

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No. **ICC-01/21**
Date: **14 July 2022**

PRE-TRIAL CHAMBER I

Before: **Judge Péter Kovács, Presiding Judge**
 Judge Reine Adélaïde Sophie Alapini-Gansou
 Judge María del Socorro Flores Liera

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

PUBLIC

Order inviting observations and victims' views and concerns

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
Mr Colin Black

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

The Office of Public Counsel for Victims

The Office of Public Counsel for the Defence

States Representative

The Republic of the Philippines

Amicus Curiae

REGISTRY

Registrar

Mr Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this Order inviting observations and victims’ views and concerns.

I. PROCEDURAL HISTORY AND SUBMISSIONS

1. On 19 April 2021, the Presidency assigned the situation in the Republic of the Philippines (the ‘Situation in the Philippines’) to the Chamber.¹
2. On 24 May 2021, the Prosecutor requested authorisation to commence an investigation into the Situation in the Philippines (the ‘Article 15(3) Request’).²
3. On 14 June 2021, the Prosecutor filed a public redacted version of the Article 15(3) Request,³ thereby providing notice to victims under Article 15(3) of the Statute and Rule 50(1) of the Rules of Procedure and Evidence (the ‘Rules’).
4. On 27 August 2021, the Registry transmitted 204 victim representations to the Chamber,⁴ and filed in the record of the case its report on victim representations.⁵
5. On 15 September 2021, the Chamber authorised the commencement of the investigation into the Situation in the Philippines, in relation to ‘crimes within the jurisdiction of the Court allegedly committed on the territory of the Philippines between 1 November 2011 and 16 March 2019 in the context of the so-called “war on drugs” campaign’.⁶
6. On 10 November 2021, the Prosecutor notified the Chamber that the Republic of the Philippines (‘the Philippines’) had requested that the Prosecutor defer to the Philippines the investigation of nationals or others within its jurisdiction.⁷ In an annex to the notification, the Prosecutor appended the deferral request submitted by the Philippines⁸ (the ‘Deferral Request’).

¹ Decision on the assignment of the situation in the Republic of the Philippines, ICC-01/21-1.

² Request for authorisation of an investigation pursuant to article 15(3), ICC-01/21-7-SECRET-Exp, with secret *ex parte* Annexes 1, 2, 3, 4 and 5.

³ ICC-01/21-7-Red. Annexes 1, 4 and 5 were reclassified by the Chamber as ‘public’ on the same day following a request to this effect submitted by the Prosecutor by email.

⁴ ICC-01/21-10 and 204 annexes containing the actual representations, classified as ‘confidential *ex parte*, only available to the Registry’.

⁵ ICC-01/21-11 and confidential Annex I - Registry Report on Victims’ Representations (public redacted version also available; see ICC-01/21-11-AnxI-Red).

⁶ Decision on the Prosecutor’s request for authorisation of an investigation pursuant to Article 15(3) of the Statute, ICC-01/21-12.

⁷ Notification of the Republic of the Philippines’ deferral request under article 18(2), ICC-01/21-14, with public Annex A (ICC-01/21-14-AnxA).

⁸ See ICC-01/21-14-AnxA.

7. Between 22 December 2021 and 31 March 2022, the Philippines provided the Prosecutor with various documents in support of the Deferral Request.⁹

8. On 24 June 2022, the Prosecutor requested, pursuant to article 18(2) of the Statute, to resume the investigation into the Situation in the Philippines (the ‘Request’).¹⁰

9. The Prosecutor submits that he has carefully analysed the information supporting the Deferral Request. In his view, the Philippines has not demonstrated that it has investigated or is investigating its nationals or others within its jurisdiction within the meaning of article 18(2) of the Statute. The Prosecutor therefore requests the Chamber to authorise the resumption of the Court’s investigation in the Situation in the Philippines, notwithstanding the Deferral Request.¹¹

10. The Prosecutor requests the Chamber to first issue an order pursuant to Rule 55(1) of the Rules setting out the procedure to be followed, and request any further submissions. In this regard, the Prosecutor submits that the Chamber ‘should allow victims to make written submissions on issues arising from this Request through their legal representatives and/or OPCV’, based on the fact that the ‘interests of victims may be affected as a result of this litigation’.¹²

II. DETERMINATION BY THE CHAMBER

11. According to Rule 55 of the Rules the Chamber ‘shall decide on the procedure to be followed and may take appropriate measures for the proper conduct of the proceedings. It may hold a hearing.’

12. The Chamber considers it appropriate to invite the Philippines to submit any additional observations arising from the Prosecutor’s Request. If it wishes to do so, the Philippines must submit these additional observations by 8 September 2022 at the latest.

13. The Prosecutor may respond to the additional observations submitted by the State of the Philippines, if submitted, to the extent that they relate to factual arguments as to whether the

⁹ Request to resume the investigation into the situation in the Philippines pursuant to article 18(2), 24 June 2022, ICC-01/21-46, paras 10-11.

¹⁰ Request to resume the investigation into the situation in the Philippines pursuant to article 18(2), ICC-01/21-46.

¹¹ Request, paras 2, 135.

¹² Request, para. 6.

State ‘is investigating or has investigated its nationals or others within its jurisdiction with respect to criminal acts which may constitute crimes referred to in article 5 and which relate to the information provided in the notification to States’. However, the Chamber does not require a reply to any observations by the Philippines to the Prosecutor’s submissions on the applicable legal framework under article 18(2) of the Statute.¹³ Any response should be submitted by 22 September 2022 at the latest.

14. The personal interests of victims, within the meaning of article 68(3) of the Statute,¹⁴ might be affected by the outcome of the decision of the Chamber on the Prosecutor’s Request. Therefore, their views and concerns should be collected. The Chamber notes that in the present situation, and in the context of the Article 15 proceedings,¹⁵ victims have already been consulted and some have already communicated their views about the ability and willingness of the Philippines to investigate the relevant crimes. The Chamber also notes that the system as set forth by the Statute and the Rules in respect of proceedings pursuant to article 15 of the Statute provides a suitable model for collecting victims views and concerns in the context of Article 18(2) proceedings.¹⁶ The Chamber therefore instructs the Victims Participation and Reparations Section (the ‘VPRS’) to liaise with victims and their legal representatives, if any, to collect any additional or different views or concerns related to the Prosecutor’s Request, and to prepare a short report summarizing those views and concerns.

15. The victims’ views and concerns on the Prosecutor’s Request must be submitted to the VPRS by 8 September 2022. The VPRS is instructed to submit to the Chamber all the views and concerns received by that date, together with a report, by 22 September 2022 at the latest.

¹³ See Request, paras 27-69.

¹⁴ The Chamber recalls that according to the jurisprudence of the Court, article 68(3) of the Statute vests in a chamber a certain margin of discretion in determining whether, and in what modalities, victims may appropriately be allowed to play a role at certain stages of the proceedings, including before or during the investigation stage. See for instance 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. 12 and note 15; Pre-Trial Chamber I, *Situation in the State of Palestine*, Decision on Information and Outreach for the Victims of the Situation, 13 July 2018, ICC-01/18-2, paras 8-11; Pre-Trial Chamber III, *Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar*, Order on Information and Outreach for the Victims of the Situation, 20 January 2020, ICC-01/19-28, para. 7.

¹⁵ ICC-01/21-11.

¹⁶ See similarly 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.

16. The Chamber does not deem it necessary to hold a hearing in addition to receiving further written observations from the Philippines, any reply from the Prosecutor, and the views and concerns of the victims.

FOR THESE REASONS, THE CHAMBER HEREBY

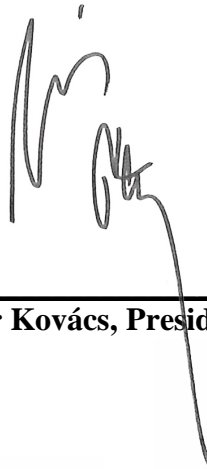
INVITES the Philippines to provide observations on the Prosecutor's Request by 8 September 2022 at the latest;

INSTRUCTS the Prosecutor to submit a response, if any, to the observations of the Philippines, as set forth in paragraphs 13 of the present order, by 22 September 2022 at the latest;

INVITES victims and their legal representatives to submit any additional or different views on the Prosecutor's Request by 8 September 2022 at the latest; and

INSTRUCTS the Victims Participation and Reparations Section to collect the views as set forth in paragraphs 14 of the present order, and to transmit them to the Chamber, together with the report, by 22 September 2022 at the latest.

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



Judge Péter Kovács, Presiding Judge



**Judge Reine Adélaïde Sophie
Alapini-Gansou**



**Judge María del Socorro
Flores Liera**

Dated this Thursday, 14 July 2022

At The Hague, The Netherlands