

ICC decisions give hope for justice
Statement of the Philippine Coalition for the International Criminal Court (PCICC)
March 30, 2023

We highly welcome the laudable decisions of the Appeals Chamber of the International Criminal Court (ICC) [allowing victims](#) to give their views and concerns on this appeal and [rejecting the request for suspensive effect](#) of the appeal filed by the Philippine government. They give hope for justice to the families of victims of extrajudicial killings in the brutal war on drugs. They are flickers of light amidst the darkness of impunity in our country.

What has happened so far?

The Appeals Chamber is currently asked to decide whether the Prosecutor of the ICC can resume investigations on alleged crimes committed in the context of the war on drugs between 2011 and 2019. To recall, on 15 September 2021, the [ICC Pre-Trial Chamber authorized](#) “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...”. The investigation is limited to those crimes which occurred during the period that the Philippines was a State Party to the Rome Statute and was bound by its provisions.

In its decision, the Pre-Trial Chamber emphasized that “based on the facts as they emerge at the present stage and subject to proper investigation and further analysis, the so-called ‘war on drugs’ campaign cannot be seen as a legitimate law enforcement operation, and the killings neither as legitimate nor as mere excesses in an otherwise legitimate operation. Rather, the available material indicates, to the required standard, that a widespread and systematic attack against the civilian population took place pursuant to or in furtherance of a State policy [...]”

In November 2021, the government of the Philippines made a [request to defer](#) the investigation ordered by the Pre-Trial Chamber. States are entitled to file such a deferral request if they claim that their national authorities are already investigating and prosecuting the alleged crimes. The Prosecutor, however, [opposed this request](#) and, the [Pre-Trial Chamber allowed the investigations to resume](#) on 26 January 2023. This caused a delay of 14 months in the investigation. Not content, the Philippines appealed the decision of the Pre-Trial Chamber on the resumption of the investigation in February 2023, filing its [appeal brief](#) on March 13, 2023, to the Appeals Chamber. Under the Rome Statute, States are allowed to appeal a decision on a deferral request. This is the first time at the ICC, that a State has used this right to appeal.

Such an appeal does not stop the Prosecutor from investigating while the appeal is pending, unless the Appeals Chamber orders it following a request by the State. The government of the Philippines made such a [request for suspensive effect](#) of its appeal, in other words it requested that their appeal would block the investigations. The Appeals Chamber in their latest decision rejected this motion.

After the government filed their appeal, a [group of victims asked the Appeals Chamber](#) to allow them to present their views and concerns. At the ICC, the court can grant victims such a right to

be heard at various points. The Appeals Chamber in their latest decision allowed victims to make submissions on whether the resumption of the investigation by the ICC Prosecutor should be confirmed, amended or reversed on appeal.

Milestone for Victims

The decision of the Appeals Chamber to allow victims to present their views and concerns is a milestone in the ICC judicial process. This decision can set a precedent for future appeal proceedings of this kind to allow victims' representations as it is the first time that the Appeals Chamber has ruled on the role of victims during an appeal lodged by a State against a decision on deferral.

Victims can now submit their views and concerns to the Victims Participation and Reparations Section which in turn will compile a report for the Appeals Chambers. It is laudable that the Appeals Chambers made clear that this modality was adopted due to the "[particular circumstances in the Philippines situation](#)" as this does not rule out a more direct involvement of victims in other situations.

Currently in the public debate in the Philippines, what are highlighted are statements by top government officials expressing their disappointment and rejecting the ICC probe. The Appeals Chamber's decision to allow victims to give their views regarding the appeal is an opportunity for those most affected to help surface the emotional turmoil and economic difficulties of the mothers, children and family members who have been waiting for more than 6 years for the long delayed justice. This will be a chance to highlight the views of the families that not only the police who pulled the trigger must be held to account, but top officials of government with ultimate responsibility must also be investigated and brought to court for the widespread killings and other crimes committed in the brutal war on drugs.

Prosecutor Should Investigate Now

The Appeals Chamber's decision rejecting the suspensive effect of the appeal means that the investigation of the Philippine situation can now be resumed by the Office of the Prosecutor (OTP). We urge the OTP to seize this opportunity and push forward with the stalled investigations to the extent possible. We hope there will be no more delays in the investigation in order to proceed to the identification of possible individuals to be charged at the ICC. The delays have caused great trepidation among families of victims and among us who support the families in their quest for justice. The emotional turmoil is aggravated by the stagnation of the domestic criminal investigations and prosecution related to the killings in the bloody war on drugs.

We are also hoping that the Philippine government will consider the ICC decisions as wake up calls to genuinely conduct criminal investigations and prosecutions not only of low level police but also top officials who made possible the widespread killings in the war on drugs.