

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **8 May 2026**

TRIAL CHAMBER III

Before: Judge Joanna Korner, Presiding Judge
Judge Keebong Paek
Judge Nicolas Guillou

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 Rodrigo Roa Duterte’s Detention”

Source: Office of the Prosecutor

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I. INTRODUCTION

1. Pursuant to Trial Chamber III's (the "Chamber") Order of 1 May 2026, 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 Pre-Trial Chamber I's (the "Pre-Trial Chamber") previous determination that Mr Duterte presents a risk under all factors of article 58(1)(b) of the Statute. To the contrary, recent events demonstrate that Mr Duterte's continued detention is necessary under article 58(1)(b)(i) of the Statute.

II. CONFIDENTIALITY

3. This filing is classified as confidential *ex parte* Prosecution and Defence only pursuant to regulation 23bis (1) and (2) of the Regulations of the Court as it refers to a decision of the same classification and contains [REDACTED]. A confidential redacted version and public redacted version will be filed shortly.

III. APPLICABLE LAW

4. Pursuant to article 60(3) of the Statute, a Chamber is required to periodically review its 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 Order to Submit Observations on Rodrigo Roa Duterte's Detention, 1 May 2026, [ICC-01/21-01/25-424](#).

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. The Pre-Trial Chamber consistently found that the conditions under articles 58(1)(a) and 58(1)(b)(i)-(iii) of the Statute are met

7. The Prosecution has provided an overview of the findings of the Pre-Trial Chamber with respect to Mr Duterte’s detention below, given that the Chamber is conducting its review of Mr Duterte’s detention for the first time.¹¹

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 filed on the same date, 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 filed 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.

¹¹ Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, Decision on the review on detention, 1 November 2021, ICC-02/05-01/20-502, (the “[Abd-Al-Rahman Decision on Detention](#)”) para. 12.

8. In its Decision on the Defence’s ‘Urgent Request for Interim Release’ and ‘Renewed Request for Interim Release’ (the “Interim Release Decision”), the Pre-Trial Chamber found that the criteria in articles 58(1)(a) and 58(1)(b)(i)-(iii) of the Statute were met.¹² The Pre-Trial Chamber then ruled in its Decision on the review of Mr Rodrigo Roa Duterte’s detention (the “Decision on Review of Detention”) that there were no changed or new circumstances requiring the Chamber to modify its prior ruling on the existence of the risks under article 58(1)(b)(i) to (iii) of the Statute.¹³ The Pre-Trial Chamber relied on the below examples in making its determinations that Mr Duterte shall remain in detention:

- (i) The Pre-Trial Chamber found that Mr Duterte is a flight risk pursuant to article 58(1)(b)(i) of the Statute for the following reasons:
 - a. Mr Duterte and his family’s continuous references to his arrest and detention as a kidnapping, as well as their public statements rejecting the legitimacy of the International Criminal Court (the “ICC” or “Court”) and the legal proceedings against him, which the Pre-Trial Chamber found illustrative of their will to help Mr Duterte elude detention and prosecution.¹⁴ The evidence before the Pre-Trial Chamber in this respect included, *inter alia*, Mr Duterte’s reported public assertion, made before his arrest, that if the ICC were to “come for me, if they arrest me here, there will be a shootout, I will finish all those sons of bitches”;¹⁵
 - b. Mr Duterte’s family physically resisting his arrest.¹⁶ Specifically, Mr Duterte’s common-law partner, Honeylet Avenceña, reportedly assaulted a police officer during Mr Duterte’s arrest by hitting the

¹² Pre-Trial Chamber I, Confidential 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 filed on 10 October 2025, ICC-01/21-01/25-282-Red) (“the [“Interim Release Decision”](#)”).

¹³ Pre-Trial Chamber I, Confidential Decision on the review of Mr Rodrigo Roa Duterte’s detention, 26 January 2026, ICC-01/21-01/25-357-Conf (public redacted version filed on the same date, ICC-01/21-01/25-357-Red) (the [“Review of Detention Decision”](#)).

¹⁴ [Interim Release Decision](#), para. 50; [Review of Detention Decision](#), para. 31.

¹⁵ 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 (confidential redacted version and public redacted version filed on the same date, ICC-01/21-01/25-159-Conf-Exp-Red, ICC-01/21-01/25-159-Red) (“[Prosecution Response to Urgent Request for Interim Release](#)”), para. 9.

¹⁶ [Interim Release Decision](#), para. 50.

officer on the head with a cell phone which resulted in injuries to the officer;¹⁷

- c. Mr Duterte's family demanding that he be returned to the Philippines;¹⁸
- d. Mr Duterte's daughter, the Vice President of the Philippines, Sara Duterte, talking about breaking Mr Duterte out of the Detention Unit in public speeches;¹⁹
- e. Mr Duterte's family attempting to delegitimise the proceedings against him by alleging collusion between the Court and the Government of the Philippines, as well as accusing the Prosecution of using "fake witnesses";²⁰
- f. Mr Duterte's daughter allegedly indicating on 19 August 2025 that Mr Duterte had told her that he wishes to return to Davao City, should he be granted interim release, which is in contradiction with the Defence's assertion that he would remain in the State he would be released to;²¹
- g. his network of support and political contacts, given his position as former President of the Philippines, as well as the fact that his daughter is currently Vice President of the Philippines;²²
- h. the fact that he was elected as mayor of Davao City in May 2025, which shows that he has continued support in the Philippines;²³ and
- i. the fact that he is facing multiple murder charges comprising a number of murders and attempted murders as crimes against humanity, and may receive a lengthy sentence if all or part of the charges were to be

¹⁷ [Prosecution Response to Urgent Request for Interim Release](#), para. 11.

¹⁸ [Interim Release Decision](#), para. 50.

¹⁹ [Interim Release Decision](#), para. 50.

²⁰ [Interim Release Decision](#), para. 50.

²¹ [Interim Release Decision](#), para. 50.

²² [Interim Release Decision](#), para. 51.

²³ [Interim Release Decision](#), para. 51.

confirmed and he were convicted at trial²⁴ and that he has been found fit to take part in the proceedings.²⁵

(ii) The Chamber found that Mr Duterte's detention is necessary to ensure that he does not obstruct or endanger the investigation or these proceedings pursuant to article 58(1)(b)(ii) of the Statute for, *inter alia*, the following reasons:

- a. Mr Duterte's history of threatening and taking retaliatory actions against individuals opposed to him.²⁶ [REDACTED];²⁷
- b. [REDACTED];²⁸ and
- c. [REDACTED].²⁹ The Pre-Trial Chamber [REDACTED].³⁰

(iii) Finally, the Pre-Trial Chamber found that Mr Duterte's detention is necessary to ensure that he does not continue with the commission of crimes pursuant to article 58(1)(b)(iii) of the Statute due to the fact that in 2024, Mr Duterte allegedly promised to double the killings if he were to be elected again as Mayor of Davao City.³¹ Mr Duterte was elected as Mayor of Davao City in May 2025.³²

9. The Appeals Chamber unanimously upheld both the Interim Release Decision³³ and, subsequently, the Review of Detention Decision.³⁴

10. At the hearing on Mr Duterte's detention, the Prosecution pointed the Pre-Trial Chamber to the waiver Mr Duterte had submitted when he refused to attend the confirmation hearing, in which he stated, *inter alia*, "I do not recognise the jurisdiction of the International Criminal

²⁴ [Interim Release Decision](#), para. 51. The Pre-Trial Chamber also found that Mr Duterte presents a risk pursuant to article 58(1)(b)(ii) due to the serious charges and potential lengthy sentence he is facing, noting that he would have "strong incentive to influence the Prosecution's witnesses before the start of any trial". See [Interim Release Decision](#), para. 56.

²⁵ [Review of Detention Decision](#), para. 31.

²⁶ [Interim Release Decision](#), para. 54.

²⁷ [REDACTED].

²⁸ [Interim Release Decision](#), para. 54.

²⁹ [Interim Release Decision](#), para. 55.

³⁰ [REDACTED].

³¹ [Interim Release Decision](#), para. 58.

³² [Interim Release Decision](#), para. 58.

³³ 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'", 28 November 2026, ICC-01/21-01/25-326-Conf (public redacted version filed on the same date, [ICC-01/21-01/25-326-Red](#)).

³⁴ Appeals Chamber, Judgment on the appeal against Pre Trial Chamber I's "Decision on the review of Mr Rodrigo Roa Duterte's detention", 6 March 2026, ICC-01/21-01/25-408-Conf (public redacted version filed on the same date, [ICC-01/21-01/25-408-Red](#)).

Court over my person”, and that he was “forcibly pushed into a jet and renditioned to The Hague [...]”.³⁵ He also referred to his arrest as a “kidnapping”.³⁶ As submitted by the Prosecution during the hearing, these are not the words of a person who would return voluntarily to the Court if granted interim release.³⁷

11. There have been no changes in circumstances or new facts which would require the Chamber to modify the decisions of the Pre-Trial Chamber to remand Mr Duterte to detention. On the contrary, recent developments lend further support for Mr Duterte’s continued detention under article 58(1)(b)(i) of the Statute. These developments are outlined below.

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

12. As noted above, the Pre-Trial Chamber has previously considered statements by Mr Duterte and his family rejecting the legitimacy of the legal proceedings against him to be illustrative of their willingness to help Mr Duterte elude detention and prosecution.³⁸ In the time since the Prosecution’s last submission regarding Mr Duterte’s potential interim release, Mr Duterte’s family and associates, as well as his lead counsel, have continued to undermine the legitimacy of the Court. For example, on 5 May 2026, Mr Duterte’s daughter, Sara Duterte, reportedly stated that “[w]e don’t see any way that the ICC will let go of the case of President Duterte. Since it is only one of two ICC [ongoing] cases. So we don’t think that they will let this go.”³⁹ Mr Duterte’s close associate, Salvador Panelo, made similar comments in the Philippines media, stating that the Court “is trying to justify its existence”.⁴⁰

13. Finally, and regrettably, Mr Duterte’s Defence Counsel has also questioned the Court’s legitimacy, plainly stating in recent interviews that the Court is a partisan political body and that the Judges of the Court issue biased decisions motivated by their desire to generate work for themselves and justify the Court’s budget.⁴¹ These examples demonstrate an ongoing effort

³⁵ Annex A to the Notification of a Request to Waive the Right to Attend the Hearing on the Confirmation of the Charges, 18 February 2026, ICC-01/21-01/25-383-AnxA (the “[Waiver](#)”).

³⁶ [Waiver](#).

³⁷ Transcript of hearing, 27 February 2026, [ICC-01/21-01/25-T-007-Red-ENG](#), page 56, lines 11-12.

³⁸ [Review of Detention Decision](#), para. 31.

³⁹ GMA, [VP Sara Duterte reacts to ICC decisions: ‘Best way to move forward is to prepare for trial’](#), 5 May 2026.

⁴⁰ ANC, [‘It has to justify existence’: Panelo says says ICC won’t let go of Duterte case as challenges mount](#), 30 April 2026, 2:20-2:30.

⁴¹ Rappler, [Kaufman on ICC jurisdiction decision: Not surprised, focusing on road ahead](#), 22 April 2026; ANC, [Kaufman: ICC upholding jurisdiction over Rodrigo Duterte ‘unsurprising’](#), 22 April 2026. See Prosecution’s response to “Defence Request for Leave to Appeal the Decision on the Confirmation of Charges”, 4 May 2026, [ICC-01/21-01/25-428](#), paras 20-25.

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.

14. The gravity of the charges and the prospect of a lengthy prison sentence are also relevant considerations in decisions on interim release.⁴² Since the Prosecution's last submission on interim release, the Appeals Chamber confirmed, by majority, on 22 April 2026, the Pre-Trial Chamber's finding that the Court indeed has jurisdiction over Mr Duterte's case⁴³ and the Pre-Trial unanimously confirmed all charges against Mr Duterte on 23 April 2026.⁴⁴ Mr Duterte's case is therefore confirmed to go to trial, which increases the risk that he may abscond.⁴⁵

15. Finally, the Prosecution is continuing to disclose additional material, including statements from new witnesses. This process is dependent on the Prosecution's and the Registry's ability to protect witnesses, which militates in favour of Mr Duterte's continued detention.⁴⁶

V. REQUESTED RELIEF

16. For the above reasons, the Prosecution respectfully requests that the Chamber order the continued 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 May 2026

At The Hague, the Netherlands

⁴² [Interim Release Decision](#), para. 51 (and references contained in footnote 50).

⁴³ Appeals Chamber, Judgment on the appeal of Mr Rodrigo Roa Duterte against Pre-Trial Chamber's "Decision on the Defence Challenge to the Jurisdiction of the Court" of 23 October 2025, 22 April 2026, [ICC-01/21-01/25-415](#).

⁴⁴ Decision on the confirmation of charges against Mr Rodrigo Roa Duterte, 23 April 2026, ICC-01/21-01/25-417- Conf (public redacted version filed on the same date, [ICC-01/21-01/25-417-Red](#)).

⁴⁵ [Abd-Al-Rahman Decision on Detention](#), para. 22.

⁴⁶ [Abd-Al-Rahman Decision on Detention](#), para. 28.