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TRIAL CHAMBER III

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

SITUATION IN THE REPUBLIC OF THE PHILIPPINES

IN THE CASE OF THE PROSECUTOR v. RODRIGO ROA DUTERTE

PUBLIC

Public Redacted Version of Defence Request for Disclosure of Materials

Source: **Defence for Mr Rodrigo Roa Duterte**

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**
Duterte Defence Team

☒ **Legal Representatives of the Victims**

☐ **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**

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I. INTRODUCTION

1. According to the Prosecution, the victims of the alleged crimes in this case are "alleged criminals in the Philippines who were perceived or alleged to be involved in drug-related (including production, sale and use) and other crimes (such as theft and murder)",[1] meaning their criminal antecedents are directly relevant to the Prosecution case. The Prosecution's witness list also draws largely on those who are suspected to have carried out the charged murders, making it again likely that these witnesses have criminal records which are directly relevant to their testimony and credibility.[2] In a case of this nature, it would be expected that the disclosure would contain a large number of records relevant to the criminal antecedents of both witnesses and victims. In fact, very few have been disclosed. For example, open-source material indicates that the first witness the Prosecution intends to call, P-1302, has been the subject of at least [REDACTED] legal cases in the Philippines, and yet not one judicial record has been disclosed.[3] The Defence for Mr Duterte ("Defence") has repeatedly asked the Prosecution for this disclosure, and it has refused.

2. The Defence therefore respectfully requests that the Trial Chamber direct the Prosecution to seek and disclose information pertaining to the criminal antecedents of all witnesses and victims identified in the Prosecution's Updated Trial Brief.[4] Concretely, the Defence requests the disclosure of all arrests, convictions, sentences or non-judicial disposals (in whatever jurisdiction), and all former or pending arrest warrants including any Interpol notices (hereafter, "the Request").

II. CONFIDENTIALITY

3. This submission is filed confidentially pursuant to Regulation 23*bis*(1) of the Regulations of the Court as it pertains to confidential information about witnesses and victims and refers to *inter partes* correspondence.

[1] Decision on the confirmation of charges against Mr Rodrigo Roa Duterte, ICC-01/21-01/25-417-Conf, 23 April 2026, para. 62.
[2] For example, P-0001, P-0002, P-0003, P-0008, P-0026, P-1036, P-1077, P-1151, P-1155, P-1156, P-1157, P-1160, P-1207, P-1211, P-1235, P-1236, P-1262, P-1340, P-1407 and P-1410.
[3] P-1302: PHL-OTP-00250473-R02, para. 107.
[4] Prosecution's Updated Trial Brief, ICC-01/21-01/25-522-Conf-AnxA, 16 October 2026 ("Prosecution's Updated Trial Brief").

III. PROCEDURAL HISTORY

4. During the course of its review of disclosed evidence, the Defence discovered indications that many of the Prosecution's witnesses and victims cited in the pre-trial documents may have relevant criminal antecedents. On 24 August 2026, the Defence emailed the Prosecution requesting disclosure of all material relating to the criminal antecedents for each of the witnesses it intended to call. The Defence explained that "[i]n the category of PEXO material, criminal antecedents are at the very top of the list."[5]

5. The Prosecution responded by email on 15 September 2026 that it considered the request to be "[REDACTED]",[6] and that accordance with its obligations under Article 54(1)(a) of the Statute, it had conducted checks of [REDACTED]. These checks were conducted only with regards to Prosecution insider witnesses and individuals identified as being involved in charged incidents.[7]

6. The Defence renewed its request on 24 September 2026, specifying that it was seeking the disclosure of all details of criminal antecedent records for all named victims and all Prosecution witnesses on the Final List of Witnesses.[8] To assist and expedite the searches, the Defence provided the Prosecution with a list of witnesses for whom there was a clear indication of the existence of domestic proceedings in previously disclosed material.

7. The Prosecution responded on 9 October 2026, asserting that it did not "[REDACTED]"[9] It nonetheless pointed the Defence towards some relevant items within the evidentiary record.

8. On 12 October 2026 the Defence clarified that it required all records of arrests, charges, convictions and sentences as set out in previous emails. It reiterated that the Prosecution would need to cause named enquiries to be made of the National Bureau of

[5] Email, Defence to Prosecution, "Re: D36 Request for Disclosure / Metadata Updates", 24 August 2026, 12:10.
[6] Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 15 September 2026, 16:51.
[7] *Id.*
[8] Email, Defence to Prosecution, "Re: D36 Request for Disclosure / Metadata Updates", 24 September 2026, 15:50.
[9] Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 9 October 2026, 16:07.

Investigation's ("NBI") clearance system, the Ministry of Justice's records of judgments, the Philippine National Police ("PNP") records and Interpol.[10]

9. On 27 October 2026, the Prosecution declined the Defence's request on the basis that it still considered it "[REDACTED]" but that "[REDACTED]."[11]

IV. APPLICABLE LAW

10. Article 54(1) of the Rome Statute casts a duty on the Prosecution to investigate 'exonerating circumstances', which extends to making reasonable efforts to obtain information that may be potentially exculpatory.[12]

11. Article 67 of the Statute establishes the defendant's right to a fair and impartial trial, and to this end Article 67(2) affirms the Prosecution's obligations vis-à-vis exculpatory evidence: "the Prosecutor shall, as soon as practicable, disclose to the defence evidence in the Prosecutor's possession or control which […] may affect the credibility of prosecution evidence."

12. Article 64(2), meanwhile, empowers the Trial Chamber to "ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused [...]." The Chamber may also, pursuant to Article 64(6)(f), "rule on any other relevant matters" as may be required in the performance of its functions, which would necessarily include ensuring due respect for an accused's right to a fair trial. Chambers of this Court have repeatedly recognised their oversight over the Prosecution's compliance with Article 54(1).[13]

V. SUBMISSIONS

13. Material responsive to the Request falls squarely within the Prosecution's obligation to disclose potentially exculpatory material under Article 67(2) of the Statute, which

[10] Email, Defence to Prosecution, "Re: D36 Request for Disclosure / Metadata Updates", 12 October 2026, 19:50.
[11] Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 27 October 2026, 17:20.
[12] *Ruto & Sang*, Decision on Joint Defence Application for Further Prosecution Investigation Concerning the Asylum Application Records of Certain Prosecution Witnesses, ICC-01/09-01/11-1655-Red2, 17 November 2014, para. 32.
[13] *See e.g. Ruto &Sang*, Decision on Joint Defence Application for Further Prosecution Investigation Concerning [REDACTED] of Certain Prosecution Witnesses, ICC-01/09-01/11-1655-Red, 12 January 2015, para. 38 ("Great caution is called for when the Prosecution purports to assert its 'independent role' under the Statute, whenever the Statute imposes an explicit or implicit duty on the Prosecution—such as Article 54 of the Statute does in the present context. In those circumstances, the Prosecution may not correctly assert an 'independent role' in any way that suggests that it is 'best placed' to determine whether or not it has discharged the duty so imposed. The Chamber retains the amplitude of the power to adjudicate that question whenever it is presented before the Chamber.").

incontrovertibly includes material that tends to show the innocence of the accused or that may affect the credibility of prosecution evidence. This duty of disclosure must also be viewed in light of the Prosecution's concomitant, overarching obligation to investigate incriminating and exonerating circumstances equally under Article 54(1) of the Statute.

14. The Prosecution's investigative diligence and the accused's entitlement to full disclosure – including potentially exculpatory material – goes to the heart of every case and has been unhesitatingly recognised by various Chambers as a fundamental component of the right to a fair trial.[14] Its impact on the Court's determination of guilt or innocence cannot be overstated.[15]

15. It is equally well-established that the past criminal record or criminal involvement of a witness on whom the Prosecution intends to rely at trial can be relevant to assessing their credibility and, therefore, that such information falls within the scope of Article 67(2) of the Statute.[16] By way of example, it stands to reason that the Defence may seek to use prior criminal convictions involving perjury or false statements to impeach the credibility of a Prosecution witness during cross-examination.

16. Equally, the requested criminal records of victims may also be exculpatory. For instance, the Prosecution's case theory alleges that false self-defence scenarios were

[14] *See e.g. Lubanga*, Decision on the consequences of non-disclosure of exculpatory materials covered by Article 54(3)(e) agreements and the application to stay the prosecution of the accused, together with certain other issues raised at the Status Conference on 10 June 2008, ICC-01/04-01/06-1401, 13 June 2008, paras 77-81, 92, in which the Chamber "unhesitatingly concluded that the right to a fair trial—which is without doubt a fundamental right—includes an entitlement to disclosure of exculpatory material". *See also Banda*, Decision on Article 54(3)(e) documents, ICC-02/05-03/09-259, 23 November 2011, para. 14 and references cited therein; *Yekatom & Ngaissona*, Decision on the Yekatom Defence Motion for Disclosure of Exculpatory Material, ICC-01/14-01/18-296, 28 August 2019, para. 12.

[15] Chambers of international criminal tribunals have recognised that the disclosure of judicial records of Prosecution witnesses serves not merely to facilitate the preparation of the Defence but also to assist the Trial Chamber in assessing the credibility of witnesses. *See e.g. Karemera et al.*, ICTR-98-44-T, Decision on Motions for Order for Production of Documents by the Government of Rwanda and for Consequential Orders, 13 February 2006, para. 7.

[16] *Lubanga*, Decision on the Defence Request for Order to Disclose Exculpatory Materials, ICC-01/04-01/06-649, 2 November 2006, p. 3. Chambers of the ICTR have also been alert to this concern and routinely compelled the Prosecution to obtain and disclose the judicial records of Prosecution witnesses. *See e.g. Bizimungu et al*, ICTR-99-50-T, Decision on Jerome-Clement Bicamumpaka's Urgent Motion for Disclosure of Exculpatory Material, 9 February 2009, paras 8-9; *Nchamihigo*, ICTR-01-63-T, Order for Judicial Records, 12 October 2006, para. 3; *Niyiramasuhuko et al*, ICTR-98-42-T, Decision on the Defence Motion for the Disclosure of the Declarations of the Prosecutor's Witnesses Detained in Rwanda and all Other Documents and Information Pertaining to the Judicial Proceedings in their Respect, 18 September 2001, paras 6, 13; *Gatete*, ICTR-2000-61-PT, Decision on Defence Motions for Disclosure Pursuant to Rule 66(A)(ii) and Commencement of Trial, 13 October 2009, para. 26.

often invoked by PNP officers to make the killings of alleged criminals appear lawful.[17] Accordingly, if any of the victims were subject to arrest warrants or had faced criminal proceedings for, for instance, illegal possession of firearms, this could call into question the Prosecution's characterisation and would lend support to the legitimacy of the PNP's operations. The Defence cannot adequately test the Prosecution's case without this material. If the records cast doubt on the Prosecution's case theory, they are relevant to "show the innocence of the accused."[18]

17. While the Prosecution does not seem to contest the fact that the criminal records may be exculpatory, and, indeed, the Defence appreciates the Prosecution's assistance in identifying some of the relevant items,[19] it is apparent that this exercise is incomplete. For example, [REDACTED] Interpol notice is cited in PHL-OTP-0006-1355-R01 but has not been disclosed.[20] Evidence related to several other witnesses – such as [REDACTED][21] and [REDACTED][22] – indicates that they have been charged with drug-related charges in the Philippines, yet no official documentation recording their arrests, convictions, sentences or detentions, as applicable, can be identified amongst the disclosed documents. This deficiency also affects central Prosecution witnesses [REDACTED] and [REDACTED], whose judicial dossiers related to [REDACTED] are missing from the case record.[23] [REDACTED] and [REDACTED] appear to have been [REDACTED], yet no official documents pertaining to these charges have been transmitted to the Defence.[24] Also absent from the record is any arrest warrant, charging document or sentencing decision issued against P-1302 – an omission that is

[17] *See e.g.* Prosecution's Updated Trial Brief, para. 87.
[18] Article 67(2) of the Rome Statute.
[19] Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 9 October 2026, 16:07; Email, Defence to Prosecution, "Re: D36 Request for Disclosure / Metadata Updates", 9 October 2026, 18:52.
[20] *See* PHL-OTP-0006-1355-R01 at 1356-1357.
[21] As mentioned in a [REDACTED]. The Prosecution has reviewed the material it holds and "[REDACTED]". *See* Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 9 October 2026, 16:07.
[22] According to [REDACTED] witness statement (PHL-OTP-00090342-R01, para. 14), [REDACTED].
[23] [REDACTED] is mentioned in PHL-OTP-00001702-R01 at 0004, lines 98-102. [REDACTED] is mentioned in PHL-OTP-00250016 and PHL-OTP-00019317. Neither the Defence nor the Prosecution have been able to locate any official documents related to this within the disclosed materials. The Prosecution directed the Defence to [REDACTED]. *See* Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates, 9 October 2026, 16:07.
[24] [REDACTED] are mentioned, for instance, in PHL-OTP-00014996-R02, at 0001 and PHL-OTP-00014914-R02, at 0001. No official records pertaining to [REDACTED] have been disclosed, the Prosecution having confirmed that it "[REDACTED]". *See* Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 9 October 2026, 16:07.

particularly concerning considering that P-1302 is the first witness the Prosecution intends to call, less than three weeks from the date of this filing.

18. The Prosecution has also not engaged with the second limb of the Defence's *inter partes* request, namely the disclosure of the criminal antecedents of the named victims of the charged Incidents.

19. The Defence acknowledges that the information sought is not in the possession of the Prosecution, noting that it "[REDACTED]" in relation to most of the witnesses identified by the Defence.[25] Nevertheless, considering that material responsive to the Request must be understood as 'potentially exculpatory information', the Prosecution is obliged to make reasonable efforts to obtain it, pursuant to Article 54(1)(a).[26] This has not been done exhaustively. By the Prosecution's own admission, it has conducted systematic checks of only [REDACTED], and for only some of the victims and witnesses.[27] It has not caused named enquiries to be made [REDACTED]. It has also declined to carry out further enquiries with the relevant systems and authorities, citing concerns that [REDACTED].[28]

20. While the Prosecution has parallel duties to investigate exculpatory evidence and protect the interests and safety of victims and witnesses,[29] measures taken pursuant to the latter must not be "prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."[30] The duty to protect witnesses cannot be invoked to abrogate the fundamental right of the accused to a fair trial, which relies entirely on the thorough

[25] Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 9 October 2026, 16:07.
[26] *Ruto & Sang*, Decision on Joint Defence Application for Further Prosecution Investigation Concerning the Asylum Application Records of Certain Prosecution Witnesses, ICC-01/09-01/11-1655-Red2, 17 November 2014, para. 32 ("should it be determined that there are reasonable grounds to believe that information not in the Prosecution's possession may be potentially exculpatory, Article 54(1)(a) of the Statute obligates the Prosecution to make reasonable efforts to obtain that information."). This was reiterated in *Abd-Al-Rahman*, Trial Judgment, ICC-02/05-01/20-1240, 6 October 2025, para. 126. *See also Lubanga*, Decision on Defence Requests for Disclosure of Materials, ICC-01/04-01/06-718, 17 November 2006, p. 4, where the Chamber's approach indicates that where the Prosecution is alerted to the fact that a certain category of documents may be exculpatory, the Prosecution is under a positive duty to "make its utmost effort" to obtain such information. It has also been the practice of international criminal tribunals to order the Prosecution to obtain the judicial records of its witnesses. *See e.g. Nchamihigo*, ICTR-01-63-T, Order for Judicial Records, 12 October 2006, pp 2-3; *Bagosora et al*, ICTR-98-41-T, Decision on the Request for Documents Arising from Judicial Proceedings in Rwanda in Respect of Prosecution Witnesses, 16 December 2003, para. 7.
[27] Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 15 September 2026, 16:51; Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 27 October 2026, 17:20.
[28] Email, Prosecution to Defence, "Re: D36 Request for Disclosure / Metadata Updates", 27 October 2026, 17:20.
[29] Pursuant to Article 54(1)(a), Article 54(1)(b) and Article 68(1) of the Rome Statute.
[30] As expressly mandated by Article 68(1) of the Rome Statute.

collection and subsequent disclosure of core exculpatory evidence under Article 67(2) and the ability to impeach or challenge witness credibility.

21. In any event, abstract and unparticularised safety concerns are insufficient as a basis for non-disclosure or to justify a wholesale refusal to investigate exculpatory circumstances.[31] Where an exculpatory line of inquiry poses an identifiable risk to the security of a witness, the Prosecution must first explore and exhaust available secure investigative means. This would include, for instance, formulating or couching its inquiries in a manner which does not reveal that the subject of the inquiry is a prospective witness. As a matter of fairness, if a safety risk creates an insurmountable barrier to the collection or disclosure of core exculpatory circumstances related to a particular witness, the Prosecution must withdraw that witness from its list. The alternative would contravene the accused's right to a fair trial and significantly impair Mr Duterte's ability to defend himself.

22. Accordingly, in discharge of its obligations under Articles 67(2) and 54(1) of the Statute, the Prosecution must disclose all materials in its possession relating to the requested criminal antecedents, and, in parallel, use all reasonable efforts to obtain the information that is not in its possession.

VI. RELIEF SOUGHT

23. For the foregoing reasons, the Defence respectfully requests that the Trial Chamber

> **ORDER** the Prosecution to immediately seek and obtain information pertaining to the criminal antecedents of all witnesses and victims identified in its Updated Trial Brief; and

[31] For instance, non-disclosure on grounds of witness safety must be assessed on a case-by-case basis, be based on a current and objectively justifiable risk specifically linked to the disclosure sought, rather than general or abstract security concerns, and the Prosecution must substantiate the existence of such a risk and demonstrate that less restrictive measures would not adequately address it. *See e.g. Katanga*, Decision on the Protection of 21 Witnesses Under Article 67(2) of the Statute and/or Rule 77 of the Rules of Procedure and Evidence, ICC-01/04-01/07-1332-tENG, 24 July 2009, para. 36. Similarly, redactions sought due to safety concerns must be assessed on a case-by-case basis, with due regard to the competing interests and stake, and based on a series of criteria, including the existence of an objectively justifiable risk to the safety of the person concerned and the infeasibility of insufficiency of less restrictive measures. *See Ntaganda*, Decision on the Prosecution request for redactions, ICC-01/04-02/06-545-Red2, 7 April 2015, para. 16.

ORDER the Prosecution to disclose those materials to the Defence, setting a deadline for disclosure of no later than 30 November 2026 for those witnesses it intends to call before 1 January 2027.



Mr Peter Haynes, KC
Counsel for Mr Rodrigo Roa Duterte

Dated this 18th day of November 2026

At The Hague, the Netherlands