

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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

Date: **29 April 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

Request for Leave to Appeal the Decision on the Confirmation of Charges

Source: Defence for Mr Rodrigo Roa Duterte

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I. INTRODUCTION

1. The Defence for Mr Rodrigo Roa Duterte hereby requests leave to appeal Pre-Trial Chamber I's decision confirming the charges against Mr Duterte, issued on 23 April 2026 ("Impugned Decision").¹
2. The Impugned Decision raises **two** appealable issues. *Firstly*, the Pre-Trial Chamber erred in law by adopting an impermissibly "flexible" approach to the formulation of the charges,² thereby diluting the requirement that the accused person be informed in detail of their nature, cause, and content. In so doing, the Pre-Trial Chamber relied on irrelevant considerations – namely, the "limitations inherent [to] its statutory role" and an asserted prosecutorial "prerogative to expand and vary the evidentiary basis relied upon following confirmation",³ which find no basis in the Rome Statute. As such, the Pre-Trial Chamber effectively endorsed an open-ended formulation of the charges, permitting their factual scope to remain undefined and thereby failing to delineate the parameters of the case at the confirmation stage, as required by both practice and procedure.
3. *Secondly*, the Pre-Trial Chamber erred in law by failing to articulate a reasoned evidentiary basis for confirming the charges. It did not link its factual findings to the evidence nor did it engage with central Defence submissions, including the absence of a common plan. Instead, it accepted the Prosecution's case at

¹ Public redacted version of 'Decision on the confirmation of charges against Mr Rodrigo Roa Duterte', 23 April 2026, 23 April 2026, [ICC-01/21-01/25-417-Red](#), 23 April 2026 ("Impugned Decision"). All references to "Article" in this submission are to the Rome Statute, unless otherwise indicated.

² [Impugned Decision](#), para. 34.

³ [Impugned Decision](#), para. 33.

face value,⁴ without conducting the necessary incident-specific assessment required at the confirmation stage.⁵

4. The above mentioned errors undermine the very function of the confirmation procedure – that is, to define the case and to test the evidentiary strength and basis of the charges. These errors directly affect the fairness and expeditious conduct of the proceedings, warranting immediate appellate intervention.

II. APPLICABLE LAW

5. A party may seek appellate review of a decision under Article 82(1)(d) of the Rome Statute where the decision gives rise to an appealable issue⁶ that is capable of significantly affecting either the fair and expeditious conduct of the proceedings or the outcome of the trial, and where immediate resolution by the Appeals Chamber may materially advance the proceedings by eliminating potential judicial error at an early stage.⁷

⁴ 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.

⁵ See *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, paras 95-180; *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](#)”), paras 80-122; *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](#)”), paras 56-166. See also *Yekatom & 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](#), 28 June 2021 (“[Yekatom & Ngaïssona Confirmation of Charges Decision](#)”), para. 57 (“[t]he Chamber believes that it is conceptually and methodologically appropriate to address the issue of the individual criminal responsibility of the suspects by looking at their alleged contributions in respect of each of the charged incidents and at the evidence cited in support of those allegations”).

⁶ *Bemba*, Decision on the Prosecutor’s Application for Leave to Appeal the “Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo”, [ICC-01/05-01/08-532](#), 18 September 2009, para. 17. See also *Said*, Decision on the admissibility of the appeal, [ICC-01/14-01/21-514](#), 25 October 2022, para. 14.

⁷ *Situation in the State of Palestine*, Decision on Israel’s request for leave to appeal the ‘Decision on the State of Israel’s request to have arrest warrants withdrawn, vacated or declared of no force or effect and to suspend the Prosecutor’s investigation’, [ICC-01/18-468](#), 17 October 2025, paras 17-19. See also *Mbarushimana*, Decision on the “Prosecution’s Application for Leave to Appeal the ‘Decision on the confirmation of charges’”, [ICC-01/04-01/10-487](#), 1 March 2012, para. 4; *Situation in Democratic Republic of the Congo*, Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber

6. In determining such a request, the Article 82(1)(d) criteria must be applied with restraint, as the Pre-Trial Chamber's role is confined to identifying whether an appealable issue has arisen *without* entering into the merits of the underlying arguments.⁸ At the same time, those criteria may be interpreted broadly, where necessary, in light of Article 21(3),⁹ as early correction of consequential errors at the pre-trial stage serves to safeguard the integrity of the proceedings, a consideration that lies at the core of Article 82(1)(d).¹⁰

III. SUBMISSIONS

A. *First Issue: Whether the Pre-Trial Chamber erred by adopting a "flexible approach" and overbroadly delineating the scope of the charges*

7. At the outset, the Defence clarifies that it does not conflate the requirement of "prompt and sufficient notice of the charges" with the distinct question of the "proper delineation" of their scope.¹¹ It submits that the Pre-Trial Chamber's adoption of a "flexible approach"¹² resulted in a failure to define the factual parameters of the charges. By permitting the Prosecution to introduce additional incidents as "examples" at a later stage, the Pre-Trial Chamber endorsed an approach that leaves the Defence unable to determine whether and which incidents fall within the facts and circumstances of the charges. The Impugned Decision neither identifies the facts and circumstances underlying the charges nor does it explain how they were demarcated. This constitutes an

I's 31 March 2006 Decision Denying Leave to Appeal, [ICC-01/04-168](#), 13 July 2006 ("[DRC Decision](#)"), para. 19.

⁸ *Lubanga*, Decision on the Defence and Prosecution Requests for Leave to Appeal the Decision on Victims' Participation of 18 January 2008, Separate and Dissenting Opinion of Judge René Blattmann, [ICC-01/04-01/06-1191](#), 26 February 2008, para. 5.

⁹ *Bemba et al.*, Decision on the "Requête en appel de la défense de monsieur Aimé Kilolo Musamba contre la décision de la Chambre de première instance VII du 17 novembre 2015", [ICC-01/05-01/13-1533](#), 2 December 2015, para. 16.

¹⁰ [DRC Decision](#), para. 11.

¹¹ [Impugned Decision](#), para. 17.

¹² [Impugned Decision](#), para. 34.

appealable issue. This legal error results in concrete prejudice to Mr Duterte's right to receive adequate and specific notice of the case against him.

8. Article 67(1)(a) of the Rome Statute guarantees that an accused "be informed promptly and in detail of the nature, cause and content of the charge". While the degree of specificity may depend on the circumstances of the case,¹³ the Appeals Chamber has long made clear that the underlying criminal acts form an integral part of the charges and must be set out with sufficient detail to enable the effective preparation of the defence.¹⁴ The Appeals Chamber has further clarified that charges cannot be articulated in general or abstract terms, as this prevents a meaningful application of Article 74(2) and risks extending the scope of the case beyond identifiable factual limits.¹⁵
9. The Pre-Trial Chamber interpreted the Appeals Chamber's holding in *Ntaganda* that the degree of specificity of the charges may vary depending on the circumstances of the case¹⁶ as permitting the exclusion of "unnecessary details" that could prove "too specific and limiting at trial". It further considered that, in light of the "limitations inherent in its statutory role" and the possibility that the evidentiary basis may evolve following confirmation, it was not required to determine all such details at this stage.¹⁷

¹³ [ICC Chambers Practice Manual](#), para. 38.

¹⁴ *Lubanga*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, [ICC-01/04-01/06-3121-Red](#), 1 December 2014 ("[Lubanga Appeal Judgment](#)"), para. 123 ("[i]n the view of the Appeals Chamber, the underlying criminal acts form an integral part of the charges against the accused, and sufficiently detailed information must be provided in order for the accused person to effectively defend him or herself against them").

¹⁵ *Bemba*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's "Judgment pursuant to Article 74 of the Statute", [ICC-01/05-01/08-3636-Red](#), 8 June 2018, paras 103, 110 (holding that "simply [...] stating, in broad general terms, the temporal and geographical parameters of the charge is not sufficient [...] and does not allow for a meaningful application of article 74 (2) of the Statute").

¹⁶ *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 Judgment](#)"), paras 5, 326.

¹⁷ [Impugned Decision](#), para. 3.

10. On that basis, the Pre-Trial Chamber adopted a “flexible approach” not just to some elements of the charges but to essential components thereof, including the “timing, location, and identity of the victims”¹⁸ as well as the “number of incidents and victims”.¹⁹ This erroneous approach resulted in charges being confirmed with an inordinately excessive degree of generality while failing to define the factual parameters of the case.
11. The Pre-Trial Chamber suggested that the Appeals Chamber’s reasoning in *Ntaganda* was transferable to the present case. That reliance is misplaced. As the Appeals Chamber has made clear, the level of specificity depends on the circumstances of the case, including the scale and structure of the alleged criminality.²⁰
12. In *Ntaganda*, the charges were confined to two short periods totalling 33 *days*, within defined *collectivités*, and linked to specific attacks and locations.²¹ By contrast, the charges in the present case span almost seven-and-a-half *years* – from 1 November 2011 to 16 March 2019 – and extend from “in or around Davao City” to “locations across the Philippines”,²² a territory of approximately **300,000 square kilometres**. This is a land surface area of almost 100 and more than 160 times larger than the two at issue in *Ntaganda*.
13. Against that backdrop, the Chamber’s decision to remove “limiting” factual elements and replace them with generalised formulations results in a case that is not appropriately delimited. It effectively encompasses *any* alleged incident

¹⁸ [Impugned Decision](#), para. 34.

¹⁹ [Impugned Decision](#), paras 34-35.

²⁰ [Ntaganda Appeal Judgment](#), paras 5, 326. See also [Impugned Decision](#), para. 20, with the Pre-Trial Chamber finding that “a broader description of the charges defined through examples of relevant incidents is not necessarily incompatible with article 74(2) of the Statute”.

²¹ In the *Ntaganda* case, the facts were confined to a first period of **17 days**, in the Banyali-Kilo *collectivité*, and a second period of **16 days**, in the Walendu-Djatsi *collectivité*, for a total of 33 days. Each count was identified in specific locations within those *collectivités*. The Banyali-Kilo *collectivité* covers **3,200 square kilometres**, and the Walendu-Djatsi *collectivité* covers **1,800 square kilometres**. In contrast, Davao City **alone** covers approximately **2,443 square kilometres**.

²² [Impugned Decision](#), paras 67, 69.

falling within an expansive temporal and geographical frame, without identifying the specific factual basis upon which the Prosecution intends to proceed. More disturbingly, the Impugned Decision permits the introduction of additional allegations and factual circumstances at the trial stage of the proceedings, leaving the scope of the case indeterminate and contingent on the Prosecution's evolving presentation of evidence rather than on a defined set of confirmed charges.

14. This indeterminacy is illustrated by the Pre-Trial Chamber's treatment of the categories of victims and perpetrators. In an apparent effort to align its reasoning with the *Ntaganda* jurisprudence, the Pre-Trial Chamber referred, in general terms, to a group of perpetrators, yet failed to identify with any precision the corresponding group of victims, describing them only as persons "alleged to be criminals", such as "drug pushers or thieves",²³ "high-value",²⁴ or "'lower-level' criminals".²⁵ The Chamber further made clear that its "broad" approach extended to the number of incidents and victims.²⁶ Such formulations do not present a clearly defined factual basis for the charges, but instead reinforce their open-ended and imprecise character. In consequence, the Impugned Decision is deprived of its core function as a crystallised articulation of the case, and is instead reduced to a fluid framework or "live document", capable of ongoing expansion in line with the Prosecution's whim or evolving case.
15. Moreover, the Pre-Trial Chamber's approach and decision rest on considerations extraneous to the requirement that the charges be defined with sufficient precision, namely "limitations inherent in its statutory role" and an asserted – albeit totally unfounded – prosecutorial prerogative to expand and

²³ [Impugned Decision](#), p. 45.

²⁴ [Impugned Decision](#), p. 46.

²⁵ [Impugned Decision](#), p. 47.

²⁶ [Impugned Decision](#), para. 35.

vary the evidentiary basis post-confirmation.²⁷ Neither provides a legal basis for leaving the factual scope of the charges undefined.

16. Should leave be granted, the Defence will demonstrate that the Chamber's reliance on its purported 'statutory limitations' is misplaced. The confirmation procedure is *specifically* designed to determine whether there are substantial grounds to believe that a suspect committed the crimes charged, and in so doing, to define the factual parameters of the case for trial. It follows that the Pre-Trial Chamber cannot defer the determination of core factual elements on the basis that further detail may emerge at a later stage,²⁸ as this approach of "kicking the can down the road"²⁹ is incompatible with the function of the confirmation procedure.
17. The Defence will *also* demonstrate that the Pre-Trial Chamber erred in relying on an asserted prosecutorial ability to expand and vary the evidentiary basis following confirmation as a justification for leaving the charges broadly formulated. The Court's framework, confirmed by practice, requires the Prosecutor's investigations to be, in substance, completed *prior to* the confirmation hearing.³⁰ It is well-established that the Prosecutor can only investigate beyond the confirmation hearing to the extent that it is "necessary in order to establish the truth" and where failing to do so might result in "depriv[ing] the Court of significant and relevant evidence".³¹ The Prosecution cannot rely on open-ended charges in order to continue investigations with a

²⁷ [Impugned Decision](#), para. 33.

²⁸ [Impugned Decision](#), para. 34.

²⁹ Transcript of the Confirmation of Charges Hearing, [ICC-01/21-01/25-T-007-Red-ENG](#), 27 February 2026 ("[Transcript of 27 February 2026 Hearing](#)"), p. 42, line 23.

³⁰ *Lubanga*, Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence, [ICC-01/04-01/06-108-Corr](#), 19 May 2006, para. 39.

³¹ *Yekatom and Ngaïssona*, Decision on the 'Prosecution's Request to Amend Charges pursuant to Article 61(9) and for Correction of the Decision on the Confirmation of Charges, and Notice of Intention to Add Additional Charges', [ICC-01/14-01/18-517](#), 14 May 2020 ("[Yekatom Decision](#)") para. 25.

view to reshaping the case, nor to introduce, in effect, new factual allegations without recourse to the procedure under Article 61(9).³²

18. In any event, any ability of the Prosecution to seek modification of the charges post-confirmation is legally distinct from, and cannot displace, the Pre-Trial Chamber's obligation to define the scope of the case in its confirmation decision. By conflating these matters, the Pre-Trial Chamber failed to fulfil its core function at the confirmation stage.
19. The Chamber's reasoning – that requiring the Prosecution to seek leave to introduce additional incidents would generate excessive "parallel litigation"³³ – does not justify this result. Procedural efficiency cannot displace the fundamental fair trial requirement that charges be properly delineated and that adequate notice be given, thereby, to an accused person facing trial. To the contrary, the failure to delimit the case at confirmation risks transferring that burden to the trial stage and thereby undermining both fairness and procedural economy.
20. The result is to afford the Prosecution an impermissibly broad discretion to determine, over time, which incidents will form part of the case, without recourse to the safeguards provided by Article 61(9), rendering them illusory. This is not a permissible consequence of the confirmation procedure.

³² [Yekatom Decision](#), para. 31 ("[a] procedure under article 61(9) of the Statute must be limited to the amendment of the factual basis of an already confirmed charge, whenever the amendment appears necessary with a view to enhancing the specificity of the charges against which the accused must defend himself or herself and cannot amount to a correction to the confirmation decision").

³³ [Impugned Decision](#), para. 21.

B. Second Issue: Whether the Pre-Trial Chamber erred in law by failing to articulate a reasoned evidentiary basis for confirming the charges

21. The Pre-Trial Chamber expressly adopted an approach prioritising conciseness, stating that the adequacy of its reasoning should not be measured by the extent of evidentiary references, but by “the clarity” of its overall assessment.³⁴
22. In practice, this resulted in a decision that does not identify the evidentiary basis underpinning its findings. The Chamber neither sets out the material facts nor provides specific references to the evidence supporting its conclusions.³⁵ Instead, the Impugned Decision relies, at a high level of generality, on the Prosecution’s submissions and its pre-confirmation brief, without demonstrating how the evidentiary record substantiates the confirmed charges. This omission is further reinforced by the Pre-Trial Chamber’s decision not to distinguish clearly between factual findings and legal conclusions,³⁶ as instructed by the ICC Chambers Practice Manual.³⁷
23. This constitutes an error of law. A confirmation decision must enable an accused person to understand the evidentiary basis of the charges and the reasoning by which the Chamber concluded that the Article 61 threshold has been met. By failing to link its findings to the evidence – resulting in the *complete absence* of evidentiary citations in the footnotes – the Pre-Trial

³⁴ [Impugned Decision](#), para. 36 (“[t]he adequacy of the reasoning, including for the purpose of possible challenges, is not to be measured by the number of pages, the items specifically referred to or the presence of footnotes. Rather, it is to be assessed against the clarity and precision of the illustration of the **principles guiding the Chamber’s assessment of the evidence**, as well as the existence of specific references to individual, relevant items of evidence where necessary and appropriate”) (emphasis added).

³⁵ [Impugned Decision](#), para. 37. See [Said Confirmation of Charges Decision](#), para. 42 (requiring “detailed and specific references to the content of the evidence retained as instrumental to **its findings**, as well as to all the factual and legal elements relevant to **its conclusions**”) (emphasis added). See also *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. 40.

³⁶ [Impugned Decision](#), para. 37.

³⁷ [ICC Chambers Practice Manual](#), para. 66 (requiring factual and legal findings to be set out separately).

Chamber deprived the Defence of the ability to meaningfully assess and challenge its determination.

24. The Chamber's reliance on "conciseness" cannot justify this omission.³⁸ The confirmation stage requires a reasoned assessment of whether the available evidence establishes substantial grounds to believe that the crimes charged were committed.³⁹ That function cannot be discharged through generalised references to the Prosecution's case.
25. This failure is compounded by the absence of substantive engagement with the Defence's submissions. The Pre-Trial Chamber failed to address central arguments which directly challenged both the existence of the alleged criminal conduct and its legal characterisation. On the contrary, the Chamber's desire

³⁸ Confirmation decisions before the Court are typically exemplified by rigorous and detailed analysis. See [Gicheru Confirmation of Charges Decision](#); [Yekatom & Ngaïssona Confirmation of Charges Decision](#); *Al Hassan*, Corrected Version of "Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud", [ICC-01/12-01/18-461-Corr-Red-tENG](#), 13 November 2019 ("*Al Hassan Confirmation of Charges Decision*"); *Blé Goudé*, Decision on the confirmation of charges against Charles Blé Goudé, [ICC-02/11-02/11-186](#), 11 December 2014; *Bemba et al.*, Decision pursuant to Article 61(7)(a) and (b) of the Rome Statute, [ICC-01/05-01/13-749](#), 11 November 2014; *Gbagbo*, Decision on the confirmation of charges against Laurent Gbagbo, [ICC-02/11-01/11-656-Red](#), 12 June 2014; *Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, [ICC-01/04-02/06-309](#), 9 June 2014; *Muthaura et al.*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, [ICC-01/09-02/11-382-Red](#), 23 January 2012; *Ruto et al.*, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, [ICC-01/09-01/11-373](#), 23 January 2012; *Mbarushimana*, Decision on the confirmation of charges, [ICC-01/04-01/10-465-Red](#), 16 December 2011; *Banda & Jerbo*, Corrigendum of the "Decision on the Confirmation of Charges", [ICC-02/05-03/09-121-Corr-Red](#), 7 March 2011; *Abu Garda*, Decision on the Confirmation of Charges, [ICC-02/05-02/09-243-Red](#), 8 February 2010; *Bemba*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, [ICC-01/05-01/08-424](#), 15 June 2009; *Katanga & Ngudjolo Chui*, Decision on the confirmation of charges, [ICC-01/04-01/07-717](#), 30 September 2008; *Lubanga*, Decision on the confirmation of charges, [ICC-01/04-01/06-803-tEN](#), 29 January 2007.

³⁹ *Al Mahdi*, Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi, Separate Opinion of Judge Péter Kovács, [ICC-01/12-01/15-84-Anx](#), 9 May 2016, paras 6 ("the role of the Pre-Trial Chamber [...] is not to conduct a 'marginal assessment'. Rather, its role is, *inter alia*, to 'provide a clear and well-reasoned decision, which presents a **full account of the relevant facts and law** in order to reveal transparency of the judicial process and guarantee a considerable degree of persuasiveness"); 7 ("[b]eing at the pre-trial phase **does not justify a light assessment of facts or disregarding the proper presentation of evidence submitted**. It simply means that the assessment should be carried out against the evidentiary standard required for the particular stage of the judicial process, be it low or high") (internal footnotes omitted) (emphasis added).

for brevity appears to have replaced rigorous scrutiny of the Prosecution's case with mechanical endorsement, thereby deviating from the purpose of the confirmation proceedings.⁴⁰

i) Failure to address the Defence's submissions on the absence of a common plan

26. The Pre-Trial Chamber concluded that there were substantial grounds to believe that a common plan existed between Mr Duterte and the alleged co-perpetrators.⁴¹ However, it did so without identifying the evidentiary basis for that finding or engaging with the Defence's submissions challenging its existence.⁴²
27. The Defence submitted that the Prosecution failed to establish the very existence of so-called co-perpetrators and that there was an agreement between them establishing the existence of a common plan.⁴³ The Defence further submitted that the material relating to the so-called Davao Death Squad did not establish a shared criminal plan.⁴⁴ Additionally, the Defence argued that official policies governing anti-drug operations required compliance with domestic and international law,⁴⁵ that the infamous word "to neutralise" central to the alleged common plan had definition in documentary evidence,⁴⁶ and that several perpetrators had confessed to a policy of random killing⁴⁷ for personal

⁴⁰ *Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled 'Decision on the confirmation of charges', [ICC-01/04-01/10-514](#), 30 May 2012 ("*Mbarushimana Appeal Judgment*"), para. 47 ("[t]he Appeals Chamber recalls that the confirmation of charges hearing is not an end in itself but rather serves the purpose of filtering out those cases and charges for which the evidence is insufficient to justify a trial"). See also *Gbagbo*, Decision adjourning the hearing on the confirmation of charges pursuant to Article 61(7)(c)(i) of the Rome Statute, [ICC-02/11-01/11-432](#), 3 June 2013, para. 18.

⁴¹ [Impugned Decision](#), para. 86.

⁴² [Impugned Decision](#), para. 87 (cursorily dismissing essential Defence arguments by stating merely that the interpretation of "neutralise" as "kill" was not undermined by its observations).

⁴³ Transcript of the Confirmation of Charges Hearing, [ICC-01/21-01/25-T-006-Red-ENG](#), 26 February 2026 ("*Transcript of 26 February 2026 Hearing*"), p. 15, lines 21-24.

⁴⁴ [Transcript of 26 February 2026 Hearing](#), p. 17, lines 11-25; p. 18, lines 1-25; p. 19, lines 1-6.

⁴⁵ [Transcript of 26 February 2026 Hearing](#), p. 21, lines 7-10.

⁴⁶ [PHL-OTP-0005-0259](#) at 0260-0261, 0270-0274; [PHL-OTP-00015546](#) at 0130.

⁴⁷ [Transcript of 26 February 2026 Hearing](#), p. 37, lines 7-10.

financial gain. The Defence argued that all this distinct evidentiary material undermined the allegation that there existed a common plan.⁴⁸

28. The Pre-Trial Chamber failed to address these submissions in any meaningful way whatsoever. It confined itself to a brief assertion that the interpretation of certain language was not undermined by its findings, while acknowledging that some killings may have been carried out lawfully or at random,⁴⁹ without explaining how such findings were reconciled with the existence of a common plan.
29. In the absence of such reasoning, it is not possible to discern how the Pre-Trial Chamber concluded that the evidentiary threshold for the existence of a common plan was met.

ii) Failure to conduct an incident-specific assessment of the alleged crimes

30. The same deficiency arises in the Pre-Trial Chamber's treatment of the alleged crimes. Rather than assessing the evidentiary basis of each incident, the Chamber relied on generalised summaries of the Prosecution's case and dismissed detailed Defence submissions in summary terms.
31. In particular, the Defence relied on documentary and forensic material indicating that deaths occurred in the context of armed confrontations. The Pre-Trial Chamber rejected this position on the basis that certain Prosecution witnesses had baldly alleged that such reports were false, without evaluating the underlying material or addressing the inconsistencies identified by the Defence.⁵⁰

⁴⁸ [Transcript of 27 February 2026 Hearing](#), p. 16, lines 17-21.

⁴⁹ [Impugned Decision](#), paras 52-53.

⁵⁰ [Impugned Decision](#), para. 74 (summarily dismissing Defence submissions substantiated by extensive evidence on the sole basis that certain Prosecution witnesses claimed that there were no threats posed by victims to direct perpetrators and that the crime scenes were staged).

32. On that basis alone, the Pre-Trial Chamber concluded that the objective elements of the crimes were established.⁵¹ Such approach falls short of the requirement to assess the evidence, including by “evaluat[ing] ambiguities, inconsistencies and contradictions in the evidence or doubts as to the credibility of witnesses”.⁵²
33. Despite the Defence’s detailed submissions concerning each incident, the Pre-Trial Chamber did not undertake an incident-specific analysis or explain how the evidentiary threshold was met in respect of the charges. As a result, the reasoning does not permit the Defence to understand the basis of the findings or to challenge them effectively.
34. Briefly by way of illustration, the Pre-Trial Chamber did not address the following Defence submissions:
 - a. *Count 1*: (i) three of the nine incidents involve unidentified victims lacking basic identification documentation, autopsy reports, or death certificates;⁵³ and (ii) for a majority of the incidents, P-0001’s testimony was heavily grounded in speculation, including on the transmission of criminal orders;⁵⁴
 - b. *Count 2*: (i) “High-Value Targets” is a law enforcement term of art used in anti-drug operations that does not imply selection or instruction to kill and often resulted in arrest or surrender;⁵⁵ and (ii) Incidents 12, 13, and 14 arose from judicially authorised operations;⁵⁶ and
 - c. *Count 3*: (i) at least nine incidents rest on a single witness uncorroborated by any alleged co-participants;⁵⁷ and (ii) Incidents 31 and 41 appear, on

⁵¹ [Impugned Decision](#), para. 75.

⁵² [Mbarushimana Appeal Judgment](#), para. 46. See also [Said Confirmation of Charges Decision](#), para. 41.

⁵³ [Transcript of 26 February 2026 Hearing](#), p. 57, line 25; p. 58, lines 1-6.

⁵⁴ [Transcript of 26 February 2026 Hearing](#), p. 54, lines 5-12.

⁵⁵ [Transcript of 27 February 2026 Hearing](#), p. 3, lines 4-18.

⁵⁶ [Transcript of 27 February 2026 Hearing](#), p. 4, lines 15-16; p. 8, lines 20-21.

⁵⁷ [Transcript of 27 February 2026 Hearing](#), p. 14, lines 6-13.

the Prosecution's own evidence, to fall outside the scope of any alleged common plan.⁵⁸

35. In light of the foregoing, this is not a mere disagreement as to the interpretation of the evidence, but a failure by the Pre-Trial Chamber to engage with the Defence's submissions and to articulate the evidentiary basis for its conclusions.⁵⁹ The Impugned Decision does not indicate whether, or how, the identified deficiencies in the Prosecution's case were addressed. Consequently, the Defence cannot discern the reasoning by which the Pre-Trial Chamber concluded that there are substantial grounds to believe that the crimes of murder and attempted murder were established across all 49 incidents.
36. Taken together, the errors identified above reveal a fundamental defect in the Impugned Decision: the Pre-Trial Chamber neither defined the factual parameters of the case nor articulated the evidentiary basis upon which those parameters rest. The result is a decision that leaves the Defence unable to discern, with any precision, what case has been confirmed or on what evidentiary foundation. This dual failure strikes at the core function of the confirmation procedure under Article 61, which is to crystallise both the scope of the charges and the evidentiary basis supporting them. In the absence of either, the confirmation decision ceases to perform its filtering and defining role and instead commits the case to trial in an indeterminate and legally untested form.

C. Fair and expeditious conduct of the proceedings or outcome of the trial

37. The two errors identified above go to the core of the confirmation process. By failing to define the scope of the charges and to articulate a reasoned evidentiary basis for their confirmation, the Pre-Trial Chamber has

⁵⁸ [Transcript of 27 February 2026 Hearing](#), p. 14, lines 14-16.

⁵⁹ See e.g. [Al Hassan Confirmation of Charges Decision](#), which encompassed 461 pages and 2455 footnotes.

undermined both the clarity of the case and the ability of the Defence to challenge it effectively. These issues are capable of significantly affecting the fairness and expeditious conduct of the proceedings.

38. Proceedings are fair only in so far as they are transparent and fully respect the rights of the person brought before the Court.⁶⁰ Fairness requires that an accused person be informed of the nature of the case against him with sufficient specificity⁶¹ and that the confirmation decision disclose, with clarity, the basis on which the evidentiary threshold has been met.⁶² The absence of such clarity at the pre-trial stage directly impacts the ability of the Defence to prepare its case and consequently, may affect the outcome of the trial.⁶³
39. As a result, the charges remain insufficiently defined, both in scope and with respect to its evidentiary basis. This uncertainty impairs the Defence's ability to investigate, to respond to the allegations, and to anticipate the case to be met at trial.
40. Moreover, the failure to engage with the Defence's submissions and to identify the evidentiary basis for the findings prevents any meaningful challenge to the confirmed charges. This undermines the equality of arms and places the Defence at a structural disadvantage.

⁶⁰ Rome Statute, [Article 64\(2\)](#).

⁶¹ [Lubanga Appeal Judgment](#), para. 123 ("[w]ith respect to the underlying criminal acts and the victims thereof, the Appeals Chamber considers that the Prosecutor must provide details as to the date and location of the underlying acts and identify the alleged victims to the greatest degree of specificity possible in the circumstances").

⁶² *Abd-Al-Rahman*, Judgment on the appeal of Mr Ali Muhammad Ali Abd-Al-Rahman against two oral decisions of the Pre-Trial Chamber and the decision entitled 'Decision on the Defence Request to provide written reasoning for two oral decisions', [ICC-02/05-01/20-236](#), 18 December 2020, para. 14 ("[n]evertheless, the Appeals Chamber recognises that chambers of the Court must indicate with sufficient clarity the grounds on which they base their decisions. This duty is an element of the broader right to a fair trial, which applies as early as a person's initial appearance before the Court").

⁶³ [DRC Decision](#), para. 11.

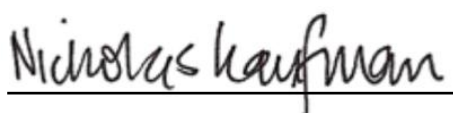
41. These deficiencies are also likely to generate further litigation. Their resolution at this stage would avoid unnecessary disputes and contribute to the orderly and expeditious conduct of the proceedings.

D. Immediate Resolution

42. Immediate resolution of this matter by the Appeals Chamber is warranted. Absent appellate intervention, the proceedings risk advancing on an unclear and legally deficient basis.
43. Prompt intervention would ensure that the case proceeds on a properly defined factual and evidentiary framework, enabling the Defence to prepare effectively for trial, reducing the likelihood of protracted future litigation on these issues, and dispelling any enduring doubts as to the validity of the Impugned Decision.⁶⁴

IV. CONCLUSION AND RELIEF SOUGHT

44. For the reasons set out above, the Defence respectfully requests that Pre-Trial Chamber I **certify** the issues identified above for appeal.



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Dated this 29th day of April 2026

At the Hague, the Netherlands

⁶⁴ [DRC Decision](#), paras 15 (“[a] crucial word in the second leg of article 82 (1) (d) is ‘advance’ [...] The meaning conveyed by ‘advance’ in the latter part of sub-paragraph (d) is ‘move forward’; by ensuring that the proceedings follow the right course. Removing doubts about the correctness of a decision or mapping a course of action along the right lines provides a safety net for the integrity of the proceedings”); 16 (“[a] wrong decision on an issue in the context of article 82 (1) (d) of the Statute unless soon remedied on appeal will be a setback to the proceedings in that it will leave a decision fraught with error to cloud or unravel the judicial process. In those circumstances the proceedings will not be advanced but on the contrary they will be set back”) (internal citation omitted).