

**Cour
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**International
Criminal
Court**

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Date of the original: 9 October 2026

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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 redacted version of
Decision on the Defence's motions on the charges**

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☒ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the
Defence

☐ States' Representatives

☐ Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations
Section

☐ Other

TRIAL CHAMBER III (the ‘Chamber’) of the International Criminal Court, in the case of *The Prosecutor v. Rodrigo Roa Duterte*, pursuant to Articles 64(2) and (6)(f), 67(1)(a) and (b), and 74(2) of the Rome Statute (the ‘Statute’), and Rule 134(1) of the Rules of Procedure and Evidence (the ‘Rules’), issues this ‘Decision on the Defence’s motions on the charges’.

I. PROCEDURAL HISTORY

1. On 4 July 2025, the Prosecution submitted to Pre-Trial Chamber I (‘PTC I’) the Document Containing the Charges (the ‘DCC’) and its list of evidence.¹
2. On 18 July 2025, the Prosecution submitted the Pre-Confirmation Brief and updated the list of evidence.² The Prosecution subsequently clarified the scope of the charges, indicating that ‘the 49 incidents and 78 victims referenced in its DCC and PCB are intended as a non-exhaustive list’.³
3. On 23 April 2026, the PTC issued the ‘Decision on the confirmation of charges against Mr Rodrigo Roa Duterte’ (the ‘Confirmation Decision’).⁴
4. On 29 March 2026, the Defence submitted a request to the PTC seeking leave to appeal the Confirmation Decision in respect of two issues: first, ‘[w]hether the Pre-Trial Chamber erred by adopting a “flexible approach” and overbroadly delineating the

¹ Document Containing the Charges, ICC-01/21-01/25-178-Conf (a public lesser redacted version was filed on 13 February 2026, ICC-01/21-01/25-178-Red2)); Prosecution’s Submission of the List of Evidence, ICC-01/21-01/25-180, with confidential Annex A.

² Prosecution’s Submission of an Updated List of Evidence, ICC-01/21-01/25-200, with confidential Annex A. The Prosecution subsequently filed the Prosecution’s Submission of the Second Updated List of Evidence, 13 February 2026, ICC-01/21-01/25-378, with confidential Annex A; and the Prosecution’s Submission of the Third Updated List of Evidence, 20 February 2026, ICC-01/21-01/25-391, with confidential Annex A (the ‘Prosecution’s List of Evidence’).

³ Prosecution’s Clarification on the Proposed Scope of the Charges, 8 December 2025, ICC-01/21-01/25-330, para. 7. *See also* Defence Response to the Prosecution’s Clarification on the Proposed Scope of the Charges (ICC-01/21-01/25-330), 10 December 2025, ICC-01/21-01/25-332; Observations on behalf of Victims on the Prosecution’s Clarification on the Proposed Scope of the Charges, 10 December 2025, ICC-01/21-01/25-333.

⁴ Public redacted version of ‘Decision on the confirmation of charges against Mr Rodrigo Roa Duterte’, ICC-01/21-01/25-417-Red (the ‘Confirmation Decision’). *See also*, Transcript of hearing, 23 February 2026, ICC-01/21-01/25-T-004-Red-ENG; Transcript of hearing, 24 February 2026, ICC-01/21-01/25-T-005-ENG; Transcript of hearing, 26 February 2026, ICC-01/21-01/25-T-006-Red-ENG; Transcript of hearing, 27 February 2026, ICC-01/21-01/25-T-007-Red-ENG.

scope of the charges’; and second, ‘[w]hether the Pre-Trial Chamber erred in law by failing to articulate a reasoned evidentiary basis for confirming the charges’.⁵

5. On 4 May 2026, the Prosecution⁶ and the CLRVs⁷ opposed the Defence request for leave to appeal.

6. On 21 May 2026, the PTC issued the ‘Decision on the Defence’s ‘Request for Leave to Appeal the Decision on the Confirmation of Charges’, rejecting the request.⁸

7. On 27 May 2026, during the first status conference, the Chamber established 31 August 2026 as the deadline for the Prosecution to add any new incidents in accordance with the Confirmation Decision.⁹

8. On 31 August 2026, the Prosecution gave notice by email of the addition of eight new incidents which were included in its Trial Brief filed on 4 September 2026 (the ‘Prosecution’s Trial Brief’).¹⁰

9. On the same date, the Defence filed a motion pursuant to Rule 134(1) of the Rules on the form of the charges (the ‘First Motion’).¹¹

10. On 10 September 2026, the Prosecution and CLRVs filed responses to the Defence’s First Motion (the ‘First Response’ and the ‘CLRVs’ Response’, respectively).¹²

⁵ Defence’s Request for Leave to Appeal the Decision on the Confirmation of Charges, ICC-01/21-01/25-422 (the ‘Defence Request for leave to appeal the Confirmation Decision’).

⁶ Prosecution’s response to “Defence Request for Leave to Appeal the Decision on the Confirmation of Charges”, ICC-01/21-01/25-428.

⁷ Victims’ Response to the “Defence Request for Leave to Appeal the Decision on the Confirmation of Charges (ICC-01/21-01/25-417-Conf)”, ICC-01/21-01/25-427.

⁸ Decision on the Defence’s “Request for Leave to Appeal the Decision on the Confirmation of Charges”, ICC-01/21-01/25-445 (the ‘Decision on the Defence’s request for leave to appeal the Confirmation Decision’).

⁹ Transcript of hearing, ICC-01/21-01/25-T-009-Red-ENG, p. 47.

¹⁰ See Email from the Prosecution, 31 August 2026, at 11:31. See also Prosecution’s Trial Brief, ICC-01/21-01/25-490-Conf (a public redacted version was filed on the same date, ICC-01/21-01/25-490-Red), paras 245-261 (Incidents 50-54), paras 234-237 (Incident 55) and paras 161-164 (Incident 56).

¹¹ Defence Rule 134(1) Motion on the Form of the Charges, 31 August 2026, ICC-01/21-01/25-487.

¹² Prosecution’s Response to the “Defence Rule 134(1) Motion on the Form of the Charges”, ICC-01/21-01/25-499; Victims’ Response to the Defence Rule 134(1) Motion on the Form of the Charges (ICC-01/21-01/25-487), ICC-01/21-01/25-498.

11. On 11 September 2026, the Defence filed a second motion requesting a judicial determination on the Prosecution's eight additional incidents (the 'Second Motion').¹³

12. On 14 September 2026, the Prosecution submitted its response to the Second Motion (the 'Second Response').¹⁴

13. On 16 September 2026, the CLRVs informed the Chamber that they supported the Second Response and did not intend to file a response to the Second Motion.¹⁵

II. SUBMISSIONS

A. Defence's motions

14. In its First Motion, the Defence submits that the DCC, which the Prosecution framed around illustrative and non-exhaustive incidents, violates the Accused's rights to be informed in detail of the nature, cause and content of the charges under Article 67(1)(a) of the Statute.¹⁶ The Defence further challenges the 'entirely novel' framing of the DCC, averring that broad topical headings have been elevated to the status of counts allegedly committed over an extended period and across a large geographical area.¹⁷ The Defence asserts that the charges are 'a moving target'¹⁸ and expresses concerns that the 'current landscape of crimes in this case' is 'virtually unlimited'.¹⁹ As a result, the Defence submits that the Accused has no notice of what he will face at trial.²⁰

15. The Defence requests the 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

¹³ Defence Motion Requesting a Judicial Determination on the Prosecution's Eight Additional Incidents, ICC-01/21-01/25-502-Conf (a public redacted version was filed on 15 September 2026, ICC-01/21-01/25-502-Red).

¹⁴ Corrected version of the "Prosecution Response to 'Defence Motion Requesting a Judicial Determination on the Prosecution's Eight Additional Incidents'", ICC-01/21-01/25-504-Conf-Corr (a public redacted version was filed on 22 September 2026, ICC-01/21-01/25-504-Corr-Red).

¹⁵ See Email from the CLRV, 16 September 2026, at 8:20.

¹⁶ First Motion, paras 1, 11-12, 15, 17, 19.

¹⁷ First Motion, paras 2-12.

¹⁸ First Motion, paras 18-19.

¹⁹ First Motion, para. 16.

²⁰ First Motion, paras 12, 17.

acts which represent the entirety of the charges against the accused’ pursuant to Article 61(9) of the Statute.²¹

16. In its Second Motion, the Defence submits that the DCC as confirmed cannot be amended without seeking prior judicial authorisation from the PTC pursuant to Article 61(9) of the Statute.²² The Defence argues that the eight proposed new incidents exceed the scope of the confirmation decision, and that the Prosecution ‘must therefore seek the permission of the Pre-Trial Chamber to amend the charges’.²³ The Defence notes that the ‘unusual framing of the charges’ makes it ‘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’.²⁴

17. The Defence further submits that the eight proposed new incidents exceed the scope of the Confirmation Decision as the Prosecution seeks to add the incidents ‘based on fresh evidence that constitute new material facts, not “further specification” of the confirmed charges’.²⁵ Specifically, the Defence argues that except for Incident 55 (Count 3), which appears to be situated in the same barangay as Incident 21, albeit some 2.5 kilometres away, the remaining seven new incidents (Incidents 50 to 54 (Count 3) and Incidents 56 and 57 (Count 2)) concern new locations that do not form part of the charged locations.²⁶ The Defence further avers that the eight new incidents relate to different primary perpetrators, victims and dates from the charged incidents and therefore ‘fall outside of the facts and circumstances described in the charges’.²⁷

18. Additionally, the Defence argues that Incident 57 also falls outside the temporal scope of Count 2 established in the Confirmation Decision. Whereas Incident 57 is

²¹ First Motion, paras 1, 21.

²² Second Motion, paras 9, 14.

²³ Second Motion, paras 14.

²⁴ Second Motion, para. 23.

²⁵ Second Motion, para. 26.

²⁶ Second Motion, paras 26-31.

²⁷ Second Motion, paras 27-31.

alleged to have occurred ‘on or about [REDACTED]’, Count 2 is limited to the period between around July 2016 and July 2017’.²⁸

19. The Defence therefore requests the Chamber to order the Prosecution to file a request for authorisation 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.²⁹

B. Prosecution’s responses

20. In its First Response, the Prosecution submits that the Defence fails to recognise the important distinction between the question of legal adequacy of the charges under Article 74(2) and the right to notice under Article 67(1)(a) of the Statute.³⁰ As regards the legal adequacy of the charges, the Prosecution argues that: (i) ‘questions [regarding] the form of charges are a matter for confirmation proceedings, not trial’;³¹ (ii) the Defence fully participated in the substantive proceedings to confirm the charges, including an unsuccessful request for leave to appeal;³² (iii) the Defence’s challenges to the scope of the charges are incorrect and insufficient to show any defect in the form of the confirmed charges;³³ and (iv) the ‘three counts have a clear temporal, geographical and material scope consistent with the requirements of Article 74(2) of the Statute’.³⁴

21. The Prosecution argues that the Defence’s assertion that the Accused had no notice under Article 67(1)(a) is incorrect ‘since 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’.³⁵ The Prosecution further submits that it ‘expressly

²⁸ Second Motion, paras 31-32. *See also* Confirmation Decision, para. 75 (Count 2 is framed as follows: **Count 2:** Murder as a crime against humanity of ‘High-Value Targets’ in locations across the Philippines during the Presidential period of at least the 14 victims of Incidents 10 to 14, between around July 2016 and July 2017, pursuant to articles 7(1)(a) and 25(3)(a) (indirect co-perpetration) and/or 25(3)(b) (ordering and/or inducing) and/or 25(3)(c) (aiding and abetting)).

²⁹ Second Motion, para. 34.

³⁰ First Response, paras 3-4, 7.

³¹ First Response, para. 9.

³² First Response, para. 9.

³³ First Response, para. 12.

³⁴ First Response, para.12.

³⁵ First Response, paras 18, 19.

notified’ the Defence about the addition of eight new incidents and provided ‘specific information about each’ in advance of the 31 August 2026 deadline set by the Chamber.³⁶

22. In its Second Response, the Prosecution recalls the submissions it made in its First Response,³⁷ as in its view the Defence’s Second Motion duplicates the First Motion.³⁸ The Prosecution submits that there is no basis for the relief sought by the Defence because the eight additional incidents ‘fall squarely within the parameters of the confirmed charges’.³⁹ As to the Defence’s submission that Incident 57 falls outside the temporal scope of the charges because it occurred [REDACTED], the Prosecution asserts that the Defence is ‘ignoring the Chamber’s express incorporation of the word “around” and therefore misinterpreting [REDACTED] 2017 as a fixed endpoint’.⁴⁰ For the reasons set out above, the Prosecution requests that the Defence’s First and Second Motions be dismissed.

C. CLRVs’ response

23. The CLRVs submit that the Defence’s First Motion should be dismissed *in limine* as it ‘constitutes an impermissible attempt to relitigate the Confirmation Decision’.⁴¹ The CLRVs aver that the Defence’s arguments ‘are not new procedural issues concerning the conduct of proceedings under Rule 134(1) of the Rules [...] [r]ather they concern the very manner in which the Pre-Trial Chamber determined the permissible scope of the charges and confirmed them’.⁴² The CLRVs note that, in its request for leave to appeal the Confirmation Decision, the Defence expressly raised arguments that are materially indistinguishable from the central premise of its First Motion,⁴³ which were rejected by the PTC.⁴⁴ The CLRVs argue that the First Motion ‘amounts to an attempt to obtain from the Trial Chamber the reconsideration of the Confirmation Decision’ and that the Defence ‘cannot circumvent the Pre-Trial

³⁶ First Response, paras 18, 19.

³⁷ Second Response, para. 4.

³⁸ Second Response, para. 3.

³⁹ Second Response, para. 6.

⁴⁰ Second Response, para. 7.

⁴¹ CLRVs’ Response, paras 12-17.

⁴² CLRVs’ Response, para. 13.

⁴³ CLRVs’ Response, para. 14.

⁴⁴ CLRVs’ Response, para. 14.

Chamber's rejection of its request for leave to appeal by recasting substantially the same challenge as a rule 134(1) motion [...].⁴⁵

24. In the alternative, the CLRVs submit that the First Motion should be rejected on the merits. The CLRVs argue that: (i) the Defence's objections conflate the Accused's rights pursuant Article 67(1)(a) of the Statute and the delineation of the facts and circumstances of the charges pursuant to Article 74(2) of the Statute;⁴⁶ (ii) 'the Pre-Trial Chamber correctly applied the settled jurisprudence concerning the degree of specificity required in the formulation of charges';⁴⁷ and (iii) the non-exhaustive character of the incidents does not render the charges 'open-ended', 'fluid', or 'indeterminate'.⁴⁸ The CLRVs note that, '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'.⁴⁹

III. ANALYSIS

25. The Chamber observes that the First and Second Motions submitted by the Defence raise interrelated issues.⁵⁰ The Chamber has therefore considered the motions together. The Chamber assesses each of the requests in turn.

A. Request for order to re-file a document containing the charges

26. At the outset, the Chamber notes that while the Defence's First Motion purports to seek relief on the basis that the Accused's right to notice under Article 67(1)(a) of the Statute has been violated,⁵¹ the essence of the Defence's arguments, in fact, challenge the form, scope and specificity of the charges, as confirmed.⁵²

27. The Appeals Chamber has addressed the formulation of charges under Article 74(2) of the Statute, clarifying that the question of timely and sufficient notice of the

⁴⁵ CLRVs' Response, paras 16, 21.

⁴⁶ CLRVs' Response, para. 23.

⁴⁷ CLRVs' Response, para. 24.

⁴⁸ CLRVs' Response, paras 26-31.

⁴⁹ CLRVs' Response, paras 29-30.

⁵⁰ Transcript of hearing, 16 September 2026, ICC-01/21-01/25-T-011-Conf-ENG, p. 29.

⁵¹ See First Motion, para. 1.

⁵² See, for example, First Motion, paras 3-18.

charges under Article 67(1)(a) is a distinct issue.⁵³ The Chamber, therefore, considers first, whether it may reconsider the charges confirmed by the Pre-Trial pursuant to Article 74(2) and second, the issue of sufficiency of notice under Article 67(1)(a).

i. Whether the Trial Chamber may reconsider the charges confirmed by the Pre-Trial Chamber pursuant Article 74(2) of the Statute

28. The Court's statutory regime sets out a detailed framework for determining the charges. As the Appeals Chamber has held, the factual scope of the charges is delineated in the course of pre-trial proceedings.⁵⁴ Article 61(9) of the Statute provides that after the charges are confirmed, but before the trial has begun, the Prosecutor can amend the charges with the permission of the pre-trial chamber.⁵⁵ While the trial chamber may exercise pre-trial functions that are capable of application prior to or during trial proceedings,⁵⁶ this does not extend to functions that are exclusively assigned to the pre-trial chamber, such as those enshrined within article 61(9) of the Statute.⁵⁷

⁵³ Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Public redacted version of Judgment on the appeals of Mr Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled "Judgment", 30 March 2021, ICC-01/04-02/06-2666-Red ('Ntaganda Appeal Judgment'), paras 322-326. See also Confirmation Decision, para. 17.

⁵⁴ *Ntaganda Appeal Judgment*, para. 325; Appeals Chamber, *The Prosecutor v. Thomas Lubanga*, Public redacted version of Judgment on the appeal of Mr Thomas Lubanga against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red ('Lubanga Appeal Judgment'), para. 124; Appeals Chamber, *The Prosecutor v. Bemba et al*, Public redacted version of Judgment on the appeals of Mr Jean-Pierre Bemba Gombo et al, against the decision of Trial Chamber VII entitled "Judgment pursuant to Article 74 of the Statute", 8 March 2018, ICC-01/05-01/13-2275-Red (*Bemba et al Appeal Judgment*), paras 196-197.

⁵⁵ See *Bemba et al Appeal Judgment*, para. 197.

⁵⁶ See article 64 (6)(a), read with article 61(11) of the Statute.

⁵⁷ *Bemba et al Appeal Judgment*, para. 197. Specifically, article 61(11) provides '[o]nce the charges have been confirmed in accordance with this article, the Presidency shall constitute a Trial Chamber which, **subject to paragraph 9** and to article 64, paragraph 4, shall be responsible for the conduct of subsequent proceedings and may exercise any function of the Pre-Trial Chamber that is relevant and capable of application in those proceedings' (emphasis added). See Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Defence Motions Alleging Defects in the Confirmation Decision, 7 March 2019, ICC-02/04-01/15-1476 ('Ongwen Decision on Alleged Defects in the Confirmation Decision'), para. 21, referring to, relevantly, Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeals of Mr Lubanga Dyilo and the Prosecutor against the Decision of Trial Chamber I of 14 July 2009 entitled "Decision giving notice to the parties and participants that the legal characterisation of the facts may be subject to change in accordance with Regulation 55(2) of the Regulations of the Court", 8 December 2009, ICC-01/04-01/06-2205, OA15-OA16 ('Lubanga Regulation 55 Appeal Judgment'), para. 77 (distinguishing Article 61(9) from the trial chamber power under Regulation 55 of the Regulations of the Court by explaining that these provisions 'address different powers of different entities at different stages of the procedure'). See also Chambers Practice Manual, as amended on 21 October 2024, para. 62, which provides that 'after the charges are confirmed (in whole or in part) by the Pre-Trial Chamber there shall be no discussion or litigation at trial as to their formulation, scope or content'.

29. Moreover, the Chamber observes that Article 61(9) of the Statute addresses the powers of the Prosecutor to seek an amendment to the charges at his or her own initiative.⁵⁸ In the instant case, the Prosecutor has not sought any such amendment to the charges under this provision.

30. In the context of confirmed charges, the Appeals Chamber has explicitly held that the trial chamber does ‘not have the “option” to request the Prosecutor to “update” the charges as confirmed by the Pre-Trial Chamber’.⁵⁹ Indeed, the Appeals Chamber observed that ‘an “updated” document containing the charges is “neither appropriate nor compatible with the procedural regime set out in the Statute” as it undermines the authority of the decision on confirmation of charges to serve as the operative document for the trial’.⁶⁰

31. In the present case, the Chamber recalls that the matters in respect of which the Defence seeks the Chamber’s intervention have been extensively litigated before, and determined by, PTC I.⁶¹ In considering the Defence’s request for leave to appeal the Confirmation Decision,⁶² PTC I affirmed that it had ‘clearly set out in paragraphs 17-24 of the Confirmation Decision the basis for the delineation of the charges as confirmed for the purposes of article 74(2) of the Statute’, applying relevant and settled jurisprudence of the Court.⁶³ As the CLRVs observe, the First Motion amounts to an attempt to re-litigate, and obtain from the Trial Chamber reconsideration of, the Confirmation Decision.⁶⁴ In this regard, the Chamber observes that trial chambers do not have appellate jurisdiction over the work of pre-trial chambers.⁶⁵

⁵⁸ *Lubanga* Regulation 55 Appeal Judgment, para. 77; *Prosecutor v. William Samoei Ruto and Joshua Arap 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”, 13 December 2013, ICC-01/09-01/11-1123, para. 30.

⁵⁹ *Bemba et al* Appeal Judgment, para. 197. See also *Lubanga* Regulation 55 Appeal Judgment, para. 94.

⁶⁰ *Bemba et al* Appeal Judgment, para. 197.

⁶¹ Confirmation Decision, paras 17-24; Decision on the Defence’s request for leave to appeal the Confirmation Decision, paras 5-15.

⁶² Defence Request for leave to appeal the Confirmation Decision.

⁶³ Decision on the Defence’s request for leave to appeal the Confirmation Decision, paras 8-15, referring to Confirmation Decision, paras 18, 20, citing the *Ntaganda* Appeal Judgment, paras 5, 326.

⁶⁴ CLRVs’ Response, paras 16, 21.

⁶⁵ *Ongwen* Decision on Alleged Defects in the Confirmation Decision, para. 15; Trial Chamber I, *The Prosecutor v. Thomas Lubanga Dyilo*, Decision on the status before the Trial Chamber of the evidence heard by the Pre-Trial Chamber and the decisions of the Pre-Trial Chamber in trial proceedings, and the manner in which evidence shall be submitted, 13 December 2007, ICC-01/04-01/06-1084, para. 43.

32. Having regard to the foregoing, the Chamber finds that it is not vested with the authority to order the Prosecution to re-file a document before the Pre-Trial Chamber that reframes the charges.

ii. Rights of the Accused pursuant to Articles 67(1)(a) and (b)

33. Article 67(1)(a) provides that the accused shall be ‘informed promptly and in detail of the nature, cause and content of the charge[s], in a language which the accused fully understands and speaks’. This provision must be read in conjunction with Article 67(1)(b) of the Statute, which provides that the accused must have adequate time and facilities for the preparation of the defence.

34. 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’.⁶⁶ The Appeals Chamber has determined that 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’.⁶⁷

35. In the instant case, the Chamber considers that the charges, as confirmed, together with additional information provided in the course of the confirmation proceedings and through auxiliary pre-trial documents, provide the Accused with sufficient notice to enable the Accused to prepare his defence in accordance with Articles 67(1)(a) and (b) of the Statute.⁶⁸

36. The Defence’s allegation that the charges are ‘a moving target’⁶⁹ ignores the procedural safeguards taken by the Chamber in this regard. Bearing in mind the rights of the Accused pursuant to Article 67(1)(a) and (b) of the Statute, the Chamber

⁶⁶ Appeal Chamber, *The Prosecutor v. Dominic Ongwen*, Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled “Trial Judgment”, ICC-02/04-01/15-2022 Red (‘Ongwen Appeal Judgment’), para. 235.

⁶⁷ See *Ongwen Appeal Judgment*, para 234 (citing *Lubanga Appeal Judgment*, para. 129; *Ntaganda Appeal Judgment*, para. 322), 259.

⁶⁸ See e.g. *Lubanga Appeal Judgment*, paras 124, 132; *Ntaganda Appeal Judgment*, para. 325.

⁶⁹ First Motion, para. 19.

established 31 August 2026 as the deadline for the Prosecution to add new incidents (discussed further below) and file auxiliary pre-trial documents, including its Trial Brief, List of Evidence and List of Witnesses.

37. Furthermore, the Chamber notes that the witnesses related to the eight new incidents are not expected to be called during the first months of trial.⁷⁰ The Chamber expects the parties to engage in discussion to ensure that no witness relating to the additional incidents is called to give evidence before the Defence has had reasonable time to prepare.

B. The eight proposed new incidents

38. The Chamber recalls that, pursuant to Article 64(2) of the Statute, it is required to ensure that the trial is fair and expeditious. The Chamber further recalls that its decision pursuant to Article 74 of the Statute shall not exceed the facts and circumstances described in the charges and any amendments thereto. Moreover, given the link between the right of the accused to be informed in detail of the nature, cause and content of the charges and the right to prepare one's defence under Articles 67(1)(a) and (b) of the Statute, the Chamber may take into account only information made available before the start of the trial hearings for the purposes of its Article 74 decision.⁷¹

39. Bearing in mind the circumstances of this case, PTC I determined in its Confirmation Decision that requiring the Prosecution to provide an exhaustive list of all incidents falling within the charged criminality was unwarranted.⁷² Instead, PTC I concluded that a broad approach to the scope of the charges through 'illustrative examples of relevant incidents', was necessary to capture the extent of the Accused's alleged criminality.⁷³ In this regard, PTC I affirmed:

[...] based upon the non-exhaustive list of incidents set out in any charges that may be confirmed, the Trial Chamber as well as the parties and participants in any potential trial of Mr Duterte will be able to identify which historical events are covered by the charges, i.e. the time during which and an area where

⁷⁰ Prosecution's Submission of the List of Witnesses and the List of Evidence, ICC-01/21-01/25-488, Annex A.

⁷¹ Lubanga Appeal Judgment, para. 129. *See also* Confirmation Decision, para. 17.

⁷² Confirmation Decision, para. 23.

⁷³ Confirmation Decision, para. 23.

criminal acts were allegedly committed by an identifiable group of perpetrators against an identifiable group of victims.⁷⁴

40. In confirming the counts charged, PTC I observed that the murders and attempted murders were ‘illustrated by’ the applicable incidents.⁷⁵ PTC I, therefore, confirmed the charged murders and attempted murders of ‘at least’ the enumerated victims in Incidents 1 to 49.⁷⁶

41. In light of the above, PTC I found that the addition of incidents that would fall within the scope of the confirmed charges would not necessitate recourse to Article 61(9) of the Statute.⁷⁷ Indeed, PTC I foreclosed any suggestion that the Prosecution be required to come back to the Pre-Trial Chamber each time it identified one or more further incidents or victims falling within an already confirmed charge, noting that this ‘could potentially trigger a very large amount of parallel litigation’.⁷⁸ PTC I observed that such a requirement would be ‘practically unworkable’ and ‘could also result in significantly disrupting the orderly conduct of trial proceedings, ultimately adversely affecting the right of the accused to be tried expeditiously’.⁷⁹

42. Having regard to the foregoing, and in line with this Court’s jurisprudence, the Chamber finds that it is within the Chamber’s remit to consider the Prosecution’s proposed inclusion of additional incidents, which are illustrative of the charged crimes.

43. Considering, in particular, the rights of the Accused pursuant to Articles 67(1)(a) and (b) of the Statute, and following *inter partes* consultations, the Chamber set a deadline of 31 August 2026 if the Prosecution wished to add new incidents.⁸⁰ By email of 31 August 2026, the Prosecution gave notice of the inclusion of an additional eight incidents under Counts 2 (Incidents 56 and 57) and 3 (Incidents 50 to 55), attaching a

⁷⁴ Confirmation Decision, para. 24.

⁷⁵ Confirmation Decision, pp. 45-47, paras 24, 34, 40.

⁷⁶ Confirmation Decision, p. 49, referring to ‘at least the 19 victims of Incidents 1 to 9’ in respect of Count 1, ‘at least the 14 victims of Incidents 10 to 14’ in respect of Count 2 and ‘at least the 45 victims [...] of Incidents 15 to 49’ in respect of Count 3.

⁷⁷ Confirmation Decision, para. 24.

⁷⁸ Confirmation Decision, para. 21, *contra* Second Motion, paras 9, 14.

⁷⁹ Confirmation Decision, para. 21.

⁸⁰ Transcript of hearing, 27 May 2026, ICC-01/21-01/25-T-009-Red-ENG, p. 47.

courtesy copy of the summaries of the additional incidents from its Trial Brief.⁸¹ This was formalised with the filing of the Prosecution's Trial Brief on 4 September 2026.⁸²

44. Having regard to the foregoing, and recalling that notice may be given by way of auxiliary documents, such as the Trial Brief, prior to the commencement of the trial proceedings,⁸³ whilst the Chamber might have expected formal notice to be given by way of written Motion, it finds that the Prosecution provided the Defence with sufficient notice of the proposed inclusion of the additional incidents pursuant to Article 67(1) of the Statute.⁸⁴

45. The Chamber now turns to the question of whether the eight new incidents fall within the parameters of the charges. The Chamber recalls that PTC I confirmed the charges as follows⁸⁵:

Count 1: Murder as a crime against humanity in Davao City during the Mayoral period of at least the 19 victims of Incidents 1 to 9, between 2013 and around June 2016, pursuant to articles 7(1)(a) and 25(3)(a) (indirect co-perpetration) and/or 25(3)(b) (ordering and/or inducing) and/or 25(3)(c) (aiding and abetting);

Count 2: Murder as a crime against humanity of 'High-Value Targets' in locations across the Philippines during the Presidential period of at least the 14 victims of Incidents 10 to 14, between around July 2016 and July 2017, pursuant to articles 7(1)(a) and 25(3)(a) (indirect co-perpetration) and/or 25(3)(b) (ordering and/or inducing) and/or 25(3)(c) (aiding and abetting);

Count 3: Murder and attempted murder as crimes against humanity in barangay clearance operations in locations across the Philippines during the Presidential period of at least the 45 victims (43 murders and two attempted murders) of Incidents 15 to 49, between around July 2016 and September 2018, pursuant to articles 7(1)(a) and/or 25(3)(f) and 25(3)(a) (indirect co-perpetration) and/or 25(3)(b) (ordering and/or inducing) and/or 25(3)(c) (aiding and abetting).

⁸¹ Email from the Prosecution, 31 August 2026, at 11:31.

⁸² Prosecution's Trial Brief, paras 245-261 (Incidents 50-54), paras 234-237 (Incident 55), paras 161-164 (Incident 56) and paras 176-180 (Incident 57).

⁸³ See *e.g.* *Lubanga* Appeal Judgment, paras 124, 132; *Ntaganda* Appeal Judgment, para. 325. See also *above*, paras 35-35.

⁸⁴ The Chamber notes that while initial notice of the inclusion of the additional incidents was provided by email, rather than by filing (as a result of the extension granted until 4 September 2026 for the filing of the Prosecution's Trial Brief), given that the email attached summaries of the incidents from the Trial Brief, and the Trial Brief was filed shortly thereafter and well in advance of the commencement of the trial proceedings, the Chamber finds that the notice was sufficient.

⁸⁵ Confirmation Decision, p. 49.

46. In contemplating further specification of the charges, PTC I observed that:

‘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.’⁸⁶

47. Having considered the submissions of the parties and participants as set above, the formulation of the charges, and the relevant jurisprudence of the Appeal Chamber,⁸⁷ the Chamber finds that, contrary to the Defence’s submissions,⁸⁸ Incidents 50 to 55, under Count 3, and Incident 56, under Count 2, all *prima facie* fall within the factual, geographical and temporal scope of the charges. Consistent with Count 3, Incidents 50 to 55 relate to alleged murders which purportedly occurred in ‘locations across the Philippines’ ‘between around July 2016 and September 2018’.⁸⁹ Similarly, consistent with Count 2, Incident 56 relates to the alleged murder of a ‘High-Value Target’, which purportedly occurred in a location ‘across the Philippines’ ‘between around July 2016 and July 2017’.⁹⁰ The Chamber therefore finds that Incidents 50 to 56 do not exceed the scope of the charges within the meaning of Article 74(2) of the Statute.

48. Regarding Incident 57, under Count 2, the Chamber is satisfied that the incident falls within the factual and geographical scope of the charges and is consistent with the scale and criminal pattern of the conduct that the Prosecution is required to prove at trial as it relates to the alleged murder of a ‘High-Value Target’ in a location across the Philippines.⁹¹

49. As to whether Incident 57 falls within the temporal scope of the charges, the Chamber notes that it has the discretion to decide whether the formulation of the temporal scope of Count 2, ‘between around July 2016 and July 2017’ encompasses an event happening ‘on or about [REDACTED]’.

⁸⁶ Confirmation Decision, para. 22.

⁸⁷ *Ntaganda* Appeal Judgment, paras 322-326.

⁸⁸ See Section II, A above.

⁸⁹ Confirmation Decision, p. 49. As detailed in the Prosecution’s Trial Brief, paras 245-261 (Incidents 50-54) and paras 234-237 (Incident 55).

⁹⁰ Confirmation Decision, p. 49. As detailed in the Prosecution’s Trial Brief, paras 161-164 (Incident 56).

⁹¹ Confirmation Decision, para. 34, p. 49. As detailed in the Prosecution’s Trial Brief, paras 176-180 (Incident 57).

50. The Chamber finds that by delimiting the charged period in Count 2 to the period ‘*between around (sic) July 2016 and July 2017*’, PTC I set temporal parameters to the charged conduct. In the temporal context, the word ‘between’ means during the time period that separates two specific points in time or events. This necessarily connotes a precise interval of time, defined by a beginning and an end point. The Chamber finds that, while the term ‘around’ may allow for a greater degree of flexibility in the context of a specific charged event,⁹² it would be inappropriate to apply the same degree of flexibility to the charged period in the instant case.

51. The acts alleged in the DCC and confirmed by PTC I, based on the evidence available at the time of the confirmation proceedings, occurred between July 2016 and July 2017. In the Chamber’s view, the Prosecution cannot now be permitted to broaden the temporal scope of the confirmed charges beyond the defined period the Prosecution itself established.

52. Noting the breadth of Count 2’s geographical scope, and the flexibility otherwise afforded to the Prosecution in adding new incidents, the Chamber deems that it is incumbent upon it to clearly apply the temporal parameters of the confirmed charges. Doing so safeguards the right of the Accused to be able to understand with sufficient clarity the facts and circumstances underlying the charges and to meaningfully prepare his defence. Accordingly, the Chamber finds that Incident 57 falls outside the scope of the charges and that its consideration as part of the charged conduct would exceed the facts and circumstances described in the charges within the meaning of Article 74(2) of the Statute.

⁹² In this regard, the Chamber notes, for example, limitations on witnesses’ abilities to recall exact dates on which events occurred and the possibility that different witnesses may have provided slightly different dates.

FOR THESE REASONS, THE CHAMBER HEREBY

REJECTS the Defence's First Motion.

PARTIALLY GRANTS the Defence's Second Motion.

ORDERS the Prosecution to update by 16 October 2026 its List of Witnesses, List of Evidence and Trial Brief to reflect the removal of Incident 57.

Done in both English and French, the English version being authoritative.



Judge Joanna Korner
Presiding Judge



Judge Keebong Paek



Judge Nicolas Guillou

Dated this **9 October 2026**

At The Hague, The Netherlands