

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/21 OA**
Date: **02 March 2023**

THE APPEALS CHAMBER

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

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

Public Document

Response to requests to participate before the Appeals Chamber

Source: The Republic of the Philippines

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

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Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

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Section**

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I. INTRODUCTION

1. The Government of the Republic of the Philippines (Philippine Government), respectfully requests the Appeals Chamber to dismiss both the Office of the Public Counsel for Victim's (OPCV) request to appear before the Appeals Chamber,¹ and the anonymous application to present the victims' views and concerns dated 17 February 2023.²
2. At the outset, the Philippine Government reiterates its full respect for internationally protected human rights and its commitment to victims' access and right to truth and justice.
3. The OPCV Request and Anonymous Application fall foul however of procedural and substantive requirements which are necessary in these proceedings before the Appeals Chamber.

II. OPCV REQUEST

4. At the core of its Request, the OPCV avers that it has been the practice of the Court to permit the OPCV to appear on "specific issues" which are of "general interest of the victims".³ However, each of the examples provided in support are procedurally and factually distinct from the present proceedings before the Appeals Chamber.
5. To date, the OPCV has had no role or involvement in the collection or presentation of the views and concerns of victims either in the article 15 or article 18 context in the *Situation in the Republic of the Philippines*.⁴ The OPCV did not seek leave to

¹ ICC-01/21-63, Request to appear before the Appeals Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court, 24 February 2023 ("OPCV Request"). The Request was notified to the Philippine Government on 28 February 2023.

² ICC-01/21-62-RED, 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'", 24 February 2023, Annex III ("Anonymous Application"). The Philippine Government did not formally receive notification of this filing see paragraph 14 below.

³ Request, paras. 11, 15 and 20.

⁴ ICC-01/21-12, Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute, para. 17 and ICC-01/21-47, Order inviting observations and victims' views and concerns, 14 July 2022 noting further that although the Prosecution had suggested that Pre-Trial Chamber I should allow victims to make written submissions through, *inter alia*, the OPCV, this proposal was rejected in relation to the article 18 proceedings and was not invoked at the article 15 stage. *Cf* system adopted in more recent proceedings concerning the *Situation in the Bolivarian Republic of Venezuela I* whereby VPRS was instructed to "liaise with victims and any legal representatives, including OPCV [...]" (emphasis added) see ICC-02/18-21, Order inviting observations and views and concerns of victims, 18 November 2022, para. 11.

participate before Pre-Trial Chamber I in any context and saw no prior need to present submissions on what it states are issues which “fundamentally affect the general interest of the victims”.⁵ Nor does the OPCV aver that it has been in contact with any victim(s) in relation to the *Situation in the Republic of the Philippines* and the Request fails to establish which specific victims the OPCV seeks to advance the views of. As such, there is no basis to regard the OPCV as ‘participants’ in the broader proceedings leading to the Impugned Decision and no concrete reasons are provided as to why the interests of those victims who presented their views either directly, or through legal representatives, to VPRS should now be represented by OPCV.⁶

6. In contrast, along with a number of other legal representatives for victims, the OPCV did participate in broader proceedings concerning the *Situation in the Islamic Republic of Afghanistan*,⁷ and had been in contact with “victims and organisations representing victims” in that situation.⁸ Further, the OPCV’s initial intervention in the *Situation in the Islamic Republic of Afghanistan* concerned circumstances whereby the Prosecution had been denied authority to investigate by Pre-Trial Chamber II.⁹ The Philippine Government’s appeal however concerns its ability to exercise its primary jurisdiction to carry out investigations.¹⁰
7. It was on this basis that the Appeals Chamber, adopting the practice established in *Gbagbo and Blè Goudè* (OA6),¹¹ permitted legal representatives for victims and the

⁵ Request, paras 2 and 15.

⁶ Notwithstanding the submissions on the Anonymous Applicant, the Philippine Government notes recent practice whereby the OPCV’s role is limited to its assistance to identified common legal representatives see e.g. ICC-02/05-01/20-494, Decision on victims’ participation and legal representation in trial proceedings, 19 October 2021.

⁷ For example, ICC-02/17-56, Information concerning the Request Seeking Leave to File Amicus Curiae Submissions on Behalf of Human Rights Organizations in Afghanistan (ICC-02/17-55 OA OA2 OA3), 27 June 2019; ICC-02/17-59, Submissions in the general interest of the Victims on the Prosecution’s Request for Leave to Appeal the “Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghan, 12 July 2019; and ICC-02/17-93, OPCV Consolidated Submissions pursuant to the “Order Scheduling a Hearing before the Appeals Chamber and Other Related Matters” (No. ICC-02/17-72-Corr), 22 October 2019.

⁸ ICC-02/17-39, Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court, 10 June 2019, para. 32. See also ICC-02/17-67, Request to appear before the Appeals Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court, 20 September 2019, para. 24.

⁹ ICC-02/17-33, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan, 12 April 2019.

¹⁰ With regard to the limited scope of role of victims in article 18 proceedings see ICC-02/17-196, Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation, 31 October 2022, para. 31.

¹¹ ICC-02/11-01/15 (OA6), Reasons for the “Decision on the ‘Request for the recognition of the right of victims authorized to participate in the case to automatically participate in any interlocutory appeal arising from the case and, in the alternative, application to participate in the interlocutory appeal against the ninth decision on Mr Gbagbo’s detention (ICC-02/11-01/15-134-Red3)”, 31 July 2015, para. 19.

OPCV to participate in article 18 proceedings concerning the *Situation in the Islamic Republic of Afghanistan*.¹² The context is distinguishable as evidenced by the existence of the Request itself.¹³

8. The Request does not cite to any example whereby the Appeals Chamber has granted leave to the OPCV in the absence of any prior participation in broader proceedings.¹⁴ Further, with exception of its reference to the Afghanistan situation dealt with above, the examples cited by the OPCV concern scenarios whereby leave was granted as the OPCV was either appointed to represent specific victims,¹⁵ or its submissions were limited to logistical and not substantive issues.¹⁶ As concerns the OPCV's submission that the Office has "appeared at the request of Chambers",¹⁷ the example provided establishes that the OPCV was asked whether it *intended* to make submissions in relation to the definition of victims under rule 85,¹⁸ and if so, preferably in writing.¹⁹
9. The definition of a victim is clearly one that is a specific issue of "general importance and applicability".²⁰ However, the issues identified in the OPCV Request fail to meet the same criteria and are limited to the deferral request submitted by the Philippine

¹² ICC-02/17-200 (OA5), Order on the conduct of the appeal proceedings, 23 November 2022, para. 1. The Philippine Government further notes that Appeals Chamber had previously allowed victims to participate in at the appellate stage in the Afghanistan situation in the context of article 15 proceedings in accordance with Rules 50(30) and 90 of the Rules, whereby the same victims had participated at first instance see ICC-02/17-200 (OA5), Order on the conduct of the appeal proceedings, 23 November 2022, para. 2 and ICC-02/17-97, Decision on the participation of amici curiae, the Office of Public Counsel for the Defence and the cross-border victims, 24 October 2019, para. 40.

¹³ *C/f* ICC-02/17-202, Submissions on behalf of victims pursuant to the "Order on the conduct of the appeal proceedings" (No. ICC-02/17-200), 15 December 2022.

¹⁴ Request, fn. 13. All cited examples pertain to pre-trial and trial stage.

¹⁵ (i) in reference to ICC-01/04-01/06-1046 – the Trial Chamber had ordered that OPCV be appointed as legal representative for a specific number of unrepresented victim-applicants (see ICC-01/04-374, Decision on the Requests of the Legal Representative of Applicants on application process for victims' participation and legal representation, 18 August 2007) and it was on this basis that leave was granted see ICC-01/04-01/06-1046, para. 5; (ii) in reference to ICC-01/04-01/07-1205 – the OPCV had requested to address specific issues relating to 'Witness 7' who was represented by the office (see ICC-01/04-01/07-1160, Request by OPCV for leave under regulation 81(4)(b) of the Rules of Court to appear before the Chamber on specific matters relating to protective measures for Witness W-007, 20 May 2009); and (iii) in reference to ICC-01/0401/06-2858 – Trial Chamber I instructed the Registry to appoint the OPCV as the legal representative for any unrepresented applicants.

¹⁶ In reference to ICC-02/11-01/11-57 – Pre-Trial Chamber III denied the OPCV's request to provide submissions on the appropriate interpretation of the legal provisions in the Statute and instead limited the Office's submissions to practical implications arising from the Registry's proposal to issue collective application forms for victim participation see ICC-02/11-01/11-57, Decision on the OPCV's "Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims' application process", 13 March 2012, paras 11 and 12.

¹⁷ Request, para. 12 and fn. 14.

¹⁸ ICC-01/04-01/06-T-58 ENG, Transcript, 30 October 2007, p. 13 lines 20 to 23

¹⁹ ICC-01/04-01/06-T-62 ENG, Transcript, 4 December 2007, p. 53 lines 23 to 25 and p.54 lines 1-5.

²⁰ ICC-01/04-01/06-1211, Decision on the role of the Office of Public Counsel for Victims and its request for access to documents, 6 March 2008, para. 35 (emphasis added).

Government.²¹

10. Accordingly, there remains no compelling reason nor procedural basis to grant OPCV leave to participate in appellate proceedings, where it has not been a prior participant, on behalf of hypothetical victims in a hypothetical case.

III. ANONYMOUS APPLICATION

11. The Anonymous Application seeks leave to present the views and concerns of 90 applicants,²² “by submitting a response to the appeal brief by the Government of the Philippines and the application for suspensive effect within the applicable timelines”.²³
12. The application itself is available to the Philippine Government in redacted form with no means to discern: (i) who the legal representative is, (ii) whether they have authority to represent *all* 90 applicants,²⁴ and (iii) if so, whether *all* 90 applicants had been subject to a preliminary assessment by VPRS and submitted their views and concerns to Pre-Trial Chamber I. In the absence of this information,²⁵ and in accordance with the aforementioned practice of the Appeals Chamber, there would be no basis to grant leave.
13. The matter is compounded by the fact that the Anonymous Application also redacts the substantive content as to what it is that the applicants are seeking to provide information on.²⁶ The Philippine Government recalls the Appeals Chamber’s finding that “if participants in appellate proceedings are unable to respond to certain arguments of the appellant, those arguments are precluded from the scrutiny of the participants which in turn may affect the Appeals Chamber’s determination of the

²¹ See also Request, para. 15.

²² Anonymous Application, para. 1.

²³ Anonymous Application, para. 16.

²⁴ The Anonymous Application make reference to “[a] list with details on 20 out of the 90 Applicants is attached in the Annex to this application” at paragraph 2.

²⁵ The Philippine Government recognises it is precluded from making further observations in this regard and that some of this information may very well be before the Appeals Chamber.

²⁶ Anonymous Application, para. 16. The Philippine Government is for example, unable to therefore ascertain whether the redacted information concerns matters which fall outside the scope and effect of the deferral request see e.g. ICC-02/17-196, Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation, 31 October 2022, para. 40.

issues on appeal”.²⁷ The reverse is equally applicable – as the appellant, the Philippine Government cannot effectively exercise its rights in accordance with article 18(4) and 82(1)(a) if it is precluded from scrutinizing the submissions of all other participants.

14. Finally, the Philippine Government observes that it is not notified of any filings, including public documents, submitted by the Registry concerning victim representation. It is requested that all documents registered in these proceedings are notified to the Philippine Government in accordance with Regulations 31 and 32 of the Regulations of the Court.

15. For the foregoing reasons, the Philippine Government respectfully requests the Appeals Chamber to:

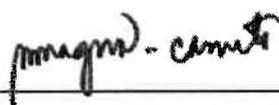
REJECT the OPCV Request and the Anonymous Application; and

ORDER the Registry to notify the Philippine Government of all documents registered in these proceedings.

RESPECTFULLY SUBMITTED,



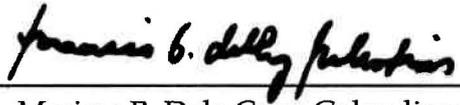
Menardo I. Guevarra

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²⁷ ICC-02/17-200, Order on the conduct of the appeal proceedings, 23 November 2022, para. 1.



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Ma. Cielo Se-Rondain

Counsel for the Republic of the Philippines

Dated this 2nd of March 2023
At The Hague, The Netherlands