Republic of the Philippines
COURT OF APPEALS
Manila

MAI ZING THA DIN RAL TU, PASTOR NGUN THAWNG LIAN, SALAI LAI LIAN, SALAI THA PENG LING HRANG LUNG, AND SALAI ZA UK LING,

Petitioners

–versus–

HON. FREDDERICK A. VIDA, SECRETARY OF JUSTICE, DEPARTMENT OF JUSTICE; AND HON. RICHARD ANTHONY D. FADULLON, PROSECUTOR GENERAL, NATIONAL PROSECUTION SERVICE, DEPARTMENT OF JUSTICE,

Public Respondents,

SR. GEN. MIN AUNG HLAING, DR. VUNG SUAN THANG, LT. GEN. MIN NAING, LT. GEN. TAY ZAR KYAW, MAJOR GEN. PHYO THANT, MAJOR GEN. THAN HTIKE, BRIG. GEN. MYO HTUT HLAING, COL. SAW TUN, LT. COL. MYO ZIN TUN, MAJOR NAY MYO OO,

Private Respondents (nominal parties).

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CA-G.R. SP No.
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For: Mandamus and Certiorari (Rule 65, Rules of Court, as amended)

PETITION FOR MANDAMUS AND CERTIORARI

(Under Rule 65 of the Rules of Court, as amended,
with Prayer that Public Respondents be Ordered to Comment)

PETITIONERS MAI[1] **ZING THA DIN RAL TU, PASTOR NGUN THAWNG LIAN, SALAI**[2] **LAI LIAN, SALAI THA PENG LING HRANG LUNG, AND SALAI ZA UK LING**, through counsel, respectfully state:

[1]"Mai" is a title of respect for a woman in the Chin language. "Mai" is synonymous to "Mrs." in English.
[2] "Salai" is a title of respect for a man in the Chin language. "Salai" is synonymous to "Mr." in English.

Do not deprive the foreigner or the fatherless of justice….
-Deuteronomy 24:17a (NIV)

PREFATORY STATEMENT

1. This Petition presents a question of first impression arising from an irregular refusal to open the preliminary-investigation process. Under the rule in force when the Complaint was filed, the prosecution office had ten (10) working days to evaluate whether it contained the evidence necessary to prove the essential elements and should be docketed; if sufficient, it "shall then be docketed" for preliminary investigation. The current rules likewise require a pre-docket review of form and completeness, but direct that, once those requirements are met, the complaint-affidavit "shall be docketed." The Prosecutor General's Letter did not find the Complaint deficient in form or evidence and requested no additional evidence. It instead returned the Complaint on a disputed construction of Section 17 of R.A. No. 9851. The issue is whether that legal conclusion authorized the DOJ to bypass the prescribed procedure and leave the ensuing Motion for Reconsideration unresolved.[3][4]

2. But that is precisely what happened in this case: the DOJ personally received from Petitioners on 25 October 2023 a Joint Criminal Complaint-Affidavit for alleged war crimes committed by the Myanmar Junta and/or officers and men of the armed forces of Myanmar under their control and supervision, which Complaint-Affidavit was filed under Republic Act No. 9851 (R.A. No. 9851) or the Philippine International Humanitarian Law Act (IHL Act) by Complainants from the Myanmar diaspora, who anchored their war crimes complaint under the doctrine of mandatory universal jurisdiction recognized by the IHL Act and applicable jurisprudence. The Complainants swore to the truthfulness of their Joint Criminal Complaint-Affidavit before a DOJ Prosecutor as required by the rules, expecting that it would then be docketed for preliminary investigation. Instead, after months of silence, the DOJ, in violation of its own rules, refused to docket the Joint Criminal Complaint-Affidavit, and then physically returned the Complaint-Affidavit to the Complainant's lawyers, with a letter from the DOJ Prosecutor General.

3. This Petition thus seeks performance of the procedural duties that attach when a complaint charging war crimes is formally lodged under R.A. No. 9851: to evaluate the complaint within the prescribed period, to docket it when the requirements are met, and to conduct the preliminary investigation that the rules prescribe. Petitioners invoked that task on 25 October 2023 by filing their Joint Criminal Complaint-Affidavit.[5] The DOJ received and stamped the Complaint, but refused to docket it and returned it through the Prosecutor General's Letter dated 22 February 2024.[6] That threshold refusal prevented the statutory investigation from beginning and foreclosed the evidence-based assessment that the law assigned to the DOJ.

4. Petitioners thereafter made formal, procedural demands for performance through their Verified Motion for Reconsideration filed on 11 April

[3] Department of Justice, Department Circular No 15 (16 July 2024) r IV, s 10(b).
[4] Department of Justice, Department Circular No 20 (31 March 2023) s 5.
[5] Herein attached as **ANNEX A** is the original of Petitioners' Joint Criminal Complaint-Affidavit.
[6] Herein attached as **ANNEX B** is the original of the Prosecutor General's Letter dated 22 February 2024.

2024,[7] their first Motion to Resolve filed on 2 April 2025,[8] and their Second Motion to Resolve filed on 31 July 2026.[9] Each was filed with and stamped received by the DOJ's OSJ Prosecution Staff, NPS Docket Section. Those filings themselves supplied repeated formal demands for action; no further demand was required.

5. Yet, as of 3 November 2026, the Joint Complaint-Affidavit[10] had remained undocketed and uninvestigated for three (3) years and nine (9) days, and the Verified Motion for Reconsideration had remained unresolved for two (2) years, six (6) months and twenty-three (23) days, despite two formal Motions to Resolve, the latest filed three (3) months and three (3) days earlier. Petitioners therefore ask this Honorable Court to compel Public Respondents to perform the statutory sequence entrusted to the DOJ under R.A. No. 9851 and the applicable rules, not to dictate its outcome. The Court is not asked to find probable cause, conduct the preliminary investigation, or adjudge guilt. The DOJ must resolve the pending Motion for Reconsideration, docket the Joint Complaint-Affidavit and conduct the preliminary investigation that the rules prescribe, leaving to its own judgment whether the evidence meets the governing standard. Petitioners likewise ask that the Prosecutor General's Letter dated 22 February 2024[11] which blocked that process be annulled as an act of grave abuse of discretion and that the DOJ be directed to docket the Complaint and conduct the preliminary investigation.

NATURE OF THE PETITION

6. This is a petition for **mandamus** under Section 3, and for certiorari under Section 1, of Rule 65 of the Rules of Court, as amended. Mandamus lies because Public Respondents unlawfully neglected and refused the duties specifically enjoined by law: to act on the Motion for Reconsideration, to evaluate the Complaint within the prescribed period, to docket it when the requirements are met, and to conduct the preliminary investigation that the rules prescribe. Certiorari lies because the 22 February 2024 Letter[12] is the extra-procedural act by which the DOJ returned the Complaint, on a single legal ground and without finding any deficiency in the Complaint, and thereby prevented the preliminary investigation from beginning. Reconsideration, left unresolved for more than two and a half years, is no longer a plain, speedy and adequate remedy, as Petitioners plead in Part A.

7. This Petition does not ask the Court to determine the criminal liability of the Private Respondents or direct the DOJ to reach a predetermined prosecutorial result. It asks the Court to compel Public Respondents to complete the procedure assigned to them by law: evaluate the Complaint under the applicable rules, docket it if the governing requirements are met, resolve the pending Motion for Reconsideration, and conduct the preliminary investigation, leaving the evidentiary and prosecutorial

[7] Herein attached as **ANNEX C** is the original of the Petitioners' Verified Motion for Reconsideration filed on 11 April 2024.
[8] Herein attached as **ANNEX D** is the original of the Petitioners' Motion to Resolve filed on 2 April 2025.
[9] Herein attached as **ANNEX E** is the original of the Petitioners' Second Motion to Resolve filed on 31 July 2026.
[10] Herein attached as **ANNEX A**.
[11] Herein attached as **ANNEX B** is the original of the Prosecutor General's Letter dated 22 February 2024.
[12] *Ibid.*

judgment to the DOJ. The controlling distinction is that the Secretary of Justice may be compelled "to act" but not "to act in a certain way."[13]

8. The Complaint was filed on 25 October 2023. Department Circular No. 20 required its evaluation within ten (10) working days and directed that, if it contained the necessary evidence, it "shall then be docketed" for preliminary investigation. The Office of the Prosecutor General instead returned it approximately four months later, solely on the ground that none of the jurisdictional circumstances enumerated in Section 17 of R.A. No. 9851 was allegedly present. The complainants timely moved for reconsideration on 11 April 2024 and thereafter filed formal Motions to Resolve on 2 April 2025 and 31 July 2026. As of 3 November 2026, the Motion for Reconsideration had remained unresolved for two (2) years, six (6) months and twenty-three (23) days.[14]

9. The controversy therefore concerns more than the clerical assignment of a docket number. It concerns the refusal and continuing failure of the prosecutorial authorities to carry out the procedure prescribed for a complaint alleging war crimes and other international crimes. Preliminary investigation is an executive function entrusted to prosecutors, but the Supreme Court has expressly retained the power to correct, for grave abuse of discretion, prosecutorial action that impairs constitutional rights. The DOJ was not asked to adjudicate guilt or exercise the trial jurisdiction of a court. It was called upon to perform its own statutory and prosecutorial functions through the process prescribed by law.[15]

10. Petitioners accordingly seek, principally, an order compelling Public Respondents to resolve the pending Motion for Reconsideration and complete the legally required evaluation and preliminary-investigation process within a definite period. In the alternative, should the return letter be treated as a final prosecutorial disposition, they seek its annulment for grave abuse of discretion and the remand of the Complaint for a procedurally regular and legally correct evaluation. The Court has, where a prosecutor's refusal rested on an erroneous legal construction, ordered the State Prosecutor to take cognizance of the complaint.[16]

PARTIES

11. **PETITIONERS MAI ZING THA DIN RAL TU, PASTOR NGUN THAWNG LIAN, SALAI LAI LIAN, SALAI THA PENG LING HRANG LUNG, AND SALAI ZA UK LING** (“Mai” and “Salai” are Chin honorifics, equivalent to “Mrs.” and “Mr.”) are Chin nationals of Myanmar and the complainants in the Joint Criminal Complaint-Affidavit they personally subscribed to and filed before the Department of Justice on 25 October 2023. From their Joint Criminal Complaint-Affidavit,[17] the Petitioners’ relevant circumstances are as follows:

11.1. **MAI ZING THA DIN RAL TU** is female, of legal age, and is a native of Chin State, Myanmar, but who, due to the criminal acts of the Myanmar military against the people of Chin State, is constrained to reside in Canada. She is the daughter of Baptist church Elder Pu

[13] *Datu Andal Ampatuan Jr v De Lima*, GR No 197291, 3 April 2013, 708 Phil 153.
[14] Department of Justice, Department Circular No 20 (31 March 2023) s 5.
[15] *Meking v Remulla*, GR No 280455, 11 November 2025 (SC, en banc).
[16] *Federated LPG Dealers Association v Del Rosario*, GR No 202639, 9 November 2016, 799 Phil 251.
[17] Page 5, Petitioners’ Joint Criminal Complaint-Affidavit (herein attached as **ANNEX A** is the original).

Ral Tu, who was shot to death and intentionally killed on September 29, 2021 by officers and soldiers of the Tatmadaw.

11.2. **PASTOR NGUN THAWNG LIAN** is male, of legal age, and is a native of Chin State, Myanmar, but who due to the criminal acts of the Myanmar military against the people of Chin State, is constrained to reside in Melbourne, Australia. His house in Thantlang, Chin State, Myanmar was burned by officers and soldiers members of the Tatmadaw. His nephew, P**astor Cung Biak Hum**, was willfully killed and his finger mutilated by officers and soldiers of the Tatmadaw on September 18, 2021 in Thantlang, Chin State, Myanmar.

11.3. **SALAI LAI LIAN** is male, of legal age, and is a native of Chin State, Myanmar, but who, due to the criminal acts of the Myanmar military against the people of Chin State, is constrained to reside in London, United Kingdom. His house in Thantlang, Chin State, Myanmar was burned down by officers and soldiers of the Tatmadaw.

11.4. **SALAI THA PENG LING HRANG LUNG** is male, of legal age, and is a native of Chin State, Myanmar but who, due to the adverse acts of the Myanmar military against the people of Chin State, is constrained to reside in Australia. His house in Thantlang, Chin State, Myanmar was burned by officers and soldiers of the Tatmadaw.

11.5. **SALAI ZA UK LING** is male, of legal age, and is a native of Chin State, Myanmar but who due to the criminal acts of the Myanmar military against the people of Chin State, is constrained to reside in Aizawl, India. His house in Thantlang, Chin State, Myanmar was burned by officers and soldiers of the Tatmadaw.

12. For purposes of this proceeding, the Petitioners may be served with court processes and pleadings through their counsel Atty. Romel R. Bagares and Atty. Gilbert T. Andres with office address c/o Center for International Law, Unit 901 Vicente Madrigal Building, 6793 Ayala Avenue, Makati City 1227; aseanactionformyanmar@gmail.com.

13. **PUBLIC RESPONDENT HON. FREDDERICK A. VIDA** is being sued in his official capacity as the Secretary of Justice, with office address at the Department of Justice, Padre Faura, Manila where he may be served with court processes and pleadings. The Office of the Secretary of Justice (OSJ) Prosecution Staff, National Prosecution Service (NPS) Docket Section, is the office whose stamp appears on the Joint Criminal Complaint-Affidavit,[18] the Motion for Reconsideration,[19] and the Motions to Resolve.[20]

14. **PUBLIC RESPONDENT HON. RICHARD ANTHONY D. FADULLON** is being sued in his official capacity as the Prosecutor General,

[18] Herein attached as **ANNEX A** is the original of Petitioners' Joint Criminal Complaint-Affidavit.
[19] Herein attached as **ANNEX C** is the original of the Petitioners' Verified Motion for Reconsideration filed on 11 April 2024.
[20] Herein attached as **ANNEX D** is the original of the Petitioners' Motion to Resolve filed on 2 April 2025, and **ANNEX E** is the original of the Petitioners' Second Motion to Resolve filed on 31 July 2026.

with office address at the Office of the Prosecutor General, National Prosecution Service, Department of Justice, Padre Faura, Manila where he may be served with court processes and pleadings. Although it was the then Prosecutor General, Benedicto A. Malcontento, who signed the 22 February 2024 Letter, nevertheless since the Public Respondent in this petition is the Prosecutor General, consequently, it is the current Prosecutor General, Richard Anthony D. Fadullon, who is being impleaded in such official capacity.

15. Private Respondents are the persons complained against in the Joint Criminal Complaint-Affidavit, senior officers of the Myanmar military and its installed administration. They are impleaded under Section 5 of Rule 65 of the Rules of Court as persons interested in sustaining the challenged acts, and only as nominal parties as **no** preliminary investigation has been conducted and **no** subpoena has been issued to them. From the Joint Criminal Complaint-Affidavit (**ANNEX A**),[21] Private Respondents' relevant circumstances during the relevant time period covered by the complaint-affidavit, including their addresses, are as follows:

15.1. **SR. GEN. MIN AUNG HLAING**, is of legal age, a Myanmar citizen, and residing at the capital in Naypidaw, Myanmar. He is the chairman of the State Administration Council, Commander-In-Chief of the Myanmar Defence Services, and the Commander-In Chief of the Myanmar Military known as the Tatmadaw.

15.2. **DR. VUNG SUAN THANG**, is of legal age, a Myanmar citizen, and residing in Hakkha, which is the state capital of Chin State, Myanmar. He is Chief Minister of Chin State, is formerly a military officer under the Myanmar military and is the Myanmar military's highest appointed state official government for Chin State and has ultimate responsibility for Chin State.

15.3. **LT. GEN. MIN NAING**, is of legal age, a Myanmar citizen, and residing at the capital in Naypidaw, Myanmar. He is the Chair of the Cyclone Mocha Emergency Response in Chin State and has ultimate responsibility for the Myanmar military's actions with respect to the Cyclone Mocha Emergency Response in Chin State.

15.4. **LT. GEN. TAY ZAR KYAW**, is of legal age, a Myanmar citizen, and residing at the capital in Naypidaw, Myanmar. He is the Myanmar military's Chief of Bureau of Special Operations 1 who has command over three (3) regional military commands:

a) North Western Regional Military Command;

b) Northern Regional Military Command; and

c) Central Regional Military Command.

15.5. **MAJOR GEN. PHYO THANT**, is of legal age, a Myanmar citizen, and residing at Monywa, Sagaing Region, Myanmar. He was the Commanding General of the North Western Regional

[21] Pages 6-7, Petitioners' Joint Criminal Complaint-Affidavit (herein attached as **ANNEX A** is the original).

Military Command which is based on Monywa, Sagaing Region, Myanmar, until he was replaced by Major Gen. Than Htike since January 2022.

15.6. **MAJOR GEN. THAN HTIKE**, is of legal age, a Myanmar citizen, and residing at Monywa, Sagaing Region, Myanmar. Sometime on January 2022, he replaced Major Gen. Phyo Thant as the Commanding General of the North Western Regional Military Command which is based on Monywa, Sagaing Region, Myanmar.

15.7. **BRIG. GEN. MYO HTUT HLAING**, is of legal age, a Myanmar citizen, and residing at Hakha, Chin State, Myanmar. He is the Deputy Commanding General of the North Western Regional Military Command.

15.8. **COL. SAW TUN**, is of legal age, a Myanmar citizen, and residing at Hakkha, Chin State, Myanmar. He is the Tactical Operations Commander of the Myanmar Light Infantry Battalion No. 266 ("LIB 266") which is based in the capital of Chin State in Hakkha. He has ultimate command responsibility over the Myanmar Light Infantry Battalion No. 269 which is based in Thantlang town, in Chin State, Myanmar.

15.9. **LT. COL. MYO ZIN TUN**, is of legal age, a Myanmar citizen, and residing at Thantlang, Chin State, Myanmar. He is the Thantlang Camp Commander with seventeen (17) soldiers under his command. He is the Commander of the Myanmar Light Infantry Battalion No. 269 ("LIB 269") which has been the Myanmar military unit historically stationed in Thantlang town, in Chin State, Myanmar. He is the over-all military commander of all military units stationed in Thantlang town.

15.10. **MAJOR NAY MYO OO**, is of legal age, a Myanmar citizen, and residing at Homalin Town, Hkamti District, Sagaing Region. He is the Column Commander of the Light Infantry Battalion No. 222 ("LIB 222") which is a reinforcement battalion to the LIB 269 which is already based in Thantlang, Chin State, Myanmar. He and his LIB 222 arrived in Thantlang on or about August 24, 2021. He has eighty-seven (87) soldiers under his column command.

16. Because all the Private Respondents are outside the Philippines, in accordance with the following applicable provisions of the Rule 13 of the Rules of Court, as amended, Petitioners pray that the Honorable Court direct the mode of service it considers proper, given the additional unique context that Private Respondents are merely impleaded under Section 5 of Rule 65 of the Rules of Court as nominal parties, though persons interested in sustaining the challenged acts, since **no** preliminary investigation has been conducted and **no** subpoena has been issued to them:

a) under Section 5 of Rule 13 of the Rules of Court, as amended, that "[p]leadings, motions, notices, orders, judgments, and other court submissions shall be served … by registered mail, accredited courier, electronic mail, facsimile transmission, other electronic means **as may be authorized by the [c]ourt** *(emphasis and underscoring supplied)*";

b) under Section 14 of Rule 13 of the Rules of Court, as amended, that "**express permission is granted by the [c]ourt** *(emphasis and underscoring supplied)*" to serve electronically this Petition.

17. Further, for the guidance of the Honorable Court, in the Joint Criminal Complaint-Affidavit,[22] it was contended that the necessary processes of the DOJ may be served on herein Private Respondents as follows:

17.1 All the [**PRIVATE**] **RESPONDENTS**, by virtue of Article 1[23] vis-à-vis Article 4[24] of the **ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (ASEAN "TMLACM")**, of which the Philippines and Myanmar are both state-parties to, may be served with subpoenas, pleadings, notices, orders, and other legal processes of this Honorable Office through the following means:

(a) Under Article 4(4)[25] of the ASEAN TMLACM, from the Philippine Department of Justice (as the Philippine Central Authority) directly to the Myanmar Central Authority for Mutual Assistance in Criminal Matters Law (as the Myanmar Central Authority created by the Myanmar "The Mutual Assistance in Criminal Matters Law") with the Minister, of the Myanmar Ministry of Home Affairs, as the Chairman of the Central Authority; or

(b) Alternatively, under Article 4(4) of the ASEAN TMLACM, through the diplomatic channel from the Philippine Department of Justice (as the Philippine Central Authority) to the Philippine Department of Foreign Affairs ("DFA") and then, in turn, from the DFA to the Embassy of the Republic of the Union of Myanmar, at 8/F Gervasia Corporate Center Amorsolo Street, Legazpi Village, Makati and then, in turn, from the Myanmar Embassy in the Philippines to the Myanmar Ministry of Foreign Affairs ("MFA") and then, in turn, from the Myanmar MFA to the Myanmar Central Authority for Mutual Assistance in Criminal Matters Law (as the Myanmar Central Authority created under the

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[22] Pages 8-9, Petitioners' Joint Criminal Complaint-Affidavit (herein attached as **ANNEX A** is the original).

[23] **ARTICLE 1**

SCOPE OF ASSISTANCE

1. **The Parties shall**, in accordance with this Treaty and subject to their respective domestic laws, **render to one another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and resulting proceedings.** *(Emphasis and underscoring supplied)*

[24] **ARTICLE 4**

DESIGNATION OF CENTRAL AUTHORITIES

4. **The Central Authorities shall communicate directly with one another but may, if they choose, communicate through the diplomatic channel**. *(Emphasis and underscoring supplied)*

[25] **Article 4(4), ASEAN TMLACM, quoted in full above.**

Myanmar "The Mutual Assistance in Criminal Matters Law") with the Minister, of the Myanmar Ministry of Home Affairs, as the Chairman of the Central Authority.

TIMELINESS AND STATEMENT OF MATERIAL DATES

AND ATTACHED RELEVANT DOCUMENTS

18. In compliance with Section 3, Rule 46, the material dates are the following with the correspondent attached relevant documents:

Date	Event
25 Oct 2023	Joint Criminal Complaint-Affidavit filed and stamped received by the DOJ "OSJ Prosecution Staff, NPS Docket Section"; subscribed before Prosecution Attorney Normandale O. Manalo. It was never docketed. (the original is attached as **ANNEX A**)
22 Feb 2024	Date of the Letter of the Prosecutor General declining to take cognizance and returning the undocketed Complaint-Affidavit. (the original is attached as **ANNEX B)**
25 Mar 2024	Petitioners, through counsel, received the Letter.
11 Apr 2024	Verified Motion for Reconsideration filed and stamped received by the DOJ. This was the first working day after the 15th day (9 April 2024, Araw ng Kagitingan) and 10 April 2024 (Eid'l Fitr) fell on regular holidays. (the original is attached as **ANNEX C**)
2 Apr 2025	Motion to Resolve filed and stamped received by the DOJ. (the original is attached as **ANNEX D)**
31 Jul 2026	Second Motion to Resolve, with the CHRO report "Faith Under Attack" as Annex A, filed with the DOJ. (the original is attached as **ANNEX E**)
3 Nov 2026	Complaint remained undocketed and uninvestigated for 3 years and 9 days; no written action on the Motion for Reconsideration for 2 years, 6 months and 23 days; 3 months and 3 days since the Second Motion to Resolve.
27 October 2023	Duplicated original copy of the Special Power of Attorney issued to Petitioners' counsel on even date (attached as **ANNEX F**)

19. This Petition is timely. As to mandamus, Public Respondents' neglect is continuing: the Joint Criminal Complaint-Affidavit[26] remains undocketed, no preliminary investigation has commenced, and Petitioners renewed their demand for performance in writing on 2 April 2025[27] and again on 31 July 2026.[28] As to certiorari, Section 4 of Rule 65 counts the sixty (60) days from notice of the denial of a timely motion for reconsideration. There has been no denial and no notice of one, so the 60-day period has not begun to run. Petitioners further

[26] **ANNEX A**.
[27] **ANNEX D.**
[28] **ANNEX E.**

plead in Part A why, after more than two and a half years and two formal Motions to Resolve, the pending Motion for Reconsideration is no longer a plain, speedy and adequate remedy. These points are developed in Part A below.

STATEMENT OF THE CASE AND OF THE FACTS

A. The Joint Criminal Complaint-Affidavit

20. On 25 October 2023 Petitioners filed their Joint Criminal Complaint-Affidavit[29] before the DOJ against the Private Respondents for war crimes committed against the Chin people of Myanmar, specifically under Section 4(b)(1), Section 4(c)(10), Section 4(c)(2), Section 4(c)(7) and Section 4(c)(21) of R.A. No. 9851. The DOJ's OSJ Prosecution Staff, NPS Docket Section, received and stamped it that day, and Petitioners subscribed to it before a DOJ prosecutor as Rule 112, Sec. 3(a) requires.

21. On the same date the Secretary of Justice was reported as saying that the DOJ would evaluate the Joint Criminal Complaint-Affidavit and, if it were "sufficient in form and substance," the respondents would be asked to answer the allegations made against them.[30]

22. No subpoena was ever issued to any Private Respondent. The Joint Criminal Complaint-Affidavit was never docketed.

B. The Prosecutor General's 22 February 2024 Letter

23. On 25 March 2024 Petitioners received the Letter of the Prosecutor General dated 22 February 2024,[31] one hundred and twenty (120) days after filing. The Letter admitted that *"[a]t the outset, the Department recognizes that the alleged acts are serious offenses"* under R.A. No. 9851, *"that being a member of the international community the Philippines has jus cogens obligation to act on such complaint, and that the principles of universal jurisdiction applies in the Philippines."*[32] It stated that the facts alleged "would have been violations" of the five cited provisions of R.A. No. 9851.

24. The Prosecutor General's 22 February 2024 Letter then declined to take cognizance of the matter on one ground only, stated in these words: *"none of your clients are Filipino citizens; … none from the accused is present in the Philippines; and … none of the alleged acts was committed against a Filipino citizen,"* so that *"this Office cannot take cognizance of the matter since the conditions set forth in Section 17 of R.A. 9851 for the State to exercise jurisdiction, are not present."* The undocketed Complaint was returned with the Letter. Nothing in the Letter states that the Joint Criminal Complaint-Affidavit was insufficient in form or in the evidence submitted. Nothing indicates that it was furnished to the Private Respondents.

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[29] **ANNEX A.**
[30] Jeffrey Damigoc, 'DOJ to evaluate 'war crimes' raps vs Myanmar military junta officials --Sec Remulla' (Manila Bulletin, 25 October 2023) online: https://mb.com.ph/2023/10/25/doj-to-evaluate-war-crimes-raps-vs-myanmar-military-junta-officials-sec-remulla. Also quoted in page 2 of the Petitioners' Verified Motion for Reconsideration filed on 11 April 2024 (attached as **ANNEX C** is the original).
[31] **ANNEX B.**
[32] Pages 1-2, the Prosecutor General's Letter dated 22 February 2024 (herein attached as **ANNEX B** is the original).

C. The Verified Motion for Reconsideration

25. On 11 April 2024, within the fifteen (15) day period under the DOJ rules then applicable, Petitioners filed a Verified Motion for Reconsideration (**ANNEX C**), with the verification of counsel and the Special Power of Attorney (**ANNEX F**). It raised two groups of questions: **procedural** (that non-docketing and return of a sufficient complaint violate Rules 110 and 112 and jurisprudence; that the Letter admits the acts are war crimes and warrants preliminary investigation; that DOJ Department Circular No. 20 (31 March 2023) cannot authorize what was done and in any case was not followed; and a rule-making objection later foreclosed by *Meking v. Remulla*,[33] and **jurisdictional** (that the determination of jurisdiction under R.A. No. 9851 belongs to the courts, Sec. 18; that these crimes are subject to mandatory universal jurisdiction; that Section 17 speaks of "persons … suspected or accused" and its presence requirement attaches to the "accused" in court, not the respondent-suspect in a preliminary investigation; and that Section 17 is an admissibility clause tied to ne bis in idem).

D. The continuing refusal to docket and investigate

26. The Motion for Reconsideration demanded that the DOJ reverse the Letter, docket the Complaint, conduct the required investigation, and, where the evidence warrants, prosecute. No order or other written action has been received. Petitioners renewed that demand through their first Motion to Resolve, filed and stamped received by the DOJ on 2 April 2025 (**ANNEX D**).

27. Petitioners filed their Second Motion to Resolve on 31 July 2026 (**ANNEX E**), more than twenty-seven (27) months after the Motion for Reconsideration and nearly sixteen (16) months after the first Motion to Resolve. It attached the July 2026 report of the Chin Human Rights Organization (CHRO), "Faith Under Attack," which documents between 153 and 162 attacks on religious buildings and personnel in Chin State since 2021, including the killing of at least nine clergy, and which names several Private Respondents. Petitioners cite the report only to show that the harm from delay is continuing. Its contents are not before this Court for adjudication.

28. As of 3 November 2026, three (3) months and three (3) days had passed since the Second Motion to Resolve, yet the Joint Criminal Complaint-Affidavit remained undocketed and no investigation had commenced. By then, the DOJ had declined to perform its investigative task for three (3) years and nine (9) days, while the Motion for Reconsideration had remained pending for two (2) years, six (6) months and twenty-three (23) days.

ISSUES

29. **Procedural (Part A).** (i) Whether the Court of Appeals has jurisdiction, and Rule 65 is the correct remedy; (ii) whether mandamus lies to compel Public Respondents to resolve the pending Motion for Reconsideration, to docket the Complaint and to conduct the preliminary investigation; (iii) whether the Petition is timely and, as to certiorari, whether reconsideration has ceased to be a plain, speedy and adequate remedy; (iv) whether further

[33] Department of Justice, Department Circular No 70 (3 July 2000) s 13.

administrative remedies remain that Petitioners must first exhaust; and (v) whether Petitioners are proper parties.

30. **Substantive (Part B).** (vi) Whether the sole ground of the Letter, its construction of Section 17 of R.A. No. 9851, which enumerates the connections upon which the State's exercise of jurisdiction depends, authorized the DOJ to refuse to docket and investigate the Complaint, or whether those connections govern the later exercise of criminal jurisdiction rather than the receipt, investigation and preservation of evidence (a question of first impression); (vii) whether Public Respondents were bound to evaluate the Joint Criminal Complaint-Affidavit within the period and through the procedure prescribed by DOJ Department Circular No. 20 and the Rules of Court and, the Letter having found no deficiency in it, to docket it and conduct the preliminary investigation; (viii) whether the return of the Complaint and the continuing failure to resolve the Motion for Reconsideration constitute grave abuse of discretion; and (ix) whether the prolonged nonperformance is further contrary to the policy of Article III, Section 16 of the Constitution.

ARGUMENTS

PART A — PROCEDURAL: THE PETITION IS PROPERLY BEFORE THIS COURT

I. The Court of Appeals has jurisdiction, and Rule 65 is the correct remedy.

31. Section 9(1) of Batas Pambansa Blg. 129, as amended by R.A. No. 7902, gives the Court of Appeals original jurisdiction to issue writs of mandamus and certiorari, whether or not in aid of its appellate jurisdiction. Public Respondents are officers of a national executive department with offices in Manila.

32. Rule 43 does not apply. The Prosecutor General's jurisdictional return of the Complaint without evaluation is not an award, judgment, final order, or resolution of a quasi-judicial agency exercising the adjudicative power covered by Rule 43. Preliminary investigation is an executive process through which the DOJ investigates and determines whether the evidence warrants prosecution, and this Court reviews grave abuse in that process under Rule 65 (see *Porto v Grant Institute of Trade & Technology,*[34] holding that after the prosecution service resolves a preliminary investigation appeal with finality, the remedy is certiorari under Rule 65 before the Court of Appeals).

33. Rule 45 does not apply either. It governs appeals by certiorari to the Supreme Court from judgments, final orders or resolutions of the Court of Appeals, the Sandiganbayan, the Regional Trial Courts and other courts, on questions of law. No court has yet ruled. Rule 45 becomes available, if at all, after this Court has acted.

34. There is no reason to seek relief first from the Supreme Court. The Court of Appeals is the appropriate forum under the hierarchy of courts. The

[34] Porto v Grant Institute of Trade & Technology [2022] G.R. No. 257446 [Third Division] 12 October 2022.

Petition may involve novel questions of law, but the immediate relief sought—an order requiring the DOJ to resolve the pending Motion for Reconsideration, to docket the Joint Criminal Complaint-Affidavit and to conduct the preliminary investigation—is relief this Court can grant under Rule 65.

II. Mandamus lies because Public Respondents have unlawfully neglected duties that the law specifically enjoins.

35. Section 3 of Rule 65 lies "[w]hen any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station," and there is no other plain, speedy and adequate remedy in the ordinary course of law. Petitioners ask the Court to compel performance, not to dictate the DOJ's evidentiary assessment. In *Ampatuan Jr v De Lima*, the Court held that the Secretary of Justice may be compelled "to act" but not "to act in a certain way." In [35]*Independent Electricity Market Operator of the Philippines Inc v Energy Regulatory Commission*, it likewise held that mandamus may compel action where there is "unnecessary and unreasonable delay in the exercise of a duty that is clearly imposed by law." Public Respondents retain their discretion over the evidentiary result, but not a discretion to leave the prescribed process and the Motion for Reconsideration indefinitely unacted upon.[36]

36. Public Respondents have refused to perform three connected aspects of one statutory task.

(a) The duty under R.A. No. 9851 to receive and evaluate the Complaint and, where it is sufficient, to conduct a preliminary investigation.

37. R.A. No. 9851 does more than define offenses. Its Section 2(e) requires national measures to ensure the effective prosecution of the most serious crimes of concern to the international community and declares it the duty of every State to exercise criminal jurisdiction over those responsible. Its Section 17 states that the State "shall exercise jurisdiction" over persons suspected or accused of crimes under the Act (subject to the conditions addressed in Part B), while its Section 18 assigns prosecutors and investigators, including those of the DOJ, to these cases. Once Petitioners formally lodged a complaint alleging such crimes, the DOJ was required to put that machinery into motion by evaluating the Complaint through the prescribed procedure and, the Complaint being sufficient, docketing it and conducting the preliminary investigation. Petitioners do not contend that the Court may dictate the outcome of that investigation or the DOJ's assessment of the evidence; they ask only that the process the rules prescribe be carried out.

(b) The duty to evaluate the Complaint within the prescribed period and to docket it when the requirements are met.

38. Section 3(b), Rule 112 provides that *"[w]ithin ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds*

[35] *Datu Andal Ampatuan Jr v De Lima*, GR No 197291, 3 April 2013, 708 Phil 153.
[36] *Independent Electricity Market Operator of the Philippines Inc v Energy Regulatory Commission*, GR No 254440, 23 March 2022, 921 Phil 774, 800-01.

no ground to continue with the investigation, or issue a subpoena to the respondent." [37]

39. DOJ Department Circular No. 20 (31 March 2023), Section 5, likewise requires that a complaint received from a private individual be evaluated *"within ten (10) working days from receipt"* to determine whether it contains the necessary evidence to prove the essential elements of the crime and *"should be docketed for preliminary investigation."* [38]

40. Department Circular No. 15, series of 2024, or the *2024 DOJ-National Prosecution Service Rules on Preliminary Investigation and Inquest Proceedings* ("DOJ DC No. 15"), in its Section 10 provides for the mandatory docketing—with the use of the word "shall"— if the complaint-affidavit is sufficient in form and the evidence is complete:

> (b) Upon receipt of a complaint-affidavit and before the same is docketed, the head of the prosecution office shall ensure sufficiency in form of the complaint-affidavit and the completeness of evidence. For this purpose, he/she shall require the complainant, the referring law enforcement agency, or any third party to submit any lacking piece of evidence.
>
> Once the head of the prosecution office determines that the complaint-affidavit is sufficient in form and the evidence is complete, the same shall be docketed.[39]

41. DC No. 15 was issued after the Complaint was filed, and the Complaint was governed when filed by DC No. 20 and Rule 112. But the docketing of the Complaint and the preliminary investigation have yet to take place, and procedural rules apply to matters that remain pending. The duty to docket therefore falls to be performed under the rule now in force. Under Section 10(b), the head of the prosecution office must, before docketing, ensure the sufficiency in form of the complaint-affidavit and the completeness of the evidence, and for that purpose must require the complainant to submit any lacking piece of evidence; once the head determines that the complaint-affidavit is sufficient in form and the evidence is complete, it "shall be docketed." The Prosecutor General's Letter made no finding that the Complaint was insufficient in form or that its evidence was incomplete, and it requested no further evidence from Petitioners.

42. The Joint Criminal Complaint-Affidavit was neither docketed nor dismissed after evaluation for insufficiency. It was returned after 120 days on a ground that neither provision contemplates.

43. Section 6 of Rule 110 and Section 3(a) of Rule 112 define a sufficient complaint. Petitioners' Joint Criminal Complaint-Affidavit states the names of the respondents, the designation of the offense, the acts complained of, the offended parties, the approximate dates and the place of commission, and was accompanied by affidavits and supporting documents and subscribed before a DOJ prosecutor. The Letter makes no contrary finding. Petitioners do not rely on a rule of automatic docket-number

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[37] 2000 Revised Rules of Criminal Procedure, r 112, s 3(b) (in force on 25 October 2023).
[38] Department of Justice, Department Circular No 20 (31 March 2023) s 5.
[39] Department of Justice, Department Circular No 15 (16 July 2024) r IV, s 10(b).

assignment before evaluation. They rely on the mandatory duty to evaluate the Complaint within ten (10) working days and, if it meets the governing requirements, to docket it for preliminary investigation. This accords with the Supreme Court's statement that "[a] criminal action is instituted upon the filing of a complaint with the prosecutor's office for the purpose of conducting a preliminary investigation."[40]

(c) The duty demanded in every subsequent pleading was performance of that statutory task.

44. The Verified Motion for Reconsideration and both Motions to Resolve did not seek an abstract answer from the DOJ. They demanded reversal of the Letter, docketing of the Complaint, performance of every step of preliminary investigation, and, upon a finding of probable cause, filing of the necessary Information. The DOJ's failure to act on those demands continued the original refusal to perform. The Court may compel the DOJ to resolve those demands, to docket the Complaint and to conduct the required investigation without dictating the outcome of its prosecutorial discretion. That is the distinction drawn in Ampatuan Jr v De Lima.[41]

45. **No other plain, speedy and adequate remedy exists.** The Letter remains the operative obstacle to docketing and investigation. Petitioners pursued reconsideration and twice demanded performance, yet no internal filing caused the DOJ to open the required process. A further motion cannot supply the docketing and investigation that Public Respondents have refused to undertake. The exhaustion issue is addressed in Section IV.

III. The Petition is timely.

46. **Mandamus.** Public Respondents' failure to docket and investigate is a continuing nonperformance of duty. Petitioners did not sleep on their rights: they timely moved for reconsideration, filed the first Motion to Resolve on 2 April 2025, and renewed their demand through the Second Motion to Resolve on 31 July 2026. As of 3 November 2026, the Complaint had remained undocketed and uninvestigated for three (3) years and nine (9) days, including three (3) months and three (3) days after the last formal demand. The delay is Public Respondents' alone.

47. **Certiorari.** Section 4 of Rule 65 (as amended by A.M. No. 07-7-12-SC) provides that the *"petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution"*, and that *"[i]n case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion."* Petitioners timely moved for reconsideration of the 22 February 2024 Letter.[42] There has been no denial and thus no notice of denial. The sixty (60) days have not begun. Petitioners should not be penalized, and Public Respondents should not profit, because the DOJ has not issued the ruling that would start the period.

48. In the alternative, should this Honorable Court hold that more than two and a half years of silence is itself a ruling, it would be a refusal by the DOJ

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[40] *Wu v People*, GR Nos 207220-21, 16 March 2022.
[41] *Datu Andal Ampatuan Jr v De Lima*, GR No 197291, 3 April 2013, 708 Phil 153.
[42] Herein attached as **ANNEX C** is the original of the Petitioners' Verified Motion for Reconsideration filed on 11 April 2024.

to act on the Motion for Reconsideration whose date cannot be fixed by any notice, and which is continuing. Petitioners submit that in such circumstances the period cannot be counted against them, and that in any event the Court has the discretion to relax procedural rules where their rigid application would defeat substantial justice, especially where the complainants are stateless or displaced persons alleging continuing atrocities and the delay lies wholly with the respondent officers.

49. Petitioners recognize that certiorari ordinarily does not lie while a motion for reconsideration remains pending. In *Esguerra v Gonzales-Asdala*, the Court treated certiorari as not yet available where the petition was filed "even before the resolution ... of her motion for reconsideration." Certiorari is nonetheless properly pleaded together with mandamus because reconsideration has ceased to be a plain, speedy and adequate remedy here: (a) the Verified Motion for Reconsideration has remained unresolved for two (2) years, six (6) months and twenty-three (23) days; (b) two formal Motions to Resolve, filed on 2 April 2025 and 31 July 2026, drew no response; (c) because the Complaint was returned undocketed, there is no pending preliminary investigation in which a further remedy may be pursued; (d) the harm from delay is continuing; and (e) the delay is itself the act complained of. A remedy that respondent officers have left unavailable for more than two and a half years is neither speedy nor adequate.[43]

IV. No administrative remedy remains that Petitioners must first exhaust; every recognized exception applies in any case.

50. The Prosecutor General's Letter dated 22 February 2024 (**ANNEX B**) is not a "resolution" on a preliminary investigation. No investigation was opened, no docket number was assigned, and no respondent was subpoenaed. The DOJ's rules on appeals to the Secretary of Justice (2000 NPS Rules on Appeal, and DC No. 27, s. 2022) address appeals from resolutions in preliminary investigation. DOJ DC No. 15 (*2024 DOJ-National Prosecution Service Rules on Preliminary Investigation and Inquest Proceedings),* specifically its Section 19 on "Petition for Review" does **not** cover the Prosecutor General's determination not to docket a criminal complaint-affidavit. Petitioners have found no rule providing an appeal from the Prosecutor General's Letter declining to docket.

51. Even if such an appeal were available, the rules would not require it now. The Motion for Reconsideration is still pending, so the period to appeal from its denial has not begun. Petitioners cannot be required to exhaust a remedy that becomes available only when the DOJ acts.

52. Finally, the doctrine of exhaustion admits of exceptions. Among those recognized in *Paat v. Court of Appeals*,[44] are cases where the issue is purely legal, where the act complained of is patently illegal, where irreparable injury will result, where exhaustion would be unreasonable, where there is no plain, speedy and adequate remedy, and where the circumstances indicate the urgency of judicial intervention. Each applies. The question is one of law, fully briefed in the Motion for Reconsideration. The return of a sufficient complaint on a ground outside the DOJ's authority is patently illegal. Delay of this length is itself

[43] *Esguerra v Gonzales-Asdala*, GR No 168906, 4 December 2008, 593 Phil 458, 471-72.
[44] *Cagang v Sandiganbayan*, GR Nos 206438, 206458 and 210141-42, 31 July 2018, 837 Phil 815 (SC, en banc).

unreasonable. And the OSJ, the Office of the Secretary, has held every one of Petitioners' filings since October 2023 without response, so a further recourse within the same department would be futile.

V. Petitioners are proper parties.

53. Rule 65 gives the remedy to "the person aggrieved." Petitioners are the complainants and victims who invoked R.A. No. 9851 by filing their Joint Criminal Complaint-Affidavit. The refusal to docket deprived them of the evaluation and preliminary investigation that the applicable rules require, and of any prosecution that such an investigation may warrant. It also implicates the guarantee in Article III, Section 16, to "a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." The constitutional guarantee runs to "all persons," not only to respondents.

54. This Petition does not seek to reverse an acquittal, a judicial dismissal, or any judgment in a criminal action, and it does not ask this Court to direct a finding of probable cause. There is no criminal action in court because the DOJ refused to docket the Complaint. The relief sought is performance of the DOJ's own statutory function: resolution of the pending motion, docketing of the Complaint and the conduct of a preliminary investigation, followed by whatever prosecutorial action the DOJ's own assessment of the evidence warrants. Petitioners will furnish the Office of the Solicitor General with a copy and invite its comment.

VI. There is no forum shopping, and the Petition is otherwise in form.

55. Petitioners have not commenced any other action or proceeding involving the same issues in any court, tribunal or agency, other than the Motion for Reconsideration[45] and Motions to Resolve[46] before the DOJ that are the subject of this Petition. The Verification and Certification against Forum Shopping are attached. Originals of the Letter and the pleadings, and proof of payment of the docket and other lawful fees, are attached as required by Section 1, Rule 65 and Section 3, Rule 46.

PART B — SUBSTANTIVE: THE LETTER'S ONLY GROUND IS A QUESTION OF LAW, AND IT DOES NOT SUPPORT THE REFUSAL TO DOCKET AND INVESTIGATE

56. The full argument is in the Verified Motion for Reconsideration (**ANNEX C**), which Petitioners replead in its entirety. Because the DOJ never answered it, the principal points are summarized here.

VII. The Letter rests on a single ground, a question of law.

57. The Prosecutor General's Letter dated 22 February 2024 (**ANNEX B**) finds no deficiency in the Complaint under Rule 110 or Rule 112 and makes no finding under DC No. 20, Sec. 5 that it lacks the necessary evidence. It does the

[45] Herein attached as **ANNEX C** is the original of the Petitioners' Verified Motion for Reconsideration filed on 11 April 2024.
[46] Herein attached as **ANNEX D** is the original of the Petitioners' Motion to Resolve filed on 2 April 2025 and as **ANNEX E** is the original of the Petitioners' Second Motion to Resolve filed on 31 July 2026.

opposite: it says the facts alleged "would have been" violations of R.A. No. 9851 and acknowledges that the Philippines has a jus cogens obligation to act. The Letter thus implicitly accepts that the Complaint is sufficient in form and that its allegations, taken as they stand, make out violations of R.A. No. 9851. It makes no finding to the contrary and, although Section 10(b) of DC No. 15 now contemplates that any lacking evidence be called for, it asked Petitioners for none. The only ground it gave for declining to proceed is a question of law: its construction of Section 17. The question before the Court is therefore not whether the evidence is strong enough. It is whether Section 17 authorized the DOJ to refuse to docket and investigate a complaint that it did not find wanting. If it did not, the Letter has no ground left to stand on, and a refusal to act that rests on an erroneous legal premise, and on nothing else, is attended by grave abuse of discretion that Rule 65 reaches.

58. DC No. 20 authorized evaluation of whether a complaint contained the evidence needed to prove the essential elements of the crime. The Letter did not reject the Complaint for evidentiary insufficiency; it accepted that the alleged acts would violate the cited provisions of R.A. No. 9851 and relied solely on its construction of Section 17. The later 2024 DOJ-NPS Rules and their higher evidentiary threshold do not retroactively supply a ground that the Letter did not invoke. In *Meking v Remulla*, the Supreme Court confirmed that "preliminary investigation is an executive, not a judicial function" and upheld the DOJ's authority to promulgate Department Circular No. 15. It also stated that the Court's "power to correct, on grave abuse of discretion, any prosecutorial rule or action that impairs constitutional rights, is retained." Petitioners invoke that retained judicial power, not a general judicial authority to control prosecutorial judgment.[47]

VIII. Section 17 of R.A. No. 9851 did not authorize the DOJ to refuse to docket and investigate the Complaint.

59. Petitioners acknowledge that Section 17 does not extend to every person suspected of a crime under the Act without more. Its chapeau continues: "provided, any of the following conditions is met: (a) The accused is a Filipino citizen; (b) The accused, regardless of citizenship or residence, is present in the Philippines; or (c) The accused has committed the said crime against a Filipino citizen." (R.A. No. 9851, Sec. 17, chapeau and subsections (a) to (c).) The Prosecutor General found that none of these connections was present, and this Petition does not depend on contesting that finding. Petitioners' position is that Section 17 governs the State's ultimate exercise of criminal jurisdiction and did not authorize the DOJ to decline to evaluate the Complaint and to preserve and assess the evidence it contains.

60. The Prosecutor General's premise that none of the Section 17 connections is "present" looks only to the day on which the Complaint was filed. Presence in the Philippines, or another enumerated connection, may arise later, by travel, arrest, surrender or transfer. Evidence is perishable and the witnesses are displaced; an investigation that begins only after a respondent is already within reach would have to be built from nothing. Even if the connections must exist before an Information may be filed or a trial may proceed, the Letter

[47] *Meking v Remulla*, GR No 280455, 11 November 2025 (SC, en banc).

identifies no provision requiring them before a complaint may be docketed and investigated, and the DOJ's own rules call for docketing once the complaint-affidavit is sufficient in form and the evidence complete (DC No. 20, Section 5; DC No. 15, Section 10(b)). At most, then, Section 17 limits the stage at which the State may proceed to the filing of an Information or to trial; it does not limit docketing and investigation.

61. Petitioners recognize that the construction advanced in Part IX is textually contestable, because the enumerated conditions of Section 17 are expressed in terms of "the accused," and that no decision of the Supreme Court has so held. It is a question of first impression. It is advanced as the primary reading of the statute and, in the alternative, in the narrower form that Section 17 limits the ultimate exercise of criminal jurisdiction but does not necessarily prohibit preliminary evidence-preservation and case-building in anticipation of presence, extradition or another jurisdictional connection.

IX. R.A. No. 9851 subjects the alleged war crimes to mandatory universal jurisdiction, and Section 17 does not bar their investigation.

62. The Letter does not dispute that the alleged acts are war crimes or that universal jurisdiction applies in the Philippines. It declines to docket the Complaint only because it reads Section 17 of R.A. No. 9851 as requiring one of three connections that it found absent. The Verified Motion for Reconsideration met that reading with an extended argument, repleading as well the discussion in the Joint Criminal Complaint-Affidavit, and observed that the Letter gave no point-by-point answer to either.[48] Petitioners summarize that argument here, because the question of law on which the Letter rests cannot be decided without it.

A. The Letter's own premises leave one question: whether the Act requires the presence of a foreign respondent for purposes of preliminary investigation.

63. The Letter begins by recognizing, in its own words, that:

> At the outset, the Department recognizes that the alleged acts are serious offenses under the aforesaid law, that being a member of the international community the Philippines has jus cogens obligation to act on such complaint, and that the principles of universal jurisdiction applies in the Philippines.[49]

64. Having admitted that the Philippines has jus cogens obligations to prosecute war crimes and that universal jurisdiction applies, the Letter then said that there are particular modalities for the exercise of that jurisdiction under Section 17 of R.A. No. 9851: that the victim must be a Filipino, or the accused is a Filipino, or the accused, though a foreigner, must be present in the Philippines.[50] The first two conditions are ruled out, because the victims are citizens of Myanmar and the respondents are high officials of the military junta. What

[48] Herein attached as ANNEX C is the original of the Petitioners' Verified Motion for Reconsideration filed on 11 April 2024, Part VI.
[49] Pages 1-2, the Prosecutor General's Letter dated 22 February 2024 (herein attached as ANNEX B is the original).
[50] Ibid, at 2.

remains is whether the Act requires the presence in the Philippines of a foreign respondent, at the very least for purposes of preliminary investigation. The Letter answered by taking the easy way out: a literalist, verba legis reading of Section 17(b). Petitioners submit that this reading does not comport with Philippine jurisprudence, with the structure of the Act, or with the constitutional principle of ne bis in idem, and that it contradicts the very meaning of jus cogens obligations in international law and Philippine law.

B. Mandatory universal jurisdiction is the consequence of the jus cogens prohibition of war crimes, which Philippine law incorporates.

65. The serious violations of international humanitarian law that constitute war crimes, such as those alleged in the Complaint, violate jus cogens prohibitions, that is, norms of customary international law of peremptory character. By mandatory universal jurisdiction Petitioners mean that whenever such crimes are brought before Philippine prosecutorial authorities, those authorities have a legal duty to investigate and, where the evidence allows, prosecute them before Philippine courts, regardless of the perpetrators' nationality and wherever they may be; and the courts have both the legal duty and the jurisdiction[51] to try the perpetrators, subject to the defenses provided in applicable national and international law and in Philippine procedural and substantive rules.

66. Jus cogens norms are incorporated into Philippine law by the Constitution, under the principle of duality of norms. They must be read into every provision dealing with war crimes, including those of R.A. No. 9851. The Supreme Court so held of the laws of war in the years immediately following the Second World War.[52] In Bayan Muna v Romulo, decided two years after the Act was passed, the Court recognized universal jurisdiction as a consequence of the jus cogens norms binding on the international community in respect of genocide, war crimes and crimes against humanity:[53]

> These jus cogens [prohibition on serious international][54] crimes relate to the principle of universal jurisdiction, i.e., "any state may exercise jurisdiction over an individual who commits certain heinous and widely condemned offenses, even when no other recognized basis for jurisdiction exists." "The rationale behind this principle is that the crime committed is so egregious that it is considered to be committed against all members of the international community" and thus granting every State jurisdiction over the crime [emphasis supplied].[55]

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[51] As Philippine jurisprudence puts it, jurisdiction is "the power and authority to hear, try, and decide a case" which is conferred by law. Velasquez v Lisondra Land Incorporated [2020] G.R. No. 231290 [First Division] 27 August 2020.
[52] Co Kim Cham v Valdez [1945] G.R. No. L-5 [En Banc] 17 September 1945; Yamashita v Styer [1945] G.R. No. L-129 [En Banc] 19 December 1945; Kuroda v Jalandoni [1949] G.R. No. L-2662 [En Banc] 26 March 1949.
[53] Bayan Muna v Romulo [2011] G.R. No. 159618 [En Banc] 1 February 2011, citing Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Merits, I.C.J. judgment, February 26, 2007, para. 161 and M. Cherif BASSIOUNI, "International Crimes: Jus Cogens and Obligatio Erga Omnes" (1996) 59 AUT Law & Contemp. Probs. 63, 68.
[54] The editorial emendation is necessitated by the awkward phraseology of the original. Taken literally, it would mean that the crimes referred to are binding on all states. What the Court meant is that the said crimes are subject to jus cogens prohibitions: every state is duty-bound to criminalize and prosecute them, under a prohibition that cannot be derogated from.
[55] Bayan Muna v Romulo, supra note 53.

67. Bayan Muna dealt with the constitutionality of a Bilateral Immunity Agreement between the Philippines and the United States of America under Article 98 of the Rome Statute. In answer to the argument that the United States had not sufficiently criminalized international crimes in its own code, the majority said that "even with the current lack of domestic legislation on the part of the US, it still has both the doctrine of incorporation and universal jurisdiction to try these crimes,"[56] and approvingly observed that genocide, war crimes and crimes against humanity have attained the status of customary international law and, for some, of jus cogens.[57] The Court thus recognized that these serious international crimes are subject to universal jurisdiction under the separate regime of customary international law, outside the Rome Statute; that States have a legal obligation to investigate and prosecute them with or without membership in the International Criminal Court; and that, if unable or unwilling to do so, they must extradite the suspect to a willing third party (the principle of aut dedere aut judicare).[58]

68. Bayan Muna thus established a Philippine precedent: under the hybrid constitutional and legal system of the Philippines, with its established jurisprudence on the doctrine of incorporation, genocide, war crimes and crimes against humanity are subject to the mandatory universal jurisdiction of Philippine courts under the jus cogens regime, even assuming the absence of a congressional penal act. The prosecution of war crimes brought to the attention of Philippine authorities is a duty owed to the international community as a whole, an erga omnes obligation proceeding from jus cogens norms. The incorporation of customary international law that Bayan Muna described also reaches back to the common law tradition imparted to the Philippine legal system and continues to be embodied in the incorporation clause of the Constitution.[59]

C. A correlated reading shows that R.A. No. 9851 recognizes mandatory universal jurisdiction.

69. Mandatory universal jurisdiction is built into the operative structure of R.A. No. 9851. Its Section 2(d) adopts generally accepted principles of international law, including the Hague Conventions of 1907, the Geneva Conventions on the protection of victims of war and international humanitarian law, as part of the law of the nation. Its Section 2(e) declares that the most serious crimes of concern to the international community as a whole "must not go unpunished," that their effective prosecution "must be ensured by taking measures at the national level," and that it is "the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes." Its Section 15 incorporates international-law sources into the Act's interpretation, while Sections 17 and 18 supply the jurisdictional, prosecutorial, and investigative machinery.[60]

70. Section 17 does not, by itself, limit the exercise of mandatory universal jurisdiction by Philippine authorities to cases with a demonstrable

[56] Bayan Muna v Romulo, supra note 53.
[57] Ibid.
[58] Ibid.
[59] Ibid.
[60] Republic Act No 9851 (2009) ss 2(d)-(e), 15, 17-18.

Philippine presence nexus. The structure of the Act, correlated with case law, with relevant statutes, with the principles and norms of international law and, above all, with the Constitution, assumes mandatory universal jurisdiction over the international crimes it penalizes. Section 17(b) is a specification of an admissibility bar for an obvious target of investigation and prosecution; it does not preclude the investigation and prosecution of international crimes whose perpetrators have not yet been found on Philippine soil, subject to reverse complementarity and the interest of justice.

71. Section 2 contains no presence requirement. It invokes the generalized and unrestricted obligation of States "to exercise [their] criminal jurisdiction over those responsible for international crimes," whether or not the perpetrators are found within their jurisdiction.[61] The Act thus states as its very purpose the exercise of mandatory universal jurisdiction over the most serious crimes of international concern as "the duty of every State," the Philippines included. By naming the Hague and Geneva Conventions in Section 2(d), the Act also embraces the contemporary developments in international humanitarian law and international criminal law that apply the criminalization of war crimes as serious violations of IHL to both international and non-international armed conflicts, discussed below.

72. The chapeau of Section 17 itself speaks of the crimes identified in the Act "regardless of where the crime is committed."[62] In Pangilinan v Cayetano, the Court described the Act in terms consistent with that reading:[63]

> This is enforced by the Republic Act No. 9851's assertion of jurisdiction over crimes committed anywhere in the world…Republic Act No. 9851 expressly confers original and exclusive jurisdiction on regional trial courts over the offenses it punishes. It also provides that this Court shall designate special courts to try these cases. Unlike the Rome Statute, Republic Act No. 9851 dispenses with complementarity as a requirement for prosecution of crimes against humanity [emphasis supplied, internal citations omitted].[64]

73. Petitioners recognize that this passage is an obiter dictum and that Pangilinan did not decide the question presented here. They cite it for the Court's reading of the structure and purpose of the Act.

D. The war crimes alleged are serious violations of international humanitarian law within the Act's mandatory universal jurisdiction, whether committed in an international or a non-international armed conflict.

74. One of the most significant developments in the law of armed conflict is the eclipse and absorption of the "grave breaches" of the four Geneva Conventions into the concept of "serious violations of IHL" that encompass war

[61] R.A. No. 9851, Sec. 2(e).
[62] R.A. No. 9851, Sec. 17.
[63] Pangilinan v Cayetano [2021] G.R. No. 238875, G.R. No. 239483 [Consolidated Cases, En Banc] 16 March 2021.
[64] Pangilinan v Cayetano, supra note 63.

crimes. The International Criminal Tribunal for the former Yugoslavia (ICTY) defined such violations as breaches that:

> … constitute a breach of a rule protecting important values, and the breach must involve grave consequences for the victim. Thus, for instance, the fact of a combatant simply appropriating a loaf of bread in an occupied village would not amount to a "serious violation of international humanitarian law."[65]

75. Grave breaches were previously taken to be limited to international armed conflicts. Today the distinction has been practically erased, and grave breaches are subsumed under the notion of serious violations of IHL that may be committed in both international and non-international armed conflicts.[66] Under ICTY jurisprudence, the underlying crimes held to meet the Tadić criteria include murder, cruel treatment, attacks on civilians or civilian objects, destruction and devastation of property including cultural or religious property, and terror.[67] As the United Kingdom's Manual of the Law of Armed Conflict puts it, "[a]lthough the treaties governing internal armed conflicts contain no grave breach provisions, customary law recognizes that serious violations of those treaties can amount to punishable war crimes. It is now recognized that there is a growing area of conduct that is criminal in both international and internal armed conflict . . ."[68]

76. The United Nations General Assembly has recognized the same, stating that "[i]n cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violation and, if found guilty, the duty to punish her or him."[69]

77. The ICTY Appeals Chamber began the absorption of the grave breaches regime into the regime of serious violations of international law, founding it on a deepened understanding of the notion of humanity.[70] In Tadić it held that violations of the rules of warfare "entail individual criminal responsibility, regardless of whether they are committed in internal or international armed conflicts," because principles and rules of humanitarian law reflect "elementary considerations of humanity" widely recognized as the

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[65] Prosecutor v. Tadić, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 94 (iii).
[66] Chile EBOE-OSUJI, "Much Ado About 'Serious Violations'," 8-9, (undated) online: https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/827EE9EC-5095-48C0-AB04-E38686EE9A80/283279/GRAVEBREACHESMUCHADOABOUTSERIOUSVIOLATIONS.pdf, citing Judgement en la cause Fulgence Niyonteze, Tribunal de Division 2, Armée Suisse Justice Militaire ('Niyonteze Appeals Judgment') and Prosecutor v Tadic; Marko Divac ÖBERG, (2009) "The Absorption of Grave Breaches Into War Crimes Law", 91 ICRC Review 873 163-183.
[67] Gideon BOAS, James L. BISCHOFF, and Natalie L. REID (eds.) Elements of Crimes under International Law: International Law Practitioners Library Series Vol. III (Cambridge: Cambridge University Press 2009) 262 (in-text citations omitted).
[68] U.K., Manual of the Law of Armed Conflict (Oxford: Oxford University Press 2004) paras. 15.32, 15.32.1, at 397, quoted in Gary D. SOLIS, The Law of Armed Conflict: International Humanitarian Law in War (Cambridge: Cambridge University Press 2010) at 101.
[69] 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, annexed to UN General Assembly Resolution 60/147 21 March 2006, Section 4. The Resolution was adopted by consensus on 16 December 2005 and officially published in 2006. The adoption reflects opinio juris sive necessitatis.
[70] SOLIS, supra note 68, at 100.

mandatory minimum for conduct in armed conflicts of any kind.[71] Six years later, in Čelebići, the Appeals Chamber completed the process, reasoning that "[i]n light of the fact that the majority of the conflicts in the contemporary world are internal, to maintain a distinction between the two legal regimes and their criminal consequences in respect of similarly egregious acts because of the difference in nature of conflicts would ignore the very purpose of the Geneva Conventions."[72] These developments were anticipated in Philippine jurisprudence by the opinion of Mr. Justice Perfecto in Yamashita v Styer,[73] which grounded mandatory universal jurisdiction over war crimes, whether committed in an international or a non-international armed conflict, in the principle of humanity.

78. The same assimilation is built into the structure of R.A. No. 9851. Section 4 already subsumes under war crimes, or "crimes against international humanitarian law," the grave breaches of the Geneva Conventions of 12 August 1949,[74] the crimes committed in a non-international armed conflict that constitute serious violations of common Article 3 to the four Geneva Conventions of 12 August 1949,[75] and "[o]ther serious violations of the laws and customs applicable in armed conflict, within the established framework of international law."[76] Read with Section 2(e), the Act reflects current developments in international humanitarian law and international criminal law and embodies the treaty obligations of the Philippines under the Geneva Conventions: serious violations of IHL, including war crimes, whether committed in an international or a non-international armed conflict, are subject to mandatory universal jurisdiction.

79. The acts complained of happened, and are happening, in Myanmar in the context of a non-international armed conflict, which is within the scope of the Act. Moreover, the Letter itself agreed that, under Philippine law, the acts complained of qualify as war crimes under the five provisions of R.A. No. 9851 that the Complaint invoked.

E. Section 17 does not require a respondent to be present in the Philippines before the DOJ may docket and investigate the Complaint.

80. The chapeau of Section 17 uses mandatory language: *"[t]he State shall exercise jurisdiction over persons, whether military or civilian,* ***suspected or accused*** *of a crime defined and penalized in this Act, regardless of where the crime is committed."* Although Section 17(b) refers to an "accused" who is present in the Philippines, the chapeau separately includes persons "suspected" of a crime. In Philippine criminal procedure, a respondent becomes an accused only after an information is filed in court. The presence of an accused may therefore govern the court's exercise of adjudicative jurisdiction, but the text does not require a respondent-suspect to be physically present before the DOJ may docket a complaint, preserve and evaluate evidence, and determine probable cause.

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[71] Ibid, quoting Prosecutor v Tadić, supra note 65, para. 84.
[72] SOLIS, supra note 68, quoting Prosecutor v Delalić IT-96–21-A (20 Feb. 2001), para. 172.
[73] Yamashita v Styer, supra note 52.
[74] R.A. No. 9851, Sec. 4(a).
[75] R.A. No. 9851, Sec. 4(b).
[76] R.A. No. 9851, Sec. 4(c).

81. Section 17(b) refers to an "accused." In Philippine criminal procedure a person becomes an accused only when an Information, an accusation in writing charging a person with an offense, subscribed by the prosecutor and filed with the court,[77] has been filed. Before that, there must be a preliminary investigation by the National Prosecution Service of the DOJ to determine the existence of probable cause, and at that stage the respondent is only a "suspect." The chapeau of Section 17 itself distinguishes between persons "suspected" and persons "accused." The reference in Section 17(b) to an "accused" who is "present in the Philippines" therefore logically and procedurally presupposes a preliminary investigation that has already been conducted, in which the foreign respondent need not even have been physically present on Philippine territory. The preliminary investigation is precisely meant to establish whether there is a basis to charge a suspect in court for war crimes, and it is the earliest stage at which objections to admissibility, such as the principle of ne bis in idem discussed below, may be raised. The same is true of Filipinos who, under Section 17(a), are the subject of a war crimes investigation while abroad.

F. Section 17 must be read as a whole: the ne bis in idem clause and the rules of statutory construction show that presence is an admissibility consideration, not a precondition of investigation.

82. Section 17 states in full:

> Section 17. Jurisdiction - The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, provided, any one of the following conditions is met:
>
> (a) The accused is a Filipino citizen;
>
> (b) The accused, regardless of citizenship or residence, is present in the Philippines; or
>
> (c) The accused has committed the said crime against a Filipino citizen.
>
> In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under this Act if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties.
>
> No criminal proceedings shall be initiated against foreign nationals suspected or accused of having committed the crimes defined and penalized in this Act if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence.[78]

[77] Rule 110, Section 4, Revised Rules of Criminal Procedure.
[78] R.A. No. 9851, Sec. 17.

83. Section 17(a) is based on the nationality principle: that a State may prosecute its nationals even for crimes committed abroad.[79] Section 17(b) is anchored on universal jurisdiction proper, the idea that some crimes are so serious as to concern any State, regardless of who committed them and where.[80] Section 17(c) embodies the passive personality principle, which asserts State jurisdiction over crimes that harm its nationals wherever they occur and whoever commits them.[81] Two exception clauses follow. The first is the mechanism of "reverse complementarity." The second is the established principle of ne bis in idem, known in common law jurisdictions as double jeopardy, which in the Philippines is a constitutional right.[82]

84. A cursory reading of Section 17 gives the impression that the exercise of universal jurisdiction by Philippine authorities over war crimes committed against foreigners on foreign soil by perpetrators who are neither Filipinos nor present in the Philippines is foreclosed. That is the reading the Letter adopted, treating the three conditions as an exhaustive list because of the proviso, "provided, any one of the following conditions is met," in the chapeau, which is ordinarily given a limiting function in Philippine statutory construction.[83] That reading cannot stand, for the reasons that follow.

85. The paragraph of Section 17 that begins "In the interest of justice" confirms that investigation and prosecution are distinct stages. It permits the relevant Philippine authorities, in the interest of justice, to "dispense with the investigation or prosecution" if another court or international tribunal is already conducting the investigation or prosecution. That discretionary reverse-complementarity mechanism presupposes that Philippine authorities may open an investigation and then decide, for stated reasons, whether to defer. The Letter identified no competing proceeding and made no interest-of-justice determination. Nor did it invoke the separate ne bis in idem bar in the final paragraph of Section 17, which begins "No criminal proceedings shall be initiated against foreign nationals."

86. The reverse complementarity mechanism is so called, as the Court noted in Pangilinan v Cayetano, borrowing from the petitioners in that case, because unlike the complementarity principle operative in the International Criminal Court, in which the tribunal steps in only where a State Party fails to discharge its duty to prosecute crimes within its territory, under the Act the Philippine authorities may opt, in the interest of justice, not to investigate or prosecute a crime penalized by the law and cede the matter to an international tribunal or foreign court "already conducting the investigation or undertaking the prosecution of such crime."[84] The deferral is discretionary, not mandatory, and it applies regardless of whether the foreign national is present in the Philippines at the time. It applies equally to a Filipino suspected or accused of war crimes wherever committed. In deciding whether to continue under this clause, the

[79] Jan KLABBERS, International Law 2nd ed. (Cambridge: Cambridge University Press 2017) 101.
[80] Ibid. at 102.
[81] Ibid.
[82] 1987 Constitution, Article III, Section 21.
[83] Mercado v NLRC [1991] G.R. No. 79869 [Second Division] 5 September 1991 (a proviso is construed with reference to the immediately preceding part of the provision to which it is attached, and not to the statute itself or to other sections thereof).
[84] Pangilinan v Cayetano, supra note 63.

authorities must undertake an "interest of justice" analysis. The Act does not specify its content, but given the norms and principles absorbed into the Philippine system by Section 15, it may mirror the procedures followed by the International Criminal Court.[85]

87. The final paragraph of Section 17, the ne bis in idem clause, shows that presence is not a precondition of investigation. On the Letter's reading, the defense of ne bis in idem would be available only to foreign nationals being investigated or prosecuted in the Philippines for war crimes, and there is nothing in the text to support the view that similarly situated Filipinos may oppose a war crimes investigation or prosecution with the same defense. Such a construction offends the constitutional sense of due process and equality of arms. It is, without doubt, a Dworkinian hard case, where the law offers "incomplete, ambiguous, or conflicting guidance,"[86] but it cannot be a proper reading of the text. A Filipino accused of international crimes penalized by the Act may also interpose the prohibition on double jeopardy, an established constitutional doctrine,[87] and the equal protection of the laws would otherwise be violated.[88] The point underscores that there are matters not expressly stated in the statute that are nevertheless part of it, as a matter of public policy, generally accepted principles of international law, customary international law, jus cogens norms and, in this case, constitutional doctrine.

88. The ne bis in idem clause also applies to a foreign national who is the subject of a pending investigation under the Act, even if not present in the Philippines: if the bar is shown to apply, the investigation and prosecution must stop permanently. A reading that made presence a condition of every step of the investigation would leave this protection without a stage at which to operate. Section 17(b) is better read as an express admissibility clause.

89. Rather than an application of the rule of expressio unius est exclusio alterius, which is a canon of restrictive interpretation predicated on the legislature's having intended to restrict meaning by specific enumeration,[89] Section 17(b) is read in connection with the ne bis in idem exception clause, which is specific to foreigners suspected or accused of war crimes. The rule of reddendo singula singulis is the better fit: words in different parts of a statute must be referred to their appropriate connection, giving to each in its place its proper force and effect, and, if possible, rendering none of them useless or superfluous, even if strict grammatical construction demands otherwise; and where the words under consideration appear in different sections or are widely dispersed throughout an act, the same principle applies.[90] The interpretation is also consistent with the doctrine of necessary implication recognized in Philippine jurisprudence: what is implied in a statute is as much a part of it as what is expressed, and every statute is understood to contain all such provisions as may be necessary to effectuate its object and purpose, including such collateral

[85] Rome Statute, Article 53(1)(c): the "interests of justice" are a countervailing consideration; the Prosecutor must assess whether, taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.
[86] HLA HART, "Law in the Perspective of Philosophy: 1776-1976" (1976) 51 NYUL Rev 538, 547.
[87] 1987 Constitution, Article III, Section 21.
[88] 1987 Constitution, Article III, Section 1.
[89] De La Salle University v Bernardo [2017] G.R. No. 190809 [First Division] 13 February 2017.
[90] City of Manila v Laguio [2005] G.R. No. 118127 [En Banc] 12 April 2005.

and subsidiary consequences as may be fairly and logically inferred from its terms.

90. Applying these two canons, and in conjunction with the norms and principles of international law incorporated in Philippine law and the treaty obligations of the Philippines, Section 17 should be read as follows:

> SEC. 17. Jurisdiction. – The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, [and regardless of citizenship or residence], provided […] (b) [Where] the accused [or suspects, are foreigners who are] present in the Philippines[,] [n]o criminal proceedings shall be initiated against [such] foreign nationals suspected or accused of having committed the crimes defined and penalized in this Act if they have been tried by a competent court outside the Philippines in respect of the same offense and acquitted, or having been convicted, already served their sentence.

91. By express admissibility clause, Petitioners mean that, under Section 17(b), even if a suspect or accused foreign national is in the Philippines while being investigated or prosecuted, if it is established that the person has already been tried by a competent court outside the Philippines for the same offense and acquitted, or, having been convicted, has already served the sentence, the Philippine authorities will no longer investigate or prosecute. Ne bis in idem is thus a procedural bar to universal jurisdiction and a ground for an admissibility challenge. The cessation it requires is mandatory, not discretionary.

92. Ordinarily the principle of territoriality governs the enforcement of Philippine criminal laws. Where extraterritoriality is resorted to, as in the exercise of mandatory universal jurisdiction, the sovereignty of other States may be at issue. Section 17(b) emphasizes that serious care should be taken in investigating and prosecuting foreign nationals found on Philippine soil. It is easier to pull the prosecutorial trigger on a foreign national who is found in the Philippines, given the obligations of international law embodied in the Act. But, as the Island of Palmas arbitration held, territorial sovereignty has as its corollary a duty: "the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory."[91] That obligation is now part of customary international law,[92] and it embraces the foreigner's right of access to justice within the territorial State, understood not merely as access to the courts but as the availability of a system of fair and impartial justice whose effectiveness and legitimacy may be reviewed under the international standard on the treatment of aliens.[93] A violation of that right engages State responsibility.[94] Section 17(b) is therefore best understood as

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[91] Island of Palmas case (Netherlands, USA) [1928] Permanent Court of Arbitration Award II RIAA 829, ICGJ 392, 4 April 1928 839.
[92] Mavrommatis Palestine Concessions, PCIJ Rep Series A No 2 (30 August 1924) 12.
[93] Francesco FRANCIONI, "The Rights of Access to Justice under Customary International Law" in Francesco FRANCIONI, ed. Access to Justice as a Human Right: The Collected Courses of the Academy of European Law (Oxford: Oxford University Press 2007).
[94] Articles on Responsibility of States for Internationally Wrongful Acts (2001), annexed to UN General Assembly Resolution 56/83 A/RES/56/83 12 December 2001, and corrected by document A/56/49(Vol. I)/Corr.4, Article 44.

expressly underscoring the precedence of ne bis in idem in the investigation or prosecution of foreign nationals found on Philippine soil, so as to avoid a miscarriage of justice that would entail State responsibility on the part of the Philippines under nationality claims.

93. Nor is the proviso in the chapeau a limitation on the exercise of jurisdiction over war crimes. Where its literal application produces an absurdity, the courts apply a settled rule:

> Even though the primary purpose of the proviso is to limit or restrain the general language of a statute, the legislature, unfortunately, does not always use it with technical correctness; consequently, where its use creates an ambiguity, it is the duty of the court to ascertain the legislative intention, through resort to the usual rules of construction applicable to statutes, generally and give it effect even though the statute is thereby enlarged, or the proviso made to assume the force of an independent enactment and although a proviso as such has no existence apart from the provision which it is designed to limit or to qualify [emphasis supplied].[95]

94. Section 17(b) therefore cannot be read to restrict the investigation or prosecution of foreign nationals suspected or accused of war crimes to those present in the Philippines. To construe it so is to deny the jurisprudence on the workings of the Incorporation Clause and the duality of norms, Sections 2 and 15 of the Act, Articles 8 and 14 of the Civil Code, and even Article 2(5) of the Revised Penal Code.[96]

G. The object and purpose of the Act confirm that the Letter's reading was error.

95. Courts and other legal authorities seeking right and justice may not interpret Section 17(b) in a manner that pits it against the clear mandate of customary international law, in particular the jus cogens obligations recognized by Philippine case law under the Incorporation Clause and by treaty, for the exercise of mandatory universal jurisdiction over war crimes regardless of the nationality of the perpetrators or the victims. A contrary interpretation runs counter to the public policy declared in Section 2 of the Act and in Section 15, which incorporates treaties, international norms and principles, and subsidiary means of establishing the existence of a rule of international law. Together they show that the legislators were well aware of the obligation to exercise mandatory universal jurisdiction in respect of serious violations of IHL, war crimes included, and that the Act's object and purpose is to give no quarter to impunity.

96. In case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.[97] It would be a reading contrary to right and justice to deny an established jus cogens obligation of the State to prosecute war crimes, laid down as a key purpose for

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[95] CIR v Filipinas Compaña de Seguros [1960] G.R. No. L-14880 [En Banc] 29 April 1960, quoting E.T. CRAWFORD, The Construction of Statutes (St. Louis: Thomas Law Book, 1940) 604-605.
[96] Civil Code, Art. 8 (judicial decisions applying or interpreting the laws or the Constitution form part of the legal system of the Philippines); Civil Code, Art. 14 (penal laws and those of public security and safety are obligatory upon all who live or sojourn in Philippine territory, subject to the principles of public international law and to treaty stipulations); Revised Penal Code, Art. 2(5).
[97] Civil Code, Art. 10.

enacting the Act. A verba legis approach does not cohere with the interlocking principles, public policy, norms, object and purpose of the law, jurisprudence, constitutional structure, the law of humanity and the jus cogens nature of the prohibition on war crimes. That is why the question the Letter decided is a question of law, and why its answer is dispositive of the Letter's only ground.

97. The Supreme Court's decisions reinforce the universal-jurisdiction premise, although neither decides the precise procedural question presented here. In *Bayan Muna v Romulo*, the Court described universal jurisdiction as the principle that "any state may exercise jurisdiction" over certain heinous offenses "even when no other recognized basis for jurisdiction exists." In [98]*Pangilinan v Cayetano*, it described R.A. No. 9851 as an "assertion of jurisdiction over crimes committed anywhere in the world," while reproducing the conditions stated in Section 17. The Letter itself concedes that the alleged acts are serious offenses and that universal jurisdiction is relevant. Petitioners submit that Section 2(e), read with Sections 17 and 18, requires the DOJ at least to carry out the prescribed evaluation and investigation and, where its own assessment of the evidence and the governing jurisdictional requirements warrant, to prosecute.[99]

98. Section 18 completes the statutory scheme. It gives Regional Trial Courts original and exclusive jurisdiction over the crimes punishable under the Act and directs the DOJ, the Commission on Human Rights, the Philippine National Police, and other law-enforcement agencies to designate prosecutors or investigators for those cases. Even if presence were ultimately required before an Information could be filed or trial could proceed, it does not follow that the DOJ may refuse to docket or investigate. Preliminary investigation preserves and tests evidence, determines the character of the armed conflict and the statutory elements, and assesses individual and command responsibility. Petitioners therefore seek enforcement of the DOJ's mandatory task to investigate and, where its own assessment of the evidence warrants, prosecute. They do not ask this Court itself to find probable cause or guilt.

X. The Letter cannot be shielded as an exercise of prosecutorial discretion.

99. Petitioners anticipate the objection that the Letter was itself the evaluation contemplated by DC No. 20, that such an evaluation is an exercise of prosecutorial discretion, and that neither mandamus nor certiorari lies to correct it. The objection fails whichever way the Letter is characterized. If the Letter was an evaluation under DC No. 20, it was an act outside the rules that govern that evaluation. First, it came after one hundred and twenty (120) days, not within ten (10) working days. Second, it did not address the question that DC No. 20, Section 5 commits to the evaluator, namely whether the complaint contains the evidence needed to prove the essential elements of the crime; it conceded that the alleged acts would have been violations of R.A. No. 9851 and rested wholly on a construction of Section 17; it did not find the Complaint insufficient or call for any lacking evidence, as Section 10(b) of DC No. 15 now contemplates. Third, it took a form that neither Section 3(b) of Rule 112 nor DC No. 20 provides for. The rules provide for dismissal for lack of ground to continue, or for the issuance

[98] *Bayan Muna v Romulo*, GR No 159618, 1 February 2011, 656 Phil 246.
[99] *Pangilinan v Cayetano*, GR Nos 238875, 239483 and 240954, 16 March 2021 (SC, en banc).

of a subpoena; they do not provide for the return of an undocketed complaint. Discretion conferred for one purpose is not exercised by disposing of the matter on another ground that the rules do not recognize. That is the grave abuse of discretion that Rule 65 corrects, and Meking itself preserves judicial correction where prosecutorial action is attended by grave abuse of discretion.

100. If, on the other hand, the Letter was not the evaluation that DC No. 20 requires, then that evaluation has never been made, the duty to make it remains unperformed, and mandamus lies to compel it. Public Respondents cannot have it both ways: a return of the Complaint that is final enough to dispose of it, yet not final enough to be answered by the Motion for Reconsideration pending since 11 April 2024. On either characterization, the relief sought does not intrude on prosecutorial discretion. Petitioners ask the Court to require that the rules be followed, through docketing and a preliminary investigation, and leave to Public Respondents the determination whether the evidence meets the governing standard. That respects the distinction, recognized in Ampatuan Jr. v De Lima,[100] between compelling a prosecutor to act and dictating how the prosecutor's discretion is to be exercised. The Supreme Court has also ordered a State Prosecutor to take cognizance of a complaint when the refusal rested on a legally erroneous construction of the governing statute.[101]

XI. The inaction is further contrary to the constitutional policy of speedy disposition and to due process.

101. Article III, Section 16 of the Constitution guarantees to "all persons" the right to a speedy disposition of their cases before "all judicial, quasi-judicial, or administrative bodies." In *Cagang v. Sandiganbayan*,[102] the Supreme Court held that the right applies to proceedings including the preliminary investigation stage, and set out the framework for assessing delay by the length of the delay, the reasons for it, the assertion of the right, and prejudice. The right has usually been invoked by respondents and accused. Its text carries no such limit. Petitioners acknowledge that the decisions applying the Cagang framework have principally protected respondents and accused persons from oppressive delay, and that no decision applies its dismissal remedy to complainants. They invoke the guarantee in support of, and not in place of, the mandatory procedural deadlines and the mandamus authorities on unreasonable failure to act.

102. Applying those factors as of 3 November 2026: the Joint Criminal Complaint-Affidavit (**ANNEX A**) had remained undocketed and uninvestigated for three (3) years and nine (9) days; no written action had been taken on the Motion for Reconsideration (**ANNEX C**) for two (2) years, six (6) months and twenty-three (23) days; and three (3) months and three (3) days had passed since the Second Motion to Resolve (**ANNEX E**) renewed Petitioners' demand for performance. No reason for the delay has ever been given. Petitioners asserted the right in writing on 2 April 2025 (**ANNEX D**) and again on 31 July 2026 (**ANNEX E**). The prejudice is concrete: witnesses are displaced civilians who are

[100] Ampatuan Jr. v De Lima, supra note 13.
[101] *Federated LPG Dealers Association v Del Rosario*, GR No 202639, 9 November 2016, 799 Phil 251.
[102] Cagang v Sandiganbayan [2018] G.R. No. 206438, G.R. No. 206458, G.R. Nos. 210141-42 [Consolidated Cases, En Banc] 31 July 2018.

aging or at risk; documentary evidence held by a displaced community may be lost; and, as recorded in the CHRO report, the alleged conduct continues.

103. Due process is also engaged. Petitioners invoked the statutory process by filing a sufficient Joint Criminal Complaint-Affidavit and repeatedly demanded its docketing and investigation. By refusing to open that process and then taking no action on the demands that followed, Public Respondents denied Petitioners the procedure through which evidence is tested and warranted prosecution may proceed.

PRAYER

WHEREFORE, premises considered, Petitioners respectfully pray that this Honorable Court:

1. Require Public Respondents to comment on this Petition within the period it fixes, and thereafter **GIVE DUE COURSE** to it;

2. **DIRECT THE MODE OF SERVICE** on Private Respondents, in accordance with Section 5 and/or Section 14 of Rule 13 of the Rules of Court, as amended;

3. In the exercise of its power under Section 3, Rule 65, **ISSUE A WRIT OF MANDAMUS COMMANDING** Public Respondents, within a definite period to be fixed by this Honorable Court, to (a) RESOLVE the Verified Motion for Reconsideration filed on 11 April 2024; and (b) DOCKET the Joint Criminal Complaint-Affidavit received on 25 October 2023, there being no finding that it is deficient in form or evidence, and CONDUCT the preliminary investigation prescribed by Rule 112 of the Rules of Court and the applicable DOJ rules, leaving to Public Respondents' own judgment the determination whether the evidence meets the governing standard;

4. Likewise, and to the extent that the Letter or the continuing inaction is treated as a final prosecutorial disposition, ISSUE **A WRIT OF CERTIORARI ANNULLING AND SETTING ASIDE** the Letter dated 22 February 2024, and any implied denial of the demands that followed it, as rendered with grave abuse of discretion amounting to lack or excess of jurisdiction, and **DIRECT Public Respondents to docket the Joint Criminal Complaint-Affidavit and to conduct the preliminary investigation prescribed by Rule 112 of the Rules of Court and the applicable DOJ rules, within a definite period to be fixed by this Honorable Court, leaving to Public Respondents' own judgment the determination whether the evidence meets the governing standard.**

Other reliefs, just and equitable under the premises, are also prayed for.

Makati City for Manila, 03 November 2026.

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EXPLANATION

Due to the shortage of messengerial services and lack of material time, this Petition is served to the Public Respondents and the Office of the Solicitor General by registered mail.

GILBERT TERUEL ANDRES