

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date of original:

16 February 2026

Date: **20 February 2026**

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 "Defence Observations pursuant to Rule 122(3) and
Defence Request pursuant to Rule 124(1)"**

Source: Defence for Rodrigo Roa Duterte

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

Duterte Defence Team

☐ 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

Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☒ Other

Principal Counsel for OPCV

I. SUBMISSIONS

1. The Defence hereby submits its observations pursuant to Rule 122(3) of the Rules of Procedure and Evidence and a request pursuant to Rule 124(1).¹
2. Pursuant to Regulation 23bis(1),² the present submissions are filed as confidential *ex parte* to the Prosecution and the Principal Counsel for OPCV only, pending the adjudication of the Defence's request to disqualify the External Legal Representatives for Victims and to revoke their access to the case record.³ They are, however, made available to the Principal Counsel for OPCV, who has notified the parties and the Pre-Trial Chamber that she, and she alone, "is the designated OPCV counsel to act in the CLRV team".⁴

i. Redactions

3. Despite the lifting of redactions on 13 February 2026, the Prosecution's Document Containing the Charges ("DCC")⁵ and Pre-Confirmation Brief ("PCB")⁶ remain overly censored. As a result, those who matter the most to this Pre-Trial Chamber – *i.e.* the families of each individual victim mentioned in the

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](#), 26 January 2026, para. 55. All references to 'Rule' and the 'Regulation' in the present submission are to the ICC Rules of Procedure and Evidence and the ICC Regulations of the Court, unless otherwise indicated.

² Regulations of the Court, [Regulation 23bis\(1\)](#).

³ Defence Request for the Disqualification of the External Legal Representatives for the Victims, [ICC-01/21-01/25-372-Conf](#), 11 February 2026.

⁴ Email, the Principal Counsel of the OPCV to Pre-Trial Chamber I, "RE: The Prosecutor vs. Rodrigo Roa Duterte: ICC-01/21-01/25-358 - Decision on victims' participation and legal representation", 27 January 2026, 14:39.

⁵ Public Lesser Redacted Version of "Document Containing the Charges", 4 July 2025, ICC-01/21-01/25-178-Conf, [ICC-01/21-01/25-178-Red2](#), 13 February 2026 ("[Redacted DCC](#)").

⁶ Public Lesser Redacted Version of "Corrected Version of 'Prosecution's Pre-Confirmation Brief', 18 July 2025, ICC-01/21-01/25-201-Conf," dated 24 July 2025, ICC-01/21-01/25-201- Conf-Corr, [ICC-01/21-01/25-201-Corr-Red2](#), 13 February 2026 ("[Redacted PCB](#)").

DCC – will not be able to follow the proceedings nor will the parties be able to make meaningful submissions in public session.⁷

4. As they stand, the 49 incidents (“Incidents”) described in the Redacted DCC and Redacted PCB are unintelligible to the public. Much of the relevant information, such as the identities of those involved in the Incidents and the time and place of their occurrence, remains confidential. At present, therefore, the Defence can only challenge the evidence underlying the Incidents, meaningfully, in closed/private session. Hearings should only be conducted in closed/private session when absolutely necessary. The use of pseudonyms or a numbering system, in the present instance, will ensure the public nature and transparency of the proceedings.

ii. Prosecution Witnesses Known to the General Public

5. A number of witnesses – [REDACTED] – are [REDACTED]. [REDACTED].⁸ [REDACTED].⁹
6. The reliability and admissibility of their evidence will be challenged by the Defence. Even if the Defence does not mention these individuals by name, any meaningful reference to the subject matter of their testimony will reveal their identity. The fact that at least two of these witnesses (P-1036 and P-0002) have provided testimony to the Prosecution is not a secret in the Philippines thanks to the publication of [REDACTED],¹⁰ and, in part, to the reckless conduct of [REDACTED].¹¹

⁷ Regulations of the Court, [Regulation 20\(1\)](#) which provides for the overriding principle of the publicity of courtroom proceedings.

⁸ See e.g. PHL-OTP-00091910; PHL-OTP-00090696; PHL-OTP-00019317; PHL-OTP-00015101; PHL-OTP-0006-0988.

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

7. Additionally, despite informing the Pre-Trial Chamber and the parties that [REDACTED],¹² the Prosecution has yet to make this information public. The Defence will be making submissions on the admissibility of the prior recorded testimony of this witness, and no harm may be occasioned if the fact of [REDACTED] be made known. This will permit the Defence to make all submissions concerning [REDACTED] in open session – once again, to ensure the transparency of the proceedings.

iii. The Availability of Witnesses for Trial

8. It is wholly inappropriate for the Prosecution to seek to confirm charges on the basis of evidence of which the future availability at trial is not certain or even verified. In advance of these submissions, the Defence petitioned the Prosecution and asked the latter to assure the Defence that it had ascertained the whereabouts of a number of key “insider” witnesses and their willingness to attend trial for the purpose of testifying.¹³ It should not be forgotten that a number of these witnesses were interviewed several years ago. The Prosecution replied as follows: “The Prosecution is aware of its responsibilities and will follow them in relation to the confirmation hearing and all other matters. These responsibilities do not include providing the requested ‘declarations’”.¹⁴ Such obfuscation is totally unacceptable considering the *Mokom* affair – termed by a respected international justice reporter a “fiasco”.¹⁵ After 19 months of that suspect’s detention,¹⁶ the Prosecutor was forced to declare as follows: “It has

¹² Email, Prosecution to Pre-Trial Chamber I, “Re: [ICC-01/21-01/25 – Confidential] Further order to the Prosecution, the Office of Public Counsel for Victims and the Victims and Witnesses Unit to provide observations”, 3 July 2025, 12:04.

¹³ Email, Defence to Prosecution, “Witness Availability – URGENT”, 9 February 2026, 13:51 (enquiring about P-0001, P-0003, P-0008, P-0026, P-1066, P-1160, P-1036, P-1077, P-1155, P-1156, P-1207, P-1211).

¹⁴ Email, Prosecution to Defence, “Re: Witness Availability – URGENT”, 12 February 2026, 14:27.

¹⁵ Janet H. Anderson, “[The Mokom fiasco at the ICC](#)”, *JusticeInfo*, 23 October 2023. See also Janet H. Anderson, “[The Mokom fiasco, part 2: everybody did their job, no one needs to know](#)”, *JusticeInfo*, 10 September 2024.

¹⁶ *Mokom*, Public Redacted Version of “Request for Compensation under Article 85 of the Rome Statute”, [ICC-01/14-01/22-329-Red](#), 17 April 2024, para. 3.

become clear that several critical witnesses are unavailable to testify and that ongoing investigative efforts are unlikely to result in new evidence of comparable probative value. Among the unavailable witnesses are insider witnesses who provide critical information regarding the charges against Mr Mokom”.¹⁷ Practice of this sort should not be repeated, and the Prosecution must provide the sought assurances and declarations to the Court.

iv. Attendance

9. Pursuant to Rule 124(1), Mr Duterte requests to waive his right to be present at the hearing on the confirmation of charges. Pursuant to Rule 124(2), the Defence affirms that Mr Duterte “understands [his] right to be present at the hearing and the consequences of waiving this right”.¹⁸ Mr Duterte has full confidence in his Defence team and, given his condition, entrusts to it all submissions on and challenges to the sufficiency of the evidence. Pursuant to Rule 124(3), Mr Duterte does not require provision to observe the hearing from outside the courtroom through the use of communications technology. Pursuant to Rule 124(4), Mr Duterte will make “written observations” if absolutely necessary and, prior to the hearing, will provide a written waiver, as deemed appropriate for all hearings where attendance is waived.

II. CONCLUSION AND RELIEF SOUGHT

10. In light of the aforementioned, the Pre-Trial Chamber is requested to **ORDER**:
 - i) The Prosecution to file a second lesser redacted version of its DCC and PCB that will allow the hearing on the confirmation of charges to be conducted in public session to the maximum extent possible;

¹⁷ Mokom, Notice of Withdrawal of the Charges against Maxime Jeoffroy Eli Mokom Gawaka, [ICC-01/14-01/22-275](#), para. 3.

¹⁸ Rules of Procedure and Evidence, [Rule 124\(2\)](#).

- ii) The Prosecution to disclose the fact that the witnesses mentioned in paragraph 5 above were interviewed by its investigators;
 - iii) The Prosecution to disclose to the public that [REDACTED]; and,
 - iv) The Prosecution to declare that it has ascertained the whereabouts and willingness of the witnesses mentioned in footnote 13 of this filing to testify at trial.
11. Furthermore, the Pre-Trial Chamber is requested to **PERMIT** Mr Duterte to exercise his right to waive attendance at the confirmation hearing on the condition that he will be represented by Counsel in his absence.

A handwritten signature in black ink that reads "Nicholas Kaufman". The signature is written in a cursive, slightly slanted style. Below the signature is a solid horizontal line.

Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 20th day of February 2026

At The Hague, The Netherlands