



INSTITUTE OF INTERNATIONAL LEGAL STUDIES

FREQUENTLY ASKED QUESTIONS ON THE ARREST, SURRENDER, AND PROCEEDINGS INVOLVING FORMER PRESIDENT DUTERTE AT THE INTERNATIONAL CRIMINAL COURT

Frequently Asked Questions

A. Overview

1. What was the basis of the arrest of former President Rodrigo Duterte?

The Pre-Trial Chamber I (PTC) of the International Criminal Court (ICC) issued a warrant of arrest against Mr. Duterte,¹ after a request for the issuance of the same was made by the Office of the Prosecutor (OTP) which had been investigating the killings that occurred in the course of the so-called “war on drugs,” officially referred to by the ICC as the Situation in the Republic of the Philippines. A warrant of arrest is issued when “[t]here are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the [ICC]” and the “arrest of the person appears necessary” to (a) ensure the person’s appearance at trial; (b) ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (c) where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the [ICC] and which arises out of the same circumstances. [Art. 58(1), Rome Statute]

The PTC found **reasonable grounds to believe** that Mr. Duterte was individually responsible as an indirect co-perpetrator for **crimes against humanity of murder** between November 1, 2011 and March 16, 2019.² The PTC determined that he, as head of the “Davao Death Squad” and subsequently as the President of the Philippines, perpetrated an attack directed at a civilian population pursuant to an organizational policy during the period he was in power, punishable under Article 7(1) of the Statute.³ The ICC finds that the issuance of the arrest warrant is necessary to ensure Mr. Duterte’s appearance before the court as “there is no reasonable expectation that he would cooperate with a summons to appear issued by the Court.”⁴

2. How could the ICC have issued a warrant of arrest when the Philippines is no longer a state party to the Rome Statute?

In 2021, another PTC of the ICC had previously determined that it retains jurisdiction over the alleged crimes that occurred in the country while the Philippines was a State Party, from November 2011 until March 2019.⁵ Moreover, the Rome Statute provides that a State’s withdrawal from the Statute shall not

¹April 29, 2025, Prepared by the International Criminal Law Program, UP Institute of International Legal Studies, University of the Philippines Law Center

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This document was prepared to provide the media, the public, and officials with basic information on the arrest, surrender, and proceedings involving Former President Duterte at the International Criminal Court. Opinions on novel issues are the personal academic views of the authors and do not reflect those of the U.P. College of Law.

²Warrant of Arrest for Mr. Rodrigo Roa Duterte, Pre-Trial Chamber I, I.C.C. 01/21 at 5 (2025).

³*Id.* at 5-7.

⁴*Id.* at 6.

⁵*Id.* at 13.

⁶Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I’s “Authorisation pursuant to article 18(2) of the Statute to resume the investigation”, Appeals Chamber, I.C.C. 01-21 at 38 par. 111 (2023).

“prejudice in any way the continued consideration of any matter which was already under consideration by the Court prior to the date on which the withdrawal became effective.” [Art. 127(2), Rome Statute]

One view posits that since the preliminary examination had begun prior to the effectivity of the withdrawal on 17 March 2019, then the matter being investigated in the Situation in the Republic of the Philippines could continue to be examined because it is not prejudiced by the withdrawal. This view has been acknowledged by the Supreme Court of the Philippines when it made reference to Art. 127(2) and stated that “[w]ithdrawing from the Rome Statute does not discharge a state party from the obligations it has incurred as a member.” (*Pangilinan v. Cayetano*, G.R. Nos. 238875, 239483 & 240954, 2021)

The other view, which is articulated in the dissent of the Appeals Chamber Judges when the PTC’s authorization of the investigation was appealed, advances that because the authorization for the investigation was granted by the PTC only in 2021, or beyond March 17, 2019 when the withdrawal had become effective, then jurisdiction could not be exercised anymore. [Art. 12, Rome Statute] Under this view, a preliminary examination conducted solely by the OTP is not a matter under consideration by the Court.

3. Why is the ICC even in the picture when the Rome Statute puts primacy on complementarity?

Complementarity is the principle that allows States Parties to investigate and prosecute persons (who could be their nationals) at the first instance. It operationalizes the balance between accountability and state sovereignty by allowing the state to first pursue the matter before the ICC can step in. If complementarity is not respected, the case could be deemed inadmissible before the ICC. Article 17 provides, in part:

[T]he Court shall determine that a case is inadmissible where:

- (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
- (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
- (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
- (d) The case is not of sufficient gravity to justify further action by the Court. [Art. 17, Rome Statute]

However, complementarity only applies when the state is still a State Party to the Rome Statute. Moreover, even assuming that it applies to the Philippines, the PTC had already determined in its decision authorizing the investigation into the Philippines that the cases and proceedings in the Philippines demonstrate its unwillingness to investigate or prosecute the architects of the “war on drugs” and therefore, do not satisfy, the “same conduct/same person test” that is used to test for compliance with complementarity in relation to admissibility.

4. Given that there was a warrant of arrest that could be implemented, could it be said that the arrest of Mr. Duterte was illegal?

At least four views have emerged regarding this question.

The **first view** posits that the Philippine government can surrender the person of Mr. Duterte to the ICC because Philippine law allows such surrender. The law states that “[i]n the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under [Republic Act No. 9851] if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties. [Sec. 17, RA 9851]

The **second view** articulates that the Rome Statute sets out a procedure for the implementation of the warrant of arrest and the conduct of the arrest. Upon the issuance of a warrant of arrest, the Court may transmit a request for the arrest and surrender of a person, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. [Art. 89(1), Rome Statute]

Upon arrest, which should have been conducted immediately upon receipt of the warrant, the person shall then be brought before a competent judicial authority in the custodial State to determine, in accordance with the law of the custodial State, whether:

- (a) the warrant applies to that person;
- (b) the person has been arrested in accordance with the proper process; and
- (c) the person’s rights have been respected.

This view construes “competent judicial authority” as a court, and since Mr. Duterte was not brought before a Philippine court, Art. 59 had not been complied with.

The **third view** states that Art. 59 of the Rome Statute does not apply because it applies only to States Parties to the Rome Statute. Since the Philippines is no longer a State Party, then it has no obligation to comply with Art. 59. Without Art. 59, only the minimum constitutional rights should be observed, i.e. reading of the Miranda rights and informing the person of the basis of the arrest. This view also articulates that the ICC would not be concerned with the question of legality or illegality of the person’s arrest or transfer to the ICC.

The **fourth view** accepts that Art. 59 applies even when the Philippines is no longer a party to the Rome Statute because the relevant text addresses the custodial State. This view, however, posits that Art. 59 had been complied with because Philippine authorities had informed Mr. Duterte of the basis of his arrest in a language he understood, was read his constitutional rights and was actually advised by counsel, and was brought before the Prosecutor-General. This procedure is sufficient under the precedents of the ICC which

had interpreted Art. 59 as providing states with flexibility in designing a procedure that complies with the Rome Statute.⁶

Adopting any of these four views would have to engage with the question of which law primarily governs this situation – Philippine law or international law. The author of this work is of the view that it is international law that governs, subject to the observances of relevant constitutional rights.

5. Could warrants of arrest be issued against persons apart from Mr. Duterte?

Yes. The Situation in the Republic of the Philippines is still at the investigation stage and could identify more persons whom the OTP could determine should also be charged with the crimes they identify as having been committed in the same Situation being investigated.

B. Initial Proceedings

6. What happens after a person is arrested?

The person arrested is transferred or surrendered to the ICC. [Art. 59 (7), Rome Statute] Upon arrival at the ICC, the person arrested will make an initial appearance before the PTC to ensure that the suspect is informed of the crimes allegedly committed and of their rights under the Rome Statute. During this appearance, the date of the hearing for the confirmation of charges is set. [Art. 60 (1), Rome Statute]

When Mr. Duterte was arrested, he was informed of the charges against him, read his Miranda rights, and brought to the Villamor Airbase pending surrender to the ICC.⁷ On the same day as his arrest, Mr. Duterte was transported to the ICC in The Hague, Netherlands.⁸

7. What remedies may the arrested person avail at the initial appearance or thereafter?

A person subject to a warrant of arrest may apply for interim release pending trial. In order for interim release to be granted, the person arrested must prove to the satisfaction of the PTC that the conditions under Art. 58 (1) of the Rome Statute were not complied with or are no longer present. [Art. 60(2), Rome Statute]

An interim release may be coupled with conditions that will be set by the PTC such as the order to appear before the Chamber at the date, time, place, and in the manner ordered by the Chamber.⁹ The decision on the application for interim release may be periodically reviewed at any time on its own, or by the request of either party.

Last March 14, 2025, Mr. Duterte made an initial appearance before the ICC judges where the Chamber satisfied itself that Mr. Duterte has been informed of the crimes which he is alleged to have committed, and

⁶ Decision on the applicability of article 101 of the Rome Statute in the proceedings against Dominic Ongwen, Situation in Uganda, In the case of the Prosecutor v. Dominic Ongwen.

⁷ D. Dizon, 'Marahan, tahimik, hindi pinuwersa': DOJ says Duterte arrest followed due process, ABS-CBN News Online (Mar. 13, 2025), <https://www.abs-cbn.com/news/nation/2025/3/12/duterte-touches-down-in-the-netherlands-to-face-icc-drug-war-case-2355>; J.E. Mendoza, *Ex-President Rodrigo Duterte now at Villamor Airbase*, Philippine Daily Inquirer Online (Mar. 11, 2025), <https://newsinfo.inquirer.net/2042778/ex-president-rodrigo-duterte-now-at-villamor-airbase>.

⁸ D. Sampang, *Plane carrying ex-President Rodrigo Duterte en route to The Hague*, Philippine Daily Inquirer Online (Mar. 12, 2025), <https://globalnation.inquirer.net/267114/plane-carrying-rodrigo-duterte-now-en-route-to-the-hague-2>.

⁹ ICC Pre-Trial Chamber A Grants Interim release to Paul Gicheru, International Criminal Court, <https://www.icc-cpi.int/news/icc-pre-trial-chamber-grants-interim-release-paul-gicheru> (last visited Mar 13, 2025).

of his or her rights under this Statute, including the right to apply for interim release pending trial.¹⁰ Hence, Mr. Duterte already has the option to apply for interim release.

8. Does trial follow right after the initial appearance?

No. After the initial appearance, there will be a hearing to confirm the charges against the person arrested. The hearing will be held in the presence of the Prosecutor, the person charged, and his or her counsel, but the person charged can waive his or her right to be present at the hearing. [Art. 61(1) (2), Rome Statute]

At the hearing, the Prosecutor will present evidence to support the charges. Meanwhile, the person charged may object to the charges, challenge the Prosecutor's evidence, and present his or her own evidence. [Art. 61(5) (6), Rome Statute]

Within 60 days¹¹ after the hearing, if the PTC finds that the Prosecutor presented **sufficient evidence** to establish **substantial grounds** to believe that the person arrested committed the crime charged, it will confirm the charges and proceed with trial. However, if the PTC is unsatisfied, there will be no trial unless the Prosecutor provides additional evidence or amends the charge. [Art. 61(7), Rome Statute]

Before the confirmation of charges, the OTP and the Defense, and if allowed, with the participation of victims through their Common Legal Representative, would disclose the evidence the parties will rely on during the confirmation of charges. [Rules 76-84, Rules of Procedure and Evidence of the ICC]

C. Confirmation of Charges

9. What is the stage of confirmation of charges and how will it be conducted?

The confirmation of charges is a pre-trial hearing held to determine whether there is sufficient evidence to establish substantial grounds to believe that the person committed the crimes they are suspected of. [Art. 61 [7], Rome Statute] It is conducted by the PTC, and is held in the presence of the Prosecutor, the person charged, and the latter's counsel. [Art. 61 [1], Rome Statute] However, the hearing may be held without the presence of the accused if the person charged has either waived their right to be present, or they have fled and cannot be found, with all reasonable steps taken to secure their appearance and to inform them of the charges. [Art. 61 [2], Rome Statute]

Prior to the confirmation of charges, it is required that the person charged shall be given a copy of the document containing the charges and informed of the evidence on which the Prosecutor intends to rely on for the hearing. [Art. 61 [3], Rome Statute] However, this does not preclude the Prosecutor from continuing the investigation, amending, or withdrawing any charges. [Art. 61 [4], Rome Statute]

During the confirmation of charges, the Prosecutor shall support each charge with sufficient evidence to establish substantial grounds to believe that the person committed the crime charged. [Art. 61 [5], Rome Statute] This is a higher standard of proof in comparison to the less stringent standard of reasonable grounds required for issuance of a warrant of arrest by the PTC. [Art. 58 [1], Rome Statute] Evidence that may be relied on by the prosecutor can be either documentary or summary, and they need not call the witnesses expected to testify at the trial. [Art. 61 [5], Rome Statute]

¹⁰Rodrigo Roa Duterte makes first appearance before the ICC: confirmation of charges hearing scheduled for 23 September 2025, International Criminal Court, <https://www.icc-cpi.int/news/rodrigo-roa-duterte-makes-first-appearance-icc-confirmation-charges-hearing-scheduled-23> (last visited March 14, 2025).

¹¹ *How the Court works*, ICC Website, <https://www.icc-cpi.int/about/how-the-court-works>.

Once presented with the Prosecutor's evidence, the person charged has three (3) options: they may object to the charges, challenge the Prosecutor's evidence, and present their own evidence. [Art. 61 [6], Rome Statute]

Based on their determination of evidence at the hearing, the PTC may do the following:

- If there is sufficient evidence to confirm the charges, the person may be committed to a Trial Chamber and trial will commence. A Trial Chamber will then be constituted, who will oversee and be responsible for the conduct of subsequent proceedings.
- If evidence is insufficient, they may decline to confirm the charges. This does not preclude the Prosecutor from asking for confirmation again upon submission of additional evidence later on.
- Lastly, they may adjourn the hearing and request an amendment of a charge if the evidence establishes a different crime, or ask the Prosecutor to provide further evidence or conduct further investigations. [Art. 61 [7] [8], Rome Statute]

Amendments of charges are still permissible post-confirmation of charges and before trial is commenced, as long as it is with the permission of the PTC and after notice to the accused. However, additional charges or the substitution of a charge with a more serious one will require further hearing. Moreover, even after a trial has begun, a withdrawal is allowed as long as the Prosecutor gains permission of the PTC. [Art. 61 [9], Rome Statute]

Trial will only commence when the PTC confirms the charges in full or in part. If the PTC does not confirm the charges due to insufficient evidence, then the warrant ceases to have its effect and the person detained can be released. [Art. 61 [10], Rome Statute]

If the PTC adjourns the hearing and requests the Prosecutor to consider either providing further evidence or conducting further investigation; or amending a charge, the warrant as to the charges not confirmed by the PTC likewise ceases. [Rule 127, Rules of Procedure and Evidence of the ICC]

10. Do the rules require that the identity of witnesses be disclosed to the public?

No. The ICC shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses during the pre-trial and trial. [Art. 68 [1], Rome Statute] These measures shall be overseen by the Victims and Witnesses Unit which may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance. [Art. 68 [4], Rome Statute]

The Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means (Art. 68 [2], Rome Statute), or allow alteration of pictures or voice. [Rule 87 [3(c)], Rules of Procedure and Evidence of the ICC] Specifically, during the confirmation of charges, the Prosecution need not present witnesses and may present object or summary evidence to prove substantial grounds that the person committed the crimes charged against him. [Art. 61 [5], Rome Statute]

The ICC may also permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court, and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. [Art. 68 [3], Rome Statute]

In addition to this, a Chamber may order certain measures to protect the identity of the witnesses. This includes the use of pseudonyms, and an order to expunge from public records any testimony or

information which could lead to the identification of a witness. [Rule 87 [3(a)(d)], Rules of Procedure and Evidence of the ICC] The Prosecutor, defense, or other participants in the proceedings may also be prohibited from disclosing this information to third parties. [Rule 87 [3(b)], Rules of Procedure and Evidence of the ICC]

C. The Trial

11. What are the rights of the accused?

Article 67 of the Rome Statute states that the accused shall be entitled to a public and a fair hearing conducted impartially. They are also entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail of the nature, cause and content of the charge, in a language which the accused fully understands and speaks;
- (b) To have adequate time and facilities for the preparation of the defence and to communicate freely with counsel of the accused's choosing in confidence;
- (c) To be tried without undue delay;
- (d) Subject to article 63, paragraph 2,¹² to be present at the trial, to conduct the defence in person or through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. The accused shall also be entitled to raise defences and to present other evidence admissible under this Statute;
- (f) To have, free of any cost, the assistance of a competent interpreter and such translations as are necessary to meet the requirements of fairness, if any of the proceedings or documents presented to the Court are not in a language which the accused fully understands and speaks;
- (g) Not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- (h) To make an unsworn oral or written statement in their defence; and
- (i) Not to have imposed on them any reversal of the burden of proof or any onus of rebuttal.

12. What happens during trial?

A Trial Chamber shall be formed after the charges are confirmed. [Art. 61 [11], Rome Statute]

The trial shall be held in public (Art. 64 [7], Rome Statute), with the accused present in court. [Art. 63 [1], Rome Statute] During trial, the Trial Chamber will read to the accused the charges previously confirmed and ensure that the accused understands the nature of these charges. After this, the accused has the opportunity to plead "guilty" or "not guilty." [Art. 64 [8(a)], Rome Statute]

If the accused admits guilt, the accused may be convicted if the Trial Chamber is convinced of three (3) things: that (1) the accused understands the nature and consequences of their admission; (2) such admission is voluntarily made after consultation with their defense counsel; and (3) it is supported by the facts and evidence of the case. [Art. 65 [1] & [2], Rome Statute]

¹² This allows the Trial Chamber, in the event the accused continues to disrupt the trial, to remove the accused from the courtroom and have them observe the proceedings from outside.

On the other hand, if the accused pleads “not guilty,” both sides may submit evidence to support their positions. [Arts. 64 [8(b)] & 69 [3], Rome Statute] It is the duty of the OTP to prove the accused’s guilt beyond reasonable doubt. [Art. 66 [2] & [3], Rome Statute] Witnesses will also testify under oath and in person (Art. 69 [1] & [2], Rome Statute), subject to their safety, physical, and psychological well-being. [Art. 68 [1], Rome Statute] If a witness cannot testify in person, the Trial Chamber may permit a recorded video or audio testimony and/or written transcripts, as long as they do not prejudice the rights of the accused. [Art. 69 [2], Rome Statute]

To reach a verdict, the judges of the Trial Chamber will evaluate all the evidence presented and the entire proceedings in court. [Art. 74 [2], Rome Statute] An accused is convicted only when the Trial Chamber finds **guilt beyond reasonable doubt**. [Art. 66 [3], Rome Statute]

13. What follows if and after the accused is convicted?

The possible penalties that the Trial Chamber may impose upon the convict are either imprisonment which **may not exceed thirty years**; or a term of **life imprisonment**, when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. [Art. 77 [1], Rome Statute] The Trial Chamber may also fine the convict and order a forfeiture of proceeds, property, and assets derived directly or indirectly from that crime. [Art. 77 [2], Rome Statute]

The convicted person may **appeal their conviction** on four grounds: (1) procedural error; (2) error of fact; (3) error of law; or (4) any other ground that affects the fairness or reliability of the proceedings or decision. [Art. 81 [1(b)], Rome Statute] They may also **appeal their sentence** by arguing that such sentence was disproportionate to the crime. [Art. 81 [2(a)], Rome Statute]

While such appeal is pending, the convicted person shall remain in custody, unless the Trial Chamber orders otherwise. [Art. 81 [3(a)], Rome Statute]

Lastly, the convicted person may also appeal against the order of the Trial Chamber providing reparations for the victims. [Art. 82 [4], Rome Statute]

14. What happens if the person is acquitted?

The Prosecutor may **appeal the acquittal** on four grounds: (1) procedural error; (2) error of fact; or (3) error of law. [Art. 81 [1(a)], Rome Statute]

In case the accused is acquitted, they shall be **released immediately**. However, the Prosecutor may request the Trial Chamber to keep the person in detention pending appeal under exceptional circumstances, having regard to the concrete risk of flight, the seriousness of the offense charged, and the probability of success on appeal. [Art. 81 [3(c)], Rome Statute]

15. What role do the victims play in the proceedings before the ICC?

The victims of any crime within the jurisdiction of the ICC may appear before it. To ensure their safety, the Rome Statute establishes a Victims and Witnesses Unit, which provides protection and security arrangements, counseling, and other appropriate assistance to the victims. [Art. 43 [6], Rome Statute]

During trial, the Trial Chamber is mandated to conduct the trial with due regard for the protection of victims and witnesses. [Art. 64 [2], Rome Statute] The ICC must take into consideration relevant factors in relation to the victims and witnesses, such as their age, gender, health, and the nature of the crime. [Art. 68

[1], Rome Statute] Where appropriate, the ICC may also conduct the proceedings in camera, or allow evidence to be presented electronically, to protect the victims and witnesses. [Art. 68 [2], Rome Statute]

The victims are also entitled to reparations. It is the ICC that determines the scope and extent of the damage, loss, and injury that the victims have experienced, and shall in its Decision specify appropriate reparations (which include restitution, compensation, and rehabilitation). [Art. 75 [1] & [2], Rome Statute] The reparations may be either ordered directly against the convict; or taken from the ICC's Trust Fund (Art. 75 [2], Rome Statute), which is established and managed by the Assembly of States Parties. [Art. 79 [1] & [3], Rome Statute] The Trust Fund is separate from the ICC,¹³ and relies on voluntary contributions from public and private donors.¹⁴

¹³ International Criminal Court, <https://www.icc-cpi.int/tfv> (last visited April 23, 2025).

¹⁴ The Trust Fund for Victims, <https://www.trustfundforvictims.org/en/your-support> (last visited April 23, 2025).

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