

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **10 December 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

CONFIDENTIAL

**Defence Response to the Prosecution's Clarification on
the Proposed Scope of the Charges (ICC-01/21-01/25-330-Conf)**

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

☐ Amicus Curiae

REGISTRY

Registrar

Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. Pursuant to the Pre-Trial Chamber's order,¹ the Defence for Mr Rodrigo Roa Duterte hereby responds to the "Prosecution's Clarification on the Proposed Scope of the Charges".²
2. Despite the Prosecution's clarification that the incidents and victims listed in both the Document Containing the Charges ("DCC") and its Pre-Confirmation Brief ("PCB")³ are non-exhaustive and intended only to provide examples of the conduct underlying the charges,⁴ the Defence submits that the Prosecution is nevertheless obliged to prove, during the confirmation of charges proceedings, each of the 49 incidents ("Incidents") to the relevant evidentiary standard.
3. Any facts later sought to be added must fall squarely within the geographic and temporal parameters of the incidents underlying the charges as opposed to within the scope of the charges in general. The Prosecution should not be allowed to introduce incidents at a later date merely because they fall within such overbroad parameters as "mayoral period" or "presidential period". Rather, any new incidents must bear substantial similarity to the facts and circumstances underpinning the confirmed charges, since this forms the factual ambit of the case for the purposes of trial.

¹ Email, Pre-Trial Chamber I to the Prosecution, "[ICC-01/21-01/25 – Confidential] Order for clarification", 3 December 2025, 11:44 ("Email Order for Clarification"). All references to "Article", "Rule", and "Regulation" in the present submission are to the [Rome Statute](#), ICC [Rules of Procedure and Evidence](#) ("RPE"), and the [Regulations of the Court](#), respectively, unless otherwise indicated. Pursuant to [Regulation 23bis\(2\)](#) of the Regulations of the Court, the present submissions are filed **confidentially** as they relate to submissions of the same classification.

² Prosecution's Clarification on the Proposed Scope of the Charges, [ICC-01/21-01/25-330-Conf](#), 8 December 2025 ("Prosecution Clarification").

³ Document Containing the Charges, [ICC-01/21-01/25-178-Conf](#), 4 July 2025; Corrected Version of "Prosecution's Pre-Confirmation Brief", 18 July 2025, ICC-01/21-01/25- 201-Conf, [ICC-01/21-01/25-201-Conf-Corr](#), 24 July 2025 ("Pre-Confirmation Brief").

⁴ [Prosecution Clarification](#), paras 1, 5, and 7.

II. APPLICABLE LAW

4. Article 67(1)(a) of the Rome Statute guarantees an accused the right to be informed “in detail of the nature, cause and content” of the charges brought against him.⁵
5. The confirmation of charges proceedings are intended to ensure that the parameters of the case are set for trial, and that the charges are clear and properly formulated, both factually and legally, in compliance with the relevant statutory framework.⁶ It is incumbent on the Prosecution to describe, with precision, the facts underlying the charges in such a way as to enable the parties “to determine with certainty which sets of historical events, in the course of which crimes under the jurisdiction of the Court are alleged to have been committed, form part of the charges” and which, importantly, do *not*.⁷
6. The facts and circumstances that form the basis for the charges confirmed at the pre-trial stage are determinative of “the factual ambit of the case for the

⁵ [Rome Statute](#), Article 67(1)(a).

⁶ *Kony*, Decision on the confirmation of charges in absentia against Joseph Kony pursuant to articles 61(2)(b) and 61(7) of the Rome Statute, [ICC-02/04-01/05-633](#), 6 November 2025 (“*Kony* Confirmation of Charges Decision”), paras 39, 184. *See also Said*, Decision on the confirmation of charges against Mahamat Said Abdel Kani, [ICC-01/14-01/21-218-Red](#), 9 December 2021 (“*Said* Confirmation of Charges Decision”), para. 36; *Abd-Al-Rahman*, Corrected version of ‘Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’), 9 July 2021, ICC-02/05- 01/20-433, [ICC-02/05-01/20-433-Corr](#), 23 November 2021, para. 35; *Gicheru*, Decision on the confirmation of charges against Paul Gicheru, [ICC-01/09-01/20-153-Red](#), 15 July 2021 (“*Gicheru* Confirmation of Charges Decision”), para. 24; *Al Hassan*, Judgment on the appeal of Mr Al Hassan against the decision of Trial Chamber X entitled ‘Decision on application for notice of possibility of variation of legal characterisation pursuant to Regulation 55(2) of the Regulations of the Court’, [ICC-01/12-01/18-1562-Red](#), 1 July 2021, para. 4; *Yekatom and Ngaïssona*, Corrected version of ‘Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona’, [ICC-01/14-01/18-403-Corr-Red](#), 11 December 2019 (“*Yekatom and Ngaïssona* Confirmation of Charges Decision”), para. 15.

⁷ *Ntaganda*, Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’, [ICC-01/04-02/06-2666-Red](#), 30 March 2021 (“*Ntaganda* Appeal Decision”), para. 326.

purposes of the trial and circumscribe [the trial] by preventing the Trial Chamber from exceeding that factual ambit.”⁸

III. SUBMISSIONS

7. The Prosecution appears to indicate that, while the Incidents and victims are “intended as a non-exhaustive list”,⁹ it does not intend to adduce evidence on additional incidents prior to the Pre-Trial Chamber’s Article 61(7) decision. Specifically, the Prosecution states only that it *may* provide evidence of additional incidents at a later date “[s]hould the Pre-Trial Chamber confirm the charges in this case”.¹⁰ The Defence is concerned by this attempt on the part of the Prosecution to keep the parameters of its case as broad and as general as possible and disagrees with this proposal.
8. In the first place, the Pre-Trial Chamber sought clarification as to the scope of the charges sought to be confirmed against Mr Duterte, *i.e.* whether or not the charges are “limited to the specific incidents and murder victims listed in the DCC and the PCB”.¹¹ The Prosecution’s ‘clarification’ misses the mark and clarifies nothing. By indicating that the Incidents are non-exhaustive and may later be amended, the Prosecution merely adds ambiguity with respect to the scope of the charges that may be confirmed.
9. In any event, even if the listed Incidents are non-exhaustive and the Prosecution later intends to introduce additional incidents, it is nonetheless required to satisfy the ‘substantial grounds’ threshold for the occurrence of the 49 Incidents as well as their nexus to Mr Duterte. The decision on the confirmation of charges is intended to delineate the precise parameters of the case to be

⁸ *Mbarushimana*, Decision on the confirmation of charges, [ICC-01/04-01/10-465-Red](#), 16 December 2011 (“*Mbarushimana* Confirmation Decision”), para. 81, citing *Banda*, Corrigendum of the “Decision on the Confirmation of Charges”, [ICC-02/05-03/09-121-Corr-Red](#), 7 March 2011, para. 34.

⁹ [Prosecution Clarification](#), paras 1, 7.

¹⁰ [Prosecution Clarification](#), para. 6.

¹¹ Email Order for Clarification.

committed to trial and for which the Defence is entitled to be put on notice. Accordingly, the Pre-Trial Chamber must assess, to the requisite standard, any Incident heretofore identified by the Prosecution in order to determine and define the nature and scope of the confirmed charges.

10. This approach finds support in the practice of the Court. In *Said*, Pre-Trial Chamber II assessed each incident individually, despite the fact that the list of incidents was, as in the present instance, intended only “to provide examples of the conduct underlying the charges”.¹² Similarly, Pre-Trial Chamber III, in *Kony*, reviewed each and every incident forming the basis of the alleged non-systemic crimes.¹³ Notably, in *Mbarushimana*, the very position now being forwarded by the Prosecution in this case was **rejected** by Pre-Trial Chamber I, which admonished the Prosecution for attempting to “keep the parameters of its case as broad and general as possible” and for appearing to be unfamiliar with the “scope of its case, as well as the material facts underlying the charges that it seeks to prove, and [...] the evidence necessary to prove those charges to the requisite level in advance of the confirmation hearing.”¹⁴
11. Should the Prosecution later seek to introduce additional incidents, they must be sufficiently detailed, bear substantial similarity to the facts and circumstances underlying the confirmed charges, and follow the mandatory procedure prescribed under Article 61(9) of the Statute. Overbroad references to alleged crimes occurring anywhere in a country over the course of eight

¹² [Said Confirmation of Charges Decision](#), paras 80-122. See also [Gicheru Confirmation of Charges Decision](#), paras 56-166 (whereby Pre-Trial Chamber A assessed all eight incidents individually).

¹³ [Kony Confirmation of Charges Decision](#), paras 95-180.

¹⁴ [Mbarushimana Confirmation Decision](#), paras 79-83. See specifically para. 81 (“the approach adopted by the Prosecution is untenable insofar as it attempts to reserve for the Prosecution the right to expand the factual basis of the charges through the addition of entirely new material facts after the charges have been confirmed”); 82 (“[t]he DCC must contain a statement of the material facts underlying the charges, to include the dates and locations of the alleged incidents to the greatest degree of specificity possible in the circumstances”); 83 (“the Chamber finds that the words ‘include but are not limited to’ are meaningless in the circumstances of this case. Accordingly, the Chamber will assess the charges only in relation to the locations specified under each count contained in the DCC”).

years simply are insufficient. While the circumstances of a case may, sometimes, permit the charges to be described “in a less specific manner”, a minimum level of detail must still be met with respect to the “period of time during which and an area where criminal acts were allegedly committed by an identifiable group of perpetrators”.¹⁵ The Prosecution is thus obliged, for any incident it presents post-confirmation, should charges indeed be confirmed, to provide sufficient temporal and geographic markers to allow the Defence to understand and to prepare for the precise nature and scope of the charges against Mr Duterte.

12. The temporal and geographic scope of the charges, if assessed independently of the incidents, would be overbroad, as they would simply fall into two time periods (mayoral and presidential) and two locations (Davao City and the entire country). The present charges are predicated on alleged crimes committed throughout the territory of the Philippines from 1 November 2011 to 16 March 2019,¹⁶ with the “identifiable group of perpetrators” being either the Davao Death Squad (DDS) or the ‘National Network’, which term encompasses members of the Philippines National Police, National Bureau of Investigation, Philippines Drugs Enforcement Agency, Bureau of Correction, non-police assets, and hitmen.¹⁷ This is far too imprecise and the Prosecution should not be allowed to use this lack of specificity to its advantage at a later date.
13. As such, the Defence submits that the Pre-Trial Chamber should assess each of the 49 Incidents independently on the evidence, so as to appropriately circumscribe the factual ambit of the case and the ‘group of perpetrators’ in order to meet the minimum level of detail.

¹⁵ [Ntaganda Appeal Decision](#), para. 326.

¹⁶ See e.g. [Pre-Confirmation Brief](#), para. 4.

¹⁷ [Document Containing the Charges](#), para. 7.

14. Finally, should the Prosecution wish to add new incidents underlying the charges in this case, the Defence submits that it must do so *vis-à-vis* an updated document containing the charges, which contains a statement of the material facts underlying the charges and includes the dates and locations of the alleged incidents “to the greatest degree of specificity possible”.¹⁸

IV. CONCLUSION

15. An accused cannot be judged on ‘examples’,¹⁹ but only on concrete facts proven to the confirmation standard. The Prosecution is obliged to substantiate every Incident on which it has relied in the Document Containing the Charges and the Pre-Confirmation Brief. This will allow the Pre-Trial Chamber to assess each of the Incidents for the purpose of delimiting the factual parameters of the case, should it be committed to trial.
16. Any additional incidents sought to be introduced after the Pre-Trial Chamber has issued its Decision on the Confirmation of the Charges must also fall squarely within the facts and circumstances of the Incidents comprising the confirmed charges.



Nicholas Kaufman
Counsel for Mr Rodrigo Roa Duterte

Dated this 10th day of December 2025

At The Hague, The Netherlands

¹⁸ [Mbarushimana Confirmation Decision](#), para. 82.

¹⁹ [Prosecution Clarification](#), paras 1, 5.