

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **6 February 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
with Confidential Annex A**

Defence Request for Leave to Add Items to its List of Evidence

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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REGISTRY

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Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and
Reparations Section

☐ Other

I. INTRODUCTION

1. The Defence for Mr Rodrigo Roa Duterte hereby requests leave to add 78 items (“Additional Items”) to its List of Evidence to be relied on during the hearing on the confirmation of charges, originally submitted on 5 September 2025.¹ The Additional Items are outlined in Confidential Annex A. The Prosecution has reviewed the Items and confirmed to the Defence in *inter partes* communications that it does not object to their admission.²
2. Since the postponement of the hearing on the confirmation of charges,³ the Defence persevered in reviewing the substantial body of evidence disclosed for the purpose of confirmation.⁴ The Prosecution has further disclosed, between the decision postponing the hearing and 5 February 2026,⁵ a total of 1,242 items as potentially exculpatory or which could be material to the preparation of the Defence.⁶
3. Having revisited the totality of the Prosecution’s disclosure to date in light of its receipt of these 1,242 items, the Defence has identified the Additional Items

¹ Defence Submission of its List of Evidence pursuant to Rule 121(6), [ICC-01/21-01/25-265-Conf-Exp](#), 5 September 2025 (“[Defence List of Evidence](#)”). All references to “Article”, “Rule”, and “Regulation” in the present submission are to the [Rome Statute](#), [Rules of Procedure and Evidence](#), and the [Regulations of the Court](#), respectively, unless otherwise indicated.

² Email, Prosecution to Defence, “Re: Amendment of Defence List of Evidence”, 6 February 2026, 13:23.

³ Decision postponing the hearing on the confirmation of charges, ICC-01/21-01/25-267, 8 September 2025 (“[Postponement Decision](#)”).

⁴ As of 5 September 2025, the Prosecution had disclosed **3,883 items of evidence, totalling 43,289 pages**. Since the supplementation of its disclosure after the Postponement Decision, the Defence is now in possession of **5,145 items** of evidence, amounting to **49,676 pages** (excluding hours of audio-video material).

⁵ The Prosecution’s latest disclosure was effected on **5 February 2026** at 17:49, by way of seven separate packages, of which one was marked as PEXO, two as Rule 77, and four as INCRIM. This disclosure comprised 38 new items, 12 of which are said to be potentially exculpatory or contain evidence material to the Defence under either PEXO or Rule 77. At the time of this present submission, the Defence has not yet had the opportunity to review this material.

⁶ The Prosecution has disclosed these 1,242 items in **27 separate packages** (not including disclosure of metadata updates) over the course of the last four months, with the most recent disclosure taking place on **29 January 2026**. See Pre-Confirmation INCRIM packages 044 to 056, Pre-Confirmation PEXO packages 006 to 008 and Pre-Confirmation Rule 77 packages 016 to 026.

as highly relevant to the charges and necessary for any meaningful submissions by the Defence at the hearing on the confirmation of charges. The present request is supported by good cause and the Prosecution has confirmed that the addition of these Items to the Defence List of Evidence causes it no prejudice.

II. PROCEDURAL HISTORY

4. Between 11 September 2025 and 29 January 2026, the Prosecution disclosed 1,242 items to the Defence, including nine as potentially exculpatory and 376 which could be material to the preparation of the Defence pursuant to Rule 77.⁷
5. On 26 January 2026, the Pre-Trial Chamber set the date for the confirmation hearing to commence on 23 February 2026.⁸

III. APPLICABLE LAW

6. Article 61(6)(c) guarantees the suspect's right to present evidence at the confirmation of the charges before trial.⁹ Should the suspect choose to exercise that right, "he or she shall provide a list of that evidence to the Pre-Trial Chamber no later than 15 days before the date of the hearing".¹⁰
7. A request to add items to a list of evidence does not constitute a request for the variation of a time limit. Rather, it is a request for leave to add items in accordance with the Chamber's decision setting the time limit for the original list of evidence.¹¹ Thus, the appropriate assessment is whether, in the concrete

⁷ See Pre-Confirmation INCRIM packages 044 to 056, Pre-Confirmation PEXO packages 006 to 008 and Pre-Confirmation Rule 77 packages 016 to 026.

⁸ Decision on the 'Defence Request for an Indefinite Adjournment' and Mr Duterte's fitness to take part in the pre-trial proceedings, [ICC-01/21-01/25-356-Conf](#), 26 January 2026.

⁹ [Rome Statute](#), Article 61(6)(c).

¹⁰ [Rules of Procedure and Evidence](#), Rule 121(6).

¹¹ See e.g. *Yekatom and Ngaïssona*, Decision on the Prosecution Request to Add Six Email Threads to its List of Evidence, [ICC-01/14-01/18-989-Red](#), 6 May 2021, para. 5; *Mokom*, Prosecution's Request pursuant to regulation 35(2) to vary a time limit, and/or Request for Reconsideration of the 'Decision on issues arising from the submission of the Document Containing the Charges' (ICC-01/14-01/22-177), [ICC-01/14-01/22-180](#), 24 March 2023, para. 20; *Ongwen*, Decision on Prosecution Request to Add Items to its List of Evidence, to include a Witness on its List of Witnesses and to Submit Two Prior Recorded Testimonies under Rule 68(2)(b) and (c), [ICC-02/04-01/15-600](#), 22 November 2016, para. 14; *Ongwen*,

circumstances at hand, reliance on items not included in the initial list of evidence would cause undue prejudice.¹² Factors to be considered in this determination include the extent to which the requested addition is opposed, when the addition was sought, the nature and amount of the material concerned, the intended purpose of such material, and its significance in light of the charges against the accused and the rest of the available evidence.¹³

IV. SUBMISSIONS

A. The Additional Items are relevant to the charges

8. The Additional Items are highly relevant to the charges which the Prosecution seeks to confirm and are essential to the conduct of Mr Duterte's defence.

B. There is good cause to grant the present request

9. 24 of the 78 Items were disclosed in November and December 2025.¹⁴ As such, they were received by the Defence only after the expiration of the time limit for the provision of its initial List of Evidence on 5 September 2025.¹⁵ Their addition is therefore warranted. The remainder of the Additional Items are to be found among items disclosed prior to the expiration of the aforementioned time limit, but which are now essential to the Defence as a result of the assimilation of the other 24 Additional Items.

Decision on the 'Prosecution's Request to Add Transcripts and Seven Additional Documents to its List of Evidence', [ICC-02/04-01/15-619](#), 2 December 2016, para. 10.

¹² *Id.*

¹³ *Id.*

¹⁴ PHL-OTP-00092079; PHL-OTP-00092080; PHL-OTP-00092085; PHL-OTP-00092090; PHL-OTP-00092095; PHL-OTP-00092096; PHL-OTP-00092097; PHL-OTP-00092098; PHL-OTP-00092104; PHL-OTP-00092105; PHL-OTP-00092111; PHL-OTP-00092169; PHL-OTP-00093128; PHL-OTP-00093226; PHL-OTP-00093266-R01; PHL-OTP-00094873-R01; PHL-OTP-00094948-R01; PHL-OTP-00094949-R01; PHL-OTP-00094950-R01; PHL-OTP-00094951-R01; PHL-OTP-00094952-R01; PHL-OTP-00094953-R01; PHL-OTP-0018-0372-R01; PHL-OTP-00095210-R01.

¹⁵ Order on the conduct of confirmation proceedings, [ICC-01/21-01/25-114](#), 17 April 2025, para. 44.

C. The addition of the Additional Items to the Defence List of Evidence does not occasion any unfair prejudice

10. No prejudice will stem from the inclusion of the Additional Items on the Defence List of Evidence. **Firstly**, in full compliance with Rule 121(6), the present request is submitted 15 days before the commencement of the Confirmation of Charges hearing, now set to begin on 23 February 2026. **Secondly**, the number of Additional Items is modest. **Thirdly**, the Prosecution is the master of its own evidence and is presumed to be aware of its relevance or lack thereof to the charges. **Fourthly**, the Legal Representatives for the Victims have only just been appointed, the composition of their team is yet to be finalised, and their access rights to evidence still to be facilitated. **Finally**, and most importantly, in light of the Prosecution's confirmation that it does not oppose the addition of these Items, their inclusion would occasion no prejudice to the Prosecution, whereas their non-admission would cause significant prejudice to Mr Duterte.
11. The Defence has not yet had the opportunity to review the Prosecution's latest disclosure, effected on the evening of 5 February 2026, of which 12 items have been marked as either potentially exonerating or relevant to the preparation of the Defence. The Defence respectfully reserves the right to seek further amendment of its List of Evidence upon its prompt review of the newly-disclosed items.

V. CONCLUSION AND RELIEF SOUGHT

12. In light of the aforementioned, the Defence requests the Pre-Trial Chamber to **GRANT** the Defence leave to add the 78 items identified in Confidential Annex A to its List of Evidence.

A handwritten signature in black ink that reads "Nicholas Kaufman". The signature is written in a cursive style and is positioned above a solid horizontal line.

Nicholas Kaufman
Counsel for Rodrigo Roa Duterte

Dated this 6th day of February 2026

At The Hague, The Netherlands