

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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Date: **8 January 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’s observations on the review of the pre-trial detention of Mr Rodrigo Roa Duterte”, 7 January 2026, ICC-01/21-01/25-349-Conf

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I. INTRODUCTION

1. Pursuant to the Chamber's Order of 5 December 2025, the Prosecution hereby submits its observations on the review of the detention of Mr Rodrigo Roa Duterte ("Mr Duterte") under rule 118(2) of the Rules of Procedure and Evidence (the "Rules").¹

2. The continued detention of Mr Duterte pursuant to article 60(2) of the Rome Statute (the "Statute") remains necessary because the conditions set out under articles 58(1)(a) and 58(1)(b)(i)-(iii) of the Statute continue to be met. There has been no change in circumstances that would require the Chamber to reverse its previous determination. To the contrary, recent events demonstrate that Mr Duterte's detention is further justified under article 58(1)(b)(i) and (ii) of the Statute. Further, there has been no change in circumstances that would require a modification of the Chamber's ruling that Mr Duterte's health does not mitigate the risk he presents under article 58(1)(b) of the Statute.

II. CONFIDENTIALITY

3. This filing is classified as confidential pursuant to regulation 23bis(2) of the Regulations of the Court as it refers to filings and decisions of the same classification.

III. APPLICABLE LAW

4. Pursuant to article 60(3) of the Statute, the Chamber is required to periodically review its first ruling on the release or detention rendered pursuant to article 60(2) of the Statute.² Rule 118(2) of the Rules states that the Chamber shall do so at least every 120 days.

5. As regards the scope of review under article 60(3) of the Statute, the Chamber does not need to make a decision *ab initio*.³ Rather, it must assess whether there are any changed circumstances, and if so, whether these changed circumstances have an impact on the previous

¹ Email from Chamber to Prosecution, Defence and OPCV, [ICC-01/21-01/25 – Confidential] Order to submit observations on Mr Duterte's detention, 5 December 2025 at 11:25.

² Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the Second Yekatom Defence Motion for Interim Release, 7 September 2020, ICC-01/14-01/18-643-Red (the "Yekatom Ngaïssona Decision"), para. 14, citing, Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled 'Décision sur la demande de mise en liberté provisoire de Thomas Lubanga Dyilo', 13 February 2007, ICC-01/04-01/06-824 (the "Lubanga OA 7 Judgment"), paras 3, 94.

³ Yekatom Ngaïssona Decision, para. 15, citing, Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 28 July 2010 entitled 'Decision on the review of the detention of Mr Jean-Pierre Bemba Gombo pursuant to Rule 118(2) of the Rules of Procedure and Evidence', 19 November 2010, ICC-01/05-01/08-1019 (the "Bemba OA 4 Judgment"), para. 53.

ruling under review.⁴ In order to demonstrate that “changed circumstances” exist, there must be a “change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary.”⁵

6. The Prosecution need not re-establish circumstances that have already been established in previous submissions though must establish that there has been no change in those circumstances and must bring any other relevant information to the attention of the Chamber.⁶ A change in circumstances must be demonstrated on a concrete basis, “[h]ypotheticals and conditionals” are insufficient.⁷ The Chamber is not required to enter findings “on the circumstances already decided upon”,⁸ or “entertain submissions by the detained person that merely repeat arguments that the Chamber has already addressed”.⁹ The length of time in detention cannot be considered on its own to be a changed circumstance within the meaning of article 60(3) of the Statute.¹⁰

IV. SUBMISSIONS

A. There has been no change in circumstances that would justify the modification of the Chamber’s decision that Mr Duterte remain in detention

7. In its Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’ (the “Decision”), the Chamber found that the criteria in articles 58(1)(a) and 58(1)(b)(i)-(iii) of the Statute were met, namely: that there were reasonable grounds to believe that Mr Duterte committed crimes within the jurisdiction of the International

⁴ Yekatom Ngaïssona Decision, para. 15, citing, *inter alia*, Appeals Chamber, *The Prosecutor v. Laurent Gbagbo*, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I of 11 July 2013 entitled “Third decision on the review of Laurent Gbagbo’s detention pursuant to article 60(3) of the Rome Statute”, 29 October 2013, ICC-02/11-01/11-548-Conf (public redacted version notified the same day, ICC-02/11-01/11-548-Red) (the “Gbagbo OA 4 Judgment”), paras 1, 40, 53.

⁵ Bemba OA 4 Judgment, para. 51.

⁶ Bemba OA 4 Judgment, paras 2, 51.

⁷ Yekatom Ngaïssona Decision, para. 16, citing, *inter alia*, Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Decision on Applications for Provisional Release, 27 June 2011, ICC-01/05-01/08-1565-Conf (public redacted version notified on 16 August 2011, ICC-01/05-01/08-1565-Red), para. 58.

⁸ Yekatom Ngaïssona Decision, para. 17, citing, Bemba OA 4 Judgment, para. 53; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled “Decision on Applications for Provisional Release”, 19 August 2011, ICC-01/05-01/08-1626-Red, para. 60; Gbagbo OA 4 Judgment, para. 52.

⁹ Yekatom Ngaïssona Decision, para. 17, citing, Bemba OA 4 Judgment, para. 53; Lubanga OA 7 Judgment, para. 60.

¹⁰ Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Judgment on the appeals against Pre-Trial Chamber II’s decisions regarding interim release in relation to Aimé Kilolo Musamba, Jean-Jacques Mangenda, Fidèle Babala Wandu, and Narcisse Arido and order for reclassification, 29 May 2015, ICC-01/05-01/13-969, para. 44.

Criminal Court (the “ICC” or “Court”);¹¹ that his continued detention appeared necessary to ensure his appearance at trial;¹² that his continued detention appeared necessary to ensure that he does not obstruct or endanger the investigation or court proceedings;¹³ and that his continued detention appeared necessary to ensure that he does not continue with the commission of crimes.¹⁴

8. The Appeals Chamber upheld the Decision, rejecting all grounds of appeal raised by the Defence and noting that the Chamber “reached its conclusions in relation to the risks enumerated in article 58(1)(b) of the Statute on the basis of a comprehensive assessment of the information before it.”¹⁵

9. The Prosecution is not aware of any change in circumstances or new facts which would require the Chamber to modify its Decision. On the contrary, recent developments lend further support for Mr Duterte’s continued detention under article 58(1)(b)(i) and (ii) of the Statute. These developments are outlined below.

B. Recent events demonstrate that Mr Duterte’s continued detention is necessary

1. Recent events demonstrate that Mr Duterte’s continued detention is necessary to ensure his appearance at trial under article 58(1)(b)(i)

10. The Chamber has previously considered claims that Mr Duterte was “kidnapped” to be a factor in its conclusion that he presents a flight risk pursuant to article 58(1)(b)(i) of the Statute.¹⁶ In the time since the Prosecution’s last submission before the Chamber regarding Mr Duterte’s potential Mr Duterte interim release,¹⁷ his family and associates have continued to promulgate this false and damaging narrative:

¹¹ Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’, 26 September 2025, ICC-01/21-01/25-282-Conf (public redacted version notified 10 October 2025, ICC-01/21-01/25-282-Red) (the “Decision”), paras 47-48.

¹² Decision, paras 50-53.

¹³ Decision, paras 54-57.

¹⁴ Decision, paras 58-60.

¹⁵ Appeals Chamber, Judgment on the appeal of Mr Rodrigo Roa Duterte against the decision of Pre-Trial Chamber I entitled “Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’” ICC-01/21-01/25-326-Conf, 28 November 2025, ICC-01/21-01/25-326-Conf (public redacted version notified the same day, ICC-01/21-01/25-326-Red) (the “Appeals Decision”), para. 129.

¹⁶ Decision, para. 50.

¹⁷ See Confidential *ex parte* Defence and Prosecution only, Prosecution’s response to “Renewed Request for Interim Release” 28 August 2025, ICC-01/21-01/25-252-Conf-Exp (confidential version filed on the same day ICC-01/21-01/25-252-Conf and public redacted version notified on 12 September 2025, ICC-01/21-01/25-252-Red).

- (i) In a speech delivered in Japan on 21 September 2025, Mr Duterte's daughter, Sara Duterte, repeated her claims that Mr Duterte was kidnapped. She reportedly stated that "what they did was they kidnapped President Duterte. This is abuse."¹⁸ She reportedly went on to state that "[w]hat they did to former President Rodrigo Duterte was, with a warrant of arrest, they forcibly took him from our country and brought him to The Hague."¹⁹
- (ii) On 21 September 2025 during a rally in the Philippines, [REDACTED], Joyleen Mercedes "Girly" Labis Balaba, who is an active member of the "Free Duterte Now" movement, gave an interview in which she stated that Mr Duterte was "kidnapped and taken to the Hague".²⁰ She further stated that the "Free Duterte Now" rallies have continued because "[...] it's still about corruption. Because we believe that this kidnapping of our former president is an act of a corrupt government."²¹
- (iii) On 28 November 2025, Mr Duterte's grandson, Omar Duterte, who is a political representative in Davao City, was interviewed outside of the ICC following the Appeals Chamber's ruling upholding Mr Duterte's pre-trial detention.²² He was asked "what's your message to the Marcos administration who kidnapped and brought Papa Digong here?" to which he replied, "I hope they're happy right now. I hope they feel vindicated on what they did. I hope they got some sort of reward from this. It is borderline...or almost borderline...no, it's borderline...it's borderline inhumane keeping an 80-year-old here, away from his family, away from the land they called home. So, yeah, I hope they're happy."²³

11. These examples demonstrate that Mr Duterte's family and associates continue to reject the legitimacy of the legal proceedings against him. His detention therefore continues to be necessary to ensure his appearance at trial pursuant to article 58(1)(b)(i) of the Statute.

¹⁸ PhilStar, VP Sara accuses ICC of "kidnapping" father anew.

¹⁹ PhilStar, VP Sara accuses ICC of "kidnapping" father anew.

²⁰ PHL-OTP-00093021 (Transcript: PHL-OTP-00093057; Translation: PHL-OTP-00093058 at 0002, lines 13-14).

²¹ PHL-OTP-00093021 (Transcript: PHL-OTP-00093057; Translation: PHL-OTP-00093058 at 0002, lines 23-25).

²² PHL-OTP-00095429 (Transcription: PHL-OTP-00095622; Translation: PHL-OTP-00095623 at 0002).

²³ PHL-OTP-00095429 (Transcription: PHL-OTP-00095622; Translation: PHL-OTP-00095623 at 0002).

2. Recent events demonstrate that the continued detention of Mr Duterte is necessary to ensure that he does not obstruct or endanger the investigation or court proceedings under article 58(1)(b)(ii)

12. [REDACTED],²⁴ [REDACTED].²⁵ [REDACTED] “[REDACTED].”²⁶ [REDACTED].²⁷ [REDACTED].²⁸

13. [REDACTED].²⁹ Given his past proclivity for interfering in investigations against him, it is possible that Mr Duterte, if granted interim release, would make use of this network to interfere with the case against him.³⁰ As such, Mr Duterte should remain in detention in order to ensure that he does not obstruct or endanger the investigation or court proceedings under article 58(1)(b)(ii) of the Statute.

C. There has been no change in circumstances that would require a modification of the Chamber’s ruling that Mr Duterte’s health does not mitigate the risk he presents under article 58(1)(b) of the Statute

14. The Prosecution notes its previous submission that the Defence’s request for an expert report on whether Mr Duterte’s health mitigates the article 58(1)(b) risk factors should be rejected.³¹ In particular, the requested report is unnecessary and the Chamber has already considered and rejected the Defence’s argument that Mr Duterte’s health can mitigate the risks he poses under article 58(1)(b) of the Statute.³² There has been no change in circumstances which would require the Chamber to modify this finding. The recent report of the panel of

²⁴ [REDACTED].

²⁵ [REDACTED].

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

²⁹ Appeals Chamber, *The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé*, Judgment on the appeal of Mr Laurent Gbagbo against the decision of Trial Chamber I of 8 July 2015 entitled “Ninth decision on the review of Mr Laurent Gbagbo’s detention pursuant to Article 60(3) of the Statute, 8 September 2015, ICC-02/11-01/15-208, para. 46.

³⁰ See Decision, para. 54, in which the Chamber found that that the question of the risks to witnesses and investigations revolves around the *possibility*, not the inevitability, of a future occurrence.

³¹ Confidential Prosecution’s response to “Defence Request for an Expert Report on Article 58(1)(b) Risk Factors”, ICC-01/21-01/25-342, 23 December 2025, ICC-01/21-01/25-345-Conf (public redacted version filed the same day ICC-01/21-01/25-345-Red).

³² Decision, para. 64. This ruling was subsequently upheld by the Appeals Chamber, noting the Defence’s failure to demonstrate that the Chamber’s approach to the issue was unreasonable. See Appeals Decision, paras 87-88.

independent experts supports this in finding that Mr Duterte possesses the necessary capacities to meaningfully exercise his procedural and fair trial rights.³³

V. REQUESTED RELIEF

15. For the above reasons, the Prosecution respectfully requests that the Chamber order the continued pre-trial detention of Mr Duterte in accordance with articles 60 and 58(1) of the Statute.



Mame Mandiaye Niang, Deputy Prosecutor

Dated this 8th day of January 2026

At The Hague, the Netherlands

³³ In particular, each panel member independently concluded that Mr Duterte has the ability to: (i) understand the charges and the evidence (*see* Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 52-53, sections 4.7 and 4.8; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 13; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 33, paras. 124-125); (ii) understand the conduct, purpose and possible consequences of the pre-trial proceedings (*see* Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 53, section 4.9; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 12; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 33, para. 126); and (iii) instruct Counsel for the preparation and conduct of his defence (*see* Annex II to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxII, p. 53, section 4.10; Annex III to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIII, p. 12; Annex IV to the Experts' Reports, ICC-01/21-01/25-327-Conf-AnxIV, p. 34, para. 127).