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No.: **ICC-01/21-01/25**
Date: **10 September 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

Prosecution Response to “Defence Rule 134(1) Motion on the Form of the Charges”

Source: Office of the Prosecutor

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INTRODUCTION

1. Charges against suspects appearing before this Court are confirmed by the Pre-Trial Chamber, based on an *inter partes* process in which both the Prosecution and the Defence can and do fully participate, as they did in this case. This process is regulated by article 61 of the Statute. In this way, charging at the Court is procedurally different from charging at *ad hoc* international criminal tribunals or indeed in the courts of some national jurisdictions.

2. The Defence now asserts that the charges in this case “violate the accused’s right to be informed in detail of the nature, cause and content of the charges [...] under [a]rticle 67(1)(a) of the Statute”, and requests that the Prosecution should “be ordered to re-file a set of charges that properly informs the accused of the case he needs to meet, pursuant to [a]rticle 61(9) of the Statute.”¹

3. The Prosecution respectfully rejects this assertion, and opposes this request, which is unfounded. The Motion ignores the distinction between the legal adequacy of the charges under article 74(2) of the Statute and the right to notice under article 67(1)(a) of the Statute. The question of the adequacy of the charges has been determined by the Pre-Trial Chamber—which carefully verified their proper formulation in accordance with the established law of this Court, affirmed by the Appeals Chamber.² Conversely, the question of notice is premature, since notice can be provided *inter alia* through the Trial Brief, and under certain conditions during trial.

SUBMISSIONS

A. The legal adequacy of the charges under article 74(2) and the right to notice under article 67(1)(a) are separate issues

4. In the Motion, the Defence, once again,³ conflates the question of the legal adequacy of the charges under article 74(2) and the right to notice under article 67(1)(a).

5. In the Confirmation Decision, the Pre-Trial Chamber explained the distinction between the two notions.⁴ In doing so, “it applied relevant and settled jurisprudence of the Court,”

¹ [ICC-01/21-01/25-487](#) (“Motion”), para. 1.

² See e.g. [ICC-01/21-01/25-417-Red](#) (“Confirmation Decision”).

³ See e.g. [Confirmation Decision](#), para. 17 (citing [ICC-01/21-01/25-332](#) (“Defence Response to Clarification on Proposed Scope of the Charges”), paras. 4-5, and fn. 7).

⁴ See [Confirmation Decision](#), paras. 17-24.

including of the Appeals Chamber, and “[i]n line with this reasoning, [...] defined a clear temporal, geographical and material scope for each of the three confirmed Counts.”⁵

6. The Pre-Trial Chamber expressly, and correctly, quoted the guidance of the *Ntaganda* Appeals Chamber that—for the purpose of the legal adequacy of charges under article 74(2)—charging documents need not “necessarily [...] list all criminal acts underlying each charge exhaustively” and that “less specific” descriptions of the charges may suffice depending, “*inter alia*, on the scale of criminality and the mode of individual criminal responsibility alleged.”⁶ In short, what matters is whether 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.”⁷ As the Pre-Trial Chamber summarised:

In situations in which charges have been broadly formulated, further specification of, for example, the number of victims or incidents neither impacts the temporal or geographic scope of the confirmed charges nor does it alter any other material facts other than the number of persons victimised. Indeed, in such cases, the number of victims mentioned in the charges, whilst proving an indication of the scope of the charged crime, sets neither the upper nor the lower limit. The Trial Chamber hearing the case can eventually find that a larger or smaller number of persons fell victim to the relevant crime than the figure arrived at by the Pre-Trial Chamber at the confirmation stage. As long as the temporal, geographical and other material factual parameters, as well as the charged contribution of the suspect, remain the same, further specification of the charges will remain within the boundary of the charge as originally confirmed. Any developments in this regard must, however, not come as a surprise: as soon as information allowing further specification of the charges becomes available, the Defence must be adequately put on notice by appropriate means, such as a trial brief.⁸

7. In the Motion, the Defence fails to recognise the important distinction between questions of the legal adequacy of the charges and the right to notice; to the contrary, it raises questions of notice as if they were challenges to the charges. It further signals its disagreement with these

⁵ [Leave to Appeal Decision](#), paras. 8, 10. See also paras. 12-15 (further observing that “the Defence conflates the issue of proper delineation of the charges for the purposes of article 74(2) [...] 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)”). See further [Confirmation Decision](#), paras. 17 (citing [ICC-01/04-02/06-2666-Red A A2](#) (“*Ntaganda* Appeal Judgment”), para. 322).

⁶ [Confirmation Decision](#), para. 18 (quoting [Ntaganda Appeal Judgment](#), para. 326).

⁷ [Confirmation Decision](#), para. 20.

⁸ [Confirmation Decision](#), para. 22.

principles by the observation that it “does not concede that incidents can be added to this DCC [sic] based upon fresh evidence without following the procedure in Article 61(9)”,⁹ without showing error in the approach.

8. In keeping with the distinction between charges and notice, this response first addresses the question of charges, which is settled, and then the question of notice, which is premature.

B. The legal adequacy of the charges has been settled in the confirmation proceedings

9. While the Defence frames the Motion, including in the title,¹⁰ as raising a question of notice,¹¹ many of its arguments challenge the form of the confirmed charges.¹² However, questions as to the form of charges are a matter for confirmation proceedings, not trial. The Defence fully participated in the substantive proceedings to confirm the charges, up to and including seeking leave (unsuccessfully) to appeal the Pre-Trial Chamber’s confirmation decision on the issue of the form of the charges.¹³ The confirmation proceedings focused in particular on “the proper definition of the scope of the charges for the application of article 74(2)”, as the Pre-Trial Chamber itself observed.¹⁴ Accordingly, in these circumstances, the Trial Chamber should regard issues concerning the technical form of the charges as settled.

10. In any event, the substantive challenges to the confirmed charges are without merit. The Motion challenges the legal adequacy of the confirmed charges, principally based on the formulation of several counts each concerning conduct “allegedly committed over an extended period and across a large geographical area”.¹⁵

11. While the Motion sets out why the Defence might in the abstract prefer the form of charges used in other cases,¹⁶ this cannot itself show that the form of the confirmed charges in this case is legally inadequate. The case against Mr Duterte differs in material respects from other cases before the Court, justifying a different approach to the form of the charges.¹⁷ Further, the formulation of the charges in this case is not a one-off—the Pre-Trial Chamber has

⁹ [Motion](#), para. 2.

¹⁰ The Motion is titled: “Defence Rule 134(1) Motion on the Form of the Charges”.

¹¹ See e.g. [Motion](#), paras. 1, 4, 17, 19.

¹² See e.g. [Motion](#), paras. 3-18.

¹³ See e.g. [ICC-01/21-01/25-445](#) (“Leave to Appeal Decision”), paras. 2, 15. See also *above* fn. 3.

¹⁴ [Confirmation Decision](#), para. 17.

¹⁵ [Motion](#), para. 9. See also paras. 4-7 (contrasting the formulation of the charges in this case with the approach in certain other cases, such as *Abd-Al-Rahman*, *Kony*, and *Yekatom and Ngaïssona*).

¹⁶ See [Motion](#), para. 8.

¹⁷ See *above* para. 6.

since likewise applied a similar approach to the charges in *El Hishri* in light of the particular circumstances of that case (including the scale of criminality).¹⁸

12. The criticisms of the form of the charges are likewise incorrect. As carefully explained in the Confirmation Decision and the Leave to Appeal Decision, the charges in this case are not “a literal moving target”.¹⁹ Nor is it correct that “the allegedly illustrative incidents do not concern the acts and conduct of the accused” or “occurred in vastly different places and time periods, involved different primary perpetrators, different victims, and different *modus operandi*”.²⁰ To the contrary, the three counts each have a clear temporal, geographical and material scope, and this is consistent with the requirements of article 74(2) of the Statute.²¹ The Defence’s mere disagreement with the analysis of the Pre-Trial Chamber is insufficient to show any defect. While Mr Duterte also has a separate and *further* right under article 67(1)(a) of the Statute to sufficient notice of the specific allegations and evidence underpinning those counts, that notice need not be solely and exhaustively provided in the charges themselves.²²

13. Where necessary, the Pre-Trial Chamber in this case “remedied any overbroad formulation of the charges that would have prevented a proper identification of these parameters, including regarding the alleged group of perpetrators.”²³ It emphasised that “[w]hether and how alleged individual victims actually fall within any of these categories amounts to a factual question to be assessed and determined at trial”,²⁴ and that—in addition to the question of sufficient notice—“the possibility for the Prosecution to add incidents within the confirmed charges is restricted by the defined and limited scope of such charges”.²⁵

14. The three specific concerns raised to substantiate the claim that the confirmed charges “would be unacceptable in any criminal jurisdiction”²⁶ are misconceived, and show no legal defect in the form of the confirmed charges.

- First, the Motion alleges that “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

¹⁸ See e.g. [ICC-01/11-01/25-143](#) (“*El Hishri* Confirmation Decision”), paras. 17-26. See also paras. 39-45.

¹⁹ *Contra* [Motion](#), para. 19.

²⁰ *Contra* [Motion](#), para. 18.

²¹ See e.g. *above* paras. 5-6.

²² See e.g. *above* paras. 5-6; *below* paras. 17-19.

²³ [Leave to Appeal Decision](#), para. 10.

²⁴ [Leave to Appeal Decision](#), para. 10.

²⁵ [Leave to Appeal Decision](#), para. 11.

²⁶ [Motion](#), para. 18.

illustrative-only ‘incidents’, without any legal characterization.”²⁷ Yet, the Confirmation Decision—and specifically the confirmed charges set out from paragraph 102 describing both the relevant counts and the incidents included in the Document Containing the Charges²⁸—leaves no doubt about the legal characterisation of the relevant acts: they are all acts of murder or attempted murder, as a crime against humanity.²⁹ Similarly, irrespective of whether the Motion is accurate in its later claim that “[a] ‘count’ has *only ever* denoted an individual crime under the ICC Statute”³⁰—which it is not³¹—there is no defect in a count containing one or multiple legal characterisations, provided the scope of the charge is legally adequate under article 74(2).

- Second, the Motion alleges that the formulation of the counts “makes it impossible for the defendant to know what case he has to meet at trial.”³² In particular, it questions whether—in order to be convicted of a count—it is necessary for the Prosecution to prove each alleged incident, or a certain proportion, or even just one,³³ and raises the concern that Defence efforts to show reasonable doubt in certain incidents might be wasted if this “would have no impact whatsoever on the accused’s liability.”³⁴ It is correct that Mr Duterte may be convicted of a count if the Trial Chamber is satisfied beyond reasonable doubt of his criminal responsibility for any of the incidents alleged as evidence of that count. But this does not mean, as the Defence incorrectly implies, that Mr Duterte might

²⁷ [Motion](#), para. 11.

²⁸ [ICC-01/21-01/25-178-Red2](#) (“Document Containing the Charges”). See also para. 18.

²⁹ *Contra* [Motion](#), para. 11.

³⁰ [Motion](#), para. 10 (emphasis supplied).

³¹ See e.g. [ICC-01/14-01/18-403-Corr-Red](#) (“*Yekatom and Ngaïssona* Confirmation Decision”), Disposition (confirming *inter alia* counts 4 (forcible transfer and deportation as crimes against humanity), 24 (forcible transfer and deportation as crimes against humanity), and 29 (conscription, enlistment, and use of children under the age of fifteen to participate actively in hostilities as war crimes)); [ICC-02/11-02/11-186](#) (“*Blé Goudé* Confirmation Decision”), para. 194 (confirming *inter alia* count 3: other inhumane acts and attempted murder as crimes against humanity); [ICC-02/11-01/11-656-Red](#) (“*Gbagbo* Confirmation Decision”), para. 278 (confirming *inter alia* count 3: other inhumane acts and attempted murder as crimes against humanity). On the distinct nature of the war crimes of conscription, enlistment, and use of children under the age of fifteen to participate actively in hostilities, see further e.g. [ICC-01/04-01/06-3121-Red A5](#) (“*Lubanga* Appeal Judgment”), paras. 305, 307, 310-311. On the distinct nature of the crimes against humanity of forcible transfer and deportation, see further e.g. [ICC-RoC46\(3\)-01/18-37](#) (“*Bangladesh/Myanmar* Article 19(3) Decision”), paras. 52-61.

³² [Motion](#), para. 12.

³³ [Motion](#), para. 12. See also paras. 13 (arguing that, if the Prosecution need only prove one incident to secure a conviction under the corresponding count, Mr Duterte might “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”, which it is asserted “cannot be reconciled with basic principles of individual criminal responsibility”), 19.

³⁴ [Motion](#), para. 14. See also para. 19.

therefore be convicted beyond the scope of his proven culpability.³⁵ Moreover, neither article 74(2) nor 67(1)(a) entitles the Defence to advance guidance from the Trial Chamber about the future basis of its potential findings.³⁶ Rather, the Defence is entitled to what it has: clearly defined charges meeting the requirements of article 74(2), and sufficient notice of the allegations and evidence informing and supporting those charges meeting the requirements of article 67(1)(a).

- Third, the Motion alleges that the form of the confirmed charges means that the Defence “needs to be ready to defend against any alleged unlawful killing in the Philippines over a seven-year-plus period” because the Prosecution may always point to “other evidence in the case” of “other incidents” to prove a relevant count.³⁷ This is incorrect. The Defence is not required to prepare to defend against *any* alleged unlawful killing, but only those for which the Prosecution has given sufficient notice,³⁸ as further explained below.³⁹

15. In these latter respects, furthermore, the Motion overlooks the distinction between incidents relied upon to establish Mr Duterte’s individual criminal responsibility, and evidence of other incidents relevant only for the contextual purpose of establishing the *chapeau* of crimes against humanity.⁴⁰ While the Prosecution will adduce evidence showing that the attack upon the civilian population was not only systematic but widespread, and that relevant article 7(1) acts numbered in the thousands, Mr Duterte is not charged with *individual responsibility* for all those acts even if proven. Rather, he will only be held responsible only for those incidents to which it is proved beyond reasonable doubt that he contributed, with intent and knowledge, provided: (a) they fall within the scope of the confirmed charges, and (b) he has received sufficient notice of those incidents.

³⁵ The Prosecution notes, in this regard, that all three confirmed counts are framed neutrally as to the number of victims to which they relate—they merely establish temporal, geographic, and material parameters but neither an upper nor a lower number of victims. *See also above* para. 6 (quoting [Confirmation Decision](#), para. 22). *Contra Motion*, para. 13.

³⁶ *Contra Motion*, paras. 12-14.

³⁷ *Motion*, para. 15. *See also* para. 16 (referring to Prosecution disclosure describing “alleged killings which are unrelated to the listed incidents”, and speculating that “the Prosecution intends to lead substantial tranches of evidence which relate[] to incidents not listed in the DCC”).

³⁸ *Contra Motion*, paras. 15-16.

³⁹ *See below* paras. 17-19.

⁴⁰ *Cf. Motion*, para. 16. Nor does the Motion show any basis for its further concern that the Trial Chamber will not be in a position to determine whether relevant acts have a nexus to the alleged widespread or systematic attack upon the civilian population: *contra Motion*, para. 20. The form of the confirmed charges does not presuppose the particular manner in which the Trial Chamber will assess the evidence for this purpose at the conclusion of the trial, nor is it apparent how this might permit the Prosecution to “circumvent” the requirements of article 7 of the Statute. If the Trial Chamber is not satisfied beyond reasonable doubt that these requirements are met, it will simply acquit Mr Duterte accordingly.

C. The question of sufficient notice is premature

16. The question of notice is raised prematurely, since notice may be provided by various means (for example, through pre-trial filings) and any potential defect may be cured during the proceedings, provided the Trial Chamber is satisfied in its concluding deliberations that any charge of which Mr Duterte may be convicted meets the requirements of article 67(1)(a).

17. With regard to the right to adequate notice “of the nature, cause and content” of the charges under article 67(1)(a), the Appeals Chamber has affirmed that “the accused person must receive ‘sufficiently detailed notice of the charges’, and that what constitutes *sufficient* detail ‘turn[s] on the particular circumstances of the case, taking into account the nature of the charges and the ability of the accused to prepare a meaningful defence.’”⁴¹ While notice should be given in a “timely manner”, and generally “‘before the start of the trial hearings’”, the right to notice “does not impose any special formal requirement as to the manner in which an accused is to be informed of the nature and cause of the charges”.⁴²

18. The Defence incorrectly asserts that Mr Duterte “has no such notice” of the case “he will face at trial, and what he should contest.”⁴³ To the contrary, the Prosecution has duly provided sufficient notice of all the relevant incidents and victims, both through the information provided in the course of confirmation proceedings but also through auxiliary pre-trial documents such as the Trial Brief. In particular, in the Trial Brief the Prosecution has expressly notified the Defence that there are a small number of ‘additional’ incidents falling within the scope of the confirmed charges which the Prosecution intends to prove at trial,⁴⁴ and has provided specific information about each of these incidents.⁴⁵

19. The Prosecution affirms that it has thus provided sufficient notice of the incidents upon which it intends to prove the charges. This is consistent with the instruction of the Trial Chamber, in the exercise of its case management powers under article 64(6)(f) of the Statute, that the Prosecution must give notice of any “new incidents” by 31 August 2026.⁴⁶ Should evidence of additional victims arise, it will be a question for the Trial Chamber to determine

⁴¹ [ICC-02/04-01/15-2022-Red](#) (“Ongwen Appeal Judgment”), para. 235 (emphasis added, citing [Lubanga Appeal Judgment](#), para. 123; [ICC-01/14-01/18-874 OA2](#) (“Yekatom and Ngaïssona Charging Appeal Judgment”), paras. 38-39, 44; [Ntaganda Appeal Judgment](#), para. 322). See also paras. 232-233, 237. See further [Motion](#), para. 19.

⁴² See [Ongwen Appeal Judgment](#), paras. 234 (citing [Lubanga Appeal Judgment](#), para. 129; [Ntaganda Appeal Judgment](#), para. 322), 259; [Yekatom and Ngaïssona Charging Appeal Judgment](#), para. 54.

⁴³ *Contra* [Motion](#), paras. 17, 19-20.

⁴⁴ See [ICC-01/21-01/25-490-Conf](#) (“Prosecution Trial Brief”), para. 6 (fn. 21: referring to incidents 50-57).

⁴⁵ See e.g. [Prosecution Trial Brief](#), paras. 161-164 (incident 56), 176-180 (incident 57), 234-235 (incident 55), 245-246 (incident 50), 247-249 (incident 51), 250-252 (incident 52), 253-255 (incident 54), 294-295 (incident 53)

⁴⁶ See [ICC-01/21-01/25-T-009-Red-ENG WT](#), pp. 26:17-28:18, 47:7-11.

(on those facts, at that time) whether the Defence will be in a position to receive sufficient notice such that the allegation may be relied upon as a further basis to establish Mr Duterte's criminal responsibility for the confirmed charges.

CONCLUSION

20. For all the reasons above, the Motion should be dismissed.

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

Mame Mandiaye Niang
Acting Prosecutor

Dated this 10th day of September 2026

At The Hague, the Netherlands