

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **4 May 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

Prosecution's response to "Defence Request for Leave to Appeal the Decision on the Confirmation of Charges"

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Prosecution respectfully requests that Pre-Trial Chamber I (the “Chamber”) reject the Defence’s request for leave to appeal (the “Request”)¹ the Decision on the confirmation of charges against Mr Rodrigo Roa Duterte (the “Decision”).² The Defence misrepresents and expresses its mere disagreement with the Decision. As such, the Request does not identify any appealable issues and fails to meet the cumulative criteria for leave to appeal under article 82(1)(d) of the Rome Statute (the “Statute”).

II. APPLICABLE LAW

2. Under article 82(1)(d) of the Statute, the Chamber has regard to whether: (i) the matter is an “appealable issue”; (ii) the issue would significantly affect the fair and expeditious conduct of the proceedings or the outcome of the trial; and (iii) in the opinion of the Chamber, an immediate resolution by the Appeals Chamber may materially advance the proceedings.³ The three criteria under article 82(1)(d) of the Statute are cumulative. Therefore, failure to fulfil one or more of the criteria should result in dismissal of the Request.⁴

3. Regarding the first criterion, the Appeals Chamber has held:

An issue is an identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion. There may be disagreement or conflict of views on the law applicable for the resolution of a matter arising for determination in the judicial process. This conflict of opinion does not define an appealable subject. An issue is constituted by a subject the resolution of which is essential for the determination of matters arising in the judicial cause under examination.⁵

¹ Defence Request for Leave to Appeal the Decision on the Confirmation of Charges, 29 April 2026, ICC-01/21-01/25-422 (the “[Request](#)”).

² Decision on the confirmation of charges against Mr Rodrigo Roa Duterte, 23 April 2026, ICC-01/21-01/25-417-Conf (public redacted version filed the same day, ICC-01/21-01/25-417-Red) (the “[Decision](#)”).

³ Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, Decision on the Application on behalf of Mr Bosco Ntaganda seeking leave to appeal Decision on the Registry submission in compliance with the “Order for the implementation of the Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled ‘Reparations Order’”, 21 December 2022, ICC-01/04-02/06-2805 (the “[Ntaganda Leave Decision](#)”), para. 12; Trial Chamber VI, *The Prosecutor v. Mahamat Said Abdel Kani*, Public redacted version of Decision on the Defence’s Request for Reconsideration of or Leave to Appeal the Decision on the Prosecution’s Fifth Request under Rule 68(2)(b), 21 December 2022, ICC-01/14-01/21-575-Red (the “[Said Leave Decision](#)”), para. 21.

⁴ [Ntaganda Leave Decision](#), para. 13; [Said Leave Decision](#), para. 23.

⁵ Appeals Chamber, Situation in the Democratic Republic of the Congo, Judgment on the Prosecutor’s Application for Extraordinary Review of Pre-Trial Chamber I’s 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-01/04-168 (the “[DRC Extraordinary Review Decision](#)”), para. 9.

4. Finally, issues that are based on a misunderstanding or mischaracterisation of the decision are not appealable.⁶

III. SUBMISSIONS

5. The Defence identifies the following two issues for appeal (the “Issues”):

- a) whether the Chamber erred by adopting a “flexible approach” and overbroadly delineating the scope of the charges (the “First Issue”);⁷ and
- b) whether the Chamber erred in law by failing to articulate a reasoned evidentiary basis for confirming the charges (the “Second Issue”).⁸

A. The Issues are not appealable issues

i. *The First Issue*

6. With respect to the First Issue, the Defence submits that the Chamber erred by failing to define the parameters of the charges – noting that the Decision “neither identifies the facts and circumstances underlying the charges nor [...] explain[s] how they were demarcated.”⁹ The Defence argues that this constitutes an appealable issue and results in concrete prejudice to Mr Duterte’s right to be informed in detail of the nature, cause and content of the charges pursuant to article 67(1) of the Statute.¹⁰

7. The First Issue is premised upon a misrepresentation of the Decision and is therefore not an appealable issue within the meaning of article 82(1)(d) of the Statute. The Chamber clearly identified the scope of the charges for the application of article 74(2) of the Statute and explained how it arrived at its conclusion. In fact, the Chamber solicited additional submissions from the parties on this issue,¹¹ considered these arguments in detail,¹² and clearly articulated

⁶ [Ntaganda Leave Decision](#), para. 15; Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision on Defence request for reconsideration, or leave to appeal, “Decision on Defence request in relation to P-0626”, 10 February 2021, [ICC-01/12-01/18-1295-Red](#), para. 14; Pre-Trial Chamber II, *The Prosecutor v. Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Decision on the Defence Applications for Leave to Appeal the Decision on the Confirmation of Charges, 9 March 2012, [ICC-01/09-02/11-406](#), para. 46.

⁷ [Request](#), paras 7-20.

⁸ [Request](#), paras 21-36.

⁹ [Request](#), para. 7.

¹⁰ [Request](#), paras 7-8.

¹¹ [ICC-01/21-01/25-Confidential] Order for Clarification, Email from Chamber to Parties, 3 December 2025 at 11:43 a.m.

¹² [Decision](#), paras 14-16.

its findings with respect to the scope of the charges in the Decision, which are consistent with the jurisprudence of the Appeals Chamber.¹³

8. Specifically, the Chamber followed the jurisprudence of the Appeals Chamber in the *Ntaganda* case¹⁴ as well as Trial Chamber VI in the *Said* case¹⁵ to find that the scope of the charges can be defined with regard to temporal and geographical parameters and for individual criminal acts and victims to be listed in a non-exhaustive manner.¹⁶ The Chamber noted, consistent with the aforementioned jurisprudence, that the ability to confirm the scope of the charges in this fashion will depend, *inter alia*, on the scale of criminality and the alleged mode of individual criminal responsibility.¹⁷ The Chamber further noted that having considered these factors, the charges may cover a significant time period and territory, as long as it is possible for the Trial Chamber, the parties and the participants to identify which historical events are covered by the charges and which are not.¹⁸

9. The Chamber then went on to consider the scale of criminality and alleged mode of individual criminal responsibility in this case. With respect to individual criminal responsibility, the Chamber noted that Mr Duterte has been charged, *inter alia*, as an indirect co-perpetrator of a common plan to ‘neutralise’ criminals in the Philippines (including those perceived or alleged to be associated with drug use, sale or production), through violent crimes including murder.¹⁹ The Chamber then considered the scale of the alleged criminality, noting that it involves a “widespread attack against the civilian population consisting of the commission of numerous crimes over an extended period of time and, with regard to the presidential period, in a large territory.”²⁰ In these circumstances, the Chamber ruled that “a broad approach to the scope of the charges through illustrative examples of relevant incidents may indeed be necessary to cover the extent of Mr Duterte’s alleged criminality.”²¹

¹³ [Decision](#), paras 17-24.

¹⁴ Appeals Chamber, *The Prosecutor v. Bosco 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’, 30 March 2021, ICC-01/04-02/06 2666-Red (the “[Ntaganda Appeal Judgment](#)”).

¹⁵ Trial Chamber VI, *The Prosecution v. Mahamat Said Abdel Kani*, Decision on Prosecution Notification regarding the Charges (ICC-01/14-01/21-262-Red), 20 April 2022, [ICC-01/14-01/21-282](#), para. 15.

¹⁶ [Decision](#), para. 19.

¹⁷ [Decision](#), para. 19.

¹⁸ [Decision](#), para. 20.

¹⁹ [Decision](#), para. 23.

²⁰ [Decision](#), para. 23.

²¹ [Decision](#), para. 23.

10. Therefore, contrary to the Defence’s assertion, the Chamber did define the “parameters of the charges”,²² and did so in a manner that is consistent with the jurisprudence of the Appeals Chamber. The Defence merely disagrees with the Chamber’s decision to define the scope of the charges in a broader manner than the Defence had argued for.²³ The First Issue is thus premised on a misrepresentation of the Decision and the Defence’s mere disagreement with the Decision. It is therefore not appealable.

i. The Second Issue

11. In relation to the Second Issue, the Defence argues that the Chamber committed a legal error by failing to articulate a reasoned evidentiary basis for confirming the charges.²⁴ Specifically, the Defence takes issue with two aspects of the Decision: first, the Chamber’s alleged failure to link its findings to specific references to the evidence;²⁵ and second, the Chamber’s alleged failure to engage with the Defence’s submissions on certain matters,²⁶ namely, the Defence’s submission on the absence of a common plan,²⁷ as well as its submissions on the specific charged incidents.²⁸ These arguments misrepresent the Decision and thus fail to set out an appealable issue within the meaning of article 82(1)(d) of the Statute.

12. Contrary to the Defence’s assertion, the Chamber did properly link its finding to references in the evidence. Throughout the Decision, the Chamber references the witnesses and other forms of evidentiary material that substantiate its findings, often citing to the Prosecution’s Pre-Confirmation Brief which contains citations to the underlying evidence.²⁹ The Chamber clearly explained its approach in this respect, noting that it had analysed the Prosecution’s List of Evidence and the Defence’s List of Evidence,³⁰ as well as the “evidentiary material relied upon by the Prosecution and referenced in the [Pre-Confirmation Brief], following the structure of the [Document Containing the Charges], and the evidence cited at the Confirmation Hearing by both the Prosecution and the Defence” but that it would “only refer to those items of evidence which it considers necessary to show the line of reasoning

²² [Request](#), para. 7; [Decision](#), paras 23-24, pp 41-49.

²³ [Decision](#), para. 16, citing Defence Response to the Prosecution’s Clarification on the Proposed Scope of the Charges (ICC-01/21-01/25-330-Conf), 10 December 2025, [ICC-01/21-01/25-332](#).

²⁴ [Request](#), para. 22.

²⁵ [Request](#), paras 22-24.

²⁶ [Request](#), paras 25-36.

²⁷ [Request](#), paras 26-29.

²⁸ [Request](#), paras 30-36.

²⁹ See e.g., [Decision](#), paras 69-75, in which the Chamber provides its assessment of the evidence underlying Counts 1-3 of the Document Containing the Charges.

³⁰ [Decision](#), para. 49, fn. 93.

underpinning its conclusions.”³¹ This is consistent with the approach taken in recent confirmation decisions of this Court³² and in line with the purpose of confirmation proceedings more broadly, that is, to decide whether the case as presented by the Prosecution is sufficiently established to warrant a trial.³³ The Defence thus misrepresents the Decision in this respect and fails to demonstrate an appealable issue.

13. The Defence’s argument that the Chamber failed to engage with its submissions on certain issues is also a mischaracterisation of the Decision. The Chamber explicitly noted that it had “engaged in an overall assessment of the entire evidentiary basis relied upon by the Prosecution *and the Defence*, including with a view to detecting inconsistencies, ambiguities, contradictions or other weaknesses which would result in the allegations not being supported to the relevant standard [...]”.³⁴ The Chamber, indeed, referenced and explicitly addressed a number of arguments raised by the Defence,³⁵ though was not required to address all of the arguments raised by the parties in its written decision.³⁶

14. The Chamber further reasoned that at this stage of the proceedings, and given the Pre-Trial Chamber’s specific role, an “assessment as to each and every item of evidence, or of each and every item’s admissibility and/or probative value” was not warranted, as this would “only create the risk of inappropriately pre-determining evidentiary matters, without furthering or contributing to the specific task vested in the Pre-Trial Chamber at this stage.”³⁷ This is consistent with the Appeals Chamber’s finding that the confirmation of charges hearing is not

³¹ [Decision](#), paras 49-50.

³² See e.g., Pre-Trial Chamber III, *The Prosecutor v. Joseph 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, 6 November 2025, [ICC-02/04-01/05-633](#); Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, 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, 11 November 2021, [ICC-02/05-01/20-433-Corr](#).

³³ [Decision](#), paras 26, 36 (including authorities referenced in footnote 69), 49, 50.

³⁴ [Decision](#), para. 50 [emphasis added].

³⁵ See e.g., [Decision](#), paras 16-17, 24, 29-32, 42-43, 45, 48, 51-54, 62-66, 74-75, 87.

³⁶ See, *inter alia*, Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba et al*, Judgment on the appeal of Mr Jean-Jacques Mangenda Kabongo against the decision of Pre-Trial Chamber II of 17 March 2014 entitled “Decision on the ‘Requete de mise en liberte’ submitted by the Defence for Jean-Jacques Mangenda”, 11 July 2014, [ICC-01/05-01/13-560](#), para. 116; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Judgment, 8 July 2019, [ICC-01/04-02/06-2359](#), para. 52; Trial Chamber III, *The Prosecutor v. Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, 21 March 2016, [ICC-01/05-01/08-3343](#), para. 227; Appeals Chamber, *The Prosecutor v. Jean-Pierre Bemba et al*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo, Mr Aimé Kilolo Musamba, Mr Jean-Jacques Mangenda Kabongo, Mr Fidèle Babala Wandu and Mr Narcisse Arido against the decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”, 8 March 2018, [ICC 01/05-01/13-2275-Red](#), paras 105-106; and Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81”, 14 December 2006, [ICC 01/04-01/06-773](#), para. 20.

³⁷ [Decision](#), para. 50.

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. It thus held that “[t]his limited purpose of the confirmation of charges proceedings is reflected in the fact that the Prosecutor must only produce sufficient evidence to establish substantial grounds to believe the person committed the crimes charged”.³⁸ The Defence thus expresses its mere disagreement with the Chamber’s approach to the evidentiary matters in this respect. As such, the Second Issue is premised on a misrepresentation of the Decision as well as the Defence’s mere disagreement with the Decision and is therefore not appealable.

B. The Issues do not satisfy the cumulative criteria under article 82(1)(d) of the Statute

15. Even if the Chamber were to determine that the Issues are appealable, they do not satisfy the cumulative criteria under article 82(1)(d) of the Statute.

i. The Issues would not significantly affect the fair and expeditious conduct of the proceedings

16. The Defence argues that “fairness requires that an accused person be informed of the nature of the case against him with sufficient specificity” and that the “charges remain insufficiently defined, both in scope and [...] evidentiary basis” which impairs the Defence’s ability to investigate, respond to the allegations, and to anticipate the case to be met at trial.”³⁹ However, the Chamber specifically addressed the issue of fair notice pursuant to article 67(1)(a) of the Statute after adopting a broad formulation of the charges, noting that “as soon as information allowing further specification of the charges becomes available, the Defence must be adequately put on notice by appropriate means [...]”.⁴⁰ There is also no issue of fairness with respect to the Second Issue as all evidence and arguments raised by the Defence will be addressed by the Trial Chamber in the context of trial. The Issues therefore do not significantly affect the fair conduct of the proceedings pursuant to article 82(1)(d) of the Statute.

17. The Defence also fails to demonstrate that the Issues significantly affect the expeditious conduct of the proceedings pursuant to article 82(1)(d) of the Statute. The Defence simply

³⁸ The Appeals Chamber, *The Prosecutor v. Mbarushimana*, Judgment on the Prosecutor’s Appeal against the Confirmation of Charges Decision, [ICC-01/04-01/10-514](#), 30 May 2012, para. 47.

³⁹ [Request](#), para. 38.

⁴⁰ [Decision](#), para. 22.

states that the Issues are “likely to generate further litigation” though does not explain how or why that would be the case. It does not suffice for an issue to have a hypothetical impact on the expeditiousness of proceedings.⁴¹ The Defence therefore fails to substantiate how the Issues would significantly affect the expeditious conduct of the proceedings, which forms part of the cumulative criteria under article 82(1)(d) of the Statute.

ii. The immediate resolution of the Issues by the Appeals Chamber would not materially advance the proceedings

18. The Defence fails to demonstrate that the immediate resolution of the Issues will materially advance the proceedings. To materially advance the proceedings, it must be the case that unless the Issues are remedied on appeal, there will be a setback to the proceedings that it will leave a “decision fraught with error to cloud or unravel the judicial process”.⁴²

19. The Defence argues that “[p]rompt 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”.⁴³ However, the Prosecution submits that because the Chamber’s approach firmly reflects prior jurisprudence of the Appeals Chamber regarding the scope of the charges⁴⁴ and the limited purpose of confirmation proceedings,⁴⁵ immediate resolution of the Issues by the Appeals Chamber would not materially advance the proceedings and could, in actuality, result in their delay if appeals proceedings are commenced regarding already settled issues of law. Further, the Defence has, once again, failed to establish how immediate resolution of the Issues by the Appeals Chamber would “reduce the likelihood of protracted future litigation on these issues” and has therefore failed to demonstrate how the immediate resolution of the Issues would materially advance the proceedings.

20. Furthermore, the Prosecution finds that the Defence’s concerns with respect to the need for “dispelling any enduring doubts as to the validity of the Impugned Decision”⁴⁶ lack

⁴¹ Pre-Trial Chamber II, *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen*, Decision on the Defence Request for leave to appeal the 21 November 2008 Decision, 10 February 2009, [ICC-02/04-01/05-367](#), paras 21-22.

⁴² [DRC Extraordinary Review Decision](#), para. 16.

⁴³ [Request](#), para. 43.

⁴⁴ See [Decision](#), paras 18-20, citing [Ntaganda Appeal Judgment](#).

⁴⁵ See [Decision](#), paras 16, 49.

⁴⁶ [Request](#), para. 43.

credibility in light of Defence Counsel's recent false and disparaging statements about this Court and its Judges. On 22 April 2026, Defence Counsel participated in several media interviews in which he plainly stated that the Court is a partisan political body.⁴⁷ He further stated that the Judges of the Court issue biased decisions motivated by their desire to generate work for themselves and justify the Court's budget.⁴⁸

21. When asked what he expected with respect to the outcome of the Decision, which at this point had yet to be issued, Defence Counsel stated in an interview "well, once again, I can only look at it in the political context of this Court and the stakes are just too high for the Court just to throw the case out. I have to be realistic [...]."⁴⁹

22. When asked in the same interview to elaborate on his comments regarding the political dimension of the Court that he had referred to in the interview, Defence Counsel stated:

Well I've clarified quite frankly. I mean, this Court is in a state of crisis at the moment. The only thing that it has currently in its docket of substance is the case against the former President of the Philippines. There's no one else here in the in the Detention Centre. And bear in mind that you have a Pre-Trial Chamber, you also have a Trial Chamber. I would say there are somewhere in the region of five to seven Judges who are in the Trial Chamber with nothing to do at the present moment in time. So they have to justify their workload, and obviously there will be a [...] Trial Chamber set up in order to try the former president once charges are confirmed and that will keep the Court occupied for the years to come. Obviously, there is also the case of the Libyan human trafficker, El Hishri, which was fast tracked as well to confirmation. So the Court, don't forget, gets a huge budget. It has to justify its budget.⁵⁰

23. Counsel later stated in the same interview, "sometimes you feel as if you're banging your head against [...] the wall at this Court. You can argue as hard as you want and present the strongest [...] legal arguments that you want, but ultimately, you're faced with political dimensions which are beyond your control."⁵¹

⁴⁷ Rappler, [Kaufman on ICC jurisdiction decision: Not surprised, focusing on road ahead](#), 22 April 2026; ANC, [Kaufman: ICC upholding jurisdiction over Rodrigo Duterte 'unsurprising'](#), 22 April 2026.

⁴⁸ Rappler, [Kaufman on ICC jurisdiction decision: Not surprised, focusing on road ahead](#), 22 April 2026; ANC, [Kaufman: ICC upholding jurisdiction over Rodrigo Duterte 'unsurprising'](#), 22 April 2026.

⁴⁹ Rappler, [Kaufman on ICC jurisdiction decision: Not surprised, focusing on road ahead](#), 22 April 2026, 2:45-3:00.

⁵⁰ Rappler, [Kaufman on ICC jurisdiction decision: Not surprised, focusing on road ahead](#), 22 April 2026, 3:10-4:20.

⁵¹ Rappler, [Kaufman on ICC jurisdiction decision: Not surprised, focusing on road ahead](#), 22 April 2026, 6:00-6:17. The Prosecution notes that Defence Counsel made similar comments in reference to the Appeals Chamber's Judgment confirming the Chamber's finding that the Court indeed has jurisdiction over Mr Duterte's case, stating

24. These claims are offensive and categorically false. They appear to be designed to denigrate and undermine the legitimacy of the decisions of this Court that the Defence considers unfavourable and completely contradict the Defence's purported concerns about "dispelling any enduring doubts as to the validity" of the Decision. The Court is an independent institution and its Judges issue fair and impartial decisions based on the evidence presented and applicable law. Defence Counsel's comments are clearly intended to bring the Court into disrepute and are therefore a blatant violation of article 24(1) of the Code of Professional Conduct for Counsel (the "Code of Conduct"). They also contravene his obligation to be respectful and courteous in his relations with the Chamber pursuant to article 7 of the Code of Conduct.

25. Defence Counsel has already been reminded – on two occasions – of his obligations under the Code of Conduct by this Chamber.⁵² Despite this, he continues to exhibit a pattern of deplorable conduct in relation to the public statements he makes about this case and the Judges of this Court. These comments undermine the legitimacy of the Court and contribute to the significant disinformation campaign surrounding this case in the Philippines. It is worth noting that Salvador Panelo – one of the six lawyers the Defence refused to publicly admit was

that the Defence was "not really surprised about today's decision given the politics currently at play. The Court is essentially in existential crisis [...]". He went on to state that "[t]he practical effect of allowing the appeal would have basically meant voiding the Court's docket. There's nothing going on at this Court apart from one case of a Libyan human trafficker." See ANC, [Kaufman: ICC upholding jurisdiction over Rodrigo Duterte 'unsurprising'](#), 22 April 2026, 0:27-0:52. Defence Counsel made similar offensive statements during the litigation surrounding Mr Duterte's application for interim release, suggesting in a filing before the Appeals Chamber that Pre-Trial Chamber I had made a "predetermined decision to detain Mr Duterte". See Confidential Appeal Brief on Interim Release, 14 October 2025, ICC-01/21-01/25-298-Conf (public redacted version filed on 28 October 2026, [ICC-01/21-01/25-298-Red](#)), para. 20. He reportedly made similar statements in the media at the time, suggesting that Mr Duterte's continued detention was ordered by the Chamber because there was only "one active first instance case in its docket". See Inquirer, [Duterte's legal team appeals ICC decision on interim release](#), 10 October 2025.

⁵² First, in its Order in relation to the Defence's request to disqualify an expert, the Chamber stated that it "deplores some of the Defence's assertions in the Request and reminds it of its obligations under the Code of Professional Conduct for Counsel." The Chamber went on to state that the "Defence's choice of language which suggests that the Chamber would have made a biased decision in appointing experts is not only incorrect, but also inconsistent with Counsel's professional duty to be respectful and courteous in its relations with the Chamber, as provided in article 7(1) of the Code of Professional Conduct for Counsel." See Public redacted version of "Order in relation to the 'Defence Request for the Disqualification of [REDACTED]'", 3 October 2025, ICC-01/21-01/25-288-Conf", 14 November 2025, [ICC-01/21-01/25-288-Red](#), para. 10. Second, following the Defence's request to disclose to the public that confidential Prosecution witnesses were interviewed by its investigators and its submission that "[e]ven if the Defence does not mention these individuals by name, any meaningful reference to the subject matter of their testimony will reveal their identity" (Confidential Defence Observations pursuant to Rule 122(3) and Defence Request pursuant to Rule 124(1), 16 February 2026, ICC-01/21-01/25-379-Conf (public redacted version filed on 20 February 2026, [ICC-01/21-01/25-379-Red](#)), paras 6-7, 11(ii)), the Chamber "not[ed] with concern the related Defence's assertion" and recalled "counsel's duty to respect professional secrecy and the confidentiality of information pursuant to article 8 of the Code of Professional Conduct for counsel at all times, including during the forthcoming hearing on the confirmation of charges." See Decision on the Defence's observations pursuant to rule 122(3) of the Rules of Procedure and Evidence, 20 February 2026, [ICC-01/21-01/25-388](#), para. 9.

not, in fact, a part of the Defence Team⁵³ – has repeated the same talking points in the Philippines media, recently providing an interview in which he stated that the Court “is trying to justify its existence.”⁵⁴ These comments undermine the “validity” of the Decision and have the potential to negatively impact witnesses and victims who may be reluctant to participate in proceedings portrayed by Defence Counsel as corrupt or illegitimate.

IV. RELIEF REQUESTED

26. For the foregoing reasons, the Prosecution respectfully requests that the Chamber reject the Request.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', with a large, stylized flourish on the left side.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 4th day of May 2026

At The Hague, the Netherlands

⁵³ Defence Response to Prosecution Request ICC-01/21-01/25-411-Conf-Exp, 13 April 2026, [ICC-01/21-01/25-413](#).

⁵⁴ ANC, [‘It has to justify existence’: Pabelo says says ICC won’t let go of Duterte case as challenges mount](#), 30 April 2026, 2:20-2:30.