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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 Response to Defence Motion Pursuant to an Order of the Trial Chamber (ICC-01/21-01/25-507)”, 29 September 2026, ICC-01/21-01/25-510-Conf

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I. INTRODUCTION

1. The Prosecution respectfully requests that Trial Chamber III (“Chamber”) reject the Defence Motion Pursuant to an Order of the Trial Chamber (“Motion”).¹
2. The majority of the Motion is dedicated to complaints regarding the volume, relevance and quality of the Prosecution’s disclosure,² to which the Prosecution responds as follows:
 - (i) The volume of the Prosecution’s disclosure in this case is reasonable. The vast majority of its disclosure comes from the [REDACTED] dataset. Evidence from this collection is highly relevant and relied upon by the Prosecution to prove specific charged incidents as well as the contextual elements. It is voluminous because it records the deaths of the thousands of individuals killed by the PNP in anti-illegal drug operations and the deaths of drug personalities while Mr Duterte was President. The Prosecution rejects the repeated portrayal of the disclosure of documents that memorialise the attack against the civilian population, including victims specified in this case, as the “dumping of documents” into the case record.³ The Prosecution has made every effort to assist the Defence in its review of this dataset but its proposals have been largely rejected. This includes a recent proposal of six agreed facts that would have allowed the removal of the majority of this dataset (approximately 42,511 items) from the case record. The Prosecution’s disclosure is further reasonable considering the large geographic and temporal scope of this case and the fact that the accused is a former head of state who openly ran a “war on drugs” that drew significant domestic and international attention. The volume of the Prosecution’s List of Evidence is also consistent with that of other cases at this Court.
 - (ii) With respect to relevance, the Defence states that many documents “have extremely limited (or no) relevance to the present case.”⁴ This is incorrect and unsubstantiated in the Defence’s submissions.
 - (iii) The Defence’s complaints regarding the quality of the Prosecution’s disclosure lack context and often misrepresent the disclosure.

¹ Confidential Defence Motion Pursuant to an Order of the Trial Chamber, 22 September 2026, ICC-01/21-01/25-507-Conf (public redacted version filed on 25 September 2026, ICC-01/21-01/25-507-Red) (“Defence Motion”).

² Defence Motion, paras 8-23.

³ Defence Motion, paras 19, 21.

⁴ Defence Motion, para. 10.

3. Finally, with respect to its actual request for relief, the Defence asks the Chamber to artificially and arbitrarily cap the Prosecution's disclosure at 10,000 documents and order the Prosecution to triage the evidence that it has already disclosed as incriminating and material to the Defence's preparation.⁵ The Chamber should reject this request for two reasons. First, this proposal would necessarily require the removal of the [REDACTED] dataset, which as explained below, is highly relevant to this case. Second, setting an arbitrary cap on the number of documents the Prosecution can disclose would automatically place the Prosecution in violation of its disclosure obligations as it would require the Prosecution to withhold evidence that it considers material to the Defence's preparation.

II. CONFIDENTIALITY

4. This filing is classified as confidential pursuant to regulations 23*bis* (1) and (2) of the Regulations of the Court as it refers to confidential sources who have provided evidence to the Prosecution,⁶ and identifying information about witnesses and victims. It also refers to a filing and decision of the same classification.

III. SUBMISSIONS

A. The volume of disclosure in this case is reasonable

1. *The [REDACTED] dataset*

5. In order to address the Defence's complaints about the volume of the Prosecution's disclosure, it is first necessary to contextualise the [REDACTED] dataset which comprises 44,495 of the 62,034 items disclosed in this case and 8,812 of 19,241 items included on the Prosecution's List of Evidence.⁷ The Prosecution also briefly outlines the numerous attempts it has made to assist the Defence in its review of this collection.

Background

6. The [REDACTED] dataset was provided to the Prosecution by the [REDACTED].⁸ [REDACTED] acquired the dataset from the [REDACTED].⁹ [REDACTED].¹⁰

⁵ Defence Motion, paras 5, 24, 32; Transcript of Status Conference, 16 September 2026, ICC-01/21-01/25-T-011-CONF-ENG, p. 26, lines 21-25, p. 27, lines 1-6.

⁶ [REDACTED].

⁷ Confidential Annex B to the Prosecution's Submission of the List of Witnesses and the List of Evidence, 31 August 2026, ICC-01/21-01/25-488-Conf-AnxB.

⁸ P-0024, PHL-OTP-00247832-R01, para. 17.

⁹ P-0024, PHL-OTP-00247832-R01, paras 22-30.

¹⁰ [REDACTED].

7. The [REDACTED] relevant information on all killings related to the war on drugs¹¹ [REDACTED].¹² These documents form the basis of the [REDACTED] dataset, which predominantly includes [REDACTED] records regarding individuals who died in PNP anti-illegal drug operations and records of investigations regarding the deaths of drug personalities, [REDACTED].¹³

8. On 1 November 2021, [REDACTED] provided the Prosecution with the [REDACTED] dataset.¹⁴ The material that [REDACTED] provided to the Prosecution was unstructured and fragmented, with inconsistent file types, naming conventions and folder structures.¹⁵ A significant number of documents were also not amenable to OCR (optical character recognition), which limited the scope for automated searching.¹⁶ Contrary to the Defence's false assertions at the status conference,¹⁷ which the Defence has unfortunately repeated in its Motion,¹⁸ and its email of 28 September 2026,¹⁹ the Prosecution conducted a systematic and manual review of the [REDACTED] dataset.²⁰ The Prosecution laments the Defence repeating this false assertion despite being referred by the Prosecution to material which makes clear that a manual review of the [REDACTED] dataset was completed.²¹ This review included the individual examination of each document, in order to create a structured index to facilitate searches and the analysis of the dataset.²² This index was created by the Prosecution for internal purposes but was provided to the Defence, which is discussed below.

The [REDACTED] dataset is highly relevant to this case

9. The [REDACTED] dataset is part of the evidence relied upon by the Prosecution to prove, *inter alia*, specific charged incidents as well as the contextual elements of its case. It is also relied upon by Prosecution experts. As noted above, the dataset is large because it records the deaths of the thousands of individuals killed by the PNP in anti-illegal drug operations, as well as the deaths of other drug personalities, while Mr Duterte was President. The Prosecution relies on this, in part, to prove the widespread and systematic attack against the civilian population. Defence Counsel stated at the first

¹¹ P-1440, PHL-OTP-00250125 at 0001.

¹² P-0024, PHL-OTP-00247832-R01, para. 25.

¹³ P-1440, PHL-OTP-00250125 at 0003. The dataset also includes documents outside of this date range.

¹⁴ P-0024, PHL-OTP-00247832-R01, para. 39.

¹⁵ P-1440, PHL-OTP-00250125 at 0003-0004.

¹⁶ P-1440, PHL-OTP-00250125 at 0003-0004.

¹⁷ Transcript of Status Conference, 16 September 2026, ICC-01/21-01/25-T-011-CONF-ENG, p. 21, lines 1-2.

¹⁸ Defence Motion, para. 21.

¹⁹ Email from Defence to Prosecution, 28 September 2026 at 17:00 hrs.

²⁰ P-1440, PHL-OTP-00250125 at 0004.

²¹ Email from Prosecution to Defence, 15 September 2026 at 16:50 hrs. This was also made clear at the 16 September 2026 status conference. See Transcript of Status Conference, 16 September 2026, ICC-01/21-01/25-T-011-CONF-ENG, p. 13, lines 5-7.

²² P-1440, PHL-OTP-00250125 at 0004.

status conference that the Defence would challenge the very existence of this widespread and systematic attack, stating of the Defence trial brief “[w]ell, whenever I deliver it, it will say these are not crimes against humanity.”²³ In light of this, it is clear why the Defence is requesting the dataset be excluded. However, the Prosecution should not be required to exclude a dataset that evidences the contextual elements of its case, which the Defence has expressly indicated it intends to challenge, on the basis that it is voluminous.

10. Further, and contrary to the Defence’s assertion,²⁴ the fact that the [REDACTED] dataset includes deaths under investigation (i.e. deaths of drug personalities that did not occur in official police operations) does not make them any less relevant. As the Defence should be aware, the Prosecution charges murders where it was made to look as though victims were killed by unidentified assailants.²⁵ These do not qualify as official deaths in police operations.

The Prosecution has taken reasonable steps to facilitate the Defence’s review of the [REDACTED] dataset

11. The [REDACTED] dataset is large, unstructured and there are blank pages and illegible or difficult to read pages within the dataset. The Prosecution attempted to resolve as many of these issues as possible through a manual review of the dataset. However, many of these issues, such as poor quality scans, limited use of OCR, and “floating documents”/the absence of appropriate parent/attachment relationships are inherent to the dataset.

12. The Prosecution has taken reasonable steps to facilitate the Defence’s review of this material. Contrary to the Defence’s assertion,²⁶ the Defence has been aware of the [REDACTED] dataset since at least the first status conference before this Chamber. The Prosecution referenced the dataset in its submissions, noting that the dataset contained “approximately 46,601 items provided by the [REDACTED]” and required intensive review.²⁷ The Defence therefore knew about the [REDACTED]

²³ Transcript of Status Conference, 27 May 2026, ICC-01/21-01/25-T-009-CONF-ENG, p. 33, lines 11-12.

²⁴ Defence Motion, para. 19.

²⁵ See e.g. incidents 50, 51 and 52.

²⁶ Transcript of Status Conference, 16 September 2026, ICC-01/21-01/25-T-011-CONF-ENG, p. 20, lines 19-25.

²⁷ Confidential *ex parte* only available to the Prosecution, Prosecution’s submissions pursuant to the ‘Order scheduling first status conference’, 15 May 2026, ICC-01/21-01/25-440-Conf-Exp (confidential redacted version and public redacted version filed on the same date, ICC-01/21-01/25-440-Conf-Red and ICC-01/21-01/25-440-Red), para. 25, fn. 20. The Prosecution also referenced this dataset in its 4 April 2025 submissions before the Pre-Trial Chamber. See Confidential Prosecution’s Response to the Order seeking observations on matters related to the conduct of confirmation proceedings, 4 April 2025, ICC-01/21-01/25-104-Conf (public redacted version filed on 15 April 2025, ICC-01/21-01/25-104-Red), para. 22.

collection at the time it made submissions on the schedule for the preparation for trial at the first status conference.²⁸

13. The Prosecution disclosed the [REDACTED] material it considered incriminating on a rolling basis. Items directly relevant to charged incidents were cited in the Confirmation Brief, and are cited in the Trial Brief. With respect to the remainder, which makes up the majority of the dataset, cognisant of the Chamber's direction at the first status conference to avoid disclosing voluminous evidence,²⁹ the Prosecution made various proposals to the Defence. On 15 July 2026, the Prosecution offered to instruct a joint expert to analyse this dataset, which the Defence declined.³⁰ The Prosecution also offered to provide this dataset to the Defence for inspection on a separate platform, which the Prosecution understood the Defence had accepted [REDACTED].³¹ The Defence then declined this option two weeks before the Prosecution's disclosure deadline, [REDACTED] "[REDACTED]."³² The Defence has since stated that they never agreed to inspect the dataset.³³ The Prosecution was therefore required to disclose the [REDACTED] dataset pursuant to its obligations under rule 77 of the Rules.

14. As noted above, as a courtesy, the Prosecution has provided the Defence with its own internal work product, the product of many hundreds of hours, which indexes these records, and has offered to provide technical advice on the most effective way to search the dataset.³⁴ Additionally, and as submitted at the 16 September 2026 status conference,³⁵ the Prosecution provided the Defence with a separate chart containing AI summaries of each incident and linking all documents that are relevant to a particular killing. The Defence is able to filter by date, incident and location as well as whether the death occurred in an official police operation. All documents referenced in the chart are hyperlinked. These charts should assist the Defence in swiftly reviewing the content of the documents without requiring a "three minutes per page" review.³⁶ As set out below, Defence complaints about deficiencies in the metadata for some of the items in this collection should be viewed in this context.

15. Most recently and significantly, the Prosecution proposed a set of agreed facts to the Defence that would have reduced the number of disclosed documents by approximately 42,511 items. The Defence

²⁸ *The Prosecutor v. Bosco Ntaganda*, Oral decision, 22 April 2015, ICC-01/04-02/06-T-19-ENG, p. 5, lines 18-24.

²⁹ Transcript of Status Conference, 27 May 2026, ICC-01/21-01/25-T-009-CONF-ENG, p. 20, lines 12-13.

³⁰ Email from Defence to Prosecution, 17 July 2026 at 14:15 hrs.

³¹ Email from Defence to Prosecution, 17 July 2026 at 16:46 hrs [emphasis added].

³² Email from Defence to Prosecution, 14 August 2026 at 18:54 hrs.

³³ Email from Defence to Prosecution, 24 August 2026 at 12:17 hrs.

³⁴ Email from Prosecution to Defence, 18 August 2026 at 17:06 hrs.

³⁵ Transcript of Status Conference, 16 September 2026, ICC-01/21-01/25-T-011-CONF-ENG, p. 14, lines 11-25, p.15, lines 1-17.

³⁶ Defence Motion, para. 3.

rejected the proposal in its entirety. The Prosecution has annexed the email chain including the Defence's rejection of this proposal per the Defence's request.³⁷

2. *The volume of the Prosecution's disclosure in its proper context*

16. This background allows the Defence's statistics regarding the Prosecution's disclosure to be placed in their proper context. While the Defence submits that tens of thousands of documents were disclosed between June and August 2026, it fails to mention that the overwhelming majority of these documents belong to the [REDACTED] dataset.³⁸ For example, the Defence complains that "over 37,000 [documents] were disclosed on or after 31 August 2026".³⁹ However, approximately 36,000 of these items were from the [REDACTED] collection, which the Prosecution was obligated to disclose after the Defence changed its position, approximately two weeks before the disclosure deadline, from what the Prosecution had understood to be an agreement to inspect the [REDACTED] dataset.⁴⁰ The Defence's submission that thousands of [REDACTED] documents were disclosed "after the 31 August 2026 deadline" is also misleading.⁴¹ The Registry emailed the Chamber and the parties on 31 August 2026 to confirm that the "Prosecution has provided the disclosure package ahead of the deadline" but that the upload of the material by the Registry was "taking longer than anticipated".⁴²

17. Setting aside the [REDACTED] dataset, the volume of the Prosecution's disclosure is reasonable considering the scale of this case. The geographic scope spans the entirety of the Philippines and the temporal scope covers a period of over seven years (1 November 2011 and 16 March 2019).⁴³ The Prosecution has also disclosed evidence that predates the jurisdictional period as Mr Duterte formed the death squads he used to murder alleged criminals throughout the charged period in 1988.⁴⁴ The accused is a former head of state who ran an extremely public campaign against drugs that drew significant

³⁷ Confidential Annex A, Email exchanges between the Prosecution and Defence.

³⁸ For instance, the Defence complains that "[a]round 57,000 items were disclosed [...] 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" (Defence Motion, para. 8). However, of the approximately 57,000 items disclosed after 8 June 2026, approximately 44,136 were from the [REDACTED] collection. Similarly, of the 37,000 that were disclosed on 31 August 2026, 35,930 were from the [REDACTED] collection.

³⁹ Defence Motion, para. 8.

⁴⁰ Email from Defence to Prosecution, 14 August 2026 at 18:54 hrs; Email from Defence to Prosecution, 17 July 2026 at 16:46 hrs.

⁴¹ Defence Motion, paras 8, 19.

⁴² Notification to the Chamber Regarding Prosecution's Disclosures, Email from CMS to Trial Chamber III, 31 August 2026, 17:12 hrs.

⁴³ Pre-Trial Chamber I, Decision on the Defence Challenge to the Jurisdiction of the Court, 23 October 2025, ICC-01/21-01/25-309, paras 43, 84.

⁴⁴ See *The Prosecutor v. Dominic Ongwen*, Public Redacted Judgment on the appeal of Mr Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled "Trial Judgment", 15 December 2022, ICC-02/04-01/15-2022-Red, para. 301

domestic and international attention. The universe of disclosable material is therefore extremely large and, in many ways, unique to cases previously before this Court.

18. Despite this, and even when including the [REDACTED] dataset, which makes up more than 70% of the Prosecution’s total disclosure and approximately 40% of the Prosecution’s List of Evidence, the volume of documents on the List of Evidence is still comparable to other cases before the Court. For example, in the *Yekatom and Ngaïssona* case, the List of Evidence [REDACTED]⁴⁵ and a later version contained 19,962 documents.⁴⁶ [REDACTED].⁴⁷ None of the Defence teams in those cases requested that the Chamber order the Prosecution to arbitrarily discard the overwhelming majority of the evidence it had disclosed.

19. For the reasons set out above, the Prosecution submits that the volume of disclosure in this case is reasonable.

B. The Prosecution’s disclosure is relevant

20. The Defence’s assertion that many of the disclosed documents “have extremely limited (or no) relevance to the present case⁴⁸ is simply false. For example, the number of hits for “Duterte” or “Davao Death Squad” in a keyword search is in no way indicative of the relevance of evidence. The legally pertinent inquiry is whether certain evidence bears upon a fact or issue of consequence to the proceedings, not whether a particular search term appears in it. In any event, if the [REDACTED] dataset is removed from the Defence’s calculations, which contains local PNP records regarding killings in police anti-illegal drug operations and deaths under investigation and therefore would not include the term “Duterte”, a search for “Duterte” yields results in 5,589 documents: approximately one third of the documents disclosed.⁴⁹ Unsurprisingly, the term “National Network” does not appear in the disclosed documents because it is a term defined by the Prosecution to encompass “a network of perpetrators comprising law enforcement officers (including personnel from the PNP, PDEA, NBI and BuCor), non-police assets and hitmen”, as made clear in the Prosecution’s Trial Brief.⁵⁰

⁴⁵ [REDACTED].

⁴⁶ *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, Annex A to the Prosecution’s Updated List of Evidence, 14 December 2021, ICC-01/14-01/18-1211-AnxA.

⁴⁷ [REDACTED].

⁴⁸ Defence Motion, para. 10.

⁴⁹ This excludes the [REDACTED] dataset and also does not account for the fact that certain documents are not OCR searchable.

⁵⁰ Prosecution’s Trial Brief, 4 September 2026, ICC-01/21-01/25-490-Conf (public redacted version filed on 14 September 2026, ICC-01/21-01/25-490-Red), para. 63.

21. The Defence also mischaracterises the one specific example it provides. The Defence argues that PHL-OTP-00015959 is irrelevant as it relates to “a murder over a coin toss betting game”.⁵¹ This document is a “Spot Report”, which is an initial report prepared by the PNP soon after an incident is reported or discovered, from the [REDACTED] dataset. While this document on its own appears to relate to a murder over a coin toss game, a brief review of the other documents related to this incident, which can be easily and quickly found via the chart the Prosecution has provided to the Defence, establishes that “illegal drugs” were involved as a “motive” for the killing and the suspect was alleged to be a “drug pusher”.⁵²

22. For the reasons set out above, the Prosecution submits that its disclosure in this case is both reasonable and relevant.

C. The Defence’s submissions regarding the quality of the Prosecution’s disclosure are not accurate

23. The Prosecution’s disclosure in this case is not perfect. It is inevitable that oversights occur during the manual review of over 100,000 items in a short time frame, and that datasets are not flawlessly organised, especially when the Prosecution received them in an unstructured manner. However, the Defence’s submission that the Prosecution’s disclosure is “appalling” is incorrect. The examples provided by the Defence are replete with mischaracterisations, and leave the impression that the Defence has spent more time searching for problems to present to the Chamber than commencing a proper review of the material in order to prepare for trial.

1. Floating documents/pages

24. The Defence argues that there are “floating documents” and “floating pages” in the Prosecution’s disclosure whereby “individual pages of the same documents have regularly been disclosed independently” with distinct evidence reference numbers.⁵³ The Prosecution has worked with the Defence to rectify the issue of true floating documents where possible and will continue to do so. However, many of the examples provided by the Defence are either: (i) not true “floating documents” and therefore cannot be linked by the Prosecution; (ii) are from the [REDACTED] collection and were provided by the source in this manner; or (iii) are simply not floating documents as the Defence suggests.

⁵¹ Defence Motion, para. 11.

⁵² See e.g. PHL-OTP-00015949 at 0001; PHL-OTP-00015950 at 0002.

⁵³ Defence Motion, para. 14.

25. Several examples provided by the Defence are not true floating documents. For instance, at the status conference, the Defence showed the Chamber three pages of what appears to be a draft affidavit of Prosecution witness P-1036.⁵⁴ The Defence complained that these three pages had been disclosed with three separate ERNs instead of with one ERN that would have allowed Defence Counsel to “scroll down to the next page” while examining the witness in Court.⁵⁵ However, what the Defence failed to explain to the Chamber, or perhaps failed to appreciate, is that these three documents are individual photographs that were taken of separate pages of an affidavit. They are standalone media files that were extracted from the media folder of P-1036’s cell phone. A cursory inspection of the photographs shows that the background in each of the photographs is different. Given the circumstances, it would not be appropriate for the Prosecution to combine three distinct, even potentially unrelated, photographs as one ERN.

26. Similarly, the Defence complains in its Motion, that the Prosecution “disclosed approximately 350 pages of a document of at least 400 pages” as separate items with distinct ERNs rather than one combined ERN.⁵⁶ Defence Counsel noted this during the status conference as “the worst” example of floating pages in the Prosecution’s disclosure, remarking that the Defence has “a 400-page document which was disclosed page by page. We’ve got 347 of the 400-page document.”⁵⁷ However, once again, these documents are standalone media files extracted from P-1036’s cell phone and therefore could not be combined by the Prosecution. The Prosecution has only disclosed a certain number of pages of what appears to be a 400 page document because these were the only pages found on the cell phone. The Defence also failed to mention that the Prosecution has clearly indicated in the disclosure notes that these pages are near duplicates⁵⁸ of a separate document that has been disclosed with one ERN, translated, and provided to the Defence.⁵⁹

27. The majority of the other examples the Defence provides are from the [REDACTED] dataset, including the entirety of “Pre-Trial INCRIM Package 014”⁶⁰ and the overwhelming majority of documents included in the Defence’s floating pages e-binder. As noted above, issues such as floating

⁵⁴ Transcript of Status Conference, 16 September 2026, ICC-01/21-01/25-T-011-CONF-ENG, p. 22, lines 22-25, p. 23, lines 1-15. The documents shown by the Defence during the status conference are: PHL-OTP-00239165; PHL-OTP-00239111; and PHL-OTP-00239089.

⁵⁵ Transcript of Status Conference, 16 September 2026, ICC-01/21-01/25-T-011-CONF-ENG, p. 22, lines 22-25, p. 23, lines 1-15.

⁵⁶ Defence Motion, para. 14, footnote 19.

⁵⁷ Transcript of Status Conference, 16 September 2026, ICC-01/21-01/25-T-011-CONF-ENG, p. 23, lines 20-22.

⁵⁸ The Prosecution considered it necessary to disclose these pages even though there exists a near duplicate as the source of the documents is different (the individual pages were found on the phone of a witness and are [REDACTED]) and the version found on the witness’ phone contain a certified copy stamp that are is included on the near duplicate (PHL-OTP-00237926).

⁵⁹ See for example the disclosure notes field of PHL-OTP-00238634.

⁶⁰ Defence Motion, para. 14.

pages are inherent to this collection, which is why the Prosecution has provided the Defence with its own internal analytical tools where all documents relevant to a particular incident have been grouped and can be easily searched, filtered and reviewed.

28. Finally, certain other examples provided by the Defence are simply not floating documents. For example, the Defence has included PHL-OTP-0004-0085 as an example of a floating page even though it is clearly marked in the disclosure notes as an annex to P-0004's witness statement with the ERN of the relevant transcript and translation referenced and linked.⁶¹

29. The Prosecution will work to address the issue of true floating documents where possible. The Prosecution is currently working to address the Defence concerns regarding the tables of contents that are allegedly not linked to the underlying documents, though notes that the majority are from the [REDACTED] collection, and as such, were received in this format. The Defence is simply incorrect that a photograph of an autopsy which was recently linked to the parent document in Nuix Discover has "no apparent relationship to it".⁶² A quick search in Nuix Discover reveals that the table of contents relates to the killing of "[REDACTED]" and that the attachment is the photograph of his autopsy.⁶³

30. Regarding the 400 floating annexes mentioned by the Defence, the Prosecution notes that the majority belong to the [REDACTED] dataset, or, in some cases, are simply not "floating" as the Defence suggests.⁶⁴ The Prosecution addressed the floating annexes the Defence identified in its 17 July 2026 email.⁶⁵ The Prosecution met with the Defence in person on 24 July 2026 to discuss the issue and provided the Defence with a table that grouped all annexes with the parent document where possible.⁶⁶ These items will be linked in Nuix Discover through a metadata update.

2. *Illegible and unreadable items*

31. The Defence complains that some documents disclosed are "illegible and unreadable".⁶⁷ Of the 205 examples provided, the overwhelming majority are from two specific sources: [REDACTED] (157 documents) and the [REDACTED] (43 documents).⁶⁸ These documents were provided to the Prosecution electronically in the format disclosed. The Prosecution is therefore unable to provide higher quality versions of those documents. Where items were partially legible, the Prosecution identified their

⁶¹ PHL-OTP-0004-0085.

⁶² Defence Motion, para. 14.

⁶³ PHL-OTP-0001-0875.

⁶⁴ PHL-OTP-0004-0085.

⁶⁵ Defence Motion, para. 14.

⁶⁶ Email from Prosecution to Defence, 14 August 2026 at 11:52 hrs.

⁶⁷ Defence Motion, para. 15.

⁶⁸ [REDACTED].

relevance and legal classification based on the overall status of the case file that the item was contained in.

32. Certain other examples included by the Defence are simply not illegible and/or unreadable.⁶⁹ Similarly, the fact that documents are handwritten does not make them illegible and/or unreadable.⁷⁰ Finally, the Prosecution notes that the Defence has included examples in which there are blank or illegible pages within one document that contains multiple pages. For example, the Defence has included PHL-OTP-00093136 as an example of an “illegible and unreadable item” that it requests the Chamber to remove from the case record.⁷¹ This document contains Police Regional Office 3’s Accomplishments Report from January to November 2017 and lists the deaths of drug users and drug pushes as “significant accomplishments of Police Regional Office 3”.⁷² This document includes one blank page out of 144 pages.⁷³ The Prosecution submits that where a blank or illegible document is included in a document with multiple pages, the Defence can simply scroll past it.

33. Finally, the Defence argues that a specific group of items were “disclosed in a format unsupported by NUIX”.⁷⁴ The Defence is referring to “.dcm” files, which, in this case, are X-ray records [REDACTED].

34. When this issue was raised by the Defence, the Prosecution consulted its E-Discovery Management Unit as well as its Forensic Services Section, which advised that the most accurate way for the Defence to view the files is in their native .dcm format. The Prosecution therefore prepared an encrypted SD card with a viewer and the files for the Defence to use. The Defence responded that “[REDACTED].”⁷⁵ SD card readers can be purchased online for under € 5.00 or can be provided to the Defence by the Prosecution. It is not uncommon that evidence may need to be reviewed outside of Nuix Discover. For example, physical items are often inspected by the Defence which would also “require the Defence to review evidence outside of the NUIX platform”.⁷⁶ This is demonstrative of the Defence’s unwillingness to accept the solutions presented by the Prosecution and instead waste the time of the parties, the participants and the Chamber, with alleged disclosure issues that have already been addressed *inter partes*.

⁶⁹ See e.g. PHL-OTP-0001-0858; PHL-OTP-0001-0886; PHL-OTP-0001-1054; PHL-OTP-0001-1070; PHL-OTP-0001-1405; PHL-OTP-0006-7773; PHL-OTP-00100218; PHL-OTP-00093136.

⁷⁰ See e.g. PHL-OTP-0001-0816.

⁷¹ Defence Motion, para. 30.

⁷² PHL-OTP-00093136 at 0004.

⁷³ PHL-OTP-00093136 at 0002.

⁷⁴ Defence Motion, para. 15.

⁷⁵ Email from Defence to Prosecution, 18 September 2026 at 12:14 hrs.

⁷⁶ Defence Motion, para. 15.

3. *Missing translations and/or transcriptions*

35. The Defence submits that “thousands of items are in Tagalog or Cebuano and have not been translated”.⁷⁷ However, of the 1,970 documents the Defence argues are missing translations, 1,591 were disclosed under rule 77 of the Rules or article 67(2) of the Statute and therefore do not require translation into a working language of the Court.⁷⁸ Of the remaining documents disclosed as incriminating, at least 130 items are videos that contain no audio, and thus, cannot be translated (e.g. CCTV footage). This has been made clear to the Defence in prior correspondence.⁷⁹ Further, at least 75 items do in fact have accompanying transcripts and translations. Some of these items were not linked in Nuix Discover due to a technical reason, which the Prosecution is resolving. Where translations cannot be technically linked, the Prosecution has provided the translation reference in the disclosure notes. The Prosecution will provide translations for any outstanding items disclosed as incriminating as soon as possible.

4. *Repetitive and duplicative items*

36. The Defence argues that the Prosecution has disclosed “the same exact photograph of a tube light” 21 times and complains that “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.”⁸⁰

37. These photographs are annexes to the witness statements of three Prosecution witnesses.⁸¹ They are [REDACTED]. [REDACTED]. For example, [REDACTED].⁸² This particular folder includes, as the Defence correctly points out, photographs “taken in quick succession” of the [REDACTED].⁸³ While some of the photographs are similar, they are not exact duplicates. The Prosecution does not consider it appropriate, or consistent with its disclosure obligations, to make determinations about which versions of these photographs the Defence would find most useful or material to its preparation.

38. These photographs were initially uploaded with individual ERNs. However, in an effort to facilitate the Defence’s review, the Prosecution combined all photographs contained in a particular folder into a single document with one ERN. This allows the parties, and the Chamber, to easily and quickly review the photographs. For example, the photographs of the tube lighting the Defence

⁷⁷ Defence Motion, para. 16.

⁷⁸ *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido*, Decision on the ‘Defence request for an order requiring the translation of evidence’, 11 February 2014, ICC-01/05-01/13-177, para. 9.

⁷⁹ Email from Prosecution to Defence, 18 August 2025 at 17:06 hrs.

⁸⁰ Defence Motion, para. 17.

⁸¹ P-0004, P-0009 and P-1263.

⁸² P-0009, PHL-OTP-0002-0626-R03 at 0693, paras 344-346.

⁸³ P-0009, PHL-OTP-00235897 at 0039-0078; Defence Motion, para. 17.

references are contained in a folder that [REDACTED].⁸⁴ The folder is entitled “[REDACTED]” and depicts [REDACTED].⁸⁵ They appear to be quick succession photographs taken in the [REDACTED]. It takes mere seconds to scroll past the photographs of the lighting in the document.

5. *Incorrect metadata*

39. With respect to the Defence’s concerns with the metadata of certain disclosed items, the Prosecution will endeavour to continue conducting metadata checks of the disclosed material and reissue relevant metadata where possible. As recently as 23 September 2026, the Prosecution reissued a metadata update for 219 items regarding the Record Type, Document Date, Document Title, Language of the Item.

40. The Prosecution notes that a large portion of the documents for which the Defence has raised concerns belong to the [REDACTED] dataset, which the Prosecution will make reasonable efforts to address. The Prosecution notes, however, that the Defence has the benefit of the Prosecution’s coding of this collection which allows the Defence “to search for, find, and filter items by category and/or date.”⁸⁶

D. The Chamber should reject the Defence’s proposal to artificially cap the Prosecution’s disclosure

41. The Defence has requested that the Chamber order the creation of a new case record, to which the Prosecution must migrate all exculpatory evidence, and duly-reviewed and triaged rule 77 and incriminating evidence, up to an absolute maximum of 10,000 items. The Chamber should reject this proposal for two reasons.

42. First, this proposal would necessarily require the removal of the [REDACTED] dataset, which as explained above, is highly relevant to this case. Second, setting an arbitrary cap on the number of documents the Prosecution can disclose would automatically place the Prosecution in violation of its disclosure obligations as it would require the Prosecution to withhold evidence that it considers material to the Defence’s preparation. It is highly inappropriate for the Prosecution to re-review evidence that it has already deemed material to the Defence’s preparation for the purposes of determining which of this evidence the Defence may find most useful to prepare its case. The Prosecution notes the Chamber’s observation that the Prosecution’s volume of evidence would be “detrimental for the parties and the

⁸⁴ P-0004, PHL-OTP-0004-0006-R03 at 0044-0050, paras 208-238.

⁸⁵ P-0004, PHL-OTP-0004-0006-R03 at 0044-0050, paras 208-238. The photographs in this folder are disclosed at PHL-OTP-00249477.

⁸⁶ Defence Motion, para. 13.

Chamber's search for the truth".⁸⁷ However, the Prosecution respectfully submits that withholding material evidence from the Defence, or forcing the Prosecution to remove a dataset that directly supports the contextual elements of its case, would more severely hinder the search for the truth in this case. The Prosecution has already reviewed its evidence collection and disclosed the evidence that it considers incriminating, exculpatory, and material. The Prosecution is not required to further "triage" the evidence it has disclosed.⁸⁸

43. It is the role of the Defence – not the Prosecution – to review the evidence disclosed to it in order to prepare for trial. The Defence has repeatedly demonstrated its reluctance to begin this work in earnest despite significant assistance from the Prosecution that goes well beyond the scope of its obligations. It has instead spent its time collating complaints, that when placed in their proper context, are of limited impact. The Defence has the Confirmation Decision and the Prosecution's Trial Brief, and as such, has a clear understanding of scope of the case in order to prepare for trial.⁸⁹

44. As set out above, where the Defence have raised legitimate issues in relation to disclosure, the Prosecution is taking active steps to address them. Furthermore, the Prosecution has presented the Defence with multiple practical, reasonable and proportionate ways to manage the [REDACTED] collection, all of which have been rejected.

IV. REQUESTED RELIEF

45. For the above reasons, the Prosecution respectfully requests that the Chamber reject the Defence's Motion.



Mame Mandiaye Niang, Acting Prosecutor

Dated this 5th day of October 2026

At The Hague, the Netherlands

⁸⁷ Decision on the Prosecution's and the Defence's requests to amend the E-Court Protocol, 28 September 2026, ICC-01/21-01/25-508, para. 10.

⁸⁸ Defence Motion, paras 5, 24, 32.

⁸⁹ *The Prosecutor v. Bosco Ntaganda*, Oral decision, 22 April 2015, ICC-01/04-02/06-T-19-ENG, p. 6, lines 9-12.