

1 International Criminal Court
2 Trial Chamber III
3 Situation: Republic of the Philippines
4 In the case of The Prosecutor v. Rodrigo Roa Duterte - ICC-01/21-01/25
5 Presiding Judge Joanna Korner, Judge Keebong Paek and
6 Judge Nicolas Guillou
7 Status Conference - Courtroom 1
8 Wednesday, 27 May 2026
9 (The hearing starts in open session at 9.31 a.m.)
10 THE COURT USHER: [9:31:31] All rise.
11 The International Criminal Court is now in session.
12 Please be seated.
13 PRESIDING JUDGE KORNER: [9:31:56] Yes. Good morning, all.
14 Can you call the case, please, Madam Registrar.
15 THE COURT OFFICER: [9:32:05] Good morning, Madam President, your Honours.
16 Situation in the Republic of the Philippines, in the case of The Prosecutor versus
17 Rodrigo Roa Duterte, case reference ICC-01/21-01/25.
18 And for the record, we are in open session.
19 PRESIDING JUDGE KORNER: [9:32:21] Yes. Could we have the appearances,
20 please. Prosecution first.
21 MR NICHOLLS: [9:32:29] Good morning, Madam President. Good morning, your
22 Honours. Good morning to everybody in the room.
23 Today we are Edward Jeremy, Robynne Croft, Hannah Allen, Erasmus Lovell-Jones,
24 Emma Norton; our case manager, James Miriti; and Maria Berdennikova. And I'm
25 Julian Nicholls. Thank you.

1 PRESIDING JUDGE KORNER: [9:32:52] Thank you, Mr Nicholls.

2 The Defence, please.

3 MR HAYNES: [9:32:56] Good morning, your Honour.

4 Kate Gibson, my co-counsel; Alexandre Desevedavy, a legal assistant; and assistant to
5 counsel, Sandrine de Sena. And I'm Peter Haynes. It's a pleasure to be here.

6 PRESIDING JUDGE KORNER: [9:33:10] Mr Haynes, just before you sit down, just
7 so that the public understand, I think that Mr Duterte asked to be excused from the
8 hearing.

9 MR HAYNES: [9:33:21] Indeed, that's correct, your Honour.

10 PRESIDING JUDGE KORNER: [9:33:23] Thank you.

11 Yes. And final -- sorry, not finally, no, the representatives of the victims, please.

12 MS MASSIDDA: [9:33:33] Good morning, Madam President, your Honours. The
13 common Legal Representatives of Victims team is composed today of Mr Joel
14 Butuyan, at my right. Behind us, Mr Orchlon Narantsetseg and Ms Ludovica
15 Vetruccio, legal officers. And on the other bench, Ms Anne Grabowski, legal officer.
16 And I am Paolina Massidda.

17 PRESIDING JUDGE KORNER: [9:33:57] Thank you very much, Ms Massidda.
18 And the Registry, please.

19 MR DUBUISSON: [9:34:00](Interpretation) Thank you, Madam President. Good
20 morning, your Honours.

21 For the Registry this morning, by my side we have Fatiah Balfas, who is the jurist
22 from the VWS section; there is Natalie Wagner, who is a coordinator within my office;
23 there's Marie Lucas, who's a jurist for the detention. And also from my Office,
24 accompanied for more specific matters, if you seek to delve more deeply, there is
25 Asmaa Yacoubi, who is the chief of the LSS; there is Philipp Ambach for the head of

1 the VPRS; and there's also Rod Rastan, who is the head of Judicial Cooperation
2 Support Section. I am, of course, Marc Dubuisson, Director of the Division of
3 Judicial Services, and I am representing here the Registrar this morning. Thank you.

4 PRESIDING JUDGE KORNER: [9:34:49] Yes. Thank you very much,
5 Mr Dubuisson.

6 As everybody knows, this is the first status conference in this case and the first proper
7 hearing, I suppose you could say, for the trial, and there are a few things I want to say
8 before we move on to the agenda.

9 As everybody knows, the independent expert review published in 2020 stated that
10 one of the tasks of the experts who have been appointed was, and I quote, "To
11 enhance by the making of recommendations the performance, efficiency and
12 effectiveness of the Court and the Rome Statute as a whole".

13 Since its publication, all organs of the Court have put in place measures designed to
14 achieve those obvious and laudable goals. In respect of trials, efficiency and
15 effectiveness is dependant on actions taken by all parties to a trial -- the Prosecution,
16 the Defence, the victims' representatives, the Registry and, last but not least, of course,
17 the judges. It depends on them, all of them, cooperating procedurally. Such
18 cooperation does not in any way affect the fairness of a trial, nor the onus on the
19 Prosecution to prove its case, nor does it encroach on the rights of the accused.

20 It is a truism, but one which bears repetition, to state that the overriding objectives of
21 a criminal trial, for judges in particular are: first, the acquittal of the innocent and the
22 conviction of the guilty; second, dealing with the Prosecution and Defence fairly;
23 third, recognising the rights of the accused, particularly those under Article 67, and
24 any other rights which are germane to a trial; respecting the interests of witnesses;
25 and, last, but certainly not least, respecting the interests of victims.

1 In order to achieve efficiency and expedition of a trial, there must be, amongst other
2 matters: first, an early identification of the real issues in the case, and I emphasise that
3 and will return to it later in this status conference; proper use of agreed fact between
4 parties; presentation of evidence, whether disputed or not, must take place in the
5 shortest and clearest way - that is particularly important in this trial - avoidance of
6 unnecessary and lengthy legal arguments.

7 We encourage the participants to cooperate in these goals and generally between
8 themselves. To give but one example, any requests for disclosure should be
9 discussed between the parties before rulings are sought from the judges. It is
10 incumbent upon the Prosecution to give proper reasons if they are going to refuse a
11 request for disclosure.

12 Finally, let me say this, we are delighted to see from the submissions that have
13 already been made that the parties and participants are represented by highly
14 experienced counsel on all sides. And we are heartened, as I say, by the responses
15 which we have received to the scheduling order for this status conference. Those
16 responses show that cooperation exists and we are optimistic that it will be
17 unnecessary for the Trial Chamber to enforce compliance with directions made in the
18 exercise of our not inconsiderable powers of case management, which we will employ
19 to achieve efficiency and a fair trial.

20 So, having said that, can we move straightaway to the various issues in the order in
21 which they were set out.

22 Firstly, and obviously, is the start of trial. There appear to be a number of different
23 suggestions. The Office of the Prosecutor says 30 November. The Defence doesn't
24 want to give any date at all until matters are resolved, such as the accused's fitness.
25 The Legal Representatives of the Victims wants the beginning of September, and the

1 Registry wants January, because of interpretation, which I will come back to.

2 Okay. Does anybody want to say anything more?

3 There is actually one matter, Mr Nicholls. Yours is -- your start date of the end of
4 November is because you say it will take you until September to complete disclosure;
5 is that right?

6 MR NICHOLLS: [9:41:07] Thank you, your Honours.

7 You'll find this at paragraphs 3 to 5 of our submissions.

8 PRESIDING JUDGE KORNER: [9:41:13] Yes, yes.

9 MR NICHOLLS: [9:41:14] What I can say is that we've taken a hard look at the, I
10 believe, 11 tasks in paragraph 5 that we need to fulfil in a reasonable time before the
11 start of trial. So, in picking the September 30 date, that was not random; it was made
12 in the spirit of efficiency and expedition that you have highlighted, and we believe
13 that is a date that we can meet, that will not be easy to meet, it will require us to work
14 hard and efficiently. Then we picked, and of course it is up to your Chamber
15 entirely, what we thought was an as soon as reasonable start date after that. But we
16 really do think we need that time in order to accomplish all of those different things,
17 different tasks that we need to do. And we think that if we have that time -- I mean,
18 I know everybody always argues this, but ultimately the trial will be more efficient
19 because we won't make mistakes and we'll have everything done properly and
20 disclosed properly.

21 Some of that -- you know, we have new counsel now, and Mr Haynes and I have
22 done a trial before and we know each other, so I do think we'll be able to cooperate.
23 And, as you say, we haven't had -- we've met and said hello and had a coffee, but we
24 haven't sat down yet to really discuss what can be agreed on, what can be stipulated
25 to, so hopefully that will make it more efficient. But, you know, we've calculated in

1 that date of 30 September that the August break doesn't exist, essentially, and that we
2 will keep going through that period. That does not include everybody taking off for
3 three weeks.

4 So I can't really add more, and I'm actually going on too long, to be efficient, but we
5 rely on our submissions and we really think that is the date -- the time we need.

6 PRESIDING JUDGE KORNER: [9:43:34] Well, okay, Mr Nicholls. I see that. I
7 mean, you're actually assisted in one sense by the fact there has been a change of
8 counsel, because that obviously causes -- well, you're assisted in many senses, I feel,
9 but -- because of the need for them to get to grips with the case.

10 However, can I -- all right. Can I emphasise, however, that you really must do
11 things with expedition. We weren't madly impressed by the delay in asking for the
12 matters in your last motion, as you saw, so we'd like you to get on with it.

13 All right, Mr Haynes --

14 MR NICHOLLS: [9:44:19] Could I make just one additional point?

15 PRESIDING JUDGE KORNER: [9:44:21] Yes.

16 MR NICHOLLS: [9:44:22] I'm sorry, I didn't -- just that with this schedule we've
17 proposed, other than one case, it would be the fastest from confirmation to trial.

18 I know that doesn't mean that those other cases, that that should be the measure, but
19 we were thinking in terms of making this as quickly as we could, and I will -- you're
20 correct, of course, about the motion you referred to and I can address that later. That
21 was our mistake. We own that.

22 There was a miscommunication where we believed that those items were not in
23 custody, but I will address that, if you wish, later.

24 PRESIDING JUDGE KORNER: [9:45:03] Well, no, I think -- I think we've given you
25 the warning, so that will do.

1 Mr Haynes, is there anything you want to add or say? I appreciate --

2 MR HAYNES: [9:45:16] Yes. I think what's important for us is that whatever trial
3 date your Honour fixes upon, you do not, as it were, concertina the gap between that
4 date and the end of disclosure, which has traditionally been no less than three months.
5 So, if the Prosecution's aspirations are to conclude that and its other tasks by the end
6 of September, then that would mitigate in favour of a start date in the middle of the
7 Christmas vacation, 30 December, which would be three months later, which has a
8 certain synergy with the other ball in the air, which is the interpretation which doesn't
9 appear to be ready until January.

10 So that would all tend to suggest that the start of the trial could not be this year.

11 We will be ready for whenever you want it to start, but our anxiety is that this should
12 not be a date which leaves us with perhaps one or two months after the end of
13 Prosecution disclosure. It should be a minimum of three.

14 PRESIDING JUDGE KORNER: [9:46:30] Yes, but there are pressing reasons which
15 mandate that we really should start this trial as soon as possible, which is basically
16 the health of your lay client. And I appreciate the interpretation, I'm going to come
17 to that in a moment. But, all right, Mr Haynes, I've got your non-submissions.

18 MR HAYNES: [9:46:57] For the avoidance of being unclear, if the start date is going
19 to be this year, then Mr Nicholls and his team are going to have to do a little better.

20 PRESIDING JUDGE KORNER: [9:47:13] Yes. Well, we'll come to that.

21 Yes, Ms Massidda, your submissions are it should start as soon as possible. I've got
22 that.

23 MS MASSIDDA: [9:47:21] Thank you, Madam President. Thirty seconds of your
24 time, I don't have to stress the obvious here. The victims would like this trial to start
25 tomorrow. That is as simple as such. However, after the submissions of the parties,

1 we had further consultation with our clients. They are amenable to start this trial
2 30 November. It seems to them, at the moment, still a reasonable period of time.
3 January 2027, no. For them, it's too long.
4 And going to what my learned colleague will say, we can start the trial already in
5 November and hear the witnesses who can speak English. This will allow to
6 continue -- to start and continue the trial, and solve the issue of interpretation, starting
7 in January 2027. Thank you very much.

8 PRESIDING JUDGE KORNER: [9:48:14] Yes. Okay, Mr Dubuisson, this is the same
9 problem that arose in Al-Rahman, that you don't have interpreters ready, as yet, to
10 deal with the two languages that are apparently going to be spoken by some of the
11 witnesses. However, as we did in Al-Rahman, and as Ms Massidda has pointed out,
12 it is possible to start the trial with witnesses who only speak English. And my
13 understanding is that it's not as complicated as finding interpreters as it was in the
14 Al-Rahman trial in a language that was only spoken in a small part of Sudan, because,
15 presumably, as court proceedings in the Philippines are all in English, there must be
16 interpreters there, and equally field interpreters who can be trained more speedily, I
17 would have thought, than was possible in the Al-Rahman trial.

18 MR DUBUISSON: [9:49:28](Interpretation) Thank you, Madam President. Yes, I
19 take note of what you've just clarified, in addition to what my colleague Ms Massidda
20 just said. Indeed, there are a number of items we need to look at here. Who will we
21 be interpreting for specifically? We are interpreting for the witnesses. Today, we
22 have a number of witnesses for which we know that they will testify in English. We
23 have been warned that there are some witnesses that will be speaking in two other
24 languages -- languages of the Philippines. So we need to find, if possible,
25 interpreters who could speak these two languages. That is very important for us.

1 To date, we do not have knowledge of who these witnesses are. So, as you have just
2 said, we are going to try to recruit people principally from the field - that is, field
3 interpreters - but, of course, we do have to train them because field interpreters
4 working out in the field work in the consecutive or in whispering, chuchotage form,
5 but we are going to be using simultaneous interpretation, so they need to be prepared
6 and trained not into English, fine, but into the other languages such as Tagalog, those
7 languages that are used in the Philippines.

8 But, of course, it is important also for the witnesses and for the population that
9 outreach is conducted with regard to the trial that is ongoing in The Hague. So it is
10 important for those out in the Philippines to be able to follow the trial that is ongoing
11 here in The Hague. This is something that we are always attentive to, but it is not
12 our top priority. Our top priority is the language of the accused and the languages
13 of the witnesses, and this is why, with regard to what has just been said, yes, were we
14 to go ahead with the opening statements, if you wanted to have these at the end of
15 November or at the end of the year, yes, indeed, we could find solutions for
16 interpretation for a number of hearing days, for those opening statements, but if we
17 are talking about bringing witnesses to testify on a regular basis, then we need to be
18 properly equipped in terms of interpretation booths.

19 And that is why we would like for the trial to commence at a later date. I'm also
20 very aware of the fact that we will need to adapt the hearings according to other
21 criteria that you will determine yes or no, to do with the accused, and this will enable
22 us to save time. So, for example, if we have shorter hearings, we would maybe be
23 able to improve the training terms and time, but that would only apply to maybe a
24 month or a month and a half in terms of time. So, for us, it would be better to start
25 after a six-month period -- that is to say, six months after today.

1 PRESIDING JUDGE KORNER: [9:53:00] Yes. Thank you, Mr Dubuisson. As I say,
2 we are going to consider all these matters. We'll give the date that we propose to
3 start at the end of the status conference orally, and we have heard all the submissions.
4 All right. Can we move then, please, to the next item on the agenda, unless there is
5 anything anybody else wants to say? No. And that's the number of witnesses.
6 You, the Prosecution, Mr Nicholls - that's paragraph 6 - thinks that you want to -- the
7 Prosecution intends to call 60 to 70 witnesses, including approximately 31 insider
8 witnesses. Is that right?

9 MR NICHOLLS: [9:54:02] Yes, your Honour. I think --

10 PRESIDING JUDGE KORNER: [9:54:06] I'm looking at paragraph 6 of your
11 submissions.

12 MR NICHOLLS: [9:54:08] Yes. Yes, I think we can rely on our submissions for this
13 question, unless you have any other follow-up.

14 PRESIDING JUDGE KORNER: [9:54:19] No. Yes, well, only this one, while we are
15 on the topic of witnesses: We'll set the number of hours at a later stage, but -- and
16 can I say to all parties we will do the same as I think most trials do now, and that is
17 you'll just be given an overall figure as opposed to a timing for every witness.

18 But there is one thing. What emerged as a problem in the last trial of Al-Rahman
19 was the fact that witnesses to the same incident were called months apart, as a result
20 of which discrepancies and things which could have been resolved had they been
21 spotted were not spotted. If we say, as I think we'll have to, given what the Registry
22 says, that we are going to start the trial earlier, but they won't have their interpreters
23 ready until the new year and you deal with them in English, you deal with those who
24 can give evidence in English, rather, what I would still -- what we would all still like
25 is for you to try and call all the witnesses to the same incident consecutively. It

1 makes life very difficult afterwards.

2 Is that something that will -- well, I don't expect you to answer that straightaway, but

3 I think it's something we'd like you to consider.

4 MR NICHOLLS: [9:55:58] Well, thank you, your Honour. Yeah, of course we
5 would want to do that.

6 PRESIDING JUDGE KORNER: [9:56:02] Yes.

7 MR NICHOLLS: [9:56:03] Without rehashing the last trial, it was the interpretation
8 that threw that off because we had to just choose whoever could speak --

9 PRESIDING JUDGE KORNER: [9:56:10] Yes.

10 MR NICHOLLS: [9:56:11] -- the standard Arabic at the time or in English. I think
11 it will be less of an issue in this case because the case is different in that it's not sort of
12 three big incidents with many witnesses for each of those --

13 PRESIDING JUDGE KORNER: It's a lot of incidents --

14 MR NICHOLLS: It's a lot of little incidents which are fairly discrete, which rely on
15 fewer witnesses per incident. So we will try to do that.

16 If I could just go back to the translation, not to complain, but we did raise this early in
17 order to try to get a head start. We sent a notice on 13 March, I believe, of the
18 languages.

19 My understanding is that nothing can happen until after the confirmation decision,
20 but I just wonder if it can be speeded up because six months is a long time -- not just
21 for the courtroom presentation, but some of the feedback that we received that my
22 friends representing the victims would know better is that, as Mr Dubuisson said,
23 there's a lot of interest in this case in the Philippines and having it not broadcast,
24 I know that's not the main point and we don't always do that, but it would be much,
25 much better for the population and the victims and people interested in this case if it

1 could be broadcast in Tagalog, rather than the other languages.

2 So if we start with all the English-speaking witnesses, that will require us to jump
3 around a bit, although we will try to keep it as coherent and focused as possible on
4 the particular incidents, but it means at the start of the trial, that some people won't be
5 able to follow as well as they should and that would be a shame. That would
6 be -- and part of what we try to do here is make this accessible to the population for
7 the situation in question. So if there is any way to speed that up, that would be
8 excellent.

9 PRESIDING JUDGE KORNER: [9:58:12] Yes. Well, as I said to Mr Dubuisson, my
10 understanding is that the court system in the Philippines operates in English, and if
11 there is -- with interpreters. I may say, I was quite surprised, I rather was under the
12 impression, and being told by people that come from the Philippines, that most
13 people, they did speak English. But I'm told that's -- what you all tell me, that's
14 wrong. But certainly the court system must therefore have ready entrained
15 simultaneous interpreters?

16 MR NICHOLLS: [9:58:44] Yes, your Honour. I have to say it was not something we
17 had foreseen until we heard after the confirmation hearing and got this feedback.
18 But it's also likely that some of the population from which a lot of the victims in this
19 case were drawn do not speak English. It may be that most people do, but I again
20 defer to my friends, but that the -- that some of the poorer community where many of
21 the victims are from do not have a good command.

22 PRESIDING JUDGE KORNER: [9:59:17] Yes. All right. There's one other thing.
23 Well, it may -- it will be specified in the conduct of proceedings, but I note that a lot of
24 these -- the witness evidence is in the form of suspect interviews. Right.
25 Can I make it clear straightaway, as I say it will appear in the conduct of proceedings,

1 where there are lengthy interviews which wander all over the place in terms of topics
2 and whatever, before the witness is called, the Chamber will expect to have a
3 breakdown in schedule form of the topics which are to be gone through with the
4 witness in the order of which they are to be gone through, with a reference in a
5 column to the pages in the actual interview. Because, as I say, our
6 experience - certainly my experience from the last trial - was that, as so often happens
7 in such interviews, topics were returned to over and over again. So can I make that
8 clear right away.

9 MR NICHOLLS: [10:00:39] Absolutely, your Honour. We expected that. We've
10 discussed how to do that best and we plan to do that. I would say that affects, in the
11 most part, five witnesses especially, and so we intend to provide very detailed
12 summaries and will put them in the format that the Court -- we will create those
13 schedules and we will also take care of the summaries for those insiders with lengthy
14 transcripts.

15 PRESIDING JUDGE KORNER: [10:01:17] Right. And the other, the last thing is,
16 and I think it's a general comment, it really is incumbent, as I say, in particular,
17 because of this case, because of the health of the accused, that we -- the evidence is
18 kept to the minimum possible, and the Chamber would not expect to hear from
19 witnesses all saying the same thing. And I know Mr Haynes objects to it, and I will
20 come back to that, but we'd expect as much use of Rule 68(3) and 68(2)(b), I think it is,
21 as possible.

22 MR NICHOLLS: [10:02:05] Yes. We would plan that. That is something I was
23 going to address.

24 PRESIDING JUDGE KORNER: [10:02:08] Yes.

25 MR NICHOLLS: [10:02:09] We would like to -- I mean, the experience of the last trial

1 is that it seemed to work well. I think the jurisprudence, I won't go into it now to
2 check, is --

3 PRESIDING JUDGE KORNER: [10:02:18] I'll come --

4 MR NICHOLLS: [10:02:18] -- that there is no unfairness whatsoever in using 68(3).
5 It's available to both parties. It makes things more efficient in every way and we
6 intend to use it.

7 In terms of the length and how much a witness needs to testify, I think that may be
8 something where we can cut that down. Some of these facts may not be in dispute,
9 about a particular murder that may -- we may be able to narrow it to the issues in
10 dispute, which would make the testimony much shorter, if the actual fact of this
11 murder or this incident is not in dispute and we're talking about linkage, et cetera.
12 So we may be able to speed it up.

13 PRESIDING JUDGE KORNER: [10:03:04] Yes. Well, I'll come back to that when we
14 come to your documentary -- yes. Right. Mr Haynes or Ms Gibson?

15 MR HAYNES: [10:03:11] Nothing to add about that.

16 PRESIDING JUDGE KORNER: [10:03:13] Right. Ms Massidda, anything?

17 MS MASSIDDA: [10:03:16] No, Madam President. Thank you.

18 PRESIDING JUDGE KORNER: [10:03:18] All right. Right, next, then the next topic
19 is -- oh, well, I suppose we may as well deal with it here. Yes, I'm sorry, before I
20 move on, Mr Nicholls, I meant to say the Defence did say you should provide at the
21 earliest possible time a provisional witness list. Can I say I agree with that.

22 MR NICHOLLS: [10:03:43] We agree too.

23 PRESIDING JUDGE KORNER: [10:03:44] Right.

24 MR NICHOLLS: [10:03:45] We'll do that five months in advance, the provisional
25 witness list. It's already the list from confirmation, obviously.

1 PRESIDING JUDGE KORNER: [10:03:50] Yes.

2 MR NICHOLLS: [10:03:51] But we will provide an updated one five months in
3 advance, which I think is what was requested.

4 PRESIDING JUDGE KORNER: [10:03:56] Right. Thank you.

5 Okay. Expert witnesses. You seem to be -- sorry, Mr Nicholls, it's you again. You
6 seem to be calling an awful lot, on the face of it.

7 I think all we want to say at this stage about it is this, that we are going to propose, I
8 think, that there is a deadline of 24 August to provide a list of your experts and their
9 reports, if possible.

10 It would be helpful if, again, as in the Al-Rahman trial, Defence and Prosecution
11 could agree on the nature and -- yes, well, I see Ms Massidda wants to say something
12 in a moment. At the moment it seems to me it's the Defence and Prosecution could
13 agree on the nature of the experts to be called. But I will say this: Firstly, if these
14 are going to be experts that are not on the Registry list, you should inform the
15 Registry as soon as possible who you want to -- I mean, because more checks are
16 being done these days on expert witnesses, so it's really important that the Registry is
17 given advance notice.

18 Second, if objection is going to be taken - and this applies to experts called by both
19 sides - to either the expert and the expertise of the particular expert, or the content of
20 the report, again, that must be notified to the Trial Chamber well in advance of the
21 expert to be called. And if there's going to be any legal argument about it,
22 particularly involving a voir dire, then that must be notified as early as possible.
23 I say that applies to both sides.

24 Mr Haynes, anything you want to say about that at the moment?

25 MR HAYNES: [10:06:31] Just a couple of things, and I do hope Mr Nicholls will

1 forgive me if we are holding a conversation across the courtroom, it's merely the fact
2 that we haven't had the opportunity to have a lengthy conversation, as he's already
3 alluded to. I just wondered whether the Prosecution experts have yet been
4 instructed how far advanced their reports are and whether he's confident they could
5 be served by 30 September of this year?

6 PRESIDING JUDGE KORNER: [10:06:58] Well, we had in mind earlier than that,
7 actually.

8 MR HAYNES: [10:07:01] I'm grateful for that. The note I made was 30 September.

9 PRESIDING JUDGE KORNER: [10:07:07] I thought I said 24 August.

10 MR HAYNES: [10:07:09] 24 August, yes.

11 PRESIDING JUDGE KORNER: [10:07:13] Yes, I did.

12 Mr Nicholls?

13 MR NICHOLLS: [10:07:14] Yes. We have instructed some of the experts. They are
14 underway on their reports. I think we will -- we will definitely be able to meet the
15 24th for the list, which will likely be narrower than what we're looking at here, and
16 part of it depends on some things in the works.

17 As far as the provision of the reports, that's hard for me to say, that may be difficult
18 for some of them, 24 August, but we will --

19 PRESIDING JUDGE KORNER: [10:08:00] Well, I think --

20 MR NICHOLLS: [10:08:03] -- follow your orders. As I could say, we're -- it's
21 moving, we have instructed the experts, they are working. I need to -- I need to
22 check, essentially. And I think we can meet that very likely for most kind of
23 important reports, but there may be a couple -- there's a couple of things where we're
24 waiting on outside parties, and I'll leave it there, I think.

25 PRESIDING JUDGE KORNER: [10:08:32] Yes, all right.

1 Yes, Ms Massidda, you wanted to say something?

2 MS MASSIDDA: [10:08:35] Yes, your Honour. Actually, it was the same question
3 that my colleague Haynes posed to the Prosecution about if we expect whether we are
4 already starting or not, for one very simple reason, some of the experts are also
5 interesting for us, so we were thinking of joint instructions to save time of the Court.
6 Maybe we will liaise with the Prosecution and see what can be done yet. Thank you
7 so much.

8 PRESIDING JUDGE KORNER: [10:09:00] Yes. All right. And I'll say one other
9 thing about experts at this stage. Again, it will be -- it will appear in the conduct of
10 proceedings, and that is this: If the side who's not calling the expert intends to show
11 documents during the course of a cross-examination to an expert, they must be
12 provided to the expert in advance of the hearing. As I say, that will appear in the
13 conduct of proceedings.

14 Right. The next item -- is there anybody who wants to say anything else on that?
15 Does the Registry, Mr Dubuisson, want to say anything about experts, other than,
16 obviously, early -- early notification.

17 MR DUBUISSON: [10:09:54](Interpretation) As you indicated, and rightly so, we
18 currently have a vetting system, which is much more advanced to circumvent any
19 problems. So it will be worthwhile to be informed of experts ahead of time so that
20 through these three ways of vetting an individual, we can get from A to B. Thank
21 you.

22 PRESIDING JUDGE KORNER: [10:10:14] Yes. Next, the use of AVL. The
23 answer -- I mean, I don't think I need to say anything else, but, Mr Haynes, you say it
24 should remain limited and subject to prior judicial authorisation. What did you do
25 during COVID?

1 MR HAYNES: [10:10:37] Stayed at home.

2 PRESIDING JUDGE KORNER: [10:10:40] Yes. And did everything on AVL.

3 MR HAYNES: [10:10:44] Yeah. I mean, I do have one, I hope helpful, observation
4 and that is of course the big difficulty with AVL in this case is the time difference.

5 PRESIDING JUDGE KORNER: [10:10:55] Yes.

6 MR HAYNES: [10:10:55] Ever since 15 May, my phone pings regularly from
7 4 o'clock in the morning onwards and you can't get anybody after 4 o'clock in the
8 afternoon. I think it's going to apply both to those who appear on a video screen and
9 those who are brought here, who are going to need, I think, a couple of days
10 acclimatisation to the new timezone they are in. So I think that is going to be a
11 practical problem with AVL in terms of hearing people who are on the other side of
12 the world.

13 Please don't pay too much attention to what appears in the submission document.
14 You will notice its proximity to the date of my assignment.

15 PRESIDING JUDGE KORNER: [10:11:36] Yes. Can I say that I agree with -- I mean,
16 that is -- I was going to raise that anyhow, Mr Nicholls. It's going to be really
17 difficult if they are testifying from the Philippines, because we'll be sitting at
18 something like 6 in the morning.

19 MR NICHOLLS: [10:11:54] We'll have to work that out, your Honour. In my last
20 job before here, there were sometimes video links where I was present and it started
21 late at night in the other jurisdiction. We will -- we are cognisant of that and we will
22 only apply for a video link when it's impossible to get the person here. So it will be
23 as limited as we can make it, because we would rather they be here. There may be
24 some witnesses who just can't, for different reasons.

25 PRESIDING JUDGE KORNER: [10:12:29] Yes. All right. Well, as I say, I don't

1 think there's anything else that needs to be said about that. You don't need judicial
2 authorisation. You can -- subject to the timings, you can just make that arrangement.
3 Other documentary evidence is the next item. Yes. Now, let's go through that.
4 You say currently -- OTP's currently in the process of determining the overall. Yes,
5 you've got 619 items. My note is that it's paragraph 13. Oh, yes, it's the speeches.
6 That's right. That's what I want to query with you. 197 speeches seems to me, on
7 the face of it, and without -- it's probably not the right word, but it seems to me too
8 much, particularly if they all say the same thing. And I think you need to consider
9 fairly carefully whether you need all 197.

10 MR NICHOLLS: [10:14:08] We are definitely not going to intend to play all those in
11 court. We'll go through them. These are -- that will be narrowed. That was, I
12 believe, meant -- and Mr Jeremy may need to help me here in a minute, but that was
13 meant -- that's sort of the universe --

14 PRESIDING JUDGE KORNER: [10:14:23] Right.

15 MR NICHOLLS: [10:14:24] -- at the moment and they are sort of -- we will make
16 careful selections. We don't intend to introduce, I'm sure, all 197 of those.

17 PRESIDING JUDGE KORNER: [10:14:41] Right. Now, the point which is made in
18 the Defence submissions is this question of whether documents need to be
19 submitted -- need to be -- go on to the court record through the submission or
20 admission system. I'll let Mr Haynes address us on this, but the submission system
21 of evidence getting on to the record is now court-wide. I think all Trial Chambers
22 accept that's the way of doing it.

23 However, as a result of the experiences in our last trial where there was a whole lot of,
24 in our view, unnecessary and irrelevant evidence that was dumped into the court
25 record through largely the admission of very large documents, even though a witness

1 had only spoken as to one page, or, even worse, through the Bar table motion, this
2 Chamber is going to try and find a fine line between the two systems, which we
3 haven't quite worked out but will appear in the conduct of proceedings.
4 But one of the things that we have in mind is that where documents are relied upon
5 heavily by either party to the proceedings, and considered to be important, and I take
6 into account the argument mounted on behalf of Mr Haynes, which has been said on
7 many occasions, that it makes it very difficult to know at the end whether the
8 Chamber will find the document to be persuasive or unpersuasive, or even admitted
9 at all.

10 So, I think we are going to say, just so that you have advance warning, that where a
11 particular document is said to be important, we are going to say that we will decide
12 on admission or not at that stage when it's presented. But, as I say, what I'm anxious
13 to avoid is wholesale, as I say, dumping of documents through the Bar table motion.
14 Videos of visits to a country did not seem to help the Chamber much in its last case.
15 So that's really all that I want to say at this stage, unless there's anything else -- oh, yes.
16 I'm sorry, there is one other thing. If you're going to want to introduce evidence
17 from open sources, which includes Facebook or any other social media platforms,
18 then we want to know if you're just going to put them in or whether you're going to
19 be calling expert evidence. And when I say "open source", I mean other -- I mean
20 material that is not directly attributable to a witness or anybody who can speak about
21 it.

22 MR NICHOLLS: [10:18:57] Okay, that's understood. We'll look at that.

23 PRESIDING JUDGE KORNER: [10:19:00] Yeah.

24 MR NICHOLLS: [10:19:01] Thank you.

25 PRESIDING JUDGE KORNER: [10:19:02] Yes, Mr Haynes, anything you want to

1 say?

2 MR HAYNES: [10:19:04] No, thank you, your Honour.

3 PRESIDING JUDGE KORNER: [10:19:05] All right.

4 Ms Massidda, anything you want to say?

5 MS MASSIDDA: [10:19:11] No, thank you.

6 PRESIDING JUDGE KORNER: [10:19:13] All right.

7 I take it the Registry has no observations on this.

8 All right. Well, Rule 68 we have more or less dealt with. I think that we'll leave it

9 to the parties to see what agreement can be reached on 68. As I say, and as

10 Mr Nicholls says, it's quite a -- 68(3) is quite a good way of getting the evidence in.

11 Yes, and we encourage the parties to discuss that, really.

12 Well, I suppose the only thing, Mr Nicholls, are you -- would you be using Rule 68(3)

13 for any of the Article 55 witnesses, or trying to?

14 MR NICHOLLS: [10:20:20] Yes, that's possible. I think so.

15 PRESIDING JUDGE KORNER: [10:20:27] Yes, all right. Well, I think we'll see

16 when we get to with that. Mr Haynes, I don't expect any submissions on that at the

17 moment.

18 Agreed facts next. I'm happy to see that everybody is going to talk about this still,

19 and the only -- I mean, we encourage, as I've already said, we really encourage agreed

20 facts. There must be quite a lot in this case because it's a matter of public record

21 what the accused said or did, in some stages -- in some senses.

22 The only question, I see that, Ms Massidda, the -- you submit that the legal

23 representatives of victims should have a say on this. The article actually talks about

24 Prosecution and Defence. I think if you want to -- obviously, you should be supplied

25 with potentially agreed facts, but I think if you want to address us or if you want to

1 make submissions on it, you'll have to apply for leave.

2 MS MASSIDDA: [10:21:58] Thank you, Madam President. I am guided, but can I
3 have one minute on this issue?

4 PRESIDING JUDGE KORNER: [10:22:05] Yes.

5 MS MASSIDDA: [10:22:06] Thank you very much. First of all, two things very
6 briefly. One, it has been core practice to allow victims to notify the Chamber if they
7 have or they have not any matter to raise in relation to agreed facts raised by the
8 Chamber. And, second, in deciding, the Chamber shall take into account also the
9 interests of the victims. So, on that basis, we submitted already that we should at
10 least give an opportunity to have a say on whether or not the agreed facts agreed by
11 the parties may raise an issue for the victims. It remains, of course, entirely with the
12 parties to discuss, we don't want to be involved in that, but we simply request the
13 notification of agreed facts just to check whether or not these may have an impact on
14 the interest of the victims and eventually raise that with the Chamber.

15 And it's something that can be done in a very quick way, if I can also make this point.
16 If we are notified of the agreed facts, it will take for us not more than a few days to
17 verify whether or not the interest of our clients are indeed concerned. Thank you.

18 PRESIDING JUDGE KORNER: [10:23:20] Well, you say that's been the practice. I
19 mean, you quote what -- you don't actually say which case it was, but I am assuming
20 from the date that it was Lubanga, in your footnote 12, at paragraph 10. But what
21 you rightly say is that Rule 69, which deals with that, apart from saying it's the
22 Prosecution and the Defence --

23 MS MASSIDDA: [10:23:43] Yes.

24 PRESIDING JUDGE KORNER: [10:23:44] -- it's for the Chamber to decide
25 whether -- the "Chamber may consider such alleged fact as being proven, unless the

1 Chamber is of the opinion that a more complete presentation [...] is required in the
2 interest of justice, in particular the interests of the victims."

3 So, before we even get to that, we have to decide -- if we are satisfied that something
4 is proven, then it's for us to decide before, and it's only if we take the view that we
5 need more information, or more complete presentation, that the victims come into it.

6 MS MASSIDDA: [10:24:34] Well, your Honour, with all due respect, sometimes the
7 Chamber may not be aware of facts or circumstances that the legal representatives are
8 aware of because we maintain the direct contact with victims. So, in this sense, for
9 us, the notification is important because we can confront what the parties have agreed
10 with what the views and concerns of the victims are.

11 And, second, going back to the practice of the Court, in the Abd-Al-Rahman case, we
12 notified twice our agreement at the pretrial stage. I can't remember now the filing.
13 I'm looking behind me -- someone can find that. At pretrial in the Abd-Al-Rahman,
14 there were already a list of agreed facts, and if my memory is still good - I hope so - in
15 both cases there is a filing of the then appointed legal representative notifying the
16 Chamber about no opposition of the agreed facts reached by the parties. So, it's not
17 an ancient practice of the Court, it's a practice that has been prolonged in a number of
18 case before the Court.

19 I leave it to the discussion of the Chamber, but I wanted to make the point because,
20 particularly in this case, it's important for victims to be fully appraised of what's
21 going on. Victims are very interested in this case and for them it has an impact if a
22 fact is already agreed or not agreed. Thank you.

23 PRESIDING JUDGE KORNER: [10:26:24] Yes, well, we will take your submissions
24 under consideration. Yes, thank you. Unless there's anything else on that
25 before -- yes, Mr Nicholls.

1 MR NICHOLLS: [10:26:27] Yes, I think in the last trial, I think I agree with your
2 Honour, the Defence and I agree what -- and the Prosecution agree what they can,
3 and then the LRV is notified that this agreement has taken place, and we submit them.
4 But I think that's where -- that's where it ends.

5 PRESIDING JUDGE KORNER: [10:26:45] Well, that's my impression.

6 MR NICHOLLS: [10:26:49] Yes.

7 PRESIDING JUDGE KORNER: [10:26:49] But I hear what Ms Massidda has said. I
8 just think it would be unfortunate were there to be intervention when facts which
9 have been agreed between the Defence and Prosecution, who are the parties to this
10 trial, and with the laudable view of increasing the efficiency, I would be reluctant to
11 see it being derailed at any stage.

12 But, as I say, we'll return to you on that, Ms Massidda.

13 All right. Finally, before we take the break, languages -- I think we have really
14 discussed that, haven't we, except the only thing that, Mr Haynes, I was slightly
15 surprised to see was that you wanted interpretation for your lay client, who, as I
16 understand it, as president of the Philippines -- ex-president of the Philippines, an
17 ex-lawyer in the Philippines, speaks fluent English.

18 MR HAYNES: [10:28:02] He won't need interpretation.

19 PRESIDING JUDGE KORNER: [10:28:05] Right. Thank you. Unless there is
20 anything else on interpretation, I think we've actually discussed that already.

21 Anybody else want to add anything? No.

22 All right. It seems to me, because we are then coming on to disclosure, which will be
23 slightly longer, I think, we'll take the break at this stage and sit again at 11 o'clock.

24 THE COURT USHER: [10:28:36] All rise.

25 (Recess taken at 10.28 a.m.)

1 (Upon resuming in open session at 11.00 a.m.)

2 THE COURT USHER: [11:00:47] All rise.

3 Please be seated.

4 PRESIDING JUDGE KORNER: [11:01:18] Yes. As I say, the next item is that of
5 disclosure.

6 Mr Nicholls, you -- you've said in your submissions that there were still ongoing
7 investigations. Sorry, I'm just going to find it.

8 MR NICHOLLS: [11:01:54] Paras 22 to 23, your Honour.

9 PRESIDING JUDGE KORNER: [11:02:04] Yes. And you're effectively still
10 collecting evidence and, indeed, want to re-interview.

11 As I understand the matter, you have access to the -- to the Philippines?

12 MR NICHOLLS: [11:02:37] Can we maybe go into private session?

13 PRESIDING JUDGE KORNER: [11:02:39] Yes.

14 Private session, please.

15 (Private session at 11.02 a.m.)

16 THE COURT OFFICER: [11:03:01] We are in private session, Madam President.

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

1 (Redacted)

2 (Redacted)

3 (Redacted)

4 (Redacted)

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Open session at 11.05 a.m.)

16 THE COURT OFFICER: [11:05:18] We are back in open session, Madam President.

17 PRESIDING JUDGE KORNER: [11:05:22] Yes. The second matter that has been

18 raised by you is the question of adding new incidents, which the Pre-Trial Chamber

19 left open. And not surprisingly, the Defence aren't very happy about that.

20 I think we're going to have to give you a deadline in -- in which, if you want to add

21 new incidents, you're going to have to comply with that deadline. And it's likely to

22 be when we give you the deadline for disclosure.

23 MR NICHOLLS: [11:06:10] Your Honour, our -- our date we were going to propose

24 would be -- was going to be the end of August and I can say that we are being

25 conservative in -- in -- in any new incidents we're adding. So it will not be

1 a -- a huge, unmanageable number.

2 PRESIDING JUDGE KORNER: [11:06:35] Yeah. It sounds as though you are going
3 to be applying to add new incidents.

4 MR NICHOLLS: [11:06:41] Yes, I imagine we will. But I think it will be a few.
5 Some of them are related to existing witnesses where we got more evidence. Some
6 is -- is material that's come in soon but it fits perfectly within the theory and is just
7 really part of the same case, so -- but -- but it will not be a huge number.

8 PRESIDING JUDGE KORNER: [11:07:00] All right. Yes, all right.

9 Then, Mr Haynes, anything you want to say? I mean, as I say, we understand your
10 dissatisfaction.

11 MR HAYNES: [11:07:12] Your Honour, this -- this was going to be the only item on
12 which I made any substantive submissions today. But in the light of Mr Nicholls'
13 comments, perhaps I'll wait to see what is proposed. I'll give you it in outline.
14 We -- we regard the pleading of what are, in effect, charges as something else,
15 instances, or whatever, as -- as a device to get around the fact that what is in fact
16 being done here is extra charges are being added after committal, which, of course,
17 would require a return to the Pre-Trial Chamber under Article 61(9). This is a very
18 unusually pleaded DCC.

19 I think if you look back at Abd-Al-Rahman, you will see that what in that case would
20 have been a topical heading by geographical location or similar, here has been
21 pleaded as an account, account which in old money I think you and I would have
22 regarded as duplicitous because it alleges 19 murders as a single charge and, of course,
23 thereby deprives the Trial Chamber of delivering different verdicts on each of the
24 underlying acts.

25 But as I've said, I'll keep my powder dry for today. We're not going to be silly. Our

1 real concern is what the parameters of this trial are. If we are to investigate, say,
2 even 50 plus episodes, then -- then that's manageable. But if the suggestion is that
3 we are, in effect, in a sort of public enquiry here which spans 300,000 square
4 kilometres and a nation of 120 million people over seven and a half years, then -- then
5 this trial really is going to get out of hand and our investigations will be impossible.

6 PRESIDING JUDGE KORNER: [11:09:12] Yeah. Well, Mr Haynes, that's fine. I
7 mean, until such time as we see what the Prosecution is proposing. I mean, your
8 problem is that the trial -- Pre-Trial Chamber specifically left it open and I suppose
9 it -- it's -- if you go back to the old days, it's like pleading a fraud with all sorts of
10 different instances which are examples of the fraud.

11 MR HAYNES: [11:09:44] Yes.

12 PRESIDING JUDGE KORNER: [11:09:45] But anyhow, we'll -- we'll -- I'm sure
13 Mr Nicholls has heard what you're saying and Mr Nicholls is fully aware that -- that
14 the Trial Chamber has every intention of this trial proceeding expeditiously.

15 MR HAYNES: [11:09:55] Thank you.

16 MR NICHOLLS: [11:09:55] I'll speak to my friend when we have a chance and I
17 think I'll be able to put his mind at rest.

18 PRESIDING JUDGE KORNER: [11:09:58] Yeah. Yes, thank you very much.

19 Again, Ms Massidda, I don't think there's anything that affects you on that. Yes.
20 Or the Registry.

21 So on the question of outstanding disclosure, I think both of you are agreed, and can
22 we emphasise that the Trial Chamber thinks it is very sensible, disclosure will go on
23 a rolling basis as before. And the -- the same deadline effectively is going to apply
24 to -- to all of this -- these matters of disclosure and the like.

25 Yes, and if there's to be any request for delayed disclosure, could you send

1 out -- could you file a motion to that effect as soon as possible, please, Mr Nicholls,
2 and you've got to show good cause, as you might expect.

3 MR NICHOLLS: [11:11:13] Yes, your Honour.

4 PRESIDING JUDGE KORNER: [11:11:14] Right.

5 All right. Having said disclosure was likely to take more time, Mr Haynes having
6 kept his powder dry, we can move on to transcription.

7 Any updates on what you've said at paragraph 28, Mr Nicholls, or is it more or less
8 the same?

9 MR NICHOLLS: [11:11:37] No update, your Honour.

10 PRESIDING JUDGE KORNER: [11:11:40] All right. Yes, and we'll -- and we'll, as I
11 say, produce the same deadline.

12 Right, witness protection.

13 As I understand it from paragraph 31, Mr Nicholls, you will work towards disclosing
14 the identities of all witnesses by the end of September 2026. Does that mean also any
15 new witnesses that you're intending to propose?

16 MR NICHOLLS: [11:12:18] Yes, your Honour.

17 PRESIDING JUDGE KORNER: [11:12:22] All right.

18 I mean, if you want to give any updates, it ought to be, I suppose, in private session.

19 MR NICHOLLS: [11:12:33] No, I don't think any updates. It's just, as you said just
20 a moment ago, if -- if we need to apply for delayed disclosure of an identity, we'll do
21 that as soon as possible.

22 PRESIDING JUDGE KORNER: [11:12:45] All right. And if -- yeah, if there are
23 going to be any discussions about that, or anything which needed to be *ex parte*, then
24 we'll -- we'll deal with that at the next status conference, or when it needs to go
25 in -- into private session.

1 And, yes, protective measures obviously as soon as possible. Actually, I think,
2 nonetheless, we'll just briefly go into private session, for a moment.

3 (Private session at 11.13 a.m.)

4 THE COURT OFFICER: [11:13:38] We are in private session, Madam President.

5 (Redacted)

6 (Redacted)

7 (Redacted)

8 (Redacted)

9 (Redacted)

10 (Redacted)

11 (Redacted)

12 (Redacted)

13 (Redacted)

14 (Redacted)

15 (Redacted)

16 (Redacted)

17 (Redacted)

18 (Redacted)

19 (Redacted)

20 (Redacted)

21 (Redacted)

22 (Redacted)

23 (Redacted)

24 (Redacted)

25 (Redacted)

Status Conference

(Private Session)

ICC-01/21-01/25

1

2

3

4

5

6

7

8

9

10

11

12 Page redacted – Private session

13

14

15

16

17

18

19

20

21

22

23

24

25

Status Conference

(Private Session)

ICC-01/21-01/25

1 (Redacted)
2 (Redacted)
3 (Redacted)
4 (Redacted)
5 (Redacted)
6 (Redacted)
7 (Redacted)
8 (Redacted)
9 (Redacted)
10 (Redacted)
11 (Redacted)
12 (Redacted)
13 (Redacted)
14 (Redacted)
15 (Redacted)
16 (Redacted)
17 (Redacted)
18 (Open session at 11.18 a.m.)
19 THE COURT OFFICER: [11:18:15] We are back in open session, Madam President.
20 PRESIDING JUDGE KORNER: [11:18:19] Thank you very much.
21 Disclosure by the Defence of any defences in accordance with Rule 79, 80. And at
22 the moment I understand there are none; is that right?
23 MR HAYNES: [11:18:38] Yes, I've -- I've never known how you could have an alibi
24 to a JCE.
25 PRESIDING JUDGE KORNER: [11:18:44] No.

1 Yes, in the conduct of proceedings we'll deal with disclosure in respect of
2 cross-examination of witnesses, disclosure which must be made in advance. But
3 I don't think we need to do that.
4 Right. Okay. Trial briefs I think was the next.
5 Mr Nicholls, the OTP says it would -- two months before, I think, the start of trial.
6 You say 3 September, if it happened to be 30 November. Yeah.
7 And, yes, the Defence. Mr Haynes, you have the option, although there's something
8 I'm going to add in a moment, but you have the option of -- of a Pre-Trial Brief, as it
9 were, at the -- after the Prosecution or before you begin your case. And I rather
10 assume that you want to do it before you begin your case.
11 MR HAYNES: [11:20:12] Well, whenever I deliver it, it will say these are not crimes
12 against humanity. You can have it now if you want.
13 PRESIDING JUDGE KORNER: [11:20:20] No. Well, thank you very much. But
14 there is, however, there's an added extra thing that I wanted to say about -- a ruling
15 that I want to give about this, which won't surprise Mr Nicholls, nor I imagine you,
16 Mr Haynes, given your jurisdiction.
17 Article 64(3) of the Rome Statute says that the Trial Chamber shall:
18 "Confer with the parties and adopt such procedures as are necessary to facilitate
19 the fair and expeditious", emphasised, "conduct of the [case]".
20 Regulation 54, which deals with status conferences, the first status conference, says
21 that:
22 "... the Trial Chamber may, in accordance with the Statute and the Rules, issue any
23 order in the interests of justice for the purposes of the proceedings on, *inter alia*,
24 the following issues:"
25 And two of the issues that are germane to this point are:

1 "(h) The issues [that the parties] propose to raise during [the course of] the trial;" and
2 "(p) The defences, if any, to be advanced by the accused."

3 The Trial Chamber is of the opinion that it would assist the fair and expeditious
4 conduct of this trial, which I referred to in my opening remarks this morning, for
5 the Defence to provide a document before the start of trial which sets out, first,
6 the matters which the Prosecution are proposing to lead in evidence with which
7 the Defence takes issue.

8 Second, sets out in general terms the nature of your defence. And that means going
9 further than saying "these are not crimes against humanity", Mr Haynes.

10 We do not expect you to provide the complete detail of the defence at that stage.

11 The provision of this document does not preclude you from raising further issues at
12 a later stage if those become evident to you in the course of investigations, nor does it
13 encroach upon your right to file a pre-trial brief.

14 And we therefore propose to order you to provide this document one month before
15 the start of trial.

16 So is there anything you want to say about that?

17 MR HAYNES: [11:23:17] No. We'll comply with that, of course.

18 PRESIDING JUDGE KORNER: [11:23:19] Thank you very much.

19 Yes. And then I think, unless there's anything -- oh, I'm sorry, Ms Massidda, yes, as
20 far as the victims are concerned, you -- you may file a brief. I -- I assume it will be
21 before you -- if you decide to call any evidence as to the views and concerns of
22 the victims.

23 MS MASSIDDA: [11:23:53] Yes, Madam President. Our position at the moment,
24 we are still finalising our internal discussions, but our position will be to file
25 the Pre-Trial Brief before the start of the trial as it was --

1 PRESIDING JUDGE MINDUA: [11:24:09] Yes.

2 MS MASSIDDA: [11:24:10] -- in the Abd-Al-Rahman case. I gave -- my recollection
3 is, is okay this morning, I believe the Prosecution filed one month after the LRV filed
4 and then the Defence filed in the Abd-Al-Rahman case. We are, of course, open at
5 any order of the Chamber, we will comply, no problem at all. Thank you.

6 PRESIDING JUDGE KORNER: [11:24:30] That's fine. I honestly can't remember. I
7 rather thought that in the -- in the Al-Rahman case that the Defence filed before they
8 started to call their evidence. But I may be wrong.

9 MS MASSIDDA: [11:24:48] I think, your Honour, there was a choice for the opening
10 statements --

11 PRESIDING JUDGE KORNER: [11:24:51] Yeah.

12 MS MASSIDDA: [11:24:52] -- if there was a choice of doing the opening statements --

13 PRESIDING JUDGE KORNER: [11:24:56] Yeah.

14 MS MASSIDDA: [11:24:57] -- for the LRV as well, at the start of the trial or once we
15 will request to submit evidence, if ever we will request that. I think this was
16 the option.

17 PRESIDING JUDGE KORNER: [11:25:08] Yeah. Well, I'll check, I'll check that over.
18 We're going to have a break before we deliver various oral rulings and we'll check
19 what that was.

20 MS MASSIDDA: [11:25:19] Thank you very much.

21 PRESIDING JUDGE KORNER: [11:25:23] Yeah. Pretrial motions.

22 Yes. The Office of the Prosecutor says 30 October, if the start date is 30 November.
23 The Defence effectively going back to the -- that the question on the start date is
24 a -- I'm going to come on to that separately, I think that a determination of Mr -- of
25 the accused's fitness to stand trial.

1 Yeah, I mean, do you want to say anything about deadline for the filling of -- of -- of
2 motions, or anything?

3 MR HAYNES: [11:26:15] No. We'll comply with whatever order you make in that
4 regard, your Honour.

5 PRESIDING JUDGE KORNER: [11:26:19] Ms Massidda, you are the same, are you?

6 MS MASSIDDA: [11:26:23] Same as well, your Honour.

7 PRESIDING JUDGE KORNER: [11:26:26] Right. Thank you.

8 Okay. Well, that brings us on to opening statements, which we have more or less
9 had a discussion of it. We'll come back with the hours at that stage.

10 On the question of victims' participation, yes, I think what we'll say there, that
11 the Defence invites the deadline for applications by the victims to participate
12 30 September 2026, and CLRV request until the end of the CLRV case or at least until
13 the close of the Prosecution's evidence.

14 I think we're going to go as we did in -- in the Al-Rahman case, say that it's going to
15 be the end of the Prosecution's evidence, unless there's any objection to that,
16 Mr Haynes?

17 MR HAYNES: [11:27:32] Perhaps a slightly different observation, and that is going
18 back to the point that's still in the air, as it were, as to the parameters of the case as
19 a whole. If this case does involve 49 incidents and 73 deceased, then even allowing
20 for multiple dependents one would expect the number of participating victims to be
21 in the low hundreds and not the high thousands. And Ms Gibson and I have had
22 recent experience of the harm that can be done in admitting thousands of victims to
23 participate in proceedings only for them to find out in the reparations phase that none
24 of them fall within the ambit of the convictions, if any.

25 So I would hope there would be some careful analysis on the part of those assessing

1 these applications as to whether they fall within the ambit of this indictment as it is
2 currently pleaded, because it's doing victims no favours to allow thousands and
3 thousands of them to believe that they might receive compensation at the end of
4 the day when that is unlikely, even at this stage.

5 The other observation I would make, which comes from my experience in the Bemba
6 case, is that multiple applications throughout the trial process overwhelm the Defence,
7 because we have to look at them, and nobody else does, and we have to review them
8 at a time when we're cross-examining other witnesses or presenting our own case.

9 And so I -- I would invite you to consider whether or not that given the potentially
10 relatively low number of victims who to do qualify to participate in this case, whether
11 that shouldn't be done before the trial starts.

12 PRESIDING JUDGE KORNER: [11:29:33] All right.

13 Well, Ms Massidda, yes, first of all, yeah. And then I think I'll go to the Registry.

14 MS MASSIDDA: [11:29:42] Thank you, Madam President. Just very briefly I
15 wanted to recall that, at the request of the Pre-Trial Chamber, the Prosecution
16 indicated that the number of incidences are only indicative of victimisations and they
17 are not to be considered an exhaustive list of potential victims.

18 This was confirmed by the Decision Confirming the Charges and therefore I suspect,
19 and these are our assumption at the moment, that a high number of victims will
20 manifest themselves for trial. And our assessment is done by, of course, having
21 contact with the affected communities and we can already indicate that a number of
22 victims already enter in contact with us, to manifest their willingness to participate in
23 this trial.

24 Second, your Honour, if the Prosecution is going to add new incidents, then at that
25 point in time victims will need time, in any case, to continue to manifest themselves for

1 trial. So, at the end of the Prosecution case, it seems to us, as in previous cases,
2 the most reasonable deadline in order to effectively grant the right of victims to
3 participate in this trial. Thank you.

4 PRESIDING JUDGE KORNER: [11:31:05] Right.

5 Does the Registry have any observations to make on this?

6 MR DUBUISSON: [11:31:13](Interpretation) We are completely in agreement with
7 this position, which is also yours. I could also ask Mr Ambach to give you extra
8 information, if you so require.

9 MR AMBACH: [11:31:31] Thank you very much, your Honours.

10 PRESIDING JUDGE KORNER: [11:31:33] Yeah. Mr Ambach, yeah.

11 MR AMBACH: [11:31:35] The only point I would have to add to what the legal
12 representative has already submitted, which is also part of what we submitted in our
13 own filing as to the scope of the case, is that the burden on the Defence and
14 the Prosecutor in terms of the analysis of applications would be minimal if one were
15 to follow the A-B-C Approach that we have proposed to continue from pretrial into
16 trial whereby only the unclear forms would come to the analysis of the parties and
17 the final decision by the Chamber, which, as we also submit, would be minimised to
18 the later stages of trial, which was obviously also a part -- part motivating our
19 suggestion that one were to continue the possibility of victims to come forward until
20 the end of the evidence hearing. Thank you.

21 PRESIDING JUDGE KORNER: [11:32:30] Right. Well, we certainly approve
22 the -- the A-B-C Approach, I mean I think that's our standard through all -- all
23 Trial Chambers.

24 So, really, the submission of the Registry and -- the victims representatives, rather, is
25 it should be the end of trial. Defence say cutoff date, and Prosecution didn't say

1 anything really, I suppose, on this.

2 All right, it's one of the ones we'll give a ruling on when we've dealt with all other

3 matters.

4 Witness preparation, a lot of this will be dealt with, as I say, in the Conduct of

5 Proceedings document, which we'll issue as soon as practicable.

6 Yes. The -- the -- the Prosecution can have the same witness preparation protocol as

7 it had in Abd-Al-Rahman. There is the -- the adoption of the protocols used for

8 preparation, familiarisation and vulnerability will apply as well.

9 However, there is one matter I want to mention, because of what happened in

10 the Al-Rahman trial. The proceedings were delayed one morning because the

11 witness who was due to appear that morning had requested during the 24-hour, if

12 I can put it, quarantine period before they give evidence to speak to the Office of the

13 Prosecutor because he had remembered something, or wanted to change something.

14 And that request was not transmitted until the morning that the witness was due to

15 testify, when he did give new information, and as a result there was a delay.

16 Accordingly, if that is what a witness requests - and it matters not whether it's

17 a Defence witness or a Prosecution witness or somebody called by the CLRV - then

18 notwithstanding the 24-hour quarantine period, that request should be immediately

19 transmitted to the party calling the witness and, unless there is good reason why they

20 should not speak to the witness, they should be allowed to speak to the witness, and

21 obviously make a note and provide it to the non-calling party. But I -- it was

22 a lengthy delay which was unnecessary and, in my view, it need not be repeated.

23 Right, unless there's anything else on any of that? It's standard.

24 Right, the sitting schedule for trial.

25 Now this does bring me on to the fitness of the accused, Mr Haynes.

1 As you rightly pointed out, and -- and you filed a motion to that effect, the finding of
2 fitness related to the confirmation proceedings and the Chamber is obliged to make
3 a separate finding on that issue.

4 And you very sensibly propose that the three gentlemen who examined him for
5 the purpose of the confirmation proceedings should be reinstructed to re-examine
6 him. And we propose to make that order, hopefully either today or tomorrow.

7 You also ask that they be made available for questioning. I think we will -- I mean,
8 the first thing to say, it makes sense, because these three experts examined him for
9 the purposes of the confirmation proceedings, therefore they don't have to go back
10 over all the background that was taken on the last occasion.

11 As regards having them brought for any questioning by the parties, I -- I rather think
12 we will wait and see what the reports say before we make such a decision.

13 MR HAYNES: [11:37:41] I agree, your Honour.

14 PRESIDING JUDGE KORNER: [11:37:42] Thank you very much.

15 In that case, as I say, we'll -- I only hope that they can carry out the assessment with
16 some speed.

17 So, therefore, at the moment it's a bit difficult to set a schedule for trial until we've
18 had an up-to-date report, but it -- it seems to be that because of his age and,
19 potentially, medical problems, there will have to be a day off. And I see
20 the suggestion is that it's in the middle of the week. But, as I say, I'm reluctant at this
21 stage, without further reports and without an assessment made by the experts
22 of -- of -- to -- to set a schedule. So I propose to adjourn that until we find out what
23 the situation is, unless anybody thinks differently.

24 No. I'm taking silence as assent.

25 The representatives of the victims, finally, want to have a secure and private remote

1 room. I think you will have to take that up with the Registry. I mean, if they can
2 arrange that, that's fine by the Trial Chamber. It's not really a matter for us.
3 And the final matter was the suggestion by the Prosecution of an alternate judge.
4 I don't think that really is necessary.

5 All right. Are there any other matters? We're going to adjourn and -- and -- I
6 suppose we could -- we could try and do it before -- just to go through the rulings
7 we're going to make. Just give me a moment.

8 (Trial Chamber confers)

9 PRESIDING JUDGE KORNER: [11:40:36] I'm reminded, Mr Nicholls, I should have
10 asked you have you got anything to say about the experts examining him?

11 MR NICHOLLS: [11:40:44] Well, you've made your decision, so no. And we would
12 have, but you've made your decision.

13 PRESIDING JUDGE KORNER: [11:40:51] It didn't occur to me that -- that you were
14 going to object, but ...

15 MR NICHOLLS: [11:40:55] We had some -- no, we -- we -- we accept that.
16 The one point I would make, very briefly, is we would hope that your Honours
17 would instruct the experts. We would not agree with the Defence's proposed letter
18 of instruction --

19 PRESIDING JUDGE KORNER: [11:41:16] Oh, I see.

20 MR NICHOLLS: [11:41:17] -- in its entirety --

21 PRESIDING JUDGE KORNER: [11:41:17] Yeah, I forgot about that, yeah.

22 MR NICHOLLS: [11:41:18] -- on some of the points we feel we -- we would take
23 issue with. But -- so we think your Honour -- your Honours should do
24 the instruction according to the test from Strugar and Hadzic and Gbagbo. And so I
25 appreciate trying to save time and be helpful, but we would not agree with this letter

1 going as is.

2 PRESIDING JUDGE KORNER: [11:41:43] Yes, all right. All right. And in fact,
3 quite rightly, of course the people who are going to be concerned are the Registry. Is
4 there anything you want to say on that, Mr Dubuisson?

5 MR DUBUISSON: [11:41:54](Interpretation) No. I believe that to find experts that
6 are immediately available and who know the interested party, I think that this is
7 the best solution. And today, I do not believe that they will deviate very much from
8 the previous recommendations.

9 PRESIDING JUDGE KORNER: [11:42:15] Well, yes, we'll have to see what -- what
10 they say rather than anticipating it. Okay.
11 Yes, Mr Haynes, all right. So the Prosecution doesn't much like your letter, so I think
12 we will -- that the Chambers will write --

13 MR HAYNES: [11:42:33] We were only trying to be helpful.

14 PRESIDING JUDGE KORNER: [11:42:35] Yes, thank you. All right. Yes, I'm sorry,
15 I forgot about that.

16 All right. What we're going to do is adjourn until 2 o'clock just so that we can take
17 time to consider the various matters being raised.

18 Before I do that, however, can I just say one last thing, which really has no bearing or
19 impact on the case or how it will be conducted, but for the purposes of transparency,
20 knowing that there is public interest in this case, I should say - and this is myself
21 speaking rather than on behalf of my fellow judges - the -- it's probably well known
22 that the -- the world and the pool of international criminal law lawyers and judges is
23 a limited one, and it is therefore probable that judges and counsel will have met
24 before the -- this case or during other cases, or possibly at conferences or even social
25 events.

1 In this case, as it so happens, I know counsel on both sides. As far as Mr Nicholls is
2 concerned, apart from the fact that both he and Mr Jeremy appeared as Prosecution
3 counsel in the case of Al-Rahman, Mr Nicholls and I worked together, now over
4 20 years ago, as counsel at ICTY.

5 Mr Haynes and Ms Gibson I have -- Mr Haynes I have known, though not in
6 a professional way in the same way as Mr Nicholls, for almost as long, and Ms Gibson
7 for less time. We have met and, as I say, are likely, almost certainly, to meet again at
8 seminars and social functions.

9 Although it's not possible to predict that with any certainty, the one thing it is
10 possible to say, with certainty, there will be no discussion whatsoever of this case
11 between parties and the judges at any such functions. And as I said already, it has
12 no impact on the way that this case will be conducted or any rulings that may be
13 made by this Chamber in respect of submissions made by all sides.

14 So thank you very much. And we'll adjourn until 2 o'clock.

15 THE COURT USHER: [11:45:58] All rise.

16 (Recess taken at 11.46 a.m.)

17 (Upon resuming in open session at 2.00 p.m.)

18 THE COURT USHER: [14:00:15] All rise.

19 Please be seated.

20 PRESIDING JUDGE KORNER: [14:00:39] Yes, just before I give the various rulings,
21 one thing I did miss out was really to do with items relating to victims. Firstly, the
22 VPRS and mapping report. And the question of household forms as opposed to
23 individual ones. As well as victims in pretrial.

24 Now, we had in mind, and I just want to hear at this stage if there's any objection, to
25 make various orders really for the VPRS to file a report including the possibility of

1 having a mapping report and household forms. The main -- the main mapping
2 report to be filed 30 days after the Article 74 judgment.

3 I see Mr Ambach indicating assent I think is the polite way of putting it.

4 MR AMBACH: [14:02:12] Assent, your Honour.

5 PRESIDING JUDGE KORNER: [14:02:15] And next we were going to authorise the
6 use of household forms in addition to individual application forms, unless there's an
7 objection. If there isn't, then we'll -- we'll authorise it. If there's an objection, we're
8 not going to make a ruling and you can make submissions from either side.

9 MS MASSIDDA: [14:02:34] Thank you, Madam President. As far as we are
10 concerned, we would prefer to maintain the individual -- as far as we are concerned,
11 we would prefer to maintain the individual form and the household form so that
12 victims can choose which one. Because on occasion some victims would like not to
13 complete a household form because some members of their family may not be aware
14 of what happened.

15 PRESIDING JUDGE KORNER: [14:03:04] Right.

16 MS MASSIDDA: [14:03:04] So we would prefer to maintain both options. Thank
17 you very much.

18 PRESIDING JUDGE KORNER: [14:03:09] Right. Is there any objection to -- to this?
19 If -- no. I see Mr Haynes shaking his head; I see Mr Nicholls shaking his head.

20 Right. Then we will authorise the use of both forms, Ms Massidda.

21 And finally we were going to order that the victims who participated in the pretrial
22 proceedings are authorised to continue participating in the trial proceedings. Any
23 objection to that? No. Okay. Well, then we make that order as well.

24 We didn't mention, but I'm going to mention now this, that pursuant to Regulation 37
25 of the Regulations of the Court, we're going to limit parties, participants and Registry

1 in their written submissions to 12 pages, which is what we did in Al-Rahman. If you,
2 for some reason, want to add to that limit, you must apply for permission and explain
3 why.

4 As far as further submissions are concerned, we're going to hold two more status
5 conferences. We would prefer that, unless there is something that needs urgent
6 resolution, submissions are made at those status conferences so that they can, if at all
7 possible, be dealt with orally. But as I say, if there's something really urgent, then of
8 course you can file a submission.

9 Right. It was brought to my attention next, before I deal with the rulings, that I
10 wasn't altogether clear this morning about the question of protocols to be used. So
11 I'm going to now read out what I say about protocols.

12 As a general rule, the Chamber will use the protocols that are already in place in the
13 Chamber's Manual. As I've already indicated, Chambers will allow witness
14 preparation. The Registry is instructed to file in the record the witness preparation
15 protocol, the familiarisation protocols as used in the Al-Rahman case, which mirror
16 those in the model conduct of proceedings. The Registry is to liaise with the parties
17 and participants and report back to the Chamber on the proposed use of dual status,
18 vulnerability, and redactions by 15 June of this year.

19 If changes are foreseeable to the eCourt protocol, the Registry is to liaise with the
20 parties and report back to the Chamber with a proposal, particularly as regards
21 submission of evidence during the course of the trial by 15 June.

22 Right. I hope that -- yes, sorry, and I forgot to say that the cutoff -- no, I was about to
23 say it, actually, but anyhow. The -- the cutoff date for any applications from the
24 victims to participate in the proceedings is the end of the Prosecution's presentation of
25 evidence and we will follow the A-B-C participation approach. Right.

1 As far as the fitness -- the assessment of the fitness of the accused to stand trial, what
2 we decided to do is that, in the light of the short discussion, it would be preferable if
3 the parties could liaise together and prepare a proposed joint letter of instruction.
4 We -- we were going to do it ourselves, but then we thought that you might then want
5 to object, so it's probably simpler if the two of you can come to an agreement. We
6 would like that, please, by Friday of next week, which is -- actually, no, I think we
7 said a week today. What's a week -- 3 June. Yeah, yeah. Sorry, my fault. Not
8 Friday, Wednesday, 3 June.

9 And, Registry, we would be grateful, please, if you could contact the experts
10 immediately to check on their availability and let us know by the end of the week.
11 That's the three experts who saw him before.

12 Right. As regards, first of all, the -- then to the decisions we've come to at the start of
13 trial, we are prepared to accede to the Prosecution's application of 30 November as
14 the start of trial. The trial will run on a daily basis until the judicial recess or
15 thereabouts.

16 We have to wait for the report on the accused's fitness, and they will specifically be
17 asked to -- if they find him fit to stand trial, about the proposed sitting. The
18 Chamber would obviously like to sit, subject to witness problems, five days a week.
19 But we note the recommendations that were made for the confirmation hearing, and
20 so it may well be that we'll have to adjust it. If we have to have a day for the accused
21 not to be in court each week, it -- that doesn't necessarily mean it won't be a sitting
22 day because we can use that day to deal with any administrative matters or any legal
23 arguments that are due to take place, subject, of course, to the accused waiving his
24 right to be present.

25 So, effectively, at the moment, let's just say subject to what reports we get, it should be

1 taken by all parties, participants and the Registry that we will be sitting continuously
2 until the recess at Christmas.

3 We very much also urge the Registry to make the necessary arrangements so that for
4 the opening statements at the end of November there can be interpretation. Even if
5 there isn't a sufficient pool of interpreters of all witnesses, I think it's important that
6 opening statements can be understood by those in the Philippines.

7 Right. So the deadlines for the Prosecution in the lead-up to trial, the Prosecution
8 provisional list of witnesses and evidence by 29 June. Its trial brief, final list of
9 witnesses and list of evidence relied upon in the trial, 31 August, which is three
10 months before the trial. And the same deadline, that is 31 August, applies if you
11 wish to add new incidents. Plus the list of experts. And, appreciating the difficulty
12 sometimes in getting experts to provide reports, we would like as many reports as are
13 available. And if a report isn't available, then at least a summary of what it is
14 expected that the expert will be saying in his report.

15 Any evidence disclosed or to be added to the list of evidence after that date is strongly
16 discouraged and will be subject to the Chamber's authorisation, good cause to be
17 shown with a full explanation for the reason for the delay.

18 Simply a reminder that disclosure of exculpatory evidence and Rule 77 should be
19 done on a rolling basis.

20 After our discussion this morning, review your evidence to make sure that we avoid
21 having repetitive, irrelevant or over-voluminous evidence and, as already discussed,
22 the witnesses interviewed under Rule 55, the schedules that we've discussed and
23 which are familiar to you from the Al-Rahman case.

24 As far as pretrial motions are concerned, if there is any issue that needs resolution
25 before the start of the proceedings, pursuant to Rule 134(1) and (2), again, cutoff date,

1 31 August. I'll give you the dates of the status conferences in a moment, but we will
2 deal with them all, I hope then. And of course obviously if it's urgent, that's a
3 different matter and it should be filed as soon as possible.

4 The dates for the next status conferences between now and the summer recess are
5 23 June and 14 July.

6 The -- as indicated this morning, the Defence's indication of issues and defence to be
7 provided by 30 October.

8 The Legal Representatives of Victims' trial brief, 28 September.

9 As far as agreed facts are concerned, we're not going to set a deadline, but we will
10 review the position at each of these status conferences. We echo or repeat our hope
11 that you can reach a substantial number of agreed facts.

12 Having considered Ms Massidda's representations, the LRV can receive notification of
13 what facts have been agreed and can make submissions on this, which the Chamber
14 will consider.

15 As far as the conduct of proceedings is concerned, I've mentioned some matters.

16 There will be other matters dealt with in that effectively it will be the -- it's intended
17 that it will very much be the same model as that in the Al-Rahman case, which also
18 models the model one in the Chamber's Manual. But if anybody wants to suggest
19 amendments to it, they must do so by Friday, 5 June; so, in other words, next Friday.

20 I mentioned this morning that we were thinking of trying to find a balance between
21 the submission and admission process, but I'm reminded, I think, that the conduct of
22 proceedings and indeed the Chamber's Manual states that where there are documents,
23 which the Chamber or the parties consider are important ones, it can be -- whether or
24 not it will be admitted can be dealt with at the time that the document is tendered.

25 But I really do emphasise, we don't expect to be drowned in documents.

Status Conference

(Open Session)

ICC-01/21-01/25

- 1 So those are the rulings. Unless anybody thinks I've missed anything out that I said
- 2 I would give a ruling on and unless there are any other matters, that concludes the
- 3 status conference. Nobody's got any other matters? No. Right.
- 4 Yes, thank you all very much.
- 5 THE COURT USHER: [14:17:46] All rise.
- 6 (The hearing ends in open session at 2.17 p.m.)