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No. ICC-01/21-01/25

Date: 21 May 2026

PRE-TRIAL CHAMBER I

Before:

**Judge Iulia Antoanella Motoc, Presiding
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

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

Decision to be notified, in accordance with Regulation 31 of the *Regulations of the Court*, to:

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☒ 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

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations

☐ Other

Section

PRE-TRIAL CHAMBER I of the International Criminal Court issues the present decision on the 29 April 2026 Defence’s ‘Request for Leave to Appeal the Decision on the Confirmation of Charges’.¹

I. PROCEDURAL HISTORY

1. On 23 March 2026, the Chamber issued the ‘Decision on the confirmation of charges against Mr Rodrigo Roa Duterte’ confirming all the charges presented by the Prosecution and committing Mr Duterte to a Trial Chamber for trial on the charges as confirmed.²

2. On 29 March 2026, the Defence submitted the Request, seeking leave to appeal the Confirmation Decision in respect of the following issues:

‘Whether the Pre-Trial Chamber erred by adopting a “flexible approach” and overbroadly delineating the scope of the charges’ (the ‘First Proposed Issue’);

‘Whether the Pre-Trial Chamber erred in law by failing to articulate a reasoned evidentiary basis for confirming the charges’ (the ‘Second Proposed Issue’).

3. On 4 May 2026, the Prosecution³ and the Common Legal Representatives of Victims (the ‘CLRV’)⁴ opposed the Request.

II. DETERMINATION

4. Based on the Court’s long-established jurisprudence, the Chamber recalls the exceptional character of the remedy of interlocutory appeals under article 82(1)(d) of the Rome Statute (the ‘Statute’), and that the following requirements must be met in order for leave to appeal to be granted: (a) a decision must involve an issue that would significantly affect (i) both the ‘fair’ and ‘expeditious’ conduct of the proceedings; or (ii) the outcome of the trial; and (b) in the view of the Pre-Trial Chamber, an immediate resolution of the issue by the Appeals Chamber is warranted as it may materially advance the proceedings.⁵ An appealable ‘issue’ is an

¹ ICC-01/21-01/25-422 (the ‘Request’).

² ICC-01/21-01/25-417-Conf (public redacted version notified on the same day, ICC-01/21-01/25-417-Red) (the ‘Confirmation Decision’).

³ Prosecution’s response to “Defence Request for Leave to Appeal the Decision on the Confirmation of Charges”, 4 May 2026, ICC-01/21-01/25-428 (the ‘Prosecution’s Response’).

⁴ Victims’ Response to the Defence Request for Leave to Appeal the Decision on the Confirmation of Charges (ICC-01/21-01/25-417-Conf), 4 May 2026, ICC-01/21-01/25-427 (the ‘CLRV’s Response’).

⁵ See Appeals Chamber, *Situation in the Democratic Republic of the Congo*, [Judgement 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 Leave to Appeal Judgment’), paras 7-8; Pre-Trial Chamber III, *The Prosecutor v. Joseph Kony*, [Decision on the ‘Kony Defence request for leave to appeal \[the\] “Decision on the criteria for holding confirmation of charges proceedings in absentia”](#)’, 28 January 2025, ICC-02/04-01/05-551 (‘Kony Leave to Appeal Decision’), para. 26.

identifiable subject or topic requiring a decision for its resolution, not merely a question over which there is disagreement or conflicting opinion; it must emanate from the relevant decision itself and cannot represent a hypothetical concern or abstract legal question.⁶

A. First Proposed Issue

5. The Defence submits that the Chamber’s adoption of ‘an impermissibly “flexible” approach to the formulation of the charges’ and ‘essential components thereof, including the “timing, location, and identity of the victims” as well as the “number of incidents and victims”’, resulted in a Confirmation Decision which ‘neither identifies the facts and circumstances underlying the charges nor [...] explain[s] how they were demarcated’, thereby leaving ‘the Defence unable to determine whether and which incidents fall within the facts and circumstances of the charges’.⁷ The Defence argues that the Chamber’s reliance on the Appeals Chamber’s reasoning in the *Ntaganda* case ‘is misplaced’ and led it to replacing ““limiting” factual elements [...] with generalised formulations’, resulting ‘in a case that is not appropriately delimited’ and ‘effectively encompasses any alleged incident falling within an expansive temporal and geographical frame’.⁸ The Defence further asserts that the Chamber’s approach rests ‘on considerations extraneous to the requirement that the charges be defined with sufficient precision, namely “limitations inherent in its statutory role”’ and a ‘prosecutorial prerogative to expand and vary the evidentiary basis post-confirmation’, which are respectively ‘incompatible with the function of the confirmation procedure’ and not founded based on the Court’s framework and practice.⁹

6. The Prosecution responds that, ‘contrary to the Defence’s assertion, the Chamber did define the “parameters of the charges” and did so in a manner that is consistent with the jurisprudence of the Appeals Chamber’.¹⁰ The Prosecution asserts that, consistent with this jurisprudence, the Chamber ‘consider[ed] the scale of criminality and alleged mode of individual criminal responsibility in this case’ and ‘ruled that “a broad approach to the scope of the charges through

⁶ [DRC Leave to Appeal Judgment](#), para. 9; [Kony Leave to Appeal Decision](#), para. 26. See also Pre-Trial Chamber II, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Decision on the ‘Ngaïssona Defence Request for Leave to Appeal the Second Decision on Disclosure and Related Matters’](#), 24 May 2019, ICC-01/14-01/18-206, para. 12; Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, [Decision on the Prosecutor’s and Defence requests for leave to appeal the decision adjourning the hearing on the confirmation of charges](#), 31 July 2013, ICC-02/11-01/11-464, para. 8; Pre-Trial Chamber II, *The Prosecutor v. Bosco Ntaganda*, [Decision on the “Requête de la Défense sollicitant l’autorisation d’interjeter appel de la Décision sur la confirmation des charges datée du 9 juin 2014”](#), 4 July 2014, ICC-01/04-02/06-322, para. 10.

⁷ Request, paras 2, 7, 10.

⁸ Request, paras 11-14.

⁹ Request, paras 15-20.

¹⁰ Prosecution’s Response, para. 7-8.

illustrative examples of relevant incidents may indeed be necessary to cover the extent of Mr Duterte’s alleged criminality””.¹¹ The Prosecution, therefore, asserts that the First Proposed Issue is ‘premised upon a misrepresentation of the Decision’ and amounts to a mere disagreement ‘with the Chamber’s decision to define the scope of the charges in a broader manner than the Defence had argued for’.¹²

7. The CLRV respond that the First Proposed Issue amounts to a disagreement with the Chamber’s application of settled jurisprudence. The CLRV submit that the Defence ‘reiterates arguments already advanced at the pre-trial stage and expressly addressed and rejected by the Chamber’,¹³ and does not ‘identify any error of law in the Chamber’s adoption of what it characterises as a “flexible approach”’, as it does not challenge the relevant legal standard but rather its application to the facts of the present case, which, according to the CLRV, was not ‘only appropriate but particularly apposite’.¹⁴ The CLRV further argue that the ‘Defence’s characterisation of the charges as “fluid” or “indeterminate” [...] misrepresents the Chamber’s findings’ as ‘[t]he non exhaustive nature of the listed incidents and victims [...] reflects the well-established principle that, in cases of large scale criminality, the number of incidents or victims is indicative’ and that ‘[i]t does not set definitive limits, provided that any further specification remains within the originally defined “facts and circumstances”’.¹⁵

8. The Chamber, contrary to the Defence’s assertion, has clearly set out in paragraphs 17-24 of the Confirmation Decision the basis for the delineation of the charges as confirmed for the purposes of article 74(2) of the Statute. In doing so, it applied relevant and settled jurisprudence of the Court,¹⁶ particularly a finding of the Appeals Chamber in the *Ntaganda* case (the ‘*Ntaganda* Jurisprudence’) stating, in its relevant parts, that:

the charges must be described in such a way that the trial chamber as well as the parties and participants are able ‘to determine with certainty which sets of historical events, in the course of which crimes under the jurisdiction of the Court are alleged to have been committed form part of the charges, and which do not’. [...] Depending on the circumstances of the case, the charges may be described in a less specific manner [...]. Whether such description of the charges is sufficient for purposes of article 74(2) of the

¹¹ Prosecution’s Response, para. 9.

¹² Prosecution’s Response, paras 6, 10.

¹³ CLRV’s Response, para. 10.

¹⁴ CLRV’s Response, paras 11-12.

¹⁵ CLRV’s Response, para. 13.

¹⁶ See Confirmation Decision, paras 18-19, citing 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; 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.

Statute will depend, inter alia, on the scale of criminality and the mode of individual criminal responsibility alleged.¹⁷

9. After noting the *Ntaganda* Jurisprudence, the Chamber held that:

a broader description of the charges defined through examples of relevant incidents is not necessarily incompatible with article 74(2) of the Statute. Depending, among other things, upon the scale of the criminality and the alleged modes of liability, charges may cover a significant time period and territory, as long as it is possible for the Trial Chamber as well as the parties and participants to identify which historical events are covered by the charges and which are not. Indeed, given the type of criminality over which this Court has jurisdiction – which typically affects large numbers of victims – it may be necessary to allow for a broader description of the charges in circumstances in which it would otherwise be impossible or difficult to adequately capture the extent of the victimisation as well as the suspect’s alleged responsibility therefor.¹⁸

10. In line with this reasoning, and based on the specific list of incidents provided in the Document Containing the Charges (the ‘DCC’), the Chamber defined a clear temporal, geographical and material scope for each of the three confirmed Counts.¹⁹ Indeed, the time period is specifically defined for each of the Counts (Count 1: between 2013 and around June 2016; Count 2: between around July 2016 and July 2017; Count 3: between around July 2016 and September 2018), as are the places where the crimes were allegedly committed (Count 1: Davao City; Counts 2-3: the territory of the Philippines), the direct perpetrators (Count 1: the DDS; Count 2-3: the National Network), and the categories of victims (Count 1: individuals alleged to be criminals; Count 2: individuals labelled as ‘high value targets’, including for their alleged involvement in drug manufacturing or drug syndicates; Count 3: individuals alleged to be lower-level criminals). The Chamber also remedied any overbroad formulation of the charges that would have prevented a proper identification of these parameters, including regarding the alleged group of perpetrators.²⁰ It is noted that, while the Defence argues that the Confirmation Decision ‘failed to identify with any precision the corresponding group of victims’, it successfully identifies in the same sentence the three groups of victims relevant to the three confirmed Counts,²¹ thereby indicating that the charges as confirmed do allow for the proper identification of the parameters of the case. Whether and how alleged individual victims actually fall within any of these categories amounts to a factual question to be assessed and determined at trial.

¹⁷ Confirmation Decision, para. 18.

¹⁸ Confirmation Decision, para. 20.

¹⁹ See Confirmation Decision, Section IV ‘The Confirmed Charges’: paras 16-19, 24, 34, 40, p. 49.

²⁰ See Confirmation Decision, para. 57, footnote 114, para. 60, footnote 119.

²¹ See Request, para. 14.

11. The fact that the scope of the confirmed charges might be wide and possibly ‘encompass[] any alleged incident falling within’ such scope does not render it undefined and is inherent to the wide scale of criminality covered by the charges brought by the Prosecution. This neither ‘deprive[s] [the Confirmation Decision] of its core function as crystallised articulation of the case’, nor renders the content of article 61(9) of the Statute ‘illusory’,²² insofar as the possibility for the Prosecution to add incidents within the confirmed charges is restricted by the defined and limited scope of such charges.²³ Therefore, contrary to the Defence’s misrepresentation, the Confirmation Decision does not ‘leav[e] 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’.²⁴

12. The Chamber further observes that, as rightly pointed out by the CLRV,²⁵ the Defence conflates the issue of proper delineation of the charges for the purposes of article 74(2) of the Statute and the accused’s right to be informed in detail of the nature, cause and content of any charge brought against him, pursuant to article 67(1)(a) of the Statute. In this regard, the Chamber notes that the Defence’s argument as to the failure to define the factual parameters of the charges relies on the alleged impermissibility of the approach adopted by the Chamber. However, the Chamber highlights that it adopted such approach only in respect of the *details* of the charges under article 67(1)(a) of the Statute. The Chamber expressly emphasised so when it stated in the Confirmation Decision that ‘[t]hese details are to be considered as indicative; additional elements may become available to the Trial Chamber at a subsequent stage, allowing a more precise determination *without exceeding the facts and circumstances of the charges*’.²⁶ This makes it clear that the approach adopted did not, and should not, have any impact on the definition of the factual parameters of the charges which, as noted above, were sufficiently delineated for the purposes of article 74(2) of the Statute.

13. Similarly, the Chamber considers that the Defence’s argument that the Chamber’s ‘flexible approach’ rests on considerations extraneous to the requirement that the charges be defined with sufficient precision confirms the Defence’s misunderstanding of the distinction between the question of the proper delineation of the scope of the charge and the accused’s right to prompt and sufficient notice of the charges, since such considerations were mentioned in the

²² *Contra* Request, paras 14, 20.

²³ *See* Confirmation Decision, para. 22.

²⁴ *See* Request, para. 13.

²⁵ CLRV’s Response, para. 10.

²⁶ Confirmation Decision, para. 34 (emphasis added).

context of the discussion on the details within the charges and not in relation to the definition of the scope of the charges *per se*. Indeed, it is also noted that the approach as to the details of the charges is not referenced in the section of the Confirmation Decision related to the ‘Scope of the charges’ – addressing the proper delineation of the charges for the purposes of article 74(2) of the Statute –, but rather in the section titled ‘Nature, purpose and content of the present decision’ and in paragraphs relating specifically to the accused’s right to be informed in detail of the nature, cause and content of any charge brought against him, pursuant to article 67(1)(a) of the Statute.

14. The Defence also submits that the Chamber erroneously interpreted the ‘Appeals Chamber’s holding in *Ntaganda* that the *degree of specificity of the charges* may vary depending on the circumstances of the case as permitting the *exclusion of “unnecessary details”* that could prove “too specific and limiting at trial”,’²⁷ adding that the *Ntaganda* Jurisprudence did not apply to the present case. The wording of the Defence’s submissions in this regard again indicates that the Defence conflates the two issues, namely the degree of specificity of the charges for the purposes of article 74(2) of the Statute, as discussed in the relevant *Ntaganda* Jurisprudence, and the exclusion of unnecessary details in the charges in the context of article 67(1)(a) of the Statute. Yet, the distinction between the two questions is particularly evident from the Confirmation Decision, which did not rely on the Appeals Chamber’s finding in the *Ntaganda* case identified by the Defence in relation to the latter issue of the suspect’s right to be informed of the charges. Accordingly, the Defence’s argument rests on a mischaracterisation of the manner in which the *Ntaganda* Jurisprudence was relied upon in the Confirmation Decision.²⁸ In these circumstances, the Defence’s further submission that the *Ntaganda* Jurisprudence was inapplicable to the present case is premised on an incorrect understanding of the Chamber’s reasoning and, for that reason, does not warrant further consideration.

15. In light of the above, the Chamber considers that the First Proposed Issue mischaracterises the Confirmation Decision as to the matter of the proper delineation of the charges. Moreover, despite the Defence’s statement to the contrary,²⁹ the First Proposed Issue is based on a conflation of two questions that are clearly distinct, as already clarified by the Chamber in the Confirmation Decision.³⁰ The First Proposed Issue thus mischaracterises the Confirmation

²⁷ Request, para. 9.

²⁸ See Confirmation Decision, paras 33-35.

²⁹ Request, para. 7.

³⁰ Confirmation Decision, para. 17.

Decision and, therefore, does not constitute an appealable issue within the meaning of article 82(1)(d) of the Statute. Accordingly, it is not necessary for the Chamber to address the remainder of the cumulative criteria of article 82(1)(d) of the Statute.

B. Second Proposed Issue

16. The Defence submits that the Chamber ‘erred in law by failing to articulate a reasoned evidentiary basis for confirming the charges’ because the Chamber’s ‘approach prioritising conciseness’ would have resulted in a Confirmation Decision that ‘does not identify the evidentiary basis underpinning its findings’.³¹ It is the view of the Defence that, the Chamber ‘neither sets out the material facts nor provides specific references to the evidence supporting its conclusions’, as would be evidenced by the reliance of the Confirmation Decision, ‘at a high level of generality, on the Prosecution’s submissions and its pre-confirmation brief’, the lack of distinction ‘between factual findings and legal conclusions’, as well as the ‘complete absence of evidentiary citations in the footnotes’.³² The Defence further specifically contends that the Chamber (i) failed to address the Defence’s submissions challenging the existence of a common plan;³³ and (ii) ‘did not undertake an incident-specific analysis or explain how the evidentiary threshold was met in respect of the charges’.³⁴

17. The Prosecution responds that the Chamber properly linked its findings to the evidence, making references to the witnesses and other evidentiary material, as well as to the Prosecution’s Pre-Confirmation Brief (the ‘PCB’) containing citations to the underlying evidence. It submits that the Chamber explained its approach, consisting of assessing the evidence submitted by the Prosecution and the Defence, but referring only to those items of evidence it considered necessary to show the line of reasoning underpinning its conclusions, which is consistent with recent confirmation decisions and the purpose of the confirmation proceedings.³⁵ The Prosecution further states that the Chamber addressed a number of arguments raised by the Defence, though it was not required to address all of the arguments raised by the parties and participants. As such, it contends that the Defence misrepresents the Confirmation Decision and shows a mere disagreement with the Chamber’s approach to evidentiary matters.³⁶

³¹ Request, paras 21-22, 35-36.

³² Request, paras 22-24.

³³ Request, paras 25-29.

³⁴ Request, para 30-34.

³⁵ Prosecution’s Response, para 12.

³⁶ Prosecution’s Response, para. 14.

18. The CLRV respond that the Defence failed to identify an issue warranting interlocutory review as it mischaracterises the Confirmation Decision and the applicable legal standard for confirmation proceedings, which neither requires the Chamber to provide an exhaustive account of every piece of evidence, akin to a trial judgment, nor to engage with each argument raised by the parties.³⁷ The CLRV further submit that the Chamber addressed the Defence's submissions, including those related to the alleged absence of a common plan, and adopted a different interpretation of the evidence than that suggested by the Defence. Therefore, in their view, the Defence reiterates arguments already raised and merely disagrees with the manner in which the Chamber articulated its assessment of the evidence.³⁸

19. In a dedicated part of the Confirmation Decision titled 'The Chamber's assessment of the evidence',³⁹ the Chamber explained that, while it conducted an overall assessment of the entire evidentiary basis relied upon by both parties, as presented in the PCB and at the confirmation of charges hearing, it referred in the Confirmation Decision only to 'those items of evidence which it consider[ed] necessary to show the line of reasoning underpinning its conclusions'. It further explained that this approach is consistent with the specific scope and purpose of the confirmation proceedings, namely to determine if 'there is sufficient evidence to establish substantial grounds to believe' that the suspect committed the crimes charged, and with the need to avoid predetermining issues or pre-adjudicating the probative value of evidence. The Chamber clarified that while it assessed the evidence in order to detect 'inconsistencies ambiguities, contradictions or other weaknesses which would result in the allegations not being supported to the relevant standard', an assessment as to each and every item of evidence is not required in the context of confirmation proceedings.

20. Consistent with this approach, each section of the Confirmation Decision addressing material elements of the charges includes a paragraph presenting relevant evidentiary materials, followed by an assessment of the allegations and substantiating evidence. The Confirmation Decision refers to specific sources of evidence only where necessary to illustrate the Chamber's reasoning. For instance, paragraphs 69–71, addressing the material elements of Counts 1–3 respectively, cite specific witness sources and link them to official documents and police reports, with references to the PCB and the DCC. The same methodology is applied to contended issues, such as in paragraph 74, where the Chamber summarises information

³⁷ CLRV's Response, para. 17.

³⁸ CLRV's Response para. 16.

³⁹ Confirmation Decision, paras 49-50.

provided by several witnesses to reject the Defence's allegation that lethal force was used only in response to an imminent threat. In addition, there is no requirement that evidentiary citations appear in footnotes; what matters is that the Chamber clearly conveys its assessment of the evidence underlying the charges. The Defence's assertion that the Chamber failed to link its findings to the supporting evidence therefore misrepresents the Confirmation Decision.

21. Regarding the Defence's contention that the Chamber failed to address a number of its arguments, the Chamber recalls, as correctly noted by the Prosecution and the CLRV, that it is not required to address every argument advanced by the parties and participants. Consistent with its approach to evidence analysis outlined above, the Chamber addressed the Defence's submissions it considered relevant to its overall assessment of the evidence. Particularly on the existence of a common plan, the Chamber specifically explained its assessment of the evidence as regards the references to 'self-defence' and 'respect of human rights' in speeches and official documents, and described how the evidence supported the interpretation that the word 'neutralise' in documents and public speeches meant to 'kill'.⁴⁰ As the Defence itself acknowledges in describing the way in which the Chamber dealt with its arguments as 'cursory',⁴¹ the Confirmation Decision expressly found that the Defence's proposed interpretation of the term 'neutralise' did not undermine the Chamber's determination on that term. The Defence's claims ultimately rest on a disagreement with the Chamber's assessment of the evidence and the extent of detail provided.

22. As to the Defence's claim that the Chamber failed to conduct an incident-specific assessment, this argument rests on a misunderstanding of the nature of confirmation proceedings. As rightly indicated by the CLRV, a decision on the confirmation of charges does not require a detailed, incident-by-incident adjudication comparable to a trial judgement.⁴² Such an approach would be inconsistent with the limited scope and purpose of confirmation proceedings, as explained in the Confirmation Decision⁴³ and recalled above.⁴⁴

23. For these reasons, the Defence's submissions regarding the Second Proposed Issue mischaracterise the Confirmation Decision and amount to a mere disagreement with the manner in which the Chamber articulated its assessment of the evidence. As such, the Second Proposed Issue does not amount to an appealable issue within the meaning of article 82(1)(d)

⁴⁰ Confirmation Decision, paras 51-54.

⁴¹ Request, footnote 42, referring to Confirmation Decision, para 87.

⁴² CLRV Response, para. 20.

⁴³ Confirmation Decision, Section B (specifically paras 25-28).

⁴⁴ See para 19 above.

of the Statute. Accordingly, it is not necessary for the Chamber to address the remainder of the cumulative criteria of article 82(1)(d) of the Statute.

**FOR THESE REASONS, THE CHAMBER HEREBY
REJECTS** the Request.

Done in English. A French translation will follow. The English version remains authoritative.



Judge Iulia Antoanella Motoc, Presiding



**Judge Reine Adélaïde Sophie Alapini-
Gansou**



Judge María del Socorro Flores Liera

Dated this Thursday, 21 May 2026

At The Hague, The Netherlands