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Date: **5 November 2026**

TRIAL CHAMBER III

Before: **Judge Joanna Korner, Presiding Judge**
Judge Keebong Paek
Judge Nicolas Guillou

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF *THE PROSECUTOR v. RODRIGO ROA DUTERTE*

Public
with Confidential Annex A

Public Redacted Version of "Prosecution's request to admit evidence under article 69(4) of the Statute", 30 October 2026, ICC-01/21-01/25-540-Conf

Source: **Office of the Prosecutor**

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I. INTRODUCTION

1. Pursuant to articles 18(6), 64(9)(a) and 69(4) of the Statute, and rule 63 of the Rules, the Prosecution requests Trial Chamber III to admit into evidence P-0002's transcribed statements and associated material (together, "P-0002's evidence") ("Request"). P-0002's evidence is "of particular importance", as elaborated below. It is relevant, reliable, and probative. Its admission into evidence does not prejudice a fair trial or a fair evaluation of the testimony of a witness or any other evidence. Granting the Request will assist the Chamber in its determination of the issues in this case.

II. CONFIDENTIALITY

2. Pursuant to regulation 23*bis*(1) of the Regulations of the Court, this application and its Annex are filed as confidential, as they contain sensitive witness related information. A public redacted version of the application will be filed as soon as practicable.

III. PROCEDURAL BACKGROUND

3. On 10 November 2021, the Prosecution notified Pre-Trial Chamber I of the temporary suspension of its investigative activities, following a request for deferral by the Republic of the Philippines, pursuant to article 18(2).[1] Notably, at that point, there was not yet a case against Mr Duterte.

4. On 11 February 2022, the Prosecution sought Pre-Trial Chamber I's authorisation under article 18(6) to interview P-0002. The Prosecution identified extenuating circumstances which justified resorting to such procedure, including the existence of a significant risk that P-0002's evidence may not be subsequently available [REDACTED].[2] The Prosecution further requested Pre-Trial Chamber I to appoint counsel to represent the interests of the defence, as foreseen by article 56 of the Statute ("Article 18 Request").[3]

5. On 18 February 2022, Pre-Trial Chamber I granted the Article 18 Request, having found that "there currently is a unique opportunity to interview P-0002" and that "there is a significant risk that P-0002's evidence may not be subsequently available".[4] Additionally, Pre-

[1] *Duterte* Notification of Deferral Request, ICC-01/21-01/25-14; Annex A to Notification of Deferral Request, ICC-01/21-01/25-14-AnxA.
[2] *Duterte* Article 18(6) Request, ICC-01/21-01/25-42-Conf, paras. 19-27.
[3] *Duterte* Article 18(6) Request, paras. 1-4.
[4] *Duterte* Article 18(6) Decision, ICC-01/21-01/25-44-Conf, para. 16.

Trial Chamber I appointed counsel to "ensure the efficiency and integrity of the proceedings and to protect the rights of the defence" ("Defence Counsel").[5]

6. P-0002 was interviewed by the Prosecution between 10 and 16 May 2022 in the presence of Defence Counsel,[6] as well as counsel appointed to represent the witness, pursuant to article 55(2) and rule 112.[7]

7. On 23 June 2024, the Prosecution was informed [REDACTED].

IV. LEGAL BASIS

8. Evidence collected with judicial authorisation under article 18(6)—like evidence collected under article 56— should be admitted under article 69.

9. Article 18(6) allows the Prosecution to exceptionally seek authorisation from a Pre-Trial Chamber to take the necessary investigative steps during a period of deferral "for the purpose of preserving evidence where there is a unique opportunity to obtain important evidence or there is a significant risk that such evidence may not be subsequently available".[8] Article 18(6) is "a crucial tool specifically aimed at making it possible to preserve evidence pending the procedure […] underlying article 18(2) of the Statute".[9]

10. In this sense, article 18(6) is similar to article 56(1)(a) which allows the Prosecution to pursue a unique investigative opportunity to secure evidence that may not be subsequently available at trial.[10]

11. Albeit arising in distinct procedural contexts, article 18(6) and article 56 thus share the same object and purpose: preserving evidence for subsequent proceedings.[11] The similarity of proceedings under article 18(6) and article 56 in this case is further demonstrated by Pre-Trial Chamber I's decision to grant the Prosecution's request, under article 56(2)(d), to appoint Defence Counsel to participate in the interview with P-0002.[12]

[5] *Duterte* Article 18(6) Decision, para. 17.
[6] P-0002, PHL-OTP-00015505 at 0002, 0004, lines 29-39, 91-95.
[7] P-0002, PHL-OTP-00015505 at 0005-0008, 0010-0012, lines 79-87, 170-217, 267-286, 350-453. *See also below* paras. 24, 27.
[8] Article 18(6) of the Statute.
[9] *Duterte* Article 18(6) Decision, para. 16 citing to ICC-02/17-166-Conf-Exp, para. 16.
[10] Article 56(1)(a) of the Statute.
[11] *Duterte* Article 18(6) Request, para. 31.
[12] *Duterte* Article 18(6) Decision, para. 17; *Duterte* Article 18(6) Request, para. 31.

12. Pursuant to article 56(4), the admissibility of evidence collected pursuant to article 56 is governed at trial by article 69.[13] Although neither the Statute nor the Rules explicitly addresses the admissibility at trial of article 18(6) evidence, such evidence should likewise be governed by article 69, given that articles 18(6) and 56 share the same object and purpose.[14] This is particularly so where, as in the case of P-0002's evidence, the investigative steps taken pursuant to article 18(6) were subject to the same principles governing the preservation of evidence under article 56.[15]

13. Therefore, like for the specific preservation of evidence under article 56, the admission of P-0002's evidence preserved under article 18(6) should be governed by article 69, and not rule 68.[16] In any event, as further outlined below, the Chamber could also admit P-0002's evidence under rule 68(2)(c).

14. As this Chamber has indicated in its directions on the conduct of the proceedings in this case, while it will generally rule on admissibility of evidence "as part of the holistic assessment of all evidence submitted when deciding on the guilt or innocence of the Accused",[17] "[e]xceptionally for items of evidence that are consider by the Chamber to be of particular importance", the Chamber "may give a ruling on admissibility at the time of that item's presentation, having first heard the parties' submissions on admissibility."[18]

V. SUBMISSIONS

15. P-0002's evidence is *prima facie* relevant, probative and its introduction into evidence is not prejudicial to, nor inconsistent with a fair trial or a fair evaluation of any evidence on the record.[19]

P-0002's evidence overview

16. P-0002 was a Davao City Police officer and a member of the Davao Death Squad

[13] *See also Ongwen* Article 56 Decision, ICC-02/04-01/15-520, para. 6.
[14] *Duterte* Article 18(6) Request, para. 31.
[15] *See Duterte* Article 18(6) Decision, para. 17.
[16] *See Ongwen* Article 56 Decision, fn. 20.
[17] *Duterte* Directions on the Conduct of Proceedings, ICC-01/21-01/25-471, para. 34.
[18] *Duterte* Directions on the Conduct of Proceedings, para. 35.
[19] *See Al Hassan* Article 56 Request, ICC-01/12-01/18-1218-Red, para. 19.

("DDS") from [REDACTED].[20] [REDACTED],[21] [REDACTED].[22] P-0002 provided evidence on, *inter alia*: (i) Mr Duterte's individual criminal responsibility and *mens rea*; (ii) the contextual elements of crimes against humanity during the Mayoral period; and (iii) charged Incident 1.

17. In relation to Mr Duterte's individual criminal responsibility, P-0002 provided evidence relating to the origins, structure, and purpose of the DDS.[23] P-0002 further elaborated on the scope of the Common Plan in Davao City and the role of Co-Perpetrators during the Mayoral period.[24]

18. In relation to the contextual elements of crimes against humanity, P-0002's evidence is relevant to the widespread nature of the attack, targeting of alleged criminals, and the DDS's *modus operandi* in Davao City during the charged period.[25] Additionally, P-0002's evidence supports the existence of a policy to neutralise alleged criminals in Davao City, as shown by,

[20] P-0002, PHL-OTP-00015507 at 0004-0005, lines 111-149, PHL-OTP-00015509 at 0007-0008, lines 251-276, PHL-OTP-00015515 at 0018, lines 636-640, PHL-OTP-00015535 at 0002, lines 16-18.
[21] P-0002, PHL-OTP-00015507 at 0008, lines 247-253, PHL-OTP-00015508 at 0003, lines 66-70, PHL-OTP-00015514 at 0007, lines 219-220, PHL-OTP-00015515 at 0014, lines 464-465, 474, PHL-OTP-00015525 at 0004, 0015-0016, lines 114-115, 532-555, PHL-OTP-00015527 at 0005, lines 161-163, PHL-OTP-00015532 at 0002-0003, lines 33-51.
[22] P-0002, PHL-OTP-00015501 at 0006, lines 176-178, 189-190, PHL-OTP-00015508 at 0004, lines 100-101, PHL-OTP-00015515 at 0008, lines 241-242, PHL-OTP-00015528 at 0010-0011, lines 331-375, PHL-OTP-0008-1956.
[23] *See e.g.* P-0002, PHL-OTP-0001-0310, PHL-OTP-0008-1955, PHL-OTP-0008-1956, PHL-OTP-0008-1957, PHL-OTP-00015500 at 0010-0011, lines 299-328, PHL-OTP-00015501 at 0002-0006, lines 2-194, PHL-OTP-00015502 at 0002-0009, lines 2-275, PHL-OTP-00015503 at 0002-0003, lines 2-61, PHL-OTP-00015507 at 0005, 0008, lines 137-149, 250-276, PHL-OTP-00015508 at 0008-0009, lines 255-322, PHL-OTP-0006-0083 at 0084, paras. 8-13, PHL-OTP-0002-0008 at 0008-0010, PHL-OTP-0001-3619 at 3619-3633, paras. 3-25(m), PHL-OTP-0002-0039 at 0040.
[24] *See e.g.* P-0002, PHL-OTP-0006-0083 at 0084, paras. 8-9, PHL-OTP-0002-0008 at 0008-0010, 0020-0025, PHL-OTP-0002-0029 at 0029-0031, 0036, PHL-OTP-0002-0039 at 0040, 0043-0048, PHL-OTP-0002-0248 at 0270-0272, 0275, PHL-OTP-0001-3619 at 3619-3636, 3639, 3744-3745, 3779-3784, paras. 3-26(mm), 34, 233-235, 270-271, 275, 278, PHL-OTP-00015501 at 0002, lines 14-28, PHL-OTP-00015502 at 0008, lines 226-258, PHL-OTP-00015507 at 0005-0008, lines 137-276, PHL-OTP-00015508 at 0005-0006, 0011-0014, 0022-0023, lines 168-175, 364-440, 470-495, 806-831, PHL-OTP-00015509 at 0004-0007, lines 92-239, PHL-OTP-00015514 at 0003-0004, lines 53-121, PHL-OTP-00015517 at 0002-0003, lines 23-68, PHL-OTP-00015523 at 0005, lines 117-121, PHL-OTP-00015527 at 0008, lines 259-273, PHL-OTP-00015528 at 0002-0003, lines 19-54, PHL-OTP-00015515 at 0011-0012, lines 353-394, PHL-OTP-00015529 at 0004-0007, lines 97-208.
[25] *See e.g.* P-0002, PHL-OTP-0002-0008 at 0008-0010, 0020-0025, PHL-OTP-0002-0039 at 0043-0049, PHL-OTP-0001-3619 at 3626, 3637-3639, paras. 20-21, 28-33, PHL-OTP-00015509 at 0010, line 385, PHL-OTP-00015526 at 0004, line 99. *See also above* fn. 23.

inter alia, (i) the provision of financial incentives;[26] (ii) the use of State and civilian forces;[27] and (iii) the dissemination of this policy by Mr Duterte to the perpetrators.[28]

19. Finally, in relation to Incident 1, P-0002 recalled having [REDACTED] and [REDACTED].[29]

20. In addition to the 45 transcribed statements, the Prosecution also requests to introduce the 61 items of associated material listed in Annex A as they form an integral part of, and are necessary to, understand P-0002's testimony. The associated material consists of: (i) 10 batches of P-0002's handwritten notes; (ii) 4 affidavits produced by P-0002; (iii) 34 photographs, including of Co-Perpetrators; (iv) 4 organigrams of the DDS structure over time; (v) 3 legal documents concerning P-0002's retirement order, possession and sale of his assault rifle, respectively; (vi) 2 pages of certificate of registration of P-0002's truck; (vii) 1 item comprising P-0002's police ID and driver's licence; (viii) 2 pages of Philippine National Police ("PNP") service records; and (ix) P-0002's PNP Personal Data Sheet.

P-0002 is no longer available

21. On 23 June 2024, the Prosecution was informed [REDACTED].

P-0002's evidence is relevant, reliable and probative and causes no prejudice to the Accused

22. As demonstrated by paragraphs 17 to 20 above, P-0002's evidence is relevant as it relates to matters being considered by this Chamber. It is clear and internally consistent, as indicated by the witness's ability to describe the events chronologically and articulately.

23. P-0002's evidence is probative as it was given voluntarily,[30] and bears the following indicia of reliability,[31] consistent with the requirements of article 55(2) and rule 112 of the Rules: (i) article 55(2) rights were explained to P-0002 who confirmed to having understood

[26] *See e.g.* P-0002, PHL-OTP-00015502 at 0003, 0008, lines 58-69, 226-258, PHL-OTP-00015507 at 0006, lines 170-190, PHL-OTP-0001-3619 at 3626, para. 19, PHL-OTP-00015509 at 0016, lines 619-625.
[27] *See e.g.* P-0002, PHL-OTP-00015502 at 0009, lines 273-275, PHL-OTP-00015503 at 0002, lines 2-22, PHL-OTP-00015542 at 0001-0002, lines 25-74.
[28] *See e.g.* P-0002, PHL-OTP-00015500 at 0010-0011, lines 316-328, PHL-OTP-00015501 at 0002, lines 2-30, PHL-OTP-00015514 at 0002-0004, lines 23-93.
[29] P-0002, PHL-OTP-00000035 at 0004, PHL-OTP-00015535 at 0002, 0005-0007, lines 20-24, 161-171.
[30] P-0002, PHL-OTP-00015505 at 0005-0006, lines 160-166, PHL-OTP-00015545 at 0003, lines 42-43.
[31] *See also* Rule 68(2)(c).

them;[32] (ii) the interview was audio and video recorded, and the recordings transcribed;[33] (iii) the interview was conducted with the assistance of an interpreter;[34] and (iv) P-0002 was offered the opportunity to clarify and/or add any information to his account.[35] At the conclusion of the interview, P-0002 confirmed he had no complaints about the way the interview was conducted.[36]

24. Furthermore, in accordance with the Pre-Trial Chamber I's decision on the Article 18 Request,[37] P-0002 was interviewed in the presence of the Defence Counsel,[38] who clarified her role and the procedure she would follow in the course of the interview,[39] as well as counsel appointed to represent P-0002.[40]

The admission of P-0002's evidence causes no prejudice

25. P-0002's evidence is sufficiently relevant and probative to outweigh any prejudicial effect that could be caused from its admission to a fair trial or to a fair evaluation of the testimony of a witness or any other evidence on the record.

26. The fact that certain parts of P-0002's evidence go to Mr Duterte's acts and conduct does not, in itself, bar its admission into evidence or result in unfair prejudice. Rather, it is merely one factor for the Chamber to consider in its evaluation.[41] Even if—*arguendo*—potential prejudice were identified, this would not automatically warrant the exclusion of P-0002's evidence, provided that its probative value outweighs any potential prejudice.[42]

27. P-0002's evidence will not prejudice a fair trial of the fair evaluation of any evidence on the record because (i) it was obtained in accordance with article 55(2) of the Statute and rule

[32] P-0002, PHL-OTP-00015505 at 0006-0008, lines 170-217, 279-281. *See also* PHL-OTP-0001-3611, PHL-OTP-0001-3808, PHL-OTP-0002-0002, PHL-OTP-0017-4753.
[33] P-0002, PHL-OTP-00015505 at 0004, 0010-0011, lines 79-87, 357-373, 378-405. For the list of transcribed statements, *see* Annex A, Part I.
[34] P-0002, PHL-OTP-00015505 at 0003-0004, lines 54-78.
[35] P-0002, PHL-OTP-00015505 at 0011, lines 374-377, PHL-OTP-00015545 at 0002-0003, lines 40-41.
[36] P-0002, PHL-OTP-00015545 at 0003, lines 47-49.
[37] *Duterte* Article 18(6) Decision, para. 17.
[38] P-0002, PHL-OTP-00015505 at 0002, lines 29-39.
[39] P-0002, PHL-OTP-00015505 at 0002, lines 29-39, PHL-OTP-00015506 at 0003, lines 50-59. The Prosecution notes the Defence Counsel made reference to Judge Henderson's instruction "in December". In this regard, *see Duterte* Rule 47(2) conduct of proceedings, ICC-01/21-01/25-34-Conf, paras. 18-21.
[40] P-0002, PHL-OTP-00015505 at 0006, lines 192-204, PHL-OTP-00015545 at 0003, lines 50-51.
[41] Rule 68(2)(c)(ii). *See also Al Hassan* Rule 68(2)(c) Decision, ICC-01/12-01/18-2114-Red, para. 52; *Ntaganda* Rule 68(2)(c) Decision, ICC-01/04-02/06-1802-Red, paras. 27-30.
[42] *See Al Hassan* Rule 68(2)(c) Decision, para. 52; *Ntaganda* Rule 68(2)(c) Decision, paras. 27-30. *See also Al Hassan* Article 56 Request, para. 49; *Al Hassan* Article 56 Decision, ICC-01/12-01/18-1475-Red, para. 75.

112 of the Statute, and (ii) it was subject to additional article 56 measures designed to ensure the integrity of the proceedings and to protect the rights of the defence.

28. In light of these safeguards, any potential prejudice would not make the evidence inadmissible in light of its relevance and probative value.

VI. CONCLUSION

29. For the foregoing reasons, the Prosecution requests that the Trial Chamber admit P-0002's evidence pursuant to article 69(4).



Mame Mandiaye Niang, Acting Prosecutor

Dated this 5th day of November 2026

At the Hague, the Netherlands