



Republic of the Philippines

**OFFICE OF THE SOLICITOR GENERAL**

## **PRESS STATEMENT**

### **ON THE DECISION ON PHILIPPINE GOVERNMENT'S APPEAL TO THE ICC PRE-TRIAL CHAMBER'S DECISION AUTHORIZING THE OFFICE OF THE PROSECUTOR TO RESUME INVESTIGATION INTO PHILIPPINE SITUATION**

18 July 2023

The Office of the Solicitor General is disappointed in today's judgment issued by the Appeals Chamber of the ICC. By a split 3-to-2 decision, the Appeals Chamber confirmed the Impugned Decision of Pre-Trial Chamber I entitled "Authorisation pursuant to article 18(2) of the Statute to resume the investigation" of 26 January 2023, and in effect refused to recognize the Philippine Government's primary and sovereign right to investigate serious crimes, in derogation of the complementarity principle so fundamental to the working of the international criminal justice system of which the ICC forms part.

Long after the Philippines ceased to be a state party to the Rome Statute, the Philippine Government chose to submit data to the Office of the Prosecutor and later, to the Pre-Trial Chamber, not out of any legal obligation but purely on the basis of comity, consonant with its assertion of sovereignty. Its submissions bear out the internal investigation and prosecution activities undertaken so far by the Government connected to the anti-illegal drug campaign.

The Chamber's majority conveniently brushed this aside and worse, they refused to consider the Philippines' jurisdictional challenge on the ground that the Impugned Decision of the Pre-Trial Chamber is not a decision on jurisdiction.

But as correctly pointed out by the Chamber's minority, which included the Presiding Judge no less, the issue of jurisdiction is properly raised before the Appeals Chamber because the Pre-Trial Chamber's finding on jurisdiction is an integral part of the Impugned Decision. The established principle of international law dictates that the Court must satisfy itself of its own jurisdiction and this power to determine its own

jurisdiction exists regardless of whether the Court is called upon to exercise this power or not.

The minority also strongly pointed out that the Rome Statute is a treaty and “that it is a fundamental right of States to decide whether they want to be bound by a treaty or not.” It therefore found that the Philippines’ withdrawal before the Court’s authorisation was requested and secured, was a valid exercise of a state prerogative, and divests the Court of jurisdiction.

The majority decision does not alter the fact that the Republic, through its various national and local agencies, remains fully committed to the internal investigation and prosecution of allegations connected to the anti-illegal drug campaign. The Philippine Government will not be deterred by today’s outcome.

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