

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/21-01/25**
Original: **16 June 2026**
Date: **26 June 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 “Response to Prosecution’s Second Request for Materials
in the Custody of the Registry”**

Source: Defence for Mr Rodrigo Roa Duterte

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**

Duterte Defence Team

☐ **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**

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Registrar

Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and Reparations
Section**

☐ **Other**

I. INTRODUCTION

1. In response to the Prosecution's second request for access to items obtained by the Registry at the time of Mr Duterte's arrest and transfer to the International Criminal Court,¹ the Defence does not oppose access to the [REDACTED] identified by the Prosecution. However, the Prosecution request for access to "all keys" in the Registry's custody is insufficiently reasoned, is neither necessary nor proportionate, and should be rejected.

II. PROCEDURAL HISTORY

2. On 1 May 2026, the Prosecution requested that the Trial Chamber order the Registry, *inter alia*, to file an inventory of the items seized from Mr Duterte following his arrest, to grant the Prosecution access to "any material" relevant to its investigation, and to ensure that any money amongst the seized items be frozen and not subject to devaluation.²
3. Upon receipt of the Defence³ and the Registry⁴ observations, the Trial Chamber granted the Prosecution's request to freeze any money that had been seized and further ordered the Registry to provide an inventory of the items obtained from Mr Duterte upon his arrest. The Chamber considered it premature to issue a ruling on access to the items at that stage, instead directing the Prosecution to file a further request should it seek authorisation to examine any of the items in the inventory.⁵
4. On 9 June 2026, the Prosecution requested access to (i) [REDACTED]; (ii) [REDACTED]; and (iii) all keys in the Registry's custody.⁶

¹ Prosecution's second request for materials in the custody of the Registry, [ICC-01/21-01/25-460-Conf-Exp](#), 9 June 2026 ("Prosecution Second Request"). This response is filed confidential *ex parte* pursuant to [Regulation 23bis\(2\)](#) of the Regulations of the Court as it addresses a request of the same classification.

² Prosecution's request for materials in the custody of the Registry, [ICC-01/21-01/25-425-Conf-Exp](#), 1 May 2026, para. 14.

³ Response to Prosecution's request for materials in the custody of the Registry, [ICC-01/21-01/25-444-Conf-Exp](#), 18 May 2026.

⁴ Registry's observations on the "Prosecution's request for materials in the custody of the Registry" (ICC-01/21-01/25-425-Conf-Exp), [ICC-01/21-01/25-442-Conf-Exp](#), 18 May 2026.

⁵ Decision on the Prosecution's request for materials in the custody of the Registry, [ICC-01/21-01/25-451-Conf-Exp](#), 28 May 2026 ("Decision on the Request for Materials"), paras 5, 7-9.

⁶ [Prosecution Second Request](#), para. 4.

III. SUBMISSIONS

5. A request by the Prosecution to access materials held by the Registry must be relevant and sufficiently reasoned.⁷ Reasonable grounds must exist to believe that the proposed search is likely to yield evidence necessary to the investigation and that the measure sought is both necessary and proportionate to the pursuit of a legitimate aim.⁸
6. To that end, the Defence does not oppose the Prosecution's request for access to the [REDACTED], and recalls the Prosecution's continuing obligation to disclose promptly any exculpatory material.⁹ The Defence asks that, should the Prosecution's [REDACTED] produce information that is personal to Mr Duterte or his family and which is not relevant to the investigation, the Prosecution take appropriate measures to limit access thereof to the minimum number of persons.¹⁰ Such information should also be destroyed or permanently deleted at the earliest possible opportunity.¹¹
7. Conversely, the Defence submits that the Prosecution's request to access "all keys in the Registry's custody"¹² is insufficiently substantiated and should be rejected. The request is, in substance, a fishing expedition. The Prosecution advances no evidential basis connecting the keys either to the commission or furtherance of the alleged crimes or to any assets that may be relevant to the investigation. Rather, the Prosecution acknowledges that it does not know to what the keys provide access, [REDACTED] – a matter that can be ascertained only *after* examination of the keys themselves.¹³ The

⁷ *Abd-Al-Rahman*, 'Decision on the Prosecution's request for evidence in the custody of the Registry (ICC-0205-01/20-9-Red2) and the Registry's request for instructions (ICC-02/05-01/07-86-US-Exp), 20 August 2020, ICC-02/05-01/20-123-Conf', [ICC-02/05-01/20-123-Red](#), 9 July 2021 ("[Abd-Al-Rahman Decision](#)"), para. 17 ("[i]n assessing the Prosecutor's Request, the Single Judge must consider whether the Prosecutor has provided **relevant and sufficient reasons** to justify issuing a search warrant. In particular, there **must be reasonable grounds to believe that the requested search would produce evidence that is necessary for the investigation**. Moreover, it must be shown that the search is **necessary in the circumstances and proportionate to the pursuance of a legitimate aim**. For that purpose, the search warrant may be accompanied by certain limitations, so that the interference is not unlimited and potentially disproportionate") (internal footnote omitted) (emphasis added).

⁸ *Id.*

⁹ *Yekatom and Ngaïssona*, Decision on the Yekatom Defence Motion for Finding of Disclosure Violation and Additional Remedies, [ICC-01/14-01/18-1202-Red](#), 7 December 2021, para. 13 ("the Chamber recalls that, under Article 67(2) of the Statute, the Prosecution is bound to disclose potentially exculpatory material 'as soon as practicable', and that a document may contain both exculpatory and incriminatory information. The fact that a document contains incriminatory information is not a reason to disregard any potentially exculpatory factor(s) contained therein, including those that may affect the credibility of prosecution evidence").

¹⁰ See [Abd-Al-Rahman Decision](#), para. 23. See also [REDACTED] ("[REDACTED]").

¹¹ See *El Hishri*, Decision on the Prosecution's request for evidence in the custody of the Registry, [ICC-01/11-01/25-60-Red](#), 17 April 2026, para. 23.

¹² [Prosecution Second Request](#), paras 4, 5 and fn. 6.

¹³ [Prosecution Second Request](#), para. 5 ("[REDACTED]").

basis of such a request must exist before the investigation is undertaken, not emerge as a result thereof. The Prosecution cannot be permitted to examine the keys in order to articulate, *post facto*, the evidential foundation required to justify that examination in the first place.

8. In *Abd-Al-Rahman*, the Chamber exceptionally granted [REDACTED]¹⁴ and their examination would not interfere with the suspect's rights.¹⁵ [REDACTED]. The present circumstances are materially different. It is unclear to what the keys relate, or indeed whether they belong to Mr Duterte at all, having been seized while he was travelling with members of his family. It is entirely possible that the keys provide access to material belonging to, or concerning, his relatives, such that their examination would intrude upon the privacy rights of third parties.¹⁶ In the absence of a clearly-identified and legitimate investigative purpose sufficient to outweigh the privacy interests of Mr Duterte and his family,¹⁷ access to the keys cannot be regarded as necessary or proportionate.

¹⁴ [Abd-Al-Rahman Decision](#), [REDACTED] (“[REDACTED]”).

¹⁵ [Abd-Al-Rahman Decision](#), para. 20.

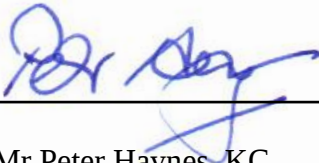
¹⁶ *Bemba et al.*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”, [ICC-01/05-01/13-2275-Red](#), 8 March 2018, para. 331 (“interference with the right to privacy may only be legitimate if ‘proportionate to the legitimate aims pursued’”. In addition, the Appeals Chamber understands the requirement of proportionality to be an integral part of the condition that any interference with the right to privacy not be ‘arbitrary’ within the meaning of article 17 of the International Covenant on Civil and Political Rights, nor, similarly, ‘abusive or arbitrary’ within the meaning of article 11 (2) of the American Convention on Human Rights”) (internal footnote omitted). *See also* ECtHR, *Yunusova and Yunusov v. Azerbaijan (No. 2)*, App. No. 68817/14, Judgment, 16 July 2020, paras **148** (“[t]he Court finds [...] that the inspection of the applicants’ luggage and handbags, regardless of its classification under domestic law, as well as the searches of their home and the Association’s offices and seizure of various materials constituted an interference with the applicants’ ‘private life’, ‘home’ and ‘correspondence’ within the meaning of Article 8 § 1 of the Convention”), **156** (“[t]hus, having regard to the restrictive definition of the exceptions provided by Article 8 § 2, the Court finds that the Government failed to demonstrate that the interference complained of pursued the legitimate aims of prevention of the crime of high treason and protection of national security within the meaning of this Article [...] The Government has not put forward and the Court does not see any other justification for the interference at issue”); *Khoroshenko v. Russia*, App. No. 41418/04, Judgment, 30 June 2015, para. 118 (“[w]ith regard to the requirement of being ‘necessary in a democratic society’, the Court has specified that the notion of ‘necessity’ implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aims pursued. In determining whether an interference was ‘necessary in a democratic society’, the Court will take into account that a margin of appreciation is left to the Contracting States, but it remains incumbent on the respondent State to demonstrate the existence of the pressing social need behind the interference”); *Camenzind v. Switzerland*, App. No. 21353/93, Judgment, 16 December 1997, para. 45 (“[t]he Contracting States may consider it necessary to resort to measures such as searches of residential premises and seizures in order to obtain physical evidence of certain offences. The Court will assess whether the reasons adduced to justify such measures were relevant and sufficient and whether the aforementioned proportionality principle has been adhered to”).

¹⁷ [Abd-Al-Rahman Decision](#), para. 23.

9. Finally, the Defence respectfully requests that any further requests for access to materials in the Registry's custody, if any, be made by 30 June 2026. This will ensure that the Prosecution is able to undertake any necessary investigative steps and fulfil its disclosure obligations in accordance with the procedural timetable established at the first status conference.¹⁸ Requests made thereafter, and any consequent delays in disclosure, are liable to prejudice the Defence's ability to prepare effectively and may adversely affect the expeditiousness of the proceedings.¹⁹

IV. CONCLUSION AND RELIEF SOUGHT

10. For the reasons set out above, the Defence does not oppose the Prosecution's request to access the [REDACTED] in the custody of the Registry. The Defence does oppose, and requests that Trial Chamber III reject, the Prosecution's request in relation to "all keys" in the Registry's custody.
11. The Defence further requests that Trial Chamber III order any additional requests for Prosecution access to materials in the Registry's custody to be submitted on or before 30 June 2026.



Mr Peter Haynes, KC
Counsel for Mr Rodrigo Roa Duterte

Dated this 26th day of June 2026
At The Hague, the Netherlands

¹⁸ Transcript of Status Conference, [ICC-01/21-01/25-T-009-Red-ENG WT](#), 27 May 2026 ("[Status Conference](#)"), p. 47, lines 7-19.

¹⁹ [Status Conference](#), p. 28, line 14 ("the Trial Chamber has every intention of this trial proceeding expeditiously").