

**Cour
Pénale
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**International
Criminal
Court**

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Date: **15 May 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 Observations in Advance of the First Status Conference”, 15 May 2026

Source: Defence for Mr Rodrigo Roa Duterte

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

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☒ 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
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I. INTRODUCTION

1. Pursuant to the “Order Scheduling First Status Conference” issued by Trial Chamber III on 30 April 2026,¹ the Defence for Mr Rodrigo Roa Duterte respectfully submits the present observations in advance of the status conference scheduled for 27 May 2026 (“First Status Conference” or “Status Conference”).

II. PROCEDURAL HISTORY

2. On 23 April 2026, Pre-Trial Chamber I confirmed the charges against Mr Duterte.² On the following day, the Presidency constituted Trial Chamber III and referred the present case to it.³ Trial Chamber III subsequently issued its Order on 30 April 2026.⁴

III. SUBMISSIONS

3. In advance of the First Status Conference, the Defence sets out its observations concerning (i) the issues identified by Trial Chamber III in its Order;⁵ and (ii) additional matters which, in the Defence’s view, warrant discussion at the Status Conference.⁶

A. Observations on the Issues Identified by the Trial Chamber

i. Commencement Date of Trial

4. The Defence contends that it would be inappropriate to attempt to set a date for the commencement of trial as matters presently stand since certain extraneous and unresolved factors will inevitably bear upon that decision. In particular, the Defence position is that a commencement is contingent upon a determination by the Trial Chamber of Mr Duterte’s fitness to stand trial. As further elaborated below, the Defence will request that this issue is revisited by the Trial Chamber pursuant to Rule 135. Whilst a determination of Mr Duterte’s competence was undertaken during the pre-trial

¹ Order Scheduling First Status Conference, [ICC-01/21-01/25-423](#), 30 April 2026 (“Order”). All references to “Article” and “Rule” in the present submission are to the [Rome Statute](#) and the ICC [Rules of Procedure and Evidence](#) (“RPE”), respectively, unless otherwise indicated. This submission is filed **confidentially** pursuant to [Regulation 23bis\(1\)](#) of the Regulations of the Court as it contains protected medical information. A public redacted version will be filed forthwith.

² Public redacted version of ‘Decision on the confirmation of charges against Mr Rodrigo Roa Duterte’, [ICC-01/21-01/25-417-Red](#), 23 April 2026 (“[Confirmation of Charges Decision](#)”).

³ Decision constituting Trial Chamber III and referring to it the case of *The Prosecutor v. Rodrigo Roa Duterte*, [ICC-01/21-01/25-420](#), 24 April 2026.

⁴ [Order](#).

⁵ [Order](#), paras 1.A. to 1.J.

⁶ [Order](#), para. 3 (“[t]he parties and participants may express their wish to add agenda items to the abovementioned list”).

phase on the basis of written reports, his condition continues to deteriorate and will need more fully to be reviewed before any trial may commence.

5. Should Mr Duterte be found fit to stand trial, the Defence will require sufficient time to prepare its case.⁷ By way of comparison, the period between the decision confirming the charges and the commencement of trial was approximately 14 months in *Yekatom and Ngaïssona*;⁸ 15 months in *Ntaganda*;⁹ 17 months in *Bemba*;¹⁰ and 19 months in *Gbagbo and Blé Goudé*.¹¹ In any event, the Defence will require a meaningful period following the Prosecution's provision of its final witness list, final list of evidence, and the disclosure of all items on which it intends to rely on at trial or that are necessary for the preparation of the Defence pursuant to Article 67(2) and Rule 77. The Defence notes in this regard the prior practice of trial proceedings commencing no less than three months after notification of the Prosecution's final witness and evidence lists.¹²

ii. Anticipated Evidence

6. At this stage of the proceedings, the Defence is not in a position to provide details concerning the estimated number of witnesses and hours of testimony; the use of expert witnesses, audio- or video-link testimony; the anticipated volume of documentary and

⁷ Rome Statute, [Article 67\(1\)\(b\)](#).

⁸ *Yekatom and Ngaïssona*, Corrected version of 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona', [ICC-01/14-01/18-403-Corr-Red](#), 11 December 2019; Decision Setting the Commencement Date of the Trial, [ICC-01/14-01/18-589](#), 16 July 2020 ("*Yekatom and Ngaïssona* Decision on Commencement Date of Trial").

⁹ *Ntaganda*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Bosco Ntaganda, [ICC-01/04-02/06-309](#), 9 June 2014; Order Scheduling a Status Conference and Setting the Commencement Date for the Trial, [ICC-01/04-02/06-382](#), 9 October 2014 ("*Ntaganda* Decision on Commencement Date of Trial").

¹⁰ *Bemba*, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, [ICC-01/05-01/08-424](#), 15 June 2009; Oral Decision during Status Conference of 21 October 2010 setting the trial date for 22 November 2010, [ICC-01/05-01/08-T-30-ENG](#), p. 4, lines 9-20.

¹¹ *Gbagbo*, Decision on the confirmation of charges against Laurent Gbagbo, [ICC-02/11-01/11-656-Red](#), 12 June 2014; *Gbagbo and Blé Goudé*, Decision granting the request of the Gbagbo Defence and re-scheduling opening statements, [ICC-02/11-01/15-322](#), 28 October 2015. *Contra*. *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; Directions on the conduct of proceedings, [ICC-02/05-01/20-478](#), 4 October 2021, para. 4 (though only nine months lapsed between the confirmation decision and trial commencement in *Abd-Al-Rahman*, the temporal and factual scope of that case was far more limited than the present: two months as opposed to more than seven years in the present case); *Said*, Public redacted version of Decision on the confirmation of charges against Mahamat Said Abdel Kani, [ICC-01/14-01/21-218-Red](#), 9 December 2021; Decision Setting the Commencement Date of the Trial and Related Deadlines, [ICC-01/14-01/21-243](#), 12 February 2022, para. 20 (though only nine months similarly lapsed between the decision confirming the charges and the commencement of trial in this case, the number of incidents in *Said* was approximately one third of the number of incidents in the present case).

¹² See e.g. *Ongwen*, Decision Setting the Commencement Date of the Trial, [ICC-02/04-01/15-449](#), 30 May 2016 ("*Ongwen* Decision on Commencement Date of Trial"), para. 8; *Al Hassan*, Decision Setting the Commencement Date of the Trial, [ICC-01/12-01/18-548](#), 6 January 2020 ("*Al Hassan* Decision on Commencement Date of Trial"); *Yekatom and Ngaïssona* Decision on Commencement Date of Trial.

non-testimonial evidence; or the potential use of Rule 68.¹³ The Defence will promptly inform the Chamber and the parties and participants of the witnesses and expert witnesses it intends to call following the close of the presentation of evidence by the Prosecution and the Common Legal Representatives of the Victims and prior to the commencement of its own case, if any. In addition, the Defence makes the following observations in respect of the remaining matters identified by the Trial Chamber.

7. **Firstly**, any fresh determination of Mr Duterte's fitness to stand trial should hear *viva voce* evidence.
8. **Secondly**, the Defence submits that recourse to audio- or video-link testimony should remain limited and subject to prior judicial authorisation.
9. **Thirdly**, the Defence requests that it be provided, at the earliest opportunity, a provisional witness list together with summaries of anticipated testimony in advance of the final witness list. This established practice enables the non-calling party to organise its investigations and overall preparation¹⁴ and "facilitate[s] the Chamber's understanding of the Prosecution's upcoming evidence preparation".¹⁵ Provisional witness lists and summaries have previously been disclosed between two and three months before the filing of the final witness list.¹⁶ However, given the considerable length of witness interview transcripts in the present case, the Defence requests that any provisional witness list be accompanied by complete disclosure of the proposed evidence no later than five months prior to the commencement of trial, as was ordered, for example, in *Yekatom and Ngaïssona*.¹⁷
10. **Fourthly**, the Defence recalls that documentary evidence should be introduced through procedures appropriate to its nature and intended use. In particular, the Prosecution should refrain from seeking wholesale admission through witnesses of highly

¹³ [Order](#), para. 1.B. ("B. Anticipated evidence. The Chamber addresses this item primarily to the Prosecution. The Defence is not obligated to provide this information at this stage unless it so desires").

¹⁴ See e.g. *Ongwen*, Prosecution's submission of Provisional List of Witnesses and Provisional Witness Summaries (P-0006, P-0009, P-0018, P-0119, P-0275 and P-0339), [ICC-02/04-01/15-458](#), 7 June 2016; *Yekatom and Ngaïssona*, Order to provide a Preliminary Witness List, [ICC-01/14-01/18-528](#), 22 May 2020.

¹⁵ [Ongwen Decision on Commencement Date of Trial](#), para. 3. See also [Ntaganda Decision on Commencement Date of Trial](#), para. 9.a; *Ruto and Sang*, Decision on the schedule leading up to trial, [ICC-01/09-01/11-440](#), 9 July 2012 ("*Ruto and Sang Decision on Schedule*"), para. 11.

¹⁶ [Ongwen Decision on Commencement Date of Trial](#) with amendments decided in Decision on the Prosecution request for variation of the time limit to provide its provisional list of witnesses and summaries of their anticipated testimony, [ICC-02/04-01/15-453](#), 6 June 2016. See also [Ntaganda Decision on Commencement Date of Trial](#), paras 9.a and 9.c; [Ruto and Sang Decision on Schedule](#), paras 11, 13; [Al Hassan Decision on Commencement Date of Trial](#), paras 4, 10.

¹⁷ [Yekatom and Ngaïssona Decision on Commencement Date of Trial](#), para. 6.

voluminous evidentiary material (e.g. Call Data Records, reports, or e-messages) merely because limited portions thereof were shown to them.¹⁸

11. **Finally**, with respect to Rule 68, given that trial proceedings are governed by the principles of orality and publicity,¹⁹ the use of Rule 68 for the admission of evidence should remain exceptional.²⁰ The Statute provides that the “testimony of a witness shall be given in person”,²¹ while the Appeals Chamber has recognised *viva voce* testimony as the default mode of testimony.²² Rule 68 must therefore be used in a manner that is not “prejudicial to or inconsistent with the rights of the accused”,²³ including with due regard to the potential limitations on the number of witnesses whose evidence may be introduced through that procedure.²⁴ These considerations are particularly relevant in the present case, where the proposed testimonial evidence consists largely of lengthy interview transcripts rather than witness statements. The introduction of such material through Rule 68 would likely necessitate extensive examination on broad aspects of the proposed testimony, thereby undermining, rather than promoting, judicial economy.

12. The Defence will respond to any specific applications in due course.

iii. Agreed Facts under Rule 69

13. At this stage, the Defence does not propose any agreed facts pursuant to Rule 69. The Defence nevertheless remains willing, as it did during the pre-trial phase,²⁵ to engage constructively with the Prosecution in relation to any proposed agreed facts and

¹⁸ See e.g. *Yekatom and Ngaïssona*, Annex 1 to the Registry’s Report on Evidence Recognised as Formally Submitted by the Chamber for witness D30-P-4679, [ICC-01/14-01/18-2705-Anx1-Red](#), 24 September 2024, p. 2.

¹⁹ Rome Statute, [Articles 64\(7\)](#), [67\(1\)](#), and [69\(2\)](#).

²⁰ *Yekatom and Ngaïssona*, Decision on the Prosecution Extension Request and Initial Guidance on Rule 68 of the Rules, [ICC-01/14-01/18-685](#), 16 October 2020 (“*Yekatom and Ngaïssona Guidance on Rule 68*”), para. 26.

²¹ Rome Statute, [Article 69\(2\)](#).

²² [Yekatom and Ngaïssona Guidance on Rule 68](#), para. 25 referring to *Bemba*, Judgment on the appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor against the decision of Trial Chamber III entitled “Decision on the admission into evidence of materials contained in the prosecution’s list of evidence”, [ICC-01/05-01/08-1386](#) (OA5 OA6), 3 May 2011, para. 76. See also *Ruto and Sang*, Judgment on the appeals of Mr William Samoei Ruto and Mr Joshua Arap Sang against the decision of Trial Chamber V(A) of 19 August 2015 entitled “Decision on Prosecution Request for Admission of Prior Recorded Testimony”, [ICC-01/09-01/11-2024](#) (OA10), 12 February 2016, para. 84.

²³ See Rome Statute, [Article 69\(2\)](#) (“[t]he testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of *viva voce* (oral) or recorded testimony of a witness by means of video or audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused”).

²⁴ [Yekatom and Ngaïssona Guidance on Rule 68](#), para. 27.

²⁵ See Public redacted version of “Joint Prosecution and Defence submission on agreed facts”, [ICC-01/21-01/25-259-Red](#), 1 September 2025.

promptly to respond to any corresponding requests. To that end, the Defence asks that any proposed agreed facts be formulated with sufficient precision and supported by adequate disclosure to permit informed consideration by the Defence. The Defence further notes that, even where facts are agreed between the Parties, the Trial Chamber retains discretion as to the weight, scope, and procedural effect to be accorded to such agreements.²⁶

iv. *Languages to be Used by the Parties, Participants, and Witnesses*

14. Mr Duterte's languages, in descending order of proficiency, are Cebuano, English, and Tagalog. Accordingly, the Defence respectfully requests that English be adopted as the working language of the parties and of the proceedings. The Defence further requests that witness testimony be interpreted into both English and Cebuano to enable Mr Duterte to follow the proceedings.
15. While the Defence is not currently in a position to provide detailed information concerning potential Defence witnesses, it is anticipated that any such witnesses would, in all likelihood, testify in English, Cebuano, Tagalog or a mixture of the three.

v. *Disclosure of Outstanding Material in the Prosecution's Possession*

16. This section addresses matters relating to (i) the state and progress of the Prosecution's investigations; (ii) disclosure pursuant to Article 67(2) and Rules 76 and 77; (iii) transcription and translation; (iv) protective measures; (v) disclosure of witness identities withheld from the Defence; and (vi) disclosure of material obtained pursuant to Article 54(3)(e).
17. **Firstly**, the Defence expresses its appreciation to the Prosecution for having disclosed the identities of individuals from whom it has thus far obtained statements and interviews. Similarly, the Prosecution disclosed, during the pre-trial phase, statements of limited use on which it intended to rely at the confirmation hearing.²⁷ The Defence

²⁶ *Abd-Al-Rahman*, Decision on the joint submissions on agreed facts, [ICC-02/05-01/20-839](#), 22 December 2022, para. 3. See also *Banda and Jerbo*, Decision on the Joint Submission regarding the contested issues and the agreed facts, [ICC-02/05-03/09-227](#), 28 September 2011, para. 24 (“[i]t also emphasizes that it remains within its discretion to request additional evidence and/or submissions on the alleged facts if required in the interests of justice. Given that the evidence and the submissions to be advanced at trial will be confined to the contested issues, the Chamber is persuaded that the suggested procedures will expedite the proceedings”).

²⁷ See Email, Prosecution to Defence, “[ICC-01/21-01/25 - Confidential] Defence Request for Screening Notes and Statements of Limited Use”, 12 February 2026, 14:28.

would welcome a comparable approach with respect to witnesses and materials upon which the Prosecution intends to rely at trial.

18. **Secondly**, the Defence recalls that the Prosecution investigations should, as a general rule, be substantially concluded by the time of the confirmation of charges proceedings, such that the bulk of the evidentiary record is already available at that stage.²⁸ As recognised by the Appeals Chamber, this approach safeguards the rights of the Defence by ensuring that the accused is not confronted at trial with a materially different evidentiary case.²⁹ This principle is particularly important in the present case, where the list of incidents relied upon by the Prosecution remains expressly non-exhaustive.³⁰
19. **Thirdly**, as regards disclosure, the Defence appreciates the staggered disclosure regime adopted during the pre-trial phase, *i.e.* disclosure on a rolling basis pursuant to Article 67(2) and Rule 77,³¹ and would welcome a continuation of this practice in the lead-up to trial. The Defence further recalls that transcripts and translated transcripts should be attached to and disclosed with the underlying audiovisual material to which they relate, rather than as stand-alone items.³² The Defence otherwise notes that the Prosecution's final list of evidence should likewise be disclosed as early as practicable and no later than three months before trial.³³ The Defence further considers that a provisional list of evidence should be provided approximately two to three months before the final list, consistent with the practice adopted in previous cases.³⁴
20. **Fourthly**, with respect to protective measures, the Defence recalls that the principles of publicity and openness govern proceedings before the Court, and that any restrictions

²⁸ *Gbagbo*, Decision adjourning the hearing on the confirmation of charges pursuant to article 61(7)(c)(i) of the Rome Statute, [ICC-02/11-01/11-432](#), 3 June 2013, para. 25, referring to *Mbarushimana*, Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled "Decision on the confirmation of charges", [ICC-01/04-01/10-514 \(OA 4\)](#), 30 May 2012, para. 44.

²⁹ See *e.g.* *Kenyatta*, Decision on defence application pursuant to Article 64(4) and related requests, [ICC-01/09-02/11-728](#), 26 April 2013, paras 118-123.

³⁰ See *e.g.* Prosecution's Clarification on the Proposed Scope of the Charges, [ICC-01/21-01/25-330](#), 8 December 2025, paras 5, 7. See also [Confirmation of Charges Decision](#), paras 20-24.

³¹ See also ICC Chambers Practice Manual, [para. 77\(v\)](#) ("[a] reminder that disclosure of material under Article 67(2) and Rule 77 is to be done promptly and on an ongoing basis").

³² Annex to Registry Submission of the Unified Technical Protocol, [ICC-01/21-01/25-116-Anx](#), 22 April 2025, p. 23, para. 2.

³³ See *e.g.* [Ntaganda Decision on Commencement Date of Trial](#), para. 9.c; *Al Hassan*, Decision on the Prosecution request for extension of deadlines relating to the disclosure of evidence and a postponement of the starting date for trial, [ICC-01/12-01/18-677](#), 20 March 2020 ("*Al Hassan Decision on Postponement of Trial Date*"), paras 15-16; [Yekatom and Ngaïssona Decision on Commencement Date of Trial](#), para. 9.

³⁴ [Ruto and Sang Decision on Schedule](#), paras 11, 13; [Ntaganda Decision on Commencement Date of Trial](#), para. 9.a; [Al Hassan Decision on Postponement of Trial Date](#), para. 15.

thereon must there remain exceptional.³⁵ This consideration is particularly relevant in the present case, where cooperation between certain witnesses and the Court is already public. Practically, the Defence would welcome applications for protective measures being made on a rolling basis, as witnesses are called to testify, rather than through broad applications filed substantially in advance of trial. Given the length and evolving nature of proceedings before the Court, the proposed approach would reduce the likelihood of subsequent litigation or requests for reconsideration arising from changes in circumstances or from information and security considerations that may not have been available at the time the original application was made.³⁶

vi. *Defence Disclosure and Rules 79 and 80 Defences*

21. During the Prosecution's presentation of evidence, the Defence may disclose material upon which it intends to rely for the examination of witnesses prior to their testimony, in accordance with the applicable legal framework of the Court and any directions that may be issued by the Chamber in respect of the conduct of the proceedings.³⁷
22. The Defence will disclose any material upon which it intends to rely during its own presentation of evidence in due course and within any time limits prescribed by the Trial Chamber.
23. Finally, at this stage, the Defence does not contemplate providing notice pursuant to Rules 79 or 80. However, in light of the recent reconstitution of the Defence team, the ongoing disclosure process, and the evolving evidentiary record, the Defence considers it premature to exclude the possibility that its position may evolve as Counsel continues his review of the case materials and evidence disclosed by the Prosecution.

vii. *Provision of Trial Brief*

24. The Defence would welcome the filing of a Prosecution Trial Brief, which Chambers of this Court have recognised as a "very useful document [...] to prepare the trial [and]

³⁵ Rome Statute, [Articles 64\(7\)](#) and [67\(1\)](#).

³⁶ See e.g. *Yekatom and Ngaïssona*, Initial Directions on the Conduct of Proceedings, [ICC-01/14-01/18-631](#), 26 August 2020 ("[Yekatom and Ngaïssona Initial Directions](#)"), paras 68-69. See also *Yekatom and Ngaïssona*, Public redacted version of "Prosecution's Request for in-court protective measures", 7 December 2020, (ICC-01/14-01/18-757-Conf-Exp), [ICC-01/14-01/18-757-Red2](#), 18 January 2021. In that case, the Prosecution asked for either reconsideration of the relevant decision or filed distinct requests weeks before the witness's testimony no less than 14 times (see filing numbers -[843](#), -[1232](#), -[1241](#), -[1244](#), -[1319](#), -[1464](#), -[1469](#), -[1512](#), -[1585](#), -[1651](#), -[1768](#), -[1860](#), -[1946](#), -[2015](#)).

³⁷ See e.g. *Yekatom and Ngaïssona Initial Directions*; *Ongwen*, Initial Directions on the Conduct of the Proceedings, [ICC-02/04-01/15-497](#), 13 July 2016; *Abd-Al-Rahman*, Directions on the conduct of proceedings, [ICC-02/05-01/20-478](#), 4 October 2021.

provide[] an explicit explanation of the manner in which the Prosecution intends to show the charges confirmed by the Pre-Trial Chamber”.³⁸ In light of its utility, the filing of a Trial Brief has become established practice before the Court.³⁹ The Defence further notes that both the Document Containing the Charges and the Pre-Confirmation Brief relied, in part, on material disclosed specifically for the purposes of the confirmation proceedings. A trial brief predicated on the evidentiary record intended to be relied upon at trial would therefore provide an updated and consolidated articulation of the Prosecution’s case. Consistent with prior practice, the Defence requests that any trial brief ordered by the Chamber be filed at least four months before the opening of the Prosecution’s presentation of evidence.⁴⁰

viii. Motions Requiring Resolution Prior to the Commencement of Trial

25. As indicated above, the Defence position is that the commencement of trial is contingent upon a determination of Mr Duterte’s fitness.⁴¹ The Defence expert neurologist diagnosed Mr Duterte with a “[REDACTED]” consistent with a progressive [REDACTED],⁴² affecting multiple domains, including his memory, executive function, visuospatial skills and complex reasoning.⁴³ That diagnosis was not excluded by the Court-appointed neurologist,⁴⁴ who likewise did not dispute the progressive nature of Mr Duterte’s condition. The Defence expert further concluded that Mr Duterte’s condition was unlikely to improve, even with medical or psychiatric treatment.⁴⁵

³⁸ [Al Hassan Decision on Commencement Date of Trial](#), para. 15.

³⁹ ICC Chambers Practice Manual, [para. 76](#) (“[a] ‘pre-trial brief’, or its equivalent, has been filed in nearly all cases and is standard practice but it is particularly incumbent on the Prosecutor to provide such a brief”).

⁴⁰ [Al Hassan Decision on Commencement Date of Trial](#), paras 10, 24; [Yekatom and Ngaïssona Decision on Commencement Date of Trial](#), para. 14.

⁴¹ In *Gbagbo and Blé Goudé*, though the Pre-Trial Chamber had found Mr Gbagbo fit to stand trial, the Trial Chamber reconsidered the issue in November 2015 prior to the commencement of trial on 28 January 2016. See *Gbagbo and Blé Goudé*, Decision on the fitness of Laurent Gbagbo to stand trial, [ICC-02/11-01/15-349](#), 27 November 2015 (“[Gbagbo Decision on Fitness](#)”), paras 2-18.

⁴² Annex A to the Defence Request for an Indefinite Adjournment, [ICC-01/21-01/25-230-Conf-AnxA](#), 18 August 2025 (“[Neurological Report of Defence Expert](#)”), p. 17. See also Annex B to the Request for Partial Modification of Restrictions Regime, [ICC-01/21-01/25-149-Conf-Exp-AnxB](#), 11 June 2025 (“[Preliminary Neurological Report of Defence Expert](#)”), p. 11.

⁴³ [Neurological Report of Defence Expert](#), pp. 7, 17. See also [Preliminary Neurological Report of Defence Expert](#), p. 11.

⁴⁴ Annex III to the Registry Transmission of the Panel of Experts’ Joint and Individual Reports, [ICC 01/21-01/25-327-Conf-AnxIII](#), 5 December 2025, p. 11.

⁴⁵ [Neurological Report of Defence Expert](#), p. 17.

26. The Pre-Trial Chamber's determination regarding fitness was expressly limited to the pre-trial phase and to Mr Duterte's participation in the confirmation proceedings.⁴⁶ The Court-appointed experts were instructed only to assess whether, and to what extent, Mr Duterte suffered from any medical condition affecting his ability to follow and participate in those proceedings.⁴⁷ The possibility that the issue may require reconsideration at trial was, moreover, implicitly recognised by the Pre-Trial Chamber when it addressed the Defence's request for leave to appeal.⁴⁸
27. Trial proceedings differ fundamentally from pre-trial proceedings in their duration, complexity, and evidentiary scope. A trial requires the accused to follow extensive oral and documentary evidence over a prolonged period, maintain sustained communication with his defence team, provide instructions, and engage continuously with the evolving evidentiary record.⁴⁹ In this context, sustained cognitive endurance assumes particular importance. Any significant impairment affecting memory, concentration, or reasoning would seriously prejudice the preparation and presentation of the Defence and undermine Mr Duterte's ability to participate meaningfully in the proceedings.⁵⁰

⁴⁶ Public redacted version of "Decision on the 'Defence Request for an Indefinite Adjournment' and Mr Duterte's fitness to take part in the pre-trial proceedings", 26 January 2026, [ICC-01/21-01/25-356-Red](#), 26 January 2026, paras 52-53.

⁴⁷ Public redacted version of 'Decision on the appointment of experts for the purpose of a medical examination pursuant to rules 113 and 135 of the Rules of Procedure and Evidence and related matters', 24 September 2025, ICC-01/21-01/25-279-Conf, [ICC-01/21-01/25-279-Red](#), 16 October 2025, para. 17.

⁴⁸ Decision on the 'Request for Leave to Appeal Decision ICC-01/21-01/25-356-Conf', [ICC-01/21-01/25-376](#), 13 February 2026, paras 23 ("[m]oreover, the Chamber emphasises that the 26 January 2026 Decision does not prejudice Mr Duterte's fitness to stand trial and that it does not preclude any competent chamber of the Court to revisit the issue should the need arise"); 24 ("[a]s argued by the Defence, and properly noted by the Prosecution, Mr Duterte's fitness to stand trial is an issue that is likely to be revisited at trial, should all or some of the charges be confirmed") (internal footnotes omitted).

⁴⁹ See [Gbagbo Decision on Fitness](#), para. 35. See also *Al Hassan*, Decision on Mr Al Hassan's ongoing fitness to stand trial, [ICC-01/12-01/18-1467](#), 10 May 2021, para. 70; *Ongwen*, Decision on the Defence Request to Order a Medical Examination of Dominic Ongwen, [ICC-02/04-01/15-637-Red](#), 16 December 2016, para. 8. See also ICTY, *Strugar*, IT-01-42-T, [Decision Re The Defence Motion to Terminate Proceedings](#), 26 May 2004, para. 36.

⁵⁰ See e.g. IRMCT, *Kabuga*, MICT-13-38-T, [Further Decision On Félicien Kabuga's Fitness To Stand Trial](#), 6 June 2023, paras 31 ("Mr. Kabuga's dementia has caused cognitive decline producing deficits in his short-term memory, attention and concentration skills, reasoning and judgment abilities, and executive functioning [...] depriv[ing] Mr. Kabuga of the capabilities necessary for meaningful participation in a trial"); 36 ("participation in a complex proceeding, such as the present trial, requires, at a minimum, a functioning memory, including the ability to retain information over a period of time, as well as the ability to process and express a view about that information. Because Mr. Kabuga lacks these capacities [...] [he] is no longer capable of meaningful participation in his trial"); MICT-13-38-AR80.3, [Decision on appeals of further decision on Félicien Kabuga's fitness to stand trial](#), 7 August 2023, para. 28 ("the Trial Chamber specifically noted the Experts' agreement that **Kabuga lacked the crucial capacity to instruct counsel** [...] [and] was no longer able to follow a regular conversation at a normal pace or be engaged in a rational conversation with any substance or coherence, could follow proceedings or understand evidence only at the most superficial level, and was unable to understand the reasoning behind questions asked in court. [...] **The Appeals Chamber recalls that an accused's ability to meaningfully participate in trial is contingent on whether he or she possesses the mental capacity to communicate, and thus consult, with counsel**") (emphasis added). See also ECCC, *Nuon et al.*, 002/19-09-

28. In light of the foregoing, the Defence will seek guidance from the Trial Chamber as to how and when this issue should be addressed. The Defence intends to request that Mr Duterte be examined by independent experts for the purposes of the trial phase and that the experts responsible for those assessments be examined before the Court. The Defence further requests that, should proceedings continue, the Trial Chamber establish a mechanism for periodic review of Mr Duterte's fitness throughout the trial phase.
29. Finally, should Mr Duterte ultimately be found fit to stand trial, the Defence requests that the Trial Chamber invite submissions and, if necessary, convene a further status conference as to whether his continuous physical presence at trial hearings would be required. In light of Mr Duterte's advanced age and medical condition, any requirement that he attend hearings in person would likely necessitate significant health-related accommodations,⁵¹ with potential implications for the expeditious conduct of the proceedings.

ix. *Estimated Length of Opening Statements*

30. The Defence will likely deliver its opening statement, if any, following the close of the Prosecution's and the CLRV's presentation of evidence and immediately prior to the commencement of the Defence case. In these circumstances, the Defence is not presently in a position to estimate the length of its opening statement.

x. *Additional Victim Applications*

31. The Defence invites the Trial Chamber to set a deadline for the receipt of applications to participate of, say, 30 September 2026. Otherwise, the Defence recalls that victim application forms are administrative in nature⁵² and do not constitute prior statements, testimony, transcripts "or other documented evidence of [such] testimony".⁵³ Should the CLRVs intend to rely on such material during trial proceedings, the Defence respectfully submits that unredacted versions thereof should be disclosed to the parties.

2007/ECCC/TC, [Decision on Ieng Thirith's Fitness to Stand Trial](#), 17 November, para. 59 ("Thirith's long-term and short-term memory loss ensures that the Accused would be unable to understand sufficiently the course of the proceedings to enable her to adequately instruct counsel and effectively participate in her own defence [...] the Chamber has no alternative but to declare her to be unfit to stand trial").

⁵¹ Order setting the schedule and directions for the confirmation of charges hearing and convening the annual hearing on detention, [ICC-01/21-01/25-359](#), 27 January 2026, paras 14-16.

⁵² *Bemba*, Public redacted version of the First decision on the prosecution and defence requests for the admission of evidence, dated 15 December 2011, [ICC-01/05-01/08-2012-Red](#), 9 February 2012 ("[Bemba Decision on Admission of Evidence](#)"), para. 100.

⁵³ [Bemba Decision on Admission of Evidence](#), para. 101.

B. Additional Matters to be Addressed at the Status Conference

i. Scope of the Charges

32. In its request for leave to appeal the decision confirming the charges, the Defence challenged the Pre-Trial Chamber's "flexible" approach⁵⁴ in permitting the Prosecution to rely, at a later stage, on additional incidents presented merely as "examples".⁵⁵ The Defence submitted that such an approach fails to define with sufficient precision the factual scope of the charges against Mr Duterte.⁵⁶
33. While the Defence's request for leave to appeal remains pending, the Defence maintains that this approach risks undermining the accused's right to be informed promptly and in detail of the nature, cause, and content of the charges, which cannot be framed in vague or indeterminate terms.⁵⁷
34. The Defence therefore seeks clarity from the Prosecution and the Trial Chamber as to the scope and parameters of the charges in the present case. In this regard, the Defence notes that comparable issues of uncertainty have previously led Trial Chambers to adopt a self-contained set of charges. In *Al Hassan*, for example, the Chamber emphasised the importance of ensuring "a common understanding on the part of the parties, participants and the Chamber as to the facts and circumstances of the charges".⁵⁸ A self-contained set of charges would therefore provide a clear reference framework for the Parties and participants, and would facilitate the Chamber's reading of the charges pursuant to Article 64(8).

ii. Evidence Regime

35. The Defence respectfully proposes the adoption of an admissibility-based regime for the reception of evidence in the present proceedings. While certain prior cases have adopted the more flexible "submission" regime following the *Bemba et al.* Appeals Judgment, that approach attracted criticism from members of the Appeals Chamber as well as civil society observers. In the Defence's view, the submission-based approach risks placing an undue burden on the Defence by requiring it to respond to broad

⁵⁴ [Confirmation of Charges Decision](#), para. 34.

⁵⁵ Request for Leave to Appeal the Decision on the Confirmation of Charges, [ICC-01/21-01/25-422](#), 29 April 2026 ("[Request for Leave to Appeal the Confirmation of Charges](#)"), para. 7.

⁵⁶ [Request for Leave to Appeal the Confirmation of Charges](#), paras 7-20.

⁵⁷ *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, paras 103, 110.

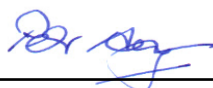
⁵⁸ *Al Hassan*, Decision on the Self-contained set of charges, [ICC-01/12-01/18-923-Red](#), 28 June 2021, para. 13.

categories of material before the Trial Chamber has ruled upon their admissibility,⁵⁹ thereby creating uncertainty as to the evidentiary basis upon which the Chamber may ultimately rely and undermining the principle of equality of arms.⁶⁰

36. By contrast, the admissibility-based regime avoids overburdening the record with material of questionable relevance or limited probative value,⁶¹ while providing greater clarity regarding the evidentiary basis upon which the Chamber may rely at trial and in its judgment. Moreover, the present case does not involve the exceptional evidentiary circumstances that have historically justified a submission-based regime before the Court, such as active conflict conditions and ongoing hostilities, compromised chains of custody, inaccessible crime scenes, or substantial reliance on indirect or intermediary-collected evidence. The security situation in the Philippines has been investigated for more than a decade and is extensively documented. In these circumstances, there is no compelling basis to depart from a stricter admissibility framework, which would better safeguard the fairness and integrity of the proceedings by ensuring that only relevant and reliable evidence is admitted into the record.

IV. CONCLUSION

37. The Defence respectfully submits the foregoing observations and proposals with a view to facilitating the fair and expeditious conduct of the Status Conference and of the proceedings.



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Dated this 15th day of May 2026
At The Hague, the Netherlands

⁵⁹ *Bemba et al.*, Separate Opinion of Judge Geoffrey Henderson in the Judgment on the Appeals of Mr. Jean-Pierre Bemba Gombo, Mr. Aime Kilolo Musamba, Mr. Jean-Jacques Mangenda, Mr. Fidele Babala Wanda and Mr. Narcisse Arido against the Decision of Trial Chamber VII entitled “Judgment pursuant to Article 74 of the Statute”, [ICC-01/05-01/13-2275-Anx](#), 8 March 2018, paras 43-45.

⁶⁰ Amnesty International, “[Admitting mistakes on admitting evidence – It’s not too late for the ICC to get it right](#)”, 4 May 2018 (“[t]he impact of this dynamic on the principle of equality of arms is enormous, especially considering that, at the commencement of a trial, the OTP will have been collecting and analysing evidence for years. Of course, much less time and fewer resources are available to defendants – especially those relying on legal aid to fund their defence. Hence, through current evidential practices, the right to adequate time and facilities to prepare a defence, an essential component of a fair trial, is seriously put into question”).

⁶¹ *Bemba*, Separate Opinion of Judge Christine Van den Wyngaert and Judge Howard Morrison in the Judgment on the Appeal of Mr. Jean-Pierre Bemba Gombo’s Appeal against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”, [ICC-01/05-01/08-3636-Anx2](#), 8 June 2018, para. 18.