

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/21-01/25**
Date: **9 September 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 “Prosecution’s Response to the Defence Request to Amend the E-Court Protocol in Relation to Open Source and User-Generated Material”,
4 September 2026, ICC-01/21-01/25-489-Conf**

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Prosecution hereby provides its Response to the Defence Request to Amend the E-Court Protocol in Relation to Open Source and User-Generated Material (the “Request”).¹

2. The Defence’s Request, while framed as a proposed amendment to the E-Court Protocol, essentially argues that an expert report must accompany all forms of open source and user-generated evidence submitted at trial.² The Prosecution disagrees with this assertion. Open source and user-generated evidence are extremely broad categories of documents that capture numerous types of evidence. As such, whether open source or user-generated evidence requires an accompanying expert report should be determined on case-by-case basis by the submitting party that has the burden of establishing its relevance, probative value and assessing its potential prejudicial effect (the “standard evidentiary criteria”).³ It is unreasonable, unnecessary and against the interests of judicial efficiency, to require an expert report to accompany all forms of open source and user-generated evidence. It is also inconsistent with the Court’s prior jurisprudence.

3. In any event, the actual relief the Defence is seeking – an amendment to the E-Court Protocol to add another field on Nuix Discover – is unnecessary and burdensome. There is no benefit to the Chamber, or the parties and participants, to including this information for all disclosed evidence at this stage of the proceedings. Whether a party adduces an expert report alongside open source or user-generated evidence will become known when the party submits the evidence to the Chamber.

4. Finally, the Prosecution notes that the Defence devoted much of its submission to complaints about the Prosecution’s disclosure.⁴ While the Prosecution disputes the Defence’s characterisation of its disclosure, these submissions are irrelevant to the Request and have therefore not been addressed.

II. CONFIDENTIALITY

5. This filing is classified as confidential pursuant to regulations 23*bis* (1) of the Regulations of the Court as it refers to filings and an order of the same classification.

¹ Confidential Defence Request to Amend the E-Court Protocol in Relation to Open Source and User-Generated Material, 31 August 2026, ICC-01/21-01/25-486-Conf (the “Request”).

² Request, para. 24.

³ Directions on the conduct of proceedings, 19 June 2026, ICC-01/21-01/25-471 (the “[Directions](#)”), paras 33-42.

⁴ Request, paras 1-2, 26-27.

III. SUBMISSIONS

6. As noted above, the Defence’s Request, while framed as a proposed amendment to the E-Court Protocol, is almost entirely dedicated to arguing that all forms of open source and user-generated evidence “should always” be accompanied by an expert report when submitted by the parties.⁵ This proposal should be rejected.

7. Open source information is defined as information that “encompasses publicly available information that any member of the public can observe, purchase or request without requiring special legal status or unauthorized access.”⁶ User-generated evidence is similarly broadly defined as “evidence recorded on personal digital devices.”⁷ Given the extreme breadth of these definitions, and the multiple types of evidence they capture, the determination of whether a particular piece of open source or user-generated evidence needs to be accompanied by an expert report must be made on a case-by-case basis.

8. For instance, there is no dispute that certain types of open source evidence and user-generated evidence, may require an expert to confirm “whether an item has been edited in any way” or whether “AI tools were used to filter the evidence”.⁸ There has been no suggestion by the Prosecution that the provision of a URL field would remedy the issues identified by the Trial Chamber in the *Yekatom* case quoted by the Defence.⁹ To be clear, despite the multiple paragraphs the Defence dedicated to rebutting this strawman argument,¹⁰ the Prosecution has never argued that the provision of a URL field is sufficient to authenticate *all* forms of open source or user-generated evidence.

9. On the other hand, the Prosecution submits that expert evidence is not necessary to accompany certain other forms of open source evidence from reputable sources. For example, reports from organisations such as the United Nations, government websites, NGOs such as Human Rights Watch, and reputable news publications should not require expert evidence in

⁵ Request, para. 24.

⁶ [Berkeley Protocol on Digital Open Source Investigations, A Practical Guide on the Effective Use of Digital Open Source Information in Investigating Violations of International Criminal, Human Rights and Humanitarian Law](#), Office of the United Nations High Commissioner for Human Rights, University of California Human Rights Center, 2022, p. 6. Pursuant to the Defence position, an expert report or testimony would be required for the Prosecution to submit the Berkeley Protocol.

⁷ Yvonne McDermott Rees, Anne Hausknecht & Alice Liefgreen, *New Evidence, New Challenges: ICC Judges’ Perspectives on User-Generated Evidence and Judging in an Age of Artificial Intelligence*, 16 *Oñati Socio-Legal Series* 1571 (2026) p.1.

⁸ Request, para. 15.

⁹ Request, para. 14.

¹⁰ Request, paras 13-19.

order to be submitted. However, were the Defence's Request to be granted, the submission of a United Nations Security Council resolution obtained from the United Nations official website¹¹ would require an expert report or testimony. Chambers of this Court have consistently allowed the submission of open source evidence of this nature without the need for an accompanying expert report.¹² Applying this standard, the Defence should have provided an expert report to accompany the multiple open source documents cited in its Request, which it seeks the Chamber to rely upon.¹³

10. Ultimately, the Defence's proposed approach fails to differentiate between these vast categories of documents, which have inherently different *indicia* of reliability. The Defence's attempt to impose the burden of expert evidence which may be necessary for some categories of material (e.g. anonymous user-generated evidence posted on a social media platform), but certainly not others (e.g. material from an official government website), should be rejected.

11. The Prosecution submits that it is up to the party submitting the evidence to determine whether expert evidence is indeed necessary to establish the standard evidentiary criteria the Chamber will consider in its holistic assessment of the evidence.¹⁴ Further, pursuant to the protocol adopted by the Chamber regarding the submission of evidence (whether documentary, digital or physical), the parties may challenge the admissibility of certain evidence when it is submitted.¹⁵ The Defence will therefore have the chance to challenge any open source or user-generated evidence the Prosecution decides to introduce at trial should it have concerns regarding its authenticity.

12. The Prosecution agrees with the Defence that the Court must be vigilant in its assessment of open source evidence in the age of artificial intelligence and disinformation. Pre-Trial Chamber I [REDACTED] "[REDACTED]".¹⁶ However, the Prosecution submits that the Court must be proportionate in its response to these concerns and not create significant burdens that unnecessarily hamper judicial efficiency and ultimately, risk delaying the start of the trial.

¹¹ United Nations Security Council, Resolutions, <https://main.un.org/securitycouncil/en/content/resolutions-0>.

¹² See *e.g.* *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, Public redacted version of Decision on the Prosecution's bar table motion, 27 February 2023, [ICC-02/05-01/20-885-Red](#), paras 8-10, 52(i).

¹³ Request, fns 20, 21 22, 25, 28, 29, 31, 33, 34.

¹⁴ [Directions](#), para. 34. The Prosecution submits that this includes evidence from OTP Link. The Prosecution notes the Defence's submission in this regard assures the Defence that it has reviewed, and continues to review, all material that is submitted through OTP Link in relation to this case.

¹⁵ [Directions](#), paras 35-37.

¹⁶ Confidential Decision on the Defence's 'Urgent Request for Interim Release' and 'Renewed Request for Interim Release', 26 September 2025, ICC-01/21-01/25-282-Conf, para. 54.

13. Turning to the narrow point of relief the Defence is seeking in its Request, the Prosecution submits that the establishment of what is essentially a check “yes or no” box in Nuix Discover is unhelpful and unduly burdensome. Whether a party adduces an expert report alongside open source or user-generated evidence that it seeks to formally submit in the trial will become clear upon the party’s application to the Chamber. It would not benefit the Chamber, or the parties and participants, to force the provision of this information for all open source or user-generated items that have been disclosed to date.

IV. REQUESTED RELIEF

14. For the above reasons, the Prosecution respectfully requests that the Chamber reject the Request.

A handwritten signature in black ink, appearing to read 'Mandiaye Niang', with a large, stylized flourish to the left.

Mame Mandiaye Niang, Prosecutor, *ad interim*

Dated this 9th day of September 2026

At The Hague, the Netherlands