

**Cour
Pénale
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**International
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Court**

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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 THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

Public

**Victims' Response to the Defence Request
for Leave to Appeal the Decision on the Confirmation of Charges
(ICC-01/21-01/25-417-Conf)**

Source: Common Legal Representatives of the Victims

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I. INTRODUCTION

1. The Common Legal Representatives of the Victims (the “CLRV”) herewith file their response to the Defence “Request for Leave to Appeal the Decision on the Confirmation of Charges” (the “Request”¹ and the “Confirmation Decision”²).
2. The Victims oppose the Request in its entirety. The Defence fails to identify any issue that satisfies the requirements of article 82(1)(d) of the Rome Statute (the “Statute”). Rather than raising a discrete legal question warranting interlocutory review, the Request reiterates arguments already fully considered and rejected by Pre-Trial Chamber I (the “Chamber”) and reflects nothing more than the Defence’s disagreement with the Chamber’s reasoning and its assessment of the evidence.
3. In particular, the Defence mischaracterises the Chamber’s delineation of the scope of the charges and its evidentiary reasoning, alleging a failure to articulate a reasoned evidentiary basis, to address submissions on the absence of a common plan, and to conduct an incident-specific assessment. These submissions distort the applicable legal framework and the Chamber’s role at the confirmation stage, which does not require exhaustive engagement with every argument or item of evidence. The Request further advances a distorted reading of the applicable jurisprudence and of the respective statutory roles of the Prosecution and the Chamber, while failing to identify any discernible error of law in the Confirmation Decision.
4. Lastly, the Defence does not demonstrate that the alleged issues are capable of significantly affecting the fairness or expeditious conduct of the proceedings or the outcome of the trial, nor that their immediate resolution would materially advance the proceedings. On the contrary, granting leave to appeal would risk fragmenting the

¹ See the “Request for Leave to Appeal the Decision on the Confirmation of Charges”, [No. ICC-01/21-01/25-422](#), 29 April 2026 (the “Request”).

² See the “Decision on the confirmation of charges against Mr Rodrigo Roa Duterte” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-417-Conf](#), 23 April 2026 (the “Confirmation Decision”). A public redated version [No. ICC-01/21-01/25-417-Red](#) was filed on the same day.

proceedings and causing unnecessary delay, without any corresponding benefit, against the interests of both the Victims and the Accused.

II. PROCEDURAL BACKGROUND

5. On 23 April 2026, the Chamber rendered the Confirmation Decision.³

6. On 29 April 2026, the Defence filed the Request.⁴

III. SUBMISSIONS

1. Applicable law

7. Article 82(l)(d) of the Statute sets out the criteria for granting a request for leave to appeal as follows: (a) the decision shall involve an issue that would significantly affect: (i) the fair and expeditious conduct of the proceedings; or (ii) the outcome of the trial; and (b) for which, in the opinion of the relevant Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings. For the purposes of the first prong of this test, the Appeals Chamber defined an “*issue*” as “*an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion*”.⁵ Moreover, the Appeals Chamber ruled that “*the Pre-Trial or Trial Chamber is vested with power to state, or more accurately still, to certify the existence of an appealable issue*”.⁶

8. It must first be determined whether the purported “*issue*” identified in the Request is an “*appealable issue*” within the meaning of article 82(l)(d) of the Statute, as interpreted by the jurisprudence of the Court. Indeed, “*while an application for leave to appeal should not contain in detail the arguments which the party intends to raise before the Appeals Chamber, it must still identify clearly the appealable issue, including by way of*

³ *Ibid.*

⁴ See the Request, *supra* note 1.

⁵ See the “Judgement on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal” (Appeals Chamber), No. [ICC-01/04-168 OA3](#), 13 July 2006, para. 9.

⁶ *Ibid.*, para. 20.

indicating a specific factual and/or legal error. Only in this case can the Chamber assess whether the issue, provided it was wrongly decided, may have implications on the fairness and expeditiousness of the proceedings or outcome of the trial”.⁷

9. The Defence seeks leave to appeal the following two issues: (a) **First Issue:** *Whether the Pre-Trial Chamber erred in law by adopting a flexible approach and overbroadly delineating the scope of the charges;*⁸ and (b) **Second Issue:** *Whether the Pre-Trial Chamber erred in law by failing to articulate a reasoned evidentiary basis for confirming the charges*⁹ - including the following to sub-issues alleging the Chamber’s failure (i) *to address the Defence’s submissions on the absence of a common plan;*¹⁰ and (ii) *to conduct an incident-specific assessment of the alleged crimes.*¹¹

2. Merits of the Request

a) First Issue

10. The first issue advanced by the Defence does not constitute an appealable matter within the meaning of article 82(1)(d) of the Statute. Rather, it reiterates arguments already advanced at the pre-trial stage and expressly addressed and rejected by the Chamber.¹² In particular - notwithstanding the Defence’s express disclaimer that it does not conflate the requirement of prompt and sufficient notice under article 67(1)(a) with the distinct question of the proper delineation of the scope of the charges for the purposes of article 74(2) of the Statute - its submissions reveal that it does so in substance.¹³ The Chamber explicitly identified and rejected this conflation, clarifying that these are separate legal inquiries governed by different standards.¹⁴

⁷ See the “Decision on three applications for leave to appeal” (Pre-Trial Chamber I), No. [ICC-02/11-01/11-307](#), 30 November 2012, para. 70.

⁸ See the Request, *supra* note 1, paras. 7-20.

⁹ *Ibid.*, paras. 21-36.

¹⁰ *Ibid.*, paras. 26-29.

¹¹ *Ibid.*, paras. 30-36.

¹² See the Confirmation Decision, *supra* note 3, paras. 16-17.

¹³ See the Request, *supra* note 1, paras. 7-9.

¹⁴ See the Confirmation Decision, *supra* note 3, para. 17.

11. Nor does the Defence identify any error of law in the Chamber's adoption of what it characterises as a "*flexible approach*".¹⁵ To the contrary, the Chamber correctly applied established Appeals Chamber jurisprudence.¹⁶ The degree of specificity required in the formulation of charges is context-dependent, notably in light of the scale of the alleged criminality and the mode of liability.¹⁷ As recalled by the Chamber, charges need not exhaustively list all underlying criminal acts; they may instead be delineated through a combination of temporal, geographical, and contextual parameters, provided that the "*facts and circumstances*" of the case remain identifiable.¹⁸ The Defence's submissions do not challenge this legal standard, but rather its application to the facts of the present case.¹⁹

12. In this respect, the Chamber's reliance on the *Ntaganda* jurisprudence²⁰ is not only appropriate but particularly apposite. The present case concerns alleged crimes committed over an extended period of time and across a wide territorial scope, within the framework of a large-scale and systematic campaign. It further reflects Mr Duterte's institutional roles - as Vice Mayor and Mayor of Davao City, and subsequently as President of the Republic of the Philippines²¹ - which place him at a significant distance from the physical commission of crimes and align with the modes of liability alleged, including indirect co-perpetration.²² As the Chamber correctly observed, these features justify a broader formulation of the charges, including the use of non-exhaustive lists of incidents and victims, in order to accurately reflect the scale and nature of the alleged criminality.²³ The Defence's attempt to distinguish *Ntaganda*

¹⁵ See the Request, *supra* note 1, paras. 7-10.

¹⁶ See the "Public redacted version of 'Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment'" (Appeals Chamber), [No. ICC-01/04-02/06-2666-Red A A2](#), 31 March 2021 (the "*Ntaganda* AJ").

¹⁷ See the Confirmation Decision, *supra* note 3, paras. 18-20.

¹⁸ *Ibid.*

¹⁹ See the Request, *supra* note 1, paras. 11-12.

²⁰ See the *Ntaganda* AJ, *supra* note 16, paras. 5 and 326.

²¹ See the Confirmation Decision, *supra* note 3, para. 22.

²² *Ibid.*, para. 23.

²³ *Ibid.*, paras. 20-23.

on the basis of differences in scale and geography²⁴ in fact underscores, rather than undermines, the appropriateness of the Chamber's approach.

13. The Defence further errs in suggesting that the Chamber endorsed an "*open-ended*" or undefined formulation of the charges.²⁵ The Confirmation Decision demonstrates that the Chamber delineated the scope of the charges through defined temporal, geographical, and material parameters, within which the alleged conduct of identifiable perpetrators against identifiable groups of victims is situated.²⁶ The non-exhaustive nature of the listed incidents and victims does not render the charges indeterminate. Rather, it reflects the well-established principle that, in cases of large-scale criminality, the number of incidents or victims is indicative.²⁷ It does not set definitive limits, provided that any further specification remains within the originally defined "*facts and circumstances*".²⁸ The Defence's characterisation of the charges as "*fluid*" or "*indeterminate*" therefore misrepresents the Chamber's findings.

14. Finally, the Defence's argument that the Chamber improperly relied on considerations such as its statutory inherent limitations and the Prosecution's ability to vary the evidentiary basis or refine its case²⁹ following confirmation is equally misplaced. The Chamber did not abdicate its duty to define the scope of the case; rather, it acknowledged the legal framework of the Court - including the specific function of the confirmation proceedings³⁰ and the continuing obligation of the Prosecution to investigate where necessary for the establishment of the truth.³¹ This consideration does not expand or alter the confirmed charges, but operates within the

²⁴ See the Request, *supra* note 1, paras. 11-12.

²⁵ *Ibid.*, paras. 13-14.

²⁶ See the Confirmation Decision, *supra* note 3, para. 24.

²⁷ See the *Ntaganda* AJ, *supra* note 16, paras. 5 and 326.

²⁸ *Ibid.*, para. 22.

²⁹ See the Request, *supra* note 1, paras. 15-17.

³⁰ See the Confirmation Decision, *supra* note 3, para. 36. See also, the Chambers Practice Manual, Seventh edition, adopted following the judicial retreat of 2023, para. 63 (the "Chambers Manual").

³¹ *Ibid.*, paras. 21, 33-34. See also, the Request, *supra* note 1, para. 17. See also, the "Decision on the 'Prosecution's Request to Amend Charges pursuant to Article 61(9) and for the Correction of the Decision on the Confirmation of charges, and Notice of Intention to add Additional Charges'" (Pre-Trial Chamber II), [No. ICC-01/14-01/18-5171](#), 4 May 2020, para. 25.

limits of the defined factual framework. In any event, the Defence's submissions on this point again revisit matters already considered and rejected by the Chamber, and do not disclose any identifiable legal error arising from the Confirmation Decision.

15. In sum, the Defence has failed to demonstrate that the Chamber erred in law in adopting a flexible approach to the delineation of the charges. Its submissions amount to a disagreement with the Chamber's application of settled jurisprudence to the specific circumstances of the case, and therefore do not give rise to an appealable issue under article 82(1)(d) of the Statute.

b) Second Issue

16. The second issue put forward by the Defence is not appealable within the meaning of article 82(1)(d) of the Statute. The Defence does not identify a discrete legal question arising from the Confirmation Decision. Rather, it expresses disagreement with the Chamber's assessment of the evidence and reiterates arguments that were already raised before - and addressed - by the Chamber, particularly in relation to the alleged absence of a common plan and the interpretation of the term "*neutralise*".³²

17. The Defence's submission that the Chamber failed to articulate a "*reasoned evidentiary basis*" mischaracterises both the Confirmation Decision and the applicable legal standard. At the confirmation stage, the Chamber is required to determine whether there are substantial grounds to believe that the suspect committed the crimes charged. This assessment is necessarily based on a holistic evaluation of the evidentiary record,³³ without the need to provide an exhaustive account of every piece of evidence or to engage with each argument raised by the parties.³⁴ As recognised in

³² See the Request, *supra* note 1, paras. 21-23 and the Confirmation Decision, *supra* note 3, paras. 23, 33-34.

³³ See, *inter alia*, the "Decision on the confirmation of charges (Pre-Trial I), [No. ICC-01/04-01/07-717](#), 1 October 2008, para. 66.

³⁴ See, *inter alia*, the "Public Redacted Version Decision on the Confirmation of Charges" (Pre-Trial Chamber I), [No. ICC-02/05-02/09-243-Red](#), 8 February 2010, para. 45 (the "Abu Garda Confirmation Decision").

the Court's practice, including the Chambers Manual,³⁵ the adequacy of judicial reasoning is not measured by the volume of evidentiary citations or the extent to which each submission is addressed individually, but by the clarity and sufficiency of the reasoning as a whole.³⁶

18. In this regard, the Chamber did articulate a clear and reasoned basis for its findings. It set out the applicable legal framework, identified the relevant factual allegations, and explained why the evidentiary material - considered in its totality - met the "*substantial grounds*" threshold.³⁷ The Defence's assertion that the Chamber was required to link each factual finding to specific items of evidence reflects an incorrect understanding of the nature of confirmation proceedings and the standard of reasoning required at this stage.

19. As to the first sub-issue, the Defence's claim that the Chamber failed to address its submissions on the absence of a common plan is unfounded.³⁸ The Chamber expressly considered the contextual and organisational elements of the alleged criminality, including the existence of a coordinated policy or plan, and assessed Mr Duterte's alleged role within that framework.³⁹ The fact that the Chamber did not adopt the Defence's interpretation of the evidence - including its arguments regarding the meaning of the term "*neutralise*"⁴⁰ - does not amount to a failure to address those submissions, but rather reflects the Chamber's reasoned evaluation of the record of the case.

³⁵ See the Chambers Manual, *supra* note 30, paras. 62-63. See also, the Confirmation Decision, *supra* note 3, para. 36.

³⁶ See the "Decision on the confirmation of charges in absentia against Joseph Kony pursuant to articles 61(2)(b) and 61(7) of the Rome Statute" (Pre-Trial Chamber III), [No. ICC-02/04-01/05-633](#), 6 November 2025, para. 54. See also, the "Public redacted version of Decision on the confirmation of charges against Mahamat Said Abdel Kani" (Pre-Trial Chamber II), [No. ICC-01/14-01/21-218-Red](#), 9 December 2021, para. 42.

³⁷ See the Confirmation Decision, *supra* note 3, paras. 25-27.

³⁸ See the Request, *supra* note 1, paras. 26-29.

³⁹ See the Confirmation Decision, *supra* note 3, paras. 23, 32-33.

⁴⁰ See the Request, *supra* note 1, para. 28 and the Confirmation Decision, *supra* note 3, para. 54.

20. Similarly, the second sub-issue - alleging a failure to conduct an incident-specific assessment - misconceives the function of the confirmation stage. While the Chamber must be satisfied that the evidentiary threshold is met in relation to the crimes charged, it is not required to engage in a detailed, incident-by-incident adjudication akin to a trial judgment.⁴¹ As the Chamber itself recalled, its findings at this stage are necessarily provisional and based on a *prima facie* assessment of the evidence.⁴² The Defence's insistence on a granular, incident-specific analysis effectively seeks to import the standard of proof and methodology applicable at trial into the confirmation phase, contrary to the Statute and the Court's jurisprudence.

21. In sum, the Defence's submissions under this issue amount to a disagreement with the manner in which the Chamber assessed and articulated its evaluation of the evidence. They do not disclose any identifiable error of law, nor do they raise a question that would warrant immediate appellate intervention. As such, they do not give rise to an appealable issue within the meaning of article 82(1)(d) of the Statute.

3. No significant effect on the fairness or outcome of the proceedings

22. Even assuming *arguendo* that the Defence had identified an appealable issue, it has failed to demonstrate that the alleged errors are capable of significantly affecting the fairness or expeditious conduct of the proceedings or the outcome of the trial. The Defence's submissions concern the scope of the charges and the articulation of the evidentiary reasoning at the confirmation stage. These matters do not give rise to any concrete or immediate prejudice to the rights of the Accused. The parameters of the case have been delineated, and adequate mechanisms exist to ensure that the Defence is informed of the case against it - including through disclosure, pre-trial and trial briefs, and ongoing procedural safeguards. The Defence remains fully able to challenge the Prosecution's case, including the existence of a common plan and the alleged incidents, during trial.

⁴¹ See the Abu Garda Confirmation Decision, *supra* note 34, paras. 39-42.

⁴² See the Confirmation Decision, *supra* note 3, paras. 27-28.

23. The Defence's arguments rest on an overly rigid conception of specificity which, if accepted, would undermine rather than protect the fairness of the proceedings. Over-particularisation of the charges in cases of large-scale criminality carries its own risks. It may artificially narrow the case, exclude victims whose experiences fall within the charged conduct but are not individually listed, and misrepresent the true scale of the victimisation and nature of the alleged criminality. It would also necessitate repeated amendments to the charges as additional incidents or victims are identified, thereby generating satellite litigation and delaying proceedings. The Defence's position, far from safeguarding fairness, would therefore undermine both fairness and expeditiousness. In this sense, it runs counter to the very considerations underpinning article 82(1)(d) of the Statute.

24. Moreover, the findings of the Chamber are, by their nature, provisional and limited to determining whether the "*substantial grounds*" threshold is met. They do not prejudice the outcome of the trial. The Trial Chamber retains full authority to assess the evidence in its entirety, including to accept, reject, or refine the factual findings made at the confirmation stage. The Defence's arguments therefore also fail to demonstrate any impact on the outcome of the proceedings within the meaning of article 82(1)(d) of the Statute.

4. No need for immediate appellate intervention

25. The Defence has likewise failed to establish that immediate resolution by the Appeals Chamber would materially advance the proceedings. The issues raised concern matters that fall within the ordinary conduct of trial, including the assessment of evidence and the delineation of the factual basis of the charges as it develops through the evidentiary record. These matters can be adequately addressed, if necessary, in the course of trial proceedings without the need for interlocutory review.

26. Even where some degree of ambiguity is assumed, this would not warrant immediate appellate intervention. Any such matters can be effectively managed at the trial stage through established procedural mechanisms, including trial management

decisions, disclosure obligations, and the submission of briefs. These mechanisms ensure that the Defence is adequately informed of the case against it and able to respond accordingly.

27. There is, moreover, no risk of irreparable prejudice or inefficiency arising from deferring appellate consideration. The Defence retains the full opportunity to challenge the Prosecution's case at trial, and any issues relating to the scope of the charges or the evidentiary basis can be addressed in the context of a complete evidentiary record. Nor is there any risk that the proceedings would have to be revisited or duplicated at a later stage, such as to justify early intervention by the Appeals Chamber.

28. Granting leave to appeal at this stage would, on the contrary, risk fragmenting the proceedings and causing unnecessary delay, contrary to the principle of expeditiousness. The Defence has therefore not demonstrated that immediate intervention by the Appeals Chamber is warranted under article 82(1)(d) of the Statute.

IV. CONCLUSION

29. For all the foregoing reasons, the CLRV respectfully request the Chamber to reject the Defence Request for leave to appeal the Confirmation Decision.



Gilbert Andres



Joel Butuyan



Paolina Massidda

Common Legal Representatives of the Victims

Dated this 4th day of May 2026

At The Hague (The Netherlands) and Manila (The Republic of the Philippines)