

The Nuremberg Academy contextualises the surrender of former President of the Philippines to the ICC

18 March 2025, by Kiran Mohandas Menon and Dr Pablo Gavira Díaz

1. What has been the engagement of the International Criminal Court ('ICC' or 'Court') with the Philippines?

On 15 September 2021, Pre-Trial Chamber I of the ICC [authorised](#) the Prosecutor to investigate crimes allegedly committed in the Philippines between 1 November 2011 and 16 March 2019 during the 'war on drugs' campaign. This followed the Prosecutor's request to open an investigation from 24 May 2021, [filed](#) (then in a redacted version) on 14 June 2021 and views submitted by or on behalf of victims. On 26 January 2023, after reviewing materials provided by the Philippines, the Chamber [granted](#) the Prosecutor's request to resume investigation into the Situation of the Republic of the Philippines. This decision was [confirmed](#) by the Appeals Chamber on 18 July 2023.

The Philippines, a State Party to the Rome Statute since 1 November 2011, notified the Court on its [withdrawal](#) on 17 March 2018 based on a decision taken by the then President Rodrigo Roa Duterte (Mr Duterte). The decision took effect on 17 March 2019. However, the Court retains jurisdiction over alleged crimes committed while the Philippines was a State Party, from 1 November 2011 to 16 March 2019. The Court [noted](#) that although crimes may have continued after this date, the focus of its investigation is limited to this period.

2. What is Mr Duterte suspected of?

On 10 February 2025, the Prosecution, under seal and *ex parte*, [requested](#) a warrant for Mr Duterte's arrest as an alleged indirect co-perpetrator of crimes against humanity under Article 25(3)(a) of the Rome Statute. The offences, allegedly committed in the Philippines between 1 November 2011 and 16 March 2019, included the crimes against humanity of murder, torture and rape. During this period, Mr Duterte was, at varying times, the President of the Philippines, the Mayor of Davao City and, allegedly, the head of the Davao Death Squad.



On 7 March 2025, Pre-Trial Chamber I [issued](#) under seal the arrest warrant against Mr Duterte and determined that there are reasonable grounds to believe that he bears criminal responsibility for the crime against humanity of [murder](#) (Article 7(1)(a) of the Rome Statute). This offence [requires](#) that the perpetrator kills (or causes death to) one or more persons and that the conduct takes place as part of a widespread or systematic attack directed against a civilian population. Based on the warrant, Mr Duterte was arrested by Philippine authorities and surrendered to the custody of the ICC on 12 March 2025.

3. What are the next steps procedurally?

Mr Duterte [made](#) his initial appearance before Pre-Trial Chamber I on 14 March 2025. At this stage, the judges verify the identity of the suspect as well as the language in which he is able to follow the proceedings. In addition, they inform the suspect of the charges against him and of his rights under the Rome Statute. These are fundamental procedural guarantees to ensure fair trial rights.

The initial appearance is the first step of the confirmation of charges before trial, the length of which can vary depending on the circumstances of each case. The process regulating confirmation proceedings is governed by Article 61 of the Rome Statute, which details the steps to be followed before, during and after the confirmation hearing. The date of the hearing to confirm the charges against the suspect is announced at his initial appearance before the Court. The date, and any postponements, will be made public. In this respect, Pre-Trial Chamber I scheduled the hearing on the confirmation of charges against Mr Duterte to commence on 23 September 2025. The confirmation hearing is held in public, although some parts may take place in closed or private sessions to protect witnesses, victims or other persons at risk, as well as the privacy of the suspect, if such concerns arise.

4. Will there be contentions regarding Mr Duterte's immunity?

It is widely accepted that international law excludes international jurisdictions dealing with international crimes from its general regime of immunity. In relation to the ICC, this is a position that has been reinforced by both the Court itself and by other domestic jurisdictions. For example, when South Africa allowed Omar al-Bashir, the former



President of Sudan to leave its territory invoking, *inter alia*, his immunity, Pre-Trial Chamber II [noted](#) that Article 27 of the Rome Statute, which deems irrelevant official positions for the Statute's application, "conveys comprehensiveness and is not compatible with the proposition that the immunity from arrest of Heads of State is excluded from it". The Guateng High Court in South Africa and the Supreme Court of Appeal of South Africa further [found](#) that the State had violated both its domestic and international obligations by not cooperating with the ICC and arresting Mr al-Bashir.

It is probable that a domestic court in the Philippines might also deliberate on this question especially as the Philippines, unlike South Africa, officially withdrew from the ICC. However, even if a domestic court rules on the legality of Duterte's arrest, the ICC is not obliged to respond to any such decision emanating from a national jurisdiction.

5. How could this potential trial affect the state of affairs concerning the ICC?

The ICC is inherently reliant on state cooperation for its functioning. Part IX of the Rome Statute elaborates on the obligation of States Parties to support the Court in the investigation and prosecution of crimes under its jurisdiction. At this moment, when the ICC faces unprecedented challenges, the need for such cooperation is particularly acute and critical. In this context, the arrest of a former Head of State pursuant to an ICC warrant is both symbolic and consequential.

Professor Dr Christoph Safferling, Director of the Nuremberg Academy, describes this development as "a great success" for the Court. He further notes that Mr Duterte's arrest and subsequent transfer to The Hague is a "paradigmatic and highly necessary example of state cooperation on which the ICC is fundamentally dependent on to fulfil its mandate." In addition, Director Professor Safferling hopes that "the Philippines will join the ICC soon". (km/pg)