

Pursuant to Pre-Trial Chamber's Instruction dated 28/08/2025, this document is reclassified as Public

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/21-01/25

Date: 27 August 2025

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc , Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

Confidential

**OPCV's Observations on the Registry's Report
on Common Legal Representation of Victims**

Source: Office of Public Counsel for Victims

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Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

☒ The Office of the Prosecutor

☒ Counsel for the Defence
D36

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar
M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☒ Victims Participation and
Reparations Section

☐ Other

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I. PROCEDURAL BACKGROUND

1. On 17 April 2025, Pre-Trial Chamber I (the “Chamber”) issued the “Order on the conduct of confirmation proceedings” (the “Order”)¹ instructing, *inter alia*, the Registry to take action for organising the common legal representation of victims and to submit a report by 20 August 2025.² The Chamber also instructed the Prosecution and the Defence to respond to the Registry’s Report by no later than 27 August 2025.³

2. On 20 August 2025, the Registry submitted its Report on the Common Legal Representation of Victims (the “Report”).⁴

3. On 21 August 2025, the Chamber, by e-mail, instructed the Office of Public Counsel for Victims (the “OPCV” or the “Office”) to file its response to the Report by 27 August 2025.⁵

II. CLASSIFICATION

4. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, the present submission is classified as confidential, following the classification chosen by the Registry. However, the Principal Counsel indicates that the submission does not contain confidential information and can be reclassified as “public”.

1. *On the organisation of the common legal representation*

5. The Principal Counsel, currently appointed to represent the collective interests of potential victims until the mandate of the team of common legal representatives takes effect,⁶ leaves the issue of the organisation of the common legal representation of victims to the discretion of the Chamber. To assist the latter in its deliberation on the

¹ See the “Order on the conduct of confirmation proceedings” (Pre-Trial Chamber I), [No. ICC-01/21-02/25-144](#), 17 April 2025 (the “Order”).

² *Idem*, para. 66.

³ *Ibid.*

⁴ See the “Registry Report on the Common Legal Representation of Victims”, [No. ICC-01/21-02/25-236-Conf](#), 20 August 2025 (the “Report”).

⁵ See the e-mail communication from the Chamber dated 21 August 2025 at 17:48.

⁶ See the Order, *supra* note 1, paras. 68-69.

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matter, she only notes the current involvement of the Office in the proceedings and the sensitivity of a number of issues under litigation, which may have a bearing on the final arrangement of common legal representation and feasibility of some of the options put forward by the Registry. As such, the Principal Counsel confirms her availability to remain appointed, including as part of a team of lawyers, should the Chamber deem it appropriate under the present circumstances.⁷ She also emphasises the added value of appointing counsel from the situation country, who have an understanding of the victims' situation and cultural context, as well as better access to the victims. She, therefore, posits that combining the expertise of external counsel with that of counsel from the Office is likely to ensure the most appropriate solution for an effective and meaningful representation of victims in the proceedings before the Court. The practice already established in several proceedings⁸ has demonstrated that the added value deriving from the synergies of the combined collaboration between lawyers of the OPCV and external lawyers is substantial, particularly in strengthening the effectiveness of the participation of victims, and that such a system efficiently addresses the needs of victims.

2. On the proposed recommendation on the monitoring of Common Legal Representatives

6. The Principal Counsel notes the proposal from the Registry about regular updates "*on whether there is sufficient communication between counsel and client*",⁹ on the "*activities of the CLRV*",¹⁰ and on the implementation of additional measures "*to assess,*

⁷ The Principal Counsel does not consider an option of integrating a member of the OPCV holding another position into the legal team of external lawyers to be conducive to an effective and efficient legal representation of victims. The model adopted in the Kenya cases has indeed proven to be ineffective and has not been used since. In fact, the Registry itself refrained from suggesting said option in any of its reports on legal representation. Incidentally, the Principal Counsel notes that suggesting such an option in the Report without prior consultation with the Office appears inappropriate, given that said course of events would place a considerable burden on OPCV staff.

⁸ Reference is to the *Lubanga, Ongwen, Yekatom and Ngaïssona* cases.

⁹ See the Report, *supra* note 4, para. 77.

¹⁰ *Ibid.*

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and if necessary, recommend adjustments, to the common legal representation scheme”¹¹ including “establishing a reporting system”.¹²

7. As a matter of principle, the Principal Counsel submits that it is not the Registry’s role *to monitor* how appointed legal representatives fulfil their mandate. In this regard, she recalls that counsel for victims are bound by the Code of Professional Conduct for Counsel (the “Code of Conduct”)¹³ – as any other lawyer appearing before the Court – which prevails over any other code of ethics or professional responsibility which counsel are bound to honour.¹⁴ The Code of Conduct sets out ethical and professional standards, requiring counsel, *inter alia*, to act in good faith, with fairness, integrity and candour when dealing with clients, as the basis for a relationship “of candid exchange and trust”;¹⁵ to consult clients and abide by their decisions;¹⁶ and to keep clients informed about the progress of the proceedings and any relevant legal or factual issues that may concern them.¹⁷ The Principal Counsel also recalls that communications between counsel and client are privileged.

8. Concerning the proposed filing of regular updates about “recent activities of the CLRVs”,¹⁸ the current practice is limited to a few cases and only at the trial stage. In light of the limited scope and purpose of the confirmation of charges proceedings and the fact that the CLRV will be appointed almost at the eve of the hearing, the Principal Counsel posits that the filing of updates is unnecessary at this stage of the proceedings.

9. Concerning the proposed “monitoring scheme”, the suggestion has no support in the Court’s practice. In none of the cases in which it was already proposed, namely the *Saïd* and the *Mokom* cases,¹⁹ was said scheme approved. In fact, the proposed “monitoring scheme” – apart from not being justified – is also inconsistent with the

¹¹ *Idem*, para. 78.

¹² *Ibid.*

¹³ See the [Code of Professional Conduct for Counsel](#), 2011 (the “Code of Conduct”).

¹⁴ See article 4 of the Code of Conduct.

¹⁵ See article 14(1) of the Code of Conduct.

¹⁶ See article 14(2) of the Code of Conduct.

¹⁷ See article 15(1) of the Code of Conduct.

¹⁸ See the Report, *supra* note 4, para. 77.

¹⁹ *Idem*, footnote 86.

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Court's legal framework, particularly the fundamental principle of independence of counsel and the Registry's duty to maintain its neutral position at all times.

10. The Principal Counsel contends that it is not appropriate for the Registry, as the organ of the Court providing neutral non-judicial administrative and operational support,²⁰ to act as a *de facto* oversight mechanism or scrutineer of any counsel appointed to represent victims in proceedings before the Court. Under no circumstances is the Registry to intervene in counsel's activities and legal representation as said course of action would ultimately lead to the Registry's interference with counsel's independence and to a discriminatory differentiation between lawyers since defence counsel would not be subjected to any similar monitoring scheme.

11. The Principal Counsel further recalls that the Code of Conduct already envisages a comprehensive complaint procedure that would duly address possible issues related to victims' non-satisfaction with their legal representation²¹ – a *lex specialis* which must be followed in these circumstances.²² As such, the Code of Conduct is the only appropriate legal instrument for addressing shortcomings in conduct and more generally for holding legal representatives accountable to victims and the Court, which obviates the need for a separate monitoring scheme that finds no support in the Court's legal framework.

²⁰ See, *inter alia*, article 43(1) of the Rome Statute.

²¹ See the Report, *supra* note 4, para. 78.

²² See, *mutatis mutandis*, the "PUBLIC REDACTED VERSION OF ICC-01/05-01/08-295-Conf Decision on the Prosecutor's Applications to Open an Inquiry with Respect to Witnesses [REDACTED]" (Pre-Trial Chamber III), [No. ICC-01/05-01/08-295-Red](#), 22 September 2009 (dated 27 November 2008), paras. 14-15. See also, the "Decision on the 'Libyan Government Request for Status Conference and Extension of Time to file a Reply to the Responses to its Article 19 Admissibility Challenge'" (Pre-Trial Chamber I), [No. ICC-01/11-01/11-200](#), 9 August 2012, para. 14.

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Respectfully submitted.

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

Paolina Massidda
Principal Counsel

Dated this 27th day of August 2025

At The Hague, The Netherlands