

**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**

Decision on the Defence's observations pursuant to rule 122(3) of the Rules of Procedure and Evidence

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

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 the present decision on the Defence’s observations pursuant to rule 122(3) of the Rules of Procedure and Evidence (the ‘Rules’).

1. On 16 February 2026, pursuant to the Chamber’s order,¹ the Defence submitted the ‘Defence Observations pursuant to Rule 122(3) and Defence Request pursuant to Rule 124(1)’,² in which it, *inter alia*, requested that the Chamber order the Prosecution to (i) file a second lesser redacted version of its Document Containing the Charges (the ‘DCC’) and Pre-Confirmation Brief (the ‘PCB’) that will allow the hearing on the confirmation of charges to be conducted in public session to the maximum extent possible; (ii) publicly disclose specific information about some of the witnesses; and (iii) declare that it has ascertained the whereabouts and willingness of some of the witnesses to testify at trial (together, the ‘Defence’s Requests’).

2. On 17 February 2026, the Prosecution opposed the Request,³ arguing that (i) in light of safety and protection concerns, the DCC and PCB are appropriately redacted and information regarding witnesses’ cooperation with the Prosecution should remain confidential; and (ii) the Prosecution is under no obligation to ‘declare’ information about the availability of witnesses for trial.

3. On 18 February 2026, the Common Legal Representatives for Victims (the ‘CLRV’) responded to the Request,⁴ indicating that while they ‘favour the publicity of the proceedings as much as possible in order for the Victims [...] to follow the procedure in a meaningful and comprehensive manner’, the CLRV ‘underline that not all matters related to the proceedings may appropriately be disclosed to the public in light of the Court’s obligation [under] article 68(1) of the Rome Statute’ (the ‘Statute’).

4. The Chamber understands that the Defence’s Requests regarding redactions to the DCC and PCB, and disclosure of information regarding witnesses, are justified by the alleged need to ensure the publicity and transparency of the proceedings.⁵ The Chamber notes that, while

¹ Decision on the ‘Defence Request for an Indefinite Adjournment’ and Mr Duterte’s fitness to take part in the pre-trial proceedings, ICC-01/21-01/25-356-Conf (public redacted version notified on the same day, [ICC-01/21-01/25-356-Red](#)), 26 January 2026, para. 55.

² ICC-01/21-01/25-379-Conf (the ‘Defence Rule 122(3) Observations’).

³ Prosecution Response to ‘Defence Observations pursuant to Rule 122(3) and Defence Request pursuant to Rule 124(1)’ (ICC-01/21-01/25-379-Conf-Exp), ICC-01/21-01/25-382-Conf.

⁴ Victims’ Response to the Defence Observations pursuant to Rule 122(3) and Defence Request pursuant to Rule 124(1), ICC-01/21-01/25-384-Conf.

⁵ See Request, paras 3, 5, 7.

the publicity of the proceedings is a well-established principle which has consistently been stressed in the decisions of the chambers of this Court,⁶ this principle is not absolute and needs to be balanced against, in particular, the Chamber's duty under article 68(1) of the Statute 'to protect the safety, physical, psychological well-being, dignity and privacy of victims and witnesses'. One of the corollaries of the principle of publicity is that the parties and participants must state the basis for the level of classification of their submissions and must ensure that they request for reclassification when such basis cease to exist, in accordance with regulations 23bis(1) and (3) of the Regulations of the Court (the 'Regulations').

5. With regard to the redactions in the DCC and the PCB, the Chamber notes that the Prosecution, in accordance with rule 23bis(1) of the Regulations, indicated that the confidentiality of the information that the Defence seeks to be made public is warranted as it constitutes 'sensitive information pertaining to the security of victims and witnesses'.⁷ The Prosecution further indicates that the redactions currently in place in the lesser redacted versions of the DCC and the PCB are a reflection of its consultations with the Prosecution's Security and Protection Unit for 'ensuring that the redactions maintained strike the proper balance between publicity and the protection of witnesses, victims and other persons based on an objective risk to their safety and wellbeing'.⁸

6. Moreover, the Chamber is not persuaded that the Defence's argument that, because of the abovementioned redactions, the 'Defence can only challenge the evidence underlying the [DCC] Incidents, meaningfully, in closed/private session' at the confirmation of charges hearing would warrant the lifting of these redactions. Contrary to what the Defence implies, and as noted above, the right to a public trial and the principle of publicity of the proceedings does not equate to an absolute right for the public to know all the details of a case or for the Defence to present its arguments fully in public session, to the detriment of the integrity of the proceedings and the safety of those involved.

7. In any event, in the present case, the Chamber considers that the lesser redacted versions of the DCC and the PCB – which only redact information that may allow for the identification of victims and witnesses – contains sufficient information to allow the public to contextualise

⁶ See e.g. Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, [Decision on 'Prosecution's Information to Trial Chamber III on issues involving witness CAR-OTP-PPPP-0169' \(ICC-01/05-01/08-3138-Conf-Red\)](#) and ['Defence Urgent Submissions on the 5 August Letter \(ICC-01/05-01/08-3139-Conf\)](#), 2 October 2014, ICC-01/05-01/08-3154-Red, para. 40, and references therein.

⁷ [Document Containing the Charges](#), 4 July 2025, ICC-01/21-01/25-178-Red2, para. 2.

⁸ Prosecution's Response, para. 5.

the crimes alleged against the suspect, and to satisfy the requirements of publicity and transparency of the proceedings. The Chamber emphasises that it is for the parties and participants to ensure that their arguments are formulated in such way as to limit the need for private sessions, thereby ensuring transparency of the proceedings without risking the disclosure of any confidential information. However, should the parties and participants need to discuss information that currently remains confidential, they shall request to do so in private session during the confirmation of charges hearing.

8. Similarly, the Chamber considers that, except for the arguments linked to the need for the publicity of the proceedings, the Defence does not provide any reason that would warrant removing, or that could counterbalance the need for, protective measures regarding the Prosecution's witnesses. In the view of the Chamber, whether some of the information requested to be disclosed to the public is allegedly already public information in the Philippines does not negate the risks imposed on the relevant individuals and their families should the information be confirmed or not, which might also heighten such risks.

9. Moreover, the Chamber considers that the protective measures in place for certain witnesses do not prevent the Defence from challenging the reliability and admissibility of their evidence during the hearing.⁹ In this regard, noting with concern the related Defence's assertion,¹⁰ the Chamber recalls counsel's duty to respect professional secrecy and the confidentiality of information pursuant to article 8 of the Code of Professional Conduct for counsel at all times, including during the forthcoming hearing on the confirmation of charges. As such, counsel has a duty to ensure that his oral submissions, taken in isolation or holistically, do not directly or indirectly reveal any confidential information, and to request that part of the hearing be held in private session should counsel intend to address such information.

10. In light of the above, the Chamber considers that the current redactions in the DCC and the PCB, as well as the protective measures applied to the Prosecution's witnesses vis-à-vis the public remain necessary.

11. As to the Defence's request for a Prosecution's declaration and assurance on availability of witnesses, the Defence does not provide any legal basis that would support such request. Indeed, nothing in the Court's legal framework warrants for such declaration.

⁹ See Request, para. 6.

¹⁰ See Request, paras 6-7.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Defence's Requests set out in the Defence Rule 122(3) Observations.

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