

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **15 April 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

Public redacted version of “Prosecution’s application under regulation 35 to extend the disclosure deadline for the arrest warrant materials of [REDACTED] witnesses”, 19 March 2025, ICC-01/21-01/25-93-Conf

Source: Office of the Prosecutor

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

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☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

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(Participation/Reparation)

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Victims

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I. INTRODUCTION

1. On 14 March 2025, during the initial appearance of Mr Rodrigo Roa Duterte, Pre-Trial Chamber I (the “Chamber”) ordered the Prosecution to disclose, by Friday 21 March 2025, the material cited in the Warrant of Arrest for Mr Duterte¹ (the “Arrest Warrant Materials”).² Pursuant to regulation 35 of the Regulations of the Court (“Regulations”) and article 64(2) of the Rome Statute, the Prosecution respectfully requests the Chamber to extend the disclosure deadline for the Arrest Warrant Materials relating to witnesses [REDACTED] (the “[REDACTED] Witnesses”).³

II. CONFIDENTIALITY

2. Pursuant to regulation 23bis(1) of the Regulations, the Prosecution files this request as confidential, since it contains information relating to the security of witnesses. The Prosecution will file a public redacted version as soon as practicable.

III. SUBMISSIONS

A. *There is good cause to extend the time limit for the disclosure of the materials of the [REDACTED] Witnesses*

3. Regulation 35(2) of the Regulations provides that the Chamber “may extend or reduce a time limit if good cause is shown.” The Appeals Chamber has held that “[a] cause is good, if founded upon reasons associated with a person’s capacity to conform to the applicable procedural rule or regulation or the directions of the Court. Incapability to do so must be for sound reasons, such as would objectively provide justification for the inability of a party to comply with his/her obligations.”⁴ For the reasons set out below, there is good cause to extend the time limit for the disclosure of the Arrest Warrant Materials relating to the [REDACTED] Witnesses.

B. *The Prosecution will disclose the Arrest Warrant Materials that only require standard redactions by Friday 21 March 2025*

4. The Prosecution recognises that it is essential that the disclosure process begins as soon as possible following Mr Duterte’s initial appearance, and is working accordingly to comply

¹ Warrant of Arrest for Mr Rodrigo Roa Duterte, ICC-01/21-83.

² Initial appearance of Mr Duterte, ICC-01/21-01/25-T-0002-ENG-ET, p. 11, lines 2-4.

³ [REDACTED].

⁴ *Prosecutor v. Katanga and Ngudjolo Chui*, ICC-01/04-01/07-653, para. 5.

with the Chamber's order, to the greatest extent possible. The Prosecution intends to disclose all Arrest Warrant Materials that only require standard redactions under rule 81(2) and (4) of the Rules of Procedure and Evidence, consistent with the Chambers Practice Manual,⁵ by Friday 21 March 2025.

C. Delayed disclosure requests are necessary for the [REDACTED] Witnesses

5. Amongst the Arrest Warrant Materials, the Prosecution has determined, consistent with its duties under article 68(1), and rule 87, and in consultation with its Security and Protection Unit ("SPU"), that the [REDACTED] Witnesses will require protective measures before disclosure.

6. In respect of these [REDACTED] Witnesses, risk assessments [REDACTED], and appropriate protective measures, are being worked on by SPU, in consultation, as appropriate, with the Registry's Victim and Witness Section.

7. For these [REDACTED] Witnesses, the Prosecution therefore determines that it will be required to submit requests to the Chamber for non-disclosure of their identities. For the Chamber's reference, and acknowledging that every case is different, the Prosecution notes that the deadlines for disclosure of such filings was approximately three months after the initial appearance in the *Mokom* case⁶ and the *Abd-Al-Rahman (Ali Kushayb)* case.⁷

8. The Prosecution therefore respectfully requests that the Chamber allow the Prosecution 6-8 additional weeks to file requests for non-disclosure of witness identities. The Prosecution further requests that the Chamber postpone the deadline for disclosure of the Arrest Warrant Materials relating to the [REDACTED] Witnesses until the Chamber has had time to rule on such a request.

9. Allowing the requested time of 6-8 weeks for the Prosecution to make these filings would be in accordance with, and in fact a shorter period, than in the jurisprudence noted above, and would allow the Prosecution sufficient time to explain the need for authorisation of non-disclosure of witness identities pursuant to rule 81(4), in accordance with the jurisprudence of the Appeals Chamber.⁸ This additional time would also allow the Prosecution to provide the Chamber with the materials relating to the [REDACTED] Witnesses, which include transcripts of recorded interviews, on an *ex parte* basis, with proposed redactions.

⁵ Chambers Practice Manual, Eighth edition, 21 October 2024 ("Chambers Practice Manual"), Part V, B, p. 22.

⁶ *Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka*, ICC-01/14-01/22-62, para. 26.

⁷ *Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, ICC-02/05-01/20-116, page 8.

⁸ See e.g. *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-773, para. 21 and *Prosecutor v. Germain Katanga*, ICC-01/04-01/07-475, para. 67.

10. On the above basis, the Prosecution submits that there is good cause to delay the disclosure of the Arrest Warrant Materials relating to the [REDACTED] Witnesses beyond this Friday's disclosure deadline, and that this request justifies a reasonable extension of time, which is consistent with the rights of Mr Duterte under article 67(1), the rights of witnesses under article 68(1), and the jurisprudence of this Court.

D. The Prosecution respectfully requests the Chamber consider ordering the Parties to comply with the Confidential Information Protocol

11. Lastly, while the Prosecution anticipates that the Chamber will shortly issue an order, pursuant to article 61(3) and rule 121, setting out the modalities of the disclosure process (including the E-court protocol, and the redactions protocol), the Prosecution respectfully requests that in advance of the Prosecution's disclosure of confidential witness-related material on Friday 21 March, the Chamber consider adopting, and ordering the Parties to comply with, the Protocol on the handling of confidential information (the "Confidential Information Protocol").⁹

IV. CONCLUSION

12. For the reasons outlined above, the Prosecution respectfully requests that the Chamber extend the disclosure deadline for the Arrest Warrant Material relating to the [REDACTED] Witnesses, as set out above, and consider ordering the Parties to comply with the Confidential Information Protocol.



Karim A. A. Khan KC, Prosecutor

Dated this 15th day of April 2025

At The Hague, the Netherlands

⁹ Chambers Practice Manual, Annex, Protocol on the Handling of Confidential Information during Investigations and Contact Between a Party or Participant and Witnesses of the Opposing Party or a Participant.