



Original: English

**No. ICC-01/21 OA
Date: 2 May 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 the Republic of the Philippines' request for leave to reply to the
"Prosecution's response to the Philippine Government's Appeal Brief against
'Authorisation pursuant to article 18(2) of the Statute to resume the
investigation' (ICC-01/21-65 OA)"**

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 Osvaldo Zavala Giler

Victims and Witnesses Unit

Mr Philipp Ambach

The Appeals Chamber of the International Criminal Court,

In the appeal of the Republic of the Philippines against the decision of 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),

Having before it the Republic of the Philippines' "Request for Leave to Reply" of 11 April 2023 (ICC-01/21-69),

Pursuant to regulation 24(5) of the Regulations of the Court,

Renders unanimously the following

DECISION

The Republic of the Philippines may file a reply to the "Prosecution's response to the Philippine Government's Appeal Brief against 'Authorisation pursuant to article 18(2) of the Statute to resume the investigation' (ICC-01/21-65 OA)" by 16h00 on 16 May 2023, as specified in paragraph 9 below. The reply shall not exceed 10 pages.

REASONS

I. PROCEDURAL HISTORY

1. On 13 March 2023, the Republic of the Philippines (hereinafter: "the Philippines") filed its appeal brief (hereinafter: "Appeal Brief").¹
2. On 4 April 2023, the Prosecutor filed his response to the Philippines' Appeal Brief (hereinafter: "Prosecutor's Response to Appeal Brief").²

¹ [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](#).

² [Prosecution's response to the Philippine Government's Appeal Brief against "Authorisation pursuant to article 18\(2\) of the Statute to resume the investigation" \(ICC-01/21-65 OA\)](#), ICC-01/21-68.

3. On 11 April 2023, the Philippines filed a request, seeking leave to file a reply to the Prosecutor’s Response to Appeal Brief in respect to five issues (hereinafter: “Request”).³
4. On 14 April 2023, the Prosecutor filed his response to the Request (hereinafter: “Prosecutor’s Response”).⁴
5. On 18 April 2023, the Office of Public Counsel for Victims filed its observations (hereinafter: “OPCV Observations”).⁵

II. MERITS

6. Regulation 24(5) of the Regulations of the Court (hereinafter: “Regulations”) provides:

Participants may only reply to a response with the leave of the Chamber, unless otherwise provided in these Regulations. Unless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.

7. The Appeals Chamber may grant a request for leave to reply if the above-mentioned conditions are met, or if it considers that a reply would otherwise be necessary for the adjudication of the appeal.⁶
8. The Philippines seeks leave to reply to the Prosecutor’s Response in respect of five issues, which, in its view, concern new issues that could not have been reasonably anticipated by the Philippines.⁷ The Appeals Chamber notes that in Issues 1 and 4, as identified in the Request, the Philippines seeks leave to reply in relation to (i) whether the Prosecutor’s preliminary examination can serve as the trigger for article 127(2) of the Statute; and (ii) whether the Appeals Chamber, in its “Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the

³ [Request for Leave to Reply](#), ICC-01/21-69.

⁴ [Prosecution’s Response to the Philippines Government’s “Request for Leave to Reply” \(ICC-01/21-69 OA\)](#), ICC-01/21-70.

⁵ [Observations on behalf of victims on the Philippines Government Appeal against the Decision authorising the resumption of the investigation](#), ICC-01/21-71.

⁶ *Situation in the Islamic Republic of Afghanistan*, [Decision on the Prosecutor’s request for leave to reply](#), 23 December 2022, ICC-02/17-206 (OA5), para. 8; *The Prosecutor v. Bosco Ntaganda*, [Decision on Mr Ntaganda’s request for leave to reply](#), 17 July 2017, ICC-01/04-02/06-1994 (OA6), para. 9; *The Prosecutor v. Bosco Ntaganda*, [Decision on Mr Ntaganda’s request for leave to reply](#), 3 March 2017, ICC-01/04-02/06-1813 (OA5), para. 8.

⁷ [Request](#), paras 1-2.

Islamic Republic of Afghanistan”,⁸ “nullified” the application of the two-step assessment of article 17 of the Statute, in the context of article 18 proceedings.⁹

9. In the circumstances of the case, the Appeals Chamber considers that a reply in respect to Issues 1 and 4 would assist in its determination of the appeal. The reply shall be filed no later than 16 May 2023, and shall not exceed 10 pages.

10. In regard to Issues 2, 3 and 5, as set out in the Request,¹⁰ the Appeals Chamber considers that these do not constitute new issues, or that they could have been reasonably anticipated. Furthermore, a reply on these issues would not assist the Appeals Chamber in its determination of the appeal.

11. The Appeals Chamber also notes that the Philippines expresses a preference to submit a “consolidated reply” to both the Prosecutor’s Response to Appeal Brief and the OPCV Observations.¹¹ However, as the Philippines did not submit a separate request for leave to reply to the OPCV Observations within the applicable time limit pursuant to regulations 24(5) and 34(c) of the Regulations, the Appeals Chamber finds the request for a consolidated reply to be moot and will not consider it.

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



Judge Marc Perrin de Brichambaut
Presiding

Dated this 2nd day of May 2023

At The Hague, The Netherlands

⁸ *Situation in the Islamic Republic of Afghanistan*, [Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan](#), 5 March 2020, ICC-02/17-138 (OA4).

⁹ [Request](#), para. 2.

¹⁰ [Request](#), para. 2 (Issues 2, 3 and 5 concern: (2) “[t]he correct allocation of the burden of proof” in article 18(2) proceedings, (3) whether the Philippines raised certain arguments concerning domestic processes for the first time on appeal, and (5) “[t]he Prosecution’s reading of article 19(2)(b)” in relation to the gravity component).

¹¹ [Request](#), fn. 15.