

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: **ICC-01/21-01/25**  
Date of original: **2 October 2026**  
Date: **9 October 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 “Defence Request for Leave to Reply to ‘Prosecution’s Response to Defence Motion Pursuant to an Order of the Trial Chamber’”**

**Source:** Defence for Mr Rodrigo Roa Duterte

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

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**REGISTRY**

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## I. INTRODUCTION

1. Regulation 24(5) of the Regulations of the Court requires parties to seek leave of a Chamber before filing a reply to a response. A request for leave to reply may be granted where the adverse party has raised new issues that could not reasonably have been anticipated in the original submission,<sup>1</sup> or where a reply would be necessary for,<sup>2</sup> or assist in,<sup>3</sup> the adjudication of the question in issue, is in the interests of completeness of the judicial record,<sup>4</sup> or is otherwise warranted.<sup>5</sup>
2. The Defence disagrees with almost all aspects of the Prosecution Response,<sup>6</sup> apart from the overall impression it gives about the chaos of disclosure in this case. The Prosecution's statement that the Defence has "repeatedly demonstrated its reluctance to begin this work [of reviewing the evidence] in earnest" and "instead spent its time collating complaints [...]"<sup>7</sup> is particularly disappointing, when the Prosecution has repeatedly asked the Defence to identify errors within its disclosure, and expressed gratitude for the Defence's cooperation in doing so, all the while being aware of the extent of Defence resources that were being expended on this unwelcome and burdensome task, which would not have been necessary had disclosure been properly executed in the first place.
3. However, considering the limited circumstances in which a reply will be entertained, the Defence seeks leave to reply to the Prosecution response on two discrete issues only, undertaking to do so within ten pages, and within three days of leave being granted. The Prosecution's remaining submissions on the adequacy and reasonableness of its disclosure in this case are otherwise answered by the Defence Motion and accompanying e-binders, and the quality and volume of the disclosure itself.<sup>8</sup>

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<sup>1</sup> [Regulation 24\(5\)](#), ICC Regulations of the Court.

<sup>2</sup> *Situation in the Islamic Republic of Afghanistan*, Decision on the Prosecutor's request for leave to reply, [ICC-02/17-206](#), 23 December 2022, para. 8.

<sup>3</sup> *Situation in the Republic of the Philippines*, Decision on the Republic of the Philippines' request for leave to reply to the "Prosecution's response to the Philippine Government's Appeal Brief against 'Authorisation pursuant to article 18(2) of the Statute to resume the investigation' (ICC-01/21-65 OA)", [ICC-01/21-72](#), 2 May 2023, para. 9.

<sup>4</sup> *Ruto & Sang*, Decision granting the Government of Kenya leave to reply, [ICC-01/09-01/11-757](#), 30 May 2013, para. 8.

<sup>5</sup> *Ntaganda*, Decision on Mr Ntaganda's request for leave to reply, [ICC-01/04-02/06-1994](#), 17 July 2017, para. 14.

<sup>6</sup> Prosecution's Response to Defence Motion Pursuant to an Order of the Trial Chamber (ICC-01/21-01/25-507), [ICC-01/21-01/25-510-Conf](#), 29 September 2026 ("Prosecution Response").

<sup>7</sup> [Prosecution Response](#), para. 43.

<sup>8</sup> Defence Motion Pursuant to an Order of the Trial Chamber, [ICC-01/21-01/25-507-Conf](#), 22 September 2026, ("Defence Motion").

## II. REQUEST FOR LEAVE TO REPLY

4. There is an obvious divergence between the parties as to the Prosecution's obligations to review, triage, and disclose the [REDACTED] dataset, and the diligence with which this has been done. The Prosecution is of the view that it has discharged its obligations by disclosing the entirety of the dataset and taking purportedly reasonable steps to facilitate Defence review. The Defence position is that the Prosecution is not entitled to merely select the "most relevant"<sup>9</sup> incriminating items and decline to determine the materiality, relevance, or exonerating nature of the remainder.<sup>10</sup> The Prosecution's decision to accept possession of the dataset in 2021 triggered its statutory obligation to review it in its entirety, investigating incriminating and exonerating circumstances equally, and to identify and disclose the Rule 77 and exonerating material contained therein. Providing a spreadsheet to facilitate Defence navigation of thousands of documents by reliance on AI-generated summaries is no substitute for the Prosecution doing this work. Nor was it satisfactory to make any reduction of the record of evidence contingent on the Defence first agreeing facts as to the contents of the [REDACTED] dataset without any human review of the content and with reference instead to (incorrect<sup>11</sup>) algorithms.
5. This dispute is relevant, because the Prosecution is asking the Trial Chamber to accept that the entirety of the [REDACTED] documents must remain in the record, on two bases: (i) the [REDACTED] dataset is highly relevant to this case; and (ii) it has taken reasonable steps to facilitate the Defence's review of the [REDACTED] dataset. It is these two points on which the Defence seeks leave to file a limited and targeted reply, given that the Prosecution has raised new issues that the Defence could not reasonably have anticipated, and that a reply will assist with the Chamber's adjudication of the issues in dispute.

### **(i) The Relevance of the [REDACTED] Dataset**

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<sup>9</sup> Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 18 August 2026, 17:06 ("[REDACTED]").

<sup>10</sup> *Banda & Jerbo*, Judgment on the Appeal of Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Janus against the decision of Trial Chamber IV of 23 January 2013 entitled "Decision on the Defence's Request for Disclosure of Documents in the Possession of the Office of the Prosecutor", [ICC-02/05-03/09-501](#), 28 August 2013, para. 35 ("This determination of materiality must be carried out before turning to the second stage of the process in rule 77 [...]").

<sup>11</sup> See [Annex A](#) to the [Prosecution Response](#), p. 4 ("[REDACTED]").

6. The relevance of the [REDACTED] dataset depends on what it contains. The Prosecution Response gives the impression that the dataset is a complete archive of evidence demonstrating the number of people who were killed in police operations, as well as the deaths of drug personalities during the Presidential Period,<sup>12</sup> a total number that it places at “[REDACTED]”. If given leave to reply on this point, the Defence will demonstrate that this position is irreconcilable with [REDACTED]. The Defence will also show that the Prosecution claims that the entire dataset was the subject of a “systematic and manual review”<sup>13</sup> is unsubstantiated and contradicted by the information therein. As regards the specific example highlighted by the Defence, being a record of a stabbing by one individual of another over a gambling game, the Prosecution seeks to include this fatality amongst its calculation of “war on drugs” killings, merely because the suspect was a “drug pusher” and “illegal drugs” were recorded as a motive,<sup>14</sup> because the wager in the gambling game was “shabu”.<sup>15</sup> There are hundreds, if not thousands, of such incidents in the dataset. The Prosecution cannot be permitted to inflate the numbers by counting incidents in an incomplete dataset that its own provider has described as being full of irrelevant information<sup>16</sup> nor having been fully reviewed.<sup>17</sup> Nor is the dataset required to prove the individual Incidents specifically charged in this case.<sup>18</sup>
7. The Defence could not have anticipated the Prosecution’s current position extolling the [REDACTED] dataset’s completeness and relevance as “a dataset that evidences the contextual elements of its case.”<sup>19</sup> A Defence reply would track the Prosecution’s evolving submissions as to its relevance, explain the inconsistencies as to what the dataset has been said to contain, and the enormous discrepancies as to figures and relevance asserted by the Prosecution and [REDACTED] at various times, all of which are directly relevant to the Trial Chamber’s adjudication of the Defence Motion.

***(ii) The Prosecution steps to “facilitate the Defence’s review of the [REDACTED] dataset”***

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<sup>12</sup> [Prosecution Response](#), paras 7, 9.

<sup>13</sup> *Id.*, para. 8.

<sup>14</sup> *Id.*, para. 21.

<sup>15</sup> [PHL-OTP-00015950](#) at p. 2.

<sup>16</sup> **P-0024**: [PHL-OTP-00247832-R01](#), para. 51 (“[REDACTED]”).

<sup>17</sup> *Id.*, para. 50 (“[REDACTED]”).

<sup>18</sup> The Defence notes, for example, that, if the coding in the spreadsheet is correct, there are apparently no records in the dataset for 24 of the Prosecution’s originally-charged 49 Incidents (Incidents 1-9, 11, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49).

<sup>19</sup> [Prosecution Response](#), para. 9.

8. The Prosecution has mischaracterised the Defence position on the disclosure of the [REDACTED] material. Central background information is missing, such as the fact that the Prosecution’s initial 15 July offer to provide the Defence with the entirety of the [REDACTED] dataset, or part thereof, via **a separate platform/software** with analysis capabilities was subsequently withdrawn after it was accepted by the Defence on 17 July.<sup>20</sup> Instead, almost a month later, the Prosecution proposed uploading all 32,000 items to the standard DefenceJEM platform, separate from the formally disclosed material.<sup>21</sup> It was proposed that this would be accompanied by an Excel spreadsheet so that the Defence could then apparently assess the relevance of each item ***itself*** and let the Prosecution know which items should be disclosed. This is a burden that no Defence team could or should ever accept to absorb.<sup>22</sup> The Defence did not consider the detailed and lengthy *inter partes* exchanges to be relevant to the Trial Chamber’s adjudication of the issues in dispute. However, the Prosecution has now presented a misleading and partial picture of these exchanges, which the Defence could not have reasonably anticipated. As such, the Defence seeks leave to provide the missing context, including the three weeks between 24 July and 14 August 2026 during which the Defence waited for a response from the Prosecution on the issue of [REDACTED] disclosure, as well as many other pending disclosure questions, while all deadlines in the case continued to run.

### III. CONCLUSION AND RELIEF SOUGHT

9. This request for leave to reply is limited in scope and directed only towards those issues which the Defence could not have reasonably anticipated and for which, in the Defence submission, additional information will assist in the adjudication of the Defence Motion.
10. For those reasons, the Defence respectfully requests that the Trial Chamber:

**GRANT** the Defence request for leave to reply on the two issues described above, such reply not exceeding ten pages in length and to be filed within three days of leave being granted.

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<sup>20</sup> Email, Defence to Prosecution, “D36 Request for Disclosure / Metadata Updates”, 17 July 2026, 16:46 (“[REDACTED]”).

<sup>21</sup> Email, Prosecution to Defence, “RE: D36 Request for Disclosure / Metadata Updates”, 14 August 2026, 11:52 (“[REDACTED]”).

<sup>22</sup> Email, Defence to Prosecution, “Re: D36 Request for Disclosure / Metadata Updates”, 14 August 2026, 18:54 (“[REDACTED]”).



Mr Peter Haynes, KC  
Counsel for Mr Rodrigo Roa Duterte

Dated this 9<sup>th</sup> day of October 2026  
At The Hague, the Netherlands