

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/21-01/25
Date: 19 December 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

Public Redacted Version of No. ICC-01/21-01/25-269-Conf

Victims' Response to the "Defence request with respect to Group A participants"

Source: Office of Public Counsel for Victims

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

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☐ 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

I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the “Legal Representative”), appointed by the Pre-Trial Chamber (the “Chamber”) to represent the collective interests of potential victims until the mandate of the team of common legal representatives takes effect pursuant to the “Order on the conduct of confirmation proceedings” (the “Order”),¹ files her response to the “Defence request with respect to Group A participants” (the “Request”).²

2. The Legal Representative submits that the Request should be rejected because it calls for litigation in parallel of a matter *sub judice* pending before the Appeals Chamber and contravenes the Chamber’s Order by attempting to modify its core ruling and practical effects. Moreover, granting the relief sought will put in danger the security and well-being of the victims in violation of rule 89(1) of the Rules of Procedure and Evidence (the “Rules”) and article 68(1) of the Rome Statute (the “Statute”). Finally, the information sought by the Defence is not necessary for the preparation of its case, thus not disclosable under rule 77 of the Rules.

II. CLASSIFICATION

3. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, the present submission is classified as Confidential because it refers to the content of a confidential document. A public redacted version will be filed in due course.

III. PROCEDURAL BACKGROUND

4. On 8 February 2018, the then Prosecutor Ms Bensouda opened a preliminary examination in the Situation in the Republic of the Philippines.³

¹ See the “Order on the conduct of confirmation proceedings” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-114](#), 17 April 2025, paras. 68-69 (the “Order”).

² See the “Defence request with respect to Group A participants”, [No. ICC-01/21-01/25-261](#), 2 September 2025 (the “Request”).

³ See ICC-OTP, [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on opening Preliminary Examinations into the situations in the Philippines and in Venezuela](#), 8 February 2018.

5. On 12 February 2021, Mr Khan was elected as the Prosecutor of the International Criminal Court (the “ICC” or the “Court”).⁴

6. On 7 March 2025, the Chamber issued a warrant of arrest for Mr Duterte.⁵

7. On 6 March 2025, the Prosecutor filed a Notification informing the Chamber that, in 2018, he was part of a team representing a number of victims which requested the Former Prosecutor to open an investigation into the crimes allegedly committed in the Philippines by submitting a communication pursuant to article 15 of the Statute (the “Article 15 Communication”).⁶ On 1 April 2025, the Prosecutor filed [REDACTED].⁷

8. On 17 April 2025, the Chamber issued the Order adopting, *inter alia*, the procedure for admission of victims to participate in the case (the “A-B-C approach”) and instructing the Registry to transmit Group A and B applications to the Chamber, by no later than 27 August 2025, and Group C applications, to the Chamber and the parties, by no later than 20 August 2025.⁸

9. On 6 August 2025, the Defence filed a request seeking the disqualification of the Prosecutor before the Appeals Chamber (the “Disqualification Request”).⁹ On 18 August 2025, the Prosecution¹⁰ and the Legal Representative¹¹ filed their respective response to the Disqualification Request.

⁴ See International Criminal Court, [Karim A. A. Khan KC](#).

⁵ See the “Warrant of Arrest for Mr Rodrigo Roa Duterte” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-83](#), 7 March 2025. See also the “Public redacted version of ‘Prosecution’s urgent application under article 58 for a warrant of arrest against Rodrigo Roa DUTERTE’”, 10 February 2025, ICC-01/21-80-US-Exp, [No. ICC-01/21-01/25-80-Red](#), 13 March 2025.

⁶ See the “Prosecutor’s Notification”, [No. ICC-01/21-01/25-81-Conf](#), 6 March 2025. A Public redacted version [No. ICC-01/21-01/25-81-Red](#) was filed on 18 August 2025.

⁷ See [REDACTED].

⁸ See the Order, *supra* note 1, para. 56.

⁹ See the “Defence Request to Disqualify Chief Prosecutor Karim Khan”, [No. ICC-01/21-01/25-226-Conf](#), 6 August 2025 (the “Disqualification Request”). A Public Redacted Version [No. ICC-01/21-01/25-226-Red2](#) was filed on 6 August 2025.

¹⁰ See the “Prosecutor’s Response to Defence Request to Disqualify Chief Prosecutor Karim Khan”, [No. ICC-01/21-01/25-234-Conf](#), 18 August 2025.

¹¹ See the “Victims’ Response to the ‘Defence Request to Disqualify Chief Prosecutor Karim Khan’”, [No. ICC-01/21-01/25-233-Conf](#), 18 August 2025 (the “Response to the Disqualification Request”). A Public Redacted Version [No. ICC-01/21-01/25-233-Red](#) was filed on 26 August 2025.

10. On 27 August 2025, the Registry transmitted fifteen Group A applications for participation to the Chamber.¹²

11. On 2 September 2025, the Defence filed its Request.¹³

12. On 5 September 2025, the Prosecution filed its response to the Request.¹⁴

IV. SUBMISSIONS

13. Firstly, the Defence submits that [REDACTED].¹⁵ The Defence cites no legal provision in support of its Request and seems to simply reiterate its arguments contained in the Disqualification Request; in particular, that Mr Karim Khan (“Mr Khan”) [REDACTED].¹⁶

14. The Legal Representative posits that this matter – namely, whether Mr Khan acted in contravention of article 42(7) of the Statute and rule 34(1)(b) and (c) of the Rules – is presently pending before the Appeals Chamber, far from being settled. Therefore, the Defence’s contention that [REDACTED] is devoid of any legal and factual basis since the Appeals Chamber has not yet made any determination on the matter. Furthermore, the Defence must not be allowed to litigate before the Chamber a matter *sub judice* being adjudicated by the Appeals Chamber at present.

15. Furthermore, as argued in the response to the Disqualification Request,¹⁷ the Defence did not demonstrate that Mr Khan conducted himself in an unlawful or unethical or otherwise inappropriate manner [REDACTED]. Rather, the facts based on the entire context of the *Duterte* case show that, since being elected as the Prosecutor, Mr Khan has acted in compliance with the Court’s legal framework and pursuant to

¹² See the “Registry Transmission of Group A and B Applications for Victim Participation in Pre-Trial Proceedings, with 25 Annexes in confidential *ex parte* version, only available to the Registry”, [No. ICC-01/21-01/25-246](#), 27 August 2025.

¹³ See the Request, *supra* note 2.

¹⁴ See the “Prosecution’s response to the ‘Defence request with respect to Group A participants’”, [No. ICC-01/21-01/25-266](#), 5 September 2025.

¹⁵ See the Request, *supra* note 2, para. 4.

¹⁶ See the Disqualification Request, *supra* note 9, para. 35.

¹⁷ See the Response to the Disqualification Request, *supra* note 11, para. 45.

the duties it imposes upon him to investigate and prosecute crimes within the jurisdiction of the Court. Consequently, the Defence fails to demonstrate exactly how the investigation of the Prosecutor has been [REDACTED].

16. Moreover, on 17 April 2025, in the Order, the Chamber adopted the procedure for admission of victims to participate in the proceedings.¹⁸ In particular, the Chamber instructed the Registry to transmit the Group A and B applications *to the Chamber only*.¹⁹ Yet, after five months since the issuance of the instruction, the Defence is now essentially asking the Chamber to substantially modify the core ruling and practical effects of said Order with regard to the procedure for admission of victims. In this regard, the Chamber adopted the “A-B-C” procedure in light of the practice established in other cases²⁰ and reflected in the Chambers Practice Manual.²¹

17. While the Request appears to ask the Chamber to only notify it [REDACTED], the actual practical effects of such notification will be much more impactful. Indeed, [REDACTED].²²

18. This must also be considered in light of the fact that the Registry [REDACTED] assessed by the Victims Participation and Reparations Section as falling in Group A.²³ Consequently, it will be possible to [REDACTED]. In other words, the information the Defence seeks would potentially lead to full disclosure of the identifying information of the victims belonging to Group A. Thus, granting the relief sought by the Defence will risk the security and well-being of the victims in violation of rule 89(1) of the Rules and article 68(1) of the Statute.

19. In this regard, the Appeals Chamber held :

¹⁸ See the Order, *supra* note 1, para. 55

¹⁹ *Idem*, para. 56.

²⁰ *Idem*, para. 55.

²¹ See the [Chambers Practice Manual](#), Eighth Edition, 2024, para. 96.

²² See [PHL-OTP-0005-0005](#), pp. 37-164.

²³ See the “Registry Transmission of Group A and B Applications for Victim Participation in Pre-Trial Proceedings, *supra* note 12.

“[...] Rule 89(1) of the Rules [...] must be interpreted in such a way that it gives effect both to article 68(1) of [the Statute] – reflecting the duty to ensure the protection of victims – and article 68(3) of the Statute – requiring the Court to ensure meaningful victim participation in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. [...] While rule 89(1) of the Rules provides that copies of victims’ applications should be provided to the parties for them to make observations, it also allows for exceptions. Indeed, nothing in the text or spirit of rule 89(1) of the Rules, article 68 of the Statute or the statutory framework more broadly suggests that the non-transmission of victim applications is per se impermissible. The only limit in this regard is that the procedure put in place by the relevant chamber when exercising its discretion under rule 89 of the Rules (transmission of redacted application forms or their non-transmission) cannot be prejudicial to, or inconsistent with, the rights of a suspect or an accused to a fair trial. [...] In assessing whether any such exception is appropriate in a given case, it is incumbent upon a chamber to strike the right balance among all of the interests at stake: the interest of the Defence in having access to victims’ applications for participation and, if deemed necessary, challenging the admission of victims to participate in the proceedings against the suspect/accused; the safety, physical and psychological well-being, dignity and privacy of the victims; the need to ensure that victim participation is meaningful; as well as the expeditiousness of the proceedings. [...]”²⁴

20. Finally, the Legal Representative recalls that, under rule 89 of the Rules, victims’ applications are not provided for the purpose of “allowing the defence to gather information that may be important for the preparation of its case”.²⁵ Instead, as held by the Appeals Chamber:

“[...] the Statute and the Rules primarily establish for that purpose disclosure obligations on the Prosecutor, which remain unaffected by rule 89(1) of the Rules. [...] [T]he fact that victims’ applications are provided to the defence by the Registry under rule 89(1) of the Rules does not mean that they cannot be the subject of separate disclosure obligations of the Prosecutor once they are in her possession or control [...]. Depending on the circumstances, and in particular if the Prosecutor decides to call the victims in question as witnesses (so-called ‘dual status’ victims), [the Prosecutor] may determine that the applications in question are disclosable under rule 77 of the Rules, as being material to the preparation of the defence”²⁶

²⁴ See the “Judgment on the appeal of Mr Mahamat Said Abdel Kani against the decision of Pre-Trial Chamber II of 16 April 2021 entitled ‘Decision establishing the principles applicable to victims’ applications for participation’” (Appeals Chamber), [No. ICC-01/14-01/21-171 OA2](#), 14 September 2021, para. 1-4.

²⁵ *Idem*, para. 51.

²⁶ *Idem*, paras. 51-52 (footnotes omitted).

21. Indeed, should any victims belonging to Group A testify before the court as witnesses called for the Prosecution, the disclosure regime becomes applicable and the Prosecutor would be obliged to provide the Defence with the disclosable information in his possession, including their applications for participation, in redacted form, if necessary. It follows that, at present, the Defence has no right to receive the information in question that will potentially lead to disclosure of the identities of the victims belonging to Group A since said information is not necessary for the preparation of its case, thus not disclosable under rule 77 of the Rules. Consequently, the Request must be rejected.

V. CONCLUSION

22. For the foregoing reasons, the Legal Representative respectfully requests the Chamber to reject the Request.



Paolina Massidda
Principal Counsel

Dated this 19th day of December 2025

At The Hague, The Netherlands