

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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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 “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

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Prosecution respectfully requests that the Chamber reject the “Defence’s Request for Leave to Reply to the Prosecution’s response to the Defence’s ‘Urgent Request for Interim Release’” (the “Request”).¹ The Request is premised on the erroneous contention that the Prosecution’s agreement in principle not to oppose a Defence request for Mr Duterte’s interim release to [REDACTED], under certain conditions (the “Conditions”),² meant the Prosecution would be equally amenable, or had implicitly agreed to, Mr Duterte’s interim release to a different country unilaterally chosen by the Defence. However, the Prosecution had only agreed not to oppose, under certain conditions, Mr Duterte’s interim release to [REDACTED]. The Prosecution never agreed to interim release to [REDACTED], which the Defence knew when it filed its application for interim release (the “Request for Interim Release”).³ As such, the Prosecution’s arguments in opposition to Mr Duterte’s interim release to [REDACTED] contained in its Response to the Defence’s Urgent Request for Interim Release (the “Response”)⁴ could have been anticipated.

II. CONFIDENTIALITY

2. This Response is classified as confidential *ex parte* pursuant to regulation 23bis(2) of the Regulations of the Court, as it refers to filings with the same classification.

III. SUBMISSIONS

3. The Defence argues that because the Prosecution agreed not to oppose Mr Duterte’s interim release to [REDACTED], so long as the Conditions were in force, it assumed that the Prosecution would necessarily agree to Mr Duterte’s request for interim release to [REDACTED] under the same conditions.⁵ The Defence submits that it therefore could not have reasonably anticipated the Prosecution’s opposition to its application for interim release to [REDACTED].⁶

¹ Confidential *Ex Parte* Defence and Prosecution only 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, ICC-01/21-01/25-165-Conf-Exp.

² [REDACTED]

³ Confidential *Ex Parte* Defence, Prosecution and OPCV Only Urgent Request for Interim Release, 12 June 2025, ICC-01/21-01/25-150-Conf-Exp.

⁴ Confidential *Ex Parte* Defence, Prosecution only Prosecution’s response to “Urgent Request for Interim Release”, 23 June 2025, ICC-01/21-01/25-159-Conf-Exp.

⁵ Request, ICC-01/21-01/25-165-Conf-Exp, paras 3-6.

⁶ Request, ICC-01/21-01/25-165-Conf-Exp, paras 3-6.

4. As the Prosecution's Response makes clear, the Prosecution's agreement to the specific Conditions for interim release was based on the express understanding that Mr Duterte's potential interim release, if granted by the Chamber, would take place in [REDACTED].⁷

5. The support the Defence offers for its assumption that the Prosecution would not contest interim release to any state, so long as the Conditions were met, is a draft letter [REDACTED] and correspondence between the Defence and Prosecution discussing the feasibility of interim release *in* [REDACTED].⁸ A reasonable reading of the Prosecution's addition of a line in the draft letter to [REDACTED] stating that it "[REDACTED]" cannot reasonably be understood as the Prosecution consenting to Mr Duterte's interim release to a different country, [REDACTED], which had not been named, let alone discussed *inter partes*, at the time the letter was drafted.⁹

6. In fact, the Defence *knew*, unambiguously, at the time it filed its Request for Interim Release that the Prosecution had not agreed to interim release to [REDACTED]. On 11 June 2025, the Defence emailed the Prosecution stating, among other points, that [REDACTED]."¹⁰

7. The Prosecution responded to the Defence the same morning on 11 July 2025 stating, among other points: "[REDACTED]".¹¹ It was therefore clear at this time that the Prosecution had not agreed to interim release to [REDACTED].

8. A few hours later, the Prosecution emailed the Defence again stating:

"[REDACTED]".¹²

9. Later that same day, Defence counsel responded, among other points, by email: "[REDACTED]".¹³

10. Thus, on 11 July 2025, the Prosecution twice notified the Defence that its proposal regarding release to [REDACTED] had not yet been decided upon and the Defence replied that

⁷ Response, ICC-01/21-01/25-159-Conf-Exp, paras 33-35.

⁸ Confidential Ex Parte Defence and Prosecution only Annex A – [REDACTED], 26 June 2025, ICC-01/21-01/25-165-Conf-Exp-AnxA (Annex A).

⁹ Annex A, ICC-01/21-01/25-165-Conf-Exp-AnxA, p. 3.

¹⁰ Email from Defence to Prosecution, 11 June 2025 at 06h29 [emphasis in original].

¹¹ Email from Prosecution to Defence, 11 June 2025 at 09h49 [emphasis added].

¹² Email from Prosecution to Defence, 11 June 2025 at 12h43 [emphasis added].

¹³ Email from Defence to Prosecution, 11 June 2025 at 13h10.

it understood. There could not have been any reasonable expectation that the Prosecution would not object to a request for provisional release to [REDACTED].

11. Yet, the next day, 12 July 2025, without further communication, the Defence filed its Request for Interim Release to [REDACTED].¹⁴ It is impossible that at the time of filing its Request for Interim Release, with no further communication from the Prosecution, the Defence genuinely believed that the Prosecution had agreed to provisional release to [REDACTED]. Thus, the Defence could have anticipated the Prosecution's opposition to interim release to [REDACTED].

12. In any event, the Prosecution notes that the Defence *did* make submissions in its Request for Interim Release on article 58(1)(b) of the Statute.¹⁵ The Defence addressed each of the three factors under article 58(1)(b) of the Statute.¹⁶ The Defence's submission that it wishes it had addressed these factors with more "vigour" is not a reason to grant leave to reply.¹⁷

13. The Defence argues that "[s]everal of the [Prosecution's] factual assertions could not have been anticipated".¹⁸ This argument is based on the disclosure of seven documents the day after the Prosecution's Response was filed.¹⁹ However, the Prosecution had already made the same factual arguments in its [REDACTED], with reference to the same documents.²⁰ The Prosecution's factual assertions were therefore known to the Defence and could thus have been anticipated in relation to interim release.

14. In regard to the Defence's submission that the Prosecution erroneously treated its Request for Interim Release as limited to [REDACTED],²¹ the Prosecution notes that the first sentence of the Request for Interim Release specifically states that Mr Duterte "requests [...] interim

¹⁴ Request for Interim Release, ICC-01/21-01/25-150-Conf-Exp.

¹⁵ Request for Interim Release, ICC-01/21-01/25-150-Conf-Exp, paras 19-33.

¹⁶ Request for Interim Release, ICC-01/21-01/25-150-Conf-Exp, paras 19-33. The Defence addressed the necessity of ensuring Mr Duterte's appearance at trial (article 58(1)(b)(i)) at paras 19-25, the possibility of Mr Duterte obstructing or endangering proceedings (article 58(1)(b)(ii)) at paras 26-28, and whether Mr Duterte's continued detention was necessary to prevent the commission of crimes (article 58(1)(b)(ii)) at paras 29-33.

¹⁷ Request, ICC-01/21-01/25-165-Conf-Exp, para. 5.

¹⁸ Request, ICC-01/21-01/25-165-Conf-Exp, para. 7.

¹⁹ The Prosecution notes, however, that these seven documents were released to the Defence on JEM at 18h12 on 23 June 2025.

²⁰ [REDACTED].

²¹ Request, ICC-01/21-01/25-165-Conf-Exp, para. 6.

release to [REDACTED]”.²² Nowhere in the Request for Interim Release does the Defence mention the potential for interim release to [REDACTED], or any other countries.

15. Therefore, the Defence has not, to the Prosecution’s understanding, formally applied before the Chamber for interim release to [REDACTED]. Had the Defence made such a request, the Prosecution would have considered it in light of the commitment of [REDACTED]. However, as noted in its Response, the Prosecution must review any formal application to the Chamber for interim release if and when filed, and cannot agree not to oppose a specific submission before the submission has been filed and the commitment by the receiving State is known.²³

16. The Prosecution further notes that the Defence has, again,²⁴ included extensive substantive submissions in its Request,²⁵ which defeats the purpose of seeking leave.²⁶

17. In conclusion, the Prosecution had, in good faith, agreed in principle with the Defence on Conditions which would allow it not to oppose a Defence motion for interim release to [REDACTED]. The Defence then filed its Request for Interim Release not to [REDACTED], but to [REDACTED], knowing that the Prosecution had not agreed to this. The Defence therefore could have anticipated the Prosecution’s opposition. In this context, the Defence’s suggestion that it is the Prosecution who has acted “disingenuously” or conducted a “*volte-face*”, is not credible.²⁷

IV. REQUESTED RELIEF

18. For the above reasons, the Prosecution respectfully requests that the Chamber reject the Defence’s Request.

²² Request for Interim Release, ICC-01/21-01/25-150-Conf-Exp, para. 1. Further, the Request for Interim Release requested in the conclusion that “the Pre-Trial Chamber order Mr Duterte’s immediate release [REDACTED] under any conditions as deemed appropriate”. It also lists a number of reasons as to why [REDACTED] is a more “stable and suitable” environment for Mr Duterte, including [REDACTED]. See Request for Interim Release, ICC-01/21-01/25-150-Conf-Exp, paras 36, 40.

²³ Response, ICC-01/21-01/25-159-Conf-Exp, para. 35.

²⁴ See Defence Request for Leave to Reply to the Prosecution’s Response to the Defence Challenge on Jurisdiction (ICC-01/21-01/25-146), 23 June 2025, ICC-01/21-01/25-158-Conf, paras 10-12.

²⁵ Request, ICC-01/21-01/25-165-Conf-Exp, paras 8-11.

²⁶ *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, Decision on the Defence request to amend the name of the case, 26 June 2020, [ICC-02/05-01/20-8](#), paras 11-12; *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, Decision on the Defence request under article 67(1)(f) of the Rome Statute, 10 July 2020, [ICC-02/05-01/20-94](#), para. 12.

²⁷ Request, ICC-01/21-01/25-165-Conf-Exp, paras 2, 3, 5.

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

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 3rd day of July 2025

At The Hague, the Netherlands