

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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

Date: **31 August 2026**

TRIAL CHAMBER III

Before: Judge Joanna Korner, Presiding Judge
Judge Keebong Paek
Judge Nicolas Guillou

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

PUBLIC

Defence Rule 134(1) Motion on the Form of the Charges

Source: Defence for Mr Rodrigo Roa Duterte

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

☒ The Office of the Prosecutor

☒ Counsel for the Defence

Duterte Defence Team

☒ Legal Representatives of the Victims

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☐ Unrepresented Victims

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(Participation/Reparation)

☐ The Office of Public Counsel for
Victims

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I. INTRODUCTION

1. There are many reasons that the present case is unlike any previously heard before the international criminal courts and tribunals. Perhaps one of the starkest departures from prior practice is the way in which the charges have been framed. Rather than containing a clear set of settled facts and circumstances supporting separate counts (being crimes under the ICC Statute), the document containing the charges (“DCC”) has been framed around illustrative non-exhaustive incidents, grouped under topical headings. For the reasons set out herein, the Defence submits that the charges, as currently framed, violate the accused’s right to be informed in detail of the nature, cause and content of the charges against him under Article 67(1)(a) of the Statute. The only effective remedy would be for the Prosecution to be ordered to re-file a set of charges that properly informs the accused of the case he needs to meet, pursuant to Article 61(9) of the Statute.

II. SUBMISSIONS

2. Mr. Duterte has been charged with murder and attempted murder, as crimes against humanity. The DCC alleges three “counts” which are said to be illustrated by 49 incidents. The charged attack was alleged to include these 49 incidents, and “at least hundreds of other murders during the Mayoral period, thousands of other murders in the Presidential period”.¹ During the pre-trial phase, the Prosecution suggested,² and the Pre-Trial Chamber accepted,³ that the “incidents” should be considered “non-exhaustive”. The Prosecution then signaled an intention to apply to add incidents.⁴ Although the Defence does not concede that incidents can be added to this DCC based upon fresh evidence without following the procedure in Article 61(9) of the Statute, it

¹ Public Lesser Redacted Version of “Document Containing the Charges”, 4 July 2025, ICC-01/21-01/25-178-Conf, [ICC-01/21-01/25-178-Red2](#), 13 February 2026, para. 19.

² Prosecution’s Clarification on the Proposed Scope of the Charges, [ICC-01/21-01/25-330](#), 8 December 2025 (“[Prosecution Clarification on the Charges](#)”), para. 1 (“[t]he Prosecution hereby confirms that the specific incidents and murder victims listed in the DCC and PCB are intended as a non-exhaustive list”). *Contra*: Defence Response to the Prosecution’s Clarification on the Proposed Scope of the Charges (ICC-01/21-01/25-330-Conf), [ICC-01/21-01/25-332](#), 10 December 2025.

³ Public redacted version of ‘Decision on the confirmation of charges against Mr Rodrigo Roa Duterte’, 23 April 2026, [ICC-01/21-01/25-417-Red](#), 23 April 2026 (“[Decision on the Confirmation of Charges](#)”), para. 23 (“[i]n these circumstances, the Chamber considers that requiring an exhaustive list of all incidents related to the charged criminality in this case is unwarranted, and 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”).

⁴ [Prosecution Clarification on the Charges](#), para. 6 (“[s]hould the Pre-Trial Chamber confirm the charges in this case, then subject to ensuring appropriate notice is provided to the Defence, and consistent with the Court’s legal framework and its jurisprudence, the Prosecution may present evidence of additional incidents, and related victims, provided these fall within the parameters of any confirmed charges”) (internal footnotes omitted).

received notice of details of eight additional incidents today, 31 August 2026, bringing the Prosecution's total proposed list of incidents to 57.⁵

3. The nomenclature of the Rome Statute does not recognise "indictments" or "counts", which are familiar to lawyers in common law jurisdictions as well as those who practiced before the *ad hoc* tribunals.⁶ Instead the constitutive instruments of the Court refer to "charges" and "document containing the charges".⁷ However, the concept of "counts" soon appeared in the Court's charging documents, and thereafter in its decisions.⁸ In reality, a "count" is a confirmed charge in all but name. The two concepts are synonymous.
4. Regardless of terminology, consistent practice has been for charging documents to be divided into topical headings, usually geographical areas with corresponding time periods, or overarching events. Under each topical heading, the counts are then listed, together with the legal and factual basis being alleged in support of each. In this way, the accused is duly notified of the allegations in detail, as required.⁹ The Trial Chamber is then able to enter verdicts on each count.

⁵ Email, Prosecution to Defence, "Re: [ICC-01/21-01/25 – Public] Decision on the Prosecution's request regarding date of submission of its Trial Brief", 31 August 2026, 11:31.

⁶ See e.g. ICTY, *Milošević*, Case No. IT-02-54-T, [Amended Indictment](#), 22 November 2002 ("[c]ount 1: GENOCIDE, punishable under Articles 4(3)(a), 7(1) and 7(3) of the Statute; or Count 2: COMPLICITY IN GENOCIDE, punishable under Articles 4(3)(e), 7(1) and 7(3) of the Statute, Count 3: Persecutions on political, racial or religious grounds, a CRIME AGAINST HUMANITY, punishable under Articles 5(h), 7(1) and 7(3)..."); ICTR, *Akayesu*, Case No. ICTR-96-4-I, [Amended Indictment](#), 17 June 1997 ("COUNT 1: GENOCIDE, punishable by Article 2(3)(a) of the Statute of the Tribunal. COUNT 2: Complicity in GENOCIDE, punishable by Article 2(3)(e) of the Statute of the Tribunal. COUNT 3: CRIMES AGAINST HUMANITY (extermination), punishable by Article 3(b) of the Statute of the Tribunal").

⁷ Article 61 refers to the document containing the charges and the confirmation of the *charges* before trial; Article 64 to the functions and powers of the Trial Chamber in respect of the charges; and Article 74 to the decision which shall not exceed the facts and circumstances described in the charges. Section V and Section VI of the Rules of Procedure and Evidence refer to the proceedings with regard to the charges. See also Triffterer Otto and Ambos Kai (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, Third Edition, C.H. Beck/Hart/Nomos, München/Oxford/Baden-Baden, 2016, p. 867, fn. 78 ("[t]he document containing the charges is similar to an indictment outlining the charges submitted in a common law system either to a grand jury or to a judge for confirmation, but with more information than included in the arrest warrant"); pp. 1971-1972, fn. 38 ("[w]hile at the *ad hoc* tribunals the indictments are moulded in rather specific counts, this is more difficult e.g. at the ECCC that bases the trials on indictments contained in a judicial Closing Order or at the ICC where indictments (documents containing the charges) are not always formulated by counts and are subject to the confirmation of the Pre-Trial Chamber").

⁸ See *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, para. 36 *et seq.*; *Gbagbo*, Decision on the confirmation of charges against Laurent Gbagbo, [ICC-02/11-01/11-656-Red](#), 12 June 2014, para. 278 *et seq.*

⁹ Article 67(1)(a) provides that "[i]n the determination of any charge, the accused shall be entitled to [...] be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks". See e.g. *Said*, Public Redacted Version of "Document Containing the Charges, ICC-01/14-01/21-144-Conf", dated 16 August 2021, [ICC-01/14-01/21-144-Red](#), 17 September 2021, pp. 13-14;

5. In *Abd-al-Rahman*, for example, the document containing the charges was organised into topical headings, being geographical areas and relevant timeframes: “Kodoom, Bindisi and surrounding areas, between 15 and 16 August 2003”; “Outside of Mukjar between late February and early March 2004” and; “Deleig and surrounding areas, between 5 and 7 March 2004”. The individual counts were then listed beneath each topical heading (Count 1: Intentionally directing attacks against the civilian population as such, as a war crime; Count 2: Murder as a crime against humanity, and so on). Under each topical heading the material facts – being the facts and circumstances that were said to support each count – were set out. In relation to “Counts 2-3: Murder as a crime against humanity and as a war crime”, for example, the Prosecution alleged that Mr. Abd-al-Rahman was responsible for the death of 51 people who were listed in an Annex, during an attack in a named location on a specific date.¹⁰ While the list of **victims** was ‘non-exhaustive’ in relation to some counts, those non-exhaustive lists were limited to one attack on one day in one location.
6. Similarly in *Kony*, the document containing the charges¹¹ was organised into topical headings that denoted particular events, such as “Attack on Lwala Girls School”, “Attack on Pajule IDP Camp” and so on. The individual counts were then listed below (Count 1: Intentionally directing attacks against the civilian population as such as a war crime, Count 2: Murder as a crime against humanity, and so on). In relation to Count 2, it was similarly supported by specific facts and circumstances, being killings on particular dates of a certain number of civilians, in named locations.¹²

Abd-Al-Rahman, Public redacted version of “Second Corrected Version of ‘Document Containing the Charges’, 29 March 2021, ICC-02/05-01/20-325-Conf-Anex1”, 22 April 2021, ICC-02/05-01/20-325-Conf-Anx1-Corr-2, [ICC-02/05-01/20-325-Anx1-Corr2-Red](#), 23 April 2021, pp. 11-35.

¹⁰ *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. 33 (“[d]uring the attack on Kodoom and Bindisi on 15 and 16 August 2003, Militia/Janjaweed and GoS Forces killed the 51 persons listed in Annex 1. These persons were either civilians taking no active part in hostilities or were persons hors de combat. ABD-AL-RAHMAN was aware of the factual circumstances that established their status”).

¹¹ *Kony*, Document Containing the Charges, [ICC-02/04-01/05-474](#), 19 January 2024 (“[Kony Document Containing the Charges](#)”), paras 20-105.

¹² [Kony Document Containing the Charges](#), para. 134. See also *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, p. 93 (“[c]ount 2: Murder as a crime against humanity, pursuant to articles 7(1)(a) and 25(3)(a) (indirect co-perpetration) or 25(3)(b) (ordering and inducing) of at least 618 civilians, namely on or about 10 October 2003 of at least 4 civilians at or around Pajule IDP camp (para. 31), on or about 4 February 2004 of at least 116 civilians at or around Abia IDP camp (paras. 42, 46), on or about 21 February 2004 of at least 313 civilians at and around Barlonyo IDP camp (para. 55), on or about 29 April 2004 of at least 51 civilians at or around Odek IDP camp (paras. 64, 66), on or about 16 May 2004 of at least 58 civilians at or around Pagak IDP

7. In *Yekatom & Ngaïssona*, the charges were again organised into topical headings that were geographical areas, such as “BANGUI (including CATTIN) and BOEING”, “BOEING Muslim Cemetery”, and so on. The individual counts were then listed below the different topical headings (Count 1: Attack directed against the civilian population, Count 2: Murder). Specifically, the Prosecution alleged that Ngaïssona was responsible for murder as a crime against humanity, for example, and set out four counts in this regard, each of which set out a specific killing or killings on a particular day in a named location.¹³
8. An accused reading the charges in these cases would have known that he was being charged with being criminally responsible for the death of a known number of civilians, in particular locations, on specific dates, and that these killings represented the entirety of the murder charge against him. The Trial Chamber would then be able to consider whether the elements of the crimes had been proven beyond reasonable doubt in relation to each count. Objections to evidence of other alleged murders outside of the parameters of the charged count could be raised on the grounds that it was irrelevant to the charges.
9. The framing of the DCC in this case is entirely different, and entirely novel. The topical headings have been elevated to the status of counts allegedly committed over an extended period and across a large geographical area. The “counts” charged in this case are:

Count 1 - Murder as a crime against humanity in Davao City during the Mayoral period, between 2013 and around June 2016.

Count 2 - Murder as a crime against humanity of ‘High-Value Targets’ in locations across the Philippines during the Presidential period, between around July 2016 and July 2017.

Count 3 - Murder and attempted murder as crimes against humanity in barangay clearance operations in locations across the Philippines during the Presidential period, between around July 2016 and September 2018.

camp (para. 75), on or about 19 May 2004 of at least 48 civilians at or around Lukodi IDP camp (para. 87), and on or about 8 June 2004 of at least 28 civilians at or around Abok IDP camp (paras. 99, 102)’’).

¹³ *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, pp. 103-104 (namely, ‘the killing of between five and 13 persons, including Hassan Mahamat, at the Boeing market, four Muslim persons in Cattin, and Nina Pascal at the Boeing market [...] on 5 December 2013’ (Count 3); ‘the killing of 28 persons [...] in the context of the attack on Bossangoa on 5 December 2013’ (Count 32); ‘the killing of Lapo N’Gomat at the Yamwara School Base on or about 24 December 2013’ (Count 16), and ‘the killing of Deputy Mayor Saleh on or about 28 February 2014 in Mbaïki’ (Count 27)).

10. A “count” has **only ever** denoted an individual crime under the ICC Statute, or the Statutes and jurisprudence of the ICTY,¹⁴ ICTR,¹⁵ SCSL,¹⁶ STL¹⁷ and KSC.¹⁸ But in this case, “Count 3” for example, is said to encompass both murder and attempted murder, over a period of more than two years in operations carried out “in locations across the Philippines” (an area of some 300,000 square kilometers). This is not a count on which the Trial Chamber can enter a verdict. It is a descriptive topical heading.
11. Importantly, the specific charged acts which would, in any other document containing the charges, be framed as the facts and circumstances supporting a count or individual counts themselves, have been relegated to the status of non-exhaustive and illustrative-only “incidents”, without any legal characterization. Specifically, 19 victims (spanning nine incidents over three years) are listed in relation to Count 1; 14 victims (five incidents over a period of about 13 months) for Count 2 and 45 victims (35 incidents over two years) for Count 3.
12. The Prosecution’s decision to frame the charges in this entirely novel way makes it impossible for the defendant to know what case he has to meet at trial. The Trial Chamber can only enter verdicts in relation to the counts on the DCC, and the defendant has no indication of the route to conviction, nor of the value of the so-called incidents, for each count. Is the Prosecution required, for example, to prove beyond reasonable doubt every one of the incidents under a particular “count”, the vast majority of them, more than half of them, just some of them, or even just one? And what is the impact of the failure of the Prosecution to prove a significant number of the 57 incidents upon which the defendant’s alleged culpability rests for “at least hundreds” or “thousands” of murders and attempted murders? In all previous charging documents in international criminal cases, it was clear what the Prosecution had to prove and what case the accused had to meet, because counts were supported by the alleged facts and circumstances necessary to their proof. In this case, the DCC contains merely “illustrative incidents”, which are said in turn to be “non-exhaustive” and mere “examples” of the underlying

¹⁴ See fn. 6 above.

¹⁵ See fn. 6 above.

¹⁶ See e.g. SCSL, *Taylor*, Case No. SCSL-03-01-0001, [Indictment](#), 7 March 2003.

¹⁷ See e.g. STL, *Badreddine et al.*, Case No. STL-11-01/I/PTJ, [Indictment](#), 10 June 2011.

¹⁸ See e.g. KSC, *Thaçi et al.*, Case No. KSC-BC-2020-06, [Further redacted Indictment](#), 4 November 2020.

conduct.¹⁹ The Prosecution's desire and intention to add further incidents is noteworthy as it plainly indicates that the Prosecution, at least, does not believe that it needs to prove all or most of the incidents. However, with a trial due to start in three months, the Defence has no idea what is regarded as necessary proof of a "count" on this DCC.

13. Moreover, as previously mentioned, there is the further difficulty for the Defence of knowing the scope of the counts in terms of overall culpability. If, for example, it is the Prosecution's position that it would only need to prove one illustrative incident to secure a conviction under each "count", then the accused is facing a trial in which he could be held individually criminally responsible for at least "thousands of other murders", over a period of years, on the basis of one murder having been proven. This cannot be reconciled with basic principles of individual criminal responsibility.
14. Secondly, there is a more practical problem. The Defence appreciates that the parties and the Trial Chamber are committed to this trial proceeding expeditiously, given the age and vulnerability of the accused. Through investigations, the Defence may well be in a position to cast significant doubt upon some (or all) of the 57 incidents, whether, for example, as to the unlawfulness of killings which took place, identification of the true perpetrators, or by showing there was no possible *nexus* to the accused. However, the expenditure of substantial resources, and months or years of courtroom time, painstakingly challenging the Prosecution's case on each of the 57 individual incidents would be of little purpose if a finding that the Prosecution had not met its burden of proof beyond a reasonable doubt on some (or even most) of the 57 incidents would have no impact whatsoever on the accused's liability.
15. Thirdly, and even more problematically, the Prosecution's insistence as to the "non-exhaustive" and "illustrative" nature of the incidents, leaves open the possibility that the Defence could raise reasonable doubt in relation to all of the 57 incidents, only for the Prosecution to claim that these were only "examples" and point to other evidence in the case enabling the Trial Chamber to find that other incidents (falling outside of the 57) were established beyond reasonable doubt. Meaning that, in practice, the Defence would need to be ready to defend against any alleged unlawful killing in the Philippines over a seven-year-plus period.

¹⁹ [Decision on the Confirmation of Charges](#), para. 23.

16. Keeping in mind that the Prosecution had disclosed around 5,000 documents as at the date of the confirmation decision, which has now increased by over 400% to over 25,000 items at the date of writing, the Defence team has no chance of even reading this full volume of disclosure before the start of the trial, let alone being aware of every alleged murder or killing contained therein and being ready to defend against them. From a very preliminary review of the additional eight incidents disclosed today it appears that, indeed, many of the 20,000 additional items which the Defence has received over the last months describe alleged killings which are unrelated to the listed incidents. Unless these items are simply being disclosed *en masse* to drown the Defence and obstruct its preparation, it must be assumed that the Prosecution intends to lead substantial tranches of evidence which relates to incidents not listed in the DCC, despite them being unrelated to the 57 incidents, a process which could elongate the trial by weeks or even months. There are obvious issues of trial management here, in addition to the Defence concerns about the current landscape of crimes in this case being virtually unlimited.
17. This is precisely the situation that a charging document is supposed to avoid. It is required to give an accused notice of what he will face at trial, and what he should contest. In this case, he has no such notice. The abnormal framing of the charges is a device to allow the Prosecution effectively to throw all its material at the wall and see what sticks, meaning that the accused's statutory right to be informed in detail of the charges is being violated.
18. The Defence submits that a charging document of this kind, alleging only broad topical headings rather than charged crimes, and non-exhaustive underlying examples, would be unacceptable in any criminal jurisdiction, and is certainly unknown in international criminal justice. Of course, there are cases in domestic law in which it may be appropriate to adopt an incident-based approach to charging through the use of a "specimen count", where the evidence turns upon the same act being committed repeatedly, by the same person, on multiple occasions, against the same victim.²⁰ In

²⁰ For example, the Crown Court Compendium for England and Wales explains: "[s]pecimen counts: In some instances, the Crown will be relying on a specimen count charging a distinct identifiable offence as an example of one of the multiplicity of incidents which could be charged; but to keep the trial manageable these are not separately indicted. An example would be a single incident of false accounting alleged against a bookkeeper who had perpetrated the same conduct repeatedly over many years – the prosecution may, for example, opt for one

such cases, careful directions can be given so that the parties and participants are clear as to what must be proven.²¹ This does not translate to the present context. In this case, the allegedly illustrative incidents do not concern the acts and conduct of the accused, they occurred in vastly different places and time periods, involved different primary perpetrators, different victims, and different *modi operandi*. This is presumably why there has never before been a case in which the Prosecution has been permitted to frame charges with such fluidity, given that international criminal cases do not lend themselves to charging through a “specimen count”.

19. The ICC Appeals Chamber has been clear that ‘the right of the accused person to be informed of the charges is firmly grounded in the Statute’ and it highlighted ‘the strong link between the right to be informed in detail of the nature, cause and content of the charges and the right to prepare one’s defence’.²² The accused cannot even begin to make strategic decisions about how to approach this case, because he does not know what case he has to meet. The *Duterte* charges are a literal moving target; a non-exhaustive, illustrative list of events whose proof beyond reasonable doubt may or may not trigger liability for thousands of others, and whose evidential value remains entirely unclear.
20. In addition to the violation of the accused’s rights, the necessity of re-drafting the charges is also linked to the impossibility of the position in which the current charges put the Trial Chamber. For each individual act charged in the DCC, “**the individual act** must be committed as part of a widespread or systematic attack directed against a

count for each year over which the offending spanned”. See [The Crown Court Compendium](#), Part I: Jury and Trial Management and Summing Up, October 2025 (updated March 2026), p. 6-5.

²¹ For example, juries in specimen count cases in England and Wales are instructed that they “must be sure that D committed the particular offence charged, whether or not they are sure that D committed any of the other similar alleged offences”, in order to convict. See [The Crown Court Compendium](#), section 6-3, para. 11. This would suggest that all of the ‘incidents’ would need to be proven beyond reasonable doubt to sustain a conviction for a count, if the ‘incidents’ are to be regarded as akin to ‘specimen counts’ in the present case. In the same jurisdiction, for ‘multiple incident’ indictments, “if the jury are not sure of the number of incidents specified in the count, then they must find D not guilty, even if they are sure that D committed the offence on a smaller number of occasions”. For example, in a case where the defendant is charged with sexually abusing the victim on ‘at least four’ occasions, if the jury believe the defendant committed the offence on three occasions, they must acquit. See [The Crown Court Compendium](#), section 6-3, para. 10.

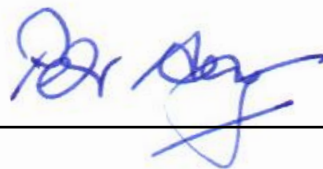
²² *Ongwen*, Judgment on the appeal of Mr Dominic Ongwen against Trial Chamber IX’s ‘Decision on Defence Motions Alleging Defects in the Confirmation Decision’, [ICC-02/04-01/15-1562](#), 17 July 2019, para. 69, citing *Lubanga*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, [ICC-01/04-01/06-3121-Red](#), 1 December 2014, para. 118.

civilian population.”²³ In that regard, “the Chamber must examine **whether the act** is part of the widespread or systematic attack, considered as a whole with due regard to the nature of the act at issue, its aims and consequences”, and knowledge of that *nexus* by the perpetrator of the act.²⁴ Where there are no pleaded underlying acts, but rather only “non-exhaustive” and “illustrative” examples of alleged conduct by perpetrators, the Prosecution can circumvent these requirements. Meaning, that the trial could end with the Prosecution having done nothing more than establishing a certain number of “illustrative incidents” but without any of the requisite contextual elements necessary to link the charged acts back to the charged counts.

III. RELIEF REQUESTED

21. For the above reasons, the DCC in this case is not fit for purpose and should be struck out. The Defence accordingly requests the Trial Chamber to

ORDER the Prosecution to re-file a document before the Pre-Trial Chamber that frames the charges in terms of counts with a defined scope, being crimes under the ICC Statute, and with an exhaustive list of underpinning acts which represent the entirety of the charges against the accused.



Mr Peter Haynes, KC
Counsel for Mr Rodrigo Roa Duterte

Dated this 31st day of August 2026
At The Hague, the Netherlands

²³ *Abd-Al-Rahman*, Trial Judgment, [ICC-02/05-01/20-1240](#), 6 October 2025 (“[Abd-Al-Rahman Trial Judgment](#)”), para. 702.

²⁴ [Abd-Al-Rahman Trial Judgment](#), para. 703. See also para. 702.