

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/21-01/25**
Date: **23 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 “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)”, 17 February 2026, ICC-01/21-01/25-382-Conf

Source: Office of the Prosecutor

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

☒ 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

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REGISTRY

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☐ Counsel Support Section

M. Osvaldo Zavala Giler

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations
Section

☐ Other

I. INTRODUCTION

1. The Prosecution hereby provides its response to the ‘Defence Observations pursuant to Rule 122(3) and Defence Request pursuant to Rule 124(1)’ (the “Defence Observations”).¹

II. CONFIDENTIALITY

2. This filing is classified as confidential pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court (the “Regulations”) as it responds to a filing of the same classification and contains sensitive information regarding Prosecution witnesses.

III. SUBMISSIONS

A. The Prosecution’s Document Containing the Charges and Pre-Confirmation Brief are appropriately redacted in light of protection concerns

3. The Defence argues that the Prosecution’s Document Containing the Charges (the “DCC”)² and Pre-Confirmation Brief (the “PCB”)³ are “overly censored” and as a result, the Defence “can only challenge the evidence underlying the Incidents, meaningfully, in closed/private session.”⁴

4. The Prosecution acknowledges the importance of publicity of the Court’s proceedings as enshrined in article 67(1) of the Rome Statute and implicitly acknowledged in the requirement of regulation 23*bis* of the Regulations that any departure from a public filing be justified by factual and legal reasons.⁵ However, the presumption in favour of the publicity of

¹ Confidential *ex parte* Prosecution and Principal Counsel for OPCV only, Defence Observations pursuant to Rule 122(3) and Defence Request pursuant to Rule 124(1), 16 February 2026, ICC-01/21-01/25-379-Conf-Exp (the “Defence Observations”). The Prosecution notes that this filing was reclassified as confidential on 17 February 2026 further to an order from the Chamber. *See* [ICC-01/21-01/25 - Confidential] Order in relation to ‘Defence Observations pursuant to Rule 122(3) and Defence Request pursuant to Rule 124(1)’ (ICC-01/21-01/25-379-Conf-Exp), 17 February 2026 at 11:31 hrs.

² Document Containing the Charges, 4 July 2025, ICC-01/21-01/25-178-Conf (public redacted version filed on 22 September 2025, [ICC-01/21-01/25-178-Red](#) and lesser redacted version filed on 13 February 2026, [ICC-01/21-01/25-178-Red2](#)).

³ Corrected Version of “Prosecution’s Pre-Confirmation Brief”, 18 July 2025, ICC-01/21-01/25-201-Conf”, 24 July 2025, ICC-01/21-01/25-201-Conf-Corr (public redacted version filed on 22 September 2025, [ICC-01/21-01/25-201-Corr-Red](#) and lesser redacted version filed on 13 February 2026, [ICC-01/21-01/25-201-Corr-Red2](#)).

⁴ Defence Observations, paras 3-4.

⁵ The Presidency, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Annex to Decision Filing a Public Redacted Version of the “Decision on the ‘Request for Review of the Registrar’s Decision of 25 August 2008 on the Application for Legal Assistance Paid by the Court’”, 25 February 2009, [ICC-RoC85-01/08-4-Anx](#), para. 53.

proceedings must be balanced with the Chamber's duty to "protect the safety, physical and psychological well-being, dignity and privacy of witnesses."⁶

5. The Prosecution originally filed confidential versions of its DCC and PCB as both contained "sensitive information pertaining to the security of victims and witnesses."⁷ The Prosecution filed public redacted versions of its DCC and PCB on 22 September 2025 and lesser redacted versions on 13 February 2026 in order to ensure that the scheduled confirmation hearing could be as public as possible. In preparing the lesser redacted versions of the DCC and PCB, the Prosecution consulted closely with [REDACTED]. The significantly lesser redacted versions reflect this consultation and analysis, 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. It is therefore necessary that the redactions be maintained.

B. Prosecution witnesses must remain confidential

6. The Defence requests that the Chamber order the Prosecution to disclose that [REDACTED] Prosecution witnesses "were interviewed by investigators".⁸ The Defence argues that these witnesses are [REDACTED].⁹

7. The Chamber should reject this request. It is essential for the safety of these witnesses, [REDACTED], that their cooperation with the Prosecution remain confidential. The fact that these witnesses are [REDACTED]. Further, the increased threat to these witnesses due to [REDACTED].¹⁰ The Prosecution notes the Defence's submission that "any meaningful reference to the subject matter of their testimony will reveal their identity" and reminds the Defence that any submissions which would reveal the identity of confidential Prosecution witnesses must be done in private session.¹¹

8. With respect to [REDACTED], the Prosecution notes that it is under no obligation to generally "[REDACTED]".¹² In any event, and as previously submitted, the Prosecution has

⁶ Trial Chamber V(A), *The Prosecutor v William Samoei Ruto and Joshua Arap Sang*, Decision on Common Legal Representative for Victims' Request to Participate in Hearings and Examine Witnesses, 20 November 2013, [ICC-01/09-01/11-1107](#), para. 12.

⁷ [DCC](#), para. 2; [PCB](#), footnote 1.

⁸ Defence Observations, paras 5-6, 10(ii).

⁹ Defence Observations, para. 5.

¹⁰ Defence Observations, para. 6.

¹¹ Defence Observations, para. 10(iv).

¹² Defence Observations, para. 10(iii).

[REDACTED].¹³ The Prosecution has recently [REDACTED]. The Prosecution understands that the [REDACTED]. Therefore, the Prosecution requests that [REDACTED].

C. The Prosecution is under no obligation to “declare” information about the availability of witnesses for trial

9. In response to the Defence’s somewhat bizarre request that the Chamber order the Prosecution to “declare that it has ascertained the whereabouts and willingness” of certain witnesses to testify at trial,¹⁴ the Prosecution maintains the position that it already articulated to the Defence, namely that it is under no obligation to “declare” information regarding the whereabouts and willingness of its witnesses to testify at trial at this stage of the proceedings.¹⁵ The Prosecution confirms that it is confident that should the charges be confirmed it will present ample evidence at trial to convict Mr Duterte.

10. Moreover, the Prosecution finds the Defence’s inquiries regarding [REDACTED] potentially troubling. The Prosecution hopes that this request is grounded in a genuine concern regarding the efficiency of these proceedings, and not [REDACTED]. The Prosecution would not continue with this case were it not confident in its ability to meet its burden at confirmation and at trial.

D. Mr Duterte should attend the confirmation hearing

11. The Prosecution objects to the Defence’s request for the Chamber to permit Mr Duterte to waive his right to attend the confirmation hearing.¹⁶ Mr Duterte has yet to appear physically in the courtroom, a fact which he has repeatedly complained about.¹⁷ In line with the Defence’s submissions regarding the importance of the publicity of the confirmation hearing, it is important that the public, and in particular the many victims of the alleged crimes, be able to view Mr Duterte while he defends against the crimes he has been charged with. This is especially true in a case where there has been significant misinformation regarding the proceedings and Mr Duterte’s well-being. There is no reason given, nor does any exist, for Mr Duterte to avoid appearing in court for the confirmation hearing. The Chamber has

¹³ Email from Prosecution to the Chamber, 3 July 2025 at 12:04 p.m.

¹⁴ Defence Observations, para. 10(iv).

¹⁵ Email from Prosecution to Defence, 12 February 2026 at 2:27 p.m.

¹⁶ Defence Observations, paras 9, 10(iv).

¹⁷ Defence Observations on the First Review of Pre-Trial Detention, 9 January 2026, ICC-01/21-01/25-351-Conf, para. 6, footnote 16.

provided a special sitting schedule to accommodate Mr Duterte's participation in the pre-trial proceedings.¹⁸

IV. CONCLUSION

12. The Prosecution respectfully requests that the Chamber reject the Defence's requests pursuant to rule 122(3) of the Rules and reject the request to permit Mr Duterte to waive attendance at the confirmation hearing.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', written over a horizontal line.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 23rd day of February 2026

At The Hague, the Netherlands

¹⁸ Order setting the schedule and directions for the confirmation of charges hearing and convening the annual hearing on detention, 27 January 2026, [ICC-01/21-01/25-359](#), paras 14-16.