

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date: **18 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 Second 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

☐ 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. The Defence for Mr Rodrigo Roa Duterte hereby requests leave to add 108 items (“Additional Items”) to its List of Evidence to be relied on during the hearing on the confirmation of charges. The Additional Items are outlined in Confidential Annex A.
2. As previously mentioned by the Defence,¹ the Prosecution has disclosed 60 items since the Defence’s first request to add items to its List of Evidence.² Having reviewed said items against the evidence already available in the case record, the Defence has identified the Additional Items as highly relevant to the charges and necessary for any meaningful submissions by the Defence at the hearing on the confirmation of charges.
3. The present request is supported by good cause, and the Prosecution has confirmed to the Defence, this afternoon, in *inter partes* communications that the addition of these Items to the Defence List of Evidence causes it no prejudice.³

II. APPLICABLE LAW

4. Article 61(6)(c) guarantees the suspect’s right to present evidence at the confirmation of the charges before trial.⁴
5. 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

¹ Defence Request for Leave to Add Items to its List of Evidence, [ICC-01/21-01/25-367](#), 6 February 2026 (“[First Request](#)”), para. 11; Email, *Duterte* Defence to Pre-Trial Chamber, “ICC-01/21-01/25 : Duterte: [CONFIDENTIAL] - Defence Notification”, 12 February 2026, 18:43.

² See Pre-Confirmation INCRIM packages 057, 058, 059 and 060, 5 February 2026; Pre-Confirmation PEXO package 009, 5 February 2026; Pre-Confirmation Rule 77 packages 027 and 028, 5 February 2026; Pre-Confirmation INCRIM packages 061, 062, 063 and 064, 12 February 2026; Pre-Confirmation PEXO package 010, 12 February 2026.

³ Email, Prosecution to *Duterte* Defence, “Re: D36 Items for Updated List of Evidence”, 18 February 2026, 16:15.

⁴ [Rome Statute](#), Article 61(6)(c).

accordance with the Chamber's decision setting the time limit for the original list of evidence.⁵ Thus, the appropriate assessment is whether, in the concrete circumstances at hand, reliance on items not included in the initial list of evidence would cause undue prejudice.⁶ 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.⁷

III. SUBMISSIONS

A. The Additional Items are relevant to the charges

6. 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

7. Amongst the Additional Items, six (6) Items were disclosed since 5 February 2025.⁸ As such, they were received by the Defence only after the filing of its First Request.⁹ Their addition is therefore warranted.
8. The remainder of the Additional Items are items previously disclosed or transcripts thereof – identified, stamped and disclosed by the Defence – but

⁵ 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*, 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.

⁶ *Id.*

⁷ *Id.*

⁸ PHL-OTP-00093033; PHL-OTP-00095659; PHL-OTP-00095660; PHL-OTP-00095678; PHL-OTP-00095679; PHL-OTP-00096776-R01.

⁹ Order on the conduct of confirmation proceedings, [ICC-01/21-01/25-114](#), 17 April 2025, para. 44.

which are now essential to the Defence as a result of the assimilation of the other six (6) Additional Items.

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

9. No prejudice will stem from the inclusion of the Additional Items on the Defence List of Evidence. **Firstly**, with the exception of three (3) items,¹⁰ the Additional Items are all Prosecution evidence or transcripts of audio-video material disclosed by the Prosecution. **Secondly**, the number of items is modest. Indeed, while a *prima facie* count brings the total items to 108, they are mostly transcripts and translations of transcripts of audio-video material. As such, the substantive volume of evidence sought to be added can be reduced by half. **Thirdly**, and in any event, 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 still subject to litigation and their access rights to evidence has only recently been 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-addition would cause significant prejudice to Mr Duterte.

¹⁰ PHL-D36-0003-0005; PHL-D36-0010-0049 and its corresponding translation, PHL-D36-0010-0059.

IV. CONCLUSION AND RELIEF SOUGHT

10. In light of the aforementioned, the Defence requests the Pre-Trial Chamber to **GRANT** the Defence leave to add the 108 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 18th day of February 2026
At The Hague, The Netherlands