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No.: ***ICC-01/21-01/25***
Date: **18 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

Public Redacted version of
"Victims' Response to the "Prosecution's request to admit evidence under article 69(4) of the Statute"
(ICC-01/21-01/25-551 dated 12 November 2026)

Source: **Common Legal Representatives of the Victims**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

☒ **The Office of the Prosecutor**	☒ **Counsel for the Defence** D36
☒ **Legal Representatives of the Victims** V50	☐ **Legal Representatives of the Applicants**
☐ **Unrepresented Victims**	☐ **Unrepresented Applicants (Participation/Reparation)**
☐ **The Office of Public Counsel for Victims**	☐ **The Office of Public Counsel for the Defence**
☐ **States' Representatives**	☐ **Amicus Curiae**

REGISTRY

Registrar Mr. Osvaldo Zavala Giler	☐ **Counsel Support Section**
☐ **Victims and Witnesses Unit**	☐ **Detention Section**
☐ **Victims Participation and Reparations Section**	☐ **Other**

I. INTRODUCTION

1. The Common Legal Representatives of the Victims (the "CLRV") hereby file their response to the "Prosecution's request to admit evidence under article 69(4) of the Statute" (the "Prosecution's Request" or the "Request").[1]

2. The CLRV submit that the Request for the admission of the transcribed statements of witness P-0002 and the associated material ("P-0002's evidence") should be granted, as the requirements of article 69(4) of the Rome Statute (the "Statute") and, alternatively, rule 68(2)(c) of the Rules of Procedure and Evidence (the "Rules") have been satisfied. In particular, P-0002's evidence appears to be directly relevant to, and highly probative of, the crimes committed and the harm suffered by the victims. Furthermore, its admission would be consistent with, and conducive to, the realisation of the victims' right to the truth, as well as to the conduct of a fair and expeditious trial.

II. PROCEDURAL BACKGROUND

3. On 19 June 2026, Trial Chamber III (the "Chamber") issued the "Directions on the Conduct of Proceedings".[2]

4. On 7 October 2026, the Prosecution filed the Request.[3]

III. CLASSIFICATION

5. Pursuant to regulations 23*bis*(1) and (2) of the Regulations of the Court, the present submission is classified as confidential following the classification chosen by the Prosecution, and because it refers to the content of documents bearing the same classification. A public redacted version will be filed in due course.

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[1] See the "Prosecution's request to admit evidence under article 69(4) of the Statute", No. ICC-01/21-01/25-540-Conf, 30 October 2026. A public redacted version No. ICC-01/21-01/25-540-Red was notified on 5 November 2026 (the "Prosecution's Request" or the "Request").
[2] See the "Directions on the conduct of proceedings" (Trial Chamber III), No. ICC-01/21-01/25-471, 19 June 2026.
[3] See the Request, *supra* note 1.

IV. SUBMISSIONS

1. The requirements of article 69(4) of the Statute are satisfied

a) Legal basis

6. In the Request, the Prosecution submits that: (i) P-0002's evidence was initially obtained on 10 and 16 May 2022, pursuant to the Pre-Trial Chamber's decision under article 18(6) of the Statute (the "Decision on the Preservation of Evidence"),[4] in light of [REDACTED]; (ii) [REDACTED] on 23 June 2024, and (iii) accordingly, P-0002's evidence should be admitted under article 69(4) of the Statute.[5]

7. The CLRV fully support the Request and argue that articles 18(6) and 69(4) of the Statute provide an appropriate legal basis for the admission of P-0002's evidence. In this regard, in the [REDACTED], the Pre-Trial Chamber held that:

> "[…] [REDACTED].
>
> […]
>
> [REDACTED]".[6]

8. The powers vested in the Pre-Trial Chamber under article 18(6) of the Statute to authorize the Prosecutor to undertake investigative steps are exceptional in nature. This is because such authorisation may be sought while the Prosecutor's application to investigate is still pending or where the Prosecutor has already deferred the investigations to a State. Accordingly, the Pre-Trial Chamber will not ordinarily grant such authorisation, unless the Prosecutor demonstrates, by cogent evidence, that the requested investigative steps are urgently necessary. Such urgency must arise from the

[4] REDACTED.
[5] See the Request, *supra* note 1, paras. 3-8.
[6] See the Decision on the Preservation of Evidence, *supra* note 4, paras. 15-16.

need to preserve evidence that is at risk of being lost or to seize a unique opportunity to obtain important evidence that may otherwise become unavailable.[7]

9. Consequently, the CLRV submit that articles 18(6) and 69(4) of the Statute provide an independent and sufficient legal basis for the admission of P-0002's evidence, without recourse to article 56 of the Statute. These provisions govern, respectively, the authorisation of investigative steps aimed at preserving evidence in the context of a deferred investigation and the admission of evidence before the Court. The circumstances in which P-0002's evidence was obtained therefore fall squarely within the procedural framework established by articles 18(6) and 69(4) of the Statute.

10. Furthermore, P-0002's evidence satisfies the requirements for admissibility under article 69(4) of the Statute, for the reasons set out below.

b) P-0002's evidence is directly relevant and highly probative

11. P-0002 [REDACTED] Davao Death Squad.[8] In particular, he provided evidence concerning Mr Duterte's individual criminal responsibility and [REDACTED].[9] From the victims' perspective, his evidence is directly relevant to, and highly probative of, both the crimes charged and the harm suffered by them. Given its *particular importance* to the determination of the guilt or innocence of the Accused, the evidence falls squarely within the category of evidence for which the Chamber contemplated ruling on admissibility at the time of its presentation.[10]

[7] See Article 18, NSEREKO (D) in TRIFFTERER (O.), AMBOS (K.) (Eds.), Rome Statute of the International Criminal Court : Article-by-Article Commentary, 2nd edition, Verläg C.H. Beck / Nomos, Munich / Hart Publishing, Oxford, 2008, p. 635.
[8] See the Request, *supra* note 1, paras. 16-19.
[9] *Ibid.*
[10] See the "Directions on the conduct of proceedings", *supra* note 2, para. 35.

c) The admission of P-0002's evidence will not prejudice the fairness of the trial or the fair evaluation of the witness' testimony

12. As recalled in the [REDACTED], P-0002 was interviewed in the presence of Defence counsel appointed by the Pre-Trial Chamber to safeguard the efficiency and integrity of the proceedings and to ensure the protection of the rights of the Defence.[11] To enable her to discharge her duties effectively, counsel was provided with all relevant documentation concerning P-0002.[12] In addition, counsel appointed to represent P-0002, pursuant to article 55(2) of the Statute and rule 112 of the Rules, was also present during the interviews conducted by the Prosecution.[13] These procedural safeguards ensured that the rights of the Defence were respected throughout the collection and preservation of the evidence. Accordingly, admitting that evidence would neither prejudice the fairness of the trial nor impair the Chamber's ability to assess it fairly, including the weight to be accorded to P-0002's testimony.

2. In the alternative, the requirements of rule 68(2)(c) of the Rules are satisfied

13. In the alternative, should the Chamber consider admitting P-0002's evidence pursuant to rule 68(2)(c) of the Rules, the requirements for admission under that provision would likewise be satisfied.

a) The witness is unavailable to testify and the necessity of measures under article 56 of the Statute could not have been anticipated

14. P-0002 [REDACTED] and is therefore unavailable to testify before the Chamber.[14] Moreover, the need to seek measures under article 56 of the Statute could not reasonably have been anticipated, given that P-0002'evidence had already been obtained and preserved under article 18(6) of the Statute. Accordingly, there was no need to resort to article 56 to secure the preservation of the testimony for the purposes of the trial. As argued above, article 18(6) provided an independent and specific legal

[11] REDACTED.
[12] REDACTED.
[13] See the Request, *supra* note 1, para. 6.
[14] *Ibid.*, para. 7.

basis for obtaining and preserving P-0002's evidence, as expressly recognised in the [REDACTED].

b) P-0002's evidence has sufficient indicia of reliability

15. According to the Court's jurisprudence interpreting rule 68(2)(c) of the Rules, prior recorded testimony may be regarded as sufficiently reliable where: (i) it comprises written statements taken under rules 111 and 112 of the Rules, together with any annexes or other associated documents that are used or explained by the witness, which thereby form an integral part of the testimony; (ii) it was given voluntarily and obtained by the Prosecution in the ordinary course of its investigations; and (iii) the witness understood that the information provided could subsequently be relied upon in judicial proceedings.[15] P-0002's evidence fully satisfies these requirements.

c) P-0002's evidence goes to proof of the acts and conduct of the Accused

16. The fact that P-0002's evidence goes to proof of the acts and conduct of Mr Duterte should not, in itself, preclude its admission pursuant to rule 68(2)(c) of the Rules.[16] Rather, it is a factor that may weigh against the admission of such testimony

[15] See the "Decision on Defence Request Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence" (Trial Chamber IX), No. ICC-02/04-01/15-1288, 19 June 2018, paras. 8 and 10; the "Decision on certain requests related to the admission of the prior recorded testimony of Witness D-0080" (Trial Chamber VI), No. ICC-01/04-02/06-2242-Red, 22 February 2018, para. 42; the "Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of Witness P-0027" (Trial Chamber VI), No. ICC-01/04-02/06-1653, 25 November 2016, para. 17; the "Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of Witness P-0103" (Trial Chamber VI), No. ICC-01/04-02/06-1205, 11 March 2016, paras. 7 and 8; the "Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of P-0022, P-0041 and P-0103" (Trial Chamber VI), No. ICC-01/04-02/06-1029, 20 November 2015, paras. 21 and 24; the "Decision on 'Prosecution Submission of Evidence Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence'" (Trial Chamber VII), No. ICC-01/05-01/13-1481-Red-Corr, 12 November 2015, para. 20; and the "Decision on Prosecution Request for Admission of Prior Recorded Testimony" (Trial Chamber V (a)), No. ICC-01/09-01/11-1938-Corr-Red2, 28 August 2015, para. 144.

[16] See the "Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of P-0022, P-0041 and P-0103", *supra* note 15, para. 37; the "Decision on certain requests related to the admission of the prior recorded testimony of Witness D-0080", *supra* note 15, para. 54; and the "Decision on 'Prosecution Submission of Evidence Pursuant to Rule 68(2)(c) of the Rules of Procedure and Evidence'", *supra* note 15, para. 21 and 22.

or part thereof.[17] Accordingly, a chamber retains the discretion to admit such evidence pursuant to that provision, notwithstanding its relevance to the acts and conduct of the Accused.[18]

17. As already noted, P-0002's evidence is directly relevant to, and highly probative of, the crimes committed and the harm suffered by the victims. In this regard, the following factors may militate in favour of admitting a witness' prior recorded testimony: (i) the witness' direct knowledge of the matters at issue; (ii) their status as insider, rendering their testimony directly relevant to the charges; and (iii) their role placing them in a particularly favourable position to provide information on material issues.[19] P-0002 [REDACTED] Davao Death Squad. He provided evidence, in particular, concerning Mr Duterte's individual criminal responsibility and [REDACTED]. His position and first-hand knowledge therefore render his testimony particularly significant to the determination of the matters before the Chamber.

18. In light of these considerations, the CLRV submit that the fact that P-0002's evidence goes to proof of the acts and conduct of the Accused should not outweigh its substantial probative value. On the contrary, having regard to the nature of his evidence, his position as an insider witness and his direct knowledge of material issues, the admission of his testimony is warranted. This is also consistent with the approach contemplated by the Chamber in its Directions on the Conduct of Proceedings, which recognises the particular importance of evidence bearing on the determination of the guilt or innocence of the Accused.[20]

[17] *Ibid.*
[18] *Ibid.*
[19] See the "Decision on certain requests related to the admission of the prior recorded testimony of Witness D-0080", *supra* note 15, para. 55.
[20] See the "Directions on the conduct of proceedings", *supra* note 2, para. 35.

d) The admission of P-0002's evidence does not give rise to any prejudicial effect that outweighs its probative value

19. The admission of P-0002's evidence is without prejudice to the weight, if any, to be accorded to it, which remains a matter for the Chamber to assess in light of the entirety of the evidence presented at trial.[21] Moreover, the Defence's inability to cross-examine the witness does not, in itself, preclude admission.[22] Cross-examination is neither the only potential source of information available to the Defence, nor the sole means of challenging the credibility or reliability of a witness' account admitted pursuant to rule 68(2)(c) of the Rules.[23] As already recalled, P-0002 was interviewed in the presence of Defence counsel appointed by the Pre-Trial Chamber; and counsel was provided with all relevant documentation concerning the witness. The Defence retains the opportunity to identify inconsistencies, if any, in P-0002's account, challenge his sources of knowledge and contest his evidence through other evidence presented at trial. These avenues enable the Chamber to assess any identified weaknesses when determining the weight to be accorded to his testimony. Accordingly, considered together with the safeguards surrounding the interview, the Defence's inability to cross-examine P-0002 does not, in the circumstances of this case, give rise to prejudice outweighing the probative value of his evidence.

e) Granting the Request will give effect to victims' right to the truth and to a fair and expeditious trial

20. Lastly, granting the Request would advance the realisation of the victims' right to the truth and contribute to the conduct of a fair and expeditious trial. Given the direct relevance and high probative value of P-0002's evidence concerning the crimes committed and the harm suffered by the victims, its admission would enable the

[21] See the "Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of Witness P-0103", *supra* note 15, para. 19; and the "Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of Witness P-0027", *supra* note 15, para. 23.
[22] See the "Decision on Prosecution Request for Admission of Prior Recorded Testimony", *supra* note 15, para. 145.
[23] See the "Decision on Prosecution application under Rule 68(2)(c) of the Rules for admission of prior recorded testimony of Witness P-0027", *supra* note 15, para. 22.

Chamber to consider material evidence bearing on the determination of the charges and the experiences of the victims. Moreover, admitting evidence that has already been preserved would promote the expeditious conduct of the proceedings, while ensuring that all relevant evidence is available for the Chamber's consideration. Accordingly, granting the Request would serve the interests of justice while advancing victims' right to the truth.

V. CONCLUSION

21. For the foregoing reasons, the CLRV respectfully ask the Chamber to grant the Request.



Gilbert Andres



Joel Butuyan



Paolina Massidda

Dated this 18th day of November 2026

At The Hague (The Netherlands) and Manila (The Philippines)