

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

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

Date of original:

22 September 2026

Date: **25 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 “Defence Motion Pursuant to an Order of the Trial Chamber”

Source: Defence for Mr Rodrigo Roa Duterte

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I. INTRODUCTION

1. Trial Chamber III has warned the parties that it does not want the case record to be flooded with material that is repetitive, irrelevant, duplicative, or overly voluminous. It asked the Prosecution to review its evidence to ensure that this is not the case.¹ A concise, properly-compiled case record is particularly important in this case, with a frail and elderly defendant, and the shortest period between confirmation and the start of trial in ICC history.²

2. The Prosecution disclosed 5,275 items of evidence in the confirmation phase. Having heard the Trial Chamber's request for a tight case record, it then chose to expand this to 62,130 items at the time of writing, being a 978% increase. The Prosecution's "massive"³ List of Evidence currently comprises 19,238 of those items.⁴ The Defence has no ability to read this volume of evidence prior to trial. However, even a cursory review demonstrates that much of the disclosed material is of extremely limited or no **relevance** to the charges in this case.

3. The sheer **volume** of material, disclosed to the Defence three months before the start of trial, undermines Mr Duterte's right to adequate time for the preparation of his defence pursuant to Article 67(1)(b). Even if the Prosecution were to condense its List of Evidence in advance of the next Status Conference, as suggested by the Chamber,⁵ the Defence must still review all 62,130 items disclosed to it, totalling over 320,000 pages of documents and 1,000 items of audio-visual material, in order to prepare for trial. On a conservative estimate of three minutes per page, it would take 16,000 person hours to review every disclosed item of documentary evidence just once.

4. In addition to its quantity, the **quality** of this material is abysmal. The Defence has raised systematic and persistent disclosure problems with the Prosecution. These include: tens of

¹ Transcript of Status Conference, [ICC-01/21-01/25-T-009-CONF-ENG](#), 27 May 2026 ("Transcript of the First Status Conference"), p. 47, lines 20-21; Transcript of Status Conference, [ICC-01/21-01/25-T-011-CONF-ENG](#), 16 September 2026 ("Transcript of the Third Status Conference"), p. 15, line 25 to p. 16, line 9, p. 17, lines 13-16, p. 18, lines 17-22.

² The trial is scheduled to commence seven months and one week after the confirmation decision, see [Transcript of the First Status Conference](#), p. 46, lines 12-14. In *El Hishri*, the same period will be nine months and 19 days, see *El Hishri*, Decision Setting the Commencement Date of the Trial, [ICC-01/11-01/25-183](#), 14 September 2026, para. 28. In *Yekatom & Ngaïssona*, this period was 14 months and 5 days, see *Yekatom & Ngaïssona*, Order Rescheduling the Commencement Date of the Trial, [ICC-01/14-01/18-875](#), 8 February 2021, para. 3. In *Abd-Al-Rahman*, it was just shy of 9 months, see *Abd-Al-Rahman*, Transcript of Status Conference, [ICC-02/05-01/20-T-013-ENG](#), 8 September 2021, p. 77, lines 17-20. In *Bemba*, it was 17 months and one week, see *Bemba*, Transcript of Trial Hearing, [ICC-01/05-01/08-T-32-ENG](#), 22 November 2010, p. 1, lines 14-15.

³ [Transcript of the Third Status Conference](#), p. 10, line 20.

⁴ Annex B to the Prosecution's Submission of the List of Witnesses and the List of Evidence, [ICC-01/21-01/25-488-Conf-AnxB](#), 31 August 2026.

⁵ [Transcript of the Third Status Conference](#), p. 17, lines 13-16, p. 18, lines 17-22.

thousands of documents with incorrect descriptions, dates and other metadata; thousands of ‘floating’ pages that are detached from the remainder of the documents to which they belong; hundreds of illegible or blank items; thousands of duplicates or repetitive items; hundreds of untranslated and/or untranscribed audio and video files, and material disclosed in unreadable formats. Proceeding to trial on this basis would undermine the efficiency of proceedings and, by consequence, Mr Duterte’s right to trial without undue delay.

5. In ordinary circumstances, the obvious remedy would be to vacate the start date of trial to allow the Defence adequate time to review the full record of disclosure and prepare for trial. Herein, the Defence proposes an alternative solution, which is for the Trial Chamber to order the Prosecution to triage and properly organise the documents in its possession and migrate relevant items to a new case record containing all exculpatory evidence and duly-triaged Rule 77 and incriminating evidence, with a maximum number of items that would be manageable within the constraints of these proceedings. This is the only way in which the start date for trial proceedings of 30 November 2026 could fairly be maintained.

II. PROCEDURAL HISTORY

6. The Defence does not consider it appropriate to divulge details of *inter partes* communications in a public filing. Suffice to say, since July 2026, the parties have entered into regular correspondence, in good faith, to attempt to remedy the issues with the Prosecution’s disclosure record in this case. The overarching problem is that the excessive volume of the record, much of which is of extremely limited relevance to this case, has rendered meaningful review, let alone the ability to list every individual problematic item, impossible.

7. Having illustrated some of the key issues at the Third Status Conference, the Defence was ordered to file a motion setting out these issues, and proposed solutions.⁶ The proposal set out herein was made, in outline form, to the Prosecution on Thursday 17 September, but to date no agreement has been reached between the parties.

⁶ [Transcript of the Third Status Conference](#), p. 29, lines 1-4, 9-10.

III. SUBMISSIONS

i. The volume of material disclosed has not been provided sufficiently in advance to enable adequate preparation for trial

8. In a motion filed at 14:31 on the day of the Prosecution’s disclosure deadline, Monday 31 August 2026, the Defence noted that the Prosecution’s record of disclosure had increased to over 25,000 items, or a 400% increase, since confirmation.⁷ By the middle of that week, that number had increased to 62,130 items. Around 57,000 items were disclosed after 8 June 2026, meaning in the last three months of the disclosure window, and after the date for commencement of trial was set, and over 37,000 of them were disclosed on or after 31 August 2026.

9. While the Prosecution may continue its investigations post-Confirmation,⁸ there must be some limits to this, especially in cases like the present where the time between confirmation and the start of trial is extremely short (seven months). The Prosecution must have known, when making a decision to increase the size of the case record by nearly 1000% in that time, that the Defence could not possibly review this volume of material by 30 October 2026, the deadline for filing its Pre-Trial Brief, nor by the start of trial, currently scheduled for 30 November 2026.

ii. The voluminous record of disclosure is of dubious, little, or no relevance to this trial

10. The Defence has scanned some of the 62,130 disclosed items. This preliminary review shows that many have extremely limited (or no) relevance to the present case. Fewer than 5,000 of the 62,130 disclosed items contain the word “Duterte”, even once.⁹ The number of items that mention the term “national network” (central to the Prosecution’s case theory in relation to Counts 2 and 3), is **three** out of 62,130. Two of those are duplicates of the same newspaper article from Rappler, which uses the term once,¹⁰ and the other refers to a “national network” of civil society organisations.¹¹ Similarly, the term “Davao Death Squad”, appears in fewer than 500 of the 62,130 disclosed items, or in 0.8% of the case record.

⁷ Defence Request to Amend the E-Court Protocol in Relation to Open Source and User-Generated Material, [ICC-01/21-01/25-486-Conf](#), 31 August 2026 (“[Defence Request to Amend the E-Court Protocol](#)”), para. 1.

⁸ [Chambers Practice Manual](#), Eighth edition, as amended on 21 October 2024, p. 3, para. 14; *Abd-Al-Rahman*, Decision on the Prosecution’s applications to add witnesses and items to its List of Witnesses and List of Evidence and to rely on recently collected evidence, [ICC-02/05-01/20-668-Red](#), 5 May 2022, para. 19.

⁹ A keyword search for “Duterte” surfaces 4,949 search results. A total of 285 items contain the initials by which Mr Duterte is frequently known, “PRRD”.

¹⁰ [PHL-OTP-00239909](#); [PHL-OTP-0003-1420](#).

¹¹ [PHL-OTP-00235868-R01](#).

11. The record is replete with, for example, crime scene photographs and police documentation of their investigations into hundreds of deaths that are not amongst the 49 Incidents charged by the Prosecution and confirmed by the Pre-Trial Chamber (nor the eight Incidents that the Prosecution recently sought to add). The Defence cannot spend its limited preparation time investigating every killing in the Philippines over the entire charged period of almost eight years. A cursory glance through the disclosure reveals that many items relate to crimes with no apparent link to the case. To give one example of thousands, PHL-OTP-00015959 is a police spot report, concerning a murder over a coin toss betting game, “cara y cruz”. There is no discernible link to the defendant or charges, aside from the tenuous one that he happened to be President of the country in which such crimes took place.

iii. The quality of the disclosure is appalling and will impede the trial

12. The Prosecution has wrongly characterised the Defence’s concerns about Prosecution disclosure as being “not all correct” and “really exaggerated”.¹² It is neither realistic nor reasonable to expect the Defence exhaustively to list all of the issues and errors in 62,130 disclosed items, within three weeks of the disclosure of the majority of them. The issues that the Defence has brought to the Prosecution’s attention since disclosure began are systemic, and can safely be said to impact the majority of the entire case record. These include, but are not limited to:

13. **Incorrect metadata:** Thousands of documents from the same category have been tagged as different “Document Types”. For example, judicial affidavits and sworn statements are variously and inconsistently tagged as a “Report” or “Non ICC Statement (Note/Screening/Transcript)” or “Legal, Administration and Court document – Non ICC” or “Personal data/Identifying document” or “Non ICC Statement”.¹³ At least 34,000 items from a single large dataset have been incorrectly disclosed as a “Personal Data/Identifying document”, when they are instead police reports, photographs and sketches of crime scenes, death certificates, warrants of arrest, affidavits, or lists of police operations and operatives.¹⁴ Police spot reports are also tagged in the record as one of five different document types.¹⁵ To give a concrete example, one document has been uploaded as a “Report” and its exact duplicate as

¹² [Transcript of the Third Status Conference](#), p. 28, lines 7-8.

¹³ See E-Binder “#507 - Document Type Issue / Affidavits and Sworn Statements”.

¹⁴ See E-Binder “#507 - Document Type Issue / Personal Data”.

¹⁵ See E-Binder “#507 - Document Type Issue / Spot Reports”.

“Correspondence”.¹⁶ Around 17,500 items, and likely many more, have been given the wrong document date.¹⁷ Incorrect metadata is not a harmless error. It prevents the Defence from being able to search for, find, and filter items by category and/or date.

14. **“Floating” documents:** As previously noted,¹⁸ individual pages of the same documents have regularly been disclosed independently, with distinct and often inconsecutive evidence reference numbers (ERNs).¹⁹ The disclosure package “Pre-Trial INCRIM Package 014”, received on 5 August 2026, is primarily composed of stand-alone/floating pages. On 14 August 2026, the Defence provided the Prosecution with a list of 64 standalone Tables of Contents, by way of example, that it had identified in the disclosure by that date, asking the Prosecution to reunite them (and all other ‘floating’ documents, beyond those that the Defence had specifically listed) with the documents to which they pertain.²⁰ Over one month later, 63 of the 64 remain without an attachment.²¹ For the one item that the Prosecution did update, it has been attached to a photograph of an autopsy with no apparent relationship to it.²² The Defence has further identified around 400 floating annexes²³ that remain unlinked to any other items, despite the Prosecution having been informed of this issue on 17 July 2026.

15. **Illegible and unreadable items:** A small sample of illegible individual items from the record is included herewith.²⁴ There are thousands of such items. They include unreadable and poorly-scanned items, blank documents, and documents that have been disclosed in a format unsupported by NUIX. For the latter category, the Prosecution offered to provide the Defence with an SD card to view all of its documents that have been disclosed in an unreadable format, but this would require the Defence to review evidence outside of the NUIX platform, meaning that these items then cannot be coded or linked to other items in the record. For the hundreds (if

¹⁶ [PHL-OTP-00067159](#) and [PHL-OTP-00067193](#).

¹⁷ See E-Binder “#507 - Document Date Issue”.

¹⁸ [Defence Request to Amend the E-Court Protocol](#), para. 2. “1 November 2021” is listed as the document date for over 17,000 individual items. 180 items have “13 January 2025” as their document date, and 341 are seemingly erroneously dated “25 July 2012”. Several documents have a document date falling after the date of the present filing, which is impossible; these include [PHL-OTP-00099820](#) (dated 7 October 2026), as well as [PHL-OTP-00020868](#) and [PHL-OTP-00096876](#), which are transcripts of speeches made by the accused when he was President, dated 16 October 2026 and 28 November 2026, respectively.

¹⁹ For example, the Prosecution disclosed approximately 350 pages of a document of at least 400 pages (as implied by the page number on [PHL-OTP-00238634](#)) page by page, non-continuously from [PHL-OTP-00238126](#) (page number 373) to [PHL-OTP-00239076](#) (page number 128 of the same document).

²⁰ This was raised again in [Defence Request to Amend the E-Court Protocol](#), para. 2.

²¹ See E-Binder “#507 - Floating Materials”.

²² [PHL-OTP-0001-0875](#).

²³ See E-Binder “#507 - Floating Materials”.

²⁴ See E-Binder “#507 - Illegible Materials”.

not thousands) of individual illegible or very poor quality items in the record, this issue is presently apparently unfixable, because the Prosecution does not have better-quality versions of illegible items in its possession.

16. **Missing translations and/or transcriptions:** Thousands of items are in Tagalog or Cebuano and have not been translated; at least 1,400 of them have been disclosed with “English” incorrectly tagged as their language. Hundreds of audio-visual items remain without an accompanying transcript.²⁵

17. **Repetitive and duplicative items:** In a previous filing,²⁶ the Defence referred to 21 items, which are the same exact photograph of a tube light, disclosed 21 times.²⁷ There are similarly absurd examples, including the same document having been disclosed three times in progressively poorer quality.²⁸ Thousands of duplicates or extremely similar photographs (e.g. multiple photographs apparently taken in quick succession of the same scene) remain in the case record. Bundles of photographs disclosed as a single item contain between 150 and 2,300 exposures, of which dozens are repetitive of each other.²⁹

18. In response, the Prosecution has asked the Defence to provide list after list of issues, which it undertakes to attempt to address. However, the burden of pointing out these issues does not rest with the Defence, nor is a comprehensive listing of them possible, given the volume of material and their systematic nature.³⁰ The problems are endemic to the case record and have proliferated in proportion to its growth since June 2026.

iv. Disclosed materials have not been adequately triaged by the Prosecution, placing an undue burden on the Defence to flag issues of quality

19. In response to the Trial Chamber’s statement that it was anxious to avoid the wholesale dumping of documents into the case record, the Prosecution produced an Excel spreadsheet that accompanies the largest dataset in the case, comprised of approximately 44,400 items (thousands which were disclosed **after** the 31 August 2026 deadline). In the Third Status

²⁵ See E-Binder “#507 - Items without Transcripts and/or Translations”.

²⁶ [Defence Request to Amend the E-Court Protocol](#), fn 8.

²⁷ [PHL-OTP-0004-5050](#) to [PHL-OTP-0004-5070](#).

²⁸ [PHL-OTP-00068875](#), [PHL-OTP-00068876](#), and [PHL-OTP-00068877](#).

²⁹ See e.g. [PHL-OTP-00247365](#), [PHL-OTP-00247331](#), [PHL-OTP-00247093](#), or [PHL-OTP-00247333](#). See also all photographs disclosed in Pre-Trial INCRIM package 010 27 July 2026, Pre-Trial INCRIM package 017 11 August 2026, Pre-Trial INCRIM package 022 (CAH - Contextual Elements) 21 August 2026, and Pre-Trial INCRIM package 031 (CAH - Contextual Elements) 26 August 2026.

³⁰ See also [Defence Request to Amend the E-Court Protocol](#), fns 3-5, 8.

Conference, the Prosecution mischaracterised this large dataset, saying that it “provides a kind of bottom number of what the government and the Philippines National Police say are War on Drugs numbers where a suspect was killed in a police operation, and that comes [to] around 3,422 deaths that they say occurred in that period nationwide”.³¹ But the dataset contains information on more than 20,000 “drug-related deaths” in the Philippines between 2016-2017; namely, over three quarters of the dataset has nothing to do with deaths in police operations.

20. This large dataset is incomplete, and its chain of custody is complicated. The Prosecution has sought to conceal the identity of its provider from the public,³² despite [REDACTED].³³ It would seem that in May 2019, the provider received [REDACTED]³⁴ which were badly handled and in poor [REDACTED] condition.³⁵ The provider observed that they contained a huge number of incidents unrelated to drug operations.³⁶ Following [REDACTED], [REDACTED] to the provider.³⁷ Again, the provider noted that the material might be incomplete or selective.³⁸ The provider was unable to index the materials according to regions, police districts or names of the deceased, because of the volume.³⁹ A reproduction of the [REDACTED] was purportedly made [REDACTED] and in 2021, the provider gave the Prosecution [REDACTED] which itself contained only a reproduction of the material, which the Prosecution extracted.⁴⁰ It is unclear what, if any, checks were made by the Prosecution to ascertain the completeness of the dataset.

21. The Prosecution has not read and/or triaged these 44,000+ items. Through a process unknown to the Defence, the Prosecution extracted items it considered to be most incriminating, but knowing that it could not cherry-pick the most incriminating material and ignore the rest, it chose to dump the remainder into the case record without meaningful review. The Prosecution now expects the Defence to “navigate” the remaining items by reference to an Excel spreadsheet, disclosed to the Defence in its current form on the evening of 15 September 2026. It justified its approach as follows:

³¹ [Transcript of the Third Status Conference](#), p. 12, lines 22-25.

³² The Defence sees no reason why protective measures should attach to [REDACTED], nor is it aware of any statutory basis for granting protective measures to a [REDACTED], particularly given [REDACTED]. However, for present purposes, it will be referred to as “the large dataset”, and the Defence simply invites the Trial Chamber to [REDACTED] when considering the Defence submissions.

³³ [REDACTED].

³⁴ [PHL-OTP-00247832-R01](#), para. 31; [PHL-OTP-00088362-R01](#), para. 35.

³⁵ [PHL-OTP-00088362-R01](#), para. 36; [PHL-OTP-00247832-R01](#), para. 33.

³⁶ [PHL-OTP-00088362-R01](#), para. 36; [PHL-OTP-00247832-R01](#), para. 33; [PHL-OTP-0001-4548-R01](#), paras 13-14. See also [PHL-OTP-00088371](#), paras 3-8.

³⁷ [PHL-OTP-00088362-R01](#), paras 37-38; [PHL-OTP-00247832-R01](#), paras 34-35.

³⁸ [PHL-OTP-00088362-R01](#), paras 53-56; [PHL-OTP-00247832-R01](#), paras 51-54.

³⁹ [PHL-OTP-00088362-R01](#), paras 47, 58; [PHL-OTP-00247832-R01](#), para. 47.

⁴⁰ [PHL-OTP-00088362-R01](#), paras 44-45; [PHL-OTP-00247832-R01](#), paras 39-40.

coming to your question of whether we just dumped it all, which we have not. We've tried to separate out the INCRIM, put that on the list of evidence, for the reasons I stated. And for the rest, the Rule 77 or the remainder, which is arguably relevant, [...] we've provided this way which we hope and think is very **useful for -- for the -- my friends to navigate**.⁴¹

22. The spreadsheet has 52,103 rows, each with an ERN number and associated AI-generated summary. All items **not** considered INCRIM by the Prosecution were disclosed under Rule 77, because they were considered, as described at the Third Status Conference, “kind of *per se* Rule 77”.⁴² To disclose thousands of documents without first even reading them is inconsistent with the Prosecutor’s duty under Articles 54(1)(a) and 67(2). Neither is it permissible simply to classify *en masse* all items, not regarded as incriminating, as “Rule 77” (i.e. items that are material for the preparation for the defence or which the Prosecution intends to use at trial), without first having determined materiality.⁴³ The Prosecution has had this material since 2021. There is no indication that it has been triaged for exculpatory evidence. In the circumstances, given the proximity of the date for the commencement of trial and the volume of material, the exclusion of the entirety of this large dataset would be both fair and consistent with proper trial management.

23. A brief keyword search of some of the AI summaries suggests that the items to which they relate are indeed exculpatory, and should have been disclosed as such under Article 67(2). Failure to do so indicates that the Prosecution has not even read the AI summaries. Hundreds of AI summaries extol the meticulousness and thoroughness of PNP investigations into drug deaths,⁴⁴ seemingly contrary to the Prosecution’s case theory. Indeed, the AI summaries (if they are even reliable) reveal further deficiencies in the process. For example, it appears from a keyword search that thousands of the items are in Filipino despite the Prosecution wrongly disclosing them, untranslated, to the Defence as being in English. Similarly, no attempt has been

⁴¹ [Transcript of the Third Status Conference](#), p. 15, lines 20-24 (emphasis added).

⁴² [Transcript of the Third Status Conference](#), p. 13, line 25.

⁴³ *Banda and Jerbo*, Judgment on the Appeal of Mr Abdallah Banda Abakaer Nourain and Mr Saleh Mohammed Jerbo Janus against the Decision of Trial Chamber IV of 23 January 2013 entitled “Decision on the Defence’s Request for Disclosure of Documents in the Possession of the Office of the Prosecutor”, [ICC-02/05-03/09-501](#), 28 August 2013, para. 35.

⁴⁴ To give just two examples of thousands from the hyperlinked spreadsheet attached to an email sent by the Prosecution to the Defence at 16:51 on 15 September 2026: the AI-generated summary of [PHL-OTP-00086814](#), describes the “comprehensive procedural adherence essential for thorough investigation and accountability” and “meticulous documentation” that it shows. The summary of [PHL-OTP-00087393](#), lauds “both the multilayered approach to homicide investigations adopted by local law enforcements and the complexities inherent in resolving crimes intertwined with drug issues” as well as the “extensive reporting and follow-up”, “sustained community-police engagement”, and “vigilance in law enforcement endeavors within the Philippines” that the item demonstrates.

made to filter out the thousands of items summarised by the AI as being “illegible” or otherwise unreadable; they have simply been left in the mix for the Defence to waste more time reviewing. The Prosecution’s protestations that it has not dumped the large dataset onto the Chamber and the Defence ring hollow under minimal scrutiny.

v. *The only solution is a new limited case record into which relevant and usable items must be migrated*

24. Each of the problems outlined above has, at its source, the Prosecution’s decision to inflate its case record by nearly 1000% between June and August 2026, knowing that the trial commencement date was fast approaching. The resulting problems of relevance and quality of the items are a corollary of this overarching problem of volume. During the Third Status Conference, the Defence submitted that the only solution is for the Prosecution to be ordered to migrate a reduced number of items to a new case record in NUIX. This new case record should include the disclosure of all exculpatory evidence (as is statutorily required), along with duly-triangulated and relevant Rule 77 and INCRIM evidence in a reviewable usable format. It should be limited to no more than 10,000 items, as an absolute maximum. This would still represent a doubling of the case record since confirmation.

25. It is not a solution for the Prosecution to be ordered to reduce its List of Evidence from almost 20,000 items to a smaller number, or to highlight in some way the documents from amongst this list of almost 20,000 that it anticipates it will actually rely on. This makes no difference to the Defence, which will still be left with a case record of 62,130 items to read, watch, listen to, review, and tag. As the Presiding Judge noted, “[t]he Defence will have obviously access to all of these documents and if they feel there’s one that you haven’t put in, they want to put in, then they can do that.”⁴⁵ In order to do this, the Defence would first have to read everything, which is currently impossible. Moreover, as the Senior Trial Attorney noted, the Prosecution can always apply to the Trial Chamber later to add further items to its List of Evidence during trial, if good cause can be shown.⁴⁶

26. Nor could the Prosecution simply be ordered to “fix” the problems which are systemic throughout the case file. So-called “metadata updates” will not work, because they will not reduce the size of the case. Indeed, they will likely make it bigger. Where the Prosecution has

⁴⁵ [Transcript of the Third Status Conference](#), p. 16, lines 4-6.

⁴⁶ *Katanga*, Decision on the Prosecution Motion for leave to disclose and add the investigator’s report concerning Witness P-268 to the List of Incriminating Evidence, [ICC-01/04-01/07-2325-Red](#), 27 September 2010, paras 14-15.

disclosed, for example, a 400-page document by individual and non-sequential pages, linking those pages together through a metadata update will not circumvent the fact that the ERNs remain non-sequential and the pages separate. All that happens is that the parties can now see that those pages should have been linked, but reviewing them still requires opening each non-sequentially numbered document and trying to figure which page order they should originally have been in. Neither can the Prosecution reduce the original case file by deleting repetitive, duplicative, blank, or irrelevant documents because they cannot be simply deleted, nor can the Defence's work product which already attaches to them. Other "fixes" might, in fact, exacerbate the problem. Where documents have been disclosed in illegible, unreadable, or poor quality form, re-disclosing the thousands of illegible items or pages thereof would simply add to the 62,130 documents in the record, and risk confusion as to different versions.

27. Whilst keyword searches may be a useful tool,⁴⁷ it is only through consistently accurate metadata that a party can identify, review and safely rely on an item of evidence, and find corresponding items using keywords. As such, for example, when a sworn affidavit dated 24 August 2017 is disclosed without being text-searchable as a "Personal data/identifying document", incorrectly dated "11/1/2021",⁴⁸ it is impossible to find it in a sea of over 62,000 items. To the contrary, the Defence can only hope to stumble upon this kind of evidence before trial starts.

28. Further, keyword searches cannot help the Defence locate images, video files, or scanned items that are not text-searchable,⁴⁹ nor items that do not contain a particular keyword but which may nonetheless be relevant. These items **can only be retrieved where the Defence has identified and tagged them in advance**. That tagging is the product of a Defence team member reading, analysing, and categorising each disclosed item. This exercise forms an essential part of the preparation of the Defence, and is only possible in cases where the record is of an appropriate size and quality. And, unlike the Prosecution, the Defence does not have state-of-the-art AI tools at its disposal to assist with document review and coding.

29. Accepting the *status quo* would be calamitous. The current case record is too big and too replete with metadata errors for the parties and the Chamber effectively to navigate and

⁴⁷ [Transcript of the Third Status Conference](#), p. 21, lines 11-20.

⁴⁸ This example is [PHL-OTP-00048507](#). See also e.g. [PHL-OTP-00057678](#); [PHL-OTP-00060860](#); [PHL-OTP-00062998](#); [PHL-OTP-00078487](#); [PHL-OTP-00078432](#); [PHL-OTP-00078545](#); [PHL-OTP-00078627](#); [PHL-OTP-00079072](#); [PHL-OTP-00079077](#); [PHL-OTP-00079161](#); [PHL-OTP-00079288](#); [PHL-OTP-00087708](#).

⁴⁹ See E-Binder "#507 - Not Text-Searchable Materials".

manage it. For example, as graphically illustrated by Counsel at the Status Conference, the volume of floating documents will result in protracted in-court examinations. Frequent challenges to the admissibility of irrelevant, unreliable, and unverified items will become the norm, as will voluminous bar table motions. Witnesses may have to be recalled for further examination so that matters can be put to them which subsequently come to light from a better understanding of the disclosed material. Reviewing the Prosecution Lists of Witnesses and Evidence line by line at the next Status Conference may reduce the length of the lists, but has no impact on the size of the case record – it will still be on NUIX, requiring Defence review ahead of trial. Moreover, if this exercise does not commence until 13 October, two weeks before the Defence is due to file its Trial Brief, any comments it could make on the Prosecution’s evidence would be superficial at best. The only way to reduce the size of this case is to reset disclosure. This is now the reality, and a remedy is urgently required.

30. A reduction from 62,130 to 10,000 is significant. In the Defence submission, the starting point would be for the Prosecution to exclude *all* items from the large dataset, as well as any unverified, duplicative, illegible, repetitive, or irrelevant material, which should never have been included in the first place.

IV. CONCLUSION AND RELIEF SOUGHT

31. The current case record is unworkable, and is of a quality that falls far below the standard expected in any criminal trial. The systemic issues with the record will affect the trial by slowing the presentation of evidence by the parties in the courtroom, and their ability to prepare for trial outside of it. In ordinary circumstances, the trial date would be vacated as the appropriate remedy.⁵⁰ In this case, time is of the essence.

32. The remedy of a new, reduced case record is not without prejudice to the Defence, which was entitled to receive an organised disclosure of relevant evidence by 31 August 2026, two months prior to filing its brief on 30 October 2026. Even if the remedy suggested herein were adopted, the Defence would only receive the Prosecution disclosure weeks before this date. However, on balance, and given the impenetrability of the current record and the impossibility of meaningful trial preparation, a manageable case record outweighs the prejudice which arises

⁵⁰ *Kenya*, Decision on defence application pursuant to Article 64(4) and related requests, [ICC-01/09-02/11-728](#), 26 April 2013, para. 125; *Kenya*, Public redacted version of ‘Decision on commencement date of trial’, [ICC-01/09-02/11-763-Red](#), 20 June 2013, para. 40 (granting four extra months for the preparation of the defence because of the addition of 300 new documents since the confirmation of charges).

from a truncated disclosure timetable. For this reason, the Defence requests the Trial Chamber to:

ORDER the Prosecution to liaise with the Registry to create a new case record in these proceedings, to which the Prosecution should migrate all exculpatory evidence, and duly-reviewed and triaged Rule 77 and incriminating evidence, up to an absolute maximum of 10,000 items, by 7 October 2026 at the latest.

A handwritten signature in blue ink, appearing to read 'Peter Haynes', is centered above a horizontal line.

Mr Peter Haynes, KC
Counsel for Mr Rodrigo Roa Duterte

Dated this 25th day of September 2026
At The Hague, the Netherlands