

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/21 OA
Date: 17 February 2023

THE APPEALS CHAMBER

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

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

Public

**Public Redacted Version of
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"
with confidential EX PARTE Annex only available to the Registry**

Source: [redacted]

Document 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 the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants
(Participation/Reparation)**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States' Representatives

Office of the Solicitor General of the
Republic of the Philippines

Amicus Curiae

REGISTRY

Registrar

M. Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Mr Philipp Ambach

Other

I. INTRODUCTION

1. In accordance with Article 68(3) of the Rome Statute and Rule 89(1) of the Rules of Procedure and Evidence, [redacted]¹ is submitting this application on behalf of 90 victims (hereinafter the 'Applicants') to present views and concerns of victims in the appeal proceedings before the Appeals Chamber against the Pre-Trial Chamber I's "Authorisation pursuant to article 18(2) of the Statute to resume the investigation" (hereinafter the 'Appeal').
2. A list with details on 20 out of the 90 Applicants is attached in the Annex to this application. In light of the threats to the physical and psychological safety of the Applicants and the submitting entity, this application and its Annex are filed confidentially *ex parte* only available to the Registry.
3. The Applicants making this submission have nominated [redacted] as their legal representative for any and all representation in proceedings before the International Criminal Court, including the Appeal. The power of attorney for the legal representative will be transmitted to the Victim Participation and Reparation Section.
4. [redacted] is acting as a conduit to transmit this application. Any future communication can be addressed to:

[redacted]

II. PROCEDURAL HISTORY

5. On 15 September 2021, the Pre-Trial Chamber I authorized the commencement of an investigation into the situation in the Republic of the Philippines in relation to crimes committed between 1 November 2011 and 16 March 2019 in the context of the war on drugs.²
6. On 10 November 2021, the Government of the Philippines requested that the Prosecutor defer to the Philippine Government's investigations and

¹ [redacted]

² Decision on the Prosecutor's request for authorisation of an investigation pursuant to Article 15(3) of the Statute, ICC-01/21-12.

proceedings.³ On the same day, the Office of the Prosecutor temporarily suspended its investigative activities to assess the scope and effect of the request for deferral.⁴ After the request of the Prosecution under Rule 53 of the Rules of Procedure and Evidence, the Philippine Government, between 22 December 2021 and 31 March 2022, provided the Prosecution with various documents in support of its request for deferral.⁵

7. On 24 June 2022, the Prosecution requested Pre-Trial Chamber I to authorize the resumption of the investigation into the situation in the Philippines pursuant to Article 18(2) of the Rome Statute.⁶
8. On 26 January 2023, the Pre-Trial Chamber I rendered its decision authorizing the Prosecution to resume the investigation into the situation in the Republic of the Philippines pursuant to Article 18(2) of the Rome Statute.⁷
9. On 3 February 2023, the Philippine Government filed a Notice of Appeal against the Pre-Trial Chamber I's "Authorisation pursuant to article 18(2) of the Statute to resume the investigation" with an application for suspensive effect.⁸

III. INFORMATION ON THE APPLICANTS

10. The Applicants fall within the temporal, territorial and material scope of the situation of the Philippines currently before the International Criminal Court because they suffered harm as a result of the extra-judicial killings of their family members by police and non-state actors, committed between [redacted] and [redacted] in [redacted]. All Applicants represented in this submission are family members, such as parents, children, uncles/aunts, cousins, nephews, of individuals killed in the context of the war on drugs. Some Applicants have experienced torture at the hands of the police in relation to the drug war.

³ Notification of the Republic of the Philippines' deferral request under article 18(2), ICC-01/21-14, with public Annex A.

⁴ Prosecution's request to resume the investigation into the situation in the Philippines pursuant to article 18(2), ICC-01/21-46.

⁵ Prosecution's request to resume the investigation into the situation in the Philippines pursuant to article 18(2), ICC-01/21-46, para. 9-11.

⁶ Prosecution's request to resume the investigation into the situation in the Philippines pursuant to article 18(2), ICC-01/21-46.

⁷ Authorisation pursuant to article 18(2) of the Statute to resume the investigation, ICC-01/21.

⁸ Philippine Government's the 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, ICC-01/21.

11. As a result of the killings of their family members or the torture they were subjected to, the Applicants have suffered physical, psychological and socio-economic harm, including physical pain, injuries, anxiety, loss of sleep, trauma, feeling of fear, depression, loss of income, and economic hardship.
12. The Applicants submitted victim representation forms to the Victim Participation and Reparation Section during the victim representation process under Article 15(3) of the Rome Statute, represented by [redacted]. In addition, they shared their views and concerns with the Victim Participation and Reparation Section during the consultation on the deferral request under Article 18(2) of the Rome Statute, represented by [redacted].

IV. PERSONAL INTEREST OF VICTIMS

13. Article 68(3) of the Rome Statute stipulates that “[w]here the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.”
14. The Appeal will decide upon the question whether investigations will take place or be deferred in the situation of the Philippines. This question has an immediate and direct effect on the personal interests of the Applicants as they have not been able obtain justice and remedies for the crimes committed against their family members.
15. Investigations by the Office of the Prosecutor in this matter could shed light on the alleged crimes and could identify potential perpetrators, both of which are elements of the right of victims to an effective remedy.⁹ In addition, investigations are the premise for any future prosecution and possible reparation and, as such, the necessary pre-requisite for victims to see justice done and obtain remedies for the harm suffered.

⁹ See UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, General Assembly resolution 60/147, 16 December 2005, para. 4.

V. REQUEST

16. The Applicants therefore request that they be permitted to present their views and concerns in the Appeal by submitting a response to the appeal brief by the Government of the Philippines and the application for suspensive effect within the applicable timelines. The Applicants would be providing information on [redacted]. Depending on the content of the appeal brief, they would present additional views and concerns.

[redacted]

on behalf of

[redacted]

Dated this 17 February 2023

At [redacted]