

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: **ICC-01/21-01/25**
Date: **7 September 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 first application under rule 68(3) to introduce into evidence prior recorded testimony of witness P-1100”, 31 August 2026,
ICC-01/21-01/25-484-Conf**

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Prosecution requests the formal submission of the statement and associated material (“Prior Recorded Testimony”)¹ of P-1100 in accordance with article 69(2) and (4) of the Rome Statute (the “Statute”), rule 68(3) of the Rules of Procedure and Evidence (the “Rules”), and the “Directions on the Conduct of Proceedings” (the “Directions”).² The Prosecution further requests leave to conduct a focused *viva voce* supplementary examination of the witness, as detailed below.

2. Granting the request will enhance the expeditiousness of the proceedings by reducing the length of the witness’s direct examination from seven hours to two hours, thus saving at least five hours of court time.

3. The Prior Recorded Testimony of P-1100 is relevant, reliable, and probative. It primarily relates to [REDACTED]. As such, his evidence is particularly relevant to the policy to ‘neutralise’ through violent crimes, including murder, alleged criminals in the Philippines. It also provides evidence of the Davao Death Squad’s (“DDS”) *modus operandi*, as well as the Accused’s individual criminal responsibility, including in relation to his knowledge and intent.

4. The introduction into evidence of P-1100’s Prior Recorded Testimony is not prejudicial to or inconsistent with the rights of the Accused, as the witness will be available for cross examination by the Defence and any further questioning by the Chamber, the parties, and the Common Legal Representatives of Victims (the “CLRV”).

II. CONFIDENTIALITY

5. 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. SUBMISSIONS

A. Legal Basis

¹ Annex A lists the Prior Recorded Testimony of P-1100, which comprises his hyperlinked witness statement (at I) and associated material (at II). The material related to the witness’s Prior Recorded Testimony which the Prosecution does not seek to introduce into evidence, is also included (at III). See Directions on the conduct of proceedings, ICC-01/21-01/25-471, para. 59.

² Directions on the conduct of proceedings, ICC-01/21-01/25-471, para. 59.

6. Rule 68(3) provides that the Chamber may allow the introduction of the prior recorded testimony of a witness who is present before the Chamber, where the individual does not object, and the parties and the Chamber have the opportunity to examine the witness.³

7. The main purpose of rule 68(3) is to streamline the presentation of evidence and conduct the proceedings in a more effective and expeditious way.⁴ As such, the Trial Chamber in the *Bemba et al* case noted that the central motivation for introducing rule 68(3) testimony is to save time and expedite the conduct of the proceedings,⁵ and concluded that the fact that in-court-testimony can be considerably shortened by admitting prior recorded testimony is, in itself a sufficient reason for granting a rule 68(3) request, as long as its other mandatory requirements are met.⁶ The Appeals Chamber has further acknowledged that Trial Chambers can take good trial management into account in making decisions under rule 68(3).⁷ Accordingly, other Chambers of this Court have encouraged the use of rule 68(3) to enhance the expeditiousness of the proceedings.⁸ In this specific case, having the health of the Accused in mind, the Chamber has also explicitly encouraged the use of rule 68(3).⁹

8. A rule 68(3) determination is subject to rule 68(1) and must not be prejudicial or inconsistent with the rights of the accused or the fairness of the trial generally.¹⁰ In this respect, the rule allows for more streamlined proceedings, while fully respecting the rights of the accused to a fair trial, as witnesses whose prior recorded testimonies are tendered into evidence are asked to confirm their accuracy, and the Defence has the opportunity to examine them in

³ Rule 68(3) of the Rules of Procedure and Evidence. *See also* *Gbagbo & Blé Goudé* Decision on Prosecution's application under rule 68(3), ICC-02/11-01/15-870, para. 7; *Ntaganda* Preliminary decision on rule 68(3) (*Ntaganda* Preliminary Rule 68(3) decision), ICC-01/04-02/06-1640-Red, para. 7; *Abd-Al-Rahman* First Rule 68(3) Decision ("*Abd-Al-Rahman* First Rule 68(3) Decision"), ICC-02/05-01/20-559-Red, para. 13.

⁴ *Gbagbo & Blé Goudé* Appeals Judgment on rules 68(2)(b) and 68(3) ("*Gbagbo & Blé Goudé* Rule 68 AJ"), ICC-02/11-01/15-744, para. 60; *Bemba et al.* Decision on Prosecution Rule 68(2) and (3) Requests ("*Bemba et al.* Rule 68 Decision"), ICC-01/05-01/13-1478-Red-Corr, para. 51; *Yekatom & Ngaissona* Decision on the request for leave to appeal a Rule 68(3) decision ("*Yekatom & Ngaissona* Rule 68(3) Leave to Appeal Decision"), ICC-01/14-01/18-1383, para. 11.

⁵ *Bemba et al.* Rule 68 Decision, para. 51.

⁶ *Bemba et al.* Rule 68 Decision, para. 48.

⁷ *Gbagbo & Blé Goudé* Rule 68 AJ, para. 62; *see also* *Gbagbo & Blé Goudé* Decision on Prosecutor's application under Rules 68(2)(b) and 68(3), ICC-02/11-01/15-573, para. 25; *Yekatom & Ngaissona* Rule 68(3) Leave to Appeal Decision, para. 11.

⁸ *Ntaganda* Decision on Prosecution application under Rule 68(3), ICC-01/04-02/06-961, para 13; *Gbagbo & Blé Goudé* Decision on Prosecutor's application under Rules 68(2)(b) and 68(3), ICC-02/11-01/15-573, para. 42.

⁹ ICC-01/21-01/25-T-009-Red-Eng, p. 13, lines 15-21.

¹⁰ *Bemba* Appeals Judgment on the admission into evidence of materials contained in the prosecution's list of evidence ("*Bemba* Rule 68 AJ"), ICC-01/05-01/08-1386, para. 78; *Gbagbo & Blé Goudé* Rule 68 AJ, para. 75; *Gbagbo and Blé Goudé* Decision on the Prosecution's rule 68(3) application, ICC-02/11-01/15-870, para. 7; *Abd-Al-Rahman* First Rule 68(3) Decision, para. 11; *Al Hassan* Decision on Rule 68(3), ICC-01/12-01/18-987-Red, para. 9; *Ntaganda* Preliminary Rule 68(3) decision, para. 7; *Ongwen* Decision on the Prosecution's rule 68(3) application, ICC-02/04-01/15-621, para. 6.

court. In this respect, the Appeals Chamber has ruled that prior recorded testimony introduced under rule 68(3) “cannot be considered to be exclusively written as it is not necessarily intended to replace oral testimony but, rather, complement it”.¹¹

9. Furthermore, while each rule 68(3) determination must necessarily be made on the merits of each individual application, following a “cautious item-by-item analysis”,¹² a Trial Chamber is nevertheless allowed greater discretion in applying rule 68(3) than other provisions in rule 68.¹³ As such, rule 68(3) does not preclude the introduction of prior recorded testimony even if it relates to issues materially in dispute, issues that are central to core matters in the case, or that are uncorroborated.¹⁴ Rather, these factors (previously outlined in the *Bemba* interlocutory appeal decision¹⁵) are only factors that *may* assist the Chamber to assess whether introducing the rule 68(3) testimony would be consistent with the rights of the accused and with the fairness of the trial generally.¹⁶ As such, they may guide a Chamber, but not bind it. Moreover, rule 68(3) does not preclude the admission of evidence which goes to the acts and conduct of the accused,¹⁷ nor does it exclude the possibility of introducing the evidence of a ‘key witness’,¹⁸ further demonstrating the degree of discretion afforded to Chambers under this provision.

10. The associated material for P-1100 which the Prosecution seeks to introduce into evidence¹⁹ forms an integral part of his Prior Recorded Testimony.²⁰ These items are also necessary to fully comprehend the witness’s account, as he uses and/or explains them in his statement. The introduction of this material is supported by prior jurisprudence that “exhibits

¹¹ *Gbagbo & Blé Goudé* Rule 68 AJ, para. 79.

¹² *Gbagbo & Blé Goudé* Rule 68 AJ, para. 69; *Bemba* Rule 68 AJ, para. 78.

¹³ *Gbagbo & Blé Goudé* Rule 68 AJ, para. 68; *Yekatom & Ngaissona* Rule 68(3) Leave to Appeal Decision, para. 9.

¹⁴ *Gbagbo & Blé Goudé* Rule 68 AJ, paras 2, 67, 69; *Ongwen* Decision on the Prosecution’s rule 68(3) application, ICC-02/04-01/15-621, para. 7; *Abd-Al-Rahman* First Rule 68(3) Decision, para. 16; *Yekatom & Ngaissona* Rule 68(3) Leave to Appeal Decision, para. 10; *Yekatom & Ngaissona* Twentieth Decision on Rule 68(3) (“*Yekatom & Ngaissona* Twentieth Rule 68(3) Decision”), ICC-01/14-01/18-1783-Red, paras 10-11.

¹⁵ See *Bemba* Rule 68 AJ, para. 78, in which the Appeals Chamber states that, in making its determination, “The Trial Chamber may, for example, take into account, a number of factors, including the following: (i) whether the evidence relates to issues that are not materially in dispute; (ii) whether that evidence is not central to core issues in the case, but only provides relevant background information; and (iii) whether the evidence is corroborative of other evidence”.

¹⁶ *Gbagbo & Blé Goudé* Rule 68 AJ, paras 2, 69; *Abd-Al-Rahman* First Rule 68(3) Decision, para. 16.

¹⁷ *Yekatom & Ngaissona* Rule 68(3) Leave to Appeal Decision, para. 10; *Yekatom & Ngaissona* Twentieth Rule 68(3) Decision, para. 10; *Abd-Al-Rahman* First Rule 68(3) Decision, para. 21; *Al Hassan* Second Decision on Rule 68(3), ICC-01/12-01/18-1267-Red, para. 14.

¹⁸ *Yekatom & Ngaissona* Rule 68(3) Leave to Appeal Decision, para. 10, including its citation to *Gbagbo & Blé Goudé* Rule 68 AJ, para. 80.

¹⁹ See Annex A, Part II.

²⁰ *Yekatom & Ngaissona* Decision on the Prosecution Requests under Rule 68(3), ICC-01/14-01/18-907-Red, para. 26; *Ongwen* Decision on Defence Rule 68(2)(c) request, ICC-02/04-01/15-1288, paras 8, 10.

associated with a previously recorded testimony are admissible if the witness uses or explains them in the prior recorded testimony, and particularly when these are necessary to read and understand the prior recorded testimony being introduced”.²¹

B. Overview of the Prior Recorded Testimony of P-1100

11. P-1100’s Prior Recorded Testimony may be introduced under rule 68(3). The witness will attest to its accuracy, be present in court, and available for examination by the parties, the Chamber, and the CLRV.

12. The Prior Recorded Testimony consists of one witness statement and associated material that was used or explained by the witness in his statement and is listed in confidential Annex A.

13. P-1100 was [REDACTED].²² [REDACTED].²³ He also describes [REDACTED]²⁴ and [REDACTED].²⁵ P-1100 authenticates the [REDACTED].²⁶ P-1100’s Prior Recorded Testimony goes to proof of a policy to ‘neutralise’ through violent crimes, including murder, alleged criminals in the Philippines. It also provides evidence of the DDS’s *modus operandi*, as well as the Accused’s individual criminal responsibility, including in relation to his knowledge and intent.

14. P-1100’s associated material is comprised of: (i) [REDACTED]; (ii) [REDACTED]; (iii) [REDACTED], and; (iv) [REDACTED].

15. Should P-1100’s Prior Recorded Testimony be introduced into evidence, the Prosecution requests approximately two hours to conduct a streamlined supplementary examination of this witness, in accordance with rule 68(3) and the prior jurisprudence of this Court.²⁷ During this limited and focused supplementary examination, the witness would be asked to elaborate

²¹ *Ntaganda* Transcript of 20 June 2016, ICC-01/04-02/06-T-105-Red2-ENG, p. 94, l. 2-7. *See also*, *Ntaganda* Decision on Prosecution application under Rule 68(2)(c), ICC-01/04-02/06-1205, para.7; *Ntaganda* Decision on Rule 68(2)(c), ICC-01/04-02/06-1029, paras 23, 35; *Ruto & Sang* Decision on the Admission of Prior Recorded Testimony, ICC-01/09-01/11-1938-Corr-Red2, para. 33; *Ongwen* Decision on Defence Rule 68(2)(c) request, ICC-02/04-01/15-1288, paras 8, 10; *Abd-Al-Rahman* First Rule 68(3) Decision, para. 17.

²² P-1100, PHL-OTP-00001791 at 0003, para. 1, at 0008, para. 28.

²³ P-1100, PHL-OTP-00001791 at 0003, para. 1, at 0009, para. 31, at 0011, para. 39, at 0014, para. 55.

²⁴ P-1100, PHL-OTP-00001791 at 0012, paras 41-42, 44, at 0026, paras 112-113.

²⁵ P-1100, PHL-OTP-00001791 at 0003, para. 3, at 0016-0019, paras 61-77.

²⁶ P-1100, PHL-OTP-00001791 at 0003, para. 2, at 0011, paras 37-39, at 0013, paras 48-49; PHL-OTP-00250267; PHL-OTP-0005-0737; PHL-OTP-0003-2952.

²⁷ *Ntaganda* Transcript of hearing, ICC-01/04-02/06-T-110-Red2-ENG, p. 34, l. 8-13; *Gbabgo & Blé Goudé* Decision to conditionally admit the prior recorded statements under rule 68(3), ICC-02/11-01/15-722-Red, para. 23; *Al Hassan* Directions on the Conduct of Proceedings, ICC-01/12-01/18-789-AnxA, para. 65; *Yekatom & Ngaissona* initial Guidance on Rule 68, ICC-01/14-01/18-685, para. 36.

further on some of his associate exhibits. In addition, the Prosecution would also explore and clarify aspects of P-1100's evidence related to, in particular: (i) [REDACTED], and; (ii) [REDACTED].

16. The Prosecution estimates that it would require seven hours for the direct examination of P-1100, if his Prior Recorded Testimony is not introduced through rule 68(3). Thus, the two hours required for the limited supplementary examination would shorten the in-court testimony of this witness by five hours, should this Application be granted.

C. The Prior Recorded Testimony of P-1100 is internally consistent and corroborative of evidence to be provided by viva voce witnesses

17. P-1100's Prior Recorded Testimony is internally consistent and accompanied by supporting documents in relation to certain aspects.²⁸ It is also cumulative in nature and corroborative of other evidence,²⁹ as described below.

18. P-1100's evidence relating to [REDACTED], is corroborative of, and cumulative to, the evidence expected to be provided by, in particular, *viva voce* witnesses P-0001, P-0026, P-1022, and P-1390. His evidence regarding [REDACTED] is corroborative of, and cumulative to, the evidence expected to be provided by, in particular, *viva voce* witnesses P-0001, P-0026, P-1022, and P-1036.

D. The introduction of P-1100's Prior Recorded Testimony is not prejudicial to or inconsistent with the rights of the Accused

19. The introduction of P-1100's Prior Recorded Testimony into evidence would not be prejudicial to or inconsistent with the rights of the Accused, as the Defence will have ample opportunity to cross-examine him. With trial scheduled to commence on 30 November 2026,³⁰ the Defence have adequate time to prepare for his cross-examination.

20. In accordance with the conditions set out in rule 68(3), the witness will be asked whether he consents to the introduction of his Prior Recorded Testimony into the record of the case at the start of his testimony and the parties, the CLRV, and the Chamber will have the opportunity to examine him and observe his demeanour during his testimony.

²⁸ *Ntaganda* Preliminary Rule 68(3) decision, para. 9.

²⁹ *Bemba* Rule 68 AJ, para. 78.

³⁰ Directions on the conduct of proceedings, ICC-01/21-01/25-471, para. 12.

E. The Prior Recorded Testimony of P-1100 is relevant, reliable, and probative to the case

21. The Prior Recorded Testimony that the Prosecution seeks to introduce into evidence, pursuant to rule 68(3) is relevant, reliable, and probative.

22. P-1100's Prior Recorded Testimony bears formal indicia of reliability,³¹ as it was signed by the witness, who attested to the fact that it was voluntarily given and records his best recollection of events.³² While rule 68(3) contains no requirement that the prior recorded testimony has sufficient indicia of reliability, contrary to other sub-rules of rule 68,³³ such indicia are relevant to the Prior Recorded Testimony's reliability and probative value.

IV. CONCLUSION

23. For the above 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 7th day of September 2026

At The Hague, the Netherlands

³¹ *Ntaganda* Preliminary Rule 68(3) decision, para. 9.

³² P-1100, PHL-OTP-00001791 at 0029.

³³ *Yekatom & Ngaissona* Fifteenth Decision on Rule 68(3), ICC-01/14-01/18-1480-Red, para. 16; *Yekatom & Ngaissona* Twentieth Rule 68(3) Decision, para. 11.