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Court

Original: **English**

No.: **ICC-01/21-01/25**
Date: **4 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 eleventh application under rule 68(3) to introduce into evidence the expert reports of P-1071, P-1078 and P-1162 and associated material", ICC-01/21-01/25-543-Conf, 30 October 2026

Source: **Office of the Prosecutor**

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☐ **The Office of Public Counsel for Victims**	☐ **The Office of Public Counsel for the Defence**
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I. INTRODUCTION

1. In accordance with articles 69(2) and 69(4) of the Rome Statute ("Statute"), rule 68(3) of the Rules of Procedure and Evidence ("Rules"), the "Directions on the Conduct of Proceedings",[1] and Trial Chamber III's ("Chamber") order and oral directions,[2] the Prosecution requests to: (i) introduce into evidence the expert reports and statements provided by P-1071, P-1078 and P-1162 ("Expert Reports") and associated material; and (ii) grant the time requested below to conduct a focused *viva voce* supplementary examination of P-1071 and P-1078 as well as P-1162 on certain issues in the Expert Reports requiring clarification or elaboration (together, the "Application").

2. Granting the Application will enhance the expeditiousness of the proceedings by reducing the length of each witness's direct examination from [REDACTED] hours to [REDACTED] hours for P-1071 and P-1078 and from [REDACTED] hours to [REDACTED] hours for P-1162, saving approximately [REDACTED] hours of court time.

3. P- 1071, P-1078 and P-1162 are experts in their respective fields. The Expert Reports are relevant, reliable and probative. They fall within the scope of the respective experts' areas of expertise and will assist the Chamber in its determination of the issues in this case. Furthermore, the introduction into evidence of the Expert Reports and associated material is not prejudicial to or inconsistent with the rights of Mr Duterte and the Defence has agreed, in principle, to the introduction of expert reports via rule 68(3) of the Rules.

II. CONFIDENTIALITY

4. 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 shortly.

III. LEGAL BASIS

5. Pursuant to articles 64(9)(a) and 69(4) of the Statute, the Chamber may hear a witness as an expert[3] when it is satisfied that "(i) the witness is an expert […]; (ii) the testimony in the

[1] Directions on the conduct of proceedings, ICC-01/21-01/25-471, paras. 63-64.
[2] Email from Trial Chamber III to the Parties and Participants, dated 15/10/2026 at 11:53; *Duterte* Second Status Conference, ICC-01/21-01/25-T-012-CONF, p. 11, lines 21-25, p. 12, lines 1-5.
[3] *Ntaganda* Decision on Prosecution's expert witness, ICC-01/04-02/06-1159, para. 7: "The Chamber considers an expert witness to be a person who, by virtue of some specialised knowledge, skill or training can assist the Chamber in understanding or determining an issue of technical nature that is in dispute."

subject area of expertise would be of assistance to the Chamber; (iii) the content of the report and/or anticipated testimony falls within the area of expertise of the witness; and (iv) the content of the report and/or the anticipated testimony does not usurp the functions of the Chamber as the ultimate arbiter of fact and law."[4]

6. This Court has previously allowed for the submission of expert witness reports and associated material pursuant to rule 68(3), insofar as the relevant criteria set out by this rule are met, the proceedings expedited, and the requirements indicated in paragraph 5 above satisfied.[5]

7. In relation to the conditions for introducing evidence pursuant to rule 68(3), the Prosecution incorporates by reference the jurisprudence set out in its first application under rule 68(3).[6]

IV. SUBMISSIONS

A. Overview of Joint Expert Report by P-1071 and P-1078

i. P-1071 and P-1078 are experts

8. The Prosecution seeks to submit into evidence the expert report jointly prepared by P-1071 and P-1078 ("Joint Expert Report") and the associated items listed in Annex A to this Application.

9. P-1071 and P-1078 are experts in the field of [REDACTED]. Both are widely published and recognised as leading academic experts in this field.[7] P-1071 is a [REDACTED].[8] P-1078 is an [REDACTED].[9] P-1071 and P-1078 each have extensive

[4] *Al Hassan* Decision on Proposed Expert Witnesses, ICC-01/12-01/18-989-Red, para. 16. *See also Ruto and Sang* Decision on Expert Report, ICC-01/09-01/11-844, para. 12; *Ntaganda* Decision on Prosecution's expert witness, para. 8; *Abd-Al-Rahman* Decision on Expert Witness, ICC-02/05-01/20-1044, para. 10.
[5] *Al Hassan* Decision on Proposed Expert Witnesses; *Abd-Al-Rahman* Seventh Rule 68(3) Decision, ICC-02/05-01/20-651-Red, paras 36, 42; *Ongwen* Decision on Mental Health Expert Evidence, ICC-02/04-01/15-1073, para. 14; *Ntaganda* Preliminary Ruling on Rule 68(3), ICC-01/04-02/06-845, para. 8. *See also Duterte* First Rule 68(3) Decision, ICC-01/21-01/25-514-Red, paras. 14, 29.
[6] *Duterte* Prosecution's First Rule 68(3) Application, ICC-01/21-01/25-484-Red, paras. 6-10.
[7] P-1071 & P-1078, PHL-OTP-00250637 at 0010-0013, paras. 7-9, 11, 17-18, 20.
[8] P-1071 & P-1078, PHL-OTP-00250637 at 0010, para. 7.
[9] P-1071 & P-1078, PHL-OTP-00250637 at 0013, para. 17.

experience testifying as expert witnesses in litigation regarding [REDACTED].[10] [REDACTED].[11] P-1071 and P-1078 are included on the Registry's List of Experts.[12]

ii. The Joint Expert Report falls within expertise of P-1071 and P-1078

10. Further to an instruction by the Prosecution,[13] P-1071 and P-1078 examined the [REDACTED]. [REDACTED].[14]

11. The subject matter of the Joint Expert Report falls directly within the area of expertise of P-1071 and P-1078. As set out above, the P-1071 and P-1078 are both [REDACTED]. Together with the Joint Expert Report, the Prosecution seeks to introduce a selection of the items that constitute the associated material to the Joint Expert Report, consisting of: (i) two letters of instruction provided to P-1071 and P-1078; (ii) items provided to P-1071 and P-1078 by the Prosecution, including [REDACTED], that have been directly reviewed, relied upon and cited by P-1071 and P-1078 in the Joint Expert Report; and (iii) material referred to in the Joint Expert Report which was not provided to P-1071 and P-1078 by the Prosecution but which the Prosecution has collected and disclosed. Regarding items cited and relied upon in the Joint Expert Report which were not provided by the Prosecution, the Prosecution has selected only a portion of these materials for submission.

iii. The Joint Expert Report and associated material will assist the Chamber

12. The Joint Expert Report and its associated material will assist the Chamber in its determination of the truth.[15] This is apparent from the five page Executive Summary to the Joint Expert Report.[16] [REDACTED]. [REDACTED] in their joint report which will assist the Chamber:

i. Opinion 1: [REDACTED];

ii. Opinion 2: [REDACTED];

iii. Opinion 3: [REDACTED];

[10] P-1071 & P-1078, PHL-OTP-00250637 at 0012, 0014, paras. 11, 20.
[11] P-1071 & P-1078, PHL-OTP-00250637 at 0009-0010, 0012-0013, paras. 5-6, 13-16.
[12] The Registry confirmed to the Prosecution that P-1071 and P-1078 were added to the List of Experts as of 7 July 2026.
[13] *See* P-1071, PHL-OTP-00250715; P-1078, PHL-OTP-00250714.
[14] *See* P-1071 & P-1078, PHL-OTP-00250637 at 0002-0005.
[15] *Al Hassan* Decision on Proposed Expert Witnesses, para. 16.
[16] P-1071 & P-1078, PHL-OTP-00250637 at 0001-0005.

iv. Opinion 4: [REDACTED]; and

v. Opinion 5: [REDACTED].

iv. The Prosecution requests [REDACTED] hours in total for its focused supplementary examination of both P-1071 and P-1078

13. The Prosecution intends for both P-1071 and P-1078 to testify in relation to discrete parts of the Joint Expert Report in order to adopt the report, pursuant to rule 68(3), and answer focused supplementary questions on discrete parts and topics of the Joint Expert Report. It requests a total of [REDACTED] hours for both witnesses, divided as necessary between P-1071 and P-1078. This will expedite the proceedings and obviate the need for either to address each issue covered in the Joint Expert Report, while retaining the opportunity for the Parties, the Common Legal Representatives for Victims and the Chamber to question the witnesses.[17]

14. The Prosecution will seek to clarify aspects of the Expert Report, including but not limited to: (i) [REDACTED]; (ii) [REDACTED];[18] and (iii) [REDACTED].[19]

B. Overview of Expert Report by P-1162

i. P-1162 is an expert

15. The Prosecution seeks to submit into evidence the Expert Report[20] prepared by P-1162 along with the Addendum to his Expert Report,[21] and two prior statements[22] (together, "P-1162's Reports") as well as the associated items listed in Annex A to this Application.

16. P-1162 is an expert. [REDACTED].[23] [REDACTED].[24] [REDACTED].[25] P-1162 is included in the Registry's List of Experts.[26]

[17] *Gbabgo & Blé Goudé* Rule 68(2)(b) and 68(3) Appeals Decision, ICC-02/11-01/15-744, paras. 59, 61, 79.
[18] *See* P-1071 & P-1078, PHL-OTP-00250637 at 0018-0024, paras. 32-43.
[19] *See* P-1071 & P-1078, PHL-OTP-00250637 at 0001-0005.
[20] P-1162, PHL-OTP-00249773.
[21] P-1162, PHL-OTP-00249763.
[22] P-1162, PHL-OTP-00017684, PHL-OTP-00091837.
[23] P-1162, PHL-OTP-00099792 at 0001.
[24] P-1162, PHL-OTP-00099792 at 0001-0006.
[25] P-1162, PHL-OTP-00099792 at 00011.
[26] The Registry confirmed to the Prosecution that P-1162 was added to the List of Experts in August 2026.

17. Further to an instruction by the Prosecution,[27] P-1162 provided his Expert Report and the Addendum to his Expert Report which falls within his area of expertise, in particular, his views on the [REDACTED].[28]

ii. The Expert Reports fall within the expertise of P-1162

18. The subject matter falls within the expertise of P-1162. As set out above, P-1162 has [REDACTED]. Together with the Expert Report, the Addendum to the Expert Report and the two prior statements, the Prosecution seeks to introduce a selection of the items that constitute the associated material to P-1162's Reports, consisting of: (i) two datasets that P-1162 compiled and referred to in his Expert Report; (ii) material the Prosecution provided to P-1162, which he referred to in his Expert Report; (iii) material referred to in P-1162's reports which was not provided to P-1162 by the Prosecution but which the Prosecution has collected and disclosed; and (iv) previous reports authored by P-1162 which are annexed to and discussed in his prior statements. Regarding items cited and relied upon in the P-1162's reports which were not provided by the Prosecution, the Prosecution has selected only a portion of these materials for submission.

iii. The Expert Reports and Associated Material will assist the Chamber

19. P-1162's Reports and associated material will assist the Chamber in its determination of the truth.[29]

20. P-1162's Reports demonstrate the implausibility that the number of suspects killed can be explained by legitimate self-defence in light of the number of suspects and police who died in anti-illegal drug operations during Mr Duterte's presidency. More specifically, P-1162 analysed the use of deadly force by the PNP, through a series of national, international and regional comparisons, with a particular focus on Bulacan province.[30] P-1162's Reports identify and evaluate indicators such as ratios of suspects wounded against suspects killed, suspects killed against police officers killed, and number of operations against suspects killed.[31] Based on this evaluation, P-1162 finds that the number of deaths during Mr Duterte's presidency was

[27] PHL-OTP-00250712.
[28] PHL-OTP-00250712, paras 1 and 4.
[29] *Al Hassan* Decision on Proposed Expert Witnesses, para. 16.
[30] P-1162, PHL-OTP-00249773 at 0033-0034, 0039, PHL-OTP-00091837-R01 at 0003, 0005, paras. 3-4, 11, PHL-OTP-00017684-R01 at 0003, paras. 2-4, PHL-OTP-00088713-R01 at 0006.
[31] P-1162, PHL-OTP-00249773 at 0026, 0029, 0031, PHL-OTP-00088713-R01 at 0006, 0008.

not the unavoidable result of lawful self-defence.[32] P-1162 opines that the suspect to police officer fatality ratios "provide a compelling evidentiary basis to conclude that a vast majority of these encounters were staged to mask targeted killings, representing a systemic practice of extrajudicial execution rather than legitimate law enforcement",[33] and that even when compared to "jurisdictions notorious for violent policing", the use of deadly force by police in the Philippines during Mr Duterte's presidency was extreme and a statistical outlier.[34] Further, drawing on baseline comparisons from the Aquino and Marcos presidencies, P-1162's Addendum to his Expert Report finds that the number of deaths during Mr Duterte's presidency significantly exceeds the number that would be expected having regard to the respective baselines.[35]

iv. The Prosecution requests [REDACTED] hours for its focused supplementary examination of P-1162

21. The Prosecution intends for P-1162 to adopt his reports and statements, pursuant to rule 68(3), and then ask focused supplementary questions. As noted above, this will expedite the proceedings and obviate the need for P-1162 to address each issue covered in his reports, while retaining the opportunity for the Parties, the Common Legal Representatives for Victims and the Chamber to question the witness.[36]

22. The Prosecution will seek to clarify aspects of P-1162's Reports, including but not limited to: (a) [REDACTED]; (b) [REDACTED]; and (c) [REDACTED].

C. The Expert Reports are relevant, reliable, probative and not prejudicial to or inconsistent with Mr Duterte's rights

23. The Expert Reports are each relevant, reliable and probative, in particular: (i) they are internally consistent and accompanied by supporting documents, *i.e.* the associated material; and (ii) they bear formal indicia of reliability for introduction into evidence under rule 68(3), including being dated and provided voluntarily to the Prosecution in response to letters of instruction on the understanding they would be introduced into evidence.

[32] P-1162, PHL-OTP-00249773 at 0011, 0058, 0064, 0066-0067, 0072-0074, 0136, 0144, PHL-OTP-00088713-R01 at 0008.
[33] P-1162, PHL-OTP-00249773 at 0067, PHL-OTP-00088713-R01 at 0002.
[34] P-1162, PHL-OTP-00249773 at 0083, 0135, 0139, PHL-OTP-00088713-R01 at 0033.
[35] P-1162, PHL-OTP-00249763 at 0040-0041.
[36] *Gbabgo & Blé Goudé* Rule 68(2)(b) and 68(3) Appeals Decision, ICC-02/11-01/15-744, paras. 59, 61, 79.

24. The Prosecution notes that the use of rule 68(3) for these witnesses is not prejudicial to or inconsistent with the rights of Mr Duterte, because the Defence: (i) has agreed, in principle, to the introduction of Expert Reports through rule 68(3);[37] and (ii) will have the opportunity to question the witnesses in relation to their Expert Reports and the associated material.

V. CONCLUSION

25. For the foregoing reasons, the Prosecution respectfully requests that the Chamber grant the Application subject to the fulfilment of the further conditions of rule 68(3) of the Rules.



Mame Mandiaye Niang, Acting Prosecutor

Dated this 4th day of November 2026

At the Hague, the Netherlands

[37] *Duterte* Status Conference 13 October 2026, p. 14, lines 21-25, p. 15, lines 1-14.