

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **11 February 2026**

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

**Public Redacted Version of “Defence Request for the Disqualification
of the External Legal Representatives for the Victims”**

Source: Defence for Mr Rodrigo Roa Duterte

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
Duterte Defence Team

☒ 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
Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Defence for Mr Rodrigo Roa Duterte hereby requests the disqualification of Joel Butuyan, Gilbert Andres, and Nicolene Arcaina on the grounds of an impediment to representation and, in the alternative, on the basis of a conflict of interest.
2. The interests of the victims recognised by the Pre-Trial Chamber may adequately be represented by “a counsel from the OPCV”,¹ and no delay will be occasioned in the schedule for the hearing on the confirmation of charges.

II. PROCEDURAL HISTORY

3. In its order on the conduct of confirmation proceedings, the Pre-Trial Chamber invited the parties’ observations on the Registry Report prepared for the purpose of identifying lawyers to act for alleged victims.² The names of the proposed lawyers were redacted, making it totally impossible for the Defence to make any meaningful observations. The Defence, correctly, predicted that Joel Butuyan would express an ardent interest in taking a part in the proceedings. The Defence, furthermore, voiced its objection, *inter alia*, for the following reason:

The Defence will also object to the involvement of another common legal representative who has persistently criticized defence strategy in media interviews, voiced denigratory slurs concerning Counsel, expressed preconceived views as to Mr Duterte’s guilt or derogatory comments on his character. The Court disapproves of satellite litigation and allowing legal representation by such a

¹ Decision on victims’ participation and legal representation, [ICC-01/21-01/25-358](#), 26 January 2026 (“[Decision on Legal Representation of Victims](#)”), para. 31. All references to “Article” and “Rule” in the present submission are to the [Rome Statute](#) and the ICC [Rules of Procedure and Evidence](#) (“RPE”), respectively, unless otherwise indicated. This submission is filed **confidentially** pursuant to Regulation 23bis(1) of the Regulations of the Court as it contains information of the same classification. A public redacted version will be filed forthwith.

² Order on the conduct of confirmation proceedings, [ICC-01/21-01/25-114](#), 17 April 2025, para. 66.

lawyer and his ilk could be perceived by the general public as a reward for inappropriate conduct.³

4. On 26 January 2026, disregarding the aforementioned Defence concern which it felt revealed no “inappropriate conduct” and finding them “eligible”,⁴ the Pre-Trial Chamber appointed Joel Butuyan and Gilbert Andres along with “a counsel from the OPCV” as the Common Legal Representatives for any admitted Victims (“CLRVs”).⁵ The Pre-Trial Chamber also ordered that the CLRVs be given access to “the case record, including all filings, decisions, transcripts and items of evidence disclosed, with the exception of those classified as *ex parte*”.⁶
5. On 29 January 2026, the Defence enquired of the Prosecution as to whether the CLRVs had been provided with access to [REDACTED].⁷ On the following day, the Prosecution confirmed that such access had indeed been provided.⁸
6. Thanks to the interviews with the social media klaxon *cum* human rights activist and self-styled legal assistant to ICC Counsel – Kristina Conti, the Defence was put on notice of the CLRVs’ intent to nominate Nicolene Arcaina as their case manager. Accordingly, Counsel wrote to the CLRVs, seeking confirmation of their team composition.⁹ Joel Butuyan replied as follows:

³ Defence Observations on the “Registry Report on the Common Legal Representation of Victims” (ICC-01/21-01/25-236-Conf), [ICC-01/21-01/25-248](#), 27 August 2025, para. 5 (internal citations omitted).

⁴ See [Decision on Legal Representation of Victims](#).

⁵ [Decision on Legal Representation of Victims](#), p. 15.

⁶ [Decision on Legal Representation of Victims](#), p. 15.

⁷ Email, Defence to Prosecution, “CLRV Access to Certain Confidential Information”, 29 January 2026, 21:44 (“[w]e would like to know whether you understand that this means that the CLRVs now have access to [REDACTED]?”).

⁸ Email, Prosecution to Defence, “Re: CLRV Access to Certain Confidential Information”, 30 January 2026, 14:53.

⁹ Email, Defence to Joel Butuyan and Gilbert Andres, “Composition of the V50 team of legal representatives”, 30 January 2026, 11:40.

We will inform you of the composition of our team once we get the approvals from the Registry.¹⁰

7. On the same day, 30 January 2026, Counsel wrote to the CLRVs as follows:¹¹

Dear Sirs,

You both work for CenterLaw Philippines and have done so throughout the period of the Prosecutor's investigation in the Philippines' Situation.

Kindly inform me:

1. whether either of you or anyone else you have worked with at CenterLaw Philippines has been [REDACTED] - Former President Rodrigo Roa Duterte. Relevant materials would include information emanating from governmental offices and ministries and law enforcement agencies.

If the answer to the above question is in the affirmative, please supply me with the following details:

2. the dates of any contact [REDACTED];
3. the name of CenterLaw personnel [REDACTED] and, if it was not either of you, their contact details;
4. the nature of the information [REDACTED];
5. whether CenterLaw Philippines retains information that [REDACTED] has or could express an interest given its relevance to the charges against Mr Duterte - should any of your staff have been in contact with it.

On a separate note, kindly inform me:

6. whether you have represented, promoted or assisted any individual who may have been [REDACTED] in the case against former President Rodrigo Roa Duterte.
7. If so, kindly detail the nature of such representation, promotion or assistance.

¹⁰ Email, Joel Butuyan to Defence, "Re: Composition of the V50 team of legal representatives", 30 January 2026, 13:58.

¹¹ Email, Defence to Gilbert Andres and Joel Butuyan, "CenterLaw Philippines", 30 January 2026, 10:59.

I would ask for your response to this enquiries 1, 3, 5 and 6 **today**.

I would ask for your response to enquiries 2, 4 and 7, if relevant, as soon as possible.

Regards

8. Almost a week later, having received no response from the CLRVs, the Defence wrote to the Pre-Trial Chamber requesting that it instruct the CLRVs to notify the composition of its team so that the Defence could both ascertain the recipients of its confidential filings¹² and file this request for disqualification, if necessary, in timely fashion. The CLRVs indicated that their team composition was still awaiting finalisation.¹³
9. On 3 February 2026, Joel Butuyan responded to Counsel's mail seeking information on [REDACTED] between him, his associates, and [REDACTED].¹⁴ He stated as follows:

We take note of your request. However, we believe we are not under any obligation to answer.
10. Subsequently, on 6 February 2026, the Pre-Trial Chamber issued an email order rejecting the Defence request for the legal representatives to disclose their proposed team members and to confirm Nicolene Arcaina's appointment.¹⁵
11. Yesterday, 10 February 2026 at 20:58, Joel Butuyan informed herein undersigned Counsel via email that his appointment of Nicolene Arcaina as

¹² Email, Defence to Pre-Trial Chamber I, "Defence's request to be notified of the team members of the Common Legal Representatives of Victims", 4 February 2026, 08:26.

¹³ Email, Gilbert Andres to Pre-Trial Chamber, "Re: Notification to CLR of document ICC-01/21-01/25-363-Conf", 4 February 2026, 16:25.

¹⁴ Email, Joel Butuyan to Defence, "Re: CenterLaw Philippines", 3 February 2026, 18:21.

¹⁵ Email, Pre-Trial Chamber I to the parties and participants, "ICC-01/21-01/25 - Confidential] Decision on the Defence's request to be notified of the team members of the Common Legal Representatives of Victims", 6 February 2026, 09:39 ("[REDACTED]").

case manager had been approved and finalised by the Registry.¹⁶ This morning, Joel Butuyan notified the Pre-Trial Chamber of this appointment.¹⁷

III. SUBMISSIONS

12. Article 7(4) of the ICC Code of Professional Conduct for Counsel (“Code”) states that “Counsel shall supervise the work of his or her assistants [...] to ensure that they comply with this Code”.¹⁸
13. Article 12 of the Code details various impediments to representation [REDACTED].
14. Nicolene Arcaina has a professional relationship with both Joel Butuyan and Gilbert Andres. She was employed, from March 2019 to December 2023, as Fellow and Staff Lawyer at CenterLaw, contemporaneously with and alongside both Joel Butuyan and Gilbert Andres, who have worked for this organisation since, at least, the 2010s.¹⁹ Her subsequent appointment to the external team representing victims suggests a continuity of this professional association and not a one-off working relationship.
15. By virtue of their collaboration with her, both Joel Butuyan and Gilbert Andres must have known, contemporaneously, that Nicolene Arcaina [REDACTED].²⁰ To compound matters, the Prosecution has since confirmed that both Joel Butuyan and Gilbert Andres had been given access to [REDACTED] prior to 30 January 2026, when Counsel wrote his email to them. As such, both Joel Butuyan and Gilbert Andres should have known that Nicolene Arcaina was

¹⁶ Email, Joel Butuyan to Defence, “Re: Composition of the V50 team of legal representatives”, 10 February 2026, 20:58.

¹⁷ Email, Joel Butuyan to Pre-Trial Chamber I, “Re: [ICC-01/21-01/25 - Public] Prosecution’s Request to Add Two Items to its List of Evidence”, 11 February 2026, 10:37.

¹⁸ ICC Code of Professional Conduct for counsel, [Article 7\(4\)](#).

¹⁹ [REDACTED].

²⁰ [REDACTED].

[REDACTED] at the same time that they were processing her appointment to their team.

16. If this were not enough, both Joel Butuyan and Gilbert Andres, thereafter, provided an evasive response to Counsel's email concerning the [REDACTED] with, and their [REDACTED] to, [REDACTED].
17. [REDACTED].
18. [REDACTED].
19. [REDACTED].²¹
20. [REDACTED].
21. Even if the Pre-Trial Chamber should be persuaded that there exists no impediment to representation arising out of the appointment of the three external legal representatives, a conflict of interest arises with respect to Nicolene Arcaina's current role as a victim's case manager and [REDACTED]. These roles are structurally incompatible. The Prosecution and legal representatives for victims operate under distinct mandates and obligations: Whereas the Prosecution is a minister of justice tasked with a truth-seeking function and disclosure duties, victims' counsel are partisan representatives owing duties only to their clients and are not subject to comparable disclosure obligations. The practical effect of [REDACTED] is that [REDACTED] may access and retain potentially exculpatory evidence or information material to the Defence outside the disclosure regime which, as shown above, is indeed the case. This clearly undermines the fairness of the proceedings.²²

²¹ [REDACTED].

²² *Katanga and Ngudjolo*, Judgment on the Appeal of Mr Katanga Against the Decision of Trial Chamber II of 22 January 2010 Entitled "Decision on the Modalities of Victim Participation at Trial", [ICC-01/04-](#)

22. The Court's statutory framework presupposes institutional separation and independence between the Prosecution and CLRVs in order to safeguard the integrity of the proceedings.²³ [REDACTED].²⁴
23. The [REDACTED].
24. The connection extends further still: Joel Butuyan and Gilbert Andres have **likewise** [REDACTED].²⁵ The resulting web [REDACTED] creates an objective appearance of bias incompatible with the integrity of the proceedings.

[01/07-2288](#), 16 July 2010, paras 75 (“[t]he Appeals Chamber also recalls that the drafting history of the Statute supports the notion that the Prosecutor’s disclosure obligations to the accused are linked to the Prosecutor’s role in conducting the investigation, and stem from the Prosecutor’s obligation to investigate incriminating and exonerating circumstances equally under article 54 (1) (a) of the Statute. In contrast, as explained in greater detail in the preceding section relating to the first ground of appeal, pursuant to article 68 (3) of the Statute, the victims’ role in the proceedings is significantly more limited. The Appeals Chamber considers that imposing a general disclosure obligation on the victims to disclose evidence to the accused would disregard the limited role of the victims of presenting their views and concerns where their personal interests are affected. Bearing in mind the differing roles of the victims *vis-à-vis* the parties, the Appeals Chamber finds that it is inappropriate simply to extend the Prosecutor’s statutory obligations to victims participating in the proceedings”); 77 (“[t]he question that arises is whether in applying article 67 (1) of the Statute consistently with internationally recognised human rights, the Trial Chamber must impose a general requirement on victims participating in the proceedings to disclose exculpatory information to the accused. For the reasons provided below, the Appeals Chamber determines that no such requirement need be imposed”); 87 (“[h]aving concluded that there are no statutory obligations on participating victims to disclose all exculpatory information in their possession, and having found that internationally recognised human rights do not support Mr Katanga’s position that such an obligation generally must be imposed on participants in the proceedings, the Appeals Chamber finds that the Trial Chamber did not err in not imposing a general obligation on the Victims to disclose all evidence in their possession, whether incriminating or exculpatory”) (internal footnotes omitted). *See also Al Hassan*, Decision on Defence request for provision of victims’ applications, [ICC-01/12-01/18-1248](#), 12 January 2021, para. 11 (“[t]he Chamber notes that according to the Appeals Chamber, no general obligation must be imposed on victims to disclose to the accused all evidence in their possession, whether incriminating or exculpatory; however, there may be specific instances in which a chamber may require victims to disclose exculpatory evidence in their possession to the accused, such as when a party or participant brings to the attention of the Chamber that such information is available and the Chamber finds that such information is necessary for the determination of the truth”).

²³ *Kony et al.*, Decision on “Prosecutor’s Application to attend 12 February hearing”, [ICC-02/04-01/15-90](#), 9 February 2007, p. 4 (“the Pre-Trial Chamber is entrusted with responsibilities *vis-a-vis* victims which are independent from those vested in the Prosecutor, without prejudice to his duties and powers under the Statute”).

²⁴ [REDACTED].

²⁵ [REDACTED].

25. [REDACTED].

IV. CONCLUSION AND RELIEF REQUESTED

26. The standard for a conflict of interest at the ICC is whether a reasonable and informed observer would apprehend bias; actual prejudice is irrelevant.²⁶ It is, also, a clear impediment to representation for counsel or his associates to [REDACTED].
27. The CLRVs do not appear to have informed the Pre-Trial Chamber of the pertinent facts set out in this filing. Nor have they taken any steps to terminate Nicolene Arcaina's appointment, given that they should have been aware of [REDACTED]; quite the opposite – they have actively promoted it. This goes beyond passive omission.
28. In light of the foregoing, the Defence requests the Pre-Trial Chamber to **ORDER** the Registry to **REVOKE** the appointment of the CLRVs and immediately to suspend their access to the case record pending the Pre-Trial Chamber's determination on the present request.



Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 11th day of February 2026
At The Hague, The Netherlands

²⁶ See e.g. *Bemba et al.*, Decision of the Plenary of Judges on the Defence Applications for the Disqualification of Judge Cuno Tarfusser from the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, filed on 20 June 2014 and notified on 23 June 2014, [ICC-01/05-01/13-511-Anx](#), 20 June 2014, para. 17.