

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

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

Original: **26 June 2025**

Date: **27 June 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, *Ex Parte* Defence and Prosecution ONLY**

**Public Redacted Version of the "Defence Request for Leave to Reply to ICC-01/21-01/25-159 (Prosecution's response to Defence's "Urgent Request for Interim Release")", 26 June 2025**

**Source:** Defence for Mr Rodrigo Roa Duterte

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

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## REGISTRY

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## I. INTRODUCTION

1. The Defence seeks leave to reply to filing ICC-01/21-01/25-159, which constitutes the Prosecution's response<sup>1</sup> to the Defence's "Urgent Request for Interim Release".<sup>2</sup> As the Prosecution has noted elsewhere, "[a] reply may be warranted where the applicant seeks to provide arguments on matters that could not reasonably have been anticipated, or are otherwise necessary to adjudicate the matter".<sup>3</sup> Leave to reply may also be considered appropriate "in the interests of completeness of the judicial record".<sup>4</sup>

## II. SUBMISSIONS

2. All submissions set out below are presented in the full knowledge that any understanding achieved between the parties is not binding on the Pre-Trial Chamber. However, any such understanding should, as a matter of ethical propriety,<sup>5</sup> oblige the Prosecution to follow through faithfully and clearly on its negotiated intent, and not to act disingenuously by presenting submissions that undermine that very intent.
3. The Defence is considerably concerned by the Prosecution's apparent *volte-face* in paragraphs 33 to 35 of its Response. These paragraphs seem to intimate that the Prosecution had always intended that interim release must be denied while agreeing to terms and conditions for release to [REDACTED] merely as a

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<sup>1</sup> Prosecution's response to "Urgent Request for Interim Release", [ICC-01/21-01/25-159-Red](#), 23 June 2025 ("Prosecution Response"). All references to "Article" and to "Rules" in the present submission are to the Rome Statute and the ICC Rules of Procedure and Evidence ("RPE"), respectively, unless otherwise indicated.

<sup>2</sup> Urgent Request for Interim Release, [ICC-01/21-01/25-150-Red](#), 12 June 2025 ("Defence Request").

<sup>3</sup> Prosecution's response to "Defence Request for Leave to Reply to the Prosecution's Response to the Defence Challenge on Jurisdiction (ICC-01/21-01/25-146)", [ICC-01/21-01/25-163](#), 25 June 2025, para. 4.

<sup>4</sup> *Ruto and Sang*, Decision granting the Government of Kenya leave to reply, [ICC-01/09-01/11-757](#), 30 May 2013, para. 8.

<sup>5</sup> [Code of Conduct for the Office of the Prosecutor](#), Art. 70(a).

default position on the “off-chance” that the Pre-Trial Chamber (and not the Prosecution) should find that interim release is appropriate.

4. This was demonstrably **not** the intent exhibited by the Prosecution in its dealings with the Defence. This can be proved by referring the Pre-Trial Chamber to Annex A attached hereto, which comprises the draft of a letter sent, with the full knowledge of the Office of the Prosecutor, to the competent authorities of [REDACTED]. At the relevant part, the letter reads as follows: “[REDACTED]”.<sup>6</sup> The Pre-Trial Chamber will note that the Senior Trial Lawyer for the Prosecution carefully vetted this draft letter and approved it, subject to his visible tracked changes in red, which were indeed effected.
5. In light of the aforementioned, it was clear to the Defence that the Prosecution had agreed not to contest the risk factors enumerated in Article 58(1)(b) if Mr Duterte was to proffer terms and conditions of release no less stringent than those proffered for [REDACTED]. For this very reason, the Defence volunteered exactly the same terms of release for [REDACTED], with the exception of [REDACTED] (for which [REDACTED]). Given the Prosecution’s supposedly “good faith”<sup>7</sup> attitude, and truly believing that any purported risk factors could adequately be neutralised, the Defence purposefully refrained from addressing Article 58(1)(b) considerations with the vigour it would otherwise have exercised.

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<sup>6</sup> Annex A (emphasis added).

<sup>7</sup> [Prosecution Response](#), para. 34.

6. The Defence's genuine belief that the Prosecution had accepted that risk factors could be neutralised is completely understandable. After all, it is axiomatic that terms and conditions for release would never even have been a topic for discussion between the parties had the Prosecution truly considered that Mr Duterte's release was unwarranted. Be that as it may, the Prosecution has now, effectively, objected to the very notion of interim release and, furthermore, has descended into minute and petty detail as to why it believes Mr Duterte irredeemably offends all three risk factors stipulated in Article 58(1)(b). The Prosecution furthermore purports to treat the Defence request for interim release as being confined to [REDACTED] when it is fully aware that the Pre-Trial Chamber, at the Defence's request, invited observations from [REDACTED] on the possibility of receiving Mr Duterte [REDACTED] for the purpose of interim release and on enforcing, *inter alia*, the conditions set out in Annex A to the Defence Request.<sup>8</sup>
7. In these circumstances, a reply is necessary to address all the Prosecution's factual assertions on the risks posed by interim release since it would be procedurally unfair for the Pre-Trial Chamber to rule on the liberty of the individual without hearing the Defence's comments on the same. Several of the factual assertions could not have been anticipated, as evidenced by the fact that the Prosecution transmitted a disclosure package<sup>9</sup> in support of its Response the day after its submission.<sup>10</sup>

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<sup>8</sup> [REDACTED].

<sup>9</sup> Email, Prosecution to Defence, "[REDACTED]", 24 June 2025, 8:32 ("[REDACTED]").

<sup>10</sup> *Bemba*, Decision on defence request for leave to reply to "Prosecution's Response to 'Defence Request for Interim Relief'", [ICC-01/05-01/08-2985](#), 19 February 2014, para. 6 ("considering the defence's assertion that part of the information relied upon by the prosecution was not available to the defence at the time of its request, the Chamber is of the view that it might benefit from the defence's views on the four discrete issues set out in paragraph 3 above. Leave to reply will therefore be granted.")

8. The Prosecution’s contention that a “rejection of the legitimacy of the Court’s jurisdiction”<sup>11</sup> indicates a propensity to evade justice is nothing short of bizarre. Is it truly the Prosecution case that a suspect’s Article 19 challenge to the jurisdiction of the Court or a motion for an “abuse of process” must be seen as “justifying [...] continued detention in order to ensure [...] appearance at trial”? Mr Duterte’s refusal to submit to an **unconstitutional** arrest and his legal team’s claims of extraordinary rendition<sup>12</sup> have nothing to do with the recognised risk factors. They are legitimate legal arguments (albeit presented in colourful language). If leave to reply is granted, the Defence will produce documentation clearly showing that the domestic unlawfulness of Mr Duterte’s surrender represents official findings of the Committee on Foreign Relations in the Senate of the Republic of the Philippines (“Committee”).<sup>13</sup> The Committee’s findings detail, in full, the overtly political motives underpinning Mr Duterte’s arrest and surrender to the Court,<sup>14</sup> highlighting “a whole-of-government effort to bring down the Dutertes”.<sup>15</sup> The Committee’s findings corresponded to

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<sup>11</sup> [Prosecution Response](#), para. 8.

<sup>12</sup> *Id.*

<sup>13</sup> The Senate Committee on Foreign Relations of the Philippines conducted public hearings on 20 March, 3 April, and 10 April 2025 to inquire into the circumstances surrounding Mr Duterte’s arrest and surrender. The relevant press releases have, since their initial publication on 26 and 27 March and 7 April 2025, been removed from the official website of the Senate of the Philippines.

On 29 April 2025, Chairperson Senator Imee R. Marcos held a press conference to publicly present the results of the investigation. A **summary** was published as a [press release](#) on the website of the Senate of the Philippines on the same day. See Senate of the Republic of the Philippines, Committee on Foreign Relations, Office of the Chairperson Sen. Imee R. Marcos, “[Further Findings re: ICC issue](#)”, 29 April 2025 (“Further Findings”).

The **full report**, which includes, *inter alia*, all information gathered during the inquiry and the relevant conclusions, will be submitted as an Annex, should the Chamber grant the Request for Leave to Reply.

<sup>14</sup> [Further Findings](#), p. 1 (“[t]he arrest and transport of Former President Rodrigo R. Duterte (“FPRRD”) to the ICC was politically-motivated. There is a clear pattern where major political incidents precede significant statements and actions of the administration relative to the ICC”).

<sup>15</sup> [Further Findings](#), p. 1.

Counsel's utterances, namely that Mr Duterte's arrest and handover were the result of "political manoeuvring" designed to "politically cripple" his family.<sup>16</sup>

9. The Committee, further, found that the Government of the Philippines had denied Mr Duterte's right to seek interim release before the national courts, and that the Prosecutor of the ICC was aware, or should have been aware, of the administration's abuse of the existing legal framework to deprive Mr Duterte's of his fundamental rights.<sup>17</sup> These conclusions have resulted in the presentation of charges before the Office of the Ombudsman<sup>18</sup> against the domestic officials involved in Mr Duterte's arrest,<sup>19</sup> including for grave misconduct, graft and corrupt practices, arbitrary detention, usurpation of judicial functions, conduct prejudicial to the best interest of the service, and false testimony.<sup>20</sup>
10. Leave to reply will permit the Defence to present **official** Senate documentation to balance the factual gossip presented by the Prosecution, derived not from proper investigative work but, rather, from newspaper clippings.
11. Some of the most outlandish, if not regrettable, submissions presented by the Prosecution impugn the [REDACTED]. While the Prosecution might crudely denigrate [REDACTED],<sup>21</sup> the [REDACTED]. The Defence will also, if granted

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<sup>16</sup> [Further Findings](#), p. 2 ("[a]ny doubt that the arrest and turn-over of FPRRD to the ICC was politically-motivated was put to rest by the document entitled "Mid-Election Final Campaign Sprint Action Plan" ("Action Plan") by the Administration-aligned Lakas-CMD. Dated 22 April 2025, the Action Plan described in detail the accomplishments of "Oplan Horus", an operation launched sometime in April 2024, and was designed to bring down the Dutertes").

<sup>17</sup> Such findings are included within the full report of the Committee.

<sup>18</sup> See e.g. Araja, R. N., "[Ombudsman to top officials: Answer Imee's complaint](#)", Manila Standard, 7 May 2025. See also Panti, L. T., "[Ombudsman gives DOJ officials more time to answer complaint over Duterte arrest](#)", GMA News Online, 19 June 2025.

<sup>19</sup> The Committee on Foreign Relations identified the following individuals, in various capacities, as having participated in Mr Duterte's arrest: Department of Justice Secretary Jesus Crispin Remulla; Philippine National Police Chief General Rommel Francisco D. Marbil; Department of Interior and Local Government Secretary Juanito Victor Remulla; General Nicolas Torre III; Special Envoy on Transnational Crime Markus V. Lacanilao. See [Further Findings](#), pp. 4-5.

<sup>20</sup> For an elaboration of the crimes charged, please see [Further Findings](#), pp. 4 and 5.

<sup>21</sup> [Prosecution Response](#), para. 18.

leave to reply, elaborate on [REDACTED], which [REDACTED]. Mr Duterte is [REDACTED], and [REDACTED].<sup>22</sup> At the end of the day, the Pre-Trial Chamber will be assured that Mr Duterte [REDACTED]. The Defence questions the extent to which, if at all, the Prosecution actually believes this routinely repetitive argument that it makes on the risk of flight in almost every case at the International Criminal Court.<sup>23</sup>

12. The Defence does not seek leave to reply to the Prosecution's arguments as to Mr Duterte's presumed financial situation.<sup>24</sup> However, it must be noted that whatever "good faith" the Prosecution has purported to show in its interaction with the Defence is further diminished by throwing back in Mr Duterte's face the Defence's agreement to [REDACTED]. The Prosecution's double standards are clearly exposed by its agreement to [REDACTED] while claiming, simultaneously, that it [REDACTED].

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<sup>22</sup> [REDACTED].

<sup>23</sup> *Yekatom*, Prosecution's Response to YEKATOM's Request for Interim Release, [ICC-01/14-01/18-452](#), 16 March 2020, para. 9 ("[c]ontrary to the Request, YEKATOM has the means to abscond. As evidenced from his being a "fighter" in command of his Anti-Balaka Group and his former position as a [...] member of parliament, YEKATOM has a network of contacts and supporters which could provide him with the necessary means of absconding [and] is likely to mobilise to support him and facilitate his flight from the Court's jurisdiction. As a former MP, YEKATOM retains influence over his network of supporters within CAR and he could rely on them to abscond [...] the Chamber need only consider the possibility – not the inevitability – of YEKATOM's access to resources, financial or otherwise"). See also *Mbarushimana*, Prosecution response to the "Defence Request for Interim Release, [ICC-01/04-01/10-101](#), 15 January 2011, para. 19 ("[t]hrough the Suspect's former position as Executive Secretary of the FDLR, he has established numerous contacts in France, Europe generally, Africa and beyond, which could provide him with the necessary means of absconding"); *Bemba*, Transcript, [ICC-01/05-01/08-T-13-ENG WT](#), 29 June 2009, p. 32, lines 23-25 ("[t]he Prosecution submits that the accused benefits from the support of a number of influential networks in both DRC and Europe, which could facilitate his flight from the court's jurisdiction"); *Ngudjolo*, Prosecution's Observations on the Defence's Application for Interim Release, [ICC-01/04-01/07-299-Anx1](#), 22 February 2008, para. 15 ("NGUDJOLO has established numerous contacts nationally and internationally, which provide him with the connections and means to flee. The Prosecution further submits that it is not necessary to show that NGUDJOLO has actually made use of any of those contacts to seek to abscond, but there is an element of predictability that he could use those contacts").

<sup>24</sup> [Prosecution Response](#), para. 17.

13. The Prosecution, headed by a Deputy-Prosecutor who has persistently and inexplicably [REDACTED]<sup>25</sup> will, no doubt, obstinately maintain its belief in Mr Duterte's capacity to threaten witnesses and plot ongoing criminal offences. Leave to reply, however, will permit the Defence to show [REDACTED], [REDACTED], [REDACTED], [REDACTED]. Not for nothing is [REDACTED]. [REDACTED]. This will be proved should leave be granted. The only matter occupying Mr Duterte at present is not a desire to pick up a telephone [REDACTED] and to threaten witnesses for a trial – [REDACTED] – but rather to [REDACTED].
14. Finally, the Defence feels obliged to address the Prosecution's observations on the feasibility of release to [REDACTED]. As the Pre-Trial Chamber will recall, the Senior Trial Lawyer indicated [REDACTED].<sup>26</sup> Counsel called the Senior Trial Lawyer [REDACTED] and queried as to [REDACTED]. The Senior Trial Lawyer advised Counsel to [REDACTED]. Such an attitude is incomprehensible. As far as Counsel is concerned, this is, regrettably, yet another instance of the Prosecution's failure to deal with the Defence in collegial fashion on the subject of interim release. Now that the Prosecution's objection to [REDACTED] has been revealed, the Defence requires an opportunity to reply. The Defence, in fact, feels obliged to address the [REDACTED],<sup>27</sup> [REDACTED]. This offensive innuendo should be rejected, as should the arguments as [REDACTED] and [REDACTED].<sup>28</sup> As will be shown in the Defence reply, these considerations were of scant concern when Mr Duterte was surrendered, unconstitutionally, to The Hague [REDACTED]. The

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<sup>25</sup> Email, Prosecution to Defence, "Re: ICC-01/21-01/25: Duterte: Interim Release to [REDACTED]", 11 June 2025, 9:49 ("[REDACTED]"). *See also* Email, Prosecution to Defence, "Re: Duterte: Interim Release", 26 May 2025, 15:36 ("[REDACTED]").

<sup>26</sup> Email, Prosecution to Pre-Trial Chamber I, "Defence's Urgent Request for Interim Release (ICC-01/21-01/25-150-Conf-Exp)", 12 June 2025, 17:27.

<sup>27</sup> [Prosecution Response](#), para. 36(iii).

<sup>28</sup> [Prosecution Response](#), para. 36(ii).

same process may be applied to transfer Mr Duterte to [REDACTED], [REDACTED].

### III. RELIEF SOUGHT

15. In light of all the aforementioned, the Pre-Trial Chamber is respectfully requested to **GRANT** the present petition for leave to reply to the Prosecution's Response to the Defence's Urgent Request for Interim Release.

A handwritten signature in black ink that reads "Nicholas Kaufman". The signature is written in a cursive style and is positioned above a solid horizontal line.

Nicholas Kaufman

Counsel for Rodrigo Roa Duterte

Dated this 27<sup>th</sup> day of June 2025

At Jerusalem, Israel