

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: **ICC-01/21-01/25**

Date: **15 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

Prosecution's Response to "Defence Submissions on the Directions on the Conduct of Proceedings" (ICC-01/21-01/25-455)

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Prosecution provides its response to the Defence Submissions on the Directions on the Conduct of Proceedings (the “Defence Submissions”) below.¹ The Defence’s proposals with respect to: (i) the admission and submission regime; (ii) when a calling party is required to confront a witness; and (iii) what documentary evidence can be introduced through rule 68 of the Rules of Procedure and Evidence (the “Rules”) are unnecessary. The Prosecution further submits that the Defence’s proposal regarding the provision of breakdowns of anticipated witness testimony should be limited, as the Chamber noted, to witnesses with lengthy transcripts.

II. SUBMISSIONS

A. Several of the Defence’s proposals are unnecessary

1. *The admission and submission regime*

2. The Defence’s proposal that the Chamber depart from the Directions on the Conduct of Proceedings adopted in the case of *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (“*Ali Kushayb*”) (the “*Abd-Al-Rahman* Directions”)² in order to “reflect a balance between the admission and the submission regimes”³ is unnecessary.

3. This balance is already reflected in the *Abd-Al-Rahman* Directions, which was noted by the Chamber during the first status conference.⁴ Specifically, the *Abd-Al-Rahman* Directions state that the Chamber will “make discrete determinations on the admissibility of specific evidence or categories of evidence in accordance with the requirement of the Statute.”⁵ The Prosecution notes that the Chamber in the *Abd-Al-Rahman* case did, in fact, make discrete determinations on the admissibility of certain items of evidence.⁶ The *Abd-Al-Rahman* Directions, which the Chamber advised largely follow the Directions for the Conduct of Proceedings appended to the Chambers Practice Manual,⁷ should not be deviated from without

¹ Defence Submissions on the Directions on the Conduct of Proceedings, 5 June 2026, ICC-01/21-01/25-455 (the “[Defence Submissions](#)”).

² Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (“*Ali Kushayb*”), Direction on the conduct of proceedings, 4 October 2021, ICC-02/05-01/20-478 (the “[Abd-Al-Rahman Directions](#)”).

³ [Defence Submissions](#), para. 9.

⁴ T-0009, p. 48, lines 20-24.

⁵ [Abd-Al-Rahman Directions](#), para. 26.

⁶ See e.g., Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (“*Ali Kushayb*”), Decision on the admissibility of video (DAR-OTP-0216-0119) and records of telephone calls (DAR-OTP-0216-0127, DAR-OTP-0216-0128), 17 February 2023, [ICC-02/05-01/20-876](#).

⁷ T-009, p. 48, lines 15 to 18.

good reason in order to promote consistent practice across cases in relation to the submission regime, which, as the Chamber made clear, is now “court-wide”.⁸

4. Noting the Defence’s proposal, the Prosecution would, however, suggest that in order for the parties, participants and the Chamber to receive sufficient notice of potential challenges to admissibility, paragraph 43 of the *Abd-Al-Rahman* Directions be revised as follows:

*43. The opposing party shall, by way of email, no later than two days prior to the start of the witness’s testimony, provide notice of its objection to the use of any material with the witness, **including any potential challenges to its admissibility**. This is without prejudice to the possibility to object, during the testimony, to the manner in which the material is presented to the witness.*

2. Confronting witnesses

5. In relation to when a party is required to confront or “put its case” to a witness,⁹ the Prosecution proposes the procedure adopted in the *Abd-Al-Rahman* case, which reflects established case law.¹⁰ Pursuant to this procedure, “if the non-calling party challenged the accuracy or veracity of the evidence being given by a witness, then this challenge should be included in the questioning of a witness.”¹¹ While the Defence do not appear to disagree with this approach in principle, the language proposed in the Defence Submissions does not fully capture the approach to this issue in the *Abd-Al-Rahman* case, and is unnecessarily vague.¹² The Prosecution therefore suggests that the parties be guided by the procedure adopted in the *Abd-Al-Rahman* case, as articulated in the *Abd-Al-Rahman* Trial Judgment, which the Chamber may choose to set down in the conduct of proceedings in this case, or simply incorporate by reference.¹³

3. Applications pursuant to rule 68 of the Rules and associated exhibits

⁸ T-009, p. 19, lines 17 to 22; [Defence Submissions](#), para. 8.

⁹ [Defence Submissions](#), paras 13-15.

¹⁰ Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”)*, Trial Judgment, 6 October 2025, ICC-02/05-01/20-1240, (the “[Abd-Al-Rahman Trial Judgment](#)”), para. 199. *See also*, paras 200-201.

¹¹ [Abd-Al-Rahman Trial Judgment](#), para. 199. *See also*, paras 200-201.

¹² For example, the Defence suggests that the fact that matters were not put to a witness shall not “without more” lead the Chamber to disregard or attribute reduced weight to the relevant evidence. It is not clear to the Prosecution what is meant by “without more”. *See* [Defence Submissions](#), paras 13-15.

¹³ [Abd-Al-Rahman Trial Judgment](#), para. 199.

6. The Defence proposes that the admission of associated exhibits to statements tendered under rule 68 of the Rules should be limited to those exhibits which were used or explained by the witness in their prior recorded testimony and which are necessary for the proper understanding of that testimony.¹⁴

7. While the amendment proposed by the Defence appears to seek to reflect a finding of the Trial Chamber in the *Ruto and Sang* case,¹⁵ including such a direction in the conduct of proceedings is unnecessary. Decisions regarding which documents should be introduced as associated exhibits should be made by the Chamber on a case-by-case basis when deciding on applications under rule 68 of the Rules. This is consistent with the approach taken by Trial Chamber I in the *Abd-Al-Rahman* case.¹⁶ This will allow the Chamber to make its decision with the relevant context and jurisprudence before it. There is no need to seek to restrict the introduction of certain documents under rule 68 of the Rules before applications have even been made before the Chamber.

B. Breakdowns of anticipated witness testimony should be limited to witnesses with lengthy transcripts

8. The Defence proposes that if a witness is called whose evidence has been recorded in the form of a transcript, the calling shall provide the Chamber and parties with a breakdown, in schedule form, indicating: (i) the topics to be addressed; (ii) the order in which the topics will be addressed; and (iii) the reference to the relevant pages of interview transcripts.¹⁷

9. The Prosecution objects to the Defence's proposal that a breakdown be provided for each witness whose testimony was recorded in transcripts. The Chamber was clear during the first status conference that the proposed schedule is intended to provide order to complex and "lengthy interviews"¹⁸, as opposed to every witness interview recorded in the form of a transcript. The Prosecution submits that there is no need to deviate from the Chamber's original

¹⁴ [Defence Submissions](#), paras 20-21.

¹⁵ See [Defence Submissions](#), paras 20-21, citing Trial Chamber V(A), *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*, 19 August 2015, [ICC-01/09-01/11-1938-Corr-Red2](#), para. 33, in which the Trial Chamber stated that associated exhibits "are also admissible so long as the witness uses or explains them in the prior recorded testimony, and particularly when these are necessary to read and understand the prior recorded testimony being introduced".

¹⁶ See Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Public redacted version of First Decision on the Prosecution's request to introduce prior recorded testimonies under Rule 68(3), 20 January 2022, [ICC-02/05-01/20-559-Red](#), para. 17, in which Trial Chamber I noted that "the Chamber will analyse the prior recorded testimonies and related material on a case-by-case basis, noting that, in principle, such associated material must also be introduced in order to ensure full understanding of the submitted testimony."

¹⁷ [Defence Submissions](#), para. 12.

¹⁸ T-0009, p. 13, lines 1-8.

instruction and that doing so is inconsistent with the objective of conducting expeditious proceedings as it will create unnecessary work for the parties and additional materials for the Chamber to review.

10. The Prosecution does not oppose the Defence's proposal regarding the content of the breakdown,¹⁹ on the understanding that the order of topics is understood as an "anticipated order of topics", given that the calling party cannot guarantee the order in which the witness' evidence will be elicited.

III. REQUESTED RELIEF

11. For the above reasons, the Prosecution respectfully requests that the Chamber:

- (i) reject the Defence's proposal regarding the admission and submission regime and adopt the Prosecution's recommendation regarding paragraph 43 of the *Abd-Al-Rahman* Directions as set out in paragraph four above; and
- (ii) reject the Defence's proposals regarding:
 - i. when a calling party is required to confront a witness;
 - ii. what documentary evidence can be introduced through rule 68 of the Rules; and
 - iii. breakdowns being provided for each witness whose testimony was recorded in transcripts.



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¹⁹ Namely: (i) the topics to be addressed; (ii) the order in which the topics will be addressed; and (iii) the reference to the relevant pages of interview transcripts. See [Defence Submissions](#), para. 12.

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