Cour Pénale Internationale

International Criminal Court

Original: **English**

No.: **ICC-01/21-01/25**
Original: **2 November 2026**
Date: **9 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 "Defence Response to the Prosecution's Third Application Under Rule 68(2)(b)"

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

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☒ **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**

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I. INTRODUCTION

1. The Prosecution's third application under Rule 68(2)(b)[1] seeks to introduce the prior recorded testimony of P-1334 and P-1348. The Defence submits that, for the reasons set out below, the probative value of the evidence of these two witnesses is so limited that they should be removed from the witness list.

2. In the event that Trial Chamber III ("Chamber") decides to admit the evidence pursuant to Rule 68(2)(b), the Defence, which does not intend to cross-examine the witnesses given the marginal value of their testimony, submits that the Chamber should not rely on those passages that directly go to the alleged acts and conduct of the Mr Duterte.

II. APPLICABLE LAW

3. Rule 68(2) permits a party to introduce prior recorded testimony in the absence of the witness. While this mechanism legitimately serves the expeditious conduct of proceedings, it must be applied cautiously, consistent with fair trial guarantees and the principle of equality of arms.[2]

4. In particular, Rule 68(2)(b) needs be interpreted narrowly, having regard to the exceptional nature of the provision. Prior recorded testimony concerning individuals other than the accused may fall within "the acts and conduct of the accused" where, depending on the charges, it may be relied upon to establish the accused's own conduct. The Appeals Chamber has therefore rejected a categorical approach and stressed that the provision cannot be used to introduce, without restriction, evidence that may ultimately serve to prove the acts and conduct of the accused.[3]

5. The Chamber, in the exercise of its discretion, is requested to apply particular caution when applying Rule 68(2)(b), including the criteria in Rule 68(2)(b)(i),[4] and take into account any other circumstances relevant to safeguarding the accused's rights,[5] given

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[1] Prosecution's third application under rule 68(2)(b) to introduce into evidence Prior Recorded Testimonies of Witnesses P-1334 and P-1348, ICC-01/21-01/25-526-Conf, 21 October 2026 ("Application").
This submission is filed **confidentially** pursuant to Regulation 23*bis*(2) of the Regulations of the Court as it provides a response to a filing bearing the same classification. All references to "Rule" in the present submission are to the International Criminal Court Rules of Procedure and Evidence.
[2] *Al Hassan*, Judgment on the appeal of the Prosecution against Trial Chamber X's "Decision on second Prosecution request for the introduction of P-0113's evidence pursuant to Rule 68(2)(b) of the Rules", ICC-01/12-01/18-2222, 13 May 2022 ("*Al Hassan* Appeal Judgment"), para. 78.
[3] *Al Hassan* Appeal Judgment, paras 54, 55.
[4] *Abd-Al-Rahman*, Public Redacted Version of "Prosecution's first application under rule 68(2)(b) to introduce into evidence prior recorded testimony of witnesses P-0013, P-0034, P-0043, and P-0065" 26 January 2022, ICC-02/05-01/20-565-Red, 31 January 2022.
[5] *Al Hassan* Appeal Judgment, para. 81.

the inherent dangers of admitting written witness statements without cross-examination for the purpose of advancing a party's case, particularly that of the Prosecution.[6]

III. SUBMISSIONS

6. The Chamber has directed the Prosecution to streamline its witness list.[7] Against this backdrop, the Prosecution submits that the proposed prior recorded testimonies of P-1334 and P-1348 are "relevant" to the contextual elements of the crimes against humanity because they allegedly bear on the policy of criminals being "neutralized".[8]

7. Despite being members of the [REDACTED] and the [REDACTED] respectively, P-1334 and P-1348 were both absent for almost the entire period charged under Counts 2 and 3. P-1334 [REDACTED],[9] while P-1348 [REDACTED].[10] Accordingly, they can have almost no direct knowledge of how decisions were taken [REDACTED] or how operations were conducted during Mr Duterte's presidency. The interviews bear this out: the accounts they provided are substantially based on rumour, hearsay, and information obtained through the media. During the limited time in which [REDACTED], their contribution was so marginal as to offer little, if any, evidentiary weight.

8. As to the specific grounds relied upon by the Prosecution in support of P-1334's relevance,[11] the Defence would simply point out that: (i) the witness expressly confirmed that she has no personal knowledge of how instructions were conveyed by Mr Duterte, through Bato Dela Rosa, to the [REDACTED] leadership. She never saw Dela Rosa do anything of the sort, and recognized that her account is based on stories she had heard;[12] (ii) she neither [REDACTED] allegedly convened to identify individuals for inclusion on target lists of drug personalities;[13] (iii) her understanding

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[6] *Al Hassan* Appeal Judgment, para. 82.
[7] First Decision on the Prosecution's Request to introduce prior recorded testimony pursuant to Rule 68(3), ICC-01/21-01/25-514-Conf, 2 October 2026, para. 39 ("[t]herefore, the Chamber reminds the Prosecution that it must conduct thoughtful assessments of evidence with a view to avoiding seeking the introduction on to the record of items - be they exhibits, documents, videos or any other category - which are repetitive or of such limited relevance as to be almost irrelevant. The Chamber signals its approach to the parties with a view to ensuring that this trial unfolds in a focused and expeditious manner and that the rights of the accused are safeguarded"). *See also* Transcript of Third Status Conference, ICC-01/21-01/25-T-011-CONF-ENG ET, 16 September 2026, p. 6, lines 4-8.
[8] Application, para. 7.
[9] P-1334, PHL-OTP-00099944, at 0015, line 459; PHL-OTP-00099946, at 0030, lines 1013-1016.
[10] P-1348, PHL-OTP-00232372, at 0011-0012, lines 354-359.
[11] Application, para. 10.
[12] P-1334, PHL-OTP-00099948, at 0012, lines 363-381.
[13] P-1334, PHL-OTP-00099948, at 0004, lines 90-92; at 0008, lines 227-230, 240-247; at 0020, lines 659-660.

of the alleged murder in Incident 53 is limited to [REDACTED]. She [REDACTED], and conceded having no personal knowledge as to [REDACTED].[14] Her assertion that [REDACTED] to meet quotas was, at most, an assumption, that she also failed to recall having made when questioned the following day;[15] (iv) the little she claims to know about Incident 13 comes entirely from newspapers or "people talking".[16] Additionally, although she did not hear any such instruction herself, she merely assumed that the order to [REDACTED] originated from Mr Duterte.[17]

9. P-1348's lack of probative value is reinforced by the fact that the Prosecution does not [REDACTED]. This is not surprising, given her inability to offer any direct information on matters of significance to the case. For example, P-1348 cannot speak from personal experience on the alleged quotas to kill criminals. Not only is she unable to provide any details, she also seeks to fill this gap by relying on conjecture, speculating that such quotas [REDACTED], although never saw [REDACTED].[18] Indeed, she accepted that her account is based entirely on hearsay: [REDACTED],[19] nor could she explain [REDACTED].[20] In addition, her evidence appears to have been shaped by information obtained from news reports and social media concerning the *nanlaban* narrative, rather than by any direct familiarity with the events.[21] She is even less able to shed light on the alleged rewards for such killings, beyond presuming that the money [REDACTED].[22] As for the supposed existence of high-value target lists, the position is no different. Her sources were media reports and information relayed by [REDACTED]. She never [REDACTED].[23]

10. As such, the Prosecution is seeking to introduce prior recorded testimonies of marginal value, concerning matters said to support the contextual elements, but resting on a fragmented and increasingly attenuated chain of hearsay from unidentified individuals, "stories", press articles and, more seriously, speculation.

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[14] P-1334, PHL-OTP-00099944, at 0022, lines 731-732; at 0023, lines 745-750; at 0030, line 1015; PHL-OTP-00099947, at 0018-0019, lines 600-615.
[15] P-1334, PHL-OTP-00099947, at 0026, lines 879-890.
[16] P-1334, PHL-OTP-00099945, at 0026-0027, lines 884-901.
[17] P-1334, PHL-OTP-00099948, at 0009, lines 264-276.
[18] P-1348, PHL-OTP-00232377, at 0007, lines 205-217.
[19] P-1348, PHL-OTP-00232377, at 0010, lines 299-302.
[20] P-1348, PHL-OTP-00232377, at 0011, lines 333-334.
[21] P-1348, PHL-OTP-00232375, at 0026, lines 882-889.
[22] P-1348, PHL-OTP-00232377, at 0011, lines 351-354.
[23] P-1348, PHL-OTP-00232374, at 0021-0022, lines 705-716; PHL-OTP-00232376, at 0014, lines 443-450; PHL-OTP-00232377, at 001, lines 336-337.

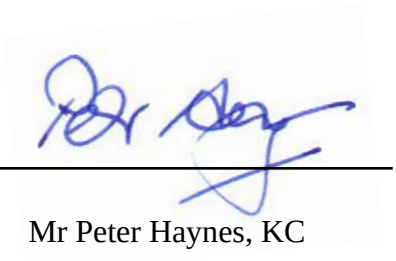
11. For these reasons, the Defence submits that P-1334 and P-1348 ought to be removed from the witness list. Should the Chamber nevertheless decide to retain them, the Defence takes no position on their admission pursuant to Rule 68(2)(b) and leaves the matter to the Chamber's discretion.

12. In the event that the Chamber decides to grant the Application, the Defence, however, requests that it admit only those parts of the statements that relate to proof of matters other than the acts and conduct of the accused.[24] In particular, no reliance should be placed on any of the passages identified by the Prosecution[25] in its Application,[26] as well as the allegation that specific instructions to kill were issued within the [REDACTED], allegedly "[REDACTED]",[27] and those attributing to Mr Duterte funds derived from [REDACTED].[28]

IV. CONCLUSION AND RELIEF SOUGHT

13. For the above reasons, the Defence requests that the Chamber

> **ORDER** the Prosecution to remove P-1334 and P-1348 from its List of Witnesses; or in the alternative
>
> **REJECT** the admission of identified passages that relate to the acts and conduct of Mr Duterte.



Mr Peter Haynes, KC
Counsel for Mr Rodrigo Roa Duterte

Dated this 9th day of November 2026
At The Hague, the Netherlands

[24] *Al Hassan* Appeal Judgment, para. 51.
[25] Application, para. 7, fns. 10-13.
[26] The Prosecution identifies P-1348's testimony as referring to the alleged association between Mr Duterte and the Davao Death Squad and drug cartels, including, *inter alia*, PHL-OTP-00232374, at 0014-0017, lines 440-534. **The Defence respectfully requests that the subsequent portion of the statement also be excluded from admission: PHL-OTP-00232374, at 0017-0018, lines 535-596.**
[27] P-1334, PHL-OTP-00099947, at 0013, lines 407-416; at 0022, lines 746-747; at 0026-0027, lines 879-893.
[28] P-1334, PHL-OTP-00099948, at 0013, lines 427-432.