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Date: **17 November 2026**

TRIAL CHAMBER III

Before: **Judge Joanna Korner, Presiding Judge**
Judge Keebong Paek
Judge Nicolas Guillou

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

Public
with Confidential *Ex Parte* Annex A only available to the CLRV and the Registry

Public Redacted version of "Victims' Response to the First Registry Report (ICC-01/21-01/25-535-Conf-Red)
and Request for Clarification or, in the Alternative,
for limited Reconsideration of the 9 October 2026 Decision"
(ICC-01/21-01/25-547-Conf dated 9 November 2026)

Source: **Common Legal Representatives of the Victims**

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I. INTRODUCTION

1. The Common Legal Representatives of Victims (the "CLRV") hereby submit their observations on the "First Registry Report on Group A and C Applications for Victim Participation in Trial Proceedings" (the "Registry Report").[1] The CLRV oppose the Registry's proposed restrictions of the victims' participation parameters (the "participation framework") following the Decision on the Defence's motions on the charges of 9 October 2026 (the "9 October Decision"). That Decision neither revisited the participation framework judicially established by Pre-Trial Chamber I (the "Pre-Trial Chamber") and subsequently maintained by Trial Chamber III (the "Chamber"), nor directed the reassessment of existing participation authorisations. The CLRV therefore request clarification that its determination concerning additional incidents does not narrow that framework for participating victims or future applicants. Alternatively, insofar as the Decision requires such restrictions, they request reconsideration of its temporal interpretation for failing to reconcile the narrower count-specific periods with the broader participation framework. The CLRV also provide observations on the discrete issues raised in the Registry Report concerning disappearances, indirect victims who witnessed the commission of crimes, and children born after the crimes.

2. On the participatory limitations, Victims voiced profound sadness and anxiety at the prospect of losing participation status recognised only months earlier. Among those potentially affected are families whose relatives were killed during [REDACTED], just [REDACTED] days after the endpoint which may now apply to Count 3. Victim a/50113/25 described the prospect of exclusion as painful, while victim a/50019/25, whose 15-year-old child was killed, appealed: "*May there be justice for the children who were killed*". These concerns are shared by Victims whose participation remains unaffected. One explained that it would be "*really devastated*", because "*this is our only hope for justice*". Another emphasised their common loss: "*We are talking about lives, about lives lost. We all lost family members. Will that be disregarded?*" Their views convey the importance of participation both as an avenue to justice and as recognition of their loss and dignity.

[1] See the "Confidential redacted version of 'First Registry Report on Group A and C Applications for Victim Participation in Trial Proceedings'", No. ICC-01/21-01/25-535-Conf-Red, 29 October 2026 (the "Registry Report"). A public redacted version No. ICC-01/21-01/25-535-Red was filed on the same day.

II. PROCEDURAL BACKGROUND

3. On 26 January 2026, the Pre-Trial Chamber issued the "Decision on victims' participation and legal representation", instructing the Registry to appoint Mr Joel Butuyan, Mr Gilbert Andres, and a counsel from the OPCV, as the common legal representatives for admitted victims.[2]

4. On 13 February 2026, the Pre-Trial Chamber issued the Second decision on victims' participation and legal representation.[3]

5. On 23 April 2026, the Pre-Trial Chamber issued the "Decision on the confirmation of charges against Mr Rodrigo Roa Duterte" (the "Confirmation Decision"),[4] confirming all the charges and committing Mr Duterte to trial.

6. On 27 May 2026, during the first status conference, the Chamber authorized victims who participated in the pre-trial proceedings to continue participating at the trial stage, approved the use of the A-B-C Approach for the admission of future victims, and permitted applications for participation to be submitted until the close of the Prosecution's case.[5]

7. On 31 August 2026, the Prosecution gave notice by email of the addition of eight new incidents which were included in its Trial Brief filed on 4 September 2026 (the "Prosecution's Trial Brief").[6] On the same date, the Defence filed a motion pursuant to rule 134(1) of the Rules on the form of the charges (the "First Motion").[7]

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[2] See the "Decision on victims' participation and legal representation" (Pre-Trial Chamber I), No. ICC-01/21-01/25-358, 26 January 2026 (the "Participation Decision").
[3] See the Second decision on victims' participation and legal representation (Pre-Trial Chamber I), No. ICC-01/21-01/25-375, 13 February 2026 (the "Second Participation Decision").
[4] See the "Decision on the confirmation of charges against Mr Rodrigo Roa Duterte" (Pre-Trial Chamber I), No. ICC-01/21-01/25-417-Conf, 23 April 2026. A public redacted version No. ICC-01/21-01/25-417-Red was filed the same day (the "Confirmation Decision").
[5] The Chamber also established 31 August 2026 as the deadline for the Prosecution to add any new incidents in accordance with the Confirmation Decision. See the Transcript of the hearing held on 27 May 2026, No. ICC-01/21-01/25-T-009-CONF-ENG, p. 44 to p. 47.
[6] See the "Prosecution's Trial Brief", No. ICC 01/21-01/25-490-Conf, 4 September 2026. A public redacted version No. ICC-01/21-01/25-490 Red, was filed on the same date, paras. 245-261 (Incidents 50-54), paras. 234-237 (Incident 55) and paras. 161-164 (Incident 56). The "Prosecution's Updated Trial Brief", No. ICC 01/21-01/25-522-Conf was filed on 16 October 2026.
[7] See the "Defence Rule 134(1) Motion on the Form of the Charges", No. ICC-01/21-01/25-487, 31 August 2026. On 10 September 2026, the Prosecution and CLRVs filed responses to the Defence's First Motion. See the "Prosecution's Response to the 'Defence Rule 134(1) Motion on the Form of the Charges'", No. ICC-01/21-01/25-499, 10 September 2026; and the "Victims' Response to the Defence Rule 134(1) Motion on the Form of the Charges (ICC 01/21-01/25-487)", No. ICC-01/21-01/25-498, 10 September 2026.

8. On 11 September 2026, the Defence filed a second motion requesting a judicial determination on the Prosecution's eight additional incidents (the "Second Motion").[8]

9. On 4 October 2026, the CLRV filed the "Victims' Trial Brief".[9]

10. On 9 October 2026, the Chamber issued the 9 October Decision.[10]

11. On 29 October 2026, the Registry filed its Report.[11]

III. CLASSIFICATION

12. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, the present submission is classified as confidential, because it refers to the content of documents and information bearing the same classification. A public redacted version will be filed in due course.

IV. OBSERVATIONS ON THE SCOPE OF THE CASE AND OF THE VICTIMS' PARTICIPATORY FRAMEWORK

13. The interpretation proposed by the Registry must first be considered in light of the Pre-Trial Chamber's own determination of the scope of victims' participation.[12] Said Chamber admitted applicants reporting murders or attempted murders beyond the incidents enumerated by the Prosecution, provided that they occurred in or around Davao City during the *mayoral period* - from at least 1 November 2011 to 30 June 2016 - or throughout the Philippines during the *presidential period* - from at least 30 June 2016 to 16 March 2019, expressly finding that the relevant categories fell within Counts 1-3.[13] Conversely, it excluded Category 2 applications on the basis that the alleged harm fell outside the territorial scope of Count 1 and of the temporal scope of Counts 2 and 3.[14] Read together, these determinations demonstrate that the Pre-Trial

[8] See the "Defence Motion Requesting a Judicial Determination on the Prosecution's Eight Additional Incidents", No. ICC-01/21-01/25-502-Conf, 11 September 2026. A public redacted version No. ICC-01/21 01/25-502-Red was filed on 15 September 2026. On 14 September 2026, the Prosecution submitted its response to the Second Motion, see the Corrected version of the "Prosecution Response to 'Defence Motion Requesting a Judicial Determination on the Prosecution's Eight Additional Incidents'", No. ICC-01/21-01/25-504-Conf-Corr, 14 September 2026. A public redacted version No. ICC-01/21-01/25-504-Corr-Red was filed on 22 September 2026.
[9] See the "Victims' Trial Brief", No. ICC-01/21-01/25-515-Conf, 4 October 2026. A public redacted version No. ICC-01/21-01/25-515-Red was filed on 13 October 2026.
[10] See the "Decision on the Defence's motions on the charges" (Trial Chamber III), No. ICC-01/21 01/25-519-Conf, 9 October 2026. A public redacted version No. ICC-01/21-01/25-519-Red was issued on the same date.
[11] See the "Confidential redacted version of 'First Registry Report on Group A and C Applications for Victim Participation in Trial Proceedings'", No. ICC-01/21-01/25-535-Conf-Red, 29 October 2026.
[12] See the Participation Decision, *supra* note 2, paras. 19-23.
[13] *Ibid.*, paras. 19 and 22.
[14] *Ibid.*, para. 23.

Chamber applied broader temporal and geographical parameters when assessing eligibility for participation, while requiring the requisite nexus between the alleged harm and the criminality encompassed by the case.[15] Those determinations supports the inference that the Pre-Trial Chamber understood the charges to encompass incidents beyond those specifically enumerated by the Prosecution, provided that they fell within those broader parameters and satisfied the remaining material requirements, including adequate notice to the Defence.[16] The broader participation framework previously applied by the Registry therefore reflected a judicial determination.[17]

14. This understanding of the broader parameters of the case is further supported by the subsequent Confirmation Decision, both in its operative formulation of the charges and in its reasoning concerning the illustrative nature of the incidents.[18] The Confirmation Decision expressly defines 1 November 2011 to 16 March 2019 as the "*charged period*", encompassing the *mayoral period* from 1 November 2011 to 30 June 2016 and the *presidential period* from 30 June 2016 to 16 March 2019.[19] As this definition forms part of the operative text confirming the charges, it must be given effect in determining their temporal scope.[20] This interpretation is reinforced by the Pre-Trial Chamber's reasoning on the scope of the charges, which expressly refers to the broader temporal and geographical parameters set out in paragraph 23 when explaining why the charged criminality is presented through illustrative incidents.[21] In particular, the Pre-Trial Chamber observed that an exhaustive enumeration of incidents and victims would either render the charges unmanageably or capture only a small part of the alleged criminal conduct and victimisation.[22]

15. The confirmed allegations concerning the common plan and the contextual elements of crimes against humanity likewise encompass the entire charged period.[23] In particular, the operative part places the widespread and systematic attack between at least 1 November 2011 and 16 March 2019, describes its expansion from Davao City to the Philippines as a whole, and

[15] The Chamber applied identifiable geographical and temporal boundaries: incidents outside the area in or around Davao City fell outside the participation framework during the mayoral period, whereas incidents throughout the Philippines could qualify during the presidential period, extending from 30 June 2016 to 16 March 2019. See also, the Participation Decision, *supra* note 2, para. 19(i)-(iii) and paras. 22-23; and the Confirmation Decision, *supra* note 4, operative part, para. 1, p 41.
[16] See the Participation Decision, *supra* note 2, paras. 21-22; and the Confirmation Decision, *supra* note 4, paras. 21-24.
[17] See the Participation Decision, *supra* note 2, paras. 19-23; and the Second Participation Decision, paras. 3-5.
[18] See the Confirmation Decision, *supra* note 4, paras. 23-24 and operative part, para. 1, p 41.
[19] *Ibid.*, operative part, para. 1, p 41.
[20] *Ibid.*, operative part, introductory formulation and para. 1, p 41.
[21] *Ibid.*, para. 23.
[22] *Ibid*.
[23] *Ibid.*, operative part, paras. 3 and 16-22, pp. 41, 44-45.

identifies thousands of killings committed throughout that period.[24] While the temporal extent of the attack does not, in itself, establish that every crime committed during said period falls within the charges, the confirmed allegations must be read together with the express definition of the charged period and the reasoning accepting the use of illustrative, rather than exhaustive, incidents.[25] Considered together these elements support the CLRV's submission that the charges encompass criminal conduct within the broader temporal and geographical parameters established by the Pre-Trial Chamber. This reading is also consistent with the parameters governing victims' participation, as judicially determined by the Pre-Trial Chamber and subsequently applied by the Registry in assessing further applications.[26]

16. The Defence was expressly placed on notice that the incidents and victims enumerated in the charging documents did not constitute an exhaustive account of the criminality alleged against Mr Duterte.[27] The Pre-Trial Chamber accepted that further incidents or victims could be identified without recourse to article 61(9) of the Statute, provided that they fell within the temporal, geographical and other material factual parameters of the confirmed charges and the Defence received appropriate notice.[28] Those parameters must therefore be ascertained by reference to the Confirmation Decision as a whole, including its express definition of the charged period and its reasoning concerning the breadth of the alleged criminality.[29] Although the individual counts specify narrower periods, those periods cannot be read in isolation or treated as conclusively displacing the broader framework.[30] Such an interpretation would fail to reconcile the different elements of the Confirmation Decision, as well as the Pre-Trial Chamber's express application of that framework when determining the scope of victims' participation.

17. The Registry's interpretation also fails to account for the significance of the successive judicial decisions authorising victims' participation.[31] In its Second Participation Decision, the Pre-Trial Chamber expressly recorded that the Registry had assessed further applications in accordance with its earlier determination and itself authorised the additional applicants to

[24] *Ibid.*, operative part, paras. 16-20, pp. 44-45.
[25] *Ibid.*, paras. 18-24; operative part, paras. 1 and 16-24.
[26] See the Participation Decision, *supra* note 2, paras. 19-23; and the Second Participation Decision, *supra* note 3, paras. 3-5.
[27] See the Confirmation Decision, *supra* note 4, paras. 14 and 18-24; and the 9 October Decision, *supra* note 10, paras. 39-41.
[28] See the Confirmation Decision, *supra* note 4, paras. 21-24.
[29] *Ibid.*, paras. 20–24; operative part, paras. 1, 3 and 16-24.
[30] *Ibid.*, para. 23 and operative part, pp 41, 45-49. See also, the Participation Decision, *supra* note 2, paras. 19-23.
[31] See the Registry Report, *supra* note 11, paras. 17-18. See also, the Participation Decision, *supra* note 2, para. 22; and the Second Participation Decision, *supra* note 3, para. 5.

participate.[32] Following confirmation of the charges, during the status conference of 27 May 2026, the Trial Chamber authorised victims admitted at the pre-trial stage to continue participating at trial.[33] The proposed reassessment of at least 13 applications, [REDACTED], therefore concerns authorisations already granted by the Pre-Trial Chamber and subsequently affirmed by the Trial Chamber.[34] Importantly, the 9 October Decision did not address the continued participation of those victims, nor did it expressly vary or revoke the Trial Chamber's earlier authorisation.[35]

18. Accordingly, insofar as the Registry's approach is premised on an interpretation that confines the case to the periods associated with the selected illustrative incidents, the CLRVs respectfully invite the Chamber to not adopt that interpretation in light of the Confirmation Decision as a whole and the prior determinations on victims' participation.[36] This approach would give effect to the framework judicially established, consistently with the Trial Chamber's recognition that the Confirmation Decision remains the operative document for trial and that it does not exercise appellate jurisdiction over the Pre-Trial Chamber.[37]

V. REQUEST FOR CLARIFICATION

19. The CLRV request the Chamber to clarify that its determination concerning additional incidents does not narrow the participatory framework for admitted victims and future applicants. There is in fact a distinction between determining the eligibility for victims' participation and the inclusion of additional incidents as charged conduct for the purposes of article 74(2) of the Statute. The former requires a *prima facie* assessment of whether the applicant has suffered personal harm linked to the temporal, geographical and material scope of the case. The latter concerns the conduct on which the Prosecution seeks to establish the Accused's criminal responsibility and therefore engages the requirements of sufficiently detailed notice and adequate time for the Defence to prepare.[38] Authorising a victim to participate does not thereby add the incident described in the application to the Prosecution's case, establish its occurrence, or make it an additional factual basis for conviction. Accordingly, the requirements governing the introduction of additional incidents should not automatically be

[32] See the Second Participation Decision, *supra* note 3, paras. 3-5.
[33] See the Registry Report, *supra* note 11, para. 7(v), citing Transcript of the hearing held on 27 May 2026, No. ICC-01/21-01/25-T-009-Red-ENG, p 44, lines 21-22.
[34] *Ibid.*, paras. 7(v) and 17–18.
[35] See the 9 October Decision, *supra* note 10, paras. 38-52 and disposition.
[36] See the Registry Report, *supra* note 11, paras. 15-18; Confirmation Decision, paras. 20-24 and operative part, paras. 1, 3 and 16-23; and the Participation Decision, *supra* note 2, paras. 19-23.
[37] See the 9 October Decision, *supra* note 10, paras. 28-32.
[38] See the Participation Decision, *supra* note 2, para. 21; and the 9 October Decision, *supra* note 10, paras. 33-38 and 43-46.

transposed to the assessment of applications arising from the criminality falling within the broader judicially established participation framework.[39]

20. On this interpretation, both previously admitted victims and future applicants would continue to be assessed under the participation framework, subject to the requisite connection between their personal harm and the criminality encompassed by the case.[40] This would allow the Chamber to maintain its determination concerning Incident 57 while distinguishing that determination from the eligibility of individuals harmed by incidents which the Prosecution has not selected for presentation as charged conduct.[41] The consequences of the Registry's proposed approach must therefore be considered by reference to each ground of exclusion, beginning with the application of temporal limits to victim applications. The proposed exclusion of a participating victim reporting harm arising from a murder [REDACTED] illustrates the practical consequences of extending the Chamber's interpretation beyond the additional incident before it.[42] Under the Registry's approach, that application would fall outside Count 3 because the murder occurred just four days after the end of September 2018, notwithstanding that it occurred within the broader *presidential charged period* as applied for participation purposes. The question is therefore whether the count-specific temporal interpretation adopted in relation to Incident 57 also determines eligibility under the established participation framework. The 9 October Decision did not expressly address or resolve that question.

21. Moreover, the Confirmation Decision's evidentiary analysis describes the Count 3 incidents as occurring between around July 2016 and "*around September 2018*", whereas the final formulation refers to September 2018 without retaining the qualification "*around*".[43] That difference further underscores the need for express clarification before an incident occurring shortly thereafter is assessed as necessarily falling outside the participation framework.[44] The Registry's request for guidance concerning incidents in June 2016 similarly illustrates the need to clarify the relationship between the count-specific wording and the broader presidential period.[45] These questions should therefore be resolved expressly in the context of victims'

[39] See the Participation Decision, *supra* note 2, paras. 19-22. See also, the Confirmation Decision, *supra* note 4, paras. 18-24; and the 9 October Decision, *supra* note 10, paras. 38-46.
[40] See the Participation Decision, *supra* note 2, paras. 21-22; and the Registry Report, *supra* note 11, para. 19.
[41] See the 9 October Decision, *supra* note 10, paras. 48-52; and the Confirmation Decision, *supra* note 4, paras. 18-24.
[42] See the Registry Report, *supra* note 11, para. 17. The CLRV received an email communication with the preliminary assessment following the 9 October decision, see email received on 15 October 2026, at 17:16, see Annex A to this filing.
[43] See the Confirmation Decision, *supra* note 4, para. 71 and operative part, p. 49.
[44] *Ibid.*, para. 71; and the Registry Report, *supra* note 11, paras. 16(vi)-18.
[45] See the Registry Report, *supra* note 11, paras. 30-32; and the Confirmation Decision, *supra* note 4, operative part, para. 1 and p. 49.

participation, rather than by automatically treating affected applications as falling outside the case.[46] A separate issue arises in relation to applicants reporting attempted-murder whose exclusion is also contemplated by the Registry.[47] Although Counts 1 and 2 expressly refer to murder, whereas Count 3 expressly includes attempted murder, the Pre-Trial Chamber's determination on victims' participation encompassed applicants reporting both completed and attempted killings within the relevant geographical and temporal categories.[48] The significance of that judicial determination cannot be addressed solely by reference to the Prosecution's selection of completed killings as illustrative incidents under Counts 1 and 2.[49] The eligibility of victims of attempted murder therefore requires separate and express consideration under the established participation framework, in respect of both existing participants and future applicants, rather than being treated as a categorical consequence of the ruling concerning Incident 57.[50]

22. The proposed geographical restriction to Davao City encounters an additional difficulty. The operative part of the Confirmation Decision expressly describes Count 1 as concerning murders "*in or around Davao City*".[51] The Pre-Trial Chamber assessment of the evidence likewise encompassed killings in or around Davao City and retained Incident 2, which refers to victims taken to and killed in [REDACTED].[52] The reference to Davao City in the final formulation of Count 1 must therefore be read together with those findings and the geographical framework applied in the Participation Decision.[53] The Chamber's interpretation of the temporal qualification "*around*" in relation to Incident 57 provides no basis for disregarding the geographical significance of the same wording elsewhere in the Confirmation Decision.[54] Accordingly, the proposed exclusion of applicants reporting murders committed around Davao City is not supported by a reading of the confirmed charges as a whole and should not be applied to either existing participants or future applicants.[55]

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[46] See the Registry Report, *supra* note 11, paras. 16, 18 and 30-32.
[47] *Ibid.*, para. 16(ii) and (v). See also, the 9 October Decision, paras. 45-52.
[48] See the Confirmation Decision, *supra* note 4, operative part, p. 49; and the Participation Decision, paras. 19 and 22.
[49] See the Participation Decision, *supra* note 2, paras. 21-22; and the Confirmation Decision, *supra* note 4, paras. 18-24.
[50] See the Registry Report, *supra* note 11, para. 16(ii) and (v); and the 9 October Decision, paras. 48-52 and disposition.
[51] See the Confirmation Decision, *supra* note 4, operative part, and para. 24, p. 45.
[52] *Ibid.*, para. 69; operative part, para. 26, p. 46.
[53] See the Confirmation Decision, *supra* note 4, operative part, paras. 24 and 26, pp 45-46, and p 49; and the Participation Decision, *supra* note 2, paras. 19 and 22.
[54] See the 9 October Decision, *supra* note 10, paras. 49-52; and the Confirmation Decision, *supra* note 4, operative part, para. 24.
[55] See the Registry Report, *supra* note 11, para. 16(iii); and the Confirmation Decision, *supra* note 4, operative part, para. 24.

23. For these reasons, the CLRV respectfully request that the Chamber decline to endorse the approach proposed in paragraphs 16-18 of the Registry Report and direct that victim applications continue to be assessed in accordance with the participatory framework judicially established by the Pre-Trial Chamber.[56] To the extent necessary, the Chamber should clarify that its determination concerning additional incidents does not automatically narrow the framework governing existing participants and future applicants or, in the alternative, reconsider the temporal interpretation underlying the Registry proposed reassessment.[57] Victims previously admitted to participate should therefore retain their status, while future applicants whose circumstances fall within the same framework should be assessed on the same basis and admitted, provided that they satisfy the applicable requirements concerning identity, personal harm and nexus to the case.[58] Consistent application of the Pre-Trial Chamber's judicial determination would ensure that similarly situated victims are treated equally, irrespective of when their applications were submitted or determined.[59]

VI. ALTERNATIVE REQUEST FOR LIMITED RECONSIDERATION

24. In the alternative, the Chamber may resolve the issues raised above by reconsidering the temporal interpretation in the 9 October Decision underlying the Registry proposed reassessment. In fact, the Registry's approach constitutes a subsequent development bringing to light consequences of the 9 October Decision for victims' participation that were not addressed when said ruling was rendered. These subsequent developments provide the context for the present request for reconsideration, which, in the CLRV's submission, satisfies the applicable exceptional threshold.[60] The Court's jurisprudence recognises that reconsideration may be warranted where a clear error of reasoning has been demonstrated or where it is necessary to prevent an injustice, including in light of new facts and arguments arising since the decision was issued.[61]

25. The CLRV rely on both grounds: the failure to reconcile the temporal interpretation adopted in the 9 October Decision with the Confirmation Decision as a whole, and the resulting

[56] See the Participation Decision, *supra* note 2, paras. 19-23. See also, the Second Participation Decision, *supra* note 3, para. 5; and the Registry Report, *supra* note 11, paras. 7(v) and 15-18.
[57] See the Confirmation Decision, *supra* note 4, paras. 18-24. See also, the 9 October Decision, *supra* note 10, paras. 38-52; and the Registry Report, *supra* note 11, paras. 15-18 and 21.
[58] See the Second Participation Decision, *supra* note 2, para. 5; and the Registry Report, *supra* note 11, paras. 7(v) and 19.
[59] See the Participation Decision, *supra* note 2, paras. 21-22; and the Second Participation Decision, *supra* note 3, paras. 3-5.
[60] See the Registry Report, *supra* note 11, paras. 15-18; and the 9 October Decision, *supra* note 10, paras. 49-52.
[61] See the "Decision on Defence Request for Reconsideration of or Leave to Appeal the Directions on Closing Briefs and Closing Statements" (Trial Chamber IX), No. ICC-02/04-01/15-1259, 11 May 2018, para. 12.

exclusion of victims from the participatory framework previously established through judicial determinations.[62] First, the alleged error concerns the identification and interpretation of the temporal parameters established by the Confirmation Decision, rather than any subsequent change to those parameters.[63] The 9 October Decision treats the periods specified in the individual counts as delimiting the charged conduct, without reconciling that interpretation with the express definition of the charged period as extending from 1 November 2011 to 16 March 2019, the confirmed allegations concerning the common plan and attack throughout that period, and the reasoning accepting the use of illustrative incidents to describe the criminality within the broader framework.[64] This omission gives rise to an internal inconsistency: although the broader charged period remains expressly confirmed, incidents falling within that period are nevertheless excluded on the basis that they postdate the last month specified for the selected illustrative incidents.[65] In particular, treating September 2018 as the definitive temporal endpoint for the criminality underlying Count 3 excludes subsequent incidents falling within the *presidential charged period,* without explaining how that conclusion can be reconciled with the broader temporal framework and the illustrative, rather than exhaustive, formulation accepted by the Pre-Trial Chamber.[66]

26. A corresponding difficulty arises for Counts 2 and 3. The Registry seeks clarification as to whether the reference to "*around July 2016*" encompasses incidents occurring in June 2016, notwithstanding the Confirmation Decision expressly identifies 30 June 2016 as the beginning of the *presidential period*.[67] The potential exclusion of applicants reporting crimes committed at the end of June 2016, particularly on 30 June itself, further demonstrates the need to reconcile the count-specific wording with the broader charged period and the participation parameters established by the Pre-Trial Chamber.[68] The prior judicial determination on victims' participation further underscores the significance of this discrepancy.[69] The Pre-Trial Chamber expressly admitted applicants reporting murders or attempted murders beyond the enumerated

[62] See the Confirmation Decision, *supra* note 4, paras. 18-24 and operative part, paras. 1, 3 and 16-24. See also, the Participation Decision, *supra* note 2, paras. 19-23; Registry Report, *supra* note 11, paras. 15-18.
[63] See the Confirmation Decision, *supra* note 4, para. 23 and operative part, para. 1. See also, the 9 October Decision, *supra* note 10, paras. 49-51.
[64] See the 9 October Decision, *supra* note 10, paras. 45-51. See also, the Confirmation Decision, *supra* note 4, paras. 20-24 and operative part, paras. 1, 3 and 16-23.
[65] See the Confirmation Decision, *supra* note 4, operative part, paras. 1 and 16-23 and p 49; 9 October Decision, paras. 50-52.
[66] See the Confirmation Decision, *supra* note 4, paras. 23-24 and operative part, paras. 1, 16-23 and 40, and p 49; and the Registry Report, *supra* note 11, para. 16(vi).
[67] See the Registry Report, *supra* note 11, paras. 30-32; and the Confirmation Decision, *supra* note 4, operative part, para. 1 and p 49.
[68] See the Participation Decision, *supra* note 2, paras. 19 and 22; the Confirmation Decision, *supra* note 4, para. 23 and operative part, para. 1; and the Registry Report, *supra* note 11, paras. 30-32.
[69] See the Participation Decision, *supra* note 2, paras. 19-23; and the Second Participation Decision, *supra* note 3, paras. 3-5.

incidents within the broader temporal and geographical categories, and the Trial Chamber subsequently authorised victims admitted at the pre-trial stage to continue participate at trial.[70] These determinations should have been taken into account when interpreting the confirmed framework, particularly before attributing to the 9 October Decision consequences that would effectively reverse the eligibility determinations underpinning existing participation authorisations.[71] Therefore reconsideration is sought not merely because a different interpretation of the relevant wording is preferred, but because the interpretation adopted fails to reconcile material findings and prior judicial determinations, with direct consequences for victims whose participation had already been authorised.[72]

27. Second, reconsideration is necessary to prevent the concrete injustice identified by the Registry's proposed implementation of the 9 October Decision.[73] The Report identifies at least 13 previously admitted applications, [REDACTED], which would now be assessed as falling outside the case, and contemplates broader exclusions affecting subsequent applications.[74] For existing participants, that approach would deprive victims of the opportunity to exercise participatory rights already recognised by the Pre-Trial Chamber and continued by the Trial Chamber, notwithstanding that the broader charged period remains expressly confirmed and neither Chamber has expressly withdrawn their authorisation to participate.[75] The resulting prejudice is concrete: victims would lose their previously recognised procedural status through the application of reasoning adopted in a dispute concerning an additional prosecution incident.[76]

28. Preventing that injustice also requires ensuring consistent treatment of future applicants whose circumstances satisfy the same judicially established participation parameters.[77] The potential prejudice extends well beyond the applications presently identified. Applications will continue to be transmitted until the end of the Prosecution's presentation of evidence, and the Registry anticipates further transmissions throughout that period.[78] The consequences also

[70] See the Participation Decision, *supra* note 2, paras. 19 and 22. See also the Registry Report, *supra* note 11, para. 7(v).
[71] See the Registry Report, *supra* note 11, paras. 14-18.
[72] See the Confirmation Decision, *supra* note 4, para. 23 and operative part, para. 1; and the Participation Decision, *supra* note 2, para. 22. See also, the 9 October Decision, *supra* note 10, paras. 49-52.
[73] See the Registry Report, *supra* note 11, paras. 15-18.
[74] *Ibid.*, paras. 16-18.
[75] See the Confirmation Decision, *supra* note 4, operative part, para. 1. See also, the Registry Report, *supra* note 11, paras. 7(v) and 17-18; and the 9 October Decision, *supra* note 10, disposition.
[76] See the Registry Report, *supra* note 11, paras. 17-18; 9 October Decision, *supra* note 10, paras. 48-52.
[77] See the Participation Decision, *supra* note 2, paras. 19-23; and the Second Participation Decision, *supra* note 3, paras. 3-5.
[78] See the Registry Report, *supra* note 11, paras. 7(ii) and 45-46.

extend to potential reparations, the scope of which is linked to the crimes for which an accused is ultimately convicted. Preserving existing authorisations while excluding otherwise similarly situated applicants solely because their applications are determined at a later stage would create an unjustified distinction unrelated to the nature of their harm or its connection to the case.[79] Conversely, withdrawing existing authorisations to achieve uniformity would merely extend the prejudice to victims whose participation has already been judicially recognised, rather than resolve the underlying inconsistency.[80] The appropriate remedy is therefore to preserve existing authorisations and apply the same judicially established participatory framework to all applicants who satisfy its requirements, including identity, personal harm and nexus to the case.[81]

29. The Registry Report gives concrete expression to these consequences and demonstrates why the requested reconsideration has practical significance beyond the treatment of Incident 57.[82] The CLRV, therefore, respectfully request that the Chamber reconsider the 9 October Decision to the extent necessary to ensure that its narrower temporal interpretation does not displace the participation framework previously established through judicial determinations.[83]

VII. OBSERVATIONS ON THE FURTHER ISSUES REQUIRING GUIDANCE

1. Disappearances

30. The CLRV support the recognition as indirect victims of applicants who have suffered personal harm following the disappearance of a family member in circumstances supporting a *prima facie* inference that the person was killed in criminality falling within the case.[84] Such disappearances should be assessed in light of the documented pattern of abductions followed by killings in the context of the "*war on drugs*". Numerous incidents involved the abduction of persons allegedly associated with the drug trade, followed by the discovery of their bodies. A pattern of abduction or detention preceding murders or attempted murders is also reflected in Incidents 1, 2, 22, 27, 28, 32, 37, 38, 40, 41, 42, 44, 45 and 46.[85] Where a person disappeared in comparable circumstances, that pattern should inform the assessment of whether the available information supports a *prima facie* inference of killing.

[79] *Ibid.*, paras. 16-18 and 21. See also, the Participation Decision, *supra* note 2, paras. 21-22.
[80] See the Registry Report, *supra* note 11, paras. 17-18.
[81] *Ibid.*, para. 19. See also, the Participation Decision, *supra* note 2, paras. 21-22;
[82] See the Registry Report, *supra* note 11, paras. 15-18. See also, the 9 October Decision, *supra* note 10, paras. 48-52.
[83] See the Confirmation Decision, *supra* note 4, paras. 18-24. See also, the Participation Decision, *supra* note 2, paras. 19-23; and the Registry Report, *supra* note 11, paras. 15-18.
[84] See the Registry Report, *supra* note 11, paras. 33-35; and the Participation Decision, *supra* note 2, para. 21.
[85] See the Prosecution's Trial Brief, *supra* note 6, paras. 133, 229, 268, 270, 274-279 and 282-288.

31. The absence of a recovered or identified remains should not, in itself, preclude admission. International criminal jurisprudence recognises that death may be established through circumstantial evidence even for the purposes of determining criminal responsibility beyond reasonable doubt.[86] Relevant circumstances include the person's treatment before disappearance, patterns of mistreatment and disappearance, the time elapsed, and the absence of contact with persons whom the disappeared individual would ordinarily have contacted.[87] The European Court of Human Rights similarly recognises that death may be inferred from concrete circumstantial evidence, with prolonged absence of news constituting a relevant, although not independently decisive, factor.[88] Accordingly, the circumstances of apprehension or disappearance, their consistency with the pattern of killings associated with the "*war on drugs*", and the continued absence of evidence of life despite reasonable enquiries should be assessed cumulatively against the *prima facie* standard applicable to victims' participation. The assessment should not import the more stringent standard applicable to a determination of criminal responsibility.[89]

32. Philippine law provides additional support for recognising death in the absence of direct confirmation. Article 390 of the Civil Code establishes a general presumption of death after seven years' absence, subject to distinct rules concerning succession, while article 391(3) provides for a presumption after four years where the person disappeared in circumstances involving danger of death.[90] The Philippine Supreme Court has explained that these are rebuttable evidentiary presumptions arising by operation of law once their factual conditions are established, without requiring a separate judicial declaration.[91] Against this background, the CLRV respectfully request that the Chamber authorise the Registry to assess such applications without requiring recovery or identification of remains, a death certificate, or a domestic declaration of presumptive death, where the available information otherwise establishes the requisite *prima facie* inference of killing and the applicant's personal harm and nexus to the case.[92] Such assessment should remain individualised, with the elapsed time since

[86] See ICTY, *Kvočka* et al., Judgement (Appeals Chamber), 28 February 2005, IT-98-30/1-A, para. 260 (the "*Kvočka* et al. AJ"); and *Krnojelac*, Judgment (Trial Chamber), 15 March 2002, IT-97-25-T, paras. 325-327 (the "*Krnojelac* TC").
[87] See the *Krnojelac* TC, *supra* note 86, para. 327.
[88] See *inter alia*, ECtHR, *Timurtaş v Turkey*, no. 23531/94, Judgment, 13 June 2000, paras. 82-86 (the "*Timurtaş* Judgment").
[89] See the Registry Report, *supra* note 11, paras. 33-35; and the Participation Decision, *supra* note 2, para. 21. See also, the *Krnojelac* TC, *supra* note 86, paras. 326-327.
[90] See the Civil Code of the Philippines, Republic Act No. 386, arts 390-391.
[91] See the Philippine Supreme Court, *Tadeo-Matias v Republic*, G.R. No. 230751, Decision, 25 April 2018, discussion under section I and section II, guidelines 1-3.
[92] See the Participation Decision, *supra* note 2, para. 21; and the Registry Report, *supra* note 11, paras. 33-35. See also, ICTY, *Kvočka* et al. AC, *supra* note 86, para. 260.

disappearance considered alongside the circumstances in which it occurred, rather than applied as an inflexible waiting period where the available information already satisfies the participation standard.[93]

2. Indirect Victims

a) Individuals who witnessed the commission of crimes and persons with a pre-existing relationship with direct victims

33. The questions raised by the Registry concerns the circumstances in which individuals who were neither directly targeted nor related to the person killed may nevertheless have suffered personal harm as a result of the crime.[94] The CLRV submit that eligibility should turn on the harm suffered and its causal connection to the crime, rather than on a requirement to have visually observed the fatal act or shared a pre-existing relationship with the person killed.[95] Chambers have recognised that individuals may suffer personal harm from witnessing crimes, without making eligibility conditional upon kinship or another pre-existing relationship.[96]

34. The CLRV submit that "*witnessing*" should encompass contemporaneous sensory perception of the crime, including through hearing, rather than require visual observation of the fatal physical act.[97] The assessment should therefore consider the applicant's experience as a whole, including the temporal and spatial connection between the events perceived and the crime, and the personal harm resulting from that experience.[98] In the application described by the Registry, observing the alleged perpetrators approach the house, hearing gunshots shortly afterwards, and the immediate announcement of the killing should be assessed as a continuous sequence, rather than divided into isolated events according to whether the applicant saw the precise act causing death.[99] A pre-existing relationship may be relevant to the nature or intensity of the harm, but its absence should not defeat an application otherwise establishing personal harm causally connected to the crime.[100] Moreover, where a killing occurred in the immediate vicinity of an applicant's home, its proximity and circumstances may support a rebuttable inference of psychological harm, notwithstanding the applicant's absence when it occurred.

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[93] See the Participation Decision, *supra* note 2, para. 21. See also the *Krnojelac* TC, *supra* note 86, para. 327, and the *Timurtaş* Judgment, *supra* note 88, paras. 82-83.
[94] See the Registry Report, *supra* note 11, paras. 38-41.
[95] See the Reparations Order (Trial Chamber VI), No. ICC-01/04-02/06-2659, 8 March 2021, paras. 127-128 (the "*Ntaganda* Reparations Order"); and the Reparations Order (trial Chamber IX), No. ICC-02/04-01/15-2074, 28 February 2024, paras. 128 and 486 (the "*Ongwen* Reparations Order").
[96] See the *Ntaganda* Reparations Order, *supra* note 95, para. 128; and the Reparations Order, (Trial Chamber X), No. ICC-01/12-01/18-2782, 28 April 2026, para. 68 (the "*Al Hassan* Reparations Order").
[97] See the Registry Report, *supra* note 11, paras. 38-41.
[98] *Ibid.*, paras. 38-39. See also the Participation Decision, *supra* note 2, para. 21.
[99] See the Registry Report, *supra* note 11, paras. 38-39.
[100] See the Ongwen Reparations Order, *supra* note 95, paras. 128 and 486.

Learning that a neighbour was killed next door, in the context of a campaign targeting members of the same community, may reasonably generate fear that the applicant or their household could be targeted next. Absence at the precise moment of the killing should therefore not defeat eligibility where the applicant subsequently became aware of the crime and experienced its consequences within their immediate living environment. The assessment should give due weight to these circumstances when determining, *prima facie*, personal harm and its causal connection to the crime.[101]

35. Where an applicant did not contemporaneously perceive the commission of the crime, a relationship of friendship or proximity with the person killed may nevertheless provide a basis for recognising indirect victimhood, if the particular circumstances establish resulting personal harm.[102] In *Ongwen*, the trial chamber expressly rejected treating the nature of the bond as a prerequisite to indirect victim status and required applicants relying on the loss of a friend to explain how that loss caused their alleged harm.[103] In the present case, residents of the urban poor communities where the killings occurred live in close physical proximity, often in densely populated neighbourhoods.[104] Such proximity, together with the cultural concept of *kapwa*, reflecting shared identity and togetherness, fosters close relationships and bonds that may resemble those of family, extending beyond formal kinship.[105] The assessment of personal harm should therefore take account of the substance of those relationships within their social and cultural context, rather than rely on formal distinctions between relatives, friends and neighbours.[106] The CLRV support accepting the witness declarations proposed in paragraph 42 of the Report as evidence of the existence and nature of a relationship, while distinguishing that evidence from the assessment of personal harm and causation.[107] Such declarations should not, however, be required where an application instead relies on personal harm arising from contemporaneous perception of the crime.[108]

[101] See the Participation Decision, *supra* note 2, para. 21. See also, *Ongwen* Reparations Order, *supra* note 95, paras. 128 and 134.
[102] See the Registry Report, *supra* note 11, para. 41. See also the *Ntaganda* Reparations Order, *supra* note 95, para. 127; and the *Ongwen* Reparations Order, *supra* note 95, paras. 134 and 488-489.
[103] See the *Ongwen* Reparations Order, *supra* note 95, paras. 486 and 489.
[104] See the Victims' Trial Brief, *supra* note 9, para. 105, p. 50.
[105] *Ibid.*, para. 18, p. 11.
[106] See the *Ongwen* Reparations Order, *supra* note 95, paras. 134 and 485-489.
[107] See the Registry Report, *supra* note 11, para. 42; and the *Ongwen* Reparations Order, *supra* note 95, para. 489.
[108] See the Registry Report, *supra* note 11, paras. 41-42; and the *Ntaganda* Reparations Order, *supra* note 95, para. 128.

b) Children born after the crimes

36. The CLRV submit that children born into families suffering the continuing consequences of the crimes should benefit from a rebuttable presumption of personal harm.[109] Chambers have recognised that children may suffer transgenerational harm regardless of when they were born and may experience personal suffering without having experienced the atrocities themselves.[110] In the present case, the victims have described enduring psychological, social and economic consequences affecting their children and grandchildren.[111] Therefore, once the relevant family relationship and the family's continuing exposure to consequences causally linked to the crimes are established *prima facie*, those circumstances should support the proposed presumption, subject to contrary information in the individual application.[112] That presumption should encompass material deprivation arising from the enduring disruption of family support, as well as psychological harm.[113] In the Philippines, affected households frequently comprise extended families, with financial support extending beyond spouses and children to other family members.[114] The killings deprived families of their principal financial providers, shifted responsibilities to surviving women, including grandmothers, and impaired access to food, housing, healthcare and education.[115] Children subsequently born into those households experience the resulting conditions of deprivation and disrupted care as part of their own upbringing, rather than merely inheriting a claim belonging to another family member.[116] Accordingly, the CLRV respectfully request that the Chamber recognise the proposed rebuttable presumption for children born into families whose continuing harm from the crimes is established, thereby enabling their admission under the applicable *prima facie* participation framework.[117]

[109] See the Registry Report, *supra* note 11, paras. 43-44
[110] See the *Ntaganda* Reparations Order, *supra* note 95, para. 182; and the *Ongwen* Reparations Order, *supra* note 95, paras. 206–207.
[111] See the Victims' Trial Brief, *supra* note 9, para. 205.
[112] See the Participation Decision, *supra* note 2, para. 21. See also the Registry Report, *supra* note 11, paras. 43-44.
[113] See the Registry Report, *supra* note 11, para. 44.
[114] See the Victims' Trial Brief, *supra* note 9, paras. 107 and 216.
[115] *Ibid.*, paras. 216-218.
[116] *Ibid.*, paras. 205 and 216-218. See also the Registry Report, *supra* note 11, paras. 43-44.
[117] See the Participation Decision, *supra* note 2, para. 21; and the Registry Report, *supra* note 11, paras. 43-44.

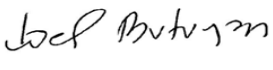
VIII. CONCLUSION

37. For the foregoing reasons, the CLRV respectfully request the Chamber to:

- Clarify that the 9 October Decision does not narrow the participation framework applicable to admitted victims and future applicants;
- In the alternative, reconsider, for the purpose of victims' participation, the temporal interpretation adopted in the 9 October Decision; and
- Resolve the discrete issues raised by the Registry for guidance in accordance with the above submissions.



Gilbert Andres



Joel Butuyan



Paolina Massidda

Dated this 17th day of November 2026

At The Hague (The Netherlands) and Manila (The Philippines)