

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/21**
Date: **24 February 2023**

THE APPEALS CHAMBER

Before: Judge Marc Pierre 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 Document

**Request to appear before the Appeals Chamber pursuant to
regulation 81(4)(b) of the Regulations of the Court**

Source: Office of Public Counsel for Victims

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 KC

Ms Helen Brady

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**

Ms Paolina Massidda

Ms Ludovica Vetrucchio

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

States' Representatives

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

I. INTRODUCTION

1. Pursuant to regulation 81(4) of the Regulations of the Court (the “Regulations”), the Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) requests to appear before the Appeals Chamber, to represent the general interest of the victims in relation to the appeal brought by the Republic of the Philippines¹ against the decision of Pre-Trial Chamber I authorising the Prosecutor to resume the investigation into the Situation in the Philippines (the “Impugned Decision”).²

2. The appeal is directed against the whole decision authorising the resumption of the investigation. As such, the issues on appeal fundamentally affect the general interest of the victims. A reversal of the Impugned Decision on appeal may in fact result in halting the Prosecutor’s investigation, thereby jeopardising the victims’ rights to truth, justice and reparations.

3. Victims have presented their observations on the issue of the resumption of the investigation.³ It is therefore appropriate that they are also authorised to present their views and concerns on the appeal arising directly from said proceedings. In recent appeals proceedings related to article 18 of the Rome Statute (the “Statute”), victims have been invited by the Appeals Chamber to submit observations.⁴

4. In light of the above, the Principal Counsel posits that allowing the Office to appear before the Appeals Chamber will ensure that the rights and interests of victims are protected and duly taken into account at the appellate stage. The Principal Counsel

¹ See the “Philippines Government’s 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)”, [No. ICC-01/21-57](#), 3 February 2023 (the “Notice of Appeal”).

² See the “Public Redacted Version of ‘Authorisation pursuant to article 18(2) of the Statute to resume the investigation’”, [No. ICC-01/21-56-Red](#), 26 January 2023 (the “Impugned Decision”).

³ See the “Registry Report on Article 18(2) Victim Representations”, [No. ICC-01/21-55](#) and [No. ICC-01/21-55-AnxI-Red](#), 22 September 2022.

⁴ See the “Order on the Conduct of the appeal proceedings” (Appeals Chamber), [No. ICC-02/17-200 OA5](#), 23 November 2022, para. 2. See also, the “Order on the filing of observations on the Prosecutor’s notice of discontinuance of the appeal” (Appeals Chamber), [No. ICC-02/17-208 OA5](#), 24 January 2023, para. 2.

files these submissions at this early juncture with a view to provide the Appeals Chamber with a meaningful contribution on the issue from the victims' prospective, while ensuring that the expeditiousness and efficiency of the proceedings is safeguarded.

II. PROCEDURAL BACKGROUND

5. On 26 January 2023, Pre-Trial Chamber I issued the Impugned Decision.⁵
6. On 3 February 2023, the Republic of the Philippines filed its Notice of Appeal requesting suspensive effect.⁶
7. On 8 February 2023, the Appeals Chamber issued a decision on the Presiding Judge in the appeal.⁷
8. On 15 February 2023 the Republic of the Philippines filed a request for extension of time to file its Appeal Brief.⁸
9. On 16 February 2023, the Prosecution filed its response to the request for suspensive effect, asking the Appeals Chamber to reject it.⁹
10. On 17 February 2023, the Appeals Chamber granted the request by the Republic of the Philippines for an extension of time to file its appeal brief, setting the deadline at 16 March 2023.¹⁰

⁵ See the Impugned Decision, *supra* note 2.

⁶ See the Notice of Appeal, *supra* note 1.

⁷ See the "Decision on the Presiding Judge of the Appeals Chamber in the appeal of the Republic of the Philippines against Pre-Trial Chamber I's 'Authorisation pursuant to article 18(2) of the Statute to resume the investigation'", [No. ICC-01/21-58](#), 8 February 2023.

⁸ See the "Philippine Government's Application Extension of Time to File the Appeal Brief", [No. ICC-01/21-59](#), 15 February 2023.

⁹ See the "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)", [No. ICC-01/21-60](#), 16 February 2023.

¹⁰ See the "Decision on the Republic of the Philippines' application for extension of time to file the appeal brief" (Appeals Chamber), [No. ICC-01/21-61 OA](#), 17 February 2023.

III. SUBMISSIONS

1. The OPCV's duty to appear in respect of specific issues

11. Pursuant to regulation 81(4) of the Regulations, “[t]he tasks of the Office of Public Counsel for victims shall include: [...] (b) [a]ppearing, on the instruction or with the leave of the Chamber, in respect of specific issues”.¹¹ This provision was amended to reflect the relevant practice of the Court and specifies, in its revised version, that the OPCV's appearance can be initiated either upon instructions of the Chamber or upon request of the Office itself. Trial Chamber I confirmed that the OPCV can appear in respect of specific issues, *inter alia*, by filing “an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims or any individual victims (this will usually relate to issues of general importance and applicability)”.¹²

12. In the past, the Office requested, and was granted, leave to appear on specific issues pertaining to the general interest of the victims.¹³ In other instances, the Office appeared at the request of Chambers.¹⁴ Said practice reflects the obligation binding on

¹¹ See regulation 81(4) of the Regulations of the Court, [Doc. ICC-BD/01-05-16](#).

¹² See the “Decision on the role of the Office of Public Counsel for Victims and its request for access to documents” (Trial Chamber I), [No. ICC-01/04-01/06-1211](#), 6 March 2008, para. 35.

¹³ See, *inter alia*, the “Order on the Office of Public Counsel for Victims’ request filed on 21 November 2007 (Trial Chamber I), [No. ICC-01/04-01/06-1046](#), 27 November 2007, para. 2; the “Order on Written Submissions on the Interpretation of Regulation 42 of the Regulations of the Court (Regulation 28 of the Regulations of the Court)” (Trial Chamber II), [No. ICC-01/04-01/07-1205](#), 12 June 2009, which *inter alia* granted the OPCV's Request to appear filed on 20 May 2009 (“*Demande du BCPV afin d’être autorisé en vertu de la norme 81-4-b du Règlement de la Cour à comparaître devant la Chambre dans le cadre de questions spécifiques liées aux mesures de protection au bénéfice du témoin W-007*”, [No. ICC-01/04-01/07-1160](#), 20 May 2009); the “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” (Pre-Trial Chamber III), [No. ICC-02/11-01/11-57](#), 13 March 2012; the “Decision on the OPCV's request to participate in the reparations proceedings” (Trial Chamber I), [No. ICC-01/04-01/06-2858](#), 5 April 2012; and the “Decision on the ‘Request for Leave to File Amicus Curiae Submissions on Behalf of Human Rights Organizations in Afghanistan’ (ICC-02/17-35) and on the ‘Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court’ (ICC-02/17-39)” (Pre-Trial Chamber II), [No. ICC-02/17-43](#), 12 June 2019.

¹⁴ See, *inter alia*, the Transcripts of the hearing held on 30 October 2007, [No. ICC-01/04-01/06-T-58-ENG-ET WT](#), p. 13, lines 4 to 18; and the Transcripts of the hearing held on 4 December 2007, [No. ICC-01/04-01/06-T-62-ENG-ET WT](#), pp. 53 to 54.

the OPCV to provide where appropriate assistance to victims, in accordance with its role and mandate before the Court.

13. In this regard, Counsel recalls that the OPCV was established as an independent permanent body within the Court “able to provide expert advice and assistance” on victims’ issues.¹⁵ Since the Office’s inception, the practice of the Court and the responsibilities entrusted with the OPCV by both the Chambers and the victims have greatly contributed to the development of such expertise.

14. In light of the above, the Principal Counsel posits that the Appeals Chamber will benefit from receiving the OPCV legal submissions on behalf of the victims. Victims have presented their observations on the issue of the resumption of the investigation¹⁶ and it is therefore appropriate that they are also authorised to present their views and concerns on the appeal arising directly from said proceedings. The Principal Counsel also recalls that the Appeals Chamber has recently invited victims to present observations in the appeal brought by the Prosecutor in the Situation in the Islamic Republic of Afghanistan against the Pre-Trial Chamber II’s decision related to the resumption of the investigation.¹⁷

2. The issues raised on appeal affect the general interest of victims

15. The appeal is directed against the whole decision authorising the resumption of the investigation. As such, the issues raised on appeal fundamentally affect the general interest of the victims. A reversal of the Impugned Decision on appeal may in fact result in halting the Prosecutor’s investigation, thereby jeopardising the victims’ rights to truth, justice and reparations. In particular, the issue of (a) how to apply the gravity criterion; (b) the ICC jurisdiction over the Situation in the Republic of the

¹⁵ See FULFORD (A.), “The role of the Office of Public Counsel for Victims in trial proceedings”, in OPCV, [Helping victims make their voice heard: The Office of Public Counsel for Victims 5 years of activities](#), 2010, pp. 4-5.

¹⁶ See the “Registry Report on Article 18(2) Victim Representations”, *supra* note 3.

¹⁷ See the “Order on the Conduct of the appeal proceedings” and the “Order on the filing of observations on the Prosecutor’s notice of discontinuance of the appeal”, *supra* note 4.

Philippines; and (c) related the complementary assessment as identified in paragraph 7 of the Notice of Appeal,¹⁸ are all at the core of the victims' interests.

16. The Appeals Chamber has consistently recognised that issues such as whether proceedings in a given case should be stayed,¹⁹ and whether an accused should stand trial,²⁰ affect the personal interests of the victims. In fact, depending on the resolution of said issues, victims may be denied the opportunity to uncover the truth, present their views and concerns throughout the proceedings, and eventually ensure that those responsible for the crimes are held accountable, and claim reparation.²¹

17. *A fortiori*, the personal interests of the victims are impacted by decisions regarding the opening of an investigation. In fact, said rulings concern the first step towards perpetrators' accountability before the Court in respect of the crimes suffered by the victims. Their personal interest in seeing that the Court is seized with a situation, and that an investigation proceeds, has been regarded as "*the most essential of all victims' interests*".²²

18. Regarding the participation of victims in proceedings pursuant to article 18 of the Statute, Pre-Trial Chambers have further observed that the personal interests of the victims under article 68(3) of the Statute may in fact be affected by the outcome of their

¹⁸ See the Notice of Appeal, *supra* note 1, para. 7.

¹⁹ See the "Decision on the Participation of Victims in the Appeal" (Appeals Chamber), [No. ICC-01/04-01/06-1453 OA13](#), 6 August 2008, para. 9; and the "Decision on Victim Participation in the Appeal on the Stay of Proceedings due to an Abuse of Process" (Appeals Chamber), [No. ICC-01/04-01/06-2556 OA18](#), 18 August 2010, para. 9.

²⁰ See the "Decision on the Participation of Victims in the Appeal against the 'Decision on Applications for Provisional Release' of Trial Chamber III" (Appeals Chamber), [No. ICC-01/05-01/08-1597 OA7](#), 14 July 2011, para. 10; and the "Decision on the victims' request to participate in the appeal proceedings" (Appeals Chamber), [No. ICC-01/09-02/11-1015 OA5](#), 24 April 2015, para. 11.

²¹ See the "Decision on the victims' request to participate in the appeal proceedings", *ibid*; and the "Decision on the Participation of Victims in the Appeal against the 'Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence' of Trial Chamber III" (Appeals Chamber), [No. ICC-01/05-01/08-857 OA4](#), 18 August 2010, para. 10.

²² See HUMAN RIGHTS WATCH, [Commentary to the 2nd Preparatory Commission Meeting on the International Criminal Court](#), July 1999, p. 33. See also ECtHR, *Kaya v Turkey*, App. No. 22535/93, [Judgment](#), 28 March 2000, paras. 121-126; and IACtHR, *Mapiripán Massacre v Colombia*, Merits, Reparations and Costs, [Judgment](#), 15 September 2005, paras. 116 and 123.

decisions on Prosecutor's requests to resume an investigation.²³ In particular, Pre-Trial Chamber II held that, not only victims' interests may be affected by said proceedings, but also that in such context, "*potential victims may legitimately have and develop concerns worth being brought to the Chamber's attention*".²⁴

19. Within the ICC's legal framework, the Court has a duty to exercise its jurisdiction over those responsible for international crimes when the complementary test is met. Said duty includes respecting the internationally recognised human rights of victims during criminal proceedings, where the "*outcome of such proceedings lead to the identification, prosecution and punishment of those who have victimised them*".²⁵ In turn, the rights of victims to both participate in the proceedings and to claim reparations are *entirely dependent* on the Prosecutor initiating an investigation,²⁶ since victims before the Court have no right to trigger the commencement of investigations.²⁷ As recognised by Judge Mindua in his partly dissenting opinion:

"[t]he investigation is a very important phase whereby the Prosecutor aims to establish truth and justice through the selection of charges and perpetrators for trial. Victims' participation is, here, a procedural right attaching to fundamental rights, such as the right to life. But also, victims have a right to substantive justice, which encompasses the outcomes of judicial processes. For victims, substantive justice involves redressing the harm they have suffered and the causes of victimisation, and it corresponds with an effective remedy in human rights law, which has developed three rights for victims of gross violations: truth, justice, and reparations".²⁸

²³ See the "Order inviting observations and victims' views and concerns" (Pre-Trial Chamber I), [No. ICC-01/21-47](#), 14 July 2022, para. 14 and footnote 14; and the "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" (Pre-Trial Chamber II), [No. ICC-02/17-171](#), 8 November 2021, para. 12 and footnote 15. See also, the "Order on Information and Outreach for the Victims of the Situation" (Pre-Trial Chamber III), [No. ICC-01/19-28](#), 20 January 2020, para. 7; and the "Decision on Victims' Participation in Proceedings Related to the Situation in the Republic of Kenya" (Pre-Trial Chamber II), [No. ICC-01/09-24](#), 4 November 2021, paras. 11-12.

²⁴ See the "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", *supra* note 23, para. 12.

²⁵ See the "Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case" (Pre-Trial Chamber I), [No. ICC-01/04-01/07-474](#), 13 May 2008, para. 41.

²⁶ See the "Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute'" (Pre-Trial Chamber I), [No. ICC-RoC46\(3\)-01/18-37](#), 6 September 2018, para. 88.

²⁷ See the "Partially Dissenting Opinion of Judge Antione Kesia-Mbe Mindua" (Pre-Trial Chamber II), [No. ICC-02/17-62-Anx](#), 17 September 2019, para. 32 (the "Partially Dissenting Opinion of Judge Mindua").

²⁸ *Idem*, para. 37.

20. In the present circumstances, the issues under appeal are thus of “*general importance and applicability*”,²⁹ go to the matter of impunity and accountability³⁰ and as such, justify the intervention of the Office to represent the general interests of the victims on such important matters. Victims of the crimes committed in the Situation in the Republic of the Philippines, along with their families, have a the right to obtain justice; to know the truth about the events they suffered, and to be redressed.³¹

²⁹ See the “Decision on the role of the Office of Public Counsel for Victims and its request for access to documents”, *supra* note 12, para. 35.

³⁰ See the “Separate opinion of Judge Sang-Hyun Song” appended to the “Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the ‘Directions and Decision of the Appeals Chamber’ of 2 February 2007” (Appeals Chamber), [No. ICC-01/04-01/06-925](#), 13 June 2007, para. 16: “*victims of serious crimes have a special interest that perpetrators responsible for their suffering be brought to justice, and this interest is protected by human rights norms*”. See also, the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victims at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), [No. ICC-01/04-01/07-474](#), 13 May 2008, para. 31: “*the latest empirical studies conducted amongst victims of serious violations of human rights [...] show that the main reason why victims decide to resort to those judicial mechanisms which are available to them against those who victimised them is to have a declaration of the truth by the competent body*”. See also para. 34, acknowledging that “*when this right is to be satisfied through criminal proceedings, victims have a central interest in [...] the outcome of such proceedings*”; the “Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I’s Decision on Victims’ Participation of 18 January 2008” (Appeals Chamber), [No. ICC-01/04-01/06-1432 OA9 OA10](#), 11 July 2008, para. 97; the “Decision on victims’ representation and participation” (Trial Chamber V), [No. ICC-01/09-01/11-460](#), 3 October 2012, para. 10; the “Decision on victims’ representation and participation” (Trial Chamber V), [No. ICC-01/09-02/11-498](#), 3 October 2012, para. 9; and the “Decision on common legal representation of victims for the purpose of trial” (Trial Chamber III), [No. ICC-01/05-01/08-1005](#), 10 November 2010, para. 9(a).

³¹ See the Partially Dissenting Opinion of Judge Mindua, *supra* note 27, para. 47.

IV. CONCLUSION

21. For the foregoing reasons, the Principal Counsel respectfully requests the Appeals Chamber to be allowed to appear in the appeals proceedings before it, by filing written observations not exceeding 35 pages - following the submission of the appeal brief by the Republic of the Philippines - and within a deadline to be established by the Appeals Chamber.

A handwritten signature in black ink, reading "Paolina Massidda". The signature is written in a cursive style with a horizontal line underneath the name.

Paolina Massidda
Principal Counsel

Dated this 24th day of February 2023

At The Hague, The Netherlands