

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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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
with Confidential Annex A**

Public Redacted Version of “Prosecution’s Response to the Order seeking observations on matters related to the conduct of confirmation proceedings”, 4 April 2025, ICC-01/21-01/25-104-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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☒ Counsel for the Defence

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

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☐ Unrepresented Applicants
(Participation/Reparation)

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Victims

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M. Osvaldo Zavala Giler

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations
Section

☐ Other

I. INTRODUCTION

1. The Prosecution hereby provides Pre-Trial Chamber I (the “Chamber”) with the information specified in the Order seeking observations on matters related to the conduct of confirmation proceedings (the “Order”).¹

2. In addition, as set out below, the Prosecution respectfully requests the Chamber to adopt the Redaction Protocol and the E-Court Protocol.

II. CLASSIFICATION

3. This Response is classified as “Confidential” pursuant to regulation 23*bis*(1) of the Regulations of the Court, as it contains sensitive information which could impact the security of Prosecution witnesses and staff working on the investigation, as well as ongoing lines of investigative inquiry. The Prosecution will file a public redacted version as soon as practicable.

III. PROSECUTION’S SUBMISSIONS

A. General observations

4. In order to contextualise the Prosecution’s responses to the Chamber’s specific questions as set out in the Order, the Prosecution provides the following general overview of the extent and nature of its current evidence collection.

5. In the course of its investigation, the Prosecution has collected a significant volume of documentary material that requires legal review prior to disclosure. At present, the Prosecution has 129,358 items (160,679 pages) in its Relativity database, and a further estimated 48,235 items (100,864 pages) held in another database that are currently in the process of being registered in the Relativity database (the “Collection”). Of these, the majority of the Collection (approximately 168,575 items) comprises documentary material [REDACTED] (the “Datasets”).² The Prosecution intends to review each Dataset on a rolling basis, and disclose any relevant material as soon as practicable (as set out in Annex A).

B. Prosecution’s observations on the conduct of the confirmation proceedings

6. The Prosecution provides the following information in response to the Chamber’s Order:

¹ Order seeking observations on matters related to the conduct of confirmation proceedings, ICC-01/21-01/25-94.

² An overview of these Datasets is set out in Annex A, rows 8-14.

- (i) *Within the category of documentary evidence, what is the overall number of written pieces of evidence the Prosecution intends to rely upon at the confirmation hearing? How many pages does this amount to? What is the original language of such evidence and/or in what language will it be made available?*
- (ii) *Does the Prosecution intend to rely upon other non-written pieces of documentary evidence, such as photographs, videos, or audio recordings? If so, what is the total length/duration and original language of such pieces of evidence and will transcripts and/or translations be made available?*

7. The Prosecution is still in the process of determining the overall quantity of written and non-written documentary evidence that it intends to rely upon at the confirmation hearing. At a minimum, this will include the majority of the evidence cited in its application under article 58 for a warrant of arrest against Rodrigo Roa DUTERTE (the “Arrest Warrant Application”),³ which comprises: 421 pieces (8,565 pages) of written evidence; 9 photographs; and 30 (15:55 hours) of audio-visual files. The Prosecution also expects to rely upon further documentary evidence identified in its review of the Collection, and collected during its ongoing investigation.

8. The documentary evidence (including non-written items) relied upon by the Prosecution is predominately in the original languages of either English, Tagalog or Cebuano. The Prosecution will ensure all material is made available in its original language, with a transcription/translation into English where necessary.

- (iii) *How many and which pieces of evidence can be immediately disclosed without redactions? How many pages, or in the case of video and audio recordings, what duration does this evidence amount to?*

9. The Prosecution has already disclosed 181 items (2,787 pages) on 21 March 2025. The Prosecution has identified approximately 160 further items (including 15 audio-visual files with a duration of 5:40:12) that can be immediately disclosed and intends to disclose these items during the course of the week starting 7 April 2025. These items are non-witness related

³ Public redacted version of “Prosecution’s urgent application under article 58 for a warrant of arrest against Rodrigo Roa DUTERTE”, ICC-01/21-80-Red.

documentary material that it intends to rely upon at the confirmation hearing. These items will require limited standard redactions.

10. As set out in paragraph 22 below, the Prosecution is currently in the process of organising a courtesy disclosure of two of the Datasets to the Defence.

(iv) What is the estimated overall amount of (potentially) exculpatory evidence that the Prosecution intends to disclose as soon as practicable pursuant to article 67(2) of the Statute? How many pages, or in the case of video and audio recordings, what duration does this evidence amount to? Does the (potentially) exculpatory evidence require redactions?

11. The Prosecution is in the process of reviewing its Collection for potentially exonerating evidence (“PEXO”) and the identification of any such information is currently based on the Prosecution’s own theory of the case and anticipated defences.

12. In the package of Arrest Warrant Application materials to be disclosed during the week starting 7 April 2025, which will be classified as INCRIM, the Prosecution will also identify evidence that is PEXO or falls under rule 77 of the Rules (“R77”), and apply standard redactions thereto. Further, the Prosecution has interviewed [REDACTED] witnesses that it does not presently intend to rely upon during the confirmation hearing. Recognising that these witness materials may contain PEXO information, the Prosecution will prioritise their review and disclose any such items in the week beginning 12 May 2025, with standard reactions.⁴

13. The Prosecution will then prioritise its review of the remaining items in the Collection (including the Datasets) by running searches with relevant themes, phrases or keywords. On 2 April 2025, the Prosecution invited the Defence to provide search terms relevant to its preparation. Any items in the Collection that are responsive to these search terms (once received from the Defence) will be disclosed as a priority.⁵

(v) How many persons, if any, does the Prosecution intend to call as witnesses to testify viva voce at the confirmation hearing?

14. The Prosecution presently intends to call a maximum of two witnesses to testify viva voce at the confirmation hearing.

⁴ See Annex A, row 5.

⁵ See Annex A, row 7.

- (vi) *How many witness statements does the Prosecution intend to provide, for the purposes of the confirmation hearing, pursuant to rule 76 of the Rules of Procedure and Evidence (the ‘Rules’)? Does the Prosecution intend to provide such statements in their entirety or in the form of summaries, pursuant to articles 61(5) and 68(5) of the Statute?*

15. At present, the Prosecution intends to rely upon rule 76 statements from at least [REDACTED]. The Prosecution also expects to rely upon additional witness statements collected during the ongoing investigation. The Prosecution will disclose newly collected evidence on a rolling basis.

- (vii) *What is the language of the materials the Prosecution intends to rely upon at the confirmation hearing? If applicable, have those statements been translated into a language that the suspect fully understands and speaks, as required in rule 76(3) of the Rules? If this has not yet been done, what is the Prosecution’s estimate regarding the time needed to provide such translations?*

16. The Prosecution intends to rely upon material in English, including the English translation of documents originally in Tagalog and Cebuano. With respect to rule 76(3), English is a language that Mr DUTERTE fully understands and speaks.⁶

- (viii) *Does the Prosecution intend to submit requests to withhold the identity of any potential witnesses and, if so, of how many persons? Have security assessments already been prepared for such witnesses, and, if not yet, when are they estimated to be finalised?*

17. Pursuant to the Chamber’s order, the Prosecution will submit requests to the Chamber to withhold the identity of [REDACTED] witnesses (the “[REDACTED] Witnesses”) by 9 May 2025.⁷ The Prosecution has also identified a further [REDACTED] witnesses (the “[REDACTED] Witnesses”) that will require further protective measures prior to the disclosure of their identities.⁸ The Prosecution respectfully requests that the Chamber set a deadline of 23 May 2025 for a request for non-disclosure of the identity of the [REDACTED]

⁶ See Initial appearance of Mr Rodrigo Roa Duterte, ICC-01/21-01/25-T-0002-ENG-ET, p. 3, lines 2-6, p. 9, lines 11-13.

⁷ Decision on the Prosecution’s application under regulation 35 of the Regulations of the Court, communicated by email on 20 March 2025 at 16:52pm.

⁸ [REDACTED].

Witnesses, to allow the Prosecution sufficient time to explain the need for authorisation of non-disclosure of witness identities.

18. Individual Risk Assessments (“IRAs”) are in process for each witness whose identity cannot yet be disclosed. [REDACTED]. The Prosecution will aim to finalise IRAs for the [REDACTED] Witnesses by 2 May 2025, and IRAs for the [REDACTED] Witnesses by 16 May 2025.

(ix) Does the Prosecution intend to request protective measures for potential witnesses, victims or other persons at risk prior to disclosure of the names of these relevant persons and/or of certain documents, pursuant to rules 87 and 88 of the Rules? Has the Prosecution already held consultations with the Victims and Witnesses Unit (the ‘VWU’) regarding protective measures for witnesses, victims or other persons at risk? How many potential witnesses have been referred to VWU for protection purposes, including relocation? Does the Prosecution intend to refer other potential witnesses to VWU for protection purposes before the confirmation hearing? What is the Prosecution’s estimate regarding the time needed for such measures to be put in place?

19. At this stage of the proceedings, the Prosecution would only request protective measures pursuant to rules 87 and 88 in the event that it does call witnesses to testify viva voce at the confirmation hearing. For this purpose, the Prosecution will consult with VWU at the earliest opportunity.

20. [REDACTED].⁹ [REDACTED].

(x) Does the Prosecution possess or control any books, documents, photographs or other tangible objects that are subject to inspection as material to the preparation of the Defence under rule 77 of the Rules? If so, what is the estimated overall amount of such material?

21. The Prosecution does possess or control, within its Collection, material subject to rule 77. This material will be subject to review in accordance with the proposed disclosure schedule in Annex A.

⁹[REDACTED].

22. The Prosecution is currently in the process of organising disclosure, pursuant to rule 77, of two of the Datasets to the Defence. A courtesy disclosure of these materials to the Defence is planned in the coming days. These materials will be formally disclosed to the Defence and the Chamber as soon as practicable.

23. In addition to the Prosecution's assessment of the information that falls within the parameters of rule 77, the Prosecution will prioritise the search, review and disclosure of items in its Collection that are responsive to searches based on any search terms received from the Defence.

(xi) Are any of the Prosecution's pieces of evidence, in particular (potentially) exculpatory evidence or evidence considered as material to the preparation of the Defence, affected by confidentiality agreements in accordance with articles 54(3)(e), 72 and 93 of the Statute? In the affirmative, has the Prosecution undertaken, or will the Prosecution undertake, steps to obtain the consent of the information provider(s) regarding the disclosure of such material?

24. The Prosecution has identified one witness statement that is subject to a confidentiality agreement. As part of the disclosure review process, the Prosecution has determined that it will seek to rely on this witness statement for the purposes of the confirmation hearing and will immediately take steps to seek consent for the lifting of the confidentiality restriction from the provider.

(xii) Does the Prosecution intend to submit requests in relation to unique investigative opportunities under article 56 of the Statute? If so, will such requests impact on the disclosure process and the commencement of the confirmation hearing?

25. At this stage, the Prosecution assesses that it may need to submit [REDACTED] in relation to a unique investigative opportunity under article 56 of the Statute, and is actively taking steps to make this determination at the earliest opportunity. Should such a request be necessary, the Prosecution does not expect this to impact on the disclosure process and the commencement of the confirmation hearing.

(xiii) Is the Prosecution continuing the investigation regarding Mr Duterte and, if so, how would this impact on the disclosure process?

26. The Prosecution is continuing its investigation regarding Mr DUTERTE [REDACTED]. The Prosecution intends to review and disclose any new evidence collected during this investigation on a rolling basis.

(xiv) *Does the Prosecution intend, or is the Prosecution able, to implement a thematic disclosure process, i.e. provide separate disclosure packages containing only the relevant evidentiary items, classified as incriminating, exonerating, or falling under rule 77 of the Rules, in relation to specific themes or time frames such as contextual elements, specific alleged incidents or time periods, or modes of liability? If so, the Prosecution shall also submit a proposal detailing its disclosure themes.*

27. At this stage, the Prosecution intends to provide disclosure packages in accordance with the disclosure schedule set out in Annex A. The Prosecution will classify these packages as INCRIM, PEXO or R77, and within these packages, the Prosecution will identify INCRIM, PEXO and R77 evidence. In addition to the disclosure schedule set out in Annex A, the Prosecution is considering further options for thematic disclosure, based on, for example, any search terms received from the Defence.

(xv) *Bearing in mind the scheduled date for the confirmation hearing and the need for the Defence to have sufficient time to prepare, what does the Prosecution anticipate to be the earliest date it will be able to complete disclosure?*

28. The Prosecution intends to complete the review and disclosure of evidence currently in its possession by no later than thirty days before the confirmation hearing,¹⁰ currently scheduled for 23 September 2025, in accordance with the proposed disclosure schedule in Annex A.

C. Request for the Adoption of Protocols

29. In anticipation of an order from the Chamber setting out the modalities of the disclosure process pursuant to article 61(3) and rule 121, the Prosecution also respectfully requests that the Chamber adopt the following protocols for the purpose of these proceedings.

¹⁰ Rule 121(3).

30. First, the Prosecution requests the adoption of the Redaction Protocol,¹¹ which will allow the Prosecution to apply standard redactions to specific categories of information, without seeking prior authorisation from the Chamber. Adopting the Redaction Protocol will promote efficiency in the Prosecution's disclosure process, and standardise the application of any necessary redactions to evidence disclosed.

31. Second, the Prosecution requests the adoption of the most current version of the E-Court Protocol, as submitted by the Registry in the *Kony* case on 20 January 2025.¹² This protocol was recently revised by the Registry, in collaboration with the Prosecution, to meet their respective technical requirements and evidence management. Adopting the same protocol will ensure an efficient and reliable disclosure process in these proceedings.

32. The Prosecution notes that the Chamber has already adopted the Protocol on the handling of confidential information and contacts with witnesses.¹³

IV. REQUESTED RELIEF

33. The Prosecution stands ready to provide any additional information as may be required by the Chamber. For the reasons set out above, the Prosecution respectfully requests the Chamber to adopt the Redaction Protocol and the E-Court Protocol.



Karim A. A. Khan KC, Prosecutor

Dated this 15th day of April 2025

At The Hague, the Netherlands

¹¹ Chambers Practice Manual, pp. 22-25, paras. 98-100.

¹² [ICC-02/04-01/05-547-Anx](#) ("*Kony* E-Court Protocol").

¹³ Decision on the Prosecution's application under regulation 35 of the Regulations of the Court, communicated by email on 20 March 2025 at 16:52pm.