

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

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

Date: 3 July 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

**Public Redacted Version of
“Victims’ Response to the ‘Confidential 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”
(No. ICC-01/21-01/25-169-Conf-Exp, dated 1 July 2025)**

Source: Office of Public Counsel for Victims

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

D36

☐ 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

M. Zavala Giler, Osvaldo

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”), appointed to represent the collective interests of potential victims until the mandate of the team of common legal representatives takes effect,¹ files her response to the “Confidential 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” (the “Request”).²

2. The Principal Counsel submits that the Request should be dismissed since the Defence fails to raise and/or demonstrate any new issues which it could not reasonably have anticipated, in accordance with regulation 24(5) of the Regulations of the Court (the “Regulations”). The Principal Counsel further submits that, by making substantive submissions in its Request, the Defence has not strictly complied with the relevant provision.

II. PROCEDURAL BACKGROUND

3. On 12 June 2025, the Defence filed a request for interim release (the “Request for Interim Release”).³

4. On 23 June 2025 and 25 June 2025, respectively, the Prosecution and the OPCV filed their responses to the Request for Interim Release (respectively the “Prosecution’s Response” and the “OPCV’s Response”).⁴

¹ See the “Order on the conduct of confirmation proceedings” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-114](#), 17 April 2025, paras. 68-69.

² See the “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”, [No. ICC-01/21-01/25-165-Red](#), 27 June 2025 (the “Request”).

³ See the “Public Redacted Version of the ‘Urgent Request for Interim Release’, 12 June 2025”, [No. ICC-01/21-01/25-150-Red](#), 12 June 2025 (the “Request for Interim Release”).

⁴ See the “Public Redacted Version of ‘Prosecution’s response to ‘Urgent Request for Interim Release’”, [No. ICC-01/21-01/25-159-Red](#), 23 June 2025 (the “Prosecution’s Response”), and the “Public Redacted Version of ‘Victims’ Response to the Defence Urgent Request for Interim Release’”, [No. ICC-01/21-01/25-162-Red](#), 25 June 2025 (the “OPCV’s Response”).

5. On 26 June 2025, the Defence filed its Request.⁵

6. On 27 June 2025, Pre-Trial Chamber I (the “Chamber”) instructed the Defence to file a confidential redacted version of the Request, indicating that the delay to respond for the OPCV would start from the date of notification of said version.⁶ The OPCV received the confidential redacted version of the Request the same day, except for Annex A, which was made available to the OPCV on 30 June 2025 after *inter partes* discussion with the Defence.⁷

7. On 30 June 2025, the Prosecution filed its response to the Request.⁸

III. CLASSIFICATION

8. Pursuant to regulation 23*bis* (1) and (2) of the Regulations of the Court, the present submission is classified as Confidential *Ex parte* Defence, Prosecution and OPCV only, following the classification chosen by the Defence and because it refers to the content of documents bearing the same classification. A public redacted version will be filed in due course.

IV. SUBMISSIONS

9. Regulation 24(5) of the Regulations provides in relevant part that “[u]nless otherwise permitted by the Chamber, a reply must be limited to new issues raised in the response which the replying participant could not reasonably have anticipated”.

10. The Principal Counsel submits that the Defence does not demonstrate that the Prosecution’s Response raises new issues which it could not reasonably have anticipated. In that regard, she recalls that leave to reply should not be granted to a participant that merely points to issues arising from a response, without adequately

⁵ See the Request, *supra* note 2.

⁶ See the email from the Chamber of 27 June 2025, at 10:38.

⁷ See the email from the Defence of 30 June 2025, at 12:03.

⁸ See the “Public Redacted Version of “Prosecution’s response to ‘Defence Request for Leave to Reply to ICC-01/21-01/25-159 (Prosecution’s response to Defence’s “Urgent Request for Interim Release”)” 30 June 2025, ICC-01/21-01/25-166-Conf-Exp”, [No. ICC-01/21-01/25-166-Red](#), 3 July 2025.

demonstrating why such issues are new and could not reasonably have been anticipated.⁹ By the same token, a mere disagreement with the arguments in a response does not warrant granting leave to reply.¹⁰

11. In its Request, the Defence seeks leave to reply to several issues related to the Prosecution's factual assertions on the risks posed by interim release,¹¹ including on arguments related to Mr Duterte's propensity to evade justice,¹² on [REDACTED],¹³ on his capacity to threaten witnesses or commit criminal offences,¹⁴ and finally, on the feasibility of his release to [REDACTED].¹⁵

12. All these issues could – and should – have been anticipated by the Defence, and none of them are new. The entirety of these issues are either part of the very criteria in article 58(1)(b) of the Rome Statute (the “Statute”) that are regularly used by Chambers to decide on requests for interim release,¹⁶ or were brought directly by the Defence in its Request for Interim Release.¹⁷ The Defence should therefore have anticipated that the Prosecution, or the OPCV, would present relevant arguments and evidence in support of their submissions on the criteria of article 58(1) of the Statute.

13. The fact that the Prosecution and the Defence might have discussed the issue of interim release, and the extent of their discussions or possible agreements, is irrelevant to the question of knowing if the Defence should have anticipated these issues.¹⁸ As

⁹ See the “Decision on Mr Ntaganda’s request for leave to reply” (Appeals Chamber), [No. ICC-01/04-02/06-1994 OA6](#), 17 July 2017, para. 13.

¹⁰ *Ibid.*

¹¹ See the Request, *supra* note 2, para. 7.

¹² *Idem*, paras. 8-10.

¹³ *Idem*, para. 11.

¹⁴ *Idem*, para. 13.

¹⁵ *Idem*, para. 14.

¹⁶ See e.g. the “Decision on the Yekatom Defence Application for Interim Release” (Trial Chamber V), [No. ICC-01/14-01/18-495-Red3](#), 24 July 2020, paras. 17-36; the “Decision on the Application for the interim release of Thomas Lubanga Dyilo” (Pre-Trial Chamber I, Single Judge), [No. ICC-01/04-01/06-586-tEN](#), 18 October 2006; the “Decision on Application for Interim Release” (Pre-Trial Chamber II, Single Judge), [No. ICC-01/05-01/08-321](#), 16 December 2008, paras. 43-50; and the “Decision on the ‘Requête de la Défense demandant la mise en liberté provisoire du président Gbagbo’” (Pre-Trial Chamber I, Single Judge), [No. ICC-02/11-01/11-180-Red](#), 13 July 2012, paras. 53-79.

¹⁷ See the Request for Interim Release, *supra* note 3, paras. 6, 11, 21-23, 34-37.

¹⁸ *Contra* see the Request, *supra* note 2, para. 7.

the Defence rightly points out,¹⁹ any agreement between the Prosecution and the Defence is not binding on the Chamber. It was the Defence's duty to effectively present all the relevant submissions with regard to the criteria in article 58(1) of the Statute, as vigorously as needed.²⁰ The Defence cannot use its own tactical choices to get a second opportunity to address the Chamber in support of its Request for Interim Release. Indeed, the Defence should not be allowed to effectively remedy its own failure to address and develop different aspects of the arguments contained in its Request for Interim Release, when it previously had the opportunity to do so and chose to not avail itself of that opportunity.

14. Concerning the issue of [REDACTED], the Principal Counsel notes that the Request is highly redacted and prevents a proper response.²¹ However, this issue is not new and could have inevitably been anticipated, since the Defence raised it on its own in the Request for Interim Release.²²

15. The Principal Counsel further notes that the Defence reasons – at times extensively – on substantive arguments.²³ In that regard, she recalls that such an approach is contrary to regulation 24(5) of the Regulations,²⁴ and these arguments should be disregarded.

¹⁹ *Idem*, para. 2.

²⁰ *Contra Idem*, para. 5.

²¹ *Idem*, para. 11.

²² See the Request for Interim Release, *supra* note 3, paras [REDACTED].

²³ See the Request, *supra* note 2, paras. 8-14.

²⁴ See "Decision on the 'Prosecution's Request to Amend Charges pursuant to Article 61(9) and for Correction of the Decision on the Confirmation of Charges, and Notice of Intention to Add Additional Charges'" (Pre-Trial Chamber II), [No. ICC-01/14-01/18-517](#), 14 May 2020, para. 13.

V. CONCLUSION

16. For the foregoing reasons, the Principal Counsel respectfully requests the Chamber to reject the Request.

A handwritten signature in black ink, appearing to read 'Paolina Massidda', with a horizontal line drawn underneath the name.

Paolina Massidda
Principal Counsel

Dated this 3rd day of July 2025

At The Hague, The Netherlands