

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**



Original: **English**

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

Date of original:

**11 September 2026**

Date: **15 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**

**Public Redacted Version of “Defence Motion Requesting a Judicial Determination on the Prosecution’s Eight Additional Incidents”**

**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

☐ 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**

Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations  
Section

☐ Other

## I. INTRODUCTION

1. By purporting to give “notice” of eight new incidents with just three months until the start of trial,<sup>1</sup> and promptly adding those incidents to its Trial Brief without authorisation from the Trial Chamber,<sup>2</sup> the Prosecution has effectively sought to amend the charges in this case with no judicial oversight.

2. For the reasons set out herein, the Defence submits that the Prosecution must first file a request to this Trial Chamber to add those incidents to the confirmed charges. It will then fall to the Chamber to determine whether the requested amendment would expand the temporal or geographical scope of the confirmed charges or alter the facts and circumstances underpinning them.

3. Should the Trial Chamber decide that these new incidents exceed the scope of the confirmed charges or the facts and circumstances described therein, and the Defence submits that they do, the Prosecution should be ordered to file a revised Trial Brief excluding these eight incidents, or alternatively to apply to the Pre-Trial Chamber to request amendment of the charges pursuant to Article 61(9) of the Statute.

## II. PROCEDURAL HISTORY

4. On 23 April 2026, Pre-Trial Chamber I confirmed the charges against Mr Duterte, comprising three Counts of murder and attempted murder as a crime against humanity, illustrated by 49 enumerated incidents.<sup>3</sup> The Pre-Trial Chamber noted *obiter* that it would be “practically unworkable” and “could trigger a very large amount of parallel litigation”, “if the Prosecution were required to come back to the Pre-Trial Chamber each time it identifies one or more further incidents or victims relevant to a confirmed charge.”<sup>4</sup>

5. During the first Status Conference held on 27 May 2026, the Trial Chamber asked the Prosecution whether it intended to **apply** to add new incidents, and the Prosecution indicated

---

<sup>1</sup> 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. This submission is filed **confidentially** pursuant to [Regulation 23bis\(1\)](#) of the Regulations of the Court as it provides observations on filings bearing the same classification. All references to “Article”, to “Rules” and “Regulations” in the present submission are to the Rome Statute, the Rules of Procedure and Evidence, and the Regulations of the Court, respectively.

<sup>2</sup> Public Redacted Version of “Prosecution’s Trial Brief” dated 4 September 2026, [ICC-01/21-01/25-490-Red](#), 14 September 2026 (“[Trial Brief](#)”).

<sup>3</sup> Decision on the confirmation of charges against Mr Rodrigo Roa Duterte, [ICC-01/21-01/25-417](#), 23 April 2026 (“[Confirmation Decision](#)”).

<sup>4</sup> [Confirmation Decision](#), para. 21.

that it did.<sup>5</sup> The Prosecution stated that some of those proposed new incidents related to existing witnesses,<sup>6</sup> and some to “material that’s come in soon but it fits perfectly with the theory and is just really part of the same case... but it will not be a huge number”.<sup>7</sup>

6. Notice of eight new incidents was filed on 31 August 2026.<sup>8</sup> Incidents 50-55 relate to Count 3, and Incidents 56 and 57 relate to Count 2. In its Trial Brief, the Prosecution justified its addition of these eight new incidents as falling within the scope of the confirmed charges “because they were perpetrated in a ‘time during which and an area where criminal acts were allegedly committed by an identifiable group of perpetrators against an identifiable group of victims’”.<sup>9</sup>

### III. APPLICABLE LAW

7. Article 67(1)(a) provides that the accused has the right to “be informed promptly and in detail of the nature, cause and content of the charge”. Article 61(3)(a) states that, within a reasonable time prior to the hearing on the confirmation of charges, the accused shall “[b]e provided with a copy of the document containing the charges on which the Prosecutor intends to bring the person to trial”. Rule 121(3) directs that the “Prosecutor shall provide to the Pre-Trial Chamber and the person, no later than 30 days before the date of the confirmation hearing, a detailed description of the charges together with a list of the evidence which he or she intends to present at the hearing”. Regulation 52(1)(b) specifies that the document containing the charges shall include a “statement of the facts, including the time and place of the alleged crimes, which provides a sufficient legal and factual basis to bring the person or persons to trial [...]”. The charges presented in that document containing the charges that have been confirmed

---

<sup>5</sup> Status Conference, [ICC-01/21-01/25-T-009-Red-ENG WT](#), 27 May 2026, p. 27, ln. 2-4 (“[27 May Status Conference](#)”) (“PRESIDING JUDGE KORNER: It sounds as though you are going to be applying to add new incidents. MR NICHOLLS: Yes, I imagine we will. But I think it will be a few”).

<sup>6</sup> [27 May Status Conference](#), ln. 5 (“[s]ome of them are related to existing witnesses where we got more evidence”). On the principle that the Prosecution’s investigations should be substantially complete by the confirmation stage, see *Lubanga*, Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence, [ICC-01/04-01/06-108-Corr](#), 19 May 2006, para. 39; *Yekatom and Ngaissona*, Decision on the ‘Prosecution’s Request to Amend Charges pursuant to Article 61(9) and for Correction of the Decision on the Confirmation of Charges, and Notice of Intention to Add Additional Charges’, [ICC-01/14-01/18-517](#), 14 May 2020, para. 25.

<sup>7</sup> [27 May Status Conference](#), p. 27, ln. 6-7.

<sup>8</sup> 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.

<sup>9</sup> [Trial Brief](#), fn. 21, citing to the [Confirmation Decision](#), para. 24.

by the Pre-Trial Chamber are reproduced in full and form the operative part of the confirmation decision, which is binding on the Trial Chamber.<sup>10</sup>

8. Under Article 74(2) of the Statute, the Trial Chamber’s decision “shall not exceed the facts and circumstances described in the charges and any amendments to the charges”.

#### IV. SUBMISSIONS

##### *i) The document containing the charges as confirmed cannot be amended without prior judicial authorisation*

9. Amendments to the confirmed charges require the authorisation of the Pre-Trial Chamber under Article 61(9) of the Statute, which states, in relevant part:

[a]fter the charges are confirmed and before the trial has begun, the Prosecutor may, with the permission of the Pre-Trial Chamber and after notice to the accused, amend the charges. If the Prosecutor seeks to add additional charges or to substitute more serious charges, a hearing under this article to confirm those charges must be held.

10. In three recent cases before the Court, Pre-Trial Chambers have grappled with the circumstances in which recourse back to them under Article 61(9) is required, and those in which minor amendments not exceeding the facts and circumstances would fall within the powers of the Trial Chamber. In *Abd-Al-Rahman*, the Pre-Trial Chamber denied the Prosecution’s application to add new victims under Article 61(9), finding that:

[t]he mention of exact numbers of victims in a confirmation of charges decision, and the listing of a specific number of persons in an annex thereto, must therefore not be understood as preventing the trial chamber hearing the case from finding that a larger number of persons fell victim to the relevant crime. So long as other persons, who are at a later stage found to have been murdered or raped, fall within the temporal and geographical parameters, as well as within the charged role of the accused, a trial chamber assessing the relevant evidence may include those persons in the crime as charged.<sup>11</sup>

11. Similarly, in *Kony*, the Pre-Trial Chamber recalled the statement of the Appeals Chamber in *Ntaganda* such that “the charges may be described in a less specific manner, for instance, by specifying a period of time during which and an area where criminal acts were

---

<sup>10</sup> [Chambers Practice Manual](#), Eighth edition, as amended on 21 October 2024, para. 66(vi) (“[t]he operative part, the only part of the confirmation decision which is binding on the Trial Chamber. In a decision confirming the charges the operative part shall reproduce the charges presented by the Prosecutor that are confirmed by the Pre-Trial Chamber (both the material facts and circumstances described in the charges confirmed and the confirmed legal characterisation(s)”).

<sup>11</sup> [Abd-Al-Rahman Decision on the amendment to the charges](#), para. 23.

allegedly committed by an identifiable group of perpetrators against an identifiable group of victims”.<sup>12</sup> To this end, the Pre-Trial Chamber adopted a flexible approach in respect of certain details of the charges, such as the nature and quantity of looted items.<sup>13</sup>

12. In *Said*, the Trial Chamber rejected the Prosecution’s submission “for individual criminal acts and victims to be listed in a non-exhaustive manner”.<sup>14</sup> The Trial Chamber considered “that the scope of the charged crimes in this case is limited to the specific criminal acts listed by the Pre-Trial Chamber in paragraph 29 of the Confirmation Decision”.<sup>15</sup> The Prosecution then applied to the Pre-Trial Chamber for an amendment of the charges pursuant to Article 61(9), but Pre-Trial Chamber II declined this request, holding that:

the charges as confirmed allow for the exercise by Trial Chamber VI of its powers and functions relevant to the assessment of the evidence relating to the additional material facts and circumstances relevant to the confirmed crimes indicated in the Application, which, as anticipated by the Prosecution, will in any event be presented at trial. The procedure envisaged in article 61(9) of the Statute does not constitute an appropriate avenue to request modification of the charges such as the one sought by the Prosecution in the present case.<sup>16</sup>

13. Following this decision, Trial Chamber VI issued a decision on the scope of the charges, in which it recalled that “[f]or the purposes of the trial, **it is the Trial Chamber’s responsibility** to ensure that the Prosecution’s factual allegations do not exceed the facts and circumstances described in the charges and to satisfy itself as to its jurisdiction to determine matters that may arise in the course of proceedings.”<sup>17</sup> Having carefully considered the Pre-Trial Chamber’s interpretation of the facts and circumstances described in the charges, the Trial Chamber found that it could not “reconcile itself to the Pre-Trial Chamber’s interpretation”.<sup>18</sup>

14. The above jurisprudence establishes three key principles. First, where the non-operative part of the confirmation decision “list[s] or make[s] reference to specific criminal acts, the

---

<sup>12</sup> *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’, [ICC-01/04-02/06-2666-Red](#), 30 March 2021 (“[Ntaganda Appeal Judgment](#)”), para. 326.

<sup>13</sup> *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 (“[Kony Confirmation of Charges Decision](#)”), para. 46.

<sup>14</sup> *Said*, Decision on Prosecution Notification regarding the Charges (ICC-01/14-01/21-262-Red), [ICC-01/14-01/21-282](#), 20 April 2022 (“[Said Decision on the notification of the charges](#)”), para. 17.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Said*, Decision on the ‘Prosecution’s application to amend the charges’, [ICC-01/14-01/21-396](#), 8 July 2022 (“[Said Decision on the amendment of the charges](#)”), para. 27.

<sup>17</sup> [Said Decision on the scope of the charges](#), para. 18 (emphasis added).

<sup>18</sup> *Ibid.*

scope of the case is not necessarily limited to them”, provided that “other criminal acts not mentioned in the document containing the charges” fall squarely within the facts and circumstances of the charges.<sup>19</sup> Second, and relatedly, where the confirmed charges set out a specific time and place of the alleged crime(s), it is permissible for the Trial Chamber to authorise the Prosecution to add a *victim* without recourse to Article 61(9). This does not, however, extend to a new *incident* setting out a new time, place, individual criminal act, principal perpetrator, and victim. Such new incidents would exceed the facts and circumstances of the charges as confirmed, and the Prosecution must therefore seek the permission of the Pre-Trial Chamber to amend the charges. Third, while differing interpretations have been advanced by distinct Chambers as to *which* Chamber (i.e. Pre-Trial or Trial) is responsible for approving amendments to the charges, it is abundantly clear that judicial oversight is essential, and that the Prosecution cannot merely add to the confirmed charges *proprio motu* and without judicial authorisation. As shown by *Said*, individual Pre-Trial Chambers may deem their continued intervention on the scope of the charges unnecessary post-confirmation, but the ultimate responsibility lies with the Trial Chamber to ensure that its decision under Article 74 does not exceed the facts and circumstances described in the charges and any authorised amendments to the charges.

15. Applying these principles to the present case, an additional incident could form part of the confirmed charges where it occurred on the same date, at the same location and at the hands of the same perpetrators as a confirmed incident – that is, the genuine further specification of a fact already confirmed, not the addition of a new one. For example, if, for one of the 49 confirmed incidents, the Prosecution were to allege that two or three individuals were killed instead of the one or two listed in the confirmation decision, that would likely be deemed permissible, following the jurisprudence outlined above.<sup>20</sup> However, none of the additional eight incidents fits that description. The Prosecution seeks to extend the charges to new times, locations, individual criminal acts, victims and perpetrators that the Pre-Trial Chamber did not confirm, and in one case, to an incident falling outside the temporal scope of the relevant Count. The scope of the trial against Mr Duterte must be confined to the criminal acts that the Pre-

---

<sup>19</sup> *Ntaganda Appeal Judgment*, para. 5, cited in *Kony Confirmation of Charges Decision*, para. 42. See also *Said Decision on the scope of the charges*, para. 17 and *Abd-Al-Rahman Decision on the amendment to the charges*, para. 21.

<sup>20</sup> For example, three new victims have been added to Incident 43 in the Trial Brief (*Trial Brief*, fn. 1097) and the victim who was named in relation to Incident 25 has been changed to “[REDACTED]” in the Trial Brief (*Trial Brief*, para. 267).

Trial Chamber did confirm, absent authorisation from the Pre-Trial Chamber to amend the charges pursuant to Article 61(9).

16. The confirmation decision in the present case departs from prior jurisprudence in one important respect: it states that the Prosecution need not come back to the Pre-Trial Chamber each time it identifies further “incidents or victims”, where other cases have referred only to the number of *victims*.<sup>21</sup> In *Said*, the Pre-Trial Chamber found that instances of the same crime, for example of allegations of torture in the same detention facility would fall within the scope of the confirmed charges,<sup>22</sup> but this proposition was later rejected by Trial Chamber VI.<sup>23</sup>

17. In the present case, witnesses whose evidence is cited in support of the additional incidents were interviewed by the Prosecution post-confirmation and only disclosed to the Defence in June or August 2026,<sup>24</sup> amongst over 62,000 other items of evidence that have now been disclosed.<sup>25</sup> As outlined below, the eight additional incidents are in no way connected to the 49 confirmed incidents. Each of them occurred in an entirely new location, not mentioned in the confirmed charges, with a distinct set of facts: different primary perpetrators, different victims, different dates, and different circumstances. The prejudice is evident; if the Trial Chamber authorises their addition to the charges, the Defence will be required to investigate these new incidents in the less than three months before the opening of trial, without having received any prior notice that these new locations, victims, perpetrators and circumstances would be part of the case. That is fundamentally different from previous cases, where the addition of a newly discovered victim of the same crime by the same perpetrators on the same date in the same location could fall within the scope of the confirmed charges.

18. The jurisprudence on Article 61(9) suggests that “whether the description of the charges is sufficient for [the] purposes of Article 74(2) of the Statute will depend, *inter alia*, on the scale of criminality and the mode of individual criminal responsibility alleged”.<sup>26</sup> Trial

---

<sup>21</sup> [Abd-Al-Rahman Decision on the amendment to the charges](#), paras. 18, 20, and 25; [Kony Confirmation of Charges Decision](#), paras. 43-44.

<sup>22</sup> [Said Decision on the amendment of the charges](#), para. 22.

<sup>23</sup> [Said Decision on the amendment of the charges](#), para. 18.

<sup>24</sup> In relation to incidents 56 and 57, [REDACTED] was interviewed on [REDACTED] and the transcripts of that interview were disclosed to the Defence on 21 August 2026. In relation to incidents 50, 51, 52 and 54, [REDACTED] was first interviewed on [REDACTED], the transcripts being disclosed on 2 July 2026, and interviewed a second time on [REDACTED], those transcripts being disclosed on 7 August 2026. In relation to incident 53, [REDACTED] was interviewed in [REDACTED], but the transcripts were disclosed on 26 August 2026. In relation to incident 55, [REDACTED] was interviewed on [REDACTED], and the transcripts were disclosed on 8 June 2026.

<sup>25</sup> At the time of filing this Motion, the total number of items disclosed to the Defence was 62,131.

<sup>26</sup> [Ntaganda Appeal Judgment](#), para. 326; [Kony Confirmation of Charges Decision](#), para. 47.

Chamber VI in *Said* held that, in light of these two guiding criteria, “a broader description of the charges *may* be acceptable for the purpose of article 74(2) of the Statute in cases where the extent of the criminality is of a larger scale and the accused is further removed from the scene of crimes”.<sup>27</sup>

19. However, there must be some defined limits to the description of the charges, even in cases involving a larger scale and an accused who is further removed from the scene of the crime. As the Appeals Chamber noted in *Lubanga*, “there can be no doubt that the decision on the confirmation of the charges defines the parameters of the charges at trial.”<sup>28</sup> In *Bemba*, the Appeals Chamber noted that, “[s]imply listing the categories of crimes with which a person is to be charged or stating, in broad general terms, the temporal and geographical parameters of the charge is not sufficient to comply with the requirements of regulation 52(b) of the Regulations of the Court and does not allow for a meaningful application of article 74(2) of the Statute”.<sup>29</sup> In that case, the Appeals Chamber, in overturning Mr Bemba’s conviction at trial, “rejected the Prosecutor’s submission, at the appeal hearing, that Mr Bemba was charged with, and convicted of, generally crimes of murder, rape and pillaging committed by MLC soldiers on the territory of the CAR from 26 October 2002 to 15 March 2003, which constituted the ‘the facts and circumstances’ in the present case, and that the criminal acts were merely ‘subsidiary facts’ or ‘evidence’, ‘used in this case to establish the material fact’”.<sup>30</sup> It found that “the ‘facts and circumstances’ were described [in the confirmation decision and document containing the charges], in relation to the crimes, at the level of individual criminal acts”,<sup>31</sup> and that the Trial Chamber’s judgment exceeded those facts and circumstances.

20. Thus, it is clear that the “facts and circumstances” of the case cannot constitute the broad geographic area,<sup>32</sup> which, in the present case, spans 300,000 square kilometers of an

---

<sup>27</sup> [Said Decision on the notification of the charges](#), para. 15; [Kony Confirmation of Charges Decision](#), para. 47 (emphasis added).

<sup>28</sup> *Lubanga*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, [ICC-01/04-01/06-3121-Red](#), 1 December 2014, para. para. 124. See also *Ruto and Sang*, “Decision on the Prosecutor’s appeal against the “Decision on the Prosecution’s Request to Amend the Updated Document Containing the Charges Pursuant to Article 61(9) of the Statute”, [ICC-01/09-01/11-1123](#), 13 December 2013, paras 26-29.

<sup>29</sup> *Bemba*, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s ‘judgment pursuant to Article 74 of the Statute’, [ICC-01/05-01/08-3636-Red](#), 8 June 2018 (“[Bemba Appeal Judgment](#)”), para. 110.

<sup>30</sup> [Bemba Appeal Judgment](#), para. 104.

<sup>31</sup> [Bemba Appeal Judgment](#), para. 111.

<sup>32</sup> [Bemba Appeal Judgment](#), para. 104 (“[t]he Appeals Chamber therefore rejects, by majority, Judge Monageng and Judge Hofmański dissenting, the Prosecutor’s submission, at the appeal hearing, that Mr Bemba was charged with, and convicted of, generally crimes of murder, rape and pillaging committed by MLC soldiers on the territory of the CAR from 26 October 2002 to 15 March 2003, which constituted the “the facts and circumstances” in the

entire country with a population of over 115 million people, nor the broad temporal parameters, which in the present case is 7 years and 4 months. This post-charging addition of what are effectively new charges, despite the confusing and extra-legal nomenclature of ‘incidents’, would not be acceptable in any legal system of the world. In French criminal procedure, for example, the *acte de saisine* locates the facts within a broad frame – “*sur le territoire de la République française, courant [année]*” – before setting out the specific facts: the identified acts, their victims and their dates.<sup>33</sup> Yet, once the Chamber is seised of those facts, it may not judge new facts that were not before it. Newly discovered facts require a fresh prosecutorial act – a *réquisitoire supplétif* by which the *procureur* asks the investigating judge to extend the seisin – and cannot simply be added to the case at trial. Similar requirements exist in other domestic legal systems.<sup>34</sup>

21. A line must be drawn as to the boundaries of the case as confirmed, and the Defence proposes that those boundaries must attach to the 49 incidents confirmed, for the sake of judicial economy, ensuring that the accused is given proper notice of the charges, and guaranteeing that the ultimate decision under Article 74 does not exceed the facts and circumstances described in the charges.

22. The need to delineate the scope of the charges is further heightened by the unprecedented manner in which the charges have been outlined in the present case.<sup>35</sup> In previous cases, the operative part of the confirmation decision listed the particular count (for example, murder as a crime against humanity) under broad geographic and temporal headings (for example, in the case against *Abd-Al-Rahman*, ‘in Kodoom, Bindisi and surrounding areas,

---

present case, and that the criminal acts were merely “subsidiary facts” or “evidence” “used in this case to establish the material fact”).

<sup>33</sup> See Code de procédure pénale, art. 80 (the *juge d’instruction* is seised *in rem*; new facts require a *réquisitoire supplétif*); arts 388 (*tribunal correctionnel*) and 231 and 349 et seq. (*cour d’assises*), from which it follows that the trial court may adjudicate only the facts of which it is seised.

<sup>34</sup> In Spain, the indictment (‘*auto de procesamiento*’) delimits the factual and personal scope of the proceedings, binding the parties as to the facts imputed and the persons processed, although not as to their legal characterisation. The Spanish Supreme Court has expressly held that “*el auto de procesamiento vincula las partes en cuanto a los hechos imputados y las personas responsables*” (“the indictment binds the parties with respect to the alleged facts and the persons held responsible”) (STS 133/2018). In the *procedimiento abreviado*, the equivalent delimiting instrument is the *auto de transformación*. Under art. 780.2 of the Ley de Enjuiciamiento Criminal and the principles affirmed in Supreme Court case STS 702/2003, where the prosecution seeks to introduce materially new facts or persons beyond that framework, it cannot simply do so in the subsequent accusation but must invoke the appropriate procedural mechanism. In the same way, in Italy, criminal charges are formalised by the indictment, which must clearly state the facts, applicable legal provisions, and evidence. During trial, the Public Prosecutor may amend the charge if the facts differ or related offences or aggravating circumstances emerge, subject to a new preliminary hearing under Article 516 of the Code of Criminal Procedure.

<sup>35</sup> Defence Rule 134(1) Motion on the Form of the Charges, [ICC-01/21-01/25-487](#), 31 August 2026 (“[Motion on the Form of the Charges](#)”).

between 15 and 16 August 2003<sup>36</sup>), and the list of victims appeared elsewhere in the confirmation decision. In the present case, the individual incidents, which would normally constitute either the facts and circumstances supporting a single count or individual counts themselves, have been given the status of non-exhaustive and illustrative-only ‘incidents’, evading legal characterisation.<sup>37</sup> Notably, the 49 incidents are listed in the *operative part* of the confirmation decision, the only part of the decision that is binding on the Trial Chamber. Therefore, any amendment to the operative part of the confirmation decision requires authorisation from the Pre-Trial Chamber, and a new confirmation hearing, pursuant to Article 61(9).

23. As the Defence has previously indicated, one consequence of this unusual framing of the charges is that it is practically impossible to devise a defence strategy without clarity as to the role of these underpinning incidents in proving each count, and specifically as to whether the Prosecution needs to prove all, most, a simple majority, one or even none of the enumerated ‘illustrative’ incidents beyond reasonable doubt to sustain a conviction on each count.<sup>38</sup> For these reasons, the Defence has requested that the Prosecution be ordered to re-file a revised Document Containing the Charges before the Pre-Trial Chamber, so that the accused can be properly put on notice as to the case that he needs to meet. For its part, the Prosecution has asserted 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.”<sup>39</sup> While the question of what must be proven rests with Trial Chamber, the practical impact of this suggestion is that the Prosecution believes that Mr Duterte can be convicted of the entirety of a Count based on only one of these new incidents. It is difficult to reconcile this interpretation with Article 74(2) of the Statute.

24. There is a further concern surrounding the evidence underpinning these eight incidents. The chain of custody reveals that the documentary evidence cited in the Trial Brief in relation to the eight new incidents has a single political opponent of Mr Duterte, Antonio Trillanes, as its source, and these documents – which include purported internal PNP documentation – bear no indicia of authenticity. This source is a former Senator with no known legitimate means of

---

<sup>36</sup> *Abd-Al-Rahman*, Decision on the confirmation of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’), [ICC-02/05-01/20-433](#), 9 July 2021, paras. 27-57.

<sup>37</sup> [Motion on the Form of the Charges](#), para. 11.

<sup>38</sup> [Motion on the Form of the Charges](#), para. 12.

<sup>39</sup> Prosecution Response to “Defence Rule 134(1) Motion on the Form of the Charges”, [ICC-01/21-01/25-499](#), 10 September 2026, para. 14.

accessing internal PNP documentation, but who has produced **all** of the newly disclosed PNP Incident Record Forms underpinning these eight incidents. Notably, unlike other PNP Incident Record Forms that have been disclosed, they do not contain an official stamp indicating that they are a “certified true copy” of the original, nor are they signed. In light of these evidentiary deficiencies, questions may be raised as to whether these eight incidents would have passed the lower standard of proof applicable at confirmation, had they been included in the original pre-confirmation brief and document containing the charges.

25. Lastly, there are practical consequences to be considered. For example, at the start of trial, the charges are to be read aloud in the courtroom so that the accused and the public can understand the exact scope of the case. However, with the addition of the eight incidents, the charges outlined in the operative part of the confirmation decision and document containing the charges no longer match what is in the Prosecution’s Trial Brief.

***ii) The eight proposed new incidents exceed the scope of the confirmation decision***

26. The confirmation decision endorsed the Prosecution’s “non-exhaustive list” approach “as long as the temporal, geographical and other material factual parameters, as well as the charged contribution of the suspect, remain[ed] the same”.<sup>40</sup> The Pre-Trial Chamber, however, considered that such “historical events” would form part of the charges only in so far as they amounted to *further specification* not impacting the temporal or geographical scope of the confirmed charges, and not altering “any other material facts other than the number of persons victimised”.<sup>41</sup> The Prosecution is now seeking to add eight new incidents based upon fresh evidence that constitute new material facts, not “further specification” of the confirmed charges. As outlined below, the addition of any of these eight incidents would extend the charges of murder to victims, dates and places that the Pre-Trial Chamber did not confirm and would constitute a material change to the charges.

27. Incidents 50-52 and 54 concern a new location that does not form part of the charged locations in this case ([REDACTED]). They consequently relate to different primary perpetrators, different victims and different dates and therefore fall outside of the facts and circumstances described in the charges.

---

<sup>40</sup> [Confirmation Decision](#), para. 22.

<sup>41</sup> [Confirmation Decision](#), para. 22.

28. Incident 53 similarly concerns a new location ([REDACTED]), date, victim and perpetrators that does not form part of the charged incidents. It therefore falls outside of the facts and circumstances described in the charges.

29. Incident 55 appears to be situated in the same *barangay* as incident 21 ([REDACTED], Quezon City). However, the two incidents are some 2.5 km apart and it also relates to different primary perpetrators, different victims and different dates ([REDACTED] for Incident 21 and [REDACTED] for Incident 55). It therefore falls outside of the facts and circumstances described in the charges.

30. Incident 56 concerns a new location that does not form part of the charged locations in this case ([REDACTED]) and which lies at least 159 km from the nearest confirmed Count 2 incident,<sup>42</sup> and as much as 1,690 km from the furthest.<sup>43</sup> It relates to different primary perpetrators, different victims and different dates to the charged Incidents and therefore falls outside of the facts and circumstances described in the charges.

31. Incident 57 also concerns a new location ([REDACTED], [REDACTED]) that does not form part of the charged locations in this case. It also falls outside of the confirmed charged period for Count 2. The incident is dated “on or about [REDACTED] **2017**”,<sup>44</sup> whereas Count 2 was stated as follows in the confirmation decision:

**Count 2:** The murders in Count 2, as illustrated by Incidents 10 to 14 below, were perpetrated by members of the National Network in locations across the Philippines during DUTERTE’s Presidency between around July 2016 and **July 2017**.<sup>45</sup>

32. The Prosecution now asserts that the murders charged under Count 2 occurred between “around July 2016 and **August 2017**”.<sup>46</sup> This is incorrect and misleading: the confirmed charged period under Count 2 is “between around July 2016 and **July 2017**”.<sup>47</sup> The Defence

---

<sup>42</sup> Incident 11.

<sup>43</sup> Incident 12.

<sup>44</sup> [Trial Brief](#), p. 92.

<sup>45</sup> [Confirmation Decision](#), para. 34.

<sup>46</sup> [Trial Brief](#), p. 8 (“[m]urders of at least 16 victims, labelled as “High-Value Targets” for their alleged criminality, who were killed in locations across the Philippines, between around July 2016 and August 2017 [...]”). *See also* para. 147 (“[t]he murders in Count 2, as set out in Incidents 10 to 14 and 56 to 57 below, were perpetrated [...] in locations across the Philippines during DUTERTE’s Presidency between around July 2016 and August 2017”).

<sup>47</sup> [Confirmation Decision](#), p. 46 and p. 49.

presumes this to be an error on the part of the Prosecution, rather than a deliberate attempt to mislead the Trial Chamber. Regardless, its addition must be rejected.

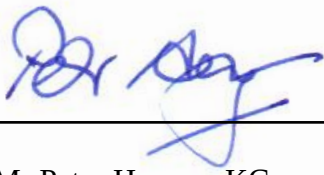
33. For the above reasons, each of the eight incidents constitute new material facts and therefore fall outside of the facts and circumstances of the case. The Trial Chamber was right to ask the Prosecution in May 2026 whether it would “apply” to add new incidents, and the Senior Trial Attorney was right to answer in the affirmative.<sup>48</sup> It is not enough that seven of the eight incidents fall within the charged period for each Count, nor that they have been put forward by the Prosecution as having the same (diverse) means of perpetration as the 49 confirmed incidents. Each incident rests upon fresh evidence and seeks to introduce an entirely new set of material facts, meaning authorisation is required.

## V. RELIEF REQUESTED

34. For the above reasons, the Defence respectfully requests the Trial Chamber to:

**ORDER** the Prosecution to file a request for permission to add the eight new incidents to the charges, or, in the alternative,

**ORDER** the Prosecution to strike the eight incidents from its Trial Brief, as they exceed the facts and circumstances described in the charges.




---

Mr Peter Haynes, KC  
Counsel for Mr Rodrigo Roa Duterte

Dated this 15<sup>th</sup> day of September 2026  
At The Hague, the Netherlands

---

<sup>48</sup> [27 May Status Conference](#), p. 27, ln. 2-4