

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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Date: 10 September 2026

TRIAL CHAMBER III

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

SITUATION IN THE THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

Public

**Victims' Response to the Defence Rule 134(1) Motion on the Form of the Charges
(ICC-01/21-01/25-487)**

Source: Common Legal Representatives of Victims

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

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☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

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☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

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I. INTRODUCTION

1. The Common Legal Representatives of Victims (the “CLR/V”) herewith file their response to the “Defence Rule 134(1) Motion on the Form of the Charges” (the “Defence Motion” or the “Motion”).¹

2. The Defence Motion should be dismissed *in limine*. Although presented as a challenge to the “*form*” of the Document Containing the Charges (the “DCC”), it contests, in substance, the manner in which Pre-Trial Chamber I (the “Pre-Trial Chamber”) delineated and confirmed the charges. The Defence had already advanced materially the same arguments when seeking leave to appeal the Decision confirming the charges (the “Confirmation Decision”). The CLR/V opposed those arguments and the Pre-Trial Chamber rejected them, finding that the Defence had mischaracterised the Confirmation Decision and conflated distinct questions already addressed.

3. Having unsuccessfully sought leave to appeal those determinations, the Defence cannot now invite Trial Chamber III (the “Chamber”) to reconsider them under the guise of a motion concerning the “*form*” of the charges. Rule 134(1) cannot serve as an alternative avenue for appellate review. Conversely, should the Chamber consider that the Defence genuinely seeks to challenge defects in the DCC itself, such objections belonged to the pre-confirmation stage and cannot now be raised before the Trial Chamber. On either characterisation, the Defence Motion is procedurally misconceived and should be dismissed.

4. In the alternative, should the Chamber nevertheless proceed to consider the merits of the Motion, the CLR/V maintain and rely upon their previous submissions concerning the same issues. As set out further *infra*, the Defence provides no basis for departing from findings which the Pre-Trial Chamber has already expressly made and subsequently reaffirmed in rejecting the Defence request for leave to appeal the Confirmation Decision.

¹ See the “Defence Rule 134(1) Motion on the Form of the Charges”, [No. ICC-01/21-01/25-487](#), 31 August 2026 (the “Defence Motion” or the “Motion”).

II. PROCEDURAL BACKGROUND

5. On 4 July 2025, the Prosecution submitted the DCC and its list of evidence.²

6. On 23 April 2026, the Pre-Trial Chamber rendered the Decision on the confirmation of charges against Mr Rodrigo Roa Duterte (the “Confirmation Decision”),³ confirming all the charges and committing him to trial.

7. On 29 March 2026, the Defence submitted a request seeking leave to appeal the Confirmation Decision in respect of the following issues: “[w]hether the Pre-Trial Chamber erred by adopting a ‘flexible approach’ and overbroadly delineating the scope of the charges” (the “First Proposed Issue”); and “[w]hether the Pre-Trial Chamber erred in law by failing to articulate a reasoned evidentiary basis for confirming the charges” (the “Second Proposed Issue”).⁴

8. On 4 May 2026, the CLRV⁵ and the Prosecution⁶ opposed the Defence Request for leave to appeal.

9. On 21 May 2026, the Pre-Trial Chamber issued the “Decision on the Defence’s ‘Request for Leave to Appeal the Decision on the Confirmation of Charges’”, denying the request and finding, *inter alia*, that “the First Proposed Issue mischaracterises the Confirmation Decision as to the matter of the proper delineation of the charges”.⁷

² See the “Document Containing the Charges”, [No. ICC-01/21-01/25-178-Conf](#), 4 July 2025. A public redacted version [No. ICC-01/21-01/25-178-Red](#) was filed on 22 September 2025; a lesser public redacted version [No. ICC-01/21-01/25-178-Red2](#) was filed on 13 February 2026.

³ 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 redacted version [No. ICC-01/21-01/25-417-Red](#) was filed on the same day.

⁴ See the “Request for Leave to Appeal the Decision on the Confirmation of Charges”, [No. ICC-01/21-01/25-422](#), 29 April 2026.

⁵ See the “Victims’ Response to the Defence Request for Leave to Appeal the Decision on the Confirmation of Charges (ICC-01/21-01/25-417-Conf)”, [No. ICC-01/21-01/25-427](#), 4 May 2026, (the “CLRV’s Response”).

⁶ See the Prosecution’s response to “Defence Request for Leave to Appeal the Decision on the Confirmation of Charges”, [No. ICC-01/21-01/25-428](#), 4 May 2026.

⁷ See the “Decision on the Defence’s ‘Request for Leave to Appeal the Decision on the Confirmation of Charges’” (Pre-Trial Chamber I), [No. ICC-01/21-01/25-445](#), 21 May 2026, para. 15.

10. On 31 August 2026, the Defence filed the Motion.⁸

11. On 1 September 2026, by email, the Chamber ordered the Prosecution and the CLRV to file responses thereto by 10 September 2026.⁹

III. SUBMISSIONS

1. The Defence's Motion should be dismissed *in limine*

a) The Defence Motion constitutes an impermissible attempt to relitigate the Confirmation Decision

12. The Defence seeks an order striking the DCC and requiring the Prosecution to re-file before the Pre-Trial Chamber a document containing counts with a “defined scope” and an “exhaustive list of underpinning acts which represent the entirety of the charges against the accused”.¹⁰ Yet, following the confirmation proceedings, the scope of the charges against Mr Duterte is no longer determined by the Prosecution’s DCC viewed in isolation. It is the charges as confirmed by the Pre-Trial Chamber, and the facts and circumstances delineated in the Confirmation Decision, that define the case committed to trial.¹¹

13. The substance of the Defence Motion confirms that its actual target is the Confirmation Decision. The Defence (i) objects to the use of illustrative and non-exhaustive incidents; (ii) argues that the charges must instead comprise an exhaustive list of underlying acts; (iii) challenges the breadth of their temporal, geographical and material parameters; and (iv) contends that their present formulation fails sufficiently to delimit the case for trial.¹² These are not new procedural issues concerning the conduct of the proceedings within the meaning of rule 134(1) of the Rules of Procedure and Evidence (the “Rules”). Rather, they concern the very manner in which the

⁸ See the Defence Motion, *supra* note 1.

⁹ See the email from the Chamber on 1 September 2026, at 13:02hours.

¹⁰ See the Defence Motion, *supra* note 1, para. 21.

¹¹ See articles 61(7), 61(11) and 74(2) of the Statute; the Confirmation Decision, *supra* note 3, paras. 16-24 and Section IV, “The Confirmed Charges”.

¹² See the Defence Motion, *supra* note 1, paras. 5-20.

Pre-Trial Chamber determined the permissible scope of the charges and confirmed them.¹³

14. The procedural history demonstrates the true nature of the Motion. Following the Confirmation Decision, the Defence expressly sought leave to appeal, *inter alia*, on the discrete issue of whether the Pre-Trial Chamber erred by “*overbroadly delineating the scope of the charges*”.¹⁴ In support of that proposed appeal, the Defence argued that the Confirmation Decision (i) failed adequately to identify the facts and circumstances underlying the charges; (ii) improperly replaced limiting factual elements with generalised formulations; and (iii) effectively encompassed any alleged incident falling within an expansive temporal and geographical framework.¹⁵ Those submissions are materially indistinguishable from the central premise of the present Motion.¹⁶

15. The Pre-Trial Chamber rejected the Defence’s challenge. Importantly, it did not dispose of the Defence Request merely on the basis of an ancillary requirement applicable to interlocutory appeals. Rather, it expressly addressed and rejected the premise underlying the proposed issue, namely the Defence’s characterisation of the scope of the confirmed charges.¹⁷ In particular, the Chamber found that the Confirmation Decision had established “*a clear temporal, geographical and material scope for each of the three confirmed Counts*”, identifying the relevant periods, geographical areas, direct perpetrators and categories of victims.¹⁸

16. Against this background, the Motion amounts to an attempt to obtain from the Trial Chamber the reconsideration of the Confirmation Decision that the Defence was not permitted to pursue before the Appeals Chamber. The Defence cannot circumvent

¹³ See the Confirmation Decision, *supra* note 3, paras. 16-24.

¹⁴ See the Request for leave to appeal the Decision on the Confirmation of Charges, *supra* note 4, paras. 7-20.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, paras. 30-36.

¹⁷ See the Decision on the Defence’s ‘Request for Leave to Appeal the Decision on the Confirmation of Charges’, *supra* note 7, paras. 8-15.

¹⁸ *Ibid.*, para. 10.

the Pre-Trial Chamber's rejection of its request for leave to appeal by recasting substantially the same challenge as a rule 134(1) motion and directing it to the Trial Chamber. Were the Motion to be entertained on that basis, the Trial Chamber would effectively be called upon to review the correctness of the Pre-Trial Chamber's determination of the scope of the charges. Rule 134(1) of the Rules provides no basis for such collateral appellate review.

17. The substance of the Motion demonstrates that the Defence is seeking reconsideration of the Pre-Trial Chamber's determination of the scope of the confirmed charges, and it should therefore be dismissed *in limine*. To the extent, however, that the Motion is understood as genuinely challenging an alleged defect in the DCC itself, rather than the charges as confirmed by the Pre-Trial Chamber, it is likewise inadmissible, albeit for a different procedural basis, as developed *infra*.

b) Any objection genuinely concerning a defect in the DCC should have been raised before confirmation

18. Regulation 52 of the Regulations of the Court (the "Regulations") specifically governs the content of the DCC, including the statement of the facts providing a sufficient legal and factual basis to bring the person to trial and the legal characterisation of those facts, including the precise form of participation alleged.

19. The statutory framework provides a specific procedural stage for objections concerning the proper conduct of proceedings preceding confirmation. Pursuant to rule 122(3) of the Rules, before hearing the merits of the confirmation proceedings, the Presiding Judge asks the parties whether they intend to raise objections or observations concerning issues related to the proper conduct of the proceedings prior to the confirmation hearing. Significantly, rule 122(4) provides that objections and observations made pursuant to rule 122(3) may not subsequently be raised again in the confirmation or trial proceedings.

20. Accordingly, insofar as the Defence considered that the DCC did not comply with the applicable requirements governing its form and contents, such objections

belonged to the pre-confirmation stage. They cannot now be used, after the completion of the confirmation proceedings, as a vehicle for reopening the Pre-Trial Chamber's determination of the charges. The charges have been confirmed; Mr Duterte has been committed to trial on the charges as confirmed;¹⁹ and the Defence has already unsuccessfully sought leave to challenge the manner in which the Pre-Trial Chamber delineated their scope.²⁰

21. Thus, on either characterisation, the Defence Motion is procedurally misconceived. Rule 134(1) of the Rules cannot be used either to obtain collateral review of the Confirmation Decision or to revive objections that should have been raised before confirmation.

22. Should the Chamber nevertheless be minded to consider the merits of the Motion, the CLRV refer to and maintain their submissions in response to the Defence Request for leave to appeal and, for completeness, briefly develop *infra* some arguments demonstrating that the Motion is, in any event, without merit.

2. The Defence Motion is without merit

23. First, the Defence's objections proceed from a conflation between two distinct questions: the accused's right to be informed in detail of the nature, cause and content of the charges pursuant to article 67(1)(a) of the Statute, and the proper delineation of the facts and circumstances of the charges for the purposes of article 74(2).²¹ The Pre-Trial Chamber expressly endorsed the CLRV's position on this point, finding that the Defence had conflated said two questions, notwithstanding their distinct nature and the Pre-Trial Chamber's previous clarification of that distinction.²²

¹⁹ See article 61(7) and (11) of the Statute; the Confirmation Decision, *supra* note 3, Section IV.

²⁰ See the Defence Request for leave to appeal the Confirmation Decision, *supra* note 4, paras 7-20; and the Decision on the Defence's 'Request for Leave to Appeal the Decision on the Confirmation of Charges', *supra* note 7, paras. 8-15.

²¹ See the CLRV's Response, *supra* note 5, para. 10; the Confirmation Decision, *supra* note 3, para. 17.

²² See the Decision on the Defence's 'Request for Leave to Appeal the Decision on the Confirmation of Charges', *supra* note 7, paras. 12-15.

24. Second, as previously submitted,²³ the Pre-Trial Chamber correctly applied the settled jurisprudence concerning the degree of specificity required in the formulation of charges. Said requisite is context-dependent, notably in light of the scale of the alleged criminality and the mode of individual criminal responsibility. Charges need not exhaustively enumerate every underlying criminal act but may instead be delineated through temporal, geographical and other material parameters, provided that the relevant facts and circumstances remain identifiable.²⁴

25. That approach is particularly apposite in the circumstances of the present case. As previously submitted,²⁵ the case concerns alleged crimes committed over an extended period of time and broad territorial scope, within the framework of alleged large-scale and systematic criminality. Mr Duterte's alleged institutional roles - as Vice Mayor and Mayor of Davao City and subsequently as President of the Philippines - further place him at a significant distance from the physical commission of the alleged crimes and correspond to the modes of liability alleged against him, including indirect co-perpetration.²⁶ These characteristics justify a broader formulation of the charges, including through non-exhaustive lists of incidents and victims, in order to properly reflect the alleged scale and nature of the conduct.²⁷

26. Third, the non-exhaustive character of the incidents does not render the charges "open-ended", "fluid" or indeterminate. The Confirmation Decision delineates the charges through defined temporal, geographical and material parameters, within which conduct by identifiable groups of perpetrators against identifiable categories of victims is situated.²⁸ The number of incidents or victims does not constitute the

²³ See the CLRV's Response, *supra* note 5, para. 11.

²⁴ See the Confirmation Decision, *supra* note 3, paras. 18-20. See also, 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](#), paras. 5, 326 (the "*Ntaganda Appeal Judgment*").

²⁵ See the CLRV's Response, *supra* note 5, para. 12.

²⁶ See the Confirmation Decision, *supra* note 3, paras. 20-23.

²⁷ See the CLRV's Response, *supra* note 5, para. 12.

²⁸ *Ibid.*, para. 13 and the Confirmation Decision, *supra* note 3, paras. 22-24.

definitive limit of the charges in a case of this nature, provided that any further specification remains within the originally defined facts and circumstances.²⁹

27. This conclusion had been expressly reaffirmed by the Pre-Trial Chamber in the Decision denying the Defence Request for leave to appeal. The Pre-Trial Chamber held that the confirmed charges are sufficiently delineated for the purposes of article 74(2) of the Statute, and that the possibility of additional incidents may fall within their scope does not deprive the Confirmation Decision of its function as the crystallised articulation of the case.³⁰ The Defence Motion provides no basis upon which the Trial Chamber could, or should, revisit that determination.

28. Nor does the use of illustrative incidents relieve the Prosecution of establishing the requisite connection between the alleged crimes, the charged attack and Mr Duterte's alleged individual criminal responsibility. The degree of factual specificity with which the charges are formulated is distinct from the elements which the Prosecution must establish at trial.³¹ In fact, the Pre-Trial Chamber found - at the applicable confirmation standard - that the alleged murders and attempted murders formed part of a widespread and systematic attack carried out pursuant to a policy to "neutralise" alleged criminals, and that the individual acts charged as incidents formed part of that attack.³² The non-exhaustive formulation of the incidents, therefore, neither dispenses with the requisite nexus nor diminishes the Prosecution's burden of proof.

29. Finally, as the CLRV previously submitted,³³ requiring an exhaustive enumeration of every incident in a case alleging large-scale criminality would risk artificially narrowing the case and failing accurately to reflect the extent of the victimisation. It could also exclude victims whose experiences fall within the charged conduct merely because their individu

²⁹ *Ibid.*

³⁰ See the Decision on the Defence's 'Request for Leave to Appeal the Decision on the Confirmation of Charges', *supra* note 7, paras. 10-12.

³¹ See articles 7, 25(3)(a) and 66(3) of the Statute.

³² See the Confirmation Decision, *supra* note 3, paras. 57-61.

³³ See the CLRV's Response, *supra* note 5, para. 23.

30. al incidents were not included in an exhaustive list and necessitate repeated applications to amend the charges as further incidents or victims are identified. Such an approach is neither required by the applicable jurisprudence nor conducive to the fair and expeditious conduct of the proceedings.

31. Accordingly, the Defence advances no argument warranting a different conclusion from that already reached by the Pre-Trial Chamber. Its submissions amount to a renewed disagreement with the manner in which the charges were delineated and confirmed, rather than the identification of any cognisable defect in their form under rule 134(1) of the Rules.

IV. CONCLUSION

32. For all the foregoing reasons, the CLRV respectfully request the Chamber to: DISMISS *in limine* the Defence Motion; or, in the alternative, REJECT the Defence Motion on the merits.



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Common Legal Representatives Victims

Dated this 10th day of September 2026

At The Hague (The Netherlands),
Manila (The Philippines)