

**Original: English****No. ICC-01/21-01/25****Date: 20 February 2026****PRE-TRIAL CHAMBER I****Before:****Judge Iulia Antoanella Motoc, Presiding  
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 ‘Decision on the “Defence Request for the Disqualification of the External Legal Representatives for the Victims”’, 20 February 2026

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☒ 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

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**Registrar**

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations  
Section

☐ Other

**PRE-TRIAL CHAMBER I** of the International Criminal Court issues this decision on the 11 February 2026 ‘Defence Request for the Disqualification of the External Legal Representatives for the Victims’.<sup>1</sup>

## **I. PROCEDURAL HISTORY**

1. On 17 April 2025, the Chamber issued the ‘Order on the conduct of confirmation proceedings’,<sup>2</sup> *inter alia* instructing the Registry to organise the common legal representation of victims.
2. On 26 January 2026, the Chamber instructed the Registry to appoint Mr Joel Butuyan (‘Mr Butuyan’), Mr Gilbert Andres (‘Mr Andres’), and a counsel of the Office of Public Counsel for Victims (the ‘OPCV’) as the common legal representatives of any admitted victims in the present case (the ‘CLRV’).<sup>3</sup>
3. On 11 February 2026, the CLRV informed the Chamber and the parties that Ms Nicolene Arcaina (‘Ms Arcaina’) had joined their team as a case manager.<sup>4</sup>
4. On the same day, the Defence filed the Request, seeking that the Chamber order the Registry to revoke the appointment of Mr Butuyan and Mr Andres, and immediately suspend their access to the case record pending the Chamber’s determination of the Request.<sup>5</sup>
5. On 16 February 2026, following the Chamber’s order,<sup>6</sup> the Prosecution,<sup>7</sup> as well as Mr Butuyan and Mr Andres,<sup>8</sup> responded to the Request.

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<sup>1</sup> ICC-01/21-01/25-372-Conf (public redacted version notified on the same day, [ICC-01/21-01/25-372-Red](#)) (the ‘Request’).

<sup>2</sup> [ICC-01/21-01/25-114](#).

<sup>3</sup> [Decision on victims’ participation and legal representation](#), ICC-01/21-01/25-358, para. 31. *See also* [Notification pursuant to the “Decision on victims’ participation and legal representation” \(ICC-01/21-01/25-358, 26 January 2026\)](#), 4 February 2026, ICC-01/21-01/25-365, with confidential annexes I-IV; *see also* [Second decision on victims’ participation and legal representation](#), 13 February 2026, ICC-01/21-01/25-375.

<sup>4</sup> Email from Mr Butuyan, 11 February 2026, at 10:37.

<sup>5</sup> [Request](#), para. 28.

<sup>6</sup> Email from the Chamber, [ICC-01/21-01/25 - Confidential] Order for observations on Defence request for disqualification of legal representatives of victims, 12 February 2026, at 10:35.

<sup>7</sup> Prosecution’s Response to the Defence Request for the Disqualification of the External Legal Representatives for the Victims, ICC-01/21-01/25-380-Conf (public redacted version notified on the same day, [ICC-01/21-01/25-380-Red](#)) (the ‘Prosecution’s Response’).

<sup>8</sup> Mr Joel Butuyan and Mr Gilbert Andres’ Observations on the Defence “Request for the Disqualification of the External Legal Representatives for the Victims”, ICC-01/21-01/25-381-Conf (public redacted version notified on 20 February 2026, ICC-01/21-01/25-381-Red) (‘Mr Butuyan and Mr Andres’s Response’).

## II. SUBMISSIONS

### A. Defence

6. The Defence submits the Request ‘on the grounds of an impediment to representation and, in the alternative, on the basis of a conflict of interest’, by referring to articles 7(4) and 12 of the Code of Professional Conduct for counsel (the ‘Code’).

7. In relation to the impediment to representation, the Defence alleges that Ms Arcaina [REDACTED],<sup>9</sup> and was [REDACTED], and that ‘by virtue of their collaboration with her, both Joel Butuyan and Gilbert Andres must have known’ that fact.<sup>10</sup> Based on these allegations, the Defence avers that [REDACTED], and that this would constitute an impediment to representation.<sup>11</sup>

8. In the alternative, the Defence avers that ‘a conflict of interest’ arises from Ms Arcaina’s alleged ‘current role as a victim’s case manager and [REDACTED]’, which, according to the Defence, are ‘structurally incompatible’.<sup>12</sup> The Defence *inter alia* submits that Ms Arcaina [REDACTED].<sup>13</sup> Based on these allegations, the Defence avers that [REDACTED].<sup>14</sup>

9. On the basis of the above allegations against Ms Arcaina, the Defence avers *inter alia* that Mr Butuyan and Mr Andres ‘should have been aware of [REDACTED]’, but instead of informing the Chamber or taking ‘any steps to terminate Nicolene Arcaina’s appointment’, ‘they have actively promoted it’.<sup>15</sup>

### B. Prosecution

10. The Prosecution ‘takes no position’ on the Request, while it ‘confirms that it will not rely on [REDACTED] for the confirmation of charges hearing’ and that it ‘also does not intend to rely on [REDACTED] at trial’.<sup>16</sup>

### C. Mr Butuyan and Mr Andres

11. Mr Butuyan and Mr Andres opposed the Request, submitting that (i) there is no impediment to representation under article 12 of the Code; and (ii) there is no conflict of interest.

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<sup>9</sup> [Request](#), para. 15.

<sup>10</sup> [Request](#), para. 15.

<sup>11</sup> [Request](#), para. 20.

<sup>12</sup> [Request](#), para. 21.

<sup>13</sup> [Request](#), para. 23.

<sup>14</sup> [Request](#), para. 25.

<sup>15</sup> [Request](#), para. 27.

<sup>16</sup> [Prosecution’s Response](#), paras 1-2.

12. With regard to the impediment to representation, Mr Butuyan and Mr Andres submit *inter alia* that (i) '[t]he Code does not apply to Ms. Arcaina's role as case manager, as such role does not fall under the provisions of the Code';<sup>17</sup> and (ii) 'there is no [REDACTED]'.<sup>18</sup>

13. In relation to the conflict of interest, Mr Butuyan and Mr Andres argue *inter alia* that 'Ms Arcaina's [REDACTED] and as Case Manager of the external CLRV team is not *prima facie* incompatible nor prohibited by the Statute, Rules, Court Regulations, or the Code'.<sup>19</sup>

### III. DETERMINATION

14. At the outset, the Chamber notes that it is incumbent on the Defence to properly and clearly present and articulate its arguments, and that it is not the Chamber's role to render such arguments understandable by piecing together multiple parts of the Defence's submissions or to surmise, approximate or identify the legal basis for any contention or relief sought. In this regard, the Chamber notes that the Request refers to articles 7(4) and 12 of the Code without clearly linking them to any arguments. Moreover, the Request argues the existence of a conflict of interest without pointing to any clear legal basis. Finally, the relief sought by the Defence is affected by incoherences: while in the introduction the Defence requests 'the disqualification of Joel Butuyan, Gilbert Andres, and Nicolene Arcaina', indicating that '[t]he interests of the victims [...] may adequately be represented by' counsel from the OPCV,<sup>20</sup> in the conclusion the Defence requests the Chamber to revoke 'the appointment of the *CLRVS*',<sup>21</sup> defined earlier in the Request as 'Joel Butuyan and Gilbert Andres along with "a counsel from the OPCV" as the Common Legal Representatives for any admitted Victims'.<sup>22</sup> The Chamber, therefore, urges the Defence to place substance over stylistic and theatrical formulation.<sup>23</sup> Nevertheless, considering that the Defence raises issues relating to the fairness of the proceedings, the Chamber will address the merits of the Request.

15. The Chamber recalls the Court's legal framework regarding the responsibilities counsel are bound to honour by referring to the provisions of the Code that appear relevant to the Request. Article 12 of the Code, relating to impediments to representation of counsel, states:

1. Counsel shall not represent a client in a case:

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<sup>17</sup> Mr Butuyan and Mr Andres's Response, paras 11-25.

<sup>18</sup> Mr Butuyan and Mr Andres's Response, paras 44-46.

<sup>19</sup> Mr Butuyan and Mr Andres's Response, para. 47.

<sup>20</sup> [Request](#), paras 1-2.

<sup>21</sup> [Request](#), para. 28 (emphasis added).

<sup>22</sup> [Request](#), para. 4.

<sup>23</sup> See e.g. [Request](#), para. 6.

- (a) If the case is the same as or substantially related to another case in which counsel or his or her associates represents or formerly represented another client and the interests of the client are incompatible with the interests of the former client, unless the client and the former client consent after consultation; or
    - (b) In which counsel was involved or was privy to confidential information as a staff member of the Court relating to the case in which counsel seeks to appear. The lifting of this impediment may, however, at counsel's request, be ordered by the Court if deemed justified in the interests of justice. Counsel shall still be bound by the duties of confidentiality stemming from his or her former position as a staff member of the Court.
  - 2. In the case of paragraph 1 (a) of this article, where consent has been obtained after consultation, counsel shall inform the Chamber of the Court seized with the situation or case of the conflict and the consent obtained. Such notice shall be provided in a manner consistent with counsel's duties of confidentiality pursuant to article 8 of this Code and rule 73, sub-rule 1 of the Rules of Procedure and Evidence.
  - 3. Counsel shall not act in proceedings in which there is a substantial probability that counsel or an associate of counsel will be called to appear as a witness unless:
    - (a) The testimony relates to an uncontested issue; or
    - (b) The testimony relates to the nature and value of legal services rendered in the case.
  - 4. This article is without prejudice to article 16 of this Code.
16. Article 16 of the Code relates to conflicts of interest, indicating that:
- 1. Counsel shall exercise all care to ensure that no conflict of interest arises. Counsel shall put the client's interests before counsel's own interests or those of any other person, organization or State, having due regard to the provisions of the Statute, the Rules of Procedure and Evidence, and this Code.
  - 2. Where counsel has been retained or appointed as a common legal representative for victims or particular groups of victims, he or she shall advise his or her clients at the outset of the nature of the representation and the potential conflicting interests within the group. Counsel shall exercise all care to ensure a fair representation of the different yet consistent positions of his or her clients.
  - 3. Where a conflict of interest arises, counsel shall at once inform all potentially affected clients of the existence of the conflict and either:
    - (a) Withdraw from the representation of one or more clients with the prior consent of the Chamber; or
    - (b) Seek the full and informed consent in writing of all potentially affected clients to continue representation.
17. The Chamber further recalls that, pursuant to its article 1, the Code 'shall apply to defence counsel, counsel acting for States, amici curiae and counsel or legal representatives for victims and witnesses practising at the International Criminal Court, hereinafter referred to as "counsel"'. Article 2 of the Code further clarifies that the term "associate" refers to lawyers who practise in the same law firm as counsel'.
18. The Court's jurisprudence has clarified that those who 'will not represent [a person] in court and make oral submissions before the Chamber on his behalf, unless expressly authorized

to do so’, ‘may [...] not be considered as “practising at the [...] Court” within the meaning of [a]rticle 1 of the Code’, and will therefore be excluded from the application of article 12 of the Code.<sup>24</sup> Furthermore, in light of the Court’s jurisprudence, and unlike article 12 of the Code, article 16(1) of the Code provides for a broader application,<sup>25</sup> setting out counsel’s responsibility to ensure that there is no conflict of interest, including any conflict of interest concerning a member of their team.<sup>26</sup>

19. The Chamber notes that, in the present case, Ms Arcaina has been appointed as a case manager to assist counsel representing victims. As recalled above, the Court’s legal framework clearly distinguishes ‘counsel’ and their assistants, including as to their qualifications and responsibilities.<sup>27</sup>

20. Pursuant to its clear wording, article 12 of the Code applies specifically to ‘counsel’ or, with regard to its third paragraph, ‘associate of counsel’, and not to other members of counsel’s team who do not represent a person before the Court. The Defence’s arguments misconceive such distinctions and attempt to raise an issue of impediment to representation under article 12 of the Code against a team member of the CLRV who does not act as counsel within the meaning of that article. In addition, the Chamber considers that the Defence does not substantiate how Mr Butuyan and Mr Andres’s awareness of Ms Arcaina’s [REDACTED], if at all, would represent an impediment to their representation under [REDACTED], as it fails to argue how Ms Arcaina, as case manager of the CLRV team, could fall within the category of [REDACTED] as defined under article 2(2) of the Code.

21. Accordingly, the Defence has failed to establish the existence of any impediment to representation pursuant to article 12 of the Code with regard to Mr Butuyan and Mr Andres.

22. In relation to the Defence’s alternative argument regarding the existence of a conflict of interest, the Chamber notes that article 16 of the Code specifically addresses this issue, setting out the responsibilities of counsel to ensure that no conflict arises between his or her clients’ interests and those of counsel or any other person.

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<sup>24</sup> See Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on the “Prosecution’s Request to Invalidate the Appointment of Legal Consultant to the Defence Team”](#), ICC-01/05-01/08-769 (the ‘Bemba Trial Chamber Decision’), paras 35-37.

<sup>25</sup> See Appeals Chamber, *The Prosecutor v. Goeffrey Eli Mokom Gawaka*, [Judgment on the appeal of Maxime Jeoffroy Eli Mokom Gawaka against the decision of Pre-Trial Chamber II of 19 August 2022 entitled “Decision on legal representation further to the Appeals Chamber’s judgment of 19 July 2022”](#), ICC-01/14-01/22-124-Red, para. 51.

<sup>26</sup> See [Bemba Trial Chamber Decision](#), para. 38.

<sup>27</sup> See also, e.g., Assembly of States Parties, [Draft Legal aid policy of the International Criminal Court](#), 22 November 2023, ICC-ASP/22/9, para. 4, page. 43.

23. The Chamber notes that the Defence's arguments in this regard are limited to submitting that Ms Arcaina's 'current role as a victim's case manager and [REDACTED]' are 'structurally incompatible', and to recalling that '[t]he Prosecution and legal representatives for victims operate under distinct mandates and obligations'. First, the difference in roles, mandates or obligations of these two entities does not *per se* indicate the existence of a conflict of interest. Second, the Defence fails to explain why and how Ms Arcaina's [REDACTED] could negatively impact Mr Butuyan and Mr Andres's obligations to prioritise the interests of the victims they represent, and to ensure a fair representation of the potential different positions of such victims, within the meaning of article 16 of the Code.

24. In any event, the Chamber further notes that, as the Defence correctly admits, '[REDACTED]',<sup>28</sup> as there is no indication that the Prosecution will [REDACTED] in pre-trial and trial proceedings.<sup>29</sup> In addition, in light of the limited nature and purpose of pre-trial proceedings and of the confirmation of charges hearing, which is yet to take place, the issues raised by the Defence in relation to the possibility and impact of Ms Arcaina's [REDACTED] are all potential matters that shall be determined by the Trial Chamber, if and when the present case proceeds to trial. The Defence's arguments are therefore speculative and hypothetical, as such unsuitable to characterise an alleged conflict of interest.

25. In light of the above, the Chamber finds that the Defence's alternative arguments do not demonstrate the existence of a conflict of interest regarding Mr Butuyan and Mr Andres within the meaning of article 16 of the Code.

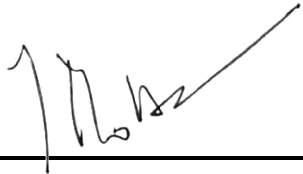
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<sup>28</sup> [Request](#), paras 20-21.

<sup>29</sup> [Prosecution's Response](#), para. 2.

**FOR THESE REASONS, THE CHAMBER HEREBY  
REJECTS** the Request.

Done in English. A French translation will follow. The English version remains authoritative.



**Judge Iulia Antoanella Motoc, Presiding**



**Judge Reine Adélaïde Sophie Alapini-  
Gansou**



**Judge María del Socorro Flores Liera**

Dated this Friday, 20 February 2026

At The Hague, The Netherlands