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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

Public redacted version of "Prosecution's submissions pursuant to the 'Order scheduling first status conference'"

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I. INTRODUCTION

1. The Prosecution provides the following submissions on the agenda items for the first status conference, pursuant to Trial Chamber III's (the "Chamber") order of 30 April 2026 (the "Scheduling Order").¹

II. CONFIDENTIALITY

2. This document is filed confidential, *ex parte*, only available to the Prosecution, pursuant to regulation 23bis(1) of the Regulations of the Court, as it contains security related and other highly sensitive information relating to the Prosecution's witnesses and its ongoing focused investigations. Confidential and public redacted versions of this document will be filed simultaneously.

III. SUBMISSIONS

A. Commencement date of the trial

3. As detailed further below, the Prosecution expects to complete all of the necessary pre-trial steps by 30 September 2026. Consequently, the Prosecution proposes that the trial be set to commence on Monday, 30 November 2026 which would then provide for a period of two months prior to the commencement of the trial. With the exception of the *Al Mahdi* case, which was subject to a plea agreement, the proposed timeframe would result in this being one of the fastest case to go to trial following the decision on the confirmation of charges.²

4. The proposed date for the start of trial will allow the Prosecution to efficiently discharge its disclosure and other pre-trial steps, as detailed below, and will consequently likely prevent problems arising during the trial which could cause delay.

¹ Order Scheduling First Status Conference, 30 April 2026, [ICC-01/21-01/25-423](#).

² The time lapse between the decision on the confirmation of charges and the proposed start date of the trial is approximately 7 months in this case. A review of the same time period in other cases shows the following timeframes: *Lubanga* (approx. 24 months), *Katanga & Ngudjolo* (approx. 14 months), *Bemba* (approx. 17 months), *Ruto & Sang* (approx. 20 months), *Gbagbo & Blé Goudé* (approx. 19 months for *Gbagbo* and 13 months for *Blé Goudé*), *Ntaganda* (approx. 15 months), *Ongwen* (approx. 8 months), *Al Mahdi* (who was subject to a plea agreement) (5 months), *Al Hassan* (approx. 10 months), *Yekatom & Ngaissona* (approx. 14 months), *Abd-Al-Rahman* (approx. 9 months), *Gicheru* (approx. 7 months). Viewed from the perspective of the overall time lapse between the transfer of the suspect to the custody of the Court and the commencement of the trial, the proposed timeframe would render the overall time period between Mr Duterte's transfer to the custody of the Court and the commencement of the trial approximately 20 and a half months, which is also shorter than the same time period in other cases. See e.g. *Lubanga* (approx. 34 months), *Katanga & Ngudjolo* (approx. 25 months for *Katanga* and 21 months for *Ngudjolo*), *Bemba* (approx. 27 months), *Ruto & Sang* (approx. 29 months from initial appearance), *Gbagbo & Blé Goudé* (approx. 50 months for *Gbagbo* and 22 months for *Blé Goudé*), *Ntaganda* (approx. 29

5. In particular, by 30 September 2026, the Prosecution intends to *inter alia*: (i) further assess materials in its possession (in light of the progress of the case, the charges as confirmed and the Prosecution's further investigations), including determination of any necessary protective measures; (ii) complete the process of transcription of audio and video-recorded evidence, including interviews conducted under article 55(2) of the Rome Statute (the "Statute"); (iii) provide translation of evidence where required; (iv) complete its investigations; (v) complete its disclosure obligations; (vi) submit requests for admission of prior recorded testimony under rule 68 of the Rules of Procedure and Evidence (the "Rules"); (vii) submit applications for in-court protective measures and special measures; (viii) submit applications for witnesses to give evidence via audio/visual link pursuant to article 69(2) of the Statute/rule 67 of the Rules; (ix) provide a trial brief and summaries of the anticipated testimony of its witnesses; (x) conduct discussions with the Defence regarding further agreed facts under rule 69 of the Rules; and (xi) obtain expert reports to be relied on by the Prosecution at trial.

B. Anticipated Evidence

1) Estimated number of witnesses to be called and number of hours of in-court testimony

6. Subject to its further investigations and the potential addition of witnesses, the Prosecution estimates at present that it will rely on the evidence of approximately 60-70 witnesses at trial. These currently include approximately 31 insider witnesses, 17 crime-base witnesses, 12 witnesses who are relevant to explain the background and the contextual elements of the crimes charged, as well as an anticipated number of experts and additional witnesses. As discussed below, the Prosecution currently anticipates calling approximately 25-30 of these witnesses to give *viva voce* testimony at trial and to introduce evidence of the remainder under rule 68 of the Rules. Further, as set out below, the Prosecution is currently considering adding a limited number of further incidents to the charges that were confirmed by Pre-Trial Chamber I (the "Pre-Trial Chamber"). In the event further incidents are added to the charges there will likely be a modest impact on the number of witnesses to be called.

7. The Prosecution currently estimates that its direct examination of these witnesses will take approximately 175-200 hours. This estimation is based on the estimated number and type

months), *Ongwen* (approx. 22 months), *Al Mahdi* (who was subject to a plea agreement) (11 months), *Al Hassan* (approx. 27 months), *Yekatom & Ngaissona* (approx. 27 months for *Yekatom* and 25 months for *Ngaissona*), *Abd-Al-Rahman* (approx. 22 months), *Gicheru* (approx. 15 months).

of witnesses in this case (which includes a comparatively high proportion of insider witnesses and currently spans 49 separate incidents), their proposed mode of testimony, and is informed by the Prosecution's consideration of how the Court has calculated the average time required for witnesses to give live testimony at trial in other cases.³

8. The Prosecution observes that in the *Abd-Al-Rahman* case the Trial Chamber decided to issue a separate decision on the length and timing of the presentation of evidence.⁴ The Trial Chamber did so after the filing of the Prosecution's final list of witnesses along with its trial brief and list of evidence. In issuing the decision on the length and timing of the Prosecution's case the Trial Chamber further allocated an overall amount of time for the Prosecution to question its witnesses rather than allocating a set number of hour per witness.⁵ The Prosecution respectfully proposes that a similar approach would be appropriate in this case. This is particularly so in circumstances where, as set out below, there may be further agreement on agreed facts pursuant to rule 69 of the Rules. The Prosecution anticipates that it will be in a position to provide a more detailed estimate of the length of time required to present its case following the identification of those witnesses whose evidence it proposes to adduce pursuant to rule 68 of the Rules and the filing of its trial brief and lists of witnesses and evidence.

2) Use of expert witnesses

9. The Prosecution is currently considering calling expert witnesses in the following areas of expertise:

- (i) historical, political and/or cultural background to the 'War on Drugs' in the Philippines;

³ For example, in *Ongwen*, the Trial Chamber allowed 400 hours to receive evidence from 115 Prosecution witnesses of which 65 were to give live testimony at trial. See *The Prosecutor v. Dominic Ongwen*, Initial Directions on the Conduct of the Proceedings, 13 July 2016, [ICC-02/04-01/15-497](#), paras 11-12. In *Katanga & Ngudjolo*, the Trial Chamber allowed 120 hours to receive evidence from 26 Prosecution witnesses who would give live testimony at trial. See *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Corrigendum - Directions for the conduct of the proceedings and testimony in accordance with rule 140, 1 December 2009, [ICC-01/0401/07-1665](#), paras. 7-8. In *Yekatom & Ngaïssona*, the Trial Chamber allowed 400 hours to receive evidence from 152 Prosecution witnesses of which 109 were to give live testimony at trial. See *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Initial Directions on the Conduct of the Proceedings, 27 August, [ICC-01/14-01/18-631](#), paras 21-22. In *Abd-Al-Rahman* the Trial Chamber allocated 280 hours to receive evidence from 81 witnesses following the submission of the Prosecution's final list of witnesses. See *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Decision on the length and timing of the Prosecution case, 29 March 2022, ICC-02/05-01/20-648 ("[Abd-Al-Rahman Decision on Length and Timing](#)"), para. 10.

⁴ *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Directions on the conduct of proceedings, 4 October 2021, ICC-02/05-01/20-478 ("[Abd-Al-Rahman Decision on Conduct of Proceedings](#)"), para. 22.

⁵ [Abd-Al-Rahman Decision on Length and Timing](#), para. 5.

- (ii) statistical analysis of the use of deadly force by police in the Philippines;
- (iii) statistical analysis of the number of people killed during the ‘War on Drugs’;
- (iv) police methodology, use of force and standard operating procedures; and
- (v) forensic science (the Prosecution is giving consideration to a number of fields of forensic expertise).

10. The Prosecution is in the process of obtaining reports from/identifying relevant experts in the above areas of expertise and aims to disclose these by 30 September 2026.

3) Testimony given by audio or video link

11. The Prosecution intends to call as many of its witnesses as possible to testify in person at the seat of the Court. However, the Prosecution anticipates that some witnesses may need to testify via audio/video link where the witness is unable to travel to the seat of the Court. The Prosecution is in the process of identifying those witnesses for whom applications pursuant to article 69(2) of the Statute/rule 67 of the Rules may be necessary and will keep the Chamber updated. Were witnesses to testify via audio/video from the Philippines, the Prosecution observes that the Philippines is six or seven hours ahead of the Netherlands depending on the time of the year.

4) Estimated volume of documentary and other non-testimonial evidence to be relied upon at trial

12. The Prosecution is in the process of determining the overall quantity of documentary and other non-testimonial evidence that it intends to rely on at trial. At a minimum, this will include the majority of the non-witness evidence cited in part II of the list of evidence in the pre-confirmation brief which comprised 619 items (additional to the 468 items of witness evidence cited in part I and the 199 items cited in part III).⁶

13. The Prosecution anticipates that it will seek to rely upon further documentary evidence currently in its collection. This will include audio/video items of speeches and other public statements made by Mr Duterte, as well as their associated transcripts and/or translations. To date, the Prosecution has identified approximately 197 relevant speeches, and is in the process

⁶ Annex A of the Prosecution’s Submission of the Third Updated List of Evidence, 20 February 2026, ICC-01/21-01/25-391-Conf-AnxA.

of considering which to include in its list of evidence.⁷ It is also likely that the Prosecution will seek to rely on further police reports related to drug-related killings within the jurisdictional period. As set out further below, the review of this material is ongoing and the Prosecution anticipates that it will be completed within the next four to six weeks.

14. The Prosecution also anticipates that it will rely on further documentary evidence identified in the review of its collection and obtained during the ongoing investigation.

5) Use of rule 68 of the Rules

15. The Prosecution currently estimates that it will call approximately 25-30 witnesses to give *viva voce* testimony⁸ and to seek the introduction of previously recorded evidence under rule 68 of the Rules for the remainder of its witnesses. The Prosecution is in the process of making these assessments and currently estimates that it will seek to introduce the evidence of approximately 5-10 witnesses under rule 68(2)(b), 1 witness under rule 68(2)(c) and 20-30 witnesses under rule 68(3) of the Rules. For the 20-30 witnesses under rule 68(3) of the Rules, the Prosecution intends to conduct a limited supplementary examination-in-chief. As noted above, and discussed below, the Prosecution may add a limited number of incidents to the non-exhaustive list of incidents confirmed by the Pre-Trial Chamber. In the event additional incidents are to be included in the charges, there is likely to be a modest impact on the estimated number of the Prosecution's witnesses.

C. Agreed facts under rule 69 of the Rules

16. Prior to the hearing on the confirmation of charges, the Prosecution and the Defence agreed on a limited number of facts.⁹

17. At the time the parties agreed those facts, it was foreshadowed to the Pre-Trial Chamber that the parties had agreed to resume efforts to agree further facts [REDACTED].¹⁰ On 26 January 2026 the Pre-Trial Chamber found that Mr Duterte was fit to take part in the pre-trial

⁷ The audio/video recordings of these speeches are open source and have been disclosed to the Defence.

⁸ This number includes only the witnesses for whom the Prosecution currently anticipates conducting a complete *viva voce* direct examination.

⁹ Joint Prosecution and Defence submission on agreed facts, 1 September 2025, ICC-01/21-01/25-259-Conf (public redacted version filed on the same date, ICC-01/21-01/25-259-Red) ("[Joint Submission on Agreed Facts](#)"), para. 3.

¹⁰ [Joint Submission on Agreed Facts](#), para. 4.

proceedings,¹¹ and on the same date the confirmation of charges hearing was set to commence on 23 February 2026.¹² As a consequence, the parties did not find the opportunity to agree additional facts.

18. The Prosecution stands ready to resume efforts to agree further facts when Mr Duterte's new legal representatives are appointed. The Prosecution is of the view that there is scope for agreement in relation to a greater number of facts prior to trial. In particular, it appears to the Prosecution that there are a number of matters, which are a matter of public record, which are unlikely to be in dispute. For example, Mr Duterte's biographical details, including the dates he held public office, as well as biographical details and dates of official appointments of the alleged co-perpetrators. Further, the Prosecution anticipates there are a number of additional material and ancillary facts that may also be capable of being agreed between the parties, following the decision on the confirmation of charges. The Prosecution is in the process of preparing a proposal for additional agreed facts.

D. Languages to be used by the parties, participants and the witnesses the parties intend to call

19. Counsel for the Prosecution intends to use English during the proceedings.

20. As noted above, the Prosecution currently estimates that it will rely on the evidence of approximately 60-70 witnesses. On 13 March 2026 the Prosecution wrote to the Registry and advised that: approximately 20 witnesses will speak English (it is possible that some witnesses who testify in English may require interpretation for certain words or phrases); approximately 20 witnesses will speak Filipino (Tagalog); approximately 5 witnesses will speak Cebuano (Visayan); and approximately 2 witnesses may speak Ilocano (the Prosecution advised that it would provide an update on whether Ilocano interpretation will be necessary). The Prosecution anticipates that additional witnesses will also speak the above languages and will advise the Registry and the Chamber should it become aware that any other languages will be required for interpretation. The determination of the witnesses' spoken languages is derived from the languages used during their interviews and the information currently available to the Prosecution.

¹¹ 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-Conf (public redacted version file on the same date, ICC-01/21-01/25-356-Red ("Decision on Fitness"), para. 45.

¹² [Decision on Fitness](#), para. 54.

21. Relatedly, on 13 March 2026, the Prosecution raised with the Registry whether interpretation into Filipino will be provided for the public during the trial. This was based on concerns that affected communities in the Philippines who watched the confirmation of charges hearing had difficulties following the proceedings without interpretation into Filipino.¹³ As Filipino is the national and most widely spoken language in the Philippines, providing simultaneous interpretation will significantly promote public accessibility and understanding of the proceedings.

E. Disclosure of outstanding material in the Prosecution's possession and related issues

1) Whether the Prosecution's investigations are still ongoing

22. The Prosecution's investigations in this case, and the Philippines Situation more broadly, are ongoing. [REDACTED],¹⁴ [REDACTED].¹⁵ [REDACTED].¹⁶

23. The Prosecution continues to conduct further focused investigations that are necessary in particular to: (i) collect additional evidence that was not previously available and assess it in light of evidence that has already been obtained; (ii) complete pending investigative steps that the Prosecution had started but could not conclude before the confirmation hearing; and (iii) where necessary, re-interview certain witnesses. The objective of these investigations is to ensure that the Court is not deprived of significant, relevant and probative evidence necessary to establish the truth.¹⁷ The Prosecution estimates that these investigative steps will take several months but in any event, would be concluded sufficiently in advance of the proposed date for the commencement of the trial and related deadlines, without any prejudice to the Defence.

2) Timing and volume of disclosure of outstanding evidence pursuant to article 67(2) of the Statute and rules 76 and 77 of the Rules

¹³ See e.g., Inquirer, [EJK victims' kin struggle with language at ICC watch](#), 25 February 2026.

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ The Prosecution recalls that the Statute does not prohibit post-confirmation investigations. See *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision Establishing General Principles Governing Applications to Restrict Disclosure pursuant to Rule 81 (2) and (4) of the Rules of Procedure and Evidence", 13 October 2006, [ICC-01/04-01/06-568](#), paras 52, 54; *The Prosecutor v. Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, Decision on Defence Application Pursuant to Article 64(4) and Related Requests, 26 April 2013, [ICC-01/09-02/11-728](#), paras. 118, 120; *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Decision on the 'Prosecution's Request to Amend Charges pursuant to Article 61(9) and for Correction of the Decision on the Confirmation of Charges, and Notice of Intention to Add Additional Charges' 14 May 2020, [ICC-01/14-01/18-517](#), para. 25).

24. To date, the Prosecution has disclosed a total of 5,177 items, including 2,975 items that are witness statements/transcripts or other witness-related material. The disclosed evidence includes approximately 189 items identified as including potentially exonerating information. The Prosecution will continue its ongoing review for article 67(2) and rule 77 material, and will ensure its timely disclosure on a rolling basis.

25. The Prosecution is continuing to review the undisclosed material currently in its possession. At this stage, the Prosecution estimates that there are approximately 13,284 items in the collection pending review and disclosure where necessary. In addition to these items, the Prosecution's current collection also includes a significant volume of individual photographs provided by witnesses.¹⁸ The Prosecution has reviewed this material and, where necessary and appropriate, is preparing to compile and disclose closely related photographs as single items.¹⁹ As noted above, the collection also includes a large number of police reports from within the jurisdictional period, that require time intensive analytical and legal review.²⁰ This review is currently underway, and the Prosecution anticipate it will being complete within the next four to six weeks.

26. Further material collected during the course of the ongoing investigation will also require review.²¹ The Prosecution will ensure all existing and new evidence in its possession is disclosed on a rolling basis, and anticipates being able to complete the disclosure process by no later than 30 September 2026.

27. Finally, during the pre-confirmation phase the Prosecution disclosed approximately 856 items to the Defence with content redactions. The Prosecution will review the continued requirement for these redactions on an ongoing basis, with a view to lifting any that are no longer necessary for the purposes of trial.

3) Transcription and translation issues

¹⁸This includes approximately 140,735 items [REDACTED].

¹⁹ The purpose of this is to ensure that these items are disclosed in a manageable format, in light of the volume and closely related nature of the photographs. Many of these items are near duplicate photographs taken of the same scene within a short time-span.

²⁰ This includes approximately 46,601 items [REDACTED].

²¹ [REDACTED].

28. In its further investigations, the Prosecution intends to conduct a number of article 55(2) audio recorded interviews, which must then be transcribed. Transcription of audio/video recordings of these interviews is time intensive.

29. As set out above, there are at least 197 speeches made by Mr Duterte, currently in its possession, that the Prosecution may seek to rely on and which require transcription and/or translation. Of these, approximately 67 items are the subject of pending transcription and/or translation requests. In addition to these items, a further 194 speeches have been collected since the confirmation hearing, and are currently undergoing initial language review in Filipino and/or Cebuano to identify relevant passages for transcription and/or translation.

30. In addition to Mr Duterte's speeches, there are approximately 99 other items that are currently the subject of pending transcription and/or translation requests. It is likely that further evidence will be identified that requires transcription and/or translation as the Prosecution completes its investigation and disclosure review. At this stage, the Prosecution anticipates that it will be able to finalise and disclose all necessary transcriptions and/or translations no later than 30 September 2026.

4) Protective measures for witnesses (including additional need for redactions, delayed disclosure or referrals to the Court's witness protection programme)

31. The Prosecution will continue to conduct individual risk assessments for newly interviewed witnesses and to disclose the identities of these witnesses as soon as the necessary protection measures are in place. Based on the information currently available, the Prosecution is working towards disclosing the identities of all witnesses by the end of September 2026 in advance of its proposed commencement date for trial, as set out below.

32. [REDACTED] witnesses have already been admitted to the Court's witness protection programme.²² The Prosecution presently estimates that it may refer [REDACTED] additional witnesses to the Registry's Victims and Witnesses Section ("VWS") for protection advice, and is working to do so as soon as possible. Given that the Prosecution's investigation is ongoing, additional witnesses may be referred in the future, and the Prosecution will keep the Chamber apprised of this matter, as necessary.

²² [REDACTED].

33. The Prosecution anticipates that a significant number of witnesses will require in-court protective measures under articles 68(1) and (2) of the Statute, and rule 87 of the Rules. These protective measures are likely to be necessary due to the current security situation in the Philippines where many Prosecution witnesses and/or their family members reside. At present, the Prosecution does not intend to call any witnesses who are currently under 18 years of age.

5) Disclosure of witnesses' identities which have been withheld from the Defence

34. The identities of all of the Prosecution witnesses relied on in the Prosecution's pre-confirmation brief have been disclosed to the Defence. There are currently approximately 18 witnesses who were interviewed following the filing of the Prosecution's pre-confirmation brief whose identities are currently undisclosed. [REDACTED]. The Prosecution is working towards disclosing the identity of those witnesses by the end of September 2026, as set out below. In the event that it becomes apparent that this will not be possible, the Prosecution will make an application for delayed disclosure as soon as practicable.

6) Disclosure of material obtained pursuant to article 54(3)(e) of the Statute

35. There is no undisclosed material subject to agreements pursuant to article 54(3)(e) of the Statute.

F. Disclosure by the Defence, including whether the Defence intends to advance a defence in accordance with rules 79 and 80 of the Rules

36. Should the Defence wish to advance a defence in accordance with rules 79 and 80 of the Rules at trial, the Prosecution proposes that the Chamber set a time limit for the Defence to do so sufficiently in advance of the commencement of the trial, in order to allow the Prosecution to adequately respond and prepare its case for trial accordingly.

37. Pursuant to rule 79(2) of the Rules, the notification of grounds for exclusion of criminal liability falling under rule 79(1), namely the grounds provided for in article 31(1), "shall be given sufficiently in advance". Rule 80(1) of the Rules refers to article 31(3) of the Statute, which includes grounds for excluding criminal responsibility other than the ones falling under article 31(1). Pursuant to rule 80(1) of the Rules, notice of the latter grounds should be done "sufficiently in advance of the commencement of the trial".

38. Trial Chambers have consistently interpreted this to mean that notifications of grounds excluding criminal liability should be given prior to the commencement of trial.²³ The jurisprudence of the Court establishes that providing such advance notification is necessary to allow the Prosecution to adequately respond to the Defence and prepare its case for trial accordingly, which lessens the possibility of delays that would affect the fair and expeditious conduct of the trial.²⁴ Notably, in the *Abd-Al-Rahman* case, Trial Chamber I ordered this to be done as a part of the Defence's trial brief and the Prosecution proposes the same approach in this case.²⁵

G. Provision of trial briefs

39. The Prosecution supports the provision of trial briefs, which it considers will assist the Chamber, as well as the parties and participants. The Prosecution proposes that the Chamber adopt the directions that were made in the *Abd-Al-Rahman* case regarding the content of the Prosecution's trial brief and the Prosecution's list of witnesses.²⁶ Were the trial to commence on 30 November 2026 the Prosecution requests that its trial brief be ordered to be due, simultaneously with the Common Legal Representative of the Victims, on 30 September 2026. This would enable the due date for the trial brief of the Defence to be staggered so that it would be due a month later on 30 October 2026 and provide the Defence with adequate time to prepare for trial.

H. Motions requiring resolution prior to the commencement of trial

40. The Prosecution also proposes that the Chamber set a deadline of 30 October 2026 for the filing of all motions requiring resolution prior to the commencement of trial.²⁷ In the Prosecution's submission the parties ought to be expected to bring any motions as soon as practicable once the need has been identified however setting a deadline on 30 October 2026 will ensure the commencement of the trial is not jeopardised immediately prior to its

²³ *The Prosecutor v. Dominic Ongwen*, Decision on 'Prosecution's request to order the Defence to comply with rule 79', 7 June 2016, ICC-02/04-01/15-460 ("[Ongwen Decision](#)"), para. 8. See also *The Prosecutor v. Thomas Lubanga Dyilo*, Annex 1: Decision on disclosure by the defence, 20 March 2008, [ICC-01/04-01/06-1235-Corr-Anx1](#), para. 29(b); *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Directions on the conduct of the proceedings, 2 September 2015, [ICC-01/05-01/13 1209](#), para. 8.

²⁴ [Ongwen Decision](#), para. 9.

²⁵ [Abd-Al-Rahman Decision on Conduct of Proceedings](#), para. 10.

²⁶ [Abd-Al-Rahman Decision on Conduct of Proceedings](#), paras. 6 and 7.

²⁷ In *Al Hassan*, Trial Chamber X scheduled the commencement of the trial on 14 July 2020 and set the date of 1 June 2020 as a deadline for submissions of motions requiring resolution prior to the commencement of trial. See *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Decision Setting the Commencement Date of the Trial, 6 January 2020, [ICC-01/12-01/18-548](#), p. 9.

commencement. This would allow time for the parties and participants to respond and for the Chamber to dispose of any such motions prior to the commencement of the trial.

I. Estimated length of opening statements

41. The Prosecution estimates that it would require between four and a half to six hours for its opening statement.

J. Update and forecast on additional applications by victims to participate in the proceedings

42. The Prosecution defers to the Registry to report on this topic.

K. Other Issues

1) Witness Preparation

43. The Prosecution requests that a protocol for witness preparation be implemented. Permitting witness preparation would enhance the efficiency of the proceedings by ensuring that witnesses give relevant and structured testimony while also helping to ensure the well-being of witnesses. The Prosecution respectfully proposes that the Chamber adopt the witness preparation protocol used in the *Abd-Al-Rahman* case.²⁸

2) Potential Additional Incidents

44. As indicated above, the Prosecution is currently considering including additional incidents in the charges as confirmed by the Pre-Trial Chamber. In this regard, the Prosecution will fully observe the Pre-Trial Chamber's finding that provided "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."²⁹ In those circumstances, as the Pre-Trial Chamber noted, the addition of further incidents would not necessitate recourse to article 61(9) of the Statute.³⁰ Further, the

²⁸ *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Annex A to the Directions on the conduct of proceedings, 4 October 2021, [ICC-02/05-01/20-478-AnxA](#).

²⁹ Decision on the confirmation of charges against Mr Rodrigo Roa Duterte, 23 April 2026, ICC-01/21-01/25-417-Conf (public redacted version filed the same day, ICC-01/21-01/25-417-Red) ("[Confirmation Decision](#)"), para. 22.

³⁰ [Confirmation Decision](#), para. 24.

Prosecution will ensure that adequate notice of any additional incidents is provided to the Defence, including at the very latest, in the Prosecution's trial brief.³¹

3) *The Sitting Schedule For Trial*

45. During the pre-trial proceedings, pursuant to the orders of the Pre-Trial Chamber, the Detention Centre's Medical Officer³² and the joint panel of experts appointed pursuant to rules 113 and 135 of the Rules,³³ provided observations and recommendations regarding special measures and adjustments to facilitate Mr Duterte's participation in the pre-trial proceedings.

46. In setting the sitting schedule for the confirmation hearing, the Pre-Trial Chamber adopted those recommendations, and limited the number of days of hearings to four per week, with a non-sitting day on Wednesday, and set the duration of the hearings to a maximum of three hours per day, with a break every hour.³⁴ Ultimately, the necessity of this reduced sitting schedule was not tested as a consequence of Mr Duterte waiving his right to attend the confirmation hearing.³⁵

47. The Prosecution observes that increasing the number of sitting hours each week has the capacity to significantly reduce the overall length of the trial. Accordingly, the Chamber may consider it appropriate to commence the trial with a moderately increased daily sitting schedule of three and half hours, rather than three hours, and for this to be monitored and amended as necessary. In the event Mr Duterte were to be permitted to absent himself from portions of the trial, which the Prosecution would oppose without due justification, the Prosecution observes that with sufficient notice it may be possible to organise its witnesses so that the regular sitting schedule of four and a half hours per day may be observed.

³¹ [Confirmation Decision](#), para. 22. The Prosecution notes that the Defence has applied for leave to appeal the Confirmation Decision (see Request for Leave to Appeal the Decision on the Confirmation of Charges, 29 April 2026, [ICC-01/21-01/25-422](#)), which the Prosecution opposed (see Prosecution's response to "Defence Request for Leave to Appeal the Decision on the Confirmation of Charges", 4 May 2026, [ICC-01/21-01/25-428](#)). The Defence's request for leave to appeal is currently under consideration by the Pre-Trial Chamber.

³² Order setting the schedule and directions for the confirmation of charges hearing and convening the annual hearing on detention, 27 January 2026, ICC-01/21-01/25-359 ("[Order Setting the Schedule and Directions](#)"), para 14; Confidential Registry Report on the Assessment by the Medical Officer of the Detention Centre, 2 September 2025, ICC-01/21-01/25-263-Conf (public redacted version filed on 30 September 2025, [ICC-01/21-01/25-263-Red](#)).

³³ [Order Setting the Schedule and Directions](#), para. 14; Registry Transmission of the Panel of Experts' Joint and Individual Reports, 5 December 2025, ICC-01/21 01/25-327-Conf (public redacted version was notified on 18 December 2025, [ICC-01/21-01/25-327-Red](#)), with confidential annexes I-IV.

³⁴ [Order Setting the Schedule and Directions](#), para. 15.

³⁵ Decision on Mr Duterte's request to waive the right to attend the hearing on the confirmation of charges, 20 February 2026, [ICC-01/21-01/25-387](#).

4) *Alternate Judge*

48. In light of the recent practice of the Presidency in assigning alternate judges to trial chambers, the Prosecution submits that the assignment of an alternate judge pursuant to article 74(1) of the Statute and rule 39 of the Rules may be appropriate in this matter, should the current availability of the Judges assigned to the Trial Division allow for such an appointment.³⁶ Consistent with the Presidency's previous decision, such an order would avoid the risk of any unanticipated unavailability of a judge in the future having an adverse impact on the expeditiousness of proceedings.³⁷ Accordingly, the Prosecution respectfully defers to the Trial Chamber as to whether a recommendation to the Presidency ought to be made for the assignment of an alternate judge in this case.

5) *Request pursuant to article 56 of the Statute*

49. The Prosecution assesses that it may need to submit at least one request pursuant to article 56 of the Statute in relation to a unique investigative opportunity. The Prosecution anticipates making the request at the earliest opportunity. Should the request be made the Prosecution does not expect this to impact on the disclosure process or the commencement of the trial.

6) *Part of the status conference which should be held ex parte*

50. The Prosecution is mindful that the principles of open justice militate against *ex parte* sessions and that such sessions should only be used where they are strictly necessary. Should the Trial Chamber have questions regarding issues related to cooperation, security risks and the Prosecution's ongoing investigations, they may need to be discussed in an *ex parte* part of the status conference.

IV. CONCLUSION

51. The Prosecution submits the above observations in preparation for the scheduled status conference.

³⁶ The Presidency, Decision assigning judges to divisions and recomposing Chambers, 12 March 2024, ICC-01/04-01/07-3920 ("[Presidency Decision Assigning Judges](#)").

³⁷ [Presidency Decision Assigning Judges](#), p. 6.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', written over a horizontal line.

Mame Mandiaye Niang, Deputy Prosecutor

Dated this 15th day of May 2026

At The Hague, the Netherlands