

**Cour
Pénale
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**International
Criminal
Court**

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Date: **5 June 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

Defence Submissions on the Directions on the Conduct of Proceedings

Source: Defence for Mr Rodrigo Roa Duterte

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I. INTRODUCTION

1. Pursuant to the order issued by Trial Chamber III (“Chamber”) during the Status Conference on 27 May 2026,¹ the Defence for Mr Rodrigo Roa Duterte files its submissions on the directions on the conduct of the proceedings to be issued by the Chamber in this case (“Directions”).

II. PROCEDURAL HISTORY

2. On 30 April 2026, the Chamber scheduled the Status Conference² and ordered the parties and participants to provide submissions on a range of items to facilitate the preparation of the hearing and to enable the Chamber to set a trial date in the case.³
3. On 15 May 2026, the Defence submitted its observations in advance of the Status Conference,⁴ proposing, *inter alia*, that the presentation of evidence be governed by the “admission” regime.⁵
4. The same day, the Prosecution indicated its intention to call between 26 and 41 witnesses under Rule 68 of the Rules.⁶ The Prosecution also informed the Chamber of approximately 13,284 items in its collection pending review and potential disclosure, in addition to the 5,177 items which have already been disclosed.⁷
5. During the Status Conference on 27 May 2026, the Chamber indicated that it intended to follow the same conduct of proceedings model adopted in the *Al-Rahman* case,⁸ which itself was based on the model in the Chamber’s Practice Manual. The Chamber

¹ First Status Conference, [ICC-01/21-01/25-T-009-CONF-ENG ET](#), 27 May 2026 (“[Status Conference](#)”), p. 48, lines 17-19 (“[i]t’s intended that it will very much be the same model as that in the *Al-Rahman* case, which also models the model one in the Chamber’s Manual. But if anybody wants to suggest amendments to it, they must do so by Friday, 5 June”). All references to “Article”, “Rule”, and “Regulation” in the present submission are to the [Rome Statute](#), [Rules of Procedure and Evidence](#), and the [Regulations of the Court](#), respectively, unless otherwise indicated.

² Order Scheduling First Status Conference, [ICC-01/21-01/25-423](#), 30 April 2026 (“[Order on First Status Conference](#)”).

³ [Order on First Status Conference](#), para. 1.

⁴ Defence Observations in Advance of the First Status Conference, [ICC-01/21-01/25-439-Conf](#), 15 May 2026 (“[Defence Observations](#)”).

⁵ [Defence Observations](#), paras 35-36.

⁶ Confidential redacted version of “Prosecution’s submissions pursuant to the ‘Order scheduling first status conference’”, [ICC-01/21-01/25-440-Conf-Red](#), 15 May 2026 (“[Prosecution Observations](#)”), para. 15.

⁷ [Prosecution Observations](#), paras 24-25.

⁸ *Al-Rahman*, Directions on the conduct of proceedings, [ICC-02/05-01/20-478](#), 4 October 2021 (“[Al-Rahman Directions](#)”).

ordered anyone wishing to suggest amendments to the Directions to do so by 5 June 2026.⁹

III. SUBMISSIONS

6. In light of the Chamber's indication that the Directions would largely follow the model adopted in *Al-Rahman*,¹⁰ the Defence's proposed amendments are formulated by reference to the Directions on the Conduct of Proceedings issued in that case.

A. A balance between the admission and submission regimes

7. In its observations in advance of the Status Conference, the Defence submitted that "the admissibility-based regime avoids overburdening the record with material of questionable relevance or limited probative value".¹¹ The Chamber expressed its own concern over the substantial volume of "unnecessary and irrelevant evidence that was dumped into the court record"¹² in the *Al-Rahman* case as a result of the submission-based regime. The Chamber also recognised that the submission regime provides insufficient certainty as to the evidentiary basis on which the Chamber may ultimately rely.¹³
8. Notwithstanding the acknowledgement that "the submission system of evidence getting on to the record is now court-wide",¹⁴ the Chamber indicated that it "is going to try and find a fine line between the two systems".¹⁵ On this basis, the Chamber explained its intention to rule, at the time of presentation, on the admissibility of items of evidence that are considered to be of particular importance or heavily relied upon by the parties.¹⁶
9. Accordingly, the Defence submits that the Directions should depart from the *Al-Rahman* Directions in this respect to reflect a balance between the admission and the submission regimes. This balance would assist the Chamber in safeguarding the integrity of the case record, and also in assessing whether the burden of proof has been discharged by the Prosecution at the close of the presentation of its case. The Defence

⁹ [Status Conference](#), p. 48, lines 18-19.

¹⁰ [Status Conference](#), p. 48, lines 17-18.

¹¹ [Defence Observations](#), para. 36.

¹² [Status Conference](#), p. 19, lines 24-25.

¹³ [Status Conference](#), p. 20, lines 5-9 ("and I take into account the argument mounted on behalf of Mr Haynes, which has been said on many occasions, that it makes it very difficult to know at the end whether the Chamber will find the document to be persuasive or unpersuasive, or even admitted at all").

¹⁴ [Status Conference](#), p. 19, lines 20-21.

¹⁵ [Status Conference](#), p. 20, line 2.

¹⁶ [Status Conference](#), p. 20, lines 10-12.

therefore suggests that the following language could replace current paragraph 26 of the *Al-Rahman* Directions:

“At the same time, for items of evidence that are considered by the Chamber to be of particular importance, including items which have been relied upon repeatedly by the parties, the Chamber acting proprio motu or at the request of either party, may give a ruling on admissibility at the time of that item’s presentation, having first heard the parties’ submissions on admissibility”.

B. “Breakdowns” of anticipated witness testimony

10. The Chamber also expressed concern over the volume of Prosecution witness evidence which exists in the form of lengthy suspect interviews “which wander all over the place in terms of topics”.¹⁷ The Chamber indicated that it “expect[s] to have a breakdown in schedule form of the topics which are to be gone through with the witness in the order of which they are to be gone through, with a reference in a column to the pages in the actual interview”.¹⁸
11. The Prosecution has indicated its intention to provide such breakdowns for “five witnesses especially”.¹⁹ However, witness evidence has been disclosed in the form of lengthy transcribed interviews for many more than five witnesses. In these circumstances, the Defence proposes that the Prosecution be directed to provide detailed breakdowns for all witnesses called to testify whose evidence includes prior transcribed interviews.
12. These breakdowns would assist in clarifying the anticipated content and scope of witnesses’ testimony, facilitating the early identification of issues in dispute. As emphasised by the Chamber, this would contribute to the efficient and expeditious conduct of the trial.²⁰ As such, the Defence respectfully proposes the following amendment to be added to the Directions:

“Should the calling party intend to call a witness whose evidence has been recorded in the form of a transcript of interview, it shall provide the Chamber and the parties with a breakdown, in schedule form, indicating: (i) the topics to be addressed with the witness; (ii) the order in which those topics will be addressed; and (iii) references to the relevant pages of the interview transcripts”.

¹⁷ [Status Conference](#), p. 12, lines 22-25; p. 13, line 1.

¹⁸ [Status Conference](#), p. 13, lines 2-5.

¹⁹ [Status Conference](#), p. 13, lines 10-11.

²⁰ [Status Conference](#), p. 3, lines 1-2.

C. Examination of witnesses

13. The *Al-Rahman* Directions are silent on whether a party is required to “put its case” to a witness, meaning whether a party is required to present its version of a disputed fact to a witness during questioning, thereby giving the witness an opportunity to accept, reject or explain it. In the present case, as discussed above, the Prosecution’s witness evidence has been disclosed in the form of lengthy prior statements or transcripts of interview. Where this lengthy prior testimony is admitted into the case record, requiring the parties to then confront the witness with every disputed aspect of that testimony becomes unrealistic. To do so would consume a disproportionate amount of hearing time, and undermine the efficiency sought by the Chamber. In the Defence’s view, the essential purpose of the practice – to ensure fairness by giving a witness an opportunity to respond to substantive challenges – can be achieved without requiring that each and every aspect of a party’s case be put expressly.
14. Accordingly, the Defence proposes that a party’s decision not to confront a witness with each aspect of its case should not – in and of itself – result in the Chamber disregarding or assigning reduced weight to impeaching evidence, particularly where the substance of the challenge is otherwise apparent from the record. Rather, the Chamber should retain the discretion to assess whether the witness was afforded sufficient opportunity to address the matters in dispute and what weight, if any, should be attributed to the relevant evidence.
15. The Defence therefore proposes the following additional language be included in the Directions, potentially after current paragraph 37 of the *Al-Rahman* Directions:

“The non-calling party is not required to confront a witness with every aspect of its case that differs from the witness’s evidence, nor with every fact or item of evidence on which it may later rely to challenge the witness’s credibility. The fact that such matters were not put to the witness shall not, without more, lead the Chamber to disregard or attribute reduced weight to the relevant evidence”.

D. Introduction of evidence through witnesses

16. One of the greatest potential threats to the Chamber’s stated desire of avoiding a large volume of “unnecessary and irrelevant evidence” in the case record is the wholesale admission of large documents and items of evidence, particularly in cases where a witness has only been able to comment on a small portion of them. The Defence shares

the Chamber's concern over "the admission of very large documents, even though a witness had only spoken as to one page".²¹

17. In the Defence submission, the introduction of evidence through witnesses should be guided by the nature, length, and use of that evidence in court. The Defence further notes that the approach adopted in the *Al-Rahman* Directions will not fully resolve this issue, as prior guidance has tended to favour the submission of items in their entirety through witnesses, even where only specific parts have been addressed in testimony.²²
18. Accordingly, the Directions should discourage the wholesale introduction of extensive items of evidence (*e.g.* Call Data Records, reports, long videos or e-messages) through witnesses whose testimony pertains only to discrete portions thereof. Addressing this issue in the Directions may also help circumvent the need for recurrent litigation on this issue.²³
19. The Defence accordingly suggests that the following additional language be added to current paragraph 32 of the *Al-Rahman* Directions:

"32. Through this process each item of evidence which is submitted (in batches or otherwise) will be formally recognised as submitted. For large or lengthy items of evidence, only the specific portion or portions shown to the witness, and about which the witness has given evidence, will be submitted through that witness unless the Chamber decides otherwise".

²¹ [Status Conference](#), p. 19, line 25; p. 20, line 1.

²² See *e.g.* *Al-Rahman*, Annex 1 to the Registry's Report on Evidence Recognised as Formally Submitted by the Chamber for Witness D-0027, [ICC-02/05-01/20-1070-Anx1-Red](#), 8 February 2024, p. 2.

²³ See *e.g.* repeated litigations in the *Yekatom and Ngaïssona* case: Annex 1 to the Registry's Report on the Evidence recognised as formally submitted by the Chamber for witness P-2027, [ICC-01/14-01/18-1100-Anx1](#), 30 August 2021; Annex 1 to the Registry's Report on the Evidence recognised as formally submitted by the Chamber for witness P-2673, [ICC-01/14-01/18-1113-Anx1](#), 20 September 2021; Annex 1 to the Registry's Report on Evidence Recognised as Formally Submitted by the Chamber for witness P-0801, [ICC-01/14-01/18-1197-Anx1](#), 1 December 2021; Annex 1 to the Registry's Report on Evidence Recognised as Formally Submitted by the Chamber for witness P-1719, [ICC-01/14-01/18-1780-Anx1-Red](#), 3 March 2023; 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. See also repeated litigations in the *Al-Rahman* case: Annex 1 to the Registry's Report on Evidence Recognised as Formally Submitted by the Chamber for Witness DAR-OTP-P-0877, [ICC-02/05-01/20-794-Anx1-Red](#), 27 October 2022; Annex 1 to the Registry's Report on Evidence Recognised as Formally Submitted by the Chamber for Witness DAR-OTP-P-0916, [ICC-02/05-01/20-825-Anx1-Red](#), 13 December 2022; Annex 1 to the Registry's Report on Evidence Recognised as Formally Submitted by the Chamber for Witness D-0026, [ICC-02/05-01/20-1216-Anx1-Red](#), 9 December 2024.

E. Rule 68 and associated exhibits

20. The Defence is alive to the intended use of Rule 68 by the Prosecution,²⁴ as endorsed by the Chamber.²⁵ As regards any associated exhibits to Rule 68 statements, the Defence respectfully submits that admission should be limited to those exhibits which are used or explained by the witness in their prior recorded testimony and which are necessary for the proper understanding of that testimony.²⁶ These limits will ensure that the Rule 68 procedure does not open the door to the admission of lengthy standalone documents.²⁷
21. Therefore, the Defence respectfully proposes the below addition to the *Al-Rahman* Directions, after current paragraph 47:

“Where prior recorded testimony is admitted pursuant to Rule 68, only those exhibits that were used or explained by the witness in the course of that prior testimony (or any supplementary evidence given before the Chamber), and that are necessary to its proper understanding, may be admitted as associated exhibits”.

F. Metadata update by the Registry

22. Chambers of this Court have previously directed the Registry to update the metadata of each item used during hearings, including, *inter alia*, an indication of whether the item was submitted and through which witness it was tendered.²⁸ A similar approach was also reflected in the *Al-Rahman* Directions.²⁹ However, to ensure that the evidentiary record is clear to the parties and participants from the earliest possible stage, the metadata of documents should be consistent across all databases. In these circumstances, the Defence respectfully requests that the Chamber direct the Registry to provide the parties and participants with equivalent metadata updates for their external databases (including Defencejem for the Defence).

²⁴ [Status Conference](#), p. 13, line 22; p. 14, line 12.

²⁵ [Status Conference](#), p. 13, lines 20-21.

²⁶ See e.g. *Ruto and Sang*, Decision on Prosecution Request for Admission of Prior Recorded Testimony, [ICC-01/09-01/11-1938-Red](#), 19 August 2015, para. 33.

²⁷ See e.g. [PHL-OTP-00000035](#), [PHL-OTP-0002-0008](#), [PHL-OTP-0002-0029](#), and [PHL-OTP-00090437](#) adding up to 132 pages. See also the Notebooks provided by a witness that span over 500 pages taken together: [PHL-OTP-0008-2003-R02](#) and [PHL-OTP-0008-2337-R02](#).

²⁸ See e.g. *Ongwen*, Initial Directions on the Conduct of the Proceedings, [ICC-02/04-01/15-497](#), 13 July 2016, para. 28(v); *Al Hassan*, Directions on the conduct of proceedings, [ICC-01/12-01/18-789-AnxA](#), 6 May 2020, paras 33, 34(vi); *Yekatom and Ngaïssona*, Initial Directions on the Conduct of the Proceedings, [ICC-01/14-01/18-631](#), 26 August 2020, para. 63(v).

²⁹ [Al-Rahman Directions](#), paras 31(iv), 32.

23. The Defence suggests the following amendments to the *Al-Rahman* Directions:

“31.iv) the Registry will then reflect all formally submitted items in the eCourt metadata. [...]”

32. Through this process each item of evidence which is submitted (in batches or otherwise) will be formally recognised as submitted. Its status as submitted will accordingly be reflected in the eCourt metadata of each item of evidence.

33. The Registry will, on a monthly basis, provide the parties and participants a disclosure package in the form of a metadata update of all fields related to the evidence used in court”.

IV. CONCLUSION AND RELIEF SOUGHT

24. The Defence respectfully requests that the Trial Chamber consider the amendments suggested herein while preparing the Directions on the Conduct of Proceedings in this case.



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Dated this 5th day of June 2026
At The Hague, the Netherlands