeals Chamber to dismiss the application made by the Government of the Philippines pursuant to article 82(3) and rule 156(5) for suspensive effect of Pre-Trial Chamber I's decision authorising the resumption of the Prosecution's investigation.¹
2. The granting of suspensive effect leads to the "non-enforcement of a decision, the subject of the appeal".² In this case, the Philippines seeks suspension of the decision authorising the Prosecution to resume its investigation in the Philippines under article 18(2).³ If suspensive effect is granted, the Prosecution would be required to suspend its investigation pending the resolution of the Philippines' appeal against the Decision.
3. As the Appeals Chamber has held, "[s]uspensive effect is the exception, not the rule".⁴ Furthermore, decisions of the Appeals Chamber deciding on applications for suspensive effect are discretionary.⁵ In exercising its discretion, the Appeals Chamber will consider "the specific circumstances of the case and the factors it considers relevant for the exercise of its discretion under these circumstances".⁶ In so doing, the Appeals Chamber has consistently considered whether the implementation of the decision under appeal: "(i) 'would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant', (ii) would lead to consequences that 'would be very difficult to correct and may be irreversible', or (iii) 'could potentially defeat the purpose of the appeal'".⁷

¹ [ICC-01/21-57 OA](#) (in which the Philippines Government ("the Philippines") filed its "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-Red](#)) with application for suspensive effect"). See also Authorisation pursuant to article 18(2) of the Statute to resume the investigation, 26 January 2023, [ICC-01/21-56-Red](#) ("Decision"). The Philippines states that it was notified of the Decision on 27 January 2023.

² [ICC-02/04-01/05-92 OA](#), para. 3.

³ [ICC-01/21-56-Red](#) ("Decision").

⁴ [ICC-01/09-01/11-1370 OA7 OA 8](#), para. 10.

⁵ See e.g. [ICC-01/04-01/06-1347 OA9 OA10](#), para. 10; [ICC-01/04-01/06-1290 OA11](#), para. 7.

⁶ [ICC-01/04-01/06-1347 OA9 OA10](#), para. 10; see also [ICC-01/04-01/06-1290 OA11](#), para. 7; [ICC-01/11-01/11-387 OA4](#), para. 22.

⁷ See e.g. [ICC-01/05-01/08-817 OA3](#), para. 11; [ICC-01/11-01/11-387 OA4](#), para. 22, and authorities cited therein.

4. The Prosecution submits that granting suspensive effect is not necessary in the circumstances of this case. The Philippines has not provided any argument substantiating its request for suspensive effect, nor shown that implementation of the Decision would create an irreversible situation or one that would be very difficult to correct or that could potentially defeat the purpose of the appeal. No such grounds for granting suspensive effect exist. While the Appeals Chamber decides on the merits of the appeal, the Philippines can continue with its investigations and domestic proceedings irrespective of the ongoing Prosecution's investigation.⁸ The Appeals Chamber is likewise able to reverse, confirm or amend the Decision irrespective of the Prosecution's investigation.⁹ Should the Appeals Chamber eventually decide to reverse the Decision, any relevant investigation by the Prosecution would be discontinued. Accordingly, there is no irreversible situation or one that would be very difficult to correct or that could defeat the purpose of the appeal arising from implementation of the Decision during the course of the appeal proceedings.
5. The Prosecution accordingly respectfully requests the Appeals Chamber to reject the Philippines' request for suspensive effect of the Decision.



Karim A.A. Khan KC, Prosecutor

Dated this 16th day of February, 2023
At The Hague, The Netherlands

⁸ [ICC-01/11-01/11-387 OA4](#), paras. 24-26; *see also* [ICC-01/11-01/11-480 OA6](#), paras. 16-17.

⁹ [Rules](#), rule 158(1). *See e.g.* [ICC-01/05-01/08-817 OA3](#), para. 11. Depending on the circumstances the Appeals Chamber may also remand a decision to the first-instance Chamber for that Chamber to issue a new decision in light of the Appeal Judgment. *See e.g.* [ICC-01/04-01/06-774 OA6](#), paras. 64-66 (where the Appeals Chamber reversed a decision and directed the Pre Trial Chamber to decide the matter anew), [ICC-01/14-01/22-70-Red OA](#), para. 69.