

**ANNEX A**  
**PUBLIC**



Cour  
Pénale  
Internationale  
International  
Criminal  
Court

Le Bureau du Procureur  
The Office of the Prosecutor

H.E. Mr J. Eduardo Malaya  
Ambassador of the Republic of the Philippines to The Netherlands  
The Statesman  
Churchillplein 5, 6<sup>th</sup> floor  
2517 JW Den Haag

*VIA MAIL*

Ref.: OTP2022/014147

Date: 23 June 2022

Your Excellency,

I have the honour to refer to your letters of 10 November 2021, 22 December 2021, and 31 March 2022, in which the Government of the Republic of the Philippines (“Philippine Government”) requested, under article 18(2) of the Rome Statute, that my Office defer to national proceedings and provided additional information in support of that request.

I am grateful for the information submitted together with your letters. My Office has carefully considered all of the information provided in assessing the Philippine Government’s Deferral Request.

I write today, however, to inform you, in accordance with rule 54(2), that I will soon be requesting from Pre-Trial Chamber I of the International Criminal Court (“ICC” or “Court”), under article 18(2) of the Rome Statute, authorisation to resume my Office’s investigation into the Situation in the Philippines. Our assessment of the Deferral Request, and the supporting information which you kindly provided, has led to the conclusion that deferral is not warranted, for the following reasons:

- First, the majority of the information provided relates to administrative and other non-penal processes and proceedings which do not seek to establish criminal responsibility, and therefore cannot warrant deferral of the ICC’s criminal investigation;
- Second, the various proceedings referenced fail to sufficiently mirror the authorised ICC investigation, as required by articles 17 and 18 of the Rome Statute. For example, the Philippine Government has not asserted that it has investigated or is investigating any criminal conduct in

Davao from 2011 to 2016, any crimes other than murder, any killings outside official police operations, any responsibility of mid- or high-level perpetrators, or any alleged systematic conduct or State policy; and

- Third, while the Philippine Government references various cases and proceedings, it has – with a few exceptions – not provided sufficient documentation to demonstrate that investigations in the referenced cases are ongoing or complete, nor any details regarding concrete investigative or prosecutorial steps that have been taken.

Under the principle of complementarity, States have primary responsibility to investigate and prosecute crimes under the Court's jurisdiction. However, when they fail to do so, the Court will step in. It is on that basis that I will seek authorisation to resume my investigation into the Situation in the Philippines.

I take this opportunity to commend the Government of the Philippines for its constructive engagement with my Office since November 2021, and also to thank you for your time and attention to this important matter. I remain ready and willing to continue this dialogue, and to further explore ways in which, moving forward, we can cooperate to ensure justice for victims in the Philippines.

Please accept, Your Excellency, the assurances of my highest consideration.



Karim A. A. Khan QC  
Prosecutor